FEDERAL RESERVE BOARD

WASHINGTON

X-6881

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

May 6, 1931.

SUBJECT: "Cashing" of Government Warrants and Checks by Federal Reserve Banks.

Dear Sir:

There are enclosed for your information copies of the following documents pertaining to the above subject:

(1) A memorandum addressed to the Board by its General Counsel under date of April 17, 1931 (X-6867);

(2) The documents attached as exhibits to Counsel's memorandum (X-6867-a); and

(3) Letter dated April 23, 1931, addressed to the Board by the Undersecretary of the Treasury transmitting a copy of the opinion of the Attorney General of the United States rendered May 27, 1925, pertaining to the liability of Federal reserve banks in the redemption of certain War-savings stamps subsequently found to be counterfeit (X-6880-X-6880-a).

In accordance with the suggestion made by the Undersecretary of the Treasury, your attention is invited to the fact that the opinion of the Attorney General relates to a specific instance.

As you know, this matter was presented to the Conference of Governors of all Federal reserve banks during its meeting in Washington on April 27, 1931, and the Conference of Governors voted to refer it to the Standing Committee on Collections for study and report.

By order of the Federal Reserve Board.

Very truly yours,

Enclosures.

E. M. McClelland,
Assistant Secretary.

TO GOVERNORS OF ALL F. R. BANKS AND MEMBERS OF STANDING COMMITTEE ON COLLECTIONS.

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C O P Y X-6867

To Federal Reserve Board Date April 17, 1931.

From Mr. Wyatt - General Counsel. Subject: "Cashing" of Government Checks and Warrants by Federal Reserve Banks.

In the attached letter addressed to Mr. McClelland on March 14, 1931, Mr. M. W. Bell, Cashier of the Federal Reserve Bank of Atlanta, requests him to negotiate "unofficially" with the Treasurer of the United States with a view of obtaining from him a definition of the rights, duties and responsibilities of the Federal reserve banks in "cashing" Government checks and warrants pursuant to Section 32 of Treasury Department Circular No. 176. In the attached letter of April 4, Mr. Bell recognizes that, "The points at issue between ourselves and the Treasury Department are of interest to all Federal reserve banks and no doubt the whole subject of payment of checks drawn on the Treasurer by the Federal reserve banks, particularly with reference to the adoption of a definite policy by the Treasury Department, is of sufficient importance to deserve the attention of the Federal Reserve Board."

I agree with Mr. Bell that this is a matter of great importance to all Federal reserve banks and that it is a subject upon which the Treasury Department should clearly define its attitude. Because of its importance to all of the Federal reserve banks, however, I believe that neither the Federal Reserve Board nor any one Federal reserve bank should endeavor to obtain from the Treasury a definite statement or decision on this subject until it has been very carefully considered by all of the Federal reserve banks and an agreement has been reached between them as to the position which they think the Treasury should take.

Repeated efforts over a long period of years have been made

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to persuade the Treasury Department to clarify the provisions of Section 32 of its Circular No. 176 which governs this subject; and the matter has been discussed at least twice in conferences between representatives of the Federal reserve banks and the Treasury Department without any agreement being reached. At the last discussion, which took place on June 10, 1930, during the Conference of Counsel of all Federal reserve banks and which was attended also by the Chairman and several members of the Standing Committee on Collections appointed by the Conference of Governors of all Federal reserve banks, it was impossible to insist upon a definite settlement of this question; because it developed that all of the Federal reserve banks were not in entire agreement as to the position which they would like to have the Treasury Department take and some of them had no well-defined views on this subject.

Under these circumstances, I believe that, before any effort is made to have the circular clarified, this subject should be studied carefully, both by the operating officers and by the Counsel of the various Federal reserve banks, and should be discussed at a conference of the Governors of all Federal reserve banks, with a view of arriving at an agreement between the Federal reserve banks themselves as to the position which the Treasury Department should take.

This matter is so technical and both the practical and legal problems involved are so difficult of solution that I do not believe it could be given sufficient study in advance of the Conference of Governors to be held here on April 27 to justify placing it on the program for final action during that Conference. If, however, the matter is brought to the attention of the Governors during the forthcoming conference, it can be referred to the Standing Committee on Collections, to the Conference of Counsel, or

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to some other appropriate committee for study and report, with a view to having the report in the hands of the Governors sufficiently in advance of the next conference to enable them to consider it and act upon it at that time. There seems to be no urgent need of an immediate solution of these problems; and it is more important to have them settled right than to have them settled quickly.

RECOMMENDATIONS.

I, therefore, respectfully recommend:

1. That, during the forthcoming Conference of Governors to be held in Washington April 27, this matter be presented to the Conference with a suggestion that it would be appropriate to refer it to a committee for study and report;

2. That copies of this memorandum and the attached letters be furnished to the Governors of all Federal reserve banks for their information; and

3. That the Secretary of the Treasury be requested to furnish to the Federal Reserve Board for its information and for the information of the Federal reserve banks in this connection a copy of the opinion of the Attorney General regarding the liability of the Federal reserve banks for payment of counterfeit war savings stamps, which will be discussed below. (See page 29.)

DISCUSSION.

Pending a further study of this subject, I prefer to reserve any definite decision on any of the highly technical legal questions involved, and I think it would be inappropriate for me to express any opinion on any of the practical problems involved until after this subject has been carefully studied and a report rendered by practical operating officers of the Federal reserve banks. Merely for the purpose of raising such points as have

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occurred to me and for the purpose of submitting them for the consideration of the Board and the Federal reserve banks, however, I submit below a general discussion of this subject. Any views therein expressed on any of the practical or legal aspects of the problem are merely tentative and are subject to further revision after further study and discussion.

QUESTION RAISED BY ATTACHED CORRESPONDENCE.

While the clarification of the Treasury's position with reference to the "cashing" of Government checks and warrants by Federal reserve banks involves much broader and more important questions, which will be discussed below, the immediate subject of the correspondence between the Federal Reserve Bank of Atlanta and the Treasury Department may be stated as follows:

Acting pursuant to instructions from the Treasury Department, the Federal reserve banks "cash" Government checks and warrants presented to them by their member banks, by debiting the account of the Treasurer of the United States and giving their member banks immediate credit in their reserve accounts. The checks are then forwarded to the Treasurer of the United States "for examination and final payment". Sometimes the Treasurer refuses to credit the Federal reserve banks, because the member banks in which such checks were deposited have failed and the payees have requested that payment be stopped. In other words, the Treasurer asks the Federal reserve banks to reverse the entries, credit the Treasurer's account, and debit the insolvent member bank's reserve account with the amount of such checks, in order that the checks may be returned to the payees to save them the loss which would otherwise result from the failure of the banks in which the checks were deposited.

In their constant dealings with such member banks, which usually

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continue up to the moment of closing and which involve extensions of credit, shipments of currency, wire transfers of funds, and the daily sending of checks to the member banks for collection and payment, the Federal reserve banks rely very largely upon the reserve balances of such member banks for their own protection. To comply with the Treasurer's request would frequently result in loss to the Federal reserve banks; and frequently it is impossible for the Federal reserve bank to know until sometime after the closing of an insolvent bank whether it can comply with the Treasurer's request without loss to itself.

I understand from informal discussions with officials of the Treasury Department that the Treasurer does not expect the Federal reserve banks to reverse the entries in such cases where they cannot do so without loss to themselves; but the Treasury Department has never clearly defined its attitude on this subject, and the Federal reserve banks are left in an uncertain and uncomfortable position.

The position of the Federal reserve banks is sometimes rendered more uncertain and uncomfortable by officials of the Treasury Department, (1) questioning their right as its agents to use the reserve balances of insolvent member banks for their own protection instead of utilizing it to obtain reimbursement for the Treasurer, and (2) calling attention to the fact that Section 32 of the Circular authorizes Federal reserve banks to "cash" Government checks and warrants only when presented by "responsible" banks and trust companies.

The situation is summarized as follows by Governor Black of the Federal Reserve Bank of Atlanta in a letter addressed to the Undersecretary of the Treasury on February 9, 1931, requesting a definite statement of the position of the Treasury Department:

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"Our correspondence with the Treasurer concerning these and other checks, payment of which he has declined because of suspension of the banks in which these were deposited by the payees, has been very unsatisfactory. We have endeavored to get him to define or agree as to our position, when as Fiscal Agent of the United States we pay checks drawn on him. We have asked whether such payment is final unless some infirmity exists in the instruments themselves, or that have been fraudulently issued or negotiated, or the balance to the credit of the drawer is insufficient. We have further endeavored to get the Treasurer to state whether, except in one of the cases named payment of Treasury checks will be protected by him at least to the extent that no loss through such payment would be entailed on us. We have been unsuccessful in our efforts to get such committments from the Treasurer, although we feel that in all fairness such inquiries should be specifically answered and such committments made, all to the end that we may with certainty as to our position handle his account."

See also the following statement contained in a letter addressed to the Treasurer of the United States by Mr. M. W. Bell, Cashier of the Federal Reserve Bank of Atlanta under date of March 2, 1931:

"The policy which has been followed by your office in several similar cases where you have declined at the request of payees or drawers to pay checks drawn on you, because of the suspension of the banks in which they were deposited, creates serious doubt in our mind as to what you conceive to be the function of the Federal Reserve Banks acting as Fiscal Agents of the United States in paying checks drawn on you. Your action in such cases creates a condition that is difficult for the Federal Reserve Banks to deal with, because we do not know when you may, for the reasons stated above, decline to pay a check for a large amount and leave us in a position where we cannot recover from our endorser, forcing us to become an ordinary creditor for an amount of money which we, to all intents and purposes, find that we have merely advanced to our endorser."

I understand that, as to the particular checks giving rise to this correspondence, the Federal Reserve Bank of Atlanta has complied with the Treasurer's request and has credited the Treasurer with the amount of such checks and debited the accounts of the insolvent member banks from which they were received; but the Federal Reserve Bank desires the Treasurer

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to define its position on this question, in order that it may know how to conduct its business in the future.

In my opinion, the question whether the Treasury Department has the legal right to insist on stopping or refusing payment on Government checks and warrants under such circumstances depends largely upon the interpretation of certain ambiguous provisions of Section 32 of the Treasury Department circular; and I am of the opinion that the provisions of that section of the circular and also of Section 34 should be revised so as clearly and unequivocably to state the rights, duties and responsibilities of the Federal reserve banks in "cashing" Government checks and warrants. The revision of these sections, however, involves several other problems of great importance to the Treasury Department and to all of the Federal reserve banks, which should also be given most careful consideration.

OTHER QUESTIONS INVOLVED.

Under the ambiguous provisions of Section 32, it is impossible to ascertain with certainty whether, in "cashing" Government warrants and checks presented to them by member banks, the Federal reserve banks act (1) as fiscal agents of the Treasury Department or (2) as depositaries of the Treasury Department or (3) as collecting agents for the banks from which they receive such checks.

I understand that, in different cases in the past, the Treasury Department has actually taken the position that the Federal reserve banks occupy each of these three inconsistent positions. In fact, I have good reason to believe that this section of the circular was purposely made ambiguous in order to avoid defining the exact legal status of the Federal reserve banks and the legal effect of their action in "cashing" Government checks and warrants. (See discussion below entitled "Correspondence with Treasury", page 18.).

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The uncertainty as to what the legal rights, duties and responsibilities of the Federal reserve banks under this circular are and as to what position the Treasury Department will take in any specific case creates an unbusinesslike situation and one which is manifestly unfair to the Federal reserve banks, especially in view of the fact that they are not free to stipulate the terms and conditions on which they will perform this service but <u>are required by law</u> to act as depositaries or fiscal agents of the Government when directed to do so by the Secretary of the Treasury.

In addition to the question whether the Treasurer of the United States has a right to stop payment on Government checks after they have been "cashed" by the Federal reserve banks and the amount credited to the accounts of other banks which have since failed, the following questions have never been definitely settled:

1. To what extent are Federal reserve banks liable when they "cash" Government warrants and checks bearing forged signatures or endorsements, drawn against insufficient funds, or otherwise containing intrinsic defects ?

2. How long does the liability of the Federal reserve banks continue and how soon must the Treasury Department demand reimbursement in order to preserve such liability ?

3. To what extent is a Federal reserve bank responsible for obtaining reimbursement for the Treasury Department from the banks from which it receives such checks ?

4. Must the Federal reserve bank absorb the loss if such banks have failed and it is impossible to obtain reimbursement ?

The revision of Section 34 (formerly Section 37) of the Treasury circular effective September 2, 1930, made material progress toward

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the clarification of some of these points; but I do not believe that all of these points have been sufficiently clarified to guard against serious misunderstandings between the Federal reserve banks and the Treasury Department and possible financial loss to the Federal reserve banks in the event of a loss on a large item or in the event of a change in the administrative policies of the Treasury Department. Nor is the regulation sufficiently specific to protect the Federal reserve banks against an adverse ruling of the Comptroller General of the United States, regardless of the administrative policies of the Treasury Department or any informal working agreements between the Treasury and the Federal reserve banks.

I understand that the Treasury Department has treated the Federal reserve banks very fairly in this matter and that some of them are not disposed to insist that the Treasury define its position with absolute clarity and definiteness; but I personally believe that the situation is one fraught with the possibility of dangerous consequences to the Federal reserve banks and to the friendly relations between them and the Treasury Department.

STATUTORY PROVISIONS.

Section 15 of the Federal Reserve Act, as amended by the Agricultural Credits Act of March 4, 1923, reads, in part, as follows:

"GOVERNMENT DEPOSITS

"Sec. 15. The moneys held in the general fund of the Treasury, except the five per centum fund for the redemption of outstanding national-bank notes and the funds provided in this Act for the redemption of Federal reserve notes may, upon the direction of the Secretary of the Treasury, be deposited in Federal reserve banks, which banks, when required by the Secretary of the Treasury, shall act as fiscal agents of the United States, and the revenues of the Government or any part thereof may be deposited in such banks, and disbursements may be made by checks drawn against such deposits.

"* * * * * *

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"The Federal reserve banks are hereby authorized to act as depositories for and fiscal agents of any National Agricultural Credit Corporation or Federal Intermediate Credit Bank."

It will be noted that the first paragraph, which has never been amended but contains the language of the original Federal Reserve Act, does three things:

1. It authorizes certain funds of the Government to be deposited in Federal reserve banks;

2. It authorizes disbursements of such funds to be made by "checks drawn against such deposits"; and

3. It provides that, when required by the Secretary of the Treasury, Federal reserve banks "shall act as fiscal agents of the United States."

The last paragraph of Section 15, which was added by an amendment contained in the Agricultural Credits Act of March 4, 1923, is not important in this connection except for the fact that it again recognizes two distinct capacities in which Federal reserve banks may be required to act, i.e., (1) as depositories and (2) as fiscal agents.

The first paragraph clearly contemplates that Federal reserve banks may be required to act either (1) as fiscal agents, which would seem to involve a pure agency relationship, or (2) as depositories, which involves the relationship of debtor and creditor. It is clear, therefore, that the Treasurer could either (1) deposit funds in the Federal reserve banks and draw checks against them in making disbursements, or (2) require the Federal reserve banks, as fiscal agents, to pay on behalf of the Treasury checks, warrants and other obligations of the Government out of Government funds held by the Federal reserve banks as "fiscal agents".

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The Treasury warrants and checks under discussion here are not drawn upon the Federal reserve banks but upon the Treasurer of the United States. They are, however, "cashed" by the Federal reserve banks out of funds of the Treasury on deposit with the Federal reserve banks; and the Treasury Department has either refused or neglected to indicate clearly in its regulations whether in doing so, the Federal reserve banks are acting as depositories or as fiscal agents. This is quite important to the Federal reserve banks as well as to the Treasury Department, because of the important practical and legal distinctions between an agency relationship and a debtor and creditor relationship.

The Appropriation Act of May 29, 1920, which abolished the subtreasuries, contains the following provision (U. S. Code, Title 31, Section 476):

> "The Secretary of the Treasury is hereby authorized in his discretion, to transfer any or all of the duties and functions performed or authorized to be performed by the assistant treasurers above enumerated, or their offices, to the Treasurer of the United States or the mints or assay offices of the United States, under such rules and regulations as he may prescribe, or to utilize any of the Federal reserve banks acting as depositaries or fiscal agents of the United States, for the purpose of performing any or all of such duties and functions, notwithstanding the limitations of section 15 of the Federal reserve Act, as amended, or any other provisions of law: Provided, That if any moneys or bullion, constituting part of the trust funds or other special funds heretofore required by law to be kept in Treasury offices, shall be deposited with any Federal reserve bank, then such moneys or bullion shall by such bank be kept separate and distinct from the assets, funds, and securities of the Federal reserve bank and be held in the joint custody of the Federal reserve agent and the Federal reserve bank: Provided further, That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use member banks as depositaries as heretofore authorized by law.
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> "The Secretary of the Treasury is hereby authorized to assign any or all the rooms, vaults, equipment, and safes

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or space in the buildings used by the subtreasuries to any Federal reserve bank acting as fiscal agent of the United States."

Here again it is clear that, if the Federal reserve banks are utilized by the Secretary of the Treasury, they must act either (a) as "depositaries" or (b) as "fiscal agents" of the United States. The words "notwithstanding the limitations of Section 15 of the Federal Reserve Act" clearly refer to the limitations as to the character of Government funds which may be deposited in Federal reserve banks.

When the Federal reserve banks took over certain sub-treasury functions, they did not step into the shoes of the Assistant Treasurers, whose offices were abolished, but undertook the performance of such functions as were conferred upon them by the Secretary of the Treasury in his discretion either as "fiscal agents" or as "depositaries". Even if they had stepped into the shoes of the Assistant Treasurers, however, their relationship would seem to be one of agency; because the Assistant Treasurers were merely Assistants to the Treasurer of the United States and the sub-treasuries were mere branches of the Treasury Department.

THE TREASURY CIRCULAR.

Section 32 of the Treasury Department Circular No. 176 as amended September 2, 1930, (which was formerly Section 35 of Treasury Department Circular No. 176, of May 15, 1922) reads as follows:

"II. PAYMENT OF GOVERNMENT CHECKS AND WARRANTS."

"32. Federal Reserve Banks and branches. -- Federal Reserve Banks and branches will make arrangements to cash Government checks and warrants drawn on the Treasurer of the United States for disbursing officers of the War Department and Navy Department, and other Government officers, provided that satisfactory identification of the officers shall be furnished. The Treasurer will upon special request advise Federal Reserve Banks and branches as to

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whether the balances to the credit of disbursing officers are sufficient for payment of the checks presented. Each Federal Reserve Bank and branch will cash Government checks and warrants drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible incorporated banks and trust companies who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Checks and warrants cashed by Federal Reserve Banks and branches shall be charged to the account of the Treasurer of the United States, subject to examination and payment by the Treasurer. Federal Reserve Banks and branches will not be expected to cash Government checks and warrants presented direct to the bank by the general public."

It will be noted that, although this is captioned "Payment of Government Checks and Warrants", the text of the section itself very carefully avoids the use of the word "payment" as applied to the action taken by the Federal Reserve Banks; but, in lieu thereof, uses the word "cash", which is an ambiguous word having no well-defined legal meaning. It will also be noted that the section very carefully avoids any indication as to whether the Federal Reserve Banks act as depositaries of the United States or as fiscal agents of the United States.

At a conference held in Washington on January 24, 1927, the Standing Committee on Collections, appointed by the Conference of Governors of all Federal reserve banks, suggested to the officials of the Treasury Department that this section should be amended as follows, the cancelled words being stricken out and the words in capital letters being inserted:

"Federal Reserve Banks and branches, AS FISCAL AGENTS OF THE UNITED STATES, will make arrangements to cash Government warrants and checks drawn on the Treasurer of the United States for disbursing officers of the War Department and Navy Department, and other Government officers, provided that satisfactory identification of the officers shall be furnished. The Treasurer will upon special request advise Federal Reserve Banks and branches as to whether the balances to the credit of disbursing officers are sufficient for payment of the checks presented. Each Federal Reserve Bank and branch, ~~will cash~~ AS FISCAL AGENTS OF THE UNITED

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STATES, WILL PAY CONDITIONALLY Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed THROUGH CLEARING HOUSES OR by ~~responsible incorporated~~ MEMBER banks and trust companies OF THE FEDERAL RESERVE SYSTEM who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Warrants and checks cashed by Federal Reserve Banks and branches shall be charged to the account of the Treasurer of the United States, subject to examination and FINAL payment by the Treasurer. Federal Reserve Banks and branches will not be expected to cash Government warrants and checks presented direct to the bank by the general public."

The circular was not revised at that time, and the same suggestion was again submitted to the officials of the Treasury Department at the Conference of Counsel for all Federal reserve banks (attended also by the Chairman and several members of the Standing Committee on Collections), which was held in Washington on June 10, 1930. The officials of the Treasury Department, however, could not see their way clear to adopt these suggestions; and, when the circular was revised on September 2, 1930, the only change made in this section was to reverse the order of the words "checks and warrants" wherever they appeared.

The questions whether, in "cashing" Government checks and warrants, Federal reserve banks act as depositories or as fiscal agents of the Treasury Department, what is the legal effect of "cashing" such a check or warrant, and whether Federal reserve banks are authorized to cash them when presented through clearing houses, were left undetermined; and the request frequently made by the Federal reserve banks that they be required to cash them only when presented by member banks or by Government disbursing officers, was not complied with.

In view of the provision that "checks and warrants cashed by Federal reserve banks shall be charged to the account of the Treasurer

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of the United States, subject to examination and payment by the Treasurer", it would seem that Federal reserve banks are not acting as depositaries; since otherwise the action of "cashing" such checks and warrants would be final payment. Moreover, the facts that such checks and warrants are not drawn on the Federal reserve banks but are drawn on the Treasurer of the United States indicates that the Federal reserve banks do not act as depositaries but as fiscal agents. They are not familiar with the signatures of disbursing agents and have no information in their records showing the balances to their credit; and, therefore, could not properly and justly be held to the same responsibility as banks paying checks drawn on them by their own depositors.

Section 34, however, reads, in part, as follows:

> "34. Payment by Treasurer.- The Treasurer of the United States reserves the usual right of the drawee to examine, when received, all Government checks and warrants cashed by Federal Reserve Banks and branches and member bank depositaries, and to refuse payment thereon. The Treasurer will handle all such items received by him on the following basis:
>
> "(1) Immediate return will be made of any check or warrant, payment of which is refused on account of forged signature of drawer, insufficient funds, stoppage of payment, or any material defect discovered upon first examination, in all of which cases the transit account of the remitting bank will be charged with the amount of the returned check or warrant and the remitting bank will be expected to give immediate credit therefor in the Treasurer's account; but if the original check or warrant is required for use in connection with a criminal investigation or legal proceeding, the original will be retained for that purpose and a photographic copy of the face and back will be forwarded to the remitting bank in lieu of the original.
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> "(2) In the event that any check or warrant which has been paid by the Treasurer is subsequently found to bear a forged indorsement, or to bear any other material alteration or defect which was not discovered upon first

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"examination, a photographic copy of the check or warrant will be forwarded to the remitting bank and its transit account will be charged with the amount by the Treasurer. The remitting bank, if a member bank depositary, will be expected to give immediate credit therefor in the Treasurer's account; if a Federal Reserve Bank or branch, it will be expected to demand restitution at once from its prior indorser or indorsers, to maintain a close follow-up on its demand, and to give credit in the Treasurer's account when reimbursement has been made. In the case of checks paid more than a year before reclamation is requested of the presenting bank, the Treasurer may, in his discretion, treat the item as a collection instead of charging the presenting bank's account, with the understanding that no rights of the Government as to ultimate recovery are waived thereby.

"(3) In cases of checks or warrants raised or bearing a forged signature of the drawer, not discovered upon first examination by the Treasurer, and in other cases where the Treasurer's right to reclaim is in question, the checks or warrants will be forwarded to the remitting bank as collection items and taken up by the Treasurer when credited, with no intermediate charge in the account of the remitting bank. A photographic copy may be returned in lieu of the original if the latter is required for use in connection with a criminal investigation or legal proceeding.

"In any case arising under this section in which a Federal Reserve Bank or branch is unable to secure restitution within a reasonable length of time, the facts should be reported to the Treasurer of the United States in order that appropriate action may be taken by him."

In view of the fact that Subparagraph No. 1 contains no exception as to cases in which Federal reserve banks "cash" Government warrants and checks bearing forged signatures, drawn against insufficient funds, etc., without any negligence on their part (even though the banks for which they cashed them have become insolvent and it is impossible for the Federal reserve banks to obtain reimbursement), this paragraph would seem to be predicated upon the theory that the Federal reserve banks are acting as depositaries, who are charged with knowledge of the signatures of persons authorized to draw checks upon them and with knowledge as to the sufficiency

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of the balances against which such checks are drawn, rather than as agents having no such information and not being responsible for payments made pursuant to the instructions of their principles without any negligence on their own part.

Where it is possible for the Federal reserve banks to obtain reimbursement from their endorsers, it would not be inconsistent with the agency relationship for them to attempt to do so as agents of the Treasurer of the United States; but it does seem inconsistent with the agency relationship for the Treasurer of the United States to look to the Federal reserve banks for reimbursement in their own right, in the absence of negligence on their part.

INFORMAL ASSURANCES OF TREASURY OFFICIALS.

During informal conversations, officials of the Treasury Department recognize that it is not proper to expect the Federal reserve banks to absorb any losses which might be sustained on such items; and they insist that it is their intention to obtain reimbursement from other sources and to protect the Federal reserve banks "wherever possible", notwithstanding the provisions of sub-paragraph No. 1 of Section 34 of the Treasury Circular. In this connection, they call attention to the following provision of Section 34:

> "In any case arising under this section in which a Federal Reserve Bank or branch is unable to secure restitution within a reasonable length of time, the facts should be reported to the Treasurer of the United States in order that appropriate action may be taken by him."

They admit that this does not give the Federal reserve bank any definite assurance of protection against losses, but state that they are unable to give any more definite assurance because of the lack of any fund or appropriation to which the Treasury can charge such losses.

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When asked how they intend to protect the Federal reserve banks in the absence of any such fund or appropriation, they answer that they propose, first, to make every effort to obtain reimbursement from other sources, such as banks or disbursing officers, and that, if they are unable to do so, they will ask Congress to pass a bill relieving the Federal reserve bank.

They say that bills to relieve the Treasurer of the United States from losses sustained without negligence or misconduct on his part are introduced at every session of Congress and pass without any difficulty. This being the case, it would seem that it would be better to have such losses charged against the Treasurer and covered by bills for his relief than to have them charged against Federal reserve banks and covered by bills for their relief, especially since bills of the latter class might not be so easily passed if the Federal reserve banks should happen to be unpopular at the time they are introduced.

I am well-acquainted with, and have the highest regard for, the Treasury officials with whom I have discussed this subject, and I have not the slightest doubt of their good faith in this matter; but such informal assurances from Government officers, in apparent conflict with the specific provisions of an official circular formally promulgated pursuant to law and itself having the force and effect of law (United States v. Sachs, 257 U. S. 37; United States v. Janowitz, 257 U. S. 42) are slender reeds to lean upon if the Federal reserve banks should ever find it necessary to look to the courts or to the Comptroller General of the United States for a decision as to their liability. To rely upon such informal assurances is at least unbusinesslike, hazardous, and not in accordance with the best methods of dealing with Government officers and departments.

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CORRESPONDENCE WITH TREASURY.

Moreover, in its correspondence on this subject, the Treasury Department has carefully avoided any definite admission that in "cashing" Government checks and warrants the Federal reserve banks act as fiscal agents of the Government. Two or three illustrations will serve to indicate the Treasury's attitude on this point.

In order to protect itself against loss as a result of demand for reimbursement on checks collected by it through the Federal Reserve Bank of New York which were paid by the Treasury but subsequently discovered to contain intrinsic defects, the National City Bank of New York adopted the practice of placing the following statement on the form used by it in advising its correspondents of credit given for Government checks and warrants:

> "All instruments against the Government of the United States are credited subject to final payment by the Treasury Department. Therefore, any item which subsequently may be returned unpaid to us by the Department will be charged back against your account."

This credit advice resulted in many difficulties with foreign banks and was the cause of some embarrassment to the Government of the United States. The Treasury Department requested the National City Bank of New York to discontinue the use of such form of credit advice. The National City Bank insisted that the Treasury clarify its circular and define precisely the position of the Federal Reserve Bank of New York, and a long correspondence ensued running at least from October 3, 1921 to August 7, 1922, (see enclosures to letter addressed by Vice Governor Platt to the Governors of all Federal reserve banks under date of August 16, 1922, X-3504, a copy of which is attached).

Although the National City Bank was most insistent that the Treasury Department state its position specifically, it was unable to obtain any more definite statement regarding the position of the Federal

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Reserve Bank than the following (Letter, Secretary Mellon to C. E. Mitchell, President, National City Bank of New York, July 29, 1922, X-3504a):

> "The Federal Reserve Banks do not pay Government warrants and checks, but cash them under Treasury regulations. The Treasurer of the United States, as the drawee of Government warrants and checks, makes payment thereof, and the Government, rather than the Federal Reserve Bank, is the real party at interest when the question arises of recovery on warrants and checks paid on forged endorsements. * * * ** In the event that recovery could not be made in this manner it would, of course, be necessary to bring suit, and in ordinary course suit would be brought by the United States, rather than by the Federal Reserve Bank, since the Federal Reserve Banks act in such matters for account of the United States and the United States is the real party at interest."

Under date of August 18, 1922, Honorable R. A. Young, then Governor of the Federal Reserve Bank of Minneapolis, submitted to the Board a proposed revised draft of a new check collection circular of the Federal Reserve Bank of Minneapolis, which contained the following statement:

> "This bank being a Fiscal Agent of the Government, it will receive for immediate credit at par, subject to the conditions of this circular, and subject to final payment at the office of the Treasurer of the United States, checks and warrants drawn against the Treasurer. When sending such checks for deposit, they should bear the regular indorsing stamp of the depositing member bank."

The Board submitted this to the Treasury Department and Mr. S. P. Gilbert, Jr., then Undersecretary of the Treasury, replied on August 25, 1922, as follows:

> " * * * * I see no objection to the second paragraph on page 1 of the circular, which appears to be the only paragraph covering the payment of checks and warrants drawn on the Treasurer of the United States, except that I think that the reference to the bank as fiscal agent of the Government in this paragraph is unnecessary and apt to mislead."

After correspondence lasting from January 6th to June 21st, 1922,

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during which numerous letters were exchanged between the Federal Reserve Bank of Richmond, the Federal Reserve Board and the Treasury Department in an effort to reach an agreement as to the functions and liabilities of the Federal reserve banks with respect to Government checks and warrants which were "cashed" by the Federal reserve banks and later found to bear forged indorsements, Mr. S. Parker Gilbert, then Undersecretary of Treasury, terminated the correspondence by the following statement in his letter of June 21, 1922:

> "The Treasury does not look to the Federal Reserve Banks as indorsers or guarantors of warrants or checks drawn on the Treasurer which may be cashed by the Federal Reserve Banks. The duties and functions of the Federal Reserve Banks, as depositaries and fiscal agents of the United States, in respect to the payment of Government warrants and checks are set forth in paragraphs 35-38 of Treasury Department Circular No. 176, as amended and supplemented May 15, 1922, and the Treasury has no intention of holding the Federal Reserve Banks to any liability in this connection beyond the discharge of their duties and responsibilities under the terms of the circular."

While he definitely stated that the Treasury does not look to the Federal reserve banks as indorsers or guarantors of such warrants or checks, it will be noted that he carefully refrained from saying whether the Federal reserve banks were acting as depositaries or as fiscal agents, but avoided any commitment on this point by referring to the Federal reserve banks as "depositaries and fiscal agents". Moreover, the statement that, "The Treasury has no intention of holding the Federal reserve bank to any liability beyond the discharge of their duties and responsibilities under the circular" leaves open the question what are the duties and responsibilities of the Federal reserve banks under the circular.

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As pointed out in my opinion of February 3, 1925, on the liability of Federal reserve banks for paying counterfeit War Savings Stamps as fiscal agents, the terms "depositaries" and "fiscal agents" are not synonymous but have very different meanings. (State v. Dubuclet, 27 La. Ann. Rep. 29)

As pointed out above, in revising its circular No. 176 as late as September 2, 1930, the Treasury Department again rejected a specific suggestion made on the part of the Federal reserve banks that Section 32 of the circular should specifically state that, in cashing Government checks and warrants, the Federal reserve banks act as fiscal agents; and the circular remains silent on the question whether the Federal reserve banks act as depositaries or as fiscal agents.

The attitude of the Treasury Department is well illustrated by the following statement contained in a report submitted to the Conference of Governors on April 25, 1928, by Governor Talley of the Federal Reserve Bank of Dallas, immediately after he had conferred with certain officials of the Treasury Department on this subject:

> "Everyone is aware that no department of the Government will either assume or define the liability of the Government in any hypothetical or probable case and will therefore not undertake to bind the officials of any department in that connection, such liability being left to congressional determination and relief when the question of such liability arises."

This makes it all the more important for the exact status and duties of the Federal reserve banks to be stated clearly and definitely in the regulation under which they are required to act. By clearly defining their status and stating their duties in advance, the chances of misunderstandings, disputes and possible litigation can be greatly reduced.

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CIRCULARS OF FEDERAL RESERVE BANKS.

Under the provisions of Section V of the Board's Regulation J, which governs the terms and conditions under which the Federal reserve banks undertake to clear and collect checks for their member banks, it is specifically provided that, "A Federal reserve bank will act only as agent of the bank from which it receives such checks and will assume no liability except for its own negligence and its guaranty of prior endorsements"; and that, "The amount of any check for which payment in actually and finally collected funds is not received shall be charged back to the forwarding bank, regardless of whether or not the check itself can be returned."

The check collection circulars of all Federal reserve banks, of course, quote this section of Regulation J. All of them also quote the provisions of Section 34 of Treasury Department Circular No. 176 and contain the following special provision regarding Government checks and warrants:

> "The provisions of Regulation J and of this circular and of our time schedules shall be deemed applicable to the handling of and credit and availability for United States Government checks and warrants in so far as such provisions relate to checks generally or to Government checks and warrants in particular. Credit for Government checks and warrants will in all cases be subject to payment by the Treasurer of the United States and they will be handled in accordance with, and subject to, the provisions of Treasury Department circular No. 176, in effect at the time such items are received by the Federal Reserve Bank."

Because of these provisions in their circulars, it is sometimes contended on behalf of the Treasury Department that the credit given by Federal reserve banks to their member banks is only provisional; that the Federal reserve banks never acquire the rights of bona fide holders for value of such Government checks and warrants; and that the Federal

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reserve banks have no right to utilize the reserve balances of the banks to which such checks have been credited for their own protection instead of for the purpose of obtaining reimbursement for the Treasurer or for the payees of Government checks and warrants upon which it is sought to stop payment because the banks in which they were deposited have become insolvent. It is perfectly clear, however, that the provision that such checks are credited "subject to final payment" and the reservation of the right to charge them back to the member bank if payment is not received by the Federal reserve bank in actually finally collected funds does not prevent the Federal reserve banks from acquiring title to such checks in their own right when they have collected such checks and credits the proceeds to the banks from which they were received. City of Douglas v. Federal Reserve Bank of Dallas, 271 U. S. 489.

Because the Federal reserve banks originally receive Treasury checks and warrants for collection as agents of their member banks and nonmember clearing banks, it is sometimes contended that in "cashing" them they are acting as agents of such banks and not as depositaries or fiscal agents of the Treasury Department; and, where such checks bear forged signatures or have been drawn against insufficient funds, it might be contended on the part of the Treasury Department that the Federal reserve banks are liable on their endorsements or for money had and received without valuable consideration. If they act as agents of the member banks, however, it would seem that the Government ought to look to their principals for reimbursement.

In informal discussions which I have had with representatives of the Treasury Department, an attempt has been made to distinguish between the legal effect of "cashing" Government checks and warrants under Treasury circular No. 176, (1) when Federal reserve banks actually pay out cash to disbursing agents or banks, and (2) when they merely debit the Treasurer's account

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and credit the account of the banks from which such checks were received. I believe, however, that no such distinction can properly be made and that the legal effect of the latter transaction is the same as if the Federal reserve banks, acting as agents for their member banks, presented the checks to themselves in their capacity as agents of the United States; received the cash from the United States; and deposited the same to the reserve accounts of their member banks.

Incidentally, there is considerable authority for the position that, when the proceeds of the checks have been received by a collecting agent and credited to the account of the banks from which the checks are received, the agency relationship ceases and the relation of debtor and creditor is substituted.

CONFLICTING VIEWS OF THE FEDERAL RESERVE BANKS.

During the conference of Governors of all Federal reserve banks held in Washington April 10, 1920, the subject of cashing Government warrants and checks for disbursing officers was discussed with the idea of developing more businesslike relationships between the Treasury Department and the Federal reserve banks. After considerable discussion the Chairman, Governor Mc Dougal of the Federal Reserve Bank of Chicago, made the following statement (Stenographic Transcript of Proceedings, pages 498 to 500):

> "* * The conclusion is if we do indulge in the cashing of these checks that the plan should be as follows:
>
> "As a matter of ordinary business prudence it seems to me not only desirable but necessary that the Federal reserve banks and branches, before undertaking to cash Government warrants and checks, should require:
>
> "1. Full authority covering signatorial powers of each and every disbursing officer.
>
> "2. Properly authenticated specimen signatures.

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"All authorities and signatures to be considered in full force and effect until revocation in writing is received and acknowledged by the Federal reserve banks and branches.

"3. A definite understanding that no responsibility will be assumed for stop payments unless proper notification has been received by Federal reserve banks and branches in time to prevent payment.

"4. Protection against overdrafts.
Complete freedom from restriction or responsibility as to the amount of checks cashed.

"5. That whatever operating arrangement for cashing Government checks and warrants is agreed to, if any, should be expressed in writing and under no circumstances should be governed by a circular containing any such conditions as the following, which appears in Treasury Department circular No. 176:

"The Secretary of the Treasury may withdraw at any time, or from time to time any or all of the provisions of this circular."

unless with consent of respective Federal reserve banks."

The Conference thereupon adopted the following resolution:

"Moved and carried that, if or when Federal Reserve Banks and Branches are required to cash Government checks and warrants, the procedure of the Banks should be that of commercial banks dealing with their own customers, and they should be governed in their actions by sound business principles and methods, or that they conduct the whole business for account and risk of the Government, as its agents and without recourse to the Federal Reserve Banks except for negligence; and that the Federal Reserve Board be requested to take the matter up with the Treasury Department to that end. (page 500)"

This recommendation was submitted to the Federal Reserve Board, which commented thereon as follows. (Letter addressed to the Governors of all Federal reserve banks, June 6, 1920, X-1944):

"Treasury officials take the view that where Federal Reserve Banks cash Government checks or warrants they do so upon their own responsibility and not as fiscal agents of the Treasury. The Treasury Department has, however, limited the cashing of Government checks and warrants by

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> Federal Reserve Banks to disbursing officers of the Government under Pa. 29 of Department Circular No. 176, dated December 31, 1919, and in accordance with these regulations, Federal Reserve Banks and Branches will not be expected to cash Government checks and warrants presented direct to the Bank by the general public. Disbursing officers, of course, must be satisfactorily identified before their checks are cashed, and the Treasurer will, upon special request, advise Federal Reserve Banks and their Branches by wire the balance to the credit of such officers. Federal Reserve Banks, of course, should take such precautions as are generally taken by the commercial banks in cashing Government checks and warrants."

Since those proceedings took place, the Treasury Department Circular has been amended so as to require Federal reserve banks to cash Government warrants and checks when presented by disbursing officers, as well as when presented by responsible banks and bankers, but the Treasury Department has never said whether in doing so they are acting as depositaries or as fiscal agents.

Most of the Federal reserve banks now take the position that they act solely as fiscal agents of the Treasury in performing these functions; but there seems to be a lack of complete agreement on this question, even among the Federal reserve banks, as is evidenced by the following statement contained in a report submitted to the Governors' Conference by Governor Talley of the Federal Reserve Bank of Dallas, under date of April 25, 1928:

> "The service and facility of encashment of Treasury warrants at Federal reserve banks seem to have been kept out of the sphere or domain of the fiscal agency functions of the Federal reserve banks performed for the Secretary of the Treasury as specified in the Federal Reserve Act, and in this respect the encashment of warrants by the Federal reserve banks is looked upon as a depository function in the same view as such service is performed by active national bank depositaries."

> "After considerable study of the subject my own view is that the Federal reserve banks would be looked upon and determined to be paying agents of any Treasury and that such warrants that had been encashed by Federal reserve banks would be considered to have been paid to the holder of such

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"warrants as though such warrants were actually drawn upon a Federal reserve bank and without recourse upon such holders."

It is very important, therefore, that, before entering into further negotiations with the Treasury Department on this subject, the Federal reserve banks reach an agreement among themselves as to the capacity in which they would like to act.

If they act as fiscal agents, their liability will be strictly limited and they will not be required to know the signatures of the drawers of such checks or whether the balances against which they are drawn are sufficient. On the other hand, it is probable that it will be held that such checks are not finally paid when charged to the Treasurer's account by the Federal reserve banks, and payment will be postponed until they have been finally accepted by the Treasurer of the United States.

On the other hand, if the Federal reserve banks act as depositaries it would seem to be necessary to establish balances on their books to the credit of the various disbursing agents, to know the signatures of such disbursing agents, and to assume all of the responsibilities and liabilities incident to banks paying checks drawn on themselves. If this were done, however, the checks would be finally paid and charged to the accounts of the drawers on the books of the Federal reserve banks, and there would be much more justification for the Federal reserve banks giving immediate credit therefor to the banks from which such checks are received.

There are other practical advantages and disadvantages of acting in either of these capacities; but these practical problems are fully appreciated by the officers of the Federal reserve banks and it is unnecessary for me to attempt to summarize them here.

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OPINION OF THE ATTORNEY GENERAL

Several years ago, the Federal reserve banks, without any negligence on their part, and acting under specific instructions to redeem war savings certificates "as fiscal agents of the United States", paid and charged to the account of the Treasurer of the United States a large amount of counterfeit war savings stamps, which were not discovered to be counterfeit until several months afterwards. The Treasurer demanded that the Federal reserve banks reimburse him for the amount of such payments; they refused to do so; and the question whether they should do so was submitted to the Attorney General of the United States. The Attorney General ruled that the Federal reserve banks were acting as fiscal agents of the Treasury in redeeming such war savings stamps; that their relation was purely one of agency; and that, in the absence of negligence or violation of instructions, they could not be required to reimburse the Treasury.

In submitting that question to the Attorney General for an opinion, the Secretary of the Treasury transmitted an opinion of the Solicitor of the Treasury and also an opinion rendered by the undersigned, as General Counsel of the Federal Reserve Board, under date of February 3, 1925; but the opinion of the Attorney General has never been published and no copy has ever been furnished to the Federal Reserve Board or to the Federal reserve banks.

It is believed that this opinion of the Attorney General establishes principles of great importance to all Federal reserve banks; and I respectfully recommend that the Board request the Secretary of the Treasury to furnish copies of it to the Federal Reserve Board for its information, and that of the Federal reserve banks.

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THE CLOSTER NATIONAL BANK CASE.

In the case of Closter National Bank, Plaintiff in Error v. Federal Reserve Bank of New York, Defendant in error, 285 Fed. 138, which was decided on October 31, 1922, the Circuit Court of Appeals for the Second Circuit held that, where a Federal reserve bank reserved the right to charge back "at any time and unconditionally" checks on the Treasurer of the United States, it could charge back such an item to the member bank credited therewith, although over a year had elapsed since it was deposited, and that such right to charge back was not dependent on a showing by the Federal reserve bank that the item was in fact a forgery and alteration as claimed by the Treasurer. The Court discussed the rights, duties and liabilities of the Federal reserve bank as follows:

> "The contract between the parties embraces the contents and obligations imposed by the circular letter No. 37. The defendant in error was appointed depository and fiscal agent of the United States, and it offered to certain member banks of the Second Federal Reserve District the option of presenting for payment checks and warrants on the Treasurer of the United States through it, but it made the terms as set forth in the circular above. The plaintff in error was free to accept or refuse to accept the services of the defendant in error as it saw fit. It might have used other available means for collecting government checks and warrants, if it so desired. While immediately crediting the account of the plaintiff in error with the defendant in error, it was always subjected to final payment by the Treasurer. Crediting the account accorded an advantage to the member banks in affording means for making funds promptly available. In undertaking this service, the defendant in error became a collecting agent. Under the terms of the circular, defendant in error had the right, should the United States at any time not pay, to return such check for any reason which the government might consider good, and the defendant in error could at any time and unconditionally charge back the amount credited to the plaintiff in error, at the same time returning the item so charged back. The right to do so was indefinite as to time; it might be done at any time and unconditionally. It was with this understanding and agreement that the defendant in error gave credit and accepted the obligation to perform this service for the plaintiff in error.
>
> "But it is contended that the defendant in error's right to charge back the item is dependent upon its showing that the item was in fact a forgery and alteration as claimed by the Treasurer.

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"By the terms of the collection agreement under which the defendant in error performed the service, the collection agent had the right, if it acted in good faith, to charge back the item to the plaintiff in error's account, without the necessity of establishing a forgery or alteration of the warrant. The memorandum credit accorded, by the agreement of which the circular letter is a part, was always qualified by the clause "subject to final payment". And by that clause the government has for many years exercised the right of returning at any time warrants and checks, which for any cause have not been considered good, and the plaintiff in error was notified that this practice would be continued as a condition of receiving government warrants and checks on the Treasurer of the United States from member banks for credit, with 'the right to charge back at any time and return to the depositor at any time and unconditionally any such item deposited with the Federal Reserve Bank.' To place any other construction upon the terms of the circular would be to treat the phrase quoted as surplusage. Under the law, the Treasurer might recover if he paid the warrant because of the forgery, and therefore, as a matter of law, the item was not finally paid."

Incidentally, the opinion upheld the right of the Government to demand reimbursement at any time for warrants and checks "which for any cause have not been considered good" and cited the case of Onondaga Bank v. United States, 12 C. C. A., 407, 64 Fed. 703, wherein the Government was allowed to recover after two years had elapsed between payment and discovery of the forgery.

PRACTICAL OPERATION

Neither the legal effect of these transactions nor the practical problems involved can be fully appreciated without a clear conception of how they are actually handled; and it is believed that some of the features of the practical operations have been overlooked by certain of the parties who have discussed these problems from time to time. While the practical details can be stated more accurately and more understandingly by Federal reserve bank officers, I submit the following as what I believe to be a substantially accurate statement of the practice:

(1) Government checks are received by Federal reserve banks from their member banks and nonmember clearing banks, either through the clear-

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ing houses or in their daily "cash letters", along with checks on numerous other banks, some of which are located in the same city as the Federal reserve banks and some of which are located at distant points.

(2) For all bank checks which can be collected on the day they are received, the Federal reserve banks give immediate credit and immediate availability (i. e., the immediate right to withdraw and to count the proceeds as reserves) and for all other bank checks they give their member banks deferred credit, which becomes available for withdrawal or for reserve purposes in accordance with time schedules representing approximately the average time required to collect such checks.

(3) Acting pursuant to arrangements made at the request of the Treasury Department, and for the accommodation of the Treasury Department, Federal reserve banks give their member banks immediate credit and immediate availability for all Government checks and warrants received up to a certain hour each day.

(4) Acting pursuant to the provisions of Section 32 of Treasury Department Circular No. 176, the Federal reserve banks immediately debit the account of the Treasurer of the United States with the amount of such checks and warrants and forward them to the Treasurer of the United States "for examination and final payment".

(5) Thereafter, if the checks are found to bear forged signatures or to be drawn against insufficient funds, if payment is stopped, or if for any other reason payment is refused by the Treasurer of the United States, the checks are returned to the Federal reserve banks and either the amounts thereof are charged back against the Federal reserve banks or the Federal reserve banks are requested to obtain reimbursement from their endorsers, in accordance

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with the provisions of Section 34 of Treasury Department Circular No. 176.

When a Government check reaches the Federal reserve bank it has reached the organization which acts for both the holder and the drawee; and the Federal reserve bank simply debits the account of the Treasurer of the United States and credits the account of its member bank on the same date. It will be seen, therefore, that the collection of a Government check as agent for a member bank and the "cashing" of it pursuant to Treasury Department Circular No. 176 are practically simultaneous transactions, wherein the operations of the Federal reserve bank resemble more closely the operations of a clearing house than the operations of an agent for collection. This similarity is even more pronounced when consideration is given to the fact that each day the Federal reserve bank receives from the Treasury Department checks drawn on its member banks, collects them from its member banks, and credits the proceeds to the Treasurer of the United States.

As long as the bank from which such checks and warrants are received remains solvent, no great hardship results to Federal reserve banks from the return of Government checks by the Treasurer of the United States; since the Federal reserve banks can charge them back to the reserve accounts of the banks from which they were received. Where, however, such checks are charged back to the Federal reserve banks after the banks from which they were received have become insolvent, there is grave danger of loss to the Federal reserve banks, if the Treasury looks to them for reimbursement in the absence of negligence or violation of the instructions of the Treasury Department.

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It is frequently contended that the Federal reserve bank can and should charge the amount of such checks to the reserve account of a member bank after insolvency; but to do so is in derogation of the Federal reserve bank's right to enforce its bankers' lien against such reserve balance, upon which it relies as at least partial security in extending credit and forwarding checks for collection to member banks.

NATURE OF TREASURY CHECKS AND WARRANTS.

With particular reference to the right of the Treasurer of the United States to "stop payment" on Treasury checks and warrants after they have been debited to his account and credited to the account of the member bank on the books of the Federal reserve bank and after the member bank has been placed in the hands of a receiver, there is one legal point which is frequently overlooked in discussions of this subject, - i. e., the fact that such warrants are in effect bills of exchange drawn by the Government on itself.

Section 130 of the Uniform Negotiable Instruments Law, which has now been enacted in all of the States, provides in part that, "Where in a bill drawer and drawee are the same person, * * * the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note".

It could be argued with some force that, where a Federal reserve bank has given a member bank immediate credit and availability for a Government check or warrant, it has become the holder thereof and may treat it as a demand note of the Government of the United States, and that, for the Government to attempt to "stop payment" or refuse

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to allow credit therefor in the account between the Treasurer of the United States and the Federal reserve banks, is in substance a refusal by the Government to honor its demand obligation in the hands of a bona fide holder for value.

It may be argued on behalf of the Government that the drawer and drawee are not the same, since the drawer is the disbursing agent of the Government and the drawee is the Treasurer of the United States; but, when acting in official capacities, both of these officials are acting for the Government. In this connection, see the following statement in Brannon, Negotiable Instruments Law, 3d Ed., page 358:

> "A draft drawn by an agent on his principal by authority of the principal is equivalent to a draft drawn by the principal on himself, and need not be accepted by the drawee. It may be treated as the promissory note or the bill of the principal. First Nat. Bank v. Home Ins. Co., 16 N. M. 66, 113 Pac. 815; C. M. Keyes Commission Co. v. Miller (Okla.), 157 Pac. 1029, not citing the N. I. L. Watauga Co. Bank v. McQueen, 130 Tenn. 382, 170 S. W. 1025; Clemens v. Staunton Co., 61 Wash. 419, 112 Pac. 494. And it is no defense that the indorsee knew that the drawer was an agent. Merchants' Bank v. Goodfellow, 44 Utah, 349, 140 Pac. 759."

In the case of United States v. National Exchange Bank of Baltimore, 1 Fed. (2nd) 888, the Circuit Court of Appeals held that a Government check drawn by a disbursing officer of the Veterans' Bureau on the Treasurer of the United States was a check drawn by the Government on itself; and, on this ground, the court denied the right of the United States to recover from a commercial bank (which acted in good faith and without knowledge of any irregularity) the amount of such a check which had been raised to a hundred times its true value and had been paid to such commercial bank by the Treasurer through a Federal reserve bank.

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In the course of its opinion, the court said (page 890):

> "*** It is enough that, when the United States elects to become a party to commercial paper, it assumes all the responsibilities of private persons under the same circumstances. Cook v. United States, supra; United States v. Bank of New York National Banking Association, 219 F. 648, 134 C. C. A. 579, L. R. A. 1915D, 797."

The principle thus announced by the court has an important bearing on the claim sometimes advanced by officials of the Treasury Department that, in dealing with government checks and warrants, the Government is a sovereign and has peculiar and special rights as such.

Incidentally, the court said that the Federal reserve bank acted as the Government's agent in the transaction giving rise to the decision, but the decision arose on a demurrer, and this may have been a mere restatement of one of the allegations of the declaration filed by the Government.

Regardless of whether the Federal reserve banks could or should elect to treat as promissory notesof the Government checks and warrants for which they have given their member banks immediate credit and availability, it would not seem morally fair or just for the Treasury Department to attempt to stop payment and to refuse to allow the Federal reserve banks credit for such items after the insolvency of the bank from which they were received, in view of the following considerations:

(1) The items are drawn by the Government on itself;

(2) Acting pursuant to specific (though ambiguous) instructions issued by the Secretary of the Treasury, with which the Federal

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reserve banks must comply in view of the mandatory provision of Section 15 of the Federal Reserve Act, the Federal reserve banks have debited the amounts of such items to the Treasurer of the United States.

(3) On the faith of such debits to the Treasurer's account and acting pursuant to arrangements made at the request of the Treasury Department, the Federal reserve banks have given their member banks immediate credit for such items in their reserve accounts with the right of immediate withdrawal; and

(4) The member bank to which such items have been credited has become insolvent; and to attempt to reverse the entries diminishes the reserve balance of such bank available for the protection of the Federal reserve bank and may result in dispute and possible litigation with the receiver of the insolvent member bank.

THE QUESTION OF IMMEDIATE CREDIT.

Section 19 requires the reserve balance of each member bank to consist of "an actual net balance" with the Federal reserve bank, and the Courts have construed this requirement as forbidding credit given for uncollected checks to be counted as reserve. (Pascagoula National Bank v. Federal Reserve Bank of Atlanta, 3 Fed. (2nd) 465, 11 Fed. (2nd) 866, certiorari denied, 271 U. S. 685, 46 Sup. Ct. 637.)

In view of this decision, it may seriously be questioned whether the Federal reserve banks should give their member bank immediate credit for Treasury checks and warrants, even though the amount thereof is immediately debited to the Treasurer's account, unless (1) such debit

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is deemed to be a final payment in so far as the Federal reserve bank is concerned, or (2) unless the Treasurer will agree not to look to the Federal reserve bank for reimbursement for items bearing forged endorsements, drawn against insufficient funds, on which payment is stopped, or on which the Treasurer refuses final payment for any other reason, unless and until the Federal reserve bank is able to obtain reimbursement from its member banks.

The refusal of Federal reserve banks to give their member banks credit in their reserve accounts for bank checks until they have been collected, is now recognized to be not only economically sound but legally necessary. If Federal reserve banks do not know whether credit will be allowed by the Treasurer of the United States for Government warrants or checks until after they have been forwarded to Washington and examined by the Treasurer and until after he has made a decision on the question whether they will be finally paid, there is serious question whether the Federal reserve banks should not refuse to give immediate credit for such checks, treat them as items drawn on a bank in Washington, and give deferred credit in accordance with their time schedules covering items drawn on banks in Washington.

This is a question which I believe should be given very serious consideration in connection with the clarification of the legal rights and responsibilities of the Federal reserve banks in cashing Government warrants and checks as well as the actual practice which is to be pursued by the Federal reserve banks and the Treasurer of the United States.

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ADDITIONAL DATA.

If the Board adopts my recommendations, brings this matter to the attention of the Conference of Governors, and furnishes the Governor of each Federal reserve bank with a copy of this memorandum, I respectfully recommend that they also be furnished with copies of the following documents containing further data on this subject, which would be of value to any Committee to which this matter might be referred for study and report:

1. The attached recent correspondence between the Treasury Department and the Federal Reserve Bank of Atlanta.

2. Circular letter (X-1980) to Governors of all Federal reserve banks, except Kansas City, under date of July 16, 1920, re "Cashing Government Warrants and Checks Drawn on the Treasurer of the United States for Disbursing Officers."

3. Letter addressed by Mr. Case, Deputy Governor of the Federal Reserve Bank of New York to Mr. S. P. Gilbert, Jr., Assistant Secretary of the Treasury, December 15, 1920.

4. Reply of Gilbert to Case, December 21, 1920.

5. Reply, Case to Gilbert, December 23, 1920.

6. Reply, Gilbert to Case, December 29, 1920.

7. Circular letter (X-3047) by Board to Chairmen of all Federal reserve banks, except New York, February 15, 1921, re "Returned Treasury Items."

8. Circular letter (X-3471) to Governors of all Federal reserve banks, July 10, 1922, entitled "Amendment to Check Collection Circulars Suggested by Treasury Department."

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9. Circular letter (X-3504) to Governors of all Federal reserve banks, August 16, 1922, re "Charging back of Government Warrants and Checks Previously Paid by Treasurer of the United States" and enclosures containing correspondence between Treasury Department and National City Bank.

10. Letter, Governor Seay, Federal Reserve Bank of Richmond to Treasurer of the United States, January 6, 1922.

11. Letter, Governor Seay to Governor Harding, enclosing a copy of the above, January 7, 1922.

12. Letter, Harding to Undersecretary Gilbert, January 11, 1922.

13. Letter, Treasurer White to Governor Seay, January 17, 1922, enclosing letter Gilbert to Case, January 27, 1921.

14. Letter, Undersecretary Gilbert to Governor Harding, January 18, 1922.

15. Letter, Governor Harding to Governor Seay, January 20, 1922.

16. Letter, Governor Seay to Governor Harding, January 21, 1922.

17. Memorandum of law, M. G. Wallace (Counsel, Federal Reserve Bank of Richmond) to Governor Seay, January 25, 1922, re "Government Checks Bearing Forged Endorsements".

18. Letter Governor Seay to Governor Harding, transmitting copy of above, January 25, 1922.

19. Letter Governor Harding to Undersecretary Gilbert, January 26, 1922.

20. Letter, Undersecretary Gilbert to Seay, June 21, 1922.

21. Letter, Undersecretary Gilbert to Governor Harding, June 21, 1922.

22. Circular letter (X-3456) re "Liability of Federal Reserve Banks

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on Government Warrants and Checks Cashed by Them."

23. Letter, Congressman McSwain to Board, December 7, 1922.

24. Letter, Governor Seay to Vice Governor Platt, December 9, 1922.

25. Letter, Congressman McSwain to Vice Governor Platt, December 14, 1922.

26. Letter, Vice Governor Platt to Congressman McSwain, December 22, 1922.

27. Letter, The Commerical Bank, Clinton, South Carolina, to the Secretary of the Treasury, December 11, 1922.

28. Reply of Secretary of the Treasury, December 28, 1922.

29. Letter, Vice Governor Platt to Undersecretary Gilbert, January 5, 1923.

30. Letter, Wallace (Counsel Federal Reserve Bank of Richmond) to Wyatt, General Counsel, Federal Reserve Board, November 1, 1923.

31. Formal opinion addressed to Board by undersigned February 3, 1925, re "Liability of Federal Reserve Banks for Paying Counterfeit War Savings Stamps as Fiscal Agents of the Treasury".

32. Memorandum, Wyatt to files, January 14, 1927, "Cashing of Government Checks by Federal Reserve Banks when Presented through Mail by Nonmember Banks."

33. Memorandum, Wyatt to Hand, January 22, 1927, "Cashing of Government Checks Presented through Mails to Federal Reserve Banks by Nonmember Banks".

34. Letter, Stroud, (Counsel Federal Reserve Bank of Dallas) to Wyatt, Board's Counsel, July 5, 1927.

35. Wyatt's reply to Stroud, August 17, 1927.

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36. Report submitted to Governors' Conference, April 25, 1928. by Lynn P. Talley, Governor of the Federal Reserve Bank of Dallas.

If the Board is able to obtain a copy of the opinion of the Attorney General of the United States with regard to the liability of Federal reserve banks for paying counterfeit war savings stamps as fiscal agents of the Government, I also recommend that a copy of that opinion be furnished to the Governors of all Federal reserve banks.

I respectfully submit herewith a proposed letter addressed to the Secretary of the Treasury requesting him to furnish the Board with a copy of the opinion of the Attorney General.

Respectfully,

(Signed) Walter Wyatt,

General Counsel.

Papers attached.

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X-6867-a

DOCUMENTS ATTACHED AS EXHIBITS

TO

MR. WYATT'S MEMORANDUM

OF

April 17, 1931

RE

"Cashing" of Government Checks
and Warrants by Federal Reserve
Banks.

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FEDERAL RESERVE BANK OF ATLANTA

Office of
Cashier.

April 4, 1931.

Mr. E. M. McClelland, Assistant Secretary,
Federal Reserve Board,
Washington, D. C.

Dear Mr. McClelland:

Reference is made to our conversation over the telephone on the 2nd instant, at which time I mentioned my letter to you dated the 14th ultimo relative to our correspondence with Mr. Ogden L. Mills, Undersecretary of the Treasury, and also with Mr. W.O. Woods, Treasurer of the United States.

In order that I may be in a position to tell Governor Black what you and Mr. Walter Wyatt have decided to do, I wish that you would have the kindness at your convenience to let me know if you have decided to make it a Federal Reserve Board matter. I believe the points at issue between ourselves and the Treasury Department are of interest to all Federal Reserve Banks, and no doubt the whole subject of payment of checks drawn on the Treasurer by the Federal Reserve Banks, particularly with reference to the adoption of a definite policy by the Treasury Department, is of sufficient importance to deserve the attention of the Federal Reserve Board.

Anyway let me know what you have done.

(Sgd.) M.W.Bell

Cashier

MWB:MC

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Federal Reserve Bank of St. Louis

COPY X-6867-a-2

FEDERAL RESERVE BANK

OF ATLANTA

Office of
Cashier

March 14, 1931.

Mr. E. M. McClelland, Assistant Secretary,
Federal Reserve Board,
Washington, D.C.

Dear Mr. McClelland:

I am enclosing copies of letters dated February 9th and March 2nd written by Governor Black to Mr. Ogden L. Mills, Undersecretary of the Treasury, also copy of my letter of the 2nd instant to W. O. Woods, Treasurer of the United States.

All of this correspondence relates to checks drawn on the Treasurer of the United States received by us from banks which suspended just about the time the checks reached us and were charged to the Treasurer of the U.S. Payment of these checks was declined by the Treasurer because he had been requested by the drawers, payees, or by other persons, to stop payment of the checks because of the suspension of the banks in which they were deposited.

We have had extensive correspondence with the Treasurer and with Mr. Mills during the past several months when bank suspensions were of frequent occurrence, and all of this correspondence related to the Treasurer's policy or practice which we think is unsound or at least likely to be prejudicial to our interests and it appears to be manifestly unfair to us.

We have not received replies to these letters or to other letters written previously and which call for a definite statement of the Treasurer's policy, or really the adoption by the Treasurer of a definite policy. It is very essential that we know definitely the policy by which the Treasurer proposes to be governed in handling such checks in order that we can also adopt a definite policy.

If you can without embarrassment to yourself take this matter up unofficially with the Treasurer with a view of getting a definite answer from him for us, I will very much appreciate it. If, however, it is a matter that you do not care to handle, a word to that effect from you will be sufficient.

Yours very truly,

(Sgd) M. W. Bell.

MWB:MC

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FEDERAL RESERVE BANK
OF ATLANTA

March 2, 1931

My dear Mr. Secretary:

On February 9th I wrote you in connection with two checks drawn on the Treasurer by W. A. Minnis, symbol number 99126 to the order of Isaac L. Reisman for $110.67 and $253.76 respectively, and one other check for $150.00 drawn to the order of P. L. Dodge by J. B. Schommer, symbol number 11666.

In my letter to you I detailed our situation with the Treasurer relative to similar checks and recited that I had made every effort to get the Treasurer to define or agree as to our position when, as fiscal agent of the United States, we pay checks drawn on him. In my letter to you I stated that we would greatly appreciate it if you could aid us in getting the Treasurer to fix a policy as to such checks, so that we could with certainty under that policy handle them.

I have received no reply to my letter to you and have received no further information from the Treasurer as to a definition of such policy. If you can aid in this matter I will greatly appreciate it.

With my regards, I am,

Yours very truly,

E. R. Black

Governor

Mr. Ogden L. Mills,
Undersecretary of the Treasury,
Washington, D. C.

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FEDERAL RESERVE BANK
OF ATLANTA

March 2, 1931

Hon. W. O. Woods,
Treasurer of the United States,
Washington, D. C.

Dear Sir:

Reference is again made to your letter, AWS-C, dated the 25th ultimo, in which you referred to check #1050780 dated October 15, 1930, drawn on you by J. L. Summers, symbol #10-005, to the order of Martha B. Waltmire for $150, payment of which was originally declined by you as stated in your letter of October 22, 1930, AWS-C, as you were requested by C. C. Pierce, Assistant Surgeon General, Public Health Service, to stop payment because the First National Bank of Perry, Florida, in which the check was deposited, had become insolvent. On the 27th ultimo we acknowledged receipt of your letter of the 25th ultimo, and enclosed with our acknowledgement a copy of our letter of the same date addressed to Mr. Iron Ross, Receiver of the First National Bank of Perry, Florida, in which this check was deposited by the payee.

In our letter to Mr. Ross we stated in substance that we are unwilling to reverse our entry charging your account with the amount of this check and return it to the receiver for delivery to the payee, because we feel that the balance standing to the credit of the First National Bank of Perry in its reserve account at the time of its suspension should be held by us to apply in partial liquidation of its indebtedness to us, which is considerably in excess of the amount of its reserve balance, and that unless he had funds he could use to redeem the check or reimburse us for the amount of it, we would find it necessary to decline your request.

We enclose herewith a copy of Mr. Ross' reply dated the 28th ultimo in which he declines to use funds of his trust derived from other sources to redeem the check or reimburse us, and consequently it is necessary for us to decline your request.

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FEDERAL RESERVE BANK
OF ATLANTA

The policy which has been followed by your office in several similar cases where you have declined at the request of payees or drawers to pay checks drawn on you, because of the suspension of the banks in which they were deposited, creates serious doubt in our mind as to what you conceive to be the function of the Federal Reserve Banks acting as Fiscal Agents of the United States in paying checks drawn on you. Your action in such cases creates a condition that is difficult for the Federal Reserve Banks to deal with, because we do not know when you may, for the reasons stated above, decline to pay a check for a large amount and leave us in a position where we cannot recover from our endorser, forcing us to become an ordinary creditor for an amount of money which we, to all intents and purposes, find that we have merely advanced to our endorser.

We would like to have a definite statement of your policy with respect to stoppage of payment of checks under circumstances which do not assert or claim any infirmity of any nature in the checks themselves.

If you will inform us as to the adoption of a definite policy by your office, we will be in a position to know what our own policy should be in handling checks drawn on the Treasurer of the United States.

Trusting that you will give this matter your consideration and favor us with a reply, I am,

Yours very truly,

M. W. Bell
Cashier

MWB:MC

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X-6867-a-5

FEDERAL RESERVE BANK
OF ATLANTA

February 9, 1931

Dear Mr. Secretary:

I am pleased to acknowledge receipt of your letters dated January 29th, 31st, and the 5th instant with enclosures relating to requests received by the Treasurer of the United States to stop payment of two checks drawn on the Treasurer by W. A. Minnis, symbol number 99126 to the order of Isaac L. Reisman for $110.67 and $253.76 respectively, and one check for $150 drawn to the order of P. L. Dodge by J. B. Schommer, symbol number 11666.

These checks were received by us on December 20 and 22, 1930, in the regular course of business, from the City National Bank of Miami, Florida, for payment and immediate credit of the proceeds to its reserve account. On the respective dates the reserve account of the City National Bank was credited and the checks were charged to the Treasurer's general account and forwarded to his office with our transcript of that account.

The Treasurer returned the checks to us in letters dated December 23 and 29, 1930, stating with respect to the Reisman checks that "payment is declined at this time in compliance with request dated December 23, 1930, from the United States Veterans Bureau who asked that payment be stopped because the bank in which the checks were deposited had become insolvent.

Please return the checks through the endorsers to the Receiver of the failed bank for delivery to the payees if circumstances warrant this action. Returned check credit tickets #50666 and #50667 are enclosed, with which to enter credit in the Treasurer's account."

The Treasurer employs the same language in his letter returning the Dodge check, except that he stated as his reason for declining payment, that the payee requested that payment be stopped.

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FEDERAL RESERVE BANK
OF ATLANTA

Under dates of January 2nd and 5th, 1931, we declined to credit the Treasurer, and returned to his office these and other checks received by us from the City National Bank, payment of which had been refused by the Treasurer because of requests received from the payees or drawers to stop payment. Our reasons for refusing the Treasurer's requests for credit and the return of the checks through our endorsers to the Receiver of the failed bank are stated in the following paragraphs of our letters:

"These checks were received by us in the regular course of business on December 19, 1930, from the City National Bank, Miami, Florida, and were on that date charged in our transcript of the Treasurer's account and credited to the reserve account of the City National Bank, which bank suspended December 22nd.

Immediately following the suspension of the City National Bank we applied the entire balance to its credit on our books in its reserve account in partial payment of its indebtedness to us, the amount of which indebtedness greatly exceeded the amount of the balance so applied, consequently we cannot now, as requested by you, charge the amount of these checks to that balance without loss to ourselves.

We feel confident that you do not expect us to take such action, and the checks are returned to you for such disposition as you deem proper."

Without conceding to the Treasury any right to decline payment of these checks for the reasons he has assigned and without establishing any precedent, we will endeavor to obtain the consent of the Receiver of the City National Bank to permit us to reduce the reserve balance we have applied in partial payment of the indebtedness of his trust to us, and return to him for such disposition as circumstances warrant, all the checks, eight in number amounting to $903.27, which have been the subject of some of our correspondence with the Treasurer. Such action can now be taken without apparent risk of loss to us because the indebtedness of the City National Bank has been very materially reduced, and we trust our collateral will be sufficient to pay it in full.

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FEDERAL RESERVE BANK
OF ATLANTA

Our correspondence with the Treasurer concerning these and other checks, payment of which he has declined because of suspension of the banks in which these were deposited by the payees, has been very unsatisfactory. We have endeavored to get him to define or agree as to our position, when as Fiscal Agent of the United States we pay checks drawn on him. We have asked whether such payment is final unless some infirmity exists in the instruments themselves, or that have been fraudulently issued or negotiated, or the balance to the credit of the drawer is insufficient. We have further endeavored to get the Treasurer to state whether, except in one of the cases named payment of Treasury checks will be protected by him at least to the extent that no loss through such payment would be entailed on us. We have been unsuccessful in our efforts to get such committments from the Treasurer, although we feel that in all fairness such inquiries should be specifically answered and such committments made, all to the end that we may with certainty as to our position handle his account.

The subject matter of such correspondence has been handled to conclusion by the Treasurer without suggestions from him as to our specific inquiries and our specific request for a specific statement of Treasury policy. If you can aid us in getting such policy as is covered by our inquiries definitely fixed, it will be greatly appreciated. In the absence of the fixing of such policy each transaction must be handled without regard to Treasury policy on the points involved, and may lead to the necessity of our fixing a general policy as to handling Treasury checks and warrants. This, we would regret.

I am glad that the present checks are small in amount, that the payees are entitled to every consideration, that our own position is such that we may handle them in accordance with your wishes.

It will be fortunate if these checks lead to a clearing up of our obligation and responsibility in the matter of handling Treasury checks.

Very sincerely yours,

(SGD) E. R. Black
Governor

Hon. Ogden L. Mills
Undersecretary of the Treasury
Washington, D. C.

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Federal Reserve Bank of St. Louis

January 29, 1931.

My dear Governor:

There is attached hereto a copy of a letter received by the Secretary of the Treasury from Mr. Isaac L. Reisman, Miami, Florida, together with a copy of the enclosures discussing two policy loan checks in the amounts of $253.76 and $110.67, drawn on the Treasurer of the United States, deposited by Mr. Reisman in the City National Bank of Miami, Florida, prior to its suspension, the proceeds thereof having been applied by the Federal Reserve Bank of Atlanta in reduction of the insolvent bank's indebtedness.

As we understand it all Florida banks are agents for collection of out of town items deposited until collection is effected. Edwards v. Lewis, 124 Southern 746. The agency relationship continued until the Miami bank received the proceeds from its subagent. Commercial Bank of Pennsylvania v. Armstrong 148 U.S. 50. Where an agent makes a deposit even in his own name, of funds belonging to his principal, the bank although unaware of the beneficial ownership of such deposit cannot offset such deposit against an indebtedness owing by such agent to the bank, where the bank has not altered its position or extended any additional credit, in reliance or faith upon the supposition that the deposit in fact belonged to the agent. Citizens & Southern Bank v. Faygam 21 Fed. 2d 998; Swift & Co. v. Hammond 22 Fed. 2d 166; Fulton National Bank v. Hozier 295 Fed. 511; Bank of Metropolis v. New England Bank 1 How. 234 and 6 How. 212; Wilson v. Smith 8 How. 763.

It thus appears that Mr. Reisman owns the proceeds of these two checks unless the Miami bank permitted withdrawals against their deposit, which does not appear to be the case, or unless the Federal Reserve Bank after the receipt of these items changed its position to its detriment. No information as to this feature is contained in the file.

In view of the financial condition of this veteran, as indicated by his letter, it was thought best to refer this matter to your bank directly with a request that it be examined by your counsel to make sure that no injustice has been done Mr. Reisman. May we request an early reply setting out the facts and the principles of law relied upon by the Federal Reserve Bank in applying the proceeds of these two items in reduction of the insolvent bank's indebtedness?

Yours very truly,
OGDEN L. MILLS,
Undersecretary of the Treasury.

E. R. Black, Esq.,
Governor, Federal Reserve Bank,
Atlanta, Georgia.

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COPY

X-6867-a-7

845 S. W. 10th Ave.,
Miami, Florida.

January 17, 1931.

Hon. Mr. Andrew W. Mellon,
Secretary of the Treasurer,
Washington, D. C.

Sir :

May I ask your kind indulgence, and if at all possible if you can do anything for me in this case, it will be greatly appreciated.

I am a disabled war veteran, and have been out of work for several months, and as a last resource, I arranged for a loan on my government insurance policies, checks for which were issued me on December 15. I deposited these checks in the City National Bank of Miami, Florida, on December 17. On Monday, December 22, the City National Bank of Miami, failed to open its doors for business. I immediately wired the Veterans Bureau at Washington, asking them to stop payment on these checks. In reply to my wire, I received a letter from the Veterans Administration, dated December 23. a copy of which you will find inclosed. I also received a communication from the Treasurer Department, Washington, of which you will also find a copy inclosed, in which they advised me they had stopped payment on these checks. On January 8, I received another communication from the Treasurery Department, copy also inclosed, advising that the Federal Reserve Bank of Atlanta, insisted upon the Treasury Department paying these checks and they did, although they had already stopped payment on them, and in spite of the fact that I wrote Mr. W.O. Woods of the Treasury Department, that I tried to collect the money for the checks on Saturday, December 20, and the City National Bank of Miami advised they could not pay them until they had cleared, and up until that time they had not cleared.

It seems to me that the Federal Reserve Bank in Atlanta took advantage of the fact that the checks in question were issued on the government, otherwise they would not have insisted upon the payment of the checks. I know this to be the fact, because checks drawn on individuals thru individual banks are not forced to pay checks that have been stopped.

I am appealing to you only because I am indire need- am still out of work and have a wife and baby to take care of. If it were not for this, would not think of worrying you or taking up your time with my troubles.

Thanking you for your interest, and awaiting your advices, I am,

Respectfully yours,

(Sgd.) Isaac L. Reisman

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X-6867-a-8

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TREASURY DEPARTMENT

WASHINGTON

January 8, 1931.

Office of
Treasurer of the United States
In replying quote initials
AWS-C

Mr. Isaac L. Reisman
845 S. W. 10th Avenue,
Miami, Fla.

Sir:

Further reference is made to checks No. 48,483 and No. 48,484 both dated December 15, 1930, drawn on the Treasurer of the United States to your order for $110.67 and $253.76, respectively, by W. A. Minnis, symbol 99126, upon which stoppage was requested because of the failure of the City National Bank, Miami, Florida.

As you were advised by office letter of December 23, payment was suspended when the checks were presented and the checks were returned to the Federal Reserve Bank of Atlanta for transmittal through indorsers to the receiver of the failed bank for delivery to you if the circumstances warranted such action.

The checks have been returned to this office by the Federal Reserve Bank, which states its position as follows:

> "These checks were received by us in the regular course of business on December 19, 1930, from the City National Bank, Miami, Florida, and were on that date charged in our transcript of the Treasurer's account and credited to the reserve account of the City National Bank which bank suspended December 22nd.
>
> "Immediately following the suspension of the City National Bank we applied the entire balance to its credit on our books in its reserve account in partial payment of the indebtedness to us, the amount of which indebtedness greatly exceeds the amount of the balance so applied, consequently we cannot now, as requested by you, charge the amount of these checks to that balance without loss to ourselves."

The Federal Reserve Bank has been advised that, in view of its position, the proceeds of the checks are being paid to it, but, if the payee of the checks is shown to be entitled to the proceeds as against that bank it will be expected to make proper adjustment.

Respectfully,

(Sgd.) J.O.Woods
Treasurer

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X-6867-a-9

TREASURY DEPARTMENT

Office of the
Treasurer of the United States

WASHINGTON

DECEMBER 23, 1930

In replying quote initials:AWS-C

Mr. Isaac L. Reisman,
845 S.W. 10th Avenue,
Miami, Fla.

Sir:

With reference to letter from United States Veterans Bureau, dated December 23, 1930, requesting stoppage of payment on check No. 48483, 48484 dated December 15, 1930 and December 15, 1930, drawn on this office to your order for $110.67 and $253.76, by W. A. Minnis, symbol No. 99126, for the reason that the City National Bank, Miami Florida, in which you deposited the item, subsequently failed to open its doors, you are advised that the check was presented for payment today. Payment was suspended and the check returned to the Federal Reserve Bank, Atlanta, Georgia, for transmittal through the indorsers to the receiver of the failed bank for delivery to you if the circumstances warrant this action.

It should be clearly understood that the failure of a bank in which a check has been deposited and credited in the depositors account is not sufficient reason for stoppage of payment. If the indorsers of this check insist, it will be necessary for the Treasurer to pay it.

Respectfully,

W. O. WOODS

Treasurer.

Countersigned

Chief Accounting Division

Ac-153
B:CEM

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VETERANS ADMINISTRATION

UNITED STATES VETERANS BUREAU

WASHINGTON

December 23, 1930.

In Reply Refer to: DCC-A

K-244,299
K-572,097

Mr. Isaac L. Reisman,
845 S. W. 10th Avenue,
Miami, Florida.

Dear Sir:

This Bureau is in receipt of your telegram of December 22, 1930, advising that Policy loan checks Nos. 48483 and 48484, dated December 15, 1930, for $110.67 and $253.76, respectively, symbol No. 99126, were deposited in a Miami bank prior to its failure.

Your telegram has therefore been referred to the Treasurer of the United States, in order that stoppage of payment may be placed upon these checks as requested.

For the director,

Harold W. Breining,

Assistant Director-G

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July 16, 1920.

X-1980

Subject: Cashing Government Warrants and Checks Drawn on the Treasurer of the United States for Disbursing Officers.

Dear Sir:-

Referring to the Board's letter of June 7, 1920, X-1944, on the subject of "Comments by the Federal Reserve Board on recommendations made by Governors of Federal Reserve Banks at their conference with the Federal Reserve Board, April 7th-10th, 1920", and with particular reference to the discussion by the Board of Topic 4, "Cashing Government warrants and checks drawn on the Treasurer of the United States for disbursing officers", one of the Federal Reserve Banks has made inquiry as to the protection afforded a Federal Reserve Bank, by telegraphing to the Treasurer of the United States as to whether or not the balance to the credit of a particular disbursing officer is sufficient to meet his check presented for payment at the Federal Reserve Bank, in the event this disbursing officer has other checks outstanding which might be presented at Washington for payment prior to receipt by the Treasurer of the check cashed by the Federal Reserve Bank and which would exhaust his balance with the Treasurer of the United

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States. There is quoted below reply received from Assistant Treasurer of the United States with reference to this inquiry:

"In compliance with your request of July 12, the following is submitted relative to the methods used in reserving sufficient balance in the account of a disbursing officer to make payment on a check which has been certified to a Federal reserve bank requesting information as to sufficient funds to make payment thereon.

"When such request is received from a Federal reserve bank, notation of the amount of such check is made on the ledger account of the disbursing officer and that part of the balance is held in reserve to meet the check.

"If the Treasurer's officer, subsequent to the telegraphic advice given Federal reserve banks, should receive checks from other sources which would not leave a sufficient balance in the officer's account to meet the check which has been certified to a Federal reserve bank, payment on checks received from other sources would be refused and the Federal reserve bank, paying upon the Treasurer's telegraphic advice, would be thoroughly protected.

"This work has been thoroughly systemized so that these certifications are followed up and if, for any reason, the bank requesting the certification of the check does not present it in due course, the matter is adjusted by correspondence with the bank. In other words, the Federal reserve bank that pays on telegraphic advice that balance in officer's account is sufficient, is as thoroughly protected as if the check were presented and immediately charged in the account of the drawer."

Very truly yours,

Assistant Secretary.

To Governors of all F.R. Banks except Kansas City

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COPY

X-6867-a-11

FEDERAL RESERVE BANK

of New York

December 15, 1920.

Dear Mr. Gilbert:

On various occasions in the past we have discussed with your office, both orally and in writing, certain phases of our operations in cashing for our member banks checks and warrants drawn on the Treasurer of the United States.

Under the present practice, as defined by the terms of our circular to all of our member banks, items drawn on the Treasurer are received by us for immediate credit and availability, that is they are cashed, but with the understanding that the Federal Reserve Bank reserves the right at any time and unqualifiedly to charge back to the account of the member bank items returned by the Treasurer. Accordingly, whenever an item is returned by the Treasurer, the Federal Reserve Bank credits his account and charges the account of the member bank, regardless of the reason for which the item is returned and regardless of the length of time which may have transpired since its payment.

Our present circular and the practice now prevailing have both resulted from the fact that the Treasury Department has for years reserved the right at any time after payment of a check or warrant to return it for a refund in the event that it should appear that the endorsement has been forged or the face of the check in any way altered. In some instances it appears that twenty years have elapsed between the time of payment and the time that the Treasurer has requested the refund. It is because of this custom of the Treasurer that the Federal Reserve Banks have in the past reserved the right at any time and unqualifiedly to charge back to the account of a member bank any item returned by the Treasurer.

As you are perhaps aware, banks handling Treasury checks have for some time protested against the practice of the Treasury Department on the ground that it is unscientific and unbusinesslike, and even now, since the inauguration of the Federal Reserve Banks, when the greater part of these items is cleared through the Federal Reserve Banks, the member banks continue to object to the practice which is the basis of the Reserve Bank's existing circulars.

There is no question that the courts generally sustain the rights of the drawee of a check to obtain reimbursement, even after payment, in the case of a forged endorsement or alteration. That right, however, is predicated upon due or reasonable care on the part of the drawee in discovering the forgery or alteration. In other words, if the drawee has, by its own negligence, prejudiced the rights of a forwarding or endorsing bank, the right of reimbursement does not attach. While, therefore, there is no doubt that the Treasurer may, under court decisions, demand a refund in the event a check or warrant paid by him subsequently proves to be forged or altered, he may do so, theoretically, only if it be shown that he, the Treasurer, has not been guilty of any negligence causing a loss to the endorsing bank.

The sole question at issue is whether this Federal Reserve Bank should agree voluntarily to credit to the Treasurer items returned by him after payment,

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or whether the Federal Reserve Bank, which is not an endorser of the item but merely an agent in effecting its collection, should decline to credit the Treasurer's account and agree to accept such returned items only for collection. This matter has been considered by the officers of this bank for some time and they are in accord in recognizing the necessity of maintaining correct business practices in all of our transactions with the Treasury Department so far as that is consistent with the more or less intimate relations between that Department and this bank. We believe that we should not, by circular, ruling or otherwise, undertake to pass in advance upon the merits of a controversy which in reality involves only the Treasurer and the member bank for which we act as a collecting agent. An agreement by us to credit the Treasurer in all events, regardless of the ultimate determination of the question whether or not the Treasurer has been negligent, would, in substance, be a voluntary action on our part based upon a mere assumption that the merits of the controversy are on the Treasurer's side.

While we have a sincere desire to cooperate with the Treasury Department in every way consistent with the practices and usages of business, we are of the opinion that items returned by the Treasurer on account of irregularities in signature, filling, alterations, etc., should be accepted by the Federal Reserve Bank only as collection items, and that the account of the Treasurer should not be credited therefor until payment has been received from the last endorsing bank. We believe that this procedure will serve only to place all parties to the transaction in their normal and usual relation without, at the same time, depriving any of them of the rights or privileges to which they are justly entitled. In view of the fact, however, that this is a matter upon which both the Treasury Department and the member banks should have ample notice in advance, it is thought desirable that the practice which we have indicated should not become effective until January 1, 1921.

Very truly yours,

(Signed) J. H. Case

Acting Governor.

Honorable S. P. Gilbert, Jr.,
Assistant Secretary of the Treasury,
Washington, D. C.

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COPY X-6867-a-12

December 21, 1920.

Dear Mr. Case:

I received your letter of December 15, 1920, which Mr. Jay handed me on Saturday, as to the Treasurer's charging back forged and raised checks for which banks have received immediate credit through the Treasurer's account. As I explained to Mr. Jay, the chief complication that enters into this question is that the Treasurer's account is involved. The Treasurer is a bonded public officer and naturally wishes to reserve the right to charge back, and thereby clean out of his account, forged or raised items which have been charged against his account subject to final payment by him. His position is that the charging back merely restores the bank presenting the check to the same position as if it had not received the original credit. As you know, forged indorsements and raised checks stand on quite a different basis; for example, from checks to which the drawer's signature is forged, and even though a long time has elapsed, the Treasurer can reclaim upon discovering the forged indorsement or the raising. From the Treasurer's point of view, therefore, the question is not an easy one, for to treat returned raised or forged items as collection items may, at the least, throw upon the Treasurer the substantial burden of instituting litigation to recover. Careful consideration is being given to the problem and you will be further advised in the course of a few weeks at the most.

In this connection, I ought to say that I am not quite clear whether your letter of December 15th means to take the position that on and after January 1, 1921, return items of this character cannot be charged back by the Treasurer but must be treated as collection items. I do not believe that such a position would be tenable until you have had the Treasury's assent. After all, the question concerns charges in the Treasurer's account, and the Treasurer has not consented to the charges in the first instance except subject to final payment by him. The circulars under which you collect checks for member banks recognize this condition.

Very truly yours,

(Signed) S. P. Gilbert, Jr.

J. H. Case, Esq.,
Acting Governor,
Federal Reserve Bank,
New York, N. Y.

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X-6867-a-13

FEDERAL RESERVE BANK

OF NEW YORK

December 23, 1920.

Dear Mr. Gilbert:

I have read with a great deal of interest your letter of December 21, in reply to mine of December 15, relating to the method of handling items returned by the Treasurer on account of forgery, alteration, etc.

You state, among other things, that forged indorsements and raised checks stand on quite a different basis from checks to which the drawer's signature is forged and that even though a long time may have elapsed, the Treasurer can reclaim upon discovering the forged indorsement or the raising. That statement, I take it, is only partly true, since the right of the Treasurer to reclaim in such a case exists only if it can be shown that the last indorsing bank has suffered no loss through negligence of the Treasurer in discovering the defect and in making claim thereupon. It was to this feature of the matter that I made particular reference in my letter of the 15th, since it seems to us, as stated in that letter, that if we should give the Treasurer immediate credit upon any item returned, regardless of the reason or the circumstances under which reclamation is requested, the Federal Reserve Bank will, in effect, be determining a controversial question of law, namely whether or not the Treasurer has been negligent, in an issue that involves solely the Treasurer and the indorsing bank. It is, of course, recognized that if we treat returned items of this character as collection items it may "throw upon the Treasurer the substantial burden of instituting litigation to recover," but we do not believe that that is a burden which we should voluntarily assist the Treasurer in shifting elsewhere, inasmuch as he, <u>like any other drawee of a check</u> in similar circumstances, is the proper party to institute the litigation.

However, these matters are ones which were discussed much more fully in my letter of December 15, and I need not repeat them now.

I do feel, however, with reference to the contents of the last paragraph of your letter that while, as you say, the Treasurer may not have consented to our charging his account in the first instance "except subject to final payment by him," that is a matter which cannot determine the merits of the issue now raised, namely whether we should, as a matter of principle, give the Treasurer immediate credit for returned items, or whether we should treat such items solely as collection items. It is admitted that the Treasurer can require us not to charge his account immediately in the first instance for checks and warrants drawn upon him that are presented to us for payment, and we would not, of course, make such an immediate charge without his consent. Although it would seem to

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be most unfortunate if the Treasurer should not permit us to "cash" items drawn upon him, nevertheless, even if he should not do so, there is no question of our right to receive Treasury items from our member banks for collection, just as we now receive items drawn upon any other bank or banker. If that is done, I think you will agree that we could properly decline to give the Treasurer immediate credit for items returned by him after we had once effected their collection, and that we could, in turn, treat such returned items as collection items, regardless of the wishes of the Treasurer.

In view of all the circumstances to which we have adverted in this and our earlier letter, we feel constrained on and after January 1, 1921 to receive items of the character in question, returned by the Treasurer, solely as collection items and to give credit to the Treasurer for those returned items only when payment is received by us from our interested member bank.

In conclusion I should say that we will continue as in the past to "cash" checks and warrants drawn on the Treasurer when presented to us for payment unless we are expressly advised not to do so.

Very truly yours,

(Signed) J. H. CASE,

Acting Governor.

Honorable S. P. Gilbert, Jr.,
Assistant Secretary of the Treasury,
Washington, D. C.

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COPY

X-6867-a-14

December 29, 1920.

Dear Mr. Case:

I received your letter of December 23, 1920, which Mr. Harrison handed me on Friday, as to certain classes of returned items, and note your statement that the Federal Reserve Bank feels constrained on and after January 1, 1921, to receive items returned by the Treasurer on account of forgery, alteration, and the like, solely as collection items and to give credit to the Treasurer for such returned items only when payment is received by the Federal Reserve Bank from the member bank affected. The Treasury does not assent to the position which your letter takes as to returned items, for the reasons already indicated in my earlier letters, including the letters relating to the litigation instituted by the Closter National Bank.

The question at issue directly concerns the general account of the Treasurer of the United States, a bonded public officer, and his relations with all other depositaries of public moneys. The procedure now in effect is well established and under the general Treasury regulations governing deposits of public moneys applies to all Federal Reserve Banks and National bank depositaries. The question presented, therefore, must receive the Treasury's most careful consideration, and cannot be decided by a two weeks' notice from one Federal Reserve Bank. It is a question which must be decided on its merits, and not by ultimatum. I have had the matter under discussion with the Treasurer for some time, and in view of your letters of December 15th and 23rd have referred it to him for further attention and report to this office. Pending a decision, I assume that the Federal Reserve Bank of New York will continue to follow the procedure now in effect even after January 1, 1921.

Very truly yours,

(Signed) S. P. Gilbert, Jr.

J. H. Case, Esq.,
Acting Governor,
Federal Reserve Bank,
New York, N. Y.

SPG:WAM

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X-3047

February 15, 1921.

SUBJECT: Returned Treasury Items.

Dear Sir:

There is enclosed herewith copy of a letter from Assistant Secretary of the Treasury Gilbert to the Deputy Governor of the Federal Reserve Bank of New York, giving the method of procedure in connection with items drawn on the Treasurer of the United States, paid by the Federal Reserve Bank of New York, and forwarded to the Treasurer, and subsequently found to have been raised, or to bear forged endorsements, etc., and returned by the Treasurer to the Federal Reserve Bank of New York. The Treasury advises that the Treasurer of the United States is prepared to extend this plan to other Federal Reserve Banks.

Very truly yours,

R. G. Emerson,
Assistant to Governor.

Enclosure

TO CHAIRMEN OF ALL FEDERAL RESERVE BANKS EXCEPT NEW YORK.

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Such checks will be returned with Form 6537, copies of which are enclosed.

When checks of class (2) are returned it will be satisfactory to the Treasury if credit in the Treasurer's account is delayed by the Federal Reserve Bank until advice is received from the member bank that the item has been credited. Such checks will be returned with Form 6536, copies of which are enclosed. It is understood, however, as stated in Mr. Harrison's letter of January 15, 1921, that the circular under which the Federal Reserve Bank of New York acts as collecting agent for banks in its district with respect to warrants and checks drawn on the Treasurer of the United States will continue to reserve in favor of the Federal Reserve Bank the right at any time to charge back items returned by the Treasurer; and the Treasury still reserves the right ultimately to insist upon credit in such cases unless it develops upon further investigation that the Treasurer has not the right to reclaim.

When checks of class (1) and (2) are returned to the Federal Reserve Bank the Treasurer's office will charge the Transit Account - Adjustments of the Federal Reserve Bank - and hold further adjustments in the account in suspense until the Transit Account Adjustments item is cleared in the transcript of the Federal Reserve Bank.

When checks of class (3) are returned they will be forwarded with other items for collection and taken up when credited, with no intermediate charge on the books of the Treasurer in the account of the Federal Reserve Bank.

The Treasury will on and after January 28, 1921, handle these items in the manner outlined above, which I think is substantially in accordance with the procedure set out in the letter of December 30, 1920, to the Buffalo Branch. The regulations of the Treasury now in effect governing the payment of Government warrants and checks, as set forth in paragraphs 29-31 of Treasury Department circular No. 176, dated December 31, 1919, will continue in effect.

Very truly yours,

(Signed) S.P. GILBERT, Jr.

Assistant Secretary of the Treasury.

J.H. Case, Esq.,
Deputy Governor,
Federal Reserve Bank,
New York, N.Y.

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COPY

X-3047a

January 27, 1921.

Dear Mr. Case:

I received your letter of December 31, 1920, with further reference to the question of items drawn on the Treasurer of the United States and returned by him to the Federal Reserve Banks. I have also received a letter from Mr. Harrison, dated January 15, 1921, enclosing a copy of a letter of December 30, 1920, to the Manager of the local Branch at Buffalo, which defines the procedure under which it is proposed to handle items returned by the Treasurer. The matter in question has been carefully considered by the Treasury and particularly by the Treasurer of the United States, whose account is of course affected. I think that the question has now reduced itself in large measure to one of procedure.

The items involved seem to fall under three distinct classes, namely:

(1) Checks which the Treasurer rejects promptly upon first examination on account of any irregularity. Checks falling within this class would normally include, for example, unsigned checks, checks in which the signature of the drawer is discovered upon first examination to be forged, checks payment of which has been stopped, etc.

(2) Checks which bear forged indorsements, and checks which have been raised or bear other material alterations which do not appear on examination.

(3) Checks in respect to which a question arises on the facts as to the Treasurer's right to reclaim, as, for example, checks bearing a forged signature of the drawer not discovered upon first examination.

When checks of class (1) are returned I assume that immediate credit will be given in the Treasurer's account. The second paragraph of Mr. Rounds' letter of December 31, 1920, to the Buffalo Branch does not make this quite clear, but I assume that there is no difference of opinion as to items of this character.

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X-3471
July 10, 1922.

SUBJECT: Amendment to Check Collection Circulars Suggested by Treasury Department

Dear Sir:

I enclose for your information and guidance copy of a letter received today from the Secretary of the Treasury, together with copy of letter addressed by him on July 8, 1922, to the Governor of one of the Federal Reserve Banks. The Federal Reserve Board suggests that those Federal Reserve Banks which have not already done so take steps to amend their check collection circulars so as to conform, on the point mentioned, to the provisions of Treasury Department Circular No. 176, as amended and supplemented May 15, 1922.

Very truly yours,

Governor.

(Enclosures)

GOVERNORS OF ALL F.R.BANKS
COPIES TO AGENTS

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THE SECRETARY OF THE TREASURY

WASHINGTON

July 8, 1922.
X3471a

Dear Governor Harding:

On a number of occasions within the past six months the Treasury has had brought to its attention notices circulated by banks, purporting to be based upon circulars of various Federal Reserve Banks, stating that the Government of the United States has for many years reserved the right to charge back unconditionally, at any time, checks and warrants which for any cause have not been considered good. This statement is incorrect and misleading, and calculated to cause the Treasury and the holders of Government warrants and checks considerable difficulty. Difficulty has been experienced on this account in connection with the cashing of Government warrants and checks abroad, and complaints have been received from various correspondent banks in this country. The notice has been so widely circulated and there is so much of a coincidence in the time of the circulation of the notice that it would appear that some bank, or group of banks, is responsible for the circulation of the notice. The Federal Reserve Bank of New York has revised its check collection circular so as to avoid any statements which would afford a basis for the circulation of the objectionable notice, and the Federal Reserve Bank of Chicago is undertaking a revision of its check collection circular with the same end in view. I have just taken the matter up with the Federal Reserve Bank of in a letter, dated July 8, 1922, a copy of which is inclosed for your information. In view of the apparent tendency to spread the circulation of the objectionable notices from one part of the country to another, I would suggest for your consideration that it might be advisable for the Federal Reserve Board to take up with each Federal Reserve Bank the matter of possible amendment of their check collection circulars so as to conform with the provisions of Treasury Department Circular No. 176, amended and supplemented May 15, 1922, (copy inclosed) on this point.

Very truly yours,

(Signed) A. W. Mellon,
Secretary.

Hon. W. P. G. Harding,
Governor, Federal Reserve Board,
Washington, D. C.

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C O P Y

X-3471b
July 8, 1922.

Dear Governor ---------

I enclose a copy of a letter, dated June 23, 1922, addressed by the ----- Trust Company, --------- to Senator --------- with regard to a circular apparently sent to its correspondents by the -------- National Bankof --------- which states that:

> "The Federal Reserve Bank of Cleveland reserves the right to charge the account of the last endorsing bank, unconditionally, at any time, with the amount of such returned items deposited with, endorsed to, or otherwise paid by this bank"

in case of all Government warrants and checks received by it from member banks. This misrepresents the Treasury's present practice in its further statement that:

> "The United States Treasury has for years exercised the right to return at any time checks and warrants which for any cause have not been considered good."

and is calculated to cause the Treasury considerable difficulty. A notice somewhat similar to the statement just quoted as to the alleged practice of the Treasury with regard to later charging back of checks and warrants previously paid, issued some years ago by the Federal Reserve Bank of New York, was taken by certain New York banks doing a foreign business as a basis for a notice stamped upon foreign advices covering Government items, and, as a result of the circulation of that statement, considerable difficulty has recently been experienced by holders of Government checks in cashing them in certain foreign countries. The Federal Reserve Bank of New York has recently issued a revised circular regarding collection of checks which eliminates the objectionable statement. Because of a similar statement circulated by a certain one of its member banks, which has caused the Treasury considerable trouble, the Federal Reserve Bank of Chicago is also undertaking the revision of its check collection circular so as to make its circular conform strictly with the present practice of the Treasury Department, as outlined in Treasury Department Circular No. 176, amended and supplemented May 15, 1922, (copy enclosed). The member bank of the Federal Reserve Bank of Chicago is also withdrawing its circular.

The notice circulated by the ---------- National Bank of --------- of which the ---- Trust Company of ---------- complained in its letter of June 23, 1922, is incorrect and misleading as the Government of the United States does not reserve the right to charge back at any later time all warrants or checks which for any reason are not considered good, and the wide circulation of the statement is obviously calculated to put

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Government warrants and checks at a disadvantage, as compared with commercial items. The Treasury's practice with respect to the payment of Government warrants and checks is stated in paragraphs 35-38 of Treasury Department Circular No. 176, amended and supplemented May 15, 1922, and conforms generally to commercial practice. I should, therefore, appreciate it if you would, if necessary, take up the revising of your regulations on this point along the lines followed by the Federal Reserve Bank of Chicago, or those followed by the Federal Reserve Bank of New York in revising their check collection circulars, and if you would at the same time take the matter up with the --------- National Bank of -------- with a view to preventing further circulation of this notice.

Very truly yours,

(Signed) A. W. Mellon,
Secretary.

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X-3504.
August 16, 1922.

SUBJECT: Charging Back of Government Warrants and Checks Previously Paid by Treasurer of United States.

Dear Sir:

On July 10, 1922, the Board sent to all Federal Reserve Banks a letter (X-3471), subject "Amendment to Check Collection Circulars Suggested by Treasury Department", dealing with the Treasury's practice with regard to the later charging back of Government warrants and checks previously paid by the Treasurer of the United States. In this connection there is enclosed herewith, for your information, copy of a letter received today from the Secretary of the Treasury transmitting copies of correspondence between the Treasury Department and the National City Bank of New York, setting forth in full the Treasury's position with regard to the charging back of Government items, the method of handling such items by the Federal Reserve Banks upon charging back and the respective functions of the Federal Reserve Banks and the Treasury with regard to reclamation on such items.

Very truly yours,

Vice Governor.

(Enclosure)

TO GOVERNORS OF ALL F. R. BANKS
COPIES TO AGENTS.

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COPY

THE SECRETARY OF THE TREASURY

Washington X-3504a
August 12, 1922.

My dear Mr. Platt:

Referring to previous correspondence relative to the Treasury's practice with regard to the later charging back of Government warrants and checks previously paid by the Treasurer of the United States, I enclose copies of recent correspondence between the Treasury and the National City Bank, consisting of the Bank's letters of July 8, 1922, July 27, 1922, and August 7, 1922, and my letters of July 19, 1922 and July 29, 1922. These letters set forth in full the Treasury's position with regard to the later charging back of Government items, the method of handling such items by the Federal Reserve Banks upon charging back, and the respective functions of the Federal Reserve Banks and the Treasury with regard to reclamation on such items. As there has recently been considerable misunderstanding and difficulty regarding this matter, much of which has been traceable to the action of the National City Bank, I would suggest the advisability of sending copies of the correspondence to all the Federal Reserve Banks in connection with your previous circular letter on this subject dated July 10, 1922.

Very truly yours,

(Signed) A. W. Mellon,
Secretary.

Hon. Edmund Platt,
Vice-Governor, Federal Reserve Board,
Washington, D. C.

5 enclosures.

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COPY X-3504a

THE NATIONAL CITY BANK

of New York

New York, August 7, 1922.

Office of the
President

My dear Mr. Mellon:

I have received your letter of July 29th regarding the form of credit advice used by us with respect to warrants and checks drawn on the Treasury of the United States, and I delayed a reply until, for the purpose of our record, a confirmation of your definition of the capacity in which the Federal Reserve Bank acted in such matters was obtained through Mr. Strong, who advised me that a copy of your letter had been sent to him. That confirmation has now been received, and I am pleased to write that with a full concurrence of counsel we have determined to discontinue the form of credit advice which was objectionable to you.

This matter stands in a much clearer light than heretofore, and I want to express my personal appreciation for your cooperation in closing it thus satisfactorily.

Yours very truly,

(Signed) C.E. Mitchell,

President.

Hon. Andrew W. Mellon
Secretary of the Treasury,
Washington, D. C.

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(Copy)

THE SECRETARY OF THE TREASURY

Washington

July 29, 1922.
X-3504a

Dear Mr. Mitchell:

I received your letters of July 24 and July 27, 1922 regarding the form of credit advice used by the National City Bank of New York with respect to warrants and checks drawn on the Treasurer of the United States. I note that your counsel are not satisfied on the question as to whether the Federal Reserve Bank acts in a private or governmental capacity in handling such items, and that this question is in their opinion relevant, for the reason that the Federal Government would not be barred by the statute of limitations and in case of a forged endorsement might bring action for recovery years after the discovery of the forgery when an ordinary individual would be barred by the lapse of time. The Federal Reserve Banks do not pay Government warrants and checks, but cash them under Treasury regulations. The Treasurer of the United States, as the drawee of Government warrants and checks, makes payment thereof, and the Government, rather than the Federal Reserve Bank, is the real party at interest when the question arises of recovery on warrants and checks paid on forged endorsements. I take it to be clear that in the absence of a statute expressly providing otherwise, the United States Government would not be barred by the statute of limitations, or by laches, and that there might therefore be cases where it could bring suit for recovery in respect to Government warrants and checks which had been paid on a forged endorsement, even though enough time might have elapsed to bar recovery by private parties similarly situated. I do not see that there is any escape from this situation. The Government is the sovereign, and from time immemorial this has been the rule. I do not understand, however, how this contingency justifies the form of credit advice used by the National City Bank of New York. The letter of October 3, 1921, from the Cashier of the bank states that this clause reads as follows: "All instruments against the Government of the United States are credited subject to final payment by the Treasury Department. Therefore, any item which subsequently may be returned unpaid to us by the Department will be charged back against your account". As the Treasury has previously pointed out, the fact that warrants and checks drawn on the Treasurer of the United Stated must be credited "subject to final payment by the Treasury Department" is not unusual and does not warrant any discrimination as between commercial items and Government items. In the nature of the case, warrants and checks must be subject to final payment by the drawee, and the terms and conditions on which the Treasurer of the United States makes examination and payment are set forth in paragraphs 35 to 38 of Treasury Department Circular No. 176, dated May 15, 1922. The second sentence of the credit advice refers to returned

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items, and the Treasury's practice in this regard has already been fully explained in previous correspondence. Under this practice, as outlined in subdivision 2 of paragraph 37 of Treasury Department Circular No. 176, warrants and checks paid by the Treasurer which are subsequently found to bear a forged endorsement, or to bear any other material alteration or defect not discoverable upon first examination, will be returned to the Federal Reserve Bank or national bank depositary which cashed the item, but the Federal Reserve Bank or other depositary will not be expected to give credit therefor to the Treasurer until it has actually received reimbursement therefor from the person liable on the forgery or alteration. The term "remitting bank" as used in this paragraph applies to the Federal Reserve Bank, rather than to the bank presenting the item to the Federal Reserve Bank, as has already been explained in my letter of July 19, but even as between the Federal Reserve Bank and the bank which presented the item the practice would be, as I understand it, to call upon the presenting bank for reimbursement, and not to charge its account with the item under any arbitrary procedure. In other words, the items would not be "charged back" by the Federal Reserve Bank, but would be treated in substance like collection items. In the event that recovery could not be made in this manner it would, of course, be necessary to bring suit, and in ordinary course suit would be brought by the United States, rather than by the Federal Reserve Bank, since the Federal Reserve Banks act in such matters for account of the United States and the United States is the real party at interest. Under the procedure thus established the items cannot properly be said to be "charged back", and the credit advice used by the National City Bank of New York is therefore incorrect and misleading. As a matter of fact, save for the one question as to the effect of lapse of time the procedure would be the same as with commercial items, and on the question of the lapse of time it would, of course, be the policy of the Treasury to move at the earliest possible moment after discovery of the forgery or alteration. The Treasury cannot undertake that the Government in these matters will be barred by lapse of time, but even assuming a case where there might be a sufficient lapse of time to bar private parties, the result would be a suit brought in regular manner by the Government of the United States, and not an arbitrary charging back of the item through the channels from which it was received.

I wish that you would consider the matter further in the light of the considerations suggested by this letter and advise me if it is not possible under the prevailing conditions to discontinue the use of the credit advice in question. In this connection I should

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like to refer to your Cashier's letter of December 15, 1921, from which the Treasury understood that notwithstanding the point raised by counsel the National City Bank would change its forms as soon as the Federal Reserve Bank changed its circular.

Yours very truly,

(Signed) A. W. Mellon,
Secretary.

C. E. Mitchell, Esq.,
President, The National City Bank of New York,
New York, N. Y.

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COPY X-3504a

THE NATIONAL CITY BANK

of New York

Office of
the President

New York, July 27, 1922.

Hon. Andrew W. Mellon,
Secretary of the Treasury,
Washington, D. C.

My dear Mr. Mellon:

Referring further to your letter of July 19, regarding the form of advice which we use when remitting the proceeds of Government warrants and checks paid by the Treasury of the United States, I have conferred with our counsel, upon whose definite advice you will realize that we must rely. I had hoped that your letter would definitely close the matter in their minds, but it appears that while it did dispose of the first question raised in our letter of July 8, it does not seem to have satisfied them on the question as to whether the Federal Reserve Bank acts in a private or Governmental capacity when it pays these items.

This question in their opinion is relevant for the reason that by decision of the Supreme Court, the Federal Government is not barred by the Statute of Limitations, and in case of a forged prior endorsement might, if it saw fit, bring an action for recovery several years after it otherwise would be barred. Consequently, if the Federal Reserve Bank acts as a Governmental agent in this respect, it would have the same power, and we are advised that it probably is not possible for the Government to deprive itself of this power without express law to that effect.

I feel sure you understand the difficulty of our position. We do not want you to interpret us as doubting either the good intentions of your Department or of the Federal Reserve Bank, and we would be only too glad to acquiesce and discontinue the use of this stamp, - but we do not wish to assume any unnecessary risk with respect to collection items.

If you have at hand any decisions or opinions showing that the Federal Reserve Bank in receiving this type of paper for collection is acting in a private and not a Governmental capacity, so that the usual commercial laws will apply between this Bank and it, I will be very glad to receive them.

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New York, July 27, 1922. X-3504a

On receipt of your reply to this letter, I can assure you the matter will be definitely closed.

Yours very truly,

(Signed) C. E. Mitchell,

President.

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COPY X-3504a

THE SECRETARY OF THE TREASURY

Washington

PERSONAL July 19, 1922.

My dear Mr. Mitchell:

I have received from your cashier a letter dated July 6, 1922, with further reference to a form of credit advice used by the National City Bank of New York which contains an objectionable statement regarding the charging back of Government warrants and checks previously paid by the Treasurer of the United States. This credit advice has resulted in many difficulties with foreign banks, and has been the cause of some embarrassment to the Government of the United States. I had supposed that its use was discontinued some time ago by your bank, but it now appears that it is still in use and that the bank does not yet regard the question as settled. The correspondence has been going on since early last fall, and there have been several letters from your cashier, particularly letters dated December 15, 1921, March 16, 1922, and June 21, 1922, indicating that the National City Bank would discontinue the use of its stamp as soon as the Federal Reserve Bank of New York revised its check collection circular. This revision was made a couple of months ago, and the Federal Reserve Bank at that time advised the Treasury that the National City Bank had actually given up the objectionable form of advice. Apparently this has not been done. In these circumstances I should appreciate it if you would give the matter your personal attention, in order that it may be settled once and for all.

The Treasury's procedure in respect to returned items has been many times explained in letters to the National City Bank, and the regulations of the Treasury and of the Federal ReserveBank of New York have been revised in order to state the situation in as clear and definite terms as possible. As to the specific questions raised in your Cashier's letter of July 8, the term "remitting bank" used in Section 37 (2) of Treasury Department Circular No. 176, as amended and supplemented May 15, 1922, means the Federal Reserve Bank rather than the bank which has transmitted the paper to the Federal Reserve Bank. On the second question, as to whether the "Reserve Banks in dealing with this type of paper are acting in a Governmental or private capacity", I do not quite understand what is meant nor what relation the inquiry has to the matter under discussion. It is clear, of course, that under Section 15 of the Federal Reserve Act, the Federal Reserve Banks act as depositaries and fiscal agents of the United States, and their duties as depositaries and fiscal agents in respect to the payment of Government warrants and checks are set forth in the provisions of the

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aforesaid Treasury Department Circular No. 176. The Federal Reserve Banks also act for their member banks in connection with the collection of checks and similar items, and their responsibilities in this regard are usually set forth in their own circulars.

Very truly yours,

(Signed) A. W. Mellon,
Secretary.

C. E. Mitchell, Esq.,
President, The National City Bank of New York,
New York, N. Y.

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(copy)

THE NATIONAL CITY BANK OF NEW YORK

New York, July 8, 1922.

In replying please quote initials
CBL-T
X-3504a

Hon. A. W. Mellon,
Secretary of the Treasury,
Washington, D. C.

Dear Sir: RE:-Checks and warrants drawn on the Treasurer of the United States.

We are glad to acknowledge your letter of June 23, 1922, giving assurance that it is your intention to treat checks and warrants drawn on the Government in accordance with the usual commercial practice, and referring us to Sections 35 to 38 of Treasury Department Circular 176, dated May 15, 1922.

It is gratifying to this Bank to note your stand with respect to the payment of Government checks and warrants. However, under present banking practice, as you know, a great proportion of this paper is collected through the Federal Reserve Banks, which in certain respects act as an agency of the Government. This has raised two questions: first, whether the "remitting bank" referred to in Section 37(2) is to be interpreted as the Federal Reserve Bank, or the bank which has transmitted the paper to the Reserve Bank, and second, whether the Reserve Banks in dealing with this type of paper are acting in a governmental or private capacity?

We would like very much to conform to your desire and discontinue at once the use of the stamp referred to in former correspondence, which is subject to so much criticism from our foreign correspondents. Our counsel, however, do not feel free to advise that course until they know the attitude of the Department of the Treasury on the points mentioned.

Yours very truly,

(Signed) N. C. Lenfestey,

Cashier.

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COPY

X-6867-a-15

January 6, 1922.

Mr. Frank White, Treasurer of United States,
Treasury Department,
Washington, D. C.

Dear Sir: Attention of AWS

Your letter of December 29th addressed to L. A. A. Siems, Manager, Government Redemption Department of the Baltimore Branch of this bank, has been referred to me, and along with it the file of correspondence between the Baltimore Branch of this bank and the Treasury Department upon the subject of ten checks, each for the sum of $30.00, drawn by the Bureau of War Risk Insurance upon your office in favor of Elizabeth Johnson, which checks were apparently mailed by the Bureau of War Risk Insurance to the payee in care of John A. Johnson, School for Bakers & Cooks, Camp Meade, Md., and are dated one on the first of each month beginning November 1, 1918 and ending August 1, 1919. All of these checks are apparently endorsed by Elizabeth Johnson, John A. Johnson, Commonwealth Bank of Baltimore, and by the National Exchange Bank of Baltimore. These checks were presented to us through the Baltimore Clearing House by the National Exchange Bank of Baltimore and paid for your account.

I understand from the correspondence that the payee of these checks, Elizabeth Johnson, has made affidavit that her endorsement upon the checks are forgeries and that she received no part of the proceeds; and that after investigation by the special agents of the Secret Service Division and an examination by your handwriting experts you are of opinion that the claim of the payee is substantiated and you have accordingly charged these checks to our account.

The National Exchange Bank has refused to reimburse us for the amount of these checks and I do not feel that we should be compelled to reimburse the Treasury until we are in a position to secure credit from the member bank from which we received the checks or until the claim of your department has been established by appropriate legal proceedings.

I have been advised by the counsel for this bank that the liability of endorsers upon a check drawn by a disbursing officer upon the Treasury of the United States is no different from the liability of endorsers upon checks drawn upon private corporations and persons, that is to say the endorsers warrant the genuineness of prior endorsements; and if the endorsement be proven to be a forgery, the drawee of the check may recover the amount paid from any endorsers. The counsel for this bank further advises me that whoever affirms that any signature is a forgery must prove it.

We know nothing of the facts of this case, but if we accepted the charge made by your office and attempted to collect the amount of

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#2.
Mr. Frank White,
Treasurer of United States. Jan. 6, 1922.

these checks from the National Exchange Bank, we would be obliged to assume the burden of proof and to prove that the signature of Elizabeth Johnson is a forgery. You have furnished us with no evidence which would enable us to prove such a fact, and until such evidence is furnished I can not credit your account with the amount which you claim.

You will doubtless realize that it would work a great hardship upon Federal reserve banks if they were compelled to accept the findings of your office as final and were then compelled to bring a suit against some prior endorser, in which suit they would be compelled to prove by evidence admissible in court that the endorsement was a forgery.

We shall endeavor to secure an amicable adjustment of the matter between ourselves and the National Exchange Bank, but until such an adjustment is secured we must refuse to credit your account or to sign Form 6536 covering these checks.

I suggest that it appears to me both practicable and reasonable for your department, if it considers it certain that the endorsements upon these checks are forged, to bring a suit against the endorsers upon these checks, making this bank a party to such suit if you deemed that course best, and in such suit establish the fact of the forgery in such manner as would be binding upon all parties.

I remain,

Yours very truly,

George J. Seay,
G o v e r n o r.

MGW-S

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X-6867-a-16

FEDERAL RESERVE BANK

OF RICHMOND

January 7, 1922.

Dear Governor Harding:

I enclose, for the information of the Board, copy of a letter drafted by our Counsel which I have sent to the Treasurer of the United States, with respect to certain checks on the Treasury paid by the Baltimore Branch in the usual way, upon which the endorsement of the payee has been declared to be a forgery by the officials of the Treasury Department. The member bank for which the checks were cashed takes the position that it has no evidence to prove that the endorsement is forged, and declines to accept the decision of the Treasury Department without proof.

It appears to me that Federal reserve banks, for their own protection, and protection of their members, are called upon to take the position which I have taken under advice of our Counsel, as set forth in the accompanying letter, which more fully sets forth the facts in the case.

Very truly yours,

(S) Geo. J. Seay
Governor.

GJS-CCP
1 Encl.

Hon. W. P. G. Harding, Governor,
Federal Reserve Board,
Washington, D. C.

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COPY X-6867-a-17

January 11, 1922.

Dear Mr. Secretary:

I enclose herewith copy of letter and enclosure received from the Governor of the Federal Reserve Bank of Richmond, all of which is self-explanatory. I would appreciate it very much if you would write me expressing the attitude of the Treasury Department in the matter referred to, in order that I may communicate your views to Governor Seay.

Very truly yours,

G o v e r n o r.

Hon. S. P. Gilbert, Jr.,
Under Secretary of the Treasury.

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COPY X-6867-a-18 581

January 17, 1922.

AWS.

George J. Seay, Esquire,
Governor, Federal Reserve Bank,
Richmond, Virginia.

Dear Sir:

Receipt is acknowledged of your letter of the 6th inst., referring to the request made of your Baltimore branch for reclamation of payment on ten checks for $30.00 each, drawn on this office by the disbursing clerks of the Bureau of War Risk Insurance, all in favor of Elizabeth Johnson. These checks were mailed to the payee in care of John A. Johnson, School for Bakers and Cooks, Camp Meade, Md., and are dated on the first day of each month beginning November 1, 1918 and ending August 1, 1919. The checks are endorsed Elizabeth Johnson, John A. Johnson, Commonwealth Bank of Baltimore, National Exchange Bank of Baltimore and Baltimore branch, Federal Reserve Bank of Richmond.

Your letter states in substance, (first) that you have been furnished with no evidence or proof that the payee's indorsement is forged and (second) that the proper method of securing reclamation would be for the Treasury to bring suit against the indorsers in order to establish thefact of the forgery, making the Federal Reserve Bank a party to the suit.

It is found that the Baltimore branch of your bank has been furnished with information relative to this case in letters of this office dated October 18, November 8, December 5, and December 29, 1921. There are forwarded to you herewith certified photographic copies of the affidavit of the payee, of the ten checks bearing forged indorsements and of eleven checks issued to this payee at earlier dates bearing her genuine indorsement. There is also forwarded herewith a copy of the report of the Examiner of questioned Writing of this office relative to his examination of the indorsements.

The indorsements of the payee on the ten checks in question appear to have been forged by John A. Johnson, husband of the payee, who appears as the second indorser on the checks and whose signature thereon, the Department is advised, agrees with his specimen signature on file with the Commonwealth Bank of Baltimore.

For your information with reference to the position of the Treasury in such matters there is inclosed herewith a copy of the letter of the Under Secretary to the Federal Reserve Bank, New York,

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dated Jan. 27, 1921, copy of which letter has also been previously sent to your bank by the Federal Reserve Board, reference X-3047 You will note that the Treasury reserves the right ultimately to insist upon credit in such cases unless it develops upon further investigation that the Treasurer has not the right to reclaim. In the correspondence relative to this forgery which this office has carried on with the Baltimore branch of your bank and with the attorney for the Commonwealth Bank of Baltimore no fact has been developed to warrant the questioning of the statements made by the payee of these checks in her affidavit.

It is noted that you will endeavor to secure an amicable adjustment of the matter between yourselves and the National Exchange Bank and it appears that the facts are sufficiently clear in this case to make such adjustment possible.

Very truly yours,

(Sgd) Frank White

Treasurer.

(Inclosure)
MGK.

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January 27, 1921.

Dear Mr. Case:

I received your letter of December 31, 1920, with further reference to the question of items drawn on the Treasurer of the United States and returned by him to the Federal Reserve Banks. I have also received a letter from Mr. Harrison, dated January 15, 1921, enclosing a copy of a letter of December 30, 1920, to the Manager of the local branch at Buffalo, which defines the procedure under which it is proposed to handle items returned by the Treasurer. The matter in question has been carefully considered by the Treasury and particularly by the Treasurer of the United States, whose account is of course affected. I think that the question has now reduced itself in large measure to one of procedure.

The items involved seem to fall under three distinct classes, namely:

(1) Checks which the Treasurer rejects promptly upon first examination on account of any irregularity. Checks falling within this class would normally include, for example, unsigned checks, checks in which the signature of the drawer is discovered upon first examination to be forged, checks payment of which has been stopped, etc.

(2) Checks which bear forged indorsements, and checks which have been raised or bear other material alterations which do not appear on examination.

(3) Checks in respect to which a question arises on the facts as to the Treasurer's right to reclaim, as, for example, checks bearing a forged signature of the drawer not discovered upon first examination.

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When checks of class (1) are returned I assume that immediate credit will be given in the Treasurer's account. The second paragraph of Mr. Round's letter of December 31, 1920, to the Buffalo Branch does not make this quite clear, but I assume that there is no difference of opinion as to items of this character. Such checks will be returned with Form 6537, copies of which are enclosed.

When checks of class (2) are returned it will be satisfactory to the Treasury if credit in the Treasurer's account is delayed by the Federal Reserve Bank until advice is received from the member bank that the item has been credited. Such checks will be returned with Form 6536, copies of which are enclosed. It is understood, however, as stated in Mr. Harrison's letter of January 15, 1921, that the circular under which the Federal Reserve Bank of New York acts as collecting agents for banks in its districts with respect to warrants and checks drawn on the Treasurer of the United States will continue to reserve in favor of the Federal Reserve Bank the right at any time to charge back items returned by the Treasurer; and the Treasury still reserves the right ultimately to insist upon credit in such cases unless it develops upon further investigation that the Treasurer has not the right to reclaim.

When checks of class (1) and (2) are returned to the Federal Reserve Bank the Treasurer's office will charge the Transit Account - Adjustments of the Federal Reserve Bank - and hold further adjustments in the account in suspense until the Transit account Adjustment item is cleared in the transcript of the Federal Reserve Bank.

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When checks of class (3) are returned they will be forwarded with other items for collection and taken up when credited, with no intermediate charge on the books of the Treasurer in the account of the Federal Reserve Bank.

The Treasury will on and after January 28, 1921, handle these items in the manner outlined above, which I think is substantially in accordance with the procedure set out in the letter of December 30, 1920, to the Buffalo Branch. The regulations of the Treasury now in effect governing the payment of Government warrants and checks, as set forth in paragraphs 29-31 of Treasury Department Circular No. 176, dated December 31, 1919 will continue in effect.

Very truly yours,

(Signed) S. P. Gilbert, Jr.,

Assistant Secretary of the Treasury.

J. H. Case, Esq.,
Deputy Governor,
Federal Reserve Bank,
New York, N. Y.

Enclosures.

SPG:HRS.

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COPY X-6867-a-20

THE UNDERSECRETARY OF THE TREASURY

WASHINGTON

January 18, 1922.

Dear Governor Harding:

I received your letter of January 11, 1922, enclosing a copy of a letter and its enclosure received from the Governor of the Federal Reserve Bank of Richmond relative to reclamation upon 10 checks, each for the sum of $30, drawn by the Bureau of War Risk Insurance upon the Treasurer of the United States, in favor of Elizabeth Johnson, on which the indorsements of the payee were forged. You ask that I write you regarding the attitude of the Treasury in this matter.

The matter of reclamation upon the checks in question has already been the subject of correspondence between the Treasurer of the United States and the Baltimore branch of the Federal Reserve Bank of Richmond, and also with the Federal Reserve Bank of Richmond itself. I enclose a copy of a letter of January 17, 1922, addressed by the Treasurer to the Governor of the Federal Reserve Bank of Richmond which states the position of the Treasury with regard to this case. These cases do not present any new or unusual features. The position which the Treasury has taken is in accordance with the usual practice established in compliance with the understanding reached some time ago between the Treasury and the Federal Reserve Banks. I enclose a copy of my letter of January 27, 1921, to Mr. Case, Deputy Governor of the Federal Reserve Bank of New York, which states the Treasury's position in the matter of reclamation generally.

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In the present cases, the Baltimore branch was furnished with the proof of the forgeries which the Treasury had obtained. The Federal Reserve Bank of Richmond apparently was not informed of this fact. The Treasury, of course, realizes that if the Federal Reserve Bank is to make reclamation against its member bank, it should be furnished with all the proof available, and will in all cases undertake to furnish such proof. It is further expected, in accordance with the Treasury's understanding with the Federal Reserve Banks, that the Federal Reserve Banks shall make every effort possible to make reclamation without litigation, as litigation in most of these cases is unnecessary, the facts being clear and the principles of law governing the cases well established.

Very truly yours,

(S) S. P. Gilbert, Jr.,

Under Secretary.

Hon. W. P. G. Harding,
Governor, Federal Reserve Board,
Washington, D. C.

2 enclosures

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COPY

X-6867-a-21

January 20, 1922

Dear Governor Seay:

Referring again to your letter of the 7th instant, I enclose herewith, for your information, copy of letter received from the Under Secretary of the Treasury which is self-explanatory. The two enclosures referred to therein are not being sent you, for the reason that it appears from the letter that you already have copies of them in your files.

Very truly yours,

Governor.

Mr. George J. Seay, Governor,
Federal Reserve Bank,
Richmond, Virginia.

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FEDERAL RESERVE BANK

OF RICHMOND

January 21, 1922.

Dear Governor Harding:

I am in receipt of your letter of the 20th transmitting to us a letter from the Under Secretary of the Treasury, under date of the 18th, relating to reclamation upon ten checks, each for the sum of $30, drawn by the Bureau of War Risk Insurance upon the Treasurer of the United States, in favor of Elizabeth Johnson, on which it is alleged the endorsements of the payee were forged. The under Secretary states that, in the present cases, the Baltimore Branch was furnished with the proof of the forgeries, which the Treasury had obtained, and makes the comment that the Federal Reserve Bank of Richmond apparently was not informed of this fact.

We presume that the Under Secretary understands that reclamation was made upon the member bank which cashed the checks, or from which the checks were received by the Branch of the Federal Reserve Bank of Richmond, and that member bank declined to redeem the checks, upon the ground, as we understand, that the proof of the forgeries was not conclusive and was not such as to place upon the member bank the obligation of redeeming the checks.

It, therefore, appears to us that litigation in this case will be necessary. Our counsel is making further examination into the matter to determine whether the proof furnished by the Department is such as will enable us to go into court upon it. Pending further opinion from our counsel, which I will forward without delay, I am writing this letter for the information of the Department.

Very truly yours,

(S) Geo. J. Seay,
Governor.

GJS-CCP

Hon. W. P. G. Harding, Governor,
Federal Reserve Board,
Washington, D. C.

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X-6867-a-23

OFFICE CORRESPONDENCE

Date January 25, 1922.

To Mr. George J. Seay, Governor.

From M. G. Wallace, Counsel.

Subject Ten checks paid by this bank on behalf of the Treasury of the United States, each for $30.00; which checks were payable to the order of Elizabeth Johnson, whose endorsement is said to have been forged.

Dear Sir:

I have before me the file of correspondence between the Baltimore Branch of this bank and the Treasury upon the subject of these checks, and also of the Baltimore Branch and the National Exchange Bank of Baltimore, from which we received the checks. I also have before me photostatic copies of the ten checks in question, photostatic copies of ten similar checks to the order of Elizabeth Johnson containing an endorsement of Elizabeth Johnson said to be genuine, and a photostatic copy of an affidavit made by Elizabeth Johnson, all of which documents are accompanied by a certificate of the Treasury Department certifying that the originals are on file with that department.

I also have a letter dated December 15th from B. C. Farrar, an examiner in questioned handwriting, in which he expresses the opinion that the endorsement of Elizabeth Johnson upon the ten checks in question was not made by her, but was made by one John A. Johnson, who likewise endorsed the ten questioned checks and who is said to be the husband of Elizabeth Johnson and the person who deposited the checks in the Commonwealth National Bank of Baltimore, Maryland.

I understand that the checks in question were deposited by one John A. Johnson in the Commonwealth Bank of Baltimore, Maryland, and by that bank endorsed and deposited in the National Exchange Bank of Baltimore, Maryland, which forwarded them to us for payment. We, accordingly, paid them on the dates which appear on the back of the respective checks, that is to say, six on January 27, 1920 and four on January 30, 1920. We stamped the checks paid in accordance with our usual practice and forwarded them to the Treasury of the United States, and nothing further was heard of the matter until on or about October 18, 1921.

The checks were sent to us by the Treasurer of the United States with the statement that it had been ascertained that the endorsement of Elizabeth Johnson was a forgery, and with the further statement that unless good reason to the contrary was advanced by the endorsers our account would be charged within thirty days. Our Baltimore Branch promptly sent the checks to the National Exchange Bank, which appears to have promptly sent them to the Commonwealth Bank. These banks, however, returned them with the statement that John A. Johnson had closed his account and they, accordingly, refused reimbursement. I understand the Treasurer of the United States has since charged these checks to our account upon the ground that the proof that the

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endorsement is forged is sufficient to justify such course, and to enable us to recover the amount of the checks from the endorsing banks. The endorsing banks, however, still deny our right to recover the amount from them. I understand that you desire my opinion upon the question of our liability to the Treasurer of the United States and the liability of the endorsing banks to us or to the Treasurer.

It is, of course, well established law that every person who endorses a check warrants the genuineness of prior endorsements, and, if it be proven that the endorsement of a prior endorser is a forgery, a subsequent endorser may be compelled to reimburse the amount of the check to the drawee. This rule of law has been extended to transactions between the Treasurer of the United States and banks or other persons cashing checks drawn upon the Treasury in at least one reported decision of the United States Supreme Court; and, in my opinion it is, therefore, certain that the national Exchange Bank and the Commonwealth Bank are liable to the Treasurer of the United States, provided the Treasurer of the United States can prove that the endorsement of Elizabeth Johnson is a forgery, that is to say, that it was not made by her and that she in no way authorized or ratified it. The allegation of forgery, however, raises an issue of fact and the Treasurer of the United States would have the burden of proving this fact. Therefore, if the endorsing banks choose to deny this fact, a suit must be brought against them and the fact established in such suit by evidence admissible in a court of law, which I will discuss more fully later on.

While the matter is not entirely free from doubt, I incline to the opinion that the Federal Reserve Bank cannot be regarded as an endorser of these checks. Treasury Circular #176, dealing with the payment of Government checks, reads as follows:

> "Each Federal Reserve Bank and branch will cash Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible incorporated banks and trust companies who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor."

If I construe the above provision correctly, it makes the Federal Reserve Bank the agent of the Treasurer to pay checks presented to it and does not impose upon the bank the responsibility of an endorser, but requires the bank to cash the check when it is duly presented and properly endorsed by a responsible bank or trust company, and, if the Federal Reserve Bank has relied upon the endorsement of a responsible incorporated bank or trust company before cashing a check, it has discharged its full duty as an agent. If it later develops that an endorsement prior to the last bank endorsement is a forgery, the Treasurer should look to such bank for reimbursement and may not charge the check to the account of the Federal Reserve Bank, unless and until the Federal Reserve Bank has succeeded in recovering the money from the bank en-

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dorsers. It would be our duty, perhaps, to use every possible means to recover the money without litigation, but we have already made such an attempt and we are continuing to make this attempt as I state hereafter, but I do not think that a Federal Reserve Bank is bound to credit the Treasurer with this money and assume the burden of litigation, which would certainly be expensive and which, like all other litigation, is attended with some risk regardless of how clear the facts may appear to be.

If I am right in my construction of the above quoted provision of the circular which I mentioned, we have a perfect right to insist that the Treasurer of the United States shall take this matter up directly with the National Exchange Bank and either settle the matter or bring a suit, upon whichever he deems advisable.

It might be contended by the Treasurer that we occupy the position of the last endorser and that, therefore, we are in the position of guaranteeing prior endorsements and the Treasurer has the right to deal with us alone, leaving us to enforce our claim upon endorsers who were prior to us. If this view be taken, we have, of course, the right to refuse to admit that the endorsement of Elizabeth Johnson is forged and insist that before we make reimbursement the Treasurer shall bring a suit against us and establish his allegation by evidence admissible in court.

If we take the view that we are not the agent of the Treasurer in paying Government checks, then it must follow that when we receive a check drawn upon the Treasurer from one of our member banks, we are, in accordance with the Regulations of the Federal Reserve Board, acting as the agent of the member bank, and in such case, although we sustain to the Treasurer the relation of an endorser, to our member bank, we sustain the relation of an agent for collection; and, therefore, when a claim is made upon us for a matter arising out of our act in collecting these checks, we should not pay such claim until we have notified our member bank and until they have either authorized us to pay the check and charge the amount to them, or until a suit has been brought against us and we have been compelled to pay the claim. In such a suit it would be the duty of the member bank, as the real party in interest, to make whatever defense it felt was proper, and we should do nothing which would deprive them of their power to make such defense.

You will see from the above that in my judgment it is not our duty at this time to credit the Treasurer with the amount of these checks. If we do credit the Treasurer with the amount of these checks and attempt to enforce reimbursement from the National Exchange Bank, we shall be compelled to take one of two courses. (1) Sue the National Exchange Bank for the amount of the checks. (2) Charge the reserve account of the National Exchange Bank with the amount of the checks, leaving that bank to sue us for the amount so withheld. In either case we should have the burden of proving that the signature of Elizabeth Johnson was a forgery, and, therefore, for your information I set

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out, as well as I am able to do so at present, the evidence which would be necessary to sustain such a contention.

We have in our hands a certified copy of an affidavit made by Elizabeth Johnson. The certificate of the Treasury Department that the affidavit is on file with them is sufficient to prove that there is such an affidavit on file in the Treasury Department, but it can have no greater effect than the original affidavit would have. It is well established as a rule of evidence that no ex parte affidavit may be read in court as evidence, but that the person who made it must be produced as a witness or else, if the circumstances justify it, the deposition of that person must be taken and the opposing party given an opportunity to cross-examine the deponent. Therefore, if we brought a suit against the National Exchange Bank upon these checks, we would be compelled either to produce Elizabeth Johnson as a witness or else take her deposition, and as she appears to live at 314 Gore Avenue, Lawton, Oklahoma, either course would be difficult and expensive. In my judgement it would be impossible to bring this suit without relying upon the testimony of Elizabeth Johnson. We might, of course, attempt to prove our case by relying solely upon evidence that the handwriting upon the checks was a sufficient proof that the endorsement was not made by Elizabeth Johnson in person. To do this, however, we must first produce an admitted genuine specimen of the handwriting of Elizabeth Johnson. The Treasury Department has offerred us photostatic copies of certain checks endorsed by Elizabeth Johnson and makes the statement that she does not question the genuineness of her endorsement upon these checks. These photostatic copies, however, would not be sufficient to prove that the endorsement upon the back of them showed the genuine handwriting of Elizabeth Johnson. We would be compelled either to produce some person familiar with the handwriting of Elizabeth Johnson who could identify the endorsements upon the checks or else we would be compelled to produce Elizabeth Johnson to identify her genuine endorsement. Having done this, we would introduce the photostatic copies upon which the endorsement was said to be forged and would introduce experts to give their opinion as to the genuineness of the endorsements alleged to be forged. We know of no person acquainted with Elizabeth Johnson who could identify her handwriting. It, therefore, seems to me even with the aid of experts in handwriting we would not make out a clear case unless we produced Elizabeth Johnson as a witness or took her deposition. Therefore, in my opinion, if the Federal Reserve Bank credited the Treasurer with these checks, we will find it expensive and difficult to secure reimbursement by means of a suit against the National Exchange Bank of Baltimore, and, as I stated above, I do not believe we are under any liability or moral duty to assume the expense of such a suit.

I may add that since this case was referred to me I have written Mr. Robert Biggs, attorney for the Commonwealth Bank, and have suggested to him that unless his client was willing to pay the amount of these checks it would probably be necessary for the matter to be settled by a suit. I, therefore, requested him to look into the matter and to advise me frankly whether or not he had any good reason to doubt that a forgery has been in

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fact committed. It seemed to me that it was useless to dispute over rules of evidence unless we in reality felt that there was a doubt as to true facts. He has written me that his client was endeavoring to locate John A. Johnson, who it seems likely committed the forgery, if a forgery has been committed, and he would later advise me of the results of his efforts. I suggest that we should send to Mr. Biggs the photostatic copies of the documents to which I have referred above and request him to examine them and return them to us. I think that such course may well result in convincing Mr. Biggs that it is useless to litigate this matter.

Very truly yours,

(S) M. G. Wallace,
Counsel.

MGW-S

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FEDERAL RESERVE BANK

OF RICHMOND

January 25, 1922.

Dear Governor Harding:

Referring to your letter of the 20th sending us a copy of one from the Under Secretary of the Treasury, dated January 18, relative to reclamation upon 10 checks, each for the sum of $30, drawn by the Bureau of War Risk Insurance upon the Treasurer of the United States in favor of Elizabeth Johnson, on which the endorsements of the payee are alleged to have been forged, I now enclose letter from our counsel, under date of the 25th, answering the position taken by the Treasury Department and setting forth what it is believed the attitude of this bank should be in the matter.

It will, of course, be understood by the Department that our relation towards our member banks, as well as our relation towards the Treasury, requires, in our opinion, that our procedure should be strictly in accordance with legal requirements as well as with approved banking practice.

If the bank which cashed the checks, or the member bank from which we received them refuses to redeem them and compels us to go into court to enforce the position of the Treasury, with which situation we seem to be faced, then the position of our counsel is well taken. You will observe that our counsel suggests in the last paragraph of his letter that we send to the attorney of the Commonwealth Bank, which cashed the checks, the photostatic copies of the documents in the case, tending to prove the allegation of forgery. We shall take this course, and will later advise the Department, through you, of the result.

Very truly yours,

(S) Geo. J. Seay
Governor.

GJS-CCP
1 Encl.

Hon. W. P. G. Harding, Governor,
Federal Reserve Board,
Washington, D. C.

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COPY X-6867-a-25

January 26, 1922.

Dear Mr. Secretary:

Further in reference to reclamation by the Federal Reserve Bank of Richmond upon ten checks drawn by the Bureau of War Risk Insurance, on which the endorsements of the payee are alleged to have been forged, I enclose herewith for your information copies of letter and enclosure received today from the Governor of the Federal Reserve Bank of Richmond, which are self-explanatory.

Very truly yours,

G o v e r n o r.

Hon. S. P. Gilbert, Jr.,
Under Secretary of the Treasury.

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(Copy)

June 21, 1922.

My dear Governor:

In view of your letter of January 25, 1922, to Governor Harding, as to the 10 checks for $30.00 each, drawn by the Bureau of War Risk Insurance upon the Treasurer of the United States in favor of Elizabeth Johnson and cashed on endorsements of the payee which are alleged to have been forged, which was transmitted by a letter dated January 26, 1922, from Governor Harding, it may interest you to know that the Treasury is proceeding to enforce reclamation against the endorsers of these checks and has made demand upon the National Exchange Bank of Baltimore. In this connection I should like to add, for the sake of the record and in view of the points raised in the memorandum dated January 25, 1922, from M. G. Wallace, counsel of the Federal Reserve Bank of Richmond, which accompanied your letter, that the Treasury does not look to the Federal Reserve Banks as indorsers or guarantors of warrants or checks drawn on the Treasurer which may be cashed by the Federal Reserve Banks. The duties and functions of the Federal Reserve Banks, as depositaries and fiscal agents of the United States, in respect to the payment of Government warrants and checks are set forth in paragraphs 35-38 of Treasury Department Circular No. 176,

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as amended and supplemented May 15, 1922, and the Treasury has no intention of holding the Federal Reserve Banks to any liability in this connection beyond the discharge of their duties and responsibilities under the terms of the circular.

Very truly yours,

(Signed) S. P. GILBERT, Jr.,
Under Secretary.

George J. Seay, Esq.,
Governor, Federal Reserve Bank,
Richmond, Va.

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THE UNDERSECRETARY OF THE TREASURY

Washington

June 21, 1922.

My dear Governor:

In view of our previous correspondence in the matter, I am enclosing for your information a copy of my letter of this date to the Governor of the Federal Reserve Bank of Richmond, which states the Treasury's attitude with respect to the liability of the Federal Reserve Banks on Government warrants and checks cashed by them.

Very truly yours,

(Signed) S. P. GILBERT, Jr.,

Under Secretary.

Hon. W. P. G. Harding,
Governor, Federal Reserve Board.

1 enclosure.

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X-3456

June 27, 1922.

SUBJECT: Liability of Federal Reserve Banks on Government Warrants and Checks Cashed by Them.

Dear Sir:

The Under Secretary of the Treasury has sent the Board a copy of a letter he has written the Governor of one of the Federal Reserve Banks on the subject of the liability of Federal Reserve Banks on Government warrants and checks cashed by them. For your information I quote the following from the letter in question:

> "The Treasury does not look to the Federal Reserve Banks as indorsers or guarantors of warrants or checks drawn on the Treasurer which may be cashed by the Federal Reserve Banks. The duties and functions of the Federal Reserve Banks, as depositaries and fiscal agents of the United States, in respect to the payment of Government warrants and checks are set forth in paragraphs 35-38 of Treasury Department Circular No. 176, as amended and supplemented May 15, 1922, and the Treasury has no intention of holding the Federal Reserve Banks to any liability in this connection beyond the discharge of their duties and responsibilities under the terms of the circular."

Very truly yours,

Governor.

GOVERNORS OF ALL F. R. BANKS
COPIES TO CHAIRMEN.

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X-6867-a-28

CONGRESS of the UNITED STATES

House of Representatives

Washington, D. C.

December 7, 1922.

Federal Reserve Board,
Treasury Department,
Washington, D. C.

Gentlemen:

A state Bank in my district in South Carolina has the National Loan and Exchange Bank of Columbia, South Carolina, as its correspondent and reserve agent, and has received a letter from said bank stating that in pursurance of the practice of the Federal Reserve Bank, Richmond, Virginia, the member bank in Columbia will debit the account of the local bank with all checks that the Government fails and refuses to pay, when the Government discovers after the check is issued, that for some reason payment thereon should be stopped. Also, even when Government vouchers have been paid and it has been decided later that the money was not due, the voucher is then returned back through the Federal Reserve Bank to the local bank which is required to have to take same up.

If this practice is enforced it will work a great hardship both to the local banks and to the various beneficiaries of the Bureau of War Risk Insurance, who are scattered throughout the country in the number of nearly one million. If this rule can be legally enforced, then, these claimants will find it almost impossible to have their checks cashed at local banks because, as a matter of fact, most of these beneficiaries are not responsible, financially, so that they can be compelled by judicial action to refund the money. Therefore the local bank is obligated not only to guarantee the genuineness of the endorsement and the genuineness of the voucher, but to guarantee that the voucher represents an actual governmental obligation. This is asking too much of the local banks, and as a result, they will be forced to refuse to cash government checks and thus the innocent beneficiaries of the government will suffer.

Please advise me at once what instructions have been given to the Reserve Banks and if none, what is your conclusions upon this state of facts?

Thanking you for early attention to this case, I am

Very respectfully,

(Signed) J. J. McSwain.

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FEDERAL RESERVE BANK OF
RICHMOND

December 9, 1922.

Hon. Edmund Platt, Vice Governor,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Platt:

I am in receipt of your letter of the 8th sending us a copy of a letter from Congressman J. J. McSwain, of South Carolina, in which he stated:

"A State bank in my District in South Carolina has the National Loan & Exchange Bank of Columbia as its correspondent and reserve agent, and has received a letter from said bank stating that in pursuance of the practice of the Federal Reserve Bank of Richmond, the member bank in Columbia will debit the account of the local bank with all checks that the Government fails and refuses to pay when the Government discovers after the check is issued payment thereon should be stopped. Also even when Government vouchers have been paid, and it has been decided later that the money was not due, the voucher is then returned back through the Federal Reserve Bank to the local bank, which is required to take same up."

The practice of the Treasury Department in such matters is fully described in paragraph 37 of the Department's Circular No. 176, which paragraph reads in part as follows:

"37. PAYMENT BY TREASURER.--The Treasurer of the United States reserves the usual right of the drawee to examine, when received, all Government warrants and checks cashed by Federal Reserve Banks and branches and general National bank despositaries, and to refuse payment thereon. The Treasurer will handle all such items received by him on the following basis: (1) Immediate return will be made of any warrant or check, payment of which is refused on account of forged signature of drawer, insufficient funds, stoppage of payment, or any material defect discovered upon first examination, in all of which cases the transit account of the remitting bank will be charged with the amount of the returned warrant or check and the remitting bank will be expected to give immediate credit therefor in the Treasurer's account. (2) In the event that any warrant or check which has been paid by the Treasurer is subsequently found to bear a forged endorsement, or to have been raised, or to bear any other material alteration or defect which was not discoverable upon first examination, a photographic copy of the warrant or check will be forwarded to the remitting bank and its transit account will be charged with the amount by the Treasurer, but the remitting bank will not be expected to give credit in the Treasurer's account for items of this class until it has received reimbursement therefor. (3) In cases of warrants or checks bearing a forged signature of the drawer, not discovered upon first

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examination by the Treasurer, and in other cases where the Treasurer's right to reclaim is in question, the warrants or checks will be forwarded to the remitting bank as collection items and taken up by the Treasurer when credited, with no intermediate charge in the account of the remitting bank."

The Federal Reserve Bank of Richmond acts in strict accordance with the foregoing regulation of the Treasury Department. Should the Federal Reserve Bank have returned to it by the Treasurer any warrant or check payment of which is refused on account of forged signature of drawer, insufficient funds, stoppage of payment, or any material defect discovered upon first examination, the Federal Reserve Bank will be required to act according to the Treasury regulation and will, of course, in that case be compelled to charge such check back to the account of the member bank from which it received it, and return said check to the bank. In the event, however, that any warrant or check which has been paid by the Treasury is subsequently found to bear a forged endorsement, etc., as fully described in paragraph 37 quoted above, it is the practice of the Federal Reserve Bank to acquaint the member bank from which it received such a check of the circumstances of the case, and we enclose copy of a letter which we usually address to the member bank under circumstances of that character.

In the event that the member bank declines for any reason sufficient to itself to give credit for the check in question, no entry is made against its account, but the matter is reported to the Treasury Department for such action as may be called for. It was formerly the practice of the Department to require Federal Reserve Banks to give immediate credit for all such checks as described above when returned by the Department for any of the reasons given, but, inasmuch as the law which governs banking institutions generally in such cases has been decided by the courts to be applicable to the Treasury Department, or for reasons of equity, the Treasury Department changed its practice with respect to Federal Reserve Banks and issued Circular No. 176, by which Federal Reserve Banks have been governed and to which the Treasury Department now conforms.

If the banking institution which appealed to Congressman McSwain holds the opinion that it should be relieved of all responsibility as endorser on Government checks when it cashes the same for the wrong person or upon a forged endorsement, or when the Government check itself has a forged signature or other defects, as indicated in the Department's circular, then it is manifest that responsibility cannot be waived.

The responsibility of banks in general which cash Government checks and warrants is no greater than when cashing other checks. It is well understood that when any bank finds that it has cashed a check

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Dec. 9, 1922.

with a forged endorsement of the payee, it has the right of recourse to the endorser, whether a bank or person, from which the check was received by it. These are responsibilities that pertain to the banking business and are well fixed by law, and cannot be avoided.

The purpose of this letter is simply to advise you that the practice of the Federal Reserve Bank of Richmond is in strict accord with Treasury regulations, and to express the opinion that Treasury regulations by which we are governed conform to general banking custom everywhere.

We enclose a copy of this letter, which we shall be glad to have you transmit to Congressman McSwain, should you feel so inclined.

Very truly yours,

(Signed) Geo. J. Seay,

Governor.

GJS-CCP
Encls.

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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C.

December 14, 1922.

Hon. Edmund Platt,
Acting Governor,
Federal Reserve Board,
Washington, D. C.

My dear Mr. Platt:

I beg leave to acknowledge receipt of your letter of December 13, in which was enclosed copy of letter from Mr. George J. Seay, Governor of the Federal Reserve Bank of Richmond, Virginia.

In reply to his letter I beg to say that in my humble opinion the same does not meet the question presented by my letter.

Of course any lawyer must know that the member bank, or local bank, cashing a check upon a forged signature, or in case of false personation, will be liable to make good the money. The case I mention is this: Where there is no doubt about the identity of the person, and no doubt about the genuineness of the signature, but the government subsequently takes the position, as is often the case when dealing with the Veterans' Bureau, that the Government did not owe the money at the time the check was issued, or that the check was issued for a greater sum than it should have been issued for, and in such case the government returns the voucher back through channels and has the same charged to the bank which cashed the check for the right person, upon a proper endorsement, and in such case, I cannot for the life of me see how a bank which cashed a government voucher for the right person can be chargeable with notice that as a matter of absolute truth the voucher is for an excess amount, or not due at all. It seems to me in such case the fault lies with the Veterans' Bureau, or any other Bureau issuing the check, and should be charged to it and the government be estopped to deny the validity of its own vouchers which have been put into circulation by its own hand.

Yours very respectfully,

(Signed) J. J. McSwain.

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(Copy) X-6867a-31

December 22, 1922.

Dear Mr. McSwain:

Replying to your letter of December 14th, it seems to me that Governor Seay's letter, which was enclosed with mine of the 13th, covered pretty fully the matter of complying with instructions of the Treasury Department with regard to the handling of Government checks, but it was, perhaps, so fully covered that the case more specifically outlined in your letter of December 14th could not easily be picked out from it. Of course, you understand that this is a matter where the Reserve banks must follow Treasury instructions and I may say that these instructions have been a matter of debate between the banks and the Treasury on several occasions. They are decidedly more liberal than they used to be and I think the bank which wrote you about them probably had not compared the former practice with the present.

In the case you mentioned, namely, "Where there is no doubt about the identity of the person, and no doubt about the genuineness of the signature, but the government subsequently takes the position, as is often the case when dealing with the Veterans' Bureau, that the government did not owe the money at the time the check was issued, or that the check was issued for a greater sum than it should have been issued for", it would seem at first thought that you are right in maintaining that the Government itself should stand any loss that might result from failure to recover from the person to whom the check was paid but this is a matter of law, and in that particular case if the government itself has paid the check my understanding is the Government sends it back through the Federal Reserve bank to the bank which cashed it as practically a collection item under present practice and the Federal Reserve bank does not charge back the amount of the check to the member bank unless it can be collected. The Reserve bank, however, is required to charge back the check if payment is stopped because of discovery of error before check is paid by the Treasurer of the United States and hence the practice of some banks is not to cash these checks but to take them from the payee for collection.

I am taking the liberty of referring this correspondence to the Under Secretary of the Treasury.

Yours very truly,

(Signed) Edmund Platt,

Acting Governor.

Hon. J. J. McSwain,
House of Representatives,
Washington, D. C.

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X-6867-a-32

THE COMMERCIAL BANK

Clinton, S. C.

December 11, 1922.

Hon. A. W. Mellon,
Secretary of the Treasury,
Washington, D. C.

Dear Sir:-

The following circular letter comes to us from our correspondent bank thru the Federal Reserve Bank of Richmond, Va.:

> "The Government has for many years exercised the right to return at any time, warrants and checks which for any cause have not been considered good, and we have been advised that this practice will be continued. The Federal Reserve Bank of Richmond, in view of this practice and as a condition of paying government warrants and checks on the Treasurer of the United States, reserves the right to debit the account of the last endorsing bank, unconditionally, at any time, with any such returned items deposited with, endorsed to, or otherwise made by this bank."

In view of the above we shall appreciate if you will give us some information as to what checks we should cash and should not.

For instance: we have several customers who draw regular compensation checks and also get regular insurance checks. Now, today we are cashing your insurance checks Nos. 58799200-01-02-03 and 04, Mrs. Dollie Harris McCoy. In addition to this we are cashing for the same party compensation checks Nos. 49654894-95-96-97, made payable to the same party who is guardian for the estate of Douglas McCoy.

We also cash checks for Lula Johnson, Mrs. Sallie Tolden Hudgens, and Mrs. Mary Morre. All the above parties receive insurance checks, also compensation checks.

Now, what we wish to know is whether or not we should cash these checks, without any question of you having to charge them back to us.

Of course, it is our pleasure to render any and all service we can to these parties, but we do not care to assume the responsibility for the Government's failure to issue these checks correctly, as we are sure of the identity of the parties for whom we are cashing them.

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Kindly advise us whether we should continue this practice and in your opinion not be liable for any checks cashed for the parties named in this letter.

Your very prompt attention will be greatly appreciated.

Yours very truly,

(Signed) F. M. Boland,
Cashier.

B/fb

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X-6867-a-33

December 28, 1922.

Dear Sir:

I have your letter of December 11th, advising of a circular letter received from a correspondent bank through the Federal Reserve Bank of Richmond, purporting to regulate the "charging back" of Government warrants and checks, and inquiring as to its effect, especially with regard to your responsibility in cases of over-payment of war risk insurance and compensation checks.

You have, no doubt, heard from my letter of December 12th to Senator Dial, who wrote the Treasury in your behalf regarding this matter, and have also been advised by the Federal Reserve Bank of Richmond of its present practice and its view of the rights and obligations of banks endorsing checks drawn on the Treasurer of the United States. The correct practice is stated in these communications.

With regard to specific instances of war risk insurance and compensation checks, concerning which you appear to be in doubt, you are informed that the United States Veterans Bureau states that there are many cases where it is possible for a beneficiary to receive both compensation and insurance from that Bureau. For instance, when a soldier is given a permenent total disability rating on account of sickness contracted or injuries received while in the service, he is awarded compensation and if he is a policy

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holder, he is entitled to receive his insurance. In the same way if a soldier is receiving compensation from the Veterans Bureau and is the holder of a war risk insurance policy, at his death, the compensation will be awarded to his dependents and the insurance will be paid to the beneficiary named in the policy. The bank cashing such checks, should observe the same precautions as in cashing ordinary commercial checks and its legal obligations are similar to those in connection with the cashing of commercial items. Obviously, the bank will not be held for an over-payment caused by negligence of the United States Veterans Bureau in drawing the checks. The checks referred to in your letter are reported by the Veterans Bureau to have been correctly drawn.

Very truly yours,

A. W. MELLON
Secretary of the Treasury.

F. M. Boland, Esq.,
Cashier, The Commercial Bank,
Clinton, S. C.

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COPY

X-6867-a-34

January 5, 1923.

Dear Mr. Gilbert:

I have just been reading over with great interest the correspondence enclosed with yours of January 3rd, which you have had with the Commercial Bank of Clinton, South Carolina, with relation to Treasury items.

I notice this specific statement in Secretary Mellon's letter of December 28th directed to F. M. Boland, Cashier of the Commercial Bank of Clinton. "Obviously, the bank will not be held for an over-payment caused by negligence of the United States Veterans Bureau in drawing the checks".

This looks to me like a definite ruling and standing by itself would seem to mean that the bank should not be held for an over-payment even if the discovery of over-payment was made before the check had been paid by the Treasurer of the United States and a stop order had been issued after the bank had cashed the check and while it was in transit to the Treasurer's office. It seems to me that is the interpretation that will naturally be put upon that sentence by the Cashier of the Commercial Bank of Clinton, South Carolina, even though in the sentence above it is stated the bank's "legal obligations are similar to those in connection with the cashing of commercial items".

My understanding has been that in such cases where stop orders are issued after the cashing of a check, but before it had been finally paid by the Treasurer of the United States, the practice has been to charge back the check through the Federal Reserve bank to the bank which cashed it but that if the Treasurer of the United States had already paid the check before the discovery of error was made the check was then sent back merely as a collection item and without attempting to hold the bank which cashed the check responsible for the over-payment.

Yours very truly,

Acting Governor.

Hon. S. P. Gilbert, Jr.,
Under Secretary of the Treasury.

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FEDERAL RESERVE BANK

OF RICHMOND

November 1, 1923.

The Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt,
General Counsel.

My dear Mr. Wyatt:

I have your letter of October 30th requesting me to send you a copy of our circular relating to the payment of Government checks, which was in effect in June, 1922.

I have examined the file of circulars issued by this bank and I am unable to find any circular which deals particularly with the payment of Government checks. In our published time schedules we list Government checks as Immediate Credit items, but make no especial provision concerning our liability.

As a matter of practice, until very recently we never received Government checks except from member banks, and, as you know, we have had for several years a contract printed upon our signature card which embodied our liability for all checks received on deposit or for collection. This contract embodied substantially the 8th paragraph of Regulation J. I enclose you herewith a copy.

Recently, the admission of certain non-member banks to the Baltimore Clearing House has brought it about that we receive from such non-member banks Government checks through the daily clearing. I do not know whether or not we have had any particular understanding with these non-member banks. I believe that I suggested to the Manager of our Baltimore Branch that it would be wise to put such non-member banks on notice that we receive Treasurer's checks through the Clearing House for payment in accordance with the terms of Treasury Circular No. 176.

About the time that the Closter case arose, the Treasury Department had adopted the practice of returning to us photostatic copies of checks upon which the endorsement was forged, accompanied by the statement that the investigation of the Treasury Department was sufficient to confirm the allegation of forgery, and the request that we make reclamation from the bank which had presented the check. The bare statement of this conclusion by the Treasury Department was frequently unsatisfactory to the bank which, perhaps, had received the check from one of its customers, which customer had received it in the course of trade. The customer naturally objected to taking up the check upon the mere statement that a forgery had been committed, when he was furnished with no evidence of the circumstances. The pressure of business in the Treasury Department made it difficult for us to secure explanations or any statement of the nature of the

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evidence upon which the Treasury had determined that the endorsement was a forgery.

I examined the law and came to the conclusion that, after the Treasurer of the United States has paid a check upon an endorsement purporting to be genuine, he has the same right to recover against prior endorsers, if the endorsement be a forgery, as has any other person, but he has no better right. I therefore took the position that the Treasurer of the United States must do what any other person must do; that is to say, submit evidence sufficient to convince the endorser that the previous endorsement is a forgery, or, if he failed to convince the person against whom he makes claim, he must institute an action and establish his claim to the satisfaction of the court. This bank, therefore, upon my advice, notified the Treasurer that we would not credit him with checks returned with the statement that an endorsement was forged unless we were furnished with evidence which was sufficient to convince the bank which had endorsed prior to us that the allegation of forgery was sustained. This action upon our part led to some correspondence between ourselves and the Treasury Department.

In further examining the system, I found that Section 29 of Treasury Circular No. 176, dated December 31, 1919, read in part as follows:

> "Each Federal reserve bank and branch will cash Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly endorsed by responsible incorporated banks and trust companies who guarantee all prior endorsements thereon, including the endorsement of the drawer when the check is drawn in his favor."

The same provision is now contained in Section 35 of Treasury Circular No. 176, as revised May 15, 1922.

I concluded that under the above provision a Federal reserve bank was in the position of a mere agent for the Treasurer of the United States, and that our standing instructions were to cash any check drawn upon the Treasurer of the United States, provided it was properly endorsed by a responsible incorporated bank. Our responsibility went no further than securing the endorsement of a responsible incorporated bank. When this was done and the check was paid, it became incumbent upon the Treasurer to prosecute his claim, if any, against the responsible incorporated bank upon the endorsement of which the check had been cashed. I therefore took the position that if it subsequently developed that an endorsement prior to the collecting bank was a forgery, we were not interested in the matter, but that it was the business of the Treasurer of the United States to adjust the matter with the last endorsing bank. Accordingly, this bank offered in such cases to use its good offices in endeavoring to secure adjustments of claims against banks which had cashed Treasurer's checks which were said to bear forged endorsements, but only upon the understanding that if the bank denied liability we would drop the matter and the Treasurer could then prosecute his own claim, as he was advised.

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You will perhaps recall that at the end of this correspondence the general question came before the Governors' Conference, and the Treasurer of the United States apparently acquiesced in our views, as evidenced by a letter written by him to the Federal Reserve Board, which is quoted in a circular letter of the Federal Reserve Board, dated June 27, 1922, lettered X-3456.

After the above discussion of this question, I came to the conclusion that we assumed no liability in cashing Government checks, provided only that they bore the endorsement of responsible incorporated banks. Consequently, when the Closter case arose, and I again considered the matter, I decided that there was no reason for us to reserve any special rights or privileges with respect to Government checks which we cash, but that we could afford to stand upon our collection contract with the member bank from which we received the check and general rules of law as protecting us in the event that the check were returned upon first examination, and upon Circular No. 176 if the check were paid upon first presentation and later returned after payment because of a forged endorsement.

I fear I have gone unnecessarily into detail in my answer to your letter, but it occurred to me that it was possible that the Solicitor of the Treasury had overlooked the above situation and might wish to refer to the correspondence which passed between the Department and the various Federal reserve banks and the Federal Reserve Board at the time which I mentioned.

I am, of course, delighted to learn that the Solicitor has no intent of bringing suit against the Federal Reserve Bank of Richmond, but you can tell him that if he finds that there is any reason to bring suit against us because of our method of handling Government checks or the position which we have taken with respect to them, I will not hold him to his promise and will be very glad to give him any information which he might wish, and at the same time leave him free to use it against us if he thinks it can be so used.

Very truly yours,

(Signed) M. G. Wallace

M. G. Wallace,
Counsel.

MGW:W.

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C O P Y

X-6867-a-36

February 3, 1925.

The Federal Reserve Board

Mr. Wyatt, General Counsel.

Liability of Federal Reserve Banks for paying Counterfeit War Savings Stamps as Fiscal Agents of the Treasury.

The opinion of this office has been requested as to the liability of Federal reserve banks which pay War Savings Certificates as fiscal agents of the United States when such certificates are later found to be counterfeit.

The facts leading up to the request for this opinion are briefly as follows:

Acting pursuant to the provisions of Section 15 of the Federal Reserve Act and the Act of May 29, 1920, the Secretary of the Treasury authorized the Federal reserve banks to pay War Savings Certificates, charge them to the account of the Treasurer of the United States, and send them to the Treasury Department. Sometime ago a very clever counterfeit of War Savings Certificates, known as the "Series of 1919", was perpetrated and many of such counterfeit certificates were presented to and paid by the Federal reserve banks. The amounts thereof were charged to the Treasurer's account and the certificates were forwarded to the Treasury where they were examined and the charges against the Treasurer's account were allowed without the fact being discovered that they were counterfeit. Some months later the counterfeit was discovered and thereupon the Treasurer of the United States directed the Federal reserve banks to credit to his account the amount of counterfeit certificates paid by each of them and thus assume the loss. The Federal reserve banks refused to do so, taking the position that in paying War Savings Certificates they acted only as agents and are not liable except for their own negligence and that in this case they were not guilty of any negligence, since the fact that these stamps were counterfeit could not be discovered by the usual examination.

This question was considered at the recent conference of Counsel to all Federal reserve banks and the following resolution was unanimously adopted by the conference:

> "RESOLVED That it is the opinion of this conference:
>
> "1. That the several Federal reserve banks are under no legal obligation to reimburse the Treasurer of the United States for the amount of counterfeit War Savings Stamps now or hereafter paid by them as fiscal agents of the United States unless said Federal reserve banks have failed to use due care at the time said stamps were paid by them.

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"2. That the several Federal reserve banks should not comply with the request of the Treasurer of the United States to credit him with the amount of such stamps now discovered to be counterfeit.

"3. That the several Federal reserve banks which now or may hereafter pay such counterfeit stamps should cooperate with the Treasurer of the United States in recovering from the persons or banks by whom such stamps were presented to said banks for payment of the amounts thereof, but that such cooperation should not extend to charging to the account of any member or nonmember clearing bank with any Federal reserve bank the amount of any such stamp and no suit should be instituted by any Federal reserve bank (as Fiscal Agent of the United States) to recover back the amount paid on any such stamps.

"4. That as to the amounts for which the several Federal reserve banks have reimbursed postmasters for payments made by them on such counterfeit stamps the several Federal reserve banks, as fiscal agents of the United States should make counter-entries in their accounts with the Treasurer of the United States, as requested by him."

I have since gone into the matter more fully and am of the opinion that the conclusions stated in the above resolution are correct.

Section 15 of the Federal Reserve Act provides in part that, "The moneys held in the general fund of the Treasury * * * may, under the direction of the Secretary of the Treasury, be deposited in Federal reserve banks, which banks when required by the Secretary of the Treasury shall act as Fiscal Agents of the United States"; and the Act approved May 29, 1920, abolishing the office of Assistant Treasurer of the United States, authorizes the Secretary of the Treasury to utilize the Federal reserve banks "acting as depositaries or Fiscal Agents of the United States" for the purpose of performing any of the functions previously performed by the Assistant Treasurers.

Congress has thus authorized the Federal reserve banks to act in two distinct capacities when requested to do so by the Secretary of the Treasury: (a) As depositaries, and (b) as fiscal agents. Since Congress has used two different terms, "depositaries" and "fiscal agents", it must have intended the Federal reserve banks to occupy different relationships to the United States when acting in these two different capacities. When the banks act as fiscal agents, therefore, they do not perform the duties of, and are not subject to the liabilities of, an ordinary depositary, but stand in a different relation to the United States.

In the case of State v. Dubuclet, 27 Aa. Ann. Rep. 29, it was held that the terms "depositary" and "fiscal agent" are not synonymous. In this case the Court said that the designation in a State statute of a

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person to act as fiscal agent does not mean that he should also act as depositary of the public moneys so as to enable him to demand that the Treasurer of the State turn over the State's moneys to him as depositary. The Court said:

> "Our examination of these laws does not bring us to the conclusion, as suggested, that the term 'fiscal agent' means necessarily the depositary of the public funds so as, by the simple use of it in a statute, without any directions in that respect, to make it the duty of the city or State treasurer to deposit all moneys therein and confer on such agent power to compel such deposit with him or it. * * * "

It is important, therefore, to determine at the outset whether the Federal reserve banks were acting as "depositaries" or as "fiscal agents" when they paid these war savings certificates.

This question would seem to be settled conclusively by the express terms of Treasury Department Circular No. 330, promulgated by the Secretary of the Treasury under date of November 15, 1923. This circular provides that unregistered war savings certificates "will likewise be accepted for payment at the Federal reserve banks and their branches, acting as fiscal agents of the United States" and that

> "Banking institutions generally will handle redemptions and exchanges for their customers, but the only official agencies are the post offices, the Federal Reserve Banks, and branches, and the Treasury Department at Washington * * * ".

Under the terms of this circular, persons presenting war savings certificates of the Series of 1919 for redemption or exchange are authorized to make application on Treasury Form P. D. 830, which is printed on the same sheet of paper as the Circular and is in effect a part of it. According to this printed form the application is always addressed, "To the Secretary of the Treasury, Washington, D. C." Applications for the redemption of War Savings Certificates, therefore, are all addressed to the Secretary of the Treasury, and in redeeming such certificates the Federal reserve banks are acting only as agents of the Secretary of the Treasury. This Circular No. 330, also provides that unregistered War Savings Certificates shall be "accepted for payment at the Federal reserve banks and their branches". The use of the phrase "accepted for payment" further indicates that the Secretary desired the banks to pay the certificates on behalf of the United States and as agents of the United States and not to purchase them for their own account and later sell them to the United States with an endorsement or implied warranty of genuineness. Furthermore, the Treasury Department's confidential instructions on this subject provide that, at the option of the Federal reserve banks, they may be authorized to use official disbursing checks drawn

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on the Treasury of the United States in making payments for such certificates. See Treasury Department Memoranda No. 144, May 28, 1923, No. 131, November 11, 1922.

The regulations of the Secretary of the Treasury with reference to War Savings Certificates have the force and effect of law. United States of America v. Paul Sacks, 257 U. S. 37; United States of America v. Herman Janowitz, 257 U. S. 42.

It seems clear, therefore, that in paying War Savings Certificates the Federal reserve banks acted as fiscal agents and not as depositaries of the United States Government. As to these certificates, therefore, their relation to the Government was one of agency and not one of debtor and creditor.

A fiscal agent, as I understand that term, is merely an agent to perform certain duties with reference to financial or fiscal matters; and it would seem that his legal duties and liabilities would be governed by the same general principles of law as are applicable to any other agent. Webster's Dictionary defines the word "fiscal" as "pertaining to the public treasury or revenue". Congress must have used the term "fiscal agent" in its usual sense, for it is a fundamental rule of statutory construction that words used in a statute must be given their usual meaning unless there is something in the context to show that they are intended to have a special or different meaning. In the present case there is nothing in the context of the statute to indicate that Congress used the term "fiscal agent" in any other sense than as an agent of the United States to perform certain functions on behalf of the Treasury. The term "fiscal agent" as used in these statutes, therefore, must be taken to mean an agent authorized by the United States to act in relation to the public treasury or revenue.

I have searched the authorities diligently and have been unable to find anything which would indicate that the duties and liabilities of a fiscal agent are any different from those of any other agent, or that there are any special rules of law applicable to fiscal agents. In my opinion, therefore, the duties and liabilities of a fiscal agent are governed by the same general principles of law as those of any other agent.

It is a fundamental principle of the law of agency that an agent is only required to exercise due care in performing the acts entrusted to him by his principal and is not liable personally for any loss resulting from such acts, unless such loss results from his negligence. The Federal reserve banks clearly were not negligent in failing to discover that the War Savings Certificates were counterfeit, since the Treasury Department itself was unable to discover this fact and accepted and cancelled the very certificates in question.

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This apparently is conceded by the Treasury Department. It would seem to follow that the Federal reserve banks cannot be required to assume the resulting loss and that any such loss must fall on their principal.

In a somewhat similar case the Secretary of the Treasury has taken the position that the Federal reserve banks are only liable for negligence in cashing forged checks and warrants drawn on the Treasurer of the United States. He held that in case of a forgery of a warrant or check the banks are not liable if they use due care in examining such items as to their genuineness and as to the genuineness of the endorsements.

On June 27, 1922, Mr. Gilbert, the Under-Secretary of the Treasury, wrote the Federal Reserve Board as follows:

> "The Treasury does not look to the Federal Reserve banks as indorsers or guarantors of warrants or checks drawn on the Treasurer which may be cashed by the Federal Reserve Banks. The duties and functions of the Federal Reserve Banks, as depositaries and fiscal agents of the United States, in respect to the payment of Government warrants and checks are set forth in paragraphs 35-38 of Treasury Department Circular No. 176, as amended and supplemented May 15, 1922, and the Treasury has no intention of holding the Federal Reserve Banks to any liability in this connection beyond the discharge of their duties and responsibilities under the terms of the circular."

In a letter dated July 29, 1922, addressed to Mr. C. E. Mitchell, President of the National City Bank of New York, the Secretary of the Treasury said:

> "The Federal Reserve Banks do not pay Government warrants and checks, but cash them under Treasury regulations. The Treasurer of the United States, as the drawee of Government warrants and checks, makes payment thereof, and the Government, rather than the Federal Reserve Bank, is the real party at interest when the question arises of recovery on warrants and checks paid on forged endorsements. * * * *
> "In the event that recovery could not be made in this manner it would, of course, be necessary to bring suit, and in ordinary course suit would be brought by the United States, rather than by the Federal Reserve Bank, since the Federal Reserve Banks act in such matters for account of the United States and the United States is the real party at interest."

The Secretary of the Treasury sent a copy of this letter to

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the Federal Reserve Board for its information, and at his request copies were sent to all the Federal reserve banks.

The case now under discussion, and the liability of a Federal reserve bank in cashing forged Treasury warrants are analogous in that in both cases the items are not drawn on the Federal reserve bank but are the obligations of a third party made payable at the Federal reserve bank. Since the Federal reserve banks were held to be liable only for negligence in the case of forged warrants and checks they should not be held to a greater degree of liability in the case of counterfeit War Savings Certificates. Indeed the reason for holding the Federal reserve banks liable only for negligence is stronger in the case now under consideration, for in the Circular directing Federal reserve banks to cash warrants and checks drawn on the Treasurer it is not expressly stipulated that they should cash such warrants and checks as fiscal agents of the United States.

The ruling of the Secretary of the Treasury that the Federal reserve banks are only liable for negligence in cashing forged Government checks and warrants, was made under Department Circular No. 176, issued by the Secretary of the Treasury on May 15, 1922, which directs the Federal reserve banks to pay Government warrants and checks, but does not use the term "fiscal agent". Treasury Department Circular No. 330, under authority of which the Federal reserve banks paid the War Savings Certificates of the series of 1919, was issued subsequent to that ruling and this further indicates that the term "fiscal agent" was used advisedly in Department Circular No. 330, in order to remove any doubt as to the extent of the liability of Federal reserve banks in paying maturing War Savings Certificates.

It is clear from the above facts that as between the Federal reserve banks and the United States both parties understood that the banks were acting merely as agents and that it is only the duty of such banks to exercise due care in cashing the war savings certificates. The banks did not undertake to warrant the genuineness of all certificates cashed and the Secretary of the Treasury did not understand that the certificates were so warranted.

In my opinion, therefore, the Federal reserve banks are not liable to the Treasury Department for the amounts of any War Savings Certificates which they pay as fiscal agents of the Treasury and which are subsequently found to be counterfeit, unless the banks are negligent in failing to discover that such certificates are counterfeit.

Respectfully,

WW SAD OMC

Walter Wyatt
General Counsel.

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FEDERAL RESERVE
BOARD

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X-6867-a-37

Jan. 14, 1927.

TO: The Files

FROM: Mr. Wyatt

Subject: Cashing of Government checks by Federal reserve banks when presented through mails by nonmember banks.

I discussed with Mr. Hand of the Treasury Department today the letter on the above subject addressed to the Board by Mr. James E. Clark, Editor of the Journal of the Bankers Association.

Mr. Hand stated that it was his understanding that the Treasury would expect the Federal reserve banks to cash Government checks when presented to them through the mails by nonmember banks under the terms of the present Treasury Circular No. 176. I explained to him that it was unusual for such checks to be presented direct to Federal reserve banks through the mails by nonmember banks, because such banks usually send such checks to their city correspondents. Moreover I explained that when Federal reserve banks receive checks from member banks they simply credit the amount to the account of such member banks and do not have to remit either currency or an exchange draft therefor unless member banks request it. I also explained that in cashing such checks for member banks Federal reserve banks are protected by their member banks' indorsement and by the fact that they hold the reserve account and subscription to capital of such member banks and sometimes additional collateral, all of which secures the Federal reserve bank against loss in the event of insolvency of the indorsing bank. No such convenience or protection is afforded when cashing such checks for nonmember banks. I told him that in view of this situation Governor Crissinger thought that the Treasury Department ought to amend Section 35 of its Department Circular No. 176 by striking out the words "responsible incorporated banks and trust companies" and inserting in lieu thereof the words "member banks of the Federal Reserve System" so that Federal reserve banks would only be required to cash checks when presented by or through a member bank. Mr. Hand stated that the Treasury hesitated to do this because the Treasury has always endeavored not to take any part in the controversy between the nonmember banks and the Federal Reserve System with reference to check collections, but that in view of the fact that this controversy has largely subsided the Treasury might be willing to consider the matter.

Incidentally he told me that Treasury Department Circular No. 176 dated May 15, 1922, has never been superseded by a new circular; but that the Treasury is now preparing a new circular to supersede that circular.

There then ensued a discussion of the liability of a Federal reserve bank in cashing for a nonmember bank Treasury checks which bear forged signatures or indorsements. I took the position that the Federal reserve banks act merely as agents of the Government in cashing such checks and are not legally liable except for actual negligence. Mr. Hand stated that the Treasury Department has acceded to this position and has agreed not to hold the Federal reserve banks liable in such cases. I asked him for a copy of the Treasury Department ruling on this subject and he referred me to the inclosures of the Board's letter X-3504 of August 16,

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1922, pertaining to a dispute between the Treasury Department and the National City Bank. Subsequently I examined carefully that correspondence and found that it does not clearly reverse the policy stated in Section 37 of Treasury circular No. 176 but on the contrary merely explains the policy as stated in that circular. Moreover subdivision 1 of Section 37 clearly provides that the Treasury Department would charge back to Federal reserve banks any warrant or check payment of which is refused on account of forged signature of drawer, insufficient funds, stoppage of payment, or any material defect discovered upon first examination, and will expect Federal reserve banks to give immediate credit therefor in the Treasurer's account. I called this to Mr. Hand's attention and he advised me that the Treasury has agreed that Federal reserve banks are not liable in such cases, but referred me to no written ruling on the subject. I feel very strongly that the position stated in subdivision 1 of Section 37 is wrong and that it should be changed, especially in view of the decision of the Attorney General on the question of the liability of Federal reserve banks in paying counterfeit War Savings Stamps. I so advised Mr. Hand and urged him to revise his circular accordingly. He then admitted that the Treasury Circular was purposely made ambiguous in order to avoid passing upon the question whether in "cashing" government checks Federal reserve banks are acting in the capacity of fiscal agents for the Treasury, government depositaries, or collecting agents for the banks from which they receive such checks. I told him that this ambiguity was unbusinesslike and unfair to the Federal reserve banks, who are entitled to know in what capacity they are acting and what their legal liabilities are.

During the course of this conversation I learned that the Treasury expects to issue its new circular within the next two weeks and I informally suggested to Mr. Hand the advisability of submitting it to the Federal reserve banks for criticism and also giving them an opportunity to discuss the matter with the Treasury Department before the circular is finally promulgated, in order that all differences between the Treasury and the Federal reserve banks may be satisfactory adjusted and the circular put into form satisfactory to both parties. Mr. Hand could not agree to any such arrangement without first taking the matter up with Mr. Winston, but promised to take the matter up with him.

In the course of the discussion Mr. Hand advised me that sometimes nonmember banks send Government checks through the mails direct to the Treasury Department for payment and ask either for another Treasury check in payment or for a shipment of currency. He stated that in such cases the Treasury makes payment but is very reluctant to do so, because it involves considerable trouble to the Treasury and the Treasury has the protection of no bank indorsement except that of the bank which sent the check to the Treasury. I then called his attention to the fact that, inasmuch as the Federal reserve banks act merely as agents of the Treasury Department in cashing such checks, the situation is exactly the same when Government checks are sent direct to Federal reserve banks for payment by nonmember banks and that the Treasury in that case is likewise without the protection of a member bank indorsement. This was a new thought to Mr. Hand, but he agreed that I was right and stated that he believed it would be to the

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interest of the Treasury Department to follow Governor Crissinger's suggestion and amend the circular so as to require Federal reserve banks to pay Government checks only when presented by or through member banks. He was a little worried, however, for fear that such a change in the circular might bring criticism upon the Treasury Department. On this point I told him that I was confident that the usual banking practice is for nonmember banks to send such checks to their city correspondents, which usually are member banks, and that, therefore, such a change in the circular would not involve any change in the usual banking practice. He stated that if this were the case he thought the Treasury Department would be willing to make such an amendment to the circular. I told him I was not sure about the facts regarding the banking practice but if he would like to be assured on the subject the Board could send a telegram to all Federal reserve banks asking to be advised whether nonmember banks ever have Government checks presented to them direct through the mails, and if so, how frequently this is done. Mr. Hand said, however, that he would prefer that we should not send such a telegram to the Federal reserve banks until he first took the matter up with Mr. Winston and ascertained whether Mr. Winston was willing to have this done.

It is my personal opinion that the fact that the Treasury Department is now revising its Circular No. 176 offers an unusual opportunity to iron out the differences between the Federal reserve banks and the Treasury Department with reference to the handling of these checks and that it is of extreme importance that the Federal reserve banks should be given an opportunity to confer with the Treasury Department on this subject and to discuss certain portions of the circular with the Treasury Department before the new circular is definitely promulgated. I believe that the most satisfactory way of handling this would be to arrange a conference in Washington of Counsel to all Federal reserve banks to consider a tentative draft of such circular and discuss the matter with the Treasury Department. If this were done the conference should be reenforced by Mr. Strater and some of the other transit men. I took the matter up with Governor Crissinger and he was very reluctant to go to the expense of having such a large conference here but seemed willing to have the matter ironed out between the Treasury Department and the representatives of two or three Federal reserve banks.

Walter Wyatt.

(Signed) Walter Wyatt

WW-sad-

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COPY

X-6867-a-38

January 22, 1927.

Mr. Hand

Mr. Wyatt

Cashing of Government Checks presented through mails to Federal Reserve Banks by nonmember banks.

In accordance with your request, the Board sent the following telegram to all Federal reserve banks on January 18, 1927:

"Please wire whether Government checks are ever presented to you through mails by nonmember banks. If so, how frequently does this happen and how do you handle them?"

The following is the text of the replies received from the Federal Reserve Banks:

Boston.

"We are receiving Government checks through the mails from two nonmember banks for account of two member banks."

New York.

"Answering inquiry contained your telegram even date Government checks are not presented to us through mails by nonmember banks. They come to us through the mails from member banks other F R banks through the clearing house exchanges and over our counters. By special arrangement with Treasury we cash certain government warrants for government employees known to us."

Philadelphia.

"No government checks presented to us through any source by nonmember banks."

Cleveland.

"Possibly two or three times a year we receive government checks from nonmember banks. These are entered for collection ascertaining from Treasury Department that items will be paid before forwarding our official check in payment."

Richmond.

"Your wire 18th. Can recall no instances in many months of government checks sent us through mails by nonmember banks. In the few instances we recall in times past such checks were returned to senders with request that they come to us through regular member bank channels, this on account endorsements and other considerations."

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Atlanta.

"No government checks have been presented to us through the mails for payment in recent years by nonmember banks if such checks were presented through the mails by nonmember banks we would pay them in accordance with the request of the remitting bank by means of cashiers check or shipment of cash at the expense of the nonmember banks."

Chicago.

"Replying to your wire with respect to Government checks presented to us through mails by nonmember banks, we do receive such checks occasionally, probably not more than half a dozen a year. They are always special items, accompanied by letters testamentary or letters of guardianship and are handled for collection. Payment when received is made to the nonmember bank by our officers check. In this district nonmember banks, with the few exceptions mentioned, deposit government checks with their member bank correspondents and this procedure seems to be satisfactory because it places the proceeds at once with the correspondent."

St. Louis.

"In only a very few instances have government checks been presented to us through the mails by nonmember banks not carrying accounts with us. In such instances they have been returned with the request that they be collected through the usual banking channels.

Minneapolis.

"Replying to your wire of today Government checks are never presented to us through mails by nonmember banks."

Kansas City.

"Replying telegram: Our branches state Government checks have never been presented to them by nonmember banks through mails or otherwise but at the head office we have on two or three occasions received government checks from nonmember banks for collection and remittance. In those instances remittances have been made by cashiers check when endorsements appeared regular. We also frequently receive government checks in our fiscal agency department involving estates, guardianship or other similar matters usually accompanied by court authorities and in such cases the authorities are detached and forwarded to the Treasury Department, the checks being

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Kansas City (cont.)

"returned to endorsing bank with notation "Authorities on file" with instructions to effect collection in usual manner through member banks. In a few instances we have also received government checks in payment for subscriptions to Treasury issues or in payment for purchases of bonds through investment department and when entirely satisfied as to endorsements, such checks are accepted by us; otherwise returned to subscriber stop In Kansas City we pay through clearing house, Government checks cleared on us by nonmember banks that are members of clearing house."

Dallas.

"Your wire date. The Great majority government checks are presented to us through member banks and in those few instances where we receive them from nonmember banks and we can satisfy ourselves as to responsibility of endorsing bank considering amount involved it has been our custom to pay them. Inasmuch as we are without facilities for knowing condition of nonmember banks it is preferable that such checks be presented through member banks and we sometimes make this suggestion where we are unable to satisfy ourselves and where the amount involved warrants customary caution. I am writing you in regard to matter which probably occasioned this inquiry and which was improperly handled through a misunderstanding of circumstances."

San Francisco.

"Your wire date. Only very infrequently are government checks presented by nonmember banks. We forward them to Treasurer for collection issuing cashiers check when Treasurer authorizes payment."

Very truly yours,

Walter Wyatt,
General Counsel.

WW MD 1-22-27

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COPY

X-6867-a-39

Law Office Of
Locke, Locke, Stroud & Randolph,
American Exchange Building,
Dallas, Texas.

July 5th 1927.

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

Gentlemen:

The Federal Reserve Bank of Dallas recently submitted to us a question pertaining to insurance covering cancelled Government warrants and checks in transit between Dallas, Texas, and Washington, D.C.

The question arose due to the fact that the insurance in effect at the present automatically insures shipments of Government warrants and checks in lots of less than $300,000 for the flat sum of $5,000 and in lots greater than $300,000 for the flat sum of $10,000. The purpose of carrying the insurance is to cover expenses incurred in securing duplicates of the warrants or checks and other instruments necessary should a shipment be lost or stolen while in transit.

The warrants being cancelled and of no value other than from an accounting standpoint, the question arose as to whether or not any sum would be recoverable from the insurance company without the policy expressly so providing. With this point in view Mr. Swan suggested that the policy have attached to it a rider reading substantially as follows:

> "It is agreed that securities, bank checks or commercial paper that is not negotiable in form may be insured for not less than ten per cent. of their face amount. In case of loss of any such shipment the assured shall be indemnified for the total cost of procuring the reissue of the property insured, including the legal and advertising expenses, loss of interest and all charges directly resulting from the loss or from the delay in replacement, such total cost not to exceed the amount of insurance."

We think the rider suggested is sufficiently broad to cover the purposes desired,- however, it occurs to us that a much broader question than that of insurance has been raised and we are writing you with reference to the matter in order to get your views.

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We have consistently taken the position that, in the payment of Government warrants and checks under the instructions of the Treasury Department, we are acting merely as an agent in the performance of ministerial duties. With this point in mind the Treasury Department was induced, some time ago, to reverse the position that it had formerly taken with reference to its right to arbitrarily charge back Government warrants which upon investigation proved to be forgeries.

While the treasury's instructions at this time permit the various Federal Reserve Banks to charge the amount of Government warrants paid under such instructions to the account of the secretary of the treasury, this charge is not fully acquiesced in by the Treasury Department until the instruments so paid have reached Washington and have been inspected. As far as we know there has never been a loss in transit of such shipments, but the question occurs to us that in the event there should be a loss of a substantial amount of these instruments between Dallas and Washington, what would be the status of the charge, under the present practices, which the Federal Reserve Bank of Dallas has made because of the payment of these warrants. In other words, would the Treasury Department permit the charge to stand should the Federal Reserve Bank be unable to procure duplicate instruments and endorsements? In the event of a large shipment it is entirely possible that the payee and endorser of many of these instruments could never be located and the question would arise as to what would be the status of the charge representing these amounts.

We are of the opinion that, in view of the fact that Federal Reserve Banks are acting as fiscal agents in the payment of these obligations, the Treasury Department should give explicit instructions as to how they wanted shipments made and that when a Federal Reserve Bank had followed these instructions its duties would have been discharged and in the event of loss the charge would be final as between the Federal Reserve Bank and the Treasury Department. Of course, there is no objection insofar as the Federal Reserve Bank of Dallas is concerned to defraying the cost of insurance if the Treasury Department cares to have the same taken out in reasonable amounts nor is there any objection to lending every effort in the case of loss to secure the execution of duplicates, but we think that the Treasury Department should require nothing further of the Federal Reserve Banks.

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This is a matter of system-wide importance as all Federal Reserve Banks are confronted with the same questions and we would like very much to have the benefit of your views in connection with the questions brought out in this letter. In the event you should think it important to take the matter up with the Treasury Department, we would also like to have an expression from you as to the best method of doing so.

Very truly yours,

(S) Locke, Locke, Stroud & Randolph.

EBS-s

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August 17, 1927.

Locke, Locke, Stroud & Randolph,
American Exchange Building,
Dallas, Texas.

Gentlemen:

I have received your letter of July 5th with reference to the relations between the Treasury Department and the Federal Reserve Bank with regard to the payment of Government warrants and checks and specifically with reference to the duties and liabilities of the Federal reserve banks with regard to the shipment to the Treasurer of the United States of cancelled warrants and checks. You suggest that this is a matter of system-wide importance and you would like to know the best method of taking it up with the Treasury Department.

I agree with your view that in all fairness the Treasury Department should issue regulations specifying clearly the legal relations between it and the Federal reserve banks in connection with the payment of Government warrants and checks and stating specifically the duties of the Federal reserve banks in this connection. I also agree with you that the Treasurer of the United States should give specific instructions as to the shipment of cancelled warrants and checks and that when the Federal reserve banks comply with these instructions it should be recognized that their legal duties have been discharged and they are no longer responsible for any losses that may occur.

This is a matter which I think should be taken up by negotiations with the Treasury Department and, in view of its system-wide importance, it seems to me that it would be advisable to have the point placed on the program and discussed at a conference of Governors of all Federal reserve banks at which the Governors should agree upon what they consider the proper method of handling this subject. After the Federal reserve banks are all in agreement I think it would be advisable for them to appoint a committee to confer with the Treasury Department on this subject with a view of arriving at a definite understanding regarding all legal and practical problems arising in connection with the handling of Government warrants and checks.

These views, however, are merely my own personal views and not the views of the Federal Reserve Board.

Very truly yours,

(S) Walter Wyatt,
General Counsel.

WW-SAD

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II - C Duties and liabilities of Federal Reserve Banks with regard to shipment of cancelled Government warrants and checks. (Report to be submitted by Gov. Talley)

The Chairman. We will hear Governor Talley's report on that.

Governor Talley. That report is so framed that it may be received and filed if that is the pleasure of the Conference.

(The report of Governor Talley is as follows)

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FEDERAL RESERVE BANK

OF DALLAS

April 25, 1928.

Mr. Benjamin Strong,
Chairman Governors' Conference,
Washington, D. C.

Dear Governor Strong:

As a Committee of one appointed by the Governors' Conference November 2 and 3, 1927, to confer with the Treasury in reference to Topic II-C, "Duties and liabilities of Federal Reserve banks with regard to shipment of cancelled Government warrants and checks", on the program of the last Governors' Conference, I am submitting the following report:

Through the courtesy of Honorable Ogden L. Mills, Undersecretary of the Treasury, I discussed this topic with Mr. Hand, the Commissioner of Accounts, and Mr. Cunningham of the Treasury, on the day the last Conference adjourned. Based upon the general observation of Mr. E. B. Stroud, Jr., Counsel for the Federal Reserve Bank of Dallas, I endeavored to arrive at some practical conclusion upon which a definite plan of handling paid Treasury warrants between Federal reserve banks and the Treasury could be formulated so that the Federal reserve banks could eliminate as much risk as possible that might be inherent from these transactions between the time of encashment and final payment of Treasury warrants and final payment and release by the Treasury Department, as well as to have as full knowledge as possible of the liability of the Treasury to the Federal reserve banks in the event of the loss in transit or non-receipt otherwise of the shipments of Treasury warrants to the Treasury after encashment.

Everyone is aware that no department of the Government will either assume or define the liability of the Government in any hypothetical or probable case and will therefore not undertake to bind the officials of any department in that connection, such liability being left to congressional determination and relief when the question of such liability arises.

Mr. Hand and Mr. Cunningham were fully appreciative of the position of the Federal reserve banks and offered the full cooperation of the Treasury in connection with any unusual situation that might arise in connection with the loss or destruction of any warrants in transit or the non-receipt by the Treasury after debit to the Treasurer's account. They carefully explained that the Controller General would not clear the Treasurer's account without the submission of vouchers but that in all probability the submission of affidavits accompanied by certified copies of invoices or transcripts giving minute description of warrants which had been shipped and not received by the Treasury, would be considered by the Controller General and in any event such documents would be accepted as a basis of a petition for congressional relief.

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The members of the Conference will appreciate I am sure that considerable expense would be involved in making up transcripts or manifests in minute detail and that this expense would perhaps, in the light of a favorable experience since 1916, be prohibitive. Therefore, if an arrangements could be made to insure the shipments of Treasury warrants to the Treasury at some low premium rate, say 2 1/2 cents per $1000, as now applied to the shipment of cancelled coupons, the expense of doing so would be far less than that involved in making up manifests or transcripts in minutia.

The service and facility of encashment of Treasury warrants at Federal reserve banks seem to have been kept out of the sphere of domain of the fiscal agency functions of the Federal reserve banks performed for the Secretary of the Treasury as specified in the Federal Reserve Act, and in this respect the encashment of warrants by the Federal reserve banks is looked upon as a depository function in the same view as such service is performed by active national bank depositaries.

After considerable study of the subject my own view is that the Federal reserve banks would be looked upon and determined to be paying agents of any Treasury and that such warrants that had been encashed by Federal reserve banks would be considered to have been paid to the holder of such warrants as though such warrants were actually drawn upon a Federal reserve bank and without recourse upon such holders.

The present practice of the Federal Reserve Bank of Dallas is to insure a shipment of Treasury warrants to the Treasury at 10 per cent of their face value and an endorsement upon its insurance contract has been obtained to permit and accept this practice. It is thought that an insurance coverage in this matter would be sufficient to cover interest and expenses in connection with obtaining duplicates or final relief in the matter of loss or destruction or non-receipt by the Treasury of any particular shipment.

Inasmuch as this question was raised by Counsel for the Federal Reserve Bank of Dallas and was not covered by the Conference of Counsel of February 9 and 10, 1928, your committee has no definite recommendation to make.

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TREASURY DEPARTMENT

WASHINGTON

April 23, 1931.

My dear Governor:

For the Secretary, and agreeable to the request in your letter of April 20, 1931, I am enclosing a copy of the opinion of the Attorney General, given under date of May 27, 1925, in the matter of the liability of Federal Reserve Banks in the redemption of certain War-savings stamps subsequently found to be counterfeit.

The Board is at liberty to transmit copies of the opinion to the Federal Reserve Banks, but it should be pointed out that the opinion relates to a specific instance of liability.

Very truly yours,

(Signed) Ogden L. Mills

OGDEN L. MILLS
Undersecretary of the Treasury

Hon. Eugene Meyer,

Governor, Federal Reserve Board.

Enclosure

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DEPARTMENT OF JUSTICE,
Washington.

May 27, 1925.

Sir:-

I have the honor to acknowledge receipt of your letter of February 18, 1925, with its enclosures, respecting the relations of Federal reserve banks to the United States in cashing war-savings stamps and the liability assumed thereby.

The facts are set forth in a letter addressed by you to the Solicitor of the Treasury, a copy of which is transmitted with your letter to this Department, and may be summarized as follows:

Section 15 of the Federal Reserve Act, approved December 23, 1913, c. 6, 38 Stat. 265, authorized the Secretary of the Treasury to deposit public funds in the Federal reserve banks, "which banks, when required by the Secretary of the Treasury, shall act as fiscal agents of the United States; and the revenues of the government, or any part thereof may be deposited in such banks, and disbursements may be made by checks drawn against such deposits."

On November 24, 1915, the Secretary of the Treasury communicated to the Federal Reserve Board his intention to appoint "the Federal reserve banks depositaries and fiscal agents in the manner thus indicated by the act." In said communication the Secretary stated: "Each Federal reserve bank will be required to perform on behalf of the government the services which are now rendered by the national bank depositaries located in said cities, as well as any other services incidental to or growing out of the duties and responsibilities

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of fiscal agents." On the same date the Secretary of the Treasury addressed a communication to each Federal reserve bank advising the officers thereof that said bank "is hereby designated a depositary and a fiscal agent of the United States under section 15 of the Federal Reserve Act, effective on and after January 1, 1916, and until revoked."

By the Legislative, Executive and Judicial Appropriation Act, approved May 29, 1920, c. 214, 41 Stat. 631,655, the subtreasuries were abolished and the Secretary of the Treasury was authorized, in his discretion, "to utilize any of the Federal reserve banks acting as depositaries or fiscal agents of the United States, for the purpose of performing any or all of such duties and functions" theretofore performed by assistant treasurers of the United States.

By General Regulation No. 176, issued May 15, 1922, Federal reserve banks were authorized to accept deposits of public funds and credit the Treasurer of the United States therewith, and to cash government warrants and checks drawn on the Treasurer and charge the same to the account of the Treasurer of the United States, subject to examination and payment by him.

Under authority of section 6 of the Second Liberty Bond Act, approved September 24, 1917, c. 56, 40 Stat. 291, as amended, the Secretary of the Treasury issued certain war-savings certificates, known as "War-Savings Certificates, Series 1919", to mature on January 1, 1924. (Treasury Circular No. 128, December 18, 1918). On November 15, 1923, the Secretary issued Department Circular No. 330, addressed to holders of war-savings certificates, series 1919, postmasters, Federal reserve banks and others, in regard to the redemption or exchange of war-savings certificates. In section 1 thereof it is provided:

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> Certificates having registered stamps affixed are payable only at the post office where registered. Unregistered certificates are payable at any money-order post office or at the Treasury Department in Washington, and will likewise be accepted for payment at the Federal Reserve Banks and their branches, acting as fiscal agents of the United States. * * * Banking institutions generally will handle redemptions and exchanges for their customers, but the only official agencies are the post offices, the Federal Reserve Banks and branches, and the Treasury Department at Washington, except that duly qualified collateral agents for the issue and sale of Treasury Savings Certificates may make exchanges of unregistered War-Savings Certificates for Treasury Savings Certificates. (Italics supplied).

Instructions were given Federal reserve banks in regard to the redemption of war-savings certificates by Memorandum No. 155, dated November 15, 1923, and Memorandum No. 158, dated November 24, 1923. In a memorandum to Federal reserve banks, dated April 24, 1924, dealing with fiscal agency expenses, the Treasury Department defined the fiscal relations existing between Federal reserve banks and the Treasury Department as follows:

> The relationship between the Treasury and the Federal Reserve Banks is two-fold - the Banks act as fiscal agents of the Treasury and as depositaries. As fiscal agents the Banks announce issues, receive subscriptions, make allotments, receive payments, make deliveries, and subsequently conduct exchange transactions in the securities delivered.

It is stated several counterfeit war-savings stamps have been discovered and instructions given to Federal reserve banks in regard thereto in order that the banks might be fully advised and could take precautions against payment of such counterfeits. It is further stated that in October 1924 a fifth counterfeit 1919 war-savings stamp was discovered, and

> * * * upon examination of the stamps which had been redeemed by Federal Reserve Banks and forwarded to the Treasurer of the United States, it was discovered that a number of such counterfeit stamps had been re-

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deemed by the Federal Reserve Banks, and the Treasurer of the United States had allowed credit in the Federal Reserve Banks' accounts for such stamps. These stamps had been presented subsequent to May, 1924, and the counterfeit was an exceedingly clever one which would not be detected in the usual examination as to genuineness.

The Treasurer of the United States under date of November 25, 1924, advised all Federal Reserve Banks who had transmitted such counterfeit stamps that such stamps were counterfeit, and directed them to make adjustment of the charges in the Treasurer's account by crediting the amount charged on account of the redemption of such stamps to the Treasurer's account.

The various Federal reserve banks have been called upon to make good the amount paid out on said counterfeit stamps. This the banks have refused to do, denying their liability for the amount of counterfeit stamps redeemed by them.

You now request to be advised in what capacity the Federal reserve banks were acting in the cashing of war-savings stamps, and the extent of their liability in that respect.

That the Federal reserve banks, in the purchase or redemption of war-savings certificates, acted in the capacity of agents of the Treasury Department, is not open to question. Section 15 of the Federal Reserve Act required the Federal reserve banks to act as fiscal agents of the United States when required to do so by the Secretary of the Treasury. On November 24, 1915, the Secretary of the Treasury informed the officers of each Federal reserve bank that the bank had been designated a fiscal agent of the United States, and on November 15, 1923, the Secretary gave instructions to each Federal reserve bank in regard to the redemption or exchange of war-savings certificates, designating such banks as "fiscal agents of the United States" for that purpose.

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What then are the liabilities of the banks acting as such fiscal agents? The word "fiscal" as used in the several acts of Congress and the designation of the Secretary of the Treasury has no special or unusual meaning. It is a descriptive adjective qualifying the word "agent" and indicates "of or pertaining to the treasury or public finances". (Words and Phrases, Vol. 3). As an agent of the United States, with duties and responsibilities limited by the statute and the regulations issued by the Secretary of the Treasury, a Federal reserve bank acts in a representative capacity and, like any other agent, so long as it keeps within the scope of its employment, its acts are those of its principal. As the law of agency applies to the relationship between the Federal reserve banks and the United States, represented by the Secretary of the Treasury, it follows that a Federal Reserve bank is liable to its principal only for its non-feasance or malfeasance.

The relation of principal and agent is one of trust, and the agent must bestow on the affairs of his principal the same degree of care and skill which a reasonably prudent man ordinarily bestows on his own affairs. If he fails to exercise ordinary care and prudence in the discharge of his duties as agent, he is guilty of negligence and will be held liable to his principal. St. Paul Fire Insurance Co. v. Lauberstein, 162 Wis. 165; 155 N.W. 918. An agent, however, is not liable to his principal for a mere mistake in judgment. Briere v. Taylor, 126 Wis. 347; Chapel v. Clark, 117 Mich. 63.

In National Bank v. Merchants Bank, 91 U. S. 92,104, the Supreme Court said: "If this, however, were doubtful, the doubt ought to be resolved favorably to the agent. In the case in hand the Bank of Commerce having accepted the agency to collect, was bound only to reasonable care

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diligence in the discharge of its assumed duties." In Preston v. Prather, 137 U.S. 604,608, the court said: "No one taking upon himself a duty for another without consideration is bound, either in law or morals, to do more than a man of that character would do generally for himself under like conditions.. The exercise of reasonable care is in all such cases the dictate of good faith."

That the banks were not negligent in redeeming the counterfeit stamps is shown by the statement that "The counterfeit was an exceedingly clever one which would not be detected in the usual examination as to genuineness." It cannot be denied that the Treasury Department is as well qualified to detect counterfeits as are Federal reserve banks, and the fact that the counterfeit stamps were accepted as genuine by the Treasury Department indicates that the several banks were free from negligence in redeeming such stamps.

Where a Federal reserve bank, acting as fiscal agent of the United States, uses reasonable care, skill, and diligence in the execution of the duties of the agency, it cannot be held liable for the acceptance for redemption of war-savings certificates or war-savings stamps which are subsequently discovered to be counterfeits, and especially is this true where the counterfeits were so similar to the genuine that the Treasury Department itself was deceived into accepting them as genuine.

Aside from the question of agency existing between Federal reserve banks and the United States, as represented by the Secretary of the Treasury, it is doubtful whether the Federal reserve banks could be held liable under the facts as set forth in your letter.

In United States Bank v. Bank of Georgia, 10 Wheat. 332,341, the

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court had under consideration bank notes, issued by the Bank of Georgia, which had been fraudulently altered. In the regular course of business the altered notes came into the possession of the United States Bank and were sent by it to and accepted by the Bank of Georgia as genuine. Subsequently the fraudulent alterations were discovered and the Bank of Georgia sought to reclaim from the United States Bank. Mr. Justice Story, speaking for the court, said:

> It is bound to know its own paper, and provide for its payment, and must be presumed to use all reasonable means, by private marks and otherwise, to secure itself against forgeries and impositions. In point of fact, it is well known, that every bank is in the habit of using secret marks, and peculiar characters, for this purpose, and of keeping a regular register of all the notes it issues, so as to guide its own discretion as to its discounts and circulation, and to enable it to detect frauds. Its own security, not less than that of the public, requires such precautions. Under such circumstances, the receipt by a bank of forged notes, purporting to be its own must be deemed an adoption of them. It has the means of knowing if they are genuine; if these means are not employed, it is certainly evidence of a neglect of that duty, which the public have a right to require. And in respect to persons equally innocent, where one is bound to know and set upon his knowledge, and the other has no means of knowledge, there seems to be no reason for burdening the latter with any loss, in exoneration of the former.

In the more recent case of United States v. Chase National Bank, 252 U. S. 485, the court had under consideration the question of recovery by the United States of money paid on a forged check drawn on the Treasurer of the United States. The name of the drawer of the check had been forged and negotiated through the Chase National Bank, which bank presented the check to the Assistant Treasurer at New York for payment.

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Some time after payment it was discovered that the check was a forgery, and the United States sued the Chase National Bank for the amount of the check. The court (pp. 494,495) held that it was encumbent on the plaintiff to detect the forgery of the drawer's name, citing with approval the decision in Price v. Neal, 3 Burr. 1354,1357, and stating that the rule there laid down has never since been departed from. On page 496 the court said:

> He cannot be called upon to pay again and the collecting bank has not received the proceeds of an instrument to which another held a better title. The equities of the drawee who has paid are not superior to those of the innocent collecting bank who had full right to act upon the assumption that the former knew the drawer's signature or at least took the risk of a mistake concerning it.

The Act of May 29, 1920, supra, which abolished the subtreasuries, authorized the Secretary of the Treasury to utilize Federal reserve banks to perform all of the "duties and functions" theretofore performed by Assistant Treasurers of the United States. In acting as fiscal agents for the United States in the redemption and exchange of war-savings certificates the Federal reserve banks stand in the same relation to the United States as Assistant Treasurers formerly stood.

A case somewhat analogous to that under consideration was decided by the Supreme Court in Cooke, et al. v. United States, 91 U. S. 389. The Assistant Treasurer at New York purchased from J. Cooke & Co., for redemption, certain treasury notes among which were a number of counterfeit notes. No attempt was made to hold the Assistant Treasurer liable for accepting the counterfeits, but action was brought against

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Cooke & Co., for the amount paid by the Assistant Treasurer. Chief Justice Waite, speaking for the court, (pp. 396,397,) said:

> It is, undoubtedly, also true, as a general rule of commercial law, that where one accepts forged paper purporting to be his own, and pays it to a holder for value, he cannot recall the payment. The operative fact in this rule is the acceptance, or more properly, perhaps, the adoption, of the paper as genuine by its apparent maker. Often the bare receipt of the paper accompanied by payment is equivalent to an adoption within the meaning of the rule; because, as every man is presumed to know his own signature, and ought to detect its forgery by simple inspection, the examination which he can give when the demand upon him is made is all that the law considers necessary for his protection. He must repudiate as soon as he ought to have discovered the forgery, otherwise he will be regarded as accepting the paper.
>
> * * * * * * *
>
> So, too, if the paper is received and paid for by an agent, the principal is not charged unless the agent had authority to act for him in passing upon the character of the instrument. It is the negligence of the principal that binds; and that of the agent has no effect, except to the extent that it is chargeable to the principal.

It does not appear, from the facts stated by you, that the Federal reserve banks are chargeable with lack of diligence amounting to negligence in accepting for redemption the counterfeit war-savings certificates or war-savings stamps which were subsequently accepted by the Treasury Department as genuine. The authorities are one in holding that, in the absence of negligence, the agent is not liable.

It is my opinion, therefore, that, under the statute and the designation of the Secretary of the Treasury, Federal reserve banks in accepting for redemption war-savings certificates were and are acting as fiscal agents of the United States; that as such fiscal agents they are not liable except

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for lack of ordinary care and diligence, and that in the case submitted the Federal reserve banks are not liable to the United States for having accepted as genuine counterfeit war-savings stamps which so cleverly imitated the genuine stamps issued by the Treasury Department as to deceive that Department when presented to it.

Respectfully,

(Signed) John G. Sargent

Attorney General.

The Honorable,

The Secretary of the Treasury.

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