HIGH COURT DENIES FRANK'S LAST PLEA

Not Shown to Have Been Deprived of Any Rights, the Supreme Court Holds.

TWO JUSTICES DISSENT

Prima Facie Case of Intimidation of Jury by Mob Made Out, Holmes and Hughes Say.

CLEMENCY NOW ONLY HOPE

New Governor, with Open Mind, Likely to Give Final Decision—Frank Takes Blow Calmly.

Special to The New York Times.

WASHINGTON, April 19.—The Supreme Court of the United States, with a bench divided seven to two, today denied the appeal for a writ of habeas corpus for Leo M. Frank, now under sentence of death in Georgia for the murder of Mary Phagan, an Atlanta factory girl.

In denying the appeal, which came up from a Federal District Court in Georgia, the high court held that Frank's absence from the court room when the verdict was rendered did not deprive him of due process of law and that it was a right he could waive and did waive inferentially. The court also held that Frank's allegations of hostile tumult in and about the court room had been rejected by competen State tribunals as untrue.

The dissenting Justices were Messers. Holmes and Hughes, with Justice Holmes presenting their joint views. They contended that Frank had made out a prima facie case of interference with the deliberations of the jury through the prevalence of mob spirit in and about the court room, which should entitle him to a review.

Justice Pitney, in the majority opinion of more than 10,000 words, concluded with the following summary:

> His (Frank's) allegations of hostile public sentiment and disorder in and about the courtroom, improperly influencing the trial court and the jury against him, have been rejected because found untrue in point of fact upon evidence presumably justifying that finding, and which he has not produced in the present proceeding. His contention that his lawful rights were infringed because he was not permitted to be present when the jury rendered its verdict has been set aside because it was waived by his failure to raise the objection in due season when fully cognizant of the fact.
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> In all of these proceedings the State, through its courts, has retained jurisdiction over him and accorded to him the fullest right and opportunity to be heard according to established modes of procedure, and now holds him in custody to pay the penalty of the crime of which he has been adjudged guilty.
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> In our opinion, he is not shown to have been deprived of any right guaranteed to him by the Fourteenth Amendment or any other provision of the Constitution or laws of the United States. On the contrary, he has been convicted, and is now held in custody, under "due process of law" within the meaning of the Constitution. The judgment of the District Court refusing the application for a writ of habeas corpus is affirmed.

While the general opinion here is that the Supreme Court's decision today is final and that nothing but Executive clemency can save Frank from the penalty to which he has been sentenced, the point is made in some quarters that one passage in the majority opinion seems to suggest the possibility of a further appeal. This is the passage in which the Supreme Court refuses to be moved by Frank's allegations of mob rule, on the ground that the opposing evidence upon which the State appellate courts threw out the allegations had not been presented to it by Frank's counsel. The suggestion has been made that a renewed motion with this evidence included might win the Supreme Court's attention, but advices from Atlanta tonight are that Frank's counsel seem to regard the present decision as final, and are pinning their hopes on Executive clemency.

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