

and said: "Mr. Frank, Chief Beavers, Chief Lanford and Scott and Conley want to talk with you, if you want to see them;" that Frank said: "No, my attorney is not here, and I have got nobody to defend me;" that his lawyer was not there, and that no one was there to listen to what might be said.

The Court erred in admitting this evidence for the reasons above stated.

The solicitor in his agument pressed on the jury that the failure of Frank to face this negro and the detectives was evidence of guilt, and movant contends same was prejudicial.

18. Because the Court erred in permitting the witness, Dr. H. F. Harris, over the objection of the defendant, made at the time the testimony was offered that the same was irrelevant and immaterial, to testify:

"I might preface my remarks on this by saying that more than 12 or 15 years ago someone told me that the reason that cabbage was considered indigestible was because they were ordinarily cooked with meat or grease, and with the idea of settling this question, on my clinic I got a lot of patients whose stomachs were not in very good condition, and made a number of experiments particularly to determine the matter as to whether or not this was the case. During the course of the experiment that I made at that time, I was struck by the fact that the behaviour of the stomach after taking a small meal of cabbage and bread, either cornbread or biscuit,—that the behaviour of the stomach was practically the same as after taking some biscuit and some water alone.

"I discovered, as I say, at that time, that our ideas about how quickly cabbage digested were rather erroneous, and as I remarked a moment ago, I observed that the stomach freed itself of a mixture of cabbage and bread just about as quickly as we only gave bread alone; the amount of recovery on the part of the mucous membrane in the way of sufficient gastric juices was about the same practically or probably a little bit more recovery with cabbage.

"It is the only way I can get at it, it is the only real knowledge I have on the subject in connection with the work that was done in this particular instance here."

The witness Harris testified that from the state of digestion of the food found in the stomach of Mary Phagan he could say she died in 30 or 40 minutes after her last meal of bread and cabbage, over the objection above made and the further objection that the witness could not give the result of other and different experiments made 12 or 15 years ago upon persons "whose stomachs were not in a very good condition," and not under the same circumstances and conditions, to sustain and bolster up the experiment made upon the stomach of Mary Phagan, and to sustain his assertion that Mary Phagan died from 30 to 40 minutes after she ate her last meal.

The Court overruled the objection and admitted the testimony and in doing so, the court for the reasons indicated, committed prejudicial error.

19. Because the court erred in permitting the witness, Dr. H. F. Harris, to testify, over the objection of the defendant made when the evidence was submitted, that the same was irrelevant and immaterial and that experts could