

a communication on the public street and in the presence of a third person may show by its circumstances that it was not confidential—statements to a third person are not privileged simply because they are made in the presence of solicitor and client. So, too, if the statement be irrelevant to the matter upon which advice is sought, it is not privileged, for the client is not then seeking legal advice on that.

It is not confidence placed in another alone which justifies privilege—there is no privilege in confidential communications to one's clerk no matter how confidential and trusted he may be, to a trustee, to a commercial agency, to a banker, to a journalist, to a telegraph operator, to the closest and most intimate friend.

Confessions to a priest are not on quite the same footing as those mentioned. British principles are now, and for many years have been in favour of perfect religious tolerance—it is recognised that the religion of the Roman Catholic and some others, compels them to confess sins to an ecclesiastic. While the law does not make such a confession absolutely privileged—as it might well do as being made under moral compulsion and in performance of a religious duty—judges are very loath to require disclosure by the father confessor. In my own experience, I have more than once said on the Bench that I would direct disclosure if it were pressed, but suggested that the confidence be respected; and in every case counsel has recognized the propriety of doing so.

The position of the priest and that of the lawyer are not the same, and it is misleading to suggest an analogy which does not exist.

The erroneous idea that the lawyer has any privilege is an instance of "fireside law" which, like so much other "fireside law," is a relic of the past. Two hundred years ago, the privilege was supposed to rest upon the honorable obligations of the attorney, and upon his oath on being admitted — it was his privilege; but nothing of the kind has been heard of for a century and a half. In those olden times, the courts recognized the rule of honour among gentlemen as being sufficient to entitle any one to decline to make public a confidential communication of any kind. Now neither the feeling of honourable obligation nor even