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X-3613

January 9, 1923.

Mr. M. G. Wallace, Counsel,
Federal Reserve Bank of Richmond,
Richmond, Virginia.

Dear Mr. Wallace:

Please accept my thanks for your letter of December 29 containing your views with reference to the letter addressed to me under date of December 18 by Mr. E. B. Stroud, Jr., Office Counsel to the Federal Reserve Bank of Dallas.

I have read your letter with much interest, and, while I have been prevented by great pressure of work from making any investigation of the subject, I am rather inclined to agree with your suggestion that if a customer deposits a check in a bank which forwards it to another bank for collection, the right of the customer to sue the second bank depends upon the relationship between himself and the first bank, and that relationship is determined by the law of the State in which the first bank is located. It seems to me that the question whether the so-called New York rule, or the so-called Massachusetts rule, is to apply depends upon which interpretation is placed upon the contract entered into between the first bank and its depositor. It is a general principle applicable in cases involving conflicts of laws that a contract is to be construed in accordance with the lex loci contractus, which, in this case, would be the law of the State in which the first bank is located. As indicated above, however, this is merely my off-hand impression and is not to be taken as a definite opinion.

I am very glad that you find our practice of distributing reports on cases of general interest to the Federal Reserve System to be of some assistance.

Very truly yours,

(Signed) Walter Wyatt

General Counsel.

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Federal Reserve Bank
of Richmond.

X-3613

December 29, 1922.

Mr. Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D. C.

My dear Mr. Wyatt.

I have your letter of December 28th enclosing the interesting letter of Mr. E. B. Stroud, Jr., Office Counsel to the Federal Reserve Bank of Dallas. The point presented is certainly a striking one. The so-called Massachusetts and New York rules are always breeding trouble, and I heartily approve of the suggestion of Mr. Stroud that a uniform circular should be adopted, but I incline to think that it would be wise to defer this circular until the several cases now pending involving collections have been decided, in order that the circular may be drawn in the light of the decisions.

It seems to me that in Mr. Stroud's case the court in Dallas erred. I should say that the right of the original depositor to sue a remote agent should be determined not by the law of the state in which the remote agent is located, but by the law of the state in which the original deposit was made. The theory upon which the courts deny the right of the original depositor to sue the remote agent in those states in which the New York rule is applied is that the relation between a bank and a depositor is that of a general contractor, and that sub-contractors are not liable to the person who contracts with a general contractor. The theory upon which the courts apply the Massachusetts rule permitting the depositor to sue the remote bank is that the bank in which the check was originally deposited is a mere forwarding agent authorized to appoint sub-agents, who become the agents of and are responsible to the principal.

It seems to me that if we apply these principles it appears that if a customer deposits a check in a bank which forwards it to another bank, the right of the customer to sue the second bank depends upon the relationship between himself and the first bank, and that relationship is determined by the law of the state in which the first bank is located. If, under the law of that state, the first bank was an independent contractor, the customer could not sue. If, under the law of that state, the first bank was a for-

warding agent, the customer could sue.

It has always seemed to me that the books upon the subject lay too much stress upon the so-called New York rule and the so-called Massachusetts rule. They are not really rules of law at all, but are merely rules of construction which the courts apply to the contract between a bank and its depositor when the parties have not by express provision made clear the exact relationship which they intended to assume to each other.

In addition to the above it seems to me that in the case mentioned by Mr. Stroud an action could be brought against the Federal Reserve Bank of Dallas in the name of the member bank which sent the check for the use of its depositor.

In the case of Malloy Bros. v. Federal Reserve Bank of Richmond I am making the point that this suit could not be maintained by Malloy Bros. directly against the Federal Reserve Bank; but, as you will see from the above, I do not think my own point is a strong one, and I have little hope of getting the court to go further than to hold that the suit may be brought by Malloy Bros., but that when so brought it is open to every defense or excuse which could be urged against the member bank which sent us the check.

I thank you for sending me this letter from Mr. Stroud, and I hope that you will continue the very helpful practice of distributing to counsel for the various banks reports upon decisions affecting the operations of the Federal Reserve Banks; it is certainly a great assistance.

Very truly yours,

(Signed) M. G. Wallace,

Counsel.