

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, that objection once noted in the record need not in similar instances be repeated, but that the Court would assume that similar objections had been made and overruled.

This argument of the Solicitor was not only illegal, but prejudicial to the defendant, in that he, in substance, urged upon the jury that a cross-examination of female witnesses for the State, who testified to Frank's bad character for lasciviousness, would, upon cross-examination, have testified as to specific acts of immorality against him.

71. Because the Court permitted the solicitor, over the objection of defendant's counsel, to argue before the jury that the wife of the defendant did not speedily visit him when he was first taken under arrest, and that her failure to do so showed a consciousness on her part that her husband was not innocent.

In addressing this question to the jury, the solicitor said: "Do you tell me that there lives a true wife, conscious of her husband's innocence, that would not have gone through snap-shotters, reporters, and everything else to have seen him? Frank said that his wife never went there because she was afraid that the snap-shotters would get her picture, because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman conscious of the rectitude and innocence of her husband who would not have gone through snap-shotters, reporters, and the advice of any rabbi under the sun—and you know it."

Defendant's counsel objected to this line of argument, when the same was being made, upon the ground that the conduct of his wife could in no sense be used as evidence of Frank's guilt, and that the solicitor had no right to argue as he did.

The Court declined to stop the argument, but permitted it to continue. The solicitor impassionately argued it to the jury—that Mrs. Frank's conduct in not visiting her husband was strong evidence of his guilt.

This argument was highly prejudicial to the defendant, and the Court erred in permitting it to be made and in not reprimanding the solicitor-general for the making of such an argument.

72. Because the Court permitted the solicitor-general, in arguing the relative value of the expert testimony delivered by the physicians called for the State and defense, to intimate that the defense, in calling its physicians,