

the State there was necessity for same.

Wherefore this Respondent agrees, to the passage of an order revoking former orders in this case, and waives his presence at the Court, upon a hearing of same.

(Signed) Wm. H. Smith,
Attorney for James Conley.

Georgia, Fulton County.

Personally appeared before me, the undersigned attesting officer, James Conley, who after being duly sworn deposes and swears that the facts set out in the above and foregoing response so far as they come within his own knowledge are true and where derived from the information of others he believes them to be true.

(Signed) James Conley

Sworn to and subscribed before me
this June 13, 1913.

C. E. Tedder,
Notary Public, Fulton County, Ga.

IN RE:

Application of Hugh M. Dorsey, Solicitor General
to release James Conley from Legal Custody.

In answer to the petition and order in the above stated cause, served upon us, as attorneys for Leo Frank, we herewith answer and show cause as follows:-

1. If the intention of the Solicitor General is to discharge this negro from custody because (a) he is in fact not a material witness against Frank or (b) although he is a material witness, his integrity and character are such that he ought to have his liberty and be trusted to obey the subpoena of this court, then considered as a witness only, he ought to be discharged and indeed he should not have been imprisoned at all. But in such case to enact the farce in the court's presence of releasing the negro and immediately return him to his wet-nurses, at the Police station would resemble child's play.

2. But if the Solicitor believes that one of a number of contradictory statements made by this negro may, if properly preserved, be made valuable in the prosecution of Frank and that the negro may destroy its value if left free to talk, and in order to stop his mouth it is necessary that the detectives should keep him in charge, then we think we have the right to protest against any order of a court of justice that winks at such a purpose.

3. We are constrained to the conclusion that it is not the purpose for any reason to release this negro, but, by obtaining the order here sought, continue the present, illegal confinement.

4. But Frank is himself deeply interested in this proceeding, that the consent of the Solicitor and the will of the negro is all that is required to reverse the will of the law, is erroneous. The State has the right in the interest of justice to put a witness in custody, but where in custody and in whose custody is of the highest importance. The law has given such custody to the Sheriff and wisely so. The Sheriff is not a prosecutor; the jail itself is not usually a place of punishment, but a temporary place of detention. The Sheriff is supposed to stand ~~impartial~~ impartially between the state and his prisoners, and may be trusted neither to conjole, threaten, nor suppress any testimony by third degree methods. The law never meant to place a witness, who, for lack of character, needs confinement under the control of a ~~partisan~~ partisan prosecutor.

5. That the detectives should wish to keep Conley in custody and entertain him at the city's expense, is not at all surprising. They have already extracted from him extravagant, unthinkable confessions, three or four in number. To these statements they have given the widest publicity, and to the credibility of the last one they have staked their reputations and hope of place.

Upon the constancy and stability of this witness, they have staked their all. They would be less than human if they did not

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In Poor Condition