tiff who thus approached the jury were guilty of a flagrant violation of the law, and the jurors who suffered themselves to be so approached, though they may have meant no wrong, were guilty, not only of a violation of the law, but also of the oath which they had taken to say nothing to any person about the business and matters in their charge but to their fellow jurors, and to suffer no one to speak to them about the same but in court. Both were liable to severe and summary punishment. The plaintiff, as he was unaware of these transactions, is not liable to punishment, but it does not follow from this that he can hold a verdict which is the result of a trial corrupted, though without his fault, by a shameful disregard of the familiar rules which are necessary to a decent administration of the law. The court set the verdict aside, not as a punishment to any one, but in justice to themselves, as well as to the defendant, that the trial may be conducted fairly, so that the verdict, when finally rendered, may be entitled to the respect of both parties and the confidence of the court as the result of a trial substantially according to law, and upon the evidence in court. It is true that a verdict should not be set aside for every trifling error of law by the court, or for every trifling misconduct of a juror which occurs without the fault of the prevailing party, but it should be whenever the error or misconduct renders it reasonably doubtful whether the verdict has been legitimately procured.

The plaintiff insists that the motion is fatally defective because it contains no allegation that the defendant had not full knowledge of the matters complained of before the jury retired to consider their verdict, and that this is a defect which cannot be cured by proof, and that, even if it could, it has not been in this case, the court merely stating in the exceptions that they did not find that the misconduct occurred *with* the knowledge of the defendant, and not stating that they did find that it occurred *without* his knowledge. We do not think these objections are well taken. It was not incumbent upon the moving party to either allege or prove that he had not such knowledge. If the other party could prove that he had, or if he could prove that he had not, it would be one fact to be considered, with others, by the court in determining whether, in their discretion, to grant the motion, but the circumstance that the moving party had such knowledge would not, as a matter of law, defeat the motion. The case is clearly and broadly distinguishable, both in reason and authority, from those in which the objection to the juror is some matter that existed before the trial. If an objection to a juror exists when the jury are impannelled, the juror may be challenged and another substituted, and if a party knowing the objection neglects to challenge, he thereby expresses his satisfaction with the juror. But where the objection arises from misconduct of the juror during the trial, the opportunity for challenge has passed. Another juror cannot then be substituted and a fair trial thereby secured. If the juror is dismissed it but results in what is asked for here—a new trial. A party ought usually to suggest to the court any serious misconduct of the jurors of which he has positive knowledge, or entirely reliable information, particularly if learned early in the trial, as it *may* result in an immediate discharge of the jury, and a saving of much time and expense. But the fact of the misconduct may be denied, and a court cannot always interrupt a trial to investigate charges against a juror, and must exercise very great caution and discretion to be able to even make inquiries of the jurors with relation to their conduct in such a manner as to create in their minds no feeling of resentment toward either party. We cannot hold that the failure of the party, if proved, to make the suggestion to the court, would be more than a circumstance to be considered and weighed, with others, by the court in determining whether, in their discretion, to grant a new trial.

It is very true that in two Connecticut cases it has been held that it is necessary for the party to aver in his motion his ignorance, until after the jury retired, of the misconduct which occurred during the trial. But the latter of these two cases, *Woodruff* v. *Richardson*, 20 Conn. 241, professes to be governed by the earlier, *Pettibone* v. *Phelps*, 13 Conn. 452; and in *Pettibone* v. *Phelps*, the court, after stating several very good reasons why the motion should be denied, merely add, a point not made by counsel, that the motion is also insufficient for the reason that it contains no allegation that the misconduct of the juror was unknown to the plaintiffs before the trial closed, and that it was settled in *Selleck* v. *The Sugar Hollow Turnpike Co.*, 13 Com. 453, that such an allegation was essential. It thus seems that this doctrine, in Connecticut, originally rests solely upon the authority of *Selleck* v. *The Sugar Hollow Tnrnpike Co.* Upon examination of that case, it turns out that the objection there taken was not at all misconduct by a juror during the trial, but was a disqualification which existed before the trial, in that the talesman was not an elector in Connecticut, but a citizen of New York; and the court hold that if the party knew the fact at the trial he might have challenged the juror provided he did not choose to waive the disqualification, and that he should have alleged that he did not know it in order to excuse his not making the objection seasonably and regularly. It is clear, therefore, that this case is no authority to warrant the decisions which professedly rest upon it.

The views which we have expressed are decisive of the matter before us, and it becomes unimportant to discuss the other questions presented. In the opinion of the court, this case presents a state of facts in which the court below, in the exercise of their discretion, not only might, without error, but ought to have granted a new trial, and the exceptions to the action of the court in so doing are overruled and the cause is remanded.—*Am. Law. Reg.* 729.

To constitute the crime of bigamy, there must be a valid marriage subsisting at the time of the second marriage. A marriage between slaves was, in legal contemplation, absolutely void; but if the parties, after their manumission, continued to cohabit together as husband and wife, it was a legal assent and ratification of the marriage; and if, while such marriage exists, one of the parties marries another, it is bigamy.