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(ii) Under circumstances from which the Court can infer that the parties agreed together— That evidence of it should not be given.

However, it is also clarified that there is nothing to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126. (Explanation to S. 23)

Communications without Prejudice: Section 23 lays down that in civil (not criminal) cases, an admission is not relevant when it is made (i) upon an express condition that evidence of it is not to be given, or(ii) under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given. The section gives effect to the maxim interest rei publicae ut finis litium (it is in the interest of the State that there should be an end of litigation).

It is to be remembered that this section does not apply to criminal cases.

Explanation to S. 23: Under the Explanation, the legal adviser of a party will not be prevented from giving evidence of any communication made in furtherance of any illegal purpose or any fact showing that crime or fraud has been committed since his employment. “ Without Prejudice”: This section protects communication made ‘ without prejudice.’ Confidential overtures of pacification between litigants made without prejudice are excluded on grounds of public policy. It is to be noted that under S.

23, certain documents if they are written ‘ without prejudice’ will be inadmissible. The rule applies only if there is a dispute or negotiation with another, and if they are written bona fide. The mere fact that a document is

stated to have been written “ without prejudice” will not necessarily bring it within the scope of S.

23. It has been held that Section 23 does not protect all letters, merely because they are headed with the words “ without prejudice”. At best, it only shows the desire on the part of one party to have the privilege, but the other party must also respect such privilege. In an English case, it was observed that the words ‘ without prejudice’ simply mean this: “ I make you an offer- and if you do not accept it, this letter is not to be used against me.” In other words, what the expression connotes in this: “ I am making you an offer, which you may or may not accept; but, if you do not accept it, my having made it is to have no effect at all.” When letters marked “ without prejudice” are tendered in evidence, and the other party admits them (instead of objecting to them), the admission implies that the other party had waived his privilege, and such letters can then be used in a judicial proceeding. It is to be remembered, however, that an admission made to a stranger, under whatever terms as to secrecy, is not protected by law from disclosure.

An admission is not conclusive proof of the matter admitted, but it may operate as an estoppel under section 31. An admission shifts the onus on the person admitting the fact, on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established. (Kishori Lai v. Mt. Chaltibai, A. I.

R. 1959 S. C. 504) An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, and the weight to be

attached to it must depend upon circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

(Nagubai v. B. Shamrao, A. I. R. 1956 S.

C. 593 at page 599)