CALLS FRANK'S TRIAL 'MOCKERY OF JUSTICE'

John F. McIntyre Severely Arraigns Conduct of Atlanta's Famous Murder Case.

PREDICATED UPON NO LAW

Hearsay Evidence Admitted, Mere Opinions Let In, Clamor Unrestrained, and Frank's Rights Ignored.

To the Editor of The New York Times:

The Constitutions of this and our sister States contemplate fair and impartial trials, and the common law here and abroad has always been insistent that one accused of crime should be tried justly and with due regard to the forms of well recognized law. Courts and juries were not created by the wisdom of men to be moved by the press, clamor, and prejudice, nor was it ever intended that prejudgment was to be substituted in the stead of calm and deliberate decision arrived at through an analysis of proof.

We are speedily departing in this State and elsewhere from a fundamental jurisprudence which has regulated our relations to society for centuries, and yielding to innovations calculated to invite utter contempt for what is called law and justice, in that a fair and impartial trial guaranteed by the Constitution is not accorded one accused of crime—and particularly so is this the case when a sentiment is manufactured against one accused of the commission of a criminal offense—and we find some courts then geared to convict in order to obtain temporary laudation and short-lived commendation. Under this condition juries come to be the mere tools of a Judge working an exclusion of a meritorious ending.

In this country it is pretended that impartiality is much admired. Impartiality was not as prominent in some trials lately as it should have been. In recent times we have seen the organic and statute laws looked upon with disdain, and we wonder to what quarter will we look for protection from an infringement on guarantees of the Constitution. Must we be constrained to go to the highest court in nearly every instance for the purpose of obtaining dispassionate consideration and a fair and impartial determination?

In the case of the People against Charles Becker a prejudicial atmosphere was permitted to permeate the courtroom, vital safeguards were disregarded, all orderly procedure was discountenanced. As counsel for Becker I did all that one could to safeguard him in his constitutional rights, but to no avail, however, until he was thrown into the death house, there to wait for fifteen months and until the Court of Appeals said he was unjustly condemned.

Convicted on No Credible Evidence.

Another example of an unfair trial was the trial and conviction of Leo M. Frank in Atlanta. He was not convicted on credible evidence, and according to the rules of law, but by public clamor voiced in the press, prejudice and bias, and failure to apply the law of the Commonwealth in a fair and impartial manner. His rights were prostrated from the day of his arrest. I have read the record carefully. It presents a travesty upon justice. In many respects it goes beyond the Becker case. Some parts of the inquiry border upon brutality.

To hang Frank upon the evidence and rulings contained in the record would in my judgment amount to judicial murder. The only witness that the State of Georgia had who could establish the alleged killing of Mary Phagan (a girl of tender years) by Frank was a besotted negro who had himself exclusive opportunity to do the act, who was not without a motive, who had been convicted of crime eight times, served in prison, who had committed forgery, who made three affidavits concerning the homicide, two of which concededly were perjurious, and in the last for the first time incriminated the accused. He was not corroborated in the essentials, and was discredited and torn apart under cross-examination, and upon his testimony a jury convicted. Improbability is to be found in almost every sentence of his testimony. It makes one's blood run cold—it shocks the moral sense to think that human life can be toyed with upon such evidence.

The record of the trial is unique. Among other things the court ruled that it was proper to show that a negro named Lee, who had been arrested for the murder, was, on the morning after the murder, less nervous in deportment and otherwise than Frank, who at that time had not been accused. This ruling is certainly not based upon any principle now known or ever known to the law.

As if On Trial for Other Crimes.

In the record it appears that when Frank was taken to a police station at 8 o'clock in the morning in the custody of two detectives a person named Black was present. He was called by the prosecution and allowed to show that the accused had already retained counsel who were awaiting his coming. It does not appear upon what basis the admission of this testimony rested. The court it would seem regarded the employment of counsel as an incriminating circumstance, and therefore submitted the fact to the jury. Lee, who, as I said before, was arrested for the commission of the crime, was under observation by detectives, and evidence was received showing the conduct of Lee and Frank for the purpose of comparison. In other words, it was established that Lee was not at all nervous; that Frank was extremely nervous. I fail to see in the record how such testimony became competent and relevant.

The Solicitor General, who, by the way, is a quasi judicial officer whose duty it is to present the evidence against a prisoner impartially and fairly, apparently intending to impassion and inflame the minds of the jurors against the accused, put in evidence through the lips of the negro Conley acts of moral perversion by Frank with women in no wise related to the case or the deceased, which acts happened months before the homicide and which, if true, were separate and independent crimes. The fact stands out that notwithstanding the accused was indicted and tried for murder, at the same time he was on trial for perverted desires. This testimony under no authority in law was competent. It was highly prejudicial, it tended to disgrace Frank before the jury and expose him to a conviction, not because he had committed murder, but because he was accused of depravity and degeneracy.

Again, the evidence shows that when the negro Conley, the accusing witness, was brought to a place where Frank was, Frank declined to see him. The court allowed evidence upon this point to be received as a circumstance from which the jury might infer guilty knowledge on the part of Frank and the incident was admitted in evidence, although it appeared that Frank was advised by counsel to see no one nor speak with any one concerning his case.

But one of the most extraordinary things ever done in a court of justice was the establishment in this case of the fact that Mrs. Frank, wife of the accused, did not call upon him while he was incarcerated, which seemed to be admitted upon the theory that she thought him to be guilty, hence she was reluctant to go to his side in the time of trouble, notwithstanding the fact that the accused wished his wife to abstain from calling as he did not want her to suffer humiliation. Yet the court sent the circumstance to the jury, a circumstance which had no relevancy to the question at issue.

Many more drastic rulings appear in the record too numerous to mention at this time, all, however, in keeping with that which I have already pointed out. It becomes appalling to think that a man must go to his death upon such rulings and testimony indicated in the record.

Trial Dominated by the Mob.

The trial seemed to be dominated by mob rule and mob law. Every semblance of dignity and decency was cast aside. The courtroom was small, the spectators surrounded the jury box in consequence of the Court House being crowded to overflowing, their jeers, gibes, comments, and utterances of dislike for the accused were said in the presence and hearing of the jury, without remonstrance from the Sheriff, court attendants, or the presiding Judge. When the Solicitor General each day left the Court House for luncheon, (and the jury did so at the same time,) he was met at the doorsteps by an admiring crowd of a thousand or more and cheered for minutes. He would tow his acknowledgments, take off his hat, and hold an informal reception. The record of the case shows these incidents.

In this farce-tragedy there remains a blight ineradicable upon American law. Demonstrations of approval by the crowd occurred frequently in the courtroom when the court was called upon to rule. When a ruling was in favor of the accused it was received with signs of disapproval, and the record of the trial shows that when rulings were made adverse to the defendant the spectators in the courtroom, with the jury but twenty feet away, cheered and made their violent manifestations of approval unrebuked, and when counsel for the defendant asked that the courtroom be cleared the application was denied. Hearsay evidence was received, opinions, conclusions, and conjectures by witnesses were permitted predicated upon no law that I can see from a reading of the record. But it will doubtless be argued that Frank had a fair and impartial trial. It will be said, too, that no prejudicial error was made. The record teems with *improprieties notwithstanding*, I am informed, that the Appellate Court of the State of Georgia has affirmed the conviction.

I do not believe that the condemned man received at the hands of the commonwealth such a trial as is intended by our law and civilization. The record to my mind pictures a mockery of justice.

JOHN F. McINTYRE.

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