

COONED

could acts of immorality with women be heard, even on cross examination, as evidence of bad character, and reputation, upon Frank's trial for the murder of Mary Phagan.

Lasciviousness is not one of the character traits involved in a case of murder and can not be heard in a murder trial, even when the defendant has put his character in issue.

41. Because the Court permitted the witness W. D. McWorth to testify, at the request of the Solicitor General, over the objection of the defendant made at the time the testimony was offered, that the same was immaterial.

"Mr. Pierce is the head of the Pinkerton office here. I do not know where he is; the last time I saw him was Monday evening, I do not know where Mr. Whitfield is (Mr. Whitfield was also a Pinkerton man) I saw him the last time Monday afternoon. I do not know whether Pierce and Whitfield are in the City or not."

The Court admitted this testimony over the objections of the defendant, made at the time the testimony was offered, for the reasons stated and in so doing committed error. This was especially prejudicial to the defendant. Pierce and Whitfield were part of the Pinkertons force in the City of Atlanta, and the inference of the solicitor was that he wished their whereabouts to be shown upon the theory that the Pinkertons were employed by Frank for the National Pencil Company and that a failure on the part of Frank to produce them would be a presumption against him, as he stated it, upon the well-known principle of law that if evidence is shown to be in the possession of a party and not produced, it raises a presumption against them.

42. Because the Court permitted Mc Worth, at the instance of the solicitor general to testify over the objections of the defendant, made when the evidence was offered that the same was irrelevant, immaterial and illegal.

"I reported it (the finding of the club and envelope) to the police force about 17 hours afterwards. After I reported the club and envelope to the police about it about four hours afterwards. I told John Black about the envelope and the club. I turned the envelope and club into the possession of H. B. Perce."

The Court heard this testimony over the objection of the