

would be held under conditions very different from those which existed when the case was first tried. There was a mob surrounding the Court House then, court, counsel, and jury were influenced by the prevailing spirit of the community, for the danger of violence was so great that the militia was held in readiness for action, and it was felt that it would be unsafe to bring FRANK into the courtroom when the jury returned its verdict. Aside from the temper of the mob, it is not too much to say that the trial itself was a travesty of the forms of justice. The defense was inadequate, much evidence essential to a just conclusion was not presented, and FRANK did not have a fair chance to convince the jury of his innocence.

The whole country, outside of Georgia, has taken the view that it would be monstrous to send a man to execution after such a trial, and it has been the general feeling that in their own interest and for their own reputation the courts must find a way through the hedge of technicalities which barred the way to a new and just trial. Justice LAMAR's decision to grant his appeal is a complete vindication of the position taken by THE TIMES and generally by the press of the country that FRANK had never been fairly tried, that there were the gravest reasons for questioning the sufficiency of the evidence of his guilt, and that if Georgia would escape the indelible disgrace of sending a possibly or probably innocent man to his death, a new trial must be had.

#### FRANK'S APPEAL GRANTED.

All the States of the Union have seals, most of them have mottoes. The motto of the State of Georgia is "Wisdom, Justice, Moderation." It is peculiarly fortunate that to a citizen of the State of Georgia, Justice LAMAR of the Supreme Court, there has come the opportunity to call to the attention of the people of Georgia the principles of conduct embodied in their State motto, as to which recent events have given rise to the fear that they had forgotten it. It is not the prevailing belief that the Georgians have been wise or just or moderate in their attitude toward LEO M. FRANK, who was condemned to death in their State capital and whose appeal for a hearing by the full bench of the United States Supreme Court has just been granted by Justice LAMAR.

The application to Justice LAMAR was in the form of an appeal from the Federal Court in Georgia, Justice NEWMAN having refused a writ of habeas corpus, and having refused also to certify an appeal to the Supreme Court. In the court proceedings hitherto technicalities have blocked the way of FRANK's counsel in their efforts to secure a hearing upon the questions that constitute the real merit of the case—not the question of guilt or innocence, but the equally grave question whether FRANK's trial was a fair one, whether conviction was secured by due process of law. Justice LAMAR finds three grounds for his decision that there is probable cause for granting an appeal. He says that the Supreme Court of the United States has never determined whether the due process clause of the Federal Constitution guarantees the defendant's right to be present when the verdict is rendered; it has never passed upon the effect of the refusal of a new trial where the defendant did not make the fact of his absence from the courtroom the ground of the motion; and it has not passed upon the effect of its own refusal to grant a writ of error in a case where it was set up that the denial of the writ was based on the point that the motion was filed too late or at a time not authorized by the practice of the State courts. Each one of these points is vital to the interests of the condemned man, and the whole country will approve Justice LAMAR's decision that they constitute cause for an appeal.

Owing to the great number of cases which crowd the calendar of the Supreme Court the decision may be long deferred, but when it is given it will determine whether in the judgment of that bench FRANK had a fair trial. If it be found that a right guaranteed by the Constitution was denied to him it is to be hoped that there will be a new trial, and it may safely be assumed that a second trial