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James H. Pou

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to retain the power to use the club of the Sherman Law to protect the common people against possible evils of monopoly. In view of this sentiment, no politician would probably dare to advocate such an amendment of the Sherman Law.

It is suggested that the trade associations might send their information directly to some governmental agency such as the Department of Commerce, which would undertake to publish this information broadcast and which would also authorize co-operation and standardization under government supervision. This method would undoubtedly supplement the internal activities of the trade associations, but it could not supplant them entirely, for trade associations have many functions that the government could not perform.

The most probable solution seems to lie in distinguishing the activities of the Hardwood Association from the activities of other similar associations. Subtract from the principal case the somewhat inept letters of the manager of statistics and the accidental rise in prices that happened to be contemporaneous with the letters and it is doubtful whether the Supreme Court would have reached the same decision. It is probable that fine-drawn distinctions will be made to justify other trade associations if it is found that their existence cannot be dispensed with. For, after all, self preservation is the first law of nature, and the Supreme Court will be overruled by the merciless pressure of economic law, if the trade association is, as its advocates claim, necessary for increasing the efficiency of production.

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## SHARES OF STOCK WITHOUT PAR VALUE

JAMES H. POU

MEMBER OF THE RALEIGH BAR

**P**ROBABLY THE most important addition in recent years to North Carolina corporation law is the passage in 1921 of the act<sup>1</sup> authorizing the issue of stock without par or nominal value. The passage of this act follows the lead of many of the foremost industrial states. Our statute, briefer than similar statutes of other states, embraces the desirable, and leaves out many of the undesirable features of the other statutes.

New York was first to enact a law authorizing the issue of shares without nominal or par value. The law was enacted in 1912, but it attracted little attention until 1915. In 1915 the non par stock idea gained much headway and many large corporations were organized or re-organized with provisions for such stock. Other states, especially the industrial states, were quick to see the advantages of such stock and enacted laws authorizing its issuance. Non par

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<sup>1</sup> P. L., 1921, Ch. 116.

stock laws have now been adopted in half the states of the union;<sup>2</sup> and corporations organized with authority to issue non par stock can do business as foreign corporations in all states except South Carolina and Washington.

Non par value stock has not come into use without criticism. Those advocating its use claim many advantages; those not in favor of this class of stock decry it as another dangerous tool in the hands of the crooked promoter.<sup>3</sup> Whether the advantages out-weigh the disadvantages is a matter that experience alone can demonstrate. The new class of stock has gained rapidly in popularity and it seems certain that many other states will enact laws permitting its issuance.

How to deal with the question of "watered" stock has been a troublesome problem for many years. Under "watered" stock we must deal with the question of excessive issue of stock for property, services and good will. Corrupt promoters have found the excessive issue of stock for property, their easiest and safest opportunity for graft. The experience of the stock buying public during the years 1919 and 1920 is evidence of this. The numerous stock selling swindles during the two years following the World War caused almost universal adoption of a system of laws by which corporations were subjected to rigid examinations before being allowed to sell their securities. Such a system of laws was adopted in Massachusetts many years ago and the result in that state has been gratifying. The laws of Massachusetts on the subject have been copied, with few exceptions, throughout the country<sup>4</sup>. This class of legislation has come to be known as the "Blue Sky Laws." The object, of course, of the "Blue Sky Laws" is not only to keep worthless stock off the market but to make actual values and par values correspond. Thus, if the par value of a share of stock is one hundred dollars, the part of the assets of the corporation represented by a share of stock must be worth one hundred dollars.

While the passage of the "Blue Sky Laws" has been necessary to safeguard the public interest, it has delayed and embarrassed many legitimate enterprises. This has been particularly the case with public service corporations; but other classes of corporations have likewise suffered. Not only has the organization of new corporations been hindered but the financing of established corporations has been embarrassed. Few corporations begin business with their entire capitalization paid in. Many acquire their first assets by issuing stock in payment for the property that is to be developed. It is hoped that the use of non par stock will facilitate corporate financing.

Unquestionably the use of non par stock has advantages to the investor considering the purchase of the same as well as to the corporation issuing the stock. Its sponsors claim that stock without nominal or par value puts the purchaser of the stock on notice that he should investigate and determine for himself the value of the stock. He is not misled by a dollar mark which to the

<sup>2</sup>The provisions of these laws are summarized in a pamphlet, *Shares of Stock Without Par Value*, issued by the Corporation Trust Company, New York City.

<sup>3</sup>The best discussions in the legal periodicals are: Morawetz, *Shares Without Nominal or Par Value*, 26 Harv. Law Rev. 729; Cook, *Stock Without Par Value*, 19 Mich. Law Rev. 583; and Rice and Harno, *Shares With No Par Value*, 5 Minn. Law Rev. 493.

<sup>4</sup>The North Carolina "Blue Sky Law" is C. S. Ch. 106, Art. 10.

average mind indicates value. He buys the stock just as he would buy a dozen eggs or a chicken; he pays what he considers the article worth. He is offered a stock without any named value. In order to deal wisely he must ascertain the value of the assets of the corporation and what interest in these assets each share represents. To find the book value of the stock is then a mere question of division. Thus, the investor will learn that each share entitles its holder to a certain fractional interest in the holdings of the corporation and not fifty or one hundred dollars of its capital. A share of stock whose par value is one hundred dollars but which only represents ten dollars of the corporate assets is a fraud on its face. A share of stock without par value can only represent its actual value, no more, no less. This is the principal advantage to the investor.

The advantage to the corporation itself is even greater than the advantage to the investor. Upon its organization a corporation has neither property nor funds; it is a mere legal entity with authority from the state to do certain things. It must acquire property with which to accomplish the purposes of its organization. Few corporations commence business with their entire capitalization paid in. The majority start by issuing stock for needed property. A corporation may issue a certain portion of its authorized stock in payment for property, patents, rights, or good will, and offer the balance of the stock for sale to the public. Regardless of whether or not the stock so issued has or has not par value each share represents an aliquot part of the corporate assets. If the par value of the stock is one hundred dollars and each share represents only ten dollars worth of the corporate assets, it will be hard for the investor to get away from the idea that the stock is worth one hundred dollars. Here the "Blue Sky Laws" interfere. These laws provide that no stock shall be sold unless its par value and its actual value correspond. On the other hand, however, if stock without par value be issued, the provision of these laws will have been complied with in that each share represents a certain interest in the corporate assets.

A corporation, rigidly complying with the "Blue Sky Laws," may start business with its stock of par value of one hundred dollars actually worth one hundred dollars a share. However, this balance of value will not remain; the stock will soon be worth more or less than par. It will not remain exactly par for any appreciable length of time. If the corporation is successful and its stock goes above par it will probably have no great difficulty in obtaining additional finances. But if it meets with reverses and its stock goes below par, the question of needed finances will be serious. The par value of its stock is one hundred dollars but its book value is only fifty dollars a share. The corporation is faced with laws that require that its stock be sold for par and a stock buying public that will not give more than fifty. The one alternative is the issue of bonds. Bonds mean maturities; and maturities necessitate future financing. The laws of many of our states permit bonds to be sold below par but deny this privilege to stock.

But if the corporation is authorized to issue non par stock its position is much better. When finances are needed, the board of directors, if empowered to do so and if not, the stockholders, can authorize an issue of stock to be sold at its actual book value. Thus, the "Blue Sky Laws" are complied with, value is received by the investor and the corporation obtains the needed capital.

A corporation whose stock is worth more than par, when in need of additional finances, is likewise confronted with a troublesome problem. Its stock must be sold at its value and yet the stock buying public is inclined not to pay more than par. The amount above par is regarded as a premium. They do not stop to consider that the part of the corporate assets represented by each share of stock is now worth more than when the corporation was organized. Non par stock is the solution of the difficulty. Each share of such stock represents an aliquot part of the corporation's holdings and is the equivalent of so many dollars and cents.

While as has been said, the advocates of this class of stock are enthusiastic in its praise, its enemies are equally zealous in condemnation. They say that authority to issue stock without par value is another dangerous tool in the hands of the crooked promoter, and that it legalizes, instead of restricts, large issues of stock for over valued property and services. The promoter can thus issue stock in exchange for property as long as he can induce the public to buy the same. The non par stock according to this view, not only fails to solve the problem of "watered" stock but in a way gives protection to the promoters who "water" it. If an unlimited amount of stock can be issued for all kinds of property, the danger of fraud is increased instead of lessened. Mr. W. W. Cook, of the New York Bar, an authority on corporation law, says "Stock without par value adds to the mystery as to what the stock really represents, and the public still compares the market value of such stock with \$100.00 par, without regard to whether or not the stock is without par value. Even the Courts in construing these new statutes, do so in that frame of mind." He again says "It conceals the mystery of the 'water'."<sup>5</sup>

Another important criticism is that promoters can issue excessive amounts of stock for property and this stock is full paid. This seems to be a long step in the direction of the destruction of stock liability in the case of excessive issue for property. However, our statutes have always given the board of directors of a corporation the right to issue stock in payment for property and services; and in the absence of fraud, their valuations have been conclusive.<sup>6</sup>

Crooked people have ever been able to carry on their practices despite the obstacles that have been thrown in their way. It will probably always be the case. The advocates of stock without par value do not hope that its adoption into our laws will give the death blow to fake promotions. They claim it is a

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<sup>5</sup> Cook, *Stock Without Par Value*, 19 Mich. Law Rev. 583, 592, 595.

<sup>6</sup> C. S. sec. 1157-60.

step in the right direction. It gives the intending investor notice that he should investigate, and ascertain what he is buying, before he parts with his money.

The authority to issue non par stock does not change the form of the charter. It merely requires the addition of another clause. This authority may be granted in the original certificate of incorporation or in an amendment thereto. The records of the office of the Secretary of State of North Carolina show that several corporations have been organized with the authority to issue non par stock and that other corporations have amended their charters to include this authority.

For purposes of taxation, all of the non par stock laws place an arbitrary value upon the shares issued under their authority. In North Carolina this tax value is \$100.00.