

place upon the subject, these communications having been made to him as her attorney.

The information asked for in the fifth question, I think, should be given, because it is such information as any other person, if present, would have acquired as well as the witness. In other words, it has no necessary connection with the character in which alone communications between parties are protected. The inquiry is, whether there were other persons present at the time the conversation took place, and whether there was any thing in the conversation not designed to be heard by those present. Now, whether there were or were not persons present, it is a fact of which any one else, if present, would have been equally conversant with the witness. His knowledge of the presence of such persons, had nothing to do with his professional character, being acquired by the use of natural faculties possessed by himself in common with other men. Such information cannot, I think, be considered as of that description of which the policy of the law forbids a witness to speak. It cannot be regarded, in any sense, as a professional communication upon which, alone, the law places the injunction of secrecy; and, as it seems to me, the disclosure of it by the witness is clearly warranted by what are called the apparent exceptions to the rule, to be found in *Greenleaf*, sec. 244.

For the same reason, I see no ground upon which the witness can refuse to answer the seventh and eighth questions of the same parties. They ask for information which has nothing to do with his professional character, and which he did not acquire by reason of the confidence which was reposed in him on account of that character, and the relation he bore to Mrs. Gibson. He may and must tell every thing pertinent to the cause, which was not communicated to him as the legal adviser of Mrs. Gibson. Whether other persons were present at the time, or have spoken of what transpired or was said upon that occasion, are facts not communicated to him as her legal adviser, and, I think, cannot be withheld.

The next point relates to the mode in which the question is presented. It was presented in accordance with the practice,