BROOKINGS STATE BANK

v.

FEDERAL RESERVE BANK OF SAN FRANCISCO.

DECISION ON MOTION TO DISMISS.

WOLVERTON, D. J. May 19, 1925.

The first question in this case arises under the new act which was approved February 13, 1925, and which is brought into requisition here for showing that this court has been deprived of its jurisdiction to entertain the cause. Two or three sections of that statute are relied upon for that contention. It is provided by section 12:

> "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; Provided, that this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

Section 14 is also cited, which reads:

> "That this act shall take effect three months after its approval; but it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to a review, or the mode or time for exercising the same, as respects any judgment or decree entered prior to the date when it takes effect."

Now, there is the inclusion in the first case of certain corporations which own stock to exceed one-half of the capital stock. That must be read as excluding all other corporations. And in the second case, where

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

the statute includes the right of review, or the mode or the time of exercising the same, as respects any judgment or decree entered prior to the date when it takes effect, there is the inclusion of the judgment and decree, and we must read it as the exclusion of all other suits pending where the cases have not gone to judgment or decree. Based upon that idea, the court is of the opinion that the statute itself is not prospective, but retrospective. I have not attempted to go into the constitutional question, which has been ably argued by the plaintiff's counsel. What he has had to say is quite persuasive in my mind, but, for my present understanding and my present opinion, I believe that the statute itself is not prospective, but retrospective, and that that statute, as it applies to this case, will cut off further litigation.

The other question that is presented is whether or not the complaint shows that there is a federal question involved.

Now the complaint, in the first place, alleges;

"That the defendant, Federal Reserve Bank of San Francisco, is a corporation organized, created and existing under and by virtue of the laws of the United States, and being the Federal reserve system of the United States, the principal office of which is in the city of San Francisco, California; that said bank is doing business within the State of Oregon and has duly organized a branch bank in pursuance of the Federal Reserve Act, which said branch bank is located in Portland, Multnomah County, Oregon, and that said defendant is carrying on the business of a reserve bank and is doing business within the State of Oregon."

In addition to that, the complaint alleges:

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

"That the Federal Reserve Bank of San Francisco, in accordance with the policy adopted by the Federal Reserve Board and numerous other Federal Reserve Banks of the United States, has determined upon a policy of par clearance for all member banks which upon joining said system are required to agree to remit at par, and the Federal Reserve Bank of San Francisco, about the last of 1919 or the first of 1920, determined to force all banks throughout the twelfth Federal Reserve district, and particularly the plaintiff herein, to clear checks at par and determined to require the plaintiff bank to perform the services aforesaid without compensation to it."

And then it goes on to cite particular instances.

Those two clauses comprise all that is contained in the complaint touching the federal question, and the question arises whether that is sufficient to preserve the complaint as a good pleading.

Now, that it may not be said that I have overlooked the principle upon which the pleading must stand, I will quote from defendant's brief. In the case of Hull v. Burr, 234 U. S. 272, the court says:

"The general rule is firmly established that a suit does not so arise under the laws of the United States unless it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends. And this must appear not by mere inference, but by distinct averments according to the rules of good pleading; not that matters of law must be pleaded as such, but that the essential facts averred must show, not as a matter of mere inference or argument, but clearly and distinctly, that suit arises under some federal law."

There is another case which I will read from:

"When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit arising under the Constitution or laws. And it must appear on the record, by a statement in legal and logical form, such as is

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States, before jurisdiction can be maintained on this ground."

That is the statement of Chief Justice Fuller in Western Union Telegraph Co. v. Ann Arbor Railroad Company, 178 U. S. 239.

A further reference is made to the rule in Farson v. City of Chicago, 138 Fed. 184. There the court says:

"The court must look to the substance of the bill to determine whether there is in fact a federal question presented, or whether the federal question, if there be one, is but incidental to the controversy.... The federal courts should be slow to assume jurisdiction, unless it appears that a federal question is necessarily involved."

What is meant there by an incidental question maybe illustrated by suit for title under a patent, where it is questioned as to whether the patent itself was legally issued. That is incidental - that does not involve a federal question.

Now, we all understand very well what a federal question is. It is a question that arises "under the Constitution or laws of the United States, or treaties made or which shall be made under their authority. This class is commonly called federal questions, and a federal question is involved not merely when the construction of a federal statute incidentally arises, but when the case necessarily turns upon the construction of the federal laws, as when the plaintiff would be defeated by one construction, or successful by another."

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

That is found at page 235, Hughes' Federal Procedure (2 Ed.) And it is said further, as to pleadings (p. 36): "In order for this ground of jurisdiction to exist, a mere general allegation that the plaintiff's case rests upon a construction of the federal Constitution or statutes is not sufficient. The facts in his pleadings must show this. And it must also appear that the plaintiff's own case necessarily depends upon the construction of the federal Constitution or statutes."

I have read those authorities so that it might be understood that the court is not overlooking the principles of pleading upon which a federal question must rest before the pleading can be pronounced to include a federal question.

Now, in order to determine whether or not there is a federal question in existence here, the case of Farmers and Merchants Bank of Monroe, North Carolina, et al. v. Federal Reserve Bank of Richmond, Virginia, (262 U. S. 649), or some parts of it, may be read with effect. This, I should say, is a case where the State of North Carolina had passed an act which was thought by the plaintiffs to impinge upon the Constitution of the United States, and the act itself set forth its provisions touching the matters that are here now involved. The court had under consideration that act, as to whether it was constitutional, and, after setting forth the provisions of the Federal Reserve Act, section 13, and commenting upon that, and asserting what is meant by it, the court goes on and refers to the Hardwick Amendment, which declares;

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

"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."

And that is what is involved here very largely. After citing that amendment, the court cites the opinion of the Attorney General in his advice to the President, as follows:

"The Federal reserve act, however, does not command or compel these State banks to forego any right they may have under the State laws to make charges in connection with the payment of checks drawn upon them. The act merely offers the clearing and collection facilities of the Federal reserve banks upon specified conditions. If the State banks refuse to comply with the conditions by insisting upon making charges against the Federal reserve banks, the result will simply be, so far as the Federal Reserve Act is concerned, that since the Federal reserve banks can not pay these charges they cannot clear or collect checks on banks demanding such payment from them."

Thenthe court goes on to say, stating the conditions upon which this question arose and the cause for it:

"The Federal Reserve Board andthe federal reserve banks were thus advised that they were prohibited from paying an exchange charge to any bank. But they believed that it was their duty to accept for collection any check on any bank; and that Congress had imposed upon them the duty of making par clearance and collection of checks universal in the United States. So they undertook to bring about acquiescence of the remaining state banks to the system of par clearance. Some of the nonassenting state banks made stubborn resistance. To overcome it the reserve banks held themselves out as prepared to collect at par also checks on the state banks which did not assent to par clearance. This they did by publishing a list," etc. (Going on to state what was done and the efforts that were made).

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Now, there was a fourth contention against the constitutionality of the North Carolina Act, and the court, in commenting upon that contention, has this to say:

"One contention is that Sec. 2 conflicts with the Federal Reserve Act because it prevents the federal reserve banks from collecting checks of such state banks as do not acquiesce in the plan for par clearance. The argument rests on the assumption that the Federal Reserve Bank of Richmond is obliged to receive for collection any check upon any North Carolina state bank, if such check is payable upon presentation; and is obliged to collect the same at par without allowing deductions for exchange or other charge. But neither Sec. 13, nor any other provision of the Federal Reserve Act, imposes upon reserve banks any obligation to receive checks for collection. The act merely confers authority to do so. **** Moreover, even if it could be held that the reserve banks are ordinarily obliged to collect checks for authorized depositors, it is clear that they are not required to do so where the drawee has refused to remit except upon allowance of exchange charges which reserve banks are not permitted to pay."

Then in answering the fifth contention of the unconstitutionality of that act, the court says:

"The further contention is made that Sec. 2 conflicts with the Federal Reserve Act because it interferes with the duty of the Federal Reserve Board to establish in the United States a universal system of par clearance and collection of checks. Congress did not in terms confer upon the Federal Reserve Board or the federal reserve banks a duty to establish universal par clearance and collection of checks; and there is nothing in the original act or in any amendment from which such duty to compel its adoption may be inferred."

And then the court discusses the matter generally:

"Moreover, the contention that Congress has imposed upon the Board the duty of establishing universal par clearance and collection of checks through the federal reserve banks is irreconcilable with the specific provision of the Hardwick Amendment which declares that even a member or an affiliated non-member may make a limited charge (except to federal reserve banks) for 'payment of checks and . . . remission therefor by exchange or otherwise.' The right to make a charge for payment of checks, thus regained by member and preserved to affiliated non-member banks, shows that it was not intended, or expected, that the federal reserve banks would become the universal agency for clearance of checks."

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Now, that shows very pertinently and pointedly that the question is here, and it is a federal question, whether or not the Federal Reserve Bank may compel par clearance by state banks who are non-affiliated banks. That is the question upon which this case is founded, and it includes the attempt on the part of the Federal Reserve Bank to do an act that it was unauthorized to do - that Congress did not authorize it to do; and it persisted in that. This case that I have read from shows that, and the case I have before me shows it, - that the Federal Reserve Bank persisted upon its alleged right, power and authority to proceed to collect, and to compel the state banks, non-affiliated banks, to clear at par. It is an authority it did not have, and the court has so held. And this court has so held.

Now, the crucial test in this case, and the crucial question - and it is a federal question - is whether or not the Federal Reserve Bank can enforce such collection. It is all folly for a person to say that that question is not a question in this case. The only question is as to whether it has been sufficiently alleged so as to base a complaint upon it; that is, so as to make the complaint sufficient in its allegations. I think, taking the complaint all together, that it is sufficient. It states, first, that the Federal Reserve Bank is an organization under the Act of Congress; and then it states, second, that that organization has

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

entered upon a certain policy, and that it is proceeding to carry out that policy; and that specially in this case it is proceeding to enforce collection on a par basis. So there is your federal question. It is involved here. It is not stated specifically and pertinently to that end, but I think there is enough in the complaint to establish that it is good - especially at this time. If the point had been raised on demurrer to the complaint, as to whether this complaint stated a cause of action on that point, the court would probably have sustained the demurrer. But this case has gone on, an answer has been filed, it has been tried partially, and now a new trial is coming up, and the complaint is entitled to a liberal construction. I am giving it that construction now. It seems to me that, under the circumstances, this case ought not to fall simply because the jurisdiction of the court has been taken away from it to try cases on the simple ground that one of the parties is a corporation incorporated under an Act of Congress.

This is my conclusion, and I will overrule the motion.

I will say to counsel for plaintiff that, if in their advisement, they desire to amend this complaint, they may have authority to do so.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis