

Held, reversing the judgment of the Court of Appeal, that in taking and assigning said mortgages W. acted as a trustee and as an executor; that he was guilty of a breach of trust in taking and assigning them in his own name; that his being described on the face of the instruments as a trustee was constructive notice to the assignees of the trusts which put them on inquiry; and that the assignees were not relieved as persons rightfully and innocently dealing with trustees inasmuch as the breach of trust consisted in the dealing with the securities themselves, and not in the use made of the proceeds.

Appeal allowed with costs.

Marsh, Q. C. for the appellants.

W. Cassels, Q. C., and *MacKelcan, Q. C.*, for the respondents.

June 24, 1893.

DWYER v. PORT ARTHUR.

Ontario.]

Municipal corporation—By-law—Street Railway—Construction beyond limits of municipality—Validating act—Construction of.

The Corporation of the town of Port Arthur passed a by-law entitled, "a by-law to raise the sum of \$75,000 for street railway purposes, and to authorize the issue of debentures therefor," which recited, *inter alia*, that it was necessary to raise said sum for the purpose of building, etc., a street railway connecting the municipality of Neebing with the business centre of Port Arthur. At that time a municipality was not authorized to construct a street railway beyond its territorial limits. The by-law was voted upon by the rate-payers and passed, but none was submitted ordering the construction of the work. Subsequently an act was passed by the legislature of Ontario in respect to the said by-law which enacted that the same "is hereby confirmed and declared to be valid, legal and binding on the town . . . And for all purposes, etc., relating to or affecting the said by-law, any and all amendments of the Municipal Act . . . shall be deemed and taken as having been complied with.

Held, reversing the decision of the Court of Appeal, that the said act did not dispense with the requirements of ss. 504 and 505 of the Municipal Act, requiring a by-law providing for construction of the railway to be passed, but only confirmed the one that was passed as a money by-law.