## HOPKINS ET AL. *vs.* L. B. & C. M. DOWD.

As repeatedly held by this court, a motion for a new trial is, in effect, an abandonment of the exceptions taken to the opinion of the court in the progress of the trial, unless they are set forth in the motion for a new trial as causes for granting it, and this court when called upon to review the decision of the circuit court upon such motion, will limit its enquiry to the specific causes set forth in the motion.

Unless a party moving for a new trial except to the decision of the court refusing it, he will be regarded as acquiescing.

When a party excepts to the decision of the court refusing a new trial, he should set out the evidence in his bill of exceptions; and a paper purporting

to contain the evidence, though signed by the judge and filed in the cause, will not be regarded as part of the record, unless it is made part of, or incorporated in the bill of exceptions.

*Appeal from the Sevier Circuit Court.*

L. B. & C. M. Dowd, merchants &c., sued Francis Hopkins, before a justice of the peace of Sevier county, on an account for $98.96, alleged to have been made with plaintiffs by the slaves of defendant, and assumed by him. The plaintiffs recovered judgment against defendant for the amount of the account before the justice, and the defendant appealed to the circuit court, where the case was tried by jury at the August term 1849, and verdict for plaintiffs, and judgment rendered against defendant and his security in the appeal.

Defendant filed a motion for a new trial, on the grounds that the verdict was contrary to law and evidence, which was overruled. Pending the trial he took a bill of exceptions to decisions of the court admitting parol evidence that he assumed to pay the account in question, and after the motion for a new trial was overruled, he filed this bill of exceptions, and filed with it a paper marked *Exhibit A.* purporting to set out all the evidence introduced on the trial, and signed by the judge. No bill of exceptions was taken to the decision of the judge refusing a new trial.

Defendant and his security in the appeal, appealed to this court.

PIKE & CUMMINS, for the appellants, argued this cause at length, upon the merits.

WATKINS & CURRAN, for the appellees, also argued the cause upon the merits; but contended that as there was no exception to the decision upon the motion for a new trial, no question whatever was presented by the record for the revision of this

court; and referred to the cases of *Robins' Heirs vs. Danley,* 3 *Ark.* 144. *Berry vs. Singer,* 5 *Eng.* 483.

Mr. Justice WALKER delivered the opinion of the Court.

It has been repeatedly decided by this court that a motion for a new trial is, in effect, an abandonment of the exceptions taken to the opinion of the court in the progress of the trial unless they are set forth in the motion for a new trial as causes for granting it, and that this court, when called upon to review the decision of the circuit court upon such motion will limit its inquiry to the specific causes set forth in the motion. In a late case, reported in 5 *English Rep.* 483, *Berry vs. Singer,* this question was reviewed and the practice settled. But then before any question can be raised touching the correctness of the decision of the court below upon such motion, it is indispensably necessary that the party who desires to present the question before this court should except to the opinion of the circuit court in overruling such motion, or he will be considered as acquiescing in it. In this case no such exception appears to have been taken, nor is there any bill of exception filed preserving of record the facts upon which the court below decided. The paper marked (A.) and transcribed and certified to this court, although signed by the judge, is no part of the record.

But if these objections did not exist and the appellant had excepted and brought the evidence before us, the exceptions to the opinion of the court below in admitting parol evidence to prove the assumpsit to pay the debt of a third person, would not have been presented in this case; for our inquiry is limited to the specific causes set forth in the motion, and appellant, having failed to assign this as one of the causes, must be considered as having waived and abandoned that objection.

The case stands before us upon motion for a new trial overruled, without exception or the facts upon which the decision was made. In such cases we must presume that the facts were sufficient to sustain the judgment of the circuit court.

Let the judgment be affirmed with costs.