

FEDERAL RESERVE BANK  
OF MINNEAPOLIS

September 5, 1931.

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

My dear Mr. Wyatt:

I have your letter of the 3rd about the decision of the Circuit Courts of Appeals of August 24th in the case of Hirning, Receiver, vs. Federal Reserve Bank of Minneapolis.

Sigurd and I have decided not to make any application for reargument, thinking it would be a mere waste of time, for the decision covers every point in the case argued fully on our brief, and the Rules of the Court of Appeals say --

"The sole purpose of a petition for rehearing is to call attention to material matters of law or fact inadvertently overlooked by the court, as shown by its opinion. Mere reargument of issues determined by the opinion will be entirely disregarded".  
In a petition for rehearing we could not show that the court had "inadvertently" overlooked any matter of law or fact.

The Federal Reserve Bank has directed us to petition the Supreme Court for a certiorari. I enclose copies of a tentative draft of such a petition, so that you may know what Sigurd and I rely on for having it granted. I also enclose a copy of the Record in the Court of Appeals, except only the decision in the case, which I judge you have seen.

The Clerk of the Court of Appeals has 35 copies of the Record, available to us for use in connection with the petition for certiorari. For a sufficient number of those records with the petition for the writ it is only necessary for the Clerk of the Court of Appeals to add in printing to the records the decision in the case, the cost of which, he says, will not exceed \$60. The printing of the petition and brief for certiorari will not amount to much, so you see the cost of getting the matter before the Supreme Court will not amount to much.

Mr. Wyatt --2

Sept. 5, 1931

I send you copy of our draft for petition, which will show you our views of the decision of the Court of Appeals.

In the brief we shall prepare in support of the petition, I think we can point out clearly that the case comes within the subd. 5(b) of Rule 38 of the Supreme Court for the issuance of writ of certiorari, subject to the court's judicial discretion.

The Court of Appeals holding--

"That on November 16th when the Brookings bank accepted the checks of the member banks and sent to their agent, the Reserve Bank, the two drafts, it became a debtor to the member banks and they became its creditors". cannot but seriously affect all the Federal reserve banks, and so are several of the other holdings specified in our draft of the petition, as, for instance, that the Federal Reserve Bank of Minneapolis, doing nothing with the checks and currency sought to be recovered as a preference, except to give the Brookings bank available credit for them, until it had the consent of the receiver and the supervising receiver to charge the drafts against the reserve account, yet to stand liable as agent for the owners of the checks because of a wrong on its part in charging up the drafts and paying over the money coming to the owners of the checks.

You will also note that the Court of Appeals holds, in effect, that the lower court could not have given judgment against the Federal Reserve Bank, the suit having been brought against it as a creditor of the Brookings bank, and it being not a creditor.

Sec. 225(a) of Title 28 of U.S.C.A. says--

"The circuit court of appeals shall have appellate jurisdiction to review by appeal or writ of error final decisions", etc.

It is held that the jurisdiction of the Circuit Court of Appeals is statutory, and this is the statute, and it seems to me that it may be a serious question where, as in this case, the appeal is from a judgment of the district court, the circuit court of appeals has jurisdiction to grant a new trial upon pleadings framing new issues in that court; but I have not yet had time to study that question.

X-6962

Mr. Wyatt--3

Sept. 5, 1931.

While Sigurd and I think that we can properly present the petition and brief to the Supreme Court for a writ of certiorari, we have no objection to have Mr. Baker or any other counsel for the System on the petition and brief, nor would the petitioner have any objection to that, so will you please inform us what you or your Board may desire in that respect.

Yours very truly,

(Signed) A. Ueland

AU/MG

Enclo.

COPY

X-6962-a

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. \_\_\_\_\_

JOHN HIRNING, as Receiver of the  
Farmers National Bank of Brookings,

Respondent,

-vs-

FEDERAL RESERVE BANK OF MINNEAPOLIS,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT  
THEREOF.

To the Honorable, the Chief Justice and the Associate Justices  
of the Supreme Court of the United States:

Your Petitioner, the Federal Reserve Bank of  
Minneapolis, prays that a Writ of Certiorari in the above en-  
titled cause be issued to the United States Circuit Court of  
Appeals for the Eighth Circuit.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The Respondent brought this suit in the District  
Court of the United States for the District of Minnesota to re-  
cover \$21,355.82 and interest, alleging that the Petitioner had

received checks and currency to that amount of the Farmers National Bank of Brookings (hereinafter called the Brookings Bank) as a preferred creditor of that Bank. As a clearing house for its member banks under Section 16 of the Federal Reserve Act and Regulations of the Federal Reserve Board the Petitioner had received from member banks checks on the Brookings Bank, on November 13, 1926, to the amount of \$22,140.22, and on November 15, 1926, to the amount of \$15,020.88, and had forwarded them by mail on the dates of receipt to the Brookings Bank for payment and remittance. As some checks were returned unpaid, the suit involved checks for \$22,059.11 of those sent on the 13th, and for \$14,880.86 of those sent the 15th, in all checks for \$36,939.97.

Under the Regulations the Petitioner gave provisional credit for the checks to the banks from which they were received. The Regulations provided that the Petitioner would act as agent only, and assume no liability except for its own negligence; that it could send the check direct to the bank on which they were drawn; that it might in its discretion accept either cash or bank draft in payment or remittance, and not be liable for any loss resulting from acceptance of bank draft instead of cash, nor for the failure of the drawee bank to remit, nor for the non-payment of any bank draft accepted in payment or as a remittance, and that any check for which payment in actually and finally collected funds was not received should be charged back to the forwarding bank, regardless of whether or not the check itself was returned.

All the checks were in the Brookings Bank in the morning of November 16th. During the banking hours that day the Brookings Bank

drew and mailed to the Petitioner two drafts, one for the amount of the unreturned checks of November 13th, the other for the amount of the unreturned checks of November 15th, both drawn on the Petitioner. Its account with the Petitioner was insufficient to meet these drafts, and for the purpose of providing sufficient funds for the drafts, the Brookings Bank, during its banking hours November 16th, segregated from its assets checks it held against other banks to the amount of \$10,029.07 and currency to the amount of \$13,000.00, and enclosed the checks in a letter addressed to the Petitioner, which was mailed in the evening of the 16th. The currency was on that day placed in a package addressed to the Petitioner, but as the postmaster did not want to keep the currency overnight for the mail, it was not mailed until in the morning of the 17th. The checks were received by the Petitioner in the morning of the 17th, and the currency in the morning of the 18th. The Petitioner credited the Brookings Bank's account with the \$8,355.82 collected on the checks, and with the \$13,000.00 in currency, but the account being still insufficient to meet the drafts the Petitioner refused to accept the drafts and on the 18th it charged back the checks for \$36,939.97 to the member banks from whom they were received. During banking hours on the 16th, the Brookings Bank entered upon its books a charge against the Petitioner for the two drafts and a credit to itself for the checks and the currency. The Board of Directors of the Brookings Bank met in the evening of the 16th, after those book entries were made, and after the two drafts were mailed, but before the letter with the checks and the package with the currency had been placed in the mail, and

"RESOLVED, that due to the depletion of our reserve, the heavy withdrawals of deposits, and our inability to raise sufficient funds to meet these demands, and considering creditors, it be unanimous vote of the Board of Directors to suspend operation pending reorganization, and the Chief National Bank Examiner of Minneapolis, Minn. be notified immediately."

The Brookings Bank had cash on hand in the morning of November 16th to the amount of \$39,247.21. During the day this was reduced to \$6,725.73, which came into the hands of the Receiver. Counting the \$13,000.00 in currency, set apart the 16th and mailed the 17th, the Brookings Bank had on hand when it closed, cash to the amount of \$19,725.73.

On November 16th, the Petitioner was directed by telegram from the Brookings Bank to purchase for its account Liberty Bonds to the amount of \$10,000.00. It did so the same day, paying \$10,188.82, which it charged against the Brookings Bank's account, and on the same day the Brookings Bank credited Petitioner this upon its books.

A national bank examiner came to the Brookings Bank in the morning of November 18th. He called in the Directors, who thereupon passed a resolution stating -

"That the Bank be ordered continued closed and its affairs placed in full and complete charge of Wm. F. Huck, national bank examiner, with full and complete power to employ such assistance as is necessary to protect the assets of the bank for the best interest of the depositors and stockholders while he is in charge."

On November 18th, while this national bank examiner was in charge, the checks for \$36,939.97 were charged up against the accounts of the depositors and drawers, and after a receiver had been appointed for the Bank December 3, 1926, he returned the checks to the drawers.

The Receiver appointed contended that the Petitioner was not entitled to credit for the \$10,188.82 paid for the Liberty Bonds and

was dismissed. But no claim was asserted by the Receiver against the Petitioner for the \$8,355.82 in checks or the \$13,000.00 in currency until shortly before the present suit was commenced on March 14, 1929.

In the meantime, and on January 3, 1927, the Receiver wrote to the Petitioner, enclosing a copy of a letter to him from J. E. Fouts, Assistant Supervising Receiver of Insolvent Banks, dated November 29, 1926, in which the writer said:

"As to the unpaid drafts held by the reserve bank which represent an attempted remittance by the Brookings Bank to the reserve bank of the proceeds of the cash collection letter" (referring to the two drafts of November 16 and the checks of November 13th and 15th) "you are advised that (if the reserve bank desires and elects to assume ownership of the items involved it has the right to do so, and if it takes this position it is believed that you cannot prevent it from charging the unpaid drafts to the account of your trust)."

In his letter enclosing this copy the Receiver said:

"You will also note regarding the unpaid drafts which is being left to your wishes in the matter. Personally, as Receiver, I would not raise any objection to your charging the account with these drafts and believe that it would simplify matters if you would so do."

On January 27, 1927, the Petitioner, relying on these letters and on advice of counsel, charged the two drafts against the reserve account of the Brookings Bank and remitted the \$36,939.97 to the member banks for the checks received from them November 13th and 15th.

Credit stood on its books to the Brookings Bank for nearly two and one-half months for the \$8,355.82 in checks, and for the \$13,000.00 in currency, subject with the other credits to the account to the Receiver's check, and would have been paid he he not also drawn for the \$10,188.82 which had been charged against the account for the Liberty Bonds.

The case was tried before Judge John B. Sanborn of the District Court, who gave judgment for the Petitioner. From this judgment Respondent appealed to the Circuit Court of Appeals for the Eighth Circuit. On August 24, 1931, that Court filed its decision by which it disposed of the appeal as follows:

"In view of the facts that this action was brought to recover from the Reserve Bank on the theory that it was a creditor of the Brookings Bank, and the evidence has failed to show this; and in view of the facts disclosed by the present record which, in our opinion, point to liability of the Reserve Bank, we think the ends of justice will be best served by reversing the judgment and remanding the cause with instructions to grant a new trial, first granting leave to the parties to amend their pleadings so as to cover issues suggested in the opinion. It is so ordered."

THE REASONS RELIED ON FOR THE ALLOWANCE OF  
THE WRIT.

In its decision the Circuit Court of Appeals held -

1. That "the checks were charged by the Brookings Bank against the various drawers who were depositors in said bank on November 16th", although the record showed, conclusively, that they were so charged by the National Bank Examiner after the Brookings Bank had closed and while he was in possession of the Bank's assets and the checks.

2. "That on November 16th, when the Brookings Bank accepted the checks of the member banks and sent to their agent, the Reserve Bank, the two drafts, it became a debtor to the member banks, and they became its creditors."

3. That "the transfers of the currency and the collection items by the Brookings Bank were void as within the Statute", that is to say as a preference under Sec. 5242, Revised Statutes, Title 12, Section 91 U. S.

C. A.

4. That "If the transfers stood, some creditors of the Brookings Bank would receive a preference over other creditors; the member banks which had owned the checks were the creditors, and they would receive a preference by having their checks paid in full".

5. That "When the Brookings Bank accepted the checks this produced no additional funds in its hands. Its assets were not augmented. No trust fund was created".

6. "But even if it should be conceded that the Brookings Bank was an agent for the collection of the checks drawn on itself, and that the checks constituted a trust property" that trust property was not traced to the checks set apart for the Petitioner on November 16th, and mailed that day, or to the \$13,000.00 in currency set apart in a package for the Petitioner on the same day and mailed November 17th, or to any of the cash on hand by the Brookings Bank on November 16th which came into the hands of the Receiver.

7. That "the segregation items were not the proceeds of the collection of the checks".

8. That although the National Bank Examiner had charged up the checks against the depositors' accounts, and the Receiver had returned the checks to the drawers, and the \$21,355.82 sought to be recovered and other credits of the Brookings Bank had stood on the books of the Petitioner for nearly two and a half months as available credit to the Brookings Bank, and subject to the Receiver's check, and the Receiver and the Supervising Receiver had consented in writing to have the two drafts charged against the reserve account of the Brookings Bank, and the Petitioner relying thereon, and on the advice of counsel, had done so, and had paid over to owners the \$36,939.97 called for by the checks, there was no estoppel

against the Receiver.

9. That although, as held by the Court "the Reserve Bank was not a creditor of the Brookings Bank, but an agent of the member banks, \* \* \* there was a preference in favor of some of the creditors of the Brookings Bank growing out of the transfers of the currency and the collection items to the Reserve Bank". That "The Reserve Bank participated in those transfers". That "It received the property transferred and it, in turn, transferred it to the creditors of the Brookings Bank". That "The action of the Reserve Bank as agent helped bring about the preference.

\* \* \* That "Under these circumstances we" (the Court of Appeals) "think the Reserve Bank can and should be held liable to the Receiver of the Brookings Bank".

10. That although (said the Court) "this action was brought to recover from the Reserve Bank on the theory that it was a creditor of the Brookings Bank, and the evidence has failed to show this," there should be a new trial on new and different pleadings in the lower court.

The Petitioner is advised by counsel and believes that the Circuit Court of Appeals erred with respect to the several holdings specified above, and relies thereon as reasons for granting this petition.

In the brief attached, the Petitioner points out more specifically these errors, and that this cause comes within the provisions of Section 5 (b) Rule 38 of this Court for the issuance of a Writ of Certiorari.

ANDREAS UELAND  
SIGURD UELAND  
Counsel for Petitioner.

UNITED STATES OF AMERICA)  
DISTRICT OF MINNESOTA ) ss  
COUNTY OF HENNEPIN )

ANDREAS UELAND, being duly sworn, says that he is one of the counsel for the Petitioner named in the foregoing petition and that he knows the contents of said petition, and that the facts therein stated are true to the best of his knowledge and belief.

ANDREAS UELAND

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 1931.

(Maud Goldsbury)

Notary Public, Hennepin County, Minn.  
My Commission expires Dec. 16, 1936