

Samuel Jones did not stop payment until September, 1846, or petition for the benefit of the insolvent laws until January, 1847; and it may very well be said, if the officers of the bank and the city had been put on their guard in due season, they might have secured themselves from loss, if, under the circumstances of the case, they would have been liable.

This was not done, and it was not until after the failure of Jones that this bill was filed, which, for the first time, brought to the knowledge of the defendants the facts upon which relief against them is asked.

I do not think that the entry upon the books of the corporation, that this stock stood in the names of Samuel Jones and Andrew D. Jones, trustees, was standing by itself, sufficient to put the city upon the inquiry, and to make it responsible upon the ground of negligence; and I am not prepared to say that the fact that another received the dividends upon the order of the trustees, would have that effect. But, be that as it may, there has, I think, been negligence, if not acquiescence, on the part of the *cestui que trusts* quite equal to that imputed to the city, and, therefore, I do not think they are entitled to relief.

The bill will be dismissed as against the city and Cushing, and as against the bank there will be a decree for the surplus now held by it.

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[This decree was appealed from, but no decision has yet been had upon the appeal.]