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BILLS AND NOTES - EFFECT OF STATUTE OF LIMITATIONS ON DEMAND CERTIFICATES OF DEPOSIT AND CERTIFIED CHECKS

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BILLS AND NOTES — EFFECT OF STATUTE OF LIMITATIONS ON DEMAND CERTIFICATES OF DEPOSIT AND CERTIFIED CHECKS — Plaintiff sued on a certificate of deposit and a certified check, the former being issued by the defendant bank in 1905 and the latter being certified in 1919. Both were negotiated in 1937 and presented for payment the next day. Defendant pleaded the ten year statute of limitations as a bar. *Held*, at common law the statute of limitations did not operate on demand certificates of deposit until demand had been made, and section 70 of the Negotiable Instrument Law [1] does not alter this common-law requirement. This applies also to certified checks, for they are substantially the same as certificates of deposit. *Dean v. Iowa-Des Moines Nat. Bank & Trust Co.*, (Iowa 1938) 281 N. W. 714.[2]

The statute of limitations runs only when the cause of action has been perfected and the chief difficulty is in determining when the cause of action accrues. As for demand promissory notes the courts, feeling themselves bound by long lines of precedent, are practically unanimous in declaring that an actual demand is not necessary to perfect the cause of action.[3] A few courts hold a certificate of deposit is a promise to repay a loan of money and, as a result, is essentially the same as a promissory note, hence the cause of action accrues on issuance.[4]

[1] "Presentment for payment is not necessary in order to charge the person primarily liable on the instrument. . . ."

[2] The present discussion deals with headnotes 9 and 10 of the case. The problem involved here has not been raised in England for there is no such instrument as a certificate of deposit there.

[3] For a complete list of cases, see 44 A. L. R. 397 (1926). The following four reasons are often given for the rule: (1) A demand note represents a debt the instant it is issued; thus a cause of action exists against which the statute can run. Norton v. Ellman, 2 M. & W. 461, 150 Eng. Rep. 839 (1837). (2) The word "demand" is not part of the contract but is used to show the debt is due. McMullen v. Rafferty, 24 Hun (N. Y.) 366 (1882), affd. 89 N. Y. 456 (1882). (3) Since payment can easily be demanded, an actual demand is not necessary to complete the cause of action. Hodge's Admr. v. Asher, 224 Ky. 431, 6 S. W. (2d) 451 (1928). (4) The duty to make a demand is on the holder, not the maker, hence no demand is necessary before suit. Hunt v. Divine, 37 Ill. 137 (1865). For a discussion on the effect of the N. I. L. on demand promissory notes, see 20 ST. LOUIS L. REV. 333 (1935).

[4] Curran v. Wittier, 68 Wis. 16, 31 N. W. 705 (1887); Mitchell v. Easton, 37 Minn. 335, 33 N. W. 910 (1887). In Brummagim v. Tallant, 29 Cal. 503 (1866), the court indicated its dissatisfaction with the result but felt bound by the precedent concerning demand promissory notes. Chief Justice Brouser in Downes v. Phoenix Bank of Charlestown, 6 Hill (N. Y. C. L.) 297 at 299-300 (1844), said of this ancient rule concerning demand promissory notes, "If that were a new question I think the courts would not again fall into the absurdity of admitting that there must be a demand, and still holding a suit may be commenced without any prior request. . . . It is an anomaly in the law that the breach of the defendant's contract should be made out by the very fact of sueing upon it. In all other cases there must be a breach before suit is brought. The rule ought not to be extended to cases which do not fall precisely within it."

The vast majority of courts, anxious to get away from the illogical rule concerning demand promissory notes, hold that demand is necessary to mature the certificate of deposit.[5] Some courts qualify the rule by saying demand must be made in a reasonable time; [6] some say presentation must be made within the statute of limitations.[7] Mercantile usage regards the certificates of deposit the same as an ordinary deposit in the bank [8] and to say a deposit is a mere loan of money is directly contrary to all mercantile usage and understanding. No doubt the bank is the debtor of the depositor, yet there are mutual obligations and advantages which clearly distinguish a deposit from a loan; the courts should recognize this anomalous transaction and consider its peculiar characteristics.[9] Then again, the very language of the instrument calls for a demand to mature the instrument and it seems ridiculous to think that parties enter into a transaction and transfer consideration for a negotiable instrument in order to redeem it the instant it is transferred.[10] It might be mentioned that under the minority view a heavy burden is put on a quasi-public institution, for it has to seek out the holder of a negotiable instrument which goes from hand-to-hand.[11] This contention, however, is minimized by the self-interest of the holder, who naturally wishes payment in the simplest manner, an object not achieved by plaguing the bank with the burden of lawsuits. The aforementioned reasoning

[5] City Nat. Bank v. First Nat. Bank of Portland, 66 Colo. 426, 182 P. 12, 5 A. L. R. 587 (1919); Williams v. Drake, (D. C. Ill. 1935) 9 F. Supp. 672; Chandler v. Smith, 147 Ga. 637, 95 S. E. 223 (1918); Elliott v. Capital City State Bank, 128 Iowa 275, 103 N. W. 777 (1905); Fells Point Sav. Inst. v. Weedon, 18 Md. 320, 81 Am. Dec. 603 (1862); Pierce v. State Nat. Bank of Boston, 215 Mass. 18, 101 N. E. 1060 (1913); Shapleigh Hardware Co. v. Spiro, 141 Miss. 38, 106 So. 209 (1925); Gulch v. Fosdick, 48 N. J. Eq. 353, 22 A. 590 (1891); Luna v. Montoya, 25 N. M. 430, 184 P. 533 (1919); Payne v. Gardiner, 29 N. Y. 146 (1864); McGough v. Jamison, 107 Pa. 336 (1884); Smith v. Steen, 38 S. C. 361, 16 S. E. 1003 (1892); Tobin v. McKinney, 15 S. D. 257, 88 N. W. 572 (1901); Esponda v. Ogden State Bank, 75 Utah 117, 283 P. 729 (1929).

[6] In Emerson v. North Am. Transp. Co., 303 Ill. 282, 135 N. E. 497 (1922), the court held a reasonable time depends on the circumstances and peculiar business usages.

[7] Pierce v. National State Bank of Boston, 215 Mass. 181, 101 N. E. 1060 (1913). In Bulliet v. Allegheny Trust Co., 284 Pa. 561, 131 A. 471 (1925), the court declared there was no limitation on the time for demand of payment of certificates of deposit, but certified checks must be presented for payment before the statute of limitation ends.

[8] Sharp v. Citizens Bank, 70 Neb. 758, 98 N. W. 50 (1904).

[9] Elliott v. Capital City State Bank, 128 Iowa 275, 103 N. W. 777 (1905); Payne v. Gardiner, 29 N. Y. 146 (1864).

[10] Fells Point Sav. Inst. v. Weedon, 18 Md. 320 (1862); Chandler v. Smith, 147 Ga. 637, 95 S. E. 223 (1918). In Tobin v. McKinney, 15 S. D. 257, 88 N. W. 572 (1901), the court said, "this transaction, being a deposit of money for safekeeping neither party contemplated the execution of a contract being inceptively the stamp of dishonor, upon which a cause of action accrued instantaneously, without first calling the bank for payment, and the terms of the instrument will bear no such construction."

[11] Elliott v. Capital City State Bank, 128 Iowa 275, 103 N. W. 777 (1905).

applies to certified checks, which are essentially certificates of deposit.[12] Many prominent text writers[13] believe that section 70 of the N. I. L. has changed the common-law majority view, and that as a consequence the statute of limitations runs from the date of the instrument against the primary party thereon. However, the courts in which the instant problem has arisen after the enactment of the N. I. L. have paid no attention to section 70.[14] On reading the act as a whole it is seen that section 70 is introductory to article 6, which covers the manner of presentment; and, as the Iowa court says, it seems that section 70 is meant to clarify the ensuing sections of the article in that they do not apply to parties primarily liable on the instrument. It must be remembered that the N. I. L. is a codification of the common law and was drawn by a body of legal experts in this field, and it seems doubtful that such a group with the objective of uniformity would reject the logical approach of forty-three states in fostering a law whose only merit is precedent. It would appear that the Iowa decision is the progressive and correct answer to the problem and is one that should be followed.

[12] Central Guarantee Trust & Safe Deposit Co. v. White, 206 Pa. 611, 56 A. 76 (1903); Carnegie Trust Co. v. First Nat. Bank of New York, 213 N. Y. 301, 107 N. E. 693 (1918). In Wright v. MacCarty, 92 Ill. App. 120 (1900), the court said, "In legal contemplation and effect the certified check is a certificate of deposit and the bank owes the amount called for by such a check to the legal holder thereof, payable on demand." For list of cases see 3 DANIEL, NEGOTIABLE INSTRUMENTS, 7th ed., § 1791 (1933).

[13] Professors Brannon, Ames and McKeehan believe that the N. I. L. has gone contrary to business custom and the language of the certificate of deposit by changing the majority common-law view. BRANNON, NEGOTIABLE INSTRUMENTS LAW, 5th ed., 769-771 (1932).

[14] Esponda v. Ogden State Bank, 75 Utah 117, 283 P. 729 (1929); First Nat. Bank of Abbeville v. Capps, 208 Ala. 235, 94 So. 112 (1922). In Merrimac River Sav. Bank v. Higgins, (N. H. 1937) 195 A. 369, the court dealt with the effect of the statute of limitations on the liability of an accommodation indorser who waived due protest, notice and presentment. The court ignored the N. I. L. in applying the old common-law rule as to the statute of limitations and demand note and said that the waiving of these conditions precedent made the indorsers' liability contemporaneous with the maker. See 22 MINN. L. REV. 724 (1938).