55TH CONGRESS, 2d Session. | SENATE. | REPORT No. 1388.

JOHN C. COLEMAN.

JULY 2, 1898.—Ordered to be printed.

Mr. CLAY, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 9874.]

The Committee on Claims, to whom was referred the bill (H. R. 9874) for the relief of John C. Coleman, of Emanuel County, Ga., have given the same careful consideration. The report of the Committee on Claims of the House of Representatives, hereunto appended, is adopted, and the passage of the bill is recommended.

HOUSE REPORT.

The facts are as follows:

Chesley Faircloth was a contractor for carrying the mail on route No. 15286, Georgia. His sureties on his bond were John C. Coleman and White R. Smith. Faircloth incurred some penalties for remissness, which were charged up against him, and suit was brought by the United States against Faircloth, principal, and John C. Coleman and White R. Smith, his sureties, in the United States court at Savannah, and judgment was rendered against the principal and his sureties in March, 1896. Faircloth was insolvent, and the execution was levied upon the property of John C. Coleman, one of his sureties, in September, 1896, and he was forced to pay the judgment, the principal of which was $343.58, and the execution was transferred to Coleman by the United States, which he now holds.

Faircloth is dead. He left no estate, and there is no administration upon his estate.

When the judgment was paid by Coleman there was a credit of $116.39 to Faircloth on his contract, which should have been credited on the judgment, so the amount which Coleman should have paid was only $227.19. The Government has received from Coleman $116.39 more than it should have received, and should in equity and justice return to him said sum of $116.39.

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., March 22, 1898.

SIR: Referring to our conversation of yesterday, relative to the balance of $116.39 due Chesley Faircloth, late contractor (now deceased), I have the honor to state that I am in receipt, by reference from the Third Assistant Postmaster-General, of

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the letter Surety John C. Coleman addressed to you, requesting the payment to him of said balance, for the reason that he, as surety, paid the judgment recovered by the United States in the United States district court for the southern district of Georgia.

The facts in the case are as follows:

The account of Chesley Faircloth, late contractor on route No. 15286, Georgia, was submitted to the Department of Justice in 1891 for suit against the principal and sureties, Messrs. Coleman and Smith, for the collection of a balance of $343.58, with the statement that there was due Mr. Faircloth a credit of $72.97, which was suspended on account of his indebtedness. This credit was subsequently increased to $116.39.

Mr. Coleman now desires that the said $116.39 be paid over to him for the reason above given.

In this connection I invite your attention to the opinion of the Comptroller of the Treasury dated February 28, 1895 (1 Comp. Dec., 258–260, 261), in the matter of the "account of Pedro De Napoles, for refundment of tax illegally collected," to wit:

"When internal-revenue taxes, illegally or erroneously assessed against a distiller, are refunded, payment must be made to the principal against whom the assessment was levied, and not to a surety on his bond, although the latter may in fact have paid the assessment on behalf of his principal. * * *

"Whether Mr. Shwartz (the surety) is equitably entitled to receive the amount refunded on the erroneous assessment made against Mr. De Napoles is a question for private settlement between them, and not one for the determination of and settlement by the Department. * * *

"On an appeal by a surety on the bond of E. C. Benham, deceased, late postmaster at Hoquiam, Wash., from the Auditor of the Treasury for the Post-Office Department, to have refunded to him as such surety an amount paid by him on account of his principal, and which had been erroneously charged against the principal, the Comptroller, on April 24, 1894, held, following the established custom of the Auditor for the Post-Office Department, that the accounts of the Government were with the postmaster, and that payments made by sureties on his behalf must be treated as payments by the principal, and that the amount refunded would have to be paid by a draft in favor of the personal representatives of the deceased postmaster."

In view of the above I inclose herewith a copy of blank form No. 638, "Application by widow or heir for balance due deceased contractor," with the recommendation that Mr. Coleman cause the same to be filled out and acknowledged by the personal representative of Chesley Faircloth, designating one of their number to receive payment, accompanied by an affidavit of two disinterested persons as therein set forth.

If said form, properly filled out, should be returned to this office a draft will be drawn payable to the person designated to receive payment and forwarded in the care of Mr. Coleman, who will then be in a position to collect the money, provided, of course, the payee will indorse the draft.

Respectfully, yours, HENRY A. CASTLE, *Auditor.*

Hon. R. E. LESTER,
House of Representatives.

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