

VER STEEG SHOE COMPANY v. MORROW.

Opinion delivered June 3, 1907.

INJUNCTION—JUDGMENT AT LAW.—A judgment at law in favor of a company will not be restrained in equity because there was no evidence in the law case to show that the summons therein indicated whether the company was an individual, partnership or corporation; nor because the pleadings and other papers in the case have been lost, and no evidence is adduced to show their contents.

Appeal from Marion Chancery Court; *T. H. Humphreys*, Chancellor; reversed.

Woods Brothers, for appellants.

1. The name, Ver Steeg Shoe Company, being manifestly an artificial name such as is common to corporations, imports that the plaintiff in the original suit is a corporation, and the defendant in that suit, appellee here, is estopped to deny it. 10 Cyc. 1345, *et seq*; Morawetz on Priv. Corp. (2 Ed.), § 474, *et seq*; 28 Ark. 261; 3 Enc. of Ev. 599; 58 Ark. 98; 47 Ark. 269.

2. Before appellee was entitled to equitable relief, he must have alleged and proved that he had a meritorious defense to the action, and that he was deprived of making his defense by the wrong of the other party and without negligence on his part. Kirby's Digest, § § 4565, 4576, 4579, 6148; 63 Ark. 513; 50 Ark. 458; 43 Ark. 107; *Id.* 33; 34 Ark. 493; 6 Ark. 79.

Seawell & Seawell, for appellee.

BATTLE, J. Ver Steeg Shoe Company recovered a judgment against H. E. Morrow, and sued out an execution thereon. Morrow then brought suit in the Marion Chancery Court to enjoin proceedings under the execution, alleging that he was not served with process in the action in which the judgment was rendered and had no notice of its pendency, and that he had a good defense against it. Assuming that he had a good defense, the evidence adduced at the hearing proved that he was served with summons in due time and had lawful notice, and failed to appear, but made default, and lost the benefit of his defense, if he had any. But the chancery court found that there was no evidence to show that the summons in the original action

showed whether Ver Steeg Shoe Company was an individual, partnership or corporation; that the pleadings and other papers in the case have been lost, and no evidence was adduced to show their contents; and that Morrow, therefore, was not bound to interpose any defense in the original action; and perpetually enjoined the enforcement of the execution.

The capacity in which Ver Steeg Shoe Company sued did not affect its right to recover. Whether it be an individual, partnership or corporation, it had the right to sue and maintain its action. There was no evidence that Ver Steeg Shoe Company was required to show in what capacity it sued. The court erred in enjoining the execution.

Decree reversed, and complaint dismissed for want of equity.
