

FEDERAL RESERVE BANK
OF SAN FRANCISCO

February 17, 1926.

Walter Wyatt, Esq.,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

I have received your letter of February 12, 1926, enclosing copy of Mr. Stroud's letter to you dated February 8, 1926, outlining the proceedings in the case of Vacuum Oil Co. v. Federal Reserve Bank of Dallas, et al. Mr. Stroud's letter is very interesting and I believe he is to be congratulated upon the result obtained.

I have had the same question presented in a little different form in the case of Denning against the Federal Reserve Bank of San Francisco, filed in the District Court of the State of Idaho. In this case the Federal Reserve Bank was the only party sued. The plaintiff was the payee of a check drawn by Fred Rush in the sum of \$593. The check was deposited by Rush in the Burley National Bank of Burley, Idaho, and credited to his account. It was forwarded by the Burley National Bank to the Continental National Bank of Salt Lake City and by that bank delivered to us in the ordinary form of cash letter. The check was sent by us direct to the drawee, Paul State Bank, of Paul, Idaho, upon the day of its receipt and a remittance draft for this and other items was received in purported payment. The draft upon presentation was dishonored by reason of the prior failure of the Paul State Bank.

To the complaint in this action I interposed a demurrer, general and special. In argument upon the demurrer, which I handled personally, we contended for the adoption in Idaho of the so-called "New York rule," the courts of that state not being definitely committed to either rule. The argument necessarily was largely academic and in making it I attempted to stress the fact that the New York rule was that adopted by the Federal courts, that it had not been departed from in the Malloy decision and that, in the absence of any controlling decision, it was the one which should be applied in this case. In a very brief memorandum decision, copy of which I enclose, Judge Lee adopts this position. Plaintiff having refused to amend or plead further, judgment of dismissal has been entered. I am informed that this case will be appealed to the Supreme Court of Idaho on the ruling

upon the demurrer, in which event we will have the opportunity of a definite decision as to the right of action on the part of the owner of the item against the last collecting bank.

I have several similar cases pending in Idaho and Utah, in one of which the facts alleged were similar to those alleged in the Denning case. A general demurrer was also interposed in this other case and the matter argued by me upon the same brief as that used in the Denning case. The trial court in the other case overruled the demurrer and we will proceed to trial on the merits. As Mr. Stroud seems to have done in the Vacuum Oil Co. case, it is our intention to stress the question of custom.

Chapter 165 of the Idaho Session Laws, 1921, to which Judge Lee refers, in his memorandum decision, is a statute expressly authorizing the direct routing of items by collecting banks and we shall also contend that the enactment of this statute carries with it by implication the right of the collecting bank to accept the drawee's draft in payment.

Very truly yours,

(signed) Albert C. Agnew

Counsel.

Enclosure.

(COPY)

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T. BAILEY LEE
Judge Eleventh Judicial District
Burley, Idaho

Jan. 14, 1926

District Court

Denning vs Fed. Reserve

Mr. John S. Coddington,
Burley, Idaho.
Hon. H. A. Baker,
Rupert, Idaho.

Gentlemen:-

An exhaustive study of this problem constrains me to sustain defendant's general demurrer.

I am impelled to this conclusion by the holdings of the U. S. Supreme Court in *Bank vs Malloy*, 68 L Ed --- and *Exchange Bank vs Third Nat. Bank* 28 L Ed 722 where the New York rule is expressly upheld.

Also by Chapter 165 of the Idaho Session Laws of 1921 which seems to exempt the initial bank from liability only where with due diligence it has attempted to collect by sending the item to the drawee bank.

Defendant's Counsel will kindly prepare the proper order

Very truly yours,
T. BAILEY LEE