

goods that the policy should be assigned by *Claxton* to *Linton* in trust to secure *Linton* against loss from his indorsations and to secure the payment of the notes, and after the payment thereof there in trust for *McMillan*; and that the policy, in pursuance of this agreement, was, with the consent of the defendants in writing indorsed on the policy, assigned by *Claxton* to *Linton* in trust as aforesaid.

1866.
Davis
v.
Home Ins.
Co.

And the question, which was the only one argued in the Court below, is whether *Linton* has or had an insurable interest in the goods in question?

McMillan was the purchaser of the goods and the principal debtor. *Linton* was his surety merely; as such surety he could not have, and it is not pretended that he had, an insurable interest; but this was not the sole relationship of these parties towards each other, for upon the purchase by *McMillan* and the indorsation by *Linton*, it was verbally agreed between them that the goods in question should be sold by *McMillan* and the proceeds as they were received by him should be paid over by him to *Linton* to be by *Linton* applied in relief of himself and in payment of the notes; and as *Claxton* was a party to this agreement it may be that *Linton* became a trustee for *Claxton* for the proceeds of the notes which he so received.

Judgment.

The further relationship between them was that *McMillan* was a fiduciary to some extent for *Linton*, with respect to the goods or the proceeds of the goods, until he paid over the proceeds to *Linton* and then *Linton* would be in the nature of a trustee for *McMillan* as to the application of the proceeds towards the reduction and payment of the debt. And as to the policy, *Linton* was the holder of it in trust for himself and *McMillan*, till the notes were paid, and then in trust for *McMillan* solely as to the surplus.