LOUISVILLE & NASHVILLE RAILROAD CO. :
:
V. :
:
NASHVILLE BRANCH OF THE FEDERAL :
RESERVE BANK OF ATLANTA, et al. :

Findings and Opinion.

This is a suit to recover of the Nashville Branch of the Federal Reserve Bank of Atlanta and the American National Bank $3995.00, with interest from July 14, 1924.

The suit is predicated upon the failure of the two banks to collect three cashier's checks, drawn by and on the Peoples Bank of Springfield, Tennessee, and endorsed by the complainant and deposited for collection with the American National Bank, and by that bank delivered to the Nashville Branch of the Federal Reserve Bank of Atlanta for collection.

It is alleged that the American National Bank was negligent in selecting the Reserve Bank as its agent to clear or collect these checks, and that the Reserve Bank was negligent in sending these checks to the Peoples' Bank at Springfield, the drawee, and permitting that bank to hold said checks without remitting, until its failure.

The bill further alleges that the regulations of the Federal Reserve Board did not alter the responsibility of the Nashville Branch of the Federal Reserve Bank, nor render non-actionable or non-negligent a practice which, under the laws of Tennessee, is negligent, towit, forwarding a check direct to the bank on which it

is drawn for collection; and that the American National Bank in selecting the Federal Reserve Bank as its agent for handling the checks became responsible to the complainant to the same extent as if the American Bank had itself forwarded these checks direct to the Peoples' Bank of Springfield.

The defendants deny they were negligent and rely upon certain regulations adopted by the Federal Reserve Board and the Federal Reserve Bank of Atlanta, in force and effect when the transaction complained of occurred, authorizing the defendant banks to handle the checks in the manner they did, and that these checks were handled in accordance with the uniform custom and usage obtaining among banks in Nashville and the regulations of the Federal Reserve Board and the Federal Reserve Bank of Atlanta. They aver that these regulations have the legal force and effect of federal statutes, and as such are binding on the complainant with reference to the checks sued on in this case, and that the complainant authorized the American National Bank to follow the general banking custom or usage prevailing in Nashville in making collection of these checks.

The facts material to the determination of the question involved follow:

The Federal reserve system was created by an Act of Congress December 23, 1913. Section 11 of this Act expressly empowers the Federal Reserve Board to make all rules and regulations necessary to enable the Board to effectively perform the duties, functions or services specified in the Act, and to exercise a general supervision over all Federal Reserve Banks. Section 16 of the Act authorizes the Federal Reserve Board to promulgate from

time to time regulations governing the transfer of funds, charges therefor, and in its discretion may exercise the functions of a clearing house for such Federal Reserve Banks, or may designate a Federal Reserve Bank to exercise the function of a clearing house for its member banks. See 38 Statutes at Large, 251-264.

The Federal Reserve Act, (38 Statutes, 251), Secs. 9785-9805, U. S. Compilation Statutes 1916, and the Acts amendatory and supplementary thereof, constitute the charter of the federal reserve system. The general control and supervision of this system is lodged in the Federal Reserve Board, consisting of six members, appointed by the President with the consent of the Senate. The Secretary of the Treasury and the Comptroller of the Currency are members ex-officio of this Board.

The United States is divided into districts, and there is a federal reserve bank in every district. The reserve bank for this district was established in 1914 and located in Atlanta, and a branch thereof was established and located in Nashville in 1919, known as the Nashville Branch of the Federal Reserve Bank of Atlanta. The Nashville Branch of the Federal Reserve Bank of Atlanta clears at par and all national banks are required by law to be members of this system, and upon their failure to become members, their charters are forfeited.

The Federal Reserve Banks are national, not state, institutions, existing and operating under the laws of the Federal Government and those laws provide for a Federal Re-

serve Board appointed by the President, with power to make and promulgate rules and regulations for the government of Federal Reserve Banks and their branches, and of all banks which become members of the federal reserve system.

Regulation J, Series of 1924, adopted by the Federal Reserve Board, is as follows:

"SECTION V. TERMS OF COLLECTION:

"The Federal Reserve Board hereby authorizes the Federal Reserve Banks to handle such checks subject to the following terms and conditions; and each member and nonmember clearing bank which sends checks to any Federal Reserve Bank for deposit or collection shall by such action be deemed (a) to authorize the Federal Reserve Banks to handle such checks subject to the following terms and conditions, (b) to warrant its own authority to give the Federal Reserve Banks such authority and (c) to agree to indemnify any Federal Reserve Bank for any loss resulting from the failure of such sending bank to have such authority.

"(1) A Federal Reserve Bank will act only as agent of the bank from which it receives such checks and will assume no liability except for its own negligence and its guaranty of prior indorsements.

"(2) A Federal Reserve Bank may present such checks for payment or send such checks for collection direct to the bank on which they are drawn or at which they are payable, or in its discretion may forward them to another agent with authority to present them for payment or send them for collection direct to the bank on which they are drawn or at which they are payable.

"(3) A Federal Reserve Bank may in its discretion and at its option, either directly or through an agent, accept either cash or bank drafts in payment of or in remittance for such checks and shall not be held liable for any loss resulting from the acceptance of bank drafts in lieu of cash, nor for the failure of the drawee bank or any agent to remit for such checks, nor for the non-payment of any bank draft accepted in payment or as a remittance from the drawee bank or any agent.

"(4) Checks received by a Federal Reserve Bank on its member or nonmember 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 bank draft acceptable to the collecting Federal Reserve Bank, or at the option of such Federal Reserve Bank to authorize such Federal Reserve Bank to charge their reserve or clearing accounts; provided, however, 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.

"(5) Checks received by a Federal Reserve Bank payable in other districts will be forwarded for collection upon the terms and conditions herein provided to the Federal Reserve Bank of the district in which such checks are payable.

"(6) The amount of any check for which payment in actually and finally collected funds is not received shall be charged back to the forwarding bank, regardless of whether or not the check itself can be returned."

Circular No. F 5 of the Federal Reserve Bank of Atlanta provides as follows:

"The Federal Reserve Bank of Atlanta will handle checks and other cash items subject to the following terms and conditions, and each member and non-member clearing bank which sends checks for deposit or collection to the Federal Reserve Bank of Atlanta (and branches) or to another Federal Reserve Bank direct, for our account, will be understood to have agreed to said terms and conditions and by such action shall be deemed (a) to authorize the Federal Reserve Bank of Atlanta to handle such checks subject to the following terms and conditions, (b) to warrant its own authority to give the Federal Reserve Bank of Atlanta such authority and (c) to agree to indemnify the Federal Reserve Bank of Atlanta for any loss resulting from the failure of such sending bank to have such authority.

"(1) The Federal Reserve Bank of Atlanta (and branches) will act only as agent of the bank from which it receives such checks and will assume no responsibility or liability except for its own negligence and its guaranty of prior endorsements.

"(2) The Federal Reserve Bank of Atlanta (and

branches) may present such checks for payment or send such checks for collection direct to the bank on which they are drawn or at which they are payable, or in its discretion may forward them to another agent with authority to present them for payment or send them for collection direct to the bank on which they are drawn or at which they are payable.

"(3) The Federal Reserve Bank of Atlanta (and branches) may in its discretion and at its option, either directly or through an agent, accept either cash or bank drafts in payment or of in remittance for such checks and shall not be held liable for any loss resulting from the acceptance of bank drafts in lieu of cash, nor for the failure of the drawee bank or any agent to remit for such checks, nor for the non-payment of any bank draft accepted in payment or as a remittance from the drawee bank or any agent.

"(4) Checks received by the Federal Reserve Bank of Atlanta (and branches) 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 bank draft acceptable to the Federal Reserve Bank of Atlanta, or at the option of said Federal Reserve Bank to authorize said Federal Reserve Bank to charge their reserve accounts or clearing accounts; and the Federal Reserve Bank of Atlanta (and branches) reserves the right to charge such items to the reserve account or clearing account of any such bank at any time when in any particular case it deems it necessary to do so."

The agent of the complainant at Springfield would take the cash he had received from the business of the L. & N. Railroad at that point to the Peoples' Bank at Springfield, and get cashiers' checks for it, which checks he would deposit with the American National Bank at Nashville. Cashier's check 1090, issued by the Peoples Bank of Springfield on July 7, 1924, payable to the L. & N. R.R. was for $450.00, and was endorsed by the complainant and deposited for collection with the defendant American National Bank on July 8, 1924. The American National Bank endorsed this check on July 8, 1924, and delivered it to the Nashville Branch

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of the Federal Reserve Bank of Atlanta, which bank endorsed it under date of July 9, 1924, and forwarded it direct to the Peoples Bank of Springfield, and it was received by that bank on July 10, 1924. Cashier's check No. 1091 was issued by the Peoples Bank of Springfield July 8, 1924, payable to the order of the L. & N. R. R. in the sum of $1425.00, and was endorsed by it and deposited for collection in the American National Bank on July 9, 1924, and by that bank on the same day endorsed and delivered for collection to the Nashville Branch of the Federal Reserve Bank of Atlanta, and that bank also endorsed the check on July 9, 1924, and forwarded it for collection direct to the Peoples Bank at Springfield, and it was received by that bank on July 10, 1924. Cashier's check 1092 was issued by the Peoples Bank of Springfield dated July 9, 1924, payable to the order of the L. & N. R. R. for $2120.00 and endorsed by that company and deposited for collection in the American National Bank on July 10, 1924, and by the American Bank endorsed on July 10, 1924, and delivered to the Nashville Branch of the Federal Reserve Bank and that bank on the same day forwarded same for collection direct to the Peoples Bank at Springfield, and the latter bank received it on July 11, 1924. Two of these checks came into the hands of the Peoples Bank on July 10th, and the third on July 11th, and the Peoples Bank was the drawee in each one of these checks.

The Peoples Bank was open for business July 10th, 11th, 12th, and on the 14th, which was Monday, but did not open for business on July 15, 1924, and on that day was taken over by the State Bank Examiner about eleven o'clock A. M. Sunday, July 13th, was a holiday, and Monday, July 14th, was observed as such by the Nashville banks but was not observed at Spring-

field. At no time prior to July 15, 1924, did the Federal Reserve Bank at Nashville, the American National Bank, or the Robertson County Bank & Trust Co., the Springfield Bank and the Commerce-Union Bank, the three banks at Springfield, suspect the insolvency of the Peoples Bank, and all did business with the latter bank. The L. & N. agent at Springfield deposited cash and received cashier's checks on July 10, 12th and 14th, with and from the Peoples Bank. On the 14th he deposited $710.00 and received a cashier's check for that amount, and on July 14th the banks at Springfield did banking business as usual with the Peoples Bank, and this was the last day that bank was open for business.

The L. & N.'s agent at Springfield had deposited with the American National Bank daily for more than four years. The L. & N. had designated the American National Bank as its depositary and instructed its agent at Springfield to deposit his daily receipts with that bank, together with about forty-two local agents throughout Tennessee and Kentucky. The local agent of the L. & N. at Springfield would take his receipts, moneys, checks, drafts, etc., to the Peoples Bank at Springfield and exchange them for cashier's checks drawn on that bank by its cashier, and made payable to the L. & N. and these would be deposited in the American National Bank. He continued to do this up to the time the Peoples Bank closed on July 14th, and on that date, as stated, bought a cashier's check with his daily receipts for $710.00. Mr. Noel, the only official of the L. & N. examined as a witness by the complainant, and who is assistant treasurer of the home office at Louisville, testified that he had been in the treasurer's office for about thirty years and knew through the press that national banks were members of the

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Federal Reserve banking system. He further testified that no instructions were given to any of its bank depositaries as to the collection of checks delivered to them for collection, but it was left to the general custom of the locality or region where the depositary bank was located to collect the checks in accordance with their custom as stated.

Since the year 1920 the complainant has deposited with the American National Bank for collection items on banks, including the Peoples Bank at Springfield, Tennessee, and has left the American Bank free to follow the banking uses and customs at Nashville with reference to collecting items of this character. The Nashville Branch of the Federal Reserve Bank of Atlanta was established in Nashville in 1919 and since its establishment it has been the uniform custom and usage of members of the Federal Reserve banking system at Nashville, the American National Bank being a member, to use the Reserve Bank for making collections on banks outside of Nashville.

Springfield is known to the Federal Reserve Bank at Nashville as a three-day point, as three days represent the ordinary time in which items are deposited for collection until remittances thereon are received. On July 11th, 1924, Mr. Stratton, one of the officers of the Peoples Bank,was in Nashville and as that bank had been rather slow in its remittances, Mr. Fort, one of theofficials of the reserve bank, spoke to Mr. Stratton about it and was informed by Mr. Stratton that he was expecting to get in three large loans from debtors in Robertson County known to Fort, and was arranging for a loan of $50,000.00 from the American National Bank of Nashville.

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The next day, July 12, Mr. Fort was informed by the officers of the American National Bank that a loan for $50,000.00 to the Peoples Bank at Springfield was pending and would be consummated. This opinion was so satisfactory to Mr. Fort that the Federal Reserve Bank at Nashville sent to the Peoples Bank at Springfield on July 12th items for collection amounting to over $52,000.00. The banks at Nashville observe Saturday as a half holiday, and July 12th came on Saturday, and the following Monday, July 14th, was observed as a holiday by these banks. When the Peoples Bank closed its doors on July 15th, it had cash on hand of $15,925.15.

In July, 1924, there was no member bank of the Federal Reserve system at Springfield, Tenn., and the Peoples Bank at that point and three other banks there cleared at par items sent them by the Federal Reserve Bank for collection, and the items on the Springfield banks had been forwarded directly to the drawee by the Federal Reserve Bank for collection and remittance.

On July 8, 1924, the Federal Reserve Bank at Nashville forwarded to the Peoples Bank at Springfield items in excess of $33,000.00.

During the week of July 7-12, 1924, the Peoples Bank had remitted to the Federal Reserve Bank at Nashville on account of items forwarded it for collection approximately $118,000.00.

The Federal Reserve Bank at Nashville from July 7-14, 1924, continued to send items to the Peoples National Bank for collection so that on July 14, 1924, the total amount of such items in the Peoples Bank sent by the Reserve Bank amounted to approximately $121,000.00.

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It has been the custom certain and uniform obtaining in Nashville, to send checks for collection to the drawee bank and this system has prevailed since the establishment of the Nashville Branch of the Federal Reserve Bank in Nashville in 1919, and is expressly authorized by regulations of the Federal Board.

The Congress may vest in Federal Boards the power to issue rules and regulations and these rules and regulations have the force and effect of law . Field v. Clark, 143 U. S. 649; U. S. v. Grimaud, 220 U. S. 506; Morrill v. Jones, 106, U. S. 466; Caha v. U. S. 152 U. S. 211; U. S. v. Eaton, 144 U. S. 677; In re Kellock, 165 U. S. 526; Buttfield v. Stranahan, 129 U. S . 470; U. S. v. United Copper Co., 196 U. S. 207; Union Bridge Co. v. U. S., 204 U. S. 364; Williamson v. U. S. 207 U. S. 425; American Sugar Ref. Co. v. U. S. 211 U. S. 155; U. S. v. Antikamnia Co., 231 U. S. 654; Mutual Film Corp. v. Ohio, 236 U. S. 230; Oceanic Nav. Co. v. Stranahan 214 U. S. 320; Wichita R. Co. v. Kansas, 260 U. S. - ; U. S. v. Mich. Portland Cement Co..46 Sup.Ct. 395 (decided Apr.12, 1926); Thornton, et al. v. U. S., 46 Sup.Ct., 587, (decided June 1, 1926); Tindle, et al v. Heiner, 17 Fed. (2d) 522.

In the case of First National Bank v. Fellows, 244 U. S. 416, the Supreme Court of the United States, discussing this subject, said:

> "Before passing to the question of procedure we think it necessary to do no more than to say that a contention which was pressed in argument which it may be was indirectly referred to in the opinion of the court below, that the authority given by the section to the Reserve Board was void because conferring legislative power on that board is so plainly adversely disposed of by many previous adjudications as

to cause it to be necessary only to refer to them".

In Tennessee, power is often given to boards to make rules and regulations which have the effect of statutes. Bishop v. State, 122 Tenn. 729; Hyde v. State, 131 Tenn. 215; House v. Creveling, 147 Tenn. 597.

Courts, both federal and state, take judicial notice of rules and regulations promulgated by federal boards pursuant to the powers vested in them by the Congress. Caha v. U. S., 152 U. S. 211; Thornton v. U. S., 46 Sup. Ct. 595, decided June 1, 1926; State v. Southern Ry. Co., 141 N. C. 855.

In the Caha case, supra, the Supreme Court of the United States said:

> "It may be laid down as a general rule deducible from the cases, that wherever by the express language of any act of Congress, power is entrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the Courts take judicial notice."

It was held in the case of Milling Co. v. Bank, 120 Tenn. 225, that a bank was guilty of negligence in sending for collection a check directly to the drawee bank. The reason for this rule is that the drawee bank cannot be the disinterested agent of the creditor to collect the debt, and is not a suitable agent in contemplation of law to enforce in behalf of another a claim against itself, and it is not reasonable care to select an agent known to be interested against the principal and put the latter into the hands of its natural adversary.

It has been held in this State that a custom or usage which violates a settled rule of law cannot be given force and effect. R. R. Co. v. Naive, 112 Tenn. 255.

The case of Savings Bank v. National Bank, 98 Tenn. 340-1, holds that a party who selects a bank as collecting agent and avails himself of the facilities which it holds out in the absence of special directions, is bound by any reasonable usage prevailing and established among the banks at the place where the collection is made, without regard to his knowledge or want of knowledge of its existence and that in choosing such a bank, he impliedly agrees that the collection may be made in accordance with such usage, where it is not in contravention of the general law; but in the instant case, the usage is not in contravention of law but in conformity to law, since Regulation J has the force and effect of a statute, and the complainant was dealing with banks established by the federal government and governed by these laws. It cannot be said that the usage which is in conformity to this regulation is in contravention of law, because in strict keeping with it. It will not do to say that a party dealing with a branch of the federal reserve bank through a national bank which is required by federal laws to be a member of the federal system can plead ignorance of these laws or that the federal reserve system confers upon the federal reserve board only administrative functions, that is, to pass regulations that are binding upon member banks and not upon the public dealing with them. These regulations affect the public because a member bank can only deal with or for people in its transactions with a Branch of the Federal Reserve Bank.

The Massachusetts rules which prevail in this State is after all only a presumption of law as to what the parties to such transaction intended to agree to, and may be abrogated by statute or departed from by mere agreement. Capital, etc. Co. v. Federal Reserve Bank, 3 F. R. 2d Ed. 614; Bank v. Malloy, 264 U. S. 160.

This rule or presumption of law as to what the parties to a certain transaction intend to agree to is not based on public policy and may be varied, modified or changed by contract of the parties, either express or implied. First National Bank v. Butler, 41 Ohio St. 519;

It has been pointedly and expressly held in Tennessee that this rule or presumption of law may be changed by contract. In the case of Bank v. Bank, 127 Tenn. 219, the Court, speaking through Mr. Chief Justice Lansden, said:

> "Nor do we think that the Nashville Bank is liable for not selecting the proper bank to make the collection at Sparta. It is shown in the proof that both the holder and the drawer of these checks agreed with the Nashville bank that remittances might be made directly to the drawee and they of course cannot now complain that such was done."

The custom as to collecting out of town items is uniform and well known, and practiced by all the banks, and a party dealing with a bank will be presumed to have contracted impliedly for the collection of the item in accordance with such custom. Davis v. First National Bank, 118 Calif. 600. This is true, though as a matter of fact he had no knowledge of its existence. Savings Bank v. National Bank, 98 Tenn. 336.

Of course, the custom must be reasonable and established among the banks where the collection is to be made. Sahlien v. Bank, 90 Tenn. 221; Howard v. Walker, 92 Tenn. 452.

In Sahlien v. Bank, 90 Tenn. 229, our Supreme Court said:

> "A bank contracts to use diligence in collections, but it is bound only to reasonable care and diligence in the discharge of its assumed duties. In a case of doubt its best judgment is all the principal has a right to require, especially if the doubt arose by reason of the neglect of the principal to give specific instructions. The bank will be acquitted even if it exercised this discretion erroneously."

Mr. Fort, the official of the Nashville Branch of the Federal Reserve Bank of Atlanta, had no cause to doubt the solvency of the Peoples Bank at Springfield. He knew that the L. & N. agent at that point and other Springfield banks were doing business with this bank as usual, and that the American National Bank was to make it a loan of $50,000.00 and that they had remitted collections between July 7th and 12th of approximately $118,000.00. He did not hesitate to send them a letter on July 12, 1924, containing items aggregating about $52,000.00.

The cases of Malloy v. Federal Reserve Bank of Richmond, 264 U. S. 160, and City of Douglas v. Federal Reserve Bank of Dallas, U. S. Supreme Court, decided June 1, 1926, are not in point. In the Malloy case the Federal Reserve Bank was held liable because it received payment of a check other than in money which was not authorized by the federal regulations at that time; while in the City of Douglas case there was no recovery against the Federal Reserve Bank as the deposit of the check in the initial bank properly endorsed, made that bank the owner of the paper, and the plaintiff having thus surrender-

ed its right to the paper, the only rights remaining were those arising out of its contract with the initial bank.

The case of Fergus County, et al. v. Federal Reserve Bank, 75 Mont. 582, is a case in point. The plaintiff in that case deposited a check in the Empire State Bank of Lewistown. This bank was a member of the federal reserve system. The check was drawn on the First State Bank of Coffee Creek, Montana, also affiliated with the federal reserve system. The defendant Federal Reserve Bank forwarded the check direct to the Coffee Creek bank and the Coffee Creek bank remitted its draft for the amount of the check, but closed its doors before the draft could be presented and it was consequently dishonored. When this transaction took place, Regulation J of the Federal Reserve Board, Series 1920, authorizing Federal Reserve Banks receiving checks for collection to forward them directly to the drawee bank, was in force, but there was no regulation of the Board authorizing the bank to receive drafts instead of cash in payment of checks deposited with it for collection; but Regulation J provided that each Federal Reserve Bank might establish rules governing the details of its collections operations, which rules should be binding on all member and non-member banks clearing through it. Pursuant to this authority, defendant Federal Reserve Bank issued a circular which provided that every bank sending checks to the defendant for collection would be understood to have agreed that the defendant was authorized "to send such items for payment in cash or bank draft direct to the bank on which they were drawn." This rule was upheld by the Supreme Court as

being binding on those making use of the Federal Reserve Bank's collection facilities. The Supreme Court in that case said:

> "(3) When the Lewistown bank, with full knowledge of the conditions imposed by Circular 286, delivered the checks to this defendant for collection, it thereby expressed its acceptance of the offer as made, and the result was a contract by the terms of which the defendant was authorized to send the checks directly to the Coffee Creek bank and to accept in payment 'cash or bank draft;' and when that contract was entered into, defendant became the subagent for the county, and the county became bound by the contract to the same extent that the Lewistown bank was bound."

The federal reserve system is a creature of the Federal government and it operates through Federal Reserve Banks, and banks becoming members thereof. Under this Act, a national bank is required to become a member or forfeit or surrender its charter.

The Federal Reserve Board which is the governing authority of this system, is empowered to make regulations for the government of banks operating under the system. These regulations have the force and effect of statutes and all persons dealing with that system are chargeable with notice of these regulations.

These regulations authorize these banks to send checks direct to the drawee bank for collection and a custom and usage certainly prevailing among banks in Nashville since the establishment of the Nashville Branch of the Federal Reserve Bank of Atlanta in 1919, certain and uniform and known to both complainant and defendants either in fact or presumptively, sanctioned this practice.

It has been held in this State that it is negligence in a collecting bank to send a check direct to the drawee bank for collection, and it is insisted that the defendant banks were guilty of negligence in handling the checks involved in this manner. The complainant in dealing with this system is chargeable with knowledge of the aforesaid regulations and this record shows that if it did not have actual, it had presumptive knowledge of the custom in Nashville which sanctioned the practice of sending such checks direct to the drawee bank.

The question presented is not without difficulty. It is true that a custom cannot change the law, but in this case the custom is strictly in accord with the federal law and the complainant is dealing with federal institutions and charged with knowledge of these regulations which had the force and effect of law. Furthermore, with knowledge of this custom and of these regulations, it deposited for collection the checks with the American National Bank. The principle announced in this State that a collecting bank is guilty of negligence in sending a check to the drawee bank for collection can be waived by contract, either express or implied, and certainly it was waived in this case, if any waiver was necessary, by the complainant with full knowledge through federal law and custom in Nashville, that the defendant bank would send the checks for collection directly to the payee bank, delivered them to the American National Bank, thereby impliedly contracting with it to collect the checks in such manner.

When a citizen of the State deals with a federal agency and employs that agency to transact any business within the scope of its authority, his rights growing out of the contract of employment are governed and determined by the law establishing that agency and directing its operation. This is true, or otherwise a situation would be presented where federal reserve banks, though authorized by law to send checks for collection direct to the drawee bank, could not follow such practice in Tennessee without being guilty of negligence and subjected to suit for doing exactly what the federal law empowered them to do.

The federal reserve system cannot be shackled in this manner and its member banks rendered impotent to do business according to the law creating the system and regulations lawfully adopted for their operation. In the case of Davis v. Elmira Savings Bank, 161 U. S. 275, Mr. Justice White said:

> "National banks are instrumentalities of the federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the federal government to discharge the duties for the performance of which they were created. These principles are axiomatic and are sanctioned by repeated adjudications of this Court."

The collections involved were not handled by the defendants in a negligent manner but they used reasonable care and diligence in discharging the duties assumed by them.

The Court is of opinion that the bill is without equity and should be dismissed.

Decree accordingly.