

of five years—no one appears to have supposed that any pension fund existed. No pensions out of it were applied for or granted or paid, and beyond the annual sums placed at the credit of the account nothing was contributed to the fund by any officer or employee of the bank; but, on the contrary, the two pensions or retiring allowances which appear to have been granted to officers of the bank were granted and paid without any reference to the fund and out of the other money of the bank.

Even if the purpose to which the fund was to be applied was such a charitable purpose as the appellants contend it was, the case at bar is one to which the observations of Bacon, V.-C., in *Sinnott v. Herbert* (1871), L.R. 12 Eq. 201-206, are peculiarly apposite.

I am also of opinion that, assuming that the fund existed and was impressed with a trust for the "officers and employees of the Ontario Bank and their families," the trust was not a charitable one. There is nothing to indicate that the benefit of the fund was to be available only to worn out or aged or poor officers or employees, or that any element of charity was to enter into the scheme.

[Reference to *In re Gosling* (1900), 44 W.R. 300, [1900] W.N. 15.]

It may well be that the circumstances on which reliance was placed for the conclusion that the bequests was a good charitable gift warranted that conclusion; but there are in the case at bar no such indicia of intention as existed in that case, which is, therefore, I think, quite distinguishable. The fund in question here is, no doubt, called a "pension" fund, but the use of the word "pension" in itself is quite insufficient to indicate a charitable intention, and I apprehend that, if the words "pensioning off" had not been associated with the other expressions mentioned by Byrne, J., he would have reached a different conclusion.

[Reference to *In re Gassiot* (1901), 70 L.J. Ch. 242.]

Being, therefore, as I am, of opinion that no trust was created, and that, if there had been, it was not a charitable one, and it being conceded, and properly so, that the appellants' case must fail unless a charitable trust had been created, it follows that the appellants are not entitled to the relief claimed by them, and that the appeal fails and should be dismissed with costs.

If I had come to the conclusion that a charitable trust was