MINUTES OF MEETING

of the

FEDERAL ADVISORY COUNCIL

February 15-16, 1937

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Federal Reserve Bank of St. Louis

OFFICERS AND MEMBERS OF THE FEDERAL ADVISORY COUNCIL

For the Year 1937

OFFICERS:

President, Walter W. Smith
Vice President, Howard A. Loeb
Secretary, Walter Lichtenstein

EXECUTIVE COMMITTEE:

Walter W. Smith
Howard A. Loeb
Thomas M. Steele
Winthrop W. Aldrich
Edward E. Brown
W. T. Kemper

MEMBERS:

Thomas M. Steele	Federal Reserve District No. 1
Winthrop W. Aldrich	Federal Reserve District No. 2
Howard A. Loeb	Federal Reserve District No. 3
Lewis B. Williams	Federal Reserve District No. 4
Charles M. Gohen	Federal Reserve District No. 5
Edward Ball	Federal Reserve District No. 6
Edward E. Brown	Federal Reserve District No. 7
Walter W. Smith	Federal Reserve District No. 8
John Crosby	Federal Reserve District No. 9
W. T. Kemper	Federal Reserve District No. 10
R. Ellison Harding	Federal Reserve District No. 11
Paul S. Dick	Federal Reserve District No. 12

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BY-LAWS OF THE FEDERAL ADVISORY COUNCIL

ARTICLE I. OFFICERS

Officers of this Council shall be a President, Vice-President, and Secretary.

ARTICLE II. PRESIDENT AND VICE-PRESIDENT

The duties of the President shall be such as usually pertain to the office; in his absence the Vice-President shall serve.

ARTICLE III. SECRETARY

The Secretary shall be a salaried officer of the Council and his duties and compensation shall be fixed by the Executive Committee.

ARTICLE IV. EXECUTIVE COMMITTEE

There shall be an Executive Committee of six (6) members of the Council, of which the President and Vice-President of the Council shall be *ex officio* members. To fill a vacancy, the President, or in his absence, the Vice-President shall be authorized to designate as a member of the Executive Committee for a given meeting another member of the Council other than one elected to the Executive Committee.

ARTICLE V. DUTIES OF THE EXECUTIVE COMMITTEE

It shall be the duty of the Executive Committee to keep in close touch with the Board of Governors of the Federal Reserve System and with their regulations and promulgations, and communicate the same to the members of the Council, and to suggest to the Council from time to time, special matters for consideration.

The Executive Committee shall have power to fix the time and place of holding its regular and special meetings and methods of giving notice thereof.

Minutes of all meetings of the Executive Committee shall be kept and such minutes or digest thereof shall be immediately forwarded to each member of the Council.

A majority of the Executive Committee shall constitute a quorum and action of the Committee shall be by majority of those present at any meeting.

ARTICLE VI. MEETINGS

Regular meetings of the Federal Advisory Council shall be held in the City of Washington on the third Tuesday of the months of February, May, September, and November of each year, unless otherwise directed by the Executive Committee.

A preliminary meeting of the Federal Advisory Council shall be called by the Secretary in accordance with instructions to be given by the President of the Council.

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Special meetings may be called at any time and place by the President or the Executive Committee, and shall be called by the President upon written request of any three members of the Council

ARTICLE VII. ALTERNATES

In the absence of the regular representative of any Federal Reserve District, the Board of Directors of the Federal Reserve Bank of that District may appoint an alternate. The alternate so appointed shall have the right to be present at all the meetings of the Council for which he has been appointed. He shall have the right to take part in all discussions of the Council but shall not be entitled to vote.

ARTICLE VIII. AMENDMENTS

These by-laws may be changed or amended at any regular or special meeting by a vote of a majority of the members of the Federal Advisory Council.

February 15, 1937.

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MINUTES OF MEETING OF THE FEDERAL ADVISORY COUNCIL

February 15, 1937.

The first and organization meeting of the Federal Advisory Council for 1937 was convened in Room 836 of the Mayflower Hotel, Washington, D. C., on Monday, February 15, 1937, at 10:15 A. M.

Present:

Mr. Thomas M. Steele	District No. 1
Mr. Winthrop W. Aldrich	District No. 2
Mr. Howard A. Loeb	District No. 3
Mr. Charles W. Dupuis (Alternate for Mr. Lewis B. Williams)	District No. 4
Mr. Charles M. Gohen	District No. 5
Mr. Edward Ball	District No. 6
Mr. Edward E. Brown	District No. 7
Mr. Walter W. Smith	District No. 8
Mr. John Crosby	District No. 9
Mr. W. T. Kemper	District No. 10
Mr. R. Ellison Harding	District No. 11
Mr. Paul S. Dick	District No. 12
Mr. Walter Lichtenstein	Secretary

Mr. W. T. Kemper was elected Chairman *pro tem* and Mr. Walter Lichtenstein Secretary *pro tem.*

The Secretary stated that communications had been received from all of the Federal Reserve banks certifying to the election of their representatives in accordance with the above list.

Upon nominations for the office of President of the Council being called for, Mr. Walter W. Smith was nominated. On motion, duly made and seconded, the nominations were closed and the Secretary was instructed to cast a ballot for Mr. Smith, who was thereupon declared elected President of the Council for the year 1937.

Upon nominations for Vice President being called for, Mr. Howard A. Loeb was nominated. On motion, duly made and seconded, the nominations were closed and the Secretary was instructed to cast a ballot for Mr. Loeb, who was thereupon declared elected Vice President of the Council for the year 1937.

The President, Mr. Smith, thereupon called for nominations for the four appointive members of the Executive Committee. Messrs. Thomas M. Steele, Winthrop W. Aldrich, Edward E. Brown, and W. T. Kemper were nominated. On motion, duly made and seconded, these gentlemen were unanimously elected members of the Executive Committee for the year 1937, the President and Vice President being *ex officio* members.

On motion, duly made and seconded, Mr. Walter Lichtenstein was elected Secretary of the Federal Advisory Council for the year 1937 at a salary of $2,500.00 per annum.

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On motion, duly made and seconded, the Council readopted for the year 1937 the existing by-laws which are attached hereto and made part of these minutes.

On motion, duly made and seconded, the minutes of the Council meeting of November 16-17, 1936, copies of which had been previously sent to the members, were approved.

The Secretary presented his financial report for the year 1936, which had been audited by Mr. J. J. Buechner, Assistant Auditor of The First National Bank of Chicago, which on motion, duly made and seconded, was approved and ordered to be printed. The report is attached hereto and made a part of these minutes.

On motion, duly made and seconded, the following resolution was unanimously adopted:

"Resolved, that the Secretary be and he is hereby authorized to ask each Federal Reserve Bank to contribute $350 toward the Secretarial and incidental expenses of the Federal Advisory Council for the year 1937 and to draw on it for that purpose."

It was voted that the Mayflower Hotel continue to be used as headquarters of the Council.

In respect to the topics submitted by members of the Council, the first being the reconsideration of the Council recommendation on sub-section f of section 1 of Regulation Q, it was decided that as the Board of Governors of the Federal Reserve System had rescinded this regulation there was nothing to discuss in regard to it.

Mr. Brown stated that it would be desirable to call the attention of the Board of Governors to the fact that the Council believed it inadvisable to publish rulings in its bulletin regarding sub-section f of section 1 of Regulation Q as such publications would merely produce confusion.

The Chandler Bill dealing with bankruptcies was discussed. The Secretary stated that he had been informed by the Secretary of the Board of Governors of the Federal Reserve System that the bill was to be reintroduced into Congress in an amended form but that to date this had not been done.

The bill as introduced in the last session of Congress would have prevented the practice followed heretofore by banks of offsetting deposits made with it by its debtors.

The President of the Council filed a memorandum dealing with the matter.

It was decided after subsequent discussion with the Chairman of the Board of Governors of the Federal Reserve System to file with the Board of Governors a memorandum covering the whole subject.

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Topics submitted by the Board of Governors of the Federal Reserve System read as follows:

1. Are customers of commercial banks carrying large cash deposits and in a position to finance their requirements without borrowing during the remainder of this year or are there indications that there will be an increased demand for loans to meet obligations of customers during that period?

2. If there is a demand for loans, does it originate with large corporations or with small business enterprises and what are the purposes for which there is the greatest demand for loans?

Various members of the Council submitted data bearing on these topics. It was found that no conclusive generalizations were possible and that there were great differences between different districts and within each district. In general it seems that the increase of business has resulted in borrowing on the part of large corporations not so much from the banks as from the capital market. Certain exceptions were noted as where stock was closely held and concerns therefore did not wish to go to the public market or where the needs of the corporation were too small to make it possible to float issues publicly.

It was also pointed out that actual commercial loans may have declined, for the classification "other loans" include many items which are not commercial loans in any sense of the word.

At 11:20 A. M. Dr. Woodlief Thomas, Assistant Director, Division of Research and Statistics, appeared before the Federal Advisory Council in place of Dr. Goldenweiser and until 12:30 P. M. discussed general business conditions.

At 12:45 P. M. the Council adjourned to Room 860 for luncheon at which Chairman Eccles was present.

Chairman Eccles discussed at some length the need for structural changes in our banking system.

At 3:25 P. M. the meeting reconvened in Room 836.

Mr. Steele stated that he wished the President of the Council would give a statement to the press after every meeting, but it was decided not to change present practice at this time.

The meeting adjourned at 3:55 P. M.

WALTER LICHTENSTEIN,
Secretary.

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REPORT OF THE SECRETARY OF THE FEDERAL ADVISORY COUNCIL

For the Year Ending December 31, 1936.

Receipts	Amount	Disbursements	Amount
Balance on hand December 31, 1935	$1,446.97	Salary	$2,500.00
Assessment — Twelve Federal Reserve Banks	4,200.00	Miscellaneous	17.75
		Conference expenses	819.02
		Printing and Stationery	183.83
		Postage, telegrams and telephone (see note)	6.07
		Balance on hand December 31, 1936	2,120.30
	$5,646.97		$5,646.97

Note: It will be noticed that the charge for postage, telegrams, and telephone is listed as being only $6.07. This is due to an oversight and consequently in 1937 a charge of $75.00 will be made to cover the postage for both years.

Chicago, Illinois.
January 14, 1937.

To the Federal Advisory Council:

I have audited the books, vouchers and accounts of the Secretary of the Federal Advisory Council for the year ending December 31, 1936, and certify that the above statement agrees therewith.

Respectfully,

THE FIRST NATIONAL BANK OF CHICAGO,
(Signed) J. J. BUECHNER,
Asst. Auditor.

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MINUTES OF JOINT CONFERENCE OF THE FEDERAL ADVISORY COUNCIL AND THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

February 16, 1937.

At 10:15 A. M. a joint conference of the Federal Advisory Council and the Board of Governors of the Federal Reserve System was held in the Board Room, Washington Building, Washington, D. C.

Present: Members of the Board of Governors of the Federal Reserve System:

Vice Chairman, Ronald Ransom; Governors Joseph A. Broderick, Chester C. Davis, John McKee, and M. S. Szymczak; also Messrs. Lawrence Clayton, Assistant to the Chairman of the Board of Governors of the Federal Reserve System; J. P. Dreibelbis, Assistant General Counsel of the Board; Chester Morrill, Secretary of the Board of Governors of the Federal Reserve System; S. A. Carpenter, Assistant Secretary of the Board; Woodlief Thomas, Assistant Director, Division of Research and Statistics; Carl E. Parry, Chief of Division of Bank Loans; Leo H. Paulger, Chief of Division of Examinations; and Elliott Thurston, Special Assistant to the Chairman.

Present: Members of the Federal Advisory Council.

Mr. Walter W. Smith, President; Mr. Howard A. Loeb, Vice President; Messrs. T. M. Steele, W. W. Aldrich, C. W. Dupuis, C. M. Gohen, Edward Ball, E. E. Brown, John Crosby, W. T. Kemper, R. E. Harding, P. S. Dick, and Walter Lichtenstein, Secretary.

Vice Chairman Ransom made a statement regarding sub-section f of section 1 of Regulation Q explaining why on further consideration the Board of Governors of the Federal Reserve System had found it advisable not to put in force the regulation originally promulgated but for the present leave the matter more or less in abeyance and settle each case as it arises on its own merits.

In response to Mr. Brown, Vice Chairman Ransom agreed that it would be inexpedient to publish interpretative rulings.

At the request of the President of the Council the Secretary of the Council read the memorandum on the Chandler Bill which had been submitted by President Smith and it was agreed that the Council would file a memorandum with the Board.

A discussion regarding the two topics submitted by the Board of Governors took place and the members of the Council repeated the statements which they had made on the previous day.

At the request of the members of the Board of Governors each member of the Council reported in detail concerning business conditions in his district.

The meeting adjourned at twelve o'clock.

WALTER LICHTENSTEIN,
Secretary.

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FEDERAL RESERVE BANK OF CHICAGO

February 11, 1937

SUBJECT: REGULATION Q - AMENDMENT, EFFECTIVE FEBRUARY 11, 1937

TO THE MEMBER BANKS OF THE
SEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has adopted the following resolution amending Regulation Q, "Payment of interest on deposits":

"Be it resolved, that, effective February 11, 1937, Regulation Q entitled 'Payment of interest on deposits', as adopted to become effective January 1, 1936, is amended by striking out subsection (f) of section 1 thereof and by inserting after the first sentence of subsection (a) of section 2 thereof the following sentence:

'Within this regulation, any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit shall be considered interest.'"

The Board of Governors of the Federal Reserve System issued the following statement regarding this action as a joint statement of the Board and the Federal Deposit Insurance Corporation:

"In view of widespread differences of opinion in the law-making and administrative branches of the Government as to the intent of the law and as a result of further consultations between the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, their respective regulations relating to the payment of interest on demand deposits have been brought into uniformity by amendments adopted by the Board and by the Corporation.

"The definition of 'interest' has been eliminated from Regulation Q of the Board and from Regulation IV of the Federal Deposit Insurance Corporation and paragraph (a) of section 2 of each regulation has been amended by inserting after the first sentence the following: 'Within this regulation, any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit shall be considered interest.'

"The effect of these amendments is to declare existing law rather than to interpret and apply the law to particular practices. This will permit the general application by each agency of a uniform

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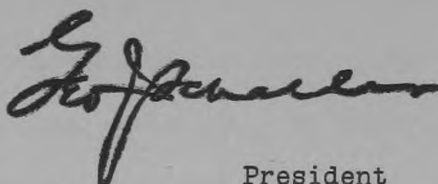
law and a determination of specific cases based upon the facts involved. It will also permit each agency to determine, with respect to cases coming before it, whether or not any practice involved in any such cases is a 'device' within the meaning of the statute employed by the banks to evade the prohibition of the law.

"The Board of Governors, in its original definition of the term 'interest' (section 1(f)), specified that such term should include the payment or absorption of exchange or collection charges which involve out-of-pocket expenses. The present action of the Board of Governors removes this finding or specification from its regulation.

"Henceforth under both regulations the question of what in a particular case is a payment of interest upon a demand deposit or a device to evade the prohibition against the payment of such interest, becomes, for both agencies, a matter of administrative determination under the general law in the light of experience and as specific cases may develop."



President

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The Chandler Bill (HR 12889) includes the proposed amendment to Section 68 of the Bankruptcy Act, which Section deals with the question of set-off. The proposed amendment consists of a slight change in subdivision (b) of the present Section which is merely a clarifying change and is desirable. However, the proposed amendment also consists of the addition of two new subdivisions, (c) and (d) both designed to change existing substantive law relating to the set-off of bank deposits.

The law as it now stands permits a bank to off-set deposits made with it by its debtor, even though within the four months period and notwithstanding that the bank has knowledge of the insolvency of the debtor, provided that the deposits are made in the ordinary course of business, are withdrawable on demand and are not collusively made to build up the account in order to create a preference.

In the present state of the law the banks admittedly have an advantage over the ordinary creditor in that if an ordinary creditor receives a payment from the debtor within four months, having knowledge of the debtor's insolvency, the payment can be recovered as a voidable preference. The legal reasoning by which the courts have differentiated deposits made in a bank from ordinary payments is that a deposit when made creates an obligation from the bank to the debtor and the debtor's estate is, therefore, not thereby diminished.

Briefly, the proposed amendment provides that all deposits made by a debtor in his account in a bank to which he is indebted shall be deemed a voidable preference if made under such circumstances that a transfer at such time by the bankrupt to the bank would constitute a voidable preference. In other words, all deposits made within the four months period after the bank has reasonable cause to believe that the debtor is insolvent shall be recoverable by the Trustee in Bankruptcy. The amendment then neces-

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sarily proceeds to give the bank credit with so much of such deposits as it may pay out on the order of the bankrupt "not either directly or indirectly for the benefit of the bank." The amendment then adds a further proviso, the intention of which is to allow the bank to retain deposits made within the four months period, after knowledge of insolvency, if at the time of the deposit the debtor's indebtedness to the bank "was not then matured or subject to being matured upon demand, and the deposit was made in the ordinary course of business, subject to withdrawal upon demand of the bankrupt and not pursuant to an understanding that it may be retained by the bank by way of payment, set-off, banker's lien or security."

The net effect of the proposed amendment is to withdraw from the banks the adjudicated right that they now have to retain deposits made within the four months period even though the bank knows of the debtor's insolvency, where the bank holds a demand note, a past due note, a note giving it a lien upon or right to set-off balances or a time note which provides that it may be accelerated.

In the first place, no reason has been suggested why any change should be made in the present law except that the proponents believe it discriminates unfairly in favor of banks. The law has been in its present form since 1904 and there is as yet no evidence of even a faint national demand for a change. The importance of the right of set-off as now existing was well summed up by Mr. Justice Lamar of the United States Supreme Court in the leading case of Studley vs Boylston Bank (229 U.S. 523) 1913 where a set-off under Section 68 was approved. Mr. Justice Lamar said:

"The Bankruptcy Act recognizes this right and it cannot be taken away by construction because of the possibility that it may be abused. The remedy against that evil is found in the

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fact that the Trustee is authorized to sue and recover if it is shown that after insolvency the money was deposited for the purpose of enabling a bank or other creditor to secure a preference.

But to deny the right of set-off, in cases like this, would in many cases make banks hesitate to honor checks given to third persons, would precipitate bankruptcy and so interfere with the course of business as to produce evils of serious and far-reaching consequence."
(Underscoring mine)

In the second place, the language of the suggested subdivision (c) and (d) is certain at once to give rise to a myriad of questions. The words "directly or indirectly" are so broad as to involve many transactions which even the proponents of the amendment would not desire to be voidably preferential.

Practically every bank in the country uses a form of note which gives the bank the right to set-off deposit balances at any time. Hence the protection to the bank claimed to be afforded by the last proviso of subdivision (d) would be of such limited application as to be of negligible importance. Assuming that banks should discontinue using this clause in their note forms the proviso would then validate the retention of deposits made with the bank the day before a time note matured but a deposit made one hundred and twenty days before its application in a bank which held a bankrupt's demand note could not be retained by the bank.

The meaning of the word "understanding" is obscure. When an unsecured bank line is extended to a customer there is ordinarily

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an understanding that a certain percentage of the loan (usually about twenty per cent) will be kept on deposit with the bank. Of course, this does not mean that the depositor may not ordinarily withdraw every cent of his checking account balance if he chooses to do so and the practice is for the borrower to maintain an <u>average</u> balance of the required percentage over the life of the loan. This requirement is imposed in part for the additional security it affords the lending bank and also because it builds up the deposits of the bank for employment in other directions. This is an "understanding" in the true sense of the word although rarely put on paper. On the other hand, as above referred to, the note form commonly used gives the bank a lien upon balances and a right to set-off. Just which of these understandings is meant by the suggested amendment is not clear, although the existence of either would undoubtedly place the transaction beyond the pale of the protection of the proviso.

The passage of this amendment in its present form in addition to withdrawing from banks what has been an important element in the extension of bank credit, will undoubtedly encourage the challenge of all bank off-sets and will have the effect of opening up the whole question of bank off-sets. This conclusion seems unescapable when you consider that the reason assigned for the change by its proponents is that the present law permits a discrimination in favor of the banks.

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The Chandler Bill (HR 12889) includes the proposed amendment to Section 68 of the Bankruptcy Act, which Section deals with the question of set-off. The proposed amendment consists of a slight change in subdivision (b) of the present Section which is merely a clarifying change and is desirable. However, the proposed amendment also consists of the addition of two new subdivisions, (c) and (d) both designed to change existing substantive law relating to the set-off of bank deposits.

The law as it now stands permits a bank to off-set deposits made with it by its debtor, even though within the four months period and notwithstanding that the bank has knowledge of the insolvency of the debtor, provided that the deposits are made in the ordinary course of business, are withdrawable on demand and are not collusively made to build up the account in order to create a preference.

In the present state of the law the banks conceivably have some advantage over the ordinary creditor in that if an ordinary creditor receives a payment from the debtor within four months, having knowledge of the debtor's insolvency, the payment can be recovered as a voidable preference. The bank's right of set-off, as adjudicated by the United States Supreme Court, is predicated upon sound economic considerations; it is not the result of a purely fortuitous use of language in the Bankruptcy Act, as the proponents of the change would infer. The legal reasoning by which the courts have differentiated deposits made in a bank from ordinary payments is that a deposit when made creates an obligation from the bank to the debtor and the debtor's estate is, therefore, not thereby diminished.

Briefly, the proposed amendment provides that all deposits made by a debtor in his account in a bank to which he is indebted shall be deemed a void-

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able preference if made under such circumstances that a transfer at such time by the bankrupt to the bank would constitute a voidable preference. In other words, all deposits made within the four months period after the bank has reasonable cause to believe that the debtor is insolvent shall be recoverable by the Trustee in Bankruptcy. The amendment then necessarily proceeds to give the bank credit with so much of such deposits as it may pay out on the order of the bankrupt "not either directly or indirectly for the benefit of the bank". The amendment then adds a further proviso, the intention of which is to allow the bank to retain deposits made within the four months period, after knowledge of insolvency, if at the time of the deposit the debtor's indebtedness to the bank "was not then matured or subject to being matured upon demand, and the deposit was made in the ordinary course of business, subject to withdrawal upon demand of the bankrupt and not pursuant to an understanding that it may be retained by the bank by way of payment, set-off, banker's lien or security."

The net effect of the proposed amendment is to withdraw from the banks the adjudicated right that they now have to retain deposits made within the four months period even though the bank knows of the debtor's insolvency, where the bank holds a demand note, a past due note, a note giving it a lien upon or right to set-off balances or a time note which provides that it may be accelerated.

In the first place, no reasons have been suggested by anyone why any change should be made in the present law except that its proponents (principally Professor James A. McLaughlin of Harvard Law School, who drafted the amendment) believe it discriminates unfairly in favor of banks. The fact that the major portion of the proceeds of most bank loans is actually used by the borrower to

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pay merchandise creditors, is ignored or deemed unimportant by the proponents. The law has been in its present form since the decision of the United States Supreme Court in "N.Y. County Bank vs Massey" (192 U.S. 138) and there is as yet no evidence of even a faint national demand for a change. The importance of the right of set-off as now existing, and the economic considerations involved, were well summed up by Mr. Justice Lamar of the United States Supreme Court in the leading case of Studley vs. Boylston Bank (229 U.S. 523) 1913 where a set-off under Section 68 was approved. Mr. Justice Lamar said:

> "The Bankruptcy Act recognizes this right and it cannot be taken away by construction because of the possibility that it may be abused. The remedy against that evil is found in the fact that the Trustee is authorized to sue and recover if it is shown that after insolvency the money was deposited for the purpose of enabling a bank or other creditor to secure a preference. But to deny the right of set-off, in cases like this, would in many cases make banks hesitate to honor checks given to third persons, would precipitate bankruptcy and so interfere with the course of business as to produce evils of serious and far-reaching consequence."
>
> (Underscoring supplied)

In the second place, the language of the suggested subdivision (c) and (d) is certain at once to give rise to a myriad of questions. The words "directly or indirectly" are so broad as to involve many transactions which even the proponents of the amendment would not desire to be voidably preferential.

Practically every bank in the country uses a form of note which gives the bank the right to set-off deposit balances at any time. Hence the protection

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to the bank claimed to be afforded by the last proviso of subdivision (d) would be of such limited application as to be of negligible importance. Assuming that banks should discontinue using this clause in their note forms the proviso would then validate the retention of deposits made with a bank (having notice of insolvency) the day before a time note matured but a deposit made one hundred and twenty days before its application in a bank (likewise having notice of borrower's insolvency) which held a bankrupt's demand note could not be retained by the bank.

The meaning of the word "understanding" is obscure. When an unsecured bank line is extended to a customer there is ordinarily an understanding that a certain percentage of the loan (usually about twenty per cent) will be kept on deposit with the bank. Of course, this does not mean that the depositor may not ordinarily withdraw every cent of his checking account balance if he chooses to do so; the general practice is for the borrower to maintain an average balance of the required percentage. This requirement is imposed in part for the additional security it affords the lending bank and also because it builds up the deposits of the bank for employment in other directions. This is an "understanding" in the true sense of the word although rarely put on paper. On the other hand, as above referred to, the note form commonly used gives the bank a lien upon balances and a right of set-off. Just which of these understandings is meant by the suggested amendment is not clear, although the existence of either would undoubtedly place the transaction beyond the pale of the protection of the proviso.

The passage of this amendment in its present form, in addition to withdrawing from banks what has been an important element in the making of commercial loans, will undoubtedly encourage the challenge of all bank off-sets and will have the effect of casting uncertainty upon the whole question of bank off-sets, - needlessly unsettling the extension of commercial bank credit.

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