Statement of the case.

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.

GENERES v. BONNEMER.

A judgment affirmed in a case where the only ruling of the court, to be found in the record, was a judgment rendered in favor of a plaintiff for the recovery of a sum of money; where there was no question raised in the pleadings, no bill of exceptions, and no instructions or ruling of the court; and where what purported to be a statement of facts, signed by the judge, was filed more than two months after the writ of error was allowed and filed in the court, and nearly a month after the citation was issued.

IN this case, which came on error to the Circuit Court for Louisiana, it appeared that the only ruling of the court, to

be found in the record, was a judgment rendered in favor of plaintiff for the recovery of a sum of money. There was no question raised on the pleadings; no bill of exceptions; no instructions or ruling of the court.

There was what purported to be a statement of facts, signed by the judge, found in the record. It was filed more than two months after the writ of error was allowed and filed in the court, and nearly a month after the citation was issued by the judge. It did not appear to have been filed by consent of parties.

The case was submitted by *Mr. Janin for the plaintiff in error, and by Mr. Durant, contra*, pointing out the peculiarity of the record.

Mr. Justice MILLER delivered the opinion of the court.

To permit the judge to make a statement of facts, on which the case shall be heard here, after the case is removed to this court by the service of the writ of error, or even after it is issued, would place the rights of parties who have judgments of record, entirely in the power of the judge, without hearing and without remedy. The statement of facts, filed without consent of the parties, must be treated as a nullity; and, as there is nothing on which error of the court below can be predicated, the judgment must be

AFFIRMED.

LABER *v.* COOPER.

1. The fact that no replication is put in to two of three special pleas, raising distinct defences, is not a matter for reversal; the case having been tried below as if the pleadings had been perfect and in form.
2. Nor, that such pleas have concluded to the court instead of to the country; the matter not having been brought in any way to the attention of the court below.
3. Nor, under similar omission, that the language of the verdict in such a case is, that we find the "issue," &c., instead of the "issues."
4. The fact, that testimony was objected to and received, does not oblige this