

February 10, 1931.

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

My dear Mr. Wallace:

Although I have already communicated with you by wire, I desire formally to acknowledge receipt of your letters of January 29, February 2, February 5 and February 6, with reference to the Attmore case and the Lucas case and to thank you for your courtesy in keeping me so fully informed of all important developments in these cases. I also wish to congratulate you upon your success in having the affirmative defenses stricken from the answer in the Attmore case.

In view of the court's action in striking the affirmative defenses in the Attmore case, I assume that it will also strike the affirmative defenses set up in the answers in several similar suits now pending.

While the granting of your motion to strike in the Attmore case deprives that case of all System importance, unless the defendant appeals, it is clear that the filing of the Lucas suit, which raises most of the questions raised by the affirmative defenses in the Attmore case and also raises additional questions of importance to the Federal Reserve System, justifies our foresight in deciding to handle the Attmore case and related litigation as a System matter and in retaining Mr. Baker to represent all Federal reserve banks jointly in such litigation. I personally believe that this is going to develop into some of the most important litigation we have ever had and that it will settle several important questions about which there has been a difference of opinion for many years, the principal question being the right of Federal reserve banks to take marginal collateral.

The first question to be decided, of course, is whether the Lucas case should be removed to the Federal Court. On that question, as I wired you on February 7, I feel that, notwithstanding the views of the Office of the Comptroller of the Currency with reference to local conditions, the arguments in favor of removal contained in your letter to Mr. Baker are practically conclusive. We certainly cannot afford to try this case before a jury if we can avoid it; and I believe we can avoid it by removing it to the Federal court, because I think it clearly is removable to the Federal court and will be treated there as a suit of equity.

Had it not been for the views of the Comptroller's Office about local conditions, I would not have hesitated for a moment to recommend that you remove the case to the Federal court. In view of the feeling of Messrs. Awalt and Barse about the general situation in that district,

and in view of the fact that the receiver will ultimately have to be made a party in the case and probably will have the chief pecuniary interest in the outcome of the case, however, I hesitated to make such a recommendation without first consulting the representatives of the Comptroller of the Currency. When I talked to them, Messrs. Awalt and Barse unhesitatingly agreed that this particular case undoubtedly should be removed to the Federal court, in order to avoid the necessity of trying it before a jury. Mr. Jackson having already indicated his concurrence in your views on this question, I accordingly wired you on February 7 suggesting that you act in accordance with your own judgment and institute removal proceedings without delay. While it is unfortunate that we cannot have Mr. Baker's views on the question whether this case should be removed, I have no doubt that he will feel that we have reached the right conclusion on that point.

It seems to me that the next question to be considered in connection with the Lucas case is whether to demur, answer or move to dismiss after the case has been removed to the Federal court. While I have no mature judgment on this question, I am inclined to agree with you that we should move to dismiss for failure to join the receiver and liquidating agent. I have not completed my analysis of the complaint; but I feel pretty confident that it is not demurrable, and there would seem to be no use in filing an answer and going to trial on the merits until all necessary parties have been joined in the suit. I believe however, that, after the receiver and liquidating agent have been made parties to the suit, it will be necessary to file an answer and go to trial on the merits; and that, therefore, we should be thinking about the kind of answer to be filed.

If the case is removed to the Federal court, Mr. Baker will return in time to be consulted about the further proceedings in the case; and I believe we ought to have a conference as soon as possible after his return. If this meets with your approval, I suggest that you request Mr. Jackson to take the matter up with Mr. Baker as soon as he returns and endeavor to arrange an early conference.

In your letter of February 5 you stated that you had not retained an associate in New Bern to assist in the Lucas litigation and inquired whether I thought that Mr. Baker would prefer to have you retain an associate of his who I had told you was somewhere in North Carolina. As I wired you on February 7, I am sure that Mr. Baker has no preference as to the selection of local counsel and would prefer that you use your own judgment on that question. The associate I spoke to you about was Mr. Jackson, who was in North Carolina on a vacation. Mr. Baker was anxious for you to get acquainted with him; but the next time he heard from Mr. Jackson he had gone to Florida.

It was very thoughtful of you to forward to me copies of the newspaper clippings with reference to the Lucas case, and I appreciate your kindness. I note with interest that both papers recognized the fact that this case is one of national importance and probably will

go to the Supreme Court of the United States. The newspaper accounts have all the earmarks of being based upon press statements issued by counsel for the complainants. I am glad to note that they are dignified, fair statements and do not indicate any inclination to try this case in the newspapers.

When I have completed my study of the complaint, I shall write you further about the Lucas case; and I hope that you will not hesitate to call upon me for any assistance which I or my associates in this office can render.

With kindest personal regards, and all best wishes, I
am

Cordially yours,

Walter Wyatt,
General Counsel

WW-sad

(Note: Mr. Jackson is one of Mr. Baker's partners in Cleveland.)

C O P Y

257

X-6817-a

FEDERAL RESERVE BANK
OF RICHMOND

January 29, 1931

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I enclose a copy of my letter to Mr. Newton Baker and a copy of the complaint in the action of Lucas' Administrators v. Federal Reserve Bank of Richmond. I could not send you a copy of the order striking out the answer in the Attmore case as our Stenographic Department is somewhat rushed and the order is rather long. The court, however, struck out all allegations except those which amounted merely to a denial of our allegations and those which set up the existence of a deposit balance due by the failed bank to the defendant. If the trial judge is consistent in his subsequent rulings, his action in striking out the answer would mean that he intended to admit no evidence except evidence of the making of the note and whether or not it was transferred to us for value and before maturity, and, of course, whether or not the defendant had a deposit balance.

I heard with much regret that you had been confined to your house with grippe. I hope that you are now improving.

Very truly yours,

(Signed) M. G. Wallace

M. G. Wallace,
Counsel.

MGW R

C O P Y

X-6817-b

FEDERAL RESERVE BANK OF RICHMOND

January 29, 1931

Honorable Newton D. Baker,
c/o Baker, Hostetler and Sidlo,
Union Trust Building,
Cleveland, O.

My dear Mr. Baker:

I am very pleased to advise you that Judge Small struck out practically the entire affirmative defense in the case of Federal Reserve Bank of Richmond v. G. S. Attmore, trading as Neuse Motor Company. I enclose a copy of the court's order. You will notice that the court has stricken out practically all of the answer except so much of it as amounts only to a denial of our title to the note and an allegation of the deposit balance which the defendant had in the failed bank.

The court also denied the motion to make the Receiver a party.

Apparently by inadvertence the court failed to strike out a sentence in Paragraph 14 which contained a prayer that the note be cancelled and delivered to the Receiver. It was obviously inconsistent to leave this particular sentence in the answer after denying the motion to make the Receiver a party.

Attorneys for the defendant noted an exception to the action of the court and stated that they would take an appeal. My associate informs me that the appeal if taken promptly would be on the docket for the February term of the Supreme Court of North Carolina, but he states that he does not think that the attorneys for the defendant will take an appeal.

I am somewhat at a loss to interpret the action of the court in the light of its former order allowing leave to the defendants to file an amended answer and permitting the Receiver to be made a party to such an answer. However, the action of the court as far as it goes indicates a disposition to sustain our contentions fully.

I regret to say that Judge Small, who entered this order, goes to another judicial district and is succeeded in order of rotation by a Judge Devin. I have heard that Judge Devin is a competent judge, but I have never had any cases before him.

Immediately after receiving notice of Judge Small's decision we were served with process and a bill of complaint, a copy of which is enclosed, in the case of W. J. Lucas' Administrators v. Federal Reserve Bank of Richmond. This is the suit which we were informed that the attorneys who represented Mr. Attmore and many other defendants were contemplating bringing. You will notice that the bill is in the nature of a creditors' bill brought by the plaintiff as

FEDERAL RESERVE BANK OF RICHMOND

Honorable Newton D. Baker,
c/o Baker, Hostetler and Sidlo,
Union Trust Building,
Cleveland, O.

-2-

January 29, 1931

representative of himself and other creditors, and the allegations are sweeping in their nature. The Receiver of the First National Bank of New Bern and the Liquidating Agent of the suspended National Bank of New Bern are not made parties defendant to this suit, and in my opinion, the omission of these parties is a fatal defect, as the plaintiff seeks to enforce an equitable right in a case in which the legal right of action, if any, is in the Receivers of the failed banks.

I have not had an opportunity to study the bill of complaint with care as I was anxious to have it copied in order to place copies in your hands and in those of Mr. Wyatt. The first question to be determined is whether or not we shall remove this case to a federal court. It seems to me that the case is clearly removable because the entire cause of action depends upon the right of a Federal reserve bank to accept as marginal or surplus collateral paper which is not eligible for rediscount and upon the allegation that the Federal Reserve Bank of Richmond violated the sections of the National Bank Act relating to preferential transfers.

I realize that the action taken by the state court in the Attmore case tends toward the conclusion that it would be ill-advised to remove the Lucas case from the state court, especially in view of what we have been told concerning the local conditions in the federal district court. I, personally, however, do not consider those conditions as serious as they appear to be to our friends in the Comptroller's Office. One of the objections which the Comptroller's Office has to the district judge depends upon his tendency to sustain the right of pledgees to collateral which the Comptroller thinks was transferred in a preferential conveyance. This, of course, would not operate against us.

Regarding the case without respect to the local situation, I am disposed to favor a removal to the federal court for two reasons: First, the questions involved are essentially federal questions of far-reaching importance, and a decision by an inferior federal court would be of more value than a decision by a state court. In the event of a decision unfavorable to us, we could probably obtain a review by the Supreme Court of the United States in any event. My second reason is that it appears to me clear that the action would of necessity be regarded by a federal court as a proceeding in chancery, and as such, would be heard either by the trial judge on evidence taken ore tenus, or else be referred to a special master. Either one of these proceedings would be preferable I think to a trial before a jury. In the state courts all issues of fact are tried before a jury, except that in certain cases involving lengthy accounts a reference to a master may be made. I have found, however, that the state courts in North Carolina do not often use a reference, and I think, therefore, that if we went to trial in a state court we should probably be compelled to try this case before a jury with the attendant inconvenience of taking witnesses and many documents to New Bern and being prepared to rebut many allegations which the plaintiffs would fail to prove.

X-6817-b

FEDERAL RESERVE BANK OF RICHMOND

Honorable Newton D. Baker,
c/o Baker, Hostetler and Sidlo,
Union Trust Building,
Cleveland, Ohio.

-3-

January 29, 1931

The above observation upon the desirability of a removal to the federal court is, of course, submitted to you for such consideration as you think that it should have. I have discussed the matter with the officers of the bank, and they are entirely willing to be guided by you in determining whether or not it is well to remove this case. I am sending a copy of this letter to Mr. Wyatt. If you consider that a conference is desirable, I can arrange to meet you at any place most convenient.

I remain,

Very truly yours,

M. G. Wallace,
Counsel.

MGW R

Copy to Mr. Walter Wyatt,
Federal Reserve Board, Washington, D. C.

COPY

X-6817-c

NORTH CAROLINA
CRAVEN COUNTY

IN SUPERIOR COURT

W. J. Lucas, Jr. and J. W. Lucas, Administrators
of the Estate of W. J. Lucas, Deceased, and Kate
S. Lucas, on behalf of themselves and all other
stockholders of the National Bank of New Berne
who care to make themselves parties hereto, and
on behalf of themselves and all other creditors
of the National Bank of New Berne or the First
National Bank of New Bern who care to make them-
selves parties hereto.

COMPLAINT

VS

The Federal Reserve Bank of Richmond, Va. a
Corporation existing under the act of Congress
known as the Federal Reserve Act.

The plaintiffs, complaining of the defendant, allege:

1. That the plaintiffs, W. J. Lucas, Jr. and J. W. Lucas, are the administrators of the estate of W. J. Lucas, deceased by virtue of their appointment as such under authority of the Superior Court of Craven County, North Carolina, and the plaintiff, Kate S. Lucas, is a resident of New Bern, Craven County, North Carolina.
2. That the National Bank of New Berne was at all times herein mentioned, a banking corporation organized and existing under authority of an act of Congress providing for the establishment of National Banks and likewise the First National Bank of New Bern was, from and after March 19, 1929, a banking corporation organized and existing under an act of Congress providing for the establishment of National Banks.
3. That the Federal Reserve Bank of Richmond, Va. is a corporation organized and existing under the provisions of an act of Congress known as the Federal Reserve Act and has such powers and only such powers as are provided by the terms of said act.
4. That The Peoples Bank was a banking corporation organized under the laws of North Carolina providing for the establishment of banks and was under the provision of the Federal Reserve Act a member bank of the Federal Reserve Bank of Richmond, Va. until its merger or consolidation with the National Bank of New Berne as hereinafter more fully set out.

-2-

5. That W. J. Lucas in his life time and at all times herein alleged, was a stockholder in the National Bank of New Berne, having standing in his name fifteen shares of stock which he acquired by purchase on or about the 27th day of March, 1917 and January 8th, 1924 and July 24th, 1923, and that said stock, upon the death of W. J. Lucas, came into the possession of his administrators, plaintiffs herein, as a portion of his estate.

6. That on February 26, 1929 and prior thereto, the said W. J. Lucas was a depositor in the First National Bank of New Bern and prior to March 19, 1929 for more than ten years, was likewise a depositor in the National Bank of New Berne and jointly with the plaintiff Kate S. Lucas, was a depositor in the First National Bank of New Bern and that the said Kate S. Lucas was a depositor in the First National Bank of New Bern.

7. That as plaintiffs are informed and believe and thereupon allege, The Peoples Bank, prior to the _____ day of _____ 1923, being then a member bank of the Federal Reserve Bank of Richmond, Va. was, on or about said date, examined by examiners of said Federal Reserve Bank of Richmond, Va. which said examiners were under the direct supervision of the Federal Reserve Bank of Richmond, and/or the Chairman of its Board of Directors, who by virtue of said position was also a member of the Federal Reserve Board and that at said time and all times subsequent thereto, the Comptroller of the Currency was, by virtue of his office as comptroller, a member of the Federal Reserve Board.

8. That plaintiffs are informed and believe and thereupon allege that shortly after the said examination referred to in the preceding paragraph, the National Bank of New Berne was approached with a view of having said National Bank of New Berne absorb or take over the said Peoples Bank and that during the negotiations following such proposal, certain officers of the Federal Reserve Bank promised, agreed and represented to the National Bank of New Berne that if the National Bank of New Berne would take over said Peoples Bank that the Federal Reserve Bank of Richmond would extend such additional accommodations in the way of discounts as would be necessary to meet the additional burden thus assumed by the National Bank of New Berne and that said representations, agreements and promises on the part of the Federal Reserve Bank were a material part of the consideration upon which the said National Bank of New Berne then took over, absorbed and discharged the obligations of the Peoples Bank of New Bern, a large portion of said obligations being due the Federal Reserve Bank of Richmond and which, as these plaintiffs are informed and believe, said Peoples Bank was then unable to pay the said Federal Reserve Bank of Richmond.

9. That plaintiffs are informed and believe and thereupon allege that the representatives of the Federal Reserve Bank of Richmond remained in New Bern for several days and during said time entered actively into the negotiations between the then Peoples Bank and the National Bank of New Berne and pressed and urged the said National Bank of New Berne to accept the proposal to take over the Peoples Bank and largely due to the urging, representations and demands of said representatives of the Federal Reserve Bank of Richmond, said National Bank of New Berne did take over said Peoples Bank, it, the said National Bank of New Berne,

-3-

being at the time, indebted to the Federal Reserve Bank of Richmond and by reason thereof, more easily induced, coerced and practically required to take over and assume the debts and liabilities of the Peoples Bank and to take over as assets, many frozen loans which were then in the Peoples Bank and which were known to the representatives of the Federal Reserve Bank of Richmond to be uncollectable within any reasonable time or by any reasonable diligence and to be partially, if not wholly, worthless as banking paper.

10. That shortly after the Peoples Bank was merged with the National Bank of New Berne, said Federal Reserve Bank of Richmond, contrary to its promise and agreement, demanded and pressed for the liquidation of the paper of the National Bank of New Berne which it then held, either direct from said bank or by reason of discount of customers' notes; restricted its credit to the National Bank of New Berne and in addition thereto, unlawfully, wrongfully and in violation of its powers and duties, demanded that said National Bank of New Berne should deposit with it additional notes and bills of its customers in an amount equal to fifty per cent of the re-discounts or advancements to be held by it as security for any sums due by reason of re-discounts of the National Bank of New Berne and that said requirement was unreasonable, unlawful and deprived the said National Bank of New Berne of the use of said bills and notes.

11. That on or about the year 1925, so plaintiffs are informed and believe and thereupon allege, the Federal Reserve Bank of Richmond, found and determined among its officers, that the National Bank of New Berne was insolvent and its assets frozen and uncollectable, said finding being based largely, if not wholly, upon the presence in the National Bank of New Berne of the notes and debts it had taken over when it acquired the Peoples Bank and that thereupon, without any order of its Board of Directors or without any order of the Board of Directors of the National Bank of New Berne and without any authority vested in it, unlawfully and wrongfully required that the National Bank of New Berne deposit with it, additional marginal collateral as hereinbefore described in the sum of fifty per cent of the amount of re-discounts and advancements, making the total deposit of said marginal collateral equal to one hundred per cent of the said re-discounts and advancements.

12. That plaintiffs are informed and believe and thereupon allege that in 1925 the re-discounts of the National Bank of New Berne with the Federal Reserve Bank of Richmond were as great or greater than they were at any subsequent period of the life of the said National Bank of New Berne or its successor, the First National Bank of New Bern and that while said re-discounts changed from time to time by the substitution of different customers' notes to the National Bank of New Berne, yet the total amount advanced thereon remained practically the same.

13. That on or about March 19, 1929, the First National Bank of New Bern was organized and took over and assumed the obligations of the National Bank of New Berne and acquired the property and property rights, of which facts defendant was fully advised and informed, and that it thereupon entered on its

ledger sheets a notation that the account of the National Bank of New Berne had been transferred to the First National Bank of New Bern and that otherwise said account remained the same as it had been with the National Bank of New Berne and that at said time, to-wit, March 19th or 20th, 1929, the said Federal Reserve Bank of Richmond held notes, bills of exchange, drafts, bonds, evidences of indebtedness, warehouse receipts and other items of security in an amount of at least \$208,103. as plaintiffs are informed and believe, to which it had no right in law or equity or in fact and which it held contrary and in violation of the rights of the depositors, stockholders and creditors of the National Bank of New Berne and the First National Bank of New Bern and particularly in violation of the rights of these plaintiffs, and that at all times herein mentioned the said Federal Reserve Bank demanded, received and held wrongfully and unlawfully and without authority in law or in fact, notes, bills of exchange, drafts, bonds, evidences of indebtedness, warehouse receipts and other evidences of security belonging either to the First National Bank of New Bern or the National Bank of New Berne in violation of the rights of said creditors and these plaintiffs as aforesaid. That as alleged in Paragraph 11 heretofore, said officers of the Federal Reserve Bank, having found and determined among themselves that the National Bank of New Berne was insolvent and its assets frozen and uncollectable, and having further found among its officers in April, 1929, that the same condition was true of the First National Bank of New Bern, based on the fact that the First National Bank of New Bern had taken over the assets of the National Bank of New Bern, unlawfully, wrongfully and in violation of the laws of the United States, particularly Section 5242 of the Revised Statutes of the United States, and in fraud of the creditors, depositors and stockholders of the National Bank of New Berne and the First National Bank of New Bern and particularly in fraud and in violation of the rights of the plaintiffs, demanded and received said notes, bills, drafts, bonds, evidences of indebtedness, warehouse receipts and other evidences of security, in the amount hereinbefore set out and at all times one hundred per cent greater than the re-discounts accepted from the National Bank of New Berne or the First National Bank of New Bern. That on or about October 23, 1929, a representative of the First National Bank of New Bern, at the instance and direction of said bank, went to Richmond and demanded of the officers of the Federal Reserve Bank, a return and surrender of the notes, bills of exchange, drafts, bonds, evidences of indebtedness, warehouse receipts and other evidences of security amounting to \$208,103. which the said Federal Reserve Bank then held unlawfully, wrongfully and in violation of the rights of said First National Bank of New Bern and its predecessor and the creditors, stockholders and depositors of said banks and particularly these plaintiffs; that thereupon the defendant, Federal Reserve Bank of Richmond, through its officers, refused to turn over and surrender said items so wrongfully held by it, although it was then advised and informed by said representative of the First National Bank of New Bern that a surrender of said items would enable said First National Bank of New Bern to continue to operate and enable it to provide funds to meet the demands then being made upon it and that the failure of the defendant, Federal Reserve Bank of Richmond, to surrender and turn over said items so wrongfully held by it, would result in the inability to stay open and meet its current obligations and these plaintiffs are further informed and believe that said failure of the defendant Federal Reserve Bank of Richmond to surrender and turn over said collateral did cause the First National Bank of New Bern to be unable to meet its

current demands and obligations and was the direct cause of said bank having to close its doors and suspend business on the 26th day of October 1929, just at the peak of the collecting season of the community in which the said First National Bank of New Bern was situated and resulted in great and irreparable damage to the stockholders, depositors and creditors of the First National Bank of New Bern and particularly these plaintiffs.

14. That by reason of the matters and things hereinbefore set out, these plaintiffs and those similarly situated, have been damaged in the great sum of One Million (\$1,000,000.) Dollars, and that the said Federal Reserve Bank of Richmond is now attempting to collect the commercial paper unlawfully held by it and is diverting the same to its own use and is bringing suits against various and sundry people in its own name and making demands for payment through the Receiver of the First National Bank of New Bern and that it has heretofore collected a large sum which it has applied to its own purpose, unlawfully, wrongfully and in violation of the rights of these plaintiffs and those similarly situated.

And for another and further cause of action, plaintiffs allege:

1. That they re-allege allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the first cause of action.

2. That plaintiffs are informed and believe and therefore allege that the Federal Reserve Bank of Richmond is vested with those powers and only those powers set forth in the Act of Congress entitled "Federal Reserve Act" dated December 23, 1913, as amended, and that said powers are specifically and definitely limited to the purposes of said Act and no other except such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by the Federal Reserve Act.

3. That plaintiffs are informed and believe and thereupon allege that the Federal Reserve Bank of Richmond, defendant herein, contrary and in violation of the powers granted to it by Congress and in violation of the rights of the creditors, depositors and stockholders of the National Bank of New Berne and of the First National Bank of New Bern, and particularly these plaintiffs, required and demanded the National Bank of New Berne and its successor, the First National Bank of New Bern, to deposit with it, notes, bills of exchange, drafts, bonds, evidences of indebtedness, warehouse receipts and other evidences of security, in an amount equal to notes, bills of exchange, drafts, bonds, evidences of indebtedness, warehouse receipts and other items of security which the said Federal Reserve Bank accepted for discount and that said requirements was unreasonable, unlawful and deprived the National Bank of New Berne and its successor, the First National Bank of New Bern of the use and benefit of said notes, bills of exchange, etc. and thereby hampered and prevented the said National Bank of New Berne and the First National Bank of New Bern from having funds, proceeds of said items, to use in carrying on its ordinary banking business and meeting its current obligations and liabilities.

4. That these plaintiffs are informed and believe and thereupon allege that the Federal Reserve System, of which the Federal Reserve Bank of Richmond, Va. is a part, was established by Congress with the purpose and intention of providing a means by which liquid commercial paper might be converted into a basis for issues of currency and as a means of aiding the credit and trading powers of the Nation and to particularly assist member banks, and of which every National Bank was, by statute, required to become a member, and that Congress, by its said Act, designated and restricted the type and kind of commercial paper that might be so used as basis for issuing of currency in order to protect and safeguard, at all times, the worth of currency so issued and to stabilize and maintain the confidence of the public in such issues of currency and in the banking systems which had or might become members of the Federal Reserve System and said act, by its terms, limits papers to be discounted by the Federal Reserve Bank to the type and kind set forth in said Act which would meet the requirements above specified and that the plaintiffs are further informed and believe and thereupon allege that the Federal Reserve Bank of Richmond in its dealings with the National Bank of New Berne and the First National Bank of New Bern, disregarded the purpose of said act and its terms and disregarded the types and kinds of paper that it pretended to accept for re-discount and accepted from the National Bank of New Berne and the First National Bank of New Bern, paper for discount that did not meet the requirement of said act and was known to the officials of the Federal Reserve Bank as not meeting said requirements and that further in violation of said act, said Federal Reserve Bank of Richmond required, demanded and compelled said National Bank of New Berne and First National Bank of New Bern, to send other commercial paper of a kind and type not meeting the requirements of said act and said Federal Reserve Bank arbitrarily of its own motion without right in law and in fact, designated said further sendings as marginal collateral and advanced no amount of money, no thing of credit and no thing of value to the said National Bank of New Berne or First National Bank of New Bern by reason of said additional amounts of commercial paper hereinafter referred to as marginal collateral and amounting to approximately the sum of \$208,000., said amount being approximately the amount wrongfully withheld by said Federal Reserve Bank at all times herein mentioned.

5. That the unreasonable and unlawful requirements of the Federal Reserve Bank of Richmond in demanding and holding said additional commercial paper deprived the said National Bank of New Bern and First National Bank of New Bern of its use and thereby in effect, produced a condition equivalent to insolvency in the affairs of said two banks and plaintiffs are further informed and belief that if such unlawful requirements had not been made, said banks would have been able to meet their current obligations and would not have been compelled to liquidate or close and the closing of said banks and the acts on the part of the defendant, Federal Reserve Bank, has caused great and irreparable damage to these plaintiffs and others similarly situated and their liquidation has resulted in a great and irreparable damage to these plaintiffs and others similarly situated.

6. That by reason of the matters and things hereinbefore set out, these plaintiffs and those similarly situated, have been damaged in the great sum of One Million (\$1,000,000) Dollars, and that the said Federal Reserve Bank of Richmond is now attempting to collect the commercial paper unlawfully held by it and is diverting the same to its own use and is bringing suits against various and sundry people in its own name and making demands for payment through the Receiver of the First National Bank of New Bern and that it has heretofore collected a large sum which it has applied to its own purpose, unlawfully, wrongfully and in violation of the rights of these plaintiffs and those similarly situated.

And for another and further cause of action these plaintiffs allege:

1. That they repeat the allegations 1 to 12 inclusive of the first cause of action.

2. That the Federal Reserve Bank of Richmond, Va. is vested with authority to examine and inquire into the condition of member banks and that it, through the Chairman of its Board, has access to all examinations made of member banks and particularly of National Banks, of which the National Bank of New Berne was one and the First National Bank of New Bern was one and such banks were regularly examined in the ordinary conduct of the supervisory powers vested in the comptroller and the Federal Reserve Bank.

3. That the Federal Reserve Bank of Richmond knew the condition of the National Bank of New Berne and the First National Bank of New Bern, the nature and condition of its assets, and by reason of its knowledge of other member banks, had a more intimate knowledge of the same than even the officers of the said First National Bank of New Bern or the National Bank of New Berne had, and that with such knowledge in its breast, the said Federal Reserve Bank of Richmond determined among its officers on or about the year 1925 that the National Bank of New Berne was insolvent and its assets frozen and uncollectable and thereupon it undertook and did cause transfers of notes, bonds, bills of exchange and other evidences of debt from the said National Bank of New Berne to be unlawfully transferred to it and that said transfers were made in contemplation of the insolvency of the National Bank of New Berne and its successor, the First National Bank of New Bern with a view to prevent the application of assets of said National Bank of New Bern and First National Bank of New Bern in the manner prescribed by law and with the view to prefer the Federal Reserve Bank as a creditor to other creditors.

4. That these plaintiffs are informed and believe that at all the times mentioned in the first, second and third cause of action herein set out, the amount of re-discounts from the National Bank of New Berne and the First National Bank of New Bern remained practically the same and that the exchange of notes from time to time was made without an appreciable increase in the amount of money received from the Federal Reserve Bank of Richmond and notwithstanding the determination upon the part of the officials of the Federal Reserve Bank as to the insolvency of the National Bank of New Berne and the First National

Bank of New Bern, said Federal Reserve Bank unlawfully, wrongfully and in violation of the expressed terms of law, required and demanded additional notes, bills and other evidences of indebtedness in an amount equal to the amount pretended to be accepted for discount amounting, as plaintiffs are informed and believe, to the sum of at least \$208,000. and that such acts on the part of the Federal Reserve Bank, made with the secret knowledge which it had, constituted a preference and a fraud on these plaintiffs and those similarly situated.

5. That the plaintiffs, prior to the institution of this action, to-wit, on the 8th day of October, 1930, issued a notice and demand on R. E. Schumacher, who had theretofore been appointed Receiver of the First National Bank of New Bern by the Comptroller of the Currency, requiring and demanding that said receiver institute this action and that in reply thereto, under date of October 16, 1930, these plaintiffs, through their attorneys, received a letter from the said R. E. Schumacher, refusing to bring said action, copies of said demand and letter of refusal being hereto attached and marked Exhibits A and B respectively.

6. That these plaintiffs are informed and believe and thereupon allege that the Receiver of the First National Bank of New Bern will not have for distribution among its general creditors an amount in excess of ten per cent of the amount due said creditors.

7. That these plaintiffs are informed and believe that their rights can only be protected by having a receiver appointed to take charge of said collateral hereinbefore described and that said receiver be authorized, directed and empowered to collect and administer said collateral pending the final determination of this cause.

8. That by reason of the matters and things hereinbefore set out, these plaintiffs and those similarly situated, have been damaged in the great sum of One Million (\$1,000,000.) Dollars and that the said Federal Reserve Bank of Richmond is now attempting to collect the commercial paper unlawfully held by it and is diverting the same to its own use and is bringing suits against various and sundry people in its own name and making demands for payment through the Receiver of the First National Bank of New Bern and that it has heretofore collected a large sum which it has applied to its own purpose, unlawfully, wrongfully and in violation of the rights of these plaintiffs and those similarly situated.

And for another and further cause of action, plaintiffs allege:

1. That they re-allege Allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the first cause of action.

2. That plaintiffs are informed and believe and thereupon allege that the Federal Reserve Bank of Richmond required its member banks and particularly the National Bank of New Berne and the First National Bank of New Bern to deposit with it funds as a reserve balance equal to not less than seven per cent

of its aggregate demand deposits and three per cent of its time deposits.

3. That plaintiffs are informed and believe and thereupon allege that at times the said National Bank of New Berne and the First National Bank of New Bern were unable to meet said requirements due in part to the fact that the Federal Reserve Bank of Richmond was holding unlawfully, many of its assets as set out in the first, second and third cause of action of this complaint and thereupon the Federal Reserve Bank of Richmond, defendant herein, unlawfully, wrongfully and in violation of law and in violation of these plaintiffs and others similarly situated, charged and demanded and received by debiting the account of the National Bank of New Berne and/or First National Bank of New Bern with it, penalties at the rate of as high as ten per cent or greater of the deficiency between said seven or three per cent and the amount of balance in said bank.

4. That plaintiffs are informed and believe and thereupon allege that there is not available to them full information to determine the amount of said charges so wrongfully made but they are advised that the same reach a great sum and they are further advised, and informed that they are entitled to have an accounting of the defendant for all sums so wrongfully and unlawfully charged and entitled to have any amount due from the National Bank of New Berne or the First National Bank of New Bern to the Federal Reserve Bank of Richmond, credited with the sums so wrongfully charged, collected and received.

5. That by reason of the matters and things set out in this cause of action, plaintiffs have been damaged in a great sum, the exact amount of which can only be determined by an accounting hereinbefore alleged to be due to the plaintiffs.

Wherefore these plaintiffs pray

1. That the Federal Reserve Bank be required to render an account of all commercial paper, notes, bills of exchange, evidences of indebtedness, warehouse receipts and other evidences of security held by it on the 19th day of March, 1929, as the property of the National Bank of New Bern, for discount and otherwise, and on the 23rd day of October, 1929 as the property of the First National Bank of New Bern, for discount and otherwise, and an accounting of all funds received by it from such commercial paper since said dates;

2. That a receiver be appointed to collect and administer said collateral pending the final determination of this cause and that the Federal Reserve Bank of Richmond be required to turn over to said receiver, all the items now held by it, together with all sums of money heretofore collected from any of said notes, bills, etc.

3. That the plaintiffs have and recover of the defendant the sum of One Million Dollars to be discharged -

When these plaintiffs have received from the defendants the sum of \$15,086.71 being the amount of the deposits and par value of the stock alleged in Paragraph 5 of the first cause of action and that as to others similarly situated to these plaintiffs, should they come in and make themselves parties, that this prayer be extended to cover the amount shown to be due them;

4. For an accounting of all penalties and excess interest charged by the defendant and proper credit as alleged in the fourth cause of action above, given to the First National Bank of New Bern and the National Bank of New Berne;

5. And for such other and further relief as plaintiffs may show themselves entitled to receive.

(signed) W. B. R. Guion

(signed) Whitehurst & Barden
Attorneys for plaintiffs.

W. J. Lucas, Jr., Administrator, one of the plaintiffs above named, being duly sworn, deposes and says; That he has read the foregoing Complaint and that the same is true of his own knowledge except as to matters therein stated on information and belief and as to those matters he believes it to be true.

(signed) W. J. Lucas, Adm.

Sworn to and subscribed before me
this 22nd day of January, 1931

(Seal)
(signed) M. P. Jones
Notary Public

My commission expires 11/23/31

NORTH CAROLINA
CRAVEN COUNTY

To R. E. Schumacher, Esquire, Receiver of the First National Bank of New Bern, New Bern, North Carolina.

Dear Sir:

In behalf of the estate of W. J. Lucas, who was a stockholder in the National Bank of New Berne, predecessor of the First National Bank of New Bern, and who was likewise a depositor in the First National Bank of New Bern, and in behalf of said estate jointly with Mrs. Kate S. Lucas, wife of said W. J. Lucas, deceased; and of all other stockholders of the National Bank of New Berne and depositors and creditors of the First National Bank of New Bern, and any other persons, firms or corporations similarly situated, request and demand is hereby made upon you that you forthwith institute proceedings in a court of competent jurisdiction against the Federal Reserve Bank of Richmond for the return to you to be handled for the benefit of those persons making the demand and all other persons similarly situated, of all notes, bills of exchange, drafts, bonds, evidences of indebtedness, warehouse receipts or other items of security which have been or may have been deposited with the said Federal Reserve Bank of Richmond as security for any indebtedness due from the National Bank of New Berne to the said Federal Reserve Bank of Richmond and/or from the First National Bank of New Bern other than notes denominated eligible notes, drafts, etc. within the meaning and terms of the Federal Reserve Act which were discounted or purchased by the Federal Reserve Bank without collateral security, And in addition thereto, that in said proceeding you will demand the return of the items of the character received from the First National Bank of New Bern and/or the National Bank of New Berne by the Federal Reserve Bank of Richmond not held in accordance with said Federal Reserve Act and when said items are shown to have been collected or if the return of same cannot be had, that you demand for the benefit of the creditors of said First National Bank of New Bern and the National Bank of New Berne, the cash proceeds received by the Federal Reserve Bank of Richmond from said items so collected or which they fail to return.

This demand is made upon you in order that you shall obtain for collection and distribution among the creditors of the institution for which you are Receiver said items unlawfully obtained and held by the Federal Reserve Bank of Richmond for the benefit of the creditors of the said First National Bank of New Bern and/or the creditors of the National Bank of New Berne.

You are further notified that should you fail to comply with this demand and immediately institute said proceedings

-2-

within a reasonable time of this notice, that the persons making the demand will, in their own right, institute said proceedings.

You will kindly advise within ten days whether it is your purpose to institute said action for the recovery of the assets improperly and unlawfully held by the Federal Reserve Bank of Richmond, otherwise your failure so to advise will be deemed a refusal by you to comply with this notice.

This 9th day of October, 1930.

W. J. Lucas, Jr. and J. W. Lucas,
Administrators of the Estate of
W. J. Lucas.

Kate S. Lucas

By Whitehurst & Barden

W. B. R. Guion

Attorneys

Received 10/8/30
Served 10/9/30 by reading and
delivering a copy of the within
notice to R. E. Schumacher, Esquire,
Receiver of the First National Bank
of New Bern.

James S. Bryan
Constable.

R. E. Schumacher, Receiver

The First National Bank of New Bern

New Bern, N. C. October 16th 1930

Whitehurst & Barden,
Attorneys at Law,
New Bern, N. C.

Mr. W. B. R. Guion,
Attorney at Law,
New Bern, N. C.

Mr. W. J. Lucas, Jr. & Mr. J. W. Lucas, Adm.
Estate of W. J. Lucas, Deceased,
Mrs. Kate S. Lucas,
New Bern, N. C.

Subject: Demand made by Administrators of W. J. Lucas,
Deceased, to commence action against the
Federal Reserve Bank of Richmond.

Gentlemen:

Service having been made upon the Receiver of the First National Bank of New Bern, Insolvent, in behalf of the estate of W. J. Lucas and Mrs. Kate S. Lucas, requesting that the Receiver institute proceedings in a Court of Competent jurisdiction against the Federal Reserve Bank of Richmond, has been referred to the Comptroller of the Currency.

You were informed that as Receiver of the First National Bank of New Bern, I refuse to file the action requested in your demand of October 9th, 1930, as it is not within my jurisdiction to do so.

The Receiver also believes that any such action, if filed, should be filed in the United States District Court, and it is my intention to petition for removal to that Court any such action that may be filed in the State Court.

Respectfully,

Raymond E. Schumacher,

Receiver

RES-L