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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 45 of the reply brief filed in this case.

17. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 35 of the Motion for New Trial, which reads as follows:

"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 and incompetent; that the National Pencil Company 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 payment.

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."

Said ground just quoted set up material facts constituting error in ~~whid~~ 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 45 of the reply brief filed in this case.