also to the vigilance and guardianship of the executor or trustee in addition to the check of the taxing officer." That seems to us to contain the whole principle, and has been followed in subsequent cases. See *Moore* v. *Froude* (3 My. & Cr. 45 (1837), Lord Cottenham); *Bainbrigge* v. *Blair* (5 L. T. Rep. O. S. 454; 8 Beav. 588); *Todd* v. *Wilson* (9 Beav. 486); *Lyon* v. *Barker* (5 De G. & Sm. 622). The rule applies not only to express trusts, but also to executors and trustees, though there have been no express trusts; thus in *Pollard* v. *Doyle* and *Kearnes* v. *Daw* (3 L. T. Rep. N. S. 432; 1 Dr. & Sm. 319), the facts were shortly these: The action of *Pollard* v. *Doyle* was commenced in 1849 by a judgment creditor of M. in the name of Pollard, as executor and devisee of M., to set aside two deeds as void against the judgment. Pollard died soon after the commencement of the suit, having appointed Kearnes, who was a solicitor, executor and devisee, and he revived the suit. Held, that he was not entitled to any profit costs. The rule also holds good, although the business is done entirely by the partner of the trustee (see *Christophers* v. *White*, 10 Beav. 523); also where a trustee who is not a solicitor employs his co-trustee, who is a solicitor, to do the business (see *Broughton* v. *Broughton*, 26 L. T. Rep. O. S. 54; 5 De G. M. & G. 160). But a trustee, being a solicitor, may employ his partner to act professionally in the business of the trust, provided it be expressly agreed between them that such partner shall alone be entitled to the profits (see *Clark* v. *Carlon*, 4 L. T. Rep. N. S. 361; 30 L. J. N. S. 639, Ch). Vice-Chancellor Wood in that case said that the rule on which the denial of costs to a solicitor-trustee was founded rested mainly on the ground that a trustee should not make a profit out of his trust, and that he could see no reason why a trustee should not be able to say to his partner, "Quoad this transaction we are not in partnership," and that he might then employ his partner in the same way as he might employ his London agent, and the partner would stand in the same position as anybody else. In *Burge* v. *Brutton* (2 Hare, 373) it was formerly decided that an executor who acts as a solicitor in a case in which he is a party in his representative capacity is entitled to be allowed, as against the estate, that proportion of the costs which his town agent is entitled to receive. In the rule under consideration an important exception was made by the well-known case of *Cradock* v. *Piper* (15 L. T. Rep. O. S. 61; 1 Mac. & G. 664), in which it was decided that a solicitor-trustee who acts in a suit as solicitor for himself and his co-trustee and a *cestui que trust*, or for any of his *cestuis que trust* alone, or for himself and co-trustee, or himself and his *cestui que trust* jointly, is entitled to the usual profit costs, provided they are not increased by his being one of the parties. That decision has been the subject of a good deal of adverse criticism both from the Bench and from text writers (see the remarks of Lord Cranworth, L. C., in *Manson* v. *Bailie*, 26 L. T. Rep. O. S. 24; 2 Macq. 80; and in *Broughton* v. *Broughton*, *supra*). But not only has it never been overruled, but it has been uniformly acted upon in the taxing master's office, and in the very recent case of *Re Corsellis*, *Lawton* v. *Elwes* (*supra*), it has received express recognition by the Court of Appeal. There appears, however, to be but little disposition to extend the exception introduced by *Cradock* v. *Piper*. For instance, it does not apply to the case of a solicitor-trustee acting for himself and his co-trustees in the administration of the trust estate out of court (*Lincoln* v. *Windsor*, 18 L. T. Rep. O. S. 39; 9 Hare, 158; *Broughton* v. *Broughton*, *supra*). But, as was remarked by a Lord Chancellor in the latter case, one cannot see any distinction between costs incurred in a suit and costs incurred in administering an estate without a suit—the danger may possibly be less in the former case than in the latter, but the principle is the same.

The question was discussed with some minuteness by Mr. Justice Chitty in the recent case of *Re Barber*, *Burgess* v. *Vinnicome* (34 Ch. Div. 77), where the facts were shortly as follow: A testatrix appointed H., who was a solicitor, and one of the attesting witnesses to her will, and V., executors and trustees of her will, which contained a clause enabling H. to make the usual professional charges, but which clause was rendered inoperative by reason of his having attested the will. Probate was obtained by V. alone, power