FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-6818

February 13, 1931.

Dear Sir:

Referring to my letter of February 7 with reference to the case of W. I. Skinner and Company v. Federal Reserve Bank of Richmond, et al., I enclose for your further information the following documents:

(1) Copy of a letter addressed to me by Mr. Wallace, Counsel for the Federal Reserve Bank of Richmond under date of February 10;

(2) Copy of a letter addressed to me by Mr. Parker, Counsel for the Federal Reserve Bank of Atlanta under date of February 10;

(3) A memorandum summarizing the telegraphic replies to my letter of February 7 received from Counsel for various Federal Reserve Banks; and

(4) A copy of a letter addressed by me to Mr. Wallace under date of February 13.

While you will observe from my letter to Mr. Wallace that an effort is being made to reorganize the National Bank of Greenville and no further steps should be taken looking toward the employment of special counsel to assist in this litigation on a System basis unless the plans for reorganization fail; it is my opinion that, if these plans should fail and if it should become necessary to litigate this case, it ought to be handled as a System matter for the following reasons:

1. It involves several questions of vital interest to all Federal Reserve Banks;

2. The Federal Reserve Bank of Richmond desires to have it handled as a System case and Counsel for several of the Federal Reserve Banks have expressed a similar desire;

3. The check in question was handled with unusual prompt-

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ness; the Federal Reserve Bank had no special knowledge of the impending insolvency of the drawee bank; there appear to be no facts upon which a charge of actual negligence could be sustained; and, in every respect, the case appears to be free from embarrassing complications of every nature, except that it was brought in the district in which the Early case arose;

4. The Federal Reserve Banks are forced to try most cases of this character in the State courts and this case affords an unusual opportunity to test the questions involved in the Federal courts; and

5. In my opinion, it is very important to the Federal Reserve System to obtain a decision as soon as possible in the Federal courts distinguishing the rights, duties and liabilities of the Federal Reserve Banks under Regulation J, as amended September 1, 1930, from their rights, duties and liabilities under the preceding regulation as established in the decision of the Supreme Court of the United States in the case of Early v. Federal Reserve Bank of Richmond.

Mr. Wallace advises me that the Federal Reserve Bank of Richmond would prefer to have this case handled as a System case but is not disposed to insist upon it unless a majority of the other Federal Reserve Banks are willing to participate. Mr. Wallace feels that, having tried the Early case and the Federal Reserve Bank of Richmond having been opposed to the amendments to Regulation J adopted effective September 1, it ought not to be in the position of trying the first important test case arising under the amended regulations without the other Federal Reserve Banks being represented in the case by special counsel.

If, therefore, the plans to reorganize the National Bank of Greenville should fail, and if it should become necessary to litigate this case, I shall recommend to the Federal Reserve Board that special counsel be retained to assist in the trial of this case on a System basis. If the Board approves my recommendation, it will immediately communicate with all Federal Reserve Banks in order to ascertain whether they are willing to participate, and you undoubtedly will be called upon to advise and consult with your bank on that question. I shall keep you fully informed of all important developments, in order that you may inform the officers of your bank.

With kindest regards and all best wishes, I am

Cordially yours,

Walter Wyatt,
General Counsel.

TO COUNSEL FOR ALL FEDERAL RESERVE BANKS EXCEPT RICHMOND.

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FEDERAL RESERVE BANK OF RICHMOND

February 10, 1931

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

My dear Mr. Wyatt:

Replying further to your telegram of February 9th, I wish to say that in my personal opinion it would be advisable to remove the action brought by Skinner and Company to the federal court. I realize that the probable attitude of the Circuit Court of Appeals and the personal qualifications of the district judge are some reasons why a removal might not be advisable, but, on the other hand, a final decision in the federal court would be the only precedent which could be of any help to other Federal reserve banks. A final decision by the state courts of North Carolina would of necessity leave the question unsettled unless we could obtain a review of the decision of the state court by the Supreme Court of the United States.

When the National Bank of Greenville suspended we held rediscounted notes aggregating $112,218.86 and held marginal collateral aggregating $38,955.00. We have not had an opportunity to make a careful appraisement of the value of the paper held by us, but the Manager of the Bank Relations Department is inclined to think that most of the paper which we hold is fairly good and that we are probably protected from any loss even if we should lose the reserve balance. It therefore seems that the Receiver has the main pecuniary interest, and if this case is not to be handled as a System matter, my own idea would be to employ as the local associate the attorney retained by the Receiver and to give him all the assistance in my power in conducting the case, but to allow him or the Receiver to determine what steps were advisable. I am sure you can readily appreciate my position in this matter, and naturally if the case is made a System matter I should prefer to have the final decisions made by you or Mr. Baker if he is retained, and if it is not handled as a System matter, I should prefer to have the Comptroller's Office assume responsibility for any important decisions, but, of course, in any event, I would expect to use my best efforts to secure a favorable decision.

I remain,

Very truly yours,
(Signed) M. G. Wallace
Counsel.

MGW R

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COLQUITT, PARKER, TROUTMAN & ARKWRIGHT
ATTORNEYS AT LAW
SUITE 1607 WILLIAM-OLIVER BLDG.
ATLANTA, GA.

February 10, 1931.

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

Dear Mr. Wyatt:

I wired you yesterday, in effect, that I saw no reason why the case of Skinner v. Federal Reserve Bank of Richmond should, for the present at least, be regarded as presenting questions of System-wide importance.

The suit has evidently been brought upon the theory that the Malloy case is applicable and upon the further theory that the Federal Reserve Bank refused, prior to the insolvency of the Greenville bank, to honor a request to charge the reserve account with the amount of a cash letter which could have been paid out of such reserve balance.

Neither theory is well taken under the law or the facts. Any authoritative value of the Malloy case would seem to be removed by the Regulation, and, for that matter, by the Regulations which have been of force ever since amendments were made to meet the Malloy case.

I cannot believe that counsel for the plaintiff will seriously contest the matter on either theory when the new Regulation is brought to their attention and it is made plain that at no time during December 10th was the reserve balance in sufficient funds to authorize a charge to the account of the Greenville bank of the net amount of the cash letter.

Had the account been in sufficient funds prior to notice of suspension, I think that the authorization to charge should have been honored, and I believe further that the mere fact that entries, charging the account, were not made prior to the receipt of notice of suspension would not have altered the situation. It has been my idea that a remittance draft or an authorization to charge a reserve account should be given effect as of the time of receipt and that the prohibition contained in Regulation J, as to the making of charges against reserve accounts after notice of insolvency, would not be applicable to cases in which such notice was actually received after remittance drafts and/or authorizations to charge reserve accounts reached the Federal Reserve Bank. As stated above, I think the Richmond bank should have paid the cash letter out of the reserve balance had that balance been sufficient for the purpose. It not having been sufficient, the case, in so far as concerns this particular aspect, should be determined in favor of the Reserve Bank independently of the provision of Regulation J.

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Of course the case may so develop later that the validity and effectiveness of Regulation J may be seriously drawn into question, but until such time I do not believe that the case is of any particular significance. I know, furthermore, that Mr. Wallace will give the matter his usual skilfull and effective handling.

With regards, I am

Very truly yours,

(Signed) Robt. S. Parker.

RSP/w

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REPLIES OF COUNSEL OF VARIOUS FEDERAL RESERVE BANKS TO MR. WYATT'S LETTER OF FEBRUARY 7, RE SKINNER & COMPANY V. FEDERAL RESERVE BANK OF RICHMOND.

Mr. Weed, Boston :

"Think case Skinner & Co. vs. Reserve Bank of Richmond could properly be handled as system matter if Wallace desires outside counsel."

Mr. Logan, New York:

"Your letter February seventh regarding case of Skinner v. Federal Reserve Bank of Richmond.(stop) We favor handling case as system matter because it seems likely that questions of system interest may be involved.(Stop) We will be glad to pay our pro rata share of expenses of handling case as system matter."

Mr. Williams, Philadelphia:

No reply received up to 11 a.m. February 13th.

Mr. Newell, Cleveland: (Squire, Sanders & Dempsey)

"Your letter seventh re Skinner vs. Federal Richmond. Believe present status of matter does not warrant handling as system case."

Mr. Wallace, Richmond:

"Your telegram re Skinner case. This bank entirely willing to have case handled as counsel for other banks desire but prefers that case be handled as system matter."

Mr. Parker, Atlanta:

"Yours February seventh referring case of Skinner vs. Richmond bank.(Stop.) I do not think decision will entail determination of validity and effectiveness of last regulation J.(Stop).Authority to charge reserve account of Greenville Bank was received when account was insufficient to pay cash letter and balance was never sufficient up to and after closing.(Stop). Do not believe that Malloy case can be used as authority in view of new regulation and while new regulation renders Early case inapplicable even were this not true insufficiency of balance to pay letter would afford ground of differentiation. (Stop.) Case may involve negligence in direct sending but this element always present in similar cases.(Stop.) Think Receiver will wish to remove case and believe reserve bank should join in petition for removal."

Mr. Meyer, Chicago:

"It seems rather difficult from complaint in Skinner vs. Federal Reserve Bank of Richmond to determine what plaintiff will rely upon to recover. However it would seem that validity of regulation J. will certainly be involved as defense will necessarily be predicated thereon, In view of this situation I am ready to advise Federal Reserve Bank of Chicago to have matter treated as system matter if other Federal reserve banks feel this should be done."

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Mr. McConkey, St. Louis:

"The figures furnished by Wallace do not indicate sufficient balances at any time after receipt of slip referred to to justify the making of the charges requested, even under the contention in the Early case.(Stop.) Have no doubt as to the validity of regulation "J"; nevertheless when attached it becomes a System matter of utmost importance and if Wallace desires System assistance it should be furnished."

Ueland and Ueland, Minneapolis:

No reply up to 11 a.m. February 13th.

Mr. Leedy, Kansas City:

"Suit of Skinner and Company versus Federal Reserve Bank of Richmond in my judgment should be handled as a System matter particularly in view of suggestion of Wallace that he may be prejudiced in courts of his district and state by reason of defenses made by him in other suits.(Stop.) Aside from question of application and effect of regulation J, I consider the case important and of concern to all other reserve banks by reason of charge that Richmond bank knew or should have known that drawee bank was insolvent. (Stop.) Also feel that every effort should be made to induce Comptroller's office to remove case to Federal Court should there by any disposition in that office to allow the case to remain in the state court."

Locke, Locke, Stroud & Randolph, Dallas:

"Re your letter February seventh. We believe cases identically similar to one mentioned in Wallace letter of February 4th have been successfully defended by Counsel for majority of reserve banks without assistance of outside counsel. Of course case is of importance to entire System and if Wallace feels any embarrassment on account of Early case in making defense we should suggest the advisability of employment of outside Counsel."

Mr. Agnew, San Francisco:

No reply received up to 11 a.m. February 13th.

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February 13, 1931.

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

My dear Mr. Wallace:

Although I have communicated with you by telephone and telegraph, I wish formally to acknowledge receipt of your letters of February 4 and February 10 with reference to the case of W. I. Skinner and Company v. Federal Reserve Bank of Richmond and W. P. Wright, Receiver of the National Bank of Greenville.

As I wired you last night, Mr. Barse, Counsel to the Comptroller of the Currency, readily agreed with our view that this case ought to be removed to the Federal courts and has instructed the receiver to have his counsel get in touch with you at once and take prompt steps to remove the case to the Federal court. Mr. Barse recognizes that the interests of the Federal Reserve Bank and the Office of the Comptroller of the Currency are identical in so far as the questions of law involved in this case are concerned and that, if the case should result in a decision in the appellate courts, it would be a most important test case for the Comptroller's Office as well as for all the Federal reserve banks.

This morning, however, Mr. Barse called on me again and told me that an effort is being made to organize a new bank to take over the assets and assume the liabilities of the National Bank of Greenville; and, of course, this plan contemplates that all creditors of the National Bank of Greenville would be paid in full, unless they voluntarily accept some compromise. Mr. Barse said that the proponents of this plan are very confident of success and that we should know within thirty days whether the plan will be consummated. Of course, if it is consummated, Skinner and Company will be paid and their suit will be dismissed. In the meantime, Mr. Barse and I are agreed that it would be advisable to proceed with the removal of the case to the Federal Court and then mark time until it is possible to determine the outcome of the plan to reorganize the bank. Pending the outcome of the reorganization plan, I feel that no further steps should be taken to employ special counsel and handle this case as a System case.

If, however, the reorganization plans should fail and you should be forced to litigate this case, I agree with you that it ought to be handled as a System case, not only for the reasons stated by you in your letters of February 4 and February 10 and in your tele-

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phone conversation with me yesterday, but also because it appears to be free from embarrassing circumstances, would make an unusually good test case and would furnish an unusual opportunity to obtain a decision in the Federal courts distinguishing the doctrine of the Early case from the rights, duties and liabilities of the Federal reserve banks under Regulation J as amended September 1, 1930.

As I told you last night, there is considerable difference of opinion among counsel for the other Federal reserve banks over the question whether this case ought to be handled as a System case. For your further information in this connection, I enclose a copy of the letter which I addressed to Counsel for all Federal reserve banks, a memorandum giving the text of the replies received from Counsel for the various Federal reserve banks, and a copy of a letter which I received from Mr. Parker this morning with reference to this case.

I shall keep Counsel for the other Federal reserve banks fully advised of all developments; so that, if the plans to reorganize the bank fail and it becomes necessary to litigate this case, it will be possible to obtain prompt action by all Federal reserve banks on the question of employing special counsel on a System basis to assist in the trial of this case.

With all best regards, I am

Cordially yours,

Walter Wyatt,
General Counsel.

Enclosures.

WW-sad

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