The appellants relied on the doctrine of charitable trusts, and referred specially to a case of pensioning as decided by Byrne, J., in Re Gosling, 48 W.R. 300 (1900). But in that case the testator had left a clearly defined fund for a clearly defined purpose, which was deemed to be charitable. The benefit intended was for a class of "old and worn out clerks," who were to be "pensioned off." These expressions brought the donation within the statute in that behalf. Here is no ascertained fund—the creation of the fund was in progress with an ultimate view of having it increased by contribution from the officers of the bank, and there is no means of defining who of all the officers and their families are to be the recipients of the pension. In this regard the decision of Cozens-Hardy, J., in Re Gassiot, 70 L.J. Ch. 242 (1901), is pertinent. He held that the testamentary gift of income to be applied for the benefit of persons answering a certain description in the wine trade, without any reference to age or poverty, could not be supported as a charitable gift, and therefore failed wholly as infringing the rule against perpetuities.

In brief, the whole scheme as projected is as yet inchoate, and it was interrupted in the making by the compulsory liquidation of the bank.

The judgment should be affirmed and the money returned to the shareholders. The Referee has awarded costs against the petitioners. But, as the point is a new one under the Bank Act and is one calling for judicial decision, I think the better course will be to relieve the petitioners from the payment of costs, and to direct that the costs of the liquidator be paid out of the fund.

MIDDLETON, J. OCTOBER 17TH, 1913.

*TORONTO HARBOUR COMMISSIONERS v. ROYAL CANADIAN YACHT CLUB.

Landlord and Tenant—Lease—Covenant of Tenant—Restricted Use of Demised Premises—Right to Remove Sand—Waste—Injury to Reversion—Injunction—Damages—Forfeiture of Lease.

Action for an injunction restraining the defendants from removing sand from certain parcels of land leased by the Corporation of the City of Toronto to the defendants the Royal

*To be reported in the Ontario Law Reports.