

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-

upon all cases in their hands, which Douglas had caused to be instituted, are to be transferred to Smith, and Douglas is to be responsible to Smith for one-half of the \$5,000, and it is to be added to the mortgage; all docket fees in the cases so transferred are to be transferred to Smith, "except the \$10," or to be credited to Douglas in reimbursement of the \$2,500 for which he is responsible, and also of any additional sum which he himself may pay "to Wilcoxson;" the balance of the docket fees to belong to Smith; all the cases to be in Smith's own name, unconnected with any other lawyer, and, in case of his death or prostration by disease, the cases not adjusted to revert to Douglas on an equitable and just payment for Smith's actual services and disbursements in the cases; the agreement of April 5, 1866, to stand good, but the transfer from Kaufmann, Frank & Wilcoxson to include every suit and claim of every kind in their hands from Douglas, and the agreement of April 5, 1866, to extend to all the suits so to be transferred; Douglas is attorney in fact of the merchants plaintiffs, and Smith is the attorney at law; collections recovered by Smith in any case to be paid over by him to Douglas, and not to the plaintiffs, Douglas dealing directly with the merchants. Smith, under said employment and contracts, became attorney for the plaintiffs in May, 1866, and continued to act as such until April 12, 1878, when he died. Alfred Douglas, Jr., died October 3, 1876. During his life-time he expended at least \$200,000 in and about said suits, as fees of the regular attorneys of record for the plaintiffs, and counsel fees, and for services of competent clerks, assistants, and experts in preparing the same for trial, and for payment of court fees, and traveling expenses of himself, his attorneys, agents, and assistants to and from Washington. He employed as counsel, besides others, William M. Evarts, Edwin W. Stoughton, and Edward Jordan.

The Douglasses, during their life-time, through their attorneys and others employed by them, and through their own individual efforts, caused to be recovered and paid, in a large number of said suits, judgments amounting to over \$600,000. Since the death of Alfred Douglas, Jr., his executors have employed counsel, agents, etc., in and about such of said suits as were not disposed of before that time, and have expended therein at least \$30,000, and have also made contracts and incurred liabilities in and about such remaining suits, and, as appears by the records in the custom-house in the city of New York, have recovered, in some of such suits, upwards of \$125,000. As a result of the litigation had during the life-time of Alfred Douglas, Jr., his efforts, and the efforts of the various counsel and others employed by him, or by him and Earl Douglas, verdicts or orders of reference were obtained, prior to the death of Smith, in all of said suits (including these two) with the exception of some few suits, which verdicts or orders required only an adjustment of the suits in accordance with the terms thereof, and the rules and decisions of this court in

similar cases, as far as the same should be found applicable. The plaintiffs, under their contracts with the Douglasses, never contributed to the expenses of the suits, all of which were paid by the Douglasses, or by Alfred Douglas, Jr., during the life-time of Alfred Douglas, Jr. The said attorneys of each of the plaintiffs were appointed by Alfred Douglas, Jr., under the contract so made by the Douglasses with the plaintiffs, and the plaintiffs were not consulted, nor did they request to be consulted, concerning such appointments or changes of attorneys, all of which were made by the sole direction of Alfred Douglas, Jr. With the exception of some few of the suits, the plaintiffs in none of the suits have ever claimed any voice or right in the appointment of attorneys to represent them, or in the changes of attorneys, or in any matter connected with the management of the litigation, but have left all of such matters entirely to the control and management of Alfred Douglas, Jr., during his life-time, and of his executors since his death. This is true as to *Strang v. Schell* up to about March 27, 1884, when the plaintiffs in it served a notice of a motion to set aside the judgment order of March 1, 1881, hereafter mentioned; and it is true as to *Dale v. Redfield* up to about July 17, 1884, when the plaintiffs in it, and in several others of the suits, gave notice that they repudiated the judgment order therein.

After the death of Smith, in April, 1878, owing to the action of the government in carrying certain of the suits to the supreme court of the United States, and to the cessation of proceedings in all others thereof, the executors of Alfred Douglas, Jr., let some time elapse without making any substitution of an attorney in the place of Smith, but employed counsel to take general charge of the suits. - But on September 26, 1878, those executors caused William Nelson Cromwell to be substituted as attorney for the plaintiffs, in the place of Smith, in all of the suits which were then pending (including these two) by a rule duly entered. In November, 1878, the attorney of the United States, as attorney for the defendants in the suits (including these two) moved this court to vacate such rule of substitution, on the ground that the contract made by the Douglasses with the plaintiffs in the suits was champertous and void, and, if not, that the executors of Alfred Douglas, Jr., had no power to appoint an attorney for such plaintiffs. The motion was made on notice to Mr. Cromwell, as attorney for the plaintiffs in all the suits, (including these two,) and counsel were heard on both sides. On November 20, 1878, a decision on the motion was filed, holding that the contract was not invalid, under the law as to champerty and maintenance, as understood and interpreted by the courts of New York; that the contract did not die with Alfred Douglas, Jr.; and that the motion must be denied. An order was entered denying the motion in all of the suits, (including these two.) Thereafter, Mr. Cromwell was recognized and treated by the attorney for the collectors, defendants in the suits, (who was the attorney of the United States,) as attorney for the plain-