

the note made to read as if such promise had been omitted—rendering the instrument identical with those involved in the first class.

The circuit court likened the case to those of the third class—from which, as we believe for the reasons stated, it is plainly distinguishable. There the instruments involved were not mercantile—although drawn to “order” or “bearer.” The cases relied upon by the court all rest on this plain distinction. The indorsement there was of a mere *chose in action*. In *Gray v. Donahoe* Chief Justice Lewis points out the distinction between such cases and those of the first class mentioned, very clearly. The note before him was drawn “to order,” but was payable in “current funds at Pittsburg.” While he therefore held it to be non-mercantile and consequently non-negotiable—saying that “nothing but money is properly the subject of a negotiable contract”—he added, “A note not negotiable in form, as between the original parties, may be negotiable between subsequent ones”, citing *Leidy v. Tammany*.

The third question reserved, on which the circuit court did not pass, must now be disposed of. The paper is made payable in Kansas, and as we have seen, the parties expressly submitted themselves to the laws of that state. They fixed the rate of interest at 12 per cent. after default, which the laws of Kansas justify. This question must therefore receive an affirmative answer.

The judgment must be reversed, and the record remitted to the circuit court for further proceedings, in accordance with this opinion.

UNITED STATES v. AMERICAN EXCHANGE NAT. BANK.

(District Court, S. D. New York. September 5, 1895.)

PENSION DRAFT—FORGED INDORSEMENT—COLLECTING AGENT NOT LIABLE AFTER PAYMENT OF PRINCIPAL WITHOUT NOTICE.

The defendant as collecting agent of the Bellaire Bank of Ohio collected at the subtreasury, New York, a pension draft on which the payee's name was forged after her death. The defendant in making the collection indorsed the draft as collecting agent of the Bellaire Bank, as appeared by the terms of its indorsement, and on collection at once paid over the money to the principal, without notice of the forgery, before this action was commenced: *Held*, that the defendant was not liable; the case of *Onondaga Co. Sav. Bank*, 12 C. C. A. 407, 64 Fed. 703, distinguished.

This was an action by the United States against the American Exchange National Bank to recover the amount of a pension draft which defendant had collected, as collecting agent of another bank; it appearing that the name of the payee had been forged upon the draft after her death. The court directed a verdict for defendant, and plaintiff moved for a new trial.

Wallace Macfarlane, U. S. Dist. Atty., for the United States.
Cardoza & Nathan, for defendant.

BROWN, District Judge. The pension draft in this case was paid to the defendant bank by the subtreasury, upon the forged indorse-

ment of the payee's name after her death. The Bellaire Bank of Ohio had previously cashed the draft upon the forged indorsement, and thereupon indorsed it "for collection" to the defendant bank at New York. The latter was the collecting correspondent of the Bellaire Bank as regards its funds in New York. The collection was made in good faith by the defendant bank and the proceeds remitted to the Bellaire Bank some months before the discovery of the forgery. The indorsement of the forged draft by the Bellaire Bank showed upon its face that the defendant was to act as collecting agent only. The defendant never had any property in the draft or its proceeds. The later authorities sustain the proposition that in such a case where the collecting agent pays over the funds before any notice of irregularity or fraud, the remedy is against the principal alone. *Bank v. Armstrong*, 148 U. S. 50, 13 Sup. Ct. 533; *White v. Bank*, 102 U. S. 658; *Sweeny v. Easter*, 1 Wall. 166; *Wells, Fargo & Co. v. U. S.*, 45 Fed. 337; *National Park Bank v. Seaboard Bank*, 114 N. Y. 28, 20 N. E. 632.

In such cases the indorsement by the collecting agent, who has no proprietary interest, does not import any guaranty of the genuineness of all prior indorsements, but only of the agent's relation to the principal, as stated upon the face of the draft; and as this relation is evident upon the draft itself, the payor cannot claim to have been misled by the indorsement of the agent, or any right to rely upon that indorsement as a guaranty of the genuineness of the payee's indorsement.

In the case of *Onondaga Co. Sav. Bank*, 12 C. C. A. 407, 64 Fed. 703, as I find upon examination of the record on appeal, no question like the present arose. The Onondaga Bank was in the same situation as the Bellaire Bank in the present case. It had cashed the forged draft and was collecting the money for its own benefit as owner of the draft. Its indorsement imported a guaranty of the prior signatures; and the defendant's remedy here is against the Bellaire Bank.

The direction of a verdict for the defendant upon the undisputed facts was, I think, correct, and the motion for a new trial should be denied.

THE LUCILLE MANOR.

RAMSAY v. THE LUCILLE MANOR

(District Court, S. D. New York. October 8, 1895.)

DAMAGES—CONTRACT FOR REPAIRS—IMPERFECT PERFORMANCE—ON REMOVAL BY OWNER NO FORFEITURE.

Upon a contract to repair a yacht for \$359, no definite time being fixed for completion, the owner being in haste to obtain possession, and the contractor being somewhat dilatory, and difficulties arising in repairs, the owner took possession before the work was finished. *Held*, not a case for forfeiture of all compensation, it not appearing that the delay was willful or considerable, or that the work done was not of substantial value; and the contractor was allowed the contract price, less a liberal deduction for the incomplete work.