

plaintiff was entitled also to use the letter and the subsequent agreement to repel any such imputation; but they thought that the judge at the trial erred in treating the letter as any evidence on the point of contributory negligence. Wilson, J., said, "This letter of defendants, if simply written 'without prejudice,' could not have been used either for or against them if the plaintiff did not act on it, as he did not. But it was not entitled to the protection claimed for it by the defendants, because they declare they mean to use it against the plaintiff, and the moment they said this it lost its privileged character, and could be used against the defendants themselves, for there is no such rule of privilege for the writer and none for the other side; it must be mutual or it means nothing. If the plaintiff had acted on the letter and conformed to it, he could then have used it against the defendants, though written without prejudice, for the letter could have meant in such a case, 'If you do not accept this proposition, then no prejudice; if you do, then the occasion for privilege has ended, and the letter may be usable for the stipulations in it that may be in your favour, in consequence of your having accepted the proposition';" and he was of opinion that as the plaintiff had substantially complied with the defendants' offer, the letter under the circumstances was admissible as evidence for all purposes, including the point of contributory negligence.

*In re Daintrey*, (1893) 2 Q.B. 116, shows very clearly the true ground on which the law allows the privilege in question and its limitations; in that case a petition in bankruptcy was presented which alleged as an act of bankruptcy that the debtor had given notice to a creditor that he had suspended payment or was about to do so. It was proposed to prove this act of bankruptcy by the letter in question, which had been addressed by the debtor to the petitioning creditor, in which the debtor offered a composition on the debt due from him to the petitioning creditor, and also stated that he was unable to pay his debts and would suspend payment unless the composition was accepted. The registrar in bankruptcy held that as the letter was written "without prejudice" it was inadmissible; but, on appeal, Williams and Bruce, JJ., unanimously reversed his decision. Williams, J., who delivered the judgment of the court, said, "In our opinion the rule which excludes documents marked 'without