

DALE and another v. REDFIELD and another, as Ex'x and Ex'r, etc.

STRANG and others v. SCHELL.

(Circuit Court, S. D. New York. December 10, 1884.)

CUSTOMS DUTIES—ILLEGAL EXACTIONS—CONTRACT TO BRING SUIT TO RECOVER—
SUBSTITUTION OF ATTORNEYS—EFFECT OF JUDGMENT.

Contract whereby plaintiffs and others authorized the institution of suits to recover alleged illegal customs duties and fees construed, and held that the substitution of the attorneys, through whom some of such suits were settled, was valid; that plaintiffs were bound by the action of said attorneys; and that the cases so settled should not be revived against the executors of the collector.

At Law.

Lewis Sanders and *George N. Sanders*, for plaintiffs.

Elihu Root, Dist. Atty., *Thomas Greenwood* and *Ladislav Karge*,
Asst. Dist. Attys., for defendants.

William Nelson Cromwell, for the executors of Douglas.

BLATCHFORD, Justice. About the year 1860 one Alfred Douglas, Jr., who was then a merchant in the city of New York, became satisfied that certain exactions made by various collectors of customs for duties and fees were excessive, and could be recovered back. Thereafter, he, at his own instance, in connection with one Earl Douglas, entered into a contract or contracts with several hundred merchants, including the plaintiffs in these two suits, whereby the said Douglasses agreed to endeavor to establish, by legal decisions or otherwise, that such exactions were illegal, and to recover back the excess of duties and fees so paid; and, in consideration of their undertaking and services rendered, the other parties to the contract severally agreed to allow and pay to said Alfred Douglas, Jr., "for himself and associate," as compensation for said services, a fee equal in amount to one-half part of all and any sums of money they might recover; it being expressly understood and agreed that all expenses and costs were to be for account and risk of said Douglasses, whether they were successful or not. In cases where the contract was in writing and signed by the merchant, it read as follows, and in cases where it was verbal, its terms were as follows:

"Whereas, the collectors of customs at various ports in the United States have been and are still exacting excessive duties on our importations of merchandise, and fees on the necessary papers accompany the entry of the same at the custom-houses, owing to our being compelled to add to our entries and to pay duty on actual or estimated transport coastwise, and inland freight charges; also, to add to our entries, and to pay duty on, commissions, cost, and charges, instead of upon the cost or market value, without charges; also, to add to our entries, and pay duty on, commissions at higher rates than the usual rates charged within different foreign countries from whence we import; also, to add to our entries, and pay duty on, charges and commissions not actually incurred; also, owing to our being compelled to pay fees for oaths

to entries, clearances, manifests, stamps on invoices, etc., and orders from one department of the custom-house to the other, which exactions, we are advised, are contrary to law; therefore, the undersigned, in behalf of themselves and consignors, have employed Alfred Douglas, Jr., and Earl Douglas, of New York city, who agree, on their behalf, to endeavor to establish, by legal decisions or otherwise, that such exactions are illegal, and to recover the excess of duty and fees paid by us to the United States; and, in consideration of their undertaking and services rendered, we hereby severally agree to allow and pay to said Alfred Douglas, Jr., for himself and associate, as compensation for said services, a fee equal in amount to the one-half part of all and any sums of money they may recover; it being expressly understood and agreed that all expenses and costs are to be for account and risk of Alfred Douglas, Jr., and Earl Douglas, whether they are successful or not."

Thereafter the said Douglasses, upon their own responsibility, and in their own behalf, made a contract or contracts with Messrs. Kaufmann, Frank & Wilcoxson, attorneys at law, whereby, at their own expense, they employed said attorneys to bring, and said attorneys brought, in the state courts of the state of New York, as attorneys of record for the plaintiffs therein, a large number of suits, including these two, in the names of the various merchants, to recover such duties and fees, all of which suits were duly removed into this court. Earl Douglas died about 1865. On the fifth of April, 1866, Alfred Douglas, Jr., upon his own responsibility, and in his own behalf, made a written contract with E. Delafield Smith, an attorney at law, and for some time before 1866 attorney of the United States for the southern district of New York, and for some time after that date corporation counsel of the city of New York, whereby, at his own expense, he employed said Smith, and thereafter caused him to be substituted as attorney of record for the plaintiffs in all of said suits, including both of these suits, in place of Kaufmann, Frank & Wilcoxson. The general terms of such written contract were, that, on the recovery of money on a claim in suit, whether it should go to verdict or judgment, or not, Douglas would pay to Smith for his services a specified fee, varying with the amount of the recovery; taxed costs not to be deemed a part of the amount recovered; the agreement to apply to all cases which Douglas had brought through Kaufmann, Frank & Wilcoxson or one Pomeroy, except some silk-plush and worsted cases; all similar cases not in suit to be placed in Smith's hands for management and collection, as attorney of the claimants, and he to receive on recovery one-half of the net amount which Douglas should realize out of the recovery, and in case of suit the taxable costs recovered; the "net amount" to mean what Douglas should realize over actual and necessary disbursements to be approved by Smith; the agreement to embrace all suits and claims for duties exacted on nine specified classes of items.

On the twenty-sixth of April, 1866, Douglas and Smith modified in writing the terms of the prior agreement, thus: Smith agrees to lend to Douglas \$10,000 on mortgage, and to advance to him \$5,000 to pay costs, as agreed on with Kaufmann, Frank & Wilcoxson, where-