

Clearfield Doctrine

"Governments descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen...where private corporate commercial paper [Federal Reserve Notes] and securities [checks] is concerned. ... For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government."

- Clearfield Trust Co. v. United States, 318 U.S. 363-371 (1942)

What the **Clearfield Doctrine** is saying is that when **private commercial paper** is used by **corporate government**, then **Government** loses its **sovereignty status** and becomes no different than a mere **private corporation**. As such, government (or in your case a court) then becomes bound by the rules and laws that govern **private corporations** which means that if they intend to **compel** an individual to some **specific performance** based upon its **corporate statutes** or **corporation rules**, then the **government**, like any **private corporation**, must be the **holder in due course** of a **contract** or **other commercial agreement** between it and the one upon whom demands for **specific performance** are made and further, the government must be willing to enter the **contract** or **commercial agreement** into evidence before trying to get to the court to enforce its demands, called statutes. - mhk]

THE CLEARFIELD DOCTRINE WAS RECORDED IN

THE AMERICAN LAW REPORT OF 1938.

THE DOCTRINE EXPLAINS: ERIE RAILROAD COMPANY V. HARRY J. TOMPKINS.

United States Supreme Court- April 25, 1938

(-U. S.- ,82 L. ed. (Adv. 787), 58 S. Ct.-.)

Courts. § 377 – duty of Federal Courts to follow State decisions on matters of general law.

1. The Phrase "laws of the several states" in the provision of **§ 34 of the Federal Judiciary Act** of **September 24, 1789, chap. 20, 28 U.S.C.A. § 725**, that the laws of the several states, **except** where the **Constitution, treaties**, or **statutes of the United States** otherwise require or provide, shall be regarded as rules of decision in trials at **COMMON LAW**, IN THE COURTS OF THE **United States**, in cases where they apply, cannot constitutionally be construed as excluding in matters of general jurisprudence the unwritten law of the state as declared by its highest court. Swift v. Tyson, 16 Pet. 1 10 L. ed. 865, OVERRULED.

Common Law, § 2- of nation.

2. There is no **Federal common law**, and **Congress** has no power to declare substantive rules of **common law** applicable in a state, whether they be local or general in their nature, be they **commercial law** or a part of the **law of torts**. [See A. Jur. Title "common Law," § 5: R.C.L. title "Common Law." § 4.] **Appeal, § 976-** remand for further consideration- propriety.....Etc. (this can be found in any university library) **page 1487 & 1500.**

CLEARFIELD TRUST DOCTRINE. Governments descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen... Where private corporate commercial paper [Federal Reserve Notes] and securities [checks] is concerned... For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government. Clearfield Trust Co. v. United States, 318 U.S. 363-371 (1942). See Note.

Note: The **Clearfield Doctrine** is **stare decisis*** upon all courts, and imposes that "an entity cannot compel performance upon its corporate statutes or corporation rules unless it, like any other corporation, is the Holder in Due Course of some contract or commercial agreement between it, and the one on whom its

demands for performance are made, and is willing to produce said document, and to place the same into evidence before trying to enforce its demands.

***STARE DECISIS.** *n.* [Latin “to stand by things decided”] The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation. Black’s 7th.

318 U.S. 363, 318 U.S. 744, 63 S.Ct. 573, 87 L.Ed. 838, 43-1 USTC P 10,051

Supreme Court of the United States

CLEARFIELD TRUST CO. et al.

v.

UNITED STATES.

No. 490.

Argued and Submitted Feb. 5, 1943.

Decided March 1, 1943.

As Amended Mar. 15, 1943.

On **Writ of Certiorari** to the **United States Circuit Court of Appeals** for the **Third Circuit**. Action by the **United States of America** against the **Clearfield Trust Company** to recover the amount of a check on which payee's name had been forged, wherein the **J. C. Penney Company** intervened. A judgment dismissing the complaint was reversed by the **Circuit Court of Appeals**, **130 F.2d 93**, and the defendant and intervener bring **certiorari**.

Affirmed.

West Headnotes

[1] [KeyCite Notes](#) 

170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(C) Application to Particular Matters

170Bk414 k. Corporations and Associations; Banks and Trust Companies; Securities. [Most Cited Cases](#)
(Formerly 106k361)

Where check drawn on **Treasurer of the United States** was issued for services performed under **Federal Emergency Relief Act** and check was paid on forged indorsement of payee's name, in action by the **United States** to recover amount of check from indorsers, the rule of **Erie R. Co. v. Tompkins** was inapplicable. **Jud.Code s 24(1)**, **28 U.S.C.A. s 41(1)**; **Federal Emergency Relief Appropriation Act of 1935**, 49 Stat. 115, **15 U.S.C.A. ss 721--728**.

[2] [KeyCite Notes](#) 

170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(C) Application to Particular Matters

170Bk433 k. Other Particular Matters. [Most Cited Cases](#)
(Formerly 106k361)

The rights and duties of the **United States** on **commercial paper** which it issues are governed by **federal law** rather than **local law**. **Cr.Code, s 148**, **18 U.S.C.A. s 262**.

[3] [KeyCite Notes](#)



- ↪ [393](#) United States
- ↪ [393VI](#) Fiscal Matters
- ↪ [393k89](#) k. Bills and Notes in General. [Most Cited Cases](#)

In absence of an applicable **act of Congress** fixing rights and duties of the **United States** on **commercial paper** which it issues, it is for the **federal courts** to fashion the governing **rule of law** according to their own standards.

[4] [KeyCite Notes](#)



- ↪ [170B](#) Federal Courts
- ↪ [170BVI](#) State Laws as Rules of Decision
- ↪ [170BVI\(A\)](#) In General
- ↪ [170Bk374](#) k. Matters of General Jurisprudence; Federal Common Law. [Most Cited Cases](#)
(Formerly 106k372(1))

The **federal law merchant** developed under the regime of [Swift v. Tyson](#) represented **general commercial law** rather than a choice of a **federal rule** designed to protect a **federal right**, but it stands as a convenient source of reference for fashioning **federal rules** applicable to **federal questions** regarding rights and duties of the **United States** on **commercial paper** which it issues.

[5] [KeyCite Notes](#)



- ↪ [56](#) Bills and Notes
- ↪ [56X](#) Payment and Discharge
- ↪ [56k434](#) k. Recovery of Payments. [Most Cited Cases](#)
- ↪ [393](#) United States
- ↪ [393VI](#) Fiscal Matters
- ↪ [393k89](#) k. Bills and Notes in General. [Most Cited Cases](#)

Where check is paid on forged indorsement of **payee's** name, **drawee's** right to recover from **indorsers** accrues when the payment is made and the **drawee**, whether it be the **United States** or another, is not chargeable with knowledge of the signature of the **payee**.

[6] [KeyCite Notes](#)



- ↪ [56](#) Bills and Notes
- ↪ [56X](#) Payment and Discharge
- ↪ [56k434](#) k. Recovery of Payments. [Most Cited Cases](#)
- ↪ [393](#) United States
- ↪ [393VI](#) Fiscal Matters
- ↪ [393k89](#) k. Bills and Notes in General. [Most Cited Cases](#)

Where check is paid on forged indorsement of **payee's** name, prompt notice to **indorsers** of **drawee's** discovery of forgery is **not** a "**condition precedent**" to **drawee's** suit to recover, but, if **drawee** on learning of forgery does not give prompt notice of it and damage results, recovery by

drawee is barred and such **rule** applies where the **drawee** is the **United States**.

[KeyCite Notes](#) 
[7]

- ↪ [393](#) United States
- ↪ [393VI](#) Fiscal Matters
- ↪ [393k89](#) k. Bills and Notes in General. [Most Cited Cases](#)

The **United States** as **drawee** of **commercial paper** stands in **no different** light than any other **drawee**.

[8] [KeyCite Notes](#) 

- ↪ [56](#) Bills and Notes
- ↪ [56X](#) Payment and Discharge
- ↪ [56k434](#) k. Recovery of Payments. [Most Cited Cases](#)

He who accepts a check with forged indorsement of **payee**'s name should be allowed to shift the loss to the **drawee** only on a clear showing that the **drawee**'s delay in notifying him of the forgery caused him damage.

[9] [KeyCite Notes](#) 

- ↪ [56](#) Bills and Notes
- ↪ [56X](#) Payment and Discharge
- ↪ [56k434](#) k. Recovery of Payments. [Most Cited Cases](#)

Mere delay on part of **drawee** in giving notice of forged indorsement of **payee**'s name does not bar recovery by **drawee** from **indorser** who accepted the check on the forged indorsement, but to bar recovery damage occasioned must be established and not left to conjecture.

[10] [KeyCite Notes](#) 

- ↪ [393](#) United States
- ↪ [393VI](#) Fiscal Matters
- ↪ [393k89](#) k. Bills and Notes in General. [Most Cited Cases](#)

Where check drawn on **Treasurer of the United States** was issued for services performed under **Federal Emergency Relief Act**, delay of **United States** in giving notice of forged indorsement of **payee**'s name to **indorser** who accepted forged indorsement did not bar recovery by the **United States** where evidence did not establish that delay caused damage to **indorsers**. **Federal Emergency Relief Appropriation Act of 1935, 49 Stat. 115, 15 U.S.C.A. §§ 721-728**.

****574 *364 Mr. Paul A. Freund, of Washington, D.C., for respondent.**
Mr. Roswell Dean Pine, Jr., of New York City, for petitioners.




Mr. Justice DOUGLAS delivered the opinion of the Court.

On **April 28, 1936**, a check was drawn on the **Treasurer of the United States** through the **Federal Reserve Bank of Philadelphia** to the order of **Clair A. Barner** in the amount of **\$24.20**. It was dated at **Harrisburg, Pennsylvania** and was drawn for services rendered by

Barner to the **Works Progress Administration**. The check was placed in the mail addressed to **Barner** at his address in **Mackeyville, Pa.** **Barner** never received the check. Some unknown person obtained it in a mysterious manner and presented it to the **J. C. Penney Co.** store in **Clearfield, Pa.**, representing that he was the **payee** and identifying himself to the satisfaction of the employees of **J. C. Penney *365 Co.** He endorsed the check in the name of **Barner** and transferred it to **J. C. Penney Co.** in exchange for **cash** and **merchandise**. **Barner** never authorized the endorsement nor participated in the proceeds of the check. **J. C. Penney Co.** endorsed the check over to the **Clearfield Trust Co.** which accepted it as agent for the purpose of collection and endorsed it as follows: 'Pay to the order of **Federal Reserve Bank of Philadelphia**, Prior Endorsements Guaranteed.' [FN1] **Clearfield Trust Co.** collected the check from the **United States** through the **Federal Reserve Bank of Philadelphia** and paid the full amount thereof to **J. C. Penney Co.** Neither the **Clearfield Trust Co.** nor **J. C. Penney Co.** had any knowledge or suspicion of the **forgery**. Each acted in good faith. On or before **May 10, 1936**, **Barner** advised the **timekeeper** and the **foreman** of the **W.P.A. project** on which he was employed that he had not received the check in question. This information was duly communicated to other **agents** of the **United States** and on **November 30, 1936**, **Barner** executed an **affidavit** alleging that the endorsement of his name on the check was a **forgery**. No notice was given the **Clearfield Trust Co.** or **J. C. Penney Co.** of the **forgery** until **January 12, 1937**, at which time the **Clearfield Trust Co.** was notified. The first notice received by **Clearfield Trust Co.** that the **United States** was asking reimbursement was on **August 31, 1937**.


[FN1] Guarantee of all prior indorsements on presentment for payment of such a check to **Federal Reserve banks** or **member bank depositories** is required by **Treasury Regulations. 31 Code of Federal Regulations s 202.32, s 202.33**.


This suit was instituted in **1939** by the **United States** against the **Clearfield Trust Co.**, the jurisdiction of the **federal District Court** being invoked pursuant to the provisions of s **24(1) of the Judicial Code**, **28 U.S.C. s 41(1)**, **28 U.S.C.A. s 41(1)**. The cause of action was based on the express guaranty of prior endorsements made by the **Clearfield Trust Co. *366 J. C. Penney Co.** intervened as a defendant. The case was heard on complaint, answer and stipulation of facts. The **District Court** held that the rights of the parties were to be determined by the **law** of **Pennsylvania** and that since the **United States** unreasonably delayed in giving notice of the **forgery** to the **Clearfield Trust Co.**, it was barred from recovery under the rule of **Market Street Title & Trust Co. v. Cheltenham T. Co.**, **296 Pa. 230, 145 A. 848**. It accordingly **dismissed** the complaint. On appeal the **Circuit Court of Appeals reversed**, **3 Cir., 130 F.2d 93**. The case is here on a petition for a **writ of certiorari** which we granted, **317 U.S. 619, 63 S.Ct. 258, 87 L.Ed. 502**, because of the importance of the problems raised and the conflict between the decision below and **Security-First Nat. Bank v. United States**, **103 F.2d 188**, from the **Ninth Circuit**.

[1]  [2]  [3]  We agree with the **Circuit Court of Appeals** that the rule of ****575 Erie R. Co. v. Tompkins**, **304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487**, **does not apply** to this action. The rights and duties of the **United States** on **commercial paper** which it issues are governed by **federal** rather than **local law**. When the **United States** disburses its funds or pays its debts, it is exercising a **constitutional function** or power. This check was issued for services performed under the **Federal Emergency Relief Act of 1935**, **49 Stat. 115, 15 U.S.C.A. ss 721--728**. The authority to issue the check had its origin in the **Constitution** and the **statutes** of the **United States** and was **in no way** dependent on the **laws** of **Pennsylvania** or of **any other state**. Cf. **Board of Commissioners v. United States**, **308 U.S. 343, 60 S.Ct. 285, 84 L.Ed. 313**; **Royal Indemnity Co. v. United States**, **313 U.S. 289, 61 S.Ct. 995, 85 L.Ed. 1361**. The duties imposed upon the **United States** and the rights acquired by it as a result of the issuance find their roots in the same federal sources. [FN2] Cf. **Deitrick v. Greaney**, **309 U.S. 190, 60 S.Ct. 480, 84 L.Ed. 694**; ***367 D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.**, **315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956**. In absence of an applicable **Act of Congress**

it is for the **federal courts** to fashion the governing **rule of law** according to their own standards. **United States v. Guaranty Trust Co., 293 U.S. 340, 55 S.Ct. 221, 79 L.Ed. 415, 95 A.L.R. 651,** is not opposed to this result. That case was concerned with a conflict of laws rule as to the title acquired by a **transferee** in **Yugoslavia** under a forged endorsement. Since the payee's address was **Yugoslavia**, the check had '**something of the quality of a foreign bill**' and the **law of Yugoslavia** was applied to determine what title the **transferee** acquired.

FN2 Various **Treasury Regulations** govern the payment and endorsement of **government checks** and warrants and the reimbursement of the **Treasurer of the United States** by **Federal Reserve banks** and **member bank depositories** on payment of **checks** or warrants bearing a **forged endorsement**. See **31 Code of Federal Regulations ss 202.0, 202.32--202.34**. Forgery of the check was an offense against the **United States. Criminal Code s 148, 18 U.S.C. s 262, 18 U.S.C.A. s 262.**

 **[4]** In our choice of the applicable **federal rule** we have occasionally selected state law. See **Royal Indemnity Co. v. United States, supra.** But reasons which may make **state law** at times the appropriate **federal rule** are singularly inappropriate here. The **issuance of commercial paper** by the **United States** is on a vast scale and transactions in that paper from issuance to payment will commonly occur in several states. The application of **state law**, even without the conflict of laws rules of the forum, would subject the **rights and duties of the United States** to **exceptional uncertainty**. It would lead to **great diversity in results** by making identical transactions subject to the vagaries of the laws of the several states. The desirability of a uniform rule is plain. And while the **federal law merchant** developed for about a century under the regime of **Swift v. Tyson, 16 Pet. 1, 10 L.Ed. 865,** represented **general commercial law** rather than a choice of a **federal rule** designed to protect a **federal right**, it nevertheless stands as a **convenient source of reference** for fashioning **federal rules** applicable to these **federal questions**.

 **[5]** **United States v. National Exchange Bank, 214 U.S. 302, 29 S.Ct. 665, 53 L.Ed. 1006, 16 Ann.Cas. 1184,** falls in that category. The **Court** held that the **United *368 States** could recover as drawee from one who presented for payment a **pension check** on which the name of the **payee** had been **forged**, in spite of a protracted delay on the part of the **United States** in giving notice of the **forgery**. The **Court** followed **Leather Mfrs.' Bank v. Merchants Bank, 128 U.S. 26, 9 S.Ct. 3, 32 L.Ed. 342,** which held that the right of the **drawee** against one who presented a check with a **forged endorsement** of the **payee's** name accrued at the date of payment and was not dependent on notice or demand. The theory of the **National Exchange Bank** case is that he who presents a **check** for payment warrants that he has **title** to it and the **right** to receive payment. **[FN3]** If he has acquired ****576** the **check** through a **forged endorsement**, the **warranty** is breached at the time the **check** is cashed. See **Manufacturers' Trust Co. v. Harriman Nat. Bank Trust Co., 146 Misc. 551, 262 N.Y.S. 482; Bergman v. Avenue State Bank, 284 Ill.App. 516, 1 N.E.2d 432.** The theory of the **warranty** has been challenged. **Ames, The Doctrine of Price v. Neal, 4 Harv.L.Rev., 297, 301--302.** It has been urged that 'the right to recover is a **quasi contractual right**, resting upon the doctrine that one who confers a benefit in misreliance upon a right or duty is entitled to restitution.' **Woodward, Quasi Contracts (1913) s 80; First Nat. Bank v. City Nat. Bank, 182 Mass. 130, 134, 65 N.E. 24, 94 Am.St.Rep. 637.** But whatever theory is taken, we adhere to the conclusion of the **National Exchange Bank** case that the **drawee's** right to recover accrues when the payment is ***369** made. There is no other barrier to the maintenance of the cause of action. The theory of the **drawee's** responsibility where the **drawer's** signature is **forged** (**Price v. Neale, 3 Burr. 1354; United States v. Chase Nat. Bank, 252 U.S. 485, 40 S.Ct. 361, 64 L.Ed. 675, 10 A.L.R. 1401)**) is inapplicable here. The **drawee**, whether it be the **United States** or another, is not chargeable with the knowledge of the signature of the payee. **United States v. National**

Exchange Bank, supra, 214 U.S. at page 317, 29 S.Ct. at page 669, 53 L.Ed. 1006, 16 Ann.Cas. 1184; State v. Broadway Nat. Bank, 153 Tenn. 113, 282 S.W. 194.

FN3 We need not determine whether the guarantee of prior endorsements adds to the drawee's rights. See Brannan's Negotiable Instruments Law (6th ed.) pp. 330--331, 816--817; First Nat. Bank v. City Nat. Bank, 182 Mass. 130, 134, 65 N.E. 24, 94 Am.St.Rep. 637. Cf. Home Ins. Co. v. Mercantile Trust Co., 219 Mo.App. 645, 284 S.W. 834. Under the theory of the National Exchange Bank case, the warranty of the title of him who presents the check for payment would be implied in any event. See Philadelphia Nat. Bank v. Fulton Nat. Bank, D.C., 25 F.2d 995, 997.

[6] [7] [8] [9] [10] The National Exchange Bank case went no further than to hold that prompt notice of the discovery of the forgery was **not** a condition precedent to suit. It did not reach the question whether lack of prompt notice might be a defense. We think it may. If it is shown that the drawee on learning of the forgery did not give prompt notice of it and that damage resulted, recovery by the drawee is barred. See Ladd & Tilton Bank v. United States, 9 Cir., 30 F.2d 334; United States v. National Rockland Bank, D.C., 35 F.Supp. 912; United States v. National City Bank, D.C., 28 F.Supp. 144. The fact that the drawee is the United States and the laches those of its employees are not material. Cooke v. United States, 91 U.S. 389, 398, 23 L.Ed. 237. The United States as drawee of commercial paper stands in no different light than any other drawee. As stated in United States v. National Exchange Bank, 270 U.S. 527, 534, 46 S.Ct. 388, 389, 70 L.Ed. 717, 'The United States does business on business terms.' It is not excepted from the general rules governing the rights and duties of drawees 'by the largeness of its dealings and its having to employ agents to do what if done by a principal in person would leave no room for doubt.' Id., 270 U.S. at page 535, 46 S.Ct. at page 389, 70 L.Ed. 717. But the damage occasioned by the delay must be established and not left to conjecture. Cases such as Market St. Title & Trust Co. v. Cheltenham Trust Co., supra, place the burden on the drawee of giving prompt notice of the forgery--**injury to the defendant being presumed by the mere fact of delay**. See London & River Plate Bk. v. Bank of Liverpool, (1896) 1 Q.B. 7. But we do not think that he who accepts a forged signature of a payee deserves that preferred treatment. It is his **neglect** or **error** in accepting the forger's signature which occasions the loss. See Bank of Commerce v. Union Bank, 3 N.Y. 230, 236. He should be allowed to shift that loss to the drawee only on a clear showing that the drawee's delay in notifying him of the forgery caused him damage. See Woodward, Quasi Contracts (1913) s 25. No such damage has been shown by Clearfield Trust Co. who so far as appears can still recover from J. C. Penney Co. The only showing on the part of the latter is contained in the stipulation to the effect that if a check cashed for a customer is returned unpaid or for reclamation a short time after the date on which it is cashed, the employees can often locate the person who cashed it. It is further stipulated that when J. C. Penney Co. was notified of the forgery in the present case none of ****577** its employees was able to remember anything about the transaction or check in question. The inference is that the more prompt the notice the more likely the detection of the forger. But that falls short of a showing that the delay caused a manifest loss. Third Nat. Bank v. Merchants' Nat. Bank, 76 Hun 475, 27 N.Y.S. 1070. It is but another way of saying that mere delay is enough.

Affirmed.

Mr. Justice MURPHY and Mr. Justice RUTLEDGE did **not** participate in the consideration or decision of this case.

U.S. 1943.

CLEARFIELD TRUST CO. v. UNITED STATES

318 U.S. 363, 318 U.S. 744, 63 S.Ct. 573, 87 L.Ed. 838, 43-1 USTC P 10,051

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