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Par Clearance in the Federal Reserve System

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PAR CLEARANCE IN THE FEDERAL RESERVE SYSTEM

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EVER since the first faint beginning of the clearing house system one hundred fifty years ago in a London Tavern, where the clerks of various banks of the city met to liquify their parched throats and where incidentally they found by experience that it was possible and advantageous to liquidate also their principals' accounts, the clearing house system has had a continuous and progressive growth.[1] As the system grew to such utility as to make it indispensable, the association of clerks procured rooms in Lombard Street for the convenience of exchanging checks and other securities and reducing the amount of actual money used in the settlement of their accounts. New York established the system in 1853, Boston in 1856, Worcester in 1861, Chicago in 1865, and other cities in the United States as well as in foreign countries soon followed their example. The purpose of the clearing house is to facilitate exchanges between banks. At the daily clearings, the debtor banks "lose" and the creditor banks "gain." The clearing house substitutes a settlement made at a fixed time and place each day by representatives of all the members for a separate settlement by each bank with every other made over the counter. It is the application on a large scale of the principle of setoff. It is one of the necessities of every city which contains a large number of banks. As at present established, it is an association of all or many of the banking institutions in a city or locality for the purpose of facilitating the exchange of checks and balancing transactions among its members. Though originally established merely to facilitate the settlement of balances between banks, it has developed beyond this original purpose into the financial regulator and conservator of the community and now affords the machinery for prompt and concerted action by the member banks in times of financial stringency.

The clearing houses in the various important cities, however, do not and cannot solve all the problems. Intercity, interstate or international commerce produces automatically, intercity, interstate or international creditors and debtors. The liquidation of their affairs presents difficulties with which the currency of any country or of all the countries

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[1] *Crane Parris & Co. v. Clearing House,* 32 N.N.C. 358, 2 Pa. Dist. 509.

combined is unable successfully to cope. Such currency, both specie and paper, is entirely inadequate for this purpose, both in volume and in character. A substitute has therefore been in use even before the Declaration of Independence, in the form of notes given to the creditor or of drafts accepted by the debtor. A newer form of payment is the check of the debtor drawn on his local bank and payable to the creditor. However different these three methods may be, they have one striking feature in common,—they shift upon the creditor the burden and expense of collecting his debt. This he in desperate cases, is forced to do through attorneys in which case, he pays such adequate fee for the services as may be agreed upon. All other collections, he affects through the banks which are better equipped than he for the task. But banks in turn groan under the burden thus heaped upon them. They are not adequately compensated for this service and are displeased with the existing round about methods of transmission. As early as 1892, the *Banking Law Journal* therefore requested its readers' views on the question of whether a national clearing house would be feasible.[2]

To understand properly this agitation for a national clearing house, a clear conception of the practice of banks in collecting out of town checks must be in the mind of the reader. Almost anyone who has dealt with different banks will have noticed a sharp difference in their practice. Many banks, particularly in the large cities, make a small collection charge for such checks and thus compensate themselves to some degree for the trouble and inconvenience and even loss which they incur. There is no valid objection to such a charge.[3] A bank in New York taking a check drawn on a bank in San Francisco and paying cash for it or crediting it to the account of a depositor, loses the use of the money while the check is being collected and should be compensated for such loss. If it sends the check direct to the drawee

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[2] *Collection of Domestic Exchanges,* 6 Bank. L.J. 422, 424.

[3] A collection charge is directly authorized by the Federal Reserve Act for the act declares that "the federal reserve board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the federal reserve bank." Sec. 16, Federal Reserve Act, 38 Stat. 269.—Says the United States Supreme Court in relation to a collecting bank: "It may make such a charge although both it and the drawee bank are members of the federal reserve system; and some third bank which aids in the process of collection may likewise make a charge for the service it renders. Such a collection charge may be made not only to member banks by member banks, national or state, but it may be made to member banks also by the federal reserve banks for the services which the latter render." *Farmers and Merchants Bank v. Federal Reserve Bank of Richmond,* 162 U.S. 649, 653, 43 S. Ct. 651, 10 Fed. Res. Bd. 298.

bank, it may in due season get the draft of the San Francisco bank drawn on a New York bank for the sum mentioned in the check, less a small charge made by the drawee bank for its trouble in making out the draft and sending it by mail. Unless the collecting bank makes a charge for its services, it not only performs its work entirely gratis but in many cases actually pays for the privilege. Yet many banks take out of town items as cash in current accounts in order to gain the good will of their customers or to take customers away from each other. It is but natural, however, under such conditions, that they would make every effort to avoid paying the charge exacted by the drawee bank. This they accomplish by avoiding the safe and sound method of direct collection from the drawee and adopting the hazardous and unbusiness like practice of sending the paper to some correspondent of theirs who again will send it on to his particular correspondent so that eventually it will find its way, much the worse for use, to a bank in the city of the drawee, where it is presented through the local clearing house to the drawee who generally pays it without exacting any charge for so doing. Such a method of collection, in addition to the slow progress on account of the many stops, is extremely vibratory and presents every degree of angular movement. A football player "weaving" his way through the opposing team and actually going from one side line to the other instead of directly running toward his goal, corresponds to the movements of such checks. Nautically speaking, every unnecessary tack in the beat to windward retards progress toward the goal.

That such a system of collection is a serious evil goes without saying. Time is wasted, the chance of insolvency of the drawee bank is increased, and the risk of negligence and irresponsibility of subagents in the selection of which the forwarding bank has no voice, is assumed. All these considerations point toward the desirability of the establishment of a central clearing house for the country through which the interstate and intercity checks can be exchanged as readily as checks drawn on Milwaukee banks are exchanged through the Milwaukee clearing house. At the same time, sharp opposition on the part of many drawee banks who earned a profit first by the exchange which they charged, and secondly, by the use of the depositor's money against which the check was drawn while it was traveling its often circuitous route and while its own draft was being collected, was to be expected. It has been stated that the total of such exchanges, if made throughout the country on a basis of one tenth of one per cent, would be $135,000,000 annually—certainly a considerable tax on commerce.[4] The desire of the "country banks" to retain this important source of profit

[4] Fed. Res. Bd. Rep. 67, 68, *Farmers & Merchants Bank v. Federal Reserve Bank of Richmond,* 183 N.C. 546, 112 S.E. 252, 255.

and to impose upon the "city banks" the corresponding loss, has therefor led to a sensational struggle in the courts and in the legislative halls. For it is the large cities which send manufactured products into the countryside, and receive their pay in checks drawn on the country banks which checks, in turn, are deposited for collection in the city banks.

The agitation begun in 1892 for a national clearing house, was continued and bore fruit when the panic of 1907 broke upon the country. This panic showed in a most glaring manner the inherent defects of our decentralized banking system and brought about a universal demand for something better. The immediate result was the Aldrich Vreeland law of 1908 under which the National Monetary Commission was appointed. This commission made the most exhaustive investigation into banking conditions and laws which has ever been undertaken and the results were published in forty-six reports ranging from small pamphlets of twenty pages to volumes of as high as 1050 pages. Out of these reports grew the so called Aldrich plan which was reported to Congress in January, 1912. The time was ripe for the enactment of the Federal Reserve Act when President Wilson was inaugurated and it was soon put upon the statute books. In due time, the board was organized, the preliminaries of organization were completed and at about the time when the war broke out in Europe, the Federal Reserve System was a going concern.

From the very beginning, the Federal Reserve Board regarded the organization of clearing functions as one of its most important responsibilities and also, as one of its most difficult and intricate problems. It recognized that very considerable and thoroughgoing innovations in existing methods were involved which depended for their success, on the harmonious cooperation of the several banks. It was clear indeed that the problem called for the application of a high degree of technical skill in order to avoid undue disturbances and violent derangements of customary commercial and banking methods. Since checks were clearly recognized as the most important and convenient constituent in the circulating medium of the country, the Federal Reserve Board in its very first report, stated that the question of giving them a wider currency and a freer flow to and from every part of the country would receive its most careful attention.[5] The complexity and seriousness of the difficulties involved in the compulsory application of any clearing system was felt to be so great that the board abstained in 1915 from imposing it but relied upon the foresight and enlightened self interests of its member banks to bring them voluntarily into accord with

[5] Federal Reserve Board Report, 19 & 20 (1914).

its policy. It took occasion in its next report to express regret over the small advance that had been made in the matter during the year and to attribute this to the failure of jobbers and merchants to appreciate the advantages of the par clearance system and to bring pressure to bear on their banks to join and cooperate in the plan.[6] The failure of the voluntary system induced the board in 1916 to require all its member banks, to pay without deduction, checks drawn upon themselves. The result was that checks on about 15,000 banks would be collected by the Federal Reserve banks subject merely to a small service charge fixed by the board. It was hoped that this move would result in making checks on practically all banks in the United States, payable at par, since it was felt that a bank would be likely to lose desirable business when checks drawn on it were at a discount while checks drawn on a nearby competitor, circulated at par.[7] The effect of this compulsory measure was to increase the volume of checks handled by the Federal Reserve banks enormously in the year, 1917, though comparatively few non-member banks availed themselves of the privilege accorded to them by an amendment to Section 13 of the act which allowed Federal Reserve banks to receive accounts for collection and exchange purposes from such non-member banks as agreed to remit to the Federal Reserve banks at par. The board realized clearly that if under the amendment to the act, only member banks were forbidden from making a charge for clearance against the Federal Reserve banks, "the further development of the collection system will necessarily be slow, and in the absence of further legislation will depend upon the voluntary action of many small banks."[8] In its report for 1918, the board announced that the number of member banks was then 8,612 and the number of non-member banks on the "par list" was 10,409, so that checks on about two thirds of all the banks of the country could be collected at par through the Federal Reserve System. It felt, however, that the number of banks which refused to remit at par, including substantial banks in important cities, was sufficiently large to make many banks hesitate to use the Federal Reserve collection system and that if the number of resisting banks could be cut in half, the principle of par collection would be established beyond question. Regarding the par collection system as a national enterprise for the convenience of the public and the promotion of commerce and not as a merely local or selfish undertaking for the benefit of the member banks, the board resolved to make concentrated and persistent efforts to make the par

[6] 2 Fed. Res. Bd. Rep. 14, 17 (1915).
[7] 3 Fed. Res. Bd. Rep. 9, 12.
[8] 4 Fed. Res. Bd. Rep. 23.

list complete.[9] That these efforts would take the form of compulsion was a foregone conclusion. While the report for 1919 reported rapid progress drawing into the system all the banks in many states particularly in the East, obstinate resistance also had to be reported, particularly in a number of Southeastern states such as North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi. Though these opposing banks availed themselves of the system to collect their own items without expense through some correspondent bank, they did not wish to reciprocate by paying the checks drawn on them at par. To force the hands of such banks, recourse had been had in many cases to means of collection other than banks but as a rule, such steps were not necessary for any length of time. The consequence was that on December 31, 1919, of the 29,561 banks of the country, only 3,996 persisted in declining to remit at par. This situation led the board to announce that "the efforts to establish a universal par clearance system will be continued until all banks are on the par list, and it is believed that this result will be accomplished within a comparatively short time." At the same time, the board issued a statement embodying its construction of sections 13 and 16 of the Federal Reserve Act in answer to formal complaints and violent protests against the means adopted by the Federal Reserve banks to collect the checks drawn on the non-assenting banks.[10] The pressure thus brough to bear had substantial results. From the report of 1920, it appears that during the year, eleven states had been added to the list of states in which all the banks were on the par list, and that on January 1, 1921, only 1755 of the 30,523 banks in the United States were outside. These banks were all located in seven Southeastern states—Tennessee, South Carolina, Louisiana, Mississippi, Alabama, Georgia and Florida. The board stated that in order to enable the Federal Reserve banks to fulfill their functions as clearing houses to the fullest extent, it had approved the action of the Federal Reserve banks not only in soliciting non-member banks to agree to remit at par, but also in collecting by presentation at the counter, checks drawn on non-member banks which declined to remit at par. That this should lead to counter measures on the part of the banks was to be expected. Drawee banks would refuse payment of checks in reliance on the inability of the agent who presented them to find a notary public willing to make protest. Or they would laboriously count out the payment for checks drawn for large sums, in small coins. Or they would threaten the local collecting agent with injury to his business. They also resorted to the devise of stamping legends on their blank checks to the effect that the check was not valid if presentation was

[9] 5 Fed. Res. Bd. Rep. 75, 76.
[10] 6 Fed. Res. Bd. Rep. 40, 43.

made through a Federal Reserve bank.[11] With this situation, a resort to the courts became inevitable. A vital issue had arisen on which a great number of banks took a position diametrically opposed to that of the Federal Reserve Board. It was only a question of time when the courts must decide whether the irresistible force of the Federal Reserve banks was to crush the immovable body of the resisting state banks.

The opening gun was fired in a local state court of Georgia in the so-called Atlanta case. A number of small banks, some of them too small to be entitled to become members of the Federal Reserve System and all of them deriving an important part of their income by charging exchange on the checks drawn on them, joined together and sought to enjoin the Federal Reserve Bank of Atlanta. Their grievance as stated in their complaint, was that the Reserve bank was accumulating checks upon them and threatened to present them in large amounts for payment in cash over the counter, thus forcing them either to submit to the demands of the Reserve bank and open at least a non-member clearing account, or keep so much cash in their vaults as to make their business less profitable, if not unprofitable because of their decreased lending power and loss of the customary exchange. The case was promptly removed to the District Court of the United States for the Northern District of Georgia where a demurrer was filed and the bill dismissed for want of equity. This action of the District Court was on November 19, 1920, affirmed by the Circuit Court of Appeals of the fifth Circuit on the ground that the Federal Reserve banks have the power to expend money to collect checks in the manner attempted and that the allegations of the bill were insufficient to establish that the Reserve bank was exercising its rights oppressively or that it had entered into a conspiracy to injure the plaintiffs or that it was using its powers and prerogatives as to unnecessarily and maliciously injure the plaintiffs.[12] When on April 13, 1921, the case was argued before the United States Supreme Court, the Reserve bank contended that the holder of a check has a right to present it to the drawee bank for payment over the counter and that where he has many checks, he may present them all at once, whatever his motive or intent. The case was likened to that of a mortgagee who is not prevented from foreclosing because he acts from disinterested malevolence and not from a desire to get his money. The court by Holmes J. answered this contention by pointing out that the word "right" is one of the most deceptive of pitfalls, that it is so easy to slip from a qualified meaning in the premises to an unqualified one in the conclusion, that the right of the

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[11] 7 Fed. Res. Bd. Rep. 67.

[12] *American Bank and Trust Co. v. Federal Bank of Atlanta*, 269 Fed. 4.

payee to demand payment over the counter is not unqualified, that the rights of business must be protected to some extent and where they conflict with those of the holder of a check that lines must be drawn which limit both. The court then pointed out that banks could not exist if they could not rely upon the law of averages and lend out a large part of their deposits on the assumption that not more than a certain proportion would be demanded on any one day. It illustrated its meaning by saying that while a man has the right to give his money away, if he gives it to another to induce him to steal or murder he commits a crime, and that if without a word of falsehood he should organize by persuasion a run upon a bank an action would lie. In conclusion the court held that there was a wide difference between presenting checks for payment in the ordinary course and presenting them in a body for the purpose of breaking down and ruining the drawee bank, and that it was not the policy of Congress in passing the Reserve act to sanction this sort of warfare upon legitimate, though relatively feeble, creations of the states.[13]

The Atlanta District was not the only one in which the question of par clearance was agitated. As early as January, 1918, the Federal Reserve Bank of the fourth district located at Cleveland had solicited a Kentucky bank whose total assets were about $600,000 to enter into an agreement for the par clearance of the checks drawn on it. In December, 1919, a traveling representative of the Reserve Bank was sent to such bank and made four personal visits. He first attempted persuasion, then demanded compliance and finally threatened to employ the American Express Company to collect the checks over the counter. He stated that the Federal Reserve System was like a mighty battleship coming up as it were from a smooth sea and that non-affiliating banks would not be able to withstand its swells and must get in its wake for safety. The express company finding the collecting business too bothersome, personal agents were engaged and their duties explained to them in great detail at a drug store opposite the bank. The checks were spread upon a refreshment table situated in a conspicuous place where all who came into the store could readily see and hear what was going on. The last agent was a woman who would come to the bank with a pistol by her side conspicuously displayed and accompanied by one or two dogs. She would cart away the cash received, amounting in one instance to ninety two pounds of silver, in a go-cart. Magee in the meantime approached various depositors of the bank attempting to induce them to sever their connection with it and succeeded in some instances. In self protection the bank stamped on its blank checks a

[13] *American Bank and Trust Co. v. Federal Reserve Bank of Atlanta*, 256 U.S. 350, 65 L.Ed. 983, 41 S. Ct. 499, 8 Fed. Res. Bd. Rep. 357.

statement that they were payable in cash or in exchange drafts. The Federal Reserve Bank intermittently accepted such checks for collection and then refused to do so. Magee finally was indicted by the state grand jury for making and circulating statements derogatory to the bank and left the city but continued in the employ of the Federal Reserve Bank for another three months. The Reserve bank had advertised that it would collect checks drawn on the plaintiff free of charge and was accumulating the checks drawn against it. The court on October 14, 1922, held that the question before it depended on the purpose of the Reserve bank in its accumulation and collection of the checks and that if its purpose was to break down the plaintiff's business as then conducted such purpose was unlawful and said: "It does not follow that, because the holder of a check has a right to present it to the bank upon which it is drawn for payment over the counter, one has the right to seek to become the holder of all the checks drawn on a bank as they are drawn and then present them in a body for payment in cash over the counter. If such was defendant's immediate purpose in so doing, it was not justified by the ulterior purpose which it had in view, to wit, of freeing commerce from the burden of such charges. Here, as never, did the end justify the means. Such a course of procedure is a kind of refined bank holdup. It is one of the inalienable rights of a person to be unprogressive, selfish and even mean. . . . . No other person has the right to coerce him into being otherwise. The idea that there is such a right was at the bottom of the night-rider troubles in Kentucky some years ago. Those who were in the pool thought that those who were out were selfish. And they undertook to coerce them into joining the pool by shooting into their homes."[14] The court then found that the purpose of the Reserve bank indeed was to break down the plaintiff's business as it was conducted and compel it to do business according to the wishes not of its board of directors but according to the wishes of the Reserve bank and issued the injunction.

Some time before the Kentucky case came before the court, the decision of the Supreme Court in the Atlanta case had been instrumental in checking a similar abuse of its powers by the Federal Reserve Bank of San Francisco. The local bank was a small Oregon institution with a capital of $15,000. After it had refused to accede to the demands of the Federal Reserve Bank for par clearings the latter had installed a local agent for the purpose of presenting and demanding the payment

[14] *Farmers and Merchants Bank of Catlesburg v. Federal Reserve Bank of Cleveland,* 286 Fed. 610, 618. The Farmers and Merchants Bank in 1924 commenced an action for the damages sustained by it through the action of the Federal Reserve Bank. To the present writing this action seems not to have resulted in any decision.

of checks drawn on the local bank over the counter and shipping the money received to the Reserve bank. This naturally was done at exorbitant expense to the Reserve bank. It appeared that in the course of a year $108,000 had been collected at an expense of $3,542, a method certainly extraordinary, extravagant and unbusinesslike. On October 1, 1921, five months after the decision of the Atlanta case by the Supreme Court, such agent had been withdrawn, probably in consequence of such decision, and the warfare between the reserve and the local bank had entered upon a new phase. The Reserve bank had adopted a new form of an endorsement as follows: "Pay to Brookings State Bank for collection only and remittance in full without deduction for exchange or collection charges." When the local bank returned such checks to it unpaid, it had notified the owners of them that they had been dishonored and that the plaintiff had not protested the same and that they must look to the plaintiff for their protection. The District Court on a motion for a preliminary injunction, held that the Reserve bank had the power of maintaining the agent for making collections over the counter and paying the expenses entailed thereby but denied the power of such bank by the form of its endorsement, to impose conditions on the local bank or make such bank its agent for causing protest to be made for nonpayment, and said: "The idea of requiring that a maker or drawee shall have protested his own paper is so inconsistent with the functions of an agent that it can hardly receive the sanction of law. No man can serve two masters, especially himself and another, in inconsistent capacities. I am persuaded therefore, that the defendant was at fault in two particulars: First, in attempting to impose the condition that the plaintiff pay without its charge for exchange; and second, in attempting to hold the plaintiff bank responsible for not having its own paper protested for nonpayment." Accordingly the court on December 19, 1921, enjoined the defendant from sending letters to its clients advising them that they must look to the plaintiff bank for their protection through the failure of plaintiff to protest its own paper endorsed by the Reserve bank as above stated.[15] On June 26, 1922 this injunction was made permanent, the court referring specifically to certain evidence which clearly showed the intention of the reserve bank to coerce the local bank into clearing its checks at par and declining to extend the injunction against the maintenance of the local agency merely on the ground that such agency had been withdrawn.[16]

In the meantime the Atlanta case had gone back to the District Court and the Reserve bank had filed an answer in which it specifically denied any intention of demanding payment in cash provided drafts collectible at par and drawn on responsible banks were tendered. The District Court on March 11, 1922, found that the Reserve bank was not in-

spired by any ulterior purpose to coerce or injure any non-member bank which refused to remit at par and that the charge that it accumulated checks on non-member banks and presented them in bulk over the counter so as to compel the plaintiffs to maintain so much cash in their vaults as to drive them out of business as an alternative to agreeing to remit at par was not borne out by the evidence.[17] This judgment on November 2, 1922 was sustained by the Circuit Court of Appeals and the proposition was laid down that a Reserve bank is not guilty of an abuse of its rights by presenting in due course, with reasonable promptness, without designed delay or accumulation and in a proper manner checks to the drawee banks for payment in cash.[18] This proposition the Supreme Court on June 11, 1923, approved saying by Brandeis J., that country banks are not entitled to protection against legitimate business competition, that the loss which they had shown is of the kind to which business concerns are commonly subjected when improved facilities are introduced by others or a more efficient competitor enters the field and that hence, such loss is *damnum absque injuria.*[19]

Tremendous interest was shown toward par clearance in North Carolina for the "Richmond case" brought before the court in addition to thirteen original plaintiff banks, two hundred and sixty-five additional plaintiff banks and trust companies while the case was before the state courts, which number was slightly increased when the case reached the United States Supreme Court. This universal interest probably explains why the North Carolina legislature had in 1921 passed an act "to promote the solvency of state banks" which provided that to prevent the accumulation of unnecessary amounts of currency in the vaults of the state banks and trust companies all checks drawn on such depositories, unless specified on their face to the contrary by the drawer, should be payable at the option of the drawees in exchange drafts drawn on their reserve deposits when such checks were presented by or through any Federal Reserve bank, postoffice or express company. In addition a fee of not to exceed 1/8 per cent on remittances covering

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[15] *Brookings State Bank v. Federal Reserve Bank of San Francisco,* 277 Fed. 430. In 1924, the Brookings State Bank commenced an action for the damages sustained by it through the action of the Federal Reserve Bank. To the present writing this action seems not to have resulted in any decision.

[16] *Brookings State Bank v. Federal Reserve Bank of San Francisco,* 281 Fed. 222, 9 Fed. Res. Bd. 271.

[17] *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta,* 280 Fed. 940, 9 Fed. Res. Bd. 258.

[18] *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta,* 284 Fed. 424, 9 Fed. Res. Bd. 529.

[19] *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta,* 262 U.S. 643, 67 L.Ed. 1153, 10 Fed. Res. Bd. 1296.

checks was authorized but checks drawn in payment of the obligations of the state or federal government were excepted from the operation of the statute.[20] This action the Federal Reserve Bank of Richmond resented and gave notice that it considered that it was unconstitutional and that hence the Reserve bank would, where checks were presented over the counter, refuse to accept exchange drafts and would return as dishonored checks for which only exchange drafts had been tendered in payment. Some checks were thus returned dishonored and the state banks left to their legal remedy. This they naturally sought in the state courts and were indeed successful in the trial court but met a reverse when the Supreme Court of North Carolina on May 24, 1922, declared that the statute was in direct conflict with the Federal Reserve Act and hence null and void. The court said: "The act of Congress which provides that no exchange shall be allowed by the Reserve bank for remitting for the collection of any check by any bank is in direct conflict with the statute of this state authorizing the paying bank to remit a lesser amount than the face amount of any check paid by it if sent to it through the mails by the Federal Reserve bank. In this conflict of authority, the federal law is supreme."[21] As a last resort the state banks were now forced into the federal courts and applied for a writ of certiorari. On February 26, 1923, the Supreme Court granted their petition for such a writ.[22] On June 11, 1923, the Supreme Court by Brandeis J. stated that the purpose of the statute was merely to remove (when the drawer acquiesced) the absolute requirement of the common law that a check presented at the bank's counter must be paid in cash and gave the drawee bank the option to pay by exchange draft only where the check was presented by or through any Federal Reserve bank, post office, or express company, or any respective agent thereof, and that the expectation was that when the Reserve banks were no longer in a position to exert pressure by demanding payment in cash that they would cease to solicit or to receive for collection checks on non-assenting banks, and thus allow such banks to earn exchange as before. The court reviewed in detail the five reasons alleged for the unconstitutionality of the statute and found them all insufficient and concluded that the statute was valid. It demonstrated from the amendments to the Reserve act that Congress did not intend or expect that the Federal

[20] North Carolina Laws of 1921, Ch. 20. Statutes similar in purpose were enacted in Alabama, Florida, Georgia, Louisiana, Mississippi, South Dakota, and Tennessee. See for citations, 262 U.S. 658, note.

[21] *Farmers & Merchants Bank v. Federal Reserve Bank of Richmond,* 183 N.C. 546, 112 S.E. 252, 9 Fed. Res. Bd. 261.

[22] *Farmers & Merchants Bank of Monroe v. Federal Reserve Bank of Richmond,* 261 U.S. 610.

Reserve banks would become the universal agency for the clearance of checks and that its purpose was merely to offer to non-member banks the use of the facilities of the Federal Reserve banks which it was hoped would prove a sufficient inducement to them to forego exchange charges but that such banks had the option to reject such offer.[23]

The result of this decision is to check the movement to make the Reserve banks the national clearing house. In consequence of it, the Federal Reserve Board has instructed the Federal Reserve banks not to handle "for collection checks drawn on non-member banks and not collectible at par through usual banking channels."[24] In consequence, the number of banks in the country which are not on the par list is now increasing. On January 1, 1921, all but 1,755 of the 30,523 banks of the United States were on the par list and all of these 1,755 banks were in seven Southeastern states.[25] In 1921, the number of banks not on the par list increased to 2,353 comprising banks in eleven states in addition to the seven southern states heretofore mentioned.[26] On December 31, 1924, there were 25,127 banks on the part list which was 1,494 below that for December 31, 1923 and 3,657 below that for December 15, 1920 when the number of par collecting banks was highest.[27] In October, 1925, the number of banks not on the par list was reported to be 3,968 as against 3,550 in the year previous.

It is not to be expected however, that the matter will rest at this point. The fight for par clearance probably has just begun. It would not be surprising since the Federal Reserve Board procured the amendments of 1917, which proved insufficient to accomplish its purpose that it may procure other amendments which will not be insufficient. The stress which the Supreme Court lays on the form which the Congressional action has taken indicates that if such action takes a more stringent form the Supreme Court will uphold it and that if Congress unambiguously indicates its desire to force through a uniform par clearance system no constitutional barriers will stand in the way. Thus the battleground has been temporarily shifted from the courtroom in the national capitol to the halls of the legislature at the two ends of it. From there it will probably in due time shift back to the courts.

The rights of non-member banks to refuse to clear checks at par being established by the highest authority the rights and liabilities between the Reserve banks and member banks in connection with the internal administration of the par clearing system remain to be settled.

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[23] *Farmers Bank v. Federal Reserve Bank*, 262 U.S. 649.
[24] 10 Fed. Res. Bd. 50.
[25] 7 Fed. Res. Bd. 67.
[26] 8 Fed. Res. Bd. 71.
[27] 11 Fed. Res. Bd. 22.

Accordingly the Pascagoula Bank of Moss Point, Mississippi, has set on foot a new Atlanta case by asking an injunction against the Federal Reserve Bank of Atlanta for the purpose of, 1. obtaining immediate credit and availability for all of plaintiff's deposits of checks on all other member banks of the Atlanta District, 2. permitting the plaintiff to charge exchange on checks drawn on it and presented for payment through the Federal Reserve Bank; 3. prohibiting defendant from handling checks other than on its own members or any checks which are not payable in the Atlanta District.[28] If these contentions were to prevail it is clear beyond doubt that the function of the Federal Reserve banks as clearing houses will be tremendously restricted. The District Court on December 29, 1925, accordingly denied these contentions *in toto* giving the Federal Reserve System a complete victory [29] The case was appealed direct to the United States Supreme Court which refused to entertain jurisdiction and sent it to the Circuit Court of Appeals where it is now pending. It is anticipated that a final decision in this case by the Supreme Court will go a long way toward settling the par clearance controversy [30]

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[28] 11 Fed. Res. Bd. 25.

[29] *Pascagoula National Bank v. Federal Reserve Bank of Atlanta,* 3 Fed. (2nd) 465.

[30] 11 Fed. Res. Bd. 25.