

PROGRAM FOR THE CONFERENCE OF COUNSEL OF FEDERAL RESERVE  
BANKS TO BE HELD AT WASHINGTON, D. C. ON DECEMBER 5, 1924.

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I.

DISCUSSION OF CASES.

The first part of the program will be taken up with a discussion of the cases brought against Federal reserve banks involving collection problems similar to those arising in the case of Federal Reserve Bank of Richmond v. Malloy Brothers. These cases will be considered individually and the Counsel for the Federal reserve bank involved in each particular case will make a brief statement of the facts and the decision in his case and follow this with a discussion of the legal principles involved. This in turn will be followed by a general discussion by the conference of the legal principles involved in the case under consideration. This course of procedure will be followed by taking up the cases in the following order:

1. Federal Reserve Bank of Richmond v. Malloy Brothers, 44 Sup. Ct. 296;
2. City of Douglas v. Federal Reserve Bank of Dallas, 300 Fed. 573;
3. First National Bank of Denver v. Federal Reserve Bank of Kansas City, 283 Fed. 700;
4. National Bank of Commerce v. Federal Reserve Bank of San Francisco;
5. Jack and Jake v. Federal Reserve Bank of Atlanta, et al. (Apparently not reported).
6. Federal Reserve Bank of Richmond v. Peters, Receiver, 123 S.E. 379;
7. Olive v. Federal Reserve Bank of Dallas (Not reported).
8. C.M. & St. Paul Railway v. Federal Reserve Bank of San Francisco (Pending).
9. Southern Power Co. v. Federal Reserve Bank of Richmond (Pending).
10. Any other cases of this character which Counsel may desire to discuss.

II.

IMPORTANT GENERAL PROBLEMS

The following topics suggest important legal problems of a general nature which probably will have been discussed more or less thoroughly in connection with the discussion of the above cases, and it will only be necessary to discuss such of these topics as have not been fully covered by the discussion of the cases:

1. Effect of Regulation J, as amended, and new check collection circulars on common law doctrine regarding liability for losses resulting from sending checks direct to payee banks and accepting exchange drafts in remittance.
2. What effect, if any, have Regulation J, as amended, and new check collection circulars on legal rights of owners of checks as against Federal reserve banks:
  - (a) Where New York rule applies;
  - (b) Where Massachusetts rule applies.
3. Privity of contract between owner of check and Federal reserve bank
  - (a) Where Massachusetts rule applies;
  - (b) Where New York rule applies.
4. Conflicts of laws (e. g. where depositary bank is located in State in which New York rule is in effect and Federal reserve bank and payee bank are located in states where Massachusetts rule applies.)
5. Jurisdiction and venue of actions against Federal reserve banks:
  - (a) In Federal courts;
  - (b) In State courts.

- (c) Right of Federal reserve bank to question venue of suit after removing same from State to Federal court.
- (d) Is a Federal reserve bank doing business in a State within its district, in which it maintains no branch office, subject to process of State courts in that State?
- (e) If it is not doing business in such a State as that above mentioned is it subject to attachment as a non-resident or foreign corporation?
- (f) Whether a suit brought in a State court jointly against a Federal reserve bank and the payee of a check may be removed to a United States District Court when the payee of the check refuses to join in the petition for removal.
- (g) Various defenses which may be interposed by Federal reserve banks in such suits.

III.

TOPICS REFERRED TO CONFERENCE OF COUNSEL  
BY GOVERNORS' CONFERENCE.

At the conference of Governors of Federal reserve banks held during the early part of November, certain questions were referred to the forthcoming conference of Counsel of Federal reserve banks with the request that it consider these questions and make a report or recommendation concerning them. The third division of the program will be given over to a consideration of these topics, which are as follows:

1. Whether or not a Federal reserve bank in forwarding checks or non-cash collection items to a bank for collection, and in accepting therefor a remittance consisting of a bank draft drawn

by the remitting bank upon another bank, has the right to accept still another bank draft in remittance for the first bank draft.

2. Whether or not it would be advisable as a matter of law to have the Federal reserve banks issue a uniform circular containing a form of contract between banks and their depositors, requesting member and clearing-member banks to amend their contracts (contained on deposit slips and signature cards) in accordance with the form proposed in the circular.
3. Whether or not it would be advisable for the Federal reserve banks to amend their check collection circulars so as to provide that the act of submitting checks to Federal reserve banks for collection will be construed as a warranty that the depositor has lodged with the depositing bank the required agreements.
4. Necessity of Federal reserve banks' guaranteeing prior endorsements on non-cash collection items.
5. Advisability of Federal reserve banks using words in their endorsements on both checks and non-cash items to limit their liability when guaranteeing prior endorsements.

IV.

SPECIAL TOPICS.

The fourth portion of the program will be devoted to the discussion of special topics suggested by various Counsel. A large number of such topics have been suggested, but those listed below are believed to be the most important. Other topics which have been suggested will be considered if time permits, under Division V of this program.

1. Desirability of uniform provision in check collection circulars covering Government checks. The courts have been very liberal in allowing the Government to assert claims for forgeries - in one case after a period of more than two years had elapsed. (This topic suggested by Mr. Mason, Counsel to Federal Reserve Bank of New York).
2. How should a Federal reserve bank handle items on non-par points where previous notice has not been given to member banks of the fact that such points are non-par points. (Suggested by Mr. Powell).
3. Right of Federal reserve banks to preference on claims growing out of their sending items direct to national bank on which drawn, or at which payable for collection and remittance when such bank fails before its remittance draft can be collected. (Suggested by Mr. McConkey, Federal Reserve Bank of St. Louis).
4. Refusal of member bank to permit Federal reserve bank to charge to its reserve account the amount of checks sent to it for payment and remittance as provided in Section VII-1-(c) of Kansas City Check Collection Circular. (Letter from Governor Bailey).
5. Contentions made by numerous bankers that while Federal reserve banks have legal right to exempt themselves from liability in collections for anything except their own negligence, yet as a practical matter they ought not to do so.
6. Collecting checks drawn on banks known by the Federal reserve bank to be in an extended or weakened condition:
  - (a) Whether or not under the present regulation and the

uniform collection circulars, a Federal reserve bank is liable for resulting loss if it sends checks direct to the drawee bank and accepts remittances in the form of exchange drafts after knowing or having reason to know that the drawee bank is in a weakened condition, and such drawee bank closes its doors before the remittance draft is collected. (Suggested by Mr. Wallace and Messrs. Randolph and Parker).

(b) Effect of State statutes expressly permitting in general terms the sending of checks direct to the drawee banks.

(Suggested by Messrs. Randolph and Parker).

(c) What precautions should a Federal reserve bank adopt in such cases in order to avoid responsibility for sending checks direct to the drawee bank. (Suggested by Mr. Wallace and Randolph and Parker.)

7. Advisability of requiring indemnity of member banks when Federal reserve banks are held liable for losses resulting from sending checks direct to drawee banks or accepting exchange drafts in remittance.

V.

NON-CASH ITEMS AND OTHER MISCELLANEOUS TOPICS.

Several problems arising in the collection of non-cash items by Federal reserve banks and other matters not directly connected with check collections have been suggested for discussion, and if time is available consideration will next be given to these questions. Explanation of these topics will be made by Counsel for the particular Federal reserve banks

where the problems have arisen and such explanation will be followed by a general discussion by all attending the conference. The following are the topics of this character which have been suggested:

1. Incorporation into non-cash collection circulars of warranty by member and nonmember clearing banks sending items to Federal reserve banks for deposit or collection that by such action they authorize the Federal reserve banks to handle checks subject to the terms and conditions of Regulation J; warrant that they have authority to give Federal reserve banks such authority; and they agree to indemnify the Federal reserve banks for any loss resulting from the failure of the sending bank to have such authority. (Suggested by Mr. Mason).
2. To what extent, if at all, should Federal reserve banks file and prosecute claims against receivers of failed banks for the benefit of member banks where, having received items for collection on the failed bank while it was a going concern it has sent those items to the failed bank and received the remittance draft of the failed bank, which draft was not paid because of the failure of such bank. (Suggested by Mr. Powell).
3. Right of Federal reserve bank to retain rediscounted paper and excess collateral after proving claim against insolvent member bank for full amount due Federal reserve bank. (Suggested by Mr. McConkey).
4. Practice of some country banks of not remitting direct to Federal reserve bank but requesting their correspondents to remit for them

and notifying Federal reserve bank that they have done so.  
Does this make the correspondent bank the agent of the Federal reserve bank so that the failure of the correspondent results in loss to the Federal reserve bank rather than the country bank on which the original checks were drawn? (Suggested by Mr. McConkey).