

OFFICE CORRESPONDENCE

X-4308

March 27, 1925.

To Mr. Wyatt, General Counsel. Subject: Effect of Recent Amendment
From Mr. Vest - Assistant Counsel to Judicial Code.

I have made a rather cursory examination of the authorities in order to determine as far as possible the effect of the recent amendment to the Judicial Code which provides that no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress. This act was passed February 13, 1925, and becomes effective May 13, 1925. Before making an examination of the legal authorities I investigated the Congressional Record in order to see if the debates in Congress while this statute was pending throw any light upon its purpose or effect. I did not find any reference, however, to that part of the statute which has to do with the jurisdiction of district courts. In the Report of the House Committee on the Judiciary submitting this bill, the provision limiting the jurisdiction of district courts is referred to but is not discussed.

Although I have not reached a definite conclusion in the matter it seems quite probable that the limitation of jurisdiction, when it takes effect on May 13, will be applicable not only to the future but also to pending proceedings. It seems to be a settled rule of law that jurisdiction over pending causes will be ousted by the repeal of the statute upon which such jurisdiction wholly depends. There are a number of cases in the United States Court supporting this doctrine. See Hallowell v. Commons, 239 U. S. 605; Railroad Company v. Grant, 98 U. S. 398; 15 Corp. Jur. 825. In accordance with this doctrine it appears that cases pending in the district courts of the United States which are in such courts solely by reason of the Federal incorporation of Federal reserve banks will after May 13 no longer be properly before the courts.

It is interesting to note that this act is very similar to that in which it was provided that jurisdiction of district courts of the United States should not extend to suits involving railroad companies upon the ground of Federal incorporation of such companies. This provision is a part of an act passed by Congress on January 28, 1915, which amended the Judicial Code in other respects. This act also contained a provision that it should not affect cases then pending in the Supreme Court of the United States but said nothing as to cases pending in the district courts. I have found no case involving the question whether cases pending in the district courts at the time

of the enactment of this statute in which jurisdiction was based alone on the Federal incorporation of a railroad company were affected, but under the doctrine just mentioned it would seem that the jurisdiction of the district courts in such cases, if any, must have ended upon the effective date of the statute.

Another very important question to the Federal reserve banks is whether or not such banks are to be considered citizens of any particular state within the meaning of the Judicial Code which gives to district courts jurisdiction over cases between citizens of different states. Federal reserve banks, of course, are organized under an Act of Congress and are, therefore, Federal corporations. They are citizens of the United States but it is at least doubtful whether they will be regarded as citizens of any particular state so that they can bring themselves within this provision of the Judicial Code. In the case of Bankers Trust Co. v. Texas & Pacific Railway, 241 U. S. 295, the question arose whether the Texas & Pacific Railway Co. which was incorporated under Act of Congress was a citizen of Texas by reason of the fact that it was a resident and inhabitant of that state. Mr. Justice Vandeventer in delivering the opinion of the Court held that this company, while a citizen of the United States, was not a citizen of a state for jurisdictional purposes. See also the case of Bacon v. Federal Reserve Bank of San Francisco, 289 Fed. 518.

It seems quite probable, therefore, that Federal reserve banks may, after May 13, 1925, sue or be sued in a United States District Court only when there is a Federal question involved in the case, regardless of the Federal incorporation of the reserve banks.

Respectfully,

George E. Vest,
Assistant Counsel.