

47. Because the Court permitted the witness, W. E. Turner, at the instance of the Solicitor and over the objection of the defendant made at the time the evidence was offered that same was irrelevant, immaterial and dealt with other matters than the issues involved, to testify:

"I saw Mr. Frank talking to Mary Phagan on the second floor of the factory about the middle of March. Frank was talking to her in the back part of the building. It was just before dinner. I do not know whether anybody was in the room besides Mr. Frank and Mary. After I went in there two young ladies came down and showed me where to put the pencils. Nobody was in there but Mr. Frank and Mary at the time I went in there. Mary was going to her work when Mr. Frank stopped to talk to her. Mary told him that she had to go to work. Mr. Frank was talking about he was the Superintendent of the pencil factory. He told her that he was the Superintendent of the pencil factory and that he wanted to speak to her and she told him she had to go to work and I never did hear any more replies from either one. I left just when she told him she had to go to work. Mary backed off and Frank went on towards her talking to her. That was before I left, was when she backed off, and the last words I heard him say was he wanted to talk to her. Mary did not stand still; she moved backward about 3½ feet. While she was going backwards Mr. Frank was talking to her and walking towards her. Mr. Frank said 'I am the superintendent of the pencil factory and I want to speak to you,' and Mary said, 'I have got to go to work.'"

The Court, over the objections made as is above stated, permitted this testimony to go before the jury and in so doing committed error, for the reasons above stated.

This was prejudicial to the defendant, because the transaction testified about was a transaction distinct from those making the issues in the present case, threw no light on that trial and tended to prejudice the jury against Frank upon the theory that he was seeking to be intimate with this little girl.

48. Because the Court erred in admitting to the jury, over the objection of defendant's counsel, made at the time the evidence was offered that the same was irrelevant, immaterial, dealt with collateral matters to the confusion of the issues on trial, the following extracts from the minutes of the Board of Health of the State of Georgia:

"The President then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too enormous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

"The President (of the Board, Dr. Westmoreland), then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too numerous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

"The Secretary not having been present at what transpired following this was not in a position to take note as to the proceeding, but was informed by