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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

JULY 27TH, 1917

FIDELITY AND CASUALTY CO. OF NEW YORK
v. MITCHELL.

*Insurance—Accident Insurance—Bodily Injury—Accidental Means
—Breach of Warranty—Extent of Disability—Sprained Wrist
—Latent Tuberculosis—Infection—Total Disability—“Exclusively of all other Causes.”*

An appeal by the company from the judgment of the Second Divisional Court of the Appellate Division of the Supreme Court of Ontario, *Mitchell v. Fidelity and Casualty Co. of New York* (1916), 37 O.L.R. 335, 10 O.W.N. 311, affirming the judgment of MIDDLETON, J. (1916), 35 O.L.R. 280, 9 O.W.N. 341.

The appeal was heard by a Board composed of VISCOUNT HALDANE, LORD DUNEDIN, LORD SHAW, and SIR ARTHUR CHANNELL.

Sir John Simon, K.C., D. L. McCarthy, K.C., and M. W. Slade, for the appellants.

P. O. Lawrence, K.C., and J. D. Montgomery, for Mitchell, the respondent, were not called upon.

The judgment of the Board was delivered by LORD DUNEDIN, who said, after stating the facts, that three grounds of defence had been argued, viz.: (1) that there was breach of warranty on the part of the plaintiff, who was thereby disentitled to sue on the policy; (2) that the injury sustained by the plaintiff through accidental means did not independently, exclusively of all other causes, result in immediate continuous and total disability; (3) that the disability did not prevent him from performing any and every kind of duty pertaining to his occupation.