

NEW TRIAL DENIED ACCUSED CIRCUS HAND

Max Mason, The Only Man Convicted of Alleged Assault which Caused Duluth Lynching Refused New Trial. Judge Admits Evidence Doubtful Upon Which Conviction Is Based.

ATTORNEYS WILL APPEAL CASE

Duluth, Minn., July 14.—Max Mason, circus hand, of Alabama, convicted of criminal assault on a white girl June 14, 1920, was denied a new trial, in an order received July 8 in district court from Judge L. S. Nelson of Slayton, Minn. A motion for a new trial was argued before him by F. L. Barnett, colored attorney of Chicago, and opposed by County Attorney Warren E. Green, a month ago. R. C. McCullough, Duluth attorney, said Friday an appeal would be taken to the state supreme court. The memorandum of the judge is unusually brief. It follows:

"As I view it, the only question in the case is whether there is evidence sufficient to sustain a verdict of guilty. The identification is not as clear as it might be and the condition of the prosecuting witness, when examined by the physician the next morning was very unusual, but there is evidence on which the jury could find that the crime was committed and that the defendant did commit it."

Mr. Barnett argued that the girl did not identify Mason when he was brought before her the day after the alleged assault, but identified him weeks later. Mr. Barnett also argued that a physician who examined the girl the day after the alleged assault committed by six Negroes, found no evidence of such an assault. Later it was testified the girl and Mason were both found to be infected with a similar disease.