

FEDERAL RESERVE BOARD

WASHINGTON

February 13, 1915.

My dear Governor:-

The attached letter from Governor Strong raises a question as to the effect of waiver of demand, notice and protest upon the obligation of an acceptor of a domestic draft or bill of exchange discounted by a member bank under the provisions of Section 13 of the Federal Reserve Act.

An acceptor of a draft or bill is the party primarily liable, and the drawer and endorsers are merely sureties. 4 Am. & Eng. Encl., 470, 2nd Ed., and cases cited. In other words, his liability is the same as that of the maker of a note. He is the principal and not a collateral debtor. Blair v. Bank of Tennessee, 11 Humph. (Tenn.) 88.

The requirement that the holder make demand on the acceptor at maturity and give notice of dishonor is provided for the benefit of persons secondarily liable, such as the drawer or endorser, and is intended to protect such secondary party from the risk of loss which may occur because of delay in demanding payment from the party primarily liable or because of the fact that he has no notice that his principal has failed to pay. Stanley v. McElrath, 86 Calif. Rep., 457.

In other words, the law provides that the holder must demand payment at maturity and that in case the bill is not paid by the acceptor on demand, other parties subsequently liable must be given notice, in order that they may take any necessary steps to protect themselves. If they are not notified of demand and dishonor, they are entitled, as sureties, to conclude that the bill has been paid and that they are released. The acceptor, or primary debtor, on the other hand, is not entitled to notice, and, unlike the drawer or endorser, is not released on failure of presentment and demand at maturity. Daniel on Negotiable Instruments, 4th Ed., Vol. 2, P. 52; Hayes v. Northwestern Bank of Virginia, 9 Gratt, (Va.) 127.

The right of other parties than the acceptor to receive notice is a personal one, and if it is not desired, may be waived, but such waiver can in no way affect any one other than the person making it. Such person merely surrenders a right afforded him by the law for his own protection.

It seems, therefore, that a waiver of demand, notice and protest on a bill discounted by a member bank under the provisions of Section 13 can have no effect on the acceptor of such bill. He remains liable just as though the formality due the person making the waiver had been complied with.

Respectfully,

(Signed) M. C. ELLIOTT,

Counsel.

Hon. Charles S. Hamlin,
Governor.

2/26/15/