

in so doing, committed error, for which a new trial should be granted.

70 (qqq) Because the Solicitor General, in his argument to the jury, stated, as follows: "The conduct of counsel in this case, as I stated, in refusing to cross examine these twenty young ladies, refutes effectively and absolutely that he had a good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking where those girls got their information, and why it was they said that this defendant was a man of bad character. Now, that is a common sense proposition; you'd know it whether it was in a book or not. I have already shown you that under the law, they had the right to go into that character, and you saw that on cross examination they dared not do it-----Whenever <sup>any</sup> body has evidence in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had; and their failure to introduce evidence is a circumstance against them. You don't need any law book to make you know that; that is true, because your common sense tells you that whenever a man can bring the evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel did not ask those hair-brained fanatics, as Mr. Arnold called them before they had ever gone on the stand-- girls whose appearance is as good as any they brought, girls that you know by their manner on the stand are speaking the truth, girls who were unimpeached and unimpeachable, the reason they didn't ask them? Why? They dared not do it. You know it; if it had never been put in the law books, you would know it."

This address of the Solicitor was made in the hearing, and in the presence of, the jury, without any protest or comment on the part of the Court.

The defendant made no objection to this argument at the time same was being had, for the reason that similar argument made by Mr. Hooper had been objected to by counsel, and their objection overruled. The objection made to the argument of Mr. Hooper was not here repeated, for the reason that the Court had stated, in the outset of the case <sup>132.</sup> that objection once noted in the record