

We are of opinion that that contention is not well-founded, and that the order of the Chancellor must be affirmed. The by-law passed on the 18th June, 1901, does not establish a pension fund, but only authorises the directors to establish one; and the grant of \$5,000 to the fund, which, moreover, is qualified by the provision that "the directors are empowered to contribute the same out of the funds of the bank," coupled with the subsequent opening of the account in question and the placing of that sum at the credit of it, was no more than setting aside money to become part of the pension fund if and when it should be established; and the grants made in the subsequent years 1902, 1903, 1904, 1905, and 1906, and the placing of the sum granted at the credit of the account, stand on the same footing, and they were but additions to a fund which had been set apart to become, as I have said, part of a pension fund if and when the directors should deem it expedient to establish such a fund.

If the appellants are right in their contention, notwithstanding that nothing had been done by the directors towards formulating a pension scheme, had the failure of the bank not occurred, and it was now a going concern, it would be open to any of its officers to bring an action to have it declared that the amount at the credit of the account is impressed with a trust for the benefit of the officers and employees of the bank and their families, and to have a scheme for the administration and application of the fund settled by the Court. Such a result would be manifestly unjust to the bank, as it would take from it the power of determining in what cases and under what conditions officers and employees of the bank and their families should be entitled to an allowance from the fund, as well as the amount to be allowed. These matters were of the very essence of the pension fund scheme that was proposed; and the fact that nothing had been determined as to them leads, I think, irresistibly to the conclusion to which I have come, that no trust was intended to be created and no pension fund to be established until the directors should have determined to establish the fund—when, no doubt, these matters would be considered and dealt with in a pension scheme regularly formulated.

There was no communication made to the officers and employees of the bank as to the action which had been taken with reference to the establishment of a pension fund; and, during the whole of the period that elapsed between the passing of the by-law and the suspension of the bank—a period of upwards