

Turner v. Enrille.

sixty days before the return ; which had not been done in the present case. The first motion was, thereupon, waived ; and an *alias subpoena* awarded. (3 Dall. 320.)

HAZLEHURST *et al.* v. UNITED STATES.

Practice.—Non-pros.

IN error from the Circuit Court for the district of South Carolina. A rule had been obtained by *Lee*, the Attorney-General, at the opening of the court, that the plaintiffs appear and prosecute their writ of error within the term, or suffer a *non-pros.* : but it was found, that errors had been assigned in the court below, and *a joinder in error entered here. The *7] rule was, therefore, changed to the following : “that unless the plaintiffs in error appear and argue the errors to-morrow, a *non-pros.* be entered.” The plaintiffs not appearing, the writ of error was non-prosessed, according to the rule.

TURNER, administrator, v. ENRILLE.

Averment of jurisdiction.

Where the jurisdiction of the federal courts depends on alienage, or the citizenship of the parties, it must be set forth on the record.
Bingham v. Cabot, 3 Dall. 382, re-affirmed.

ERROR from the Circuit Court of South Carolina. The record, as abridged for the judges, presenting the following case :

The Marquis de Caso Enrille instituted an action on the case, against Thomas Turner, the administrator of Wright Stanley, in the circuit court of North Carolina, of June term 1795.

A declaration in case was filed by the Marquis de Caso Enrille, of ——— in the island of ———, of June term 1796, in which it is set forth, that Wright Stanley (the intestate) and John Wright Stanley and James Greene were “merchants and partners, at *Newbern*, in the said district :” that Wright Stanley survived the other partners ; that on the 4th of June 1791, in the lifetime of all the partners, they were indebted unto the said Marquis in ——— dollars ; and in consideration thereof, assumed to pay, &c. The 2d count, *insimul computassent*, when the said partners were found in arrear to the said Marquis, in other ——— dollars, &c. The plaintiff concluded with the usual averments of non-payment, to the damage of the said Marquis, ——— dollars, &c.

On the 30th November 1796, the defendant appeared, and pleaded—1st. *Non assumpsit intest.* : replication and issue. 2d. The statute of limitations as to the intestate : replication, an account-current between merchant and factor : rejoinder, and issue. 3d. Set-off, that the plaintiff was indebted to the intestate, on the 1st of January 1792, in more than the damages by the plaintiff sustained, &c., to wit, in \$4000, for money had and received by the plaintiff to the intestate’s use, which sum is still due to the defendant, as administrator : replication, that plaintiff owed nothing, &c. : rejoinder, and issue. 4th. The statute of limitations, as to the administrator : replication,