

# The Burger Court Opinion Writing Database

## *Third National Bank in Nashville v. Impac Limited, Inc.*

432 U.S. 312 (1977)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

✓  
✓

CHAMBERS OF  
THE CHIEF JUSTICE

June 13, 1977

Re: 76-674 - Third National Bank in  
Nashville v. Impac Ltd.

Dear Harry:

Please show me joining your  
dissent.

Regards,  
*WRB*

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 26, 1977

RE: No. 76-674 Third National Bank in Nashville v.  
Impact Limited, Inc., et al.

Dear John:

I was the other way but you completely convince  
me. I'm happy to join.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 25, 1977

No. 76-674, 3rd Natl Bank v. Impac Ltd.

Dear John,

I agree with your memorandum.

Sincerely yours,

P.S.  
/

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 10, 1977

Re: No. 76-674 - Third National Bank v. Impac

Dear Harry:

Please join me in your dissenting opinion  
in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 27, 1977

Re: No. 76-674, Third National Bank in Nashville v. Impact  
Limited, Inc., et al.

Dear John:

Please join me.

Sincerely,



T. M.

Mr. Justice Stevens

cc: The Conference

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

✓

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 27, 1977

Re: No. 76-674 - Third National Bank v.  
Impac, Ltd.

Dear John:

For the moment, at least, I am still on the other side. I shall try my hand at a dissent, and shall get it to you as soon as possible.

Sincerely,

H.A.B.

Mr. Justice Stevens

cc: The Conference

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

From: Mr. Justice Blackmun

Filed: JUN 7 1977

Recirculated:

No. 76-674 - Third National Bank in Nashville v. Impecc, Ltd., Inc.

MR. JUSTICE BLACKMUN, dissenting.

I fear that the Court in this case is driven by sentimentality to reach for what it perceives to be a "just result." In so doing, in my view, it invades the domain of Congress.

The statute provides in unambiguous terms that "no writ of attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court." 12 U.S.C. § 91. The Court today holds that the statute does not mean what it says: debtors of a national bank may now obtain injunctions in a state court before final



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

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

1st DRAFT

Recirculated: JUN 13 1977

## SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in Nashville, Petitioner, <i>v.</i> Impac Limited, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Tennessee, Middle Division.
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[June —, 1977]

MR. JUSTICE BLACKMUN, dissenting.

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The statute provides in unambiguous terms that "no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." 12 U. S. C. § 91. The Court today holds that the statute does not mean what it says: debtors of a national bank may now obtain injunctions in a state court before final judgment. Perhaps the Court holds, as well, that the statute should apply only to protect banks that are insolvent or nearly so. See *ante*, —, — (Slip op. 5, 10). But see *ante*, —, — (Slip op. 4, 8). Since the Court rides roughshod over the language of the statute, the legislative history, and a century of consistent interpretation by this Court and others, I cannot join either the Court's opinion or its judgment.

### I

pp } At its core, the opinion for the Court rests on a postulated connection between the provision barring prejudgment state writs and certain preceding language of § 91 relating to preferential transfers and acts in contemplation of bankruptcy. From the supposed connection, the Court justifies its

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

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: **JUN 14 1977**

## SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in Nashville, Petitioner, v. Impac Limited, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Tennessee, Middle Division.
---	---	---

[June —, 1977]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE and MR. JUSTICE WHITE join, dissenting.

I fear that the Court in this case is driven by sentimentality to reach for what it perceives to be a "just result." In so doing, in my view, it invades the domain of Congress.

The statute provides in unambiguous terms that "no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." 12 U. S. C. § 91. The Court today holds that the statute does not mean what it says: debtors of a national bank may now obtain injunctions in a state court before final judgment. Perhaps the Court holds, as well, that the statute should apply only to protect banks that are insolvent or nearly so. See *ante*, —, — (Slip op. 5, 10). But see *ante*, —, — (Slip op. 4, 8). Since the Court rides roughshod over the language of the statute, the legislative history, and a century of consistent interpretation by this Court and others, I cannot join either the Court's opinion or its judgment.

### I

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

May 26, 1977

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

No. 76-674 Third National Bank v. Impact

Dear John:

I concur in your memorandum.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Powell", written in dark ink.

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 25, 1977

Re: No. 76-674 - Third National Bank v. Impac Ltd.

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

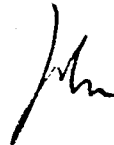
May 25, 1977

MEMORANDUM TO THE CONFERENCE

RE: 76-674 Third National Bank in Nashville v.  
Impac Ltd., Inc.

As you will note, this is a second draft. Bill Rehnquist was kind enough to review the first draft and to make some valuable suggestions that I have included. He has also authorized me to say that he will join this draft.

Respectfully,



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

From: Mr. Justice Stevens

Circulated: MAY 25 1977

Recirculated: \_\_\_\_\_

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in Nashville, Petitioner, v. Impact Limited, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Tennessee, Middle Division.
--	---	---

[May —, 1977]

Memorandum of MR. JUSTICE STEVENS.

A federal statute enacted in 1873 provides that certain prejudgment writs shall not be issued against national banks.<sup>1</sup> The question presented by this case is whether that prohibition applies to a preliminary injunction restraining a national bank from consummating a private foreclosure sale until after a court has decided the merits of the mortgagor's claim that the loan is not in default.

### I

Only the essentials of the rather complex three-party transaction giving rise to this dispute need be stated. Respondents

<sup>1</sup> Title 12 U. S. C. § 91, entitled "Transfers by Bank and Other Acts in Contemplation of Insolvency" now reads as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking associations, or of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." (Emphasis added.)

Footnotes renumbered

## STYLISTIC CHANGES THROUGHOUT

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

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: MAV 31 '77

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in Nashville, Petitioner,	} On Writ of Certiorari to the Supreme Court of Tennessee, Middle Division.
<i>v.</i>	
Impac Limited, Inc., et al.	

[June —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

A federal statute enacted in 1873 provides that certain prejudgment writs shall not be issued against national banks by state courts.<sup>1</sup> The question presented by this case is whether that prohibition applies to a preliminary injunction restraining a national bank from holding a private foreclosure sale, pending adjudication of the mortgagor's claim that the loan is not in default. We conclude that the prohibition does not apply.

## I

Only the essentials of the rather complex three-party transaction giving rise to this dispute need be stated. Respondents

<sup>1</sup> 12 U. S. C. § 91, entitled "Transfers by Bank and Other Acts in Contemplation of Insolvency," now reads as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking associations, or of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; *and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.*" (Emphasis added.)

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 8, 1977

Re: 76-674 - Third National Bank v. Impact  
Limited, Inc.

Dear Harry:

In response to your dissent, I propose to make the revisions on page 10 as indicated by the enclosure.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference



pp. 1, 10

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

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: JUN 16 1977

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in Nashville, Petitioner,	} On Writ of Certiorari to the Supreme Court of Tennessee, Middle Division.
v.	
Impac Limited, Inc., et al.)	

[June —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

A federal statute enacted in 1873 provides that certain prejudgment writs shall not be issued against national banks by state courts.<sup>1</sup> The question presented by this case is whether that prohibition applies to a preliminary injunction restraining a national bank from holding a private foreclosure sale, pending adjudication of the mortgagor's claim that the loan is not in default. We conclude that the prohibition does not apply.

## I

Only the essentials of the rather complex three-party transaction giving rise to this dispute need be stated. Respondents

<sup>1</sup> 12 U. S. C. § 91, entitled "Transfers by bank and other acts in contemplation of insolvency," now reads as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final