

(D E M U R R E R .)

GEORGIA, FULTON COUNTY.

The State of Georgia responding to the motion to set aside verdict in the above stated case says by way of demurrer:
GENERAL DEMURRER.

1. Said motion should be dismissed because a motion to set aside a verdict or judgment of the Court should be under the law predicated upon some defect appearing on the face of the pleadings or record, and the motion filed is not one predicated upon any defect appearing on the face of the pleadings or the record.
2. Said motion should be dismissed because it affirmatively appears from paragraph 6 of the motion to set aside the verdict, that the Defendant Leo W. Frank made a motion for a new trial, which said motion was denied by the Court, and as a matter of law if said verdict was rendered at a time when this defendant was not present in Court, such irregularity should have been included among the grounds of the motion for a new trial, and as a matter of law is conclusively presumed to have been incorporated and embodied in said motion for a new trial, which said motion as aforesaid was heard and denied, as is shown by this petition.
3. Said motion should be dismissed because same shows a course of conduct on the part of the Defendant Leo W. Frank which amounts to an estoppel.
4. Said motion should be dismissed because this petition and the record of the decision of the case of Leo W. Frank against the State of Georgia rendered by the Supreme Court of Georgia, affirmatively shows a course of conduct that amounts to and constitutes an estoppel.
5. Said motion should be denied because the same affirmatively discloses that counsel ^{for} ~~for~~ said Leo W. Frank agreed with the Court that said Defendant should not be present at the rendition of the verdict. This agreement on the part of counsel was and