

LEO FRANK OPENS NEW COURT FIGHT

Counsel Appeals to Federal Judge Newman for Writ of Habeas Corpus, Charging Client Is Illegally Held.

Charging that he is being unjustly and illegally held in imprisonment by the state of Georgia, Leo M. Frank yesterday fired his first gun in his last desperate fight to save his life when counsel petitioned for a writ of habeas corpus to Judge W. T. Newman, of the federal bench. He gives nine reasons why he should be freed.

The petition was not given a hearing at the time, however, on account of the absence of Solicitor Hugh M. Dorsey, who was detained by a trial at the courthouse. The argument will be heard at 10 o'clock Saturday morning.

This new move will again carry the noted Frank case into the United States supreme court at Washington. In event Judge Newman grants the writ, the state of Georgia is entitled to appeal to the Washington court. If he declines Frank has the right to appeal to Washington.

Grice Aids Dorsey.

Attorney General Warren A. Grice is automatically brought into the present fight. He was supplied with a copy of Frank's petition Thursday afternoon, and has begun to actively aid the solicitor general. Frank's petition is a voluminous document, setting forth a history of the case, and averring that he is entitled to freedom because of "his conviction without due process of law."

In the second assertion of his petition he quotes thusly from the first section of the fourteenth amendment of the constitution of the United States:

"My aforesaid imprisonment is wholly without the authority and contrary to the law, and in violation of my rights as a citizen of the United States, and particularly by section 1 of the fourteenth amendment of the constitution, which provides that no state shall deprive any person of life, liberty or property without due process of law, or deny to him the equal protection of law, the protection of which I expressly invoke."

Gives Nine Reasons.

His nine reasons are:

(1) The reception, in my absence, of the verdict convicting me of the crime tended to deprive me of my life and liberty without due process of law, within the meaning of the fourteenth amendment to the constitution.

(2) I had the right to be present at every stage of my trial, including the reception of the verdict, the polling of the jury and the discharge of the jury, this right being a fundamental right essential to the due process of law.

(3) My involuntary absence at the time of the reception of the verdict and the polling of the jury deprived me of the opportunity to be heard, which constitutes an essential prerequisite to the due process of law.

(4) This opportunity to be heard included the right to be brought face to face with the jury at the time of the rendition of the verdict and the polling of the jury.

Consent a Nullity.

(5) My counsel, having had no express or implied authority from me to waive my presence at the time of the rendition of the verdict, and, it being in any event beyond my constitutional power to give them such authority, their consent to the reception of the verdict in my absence was a nullity.

(6) Since neither I nor my counsel could expressly waive my right to be present, that right could not be waived by implication or in consequence of any pretended ratification by me or acquiescence on my part in any action taken by my counsel.

(7) My involuntary absence at the reception of the verdict, constituting, as it did, an infraction of due process of law, incapable of being waived, directly or indirectly, expressly or impliedly, before or after the rendition of the verdict, the failure to raise the jurisdictional question on my motion for a new trial did not deprive me of my constitutional right to attack as a nullity the verdict rendered against me and the judgment based thereon.

(8) My trial did not proceed in accordance with the orderly processes of the law essential to a fair and impartial trial, because dominated by a mob which was hostile to me, and whose conduct intimidated the court and jury and unduly influenced them and neutralized and overpowered their judicial functions, and, for that reason, also, I was deprived of due process of law and of the equal protection of the law, within the meaning of the fourteenth amendment of the constitution.

Asks Writ of Habeas Corpus.

(9) "Wherefore," his petition concludes, "I pray that a writ of habeas corpus may issue, directed to C. Wheeler Mangum, sheriff of Fulton county, Georgia, and to each and all of his deputies, requiring him and them to bring me and have me before this court at a time to be set by this court determined, together with the true sense of my detention, to the end that due inquiry may be had in the premises and that I may be relieved from my said unlawful imprisonment and detention.

Frank's petition likewise contains a description of the crowds that frequented the court room and territory during his trial, and especially upon the day of the verdict. "The court room was constantly crowded," he declares, "and sentiment seemed greatly against me. Considerable crowds gathered in the streets and alley and the noises that emanated from the crowds could be heard in the court room.

"These crowds were bolsterous. Sev-

eral times during the trial the crowd in the court room and outside of the court house applauded in a manner audible to both the judge and jury, whenever the state scored a point. The crowds outside cheered, shouted and hurraed, while the crowd inside evinced its feelings by applause and other demonstrations.

"The jury, in going to and from the court room each day, depended upon passageways made for them by officers through the crowds. The jury box, which was occupied by the jury, was enclosed by the crowd, sitting and standing in such close proximity to it that whispers of the crowd could be heard during a part of the trial."

Frank's Lawyers Confident.

Attorneys for Frank feel confident in this new move. It will serve unquestionably as a means of delaying the scheduled execution on January 22, 1915. It will be carried into the United States supreme court with the same rapidity that marked the appeal that was unsuccessfully made two weeks ago.