C O P Y X-4618.

FEDERAL RESERVE BANK

of

ST. LOUIS

June 12, 1926.

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

Dear Mr. Wyatt:

Your telegram regarding the decision in the case of the City of Douglas vs the Federal Reserve Bank of Dallas was forwarded to me at Little Rock, Arkansas, where I was in trial of a similar case. Upon my return to the office I find your letter of June 4th enclosing copy of the Douglas opinion. I have written to Stroud congratulating him on his success in this case, as it seems to have removed a considerable portion of the sting contained in the Malloy decision.

On Monday of this week we tried out a case before the Circuit Court of Little Rock, Arkansas. The item in controversy was one drawn on an Arkansas Bank in favor of a resident of Louisiana who deposited it in a nonmember bank in Louisiana, which, in turn, forwarded it to the First National Bank of Shreveport and the latter (under the direct sending agreement with the Federal Reserve Bank of Dallas) forwarded it to our Little Rock Branch and by the Little Rock Branch it was forwarded direct to the drawee bank. The item was collected by charging the account of the drawer of the item. The drawee bank then attempted to remit by draft on its Little Rock correspondent. The draft proved to be uncollectible because of the failure of the remitting bank.

I had employed Mr. H. M. Armistead, of the firm of Cockrill & Armistead, Little Rock, Arkansas, to represent me as local attorney in the matter. Mr. Armistead had always felt that the circular letter between the Federal Reserve Bank of Dallas and its member, the First National Bank of Shreveport, La., authorizing the collection to be made in exchange, constituted a defense in our favor. I did not feel so confident as to this defense and felt that if the case was defeated it must be defeated on the ground that the Louisiana Bank and <u>not</u> the Federal Reserve Bank of St. Louis must respond for the loss. Under the Arkansas practice one is permitted to file a demurrer and an answer in the same pleading. Accordingly, we demurred on the grounds:

(1) That since in Louisiana by judicial construction, (Martin vs Hibernia Bank & Trust Co. 53 Southern, 572) the initial bank was responsible for the acts of its sub-agents.

(2) That if the Court should find that the direct sending statute, since enacted by the Louisiana legislature, had changed the rule in Louisiana from the New York to the Massachusetts rule, then since Arkansas has a similar direct sending act, the Arkansas act made the drawee bank a suitable agent of the owner of the item, and that the drawee bank having collected the item and having failed to remit in money was alone responsible to the owner of the item.

We also pleaded the circular letter contract between the Federal Reserve Bank of Dallas and its member, the First National Bank of Shreveport, authorizing the acceptance of a draft in collection and the circular letter and regulation between Federal Reserve Banks; also Regulation J.

I argued the demurrer on both points, and whilst the Court seemed to take kindly to the suggestions he stated that since under the Arkansas procedure he could consider the demurrer at the end of the case, he would prefer to hear the evidence. This being agreeable to both parties, it was accordingly done. We thereupon submitted the stipulations and offered evidence of the universal custom among banks of accepting drafts instead of money in the matter of collections, and rested.

The Court thereupon inquired of plaintiff's attorney if his only charge of negligence against the Federal Reserve Bank was that it took an exchange draft instead of cash from the drawee bank and upon receiving an affirmative reply stated, under the circumstances, he would have to find against the plaintiff; that as he viewed the case, when this item was deposited in the Louisiana Bank, drawn on a bank in another state, the owner of the item knew that the collection would have to be made through other agents and was bound by any contract made by such agents; therefore, was bound by the contract existing between the Federal Reserve Bank of Dallas and the First National Bank authorizing the acceptance of a draft in lieu of money in the matter of collections.

The plaintiff, of course, took an appeal from the decision; nevertheless, the judgment, as it now stands, can be sustained by the Supreme Court on any of the defenses or the demurrer offered, since the plaintiff did not ask for the

findings of facts and declarations of law. I am, therefore, very hopeful of the successful outcome of this case when it reaches the Supreme Court of Arkansas.

Personally I am now and always have been somewhat afraid of the circular letter defense on cases arising prior to the amendment of Regulation J. However, I think under the status of the judgment, as it now stands, we ought to win it on the demurrer, or on the custom as proved even if the Supreme Court should not hold the same views the trial court did as to the circular letter defense.

With kindest regards, I am

Very truly yours,

(s) Jas. G. McConkey.

Counsel