

File No. 13699 Continued.

tion, the Court held,

"That the mere act of permitting stock standing in the name of the testator to be transferred by one of the executors furnished no ground for complaint, although the executor was by the transfer converting the property to his own use."

This would appear to be against any contention, but our Court of Appeals in Ehlen's case, above referred to not only says that,

"The modern doctrine in respect to what constitutes notice in such cases and that which obtains everywhere is so much broader in its reach than that which is found in Albert's case that to keep in harmony with the decisions and law we do not think Albert's case should be followed in any case which is not precisely analogous in all its facts."

And again on page 216, the Court in Ehlen's case also said:

"When the transfer made by the executor in Albert's case was made, the assignment by the executor might be presumed to be rightful by reason of his general power over the estate, for the Act of 1843, Ch. 304, had not been passed. Judge Taney in Lowry's case, which grew out of the same will as did Albert's case, adverts to the fact that the Act of 1843, Ch. 304, had not been then passed so as to make the act of the executor subject to suspicion and question."

The Act of 1843, Ch. 304 has been codified and is now Section 281, Article 93, Code of 1904, above quoted.

It would seem, therefore, that the position assumed by the City with reference to the request for transfer in this connection should be adhered to.

Yours respectfully,

(Signed) Robert F. Leach, Jr.
Assistant City Solicitor.

.....