

undeniable, and it is equally undeniable, that he paid it to the person by whom he was employed to sell the stock, without notice of the trust, or of any circumstance which could awaken a suspicion that the person to whom he made the payment was not entitled to receive the money; for the Chancellor thinks the effort to fix such knowledge upon him has been unsuccessful. To hold him liable, under such a state of facts, to see to the application of the money, would seem to be an extremely hard measure of justice—so hard, indeed, that I should be unwilling to adopt it without the most conclusive authority.

In addition to the evidence furnished by the letters of Joseph White to Campbell P. White, which clearly show that he knew of the receipt, by the latter, of the money for which the stock sold, the indorsement made by Joseph White on the account, as early as April, 1841, proves that he must have known that the money was placed to his credit on the books of John C. White & Sons, of which firm he was a partner.

Under all the circumstances of this case, and especially when we consider the long acquiescence of these parties in the payment made by the defendant, John C. White to Campbell P. White, it would be very hard, and setting a dangerous precedent, to hold him liable to pay it a second time.

The observations made by Chancellor Kent in *Tripler vs. Olcott*, 3 *Johns. Ch. Rep.*, 473, are very applicable to the present case, and strongly against the plaintiff's right to a decree.

It is believed to be true, as a general rule, that a sub-agent is accountable only to the superior agent who has employed him, and not to the principal, and that an agent employed by a trustee accounts with him, and not to the cestui que trust. *Story on Agency*, sec. 217. And I can see nothing in this case which should make the general rule inapplicable to it.

For the reasons which have been given, it is the opinion of the court that the complainants are not entitled to relief, and a decree will be passed dismissing the bill.

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[No appeal was taken from this decree.]