

did not disclose the fact that Mrs. White saw the negro on April 26th, was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer.

24. Because, during the trial, and on August 6, 1913, pending the motion of defendant's counsel to rule out the testimony of the witness Conley tending to show acts of perversion on the part of the defendant and acts of immorality wholly disconnected with and disassociated from this crime. (Such evidence being set out and described in grounds 13 and 14 of this motion.)

The Court declined to rule out said testimony, and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the crowded court room wherein the trial was being had, by clapping of hands and by stamping of feet upon the floor.

The jury was not then in the same room wherein the trial was being had, but in an adjacent room not more than fifty feet from where the judge was sitting and not more than fifteen or twenty feet from portions of the crowd applauding, and so close to the crowd, in the opinion of the Court, as to probably hear the applauding.

Immediately upon said applauding the defendant's counsel moved the Court for a mistrial of the cause; and, upon the announcement of the Court that he would not grant a mistrial, moved the Court to clear the Court-room, so that other demonstrations could not be had.

The Court refused to grant a mistrial and declined to clear the court-room.

In refusing a mistrial and in declining to clear the court-room, the Court erred. The passion and prejudice of those in the crowded court-room were so much aroused against the defendant, as contended by counsel for the defendant, that he could not obtain a fair and impartial trial.

The Court, as movant contends, also erred in not clearing the court-room of the disorderly crowd, but left them in the court-room, where their very presence was a menace to the jury.

It is true that the Court did threaten that upon a repetition of such disorder he would clear the court-room, but such a threat, as movant contends, was wholly inadequate, as evidenced by the fact that during the same day of the trial, while the witness Harris was upon the stand, the crowd laughed jeeringly when Mr. Arnold, one of the defendant's counsel, objected to a comment of the solicitor, and that, too, in the presence of the jury.

And again, during the trial, when Mr. Arnold, one of the defendant's counsel, objected to a question asked, the following colloquy took place:

Mr. Arnold: "I object to that your Honor; that is, entering the orders on that book merely; that is not the question he is asking now at all.

The Court: "What is the question he is asking now?" (Referring to questions asked by the Solicitor-General.)

Mr. Arnold: "He is asking how long it took to do all this work connected with it." (Referring to work done by Frank the day of the murder.)