

Case No. 7,679. KELSEY v. PENNSYLVANIA R. CO.
[14 Blatchf. 89.]¹

Circuit Court, S. D. New York.

Jan. 4, 1877.

PRACTICE AND PLEADING AT LAW—CORPORATION—SERVICE
UPON—APPEARANCE—AVERMENT OF CITIZENSHIP—AMENDMENT.

1. A corporation which has appeared and answered generally in an action, cannot afterward insist that this court never acquired jurisdiction over it because process was not served upon it in the district of which it was an inhabitant at the time of service.

[Cited in *Robinson v. National Stock Yard Co.*, 12 Fed. 362; *Glover v. Shepperd*, 15 Fed. 838; *Edwards v. Connecticut Mut. Life Ins. Co.*, 20 Fed. 454; *Spies v. Chicago & E. I. R. Co.*, 32 Fed. 713.]

2. An omission to allege sufficiently, in a complaint, that the defendant is a citizen of a different state from that of the plaintiff, is amendable.

[Cited in *Woolridge v. McKenna*, 8 Fed. 679.]

[This was an action at law by John Kelsey against the Pennsylvania Railroad Company.]

Benjamin F. Russell, for plaintiff.

Edmund R. Robinson, for defendant

WALLACE, District Judge. The defendant having appeared and answered generally in the action, cannot now insist that this court never acquired jurisdiction because process was not served upon it in the district whereof it was an inhabitant at the time of service. Jurisdiction of the person of a defendant may be conferred by consent or waiver. Jurisdiction of the subject-matter of the action cannot.

The case of *Pomeroy v. New York & N. H. R. Co.*, [Case No. 11,261], is not in point here. In that case the objection was taken by plea. Under the present system of pleading—that existing in the state courts—I think it would be too late, after a general appearance in the action, for the defendant to avail itself of the objection by raising it by answer. However that may be, it is clearly too late after an answer upon the merits.

The defect in the complaint, of omitting to allege sufficiently that the defendant is a citizen of a different state from that of the plaintiff is amendable, and does not constitute a sufficient ground for dismissing the action, upon a motion of this kind. The motion is, accordingly, denied.

¹ [Reported by Hon. Samuel Blatchford, Circuit Judge, and here reprinted by permission.]