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# Corporations Right To Inspect Books and Records Under Section 38 of the Business Corporation Act

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eral times each year. Fourteen states<sup>12</sup> have authorized suits by a general law, when the terms of the statute are fully complied with and when the plaintiff is included in one of the classes set out in the statute. In some states<sup>13</sup> administrative tribunals hear claims against the state.

The *Jefferson Lake Sulphur* case decision seems to be in keeping with the modern trend of gradually stripping a state of its immunity from suit.

WILLIAM E. SKYE

CORPORATIONS—RIGHT TO INSPECT BOOKS AND RECORDS UNDER SECTION 38 OF THE BUSINESS CORPORATION ACT—Plaintiff, shareholder in Union Construction Company, Incorporated, as well as shareholder and director of Riverside Realty Company, Incorporated, sued to compel the latter company to allow him to inspect its books and records. Defendant resisted contending that plaintiff was a stockholder in a competing business and owned less than the twenty-five per cent of the stock of defendant corporation required by the Business Corporations Act<sup>1</sup> before inspection can be compelled. *Held*, “. . . the objects and purposes of the respondent corporation [Riverside Realty] and the Union Construction Co., Inc. are of such scope that either . . . could engage in several types of business. Hence . . . parol evidence was properly admitted to determine whether Union . . . and the respondent . . . are business competitors and . . . this evidence reveals that they are not.”<sup>2</sup> *Pittman v. Riverside Realty Company, Incorporated*, 36 So. (2d) 642 (La. 1948).

The requirement of ownership of a certain percentage of stock as a prerequisite to the inspection of corporate books is a recent innovation to corporation law.<sup>3</sup> The general rule as developed at common law afforded a right of inspection limited only by the requirement that such inspection be made at a reasonable

12. Arizona, California, Idaho, Indiana (contract claims only), Massachusetts, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Dakota, Virginia (pecuniary claims only), Washington, Wisconsin.

13. Alabama, Arkansas, California, Idaho, Montana, Nevada, South Carolina, Tennessee, Utah.

1. La. Act 250 of 1928, as last amended by La. Act 34 of 1935 (4 E.S.) [Dart's Stats. (Supp. 1947) § 1080 et seq.]. For a discussion of this act in its entirety, see Bennett, *The Louisiana Business Corporation Act of 1928* (1940) 2 LOUISIANA LAW REVIEW 644.

2. *Pittman v. Riverside Realty Co., Inc.*, 36 So. (2d) 642, 644 (La. 1948).

3. Although our act is patterned after the Model Business Corporations Act, this provision is entirely new. Of the three other states (Idaho, Washington and Kentucky) following the Model Act, none have a similar provision. Two states (New York and Illinois) require either a holding of stock

time for a proper purpose.<sup>4</sup> The need for this right of inspection is apparent. Louisiana's constitutions have recognized a right of inspection since 1879.<sup>5</sup> If no such right existed, a stockholder could conceivably know nothing about the corporation's affairs, and his right to vote his stock would become almost valueless. With the corporate form of business being utilized to an enormous extent, and the corresponding increase in the number of people holding shares of stock in two or more corporations, coupled with the practice of including a multitude of purposes in the charters of these corporations, it is clear that a strict interpretation of the statutory provision under discussion could lead to great hardship.

However, in the instant case, the court, in interpreting this clause, very properly took notice of the fact that the objects and purposes of the business as outlined in the charters of most corporations cover a broad field to enable the company to engage in various enterprises if time and circumstances make it desirable or necessary, and allowed parol evidence to disclose whether the two corporations were actually engaged in any competitive activities. This ruling should go far toward making the twenty-five per cent requirement more workable than might have been possible had the court seen fit to adhere to a strict interpretation. Following this decision, the actual business activity of the corporations will determine whether they are competitors within the meaning of Section 38.<sup>6</sup>

It is still very possible that some well-meaning shareholder owning a few shares of stock in a competitive corporation may desire to inspect the books. Such shareholder would not have the requisite twenty-five per cent of stock, but he might invoke Article XIII, Section 4, of the Louisiana Constitution which provides for public inspection of certain corporate books—namely, books showing the amount of capital stock subscribed, the names of owners of stock, the amount owned by them respectively, the amount of stock paid, and by whom, the transfers of stock with the date of transfer, the amount of the corporation's assets and liabilities, and the names and places of residence of its officers. Insofar as inspection of these books is concerned, it would seem

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for six months or ownership of five per cent of all stock before inspection may be made by any stockholder.

4. *Guthrie v. Harkness*, 199 U. S. 148, 26 S.Ct. 4, 50 L.Ed. 130 (1905).

5. La. Const. of 1921, Art. XIII, § 4; La. Const. (1879) Art. 245; La. Const. (1898) Art. 273; La. Const. (1913) Art. 273.

6. La. Act 250 of 1928, § 38 [Dart's Stats. (1939) § 1118].

that the percentage requirements of Section 38 would be void. Of course, the constitutional right of inspection does not embrace the examination of books showing the action taken at shareholders' and directors' meetings, statements of receipts and disbursements, gains and losses, and other similar facts—the inspection of which is essential before a thorough picture of the corporation's activity may be had. In order to have a right to inspect these books, the shareholder must meet the strict, and somewhat impractical, requirements of Section 38. In this regard the liberal interpretation of the instant case achieves a fortunate and logical result.

ROBERT L. ROLAND, III

DONATIONS—TACIT REVOCATIONS OF DONATIONS INTER VIVOS—An individual created a charitable trust to which he donated several hundred lots. Subsequently the donor and donee trustee agreed to sell to the defendant certain land, including the lots previously donated. The donor joined with the donee in signing the warranty deed tendered to the defendant, but the defendant refused to accept the deed. Suit for specific performance followed. The defendant resisted upon the ground that the title was not merchantable since the property was open to an action of revendication by the forced heirs of the donor.<sup>1</sup> Held, that the donor's joining with the donee in the signing of the warranty deed resulted in a *tacit* revocation of the donation and furnished a valid title which would not be subject to an action of revendication by the forced heirs of the donor. *Atkins v. Johnston*, 213 La. 458, 35 So. (2d) 16 (1948), Chief Justice O'Niell and Justice McCaleb dissenting.

The Civil Code treats a donation inter vivos as a solemn contract perfected by the formal acceptance of the donee and *irrevocable*<sup>2</sup> by the donor except for causes specified in the code.<sup>3</sup>

1. The right of revendication is granted by Art. 1517, La. Civil Code of 1870, which provides, "The action of reduction or revendication may be brought by the heirs against third persons holding the immovable property, which has been alienated by the donee, in the same manner and order that it may be brought against the donee himself, but after discussion of the property of the donee."

Accord: *Tessier v. Roussel*, 41 La. Ann. 474, 6 So. 542 (1889), in which the court recognized the right of the forced heirs to bring an action against third persons holding immovable property that has been the subject of a donation in excess of the disposable portion.

2. Art. 1468, La. Civil Code of 1870: "A donation *inter vivos* (between living persons) is an act by which the donor divests himself, at present and *irrevocably*, of the thing given, in favor of the donee who accepts it." (Italics supplied.)

3. Art. 1559, La. Civil Code of 1870.