

ciary relation in which he stood to the city, and that he cannot therefore be allowed to retain it, and must as an inevitable consequence be ordered to pay it over to the corporation.

1856.

Bowes  
v.  
City Toronto

If this view of the case be correct, then no doubt it is immaterial that we should look closely into the particular circumstances of the case. But I cannot say that I think the general principle relied upon has in this case been rightly applied; though I must and do distrust my own judgment when I express this doubt, because I am not sure that the argument to its full extent is not acceded to in the judgment which has been pronounced below.

What I mean to say is, that I do not think the plaintiffs' case can be supported upon this ground, for I am not satisfied that the defendant being mayor of the city, and a member of the common council, came so far within the rule which disables trustees or agents from dealing on their own account in the property intrusted to their care and management, that he could not be permitted to buy city debentures from the holder of them, and to resell them on his own account, but must be considered as holding them in trust for the city, on being paid what they cost him, and must be held accountable to the city for whatever profit he may have made on negotiating them. I am now supposing a case of such a purchase made under the most ordinary circumstances, and without any imputation of sinister management. Judgment.

I did not observe that much, if any, stress was laid in the argument upon the fact of the defendant being mayor. It seemed rather to be admitted that if the mayor could not traffic in city debentures, no other member of the City Council could do it. The mayor, as I gather from the evidence, votes in committee; but while presiding in the council he has no voice unless