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CONFESSIONS TO PRIESTS.

In the course of a judgment recently delivered by the Master of the Rolls, in the case of *Wheeler v. Marchant*, his Honor stated that communications made to a priest in confession were not protected. On this question the *English Law Times* has an interesting note, which we subjoin :

"It is, no doubt, true that most text book writers lay it down that a priest or clergyman is bound, if required in a court of justice, to give in evidence confessions or statements made to him under the seal of confession or otherwise in his clerical capacity. And this view has also the support of several dicta of eminent judges. But, if we examine carefully the authorities on the subject, we shall see that really the question cannot be considered as decided.

"There can be little or no doubt that before the Reformation confessions were held sacred and inviolable by the common law of England, both civil and ecclesiastical, and that no court of justice compelled the confessor to reveal communications made to him by the penitent : Phillimore *Eccl. Law*, 700. It would seem from Lyndwood that there were exceptions from this rule, as when statements were made by the penitent which ought not properly to have formed part of his confession. Possibly cases of high treason may also have been excepted. The laws of Henry I. (*Leges Hen. I. c. 5, s. 17*), forbid the priest to reveal sins told him in confession, and punish him with degradation and a pilgrimage with ignominy. Also the 9th of the Constitutions of Archbishop Reynolds (*A. D. 1322*), forbids a priest, even through fear of death, to discover any confession, and if he offends, orders him to be punished by degradation without hope of reconciliation : Johnson, *ii. 342*. As this Constitution is contained in and glossed by Lyndwood, (*Oxford edit. p. 334*), it must be considered part of the canon law of England. And this, except when contrary to the statute law, common law, or royal prerogative, has statutory recognition by one of the most important of the Reformation statutes : 25

Henry VIII. c. 19. By the 113th Canon of 1603, which was passed by Convocation with the consent of the Crown, a clergyman is forbidden to reveal anything learnt by him in confession, except to save his own life. And by the rubric in the service for the visitation of the sick, "the sick person shall be moved to make a special confession of his sins, if he feels his conscience troubled with any weighty matter." Now by the Act of Uniformity this rubric has the authority of an Act of Parliament ; so that, if the clergyman is bound to give in evidence, facts thus obtained, the rubric would constitute a mere trap. Several of the modern cases, which are usually quoted to show that confessions are not privileged, are shown by Mr. Best, in his work on Evidence, to be inapplicable : Best 690. However, in *R. v. Sparkes*, cited in 1 Peake, 77, Mr. Justice Buller held (on circuit) that confession to a Protestant clergyman was not privileged. And in *Butler v. Moore*, *Macnally's Evid. 253*, the Irish Master of the Rolls gave a similar decision with respect to a Roman Catholic priest. *Wilson v. Rastall*, 4 T. R. 753, is a dictum to the like effect. On the other hand, in *Du Barre v. Livette*, 1 Peake, 77, Lord Kenyon said, when *R. v. Sparks (ubi sup.)* was cited : "I should have paused before I admitted the evidence there admitted." In *Broad v. Pitt*, 3 C. & P. 518, Chief Justice Best said he should not compel a clergyman to disclose in evidence communications made by a prisoner, but should receive them if the clergyman chose to disclose them. Of course, in the case of privileged communication, the privilege is that of the person making the communication, not of the adviser.

"In *R. v. Griffin*, 6 Cox Cr. Cas. 619, Baron Alderson expressed his opinion that evidence consisting of conversations between the accused and her spiritual adviser, the chaplain of a work house, should not be given in evidence.

"We believe that in some, at least, of the American States, confessions made to a minister of any denomination are privileged. In the result, while we must guard ourselves from being supposed to give an opinion that confessions are privileged, we would say that the question is not so settled as to entitle the Master of the Rolls to lay it down as positive law that they are not. Mr. Justice Stephen's opinion is that clergy probably can be compelled to give