

reduced to \$200, on and from the 1st June, 1906. The defendants became embarrassed, and on the 18th January, 1908, ceased to carry on business, and transferred their business at Owen Sound to another bank. It was shewn that between the 1st June, 1906, and the 18th January, 1908, the average deposits at the defendants' Owen Sound branch were somewhat less than \$400,000, and that during only three months of that term were the deposits as high as \$400,000. TEETZEL, J., said that his interpretation of the proviso was not that the defendants would be relieved from paying the greater sum if during the two years before the 1st June, 1908, the average deposits, monthly or otherwise, were less than \$400,000; but that, if on that date the deposits for two years prior thereto were only such as would enable a reasonable man honestly to say that the deposit business did not then amount to a steady average of \$400,000, the defendants would be relieved. If the defendants had continued business to the 1st June, 1908, and if on that date, having reference to a reasonable time prior thereto, the books had shewn deposits in the ordinary course of business amounting to a steady average of \$400,000, the defendants would not have been relieved from paying the larger sum. There was nothing to shew that the parties contemplated that the average should be computed for the whole term or for any certain number of months. The circumstance that the defendants were compelled to give up the business at this branch before the time fixed for determining whether they should be relieved under the proviso was a misfortune, the consequences of which they must suffer. They contracted to pay the plaintiffs \$250 per annum, and the proviso was introduced for their relief in a certain event, and by their own act in closing the branch, and without any default in the plaintiffs, the defendants had made it impossible to apply the terms of the proviso. The judgment stands as originally pronounced. Costs of the motion to be paid by the defendants. H. S. White, for the plaintiffs. J. F. Boland, for the defendants.

BROWN v. CANADIAN PACIFIC R.W. CO.—GARROW, J.A., IN
CHAMBERS—MARCH 2.

Appeal—Leave to Appeal to Court of Appeal from Order of Divisional Court—Absence of Special Circumstances.]—Motion by the defendants for leave to appeal to the Court of Ap-