and grantee, and generally, to be the pervading doctrine, in all cases of rights acquired in good faith, previous to the time of making the admissions in question.[1]

§ 181. In some cases, the admissions of *third persons, strangers to the suit*, are receivable. This arises, when the issue is substantially upon the mutual rights of such persons at a particular time; in which case the practice is to let in such evidence in general, as would be legally admissible in an action between the parties themselves. Thus, in an action against the sheriff for an escape, the debtor's acknowledgment of the debt, being sufficient to charge him, in the original action, is sufficient, as against the sheriff, to support the averment in the declaration, that the party escaping was so indebted.[2] So, an admission of joint liability by a third person has been held sufficient evidence, on the part of the defendant, to support a plea in abatement for the nonjoinder of such person as defendant in the suit; it being admissible in an action against him for the same cause.[3] And the admissions of a bankrupt, made before the act of bankruptcy, are receivable in proof of the petitioning creditor's debt. His declarations made after the act of bankruptcy, though admissible against himself, form an exception to this rule, because of the intervening rights of creditors, and the danger of fraud.[4]

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[1] Bartlett *v.* Delprat, 4 Mass. 702, 708; Clark *v.* Waite, 12 Mass. 439; Bridge *v.* Eggleston, 14 Mass. 245, 250, 251; Phenix *v.* Ingraham, 5 Johns. 412; Packer *v.* Gonsalus, 1 Serg. & R. 526; Patton *v.* Goldsborough, 9 Serg. & R. 47; Babb *v.* Clemson, 12 Serg. & R. 328.

[2] Sloman *v.* Herne, 2 Esp. 695; Williams *v.* Bridges, 2 Stark. R. 42; Kempland *v.* Macauley, Peake's Cas. 65.

[3] Clay *v.* Langslow, 1 M. & M. 45. *Sed quære*, and see post, § 395.

[4] Hoare *v.* Coryton, 4 Taunt. 560; 2 Rose, 158; Robson *v.* Kemp, 4 Esp. 234; Watts *v.* Thorpe, 1 Campb. 376; Smallcombe *v.* Bruges, McClel. R. 45; 13 Price, 136, S. C.; Taylor *v.* Kinloch, 1 Stark. R. 175; 2 Stark. R. 594; Jarrett *v.* Leonard, 2 M. & S. 265. The dictum of Lord Kenyon, in Dowton *v.* Cross, 1 Esp. 168, that the admissions of the bankrupt made after the act of bankruptcy, but before the commission issued, are receivable, is contradicted in 13 Price, 153, 154, and overruled by that and the other cases above cited. See also Bernasconi *v.* Farebrother, 3 B. &. Ad. 372.

§ 182. The admissions of a third person are also receivable in evidence, against the party, who has *expressly referred another to him* for information in regard to an uncertain or disputed matter. In such cases the party is bound by the declarations of the person referred to, in the same manner, and to the same extent, as if they were made by himself. Thus, upon a plea of *plene administravit*, where the executors wrote to the plaintiff, that if she wished for further information in regard to the assets, she should apply to a certain merchant in the city, they were held bound by the replies of the merchant to her inquiries upon that subject.[1] So, in *assumpsit* for goods sold, where the fact of the delivery of them by the carman was disputed, and the defendant said, "If he will say, that he did deliver the goods, I will pay for them;" he was held bound by the affirmative reply of the carman.[2]

§ 183. This principle extends to the case of an *interpreter*, whose statements of what the party says are treated as identical with those of the party himself; and therefore may be proved by any person who heard them, without calling the interpreter.[3]

§ 184. Whether the answer of a person, thus referred to, is *conclusive* against the party, does not seem to have been

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[1] Williams *v.* Innes, 1 Campb. 364.

[2] Daniel *v.* Pitt, 1 Campb. 366, note; 6 Esp. 74, S. C.; Brock *v.* Kent, Ib.; Burt *v.* Palmer, 5 Esp. 145; Hood *v.* Reeve, 3 C. & P. 532.

[3] Fabrigas *v.* Mostyn, 11 St. Tr. 171. The cases of the reference of a disputed liability, to the opinion of legal counsel; and of a disputed fact regarding a mine, to a miner's jury, have been treated as falling under this head; the decisions being held binding, as the answers of persons referred to. How far the circumstance, that if treated as awards, being in writing, they would have been void for want of a stamp, may have led the learned Judges to consider them in another light, does not appear. Sybray *v.* White, 1 M. & W. 435. But in this country, where no stamp is required, they would more naturally be regarded as awards upon parol submissions, and therefore conclusive, unless impeached for causes recognised in the law of awards.

settled. Where the plaintiff had offered to rest his claim upon the defendant's affidavit, which was accordingly taken, Lord Kenyon held, that he was conclusively bound, even though the affidavit had been false; and he added, that, to make such a proposition and afterwards to recede from it, was *mala fides;* but that, besides that, it might be turned to very improper purposes, such as to entrap the witness, or to find out how far the party's evidence would go in support of his case.[1] But in a later case, where the question was upon the identity of a horse, in the defendant's possession, with one lost by the plaintiff, and the plaintiff had said, that if the defendant would take his oath that the horse was his, he should keep him, and he made oath accordingly; Lord Tenterden observed, that, considering the loose manner in which the evidence had been given, he would not receive it as conclusive; but that it was a circumstance on which he should not fail to remark to the Jury.[2] And certainly the opinion of Lord Tenterden, indicated by what fell from him in this case, more perfectly harmonizes with other parts of the law, especially as it is opposed to any farther extension of the doctrine of estoppels, which sometimes precludes the investigation of truth. The purposes of justice and policy are sufficiently answered, by throwing the burden of proof on the opposing party, as in the case of an award, and holding him bound, unless he impeaches the test referred to by clear proof of fraud or mistake.[3]

§ 185. The *admissions of the wife* will bind the husband, only where she has authority to make them.[4] This authority

[1] Stevens *v.* Thacker, Peake's Cas. 187; Lloyd *v.* Willan, 1 Esp. 178; Delesline *v.* Greenland, 1 Bay, 458, acc, where the oath of a third person was referred to. See Reg. *v.* Moreau, 36 Leg. Obs. 69, as to the admissibility of an award as an admission of the party. Post, § 537, n. (1).

[2] Garnett *v.* Ball, 3 Stark. R. 160.

[3] Whitehead *v.* Tattersall, 1 Ad. & El. 491.

[4] Emerson *v.* Blonden, 1 Esp. 142; Anderson *v.* Sanderson, 2 Stark. R. 204; Carey *v.* Adkins, 4 Campb. 92. In Walton *v.* Green, 1 C. & P. 621; which was an action for necessaries furnished to the wife, the defence being that she was turned out of doors for adultery, the husband was permitted to prove her confessions of the fact, just previous to his turning her away; but this was contemporary with the transaction, of which it formed a part.

does not result, by mere operation of law, from the relation of husband and wife; but is a question of fact, to be found by the Jury, as in other cases of agency; for though this relation is peculiar in its circumstances, from its close intimacy and its very nature, yet it is not peculiar in its principles. As the wife is seldom expressly constituted the agent of the husband, the cases on this subject are almost universally those of implied authority, turning upon the degree in which the husband permitted the wife to participate, either in the transaction of his affairs in general, or in the particular matter in question. Where he sues for her wages, the fact that she earned them, does not authorize her to bind him by her admissions of payment;[1] nor can her declarations affect him, where he sues with her in her right; for in these, and similar cases, the right is his own, though acquired through her instrumentality.[2] But in regard to the inference of her agency from circumstances, the question has been left to the Jury with great latitude, both as to the fact of agency, and the time of the admissions. Thus, it has been held competent for them to infer authority in her to accept a notice and direction, in regard to a particular transaction in her husband's trade, from the circumstance of her being seen twice in his counting room, appearing to conduct his business relating to that transaction, and once giving orders to the foreman.[3] And an action against

[1] Hall *v.* Hill, 2 Str. 1094. An authority to the wife to conduct the ordinary business of the shop in her husband's absence, does not authorize her to bind him by an admission, in regard to the tenancy or the rent of the shop. Meredith *v.* Footner, 11 M. & W. 202.

[2] Alban *v.* Pritchett, 6 T. R. 680; Kelley *v.* Small, 2 Esp. 716; Denn *v.* White, 7 T. R. 112, as to her admission of a trespass. Hodgkinson *v.* Fletcher, 4 Camp. 70. Neither are his admissions as to facts respecting her property, which happened before the marriage, receivable, after his death, to affect the rights of the surviving wife. Smith *v.* Scudder, 11 Serg. & R. 325.

[3] Plimmer *v.* Sells, 3 Nev. & M. 422.

the husband, for goods furnished to the wife while in the country, where she was occasionally visited by him, her letter to the plaintiff, admitting the debt, and apologizing for the nonpayment, though written several years after the transaction, was held by Lord Ellenborough sufficient to take the case out of the statute of limitations.[1]

§ 186. The admissions of *Attorneys of record* bind their clients, in all matters relating to the progress and trial of the cause. But to this end they must be distinct and formal, or such as are termed solemn admissions, made for the express purpose of alleviating the stringency of some rule of practice, or of dispensing with the formal proof of some fact at the trial. In such cases they are in general conclusive; and may be given in evidence even upon a new trial.[2] But other admissions, which are mere matters of conversation with an attorney, though they relate to the facts in controversy, cannot be received in evidence against his client. The reason of the distinction is found in the nature and extent of the authority given; the attorney being constituted for the management of the cause in Court, and for nothing more.[3] If the admission is made before suit, it is equally binding, provided it appear that the attorney was already retained to appear in the cause.[4] But in the absence of any evidence of retainder at that time in the cause, there must be some other proof of authority to make the admission.[5] Where the attorney is already constituted in the cause, admissions made by his managing clerk or his agent are received as his own.[6]

[1] Gregory *v.* Parker, 1 Campb. 394; Palethorp *v.* Furnish, 2 Esp. 511, note. See also Clifford *v.* Burton, 1 Bing. 199; 8 Moore, 16, S. C.; Petty *v.* Anderson, 3 Bing. 170; Cotes *v.* Davis, 1 Campb. 485.

[2] Doe *v.* Bird, 7 C. & P. 6; Langley *v.* Ld. Oxford, 1 M. &. W. 508.

[3] Young *v.* Wright, 1 Campb. 139, 141; Parkins *v.* Hawkshaw, 2 Stark. R. 239; Elton *v.* Larkins, 1 M. & Ro. 196; Doe *v.* Bird, 7 C. & P. 6; Doe *v.* Richards, 2 C. & K. 216; Watson *v.* King, 3 C. B. 608.

[4] Marshall *v.* Cliff, 4 Campb. 133.

[5] Wagstaff *v.* Wilson, 4 B. &. Ad. 339.

[6] Taylor *v.* Willans, 2 B. & Ad. 845, 856; Standage *v.* Creighton, 5 C. & P. 406; Taylor *v.* Forster, 2 C. & P. 195; Griffiths *v.* Williams, 1 T. R. 710; Truslove *v.* Burton, 9 Moore, 64. As to the extent of certain admissions, see Holt *v.* Squire, Ry. & M. 282; Marshall *v.* Cliff, 4 Campb. 133. The admission of the due execution of a deed does not preclude the party from taking advantage of a variance. Goldie *v.* Shuttleworth, 1 Campb. 70.

§ 187. We are next to consider the admissions of a *principal*, as evidence in an action *against the surety*, upon his collateral undertaking. In the cases on this subject the main inquiry has been, whether the declarations of the principal were made during the transaction of the business for which the surety was bound, so as to become part of the *res gestæ*. If so, they have been held admissible; otherwise, not. The surety is considered as bound only for the actual conduct of the party, and not for whatever he might say he had done; and therefore is entitled to proof of his conduct by original evidence, where it can be had; excluding all declarations of the principal, made subsequent to the act, to which they relate, and out of the course of his official duty. Thus, where one guarantied the payment for such goods as the plaintiffs should send to another, in the way of their trade; it was held, that the admissions of the principal debtor, that he had received goods, made after the time of their supposed delivery, were not receivable in evidence against the surety.[1] So, if one becomes surety in a bond, conditioned for the faithful conduct of another as clerk, or collector, it is held, that, in an action on the bond against the surety, confessions of embezzlement, made by the principal after his dismissal, are not admissible in evidence;[2] though with regard to entries made in the

[1] Evans *v.* Beattie, 5 Esp. 26; Bacon *v.* Chesney, 1 Stark. R. 192; Longenecker *v.* Hyde, 6 Binn. 1.

[2] Smith *v.* Whittingham, 6 C. & P. 78. See also Goss *v.* Watlington, 3 B. & B. 132; Cutler *v.* Newlin, Manning's Digest, N. P. 137, per Holroyd, J. in 1819; Dawes *v.* Shed, 15 Mass. 6, 9; Foxcroft *v.* Nevens, 4 Greenl. 72; Hayes *v.* Seaver, 7 Greenl. 237; Respublica *v.* Davies, 3 Yeates, 128; Hotchkiss *v.* Lyon, 2 Blackf. 222; Shelby *v.* The Governor, &c. Ib. 289; Beall *v.* Beck, 3 Har. & McHen. 242.

course of his duty, it it otherwise.[1] A judgment, also, rendered against the principal, may be admitted as evidence of that fact, in an action against the surety.[2] On the other hand, upon the same general ground it has been held, that, where the surety confides to the principal the power of making a contract, he confides to him the power of furnishing evidence of the contract; and that, if the contract is made by parol, subsequent declarations of the principal are admissible in evidence, though not conclusive. Thus, where a husband and wife agreed, by articles, to live separate, and C., as trustee and surety for the wife, covenanted to pay the husband a sum of money, upon his delivering to the wife a carriage and horses for her separate use; it was held, in an action by the husband for the money, that the wife's admissions of the receipt by her of the carriage and horses were admissible.[3] So, where A. guarantied the performance of any contract that B. might make with C., the admissions and declarations of B. were held admissible against A., to prove the contract.[4]

§ 188. But where the surety, being sued for the default of the principal, gives him *notice of the pendency of the suit*, and requests him to defend it; if judgment goes against the surety, the record is conclusive evidence for him, in a subsequent action against the principal for indemnity; for the principal has thus *virtually become party* to it. It would seem, therefore, that in such case the declarations of the principal, as we have heretofore seen, become admissible, even though they operate against the surety.[5]

§ 189. The admissions of one person are also evidence against another, in respect of privity between them. The

[1] Whitnash *v.* George, 8 B. & C. 556; Middleton *v.* Melton, 10 B. & C. 317; McGahey *v.* Alston, 2 M. & W. 213, 214.

[2] Drummond *v.* Prestman, 12 Wheat. 515.

[3] Fenner *v.* Lewis, 10 Johns. 38.

[4] Meade *v.* McDowell, 5 Binn. 195.

[5] See Ante, § 180, note (6), and cases there cited.

term, *privity*, denotes mutual or successive relationship to the same rights of property; and privies are distributed into several classes, according to the manner of this relationship. Thus, there are privies in estate, as, donor and donee, lessor and lessee, and joint-tenants; privies in blood, as, heir and ancestor, and coparceners; privies in representation, as, executors and testator, administrators and intestate; privies in law, where the law, without privity of blood or estate, casts the land upon another, as, by escheat. All these are more generally classed into privies in estate, privies in blood, and privies in law.[1] The ground, upon which admissions bind those in privity with the party making them, is, that they are identified in interest; and of course the rule extends no farther than this identity. The cases of coparceners and joint-tenants are assimilated to those of joint promissors, partners, and others having a joint interest, which have already been considered.[2] In other cases, where the party by his admissions has qualified his own right, and another claims to succeed him, as heir, executor, or the like, he succeeds only to the right, as thus qualified, at the time when his title commenced; and the admissions are receivable in evidence against the representative, in the same manner as they would have been against the party represented. Thus, the declarations of the ancestor, that he held the land as the tenant of a third person, are admissible to show the seisin of that person, in an action

[1] Co. Lit. 271 *a*; Carver *v.* Jackson, 4 Peters, 1, 83; Wood's Inst. LL. Eng. 236; Tomlin's Law Dict. in Verb. *Privies*. Other divisions have been recognised; viz. privity in tenure, between landlord and tenant; privity in contract alone, or the relation between lessor and lessee, or heir and tenant in dower, or by the curtesy, by the covenants of the latter, after he has assigned his term to a stranger; privity in estate alone, between the lessee and the grantee of the reversion; and privity in both estate and contract, as between lessor and lessee, &c.; but these are foreign from our present purpose. See Walker's case, 3 Co. 23; Beverley's case, 4 Co. 123, 124; Ante, § 19, 20, 23, 24.

[2] Ante, § 174, 180.

brought by him against the heir for the land.[1] Thus, also, where the defendant in a real action relied on a long possession, he has been permitted, in proof of the adverse character of the possession, to give in evidence the declarations of one under whom the plaintiff claimed, that he had sold the land to the person under whom the defendant claimed.[2] And the declarations of an intestate are admissible against his administrator, or any other claiming in his right.[3] The declarations also of the former occupant of a messuage, in respect of which the present occupant claimed a right of common because of vicinage, are admissible evidence in disparagement of the right, they being made during his occupancy; and on the same principle, other contemporaneous declarations of occupiers have been admitted, as evidence of the nature and extent of their title, against those claiming in privity of estate.[4] Any admission by a landlord in a prior lease, which is relative to the matter in issue, and concerns the estate, has also been held admissible in evidence against a lessee who claims by a subsequent title.[5]

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[1] Doe *v.* Pettett, 5 B. & Ad. 223; 2 Poth. on Obl. by Evans, p. 254; Ante, § 108, 109, and cases there cited.

[2] Brattle Street Church *v.* Hubbard, 2 Metc. 363.

[3] Smith *v.* Smith, 3 Bing. N. C. 29; Ivat *v.* Finch, 1 Taunt. 141.

[4] Walker *v.* Broadstock, 1 Esp. 458; Doe *v.* Austin, 9 Bing. 41; Davies *v.* Pierce, 2 T. R. 53; Doe *v.* Rickarby, 5 Esp. 4; Doe *v.* Jones, 1 Campb. 367. Ancient maps, books of survey, &c., though mere private documents, are frequently admissible on this ground, where there is a privity in estate between the former proprietor, under whose direction they were made, and the present claimant, against whom they are offered. Bull. N. P. 283; Bridgman *v.* Jennings, 1 Ld. Raym. 734. So, as to receipts for rent, by a former grantor, under whom both parties claimed. Doe *v.* Seaton, 2 Ad. & Ell. 171.

[5] Crease *v.* Barrett, 1 Crompt. Mees. & R. 919, 932. See also Doe *v.* Cole, 6 C. & P. 359, that a letter written by a former vicar, respecting the property of the vicarage, is evidence against his successor, in an ejectment for the same property, in right of his vicarage. The receipts, also, of a vicar's lessee, it seems, are admissible against the vicar, in proof of a *modus*, by reason of the privity between them. Jones *v.* Carrington, 1 C. & P. 329, 330, n.; Maddison *v.* Nuttal, 6 Bing. 226. So, the answer of a former rector. De Whelpdale *v.* Milburn, 5 Price, 485. An answer in Chancery is also admissible in evidence against any person actually claiming under the party who put it in; and it has been held *primâ facie* evidence against persons generally reputed to claim under him, at least so far as to call upon them to show another title from a stranger. Earl of Sussex *v.* Temple, 1 Ld. Raym. 310; Countess of Dartmouth *v.* Roberts, 16 East, 334, 339, 340. So of other declarations of the former party in possession, which would have been good against himself, and were made while he was in possession. Jackson *v.* Bard, 4 Johns. 230, 234; Norton *v.* Pettibone, 7 Conn. 319; Weidman *v.* Kohr, 4 Serg. & R. 174; Ante, § 23, 24.

§ 190. The same principle holds in regard to *admissions made by the assignor* of a personal contract or chattel, previous to the assignment, while he remained the sole proprietor, and where the assignee must recover through the title of the assignor, and succeeds only to that title, as it stood at the time of its transfer. In such case he is bound by the previous admissions of the assignor, in disparagement of his own apparent title. But this is true only where there is an identity of interest between the assignor and assignee; and such identity is deemed to exist not only where the latter is expressly the mere agent and representative of the former, but also where the assignee has acquired a title with actual notice of the true state of that of the assignor, as qualified by the admissions in question, or where he has purchased a demand already stale, or otherwise infected with circumstances of suspicion.[1] Thus, the declarations of a former holder of a promissory note, negotiated before it was over due, showing that it was given without consideration, though made while he held the note, are not admissible against the indorsee; for, as was subsequently observed by *Parke*, J., "the right of a person, holding by a good title, is not to be cut down by the acknowledgment of a former holder, that he had no title."[2]

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[1] Harrison *v.* Vallance, 1 Bing. 38; Bayley on Bills, by Phillips and Sewall, p. 502, 503, and notes, (2d Am. Ed.); Gibblehouse *v.* Strong, 3 Rawle, 437; Hatch *v.* Dennis, 1 Fairf. 244; Snelgrove *v.* Martin, 2 McCord, 241, 243.

[2] Barough *v.* White, 4 B. & C. 325, explained in Woolway *v.* Rowe, 1 Ad. & El. 114, 116; Shaw *v.* Broom, 4 D. & R. 730; Smith *v.* De Wruitz,

But in an action by the indorsee of a bill or note dishonored before it was negotiated, the declarations of the indorser, made while the interest was in him, are admissible in evidence for the defendant.[1]

§ 191. These admissions by third persons, as they derive their value and legal force from the relation of the party making them to the property in question, and are taken as parts of the *res gestæ*, may be *proved by any competent witness* who heard them, without calling the party by whom they were made. The question is, whether he made the admission, and not merely, whether the fact is as he admitted it to be. Its truth, where the admission is not conclusive, (and it seldom is so,) may be controverted by other testimony; even by calling the party himself, when competent; but it is not necessary to produce him, his declarations, when admissible at all, being admissible as original evidence and not as hearsay.[2]

§ 192. We are next to consider the *time and circumstances of the admission.* And here it is to be observed, that confidential overtures of pacification, and any other offers or propositions between litigating parties, expressly stated to be made without prejudice, are excluded on grounds of public

Ry. & M. 212; Beauchamp *v.* Parry, 1 B. & Ad. 89; Hackett *v.* Martin, 8 Greenl. 77; Parker *v.* Grout, 11 Mass. 157, n.; Jones *v.* Witter, 13 Mass. 304; Dunn *v.* Snell, 15 Mass. 481; Paige *v.* Cagwin, 7 Hill, N. Y. R. 361. In Connecticut, it seems to have been held otherwise. Johnson *v.* Blackman, 11 Conn. 342; Woodruff *v.* Westcott, 12 Conn. 134. So, in Vermont. Sargeant *v.* Sargeant, 3 Washb. 371.

[1] Bayley on Bills, 502, 503, and notes, (2d Am. Ed. by Phillips & Sewall); Pocock *v.* Billings, Ry. & M. 127. See also Story on Bills, § 220; Chitty on Bills, 650, (8th Ed.); Hatch *v.* Dennis, 1 Fairf. 249; Shirley *v.* Todd, 9 Greenl. 83.

[2] Ante, § 101, 113, 114, and cases there cited; Clark *v.* Hougham, 2 B. & C. 149; Mountstephen *v.* Brooke, 3 B. & Ald. 141; Woolway *v.* Rowe, 1 Ad. & El. 114.

policy.[1] For without this protective rule, it would often be difficult to take any step towards an amicable compromise or adjustment. A distinction is taken between the admission of particular facts, and an offer of a sum of money to buy peace. For, as Lord Mansfield observed, it must be permitted to men to buy their peace without prejudice to them, if the offer should not succeed; and such offers are made to stop litigation, without regard to the question whether any thing is due or not. If, therefore, the defendant, being sued for £100, should offer the plaintiff £20, this is not admissible in evidence, for it is irrelevant to the issue; it neither admits nor ascertains any debt; and is no more than saying, he would give £20 to be rid of the action.[2] But in order to exclude distinct admissions of facts, it must appear, either that they were expressly made without prejudice, or at least, that they were made under the faith of a pending treaty, and into which the party might have been led by the confidence of a compromise taking place. But if the admission be of a collateral or indifferent fact, such as the handwriting of the party, capable of easy proof by other means, and not connected with the merits of the cause, it is receivable, though made under a pending treaty.[3] It is the condition, tacit or express, that no advantage shall be taken of the admission, it

[1] Cory *v.* Bretton, 4 C. & P. 462; Healey *v.* Thatcher, 8 C. & P. 388. Communications between the clerk of the plaintiff's attorney, and the attorney of the defendant, with a view to a compromise, have been held privileged, under this rule. Jardine *v.* Sheridan, 2 C. & K. 24.

[2] Bull. N. P. 236; Gregory *v.* Howard, 3 Esp. 113, per Ld Kenyon; Marsh *v.* Gold, 2 Pick. 290; Gerrish *v.* Sweetser, 4 Pick. 374, 377; Wayman *v.* Hilliard, 7 Bing. 101; Cumming *v.* French, 2 Campb. 106, n.; Glassford on Evid. p. 336.

[3] Waldridge *v.* Kenison, 1 Esp. 143, per Ld. Kenyon. The American Courts have gone farther, and held that evidence of the admission of any independent fact is receivable, though made during a treaty of compromise. See Mount *v.* Bogert, Anthon's Rep. 190, per Thompson, C. J.; Murray *v.* Coster, 4 Cowen, 635; Fuller *v.* Hampton, 5 Conn. 416, 426; Sanborn *v.* Neilson, 4 New Hamp. R. 501, 508, 509; Delogny *v.* Rentoul, 1 Martin, 175. Lord Kenyon afterwards relaxed his own rule, saying that in future he should receive evidence of all admissions, such as the party would be obliged

being made with a view to and in furtherance of an amicable adjustment, that operates to exclude it. But if it is an independent admission of a fact, merely because it is a fact, it will be received; and even an offer of a sum, by way of compromise of a claim tacitly admitted, is receivable, unless accompanied with a caution that the offer is confidential.[1]

§ 193. In regard to *admissions made under* circumstances of *constraint*, a distinction is taken between civil and criminal cases; and it has been considered, that, on the trial of civil actions, admissions are receivable in evidence, provided the compulsion under which they are given is legal, and the party was not imposed upon, or under duress. Thus in the trial of *Collett* v. *Ld. Keith*, for taking the plaintiff's ship, the testimony of the defendant, given as a witness in an action between other parties, in which he admitted the taking of the ship, was allowed to be proved against him; though it appeared, that, in giving his evidence, when he was proceeding to state his reasons for taking the ship, Lord Kenyon had stopped him by saying, it was unnecessary for him to vindicate his conduct.[2] The rule extends also to answers voluntarily given to questions improperly asked, and to which the witness might successfully have objected. So, the voluntary answers of a bankrupt before the commissioners, are evidence in a subsequent action against the party himself, though he might have demurred to the questions, or the whole examination was irregular;[1] unless it was obtained by imposition or duress.[2]

to make in answer to a bill in equity; rejecting none but such as are merely concessions for the sake of making peace and getting rid of a suit. Slack *v.* Buchannan, Peake's Cas. 5, 6; Tait on Evid. p. 293. A letter written by the adverse party "without prejudice" is inadmissible. Healey *v.* Thatcher, 8 C. & P. 388.

[1] Wallace *v.* Small, 1 M. & M. 446; Watts *v.* Lawson, Ib. 447, n.; Dickinson *v.* Dickinson, 9 Metc. 471; Thompson *v.* Austen, 2 Dowl. & Ry. 358. In this case Bayley, J. remarked that the essence of an offer to compromise was, that the party making it was willing to submit to a sacrifice, and to make a concession. Hartford Bridge Co. *v.* Granger, 4 Conn. 148; Gerrish *v.* Sweetser, 4 Pick. 374, 377; Murray *v.* Coster, 4 Cowen, 617, 635. Admissions made before an arbitrator are receivable in a subsequent trial of the cause, the reference having proved ineffectual. Slack *v.* Buchannan, Peake's Cas. 5. See also Gregory *v.* Howard, 3 Esp. 113.

[2] Collett *v.* Ld. Keith, 4 Esp. 212, per Le Blanc, J.; who remarked, that the manner in which the evidence had been obtained might be matter of observation to the Jury; but that, if what was said bore in any way on the issue, he was bound to receive it as evidence of the fact itself. See also Milward *v.* Forbes, 4 Esp. 171.

§ 194. There is no difference, in regard to the admissibility of this sort of evidence, between *direct admissions*, and those which are *incidental*, or made in some other connexion, or involved in the admission of some other fact. Thus, where in an action against the acceptor of a bill, his attorney gave notice to the plaintiff to produce at the trial all papers, &c., which had been received by him relating to a certain bill of exchange, (describing it,) which "was accepted by the said defendant;" this was held *primâ facie* evidence, by admission, that he accepted the bill.[3] So, in an action by the assignees of a bankrupt, against an auctioneer, to recover the proceeds of sales of the bankrupt's goods, the defendant's advertisement of the sale, in which he described the goods as "the property of D., a bankrupt," was held a conclusive admission of the fact of bankruptcy, and that the defendant

[1] Stockfleth *v.* De Tastet, 4 Campb. 10; Smith *v.* Beadnell, 1 Campb. 30. If the commission has been perverted to improper purposes, the remedy is by an application to have the examination taken from the files and cancelled. 4 Campb. 11, per Ld. Ellenborough; Milward *v.* Forbes, 4 Esp. 171; 2 Stark. Ev. 22.

[2] Robson *v.* Alexander, 1 Moore & P. 448; Tucker *v.* Barrow, 7 B. & C. 623. But a legal necessity to answer the questions, under peril of punishment for contempt, it seems, is a valid objection to the admission of the answers in evidence, in a criminal prosecution. Rex *v.* Britton, 1 M. & Rob. 297. The case of Rex *v.* Merceron, 2 Stark. R. 366, which seems to the contrary, is questioned and explained by Lord Tenterden, in Rex *v.* Gilham, 1 Mood. Cr. Cas. 203. See post, § 225, 451; Regina *v.* Garbett, 1 Denis, C. C. 236.

[3] Holt *v.* Squire, Ry. & M. 282.