VERDICT IS VOID, DECLARE LAWYERS FOR LEO M. FRANK

John L. Tye Stresses Advantages to the Defendant in Being Present When a Verdict Is Read.

ASSERTS THAT JURORS MIGHT HAVE CHANGED

Peeples Scores Mobs as Cowardly—Says That It Would Have Been Easy for Frank to Be Present.

"We are attacking this verdict as being void," said Attorney John L. Tye yesterday afternoon before Judge Ben Hill in the arguments which followed Solicitor Dorsey's move to demur the motion to set aside the verdict of guilty in the Frank case.

"It is not an irregularity, not a discrepancy," he continued. "It is a void verdict. This is a constitutional issue. The right of a man to be present at the time the verdict is delivered against him is not trifling nor frivolous. It is a constitutional guarantee that must be fully observed if we are to have law and order in our land."

At the opening of the proceedings Friday morning, Solicitor Dorsey moved to demur to the motion to set aside the verdict which had been filed by John L. Tye, of the law firm of Tye, Peeples & Jordan. His argument occupied all of the morning session, and lasted until 3 o'clock in the afternoon.

Cites Legal Authorities.

Mr. Dorsey cited volume after volume of legal authority bearing on his argument. Speaking from behind a barricade of law books, he kept a number of assistants constantly bringing new volumes and carrying others away.

When the hearing adjourned at 5 o'clock in the afternoon two arguments had been heard and a third was in progress. The argument of Henry C. Peeples, of counsel for the defense, will be resumed at 10 o'clock this morning. Most of the early part of his speech had been devoted to citations from legal records.

Mr. Dorsey dwelt at length upon the decision in the case of the State of Georgia v. Cawthorne, which, he asserted, was similar in numerous respects to the Frank case, Cawthorne having been absent from the courtroom at the time the verdict was rendered.

He declared that Judge Hill's decision in the Lyons case, which has created widespread speculation since the present move to free Frank by setting aside the verdict, did not bear upon the Frank case.

He had been assured earlier in the morning that Judge Hill would not stand on decisions rendered by him in the appellate court, which had conflicted with verdicts or judgments handed down by the supreme court.

Judge Hill, in the case of Lyons v. the State, wrote explicitly as a judge of the court of appeals that the presence of a prisoner at the reception of a verdict in a felony trial may not be waived except by his own express authority.

Violation of Pledges Charged.

Mr. Dorsey accused Frank's attorneys of violating a pledge in allowing the question of waivure of presence to be brought into their fight to free the convicted man. He made capital of the delay in bringing the waivure into issue, and declared that the move was nothing short of a technicality.

"It has been decreed," said Dorsey, "that the defendant is entitled to waive his presence either from jail or while on bail. When Frank stood up on August 26 and Judge Roan asked if he had anything to show why sentence of death should not be passed, he said nothing about this waivure.

"He said nothing about it at the motion for a new trial; at the supreme court, or at the other death sentencing. It doesn't come up until this late day. It is nothing but trifling with the courts. In conclusion, I would refer your honor to your own decision in the Miller case, in which you declared that no writ of error was proper unless on some phase that has caused injury to the accused."

With these final words, the solicitor resumed his seat. Attorney Tye began his argument with a reply to Mr. Dorsey's remarks upon the delay of the motion to set aside, and an explanation of counsel's action in this respect—likewise, a defense of the issue.

"This motion is not technical in character," he averred. "It is founded on a constitutional right guaranteed by the constitution of the state of Georgia and of the United States. It is not an experiment; it is not trifling with the courts. It is merely an attempt to restore the personal rights and privilges that are due every American citizen.

Three Years Allowed.

"Three years is the statutory time allowed to file a motion of this character. It is according to the common law and practice. A motion may be properly made at any time within these legal limitations. It is up up you to decide upon the merits in the motion. The delay of time is insignificant.

"The right is inviolate for an accused man to face the jurors and hear them say whether or not they stick by their verdict. It is based on human nature. There is an element of mental telepathy that enters into it. There is no telling what a juror is likely to do when he gazes fairly and unblinkingly into the eyes of the accused man.

"At least one man—unless he be firm in his decision—is likely to change. I know of a case recorded by Judge Bleckley—the case of the State v. Nolan—where eleven jurors stood pat on their verdict, but one man refused. A second trial was granted, and the prisoner was finally exonerated.

"Little did Judge Roan realize that, when he acceded to the waivure of Frank's presence, he was denying Frank one of the most important guarantees of constitutional rights and

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"VERDICT IS VOID," SAY FRANK LAWYERS

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privilege. Georgia shouldn't be bloodthirsty. It should be glad to give all of a man's right to him. If Georgia isn't, I'm sure the supreme court of America will be.

"Had Leo Frank been in the courtroom at the time of the verdict, I do not doubt but that one of the twelve jurors would have recanted.

Must Be Properly Convicted.

"Why is it that the laws demand a man's presence in the courtroom at every stage of his trial? It is to give him every advantage possible. Good government and society demand that if Leo Frank's convicted, he must be properly convicted, and not illegally.

"If ever a case in criminal procedure shows the importance of the fundamental right for an accused man to look his tryors in the face at the time of the verdict, it is this particular case. There is not a single authority that holds an attorney has the right to waive a defendant's presence—especially in capital cases.

"It is better that 999 guilty men escape than Georgia should illegally take the life of one innocent man. Therefore, we contend that the verdict in the Frank case is void. Look at the picture of the unrestrained crowds, surging around the coutrroom, crying for a man's life. The situation was so perilous that the judge and counsel advised that Frank be not brought to the place.

"Tell me, is a trial under such conditions fair and impartial? Frank wasn't responsible for such circumstances. It was the court's own action in denying him the legal right of appearing in the courtroom. He was helpless. I can't blame Judge Roan, however, for he, like all others, felt the keen sense of peril.

Did Not Get Rights.

"The court, in Frank's case, made it impossible for him to get his rights In the state constitution there is a clause to the effect that the accused has the inherent right to be tried by a jury, and that he shall be present at all stages of the proceedings, and that if he is not, the verdict is void.

"I am striving at my best to impress the importance of this motion. It is by far more momentous than the motion for a new trial."

At this juncture the speaker was interrupted by Judge Hill:

"Shouldn't you have filed the motion to upset the verdict in place of the motion for a new trial?"

Mr. Tye answered:

"We have three years in which to file the motion to set aside the verdict. There can be no possible complaint against our position in standing on our legal right. What would have been the advantage in filing the motion at that time? The state has not suffered, one way or the other.

"I think, your honor, that the clearest and most expeditious way to get this matter up to the supreme court is on this demurrer. It is nothing short of a clear-cut proposition of law and ethics."

During course of his argument, Mr. Tye had cited many law decisions. He was followed by Attorney Henry C. Peeples, who began his argument by law citations.

Refer to Supreme Court.

"If the court has a reasonable doubt regarding this matter," he said in part, "it is just and proper that it be referred to the supreme court. A reasonable doubt should always be decided in favor of the accused. There has been entirely too much talk of trifling with the courts, and of making flimsy, technical points. This is a substantial point that deals with one of the most important phases of modern justice. I want to clear it of all this cloud.

"There isn't any other case in Georgia's history like this one. It stands in a class entirely to itself."

In paying his respects to the crowds at the courthouse during the trial, Mr. Peeples had this to say:

"There is nothing so cowardly as the mob spirit. It would have been an easy matter for Frank to have been present at the time the verdict was delivered. The officers could have handled the situation effectively. There is nothing so brutal, yet so cowardly, in a crisis as a mob."

His address was discontinued at 5 o'clock.

Attorneys Reuben Arnold and Luther Z. Rosser appeared before Judge Hill at 10 o'clock in the morning, but not in the capacity of representing the convicted man. They had been subpoenaed by the state, but were released shortly before noon.