FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-4834

April 21, 1927.

SUBJECT: Topic for Governors' Conference - Member Bank stamping on cashier's check "not payable through Federal Reserve Bank".

Dear Sir:

The Board has voted to place on the program for the forthcoming Governors' Conference for consideration and discussion certain questions which have arisen as a result of a practice recently adopted by the First National Bank of Hartford, Alabama, of stamping on the face of its cashier's checks the phrase "not payable through the Federal Reserve Bank of Atlanta". There are enclosed herewith for your information on this matter copies of the letters received by the Board calling attention to this practice, together with a memorandum of Counsel to the Federal Reserve Board on the subject.

The Board has taken steps to employ the Honorable Newton D. Baker in this connection, and has referred this matter to him for an opinion as to whether the points involved may be successfully contested in the courts and on what grounds. The Board has requested that Mr. Baker submit his opinion in time for discussion at the forthcoming conference of Governors, and if his opinion is received in time it will be forwarded to you prior to the conference.

Very truly yours,

D. R. Crissinger,
Governor.

Enclosures:

TO GOVERNORS OF ALL F.R.BANKS.

To: The Federal Reserve Board.

From: Mr. Wyatt- General Counsel.

April 15, 1927. X-4834-a
Subject: National Bank stamping on its cashier's checks "Not payable through Federal reserve banks."

The attached correspondence relates to a practice recently adopted by the First National Bank of Hartford, Alabama, of stamping on the face of its cashier's checks the phrase "not payable through the Federal Reserve Bank of Atlanta."

It appears that recently several cashier's checks of the First National Bank of Hartford, Alabama, have been received by the Federal Reserve Bank of Atlanta, several of which were stamped "Not payable through the Federal Reserve Bank of Atlanta." Such checks were presented to the First National Bank of Hartford for payment in the ordinary way in cash letters sent to that bank by the Federal Reserve Bank of Atlanta, and were returned to the Federal Reserve Bank of Atlanta with the notation written on the backs of such checks, "Not payable through the Federal Reserve Bank." The Federal Reserve Bank of Atlanta returned such checks to the banks from which they were received with similar advice, taking the position that such checks are not negotiable and cannot be handled by the Federal reserve bank under the terms of Regulation J because they are not payable at par. The Federal Reserve Bank of Atlanta states that it has had no intimation from the officers of the First National Bank as to their reason for adopting this practice, but that it seems quite apparent that their purpose is to force the presentation of such checks through other channels, presumably to make it possible for the First National Bank to exact exchange charges in remitting for such checks.

Governor Harding suggests that if a national bank can prevent its Federal reserve bank from collecting one of the national bank's own cashier's checks in this manner by stamping on its face the words "Not payable through the Federal Reserve Bank of Atlanta", it could easily have these words printed on all checks which are issued to its customers, thereby preventing the Federal reserve bank from collecting such checks and that, if such a plan were successfully worked by one bank, it would soon be followed by others and the whole par clearance system would be seriously embarrassed.

RECOMMENDATIONS.

I am not yet prepared to make a definite recommendation as to exactly what legal steps should be taken; but, pending the determination of that question, I respectfully submit the following recommendations;

1. That this subject be put on the program for discussion at the next Governors' Conference;

2. That prompt action should be taken with a view of putting an end to the practice outlined above;

3. That whatever action is taken should be taken with a view of obtaining a final decision by the Supreme Court of the United States on the legal questions involved;

4. That, before determining the form of its legal action in the premises, the Board decide whether or not it desires to retain special counsel to handle this matter;

5. That, if the Board decides to retain special counsel, he be retained immediately and be consulted before the Board determines upon its form of legal action in the premises, in order that he might have an opportunity to frame the legal issues which he is to argue before the Supreme Court in accordance with his own views; and

6. That, if the Board decides to retain special counsel, it retain Honorable Newton D. Baker, in order to have the benefit of his recent experience in the Pascagoula Case.

DISCUSSION.

What Governor Harding says is obviously true. If the First National Bank of Hartford is successful in this practice it could extend such practice to all checks used by its customers and could in this way defeat the purpose of Congress to have all member banks remit at par through the Federal reserve banks. Moreover, if one member bank adopts such a practice the example would soon be followed by other member banks and the whole par clearance system would be jeopardized. It is obvious, therefore, that something should be done to stop this practice at its very inception.

The legal problems presented in this matter are much more difficult than those involved in any of the par clearance cases which have been tried heretofore. I believe, therefore, that the matter should be given very thorough consideration and should be discussed at the forthcoming Governors' Conference before the Board decides definitely upon a course of action. The discussion at the Governors' Conference might bring forth very helpful practical suggestions, and would have the advantage of enlisting the interest and support of all the Federal reserve banks in whatever course of action is decided upon.

Governor Harding has suggested that the Board might authorize the Federal reserve banks to charge such checks to the member bank's account, except in cases where such checks have been protested for actual lack of funds. By the provisions of Section V(4) of Regulation J, the Board has already provided that "any Federal reserve bank may reserve the right in its check collection circular to charge such items to the reserve account or clearing account of any such bank at any time when in any particular case the Federal reserve bank deems it necessary to do so;" and the Federal Reserve Bank of Atlanta has reserved the right in its check collection circular to charge checks to the reserve accounts of member banks on which they are drawn at any time when in any particular case it deems it necessary to do so. I seriously doubt, however, that this would be the best way to lay the foundation for a test suit. If this procedure were adopted, the suit probably would be brought by the member bank and this might result in the legal issues being unnecessarily complicated.

Two other possible courses of action have suggested themselves to me:

1. The Board might request the Comptroller of the Currency to institute a suit to forfeit the charter of the offending bank on the ground that its action in this matter is in violation of the provisions of the Federal Reserve Act.

2. The Federal Reserve Bank might become the actual owner of such checks (instead of a mere agent to collect them), by giving final credit for such checks to the bank from which it received them, and then bring suit against the drawee bank to enforce payment without the deduction of exchange charges.

Either of these courses of action, however, would present certain difficulties which will be discussed below.

When a suit is brought to forfeit the charter of a national bank for failure to comply with the provisions of the Federal Reserve Act, it is necessary at the very institution of the suit to state what provision of the Federal Reserve Act the national bank has failed to comply with. This bank has not attempted to exact an exchange charge in remitting to the Federal reserve bank for its checks but has merely declined to remit for such checks, and there is no provision in the Federal Reserve Act which specifically requires member banks to remit to Federal reserve banks for checks drawn on such member banks when presented through the mails for payment by a Federal reserve bank. The Hardwick Amendment merely prohibits the exaction of exchange charges against a Federal reserve bank.

Section 16, however, provides that, "Every Federal reserve bank shall receive on deposit at par from member banks or from Federal reserve banks checks and drafts drawn on any of its depositors", and the Supreme Court of the United States has construed this provision as follows:

> "The depositors in a Federal reserve bank are the United States, other Federal reserve banks, and member banks. It is checks on these depositors which are to be received by the Federal reserve banks. These checks from these depositors the Federal reserve banks must receive. And when received they must be taken at par." (Farmers & Merchants Nat. Bank v. Federal Reserve Bank of Richmond, 262 U. S. 649,665).

As construed by the Supreme Court, therefore, Section 16 provides that a Federal reserve bank must receive from its member banks all checks drawn on other member banks and that when such checks are received they must be received on deposit at par. It would seem that, being required to receive such checks, the Federal reserve banks must be authorized to collect them, and that the refusal of a member bank to pay such checks would be a non-compliance with the provisions of the Federal Reserve Act. Moreover, the legislative history of both Section 16 and Section 13 discloses a legislative intent to make all checks drawn on member banks collectible at par through the Federal Reserve System, and the action of the First National Bank of Hartford in this case is a clear attempt to thwart that legislative intent.

For these reasons, I am inclined to the opinion that the action of the First National Bank of Hartford in stamping upon its cashier's checks the words "Not payable through the Federal Reserve Bank of Atlanta" is in conflict with the intent, if not the letter of the Federal Reserve Act.

If, however, an attempt should be made to establish this proposition through a suit brought to forfeit the charter of the national bank, such suit

would be in the nature of a suit to enforce a penalty and every doubt would be resolved in favor of the defendant bank. I rather hesitate, therefore, to recommend that such a suit be instituted, especially in view of the fact that this bank has not clearly violated any specific provision of the Federal Reserve Act requiring the doing of certain things by member banks, and the court might very easily hold that the bank has not technically subjected itself to a forfeiture of its charter.

I am inclined to believe that a better way to test this question would be to have the Federal Reserve Bank of Atlanta become the actual owner of such cashiers' checks and bring a suit against the drawee bank to enforce payment. The holder of an ordinary check has no rights against the drawee bank, but the holder of a cashier's check can bring suit against the drawee bank to enforce payment. Moreover, such a suit would be an ordinary civil suit and there would be no reason for deciding every doubt in favor of the defendant.

The Hartford National Bank would naturally set up a defense that, by their very terms, such checks are not payable through the Federal Reserve Bank of Atlanta, and, therefore, the Federal Reserve Bank of Atlanta can acquire no rights in such checks which would be enforceable against the First National Bank. The Federal Reserve Bank of Atlanta could then argue along the lines indicated above that such a provision is contrary to the provisions of the Federal Reserve Act and contrary to public policy and therefore void and of no effect. If this proposition could be established the case would be won.

As stated above, the Federal Reserve Bank of Atlanta has taken the position that such checks are not negotiable and that, therefore, the Federal Reserve Bank is not authorized to handle them under the provisions of the Federal Reserve Act and Regulation J. Reference is made to an opinion of Counsel to the Federal Reserve Board published on page 459 of the Federal Reserve Bulletin of September 1916, wherein Judge Elliott held that a Federal Reserve Bank cannot be required to handle a non-negotiable check under section 16 because such an instrument is not a "check" within the meaning of that section. The First National Bank of Hartford might make this argument in defense; but if it did and was successful the necessary result would be that such checks would be held to be non-negotiable, and such a holding would practically put an end to this practice because no one wishes to receive non-negotiable checks in payment. In such an event, therefore, the Federal Reserve Bank would lose the suit but would gain the object of putting a stop to this practice.

I am not at all sure, however, that the words "Not payable through the Federal Reserve Bank of Atlanta" renders such checks non-negotiable. A similar practice has been in force in England for years. It is customary there to make checks payable only through some bank or banker or through a certain bank or banker. Such checks are known in England as "crossed checks" and have been held by the English Courts to be negotiable. 2 Daniel, Negotiable Instruments, (4 ed), Sec. 1585a.

AMERICAN CASES INVOLVING SIMILAR CHECKS.

I know of only two cases decided by the courts of this country involving checks containing provisions similar to that under consideration here. These cases are Commercial National Bank of Charlotte v. First National Bank of Gas-

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tonia, 118 N.C. 783, and Farmers Bank of Nashville v. Johnson, King & Company, 134 Ga., 486, 68 S. E. 85.

The case of Commercial National Bank of Charlotte v. First National Bank of Gastonia involved the validity of a stipulation stamped on the face of a check to the effect that, "This check will positively not be paid to the Gastonia Banking Company or its agents". The check came into the hands of the plaintiff which forwarded it to the Gastonia Banking Company for collection. The check was presented for payment to the Gastonia Banking Company and payment was refused. Without having the check presented through any other channel, the plaintiff then brought an action against the drawee bank for the amount of the check. The court held that the notation on the face of the check was valid and that the holder could not maintain his action against the drawer until the check had been presented to the drawee by some other agency than the Gastonia Banking Company and payment refused. In so holding the court said:

> "The holder of a check cannot maintain an action against the bank upon which the check is drawn until after the acceptance of the check by the bank. Bank v. Mallard, 10 Wallace, 153; Hawes v. Blackwell, 107 N.C. 196; Marriner v. Lumber Co., 113 N. C. 52. This is the uniform line of decisions in the Federal courts and our own, and it is sustained by the overwhelming weight of authority in other courts, though there are a few decisions in other states to the contrary. The bank is the agent of the drawer; till acceptance of the check, it has assumed no liability to the payee; its liability, if any, is to the drawer whose checks it has agreed to pay if it has the drawer's funds in hand, and for breach of that contract it is liable to the drawer, not to the payee- 'To its own master it must stand or fall.' A check is simply an order given by the principal upon his agent, and it is always open to the principal to countermand an order to its agent before it is executed, and there are occasions when it is important, to prevent imposition, that the drawer should have power to stop the payment of his check, without casting any liability upon the drawee. If the principal, the drawer, die before a check is presented, it becomes invalid, which could not be the case if the mere drawing the check created any liability in the drawee.
>
> "But the more important point, since it is now presented to us for the first time, is the validity of the stipulation stamped on the face of the check: 'This check will positively not be paid to the Gastonia Banking Company or its agents.' It appears that the check has never been presented to the drawee, the defendant bank, except by an agent of the Gastonia Banking Company. Consequently, if this restriction is valid, the holder cannot maintain this action against the drawer till the check has been presented to the drawee by some other agency and payment refused. In England the system of 'crossed checks' has long been recognized as valid. 2 Daniel Neg. Inst., Sec. 1585a; Smith v. Bank, 10 L.R., (O.B.) 295, which was affirmed on appeal, and is reported 1 L.R. 2 B. Div., 31. By that

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system there is stamped across the face of the check the name of a certain banker through whom it must be presented for payment, and if presented by any one else it will not be honored. This does not destroy the negotiability in any wise. The present case does not go that far, but merely stipulates that the check will not be honored if presented through one agency named. This can not be deemed an unreasonable restriction of trade. Nor is it a boycott. There is no evidence of a conspiracy to injure the agency named, but it is agreed as a fact that it was an effort on the part of the drawer firm to prevent its transactions and the nature and extent of its business becoming known to a rival house by its checks passing through that channel. Besides, if it were a boycott, the parties to it are the drawer and the payee who accepted the check with that restriction stamped on it. And if it was an illegal transaction, the check itself, and not merely the stipulation which is part of it, would be void. Ex mala causa non oritur actio. The restriction is a part of the check, (Tiedman Com. Paper, Section 41 and 42; Benedict v. Cowen, 49 N.Y. 396,) and if it is invalid the court could not separate the good from the bad. (Saratoga v. King, 44 N.Y. 87) but it would all be bad and the holder could not recover. In analogy, a conveyance of property, real or personal, with a condition not to alien to a certain person or class of persons, or for a certain time, is valid. Cowell v. Springs, 100 U. S., 57; Gray v. Blanchard, 8 Pick., 288 Sheppard's Touch Stone, 129, 131; Coke on Littleton, 223.

"In Smith v. Lawrence, 2 N.C., 200 this court held that a note could be limited so as to be payable to the payee only. But it is not necessary to consider here the principle maintained in that case, that the drawee can by stipulation therein make the check not assignable, for this is not attempted here, but there is simply a stipulation that it shall not be paid if presented through the agency named, Wilcoxson v. Logan, 91 N.C. 449 holds merely that where a note is made payable to A.B., without the addition of the words 'or order', or bearer, the holder thereof can maintain an action thereon, being the party in interest. There can be no question raised as to the validity of an express stipulation that the note could not be assigned at all, or would not be honored if presented by a particular party, as in this case, nor by any party except one named as in the case of the English 'cross checks'. These questions could not arise, for there was in that case no stipulation to either effect. On the facts agreed, judgment should have been entered for the defendants."

In the case of Farmers Bank of Nashville v. Johnson, King & Co., supra, decided by the Supreme Court of Georgia in 1910, the facts were as follows: Johnson, King & Company issued certain checks containing on their faces the words, "Payable through the Citizens Bank of Valdosta, Valdosta, Georgia, at current rate." These checks were drawn on the Bank of Nashville, Nashville, Georgia, and were presented to that bank by the Farmers Bank of

Nashville, Georgia. Upon presentation, the Bank of Nashville entered on the back of the checks the words, "Will pay when presented through the Citizens Bank of Valdosta, Georgia." Thereupon, the Farmers Bank of Nashville caused the checks to be protested. Johnson, King & Co., the drawer of the checks, brought a suit for damages against the Farmers Bank of Nashville, alleging that the defendant had wilfully disregarded the terms on which such checks were payable, and for the purpose of casting suspicion upon the credit of the plaintiff before the commercial world, protested the checks and thereby damaged the plaintiff. The Court held that:

1. The words "payable through the Citizens Bank of Valdosta, Valdosta, Georgia, at current rate" was a material part of such checks and that the drawee bank was not required to pay the checks when not presented through the bank thus named;

2. That, since such checks were not presented for payment through the Citizens Bank of Valdosta, the protest of such checks was unauthorized; and

3. That the action of the holder of the checks in unlawfully causing a protest of them to be made and notice to be given to the drawer or endorsers without proper presentation for payment, according to its terms, furnished a cause of action to the drawer.

In other words, the Court held that the Farmers Bank of Nashville was liable in damages to Johnson, King & Company for unlawfully protesting such checks.

In so holding the court said:

> "In England there is a well known usage, which has now been made the subject of an act of Parliament, for the drawer or holder of a check to 'cross' it with the name of a banker.
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> "In 2 Daniel on Negotiable Instruments (5th Ed.) Sec. 1585a, it is stated that the effect of this was, 'before the statute which now exists, a direction of the drawee bank to pay the check to no one but a banker; or rather, according to the cases, with only a caution or warning to the drawees that care must be used, in paying to any one else.
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> "In 1 Morse on Banks & Banking (4th Ed.) sec. 245, it was said: 'In this country the system of 'crossed checks', strictly so called, is unknown. But of late the germ of a similar custom has begun to manifest itself. Occasionally checks have stamped or written upon them some form of words which is intended to secure their payment exclusively through the clearing house. No especial form has yet been generally accepted and the legal effect of none of those in use has ever been passed upon. It is safe to say, however, that there is no question but that the drawer could embody in his order or direction to his bank to pay only upon such

presentation of the instrument in the usual course through the clearing house, and that such a direction would be as valid and as binding upon the bank as a direction to pay only to the order of a particular person. If the check be payable to the order of A.B. it is probable that the privilege of including such instruction in his order, when indorsing over, might be accorded to him, certainly indorsements in this form are very frequent, and no bank would be safe in disregarding them. Supposing the direction to be properly given, the collecting and the paying bank must both respect it, and the English cases above mentioned would be precedent directly in force. It would amount to an express designation by the drawer, or the payee, of the manner alone in which payment is authorized to be demanded or made.

"A check being in the nature of an order on a bank or banker to pay a certain sum purporting to be on deposit, there would seem to be no reason why the drawer could not direct the bank to pay only when presented through a specified channel or by a particular person or bank. The drawer is not compelled to make the check payable to bearer or order. Likewise, no sound reason is perceived why, in giving direction to the bank of deposit, he cannot make an addition to the mere order for payment. If the person to whom the check is delivered is not willing to accept it with such direction, he can reject it; but if he accepts it payable only through a particular bank, or through a particular banker, he cannot insist that the bank on which it is drawn must disregard this direction given to it by its depositor on the face of the paper. No ground has been suggested why such a direction by one to his banker in ordering the latter to pay money, is illegal or unreasonable; the banks being in the same state and notfar distant from each other. The case in hand does not present the question of whether the drawer of the check has been wholly or partially discharged by negligence or delay in presentation, but whether, in giving direction to his banker to pay the check, he can lawfully direct payment to be made through a certain medium, and whether the bank, when so instructed, is bound to disregard such direction at the demand of another collecting bank.

* * * * * * * * *

"It follows from what has been said, that under the allegations of the petition, the drawee bank had a right to decline to pay the checks until presented through the Valdosta Bank, and that upon its entering upon the back of the check that it would pay when so presented, the collecting bank was not authorized to cause the check to be presented and notice to be given."

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QUESTION OF RETAINING SPECIAL COUNSEL.

Since the practice under consideration is one which threatens the existence of the entire par clearance system, it is a matter of the gravest importance to the entire Federal Reserve System, and if a test suit of any character is instituted it should be instituted with a view of carrying the case to the Supreme Court of the United States if necessary in order to get a favorable decision. Unless, therefore, the Board is willing to have the case argued in the Supreme Court by this office or by local counsel to one of the Federal Reserve banks, it would be advisable to retain and consult special counsel before the suit is instituted, in order that such special counsel might frame in accordance with his own views the issues of law which he will have to argue before the Supreme Court.

Both Mr. Vest and I are members of the Bar of the Supreme Court of the United States; and, if the Board so desires, this office is fully prepared to and is perfectly willing to handle such a test case from its inception through the final argument in the Supreme Court. A suit such as this, however, would be infinitely more difficult to win than any of the other par clearance cases which have been tried heretofore and naturally we could not undertake to assure the Board that such a test case would be successful.

If the Board desires to employ special counsel, I respectfully recommend that it retain Honorable Newton D. Baker. In my opinion no one could handle such a suit better than Mr. Baker and it would be especially appropriate to retain him because of his familiarity with the subject due to his recent handling of the Pascagoula case.

If the Board desires to retain special counsel, this office will be very glad to cooperate to the fullest extent with such counsel and I respectfully suggest that he be retained with the understanding that he will consult and cooperate with this office to the fullest extent, in order that he may have the benefit of our specialized knowledge on this subject.

If the Board decides to retain special counsel to represent the Board itself and not the Federal reserve banks, it will be necessary to fix his compensation in advance, in order to comply with the requirements of section 11(e) of the Federal Reserve Act, which authorizes the Board to employ attorneys but provides that,

> "All salaries and fees shall be fixed in advance by said Board."

CONCLUSION.

I shall continue to study this problem with a view of being prepared to recommend to the Board a definite course of action; but in the meantime I respectfully recommend that the Board put the subject on the program for discussion at the next Governors' Conference. It is obviously a matter of system-wide importance and a discussion of it at the Governors' Conference might bring forth very helpful suggestions. It would at least enlist the active interest and support of all the Federal reserve banks and would prepare them to join in employing special counsel if the Board should decide that such a course is advisable.

Respectfully,
(Signed) Walter Wyatt, General Counsel.

COPY

FEDERAL RESERVE BANK

OF ATLANTA

March 25, 1927.

Federal Reserve Board,
Washington, D. C.

Dear Sirs:

I am enclosing herein for your information copy of a telegram from the Cashier of the Federal Reserve Bank of Boston, copies of letters of Mr. M. W. Bell, Cashier of this bank, to the Cashier of the Federal Reserve Bank of Boston, and to Mr. Ellis D. Robb, Chief National Bank Examiner.

These letters relate to the practice recently adopted by the First National Bank of Hartford, Alabama, in stamping on the face of their cashier's checks the phrase "not payable through the Federal Reserve Bank of Atlanta."

Very truly yours,

(s) Oscar Newton,

Federal Reserve Agent.

Enclosures.

COPY

FEDERAL RESERVE BANK

OF ATLANTA

March 24, 1927.

Mr. Ellis D. Robb,
Chief National Bank Examiner,
Atlanta, Georgia.

Dear Mr. Robb:

For your information, I am enclosing copy of a letter today addressed to Mr. William Willett, Cashier of the Federal Reserve Bank of Boston, dealing with a practice recently adopted by The First National Bank of Hartford, Alabama, in using a rubber stamped phrase on the face of their cashier's checks reading "not payable through the Federal Reserve Bank of Atlanta".

Nothing in the way of information can be added to what is stated in our letter to Mr. Willett, but it appears to us that this is a matter which should be brought to the attention of the Comptroller of the Currency, as it is possible that he may have the authority to require the discontinuance of the use of this restriction as to payment of these checks. We know of no remedy that we can employ as we cannot legally exercise any control over our member banks' practices in this respect.

Yours very truly,

M. W. Bell,
C a s h i e r.

COPY

K-4834-C

FEDERAL RESERVE BANK

OF ATLANTA

March 24, 1927.

Mr. William Willett, Cashier,
Federal Reserve Bank of Boston,
Boston, Massachusetts.

Dear Mr. Willett:

I have your wire of this date requesting that we write full particulars relative to the return to you of a check drawn on The First National Bank, Hartford, Alabama, on which is stamped the phrase "not payable through Federal Reserve Bank of Atlanta".

We are unable to determine from our records just what particular check your telegram refers to, but we assume that it is a cashier's check drawn by The First National Bank of Hartford.

In the last few days, several cashier's checks of this bank have reached our transit department and those stamped with the phrase referred to when presented by us in the ordinary way in our cash letters have been returned to us by The First National Bank with notation written on the backs of the checks "not payable through the Federal Reserve Bank". Two of these checks were included in today's business - one of them is drawn under date of March 3, 1927, bearing the number 17215, drawn to the order of Miss Aileen Metcalf for the amount of $100.00. The other is dated March 9, 1927, bearing the number 17229, drawn to the order of Miss Emma Nell Metcalf for the amount of $5.00. Each of these checks bear rubber stamp phrase in two places on the faces thereof reading "not payable through the Federal Reserve Bank of Atlanta". Both of these checks were forwarded to The First National Bank of Hartford in our cash letter dated March 21, 1927 and were today returned to us with the notation on the back of them "not payable through the Federal Reserve Bank."

We have had no intimation from the officers of The First National Bank as to their reason for adopting the use of this restriction, but it seems quite apparent that their purpose is to force the presentation of the checks through channels other than the Federal Reserve Bank, presumably to make it possible for The First National Bank to charge exchange when they are presented through other channels.

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We understand that the laws of Alabama permit banks to pay checks drawn on them by their customers and also to pay their own cashier's checks by means of drafts or exchange drawn on their commercial depositaries, subject to an exchange or service charge for remitting, and in the past some of our member banks of that State resorted to the practice of stamping on their cashier's checks and also on some of their customers' checks a phrase reading "payable in New York exchange at current rates".

In the opinion of our counsel and we believe also the counsel of the Federal Reserve Board, such checks are not negotiable, in that they are not an unconditional order for the payment of funds in cash, and that as a consequence Federal Reserve Banks have no power or authority to require member banks using this phrase on their checks to remit for such checks at par. Therefore, under the conditions of the Federal Reserve Board's Regulation "J", they cannot be handled by Federal Reserve Banks for collection, because they are not payable at par.

It is our intention to call this situation to the attention of the Comptroller of the Currency through Mr. Ellis D. Robb, the Chief National Bank Examiner of this District, for such action as the Comptroller may desire to take.

Very truly yours,

M. W. Bell,
C a s h i e r.

C O P Y

FEDERAL RESERVE BANK OF
ATLANTA

X-4834-e

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BOSTON MASS 225 P MAR 24 1927

ATLANTA GA.

PLEASE WRITE FULL PARTICULARS RELATIVE TO RETURNING CHECK ON FIRST NATIONAL BANK HARTFORD ALABAMA ON WHICH IS NOTED "NOT PAYABLE THROUGH FEDERAL RESERVE BANK OF ATLANTA" AS WE ARE UNABLE TO UNDERSTAND IT ON ACCOUNT OF BOARD REGULATION J WHICH REQUIRES FEDL RESERVE BANKS TO COLLECT AT PAR CHECKS DRAWN ON MEMBER BANKS IN THEIR DISTRICT

WILLETT

142 PM.

THE FIRST NATIONAL BANK
Of Hartford.

Hartford, Ala. March 9, 1927 No.17227

Not payable through
Federal Reserve Bank,
Atlanta, Ga.

Pay to the
order of B. Altman & Co.....$6.00

.....Six Dollars.....

CASHIER'S CHECK

(Signed) Q. J. Borland
a/Cashier

COPY

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FEDERAL RESERVE BANK

OF BOSTON

X-4834-g

March 24, 1927

Dear Governor Crissinger:

A few days ago we received for collection Cashier's check of the First National Bank of Hartford, Alabama, copy of which is enclosed herewith. We sent this check in regular course to the Federal Reserve Bank of Atlanta and have received it back unpaid today. The endorsement shows that the check was duly forwarded to the bank at Hartford, Alabama, by the Federal Reserve Bank of Atlanta, and the reason for dishonor is given on the back as "not payable through the Federal Reserve Bank".

It seems to me that this is a proper matter to bring to your attention for if a National bank can prevent its Federal reserve bank from collecting one of the National bank's own cashier's checks in this manner by stamping it on the face "Not payable through the Federal Reserve Bank Atlanta, Ga.", it could easily have these words printed on all checks which are issued in book form to its customers, thereby preventing the Federal Reserve Bank of the power to collect such checks. Such a plan successfully worked by one bank would soon be followed by others and the whole par collection system would be seriously embarrassed.

It seems to me that in a case like this, the Board might take the bull by the horns and authorize the Federal reserve bank to charge such checks to the member bank's account except in cases where the check may have been protested for actual lack of funds.

Very truly yours

(Signed) W. P. G. Harding,
Governor.

Hon. D. R. Crissinger, Governor,
Federal Reserve Board,
Washington, D. C.