

In this case in the Circuit Court the stock stood in the name of the deceased, Talbot Jones, and was transferred by Samuel Jones as executor, from which the bank must have known that there was a will; of which, as the Chief Justice says, in Maryland, the bank was bound to take notice. In this case, though the stock may at one time have stood in the name of the deceased, yet, from the year 1841, it had stood in the name of the trustees, and as these trusts may be, and often are, created by agreement, of which no record need be made, the same facility of ascertaining the true ownership of the property did not exist, as in the case decided in the Circuit Court, where the bank was pointed to the will of the deceased, to be found upon the public records of the state.

In the case now under consideration, the officers of the city of Baltimore saw by the books of the corporation that this stock had stood in the names of these parties as trustees, from 1841 to 1845; and although in 1841 it had been transferred by themselves as executors to themselves as trustees, and although the transfer made by them as executors in 1841, was evidence that Talbot Jones left a will, yet as the stock continued to stand in their names as trustees from that time down to 1845, the officers of the city might well assume that the will of the deceased had ceased to operate upon it.

There is another circumstance in this case, which, as it appears to me, draws a marked line of distinction between it and the case decided by the Circuit Court.

The dividends upon this stock, from January, 1842, to October, 1845, inclusive, were paid to the husband of Mrs. Albert, under an authority to her, signed by the executors, and from October, 1845, to January, 1847, during which period it stood in the name of the Savings Bank, they were paid to its president, Mr. Cushing, and there is no evidence whatever, that during that time, or until the filing of this bill, in May, 1847, any inquiry or complaint was made by the complainants to the city, on account of this diversion of their accustomed receipts.

The bill alleges that in May, 1846, one of the complainants informed Mr. Cushing that this stock was held by the trustees,