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FIVE ARGUMENTS IN THE FRANK CASE.

By Berry Benson, Augusta, Ga.

- I—ANALYSIS OF THE MURDER NOTES.
- II—THE WARDROBE PERJURY.
- III—THE ELEVATOR PERJURY.
- IV—DORSEY'S STAR WITNESS CONVICTS CONLEY.
- V—JAMES CONLEY ACCUSES MARY PHAGAN.

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man that negro
fire down he did
this I went to make
water and he pushed
along tall negro today
that for it was
being plain talk negro
would to file

Conley's Writing at Dictation of Police.

dear mother long tall
black negro did this
boy pin shelf he told
me if i woad long day
he woad fare me play like
the night witchman
did this boy pin shelf

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A Word Personal.

I am an old Confederate soldier, of the 1st South Carolina Volunteers. I fired one shot into Sumter, from an 8-inch Columbiad, April 13th, 1861. I was at the surrender at Appomattox, April 9th, 1865. Captured at Spottsylvania, after the battle of the Bloody Angle, I was a prisoner of war at Point Lookout, the Old Capitol, and Elmira. At Point Lookout two days, I escaped, swam the Potomac, a mile wide, 14 miles below Washington, was recaptured near Mt. Vernon, and imprisoned in Alexandria jail. At Elmira I again escaped, and made my way through New York, Pennsylvania, Maryland, and Virginia, back to Lee's army at Richmond. The details of this adventure are published in a new war book on prison life.

My sufferings as a prisoner compel me to sympathise with anyone who may be unjustly in prison, as is Leo Frank.

I have made a study of the Frank case from the beginning. I am thoroughly satisfied he is innocent, and knew nothing whatever of the murder.

To inform myself better, I went to Atlanta and stayed five days, at my own expense. I am publishing this book at my own expense, though I can ill afford it. I have put upon it a small price, to reimburse me in part for the many I shall give away. Any one receiving it, and wishing to send the price, may do so. I am not asking it. I have not received one cent from Frank's people, nor from anybody. I make this statement to anticipate the low jibe of any vicious or crazy person, or any person both crazy and vicious, who may say I am in the pay of the Jews. Any such statement is false.

I.—AN ANALYSIS OF THE MURDER NOTES.

By nature I am fond of problems of all kinds, whether of mathematics, philosophy, natural science, or mere mechanical tricks and puzzles.

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My business is public accounting. In this work I sometimes have hard problems to solve; the harder, the better I like them. Or mathematical ones, say like this:

Diagonally across a room 16 feet by 20 runs a carpet three feet wide, its four square corners just touching the four sides of the room; what is the length of the carpet?

When you give this up, tell me why you thought it easy to judge Frank guilty.

From the first, the Frank* case interested me. It was a problem. Was Frank the murderer, or was Conley? One of the two certainly was. There is no third alternative. I followed the trial through the papers, trying to draw a conclusion. Throughout the mass of testimony there was nothing fast to lay hold of. All the evidence was circumstantial, confused, irrelevant, or contradictory. I wrote duplicate letters to the two principal attorneys, Dorsey and Rosser, giving some of my views and asking questions. Both treated my letters with respect, answering me courteously. But no real information. And when the trial was ended, and the verdict given, I was still at sea. Only this was sure: The guilt lay between Frank and Conley. If Conley told the truth, if Frank dictated the two murder notes, Frank was guilty; if Conley lied, if Frank did not dictate the notes, then Conley was the murderer. Did Frank dictate the notes, or did he not?

If I could see the notes, study them, digest them, I might form a clear opinion; but I could not expect to have these notes sent to me. Then I read that photographic copies could be had from Attorney Henry A. Alexander, and from him I procured them. He asked me to write him my conclusions, and this article is, in the main, my letter of March 22nd, 1914, in reply.

As the son of an owner of slaves till my 18th year, then as a Confederate soldier more than four years, and since the war as a citizen of Augusta, Georgia; of Austin, Texas; of New York City; and of Washington City, employing negroes, I know somewhat of negro character and of negro manner of expression. And I know somewhat of the white man's ability (and inability) to imitate him. And it is my candid and fixed opinion, after careful scrutiny and patient study of these two notes, that there is not a white man,

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either North or South, who could have dictated them. They are negro throughout, beyond the white man's ability to imitate. If Edgar Allan Poe, a genius with his pen, a Southern man, failed, as he did fail, in his story of "The Gold Bug," to write properly the dialect of the Carolina coast negro, how could a Northern man, in the South but a few years, possibly express negro lingo? There is not one Northern writer who attempts to write negro but makes a ridiculous failure. He cannot even read it; I have to stop my ears with my fingers when I hear him try.

The negro swears that the note beginning "he said" was the first note written; and the note beginning "Mam" the second note written.

This is manifest perjury. Read the two notes, first the one beginning "Mam," then the other. They join smoothly, in natural sequence. Reverse the order and read; they are disjointed, not in natural consecutive.

"he said." Who said?

"play like the night witch did it." Did what?

Reading the "Mam" note first, the notes explain themselves.

Who said? "That negro" said.

Did what? "Did this."

I contend that no sane man of fair mind can consider this point and believe the negro.

Now, while it is absolutely clear that he lies as to the order in which he wrote these two notes, reversing (in his testimony) the order in which he did write them, why does he lie about it? I was puzzled over this until, investigating further, and understanding better the negro's character, I saw that it was because, being conscious of his guilt, **he was always afraid of the truth**, and took refuge (as he thought) in lies. Lying seemed always safer to him than the truth, so he lied, through fear, even when the lie was of no value to him. "The wicked flee when no man pursueth."

Colonel Dorsey argues that the use of the word "did" in the notes, and not "done," is proof of Frank's dictation. That the negro would have written "done," and that thereby Frank is convicted as the composer of the notes.

Colonel Dorsey is wrong. The use of the word "did" argues exactly the contrary.

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The use of "done" for "did" prevails of course largely still with the negro race; time was when it was almost universal; but in these days of negro schools it is one of the young negro's first lessons that it is wrong to say "done"; he must say "did." And there are plenty of negroes in these days who speak properly in this respect, just as they have learned to say "this and that" instead of "dis and dat." So the use of the word "did" in these notes is no proof at all that they are a white man's dictation.

Again, if Frank were dictating the notes he must necessarily keep in mind, all the time, that these notes, when found, would at once be known not to be by Mary Phagan, that soon or late they would be known to be Conley's handwriting, therefore he would have to keep out of them any sign, even the least, that they were of his (Frank's) suggestion. Now, while the Northern man is quite incapable of writing negro, he does know this, that "dis and dat," and "done" (for did), are essentially negro. And Frank is just as smart as his critics, and he would take care, if he were dictating the notes, or suggesting them, that he must use "done," and not "did," if the notes were to be attributed to Conley alone, free from his suggestion. Therefore, that the word used is "did," and not "done," is evidence that Frank did not dictate the notes, or see them at all. And Conley, a young negro, had learned that "did" is right, and "done" is wrong.

Colonel Dorsey contended that Conley, in his testimony, always said "done," and not "did." Grant, for the moment, that he did. Any man, be he white or black, will always write more correctly than he speaks. In speaking he is less careful. Many lapses are made by white men, even educated men, in speech, that they would not make in writing. But a few days ago a child corrected me for saying, "I done it," an inheritance from my childhood. But I'd never write it.

But Colonel Dorsey's contention in this, as in nearly all his contentions of moment, is broken down by the facts, as absolutely as the negro's testimony is broken down by the facts. See, in the Brief of Evidence, how many times in his testimony the negro said "did."

"And I did as he said."

"You asked me what I did the second Saturday; I don't remember."

"As to what I did the next Saturday, I disremember."

"The Saturday after that I did some more watching."

"I don't remember what I did the Saturday before Thanksgiving day."

"I don't remember what I did the Saturday after Thanksgiving day."

"I don't know, sir, what I did the next Saturday."

"The next Saturday I did some watching for him."

"Snowball and me did just plain labor."

"I couldn't tell you the first time he did this."

"I did my best."

Twelve times. How many times did he say "done"?
Five times.

And on the 19th of January, 1915, at the Atlanta courthouse, in an interview with Conley, Rev. J. E. White asked him, "Would you like to see Mr. Frank hung?"

"That's his business," the negro answered, "Mr. Frank knows what he did."

I said that Frank, if dictating or suggesting the notes, would bear in mind all the time that Conley would become known as the writer of them. Necessarily so. Because though they purport to be written by Mary Phagan, it must be immediately clear, when the notes were found, that they were not her writing; indeed, that under the circumstances it would be impossible for her to write at all. That then inquiry would soon develop the fact that the notes were in Conley's handwriting. That then, Conley being accused, he must necessarily, in his own defense, disclose that Frank dictated them, and accuse him of the murder. This would be a certain and inevitable sequel, that Frank would have to face Conley's accusation. A much less quick mind than Frank's would see this absolutely. Then why prepare for himself so fatal a trap? Would it not have been suicidal and idiotic? And Frank is no idiot. Nor is he a bungler. **And Conley is.** To write those notes and place them by the child's body was an idiotic blunder. To contend that the note beginning "he said" was the first note he wrote, and that the note beginning "Mam" was the second note he wrote, is an idiotic blunder. Conley is not smart; he has a low cunning; that is all.

Now again. In the second note (the first note, as the negro calls it), Conley writes the word "land" (for laying), meaning "lying." If the use of the word "did" instead of "done" be considered evidence that Frank dictated the notes, what about the use of "laying" instead of "lying"? Is

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it to be supposed that Frank, an educated man, does not know that "laying" is wrong? Or is it rather to be supposed that Conley, the ignorant negro, does not know it is wrong?

What about "hoo" and "wase" and "sleam" and "wood" and "wright"?

Now again. In the second note he says, "play like the night witch did it." Think of that combination, will you? "Night witch did it." "Did" proving (so Colonel Dorsey insists) that Frank dictated the notes. And "night witch" proving—what? That Frank dictated "night witch"? Is it possible that any sane man can credit such stupidity of thought?

"Play like"! A childish term that every white boy discards before he is ten years old, but is retained by the ignorant negro just from paucity of his vocabulary. Had Frank dictated these notes he would have said "pretend"; he never would have thought of "play like." Nor would any other white man. It is too childish, too niggery. Even as these two notes, in their entirety of mode of thought, mode of expression, and imbecile blunder, are of the nigger, niggery. They fit in well with the savage brutality of the murder.

Now again. If Frank dictated these two notes, (one three times over before he was satisfied, Conley swears), then why was Frank satisfied with "night witch"? A term so vague in meaning that it would surely be misunderstood by many, as it has been misunderstood. Frank, they say, is a smart man; would that be smart?

When the detectives, to test his handwriting, dictated to Conley the two notes, he wrote, not "night witch," as in the original, but "night witchman," meaning night watchman, thus proving that he understood the note. For the reason that he composed it himself.

But when they dictated the note to Frank, he, unfamiliar with the note, misunderstood the dictation, and, instead of writing "night witch," he wrote "night which." Thus proving that the notes were new to him, and were not dictated nor composed by him.

In like manner, when they dictated "Mam," he misunderstood, and wrote "Man." (See photographic copy).

The negro swears that he wrote the two notes at the same time, at Frank's desk, on paper taken from his desk, and

at Frank's dictation. They were not written at the same time. The "Mam" note was written first and the other afterward, with some interval of time elapsed—an afterthought. This is clear for two reasons:

First, because the first note, at its ending, is badly crowded, with the manifest intent to get all in on that sheet; so much crowded, in fact, that the last word, "me," is written **under** the last line, on the bottom edge of the sheet. Had he intended to write more he would not have so crowded at the end; anyhow, he would have carried the word "me" to the next sheet. This is further evidenced by the general fact that he was very free with his paper, giving himself plenty of room, even skipping lines. The beginning was on the third line, and two other full lines were skipped, besides leaving wide margins in beginning lines. As are not thus left in the second (and shorter) note. This crowding at the end of the first note shows that he did not then intend to write a second note.

Second, because the writing in the second note, although unmistakably the same hand, is smaller than that in the first note. I observed this on first inspection of the notes; then, having enlarged photographs made, I measured carefully, with surveyors' compasses in 32nds of an inch, all the letters in both notes, and I found that the letters in the first note exceed in height those in the second note in proportion of 120 to 100; that is, they are one-fifth higher, in elevation, on the average. This is a very great difference; and it is to be accounted for by the second note being written later than the first note by some interval of time, when, probably, the nerves of the writer had recovered somewhat from the excitement of the murder.

That the second note was written at all is due, I have no doubt, to an oversight made in writing the first note. In the second note it is said: "That long tall black negro." The first note does not so read. It reads: "A long tall negro black." A strained, unusual, inverted expression, the word "black" out of its proper place before "negro." Examine in the photograph this word "black." It is crowded in, at the end of the line, the last letter, "k," upon the very edge of the sheet, not fully formed, and its stem running across the "c." There was no need thus to crowd it in if the next line below were blank. But it was not blank; it had already been written. And it is not Conley's way to crowd; he gives

himself plenty of room, as is easy to see. Note that the previous word, "negro," already extended beyond the writing on the line above. What he wrote was this:

"he push me

"down that hole

"a long tall negro

"that hoo it wase

"long sleam tall negro

"i wright while play with me."

describing an imaginary negro the antithesis of himself. Afterward, noting that he had not written "black," (he himself being brown), he wrote the second note, in which he brought in the descriptive "black," and "play like the night witch did it." Then, to make the first note conform, and add its testimony to the man being black, he crowded in the word "black," after "negro," making the very awkward and unnatural reading, "a long tall negro black."

So the two notes were not written at the same time, as he swears they were, at Frank's desk. They were written in the basement, on scraps of paper which were there in abundance.

Now again. If these notes were written at Frank's desk, at his dictation, or suggestion, after several trials, (as the negro swears), why did Frank allow him to begin on the third line from the top, and to skip the fourth and sixth lines, when Frank would very well know, from the experiments made, that the sheet would be crowded at the bottom, as it is? It is too absurd for any one of good sense to believe. The crowded condition at the end of the first sheet, and the plenty of room on the second sheet show that the first sheet was intended to be all, and that the second sheet was an afterthought, written later, after some interval, as a postscript.

The negro swears that in writing the first note, (the one he calls the second), he wrote, "that negros hire down here," and that Frank corrected him, making him rub out the "s," informing him that "negros" means more than one negro. A manifest lie, this, for any six year old pickaninny knows that "negro" means one only, and "negros" two or more. Nor does he himself write "negros" for negro. In his obscene letters to the Carter woman, he writes negro. And he writes it correctly, not "negros." Once he wrote, "that negro may have got out on bond," and once, "i have got a negro watching you." (See photographs.)

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that be cause the band that they put
you under is not any thing, that negro
may have got out an bend jaudent no

girl then i want i have
got a negro watching you

Yet he tried to play a trick on me and his lawyer. In May, 1914, I had an interview with him, in the Atlanta jail, in the presence of his attorney, Mr. Wm. M. Smith. Mr. Smith would not allow me to see him alone. That was before Mr. Smith became converted to the full and absolutely honest belief in Frank's innocence, and the negro's guilt. I said "Jim write me something," handing him paper and pencil. This, remember, was long after the Carter letters. He wrote:

Mama that long tall black
negro did this by him self
he said lay down play like the
night witchman did it but that
long tall black negro did
it by his self

Jamison
Atlanta
May 19 1914

"Mama that long tall black negro did this by him self
he said lay down play like the night witchman did it but
that long tall black negro did it by his self."

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This was a low negro trick, done with the manifest intent of having me **and his lawyer** to believe that he did not yet know better than to write "negros" for "negro," and to believe, consequently, that his story of the murder notes was true. He is the damnedest liar in Georgia.

Now, here is another consideration, a most important one. He swears Frank engaged him to come back that afternoon to burn the body, but he went to sleep and did not come. If that were true, if Frank intended to burn the body, of what earthly use, then, would these notes be to Frank? Would they not be utterly useless, in the way, and have to be destroyed? Then why should he take so much pains to produce notes that would have to be immediately destroyed? The burning of the body would be to make it appear that Mary had run away or been kidnapped, while the notes were to make it appear, contradictorily, that she had been foully dealt with by a "long tall sleam negro black," who was not Jim Conley. Is it not perfectly clear that these two stories are thoroughly and flagrantly contradictory of each other? Is anybody accusing the negro any more vehemently than he accuses himself by uttering these two contradictory stories, both of them false? **Berry Benson, Augusta, Ga.**

II.—THE WARDROBE PERJURY: HOW COULD MARY PHAGAN BE IN TWO PLACES AT ONE TIME?

(This article first published in Augusta Chronicle, June 19, 1914, was reprinted in many papers throughout the country).

How could Mary Phagan be at home alive, and at the factory, being killed, at 11:05 a. m.?

How could she be at home eating her dinner and in the factory basement dead at 11:35 a. m.?

How could she be leaving home for the car and be in the factory basement dead at 11:45 a. m.?

How could she be on the car, on her way to the factory, and in the factory basement dead at 12:02 p. m.?

Before going on the stand to swear against Frank (and to save his own life), the negro, James Conley, swore to four different tales as to the murder—tales of minute detail—all

of which he acknowledged on the stand to be lies. He is, therefore, a four times self-confessed perjurer.

I have seen, and handled, and read, and I have photographic copies of the obscene letters which James Conley, this four-times-self-confessed perjurer, wrote to the negro woman, Annie Carter, in the Atlanta jail. These are most positively his writing. He does not deny it; it would be useless. These letters are not merely obscene, too obscene to print—"too terrifically obscene to be allowed through the mails," as United States District Attorney Codington decided—but in them the negro states to the woman, in foulest language, his preference for the base crime of sodomy to the act of nature. Not once merely, but again and again and again he states his desire and intent to commit with her this foul crime, gloating in the bestiality of his filthy thought and purpose as a dog wallows in carrion.

It is upon his testimony, and his alone—this lying negro, this four-times-self-confessed perjurer, this base sodomite—that a white man, Leo Frank, is condemned to death. Leo Frank, of whom I have heard said, "He will not tell a dirty tale, nor will he listen to one."

This negro perjurer swears that after Frank and himself had taken Mary Phagan's dead body to the basement and had returned to Frank's private office and were there talking, Frank, walking into the outer office exclaims: "My God, here comes Emma Clark and Quincy Hall. Get in this wardrobe, damn it, quick." (Quincy is as the negro pronounced to me the name Corinthia. Emma Clark is Mrs. Emma Clark Freeman.) That Frank hustled him into the wardrobe, a thing it would have been utterly silly to do, even had Mary Phagan been then murdered. As she was not, for she did not come to Frank's office till half an hour after they had gone. That he heard the ladies come in; that he heard Miss Emma's voice saying, "Good morning, Mr. Frank;" that he heard them talking in low tones, but that he did not hear Mrs. Freeman call up her husband through the telephone, as she did do. (He heard their voices talking low, but he did not hear the call through the telephone.) Why did he not hear it? Because he lied. He was not in Frank's office nor on the second floor, where he said the murder was committed, any time that day.

These ladies—good, respectable white Southern women—both swear that they came into Frank's office about 11:35 a. m.

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Mrs. Freeman there using the telephone, and that they left about 11:45 a. m.

Miss Hattie Hall (no kin to Miss Corinthia Hall) stenographer for Montag Bros., as nice a girl as one may know, whom I talked with, swears that she was in Frank's office, typewriting, from 11 o'clock till 12:02, and she confirms the testimony of these two ladies as to the time they were there. Other corroborative testimony as to the time is that of Mrs. J. A. White, E. K. Graham and O. Tillander.

The negro perjurer (Conley) swears that the murder was done half an hour before he was put into the wardrobe—that is, about 11:05 a. m.—if these four ladies and two men speak the truth (and there is other evidence confirming theirs as to the time). Now, at 11:05 a. m. Mary Phagan was at home helping her mother in the housekeeping, as I have learned from her mother. How could she be at home alive and at the factory being killed at the same time?

At 11:35 a. m., when the negro perjurer swears he was being unnecessarily hustled into the wardrobe, the murder being done some half hour before, Mary Phagan was at home eating her dinner, so her mother swears. How could she be eating her dinner at home and be lying dead in the cellar?

At 11:45 a. m., when the negro perjurer swears he was being let out of the wardrobe, the murder being done some forty minutes, Mary Phagan was just leaving home for the car, so her mother swears. How could she be just leaving home and be lying dead in the basement both at the same time?

And at 12:02 o'clock, when Miss Hattie Hall was leaving Frank's office (the child being dead, according to the perjurer, Conley, an hour,) Mary Phagan was on the car on her way to the factory, as is sworn to by street car conductors and motormen. How could she be on the car and be lying dead in the factory both at the same time?

White men of Georgia, white women of Georgia, who is the liar? Are these good Southern women, are these good Southern men all to be branded liars and the word of this base negro perjurer, swearing to save his life, to be taken instead? Are these four respectable white Southern women, whose word is as good as mine or yours, any one of whom might happen to be your wife, or sister, or daughter, to be classed in belief beneath this base negro perjurer, this beastly sodomite? Has Georgia come to that?

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I am an old Confederate, a man of the old time when Georgia was proud of her white men and white women. I ask, has Georgia come to that?

Colonel Dorsey, in his speech to the jury, spoke affectionately of this beastly negro as "Old Jim—Old Jim." Who knows how far this undeserved euphemy of a brute may have influenced the jury and the public in his favor and against Frank? Who knows?

"Old Jim"—as though this base young negro was one of the old-time gray-headed darkeys whose vigilant faithfulness is woven into Confederate history, watchmen in the night who loved their masters and mistresses as they loved their God.

"Old Jim"—young hell fiend! Jim Conley is one of these salacious young negroes whose lustful eyes follow white women as they pass, deterred from attacking them only by fear of the noose and the white man's revolver!

I have called this negro sodomite beastly; I apologize to the beasts.

Berry Benson, Augusta, Ga.

III.—THE ELEVATOR PERJURY.

(This article was a letter in answer to some of my friends who asked me for my reasons for believing Frank innocent. It was published in The Augusta Chronicle, December 21, 1914.)

Dear Sirs: I have your letter asking my reasons for believing Leo Frank innocent of the murder of Mary Phagan. I am willing to give you some few of my reasons on one condition—that you will not reply, as some of my good friends have done, "Oh, hell, the jury found him guilty." As though "Oh hell" were a proof or an argument; or as though juries had not made wrong verdicts hundreds and hundreds and hundreds of times. So many times found wrong too late—when the victim of their judgment was beyond recall to the life they had taken away.

My reasons are many and strong. In the short space of a letter I can give you but a few of these many.

I have made a close study of the case from the beginning. As a rule I refuse to read accounts of crime, these being distasteful to me, as much so (or nearly as much so) as are the repulsive caricatures of humanity in the so-called funny papers. But this case was a problem: Who killed Mary Phagan? And problems fascinate me.

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As the trial progressed I was unable, from the conflicting testimony given, to form a conclusion. But when the negro testified that after Frank and he had taken the child's body to the cellar (as he swore) and that Frank, in his office, had given him \$200 as hush money, and then taken it back, I saw a light. For I knew, from long experience as an accountant, that it is extremely rare a wholesale house has in hand \$200 in money after bank hours. And men who carry \$200 in their pockets are exceeding few.

I wrote to the contending lawyers, Dorsey and Rosser, a joint letter, the same to both, stating my grave doubt of the truth of this testimony. And suggesting that they bring into court the cashbook and checkbook of the factory, and ascertain whether, at that time, \$200 was in the drawer. This is easily done by subtracting from the cashbook balance the amount in bank; the difference is the cash in the drawer.

Both attorneys replied courteously, thanking me for the suggestion. The books were brought into court, and the cash balance was found to be \$26.20. There was not \$200 in the drawer to give the negro. As for Frank having \$200 of his own money, it was found on examination of Frank's private checkbook that he had been drawing \$5 from his bank every few days—April 9th, \$5; April 15th, \$5; April 24th, \$5. (The murder was on the 26th). Would a man with \$200 in his pocket be drawing small \$5 checks at short intervals?

I asked Conley, in the jail, "Jim, if Mr. Frank took the money back, how did you know it was \$200?" "I didn't know it," he replied, "Mr. Frank said it was \$200. Anyhow, it was a big roll." Would any man carry a big roll when he could easily get it changed into tens and twenties? The negro lied, as was his habit. And he was lying to save his life.

In my article in *The Chronicle* of June 18th, "How Could Mary Phagan Be in Two Places at One Time?" this was my argument:

At the trial the negro, confessing he had perjured himself four times, told a fifth and different tale. He swore that after Frank and he had taken the child's body by the elevator to the cellar, they went then to Frank's inner office and were there talking when Frank, walking into the outer office, exclaimed, "My God, here comes Quincy Hall and Emma Freeman; get in this wardrobe, damn it, quick." That Frank hustled him into the wardrobe, that he heard the ladies come in, heard their voices talking low, but he did not hear Mrs. Freeman call her

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husband through the telephone. As she did do.

Being asked if they used the telephone, ne was afraid the question was a trap, he was afraid to say yes, and he was afraid to say no. So, cunningly he said he didn't hear the call through the telephone. When he had just heard their voices "talking low." It was safe enough to say he heard "Good morning, Mr. Frank,"—of course they would say that.

These ladies did come to Frank's office. The negro learned that by reading the papers or by being coached. But, as to the time they were there, he makes it **an hour and a half later** than the time they were actually there! And by so doing he makes it evident that his whole story of the elevator and the wardrobe is pure fabrication.

These ladies both swear that they came there about 11:35, used the telephone and left about 11:45. Miss Hattie Hall, stenographer for Montag Brothers, who was there writing letters for Frank from before 11 o'clock till 12:02 (she looked **at the clock** on quitting, so she told me), swears she was there when these two ladies came and went; that they were there from about 11:35 to 11:45 and that Conley did not come there at all. Two men, also, came to the office at that time, E. K. Graham and O. Tillander, as did also Mrs. J. A. White and their testimony confirms that of these three ladies. Graham and Tillander came together to get pay due their boys. Both cite the time as "about 11:40." Mrs. White, who saw Graham and Tillander there, says: "Miss Hall and Mrs. Freeman left first, then I went. That was about 11:50."

Unless, then, we are ready to believe that these four good Southern women and these two good Southern men, whose reputations for truth are unchallenged, swear falsely, and that this four-times self-confessed perjurer speaks the truth, we must believe that the time the two ladies were there was about 11:35 to 11:45, **and not an hour and a half later.**

The negro swears that the child was killed about half an hour before they went to Frank's office; that it took them that time to dispose of the body. That would make the murder, then, about 11:05 a. m. (For the two ladies came at 11:35.)

But at 11:05 Mary Phagan was at home, helping her mother in the housekeeping; I learned that from her mother myself.

At 11:35 a. m., when the negro swears he was being hustled into the wardrobe, Mary Phagan was at home, eating her dinner, so her mother swears.

At 11:45 a. m., when the negro swears he was being let out of the wardrobe, Mary Phagan was leaving home for the car, so her mother swears.

And at 12:02 o'clock, when Miss Hattie Hall was leaving the office, (the child being then dead, according to the negro, an hour), Mary Phagan was on the car, on her way to the factory, so the conductors and motormen swear.

How could Mary Phagan be in two places at one time?

Conley's tale of the murder of Mary Phagan by Frank by strangling her with a cord on the second floor; of Frank and himself taking the body to the cellar on the elevator; of Frank taking him to his office and there giving him \$200 as hush money, and then taking it back; of Frank's then hiding him in the wardrobe, half an hour after the murder, to conceal him from the two ladies coming into the office—all this is true, or it is not true.

If it is true, Frank killed Mary Phagan.

If it is not true, it is a lie told by the negro with but one possible motive—to **escape the consequences of the crime committed by himself**. No other motive is conceivable.

Therefore, if the tale of the elevator and the wardrobe is a lie, the negro killed the child.

It can be proved—it has been proved—that it is a lie.

Let us review the argument. Her mother and the carmen swear that Mary Phagan took the 11:45 car from home. The carmen swear that she got off the car (on time) at 12:10—two minutes' walk to the factory. Frank says she arrived at his office about 12:15, got her money, \$1.20, went out, and he saw her no more. She must have been killed, then, about 12:30.

The negro swears that half an hour after the murder (which would be **about 1 o'clock**) he was hustled into the wardrobe on account of the arrival at the office of the two ladies. Six white people swear these ladies arrived at or near 11:35.

Both these accounts cannot be true. Either the six white people swear falsely, or the negro does. If we believe the six white people, then we must believe the negro lies, and his whole story of the murder tumbles to pieces. And as he can have no motive for falsely accusing Frank but to escape punishment for the crime **committed by himself**, then the negro did the murder, and Frank did not.

But if we can believe that Frank did the murder, then we must believe the negro's story to be true; we must believe that the two ladies came to the office about 1 o'clock, and not about 11:35. That means that we must believe that these four good white Southern women and these two good white Southern men, with reputations for truth unchallenged, swore to a lie, and that the drunken, obscene negro jailbird, four times self-confessed perjurer, spoke the truth. Although he was swearing for his life.

This argument is as exact as mathematics. Its conclusion is as certain as simple addition. If any one believes Frank guilty, he **must believe** these six white people to be guilty of perjury.

Are we to believe, then, that the twelve jurymen were so recreant to their race, so regardless of the fair name of Georgia, as deliberately to ascribe perjury to their white fellow citizens, deliberately to exalt above theirs the word of this base, self-admitted negro perjurer? I do not believe that.

I believe that the twelve jurymen are Southern enough, and white enough, to believe, in this, exactly as I believe. But, in the clamor and turmoil of the trial, they lost sight of the fact, obscured by the smoke of the battle, that right here lay a vital crux of the question; they did not realize that these testimonies were **in direct and irreconcilable conflict**; that if they give credit to the negro's story of the wardrobe they brand these six good white people as liars unmitigable. But if these twelve jurymen will study the case as I have studied it they cannot fail to see—and see clearly.

Now, we may dispute oral testimony if we will; we may disbelieve six respectable white people and believe, if we will, one dissolute, perjured negro swearing for his life; but there is one testimony it is impossible to dispute—a **physical fact**.

One such physical fact is that, with all the controversy about stains on the floor, as to whether they were blood or paint, **no blood was found on the elevator**.

Another incontrovertible physical fact is this: The negro swears that about two hours before the murder he went to the basement and there eased himself, on the ground, under the elevator, the elevator itself being at a floor above. He did do this, for, the next morning, when the police came and

went down through the trapdoor, by the ladder, they found this matter there, untouched. Later, when they used the elevator, the elevator came down on it and (as they say) "mashed it, making a smell."

Now, it is the testimony of every one in the factory that whenever the elevator goes to the basement it is always allowed to strike the bottom. Conley, himself, at the trial, swore (see Brief, page 72), "When the elevator goes to the basement it hits the dirt." And again he says, "The elevator don't hit hard when it hits the ground."

That the elevator is always allowed to hit the ground there is thoroughly good reason.

The elevator moves slowly, the jar is hardly perceptible, it is dark down there, so that if one going down should stop it purposely he would likely stop it an unknown height above the ground, and might get hurt getting off in the dark. I went down with Mr. Schiff, the head clerk, with a lamp. The elevator struck the ground gently. "Now I will show you," said Mr. Schiff, "that it is not customary to stop the elevator purposely." With that he grasped the chain, as though to stop the elevator, and showed me his hand. The palm was red with iron rust. I saw at once that if it were customary to stop the elevator purposely there would be no iron rust there—the frequent contact of hands with the chain would keep it free from rust. And remember, Conley himself says, "It hits the dirt."

Then, if the child's body was taken down on the elevator two hours after the negro's peccadillo, why was not this excrement then mashed as it was mashed the next day, when the police first used the elevator? There is but one answer to this question: The negro perjurer lied; **the elevator was not used the whole day of the murder.** Therefore, the body of Mary Phagan was not taken down on the elevator—the negro pushed her down through the trapdoor. "He push me down that hole," so the murder note reads.

"Mam that negro
"hire down here did
"this i went to make
"water and he push me
"down that hole
"a long tall negro black
"that hoo it wase
"long sleam tall negro."

Conley being short, and chunky, and brown. This clumsy

effort to foist his crime upon an unknown negro (the antithesis of himself, please notice) was made at the time of the murder, long before Frank was accused. He was brought to see the utter folly of this claim, and then, when Frank was suspected, he turned his accusation against Frank, claiming that Frank dictated the notes to him on the day before the murder!

Sometimes I think it must be wonderful amusing to Satan to hear all this clamor against Frank, and to see the real criminal slipping through the rigid fingers of the law, escaping justice. I imagine the grin on his face.

I could give you many other reasons—good ones—why Frank did not kill Mary Phagan, and why Conley did; but if these will not convince you, neither would the rest—not if told by an angel from heaven. Yours very truly,

Berry Benson, Augusta, Ga.

IV.—COLONEL DORSEY'S STAR WITNESS
CONVICTS THE NEGRO.

One of the State's most prominent witnesses in the Frank trial was Miss Monteen Stover. With the exception of the negro, Conley, she may be rightly termed its Star Witness.

Miss Stover's sworn testimony was that on the day of the murder she came to Frank's office to get her pay; that Frank was not in his office; that she waited five minutes and went away, Frank not appearing.

Colonel Dorsey credits Miss Stover absolutely—I know no reason why he should not—and he contends stoutly that in these five minutes Frank was engaged with the murder. Notwithstanding the fact that Miss Stover left the building at 12:10, and that it was not possible for Mary Phagan to have arrived before 12:12.

Miss Stover swears that she came at 12:05, and went away at 12:10,—looking at the clock on coming in, and on going out.

Now, if she came into Frank's office at 12:05 she must have arrived at the street door below at 12:04, for it is one minute's walk, (forty seconds to be strict), from the front door to the stairs, up the stairs, and down the hall to the office.

The negro swears that Mary Phagan came before Miss Stover, went to Frank's office, then in a little while walked back with Frank to the metal room.

"After she went upstairs I heard her footsteps going

"toward the office, and after she went in the office I

"heard **two people** walking out of the office and go-

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“ing like they were coming down the steps. But they
“didn’t come down the steps, they went back toward
“the metal room. After they went back there I heard
“the lady scream, then I didn’t hear no more. (He
says he went to sleep. **Immediately after hearing a
girl scream!**) “The next person I saw coming in was
“Miss Monteen Stover.”

So, according to the negro, Mary had come, had walked
back with Frank to the metal room, been struck by him, and
had screamed, before Miss Stover came.

How long before Miss Stover’s coming was the scream?

Colonel Hugh Dorsey,—listen now close to me,—you
claim to be a fair prosecutor,—was it ten minutes? Will you
allow it to be ten minutes? **No?**

Will you allow five minutes? **No?** Two minutes? **No?**

Will you allow one minute,—one little minute,—the next
to nothing? **What? yes, you will?** Oh, thank you. But **you
had it to do**, or else Miss Stover would hear the scream as she
enters the front door, as Conley swore he heard it, sitting in a
few feet of that door.

One minute back of 12:04, then, is 12:03, when you say
Mary is heard to scream.

How long, then, before Mary’s scream did Mary get off the car?

From the corner of Broad and Hunter Streets, where, ac-
cording to the conductor and the motorman, she got off at
12:10, to the factory door, is two minutes’ walk. From the
door to the stairs, up the stairs, and down the hall, to Frank’s
office, is a quick forty seconds. May I call that an even min-
ute? I may? Thank you. Thank you for the twenty seconds.
That makes three minutes.

For Mary to ask Frank for her pay, (supposing even that
she did not have to wait while he was adding a column of
figures), for Frank to look up her envelope, and give it to her,
for her to go and then return, and ask, “Mr. Frank, has the
metal come?” and to receive Frank’s answer, “No,” would take
surely not less than two minutes. That makes five minutes.

Even if Frank, desiring conversation with Mary, (as the
prosecution would have us believe), had not detained her with
a little talk, with a little flattery, with pretense of being un-
able to find her envelope quickly, with all those subtle arts
that any lover knows, which would have indubitably stretched
the two minutes to five, to ten, to fifteen. But you insist upon
your pound of flesh, call it two.

For the two then to walk down the hall together, past the

head of the stairs, to the metal room, for some talk then to ensue, the entreaty, the repulse, the scuffle, and for Mary to scream, would certainly take all of three minutes. That makes eight minutes. Eight minutes from the time she got off the car to the scream. (And any sensible man knows that eight minutes is much too little).

We have figured the scream, by the negro's testimony, to be certainly not later than 12:03. Eight minutes back of 12:03 makes 11:55, then, when Mary should leave the car. But according to the conductor, Hollis, and the motorman, Matthews, she left the car at 12:10 and not any sooner,—that the car was due at Broad and Hunter at 12:10, and that the car was **on time then and all that day.**

Colonel Dorsey, with strenuously dutiful effort to elicit the truth, the whole truth, **and nothing but the truth**, strove his mightiest to induce the car men to admit that the car was ahead of time, that the negro's story might "fit," or that the car **might have been** ahead of time, at least some little. The negro's story needed "fitting." But they, unawed by him and his vehemence, stuck to it that the car was **on time**, and that Mary left the car at 12:10.

But, (granting eight minutes only), the negro's story of the murder and the scream compels Mary's leaving the car at 11:55,—**fifteen minutes ahead of time!**

Will those twelve jurymen who found Frank guilty swallow so preposterous a tale as that a car in Atlanta was fifteen minutes ahead of time? **They did swallow it.** But they did not know they were swallowing it. If they had known it they could not have found Frank guilty. The trouble was, as I have said elsewhere, that in the clamor and turmoil of the trial neither they nor the public could perceive and realize that in these disagreements as to time, disagreements irreconcilable, lay absolute disproof of the story of the crime invented by the negro and his helpers. "That don't fit, Jim, that don't fit!" And they didn't get it to fit, after all. And lies, lies, lies, are not going to fit, gentlemen. Fit them at one place and they are out of joint at another. When once you get at them, study them, analyse them, compare them, one with another, "they don't fit, Jim, they don't fit!"

Fifteen minutes ahead of time!

Who lies, then? Does conductor Hollis lie? Does motorman Matthews lie? **Does Miss Monteen Stover lie?** Or does this four-times self-confessed negro perjurer lie? And if the

negro lies in this, his whole story of the murder tumbles to pieces, as it tumbled to pieces with his lies of the wardrobe, and his lies of the elevator.

If the car was fifteen minutes ahead of time, as the negro's perjury compels, then Mary Phagan did not get on the car at 11:45, as the conductor swears, and as the motorman swears, and as Mary's mother swears.

Who lies, then? Does conductor Hollis lie? Does motor man Matthews lie? Does Mary Phagan's mother lie? Or does this four-times self-confessed negro perjurer lie? As he lied about the wardrobe, and as he lied about the elevator.

And there can be but one motive for his lying, but one motive conceivable,—to shift from his own shoulders to Frank's the guilt of the murder.

And I say it, and I mean it, that this base negro's story of the crime is so utterly incredible, is such a manifest web of perjuries, that it is a shame to have to discuss it.

V.—JAMES CONLEY ACCUSES MARY PHAGAN.

In all the evidence that came out in the Frank trial there was none from any quarter that cast suspicion on Mary Phagan. One and all gave Mary the credit of being a nice girl. Frank says of her that he did not know her, but that he has no reason to believe other than that she was an innocent child.

All are in agreement in this; all the testimony is alike.

Except one.

The negro, James Conley.

This base negro points the accusing finger at Mary Phagan.

Read his testimony.

"Friday evening, the 25th of April, (the day before the murder), Mr. Frank came to me and said he wanted me to come next morning at 8:30; he had some work for me. I got to the factory about 8:30; Mr. Frank and me got to the door at the same time! Mr. Frank said, 'I want you to watch for me like you have been doing the rest of the Saturdays.'"

Thereupon, the negro immediately asks leave to go to the Capital City Laundry to see his mother, a request which Frank promptly grants, instructing the negro to meet him at the corner of Nelson and Forsyth, when he, (Frank), would be returning from Montag's, two hours later.

If this lying negro's story were true, (as it is not), there

would then be this condition of things: That Frank knew a girl was coming and that Frank engaged the negro to watch the door for him. That Frank must know at what time she was coming, **or he would not so promptly let the negro go away for two hours**, during which two hours it might be she would come. And Frank could not know at what time she was coming, except by an agreement with her.

The negro's story, therefore, carries with it the unavoidable implication that there was an understanding between Frank and Mary,—an assignment. Thus, although he is lying, this base negro becomes **the accuser of Mary Phagan!**

Having thus by implication accused her, he further confirms it by this testimony:

“After she went upstairs I heard footsteps going toward the office, and after she went in the office I heard **two people** walking out of the office back toward the metal room.”

The day was a holiday, Memorial Day, work suspended, workpeople absent, the factory deserted, silent, and still. Yet the negro's story has Mary to come by agreement with Frank, and now to walk back with him alone, down that long hall, silent, still, deserted, and through the folding doors to the metal room. The negro lies, but in his lying he thus again becomes the accuser of Mary Phagan!

Nor does the fact that he lies relieve him of aught of obloquy in thus accusing her as no one else accuses her; his perjury but adds to the depth of his infamy.

If I were but seeking to show the turpitude of this foul negro I could stop here content. But I feel it my duty to this innocent girl to prove what I have said, that in this the negro lies, that this is one more perjury in the long list of perjuries of which he is guilty. Take up his testimony.

Friday evening, the 25th of April, Mr. Frank came to me and said he wanted me to come next morning at 8:30; he had some work for me. I got to the factory about 8:30: Mr. Frank and me got to the door **at the same time.**”

At the same time! A manifest lie. A feat hardly possible to accomplish even had they had best watches set for the purpose. And all the watch the negro had was a clock on a steeple that he passed on his way.

“Mr. Frank said, ‘I want you to watch for me like you
“have been doing the rest of the Saturdays.’”

From which we are to infer that the negro watched for
him every Saturday!

“I said, ‘Mr. Frank, I want to go to the Capital City
“Laundry to see my mother, and he said, ‘As you
“come back from the Laundry stop at corner of Nel-
“son and Forsyth till I go to Montag’s’. I got to the
“corner of Nelson and Forsyth between 10 and 10:30.
“Mr. Frank passed by me going to Montag’s. I don’t
“know how long he stayed at Montag’s.”

Why don’t he know? He knew how long Miss Stover
stayed upstairs. He said “she stayed a pretty good while, not
so very long either.” This is the kind of testimony that
“couldn’t be broken down.” Fog, just fog,—how are you go-
ing to “break down” a fog? Mere wisps of fog, hazy and in-
tangible; cobweb strands twisted by the cunning of a black
Satan into a halter for an honest man’s neck. Mere fog, like
tirades against Frank I have read, by scribes with reputa-
tions for logic far and away above their mentality. Hard beset
for argument, these draw forth as from a stiletto sheath, in-
vective, insult, insinuation, innuendo, stab with them and call
it argument. When, for real value for showing what they
should show, **and do not show**, that Frank is in truth guilty, it
is not worth five cents. Nothing is worth but clean, clear-cut
argument. This is a clean, clear-cut argument:—

The negro lied throughout his testimony.

He could have no motive for lying but to save his own life.

Therefore he did the murder.

Therefore Frank did not.

“He came out, and when we got to the factory we
“both went inside, and he put his hand on the door
“and turned the knob, and says, “‘You see, you turn
“the knob just like this, and there can’t nobody come
“in from outside.”

“You see.”—Showing him now, in petty detail, as though
it were the first time, how to do the very thing he claims to
have been doing “all these Saturdays!” Is that a sensible lie,
or is it a fool lie?

“And there can’t nobody come in from outside.” There
can’t! Then why employ the negro in this at all? Why take
the negro so unnecessarily into his confidence, actually plac-

ing himself in the negro's power, for any amount of blackmail, and paying him, to do a thing Frank could do for himself just as well as the negro, and better? Can any sane man believe this?

“‘Now there will be a young lady up here after awhile, and me and her are going to chat a little.’”

Colonel Dorsey made much capital out of the negro's quotation of Frank's word "chat." Saying that if this account were not true, the negro would not have known that was a favorite word with Frank. And saying to the jury that Frank had used the word four times in his statement to the court. He used the word **six times**. The word was so much used by him that in two years' time at the factory the negro had abundant opportunity to catch on to it, and bring it into this piece of perjury. He was given to tricks like that. Like the trick he tried to play on me and Lawyer Smith in the jail, writing "negros" for negro, as though he did not know any better.

“‘When the lady comes I will stomp like I did before, and you go and shut the door. And when I whistle, you unlock the door and come upstairs like you were going to borrow some money from me, and that will give the lady time to get out.’”

More detailed instruction that he would have known by heart!

“I said, ‘All right,’ and I DID as he said. ‘Now, whatever you do, don't let Mr. Darley see you.’ I says, ‘All right, I won't let him see me.’ And I sat there on the box. The first person I saw after that was ‘Mr. Darley; he went upstairs.’”

Let us analyse this fool tale. Frank engages the negro to come at 8:30 to watch for him. Frank would not need anyone to watch at the door. With the door locked, what would there be to watch? Frank could lock the door himself, and that is all the negro could do, or that he said he did do. Arriving at the door (together!) the negro at once asks leave to go away, and this leave, of two hours, Frank promptly grants!

Now, Frank would either know that Mary was coming, or he would only guess it. If he knew it, he could only know it by an agreement with her. Such agreement would necessarily specify the time she would come. The time she did come was 12:12. Yet the negro's story is that he was told to come at 8:30, four hours before the time that would have been agreed

with Mary, during which four hours the negro must remain idle, liable to be seen by Darley, whom the negro is strictly cautioned against being seen by. And the very first person that passes after he does take his seat is **this same Mr. Darley.**

If Frank did not know Mary was coming, but only guessed it, then why, when he had instructed the negro to be there at 8:30, should he promptly **dismiss him for two hours**, not knowing but that Mary might come during those two hours? If answer is made that he himself had to be away two hours, then why did he not, in the first place, instruct the negro to come at 10:30, instead of hanging around two hours, subject to being seen by Darley?

The negro's story is rotten.

Arriving the second time at the factory, at 10:30, he says Frank goes into much detail to show him how to manage the lock,—the very thing he says he has been doing "all these Saturdays." And that he must lock the door when Frank "stomps", and unlock it when he whistles—the very thing he says he has been doing "all these Saturdays." Why the necessity of this minute detail of instruction after this long experience of "all these Saturdays?"

The tale is rotten.

"The next person I saw come in was Miss Mary Perkins. **that's what I call her**, this lady that's dead: "I don't know her name."

The monumental liar! To pretend now, after three months in jail on account of the murder, after hearing her name in those three months hundreds of times, as he must have heard it,—to "play like" he does not know her name!

Rotten, rotten, rotten!

"After she went upstairs I heard footsteps going toward the office, and after she went in the office I heard two people walking out of the office, and going like they were coming down the steps, but they didn't come down the steps, they went back toward the metal room." ("Going like!"—"Play like!")

It was contended that Frank had a fancy for Mary, that he had been seen addressing her. Even that she had said she was afraid of him! That was the story of the 14-year-old Epps boy, the one that afterward had to be sent to the Reformatory.

Think you now of the absurdity of Mary's going alone to Frank's office on a holiday, when she would be almost sure to find him alone, and she afraid of him! If she had to have

her little pay, certainly then she would have her mother or some friend to go with her. That she did go alone to Frank's office, without asking any one to go with her, without any intimation of fear to her mother, is proof absolute that these tales about Frank are lies, and that she had no fear of him whatever.

Think you now, again, of the rank absurdity of Mary walking down that long, silent, lonely hall, alone with Frank, the factory empty and still, on a holiday, and she afraid of him! Think of the utter absurdity of Mary, trembling, thus walking with him, when there were the broad stairs and the front door!

If this base negro perjurer's story were true, (as it cannot be), if she thus walked willingly with him to the metal room, would Frank need to strike her? The question is shocking! It is monstrous! The abominable concoction of lies of this base negro—he thus the accuser, the sole accuser, of Mary Phagan—beautiful and chaste Mary Phagan—is so repulsive, is such an utter wreck, is so rotten in all its details, that it is a shame, an insult to intelligence, to have to discuss it.

Mary Phagan was not afraid of Frank. She had no reason to be afraid of him. She never told anybody she was afraid of him. If she had told anybody that, she would have told her mother.

She came to get her pay. Frank gave her her pay, and she went down the stairs, purse in hand, to her fate. To where this base negro, his money spent, his brain afire with drink and lust, sat waiting for something to happen. "He push me down that hole."

Berry Benson, Augusta, Ga.

THE TRIPPING PERJURY.

I have said that the negro is stupid. Some people will not believe that, but he is. He has low cunning, that is all. His writing the notes and placing them by the body was stupid. He relied on them, in his savage nature, through a vague inheritance of the superstition that deems the inscribed birch bark a power in itself. No white man would have written the notes or placed them there.

Here is another proof of his crass stupidity. He swore at the trial as follows: (See Brief of Evidence, page 56).

"When we got near the second floor, (going up on the elevator, after placing the body in the cellar), Mr. Frank tried to step off before it got to the floor, and his foot caught on the

second floor as he was stepping off, and that made him stumble, and he fell back, sort of against me."

It is not necessary to ask any man properly equipped with brains, it is not necessary to ask any white man, Is that story true? It is false upon the face of it. A man stumbling in that way would **not** fall backward, he would inevitably fall forward. Why does the negro lie like that? Stupidity.

That was what he swore at the trial. Two months before, on May 29th, 1913, he swore before G. C. February, Notary Public, as follows: (See Brief of Evidence, page 290.)

"Then Mr. Frank hops off the elevator before it gets even with the second floor, and he makes a stumble, and he hits the floor and catches with both hands, and he went on around to the sink to wash his hands, and I went and cut off the motor, and I stood and waited for Mr. Frank to come from around there washing his hands, and then we went on into the office."

This lie is a plausible lie. It could have been true. Tripping thus, a man **would** fall forward; he might catch on his hands and have to wash them.

Why, then, did he change the plausible lie for an impossible lie? Stupidity. He got to thinking it over, and he concluded that a man, tripping thus, would fall backward instead of forward. Of course he didn't let his white friends know he was going to change it. They would have vetoed the change.

As they vetoed another act of stupidity. See brief of evidence, page 282, Conley's sworn statement before G. C. February, N. P., May 24th, 1913.

"On Friday evening before the holiday, (that is, **the day before the murder**), about four minutes to 1 o'clock, Mr. Frank come up the aisle and asked me to come to his office. When I went to the office he asked me could I write, and I told him yes, I could write a little bit, and he gave me a scratchpad and told me what to put on it, and told me to put on there dear mother, a long tall black negro did this by himself," and he told me to write it two or three times on there. I wrote it on a white scratchpad, single ruled. He went to his desk and pulled out another scratchpad, a brownish looking scratchpad, and looked at that writing and wrote on that himself. He asked me if I knew the night watchman, and I told him no, sir, I never did see him down there. He told me he had some wealthy people in Brooklyn, and

“then he held his head up and looking out of the corner of his eyes and said, ‘Why should I hang?’ and ‘that’s all I remember him saying to me.’”

Such crass stupidity! To swear Frank had him to write the murder notes,—or one of them,—and to say to him, “Why should I hang?” **on the day before the murder!** As though Frank were planning the crime! This testimony before a jury would inevitably hang Conley, so it was vetoed. Read the testimony of Pinkerton detective Harry Scott, (Book of Evidence, page 81).

“We questioned Conley three hours May 25th. He repeated his story of 24th. On 27th we talked to him five or six hours. We tried to impress on him that Frank would not have written those notes the day before the murder. That it was not a reasonable story. It showed premeditation, and it would not do. We pointed out why the statement **would not fit**. We told him we wanted another statement. He declined to make it, said he had told the truth. On May 28th Chief Lanford and I grilled him five or six hours again, trying to make clear to him several points which were far-fetched in his statement. We told him his statement would not do; **it would not fit**. He then made the statement of May 28th. May 29th we had another talk with him. Talked to him almost all day. Pointed out things in his story that were improbable, and he must do better than that. Anything in his story that looked out of place we told him wouldn’t do. As to the number of matters I told Conley **didn’t fit** the first time, and those I told him **didn’t fit** the last time, I couldn’t name them, it would be almost impossible.”

If there are those who, after knowing these enormous perjuries of the negro, antagonistic as they are to common sense and to the consistent testimony of reputable white people, can still believe Frank guilty, surely they are capable of believing, were it but craftily enough whispered into their ears, that their own grandmother was Benedict Arnold.

But it proves what I said, that the negro is stupid. It took four days of hard grilling by the detectives to convince him that a premeditated murder story would not **“fit.”** If they had let him alone he would have been hung long ago.

I was sorry to read Ex-Governor Joe Brown's letter against Frank in the Chronicle. If he will study the case with his usual care and thought he will know he is wrong.

Reading his letter, I was reminded of an incident of my boyhood, (that's a long time ago,—“not so very long either”), in old Edgefield. A sheep had been killed in the night in a pasture. A poor cur of the neighborhood, a kind of waif, kicked about (like the Jews) from one resting place to another, was suspected. At a meeting of the neighbors, at the country store, a kind of trial was held,—very informal and noisy,—and the dog was sentenced to die. By the halter. There was no dissenting voice. The dog hadn't a friend, and his tongue had been tied by The Great Master.

But one old farmer, Joe Martin,—Uncle Joe everybody called him,—sat mighty still, chewing his tobacco with energy, and spitting on the hot stove. As the rope was being made ready Uncle Joe arose, thrust his hands into his breeches pockets and, looking sideways down at the floor, he said, “Boys, can't you give the poor dog a chanst? It was my dog done it; go and ketch him.”

Uncle Joe Brown, can't you give the poor dog a chanst? Mightn't it have been your dog that done it?

“Mr. Frank was standing at the top of the steps, shivering and trembling and rubbing his hands. He had a little rope in his hands—a long wide piece of cord. His eyes were large and he looked funny out of his eyes. His face was red.”

“He had a little rope in his hands.” It was not the cord with which Mary was strangled; that cord was at that moment around her neck. Would Frank then pick up another cord and go to rubbing it? For he was rubbing his hands, and if the cord was in his hands he must be rubbing the cord. What for? This lie seems not quite explicit. Seems like it needs a little rounding out. Seems like Conley's friends overlooked it.

“His face was red.” Kind of jolly! Just after committing a murder! All we have ever read and heard and seen about a man going deathly pale at such a time is rot. He goes jolly red. Jim Conley says so; and “Old Jim” wouldn't lie.

Not if he thought it was the truth.

The negro says Frank stamped (for him to **lock** the door) **after** the murder, while the body was still on the second floor. And that Frank whistled (for him to **unlock** the door) while the body still lay there. Frank thus of his own will subjecting himself to discovery, while handling the body, by people coming up, through the unlocked door, as they had been coming all the morning. A man who can really believe that is not sane. What better proof of the negro's stupidity than to tell such a tale! To do such a thing would be stupidity; to tell such a tale is stupidity; to believe such a tale is stupidity.

"The pocket book was a wire-looking whitish-looking pocket book,—had a chain to it. You could take it and fold it up and hold it in one hand."

To be sure. You could **TAKE IT**,—and fold it up,—and hold it in one hand,—and put it in your pocket. To be sure. "If I have to go and take something."

if you do i will try to give you anything in this world if "i have to go and take something cause you have got to "have to have it honey."

Old Jim! Old Jim! Honest old Jim!

It has been said to me many times, a negro, committing such a crime, would not come back to the factory; he would flee the town. Conley knew better than to flee. He read the papers; he knew flight would be proof of guilt, and that he would never get back alive. Conley's return is not unique. Fifteen years, to 1900, I was bookkeeper & cashier for Excelsior Mills. The mildest mannered nigger we had,—smooth as Jim Conley, was Oscar Johnson. One Saturday night I paid him his week's wage. That night he decoyed his wife's sister to a lonely place, assaulted her, killed her, and left her dead body hidden in the weeds. Sunday night he went back, shouldered the stiff body, pitched it over a fence, and buried it in a sand-bar. Monday morning he was on his dray as usual, and stayed there till he was arrested. He confessed, was judged deranged, sent to an asylum, where he escaped, went to Charleston, killed two old people, and was hung.

34

Circumstantial Evidence. What is it worth?

In 1884 I traveled a month in Mexico with Mr. G. Gunby Jordan, of Columbus, Ga. In that time we discussed nearly everything, from the tariff to the Pyramids of Cholula. And lynch law. To say why he was opposed to lynch law, he told me this story.

In Georgia somewhere, a girl was attacked by a negro. On release she aroused the neighborhood. At the place tracks were found running across the ploughed ground. Dogs, put on the trail, soon pulled down a negro. His shoes fitted the tracks exactly. Lined up with other negroes, the girl at once picked him out, "he is the man." A prompt lynching followed. Some years after, a negro was hung in Arkansas for murder, and on the gallows he confessed that he did that deed.

The negro says he heard Mary scream and then promptly went to sleep. Any human being so callous as to go to sleep after hearing a girl scream,—indicating, as under the circumstances it must, an attack,—would be capable of murder, rape, or any atrocity. There is no man so callous in the whole world,—he simply lied,—the only scream he heard was when "he push me down that hole."

Colonel Dorsey argues that Frank showed great nervousness, trembling, asking for coffee, and so on. The history of the case shows that Frank **is a very nervous man**. In what condition, then, would Frank's nerves be, just after a murder in which he had any part? Would they be steady or unsteady?

I have seen and examined closely both the original letter that Frank wrote his uncle and the Financial Statement made out by him. I declare that in neither is there the slightest trace of nervousness. The entire writing is smooth, without a sign of tremor. The figures in that statement, small, perfectly formed, are absolutely without tremor. Even the diminutive pencil figures at the tops of the columns,—the "carry" figures in adding, are perfectly distinct. No man could possibly write such a letter or make such figures, having just committed a crime, or having any part in it. It is impossible.

As this goes to press I read that Conley swears now he did not write the obscene letters to the Carter woman,—that they were written by the white man who runs the elevator in the jail. Stupid! Stupid! Stupid! And isn't he the most rottenest liar that ever stank in human nostrils?

Berry Benson, Augusta, Ga.

He said he would
love me laid down play
like the night which did
it but that long tall
black negro did buy
himself

Man that negro fire
down here did that when
I went to make water and
he pushed me down a hole
a long tall negro black that
had it

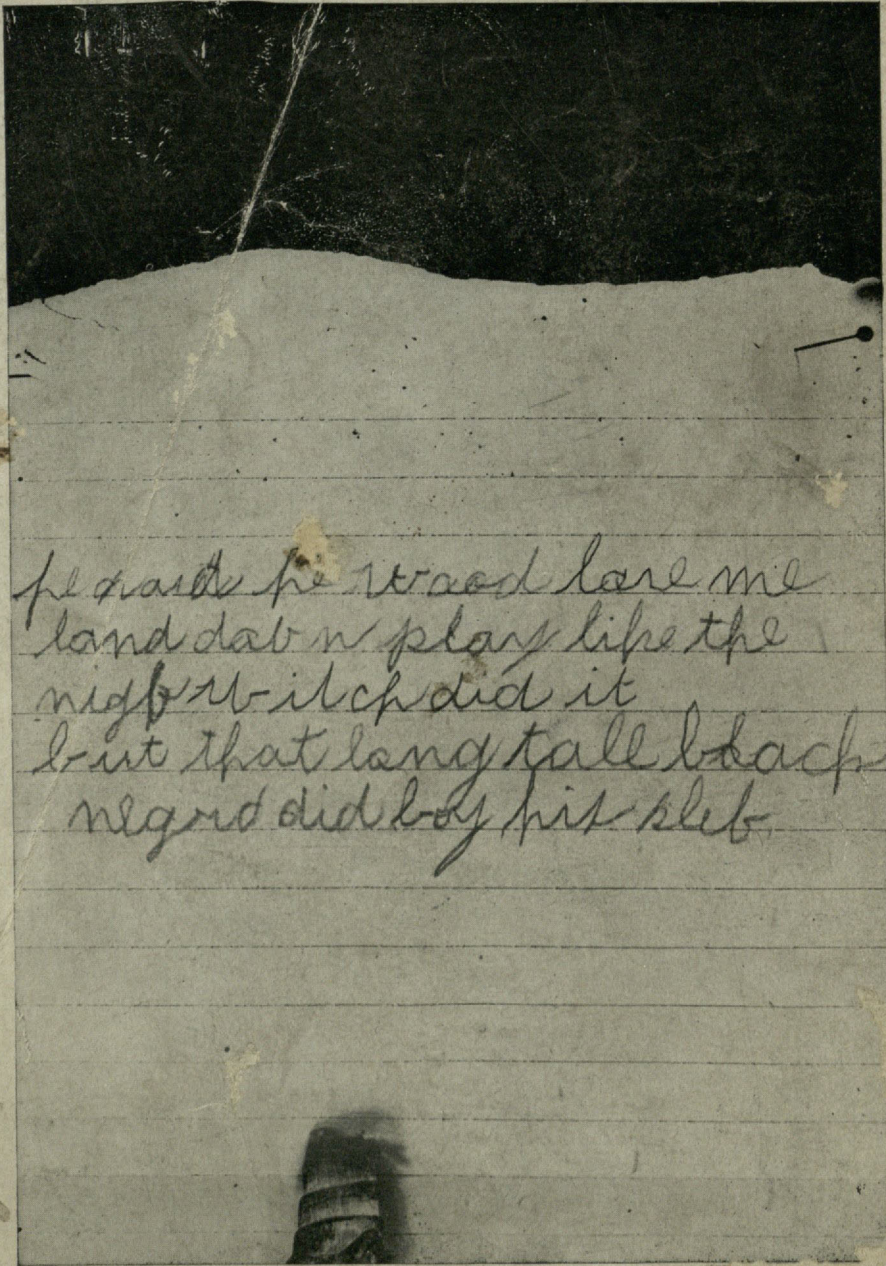
J.N.8

4/29/13

Second murder note written.

Conley says it was the first written.

The note on the front page was the first. Conley says it was the second.



he said he would have me
 land dab n play like the
 night witch did it
 but that long tall black
 negro did by his self