

8.- Because the Court, in rendering the decision in said case, overlooked the following material facts in the record, to-wit, Ground 26 of the motion for new trial, which reads as follows:

"Because the Court, in permitting the witness, Harry Scott, to testify over the objection of defendant, made at the time the testimony was offered that the same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from any one connected with the National Pencil Company that the negro Conley could write, but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil Company.

"The Court permitted this testimony to be given over the objections above stated, and in doing so, for the reasons therein stated, committed error.

"This was prejudicial to the defendant, because the negro Conley at first denied his ability to write, and the discovery that he could write was as the State contended the first step towards connecting Conley with the crime, and the Solicitor contended in his argument to the jury that the fact that the Pencil Company authorities knew Conley could write, and did not disclose that to the State authorities, was a circumstance going to show the guilt of Frank".

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 ~~just~~ 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 231 to 234 of the original brief, filed in this case.

9.- Because the Court, in rendering the decision in said case, overlooked the following material facts in the record, to-wit, Ground 27 of the motion for new trial, which reads as follows:

"Because the Court permitted the witness, Harry Scott, to testify over the objection of defendant's counsel, made when the testimony was offered, that the same was irrelevant, immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White's statements about seeing a negro on the street floor of the pencil factory on April 26, 1913, to Black, Chief Lanford, and Bass Rosser, that the information was given to the detectives on April 28."

"The Court, over the defendant's objection, permitted the above testimony to be given, and in doing so erred for the reasons above stated. This was prejudicial to the defendant, because it was contended by the State that this witness, Harry Scott, who was one of the Pinkerton detectives who had been employed to ferret out the crime, by Frank acting for the National Pencil Company, had not promptly informed the officials about the fact of Mrs. White's seeing this negro, and that such failure was evidence pointing to the guilt of Frank".

This witness was one of the investigators for the Pinkerton Detective Agency, who was employed by Frank acting for the National Pencil Company to ferret out this crime".

Said ground just quoted set up material facts constituting error in said case, which the Court in the decision rendered, overlooked, and which