

000800

testimony was offered that the same was immaterial, illegal and incompetent, to testify substantially as follows:-

"I have seen Miss Rebecca Carson go into the ladies' dressing room on the fourth floor with Leo H. Frank. Sometimes it was in the evening and sometimes in the morning during working hours. I saw them come in and saw them come out during working hours."

"The court permitted this testimony to go to the jury over the objection of the defendant made as is aforesaid and in doing so committed error. The court stated that this evidence was admitted to dispute the witnesses they had called.

"It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson; it did, however, prejudice the jury as indicating Frank's immorality with reference to women."

Said ground just quoted set up material facts constituting error in said case, which the court in the decision rendered, overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from 209 to 212 of the original brief filed in this case.

5. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: ground one of the motion for new trial, which reads as follows:

"Because the court erred in permitting the solicitor to prove by the witness Lee, that the detective Black talked to him, - the witness, ~~he~~ longer and asked him more questions at the police station than did Mr. Frank the day when he talked to the witness Lee at twelve (12) o'clock at night on April 29th.

"At the request of Black and Scott, the detectives, Frank was induced to have an interview with Lee, the witness, for the purpose of eliciting information from him. The solicitor contended that Frank made no effort to find out anything from Lee, and to that end, sought to show and was permitted to prove by Lee that Black talked longer to him than did Frank at the time stated.

"The defendant, then and there at the trial, objected to such evidence upon the ground that it was irrelevant, immaterial and was a mere conclusion of the witness. The court admitted the evidence over such objections and in doing so erred, because said evidence was unwarranted, immaterial and a mere conclusion of the witness and injurious to the defendant."

Said ground just quoted set up material facts constituting error in said case, which the court in the decision rendered overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from page