

EXHIBIT Z.

GEORGIA,
Fulton County:

Personally appeared Charles J. Moore, who on oath says that he is an attorney at law, occupying room 301 on the third floor of the Kiser Building, at the corner of Hunter and So. Pryor Streets; that on Friday, August 22, deponent was in his office and saw the jury come out of the court house entrance at about six P. M.; that soon after Mr. Dorsey appeared in the court house entrance and a great cheering and yelling occurred by the crowd immediately
138 opposite the entrance, and afterwards the crowd yelled "Hurrah for Dorsey," and the volume of the yells were so great that they could have been heard many blocks away; that they threw up their hats and gave other demonstrations; that at the time of the yelling the jury was just crossing the street toward the German Cafe, not fifty feet away from the entrance, and in the opinion of deponent must have heard the cheering and the words "Hurrah for Dorsey," because they could be plainly heard.

Deponent further states that he was in his office on Saturday, August 23, when the jury came out of the court house at about one o'clock, and he heard yelling and cheering when Mr. Dorsey appeared a few minutes afterwards. Deponent did not see the jury at the time of the yelling, but it occurred so soon after the jury came out of the court house that in the opinion of the deponent the jury must have heard the cheering and the words that were yelled.

Deponent further states that since the trial has been in progress he has heard several parties making threats of personal violence against the accused in the event of an acquittal; that these parties were loitering in and around the court house entrance and making threats that if the jury did not hang Frank; that they would pay the jury the compliment of sitting on the case and if the jury did not do its duty, they would; that deponent recalls the names of R. W. Milner, Richard Dutton; that Milner loitered continuously around the court house entrance and circulated among the crowd.

CHARLES J. MOORE.

Sworn to and subscribed before me this 26th day of August, 1913.

C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT AA.

GEORGIA,
Fulton County:

Personally appeared D. Rosinky, who on oath deposes and states that on Friday, August 22, and Saturday, August 23, he was standing near the corner of Hunter and South Pryor Street, in the City of Atlanta, Georgia, and that when the Solicitor-General, H. M. Dor-

sey, came out of the old City Hall Building, now used as a court house, there was a loud and vociferous cheering by the assembled crowd; that members of the crowd took the Solicitor in their arms and carried him across the street to the Kiser Building.

D. ROSINKY.

Sworn to and subscribed before me this 26th day of August, 1913.

LEONARD HAAS,
Notary Public, Fulton County, Ga.

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EXHIBIT BB.

GEORGIA,

Dougherty County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

MACK FARKAS.

Sworn to and subscribed before me this October 21st, A. D. 1913.

L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued).

GEORGIA,

Dougherty County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Before me personally appears B. W. Simon, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

B. W. SIMON.

Sworn to and subscribed before me this October 21st, A. D. 1913.

L. L. FORD,

Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued).

GEORGIA,

Dougherty County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

SAM. FARKAS.

Sworn to and subscribed before me this October 21st, A. D. 1913.

L. L. FORD,

Notary Public, Dougherty County, Georgia.

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EXHIBIT BB—(Continued).

Franklin Buggy Company, Inc.,
Manufacturers of the
"Improved Barnesville Buggy."

Barnesville, Georgia.

July 8, 1913.

When Ship—At Once.
How Ship, ———.

Ship to—Sam Farkas,
Albany, Ga.

Quantity	Cat. No.	BODY		GEAR		Axle Drop Arch	WHEELS			Top	Trimmings	Stripe	Price Each
		Width	Style	Spring	Color		Tread	Height					
1	44	20	R	Side	Bla	Arch	3/4	38/42	R	R	R	62.50	
1	Set Rubbers for Job 44-V-7/8											15.00	
1	44	22	R	Side	Car	Arch	3/4	38/42	R	R	R	62.50	
1	44	22	R	Side	Car	Arch	3/4	38/42	R	R	R	62.50	
1	Set Rubbers for Job 44-V-7/8											15.00	
1	44	23	R	Side	Bla	Arch	3/4	38/42	R	R	R	62.50	

} Net

} Net

TERMS.—Oct. 1st, 2.50 per cent. discount if paid in 30 days from date of invoice; if not discounted in 30 days buyer agrees to give note to cover the account net 90 days, from date of invoice, note to be made payable to any banker in Georgia. All goods F. O. B. Barnesville, Ga. No freight allowance. All notes due after 90 days from invoice to bear interest at 8 per cent. per annum.

All orders subject to manufacturers' contingencies. This order not subject to countermand after 5 days. No agreement considered unless same be written on face of this order.

The title of goods delivered under this contract to remain in the name of the sellers until they shall have received money for same, and upon failure to make such payments the sellers shall repossess themselves and take away such goods. Should time be taken under the terms of settlement of this contract by buyer and he should become insolvent or in default, sellers shall have the right to declare the whole amount, including all paper given, to be due and collectible. The acceptance of the goods implies the acceptance of this condition. All orders entered as regular 5 ft. Track unless other Track is specified. All prices F. O. B.

Barnesville, Ga.
Salesman—A. H. HENSLEE.

(Signature)

SAM FARKAS,
P'r B. W. SIMON, B. K.

GEORGIA,
Walton County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK:

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appear J. J. Nunnally and W. L. Ricker, of Monroe, Georgia, who, being duly sworn, depose and say on oath as follows:

That they have seen in the public prints that A. H. Henslee, one of the jurors in the Frank case, admits having made certain statements as to Frank's guilt of the murder of Mary Phagan, but says these statements were made after the trial of Leo M. Frank, and not before.

These deponents say that, so far as they know, the said Henslee has not been in Monroe, Georgia, since the trial of Leo M. Frank, and they reiterate the statement that all the statements made in their hearing by said Henslee, and testified about by these deponents on September 27th, 1913, were made before the commencement of the trial of Leo M. Frank for the murder of Mary Phagan on July 28th, 1913; to the best of these deponents' recollection, these statements were made in June, 1913, although as to the exact month these deponents say not.

J. J. NUNNALLY.

W. L. RICKER.

Sworn to and subscribed before me this October 10, A. D. 1913.

J. B. SHELNUTT,

Clerk Superior Court, Walton County, Georgia.

TWELVE JUR.

W. M. JEFFRIES.

M. S. WOODWARD.



J. F. HIGDON.

A. L. WISBEY.

EXHIBIT DD.

GEORGIA,
Fulton County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA
VS.
LEO M. FRANK.

Before me personally appears Julian A. Lehman, who, being duly sworn, deposes and says on oath that he makes this affidavit for use in motion for new trial in above stated case.

Further deposing, he says on oath that he reiterates his statement heretofore made under oath that between the time of the murder of Mary Phagan, as reported by the newspapers, and the commencement of the trial of Leo M. Frank on July 28th, 1913, he, on two occasions, heard A. H. Henslee, a juror in said case, express himself firmly and positively as to the guilt of Leo M. Frank of the murder of Mary Phagan, in the language set forth in the affidavit heretofore made by this deponent and attached to the original motion for new trial in said case; one of said times was on or about June 20th, 1913, another time was early in the month of June, to the best of this deponent's recollection near June 2nd, but as to the exact date this deponent can not state.

JULIAN A. LEHMAN.

Sworn to and subscribed before me this 13th day of October, A. D. 1913.

J. H. PORTER,
Notary Public, Fulton County, Ga.

(Here follows picture of jury marked p. 142a.)

In Fulton Superior Court.

GEORGIA,
Fulton County:

STATE OF GEORGIA
VS.
LEO M. FRANK.

Personally appeared Leon Harrison, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing, he says that he is not acquainted with Leo M. Frank, is not related to him, and has never seen him to know him; he says on oath that he is not personally acquainted with A. H. Henslee but he knows that said Henslee is the party about whom he makes this affidavit.

Further deposing, he says that during the month of May, 1913, deponent was walking from Scherrer's lunch place on Peachtree Street toward Five Points, when he was attracted by a conversation between two men, one of whom was said A. H. Henslee; the same Henslee that served on the Frank jury and whose picture appeared in the Atlanta Georgian of August 26th, 1913, page 2, a clipping of which paper is hereto attached.

At the time, which was shortly after the Mary Phagan murder, almost everyone was discussing the murder, and this deponent was very much interested in the matter, as was everyone else; this deponent heard the men with Henslee say to Henslee, "I don't believe Frank committed that murder; if he did, he is one Jew in a million; not one Jew in a million would commit such a crime;" and to this statement said Henslee replied in deponent's hearing: "I believe he did kill the girl, and if by any chance I get on the jury that tries him, I'll try my best to have him convicted."

The above statement of Henslee was in reference to Frank's guilt of the murder of Mary Phagan.

LEON HARRISON.

Sworn to and subscribed before me this 8th day of October, 1913.

ROBT. C. PATTERSON,
Notary Public, Fulton County, Ga.

EXHIBIT FF.

GEORGIA,
Walton County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA
VS.
LEO M. FRANK.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with J. J. Nunnally and W. L. Ricker, and that said Nunnally and Ricker are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them:

R. C. KNIGHT,
Ex-Ordinary.
HAL G. NOWELL,
Solicitor City Court.
O. ROBERTS,
Attorney.
J. B. SHELNUTT,
Clerk Walton Sup. Ct.
ALONZO C. STONE,
Judge City Ct. of Monroe.

Sworn to and subscribed before me this October 10, 1913.

P. H. MICHAEL,
J. P., Walton County, Ga.

GEORGIA,
Hancock County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA
VS.
LEO M. FRANK.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with Jno. M. Holmes, Shi Gray, and S. M. Johnson; and that said Holmes, Gray and Johnson are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

T. B. HIGHTOWER,
Sheriff Han. Co., Ga.

W. H. BURWELL,
HENRY H. LITTLE,
Ordinary.

FRANK L. LITTLE,
Chairman Bd. of Education, Sparta.

T. M. HUNT,
H. D. CHAPMAN,
Tax Collector Han. Co.

THOS. F. FLEMING,
H. L. MIDDLEBROOKS,
Cashier First Nat. Bk.

G. W. RIVES,
Mayor of Sparta.

R. E. WHEELER,
Cashier Sparta Savings Bank.

D. E. WILEY,
Clerk Superior Court.

A. H. BIRDSONG,
Treasurer Hancock Co.

E. A. ROZIER,
V.-Pres. Bank of Sparta.

J. D. BURNETT,
Csr. Bk. of Sparta.

Sworn to and subscribed before me this October 8th, 1913.

J. D. LEWIS,
Notary Public, Hancock County, Georgia.

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EXHIBIT HH.

GEORGIA,

Fulton County:

In the Superior Court of Fulton County, Ga.

STATE OF GEORGIA

vs.

LEO M. FRANK.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

W. F. UPSHAW.

S. E. PRUMAN.

HENRY B. KENNEDY.

Sworn to and subscribed before me this October 16th, A. D. 1913.

C. W. BURKE,

Notary Public, Fulton County, Georgia.

EXHIBIT HH—Continued.

GEORGIA,

Muscogee County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

vs.

LEO M. FRANK.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

C. W. MIZELL.

R. P. SPENCER, JR.

Sworn to and subscribed before me this October 15th, A. D. 1913.

J. B. STEPHENS,
Notary Public, Muscogee County, Georgia.

EXHIBIT II.

GEORGIA,
Fulton County:

In Fulton Superior Court.

STATE OF GEORGIA

vs.

LEO M. FRANK.

Personally appeared the undersigned deponents who, being duly sworn, depose and say that they are personally acquainted with C. P. Stough, of Atlanta, Fulton County, Georgia, and that they know him to be a man of high personal character, entirely trustworthy, and absolutely worthy of belief as to any statement made by him, whether on oath or otherwise.

A. L. GUTHMAN.
L. P. STEPHENS.
A. H. VANDYKE.

Sworn to and subscribed before me this 22d day of October, 1913.

C. W. BURKE,
Notary Public, Fulton County, Georgia.

STATE OF GEORGIA,
County of Muscogee:

Personally appeared before me, an officer duly authorized by law to administer oaths, the undersigned who, being sworn, deposes and says that he was head clerk at the New Albany Hotel (Albany Hotel Company, proprietors), located at Albany, in said state and county, all during the months of June, July and August, 1913, and for several years prior to that time; and that attached hereto, marked "Exhibit A," is the register of guests at said hotel from the 20th day of June, 1913, to the 31st day of August, 1913; and that there was no other register of guests used at said hotel during the period above stated.

And deponent says further that on the third page of said register of guests, under date of July 8th, 1913 (Cont'd 7/8/13), on the second line from the top, is the signature of A. H. Henslee, address "Atlanta, U. S. A., assigned to room 79 in said hotel; and deponent says further that he was the clerk on duty at said hotel at the time

the said Henslee registered his said name on said register, and was a guest at said hotel during that day; and deponent says further that he is personally acquainted with the said Henslee.

And deponent says further that he is aware and has knowledge that this affidavit is to be used as evidence in the hearing of the motion for a new trial in the case of State of Georgia versus Leo M. Frank, which is now pending in the superior court of Fulton County, Georgia.

W. M. LITTLE.

Sworn to and subscribed before me this October 23rd, 1913.

H. K. GAMMON,
J. P., Muskogee County, Ga.

EXHIBIT KK.

STATE OF GEORGIA,
Fulton County:

Fulton Superior Court.

No. —.

STATE OF GEORGIA
vs.
LEO M. FRANK.

Murder.

Personally appears Leo M. Frank, who on oath deposes and states that he is the defendant above named; that he did not know nor has he ever heard, until the end of his trial in the above stated case, that A. H. Henslee and Marcellus Jochenning had any prejudice or bias against deponent nor that they or either of them had ever said or done anything indicating that they believed in deponent's guilt, or had any prejudice or bias against deponent.

LEO M. FRANK.

Sworn to and subscribed before me this 24th of October, 1913.

J. O. KNIGHT,
Notary Public, Fulton County, Georgia.

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EXHIBIT LL.

GEORGIA,
Fulton County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA
VS.
LEO M. FRANK.

To the Honorable George L. Bell, Judge of the Fulton Superior Court:

This application is presented to the Court by Leo M. Frank, the defendant in the above stated case, and shows to the Court the following facts:

The above stated case of the State of Georgia vs. Leo M. Frank, indictment for murder, has been tried, a verdict found, and this defendant sentenced; and a motion for a new trial in said case is now pending before Honorable L. S. Roan, Judge of the Stone Mountain Circuit, and hearing set for October 4, 1913.

It is shown to this Court that there is a certain party in the City of Atlanta, one C. P. Stough, whose affidavit is desired by this defendant to be used as evidence on the motion for new trial, and that said C. P. Stough refuses to give said affidavit; and it is desired to take testimony of said C. P. Stough under Section 5918 of the Code of 1910 of the State of Georgia.

Wherefore, the premises considered, this application is made for the purpose of having this Court name a Commissioner to take said testimony and for the purpose of having subpoenas issued as provided in said section of the Code, requiring said C. P. Stough to be and appear before said Commissioner at a date and place named, to answer certain questions to be propounded to him by Counsel for said defendant.

This September 29th, 1913.

R. R. ARNOLD,
L. Z. ROSSER,
Defendant's Attorneys.

The foregoing application read and considered. It is ordered that Sig Teitlebaum act as commissioner in said case, in accordance with Section 5918 of the Code of Georgia of 1910.

This September 29th, 1913.

GEO. L. BELL,
Judge of Superior Court, Atlanta Circuit.

EXHIBIT LL (Continued).

GEORGIA,
Fulton County:

In Fulton Superior Court.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Written Questions to be Propounded to C. P. Stough, a Witness for the Defendant, on the Motion for New Trial Pending in said Case, Set for Hearing October 4, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

1. Q. Do you know A. H. Henslee, who served on the jury in the above stated case at the trial commencing July 28, 1913?

A. Yes.

2. Q. How long have you known him?

A. About 6 or 7 years.

148 3. Q. During the time between the murder of Mary Phagan, as reported in the newspapers, to-wit: on April 26, 1913, and the commencement of the trial of the above case, what statements, if any, did you hear juror Henslee make in connection with Leo M. Frank, or as to who murdered Mary Phagan, or as to who was guilty of this murder; or as to how the trial of Leo M. Frank for this murder would terminate?

A. About the time that Conley was reported to have made a statement, I was coming into the city on a street car from the home of my daughter. Henslee was also on the car. I heard him say this, in reference to Leo M. Frank's guilt of the murder of Mary Phagan: "I think he is guilty and I would like to be in a position where I could help break his damned neck."

4. Q. How were these statements made?

A. This statement was most positive. He was as positive as I was, and I was as positive as I could be in what I said in the conversation.

5. Q. When and where was this?

A. On a College Park street car, coming into the city.

6. Q. What is your business?

A. Inspector for the Mason's Annuity.

C. P. STOUGH.

GEORGIA,
Fulton County:

Personally appeared C. P. Stough, who having been duly sworn made answer as above indicated and shown, to the foregoing written

questions 1-6 inclusive; said answers executed, sworn to and subscribed before me this September 29th, 1913.

SIG TEITLBAUM,
*Notary Public, Fulton County, Georgia,
and Commissioner to Take Testimony.*

EXHIBIT MM.

GEORGIA,
Hancock County:

In Superior Court of Fulton County, Georgia.

STATE OF GEORGIA
vs.
LEO M. FRANK.

To the Honorable Clerk of the Superior Court of Hancock County,
Ga.:

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Sparta, Hancock County, Georgia, to-wit: John M. Holmes, Esq., Shi Gray, Esq., and S. M. Johnson, Esq., whose affidavits are desired by the movant as evidence on said motion; and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the Clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before J. W. Lewis, Esq., a notary public of said Hancock County, Georgia, and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,
L. Z. ROSSER,
Attorneys for Leo M. Frank, Movant.

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EXHIBIT MM—(Continued).

GEORGIA,

Hancock County:

In Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Questions to be Propounded to Shi Gray, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?

A. Yes.

2. Q. Are you personally acquainted with A. H. Henslee?

A. Yes.

3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?

A. Yes.

4. Q. To the best of your recollection what did he say in this conversation?

A. In a conversation in Walker & Holmes Insurance office, some one asked Henslee whether he, Henslee, thought Frank was guilty of the murder of Mary Phagan. Henslee answered in the affirmative. The answer given by Henslee was stated positively and firmly. The conversation lasted for about 20 minutes to half an hour. All of us were talking, Henslee and Mr. Holmes and Mr. Johnson, and others. The whole conversation at the time with Henslee was on the proposition as to whether or not Leo M. Frank was guilty of the murder of Mary Phagan.

5. Q. Where and when did this take place, and who else was present?

A. It was before the trial of Frank, and it was in the insurance office of Walker & Holmes.

6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?

A. Yes.

7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one

dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

A. I heard him say he was summoned as a juror in the same conversation already testified about.

8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?

A. I am a dealer in live stock.

H. SHI GRAY.

GEORGIA,

Hancock County:

Before me personally appeared H. Shi Gray, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,

Notary Public, Hancock County, Georgia.

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EXHIBIT MM—(Continued).

GEORGIA,

Hancock County:

In Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Questions to be Propounded to T. M. Johnson, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?

A. Yes.

2. Q. Are you personally acquainted with A. H. Henslee?

A. I know him by sight.

3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?

A. Yes.

4. Q. To the best of your recollection what did he say in this conversation?

A. Several parties were talking. Some said they thought Leo M. Frank was guilty of the murder of Mary Phagan, others said they

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN.

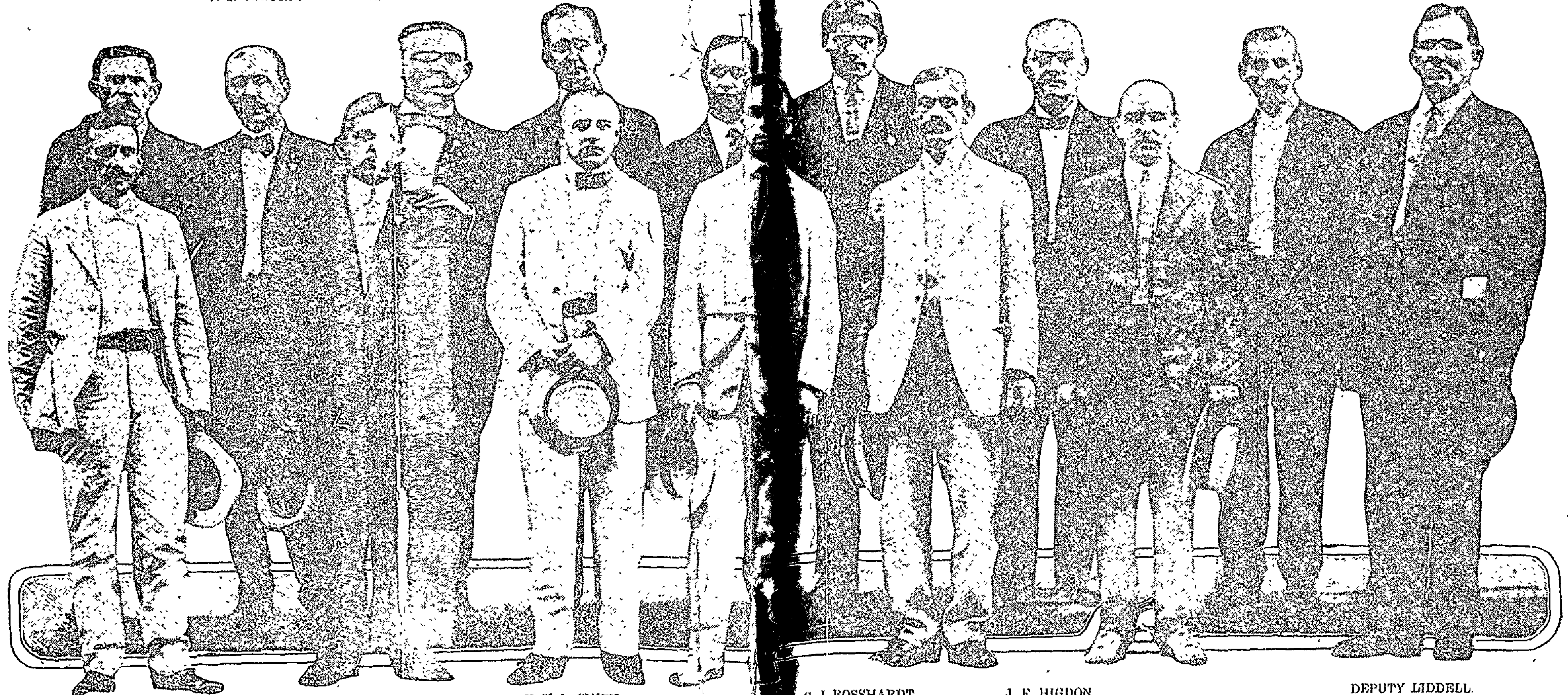
A. I. RHENSLEE.

F. E. WINBURN.

W. F. MEDCALF.

A. L. WISBEY.

W. M. JEFFRIES. M. JOHENNING.



DEPUTY HUBER.

M. S. WOODWARD.

F. V. L. SMITH.

D. TOWNSEND.

C. J. BOSSHARDT.

J. F. HIGDON.

DEPUTY LIDDELL.

did not. Henslee stated his conviction that Frank was guilty of the murder of Mary Phagan. He did this firmly and positively.

5. Q. Where and when did this take place, and who else was present?

A. Walker & Holmes' office, about the last of June, 1913.

6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?

A. Yes.

7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

A. He said he had been drawn as a juror and might have to serve.

8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?

A. Work for Walker & Holmes.

T. M. JOHNSON.

GEORGIA,

Hancock County:

Before me personally appeared T. M. Johnson, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth, said answers executed, sworn to and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

(Here follows picture of jury, marked p. 150a.)

GEORGIA,
Hancock County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Questions to be Propounded to John M. Holmes, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?

A. Yes.

2. Q. Are you personally acquainted with A. H. Henslee?

A. Yes.

3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?

A. Yes.

4. Q. To the best of your recollection what did he say in this conversation?

A. Several men were in my office. Mr. Henslee was asked the question whether or not he believed Leo M. Frank was guilty of the murder of Mary Phagan. He stated that he did. He stated this positively and firmly.

5. Q. Where and when did this take place, and who else was present?

A. Walker & Holmes insurance office on the morning of June 27th, 1913.

6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?

A. Yes.

7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

A. He stated that he had been summoned as a juror.

8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?

A. Member of the firm of Walker & Holmes, real estate and insurance.

JOHN M. HOLMES.

GEORGIA,
Hancock County:

Before me personally John M. Holmes, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

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EXHIBIT NN.

In Superior Court of Fulton County.

STATE OF GEORGIA
vs.
LEO M. FRANK.

GEORGIA,
Fulton County:

To the Honorable Clerk of the Superior Court of Walton County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Monroe, Walton County, Georgia, to-wit: J. J. Nunnally, Esq., Virgil Harris, Esq., and W. L. Ricker, Esq., whose affidavits are desired by the movant as evidence on said motion and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before Orrin Roberts or Clifford Walker, notary publics of said Walton County, Ga., and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,
L. Z. ROSSER,
Attorneys for Leo M. Frank, Movant.

GEORGIA,
Walton County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA
VS.
LEO M. FRANK.

Written Questions to be Propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and ——— ———, Residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

A. Yes, I have.

2. Q. Do you know A. H. Henslee?

A. I do.

3. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, to-wit, July 28, 1913?

A. He was.

4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

A. I did. He talked for some time in the store of Nunnally & Harris, and stated that Leo M. Frank was guilty of the murder of Mary Phagan. He denounced Frank bitterly and vehemently and made this statement about Frank in my hearing: "They are going to break that Jew's neck." This was stated most bitterly and positively.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

A. Yes, he said that Frank was guilty.

6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

A. Yes; he was bitter.

7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so, what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

A. I was only present about 20 minutes. He was talking all the time I was there and stating that Frank was guilty of the murder of Mary Phagan.

9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

A. J. J. Nunnally and some others whose names I do not now recall.

10. Q. State in full what is your business occupation, or occupations.

A. Dentist. Practicing about seven years. Am graduate of Atlanta Dental College.

W. L. RICKER.

GEORGIA,

Walton County:

Before me personally appeared W. L. Ricker, who being first duly sworn true answers to make to the above and foregoing questions, answered same as above set forth; said answer executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

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EXHIBIT NN—(Continued).

GEORGIA,

Walton County:

In the Superior Court of Fulton County, Georgia.

STATE OF GEORGIA

VS.

LEO M. FRANK.

Written Questions to be Propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and ———, Residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

A. Yes.

2. Q. Do you know A. H. Henslee?

A. Yes.

3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported

in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan—July 28, 1913.

A. He was.

4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

A. What impressed me was that Henslee was the most vehement in his expressions as to the guilt of Leo M. Frank of the murder of Mary Phagan, of any person I had heard talk about it. The Phagan murder was, at the time, the particular topic of conversation generally; a great many people were discussing it, and many men denouncing Frank as guilty, particularly traveling men. Henslee was the most bitter of any. For about two and one-half hours in my place of business Henslee argued Frank's guilt in the murder case; in talking about the outcome of the case, he made the statement, which to the best of my recollection was, that if the jury should turn Frank out, he (Frank) would not get out of Atlanta alive.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

A. Yes, he believed him guilty.

6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

A. He was very vehement as stated; there was no doubt from what he said that it was his conviction that Frank was guilty.

7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so,

(Here follows picture of jury, marked page 154 a.)

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN.

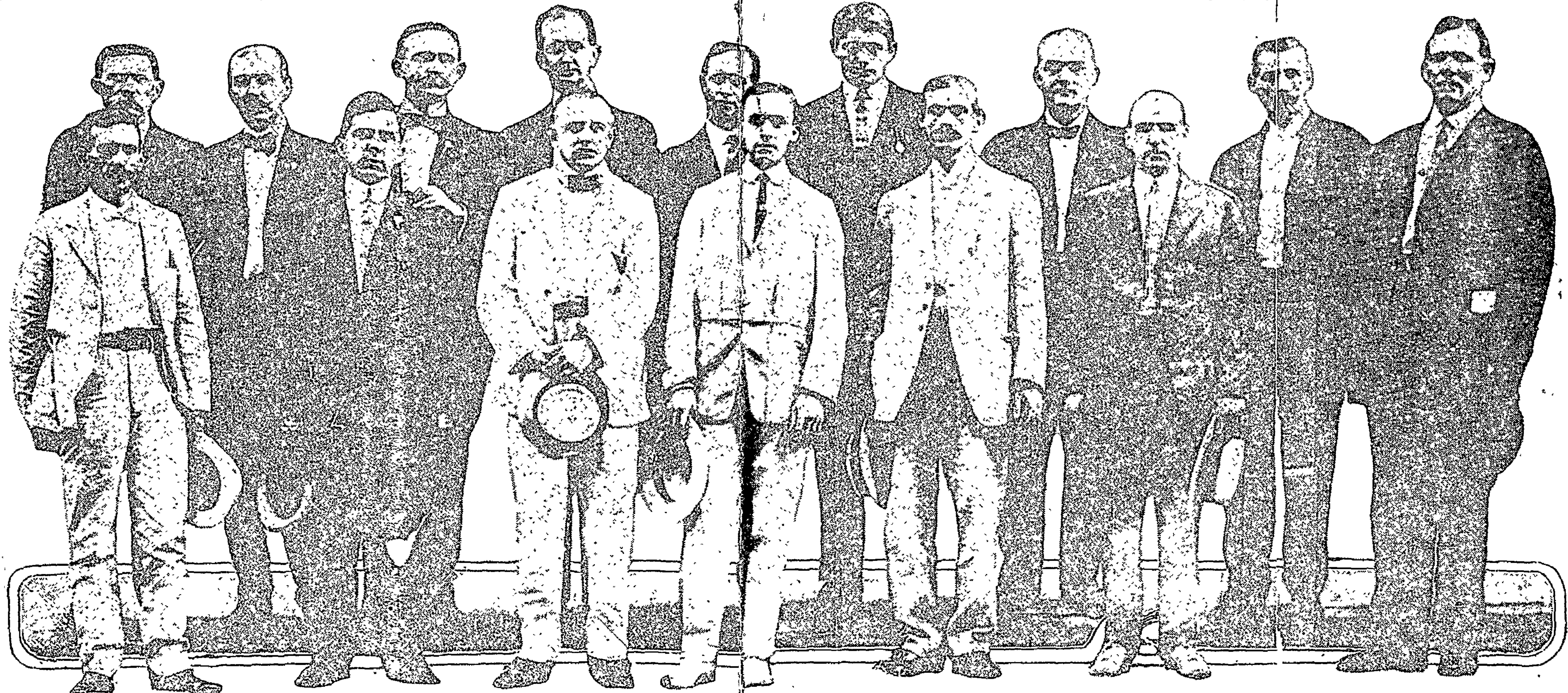
A. H. HENSLEE.

F. E. WINBURN.

W. F. MEDCALF.

A. L. WISBEY.

W. M. JEFFRIES. M. JOHNNING.



DEPUTY HUBER.

M. S. WOODWARD.

F. V. L. SMITH.

D. TOWNSEND.

C. F. BOSSHARDT.

J. F. HIGDON.

DEPUTY LIDDELL.

155 what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

A. I only recall that, to the best of my recollection, he said that if the jury did turn Frank a loose, Frank would never get away alive.

8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

A. About two and one-half hours, according to my recollection. He made the statements repeatedly; it might have been only two hours.

9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

A. Dr. W. L. Ricker, and at times during the period there were others, but their names I don't recall. My partner, Mr. Harris, was out of the city.

10. Q. State in full what is your business occupation, or occupations.

A. A member of the firm of Nunnally & Harris, composed of J. J. Nunnally and Virgil Harris, dealers in buggies, wagons, and live stock. Also vice-president W. H. Nunnally Co., general supplies and merchandise.

J. J. NUNNALLY.

GEORGIA,

Walton County:

Before me personally appeared J. J. Nunnally, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

The recitals of fact contained in the original motion for new trial, and in the one hundred and three grounds of the foregoing amended motion for new trial (the same being all the grounds of said original and all the grounds of said amended motion) are hereby approved as true, and the Court has identified all the exhibits and they are made part of said motion for new trial.

October 31, 1913.

L. S. ROAN,
J. S. C., St. Mt. Ct.

After considering the above and foregoing motion and amended motion and affidavits submitted by the State the motion for a new trial is hereby overruled and denied.

This October 31, 1913.

L. S. ROAN,
*Judge Superior Court,
Stone Mountain Circuit, Presiding.*

Recorded Writs M. G. page 796, 31st October, 1913.

JOHN H. JONES,
Deputy Clerk.

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Charge of the Court.

Fulton Superior Court.

STATE OF GEORGIA

vs.

LEO M. FRANK.

Murder.

Trial: July 28 to Aug. 21, 1913.

GENTLEMEN OF THE JURY: This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th day of April, of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the grand jury of this county recently empanelled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth of this issue.

Leo M. Frank, the defendant, commences the trial with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the State shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment. I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the State to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty. You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for want of evidence, such a doubt as a reasonable and impartial mind would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace

of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-being, which is manifested by external circumstances capable of proof.

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

There is no difference between express and implied malice except in the mode of arriving at the fact of its existence. The legal sense of the term "malice" is not confined to particular animosity to the deceased, but extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention, if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously.

157 When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the State to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of the credibility of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empanelled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be con-

sistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which would otherwise be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him. (Stephens' case, 81 Ga. 589.)

The word "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good.

When a defendant has put his character in issue, the State is
158 allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it. Hence, the Solicitor-General has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The Solicitor-General had the right to ask any questions along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them. The Court now wishes to caution you that, although the Solicitor-General was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part, the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the Solicitor-General, or any of them, unless the alleged

witnesses testify to it. Furthermore, where a man's character is put in evidence, and in the course of the investigation any specific act of misconduct is shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character. (Henderson's case, 5 Ga. App. 495 (3)).

When the defendant has put his character in issue, the State is allowed to bring witnesses to prove that his general character is bad, and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character, the jury believes that his character is bad, unless from all the other testimony in the case they believe he is guilty beyond a reasonable doubt.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant's character: If, after considering all the evidence pro and con, on the subject of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving due weight to it as one of the facts in the case, you believe from the evidence as a whole that he is guilty beyond a reasonable doubt, you would be authorized to convict him.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say "We, the jury, find the defendant guilty." Should you go no further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penalty for murder, to-wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt
159 from the evidence that this defendant is guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: "We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the penitentiary for life." In the event you should make such a verdict as that, then the Court, under

the-law, would have to sentence the defendant to the penitentiary for life.

You have heard the defendant make his statement. He had the right to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe, or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either as to the defendant's guilt as charged, then give the prisoner the benefit of that doubt, and acquit him; and in the event you do acquit him the form of your verdict would be: "We, the jury, find the defendant not guilty." As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

Examined and approved as my charge in this case, Nov. 1, 1913.

(Signed)

L. S. ROAN,
J. S. C., St. Mt. Ct.

160

Petition for Appeal.

In the Supreme Court of the United States, October Term, 1914.

LEO M. FRANK, Appellant,
 against
 C. WHEELER MANGUM, Sheriff of Fulton County, Georgia, Appellee.

Petition for Writ of Habeas Corpus.

The above named appellant, Leo M. Frank, conceiving himself aggrieved by the judgment made and entered on the 21st day of December, 1914, by the United States District Court for the Northern District of Georgia, in the above entitled cause, does hereby appeal from said judgment to the Supreme Court of the United States, for the reasons specified in the assignments of error, which are filed herewith, appellant alleging that there exists probable cause for said appeal, and prays that this appeal may be allowed, that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the Supreme Court of the United States, that the said judgment be reversed, and that such other and further proceedings may be had in the premises as may be just and proper.

LEO M. FRANK.

LOUIS MARSHALL,
 HENRY C. PEEPLES,
 HENRY A. ALEXANDER,
Attorneys for Appellant.

UNITED STATES OF AMERICA,
State of Georgia, County of Fulton:

Personally appeared Leo M. Frank, who on oath deposes and states that he is the appellant in the above entitled cause; that he verily believes that there exists probable cause for appeal and that this appeal is not made for the purpose of delay.

LEO M. FRANK.

Sworn to and subscribed before me this 22nd day of December, 1914.

[SEAL.]

MONTEFIORE SELIG,
Notary Public, Fulton County, Ga.

Filed in Clerk's Office January 14, 1915. O. C. Fuller, Clerk.

161 STATE OF GEORGIA,
Fulton County:

I, Arnold Broyles, Clerk of the Superior Court of said County, which Court is a Court of record, do hereby certify that Montefiore Selig is a duly appointed Notary Public in and for said State and County, and that he was appointed on the 11 day of May 1911, and that his commission as such Notary expires with the 10th day of May, 1915 and that he resides in said County of Fulton.

I further certify that I am acquainted with the Signature of the said Montefiore Selig as such Notary Public, to the instrument hereto attached; that the same is genuine, and that, under the laws of Georgia, he is authorized to attest instruments for record, take acknowledgments and administer oaths.

In witness of all of which, I hereunto subscribe my name and affix the Seal of this Court, this the 22 day of Dec. 1914.

[SEAL OF THE COURT.]

ARNOLD BROYLES,
Clerk of the Superior Court of Fulton County, Ga.

Revenue Stamp, Canceled.

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Assignments of Error.

Supreme Court of the United States:

In the Matter of the Application of LEO M. FRANK, Appellant, for a Writ of Habeas Corpus, to be Directed to C. Wheeler Mangum, Sheriff of Fulton County, Georgia.

LEO M. FRANK, Appellant,
against
C. WHEELER MANGUM, Sheriff of Fulton County, Georgia, Appellee.

Assignments of Error on Appeal.

Now comes Leo M. Frank, the appellant in the above entitled cause, and avers and shows that, in the record and proceedings in said cause, the District Court of the United States for the Northern District of Georgia erred to the grievous injury and wrong of the appellant in said cause, and to his prejudice and against his rights, in the following particulars:

First. The said District Court of the United States erred in holding, that the appellant's application and the exhibits and records therein referred to did not make a case wherein the said Court could properly allow the issuance of the writ of habeas corpus prayed for.

163 Second. The said District Court of the United States erred in holding, that the denial by the Supreme Court of the United States and by the several Justices thereof of appellant's application for a writ of error to the Supreme Court of Georgia, to review the judgment of that court affirming the judgment of the Superior Court of Fulton County, Georgia, denying the appellant's motion to set aside the verdict rendered in the said court convicting him of murder, deprived this appellant of his right to the issuance of a writ of habeas corpus as prayed for.

Third. The said District Court of the United States erred in holding, that it could not entertain the petition of the appellant for the issuance of a writ of habeas corpus herein because it would be the exercise by said Court of supervisory power over the action of the State courts in a manner not warranted by the Constitution or the laws of the United States.

Fourth. The said District Court of the United States erred in holding, that by entertaining the appellant's petition for a writ of habeas corpus it would do so in the face of alleged decisions of two Justices of this Court, and of this Court, that no Federal question remained for consideration, or now exists in this cause.

Fifth. The said District Court of the United States erred in holding, that no question was made concerning the jurisdiction of the Superior Court of Fulton County, Georgia, in trying the indictment wherein the appellant was charged with the crime of murder.

164 Sixth. The said District Court of the United States erred in holding, that the appellant is not entitled to the writ of habeas corpus or the relief prayed for, and that his application for the same should be denied.

Seventh. The said District Court of the United States erred in refusing to hold, that the Superior Court of Fulton County, Georgia, lost jurisdiction over the appellant on his trial for murder in said court, because of his involuntary absence from the court at the time of the rendition of the verdict against him and of the polling and discharge of the jury, said trial having thereby become a nullity, and the proceedings of said court in receiving said verdict and polling the jury and discharging it, were coram non judice and devoid of due process of law.

Eighth. The said District Court of the United States erred in refusing to hold, that the judgment pronounced against the appellant in the Superior Court of Fulton County, Georgia, whereby he was sentenced to death and under which he is now in the custody of C. Wheeler Mangum, Sheriff of Fulton County, Georgia, was a nullity, and all subsequent proceedings thereto are nullities, because at the time when said judgment was pronounced the said Superior Court of Fulton County, Georgia, had lost jurisdiction over the appellant and of this cause.

Ninth. The said District Court of the United States erred in refusing to hold, that the reception by the Superior Court of Fulton County, Georgia, on the appellant's trial for murder in said court, in his absence, of the verdict convicting him of the crime of murder, tended to deprive him of his life and liberty without due
165 process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Tenth. The said District Court of the United States erred in refusing to hold, that the appellant had the right to be present at every stage of his trial in the Superior Court of Fulton County, Georgia, including the reception of the verdict against him, the polling of the jury and the discharge of the jury, and that this right was a fundamental right essential to due process of law.

Eleventh. The said District Court of the United States erred in refusing to hold, that the involuntary absence of the appellant at the time of the reception of the verdict on his trial in the Superior Court of Fulton County, Georgia, and the polling of the jury, deprived him of an opportunity to be heard, which constituted an essential prerequisite to due process of law.

Twelfth. The said District Court of the United States erred in refusing to hold, that the appellant's opportunity to be heard on his

trial in the Superior Court of Fulton County, Georgia, included the right to be brought face to face with the jury at the time of the rendition of the verdict and of the polling of the jury.

Thirteenth. The said District Court of the United States erred in refusing to hold, that the appellant's right to be present during the entire trial, including the time of the rendition of the verdict against him in the said Superior Court of Fulton County, Georgia, was one which neither he nor his counsel could waive nor ab-
166 jure.

Fourteenth. The said District Court of the United States erred in refusing to hold, that the appellant's counsel having had no express or implied authorization from him to waive his presence at the time of the rendition of the verdict against him in the Superior Court of Fulton County, Georgia, and it being in any event beyond his constitutional power to give them such authority, their consent to the reception of the verdict in his absence was a nullity.

Fifteenth. The said District Court of the United States erred in refusing to hold, that since neither the appellant nor his counsel could expressly waive his right to be present at the rendition of the verdict, that right could not be waived by implication or in consequence of any ratification by him or acquiescence on his part in any action taken by his counsel.

Sixteenth. The said District Court of the United States erred in refusing to hold, that the appellant's involuntary absence at the reception of the verdict rendered against him in the Superior Court of Fulton County, Georgia, constituting as it did an infraction of due process of law, incapable of being waived directly or indirectly, expressly or impliedly, before or after the rendition of the verdict, his failure to raise the jurisdictional question on his motion for a new trial did not deprive him of his constitutional right to attack as a nullity the verdict rendered against him and the judgment based thereon.

167 Seventeenth. The said District Court of the United States erred in refusing to hold, that the appellant's trial in the Superior Court of Fulton County, Georgia, did not proceed in accordance with the orderly process of the law essential to a fair and impartial trial, because dominated by a mob which was hostile to him and whose conduct intimidated the court and jury and unduly influenced them and neutralized and over-powered their judicial functions, and because for that reason he was deprived of due process of law and of the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Eighteenth. The said District Court of the United States erred in refusing to hold, that the decision of the Supreme Court of Georgia, which determined that the appellant's motion to set aside the verdict rendered against him in the Superior Court of Fulton County, Georgia, on the ground of his absence at the time of the rendition of said verdict, was not an available remedy to attack such verdict but that the objection should have been raised on the motion for a new trial, deprived the appellant of a substantial right given to him

by the law in force at the time to which his alleged guilt related and at the time of the reception of the verdict against him and of the presentation and decision of the motion for a new trial made by him, and took from him a right which at all of said times was vital to the protection of his life and liberty, and constituted the passing of an ex post facto law in violation of the prohibition contained in Article I, Section 10, of the Constitution of the United States, and was illegal and void.

168 Nineteenth. The said District Court of the United States erred in refusing to hold, that the judgment of the Supreme Court of Georgia, rendered on November 14, 1914, deprived him of due process of law and of the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States, because the Court thereby in effect declared, that in order to avail himself of his aforesaid constitutional rights, to wit, the assertion of his right to due process of law and to the equal protection of the laws, he would be compelled to subject himself to a second jeopardy, thus depriving him of his aforesaid constitutional rights except on the illegal condition of the surrender by him of the right secured to all persons charged with criminal offenses in the State of Georgia under paragraph 8, section 1, Article I, of the Constitution of said State.

Dated, December 23, 1914.

LOUIS MARSHALL,
HENRY C. PEEPLES,
HENRY A. ALEXANDER,
Petitioner's and Appellant's Counsel.

Filed in Clerk's Office this January 11th, 1915.

O. C. FULLER,
Clerk U. S. District Court, Northern District of Georgia.

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Opinion of Justice Lamar.

In re LEO FRANK. Habeas Corpus.

Leo Frank's recent application for a writ of error was denied by me on the ground that no Federal question was involved in the ruling of the Supreme Court of Georgia that his Motion to Set Aside the verdict finding him guilty of murder had been filed too late. This petition presents a wholly different question since it is an application for the allowance of an appeal from the judgment of a Federal Court on a record which presents a purely Federal question, irrespective of regulations governing State practice.

Frank's petition for the writ of habeas corpus, addressed to the Judge of the United States District Court for the Northern District of Georgia, alleges that on his trial for murder in the Superior Court of Fulton County, Georgia, public feeling against him was so great that the presiding judge advised his counsel not to have him present in the court room when the verdict was returned, and that his involuntary absence, under such circumstances, when the verdict was received, deprived him of a hearing to which he was entitled under the Constitution and rendered his conviction void. He avers that

his Motion for a New Trial was overruled and he then moved to Set Aside the verdict as being void for want of jurisdiction; That in passing on that Motion the State Supreme Court held that while he had the Constitutional right to be present when the verdict against him was returned into court, yet such verdict could
 170 not be attacked, by a Motion to Set Aside, after the expiration of the trial term and after his Motion for a New Trial had been finally refused. He alleges that his attempt to have that judgment reviewed in the Supreme Court of the United States failed because, though a Federal question was raised in the record, the decision of the Supreme Court of Georgia was based on a matter of State practice.

He thereafter filed this petition for a writ of habeas corpus in which he claims that the right to be present at the rendition of the verdict was jurisdictional and that on habeas corpus he is entitled to a hearing on the question as to whether he had waived or could waive his constitutional right to be present when the verdict of guilty was returned into court.

The District Judge heard no evidence as to the truth of the allegations, but refused the writ on the ground that the facts therein stated did not entitle Frank to the benefit of that remedy. He declined to give the certificate of probable cause and this application for that certificate and for the allowance of an appeal was then made to me as the Justice assigned to the Fifth Circuit.

Under the Act of 1908 the application for the certificate is not to be determined by any views which may be held as to the effect of the final judgment of the State Supreme Court refusing a New Trial, but by considering whether the nature of the constitutional right asserted in the absence of any decision expressly foreclosing the right to an appeal, leaves the matter so far unsettled as to constitute probable cause justifying the allowance of the appeal.

The Supreme Court of the United States has never determined whether, on a trial for murder in a State court, the due process clause of the Federal Constitution guarantees the defendant a right to be present when the verdict is rendered.

171 Neither has it decided the effect of a final judgment refusing a New Trial in a case where the defendant did not make the fact of his absence when the verdict was returned a ground of the Motion, nor claim that the rendition of the verdict in his absence was the denial of a right guaranteed by the Federal Constitution.

Nor has it passed upon the effect of its own refusal to grant a writ of error in a case where an alleged jurisdictional question was presented in a Motion filed at a time not authorized by the practice of the State where the trial took place. Such questions are all involved in the present case, and since they have never been settled by any authoritative ruling by the full court, it cannot be said that there is such a want of probable cause as to warrant the refusal of an appeal. That being true, the Act of Congress requires that the certificate should be given and the appeal allowed.

Dec. 28, 1914.

J. R. LAMAR,

Associate Justice Supreme Court of the United States.

Filed in Clerk's Office January 11th, 1915.

O. C. FULLER,
Clerk U. S. District Court, Northern District of Georgia.

172 *Order Allowing Appeal and Certificate of Probable Cause.*

Supreme Court of the United States, October Term, 1914.

No. —.

LEO M. FRANK

vs.

C. WHEELER MANGUM, Sheriff of Fulton County, Georgia.

On consideration of the petition of Leo M. Frank for an appeal from the order of the District Court of the United States for the Northern District of Georgia, denying the prayer of the petitioner for the issuance of a writ of habeas corpus herein,

It is ordered that said appeal be, and the same is hereby, granted upon the petitioner giving bond in the sum of Three hundred dollars (\$300.00), conditioned according to law, and in pursuance of the Act of Congress of March 10th, 1908, Chapter 76, 35 Statutes at Large, page 40, I do hereby certify that there is probable cause for the allowance of said appeal.

(Signed)

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

Washington, D. C., December 28, 1914.

Filed in Clerk's Office Jany. 11th, 1915.

O. C. FULLER,
Clerk U. S. District Court, Northern District of Georgia.

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Appeal Bond.

Know all men by these Presents, That we, Leo M. Frank, as principal, and Montefiore Selig of Atlanta, Georgia, as Sureties, are held and firmly bound unto C. Wheeler Mangum, Sheriff of Fulton County, Georgia, in the full and just sum of Three Hundred, (\$300.00) dollars, to be paid to the said C. Wheeler Mangum, Sheriff of Fulton County, Georgia, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 4th day of January, in the year of our Lord one thousand nine hundred and fifteen.

Whereas, lately as a District Court of the United States for the Northern District of Georgia in a suit depending in said Court entitled Ex Parte Leo M. Frank, on petition for writ of habeas corpus, an order was entered against the said Leo M. Frank and the said Leo M. Frank having obtained an order allowing an appeal and filed a copy thereof in the Clerk's Office of the said court to reverse the order in the aforesaid suit, and a citation directed to the said C. Wheeler Mangum, Sheriff of Fulton County, Georgia, citing and

admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Leo M. Frank shall prosecute said plea to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LEO M. FRANK. [SEAL.]
MONTEFIORE SELIG. [SEAL.]

Sealed and delivered in the presence of I. F. Sterne.

[SEAL.]

HERBERT KAISER,
Notary Public, Fulton County, Georgia.

[On margin:] Notary Public, Fulton County, Georgia. My Commission expires Nov. 25th, 1916.

Approved by

J. R. LAMAR,

Associate Justice of the Supreme

Court of the United States.

STATE OF GEORGIA,

Fulton County:

I, Arnold Broyles, Clerk of the Superior Court of said County, which Court is a Court of record, do hereby certify that Herbert Kaiser is a duly appointed Notary Public in and for said State and County, and that he was appointed on the 26th day of November 1912, and that his commission as such Notary expires with the 25th day of November 1916 and that he resides in said County of Fulton.

I further certify that I am acquainted with the Signature of the said Herbert Kaiser as such Notary Public, to the instrument hereto attached; that the same is genuine, and that, under the laws of Georgia, he is authorized to attest instruments for record, take acknowledgements and administer oaths.

In witness of all of which I hereunto subscribe my name and affix the seal of this Court this the 4th day of Jan'y 1915.

[SEAL.]

ARNOLD BROYLES,

Clerk of the Superior Court of Fulton County, Ga.

Ten cent revenue stamp canceled.

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Petition for Writ of Habeas Corpus.

LEO M. FRANK

v.

C. WHEELER MANGUM, Sheriff of Fulton County, Georgia.

Appeal.

GEORGIA,

Fulton County:

Personally appeared before me the undersigned officer Montefiore Selig who being first duly sworn deposes and says that he is the

owner in his own right of property worth at least three hundred dollars in excess of the amount of all exemptions allowed him by law.

MONTIFIORRE SELIG.

Sworn to and subscribed before me this 4th day of January, 1915.

[Seal M. P. Cook, Notary Public, Fulton County, Ga.]

M. P. COOK,
Notary Public, Fulton County, Georgia.

Filed in Clerk's Office Jan'y 11th, 1915.

O. C. FULLER,
*Clerk U. S. District Court,
Northern District of Georgia.*

STATE OF GEORGIA,
Fulton County:

I, Arnold Broyles, Clerk of the Superior Court of said County, which Court is a Court of record, do hereby certify that M. P. Cook is a duly appointed Notary Public in and for said State and County, and that she was appointed on the 7th day of Dec. 1912, and that her commission as such Notary expires with the 6th day of December 1916 and that she resides in said County of Fulton.

I further certify that I am acquainted with the Signature of the said M. P. Cook as such Notary Public, to the instrument hereto attached; that the same is genuine, and that, under the laws of Georgia, she is authorized to attest instruments for record, take acknowledgements and administer oaths.

In witness of all of which I hereunto subscribe my name and affix the Seal of this Court this the 4th day of Jan'y 1915.

[SEAL.]

ARNOLD BROYLES,
Clerk of the Superior Court of Fulton County, Ga.

Ten cent revenue stamp cancelled.

175 UNITED STATES OF AMERICA, ss:

To C. Wheeler Mangum, Sheriff of Fulton County, Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Georgia, wherein Leo M. Frank is appellant and you are appellee to show cause, if any there be, why the order rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph R. Lamar, Associate Justice of the Supreme Court of the United States, this sixth day of January, in the year of our Lord one thousand nine hundred and fifteen.

J. R. LAMAR,
*Associate Justice of the
Supreme Court of the United States.*

Filed in Clerk's Office, January 11", 1915.

O. C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

176 GEORGIA,
Fulton County:

On this 9th day of January, in the year of our Lord one thousand nine hundred and fifteen, personally appeared before me, the subscriber, Henry A. Alexander and makes oath that he delivered a true copy of the within citation to C. Wheeler Mangum, Sheriff of Fulton County, Georgia on January 9th 1915.

HENRY A. ALEXANDER.

Sworn to and subscribed the 9th day of January, A. D. 1915.

[Seal G. H. Brodnax, Notary Public, Fulton County, Ga.]

G. H. BRODNAX,
Notary Public, Fulton County, Ga.

My Commission expires Nov. 29, 1916.

Service of the foregoing citation is hereby acknowledged—this Jan. 9, 1914.

WARREN GRICE,
Attorney General of Georgia,
Representing Appellee.

177 Supreme Court of the United States, October Term, 1914.

No. —.

LEO M. FRANK

v.

C. WHEELER MANGUM, Sheriff of Fulton County, Georgia.

Præcipe.

To the Clerk of the District Court for the Northern District of Georgia:

The appellant in the above stated cause, Leo M. Frank, indicates as the portions of the record to be incorporated in the transcript of the record on said appeal the entire record in said cause.

Appellant further files herewith an acknowledgement of service of a copy of this præcipe on the counsel of the appellee, C. Wheeler Mangum, Sheriff of Fulton County, Georgia.

LOUIS MARSHALL,
HENRY C. PEEPLES,
HENRY A. ALEXANDER,
Attorneys for Appellant.

178 Supreme Court of the United States, October Term, 1914.

No. —.

LEO M. FRANK

v.

C. WHEELER MANGUM, Sheriff of Fulton County, Georgia.

GEORGIA,

Fulton County:

The appellee in the above stated cause, C. Wheeler Mangum, Sheriff of Fulton County, Georgia, hereby acknowledges, through his counsel, service of a copy of the foregoing præcipe.

WARREN GRICE,
Attorney General of Georgia.

This 11th day of January, 1915.

Filed in Clerk's Office January 11th, 1915.

O. C. FULLER,
*Clerk U. S. District Court,
Northern District of Georgia.*

179 In the District Court of the United States for the Northern Division of the Northern District of Georgia.

I, Olin C. Fuller, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached printing and writing is a true, full, correct and complete copy of the record and all proceedings had and Assignments of Error filed, in the matter of the Application of Leo M. Frank, Appellant, for a writ of habeas corpus to be directed to C. Wheeler Mangum, Sheriff of Fulton County, Ga. Leo M. Frank Appellant, against C. Wheeler Mangum, Sheriff of Fulton County, Georgia, Appellee, as the same appear of record and on file in this office. I further certify that the original Citation with Acknowledgement of Service Thereon is attached hereto in the stead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of the said District Court, at the City of Atlanta, Georgia, this the 15th day of January, A. D. 1915.

[Seal U. S. District Court, N. D. Georgia.]

OLIN C. FULLER,
*Clerk U. S. District Court for the
Northern District of Georgia.*

Endorsed on cover: File No. 24,519. N. Georgia D. C. U. S. Term No. 775. Leo M. Frank, appellant, vs. C. Wheeler Mangum, Sheriff of Fulton County, Georgia. Filed January 18th, 1915. File No. 24,519.

Supreme Court of the United States,

OCTOBER TERM, 1914.

No. 775.

LEO M. FRANK,
Appellant,

against

C. WHEELER MANGUM, Sheriff of
Fulton County, Georgia.

Appellant's Argument.

Leo M. Frank appeals from a judgment rendered on December 21, 1914, by the United States District Court for the Northern District of Georgia, Hon. William T. Newman, United States District Judge, presiding, which denied his petition for a writ of *habeas corpus*. An appeal to this court was allowed by Mr. Justice Lamar, who certified that there was probable cause for such allowance. (*Rec. pp. 16; 229-231.*)

The appellant, in his petition, alleged that he was unjustly and unlawfully deprived of his liberty, and unlawfully imprisoned and detained in the jail of Fulton County, Georgia, by C.

Wheeler Mangum, the Sheriff of the County and ex-officio jailer thereof; that his imprisonment was in violation of his rights as a citizen of the United States, guaranteed by that part of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law. The petition showed that the sole claim of authority by virtue of which he was restrained of his liberty is, that on May 24, 1913, he was indicted by the grand jury of Fulton County, Georgia, on the charge of having murdered Mary Phagan; that thereafter in the Superior Court of Fulton County, Hon. L. S. Roan, a Judge of that court, presiding, he was arraigned and tried on the indictment, and on August 25, 1913, the jury empanelled to try him returned a verdict of guilty, upon which the judgment of the court was thereafter rendered, and he was, on August 26, 1913, sentenced to be hung, and thereafter remanded to the custody of the respondent as sheriff and ex-officio jailer, and has continued in such custody ever since awaiting the execution. (*Rec. p. 1*).

The petition shows that, at the time of the rendition of the verdict, the entry of judgment thereon, and the pronouncement of the sentence of death against the appellant, the Superior Court of Fulton County, in which he was tried, had lost jurisdiction over him and over the trial of the indictment, and that all proceedings upon the trial, including the reception of the verdict, the rendition of the judgment, and the pronouncement of the sentence of death and his commitment to the jail of Fulton County and into the custody of the respondent, were without due pro-

cess of law, and in all respects null, void and of no effect, and he charges that his imprisonment, confinement and detention are in all respects illegal, and in violation of his constitutional rights. (*Rec. pp. 1, 2.*)

The facts which occasioned such loss of jurisdiction and by reason of which he was deprived of due process of law and of the equal protection of the laws, are stated by the appellant in his petition as follows (*Rec. pp. 2 to 5*):

THE HOSTILE ATMOSPHERE SURROUNDING THE TRIAL.

“My trial in the Superior Court of Fulton County, State of Georgia, before Hon. L. S. Roan and a jury, began on July 28, 1913, in the Court House at Atlanta, Georgia, and continued until August 25, 1913. The court room in which the trial took place was on the ground floor of the Court House. The windows of the court room were open during the progress of the trial, and looked out on Pryor Street, a public street of Atlanta. An open alley ran from Pryor Street along the side of the Court House, and there were windows looking into this alley from the court room. The noises from the street were thus conveyed to the court room, and the proceedings in the court room could be heard in the street and alley. Considerable public excitement prevailed during the trial, and it was apparent to the Court that public sentiment seemed to be greatly against me. The court room was constantly crowded, and considerable crowds gathered in the street and alley, and the noises which emanated from them could be heard in the court room. These crowds were boisterous. Several times during the trial, the crowd in the court room and outside of the Court House applauded, in a manner audible both to the Court and jury, whenever the State scored a point. The crowds outside

cheered, shouted and hurrahed, while the crowd within the court room evidenced its feelings by applause and other demonstrations. Practically all of the seats in the court room were occupied, both within and without the bar. The aisles at each end of the court room were packed with spectators. The jury, in going to and from the court room, in the morning, at noon and in the evening, were dependent upon the passageways made for them by the officers of the court. The bar of the court room itself was so crowded as to leave but a small space for occupancy by the counsel. The jury box, which was occupied by the jury, was enclosed by the crowd sitting and standing in such close proximity to it that the whispers to the crowd could be heard during a part of the trial."

DEMONSTRATIONS IN THE PRESENCE OF THE JURY AND THEIR EFFECT.

"On Saturday, August 23, 1913, during the argument of Solicitor General Dorsey to the jury, Reuben R. Arnold, Esq., one of my counsel, made an objection to such argument, and the crowd laughed at him. While Mr. Arnold, my counsel, made a motion for a mistrial, and was engaged in taking evidence in support thereof before the Court, the crowd applauded a witness who testified that he did not believe that the jury heard the applause of the crowd on the previous day, since at that time the jury was in the jury room about twenty feet distant."

"On Saturday, August 23, 1913, while the Court was considering whether or not the trial should proceed on that evening and to what hour the trial should be extended, the excitement in and without the court room was so apparent as to cause apprehension in the mind of the Court as to whether the trial could be safely continued on that day, and before deciding upon an adjournment, the presiding Judge, Hon. L. S. Roan, while upon the bench, and in the presence of the jury, conferred

with the Chief of Police of Atlanta and the Colonel of the Fifth Georgia Regiment, stationed in Atlanta, who were well known to the jury. The public press of Atlanta, apprehending danger if the trial continued on that day, united in a request to the Court, that the proceedings should not continue on Saturday evening. The trial was thereupon continued until the morning of Monday, August 25, 1913."

"It was evident on that morning, that the public excitement had not subsided, and that it was as intense, as it had been on the Saturday previous. Excited crowds were present as before, both within and outside of the court room. When the Solicitor General entered the court room, he was greeted by applause by the large crowd present, who stamped their feet and clapped their hands, the jury being then in its room, about twenty feet distant."

THE CIRCUMSTANCES RESULTING IN APPELLANTS' ABSENCE FROM THE COURT-ROOM.

"During the entire trial I was in the custody of C. Wheeler Mangum, the Sheriff of Fulton County and ex-officio jailer, and was actually incarcerated in the jail, except on such occasions when I was brought into the court room by the Sheriff or one of his deputies. I was unable to be present at the trial, except when permitted by the Court and conducted there by the said Sheriff or his deputies.

"On the morning of Monday, August 25, 1913, shortly before Hon. L. S. Roan, Presiding Judge, began his charge to the jury, he privately conversed with Messrs. L. Z. Rosser and Reuben R. Arnold, two of my counsel, in the jury room of the Court House, and referred to the probable danger of violence that I would incur if I were present when the verdict was rendered and the verdict should be one of acquittal or of disagreement. After he had thus expressed himself, he requested my counsel to agree that I need not be present at