

[On the 13th of October, 1848, John S. McKim and others filed a petition in which they state the filing of their petition for the appointment of a trustee to succeed David T. McKim, and the subsequent proceedings thereon, and that for professional services rendered by their solicitors therein, they had agreed to pay them \$200. They then allege that this compensation should be paid out of the trust fund, and pray that the present trustee may be directed to pay the same. Upon this petition the Chancellor delivered the following opinion on the 27th of October, 1848.]

THE CHANCELLOR :

Upon the first presentation of the petition of John S. McKim and others, filed on the 13th instant, my impression was in favor of the application, but upon subsequent reflection, I am persuaded it would be establishing a new and, I cannot help thinking, a dangerous precedent. If in contests like the present it is understood that parties are to be allowed out of the fund their whole expenses, it occurs to me it would have a tendency to encourage litigation, and it would be difficult to restrain within reasonable bounds the extent to which the practice might be carried. Should this court declare that in contests here in regard to the appointment of a trustee in a case like the present to take charge of the trust estate, the party who is successful, or all the parties are to be paid out of the fund, their costs not only as between party and party, but as between solicitor and client, it would seem to follow that the same principle of taxation should be adopted in the Orphans Court when disputes arise there in reference to the right of administration upon the estates of deceased persons. Why should this court say that when controversies spring up here as to the right to administer a trust, the ordinary rule as to the taxation of costs shall be departed from, and the estate burdened with all the expenses, ordinary and extraordinary, and the Orphans Court, when similar controversies arise there, act upon a different rule? It is very far from the meaning of the court to impute to these parties an intention now or at any other period to indulge in a