Although it seems clear that *Erie* applies in nondiversity cases in which the source of the right sued upon is state law,[1127] it is equally clear that *Erie* is not applicable always in diversity cases whether the nature of the issue be substantive or procedural. Thus, it may be that there is an overriding federal interest which compels national uniformity of rules, such as a case in which the issue is the appropriate rule for determining the liability of a bank which had guaranteed a forged federal check,[1128] in which the issue is the appropriate rule for determining whether a tortfeasor is liable to the United States for hospitalization of a soldier and loss of his services [1129] and in which the issue is the appropriate rule for determining the validity of a defense raised by a federal officer sued for having libeled one in the course of his official duties.[1130] In such cases, when the issue is found to be controlled by federal law, common or otherwise, the result is binding on state courts as well as on federal.[1131] Despite, then, Justice Brandeis' assurance that there is no "federal general common law," there is a common law existing and developing in the federal courts, even in diversity cases, which will sometimes control decision.[1132]

[1127] Maternally Yours v. Your Maternity Shop, 234 F.2d 538, 540 n.1 (2d Cir. 1956). The contrary view was implied in Levinson v. Deupree, 345 U.S. 648, 651 (1953), and by Justice Jackson in D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447, 466–67, 471–72 (1942) (concurring opinion). *See* Wichita Royalty Co. v. City National Bank, 306 U.S. 103 (1939).

[1128] Clearfield Trust Co. v. United States, 318 U.S. 363 (1943). *See also* National Metropolitan Bank v. United States, 323 U.S. 454 (1945); D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942); United States v. Standard Rice Co., 323 U.S. 106 (1944); United States v. Acri, 348 U.S. 211 (1955); Ivanhoe Irrigation District v. McCracken, 357 U.S. 275 (1958); Bank of America Nat'l Trust & Savings Ass'n v. Parnell, 352 U.S. 29 (1956). *But see* United States v. Yazell, 382 U.S. 341 (1966). *But see* O'Melveny & Myers v. FDIC, 512 U.S. 79 (1994).

[1129] United States v. Standard Oil Co., 332 U.S. 301 (1947). Federal law applies in maritime tort cases brought on the "law side" of the federal courts in diversity cases. Pope & Talbot v. Hawn, 346 U.S. 406 (1953).

[1130] Howard v. Lyons, 360 U.S. 593 (1959). Matters concerned with our foreign relations also are governed by federal law in diversity. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964). Federal common law also governs a government contractor defense in certain cases. Boyle v. United Technologies Corp., 487 U.S. 500 (1988).

[1131] Free v. Bland, 369 U.S. 663 (1962); Yiatchos v. Yiatchos, 376 U.S. 306 (1964).

[1132] The quoted Brandeis phrase is in Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938). On the same day *Erie* was decided, the Court, in an opinion by Justice Brandeis, held that the issue of apportionment of the waters of an interstate stream between two states "is a question of 'federal common law.'" Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 110 (1938). On the matter, *see* Illinois v. City of Milwaukee, 406 U.S. 91 (1972).