

ON REHEARING.

Opinion delivered July 22, 1905.

John Barrow, for appellant.

The circuit court had no jurisdiction, and it was error to permit a substitution of new parties after judgment. 59 Ark. 583; 39 Ark. 347; 28 Ark. 261; 32 Ark. 17; 5 Ark. 517; 62 Ark. 144. Appellees failed to establish a cause of action against appellant. 62 Ark. 33; 2 Am. & Eng. Enc. Law, 855. The acts of its officers are not binding upon the corporations, unless they are within the scope of their powers. 21 Ark. 302; 23 Ark. 300; 70 Ark. 232.

Maloney & Maloney, for appellees.

An appearance waives any defect or want of service. 35 Ark. 95, 109; 25 Ark. 164; 33 Ark. 107; 14 Ark. 225; 38 Ark. 102; 48 Ark. 151; 56 Ark. 45; 58 Ark. 181. Any substantive acts of counsel constitute an appearance. 35 Ark. 276; 45 Ark. 545. There was evidence to support the verdict of the jury. 57 Ark. 577; 31 Ark. 163; 25 Ark. 476.

HILL, C. J. On petition for rehearing the appellant has filed an abstract, and presented anew the questions raised on the hearing. The case should be affirmed on the merits, as well as for the reasons heretofore given. The principal contention is that the court erred in amending the judgment so as to make it against Shorter University, instead of T. H. Jackson, superintendent of Shorter University. The account on which the suit was instituted was against Shorter University, but the summons ran to T. H. Jackson, superintendent of Shorter University. The University took a change of venue from one justice's court to another, and on the trial in the circuit court the evidence was solely on the issue whether the University was the debtor, or whether one Cox, superintendent of the boarding department, was the debtor. This issue was sent to the jury on instructions given at the instance of the attorney of the University precluding a recovery against it unless the evidence showed the goods were purchased under

authority of the board of trustees. The question that the University was not the real defendant was not raised until after verdict. The court properly found on the facts that the University had appeared. There is a conflict in the evidence on the authority of Cox; that has gone to the jury under instructions drawn by appellant's counsel, and the verdict has settled it. The motion is overruled.
