

FEDERAL RESERVE BANK
OF RICHMOND

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July 29, 1930

Federal Reserve Board,
Washington, D.C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

If you have not seen the case of Hofheimer v. Seaboard and Citizens National Bank of Norfolk, decided by the Supreme Court of Virginia June 12, 1930, and reported in 163 S. E. Page 657, you will find the opinion interesting.

One Hofheimer executed a will nominating the Citizens Bank of Norfolk as his executor. This bank was a state bank and trust company. Later it merged or consolidated with the Seaboard National Bank of Norfolk in the manner prescribed by the Act of Congress. After the consolidation Hofheimer died, and the consolidated bank, known as the Seaboard and Citizens National Bank of Norfolk, offered the will for probate and moved to qualify as executor. The lower court permitted the bank to qualify along with an individual who was named as co-executor. An appeal was taken and so much of the order as permitted the bank to qualify was reversed.

The decision, of course, rests largely upon ex parte Worchester County National Bank, 279 U. S. 347, but our court holds that the Virginia statutes by implication sanction a consolidation between a state bank and national bank and that the powers of the consolidated bank are controlled by the Federal statutes. The court appears to assume that if the testator had died and the state bank had qualified before the consolidation, the national bank under the Federal statute would have succeeded to the powers of the state bank as executor, but distinguishes between the position of an executor and the position of one who has merely been nominated as executor in a will which is wholly without effect during the lifetime of the testator. In other words, the court holds that the testator nominated as executor a person who ceased to exist before the will became operative, and the mere designation was not a legal right which passed to the successor corporation.

The Virginia case decides only the rather close point as to the construction of the National Bank Act. Its chief interest lies in the fact that the court seems to assume that in the Worchester County National Bank case the right of the national bank to continue to administer the estate was undisputed and the only question was whether or not it would be compelled to go through the formality of a requalification. The decision, however, is also interesting if any attempt is made to amend the national banking laws so as to counteract the Worchester County National Bank decision. If any such amendment is made, it might be advisable to cover the distinction which

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the court has observed between a succession to an existing power and the succession to a mere expectancy based upon the designation of an executor in the will of one who is still alive.

I have not enclosed a copy of the opinion because I am under the impression that you have the South Eastern Reporter in your library. If for any reason the opinion is not available to you, I can easily send you a copy.

Very truly yours,

(Signed)
M. G. Wallace,
Counsel.

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