In May, 1912, an action was begun by the present plaintiff and Malcolm C. Rose against the present defendant to prevent the division among the family of the shares in the Hunter Rose Company owned by the estate, 244 in number, and to compel the sale of the shares en bloc. Pending that action, the 74 shares were bought by the defendant from the company at par. The estate of George Maclean Rose, owning 244 shares, had a majority of those issued; but, after the 74 were put out, the total amount of stock became 500 shares, thus leaving the estate with less than 51 per cent. This action was then brought, leaving the other pending and undisposed of.

The appeal was heard by MEREDITH, C.J.O., MAGEE and HODGINS, JJ.A., and RIDDELL, J.

L. F. Heyd, K.C., for the appellant, contended that the action of the defendant in buying the 74 shares depreciated the value of the holdings of the estate, in so far as the estate thereby lost the controlling interest, and that the defendant had committed a breach of trust.

W. N. Tilley and J. J. Maclennan, for the defendant, the respondent, contra.

The judgment of the Court was delivered by HODGINS, J.A.:— . . . The point for decision is, whether a breach of trust has taken place on the part of the trustee in so purchasing the remaining shares, if that depreciated or might depreciate the value of those held by him for the benefit of the estate, or, if not a breach of trust, whether the respondent should be removed from his office on the ground that his interest and his duty conflict.

No doubt, control of a limited company vested in an estate or in an individual is of importance apart from the intrinsic value of the holding.

The respondent here has not dealt with any trust property, nor has he made any profit out of it. The sole ground put forward is, that his personal action in acquiring other shares, validly issued, confirmed as it was by the shareholders of the company, will result in a possible depreciation of the selling value of the shares held by him as trustee if they are to be sold en bloc. I am far from thinking that this is proved to be certain or even probable. . . . Upon the evidence . . . it would be impossible to say that depreciation in fact has taken or will take place. . . .

[As to conflict between interest and duty, reference to Ham-