

**The Grapeshot**

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**SooperKanoon Citation :** [sooperkanoon.com/81645](http://sooperkanoon.com/81645)

**Court :** US Supreme Court

**Decided On :** 1868

**Appeal No. :** 74 U.S. 563

**Appellant :** The Grapeshot

**Judgement :**

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**74 U.S. (7 Wall.) 563**

*MOTIONS TO DISMISS APPEAL FROM DECREE OF CIRCUIT COURT*

*OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA*

**SYLLABUS**

1. Proof that papers, not contained in the record, were used in the court below, must be made by affidavit, not by certificate of the clerk.
2. A decree of the Provisional Court of Louisiana, which was established by order of the President during the rebellion, having been transferred into the circuit court

in pursuance of an act of Congress must be regarded, in respect to appeal, as a decree of the circuit court.

Upon two separate motions to dismiss an appeal from the decree of the Circuit Court of the United States for the District of Louisiana, the decree being one transferred there under act of Congress from the late so-called "Provisional Court" of that state, both motions being made by Mr. Durant.

The ground of the first motion was because the transcript was incomplete,

" *as appeared by the certificate of the clerk* of the lower court, as given in the printed transcript, and because it further appeared *by the said certificate* that the missing parts of the record could not be found, so that it was useless to issue a *certiorari*, "

and on the whole impossible for this Court to hear and decide the case.

The ground of the second motion was that the Circuit Court of the United States in Louisiana had rendered no decree from which an appeal could be taken, so that this Court was without jurisdiction.

This Provisional Court of Louisiana, as mentioned in the preceding case, had been established by proclamation of the President in October, 1862, when the war of the rebellion had subverted and swept away the courts of the Union and, by the terms of its constitution, was to last no longer than till the civil authority was restored.

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THE CHIEF JUSTICE delivered the opinion of the Court.

The first motion to dismiss this appeal is made upon the ground that the transcript of the record is incomplete because of the omission of certain papers said to have been used in the court below, but not to be found when the transcript was made.

The motion must be denied. Proof that the papers alleged to be wanting were used in the court below and have been lost must be made by affidavit. The certificate of the clerk who made the transcript cannot be received as proper evidence of these facts.

The other motion is made upon the ground that the decree below was rendered by the Provisional Court of Louisiana, established by the military authority of the President during the late rebellion, from which no appeal could be properly taken. But we find on looking into the statutes that when the Provisional Court ceased to exist, its judgments and decrees were directed to be transferred into the circuit court, and to stand as the judgments and decrees of that court. And it is from the decree of the circuit court that the appeal under consideration was taken. As an appeal from that court, it was regular, and the motion to dismiss must be denied.

All questions concerning the validity of judgments and decrees of the Provisional Court will remain open until after final hearing.

*Motions denied.*

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