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THE WEST VIRGINIA LAW PERMITTING CORPORATIONS
TO ISSUE STOCK WITHOUT PAR VALUE.

By BUCKNER CLAY*

The legislature of West Virginia, at a special session held in 1920, amended certain sections of chapter 32, chapter 53 and chapter 54 of the Code so as to permit the incorporation of corporations with capital stock having no par or nominal value, and added three new sections to chapter 54, numbered sections 6a, 6b and 6c, permitting the reorganization of existing corporations so that they can issue such stock. The statute making these changes in our corporation laws has been sometimes called the "Non Par Value Stock Law." Perhaps a more accurate designation of this stock is "no par value stock" or "stock without par or nominal value".

As this statute introduces into our corporation laws a comparatively new idea, a brief explanation of the purpose and effect of such law, and similar laws elsewhere, will doubtless be of interest to the lawyers of the state at this time.

The first law of this kind in this country was enacted in New York in 1912. However, the movement in behalf of such a law began in that state as early as 1892, when the matter was taken up by some of the leading lawyers of New York City and reported to the New York State Bar Association. In 1909 a special committee appointed by the New York State Bar Association for that purpose, drafted a bill to amend the corporation statutes so as to permit the issuance by corporations of stock without par value. The bill passed both branches of the legislature, but was vetoed by the governor because of some objections to the method of assessing taxes upon such corporations. Subsequently, in 1912, the bill was re-drafted so as to obviate the objections made to it, and became a law.

Later, Delaware, Maine, Maryland, California and New Hampshire followed the lead of New York, and in the last year or two a number of other states have adopted similar laws. According to our information, laws of this kind exist in the following states, namely: Alabama, California, Delaware, Illinois, Maine, Mary-

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land, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia and Wisconsin.

The chief idea back of all these laws is the same, namely, to strike the dollar mark from certificates of stock, and to get rid of the evils attending the issuance and sale of stock with a par value. The dollar mark is a very necessary part of a bond or a note, because it is a definite obligation to pay a certain sum of money. We think it even has a place on a certificate of preferred stock, because that represents a preferred interest to a certain amount, but we believe the dollar mark has no place upon a certificate of common stock. A share of common stock is no more or less than a fractional interest in the assets of a corporation. To illustrate, if a corporation has a capital stock of one hundred thousand dollars, divided into one thousand shares having a par value of one hundred dollars each, the holder of each share owns one one-thousandth part of the net assets of the corporation and is entitled to one one-thousandth part of the net earnings of such corporation.

It would seem that a share of common stock really should have no nominal or face value. If it does have a face value, such face value does not ordinarily represent the value back of such share of stock. In one way or another, common stock is often issued for much less than its par or face value, but even if its par value was actually paid in in money at the time of the issuance of the stock, very often the face value does not represent the true value of the stock. If the corporation is successful, its shares increase in value. If it is unsuccessful, they depreciate and may become worthless. It is only necessary to look around us to see shares of stock of a corporation, of the par value of one hundred dollars each, worth only twenty or twenty-five dollars each, and shares of stock of another corporation, of the same par value, worth several hundred, or several thousand, dollars.

It follows, therefore, that the face value of a share of common stock is no real or accurate indication of its true value, but on the other hand is misleading, and tends to prevent the investor from going to the real sources of information to ascertain the true value of the shares of stock which he proposes to purchase, and makes it easier for stock speculators to impose upon the public.

One false or artificial thing often leads to others. There exist in the different states various statutory provisions intended to

prevent the issuance of stock by corporations for less than its par value, except under certain restrictions. In some states this cannot be done at all. Corporations frequently desire to issue stock for less than its par value, and in order to do this, various subterfuges are resorted to. Very often stock is issued for property, the par value of which stock is very much in excess of the value of the property. And in some states there is a practice of issuing stock in this or some other way, and then donating it back to the corporation, in order that such stock may then be sold at such price as the corporation may fix, or may be given away as a bonus with the sale of bonds or preferred stock.

Then, too, it frequently happens that a corporation, whose stock has depreciated in value, desires to raise further funds by the sale of additional stock. The stock is not worth par, and of course cannot be sold at par. Yet under the laws of some states it could not be sold at less than par, and, therefore, could not be sold at all. Certainly there should be a way by which such a corporation could raise money by the sale of stock. It will be recalled that in West Virginia, under section 24 of chapter 53 of the Code, stock may be sold for less than par by a three-fourths vote of the stockholders, after publication of notice of the intention so to do.

In the foregoing and other ways there often grows up a large overcapitalization of a corporation, with its attendant evils. It is generally recognized that the stock capitalization of a corporation frequently has little relation to the value of the corporate assets. One of the chief purposes of the issuance of stock without par or nominal value is to prevent the creation of such a false situation.

It may be asked how anyone can find out what is the value of a share of stock, which has no par or face value. The answer is, he can learn this in the only way in which he can learn the value of a share of stock with par or face value, namely, by going to the correct sources of information. If the stock has a market value he can ascertain this market value. In any event, he can learn from a financial statement of the corporation, or from its books, if he has access to them, the value of the corporate assets and the amount of stock issued and outstanding. If there are outstanding one thousand shares of stock and he owns ten of them, he has one one-hundredth interest in such assets. If the corporate assets are worth fifty thousand dollars, his stock should be worth per share one

one-thousandth of fifty thousand dollars, or fifty dollars, and his ten shares should be worth five hundred dollars.

The statutes in the various states mentioned above, permitting the issuance of stock without par value, vary in certain particulars. The special features of the West Virginia law are as follows:

There is excepted from the law banks, insurance companies, public service corporations and the like. These corporations are charged with a public interest and are subject to regulations by some state authority, and it was doubtless thought that such regulation was sufficient to protect the public, and that it would be best to except such corporations, at least for the present, from this law. By reason of the character of these corporations there is not the same need for such stock.

The West Virginia law applies only to common stock, and not to stock preferred either as to dividends or as to its distributive share of the assets of the corporation. As indicated above, there is much more reason for preferred stock to have a nominal or face value than common stock, because preferred stock is preferred as to dividends or as to its distributive share in the assets of the corporation, or as to both, and at the same time it is usually limited in its interest and frequently limited in its participation in the affairs of the corporation. This preference and this limitation necessitate the fixing of the amount to which such preference and limitation extend. While, therefore, it may not be improper to allow the issuance of preferred stock without par value, there is certainly not the same reason for doing so as in the case of common stock. The statutes in some of the other states apply both to common and preferred stock.

Under the West Virginia law, stock without par value may be issued on such terms and conditions, with or without the right to vote at stockholders' meetings, and subject to such other regulations, as may be provided by the charter, or as may be determined by the stockholders by resolution or by by-laws.

Such stock may be issued by the corporation for such consideration as may be fixed from time to time by the board of directors, pursuant to authority conferred in its charter, or if such charter shall contain no such provision, then for such consideration as may be fixed by the vote of the holders of two-thirds of each class of stock outstanding and entitled to vote. When the consideration so

fixed has been paid, such stock shall be regarded as full paid stock and not liable to further call or assessment.

In the case of a corporation having only stock without par value, at least five hundred dollars must be paid in good faith before the certificate of incorporation shall issue.

For the purpose of the annual license tax, shares without par value are presumed to have a par value of twenty-five dollars, provided that, if such shares were originally issued for a consideration greater than twenty-five dollars per share, the tax shall be computed on the basis of such consideration. In most of the states the value put upon shares having no par value, for the purposes of taxation, is one hundred dollars. We believe that the West Virginia statute is in this respect the most favorable of any from the standpoint of corporations.

The new sections added to chapter 54, namely, sections 6a, 6b and 6c, provide for the reorganization of existing corporations so that they may have the right to issue stock without par value, to the same effect as if they had been chartered under the provisions above referred to. These sections provide for the reorganization of corporations in such a way as to protect both the stockholders and the creditors of the corporation.

This statute is like our other corporation laws—fair and even liberal to corporations. It is believed that our corporation laws as a whole probably afford as many, if not more, real advantages to corporations than those of any other state.

The chief objects of this law may be summarized as follows:

1. To strike the dollar mark from the certificate of common stock of a corporation, and thereby eliminate the evils growing out of the issuance and sale of common stock with a par value.
2. To facilitate the issuance of common stock under different circumstances without subterfuge, by permitting the sale of it from time to time at such consideration as may be fixed from time to time by the Board of Directors, pursuant to authority conferred upon it by the charter or in the absence of such authority, at such price as may be fixed by a two-thirds vote of the stockholders of each class outstanding and entitled to vote.
3. As above pointed out, the West Virginia statute affords special advantages in that it places a comparatively low valuation upon no par value stock for the purpose of assessment of license tax.

And viewed in a broader aspect, the law is, we think, a step in the right direction. The corporate method of doing business has come to stay. At bottom it is sound, and affords advantages not found in partnerships or other business associations. It is especially adapted to a large business in which many persons are interested. A very large part of the business of this country is carried on through the means of corporations. The public invests largely in corporate securities, and it would seem that a more general participation in large corporations by employees and others might help to solve some of our industrial ills.

It is important, therefore, that corporation practice should be stripped of everything that is false, artificial or misleading. Corporate securities should not only be freed from deception, but protected and safeguarded in every proper way. Furthermore, so far as may be consistent with proper protection to stockholders and persons dealing with corporations, the corporate method of doing business should be made as easily adaptable as possible to all legitimate needs of business.