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CURRENT TOPICS.

The case of *Morgan v. Pennsylvania R. Co.*, recently determined in the United States Circuit Court for the Southern District of New York, is of interest upon the question of the liability of the proprietor of dangerous premises. The action was brought for injuries sustained by the plaintiff through falling into an unprotected pit between the defendants' lines. The pit was situated on ground not open to the public, and was used for the ashes of the defendants' engines. On the night of the accident the plaintiff went in a barge to a wharf adjacent to a freight shed, which was near the pit. After mooring the barge, he went on to the line of rails, but, instead of going along the path provided by the railway company, crossed at another place and so fell into the pit. The way he attempted to go was one used by laborers who wished to make a short cut. Upon those facts, the judge at the trial ruled that the evidence at most showed nothing more than a mere license or permission to the plaintiff to cross where he attempted to do so, but that the company owed the plaintiff no duty, and was not liable for the injury. Upon motion for a new trial, which was refused, the court decided that there was nothing to indicate more than a passive acquiescence on the part of the defendants in the custom of the employees to cross the line at other places than that provided. In *Bolch v. Smith*, 6 L. T. R. (N. S.) 158, upon the same question, Baron Martin asked: "What is the plaintiff's condition? It is said that he had a right and liberty to use this way; that is a mistake, and one that involves a fallacy. Assuming that the plaintiff had a perfect right to go in that part of the yard, he was there in the exercise of a license, and not of a right. A permission to use a certain way confers no right in any other sense than that the person so using it is not liable to be treated as a trespasser. Having leave and license to use this way, though having other ways to use, he voluntarily adopted this way, and has therefore no ground

of action for the obstruction which the defendants lawfully put across it?"

IMPEACHMENT OF VERDICTS FOR MISCONDUCT.

That a verdict may be impeached and set aside for misconduct of the jury, or for that of the court in its intercourse with the jury, or for the misconduct of the parties or that of their counsel, or for the misconduct of the officer in charge of the jury, is an elementary principle of law, long since recognized and established. Notwithstanding the general recognition of the principle, there seems to be some diversity of opinion as to the manner in which verdicts may be impeached for such misconduct. The rule, as it is usually laid down, is that the affidavits of jurors can not be received to impeach their verdict. But in a case in the Supreme Court of the United States, Mr. Chief Justice Taney, in speaking on this subject, said: "It would perhaps hardly be safe to lay down any general rule upon this subject. Unquestionably such evidence ought always to be received with great caution; but cases might arise in which it would be impossible to refuse them without violating the plainest principles of justice."¹ And we find in several cases, that the courts, while recognizing the correctness of the general principle, have held that the affidavits of jurors may be received to impeach their verdicts, by showing misconduct of the parties, or misconduct of the officer having them in charge.² The Supreme Court of Iowa has said: "That affidavits of jurors may be received for the purpose of avoiding a verdict, to show any matter occurring during the trial, or in the jury room, which does not essentially inhere in the verdict itself, as that a juror was improperly approached by a party, his agent or attorney; that witnesses or others conversed as to the facts or merits of the case, out of court, and in the presence of jurors; that the verdict was determined by

¹ *United States v. Reed*, 12 How. 366.

² *Hutchinson v. Sandt*, 4 Rawle (Pa.), 240; *Ritchie v. Halbrooke*, 7 S. & R. (Pa.) 458; *Heffron v. Galupe*, 55 Me. 563; *Nelson v. State*, 13 S. & M. (Miss.) 500; *Reynolds v. Champlain Transportation Co.*, 9 How. Pr. (N. Y.) 7; *Thomas v. Chapman*, 45 Barb. (N. Y.) 98.

aggregation and average, or by lot or game of chance, or other artifice or improper manner."³ And this language has been approved by the Supreme Court of Kansas, in a case in which it was held that the affidavit of a juror could be received to show that one of the jurors was intoxicated during the deliberations of the jury.⁴ In that case, the court said: "Public policy forbids that a matter resting in the personal consciousness of one juror should be received to overthrow the verdict, because, being personal, it is not accessible to other testimony; it gives to the secret thought of one person the power to disturb the expressed conclusions of twelve. But as to overt acts, they are accessible to the knowledge of all the jurors; if one affirms misconduct, the remaining eleven can deny; one can not disturb the action of the twelve." The courts in Tennessee have made similar rulings in a number of cases;⁵ and the language of the Supreme Court of Maine in a comparatively recent case, is worthy of reproduction: "We know of no rule of law," said the court, "that excludes the testimony as to facts touching his own conduct or proceedings, when separated from his fellows, or the acts or declarations of a party to or with him, touching the question pending. The rule which excludes the testimony of jurors, as to any irregularity or misconduct of the jury, applies to such acts when the jury is acting or deliberating as an organized body, presided over by their foreman, and performing their official duty."⁶ In New Jersey it has been held that while the affidavit of a juror can not be received to prove his own misconduct, it may be to prove that of his fellow jurors.⁷ And in an early case in Virginia, it was held proper to receive the affidavits of jurors, showing that four of the jurors only assented to the verdict because they were told by the others that it was their duty to agree to any verdict which the majority approved, and that they, being ignorant of the duties of their office, supposed they were bound to do so.⁸ In an

³ *Wright v. I. & M. Telegraph Co.*, 20 Iowa, 195. See, also, *Cowles v. Chicago, etc. R. Co.*, 32 Iowa, 515.

⁴ *Perry v. Bailey*, 12 Kan. 539.

⁵ *Crawford v. State*, 2 Yerg. 260; *Booby v. State*, 4 Yerg. 111; *Hudson v. State*, 9 Yerg. 408; *Bennet v. Baker*, 1 Hum. 395; *Eldredge v. Todd*, 1 Hum. 43; *Norris v. State*, 3 Hum. 333, 337.

⁶ *Heffron v. Gallupe*, 55 Me. 563.

⁷ *Deacon v. Shreve*, 22 N. J. Law, 176.

⁸ *Cochran v. Street*, 1 Wash. 79.

early case in Massachusetts, it was held proper to receive the affidavits of jurors to prove any misconduct evidenced by overt acts; but this case has since been overruled.⁹ It is evident, however, that at least in some of the States, exceptions are recognized to the rule that the affidavits of jurors are inadmissible to impeach their verdict. We shall now call attention to the cases in which it has been held improper to receive affidavits of the jurors.

1. Such affidavits can not be received to show the motives by which the jurors were influenced in arriving at their verdict.¹⁰ 2. They can not be received to show the grounds of the verdict.¹¹ 3. They are not admissible to show that a juror misunderstood the instructions of the court.¹² 4. They can not be received to prove that a juror stated to his fellow jurors, facts which had not been given in evidence.¹³ 5. Neither can they be received to show the mode in which the verdict was reached, as by lot.¹⁴ 6. They are not to be received to show what the intentions of the jury were as to their verdict.¹⁵ 7. Nor to show

⁹ *Grinnell v. Phillips*, 1 Mass. 530; overruled in *Dorr v. Fermo*, 12 Pick. 520; *Folsom v. Manchester*, 11 Cush. 334; *Woodward v. Leavitt*, 107 Mass. 461.

¹⁰ *Hughes v. Listner*, 23 Ind. 596; *Nelms v. State*, 13 S. & M. (Miss.) 500; *Brown v. Cole*, 45 Iowa, 601; *Hutchinson v. Consumers' Coal Co.*, 36 N. J. Law, 24; *Coker v. Hayes*, 16 Fla. 368; *Bridge v. Eggleston*, 14 Mass. 245.

¹¹ *Fish v. Cantrell*, 49 Tenn. 578; *Hannum v. Belchertown*, 19 Pick. 311; *Smith v. Eames*, 3 Seam. 76, 81; *Lindauer v. Teeter*, 41 N. J. Law, 255; *Schenck v. Stevenson*, 2 N. J. Law, 151; *Randall v. Grover*, 1 N. J. Law, 151.

¹² *Perry v. Bailey*, 12 Kan. 539; *Bridgewater v. Plymouth*, 97 Mass. 382; *Richardson v. McElmore*, 5 Baxter (Tenn.), 586, 590; *Ward v. Thompson*, 48 Iowa, 588; *Packard v. U. S.*, 1 Iowa, 225; *Davenport v. Cumings*, 15 Iowa, 219; *Holman v. Riddle*, 8 Ohio St. 384; *Morris v. State*, 3 Hum. 333; *Handy v. State*, 1 R. 1. 100.

¹³ *Den v. Macallister*, 7 N. J. Law, 46; *McElvin v. State*, 30 Ga. 869; *Oatis v. Brown*, 59 Ga. 711; *People v. Doyell*, 48 Cal. 85; *Folsom v. Manchester*, 11 Cush. 334; *Steele v. Logan*, 3 J. J. Marsh. (Ky.) 397; *Robbing v. Windover*, 2 Tyler (Vt.), 11; *Price v. Warren*, 1 Hen. & Mun. (Va.) 385.

¹⁴ *Boston, etc. R. Co. v. Dana*, 1 Gray, (Mass.) 83; *White v. White*, 5 Rawle, (Pa.) 61; *Lucas v. Cannon*, 13 Bush (Ky.), 650; *Reed v. Thompson*, 88 Ill. 245; *Cluggage v. Swan*, 4 Binn. (Penn.) 150; *McFarland v. Bellows*, 49 Mo. 311; *State v. Branstetter*, 65 Mo. 149; *Pleasants v. Heard*, 15 Ark. 403; *Dana v. Tucker*, 4 Johns. (N. Y.) 487; *Vaise v. Delaval*, 1 Term R. 11; *Owen v. Warburton*, 4 Bos. & Pul. 326.

¹⁵ *Stafford v. State*, 55 Ga. 591; *Heath v. Conway*, 1 Bibb, (Ky.) 398; *People v. Common Pleas*, 1 Wend. (N. Y.) 297; *Jackson v. Dickinson*, 15 Johns. (N. Y.) 309; *Jackson v. Williamson*, 2 Term R. 281; *Rex v. Woodfall*, 5 Burr. 267.

that a juror did not assent to the verdict.¹⁶ 8. They are also inadmissible for the purpose of showing that a mistake was made as to the facts, or as to the merits.¹⁷ 9. Notwithstanding the cases already cited, holding that such affidavit may be received to show misconduct upon the part of the officer in charge of the jury, it has been held in other cases that they are inadmissible even for that purpose.¹⁸ 10. In general it is held improper to receive such affidavits to show any irregularity upon the part of jurors.¹⁹

The affidavits of jurors are always admissible for the purpose of sustaining their verdicts.²⁰ They are also received to show that the verdict as reported, or as recorded, was not the verdict actually agreed upon, but that a mistake has been made in rendering a different verdict from that determined on. Such affidavits do not impeach the verdict, but sustain it.²¹ It is also well settled that when the affidavit of a juror is inadmissible to show misconduct, the affidavit of a third party as to the declarations of the juror as to such misconduct is equally inadmissible.²² The affidavit of an

officer, showing his own misconduct in his intercourse with the jury, is said to be entitled to no weight, as it proves that he has violated his official oath.²³ And the affidavit of a party to the action, stating what took place in a jury room, was rejected for the reason that he could not be presumed to have been present.²⁴

In *Sargent v. Blank*, where counsel had advanced an erroneous rule of damages to the jury, which the judge failed to correct in his charge, and the jury were in this way led to adopt an erroneous method of computing damages, affidavits of jurors were received to show these facts, these circumstances being considered as equivalent to a misdirection of the court.²⁵ The reasons usually assigned for rejecting the affidavits of jurors are the following:

1. Their reception would tend to defeat the solemn acts of jurors under oath.

2. It would afford an opportunity to tamper with jurors after the rendering of their verdict.

3. It would give a dissatisfied juror the means of destroying a verdict at any time after he had assented to it.

4. A juror would be unworthy of belief in testifying to the violation of his official oath.

As matter of principle, there can not be the same objection to the testimony of a juror to the misconduct of fellow jurors, as would exist in case he testified to his own misconduct, as the accused juror could be heard in his defense; and it would seem to the writer that the distinction taken in *Kansas*, as to the reception of affidavits to prove overt acts of misconduct, has much to be said in its favor. If the affidavit of a third party, may be received to prove misconduct on the part of jurors, why not receive the affidavit of a juror as to overt acts of misconduct? If his affidavit is false, its falsity could readily be shown by the testimony of the remaining eleven, and the eleven would be as credible witnesses in their own behalf when accused by a fellow-juror, as when accused by a third

¹⁶ *Johnson v. Davenport*, 3 J. J. Marsh. (Ky.) 393; *Clark v. Read*, 5 N. J. Law, 487; *Perry v. Bailey*, 12 Kan. 539; *Reeves v. Moody*, 15 Rich. (N. C.) Law, 312; *Boetge v. Lander*, 20 Texas, 105.

¹⁷ *Ex parte Coykendoll*, 6 Cow. (N. Y.) 53; *Murdock v. Sumner*, 22 Pick. (Mass.) 156; *Clum v. Smith*, 5 Hill, 560; *Oregon Cascades Co. v. Oregon Steam Navigation Co.*, 3 Oregon, 178; *Green v. Bliss*, 12 How. Pr. (N. Y.) 428.

¹⁸ *Wilder v. State*, 29 Ark, 294; *People v. Sprague*, 53 Cal. 495; *Williams v. Montgomery*, 60 N. Y. 648; *Doran v. Shaw*, 3 B. Mon. (Ky.) 411.

¹⁹ *State v. Freeman*, 5 Con. 348; *Mead v. Smith*, 16 Con. 356; *State v. Smallwood*, 78 N. C. 560; *State v. Pike*, 65 Me. 111; *Bishop v. State*, 9 Ga. 121; *Clum v. Smith*, 5 Hill (N. Y.) 560; *State v. McLeod*, 1 Hawks (N. C.) 344; *Tucker v. South Kingstown*, 5 R. I. 558; *Woodward v. Leavitt*, 107 Mass. 453; *Mitchell v. Carter*, 21 N. Y. (Sup. Ct.) 450; *Riggs v. State*, 26 Miss. 51; *Bingham v. Foster*, 37 Iowa, 339; *Cain v. Cain*, 1 B. Mon. (Ky.) 213.

²⁰ *Elliott v. Mills*, 10 Ind. 368; *Bradford v. State*, 15 Ind. 348; *Barlow v. State*, 2 Blackf. (Ind.) 114; *Cornelius v. State*, 7 Eng. (Ark.) 810; *Kennedy v. Kennedy*, 8 N. J. Law, 450; *State v. Hascall*, 6 N. H. 352; *Canon v. State*, 3 Tex. 31; *Dana v. Tucker*, 4 Johns. (N. Y.) 487; *Hall v. Robinson*, 25 Iowa, 191; *State v. Ayer*, 3 Fost. (N. H.) 301; *Eastwood v. People*, 3 Park. Cr. 25; *Mayor v. Goetchins*, 7 Ga. 139; *Peck v. Brewer*, 48 Ill. 55.

²¹ *Capen v. Stoughton*, 16 Gray (Mass.) 364; *Pruszel v. Knowles*, 4 How. (Miss.) 90; *Johnson v. Davenport*, 3 J. J. Marsh. (Ky.) 393; *Jackson v. Dickenson*, 15 Johns. (N. Y.) 309; *Dalrymple v. Williams*, 63 N. Y. 361; *Cogan v. Ebdon*, 1 Burr. 383; *King v. Woodfall*, 5 Burr. 2667; *Vin. Abr., Trial*, Pl. 2.

²² *Burgess v. Langley*, 5 Man. & Gran. 721; *Aylett*

v. Jewel, 2 Blacks. 1299; *Heath v. Conway*, 1 Bibb, 398; *Drummond v. Leslie*, 5 Blackf. (Ind.) 453; *Clum v. Smith*, 4 Hill (N. Y.) 560; *Cain v. Cain*, 1 B. Mon. (Ky.) 213; *Cooker v. Hayes*, 16 Fla. 370.

²³ *Green v. Bliss*, 12 How. Pr. (N. Y.) 428. See also *State v. Brown*, 22 Kan. 222.

²⁴ *Hoare v. Hindley*, 49 Cal. 275.

²⁵ 5 Cowan (N. Y.) 106.

party. In Arkansas the legislature has interfered to the extent of providing that affidavits of jurors may be received to show that the verdict was determined by chance or lot.²⁶ And in California a similar law has been enacted.²⁷

But, although a party has succeeded in making it appear that there has been misconduct on the part of jurors, it does not necessarily follow that the verdict will be set aside. The rule seems to be that the misconduct of juries, where the parties to the action are not at fault, is no ground for granting new trial, unless it is probable that the party asking for it has been prejudiced by it.²⁸ No one can complain of the misconduct of the jury, unless he has been injured thereby.²⁹ And if a party is aware of the misconduct before the verdict is rendered, and remains silent, speculating on the chances of a verdict in his favor, he is held to have waived such misconduct, and can not be heard to complain that he was prejudiced thereby.³⁰ Where a jury agree that each jurymen shall write upon a slip of paper the amount of damages to which, in his opinion, the successful party is entitled, and that the respective amounts should be added and divided by twelve, the quotient to be the verdict, it is well settled that such misconduct will vitiate the verdict.³¹ But a jury may resort to a process of this sort as an experiment, for the purpose of ascertaining how nearly the result may suit the views of the different jurors,

²⁶ Gantt's Digest, sec. 1971. See also Wilder v. State, 29 Ark. 294.

²⁷ Practice Act, sec. 193. See also Donner v. Palmer, 23 Cal. 40.

²⁸ Harrison v. Price, 22 Ind. 166; Clark v. Lebanon, 63 Me. 393; Dennison v. Powers, 35 Vt. 39; Medler v. State, 26 Ind. 171; Flatter v. McDermott, 25 Ind. 326; Crane v. Sayre, 6 N. J. 110. See also State v. Woodson, 41 Iowa, 425.

²⁹ Portis v. State, 27 Ark. 360.

³⁰ McCorkle v. Binns, 5 Binn. 340; Whittaker v. Carter, 4 Ired. (N. C.) 461; Hancock v. Franklin Co., 2 Met. (Mass.) 560; Fox v. Hazleton, 10 Pick. (Mass.) 275; Crosby v. Blanchard, 7 Allen (Mass.) 386; Bourke v. James, 4 Mich. 336; Coffin v. Gelhart, 18 Iowa, 256; Dunlavy v. Watson, 38 Iowa, 401; Salter v. Glenn, 42 Ga. 64; Carter v. State, 56 Ga. 463; Patton v. Hughesdale Manuf. Co., 11 R. I. 188; Martin v. Tidwell, 36 Ga. 332; State v. Daniels, 44 N. H. 383; Fessenden v. Sager, 53 Me. 531; Stampofski v. Steffens, 79 Ill. 303; Cogswell v. State, 49 Ga. 103.

³¹ Hale v. Cove, 1 Str. 642; Parr v. Seames, Barnes, 438; Mellish v. Arnold, Bund. 51; Smith v. Cheatham, 3 Caines, 87; Harvey v. Rickett, 15 Johns. 87; Roberts v. Failis, 1 Cow. 238; Mitchell v. Ehle, 10

there being no agreement beforehand that the result, so ascertained, should constitute the verdict, unless the result thus found should be satisfactory to the jurors.³² It is the duty of juries to determine cases upon the evidence which has been presented before them in open court; and if they consider other evidence, the verdict will be set aside; as when some of the jurors go without the permission of the court to view the property in dispute,³³ or re-examine a witness in the jury room,³⁴ or examine law books treating of the subject,³⁵ or, in short, receive any extraneous evidence whatever.³⁶ The drinking of intoxicating liquors by jurymen is treated as exceedingly reprehensible, but the weight of authority is in favor of the proposition that it will not of itself vitiate the verdict; it must appear that it affected the minds of the jurors.³⁷ In some of the cases, however, it is held that the mere drinking of such liquors will avoid the verdict.³⁸ And where a juror became intoxicated on the evening of the day of trial, but it did not appear that he was intoxicated while in discharge of his duties as juror, it

Wend. 595; Werner v. Edmiston, 24 Kan. 147; Bailey v. Beck, 21 Kan. 465; Boynton v. Trumbull, 45 N. H. 408; Turner v. Tuolumne Water Co., 25 Cal. 400; Donner v. Palmer, 23 Cal. 40; State v. Branstetter, 65 Mo. 149. See also Kennedy v. Kennedy, 18 N. J. Law, 450.

³² Goodwin v. Philips, Loft, 71; Lawrence v. Boswell, Sayer, 100; Dana v. Tucker, 4 Johns. 487; Dorr v. Fenno, 12 Pick. 520; Cheney v. Holgate, Brayt. 171; Illinois Cent. R. Co. v. Able, 59 Ill. 131; Dunn v. Hall, 8 Blackf. 32; White v. White, 5 Rawle, 61; Fowler v. Colton, 1 Pinney (Wis.) 331; Willey v. Belfast, 61 Me. 570; Wilson v. Berryman, 5 Cal. 44; Conklin v. Hill, 2 How. Pr. 6.

³³ Heffron v. Gallupe, 55 Me. 563; McIntire v. Hussey, 57 Me. 493; Bowler v. Washington, 62 Me. 302; Winslow v. Morrill, 68 Me. 362; Wright v. Carpenter, 50 Cal. 556.

³⁴ Luttrell v. Maysville, etc. R. Co., 18 B. Mon. (Ky.) 295.

³⁵ Newkirk v. State, 27 Ind. 1.

³⁶ People v. Yeiger, 6 Parke, 355; Whiting v. Whitman, 5 Mass. 405; State v. Hartman, 46 Wis. 248; Van Meter v. Kitzmiller, 5 W. Va. 380; 2 Hale P. C. 307.

³⁷ Wilson v. Abrahams, 1 Hill, 207; Pittsburg, etc. R. Co. v. Porter, 32 Ohio St. 328; Kee v. State, 28 Ark. 155; Palmore v. State, 29 Ark. 249; Salter v. Glenn, 42 Ga. 64, 81; State v. Upton, 20 Mo. 399; State v. West, 69 Mo. 401; Russell v. State, 53 Miss. 367; Davis v. People, 19 Ill. 74; Jones v. State, 13 Texas, 168; Commonwealth v. Thompson, 8 Grattan, 637; Stone v. State, 4 Humph. 27; Rowe v. Smith, 11 Humph. 491; State v. Caulfield, 23 La. Ann. 146; State v. Jones, 7 Nev. 408; Van Buskirk v. Daugherty, 44 Iowa, 42.

³⁸ Leighton v. Sargent, 31 N. H. 119; State v. Bullard, 16 N. H. 139; State v. Prescott, 7 N. H. 297; Commonwealth v. Roby, 12 Pick. 496.

was held that a new trial might properly be granted.³⁹ But the drinking of liquors by a sick juror is not misconduct entitling to a new trial.⁴⁰ Conversation in reference to the case has often been held such misconduct as entitles to a new trial.⁴¹ And if the jury is approached during the pendency of the cause, and information volunteered upon matters in issue, by a friend of the successful party, although not with knowledge or request of such party, the verdict will be set aside.⁴² Any entertainment of a juror at the expense of the successful party, or at that of his attorneys, is such misconduct upon their part as will be sufficient to set aside the verdict.⁴³ But in a recent case in Georgia it was held that, where a juror went to and from the court each day of the trial with the prevailing party in a buggy, the two being neighbors residing in the country, and it appearing that the two had no conversation in reference to the case, the verdict would not be set aside for misconduct.⁴⁴ And in a late case in Ohio it was held to be no ground for a new trial, that a juror had been "treated," it appearing to have been done with no intention to bias the mind of the juror, and to actually have had no improper influence upon his mind.⁴⁵ A new trial has been refused where a juror pending the trial made statements to persons not interested in the case, respecting the effect of the evidence;⁴⁶ also where unauthorized com-

munications have been made to a juror, which could not have influenced his mind in favor of the successful party.⁴⁷ A new trial was refused in a recent case in Missouri where it appeared that the jury deliberated in a room where there was a set of the State reports.⁴⁸ It was granted in a recent case in Kansas, where the prisoner was on trial for a felony, and the bailiff, by request of a juror, and without the authority of the court, passed into the jury room an atlas of the county where the crime was alleged to have been committed, the atlas being examined by the jurors.⁴⁹ In a late Iowa case a new trial was granted, where a juror had conversed with an attorney as to the law of the case.⁵⁰ And in Tennessee, where the defendant was seen in close conversation with a juror while the cause was under consideration.⁵¹ Also where the defendant and a part of the jury were seen going to a saloon.⁵² And in Rhode Island, where the jury procured through an officer, while deliberating, a copy of the Revised Statutes of the State which they consulted.⁵³ A new trial has been granted because some of the jurors drank ale and smoked in the same room with the counsel of one of the parties.⁵⁴ It is misconduct in the court, for a judge to have communications with jurors after the case has been submitted, except in open court and in presence of counsel. And new trials have been awarded for such misconduct in many cases.⁵⁵

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³⁹ Fairchild v. Snyder, 43 Iowa, 23.

⁴⁰ O'Neil v. Keokuk, etc. R. Co., 45 Iowa, 546.

⁴¹ Metcalf v. Dean, Cro. Eliz. 189; Thompson v. Maillet, 2 Bay, 94; Knight v. Freeport, 13 Mass. 218; Blaine v. Chambers, 1 S. & R. 169; Ritchie v. Halbrooke, 7 S. & R. 458; Thomas v. Chapman, 45 Barb. 98; Bennet v. Smith, I P. & B. 27; Tomlinson v. Deby, 41 Conn. 268; Hamilton v. Pease, 33 Conn. 115; Pettibone v. Phelps, 13 Conn. 445; People v. Boggs, 20 Cal. 432; Jackson v. Jackson, 32 Ga. 325; State v. Hascall, 6 N. H. 382; Nelson v. State, 21 Miss. 500; Smith v. Lovejoy, 62 Ga. 372; Blalock v. Phillips, 38 Ga. 216.

⁴² Bradbury v. Corry, 62 Me. 263; McDaniels v. McDaniels, 40 Vt. 363. See, also, Hamilton v. Pease, 38 Conn. 115.

⁴³ Walker v. Hunter, 7 Ga. 364; Springer v. State, 34 Ga. 379; Cottle v. Cottle, 6 Greenl. (Me.) 493; McIntire v. Hussey, 57 Me. 493; Harrison v. Rowan, 4 Wash. C. C. 32; Perry v. Bailey, 12 Kan. 539; Mynatt v. Hubbs, 53 Tenn. 320; Demund v. Gowen, 5 N. J. 637; Sacramento, etc. R. Co. v. Showers, 6 Nev. 291; Co. Litt. 227; Duke of Richmond v. Wise, 1 Vent. 124; McNeill v. Moore, 1 Pug. 234; Spence v. Trenholm, 1 Han. 78; Walker v. Walker, 11 Ga. 204. By statute in Vermont, Carlisle v. Sheldon, 38 Vt. 440.

⁴⁴ Ford v. Holmes, 61 Ga. 419.

⁴⁵ Pittsburgh, etc. R. Co. v. Porter, 32 Ohio St. 328.

⁴⁶ Stockwell v. C. C. & D. R. Co., 43 Iowa, 470; Jack-

son v. Smith, 21 Wis. 26; Chalmers v. Whittemore, 22 Minn. 305.

⁴⁷ Chalmers v. Whittemore, 22 Minn. 305.

⁴⁸ State v. Hopper, 71 Mo. 425.

⁴⁹ State v. Lantz, 23 Kan. 728.

⁵⁰ Oleson v. Meader, 40 Iowa, 662.

⁵¹ Davidson v. Manlove, 42 Tenn. 346.

⁵² Sexton v. Le Lievre, 44 Tenn. 11.

⁵³ State v. Smith, 6 R. I. 33.

⁵⁴ Hughes v. Budd, 8 D. P. C. 35; see Poole v. Chicago, etc. R. Co., 12 Cent. L. J. 492.

⁵⁵ Watertown Bank & Loan Co. v. Mix, 51 N. Y. 558; Bunn v. Croul, 10 Johns. 239; Taylor v. Betsford, 13 Johns. 487; Neil v. Abel, 24 Wend. 185, 186; Mitchell v. Carter, 21 N. Y. Sup. Ct. 448, 451; Read v. Cambridge, 124 Mass. 568; Commonwealth v. Roby, 12 Pick. 496, 518; Merrill v. Nary, 10 Allen, 416, 417; State v. Smith, 6 R. I. 33, 36; Fish v. Smith, 12 Ind. 563; Kirk v. State, 14 Ohio, 511; Benson v. Fish, 6 Greenl. 141; State v. Patterson, 45 Vt. 308; Sargent v. Roberts, 1 Pick. 341; Benson v. Clark, 1 Cowen, 258; Moody v. Pomeroy, 4 Denio, 115; State v. Alexander, 66 Mo. 148; State v. Garrand, 5 Oregon, 216, 227.