STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

In the Matter of the Memorial of

Edward B. Graves.

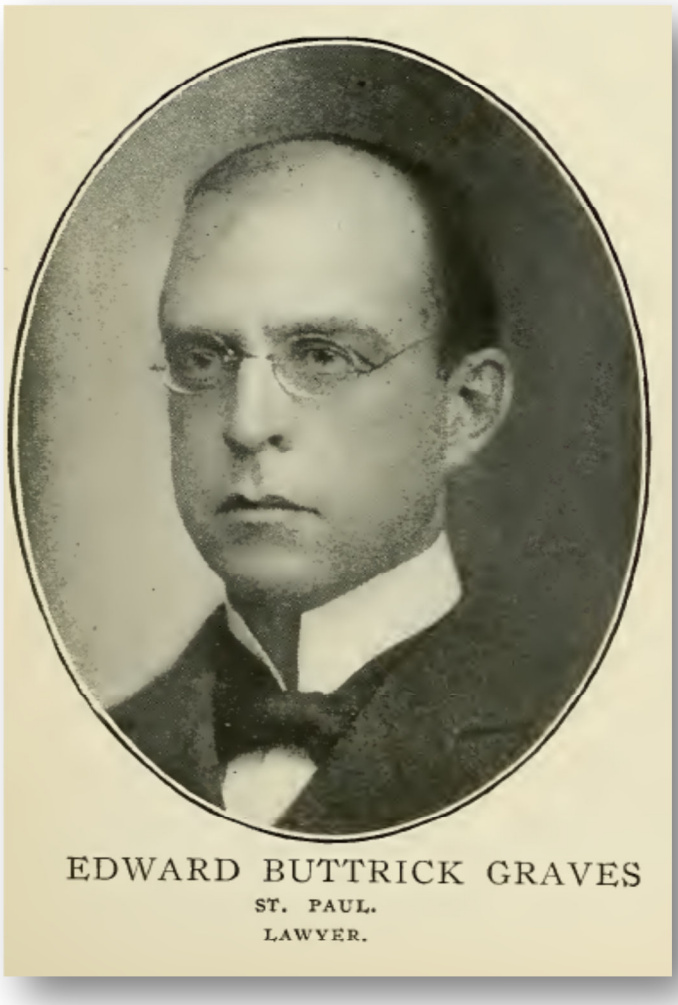
Edward B. Graves died in this City on December 2nd, 1930. He came to St. Paul in 1887. He was born at Rutland, Vermont, June 22nd, 1859

He graduated at Yale in 1881, and from the Yale Law school in 1884. For two years, he practiced his profession in New Haven, Connecticut, prior to coming to St. Paul. He was a member of Christ Church. His wife, Margaret B. Graves, and two brothers survive him.

His father was Charles E. Graves of New Haven Connecticut, who, for many years, was treasurer of Trinity College in Hartford.

Thomas Graves, the first of the family, settled in Hartford, about 1640. Many of his descendants served in the Colonial Wars and in the Revolutionary War.

His mother was Sarah L. Buttrick. William Buttrick, her first ancestor, came to America from England in the ship Planter in 1635 and settled in Boston, removing later to Concord, Massachusetts. Major John Buttrick, of her family, was in command of the American forces at the battle of Concord and Lexington and directed the firing of the "shot that was heard around the world."



Men of Minnesota (1902)

Edward B. Graves attained high honors at Yale in his early manhood, and in his practice at same Paul became one of the leading lawyers of the State.

He tried successfully the important cases of Venner vs. Great Northern Railway Company and The Trustees of the Great Northern Ore trust, which involved the rights of minority stockholders in corporations. He also tried successfully the case of Paterson vs. Shattuck Arizona Copper Company and Denn –

Arizona Copper Mining Company, in which he also established the rights of minority stockholders.

He was a student in every sense of the word, and a scholarly and companionable man.

Although Mr. Graves was married comparatively late in life, the remaining years were long enough to exemplify his domestic taste and his love for the home he purchased.

In addition to the choice home library that he had delighted in collecting, he sought and found rare engravings and etchings, which he justly prized, and which, in defiance of modern fashion, he was pleased to display on the home walls. There he treasured also the beautiful furniture of his New England ancestors, and delighted to recall for his intimate friends the history of his various pieces. In short, his home surroundings were old-fashioned and ideal.

The first Summer that he spent in his new home saw him labor with prodigious industry to improve, with his own hands, the condition of the grounds. Many men do more or less garden, as we call it, but with characteristic application to his purpose, he used far more than the usual leisure hours, working vigorously sometimes until midnight under the electrical lights which he provided for the purposes.

Here, also, as within his home, he exhibited more than usual good taste, for he transformed an ordinary backyard into a pleasant garden of unusual charm.

In these years of domestic life, Mr. Graves shared with his wife the quiet pleasures of hospitality, informal, but sincere, ample without ostentation.

These pleasant hours were spent in discussion of passing events, or at the whist table, or in other friendly intercourse have come to an end that seems untimely. For, although, he had passed the period of three score years and ten, his spirit was still a vigorous spirit of mental activity, and not until recently could it have been expected that he was about to leave the agreeable environment of these closing years of his life.

His domestic traits were consistent with his mental inheritance from the past. He was intimately familiar with American History, Literature and Tradition. This intimacy was with him not a mere acquisition. It was a structural element in his character. He revered the past, not because he was blind to its shortcomings, but because he admired its achievements and sympathized with its aspirations.

He felt a just pride in the part that had been played in that past by those who work in the line of his ancestry.

His books, his pictures, his household surroundings, all testified to the inborn American culture of this American gentleman, who deeply loved his Country and his home

In his profession, he was a sound advisor in corporation matters, domestic troubles, insurance and real estate difficulties, and, in short, and all of the branches of the practice of an old-fashioned lawyer.

He gained the confidence of his clients and retained it; all with whom he came in contact were impressed by his strict integrity. He always stood for fair dealings between man and man.

His judgment was sound.

With keenness he grappled with and solved complicated points of law. To the Court, he presented his arguments clearly, with force

and understanding. He had the gift of ready wit and prompt repartee. His written arguments were elaborate, richly colored and admirably sustained.

In presenting a case, his great strength was in the printed page, and no Judge could read his briefs without learning something new about sound law.

His mental activity was in indefatigable up to the last few weeks of his life. He would frequently, after a long day in his office, returned to his desk in the evening to work until after midnight. His powers of concentration and analysis were equal to his industry, and when it is added that his mental vision was clear and his opinions candid, all of us can readily understand the remarks of a former Chief Justice of this State that "When Mr. Graves stated a proposition of law to the Court, the Judges were inclined to accept it as accurate."

He had a keen mind, thoroughly trained and educated. He was a man of original and independent thought, deeply versed in the law as it is, but further having a profound knowledge of the principles underlying the law.

He understood and fully appreciated the causes and reasons, the human forces and attributes upon which the law is based and throughout his long career at the bar, he did much to elevate and dignify the profession to which his life was devoted.

He was a delightful companion and comrade. He had a pronounced and delicate sense of humor and a kindness and consideration for others that made him companionable and welcomed among his follows.

He was well acquainted with many of the large corporations of the United States. His tenacious memory was stored with facts and statistics concerning iron mining, ores, copper, public service

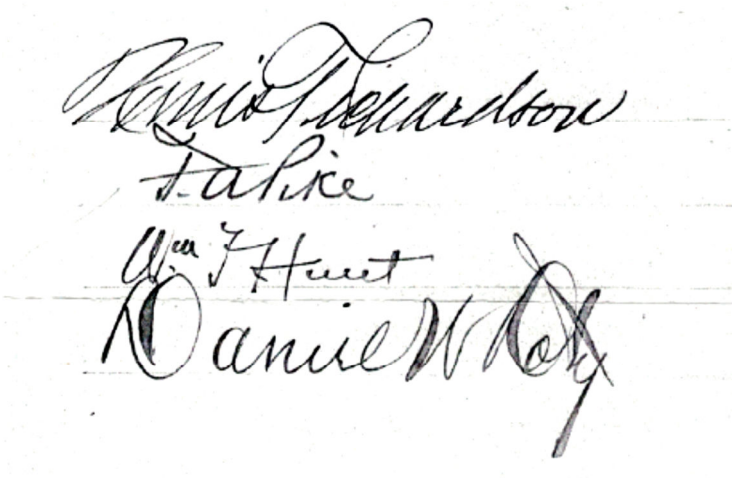
and railroad companies. He was, perhaps, the best informed lawyer in the Northwest upon the subjects of the rights of minority stockholders. His briefs in the many cases where he protected or secured such rights for the minority, are schools of legal learning. He was an expert advisor in investments and for years had watched the maneuvers of high finance.

In Church, political and social life, he was a liberal. Born in New England, he loved New England and its people; adopted and adapted to the Northwest, he loved the Northwest and its people.

The memory of this scholarly, kindly old-fashioned man will cling about our old Courthouse 'till its walls fall.

We hope that this memory may be transferred to the new edifice and that it will kindle sympathy in the hearts of the younger generations of the members of this Bar and inspire them, as he was inspired, with appreciation for the merits of the past.

April 4th 1931.



Appendix

Case **Pages**

Venner v. Great Northern Ry. Co.,

108 Minn. 62 (1909)(Start, C. J.)

CLARENCE H. VENNER v. GREAT NORTHERN RAILWAY COMPANY and Others.[1]

May 21, 1909.

Nos. 15,670, 15,671—(5, 6).

No Waiver of Appeal.

The appeals herein were not waived by the appellant, nor can they be held to be double, in view of the facts stated in the opinion.

[1]Reported in 121 N. W. 212.

Service of Summons on Associates.

Allegations of the complaint construed, and *held*, that they show that the defendant trustees are carrying on business as associates under a common name, within the meaning of section 4068, R. L. 1905, providing for the service of summons on one or more of such associates.

Action against the Great Northern Railway Company, a corporation of Minnesota, the Lake Superior Company, Limited, a limited copartnership under the laws of the state of Michigan; James J. Hill, Louis W. Hill, and Robert I. Farrington; and James N. Hill, Louis W. Hill, Walter J. Hill, and Edward T. Nichols, as trustees under an agreement of trust, dated December 7, 1906, with Lake Superior Company, Limited, in the district court for Ramsey county to annul that agreement and an agreement between defendant railway company and defendant Lake Superior Company, dated October 20, 1899, and to dispose of the property of the railway company held by the Lake Superior Company. Defendants James N. Hill and Edward T. Nichols appeared specially and separately moved to set aside the service of the summons and complaint, and after the service of an amended summons and amended complaint they moved that the service of these be set aside. From orders, Kelly, J., granting the motions, plaintiff appealed. Reversed.

Edward B. Graves and *Wilbur F. Booth,* for appellant.

William R. Begg, for respondents.

START, C. J.

The plaintiff appealed from two orders made herein by the district court of the county of Ramsey. One was an order dated May 2, 1907, granting the separate motions of the defendants James N. Hill and Edward T. Nichols to set aside an attempted service on them, respectively, of the original summons and complaint. The other was from an order, dated September 7, 1907, granting the separate motions of the same parties to set aside an attempted service on them, respectively, of the amended summons and complaint. Both appeals involve the same questions, and they were heard in the court together as one appeal. We assume, but only as a basis for the consideration of such questions, that the allegations of fact contained in the com-

plaint and in the affidavits on the part of the plaintiff in opposition to the motions are true.

The plaintiff is a resident of the state of New York and a stockholder of the defendant the Great Northern Railway Company, a Minnesota corporation, hereinafter designated as the "Great Northern." The defendant Lake Superior Company, Limited, is a limited copartnership organized under the laws of Michigan, hereinafter designated as the "Superior Company." Of the defendant trustees, Louis W. Hill and Walter J. Hill are residents of the state of Minnesota, and James N. Hill and Edward T. Nichols are residents of the state of New York.

According to the allegations of the complaint the Great Northern had acquired property, consisting of shares of stock of other corporations, of the aggregate value of $34,000,000, which it was not authorized by its charter to purchase or hold, and which it transferred to the Superior Company to be held by it for the benefit of the Great Northern; the property and the income therefrom to be disposed of by the Superior Company as the Great Northern might direct, and not otherwise. On November 14, 1906, the Great Northern directed the Superior Company to transfer all the property so held by it to the defendant trustees upon the terms and conditions and for the purposes stated in an agreement of trust between the Superior Company and the defendant trustees, dated December 7, 1906, which was duly executed by them, respectively.

This trust agreement, so far as its provisions are here material, purported to vest the legal title to all the property in question in Louis W. Hill, James N. Hill, Walter J. Hill, and Edward T. Nichols, the parties of the second part named therein, and the survivors of them and their successors, in trust, however, for the purposes therein stated. The parties of the second part were given thereby the absolute management, control, and complete power of disposition of the property, and all income and profits thereof for the purpose of the trust, which was to continue during the life of the last survivor of twenty persons named in the agreement and for twenty years thereafter, unless the trust should sooner be determined. In case any trustee should be unable to act for any cause, the other trustees are authorized to exercise all the powers conferred by the

agreement, and in case of the death or resignation of any trustee the other trustees may fill the vacancy. The trust agreement further provides that the trustees shall choose one of their number as president, who shall be the active manager and executive officer in carrying on the business devolving upon the trustees, who is to receive in any event an annual salary of $25,000, which may be increased to $50,000 if the volume of business reaches a specified limit. The other trustees are to receive an annual salary of $10,000. After payment of, or provision made for, all expenses of the trust business, including taxes, the trustees are required at least once a year to distribute and pay such portion of the net income or proceeds of the trust property as they deem proper to the shareholders of the Great Northern registered as such upon its books at the close of business on December 6, 1906; that is, on the day next before the execution of the trust agreement. The trustees organized, by choosing Louis W. Hill as president, upon the execution of the trust agreement, took possession of the property therein described, and have ever since carried on in their names as trustees under such trust agreement the business devolved upon them thereby.

The complaint prays judgment to the effect that the trust agreement is void, that the property which is the subject-matter of the agreement belongs to the Great Northern, and that it be restored to that corporation. The original summons and complaint were duly and personally served on all of the defendants, including the trustees as such, who duly appeared, except the trustees James N. Hill and Edward T. Nichols. Service was attempted to be made on the last-named trustees as such on March 30, 1907, by delivering to and leaving a true copy of the summons and complaint with Louis W. Hill as the president of the trustees. Thereupon they severally appeared specially by the same attorney, and separately moved the court at the same hour to set aside such attempted service. Each motion involved the same question, and neither involved any other question. The motions were heard together without objection, and the trial court made its one order, whereby it granted each motion and set aside such service as to each of the respondents. Neither party made any objection to the form of the order. On October 30, 1907, the plaintiff appealed from the order, but did not specify in

his notice of appeal that the appeal was taken as to each respondent from so much of the order as granted his motion. The notice of appeal was directed to the respondents, and each of them, and to the attorney of each. An amended summons and complaint were thereafter served upon the respondents in the same manner as the originals were served, and separate motions were then made by them, respectively, to set aside such service. The motions were heard together in the same manner as were the first motions, and the court made its order whereby it granted each motion and set aside the service as to each of respondents. The plaintiff appealed from this order in the same manner as from the order setting aside the service of the original summons and complaint.

Since the perfecting of both appeals, and on January 11, 1908, the amended summons and complaint were duly and personally served on James N. Hill as one of the trustees under the trust agreement, who thereupon entered a general appearance in the action and demurred to the complaint.

1. The respondents made a motion in this court to dismiss the appeals. It is urged that the appellant has waived his appeals as to James N. Hill and that they now involve only a moot question, because the summons has been personally served upon him and he has appeared generally in the action, and, further, that if the court acquired jurisdiction by the first service there was no need of the subsequent personal service. The fact that the appellant as a matter of precaution availed himself of the opportunity to make personal service of the summons after the first service had been set aside by the district court and after the appeals had been perfected cannot be held to be a waiver of the appeal, or a concession that the first service was insufficient. It is not entirely clear from the record now before us that the question of the sufficiency of the first service may not become material, as the defendants have not answered. Again, the appeals were perfected before personal service was made, and the respondent did not make his motion to dismiss the appeals until some three and a half months after he entered a general appearance in the action. It would seem that, if the respondent was of the opinion that personal service upon him and his appearance in the case rendered the question involved in the appeals a moot one, he should

have promptly moved to dismiss them. However this may be, we are of the opinion that the appeals ought not to be dismissed, either on the ground of waiver or on the ground that they now involve only a moot question.

It is further contended that the appeals are double, and for this reason they must be dismissed as to both respondents. It may be conceded that the notices of appeal were each irregular; but, in view of the facts which we have stated relevant to the motions and appeals, we are of the opinion that the appeals were not double. We base this conclusion upon the special facts of this case, which differentiates it from those cited and relied upon by the respondents. The motion to dismiss the appeals is denied.

2. The merits of the appeals, according to the concession of the respective parties, involve but a single question, namely: Does the record show prima facie that the trustees, under the agreement of trust dated December 7, 1906, are carrying on business as associates under a common name, within the meaning of R. L. 1905, § 4068? The section reads as follows: "When two or more persons transact business as associates and under a common name, whether such name comprise the names of such persons or not, they may be sued by such common name, and the summons may be served on one or more of them. The judgment in such case shall bind the joint property of all the associates, the same as though all had been named as defendants."

This statute has been considered by us in several cases. Gale v. Townsend, 45 Minn. 357, 47 N. W. 1064; Dimond v. Minnesota Sav. Bank, 70 Minn. 298, 73 N. W. 182; Taylor v. Order of Railway Conductors, 89 Minn. 222, 94 N. W. 684; St. Paul Typothetæ v. St. Paul Bookbinders' Union No. 37, 94 Minn. 351, 102 N. W. 725. The cases cited hold that the action authorized by the statute is one against the associates by their common name, and that service of the summons is such that a case may be made on one or more of the associates, and such service gives the court jurisdiction to award judgment which shall bind the joint property of all of them. The reason for such conclusion is that each of the associates in their joint business and in respect to their joint liabilities and property is deemed to be the agent of all, with authority to defend their joint

interest; that the statute is not limited to associates who are co-partners, but includes all persons associated—that is, united and acting by mutual convention—in business, who transact such business under a common name; that the business need not be strictly a commercial enterprise, for the exclusive benefit of the associates; and, further, that the statute is a remedial one, and must be liberally construed, to the end that justice may not be balked in cases within the spirit and scope of the statute as indicated by the language thereof, where personal service of the summons cannot be made within the territorial jurisdiction of the court upon all of the associates.

The record herein shows that the defendant trustees are associated by contract as such in the transaction of a business of great magnitude, and that the legal title and exclusive possession of the property which is the basis of such business are vested in them jointly as trustees, with full power of control and disposition thereof. Then why should not the service of the summons in this case upon one of the associated trustees, especially upon their president, who is the active manager and executive officer in carrying on their business, authorize a judgment binding the property which forms the subject-matter of the business? The respondents answer that they are not associates transacting business within the meaning of the statute, because they are associated together, not by their own act, but by the act of the creator of the trust. They voluntarily, by their written contract, the trust agreement, associated themselves for the purpose of carrying on the business of managing and disposing of the property conveyed to them in trust. If, as alleged, a third party, the Superior Company, set them up in business, by transferring to them the property of another as a basis for the business, it is difficult to see how such fact can affect the question whether they are associates and doing business under the meaning of the statute.

Again, it is contended that the respondents neither act under a common name nor are they sued as trustees under the agreement of trust of December 7, 1906, within the meaning of the statute. As we read the record and construe the statute, this claim is without merit. It is, however, claimed that our construction of the statute renders it unconstitutional, because in this case a personal judgment against the trustees is sought which cannot be supported by substi-

tuted service of the summons. No personal judgment is sought against any individual trustee as such, but only a joint judgment against all the associate trustees as such, each of whom is the agent of all to defend their joint interests. We hold that the statute, as construed, does not violate either the state or the federal constitution.

It follows that the trial court erred in setting aside the service of the summons and the amended summons.

Orders reversed.

Another chapter in Clarence Venner's pursuit of the Great Northern:

CLARENCE H. VENNER v. GREAT NORTHERN RAILWAY COMPANY and Others.[1]

May 17, 1912.

Nos. 17,301—(22).

Corporation — action to compel restoration of property — complaint.

In an action by a minority stockholder to compel the restoration to the corporation of property acquired by it through investments beyond and in violation of its charter powers, and subsequently unlawfully disposed of without consideration, and for the sale thereof under decree of the court for the benefit of all the stockholders, it is *held* that the complaint states a cause of action for at least a part of the relief demanded, and the demurrer thereto was properly overruled.

Joinder of causes of action.

Separate causes of action *held* not improperly united in the complaint.

Action in the district court for Ramsey county against Great Northern Railway Company, Lake Superior Company, Limited, James J. Hill, Louis W. Hill and Robert I. Farrington, and James N. Hill, Louis W. Hill, Walter J. Hill and Edward T. Nichols, as trustees under an agreement of trust dated December 7, 1906, with Lake Superior Company, Limited. The amended complaint prayed for a judgment decreeing that the agreement between the railway company and the Superior Company, dated October 20, 1899, and the trust agreement between the Superior Company and the defendants James N. Hill, Louis W. Hill, Walter J. Hill and Edward T. Nichols, dated December 7, 1906, and all transactions pursuant to said agreements, and each of them, were illegal and void, and that the same be set aside; that any and all securities and property held by the Superior Company or by the trustees were the property of the railway company, and that the Superior Company and the trustees transfer the same to the railway company, or such receiver as the

[1] Reported in 136 N. W. 271.

court might appoint, to fully vest the legal title of the same in the railway company or such receiver; that the Superior Company and the trustees account to the railway company, or to such receiver, for all moneys that at any time had or might come into their hands from the property acquired under such agreement or purchase with funds belonging to the railway company; that the railway company and its president and other defendants who are officers or directors be perpetually enjoined from further buying, owning or holding, either directly or indirectly, through the Superior Company or through the trustees, or through any of the corporations mentioned in the complaint or through other corporations, any of the securities described in the complaint, and from engaging in any line of business complained of in the complaint; that the railway company or any receiver who may be appointed at once dispose of any and all securities and property of the kind referred to in the complaint and distribute the net proceeds among the stockholders of the railway company; and that a receiver be appointed.

From an order, Bunn, J., overruling their separate demurrers to the complaint, defendants took separate appeals. Affirmed.

E. C. Lindley and *M. L. Countryman,* for appellants.

Edward B. Graves and *Elijah N. Zoline,* for respondent.

Brown, J.

Action in equity by plaintiff, a stockholder of the Great Northern Railway Company, a corporation, in his own behalf and in behalf of all other stockholders, to compel the restoration of certain property acquired by the corporation as the result of transactions beyond its charter powers, and not used or devoted to the operation of the railway, a part of which is alleged to have been wrongfully and unlawfully transferred to the other defendants, for the sale of the same and the distribution of the proceeds to the stockholders of the corporation. Defendants separately demurred to the complaint, assigning as grounds thereof: (1) The improper joinder of causes of action; and (2) that the complaint fails to state facts constituting a cause of action against any of the defendants. The demurrers were overruled, and defendants separately appealed.

A statement in the abstract of the facts alleged in the complaint will sufficiently disclose the scope and purpose of the action and the questions necessary and proper to be determined at this time. A detailed statement of the facts alleged would serve no useful purpose and result in unnecessarily extending the opinion.

The Great Northern Railway Company is a corporation duly created and existing under the laws of this state, and owns and operates various lines of railway in, through, and beyond the borders of the state. Plaintiff is the owner of three hundred shares of its stock. The complaint alleges that the corporation is the successor in interest of the Minneapolis & St. Cloud Railroad Company, which was organized under chapter 160, p. 294, Territorial Sp. Laws 1856. The defendants claim that the company is the successor also of the Minnesota & Pacific Railroad Company, which was organized under chapter 1, p. 4, Territorial Laws (Extra Sess.) 1857, and that it possesses by that succession all the rights, powers, franchises, and privileges held and possessed by that company. State v. Great Northern Ry. Co. 100 Minn. 445, 111 N. W. 289, 10 L.R.A.(N.S.) 250; State v. Great Northern Ry. Co. 106 Minn. 303, 119 N. W. 202. This question will be referred to further along in the opinion.

The complaint further alleges that prior to October 20, 1899, the defendant railway company had acquired by purchase with money belonging to the company, which should have been used in the operation of the railway, various stocks, bonds, and other securities, of the aggregate value of about $34,000,000. It further alleges that the acquisition of this property was not necessary or appropriate to the management of the railway, and that the purchase thereof was beyond the charter powers of the corporation and unauthorized.

The complaint also alleges that on or about October 20, 1899, defendant James J. Hill, the officers and board of directors of the railway company, and defendants Farrington and James N. Hill, well knowing that the company could not lawfully, under its charter or the laws of the state, purchase, own, or hold the stocks, bonds, and securities mentioned, or become associated in business with the corporations issuing the same, entered into a scheme and plan to enable

the company to evade its charter and the laws of the state, and to continue to hold, own, and control such properties, and to enable it to control the business and affairs of the corporations issuing the stocks and bonds so purchased, and to that end caused to be formed a limited copartnership under and pursuant to the laws of the state of Michigan, named the Lake Superior Company, Limited, and that the officers and directors of the railway company thereafter transferred all such stocks, bonds, and securities to that copartnership. The Superior Company is alleged to have been formed by James J. Hill, James N. Hill, and R. J. Farrington, with a capital stock of $100,000. The power of this company, as expressed in its articles of association, and its authority in the transaction of its affairs, was that of buying, selling, working, and dealing in mineral lands in the states of Minnesota, Wisconsin, and Michigan; the mining of iron ore and other minerals, and marketing the same; and also investing in stocks, bonds, and securities of other corporations and concerns. James N. Hill ceased to be a member of the company in 1902, and Louis W. Hill was appointed in his place.

The complaint also alleges that the capital stock of the company, $100,000, was never paid in by the members thereof, and that the sole business of the company was the management and control of the stocks, bonds, and securities transferred to it by the railway company. An examination of the articles of association, in connection with the contract transferring the property, discloses that the Superior Company was a mere holding company, and that the affairs thereof, and the manner and method of handling and dealing with the stocks and bonds so transferred, as well as the investment of the income therefrom, were reserved to the board of directors of the railway company. So that at all times the railway company remained the owner in fact of all the securities so transferred, and the management thereof was in the interest and for the benefit of its stockholders. From this it follows that all of the securities now held by that company, and which were not transferred by it as presently to be mentioned, are still owned by the railway company, though held by and in possession of the Superior Company. The complaint alleges that in the man-

agement of this property, and from the income thereof and from money belonging to the railway company the Superior Company has acquired title to a large amount of other property, some of which consists in iron mines of great value, a particular description of all of which, or the value thereof, plaintiff is unable to state, for the reason that he has been denied access to the books of the railway company where the same appears.

The complaint further alleges that thereafter the directors of the railway company caused to be organized a number of corporations for the purpose of holding, owning, and operating iron mines, manufacturing iron, steel, and other metals, and the general dealing in mineral and other lands; that without consideration, and in furtherance of the scheme of the railway officials to continue in ultra vires transactions, the directors of the railway company caused the Superior Company to convey, separately, to each of such mining companies, certain of the mining lands acquired and held by that company, and further caused the mining companies to issue and deliver to the Superior Company shares of stock in proportion to the value of the property conveyed to each. The complaint also alleges that the transfers to the mining companies were colorable only, and for the purpose of enabling the railway company to continue in the operations of an enterprise and business not authorized by its charter.

The complaint then alleges that on December 7, 1906, defendant James J. Hill and the board of directors of the railway company caused the Superior Company to enter into a certain trust agreement with Louis W. Hill, James N. Hill, Walter J. Hill and Edward J. Nichols, by the terms of which the Superior Company assigned and transferred to the trustees the stock held by it in the several mining companies, of the value, the complaint alleges, of $50,000,000. By the terms of this agreement the stock, and as a result the control of the mining companies and the right to receive the income from the mining and sale of iron ore, passed to the trustees absolutely, to be managed by them in the interest of themselves and the stockholders of the railway company free from any control or supervision by that company.

The complaint alleges that exorbitant salaries are granted to the trustees, and the agreement, which is attached to the complaint, vests in the trustees the exclusive control of the property. Thereafter the trustees issued and delivered to the stockholders of the railway company certificates of stock in the trust, in proportion to the shares each held in the railway company, which are subject to the sale and assignment as stock of other corporations, and separately or in connection with the sale and transfer of the railway stock certificates. These certificates of stock, or beneficial certificates, as they are termed in briefs, are designated Great Northern ore certificates, and are listed upon the stock markets for sale. The trustees may annually, if they deem it proper, declare a dividend and pay the same to the stockholders, but are not required so to do. The complaint also alleges that this transfer to the trustees was not a bona fide transaction, but a further cover or scheme of the railway officials to shield and conceal the ownership of the company in the property so transferred. The trust continues during the lives of certain minor persons therein named, and may not expire for the period of seventy or more years. At the expiration thereof the property reverts to the Superior Company.

The complaint further alleges that, in addition to the property transferred to the Superior Company, the railway company has acquired and owns and holds a large amount of bonds, stocks, and securities in other corporations and concerns, which is in no way necessary or appropriate to the purposes of the railway company, and was acquired by transactions beyond the powers conferred by its charter, the value of which is alleged to be $70,000,000.

This statement presents a fair outline of plaintiff's cause of action, as stated and set forth in the complaint. The relief demanded is that the Superior Company and the trustees be required to restore to the railway company the property held by them, that the same, together with the other property, stocks, bonds, and securities, now possessed by the railway company, which it had no lawful right to acquire, be sold under direction of the court, and the proceeds distributed among the several stockholders.

The only questions presented are: (1) Whether several causes of action are improperly united in the complaint; (2) whether the complaint states facts constituting a cause of action.

1. Taking the complaint as a whole, and viewing the allegations thereof in the light of the evident purpose of the pleader, we are clear that several causes of action are not improperly joined, and that the demurrer upon that ground was properly overruled. The contention of defendants that the claim to a restoration of the property in the hands of the Superior Company constitutes one cause of action, and the claim to a restoration of that transferred to the trustees constitutes another and different right, is not sustained. Nor do the allegations of the ninety-ninth paragraph of the complaint [1] present a cause of action in any essential respect differing from the preceding allegations. The whole scheme of the pleading, and this seems the predominating thought, is to compel by decree of court the sale of property owned by the railway company, which it has acquired in violation of law and its charter powers, and has no authority to hold or control, and that the proceeds thereof be divided among the several stockholders of the company. It does not matter that part of the property so sought to be reached is held by one and a part by another of the defendants, or that a part thereof is now in the possession and control of the company. All the defendants are concerned in the main purposes of the litigation, and it is not material that they are not all affected alike. The principal relief demanded is for a recovery of the property, that it may be disposed of for the benefit of those entitled to it. One general right is demanded, and it is not fatal that defendants are in a measure separately or independently involved. State v. Knife Falls Boom Co. 96 Minn. 194, 104 N. W. 817; Pleins v. Wachenheimer, 108 Minn. 342, 122 N. W. 166, 133 Am. St. 451; Williams v. Crabb, 117 Fed. 193, 54 C. C. A. 213, 59 L.R.A. 425.

2. Does the complaint state a cause of action? The question must

[1] [That defendant railway company had acquired other securities of various corporations which it had no authority under its charter to own or hold, some of which it had purchased of defendant J. J. Hill at prices in excess of their real value. Reporter.]

be answered in the affirmative. The rule guiding the court in determining the sufficiency of a complaint, either in an action at law or suit in equity, when challenged by a general demurrer, is not to determine whether the plaintiff is entitled to all and singular the relief demanded or prayed for, but whether the allegations thereof, properly and liberally construed, entitle him in any measure to the relief demanded. If so, the demurrer will be overruled. 2 Dunnell, Minn. Digest, § 7549, and cases there cited. The rule is one of sound policy, and serves to obviate the embarrassment with which courts are often confronted by decisions attempting, upon demurrer, to cover the entire scope of the litigation, with only a partial or one-sided statement of facts before them. Every case is controlled by its particular facts, and until they are presented no final determination of the rights and liabilities of the parties can intelligently be made. We follow and apply the rule in this case, and come directly to the question whether the complaint states facts entitling plaintiff to any particular relief.

The theory of plaintiff's case, as heretofore stated, is that all the property here in question, namely, that turned over to the Superior Company, the part thereof which that company transferred to the trustees, as well as the property now in the hands of the railway company and referred to in paragraph 99 of the complaint, was acquired by the railway company as the result of transactions beyond its powers as conferred by its charter, and wholly foreign to the legitimate purposes of the corporation, and that it has no right to retain the same, and therefore that a sale thereof should be ordered by the court for the benefit of the stockholders. It is unnecessary, and we deem it inadvisable, to attempt to determine the extent of the power and authority of the railway company in respect to the investment of its surplus funds in the class of securities and properties here claimed to have been unlawfully acquired, or the question whether plaintiff is or may be entitled to a decree for the sale of the same for the benefit of the stockholders. The complaint may be sustained without regard to either question.

A vast amount of property is involved in the action, a part of which is particularly described, and a part left uncertain; the pre-

cise nature thereof not being disclosed. To attempt to say that the purchase or acquisition of the whole or any part of it was unauthorized would require an anticipation or assumption of the material facts, and result in a correct or an erroneous conclusion, according as the facts may subsequently be made to appear. For this, if for no other reason, the question should be deferred until the evidence comes in. We pass, therefore, without further mention, the contention of defendants that the right to invest in all classes or species of property was vested in the old Minnesota & Pacific Railroad Company, by the terms of its charter, and that the right so conferred passed to the Great Northern Company as its successor in interest. The fact remains, according to the allegations of the complaint, that all the property here involved was acquired with the money of the railway company, and if any part thereof has been wrongfully and unlawfully disposed of by the company a restoration thereof to its treasury may be compelled, irrespective of the question whether it was originally rightfully or wrongfully acquired. And we are not required to go further in this respect than to hold that a restoration may be had, leaving the question whether a sale of the same may be ordered to the trial court after the facts have been presented.

That a portion of the property has been wrongfully disposed of by the railway company there can be, on the facts alleged in the complaint, no serious question. Upon this feature of the case we concur with the learned trial court that the formation of the trust and the transfer of the iron ore properties to the trustees was illegal, and a violation of the rights of the nonassenting stockholders. That transfer was at the instance and pursuant to directions of the railway company, acting through its board of directors, and, though valid as to all stockholders who expressly or impliedly acquiesced therein, was not of binding force against those who did not assent. While the transfer was made by the Superior Company, the complaint makes it clear that it was the act of the railway company, for the Superior Company had no interest in the property, and held it subject to the orders of the railway company. Since the property was originally acquired with the money of the railway company, it was held by the company for the uses and purposes of the corporation and its stock-

holders. The transfer to the trustees was without consideration, and all title and right of control thereby passed from the railway company, resulting in a loss to and a violation of the rights of the stockholders. The trustees were vested with the exclusive management of the property, and, though beneficial certificates were issued to the railway stockholders, no dividends were to be declared or to be paid thereon, except when the trustees deemed it proper. It requires no extended discussion to demonstrate the unlawfulness of the transaction as respects the stockholders who refused their assent to the transaction. Stockholders have the undoubted right to insist that the property of the corporation be devoted to corporate purposes, and to prevent, by appropriate proceedings, a dissipation thereof by gift or a disposition to purposes foreign to the affairs of the corporation.

Counsel for defendants do not seriously, if at all, controvert this proposition, but they do contend: (1) That all stockholders of the railway company must be deemed to have acquiesced in the transfer to the Superior Company, because not questiond for more than eight years thereafter, and that in any event plaintiff cannot question the same, since he became a stockholder long after the transaction had been fully consummated and completed; and (2) that since the trustees issued and delivered to the railway stockholders beneficial certificates in the trust, which were transferable on the market independently of the corporation stock, which they have accepted, they cannot now complain.

It is a sufficient answer to the first contention that no title or exclusive right of control ever passed to the Superior Company, and whatever of the property now remains in its hands belongs to and is under the control of the railway company. If, therefore, it shall appear on the trial of the action that plaintiff is entitled to a sale of the property for the benefit of the stockholders of the railway company, the fact of the colorable transfer to the Superior Company presents no obstacle in the way of a decree so directing. The property belongs to the railway company, and is simply held by this agency, created for the purpose. In this view of the case it becomes unnecessary to determine whether plaintiff, having acquired his stock subsequent to the transfer to the Superior Company, may attack the

same. The question is not involved, for there never was a sale or parting with the title to that company. It may be said, however, that upon the suggested question the authorities are not in harmony. 2 Clark & Marshall, Private Corporations, 551. As to the transfer to the trustees the question is not involved, for plaintiff became a stockholder prior to that transaction.

In respect to the second contention, just referred to, namely, the issuance, delivery, and acceptance of the beneficial certificates, it is sufficient to say that the complaint does not present facts justifying the conclusion urged. It affirmatively alleges plaintiff's refusal to accept the certificates.

Our conclusion, therefore, upon this branch of the case is that the act of the railway company in vesting title to the iron properties in the trustees was illegal, and plaintiff is at least entitled to a decree for its restoration. Williams v. Johnson, 208 Mass. 544, 95 N. E. 90; Schwab v. Potter, 194 N. Y. 409, 87 N. E. 670. Whether he is entitled to any other or further relief we do not attempt to determine.

3. It is further contended by defendants that plaintiff cannot maintain the action, for the reason that no sufficient demand was made upon the railway company that the action be brought by its officers. This question requires no extended mention. The rights of minority stockholders are clearly defined by law; and where the corporation itself refuses to act, that a minority stockholder may maintain an action in behalf of himself and all other stockholders to protect their rights is equally well settled. The property sought to have restored to the railway company has been wrongfully diverted by the corporation, and we are clear that an action to compel such restoration may be maintained by a stockholder, when the corporation refuses to act. The complaint sufficiently alleged a refusal of the railway company, and defendants' objections to the complaint in this respect are not sustained.

Order affirmed.

BUNN, J., having made the order appealed from, took no part.

Graves did not represent Venner in another case, *Venner v. Great Northern Ry. Co.*, 209 U. S. 24 (February 24, 1908)(Moody, J.)

No. 25,371
Supreme Court of Minnesota

Paterson v. Shattuck Arizona Copper Co.

169 Minn. 49 (Minn. 1926) · 210 N.W. 620
Decided Oct 29, 1926

LEES, C.

On November 7, 1925, the summons in this action was delivered to H.L. Mundy at St. Paul, where he resides. At that time he was a director and a vice-president of the respondent, Shattuck-Denn Mining Corporation. The respondent appeared specially and moved that the service be vacated and set aside. An affidavit by one of respondent's attorneys was presented in support of the motion. The affidavit stated that respondent was not and never had been a citizen or resident of the state of Minnesota; that it never had any property in this state or an office or place of business therein; that it never had been authorized to transact or had transacted any business in this state and had not empowered anyone to accept service of process in its behalf in Minnesota. Appellants filed no counter affidavits. They based their opposition to the motion on the allegations of their verified complaint. The court granted the motion and appended a memorandum to the order, stating that respondent is a corporation organized under the laws of Delaware; that it had no property, was not domiciled and did no business within this state. The ultimate question to be determined is whether there was a valid service of the summons.

*51 Appellants are minority stockholders in the Shattuck Arizona Copper Company, who claim that their rights are threatened by the consolidation of that company with the Denn-Arizona Copper Company. It appears from the complaint that respondent has acquired a majority of the stock issued by its codefendants, both of which are domestic corporations. It is contended that the shares acquired are property in this state and that the acquisition and ownership of the stock brought respondent into the state and within the jurisdiction of our courts. If it be conceded that the stock has a situs in this state, the conclusion does not follow that jurisdiction over respondent was obtained by the delivery of the summons to Mr. Mundy. Although our courts have jurisdiction over property in this state owned by a foreign corporation and may cause the property to be seized to satisfy demands against the corporation, this jurisdiction does not extend to the corporation in personam. The rule in this regard is well settled. A personal judgment against a defendant over whom the court rendering it has no jurisdiction is void, for the foundation of jurisdiction is physical power, and no state, through its courts, can reach out and impose a personal obligation on a defendant over whom the state has no control. The doctrine is set forth in 10 Minn. L.R. 520, and is fully supported by the cases cited. The conclusion follows that the service on Mr. Mundy did not give the court jurisdiction of respondent even though respondent bad property in Minnesota.

In W.J. Armstrong Co. v. N.Y.C. H.R.R. Co. 129 Minn. 104, 151 N.W. 917, L.R.A. 1916E, 232, Ann. Cas. 1916E, 335, it was said that, to give a court jurisdiction in personam over a foreign corporation, three conditions are necessary: First, it must appear that the corporation was carrying on business in the state where process was served on its agent; second, the business must have been transacted or managed by some agent or officer appointed by or representing the corporation in such state; third, the corporation must be amenable to suit under some local law. See also North Wisconsin C. Co. v. O.S.L.R. Co. 105 Minn. 198,

117 N.W. 391; Kendall v. Orange Judd Co. 118 Minn. 1, 136 N.W. 291; Atkinson v. U.S. Operating Co. 129 Minn. 232, 152 N.W. 410, L.R.A. 1916E, 241; *52 Abramovich v. Continental Can Co. 166 Minn. 151, 207 N.W. 201; Cannon Mnfg. Co. v. Cudahy Packing Co. 267 U.S. 333, 45 Sup. Ct. 250, 69 L. ed. 634.

Louis F. Dow Co. v. First Nat. Bank, 153 Minn. 19, 189 N.W. 653, goes directly to the point. It was there held that, to obtain jurisdiction of a foreign corporation, the corporation must have been doing business in this state when service of the summons was made, and that the only cases excepted from this rule are those in which the corporation has gone into a state and entered into contracts with its citizens of extended duration and mutual obligation under which the corporation continues to receive benefits.

Neither does the fact that the cause of action arose in the state suffice to take a case out of the operation of the rule announced in the Dow case. See the final paragraph of the majority opinion.

It is contended that the complaint shows that all the defendants were parties to a conspiracy to give respondent the control of the property of its codefendants through stock ownership and to place in the hands of the holders of the stock in the Denn-Arizona Copper Company a majority of the shares issued by respondent and the ultimate control of the property of the Shattuck-Arizona Copper Company, to the injury of appellants as stockholders therein; that, in furtherance of the conspiracy, meetings of the stockholders of the Shattuck-Arizona and Denn-Arizona companies were held at Duluth to authorize the transfer of the corporate property to the respondent; and that respondent had issued its stock in exchange for the stock held by a majority of the stockholders of the two domestic corporations. Granting for the sake of the argument, that such acts constituted business transactions in this state to which respondent was a party, it cannot be held that this alone is sufficient to establish respondent's presence in Minnesota at the time of the attempted service of the summons.

It appears from an exhibit attached to and made part of the complaint that on July 1, 1925, the stockholders of the Shattuck Arizona Copper Company were notified by their officers that they might send their stock certificates to the Guaranty
53 Trust Company of New York, *53 where they would be exchanged for stock in the Shattuck-Denn Mining Corporation share for share, the new certificates to be forwarded from New York to the stockholders. The same notice was sent to the stockholders of the Denn-Arizona Copper Company with a request that they send their stock certificates to the Northern Trust Company of Duluth for exchange. Beyond this there is no showing that respondent had ever done business in this state. Clearly the showing is insufficient. But, even if respondent had done business in Minnesota before the attempted service was made, the court did not acquire jurisdiction unless respondent was doing business at the time of the service. Upon the record before us, the court might well find that at that date all transactions between respondent and its codefendants and their stockholders had been completed. The order indicates that such was the conclusion reached by the court. Under the holding in Louis F. Dow Co. v. First Nat. Bank, supra, that was the test to be applied to determine the validity of the service, hence the order must be and it is affirmed.

Because Graves died in 1930, he did not represent Paterson in the appeal of a later chapter in this case, *Paterson v. Shattuck*

Arizona Copper Co., 186 Minn. 611, 244 N.W. 281 (August 12, 1932) (Dibell, J.) but he probably was one of the trial attorneys. This is the case mentioned in the memorial.

The following is another case decided by the Minnesota Supreme Court in which Graves represented minority shareholders. It is not mentioned in the memorial.

State ex rel. Humphrey v. Monida & Yellowstone Stage Co.,
110 Minn. 193, (1910).

STATE ex rel. WILLIAM W. HUMPHREY v. MONIDA & YELLOWSTONE STAGE COMPANY and Others.[1]

February 18, 1910.

Nos. 16,242—(36).

Right of Stockholder to Inspect Books of Corporation.

Under the provisions of section 2869, R. L. 1905, the right of a stockholder to inspect the books of a corporation is not an unqualified right, but is subject to the condition that the information is not sought from mere curiosity, or for an improper purpose.

Same — Inspection for Hostile Purpose Proper.

The use of the information for the purpose of prosecuting a claim of the stockholder against the corporation is a proper purpose.

Same — Demand and Refusal — Mandamus.

Evidence examined, and *held:*

(1) The evidence is sufficient to sustain a finding that a proper demand was made by the relator for permission to examine the books of appellant

[1]Reported in 124 N. W. 971, 125 N. W. 676.

[Note] For right of stockholder to inspect books of corporation, see notes in 45 L.R.A. 446, and 20 L.R.A.(N.S.) 185.

corporation, although the demand was not made at the general offices of the company.

(2) The evidence was sufficient to support the finding of the court that the demand was refused.

(3) The court did not err in directing a writ of mandamus to issue requiring appellants to permit the relator, or his agent or attorney, to examine the books of the corporation.

Relator petitioned the district court for Ramsey county for an alternative writ of mandamus directed to defendant corporation, its president and treasurer, to permit relator, a stockholder, to examine its books and accounts. The writ was granted, defendants made return thereto, and the relator demurred to the return. The case was tried before Olin B. Lewis, J., who ordered that a peremptory writ issue. Defendants' motion for judgment in their favor or for a new trial was denied. From the order denying their motion, they appealed. Affirmed, without prejudice to either party to move for any modification of the order which to it may seem desirable.

James R. Hickey, for appellants.

The request to inspect books, for refusal of which the mandamus is asked, must be alleged to have been made at a proper time and place, and of the proper person and to have been refused. 2 Cook, Corp. (6th Ed.) § 516. The stockholder must state the reason why he desires inspection and his application must be made at the general office of the company. Rex v. Wilts, 3 Ad. & El. 477. The application for mandamus is addressed to the sound discretion of the court. To hold that every stockholder may demand an examination when he pleases and to apply for a writ of mandamus to enforce an absolute right would be prejudicial to the interests of all corporations and their stockholders. 2 Cook, Corp. (6th Ed.) § 514. A director who is actively organizing a rival company has no right to examine the letter files of the former company, in order to aid the latter company. The secretary may forcibly take them from him. Heminway v. Heminway, 58 Conn. 443. Mandamus will not issue where there is every reason to believe that the applicant for inspection in-

tends to make an improper use of the information obtained. State v. Einstein, 46 N. J. L. 479; Phoenix v. Com., 113 Pa. St. 563; In re Kennedy, 75 App. Div. 188.

Edward B. Graves and *Martin H. Albin*, for relator.

At common law a stockholder in a corporation had the right to inspect its books. 10 Cyc. 954. The courts enforced the right with caution, but in this country the restrictions have been constantly relaxed so that, even where there is no statute guaranteeing the right, the courts recognize the absolute right of the stockholder to inspect the books of the company at reasonable times and for a proper purpose, and that the mere desire to acquaint one's self with the affairs of the company is such a purpose. 4 Thompson, Corp. § 4418; Wait, Ins. Corp. § 504. The doctrine of the law is that the books and papers of the corporation, though of necessity kept in some one's hand, are the common property of the stockholders. Com. v. Phoenix, 105 Pa. St. 111. It cannot be denied that it is the right of everyone to see that his property is well managed, and to have access to the proper sources of knowledge in this respect. Cockburn v. Union Bank, 13 La. An. 289; State v. Bienville, 28 La. An. 204. But to remove any doubt as to the existence of an absolute right, the legislature has passed a statute specifically guaranteeing this right to the stockholders. R. L. 1905, § 2869. These statutes have everywhere been held not only to be declaratory of the common law, but to enlarge and extend this right. 26 Am. & Eng. Enc. (2d Ed.) 951; Stone v. Kellogg, 165 Ill. 192; Cincinnati v. Hoffmeister, 62 Oh. St. 189. The statute is mandatory, and the right to examine the books is an absolute one which the courts must enforce. In re Steinway, 159 N. Y. 250; Johnson v. Langdon, 135 Cal. 624. The Minnesota statute, even with the words "all proper purposes" in it, leaves nothing to the discretion of the court. The construction that the courts have put upon the words proper purpose, makes the right mandatory. The only express limitation is that the right shall be exercised at reasonable and proper times. The implied limitation is that it shall not be exercised from idle curiosity, or for improper or

unlawful purposes. In all other respects the statutory right is absolute. Foster v. White, 86 Ala. 467. Ellsworth v. Dorwart, 95 Iowa, 108. To determine the present value of his holdings and to guide his future actions in reference to the stock of the company is a sufficient reason for a stockholder's request to examine the books of the company. State v. New Orleans, 49 La. An. 1556; Guthrie v. Harkness, 199 U. S. 148. Hostility to the management of the company or its managing officers is no reason for denying a stockholder the inspection of the books. In re O'Neill, 95 N. Y. Supp. 974; Johnson v. Langdon, supra. It has even been held that, where the stock was bought for the very purpose of bringing an action, the stockholder was entitled to inspect the books, even though he was but a "dummy" for some third person. Mutter v. Eastern, 38 L. R. Ch. Div. 92. It is immaterial how much stock is held by the stockholder seeking to inspect the books, for the smallest stockholder has the same right of inspection as the largest. In re Steinway, supra; Johnson v. Langdon, supra; Foster v. White, supra.

LEWIS, J.

The relator, a stockholder in appellant company, claiming to have been refused the privilege of examining the books of the corporation, petitioned the district court for a peremptory writ of mandamus to enforce his demand. The answer to the petition and alternative writ alleged that the information desired was not for any proper use of relator as a stockholder; that the relator and one of his attorneys, Mr. Albin, had entered into a conspiracy to injure appellant corporation, and desired the information for the purpose of harassing and annoying appellant, and to aid its competitor in business.

A large amount of evidence was taken with reference to the history of the corporation and the relations of the various parties. The court found that the capital stock of the company was $100,000, divided into one thousand shares, of $100 each; that the relator was the owner of at least five shares; that appellant F. J. Haynes was president, and owner of a majority of the stock, and that C. M. Bend was secretary and treasurer of the company; that Martin H. Albin

became connected with the corporation in 1900, and continued a director and manager until 1905, and at the time these proceedings were commenced was not a stockholder, had no financial interest in the company, and the court found: "During a period said Martin H. Albin was an officer and stockholder in said company. His management of its affairs and business policies were not satisfactory to the majority interest in the corporation, who removed him December 13, 1905, and he ceased to be manager or a member of the board of directors on December 31, 1905, and at this time has no financial interest in defendant company. Since said date there has been open hostility between said Albin and said company, resulting in charges, countercharges, acrimonious disputes and harassing litigation between said Albin and said company."

The court further found that on March 23, 1908, Mr. Albin, and John M. Bradford, an attorney of St. Paul, representing relator, made demand on the secretary and treasurer for an inspection of the records and books of the company; that the demand was refused, and the parties referred to the attorney and the president, and that thereafter Mr. Hickey, the attorney of the company, and the president, informed Mr. Bradford that the demand had been referred to Mr. Hickey as the attorney; that on the second day of April, 1908, the relator retained Edward B. Graves, an attorney of St. Paul, to examine the books in his behalf; and that on that day a letter was addressed to the corporation and its president and secretary, demanding that said Albin and Graves, as representatives of relator, be permitted to examine the records and books of the corporation. This demand was also made on the president and was refused.

As a conclusion of law the court found: "That petitioner is entitled to a peremptory writ of mandamus which shall provide that he, or such attorney or agent as he may select, other than Martin H. Albin, shall be allowed to inspect the books, records, and papers of the defendant the Monida & Yellowstone Stage Company, including the books in which are kept the minutes of the meetings of the stockholders and of the directors, and the books in which are kept the records of the stock issued and outstanding, and all books of account

and all other papers of the company, save those which have to do with the so-called party and tourist business, and that he or they be given at all reasonable times access to such books, records, and papers, for the purpose of making such examination from day to day, during business hours, until such examination shall have been completed, and that in the course of such inspection petitioner may be accompanied by and have the assistance of a stenographer and clerk other than said Martin H. Albin, for the purpose of making such abstracts and copies from said books, records and papers as said petitioner may deem necessary. Such examination to be conducted with all reasonable dispatch consistent with the proper management and conduct of the affairs of said defendant, and shall not be unduly prolonged or vexatiously delayed. Let judgment be entered accordingly."

Appellants seek to reverse the order of the trial court upon three principal grounds: (1) That a proper demand by the relator for an opportunity to inspect the books was not made at the proper place, viz., at the office of the corporation. (2) That if a proper demand was made by the relator, or his attorneys, there was no refusal to comply with it in so far as the relator was personally concerned. (3) That in any event the information was desired for the use and benefit of relator's attorney, Martin H. Albin, with the intention of using it for an ulterior purpose, to the detriment of the corporation.

1. The offices of the corporation were located in the National German American Bank Building, in the city of St. Paul, and this was known to the relator and his attorney. The first demand, in March, 1908, for an inspection of the books, was made upon Mr. Bend, the secretary and treasurer, but not at the office of the corporation. The second demand was made personally upon the president, the secretary, and Mr. Hickey, the attorney, in the city of St. Paul, but not at the offices of the company. According to the evidence, the books and papers of the corporation were kept in a private safe of the president, at his private office on the corner of Selby and Virginia avenues. It is evident that both of the officers and the attorney, Mr. Hickey, were fully informed as to the purpose of the demand, and that it

was not refused for the reason that it was not made at a proper time or at the proper place, and the objection is not well taken.

2. We find evidence in the record tending to show that the refusal was not absolute and unqualified at the time the first demand was made in March by Mr. Bradford and Mr. Albin. The refusal was coupled with the statement that so far as the relator personally, or his attorneys, Messrs. Bradford and Morphy, were concerned, they were at liberty to examine the books and secure whatever information they desired, with the understanding, however, that such information should not be furnished to Mr. Albin. With reference to this first demand, the findings merely state that the matter was referred to Attorney Hickey, and the court did not otherwise specify that the request was denied.

Messrs. Bradford and Morphy appear to have then retired from the case, and on April 2 Mr. Graves and Mr. Albin appeared as attorneys for the relator, and renewed the demand in the form of a letter, addressed to the two officers and to the corporation, and personal demand was also made on the two officers. The evidence with reference to this demand is very indefinite. From a reading of the record we are impressed with the idea that relator's attorneys understood that the information was withheld, for the reason that in the opinion of the officers of the company it was desired for the purpose of turning it over to Mr. Albin for his own personal use. But, although the court would have been warranted in finding that there had been no absolute refusal to the relator of an inspection of the books, and the order allowing the writ might have been refused upon that ground, the court was of opinion that the relator and his attorneys were justified, by the conduct of the officers and their attorney, in assuming that the refusal was intended to be absolute, and found accordingly. There is evidence reasonably tending to support the views of the court, and the finding must stand.

3. It is apparent that on account of Mr. Albin's previous conduct, and his controversies and litigation with the corporation during the years of 1906 and 1907, the officers were justified in refusing access

to their books by Mr. Albin personally and as the attorney of relator.[1] The trial court recognized the justice of this position and attempted to guard against it in the order for the writ. But, so far as the relator personally is concerned, he stands upon a different ground. He claims to have had a valid claim against the company for the value of a large block of stock, of which he had been deprived, and the evidence justified the trial court in concluding that the information was desired by him for the bona fide purpose of properly prosecuting his claim against the company.

It remains to be considered whether under these circumstances the relator was entitled to the aid of the writ of mandamus.

The common-law right of a stockholder of a corporation to examine its books and accounts is not an absolute right, and will not be enforced by a writ of mandamus when the object is curiosity, speculation, or vexation. Varney v. Baker, 194 Mass. 239, 80 N. E. 524. And the writ of mandamus to enforce the right may issue, in the sound discretion of the court, with suitable safeguards to protect the interests of all concerned. In re Steinway, 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461. In some jurisdictions it has been held that it must appear upon the face of the petition for the writ that the application is sought in good faith and for a specific purpose. Garcin v. Trenton (N. J. L.) 60 Atl. 1098; Bruning v. Hoboken, 67 N. J. L. 119, 50 Atl. 906. The writ will be refused when the applicant shows by his own testimony a lack of good faith. Bevier v. U. S. (N. J. L.) 69 Atl. 1008. In the case of People v. Keeseville, 106 App. Div. 349, 94 N. Y. Supp. 555, attention is called to the difference between the right of a stockholder to examine the books of a corporation under the common law and the absolute right guaranteed by statute. With reference to the former it was held that, with respect to the general business books of a corporation, an inspection by a stockholder will not be ordered by a court unless the applicant seeks to learn something which he has the right to know for his protection, and his application is made in good

[1] See opinion on page 203, infra.

faith and not for the purpose of injuring or annoying the corporation. Whether the request should have been complied with on demand rests in the sound discretion of the court.

But where the statute is mandatory, and gives a stockholder the absolute right to examine the stock books of the corporation, then it is immaterial whether the application be made in good faith, or for what purpose the information is desired. Such statutes have generally been strictly construed. Johnson v. Langdon, 135 Cal. 624, 67 Pac. 1050, 87 Am. St. 156; Ellsworth v. Dorwart, 95 Iowa, 108, 63 N. W. 588, 58 Am. St. 427; Cincinnati v. Hoffmeister, 62 Oh. St. 189, 56 N. E. 1033, 48 L. R. A. 732, 78 Am. St. 707. But in Illinois a statute conferring the right of inspection, without qualification, except as to time, was held subject to the implied limitation that it should not be exercised from idle curiosity, or for unlawful purposes. Stone v. Kellogg, 165 Ill. 192, 46 N. E. 222, 56 Am. St. 240. In Guthrie v. Harkness, 199 U. S. 148, 26 Sup. Ct. 4, 50 L. Ed. 130, the federal supreme court adopted the rule, as stated by Morawetz on Corporations, § 473, that the decisive weight of American authorities recognize the common-law right of the shareholder for proper purposes and under reasonable regulations to inspect the books of the corporation of which he is a member. Instructive notes will be found on this subject in connection with the reports of Weihenmayer v. Bitner (88 Md. 325) 45 L. R. A. 446, and Kuhbach v. Irving (220 Pa. St. 427) 20 L. R. A. (N. S.) 185; also 5 Current Law, 834.

A brief reference to the Minnesota statutes will be sufficient to disclose the proper principles which should govern the courts of this state in the use of the writ of mandamus to enforce the right of inspection of the books of a corporation by a stockholder. Section 2800, G. S. 1894, provided that the books and records of a corporation should at all times be open to the inspection of any and all stockholders. This section was carried forward from the Statutes of 1866, and we are not aware that it has ever been under consideration by the courts of this state. Whether it was any more than declaratory of the common law is not now of importance, since it was superseded by section 2869, R. L. 1905, which reads:

"All such books and records shall at all reasonable times and for all proper purposes be open to the inspection of every stockholder."

The writers of the Code probably recognized that there was some uncertainty as to the meaning of the statute of 1894, that the courts of the several states were not unanimous in the construction of similar statutory provisions, and took occasion to rewrite the section, and to specify that the time should be reasonable and that the purpose of inspection should be proper. The right of inspection is not an absolute one, and may be refused when the information is not sought in good faith, or is to be used to the detriment of the corporation. But in this instance the petitioner showed that he was a stockholder, and was unable to secure information as to the financial standing of the company and method of conducting the business. This was sufficient to make a prima facie case of good faith.

The order appealed from enables the relator, or any agent of his other than Mr. Albin, to have access to the books, but no provision was made to prevent the information from being communicated to Mr. Albin. Although the language of the order is somewhat indefinite, it should not be assumed that it was the intention of the court to authorize the representative, or agent, who should be selected by the relator, to furnish the information to Mr. Albin. The court restricted the examination so as not to include such books, papers, and record as pertained to the so-called "party and tourist business," and also denied the right of Mr. Albin to examine the books as the attorney of relator.[1] This seems to imply that Mr. Albin was not to be given the information sought, and we are not warranted in assuming that the court did not intend to restrict the examination to the legitimate purposes of the relator in prosecuting his personal claim against the corporation. No request was made to modify the order, and if it is liable to be misunderstood, and the rights of appellants are not clearly defined, the remedy lies with the trial court.

It is therefore ordered that the order appealed from be affirmed,

[1]See opinion on page 203, infra.

without prejudice to appellants to move for a modification of the order not inconsistent with the views herein expressed.[1]

On April 8, 1910, the following opinion was filed:

PER CURIAM.

Upon the previous hearing we understood the order appealed from to imply that the information was to be withheld from Mr. Albin, and some expressions in the opinion seem to indicate that it was intended to hold that the facts justified such conclusion. To remove any doubt as to the effect of the decision, we take this occasion to state that we express no opinion as to whether the facts disclosed would justify the trial court in directing the examination to be made on the condition that the information be not furnished to Mr. Albin; that it was not intended to direct a modification of the order to that effect, or to reflect upon his professional conduct; that it was not intended to direct the trial court to limit the examination of the books to the preparation of relator's case against the company; but it was and is the intention to leave the entire matter of the scope and purpose of the examination to the trial court, and to make such modifications, if any, as may be deemed advisable.

It is therefore ordered that the application for reargument be denied, and that the former order of this court be modified to read as follows: "The order appealed from is affirmed, without prejudice to either party to move, if so advised, for any modification of the order of the trial court which may seem to it advisable."

JAGGARD, J., took no part.

[1]For modification of order, see following opinion.