

## Statement of the case.

pose this motion for leave if he should, on seeing and considering the bill, desire to do so.

The CHIEF JUSTICE delivered the opinion of the court.

The court has adopted no rules governing suits in cases of original jurisdiction. In cases of equity, however, it has been the usual practice to hear a motion in behalf of the complainant for leave to file the bill, and, leave having been given, subsequent proceedings have been regulated by orders made from time to time as occasion required. The motion for leave has been usually heard *ex parte*; except at the last term, when leave was asked in behalf of the State of Mississippi to file a bill against the President of the United States.\* Under the peculiar circumstances of that case it was thought proper that argument should be heard against the motion for leave. We perceive no reason for making such an exception in the case of the present motion. It will be heard, therefore, on the regular motion day, and only on the part of the complainant; and the court will require that ten printed copies of the bill be filed with the clerk before the hearing.

The practice now observed may be regarded as that which will hereafter be adopted in all cases of original equity jurisdiction.

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THE SEA WITCH.

Restitution of a neutral vessel ordered, which had apparently set out on a lawful voyage, though she was captured out of the most direct and regular course of it, and in a position open to some question; there having been heavy weather which might have made her desirous to take the course she did,—one hugging a semicircular coast rather than a more direct one across its chord.

APPEAL from the District Court of the United States for the Eastern District of Louisiana.

The schooner Sea Witch was captured in the Gulf of

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\* 4 Wallace, 475.

## Opinion of the court.

Mexico on the 31st of December, 1864, by the United States war steamer Metacomet, for alleged breach of the blockade of the Texas coast, then established by our government.

The schooner was a neutral vessel, with a neutral cargo, coffee, drugs, &c., regularly cleared from Vera Cruz for New Orleans, under a license granted by the vice-consul of the United States, in pursuance of the proclamation of the President, opening the port of New Orleans to trade, and of the regulations of the Secretary of the Treasury. But at the time of the capture she was out of the ordinary and most direct line of a voyage from Vera Cruz to New Orleans, and somewhat along the coast and in a position to go to Galveston, Texas, then blockaded. She had encountered heavy weather before the capture and was somewhat damaged; and it was alleged by the master that he had abandoned the voyage to New Orleans, and was about returning to Vera Cruz. Having been brought into New Orleans and libelled as prize in the District Court, restitution was decreed and a certificate of reasonable cause given the captors. The United States appealed.

*Mr. Ashton, special counsel of the United States*, contended that the case exhibited but the ordinary sinuous devices of blockade-runners; simulating one voyage, purposing another. The vessel was just where she would have been had she been going to Galveston, and where she would not have been if going to New Orleans.

Moreover at this time, as is matter of public history, New Orleans had been but recently opened to trade, and of course was glutted with the articles which this vessel carried. Coffee was higher in Vera Cruz than in New Orleans; and as for drugs, it was shipping "coals to New Castle," to take them to the last-named port. Galveston, on the other hand, closely blockaded, was in extreme necessity of both.

*Mr. Marvin, contra.*

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The only ground of suspicion that a violation of the block-

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ade was intended is the fact that the vessel, when captured, was out of the most direct regular course to New Orleans, and in a part of the gulf where she would very probably have been had her real destination been Galveston. But we think this is sufficiently accounted for by the weather, and by the probability that such a vessel, really bound for New Orleans, would prefer to keep at no greater distance from the shore than the blockade would require, rather than take the more direct course across the gulf.

It was stated in the argument that the cargo of the vessel would not command at New Orleans so good a price as at Vera Cruz; and this circumstance, if proved, would be entitled to great weight. But there is no evidence of that sort in the record.

On the whole, therefore, we think that the decree of the District Court was correct, and shall order that it be

AFFIRMED.

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McCLANE v. BOON.

1. Where, pending a writ of error to this court, subsequently dismissed, the defendant in error dies and the other side wishes to take a new writ, application should be made to the court below for the purpose of reviving the suit in the name of the representatives of the deceased. A writ of error can then regularly issue. A motion in this court to revive the writ by suggesting the death and substituting the representatives as parties to the record is not regular.
2. If the court below should refuse an application such as that above contemplated, in the circumstances mentioned, then the writ may, from necessity, issue in the name of the representatives, in the usual way, serving on them the citation to appear at the next term.

ERROR to the Supreme Court of the State of Oregon.

On motion. Boon filed a bill in a State court of Oregon against McClane, to enjoin him from prosecuting an action at law to recover the possession of a lot of land, for which a patent had been issued to McClane by the United States, and praying that the same might be held by McClane as trustee for the benefit of him, Boon. The court dismissed