

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

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

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

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 returned to the shareholders as being unnecessarily levied? The petitioners, former officers of the Ontario Bank, ask that it be impounded and administered under the direction of the Court, and the judgment of the Referee is against that contention. I see no good reason for disagreeing with his conclusion.

Looking at all the evidence, and having regard to the action and inaction of the bank, the proper inference seems to be that there was an intention on the part of the shareholders and directors of that bank to establish a pension fund under the Bank Act, R.S.C. 1906 ch. 29, sec. 18, sub-sec. 2, which was frustrated in its progress by the insolvency and liquidation of the bank. The scheme was cut short before its completion, and never was made ready for operation. Everything as to the ascertainment of the beneficiaries is left at loose ends; whether the claim for pensions is to depend on the length of service, or sickness, or old age, or inability to work, or contribution to the fund by the officers—these and such like details are all left unconsidered, because nothing had been determined as to the status of the possible beneficiaries. One cannot think that the fund was meant for the benefit of a person who had left the service of the bank, nor can it be supposed that, when the term of service was cut short by an order to wind-up, the portion of the fund then existing should be made more efficacious for the extruded staff than it was in the hands of the body that had created it, for all the money set apart came from the shareholders. No claim now exists by any officer as to this fund, and I fail to see how any such claim can hereafter arise, because no one can tell under what conditions the pension was to be paid, or was intended to be paid, out of the \$30,000. The Court cannot undertake such an indeterminate task and supplement all that is needed, and even that in an arbitrary way, before it can be said that the pension fund has been established. At most there is but the nucleus of a fund which was being established before the liquidation.