

West v. Brashear.

for the county of Washington, and was argued by counsel : On consideration whereof, it is decreed and ordered by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.

*FRANCIS WEST and others, Appellants, v. WALTER BRASHEAR. [*101

Practice.

A defendant in an appeal, using the copy of the record received from the circuit court lodged by the appellant, cannot have the appeal docketed and dismissed, under the 30th rule of the court ; on the ground, that the appellant has failed to comply with the 37th rule, which requires a bond to be given to the clerk of the supreme court, before the case is docketed ; he must, to sustain a motion to dismiss the cause, produce the certificate of the circuit court, stating the cause, and certifying that such an appeal has been duly sued out and allowed.

APPEAL from the Circuit Court of Kentucky.

On a motion of Mr. *Crittenden*, counsel for the defendant, to dismiss the appeal.

TANEY, Ch. J., delivered the opinion of the court.—In this case, an appeal has been taken from the decree of the circuit court for the eighth circuit, and a copy of the record in due form has been lodged by the appellants with the clerk. But the case has not been docketed, because the appellants have not filed the bond to secure the fees to the clerk of this court, prescribed by the rule No. 37, adopted at January term 1831. Upon the record brought here as above mentioned, the appellee has moved the court for leave to docket and dismiss the case, under the 30th rule. We think this cannot be done. The appellee, upon producing the certificate from the clerk of the circuit court, as required by the 30th rule of this court, stating the cause, and certifying that such an appeal had been duly sued out and allowed, will be entitled to have the case docketed and dismissed. But this cannot be done on the record brought here by the appellants. The motion is, therefore, overruled.

Motion overruled.