

ition with women than he had not seen any other man in that has children; that he had seen Frank in the office of the Pencil Co., about two or three times before Thanksgiving, and a lady was in the office and she was sitting down in a chair and she had her clothes up about her privates, and Frank was down on his knees, and she had her hands on Frank; that Frank saw Conley when he came out of the office, that when Frank came out of the office he was hollering "Yes, sir, that is right, that is right" and he said "That is all right, it will be easy to fix it that way;" that at another time he saw Frank in the packing room of the factory with a young lady lying on a table---she was on the edge of the table when he saw her.

While Conley was on the stand, and before he was crossed about seeing the circumstances testified about, and after cross examination upon other subjects had been had for a day and a half, counsel for the defendant moved the Court that the next above stated testimony of the witness Conley be ruled out, withdrawn and excluded from the jury, stating at the time that such motion ought to be granted, because the testimony was irrelevant, immaterial, illegal, prejudicial, and dealing with other matters and things, and crimes, irrelevant and disconnected with the issues in this case.

The Court declined to rule out, withdraw, or exclude this testimony from the jury, but permitted the same to remain before the jury.

The action of the Court was erroneous and highly prejudicial to the defendant, and demands a new trial.

Such action of the Court was error because said evidence was illegal, irrelevant and hurtful to the defendant and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

Because the witness Conley, ~~as~~ and, testified that he watched for Frank, at the Pencil factory, four times on Saturdays, not on the day of the murder, and once on Thanksgiving day 1912, while Frank was with women in his office, detailing certain signals by which the witness Conley was to lock and