

the primary and main defendant acting either for himself or for his fellow adventurers.

That being so it would seem that he cannot set up privilege. The point is one that does not often arise. But on examination of *Bray on Discovery*, I have found two cases which seem to throw light on the question, see p. 427, 429 (n). There the learned author says: "In *Chant v. Brown*, 7 Hare 88, 1849, Wigram, V.-C., considered that the position of the solicitor in claiming privilege was not affected by his having subsequently become himself the owner of the property. It is submitted that on principle he should in such a case be regarded for the purpose of testing the extent of the privilege as the owner and not as the solicitor." The judgment there seems to have been based on the fact that the solicitor was not "absolute owner," though no doubt the Vice-Chancellor said he did not think that even if absolute owner, he would be debarred from claiming privilege.

On the other hand eleven years later Romilly, M.R., in *Lewis v. Pennington*, 29 L. J. Chy. 672 (not 692 as given in *Bray* 429), said: "The mere fact of a client having made a confidential communication to his solicitor did not protect the solicitor from giving discovery, if he had acquired the same knowledge before or after such confidential communications under such circumstances that he would be bound to discover it."

Mr. Bray thinks this "is difficult to follow."

In this state of the authorities as applied to the issues in the pleadings and the undoubted fact of the signature of the defendant as the one of the parties, if not the only party, contracting with the plaintiff, I think he should reattend for examination—and answer all questions as to facts within his own knowledge, etc., unless he has some other valid objection. In *Lewis v. Pennington*, *supra*, the solicitors claiming privilege were joint defendants with their client a judgment debtor, who has assigned to them all his assets as security for advances made to them. It was held they could not claim privilege as to facts acquired by them previously as such transferees, though they might have acquired them previously as solicitors.

The costs of the motions may be in the cause.