GEORGIA TO FILE FRANK BRIEF TODAY

Asserts Right of Every State to Make and Enforce Its Own Criminal Laws.

DENIED HIM NO RIGHT

State Upholds Prisoner's Absence from Courtroom When Verdict Was Rendered—No Disorder at Trial.

Special to The New York Times.

ATLANTA, Ga., Feb. 21.—Asserting the right of every State of the Union to make and enforce its own criminal laws, free from interference or supervision by the Federal courts, and citing the decisions of the Supreme Court of the United States itself to support this contention, the brief of the State of Georgia in the Leo M. Frank appeal was completed Saturday night after several weeks of work by Solicitor General Hugh M. Dorsey and Attorney General Warren Grice.

Solicitor Dorsey and Attorney General Grice left for Washington today, and will file the brief in the Supreme Court Monday. The brief of counsel for Leo M. Frank was filed Saturday. The hearing before the Supreme Court is set for next Tuesday.

The State's brief is voluminous, containing eighty-five pages, and cites over 200 judicial decisions, not only from Georgia and the United States Supreme Court, but also from many other States, to uphold the contention that the Frank verdict is legal, and should stand.

The principal argument of the State is that the absence of Frank at the verdict, from waiver by his counsel, was not a denial to him of any inherent right, and in no way injured him, but that at most it was a mere technical irregularity, and that the State of Georgia has the sole right to decide what the effect of such an irregularity shall be, and whether or not it shall be the basis for setting aside the verdict.

"The incorporation of the due process clause, in the fourteenth amendment, does not result in an overturning of well settled principles and established usages prevailing in States, nor to deprive the States of the power to establish other systems of law and procedure, or alter the same at their will," reads one of the principal subheads of the brief.

On this subject the brief quotes many United States decisions to show that "due process of law" was not denied Frank in allowing his absence when the verdict was rendered. One of these was the famous Huertado vs. California case, which held that a State could take away the right of indictment by a Grand Jury in felony cases if it desired, provided its laws apply to all citizens alike, thus securing to them "due process of law."

With reference to Frank's charges of disorder at the trial, the State's brief calls attention to the fact that these same charges were embodied in the bill of exceptions on the appeal to the Georgia Supreme Court for a new trial, and that they were passed on by the court when the trial was denied.

The brief says that "rebutting proof" was submitted by the State which disproved the disorder charges by Frank, and that this very important "rebutting proof" is not included in the record which is submitted to the Supreme Court of the United States by Frank in his appeal for the writ of habeas corpus. It is said also in the brief that these charges of disorder are greatly exaggerated and enlarged by Frank in his petition.

Dealing with disorder, the brief shows that no motion was made for a mistrial on this account until some time after the occurrence and calls attention to the sworn statement of the jurors that they were not influenced by the crowd against Frank. The fact is also pointed out that there was no motion to set aside the verdict on the ground that Frank was not present when the verdict was rendered until eight months after he had been found guilty.

On the question of the jurisdiction the brief says:

"The Supreme Court of Georgia had jurisdiction to determine whether Frank's counsel could waive his presence, and even if this court should think that ruling error, habeas corpus cannot correct it." An extended line of decisions is quoted in support of this argument.

The brief declares that if sentiment was so strong against the prisoner, as the defense alleges, as to make a fair trial impossible, sentiment became so after the trial began and after revolting testimony was given against Frank. If the sentiment was so strong before the trial began, the question is asked why Frank's attorneys did not request a change, and cites the fact that the Judge could have changed the venue on his own motion under the Georgia law.

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