

21. Plaintiff in error shows that in the 19th head note, the court recites that where the order overruling the motion for new trial contains nothing which could indicate that the judge was dissatisfied ~~the~~ with the verdict or that he failed to exercise discretion "The Supreme court will not in determining whether the judge has exercised such discretion consider oral remarks by him, pending the disposition of the motion."

Plaintiff in error contends that the remarks made ~~upon~~ by the judge which form the basis of the ground under consideration, were not merely made pending the disposition of the motion for new trial but were part of the oral judgment delivered by the court, disposing of the motion. They were as much a part of the decision of the motion for new trial as that part of the decision which denied the new trial, and it so appears in the Bill of Exceptions, ~~as~~ ^{and} plaintiff in error contends that the court overlooked this feature of the record.

Respectfully submitted,

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