

January 1962

Inspection of Stock Ledgers and Voting Lists

Frank G. Newman

Recommended Citation

Frank G. Newman, *Inspection of Stock Ledgers and Voting Lists*, 16 SW L.J. 439 (1962)
<https://scholar.smu.edu/smulr/vol16/iss3/3>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

INSPECTION OF STOCK LEDGERS AND VOTING LISTS

by

Frank G. Newman*

MODERN corporate management is becoming increasingly aware of the importance of stockholder lists—that is, the records of the names, addresses, and holdings of the stockholders of a corporation. Because of the growing interest in these normally obscure documents, this article presents an analysis of the rights and responsibilities of the persons who readily have access to the lists and of the persons who under certain circumstances may have access to the lists.

Undoubtedly the increasing interest in stockholder lists is due to the widespread practice of proxy voting. Theoretically, voting rights are made incidents of stock ownership in order to permit the selection of corporate management by the persons having the greatest financial interests in the corporation. However, this theory breaks down in the case of large publicly-held corporations since the persons having the greatest aggregation of financial interests are usually a host of small investors, few of whom have sufficient individual interest in the corporation to make them particularly concerned with the exercise of their voting rights. As a result, in a publicly-held corporation only management and a handful of curious shareholders attend stockholder meetings and exercise their right to vote in person. Consequently, these meetings must necessarily be controlled by the exercise of proxies which have been solicited from the numerous, non-attending small investors.¹ It follows then, that in order to solicit the proxy votes necessary to control a publicly-

* B.B.A., Southern Methodist University; LL.B. Yale University; Attorney at Law, Dallas, Texas.

¹ These proxies may well represent shares which are several times in number the shares represented by the stockholders present in person. A good example is the Chrysler Corporation's 1961 annual stockholders' meeting. The Wall Street Journal, April 19, 1961, p. 24, col. 1, had the following to say about the meeting:

Chrysler Corp.'s management was re-elected at the annual meeting, as expected, but not before it heard more than two hours of denunciation by angry stockholders.

More than 30 stockholders spoke at the meeting, which lasted nearly four hours. Only a handful had anything good to say about management in general, and L. L. Colbert, chairman and president, in particular.

Time after time calls from the floor for Mr. Colbert's resignation were greeted by cheers and applause from the crowd which numbered about 800. The meeting was held at the concern's training center in the Detroit suburb of Center Line. Stockholders overflowed the 500-seat auditorium and filled the adjoining 300-seat cafeteria.

Stockholders knew before they started talking that their comments would have little effect on the election. Mr. Colbert announced when the meeting opened that management held proxies for 7,046,288 of the auto maker's 8,915,005 shares outstanding.

held corporation, it is essential that management, or any dissident anti-management groups, have access to the names and addresses of all stockholders. Hence, the stockholder list becomes of prime importance.

Normally, the names and addresses of stockholders from whom proxies may be obtained are known only to corporate management. Consequently, the stockholder list has become a zealously guarded secret of incumbent management and a frequently sought-after tool of "outside" shareholders who seek to break or alter the control of management. In addition, the stockholder list is often used as a means of corporate acquisition, that is, one corporation will use the list in order to make offers to the listed shareholders to purchase or exchange its shares for the shares of the other corporation.

The courts have consistently recognized that directors of a corporation have an unqualified right to inspect that corporation's books and records, including the stockholder list.² In addition, several states by statute have conferred that right upon judgment creditors.³ However, the most frequently encountered request to inspect a stockholder list comes from the stockholder himself. Accordingly, this article discusses inspections and attempted inspections by stockholders.

I. BACKGROUND

A. *At Common Law*

Under the common law a stockholder is entitled to inspect corporate books and records, including the stock ledger, for a proper purpose at a proper time and place.⁴ This right of inspection arises from the shareholders' equitable ownership of the assets of a corporation and their corresponding right to receive reliable information concerning the financial condition of that corporation and the con-

² See Annot., 15 A.L.R.2d 11 (1951). *But cf.* *State ex rel. Paschall v. Scott*, 41 Wash. 2d 71, 247 P.2d 543 (1952), where a director was denied inspection because his purpose was hostile to the corporation's interests, and *Fulle v. White Metal Mfg. Co.*, 13 N.J. Misc. 591, 180 Atl. 231 (Sup. Ct. 1935), where a former director-officer was denied access to the books because his purpose was to be reinstated as an employee or to have his stock interest liquidated at a high price.

³ See Ark. Stat. § 64-219 (1957); Fla. Stat. § 608.39 (1956); Nev. Rev. Stat. § 78.105 (1959); N.H. Rev. Stat. Ann. § 294:94 (1955); N.M. Stat. Ann. § 51-2-27 (1953); N.Y. Stock Corp. Law § 10.

⁴ See Ballantine, *Corporations* §§ 159-160 (rev. ed. 1946); Fletcher, *Private Corporations* § 2214 (1931); Hornstein, *Corporation Law & Practice* §§ 611, 612 (1959); 18 C.J.S. *Corporations* § 502 (1939); 13 Am. Jur. *Corporations* § 432 (1938). See Annot., 22 A.L.R. 24 (1923), supplemented in 43 A.L.R. 783 (1926), 59 A.L.R. 1373 (1929), 80 A.L.R. 1502 (1932), 174 A.L.R. 262 (1948). See also Annot., 15 A.L.R.2d 11 (1951); Regala, *Nature of the Rights of Stockholders to Examine the Books of the Corporation*, 21 Phil. L.J. 74 (1941).

duct of its business affairs.⁵ However, since corporate records are in the physical custody or control of incumbent corporate officers, who could possibly be removed through the use of information gleaned from such records, the enforcement of the stockholders' right of inspection of the stockholder list has seldom been the matter of a simple request. Consequently, a large number of suits have arisen concerning the propriety or impropriety of attempted inspections.

B. *The Early Statutes*

During the latter part of the nineteenth century management's resistance to attempted inspections of corporate records by shareholders became so notorious that most state legislatures enacted statutes which made the right of inspection absolute.⁶ However, in spite of the legislative intent, the courts frequently held that the statutes were merely an affirmance of the common law. Accordingly, the right of inspection was limited to a reasonable or proper purpose, as well as to reasonable times and places.⁷

Some of the early statutes permitted the right of inspection only of certain specified records.⁸ In these situations the courts liberalized the statutes by holding that in addition to the statutory right to inspect specific records, the shareholder also had the common law right to inspect other books and records not mentioned in the statutes.⁹

II. THE MODERN INSPECTION STATUTES

Some thirteen states still have statutes which limit the right of inspection to specific records.¹⁰ These statutes, if literally interpreted,

⁵ *Guthrie v. Harkness*, 199 U.S. 148 (1905); *State ex rel. Boldt v. St. Cloud Mill Producers' Ass'n*, 200 Minn. 1, 273 N.W. 603 (1937); *State ex rel. Gustafson Co. v. Crookston Trust Co.*, 222 Minn. 17, 22 N.W.2d 911 (1946); *Nationwide Corp. v. Northwestern Nat'l Life Ins. Co.*, 251 Minn. 255, 87 N.W.2d 671 (1958).

⁶ Representative of such statutes of this era was Article 1328, *Tex. Rev. Civ. Stat. Ann.* (1925), which provided:

They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions. Their books and records shall at all reasonable times be open to the inspection of any stockholder.

⁷ See *Birmingham News v. State ex rel. Dunston*, 207 Ala. 440, 93 So. 25 (1921); *Guaranty Old Line Life Co. v. McCallum*, 97 S.W.2d 966 (Tex. Civ. App. 1936—Dallas) *no writ hist.*

⁸ See Conn. Gen. Stat. Rev. ch. 215, § 1 (1911); Del. Code Ann. § 1919 (1915); Me. Rev. Stat. Ann. ch. 49, § 33 (1944).

⁹ See *State ex rel. Costello v. Middlesex Banking Co.*, 87 Conn. 483, 88 Atl. 861 (1913); *State ex rel. Cochran v. Penn-Beaver Oil Co.*, 34 Del. 81, 143 Atl. 257 (1926); *Holdsworth v. Goodall-Sanford, Inc.*, 143 Maine 56, 55 A.2d 130 (1947); *Albee v. Lamson & Hubbard Corp.*, 320 Mass. 421, 69 N.E.2d 811 (1946). See also Note, 41 Va. L. Rev. 237 (1955).

¹⁰ *Ariz. Rev. Stat. Ann.* § 10-175 (1956); Del. Code Ann. tit. 8, § 221 (1953); Hawaii Rev. Laws § 172-40 (1955); Me. Rev. Stat. Ann. ch. 53, § 34 (1954); Md. Ann. Code art. 23, § 51 (1957); Mo. Rev. Stat. § 351.215 (1949); Mont. Rev. Codes Ann. § 15-1001 (1947); N.J. Rev. Stat. § 14:5-1 (1937); S.C. Code § 12-263 (1952); S.D. Code § 11.0802

would grant to the shareholders an absolute right of inspection of the stockholder list. Accordingly, most of the states have adopted modern corporate laws which either expressly limit the right of inspection, or name specific defenses to the enforcement thereof, or both.¹¹ In addition, some statutes provide penalties for non-compliance.¹² It is the primary purpose of these modern inspection laws to make it less likely that reasonable requests for inspection will be denied.

Inspection statutes are now of two types: (1) those which provide for the inspection of general books and records, including stock ledgers, and (2) those which provide only for the inspection of lists of shareholders entitled to vote at the annual meeting. Each type will be discussed separately below.

A. The General Inspection Statutes

The Illinois statute¹³ was probably the earliest comprehensive statute on the general right of shareholders to inspect books and

(1939); Tex. Bus. Corp. Act Ann. art. 2.44 (1956); Vt. Stat. Ann. tit. 11 § 461 (1957); W. Va. Code ch. 31, art. 1, § 3086 (1961). In contrast to the early statutes, some modern statutes with express restrictions on the right of inspection have been construed more liberally by the courts than the early statutes which contained no express limitations. See, e.g., *State ex rel. Costello v. Middlesex Banking Co.*, *supra* note 9.

¹¹ See Ala. Bus. Corp. Act § 21(46) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Ariz. Rev. Stat. Ann. § 10-175 (1956); Ark. Stat. § 64-219 (1957); Cal. Corp. Code §§ 3003, 3005 (1947); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Conn. Gen. Stat. Rev. §§ 33-307, -333, -334 (1961); Del. Code Ann. tit. 8, §§ 220, 221 (1953); D.C. Code Ann. § 29-920 (1961); Fla. Stat. § 608.39 (1956); Ga. Code Ann. § 22-1862 (Supp. 1961); Hawaii Rev. Laws § 172-40 (1955); Idaho Code Ann. § 30-144 (1947); Ill. Rev. Stat. ch. 32, § 157.45 (1954); Ind. Ann. Stat. § 25-210 (1960); Iowa Bus. Corp. Act § 30 (1959); Kan. Gen. Stat. Ann. § 17-3310 (1949); Ky. Rev. Stat. § 271.395 (1960); La. Rev. Stat. § 12:38 (1950); Me. Rev. Stat. Ann. ch. 53, § 34 (1954); Md. Ann. Code art. 23, §§ 49-51 (1957); Mass. Gen. Laws Ann. ch. 155, § 22 (1959); Mich. Comp. Laws § 21.35 (Supp. 1961); Minn. Stat. § 301.34 (1945); Mo. Rev. Stat. § 351.215 (1949); Mont. Rev. Codes Ann. §§ 15-1001, -1002, 94.2310 (1947); Nev. Rev. Stat. § 78.105 (1959); N.H. Rev. Stat. Ann. §§ 294:92, :94 (1955); N.J. Rev. Stat. § 14:5.1 (1937); N.M. Stat. Ann. § 51-2-27 (1953); N.Y. Stock Corp. Law § 10; N.C. Gen. Stat. §§ 55-37, -38 (1960); N.D. Cent. Code § 10-19-51 (1960); Ohio Rev. Code § 1701.37 (Anderson Supp. 1961); Okla. Stat. tit. 18, §§ 1.70, .71 (1951); Ore. Rev. Stat. § 57.246 (1961); Pa. Stat. Ann. tit. 15, § 2852-308 (1958); S.C. Code § 12-263 (1952); S.D. Code §§ 11.0802-.0804 (1939); Tenn. Code Ann. § 48-308 (1955); Tex. Bus. Corp. Act Ann. art. 2.44 (1956); Utah Bus. Corp. Act § 16-10-47 (1962); Vt. Stat. Ann. tit. 11, §§ 461, 462 (1957); Va. Code Ann. § 13.1-47 (1961); Wash. Rev. Code § 23.01.380 (1961); W. Va. Code ch. 31, art. 1, § 3086 (1961); and Wis. Stat. § 180.43 (1957).

¹² See Ala. Bus. Corp. Act § 21(46) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Ariz. Rev. Stat. Ann. § 10-175 (1956); Ark. Stat. § 64-219 (1957); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Fla. Stat. § 608.39 (1956); Idaho Code Ann. § 30-144 (1947); Ill. Rev. Stat. ch. 32, § 157.45 (1954); Iowa Bus. Corp. Act § 30 (1959); Minn. Stat. § 301.34 (1945); Mont. Rev. Codes Ann. § 94.2310 (1947); Nev. Rev. Stat. § 78.105 (1959); N.M. Stat. Ann. § 51-2-27 (1953); N.Y. Stock Corp. Law § 10; N.C. Gen. Stat. § 55-38 (1960); N.D. Cent. Code § 10-19-51 (1960); Okla. Stat. tit. 18, § 1.71 (1951); Ore. Rev. Stat. § 57.246 (1961); Tenn. Code Ann. § 48-308 (1955); Utah Bus. Corp. Act § 16-10-47 (1962); Wis. Stat. § 180.43 (1957).

¹³ Ill. Rev. Stat. ch. 32, § 157.45 (1954):

Each corporation shall keep correct and complete books and records of account

records (including stockholder lists). Consequently it has served as the model for legislation in several other states, as well as for the Model Business Corporation Act.¹⁴ The Illinois act requires corporations to keep accurate books and records, including records of the shareholders' names and addresses and of the number of shares held by each. The act authorizes inspection for any proper purpose by shareholders who have held their shares of record for at least six months, or who own at least five per cent of the stock of the corporation. Moreover, the statute specifies defenses to actions for inspection and provides penalties for non-compliance.

Statutes similar to the Illinois act have been adopted in thirty-one states¹⁵ but with considerable variations. The statutes in eleven of these states require a reasonable or proper purpose to inspect and also

and shall also keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business in this State, or at the office of a transfer agent or registrar in this State, a record of its shareholders, giving the name and addresses of all shareholders and the number and class of the shares held by each. Any person who shall have been a shareholder of record or the holder of a voting trust certificate for at least six months immediately preceding his demand or who shall be the holder of record at least 5 per cent of all the outstanding shares of a corporation, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and records of shareholders and to make extracts therefrom. A record of shareholders certified by an officer or transfer agent shall be competent evidence in all courts of this State.

Any officer, or agent, or a corporation which shall refuse to allow any such shareholder or such holder of a voting trust certificate, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder or such holder of a voting trust certificate in a penalty of ten per cent of the value of the beneficial interest owned by such voting trust certificate holder, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

¹⁴ Garrett, *Model Business Corporation Act*, 4 Baylor L. Rev. 412 (1952); Garrett, *History, Purpose and Summary of the Model Business Corporation Act*, 6 Bus. Law. 1 (1950).

¹⁵ The only states having no statutory provisions for inspection of corporate records by shareholders are Mississippi, Rhode Island, and Wyoming; Georgia, Ga. Code § 22-1862 (Supp. 1958), and Nebraska, Neb. Rev. Stat. § 21-165 (1954), require only the production of these records at a stockholders' meeting.

expressly set forth defenses to actions for inspection.¹⁶ The enactments in five states denote defenses but do not call for a showing of a proper purpose.¹⁷ Finally, the statutes in fifteen states require a showing of reasonable or proper purpose but mention no defenses.¹⁸

The defenses to an action for inspection which are most frequently specified in the various statutes are: (1) that the applicant has within the two previous years sold or offered to sell or assisted another person in the sale of or offering for sale of a shareholder list; (2) that he has improperly used information secured through a prior examination of the records; and (3) that he was not acting in good faith or for a proper purpose in making his demand.¹⁹ Of course, there are variations. In addition to the three defenses mentioned above, the statutes of Arkansas,²⁰ Connecticut,²¹ Florida,²² and Tennessee²³ provide that any use of a stockholder list other than for the protection of a stockholder's corporate interest is a defense. At the other extreme, the Massachusetts statute sets out only two defenses: (1) that the purpose of the applicant in obtaining a stockholder list is to sell it, and (2) that he intends to use the list for a purpose other than in the interest of the applicant as a stockholder or in relation to the affairs of the corporation.²⁴ Finally, the Wisconsin statute in-

¹⁶ See Ala. Bus. Corp. Act § 21(44) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Conn. Gen. Stat. Rev. § 33-307 (1961); Ill. Rev. Stat. ch. 32, § 157.45 (1954); Iowa Bus. Corp. Act § 30 (1959); N.C. Gen. Stat. § 55-38 (1960); N.D. Cent. Code § 10-19-51 (1960); Okla. Stat. tit. 18, § 1.71 (1951); Ore. Rev. Stat. § 57.246 (1961); Wis. Stat. § 180.43 (1957).

¹⁷ See Ark. Stat. § 64-219 (1957); Fla. Stat. § 608.39 (1956); Nev. Rev. Stat. § 78.105 (1959); N.M. Stat. Ann. § 51-2-27 (1953); Tenn. Code Ann. § 48-308 (1955).

¹⁸ See Cal. Corp. Code § 3003 (1947); Idaho Code Ann. § 30-144 (1947); Ind. Ann. Stat. § 25-210 (1960); Kan. Gen. Stat. Ann. § 17-3310 (1949); Ky. Rev. Stat. § 271.395 (1960); La. Rev. Stat. § 12:38 (1950); Mich. Comp. Laws § 21.35 (Supp. 1961); Minn. Stat. § 301.34 (1945); N.H. Rev. Stat. Ann. § 924:92 (1955); Ohio Rev. Code § 1701.37 (Anderson Supp. 1961); Pa. Stat. Ann. tit. 15, § 2852-308 (1958); Tex. Bus. Corp. Act Ann. art. 2.44 (1956); Utah Bus. Corp. Act § 16-10-47 (1962); Va. Code Ann. § 13.1-47 (1961); Wash. Rev. Code § 23.01.380 (1961).

¹⁹ These three defenses are specified in Ala. Bus. Corp. Act § 21(46) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Iowa Bus. Corp. Act § 30 (1959); N.D. Cent. Code § 10-19-51 (1960); Ore. Rev. Stat. § 57.246 (1961); and Wis. Stat. § 180.43 (1957). A few states list only the "prior sales" defense. See Ark. Stat. § 64-219 (1957); Fla. Stat. § 608.39 (1956); Nev. Rev. Stat. § 78.105 (1959); and N.M. Stat. Ann. § 51-2-27 (1953). New York extends the period to five years and also includes the "improper purpose" defense. N.Y. Stock Corp. Law § 10. The prior sales and improper use defenses are also specified in the following statutes: D.C. Code Ann. § 29-920 (1961); Ill. Rev. Stat. ch. 32, § 157.45 (1954); Mass. Gen. Laws ch. 155, § 22 (1959); N.C. Gen. Stat. § 55-38 (1960); Okla. Stat. tit. 18, § 1.71 (1951); Tenn. Code Ann. § 48-308 (1955).

²⁰ Ark. Stat. § 64-219 (1957).

²¹ Conn. Gen. Stat. Rev. § 33-333 (1961).

²² Fla. Stat. § 608.39 (1956).

²³ Tenn. Code Ann. § 48-308 (1955).

²⁴ Mass. Gen. Laws ch. 155, § 22 (1959).

cludes "any other meritorious defense,"²⁵ and the Connecticut enactment permits as a defense any use for "speculative or trading purposes."²⁶

Penalties for a wrongful refusal to permit inspection are found in most of the general inspection statutes. In fact, most of the enactments impose a set monetary fine, which is normally around fifty dollars.²⁷ In some states a fine is payable to a complaining shareholder,²⁸ in others to the state,²⁹ and in Nevada,³⁰ New Mexico,³¹ and New York,³² it is payable to both the shareholder and the state. Some statutes are more severe. For example, failure to grant an inspection is made a misdemeanor in Arizona,³³ Montana,³⁴ New York,³⁵ and Utah.³⁶ North Carolina not only deems it a misdemeanor for a shareholder to improperly use the information received from an inspection,³⁷ but also imposes a threat of revocation of the certificate of authority or of corporate dissolution for refusal by a corporation to comply with a court order to produce the records.³⁸ Furthermore, in order to make the inspection right more effective, some states have provided for exemplary damages at ten per cent of the value of the shares owned by the applicant in addition to any actual damages he has sustained.³⁹ However, it has been held that these exemplary

²⁵ Wis. Stat. § 180.43 (1957).

²⁶ Conn. Gen. Stat. Rev. § 33-333 (1961).

²⁷ The following states, in using the Model Code's provisions, adopted this amount: Ark. Stat. § 64-219 (1957); Fla. Stat. § 608.39 (1956); Idaho Code Ann. § 30-144 (1947); Minn. Stat. § 301.34 (1945); Nev. Rev. Stat. § 78.105 (1959); N.M. Stat. Ann. § 51-2-27 (1953); N.Y. Stock Corp. Law § 10; Okla. Stat. tit. 18, § 1.71 (1951); Tenn. Code Ann. § 48-308 (1955).

²⁸ See Ala. Bus. Corp. Act § 21(46) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Ill. Rev. Stat. ch. 32, § 157.45 (1954); N.C. Gen. Stat. § 55-38 (1960); N.D. Cent. Code § 10-19-51 (1960); Ore. Rev. Stat. § 57.246 (1961).

²⁹ See Ariz. Rev. Stat. Ann. § 10-175 (1956); Ark. Stat. § 64-219 (1957); Fla. Stat. § 608.39 (1956); Idaho Code Ann. § 30-144 (1947); Minn. Stat. § 301.34 (1945); Nev. Rev. Stat. § 78.105 (1959); N.M. Stat. Ann. § 51-2-27 (1953); N.Y. Stock Corp. Law § 10; Okla. Stat. tit. 18, § 1.71 (1951); Tenn. Code Ann. § 48.308 (1955); Utah Bus. Corp. Act § 16-10-47 (1962).

³⁰ Nev. Rev. Stat. § 78.105 (1959).

³¹ N.M. Stat. Ann. § 51-2-27 (1953).

³² N.Y. Stock Corp. Law § 10.

³³ Ariz. Rev. Stat. Ann. § 10-195 (1956).

³⁴ Mont. Rev. Codes Ann. § 94.2310 (1947).

³⁵ N.Y. Stock Corp. Law § 10.

³⁶ Utah Bus. Corp. Act § 16-10-47 (1962).

³⁷ N.C. Gen. Stat. § 55-38 (1960).

³⁸ *Ibid.*

³⁹ See Ala. Bus. Corp. Act § 21(46) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Ill. Rev. Stat. ch. 32, § 157.45 (1954); N.C. Gen. Stat. § 55-38 (1960); N.D. Cent. Code § 10-19-51 (1960); Ore. Rev. Stat. § 57.246 (1961).

Iowa, Iowa Bus. Corp. Act § 30 (1959) and Wisconsin, Wis. Stat. § 180.43 (1957), have similar provisions but limit the total amount of damages recoverable under the 10%

damages provisions are inapplicable to a foreign corporation or to its officers where the refusal to permit inspection has occurred outside of the state in which the forum is located.⁴⁰

B. *The Voting List Statutes*

Twenty-six states⁴¹ have enacted statutes (in addition to the general inspection statutes) which require a corporation to prepare lists of the names, addresses, and individual holdings of its shareholders. These statutes provide for a right of inspection by any shareholder either at the annual meeting or during some specified period of time immediately preceding an annual meeting.⁴²

Most of the voting list statutes have adopted the penalty provisions that are set forth in the Model Act for non-compliance by corporate officers. However, the penalties are usually in the form of nominal fines or other equally ineffectual sanctions.⁴³ Moreover, damages suffered by a shareholder are seldom susceptible of proof.⁴⁴ In contrast, if there is no substantial compliance with the Virginia statute, then the annual stockholder meeting is to be adjourned upon demand of any stockholder until there is substantial compliance.⁴⁵ And, in some four states if the directors fail to have the list produced at an election meeting, they are ineligible for election to any office.⁴⁶

III. ENFORCEMENT OF THE RIGHT

As noted above, a stockholder seeking to obtain the stockholder list of a corporation may have three possible remedies: (1) his right

provision to \$500. The Model Bus. Corp. Act § 46 also provides 10% of the value of shares plus actual damages as the penalty.

⁴⁰ *Schaefer v. H. B. Green Transp. Line, Inc.*, 232 F.2d 415 (7th Cir. 1956).

⁴¹ Ala. Bus. Corp. Act § 21(48) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-37 (Supp. 1958); Colo. Rev. Stat. Ann. § 31-2-9 (1953); Conn. Gen. Stat. Rev. § 33-333 (1961); Del. Code Ann. tit. 8, § 219 (1953); Ga. Code § 22-905 (1936); Ill. Rev. Stat. ch. 32, § 157.32 (1954); Ind. Ann. Stat. § 25-207(g) (1960); Iowa Bus. Corp. Act § 30 (1959); Kan. Gen. Stat. Ann. § 17-3309 (1949); La. Rev. Stat. § 12:38 (1950); Mich. Comp. Laws § 21.35 (Supp. 1961); Mo. Rev. Stat. § 351.255 (1949); Neb. Rev. Stat. § 21.165 (1954); N.J. Rev. Stat. § 14-10-5 (1937); N.M. Stat. Ann. § 51-2-27 (1953); N.Y. Stock Corp. Law § 10; N.C. Gen. Stat. § 55-64 (1960); N.D. Cent. Code § 10-19-31 (1960); Ohio Rev. Code § 1701.37 (Anderson Supp. 1961); Okla. Stat. tit. 18, § 1.59 (1951); Ore. Rev. Stat. § 57.160 (1961); Pa. Stat. Ann. tit. 15, § 2852-510 (1958); Tex. Bus. Corp. Act Ann. art. 2.27 (1956); Utah Bus. Corp. Act § 16-10-29 (1962); Va. Code Ann. § 13.1-30 (1961); Wis. Stat. § 180.29 (1957).

⁴² The period is usually ten days except in Connecticut, Conn. Gen. Stat. Rev. § 33-333 (1961); Indiana, Ind. Ann. Stat. § 25-207(g) (1960); and Pennsylvania, Pa. Stat. Ann. tit. 15, § 2852-510 (1958), where it is five days, and Oklahoma, Okla. Stat. Ann. tit. 18, § 1.59 (1951), where it is one day. *Quaere* as to the value of such stockholder list ten days before the annual meeting in a publicly-held corporation.

⁴³ See Wolinsky, *Shareholder Voting List Statutes—Are They Effective?* 26 U. Cinc. L. Rev. 288 (1957).

⁴⁴ *Ibid.*

⁴⁵ Va. Code Ann. § 13.1-30 (1961).

⁴⁶ See Del. Code Ann. tit. 8, § 219 (1953); Mich. Comp. Laws § 21.35 (Supp. 1961); Neb. Rev. Stat. § 21.165 (1954); N.J. Rev. Stat. § 14-10-5 (1937).

under common law, (2) his right under applicable general inspection statutes, and (3) his right under applicable voting list statutes. The enforcement of these inspection rights has become the subject of more litigation than any other individual right of a shareholder,⁴⁷ for the shareholder list has become the line of scrimmage for contests involving incumbent management, dissident shareholders, acquisition-minded corporations, and those who have been described in current fiction as "corporate raiders." The main problems which arise in the enforcement of inspection rights involve: (1) necessary qualifications of the inspecting shareholder, (2) time and place of inspection, (3) proper purpose, (4) right to make extracts, and (5) the burden of proof of the purpose. These and other related problems are discussed in the following subsections.

A. Shareholders Entitled To Inspect

General inspection statutes usually provide for a right of inspection by stockholders who have held their shares for a specified period of time, or who own a stated percentage of the outstanding stock.⁴⁸ A requirement of both a holding period and a percentage of stock has been adopted in five states⁴⁹ and the District of Columbia.⁵⁰ In contrast, the voting list statutes usually make no requirement as to the period of holding or percentage of ownership.⁵¹

Although theoretically the holder of a small number of shares has the same right to inspect the records as the owner of a large bloc, it is evident that larger stockholders are more often granted full inspection rights.⁵² This may be explained partially by the fact that the owner of one or only a few shares often will desire inspection for an improper purpose, whereas the owner of a large number of shares more frequently will have a reasonable purpose for seeking inspection.

The terms "shareholders" and "stockholders," unless otherwise provided in the statute, have, of course, been construed to include preferred stockholders.⁵³ Likewise, where stock is registered in the

⁴⁷ In New York alone there have been over 400 decisions in the past twenty years. See Hornstein, *Corporation Law and Practice* §§ 611, 612 (1959).

⁴⁸ The Model Act requires either a six month holding period or a 5% ownership of the outstanding shares entitled to vote. Model Bus. Corp. Act § 46.

⁴⁹ Idaho Code Ann. § 30-144 (1947); La. Rev. Stat. § 12:38 (1950); Md. Ann. Code art. 23, § 51 (1957); Mich. Comp. Laws § 21.35 (Supp. 1961); W. Va. Code ch. 31, art. 1, § 3086 (1961).

⁵⁰ D. C. Code Ann. § 29-920 (1961).

⁵¹ See statutes cited note 41 *supra*.

⁵² Cf. *Martin v. Columbia Pictures Corp.*, 307 N.Y. 920, 123 N.E. 2d 572 (1954); *Harrington v. Milton C. Johnson Co.*, 307 N.Y. 917, 123 N.E.2d 570 (1954).

⁵³ See *Loveman v. Tutwiler Inv. Co.*, 240 Ala. 424, 199 So. 854 (1940); *Indianapolis St. Ry. v. State ex rel. Cohen*, 203 Ind. 534, 181 N.E. 365 (1932); *Putnam v. Slayback*, 23 F.2d 406 (4th Cir. 1928).

name of the person who is the owner in fact, there is little question that he qualifies as a "stockholder" or "shareholder." There have been, however, considerable differences of opinion in two situations: (1) involving equitable or beneficial owners who are not the owners of record,⁵⁴ and (2) involving persons who are merely nominees⁵⁵ or who hold the stock in the capacity of a trustee.⁵⁶

The Delaware Supreme Court has construed the inspection right to be applicable to all owners of record who meet the holding period or percentage of ownership requirement.⁵⁷ Also, in New York a pledgor of stock who retains ownership subject to the pledgee's lien is held to be entitled to inspection⁵⁸ provided the stock is not registered in the pledgee's name.⁵⁹

In a few cases the courts have held that the stockholder seeking inspection must be the owner in fact and not merely in name.⁶⁰ However, at least one court has permitted an inspection by trustees who held bare legal title,⁶¹ while other courts have granted the right of inspection to the beneficial or equitable owners of stock.⁶² Inspection has been both denied⁶³ and granted⁶⁴ where a stockholder has entered into a contract for the sale of his stock.

One decision has denied the right of inspection by the holder of a voting trust certificate except where such a holder is expressly granted a statutory right of inspection.⁶⁵ In one New York case the holder of a voting stock certificate was allowed to inspect corporate

⁵⁴ See *State ex rel. Crowder v. Sperry Corp.*, 41 Del. 84, 15 A.2d 661 (1940); *Babcock v. Chicago R.R.*, 325 Ill. 16, 155 N.E. 773 (1927); *Brower & Co. v. State ex rel. Hines*, 192 Ind. 462, 137 N.E. 57 (1922); *Onjer v. Harren*, 208 Iowa 1217, 227 N.W. 101 (1929); *Woodworth v. Old Second Nat'l Bank*, 154 Mich. 459, 117 N.W. 893 (1908); *Mateer v. New Jersey Tel. Co.*, 5 N.J. Misc. 261, 136 Atl. 317 (Sup. Ct. 1927); *In re Reiss*, 30 Misc. 234, 62 N.Y. Supp. 145 (Sup. Ct. 1900).

⁵⁵ See *State ex rel. Healy v. Superior Oil Corp.*, 40 Del. 460, 13 A.2d 453 (1940).

⁵⁶ *Webster v. Bartlett Estate Co.*, 35 Cal. App. 283, 169 Pac. 702 (1917); *Taylor v. Eden Cemetery Co.*, 337 Pa. 203, 10 A.2d 573 (1940).

⁵⁷ *State ex rel. Healy v. Superior Oil Corp.*, 40 Del. 460, 13 A.2d 453 (1940). Thus, in Delaware, a registered stockholder is entitled to examine the stock ledger and make a list of stockholders, although he is a mere nominee and not the beneficial owner of the shares.

⁵⁸ *Monitor Co. v. Confianza Furniture & Appliance Corp.*, 142 N.Y.S.2d 140 (Sup. Ct. 1955).

⁵⁹ This distinction was made in *Neisloss v. Alleghany Corp.*, 141 N.Y.S.2d 732 (Sup. Ct. 1955).

⁶⁰ *Ralston v. Grande Ronde Hosp.*, 149 Ore. 45, 39 P.2d 362 (1934); *State ex rel. Moore v. Van Tassell Real Estate & Livestock Co.*, 53 Wyo. 89, 79 P.2d 476 (1938).

⁶¹ *Taylor v. Eden Cemetery Co.*, 337 Pa. 203, 10 A.2d 573 (1940).

⁶² *Fiest v. Joseph Dixon Crucible Co.*, 30 N.J. Super. 153, 103 A.2d 893 (1954); *McGeary v. Brown*, 23 S.D. 573, 122 N.W. 605 (1909).

⁶³ *State ex rel. Bulkley v. Whited & Wheless, Ltd.*, 104 La. 125, 28 So. 922 (1900); *In re Gaines*, 180 N.Y. Supp. 191 (Sup. Ct. 1919), *aff'd mem.*, 179 N.Y. Supp. 922 (App. Div. 1920).

⁶⁴ *Hoover v. Fox Rig & Lumber Co.*, 199 Okla. 672, 189 P.2d 929 (1948).

⁶⁵ *State ex rel. Crowder v. Sperry Corp.*, 41 Del. 84, 15 A.2d 661 (1940).

records under his common law right of inspection,⁶⁶ however, another New York decision states that such right is to be determined by the provisions of the voting trust agreement.⁶⁷

A shareholder who is entitled to inspect corporate records is entitled to exercise this right through an agent, attorney, or accountant of his own choosing, and the corporation cannot dictate or control his selection.⁶⁸ However, the corporation does have the right to demand evidence of the agent's authorization before it opens its books to him for inspection.⁶⁹

B. Time And Place Of Inspection

A shareholder has no right to insist arbitrarily upon a particular time or place of inspection (other than as may be specified in a voting list statute) due to the requirements of reasonable time and proper place.⁷⁰ The definition of a reasonable time and a proper place depends upon the particular facts in a given case and may be determined by a court in the exercise of its discretion.⁷¹ Thus, in ordering an inspection a court may specify the time and place.⁷²

The right of inspection has been held not to be limited to one occasion, but to be a continuing right subject only to the limitation of reasonableness.⁷³ When a shareholder seeks to inspect stockholder lists and make extracts from them, it has been held that business hours are reasonable hours.⁷⁴ Also, even when a statute grants the right of inspection "at all times," such a phrase has been construed to mean at all reasonable times during business hours.⁷⁵

Ordinarily, an inspection must be conducted so as not to interfere with the normal business of the corporation.⁷⁶ It follows, then, that the usual place of inspection is the principal business office of the

⁶⁶ *Baczowska v. 2166 Operating Corp.*, 304 N.Y. 811, 109 N.E.2d 470 (1952).

⁶⁷ *Brentmore Estates, Inc. v. Hotel Barbizon, Inc.*, 263 App. Div. 389, 33 N.Y.S.2d 331 (1942).

⁶⁸ *Fletcher, Private Corporations* 824, 825 (perm. ed. 1957).

⁶⁹ *Birmingham News v. State ex rel. Dunston*, 207 Ala. 440, 93 So. 25 (1921); *S. F. Bowser & Co. v. State ex rel. Hines*, 192 Ind. 462, 137 N.E. 57 (1922).

⁷⁰ *Flowers v. Rotary Printing Co.*, 65 Ohio App. 543, 31 N.E.2d 251 (1940); *Cornell v. Nestle Le Mur Co.*, 65 Ohio App. 1, 29 N.E.2d 162 (1940); *Ruby v. Penn Fibre Bd. Corp.*, 326 Pa. 582, 192 Atl. 914 (1937).

⁷¹ See *Ruby v. Penn Fibre Bd. Corp.*, *supra* note 70. In Missouri, Mo. Rev. Stat. § 351.215 (1949), the corporate by-laws may regulate inspection hours, and in South Carolina, S.C. Code § 12-263 (1952), and West Virginia, W. Va. Code ch. 31, art. 1, § 3086 (1961), inspection is authorized by statute "at any and all times."

⁷² See *Wittnebel v. Loughman*, 80 F.2d 222 (2nd Cir. 1935), *cert. denied*, 297 U.S. 716 (1936); *Rahn v. State ex rel. Weir*, 137 Fla. 692, 188 So. 584 (1939).

⁷³ *Smith v. Trumbull Farmers Gin Co.*, 89 S.W.2d 829 (Tex. Civ. App. 1936—Waco) *no writ hist.*

⁷⁴ *Schwamm v. United Nat'l Bank*, 269 App. Div. 692, 53 N.Y.S.2d 676 (1945).

⁷⁵ *Self v. Langley Mills*, 123 S.C. 179, 115 S.E. 754 (1923).

⁷⁶ *Ruby v. Penn Fibre Bd. Corp.*, 326 Pa. 582, 192 Atl. 914 (1937).

corporation, which office is normally located within the state of incorporation.⁷⁷ However, a court may compel a corporation to bring its records into the state even though they are kept outside its borders.⁷⁸ Of course, a court will usually balance the conveniences of the parties in determining whether this should be done or whether the shareholder should be required to inspect the records in the foreign state.⁷⁹

C. Proper Purpose

The early English common law required that there be some particular controversy or specific dispute before the right of inspection would be granted.⁸⁰ A few of the early American decisions adopted this principle,⁸¹ however, it is now generally held that the showing of a dispute is not required.⁸² Since fraud and mismanagement are frequently only discoverable *after* the books have been inspected, it is obvious that an injustice could result from a strict application of the common law rule. Indeed, the possibility of such an occurrence has been assigned as one of the reasons for the widespread adoption of statutes giving the right of inspection.⁸³

The present rule in this country with respect to the showing of a proper purpose is that there be a qualified shareholder who is seeking to ascertain information from the company's records, in good faith, for the protection of the interests of the corporation or his interests as a stockholder.⁸⁴ Therefore, any well-planned attempt by a stockholder to obtain a stockholder list by the inspection of corporate records should include: (1) a written request for permission to make the inspection, and (2) a statement of the reasons why such inspection is requested.

Most decisions which deal with attempts by stockholders to inspect corporate records have been concerned primarily with the avowed or real purpose of the stockholder.⁸⁵ These decisions show that the

⁷⁷ *Ibid.*

⁷⁸ *State ex rel. Brumley v. Jessup & Moore Paper Co.*, 24 Del. 379, 77 Atl. 16 (1910); *Ross v. Robinson*, 185 N.C. 548, 118 S.E. 4 (1923).

⁷⁹ See *Cornell v. Nestle Le Mur Co.*, 65 Ohio App. 1, 29 N.E.2d 162 (1940); *Ruby v. Penn Fibre Bd. Corp.*, 326 Pa. 582, 192 Atl. 914 (1937).

⁸⁰ *Rex v. Master & Wardens of Merchant Tailor's Co.*, 2 B. & Ad. 114, 109 Eng. Rep. 1086 (1831); *Re Burton & Saddler's Co.*, 31 L.J.Q.B.(n.s.) 62 (1861).

⁸¹ See *Johnson v. Langdon*, 135 Cal. 624, 67 Pac. 1050 (1902); *In re Pierson*, 28 Misc. 726, 59 N.Y. Supp. 1003, *aff'd*, 44 App. Div. 215, 60 N.Y. Supp. 671 (1899); *Phoenix Iron Co. v. Commonwealth*, 113 Pa. 563, 6 Atl. 75 (1886).

⁸² See *Neiman v. Templeton Kenly & Co.*, 294 Ill. App. 45, 50, 13 N.E.2d 290, 292 (1938); *Otis-Hidden Co. v. Scheirich*, 187 Ky. 423, 428, 219 S.W. 191, 194 (1920).

⁸³ *Neiman v. Templeton Kenly & Co.*, *supra* note 82.

⁸⁴ *Yagoda's Estate v. Picture Book Toys, Inc.*, 157 N.Y.S.2d 247 (Sup. Ct. 1956); *State ex rel. Weinberg v. Pacific Brewing & Malting Co.*, 21 Wash. 451, 58 Pac. 584 (1899).

⁸⁵ See Annot., 15 A.L.R.2d 11 (1951).

most prevalent purposes for inspection usually concern: (a) communication with other shareholders, (b) curiosity or harassment of management, (c) use by the shareholder for commercial or speculative reasons, and (d) use by another corporation or competitor. These four purposes are more fully analyzed below.

1. *Communication With Other Shareholders*

a. *Concerning Mismanagement or a Change in Management.*—With increasing frequency, litigation is the end result of a refusal by management to allow inspection of stock lists where the stated or obvious purpose is to depose management and gain control of the corporation. Unfortunately for management, most of the recent cases recognize that shareholders are entitled to inspect stockholder lists for the purpose of proxy solicitation or for the purpose of initiating a proxy contest with management.⁸⁶ In the recent New York decision concerning the Murchison-Kirby contest for control of the Alleghany Corporation, Justice Markowitz upheld the right of inspection of the stockholder list for such purpose and stated:

The obtaining of stock lists for the purpose of a proxy fight should be encouraged where it is genuine. Disclosure by all parties to the stockholders of all of the facts can only serve the best interest of a corporation. To prevent one from knowing who the stockholders are, so that one's position cannot be effectively presented, is not in keeping with the right of stockholders to be apprised of the position of competing groups for management. What may happen in the future, in the event one or the other side prevails, is entirely up to the stockholders.⁸⁷

This decision is in accord with an earlier New York decision which held that a stockholder's right to inspect the stockholder list does not depend upon whether the shareholder seeks to oust "an arguably good management or a demonstrably bad one."⁸⁸ Similarly, a Delaware decision has granted the right of inspection for the purpose of ousting the incumbent management. That court rejected a theory espoused by management that a stockholder would only foment discussion and cause discord if permitted to circularize information among other shareholders.⁸⁹

b. *Concerning Pending or Proposed Litigation.*—Access to the stockholder list has also been ordered when the purpose is to com-

⁸⁶ *Steinberg v. American Bantam Car Co.*, 76 F. Supp. 426 (W.D. Pa. 1948), *appeal dismissed*, 173 F.2d 179 (3d Cir. 1949); *Insuranshares Corp. v. Kinchner*, 40 Del. 105, 5 A.2d 519 (1939); *Hohman v. Illinois-Iowa Power Co.*, 305 Ill. App. 17, 26 N.E.2d 420 (1940).

⁸⁷ *Murchison v. Alleghany Corp.*, 210 N.Y.S.2d 153, 160 (Sup. Ct. 1960), *aff'd*, 210 N.Y.S.2d 975 (App. Div. 1961).

⁸⁸ *Application of Ditisheim*, 96 N.Y.S.2d 622 (Sup. Ct. 1950).

⁸⁹ *Insuranshares Corp. v. Kinchner*, 40 Del. 105, 5 A.2d 519 (1939).

municate with other shareholders with respect to a derivative suit⁹⁰ or with respect to pending or proposed litigation against the corporation.⁹¹ However, if the sole purpose is to persuade other stockholders to join in the action in order to avoid the necessity of giving security for costs, inspection has been denied.⁹²

c. *Concerning Future Actions to be Taken by the Corporation.*—It is generally held that a stockholder seeking inspection of the stockholder list in order to communicate with other shareholders regarding plans presented by management, or proposed by himself, is motivated by a proper purpose.⁹³ Similarly, a Pennsylvania court has allowed inspection of the stockholder list for the purpose of forming a protective committee of shareholders to act in the interest of their investment.⁹⁴ An Alabama court has permitted an inspection when the purpose was to call a meeting of preferred stockholders in order to determine what action they could take to enforce payment of dividends upon preferred stock.⁹⁵ The Alabama decision was rendered in spite of a defense by management that it was in the best interest of the stockholders to retain existing reserves and that the great majority of the stockholders had previously approved a no-dividend policy.⁹⁶

2. *Curiosity or Harassment of Management*

It is the general rule that inspection will be denied where the only purpose is the gratification of the idle curiosity of a shareholder,⁹⁷ or where the shareholder merely seeks to annoy or harass management.⁹⁸ However, it has been held that the fact that a director

⁹⁰ *State ex rel. Foster v. Standard Oil Co.*, 41 Del. 172, 18 A.2d 235 (1941); *Brown v. Central Home Trust Co.*, 129 N.J.L. 213, 28 A.2d 773 (1942).

⁹¹ *Webster v. Bartlett Estate Co.*, 35 Cal. App. 283, 169 Pac. 702 (1917); *Vigran v. Hamilton*, 321 Ill. App. 541, 53 N.E.2d 250 (1944); *White v. Manter*, 109 Me. 408, 84 Atl. 890 (1912); *Schmidt v. Anderson*, 29 N.D. 262, 150 N.W. 871 (1915).

⁹² *Baker v. MacFadden Publications, Inc.*, 300 N.Y. 325, 90 N.E.2d 876 (1950); *Application of Joslyn*, 78 N.Y.S.2d 183 (Sup. Ct.), *aff'd*, 78 N.Y.S.2d 923 (App. Div. 1948).

⁹³ *Chable v. Nicaragua Canal Constr. Co.*, 59 Fed. 846 (C.C.S.D.N.Y. 1894); *Hanrahan v. Puget Sound Power & Light Co.*, 332 Mass. 586, 126 N.E.2d 499 (1955).

⁹⁴ *Kahn v. American Cone & Pretzel Co.*, 365 Pa. 161, 74 A.2d 160 (1950).

⁹⁵ *Loveman v. Tutwiler Inv. Co.*, 240 Ala. 424, 199 So. 854 (1941).

⁹⁶ *Id.* at 856. Other instances where the inspection of the stockholder list by a stockholder may be permitted are: (1) When the purpose of communication is in regard to an alleged illegal amendment to the corporate charter, *McGahan v. United Eng'r Corp.*, 118 N.J. Eq. 410, 180 Atl. 195 (1935); (2) When the purpose is in regard to a plan of reorganization proposed by a dissident shareholder, *Morris v. United Pierce Dye Works*, 137 N.J.L. 262, 59 A.2d 660 (1948); and (3) When the purpose involves an individual shareholder's plan for retiring preferred stock, *Bundy v. Robbins & Myers, Inc.*, 38 Ohio Op. 77, 75 N.E.2d 717 (1947).

⁹⁷ *Stone v. Kellogg*, 165 Ill. 192, 46 N.E. 222 (1896); *Commonwealth v. Phoenix Iron Co.*, 105 Pa. 111, 51 Am. Rep. 184 (1884); *Grayburg Oil Co. v. Jarratt*, 16 S.W.2d 319 (Tex. Civ. App. 1929—El Paso).

⁹⁸ *Sawers v. American Phenolic Corp.*, 404 Ill. 440, 89 N.E.2d 374 (1949); *State ex rel. Paschall v. Scott*, 41 Wash. 2d 71, 247 P.2d 543 (1952).

may bear animosity toward other directors is insufficient proof of an interest adverse to the corporate interest to warrant a denial of his right of inspection.⁹⁹

3. *Use by the Shareholder for Commercial or Speculative Reasons*

There are many decisions which imply that an inspection will not be granted if the object is to obtain a stock list for speculative or commercial purposes,¹⁰⁰ but unfortunately, the courts have seldom defined the terms "speculative" and "commercial." In several instances the courts have held that the procurement of a stock list for the purpose of selling it to a broker or other person is improper, since such a purpose has no bearing on the corporation-shareholder relationship.¹⁰¹ However, even if there is a possibility that the list will be used for commercial purposes, if there is an otherwise proper purpose, inspection will not be denied merely because the shareholder is a securities dealer.¹⁰²

Courts are generally in agreement that inspection is entirely proper for the purpose of making a subsequent offer to purchase the stock of other shareholders.¹⁰³ However, inspection is disallowed when it is for the purpose of later soliciting stockholders to sell them stock of another corporation.¹⁰⁴ Likewise, inspection is denied if the purpose is to prevent the controlling stockholders from selling their stock and there is no charge of violation of any obligation to the other shareholders.¹⁰⁵

4. *Use by Another Corporation or Competitor*

If a proper purpose is shown, the fact that a shareholder is a business competitor, or is in control of a competing corporation, is

⁹⁹ *Pacent v. Fourth Fed. Sav. & Loan Ass'n*, 9 Misc. 2d 37, 167 N.Y.S.2d 550 (Sup. Ct. 1957).

¹⁰⁰ *State ex rel. Theile v. Cities Serv. Co.*, 37 Del. 514, 115 Atl. 773 (1922); *Slay v. Polonia Pub. Co.*, 249 Mich. 609, 229 N.W. 434 (1930).

¹⁰¹ *State ex rel. Theile v. Cities Serv. Co.*, *supra* note 100; *Eaton v. Manter*, 114 Me. 259, 95 Atl. 948 (1915). In several states it is a defense to an action for penalties for failure to permit inspection, where the person suing therefor has within two years sold or offered for sale any list of shareholders of any corporation, or has aided or abetted any person in procuring any list of shareholders for any such purpose. See Ala. Bus. Corp. Act § 21(46) (Supp. 1959); Alaska Comp. Laws Ann. § 36-2A-54 (Supp. 1958); Colo. Rev. Stat. Ann. § 31-2-10 (1953); Ind. Ann. Stat. § 25-210 (1960); N.D. Cent. Code § 10-19-51 (1960); Ore. Rev. Stat. § 57.246 (1961); Wis. Stat. § 180.43 (1957).

¹⁰² *Hanrahan v. Puget Sound Power & Light Co.*, 332 Mass. 586, 126 N.E.2d 499 (1955); *Morris v. United Piece Dye Works*, 137 N.J.L. 262, 59 A.2d 660 (1948); *Bundy v. Robbins & Myers, Inc.*, 38 Ohio Op. 77, 75 N.E.2d 717 (1947).

¹⁰³ *E. L. Bruce Co. v. State*, 51 Del. 252, 144 A.2d 533 (1958); *Crouse v. Rogers Park Apartments, Inc.*, 343 Ill. App. 319, 99 N.E.2d 404 (1951); *Nationwide Corp. v. Northwestern Natl. Life Ins. Co.*, 251 Minn. 255, 87 N.W.2d 671 (1958); *Fiest v. Joseph Dixon Crucible Co.*, 30 N.J. Super. 153, 103 A.2d 893 (1954).

¹⁰⁴ *Chas. A. Day & Co. v. Booth*, 123 Me. 443, 123 Atl. 557 (1942); *Shea v. Sweetser*, 119 Me. 400, 111 Atl. 579 (1920).

¹⁰⁵ *Bart v. Pine Grove, Inc.*, 326 Ill. App. 426, 62 N.E.2d 127 (1945).

no defense to a request to examine the stock list.¹⁰⁸ A recent Massachusetts case¹⁰⁷ has even granted an inspection when the shareholder's purposes were (1) to obtain a change in the management and policies of the corporation, and (2) to turn the stockholder list over to a committee which was seeking a merger with another corporation. That court ordered the inspection despite the fact that the committee was dominated, directed, and financed by the other corporation. Similarly, the Minnesota Supreme Court has recognized the right of one shareholding corporation to inspect the books of the corporation which issued the shares—in spite of the fact that the former was seeking to acquire control of the latter.¹⁰⁹

D. Right To Make Extracts

Of course, the mere inspection of a stockholder list is normally of little value unless the stockholder making such inspection has the right to make or obtain a copy of the same. Although there is an early case to the contrary,¹⁰⁹ it now seems to be the universally accepted rule that the right to inspect the books of a corporation includes the right to make extracts or copies.¹¹⁰ Moreover, it is said that the denial of the right to copy virtually amounts to a denial of the right to inspect.¹¹¹ Thus, the right to make extracts is a necessary incident of the right to inspect, both at common law and under the statutes.¹¹²

The stockholder lists of publicly-owned corporations will normally constitute rather voluminous records and a stockholder who is permitted to copy the same is frequently confronted with a serious clerical problem. In the Murchison-Kirby suit, the court provided a very practical solution by ordering the corporation to furnish the

¹⁰⁸ *E. L. Bruce & Co. v. State*, 51 Del. 252, 144 A.2d 533 (1958); *Mayer v. Cincinnati Economy Drug Co.*, 89 Ohio App. 512, 103 N.E.2d 1 (1951).

¹⁰⁷ *Hanrahan v. Puget Sound Power & Light Co.*, 332 Mass. 586, 126 N.E.2d 499 (1955).

¹⁰⁸ *Nationwide Corp. v. Northwestern Nat'l Life Ins. Co.*, 151 Minn. 255, 87 N.W.2d 671 (1958).

¹⁰⁹ *Appeal of Empire Pass. Ry. Co.*, 134 Pa. 237, 19 Atl. 629 (1890).

¹¹⁰ *State ex rel. Healy v. Superior Oil Corp.*, 40 Del. 460, 13 A.2d 453 (1940); *Drake v. Newton Amusement Corp.*, 123 N.J.L. 560, 9 A.2d 636 (1939); *People ex rel. Lorge v. Consol. Nat'l Bank*, 105 App. Div. 537, 94 N.Y. Supp. 173 (1905); *Bundy v. Robbins & Myers, Inc.*, 75 N.E.2d 717 (Ohio App. 1947).

¹¹¹ *State v. Cassell*, 294 S.W.2d 647 (Mo. App. 1956).

¹¹² *Fletcher, Private Corporations* § 2241 (perm. ed. 1952); *Annot.*, 174 A.L.R. 262, 288 (1948). Some statutes specifically grant the right to make extracts: *Alaska Comp. Laws Ann.* § 36-2A-54 (Supp. 1958); *Colo. Rev. Stat. Ann.* § 31-2-10 (1953); *D.C. Code Ann.* § 29-920 (1961); *Ill. Rev. Stat. ch. 32*, § 157.45 (1954); *N.C. Gen. Stat.* § 55-38 (1960); *N.D. Cent. Code* § 10-19-51 (1960); *Ore. Rev. Stat.* § 57.246 (1961); *Tex. Bus. Corp. Act Ann.* art. 2.44 (1956); *Va. Code Ann.* § 13.1-47 (1961); *Wis. Stat.* § 180.43 (1957); see also *Model Bus. Corp. Act* § 46. However, that right is in some instances limited to copying materials which are essential to the purpose of the shareholder. See *Fletcher, op cit. supra* at § 2241.

stockholder list at the expense of the stockholder.¹¹³ In another New York decision, the stockholder was permitted to obtain a reproduction of the list from the transfer agent.¹¹⁴

E. Burden Of Proof Of Purpose

Generally, the corporation has the burden of proving impropriety of purpose on the part of the shareholder.¹¹⁵ This is also true in cases arising under statutes which do not expressly require a proper purpose.¹¹⁶ However, where inspection is sought under the common law right, there is a difference of opinion as to where the burden of proof lies.¹¹⁷

In some states, such as Delaware, the status of the burden of proof depends upon which records are to be inspected. The burden is on the shareholder if he is seeking to inspect the stock ledger, but if he is seeking to inspect other books, the burden falls upon the corporation.¹¹⁸ The Illinois Supreme Court, on the other hand, has taken a minority position by holding that the burden of proof of purpose under the Illinois general inspection statute is always on the shareholder.¹¹⁹

F. Corporations Whose Stockholder Lists Are Subject To Inspection

Many jurisdictions require domestic corporations to keep certain designated records at some particular location within the state. Such location is usually the corporation's registered office or principal place of business.¹²⁰ The statutes in eight states call for a particular location only for the stock ledger.¹²¹ In addition to the regulations placed on domestic corporations, New York imposes similar require-

¹¹³ *Murchison v. Alleghany Corp.*, 210 N.Y.S.2d 153 (Sup. Ct. 1960), *aff'd*, 210 N.Y.S.2d 975 (App. Div. 1961).

¹¹⁴ *Mencher v. Seminole Oil & Gas Corp.*, 194 N.Y.S.2d 162 (Sup. Ct. 1959).

¹¹⁵ See *State ex rel. Watkins v. Cassell*, 294 S.W.2d 647 (Mo. App. 1956); *Williams Coale Dev. Co. v. Kennedy*, 121 Ohio St. 582, 170 N.E. 434 (1930); *Annot.*, 15 A.L.R.2d 11 (1951); 18 C.J.S. *Corporations* § 510 (1939).

¹¹⁶ *Toklan Royalty Corp. v. Tiffany*, 193 Okla. 120, 141 P.2d 571 (1943); *Moore v. Rock Creek Oil Corp.*, 59 S.W.2d 815 (Tex. Comm. App. 1933).

¹¹⁷ For cases which hold that the burden is on the corporation, see *Sanders v. Neely*, 197 Miss. 66, 19 So. 2d 424 (1944); *State ex rel. Grismer v. Merger Mines Corp.*, 3 Wash. 2d 417, 101 P.2d 308 (1940). For cases which hold that the burden is on the shareholder, see *State ex rel. Waldman v. Miller-Wohl Co.*, 42 Del. 73, 28 A.2d 148 (1942); *Albee v. Lamson & Hubbard Corp.*, 320 Mass. 421, 69 N.E.2d 811 (1946).

¹¹⁸ *State ex rel. Block v. Sentry Safety Control Corp.*, 41 Del. 480, 24 A.2d 587 (1942); *State ex rel. Miller v. Loft, Inc.*, 34 Del. 538, 156 Atl. 170 (1931).

¹¹⁹ See *Morris v. Broadview, Inc.*, 385 Ill. 228, 52 N.E.2d 769 (1944).

¹²⁰ For example, see Cal. Corp. Code § 502 (1947); Mass. Gen. Laws ch. 155, § 22 (1959).

¹²¹ Ark. Stat. § 64-219 (1957); Conn. Gen. Stat. Rev. § 33-334 (1961); Del. Code Ann. tit. 8, § 220 (1953); Fla. Stat. § 608.39 (1956); Hawaii Rev. Laws § 172-40 (1955); N.J. Rev. Stat. § 14:5.1 (1937); Tenn. Code Ann. § 48-308 (1955); Utah Bus. Corp. Act § 16-10-47 (1962).

ments on foreign corporations doing business in that state.¹²² Other states merely require foreign corporations to file statements with their local agent for service of process. These statements must specify the location of the pertinent records if they are kept outside of the state.¹²³

Generally, the right of inspection of corporate records extends to all private corporations. However, in some states since the inspection statutes are a part of the business corporation chapter or code, they are inapplicable to certain types of corporations, such as insurance companies¹²⁴ and savings and loan companies.¹²⁵ Of course, even in the case of those entities, the stockholder may still have his common law right of inspection.¹²⁶

Some of the earlier cases denied shareholders the right to inspect the books of foreign corporations for various reasons.¹²⁷ However, it is generally the rule today that such inspection will be allowed if the foreign corporation is doing business within the state or if its books are kept in that state.¹²⁸ A court with jurisdiction over a corporation should clearly have the power to order that its books be made available for inspection even though that court is outside of the state of incorporation,¹²⁹ but there has been a conflict in the decisions as to whether the law of the domicile of the corporation or the law of the forum is to be applied.¹³⁰

G. The Effect Of By-Law Or Charter Provisions On Inspection Rights

Courts are in agreement that corporations may not deny the shareholder his right of inspection by any provision of the charter or by-laws. The right may be reasonably regulated in those documents as

¹²² N.Y. Stock Corp. Law § 133.

¹²³ La. Rev. Stat. § 12:206 (1950); Okla. Stat. tit. 18, § 1.16 (1951).

¹²⁴ Lehman v. National Benefit Ins. Co., 243 Iowa 1348, 53 N.W.2d 872 (1952).

¹²⁵ State ex rel. Schomberg v. Home Mut. Bldg. & Loan Ass'n, 220 Wis. 649, 265 N.W. 701 (1936).

¹²⁶ Doggett v. North Am. Life Ins. Co., 396 Ill. 354, 71 N.E.2d 686 (1947).

¹²⁷ See Note, 31 Ill. L. Rev. 677 (1937) for a list of the cases.

¹²⁸ See Gertridge v. State Capital Co., 129 Cal. App. 86, 18 P.2d 375 (1933); Stoopack v. George A. Fuller Co., 18 Misc. 2d 977, 190 N.Y.S.2d 596 (Sup. Ct.), *aff'd*, 191 N.Y.S.2d 356 (App. Div. 1959) (where the foreign corporation was doing business within the state); Rogers v. American Tobacco Co., 143 Misc. 306, 257 N.Y. Supp. 321 (Sup. Ct.), *aff'd*, 249 N.Y. Supp. 993 (App. Div. 1931) (where the books were within the state); Machen v. Machen & Mayer Elec. Mfg. Co., 237 Pa. 212, 85 Atl. 100 (1912).

¹²⁹ See Sanders v. Pacific Gamble Robinson Co., 250 Minn. 265, 84 N.W.2d 919 (1957).

¹³⁰ Stoopack v. George A. Fuller Co., 18 Misc. 2d 977, 190 N.Y.S.2d 596 (Sup. Ct.), *aff'd*, 191 N.Y.S.2d 356 (App. Div. 1959); State ex rel. Grismer v. Merger Mines Corp., 3 Wash. 2d 417, 101 P.2d 308 (1940). The law of the forum is applied where the statute is construed as applicable to foreign corporations. Kahn v. American Cone & Pretzel Co., 365 Pa. 161, 74 A.2d 160 (1950); Toklan Royalty Corp. v. Tiffany, 193 Okla. 120, 141 P.2d 571 (1943).

to the time and manner of an inspection in order to curtail any interference with the efficient management of the company.¹³¹ Nevertheless, restrictive by-law provisions are usually construed in favor of the right of inspection, rather than against it.¹³² For example, in a recent Louisiana case stock was issued under a charter amendment which denied a particular class of stock any right or privilege to participate or vote in the affairs or the management of the company. The court held that such a charter provision could not be construed to restrict a shareholder's right to inspect the books.¹³³

Many corporations, particularly those incorporated in Delaware, still have provisions in their by-laws denying the right of inspection of corporate records except as conferred by statute or by resolution of the board of directors. Although such provisions have been declared invalid,¹³⁴ it has been pointed out that as late as 1946 out of one hundred of the country's largest corporations, all but two of the twenty-seven which were incorporated in Delaware contained in their charters or by-laws a provision of this nature. The retention of these provisions apparently is for the purpose of enabling management to confront a shareholder seeking inspection with a prima facie defense, the invalidity of which is perhaps unknown to the shareholder.¹³⁵

H. Procedure

A writ of mandamus is considered to be the proper procedural remedy for enforcement of a stockholder's right of inspection.¹³⁶ Since the writ of mandamus was abolished by the Federal Rules of Civil Procedure¹³⁷ most cases involving attempts by stockholders to inspect the stockholder list have arisen in state courts. In fact, federal decisions have denied the right of inspection for the reason that the writ of mandamus was abolished from the federal procedural remedies.¹³⁸ However, there should be no reason why the right could not be enforced in a proceeding in a federal court under the dis-

¹³¹ *State ex rel. Cochran v. Penn-Beaver Oil Co.*, 34 Del. 81, 143 Atl. 257 (1926); *Klotz v. Pan-American Match Co.*, 221 Mass. 38, 108 N.E. 764 (1950).

¹³² *Hodgens v. United Copper Co.*, 67 Atl. 756 (N.J. Super. Ct. 1907).

¹³³ *State ex rel. Wolfner v. Fairfax Shipside Storage, Inc.*, 93 So. 2d 336 (La. App. 1957).

¹³⁴ See cases cited note 131 *supra*.

¹³⁵ Hornstein, *Right of Stockholders in New York Courts*, 56 Yale L.J. 942, 946 (1947); Koenigsberg, *Provisions in Corporate Charters and By-Laws Governing the Inspection of Books by Stockholders*, 30 Geo. L.J. 227, 247 (1942).

¹³⁶ 13 Am. Jur. *Corporations* §§ 444-49; 5 Fletcher, *Cyclopedia of Corporations* §§ 2250 to -55.1 (1952).

¹³⁷ Fed. R. Civ. P. 81(b).

¹³⁸ E.g., *Rosen v. Alleghany Corp.*, 133 F. Supp. 858 (S.D.N.Y. 1955); *Toomey v. Wichwire Spencer Steel Co.*, 3 F.R.D. 243 (D.C.S.D.N.Y. 1942).

covery rules if the action is for a purpose other than that of merely obtaining the stockholder list.

The injunctive remedy has been used successfully in two interesting decisions. In *Steinberg v. American Bantam Car Co.*,¹³⁹ a shareholder sought to inspect the stockholder list under a general inspection statute, but he was denied the right. Ten days before the annual meeting of shareholders he sought to inspect the stockholder list under the applicable voting list statute. He was permitted to make an inspection and to make extracts, but there was insufficient time before the shareholders' meeting to complete the reproducing process. Accordingly, he sought and obtained an injunction which delayed the holding of the annual meeting until he had time to complete the stockholder list and to communicate with the other shareholders. Similarly, the Supreme Court of Minnesota held that a temporary injunction was the proper remedy to restrain management from making any proxy solicitations until the plaintiff had an opportunity to copy the stockholder list. In that case the court ordered the list produced by a writ of mandamus.¹⁴⁰

IV. CONCLUSION

The statutes which restrict the right of inspection of corporate records to stockholders who meet some holding period or percentage of ownership requirement, should provide a welcome decrease in the number of attempted inspections for improper purposes. Unfortunately, there is a noticeable absence of any such requirements in all of the voting list statutes.

The statutes which provide penalties for corporations or their officers for failure to comply with proper requests for inspection should promote a decrease in the number of unwarranted refusals to permit inspection of stockholder lists. However, those statutes with penalties which consist of nominal fines are probably of little effect. Moreover, since corporate by-laws frequently indemnify officers from liability except for willful misconduct, the penalties which are presently designed to reach officers individually are of questionable effectiveness.

Many corporate officers, due to their reluctance to divulge information which could result in the loss of their jobs, will undoubtedly continue to attempt to delay and frustrate inspection of stockholder lists. Of course, enterprising stockholders of corpora-

¹³⁹ 73 F. Supp. 426 (W.D. Pa. 1948), *appeal dismissed*, 173 F.2d 179 (3d Cir. 1949).

¹⁴⁰ *Nationwide Corp. v. Northwestern Nat'l Life Ins. Co.*, 251 Minn. 255, 87 N.W.2d 671 (1958).

tions which transact business in a number of states are frequently in a flexible enough position that they can defeat any delaying tactics by management. These shareholders can select a jurisdiction for an action to enforce their right of inspection on the basis of the most effective of the laws of several states.

Finally, it should be noted that any stockholder is capable of making a written demand for inspection and of stating a purpose which has been held by the courts to be proper. However, the success of such attempts to inspect stockholder lists will naturally continue to turn largely upon factual issues concerning the real motives of that stockholder.

Southwestern Law Journal

STUDENT EDITORIAL BOARD

Editor-in-Chief

ROBERT H. MOW, JR.

Managing Editor

THOMAS A. HOWETH

Notes & Developments Editor

BYRON L. FALK

Leading Articles Editor

OTTIS JAN TYLER

Comments Editor

OLIVER KELLEY

Research Editor

MARSHALL G. MARTIN

Business Manager

ROBERT T. GOWAN

JAMES R. CRAIG

ROY J. TRUE

Faculty Advisor

ALAN R. BROMBERG

Member, National Conference of Law Reviews

Copyright, 1962

BY SOUTHERN METHODIST UNIVERSITY