**CIHM**
**Microfiche**
**Series**
**(Monographs)**

**ICMH**
**Collection de**
**microfiches**
**(monographies)**

**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

## Technical and Bibliographic Notes/Notas techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significently change the usual method of filming, are checked below.

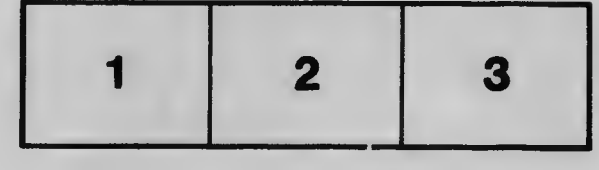
L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

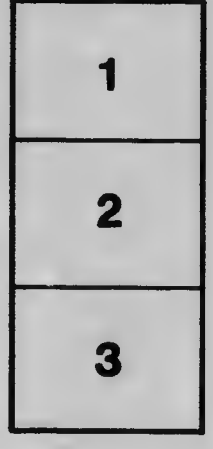
- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers demaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☑ Bound with other material/ Relié avec d'autres documents
- ☑ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

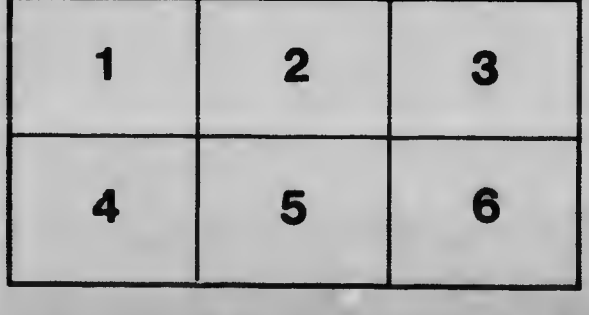
- ☐ Coloured pages/ Pages de couleur
- ☑ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☑ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

| 10X | 12X | 14X | 16X | 18X | 20X | 22X | 24X | 26X | 28X | 30X | 32X |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | ✓ | | | | | |

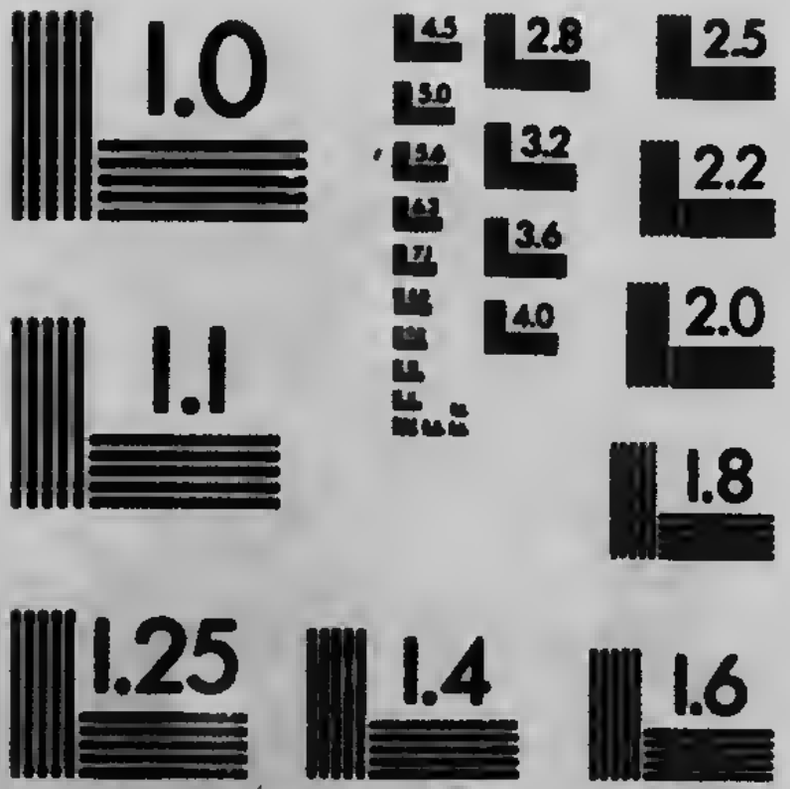


MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)




APPLIED IMAGE Inc

1653 East Main Street
Rochester, New York 14609 USA
(716) 482 - 0300 - Phone
(716) 288 - 5989 - Fax

# What is the "Cause" of Disability?

BY
WILLIAM RENWICK RIDDELL, LL. D.,
TORONTO,
FELLOW. ROYAL. HISTORICAL SOCIETY, ETC.

*Reprinted from The New York Medical Journal for January 13, 1917.*

*Reprinted from the New York Medical Journal for January 13, 1917.*

# WHAT IS THE "CAUSE" OF DISABILITY?

## *A Medicolegal Question,*

By William Renwick Riddell, LL.D., Etc.,
Toronto, Ont.

In the Supreme Court of Ontario, a medicolegal case has recently been decided which will be of interest to many medical men.

Doctor Mitchell took out an accident insurance policy in the Fidelity and Casualty Company of New York; a few days thereafter, he was thrown from his berth in a Pullman car and sprained his wrist. The injury did not improve as expected owing to tuberculous infection; and it appeared to be permanent. The policy called for $150 a week for total disability, "however long continued, if resulting from accident directly, independently, and exclusively of all other causes"; the company held that the accident was not the only cause and refused to pay. Doctor Mitchell sued and succeeded at the trial. The matter came to be decided in the Appellate Division of the Supreme Court, of which I have the honor to be a member.

I add here so much of my judgment as is not of interest to lawyers only:

"Riddell, J.:—This appeal involves the interpretation of a contract of very common occurrence. Were it a case of less importance, I should be content to adopt without further comment the conclusions of the learned trial judge, and so dismiss this appeal.

But the advance of knowledge raises and will continue to raise novel contentions: and what is a commonplace at one time becomes a matter of great controversy at another. Until very recently, the main ground of dispute of liability here would not have been thought of: or, if thought of, would have re-

ceived scant consideration—but *tempora mutantur et nos mutamur in illis.*

The plaintiff, a doctor of medicine, a specialist in diseases of the eye, ear, nose, and throat, took out an accident policy with the defendants, an accident insurance company. In most accident insurance policies, the beneficiary is entitled to payment only for a limited time (usually one year or less), but this company finds its account in making its policies perpetual, that is, for the life of the patron who may be injured. No doubt, this forms a strong inducement to those desiring accident insurance, to prefer this company.

In the application, the duties of his occupation are described as "special work on eye, ear, nose, and throat," and the insurance was against "bodily injury sustained . . . through accidental means . . . and resulting directly, independently, and exclusively of all other causes in an immediate, continuous, and total disability that prevents the insured from performing any and every kind of duty pertaining to his occupation."

The plaintiff was thrown from an upper berth in a sleeping car and thereby sprained his wrist severely—it is not contended by the defendants that this was not an injury within the meaning of the policy—and, had the injury healed within a short time, no doubt the company would have paid the $150 per week without demur.

But the injury did not heal, it is not yet healed. and it is doubtful whether it will ever be much improved—the company find themselves charged with an obligation to pay $150 per week for years, perhaps until the death of the plaintiff; and hence they dispute liability.

Several medical men of eminence were examined at the trial: without at all reflecting on any other, it seems to me that the evidence of Doctor Anderson gives the most satisfactory explanation. He says that some time ago, probably some ten or fifteen years before the accident, there had been a tuber-

culous condition of part of the pleura, probably the apex of the left lung: any existing tuberculous mass had become encysted so as to leave no apparent disease—the patient would be quite well, wholly unconscious of any trouble, danger, or disease; and there would be no danger of another outbreak proceeding from the original disease.

But an accident happens, tissues are injured, a lessened resistance to the "germs" occurs, these, otherwise innocuous, find a *nidus* into which to intrude and in which to become active.

I can see no difference between this case and the case of an injury causing a break in the skin and thereby allowing some of the germs which are (practically) always and everywhere floating around, to enter and set up a diseased condition. How is a "lessened resistance" of tissues, without a breach of continuity of the skin allowing germs which may be in the blood to enter and set up or continue an inflammatory condition, different from a lesion of the skin allowing similar germs which may be in the air to enter with the same result?

Until a comparatively recent day, no one knew anything about the tubercle bacillus, and such affections as are now known (so far as such matters are known) to be due to the invasion of a bacillus were supposed to be due to exposure to the air. Would any one in that state of theory—knowledge if you will—say that the air was a contributing cause of the disability? And is the meaning of words to be changed by the change of medical theory?

We must interpret this document on common sense principles; no one could, when obtaining accident insurance, imagine that he was guaranteeing the company against the presence, accidental and temporary or otherwise, of tubercle bacillus or any other bacillus or spirillum in his system. We must interpret the language of this contract in its ordinary and popular meaning—the use of language preceded scientific investigation.

That this disability has as a cause the accident,

cannot be disputed. In a well known Scottish case a miner was, by reason of an accident to a pump, compelled to stand for some time in cold water, exposed to a current of cold air. This reduced his vitality and permitted the pneumococci which are (practically) everywhere, to overcome the resistance of the tissues; pneumonia set in and the man died. The arbitrator held that the pneumonia was caused by the occurrence; and, of the seven judges, six agreed with him—one only thinking that there must be some direct lesion. This case was approved in a case in the House of Lords. A miner was exposed to a cold current of air which "brought on pneumonia," and it was held that the death was the result of the exposure.

I do not know of any difference between the case of a tubercle bacillus infection and that of a pneumococcus infection—it is said you cannot have tuberculosis without the former or pneumonia without the latter. And I can see no difference in law between an accident weakening the power of resistance of the tissues and allowing the pneumococcus to enter and an accident of another kind weakening the power of resistance of the tissues and allowing the tubercle bacillus to enter—the infection of either kind could not fairly be called a cause within the meaning of this policy.

It is to be noticed that in both the pneumonia cases, the pneumococci did not enter by any external lesion, but attacked the tissues in the same way as the bacillus in the case now under consideration.

The case of *Brintons Limited* v. *Turvey* contains much of value. A workman engaged in sorting wool contracted anthrax, which caused his death. "According to the medical evidence and theory," an anthrax bacillus passed into his eye, thereby infecting him with that terrible disease, and causing his death. The County Court Judge held that the entry of the bacillus was an accident; his decision was affirmed by the Court of Appeal and the House of Lords. Lord Halsbury gives examples of what he

would call accidents: "A workman . . . spills some corrosive acid on his hands; the injury caused thereby sets up erysipelas—a definite disease: some trifling injury by a needle sets up tetanus." No one in the present state of medical science doubts that erysipelas and tetanus are germ diseases like tuberculosis, pneumonia, and malaria.

In answer to the argument or suggestion that the condition of the plaintiff's bodily system was a contributing cause, I asked, "Suppose the plaintiff were 'a bleeder'—of the hemorrhagic diathesis, as the technical expression runs—so that a trifling lesion would produce (in the sense of being followed by) excessive hemorrhage, long continued, almost impossible to check, could it be argued that the diathesis was a contributing cause to the continued disability?" Surely such conditions of the body are conditions only (in the logical sense of the word) and not causes.

The appeal should, in my opinion, be dismissed with costs."

All the four judges of the highest court in the Province agreed that, while medically the infection was a cause of the disability, it should not be considered such in interpreting such a contract.

The case is interesting (if for no other reason) as showing that even courts of law, conservative as they are and must be, cannot avoid taking cognizance of the advance of medical science.

OSGOOD HALL.