

Deneale v. Archer.

stances stated in that question, the underwriters are discharged, whether the subsequent proceedings, after the seizure and detention of the ship and cargo for their adjudication, were irregular or not.

*526] *MARY DENEALE, Executrix of GEORGE DENEALE, and others, Plaintiffs in error, v. JOHN ARCHER and JOHN W. STUMP, Executors of JOHN STUMP, deceased, Defendants in error.

Practice.

A writ of error, brought in the name of "Mary Deneale and others," dismissed for irregularity; a new one, in due form, may be brought.

ERROR to the Circuit Court of the District of Columbia and county of Alexandria. Upon the opening of the record in this case, it was found, that the writ of error had been issued in the name of Mary Deneale, executrix of George Deneale, and others.

Coxe, for the defendants, objected to the writ of error as informal. All the parties to the proceedings in the circuit court should be parties to the writ of error; those who have not joined in it, are not before the court. The court cannot know who are the persons meant by "others."

Lee, for the plaintiff in error, contended, that the record showed who were the parties to the case.

MARSHALL, Ch. J., delivered the opinion of the court.—This was the case of a *scire facias* against devisees, to revive a judgment. The *scire facias* is, in its form, without precedent, and a demurrer was filed to it. Process on the *scire facias* issued against four devisees, and service was made upon two only of them. An office-judgment was then taken against all the devisees. The two of them, on whom the process was served, afterwards appeared, and the office-judgment was set aside as to them, and they then pleaded the statute of limitations. There was a demurrer to the replication, and judgment against all the devisees.

The present writ of error is brought by Mary Deneale "and others," as plaintiffs; but who the others are cannot be known to the court, for their names are not given in the writ of error, *as they ought to be. Mary *527] Deneale cannot alone maintain a writ of error on this judgment; but all the parties must be joined, and their names set forth, in order that the court may proceed to give a proper judgment on the case. The present writ of error must, therefore, be dismissed for irregularity; but a new one, in due form, may hereafter be brought to revise the judgment.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Alexandria, and was argued by counsel: On consideration whereof, it is the opinion of this court, that this writ of error is irregular, and should be dismissed, inasmuch as it is in the name of "Mary Deneale and others," without naming who those others are; whereupon, it is ordered and adjudged by this court, that this cause be and the same is hereby dismissed.