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SALT LAKE CITY BRANCH

FEDERAL RESERVE BANK

of San Francisco

March 30, 1926.

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

RE: C. M. & St. P. Ry. Co. vs. Federal
Reserve Bank of San Francisco.

Dear Mr. Wyatt:

The above entitled case with which you are already somewhat familiar through previous correspondence was tried here last week before the Court sitting without a jury.

The check involved in this case was deposited by the Milwaukee Railway Company in the Bank of Tomah, Wisconsin. It was drawn on the Citizens State Bank of Buhl, Idaho. The bank of deposit sent it to the Marine National Bank of Milwaukee for collection and that bank sent it to the Salt Lake City Branch of the Federal Reserve Bank. It was sent by this Branch direct to the drawee and a draft in payment of this and other items was received the day before the Buhl bank failed. The draft, of course, was dishonored.

The plaintiff charged negligence in sending the item direct to the drawee and in taking the drawee's draft in settlement. Our defenses, stated as six separate defenses were; First: That by having authorized us to file a claim against the failed bank predicated upon the unpaid check there had been an election of remedies. Second: That by the provisions of our Collection Circular we were justified in sending the item direct to the drawee and that this action carried with it by implication the right to accept the drawee's draft. Third: That the custom and practice of the Federal Reserve Bank had for a long period of time been in accordance with the procedure followed in this case. Fourth: That a special statute existing in the State of Idaho at which point the collection was made expressly authorized the direct routing of cash items. Fifth: That by the custom and practice of all banks generally our procedure in this case had been justified and, Sixth: That under the terms of Regulations "J", Series of 1920 no negligence could be charged.

In an effort to overcome what has always seemed to me to be the vital weakness in the Malloy case, we produced as witnesses eight local bankers and also the depositions of seven Idaho bankers all of whom

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testified positively that there was a general and unequivocal custom on the part of all banks to send items direct to the bank upon which they were drawn when the forwarding bank had no correspondent in the same town and that having sent the items direct there was a further and separate custom general in its nature to take the drawee's draft in payment.

This morning, the Court rendered its decision in which it is held that any one of the six separate defenses would have been a sufficient answer to the negligence charged. Judgment will be entered in our favor tomorrow.

I fear that on account of the relatively small amount involved ($600.00) the plaintiff will not appeal. However, there is a certain satisfaction in receiving a favorable decision even in a court of first instance where as in this case the facts were identical with those presented in the Malloy decision.

I have another case of the same kind coming on for trial at Weiser, Idaho, next week. That case will be tried before a jury and I fear very much that the outcome will not be so fortunate unless we succeed in obtaining a directed verdict. However, we will do the best we can. If we do not prevail in the lower court we will, of course, take the matter to the Supreme Court of the State of Idaho. I enclose herewith a copy of the Court's memorandum opinion in the C. M. & St. P. Ry. case.

Very truly yours,

Albert C. Agnew,

Counsel

Enclosure

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IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF UTAH

IN AND FOR SALT LAKE COUNTY.

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CHICAGO, MILWAUKEE & ST. PAUL RAILROAD COMPANY, a Corporation,	:	Hon. Wm. M. McCrea, Judge
Plaintiff,	:	
VS.	:	No. 34951
FEDERAL RESERVE BANK OF SAN FRANCISCO,	:	
Defendant	:	March 27, 1926.

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THE COURT: In No. 34951, Chicago, Milwaukee & St. Paul Railroad against Federal Reserve Bank of San Francisco, heretofore tried and submitted, most of the facts are undisputed, the stipulation covering an agreed statement of most of the material facts in the case. TO the extent that the facts are not covered by the stipulation and are in dispute, I find from the evidence that they are as alleged and set out in the defendant's answer. In my judgment the evidence establishes each and all of the allegations of the answer and each and all of the allegations of the several separate defenses, or affirmative portions of the answer, which leaves only one question to be determined and that is whether or not the facts so found and so established, as alleged in the answer, are sufficient to constitute a defense to the cause of action set out in the complaint. I do not care to take the time to state in great details the reasons for the conclusions that I have reached in that regard. Suffice it to say that I find the issues in favor of the defendant, the evidence sustaining the first, second, third, fourth, fifth and sixth affirmative defenses

set out in the answer, and in my judgment constituting a complete defense to the plaintiff's cause of action. I think that any one of them alone, probably, is a sufficient defense, but certainly taken collectively they constitute a complete defense. Findings and judgment may be prepared accordingly.

MR. JOHNSON; Do I understand the court finds on the issue of waiver, that to be a defense in itself?

THE COURT: Which defense do you have reference to?

MR. JOHNSON: By the filing of the claim with the Federal Reserve Bank.

THE COURT: Not upon the theory so much of a waiver as upon the theory of an election of remedies. I have more doubt about that defense than any of the others, Mr. Johnson, but I am inclined to believe that it was such an election as to constitute a defense to this action. I am not unmindful of your contention in that regard, the contention of the plaintiff that it is not in the nature of an estoppel because the defendant has not altered its position, but the facts are as pleaded in the answer. It may be, standing alone, I would not regard that as a sufficient defense, but I think that all of the other affirmative defenses, or any of them, would certainly constitute a defense to the cause of action, and the findings and conclusions may be prepared on the theory that the court finds in favor of the defendant upon each of the separate defenses.

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REPORTER'S CERTIFICATE.

I, Clyde Rasmussen, do hereby certify that I am one of the official reporters of the Third Judicial District Court of the State of Utah, and was on the date indicated in the foregoing decision; that as such reporter I reported in shorthand the decision of the court in the above-entitled cause; that thereafter I transcribed into typewriting my said shorthand notes, and that the above and foregoing two typewritten pages constitute a full, true and correct transcript of the court's decision in the above-entitled cause.

Dated at Salt Lake City, Utah, this 27th day of March, A. D. 1926.

(signed) Clyde Rasmussen