

COMMUNICATIONS BETWEEN CLIENT, &c.—BEQUEST TO A CHARITABLE INSTITUTION.

COMMUNICATIONS BETWEEN CLIENT
AND LEGAL ADVISER.

A correspondent writes us in the following terms:

"SIR,—I would like to have the question, as to the right of gentlemen of the legal profession to be held exempt from divulging in a court of justice their knowledge of their client's conduct in criminal matters, fully discussed in your journal. My proposition is that they are not exempt and that they ought not to be exempt."

The question proposed is not so accurately put as to enable us to determine precisely what is meant. But whatever is meant the discussion would be an unprofitable one, in this sense: that all that can be said upon such a matter has been said long ago, and the law thereupon is fixed beyond a peradventure. It is a well-established rule, that all communications passing between a client and his legal adviser (be he attorney, solicitor, or counsel) in the course, and for the purpose of professional business, are privileged. If the communication is made, not as between client and professional adviser, nor in the usual course of business, or for a fraudulent or illegal purpose, then it is not protected. It is difficult to condense the law on this subject into a few sentences, but it may be found written at large in any modern text-book on discovery or evidence. For example, Wigram, Kerr, Taylor, or Russell on Crimes.

We only discuss subjects taken up by the text-books, where those text-books seem to have come to erroneous or uncertain conclusions, or where there has been some recent alteration of the law, or where it is desirable to agitate for a change of the law, or for the purpose of making a *résumé* of cases upon some point not fully handled in such treatises. In the present instance, no fault can be found with the law; it is eminently reasonable. Suppose the rule were otherwise, then it would be impossible for lawyers to obtain information so as to enable them to give advice or conduct proceedings. No doubt something may be said as to the advisability of changing the law by statute, in so far as to declare privileged all confessions made to spiritual advisers. But it is certainly not desirable to change the present law by breaking down or modifying that privilege, as to legal advisers. It is in every respect,

and in all aspects, fit and proper that confessions made by an alleged criminal to his attorney or counsel should not be divulged. If an attorney or counsel has acquired a knowledge of any criminal conduct, on the part of his client, from another source, then no privilege exists, nor need it exist, as to this. The maintenance and enforcement of the rule are supported by considerations which the Lord Justice Knight Bruce has expressed unanswerably: "Truth, like all other good things, may be loved unwisely, may be pursued too keenly, may cost too much. And surely the meanness and the mischief of prying into a man's consultations with his legal adviser, the general evil of infusing reserve and dissimulation, uneasiness, suspicion, and fear into those communications which must take place, and which, unless in a condition of perfect security, must take place uselessly or worse, are too great a price to pay for truth itself."—*Pearse v. Pearse*, 1 *De G. & Sm.* 28.

A well-authenticated anecdote is told respecting an ejection suit, brought by a lady, a few years ago in England, who claimed some estates as sole heiress of the deceased proprietor. Before entering on proof of a long and intricate pedigree, which Mr. Adolphus her counsel had opened, Mr. Gurney, who was counsel for the defendant, offered to prove a fact which would end the suit at once, that the plaintiff had two brothers living, one of whom was then in court. Mr. Adolphus assented. The fact was proved, and on the plaintiff being asked whether she had communicated the fact to her attorney, she replied, "To be sure not; do you take me for a fool? why, he could not have undertaken the case if I had told him that." So difficult is it sometimes to get the truth and the whole truth from clients, under the most favourable circumstances. But remove the safeguard that the law has thrown around such communications, then awkward surprises and unpleasant discoveries worse than the above, would be the rule and not the exception. Then clients would be always speculating how far it would be safe to disclose their case; there would be half-confidences and imperfect narration of circumstances; suppressions and distortions of fact so that the advantages of advocacy would be well-nigh destroyed, and the relationship of solicitor and client, especially as to the "*alter ego*" theory,