

12. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 55 of the motion for New Trial, which reads as follows:

"Because the Court permitted the witness L. T. Kendrick over the objection of the defendant, made at the time the evidence was offered that the same was irrelevant, immaterial and incompetent, to testify substantially as follows:

'The clock at the pencil factory, when I worked there, needed setting about every 24 hours. You would have to change it from about three to five minutes, I reckon.'

The Court permitted this testimony to be heard over the above stated objections of the defendant, and in doing so committed error.

Kendrick had not worked at the factory for months and whether or not the clock was correct at that time was immaterial and tended to confuse the jury in their effort to determine whether or not the clock was accurate upon the date of the tragedy."

Said ground just quoted sets up material facts constituting error in said case - which the court in the decision rendered overlooked, and which was not considered in said decision as appears from the fact thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from page 46 of the reply brief filed in this case.

13. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 67 of the Motion for New Trial, which reads as follows:

"Because the Court erred in failing to charge the jury that if a witness knowingly and wilfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroborated by facts and circumstances of the case or other creditable evidence.

The Court ought to have given this charge, although no written request was formally made therefor, for the reason that the witness Jim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew that he was lying in the affidavits made by him, with reference to the crime and before the trial.

Especially ought this charge to have been given, because the Court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility."

Said ground just quoted set up material facts constituting error in said case - which the court in the decision rendered