the defendants, and the company, instead of electing to pay the money voluntarily to the person they thought entitled to it, attempted to discharge themselves by paying the money into Court. It is this which makes the difference between the two cases.

The Wagering Act makes every insurance which offends against it "null and void to all intents and purposes whatsoever." If the company choose, notwithstanding the statute, to part with their money, they act, as Mr. Justice Osler says, as a respectable company usually does, but it is none the less a voluntary payment on their part. They may regard the terms of the policy as between themselves and the assured or beneficiary and may elect to pay it to any person whom they think entitled, but when they ask leave to pay it into Court, their right depends, not upon what they think proper to do, but upon the legal status they possess, as trustees or debtors. In either capacity they are entitled to pay into Court, and the Trustee Act provides them with a discharge from liability. If there is no liability, and this comes to the notice of the Court, an order for payment into Court and for the discharge of the insurance company ought not to be made.

In re Bajus, 24 O.R. 397, the question as to whether an insurance company is a trustee of the insurance money or merely a debtor in respect of it, was not finally settled, but the Divisional Court applied the provisions of the Judicature Act (R.S.O. 1897, c. 51, s. 58, sub-s. 6) in their favour upon the ground that they occupied either one position or the other. In *Worthington* v. *Curtis* the money having been paid over to the father as administrator of the son, the Court was of opinion that no one could utilize the statute as a defence except the company itself, and that the question as to the person entitled to the money must be determined as if the statute did not exist. If that was not so, then the Court could give no relief because of the illegality of the transaction, and the party who had got the money could keep it. The decision of the Court was based on a consideration of the circumstances under which the father had effected the policy: whether in fact he had done so for his own benefit, and with his own money, or whether he had so constituted himself a trustee for his son that the latter, or his estate, were really entitled to the money as against the father. And this was decided without reference to the liability of the insurance company upon the policy but upon the antecedent circumstances arising from the dealings of the father, which, it was