592. This led him to change the grounds of his judgment; but he was of opinion, as above stated, that the plaintiffs must still fail, on the ground of there having been a change material to the risk in converting the real estate and insurance office of John Morton into a restaurant.

The learned trial Judge says that he "thinks and finds" that this was a change material to the risk. With all respect, I must say that it is a finding without any evidence to support it. It may well be that it was material, but the defendants, upon whom was the onus of proving this, gave absolutely no evidence on the point. That part of the building would appear not to have been partitioned off from the billiard and pool room, when the first policy was placed upon the tables and appurtenances. Whether a restaurant is a more hazardous risk than a billiard and pool room, I have no means of knowing. I might guess that the former is the more hazardous of the two, but it is something upon which I cannot form an intelligent opinion without evidence. As the defendants have not seen fit to furnish us with any, their evidence having been directed, as I have stated, to bring it under the authority of the Thompson case in the Supreme Court, I do not think they are entitled to a dismissal of the action on this ground.

In my opinion, the appeal should be allowed and judgment entered for the plaintiffs for $1,025, being the amount of the two policies, $1,400, less the salvage, $375.

HIGH COURT OF JUSTICE.

BRITTON, J. JULY 13TH, 1911.

FARQUHAR v. ROYCE.

Vendor and Purchaser—Contract for Sale of Land—Reservation of Gravel—License to Enter and Take—Consideration—Principal and Agent—Estoppel.

Action for damages which the plaintiff alleged that he had sustained by reason of the defendant preventing the plaintiff and his servants and assigns from entering upon certain land and removing sand and gravel therefrom.

W. C. MacKay, for the plaintiff.
R. B. Henderson, for the defendant.