

that the evidence of the witness O'Neill should be read as to the finding of a book about 10 feet from the road, where the prisoner had told O'Neill he had thrown the book from which he had taken the cheque, and that this omission, with his remark above quoted, made in answer to the question of a jurymen, possibly had the effect of withdrawing that portion of O'Neill's evidence from the jury. In this view we concur. We think that in this respect there was a substantial misdirection upon a material question, and that there must be a new trial.

This conclusion renders it unnecessary to deal with the other questions, and, as the new trial opens the whole matter, it is better to abstain from expressing any opinion with regard to them. It is, however, not to be supposed that in taking this course we are lending any countenance to them. But anything that might be said about them would be of no service on the new trial which is now directed.

The answer to the first question will be that there was a substantial misdirection, and that there must be a new trial.

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