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BILLS AND NOTES — LIABILITY OF DRAWER OF BANK DRAFT — STATUTE OF LIMITATIONS — On April 1, 1918, defendant bank's predecessor issued a draft. The draft was negotiated by the payee to the plaintiff on August 10, 1937; presentment, refusal of payment, protest, notice of protest and dis-

honor all took place on that day. Defendant suffered no loss by reason of the delayed presentment. In a suit to enforce its liability as drawer, the defendant demurred on the ground that the complaint showed the action was barred by the statute of limitations. *Held*, the cause of action does not accrue in the sense that word is used in the statute until presentment, dishonor, and the taking of the necessary proceedings on dishonor have occurred. Presentment, dishonor and subsequent action are not merely preliminary steps to the enforcement of a remedy but are steps necessary to the creation of a duty in the defendant. The statute therefore affords no defense to the action. *Dean v. Iowa-Des Moines Nat. Bank & Trust Co.*, (Iowa, 1938) 281 N. W. 714.

The reason for the rule that the statute of limitations will not begin to run against a bank draft until presentment is not entirely convincing. It is easy to conceive of a duty to present the draft at the expiration of a reasonable time after delivery, the breach of which would, for reasons of policy, put the statute in motion. This result is reached in a number [1] of the decisions on this point. It is said that a creditor may not by his own inaction deprive the debtor of the benefit of the statute.[2] Since the language of the usual statute of limitations does not readily lend itself to an interpretation whereby the statute is held to run, although the plaintiff could not sue,[3] this conclusion is rarely reached by an interpretation of statutory language; indeed it is sometimes stated as a positive rule of law although the case turns upon the application of the statute.[4] An interpretation of the purpose or policy of the statute furnishes the usual basis for holding that it applies although there has been no presentment.[5] The rule of the principal case has the support of numerous dicta [6] albeit few actual precedents.[7] Many cases cited to the contrary, however, involve situations in which presentment was excused, wherefore the action would accrue upon delivery.[8]

[1] Wrigley v. Farmers' & Mechanics' State Bank, 76 Neb. 862, 108 N. W. 132 (1916); Brust v. Barrett, 16 Hun. (23 N. Y. S. Ct.) 409 (1879), affd. on other grounds in 82 N. Y. 400 (1880); Scroggin v. McClelland, 37 Neb. 644, 56 N. W. 208 (1893); Dolon v. Davidson, 16 Misc. 316, 39 N. Y. S. 394 (1896), affd. in 7 App. Div. 461, 39 N. Y. S. 1020 (1896); F. W. Wagner & Co. v. Smith, 114 S. C. 159, 103 S. E. 527 (1920). The author of the annotation in 4 A. L. R. 881 (1919) indicates that this is the majority view.

[2] Colwell v. Colwell, 92 Ore. 103, 179 P. 916 (1919); Pan American Petroleum Corp. v. American Nat. Bank, 165 Tenn. 66, 52 S. W. (2d) 149 (1932).

[3] The mere expiration of time would not excuse presentment. Plaintiff, therefore, must make presentment to entitle him to sue the drawer.

[4] Wrigley v. Farmers' & Mechanics' State Bank, 76 Neb. 862, 108 N. W. 132 (1916); Harman v. Claiborne, 1 La. Ann. 342 (1846).

[5] F. W. Wagner & Co. v. Smith, 114 S. C. 159, 103 S. E. 527 (1920).

[6] Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. (77 U. S.) 604 (1871); Bull v. Bank of Kasson, 123 U. S. 105, 8 S. Ct. 62 (1887); Haynes v. Wesley, 112 Ga. 668, 37 S. E. 990 (1900); Wright v. MacCarty, 92 Ill. App. 120 (1900).

[7] In re Boyse, 33 Ch. Div. 612, 56 L. J. (Ch.) (N. S.) 135 (1886), involving a claim against the estate of the drawer of a bill of exchange, is perhaps the only authority in direct support of the principal case. The language of Girard Bank v. Bank of Penn Township, 39 Pa. 92 (1861), is strong in its support, however.

[8] Culver v. Marks, 122 Ind. 554, 23 N. E. 1086 (1889); Brush v. Barrett, 82 N. Y. 400 (1880).

The majority view prevails in the case of promissory notes payable "after notice," [9] and, to a lesser extent, in the case of certificates of deposit,[10] where it is held that the statute begins to run at the expiration of a reasonable time after the holder might have given notice or made demand. The decision in the principal case does not preclude a defense of discharge by the lapse of a reasonable time [11] nor does it preclude any defenses [12] other than the defense of the statute of limitations.

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[9] Pierce v. State National Bank, 215 Mass. 18, 101 N. E. 1060 (1913); Morrison's Admr. v. Mullin, 34 Pa. 12 (1859); Bass v. Hueter, 205 Cal. 284, 270 P. 958 (1928); 10 COL. L. REV. 482 (1910).

[10] 20 ST. LOUIS L. REV. 333 at 341 (1935).

[11] Principal case, 281 N. W. 714 at 718.

[12] Defenses may arise under the Negotiable Instrument Law. See Pan American Petroleum Corp. v. American Nat. Bank, 165 Tenn. 66, 52 S. W. 149 (1932).