LEO FRANK'S FATE IN HANDS OF COURT

Hearing Before the United States Supreme Tribunal on Writ of Habeas Corpus Completed Friday.

Washington, February 26.—Arguments on the northern Georgia federal court's decision refusing a writ of habeas corpus to Leo M. Frank, under death sentence for the murder of Mary Phagan, the Atlanta factory girl, were concluded before the United States supreme court today. A decision probably will not be given for at least several weeks.

Should the supreme court affirm the decision of the Georgia federal court nothing would stand in the way of carrying out the death sentence, except through appeal to the prison board and the governor. If the ruling is reversed, counsel for Frank and the state told the court the case must go back to the district court for the taking of evidence on which the allegations for the petition for the writ were based.

Would Try Frank Again.

The court was informed by Frank's attorneys that should the writ be granted Frank could be tried again under the pending indictment. The state's counsel questioned this assertion.

Louis Marshall, of New York, on behalf of Frank, contended that the trial court lost jurisdiction over the prisoner because of mob violence during the trial and because of Frank's absence through "coercion" by the trial judge when the verdict was announced. Both sides agreed that the truth of the allegations of mob violence and of absence under coercion were not before the court, but remained for hearing by the lower court if the court held, as a matter of law, assuming the allegations were true, that Frank was entitled to the writ. Notwithstanding this, both sides at times argued the truth of the allegations, until at last Chief Justice White suggested to Solicitor Dorsey that he was wasting his time.

Attorney General Grice, for the state, urged that Frank's petition showed that the question of mob violence had been passed upon by the trial court and by the Georgia supreme court and that both had found there had been no such disorder as interfered with Frank's rights.

"It is true that in the state courts Frank did not seek to draw the inferences from the facts that he did in presenting his petition for habeas corpus," declared Solicitor General Dorsey, in his argument on the same point. Both urged that the state courts having passed upon the point, a review by the federal court could not be had on a writ of habeas corpus, but was open only to review by a writ of error.

As to Frank's absence, Attorney General Grice contended there was no coercion used by Judge Roan in keeping Frank and his attorneys from the courtroom.

"Only a kind-hearted judge in the most sympathetic way made a suggestion to counsel in private," said he.

Touching upon the same point Solicitor General Dorsey declared it was not until eight months after the trial, and not until new counsel had taken hold of the case, that the point of the prisoner's being absent was raised as a ground for setting aside the verdict.

"At no time had it been complained that the alleged disorders had influenced the judge, but only that they

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had influenced the jury," said Mr. Dorsey.

"And with the object in view of having an end to litigation at some time, the authorities agree that the writ of habeas corpus will not be issued unless the record itself shows there was a loss of jurisdiction; an accused cannot withhold making a point of alleged infringed federal right until after the state courts have passed upon his case and then make it in a federal court when he asks for a writ of habeas corpus."

Mr. Dorsey concluded by citing cases to support his view that Frank could waive his right to be present when the jury returned its verdict. He said with the exception of a suggestion by the late Justice Harlan there was no case holding the absence deprived a court of jurisdiction, all treating it as a mere irregularity, reviewable only by a writ of error. He claimed the statement by Justice Harlan was applicable only to cases arising in territorial or federal cases.