

to remove him from the trust because he will not sell to an outsider, the result of which would be to give away the control of the business against the wishes of the majority.

The relief sought, namely, to remove the respondent as trustee, is just what the respondent himself is anxious to accomplish in another way. While the first action is pending to determine whether the respondent should be compelled to sell the estate shares in a block, or whether he is not entitled to rid himself of the trust by dividing them among those entitled—in short, the very point at issue between the parties—it would be manifestly unjust to remove him.

It may be that, applying the case of *Moore v. McGlynn*, and having the view the possibility that the voting power on the shares of the respondent might in some event be used against that of the estate so as to depreciate their value, if it became a question of control, the respondent should relinquish the trust or be removed from it. But it must be first determined what his duty is. When that point falls to be settled, reference may usefully be made to the case of *In re Marshall*, [1914] 1 Ch. 192.

I think that the rights, if any, of the appellant would be fully provided for by postponing decision as to any action such as that until the determination of the first pending action. It will be there adjudged whether the respondent is bound to sell en bloc, and in that case he may desire to have leave to bid; and that leave, if granted, would end his fiduciary position: *Coaks v. Boswell* (1886), 11 App. Cas. 232. The other relief sought, namely, to declare him a trustee for the estate of the 74 shares, is of course impossible upon the evidence. He became possessed of these shares, paying for them with his own money; the estate has and can have no claim upon them, unless they were in some way acquired as a gift or addition to the estate which he was disabled from acquiring in his own behalf. No such suggestion is put forward.

The appeal should be dismissed with costs, and the appellant should have the right, notwithstanding this dismissal, to apply, after the final disposition of the first action, under the statute, for the removal of the respondent as trustee, if in that action the rights declared leave it open to him so to do.

*Appeal dismissed.*