"*WITHOUT PREJUDICE.*"

Those who are familiar with Dickens will remember that he makes Mr. Guppy preface his proposal of marriage to Miss Esther Summerson with the declaration that "what follows is without prejudice." This passage loses none of its humour from the fact that Mr. Guppy's notions of the law on this point were somewhat astray.

If any love-sick swain were induced to adopt this idea of Mr. Guppy, he would probably find that his precautions for securing his retreat were unavailing, and that the mystic words "without prejudice" would altogether fail to preclude from the consideration of a jury his amatory effusions, whether written or verbal.

Some people like Mr. Guppy, however, seem to assume that every communication expressed to be made "without prejudice" is necessarily protected, but this is very far from being the case, and when the reason on which the rule is based is considered, this will be quite apparent.

In Buller's, N.P., 236 *b* (7th ed., 1817), it is said, "An offer to pay money by way of compromise is not evidence of a debt. The reasons often assigned for it by Lord Mansfield were that it must be permitted to men 'to buy their peace,' without prejudice to them, if the offer did not succeed: and such offers are made to stop litigation without regard to the question whether anything or what is due. If the terms 'buy their peace' are attended to, they will resolve all doubts on this head of evidence. But, for an example, I will add one case. If A. sue B. for £100, and B. offer to pay him £20, it shall not be received in evidence; for this neither admits nor ascertains any debt, and is no more than saying he would give £20 to get rid of the action. But if an account consists of ten articles, and B. admits that a particular one is due, it is good evidence for so much."

In one of the oldest cases on the subject, *Gregory* v. *Howard*, 3 Esp. 113 (1800), Lord Kenyon, C.J., is said to have declared at *nisi prius*: "Evidence of concessions made for the purpose of settling matters in dispute I shall never admit."

But in *Nicholson* v. *Smith*, 3 Stark N.P.C. 128, (1822) we find that Abbott, C.J., admitted in evidence proof of the fact that after the action was brought the defendant called upon the plaintiff and said he was sorry that the thing had happened, and offered £200 in settlement, which was not accepted.