

NEW TRIAL DENIED TO LEO M. FRANK

Georgia Supreme Court Decides
That New Evidence Pre-
sented Is Not Sufficient.

JUDGE HILL IS UPHELD

Did Not Abuse His Discretion in Re-
jecting New Plea—Motion to Set
Aside Verdict Argued Soon.

Special to The New York Times.

ATLANTA, Ga., Oct. 14.—The Supreme Court of Georgia this afternoon affirmed the decision of Judge Benjamin Hill denying the extraordinary motion of Leo M. Frank, convicted of the murder of Mary Phagan, for a new trial on the ground of newly discovered evidence.

The motion to set aside the verdict on the ground that Frank was not in the courtroom when the verdict was rendered, which was denied by Judge Hill, has been appealed to the State Supreme Court, and will be argued the latter part of this month. A decision will follow some weeks later. Should the State Supreme Court refuse to set aside the verdict Frank's lawyers can appeal to the United States Supreme Court, it is said, as a constitutional point is involved.

Today's decision, which was concurred in by all members of the Supreme Court, says in part:

"An extraordinary motion for a new trial on the ground of newly discovered evidence is addressed to the sound discretion of the trial Judge, and a refusal to grant it will not be reversed unless such discretion is abused. On the hearing of such a motion the court may hear affidavits making a counter showing on behalf of the State, so as to go to the bottom of the showing and discover, if possible, how much of real substance, and merit, there is in the alleged new evidence.

"We deem it unnecessary to take up each of the grounds offered by the defense, and of the counter showing made by the State. It is enough to say that after a consideration of them it cannot be held that the discretion of the presiding Judge in refusing to grant the extraordinary motion was abused or that a case is made requiring a reversal."

The court failed to find in the records as newly established any evidence that might not by due diligence have been set forth at the original trial, and it held that it would be improper to order a new trial except upon evidence that could not have been exhibited at the first trial.

The court failed to find in the record proper to go behind a completed proceeding, such as that of the Frank case, unless it appeared that such action would reverse the previous finding strictly on new evidence.

The extraordinary motion for a new trial alleged numerous grounds, principal of which was the contention that Dr. H. F. Harris, State Medical Expert, had declared that hair found on the turning lathe in the pencil factory differed from the hair taken from the head of Mary Phagan after her death. Other new evidence included an affidavit by the Rev. J. B. Ragsdale, who alleged

that he overheard a negro confess to the murder of Mary Phagan, which was later repudiated by Mr. Ragsdale; the alleged confession obtained from James Conley in the Fulton County jail by a negress named Annie Maud Carter, and numerous affidavits in which State's witnesses were purported to repudiate evidence given by them at Frank's original trial, most of which affidavits were later recanted by their makers.

This was Frank's fifth attempt to obtain a retrial or an annulment of the verdict, which was returned on Aug. 25, 1913.

HEADLIGHT SHOWS DEATH.

Motorman Finds Dead Boy Between
Tracks—Probably Killed by Truck.

The headlight of a trolley car in a dark part of Flushing Avenue, Williamsburg, last night, suddenly revealed the body of a boy prone between the tracks. The motorman found that the boy, Antonio Sucidio, 7 years old, of 616 Flushing Avenue, was dead.

Patrolman O'Connor heard from a woman that she had seen a beer motor truck pass through the street just ahead of the car. The boy's injuries indicated that they had been received from such a vehicle and the police are trying to identify the truck.

The boy's mother, who had sent him on an errand, was watching at a window for him, but did not see him killed. She is in Williamsburg Hospital in a serious condition from shock.

READY MONEY IN APPLES.

Assistant Manager of the Belmont
Makes a Farm Pay.

Thomas G. S. Hook, one of the assistant managers of the Belmont, showed every evidence yesterday of having plenty of ready money in his pockets. He hadn't made it in the hotel business, but out of apples, and unexpectedly. Mr. Hook some time ago bought a farm in Ulster County, and hired a man to work it.

He found an old apple orchard was bearing well, and he told his man when the crop was ready, to barrel as many as he could and ship them to New York. There were twenty barrels, and they sold yesterday for \$2 a barrel.