

waiver would be not only a renunciation of a right which the law established in his favor but would be a renunciation affecting the public interest.

3.

Because on the day said verdict was rendered, and shortly before Hon. L. S. Roan, the Judge who presided upon the trial of said cause, began his charge to the jury, the said Judge in the jury room of the court house wherein the trial was proceeding, privately conversed with L. Z. Rosser and Reuben R. Arnold, two of the counsel of this defendant, and in said conversation referred to the probable danger of violence that this defendant would be in if he were present when the verdict was rendered in the cause, if said verdict should be one of acquittal, and after said Judge thus expressed himself, he, the said Judge, requested said counsel to agree that this defendant need not be present at the time the verdict was rendered and the said jury polled. Under these circumstances the said counsel did agree with the said Judge that this defendant should not be present at the rendition of said verdict.) In the same conversation the said Judge expressed the opinion, also, to said counsel that even counsel of this defendant might be in danger of violence if they should be present at the reception of said verdict. Under these circumstances defendant's counsel, said Rosser and said Arnold, did agree with the said Judge that this defendant should not be present at the rendition of the verdict. This defendant was not present at said conversation and knew nothing about the same or of any agreement made, as above stated, until after the verdict was received and the jury discharged, and until after sentence of death was pronounced upon him.

Pursuant to the conversation above stated, neither the said Rosser, nor the said Arnold, nor Herbert J. Haas, nor Morris Brandon who were ^{the} sole counsel of this defendant in said cause, were present when the said verdict was received and said jury discharged; nor was this defendant present when said verdict was rendered and the said jury discharged. Defendant says: (1) He did not give to said counsel, the said Rosser and the said Arnold nor to anyone else, any authority to waive or renounce the right.