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COMMENTS

STOCKHOLDER'S RIGHT TO INSPECT CORPORATE BOOKS AND RECORDS

A stockholder of a private corporation has a common law right, for proper purposes and under reasonable regulations as to time and place, to inspect any one or all of the books and records of the corporation of which he is a member.¹ It is similar to the right of a member of an ordinary partnership to examine the books and records of the partnership,² except that the right of a partner is absolute.

This right is said to rest upon the proposition that the stockholders are the real owners of the corporation's assets and property.³ The interest of a stockholder in corporate property has been called a beneficial interest,⁴ an equitable ownership⁵ or a quasi ownership.⁶ These propositions are neither strictly accurate nor necessary. The legal title to the property is in the corporation, a separate and distinct legal entity. The stockholders are not the equitable owners of the property, yet they ultimately take the benefit from it. Therefore it is just and proper that they should have full means of knowing what is going on. This is the basis of the right of inspection. The right is a right of a stockholder as stockholder and not as an organ of the corporation. It is incident to and arises from the legal relation of stockholder and corporation.

The common law right has never been superseded and is frequently affirmed by constitutional⁷ and statutory⁸ provisions. Such statutes are usually held to be merely declaratory of the common law right⁹ or to enlarge such right.¹⁰

¹ *Guthrie v. Harkness*, 199 U. S. 148, 50 L. Ed. 130, 4 Ann. Cas. 433; *In re Steinway*, 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461; *Klotz v. Pan American Match Co.*, 221 Mass. 38, 108 N. E. 764.

² *Guthrie v. Harkness*, 199 U. S. 148, 50 L. Ed. 130, 4 Ann. Cas. 433; *Commonwealth v. Phoenix Iron Co.*, 105 Pa. St. 111, 51 Am. Rep. 184.

³ *Guthrie v. Harkness*, 199 U. S. 148, 50 L. Ed. 130, 4 Ann. Cas. 433; *Klotz v. Pan American Match Co.*, 221 Mass. 38, 108 N. E. 764; *Cincinnati Volksblatt Co. v. Hoffmeister*, 62 Ohio St. 189, 48 L. R. A. 732, 78 Am. St. Rep. 707, 56 N. E. 1033.

⁴ *Clawson v. Clayton*, 33 Utah 266, 93 Pac. 729.

⁵ *Varney v. Baker*, 194 Mass. 239, 10 Ann. Cas. 989, 80 N. E. 524.

⁶ *State v. Whited & Wheless*, 104 La. 125, 28 So. 922.

⁷ California Const. Art. 12, §14; Louisiana Const. 1879, Art. 245 (Const. 1898, Art. 273).

⁸ *Guthrie v. Harkness*, 199 U. S. 148, 50 L. Ed. 130, 4 Ann. Cas. 433; *In re Steinway*, 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461.

⁹ *O'Hara v. National Biscuit Co.*, 60 N. J. L. 198, 54 Atl. 241.

¹⁰ *Pfirman v. Success Mining Co., Ltd.*, 30 Idaho 468, 166 Pac. 216; *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050.

All stockholders have the right of inspection, regardless of the amount of stock held,¹¹ but some statutes provide that the applicant shall hold or represent a certain amount of stock or shall have been a stockholder of record for a certain period of time.¹² Such statutes are not common.

The stockholder's right of inspection belongs to stockholders and to the personal representatives of deceased stockholders.¹³ In making the inspection the stockholder is not confined to personal efforts. He may exercise the right through or have the aid of agents,¹⁴ experts,¹⁵ accountants,¹⁶ stenographers,¹⁷ or attorneys.¹⁸ If this were not true the right would be empty and its exercise futile.

The common law right of inspection is qualified by the condition that it must be asserted for proper purposes and under reasonable regulations as to time and place. On the question of what is a proper purpose there is some confusion in the authorities. The English courts, in the absence of statutory provisions, have held that there must be a dispute pending between the stockholder and the corporation, or other stockholders, but they have not required the institution of suit.¹⁹ While the English rule has had some following in this country,²⁰ in some cases it has been expressly repudiated.²¹ It has been modified by statute in England.²² The general tendency of American courts has been to permit the greatest freedom of inspection, placing no limit except that the right shall not be exercised for speculative purposes or to gratify idle curiosity.²³ The United States Supreme Court has held that "the right may not be denied to the stockholder who seeks the information for legitimate purposes."²⁴

¹¹ *Richmond v. Hill*, 148 Ill. App. 179; *In re De Vengoechea*, 86 N. J. L. 35, 91 Atl. 341.

¹² N. Y. Laws 1916, c.127 amending Consol. Laws, c.59, L.1909, c.61.

¹³ *In re Hastings*, 128 App. Div. 516, 112 N. Y. Sup. 800 (aff. 194 N. Y. 546, 87 N. E. 1120).

¹⁴ *Cincinnati Volksblatt Co. v. Hoffmeister*, 62 Ohio St. 189, 48 L. R. A. 732, 78 Am. St. Rep. 707, 56 N. E. 1033.

¹⁵ *Varney v. Baker*, 194 Mass. 239, 10 Ann. Cas. 989, 80 N. E. 524.

¹⁶ *State v. St. Louis Transit Co.*, 124 Mo. App. 111, 100 S. W. 1126.

¹⁷ *State v. St. Louis Transit Co.*, 124 Mo. App. 111, 100 S. W. 1126.

¹⁸ *State v. Ice*, 75 W. Va. 476, 84 S. E. 181.

¹⁹ *Rex v. Merchant Tailor's Co.*, 2 B. & Ad. 115, 109 Reprint 1086; *In re Burton, etc., Co.*, 31 L. J. Q. B. 62.

²⁰ *Commonwealth v. Phoenix Iron Co.*, 105 Pa. 111, 51 Am. Rep. 184; *Lyon v. American Screw Co.*, 16 R. I. 472, 17 Atl. 61.

²¹ *Foster v. White*, 86 Ala. 467, 6 So. 88; *Varney v. Baker*, 194 Mass. 239, 10 Ann. Cas. 989, 80 N. E. 524.

²² St. 8 & 9 Vict. c.16, §117, 119, and St. 25 & 26 Vict. c.89, Table A 78.

²³ *Guthrie v. Harkness*, 199 U. S. 148, 50 L. Ed. 130, 4 Ann. Cas. 433; *Varney v. Baker*, 194 Mass. 239, 10 Ann. Cas. 989, 80 N. E. 524; *In re Steinway*, 159 N. Y. 250, 45 L. R. A. 461, 53 N. E. 1103.

²⁴ *Guthrie v. Harkness*, 199 U. S. 148, 50 L. Ed. 130, 4 Ann. Cas. 433.

The great conflict in the American authorities is on the question of whether the statutory right of inspection is absolute or qualified. The tendency has been to hold that such statutes make the right absolute.²⁵ Some cases hold that the statutory right is qualified because it is merely declaratory of the common law²⁶ or because the court still retains its discretion in issuing the writ of mandamus²⁷ in the face of an unqualified statutory declaration. Much of this confusion would be avoided if the statutes expressly required sufficient grounds or expressly preserved the discretionary power of the courts.

The only Indiana statute touching inspection deals merely with the stockbook and provides that the stockbook "shall, at all business hours of the company, be subject to the inspection of creditors, stockholders, or their representatives".²⁸ Although this statute has been in force since 1852 it has been before our courts of last resort in only two cases,²⁹ neither one of which dealt with the question of qualifications of the right of inspection.

The common law right of inspection was before the Indiana Supreme Court for the first time in a recent case, in which the court held, reversing the lower court, that the relatrix, the administratrix of the estate of her deceased husband who was a stockholder in a manufacturing corporation, was not entitled to a writ of mandamus compelling the corporation to submit its books of account and books showing its assets, liabilities and financial condition to examination by a competent accountant, to be appointed and paid by relatrix. The purpose, stated by relatrix in making her demand for an inspection, was to see what the stock was worth in order that she might arrive at its value for inheritance tax purposes and that she might administer upon and finally settle the estate. Defendant company did not refuse to let relatrix, personally, examine the books but did refuse to let her have them examined by an expert accountant. *Charles*

²⁵ *White v. Mante*, 109 Me. 408, 42 L. R. A. (N. S.) 332, 84 Atl. 890; *Pfirman v. Success Mining Co., Ltd.*, 30 Idaho 468, 474, 166 Pac. 216; *Powelson v. Tennessee Eastern Electric Co.*, 220 Mass. 380, 107 N. E. 997, Ann. Cas. 1917 A. 102; *Venner v. Chicago City R. Co.*, 246 Ill. 170, '92 N. E. 643, 20 Ann. Cas. 607.

²⁶ *O'Hara v. National Biscuit Co.*, 69 N. J. L. 198, 54 Atl. 241.

²⁷ *State ex rel. Thiele v. Cities Service Co.*, 115 Atl. 773; *Shea v. Sweetzer*, 119 Me. 400, 111 Atl. 579. See 7 ILL. LAW REV. 155.

²⁸ Burns. Ann. Stat. 1914, §4054; R. S. 1881, §3010; 1 R. S. 1852, §10, p. 241.

²⁹ *Williams v. Gravel Road Co.* 45 Ind. 170 (*holding*, in an action to recover a penalty for failing to exhibit the stockbook, that it must be alleged that the officer upon whom the demand was made for inspection knew that the person making the demand was entitled to the inspection); *S. F. Bowser & Co., Inc., et al. v. State of Indiana, ex rel. Hines*, 192 Ind. 462, 137 N. E. 57 (*holding*, in denying a writ of mandamus, that, where corporate stock is in fact owned by an employer, although registered in the name of an agent, the agent is not the real party in interest and is not entitled to inspect the stockbook).

Hegewald Co. v. State ex rel. Hegewald (Sup. Ct. of Ind. Oct. 27, 1925) 149 N. E. 170.

The court's statement that "a writ of mandamus will issue only in case the facts show a clear, legal right on the part of the relator to obtain the relief demanded, and a clear, legal duty resting on the defendants to do and perform the thing demanded" is sound, but the application of the rule to the facts is narrow.

The court says that, where the relatrix is not charged with any legal duty to ascertain the value of her stock for inheritance tax purposes, but the duty to learn all pertinent facts and fix such value is imposed by law upon a public officer who has full power to investigate and examine witnesses, and which would not be bound by any investigation which the relatrix might make or any conclusion she might reach, the mere fact that she desires to know such value in order that she may pay the inheritance tax does not charge the corporation with a clear legal duty to submit its books to accountants employed on her behalf and that her desire to inform herself so that she may report to the court by which she was appointed her conclusion as to the value of the stock for inheritance tax purposes does not give her a clear, legal right to demand that the books be submitted to an accountant. Such a conclusion would seem to require that the stockholder's right be based on a legal duty to ascertain the facts, a requirement which finds no support in either the English or American authorities. The personal representative should be in a position to challenge the valuation made by the tax appraiser, if such valuation is erroneous. To do this, the personal representative must know the facts.

The court places no emphasis on the fact that the demand was that the books be submitted to an accountant instead of to the relatrix. While this is not material, it affords an opportunity to distinguish the principal case if the question arises again.

A stockholder, who desires to ascertain the value of his stock with a view to offering it for sale is entitled to inspection.³⁰ The desire of the relatrix in the principal case to ascertain the value of her stock for inheritance tax purposes would seem to be equally proper. She did not ask that the right be exercised for speculative purposes or to gratify idle curiosity. She sought the information for legitimate purposes. The principal case is not in line with the great weight of American authority. The decision seems narrow and unfortunate.

PAUL V. McNUTT.

³⁰ *State v. Jessup & Moore Paper Co.*, 27 Del. 248, 88 Atl. 449, 24 Del. 379, 30 L. R. A. (N. S.) 290, 77 Atl. 16; *Lawshe v. Royal Baking Powder Co.*, 54 N. Y. Misc. 220, 104 N. Y. Supp. 361; *Garcin v. Trenton Rubber Mfg. Company*, (N. J. L.), 60 Atl. 1098.