

DUMPOR'S CASE—COMMUNICATIONS BETWEEN SOLICITOR AND CLIENT.

involve little or no disturbance to settle titles or vested rights of ownership. And, finally, that the argument of long standing, which is the whole and only ground of acquiescence in its authority by modern judges, ought, in view of these facts, to avail nothing; as an admitted error should receive no greater tolerance, merely because it is venerable. We have already noticed one of kindred origin and equal age, which the better sense of a later day has corrected;* and we may refer, among many other examples, to the well known instance in *Semayne's Case*,† where the proposition that illegality of an officer's entry did not affect the validity of his service of process was enunciated by Lord Coke, founded on the high authority of Littleton a century before;‡ and received the recognition of the most approved text-writers at a later day.§ Yet this has since been entirely reversed.|| and the contrary doctrine is the settled rule of modern law.¶ Why should not *Dumpor's Case* receive the like measure from even-handed justice?

COMMUNICATIONS BETWEEN SOLICITOR AND CLIENT.

There have been some fluctuations of judicial opinion as to the extent to which communications between solicitor and client are privileged from disclosure. It has, indeed, long been settled, and was pointed out by Willes, V. C., in *Walsham v. Goodricke*, 3 Hare, 124, that communications between solicitor and client, made pending litigation, and with reference to such litigation; or made before litigation, but in contemplation of and with reference to litigation which was expected and afterwards arose; or made after the dispute between the parties followed by litigation, but not in contemplation of or with reference to such litigation, are privileged from disclosure, whether the party interrogated be the solicitor or the client. It has also been settled that professional communications between a party and his professional

adviser, although they do not relate to any litigation either commenced or anticipated, are privileged *where the solicitor is the party interrogated*.

It has, however, been a matter of doubt whether the rule extends beyond the last case, and embraces such communications where the client, and not the solicitor, is interrogated. Some of the cases seem to imply that the privilege of the solicitor is more extensive than the privilege of the client, and that communications might pass between a solicitor and client as to which the solicitor, if called upon to give evidence, might refuse to answer, while the client could not; although if the communications had been made after a dispute arose the client also might refuse. Well might Vice-Chancellor Knight-Bruce remark (*Pearse v. Pearse*, 1 De G. & Sm. 27):—"What for the purpose of discovery is the distinction in point of reason or principle between such communications and those which differ from them only in this, that they precede instead of following the actual arising, not of a cause of dispute, but of a dispute, I have never hitherto been able to perceive." Anomalies of this kind are often the precursors of a broader rule in which arbitrary distinctions are merged. and the decision in *Minet v. Morgan*, 21 W. R. 467, L. R. 8 Ch. 361, has at length finally established the law on a footing accordant with common sense and general convenience.

This case was a suit by a commoner against the lord, to establish rights of common claimed by the plaintiff and others. The plaintiff was required by the defendant to make an affidavit as to documents. Accordingly, he admitted the possession of correspondence between himself and the solicitors of his family, or between himself and his solicitors in the suit, written in contemplation or in the course of the suit, or with reference to the subject-matter in dispute, and of letters between his mother, from whom he derived title, and her solicitors, with reference to questions connected with the matters in dispute in the cause; but he stated that all these documents were of a private and confidential character, and that he believed them to be privileged, and therefore objected to produce them. The defendant took out a summons to compel productions of these documents,

* *Ante*, pp. 627, 628.

† 5 Co. 93.

‡ 18 Edw. 4, fo. 4.

§ Bac. Abr. Sheriff, n. 3, &c.

|| *Isley v. Nichols*, 12 Pick. 270.

¶ 1 Smith, Lead. Cas. (5th Am. ed.) 194, and cases cited.