going in the same direction, but not to the same place. On their way they either overtook or met the plaintiff, and, telling him their purpose, asked where Bowden's place of business was. Plaintiff replied that his place of business was in the same building as that of Bowden, and that he would show them where it was. He went along with them. On the way he endeavored to show them into a church building in which he was interested, and, failing to enter, he continued with them to Bowden's place of business. The fourth juror, who was with them, did not go to Bowden's. The others, with plaintiff, did go, however. When they reached the store, plaintiff told the brother of Bowden the purpose of the jurors, and instructed him to get a sample box of cigars,—25 in the box. He received the box; gave two of the jurors 9 cigars each, and the box with 7 cigars to the other juror. They waited about five minutes in the store, and then went out. On their way they met the fourth juror, and he was offered a cigar, which offer he declined. The cause of action in the pending suit was a lot of cigars, and an important question in assessing the damages recoverable was the character, quality, and value of the cigars. The bill charges that this communication with the jury had in this way tended to influence their verdict, was grossly improper, and that the verdict rendered so soon after it occurred should be set aside.

The trial by jury was instituted to secure an impartial tribunal of the issues of fact in a case. The jurors are kept as far as possible from all extraneous influences. And although the rigidity of the common-law practice has been relaxed, and now jurors are not kept secluded from possibility of such influences, still every precaution is taken to prevent them from reaching the jury. And, in so far as the absolute seclusion of the jury under the common law has been relaxed, just so far should the moral restriction substituted in its stead be enlarged and enforced. The jury are instructed to try every case according to the evidence. They are sworn to do so. The evidence before them is always delivered under oath or affirmation. Every fact submitted to them is brought out by examination and cross-examination. Every question by which such fact is elicited must be put in the presence of counsel, is subjected to the scrutiny of counsel and to discussion by them of its competency or relevancy, and, if any dispute arises, it is decided by the court. This examination is controlled by rules of evidence, a violation of which, even with the sanction of the court, will be ground for a new trial. Testimony is taken only before a full jury, and the rule is inflexible that nothing goes to them except in the presence of all. Private communications, possibly prejudicial, between jurors and third persons or witnesses or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least until their harmlessness is made to appear. Mattox v. U. S., 146 U. S. 150, 13 Sup. Ct. 50. "The rule is that the slightest tampering with the jury during the trial or prior to it, by a party, or the agent or attorney of a party, in whose favor the verdict has been rendered, is, on ground of public policy, good cause for setting aside the verdict, without reference to the merits of the case, and without considering whether the attempt to poison the sources of justice was or was not successful. On this point Hawkins says: 'The law so abhors all corruption of this

kind that it prohibits anything which has the least tendency to it, what specious pretense soever it may be covered with, and therefore it will not suffer a mere stranger so much as to labor a juror to appear and act according to his conscience.' Although this extreme doctrine is not universally approved, all the cases agree that if a party or his counsel, or any one for him, deliver to the jury or to a juror a paper, the tendency of which is to influence the verdict in favor of that party, without the consent of the opposite party, or leave of the court, a verdict given in his favor will be set aside." Thomp. & M. Jur. p. 438, § 364. Such are the general rules. It is difficult, perhaps impossible, to reconcile the cases applying them, which in such number have been brought to the attention of the court by the learning and research of counsel. The general result to be deduced from an examination of them is that in no case will a mere accidental meeting with a juror pending a trial, or an inadvertence, affect the verdict; and in all other instances each case will be governed by its own circumstances. Great care is always to be taken to avoid suspicion as to the motive of the party, or as to the effect on the jury. Vane v. City of Evanston, 150 Ill. 616, 37 N. E. 901. And the interference with the jury is punished without regard to the merits of the case, or inquiry as to its actual effect on the verdict. Veneman v. McCurtain (Neb.) 50 N. W. 955; Knight v. Inhabitants of Freeport, 13 Mass. 218.

In the case at bar the jury was engaged—had been engaged for days—in trying a question between the complainant, defendant in the law court, and the present defendant, plaintiff in that court. The main question in the case was as to the amount of damages to be allowed, and this amount of damages depended very much upon the quality, character, and value of the cigars intrusted by Threadgill to the express company, and by the latter lost to the former. The testimony was nearly all in. An effort had been made to produce the cigars before the jury, which had failed. Slurs upon the quality and value of the cigars had been uttered in the presence of the jury. Just at this critical period the plaintiff, Threadgill, casually met with four of the jury. He entered into company and conversation with them, walked with them towards his own store, and prolonged his companionship with them by visiting a church edifice on the road. He took three of them to his store. One of the jurymen, recognizing the manifest impropriety of the act, refused to accompany the others. With these others, Threadgill entered his store, called for a box of cigars, and distributed the whole box between the three. He, a dealer in cigars, suing for the value of cigars, put into the hands of one-fourth of the jury the best evidence of the value of his cigars, and gave them the means and opportunity of furnishing the same evidence to the rest of the jury. It does not fully appear what took place during the walk with Threadgill and the interview in his store. But the next day the jury brought in a full verdict for the plaintiff,—nearly all that plaintiff claimed,—the cigars getting their full value. The least that can be said is that Mr. Threadgill embraced the accidental opportunity to ingratiate himself with this large contingent of the jury, and that he, unintentionally, it may be, placed in their hands a most valuable piece of testimony, which the other side had no means

of knowing or rebutting, or of explaining. The bare fact that a party to a cause is in close, familiar conversation with jurymen trying the cause, exhibiting himself to them in a most favorable way, and cultivating their regard, is in itself a circumstance of the most suspicious character. A verdict taken under circumstances like these "has the appearance of anything but fairness, and, let it be once understood that such things are permissible, and we will be treated to the spectacle of litigants vying with each other, in both private and public places, in attempts to win the good will and favor of the jury, and the administration of the law greatly scandalized thereby." Vollrath v. Crowe, 9 Wash. 374, 37 Pac. 474. "However harmless might be the conduct of the plaintiff and of the jurors in this case, we feel called upon, in this and every case when the separation of the jury and the parties is not preserved with the utmost care, to evince, in the most decisive manner, our purpose to shut up every avenue through which corruption, or the influence of friendship, could possibly make an approach to the jury box." Springer v. State, 34 Ga. 379.

The bill sets up another reason for reopening this verdict; that is, the charges of misconduct against the juror Wright. These charges have not been sustained.

At the hearing the question of jurisdiction was not raised, nor is it raised in the pleadings. It has, however, been considered by the court. The first duty of a federal court is to inquire if a cause is within its jurisdiction. The complainant had lost all ground of relief at law when discovery was made of the facts stated in the bill as ground for setting aside the verdict. This gives jurisdiction to this court sitting in equity. Knifong v. Hendricks, 3 Grat. 212; Lawless v. Reese, 3 Bibb, 486; Pelzer Manuf'g Co. v. Hamburg-Bremen Fire Ins. Co., 62 Fed. 1, 71 Fed. 826; Johnson v. Towsley, 13 Wall. 84; Marshall v. Holmes, 141 U. S. 598, 12 Sup. Ct. 62.

Another question was raised by the court at the hearing, not by any of the counsel. It was developed in the progress of the cause that the judgment at law had been carried to the supreme court of the United States on writ of error, and was there pending under a supersedeas. This question has been set at rest by Johnson v. Railway Co., 141 U. S. 610, 12 Sup. Ct. 124, following Parker v. Judges, 12 Wheat. 561. The circuit court sitting in equity can entertain a bill of this kind notwithstanding the writ of error. Let the injunction issue as prayed for in the bill. But, as it does not conclusively appear that the error committed by the defendant was with the design to corrupt the jury, the costs of the case will be paid by the complainant.

SANDS v. E. S. GREELEY & CO.

(Circuit Court, S. D. New York. February 6, 1897.)

1. EQUITY PRACTICE—INTERVENTION IN RECEIVERSHIP CASES.
   Interventions by persons interested in the funds of a receivership will not be permitted if their rights may be conserved without it, since such interventions multiply the number of litigants, and, if begun in the case of one creditor, cannot be consistently denied as to others, thereby resulting in unnecessary expense and confusion of proceedings.

2. SAME—AUXILIARY RECEIVERSHIPS—INTERVENTION BY NONRESIDENT CREDITORS.

In cases of auxiliary receiverships for nonresident corporations, creditors who reside without the jurisdiction where either the original or auxiliary proceedings are pending are not entitled to intervene, and become technical parties, either for the purpose of asserting a claim to equal rights with resident creditors, or of placing themselves in position to object to the claims of other creditors, or to examine and dispute the propriety of the receivers' action. Their proper course is to file their claims with the receivers, and, if rejected by them, to present them to the master. They will then have the same opportunity as other creditors to overhaul the receiver's accounts, and raise all these questions before the master and before the court on the coming up of his report.

Jones & Loughlin, John L. Hill, and Perkins & Jackson, for the motion.

Frederick G. Dow and Charles Rushmore, opposed.

LACOMBE, Circuit Judge. This court is always chary as to allowing intervention by persons interested in the funds of a receivership. It does not grant such relief when all the rights of the parties applying may be conserved without it. Intervention implies the making of a new and independent party to the litigation, with an independent attorney, and, in many cases, an independent counsel. If one creditor is allowed to intervene, there is no reason why another similarly situated should not be accorded the same privilege; and it would soon come to pass that the orderly conduct of the proceedings would be obstructed by the large number of parties to be formally notified of each step, and the expenses of administration, with allowances to attorneys and to counsel for the many separate creditors, would be unnecessarily increased. The several petitions for leave to intervene are therefore refused, and the motions denied. Inasmuch, however, as the argument has covered many subjects, and it has been made apparent that the procedure in this circuit in cases similar to the one at bar is apparently not familiar to all who have appeared in this case, it seems appropriate to file a brief memorandum upon the disposal of these motions.

The receivers of this corporation were not appointed under a regular creditors' bill after judgment had been obtained against the defendant, and execution returned unsatisfied. The circumstances attending their appointment are as follows: E. S. Greeley & Co. was a Connecticut corporation. It had for some time transacted business in this state, and had considerable tangible property here, in the shape of a plant, a leased building, tools, raw material, manufactured and partly manufactured articles, and cash in bank. Possibly it also had property in other states, but that circumstance is not material. It became financially embarrassed to such an extent that, in the opinion of its officers and directors, it was practically insolvent, and, being of the opinion that a further effort to prosecute its business could only operate still more disastrously for all concerned, its officers and directors decided to wind up its affairs. Since it was a Connecticut corporation, the proper tribunal to take charge of such proceeding was the court of that state,

and to such tribunal application was made for the appointment of receivers. Such appointment was at once made, and, by the operation thereof, all of the assets of the corporation in the state of Connecticut passed to the receivers. Of course, the Connecticut appointment gave the receivers no authority to seize the assets of the corporation in this state. There were many creditors here who had dealt with the corporation, and given it credit, because of the large amount of tangible property which it was known to hold in this state. As soon as any of these creditors might be advised of the insolvency,—and they would be so advised as soon as news of the appointment of receivers in Connecticut might reach here,—they could secure themselves by at once beginning suit in the state courts, and levying attachments upon the property here. Under these circumstances, the Connecticut receivers applied to this court for an order appointing them receivers of this court in an action brought by a resident of this state against the corporation. It was apparent that, if the property were seized and sold under attachment, it would be disposed of at a ruinous sacrifice, leaving no balance available for the creditors who were not in a position to secure themselves by attachment; but it seemed highly probable that if receivers were appointed to take charge of the assets here, and dispose of them without undue haste, a sufficient sum would be realized to pay all the resident creditors in full, and leave a surplus over for transmission to the court which was winding up the corporation. At the time this appointment was applied for, it was shown that some, at least, of the resident creditors, wished to have it made. None of them have ever made any objection, and, upon the hearing of these motions, resident creditors to a considerable amount appeared, and expressed approval of the action of this court.

The questions raised upon these motions, and upon which petitioners wish to have a formal hearing and judicial determination, are these:

1. Creditors who are residents of Pennsylvania, or of states other than New York or Connecticut, insist that the New York assets which have been collected by the New York receivers should be distributed ratably among all the general creditors of the corporation, no matter in what state they may reside, nor where the contract upon which their claims arise may have been made. It has been the practice in this court in receiverships of this character to carefully provide for the protection of the creditors of the insolvent corporation who may reside within this jurisdiction. Inasmuch as this court, by seizing the property, has deprived the residents of this state of the remedies they would have possessed under state law, it would seem to be eminently just and equitable to afford them this protection. And that protection should be afforded by the federal courts in like circumstances was the opinion of the four justices of the supreme court who acted concurrently in disposing of the questions which arose under the Northern Pacific Railroad receivership. Property in similar proceedings in this court has been collected, disposed of advantageously, the resident

creditors paid, and the surplus transmitted to the court of the state of which the corporation was a citizen, and where the receivers were originally appointed for the purpose of winding up its affairs. It is wholly unnecessary at this stage of the proceeding to enter into any discussion as to the propriety of this method of administration. Logically, it comes up for determination when distribution is about to be made. If any creditor, not a resident of this state, believes that he is entitled to participate in such distribution, he may submit proof of his claim to the receivers. If they reject the claim, as, under the practice prevailing here, they undoubtedly will, such creditor is entitled to have the propriety of such action passed upon by the master to whom, in the first instance, all disputed questions as to allowance or disallowance of claims are to be presented. If the master's decision be adverse to the creditor, he may review it upon exceptions to the report; and, if such exceptions be overruled by the circuit court, such determination is a final decree, from which he may appeal to the circuit court of appeals. In this way the creditor's right to share in the distribution is judicially considered and decided as a question of right, unembarrassed by any exercise of discretion, as would be the case if the same question were presented upon a petition for intervention.

2. Counsel for nonresident creditors further insists that, in addition to the opportunity of formally presenting their claim to share in the proceeds, they are entitled to be put in a position where they may criticise or object to the claims of others, and may examine and dispute the propriety of the receivers' conduct. Except in one respect, to be noted hereafter, the ordinary proceedings of the receivers may safely await the time when their accounts and transactions are sent to the master for investigation. Under the practice in this circuit, the master gives notice of the opening of the hearing before him, touching the receivers' administration, to all who have filed claims, or to their representatives, and abundant opportunity is afforded to all who are interested either as direct distributees of the New York assets or as distributees of whatever surplus fund may be left for transmission to the court of original jurisdiction. The ordinary disbursements of receivers in collecting and preserving a fund are of such a character as not to require any special investigation in advance of this one by the master, the bond in each case being made sufficiently large to insure a response to whatever sums may be surcharged upon the account. No distribution by the receivers is made until the master has investigated and made his report; and thus, upon his investigation, the creditor who has filed a claim, whether it be allowed or disallowed, may have the opportunity of questioning the propriety of allowing any other claim or claims. Intervention, therefore, is unnecessary to protect any rights of creditors in this respect.

3. In this particular receivership there have been some extraordinary expenditures by the receivers. They have been allowed to proceed with the business so far as to complete the manufacture