THE NATURE AND EXTENT OF THE RIGHT OF A STOCKHOLDER TO INSPECT THE BOOKS OF A CORPORATION

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INTRODUCTION

A. *Necessity and Usefulness of the Right.*

At common law, every stockholder of a corporation has a right by reason of his interest, to inspect and examine the books and papers of the corporation. The decided usefulness of this absolute statutory right is directly related to the interest of the stockholder in a corporation. As an investor, he must vigilantly watch how his released capital is being taken care of, and how the property or funds accruing to it are being managed. As he puts his money to the risk of the enterprise, so may prudently he adopt such measures of protection afforded by law as that of inspection of the affairs of his corporation.

Foundaton of the Right.

The claim of the stockholder to know how the affairs of the corporation are conducted is founded on the necessity of self-protection. (Ballantine, Sec. 164, p. 546). This is further grounded on the proposition that those in charge of the corporation are merely agents of the stockholders who are the real owners of the property. (Cincinnati Volksbatt v. Hoffmeister, 56 N. E. 1033). The property of a corporation though subject to some condition to the rights of creditors is in the last analysis the property of the stockholder, and that when one seeks inspection of the books, papers, or property, he is in reality but seeking an inspection of his own. (Thompson, p. 988.)

In fact, to the end of making proper exercise of the right of examination, there have been suggested many ways thru which it may be made. It has been projected that there be created a machinery whereby representatives can be elected by the different security holders who will advice them from time to time of the condition of the company who may check upon

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the management. This is because it has been realized that there are vital decisions of policies taken by the directors which would be revealed only to one having access to the corporate minute books. (Eustace Seligman, Broader Legal Aspects of Customer Stock Ownership, 50 Reports of American Bar Association, 1925, pp. 851, 854). And under the Mexican Commercial Code, Prof. De la Torre of the University of Michigan reports that there is the "so-called vigilance committee elected at a general meeting of stockholders. They may examine the books." On the other hand, in Mexico, the stockholders have no individual right of inspection at all—the directors submit to the Vigilance Committee yearly the general balance sheet for verification. (Mexican Business Corporation, 72 University of Pennsylvania, Law Reports Supplement, 1923).

B. *Source of the Philippine Law on the Subject.*

Our own Corporation Law (Act 1459) is predominantly of New York and California Origin (Phil. Law Journal, Vol. 16, July 1936, p. 4). But Sections 51 and 52, of the same Law referring to the subject bear quite a different feature from those contained in the laws of the countries of origin.

The effect of such origin, however, will be to justify the writer to resort to American jurisprudence for decisions and precedents which are entirely wanting in our own jurisprudence; and that in so far they will be applicable and consistent with our own statutory provisions.

C. *Statutes of Different States Compared.*

At this juncture it may be well to delve into comparative study of our law with those of different states of the Union.

Section 51, of Act 1459, (Phil. Corporation Law) provides:

> Sec. 51. All Business Corporations shall keep and carefully preserve a record of all business transactions, and a minute of all meetings of directors, members, or stockholders, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. On the demand of any director, member or stockholder.
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> The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours.
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> Sec. 52. Business corporations must also keep a book to be known as the "Stock and Transfer Book" in which must be kept a record of all

stock, the names of the stockholders or members alphabetically arranged; * * * a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe.

The stock and transfer book shall be kept in the principal office of the corporation and shall be open to the inspection of any director, stockholder, or member of the corporation at reasonable hours; * * *.

New York Statute Provides:

Stock Corporation Law, Sec. 10.

Every stock corporation shall keep at its office correct books of account of all its business and transactions, and a book to be known as the stock book, containing names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon.

The stock book of such corporation shall be open daily, during at least three business hours, for inspection by any judgment creditor of the corporation, or by any person who shall have been a stockholder of record in such corporation for at least six months immediately preceding his demand, or by any person holding or thereunto in writing authorized by the holders of at least five per cent of all its outstanding shares. Persons entitled to inspect stock books may make extracts therefrom. * * *

Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open to inspection, as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit any such book or to allow any such book to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting him therefrom. It shall be a defense to any action for penalties under this section that the person suing therefrom has within two years sold or offered for sale any list of stockholders of such corporation or any other corporation, or has aided or abetted any person in procuring any stock list for any such purpose. Nothing in this section herein shall impair the power of the courts to compel the production for examination of the books of a corporation. (Stock Corporation Law, Sec. 10).

Penal Law, S. 665, subd. 4, White p. 719.

A director, officer, agent or employee of any corporation or joint stock association, who having the custody of its books, wilfully refuses or neglects to make or to exhibit or allow the same to be inspected and extracts therefrom to be taken by any person entitled by law to inspect the same, or take extracts therefrom is guilty of a misdemeanor if he wilfully refuses.

And the California Law is as follows:

"Every corporation other than religious, educational, or beneficent, organized or doing business in this State, shall have and maintain in office or a place in this state, stock and transfer books which shall be open to inspection by every person having interest therein." (California Constitution, Art. 128, Sec. 14).

The following features may be differentiated among these three laws above-cited. The New York Corporation Law makes the provision that stock books shall "be kept open daily during at least three business hours". There is no such provision in our statute; but the same is upheld as it is admitted that statute may provide for such regulations with which the companies must comply. So also none exists in the California law on the particular point.

Under the New York Law, the stockholder must show that he is a stockholder of record for at least six months preceding his demand. Again no such requirement is found in our law, it being left to the general principles that he whose interest does not appear on record has no standing in law so far as the corporation is concerned. (See proviso, Sec. 52 of Act. 1459.)

So does our law not contain the New York provision that the stockholder own "at least 5 per cent of all its outstanding shares." This will be an interesting question for discussion and is submitted by the writer. Likewise, New York Law expressly authorizes that the person entitled to inspect the books "may make extracts therefrom", which authority does not obtain in our law.

The last clause is penal in nature making it punishable under the same section for an officer in charge to refuse or neglect the inspection to allow an inspection properly made. Likewise, as provided, damages may be allowed for such refusal; both of which matters do not exist in Sections 51 and 52 of Act 1459.

Compared with the California Law, it is only to be pointed out that the latter law provides that "persons having an interest therein" may be entitled to inspection; which in our law is stated as "a director, stockholder, or member thereof".

As in New Jersey, inspection may be made "during usual hours for business", (Revision of 1896, as amended by Public Law 1898, p. 409); and "reasonable and proper hours" are used by the Alabama statute, which in our Sections 51 and 52, is "at reasonable hours."

NATURE AND EXTENT OF THE RIGHT

A. *Nature of the Right.*

1. *How the right is granted.*

The right of inspection accorded to shareholders is one of common law origin and presently absolutely given by statutes. It is even guaranteed by the California Constitution (Art. 128, Sec. 14, cited above.) In some jurisdiction the right is granted by the articles of incorporation, or by the by-laws of the corporation. But in whatever way it may be provided, it is settled that the constitution, the statute, or the articles of incorporation is merely affirmatory of the common law right, and to some extent broadens it.

(a) *Effect of a by-law restricting the exercise.*

What is the effect of a by-law restricting the right of inspection? By-laws must be consistent with general statutes, (Sec. 13, par. 7, Act 1459); the former being granted merely for regulatory purposes. The case of Pardo v. Ferrer presented the question squarely before the Supreme Court. A resolution was adopted by the board of directors providing "that the election would be held every 30th of March and with notice to the shareholders given that the books of the company are at their disposition from 15th to 25th of the same month for examination in appropriate hours." The local Supreme Court, passing upon the validity of the resolution, held:

> "The general right given by the statute may not be lawfully abridged to the extent attempted in the resolution. It may be admitted that the officials in charge of a corporation when sought at unusual hours or under other improper conditions; but neither the executive officers nor the board of directors have the power to deprive a stockholder of the right altogether. A by-law unduly restricting the right of inspection undoubtedly is invalid." (47 Phil. 946).

A similar question has been decided in Klotz v. Pan American Match Co., where it was held that a by-law of similar nature is invalid. (108 N. E. 764).

The effect of the grant by either the constitution or the statute is to place it on the level of common statutory rights which is beyond the by-laws or regulations to curtail, though may be subjected to reasonable limitations, but which in all cases must not be inconsistent with or repugnant to the statute.

2. *Compared with the right of a director.*

It is settled that the administrative officers have absolute and unqualified right to make inspection (Cook, Sec. 511), as compared with the right of a stockholder which is subject to certain limitations. The directors have absolute right to inspect books and records of the corporation at all business hours (Veraguth vs. Isabela Sugar Development Co., 31 O. G., p. 49, 1933). (Also, Mechem v. Mayor Electric Co., 237 Pac. 212). The reason for this is that these persons are charged with the duty of knowing what is going on and they cannot have this knowledge without access to the books (Heminway v. Meminway, 19 Atl. 766). The duty of a director is to direct and if he neglects this duty he is certainly guilty of a moral wrong if not a legal one. To perform this duty intelligently it is essential that he should keep himself informed as to the business and affairs of the corporation. All that he needs to show, is that he is a director and that he has demanded permission and that his demand has been refused. (Thompson, Sec. 4520, p. 993).

3. *Extent of interest to entitle a stockholder to the exercise of the right.*

As alluded to heretofore, under the New York Corporation Law, a person to be entitled, must be holding an interest "of at least 5 per cent of the total shares of the corporation", (Sec. 10, Stock Corp. Law, supra). The effect of the provision is tremendous under the New York practice. No similar provision exists in Sections 51 and 52 of Act 1459. The absence of the required amount of interest in our law raises the question: MAY THE STOCKHOLDERS, HOWEVER SMALL THE INTEREST HE HOLDS, BE ENTITLED UNQUALIFIEDLY TO AN INSPECTION PROPERLY APPLIED FOR?

Prof. Ballantine himself admits that there is a wide divergence of views on the point and states a problem of the same tenor as above given, whether a holder of a single share be given an unrestricted right to inspect the books and documents of the corporation.

It has been held in Venner v. Chicago City Railway Co., that usually the statutory right of inspection is conferred upon all stockholders, (92 N. E. 643); and may be denied to a stockholder merely because he has small holdings (In re O'neill, 95 N. Y. S. 964). But in a case of contrary view (New York case) it has been ruled that the interest of the applicant which

was 1/30% of the preferred stocks was too inconsequential to authorize compulsory inspection. (In re Pierson, 59 N. Y. S. 1003). The case of Jessup v. Moore Paper & Co. also decided that the applicant under the statute must show interest. (77 Atl. 16).

But in the absence in our law of the provision similar to that of New York whereby a certain amount of interest is required to be held by the stockholder demanding inspection, it will be safe to conclude in answer to the question, that in this jurisdicton no amount of interest will be "too inconsequential" so as to justify the refusal of the exercise of the right, if and when demanded for a lawful purpose. The decision of In re O'neill, supra, will support the conclusion.

B. *Extent of the Right.*

1. *Purpose for which inspection may be made.*

No law have enumerated or otherwise indicated the purpose for which the exercise of the right of inspection may be made. Nor do Sections 51 and 52 so provide. The silence of the statute gives rise to an extensive range of possibility as to what may consist lawful motives for which a stockholder may demand an inspection of the books and records of the company.

The general rule settled in the United States is to the effect that the stockholder is entitled to an inspection where there is sought to be learned something which he has right to know for his own protection (People v. Consolidated National Bank, 94 N. Y. S. 173; People v. Keeseville Railway Co., 94 N. Y. S. 555). The English rule has a more restrictive trend in that there must be something more than a bare suspicion of mismanagement or fraud; there must be at least specific and reasonable grounds for suspicion. There is no express rule that to warrant an application to inspect the papers of the corporations there must actually have been instituted a suit; but it is necessary that there should be some particular matter in dispute between members or between the corporation and individuals in it, there must be some controversy, some specific purpose in respect of which the examination becomes necessary. (Footnote, Ballantine, p. 547). And in the United States the generally accepted concept is that stockholders have the general right to inspect the books and papers of the company without first showing any particular dispute or mismanagement, where they wish

to make the examination in *good faith* to ascertain the condition of the company (Ballantine, footnote, on page 548. See also case of Huyler v. Cragin Cattle Co., 2 Atlantic, 274). The leading case on the point is that of Guthris v. Harkness (199 U. S. 148) which has been cited by almost all textwriters.

A stockholder of a National Bank applied for inspection of the books for the purpose of ascertaining whether the business affairs of the bank had been conducted according to the law, and whether as suspected, the bank was guilty of irregularities. The question was whether the writ of mandamus would issue to compel an inspection of the books of the corporation. Held by the Court:

"The decisive weight of authority in the United States recognizes the right of inspection of the stockholder for proper purposes and under reasonable regulations as to place and time. In issuing the writ the court will exercise its sound discretion and grant the right under proper safeguards to protect the interest of all concerned. The writ will not be granted for speculative purposes, or to gratify idle curiosity, or to aid a blackmailer, but it may not be deprived to the stockholder who seeks the information for legitimate purposes".

a. *Lawful purposes.*

Accordingly, among the lawful purposes are: (1) To ascertain the financial conditions of the company; (2) or propriety of dividends; (3) or the value of the stocks; (4) or whether there had been mismanagement; (5) in anticipation of corporate meetings where important matters will be voted on; (6) in aid of a litigation with the corporation; (7) or with its officers; or to enable the plaintiff to consult with his fellow stockholders and obtain proxies to be used at an approaching election (Otis-Hidden Co., v. Scheirich, 219 S. W. 191). Or to obtain a list of the stockholders to use in his private business as a broker is held to be a lawful purpose, though not relating to his interest as a stockholder (White v. Manter, 84 Atl. 890).

b. *Unlawful purposes.*

The general rule to be borne in mind is that the stockholder is not entitled to an inspection unless he seeks to learn something which he has right to know for his protection and his application must be in good faith and not for the purpose of injuring or annoying the corporation. (People v. Consolidated National Bank, 94 N. Y. S. 173, supra). Refusal is proper where it is for mere idle curiosity, or to fish out a defense

(Guthrie v. Harkness, supra); or to harass the corporation (Commonwealth v. Empire, 19 Atl. 629); or to furnish material for a new trial of a case against the corporation (Pratt v. Goswell, 37 N. Y. S. 669); or for the purpose of establishing justification in an action against the petitioner for libel in charging the company with insolvency (Opdyke v. Marble, 44 Barb [N. Y.] 64); or for purely speculative purposes (State v. Pan American Co., 61 Atl. 398; Bruning v. Hoboken, 50 Atl. 906); or to the end of aiding the stockholder in his suit against the directors of the corporation for publication of false reports which induced him to purchase stocks (Taylor v. Citizen's National Bank, 101 N. Y. S. 1039); or to obtain papers concerning improper loans made by the corporation in order that proof may be used to hold the directors personally liable (People v. Product Exchange, 65 N. Y. S. 926); or to serve business "prospects" or investment or advertising lists (State ex. rel. Theile v. Cities Service Co., 114 Atl. 463; Day & Co. v. Booth, 123 Atl. 557). And in the case of In re Pierson, the general rule has been enunciated as follows:

"Suffice it to say that while the court has power, it is one to be exercised in its discretion and the writ is not to be accorded to a stockholder whenever he seeks to invoke it. Had it been made to appear that the purpose sought by the examination was to promote the interest of the security holders or the company, or that the value of the securities held by the petitioner could be enhanced or protected by the relief sought, there might be a basis for the issuance of the writ. In the absence of such showing or where as here it appears that it would be injurious rather than beneficial not alone to the company but to those in behalf of whom the petitioner states he makes the application, the denial of the writ is proper." (60 N. Y. S. 671).

c. *Question Propounded.*

And consequently, the question may be asked: IS THE STOCKHOLDERS REQUIRED UNDER THE LAW TO STATE THE PURPOSE FOR WHICH HE SEEKS INSPECTION?

We re-state here the prevailing rule in the United States that there need not be a showing of a particular dispute or mismanagement, as compared with the more stringent English rule (Fletcher, p. 4096), the only limitation being, that the demand be made in good faith to ascertain the conditions of the corporation. But this rule by no means solves the problem above formulated.

There is a decidedly conflicting rulings in the United States on the point. Under the New Jersey Law, the stockholder must still prove a proper motive and reasonable grounds to inspect (Ballantine, p. 551); and in Alabama, hostile or ulterior motives may be shown by the corporation as a defense. And Mr. Fletcher avers that where the motives is questioned the stockholder must make proper showing and where it is refused to be shown, improper purpose is inferred. (Sec. 2823 p. 4105, citing the case of Henry v. Babcock & Wilcox Co., 109 N. Y. S. 853). But the preponderating rule seems to be that it is not necessary for the stockholder to demonstrate a particular reason or occasion for making the inspection, as was said in Foster v. White, 6 Southern 89, the Court further holding:

"The only express limitation is that the right shall be exercised at a reasonable and proper times. The implied limitation is that it shall not be exercised for more idle curiosity or for unlawful or improper purpose. In all other respects the right is absolute. The shareholder is not required to show any reason or as occasion rendering an examination opportune and proper or a definite or a legitimate purpose. The custodian of the books may not question or inquire into his motive or purpose. If he has reason to believe that they are improper and illegal he has the burden to prove that they are such. If it be said that the statute places upon a single shareholder the power to greatly injure or impede the business of the corporation, the answer is, that the legislature regarded his interest in the successful promotion of the object of the corporation a sufficient protection against unnecessary or injurious protection."

And in the case of White v. Manter, (Michigan), 84 Atl. 890, the petitioner not stating previously his motive, the Court held, in passing on the question after the corporation refused to allow the petitioner to inspect:

"We think that the statute is affirmatory of the common law and that it is more. It adds the common law right; it removes some of the common law limitations. In other words, their right of inspection is absolute and unlimited. The statute does not make the purpose material, and we cannot * * *. The law recognizes the absolute right of the stockholder and imposes an absolute duty upon the corporation, and the custodian of the stockbook. The law requires no statement of any particular interest upon the part of persons demanding the inspection. He must be a stockholder and must prefer his request during reasonable hours, that is all."

(See also the cases of Cincinnati Volksbatt Co. v. Hoffmeister, supra; State ex rel. Bergenthal, 39 N. W. 566.)

The writer may safely conclude in resolving the question propounded that no showing need be made by the stockholder of his purpose in applying for an inspection. Mr. Justice Fisher does believes likewise that the motive of the stockholder

is not material (Sec. 127, p. 190). But where there exists an illgal purpose, that may be availed of by the corporation merely as a defense. For it is sufficient that the statute absolutely grants the right, and the corporation or the court even, cannot inquire into the motive of the shareholder (Johnson v. Langdon, 135 Cal. 624; State ex rel. Depsey v. Werra Aluminum Foundry Co., 182 N. W. 354). This rule is further affirmed by Mr. Fletcher in the statement that later decisions in the United States have the effect of making the right of inspection absolute without inquiring as to the purpose of the stockholder. (Fletcher, Sec. 2823, p. 4105.).

2. *What May Be Inspected.*

It may be stated that where the statute as our own specifies what books or papers may be open to inspection such specification is in the nature of a limitation upon the right of inspection. But that does not preclude the exercise of the right over and as regards other papers or effects.

Section 51, 2nd paragraph, mentions "records of all business transactions and minutes of any meeting" which may be open to inspection. And Section 52 adds "Stock and Transfer Books". In some states the word "accounts" in place of "records" of transactions is used in the statute. The writer believes that there is no essential difference in meaning between "record" and "accounts", which latter is a statement of business dealings. And the right to examine the account of transactions includes all books, papers and accounts containing the transaction of the corporation (Wheihnmayor v. Bitner, 42 Atl. 245); and gives him the right to examine the contracts executed by the corporation (Stone v. Kellogg, 46 N. E. 22). The word accounts, as used in the statute includes not only the stock accounts, but also the general accounts of the corporation (State v. Bergenthal, 39 N. W. 566). And where statute requires a corporation to keep a book and the corporation does not keep such books, it is the duty of the corporation to permit an inspection of the books it keeps for purposes of entering records of transaction. (People v. Pacific Mail, 50 Barb [N. Y.] 280).

It is fortunate that in Section 51 of Act 1459 is sanctioned the inspection of the minutes of any meeting, which in some statutes like Alabama, is not so provided. Under the Alabama statute, the court absolutely ruled that no inspection will be allowed of the minutes of any meeting, as that would be tanta-

mount to admitting strangers to the meeting. The success of the corporation demands secrecy in its plan, which may be defeated by the opening to stockholders the records of proceedings which formulate policies of the company. (Alabama Railway Co. v. Rowley, 9 Ala. 508). In a certain case it has been held that demand for "book accounts" does not include "stock ledger" in which the transfer of stock are entered (Lyon v. American Screw Co., 17 Atl. 61). But this will have no force in our jurisdiction in view of the provision of Sec. 52, declaring "stock and transfer books" open to inspection.

(a) *What may be examined outside from those mentioned by law.*

It is interesting to inquire in this connection whether by-laws may be examined by a stockholder desiring to inspect them. The question is asked in view of a reported decision, to which the writer adheres in resolving the question. A stockholder owning 500 shares of stocks applied for an inspection of the by-laws. Upon refusal by the insurance company, he sued for mandamus and hence the question was brought before the court, which held:

"The stockholder may not be entitled to an inspection, of the by-law as a matter of right, yet the stockholder is entitled to an inspection, altho the right is on a different footing. It must be a strong case which would interpose to prevent a stockholder from opportunity to examine the by-laws and thus inform himself of the terms of the contract into which he has entered. He ought to be permitted to know the terms and extent of his obligation and the terms upon which he holds his property. It does not appear that the privilege to inspect the by-laws will be abused or any ulterior purpose prejudicial to the corporation will be served thereby." (In re Coats, 78 N. Y. S. 429).

Likewise it has been held that the stockholder is as much entitled to inspect the property of the corporation of which he is a stockholder as the books and papers of the same. The court, in a reported case, issued a writ of mandamus to compel the directors to enable him to visit and examine the mines of the company accompanied by an engineer, and further laying down the principle that "it would indeed be a strange rule which would allow the stockholder to ascertain its conditions and deny him an inspection of the property to verify the statements contained in its books. The rule at common law extends to the corporate property as fully as to the books. (Hobbs v. Tan Reed Gold Mining Co., 164 Cal. 497).

(3) *Does the right to inspect include the right to make abstract or copies of the books and papers?*

It is to be observed that the New York Statute (Sec. 10, Stock Corporation Law, supra) expressly declares that persons entitled to inspect stock books "may make extracts therefrom". The statute of Maine likewise contains a similar authority in this line: "may make copies and minutes therefrom" (Rev. Statute, 1916, Chap. 51, Sec. 22).

Our law does not so provide; but the writer contends, and it finds support in several decisions, that the right to make copies is embraced in and authorized by the bare right to inspect. Under the practice in Delaware, however, where no authority to make extracts exists, the court has so well held that the stockholder has the incidental right to make abstracts memorandum and copies (Swift v. State, 32 Atl. 856). For it is not to be presumed that he can carry all its contents in his memory; hence, to make effective the exercise of the right and in such form as he may be able to act on it for some legitimate purpose (People v. Consolidated Bank, 94 N. Y. S. 173). The more accepted authority on the point is the case of Shea v. Parker, the court holding:

"The right also includes the making of copies and transcripts as well as the assistance of counsel and copyists form such purposes. The statute when viewed in the light of its origin should not be so construed as to reduce the right to useless inquiry which it necessarily would be in most cases, unless the stockholder is permitted to copy names, residences and number of shares of stockholders" (126 N. E. 47).

4. *Time of Inspection.*

The restriction which the law has placed as to the time of exercise is that it be made at reasonable hours (Secs. 51 & 52, Act 1459, supra); which as construed may mean "reasonable hours during business days throughout the year" (Fisher, Sec. 127, p. 189) or during the usual hours for business of the corporation (State ex rel. O'hara v. National Biscuit Co. et al., 54 Atl. 241). And the inspection should be made in such manner as not to interfere with the conduct of the corporate business (Weihmayer v. Bitner, 42 Atl. 245); and where inspection is allowed it shall not be limited to one inspection only but may be exercised at any reasonable time as long as the relation of stockholder subsists (Cincinnati Volksbatt v. Hoffmeister, 56 N. E. 1033). But it has been ruled that the court may in its

discretion grant inspection at other times than those specified in the statute, where the case above shows a dire necessity to preserve the rights and interests of the stockholder (People v. Badie, 18 N. Y. S. 53).

5. *Place of Inspection.*

Section 51 provides that the "stock and transfer books shall be kept at the principal office of the corporation". Or, as the California statute puts it "at the place of business or office". It may be reasonably inferred from the provisions above-cited that inspection may be permitted only at the principal office of the corporation, or at any place where the corporation carries on business. But a case has held that where the books have been removed and the officers cannot be found, demand at any place and inspection therein will be lawful (Gunst v. Goldstein, 30 Misc. 44, cited by White, p. 723).

6. *Who may Exercise the Right.*

a. *The stockholder in person.*

It is settled as a fundamental rule, and it is so under Secs. 51 & 52, that a person is entitled to an inspection of the papers and books of the corporation; but he must be a stockholder at the time of application. Most statutes provide that the applicant be "a stockholder"; in Maine, he must be a "person interested" (Rev. Statute, 1916, Chap. 51, Sec. 22); and "persons having interest therein" by the law of California (Art. 28 Sec. 4). Many cases still hold that he be "a stockholder of record" (In re Reiss, 62 N. Y. S. 145; Butterfly-Terrible and Mining Co. v. Brind, 91 Pac. 1011). But the right is purely a personal one (In re Hastings, 105 N. Y. S. 834); and may not be exercised by strangers (Henry v. Travelers Insurance Co., 35 Fed. 15). But in the case of Post v. Toledo, it has been ruled that a stranger may on some circumstances obtain the right to inspect by means of a bill for discovery (11 N. E. 540). And it logically follows that upon the termination of the relation of stockholder the former stockholder has no more right to an inspection than any other stranger (State v. New Orleans Exchange, 112 L. A. 868); and under the same doctrine, a stockholder who has entered into a contract of sale of stocks and received part payment thereon, he cannot claim the right (Buckley v. Whited, 104 L. A. 125).

b. *By agents or representatives.*

It may not be amiss to indicate here that the Illinois Statute expressly provides that the inspection may be made by "himself or attorney" thereby giving an explicit authority for the agent of a stockholder to make an examination. Though it is not provided in our as well as in other statutes, it is a recognized rule that the right of inspection which is conceded by the statute to the stockholder is exercisable by his agents. So, it is undisputed in our jurisdiction that the right may be exercised either by the stockholder in person or by his agents, without the attendance of the stockholder (Philpotts v. Philippine Manufacturing Co., 40 Phil. 471) ; and such agents may be an attorney, or an expert accountant (State v. Bienville Oil Work Co., 28 L. A. 204). And the right of inspection may be exercised by a pledgor of the stock, although not ordinarily by a bare pledge (In re First National Bank, 59 N. Y. S. 1042) ; or by the executor of a deceased stockholder (In re Hastings 87 N. E. 1120) ; but not by a temporary administrator (In re Hastings, supra) ; nor a mere custodian holding the stock pending a litigation in regard to title thereto (Id). But in all cases of an exercise by the agents of the stockholder the court may interpose some control and prevent the stockholder from designating an attorney or agent who is hostile to the corporation to avoid a laborious investigation and embarrassment and expense. (Lien v. Savings, 174 N. W. 621) State ex rel. Humphrey v. Monida and Yellowstone Stage Co. 125 N. W. 971) ; and where the hostile persons belonging to a rival corporation accompanies the stockholder, the writ should provide for the exclusion of such person (Bellman v. Standard Match Co., 128 Am. Dec. 416).

7. *Demand for Inspection.*

a. *By Whom Demand Shall Be Made.*

For the proper exercise of the right an application shall be made. The words of the statute "shall be open to inspection" do not constitute a license for a stockholder to ransack the records and papers of the corporation without proper application therefore. And it has been held that the demand for inspection shall be made by the stockholder himself and not by his attorney (People v. United States Mercantile Co., cited by Thompson, Sec. 4522, p. 994) ; and the demand may be thru mails (Beubert v. Armstrong Water Co., 211 Pac. 582).

b. *To Whom Demand Shall Be Made.*

It will be reasonable to establish as a rule, in view of the silence of the law, that the demand or application for inspection shall be made upon the authorized custodian of the books, papers, or records of the corporation; unless, they have been removed from such persons (Lewis v. Brainard, 53 Vt. 519). And no showing need be made that the person on whom the demand was made bore a relation with the corporation, it being sufficient for the allowance of the right that demand shall have been made in proper manner as to time and place. The case of Pellstreau v. Greene Consolidated Gold Mining Co. is decisive on the point, where the court held:

"The statute does not specify on whom the demand for inspection shall be made further than to provide that it shall be kept at the principal office. It would be to nullify the law to require him to go further and prove in the first instance that the individual bore any particular relation with the corporation" (97 N. Y. S. 391).

Nor is refusal proper where demand was made upon a Treasurer not in charge of the books sought to be examined, but who did not refer the applicant to the proper custodian. (Martin v. Johnson & Co., 133 N. Y. 692.)

c. *Manner of Exercise.*

But to be valid, the demand must be made during the business hours of the corporation (People v. Walkers, 9 Mich. 328); and the place of business or principal office of the corporation where papers and books are kept, unless they have been removed elsewhere and the officers cannot be found, in which case a demand in any place is valid (Gunst v. Goldstein, 30 Misc. 44). And the application shall specify what books are desired to be examined, and a demand for "all books of the Corporation" will not be sufficient to allow an inspection of the stockbook (Buker v. Steele, 43 N. Y. S. 346); and where the petitioner demands from the corporation to show all that it has and knows, whether it has any materiality or utility, the court properly denied the writ to compel inspection, it being doubtful whether any large corporation would willingly honor a stockholder's demand worded in the broad form in which it was made (People v. American Union Life Insurance Co., 64 N. Y. S. 916); and if a stockholder demands some books which he is not entitled to see, it will not be justified to deny the proper books if demanded (Elsworth v. Dorwart, 63 N. S. 588); and the diligence of the

applicant is sufficient after having appeared at the office which was closed and therefore made a demand on the President, which was refused. (Bay Gas Co. v. State, 56 Atl. 1114).

8. *Refusal and Grounds Therefor.*

a. *General Rule.*

As already adverted to above, the principle obtaining in the United States is to the effect that a stockholder shall be entitled to an inspection where he seeks to learn something which he has right to know for his own protection; and under the doctrine enunciated, when the grounds proper for denying an inspection exist, the demand may also be justifiably turned down on the same grounds, because the demand being merely a preparatory step and leading to the exercise of the principal right of inspection. And it may be well to cite instances where refusal is deemed improper, the ground therefor being insufficient to impair the statutory right of the stockholder.

b. *Illustrative Improper Refusal.*

A refusal based on the ground that the applicant is a stockholder of a competitor corporation is improper (State v. Lazarus, 105 S. W. 780; Kuhbach v. Irving Glass & Co., 220 Pac. 427); nor may refusal be reasonably made on the allegation that the stockholder is an officer and hence in possession of the knowledge which he would derive from inspection (Mitchell v. Rubber Reclaiming Co., 24 Atl. 4072); or is unfriendly towards the officers of the corporation (Cobb v. Lagarde, 29 Alab. 288); nor is it a good reason to refuse the demand merely because the corporation will purchase the applicants' stocks (Kuchback v. Irving Glass & Co., supra); or that the holding of an applicant is in small amount (In re O'neill, 95 N. Y. S. 964); nor on the plea based on the fact that the officer on whom the demand is made is busy at the time (Cox v. Island Mining Co., 73 N. Y. S. 69); or that it would be inconvenient to grant the request in that particular case (State v. Louis & Railway Co., 100 S. W. 1126); and that the fact that the book to be inspected contained matters not required by the charter will not be sufficient, so long as the company fails to keep such books as the statute requires (People v. Pacific Mail, 50 Barb. [N. Y.] 280, cited by Thompson on page 997).

9. *Enforcement of the Right.*

a. *Does the statute remove the discretion of the court?*

A perusal of statutes granting in absolute terms the right of inspection, puts many writers to doubt whether the statutes so providing take away the discretion of the court on the matter of allowing compulsory inspection; or whether, upon application to the court, there is some discretion left to be exercised by the court on the case.

Ballantine admits that there is a decided conflict of authority on the question whether the statutes making the grant absolute, take away the discretion of the court to refuse to issue the writ if it is sought for an improper purpose.

"The trend of later decisions seem to favor the exercise of a sound discretion to withhold the writ to protect the interest of the corporation against a possible abuse", so says Ballantine, citing the cases of In re Vergoechea, 91 Atl. 314 and Day & Co. v. Booth, 123 Atl. 557. As has been said in the case of People v. American Union Life Insurance Co.:

> "It would not be a wise exercise of judicial discretion to compel the company to allow the relator, who is inimical to its management, to make an unlimited inquisitorial research into the company's transactions and affairs, with leave to him and his assistants to copy all of its books and papers and make such uses thereof as he pleases particularly as he has been defeated in his action founded on substantially on the same alleged grievance as is now presented." (64 N. Y. S. 916).

Ballantine further maintains that the statutes should preserve some discretion of the court. (p. 552)

Thompson asserts the contrary view, maintaining that the writ should be granted as a matter of right where especially granted by statutes. (Sec. 4539, p. 1007).

From and out of the helpless divergence of views on the subjects, the conclusion may yet be fairly deduced that the statute tho aboslutely granting the right of inspection, shall leave a piece of discretion to the court to determine whether or not the writ will issue to enforce the right, regard being had in all cases to the interest of the stockholder on the one hand, and to the protection of the corporation and other stockholders on the other hand. It will be the highest injustice to those concerned who may as well expect a protective measure from the court, where the court to whom the writ is addressed shall grant the same notwithstanding the manifest showing that the insuance of the writ will work an incalculable injury. A stockholder who

claims an enforcement of a right will be allowed to the extent only of not harming the rights of others; and both the claimant and the corporation may with equal force, demand a protection of their respective interests in the enterprise; and in the face of such "seeming conflict of interests" only the court of justice will be in a position to arbitrate. So that it was properly held that writ of mandamus was properly denied where hostile motive is manifest (Day & Co. v. Booth, 123 Atl. 557); or on the ground of suspicion of merely to gratify the curiosity of stockholder for to aid him in a speculation (Foster v. White, off-cited as leading case on the point, supra; Trust v. Raleigh Medical Co., 118 N. E. 763); or on ulterior or improper purpose (Althouse v. Giron Consolidated Mining Co. 122 Am. Dec. 617). And it has been held that the ones to prove that the ends of inspection are unlawful rests on the corporation to defeat the petition for mandamus (Bernet v. Multnomah Lumber & Box Co., 247 Pac. 155).

b. *Is the Right enforceable by Mandamus or Injunction?*

But the question is not settled whether the right may be properly enforced by the writ of mandamus or injunction. Thompson cites that the weight of authority in the United States favor the view that mandamus to compel inspection is the proper remedy and not injunction (Sec. 4539, p. 1006, citing the case of Foster v. White, supra); Mandamus is adequate and does not supercede the legal remedies (Merchants' Broon & Co. v. Butler, 70 South. 383). But in Ohio, mandamus will not lie in view of the statute provision that the remedy shall be in "ordinary course of law"; and in such case injunction is adequate remedy before mandamus will issue. (Fletcher, Sec. 2842, p. 4125, citing the cases of Cincinnati Volksbatt v. Hoffmeister, 56 N. E. 1033; also 87 Pac. 337).

In this jurisdiction, mandamus is the proper remedy to make effective the right of inspection (Fisher, Sec. 127, p. 189; Philpotts v. Philippine Manufacturing Co., 40 Phil. 471). And the writer concurs with the opinion of Fisher and adheres to the principle of unanimous cases in the United States. The Cincinnati Case has reason for itself—and that is the explicit provision in the statute.

10. *Is the Stockholder Entitled to Damages?*

The statute concedes to the stockholder a right when it is denied on grounds not lawful nor reasonable in law, the stockholder has recourse to make somebody answerable to him for damages occasioned by the wrongful refusal. Hence, resort to an action for damages is another form of remedy recognized by reliable authorities. (Buker v. Steele, 43 N. Y. S. 346; Lyon v. American Screw Co., 17 Atl. 61). As was held in the case of Legendre v. New Orleans Brewing Association:

"A denial of the right by the company in a proper case exposes the corporation to an action either in mandamus or in action for damages against the officers of the corporation." (40 Am. St. Reports, 243).

Altho in such case the remedy preferable for the stockholder is that of writ of mandamus and may be resorted to previous to the filing of the action for damages. And when the latter, an application would be first made to the directors to interfere before bringing the suit against the company (Id). But no action for damages will prosper unless the stockholder demanded previously for an inspection in a proper manner and the same has been refused, or else sued the corporation for mandamus so as to put it in default (Id). And the suit for damages may be against the officer in charge, where refusal was not decided by the directors (Cockburn v. Union Bank, 13 L. A. 289); or against the corporation itself where refusal was directed by the directors or by the majority of the stockholders (Edwards v. Bay State Gar Co., 9 Fed. 942; Legendre v. New Orleans Brewing Association, supra.) And damages, where award will be justified, are purely compensatory; and merely speculative damages will not be allowed (Bourdette v. Sieward, 52 L. A. 1333); nor damage awarded, for failing in value of his stocks arising from collateral causes (Id).

11. *Penalties for Refusal.*

Another remedy for the stockholder which is recognized by authorities as adequate is that of holding the officer denying the right in an action for misdemeanor and hence liable for the penalty, where the same is provided in the statute.

Both the California and New York Statutes provide for penalties in case of a refusal or neglect to allow the inspection applied for. Says the California Penal Code:

"Every officer or agent of any corporation having or keeping in office in this state, who has in his custody or control any book, paper or

document of such corporation and who refuses to give to a stockholder of such corporation lawfully demanding during office hours to inspect or take a copy of the part thereof, a reasonable opportunity to do so, is guilty of misdemeanor." (Sec. 565)

And the New Penal Code provides:

"A director, officer, agent, or employee or any corporation or joint stock association who having custody of its books, wilfully refuses, or neglects to make or to exhibit or allow the same to be inspected and extracts therefrom to be taken by any person entitled by law to inspect the same, or take extracts therefrom is guilty of misdemeanor if he wilfully refuses." (Sec. 665, Subd. 4).

And the Stock Corporation Law of New York fixes the Penalty:

"Every corporation that shall neglect or refuses to keep or cause to be kept such books, or to keep any book open to inspection as herein required, shall forfeit to the people of the state the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent or any such corporation shall wilfully neglect or refuse to allow any such book to be inspected and extracts therefrom taken as provided in this section, the corporation and such officer or agent shall each forfeit to the party injured a penalty of fifty dollars for every such neglect or refusal and damages resulting therefor." (Sec. 10)

The purpose of the penalty imposed by the statute is to provide a measure to protect a stockholder in his right for refusal of the inspection of the corporation or its refusal to allow the inspection (Gould v. Olympic Mining Co., 96 N. Y. S. 455). And under the statute penalizing a refusal it is sufficient to show that demand is made upon a person apparently in charge without showing particular relation (State ex rel. O'hara v. National Biscuit Co., 97 N. Y. S. 391); nor is it necessary to show that any injury resulted from such refusal (Kelsey v. Pflauder Process & Co., 3 N. Y. S. 723). But in all cases of action to hold the person liable for penalty for refusing the inspection demanded, it must be demonstrated that the refusal or neglect is wilfull.

Says the New York Court:

"We have no doubt that such penalty is only incurred by a wilfull refusal or neglect and where the agent in response to a demand that the book was not at the office, but in that of the President's and the stockholder was told he could examine the books at any time, the action did not constitute neither a wilfull refusal nor neglect under the law." (Lozier v. Zaratoga Gas, Electric Light & Power Co., 59 Am. Dec. 390)

Unfortunately for our stockholders, our Corporation Law does not embody provisions similar to those found in both the

California and New York Laws. Nor does the Revised Penal Code make it punishable in the manner it is made in the California Penal Code, hence the absence of such remedy in this jurisdiction against either the officer or the corporation to hold the latter liable to the penalty.

The usefulness of a provision in the statute fixing a penalty for any refusal, wilfull and deliberate, made by any officer in charge will not be disputed. Where it exists, there is the apprehension on the mind of the person concerned and hence will hesitate to infringe the right of the stockholder. It is indeed deplorable that no penalty is fixed by our law.

12. *Abuse of the Right of Inspection.*

Where the demand for inspection has been honored by the corporation, the exercise thereof is not at all free from abuse, nor is it safe to perceive that no injury will arise. Even a legitimate purpose may be abused to satisfy a carefree stockholder, to the great prejudice of the corporation. The abuse may consist of any act which results in the wrongful interference of the conduct of the corporate affairs, or which subsequently brings about an unforeseen damage to the corporate interests and business.

What will be the remedy of the corporation?

Says the case of Stone v. Kellogg:

"The courts are not without power to prevent an abuse of the rights which the petitioner enjoys by virtue of his relations to the company." (Supra)

And the writ may issue with suitable safeguards to protect the interests of all concerned (In re Steinway, 53 N. E. 1103).

The court may require the right of inspection to be so exercised as not to aid in some proper scheme or design against the corporation or betray its trade and business tricks. (Cook, Sec. 512).

CONCLUSION

The writer has endeavored to show to what extent a stockholder may exercise the right to inspect the books and papers of a corporation, and to what limitation the right is subjected.

The observation is inescapable that our law is far from complete on some phases. Particularly, Sections 51 and 52, of

Act 1459, do not provide penalties for refusal by a corporation as does the New York and California Laws. The writer, therefore, takes the boldness to suggest that an amendment to that effect will close the door from wilful neglect of unscrupulous corporation officers and better attain the purpose of the law to protect the interests of a stockholder in a corporate enterprise.