States depends on like facts and the same principles with that just decided, and must also be denied.

Mr. Justice CLIFFORD dissented.

SEYMOUR *v.* FREER.

Where, through mistake or accident, no bond, or a defective bond, has been filed, this court will not dismiss the appeal,—if it is in all other respects quite regular,—except on failure to comply with an order to give the proper security within such reasonable time as it may prescribe.

APPEAL from the Circuit Court for Northern Illinois.

This was a motion to dismiss an appeal because the bond for the prosecution of the appeal was not filed within ten days after the decree.

It appeared that the decree in the Circuit Court was drawn and placed in the hands of the clerk on the 15th of November, 1866, upon an understanding by the counsel, sanctioned by the court, that it was to be entered, when approved by the court, as of that day. It was retained for several days by the judge, who required a stipulation from counsel in respect to the receiver appointed by the decree, and was then returned to the clerk, and entered on the 20th as of the 15th. The bond was filed on the 28th.

The CHIEF JUSTICE delivered the opinion of the court.

We think that for the purposes of appeal this decree must be regarded as having been passed on the 20th, and that the bond was filed in time.

But if this were otherwise, and through mistake or accident no bond, or a defective bond, had been filed, this court would not dismiss the appeal, except on failure to comply with an order to give the proper security within such reasonable time as it might prescribe.* What is essential to an

* Brobst *v.* Brobst, 2 Wallace, 96.

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appeal is allowance, citation to the appellees, or equivalent notice or waiver, and the bringing up of the record at the next term of this court. Security for prosecution should be taken by the judge on signing the citation; but if this duty be omitted or defectively performed, a remedy can be applied here on motion.

In the present case a bond, admitted to be sufficient for costs of prosecution, whether given in time to make appeal operate as a supersedeas or not, was filed in the court below before removal to this court.

The motion to dismiss the appeal must therefore be

DENIED.

GARRISON *v.* CASS COUNTY.

Appeal dismissed for want of jurisdiction, where the decree was rendered 13th June, 1861, but no appeal was prayed for or allowed until June Term, 1865, when, on motion of the defendants below, an appeal was allowed *nunc pro tunc*, as of 13th June, 1861, there having been no citation to the appellees, and the record not having been brought up at the next term.

MOTION to dismiss an appeal from the Supreme Court of the Territory of Nebraska.

The CHIEF JUSTICE delivered the opinion of the court.

The decree in this case was rendered on the 13th June, 1861. No appeal was prayed or allowed until the June Term, 1865. At that term, on motion of the defendants below, an appeal was allowed *nunc pro tunc*, as of 13th June, 1861.

There is nothing in the record which warranted the making of this order; nor, if it could have been lawfully made, would it avail the defendant, for there was no citation to the appellees, and the record was not brought up at the next term of this court.