

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-

tiffs in the suits covered by such rule of substitution, (including these two,) until August 11, 1880, when, at the request and under the authority of the executors of Alfred Douglas, Jr., and on application to this court, Mr. Edward Jordan was, by an order of this court, substituted as attorney, in the place of Mr. Cromwell, for the plaintiffs, in all of the suits, (including these two.) Mr. Jordan was formerly solicitor of the treasury of the United States, and as such was familiar with such suits. After he had ceased to be such solicitor, and before he was so substituted as attorney, he was employed by Alfred Douglas, Jr., as counsel in the suits, (including these two.)

Thereafter, Mr. Jordan was recognized and treated by the attorney for the collectors, defendants in the suits, as attorney for the plaintiffs. Mr. Cromwell and Mr. Jordan, as such attorneys, were given access to, and examined, one or the other of them, the custom-house papers, at the custom-house, in nearly all of the suits, (including these two,) on the express understanding and agreement that those of said suits in which both sides could agree as to the amount of duties recoverable on charges and commissions, should be adjusted and paid; that those in which both sides agreed that nothing was recoverable should be discontinued, or otherwise disposed of; that those in which both sides agreed that nothing was recoverable as to charges and commissions should be discontinued as to that issue; and that those in which both sides could not agree, or in which there was any other issue than charges and commissions, should be litigated in court. The government, to carry out its part of such agreement, and to dispose of the cases, employed, at great expense, attorneys, experts, adjusters, and other assistants. Of the suits in which the custom-house papers were so examined, some 99 suits were, on such understanding and agreement, adjusted and put in judgment, or were, on the consent of Mr. Jordan, as attorney for the plaintiff, and of the attorney for the defendant, discontinued for payment, and over \$125,000 have been paid in full settlement thereof. Some 193 other suits, in which Mr. Jordan, as attorney for the plaintiff, after such examination, and on his own judgment, concluded that the plaintiff was not entitled to recover anything, were, on his consent as such attorney, and that of the attorney for the defendant, wholly discontinued, without costs, the attorney for the defendant having first obtained authority from the secretary of the treasury of the United States to waive costs. In some 186 other suits, (including these two,) in which Mr. Jordan, as attorney for the plaintiff, after such examination, also came to the same conclusion, motions were made by the attorney for the defendant for judgment, and judgment was rendered for the defendant, by an order entered March 1, 1881, costs having been waived by the attorney for the defendant, upon the authority aforesaid. Some 34 other suits, in which Mr. Jordan concluded that the plaintiffs were not entitled to recover anything as to charges and commissions, were discontinued as to charges and commissions,

and continued as to other issues involved. Some few suits, in which both parties could not agree, have been litigated in court.

Heman J. Redfield was collector of customs at New York from November, 1853, to July 1, 1857. The suit of *Dale v. Redfield*, was commenced in the supreme court of New York, April 24, 1863, against Mr. Redfield. About May 1, 1863, he appeared by Mr. E. Delafield Smith, then attorney for the United States, and demanded a bill of particulars of the plaintiffs' claim. The suit was removed into this court, July 20, 1863. Issue was joined May 20, 1866. On the nineteenth of April, 1872, on the written consent of Mr. Smith, as attorney for the plaintiffs, and of the attorney for the several defendants, an order was entered, entitled in that suit and 134 other suits, referring the suits to Edwards Pierrepont, Esq., as sole referee. The order states that the suits are "now pending in this court to recover duties alleged to have been illegally exacted upon charges and commissions;" that the order is made on motion of Mr. Smith, as counsel for the plaintiffs; that Mr. Pierrepont is appointed referee to take proofs of and ascertain the claim of the plaintiffs "for excess of duties upon such charges and commissions, which may be found to have been illegally exacted from plaintiffs;" and that, on the coming in of the report of the referee, and the decision on exceptions which might be taken to it, either party might "move for judgment or verdict." On December 19, 1876, an order was made in the same language, referring *Dale v. Redfield*, and other cases, to John I. Davenport in place of Mr. Pierrepont.

Augustus Schell was collector of customs at New York from July 1, 1857, to April 8, 1861. The suit of *Strang v. Schell* was commenced in the supreme court of New York, June 9, 1865, against Mr. Schell. It was removed into this court November 18, 1865. The declaration, which was put in in this court, January 25, 1866, contained only the common money counts, and claimed \$1,980. Issue was joined, by a plea of *non-assumpsit*, on February 10, 1866. On the thirteenth of March, 1875, on the consent of Mr. Smith, as attorney for the plaintiffs, and of the attorney for the defendant, the suit was, by an order of this court, referred to John I. Davenport, the order being in the same words as the above-named orders of reference in *Dale v. Redfield*.

In February, 1881, the defendants in 146 suits against three collectors (including these two suits) moved for an order requiring the plaintiffs to serve bills of particulars of the items of their demands, or, if none could be served, then for an order rendering judgment for the defendant. Mr. Jordan was attorney for the plaintiffs in all of the suits, and the motion was made on notice to him, on an affidavit stating that more than 15 years previously the defendants had appeared and served on the attorney for the plaintiffs a demand for a bill of particulars, but none had been served in any of the suits; and that each of the suits was brought to recover an excess of duty on mer-