

on either ground a claim arose, had the character of Munro's acts in regard to these overdrafts become known to the Bank more than two months previous to the notice by them given to the defendants?

In proceeding to adjudicate upon the main—the decisive issues raised by the parties in this case, I must first advert to the rules of the Bank, and to its practice with respect to over-drafts. This is a point of essential—of paramount importance, and, as such, has received the careful consideration of the Court. Now, as a matter of fact, admitting of no doubt, there was no rule of the Bank, properly so called, prohibiting over-drafts previous to the occurrences under review, although such a rule is incidentally referred to by one of the witnesses as having been since made; and there seems to be no doubt from the evidence adduced, that over-drafts were frequently permitted. Mr. Worts, the Vice-President, does not deny that an agent may occasionally so accommodate a good customer, and the account of his firm in Toronto seems to have been frequently overdrawn. It was attempted to draw a distinction in this respect between the powers of the Cashier and the highest officers who managed the Bank at Toronto, and those of Munro who managed it at Montreal. But Mr. Worts himself says, that “the functions of the Cashier, Manager and Agent are similar as regards the management of the local institution over which such officer is appointed;” and this statement appears to be justified by the character of these functions, and the plaintiff's description of Munro's powers in their proposal for insurance. In Montreal over-drafts were permitted by Munro to other persons besides Nichols and Robinson; they were made evident in many of the reports furnished by him to the Board at Toronto. He appears also to have allowed them at Peterboro', and although he was found fault with on that occasion, it was evidently very leniently censured; and, notwithstanding his having allowed them, the plaintiffs, in their guarantee proposal, declare that he has been in their employ for several years, and had given them satisfaction. Afterwards some over-drafts were found when his accounts were inspected in December, 1864. Mr. Dallas, the manager who succeeded him, seems to have allowed them, to a certain extent; and Mr. Arnold, the ledger-keeper, declares “that although it was not the general practice in the Bank to allow over-drafts, it was not unusual and it was always admitted that the agent or manager had the power to allow them or not, as he might think proper;” and he says he was perfectly justified in acting under his orders in passing the cheques, and had done so for the large and small amounts under Mr. Dallas' instructions since Munro's dismissal. And there is strong confirmation of this view to be found in the fact, that this Mr. Arnold, who passed all the over-drafts allowed to Nichols and Robinson, Sidey, Crawford and others, was not dismissed by the Bank, nor so far as appears in evidence, was even censured for having done so, although he was perfectly cognizant of all the circumstances of the over-drafts, including the absence of security.

It is remarkable, if not incredible, that the 12 folios of the deposit ledger which have been produced, shewing the enormous transactions of Nichols & Robinson, from 1st November, 1864, to the middle of May, would have exhibited column after column, composed chiefly of debit balances—many, if not most of which are overdrafts, if Munro was not recognized by every official in the Bank as having this species of discretionary power. But the attempt is made to distinguish between the overdrafts complained of, and the numerous others exhibited in the record, on the ground of their amount or of the security taken for them.—But the fallacy of this pretension is plain. The principle is the same, so far as this case is concerned, whether the overdrafts be small or great. If overdrafts are permitted or tolerated at all, the amount of them is in the discretion of him who allows them. To permit too large an overdraft,

then, becomes an imprudent or injudicious act, not an irregular one. The same argument applies to the distinction as to security. The taking of security seems to have been far from an invariable rule, apart from Nichols & Robinson's case, and this is also plainly referable to the discretion of the manager. If he could, without censure, advance fifty dollars without security, the advance of fifty thousand is within his functions, and it might easily be conceived that the loan of fifty dollars to one man without security might be more certain to be productive of loss to the Bank than the loan of fifty thousand to another, and, in this case, the immense transactions of Nichols & Robinson with the Bank reduce the amount of overdrafts to comparative insignificance. I am, therefore, of opinion that the allowance of overdrafts was not in itself an irregularity within the meaning of the policy.

But if the facilities given to Nichols & Robinson originated in any fraudulent or collusive design, the case would undoubtedly fall within the terms of the policy; and this point is of the gravest importance.

The fraudulent collusion alleged materially rests upon the assertion that Munro and Nichols and Robinson carried on joint operations in stocks and gold, and that Munro afforded them facilities by way of over-drafts to assist in these joint speculations, to float over the margins which required to be put up for them, and the others of his own in New York; his object being to share the profits, and in some cases of transactions to receive commissions for the aid he was giving, and that he fraudulently contrived to conceal these over-drafts from his employers by conniving at fictitious balances being made up at the end of the month. These are serious charges, and, if substantiated, would, in the absence of every other obstacle, sustain the plaintiff's action.

After going over the evidence the learned judge considered that there was no evidence against the defendants on this point. He said further: I consider the ruin of Nichols & Robinson and their inability to meet their engagement at the bank sufficiently accounted for by the terrible monetary crisis through which this and the neighboring country was at this moment passing. A catastrophe which swept away from them \$150,000 in one month might well have deranged the calculations of a bank manager to a greater extent than that suffered by the plaintiffs, and the fact that the firm had such a capital to lose, and that any less misfortunes would have left them competent to fill all their engagements, may not be without significance in the consideration of the conduct of Munro.

I am unable, therefore, to find the evidence of fraudulent collusion involved in the second branch of inquiry; and as to the third very little remains to be said.

If the fact of allowing over-drafts in itself give rise to the right to make a claim under the policy, then I would be of the opinion that the policy was void by a breach of the fourth condition. But as I hold that allowing over-drafts *per se* without a positive nay, a peremptory rule and practice of the Bank against it, does not constitute a default or irregularity within the meaning of the policy, my decision in regard to the breach of the fourth clause becomes unnecessary; and also holding as I do, that no fraud or collusion in respect to these over-drafts is established or has been proved by legal and sufficient testimony to have been perpetrated by Munro. I am under the necessity of dismissing plaintiff's action.

BANKERS' MAGAZINE.—The March number contains an Essay on Banking and the Currency. The Currency system of United States and Europe. The London Money Market of 1868, &c.

—The New City Gas Co., of Montreal, has declared a semi-annual dividend of four per cent., payable after the 15th. Transfer books closed to the 15th.

Railway News.

NORTHERN RAILWAY.—Traffic receipts for week ending February 27th, 1869.

Passengers.....	\$2,092 19
Freight and live stock.....	4,799 32
Mails and sundries.....	762 77

\$7,654 28

Corresponding Week of '68. 2,447 67

Increase..... \$5,206 61

GREAT WESTERN RAILWAY.—Traffic for week ending February 19, 1869.

Passengers.....	\$20,263 34
Freight.....	45,147 13
Mails and Sundries.....	2,167 72

Total Receipts for week..... \$67,578 19

Corresponding week, 1868... 67,302 79

Increase..... \$275 40

INTERCOLONIAL RAILWAY.—Messrs. H. H. Horsey & Co., who tendered for No. 1 section of the Intercolonial at \$8,750 per mile, having discovered an error of one million cubic feet in adding up the quantity of earth excavation, withdrew their tender, and the Commissioners unwilling to litigate the matter, have given the contract to G. & J. Worthington, of Quebec, the next lowest on the list. The tender of the latter was \$9,485 per mile. The contract obtained by the Messrs. Worthington for No. 4 section is allowed to be assigned to Elliott, Grant & Whitehead.

WOODEN RAILWAYS IN QUEBEC.—The Railway Committee of the Quebec Assembly adopted the following resolution:—“That the charter for the Sherbrooke and Eastern Townships Railway from Sherbrooke via Dudswell and Weedon, and thence on the most feasible route, and grade to connect with the Levis and Kennebec Railway, be granted, and that the charter of the Saint Francis Valley Railway from Lennoxville to Decourtenay place in Bury, thence to or near Bishop's Landing, and thence to Lake St. Francis, and thence to Kennebec road, be granted.” The charter of the former road to be for a wooden railway, with the right hereafter to substitute iron; and the charter of the latter to be for an iron railway, with the right hereafter to substitute wooden rails. In both charters the right to compromise, and amalgamate both companies into one company, or to arrange upon connections for the common use of both roads for track, in case the two companies are kept up.

REVENUE AND EXPENDITURE.—The following is a statement of the Revenue and Expenditure of the Dominion of Canada for the month ended 28th February, 1869:

Customs.....	\$409,790 95
Excise.....	206,281 61
Post Office.....	47,360 73
Bill Stamp Duty.....	11,976 93
Public Works including Railways.....	44,835 73
Miscellaneous.....	536,276 36
Total.....	\$1,256,522 31

Expenditure..... \$638,728 43

—Counterfeit \$4 bills on the Gore Bank are in circulation in Galt.

—The Welland County Council has decided not to purchase right of way through that county for the proposed Erie and Niagara Extension Railroad Company.

—The Hamilton Gas Company, has declared a half-yearly dividend of 34 per cent.

—A despatch from Montreal states that counterfeit bills on the Bank of Montreal are in circulation in that city.

—Mr. John Henderson of the Gore Bank has obtained a position in the Bank of Toronto.