

SECRET

"The clock of the pencil company was not accurate. They may vary all the way from three to five minutes in 24 hours."

The Court admitted this testimony over the objections made and in doing so committed error, for the reasons stated.

This was prejudicial to the defendant, because whether the clocks were or were not accurate on April 26th was material to his defense. The witness Gantt had not worked at the factory for three weeks and the fact that the clocks were not keeping accurate time three weeks before the trial was immaterial, and the evidence thereon tended to mislead and confuse the jury. Gantt had not worked at the factory during the three weeks just prior to the crime, and his testimony as to the clocks related to the time he did work at the factory."

Said grounds just quoted set up material facts constituting error in said case - which the court in the decision rendered overlooked, and which were not considered in said decision as appears from the face 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.

16. Because the Court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 42 of the Motion for New Trial, which reads as follows:

"Because the Court permitted McWorth, 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 finding, I had a further conference with 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. Pierce."

The Court heard this testimony over the objection of the defendant, made as above stated, and in doing so committed error, for the reasons herein stated.

This was prejudicial to the defendant, because the Solicitor-General contended that his failure to sooner report the finding of the club and the envelope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil Company, and movant contends that he is not bound by what they did or failed to do. The Court should have so instructed the jury."

Said ground just quoted set up material facts constituting error in said case - which the court in the decision rendered overlooked, and which were not considered in said decision as appears from the face thereof. Plaintiff in error says that the