

BROWDIE ET AL. *vs.* WHITFIELD.

The affidavit required, by law, to be made by a party appealing in a chancery case, is necessary to give this court jurisdiction, and it cannot be dispensed with by consent of parties.

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

S. H. HEMPSTEAD, for appellants.

RINGO & TRAPNALL, contra.

CONWAY B, J. Nancy Browdie and others filed their bill of complaint in the Lafayette circuit court against Francis Whitfield. He demurred to the bill. The demurrer was sustained, and Hubbard, complainants' solicitor, prayed an appeal for them to the supreme court, and by consent of parties the appeal was granted "without the affidavit as required by law."

Our State Constitution declares that the supreme court shall have appellate jurisdiction under such restrictions and regulations as may be prescribed by law. *Article 6, section 2.* By statute, appeals from courts of chancery are to be granted in the same manner as from courts of law. *Rev. Stat. p. 174, ch. 23, sec. 137.* And appeals in suits at law are not to be allowed unless the appellant or his agent shall file in court an affidavit stating that such appeal is not made for vexation or delay, but because affiant verily believes that the appellant is aggrieved by the decision or judgment of the court. *Rev. Stat. p. 638, ch. 116, sec. 142.* From these provisions we are clearly of opinion that an affidavit is necessary to give this court jurisdiction of causes by appeal. Consent cannot dispense with it, or confer jurisdiction. The cause is therefore dismissed.

NOTE.—Hubbard vs. Welch, was dismissed on the same ground.