

(upto her waist) and Mr. Frank was down on his knees, and she had her hands on Mr. Frank and I found them in that position."

Q. "When you came into the office before Thanksgiving day, now, when the lady was sitting in the chair?"

A. Yes, sir: he saw me when he came out of the office, he saw me."

Q. What was said when they saw you?"

A. "When Mr. Frank came out of the office Mr. Frank was hollering 'Yes, that is right, that is right' and he said, 'That is all right, it will be easy to fix it that way.'"

Q. "Well, did you ever see him on any other occasion?"

A. "Yes, sir; I have seen him on other times there."

Q. "What other occasions?"

A. I have seen Mr. Frank in the packing room there one time with a young lady lying on the table."

Q. How far was the woman on the table?"

A. "Well, she was on the edge of the table when I saw her."

The motion was made while the witness Conley, was on the stand, and before any cross examination had been had upon either of the circumstances referred to in said questions and answers, but after cross examination upon other subjects had progressed a day and a half. The motion to rule out, withdraw and exclude was made because, as stated to the Court when the motion was made, said questions and answers were immaterial, irrelevant, illegal, prejudicial, and dealing with other matters and things and crimes irrelevant and disconnected with the issue in the case then on trial.

Movant contends this evidence was highly prejudicial, and the failure of the Court, upon proper motion, to rule it out was a great injury to the defendant. And the failure of the Court to rule out said prejudicial and irrelevant and immaterial evidence is here assigned as error and a new trial should be granted.

11. Because the witness Conley, at the instance of the solicitor, was permitted to testify that he had seen Frank in a pos-