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No. 14

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JUNE 9TH, 1916.

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

*Insurance—Accident Insurance—Bodily Injury—Accidental Means
—Sprained Wrist—Recovery Delayed by Presence of Disease
in System—Warranty of Health—Disability Caused Exclusively
by Accident—“Total Disability”—Findings of Fact of Trial
Judge—Appeal.*

Appeal by the defendants from the judgment of MIDDLETON, J.,
35 O.L.R. 280, 9 O.W.N. 341.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL,
LENNOX, and MASTEN, JJ.

R. McKay, K.C., for the appellants.

A. C. McMaster and J. H. Fraser, for the plaintiff, respondent.

MEREDITH, C.J.C.P., read a judgment, in which he said that the plaintiff fell from a sleeping-berth in a railway carriage, and so sprained his wrist; that was the only immediate effect of the accident, and was an injury which ordinarily should have been quite recovered from in not many months; but the plaintiff's health and strength were at the time and had been for a long time before in such a condition that, instead of making a rapid recovery, he was yet, and might be for life, in ill-health, and unable to practise his profession.

The exact character of the latent physical weakness was of no great consequence; it was there, and it was started into activity

*This case and all others so marked to be reported in the Ontario Law Reports.