motion was denied by the chancellor. The defendant below appealed to the court for the trial of impeachments and the correction of errors; the decretal order, refusing to dissolve the injunction, was affirmed by that court; and from this last order, the defendant below appealed to this court, upon the ground, that the case involved a question arising under the constitution, laws and treaties of the United States.

March 8th, 1821. The cause was opened for the appellant, by *D. B. Ogden;* but on inspecting the record, it not appearing that any final decree in the cause, within the terms of the 25th section of the judiciary act of 1789, had been pronounced in the state court, the appeal was dismissed for want of jurisdiction.

DECREE.—This cause came on to be heard, on the transcript of the record of the court for the trial of impeachments and the correction of errors of *the state of New York: on inspection whereof, it is ordered, that the appeal, in this cause, be and the same is hereby dismissed, it not appearing from the record that there was a final decree in said court for the correction of errors, &c., from which an appeal was taken.(a) [*450

SULLIVAN *et al. v.* FULTON STEAMBOAT COMPANY.

Averments to sustain the jurisdiction.

In order to maintain a suit in the circuit court, the jurisdiction must appear on the record; as if the suit is between citizens of different states, the citizenship of the respective parties must be set forth.[1]

APPEAL from the Circuit Court for the Southern District of New York. This was a bill in equity, filed in the court below, in which Sullivan, one of the plaintiffs, was described as a citizen of Massachusetts, and others of the plaintiffs, as citizens of Connecticut and Vermont, and the defendants were described as a corporate body incorporated by the legislature of the *state of New York, for the purpose of navigating, by steam-boats, the waters of the East river, or Long Island sound, in said state. [*451

The object of the bill was to obtain an injunction to prevent the defendants from so exercising the privileges granted to them by the said act, and by an assignment from Livingston and Fulton of their rights under certain other acts of the legislature of New York, as to obstruct the plaintiffs in the right claimed by them under the constitution and laws of the United States, and under a coasting license, of employing a certain steam-boat belonging to the plaintiffs, in the transportation of goods and passengers, in the waters of the states of Connecticut and New York. The defendants demurred to the bill, and a decree dismissing it, was entered *pro formâ*, by consent, and the cause was brought by appeal to this court.

March 8th, 1821. *Webster*, for the appellants, opened the record, from which it not appearing that the court below had jurisdiction, as the respective

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(a) See 4 Johns. Ch. 150, and 17 Johns. 488, where the learned reader will find the case reported, as decided in the state courts.

[1] See note to Emory *v.* Grenough, 3 Dall. 369.

parties were not described as citizens of different states, the decree, dismissing the bill, was affirmed.

DECREE.—On motion of the appellants, by their counsel, and on inspection of the transcript of the record of the circuit court of the southern district of New York, it is decreed and ordered, that the decree of the said circuit court, in this case, be and the same is hereby affirmed, it not appearing from the record, that the said circuit court had jurisdiction *in said cause. The said affirmance to be without prejudice to the complainants on the merits of the case.

*452]

The JONQUILLE.

Dismissal of appeal.

An admiralty suit, where an appeal has been taken from the circuit court to this court, but not prosecuted, will be dismissed, upon producing a certificate from the court below, that the appeal has been taken, and not prosecuted.

March 8th, 1821. *Wheaton*, for the respondents, moved to docket and dismiss the appeal in the case, which was a prize cause, commenced in the circuit court of North Carolina, in which a decree for costs and damages had been entered against the captors, from which they appealed, but had not prosecuted their appeal. He produced a certificate from the court below to that effect.

THE COURT stated, that the case was within the spirit of the 20th rule of court, although that rule applied, in terms, only to writs of error.

Motion granted.(*a*)

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*453] *HUGHES *v.* BLAKE.

Equity pleading.

A decree cannot be pronounced, on the testimony of a single witness, unaccompanied by corroborating circumstances, against a positive denial, by the defendant, of any matter directly charged by the bill, in the defendant's answer, or answer in support of his plea.[1]

A replication to a plea, is an admission of the sufficiency of the plea, as much as if it had been set down for argument and allowed; and all that the defendant has to do, is to prove it in point of fact, and a dismissal of the bill, on the hearing, is then a matter of course.[2]

Under what circumstances, a plea of a former judgment at law, for the same cause of action, is a good bar in equity.

Hughes *v.* Blake, 1 Mason 515, affirmed.

APPEAL from the Circuit Court of Massachusetts.

The object of the bill in equity filed in this case, was, to recover from the defendant, Blake, a sum of money arising from the sale of a tract of land, called Yazoo lands, alleged to have been made in 1795, by the defendant, as

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(*a*) See new rule of court of the present term, *ante*, Rule 32.

[1] Union Bank *v.* Geary, 5 Pet. 99; Carpenter *v.* Providence Washington Ins. Co. 4 How. 185; Parker *v.* Phetteplace, 1 Wall. 684; Tobey *v.* Leonards, 2 Id. 423; and see Godden *v.* Kimmell, 99 U. S. 206–7.

[2] Rhode Island *v.* Massachusetts, 14 Pet. 210.