

1866.
 Bowes
 v.
 City Toronto

But allowing their full force to all such considerations of morality and public policy, we have yet to consider the question in its legal aspect—I mean, in reference to the law which is administered in courts of equity.

To support the plaintiffs' case two things are necessary to be established: 1st. That the defendant has done something which a court of equity not only disapproves of, but which it cannot allow to stand, so far as the defendant's acts, or their consequences, are yet within the control of the court. 2ndly. That out of this conduct of the defendant an *equitable claim arises to the plaintiffs to have the profit which he has made by his alleged wrongful conduct paid over to their use.*

Upon the first point many cases were cited at the bar, and were relied upon by the court below as supporting their judgment. I have looked into them all—some of them are leading and familiar cases on the doctrine of constructive or implied trusts. They are, no doubt, cases of the highest authority; the language used in them by the courts is plain and unmistakeable, and, with one or two exceptions, perfectly consistent.

The doctrine which they establish is as well settled, perhaps, as any other known to the law. It was expressed by Lord Eldon in *Cook v. Collingridge* (a), in the most comprehensive terms, when he said, "the law will not permit parties invested with a trust to deal with it so as to benefit themselves." This rule of equity, as it has been ordinarily applied, is so free from doubt that any difficulty in dealing with a case like that before us must turn upon the question of the proper and reasonable application of the principle to the facts of the particular case.

I do not doubt that the principle, as I have just stated

(a) Jacob 620.