

cannot say that such evidence did have that effect upon the minds of the jurors, but such was its tendency, and it is sufficient for this case that it might have had that effect " : 22 Pac. Rep., 941.

And, yet, it appears to me that nothing is more natural than that gamblers, belonging to the faction of which Olds was the acknowledged head, and saloon keepers who were the friends of the gamblers, and in whose saloons gambling was frequently carried on, should contribute money for the defence of Olds when he was on trial for the murder of the leader of the rival faction of gamblers ; and certainly no juror would weigh in the balance against human life, the fact that the friends of the defendant (vile, degraded, and immoral though they might be), contributed to his defence. As was said by Lord, J., dissenting : " The truth is, the fact of contributing to the defence of a man, especially when on trial for his life, is not in itself an immoral act. It has been often done, and by all classes of men, and finds its source in the instincts of our common humanity to relieve those to whom we are attached " : 22 Pac. Rep., 943.

Lord, J., further said : " The witness under examination, out of whom these facts were elicited, testified in his direct examination that he was a gambling man, and, on his cross-examination, that he had contributed money for the defence of Olds, and collected money from others for that purpose, and to this extent the testimony is admitted to be legitimate cross-examination. So that we have the fact that money was contributed by the witness before the jury, and that he was a gambling man, brought out or proved by the defendant's witness. If such matter operates to affect the standing of the defendant in the estimation of the jury, the harm was already done, and the subsequent evidence elicited was, at the most, only cumulative of what had been regularly and legitimately proven " : 22 Pac. Rep., 943.

That the view taken by Judge Lord of this matter was the only tenable one that could be taken, must be apparent to any reasonable and unprejudiced mind. The opinion of the majority of the court was that the tendency of such evidence was prejudicial to the defendant, and that it was sufficient for the case that it might have had that effect. Cases are not usually tried upon possibilities, but here we have a judgment reversed because there is a bare possibility that the evidence may have had a prejudicial effect upon the minds of the jury. This case was remanded to the court below. The time of that court was occupied for several days in a new trial, and great additional expense was thereby incurred in order that the criminal might be punished for his violation of the law, when the evidence in the first instance was abundantly sufficient to justify the verdict of the jury, even if the evidence objected to had been wholly stricken out or never received. Cases are not determined in Trial Courts on possibilities, and courts of last resort are not warranted in reversing a judgment upon the possibility that the defendant may have been innocent (for there is always a possibility that this may be the case), or that the defendant may have been prejudiced by the admission of evidence of some collateral fact.—*The Advocate.*