committee of a lunatic was not bound to produce the title deeds of the lunatic's estate, because they were not in the committee's custody, but in the custody and control of the Court. . . . There would have been great difficulty here in going beyond the doctrine laid down in these cases had not the defendant's counsel admitted that the company was at an end. No shareholder or other person had the smallest interest in the matter.

COLERIDGE, C.J., concurred.

Order of POLLOCK, J., *refusing inspection reversed.*

PEARCE v. FOSTER.

Production of documents—Papers prepared in suit by a plaintiff against a third party.

The plaintiff objected to produce documents partially prepared by his solicitors in an action previously brought by him against one D. (a person other than the defendant) for future use in carrying on that action, which were never completed or used, owing to the action not having proceeded in consequence of D.'s death, on the ground that the whole of the documents were of a private and confidential nature between counsel, solicitor, and client.

Held, that the documents were privileged from production. *Bullock* v. *Corry*, 3. Q. B. D. 356, followed.

[C. A.—15 Q. B. D. 114.

Appeal from order of Divisional Court (POLLOCK, B., and DAY, J.,) affirming order of FIELD, J.

BRETT, M.R.—It seems to me clear that these documents did come into existence for the purposes of the consideration of the course to be pursued in the conduct of an action, although the action did not ultimately proceed. Then the question arises whether, assuming them to be within this privilege, the privilege is any the less applicable because in the present case the inquiries with regard to the documents are being made in an action other than that, in regard to which they were originally brought into existence. I do not think if they were privileged in relation to the first action that the privilege ceases in relation to another action. The case of *Bullock* v. *Corry*, 3 Q. B. D. 356, seems to me to be an authority for that conclusion. . . . . The governing principle on the subject seems to me to be correctly laid down in "Bray on Discovery" at p. 371, where the author says: "It would seem clear that the extension of the privilege to all professional communications, whether passing in reference to litigation or not, must cover those which pass in reference to litigation with other persons, or with the same persons at other times."

BAGGALLAY and BOWEN, LL.J., concurred.

Appeal allowed.

RE LOVE.

HILL v. SPURGEON.

Costs—Trustee and Executor.

One executor commenced an action for administration against his co-executor, and a decree was made. There was no misconduct alleged on the part of the defendant. On further consideration, KAY, J., gave the plaintiff costs as between solicitor and client, but gave defendant only party and party costs, holding that two sets of costs as between solicitor and client should not be allowed to the trustees.

Held, on appeal, that defendant was entitled to costs as between solicitor and client as no misconduct was proved against him.

[C. A.—29 Chy. D. 348.

COTTON, L.J.— . . "In my opinion a trustee is entitled to costs in the ordinary way, *i.e.*, as between solicitor and client, unless it is established that he has been guilty of some misconduct, which would justify the judge in depriving him of what are the ordinary costs of a trustee. The judge appears to have gone on the ground that he could not allow to the trustees two sets of costs as between solicitor and client. A desire to prevent the costs of litigation being excessive is laudable; but I think that is not a sufficient reason for depriving the trustee, who admittedly has conducted himself properly in the litigation, of the ordinary trustee's costs, that is, costs as between solicitor and client, and in my opinion he must have them." . . .

FRY, L.J., concurred.

Appeal allowed.

WALCOTT v. LYONS.

Adding co-plaintiff—Rules S. C. 1883, Ord. 16 r. 11 (Ont. Rule 103.)

When a tenant for life brought an action against trustees to make them liable for an improper investment and the defendant set up acquiescence, and the plaintiff then applied to add as co-plaintiff his son who had a reversionary interest

Held, that Ord. 16, r. 11 (Ont. R. 103) does not authorize a plaintiff having no right to sue, to amend by adding as co-plaintiff a person who has such right.

[C. A.—29 Chy. D. 584.

COTTON, L.J.—" . . . Can it be said under these circumstances that the presence of the son is necessary to enable the Court to adjudicate upon all the questions involved in the cause? I am of opinion that it cannot. The object of the amendment is, that if it is shown that the father has no right to sue, there may be a plaintiff who has such right. It is contended that the main question in the cause is whether there has been a breach of trust. That is not so. The question in the cause is whether there has been any breach of rust of which the father has a right to complain."

FRY and BOWEN, LL.J., concurred.

Order of BACON, V.C., *reversed*