WILSON *v.* HOSS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 243. October Term, 1876. — Decided May 7, 1877.

Upon the pleadings and proof, the plaintiff was entitled to recover, whether the deposition objected to was admitted or excluded, and therefore its admission worked no injury to the defendant.

The case is stated in the opinion.

Mr. Justice Hunt delivered the opinion of the court.

The burden of the appellant's cause of complaint in this appeal is the admission in evidence of the deposition of the plaintiff below. This complaint is not well founded.

Upon the pleadings in the case, whether the deposition be considered as in the case, or whether it is excluded, the plaintiff was entitled to recover. No proofs were taken, except this deposition.

The bill alleged the making of an agreement between the plaintiff and the defendants' firm, (who are practising lawyers,) to the effect that the plaintiff should use his exertions to secure to the defendants certain professional business described, and that after deducting expenses the plaintiff should have one third of the fees received for prosecuting such business; that as to certain other claims mentioned, one half of the fees should in like manner be paid to the plaintiff; that various claims mentioned were prosecuted under the agreement, and judgments recovered and collected, the fees in which, amounting to over $4000, were received by the defendant; that $500 only had been paid to the plaintiff; that the defendants refuse to pay him the balance due to him; and demands an account and decree for the amount due, after deducting expenses. A copy of the agreement is made an exhibit to the bill. This agreement states that as to the cases of Cogan, Calleton and Moran, now in defendants' hands, the fees shall be equally divided between the parties.

The answer of the defendant Wilson admits the making of the agreement, alleges that the same was entered into upon plaintiff's representation that he was the agent for a number of persons having claims to a large amount against the United States, and that plaintiff should use his exertions that defendants should be employed as attorneys in such cases; that plaintiff failed to deliver

any such claims, or cause them to be delivered to defendants, or cause them to be employed, and that since the signing of the agreement no such claims have come into his hands through plaintiff's exertions; avers a belief that plaintiff was not agent for such claims, and that his representation was fraudulent; admits that the claims of Cogan and Moran were prosecuted successfully, and that he received between $3000 and $4000 as fees in those cases.

The answer thus admits the receipt of between $3000 and $4000, which the agreement expressly provided should be divided equally between the parties. It is not pretended that any larger sum than $500 has been paid to the plaintiff. The pleadings show an amount of about $1500 due to the plaintiff, subject to an account for expenses, and upon these pleadings a decree was necessarily ordered for the plaintiff.

If there is a claim of fraud it must be proved, which is not here attempted.

Excluding as irregular the deposition in which the plaintiff establishes his case, it is not a subject of reasonable doubt that upon the hearing on bill and answer, and on the motion for a rehearing, in which both parties appeared, the decree given was properly rendered. The decree expressly states that it is made upon the bill and answer, without regard to the deposition, which was irregularly taken. *Decree affirmed.*

Mr. Enoch Totten and *Mr. Thomas Wilson* for appellant. *Mr. J. M. Carlisle* and *Mr. J. D. McPherson* for appellee.

STATEN ISLAND RAILWAY COMPANY *v.* LAMBERT.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 772. October Term, 1877. — Decided January 7, 1878.

If in an action in a state court to recover damages under a state statute for a death caused by a collision on navigable waters within the State, no Federal question is raised during the trial, this court cannot take jurisdiction in error.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The steamboat Middletown, owned by the plaintiff in error, (defendant below,) on her passage from Staten Island to New York ran into and sank a small sail-boat lying at anchor, thereby causing