THE LAW

THE SUPREME COURT

Making Darwin Legal

A lot of late-show watchers remember Spencer Tracy's bravura portrayal of Clarence Darrow and Fredric March's performance as William Jennings Bryan in the movie *Inherit the Wind*, a re-enactment of the 1925 Scopes "monkey trial." That classic courtroom confrontation seemed to come from another era, a benighted past when a 24-year-old substitute biology teacher named John T. Scopes was actually indicted for teaching Darwin's theory of evolution in a Tennessee schoolroom. But that era was not so distant after all. Only in 1967 did Tennessee's legislature repeal its anti-evolution law. And in two other states—Arkansas and Mississippi—similar statutes remain in effect.

They did, that is, until last week. Then the U.S. Supreme Court ruled unanimously that the Arkansas law prohibiting public school teaching of "the theory that mankind ascended or descended from a lower order of animals" is clearly unconstitutional. That ruling should put an end to the issue in Mississippi as well.

Freedom of Speech. The victory was won by Mrs. Jon O. Epperson, a one-time biology teacher at Little Rock's Central High School* now living with her husband and baby son in a Maryland suburb of Washington. Despite the law, textbooks teaching evolutionary theory have been commonly used in Arkansas schools, and no teacher has been prosecuted. But in 1966 Mrs. Epperson went to court contending that the use of the books made her a lawbreaker. The statute called for punishment by dismissal and a fine of up to $500. That, argued Mrs. Epperson, inhibited her freedom of speech, to say nothing of violating the First Amendment ban on state establishment of religion.

An Arkansas lower court agreed with the biology teacher. But the state's Supreme Court reversed that ruling in 1967, holding that the law was a "valid exercise of the state's power to specify the curriculum in its public schools." In last week's decision, the U.S. Supreme Court avoided entirely the issues of states' rights and freedom of speech. Since the Arkansas statute allowed the teaching of only the Biblical version of man's beginnings, ruled the court, it was clearly part of an "establishment of religion" by the state. The decision was written by Justice Abe Fortas, who spoke for the court for the first time since the congressional dispute over his nomination by Lyndon Johnson for Chief Justice. Said Fortas: "There is and can be no doubt, that the First Amendment does not permit the state to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma."

Except for a Technicality. A voice from the past heartily concurred. Said John T. Scopes, now 68, a retired geologist living in Shreveport, La.: "This is what I've been working for all along." Except for a legal technicality, Scopes might have achieved last week's victory more than four decades ago. Indicted for teaching Darwinian theory in the 1925 test case, he was convicted and fined a nominal $100 by a circuit court judge. Tennessee's Supreme Court later voided the circuit court fine, on the ground that the jury and not the judge should have set the penalty. By its action, the state court prevented Scopes from taking his case to the U.S. Supreme Court.

* Scene of the 1957 encounter between Governor Orval Faubus' Arkansas authorities and federal troops enforcing court-ordered school desegregation.

AP

MRS. EPPERSON & SON AFTER VICTORY
At last laid to rest.

CIVIL RIGHTS

Million-Dollar Deterrent

For all the civil rights advances in the Deep South, a harsh reality remains in Mississippi courts: white men accused of violent crimes against Negroes are almost never convicted. About the only time such offenders are punished is when they are tried in federal courts under statutes enacted during Reconstruction times. Among those antique laws, several prohibit conspiracy to deprive any citizen of his civil rights, and last week a federal judge in Vicksburg concluded that one of man's most basic civil rights is his right to live. U.S. District Court Judge William Harold Cox, a stubborn segregationist, decided that the Ku Klux Klan, and three of its former members accused of killing a Negro, should pay damages.

Directed by the judge to fix the amount of damages, the jury awarded $1,021,500 to the estate of a 67-year-old Negro who was murdered in 1966. None of the defendants have been convicted of the murder, but one of them, James L. Jones, 58, confessed before his 1967 trial. He said that he had been present when Ernest Avants, 37, and Claude Fuller, 48, killed Ben Chester White, a caretaker who worked on a farm near Natchez. For no particular reason, said Jones, the three men took White on a ride in a car and riddled him with 30-cal. slugs and shotgun pellets. Despite that confession, Jones' trial ended in a hung jury. And though he was indicted again as an accessory after the fact, he has never been retried. Avants was later acquitted in a separate trial, and Fuller has never been tried for murder at all.

Members of the Lawyers Committee for Civil Rights, who took the case to the federal courts, asked for $1,000,000 in punitive damages. Judge Cox held that the three defendants were unquestionably responsible for "the dastardly act"; as a matter of law, he said, no reasonable person could dispute their liability. The jury of eight Negroes and four whites then called for $21,500 actual damages, plus $1,000,000 punitive damages. Said Attorney Martha Wood: "We hope that an award of this size will deter such acts in the future."

Indeed it may. Though none of the ex-Klansmen has nearly enough money to pay off, nor are they ever likely to, all may be burdened with heavy debt for the rest of their lives. Under Mississippi law, they can be forced to sell real and personal property, and 25% of their salaries can be garnisheed until the award is liquidated.