spirit of litigation at the expense of the trust estate, but it is obvious that an order directing counsel fees to be paid out of it would in many cases produce such a result.

It is believed, that no precedent can be found for the present application. The rule is, no doubt, a general one, that when personal representatives, and other trustees, are entitled to costs out of the fund, the costs will be taxed as between solicitor and client, and it is said in the books, that when a trustee finds it necessary to employ or advise with counsel, as to the proper management of the trust estate, he will, when his accounts come to be taken, be allowed under the head of just allowances, such reasonable fees as he may have paid. *Fearns* vs. *Young*, 10 *Ves.*, 184: 3 *Daniell's Ch. Pr.*, 1586. The rule with regard to taxation of the costs of the heir at law, who is brought before the court in the case of a charity, can have no application. It seems to be settled, that in such a case, if he makes no improper point, he will be allowed his costs as between solicitor and client. *Currie* vs. *Pye*, 17 *Ves.*, 462. And the practice in England, upon creditor's bills, of making this favorable taxation for the benefit of the suing creditor, when the estate has proved insufficient, seems equally inapplicable, even if such practice obtained here, which, however, is not understood to be the case.

Considering this application, then, unsupported by precedent, and believing the granting it would have an injurious tendency, I shall dismiss the petition, but without cost, as it was a point which, under the circumstances, was proper to bring to the notice of the court.

[A further opinion was delivered in this case on the 5th of January, 1849, upon the petition of John M. Duncan. The facts are stated in the opinion.]

THE CHANCELLOR:

The question now presented arises upon the petition of John M. Duncan, administrator of Ann S. Duncan.

The deceased was one of the grandchildren of the late John