

TINDALL vs. JORDAN.

This court will not affirm the decree of the Circuit Court in chancery, for the failure of the appellant to prosecute his appeal, where the execution of the decree has not been stayed.

Motion to affirm Decree.

The complainant, John A. Jordan, filed his bill in the Circuit Court of Arkansas county, sitting in chancery, against Thomas H. Tindall and others. The case proceeded to final hearing, and a decree was rendered in favor of the complainant, from which the defendant, Tindall, appealed to this court; but no recognizance was entered into to suspend the execution of the decree. The appeal was taken on the 9th day of October, A. D. 1846; and the appellant, having failed to file the transcript of the record with the clerk of this court within the time prescribed by law, the appellee filed his motion to affirm the decree for the default of said appellant to prosecute his appeal.

RINGO & TRAPNALL, for the motion.

YELL, contra.

OLDHAM, J. To authorize this court to sustain the motion of the complainant to affirm the decree of the Circuit Court in chancery, it should be made appear, from the certificate of the clerk of the Circuit Court, that an appeal was entered and a recognizance given, as required by law. *Rev. Stat.* 117, *sec.* 24. No recognizance appears to have been entered into by Tindall upon the allowance of the appeal to him, and consequently the appeal does not operate so as to stay the proceedings of the complainant upon his decree. *Rev. St., ch.* 23, *sec.* 139. Motion to affirm overruled.