was no fraud at any time, on his part, by collusion with the opposing counsel, as charged in the bill. There was no opportunity to defend successfully against a judgment for some amount against Allen, Hopkins & Co., provided suit was brought in the name of the proper plaintiff. There was an opportunity, by testimony in regard to the rents and profits and the disbursements, to attempt to reduce the amount against Mr. Allen. The reason which probably induced the attorney's conduct after the appeal was that he had not received any money from Mr. Allen, from whom, however, he had not asked compensation.

Upon the foregoing finding of facts, divers questions of law arise, which remain to be considered. The plaintiff places her case upon the established principle that judgments of a court of one state of the United States can, in an action thereon in a court of another state, be inquired into only in respect to the jurisdiction of the foreign court over the person or subject-matter embraced in the judgment, and in respect to notice to the defendant. *Christmas* v. *Russell*, 5 Wall. 290; *Thompson* v. *Whitman*, 18 Wall. 457. Such inquiry can be made, although the record of the judgment shows a service upon or an appearance by the defendant. *Knowles* v. *Gas-light Co.* 19 Wall. 58. In this case service was not made upon any member of the firm of Hopkins, Allen & Co., and Mr. Allen had no legal authority to authorize an appearance for the other members; but he voluntarily and fully appeared for himself, through his attorneys, and by such general appearance he submitted himself to the jurisdiction of the court, and became personally bound by a valid judgment against himself individually. *Hull* v. *Lanning*, 91 U. S. 160; *Cooper* v. *Reynolds*, 10 Wall. 308; *Hill* v. *Mendenhall*, 21 Wall. 453. The question, therefore, is, are the judgments, or either of them, absolutely void, as against Mr. Allen, by virtue of any inherent defects therein?

The defendant says that the judgment against the five members of the firm of Hopkins, Allen & Co. by name, "or such of them as are now surviving," three of them being dead at the date of the rendition of the judgment, and no suggestion of the death of a defendant having been made on the record, is void; because a judgment against two or more, one of whom is dead, is a nullity against the dead defendant, and being void against one is void against all; and because of its uncertainty—it being in the alternative—and the survivors not being found nor named. It is true, that at the ancient common law a judgment against three, one of them having died pending the suit, would be reversed upon writ of error as against all, upon the principle that a judgment is an entirety, and is invalid against all if invalid against one, (2 Bac. Abr. "Error," M.; *Gaylord* v. *Payne*, 4 Conn. 190;) a principle still recognized in states where the common law has not been modified by statute. *Wright* v. *Andrews*, 130 Mass. 149. In many states, however, the effect of statutes has been to alter the nature of a joint judgment, and to make it several as well as joint, while in other states the principle has been relaxed.

Sections 2905 and 2913 of the Alabama Code are as follows:

"Sec. 2905. When two or more persons are jointly bound by judgment, bond, covenant, or promise in writing, of any description whatsoever, the obligation is, in law, several as well as joint."

"Sec. 2913. In suits against joint obligors, where one dies pending the suit, judgment may be rendered against the survivor at the trial term, and the suit be continued as to the representatives of the deceased obligor, and the judgments, when rendered, shall be several as to the survivors and the representatives of the deceased."

In *Fabel* v. *Boykin*, 55 Ala. 383, a judgment had been rendered against Fabel and Price, the latter being dead at the date of the judgment. Upon execution, Fabel's property was sold. Upon motion to set aside the sale, on the ground that the judgment was void, or at least voidable by reason of Price's death, the court said:

"This would make the judgment void against him, (Price,) but not against Fabel. If a motion had been made to vacate it as against Price, this would have been so done as to leave it in force against Fabel from the time of its rendition. Such a motion, not having been made, execution was properly issued, in conformity with the judgment against both, though, as was legally proper, it was enforced only against the property of Fabel."

It thus appears that an Alabama judgment against two or more is several as well as joint, (*Cox* v. *Harris*, 48 Ala. 538,) and that, in the event of the death of one of the joint obligors pending the suit, a judgment may be rendered against the survivors; and it further seems, from *Fabel* v. *Boykin*, that an omission to comply with the provisions of another section of the Code, in regard to the suggestion of the death of a party upon the record, does not make the judgment void against the survivor. The legal effect, then, of the judgment against the five members of the firm of Hopkins, Allen & Co. is a judgment against the survivors.

But it is earnestly urged that the judgment, being in the alternative, is uncertain, and therefore void by reason of its uncertainty, and because the survivors are neither found nor named. It is not necessary to determine what would be, in general, the effect of a money judgment, against several persons, in the alternative; for these judgments are to be looked at in the light of the Alabama statutes, and the decisions which have been cited. Remembering that the judgment against the five named persons is, in legal effect, a judgment against the survivors, the words, "or such of them as are now surviving," cannot be considered to have been used in the alternative, in the sense of offering a choice or making a distinction between two sets of defendants. "'Or' is often used to express an alternative of terms, definitions, or explanations of the same thing in different words." Webster, Dict. It was used in this case to explain the meaning of the preceding clause, and the same persons were meant by both expressions. If a judgment against five named persons, three of whom are dead, is good against the survivors, it naturally follows that it is not incumbent upon the court, in order to make a valid judgment, to name the survivors. The considerations which have been already sug-

gested in regard to the nature of judgments against two or more are applicable to another point made by the defendant's counsel, and which is that a judgment against three persons not served, two of whom did not appear, and for whom the third had no authority to appear, being void as against the two, is also void against the third, who did voluntarily appear.

It is next insisted that the judgment against Mr. Allen individually is void because service of the notice of appeal was made upon Mr. Clopton, who, it is said, ceased to be Allen's attorney upon the dissolution of the firm of Stone & Clopton.

Service of a citation upon the law partner of a deceased attorney of record, the partner not affirmatively appearing to have been attorney or counsel in the cause in which the appeal is taken, is not good, (*Bacon* v. *Hart*, 1 Black, 38;) but in this case Mr. Clopton affirmatively appears to have been both attorney and counsel, and to have been, equally with Mr. Stone, charged with the management of the cause. The mere fact of the dissolution of a law firm does not necessarily dissolve the agency of each member, but the dissolution of the agency of a particular member must, I think, depend upon questions of fact; and in this case Mr. Clopton continued to be what he was before, the actual attorney of Mr. Allen. I do not propose to consider what may be the effect of the dissolution of a commercial partnership upon the relation of the members of such partnership as selling agents or factors for others.

Upon the bill to set aside the judgments for fraud, the conduct of the defendant's attorneys in making the stipulation, and in not attending to the cause after the appeal, is attacked. If the stipulation had not been entered into, the effect would not have been to cause an abandonment of the existing suit and the institution of a new one, but simply a delay, and the amendment of the bill or the filing of a supplemental bill. The agreement of Stone & Clopton was not in excess of their authority, which extended to all proceedings in good faith naturally incident to the management of the existing cause while it was pending in court. They were not authorized to make agreements by way of compromise or settlement of the cause, or agreements to keep alive a cause, which, but for such agreement, must be abandoned; but the stipulation which they made was not of such a character. The wisdom or the imprudence of their agreement I am not called upon to examine, but there was no fraudulent combination with the plaintiffs' lawyer to sacrifice Mr. Allen or to benefit Mr. Lakin. So, also, while I think that Mr. Clopton was neglectful in the management of the cause after the appeal, his conduct was not fraudulent, and it cannot be that the laches or the negligence of an attorney, when there is no fraudulent combination or collusion with the opposing counsel, will have the effect of rendering void a judgment in favor of the successful party. *Wynn* v. *Wilson*, 7 Hempst. 699.

Other objections are made to the judgment, on the ground that the