

not testified to, or with appeals calculated to awaken prejudice, partiality, or favour."

It seems to be a well-settled rule, based upon considerations of public policy, that if the successful party to a suit has attempted by any improper means to influence a verdict in his favour, whether by corrupting or intimidating jurors, by arousing prejudices, by treating or other undue civilities, the verdict will be set aside as a punishment to the offender and as an example to others, and this without consideration whether the attempt was successful or not.

I think, therefore, that the general rule that affidavits of jurors will not be received to impeach their verdicts may be qualified by this direction, that affidavits will be and ought to be received to show attempts at bribery or other corrupt and undue influence, if such attempts are made when the members of a jury are separated during the adjournment of a trial.

Now, looking at the testimony of the jurors, what does it show? Murphy swears that a man whom he does not know approached him as he was leaving the jury-box on the second day, and, accosting him, walked with him, and spoke warmly in favour of the defendant; and in his cross-examination he says that this person also told him that he would not believe the plaintiff on oath. Rositer, another jurymen, says he was also approached and spoken to by another of defendant's witnesses on leaving the jury-box, who said that defendant ought to succeed, and who also urged that the horse was not damaged much, and that he (the jurymen) should overlook some slip the defendant had made in the witness-box when giving his evidence, as he (the defendant) was a little confused from not being accustomed to give testimony. He also said that he would like to give a licking to some jurymen who, he stated, had expressed an opinion in favour of the plaintiff; and in cross-examination the jurymen says that this witness' name was James Burns. Porter, another juror, says that he and a juror named Empringham saw the injured horse at the Schiller House during the trial; that the defendant and his witness, Burns, were present; that the defendant asked him into the hotel to have a drink, but that he declined; that while looking at the colt he (Porter) expressed an opinion that the animal was not worth \$5, as he was ruined, whereupon the defendant's witness Brown, or Burns, immediately took up the statement and wanted to fight the jurymen, calling him a coarse name, swearing at him, all in the presence of the defendant. After the trial he says this witness Brown, or Burns, apologized to him, and he (the jurymen), Burns, and the defendant all had a drink together with the crowd. It was subsequently admitted that the name of the witness who had had the altercation with Porter was Burns. Another jurymen, Barker, corroborates the facts alleged as to the altercation between Burns and the jurymen Porter, and Burns wanting to fight Porter; and he says the defendant was present, and was praising up the colt in the presence of this jurymen. Another jurymen, Kimee, says he was spoken to in Jackson's (the defendant) interest, and told that he (the defendant) ought to win; but he cannot identify or name the person speaking to him.

Now from all these circumstances it is very clear that the most improper communications and advances were made to the jurors in the interests of the