violations,"[20] thereby avoided the consideration of "a complicated question in statutory construction"[21] of the limitation periods prescribed by the two acts. Why the diligence feature of the statute of limitations of the 1933 act was deleted from the statute of limitations of the 1934 act is not apparent from the records of the Congressional debate nor from the Reports of the House Committee on the bill.[22] Nevertheless, despite the differences in verbiage, the limitations of the two acts are substantially the same when they are construed in the light of the weight of authority, which holds that discovery need not be actual; but that the defrauded party "discovers" the fraud at the time when there are facts available to him which would have disclosed the fraud had he been in the exercise of reasonable diligence.[23] It is therefore reasonable to suppose that those charged with the framing of the Securities and Exchange Act of 1934 were familiar with this rule and that the diligence feature was purposely omitted from the 1934 act, as adding nothing to the act's effectiveness.

V. T. M.

TORTS—FRAUD—STATUTE OF LIMITATIONS ON NOTARY'S FALSE ACKNOWLEDGEMENT—[Missouri].—Defendant, a notary public, falsely certified the acknowledgment of a deed of trust purported to be signed by Frank and Mae Owen. In reality Frank Owen had not signed the deed, nor had he acknowledged the same. When plaintiff, holder of the deed of trust, brought suit for possession of the land after default in payment, Frank Owen successfully defended the action on the above ground. Plaintiff, having suffered damage, then sued defendant and the surety on his bond in the present action for defendant's act in falsely certifying the acknowledgment. The defense was the statute of limitations, on the ground that suit was brought more than three years after the false acknowledgment. *Held,* for defendant; the statute begins to run at the time the act is committed. Blair, P. J., *dissenting,* the statute begins to run at the time the fraud is discovered. *State ex rel., to Use of State Life Ins. Co. v. Faucett et al.*[1]

A notary and his surety in Missouri are liable for damages caused by the false certification of an acknowledgment.[2] The special statute of limi-

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20. (1934) 48 Stat. 881, c. 404, §1, 15 U. S. C. A. Sec. 78i (3, e).
21. Rosenberg v. Hano (C. C. A. 3, 1941) 121 F. (2d) 818, 821.
22. H. R. Rep. No. 1383 (1934) 73 Cong., 2d Sess., 28.
23. Dawson, Fraud and the Limitations Statutes (1933) 31 Mich. L. Rev. 591, 619. See also: Duphorne v. Moore (1910) 82 Kan. 159, 107 Pac. 791; Wright v. Peet (1877) 36 Mich. 213; Coad v. Dorsey (1914) 96 Neb. 612, 148 N. W. 155; Johnston v. Spokane and I. E. R. R. Co. (1919) 104 Wash. 562, 177 Pac. 810; Ray v. Divers (1928) 81 Mont. 552, 264 Pac. 673.

1. (Mo. App. 1941) 156 S. W. (2d) 50.
2. Gill, *The Missouri Law of Title to Real Property* (3d ed. 1931) 182-183, §316; State to the Use of Alexander v. Plass (1894) 58 Mo. App. 148; State ex rel. Covenant Mut. Life Ins. Co. v. Balmer (1898) 77 Mo. App. 463; State ex rel. Heitkamp v. Ryland (1901) 163 Mo. 280, 63 S. W. 819; State ex rel. Matter v. Ogden and American Surety Co. (1914) 187 Mo.

tations for actions against notaries public reads, "* * * no suit shall be instituted against any notary or his sureties more than three years *after such cause of action accrued.*"[3] The court in the principal case was therefore confronted with a question of statutory construction in regard to the time when "such cause of action accrued." The general rule in both law[4] and equity[5] is that if plaintiff is deceived by fraud, the statute of limitations is tolled and begins to run only when the fraud is discovered or, by the exercise of reasonable care, should have been discovered.[6] The same has been held when a person, against whom a cause of action exists in favor of another, by fraudulent concealment[7] prevents that other from obtaining knowledge of the concealment.[8] The question of what is a reasonable time for discovery is one of fact for the jury, and not one of law for the court.[9]

There are two Missouri statutes which follow the general rule making fraud or fraudulent concealment exceptions to the statute of limitations and holding the statute in abeyance until the fraud is discovered or should have been discovered.[10] But the Kansas City Court of Appeals in 1903[11]

App. 39, 172 S. W. 1172; State ex rel. Park Nat. Bank v. Globe Indemnity Co. (1928) 222 Mo. App. 153, 2 S. W. (2d) 815; State ex rel. and to Use of Schaefer v. Korte (Mo. App. 1929) 13 S. W. (2d) 558.

3. R. S. Mo. (1939) §13364. (Italics ours.)

4. Bailey v. Glover (U. S. 1875) 21 Wall. 342; Sherwood v. Sutton (1828) Fed. Cas. No. 12,782; Bayley v. Coy (1915) 195 Ill. 433.

5. Bremer v. Williams (1911) 210 Mass. 256, 96 N. E. 687; Tompkins v. Hollister (1886) 60 Mich. 470, 27 N. W. 651; Witte v. Storm (1911) 236 Mo. 470, 139 S. W. 384; Maupin v. Missouri State Life Ins. Co. (Mo. App. 1919) 214 S. W. 398; Lightfoot v. Davis (1910) 198 N. Y. 261, 91 N. E. 582, 139 Am. St. Rep. 817, 29 L. R. A. (N. S.) 119, 19 Ann. Cas. 747; Callegari v. Sartori (1916) 174 App. Div. 102, 160 N. Y. S. 931 (app. dism. 219 N. Y. 655 mem., 114 N. E. 1061 mem.).

6. A discussion of the problems in regard to this subject may be found in Dawson, Undisclosed Fraud and the Statute of Limitations (1933) 31 Mich. L. Rev. 591.

7. An excellent discussion of this latter problem may be found in Dawson, Fraudulent Concealment and Statutes of Limitation (1933) 31 Mich. L. Rev. 875, where it is said at 880-881: "There can be found in the cases innumerable statements that 'fraudulent concealment' involves affirmative efforts by the defendant to prevent discovery. But qualifications are often attached. It is said that the defendant's concealment need not be subsequent to the original wrongdoing, but may precede or accompany it, provided all his conduct taken together is calculated to mislead or allay suspicion. It is sometimes added that all requirements are satisfied if the original misconduct was of such a kind as to 'conceal itself.'" (Footnotes omitted.)

8. Manufacturers' Nat'l Bank v. Perry (1887) 144 Mass. 313, 11 N. E. 81; Wolkins v. Knight (1903) 134 Mich. 347, 96 N. W. 445; McLain v. Parker (1910) 229 Mo. 68, 129 S. W. 500; Ferris v. Henderson (1849) 12 Pa. St. Rep. 49, 51 Am. Dec. 580; Hall v. Pennsylvania R. Co. (1916) 257 Pa. 54, 100 Atl. 1035, L. R. A. 1917F, 464.

9. In State ex rel. Barringer v. Hawkins (1903) 103 Mo. App. 251, 77 S. W. 98 it was said, "* * * the judgment should be reversed [and remanded] for the reason that the jury were not required in plaintiff's instructions to pass upon the question whether plaintiff could have discovered the fraud sooner than he did by the exercise of reasonable diligence."

10. R. S. Mo. (1939) §1014, which, stating actions which may be brought within five years, says, "* * * fifth, an action for relief on the ground

decided that these statutes cannot be applied to the interpretation of the notary statute because it is a *special* statute, and by another provision of the *Revised Statutes* all *special* statutes are to be governed only by the time limited in their language.[12] The fraud and concealment statutes may not, therefore, be used to interpret the word "accrued" in the principal case. The Missouri cases which have previously considered the question of the time during which a notary is liable for his false certification are in considerable confusion, and have held him liable both from the time of certification[13] and from the time of discovery.[14] They are, however, all cases in the Courts of Appeals.[15]

The period of limitations for actions brought on covenants and warranties in deeds of conveyance is subject to the fraud and fraudulent concealment statutes.[16] It is difficult to discover any difference between the situation of a purchaser of a deed of trust who relies upon a notarized signature, as in the principal case,[17] and one who purchases realty relying on the chain of title. Yet the legislature has not required the latter to investigate the warrantor of seisin or run the risk of having the statute run from the date of the making of the warranty.[18] A different intent should not be

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of fraud, the cause of action in such case to be deemed not to have accrued until the discovery by the aggrieved party, at any time within ten years of the facts constituting the fraud"; and §1031, which reads, "If any person, by absconding or concealing himself, or by any other improper act, prevent the commencement of an action, such action may be commenced within the time herein limited, after the commencement of such action shall have ceased to be so prevented."

11. State ex rel. Barringer v. Hawkins (1903) 103 Mo. App. 251, 77 S. W. 98; see also State ex rel. O'Malley v. Musick (1910) 145 Mo. App. 33, 130 S. W. 398; cf., however, Revelle v. St. L., I. M. & S. Ry. (1881) 74 Mo. 438 where the special statute (§1710, R. S. Mo. 1879) was specific and provided that the action should be commenced *within three years of the commission of the offense, and not after,* while in the notary case it is within three years after the cause of action *accrued,* which is something different from a mere computation of time.

12. R. S. Mo. (1939) §1033, which reads, "The provisions of * * * this chapter shall not extend to any action which is or shall be otherwise limited by any statute; but such action shall be brought within the time limited by such statute."

13. State ex rel. O'Malley v. Musick (1910) 145 Mo. App. 33, 130 S. W. 398 (notary certified a false deed); State ex rel. Fehrenbach v. Logan (1916) 195 Mo. App. 171, 190 S. W. 75, (false release to deed of trust certified by notary); State ex rel. Haitz v. American Surety Co. (1920) 203 Mo. App. 71, 217 S. W. 317 (false certification of acknowledgment to deed of trust); State ex rel. Hardt v. Dunn (Mo. App. 1939) 129 S. W. (2d) 17 (false acknowledgment of right of way).

14. State ex rel. Barringer v. Hawkins (1903) 103 Mo. App. 251, 77 S. W. 98 (false certification of deed of trust); State ex rel. Meinholtz v. American Surety Co. (Mo. App. 1923) 254 S. W. 561 (name forged on deed of trust certified by notary).

15. The instant case has been certified by the dissenting judge to the supreme court, which means that the law on this point will be clarified.

16. Above, footnote 10.

17. The principal case imputes notice of all defects in every notarized statement to one who relies on that statement.

18. This statement is borne out by: 1) R. S. Mo. (1939) §1013, which reads, "* * * actions brought on any covenant or warranty contained in

imputed to the legislature in its determination of the duty placed upon the former—both should be subject to the duty of reasonable care.

R. S. S.

TORTS—LIBEL PER SE—FAIR COMMENT—[New York, Federal].—A Congressman who had voted against the Lease-Lend Bill was the object of three editorials in the defendant newspaper which questioned whether he believed in the defense of the United States, or wished to follow the Quislings' attitude of least resistance, and stated further that the dictators were being told that Congress was split by radicals who could easily be persuaded to oppose the best interests of this country.[1] *Held:* This publication was libelous per se as influencing people to think that the plaintiff was opposed to national defense, in sympathy with the Quislings, unpatriotic, and capable of being controlled by sinister influences, which exceeded the privilege of fair comment by touching the plaintiff's private character and not his public character only. *Hall v. Binghampton Press Co.*[2]

In another case, the defendant newspaper published a syndicated article asserting that the plaintiff, a Congressman, was the chief Congressional spokesman of Father Coughlin and was, therefore, organizing opposition among Ohio Congressmen to the appointment of a foreign-born Jew to the Federal District Judgeship in Cleveland.[3] *Held:* that the publication

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any deed of conveyance of land shall be brought within ten years next after there shall have been a final decision against the title of the covenantor in such deed, and actions on any covenant of seisin contained in any such deed shall be brought within ten years after the cause of such action shall accrue"; and, 2) the fraud and concealment statutes (footnote 10, supra) which apply to §1013.

1. The complaint was upheld as to only the first of these editorials which read in part as follows:

"* * * It is difficult, however, to reconcile this vote of yours with the sort of red-blooded Americanism which has characterized these valleys you represent since pioneer days.

"Sometimes we think that the younger generation is softening and sometimes we think the softening is not necessarily in the muscles. Of course, you realize that by this vote you have raised a question about your attitude on national defense and so it seems in order to ask you at this juncture whether you do feel that this country should be defended against un-Americanisms or whether you are going to take the line of least resistance and wind up with the Quislings.

"* * * The one hope of the totalitarians is a divided America—a United States wherein dissension and split councils are dominant. Reports from agents in this country are telling Hitler and Mussolini and the Japanese that we are a divided people; that everything is being done half way and by compromise; that Congress is fighting the administration and that the administration is impotent because it is honeycombed by radicals; that Congress also numbers in its roll call those who are easily persuaded to vote against the best interests of the United States. * * * " Hall v. Binghampton Press Co. (1941) 29 N. Y. S. (2d) 760, 764.

2. (1941) 29 N. Y. S. (2d) 760.

3. "A hot behind-the-scenes fight is raging in Democratic Congressional