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FEDERAL RESERVE BANK

OF RICHMOND

October 25, 1930.

Federal Reserve Board,
Washington, D. C.

Attention Mr. Walter Wyatt, General Counsel

My dear Mr. Wyatt:

I received your letter of October 22nd upon the subject of the employment of Honorable Newton D. Baker to assist in the case of the Federal Reserve Bank of Richmond v. Attmore and related litigations.

I have discussed this matter with the officers of this bank and all of us agree that these cases may well present questions which will make them matters of interest to the entire Federal Reserve System, so that it will be highly desirable to bring Mr. Baker into consultation. Mr. Seay has, therefore, asked me to request the Federal Reserve Board to make with Mr. Baker such an arrangement as is usually made in such cases. As you know I have never had any experience in such arrangements; consequently if the request should come from Mr. Seay to the Federal Reserve Board, let me know, but otherwise you may treat this letter as a request to the Federal Reserve Board to retain Mr. Baker for consultation.

I am enclosing you herewith a memorandum filed in the trial court. The docket in the court of Craven County, N. C., is so congested that the trial judge has little time for thorough study. The memorandum which I enclose, was intended merely as an outline of my views for the benefit of my associate, but he tells me that he delivered it to the trial judge supplemented only by a few citations of North Carolina cases relating to the general subject of striking out irrelevant or immaterial allegations.

I have written to my associate to ask what will be the time allowed us to perfect an appeal.

I took depositions in five other cases pending in New Bern, brought to recover upon notes held as marginal collateral. The examination of the witnesses made by the attorneys for the defendants in those cases, show that they expect to press on the court the question of our right to receive and hold marginal collateral, and also I think showed their determination to hinder and delay the progress of case as much as possible. They made no secret of the fact that the docket in their county was so congested that a trial could not be obtained for at least a year on any question requiring jury trial. They also made demands during the progress of the taking of the depositions for the production and exhibition of

numerous records and accounts. Some were produced and exhibited. The witnesses under my advice refused many others upon the ground that it would take several days or several weeks to find the documents and that they were entirely immaterial to the issue of the case. I am certain that my opponents' object is to raise as many questions as possible, hoping that the court may exclude the depositions at the trial or else permit them to have a continuance upon the ground that the documents should have been produced. I have mentioned the general conditions because I think that we are in reality calling Mr. Baker in to consult about matters when our opponents are much more anxious to avoid a decision than they are to obtain one. In other words they are raising the questions as a means of creating delays and with some hope, of course, that by some accident a decision will be rendered in their favor.

I think, however, as I stated in the beginning, that the situation is such as to suggest retaining Mr. Baker. I also agree with you that it is advisable to appeal from any adverse ruling to the motion to strike out the answer in the Attmore case, but of course, if Mr. Baker is retained he should have the deciding voice on that question.

As I have never been involved in a System case since we adopted the plan for joint action, I do not know just how I should proceed in placing these matters before Mr. Baker. My suggestion would be that when he has been retained, I should send him copies of all papers in the Attmore case and copies of the depositions to which I have referred, and that after he has had an opportunity to read the papers we should have a conference. It would be very helpful, I think, to have you at that conference, and if it suits Mr. Baker's convenience, we could have it at your office. When you have made arrangements with Mr. Baker, you can communicate with me. Of course, I could go to Cleveland to consult him there, if more convenient to him.

Very truly yours,

(S) M. G. Wallace,
Counsel.

MGW/mm
enc.

P. S. I should like very much to have a memorandum by you concerning the duties of the Federal Reserve Agent and his relations to the Bank and to the Board; and Mr. Hoxton advises that he would like to have such a memorandum in his files for his own guidance.

M. G. W.

MEMORANDUM OF MOTION TO STRIKE OUT ANSWER OF DEFENDANT IN ACTION OF FEDERAL RESERVE BANK OF RICHMOND v G. S. ATTMORE

PARAGRAPH 1 OF THE ANSWER:

Paragraph one of the answer is not a specific or general denial of the corresponding allegation of the complaint as required by Section 519 of the Code of North Carolina. In this paragraph the defendant apparently concedes that the plaintiff has organized under the acts of Congress relative to Federal reserve banks but denies that Federal reserve banks are "banking corporations". The powers of the plaintiff are prescribed by law (see Section 4 of the Federal Reserve Act; U. S. Code, Title 12, Section 341, et seq.) This paragraph, therefore, presents a question of law and not an issue of fact. (see 108 N. C. 147. 12 S. E. 896) The last sentence is plainly neither "a specific or general denial of the allegation of the complaint" nor "a statement of new matter in ordinary concise language" as required by Section 896 of the Code of North Carolina, and can have been inserted for no purpose except to attempt to arouse passion and prejudice on the part of the jury.

PARAGRAPHS 5 and 8 OF THE ANSWER:

These paragraphs are plainly not proper pleading. That portion which demands the production of documents is neither an admission or denial of matters alleged in the complaint, nor a statement of new matter, for the defendant is apparently unwilling to commit himself to the allegation that any such documents exist, but leaves this to inference. Section 899, et seq. of the Code of North Carolina provides means for compelling the production of documents and further provides that the method therein prescribed is an exclusive method. Doubtless one of the objects of such a provision was to permit the court to determine the propriety of requiring the production of the documents and the admissibility of

their contents; to determine on matters relative to the production of documents without permitting the jury to be misled or confused by the irregular presentation of matters which are within the province of the judge. The defendant has not seen fit to avail himself of the remedy provided by statute and the inclusion of a reference to such a remedy in the answer is obviously an effort to employ the answer as a substitute for a bill of discovery, which latter remedy has been expressly abolished, and the reading to the jury of this section of the answer can serve no purpose except to convey by suggestion the idea that the plaintiff has in its possession secret documents which it has wrongfully failed to produce, when the fact is that if the production of the documents is proper the court may in the manner prescribed by statute require the production.

PARAGRAPH ONE OF THE FURTHER DEFENSE:

This is a restatement of the position taken by the defendant in paragraph one of the answer and as such is open to the objections stated above.

PARAGRAPH TWO OF THE FURTHER DEFENSE:

The matters herein alleged are absolutely irrelevant to the issues of the case, which are simply - 1. Is the defendant liable upon the notes sued on? 2. Were these notes transferred to the plaintiff so that it became the holder of them? 3. Is the alleged balance due by the First National Bank of New Bern to the defendant available as defense in action by the plaintiff?

PARAGRAPH THREE OF THE FURTHER DEFENSE:

These allegations relate to matters occurring eight years before the execution of the notes in the suit and are therefore wholly immaterial to any controversy between the parties to this action.

In addition, the allegation that "The Peoples Bank became unable to function because of the requirements of the plaintiff" is a mere conclusion of the

pleader. He should specifically allege the requirements to which he refers in order that the court may be able to determine whether or not such requirements were lawful or unlawful.

The allegation that the plaintiff caused the National Bank of New Berne to absorb the said Peoples Bank is also a conclusion, and furthermore a conclusion impossible as a matter of law since the proceedings in the consolidation of National banks are subject to the control of the Comptroller of the Currency (see U. S. Code, Title 12, Sections 33 and 35) so that the plaintiff could have no power to require or compel a National bank to consolidate with a state bank.

PARAGRAPH FOUR OF THE FURTHER DEFENSE:

This allegation is irrelevant to the controversy between the parties, and in addition it appears to be held in North Carolina, as elsewhere, that an allegation that an act was done fraudulently is a mere conclusion. The pleader should allege the action which constituted the fraud in order that the court may draw its own inference from the allegation.

PARAGRAPH FIVE OF THE FURTHER DEFENSE:

The allegations of this paragraph are irrelevant, as the insolvency of the National Bank of New Berne would not debar it from transferring its assets for value.

PARAGRAPH SIX OF THE FURTHER DEFENSE:

The allegations of this paragraph are irrelevant, and in addition the allegation as to the amalgamation of the two banks is as a matter of law impossible for the reasons set out above. The allegation as to the use of the funds of Craven County is wholly irrelevant, and in addition is a mere conclusion, as there is no allegation as to why or by what means the funds of Craven County came into the hands of the National Bank of New Berne, and in any event the use or misuse of

the funds of Craven County by the National Bank of New Berne must be irrelevant to any controversy between the Federal Reserve Bank of Richmond and G. S. Attmore. The inclusion of this allegation can have been intended only to arouse passion or prejudice on the part of the jury by insinuating that in matters wholly unconnected with the present case the plaintiff has connived at irregularities on the part of National banks.

PARAGRAPH SEVEN OF THE FURTHER DEFENSE:

This paragraph appears to be irrelevant, as the defendant does not allege that his notes are held as collateral by the Federal Reserve Bank of Richmond, and the title of the Federal Reserve Bank of Richmond to notes of other persons transferred to it by the First National Bank of New Bern cannot be material in a controversy concerning its title to the notes of the defendant. The allegation that other notes were taken in pursuance of an ultra vires contract is a mere conclusion of the pleader or an allegation of a matter of law. The plaintiff has general power to lend money and rediscount notes for member banks and to make advances to them secured by the pledging of notes or bills made by customers of member banks (U. S. Code, Title 12, Sections 343-7) and plaintiff is likewise authorized to exercise such incidental powers as may be necessary to carry on the business of banking within the limitations of the act creating the plaintiff (U. S. Code, Title 12, Sections 34-7). There is no definite limitation upon the amount of the notes which plaintiff may discount for a member bank nor the amount of advances which may be made to a member bank. The taking of security is obviously incidental to the lending of money. If the defendant contends that any particular act of the plaintiff is ultra vires, he should allege that act with such particularity that the court may determine whether or not it was authorized or

prohibited by the Federal Reserve Act. In addition it has been decided that title to assets acquired for value by banks organized under the law of the United States in ultra vires transactions is voidable only, and the question of ultra vires may be raised only in a direct proceeding by the United States. (See Union National v Matthews, 98 U. S. 621; National Bank v Whitney 103 U. S. 99; Swope v Leffingwell 105 U. S. 3; Reynolds v First National Bank, 112 U. S. 405; Kerfoot v Farmers & Merchants Bank, 218 U. S. 281; also Crowell v Federal Reserve Bank, 12 Fed. 2nd 259) This paragraph also contains a prayer that plaintiff be required to account to Craven County and W. W. Griffin and to R. E. Schumacher, Receiver. None of these persons are parties to this action and consequently any allegation as to their rights is immaterial.

PARAGRAPH EIGHT OF THE FURTHER DEFENSE:

This paragraph alleges that the note for $5,000.00 was without consideration and was wholly an accommodation obligation.

The Supreme Court of North Carolina, in Merchants National Bank v Andrews, 102 S. E. 500, 179 N. C. 341, held that allegation that a note was without consideration was a mere conclusion of the pleader. It seems that a good pleading should allege the conditions and circumstances under which the note was executed in order that the court may determine whether or not it was supported by good consideration.

In addition it is provided by Section 3009 of the Code of North Carolina that knowledge by the transferee that a negotiable note was given for accommodation has no defense to action upon it, hence the matters and things alleged in this paragraph are immaterial to the action.

PARAGRAPH NINE OF THE FURTHER DEFENSE:

This paragraph appears to be a mere conclusion.

PARAGRAPH TEN OF THE FURTHER DEFENSE:

This paragraph appears open to the same objections as those made to paragraph eight.

PARAGRAPH ELEVEN OF THE FURTHER DEFENSE:

There appears to be no ground for objection to the allegation of this paragraph except that the statement "that this defendant is entitled to apply the said deposit as an offset" is a mere conclusion of law and, furthermore, an erroneous conclusion (see Sowell v Federal Reserve Bank 286, U. S. 449). The statement that the note is in the hands of R. E. Schumacher is immaterial.

PARAGRAPH TWELVE OF THE FURTHER DEFENSE:

There appears to be no good objection to this paragraph. It is a mere repetition of a portion of the denial of paragraph eight of the answer.

PARAGRAPH THIRTEEN OF THE FURTHER DEFENSE:

That portion of this paragraph that demands the production of written instruments is open to the objections mentioned under discussion of paragraphs five and eight of the answer. Furthermore, the court may take judicial notice of the fact that reports of examinations of National banks are made by the Examiners to the Comptroller of the Currency, who is an officer of the United States acting under the direction of the Secretary of the Treasury (U. S. Code, Title 12, Sections 1, 9 and 481) so that such reports could not be exhibited by the plaintiff.

PARAGRAPH FOURTEEN OF THE FURTHER DEFENSE:

This paragraph is not an allegation of any fact but an irregular prayer for relief and should be stricken, as the relief obviously cannot be granted. The relief asked in the first paragraph is for the benefit of persons not

parties to the suit for whose benefit he has no right to prosecute an action, and in addition the appointment of a receiver to take charge of the assets and administer them for the benefit of creditors of National banks would be in contravention of the laws of the United States which provide that the receivers of National banks shall act under the direction of the Comptroller of the Currency.