

COOK

The Court admitted these sample of partly digested cabbage taken from the stomach of others, as aforesaid, and in doing so, committed error for the reasons above stated, and for the further reason that there was no evidence, as the defendant's counsel contend, that the same circumstances and conditions surrounded these other parties in the eating and digestion of the cabbage as surrounded Mary Phagan in the eating and digestion on her part and no evidence that the stomachs of these other parties were in the same condition as was Mary Phagan's.

26. Because the Court, in permitting the witness, Harry Scott to testify over the objection of defendant, made at the time the testimony was offered, that same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from any one connected with the National Pencil Company that the negro Conley could write, but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil Co.

The court permitted this testimony to be given over the objections above stated, and in doing so, for the reasons therein stated, committed error.

This was prejudicial to the defendant, because the negro Conley at first denied his ability to write and the discovery that he could write was as the State contended, the first step towards connecting Conley with the crime, and the solicitor contended in his argument to the jury that the fact that the Pencil Company authorities knew Conley could write and did not disclose that to the State authorities, was a circumstance going to show the guilt of Frank.

27. Because the Court permitted the witness, Harry Scott, to testify over the objection of defendant's counsel, made when the testimony was offered, that the same was irrelevant, immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White's statements about seeing a negro on the ~~door of the pencil factory on April 28~~ <sup>door of the pencil factory on April 28</sup> to the ~~Chief Lanford~~ <sup>Chief Lanford</sup> and Bass Rosser, that the information was given to the detectives on April 28th.

The Court, over the defendant's objections, permitted the above testimony to be given, and in doing so erred for the reasons