accepted and acted upon as the law upon this subject for more than a decade in the western states, where most of these rights to lands additional to homesteads have been exercised. In 1882 the supreme court of the state of Wisconsin, in Knight v. Leary, 54 Wis. 459, 11 N. W. 600, held that a conveyance before patent, under a power similar to that in question in this case, of the land entered under section 2306 was sufficient to convey the title. In 1886, in Mullen v. Wine, 26 Fed. 206, Judge Brewer, then circuit judge of this circuit, now Mr. Justice Brewer of the supreme court, delivered a convincing opinion to the effect that this right to additional land was personal property, and assignable before entry. In 1887, in Rose v. Lumber Co., 73 Cal. 385, 15 Pac. 19, the supreme court of California held such a right assignable before the entry of the land. These decisions met the general approval of the gentlemen of the bar, and in reliance on them thousands of acres of land have been conveyed under powers of attorney similar to that before us, and under assignments of these rights made before the lands were entered. In these western states land may almost be said to be an article of merchandise. It is bought and sold far more frequently than in the older states, and many tracts of these lands have been conveyed many times, and valuable improvements have been made upon them by the purchasers whose titles rest upon such assignments and powers. These early decisions have been repeatedly affirmed. Montgomery v. Land Bureau, 94 Cal. 284, 29 Pac. 640; Webster v. Luther, 50 Minn. 77, 54 N. W. 271; Montague v. McCarroll (Utah) 36 Pac. 50. This course of judicial decision ought not to be reversed, the titles to the lands conveyed on the faith of it ought not to be disturbed, and the inevitable litigation concerning them that must follow such a reversal ought not to be invited, unless the decisions to which we have referred were clearly erroneous. In such a case it is sometimes more important that the law should be settled and certain than that it should be technically right. For this reason, if the question before us was doubtful, we should hesitate long before we reversed a course of decision so long accepted in these states, and upon the faith of which so many valuable rights rest. But it is unnecessary to continue this discussion further, because we are satisfied, for the reasons stated in the earlier part of this opinion, that the early decisions to which we have adverted were undoubtedly right. The decree below must be affirmed, with costs, and it is so ordered.

HARVEY et al. v. RICHMOND & M. RY. CO. et al.

(Circuit Court, E. D. Virginia. October 8, 1894.)

1. EQUITY PLEADING—TIME OF FILING DEMURRER.

When two demurrers, virtually the same, are filed to a bill, one within the time required by the court, the other subsequent to that time, it is within the discretion of the court to permit the filing of the second demurrer.

2. FEDERAL COURTS—AVERMENTS SHOWING JURISDICTION.
A bill must give jurisdiction in the district in which the suit is brought. Consequently, a bill is demurrable which sets out merely that the defendant is a resident of Virginia, since there are two judicial districts in Virginia.

3. SAME—AMENDMENT.
Where a bill fails to give merely the places of residence of the parties to it, as required by rule 20 in equity, such failure may be corrected by amendment on motion without delay.

4. SAME—RESIDENCE OF CORPORATION.
The fact that a corporation is resident in Richmond, and has its office for the transaction of all its business there, cannot be implied from the mere use of the word "Richmond" as a part of its corporate name in the bill.

On Two Demurrers to the Bill of Complaint.

Steele, Semmes & Cary and Meredith & Cocke, for plaintiffs.

Christian & Christian, Pegram & Stringfellow, and Wyndham R. Meredith, for defendants.

HUGHES, District Judge. This case is before me at present solely on the pleadings filed. The bill was first presented to one of the judges of the court on a motion for an injunction and the appointment of a receiver. After a hearing on this motion and two other hearings of motions by the court, the bill went back to rules. Under the practice obtaining in the circuit courts of the United States, it became incumbent upon the defendants in the cause to plead at the September rules last past; that is to say, on Monday, the 3d of September. It so happened that that day was a national holiday, and dies non, the clerk's office being closed. This circumstance constituted Tuesday, the 4th September, which was the next succeeding day, the September rule day for the purposes of this case. Accordingly, one of the defendants, viz. the Richmond Railway & Electric Company, appeared and filed a demurrer to the bill on the 4th. Afterwards, to wit, on the 6th of September, the Richmond & Manchester Railway Company entered its appearance by counsel, and tendered a demurrer, on its part, to the bill of complaint.

The two demurrers are substantially the same. The disposal of one of them by the court will virtually dispose of the other. As the demurrer of the Richmond defendant is regularly in, and permission to file that of the Manchester defendant cannot materially affect the proceedings in the case, and as, moreover, it is within the discretion of the court to permit the filing of the demurrer of the Manchester defendant, the court permits that demurrer to be filed.

The principal ground of demurrer insisted upon by defendants is the failure of the bill to set out the places of residence of the plaintiffs in the cause, and also the places of residence of defendants. The bill alleges the plaintiffs to be citizens of Maryland, and the defendants to be citizens of Virginia, but disregards rule 20 in equity which requires the residence of all parties to be set out in the bill. As rule 20 does not define the method by which the disregard of this requirement by the pleader shall be taken advantage of, I

infer that its intention is to leave that matter in each instance to the discretion of the court. My own opinion, in the absence of conclusive authorities on the subject, is that the failure of the bill to give merely the places of residence of the plaintiffs and defendants is not of sufficient gravity to require resort to a demurrer. I think it would be competent for the court to require the residences to be stated in the bill by amendment on the spot, without delay, on motion.

But the defect of the bill in this case is graver than the mere failure to give residences. There is a jurisdictional omission, more serious than the mere failure to conform to rule 20 in equity. It would not be sufficient for a bill to set out that John Doe, a citizen and resident of Maryland, complains of Richard Roe, a citizen and resident of Virginia. If there were but one judicial district in Virginia, the omission to state Richard Roe's place of residence might not be demurrable, and might be amended on mere motion. But there are two districts in Virginia, and the bill must give jurisdiction in the district in which the suit is brought. It is of jurisdictional essence that the bill shall allege that Richard Roe is a citizen of Virginia, resident at some place, alleged to be in the eastern district of Virginia. The bill at bar uses no other language in describing the defendants than to say that the suit is against "the Richmond & Manchester Railway Company, and the Richmond Railway & Electric Company, corporations duly incorporated under the laws of the state of Virginia, and as such citizens of Virginia." That is all. There is no allegation that the defendant companies are residents, respectively, of Richmond and of Manchester, in the eastern district of Virginia; having their offices for the transaction of all their business (Code Va. § 1104) in Richmond and Manchester, respectively, in the eastern district of Virginia. The omission is jurisdictional, and is demurrable. The fact that a corporation is resident in Richmond, and has its office for the transaction of all its business in Richmond, cannot be implied from the mere circumstance that "Richmond" is a word used in its corporate name. It is a fundamental rule of pleading that implications cannot supply allegations. Certainty and precision are of the essence of pleading, and all material averments must be positive and express. Implications, even necessary implications, can never dispense with material allegations. The bill here is demurrable and defective in not containing all averments giving jurisdiction of the cause to the circuit court of the United States for the eastern district.

I have not time at present to consider the remaining grounds of demurrer set out by the two defendants in the cause. I will say, however, that, whether these grounds be valid or not, the bill is amendable in the respects enumerated, on motion of complainants.

I do not think that the paper called the "answer of defendants" is yet in the cause, except as an affidavit. The defendants are not bound to file an answer in the present stage of the cause.

GREENOUGH v. ALABAMA G. S. R. CO. et al.

(Circuit Court, N. D. Alabama, S. D. November 8, 1894.)

1. CORPORATIONS — ACTION TO CONTROL ELECTION OF AGENTS — WHEN MAINTAINED BY DIRECTOR.
   A director of a corporation cannot sue in equity to hinder or control the election of other agents of the company in the manner prescribed by its charter and by-laws, on any showing as to what such agents may or may not do, or intend to do; especially until he has tried the usual methods of relief, and invoked the action of the full board of directors.

2. SAME — ELECTION OF DIRECTORS — ACTION TO ENJOIN — WHEN MAINTAINED BY MINORITY STOCKHOLDER.
   The holder in trust of one share out of a total of 156,600 shares of stock of a railroad corporation cannot maintain an action to enjoin the election of directors by the other shareholders.

3. SAME — DIRECTOR — QUALIFICATION AT TIME OF ELECTION — WHEN NECESSARY.
   Code Ala. 1886, § 1593, provides that the business of a corporation is managed by a board of directors holding and owning in good faith and in their own right shares of the capital stock, who must be elected by the shareholders at the regular annual meeting, etc. *Held*, that a person who holds and owns no stock of a corporation may be voted for and elected a director thereof, and afterwards qualify himself by acquiring one or more shares as owner in good faith and in his own right.

This was a bill by John Greenough against the Alabama Great Southern Railroad Company and others for an injunction restraining the election by defendants of certain persons as directors of such company, in which a temporary restraining order was issued. Defendants move to dissolve such order. Motion granted.

The stock of the defendant company consists of 156,600 shares, of which 156,587 are owned by the Alabama Great Southern Railway Company, Limited, of London, the other 13 shares standing in the names of different persons, and known as "directors' shares." The annual meeting for the election of a board of directors in the Alabama company was held at Birmingham, on October 3d. The English company had sent on a proxy for its 156,587 shares, directing a voting of the stock in favor of 11 specific directors, among whom were Henry A. Taylor, M. D. Woodford, Alfred Sully, Henry F. Shoemaker, Eugene Zimmerman, and John Howard Taylor. The evening before the election, John Greenough, alleging himself to be a registered stockholder of one share, applied to the circuit court, Judge Bruce presiding, for an injunction restraining all proceedings at the meeting looking to the election of these six directors, restraining the voting of this proxy and restraining the company from recognizing these men as directors. The alleged ground for his prayer was that these nominees were not registered stockholders in the company, as required by the laws of Alabama. No notice was given to the defendants, and Greenough obtained a temporary order ex parte. The election was held the next day, and all the ballots cast before the writ was served upon the parties; so that all that it accomplished was to prevent the judges of election from certifying the result. The company then moved to dissolve the injunction.

Lawrence Maxwell, Sol. Gen., for the motion.
Henry Crawford and Alex. P. Humphrey, opposed.

PARDEE, Circuit Judge (after stating the facts). This case has been presented to me for hearing at the request of the honorable circuit justice and the honorable district judge of the district, on a motion to dissolve the restraining order issued by the district