

So also I have already stated that as to municipal bodies, like the corporation which has been made plaintiff in this cause, where similar questions are presented, as they may be, I can see no reason why they should not receive the same decision as in the case of other corporations. They may all have funds and property to manage, and interests to preserve and to promote; the same grounds may be afforded for suspecting abuse, and the same opportunities and temptations presented for dishonest practices as in trading corporations, though not in so many instances perhaps, nor to the same extent. I have already said that I do not doubt the correctness of the conclusions which were come to in the Court of Chancery upon those points. My difficulty is, that I apprehend that in directing the profit on the sale of the debentures to be paid to the corporation, the court have given a more wide and indiscriminate application than is supported by reason or authority to the principle, that whenever a man who stands in any fiduciary relation as trustee or otherwise makes use of his position to procure a gain to himself he cannot be allowed to retain it. Judgment.

1856.

Bowes
v.
City Toronto

To extend the application of that principle to the case of any member of the Common Council making a purchase under the same circumstances as any other individual might do of the debentures issued by the city would, I think, be pushing it too far. For, in the first place, his case is not analogous to that of a trustee or agent buying for himself the property which he is intrusted to dispose of to the best advantage for his principal. If it were, then it would be a perfectly plain case. But it seems to me that it would be a perversion of terms to say that in such a transaction the member of a city council is like a trustee selling the trust property to himself. He does not sell the debenture to himself; he buys it from the holders, who bought it from the corporation, or from some person to whom they had previously sold it, and