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Bills and Notes—U. S. Government Check—"Imposter Rule" and Its Application

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COMMENTS

BILLS AND NOTES—U. S. GOVERNMENT CHECK—"IMPOSTER RULE" AND ITS APPLICATION [FEDERAL]

One Bertha Smith, posing as Beulah Mitchell Gibbs, the unremarried widow of Ben Gibbs, Jr., made a fraudulent application by mail to the Veterans Administration to receive benefits to which an unremarried widow of a veteran is entitled. Acting upon this application checks were written by the Government payable out of the Treasury, and delivered to Bertha Smith. She indorsed these checks with the name of Beulah Gibbs and received payment from the defendant banks. The banks required identification that she was the person to whom the checks were made payable. The defendants by indorsement guaranteed the prior indorsements and received payment from the Treasury through the customary banking channels. This action was brought by the United States against the defendant banks to recover on their guarantees of indorsement. It was held that the "imposter rule" governs where the United States has issued its paper to an "imposter," and judgment was for the defendants.[1]

A collecting bank (by presenting a check to the drawee bank for payment, and by indorsement, guaranteeing all prior indorsements) renders itself liable to the drawee if any of the prior indorsements are not genuine.[2] To determine whether a signature is genuine or forged is often a difficult matter. The determination must be made by an inquiry into the intent of the drawer. The drawer really has two intents: First, to make the instrument payable to the person with whom he is *actually* dealing; second, to make the instrument payable to the person with whom he *thinks* he is dealing.[3] If a person falsely represents that he is another and thereby induces the drawer to make an instrument payable to the order of the impersonated individual, and the check is given to the impersonator who indorses by signing the name of the payee, then if the second intent were allowed to control there would be a forgery, as the person with whom the

1. Continental-American Bank & Trust Co. v. United States, 161 F. 2d 935 (5th Cir. 1947).
2. NEGOTIABLE INSTRUMENTS LAW § 23.
3. BEUTEL, BRANNAN NEGOTIABLE INSTRUMENTS LAW 476 (7th ed. 1948).

drawer thought he was dealing did not indorse. The collecting bank would then be liable for a breach of its guarantee of prior indorsements.[4] If, on the other hand, the first intent were allowed to control, there would be no forgery because the person intended as payee had indorsed the instrument, even though he did it in another's name; in this case the collecting bank would not be liable to the drawee. This is the so-called "imposter rule." The majority of both federal[5] and state[6] courts apply the rule and hold there is no forgery.[7]

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4. Cohen v. Lincoln Savings Bk., 275 N. Y. 399, 10 N. E. 2d 457 (1937); Tolman v. American Nat'l Bk., 22 R. I. 462, 40 Atl. 480 (1901). For an exhaustive treatment of this general subject and the Tolman case in particular, see Abel, *The Imposter Payee: or, Rhode Island Was Right,* [1940] WIS. L. REV. 196.

5. United States v. First Nat'l Bank, 131 F. 2d 985 (10th Cir. 1942), *cert. denied* 318 U. S. 774 (1943); United States v. First Nat'l Bank & Trust Co., 17 F. Supp. 611 (W. D. Okla. 1936); Security-First Nat'l Bank v. United States, 103 F. 2d 188 (9th Cir. 1939) (decided under Cal. law). See United States v. First Nat'l Bank, 124 F. 2d 484, 486 (10th Cir. 1941), where the court said, "With few exceptions, it is held that the drawer of a check, bill of exchange, or other negotiable instrument, cannot recover from an intermediary bank on its indorsement, or from the payee bank upon its payment, where the check, bill or other instrument is drawn and delivered to an imposter under the mistaken belief on the part of the drawer that he is the person whose name he has assumed and to whose order the check, bill or other instrument is made payable, and the intermediary bank obtains it from the imposter upon his indorsement thereon of the name of the payee, or the payee bank pays it upon such endorsement, as the case may be . . . most courts hold that, while the drawer acts in the mistaken belief that the person with whom he deals, either in person or by correspondence, is the person whose name he has assumed and pretends to be, still it is the intent of the drawer to make the check, bill, or other instrument payable to the identical person with whom he deals and therefore to be paid on his indorsement; and that accordingly payment to him or his indorsee merely effectuates the intent of the drawer."

6. See Notes, 112 A. L. R. 1435 (1938); 52 A. L. R. 1326 (1928); 22 A. L. R. 1228 (1923).

7. It seems settled now that the rights and liabilities of the Federal government on its commercial paper are governed by federal rather than state law. This result was reached in the case of United States v. Standard Oil Co., 332 U. S. 301 (1947). Confusion was involved in a long line of cases beginning with Swift v. Tyson, 16 Pet. 1 (U. S. 1842), a case which reached the federal system on diversity grounds. It was held that the court was not controlled by local law. The doctrine of the *Swift* case was practically limited out of existence by Erie R. R. v. Tompkins, 304 U. S. 64 (1938), which in effect held that there was no Federal common law and that the federal courts were governed by local law at least where their jurisdiction is invoked under the diversity clause. The current thought is that since the government in issuing its obligations is exercising a federal power, controversies are to be governed by federal rather than state law, and in the absence of any applicable statute by Congress, the federal courts must fashion their own rules. In cases involving commercial paper the general law merchant is usually looked to. In this connection, see Clearfield Trust Co. v. United States, 318 U. S. 363 (1942); Nat'l

Among the cases presenting situations in which the "imposter rule" could have been applied, but was not, the most important is *United States v. Nat'l Exchange Bank.*[8] The case involved government pension checks. The payee procured the checks by fraudulently impersonating others who were entitled to them. The government was allowed to recover on the basis of money paid under a mistake of fact and a warranty of the genuineness of the signatures by the defendant bank. Although this was a typical situation for the application of the "imposter rule," the issue was not raised in counsel's brief. Forgery was assumed and the arguments went off on the question of whether or not the government was required to know the signatures of its many pensioners and also the alleged negligence of the government in failing to notify the bank of the forgery.

In *United States v. Onondaga County Savings Bank,*[9] the "imposter rule" was not argued. Recovery by the government was allowed on the theory of money paid under a mistake of fact.

In *United States v. Canal Bank & Trust Co.,*[10] recovery by the government was allowed; the court said that the case was governed by the *Nat'l Bank* and *Onondaga Bank* cases, *supra.*

The three cases mentioned above are the principal ones relied upon in subsequent cases in which recovery has been allowed, even when the applicability of the "imposter rule" has been argued by counsel. Although all three involved situations for the application of the rule, yet, since the issue was neither argued by counsel nor discussed by the courts, they are of doubtful authority for holding under similar facts and in the face of argument that the "imposter rule" does not apply.

The theory that the intent to deal with the person actually dealt with is controlling has application in other fields of the law even though the name "imposter rule" is not used. In the law of Sales, for example, if a person falsely represents himself to be another in order to induce the person imposed upon to sell some goods to him, title to the goods passes to the fraudulent purchaser so that if he thereafter sells the goods to a bona fide purchaser, they may not be recovered by the defrauded seller.[11]

Metropolitan Bank v. United States, 323 U. S. 454 (1944); *cf.* Security-First Nat'l Bank v. United States, 103 F. 2d 188 (9th Cir. 1949).

8. 214 U. S. 302 (1909).
9. 39 Fed. 259 (N. D. N. Y. 1889).
10. 29 F. Supp. 605 (E. D. La. 1939).
11. 1 VOLD, SALES 375 (1931); 3 WILLISTON, SALES 444 (Rev. ed. 1948).

Much is to be said in favor of the "imposter rule." In a proper case for its application there are really two frauds perpetrated. The first one is on the drawer to induce him to draw the check and the second is on the bank to induce it to cash the check. If the drawer and the cashing bank are equally innocent, then the rule, that as between two innocent parties, the one by whose act (drawing the check) the loss is made possible, should be the one who is forced to bear it, should apply. In such a situation if the drawer is negligent in ascertaining the true identity of the person with whom he is dealing, or if the cashing bank is negligent in failing to require proper identification upon cashing the check, then the result should be varied. In the usual case the imposter will work the fraud as to his identity on the cashing bank in the same manner in which he worked the fraud on the government, as for example, with the use of a stolen adjusted service certificate or by a notary public. In addition, the policy of the law in the commercial field is to make these instruments freely negotiable. This policy assumes even greater importance because of the increased number of government checks in circulation today.

The "imposter rule" is manifestly just and should become the uniform rule in the Federal Courts. It is submitted that the result reached by the court in the instant case is eminently sound.

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CONSTITUTIONAL LAW—MUNICIPAL UNDERGROUND AUTOMOBILE PARKING FACILITIES—COMPENSATION TO ADJACENT PROPERTY OWNERS.—The plaintiff was the owner of property abutting Washington Avenue on which was operated a parking lot in downtown Detroit. In 1947 the plaintiff filed a bill in chancery to enjoin the defendant, the City of Detroit, from constructing an auto parking garage under the street surface of Washington Avenue adjoining her property. It was the plaintiff's contention that she was being deprived of property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article Two, Section Nine of the Michi-

This rule is applied almost universally in cases of face-to-face dealings, but where a written order is mailed to the seller, the majority of the courts seem to hold that no title passes to the fraudulent buyer.

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