controversy cannot at the mere will of parties be extended to other communications which do not come within that category. It would be a very unreasonable thing to suppose that every individual is at liberty to say what particular act or admission he may choose to do or make shall be receivable in evidence against him. The law gives no such privilege, and the mere use of the words "without prejudice" will not protect communications from being given in evidence, unless such communications are within the class above indicated. For instance, a person cannot write a libellous or blackmailing letter and prevent its being used in evidence against him by putting in the words "without prejudice": see *Re Daintrey, infra.*

The general rule on which the court acts was recognized and followed by Proudfoot, J. in the *County of York* v. *Toronto Gravel Road Company*, 3 O.R. 584. Where such evidence was improperly received at the trial, a new trial was granted: *Pirie* v. *Wyld*, 11 O.R. 422; but in an earlier case where the court came to the conclusion that the verdict could be supported on the other evidence adduced, a new trial was refused: *Burns* v. *Kerr*, 13 U.C.Q.B. 468; and where no objection is made at the trial to its reception, the objection to its admissibility cannot be relied on as a ground for a new trial: see *Hartney* v. *North British Insurance Company*, 13 O.R. 581.

But though such communications are inadmissible when the negotiation proves abortive for the purpose of proving any admission contained therein, yet where it is successful and a compromise is agreed to the communications are admissible, both for the purpose of showing the terms of the compromise and for enforcing it: *Vardon* v. *Vardon*, 6 O.R. 719 (1883). In that case the correspondence for a settlement had commenced "without prejudice," but in subsequent letters the qualifying words were dropped; and Wilson, C.J., held it to be entirely immaterial. "For if the negotiations have failed, the terms of the negotiation fail too; while if a contract has been perfected, the qualifying words are no longer operative." And inasmuch as he held that a contract had been made, he also held that the correspondence was admissible to establish the terms of it, and for the purpose of specifically enforcing it; and this decision was affirmed by a Divisional Court (Boyd, C., and Proudfoot, J.).

Such communications are also admissible for the purpose of showing that an attempt has been made to compromise a suit,