FEDERAL RESERVE BOARD

WASHINGTON

X-3555

November 6, 1922.

SUBJECT: Closter National Bank v. Federal Reserve Bank of New York.

Dear Sir:

There is enclosed herewith for your information a copy of the opinion of the United States Circuit Court of Appeals for the Second Circuit rendered October 31,1922, in the case of Closter National Bank of Closter, New Jersey, v. the Federal Reserve Bank of New York, as received from Mr. L. R. Mason, General Counsel to the Federal Reserve Bank of New York.

Very truly yours,

Vice Governor.

(Enclosure)

X-3555a

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

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CLOSTER NATIONAL BANK,

Plaintiff-in-
Error,

-against-

FEDERAL RESERVE BANK OF NEW YORK,

Defendant-in-
Error.

- x

BEFORE:

ROGERS, MANTON and MAYER,

Circuit Judges.

Writ of error from the United States District Court for the Southern District of New York. Action by plaintiff against the defendant to recover the amount of a check drawn on the Treasurer of the United States.

Judgment for defendant; plaintiff appeals. Affirmed.

DAVID D. ACKERMAN, Esq.,
Attorney for Plaintiff-in-Error.

L. R. MASON, Esq.,
Attorney for Defendant-in-error.

MANTON, Circuit Judge.

On March 31, 1919, a check was drawn on the Treasurer of the United States purporting to be for Four thousand dollars. It was presented to the plaintiff-in- error by one representing himself to be

the payee therein named, and it was endorsed "Pay to the order of any bank or trust company. March 31, 1919. Endorsements Guaranteed. The Closter National Bank, Closter, N. J." This paper was sent on April 3, 1919 to the defendant-in-error for collection. The plaintiff-in-error was a member of the Second Federal Reserve District located outside of the State of New York, and elected to collect the check in question through the defendant-in-error, but did so under the terms and conditions of a circular letter known as No. 37 dated December 29, 1915, and which reads as follows:

> " Member banks of this district located outside of the City of New York are notified that on and after January 1, 1916, they may include in their remittances to the Federal Reserve Bank of New York for immediate credit at par, but subject to final payment by the Treasurer of the United States, all government warrants and checks drawn on the Treasurer of the United States. Member banks situated in New York City for the present and until further notified by us are requested to collect such items through the Assistant Treasurer of the United States in New York in accordance with the present practice. When the facilities of the Federal Reserve Bank for handling government deposits have been further developed, member banks in New York City will be notified that government warrants and checks may be sent to this bank through the Clearing House subject to final payment by the Treasurer of the United States.
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> " The Government has for many years exercised the right of returning at any time warrants and checks, which for any cause have not been considered good; and we have been advised that this practice will be continued.
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> " In view of this situation the Federal Reserve Bank of New York, as a condition of receiving government warrants and checks on the Treasurer of the United States from member banks for credit, reserves the right to charge back and return to the depositor at any time and unconditionally any such item deposited with the Federal Reserve Bank of New York.
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> " Your attention is specially invited to the above condition."

The check was entered to the credit of the account of the plaintiff-in-error, in defendant-in-error's bank. It was thereupon forwarded to the Treasurer of the United States for payment. The check passed through in ordinary course and after bore a signature and symbol number, and then the check was perforated as follows: "Paid 4-4-19-M9". The signature of the drawer was compared and in due course and in accordance with the usual custom, it was audited by the disbursing officer who issued it, and it was examined by the Inspector General of the army. Upon this audit and examination, the Treasurer of the United States notified the defendant-in-error by letter of May 19, 1920, over a year after the deposit of the check by the plaintiff-in-error with the defendant-in-error for collection, that the check had been altered and the endorsement of the payee forged. This letter sent to the defendant-in-error, was accompanied by a photostatic copy of the check in question and a request was made that the Treasurer of the United States be credited with the amount of the item. In accordance with the practice prevailing in the bank of the defendant-in-error the Treasurer was credited with the item of Four thousand dollars and within thirty days thereafter he was paid this amount. The plaintiff-in-error was notified by the defendant-in-error of the Treasurer's statement that the check was forged and altered, and there was forwarded to the plaintiff-in-error, with its photostatic copy of the check, a notice of the charge of the amount to the plaintiff-in-error's account. Thereupon the plaintiff-in-error objected to the charge and denied liability for the forgery. It resulted in the present action.

The contract between the parties embraces the contents and obligations imposed by the circular letter No. 37. The defendant-in-error was appointed depository and fiscal agent of the United States and it offered to certain member banks of the Second Federal Reserve District, the option of presenting for payment checks and warrants on the Treasurer of the United States through it, but it made the terms as set forth in the circular above. The plaintiff-in-error was free to accept or refuse to accept the services of the defendant-in-error as it saw fit. It might have used other available means for collecting government checks and warrants if it so desired. While immediately crediting the account of the plaintiff-in-error with the defendant-in-error, it was always subjected to final payment by the Treasurer. Crediting the account, accorded an advantage to the member banks in affording means for making funds promptly available. In undertaking this service, the defendant-in-error became a collecting agent. Under the terms of the circular, defendant-in-error had the right should the United States at any time not pay to return such check for any reason which the government might consider good, and the defendantin-error could at any time and unconditionally charge back the amount credited to the plaintiff-in-error, at the same time returning the item so charged back. The right to do so was indefinite as to time; it might be done at any time and unconditionally. It was with this understanding and agreement that the defendant-in-error gave credit and accepted the obligation to perform this service for the plaintiff-in-error.

But it is contended that the defendant-in-error's right to charge back the item is dependent upon its showing that the item was in fact a forgery and alteration as claimed by the Treasurer. By the terms of the collection agreement under which the defendant-in-error performed the service, the collection agent had the right, if it acted in good faith, to charge back the item to the plaintiff-in-error's account without the necessity of establishing a forgery or alteration of the warrant. The memorandum credit accorded by the agreement of which the circular letter is a part, was always qualified by the clause "subject to final payment." And by that clause the government has for many years exercised the right of returning at any time, warrants and checks which, for any cause, have not been considered good and the plaintiff-in-error was notified that this practice would be continued as a condition of receiving government warrants and checks on the Treasurer of the United States from member banks for credit, with "the right to charge back at any time and return to the depositor at any time and unconditionally any such item deposited with the Federal Reserve Bank." To place any other construction upon the terms of the circular would be to treat the phrase quoted as surplusage. Under the law, the Treasurer might recover if he paid the warrant because of the forgery and therefore, as a matter of law, the item was not finally paid.

In United States vs. Exchange Natl. Bank (214 U. S. 302) the United States was held not to be chargeable with knowledge of the signatures of persons entitled to pension checks and that it could re-

cover from a bank receiving payment from a sub-treasury on checks to which the names of payees had been forged.

In Cooke vs. United States (91 U.S. 389) the court laid down the rule governing the right of the Treasurer to repudiate payments of counterfeiting items and said that if presentation is made at the time when a complete examination cannot be had, such payment is tentative and does not amount to an adoption, and that further inquiry may be made and if the paper is found to be a counterfeit, it may be returned within a reasonable time and that a reasonable time is dependent upon the circumstances of each particular case; but that until a reasonable time has in fact elapsed, the law will not impute negligence on account of delay.

And in the instant case, this warrant was presented at a time when the war department was in a great rush of business owing to an accumulation incident to the conduct of the war.

In Onondaga Bank vs. United States (64 Fed. 703) the government was allowed to recover after two years had elapsed between payment and discovery of the forgery. We think the plaintiff-in-error may not recover under any of the terms of the contract under which the service of collection was performed, nor may it recover against the defendant-in-error by reason of any neglect or unreasonable delay on the part of the defendant-in-error.

Judgment affirmed.