

ilton v. Wright (1842), 9 Cl. & F. 111, 123; Bennett v. Gaslight and Coke Co. of London (1882), 48 L.T.R. 156; Broughton v. Broughton (1855), 5 DeG. M. & G. 160, 164; Moore v. McGlynn, [1894] 1 I.R. 74; Thompson v. Havelock (1808), 1 Camp. 527, at p. 528; Shipway v. Broadwood, [1899] 1 Q.B. 369, at p. 373; Benson v. Heathorn (1842), 1 Y. & C. Ch. 326, at p. 341; Tennant v. Trenchard (1869), L.R. 4 Ch. 537; Re Iron Clay Brick Manufacturing Co., Turner's Case (1889), 19 O.R. 113, 123.]

The principle of these decisions extends, it seems to me, to any act where it is established that there is a direct conflict, and to cases where it may reasonably be said that such a conflict may arise. I can conceive of a position arising by the acquisition of shares by a trustee to which this rule may be applicable. But this is not at present one of those cases to which the rule, if extended to cases of possible conflict, can be applied. This respondent was not appointed by the testator, but by the beneficiaries; and, if he holds the estate shares as trustee for them, their rights must be determined by the terms of the trust they created. It is doubtful whether the respondent holds the shares under the terms of the will, or whether the act of the beneficiaries created an entirely new status and responsibility, evidenced by the unsigned memorandum. . . . Under either, it would be competent for the *cestui que trust* to put an end to the trust, or for the trustee, if the time has come for winding it up, to do so. From his evidence it appears that he is anxious to do this, and that before the writ in the first action was issued he so declared himself. His intention in acquiring shares beyond what he then held may be in one view as much in the interest of his *cestuis que trust* as against it, for his idea seems to have been to prevent the sale to an outsider and to preserve for the estate a control through him of the situation and of the business. It would at this juncture be unjust to assume that his interest and his duty do or may conflict; a decision as to which cannot be made until the terms of his duty are ascertained and defined. If it turns out to have been his duty to divide the estate shares among the beneficiaries, it is plain that his purchase of the 74 shares could by no possibility have injured the estate. It is a strange position for the appellant to occupy, namely, that, while the respondent as trustee is anxious to put an end to the trust by distributing the shares among those entitled to them, the appellant should have pending an action to prevent him from doing this, and at the same time be endeavouring