

the proceedings have been read and considered. It is an application by a solicitor for a fee to be paid out of a fund under the control of the court for professional services rendered at the instance of an attorney *in fact* of the *cestui que trust*, and not of the trustees. There is no evidence that the trustees either desired, or needed, the aid of counsel to assist them in the discharge of their duty, nor is there any evidence that by their negligence the interposition of counsel employed by the attorney *in fact* was necessary. So far from this, the proceedings in the case show that the interests of the attorney *in fact* and of the *cestui que trust* became, in the progress of the cause, and at an early stage of it, antagonistic.

It is the practice of the court, under the head of "just allowances," to reimburse the trustee when administering his trust under its direction, all his reasonable costs and expenses, including money expended by him in properly taking the opinion, and procuring the direction and assistance of counsel. 2 *Daniell's Ch. Pr.*, 1430, 1431; 2 *Bland*, 417; 3 *Daniell's Ch. Pr.*, 1586. But it is believed this is the extent to which the practice has been carried, and that no case can be found or rule of practice shown in which the court has undertaken to lay its hands upon the money of the *cestui que trust*, and pay it to a party claiming to be his or her counsel. In this case, the claim is denied and resisted, and it would, as I conceive, not only be without precedent, but eminently improper in this court to pass upon the question in dispute. Such a practice would draw to it a vast number of controversies which can much more appropriately and satisfactorily be determined by a different tribunal.

This is not the case of a trustee asking an allowance when the aid of counsel has become necessary in the administration of the trust, but the application is by the counsel who, claiming to have rendered services to the *cestui que trust*, asks to be paid out of the fund belonging to her. This cannot be done. It is, therefore, ordered, that the said petition be, and the same is hereby dismissed, with costs, to be taxed by the Register.

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TEACKLE, for Petitioner.

DOBBIN and TALBOTT, for the Parties opposing the application