

Legislative Suggestions: Amendments of Corporate Laws in Wisconsin

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"All information necessary to constructive notice should be entered in the index immediately upon reception."

Oconto Co. vs. Jerrard, 46 Wis. 317.

The post-office method, which appears to be necessary under the irrational and inconvenient general index plan now in use, destroys the order of preference which should be governed by the act of the person leaving the instrument for record instead of the convenience of entry clerks.

The proposed remedy would index instrument by serial abstract index, by names of grantors and grantees in the same serial order as received, at once, completing the act of recording and indexing quickly instead of after a long period of delay.

NOTE:—Patents Pending.

AMENDMENTS OF CORPORATE LAWS IN WISCONSIN.

BY CARL B. RIX.

For years there has been a hue and cry about "watered stock" and the evils supposed to flow therefrom. Indeed one would suppose, from the importance given to the subject, that practically all evils of corporate finance flow from that source. The sympathy seems to be all for the poor creditor of the corporation and the purchaser of its stock, neither of whom is obliged to trade with or buy the stock of such corporation. But looking at the proposition from the angle of the organizer of an industrial or mercantile organization in Wisconsin, how can such organizer, who may be highly skilled in his line of work with years of experience back of him, get what he deserves from the earnings of the business which he may build up, without jeopardizing the interests of the creditors and purchasers of stock of such corporation? A group of men with money may desire to put their money against the other man's experience and skill and take preferred stock of the corporation for their investment. Under the statutes of Wisconsin there is no method by which the man of experience, but without money, may secure the fruits of his labors and retain a substantial interest in the corporation which he may proceed to build up. Section 1753 of the Revised Statutes of Wisconsin provides as follows:

"No corporation shall issue any stock or certificate of stock except in consideration of money or of labor or

LEGISLATIVE SUGGESTIONS

property estimated at its true money value, actually received by it, equal to the par value thereof, nor any bonds or other evidences of indebtedness except for money or for labor or property estimated at its true money value, actually received by it, equal to seventy-five per cent of the par value thereof, and all stocks and bonds issued contrary to the provisions of law and all fictitious increase of the capital stock of any corporation shall be void."

If a liberal construction of that section is attempted and a liberal value placed upon property or services given in exchange for stock, the parties taking the common stock of a company may be imperiling their life's savings in the event of failure of the plans and hopes of the new enterprise. The result is either that the organizer takes a chance and over-values the property or service with which he pays for his stock or a new enterprise is stifled. If the over-valuation takes place what happens? The balance sheet of that corporation shows miscellaneous assets of patents, good-will, and junk to offset the capital stock liability. A glance at the statement of some of our prominent industrials is all that is necessary to show that situation. The guileless creditors and purchasers of stock do not carefully analyze that statement to their great sorrow and chagrin. In a great many cases the present requirement puts a premium on dishonesty and makes the organization of new and meritorious enterprises a difficult task.

Can the situation be remedied? For a number of years prominent writers on corporate law have advocated the formation of corporations with common stock of no par value. The Railroad Securities Commission, of which Messrs. Hadley, Judson, Strauss, Fisher, and Meyer were members, in their report to Congress in December, 1911, brought the matter forcibly to the attention of the country. That report contains the following which is directed particularly to shares of railroads:

"We do not believe that the retention of the hundred-dollar mark, or any other dollar mark, upon the face of the share of stock, is of essential importance. We are ready to recommend that the law should encourage the creation of companies whose shares have no par value, and permit existing companies to change their stock into

shares without par value whenever their convenience requires it. After such conversion any new shares could be sold at such price as deemed desirable by the board of directors, with the requirement of publicity as to the proceeds of the sale of such shares and as to the disposition thereof; giving to the old shareholders, except in some cases of reorganization or consolidation, prior rights to subscribe pro rata, if they so desire, in proportion to the amount of their holdings.

“As between the two alternatives of permitting the issue of stock below par, or authorizing the creation of shares without par value, the latter seems to this Commission the preferable one. It is true that it will be less easy to introduce than the other, because it is less in accord with existing business habits and usages; but it has the cardinal merit of accuracy. It makes no claims that a share thus issued is anything more than a participation certificate.”—House Documents, Vol. 139, p. 25.

In 1912 New York adopted amendments to its corporate laws permitting the organization of corporations with common stock of no par value and providing that “the amount of capital with which the corporation will carry on business, which amount shall not be less than the amount of preferred stock (if any) authorized to be issued, with a preference as to principal, and in addition thereto a sum equivalent to \$5.00, or some multiple of \$5.00, for every share authorized to be issued other than such preferred stock, but in no event shall the amount of such capital be less than \$500.00.” The Act further provides that each share of such stock without nominal or par value shall be equal to every other share of said stock subject to the preferences given to preferred stock, and that every certificate for such shares without par value shall have plainly written upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of said shares; that the corporation may issue and sell its authorized shares for such consideration as may be prescribed in the certificate of incorporation or as may be fixed by the board of directors pursuant to authority conferred in said certificate, or if said certificate shall not so provide, then by the consent of the

LEGISLATIVE SUGGESTIONS

holders of two-thirds of each class of shares then outstanding. That any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of said shares shall not be liable to the corporation or to its creditors in respect thereto. The Act contains careful provisions in regard to the amount of capital to be put in before commencing business and as to the liability of the directors for declaring dividends which will reduce the amount of its capital below the amount named in the certificate as the amount of capital with which the corporation will carry on business. The organization tax payable on such shares without par value is at the rate of five cents on each share which the corporation is authorized to issue.

Maryland recently passed an act permitting the organization of corporations with such capital stock and other states are contemplating a change. Liberal use has been made of the New York statute, particularly within the past year.

A share of common stock of a corporation represents an aliquot part of the net value of the business over and above all debts and stock preferences and the value of such common stock depends upon the net assets and the earning power of the corporation. There does not seem to be any necessity that such net value shall be divided into shares, each one of which shall be designated in dollars. Stock of no par value will not be sold above or below par but at what it is worth, based on assets and earning power. On the part of the investor, of necessity, it will mean a closer investigation of the condition of the corporation and with the increase of investigations on the part of investors in its stock the corporation will be obliged to give more complete and accurate reports of its condition. It will not be necessary for such corporation to carry ridiculous values on doubtful assets to balance the capital stock liability. At the same time the man of experience and skill may adequately reap the benefits of his labors and retain a substantial interest in his corporation without injury in any way to the public or those who deal with him. The danger may lie in inflation of the issue of common stock but there are several things to prevent that. First, is the blue sky law which will prevent fraudulent stock jobbing propositions. Second, is the provision requiring payment of at least \$5.00 for each share of common stock. Third, the fact that any man endeavoring to build up a real corporation does not care to issue any more common stock than is absolutely neces-

sary, as each additional share diminishes the value of each issued share.

On the whole it seems that this method will bring about desired results. The creditors and purchasers of stock will know that the corporation has received the amount of capital set forth in its articles as the amount with which it shall begin business. If necessary, the Railroad Commission may be authorized to see that this provision of the law is complied with as a condition precedent to completed organization as is now required of insurance corporations. The creditors and purchasers of stock will know that the statements of the corporation can contain actual value of assets without subjecting any one to a stock liability. Corporations availing themselves of this privilege may be required to file annual statements or duplicate income tax reports with the Railroad Commission. The advantage to the organizers lies in the fact that the common stock may be divided into as many shares as desired subject to the payment of a stated amount per share and such shares may be retained, sold or given as a bonus with preferred stock or bonds. The value of such shares thereafter depends solely upon the success of the corporation. The market value will be the actual value.

If proposed legislation along these lines is presented to the legislature at this session it is hoped that this article may be the means of provoking discussion of the matter so that the legislative committees may receive the benefits of the views of parties interested in such measure.