What is meant by prejudice is presumed and the converse.—Prejudice must be shewn.—There is nothing more firmly seated, than that a juror is not allowed to impeach his own verdict. Affidavits may be submitted for the purpose of bringing to the attention of the court matters of which it would otherwise have no knowledge and from which inference of prejudice may be drawn. These are that a juror was disqualified propter affectum; or that he had expressed an opinion; or that some irregularity had occurred in the impanelling, or custody of or consideration by the jury. But what took place in facie curiae or constituted a part of the record is not to be thus shewn. But all of these things are to be judged of as to their tendency and not as any trior of the facts may say what was their effect.

Therefore, it may be thought that there is really no presumption one way or the other. The great majority of American courts say, if an error might or could have worked material harm, it should cause reversal. If it is clear that it did not, it is harmless. And these conclusions are to be drawn from a reading—a scrutiny—of the record. And so with these merely viewing prejudice more leniently.

It may be true, that here is a wide open door and that no very definite prediction may always be indulged as to the outcome of a case, when reversal is claimed and resisted for error alleged to be prejudicial. The way in which a case has been tried may eliminate the error. As for example, where there is a trial on the merits under a plea of general issue, and a general judgment for defendant on that plea, that demurrers to special pleas were erroneously overruled will be deemed harmless. If the final result arising out of special findings of fact may shew that the tendency of prejudice in a particular direction is negatived, it will not be considered.

The growth of decisions on the line of harmless and prejudicial error.—The absolute fullness of records, their complete reproduction in appellate tribunals as to everything except visual observation of witnesses and the hearing of their voices places appellate tribunals in a vastly different situation now from where