

obtained as to the communication between the solicitor and his client upon the theory that a charge of fraud such as is now made destroys privilege.

I must have expressed myself most unfortunately when the matter was up before, as this motion is made it is said upon a suggestion contained in my judgment on that occasion.

What I meant then to say was that for the purpose of the motion then before me the affidavit properly claiming privilege was conclusive, for there was nothing in the pleadings or the case disclosed by it to destroy privilege, and although the copies of documents might possibly be given in evidence at the trial they could not be given in evidence upon the motion then in hand for the purpose of contradicting the affidavit.

Mr. Stewart was also under some misapprehension as to my position as to these letters. When I reserved judgment upon the question as to whether they could be read on the motion I declined to allow them to be put in or read, and said if I allowed them to be read I should hear counsel further. He seems to think I was to hear further argument if the letters were rejected—but is wrong as to this.

I entertain the widest possible view as to granting amendments generally, but I do not think I should grant an amendment when what is sought is to set up something which is no answer to the action, merely to allow an inquiry as to communications between solicitor and client.

What is charged is not fraud as to the contract. It is denied that there ever was any contract, but fraud in the bringing of an action which the plaintiff knows ought to fail and must fail if the truth is told. What is sought is not discovery of the facts and circumstances surrounding the contract, but of some correspondence between the solicitor and his client years after alleged contract from which it will be shewn or argued that the evidence of the client and of his solicitor is untrue.

All this may, perhaps, be gone into at the trial, but it is an issue that cannot be raised upon the pleadings. The issue in the action is contract or no contract, and not the *bona fides* of the plaintiff in bringing this action.

If this is not the rule in any accident case based on negligence the plaintiff may have production of the confidential reports in the possession of the railway by the simple