

509 from making * sale, after he has qualified himself to act, he is allowed no more than half commissions. *Gibson's Case*, ante, 138. Now, in whatever way this payment, made voluntarily by Harwood to Brewer, may be contemplated; whether as a solicitor's fee; or on an account of forbearing to sell; or for commissions which the parties themselves, for their own advantage, prevented him from earning, I do not see how any decision, which I may now pronounce, can lay a foundation for making Brewer refund this money; or to give to any one a better ground for demanding it of him than now exists. I am therefore of opinion, that he is a competent witness.

The witness John Johnson, it is objected, is not competent; because he acquired a knowledge of the facts about which he is called on to speak as an attorney. I take it to be well established, that an attorney or solicitor is at no time, either before or after the termination of the suit in which he was retained, authorized, without the consent of his client, to disclose anything his client has communicated to him. This, however, is a privilege of the client, not of the attorney. And if the client be no party to the matter then in controversy so as to be able to communicate an express or tacit relinquishment of his privilege, the lips of his attorney must remain closed; and the Court cannot allow him to speak of that which the policy of the law has prohibited him from disclosing. *Pow. Mort.* 588, note N; *Bac. Abr. tit. Evidence*, A 3; *Clay v. Williams*, 2 *Mun.* 122. This is a controversy, according to the order of the 27th of August last, between this petitioner and the plaintiff; therefore, if this witness had obtained his information as the attorney of the defendant Harwood, he could not now be heard; because Harwood is not here, as regards the present controversy, to waive his privilege, even if he were willing to do so. But the witness positively avers, that he could not and did not act as the attorney of Harwood; and that a knowledge of none of the facts, of which he speaks, was obtained as the attorney of him, or of any one else. Consequently he also must be considered as a competent witness.

Having thus disposed of the several preliminary questions, we may now sum up the facts and consider this application upon its merits. There is some contrariety in the particulars as they are related by the petition, and the depositions of the witnesses; but, after considering those discordances, and laying aside everything

510 *not materially bearing upon the question to be decided, the case appears to be this:

The defendant Thomas Harwood had conveyed his property to secure the payment of his debts to the extent, and in the manner set forth by his two deeds of the 7th of April and 11th September, 1810. After which the plaintiff Hodges filed his bill as mortgagee to obtain the benefit of the deed of the 11th of September; setting