

FRANK TO APPEAL TO SUPREME COURT

His Attorneys Prepare to Take
the Case to the Nation's
Highest Tribunal.

ASK FOR WRIT OF ERROR

Contend That Georgia Court Failed
to Rule on His Absence When
the Verdict Was Rendered.

Special to The New York Times.

ATLANTA, Ga., Nov. 15.—Holding that the Georgia Supreme Court in its decision refusing to annul the verdict against Leo M. Frank did not touch the merits of the question involved, namely, Frank's absence from the courtroom when the verdict was rendered, attorneys for the prisoner have begun preparations to take the case to the United States Supreme Court.

Within a few minutes after the issuance on Saturday of the Georgia court's decision affirming the ruling of Judge Ben Hill on the Frank motion to set aside the verdict, Frank's lawyers were having the ruling transcribed, so that it might be made the basis of a request for a writ of error on which to carry an appeal to the nation's highest tribunal.

Before the appeal is made, however, it is likely that the Georgia court will be asked to grant a rehearing on the ground that points set up by the defense were overlooked by the Justices of the Supreme Court.

Should a rehearing be refused, a writ of error will be asked of Chief Justice Fish, and, in the event of a second refusal, Frank's lawyers will go directly to a Justice of the United States Supreme Court for the writ.

Frank and his lawyers are optimistic. The attorneys say that no other opinion in the world, least of all a decision by the United States court, ever held with the decision in the Cawthorn case, which was cited by the Supreme Court yesterday in sustaining Solicitor Dorsey's demurrer to the motion to set aside the verdict. The Cawthorn case is from a Georgia court, but the opinion, which was written by Justice Cobb, appears to be in conflict not only with decisions of other States and of the United States Supreme Court, but with other decisions of the Georgia court. It was because of this seeming lack of agreement that Judge Hill explained, in deciding on Solicitor Dorsey's demurrer, that the case was sent to the Supreme Court to have the decisions harmonized.

That the point of Frank's absence from court when the jury brought in the verdict should have been raised when the motion for a new trial was filed was the substance of the decision rendered on Saturday by the Supreme Court. The motion was based on the fact that Frank, instead of being in the courtroom, was in the Fulton County Tower, at the suggestion of the trial Judge. Frank's attorneys asserted that he had been deprived of a vital constitutional guarantee in being absent when the jury returned its verdict and in not being allowed to stand face to face with the jurors as they were being polled.

The Supreme Court in its decision brings to the fore the principle involved in the Cawthorn case—timeliness—and asserts that Frank's lawyers were too late in taking up a contention that at an earlier date might have been effective.

Frank's attorneys contend that there is no question of timeliness involved,

and that Frank was deprived of an inalienable constitutional right when he was sent from the courtroom on the eve of the verdict, and they hold that the United States Supreme Court will so decide. It is their opinion, and the opinion of many other lawyers, that favorable decision by the United States Supreme Court will at once free Frank, and that the case will not again appear in the State courts.

SEEK TO OUST HARTMANS.

Wife of Man Held for Stealing \$640,-
000 Tries to Keep Her Home.

Mrs. Richard T. Hartman, whose husband is in the Tombs on the charge of misappropriating \$640,000 belonging to Mrs. Caroline T. Mackenzie of New York, must appear in court in Hacken-

sack this morning to prove her right to the handsome home which she occupies in Tenafly. Sheriff Robert N. Heath has attached the furniture and other belongings in the Hartman home on a judgment obtained by Edward F. Cragin of New York for money loaned. The amount involved was \$3,458. Mrs. Hartman asserted that she owned the property in the house, and the attachment was held up pending a court hearing.

Sheriff Heath served a notice of motion for an order of possession upon the Hartmans on Saturday, this being the second step in the proceedings to dispossess them. The New York Life Insurance Company recently foreclosed on a \$15,000 mortgage on the Hartman house, and then bought in the property under Sheriff's sale at Hackensack.