

# FRANK PLEA FAILS; WILL TAKE APPEAL

## Judge Hill Denies the Atlanta Prisoner's Application for a New Trial.

### TO GO TO SUPREME COURT

#### Jurist Reaches Decision With- out Even Hearing Argu- ments from the Prosecutor.

#### STATE'S METHODS ASSAILED

#### Next Move Will Be Fight to Set

#### Aside Verdict—Frank Not Sur- prised by Court's Action.

*Special to The New York Times.*

ATLANTA, Ga., May 6.—Without hearing arguments from Solicitor Dorsey, Judge Ben Hill this afternoon overruled the extraordinary motion for a new trial for Leo M. Frank at the conclusion of the address of Attorney Reuben R. Arnold. Judge Hill announced that he would grant a bill of exceptions by which the case could be taken to the Supreme Court, and added that in the event of an appeal he would write an opinion on the case. An appeal will be taken at once.

A reporter carried the news to Frank in his cell in the tower.

"What do you think of it?" asked the reporter.

"I had expected that action," said the prisoner. "I have nothing to say."

Frank did not seem particularly discouraged. His wife was with him at the time.

The hearing on the motion to set aside the verdict on the ground that Frank was deprived of his constitutional rights in not being brought into the courtroom when the verdict was rendered will be held on Saturday morning.

Attorneys Rosser and Arnold in their argument for the extraordinary motion bitterly denounced the methods of Solicitor Dorsey and also the witnesses for the State.

"Why you could search the chain-gangs, prisons, and penitentiaries over the nation and you wouldn't find a more choice set of crooks than those with whom my friend Dorsey convicted Frank," said Mr. Arnold. "If anything like the conviction of Frank ever occurred outside of Russia I have never heard of it."

Arnold said he did not believe there was any perversion in the case on Frank's part or on Conley's.

#### Expect Speedy Verdict.

Harry A. Alexander, representing Tye, Peeples & Jordan, asked Judge Hill to withhold his ruling on the extraordinary motion until they could appear before him and show cause why it should be withheld until after the motion to set aside the verdict had been submitted and decided.

Judge Hill refused to do this, saying that the two motions had no connection and that there was no reason to withhold his judgment. A comparatively speedy decision on the appeal may be expected from the Supreme Court.

It is not likely that Frank will be re-sentenced for some time, because the motion to set aside the verdict, in the event that the appeal on the extraordinary motion fails, will have a longer course before it than any of the previous motions made by the lawyers for Frank.

The appeal failing, the motion to set aside is destined to pass through the court of Judge Hill, and, if denied there, to pass on to the Supreme Court of Georgia, whence, if again denied, it will be taken on to the Supreme Court of the United States.

While it is general practice to hurry motions of the sort in the courts, in the Frank case it is the general opinion that their consideration will require several months before both are settled.

#### Warrant Against Epps.

A development in the case to-day was the issuance of a warrant against George Epps, the newsboy witness, by B. Bernard, a South Pryor Street merchant, who was accused by Epps of participation in the boy's alleged abduction to Birmingham, where he signed a recanting affidavit for the defense.

Bernard denies Epps's charge, and asserts that he will prosecute the boy vigorously. The warrant charges perjury. Charges of criminal libel, it is said, are also likely to be brought against the youth. Bernard was identified by Epps on Monday as one of three men who took him to Birmingham during the early part of the year.

Striking at the weaker links of the State's chain of circumstantial evidence against Frank, Luther Z. Rosser and R. R. Arnold, made impressive arguments before Judge Hill in behalf of the motion for a new trial.

Attorney Rosser, through the newly discovered evidence bearing on Dr. H. F. Harris's comparison of the hair of Mary Phagan and that found on the lathe on the second floor of the pencil factory, argued at length against the State's contention that the hair was from the head of Mary Phagan.

Rosser assailed Dr. Harris, saying:

"Dr. Harris had examined the hair found on the lathe, under a microscope, and had compared it with the hair taken from Mary Phagan's head. He had a better opportunity than anybody on earth to know whether that was the little girl's hair.

"When Harris was on the stand he knew that he had compared the hair. He is a man who claims to be skilled in science. In making the autopsy on Mary Phagan's body he claimed to have used the best microscope in the world.

"I don't want to criticize Dr. Harris too severely, but I submit, your Honor, that in the evidence given by him at the trial, and in his subsequent affidavit, there never was such evasion. He could have given Dickens's 'Artful Dodger' cards and spades and beat him blind. There never was such a sealed-up witness. And with the facts before you, I want to ask, could it be honest dealing?"

Mr. Rosser charged that the power of punishment that rested in the hand of the Solicitor inspired fear in the hearts of witnesses who had told false stories

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on the witness stand, and that it was this fear which impelled them to recant their recantations when confronted with the prospects of prosecution.

Mr. Rosser defended the agents of the defense who had gathered the evidence presented in the extraordinary motion, and referred to numerous affidavits supporting the defense. He assailed the city detectives who had been employed on the case and jocularly remarked that, from the number of Headquarters men working with Dorsey, it was no wonder that the City of Atlanta was suffering from a crime wave.

## State's Witnesses Assailed.

Mr. Arnold opened with a denunciation of Solicitor Dorsey's methods and the witnesses for the State. He said:

"Nothing could have been more unfortunate to the community than the Mary Phagan tragedy. No punishment can be too severe for the guilty. The original tragedy, though, was no more horrible than the trial of the man who was convicted.

"If your Honor will look at the trial record you will see that the State's main witnesses were dreadful criminals—Albert McKnight, Jim Conley, C. R. Dalton, J. E. Duffy, and George Epps. They are the five men on whom conviction rested almost exclusively. And what a lot they are. Their pasts were submerged in secrecy at the time of the trial.

"The jury was forced to take them purely at their face value. But now the light has been thrown on each of them. Developments in our retrial motion have thrown a flood of lumiance upon their viciousness and the careers of crime they have led. And this revelation will produce an entirely new effect in the new trial.

"Furthermore, nearly all the counter-evidence of the State revolves around these men. The perjuries committed by them and others of their ilk was enough to sicken any man. Whether or not their original testimony was correct, it has been shown that they are wholly unworthy of belief.

Mr. Arnold then took up the argument. "God alone knows the truth about these recanting witnesses. They seem to have stories to fit any necessity. These confessed perjurers are responsible for the conviction of Leo M. Frank. If not, then he was convicted on no evidence at all. Why, you could search the chain gangs, prisons, and penitentiaries over the nation and you wouldn't find a more choice set of crooks than those with whom my friend Dorsey convicted Frank.

"I have never seen such depravity in mankind as has been developed in these witnesses and in the entire case. It has forced me to believe in utter depravity. If anything ever occurred outside of Russia like the conviction of Leo Frank I have never heard of it."

Following his attack upon the various witnesses who had repudiated their testimony time and again, Mr. Arnold mentioned the Ragsdale episode, saying that Ragsdale's lie was insignificant in comparison with the lie told on the witness stand by Jim Conley.

"There was where Dorsey had an excellent chance to indict witnesses," he said. "Conley admitted on three distinct occasions that he had perjured himself. Dorsey had an excellent opportunity then and at other times to do a little indicting of men in his own camp.

"We were justified in putting in Ragsdale's affidavit, because he was a minister of good position, connected with a respectable church, and vouched for by the Rev. John E. White. If he told a lie, it is only an addition to the thousands that have been told in the Frank case.

"There has been nothing unclean in our methods. We have sought nothing but the truth, and our constant instructions have been to touch nothing but the truth. But, bless you, when we get the truth, the detectives take it away

from us. In time, God will reveal it. It may be after Frank is hanged, but it will be revealed. That can be depended upon."

At this point of his address Mr. Arnold took up what he designated as two outstanding weak points in the State's chain of evidence, which, he declared, had been highly instrumental in convicting Frank. They were the hair found upon the lathing machine and the blood spots.

"First of all," he said, "we'll exclude the hair, because Dr. Harris, it has been shown, has said that it was not Mary Phagan's hair. The blood spots were chipped up and examined by a man who was the State's witness, Dr. Claude Smith. He found one blood corpuscle to the lot, and he stated that it could have been the blood of a rat or a mosquito which had sucked human flesh. Also, he stated that the blood could have been on the floor one or four years or more.

"All this practically eliminates the State's theory that Mary Phagan was murdered on the second floor. And, certainly, it was absolutely necessary for the crime to have been committed there for Frank to have been guilty."

Mr. Arnold said that Conley first brought the perversion charge into the case at the trial.

"I believe all of this perversion talk is rot," said he. "I don't believe there has been any perversion in the case on the part of Conley or of Frank."

Mr. Arnold then took up the Becker note proposition, remarking again that the hand that wrote the notes killed the girl. He submitted a photograph of the notes, furnished by the solicitor—not the one used by the defense—to the court, and asked him to examine the number on the order blank.

"That is No. 1,018," he said. "That is one thing in this case that they won't to drive me away from, although I will admit that if these detectives started to dispute the fact that this table is here I might begin to believe that it has disappeared in thin air."

Judge Hill looked at the photograph of the note for a moment and said:

"That looks like 1,018 to me."

"It is altogether probable that Chambers, Gantt, and others went through the basement looking for trash and overlooked these carbon copies of the order blanks," said Mr. Arnold. "It is not to be assumed that they found all of the scraps of paper. There has never been any pretense that the whole basement was ever cleaned up before this tragedy. All they say is that the main trash pile was burned.

"Conley is an habitual note writer. That has been demonstrated. At first he denied he could write, and then, when he could deny it no longer, he admitted he could write, but said all he could write was what somebody else told him.

"Aren't these notes important enough to justify another investigation? For weeks after the murder everybody said the writer of the note committed the crime. But that was before the case had been worked up against Frank. It was before they were on Frank's heels. When they had pushed the case so far they were afraid to change about.

"I am going to ask you to read these notes written in jail by Conley to Anna Maud Carter. They are unutterably vile.

"The original tragedy was horrible,

but it was not more deplorable than the trial."

Mr. Arnold then described Conley's character as "bestial."

## Thinks Burns was Mistaken.

"Mr. Burns, after reading those jail notes, declared he was of the opinion that Conley was a pervert. I give Mr. Burns full credit for honesty and sincerity. It may be that he does not thoroughly understand the negro nature, and that Conley isn't a pervert, but I think to call him a pervert is to pay him a compliment.

"Conley admitted in his affidavit that he knew Anna Maud Carter. I believe she has told the truth about Conley's relations with her. The fact is not denied that she knew Conley, and that she exchanged notes with him, and the truth of her affidavit is strengthened by the fact that Conley in his own affidavit does not deny that he wrote the notes to her."

Mr. Arnold compared the jail notes with the murder notes, and the murder notes with the evidence given by Conley on the witness stand. He pointed out numerous similarities in the use of words and in phrasing. He said that instead of there having been two murder notes there was one murder note which was written on two pieces of paper.

"They say," said Mr. Arnold, "that the murder note was Frank's conception and Conley's execution. I contend in the light of these jail notes and the similarity of words and phrases used by Conley on the witness stand with the words and phrases in the murder note, that it was Conley's conception and Conley's execution.

"I am limiting my argument to three physical facts—the carbon copy of the order blanks, which was never in Frank's office nor on the second floor; the hair which Dr. Harris declared not to have been Mary Phagan's hair, and the subsequent notes written in jail by Conley. I am doing this because I think they come squarely and genuinely within the law for an extraordinary motion."

Mr. Arnold insisted that Conley's impulse was to write notes, that it would never have occurred to anybody else to write these jail notes.

"We have presented this case," he said, "under great difficulties. All of the facts brought out by us have been subjected to the closest scrutiny, and if any of them stands muster they should receive due consideration. We had to go to their camp to get Dr. Harris on the hair."

"Without the testimony of Ragsdale, Epps, and the others, shouldn't these three physical facts—the hair, the carbon copy of the order blank, and the subsequent notes written in jail by Conley—entitle Leo M. Frank to a new trial? Wouldn't these facts justify a jury in sweeping aside Conley's evidence?"

"Any fact we have shown has been subjected to the vilest and most merciless attacks. And, therefore, these facts which did stand muster certainly are meritorious of deep consideration. Your Honor, Leo M. Frank deserves a new trial. It is just that he be given one."