

W. G. PHILPOTTS, PETITIONER, VS. PHILIPPINE MANUFACTURING COMPANY AND F. N. BERRY, RESPONDENTS.*G.R. No. 15568. November 08, 1919*

Ponente: STREET, J.

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The petitioner, W. G. Philpotts, a stockholder in the Philippine Manufacturing Company, one of the respondents herein,, seeks by this proceeding to obtain a writ of mandamus to compel the respondents to permit the plaintiff, in person or by some authorized agent or attorney, to inspect and examine the records of the business transacted by said company since January 1, 1918. The petition is filed originally in this court under the authority of section 515 of the Code of Civil Procedure, which gives to this tribunal concurrent jurisdiction with the Court of First Instance in cases, among others, where any corporation or person unlawfully excludes the plaintiff from the use and enjoyment of some right to which he is entitled. The respondents interposed a demurrer, and the controversy is now before us for the determination of the questions thus presented.

The first point made has reference to a supposed defect of parties, and it is said that the action can not be maintained jointly against the corporation and its secretary without the addition of the allegation that the latter is the custodian of the business records of the respondent company.

By the plain language of sections 515 and 222 of our Code of Civil Procedure, the right of action in such a proceeding as this is given against the corporation; and the respondent corporation in this case was the only absolutely necessary party. In the Ohio case of Cincinnati Volksblatt Co, vs. Hoffmister (61 Ohio St., 432; 48 L. R. A., 735), only the corporation was named as defendant, while the complaint, in language almost identical with that in the case at bar, alleged a demand upon and refusal by the corporation.

Nevertheless the propriety of naming the secretary of the corporation as a codefendant cannot be questioned, since such official is customarily charged with the custody of all documents, correspondence, and records of a corporation, and he is presumably the person against whom the personal orders of the court would be made effective in case the relief sought should be granted. Certainly there is nothing in the complaint to indicate that the secretary is an improper person to be joined. The petitioner might have named the president of the corporation as a respondent also; and this official might be brought in later, even after judgment rendered, if necessary to the effectuation of the order of the court.

Section 222 of our Code of Civil Procedure is taken from the California Code, and a decision of the California Supreme Court—Barber vs. Mulford (117 Cal., 356)—is quite clear upon the point that both the corporation and its officers may be joined as defendants.

The real controversy which has brought these litigants into court is upon the question argued in connection with the second ground of demurrer, namely, whether the right which the law concedes to a stockholder to inspect the records can be exercised by a proper agent or attorney of the stockholder as well as by the stockholder in person. There is no pretense that the respondent corporation or any of its officials has refused to allow the petitioner

himself to examine anything relating to the affairs of the company, and the petition prays for a peremptory order commanding the respondents to place the records of all business transactions of the company, during a specified period, at the disposal of the plaintiff or his duly authorized agent or attorney, it being evident that the petitioner desires to exercise said right through an agent or attorney. In the argument in support of the demurrer it is conceded by counsel for the respondents that there is a right of examination in the stockholder granted under section 51 of the Corporation Law, but it is insisted that this right must be exercised in person.

The pertinent provision of our law is found in the second paragraph of section 51 of Act No. 1459, which reads as follows: "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."

This provision is to be read of course in connection with the related provisions of sections 51 and 52, defining the duty of the corporation in respect to the keeping of its records.

Now it is our opinion, and we accordingly hold, that the right of inspection given to a stockholder in the provision above quoted can be exercised either by himself or by any proper representative or attorney in fact, and either with or without the attendance of the stockholder. This is in conformity with the general rule that what a man may do in person he may do through another; and we find nothing in the statute that would justify us in qualifying the right in the manner suggested by the respondents.

This conclusion is supported by the undoubted weight of authority in the United States, where it is generally held that the provisions of law conceding the right of inspection to stockholders of corporations are to be liberally construed and that said right may be exercised through any other properly authorized person. As was said in *Foster vs. White* (86 Ala., 467), "The right may be regarded as personal, in the sense that only a stockholder may enjoy it; but the inspection and examination may be made by another. Otherwise it would be unavailing in many instances." An observation to the same effect is^o contained in *Martin vs. Bienville Oil Works Co.* (28 La.s 204), where it is said: "The possession of the right in question would be futile if the possessor of it, through lack of knowledge necessary to exercise it, were debarred the right of procuring in his behalf the services of one who could exercise it." In *Deadreck vs. Wilson* (8 Baxt. [Tenn.], 108), the court said: "That stockholders have the right to inspect the books of the corporation, taking minutes from the same, at all reasonable times, and may be aided in this-by experts and counsel, so as to make the inspection valuable to them, is a principle too well settled to need discussion." Authorities on this point could be accumulated in great abundance, but as they may be found cited in any legal encyclopedia or treatise devoted to the subject of corporations, it is unnecessary here to refer to other cases announcing the same rule.

In order that the rule above stated may not be taken in too sweeping a sense, we deem it advisable to say that there are some things which a corporation may undoubtedly keep secret, notwithstanding the right of inspection given by law to the stockholder; as, for instance, where a corporation[^] engaged in the business of manufacture, has acquired a formula or process, not generally known, which has proved of utility to it in the manufacture of its products. It is not our intention to declare that the authorities of the corporation, and more particularly the Board of Directors, might not adopt measures for the protection of such process from publicity. There is, however, nothing in the petition which would indicate that the petitioner in this case is seeking to discover anything which the corporation is entitled to keep secret; and if anything of the sort is involved in the case it may be brought out at a more advanced stage of the proceedings.

The demurrer is overruled; and it is ordered that the writ of mandamus shall issue as prayed, unless within 5 days from notification hereof the respondents answer to the merits. So ordered.

Arellano, C.J., Torres, Johnson, Araullo, Malcolm, and Avanceña, JJ., concur.

Demurrer overruled.

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