X4161

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IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF GEORGIA.

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| PASCAGOULA NATIONAL BANK, PLAINTIFF, VS. FEDERAL RESERVE BANK OF ATLANTA, ET. AL. DEFENDANTS. | ) | NO. 295 IN EQUITY. |

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ANSWER OF DEFENDANT, FEDERAL RESERVE BANK OF ATLANTA.

And now comes Federal Reserve Bank of Atlanta, a body corporate under the laws of the United States, one of the defendants in the cause above styled and makes answer to the bill of complaint as filed herein by the plaintiff, and for answer says:

-1-

Upon information and belief, this defendant admits as true the allegations contained in paragraph 1 of the bill of complaint.

-2-

This defendant admits the averments of paragraph 2 of the bill of complaint.

-3-

In response to paragraph 3 of said bill, this defendant says that it is a Federal Reserve Bank, organized and existing under and pursuant to that certain Act of Congress approved December 23, 1913, known as the Federal Reserve Act, as amended; that its principal office is in the City of Atlanta, in the

State of Georgia, within the Northern District of Georgia, and that it is the Federal Reserve Bank for the Sixth Federal Reserve District. It maintains a branch in the City of New Orleans, in the State of Louisiana, pursuant to the provisions of Section 3, of the Federal Reserve Act, through which branch it transacts certain of its business.

-4-

Paragraph 4 of said bill of complaint consists largely of legal conclusions and of statements as to the tenor and effect of various of the provisions of the Federal Reserve Act and, to that extent, the same requires no answer. This defendant denies the allegation that the Federal Reserve Board "is a quasi corporation," and it denies, as charged, the averment in said paragraph to the effect that Joseph A. McCord, Federal Reserve Agent, is acting for the Board with particular respect to "those functions in the Sixth Federal Reserve District, that operate upon plaintiff, and other member banks in said District," of which complaint is in said bill made. This defendant admits the truth of the allegations contained in the first sentence of paragraph 4 and that the Federal Reserve Board has its principal offices in the Treasury Building of the United States in the City of Washington, as alleged in the bill.

-5-

In response to paragraph 5 of said bill of complaint, this defendant says that Joseph A. McCord resides in the City of Atlanta, and maintains on the premises of the Federal Reserve Bank of Atlanta, under the terms of the Federal Reserve Act and for the purposes specified in said Act, a local office of said Board - and that he is, to the extent specified in said Act and not otherwise, the official representative in the Sixth Federal Reserve District of the Federal

Reserve Board for the performance of the functions conferred upon it by said Act. He is also Chairman of the Board of Directors of this defendant. This defendant admits as correct the averment in said paragraph 5 as to the present personnel of the Federal Reserve Board.

-6-

This defendant says that it is advised by counsel that paragraph 6 of said bill requires no answer.

-7-

Paragraph 7 of said bill of complaint contains only statements as to provisions of the Federal Reserve Act and, therefore, requires no answer.

-8-

Paragraph 8 of said bill contains only a recital of what the plaintiff states are terms and provisions of the Federal Reserve Act touching the power and authority of the Federal Reserve Board and while the said recital of the terms and provisions of the Federal Reserve Act is partial and incomplete, the same requires no answer.

-9-

Paragraph 9 of the bill of complaint contains only statements of conclusions and, therefore, requires no answer. This defendant denies, however, that the Federal Reserve System is itself a legal entity with corporate powers, but says that the twelve Federal Reserve Banks are twelve separate and distinct corporations and that the Federal Reserve Board is not a corporation or quasi corporation, but is a governmental establishment or board exercising governmental powers among which powers is a general supervision over all the Federal Reserve Banks.

-10-

This defendant is informed and, upon such information, states that the method of collecting checks described in paragraph 10 of said bill was a method largely employed in the collection of checks prior to the passage of the Federal Reserve Act of 1913. This defendant is further informed that there was then a practice among some banks forthe remitting bank to make a small charge called "exchange" and to deduct the amount thereof from the remittance, but that such practice was not universal or customary and was modified or abated by various inter bank arrangements, so that it was neither certain nor uniform.

-11-

Answering paragraph 11 of said bill, this defendant says that the averments of the first sentence thereof appear to be substantially correct. In further response to paragraph 11 of the bill of complaint this defendant says that it is true that it was not until the summer of 1916 that the Federal Reserve Board required of the various Federal reserve banks, including the defendant Reserve Bank, that they act as clearing houses for their respective members. This defendant further says, however, that at no time prior to 1916 or subsequent thereto has it paid remission or exchange charges on checks collected by or through it.

Paragraph 12 of said bill sets up mere conclusions of the pleader and, therefore, requires no answer. This defendant says, however, that the effect of the said amendment of September 7, 1916, was to authorize any Federal Reserve Bank to receive from its member banks checks and drafts payable upon presentation without limitation as to the district where payable and from other Federal Reserve Banks checks and drafts payable upon presentation within its district. By the Act of June 21, 1917, Section 13 of the Federal Reserve Act was amended so as to authorize Federal Reserve Banks to receive also from nonmember banks checks and drafts payable on presentation without any limitation as to the district where such checks are payable; provided, such nonmember banks maintain with the Federal Reserve Bank of their own respective Districts balances sufficient to offset the items in transit. Such banks are now known as "non member clearing banks."

-13-

Paragraph 13 of said bill sets up mere conclusions of the pleader and, therefore, requires no answer. This defendant says, however, that the Federal Reserve Board was not only authorized by the original Act, but is now authorized by the Act, as amended, to require member banks to remit at par for items drawn upon them and sent to them for collection and remittance by their respective reserve banks. Moreover, member banks are forbidden by law to make exchange charges for checks sent to them for payment and remittance by or through Federal Reserve Banks, and Federal Reserve Banks are forbidden to pay exchange charges.

-14-

This defendant says that by Act approved June 21, 1917, certain language, known as the Hardwick Amendment, was inserted in Section 13 of the Federal Reserve Act to the following effect:

> "That nothing in this or any other section of this act shall be construed as prohibiting a member or nonmember bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks".

This defendant further says that the plan and purpose of this defendant since July, 1916, has uniformly been to collect for those entitled to use the collection facilities of the Federal Reserve System, all checks which might legally be collected by it, that is to say, such checks as it could collect at par. This defendant further says that its plan and purpose in this regard has been and now is in accord with the provisions of the Federal Reserve Act and the regulations of the Federal Reserve Board made pursuant thereto. Any averments in paragraph 14 in conflict with this section of this answer are denied.

-15-

This defendant is informed that the Hon. W. P. G. Harding, while Governor of the Federal Reserve Board, made a statement to the House Committee on Banking

and Currency substantially as quoted in paragraph 15 of said bill. The other allegations of said paragraph contain only conclusions of the pleader and, for that reason, no further answer is made thereto.

-16-

This defendant is informed that on or about September 5, 1923, the Hon. D. R. Crissinger, now Governor of the Federal Reserve Board, wrote to Mr. L. R. Adams, General Secretary of the National and State Bankers' Protective Association, a letter in the form set out in paragraph 15 of said bill. Upon information and belief, this defendant says that the same was written in reply to the printed letter, a copy of which is attached to said bill of complaint as "Exhibit "A" thereof. This defendant is without information upon which to make further answer to said paragraph 16 of said bill.

-17-

In response to paragraph 17 of said bill, this defendant denies the averments thereof except that this defendant admits that in the year 1916 the Federal Reserve Board issued, pursuant to the terms and provisions of the Federal Reserve Act, a certain regulation upon the subject of check clearing and collection. Said regulation has been revised and changed from time to time and, as revised and changed, is now of force and is now known as Regulation J (Series of 1924). Said regulation directs each Federal Reserve Bank to "exercise the functions of a clearing house and collect checks," andprescribes the general terms and conditions upon which such Federal reserve banks shall act as clearing houses and collect checks. Among such terms and conditions are the following:

"(1) Each Federal Reserve Bank will receive at par from its member banks and from non-member clearing banks in its district, checks drawn on all member and nonmember clea ring banks, and checks drawn on all other nonmember banks which are collectable at par in funds acceptable to the Federal Reserve Bank of the district in which such nonmember banks are located.

"(2) Each Federal Reserve Bank will receive at par from other Federal Reserve Banks, and from all member and non-member clearing banks in other Federal Reserve Districts which are authorized to route direct for the credit of their respective Federal Reserve Banks, checks drawn on all member and nonmember clearing banks of its district, and checks drawn on all other nonmember banks of its district which are collectable at par in funds acceptable to the collecting Federal Reserve Bank.

"(3) No Federal Reserve Bank shall receive on deposit or for collection any check drawn on any non-member bank which cannot be collected at par in funds acceptable to the Federal Reserve Bank of the district in which such nonmember bank is located."

Said regulation also provides "checks received by a Federal Reserve Bank, on its member or non-member clearing banks, will ordinarily be forwarded or presented direct to such banks and such banks will be required to remit or pay therefor at par in cash or in bank draft acceptable to the collecting Federal Reserve Bank".

Prior to 1916 neither this defendant nor any other Federal reserve bank had a transit or collection department, maintained as such. Relatively few checks reached this defendant for collection and such checks were items sent by member

banks, or by other Federal reserve banks, for deposit, collection and credit. No charge was made for this service by this defendant and such checks so deposited, being drawn upon its member banks, were collected at par and without deduction for exchange or collection charges. On or about the 15th day of July, 1916, this defendant, pursuant to instructions issued by the Federal Reserve Board, began the operation of a transit and collection department. For a short time, a nominal charge was made by this defendant for such collections, but no charge for remittance was included therein or permitted to be made. Subsequently such items were handled without charge to the extent of five hundred checks per month for any one bank. On or about the 15th day of June, 1918, this defendant and other Federal reserve banks began to collect for the account of members, and others entitled to use the collection facilities of the Federal Reserve System, without any charge therefor, all items which it might legally receive on deposit for collection, and such service is now being given and such collection department is now being maintained. It is not true that all members, including the plaintiff, are, under the regulations aforesaid and under the law, required to remit the proceeds of all checks presented to them through this defendant by mail without any deduction because of the remittance. On the contrary, they are given the option of remitting drafts in payment thereof by mail in addressed and stamped envelopes furnished by the Federal Reserve Bank or paying such checks by mailing or shipping cash to the Federal Reserve Bank at the expense and risk of the Federal Reserve Bank.

- 18 -

Paragraph 18 of the bill of complaint sets forth mere conclusions of the pleader and, therefore, requires no answer. This defendant denies the soundness

of such conclusions and further says that, if it should be considered that said paragraph contains any issuable averments of fact, any and all of such avermants are denied.

-19-

Paragraph 19 of said bill of complaint contains only conclusions of the pleader as to matters of law and, therefore, requires no answer. If, however, it be considered that said paragraph contains any issuable averments of fact, the same, and each thereof, are denied. Defendant further says in response to said paragraph that it is not true that this defendant is refusing to obey the mandate of Section 16 of the Federal Reserve Act to the effect that:

> "Every Federal Reserve Bank shall receive on deposit at par from member banks or from Federal Reserve Banks checks and drafts drawn upon any of its depositors, and when remitted by a Federal Reserve Bank, checks and drafts drawn by any depositor in any other Federal Reserve Bank or member banks upon funds to the credit of said depositor in said reserve bank or member bank."

Every cash item received for deposit by this defendant from the plaintiff and from all of the other member banks of defendant is received for deposit at par without any deduction whatever. It is true that in cases where this defendant receives for deposit at par cash items which may not be collected during banking hours on the same day in which received, credit is given in accordance with the time schedule referred to in said bill of complaint; but this defendant says that a credit at par of an item, to be available to a member bank for its reserve account and as funds against which a check may be drawn in accordance with said time schedule, is not a denial to the member bank of its right to deposit such items at par.

This defendant denies, as charged, the averments contained in paragraph 20 of the bill of complaint. It says that it is true that in cases where cash items deposited by a member can not be immediately collected by defendant, as in the next preceding section of this answer more fully set out, credit is given at par and without any deduction whatsoever, in accordance with said time schedule. Defendant further says that said time schedule represents the experience of this defendant as to the usual time for actual collection of items as indicated therein, but that, in accordance with said time schedule, the amount of each cash item so received is made available to the reserve account of each member bank at the expiration of the time stated in said time schedule, whether or not the same be then actually collected. Were immediate credit given as demanded by complainant each member bank could count as a part of its reserve and draw checks against items not collected and while the same were still in the "float". Such a practice would be economically unsound and contrary to existing banking practice, would result in the creation of fictitious reserves, would mean the pyramiding of credits, and lead to other abuses; and any such practice would be contrary to the purposes and express provisions of the Federal Reserve Act.

- 21 -

Paragraph 21 of the bill of complaint sets up mere conclusions of the pleader and, therefore, requires no answer. This defendant, however, denies the soundness of such conclusions.

- 22 -

Paragraph 22 of the bill of complaint sets up mere conclusions and, therefore, requires no answer. This defendant, however, denies the soundness of the conclusions in said paragraph contained, and denies that the proviso in Section 13 contained is unconstitutional for the reasons stated, or for any other reason. This defendant says further that at the time plaintiff became a member of the Federal Reserve Bank of Atlanta it voluntarily agreed to comply with the terms of the Federal Reserve Act and the regulations of the Federal Reserve Board.

- 23 -

In response to paragraph 23 of the bill of complaint this defendant says that it is true that it did heretofore issue its Circular G-161 addressed to member banks and to nonmember banks maintaining clearing accounts, which said circular was on the subject of check clearing and collection and was in all respects in accord with Regulation J of the Federal Reserve Board. Said circular was dated February 28, 1921. Said circular is not now of force, the same having been superseded by later circulars on the same subject. This defendant denies that the provisions of said circulars, or any of them, or any of its practices thereunder, were or are in anywise unlawful or in conflict with any of the provisions of the Federal Reserve Act.

- 24 -

Paragraph 24 of the bill of complaint sets up mere conclusions of the pleader and, therefore, requires no answer. If it should be considered, however, that said paragraph contains any proper averment of fact, the same, and every such averment, are denied, except that this defendant admits that it is now circulating

a par list such as that expressly approved by the Supreme Court of the United States in the case of American Bank & Trust Company et al., v. Federal Reserve Bank of Atlanta, et al., 262 U. S. 643; and except that this defendant admits its practices with regard to deferred credits as in this answer described and not otherwise. This defendant particularly denies that the plaintiff, or any other member bank, has been under any duress or the subject of any illegal practice, and this defendant denies that any act done by it and in said bill complained of has been in violation of any provision of the Federal Reserve Act, or contrary to any adjudication of the Courts, or any construction of said Act as made by the Courts.

- 25 -

To the extent that Paragraph 25 of the bill of complaint contains mere conclusions of the pleader, it requires no answer, This defendant denies, however, the correctness of the conclusion that Federal reserve banks are not authorized to receive for collection from their members and clearing members any check or draft that is not payable on presenta tion within the district of the Federal reserve bank receiving it, and further denies the correctness of the conclusion that defendant can not receive for collection checks payable within its district deposited with it for such purpose by another Federal reserve bank. This defendant says that it is true that it receives for collection from its members and from its non-member clearing banks checks that are payable in other Federal Reserve Districts, and, denying that it receives checks for any purpose from the members of other Federal reserve banks, admits that it does receive from other Federal reserve banks checks that are collectible at par and that are payable upon presentation within the Sixth Federal Reserve District.

Defendant says that its right and corporate capacity so to do are plainly stated in the Federal Reserve Act, as now amended.

- 26 -

Paragraph 26 of the bill of complaint, as charged, is denied.

- 27 -

In response to Paragraph 27 of the bill of complaint this defendant says that it is true that the checks referred to therein, aggregating $4,806.97, were tendered to it in settlement of certain daily letters, as alleged in said paragraph, and that such checks represented respectively the amounts of said daily letfers, less an attempted charge for remittance which the plaintiff sought to impose upon this defendant. It is, furthermore, true that the plaintiff did also tender to this defendant two certain bank drafts in the aggregate sum of $554.93 as being in payment of certain checks drawn on plaintiff and sent by defendant to plaintiff for payment and remittance. The checks so sent have been deposited with this defendant by other Federal reserve banks, and not by the members thereof as alleged, and had, therefore, come to defendant from outside the territorial limits of the Sixth Federal Reserve District. Said last mentioned bank drafts represented the aggregate of the checks so sent for payment and remittance, less a charge for remittance which the plaintiff attempted to impose on this defendant. This defendant says that the said attempts of the plaintiff to impose on defendant such charges were contrary to the Federal Reserve Act, and, for said reason, it refused to accept said drafts, and each of them, and, thereupon, requested the plaintiff either to remit in full at

par for said cash letters, and each thereof, or to return to defendant the items which had been sent to plaintiff by defendant for payment and remittance. In refusing to accept said drafts, this defendant wrote the plaintiff the letter of July 31, 1924, a copy of which is attached as "Exhibit B" to the bill of complaint. This defendant says that the plaintiff was, under the law, required to remit for said items without deduction and, therefore, denies the averment that the plaintiff was compelled by an illegal act of this defendant to forego said exchange and to pay said additional amounts, to its loss. Defendant denies the other averments of said paragraph 27.

- 28 -

In response to paragraph 28 of the bill of complaint, this defendant says that, under the provisions of the Federal Reserve Act and of Regulation J, the plaintiff has at all times been bound to remit to this defendant at par for items drawn upon the plaintiff and sent to it by this defendant for payment and remission of proceeds. This defendant says that, except in the particular cases described in paragraph 27 of the bill of complaint, plaintiff has made no demands upon this defendant touching the remission for items in amounts less than the par value thereof. The plaintiff and this defendant, as member bank and as Federal reserve bank respectively, have had between themselves many transactions, the plaintiff sending to this defendant cash items for deposit, the defendant sending to the plaintiff cash letters for payment and remittance, as to the aggregate whereof this defendant is not informed. In no case, however, except those specified in the bill, has the plaintiff undertaken to remit less than the full amount of any cash letter; nor has the

plaintiff heretofore demanded the immediate credit to its reserve account of items not immediately available to it under the provisions of the time schedule aforesaid. Except as herein specifically admitted, the averments of paragraph 28 of the bill are denied so far as this defendant has any knowledge thereof, and so far as this defendant is without knowledge thereof they are denied for that reason.

- 29 -

Paragraph 29 of said bill, as charged, is denied.

- 30 -

In response to paragraph 30 of said bill, this defendant says that it is true that on or about July 29, 1924, the plaintiff presented to it checks of the kind and character generally described in said paragraph and for the aggregate amount therein stated, and requested that said checks be placed to the immediate credit of plaintiff in its reserve account, and that the defendant declined to accede to such request for reasons set out in the letter of July 31, 1924, written by this defendant to the plaintiff, a copy of which is attached as "Exhibit B" to said bill, namely; that, under the regulations of the Federal Reserve Board, credit could be given therefor only in accordance with said time schedule. Defendant denies the other allegations of said paragraph, and says that the plaintiff was not entitled to receive immediate credit to its reserve account for funds then uncollected; nor was the plaintiff entitled to interest thereon, and that no injury to plaintiff, at law or in equity, resulted from the action of the defendant in this regard - the plaintiff having no right to utilize uncollected funds as a collected balance to its credit. Defendant

further says that plaintiff was immediately given credit at par in a deferred account for the full amount of such checks without any deduction whatever, and, upon the expiration of the time stated in the aforesaid time schedule, plaintiff was given credit at par in its reserve account for the full amount of such checks without any deduction whatever, in accordance with the terms of Regulation J. Defendant further says that the plaintiff has at no time, prior to July 29, 1924, made any demand upon defendant for immediate credit in its reserve account for any checks which, under the regulations of the Federal Reserve Board, are receivable for deposit and deferred credit to its reserve account, in accordance with said time schedule; and that said request of July 29, 1924, was the first request or demand made by the plaintiff of the defendant to that end invoking it.

- 31 -

This defendant admits that it wrote and delivered to the plaintiff the letter referred to in paragraph 31 of said bill of complaint; but denies that such letter constituted a refusal to receive such checks on deposit at par within the meaning of Section 16 of the Federal Reserve Act.

- 32 -

This defendant denies the allegations contained in paragraph 32 of said bill of complaint.

- 33 -

To the extent that Paragraph 33 of said bill contains mere conclusions of the pleader the same requires no answer. Defendant, however, denies the allegations of fact set forth in said paragraph and particularly that this defendant has at any time disregarded any limitation imposed upon it by law.

- 34 -

In so far as paragraph 34 of said bill contains any issuable averment of fact, the same is denied.

- 35 -

The allegations of paragraph 35 of said bill of complaint are denied.

- 36 -

The allegations contained in paragraph 36 of said bill of complaint are admitted.

- 37 -

If in any of those parts of the bill of complaint which the defendant has referred to as containing only statements of conclusions there be any allegations of fact contrary to the admissions in this answer contained, defendant denies each and every one of said allegations.

- 38 -

Defendant denies each and every allegation of fact contained in the bill of complaint, except those allegations which defendant has specifically admitted in this answer, and except those allegations as to which defendant has stated in this answer that it is without knowledge or information.

- 39 -

And now, having fully answered the plaintiff's bill, defendant shows to the Court, by way of further defense, as follows:

A.

Prior to the enactment of the Federal Reserve Act, heretofore referred to, the monetary and financial situation of the United States had become such as to cause grave apprehension and insistent demands for legislation by Congress to

protect both the nation and its people against the havoc wrought by recurring depressions, crises, panics, violent fluctuations in the rate of interest and in general the consequences which always threatened and often disastrously affected public and private business alike. These evils were caused in large part by an inelastic currency, based upon disappearing bonded indebtedness of the general government, and the general practice which had grown up with regard to reserves required by law to be maintained. Such reserves, required by law to bear a fixed relation to the deposit liability of the banks, were kept in part in cash for daily counter transactions and in larger part consisted of balances in other banks, which other banks in turn similarly maintained their own reserve requirements. The reserves thus maintained by credits in other banks were sometimes reciprocal, sometimes cumulated and utilized by many banks at the same time, and the tendency of such reserves was finally to accumulate in the great financial institutions in central reserve cities where they were frequently loaned out for speculative purposes on call. Reciprocal and circulating credits to reserves thus rendered such reserves in large part fictitious, and pyramided a large imaginary reserve upon an original small actual deposit for reserve purposes. The consequences of these practices were that the actual reserves of the banks were scattered and their availability depended upon the bbility of other banks in time of stress either to recapture their own reserves or recall loans. At the first sign of financial disturbance banks hoarded their cash, brought distressing and sometimes destructive pressure to bear upon commercial and industrial interests to

compel payment of loans, and with increasing panic found decreasing ability to realize either upon their own reserves in other banks or pay the other bank balances held by them as reserve for those other banks. Such situations occurred with periodical and increasing frequency and led to business and bank suspensions and failures and attempts at relief by the issuance of unauthorized forms of currency by clearing houses and associations of banks - all expedients which, unusual and restrictive, increased the panic they were designed to allay. This situation was aggravated by the practice of counting as reserve the so-called "float" consisting of checks deposited for collection and credit but still in transit and uncollected and which upon presentation in times of distress were met either by delays or refusals, or by payments in other credits rather than money, such as checks or drafts which in turn could not be collected when presented for payment, thus accentuating the fictitious and unreal character of the reserves upon which the integrity of the system depended. Thus the very stringency which gave rise to the need of reserves for use rendered them unavailable. Meantime the currency available to the country was rigidly limited by its bond basis and could not expand however great the need.

In 1907 the causes above described produced a disastrous panic throughout the United States and challenged public attention sharply to the unstable basis of both public and private finance in the United States. Continuously thereafter the subject was considered by Congress; extensive hearings were had, committees and conferences were organized by public authorities, by business and banking groups, and finally, informed and expert opinion moulded the Federal Reserve Act which was passed by Congress to redress the evils above

described by providing primarily for the institution of the Federal Reserve System, supervised on behalf of the Government by the Federal Reserve Board, but administered and operated by the twelve Federal reserve banks, each bank operating independently in its own district except as the several banks are required to cooperate in the public interest to meet national emergencies.

The object of the Federal Reserve Act is to bring about the establishment of a stable financial structure in the United States strong enough to support the great fiscal operations of the Government in times of peace and war and flexible enough to meet the credit and currency needs of the commerce and industry of the country. To the end above set forth the Federal Reserve Act, operating compulsorily upon national banks and seeking to induce the voluntary cooperation of State banks and trust companies, creates an actual reserve finally mobilized in the Federal Reserve Banks and there represented by actual net balances, of which not less than 35% must be kept by the Federal Reserve Banks in the form of gold or lawful money.

In its original form the Federal Reserve Act authorized member banks to keep a part of their reserve with other banks and a part as a balance with the the Federal Reserve Banks. In its zeal, however, to assure actual and accessible reserves, Congress, by amendment to the Act, required member banks to keep their entire reserves in Federal reserve banks and prescribed that such reserves must consist of "an actual net balance", thus excluding uncollected checks and items in transit. The Federal Reserve Banks are required to assure the maintenance of this actual net balance by the imposition of increasingly severe penalties upon delinquent member banks.

In order that the member banks may maintain the actual net balances required to be kept as reserves, it was essential that Federal reserve banks possess the power to collect checks deposited for collection and credit thereto, since it is by means of checks that bank balances are built up, and a check must be collected before the amount thereof can be considered as constituting "an actual net balance" within the meaning of the Act. The checks and drafts which the plaintiff sends to this defendant for collection and credit to its reserve account are credited by this defendant, not immediately upon deposit but in accordance with the time schedule and the regulations of the Federal Reserve Board. The checks and drafts which the defendant sends to the plaintiff for payment and remittance are those which to a very large extent, if not entirely, have been deposited by other member banks of this defendant or of other Federal Reserve Banks for the purpose of building up and maintaining their respective reserve accounts. Under the provisions of Section 16 of the Federal Reserve Act, each Federal Reserve Bank is required to accept at par from its members and from other Federal Reserve Banks such checks and drafts as may be placed with it on deposit for collection and credit, or on deposit for collection and the remission of proceeds when collected. The member banks of this defendant, including the plaintiff bank, avail themselves to a large extent of the collection facilities afforded by this defendant, and other Federal Reserve Banks forward to this defendant such checks and drafts, payable upon presentation in the Sixth Federal Reserve District, as may be collected at par, and this defendant is required, under the provisions of

the Act and of the regulations aforesaid, to receive such items at the face or par value thereof. Being inhibited by law from paying exchange charges, and being by law required to give credit at par this defendant cannot at the same time permit the drawee bank to deduct exchange charges.

C.

A further reason actuating Congress in passing the Federal Reserve Act was to provide for an effective and prompt clearing and collection of checks and drafts, and it was in order to carry out this purpose that Regulation J was promulgated. The advantage and benefit of a systematic, expeditious and economical collection of checks is incalculable in its direct benefits to the entire country. Prior to the institution of the Federal Reserve System, with its facilities for the orderly and prompt collection of checks, the banks of the country maintained clearing arrangements among themselves. Such arrangements often involved the circuitous routing of checks in order to escape the payment of an exchange charge. Each bank was striving to settle the problem of collection for itself, namely; by collecting checks deposited with it for the purpose in such manner as to avoid the payment of exchange charges, and many of these banks were at the same time charging exchange on checks drawn against them. The result was an expense to business and a toll upon industry, with the inconvenience and dangers arising from delayed collections and the indirect routing of checks. If the plaintiff and other member banks had the right at will to disregard the provisions of Regulation J, it would mean that such objecing member banks would still have the right, under Section 16 of the Act, to forward to this defendant for deposit for collection and credit at par such cash items as the plaintiff might desire to have collected at par and which could be by the defendant collected at par; whereas,

the plaintiff would rest under no reciprocal duty to remit for its own checks without deduction. In other words, the plaintiff seeks to utilize for its own advantage the collection facilities of defendant, maintained under the provisions of Regulation J, and at the same time to hold as inoperative upon it the said regulation, which was passed under the Act and as required by the Act, and without which there could be no efficient collection of checks by this defendant.

D

As heretofore pointed out, the Federal Reserve Board has, in and by said Regulation J, required each Federal Reserve Bank to exercise the functions of a clearing house and collect checks for such of its member banks as desire to avail themselves of its privileges and for such nonmember State banks and trust companies as may maintain with the Federal Reserve Banks balances sufficient to qualify them under the provisions of Section 13 of the Federal Reserve Act to send items to Federal Reserve Banks for purposes of exchange or of collection. In and by said Regulation J, each Federal Reserve Bank is required to exercise the functions of a clearing house and collect checks under the general terms and conditions set forth in Regulation J. This defendant avers that in promulgating Regulation J the Federal Reserve Board was acting pursuant to the authority vested in it by the Act aforesaid, and was actuated by the desire (as set forth in said Regulation J) "to afford both to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances".

This defendant, therefore, has the corporate capacity and power in and by the Federal Reserve Act, as now amended, conferred upon it to accept from its members and clearing members for deposit and collection checks and drafts payable upon presentation, regardless of whether they are payable within its own district. It has, furthermore, the corporate capacity and power to accept on deposit for collection from other Federal Reserve Banks checks and drafts payable upon presentation within its district. Any checks so deposited for collection or credit must be accepted by defendant at par, under the provisions of Section 13 of the Federal Reserve Act. Under the provisions of Section 13 of the Federal Reserve Act, this defendant is in terms prohibited from paying any charge to any bank for the collection or payment of checks and drafts and remission therefor, by exchange or otherwise. All of the foregoing powers and prohibitions are established and upheld by the Supreme Court of the United States in the cases of American Bank and Trust Company, et al. v. Federal Reserve Bank of Atlanta, et. al., 262 U. S., 643, and Farmers & Merchants Bank of Monroe, North Carolina et al. v. Federal Reserve Bank of Richmond, 262 U. S. 649.

Plaintiff bank has utilized, and now utilizes, the collection facilities maintained by this defendant and other Federal Reserve Banks, and avails itself thereof in order to secure the handling without expense to itself of items which are collectible at par through the Federal Reserve Collection System.

E.

The regulation of the Federal Reserve Board requiring checks, not immediately collectible, to be credited to the reserve account of a member

bank in accordance with the time schedule is not only permissible and lawful, under the Federal Reserve Act, but is required by business prudence and by fundamental economic considerations. This defendant and the other Federal Reserve Banks represent in the aggregate the mobilized reserves of the country, the reservoir of credit, and the principal medium of note currency issues. Considerations of inherent stability of bank reserves and of credit extensions and of security for note issues require that the reserves carried by the member banks be real and not fictitious. To allow each member bank the unrestricted right to count as a part of its legal reserve an uncollected balance still in the "float" could only mean the establishment of an erroneous and unsound basis for the computation of reserves; because the items in transit for collection, while still uncollected, would not only determine, to the full extent thereof, the reserve of the bank depositing the same with a Federal Reserve Bank, but would, until actually paid, be also reflected in the reserve of the drawee bank. It is impossible to anticipate with any certainty the aggregate of the "float", from day to day, and it is likewise impossible to state herein any accurate figures of averages, but this defendant does aver (as is also alleged by the plaintiff in the bill of complaint) that there is probably a total of "float" in the Federal Reserve System in each day of not less than $500,000,000. In order to prevent this "float" which consists of uncollected checks, from being used as bank reserves, Congress amended Section 19 of the Federal Reserve Act on June 21, 1917, so as to require that the reserves of member banks should consist not merely of "balances" with the Federal Reserve

Bank, but of "an actual net balance", which is commonly understood in banking circles to mean a net balance consisting of actually collected funds with all "float" or uncollected checks eliminated. The only safe rule is that thus adopted by Congress and incorporated in Regulation J by the Federal Reserve Board, namely, that credit for a check deposited with a Federal Reserve Bank shall be given in the collected funds or reserve account of each member only at the approximate time when the check actually has been collected. The plaintiff is not entitled to the immediate use of the proceeds of a check which is still uncollected. Nothing in the Federal Reserve Act gives to plaintiff this privilege and such privilege, if extended, would be contrary to business usage and the fundamental considerations of sound business policy, as wellas contrary to the express provisions of Section 19 of the Federal Reserve Act. This defendant says that the acceptance on deposit for deferred credit to the reserve account of a member bank, in accordance with the time schedule, is not a denial to the plaintiff of its right to have such items received for deposit at par by the defendant, because the right to deposit at par does not imply the right to demand immediate availability for uncollected items, and for the further reason that to give the plaintiff immediate credit for uncollected checks would be contrary to the provisions of Section 19 of the Federal Reserve Act.

F.

This defendant further says that were it to allow its members to check against and otherwise utilize as collected funds the anticipated proceeds of uncollected items, the member banks would thereby acquire, without cost by way of interest charge or otherwise, the constant use of large amounts of money at the expense of this defendant. Member banks would

then seek to employ these funds by lending them out or investing them and this would lead to widespread inflation with consequent high prices to the great detriment of the entire country.

This defendant, therefore, says that the Federal Reserve Act and the amendments thereto constitute a consistent Act of Congress addressed to the remedying of grave evils of a public character and seeking by its several provisions, requirements, and authorities to erect a stable financial structure in the public interest and for the welfare and convenience of the people; that the demand of the plaintiff that immediate credit be given for uncollected checks would destroy the integrity of the reserve the establishment of which was the principal purpose of the Federal Reserve Act and would be at variance with the express language of said Act; that the demand of the plaintiff that it and other member banks in the Federal Reserve System be authorized to charge exchange upon checks presented for payment and remission would likewise impair the usefulness of the System to the banks and business of the country and be in conflict with the express requirements and prohibitions of the Federal Reserve Act; that all of the acts of this defendant in the respects complained of are hereinbefore shown to be in harmony with the purpose of the Federal Reserve Act and strictly within the powers granted to it by Congress and that no injury hasbeen done to the plaintiff, but that on the contrary the plaintiff directly and as a participant in the general business welfare of the country has greatly advantaged thereby. For the foregoing reasons

this defendant says that the injunction and other relief in said bill sought against it should not be granted.

WHEREFORE this defendant prays that this suit be dismissed against it with its reasonable costs in this behalf expended.

Hollins N. Randolph

Robert S. Parker
Solicitors for Defendant Federal Reserve Bank of Atlanta.

Walter Wyatt

Montgomery B. Angell

Newton D. Baker
Of Counsel.