

ber 18, refused a writ of error. November 23, Mr. Justice Lamar, of the Supreme Court of the United States, refused a writ of error. November 25, Mr. Justice Holmes, of the United States Supreme Court, also refused a writ. December 7, the full bench of the United States Supreme Court refused a writ of error. December 9, Frank was re-sentenced

that the verdict had been rendered and the jury discharged until after the reception of the verdict and the discharge of the jury, and did not know of any waiver of his presence made by his counsel until after sentence of death had been pronounced upon him. On the day the verdict was rendered and before the judge who presided at the trial of the cause began his charge to the jury, the judge in the jury room of the court house wherein the trial was proceeding, privately conversed with two of the counsel of the defendant, and in the conversation referred to the probable danger of violence that the defendant would be in if he were present when the verdict was rendered, if the verdict should be one of acquittal; and after the judge had thus expressed himself he requested the counsel thus spoken to, to agree that the defendant need not be present at the time the verdict was rendered, and the jury was polled. In these circumstances the counsel did agree with the judge that the defendant should not be present at the rendition of the verdict. In the same conversation the judge expressed the opinion also to the counsel that even counsel of the defendant might be in danger if they should be present at the reception of the verdict. In these circumstances defendant's counsel, Rosser and Arnold, did agree with the judge that defendant should not be present at the rendition of the verdict. The defendant was not present at the conversation and knew nothing about any agreement made as above stated until after the verdict was received, and the jury was discharged and until after sentence of death was pronounced upon him. Pursuant to the conversation, neither of defendant's counsel were present when the verdict was received, and the jury discharged. Defendant says that he did not give counsel nor anyone else any authority to waive or renounce the right of the defendant to be present at the reception of the verdict or to agree that the defendant should not be present thereat; that the relation of client and attorney did not give them such authority, though counsel acted in the most perfect good faith and in the interest of the safety of the defendant. Defendant did not agree that his counsel or either of them might be absent when the verdict was rendered.

"Defendant says upon and because of the grounds above stated: The verdict was of no legal effect, and was void and in violation of article 1, Sec. 1, par. 3, of the Constitution of the State of Georgia, which provides that 'no person shall be deprived of life, liberty or property except by due process of law. That the reception of the verdict in the involuntary absence of the defendant, was in violation of and contrary to the provisions of Article 6, Sec. 18, par. 1, of the