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Corporations—Stockholder's Right to Inspection of Corporate Records

—Plaintiff, owner of approximately eighteen percent of the stock of defendant banking corporation, sought to compel defendant through a proceeding in mandamus to permit plaintiff to examine the books and records of the corporation for the purpose, as alleged, of ascertaining the true value of plaintiff's stock and of informing plaintiff as to the manner in which affairs of the defendant trust company were being conducted. The defendant by answer alleged that the plaintiff corporation, its officers and stockholders, were unfriendly; had tried to gain control of defendant; and had attempted to disrupt defendant's business by preventing customers from doing business with the bank. On the basis of these allegations defendant concluded plaintiff did not make the request in good faith. *Held*: Demurrer to the answer sustained. Under the inspection statute¹ all such books and records "shall be, at all reasonable times and for all proper purposes, open to the inspection of every stockholder". When it is stated that the inspection must be sought in good faith, it is not meant that the stockholder's motives are a test of his right to inspection, except as they manifest a purpose to exercise the right to an inspection not for some purpose germane to his rights as a stockholder, but for some extraneous purpose. The burden of establishing an improper purpose is on the defendant. Since allegations that plaintiff is unfriendly or hostile, or tried to gain control, do not prove an improper motive, the demurrer was properly sustained. *State ex rel. G. M. Gustafson Company v. Crookston Trust Company et al.* (Minn. 1946), 22 N. W. 2d 911.

This case applying the Minnesota Statute is of special interest in Wisconsin. In Wisconsin, prior to 1941, the statutory right to the inspection of corporate books and records by stockholders was repeatedly held to be an absolute right enforceable by mandamus regardless of the motive of the shareholder.² The trend in many states has been to repeal absolute statutory rights to inspection of corporate books and to make the inspection conditional on "proper purpose".³ In 1941, Section 182.10, Wisconsin Statutes, was amended to read "shall be open to inspection for any proper purpose". In effect, this amendment reinstates the common law rule and raises two questions of construction: (1) What is a proper purpose?, and (2) Who has the burden of proof as to such purpose?

¹ Minnesota Statutes (1941) 300.32; Minn. Stat. (Mason 1927), 7470.

² *Pick v. Wesbar Stamping Corporation*, 238 Wis. 93, 298 N.W. 58 (1941); *State v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 182 N.W. 354 (1921); *State ex rel Mandelker*, 197 Wis. 518, 222 N.W. 786 (1929).

³ Ind. Stat. 25-210; Burns Ann. Ind. Stat. (1929), 4832; Ill. Stat. Ch. 32, 157.45 " . . . At any reasonable time for a proper purpose . . . "; Mich. Stat. (1941) 300.32.

The weight of American authority recognizes the common law right of a shareholder to inspect the books of a corporation for a proper purpose.⁴ As in the principal case this has been generally held to mean in good faith and for a purpose related to the interests of a stockholder as such. The Wisconsin Court, in dictum in cases litigated under the old statute has given indication as to what may constitute a proper purpose. The right under the common law "was qualified and could be exercised only for a purpose not inimical to the interests of the corporation".⁵ Information so gained may not be used unlawfully nor can the right be conferred on a stranger. The principal case indicates several situations in which the right may not be denied. Every stockholder has some right by virtue of his ownership, but the purpose must not be foreign to his status as a stockholder. The Wisconsin Court, in passing on a petitioner's right to examine books, where the result of the inspection would have been detrimental to the corporation because of threatened complications with federal income tax authorities, held that under the common law, an owner of stock could in good faith demand an inspection not only to ascertain the condition of the corporation but to do such things as seemed necessary to protect his interest as a stockholder.⁶

In the principal case, the burden of proof was placed on the defendant corporation to show that the purpose of the owner was other than proper. In construing a similar statute the Ohio Court stated as follows:⁷

"When the stockholder is asking the right to inspect the corporate books, records, papers, and documents, or the corporate property, such request is attended by a presumption of good faith and honesty of purpose until the contrary is made to appear by the evidence produced by the officers or agents who are seeking to defeat such inspection. The burden of proof on this question should not be borne by the stockholder, but should be borne by the agents or officers objecting to the inspection."

⁴ *Wise v. H. M. Byllesby and Co.*, 285 Ill. App. 40, 1 N.E. (2d) 536 (1936), "The Act of 1933 preserves and declares the common law right to inspect at a reasonable time and for proper purposes."

⁵ *State v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 182 N.W. 354 (1921).

⁶ *State ex. rel. McClure v. Malleable Iron Range Co.* 177 Wis. 582, 187 N.W. 646 (1922).

⁷ *William Coale Development Co. v. Kennedy*, 181 Ohio St. 582, 170 N.E. 434 at 435 (1930); quoted with approval in *Indianapolis Street Ry. Co. v. State*, 203 Ind. 534, 181 N.E. 365 at 367-368 (1932).

Likewise, the Illinois Court, although not passing directly on the issue, stated:⁸

"Although perhaps he was not required to do so, the petitioner assumed the burden of proof and established a prima facie case, which was not contradicted."

The interpretation of similar statutory provisions by the majority of state courts is summarized by Fletcher on Private Corporations.⁹

"The courts are substantially a unit in holding that the stockholder is under no duty to state and establish a proper purpose but that impropriety of purpose such as will defeat enforcement must be set up by the corporation defensively if the court is to take cognizance of it as a qualification.

"The specific provisions take from the stockholder the burden of showing propriety of purpose and place upon the corporation the burden of showing impropriety of purpose or motive if it would defeat inspection on that ground."

It appears to be the law that the purpose of inspection by a stockholder is presumed to be in good faith, and must be rebutted by evidence submitted by the corporation which desires to defeat the right. However, in demanding to see the books and records, the stockholder probably should allege "a proper purpose" which will be respected until proved nonexistent. Even though the corporation continues to bear the burden of proof, the amended statute has relieved the corporation from examinations by minority stockholders primarily intended to destroy or injure the corporation.

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⁸ *Wise v. H. M. Byllesby and Co.*, 285 Ill. App. 40, 1 N.E. (2d) 536 (1936).

⁹ Fletcher, *Cyclopedia Law of Private Corporations*, Vol. V, Ch. 18, p. 574 (1931).