

LAST APPEAL MADE FOR LEO M. FRANK

Hearing Before the Supreme Court Monday Exhausted Resources of Defense So Far as State Courts Go.

The assertion that if Leo Frank had been aware of the waiver of his presence in the courtroom at the time the verdict was brought in, he would have strongly opposed it and insisted upon facing the twelve jurors who convicted him, was made during the argument of the motion to upset the verdict before the supreme court Monday morning.

Frank knew nothing of the waiver, it was stated by Henry C. Peeples, of the law firm of Tye, Peeples & Jordan, counsel for Frank in the constitutional motion. He discredited the report of the verdict of guilty when it was brought to him, believ-

ing that his counsel would not permit him to remain in jail while a most important part of his trial was in progress.

The argument was finished by 12:15 o'clock, noon after having been in progress since 9 o'clock. Two hours were allowed to each side. Attorney General Warren Grice, however, occupied only fifteen minutes in his address in behalf of the state. The state's argument was concluded in an hour and fifteen minutes. Attorneys John L. Tye and Mr. Peeples presented the argument for the defense.

Rosser and Arnold Absent.

There was one noteworthy feature of the argument, the first absence of Attorneys Luther Z. Rosser and Reuben Arnold from any stage of the fight to save Leo M. Frank. They had no connection with the constitutional motion, having agreed with Solicitor General Dorsey, at the time Frank's presence was waived, not to raise a constitutional point based on the defendant's absence from the courtroom.

Frank was represented, however, by the Tye, Peeples & Jordan firm; Herbert J. Haas, Leonard Haas and Harry A. Alexander.

The argument was purely technical. Volumes of rulings and verdicts from state courts and federal courts were cited by both the defense and state. Solicitor Dorsey based his argument on the ground that "it would be trifling with the court to allow it to act upon a waiver made as Frank's, and then impeach the court's own action on the ground that counsel had been guilty of an unauthorized act."

A long chain of English and American decisions—principally federal rulings—was presented by counsel for the defense. Each ruling held that it was one of the prisoner's greatest constitutional rights to be present in the courtroom at all stages of his trial.

Claim of Technicality.

Solicitor Dorsey, on the other hand, protested against the constitutional motion on the ground that it was purely technical and that it trifled with the courts. He had met technicality with technicality in presenting a demurrer to the motion when it was first heard before Judge Ben Hill.

The demurrer carried it before the supreme court in a technical manner. If the court rules in favor of the defense on it, it will again be heard before Judge Hill, this time directly as the motion in entirety. Judge Hill's action upon it only sustained the demurrer. Although the entire motion is being gone into exhaustively, the supreme court, in reality, is only considering the demurrer of the solicitor general.

The supreme court's decision is not expected before the latter part of November. Under the law, however, the court is permitted to occupy an entire year in forming a decision. If its decision sustains the prosecution, Frank's lawyers will make a final stand in trying to carry it before the supreme court of the United States on the ground that the prisoner was deprived of a constitutional right.

The justices now sitting in the supreme court are Judges S. C. Atkinson and H. W. Hill with Chief Justice Fish.

The celebrated Cawthorn case, one which resembled the Frank case in the one respect of his waiver of presence, was used extensively by Solicitor Dorsey.

The motion now before the supreme court was presented by Tye, Peeples & Jordan before Judge Ben Hill. It was based entirely on the waiving of Frank's presence in the courtroom when Judge L. S. Roan, Attorneys Rosser and Arnold and Solicitor Dorsey conferred over the prospects of violence in event of an acquittal. Even the attorneys for Frank were not present in the courtroom when the verdict was returned.