

Myrtie Cato, Mrs. C. D. Donagan, Mrs. H. R. Johnson, Miss Marie Karst, Miss Nellie Petts, Miss Mary Davis, Mrs. Mary E. Wallace, Miss Carrie Smith and Miss Estelle Winkle to testify that they were acquainted with the general character of Leo M. Frank prior to April 26, 1913, with reference to lasciviousness and his relations to women and girls and that it was bad.

The Court admitted this evidence over the objections above stated, and in doing so erred for the reasons herein stated.

In determining general character in cases of murder, lasciviousness or misconduct with women is not one of the traits of character involved. The traits of character involved are peaceableness, gentleness, kindness, and it is utterly immaterial to prove bad character for lasciviousness in a murder trial.

To permit this evidence was highly prejudicial to the defendant. It attacked his moral character and while such attack would not tend to convict him of murder nor show him a person of such character as would likely commit murder, its introduction prejudiced the jury against him.

57. Because the Court permitted the witness Miss Dewie Hewell, over the objection of the defendant that the same was irrelevant, immaterial, incompetent, illegal and dealt with separate and distinct matters and issues from this case, to testify:

"I am now staying in the Station House. Before I came to Atlanta to testify I was in Cincinnati, Ohio, in the Home of the Good Shepard. I worked at the Pencil Company during February and March, 1913, I quit there in March. I worked on the fourth floor and worked in the metal room, too. I have seen Mr. Frank hold his hand on Mary's shoulder. He would stand pretty close to Mary when he would talk to her, he would lean over in her face."

The Court permitted this testimony over the objection of the defendant, made as is above stated, and in doing so committed error. This was prejudicial to the defendant, because it was introduced to show an effort to be criminally intimate with Mary and inflamed and misled the jury.

58. Because the Court permitted the witness, Miss Cato, over the objection of the defendant that the same was incompetent, illegal and immaterial, to testify substantially as follows: