

an oath will justify any witness in concealing communication made to him.

I am not concerned with the theories and principles underlying the privilege in question—I had nothing to do with making it, nor had any living judge—I never liked it when I was at the Bar, it is no advantage but rather a burden to the practising lawyer, and is maintained from grounds of public policy. No authority but the Legislature can abolish it, and I see no movement in that direction—the people who are the final court of appeal seem to be satisfied with it.

Apply now to medical men, the rule of privilege in attorney and client. The doctor would be not only entitled, but (in the absence of the patient's consent), compelled, to keep secret in the witness box communications made to him (1) by his patient, (2) seeking medical advice from him, (3) the communications being made in confidence, (4) and being relevant to the purpose. And the patient would have the same exemption, but not the same compulsion. The doctor would not be permitted to keep secret what he found out himself by physical or other examination or enquiry, what he was told by uninterested third parties, what was not relevant to the purpose, what was told in the presence of others not interested.

A medical man called upon to set a broken leg asks the patient how it happened—the patient says, "I fell off a wall", privileged, and adds "I was trying to break into a warehouse," not privileged. The doctor finds the bones in a certain condition, not privileged; the policeman says, "We found him lying on the sidewalk under Mr. Smith's warehouse"—the doctor must so state.

The now well known case of Dr. Elliott, of Chester, England, seems to have excited considerable comment. In a divorce suit, Dr. Elliott was compelled to state that one of the parties had had venereal disease. The doctor explained that he and other medical men formed a particular clinic on the distinct understanding that professional secrecy would be observed; he pointed out a regulation under the Public Health Act; he said that to give the evidence required he would have to violate one of the earliest and most sacred principles of the medical profession, one