SAKHO MAMODOU, Appellant, v. **C. WOERMANN & BRUSSELLS COMPANY, LTD.**, a German Corporation doing Mercantile Business in Liberia, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 24, 25, 1954. Decided May 28, 1954.

1. Where a corporation is sued in a name other than its proper name a plea of misnomer will be sustained.

2. An amended answer pleading misnomer gives plaintiffs due and timely notice thereof.

On appeal to this Court from dismissal of the court below of an action of debt for misnomer, *judgment affirmed.*

MR. JUSTICE HARRIS delivered the opinion of the Court.

This case was instituted by the appellant, plaintiff below, against the appellees, defendants below, for the recovery of three thousand seven hundred and fifty dollars, an alleged debt owed the appellant by the appellee for three hundred and seventy-five bags of palm kernels sold and delivered to appellee by appellant at ten dollars a bag. Appellee appeared and filed an answer, which was withdrawn, and an amended answer was filed, Count "1" of which reads as follows :

"The writ and complaint filed in this action are bad for misnomer on the ground that the said defendant corporation is not sued in its proper name in that, prior to institution of said action, the firm of C. Woermann & Brussells Company, Limited was taken over by Jos. Hansen and Soehne of Hamburg, and that said corporate name was altered to the name of Jos. Hansen and Soehne (Liberia) Limited as by previous public notice and announcements. Wherefore defendants demur to said writ and complaint and pray that this action be dismissed with costs against plaintiff."

Plaintiff countering this in his reply, contended as follows :

"Count `1' of said answer is without any legal merit in that according to section 36 of the Liberian Corporation Law of 1948 as amended February 15, 1951, the liabilities

of corporations, or the stockholders or officers thereof, or the rights or remedies of creditors, or of persons transacting business with such corporations, shall not in any way be lessened or impaired by the consolidation of two or more corporations under the provisions of this act. Consequently there is no misnomer, nor was plaintiff wrong in suing defendants under the name of C. Woermann Brussells Company, Limited."

The issues of law raised in the pleadings came for trial before the Circuit Court of the Sixth Judicial Circuit, Montserrado County, which sustained the plea of misnomer and dismissed the action. To said judgment the plaintiff appealed to this Court for review. During argument of the appeal before this Court, counsel for plaintiff cited section 38 of the Liberian Corporation Law of 1948, as amended February 15, 1951, in support of his contention that there is no misnomer. This section reads as follows:

"All corporations, whether they expire by their own limitations, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their assets, but not for the purpose of continuing the business for which said corporations shall have been established."

As can be gathered from the preamble of the above-quoted statute, in former days there were no adequate laws for the protection of corporations or their creditors. Hence so-called "mushroom" corporations, with grossly inadequate financial backing, solicited shareholders, sold shares to our citizens, and contracted enormous debts. These corporations inevitably went out of existence and their creditors received nothing. At that time no law compelled a corporation to continue under its corporate name for the purpose of settling its affairs. This evil led the Legislature to enact section 38 of the Liberian Corporation Law of 1948 as amended February 15, 1951, which provides, in effect, that, pending the dissolution of a corporation, it retains its original name for a limited time and a special purpose. Therefore the citation by plaintiff of said statute to prove that there was no misnomer herein is inappropriate.

The law, however, is otherwise with respect to merged or consolidated corporations, for they do not dissolve, or lose their corporate entities by merger or consolidation. They continue their existence and corporate activity conjointly under their newly acquired name as a consolidated corporation, without the liability of the corporations, or the stockholders or officers thereof, or the rights or remedies of the creditors

thereof, or of any person transacting business with such corporations being in any way impaired by the merger or consolidation.

A corporation, like an individual, must be sued in its proper name, and it must also sue in its proper name. Since the plaintiff entered this action subsequent to the consolidation of the companies, and the plea of misnomer was raised by the defendants in their amended answer, the plaintiff should have amended his complaint accordingly. It is settled law that, where the name of a corporation has been legally changed, it must be sued in its new corporate name, although the contract on which it sues runs to the corporation in its old name.

"If an action is brought by or against a corporation in its old name after a change of its name, it is a case of misnomer and the general rules relating to misnomer apply. In such case the defect may be cured by amendment." 14 C. J. 323 *Corporations* § 386.

"Technically, the consolidated company is a new corporation, but as regards the business of the old companies and their respective creditors, it is a continuation of the old companies under a new name ; Minion v. Ry. Co. 39 Mo. App. 574. The new company is bound to perform the duties of the old companies; Peoria & Rock I. R. Co. v. Mining Co., 68 I11. 489; it usually has the powers of both of its constituents; Robertson v. City of Rockford, 21 I11. 451. As a general rule, the new company succeeds to the rights, duties, obligations, and liabilities of each of the precedent companies, whether arising *ex contractu* or *ex delicto.* The charter powers, privileges and immunities of the corporations pass to and become vested in the 'consolidated company,' unless otherwise provided by law; 1 Thomp. Corp. § 365. See Thompson v. Abbott, 61 Mo. 176." 2 BOUVIER LAW DICTIONARY 2203 (Rawle's 3d rev. 1914).

In view of the foregoing facts and principles of law, this Court affirms the ruling of the court below with costs against appellant; and it is so ordered.
Affirmed.

MR. JUSTICE SHANNON, with whom MR. JUSTICE BARCLAY concurs, dissenting.

In this action of debt the defendant filed an amended answer which, in addition to denying the debt, raised a plea of misnomer. But for what I consider irregularities on the face of the records certified to us, I might have found myself in full agreement with my colleagues.

In my opinion a serious irregularity is evident in that part of the defendant's answer in which misnomer is alleged, and wherein the defendant contends that, prior to the institution of this action, the C. Woermann & Brussells Company, Ltd. "was taken over by Jos. Hansen and Soehne," without notice to the plaintiff of how or in what manner the former firm name was taken over. 1841 Digest, pt. II, tit. II, ch. V, sec. 8 ; 2 Hub. 1541. This is all the more irregular since defendant first formally filed a general appearance without any reservation whatever under the name shown on the face of the writ and the declaration.

In *Clark v. Barbour,* 2 L.L.R. 15, 16 (1909), this Court refused to decide upon issues not joined between the parties, and held that notice must be given by one party to the other of all matters of fact or law relied upon.

We ask, can it be said that the plea of misnomer herein was properly raised so as to give the plaintiff the notice required by law? And we ask whether the failure of the plaintiff to deny such a taking over of one firm by another can be accepted as conclusive in the absence of any evidence as to the manner in which the alleged merger or consolidation was legally effectuated.

I concede that the plaintiff's reply is not worded and framed so as to defeat a properly raised plea of misnomer. Yet I am of the opinion that the plea of misnomer as raised herein is clearly defective since it fails to show the manner in which the alleged taking over was accomplished.

It is incongruous that, in dismissing the action and ruling the plaintiff to all costs, the court below incorporated into its ruling the following announcement as having been published in the newspaper, *Liberian Age* under date of February 7, 1952 :

"We hereby beg to notify the public in general that the firm of C. Woermann & Brussells Company, Ltd., has been taken over by Jos. Hansen & Soehne, Hamburg, and will run under the name of Jos. Hansen & Soehne (Liberia) Ltd.

"The management will remain unchanged as well as the business policies. We ask our friends and clients to continue patronizing our firm.

"Jos. Hansen & Soehne (Liberia) Ltd."

There is no record certified to us showing how the announcement reportedly

appearing in the "Liberian Age" found its way into the court below.

Courts are governed by set rules of practice and procedure which must be observed, especially in ordinary civil pleadings and procedure. Our eyes should never be closed to glaring errors, irregularities, improprieties, and incongruities. We ask, therefore, whether the court below decided this case in favor of defendant's plea of misnomer upon the naked reference to an announcement in an issue of the "Liberian Age." If not, we ask what other evidence there is of the alleged taking over and change of name, as to give proof that it was done in the manner required by law.

Appellee's astute counsel, who did not represent it in the trial court, must have conceded the defectiveness in the plea of misnomer in arguing the case before us when he attached to his briefs before this Court copies of documents purporting to show the manner in which the taking over as pleaded was accomplished, possibly to fill the gap. But we ask whether, at this stage, we can properly accept such documents, incorporate them into our records, and decide this case upon them. I am afraid not.

It is therefore my opinion that the plea of misnomer was not raised so as to warrant a favorable ruling thereon or to justify charging costs of this entire proceeding against the plaintiff.

Because, for the foregoing reasons, in my opinion, the ruling dismissing the action should' have been reversed, I have withheld my signature from the judgment of the case.