1926

Mandamus to Compel Corporations to Allow Inspection of Books, Action by Administratrix of Stockholder

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lishment of his claim, the defendant absolutely refused to pay. The plaintiff brought an immediate action on the policy without waiting for the sixty days to elapse. *Held,* for the plaintiff. *Scott* v. *Life & Casualty Ins. Co.* (Ga. 1925) 129 S. E. 903.

Much confusion of thought has arisen as to when repudiation by one party to a contract before the time for his performance gives the other party an immediate action for damages without waiting until the time agreed on for performance of the repudiated promise. In the leading English case on the subject the contract was bilateral and wholly executory, and the reason given for the decision granting an immediate action was that its denial would require the plantiff to continue ready to perform on his side in order to have a right of action upon an actual breach.[1] That he should be and is excused from the duty to perform on his part is unquestioned,[2] that he should also be excused from the necessity to perform in order to maintain his right of action is obvious, but that he cannot be excused from the necessity to perform unless his right of action is immediate is a proposition that does not bear analysis. Yet from such reasoning has developed not only the general rule that an action will lie immediately after repudiation in bilateral contracts,[3] but also the frequent assumption that the reason for the rule and hence the rule itself has no application to unilateral contracts.[4] Such an explanation justifies neither the rule nor the assumed exception. The only practical merit in the rule is the fact that an immediate action results in shifting the credit load from the plaintiff to the repudiator, but this reason applies equally whether the contract is bilateral or unilateral at the time of repudiation. The fact that the instant case represents the weight of authority as to insurance policies,[5] whereas an immediate action is denied on other unilateral obligations to pay money,[6] illustrates the impossibility of reconciling the ramifications of the doctrine. Decisive authority is lacking for the proposition that anticipatory breach does not apply to unilateral obligations other than to pay money.

CORPORATIONS—MANDAMUS TO COMPEL CORPORATION TO ALLOW INSPECTION OF BOOKS—ACTION BY ADMINISTRATRIX OF STOCKHOLDER.—In an action by the administratrix of a stockholder for a mandamus to compel the corporation to allow an inspection of its books by her accountant for the purpose of determining the value of the stock on which she would have to pay an inheritance tax in Kentucky, *held,* mandamus denied. Since a public officer has the power and duty to examine the books, a separate examination by the petitioner is unnecessary. *Charles Hegewald Co.* v. *State ex rel. Hegewald* (Ind. 1925) 149 N. E. 170.

At common law, the owner of stock in a corporation has a privilege to inspect the corporation books and records at a reasonable time and place, and for

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[1] *Hochster* v. *De la Tour* (1853) 2 E. & B. 678.

[2] See 2 Williston, *Contracts* (1921) § 875.

[3] *Roehm* v. *Horst* (1899) 178 U. S. 1, 20 Sup. Ct. 780; *Wester* v. *Casein Co. of America* (1912) 206 N. Y. 506, 100 N. E. 488.

[4] See *Roehm* v. *Horst, supra,* 17; 3 Williston, *op. cit.,* §1328; (1925) 39 Harvard Law Rev. 268.

[5] *State Ins. Co.* v. *Maackens* (1876) 38 N. J. L. 564; *Callahan* v. *London & Lancashire Fire Ins. Co.* (1917) 98 Misc. 589, 163 N. Y. Snpp. 322; *contra: Borger* v. *Conn. Fire Ins. Co.* (1916) 29 Cal. App. 476.

[6] *Leon* v. *Barnsdall Zinc Co.* (Mo. 1925) 274 S. W. 699; see (1925) 39 Harvard Law Rev. 268.

a "proper" purpose.[1] The privilege is specifically enforceable by mandamus.[2] Where it is guaranteed by statute, the right is generally held to be absolute, and the purpose for which the examination is desired, immaterial.[3] But such statutes, while almost universal, are applicable in about half the states to stock books alone,[4] and as to other records, the right exists only as at common law.[5] The content of a "proper" purpose seems to have been worked out by balancing on the one hand the nature of the stockholder's claim to information about conditions affecting his property, and, on the other, the inconvenience and possible danger to the corporation from the examination of its books. Accordingly, a court will not order an examination merely to satisfy a stockholder's curiosity,[6] or where the information is desired for the benefit of a rival concern.[7] The purpose must be to protect a definite interest of the stockholder as such.[8] There is no doubt that an examination may be had whenever the stockholder honestly believes that the corporation is being mismanaged.[9] And the desire to know the true value of the stock is a sufficient reason where the stockholder contemplates a sale.[10] But where the information may be obtained in another way, as, for example, by means of a subsequent examination, certain to be made, it seems to be a fit exercise of discretion for a court to deny an inspection. Thus, wherever the taxing officers have the power and duty to examine the books of the corporation,[11] a separate examination by the stockholder or his representative should not be ordered. The result of the instant case is therefore sound.

EQUITY—RELIEF FOR A UNILATERAL MISTAKE OF LAW.—An installment payment on mortgaged property being in default, the mortgagee's lawyer foreclosed and sold to his client, the plaintiff, for only the installment due, being unaware that he could sell for the amount of the whole mortgage, and believing that somehow he could make repeated foreclosures. The mortgagor traded his equity to the defendant, all the parties sharing the misapprehension of the attorney. Later the defendant discovered the error and seized the opportunity to acquire the property by redeeming for the amount of the foreclosure sale. The plaintiff sues in equity to have the mortgage reinstated. *Held,* for the plaintiff. Equity will grant relief for a unilateral mistake of law. *Peterson* v. *First Nat. Bk.* (Minn. 1925) 203 N. W. 53.

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[1] See *Matter of Steinway* (1899) 159 N. Y. 250, 263, 53 N. E. 1103; *Guthrie* v. *Harkness* (1905) 199 U. S. 148, 153, 26 Sup. Ct. 4; 2 Cook, *Corporations* (8th ed. 1923) § 511.

[2] See High, *Extraordinary Legal Remedies* (3d ed. 1896) § 308.

[3] *Venner* v. *City of Chicago R. R.* (1910) 246 Ill. 170, 92 N. E. 643; see 2 Cook, *op. cit.*, §§ 514, 518; Canfield & Wormser, *Cases on Private Corporations* (2d ed. 1923) 569, n.; but see (1922) 22 Columbia Law Rev. 590.

[4] See Parker, *The Corporation Manual* (26th ed. 1925) § 17.

[5] *Matter of Steinway, supra.*

[6] See *Varney* v. *Baker* (1907) 194 Mass. 239, 241, 80 N. E. 524.

[7] *People ex rel. Lehman* v. *Consol. Fire Alarm Co.* (1911) 145 App. Div. 427, 127 N. Y. Supp. 348.

[8] *Schondelmeyer* v. *Columbia Fireproofing Co.* (1908) 219 Pa. 610, 69 Atl. 49; see *State ex rel. Costello* v. *Middlesex Banking Co.* (1913) 87 Conn. 483, 485, 88 Atl. 861.

[9] *Varney* v. *Baker, supra; Guthrie* v. *Harkness, supra.*

[10] *State ex rel. Brumley* v. *J. & M. Paper Co.* (1910) 24 Del. 379, 77 Atl. 16; *Neubert* v. *Armstrong Water Co.* (1905) 211 Pa. 582, 61 Atl. 123.

[11] Ind. Ann. Stat. (Burns, 1914) § 10285; Ky. Stat. (Carrol, 1922) § 4114i 12 (4).