

also came in on the 20th of March, 1828, and shewed for cause against this order, that the orders of the 8th of January and 17th of April, 1823, under which those surveyor's fees had accrued, having been affirmed, they could not now be opened for the purpose of taxing the costs anew. And that the surveyor had by his own neglect precluded himself from claiming those costs; because *Anderson* could not have recovered them from the trustee in case the order of ratification had been reversed.

24th March, 1828.—BLAND, *Chancellor*.—The matter of the petition of the surveyor standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It is very clear, that if the surveyor had made out a bill of his legal fees upon the plot and certificate returned by him on the 19th of March, 1823, they would have been taxed by the register as a part of the costs properly incident to the order of the 17th of April, 1823, from which *Anderson* appealed; and consequently, would, with the other costs arising out of the same controversy, have been ordered by the Court of Appeals, in their affirmance of that order of the 16th of July, 1825, to be paid by *Anderson*. Hence it is evident, that *Scotton's* estate should not now be charged with these fees, as those who claim that estate have no means of obtaining reimbursement from *Anderson*, now that their *fieri facias* on that judgment of the 16th of July, 1825, of the Court of Appeals, has been fully satisfied; for it is not pretended, that it was, in any respect, their fault, that the surveyor's fees were not comprehended by that judgment. It is evident, that these fees ought to have constituted a part of the costs which *Anderson* was ordered to pay by the judgment of the Court of Appeals; but now, in this stage of the proceeding, after the affirmance of the order of the 17th of April, 1823, this court has no power to open that judgment, so as to let in these costs as a part of it; nor can this court now, in this summary way, enforce the payment of any sum of money which ought to have formed a component part of that judgment, and which had been omitted by the negligence of the party himself. If the surveyor has any remedy, it must be by a special action on the case against *Anderson*. Therefore, it is *Ordered*, that the said petition be, and the same is hereby dismissed with costs.

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The trustee *Boyle*, by his petition, filed on the 26th of July, 1828, stated, that the Court of Appeals had affirmed the order of