about Frank?

A. No sir, I don't know her.

Q. Did you ever hear C. D. Duncan, talk about Frank?   Donegan

A. No sir.

Q. You never heard any of these factory people talk about him?

A, No sir.

The Court erred in permitting the Solicitor, although the witness denied hearing all of the remarks referred to, to say in the presence of the jury that he was not four-flushing, but that he was going to bring the witnesses there, thereby improperly saying to the jury that he had such witnesses and meant to bring them in.

The Court erred in not withdrawing this whole subject from the jury and in not rebuking the Solicitor General for injecting the questions in the case and asserting that he had witnesses to prove the things asked about.

These suggestions and intimations of the Solicitor General were exceedingly prejudicial to the defendant, and for making them he ought to have been severally rebuked by the Court, and failure of the Court to do so was cause for a new trial.

91. (1111) Because the court erred in charging the jury as follows:

" Is Leo M. Frank guilty? Are you satisfied on that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth.

The Court erred in putting the proposition of the defendant's guilt or innocence to the jury in this manner, because the effect of the same was to put the burden upon the defendant of establishing his plea of not guilty, and the further effect was to impress upon the jury that unless they believed that the defendant's plea of not guilty was the truth that they could not acquit. The tendency of this charge was to impress upon the jury that they were to consider only upon the one side as to whether they believed Leo M. Frank guilty or upon the other side they were to consider only the question of whether they believed his plea of not guilty, and there was no middle ground in the case, and movant says that the error in this charge is that it leaves entirely out of view the consideration of the third proposition which the

150.