

# ANOTHER STEP IN FRANK CASE WON BY STATE

## Demurrer of Solicitor Dorsey Upheld by Judge Hill. Motion to Set Aside Verdict Dismissed.

Within twenty days there will be still another phase of the Frank case before the supreme court, for Judge Ben Hill yesterday morning sustained Hugh Dorsey's demurrer to the motion of John L. Tye to upset the verdict and dismissed the motion without calling upon the solicitor for argument in rebuttal.

Judge Hill left the city last night for Florida, where he goes to spend a short pleasure trip. He will return before twenty days have elapsed and will certify to a bill of exceptions which will carry the motion to the supreme court.

The date of Leo Frank's execution is now indefinite. Sentence was suspended when Judge Hill issued the dismissing order Saturday. Attorneys John Tye and Henry Peeples, representing the convicted man, pleaded that the order suspending sentence be contained in the dismissing document.

A protest was made and won by Solicitor Dorsey. The suspension of sentence will be set apart from the order bearing on the verdict motion.

### Able Arguments.

"I think it is proper to say that the arguments have been extremely able," Judge Hill declared previously to dismissing the motion. "My mind has been clear as to my judgment. The true rule, I opine, as relating to the question of practice, was announced in the Lyons case.

"Dorsey has cited many supreme court decisions that were in conflict with the Lyons judgment. I think it proper in sustaining the demurrer that I should send this ruling of practice to the supreme court. My ruling will go to the supreme court with a view to harmonizing the decisions with the supreme court judgment."

The following was the order issued against the motion:

"Upon considering the above and foregoing demurrer and after argument, the same is hereby sustained on each and every ground, and the motion to set aside the verdict of said Leo M. Frank is dismissed, this June 6, 1914. BENJ. H. HILL,  
Judge of Superior Court."

In speaking to newspaper men of the conflict of supreme court decisions with his judgment in the Lyons case, which was similar to the Frank case, Judge Hill stated that he had ruled against his convictions in order that the supreme court might harmonize the Lyons case with their decisions.

Judge Hill will not, however, submit an opinion to the supreme court when he certifies to the bill of exceptions. He stated that all he cared to go to the court would be his ruling, which was all that would be necessary.

Twenty days' time is allowed for the matter to be carried into the supreme court. Judge Hill will return within twelve or fourteen days. In the meantime, no definite date will be fixed for the Frank hearing.

### Complete Victory for State.

Judge Hill's action was a complete victory for the state. According to

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the general impression, a strong element in his ruling was the lateness of the date in which the motion had been filed, which gave it the appearance of being entirely technical.

Many pointed questions were asked by the court concerning this delay. An opinion was even expressed that the move should have been made before the motion for a new trial on grounds of newly discovered evidence was filed.

The Lyons case, in which Judge Hill rendered a decision from the appellate bench in favor of the accused man whose presence had been waived in the courtroom, figured strongly in the fight to upset Frank's verdict.

Many legal authorities were exhausted by Attorney Peeples in his address, which lasted until 11 o'clock Saturday morning. He cited a wealth of decisions similar to the Frank case, many of which involved the constitutional rights of the accused man.

### **Score Action of Court.**

The action of the court in permitting Frank to remain absent at the time the verdict was brought in was scored by Frank's attorneys. It was declared that had Frank announced in the courtroom that he would waive his presence, that it would have been unconstitutional deprivation of his legal rights.

The strongest fight of the defense will now be centered around the effort to annul the verdict. From the supreme court of Georgia it will be waged in the supreme court of the United States.

One angle of the Frank case is already pending in the state supreme court. The motion extraordinary for a new trial on grounds of new evidence was sent up some time ago, after having been denied by Judge Hill.