

Phagan Trial Will Be Great Legal Battle

By VERNON STILES.

One of the most spectacular battles in the legal history of Georgia is expected to open up tomorrow morning when the case of the State versus Leo M. Frank for murder is formally begun and the superintendent of the National Pencil factory goes on trial for the murder of little Mary Phagan, an employee whose dead and bruised body was found in the factory basement by police officers one bright Sunday morning in April.

Since that Sunday morning when the Constitution's exclusive extra appeared upon the streets, telling the simple story of the crime and of how New Lee, a negro night watchman, had called police headquarters at 3:15 o'clock that morning and informed the officers that he had found a dead body in the basement, Atlanta people and those from many other sections have been talking of almost nothing else.

Every bit of news, from the arrest of Lee, who is yet held, having been bound over, but never indicted by the grand jury, to the arrest of J. M. Gantt and of Arthur Mullinax, of Frank and finally of the negro sweeper, James Conley, has been seized upon with avidity.

The horror of the crime upon the little girl seemed to have impressed itself upon the people at large almost as strongly as it did upon those few who went to the basement that morning and saw the body as it lay there.

Various developments—the freeing of Gantt and Mullinax, the alleged confession of Conley to aiding Frank in disposing of the body, and the various other sensational affidavits which have been made public—have been eagerly seized upon by the public.

Great Legal Battle Over Frank.

Leo Frank is the only man at present under indictment for the crime, and while the various sides of the case have developed, some of the broadest lawyers in the country have been planning on one side his conviction and death on the gallows, while on the other side, his acquittal has been as industriously planned.

Leo Frank was arrested a few days after the crime, and, realizing the seriousness of the charge, he sought legal advice at once. His friends and relatives are persons of wealth and influence and legal talent of the highest order in the state has been employed to defend him from the hideous charge.

Luther Z. Rosser was first called and later Herbert Haas, a younger lawyer and one of less experience, of much legal ability, was selected to aid in the defense. Not satisfied, these men sought out the legal advice of another lawyer who is noted throughout the state for success in criminal cases, and Reuben Arnold joined forces with the defense.

Attorney Rosser, despite his legal reputation, has "hobbies," like any other human. Hobby No. 1, which is "lino man" would spell with "sp" if he knew the Redoubtable actor, is a hatred of having his pictures taken. He loves a camera like a bull does a red flag.

"Oh, I just hate pictures; never let 'em taken," he told The Constitution reporter who ventured to ask him to pose.

Hobby No. 2 pertains to a hatred of cravats, which nearly vies with that of pictures, and the other is a black case, that is as much a part of Mr. Rosser as is his legal ability. His dogged pertinacity in fighting a case.

The Constitution photographer, however, "snapped" one of Mr. Rosser on he was an "angel unaware," and might be mentioned that it was a bad thing for the photographer that Mr. Rosser was "unaware" at the time, for a story is going the rounds how he chased out of his office that came of his a photographer another paper who stuck his head the door and poked the machine at him.

John Luther Rosser and Reuben Arnold no man in Georgia are better known for successful criminal practice, except possibly John W. Moore, with his partner, J. A. Branch, successfully defended Mrs. Daley on the charge of shooting her husband, Eugene Grace, and later Mrs. Appellbaum on the charge of derling J. A. Appelbaum, her husband.

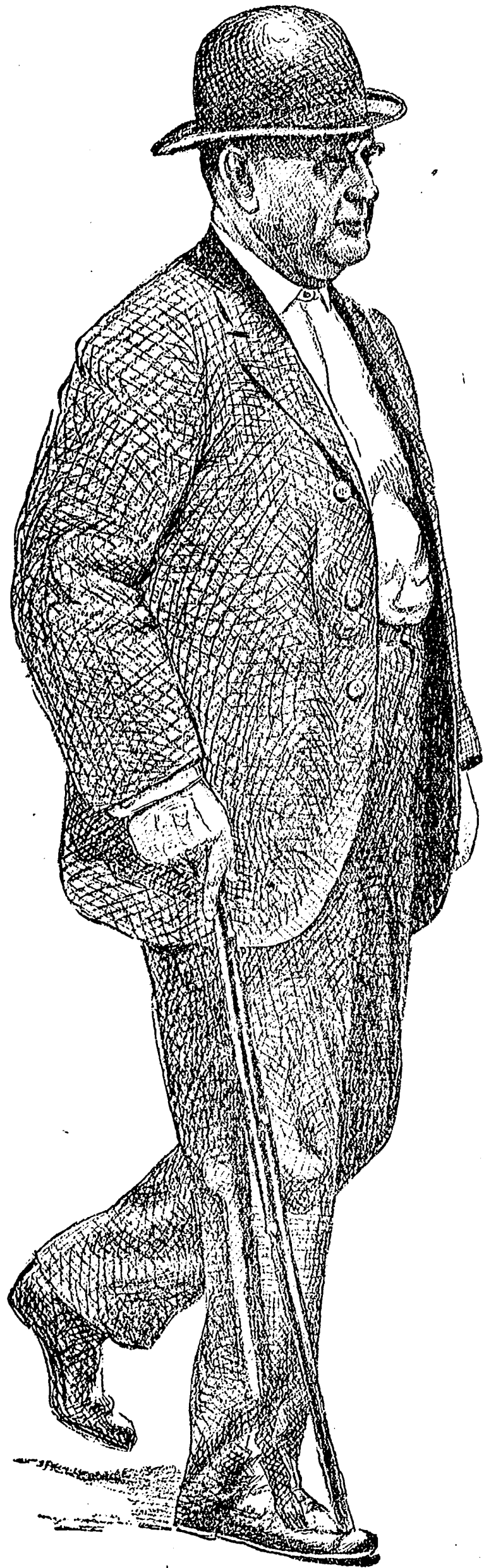
Once counsel was employed for Leo Frank, a persistent rumor has gone the rounds that John Moore was one of Frank's counsel. The rumor has been as persistently denied both by Moore and by the acknowledged counsel and the former has taken no notice of the case.

It is known to several persons that Mr. Moore was called from his office to that of Mr. Rosser, who, however, Rosser and Arnold were making a statement in which they stated the attitude taken by Solicitor General Hugh M. Dorsey in relation to the proposed indictment of Leo Frank, and it is generally understood that Mr. Moore has given his own knowledge of the defense. Dorsey Heads State's Side.

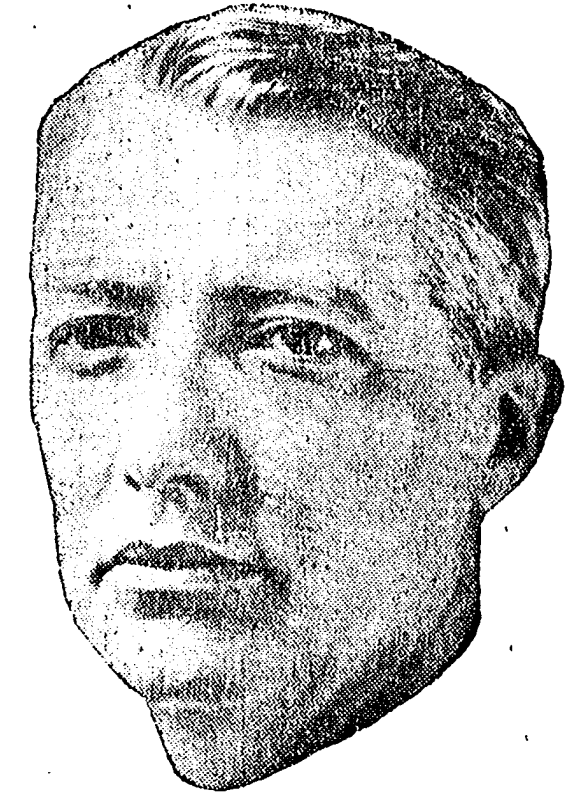
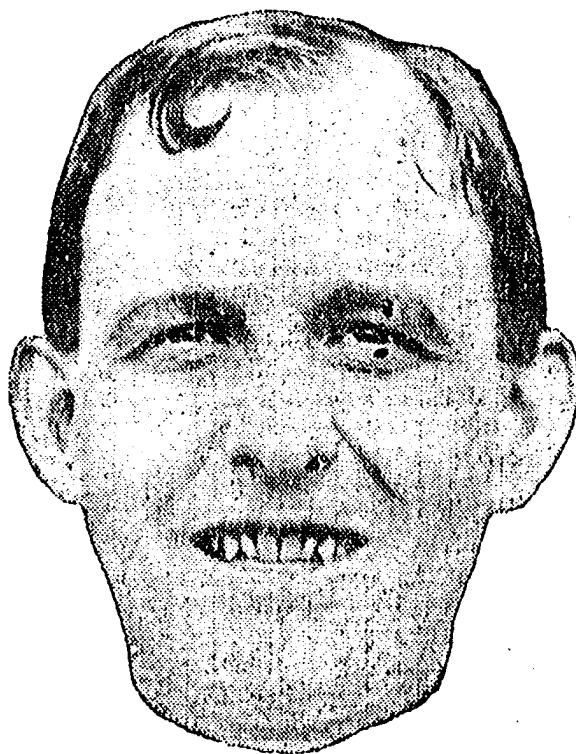
On the side of the state, Solicitor General Hugh M. Dorsey is the principal counsel and worked on the case from the fact that Leo Frank and New Lee were bound over by the coroner's jury. As solicitor general of the Superior court, Mr. Dorsey has a world of experience in criminal cases and before that time he had an enviable reputation for himself.

aid him in gathering together evidence desired from the mass of the city, and presenting it to the grand jury, he has two men to assist him, one is his assistant, E. A. Stephens, who has worked with him from the first, and Attorney Frank A. Hooper, a man who holds as high a reputation as any in Georgia for successful legal practice.

The case will be called tomorrow morning and at that time the mooted question of its postponement will be up. During the past week much has been said of the possibilities of a postponement. Solicitor General Dorsey has said that he wished the case to begin on the date set. At the same time, except Mr. Arnold, he declared that to try such a long



LUTHER Z. ROSSER, Who, with Reuben Arnold, represents Leo M. Frank.



Top row, left to right: Solicitor General Hugh Dorsey and Reuben Arnold, attorney for Frank. Bottom row: Frank A. Hooper, aiding prosecution, and Assistant Solicitor General E. A. Stephens.

case in the heated weather would be a terrific strain on all concerned. Judge Roan stated last week that if Monday proved as hot a day as was the Saturday a week ago when the heat wave reached its high water mark that he would be willing to postpone the case. The matter will be taken up in open court Monday.

Legal Giants to Meet in Court.

That a brilliant legal battle will be fought when the case opens is common knowledge to all who know the lawyers in the case, and tomorrow out of the many who seek to get a place in the courtroom there will be as many drawn by the desire to watch the way in which the counsel will handle the case as there will be those drawn by the innate morbidity in human nature which loves to watch the exercising trial of a man whose life hangs in the balance.

The trial to decide Frank's life is due to be held on the first floor of the old city hall building where, pending the completion of the new courthouse, a civil branch of the superior court sits. Ordinarily criminal cases are tried before Judge Roan on the fourth floor of the Throver building, temporarily used by several branches of the court, but owing to the low ceilings and to the lack of proper ventilation in this room, Judge Roan has announced that the place of trial will be changed.

A trial is necessarily a public affair, in order that decency and fairness may be guaranteed, and only in cases where public decency demands it are any persons excluded from the courtroom. Theoretically, everyone is entitled to attend the Frank trial, but on Monday morning it is expected that more people will be gathered outside the doors than can enter the rather

small room where the trial will be held.

Arrangements have been made by Deputy Sheriff Plennie Miner and his corps of assistants to allow the entry of those directly interested in the case, including the judge, the veniremen, lawyers, the principal and certain members of his family and the prosecutors and newspaper men actively engaged in reporting the case.

Great Crowd Expected. Seats have been prepared inside the railing around the judge's desk for all of the above with the exception of the veniremen and none of the spectators will be allowed inside this railing. In the other part of the room are ranged benches and the crowd will be allowed to sit in until these seats are taken. Then, on account of the heated term of the year and the desire to keep the air as pure as possible and not to cause disorder by too large a throng, the others will have to be excluded.

Inside the rail will be seated the lawyers and newspaper men and Leo Frank and his close relatives. Mrs. Frank, his mother, who has come all the way from her Brooklyn home to be with him, is expected to be at his side. His wife, too, who has daily visited him in the tower, will be with him during the trial.

When Leo Frank is brought to court it will be the first time that he has left the tower since May 8, when he was bound over by the coroner's jury, and it will be the first time that probably three-fourths of the spectators who have read of his case will have over seen him.

To many who will consider themselves fortunate as on one day or the other they secure a seat in the courtroom to hear the trial, there will be

many of the points of law governing the case that will be clouded and obscure.

Almost every piece of machinery has its hidden cogs and wheels which are never seen by the visitor who is taken through the factory and which would be unknown to the careless spectator who views the product manufactured, and so it is with a trial in law.

The wheels of justice grind openly and plainly apparently, but there are many fine parts that the lay mind does not understand and only the experts—the lawyers—skilled in the study of law—know of these points.

Some Legal Points.

The fact that Frank is under indictment today means to many minds that he is therefore guilty, and even those of education and high intelligence sometimes give this meaning to an indictment. In the eye of the law, Frank is an innocent man, as innocent as is the soul of little Mary Phagan, and before the law he will remain so until a jury of twelve men shall have heard all the evidence presented and then agreed unanimously that he is guilty.

The indictment of a man is merely the state's formal charge against him, and means that there is sufficient ground to suspect him of the guilt. A man is indicted by a body composed of from 18 to 23 of his fellow citizens, known as the grand jury, and who are chosen from the men who compose the veniremen for the trial jury. They are theoretically of a higher class of citizenship than the men who are on the trial juries.

A grand jury hearing is ex parte, that is, only one side is heard. When Solicitor Dorsey presented to the grand jury a bill of indictment against Frank, who had been bound over after an investigation by the coroner's jury, Frank had no chance to defend himself.

The question at issue was not whether or not he was guilty, but whether or not there was sufficient reason to suspect his guilt and to cause him to go to trial for the crime. The coroner's jury had charged "no bill."

Had the state, through its solicitor not been able to bring enough evidence to show that there was reason to suspect Frank, the jury would have returned a "no" bill and the matter would have presumably ended. However, at any other time that grand jury or a succeeding one might have reopened the case and either indicted or found a "no" bill.

Detectives Appear As Prosecutors. Frank was indicted and Detective Pat Campbell and John Starnes appear on the indictment as the prosecutors. In Georgia anyone may prosecute anyone for any crime and in criminal cases, unless some other person comes forward as formal prosecutor, it is customary to appoint one or more of the officers who have worked on the case as the prosecutor or prosecutors.

The indictment formally presented to the court contains the specific charge against the man indicted, giving in detail the state, county and city in which the crime was alleged to have been committed, the date and the name of the person injured. It bears the signature of the solicitor and of the veniremen and of the

witnesses who appeared before the grand jury to secure the indictment. It also bears the names of the grand jurors who returned the bill and when court convenes the counsel for the defendants enter upon it in writing the plea of the defendant.

Should the plea be "guilty," the judge will, after such investigation as he deems proper, impose sentence. In Frank's case the plea will be "not guilty," and in this case the finding of the grand jury and the plea of the defendant constitute the issue to be tried.

As a usual rule all of the witnesses to be used and the veniremen from whom the trial jury is to be drawn have been summoned to court by subpoena and the first move after the formal presentation by the solicitor of the bill of indictment and the plea of not guilty on the part of Frank will be for the solicitor to swear all of the witnesses in the case.

Swearing in Witnesses. "All witnesses in this case will please rise and be sworn," Solicitor Dorsey will announce and in stentorian tones Deputy Plennie Miner will repeat the order.

When the witnesses have arisen they will be asked to raise their right hands and swear to "tell the truth, the whole truth and nothing but the truth in the case of the state against Leo M. Frank."

In all important cases it is usual for both sides to desire that all witnesses be "put under the rule," which is a legal term meaning that they must be excluded from the courtroom until such time as they shall be needed to testify.

In the trial of Mrs. Appellbaum for the murder of her husband, Jerry A. Appellbaum, her young son, Claude Henderson, who was used as a witness, was not allowed to remain in court with his mother until he had been put upon the stand and had completed his testimony regarding the relationship between his mother and stepfather.

Following the swearing in of the witnesses, Clerk John H. Jones will call the names of the twelve men on the first jury panel. The names of the men from whom a trial jury of twelve is expected to be selected were drawn out last week by Judge J. T. Pendleton from among the names of 6,000 others. These men who constitute the ones from whom petit or trial juries are selected are chosen every two years from the voting population by commissioners appointed by a superior court judge. They are supposed to be the 6,000 highest class of citizens among the registered voters.

When the names of those expected to try Frank were picked out last week Judge Pendleton drew the names from the jury box, selecting by chance the names of 144 men and from these selecting in the same way 48 men who are divided into panels of twelve each. The panels, in the order in which the names were drawn out, were numbered first, second, third and fourth panels respectively, and it will be the names of the men constituting the first panel that Deputy Jones will call.

Selecting a Jury.

All of the 144 will have been served with subpoenas and unless prevented by providential action will be in court The twelve men on the first panel

will be requested to step into the jury box and be sworn.

Solicitor Dorsey will then administer the oath to each one by which they will swear to answer truthfully all questions pertaining to their fitness to try the case at issue.

The solicitor next questions each one to determine whether or not he is legally qualified to serve.

Should a venireman, as he is called, show by his answer to one of the questions that he is not legally fit to serve; his name is struck from the list and the solicitor states to the court: "Off for cause, your honor."

On the other hand, should he show by his answers that there is no legal reason why he should not serve, the solicitor states: "He is competent, your honor."

At this point begins the selection of the jury. When a venireman has shown by his sworn answers that he is qualified the real fight begins.

Theoretically the first twelve men whose names are drawn out would give Leo Frank a fair trial, but in a spirit of fairness the law gives both Frank and the state some leeway in the selection of the twelve men, "tried and true," who are to pass upon the question of his guilt or innocence.

In all felony cases in Georgia the defense may arbitrarily "strike" from the list 20 names and the state may in the same manner strike half that number.

Giving Defendant a Chance.

It may be that a man has been drawn upon that particular panel who bears an ancient grudge against Leo Frank. The cause of that grudge may have not been Frank's fault in any sense, and he may have the utmost confidence in the individual's integrity, but still the law recognizes that it would not be fair for that man to try Frank for a serious offense.

Frank may not be able to prove that to the court and the law provides for that. The man's name may be arbitrarily stricken off the list and he is then excused.

The same thing may be true regarding the relation of the potential juror with the state's side of the case, and in that case the solicitor would strike off the name arbitrarily and without giving a cause.

While each side may strike, the state is given the first chance to pass upon a possible juror and after the solicitor has declared a venireman competent to serve on the jury, he and his assistants consult among themselves as to the advisability of choosing him. While this is going on the defense is also at the same task, so that if the state accepts the man as a juror, they will know what to do with him.

Should the man prove acceptable to the state, the solicitor utters the formal: "Juror, look on prisoner; prisoner, look on juror."

Then the defense indicates its decision in regard to him and should the man prove acceptable to the defendant the leading counsel says: "You may be sworn."

In this case the juror passes into the juryroom where he waits until twelve men are selected and then all return to be formally sworn in.

Picking Jury a Fine Art. It is in their ability to pick jurors that many lawyers have laid the basis for their legal success. In many of the large law offices of Atlanta men

are employed who do nothing but aid the attorneys in selecting juries.

Some of these men are lawyers who have become so noted for this that they are more valuable in that way than in any other, and others are men who have never practiced law, but who come from walks of life where they have a wide acquaintance, and who have in addition to this made a study of the characteristics of various men.

The list of 144 men chosen by Judge Pendleton is not kept secret and before the case is opened the lawyers for both sides will have in their possession many facts as to the individual characteristics of each. The past history of these men will also be known and also their records in the past when serving upon juries.

Sometimes past knowledge of a venireman is not always complete and again it falls to aid the side which has it in possession. There is a story going the rounds of the Atlanta bar of a certain lawyer who in representing the defense was much gratified to note that the state had accepted as a juror a contractor who the year previous had built a house for him.

The relations between the contractor and the lawyer for the defense had been most pleasant and the lawyer was happy in the thought that this man would certainly listen favorably to him instead of to the other side. It was that same man who hung out for a conviction for twelve hours and caused the case to end in a mistrial.

"It will take at least two days to pick the jury," Reuben Arnold declared in open court when Frank's trial was postponed from June 30 to July 28, and it is known that both sides have made extensive preparations for this important task and will devote much time and thought to it.

When the entire 144 men have been called into the box, twelve at a time, and twelve men have not been chosen, other names may be drawn similarly from the jury box or the judge may order the sheriff to go out on the streets and gather in as many citizens as may be necessary to select from. These are known as talesmen, and must show that they are qualified as the others have done before they can be named as jurors.

State Will Open Trial.

The state, which is always the plaintiff in criminal cases, will then open the trial, either by the solicitor giving a short outline of the case before the court, or by the introduction of the first witness.

In case a postponement is asked by either side it may be given on a "legal showing," which is decided upon by the judge. The absence of a material witness, when he or she is shown to be material; the illness of leading counsel, or any cause which seems sufficient in the mind of the trial judge may constitute a "legal showing." This necessarily comes before the choosing of a jury.

The state as the case goes on will introduce its witnesses and evidence one at a time. The solicitor may ask no "leading" questions of the state's witnesses, as the lawyers for the defense may ask none of the witnesses they may introduce.

By "leading" questions is meant such questions as would suggest to the mind of the witness the answer desired. On the other hand, when the other side is cross-examining the witness the lawyer may ask any questions he deems fit, provided they are pertinent.

After the state has introduced all the witnesses it desires to and has submitted what it desires in the form of evidence that has been allowed, the state "closes," and the defense proceeds to bring forth its evidence and testimony in practically the same manner. Sometimes the defendant opens for the defense by giving his statement or version of the affair.

The defendant may give any or no statement, or as long or as short as he may desire, provided he sticks to matters that are adjudged pertinent to the case. He makes his statement not under oath and neither counsel for or against him may ask him a question or lead him unless he gives his consent to be cross-examined by the state, in which case the state's attorney may ask him whatsoever they will and he may answer what questions he sees fit to reply to.

The law says: "The defendant has the right to make to the court and jury such statement as he may deem proper in defense; it should not be under oath and shall have only such weight as the jury may see proper to give it. The jury may believe it in whole or in part; they may believe it in preference to the sworn testimony in the case."

A defendant in a felony case usually makes a statement, but it is exceedingly rare that he allows himself to be cross-examined.

Another feature of the case that lies with the defendant is the question of his character. Should Frank be openly known to be of the vilest character on record, no matter pertaining to this case or not, mentioned by the state, unless he first, either by testimony, or evidence or by his own statement, put his character in issue.

What Will Frank Do?

Should he put his character in issue he then lets down the bars and the state may attack it.

Should Frank do this and despite the attacks that the state might see fit to make, prove an unblemished reputation, this would not necessarily mean his acquittal.

The law, as explained by a leading Atlanta attorney, means by not allowing the prosecution to put character in evidence that a man is to be tried for one particular thing at a time, and also by not allowing good character of previous record to make an appeal, means that the same thing is too easy to get some one to swear something to a man's hurt and it is not in one case in a thousand that a defendant voluntarily puts his character in issue, no matter how pure and unblemished a reputation he may have.

While Leo Frank apparently has no cause to fear putting his character at issue, it is believed that there is not one chance in a hundred that he will do so.