

everybody knows are incompetent.

The Court: Well, I sustain your objection.

Mr. Arnold: If the effort is made again, your Honor, I am going to move for a mistrial. No man can get a fair trial with such inuendoes and insinuations as these made against him.

The Court: Have you any further questions, Mr. Dorsey?

Mr. Dorsey: That is all I wanted to ask him. I will bring Gantt in to impeach him.

The Court: Well, I have ruled that all out.

Mr. Dorsey: Well, we will let your Honor rule on Gantt too.

The assertion by the solicitor that this witness did make the suggested complaints to Gantt, the insinuations involved in the questions of the solicitor that Frank had committed disgraceful and prejudicial acts with the witness and the final assertion of the solicitor when the Court ruled it out that he would introduce Gantt and let the Court rule on Gantt too, was highly prejudicial to the defendant. The Court erred in permitting the solicitor to make the insinuations and to indulge in the threat that he would let the Court rule on Gantt too, in the presence of the jury and without any rebuke on the part of the Court. The Court erred in not formerly withdrawing these insinuations and assertions from the jury and in not of his own motion severally rebuking the solicitor for his conduct. The mere ruling out of the testimony was not sufficient. Nothing but a severe rebuke to the Solicitor General would have taken from the jury the sting of the insinuations and threats of the solicitor.

34. Because, while Mrs. Freeman was on the stand, after testifying as to other things she testified that while she and Miss Hall, on April 26th, were at the restaurant immediately contiguous to the pencil factory, and after they had left the factory at 11: 45 o'clock A. M., and had had lunch, that Lemmie Quinn came in and stated that he had just been up to see Mr. Frank.

Upon motion of the solicitor this statement that he had been up to see Mr. Frank was ruled out, as hearsay.

This statement of Lemmie Quinn was a part of the res gestae and was not hearsay evidence and was material to the defendant's cause. Lemmie Quinn testified that he saw Mr. Frank in his office just before he went down to the restaurant and had the conver- 90: