

MCJENKIN *vs.* STATE BANK.

In an affidavit for an appeal to this court, it is not sufficient to authorize the appeal for affiant to State that he "verily believes that the appellant is aggrieved by the decision of the court," but he should also swear that the appeal is not asked for vexation or delay.

*Appeal from the Chancery side of the Circuit Court of
Independence.*

BILL in chancery determined in the chancery side of the Independence circuit court, in February 1846, before Hon. William Conway B. then one of the circuit judges.

The decree was in favor of the Bank, McJenkin, the defendant, appealed, and filed the following affidavit therefor.

"I, Wm. Byers, as agent and attorney for the above named defendant, do solemnly swear that I verily believe the above named appellant is aggrieved by the decision and decree of the circuit court in chancery sitting in this case, so help me God."

BYERS & PATTERSON, for appellant.

LINCOLN, contra.

OLDHAM, J. The affidavit for an appeal in this case is not in compliance with the Statute. The affidavit should state that the appeal is not asked for vexation or delay, but because affiant verily believes that the appellant is aggrieved by the decision or judgment of the court. *Rev. St. ch. 116, sec. 142.* The affidavit in this case merely states that the affiant verily believes that the appellant is aggrieved by the decision and decree of the circuit court in chancery sitting, but does not state the appeal is not made for vexation or delay. The affidavit being a pre-requisite to the allowance of the appeal, the case is improperly in this court and the motion to dismiss is accordingly sustained.