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Bills and Notes -- Statute of Limitations -- Forged Endorsements

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BILLS AND NOTES — STATUTE OF LIMITATIONS — FORGED ENDORSEMENTS

An action was brought by a depositor against his bank to recover for the wrongful payment of a check upon a forged endorsement. Defendant bank alleged that the applicable statute of limitations[1] ran from the time the cancelled check was returned to the plaintiff and thus the action was barred. The lower court granted defendant's motion for summary judgment. *Held*, reversed, the statute of limitations does not begin to run until the depositor discovers the forgery or it is proven that he would have, had he exercised ordinary business care. *Edgerly v. Schuyler*, 113 So.2d 737 (Fla. App. 1959).

It is the duty of a drawee bank to determine the genuineness of endorsements on checks presented for payment.[2] This duty is based upon an implied contract of the bank to pay the depositor's money on demand to the depositor[3] or to whomsoever the depositor indicates.[4] Similarly, a person by reason of a valid endorsement from the payee is also entitled

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1. FLA. STAT. § 95.11 (1959).

2. Ellis Weaving Mills v. Citizens & So. Nat'l Bank, 91 F.Supp. 943 (W.D.S.C.), *aff'd*, 184 F.2d 43 (4th Cir. 1950); New York Title Co. v. First Nat'l Bank, 51 F.2d 485, 77 A.L.R. 1052 (8th Cir.), *cert. denied*, 284 U.S. 676 (1931); Hensley-Johnson Motors v. Citizens Nat'l Bank, 122 Cal. App. 2d 22, 264 P.2d 973 (1953); Rancho San Carlos v. Bank of Italy, 123 Cal. App. 291, 11 P.2d 424 (1932); Union Tool Co. v. Farmers' & Merchants' Nat'l Bank, 192 Cal. 40, 218 Pac. 424, 28 A.L.R. 1414 (1923); American Nat'l Bank v. First Nat'l Bank, 277 P.2d 951 (Colo. 1954); Cosmopolitan State Bank v. Lake Shore Trust Bank, 343 Ill. 347, 175 N.E. 583 (1931); United States Cold Storage Co. v. Central Mfg. Dist. Bank, 251 Ill. App. 279, *rev'd on other grounds*, 343 Ill. 503, 175 N.E. 825, 74 A.L.R. 811 (1931); Open Shop Employing Printers' Ass'n v. Chicago Trust Co., 263 Ill. App. 190 (1931); Wornhoudt Lumber Co. v. Union Bank & Trust Co., 231 Iowa 928, 2 N.W.2d 267 (1942); German Sav. Bank v. Citizens' Nat'l Bank, 101 Iowa 530, 70 N.W. 769, 63 Am. St. Rep. 399 (1897); Kansas City Title Co. v. Fourth Nat'l Bank, 135 Kan. 414, 10 P.2d 896 (1932); Union Trust Co. v. Soble, 64 A.2d 744 (Md. App. 1949); John Hancock Mut. Life Ins. Co. v. Fidelity-Baltimore Nat'l Bank & Trust Co., 212 Md. 506, 129 A.2d 815 (1957); Hart v. Moore, 171 Miss. 838, 158 So. 490 (1935); Board of Educ. v. National Union Bank, 16 N.J. Misc. 50, 196 Atl. 352 (Sup. Ct.), *aff'd*, 121 N.J.L. 177, 1 A.2d 383 (1938); New York v. Fidelity Trust Co., 243 App. Div. 46, 276 N.Y. Supp. 341 (1934); Coffin v. Fidelity-Philadelphia Trust Co., 374 Pa. 378, 87 A.2d 857, 39 A.L.R.2d 625 (1953); Commonwealth v. Globe Indem. Co., 323 Pa. 261, 185 Atl. 796 (1936); 5B MICHIE, BANKS & BANKING ch. 9, § 276 (1957); 7 AM. JUR. *Banks* § 589 (1959); 9 C.J.S. *Banks & Banking* § 356c (1959).

3. Lacaze v. City Bank & Trust Co., 31 So. 2d 891 (La. App. 1947); Union Trust Co. v. Soble, 64 A.2d 744 (Md. App. 1949); Stella Flour & Feed Corp. v. National City Bank, 308 N.Y. 1023, 127 N.E.2d 864 (1955); Coffin v. Fidelity-Philadelphia Trust Co., 374 Pa. 378, 97 A.2d 857, 39 A.L.R.2d 625 (1953); Flaherty v. Bank of Kimball, 75 S.D. 468, 68 N.W.2d 105 (1955); Unaka Nat'l Bank v. Bulter, 113 Tenn. 574, 83 S.W. 655 (1904); 9 C.J.S. *Banks & Banking* § 340 (1959).

4. Los Angeles Inv. Co. v. Home Sav. Bank, 180 Cal. 601, 182 Pac. 293, 5 A.L.R. 1193 (1919); Lacaze v. Cit Banyk & Trust Co., 31 So. 2d 891 (La. App. 1947); Union Trust Co. v. Soble, 64 A.2d 744 (Md. App. 1949); Jordan Marsh Co. v. National Shawmut Bank, 201 Mass. 397, 87 N.E. 740, 22 L.R.A. (N.S.) 250 (1909); Stella Flour & Feed Corp. v. National City Bank, 308 N.Y. 1023, 127 N.E.2d 864 (1955); Coffin v. Fidelity-Philadelphia Trust Co., 374 Pa. 378, 97 A.2d 857, 39 A.L.R.2d 625 (1953); Flaherty v. Bank of Kimball, 75 S.D. 468, 68 N.W.2d 105 (1955); Unaka Nat'l Bank v. Bulter, 113 Tenn. 574, 83 S.W. 655 (1904); 7 AM. JUR. *Banks* § 591 (1959); 9 C.J.S. *Banks & Banking* § 340 (1959).

to such payment.[5] Payment by the bank upon a forged endorsement constitutes a breach of this implied contract which gives rise to an action by the depositor to have his account re-credited.[6] Consequently, a bank acts at its peril when payment is made upon a forged endorsement.[7]

The view taken by the majority of jurisdictions when a breach of this implied contract has occurred has been that the cause of action accrues when the depositor receives his bank statement and the cancelled checks.[8] The rationale of this theory is that at that time the bank tenders

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5. Los Angeles Inv. Co. v. Home Sav. Bank, 180 Cal. 601, 182 Pac. 293, 5 A.L.R. 1193 (1919); Jordan Marsh Co. v. National Shawmut Bank, 201 Mass. 397, 87 N.E. 740, 22 L.R.A. (N.S.) 250 (1909); Coffin v. Fidelity-Philadelphia Trust Co., 374 Pa. 378, 97 A.2d 857, 39 A.L.R.2d 625 (1953); 7 AM. JUR. *Banks* § 591 (1959); 9 C.J.S. *Banks & Banking* § 340 (1959).

6. Railroad Bldg. Loan & Sav. Ass'n v. Bankers Mtg. Co., 142 Kan. 564, 51 P.2d 61, 102 A.L.R. 140 (1935); Silver v. Commerce Trust Co., 24 N.J. Super. 504, 94 A.2d 880 (1953); Henderson v. Lincoln Rochester Trust Co., 303 N.Y. 27, 100 N.E.2d 117 (1951); Liberty Mut. Ins. Co. v. First Nat'l Bank, 239 S.W.2d 737 (Tex. Civ. App. 1951).

7. United States v. Citizens Union Nat'l Bank, 40 F. Supp. 609 (W.D. Ky. 1941); Pennsylvania Co. v. Federal Reserve Bank, 30 F. Supp. 982 (E.D. Pa. 1939); United States v. National Bank, 205 Fed. 433 (9th Cir. 1913); Robertson Banking Co. v. Brasfield, 202 Ala. 167, 79 So. 651 (1918); Security-First Nat'l Bank v. Bank of America Nat'l Trust Ass'n, 22 Cal.2d 154, 137 P.2d 452 (1943); Ryan v. Bank of Italy, 106 Cal. App. 690, 289 Pac. 863 (1930); Bennett v. First Nat'l Bank, 47 Cal. App. 450, 190 Pac. 831 (1920); Union Tool Co. v. Farmers' & Merchants' Nat'l Bank, 192 Cal. 40, 218 Pac. 424, 28 A.L.R. 1414 (1923); Los Angeles Inv. Co. v. Home Sav. Bank, 180 Cal. 601, 182 Pac. 293, 5 A.L.R. 1193 (1919); Hatton v. Holmes, 97 Cal. 208, 31 Pac. 1131 (1893); Scala v. Miners' Bank, 64 Colo. 185, 171 Pac. 752 (1918); Atlanta Nat'l Bank v. Burke, 81 Ga. 597, 7 S.E. 738, 2 L.R.A. 96 (1888); First Nat'l v. American Surety Co., 30 S.E.2d 402 (Ga. App. 1944); DeWolf & Co. v. Foreman Nat'l Bank, 264 Ill. App. 23 (1931); McCornack v. Central State Bank, 203 Iowa 833, 211 N.W. 542, 52 A.L.R. 1297 (1926); Commercial Bank v. Arden, 177 Ky. 520, 197 S.W. 951, L.R.A. 1918B, 320 (1917); Pontiac v. First Nat'l Bank, 2 So. 2d 76 (La. App. 1941); Union Trust Co. v. Soble, 64 A.2d 744 (Md. App. 1949); Jordan Marsh Co. v. National Shawmut Bank, 201 Mass. 397, 87 N.E. 740, 22 L.R.A. (N.S.) 250 (1909); Metropolitan Cas. Ins. Co. v. First Nat'l Bank, 261 Mich. 540, 246 N.W. 178 (1933); St. Paul v. Merchants' Nat'l Bank, 151 Minn. 485, 187 N.W. 516, 22 A.L.R. 1221 (1922); Hart v. Moore, 171 Miss. 838, 158 So. 490 (1935); Masonic Benefit Ass'n v. First State Bank, 99 Miss. 610, 55 So. 408 (1911); Ward v. First Nat'l Bank, 224 Mo. App. 472, 27 S.W.2d 1066 (1930); Federal Land Bank v. Omaha Nat'l Bank, 118 Neb. 489, 225 N.W. 471 (1929); Seidman v. North Camden Trust Co., 122 N.J.L. 580, 7 A.2d 406 (1939); Commercial Trading Co. v. Trade Bank & Trust Co., 286 App. Div. 722, 146 N.Y.S.2d 570 (1955); Cohen v. Lincoln Sav. Bank, 275 N.Y. 399, 10 N.E.2d 457 (1937); American Sur. Co. v. Empire Trust Co., 228 App. Div. 572, 240 N.Y. Supp. 164 (1930); Welsh v. German-American Bank, 42 N.Y. Super. Ct. 462 (1877), *aff'd*, 73 N.Y. 424, 29 Am. Rep. 175 (1878); McKaughan v. Merchants' Bank & Trust Co., 182 N.C. 543, 109 S.E. 355 (1921); Schenke v. Central Trust Co., 58 Ohio App. 441, 16 N.E.2d 700 (1938); State Guaranty Bank v. Doerfler, 99 Okla. 258, 226 Pac. 1054 (1924); Joseph Milling Co. v. First Bank, 109 Ore. 1, 216 Pac. 560, 29 A.L.R. 358 (1923); Coffin v. Fidelity-Philadelphia Trust Co., 374 Pa. 378, 97 A.2d 857, 39 A.L.R.2d 625 (1953); Weiner v. Pennsylvania Co. for Ins. on Lives and Granting Annuities, 160 Pa. Super. 320, 51 A.2d 385 (1947); Figuers v. Fly, 137 Tenn. 358, 193 S.W. 117 (1917); Commonwealth Nat'l Bank v. Hawes, 196 S.W. 859 (Tex. Civ. App. 1917); Brixen v. Desert Nat'l Bank, 5 Utah 504, 18 Pac. 43 (1888); Goodfellow v. First Nat'l Bank, 71 Wash. 554, 129 Pac. 90, 44 L.R.A. (N.S.) 580 (1913); BRITTON, BILLS & NOTES § 142 (1943); 5B MICHIE, BANKS & BANKING ch. 9 § 277a (1957); 7 AM. JUR. *Banks* § 590 (1959); 9 C.J.S. *Banks & Banking* § 356c (1959).

8. Union Tool Co. v. Farmers' & Merchants' Nat'l Bank, 192 Cal. 40, 218 Pac. 424, 28 A.L.R. 1414 (1923); Kansas City Title & Trust Co. v. Fourth Nat'l Bank, 135 Kan. 414, 10 P.2d 896, 87 A.L.R. 334 (1934); Masonic Benefit Ass'n v. First State Bank, 99 Miss. 610, 55 So. 408 (1911); Bruce v. First Nat'l Bank, 180 Wash.

knowledge to the depositor of the amount owed him by the bank.[9] The bank statement is considered a denial of the bank's liability for any other amount.[10] Therefore, a demand upon the bank by the depositor to have his account re-credited is not necessary to cause the statute of limitations to run.[11]

New York is the only jurisdiction where the depositor's cause of action has *not* been held to accrue upon delivery of the bank statement and the cancelled checks. The New York Supreme Court, in *City of New York v. Fidelity Trust Co.*,[12] ruled that the cause of action could not accrue until the depositor had made an actual demand upon the bank, such demand being predicated on actual knowledge of the forgery.

In the instant case, one of first impression in Florida, the court rejected the majority view and adopted a modification of the New York position.[13] The court did not accept that portion of the New York proposition that demand must be made by the depositor in order for the cause of action to accrue, reasoning that to do so would be to give the depositor an unfair advantage by enabling him to withhold demand until such time as he desired to assert it. However, it did accept the New York theory that the cause of action commences when the depositor discovers the forgery and added, in the alternative, or when the depositor "reasonably should have" discovered it.

The position of the majority of jurisdictions,[14] in effect, places a duty upon the depositor to discover the invalidity of the endorsements rather than relying upon the bank's determination of the endorsements. The Florida court, on the other hand, has adhered to the proposition that the burden of detecting forged endorsements properly belongs upon the bank. It appears that the Florida decision has relieved the depositor from innocently suffering a penalty for the happening of a situation[15] over which he has no control.

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614, 41 P.2d 779 (1935); Peppas v. Marshall & Ilsley Bank, 2 Wis.2d 144, 86 N.W.2d 27 (1957). *Contra*, City of New York v. Fidelity Trust Co., 243 App. Div. 46, 276 N.Y. Supp. 341 (1934) (Demand must be actually made).

9. Union Tool Co. v. Farmers' & Merchants' Nat'l Bank, 192 Cal. 40, 218 Pac. 424, 28 A.L.R. 1414 (1923); Edgerly v. Schuyler, 113 So. 2d 737 (Fla. App. 1959); Kansas City Title & Trust Co. v. Fourth Nat'l Bank, 135 Kan. 414, 10 P.2d 896, 87 A.L.R. 334 (1934); 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); 34 AM. JUR. *Limitation of Actions* § 123 (1959).

10. *Supra* note 9.

11. Kansas City Title & Trust Co. v. Fourth Nat'l Bank, 135 Kan. 414, 422, 10 P.2d 896, 900, 87 A.L.R. 334, 341 (1932).

12. 243 App. Div. 46, 276 N.Y. Supp. 341 (1934).

13. City of New York v .Fidelity Trust Co., 243 App. Div. 46, 276 N.Y. Supp 341 (1934).

14. *Supra* note 8.

15. Payment by the bank on an instrument bearing a forged endorsement with no subsequent apprisal to the depositor of the forged endorsement.