

FALCONBRIDGE, C.J.

MAY 10TH, 1902.

TRIAL.

DECKER v. CLIFF.

Life Insurance—Assignment of Policy—Insurable Interest—Creditor.

Action by the infant son and the administratrix of the estate of Robert J. Decker, deceased, to have it declared that they are entitled, subject to the claim of defendant as a creditor of deceased, to the proceeds of a policy of insurance on his life issued by the Home Life Assurance Company, who have paid the money into Court. The policy was in favour of deceased's wife, who predeceased him, and at her death Decker assigned the policy to defendant, who claims to be the sole beneficiary.

J. R. Roaf, for plaintiff.

G. M. Macdonnell, K.C., and J. M. Farrell, Kingston, for defendant.

FALCONBRIDGE, C.J.—The defendant paid no money to the deceased at the time of the assignment, and the defendant filled in the blank line in the assignment for describing the relationship—"creditor, etc." In this way only could defendant have complied with condition 11 indorsed on the policy, "an insurable interest existing at the time of the assignment must be shewn." The deceased was *inops consilii*, and was parting with his sole asset. The defendant cannot now be heard to set up his present contention, and must be declared to be a trustee for plaintiffs of the policy, and they are entitled to its amount, less the indebtedness, if any, due to defendant and the amounts paid by him for premiums, with simple interest. Reference to Master at Walkerton. Costs up to judgment to plaintiffs. Further directions and subsequent costs reserved.

Roaf & Roaf, Toronto, solicitors for plaintiffs.

Macdonnell & Farrell, Kingston, solicitors for defendant.