

Two books were produced at the trial: first, the book in question, which was marked for identification; and afterwards another book which was said to have belonged to the deceased, and was found some 5 months later than the book in question, and on the other side of the road from that on which the body was found.

The finding of the second book was deposed to by one Griffiths. Subsequently one O'Neill testified as to a statement made to him by the prisoner, in which the latter spoke of having found a book which had dropped from the clothing of the deceased, and of taking from it a cheque payable to the deceased—which he had subsequently cashed—after which he had thrown the book in the bush to one side of the path. O'Neill further stated that he knew a book had been found in the bush about 10 feet from the road near the tracks leading in to where the body was, pretty close to them, just off to one side, coming down to where the body was.

As stated in the case, the learned Judge in his charge treated the case as if the second book was the only one in evidence, commenting upon the assumed fact that no book had been proven to have been found where the prisoner had told O'Neill he had thrown the book from which he had taken the cheque, as possibly reflecting upon the credibility of the prisoner's entire statement as to provocation on which he relied as a defence. The importance of O'Neill's evidence as bearing on this part of the prisoner's defence is quite manifest. At the conclusion of the charge, the learned Judge was asked by the prisoner's counsel to state to the jury that there was no evidence that the book spoken of by Griffiths had been the property of the deceased. The learned Judge did so, and in the course of his remarks stated that "no other book was found there which would answer the description;" and, in reply to a jurymen who asked, "That is the only book?" he stated, "That is the only book which would answer the description except Paul's own book." The learned counsel for the prisoner failed to direct attention to the other book or the evidence relating to it, and it was, in consequence, overlooked.

In the case which is now before us, as amended by the learned Judge, he states that, at the instance of counsel for the prisoner, he had the evidence of Griffiths as to the finding of the second book read to the jury, but he did not direct