

The principle of the exclusion of such admissions, whether verbal or documentary, therefore seems to rest on the fact that there is some matter in controversy, or some claim by one person against the other for the settlement or adjustment of which the communication is made, and that in furtherance of the maxim, *Interest reipublicæ ut sit finis litium*, it is for the public good that communications having that end in view should not be allowed to prejudice either party in the event of their proving abortive. And it would seem from the case of *Jardine v. Sheridan*, *supra*, that it is not even absolutely necessary that such communications should be expressly guarded, where they manifestly appear to have been made simply by way of compromise. At all events, it was held in *Peacock v. Harper*, 26 W.R. 109 (1877), that where a letter opening negotiations for a compromise, but not stated to be without prejudice, was followed by another a day or two after, guarding against prejudice, the whole correspondence was thereby protected.

In *Healey v. Thatcher*, 8 C. & P. 388 (1838), at a trial before Gurney, B., that learned judge refused to receive in evidence a letter written "without prejudice" even in favour of the party who had written it. He said, "If you write without prejudice so as not to bind yourself, you cannot use the letter against the other party"; but it may be doubted whether this statement of the law is not a little too wide; at all events, in some more recent cases a somewhat different view seems to have been taken.

Correspondence of this kind is not only inadmissible as evidence at the trial of the action, but it has also been held to be privileged from production for the purpose of discovery: *Whiffin v. Hartwright*, 11 Beav. 111 (1848).

In *Hoghton v. Hoghton*, 15 Beav. 321, and *Jones v. Foxall*, *ib.* 388 (1852), Sir John Romilly, M.R., discusses the question. In the first of these cases, he said: "Such communications made with a view to an amicable arrangement ought to be held very sacred, for if parties were to be afterwards prejudiced by their efforts to compromise it would be impossible to attempt any amicable arrangement of differences." Here, again, we see the reason of the rule is stated very much in the same way as it was by Tindal, C.J. in *Paddock v. Forrester*, *supra*.

This protection which the law throws round communications made with the view to compromising or adjusting matters in