Marquette Law Review

Volume 13
Issue 3 *April 1929*

Article 9

1929

# Corporations: Right of Stockholder to Examine Books by an Agent

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**Corporations; Right of Stockholder to Examine Books by an Agent**

Section 182.10 Statutes of 1927 states that, "The books of every corporation....shall at all reasonable times be open to the inspection of the stockholders. .... And the officers of such corporation shall furnish any....creditor correct information. .... And any officer refusing when requested so to do shall be liable for any damage caused thereby."

At common law, the right of a stockholder to examine the books of a corporation was qualified to the extent that such examination must be desired in good faith and not through mere curiosity or for speculative purposes.[1]

The case of *State ex rel Mandelker,* v. *Mandelker,* appearing in 222 N.W. 786, confirms the right of a stockholder to have a writ of mandamus issued to allow his properly qualified agent to examine the books in the interest of the said stockholder. Mr. Justice Rosenberry points out that the right of inspection as it existed at common law has been enlarged and extended by the statute so that "the courts will not inquire into the motives of the stockholder who demands the inspection."[2] The statute confers an absolute right to examine, and removes the right to question the stockholder's reasons for examining the books. In *State ex rel Quin* v. *Thompson's M. F. Co.,* 160 Wis. 671, the right was held to be enforceable by mandamus. Mandamus being a discretionary writ, it would not be granted at common law to permit the inspection of the corporate books when such demand was made for a purpose inimical to the interests of a corporation. But judicial discretion will not withhold the writ of mandamus when there is a clear statutory right to be enforced, in the absence of any other remedy. It is wrong for the stockholder to make an unlawful use of the information obtained, but the motives for desiring the examination, no matter of what nature, will not prevent the enforcement of such statutory right.[3] In the case just cited the examination was made by an attorney for the stockholder. The defendants in the present case attempted to have the rule as to vicarious inspection confined solely to duly authorized attorneys-in-fact. The agent in this case was a disinterested certified public accountant. The defendant in his answer alleged that the relator could, and should, make a personal examination because of his knowledge of accounting as shown by his position as credit manager of a similar concern. The court disposes of this objection by stating that an examination by a disinterested third party,

[1] 7 *Ruling Case Law,* page 326, Par. 303; 246 Ill. 170; 92 N.E. 643.
[2] *State ex rel Dempsey* v. *Werra A. F. Co.,* 173 Wis. 651.
[3] *State ex rel Dempsey* v. *Werra A. F. Co.,* 173 Wis. 651.

would have a "much greater probitive force than when made by the stockholder himself," in case of a dispute among the stockholders.

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**Fire Insurance; Standard Policy; Construction; Entirety of Policy; Waiver and Estoppel**

In a decision rendered January 8, 1929, the Wisconsin Supreme Court in the case of *C. J. Struebing* v. *American Insurance Company, Newark, New Jersey,* 222 N.W. 831, sustained the Wisconsin standard policy enacted in the year 1917, R. S. 203.01. The 1917 enactment replaced the 1895 enactment of the standard fire policy. The 1895 policy was upheld in *Temple* v. *Niagara F. Ins. Co.,* 109 Wis. 372, 85, N.W. 361; *Bourgeois* v. *Northwestern Nat'l Ins. Co.,* 86 Wis. 606, 57 N.W. 38, in which the standard policy act was referred to as bringing order out of chaos. Prior to its enactment, there were as many different contracts of insurance as there were companies, and that the standard policy is a step in the right direction is not to be doubted. Under it there could be practically only one form of policy. The standard fire policy was held to be a statutory law as well as a contract, and should be treated and construed accordingly; that it was the only contract of insurance which the parties had the power to make, and being the law as well as a contract, its provisions were binding upon the parties.

The principal issue in the Struebing case concerned the 'other insurance' provision.[1] "Unless provided by agreement in writing, added hereto, this company shall not be liable for loss or damage occurring (a) while the insured shall have any other contract. of insurance, whether valid or not, on the property covered in whole or in part by this policy."

November 22, 1922, defendant issued plaintiff a standard policy of insurance against loss by fire, covering certain buildings and personal property. It was never provided by agreement in writing, as required by said policy, that plaintiff might have other insurance. March 26, 1926, plaintiff procured another policy of insurance from the Theresa Mutual Fire Insurance Company covering personal property on the premises covered by defendant's policy. On March 4, 1928, the dwelling house covered by defendant's policy was wholly destroyed by fire, and personal property then located therein was also wholly destroyed.[2]

The court in quoting the other insurance provision of the policy says: "There was no agreement in writing added to the policy author-

[1] Lines 32 to 37 inc. of the 1917 policy.

[2] *In C. D. Struebing* v. *American Ins. Co.,* 222 N.W. 831.