

such transaction, Mary Phagan met her death, then Conley would be an accomplice of Frank, although he had no personal part in her killing.

The Court, under proper instructions, ought to have left it to the jury to say whether Conley was or not an accomplice of Frank; and, in failing to do, and because he failed to do so the Court committed error.

77. The Court erred in not charging the jury that if, under instructions given them, they found that Conley was an accomplice of Frank, they could not convict Frank under the testimony of Conley alone; but that, to do so, there must be a witness other than Conley or circumstances corroborating the evidence of Conley

78. Because the Court permitted the witness Irene Jackson at the instance of the solicitor General, and over the objection of the defendant, made at the time the testimony was offered, that the same was irrelevant, immaterial, illegal, and prejudicial to the defendant, to testify substantially as follows:

I remember having a conversation with Mr. Starnes about a dressing room incident. I told him that Mr. Frank came to the door of the dressing room while Emily Mayfield was dressing. He looked and turned around and walked out--just pushed the door open and looked in. I don't know whether he smiled or not. I never noticed to see whether he smiled or not; he just kind of looked at us and turned and walked out. I didn't time him as to how long he stayed; he just came and looked and turned and walked out. At the time, Miss Emily Mayfield had off her top dress and was holding her old dress in her hand to put it on. I did not report that the forelady, but Miss Ermilie did. I have heard remarks other than those of Miss Mayfield about Frank going into the dressing room, but I don't remember who said them, I just remember I heard something about it, two or three different times, but I don't remember anything about it, just a few times. I heard the girls talking about Mr. Frank going into the dressing room on two of three different occasions. It was the middle of the week after we started to work there; I don't remember the time. Mr. Frank also entered the dressing room when my sister was in there laying down; she just had her feet up on the table;