At the time this settlement was made, Green had deposited along the railroad some stone which had not been placed in the bridges or culverts, and this stone was not included in this final estimate. In the year 1892 the company caused the remaining culverts and bridges between Clinton and Lisbon to be constructed by other contractors; and Green sued for the loose stone he had left along this track, and for the profits he would have made if he had been permitted to do this work. He set forth his causes of action in two counts in his petition. In the first one he pleaded the contract, the delivery of the loose stones along the track, their value, and the profits he would have realized if he had been permitted to put them in the form of masonry, and asked to recover $865.64 and interest. In the second count he pleaded the contract, and the refusal of the company to permit him to construct the masonry for the bridges and culverts between Clinton and Lisbon, which had not been built in October, 1891, and sought to recover $8,000, which he averred he would have gained if he had been permitted to complete this masonry under his contract. The company answered that it admitted that it had used some of the stones left along the track by plaintiff in error, and that it was liable for their value, but questioned the quantity and value alleged in the petition of the plaintiff, and denied that he was entitled to lay them up in masonry under the contract, or that he would have made any profit by so doing, if he had laid them. A verdict and judgment in favor of the plaintiff were rendered upon the first count of the petition, and no question concerning this result is presented to this court. In answer to the second count of the petition, the company pleaded the receipt and release of October 19, 1891, and alleged that it evidenced a cancellation of the contract, and a complete settlement and release of all liability of the company under it, except its liability for the loose stones along the track which it had subsequently used. The plaintiff replied that before and at the time the release was signed there was a parol agreement between the parties that the company waived its right to withhold the 10 per cent. until the completion of the contract; that the final estimate was not final; that the contract was not canceled thereby, but was to continue in force; that the plaintiff was to continue to perform it at some future time; and that, although the release reads that the $9,362.23 was received in payment and discharge of all claims and liabilities of the company under the contract, yet that was not the fact. In support of the averments of this reply, the plaintiff testified, over the objections of the company, that, before and at about the time the final estimate and release was made, he had a conversation with Mr. Blunt, the chief engineer of the defendant in error, in which the latter said to him that the president of the company was going to discontinue work for the present, and he could not tell how long it would be before the work would be resumed; that, as the duration of the suspension of the work was so indefinite, it would not be fair for the company to retain the 10 per cent., and he would put it in his voucher; that the stone on the right of way would go into his next estimate when he built it into the masonry; that he would allow him to take his tools from the right of way of the railroad, to repair them, but that he wanted him to hold himself in readiness to build again; and that he agreed and promised to do so. He also testified that no conversation was had about ending the contract; that he never received any consideration for the release, except the money due to him upon his work, and that, when it was presented to him for his signature, he objected to its form, and Mr. Blunt assured him that it was the company's general form of receipt, that it meant nothing but the work built up to that time, that it had no reference to the future; and that it was upon that understanding that he signed it. At the conclusion of the trial, the court struck out this oral testimony, on the ground that it contradicted the written contracts of the parties, and instructed the jury to return a verdict for the company on the second count of the petition. This is the ruling which is challenged by the writ of error in this case.

Charles A. Clark (James W. Clark, on the brief), for plaintiff in error.

F. F. Dawley and C. E. Wheeler (N. M. Hubbard and N. M. Hubbard, Jr., on the brief), for defendant in error.

throughout the contract, almost entirely the personal following of Mahin.

In December, 1898, the connection between complainant and Mahin was dissolved. The dissolution was consented to by both parties, and was within the legal right of each. Neither took advantage of the other in that respect. The dissolution left Mahin at liberty to set up in business for himself. He had, without question, the right to thereafter avail himself of every advantage his previous experience had brought to him. He had the right to promote his interest wherever the field lay open. It is charged that he took with him the office help of the complainant. The evidence of this charge lies in a single circumstance, viz. that the men and clerks left at one time, and together joined Mahin's new business. But each has submitted his affidavit denying explicitly that there was any solicitation upon the part of Mahin; and, bearing in mind that Mahin had been the personality behind complainant's Chicago business, that the men had been his employés, in personal contact with him alone, that the business was, indeed, substantially his business, the affidavits do not appear strained or untrue. I can find no sufficient evidence upon which to base an order for complainant in this respect.

It appears that during the connection between complainant and Mahin there were kept by the latter in a book previously purchased by him, and used during the period of his employment with the J. Walter Thompson Company, certain tabulated memoranda relating to the rates charged by publishers. It also appears that during this connection a scrap book was kept by Mahin, in which was gathered information pertinent to the business as it went along. The complainant insists that the information gathered in these two books, though written by Mahin into books which, as blank books, belonged to him, is, in law, the property of the complainant. On the contrary, Mahin insists that the books, as books, are his, that the data in the scrap book, except such as had been cut out and delivered to complainant at the Chicago agency, had no relation to the complainant's business; that the data in the memorandum book were simply a convenient tabulation of what the complainant possesses in another equally convenient form; and that none of the data is, in any sense, the exclusive property of the complainant. Whether any of the information gathered into the scrap book is exclusively complainant's can only be ascertained by a minute examination. Whether the information gathered into the memorandum book is in the nature of a business secret, which an agent is not permitted to carry off, depends for determination, also, upon such an examination. Mahin offers to surrender everything that may be found to belong to complainant. This part of the case, therefore, I will refer to a master to report what portion, if any, of the information gathered into these books belongs exclusively to the complainant.

Complainant charges that Mahin has enticed away its clients, and has been procuring them to cancel contracts with the complainant not yet fully performed. As to the first part of this charge, I hold it was within Mahin's right, after the connection ceased, to not only receive, but to solicit, the patronage of these clients. Whether he could right-

pel of these writings? He endeavors to do so in three ways: By testimony of the oral statements of Blunt, the engineer of the company, before and at the time when the release was made; by testimony that there was no consideration for the release; and by construction of the contracts.

Laying aside for the moment the question of consideration, the parol evidence upon which the plaintiff relies consists of testimony of the oral statements of Mr. Blunt prior to the execution of the release, and of his interpretation of its meaning when it was signed. The former tends to establish a parol agreement made before the release was executed, and while negotiations for it were progressing, to the effect that the payment in full for the work done under the contract, including the 10 per cent., should not cancel the original agreement, and evidence its complete execution, as it provided; that the final estimate which Green signed should not be a final estimate, but an intermediate one; and that, in essential particulars, the legal effect of the transaction should be contrary to that evidenced by the writings. No rule or principle of law occurs to us under which this testimony could have been admissible. It flies in the teeth of the rule that parol evidence cannot be received to contradict or modify written contracts, and of the conclusive presumption that the whole engagement of the parties, and the manner and extent of their undertaking, are expressed in their written agreements. McKinley v. Williams, 74 Fed. 94, 101, 20 C. C. A. 312, 319, and 36 U. S. App. 749, 761; Thompson v. Libby, 34 Minn. 374, 377, 26 N. W. 1; Wilson v. Ranch Co., 73 Fed. 994, 999, 20 C. C. A. 244, 249, and 36 U. S. App. 634, 643. The testimony as to Blunt's interpretation of the release was equally objectionable. It was when Green was about to sign it that Blunt told him that it did not mean what it plainly read, that it covered nothing but the work up to that time, and that it had no reference to the future, when it expressly provided that he received the money in full payment and discharge of all work and materials mentioned in the contract, and of all liability of the railway company in any manner arising thereunder. The question which this evidence presents has been repeatedly considered and decided by this court, and our conclusion upon it has been embodied in this rule:

> "No representation, promise, or agreement made or opinion expressed in the previous parol negotiations as to the terms or legal effect of the resulting written agreement can be permitted to prevail, either at law or in equity, over the plain provisions and just interpretation of the contract, in the absence of some artifice or fraud which concealed its terms, and prevented the complainant from reading it."

The reason for this rule is stated, many authorities in support of it are cited, and some of them are reviewed, in Insurance Co. v. McMaster, 87 Fed. 63, 68–72, 30 C. C. A. 532, 538–540, and 57 U. S. App. 638, and it is useless to repeat them here.

Turning now to the argument of counsel for the plaintiff in error upon the question of consideration, their contention is that the only consideration for the release of the liability of the company to pay for the work and labor done after October 19, 1891, was the fact

injure the defendant Mahin in his independent venture in business, while conferring little benefit upon the complainant. Few of the Chicago agency clients yet remain with complainant, and defendant Mahin promised at the hearing that no effort would be made to procure other cancellations of contracts. I am impressed with the belief that whatever has been done in that direction heretofore by Mahin was under a mistaken belief of right, and was not under the exercise of malice towards the complainant, or with a purpose to unfairly treat him. On the whole, I think the ends of justice will be best subserved by remitting the complainant to his rights at law. It is not at all clear from the showing made by the affidavits that the complainant has not provoked every step taken by Mahin. If, as is insisted, complainant sought, after Mahin had obtained these clients for the Chicago office, to divert them from Mahin's influence, and bring them, or some of them, into a relationship outside of Mahin's right of participation in the profits, one's sense of fair play justifies his dissolution of the connection, and his subsequent steps towards keeping what he, in fact, had built up within that connection.

Upon the whole case, the injunction will for the present be denied, and the case go to a master to report respecting the character of the books and the rights of the parties relating thereto.

CENTRAL OF GEORGIA RY. CO. v. PAUL.

(Circuit Court of Appeals, Fifth Circuit. April 18, 1899.)

No. 777.

1. CORPORATIONS—TRANSFER OF PROPERTY—RIGHTS OF CREDITORS.
   Where a plan for reorganization is entered into by the stockholders and secured creditors of an insolvent corporation, and is carried out, pursuant to which all the property of the corporation is sold by foreclosure and otherwise, and transferred to the new corporation, whereby the stockholders of the old corporation retain their interest and rights, and by virtue thereof are either stockholders in the new corporation, or are otherwise provided for, this is a fraud on an unsecured creditor of the old corporation, so that she may hold the new corporation for her claim.
2. DECREE—AFFIRMANCE.
   A decree rendered on intervention in liquidation proceedings, on full hearing, against one allowed to make full defense, having done full equity between the parties, will be affirmed, though intervener might more properly have filed a bill for the relief obtained.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

On March 4, 1892, Rowena Clark, a stockholder of the Central Railroad & Banking Company of Georgia, filed her bill in the circuit court, assailing the validity of a certain lease made by the Central of its entire railroad and property to the Georgia Pacific Railroad Company, under which lease the Richmond & Danville Railroad Company was then operating and controlling the same. She also assailed the legality of the control exercised over the Central by the Richmond & West Point Terminal Railway & Warehouse Company by means of a majority of shares of Central stock owned by it. The bill prayed for the cancellation of the lease; injunction against the continued use of the