

of comment in the American press, and is being regarded, as President Taft described it, as a disgrace to their civilization. A remedy will doubtless be found. In the meantime let us beware lest the allowing of appeals in criminal cases be attended with similar results.

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“WITHOUT PREJUDICE.”

Just as compromise is recognized as the essence of business, so the law has always favoured the attempt by parties to compose their differences without pressing their disputes to an issue in court. And it is with the object of facilitating such a result that the privilege has been granted to negotiations entered into “without prejudice” for the purpose of effecting settlements.

In order to understand the precise scope of the rules upon which it is based, it is important to appreciate the nature and object of the immunity enjoyed by the parties. Unless they were protected in submitting offers to each other, it would be impossible to frame the terms or to carry through anything by way of compromise of litigation. It is clearly most important that the door should not be shut against compromises, which would inevitably be the case if letters written or interviews held without prejudice for the purpose of suggesting methods of settlement were liable to be read subsequently to the prejudice of the writer. Complete freedom must be maintained subject to proper safeguards against abuse.

It will accordingly be observed that the privilege is limited to cases where the parties are really involved in a dispute and are in negotiation with one another for the purpose of agreeing terms of settlement. If these conditions are fulfilled, the protection is absolute, and parties will not be permitted, except by mutual consent, to waive the privilege. A decision to the contrary effect in *Williams v. Thomas*, 7 L.T. Rep. 184, was expressly disapproved by the Court of Appeal in the case of *Walker v. Wilsher*, 23 Q.B. Div. 335. The extent of the protection may be seen in the case of *Cory v. Bretton*, 4 C. & P. 462, where it was