

C O P Y

LOUISVILLE & NASHVILLE RAILROAD :  
COMPANY. :

v. : DAVIDSON CHANCERY

NASHVILLE BRANCH OF THE FEDERAL :  
RESERVE BANK OF ATLANTA ET AL :

COURT OF APPEALS,  
MIDDLE SECTION.

APPEAL FROM THE CHANCERY COURT OF DAVIDSON COUNTY, PART 2;  
HONORABLE JAMES B. NEWMAN, CHANCELLOR.

. . . . .

A. W. STOCKELL AND JNO. B. KEEBLE, OF NASHVILLE,  
FOR APPELLANT RAILROAD COMPANY.

JOHN J. VERTREES AND E. J. SMITH, OF NASHVILLE,  
AND RANDOLPH & PARKER, OF ATLANTA, GA., FOR  
APPELLEE NASHVILLE BRANCH OF THE FEDERAL RESERVE  
BANK.

BASS, BERRY & SIMS, OF NASHVILLE, FOR APPELLEE  
AMERICAN NATIONAL BANK.

W. W. FAW: P. J.

LOUISVILLE & NASHVILLE RAILROAD :  
COMPANY :

v. : DAVIDSON CHANCERY

NASHVILLE BRANCH OF THE FEDERAL :  
RESERVE BANK OF ATLANTA ET AL :

MEMO. OPINION.

The Louisville & Nashville Railroad Company filed the bill in this case against Nashville Branch of Federal Reserve Bank of Atlanta and American National Bank, seeking to recover of the defendants the amount of three cashier's checks drawn by the Peoples Bank of Springfield, Tennessee, aggregating \$3,995, which, it is alleged and admitted, were deposited by complainant with the defendant American National Bank for collection, and were by the American National Bank indorsed and forwarded to the defendant Nashville Branch of the Federal Reserve Bank of Atlanta, and by the latter bank forwarded directly to the bank on which they were drawn, the Peoples Bank of Springfield, which was closed by the State Bank Examiner as an insolvent bank shortly after said checks were received by it and while they were in its possession.

Complainant alleges in its bill that the bank which is to pay a check is not a suitable agent for its collection; that

there were several other banks at Springfield, which were reliable and solvent, to either of which these checks could have been forwarded for collection, and any one of which would have, in due course, presented the same for collection to the Peoples Bank of Springfield, and collected the same before the Peoples Bank went into the hands of an examiner, and before payment of checks on that institution was stopped by the examiner.

The complainant further avers in its bill that the defendant American National Bank was negligent in selecting an improper agency through which to clear or collect these checks, in that, the American National Bank knew, or in the exercise of ordinary care should have known, that the Nashville Branch of the Federal Reserve Bank of Atlanta was not handling items of this character on Springfield banks in the proper manner; that the defendant Nashville Branch of the Federal Reserve Bank of Atlanta was negligent in not forwarding said checks promptly to some bank at Springfield, other than the Peoples Bank on which these checks were drawn; that when said checks were not paid the day following the forwarding of same to the Peoples Bank, complainant should have been immediately advised that the same had not been paid; that the defendants were negligent in permitting the Peoples Bank to hold said checks without remitting thereon; that the negligence of the defendant Nashville Branch of the Federal Reserve Bank of Atlanta in forwarding these checks direct to the bank on which they

were drawn, proximately resulted in complainant losing the opportunity of making collection thereon and occasioned the complainant to lose the entire amount represented by said checks; that after the Peoples Bank was taken over by the Bank Examiner and closed, it developed that said bank was wholly insolvent, having paid out practically all of its available funds to other persons presenting checks for payment at said bank prior to the day on which it was closed, viz: July 15, 1924: That said checks would have been paid promptly if presented through any other bank at Springfield, of which there were several, on any date prior to July 15, 1924.

In their answer, the defendants deny that they were negligent in handling the checks in question, and they rely upon a certain "regulation" adopted and promulgated by the Federal Reserve Board, known as "Regulation J", which, if valid, authorizes Federal Reserve Banks to "send such checks for collection direct to the bank on which they are drawn or at which they are payable", or to "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", and which Regulation J also provides that "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".

Conceding that, under the law prevailing in this State as repeatedly declared by our Supreme Court, the party who is to pay a check is not a suitable agent for its collection, and a bank receiving a check for collection is negligent in sending the same directly to the drawee bank for collection, and that each successive bank handling an item for collection is agent of the owner, and liable to him for the discharge of the duties incumbent on collecting agents, (Milling Co. v. Bank, 120 Tenn. 225, 111 S. W. 248), the learned chancellor held in the present case, in substance, that the above stated rules of law had been superseded (insofar as they might otherwise affect Federal Reserve Banks) by the aforesaid Regulation J, and therefore "the collections involved were not handled by the defendants in a negligent manner". The bill was thereupon dismissed at the cost of complainant, and the complainant appealed to this court.

The learned chancellor was of the opinion, and, in effect, adjudged, that by the Act of December 23, 1913, creating the Federal Reserve System, the Federal Reserve Board was authorized and empowered to make and promulgate the aforesaid Regulation J, and that said Regulation had the force and effect of a Federal statute.

This ruling of the chancellor is challenged by the appellant, through its assignments of error, brief and oral argument of counsel at the bar, and it is contended that a so-called "Regulation" which, if given effect, supersedes and

annuls as an established general rule of law is an exercise of legislative power, and that, (for lack of constitutional authority), "Congress cannot delegate the power to make laws" to a board or commission, such as the Federal Reserve Board. (Cooley's Constitutional Limitations, 8th Ed., Vol. 1, p. 231).

As we see it, the decision of the question thus presented involves an interpretation or construction of the Constitution of the United States, and by the Tennessee Act of 1925, Chapter 100, Sec. 10, exclusive appellate jurisdiction of all civil cases "involving constitutional questions" is reserved to the Supreme Court.

In order to give the Supreme Court jurisdiction, it is essential that a constitutional question shall be "directly involved - not as an abstract, theoretical or merely incidental issue, but as an issue presented in good faith, substantially determinative of the rights asserted, or the defense relied on". (152 Tenn. 162, 165).

We think that the constitutional question above stated is directly involved, as a determinative question, in the issues presented by the pleadings in this case, and it was squarely decided by the chancellor.

It is not necessary, in order to give the Supreme Court jurisdiction, that the constitutional question be the only issue in the case. State ex rel v. Hefferman, 243 Mo. 442, 449, 148 S. W. 90; State ex rel v. Scott County Macadamized Road Co., 207 Mo. 54, 13 Anno. Cas. 656, 659, Memphis St. Ry. Co. vs. Rapid Transit Co. 133 Tenn. 99, 105, 179 S. W. 635.

An order will be entered transferring this cause to the Supreme Court.

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FAW

P. J.

Judges Crowmover and

Devitt concur.