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Limitation of Actions--Banks and Banking (The City of New York v. Fidelity Trust Co. of New York, et al., 243 App. Div. 46 (1st Dept. 1935))

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that the adjudication of bankruptcy be *the* act that ends the estate.[2] Even the implication that some further act is necessary to bring the term to a close will prevent the clause from being construed as a conditional limitation.[3] When the fact itself [4] will suffice to terminate the grant, the mere filing of a petition in bankruptcy will terminate the lease.[5] It is equally competent for the parties to create a condition subsequent by giving the lessor the option to terminate the estate upon the bankruptcy of the tenant.[6] When such a situation exists, it is the exercise of the option by the landlord that brings about the ending of the term and not the adjudication.[7] The distinction between the two types of conditions is very obvious. It lies in the necessity for the declaration of an end of the relation in a condition subsequent while no such necessity exists in the conditional limitation.[8]

In an agreement of this kind the language [9] employed should be strictly construed [10] so as to give effect to the intention of the parties.[11]

M. E. W.

LIMITATIONS OF ACTIONS—BANKS AND BANKING.—Plaintiff seeks to recover the amount of several checks which had been paid out by defendant on forged indorsements. The checks were issued by plaintiff as pension money over a period of eighteen months, dur-

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[2] Miller v. Levi, 44 N. Y. 489 (1871); Matter of Szpakowski, 166 App. Div. 578, 151 N. Y. Supp. 211 (4th Dept. 1915); Ashton Holding Co., Inc. v. Levitt, 191 App. Div. 91, 180 N. Y. Supp. 700 (1st Dept. 1920); 507 Madison Avenue v. Martin, 200 App. Div. 146, 192 N. Y. Supp. 762 (1st Dept. 1922); Lonas v. Silver, 201 App. Div. 383, 195 N. Y. Supp. 214 (2d Dept. 1922).

[3] Schneider v. Springman, 25 F. (2d) 255 (C. C. A. 6th, 1928).

[4] *Supra* note 2.

[5] *In re* Outfitters' Operating Realty Co., *supra* note 1, the court stated "that * * * mere filing of petition in bankruptcy puts an end to lease, not at lessor's option, but unconditionally."

[6] *In re* Roth v. Appel, 181 Fed. 667 (C. C. A. 2d, 1910); Beach v. Nixon, 9 N. Y. 35 (1853); Woodworth v. Harding, 75 App. Div. 54, 77 N. Y. Supp. 969 (4th Dept. 1902); Witthaus v. Zimmerman, 91 App. Div. 202, 86 N. Y. Supp. 315 (1st Dept. 1904); Broadex Realty Corp. v. Jones, 211 App. Div. 96, 206 N. Y. Supp. 602 (1st Dept. 1924).

[7] *Ibid.*

[8] *Supra* note 2.

[9] Jane v. Paddell, *supra* note 1; 1 TIFFANY, LANDLORD AND TENANT §36 at 289.

[10] Gillette Bros. v. Aristocrat Restaurant, 239 N. Y. 87, 145 N. E. 748 (1924); In *In re* Schneider v. Springman, *supra* note 3, a provision that the lease was to be *forfeited* upon lessee's bankruptcy was held not equivalent to a provision that lease should be "terminated" since the words "terminated" and "forfeited" were not synonymous and that "forfeited" implied election.

[11] Raymond v. Hodgson, 55 Ill. App. 423; Anzalone v. Paskuz, 96 App. Div. 188, 89 N. Y. Supp. 203 (1st Dept. 1904); City of New York v. United States Trust Co., 116 App. Div. 349, 101 N. Y. Supp. 574 (1st Dept. 1906).

ing which period the indorsement of the pensioner, who had died at the beginning of that time, had been forged, the checks cashed, and the account of the plaintiff charged therewith. The checks had been issued between April, 1920, and October, 1921, but the forgery had not been discovered and a demand made upon the bank until 1927. Defendant claimed that the action was barred by the Statute of Limitations. On appeal, *held,* reversed. The Statute of Limitations did not begin to run against the plaintiff until it had made a demand on the defendant for the moneys paid out. *The City of New York* v. *Fidelity Trust Co. of New York, et al.,* 243 App. Div. 46, 276 N. Y. Supp. 341 (1st Dept. 1935).

Where a bank wrongfully disburses moneys of a depositor by reason of a forged indorsement, it cannot charge the account of the depositor therefor.[1] The rule as to forged indorsements, as opposed to that on forged instruments,[2] is that there is no duty on the part of the depositor to examine the returned checks in search of forgeries thereon.[3] The depositor has a right to assume that the bank has ascertained the indorsements on checks to be genuine and that no payments have been made except as authorized.[4] This results from the fact of an implied contract between the bank and the depositor to disburse moneys standing to the credit of a depositor only upon its order and in conformity with its directions.[5]

Although there is authority for a contrary view in other jurisdictions,[6] by statute in New York [7] the time within which an action for the moneys thus wrongfully paid out must be commenced is computed from the time of actual demand on the bank.[8] No cause of action against the bank arises until that demand.[9] The Statute

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[1] Morgan v. State Bank, 11 N. Y. 424 (1854); Thomson v. British Bank of North America, 82 N. Y. 1 (1880); Citizens National Bank v. Importers & Traders National Bank, 119 N. Y. 195, 23 N. E. 540 (1890); Shipman v. Bank of State of N. Y., 126 N. Y. 318, 27 N. E. 371 (1891); Gallo v. Brooklyn Savings Bank, 199 N. Y. 222, 92 N. E. 633 (1910).

[2] Hammerschlag v. Importers & Traders National Bank, 262 Fed. 266 (C. C. A. 2d, 1919).

[3] United States v. Bank of New York, National Banking Ass'n, 219 Fed. 648 (C. C. A. 2d, 1914); Prudential Insurance Co. v. National Bank of Commerce, 227 N. Y. 510, 125 N. E. 824 (1920); National Surety Co. v. The President and Directors of Manhattan Co., 252 N. Y. 247, 169 N. E. 372 (1929); Kleinman v. Chase National Bank, 124 Misc. 173, 207 N. Y. Supp. 191 (1924).

[4] Shipman v. Bank of State of N. Y., *supra* note 1.

[5] Critten v. Chemical National Bank, 171 N. Y. 219, 63 N. E. 969 (1902).

[6] Brummagin v. Tallant, 29 Cal. 503 (1866); Lynch v. Goldsmith, 64 Ga. 42 (1899); Hunt v. Divine, 37 Ill. 137 (1865); Mereness v. Charles City First National Bank, 112 Iowa 11, 83 N. W. 711 (1900); Tripp v. Curtenius, 36 Mich. 494 (1877); Mitchell v. Easton, 37 Minn. 335, 33 N. W. 910 (1887); Curran v. Witter, 68 Wis. 16, 31 N. W. 705 (1887).

[7] N. Y. CIVIL PRACTICE ACT §15, subd. 2.

[8] Bank of British North America v. Merchants' National Bank, 91 N. Y. 106 (1883).

[9] Giovannangeli v. Levich & Pollack, Inc., 134 Misc. 245, 235 N. Y. Supp. 28 (1929).

of Limitations does not begin to run at the time of the wrongful disbursement as if a conversion had been committed.[10] In the case of an ordinary deposit, as opposed to that of a special deposit, the relation existing between bank and depositor is that of debtor and creditor, and there exists no specific article which can be converted.[11] Where a demand is supererogatory, of course, there is no necessity for a special demand.[12] In any case, the time of limitation would not begin until a discovery of the forgery by the depositor.[13]

J. O'D.

MARTIN ACT—RIGHT TO ENJOIN ATTORNEY-GENERAL—RELEVANCY OF EVIDENCE.—The Attorney-General was engaged under Article 23-A of the General Business Law, commonly known as the Martin Act, in the investigation of the practices of the Niagara Share Corporation of Maryland relating to its negotiation of securities in the state of New York. He issued subpoenas *duces tecum* demanding a transcript of all the loan and brokerage accounts of the plaintiff, a director in the corporation. The transactions so demanded dated approximately six years before the plaintiff had any connection with the corporation. The plaintiff made a motion for a temporary injunction restraining the Attorney-General from examining him under the subpoenas on the ground that the information demanded was immaterial to the inquiry. *Held,* injunction granted. The Attorney-General will be enjoined from examining a person under subpoenas issued pursuant to the Martin Act when the information demanded is irrelevant to the proceeding. *Carlisle* v. *Bennett,* 243 App. Div. 186, 277 N. Y. Supp. 187 (3rd Dept. 1935).

The wording of the statute is broad.[1] In substance the Attorney-

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[10] Bank of British North America v. Merchants' National Bank, *supra* note. 8.

[11] *Ibid.*

[12] Sokoloff v. The National City Bank of New York, 250 N. Y. 69, 164 N. E. 745 (1928); Tillman v. The Title Guaranty Trust Co. of New York, 253 N. Y. 295, 171 N. E. 61 (1930).

[13] Thomson v. Bank of British North America, *supra* note 1.

[1] N. Y. GENERAL BUSINESS LAW (1932) §352. "Whenever it shall appear to the Attorney-General, either upon complaint or otherwise, that in the advertisement, purchase or sale within this State for future delivery of any commodity * * * or that in the issuance, sale, promotion negotiation, advertisement or distribution within this State of any stocks, bonds, notes, evidences of interest or indebtedness or other securities, or negotiable instruments of title * * * any person, partnership * * * shall have employed, or employs, or is about to employ" any of the fraudulent devices and practices described or if "he believes it to be in the public interest that an investigation be made, he may in his discretion" require such person or partnership to file a statement in writing under oath "as to all the facts and circumstances concerning the