

*TITLE TO MONEYS DERIVED FROM A VOID POLICY.*

The case of *Bain v. Copp* which was recently before Mr. Justice Osler on an application for leave to appeal was an interpleader issue with regard to moneys paid into Court by the Star Life Insurance Co.

The matter arose in this way:—The defendants made a mortgage to the Star Life Insurance Co., and by a covenant therein was required to insure one or more lives to the extent of £2,500 sterling, during the continuance of the mortgage, and keep the premiums paid. The defendants endeavored to insure the life of Alfred Copp, a son of the defendant W. Copp, but he failed to pass the medical examination. The plaintiff's son, a medical student, made application for insurance on his life for £2,500 sterling, and was accepted by the company, and a policy issued to him. When he signed the application he was about a month under age, but reached his majority before the policy was issued. He assigned the policy to the defendants after its issue, and they paid the premiums on it until his death in 1902. The plaintiff was his administrator and claimed the amount due on the policy. The company applied, and was given leave to pay the money into Court, and the interpleader issue was to try the question as to who was entitled to the money. Mr. Justice MacMahon, who tried the case, gave judgment for the defendants, the assignees of the policy, they having paid and satisfied the mortgage to the company. This judgment was affirmed by a Divisional Court, and leave to appeal to the Court of Appeal was refused by Mr. Justice Osler.

The decision is perhaps, as a matter of morals, perfectly correct, but it proceeds upon a legal ground upon which it may have little right to stand. It was upon the authority of *Worthington v. Curtis*, 1 C. D., 419; and there certainly is a similarity between the two cases up to a certain point. In both cases the policies were void under the Wagering Act. In both cases, too, the companies refused to set that act up as a defence and paid over the money. But here the similarity ends.

In the *Worthington* case the company paid the money strictly in accordance with the terms of the policy, but the payment was voluntarily made by them. In the case in hand the company issued the policy in favor of the plaintiff's son, who assigned it to