

that it is clearly a case in which a third party notice should be allowed. The third party denies that he signed the bond which is referred to in the second paragraph of the statement of claim on which the defendant's liability is based, but, even if I could go into the merits of the third party notice, it seems almost needless to point out that the defendant does not pretend or claim that he did, his claim is based on the fact that the third party is surety for the same debt under another bond.

I think the motion must be refused with costs to the defendant as against the third party in any event.

HON. SIR JOHN BOYD, C.

OCTOBER 16TH, 1913.

RE ONTARIO BANK (PENSION FUND.)

5 O. W. N. 134.

Bank—Winding-up.—Pension Fund—Bank Act, R. S. C. (1906), c. 29, s. 18. (2)—Inchoate Scheme — Claim on Assets of Bank—Money Raised by Assessment of Shareholders for "Double Liability"—Charitable Trusts—Order of Referee Disallowing Claim—Appeal—Costs.

BOYD, C., *held*, that the officers' pension fund of the defendant Ontario Bank should go to the relief of the shareholders under double liability. That the officers' pension fund was an inchoate scheme, not a charitable trust.

Appeal by certain persons who were members of the staff of the bank from an order of KAPPELE, Official Referee, in the winding-up of the bank, disallowing the claim of the appellants to a share of the assets of the bank in respect of a pension fund.

J. A. Worrell, K.C., for the appellants.

J. A. Patterson, K.C., for the shareholders.

A. McLean Macdonell, K.C., for the liquidator.

HON. SIR JOHN BOYD, C.:—Passing over preliminary matters set forth in the judgment of the Referee, the substantial question remains as to the \$30,000 pension fund of the Ontario Bank. This amount is now represented by that much money levied as under the double liability call made by the liquidator. Is that money impressed with a trust for the benefit of the officers of the bank, or is it to be re-