

Hughes v. Blake.

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 \*452] said cause. The said affirmance to be without prejudice to the complainants on the merits of the case.

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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)

\*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.<sup>1</sup>

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.<sup>2</sup>

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.

<sup>1</sup> *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.

<sup>2</sup> *Rhode Island v. Massachusetts*, 14 Pet. 210.