viously he had enjoyed good health, and was a sound and capable man.

The learned Judge sitting in appeal was quite unable, after a careful perusal of the evidence, to arrive at the conclusion that the finding was erroneous; but, even if the plaintiff's heart had been affected by some trouble before the assault upon him by one Atkinson, which was the "accident" causing disability, the plaintiff, being ignorant of the heart affection, was still in a position to maintain that his disablement resulted "directly, independently, and exclusively of all other causes" from the assault (accident): Fidelity and Casualty Co. of New York v. Mitchell, [1917] A.C. 592.

It was also contended on behalf of the defendant that the injury sustained by the plaintiff was not the result of accident at all, but that he voluntarily entered into a fight with Atkinson or voluntarily continued it after it had temporarily ceased. Upon this point the finding of the trial Judge in favour of the plaintiff was fully warranted by the evidence.

Again, it was urged on behalf of the defendants that there was a warranty as to the occupation of the plaintiff, and, as he had changed from a less to a more hazardous one, this avoided the policy. By the terms of clause 11 of the warranties, however, a change of occupation was contemplated by the parties to the contract, and a provision made for the recovery of a different amount by way of compensation, in case of injury received in any occupation or exposure classed by the defendants as more hazardous. It was clear that the accident to the plaintiff did not occur while he was engaged in the occupation of drover; and, in these circumstances, the effect contended for could not be given to the warranty.

As to the question of the materiality of the change in occupation, sec. 156, sub-sec. 6, of the Ontario Insurance Act, R.S.O. 1914 ch. 183, applied. The question of materiality was for the trial Judge, who had found that the interim change of occupation or the failure to declare it at the date of the renewal was not a circumstance material to the defendants or affecting the extent of the risk they undertook: Strong v. Crown Fire Insurance Co. (1913), 29 O.L.R. 33, at pp. 55 et seq.

The appeal failed on all grounds, and should be dismissed.

MULOCK, C.J.Ex., agreed with SUTHERLAND, J.

CLUTE and KELLY, JJ., agreed in the result, for reasons stated by each in writing.

Appeal dismissed with costs.