

The president and cashier are competent witnesses for the bank, to prove at what time a trustee had knowledge of the transfer of certain stock, part of his trust fund, standing on the books of the bank.

If a trustee acting on his own responsibility, receives any property from the party misapplying the trust fund, either in payment or as security for the payment of the amount due the fund, he must put the transaction in such a position that its character may be easily understood, and any bad consequences flowing from the obscurity of the transaction, must fall upon him. Though a portion of the trust fund is entrusted to the supervision and control of one of two trustees, yet if any fact endangering its safety comes to the knowledge of the other trustee, he is bound to see to its security and communicate the fact to the court and his co-trustee.

If a trustee acting upon his own discretion, makes an investment of trust funds without the sanction and approbation of the court, he will be responsible for any losses thereby incurred.

An order passed by the court upon petition, of one of the *cestui que trusts*, directing the trustee to account for a portion of the trust fund, and specifying to some extent the responsibility incurred by him, does not finally determine any right and is not conclusive on any of the parties to the case.

An order confirming an Auditor's report, is an order in the nature of a final decree.

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[The facts in this cause will be found set out at length in the case of *Jones and wife vs. Stockett*, 2 *Bland*, 409 to 436, and in the case of the *Farmers and Mechanics Bank et al vs. Wayman and Stockett*, 5 *Gill*, 336 to 358. It is the proceedings in Chancery which occurred after the cause was remanded by the decree of the Court of Appeals, in 5 *Gill*, 358, that are now to be reported. The following brief synopsis of facts taken from these cases will suffice for an understanding of the opinions here reported.

Wayman and Stockett were appointed trustees by the will of Larkin Shipley, deceased, executed in 1821, to invest a legacy of \$7000, given by said will to the testator's niece, Anne Shipley, who subsequently married Samuel Jones, by whom she had several children. By the terms of the bequest the trustees were to put the principal of the legacy out at interest on good security, and pay the annual interest thereof to the said Anne during her natural life, and if she should die leaving lawful issue, then to divide the principal equally among her children. The trustees, by the order and sanction of the Chancellor, on the 20th of April, 1826, invested \$3552 of this