COPY

X-6595-a

FEDERAL RESERVE BANK

OF ATLANTA

March 13, 1930.

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

Dear Mr. Wyatt:

I thank you for your telegram, advising that the Supreme Court has sustained the Circuit Court of Appeals in the case of Early, Receiver, v. Federal Reserve Bank of Richmond. Needless to say, I was disappointed as well as surprised. I subscribe to the U. S. Daily and will, of course, look forward with interest to the issue of March 13, in which you state that the opinion will be published in full.

Even though the decision is based upon the provisions of the Richmond Bank's check collection circular and no reference is made to Regulation J, I am afraid that its consequences will be far reaching.

I take the liberty of suggesting that you consider the advisability of calling a conference of counsel as soon as convenient. I feel sure that in Atlanta we will be in doubt as to the safe and proper procedure to be followed in the future.

With personal regards, I am

Very truly yours,

(Signed) Robt. S. Parker.

RSP/w.

COPY

X-6595-b 470

March 13, 1930.

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

Dear Mr. Wallase :

Please accept my sincere congratulations upon your victory in the Early case.

I congratulate you because you have won a victory in a case in which nearly everybody, including myself, was against you and hoping that you would lose. However, to be entirely frank, I must say that I can not be very enthusiastic about your victory because I fear its consequences.

Mr. Justice Holmes did exactly what I feared, and said in the opinion that :

> "The language of the circular pointed to the depositor's interest- for the cash letter that was to be charged was merely another name for the checks that the letter contained. The existence of the power must be assumed to have been one of the considerations inducing the owner of the check to give the Richmond bank authority to send it directly to the drawee. All parties must be taken to have understood that in the event that happened it was the duty of the Richmond bank when it knew the facts to charge the reserve account of the South Carolina bank, and if so the account should be charged."

If within the period of the statute of limitations, the Federal Reserve Bank of Richmond, or any other Federal reserve bank which reserved the right to charge checks to the reserve balance at any time, has failed to do so, even after the insolvency of the drawee bank, I should dislike very much to have to defend such Federal reserve bank in a suit for the amount of such checks on the ground that it was negligent in not exercising its right to charge them to the drawee bank's account. Fortunately, Mr. Justice Holmes made no reference to Regulation J, but based his decision entirely upon the terms of your check collection circular. In view of these facts, I hope that Federal reserve banks which did not reserve the right to charge checks to the reserve account at any time will be able to distinguish this case; but I fear that they will have suits against them nevertheless, just as they had many suits growing out of the Supreme Court's decision in the Malloy case. Let us hope that my fears are unjustified and that no such unfortunate results will follow.

Very truly yours,

Walter Wyatt,
General Counsel.

WW OMC

COPY

X-6595-c

FEDERAL RESERVE BANK

OF ATLANTA

March 15, 1930.

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

Dear Mr. Wyatt:

I have read with care the decision of the Supreme Court in the Early case as reported in the U. S. Daily. The decision is much less harmful than I had anticipated. As stated in your wire, the opinion is predicated solely upon the provisions of the Check Collection Circular of the Richmond bank and the effect of Regulation J was not considered.

Much of the decision may be helpful. For example, the statement that "all parties must be taken to have dealt upon the terms of the Circular" and "the latter"(Richmond bank) "received the checks for collection with responsibility only for its own negligence."

Of course the decision brings to the fore the much mooted question as to whether or not a Federal Reserve Bank, having the power under Regulation J to charge reserve accounts at any time, etc., would be liable for a failure to make such reservation in its check collection circular. Fortunately, however, the Regulation has itself been changed and the danger of suits based upon causes of action antedating the effective date of the revised regulation is rapidly diminishing. The court makes it perfectly plain that, in its opinion, it was the "duty of the Richmond Bank, when it knew the facts, to charge the reserve account of the South Carolina Bank." A related question is whether it might not have been the duty of other Federal Reserve Banks to have made similar reservations for the protection of "depositors' interests".

While the Federal Reserve Bank of Atlanta in its old Collection Circular reserved the right to charge reserve accounts, such right was so limited

Mr. Walter Wyatt,

as to be applicable only to cash letters for which remittances had not been received in accordance with the time schedule.

Since reading the decision the necessity for a conference of counsel on this particular matter is not so apparent as appeared when the news of the decision first reached me. I do think, however, that careful consideration should be given the further revision of Regulation J in accordance with the suggestions which have been submitted. Personally, I believe that a revision along the lines mapped out at the last conference would be advisable. Whether or not strictly necessary from a legal standpoint, such further change might prevent future litigation.

With regards, I am

Very truly yours,

(Signed) Robt. S. Parker.

RSP/w.

COPY

X-6595-d

FEDERAL RESERVE BANK

OF RICHMOND

March 15, 1930.

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I received your letter of March 13th and appreciate highly your congratulations. I know that you cannot be enthusiastic about the opinion of the court, but after reading it I am fully persuaded that you were right when you told me that Justice Holmes was perhaps the ablest member of the court. I sincerely hope that none of the other Federal Reserve banks will find themselves in difficulties because of this decision, but I think you are right in saying that it would be difficult to defend a Federal Reserve bank which had reserved in its circular a right to charge cash letters to the reserve account but had not make this charge after the member bank failed.

With kindest regards, I am,

Very truly yours,

(Signed) M. G. Wallace,
Counsel.

MGW L

COPY X-6595-e

FEDERAL RESERVE BANK

OF RICHMOND

March 18, 1930.

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I have your letter of March 17th enclosing a copy of the decision of the Supreme Court of the United States in the case of Early, Receiver, v. Federal Reserve Bank of Richmond, and I notice your request for my views as to the advisability of calling a conference of the Counsel of all Federal Reserve banks at an early date.

I have no fixed engagements for the next six weeks except a case in Charlotte, N. C,, on April 17th. The case may consume several days so I should not like to make an engagement between April 15th and April 20th. Therefore, any time fixed for a conference will be agreeable to me.

I realize that my view of the present situation is so different from that of Mr. Parker and others that my opinions as to the advisability of a conference are of little value, but I cannot see that anything can be accomplished by a conference of Counsel at the present time. When we held our last conference, we had the opinion of the Circuit Court of Appeals before us. The opinion of the Supreme Court is based upon substantially similar grounds. The language of Mr. Justice Holmes, to which you allude in your letter, is no stronger than that used by Judge Parker in the Circuit Court of Appeals. The latter says:

> "The owners had the right to demand that they (the checks) be charged against the drawee's account and that the balance in that account be applied by the Federal Reserve Bank to their payment."

If the owners had the right to demand that the checks be charged to the reserve balance, then obviously it was a duty of the Federal Reserve Bank to make the charge. It therefore seems to me that Mr. Justice Holmes and Judge Parker have said in substance the same thing.

At our last conference I believe we assumed as a basis of proceeding that the opinion of the Circuit Court of Appeals was for the time being the law and our chief discussion was as to the policy of continuing to employ contracts or circulars which might be construed as the Circuit Court of Appeals construed the circular of this bank. It therefore seems to me that any conference held at present could result only in a reargument of questions of policy which could more appropriately be considered by the Governors.

I would suggest, therefore, that if a conference of Counsel is called, it should be called to meet either at the same time or after the next

conference of Governors.

With best personal regards, I remain,

Very truly yours,

(Signed) M. G. Wallace,
Counsel.

MGW L

COPY X-6595-f

FEDERAL RESERVE BANK

OF

ST. LOUIS March 18, 1930.

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

RE:- EARLY vs. F.R.B. OF RICHMOND

Dear Mr. Wyatt:

I have just received your letter of March 17th enclosing copy of the opinion in the EARLY case, and, as requested, am hurriedly giving you my first impression of the effect of the opinion on future litigation.

The Court had before it the provisions found in Paragraph 4 of the Sec. V of Regulation 'J' authorizing:

> "Any Reserve bank to reserve the right in its Check Collection Circular to charge such items to the reserve or clearing account of any such bank, at any time, when in any particular case the Federal Reserve Bank deemed it necessary to do so;" and

the Richmond circular, in which this right was expressly reserved. Further, while it is not referred to in the opinion, the Richmond bank (if I am correctly informed) was using the schedule date 'charge account method' exclusively.

I have no criticism to offer to the opinion based on what the Court had before it. I believe the reasoning is logical, and the opinion sound.

It is unfortunate that the Court had to lay such special stress on the duty of the Richmond bank to make the charge; for, while I think it clear, from the context of the paragraph in which the word duty is used, the Court had in mind the right and duty under the Richmond circular. Nevertheless, it might be plausibly argued that since the Regulation gives to the Reserve Bank the authority to reserve this right in its check collection circular, it is the duty of the bank to charge the item against the reserve account irrespective of whether it has reserved the right to do so in its circular letter.

Some Court, adopting this suggestion, might hold that since the Regulation gave the authority to a Federal Reserve bank to reserve this right, it would be liable for any loss occasioned by its failure to reserve the right in its circular letter, and, to charge the reserve account when occasion demanded it.

I think all of us had this possibility in mind when the changes in Regulation 'J' were recommended at our last Conference, later approved by the Governors' Conference, and, adopted by the Federal Reserve Board. (See Board letter X-6389, dated Oct. 16, 1929, and the indefinite postponment of these amendments, Mr. McClelland's telegram of Dec. 17, 1929.)

We have always operated under the remittance plan instead of the charge account plan, nevertheless, after the Early suit was brought, we changed our Circular letter by eliminating this reservation.

I believe with the suggested changes in the Regulation, and, the elimination of this reservation from the circulars, the EARLY opinion will not give the System any trouble. Nevertheless, the question is one of such ever

present concern, I believe it would be well worth while to go over this question in Conference of Counsel to determine whether, in the light of the Early opinion, we have safe-guarded the banks in every known way.

The forgoing comments represent my views after a very hasty study of the opinion.

With kindest regards,

Very truly yours,

(Signed) Jas. G. Mc Conkey,
Counsel.

C O P Y

X-6595-g

478

LOCKE, LOCKE, STROUD & RANDOLPH,
American Exchange Building,
DALLAS, TEXAS.

March 19, 1930.

Federal Reserve Board,
Washington, D. C.

Attention:. Walter Wyatt, General Counsel.

Gentlemen:

We have your letter of March 17, 1930, enclosing a copy of opinion in the case of Federal Reserve Bank of Richmond v. Early.

As we view the matter, the opinion rests entirely upon the contractural provision of the portion of the circular of the Federal Reserve Bank of Richmond quoted in the opinion and, in our minds, we cannot help but emphasize the statement of the supreme court immediately preceding this quoted provision as follows:

> "The relations between the two banks were fixed by the following terms of a circular of the Richmond bank which were authorized by law and agreed to by the other."

Under these circumstances, to our minds, the opinion becomes a fact decision and we are inclined to believe will possibly result in more good than harm to the system in that it upholds the rights of Federal reserve banks to effect contractural relations of this character.

Nevertheless, the language employed by Mr. Justice Holmes referred to in the second paragraph of your letter is not unlikely to cause a great deal of litigation and, therefore, we agree with Mr. Parker that some uniform and concerted action should be taken to reduce litigation arising from this case to a minimum. Such action, we think, can best be had as a result of a conference as suggested by Mr. Parker.

Very truly yours,

(Signed) Locke Locke Stroud & Randolph.

EBS:m

C O P Y

X-6595-h

1 470

LOCKE, LOCKE, STROUD & RANDOLPH,
American Exchange Building,
DALLAS, TEXAS.

April 9, 1930.

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

Dear Mr. Wyatt:

We hand you herewith copy of a letter addressed to the Federal Reserve Bank of Dallas by the firm of Breed, Abbott and Morgan of New York, together with a copy of our reply thereto. This is one of several similar letters which we have received since the failure of The Texas National Bank of Ft. Worth. Likewise, since the decision in the Early case, similar questions are developing in connection with each failure.

The Texas National Bank of Ft. Worth is indebted to the Federal Reserve Bank of Dallas for a considerable sum. The receiver is ready to retire the indebtedness, and in the event he does so he will of course wish to offset all sums held by the Federal Reserve Bank of Dallas, including reserve balance (now containing deferred items), capital stock refund and collections on collateral. The question which presents itself is whether or not, under the circumstances, a Federal Reserve bank should hold sufficient money to protect itself against any possible liability on the cash letters involved.

In view of the fact that these questions are arising so frequently and involve, at least in this instance, rather large sums, we are calling the matter to your attention and renewing the suggestion made some time ago by Mr. Parker that a conference be called to consider these questions. We believe that a conference should be a joint conference, with a representative of the Comptroller's office, and with a view of attempting to reach some amicable agreement on just how these matters should be handled.

While we strongly recommend that a full conference of all counsel be called, we think, if the board should not be willing to do this, it would be well to call a conference of counsel of some five or six Federal Reserve banks, which we would say should at least include Dallas, Kansas City,

Atlanta and San Francisco (we suggest these banks because we believe the question is arising more frequently in these districts, but, as stated, we feel that all counsel should be included in the conference if possible), for the purpose of conferring about these matters and possibly arranging some mutually satisfactory solution of the matter with the office of the Comptroller of the Currency.

Yours very truly,

(Signed) Locke Locke Stroud & Randolph.

EBS-h
encls.

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481

BREED, ABBOTT & MORGAN

15 Broad Street

New York

March 29, 1930.

Federal Reserve Bank of Dallas,
Dallas,
Texas.

re Receivership of Texas National Bank of Fort Worth

Gentlemen:

Our client, M. C. D. Borden & Sons, Inc., received from the Monnig Dry Goods Company, one of its customers, a check dated January 24, 1930 for the amount of $1204.09, drawn by them on the Texas National Bank of Fort Worth.

This check was deposited in the Bank of Manhattan Trust Company on January 27, 1930 and then forwarded by them in the usual course of business. It is reported to have reached your bank, where on January 30th it was forwarded by you in your regular cash letter to the Texas National Bank of Fort Worth, by whom it was received on January 31, 1930. The Texas National Bank of Fort Worth thereupon appears to have charged it to the account of the Monnig Dry Goods Company and then to have forwarded to you its draft drawn on yourselves in the sum of $45,931.26, which included said sum of $1204.09. This draft we have been told was not paid by your bank due to the intervening receivership of the Texas National Bank of Fort Worth.

We are interested in determining whether our client, M. C. D. Borden & Sons, Inc., or its customer the Monnig Dry Goods Company should stand the loss and prove its claim as a general creditor against the Texas National Bank of Fort Worth. In order to do this it is necessary for us to ascertain certain facts in regard to the general practice used in your locality in transmitting and collecting checks. We should appreciate it greatly if you would be so kind to help us in this matter and let us know the following:

1. Whether any agreement exists between your bank and the Texas National Bank of Fort Worth with respect to such collections.

2. Whether this agreement is in the nature of a circular of your bank which was authorized by law and agreed to by the Texas National Bank of Fort Worth to the effect that:

> "Checks received by us drawn on our member banks will be forwarded in cash letters direct to such banks and each member bank will be required either to remit therefor in immediately available funds or to provide funds available to us to meet such cash letters within the agreed transit time to and from the member bank. Therefore, the amount of any cash letter to a member bank is chargeable against available funds in the reserve account of such member at the expiration of such transit time, which date will be shown on each cash letter. The right is reserved, however, to charge a cash letter to the reserve account of a member bank at any time when in any particular case we deem it necessary to do so."

(The above wording is taken from the recent case, No. 12,301, of Early v. Federal Reserve Bank of Richmond, decided by the Supreme Court of the United States on March 12, 1930).

3. What action, if any, has been taken since the receivership by your bank in respect to any funds or reserve balance held by you for the account of the Texas National Bank of Fort Worth.

4. Whether the balance of the Texas National Bank of Fort Worth in your hands at the time of the receivership was greater than the amount of their said draft for $45,931.26.

5. What disposition was made by your bank in regard to this draft for $45,931.26 drawn on yourselves by the Texas National Bank of Fort Worth.

We thank you for any information you can give us in this matter.

Yours very truly,

(Signed) Breed, Abbott & Morgan.

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X-6595-h-2

483

April 9, 1930.

Messrs. Breed, Abbott & Morgan,
15 Broad Street,
New York City.

Gentlemen:

Your letter of March 29, 1930, address to the Federal Reserve Bank of Dallas, has been referred to us for reply.

In response to question No. 1 propounded in your letter, we are enclosing for your information a copy of the current circular on transit operations. This circular contains the only agreement of any kind between the Federal Reserve Bank of Dallas and The Texas National Bank of Ft. Worth concerning transit operations.

The second question propounded in your letter is perhaps answered in the circular which we enclose. However, you will observe that the Federal Reserve Bank of Dallas has no such provision as that referred to in the case of Early v. Federal Reserve Bank of Richmond. In this connection, we might advise that the Federal Reserve Bank of Dallas has never followed the plan of collection which was in use by the Federal Reserve Bank of Richmond at the time of the development of the facts in the Early case. The Federal Reserve Bank of Dallas has for many years followed the plan which is generally outlined in the circular enclosed. The Federal Reserve Bank of Richmond and the Federal Reserve Bank of Philadelphia are, in so far as we know, the only two banks of the twelve Federal Reserve banks that ever followed the plan involved in the Early case, and we understand those two banks have now abandoned that plan.

We think it improper to give you the information called for in the third question of your letter, inasmuch as a full reply would divulge information of a more or less confidential nature between Federal Reserve Bank of Dallas and the receiver of The Texas National Bank of Ft. Worth. We have no objections whatever to your having the information, and if the receiver wishes to give it to you, it will be agreeable in so far as the Federal Reserve Bank of Dallas is concerned.

We doubt the propriety of giving you the information called for in the fourth paragraph of your letter, but we can say to you, generally, that the balance in the reserve account of The Texas National Bank of Ft. Worth at the time it suspended business is now the question of dispute between the Federal Reserve Bank of Dallas and the receiver of The Texas National Bank of Ft. Worth. The latter claims a balance in said account of

approximately $12,000; the Federal Reserve Bank of Dallas, on the other hand, on account of circumstances in which you are not interested, contends that said account is overdrawn in the sum of approximately $38,000. In addition to the reserve account, The Texas National Bank of Ft. Worth had a deferred account, consisting of checks and drafts in process of collection, containing sums sufficient, irrespective of the contentions of the receiver of The Texas National Bank of Ft. Worth or the Federal Reserve Bank of Dallas, to have made a sum in excess of $46,000. The amounts of the deferred account, however, could not have been withdrawn by The Texas National Bank of Ft. Worth without the consent of the Federal Reserve Bank of Dallas at the time the Ft. Worth bank suspended business.

In response to the inquiry contained in the fifth question of your letter, we may advise that the checks for which the $45,931.26 draft was drawn were forwarded to The Texas National Bank of Ft. Worth on the night of January 30, 1930. Under the plan of collection in force and followed by the Federal Reserve Bank of Dallas, remittance for these items was due February 1, 1930. The Texas National Bank of Ft. Worth was open until the close of business on January 31, 1930, and was closed by its board of directors either on the night of January 31, 1930, or in the early morning of February 1, 1930. In any event, The Texas National Bank of Ft. Worth did not open for business on February 1, 1930, and the Federal Reserve Bank of Dallas was advised officially that the bank was closed immediately following the action of the board of directors in ordering its close. The draft for $45,931.26 (if such was the amount) was not received by the Federal Reserve Bank of Dallas until February 1, 1930, after the Federal Reserve Bank of Dallas had been officially advised that The Texas National Bank of Ft. Worth was closed, and, accordingly, the Federal Reserve Bank of Dallas could not pay the draft, and thereupon immediately charged back to its endorsers the items forwarded on January 30, 1930.

We hope that the foregoing information will be sufficient for your purposes. We do not care to conceal any information whatever. The only reason that we are not giving you more detailed information is because of the fact that we feel a confidential relationship to exist between the Federal Reserve Bank of Dallas and its member banks, or, in the event the member bank is closed, the receiver thereof.

The Federal Reserve Bank of Dallas, since about 1921, has followed the plan of forwarding items for collection and remittance, and while the details of the circulars have been changed from time to time, the Federal Reserve Bank of Dallas has never at any time followed the plan of charging checks sent for collection to the accounts of the drawee banks, as was the practice of the Federal Reserve Bank of Richmond until a year or two ago. A number of cases have arisen with Federal Reserve banks following a plan identically similar to the plan of collection followed by the Federal Reserve Bank of Dallas, which no doubt you have seen in your investigation.

If we have not clearly answered your questions, or in the event you desire further information which we can properly give you, please advise.

Yours very truly,

EBS-h
encls.

COPY

X-6595-i

486

LOCKE, LOCKE, STROUD & RANDOLPH,
American Exchange Building,
DALLAS, TEXAS.

April 25, 1930.

Federal Reserve Board,
Washington, D. C.

ATTENTION MR. WALTER WYATT, GENERAL COUNSEL.

Dear Mr. Wyatt:

The indebtedness of the Texas National Bank of Fort Worth to the Federal Reserve Bank of Dallas is rapidly being liquidated to the point where the Federal Reserve Bank can entirely liquidate the debt by making application of the reserve balance.

The Texas National Bank of Fort Worth failed to open on the morning of February 1st. January 30th the Federal Reserve Bank sent a cash letter aggregating approximately $49,000.00, remittance for which was due on the morning of February 1st.

As we have previously advised you, several claims of liability have been asserted against the Federal Reserve Bank of Dallas on the strength of the case of Federal Reserve Bank of Richmond vs. Early.

Inasmuch as the reserve balance of the Texas National Bank of Fort Worth with the Federal Reserve Bank of Dallas amounts to approximately $90,000.00, we are in doubt as to whether we should apply against the rediscount liability the whole of the amount or only that portion in excess of $49,000.00.

We have not heard from you with reference to the conference which Mr. Parker suggested sometime ago and which we likewise suggested. We would appreciate being advised what you propose to do in this respect, and in the event you do not comtemplate calling a conference within the immediate future we would appreciate your letting us know what other Federal Reserve Banks have done under similar circumstances.

Very truly yours,

Locke Locke Stroud & Randolph.

EBS:g

C O P Y X-6595-i-1 487

TELEGRAM

FEDERAL RESERVE SYSTEM
(LEASED WIRE SERVICE)

RECEIVED AT WASHINGTON, D. C.

243 gb

Dallas Apl 29 245 p.
Wyatt

Washington

It is my thought agreement could be obtained with comptrollers office permitting reserve banks to withhold amount of cash letters involved from the reserve balance a reasonable time to determine whether or not litigation will ensue however believe this is a matter which should receive consideration by various reserve banks before any attempt made to secure such agreement.

Stroud

411p

C O P Y

X-6595-1-2 488

April 29, 1930.

Stroud,
Dallas.

Your letter April 25 urging conference of counsel re Early decision. Action on matter has been delayed here owing to pressure of other matters. Will bring matter to Board's attention at first opportunity and wire you result. There is quite a difference of opinion among counsel as to advisability of holding conference. Since it has never reserved right to charge reserve account, see no reason why your bank should be concerned over decision in Early case.

Wyatt

WW sad