

sion Fund Society of the Bank of Montreal as of the date on which they entered the service of the Ontario Bank.

The claim was disallowed by the Official Referee . . . and his decision was affirmed by the Chancellor.

The Referee certifies that, in making his order for a call upon the shareholders, "the pension fund amount was neither brought to" his "attention or considered by" him "in any way," and that "the pension fund amount did not appear in the estimated statement of assets and liabilities, no doubt for the reason that on the 30th November, 1907, the amount had been transferred on the books of the bank to deficit account."

It was argued before the Official Referee that the \$30,000 placed in the books of the Ontario Bank to the credit of an account called "Officers' Pension Fund of the Ontario Bank" was impressed with a trust in the nature of a charitable trust in favour of the officers and employees of the Ontario Bank and their families; and that, as the officers and employees of the bank went over practically as a body to the Bank of Montreal and became members of the Pension Fund Society of that bank, the trust fund should be administered on the principle of *cy-près* and paid over to the president of that society.

The Official Referee did not give effect to that contention, being of opinion that the scheme of forming a pension fund for the officers and employees of the Ontario Bank and their families, which the bank had in contemplation, was "only in the making and was never consummated;" and that, therefore, no trust in favour of the appellants was created in respect of the amount at the credit of the "Officers' Pension Fund of the Ontario Bank" in the books of the bank; and with that opinion the Chancellor agrees.

Upon the argument before us it was contended on behalf of the appellants:—

(1) That what was done had resulted in the \$30,000 being impressed with a trust for the benefit of the officers and employees of the Ontario Bank and their families.

(2) That what was done evidenced a clear charitable intention; and that, where that is the case, it is never allowed to fail on account of the uncertainty or impracticability of the object, but the particular mode of application will be directed *cy-près*; and that, therefore, the failure of the bank to formulate a scheme for the administration of the fund had no other result than that the fund must be applied *cy-près*, as directed by the Court.