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# Corporations - Right of a Stockholder to Inspect the Corporate Books

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and not the name of the security. The Louisiana courts have not been consistent in dealing with building and loan stock. In two instances the Uniform Stock Transfer Act was held applicable to the transfer of building and loan shares;<sup>16</sup> however, in two other cases it was held that an association shareholder was a creditor of the association, and that upon the death of the shareholder the administrator of his estate was entitled to withdraw the value of the shares from the association.<sup>17</sup> Followed to its logical conclusion the decisions holding that association stock is regulated by the Uniform Stock Transfer Act<sup>18</sup> would definitely characterize association stock as ordinary corporation stock, which is the object of a perfect usufruct. That act regulates the transfer of corporate stock, while the transfer of negotiable instruments, which are evidences of debt, is regulated by the Negotiable Instruments Law.<sup>19</sup> A different result may be reached by reasoning from the two decisions in which Louisiana courts have classified association stockholders as creditors of the association. Those two decisions, viewed in the light of the many decisions in which the courts have classified other evidences of indebtedness as being the objects of an imperfect usufruct,<sup>20</sup> are strong reason to presume that when the Supreme Court is squarely faced with the problem, it will classify building and loan stock as being the object of an imperfect usufruct.

*Bernard Kramer*

#### CORPORATIONS — RIGHT OF A STOCKHOLDER TO INSPECT THE CORPORATE BOOKS

In Louisiana the stockholder of a business corporation is granted the right to inspect the books of the corporation in which

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16. *Lilley v. First Federal Sav. & Loan Assn.*, 194 So. 901 (La. App. 1940); *State ex rel. Moulin v. Ideal Sav. & Homestead Assn.*, 178 So. 521 (La. App. 1938).

17. *Dimitry v. Shreveport Mut. Bldg. Assn.*, 167 La. 875, 120 So. 581 (1929); *Succession of D'Anna*, 6 La. App. 142 (1927).

18. LA. R.S. 12:521 *et seq.* (1950) (The Louisiana Uniform Stock Transfer Act).

19. LA. R.S. 7:1 *et seq.* (1950) (The Louisiana Negotiable Instruments Law).

20. *Taylor v. Taylor*, 189 La. 1084, 1091, 181 So. 543, 544 (1938): ("Since the estate of the decedent consisted of negotiable bonds payable to bearer, the usufruct is an imperfect one."); *Vivian State Bank v. Thompson-Lewis Lbr. Co.*, 162 La. 660, 111 So. 51 (1927) (time certificate of deposit held to be the object of an imperfect usufruct); *Succession of Block*, 137 La. 302, 68 So. 618 (1915) (notes); *Minquez v. Delcambre*, 125 La. 176, 51 So. 108 (1910) (negotiable promissory notes held to be the objects of an imperfect usufruct, but notes were matured); *Johnson v. Bolt*, 146 So. 375 (La. App. 1933) (promissory notes held to be the object of an imperfect usufruct). For a complete discussion of the classification of promissory notes as being the object of an imperfect usufruct, see Comment, 4 TUL. L. REV. 104 (1929).

he has invested.<sup>1</sup> Whether or not this right can be waived in advance of the stockholder's demand to inspect has apparently never been decided,<sup>2</sup> but the problem was suggested by a recent case.<sup>3</sup>

A corporation is required by the Constitution to keep available for public inspection its books showing the amount of capital stock subscribed, the names of owners of stock, the amount owned by them respectively, the amount of said stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities and the names and addresses of its officers.<sup>4</sup> This provision imposes on the corporation a constitutional duty of which it cannot be relieved by contract with an individual. Section 38E of the Corporation Act grants a much wider right of inspection to shareholders who meet its requirements as to the percentage of stock held. The statute applies to "any and all of the books and records of the corporation,"<sup>5</sup> rather than to certain named ones as in the constitutional provision. Is this shareholder's right of inspection one which he may waive by agreement with the corporation, or is it a fundamental right which is inherent in the shareholder status under the Louisiana Corporation Act? The answer to this question is a matter of basic statutory construction. The corporation is a creature of statute and is subject to all mandatory

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1. LA. R.S. 12:38E (1950). A general right of inspection of certain corporate books is given by LA. CONST. art. XIII, § 4. The right of a stockholder to inspect the corporate books was also recognized by the early Louisiana jurisprudence. *Martin v. Bienville Oil Works Co.*, 28 La. Ann. 204 (1876); *Cockburn v. Union Bank*, 13 La. Ann. 239 (1853).

2. In this context waiver is simply a matter of contract. For a discussion of various aspects of waiver, see EWART, *WAIVER DISTRIBUTED* c. 6 (1917).

3. *State ex rel. Wolfner v. Fairfax Shipyards Storage*, 93 So.2d 336 (La. App. 1957). In the *Fairfax* case, the plaintiff was issued certain shares of stock in the defendant corporation. These shares were created by amendment to the corporate charter which provided that this stock was "without any right or privilege to participate or vote in the affairs, conduct or management of this corporation." When the plaintiff sought to inspect the books of the defendant corporation, the defendant refused on the ground that the plaintiff, by accepting the non-participating stock, had waived his right to inspect. The Orleans Court of Appeal affirmed the trial court's granting to the plaintiff the right to inspect the corporation's books. The court held that a waiver of the stockholder's right to inspect, assuming without deciding that there can be such a waiver, must be unequivocal, and the conditions under which the plaintiff accepted the stock did not create a waiver either directly or by compelling inference.

This topic note is not designed to treat the problem of whether a stockholder may contract with the transferee of stock that the latter shall not exercise the right of inspection. It only deals with the stockholder and a contract with the corporation.

4. LA. CONST. art. XIII, § 4.

5. LA. R.S. 12:38E (1950).

limitations of the law under which it is created.<sup>6</sup> Examination of the Business Corporation Act will reveal provisions granting specific permission to deviate from certain of its stipulations. For example, every shareholder shall have preemptive rights, *unless* the articles provide otherwise;<sup>7</sup> also, every shareholder shall have one vote for every share standing in his name, *unless* the articles provide otherwise.<sup>8</sup> Section 38E specifically grants the right of inspection to the shareholder and does not state that the articles may provide otherwise. Therefore, it would seem that the legislative intent was that the right to inspect the corporate books may not be abrogated by the articles or by-laws of the corporation. Similarly, the officers of a corporation should not be able to achieve this result indirectly by means of a series of agreements between the corporation and the individual shareholders. The officers are authorized to act only in accordance with the corporate charter and by-laws, and the Corporation Act.<sup>9</sup>

There is also the broader ground, based simply on public policy, by which the court could further justify denial to the corporation of the power to abridge the shareholder's right of inspection. Corporations, though they have the capacity of natural persons, are restricted in their authority to contract.<sup>10</sup> A natural person contracts where not forbidden, but a corporation contracts only within its authority.<sup>11</sup> This distinction reflects a willingness on the part of the legislature to restrict corporate activity. Therefore, when the possibilities of fraud resulting from waiver of the statutory right of inspection are weighed against a corporation's freedom of contract, the latter element is not so compelling as when it is a matter of abridging the individual's freedom of contract. The corporate entity has long been considered a privilege extended by the state, and subject to such restrictions as the state may see fit to impose.<sup>12</sup>

From the foregoing analysis it is submitted that the statutory and constitutional provisions for inspection reflect the law's

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6. *Id.* 12:12A; *Jones v. Shreveport Lodge*, 221 La. 968, 60 So.2d 889 (1952).

7. LA. R.S. 12:28 (1950).

8. *Id.* 12:32A.

9. *Id.* 12:35C; *Tichenor v. Dr. G. H. Tichenor Co.*, 161 So. 198 (La. App. 1935).

10. LA. R.S. 12:12A (1950); *Milwaukee Trust Co. v. Germania Ins. Co.*, 106 La. 669, 31 So. 298 (1902).

11. *Central Transportation Co. v. Pullman's Palace Car Co.*, 139 U.S. 24 (1891); *In re German Savings & Loan Ass'n v. Reeder*, 253 Fed. 722 (7th Cir. 1918); *Seibrecht v. New Orleans*, 12 La. Ann. 496 (1857).

12. *Milwaukee Trust Co. v. Germania Ins. Co.*, 106 La. 669, 31 So. 298 (1902).

awareness of a fundamental right of a shareholder. To protect this right the Corporation Act does not recognize any power to change or modify it in the articles or by-laws, and it should logically follow that it cannot be indirectly abrogated by agreements with the shareholders.

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CRIMINAL LAW — CRIMINAL INTENT OR KNOWLEDGE AS AN  
ELEMENT OF UNLAWFUL POSSESSION UNDER THE  
NARCOTICS LAW

In a prosecution for unlawful possession of a hypodermic syringe and needle, the state introduced in evidence (for the stated purpose of showing criminal intent and guilty knowledge) a barbiturate found in the box along with the hypodermic instruments. When the defense subsequently attempted to introduce evidence that defendant had never used the hypodermic instruments for administering narcotics, the prosecution's objection was sustained on the ground that it was irrelevant and immaterial as defendant was not charged with possession of narcotics. The statute defining the crime of unlawful possession of hypodermic instruments<sup>1</sup> makes no mention of any requirement of criminal intent or knowledge of any particular facts. On appeal, *held*, conviction reversed. "Unlawful possession" necessarily involves knowledge of the fact that one is possessing unlawfully, as well as knowledge of the criminal consequences which one should reasonably anticipate therefrom. The refusal of the trial judge to allow defendant to show that he was in "good faith" and that "his intent was anything but that of violating the law" deprived the defense of a substantial right. *State v. Birdsell*, 232 La. 725, 95 So.2d 290 (1957).

Article 11 of the Louisiana Criminal Code provides that "the definitions of some crimes require a specific criminal intent, while in others no intent is required," and that "some crimes consist merely of criminal negligence that produces criminal consequences."<sup>2</sup> In those crimes defined in the Criminal Code itself, the mental element is clearly spelled out. Article 10 of the Code<sup>3</sup> declares that criminal intent may be "general" or "specific" and

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1. LA. R.S. 40:962 (1950).

2. *Id.* 14:11.

3. *Id.* 14:10.