

The ultimate resolution of this controversy now rests with the United States Supreme Court which has granted certiorari to the decision of the Ninth Circuit in the *Bank of America* case¹¹ and the principal case, having been appealed, has been placed on the summary calendar of that same court.¹²

Several areas of conflicting federal-state interests which will have to be resolved by the court in deciding these two cases are: (1) To what extent is the federal government to be governed by state law when it loans money in competition with local agencies and individuals? (2) To what extent has the federal government submitted itself to state law by Sec. 2410 of Title 28 U.S.C.? (3) Does the federal statute requiring joinder of, and a period of redemption for the United States imperil the efficacy of state judicial foreclosure sales and consequently imperil extension of credit by private agencies?¹³

It is submitted that Section 2410 can not be interpreted other than to pre-empt state law and to require that the federal government be allowed its statutory 12 month redemption period. Such an interpretation would give adequate notice to those who would foreclose on property of which the government has a lien. If the antecedent lien be perfected it will be satisfied from the sale prior to the claims of the government.¹⁴ For these reasons it would appear that the Supreme Court should affirm the decision of the Ninth Circuit in *United States v. Bank of America* and reverse the holding of the instant decision.

EDWARD A. ROSTER

Negotiable Instruments—Forged Indorsements—Statute of Limitations.—*Edgerly v. Schuyler*.¹—The plaintiffs drew a check payable to a named payee. The drawee bank paid the check despite a forged indorsement and upon discovery of the forgery refused to credit plaintiffs' account since the drawer depositors had failed to give notice of the forgery² or to commence

¹¹ 361 U.S. 811 (1959).

¹² Appeal Docketed, No. 565, Kan. Sup. Ct., Dec. 15, 1959. Placed on Summary Calendar, Feb. 23, 1960, 28 U.S.L. Week 3245.

¹³ See MacLachlan, Improving the Laws of Federal Liens and Priorities, 1 B.C. Com. & Ind. L. Rev. 73 (1959).

¹⁴ It has been held that the United States must in its redemption tender an amount sufficient to pay off all antecedent liens or suffer its redemptive offer to be adjudged insufficient. *United States v. Brosnan*, 264 F.2d 762 (3d Cir. 1959), *First National Bank & Trust Co. v. McGarrie*, 22 N.J. 539, 126 A.2d 880 (1956).

¹ 113 So. 2d 737 (Fla. 1959).

² § 659.37, Fla. Stat., provides as follows: "No bank or trust company, which has paid and charged to the account of a depositor any money on a forged or raised check issued in the name of said depositor, shall be liable to said depositor for the amount paid thereon, unless said depositor shall notify the bank or trust company that the check so paid is forged or raised . . . within one year after the return to said depositor of the voucher representing such payment . . ." 41 States and District of Columbia have similar statutes.

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suit within the period prescribed by the statute of limitations.³ The Circuit Court for Dade County entered summary judgment for the defendant-bank and plaintiffs appealed. HELD: The Third District Court of Appeal of Florida reversed and remanded. The notice provisions of the Florida statute dealing with forged or raised checks are inapplicable to forged indorsements and the statute of limitations does not commence to run until the depositor discovers the forgery.

In holding the notice statute inapplicable, the court relied on the holding of a number of cases. These cases state that the term "forged check" is limited to forgery of the maker's signature for the obvious reason that the drawer knows his own signature, but rarely knows the signature of the payee and consequently is in no position to tell whether the indorsement upon the check is genuine or not.⁴ The same result has been reached in jurisdictions which do not have a statute because at common law the drawer had no duty to examine the returned vouchers for forged indorsements.⁵

The second and, perhaps, more controversial issue of the case was the question when the statute of limitations began to run. The Florida court held that the action was brought within the statute of limitations because the statute did not begin to run until the discovery of the forgery by the depositors or until the depositors would have discovered the forgery if they had exercised ordinary business care. The majority of courts have taken a contrary view to this case and hold that the statute of limitations commences to run as of the date the bank renders a statement showing the charging of the amount of the check to the depositor's account.⁶ This view is based on the proposition that the relation existing between the bank and the depositor is that of debtor and creditor and that no cause of action arises in behalf of the depositor until demand has been made upon the bank for the amount of the deposit. The act of the bank in rendering a statement is a denial of liability to the extent of the amount of the check and so the necessity of a demand is dispensed with. The same rule is applied in cases involving forgery of the drawer's signature.

In rejecting this line of authority, the Florida court relied on the de-

³ § 95.11, Fla. Stat., provides as follows: "Actions other than those for the recovery of real property can only be commenced as follows: . . . (5) within three years.—. . . an action upon a contract, obligation or liability not founded upon an instrument of writing . . ."

⁴ *McCornack v. Central State Bank*, 203 Iowa 833, 211 N.W. 542 (1926); *United Motor Car Co. v. Mortgage & Security Co.*, 13 La. App. 385, 128 So. 307 (1930); *Murphy v. Metropolitan Nat'l Bank*, 191 Mass. 159, 77 N.E. 693 (1906); *Board of Education of Jefferson v. Nat'l Union Bank*, 121 N.J.L. 177, 1 A.2d 383 (1938); *Kleinman v. Chase Nat'l Bank*, 124 Misc. 173, 207 N.Y. Supp. 191 (Sp. Ct. 1924); see also cases cited in Annot., 50 A.L.R.2d 1126 (1956).

⁵ *Jordan Marsh Company v. Nat'l Shawmut Bank*, 201 Mass. 397, 87 N.E. 740 (1909); *Shipman v. Bank of State of New York*, 126 N.Y. 318, 27 N.E. 371 (1891).

⁶ *Union Tool Co. v. Farmers' & Merchants' Nat'l Bank*, 192 Cal. 40, 218 Pac. 424 (1923); *Masonic Benefit Ass'n v. First State Bank*, 99 Miss. 610, 55 So. 408 (1911); *Bruce v. First Nat'l Bank*, 180 Wash. 614, 41 P.2d 779 (1935); *Peppas v. Marshall & Ilsley Bank*, 2 Wis. 2d 144, 86 N.W.2d 27 (1957).

cision in *City of New York v. Fidelity Trust Co.*,⁷ holding that the statute of limitations does not begin to run against the depositor until he has made a formal demand on the bank for the money. The reasoning of the court was that if the statute were to run from the date of the forgery or from the date the bank rendered a statement showing the amount of the check charged to the depositor's account, it might result in the claim being barred before the depositor knows of the forgery.

The rule set forth by the Florida court which deviates only in conclusion from that of New York appears to be the better rule because under the New York view the depositor might withhold demand and perpetuate his cause of action for an indefinite period. This deficiency of the New York rule could be avoided by requiring a timely demand by the depositor.

While it is true that the drawer may not know of an invasion of his legal rights until the forged indorsement is actually discovered, it seems harsh to hold the drawee bank to strict accountability to the depositor where the forged indorsement is not discovered in the course of the drawer's business. Many years might elapse before the bank is called to account and it would seem that the bank could be forced to reimburse the drawer although the drawer's own liability to the payee had been blocked by the statute of limitations affecting actions on debt. Moreover, the result here makes the application of the statute a question for the trier of fact in each case, thereby introducing marked uncertainty into commercial transactions which it would seem require a high degree of stability especially in view of the tremendous volume of checks handled by modern banks. Finally, the purpose of the statute—to cause actions to be commenced within a definite time in order to facilitate proof of substantive fact questions—is not well served by the decision.

The UCC resolves this problem by precluding an action against the bank unless the drawer discovers and reports the forged indorsement within three years from the time the statement and vouchers are made available to the drawer.⁸ This rule was established because it was felt that in the great preponderance of cases the drawer will discover the forged indorsement within three years and if in an exceptional case he does not, the balance in favor of a mechanical termination of liability of the bank outweighs any possible injustice to the drawer. In a state which has adopted the UCC both issues of this case would be decided in favor of the drawee bank.

THOMAS DUPONT

Negotiable Instrument—Forged Signature—Recovery by Drawee Bank.
—*Riggs Nat'l Bank of Washington, D.C. v. Dade Fed. Sav. and Loan Ass'n.*¹—The defendant bank received a check in the amount of \$20,000

⁷ 243 App. Div. 46, 276 N.Y. Supp. 341 (1st Dep't 1934); see also *Bank of British North America v. Merchants' Nat'l Bank*, 91 N.Y. 106 (1883).

⁸ UCC § 4-406(4).

¹ 268 F.2d 951 (5th Cir. 1959).