

to 141 of the brief filed in this case.

6. Because the court in rendering the decision in said case, overlooked the following material facts in the record, to-wit: ground 16 of the motion for new trial, which reads as follows:

"Because the court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company and that she never reported seeing the negro on April 26th, 1913, which she testified she did see in the pencil factory, to the City detectives until May 7th, 1913.

"For the reasons above stated, the court erred in not excluding the evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th, was concealed from the authorities and that such concealment was evidence of Frank's guilt."

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 pages 213 of the brief filed in this case.

7. Because the court in rendering the decision in said case, overlooked the following material facts in the record, to-wit: ground 23 of the motion for new trial, which reads as follows:

"Because the court permitted, over the defendant's objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, the witness S.L. Rosser, to testify that since April 26th, 1913, he had been engaged in connection with this case; that he visited Mrs. Arthur White subsequent to April 26th; that the first time the witness ever claimed to have seen the negro at the factory when she went into the factory on April 26th was some time about the 6th or 7th of May.

"The court, over objections as stated, admitted the testimony just above, and in doing so erred, for the reasons herein stated.

"This was particularly prejudicial to the defendant, because the solicitor contended in his argument to the jury that the fact that factory employees did not disclose the fact that Mrs. White saw the negro on April 26th was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer."

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