

of dishonour as being part of a new bargain between the parties.

The essence of the protection conferred is that, if the negotiations carried on by the letters do not result in an agreement, nothing in them is to be taken as an admission. If an agreement does result, the protection is gone. So in the case of *Re Leite; Leite v. Ferreira*, 72 L.T. Jour. 97, where letters written "without prejudice" contained an undertaking in terms which were agreed to by the other side and afterwards the parties giving the undertaking wished to introduce a fresh condition, the original undertaking was enforced by Mr. Justice Fry. Parties are thus enabled effectively to conclude agreements for the ending of disputes provided they arrive at a definite settlement of the terms.

It may be important in some cases to shew that negotiations have taken place, as, for instance, with a view to rebut a suggestion of laches, and if for this purpose it is necessary to refer to letters written "without prejudice" this may be done, but only to the extent of establishing the fact that the letters have passed and the negotiations have taken place, the actual terms of the offer and the manner of its reception being, of course, suppressed: *Cp. Walker v. Wilsher*, supra, at p. 338, per Lord Justice Bowen. The privilege covering the letters is, therefore, in no way infringed.

The courts have always been careful to prevent the privilege being abused, and have not permitted its illegitimate use as a cloak to cover acts which are wrongful independently of pending negotiations. Where in letters marked "private and confidential" a defendant threatened, while an action was pending, to publish the pleadings with comments derogatory to the plaintiff, he was restrained by the court from committing what would be a contempt of court. Mr. Justice Fry held that no person has any right by so marking his communications to impose upon the recipient, being already at arm's length with him, any condition as to the mode in which they may be used: *Kitcat v. Sharp*, 48 L.T. Rep. 64.

Another instance of letters which have been held not privi-