

to be made by others. It is believed, however, that even if the trustees had themselves offered to transfer, under circumstances calculated to excite suspicion, that they were about to abuse their trust, the bank would have been bound to institute the necessary inquiry, and if it omitted to do so, and loss resulted, the loss would be thrown upon it.

Such was the decision of the Circuit Court, and such is believed to be the law. There are, however, circumstances in the case referred to in the Circuit Court, which clearly distinguish it from this.

In that case, long after the period allowed by the law in this state for the settlement of the estates of deceased persons, one of the executors, his co-executor not concurring, transferred the stock to another bank as security for the loan obtained by him. This loan being repaid, the bank, from whom the executor borrowed the money, transferred the stock back to him, by the name of the commercial firm under which he was trading, by which name he subsequently transferred the same stock to himself and his co-executor, as such; and then, shortly afterwards, the same party signing his name as acting executor, again transferred the stock to the same bank as security for other sums borrowed by him for his own use, and these latter loans not being paid by him, the stock was sold, and hence the loss. These various acts, the Chief Justice said, all appearing upon the books of the bank permitting the transfer, the purpose for which the last transfer was made, could not be doubted by the officers, familiar as they were with the usage of loaning money upon the hypothecation of stock; and in truth, as stated by the court, the bank, in its answer, impliedly admits such knowledge by saying, "if the president had known that the transfer was about to be made, he would have prevented it."

In this case, there was but a single transfer, and that was made by both the parties in whose names the stock stood, and there is nothing in the answer of the city, or to be found in the evidence, upon which any presumptions can be raised, that the officers of the city knew, or suspected, that the parties making the transfer were abusing their trust.