# EARLY, RECEIVER, *v.* FEDERAL RESERVE BANK OF RICHMOND.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 226. Argued February 26, 27, 1930.—Decided March 12, 1930.

A circular of a federal reserve bank, authorized by law, provided that when checks were received by the reserve bank for collection and forwarded to the member bank on which they were drawn, the drawee should remit or provide funds to meet them within an agreed transit time, failing which the amount should be chargeable against the reserve account of the drawee in the reserve bank; but that the reserve bank reserved the right to charge checks so forwarded against the drawee's reserve account at any time when in any particular case it deemed it necessary to do so. *Held:*

1. That the last provision, consented to by the drawee bank, created a power, in the interest and for the security of the owners of such checks, which was not revoked by insolvency of the drawee bank, and that upon learning of such insolvency it became the duty of the reserve bank, even though the transit time had not expired, to charge such checks against the reserve account of the drawee. P. 89.

2. This lien was not affected by the fact that the drawee bank had retained the right to draw drafts on the reserve. P. 90.

30 F. (2d) 198, affirmed.

CERTIORARI, 280 U. S. 540, to review a judgment of the Circuit Court of Appeals reversing in part a judgment of the District Court recovered by the Receiver in a suit against the Reserve Bank.

*Messrs. George P. Barse* and *R. E. Whiting,* with whom *Mr. F. G. Awalt* was on the brief, for petitioner.

There was neither agreement of the parties, nor understanding implied from the terms of collection, to treat the reserve deposit balance either as equitably assigned or as a specified fund pledged to the payment of the accepted checks.

All that the parties agreed was that the obligations incurred by the Lake City Bank by the acceptance of the checks should be paid by specified dates, which dates were shown in the cash letters in which the checks were sent. See *National City Bank* v. *Hotchkiss,* 231 U. S. 50. It was left to the drawee bank to provide funds for payment in the manner most convenient to itself, either by special remittance for the particular purpose, or by providing through general remittances for a sufficient balance in the reserve account, available at the expiration of the transit period to the Reserve Bank, to meet the cash letters. Either method served the same end—to pay a debt which by agreement of the parties was to be paid at Richmond on a fixed day.

Here, as in *Commercial National Bank* v. *Armstrong,* 148 U. S. 50, the owners of the checks became general creditors of the drawee when their checks were accepted and canceled. The terms upon which the checks were handled provided for a three day transit period. How the funds might be provided—whether from existing reserve balances, prospective reserve balances, shipments of currency, drafts upon other depositories, or otherwise—was not the concern of the owners of the checks, and no right was given them to demand that the reserve balances of the drawee bank should not be drawn upon for other purposes.

Customers of the Reserve Bank sending checks to it for collection are charged with notice of the provisions in the circular, permitting the drawee bank to pay for the checks otherwise than by appropriation of its reserve balance. They are also charged with notice of the provisions of § 19 of the Federal Reserve Act permitting the reserve accounts of member banks to be checked against or withdrawn. It is also to be noted that the customer banks assume the risk of failure and suspension of the drawee bank and agree that in such event checks for

which remittance is not made may be charged back to their accounts by the Reserve Bank.

The right of the Lake City Bank to draw upon the reserve at will is clearly inconsistent with any theory of equitable charge or lien arising against the deposit. Distinguishing *Fourth Street Bank* v. *Yardley,* 165 U. S. 634.

An agreement to remit for collection items, even where the remittance is to be made by a draft or a charge against a particular deposit account, does not constitute an assignment or create an equitable charge against the deposit. *Christmas* v. *Russell,* 14 Wall. 69.

An agreement to pay out of a particular fund, however clear its terms, is not an equitable assignment, if the assignor retains any control over the fund. *Christmas* v. *Russell, supra,* 84; *Meyer* v. *Delaware R. Constr. Co.,* 100 U. S. 457; *Williams* v. *Everett,* 14 East. 582, cited in *Tiernan* v. *Jackson,* 5 Pet. 580, 600; *Smedley* v. *Speckman,* 157 Fed. 815, 819.

The principles governing the right of equitable lien likewise impose a duty on the part of the fundholder to devote the pledged fund to the purpose intended. *Interborough Consolidated Corp.* case, 288 Fed. 334 (certiorari denied, *Porges* v. *Sheffield,* 262 U. S. 752); *Woodhouse* v. *Crandall,* 197 Ill. 104, 109; Pomeroy, Eq. Jur. (4th ed.) § 1235; *United States* v. *Butterworth-Judson Corp.,* 267 U. S. 387. Distinguishing cases cited by the court below.

The exercise of the clearing-house functions of the Reserve Bank was not based on the faith of the reserve balance of the member bank.

Under the terms of § 16 of the Federal Reserve Act, the exercise of clearing-house functions was permissive but not mandatory. U. S. C. Title 12, § 248 (m). This was seemingly considered a minor part of the reserve system activities. There is no indication from any of the provisions of the Act that clearing-house functions were

even remotely in mind so far as the statutory provision for reserve balances was concerned.

It seems clear that the customers of the Reserve Bank do not send items to it on the faith of the reserve balance of the drawee bank and that they rely entirely upon the unsecured obligation of the drawee to provide available funds at the expiration of the transit period.

The Reserve Bank has no right to apply the deposit by way of set-off. See *National Bank* v. *Insurance Co.*, 104 U. S. 54, 71; *Scott* v. *Armstrong,* 146 U. S. 499.

The authority of the Reserve Bank to withdraw funds from the reserve account of its member bank was revoked by the insolvency of the member bank. *First National Bank of Chicago* v. *Selden,* 120 Fed. 212; *Scott* v. *Armstrong,* 146 U. S. 499, 507; *Edison Electric Illuminating Co.* v. *Tibbetts,* 241 Fed. 468.

The provision in Circular No. 143 giving the Reserve Bank the right to charge the Lake City Bank's reserve account " at any time when in any particular case we deem it necessary to do so," is on exactly the same fundamental basis as the authority to charge at the expiration of the transit period, the only difference being as to the point in time when such authority might have been executed. Its revocation resulted from the suspension of the Lake City Bank, just as the revocation of the authority to charge at the expiration of the transit period. Distinguishing *McDonald* v. *Chemical National Bank,* 174 U. S. 610.

The lack of agency between the Lake City Bank and the Reserve Bank does not prevent the application of the revocation of authority doctrine.

*Equitable Trust Co.* v. *First National Bank of Trinidad,* 275 U. S. 359, is authority against the position of the Reserve Bank.

*Mr. M. G. Wallace* for respondent.

*Messrs. F. G. Awalt* and *George P. Barse,* by special leave of Court, filed a brief as *amici curiae,* on behalf of J. W. Pole, Comptroller of the Currency.

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit brought by the receiver of a national bank in South Carolina, a member of the Federal Reserve System, to recover the reserve balance of that bank in the hands of the Federal Reserve Bank of Richmond at the end of business on October 9, 1926, when the South Carolina Bank, being insolvent, closed its doors. Other matters tried below are not in question here. The Richmond Bank claims the right to retain the balance on the following facts. As authorized by agreement, on October 7 it forwarded to the South Carolina Bank checks drawn upon the latter which the Richmond Bank had received for collection. These checks were received the next day, marked paid and charged to the accounts of the drawers. Other checks were forwarded on October 8 and marked paid and charged to the drawers by the South Carolina Bank on October 9. After notice of the failure the Richmond Bank on October 11 charged the account of the South Carolina Bank with the amount of the checks forwarded on October 7 and the next day charged what was left with the amount sent on October 8.

The relations between the two Banks were fixed by the following terms of a circular of the Richmond Bank which was authorized by law and agreed to by the other. "Checks received by us drawn on our member banks will be forwarded in cash letters direct to such banks and each member bank will be required either to remit therefor in immediately available funds or to provide funds available to us to meet such cash letters within the agreed transit time to and from the member bank. Therefore, the

amount of any cash letter to a member bank is chargeable against available funds in the reserve account of such member at the expiration of such transit time, which date will be shown on each cash letter. The right is reserved, however, to charge a cash letter to the reserve account of a member bank at any time when in any particular case we deem it necessary to do so." The transit time or time allowed for collection in this case was three days, and had not expired when the South Carolina Bank closed its doors. The Circuit Court of Appeals sustained the claim of the Richmond Bank. 30 F. (2d) 198. A writ of certiorari was granted by this Court.

The petitioner contends that his bank had until the end of the transit time to remit or to provide funds to meet the cash letters, that until then the Richmond Bank had a bare power of attorney to charge the reserve fund, and that the power was revoked by the insolvency of the petitioner's bank. He denies that the reserve fund was subject to any lien until that date, and calls attention to the right of his bank to draw checks against that fund reserved to it by the law. Code, Tit. 12, § 464.

All parties must be taken to have dealt upon the terms of the circular that we have quoted. The right of the South Carolina Bank to draw against its reserve account was subject to the right of the Richmond Bank that held the account to charge it with a cash letter whenever deemed necessary. This power is reserved more obviously in the interest of the depositors of the checks than of the Richmond Bank. The latter received the checks for collection with responsibility only for its own negligence. The depositor took the chance of finding that his only debtor was a distant bank in place of the maker of the check discharged (*Federal Reserve Bank of Richmond* v. *Malloy,* 264 U. S. 160, 166,)—a bank that might be insolvent, as this one was. His situation was the one that

most needed the power to charge the reserve. The language of the circular pointed to the depositor's interest—for the cash letter that was to be charged was merely another name for the checks that the letter contained. The existence of the power must be assumed to have been one of the considerations inducing the owner of the check to give the Richmond Bank authority to send it directly to the drawee. All parties must be taken to have understood that in the event that happened it was the duty of the Richmond Bank when it knew the facts to charge the reserve account of the South Carolina Bank, and if so the account should be charged. There was no overt act necessary in addition to what the parties had agreed upon. The case of *Equitable Trust Co.* v. *First National Bank of Trinidad,* 275 U. S. 359, cited by the petitioner, has no application because there in the opinion of the Court there was no attempt to create a lien upon an identified fund, whereas here the reserve was identified. The fact that the fund might be diminished by drafts of the South Carolina Bank does not invalidate the lien, any more than the right of a depositor to draw against his account invalidates a banker's lien, not to speak of the paramount power of the Richmond Bank mentioned above.

*Judgment affirmed.*

---

## GUNNING *v.* COOLEY.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 31. Argued November 26, 1929.—Decided March 12, 1930.

1. A mere scintilla of evidence is not enough to require the submission of an issue to the jury in the Supreme Court of the District of Columbia. P. 94.
2. Upon a motion for a peremptory instruction the question is not whether there is literally no evidence, but whether there is any