

## Reports and Notes of Cases.

### England.

#### JUDICIAL COMMITTEE OF PRIVY COUNCIL.

Viscount Haldane, Lords Dunedin,  
Shaw, Sir A. Channell.]

[Law Times Rep.  
Dec. 15, 1917.

#### FIDELITY AND CASUALTY CO. OF NEW YORK V. MITCHELL.

Appeal from the Supreme Court of Ontario.

*Canada—Insurance (accident)—Sprained wrist—Bodily injury—  
Exclusively of all other causes—Latent tuberculosis—Infection  
—Total disablement.*

By a policy dated the 10th Feb., 1913, the appellants insured the respondent, a medical man, against "bodily injury sustained . . . through accidental means . . . and resulting directly, independently, and exclusively of all other causes in (a) immediate, continuous, and total disability that prevents the assured from performing any and every kind of duty pertaining to his occupation." By clause 11 blood poisoning resulting directly from a bodily injury was to be deemed to be included in the term "bodily injury." The policy also provided that in the case of partial disability so resulting, their liability was not to extend beyond twenty-six weeks. In the case of total disability resulting from an accident while in a railway train, the assured was to be paid quarterly a sum of \$150 weekly. A statement by the respondent that he was sound "mentally and physically" was made a warranty.

On the 30th May 1913 the respondent, while travelling in a train, met with an accident to his wrist. He was paid for seven quarters at the rate of \$150 a week. The wrist was found to be tuberculous and payments were stopped. There was evidence that some years before the date of the policy the assured had suffered from a slight tuberculous affection of the left lung, which had caused a lesion which had not healed. The disease had then become latent, and would have remained so in all probability but for the accident.

*Held*, agreeing with the findings of fact arrived at by both Courts below, that there was no breach of warranty. The dis-