

13/61. Expnd. in Wheat v. Moss,
14/422-3.

TAYLOR vs. ADAMS, ADR.

Where a party appeals from a decree of the Circuit Court in Chancery, but does not enter into recognizance to stay execution, one of the judges of this court, in vacation, has no power to order a stay of execution upon the appellant entering into recognizance, though the court may do it in term time after the cause is docketed, as held in the case of *Davis v. Tarwater*, *ante*.

Appeal from Jefferson Circuit Court.

THE appeal in this case, was granted by the Circuit Court in Chancery; and the appellant failing to enter into recognizance to stay proceedings on the decree, applied to the Chief Justice,

in vacation, who made an order that a writ of supersedeas be issued by the Clerk of the Supreme Court, upon the appellant's entering into recognizance. The appellee moved the court to quash the recognizance and recall the supersedeas.

PIKE & CUMMINS, for the motion.

F. W. & P. TRAPNALL, contra.

Mr. Justice SCOTT delivered the opinion of the Court.

This case was brought into this court by virtue of an appeal granted by the Circuit Court of Jefferson county. At a point of time before it was brought into this court, the Chief Justice, upon an inspection of the record in vacation, made an order staying the proceedings. This was not within the provisions of the statute, unless he had himself also granted an appeal, (*Dig. p. 244, sec. 135,*) which he might have done, notwithstanding one had already been granted by the Circuit Court.

We shall therefore grant the motion to quash the recognizance, and recall the supersedeas.
