set-off in bankruptcy strictly to its traditional limits.[13] Although the preference created by set-off seems firmly entrenched in precedent,[14] and is recognized by the express language of the Bankruptcy Act,[15] the set-off demanded in the instant case is not statutory set-off, but equitable. Whatever equity the parent corporation may have had in its subsidiary's deposit[16] is nullified by the desirability of narrowing the scope of a rule which is an anomaly in the first instance.

Corporations—Right of a Stockholder Not within the Statutory Class To Inspect the Corporate Books—[Illinois].—The plaintiff, a stockholder of record for less than six months and owning less than five per cent of the outstanding shares, petitioned for a writ of mandamus to compel the defendants individually and as officers of the corporation to permit him to examine its books. The first paragraph of the applicable section of the statutes[1] grants a right of inspection for proper purposes to stockholders "of record for at least six months . . . or who shall be the holder of record of at least five per cent of all the outstanding shares of a corporation . . . ." The second paragraph provides for a penalty upon an officer of the corporation for refusal to allow such a stockholder to examine the books upon showing of proper purpose, while the third paragraph of the statute provides that "nothing herein contained shall impair the power of any court . . . upon proof by a shareholder of proper purpose, to compel by mandamus . . . the production for examination of the books . . . of a corporation." *Held*, for the defendants. Since the plaintiff is not within the statutory class, he is not entitled to a writ of mandamus to compel the production of the corporate books. *Neiman* v. *Templeton, Kenly & Co., Ltd.*[2]

Statutes in many jurisdictions have extended the common law right of a stockholder to examine the corporate books by removal of the requirement that the stockholder show proper purpose,[3] or by the imposition of a penalty on officers and directors

[13] *Cf.* Elliot v. Flynn Bros., 192 S.E. 400 (S.C. 1937); Hodgin v. People's Nat'l Bank, 124 N.C. 540, 32 S.E. 887 (1899). See also note, 4 Univ. Chi. L.Rev. 330 (1937).

[14] Yardley v. Clothier, 51 Fed. 506 (C.C.A. 3d 1892); Upham v. Bramwell, 105 Ore. 597, 209 Pac. 100 (1922); see Gilbert's Collier, Bankruptcy §§ 1426–1430 (4th ed. 1937); Glenn, Creditor's Rights and Remedies §428 (1915).

[15] 30 Stat. 565 (1898), 11 U.S.C.A. §108 (1937).

[16] See *dictum* in Kimberly Coal Co. v. Douglas, 45 F. (2d) 25, 27 (C.C.A. 6th 1930) to the effect that property and debts of the subsidiary are in equity considered those of the parent corporation.

[1] Section 45 of the Business Corporation Act, Ill. Rev. Stat. 1937, c. 32, §157.45.

[2] 294 Ill. App. 45, 13 N.E. (2d) 290 (1938).

[3] For instance see Smith's Ill. Rev. Stat. 1919, c. 32, §38; Cahill's Cons. Laws N.Y. 1935, c. 60, §10; S.C. Civ. Code 1932, §7750; Tex. Rev. Civ. Stat. 1925, Art. 1328; Utah Rev. Stat. 1933, title 18. c. 2, §31. See also Estuar, The Nature and Extent of the Right of a Stockholder to Inspect the Books of a Corporation, 17 Phillipine L. J. 105 (1937); 5 Fletcher, Cyc. Corp. §2220 (perm. ed. 1931).

As to what constitutes a proper purpose see Burns v. Drenner, 220 Ala. 404, 125 So. 667 (1930); Davis v. Cambria Title and Savings and Trust Co., 304 Pa. 32, 155 Atl. 108 (1931); Miller v. Spanogle, 275 Ill. App. 335 (1934); Carey v. Dalgarn Const. Co., 168 La. 621, 122 So. 884 (1929); 80 A.L.R. 1503; 20 Calif. L. Rev. 449 (1932).

for the wrongful refusal of such inspection.[4] The wide use of this privilege for its nuisance value[5] has led a few states to limit the right of inspection to a class of stockholders possessing certain minimum qualifications,[6] because stockholders within the statutory class are less likely to have improper purposes for demanding inspection.

The court's conclusion in the principal case that a shareholder not of the statutory class was not entitled to the remedy of mandamus seems an unjustifiable interpretation of the statute. The wording of the statute is somewhat unfortunate in that the first paragraph appears to limit the right to inspect to the statutory class. But the third paragraph providing that "nothing *herein* contained" shall impair the power to issue mandamus upon a showing of proper purpose clearly refutes this construction. Nothing contained in the entire section is to affect the mandamus remedy. The only intended limitation on a shareholder not of the statutory class is that he is not entitled to the penalty provided for in the second paragraph. This an Illinois appellate court had previously decided in *Miller* v. *Spanogle*[7] where a petition for mandamus was granted although the shareholder did not allege that he was a member of the statutory class. There the court said: "This is not a proceeding to recover the penalty provided for in section 45 and we are clearly of the opinion that it was unnecessary in this proceeding for petitioner to allege, before he is entitled to the relief prayed for, that he was either a stockholder of record for six months immediately preceding his demand to inspect the books of the corporation, or that he was the holder of record of at least five per cent of all the outstanding shares of the corporation." The conclusion in the instant case leaves a shareholder of the non-statutory class who can show proper purpose without a remedy, a result which it is probable the legislature did not intend.

Evidence—Presumption against Suicide—Effect on Burden of Proof—Applicability of State Law—[Federal].—The defendant agreed to pay ten thousand dollars on proof of death of the insured or twenty thousand dollars on proof of his death by "external, violent and accidental means," but the double indemnity clause was to have no effect if insured were a suicide. The defendant admitted that the insured died by "external" and "violent" means, and the sole dispute was as to whether the death was "accidental." The plaintiff sued in a Montana court and the defendant, a foreign corporation, removed to federal district court of Montana. After the circuit court of

[4] See Cahill's Cons. Laws N.Y. 1935, c. 60, §10; Smith's Ill. Rev. Stat. 1919, c. 32, §38; Remington's Rev. Stat. Wash. 1932, §§3827, 3828. See also Estuar, *op. cit. supra* note 3; 5 Fletcher, *op. cit. supra* note 3, §2257.

[5] Ill. Bus. Corp. Act Ann. 187 (1934); 47 Harv. L. Rev. 335 (1933); 5 Fletcher, *op. cit. supra* note 3, §2226.

[6] Ill. Rev. Stat. 1937, c. 32, §157.45 (6 months, 5%); Cahill's Cons. Laws N.Y. 1935, c. 60, §10 (6 months, 5%); Gen. Laws Fla. Ann. 1927, §6584 (6 months, 1%); *Cf.* La. Gen. Stat. 1932, §1118 III (6 months, 2%): "Two or more shareholders, each of whom has been a holder, of record of shares for the period aforesaid, and whose aggregate holdings equal the percentage aforesaid, may join in such request and jointly exercise such rights."

[7] 275 Ill. App. 335 (1934). In Wise v. Byllesby, 285 Ill. App. 40 (1936), the appellate court held that even if the 1933 statute did not apply to foreign corporations, a stockholder nevertheless had a common law right to mandamus. See also Sullivan, Right of a Stockholder to Inspect the Books of a Corporation in Illinois, 2 John Marshall L. Q. 260 (1936); Ill. Bus. Corp. Act. Ann. 187 (1934).