10-1975

Radzanower v. Touche, Ross & Company

Lewis F. Powell Jr.

Conflict, also limited to two circuits - & may not be too imp.

Q - Whether in a suit vs. a National Bk charging violations of Securities Act, the Nat. Bank Venue Act controls as to venue (must sue where bank is located) rather than provisions of Securities Act (where violation occurred).

CA 2 applied Nat. Bk. Act, disagreeing with CA 3.

DISPOSED

PRELIMINARY MEMO

October 17, 1975 Conference
List 1, Sheet 2

No. 75-268

RADZANOWER

v.

TOUCHE, ROSS & CO., ET AL.

Cert to CA 2
(Mulligan, Gurfein, Pollack)
order

Federal/civil

Timely

Petr sued the First National Bank of Boston, alleging that the Bank with other defendants had violated the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., state law, and common law. The DC (S.D.N.Y., MacMahon) granted the Bank's motion to dismiss, holding that it had not waived its right to be sued only in D. Mass. under the venue provisions of the National Bank Act, 12 U.S.C. § 94.

Deny.

To make sure there is a real conflict between the Circuits I would wait until CA 2 is asked to reconsider its rule. They haven't done so since CA 3 differed with them.

Cert

CA 2 affirmed without opinion. Petr argues that the more liberal provisions of the Securities Exchange Act should govern.

1. FACTS: The National Bank Act's venue provisions permit a national bank to be sued only in the territorial jurisdictions (federal, state, or municipal) in which the bank is located. 12 U.S.C. § 94. The Securities Exchange Act lays the venue of suits brought under it "in the district wherein any act or transaction constituting the violation occurred, . . . or in the district wherein the defendant is found or is an inhabitant or transacts business . . . ." 15 U.S.C. § 78aa. On at least two occasions prior to the commencement of this suit, CA 2 held that the venue provisions of the National Bank Act govern in a suit against a bank under the Securities Exchange Act. Klein v. Bower, 421 F.2d 338 (2 Cir. 1970); Bruns, Nordeman & Co. v. American Nat'l Bank & Trust Co., 394 F.2d 300 (2 Cir.), cert denied, 393 U.S. 855 (1968).

Petr brought suit in S.D.N.Y. and opposed a motion to dismiss the Bank by arguing that the Bank had waived its right to restrictive venue in a document designating the New York Superintendent of Banks as its agent for service of process. The DC found no waiver, and CA 2 agreed.

In both courts, petr argued directly only the waiver issue, which is not raised here. In its memoranda below, petr did note the different venue provisions of the Securities Exchange Act, but recognized as settled law in CA 2 the proposition that the narrower provisions of the National Bank Act govern. On oral argument before CA 2, petr adverted to a CA 3 decision explicitly adopting the contrary position, Ronson Corp. v. Liquifin Aktiengesellschaft, 483 F.2d 852 (3 Cir. 1973), but refused to suggest that CA 2 reverse its position; the case was cited for the proposition that waiver should be liberally found.

2. CONTENTIONS: Petr argues that the circuits are split on the issue of just what venue provisions should govern suits against national banks brought under the federal securities laws. CA 3's position is correct for the reasons that court stated in rejecting CA 2's conclusion: the purposes of the securities laws require that its broader venue provisions govern; the legislative history of the Act does not indicate any intent to exempt banks from its venue provisions; the limited venue provisions of the National Bank Act have come under heavy scholarly fire.

Resp argues that petr did not raise below the issue he seeks to present here, and explains the history of the case as summarized above. If the issue is properly before the Court, then the case does not warrant review because (a) CA 2's position is correct, and (b) the record does not contain any re-examination by CA 2 of its position in light of Ronson, the CA 3 case.

3. DISCUSSION: Resp cites three cases for the proposition that petr may not raise the issue he seeks to raise. Neely v. Eby Construction Co., 386 U.S. 317 (1967); Lawn v. United States, 355 U.S. 339 (1958); Husty v. United States, 382 U.S. 694 (1931). In each the Court refused to deal with an issue wholly unlike and unrelated to the matters raised on appeal. These cases arguably should not control here, where the existence of the legal issue was clear on the face of petr's memoranda in the trial and appellate courts; petr simply chose not to ask CA 2 to reverse its settled position. Little would be added by requiring him to have done so in this case, since the issue -- which is exclusively an issue of law -- is adequately framed by the differing views of the Courts of Appeals.

The conflict among the circuits is real. CA 3 specifically considered and rejected CA 2's position. The conflict is not among as many circuits as petr

suggests, however, when he lines CA 9 up with CA 2. The Ninth Circuit did apply the Banking Act venue provisions in a suit under the securities laws, but it did so without discussing the issue petr seeks to present. United States National Bank v. Hill, 434 F.2d 1019 (9 Cir. 1970). Several cases in this Court that resp cites in support of its position are not dispositive, since they applied the Bank Act provisions in the face of different, state venue provisions. See, e.g., Mercantile National Bank v. Langdeau, 371 U.S. 555 (1963).

There is a response.

Rossiter DC Op in petn; petr's briefs below in response

10/6/75

DK

Court CA - 2 ..... Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 75-268

Submitted ....., 19... Announced ....., 19...

HYMAN RADZANOWER, Petitioner

vs.

TOUCHE, ROSS & CO., ET AL.

8/20/75 Cert. filed.

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Rehnquist, J.		✓												
Powell, J.			✓											
Blackmun, J.		✓												
Marshall, J.			✓											
White, J.		✓												
Stewart, J.		✓												
Brennan, J.			✓											
Douglas, J.										absent				
Burger, Ch. J.						Join 3								

BOBTAIL MEMORANDUM

TO: Mr. Justice Powell DATE: March 27, 1976

FROM: Greg Palm

No. 75-268 Radzanower v. First National Bank of Boston

The issue in this case is whether § 94 of the National Bank Act (Bank Act) has been impliedly repealed by the venue provisions of § 27 of the Securities Exchange Act of 1934 (Exchange Act). I recommend that the decision below, holding that there has been no such repeal, be affirmed. The issue is a close one, however, since from a "policy" viewpoint there is almost nothing to be said for the most restrictive venue provisions of the National Bank Act and since I think the Court would like to see the SEC "win" one for a change - although no matter which way the case goes the practical effects of the decision will not be great.

I. Permissive/Prohibitive:

Petitioners contend that § 94 is "permissive," while respondents contend that it is "prohibitive." Respondents are correct. The section is prohibitive in the sense that actions against national banks must be brought in the district in which the bank is established, unless Congress provides otherwise in another statute. This follows from the Court's decisions in Mercantile National Bank v. Langdeau, 371 U.S. 555 (1963) and Michigan National Bank v. Robertson, 372 U.S.

591 (1963), where it was held that a State could not authorize suits against a national bank in courts other than those permitted by Congress.

II. Repeal by Implication:

On its face the venue provision of the Exchange Act permits national banks to be sued other than in the districts where they are established.* The question is therefore whether Congress intended to permit national banks charged with a violation of the Exchange Act to be sued in forums other than those provided for by the Bank Act. The Respondent's Brief does an excellent job of summarizing the "law" to be applied in answering this question:

> "In order to establish that section 27 of the Exchange Act impliedly repealed section 94, petitioner must demonstrate that: (i) the intention of Congress to repeal the earlier statute is clear and manifest and (ii) there is a positive repugnancy between the two statutes. Petitioner bears the burden of persuasion on each of these issues. Amell v. United States, 384 U.S. 158, 165-166 (1968); Bulova Watch Co. v. United States, 365 U.S. 753, 758 (1961); Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222, 228-229 (1957)."

In the leading case of United States v. Borden Co., 308 U.S. 188, 198-199 (1939), the Court stated:

> "It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible. [citations omitted]. The intention of the

*See the attached copies of § 27 of the Exchange Act and § 94 of the Bank Act.

> legislature to repeal 'must be clear and manifest' [citations omitted]. It is not sufficient . . . 'to establish that subsequent laws cover some or even all of the cases provided for by [the prior act]; for they may be merely affirmative, or cumulative, or auxilliary'. There must be 'a positive repugnancy between the provisions of the new law, and those of the old; and even then the old law is repealed by implication only pro tanto to the extent of the repugnancy.'"
>
> "With respect to the Exchange Act specifically '[r]epeal is to be regarded as implied only if necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary. This is the guiding principle to reconciliation of the two statutory schemes.' Silver v. New York Stock Exchange, 373 U.S. 341, 357 (1963)." (emphasis added)

The evidence on this issue is paper thin. First, despite respondents' protestations to the contrary, it appears that Congress was aware that national banks might be involved in the kind of conduct prohibited by the Exchange Act. Thus Congress had before it a report of the Senate Committee on Banking and Currency that discussed abuses on the part of investment and commercial banks in connection with securities transactions. S. Rep. No. 1455, 73d Cong., 2d Sess. (1934). Respondents discount this report on the ground that it relates to the Glass-Steagall Act of 1934. As petitioner points out, however, there is no question that the Exchange Act applies to national banks and that when Congress did not want a particular provision to apply, it specifically carved out an exception. See 15 U.S.C. § 781(i) (administrative and enforcement of Exchange Act's registration and proxy provisions over the national banks issuance of securities vested in the

Comptroller of the Currency). Second, the House bill had limited venue in actions brought to enforce the civil liabilities of the Exchange Act to the district where the defendant was an inhabitant or had its principal place of business, or in the district where the sale took place. The Senate version, which was eventually adopted, expanded the venue provisions to include any district where the defendant might be found or transacts business. These expansive provisions suggest that Congress was well aware of the "national" character of securities fraud and that broad venue provisions were important to the enforcement of the Exchange Act.

Congress did make certain provisions of the Exchange Act expressly not applicable to national banks. From this, petitioners argue that Congress was aware of the special position of national banks and that where no special provision was made for them, none was intended. I don't find that argument necessarily compelling. Congress was no doubt aware of the venue provisions of the Bank Act and gave no specific indication that it wished to repeal them in cases alleging securities fraud. Relying on the Canon that "repeals by implication are not favored" and the fact that (1) there is no evidence Congress intended any such repeal and (2) there is no "positive repugnancy" between the provisions of the two Acts (i.e., they can exist and have meaningful content side-by-side), I would think the correct conclusion is no repeal was accomplished by the Exchange Act. See pp. 2-3 supra.

The most powerful argument against the conclusion that there was no implied repeal here rests on the idea that the venue provisions of the Exchange Act are "special", in contrast to the "general" venue provisions such as those established by 28 U.S.C. § 1391.* The argument is that Congress made a very specific decision: in order to effectuate the purpose of the Exchange Act broad venue is necessary. Thus, although the Bank Act contains a specific venue provisions regarding actions against national banks, the Exchange Act contains an equally specific venue provision concerning securities fraud actions. If the Court opts for repeal by implication this is the line of argument that it must push. The chief difficulty that I have with it is that the Bank Act venue provision is clearly more "special" than the Exchange Act. There likely are venue provisions contained in all types of regulatory statutes proscribing various forms of behavior. But this does not mean that the earlier bank Act provision was impliedly repealed just because in some circumstances a national bank might be sued under the latter act.

The policy considerations all favor the petitioner yet they are not that compelling and are relevant only insofar as the Court treats them as evidence of what Congress intended

*28 U.S.C. § 1391(c) provides that "[a] corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." See Buffum v. Chase National Bank of the City of New York, 192 F.2d 58 (CA7) cert. denied, 342 U.S. 944 (1951)(venue provisions of § 1391 did not repeal § 94 of the Bank Act).

when it enacted the Exchange Act. The purpose of the National Bank Act's restrictive venue provision was to protect against the disruption of bank operations that would naturally follow from compelling the production of bank records to a distant forum in an age of slow transportation and backward copying technology. Yet Congress has not expressly repealed the Bank Act's venue provisions originally enacted in 1863. There is no doubt that a decision in favor of respondents would have some adverse effect on the enforcement of the Exchange Act. In cases where national banks are defendants, multiple suits may be required. This obviously results in a needless expenditure of judicial time and party resources. Moreover, some private plaintiffs may be forced to forego actions against banks. There is also the possibility of conflicting adjudications based on the same securities transactions. Finally, as the SEC points out, if the district court in which venue lies under the Bank Act is over a hundred miles from the district in which witnesses are located, these witnesses could not be compelled to appear. Fed. R. Civ. P. 45(e).

It is not clear, however, how much weight these "policy" considerations in favor of repeal should be given. As I view the situation we are weighing a modest impairment of the Exchange Act against the now negligible interests that are protected by § 94 of the Bank Act. Compare Gordon v. New York Stock Exchange, Inc., 422 U.S. 659 (1975); United States v. National Association of Securities Dealers, Inc., 422 U.S.

694 (1975); Silver v. New York Stock Exchange, 373 U.S. 341 (1963). Plaintiffs are not forced to abandon meritorious claims nor is there a conflict over the substantive provisions of the Exchange Act. They must simply bring their claims in a forum that will be more inconvenient in some circumstances. Also, the problem of unavailability of compulsory process against witnesses alluded to above may occur in some circumstances even under § 27 of the Exchange Act. There certainly is no "positive repugnancy" here that is impossible to reconcile without a repeal.

III. Conclusions:

In sum, this case is one of an intermitant series of unimportant Circuit Conflicts that may some day be passed off on a National Court of Appeals. Since we are stuck with it, however, I think that you should vote to affirm. This recommendation is very tentative, however, since my only "real" concern is that an opinion reversing may mess up repeal-by-implication law in order to bring the case within the established framework (Cf. Colorado River cases). I do think that a narrow opinion could be written supporting reversal: it would emphasize (1) Congressional intent in establishing the broad venue provisions of the Exchange Act; (2) fact that the venue provision of the Exchange Act is "special, not

"general"*; (3) it is impossible for us to believe that Congress would have wanted to exempt the national banks from the Exchange Act venue provision: (a) plain language, (b) fact that exempted banks in specified situations. This result is also appealing in that although I think that the Court has done an excellent job in the securities area this year, it would be nice if the SEC prevailed for once (although any victory here is minor).**

G.P.

ss

*Some reliance could be placed on Stonite Products Co. v. Melvin Loyd Co., 315 U.S. 561 (1942) (holding patent venue provisions not repealed by a subsequent statute with general venue provision), that the Exchange Act is "special" like the Patent Act. The argument obviously is weak.

**Attached is Judge Friendly's opinion in Brums Nordeman & Co. v. American Nat'l Bank & Trust Co., 394 F.2d 300 (CA2), cert denied, 393 U.S. 855 (1968), which is the major Second Circuit case supporting the conflict here.

The venue provision of the National Bank Act (12 U.S.C. §94) provides:

> "Actions and proceedings against any association under this Chapter may be had in any district or territorial court of the United States held within the district in which such association may be established, or in any state, county, or municipal court in the county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

The Securities Exchange Act (15 U.S.C. §78aa) provides:

> "The district courts of the United States, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction over violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant . . . ."

196 U.S. 375, 398, 25 S.Ct. 276, 280, 49 L.Ed. 518 (1905) that "commerce among the states is not a technical legal conception, but a practical one, drawn for the course of business," and of the broad interpretation given the statute in other circuits. Sterling v. United States, 333 F.2d 443 (9 Cir. 1964); United States v. Berger, 338 F.2d 485, 487 (2 Cir. 1964); United States v. D'Antonio, 342 F.2d 667 (7 Cir. 1965). In our view it does not unduly stretch the concept of a continuing, though interrupted, shipment in commerce to apply it here, where sugar, purchased in Puerto Rico, was shipped to Baltimore and held temporarily in a warehouse pending final delivery to buyers in other states in fulfillment of orders previously given. There is no absolute requirement that the flow of commerce be continuous if there is the clear intention to resume the journey after a brief pause. The District Judge's findings are not clearly erroneous and the judgment is

Affirmed.

BRUNS, NORDEMAN & CO., a Limited Partnership, Plaintiff-Appellant,

v.

AMERICAN NATIONAL BANK AND TRUST COMPANY, Defendant-Appellee,

and

The Exchange Corp., Maurice Benjamin and Edward H. Levitt, Defendants.

No. 344, Docket 31987.

United States Court of Appeals
Second Circuit.

Argued March 20, 1968.

Decided April 19, 1968.

Action by New York broker-dealer against national bank and trust company "established" in Chicago, Florida corporation, Florida corporation's president-principal owner, and Louisianian for alleged conspiracy to sell, in violation of Securities Act of 1933 and Securities Exchange Act of 1934, 10,000 shares of unregistered corporate stock owned by Louisianian and pledged to bank and trust company. The United States District Court for the Southern District of New York, Sylvester J. Ryan, J., 284 F.Supp. 387, entered judgment dismissing, for lack of venue, so much of complaint as related to the bank and trust company, and broker-dealer appealed. The Court of Appeals, Friendly, Circuit Judge, held that venue was improperly laid in the Southern District of New York as to the bank and trust company.

Affirmed.

1. Courts ⇐274(6)

Special and properly wide venue provisions of Securities Act of 1933 and Securities Exchange Act of 1934 do not overcome special and exceedingly narrow venue provisions of National Bank Act of 1864. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; Securities Exchange Act of 1934, § 1 et seq., 15 U.S.C.A. § 78a et seq.; National Bank Act, 12 U.S.C.A. § 94.

2. Courts ⇐274(6)

In action by New York broker-dealer against national bank and trust company "established" in Chicago, Florida corporation, Florida corporation's president-principal owner, and Louisianian for alleged conspiracy to sell, in violation of Securities Act of 1933 and Securities Exchange Act of 1934, 10,000 shares of unregistered corporate stock owned by Louisianian and pledged to national bank and trust company, venue was improperly laid in Southern District of New York as to national bank and trust company. National Bank Act, 12 U.S.C.A. § 94; Securities Act of 1933, §§ 1 et seq., 3(a) (2), 5, 12(1, 2), 17(a), 22(a), 15 U.S.C.A. §§ 77a et seq., 77c(a) (2), 77e, 77l(1, 2), 77q(a), 77v; Securities Exchange Act of 1934, §§ 1 et seq.

10, 27, 15 U.S.C.A. §§ 78a et seq., 78j, 78aa; 28 U.S.C.A. §§ 1391(a, b), 1404 (a).

3. Courts ⇐277.1

Where, to bring action against national bank and trust company "established" in Chicago and others for violation of Securities Act of 1933 and Securities Exchange Act of 1934 in sale of unregistered corporate stock, plaintiff would have to resort to Illinois to sue national bank and trust company, any action brought in Illinois could not be transferred to Southern District of New York for convenience of parties and witnesses, since action could not have been brought in that district. 28 U.S.C.A. § 1404(a); Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; Securities Exchange Act of 1934, § 1 et seq., 15 U.S.C.A. § 78a et seq.

4. Courts ⇐268

Where Congress has dealt with a particular venue problem, broader language in general venue statute will not overcome this even though literally applicable. 28 U.S.C.A. § 1391(a, b).

Spencer Pinkham, New York City (Colton & Pinkham and David J. Colton, New York City, of counsel), for plaintiff-appellant.

John R. Hupper, New York City (Cravath, Swaine & Moore and Edwin A. Kilburn, New York City, of counsel), for defendant-appellee.

Before LUMBARD, Chief Judge, FRIENDLY, Circuit Judge, and BLUMENFELD, District Judge.*

FRIENDLY, Circuit Judge:

[1] A federal court of appeals is here confronted for the first time with an issue that has provoked a difference of opinion among district courts: Do the special and properly wide venue provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 overcome the special and exceedingly narrow venue provisions[1] of the National Bank Act of 1864? Judge Ryan, in the District Court for the Southern District of New York, here followed the opinion of Judge Tenney of that district that they do not, General Electric Credit Corp. v. James Talcott, Inc., and Franklin National Bank, 271 F.Supp. 699 (1966), a view also adopted, as an alternative ground of decision, by Judge Horowitz in the Northern District of Illinois, Berman v. Thomson and The First National Bank of Boston et al., 284 F.Supp. 521. The opposite position was taken by Judge Coolahan of the District of New Jersey in Levin v. Great Western Sugar Company and Colorado National Bank of Denver, et al., 274 F.Supp. 974. We conclude with regret that the rulings upholding the claim of prevalence of the 1864 statute are right.

[2, 3] The complaint, summarily stated, alleged a conspiracy among four defendants to effectuate, in violation of §§ 5, 12(1) and 17(a) of the Securities Act of 1933 and § 10(b) of the 1934 Act, the sale of 10,000 shares of unregistered common stock of Canaveral Corporation, owned by defendant Levitt, apparently a Louisianian, and pledged by him to the defendant, American National Bank and Trust Company, "established" in Chicago. The conspiracy was to be accomplished as follows: Levitt was to sell the shares to Benjamin, president and principal owner of The Exchange Corporation, a Florida corporation, which was to pay Levitt out of the proceeds of a resale. Exchange was a customer of plaintiff, a New York broker-dealer. Pursuant to Exchange's instructions plaintiff sold the 10,000 shares in New York and sent the bank its draft for $65,000. The bank received this and forwarded to New York certif-

* Of the District Court of Connecticut, sitting by designation.

1. The statutory history is recounted in Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555, 558-561, 83 S.Ct. 520, 9 L.Ed.2d 523 (1963).

icates for the shares, although knowing they were not registered and could not be sold without violating § 5 of the 1933 Act. The transfer agent for Canaveral refused to accept the certificates for transfer and plaintiff had to cover in a rising market, thereby sustaining a total loss (including the $65,000 payment) of $73,358.43. On motion of the Chicago National Bank Judge Ryan dismissed the complaint against it and entered the language appropriate for making the judgment final under F.R.Civ. P. 54(a).

Section 94 of the National Bank Act, originally adopted in 1864, 13 Stat. 99, 116, provides, so far as pertinent, that suits against a national bank

> "may be had in any district or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which the association is located."

Section 22(a) of the Securities Act of 1933 provides that any suit or action to enforce any liability or duty created by the Act

> "may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant, or wherever the defendant may be found."

Section 27 of the Securities Exchange Act of 1934 contains a provision with like or, indeed, even broader effect.

The contention that the provisions of the securities legislation should be read as overcoming the historic venue limitation whereby national banks can be sued only where "established" or "located" has much practical appeal. Plaintiff points out that actions wherein banks are sued for violation of the securities laws are typically multi-defendant actions, as illustrated by this case and the three others cited. Recognition of the probable multi-defendant character of securities suits was doubtless an important reason for the liberal venue provisions of § 22(a) of the 1933 Act and § 27 of the 1934 Act, in contrast to the restrictive requirement of the general venue statute, § 51 of the Judicial Code of 1911, 36 Stat. 1087, 1101, whereby federal question actions could be brought only in the district of which the defendant was an inhabitant. See also § 50. If appellee had been an Illinois state bank or trust company, plaintiff could have joined it in this action since the sale took place in New York. Of all the fagots in plaintiff's bundle, the national character of appellee's incorporation is surely the least important. Compare Liberty Natl. Bank & T. Co. v. Buscaglia, 21 N.Y.2d 357, 288 N.Y.S.2d 33, 235 N.E.2d 101 (1968); First Agricultural National Bank v. State Tax Comm., 229 N.E.2d 245 (Mass.Sup.J.Ct. 1967), appeal docketed, 389 U.S. 1033, 88 S.Ct. 774, 19 L.Ed.2d 819. Yet under the view upheld by the district judge, the plaintiff must resort to Illinois to sue appellee; it is exceedingly doubtful whether the 1933 Act would allow him to sue the other defendants there since the unlawful "offer or sale" apparently occurred in New York;[2] and the Illinois action could not be transferred to the Southern District of New York under 28 U.S.C. § 1404(a) since it could not "have been brought" in that district. The result thus is heavy inconvenience for the plaintiff and a burden for the federal courts, as against the burden on appellee—slight in this age of cheap long

2. The situation would be different under § 27 of the 1934 Act which gives venue "in the district wherein any act or transaction constituting the violation occurred." Hooper v. Mountain States Securities Corp., 282 F.2d 195, 204–205 (5 Cir. 1960), cert. denied, 365 U.S. 814, 81 S.Ct. 695, 5 L.Ed.2d 693 (1961). However, although the complaint sets forth a claim under § 10 of the 1934 Act, this might well be subject to motion.

distance telephone rates, efficient methods for copying documents and jet air transport—of defending an action in New York rather than Chicago. While some of these factors also ease the burden of plaintiff in suing in Chicago, there remains the serious difficulty in proceeding there against the other defendants.

If we were writing on a clean slate, we would not find it difficult to reconcile § 94 of the National Bank Act with § 22(a) of the Securities Act. Since § 94 reads in terms of permission rather than prohibition, it would not be a great feat of construction to read this as fixing venue only when an applicable venue statute placed this on the basis of being a "resident" or "inhabitant," and not as proscribing other places of suit when the venue statute permitted this where an act was done. Such apparently was the view of Mr. Justice Black, joined by Mr. Justice Douglas, in Michigan Nat'l Bank v. Robertson, 372 U.S. 591, 594–595, 83 S.Ct. 914, 9 L.Ed.2d 961 (1963). But, equally apparently, this was not the view taken by the majority in that case and in the slightly earlier one of Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d 523 (1963). True those decisions concerned the portion of § 94, added in 1864, 13 Stat. 99, permitting suits in certain state courts and not the portion, stemming from § 59 of the Act of 1863, 12 Stat. 665, providing that suits "may be had in any district or Territorial court of the United States held within the district in which such association may be established," and on the one occasion when the issue seems to have been squarely presented to the Supreme Court, it placed its decision in favor of the bank on lack of jurisdiction, and said it had "no occasion to consider" the issue of venue. Bank of America v. Whitney Central Nat'l Bank, 261 U.S. 171, 173, 43 S.Ct. 311, 67 L.Ed. 594 (1923). However, this court has given a construction to the clause of § 94 dealing with the venue of suits in a federal court quite as Draconian as the Supreme Court has done with respect to the state court clause, Leonardi v. Chase Nat'l Bank, 2 Cir., 81 F.2d 19, cert. denied, 298 U.S. 677, 56 S.Ct. 941, 80 L.Ed. 1398 (1936), the Seventh Circuit has followed us, Buffum v. Chase Nat'l Bank, 192 F.2d 58 (1951), cert. denied, 342 U.S. 944, 72 S.Ct. 558, 96 L.Ed. 702 (1952), and it would indeed strain language to say that the same verbs were merely permissive with respect to suits in federal courts although prohibitory as to actions in state ones.

[4] The Supreme Court has emphatically held that where Congress has dealt with a particular venue problem—here actions against national banks—broader language in a general venue statute will not overcome this even though literally applicable. Stonite Products Co. v. Melvin Lloyd Co., 315 U.S. 561, 62 S.Ct. 780, 86 L.Ed. 1026 (1942); Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222, 77 S.Ct. 787, 1 L.Ed.2d 786 (1957). Indeed, appellant apparently concedes that the present general venue statutes, 28 U.S.C. § 1391(a) and (b), would not overcome § 94 of the National Bank Act even if it did not contain the words "except as otherwise provided by law."[3] Its contention is rather that the venue clauses of the two securities acts are themselves "special" venue statutes, and that in such a case the latter prevails. We think it inappropriate to resolve the issue so mechanically. The question rather is whether, given the seventy years of highly restricted venue of actions against national banks, there is sufficient reason to think that the Congresses which enacted the 1933 and 1934 securities legislation intended to carve out an exception for claims under the securities laws.

Nothing in the legislative history of the venue provisions of the 1933 and 1934 Acts indicates that Congress had given thought to the status of nation-

3. These words in the 1948 revision supplanted narrower language in § 51 of the 1911 Code, 36 Stat. 1087, 1101.

al banks. This is not surprising. National banks, under extensive supervision by the Comptroller of the Currency, were hardly envisioned as likely defendants in actions under the new securities laws. In fact, the House Committee Report reveals that Congress expressly relied on the Comptroller when, in the 1933 Act, it exempted securities of national banks from the requirement of registration, § 3(a) (2),[4] and, even more significantly, from civil liability for fraud in their distribution. § 12(2). H.Rep.No.85, 73 Cong., 1st Sess. 14 (1933). Such prospects as that a national bank as pledgee might knowingly participate in the attempted sale of an unregistered security, as here alleged, or that by acting as an intermediary in an exchange offer a national bank might join in a violation of § 10(b) of the 1934 Act were hardly in Congress' mind. Moreover, if the problem had occurred to Congress, we cannot be at all certain how that body would have wished it resolved; the Comptroller of the Currency now stoutly opposes the broad venue rule which the SEC advocates, see General Electric Credit Corp. v. James Talcott, Inc., supra, 271 F.Supp. at 701. Concededly the case is not one where adherence to § 94 of the National Bank Act prevents a suit against such a bank for violation of the securities legislation from being brought anywhere—a situation that led to the carving out of an exception to § 94 for "local actions." See Casey v. Adams, 102 U.S. 66, 26 L.Ed. 52 (1880). Here suit against the bank in Chicago is not impossible but simply inconvenient. Appellant's case thus does not measure up to the standards laid down in United States v. Borden & Co., 308 U.S. 188, 198–199, 60 S.Ct. 182, 84 L.Ed. 181 (1939), see also Silver v. New York Stock Exchange, 373 U.S. 341, 357, 83 S.Ct. 1246, 10 L.Ed.2d 389 (1963), to justify a holding of repeal—even partial repeal—by implication. Granted that the situation calls for remedy, this lies in Congress, whether by specification in the venue sections of the securities laws, by a more general overhaul of § 94 of the National Banking Act, see Mercantile Nat'l Bank v. Langdeau, supra, 371 U.S. at 563, 83 S.Ct. 520, or both.

Affirmed.

4. It was only in 1955 that the Commission, reversing more than 20 years of contrary practice, limited § 3(a) (2) exemptions to issues of the bank's own securities and held that American Depository Receipts against outstanding foreign securities issued by a bank must be registered. 22 SEC Ann.Rep. 43 (1956). While this decision was undoubtedly sound on policy grounds, see 1 Loss, Securities Regulation 564–65 (1961), a review of the legislative history indicated that Congress did not specifically consider this problem, see Loss, supra, at 564 n. 18.

UNITED STATES of America, Plaintiff-Appellee,

v.

Salvatore BATTAGLIA and Dave Evans, Defendants-Appellants.

Nos. 16312, 16313.

United States Court of Appeals
Seventh Circuit.

Jan. 9, 1968.

Defendants were convicted of conspiring against builder of apartments to violate Hobbs Act proscribing interference with commerce by extortion. The United States District Court for the Northern District of Illinois, Eastern Division, Julius J. Hoffman, J., rendered judgments, and the defendants appealed. The Court of Appeals, Cummings, Circuit Judge, held, among other things, that the evidence sustained the conviction, that it was not error to deny bill of particulars, that the conspiracy instruction was proper, that admission of pre-indictment threats was proper, that cross-examina-

75-268 RADZANOWER v. TOUCHE, ROSS & CO. First Nat'l Bk cert to CA2 Argued 3/30/76

Nat Bank venue case

First Nat. Bk of Boston was one of several named Ds in class action ~~suit~~ 10(b) suit under '34 Act. DC dismissed Bk. on ground of no venue. CA2 affirmed

§94 of Nat Bk Act of 1864 limits venue for suit in Fed. Cts. to "district in which such [bank is in] established."

§27 of 34 Act, applying generally to all defendants, provides a D may be sued wherever he is found or transacts business.

Boston Bk. was ~~[illegible]~~ transacting some business in N.Y.

Petr. argues the two statutes can ~~[illegible]~~ "co-exist" - w/o repeal of §94.

But Langdeau (371 U.S. 553) appears to hold that a Nat. Bk. may be sued only under §94. (Petr. distinguishes Landeau + Mich. Nat Bk v Robertson on ground that they did not involve another Fed venue statute)

Bk. remains subject to Securities Law. Only issue is where it may be sued.

Sands (Reb)

Argues that 1863 Act was not repealed ~~or~~ but merely ~~[illegible]~~ "broadened" by '33 & '34 Acts

Nothing precise in leg. hist. that Congress considered the venue provisions as to Nat. Bks when it adopted 33 & 34 Acts.

Two statutes may "co-exist."

J Stewart noted that if one looked only at text of §94, there is much to Sands' co-existing argument. But Stewart says that in Lawyers & Robertson ~~[illegible]~~ §94 was construed as being mandatory

"Waiver" argument is conceded to be "weak". (Virtually abandoned)

x x x

Concedes that SEC ~~[illegible]~~ does not argue the two statutes can "co-exist". Indeed, SEC argues there is irreconcilable conflict & that the latest Act should govern [SEC's Br 6]

Gater (Resp)

Boston Bank was grabbed to do a limited fiduciary business in N.Y. Pets argued in DC that this constituted a "waiver" of §94. Case was decided by DC on this issue - finding no waiver.

Appeal to CA 2 was on this issue alone. Not until oral argument, was the implied repeal issue raised. But CA 2 decided case on order - w/out discussing the repeal issue.

J. White noted, & Gater agreed, that there is no doubt what CA 2 would hold - or rule in CA 2 is settled.

~~No petition~~
~~Petr. for Cert. argues that this~~
~~Petition~~

x x x

Affirm 7 - 2

The Chief Justice Affirm

Nothing to "waiver" issue. Langdeau supports affirmance.

xxxxxxxxx Stevens, J. Reverse (7)

Later statute could be construed to control.

Brennan, J. Affirm

Langdeau construed this statute & thus controls.

Stewart, J. Affirm

Regardless of Langdeau, the statute is clear.

Affirm

Langdeau control

Affirm

Blackmun, J. Affirm
Waiver point not here (I agree)

Powell, J. Affirm

Rehnquist, J. Reverse (?)
Langdeau does not control. Case is close on principles of statutory interpretation.

Grey

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: MAY 14 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-268

Received 5/17/76

Hyman Radzanower, Petitioner, *v.* Touche, Ross & Co. et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case requires us to determine which venue provision controls in the event a national banking association is sued in a federal court for allegedly violating the Securities Exchange Act: the broad venue provision of the Securities Exchange Act, which allows suits under that Act to be brought in any district where the defendant may be found, or the narrow venue provision of the National Bank Act, which allows national banking associations to be sued only in the district where they are established.

The petitioner, Hyman Radzanower, instituted a class action in the District Court for the Southern District of New York alleging, *inter alia*, that the respondent, First National Bank of Boston, a national banking association with its principal office in Boston, Mass., had violated the federal securities laws by failing to disclose to the Securities and Exchange Commission and the investing public its knowledge of certain adverse financial information about one of its customers, the TelePrompter Corporation, and of securities laws violations by that company. The complaint alleged that venue was proper

Join

under § 27 of the Securities Exchange Act, 15 U. S. C. § 78aa, which provides that "[a]ny suit or action to enforce any liability or duty created [by or under the Securities Exchange Act] . . . may be brought in any such district [wherein any act or transaction constituting the violation occurred] or in the district wherein the defendant is found or is an inhabitant or transacts business . . . ." The Bank moved to dismiss the complaint as to it, asserting that venue as to it lay only under § 94 of the National Bank Act, 12 U. S. C. § 94. That section provides that "[a]ctions and proceedings against any [national banking] association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established . . . ."[1]

Following the settled law of the Second Circuit, the District Court granted the Bank's motion to dismiss. It held that "[a]bsent waiver or consent, a national bank may be sued only in the district in which it is established. 12 U. S. C. Section 94." The Court noted that the Bank was established in Boston "because its charter specifies Boston as its principal place of business,"[2] and it rejected the petitioner's claim that the Bank had

---

[1] Section 94 in its entirety reads:

"Actions and proceedings against any association under this chapter may be had in any district or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

[2] The petitioner does not claim that the Bank is "established" anywhere else than in Boston. Federal courts have consistently ruled that the place specified in a bank's charter as its home office is determinative of the district in which the bank is "established" for purposes of § 94. See, *e. g., Buffum* v. *Chase Nat. Bank*, 192 F. 2d 58, 60 (CA7); *Leonardi* v. *Chase Nat. Bank*, 81 F. 2d 19, 22 (CA2).

waived the provisions of § 94.[3] The Court of Appeals affirmed without opinion.[4] Because of differing views in the Circuits as to the statutory venue question presented,[5] we granted the petition for certiorari. — U. S. —.

Section 94 provides that suits against a national banking association "may be had" in the federal district court for the district where such association is established. The Court has held that this grant of venue is mandatory and exclusive: "The phrase 'suits . . . may be had' was, in every respect, appropriate language for the purpose of specifying the precise courts in which Congress consented to have national banks subject to suit and we believe Congress intended that in those courts alone could a national bank be sued against its will." *Mercantile Nat. Bank* v. *Langdeau*, 371 U. S. 555, 560. Ac-

[3] The opinion of the District Court is unreported.

It has long been settled that the restrictive venue provisions of § 94 can be waived by a defendant bank. See, *e. g.*, *Charlotte Nat. Bank* v. *Morgan*, 132 U. S. 141, 145; *Michigan Nat. Bank* v. *Robertson*, 372 U. S. 591, 594; *National Bank of North America* v. *Associates of Obstetrics & Female Surgery*, — U. S. —.

Although the parties each devoted a portion of their briefs to the waiver issue, that issue was not raised in the petition for certiorari. Since we consider "[o]nly the questions set forth in the petition or fairly comprised therein," Sup. Ct. Rule 23.1 (c), we have no occasion to pass on the correctness of the decisions below on the waiver question.

[4] The judgment of the Court of Appeals is reported, at 516 F. 2d 896.

[5] The Second and Ninth Circuits have concluded that § 94 is the exclusive venue provision governing suits against national banking associations, while the Third Circuit has ruled that such suits may also be brought pursuant to § 27 of the Securities Exchange Act. Compare *Bruns, Nordeman & Co.* v. *American Nat. Bank & Trust Co.*, 394 F. 2d 300 (CA2), and *United States Nat. Bank* v. *Hill*, 434 F. 2d 1019 (CA9), with *Ronsan Corp.* v. *Liquifin Aktiengesellschaft*, 483 F. 2d 852 (CA3).

cord, *Michigan Nat. Bank* v. *Robertson*, 372 U. S. 591; *National Bank of North America* v. *Associates of obstetrics & Female Surgery*, — U. S. —.[6] The venue provision of the Securities Exchange Act, by contrast, allows suits under that Act to be brought anywhere that the Act is violated or a defendant does business or can otherwise be found. It is the petitioner's contention that when a national bank is named as a defendant in a suit brought under the Securities Exchange Act, it loses the protection of the venue provisions of § 94 and may be sued in any federal judicial district where that Act was violated or where it does business or can be found. For the reasons that follow, we cannot accept that contention.

It is a basic principle of statutory construction that a statute dealing with a narrow, precise and specific subject is not submerged by a later-enacted statute covering a more generalized spectrum. "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Morton* v. *Mancari*, 417 U. S. 535, 550–551.[7] "The reason and philosophy of the rule

[6] When the *Langdeau* Court held that the words "may be had" serve to provide mandatory and exclusive venue, it was dealing with the relationship of § 94 to a state venue statute. Since the same words are used in connection with the federal-court venue provision, the same construction is virtually inescapable. "[I]t would indeed strain language to say that the same verbs were merely permissive with respect to suits in federal courts although prohibitory as to actions in state ones." *Bruns, Nordemann & Co.* v. *American Nat. Bank & Trust Co.*, 394 F. 2d 300, 303 (CA2).

[7] See *Brown* v. *General Services Administration*, — U. S. —; *Bulova Watch Co.* v. *United States*, 365 U. S. 753, 758; *Rodgers* v. *United States*, 185 U. S. 83, 87–89 ("It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute." *Id.*, at 87); *Ex*

is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all." T. Sedgwick, Interpretation and Construction of Statutory and Constitutional Law 98 (2d ed. 1874).[8]

When Congress enacted the narrow venue provisions of the National Bank Act, it was focusing on the particularized problems of national banks that might be sued in the state or federal courts. When, 70 years later, Congress enacted the Securities Exchange Act, its focus was on the objective of promoting fair dealing in the securities markets, and it enacted a general venue provision applicable to the broad universe of potential defendants subject to the prohibitions of that Act. Thus, unless a "clear intention otherwise" can be discerned, the principle of statutory construction discussed above counsels that the specific venue provisions of § 94 are applicable to the respondent in this case. *Fourco Glass Co.* v. *Transmirra Products Co.*, 353 U. S. 222.

The issue thus boils down to whether a "clear intention otherwise" can be discovered—whether, in short, it can be fairly concluded that the venue provision of the Securities Exchange Act operated as a *pro tanto* repeal

---

parte Crow Dog, 109 U. S. 556, 570–571. See also *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222; *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561 (specific venue statutes for patent suits prevail over general venue statutes).

[8] See also IA J. Sutherland, Statutes and Statutory Construction § 23.15 (4th ed. C. Sands 1972).

of § 94. "It is, of course, a cardinal principle of statutory construction that repeals by implication are not favored." *United States* v. *United Continental Tuna Corp.*, — U. S. —, —.[9] There are, however,

> "two well-settled categories of repeals by implication—(1) where provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act. But, in either case, the intention of the legislature to repeal must be clear and manifest . . . ." *Posadas* v. *National City Bank*, 296 U. S. 497, 503.

It is evident that the "two acts" in this case fall into neither of those categories.

The statutory provisions at issue here cannot be said to be in "irreconcilable conflict" in the sense that there is a positive repugnancy between them or that they cannot mutually coexist. It is not enough to show that the two statutes produce differing results when applied to the same factual situation, for that no more than states the problem. Rather, "when two statutes are capable of co-existence, it is the duty of the courts . . . to regard each as effective." *Morton* v. *Mancari*, *supra*, at 551. As the Court put the matter in discussing the interrelationship of the antitrust laws and the securities laws, "[r]epeal is to be regarded as implied only if necessary to make the [later enacted law] work, and even then only to the minimum extent necessary. This is

---

[9] See also *Gordon* v. *New York Stock Exchange*, 422 U. S. 659, 682; *Regional Rail Reorganization Act Cases*, 419 U. S. 102, 133; *Silver* v. *New York Stock Exchange*, 373 U. S. 341, 357; *United States* v. *Borden Co.*, 308 U. S. 188, 198–199.

the guiding principle to reconciliation of the two statutory schemes." *Silver* v. *New York Stock Exchange*, 373 U. S. 341, 357.[10]

Here the basic purposes of the Securities Exchange Act can be fairly served by giving full effect to the provisions of § 94. The primary purpose of the Securities Exchange Act was not to regulate the activities of national banks as such but "[t]o provide fair and honest mechanisms for the pricing of securities [and] to assure that dealing in securities is fair and without undue preferences or advantages among investors . . . ." H. R. Rep. No. 94–229, p. 91.[11] Its venue provision, § 27, was intended to facilitate that goal by enabling suits to enforce rights created by the Act to be brought wherever a defendant could be found. The venue provision of the National Bank Act, § 94, was intended, on the other hand, "'for the convenience of those [banking] institutions, and to prevent interruption in their business that might result from their books being sent to distant counties . . . .'" *Charlotte Nat. Bank* v. *Morgan*, 132 U. S. 141, 145, quoted in *Mercantile Nat. Bank* v. *Langdeau*, 371 U. S. 555, 561–562, n. 12.

By allowing suits against national banks to be brought only pursuant to § 94, the purposes of that section will obviously be served. Yet application of § 94 will not

---

[10] See also *Gordon* v. *New York Stock Exchange*, 422 U. S. 659, 685; *United States* v. *National Assn. of Securities Dealers*, 422 U. S. 694, 734–735.

[11] The legislative history of the securities acts does not indicate that Congress considered banks as likely defendants in actions brought under those acts. While Congress did examine problems stemming from the relationship of banks and the securities business in the early 1930s, see S. Rep. No. 1455, 73d Cong., 2d Sess., it dealt with those problems in comprehensive legislation dealing only with banks. See Banking Act of 1933, 48 Stat. 162. See generally *Investment Co. Institute* v. *Camp*, 401 U. S. 617.

"unduly interfere" with the operation of the Securities Exchange Act. See *Gordon* v. *New York Stock Exchange*, 422 U. S. 659, 686. Section 94 will have no impact whatever upon the vast majority of lawsuits brought under that Act. In the tiny fraction of litigation where its effect will be felt, it will foreclose nobody from invoking the Act's provisions. Members of the investing public will still be free to bring actions against national banks under the Act. While suits against this narrow and infrequent category of defendants will have to be brought where the defendant is established, that is hardly an insurmountable burden in this day of easy and rapid transportation.[12] Since it is possible for the statutes to coexist in this manner, they are not so repugnant to each other as to justify a finding of an implied repeal by this Court. It is simply not "necessary" that § 94 be repealed in part in order "to make the Securities Exchange Act work." See *Silver* v. *New York Stock Exchange*, *supra*, at 357.

Moreover, it cannot be said either that "the later act covers the whole subject of the earlier one and is clearly intended as a substitute," or that "the intention of the legislature to repeal [is] clear and manifest." The Securities Exchange Act of 1934 covers a "subject" quite different from the National Bank Act. The 1934 Act was enacted primarily to halt securities fraud, not to regulate banks. Indeed, banks were specifically ex-

[12] The SEC suggests that its enforcement activity under the Securities Exchange Act will be hindered in cases of securities law violations by geographically dispersed banks, if it cannot sue all defendants, including the banks, in one proceeding. The SEC, however, was unable to cite a single instance in the last 40 years where this situation has arisen. In any event, policy arguments such as this are more appropriately addressed to Congress than to this Court. See *Mercantile Nat. Bank* v. *Langdeau*, *supra*, at 563.

empted from many provisions of the securities laws,[13] and Congress almost contemporaneously enacted other specific legislation dealing with the problems arising from banks' involvement in the securities business.[14] The passage of that legislation and the exemption of national banks from important provisions of the securities laws suggest, if anything, that Congress was reaffirming its view that national banks should be regulated separately by specific legislation applying only to them.[15] And there is nothing in the legislative history of the Securities Exchange Act to support the view that Congress in enacting it gave the slightest consideration to the *pro tanto* repeal of § 94, let alone to indicate "that Congress consciously abandoned its [prior] policy" *Morton* v. *Mancari*, *supra*, at 551, or that its intent to repeal §94 *pro tanto* was "'clear and manifest,'" *United States* v. *Borden Co.*, 308 U. S. 188, 198, quoting *Red Rock* v. *Henry*, 106 U. S. 596, 602.[16]

---

[13] See 15 U. S. C. §§ 77c (a)(2), 77l (2); cf. 15 U. S. C. § 78c (a)(6).

[14] See n. 11, *supra*.

[15] This intention was expressly stated by Congress when it exempted bank securities from the registration statements requirements of the Securities Act of 1933: "[A]dequate supervision over the issuance of securities of a national bank is exercised by the Comptroller of the Currency." H. R. Rep. No. 85, 73d Cong., 1st Sess., p. 14. Subsequent Congresses have continued to follow this policy. For example, while national banks are subject to the registration, reporting, and proxy requirements of the Securities Exchange Act, in 1964 Congress amended the Act so that the administration of those parts of the Act with respect to banks was transferred from the SEC to the various federal banking authorities. See Pub L. No. 88-467, § 3 (e), 78 Stat. 568, codified at 15 U. S. C. § 78l (i).

[16] In 1959 Congress reviewed the National Bank Act and adopted an act designed "to repeal certain [national banking] laws which have become obsolete." See Pub. L. No. 86-230, 73 Stat. 457. When it did so, it did not repeal § 94.

For these reasons it is impossible to conclude that § 94 was partially repealed by implication in 1934. It follows under the general principles of statutory construction discussed above that the narrowly drawn, specific venue provision of the National Bank Act must prevail over the broader, more generally applicable venue provision of the Securities Exchange Act. We conclude, therefore, that a national banking association is subject to suit under the Securities Exchange Act only in that district wherein it is established, and that the judgment before us must accordingly be affirmed.

It is so ordered.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 17, 1976

Re: No. 75-268 - Radzanower v. Touche, Ross & Co.

Dear Potter:

I agree.

Sincerely,

Byron

Mr. Justice Stewart

Copies to Conference

May 17, 1976

No. 75-268 Radzanower v. Touche, Ross & Co., et al

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1976

Re: No. 75-268 - Radzanower v. Touche, Ross & Co.

Dear Potter:

Please join me.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 17, 1976

Re: No. 75-268 -- Hyman Radzanowner v. Touche, Ross & Co.

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 17, 1976

RE: No. 75-268 Hyman Radzanower v. Touche, Ross & Co.

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 19, 1976

Re: No. 75-268 - Radzanower v. Touche, Ross & Co.

Dear Potter:

Please join me.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 24, 1976

Re: No. 75-268 - Radzanower v. Touche, Ross & Co.

Dear Potter:

I join your proposed opinion of May 14.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
		4/5/76						
join PS 5/24/76	join PS 5/17/76	1st draft 5-14-76	join PS 5/17/76	join PS 5/17/76	join PS 5/17/76	join PS 5/17/76	join PS 5/17/76	join PS 5/17/76 dissent 1st draft 5-26-76
					75-268 Radzanower v. Touche, Ross			