

if they do not approve, it cannot. No issue is defined for them to try, or guide laid down for them to follow, in determining whether they shall grant or refuse their approval. All questions as to what shall be taken into consideration are left wholly to them. They render no judgment, but merely declare their own approval or disapproval of further proceedings. The state, in the exercise of its right of eminent domain, has provided this check in favor of land-owners against taking land by railroads, and nothing else can be substituted for it. This court is to proceed with suits removed here as if they had been brought here by original process. Rev. St. U. S. § 639. This petition to the railroad commissioners could not be brought here, and cannot be proceeded with here. Issues of fact here, except in equity or admiralty, are to be tried by jury, unless a jury is waived. Rev. St. §§ 648, 649. The approval of a jury, or of the court on waiver of a jury, would not be the approval of the railroad commissioners, and neither could decide whether the railroad commissioners approve or not. The question of their approval does not seem to be "a dispute or controversy properly within the jurisdiction of" this court. *Upshur Co. v. Rich*, 135 U. S. 467, 10 Sup. Ct. Rep. 651. None of the cases cited in behalf of the removing parties was confined to such a narrow and merely preliminary question as this. In all of them a final question of pecuniary compensation was to be tried, upon which judgment could be rendered. *Boom Co. v. Patterson*, 98 U. S. 403; *Pacific Railroad Removal Cases*, 115 U. S. 2, 5 Sup. Ct. Rep. 1113; *Searl v. School-Dist.*, 124 U. S. 197, 8 Sup. Ct. Rep. 460; *Railway Co. v. Jones*, 29 Fed. Rep. 193; *Kansas City, etc., R. Co. v. Interstate Lumber Co.*, 37 Fed. Rep. 3. For this reason this proceeding, as now considered, cannot properly be retained here, but must be remanded.

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MILLER *et al.* v. WHEELER & WILSON MANUF'G Co.

(Circuit Court, E. D. Missouri, E. D. June 20, 1891.)

FEDERAL COURTS—RESIDENCE OF CORPORATIONS.

A corporation cannot be a resident, within the meaning of Act Cong. 1887, of a state other than that in which it was incorporated.

In Equity.

*Paul Bakewell*, for plaintiff.

*Silas B. Jones*, for defendant.

THAYER, J. Complainant, a citizen of Indiana, sues the defendant, a Connecticut corporation, for infringement of letters patent. The defendant maintains an office and agency in this district for the transaction of business, and service has been had according to state laws. On appearance day defendant obtained leave to enter a special appearance for

the purpose of moving to quash the service and contesting complainant's right to sue it in this district.

The question raised is not a new one in this circuit. Justice BREWER decided it in *Booth v. Engine, etc., Co.*, 40 Fed. Rep. 1. He held, in effect, that a corporation cannot be a resident, within the meaning of the judiciary act of 1887, of a state other than that in which it was incorporated. The same conclusion had prior thereto been reached after careful consideration by Judge SHIRAS in *Fales v. Railway Co.*, 32 Fed. Rep. 673. I understand the doctrine to be settled, for the present, at least, in this circuit, that a corporation can only be a resident and inhabitant of the state which creates it, and that it cannot change its residence or inhabitance by doing business or maintaining an office and agency in a foreign state, although it may be found there for the purpose of the service of process. And the same doctrine is adhered to in other circuits. *National Typographic Co. v. New York Typographic Co.*, 44 Fed. Rep. 711, and citations. See, also, *Myers v. Murray*, 43 Fed. Rep. 695; *Bensinger S. A. Cash Register Co. v. National Cash Register Co.*, 42 Fed. Rep. 81, and *Baughman v. Water-Works Co.*, 46 Fed. Rep. 4. I am aware that the question has been decided differently in other circuits, (*Riddle v. Railroad Co.*, 39 Fed. Rep. 290; *Zambrino v. Railroad Co.*, 38 Fed. Rep. 449; *Miller v. Mining Co.*, 45 Fed. Rep. 345;) but I must adhere to the rule that has thus far been followed in this circuit. Undoubtedly, the present case is one in which the defendant might, by a general appearance, have waived its right to be sued in Connecticut, but it has not done so.

Let the motion be sustained.

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GLENN v. McALLISTER'S EX'RS *et al.*

(Circuit Court, W. D. Virginia. February 17, 1891.)

1. LIMITATION OF ACTIONS—CORPORATE STOCK—ASSESSMENTS.

Where there is a decree levying an assessment on the stockholders of an insolvent corporation in respect of their unpaid stock, the statute of limitations does not begin to run against the subscriptions until such decree is rendered.

2. CORPORATIONS—INSOLVENCY—ASSESSMENTS—ACTION—EVIDENCE.

In an action for such assessment, the decree alone is sufficient to show defendants' liability thereunder, and it is not necessary to put in evidence the whole record in the suit in which it was rendered.

3. SAME—RELEASE OF STOCKHOLDERS—COMPROMISE.

Subsequent to the entry of this decree, another was rendered, providing that if the stockholders should, within a given time, pay a certain proportion of their subscriptions, they should be fully discharged from the debts of the corporation, but that, in default of such payment, their liability under the original decree should remain unaffected. *Held*, that a stockholder who failed to take advantage of this decree cannot set it up in an action for the original assessment, as a compromise between the corporation and other stockholders, by which he is released from all liabilities.

4. SAME—EVIDENCE OF SUBSCRIPTION.

In such an action, the facts that defendant's name appears on the subscription list of the corporation, and that he paid certain assessments on the stock subscribed, are sufficient evidence that he was a stockholder.