

COONLEY

sation with Mrs. Freeman and Miss Hall; this testimony was strongly disputed by the solicitor. Lemmie Quinn's statement that he was in Frank's office just before going into the restaurant was of the greatest moment to the defendant, because it strongly tended to dispute the contention of the State that Mary Phagan was killed between twelve and half past.

The Court erred in ruling out and declining to hear this, for the reasons above stated. The testimony was relevant, material, and part of the res gestae and should have been sent to the jury

35. Because the Court permitted at the instance of the Solicitor General, the witness Sig Montag to testify over the objection of the defendant, made when same was offered, that same was irrelevant, immaterial, incompetent; that the National Pencil Co., employed the Pinkertons, that the Pinkertons have not been paid, but have sent in their bills, that they sent them in two or three times, that, otherwise, no request has been made for payment, and that Pierce, of the Pinkerton Agency, has not asked the witness for pay.

In permitting this testimony to go to the jury, over the objections above stated, the Court erred.

The introduction of this evidence was prejudicial to the defendant, for the reason that the solicitor contended that the pay due the Pinkertons by the pencil company was withheld for the purpose of affecting the testimony of the agents of that company.

36. Because the Court permitted, at the instance of the solicitor the witness Sig Montag, to testify over the objection of defendant, made at the time the testimony was offered that same was irrelevant, immaterial and incompetent, that he got the reports made on the crime by the Pinkertons and that they were made. That these reports came sometimes every day and then they did not come for a few days and then came again. That he practically got every day's report; that he got the report about finding the big stick and about the finding of the envelope, that he got them pretty close after they were made; that he knew about them having the stick and the envelope when he read the report. That he did not request Mr. Pierce, representing the Pinkertons, to keep from the police and the authorities the finding of the stick and the envelope.