

trobe, never assented to his proposition, well knowing that it was the wish of Dr. Macauley's family; that the present trustees should receive the appointment. That Mr. Speed, in an interview with Mr. Latrobe on the 21st of August, expressed his willingness to withdraw from the case in his favor, if such should be the wish of the family. That the present trustees were especially retained by the family, and requested to act as trustees in making the sale. That the mortgage claim due to Mr. Latrobe, as surviving trustee of Thornburg's estate, in fact, belongs to the family connections of Dr. Macauley, and they refer to the petition of the said *cestui que trusts*, filed in the cause, praying that the said trustees should not be removed. They charge that the Insurance and Trust Company, by reason of the death of Dr. Macauley, one of its assignees, and its late president, is disabled to sue or retain counsel, and that Mr. Wilson, the secretary and active manager of said company, had sanctioned the proceedings of the trustees throughout, and approved of their appointment.

The matter of this petition was argued on the 5th of September, and on the 6th of the same month, the following opinion was delivered.]

THE CHANCELLOR :

The Chancellor entertained no doubt when the petition of Mr. Latrobe was filed, nor does he now, that the decree then recently passed was entirely within the control of the court, and that upon a proper case, it could be rescinded, or modified in any way which justice might require. He was equally satisfied then, and he is perfectly convinced now, that the petitioner was entitled to represent the creditors of the late Dr. Macauley, in whose behalf he appears, and this, not only because such is the legal presumption arising from the fact of his appearing for them, but because the evidence filed in the cause fully establishes his authority. The case of *Henck vs. Todhunter*, 7 Har. & Johns., 275, is conclusive to show that whatever is done by the attorney in the progress of the cause is considered as done by the authority of the party, and is binding on him.