

COPIES

20. Plaintiff in error contends that the court in deciding such case, overlocked the following material proposition in deciding upon the admissibility of the witness Conley's testimony. The court decided ~~that~~ ^{construe} as counsel for plaintiff in error ~~considered~~ the decision that Conley having said that Frank remarked "Of course, you know, I ain't built like other men" - and from the condition of the body, - it being inferable that the person who did the killing sought to have a sexual relation, natural or un-natural, with the deceased, - that it was relevant to explain the expression quoted by showing previous transactions of the accused known to him ^{and} ~~to~~ the witness, which indicated that his conduct in sexual matters differs from that of other men.

Plaintiff in error submits that the remark quoted as to being built like other men is no evidence of any connection, natural or un-natural, with any female and is no evidence that any transaction occurred between the deceased and the defendant of any kind or description; and further submits that there is no evidence in the record whatever showing any kind of sexual relation between the deceased and any person at or just before the time of the killing.

Plaintiff in error submits that in as much as the alleged remark made by the accused according to Conley's testimony, was no evidence of any sexual act and was indeed no evidence of any transaction between the accused and deceased; that it could not be explained by or made the basis for the evidence of other un-natural crimes as testified to by the witness Conley.