

directors, and may have been a transfer to them, in advance of the ultimate distribution of the shares among the shareholders of the other company. If the shares held by the directors or any of them were actually held in trust, and not beneficially, I do not think, having regard to *Pulbrook v. Richmond*, 9 Ch. D. 610, *Cooper v. Griffin*, [1892] 1 Q. B. 740, and *Howard v. Sadler*, [1893] 1 Q. B. 1, we could hold them qualified. The language of our Act is much stronger than that of the English Act, by reason of the use of the word "absolutely," and I think we ought to hold it to mean a beneficial holding. That difficulty, however, was got over shortly after the commencement of this action by the transfer to each of the defendants of a considerable number of shares beneficially.

But I am of opinion that the company having power to do what is sought to be restrained, the plaintiffs cannot succeed on any ground of mere irregularity. The company is made a defendant, and is here on the face of the record ratifying and confirming what has been done, and insisting upon what has been begun being proceeded with.

I think the appeal must be dismissed.

Moss, J.A. (after discussing the statutes and the evidence):—It seems to me impossible to say that the company has not the power to sell the real estate in question, if in good faith the majority of the shareholders decide to do so.

I do not say that if upon the face of the letters patent it plainly appeared that the main purpose of the company was the acquisition of and working the mines upon the properties in question, and that this purpose formed the foundation of the company, it might not even yet be held that it was not within the power of the company to put an end to that purpose by a sale of the properties without the consent of all the shareholders. But this does not and cannot be made to appear. The sale of these properties need not disable the company from carrying on its operations as a mining company within the District of Algoma. It does not work a dissolution of the corporation nor put an end to its powers.

I agree, therefore, that the company has power to make sale of the properties in question. I think the objections to the status of the directors have been properly disposed of, and that it was competent for them to proceed with a sale under proper conditions.