

in the basement; that he saw Conley there when he went there; that sometimes when he saw him in his office there would be ladies there, sometimes there would be two and sometimes one; he did not know how often he saw Conley there, but sometimes he would give him a quarter, that he did that a half dozen or more times; that he went to the factory about once a week for a half dozen weeks, that he saw Frank there in the evenings and in the day times; sometimes he would see cold drinks in the office, Coca-Cola, lemon limes, etc., that sometimes he saw beer in the office, that he never saw ladies there when beer and cold drinks were there do anything and never saw them do any writing.

The Court permitted this testimony of Dalton to be heard over the objections made as aforesaid and for such reason committed error.

This evidence was peculiarly prejudicial to the defendant because the solicitor insisted, in his argument, that in addition to being independent testimony looking to the same end, that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

22. Because the Court permitted the witness C. B. Dalton to be asked the following questions and make the following answers, over the objection of the defendant made at the time the evidence was offered, and before cross examination, that the testimony was irrelevant, incompetent, immaterial, and illegal, dealt with other matters and things than the issues of the trial, was prejudicial to the defendant.

Q. Mr. Dalton, have you ever worked at the pencil factory?

A. No, sir.

Q. Do you know Leo M. Frank?

A. Yes, sir.

Q. Do you know Daisy Hopkins?

A. Yes, sir.

Q. Do you know Jim Conley?

A. Yes, sir.

Q. Have you ever visited the National Pencil Factory?

A. Yes, sir; I have been there some.

Q. How many times?

A. I don't know; three, or four, or five times.

Q. Were you ever in the office of Leo M. Frank?

A. Yes, sir.

Q. On what occasion?

A. I have been there two or three times with Miss Daisy.

Q. Where was Frank when you were there?

A. He was in the office; I don't know whose office it was, but he was in the office.

Q. Were you ever down in the basement?

A. Yes, sir.

Q. What part of the basement did you visit? Can you tell me on that diagram (indicating)?

A. I have been down that ladder.