COPY X-6132

FEDERAL RESERVE BANK OF CHICAGO

CHAS. L. POWELL, Counsel
Continental and Commercial Bank Bldg.

CHICAGO September 6th, 1928.

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

My dear Mr. Wyatt:

Two suits have recently been instituted in Iowa against the Federal Reserve Bank of Chicago which I feel impelled to call to your attention because of the manner in which the plaintiff has attempted to get service on the Federal Reserve Bank of Chicago.

These suits (there are two of them) were filed in the Page County, Iowa, District Court, and I am enclosing herewith a copy of the petition in one of the suits in which Jennie E. Bull is the plaintiff. The other suit is brought in the name of I. T. Bull as plaintiff, and the allegations of the petition are the same except as to the liberty bonds claimed to have been deposited.

You will notice that these suits grew out of the failure of the First National Bank of Shenandoah, Iowa. Suits are begun in the District Court of Iowa, not by the service of process, but by the service of what is denominated an original notice, which notice is signed by the attorney for the plaintiff. A copy of the notice in the Jennie E. Bull case is enclosed.

The plaintiff first caused this notice to be served on the Shenandoah National Bank of Shenandoah, Iowa, as agent for the Federal Reserve Bank ofChicago; then they served it on H. J. Spurway, Receiver of the First National Bank of Shenandoah, Iowa, as agent for the Federal Reserve Bank of Chicago; and lastly they served it on G. C. Rinehart as agent for the Federal Reserve Bank of Chicago.

G. C. Rinehart is a young lawyer employed by the Federal Reserve Bank of Chicago to look after claims against failed banks in Iowa.

Mr. Walter Wyatt September 6th, 1928.

Under the statutes in Iowa, a defendant can file a special appearance to object to the jurisdiction of the court. I filed such special appearance supported by affidavits attacking the jurisdiction so far as it depends upon the service on Spurway, Receiver, and on the Shenandoah National Bank, as agents of the Federal Reserve Bank. The day I filed this special appearance, they served the notice upon Rinehart, and I am preparing to file affidavits to show that he is not the agent of the Federal Reserve Bank; and the sufficiency of my special appearance will be determined when the court convenes on the 3rd of October or soon thereafter.

It is quite possible that the District Court of Page County may hold the service upon Rinehart sufficient, but I do not see how the court can possibly hold that the Federal Reserve Bank of Chicago is doing business in Iowa.

You will observe that the Jennie E. Bull case, in which I am sending you copy of the petition, involves less than $250. exclusive of interests and costs; and I am somewhat inclined to the view that I should stand on my special appearance should the court hold it insufficient and let them take their judgment and then appeal it immediately to the Supreme Court.

In this connection, perhaps I should say to you that it seems to be settled in Iowa that one cannot preserve his objection to the jurisdiction made on a special appearance and answer over on the merits.

In other words, if after my special appearance is held insufficient should I answer on the merits, the Iowa Court holds that that would be a general appearance and the objection on the special appearance would be waived. At any rate, such seems to be the holding in the case of Scott v. Price Brothers, 217 N.W. Rep. 75.

When you get time I would be glad to hear from you as to your reaction on this matter. I rather think I will be in Washington next Monday, and will call on you.

Yours very truly,

(S) CHAS. L. POWELL,
Counsel

CLP
Enc.

COPY

IN THE DISTRICT COURT OF IOWA, IN AND FOR THE COUNTY OF PAGE

AUGUST TERM, A.D. 1928.

Jennie E. Bull, Plaintiff, vs The Federal Reserve Bank of Chicago, Illinois, Defendants.	PETITION AT LAW. NO. 10898

Comes now the plaintiff and for her cause of action herein, respectfully represents to the court as follows, to-wit:

That she is a resident and citizen of the City of Shenandoah, Page County, Iowa, and the defendant, the Federal Reserve Bank of Chicago, Illinois, is a corporation duly organized and existing under and by virtue of the Acts of Congress of the United States pertaining thereto, with its principal place of business located in the City of Chicago, Illinois, which said bank is the headquarters for Federal Reserve District number Seven.

That the First National Bank of Shenandoah, Iowa, is a corporation duly organized and existing under and by virtue of the laws and acts of Congress, with its principal place of business at Shenandoah, Iowa, which bank was engaged in the general banking business, was a member bank of the Federal Reserve system, being located in the Seventh Federal Reserve District of the United States, and which bank continued in business at all times mentioned in this petition until the 13th day of May, 1926, when said bank closed its doors, and a Receiver, H. J. Spurway, was appointed therefor by the United States Comptroller of the Currency, pursuant to a resolution passed by its board of directors, and, that said bank is insolvent and has been in the course

of liquidation at all times since said date.

That prior to the 4th day of December, 1919, the plaintiff herein had purchased, and was the owner of certain Third United States Liberty Loan 4¼% coupon bonds, of a par value of $300.00; that on said date she did deliver said bonds to the First National Bank of Shenandoah, Iowa, for safe-keeping, and, that said bailment was pursuant to the terms of a certain written receipt therefor that was issued by said bank to the plaintiff herein, which receipt is in words and figures as follows:

> No. 1765 U.S. Bond Certificate of Deposit
> Shenandoah, Iowa Dec. 4, 1919.
>
> This certifies that Mrs. I. T. Bull has deposited with
> THE FIRST NATIONAL BANK
> Three Hundred and no/100 ----- DOLLARS (PAR VALUE)
> in U.S. Third Liberty Loan 4¼ Per Cent Coupon Bonds,
> returnable to Her or to Her Order at this Bank, on Surrender
> of this Certificate Properly Endorsed.
>
> Interest Payable Hereon in Lieu of the Interest on Such Bonds
> According to the Terms and Tenor of Such Bonds. All Matured
> Coupons to This Date Having Been Detached.
>
> Interest due Sept. 15 and Mch 15, each year.
>
> D. B. Miller,
> A Cashier.
> (With following endorsements)

Sept. 4, 1920 Pd. $6.36 Int. to Mch 5, 1920,
Mch 17, 1920 Pd. $12.75 Int. to 3/15/21,
Dec. 12, 1921 Pd. $6.39 Int. to 8/15/21,
July, 1922, Pd. $6.36 Int. to 3/15/22,
Jan. 12, 1923, Pd. $6.39 Int. to 9/15/22,
Oct. 28, 1923 Pd. $12.75 Int. to 9/15/23,
July 11, 1924, Pd, $6.36 Int. to 3/15/24,
July 13, 1925, Pd. $12.75 Int. to 3/15/25,
May 12, 1925, Pd. $12.75 Int. to 3/15/26.

That title to said bonds remained in the plaintiff herein, and, the title to said bonds is now, and at all times since the date of the issuance of said receipt has been, in the plaintiff herein, and, that the plaintiff herein is now, and has been at all times since

said date, the absolute owner of said bonds.

That subsequent to the issuance of said receipt, the exact date of which is unknown to this plaintiff, the said First National Bank of Shenandoah, Iowa, did deliver said bonds of the plaintiff herein to the defendant herein, Federal Reserve Bank of Chicago, Illinois, and did pledge said bonds to the said defendant herein for the purpose of securing indebtedness of the First National Bank of Shenandoah, Iowa, to the said Federal Reserve Bank of Chicago, Illinois; that said pledge was unauthorized by the plaintiff herein, without her knowledge or consent and was unknown to her until after the date of the closing of the said First National Bank of Shenandoah, Iowa.

That the said First National Bank of Shenandoah, Iowa, at no time has had any title or ownership in said bonds of the plaintiff herein, and has had no right to transfer or hypothecate the same.

That the defendant herein, at the time the said bonds of the plaintiff herein were delivered to it had notice and knowledge of the fact that the said First National Bank of Shenandoah, Iowa, had no right to pledge the same as collateral security to its indebtedness; and, that the defendant herein acquired no right, title or interest in and to said bonds by reason of said pledge.

That on the date of the closing of the First National Bank of Shenandoah, Iowa, the said bonds of the plaintiff herein were in the hands of the defendant herein; that on said date the said First National Bank of Shenandoah, Iowa, was indebted to the said defendant herein on bills payable in the principal sum of $66,500.00, together with interest thereon as evidenced by certain promissory notes,

a copy of which the plaintiff herein does not have; that on said date the said First National Bank of Shenandoah, Iowa, was indebtod to the said Federal Reserve Bank of Chicago, Illinois, for notes rediscounted in the principal sum of $234,652.91, together with interest thereon; that for the purpose of securing the payment of said indebtedness at the said Federal Reserve Bank of Chicago, Illinois, the said First National Bank of Shenandoah, Iowa, had pledged United States Liberty bonds including the bond of this plaintiff, in the sum of $81,700.00, of which bonds to the extent of $66,500.00 were pledged to secure the said liability for bills payable and $15,200.00 of which was pledged to secure the liability for notes rediscounted.

That on or about the 29th day of July, 1926, the said defendant herein without the knowledge or consent of the plaintiff herein, did sell her said bonds and apply the proceeds from said sale to the payment of the indebtedness of the said First National Bank of Shenandoah, Iowa to the said Federal Reserve Bank of Chicago, Illinois, and, with knowledge and notice of the fact that it held no title to the bonds of the plaintiff herein, and thereby converted the same to its own use and benefit, and now retains the proceeds therefrom and refuses to pay the plaintiff herein the proceeds from her said bonds.

That said bonds of the plaintiff were so sold by the said defendant herein with other bonds aggregating the face value of $81,700.00 and did realize from the sale of said bonds a profit of $1281.31, and did realize from said sale accrued interest on said bonds in the sum of $971.91, making a total received by the said defendant herein from the sale of said bonds in the sum of $83,953.32.

That the said defendant herein wrongfully holds the said proceeds from the sale of the said bonds of the plaintiff herein, and uses the same for its own benefit and without title or authority from the plaintiff herein.

That on the date of the said wrongful conversion of said bonds, the value thereof was the sum of $309.28.

That after the appointment of said H. J. Spurway, as Receiver of the First National Bank of Shenandoah, Iowa, on the 13th day of May, 1926, the plaintiff herein did file a claim for said bonds with the said Receiver of said bank, in the sum of $303.11; that since said time she has received from said receiver two dividends of ten per cent each, aggregating the sum of $60.62, which sum should be credited against the damages set out herein.

That by reason of the said wrongful conversion of said bonds by the said defendant herein, this plaintiff has suffered a damage in the sum of $249.28 and interest thereon.

WHEREFORE, Plaintiff prays judgment against the defendant herein in the sum of $249.28 together with interest thereon as provided by law, and the costs of this suit.

Ferguson & Ferguson

Attorneys for Plaintiff.

COPY

X-6132-b

IN THE DISTRICT COURT OF IOWA, IN AND FOR THE COUNTY OF PAGE

AUGUST TERM, A. D. 1928.

Jennie E. Bull, Plaintiff, vs. The Federal Reserve Bank of Chicago, Illinois, Defendant.	ORIGINAL NOTICE.

TO SAID DEFENDANT:

You are hereby notified that there is now on file in the office of the Clerk of the District Court of Page County, Iowa, the petition of the plaintiff wherein she prays the court for a judgment against you for the sum of $249.28, with interest thereon at six per cent. per annum for the wrongful conversion of Liberty Bonds of the third issue belonging to this plaintiff, the same being a balance on the par value of said bonds, less credits by dividends to the extent of twenty per cent. which said bonds were wrongfully converted by you on or about the 29th day of July, 1926, and the proceeds and benefits thereof kept and retained by you. For further particulars, you are referred to the petition on file.

And now, unless you do appear thereto and defend by noon of the second day of the ensuing August term of the said District Court of Page County, Iowa, for the year 1928, which will convene in the court room in the court house in Clarinda, Page County, Iowa, on the 28th day of August, 1928, your default will be taken and judgment rendered against you and in favor of this plaintiff as prayed for in said petition.

(S) Ferguson & Ferguson,
Attorneys for Plaintiff.

COPY X-6132-c

FEDERAL RESERVE BANK
OF RICHMOND

September 12, 1928.

Federal Reserve Board,
Washington, D. C.

Attention: Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I have your letter of September 11th with respect to the suits brought against the Federal Reserve Bank of Chicago in the State courts of Iowa.

As you say, I have had several cases brought against the Federal Reserve Bank of Richmond in the State courts of North Carolina when we had no branch in that state. In all of these cases service of process was made on a director of the Federal Reserve Bank of Richmond resident in the state. My investigation of the authorities led me to the conclusion that there are always two elements involved in the validity of the service of process in such cases: (1) The actual or constructive presence of the corporation in the state; (2) The authority of the officer or agent upon whom the service is actually made.

If a corporation is present within a state so that it is subject to process at all, there can be no doubt that a director is a representative of the corporation upon whom process may be served if it is so provided by state law. Consequently, in the cases which I had the only question involved was whether or not the Federal Reserve Bank of Richmond should be regarded as resident or doing business in the State of North Carolina.

In two of the cases in which this question was raised; that is to say, in Malloy v. Federal Reserve Bank of Richmond and in Craven Chemical Company v. Federal Reserve Bank of Richmond, I used the point as a "trading point" and abandoned it in consideration of the consent of co-defendants to a removal to the Federal court.

The point was also raised in the two cases mentioned by you and in another small case called Carolina Power Company v. Federal Reserve Bank of Richmond. The last mentioned case involved a suit for the amount of a check which we had sent to a non-member bank which failed before we received payment. The lower court decided to sustain the service of process, but the judge remarked from the bench that he felt great uncertainty. The amount in this case was small and the failed bank paid large dividends. While the case was pending, there were several decisions under the amended circulars of the Federal Reserve banks holding that the banks were expressly authorized to accept exchange drafts, and the counsel for the plaintiffs, after reading these decisions, took a non-suit.

In the case brought by Page and Company the lower court also decided against me, the judge again expressing great doubt. As you know, the jury rendered a verdict in our favor on the merits in that case, but the verdict was set aside. The case is still pending, and recently my opponents notified me that they hoped to try it during the coming fall.

In the case of C. G. Morris the lower court also decided against me on this point, but when the case was tried on the merits last May, the court gave a peremptory instruction in my favor on the merits. As you will recall, the facts in this case were identical with those set out in Craven Chemical Company v. Cleve..

In arguing the cases mentioned above, I collected some authorities, and I am sending Mr. Powell a memorandum of the cases upon which I relied and of some of those upon which my opponents relied.

I agree with you and Mr. Powell in thinking that the question is not of sufficient importance to make a "System matter" of a case involving it. It might be desirable to obtain a definite decision upon the point, but I have always felt that it was not certain whether it would be more desirable to have the point decided against us or in our favor.

If it be decided against us, it will subject us to some inconvenience and expense, but this inconvenience and expense will not be large when compared with the total expense of Federal Reserve banks, and I have always felt that it is rather "good politics" for the Federal Reserve banks to take the position that they are present in all parts of their district and can be sued as any other person in any state of their district. The fact that we can be sued means that if any person has a small claim against us he will be able to assert it in the courts of his own state, but if a person in South Carolina could not sue a Federal Reserve bank except in Richmond, then for all practical purposes, he could not assert a small claim at all, for the expense in prosecuting a claim in Richmond would exceed the amount involved, and if we refused such a claim, it would leave the claimant with a feeling that the Federal Reserve bank was a remote and arbitrary institution which ignored his rights, relying upon its practical exemption from process in his state. It is true, of course, that if we can be sued in every state, and perhaps in every county of every state, we are theoretically subject to "hold-up suits" on small claims; but, if we adopt the policy of defending to the limit every claim which we do not consider just, we will not be long vexed with such suits as I mentioned.

On the other hand, if the courts decide that the suit in person cannot be brought against us in every state, then it will follow that in most states our property will be subject to attachment as the property of a non-resident, so that a plaintiff, who knows our methods of doing business, or is willing to take sufficient trouble to discover property belonging to us within the state, could secure jurisdiction by attachment;

and if our property is attached as that of a non-resident, in most states we would not be entitled to the protection of a statute of limitations, which we would have if it were decided that we were doing business in the state and subject to the personal service of process.

While the point remains doubtful, I have found that the uncertainty is of itself an advantage, for, as you see above, we can raise the point in every case and frequently embarrass our opponents by showing them that they may be compelled to go to the Supreme Court of the United States before they secure a final decision.

I am sending a copy of this letter to Mr. Powell and along with it the memorandum of authorities which I mentioned.

Very truly yours,

(S) M. G. Wallace,
Counsel.

MGW L

Copy to -
Mr. Chas. L. Powell, Counsel,
Federal Reserve Bank of Chicago.