5. There is another fatal objection to the jurisdiction of this court. The defendant Minnie G. Kinsey is joined as a co-respondent with Thomas Bray. She is a citizen of this state and district. She is an heir equally with complainants. No wrong is alleged against her. Her interests, as appear from the bill, are in harmony with those of the complainants. She is a necessary party to any partition proceeding. *Dameron* v. *Jameson*, 71 Mo. 97; *Barney* v. *Baltimore City*, 6 Wall. 280. Why is she joined as a co-respondent? No reason whatever is assigned therefor; and I apprehend that none other can be assigned than the fact that she could not be joined as a co-complainant without ousting the jurisdiction of this court, for the reason that she is a citizen of the state of Missouri, and of this federal district. The question, therefore, presents itself on the face of this bill: Can the complainants by this maneuver bring this controversy into this jurisdiction? The law is that all the plaintiffs on one side, where the action is instituted in the United States court, must be non-residents of the state in which the suit is brought. It would, in my opinion, be a palpable fraud on our jurisdiction if such a subterfuge could be resorted to successfully by making one of the necessary parties a defendant whose interests are all in common with those of the complainants, and against whom no antagonistic act is alleged. This question has undergone thorough examination in the case of *Bland* v. *Fleeman*, 29 Fed. Rep. 669, in a case quite parallel in principle; and, approving the principle therein announced, as applied to the facts of this case, I hold that jurisdiction cannot thus be thrust upon this court.

6. There are other objections made to this bill, but they are not of sufficient importance to justify the prolongation of this already too long opinion. Demurrer sustained.

NORRIS *v.* ATLAS STEAM-SHIP CO., Limited.

(*Circuit Court, S. D. New York.* **January 29, 1889.**)

COURTS—FEDERAL JURISDICTION—APPEARANCE—EFFECT.

Where the action is one of which the circuit courts have jurisdiction, under act Cong. March 3, 1887, § 1, the controversy being one between a citizen of the state and a foreign subject, and the amount in dispute exceeding $2,000, the provision of that section in relation to the district where the action shall be brought does not affect the question of jurisdiction, and the privilege it accords to defendant is waived by filing a general appearance and answering to the merits.

At Law. Motion to set aside service of summons.

Action for damages for personal injuries, brought by Abraham Norris against the Atlas Steam-Ship Company, Limited. The present motion is based on the ground that defendant, being a British corporation, is not an inhabitant of the district, and therefore cannot be sued therein. Before making the motion, defendant had appeared generally, answered to the merits, and gone to trial without raising the point.

Everett P. Wheeler, for the motion.
Herman H. Shook, *contra*.

LACOMBE, J. The main point raised upon this motion need not be now decided. Inasmuch as the controversy is one between a citizen of a state and a foreign citizen or subject, and the matter in dispute exceeds the sum of $2,000, it is within the class of cases in which, by the express language of the first clause of section 1 of the act of 1887, the circuit courts are given jurisdiction. *Wilson* v. *Telegraph Co.*, (FIELD and SAWYER, JJ.,) 34 Fed. Rep. 563, 564; *Denton* v. *International*, 36 Fed. Rep. 1. Whatever may be the true construction of the second clause of that section, (beginning "But no person shall be," etc.,) it affects, not the question of federal cognizance, but solely the question of the place of bringing suit by original process in cases of federal cognizance. *Fales* v. *Railroad Co.*, 32 Fed. Rep. 673. The privilege which it accords to a defendant, viz., that he shall be sued only in the district of which he is an inhabitant, is one which may be waived. *Halstead* v. *Manning*, 34 Fed. Rep. 565. It was waived in this case by filing a general appearance, and answering to the merits. In this conclusion Judge WHEELER, with whom I have consulted, concurs.

WAKELEE *v.* DAVIS.

(*Circuit Court, S. D. New York.* January 21, 1889.)

EQUITY—JURISDICTION—ADEQUATE REMEDY AT LAW.

On an application for a discharge in bankruptcy, the specifications of the opposing creditor were dismissed upon the contention of the bankrupt's attorney that the creditor's debt had been reduced to judgment after the petition was filed, and that it could not be affected by the discharge, and the discharge was granted. *Held*, that a complaint in an action on the judgment, which sought only a money judgment, and such other relief as to the court might seem fit, did not state a cause of action cognizable in equity, though it alleged that defendant was estopped to plead the discharge; there being no averment that defendant had taken or threatened to take any proceeding prejudicial to complainant's rights, or that the bill was filed in aid of another action.

In Equity. On demurrer to bill.

This action, commenced upon the equity side of the court, is based upon a judgment recovered in 1873, in a state court of California. The only specific relief demanded is for a money judgment. Briefly, these are the facts: In August and September, 1869, the defendant, Erwin Davis, made six promissory notes, aggregating $15,720, and delivered them, for value, to Henry P. Wakelee. On the 30th of September, 1869, Davis was adjudicated a bankrupt, on his own petition, and Wakelee proved the notes against the estate. On the 28th of June, 1873,