

not see anyone of the city detectives and that included Scott. Frank did not tell me that, the inference was mine. Frank merely said he would receive none of the city detectives without Mr. Rosser's consent, that was the substance of his conversation. Mr. Roberts came up and announced the city detectives; this was at Frank's cell in the county jail."

The Court permitted this testimony to go to the jury over the objections made as above stated, and in doing so committed error.

This was especially prejudicial to the defendant, because the Solicitor, in his argument to the jury stressed and urged upon the jury that this failure of the defendant to, as he expressed it, face this negro Conley and the detectives, even in the absence of his own counsel, was evidence of guilt.

40. Because the Court permitted Miss Mary Pirk to be asked the following questions and to make the following answers on cross examination made by the Solicitor:

Q. You never heard of a single thing immoral during that five years—that's true? (Referring to the time she worked at the pencil factory.)

A. Yes, sir, that's true.

Q. You never knew of his (Frank's) being guilty of a thing that was immoral during those five years—is that true?

A. Yes, sir.

Q. You never heard a single soul during that time discuss it?

A. No, sir.

Q. You have never heard of his going in the dressing rooms there of the girls?

A. No, sir.

Q. You never heard of his slapping them as he would go by?

A. No, sir.

Q. Did you ever see Mr. Frank go back there and take Mary off to one side and talk to her?

A. I never seen it.

Q. That never occurred?

A. I have never seen it.

Q. You never heard about the time that Frank had her off in the corner there, and she was trying to get back to her work?

A. No, sir.

Q. You didn't know about that?

A. No, sir.

Q. That was not discussed?

A. No, sir.

These questions were asked over the objection of the defendant, because even if the Solicitor's questions brought out that the witness had heard charges of immorality against Frank, that her answers thereabout would have been irrelevant and immaterial in this trial of Frank for murder. The fact that Frank might have been frequently guilty of immorality could not be held against him on a trial for the murder of Mary Phagan. Nor, could acts of immorality with women be heard, even on cross examination, as evidence of bad character and reputation, upon Frank's trial for the murder of Mary Phagan. Lasciviousness is not one of the character traits involved in a