

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-

chandise imported by the plaintiffs. The motion was made and granted, and on the first of March, 1881, an order was entered, the form of which was assented to in writing by Mr. Jordan, as plaintiffs' attorney, entitled in the 146 suits, (including these two,) which order recites the motion, and says that, "it appearing that no bill of particulars can be served in any of said actions," it is, after hearing the attorneys for both parties, "ordered that judgment be, and the same is hereby, rendered, in each of said actions, in favor of the defendant or defendants therein, and against the plaintiff or plaintiffs therein."

In the custom-house in New York it was the practice of the collectors, (including Redfield and Schell,) from about January, 1851, to June, 1883, to exact three fees of 20 cents each, as follows: When an invoice and an entry were presented, the collector put a stamp on the invoice, showing the date of its presentation, and charged 20 cents therefor. He also charged 20 cents for administering the owner's or consignee's oath on the entry. He also charged 20 cents for an order from the collector to the store-keeper in the public store to deliver to the importer examined and appraised packages. Down to April 22, 1881, there had not been any recovery by any importer for the return of such fees as illegally paid. In numerous suits against collectors who had exacted such fees, brought to trial, or settled, or otherwise disposed of, such fees were not considered recoverable, or the attempt to recover them was abandoned. No attempt was ever made to recover such fees until about April 22, 1881, and then, on the trial of *Benkard v. Schell*, in which Mr. A. W. Griswold was counsel for the plaintiffs, there was a recovery by them for such fees. A like recovery was had by Mr. Griswold, in *Recknagel v. Schell*, in November, 1881, and by Mr. George Bliss, in May, 1882, in *S. Cochran & Co. v. Schell*. The supreme court of the United States, at October term, 1882, affirmed the judgment in the last case, (*Barber v. Schell*, 107 U. S. 617, S. C. 2 Sup. Ct. Rep. 301,) holding that the exaction of the three fees was illegal; and in June, 1883, their exaction was discontinued by an order from the treasury department.

Mr. Schell having died March 28, 1884, and executors of his estate having been duly appointed April 14, 1884, the plaintiffs in *Strang v. Schell*, by Mr. Lewis Sanders, as their attorney, caused to be issued from this court, on the tenth of July, 1884, a writ directed to the marshal, commanding him to make known to the executors of Schell that they should show cause on July 29, 1884, why the several appearances of Mr. Cromwell and Mr. Jordan, as attorneys for the plaintiffs, and all proceedings thereunder, should not be expunged from the record as null and void, including the said order of March 1, 1881, and why the suit should not be revived against said executors. This writ was issued on an affidavit made by one of the plaintiffs, setting forth that the suit was brought to recover duties, charges, and fees; that, after the death of Mr. Smith, the plaintiffs did not appoint, or receive

notice to appoint, another attorney; that the order of March 1, 1881, was entered without the knowledge, consent, or authority of the plaintiffs, and after the death of Mr. Smith was known to the defendant's attorney, and that the plaintiffs were not informed until after January 1, 1884, that the suit had been attempted to be discontinued, or that any attorney had assumed to represent them since Mr. Smith's death.

The executors of Schell now move to quash said writ in *Strang v. Schell*, and the plaintiffs in *Dale v. Redfield* and in *Strang v. Schell* move to set aside the several orders substituting Mr. Cromwell and Mr. Jordan as plaintiffs' attorneys, and the order of March 1, 1881, and that the suits be reinstated, and Mr. Sanders be substituted as plaintiffs' attorney in place of Mr. Smith. The plaintiffs' motion in *Dale v. Redfield* is made on an affidavit of one of the plaintiffs therein, which sets forth that the suit was brought to recover illegal fees exacted from them by Mr. Redfield for oaths to entries, stamps, and orders; that, besides the claim for fees, they had a claim for duties on charges and commissions, exacted by Mr. Redfield, but it was paid in 1865, independently of this suit and of the Douglasses, and there is no claim for duties on charges and commissions herein; that until the latter part of 1883 neither of the plaintiffs was informed of the death of Alfred Douglas, Jr., or of Mr. Smith, or of the substitution of Mr. Cromwell or Mr. Jordan as plaintiffs' attorney, or of the judgment of March 1, 1881; that they immediately took steps to set aside the orders of substitution and the judgments; that they never authorized the representatives of Alfred Douglas, Jr., to appoint an attorney for them; that, after the trial of *Hutton v. Schell*, in April, 1881, Mr. Jordan took no steps to have the judgment in *Dale v. Redfield* set aside; that the plaintiffs in that suit never had notice of an order to furnish a bill of particulars; that the claim to recover fees therein was never abandoned, and the plaintiffs never authorized it to be abandoned; and that they could have furnished a bill of particulars of their claim for fees at any time, if it had been demanded of them. The plaintiffs' motion in *Strang v. Schell* is made on an affidavit of one of the plaintiffs therein, to the same effect as the affidavit last recited in *Dale v. Redfield*, and further stating, that their contract with the Douglasses was not in writing; and that, for want of protests, they never had any cause of action for the recovery of duties on charges and commissions, but they had and have a cause of action to recover fees. It otherwise appears that protests were made against the exaction of the fees from the plaintiffs in these two suits; that, from and after the death of Alfred Douglas, Jr., the plaintiffs never made, until recently, as before stated, any inquiry of his estate or of any of his attorneys as to the claims, or manifested any interest in them, or asserted any right to appoint attorneys on their own nomination. The Douglas estate claims the right to conduct these suits if the judgments are opened. It asserts that the contract survived Douglas,