

is binding on the said Leo M. Frank, and effectively constitutes a waiver.

6. Said motion should be dismissed because this petition in conjunction with the decision of the Supreme Court of Georgia in the case of Leo M. Frank against the State of Georgia, affirmatively shows that said Frank after a knowledge of this waiver on the part of his counsel acquiesced in the same and took steps affirmatively indicating a waiver of such conduct on the part of his counsel.

7. Said motion should be dismissed because it affirmatively appears from the same that the jury rendering the verdict in question were polled, and the presence of the defendant is necessary for himself mainly in order to exercise his right to poll the jury.

The presence of said Defendant Frank in the Court room could not have secured or obtained for him any right whatsoever beyond the mere matter of polling the jury, which this petition affirmatively discloses on its face was done.

8. Said motion should be dismissed because this petition and the decision of the Supreme Court of Georgia in the case of Frank against the State affirmatively discloses that the verdict of guilty was received in open Court and a poll of the jury demanded on behalf of this Defendant, and that said poll of said jury was in conformity with every requirement of law.

Wherefore, by reason of the above and foregoing general demurrer the State insists that this motion to set aside the verdict should be dismissed.