

000201

love for my friend to meet all the approbation that he may get from the public, I did think that it was an outrage, the crying and shouting; that is what I thought. If the jury were where Mr. Deavours said they were, they could hear; no trouble about hearing it, if they had good ordinary hearing. On Friday I was in the court room when I heard most of the crying, I do not know where the jury was then.

Charles F. Huber, testified. I was in charge of the jury when they left the court room Friday afternoon. I do not know how far the jury had gotten before the crowd began cheering in front of the court house. I didn't know myself that they had cheered, until the next morning. They didn't know it at all. I had charge of the rear end of the jury. I have good hearing and I heard no cheering.

After the introduction of this testimony, Mr. Arnold for the defense stated that he desired time to examine Mr. Pennington and Mr. Liddell, the other two bailiffs in charge of the jury, who were then absent and asked the court to give him time to make the proof.

After the hearing of this request and the above evidence, the Court ruled: "Well, I am going to charge this jury on this case, and I will give you an opportunity, don't you understand, afterwards, to complete your showing about that, but I will overrule the motion".

During the hearing of this motion for a mistrial and when the witness Charles F. Huber was on the stand and swore that he heard no cheering on the Friday afternoon referred to, and that the jury did not hear it, there was applause among the spectators, on account of the statement that the jury did not hear the cheering. Mr. Arnold called attention to the applause, stating to the court that the crowd could not be held in even while they were making this investigation.

The Court paid no further attention to this applause than to ask "what is the matter with you over there?"

In failing to grant the mistrial requested, the Court erred. The motion, taken in connection with the admitted and proven