

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.

This was a libel by Hugh Ramsay against the steam yacht Lucille Manor to recover compensation for repairs. The cause was referred to a commissioner, to whose report exceptions have been filed.

Hyland & Zabriskie, for libellant.

Richard J. Lewis, for claimant.

BROWN, District Judge. The commissioner's report shows careful consideration of the principal subjects in controversy. The exceptions to his report I must overrule, except as respects the disallowance of the contract work called for by the letters of October 12th and 13th, amounting to \$359.

The claimant was anxious to have the repairs completed speedily, so that he could leave with the yacht before the close of navigation, and no doubt there was this general understanding between the parties. But the letters by which the contract was made did not specify any fixed date for finishing the work. The claimant afterwards gave notice that he must have possession by November 1st. In the meantime, however, considerable extra work was ordered, which was done, and which has been allowed for by the commissioner.

On the night of the 2d of November, the claimant took possession of the yacht, and afterwards removed her to Brooklyn, where the incomplete work upon the pump and condenser—the most important single items—was finished. The defendant proved the cost of finishing the principal items, viz., additional dockage, \$10; work on the pump in Brooklyn, \$65, and \$12.72 paid to the expert Schantz for work before the boat was taken to Brooklyn. These are all the expenses of completion that have been pointed out by the claimant's counsel in the voluminous testimony, in response to my inquiries for the proofs upon this subject. I understand, however, that there was an additional valve put in; but whether that is embraced in the Brooklyn expense or not, is not clear. Faults are found with various other items of the work as imperfectly done; but the testimony indicates that these imperfections, although numerous, if claimant's testimony is true, and perhaps annoying, were comparatively trivial.

On the whole, I infer from the evidence that \$150 would certainly fully cover all the defects in the contract work, and all the expense of the claimant in completing it according to the contract, including towage; and the referee has found that no damage arose from the delay.

As the contract by letter did not make completion at any fixed date of the essence of the contract, no subsequent notice by the claimant could introduce that element into the contract so as to work a forfeiture by the libellant of all compensation for what beneficial work he did, because all was not done at the time desired. The libellant never refused to complete the work; nor did he stop work, until the claimant interfered, under the stress, indeed, of his own desire to sail speedily, and took the completion of the work out of the libellant's hands. This is sufficient to prevent the defendant's appropriation of beneficial work without compensation, and the application of

that rule of forfeiture which is justly applied in cases of a willful neglect or refusal to perform a contract.

The commissioner's report does not find that the work done was of no benefit to the claimant. There were many different and independent items of work. Aside from the pump and condenser, there was a general performance and completion of the contract, though the evidence shows that some items were poorly done, so as to entitle the claimant to recoup the amount necessary to make them good. It was for the defendant to show what these defects would amount to, and he proved the cost of finishing the most important. The answer raises no issue of forfeiture, nor does it allege that what was done on the contract work was of no material value.

Upon the evidence, I think full justice will be done to the defendant by the allowance of \$150, as above stated, for the defects in the contract work, and by the addition, therefore, to the commissioner's report, of the contract price, less \$150, viz., \$209, with interest from November 2, 1894. With this amendment, the report is confirmed.

UNITED STATES v. DODGE.

(District Court, E. D. Pennsylvania. October 21, 1895.)

OFFENSES AGAINST POSTAL LAWS—DUNNING LETTERS.

The proprietor of a collection agency adopted a method of proceeding by which, on failure of debtors to pay on first demand, a dunning letter was sent through the mails, inclosed in a pink-colored envelope, and, if this did not receive a favorable response, another letter was sent, inclosed in a black envelope, addressed in white letters. The purpose of these letters was universally known to the post-office employes. Having been arrested on a charge of violating the act of September 26, 1888, in respect to nonmailable matter, he sued out a writ of habeas corpus, *Held*, that the use of such envelopes was a "delineation" within the meaning of the statute, and that whether the effect was "to reflect injuriously upon the character or conduct" of the addressee was a question for the jury upon a trial for the offense, for which reasons the prisoner must be remanded.

This was an application by William H. Dodge for a writ of habeas corpus. Defendant was arrested, and, after a preliminary hearing before a United States commissioner, was committed on the charge of violating the postal laws, by "depositing in the United States mails for transmission and delivery a letter inclosed in a black envelope, addressed in white ink, calculated by the style of display, and obviously intended, to reflect injuriously upon the character of another." The commissioner held that the offense was within the meaning of the act of congress of September 26, 1888 (25 Stat. 496).

Ellery P. Ingham, U. S. Atty., for the United States.

Richard P. White, for defendant.

BUTLER, District Judge. The defendant asks to be discharged from arrest on the ground, that the evidence does not exhibit an offense. He is arrested for violation of the act of congress of September 26, 1888, which reads as follows: