

# FRANK CONVICTED BY PUBLIC CLAMOR

**His Lawyer Makes Important  
Statement Here and Witness  
at Atlanta Accuses Negro.**

**SAYS CONLEY MOLESTED HER**

**In the Very Spot Where a Week  
Later Mary Phagan Was  
Murdered.**

**CHAIN OF MURDERS IN CITY**

**Police Had to Find a Victim, Says  
the Condemned Man's Law-  
yer—New Evidence.**

*Special to The New York Times.*

ATLANTA, Ga., March 1.—Helen Ferguson, the little factory girl who was one of the chief witnesses for the State in the trial of Leo M. Frank for the murder of Mary Phagan, ending in Frank's sentence to death for the crime, made a startling statement here to-day, adding further to the sensations caused by the varied disclosures since the Supreme Court refused a rehearing of Frank's recent appeal for a new trial. Helen Ferguson now says that Jim Conley, the negro upon whose testimony Frank was convicted of Mary Phagan's murder, and whom the defense charges was himself the murderer, had made drunken advances to her on the Saturday previous to the murder.

Mary Phagan was killed in the pencil factory in which she worked about noon on Saturday, April 26, 1913. Helen Ferguson says that on Saturday, April 19, Conley accosted her in exactly the same spot on the first floor of the factory where the defense believes Mary Phagan was killed.

"It was on Saturday, April 19," she told a reporter. "I went from where I worked on the second floor of the factory to the first. I walked over to a dark place behind the stairways and started to pick up a box, when I caught sight of Conley. He was drunk—seemingly as drunk as could be. I saw a whisky bottle in a hip pocket. He was staggering. His eyes looked queer and he didn't seem to know what he was doing. I was scared and I picked up the box and started to hurry away.

"Then he came over toward me menacingly, and I drew back. He strode to within arm's length of me and said something. I was so frightened, I didn't remember all of his words. He said something about the boxes and then mumbled something else. "I dropped the box, and as he pushed nearer me, I jumped to the stairs and ran up as fast as I could. I didn't look back, I was too frightened, and I don't know whether he was following me or not. I don't think he was, though."

Helen Ferguson said she had told this story in an affidavit before to C. W. Burke, a private investigator, in the employ of Luther Z. Rosser, senior counsel for Frank's defense.

The affidavit was made, she said, about Christmas time.

"Mr. Burke asked me," she said, "if I wouldn't swear that I was mistaken about the time I went to Mr. Frank's office on Friday and asked for Mary Phagan's pay envelope. I told him no, that I had not been mistaken and that I had told the truth. He said something about the detective department being a bunch of crooks. Then he said that I was largely responsible for Mr. Frank's conviction.

"I wouldn't for anything on earth be responsible for the hanging of an innocent man," he told me. Then we got to talking about Jim Conley, and in the course of the conversation I told him about the day I had encountered the negro on the first floor, right where Frank's friends say Conley killed Mary."

The little Ferguson girl was the witness who went on the stand and swore on the Friday before Mary Phagan was murdered she had gone to Leo Frank in the factory office, and asked for Mary Phagan's pay envelope. She swore that Frank told her that he could not let her have Mary's money, and that Mary herself was coming to get it the following day.

**Kept the Story a Secret.**

This was denied by the Superintendent. Helen Ferguson, however, told nothing of her encounter with Conley on the preceding Saturday. It is said that she had not told Solicitor Dorsey of it. She said that she had never attached much importance to the happening until her conversation with Burke.

The girl asserted that she had made no statement whatever pertaining to her testimony on the stand. She said emphatically that it was the truth and that she would never repudiate it.

She said that Frank had never refused to permit this before. On the day before the murder, however, she said, she had gone to the pay window in Frank's office and asked the Superintendent for Mary Phagan's envelope. She quoted Frank as having said:

"I can't give it to you. Mary herself is coming to get it to-morrow."

The fact that Helen Ferguson's affidavit has been in possession of the defense since Christmas strongly indicates that Frank's counsel holds considerably more of just such evidence, which will be used in the motion for a new trial.

Frank's lawyers are greatly encouraged by developments, and are hopeful that the new evidence will be sufficient to induce Judge B. H. Hill to grant the extraordinary motion for a new trial, which will be made some time this week.

At the time of the tragedy Helen Ferguson was employed at the National Pencil plant. She lived in the neighborhood with Mary Phagan, and they were chums. It was she who first received the news that Mary had been killed, and was the first to convey it to the Coleman home. It was on the Ferguson girl's testimony that the prosecution based its theory that Leo Frank had planned to meet Mary Phagan on the day of the tragedy at a time when the factory building would be practically deserted.

Helen testified that she and Mary had been in the habit of getting each other's pay envelopes whenever either was unable to visit the factory on pay-days.

**Formby Denial Suppressed.**

It also developed to-day that there is in existence an affidavit made by Mrs. Nina Formby as early as Oct. 30

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last, in which it is charged that the Atlanta police had manufactured most of the evidence against Frank. The existence of this affidavit, made by Mrs. Formby before Franz Sigel, a notary of New York, has been kept a secret until today. In it, officers of having attempted by persuasion and threats to induce her to testify that Frank frequently had brought young girls to her house and that he had attempted to bring Mary Phagan there.

## CONVICTED BY PUBLIC CLAMOR.

### Atlanta Police Had to Find a Victim, Says Frank's Lawyer.

"Leo M. Frank did not have a fair trial. The Solicitor General of Fulton County, Ga., deliberately suppressed evidence in his possession which was strongly in favor of the defense."

This is the way Herbert J. Haas, of counsel for Mr. Frank, summed up yesterday the situation in Atlanta at the time of Frank's trial for the murder of Mary Phagan.

"The jury, if not actually intimidated by the bearing and the behavior of the crowd that thronged the courtroom and blocked the street in front of the Court House," Mr. Haas went on, "could not fail to have been influenced by the insinuations and actual charges made during the argument by the Solicitor General, which had no foundation in the evidence, and which in an ordinary case would have been ruled out by the court."

"Add to those things the fact that the populace of Atlanta had been inflamed by appeals to passion, that the case had been tried in the newspapers before it reached the courtroom, and various features of the local situation which seemed to demand the shedding of man's blood not only for the murder of Mary Phagan, but for a long list of crimes that had gone unavenged, and you have some of the reasons why Leo M. Frank was adjudged by a Georgian jury guilty of a horrible crime he never committed, and condemned to death."

### The Case Against Frank.

The case of Leo M. Frank has gone so far beyond the City of Atlanta and the State of Georgia in interest—owing not only to the nature of the crime, but the high standing of the condemned man, the belief of his friends in his innocence, and the fight they have been making to obtain a reopening of the case—that the matter has not ended with the refusal of the Supreme Court of Georgia, by a vote of 4 to 2, to grant a rehearing upon the ground of errors in the trial in the lower court.

Mr. Haas would not disclose the nature of the new evidence, but was very hopeful of the outcome of the extraordinary motion for a new trial which he said he would file at an early date.

The body of Mary Phagan, a fourteen-year-old girl, who worked in a pencil factory in Atlanta, was found at 3 o'clock on the morning of Sunday, April 27, the basement of the factory by Newt Lee, the negro night watchman. Leo M. Frank, manager of the factory, a former resident of Brooklyn, a graduate of Cornell, a young man of high standing, was arrested in the first place, because he was the last person who acknowledged that he had seen the girl alive.

Charges of degeneracy were made against Frank, supported by witnesses, some of whom have since confessed they committed perjury. Public feeling in Atlanta was excited to a high pitch—such an extent, in fact, that not only the Mayor of the city, but the Governor of Georgia, felt compelled to issue proclamations remonstrating with the local newspapers, condemning trials by the press, and warning the people not to be misled.

### Convicted on Negro Testimony.

Five days after the body of the girl was found, the police took into custody a negro named James Conley, who was employed as a sweeper in the pencil factory. After making several conflicting statements and affidavits, Conley testified at the trial that Frank had often employed him to watch the front door on afternoons when women visitors came to his office, and that on the Saturday before the body was found, he was watching the door for Frank, when he received a signal to come upstairs, where Frank confessed to him that the girl had repelled his advances, and he had struck her, knocking her head against something. According to the negro, they carried the body to the freight elevator, and took it to the basement, where it was hung before the furnace, the intention being to cremate it later. The negro said that Frank then invited him to his office, gave him some cigarettes and \$200, with the understanding that the negro should burn the body. Conley said he demurred, and Frank took the money back. Then the negro said he had agreed to return to the factory in the evening and dispose of the body. The negro said he did not go back to the factory.

Two notes, scrawled on bits of paper, were found near the body. The negro at first denied writing them, but afterward said he had written them at Frank's dictation. Their text was unprintable, but in the dialect of an uneducated negro they attempted to fasten the responsibility for the crime upon a negro fireman. Conley had a jail record and a reputation, as testified, for being unreliable. His testimony was the main evidence used by the State in the conviction of Frank.

On Thursday of last week THE TIMES published a confession by Mrs. Nina Formby, in which she asserted that an affidavit she had made for detectives in Atlanta, and which was used in the newspapers to help attack the character of the defendant, was false from beginning to end, and that she had been bribed with liquor and forced to make and sign statements suggested by the detectives.

### Climax of Chain of Crimes.

Mr. Haas, who is one of several able counsel for Frank, is in New York on business connected with other legal matters in which he is interested. At the Knickerbocker on Saturday he declined to discuss the Frank case except with the advice and consent of senior counsel in Atlanta, Messrs. Rosser and Brandon, and Reuben R. Arnold, who were the trial lawyers. Having communicated with them by telegraph and by telephone, Mr. Haas said yesterday he was free to explain some of the features of a case which had kept the State of Georgia stirred up for months, and attracted general attention.

"The situation in Atlanta which brought about the conviction of Leo M. Frank is one that may require a good deal of explanation to people not conversant with conditions in that city," said Mr. Haas.

"In the first place, more than fifteen murders had been committed in the city during the seven or eight months preceding the murder of Mary Phagan, and in no case had the perpetrator of the crime been found. The police had been hounded by the press and by public opinion for negligence in failing to fasten on any of these crimes upon the guilty person. The newspapers and the press discovered the police were put on trial."

"Since the beginning of the year (1913) agitation had been going on for the closing of the segregated districts of Atlanta. Disreputable houses had been closed, and naturally the public mind had been aroused on the question of the social evil and the forms under which it existed. There had been a great deal of talk of perversion. Many of the victims of unpunished murders had been negro women. Here was the first white woman victim—a child, in fact, and a child of the employe class. It was a horrible murder, and the first reports about it were wild. There was the idea of strangulation, and rumors were spread that the body had been mu-

tilated. In this last there was not a word of truth as the evidence showed. With the exception of a cut over one ear, scratches on the face, and bruises on one limb, there were no lacerations of any kind.

### Press Assails Police.

"An editorial appeared in one of the leading newspapers putting the police on trial, and demanding that they show results. And 'results' the police proceeded to obtain.

"In Georgia exists a strong prejudice against the employe class among the employe class. To account for this it must be remembered that before the war a white woman in Georgia was not supposed to work. Such a thing was degrading. With the building of factories and late war developments, operatives has arisen, and women have gone into factory work. Among the men of their class resentment has been felt that such a thing had to be. They felt aggrieved that the women of their families were in the employ of persons who could afford to pay them wages. I am aware that such a statement must sound absurd here, but the prejudice really exists and is widespread.

"Among the class of people and among others, in spite of the fact that the war has passed since the war, there is still a strong prejudice against Northern people who come down there and take high positions. A Yankee is still one of the tribe that swept across from Atlanta to the sea with Sherman. Frank is a Northerner.

"Much has been said about racial prejudice having a part in the conviction of Frank. While this was true during the early stages of the trial, I believe it is no longer the case. Mr. Frank was a Northern man. He was a Jew, and most of his associates during the few years he has been in Atlanta are of that faith, and few other persons knew him. He is a prominent member of a great Jewish fraternal society, and his friends, who knew of his high character, immediately rallied to his defense.

"As many of his friends are persons of means, this naturally created the charge that he had raised that his Jewish friends would spend any amount of money to free Mr. Frank, whether he was innocent or guilty, and this was taken up and exaggerated tales told of the money that would be raised in his behalf, and the lengths to which they had gone.

### Change of Sentiment.

"Since then, I believe the thinking people of Atlanta have come to take these wild statements at their real value, and to believe that those who have rallied to the defense of Mr. Frank are animated by no other purpose than that a man they believe innocent shall have every right the law and justice give him to establish that innocence. As a matter of fact, I believe that 90 per cent. of the lawyers of Atlanta are convinced that the case made out against Frank, and perhaps a larger percentage will agree that he did not have an impartial and fair trial, impossible under the conditions as they existed and as they still exist. The business men petitioned the newspapers to stop publishing sensational stories of the case and to limit the number of 'extras,' fearing their further effect. Each bit of evidence, or what purporting to be such, was taken up and discussed fully in the papers. Statements that Frank was guilty were continually sent out by the Police Department, which also kept conveying hints that it was holding back a witness who would testify that was proof positive of Frank's guilt.

"Within three hours after the body of Mary Phagan was discovered in the basement of the pencil factory where the body lay was packed with people. The body was placed on a stretcher, and notes found near the body were handled by many persons, and even the body was touched. So that anything like a really scientific investigation by comparison of the body with the body of the girl was impossible under the conditions as they existed and as they still exist. The business men petitioned the newspapers to stop publishing sensational stories of the case and to limit the number of 'extras,' fearing their further effect. Each bit of evidence, or what purporting to be such, was taken up and discussed fully in the papers. Statements that Frank was guilty were continually sent out by the Police Department, which also kept conveying hints that it was holding back a witness who would testify that was proof positive of Frank's guilt.

### Case of the Negro, Conley.

"The negro, Conley, whose testimony convicted Mr. Frank, was not arrested until May 1, when he was caught washing his shirt. No attention was paid to him until he refused to write and denied that he could, which was about May 17. From information which factory employes gave it became known that Conley could write. He still denied his ability in this direction, and he had to be forced to show he knew how to use a pen. Immediately the similarity in the handwriting of the notes with his own was apparent.

"It was about May 17 that Conley made a statement in which he denied that he could write, and said that he was not at the pencil factory on the day of the murder. On May 24, after it had been established that he had written the two notes found near the body, Conley made an affidavit that Frank had asked him to write the notes the day before the murder, but denied that he knew the purpose for which they had been written. Then he stated again that he had not been at the factory on the day of the murder. Several days later he made another affidavit in which he stated that his first affidavit was untrue, and that he had written the notes on Saturday, but he still denied that he knew why they had been written, or that he knew anything about the murder. The next day he made a third affidavit in which he said that what he had before stated was untrue, and that he had appeared at the factory the day before the girl was found on the second floor of the pencil factory to the engine room, and that it was after that that he had written the notes to be used in the defense of the defendant. A remarkable thing, he also stated that Frank had given him \$200, and then had taken it away from him and told him he would give it to him on the following Monday. Conley was still denying in the original affidavit which he typed, written, the statement that Frank had taken the money back appears in handwriting.

"During all those days, Conley was being held for hours at a time by Detectives Langford and Black of the city police and Scott of the Pinkertons. It is remarkable to note that Scott, a witness for the State at the trial, openly admitted that Conley had made his testimony, and told, when he said something unreasonable, that 'he must do better than that.' The same Scott, when sworn on the stand, testified that though his interrogations had pressed Conley on the question of perversion or perversion 'watching' for Frank at the factory, Conley said he knew nothing about those matters.

### Makes Conflicting Statements.

"After making his last statement, Conley was taken from the police station, and, upon the petition of the Solicitor General, was lodged in the common jail provided by law for the custody of material witnesses. There the newspaper reporters saw him, and to them he made statements that conflicted with the four statements he had previously made. The next day, upon the petition of his attorney, acquiesced in by the Solicitor General, he was removed by the court from the jail to the station house, where he was kept in absolute seclusion, under the care of two detectives who had not previously worked with him and the Solicitor General.

"It was after this, and during the time preceding the trial, that the Solicitor General put in many hours with Conley on four different occasions at the police station, and had Conley brought to his office on three different occasions, and at the trial Conley's story of perversion and his 'watching' for Frank on previous occasions were brought to light.

"The court, realizing about June 10 that Conley could not legally be held at the station house as a material witness, issued an order that if the State insisted on holding him as a witness he must be returned to jail. Whereupon the Solicitor General appeared in the courtroom and stated that the necessity for holding the man as such no longer existed, and the court ordered the negro's release. He was taken by detectives from his cell in the station house to the street and released immediately. He was immediately 'on suspicion,' under which charge the police could hold him at the station house indefinitely. At the jail Conley

could be seen and talked to by others than the Solicitor General and the detectives. At the station house he was securely 'caged.'

"As for the charges that immoral proceedings were being held on in the pencil factory, it is worthy of note that George W. Parrott, a capitalist, owner of the Piedmont Hotel, a bank Director, and one of the Directors of the pencil factory, who had been in the city for some time, was making an investigation among the employes about those charges and the charges of previous immorality against Frank. He has in his possession to-day affidavits of employes in which the lie is given to those accusations.

"To return to those notes that were found near the body, it is interesting to mention that the Solicitor General and employed experts early in the case were prepared to swear that the notes were in Frank's handwriting.

"Evidence showed that Conley had been arrested seven times between 1904 and 1912 for disorderly conduct, and had variously paid fines or served terms running up to thirty days in jail for these offenses. Fifty or sixty employes of the factory testified that they would not believe him under oath.

### Disorder in Courtroom.

"The behavior of the crowd in the courtroom was extraordinary, and more extraordinary in that it was not really checked. Whenever a point was made against the defendant the crowd applauded and cheered. On Friday, pending the rendition of the verdict, the courtroom was packed to hear the speech of the Solicitor. He delivered an address that was calculated to inflame the already excited audience to a high pitch. When the time came for the adjournment of the court murmurs of approval were distinctly audible throughout the room. Delight was plainly visible on the faces of those who had assembled to hear the trial. The crowd and through the greater throng outside, the jury was marched out, and some few moments thereafter the Solicitor General, leaving the Court House, was widely cheered. The jury could not have been more than 300 feet away, and I am told this cheering was heard several blocks off. There were only two Deputy Sheriffs to watch the twelve jurors and the 2,000 people in the crowd, and I imagine that a physical inability for those Sheriffs, honest men though they are, to know absolutely whether the jurymen did not hear what the crowd was saying through which the jurymen were being taken away to their hotel several blocks away.

"The Solicitor General resumed his argument on Saturday morning. I recall, among other things he stated, pointing his finger at the defendant: 'I am not that if that little crowd left the factory and told what advances you had made to her, men by the thousands would storm any jail you might be locked in to get at you. He then added, as an afterthought, 'I am sure you would have been right to do that. But imagine the effect of his first statement on the jury and on the crowd in the courtroom. At another point in his argument, he said: 'Gentlemen of the jury, do not convict this man on the evidence, say, do away with your courts and your juries, and not have any law at all.'

"Such sentiments as these, expressed by a sworn peace officer of the State to already over a crowd of thousands, and were not calculated to do otherwise than to fan into a flame the smoldering sentiment against the defendant.

### Judge Feared an Outbreak.

"The judge who presided intended that the case should be concluded on Saturday, so that the members of the jury, who had been separated from their families for four weeks, might return to their homes for Sunday. But the excitement in the courtroom and outside filled him with apprehension. The throng outside would be increased tenfold with the closing of the factories at the noon hour. In the presence of the jury he called into conference the Chief of Police and also the Colonel of the Fifth Georgia Regiment. Youngsters, who were aware of the danger of the situation, the three daily newspapers of Atlanta, feeling the public pulse as they did, and aware of the high tension and fear, a repetition of the terrible riot of 1906 in Atlanta, in which more than seven persons lost their lives, and the city was put under martial law, had united in a request that the court stop proceedings at noon. The judge, after his conference, stopped the Solicitor General at 1 o'clock and adjourned the case until Monday.

"The jury was led again through the same excited crowds, now clamoring for vengeance and maddened by the speech of the Solicitor General. A few minutes later that official emerging from the Court House, was wildly cheered by the crowd, and carried upon shoulders to his office across the street.

"When court reconvened on Monday more than 1,000 persons thronged about the entrance to the Court House, and through this the jury was again conducted. While they were in their room the Solicitor General, entering the courtroom, was vociferously applauded. When his speech concluded the defense requested a mistrial because of the frequent applause and expressions of sentiment that had marked the trial throughout, many of which had occurred in the presence of the jury.

### Tried to Ave His Counsel.

"While Mr. Arnold of counsel for the defense was making the argument for this I recall his stating, while the crowd glared at him, that in his opinion the defendant had not been accorded anything like a fair trial, and that he was disgusted with the unfairness of those members of the public who made such exhibitions when a man was on trial for his life. One of the Deputy Sheriffs at this juncture stated that he did not think the jury had heard the applause on one occasion, and this statement was greeted with further applause from the crowd in the courtroom, the jury room not being more than twenty feet away.

"When the court had denied a mistrial and had charged the jury, the latter was taken through the crowd outside to a restaurant 150 feet from the Court House, where a little later the applause that greeted the Solicitor General, and the jeers of the crowd of the Court House and the jeers for the defendant must have reached them.

"When the verdict had been reached, the court had agreed with counsel for the defense to poll the jury. The defendant was not in court, his presence having been waived by his counsel and acquiesced in by the court, 'because of fear of violence that might be done him were he in court when the verdict was rendered.'

"When the verdict had been reached it was signalled to the 5,000 people that now thronged the street in front of the Court House, and a mighty shout of approval went up. Such a demonstration that the windows of the courtroom had to be closed for the polling of the jury.

"It is idle to say that these manifestations of hostility to the defendant and approval of action on the part of the prosecution, apparent at every stage from the beginning of the trial to its end, did not have an effect upon the jury.

"I learned Chief Justice of Georgia once reversed a case because in the courtroom a man had shouted 'Hang him! Hang him!' at the jury which was hearing a murder case. He said: 'The nature of the case is such that to coerce a jury by manifestations of public opinion which have no place in a courtroom.'

### Threatened by Letter.

"The feeling against the defendant manifested itself in numerous threatening letters, anonymous and couched in vile language, received by counsel for the defense. Two men of high standing who dared to state publicly their belief in the defendant's innocence also received anonymous threatening communications. Friends of counsel for the defendant advised them to arm themselves to protect their lives and that of the defendant, because the Police Department was so wrapped up with the prosecution that no protection could be expected from them in the event of trouble. Personally I felt that a conflict was near at one stage in the argument of the Solicitor General, when the bereaved mother of the murdered girl, who we all have the deepest sympathy, broke down and cried aloud as the Solicitor General showed the garments of the dead girl to the jury.

"I am really informed that one man in the rear of the courtroom actually reached for and took out his revolver at this juncture, and kept it out in plain view of several witnesses. The intimidation of any one who spoke a good word for the defendant was acquiesced in by the Solicitor General. Minola McKnight, the negro cook in the household where Frank boarded, made a statement at the request of the Solicitor General, telling partly of Frank's movements on the day of the murder. A few days later her husband and his white 'boss' prepared a statement in which the woman was said to have told her husband various inci-

ding things about the defendant. Detectives took her to the Solicitor General's office. There she was requested to agree with the statement her husband had made. She refused. They attempted to coerce her. Still she was obstinate. Then, with the knowledge and consent of the Solicitor General, the detectives took the now hysterical woman to the station house, without warrant or authority, and confined her in a cell. While an attorney was preparing habeas corpus proceedings, the detectives applied the third degree to her, with the result that the woman made an affidavit substantiating the statement of her husband.

### Tortured Into Perjury.

"As soon as the woman was released she denounced the entire transaction, and stated publicly that the statement she had been compelled to sign had been forced from her by a torture chamber process, and that every item therein was false. At the trial, testifying for the defendant, she described vividly the treatment accorded her by the Solicitor General and the detectives. The Solicitor General confessed to the woman's lawyer that he knew she was being held without authority, and in direct conflict with her legal rights, but that if he should order her release he would 'get in bad' with the police. All this is a matter of court record, the sworn testimony of Minola McKnight and her lawyer, George Sardon, the latter a witness for the State.

"In this connection it is interesting to note that since the rendition of the judgment by the Supreme Court the husband of the negro woman has confessed that he committed perjury at the trial, and that his wife had told the truth.

"Another instance of the methods pursued by the Solicitor General goes to show that the case against Frank was framed up beyond any reasonable doubt.

"It was the theory of the State that the dead girl was murdered in the metal room of the factory, after struggling with the defendant for her life. In support of this theory physical evidence in the shape of spots supposed to be blood, found in one portion of this room, and several strands of hair on a metal lathe about thirty feet distant therefrom were produced. At the trial the expert for the State, who had examined the chips of wood on which the supposed blood spots were, testified that he had found no blood or four chips, but that on the fifth chip there were fields containing several blood corpuscles. The same expert, on the next drop of blood contained 40,000 or more corpuscles.

### Hair Not Identified.

"As for the hair, it was never positively identified by anyone as being that of Mary Phagan, although several witnesses said it looked like her hair. As a matter of fact, the hair, of which so much was made in the early stages of the investigation, was not produced at the trial, although it had formed a strong part in building up the theory of the prosecution. It has later developed that the Solicitor General asked Dr. Harris, the Secretary of the State Board of Health, to compare the strands with specimens from the head of the dead girl, removed one week after her death. According to the expert, no decomposition had yet set in. After a microscopic examination, he reported to the Solicitor General that the specimens were different in texture, color and every way known to scientists. Whereupon the Solicitor General said to Dr. Harris, 'You need do nothing further with the hair. We will let the matter rest there.'

Dr. Harris made this comparison several months before the trial began, and furnished this information immediately afterward to the Solicitor General. Yet with this scientific proof to the contrary in his possession, the Solicitor General, in his argument to the jury, and in the brief which he filed with the Supreme Court, stated that the strands of hair found on the lathe were from the head of the deceased, and concealed, with Dr. Harris, this important contradictory evidence which was in his possession, by saying to Dr. Harris, 'We will let the matter rest there.'

### Even the Judge in Doubt.

"Even after the jury had brought in its verdict, Judge L. S. Roan, the presiding judge, was not convinced of the defendant's guilt. In denying the motion for a new trial, he made this remarkable statement:

"I have given this question long consideration. It has given me more concern than any other case I was ever in, and I want to say here that, although I heard the evidence and the arguments during these thirty days, I do not know this morning whether Leo Frank is innocent or guilty. But I was not the one to be convinced. The jury was convinced, and I must approve the verdict and overrule the motion."

"Is it not true, Mr. Haas was asked, that under the laws of Georgia a murder trial where the evidence is circumstantial, and conviction results, the presiding judge has the discretion of imposing either a death sentence or life imprisonment?"

"Yes. Why life imprisonment was not imposed I do not know. I know, however, that the law is as you have stated.

Frank's friends and his counsel are absolutely convinced of his innocence. That he is the victim of a vile conspiracy, and that he is a man of the highest integrity and character, and that his innocence will ultimately be proved to the world there is not the slightest doubt. It is horrible to contemplate that as the case now stands this proof may come after the State has taken his life.

"However, we have not given up. It is our intention to file an extraordinary motion for a new trial on the ground of newly discovered evidence, and this will be presented to the Presiding Judge of the Superior Court of Fulton County at an early date. What this evidence is I must refuse to state."

### MRS. FORMBY UNDER OATH.

#### Atlanta Woman Makes Affidavit Retracting Charges Against Frank.

Mrs. Nina Formby of Atlanta, Ga., now in this city, signed an affidavit yesterday containing the same confession she made through THE TIMES on Thursday last, when she asserted that she had been unduly influenced by Atlanta detectives before she signed an affidavit making incriminating statements against Leo M. Frank, convicted of the murder of Mary Phagan. In her affidavit Mrs. Formby says she is willing to go back to Atlanta to substantiate it in court.

The affidavit was signed by Mrs. Formby in the offices of House, Crossman & Vorhaus, 115 Broadway. In it she related that the members of the Atlanta detective force, Norris and Cheuning, visited her apartment at 400 Piedmont Avenue, some five or six days after the arrest of Leo M. Frank, and began to ply her with liquor and perjury drugs; that the detectives after about two weeks finally induced her to say that Frank was a degenerate when she was not responsible for her statements; that three days following those

statements, when she was recovering from a state of collapse from the effects of intoxicants, she was called to the office of Langford, Chief of Detectives, and there induced to sign an affidavit containing, as she later found out, the false statements she had been induced to make to the detectives in her apartment.

The affidavit made before the Atlanta detectives is retracted 'absolutely and unequivocally' by Mrs. Formby in her second affidavit. She repeated that she had never met Leo M. Frank, and that she had seen him only once prior to the visits of the two detectives, when he was pointed out to her by a factory girl with whom she was acquainted. She asserts that she never had spoken to Frank before she was instructed by Chief Langford to 'visit the prisoner in his cell. But he had never telephoned to her house nor set foot in it. She also swore she had never heard it said that Frank was a degenerate before the detectives referred to it, and to the contrary, she expressed her belief that Frank was not only not a degenerate, but absolutely innocent of the crime for which he had been convicted.

Mrs. Formby, in her affidavit, said she realized that she had done a 'great and terrible wrong to an innocent man,' and that her participation in the case was 'false from beginning to end.' She, therefore, asserts that any statement made by her that tended to connect Frank with the murder of Mary Phagan, or any statement that Frank had communicated with her by telephone or otherwise on the day of the murder, or any statement that she ever heard or knew that Frank was a degenerate was 'absolutely and unequivocally false.'

It is set forth by Mrs. Formby that her sole interest in the case now is to 'see justice done, to clear my own conscience, and to have the truth known.'

The affidavit was forwarded to the attorneys for Frank in Atlanta yesterday afternoon by special delivery.