

Opinion of the Court.

MAYER and Another *v.* WALSH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI.

Decided December 18th, 1882.

Practice.

In the absence of a printed record the court will not grant a motion to dismiss when the motion papers disclose equitable reasons why it should not be granted.

Motion to dismiss.

Mr. C. W. Hornor for appellants.

Mr. P. Phillips and *Mr. W. Hallett Phillips* for appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is a cross-appeal and the record has not been printed. As the case is here on the original appeal by the present appellee, we are not inclined to grant this motion in the absence of the printed record. It appears from the motion papers that the present appellant pleaded prescription, and we infer that this plea was not sustained. By his other defences he defeated the claim in part. To review the decree so far as it is affected by these defences, the present appellee appealed. If, on that appeal, these defences are overruled, it may be important to the present appellant to insist on his defence of prescription against a claim that will then amount to more than five thousand dollars. Had not the other side appealed, the present appellant could not, because the decree against him is less than five thousand dollars. Under the circumstances, it may be that this appeal was well taken. Without, however, deciding that question, we postpone the further consideration of the motion until the hearing on the merits.