

S O C H 7 0

crime he accompanied Mary Phagan from a point on Bellwood Ave., to the center of the City of Atlanta, by showing that on April 27th at the house of Epps, he asked George, together with his sister, when was the last time they saw Mary Phagan. In reply, the sister of Epps said she had seen Epps on the previous Thursday, but the witness Epps said nothing about having come to town with Mary Phagan the day of the murder but did say he had ridden to town with her in the mornings of other days occasionally.

Upon cross Examination, over the objection of defendant's counsel made when the cross examination was offered, that the same was irrelevant, immaterial, incompetent, prejudicial to the defendant, and not binding on the defendant, the witness was allowed to testify that he went to the house of Epps in his capacity of reporter; that one Clofine was the City Editor and that the witness was under him and that Clofine was a constant visitor of Frank at the jail.

The Court admitted this testimony over the objections aforesaid and in doing so erred. There was no evidence of any relationship between Frank and Clofine which could show any prejudice or bias in Frank's favor, even by Clofine and certainly none on the part of the witness Niner.

30. Because the Court erred in permitting the witness Schiff to testify over the objection of defendant made at the time the testimony was offered that the same was incompetent, irrelevant and immaterial, that it was not Frank's custom to make engagement Friday for Saturday evening, then go off and leave the financial sheet that had to be over at Montag's Monday morning not touched.

The Court permitted this testimony over the objection of defendant and therein erred, for the reasons stated.

This was prejudicial, because it was the contention of the State that Frank, contrary to his usual custom, made an engagement on Friday before the crime to go to the baseball game on Saturday afternoon, leaving the financial unfinished, although such sheet ought to have been prepared on Saturday and sent to Montag's to the General Manager of the factory on Monday. The only material issue was what took place Friday and Saturday and