FRANK CASE APPEAL ARGUMENTS ENDED

Prosecutor Denies Defense's Charges of Disorder During the Trial.

DECISION IS RESERVED

Supreme Court Apparently Attaches Weight to the Theory of an Intimidated Jury.

Special to The New York Times.

WASHINGTON, Feb. 26.—Argument before the Supreme Court of the United States on the appeal of Leo M. Frank from the denial of a writ of habeas corpus by a Federal District Court came to an end this afternoon. Louis Marshall of New York concluded his speech for the defense and Attorney General Grice and Solicitor General Dorsey argued for the State of Georgia. Decision was reserved.

Questions which the Justices put to counsel yesterday seemed to indicate that the court attached more importance to the allegations of disorder during the trial, which might have influenced the jury through a sense of fear, than to the simple fact of Frank's absence from the courtroom when the verdict was rendered against him. Frank's counsel yesterday dwelt earnestly upon the disorders, asserting that they were without parallel in the history of American legal procedure.

The fact of the disorders, said Frank's counsel, was admitted. But today this was flatly denied by the representatives of the State. They insisted that there was no feeling against Frank except such as was developed in a "law-abiding community" by the evidence as it was gradually unfolded. The State's attorneys charged that counsel for the defense had added to the original statements concerning the disorders, and that those who were Frank's counsel at the time of the trial had attached less importance to the disorders which they had witnessed with their own eyes than counsel subsequently defending him.

Minimize Trial Disorders.

The State's representatives argued emphatically that the whole subject of alleged disorder has been passed upon by the Appellate Courts of Georgia, which had ample jurisdiction. Attorney General Grice quoted an opinion of the Supreme Court of George, in which the statement was made that the procedure at the trial was regarded as satisfactory at the time. Both the Attorney General and the Solicitor General insisted that counsel for the prisoner, in referring to such incidental disorders as occurred, omitted to say that the court promptly reproved the disturbers and forced a quiet continuation of the trial.

As Mr. Marshall was concluding his address the Chief Justice reminded him of a case in which a writ of habeas corpus had been sought for a prisoner who had served ten years in the penitentiary, and asked counsel if there was any distinction between that case and the pending appeal. The Chief Justice added that the similarity of the cases would indicate that any man under sentence in a State court could come to the supreme tribunal for a writ.

"I do not so consider it," said Mr. Marshall. "Here is a case involving a question of due process of law in which the judgment rendered is a nullity. It is a case where there is no dispute as to the facts."

Mr. Marshall added that if there could have been an appeal for the writ the day after the conviction there could also be an appeal ten years after judgment, if the trial was in itself illegal. He explained at some length why counsel representing the prisoner at the trial had not urged the alleged disorders as a reason for a new trial.

"Unfortunately, they did not believe this was the proper procedure. The Supreme Court of Georgia held that it was. The earlier decisions of Georgia courts convinced them that the proper procedure was a motion to set aside the verdict. In consequence of this we are caught like rats in a trap. Unless we have a remedy here we are helpless."

When Attorney General Grice took the floor Justice Hughes called his attention to the fact that in Frank's application for a new trial he did not mention his absence from the court room when the verdict was rendered. Mr. Grice argued, however, that the fact had not been advanced as a reason for a new trial.

Mr. Justice Holmes has already formally expressed his doubts as to Frank's having received a fair trial. Today, Mr. Justice Hughes questioned Mr. Grice closely as to the practice in Georgia. Mr. Grice read from the opinion of the Supreme Court of Georgia to support his contention that only two instances of disorder in the course of the trial occurred within the hearing of the Jury. He insisted that the court rebuked the disorderly spectators, threatened their exclusion and maintained good order throughout most of the trial.

"The action of the court," said the opinion quoted by Mr. Grice, "was deemed satisfactory at the time, and the orderly trial of the case was resumed without further question."

Flatly denying the allegation of the fact of disorder by counsel for Frank, Mr Grice said: "We take the position that on the record presented to the District Judge there is an absolute denial of these allegations.

"There was no coercion of the prisoner," said the Attorney General, referring to Frank's absence from the court room when the verdict was rendered. "It was simply the case of a kind-hearted Judge suggesting to the counsel that their client remain absent. There was no public prejudice against the defendant at the opening of the trial. Such feeling as was aroused against him was aroused by the character of the evidence as the trial proceeded."

Solicitor Dorsey closed the case for the State. At the request of the court he gave the complete chronology of events, and then went on to point out what he regarded as enlargements by counsel for Frank of their original statements regarding disorder in court. The only explanation for this, he said, was that counsel representing Frank during the trial had since given way to other counsel. It was the trial counsel that attached the less importance to the alleged disorder.

"Not in a single instance," said Mr. Dorsey, "was there an outcry against Frank."

As to Fear of Mob Violence.

Chief Justice White asked if there was anything in the record of the original motion for a new trial suggesting that fear of mob violence had any influence on the trial Judge.

"Not a word," replied Mr. Dorsey. "In that early procedure reference was made to the effect of fear on the jury, not on the Judge. The Judge was not mentioned in this connection until the procedure eight months later. As to the influence of fear on the jury, as a matter of fact the record shows that the jury was not in the jury room at the time of the disorder referred to by defendant's counsel as plainly audible in the jury room. Counsel for the defense omitted to state that every time the court's attention was called to the disorder the crowd was cautioned, and the Sheriff was ordered to move the crowd back. Under the Georgia Constitution the crowd could not be excluded."

The New York Times
Published: February 27, 1915