FEDERAL RESERVE BOARD

WASHINGTON

April 8,1920
X-1889

Dear Sir:-

There is enclosed herewith for your information, a mimeographed copy of the opinion of Judge Beverley D. Evans of the District Court of the United States for the Northern District of Georgia, rendered April 3,1920, in the case of the American Bank and Trust Company, et al, against the Federal Reserve Bank of Atlanta, et al, involving the right of the Federal Reserve Bank of Atlanta to collect checks at par over the counter of certain State banks.

Very truly yours,

Enclosure.

Governor.

To Chairmen of all F.R. Banks.

X-1889

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF GEORGIA

The American Bank & Trust Co., et al., (
(
vs (
(
Federal Reserve Bank of Atlanta, et al. (

Smith, Hammond & Smith - for Plaintiffs
Hollins N. Randolph and Robert S. Parker - for Defendants

Beverley D. Evans - District Judge:

Several State Banks filed in the superior court of Fulton County, Georgia, an equitable petition against the Federal Reserve Bank of Atlanta, and certain of its officials, alleging that the Reserve Bank had declared a policy of "Par clearance", set forth in an exhibit to the petition, and that to enforce such policy it was the purpose of the Reserve Bank to receive and collect checks drawn on the drawee banks, by causing them to be presented over the counter of such banks by an agent of the Reserve Bank, instead of sending the checks through the customary channels of correspondent banks or clearing houses; that this course of business was intended to coerce State banks into becoming members of the Reserve System and was ultra vires of the powers of the Federal Reserve Bank and would deprive petitioning banks and others in like position of the customary compensation for collection and remittance where checks reached them for payment under the present method of doing business. The principal prayer of the petition was to restrain the defendants from the adoption of any method of collecting checks drawn against petitioners except through the usual and ordinary channel of collecting checks through correspondent banks or clearing houses. The case was removed to the United States District Court of the Northern District of Georgia. Motions were made to remand the cause and also dismiss the petition. The motion to remand must be denied. The principal defendant is the Federal Reserve Bank of Atlanta, Georgia, incorporated by the Congress of the United States. The District Courts of the United States have jurisdiction of all suits of a civil nature, at common law or in equity, where the matter arises under the Constitution and laws of the United States. Judicial Code, section 24. A suit against a corporation created and organized under and pursuant to the Federal Reserve Act is one arising under a law of the United States. Osborn v. Bank, 9, Wheaton 738; Bankers Trust Company v. Tex. & Pac. Ry. Co. 241, U. S. 295.

A Federal Reserve Bank is not a National Banking Association within the scope and meaning of the Acts of Congress of July 12, 1882, August 13, 1888 and Judicial Code, section 11, which place national banking

associations, for the purpose of action by and against them, upon the footing of other citizens. National Banking associations and the subsequently created Reserve Banks are not ejusdem generis; their functions are different, and their chief characteristics are so unlike that it can not be supposed that Congress intended them to be included in the former legislation. A cursory reading of the Federal Reserve Banking Act discloses that its great object is to give elasticity to the national currency, and to prevent congestion in commercial centers. National banking associations are member banks of the Reserve system. The Federal Reserve Board is empowered to examine into the affairs of a national banking association; to supervise through the bureau under the charge of the Comptroller of Currency the issue and retirement of Federal Reserve notes; to grant national banking associations the right to act as trustee, executor or administrator; to permit member banks to carry in the Federal Reserve Banks of their respective districts a portion of their reserves required to be held in their own vaults, etc. The general object of the Federal Reserve system would be thwarted if the Reserve Banks could only sue and be sued under the same conditions as national banking associations.

Furthermore, the petition expressly raised the point that the actings of the Federal Reserve Bank complained of are ultra vires the act of incorporation. Clearly this raises a Federal Question, because the plaintiff's case can not be adjudicated without construing a law of the United States.

The motion to dismiss must be granted. When the allegations of the bill with its legal conclusions and interesting historical statement as to the origin and scope of State banks are reduced to their last analysis, the charge of complaining banks is, that the Federal Reserve Bank is without the power, (or, if it has the power, it should be restrained from exercising it), to collect checks on banks of deposit received by it in the course of business by presenting them for payment through agents over the counter of the drawee banks. That this method of collection of checks will deprive the drawee banks of the revenue previously enjoyed where checks on them came through the mails from correspondent banks does not make the transaction unlawful. It is the duty of the drawee bank to pay a check of the drawer, if it holds sufficient funds of the drawer to pay it. It is no less the duty of the drawee bank to pay several checks than it is to pay a single check, when presented over the counter within banking hours. The policy of the Reserve Bank of Atlanta, as outlined in the petition, is neither ultra vires nor unlawful. It is not to be presumed that the agency employed by the Federal Reserve Bank will act otherwise than may be lawful and proper in the presentation of the checks for payment. The allegations of conspiracy are lacking in essential features to charge an actionable wrong.

Accordingly, orders may be presented denying the motion to remand and granting the motion to dismiss the bill.

BEVERLY D EVANS
United States Judge

This April 3, 1920.

Filed in Clerk's Office April 5, 1920.
O. C. Fuller - Clerk.