

contended, had created an enforceable trust governing money's flowing from the original transaction.

In other words, the father having got possession of the money, it became necessary to decide whether some one with a better title by virtue of the father's acts could dispossess him of it, as it was alleged that he was trustee for the son, and his title to retain the money was determined really without any reference to the policy or to its terms.

But in the case of *Bain v. Copp*, the company, in applying for leave to pay the money into Court, based their application upon the fact that they were liable upon the policy to the plaintiff or to some one else. But the policy was confessedly a void policy, and when that fact is brought to the attention of the Court, then, in the words of Mr. Justice Kennedy in *Gedge v. Royal Exchange Insurance Corporation* (1900) 2 Q.B. 214, "The Court cannot properly ignore the illegality and give effect to the claim." The money, therefore, finds its way into Court because the illegality of the policy was not brought to its attention. If, upon the application for payment in, the Court were apprised of the state of facts, it would seem that the duty of the Court would be to refuse leave to pay it in, permitting the company to do as was done in the *Worthington* case, and pay it to whomsoever they thought entitled.

If, however, that fact is not disclosed, but becomes evident afterwards, how can the Court determine the title of parties to money which has been paid voluntarily by an insurance company into Court, without an election to treat anyone as beneficially entitled to it, where the rights of the claimants arise upon the assumption that the company is liable to one or other either by virtue of the insurance contract or its assignment?

When the Court comes to look at the title of the claimants to the insurance money, is it not open to anyone to shew that the policy was a void policy and that the payment into Court was, therefore, a voluntary payment, and that no rights had arisen which the Court could enforce? It would not seem to be an injustice in that case to direct the money to be paid out to the company, and throw upon it the responsibility of paying it to any person it might think entitled to it, having in view all the circumstances.

The line of division is clear. Where the company has paid the money into the hands of someone whom it has chosen to con-