tion of damages in this action, might well enough have been received, upon the question of punitive or exemplary damages, but it was not of a very satisfactory character even upon that head. The only portion of it which seems to afford any just apology for the flagrant misconduct of the defendants, was the stupid blunder of the provost-marshal in directing the plaintiff to be "detained." This had some fair tendency to vindicate the good faith of the defendants in arresting the plaintiff. But what can be said of their after-conduct in forcibly carrying the plaintiff three miles, and dragging him before a town meeting, and sentencing him to take an oath to support the Constitution of the United States? They might, with the same propriety, have sentenced him to be hanged, or burned to death. And if they had done so and carried the sentence into execution, and been indicted for murder, they should, so far as we can see, upon the principle of this decision, have been permitted to show the plaintiff's provoking bravado talk in mitigation of punishment—or possibly to reduce the verdict from murder to manslaughter.

It does not seem to us that such evidence should have been permitted to go to the jury, upon either the first or second point made in the plaintiff's request to charge, and not upon the third, except so far as it tended to show that the defendants acted under a misapprehension of the law, and in good faith; for punitive or exemplary damages are not given with any reference to the plaintiff's misconduct, within the limits of the law, but solely on account of the malice and wanton misconduct of the defendants, and to admonish them, and others in like case, not to repeat the misconduct. Is there anything in the plaintiff's folly and bravado, naturally calculated to induce the defendants to believe they had any legal right to deal with him in the manner they did? Was not then the charge of the court, and the result of the trial, directly calculated to encourage such abuses of right, such flagrant breaches of the law? Was not the conduct of the defendants malicious, wanton, and intentionally insulting and abusive? Can there be more than one opinion on these subjects? And was not the charge in the court below, the verdict of the jury, and the overruling of the exceptions, all calculated to encourage such conduct, and to discourage such actions? If so, can we fairly expect parties suffering like indignities to appeal to the tribunals for redress? And will not the result of such experiences, in courts of justice, sooner or later, end in a resort to force in all such cases? These are plain questions, but they are fundamental to the very existence of free states and private liberty, both of person and speech.

I. F. R.

—*American Law Register.*

KEEGAN v. MCCANDLESS.

A juror, before verdict, being entertained by or receiving any benefit or gratuity from the plaintiff, however trivial, is sufficient cause for a new trial.

[December 27, 1869.]

This was a rule for a new trial.

Opinion by HARE, P. J.

It appears from the testimony taken in support of the rule, that after the court adjourned and before the case was given to the jury many of the persons who had been in attendance during the trial withdrew to a neighboring tavern for refreshment. Men so placed are seldom silent, and the conversation naturally turned on what had taken place in court. From accident or design, one of the groups contained the plaintiff, a juror, and one of the witnesses to the plaintiff. The juror had a list of prices in his hand and was making a calculation upon it with reference to some of the matters given in evidence in the suit. They eat and drank together and the plaintiff paid the bill. This seems to be indisputable, because the juror does not know who paid; and the plaintiff, who knew the fact, and might have contradicted the statement made by a bystander, declined to be put on oath.

It may be that there really was no intention to do wrong, and it was very possible the calculation was intended to demonstrate that the plaintiff was not entitled to a part of his demand. It would, however, be contrary to the doctrine of trial by jury if a verdict rendered under such circumstrnces were allowed to stand.

A juror is for the time being a judge, and his conduct must be tested by the rules applicable to judicial action. It has long been the wise policy of the common law to require that every communication with regard to the suit shall take place in open court. In this the English practice differed from that of the continent of Europe, where a party might state his case wherever he could obtain a hearing. The object of this precaution is not so much the exclusion of the grosser forms of influence, as to guard against those appeals to kind and sympathetic feeling which bias the judgment through the heart It is, accordingly, gross misbehaviour for any person to speak to a juryman, or for a juryman to permit any one to converse with him respecting the cause in hand at any time after he is summoned, and before the verdict is delivered; *Blaine's Lessee* v. *Chambers*, 1 S. & R. 169, 173.

The wrong is greater in a party than in a stranger, as affording a stronger inference of design; and will be heightened if it appears that the juror was entertained free of expense, or received any benefit or gratuity, however trivial, that might tend to prevent him from rendering an impartial verdict. Such misconduct is a misdemeanor at common law, punishable with fine and imprisonment: 3 Bacon's Abr. 786; *The Commonwealth* v. *Kauffman*, 1 Philada. R. 534. I do not mean, however, to assert that there is matter here for an indictment. To make the offence criminal there must be a malicious or corrupt intent, which does not necessarily appear in this instance. It is enough, as between the parties, that the plaintiff did that which may have prejudiced the defendant by depriving him of the fair and unbiassed hearing to which he was entitled: *Ritchie* v. *Hobrooke*, 7 S. & R. 450.

The rule for a new trial is made absolute.

CURICUS TENURE.—Henry de la Wade holds ten pounds (a pound of land is commonly supposed to contain 52 acres) of land in Stanton, in the County of Oxford, by the serjeanty of carrying a Gerfalcon every year before our lord the King, whenever he shall please to hawk with such falcons, at the cest of the said lord the King.—*Oxford Journal.*