

JUSTICE HOLMES'S OPINION.

Justice HOLMES denies, as Justice LAMAR had previously denied it, the writ of error which would transfer the case of LEO FRANK of Atlanta to the Supreme Court. He holds that he is bound by the decision of the Georgia Supreme Court that the motion to set aside the verdict on the ground of FRANK'S absence from the courtroom at the time it was rendered comes too late. But now, from the lips of this jurist, for the first time in the proceedings taken after conviction, we have an expression of interest in the human as apart from the technical considerations of the case. In his statement of reasons for the decision given Justice HOLMES says:

I understand I am to assume that the allegations of fact in the motion to set aside are true. On those facts I very seriously doubt if the petitioner (FRANK) has had due process of law—not on account of his absence when the verdict was rendered so much as because of the trial taking place in the presence of a hostile demonstration and seemingly dangerous crowd.

This remark belongs to that class of observations from the Bench which are described as being "so because the Judge said so." The conditions described by Justice HOLMES, however, are known by everybody to be "so," they were "so" before he referred to them. It is indisputably true that the trial took place "in the presence of a hostile demonstration," it is true that there was in Atlanta at the time of the trial a "seemingly dangerous crowd." It was so dangerous that the militia were held in readiness and court and counsel agreed that FRANK should not be in the courtroom when the verdict was rendered, as they feared that in case of acquittal he might be lynched.

Justice HOLMES deserves the highest commendation for this human departure from the dry legal formula, for this evidence that he takes account of a consideration far above and beyond all technicalities of the law, since it involves the whole purpose of the law, justice. In this utterance Justice HOLMES gives expression to the thought that is in the minds of the whole public outside of Atlanta. By these words we are confident he has saved the life of an innocent man condemned to death because of the clamor of a community that seemed to have gone mad through passion and prejudice.