

evidence, even if the offer had not been accepted. Even where there is a matter in dispute a letter written "without prejudice" may, in some cases, be receivable in evidence. Of this *Clark v. The Grand Trunk Railway*, 29 U.C.Q.B. 136, and *Re Daintrey, infra*, furnish good illustrations. In Clark's case the plaintiff sued for damages for personal injuries sustained on the defendants' railway. Pending the action, the defendants' solicitor wrote to the plaintiff without prejudice, "further than I will state in this letter," proposing that the plaintiff should put himself under the care of three doctors named, for six months, at the defendants' expense, and if these gentlemen, or any two of them, would say that they believed he was hurt the defendants would waive every other defence, and settle with him on such terms as should be agreed on, or as the three doctors should name. This offer, it was stated, was intended to be used by defendants, if refused; to show the defendants' sincerity and the plaintiff's unwillingness to submit to a fair test. The offer was at first declined, but a few days after, and after a jury had been sworn on the case, an agreement was entered into of substantially the same character, but by it the plaintiff was to be placed for six months under four doctors, at the defendants' expense, and they agreed that if, at the expiration of the time, the doctors or a majority of them agreed that the plaintiff was injured, the defendants would pay the damages to be assessed as provided for. The plaintiff submitted himself to the care of the four doctors, but they failed to agree, and the case was again brought on for trial, when the plaintiff put in evidence the letter above referred to, and the jury were told by the judge that if they were in doubt as to the plaintiff having contributed to his own injury, they might consider the letter as evidence against the defendants on that point. They found for the plaintiff, saying that they did not think him guilty of any neglect. The majority of the court (Richards, C.J., and Morrison, J.) thought there had been misdirection on this point, and granted a new trial (Wilson, J., dissenting). All the members of the court were agreed that the letter was admissible, but they differed as to the extent to which it could be relied on as evidence. Richards, C.J., and Morrison, J., held that it was receivable on the ground that as the defendants' solicitor stated that he intended to use the letter to show the plaintiff's want of good faith, that, therefore, the