

1856. who having given value for the debenture, as for a negotiable security payable to bearer, is at liberty to dispose of it as he pleases.

Bowes
v.
City Toronto

The debentures issued by the corporation are not their property—they are evidences of debt due by them—the corporation can have nothing further to do than to be prepared to pay them, as they fall due; they can under no circumstances be made to pay more than the debentures express upon the face of them, and could never expect to acquit themselves by paying less.

Then this case comes as little within another principle, which if it did apply, would make the case a clear one against the defendant. I allude now to cases in which a trustee has made a gain to himself by using the trust funds in making some purchase, or in carrying on some speculation or business; in all which cases, if the estate or property so purchased remains with the trustee, he will be treated as holding it in trust for the person or corporate body whose funds he had misapplied, if they prefer his being made to stand in that situation, rather than to have their funds replaced. If the property has been disposed of again to some third party, it may or may not, according to circumstances, be followed into the hands of such party, and claimed for the person with whose funds it was bought; and where trust money has been used in a business or speculation of any kind which can be shown to have produced a profit to the trustee, a court of equity will uphold the party whose money has been misapplied, when he says to the other, "You shall not be allowed to keep that profit; you made it with my money which you had no authority to use for your own purposes, and it belongs to me rather than to y.u."

The analogy, however, between such a case and the present fails in this—that here it is not pretended

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