

ANTONIO PARDO, PETITIONER, VS. THE HERCULES LUMBER CO., INC., AND IGNACIO FERRER, RESPONDENTS.*G.R. No. 22442. August 01, 1924*

Ponente: STREET, J.

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The petitioner, Antonio Pardo, a stockholder in the Hercules Lumber Company, Inc., one of the respondents herein, seeks by this original proceeding in the Supreme Court to obtain a writ of mandamus to compel the respondents to permit the plaintiff and his duly authorized agent and representative to examine the records and business transactions of said company. To this petition the respondents interposed an answer, in which, after admitting certain allegations of the petition, the respondents set forth the facts upon which they mainly rely as a defense to the petition. To this answer the petitioner in turn interposed a demurrer, and the cause is now before us for determination of the issue thus presented.

It is inferentially, if not directly admitted that the petitioner is in fact a stockholder in the Hercules Lumber Company, Inc., and that the respondent, Ignacio Ferrer, as acting secretary of the said company, has refused to permit the petitioner or his agent to inspect the records and business transactions of the said Hercules Lumber Company, Inc., at times desired by the petitioner. No serious question is of course made as to the right of the petitioner, by himself or proper representative, to exercise the right of inspection conferred by section 51 of Act No. 1459. Said provision was under the consideration of this court in the case of *Philpotts vs. Philippine Manufacturing Co. and Berry* (40 Phil., 471), where we held that the right of examination there conceded to the stockholder may be exercised either by a stockholder in person or by any duly authorized agent or representative.

The main ground upon which the defense appears to be rested has reference to the time, or times, within which the right of inspection may be exercised. In this connection the answer asserts that in article 10 of the By-laws of the respondent corporation it is declared that "Every shareholder may examine the books of the company and other documents pertaining to the same upon the days which the board of directors shall annually fix." It is further averred that at the directors' meeting of the respondent corporation held on February 16, 1924, the board passed a resolution to the following effect:

"The board also resolved to call the usual general (meeting of shareholders) for March 30 of the present year, with notice to the shareholders that the books of the company are at their disposition from the 15th to 25th of the same month for examination, in appropriate hours."

The contention for the respondent is that this resolution of the board constitutes a lawful restriction on the right conferred by statute; and it is insisted that as the petitioner has not availed himself of the permission to inspect the books and transactions of the company within the ten days thus defined, his right to inspection and examination is lost, at least for this year.

We are entirely unable to concur in this contention. The general right given by the statute may not be lawfully abridged to the extent attempted in this resolution. It may be admitted that the officials in charge of a corporation

may deny inspection when sought at unusual hours or under other improper conditions; but neither the executive officers nor the board of directors have the power to deprive a stockholder of the right altogether. A by-law unduly restricting the right of inspection is undoubtedly invalid. Authorities to this effect are too numerous and direct to require extended comment. (14 C. J., 859; 7 R. C. L., 325; 4 Thompson on Corporations, 2d ed., sec. 4517; Harkness vs. Guthrie, 27 Utah, 248; 107 Am. St. Rep., 664, 681.) Under a statute similar to our own it has been held that the statutory right of inspection is not affected by the adoption by the board of directors of a resolution providing for the closing of transfer books thirty days before an election. (State vs. St. Louis Railroad Co., 29 Mo. Ap., 301.)

It will be noted that our statute declares that the right of inspection can be exercised "at reasonable hours." This means at reasonable hours on business days throughout the year, and not merely during some arbitrary period of a few days chosen by the directors.

In addition to relying upon the by-law, to which reference is above made, the answer of the respondents calls in question the motive which is supposed to prompt the petitioner to make inspection; and in this connection it is alleged that the information which the petitioner seeks is desired for ulterior purposes in connection with a competitive firm with which the petitioner is alleged to be connected. It is also insisted that one of the purposes of the petitioner is to obtain evidence preparatory to the institution of an action which he means to bring against the corporation by reason of a contract of employment which once existed between the corporation and himself. These suggestions are entirely apart from the issue, as, generally speaking, the motive of the shareholder exercising the right is immaterial. (7 R. C. L., 327.)

We are of the opinion that, upon the allegations of the petition and the admissions of the answer, the petitioner is entitled to relief. The demurrer is, therefore, sustained; and the writ of mandamus will issue as prayed, with costs against the respondents. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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