RECENT CASES

ATTORNEYS—ADMISSION TO THE BAR—WAIVER OF REQUIREMENTS.—On application for admission to attorney's examination. Applicant spent two years at one law school, but withdrew with a deficiency in criminal law. Completed his legal education at another law school; took and passed a course in criminal law. *Held*: application denied. *In re Austin,* 122 N. J. Law 555, 7 A2d. 167 (S. Ct. 1939).

Rule 5 (a) of the Supreme Court[1] requires that all deficiencies must be made up at the law school in which they were incurred. The result reached by the court is consistent with its earlier rulings that there must be no relaxing of the requirements,[2] although in the case of two World War veterans it did relax the preliminary educational requirements.[3]

The court construed the word "said" in the Rule to mean "same," whereas it generally is used as a word of reference to an antecedent name and, as such, to identify the person or thing named as the one above mentioned.[4] It would seem, therefore, that the correct solution would be that "said" referred to an approved law school; and that the applicant would have been entitled to take the examination, having passed criminal law at an approved law school.

Although the construction of the rule is now definitely settled, students, in transferring from one school to another, do not consult attorneys to ascertain if their action will be effective to obtain for them credits for the New Jersey bar. It is suggested, therefore, that the rule could be changed to read "at the same law school," and thus eliminate any question of doubt.

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1. Rules of the Supreme Court, (1938), 5 (a): "A portion of such . . . clerkship, . . . spent in regular attendance at an approved law school shall be allowed . . . provided the candidate shall have pursued and successfull passed . . . at said law school all of the courses required of a candidate for a degree therefrom . . . "

2. *In re* Branch, 70 N.J. Law, 537, 57 A. 431 (S.Ct. 1904); *In re* Application of K., 88 N.J. Law, 157, 98 A. 668 (S.Ct. 1915); *In re* Cole, 12 N. J. Misc., 131, 169 A. 634 (S.Ct. 1934).

3. *In re* Sklarey, 1 N.J. Misc. 484 (St.Ct. 1923); *In re* Fields, 1 N. J. Misc. 614 (S.Ct. 1923).

4. Baptist Church v. Mulford, 8 N.J. Law 182 (S.Ct. 1825); *In re* Phelan's Estate, 82 N.J.Eq. 316, 318, 87 Atl. 625 (Prerog. Ct. 1913); Hinrichsen v. Hinrichsen, 172 Ill. 462, 50 N.E. 135 (1898).

CORPORATIONS—NO PAR STOCK—FIXED CONSIDERATION THEREFOR AND ASSESSABILITY OF HOLDER THEREOF.—The directors of the defendant corporation accepted an offer from two of the respondents to sell to the corporation the business then being conducted by them in consideration of the assumption of debts, especially a note to the third respondent for $950, and for the further consideration of 300 shares of defendant's capital stock to be divided among the three respondents. The minutes of the defendant corporation contained the following statement: "It is understood that the said shares of stock shall be issued at the price of $20 per share and representing a total value of $6,000".

The assets of the business turned over were worth only $1,500. The receiver prayed that the respondents be assessed a sum sufficient to satisfy creditors, on the theory that their stock was not fully paid. *Held,* order denied. While the holder of non-par stock who takes with notice that it was issued for less than the prescribed or fixed consideration is liable for so much of the balance of the consideration as may satisfy creditors, the directors of defendant fixed the consideration by accepting respondents offer to transfer their business. The fixed consideration was satisfied by a consummation of the transaction and the stockholders are not assessable. *G. Loewus & Co. v. Highland Queen Packing Co.,* 125 N.J.Eq. 535, 6 Atl. (2d) 545 (Ch. 1939).

By statute, stock without par value may be issued for such consideration as may be fixed by the directorate acting under authority granted by the certificate of incorporation.[1] There is no rule requiring a fixed minimum consideration. Having as its object the elimination of legal control imposed by the "trust fund" and "holding out" doctrines,[2] this statutory device hands over to the directorate the power "to dilute at will".[3] The statute furnishes no yardstick by which the amount of consideration is to be measured. No substitute is made for the standard of par value.

The court, in the instant case, as a matter of *dictum,* held that a holder with notice of no par stock issued for less than the prescribed consideration is liable for so much of the balance as may satisfy credi-

1. REV. ST. 1937, 14:8-6.
2. Johnson v. Louisville Trust Co., 293 Fed. 857, 862 (C.C.A., 6th, 1923).
3. BERLE & MEANS, THE MODERN CORPORATION & PRIVATE PROPERTY (1935) p. 159.

tors. To hold otherwise would witness the complete passing of legal concern for the protection of creditors through the device of no par stock, and complete the liberation from "the thraldom of the par value feature".[4]

The precise holding of the instant case was a result of the court's conclusion that the only consideration offered for the stock was the transfer of the business conducted by respondents. The acceptance of this offer "fixed" the consideration and the consummation of the transfer constituted a delivery to the corporation of the full consideration. It is submitted that in cases where doubt is present as to the offered consideration (created in the instant case by the difference between the consideration stated in the minutes and the alleged actual value of the property transferred) a court of equity should exercise its power to circumscribe the absolute power granted to the directors to fix the consideration. This is particularly necessary when an established corporation with a surplus above original assets received is involved, for then the price at which additional stock is issued has a material effect on the interests of existing shareholders. The sale of new shares creates a new divisor for the total assets and it is of interest to existing stockholders that the value of the fraction representing their present aliquot interest is not diminished.[5] A reasoning based on an analogy to that underlying the doctrine of preemptive rights requires equity to interfere to prevent an unjust impairment of values.[6]

The result of the holding can be justified, however, from the shareholders angle by a consideration of the corporation's financial development at the time of the issuance. The facts indicate that the three respondents were the only substantial shareholders in what appears to be a small corporation. If this be true, it makes little, if any, difference how much or how little in the way of a consideration is received for original no par stock, so long as the consideration is lawful in quality.

From a standpoint of creditors, the case is but a further indication that the corporate device of no par stock grants to management an absolute power of dilution, subject to but little equitable and no statu-

4. Bodell v. General Gas & Electric Corp., 15 Del., Ch. 119, 132 Atl. 442 (1926).

5. *Ibidem.*

6. *Cf.*, Wall v. Utah Copper Co., 70 N.J.Eq. 17, 62 Atl. 533 (Ch. 1905).

tory limitations, and that the whole theory of such stock is to let the buyer beware and let the creditor beware.[7]

EQUITY—INJUNCTIVE RELIEF AGAINST A PUBLIC NUISANCE—REMOVABILITY OF SUIT BY LOCAL BOARD OF HEALTH TO FEDERAL COURTS.—Complainant, the local board of health of a New Jersey municipal corporation, acting under statutory authority, filed a bill in the court of chancery, in the name of the state on the relation of the board, seeking the abatement of an alleged public nuisance. Defendant, a Delaware corporation, sought to remove the cause to the federal district court on the ground of diversity of citizenship. *Held,* Removal denied. *State, ex rel. Township of Hillside v. Mundet Cork Corp.,* 126 N.J.Eq. 100 (Ch. 1939).

A state is not a citizen for purposes of federal jurisdiction.[1] A municipal corporation is a citizen within the purview of the removal act.[2] It is equally well settled that "the mere presence on the record of the state as a party plaintiff will not defeat the jurisdiction of the federal court when it appears that the state has no real interest in the controversy".[3] In denying removal in the instant case the court held the state to be the real party in interest in a proceeding seeking the abatement of a public nuisance. This conclusion is amply justified.

The object of the suit is the vindication of a "public" right. The cause of action accrues not to the municipality but to the state in its capacity as *parens patriae.* The interest of the state is independent of and beyond the titles of its citizens.[4] Early cases refused relief when the attorney general was not a party.[5] More recent cases continue the

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7. See BERLE & MEANS, *supra* note 3 at p. 254, footnote 12.

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1. Arkansas v. Kansas & Texas Coal Co., 183 U.S. 53, 22 Sup. Ct. 47, 46 L. Ed. 78.

2. *Cf.* Parks v. Carriere Consol. School District, 12 Fed. (2d.) 37 (C.C.A., 5th, 1926).

3. *Ex parte* Nebraska 209 U.S. 436, 444.

4. Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907).

5. Crowder v. Tinkler, 19 Vesey 617 (1816); *Cf.* Atty. Gen. v. Williams, 174

rule that in actions seeking the enforcement of a public right or the prevention of a violation of that right, the state is a necessary party to the litigation.[6] In the absence of statute chancery acts in such cases on information of the attorney general.[7] But the legislature may divert this duty from him and confer it on some other officer or public body.[8] The municipality, through its board of health, acts as an informant—a conduit by which the state obtains information of the nuisance. Considerations of convenience and expediency make such delegations of authority necessary.

Mass. 476 (1899).

6. Dodge v. Penna R.R. Co., 43 N.J.Eq. 351 (Ch. 1887); Anthony Shoe Co. v. W. Jersey R.R. Co., 57 N.J.Eq. 607, 42 Atl. 279 (E. & A. 1898); Morrison v. Standard Oil Co., 105 N.J.Eq. 104, 147 Atl. 161 (Ch. 1929); Larkin v. Wykoff, 75 N. J.Eq. 462, 72 Atl. 98 (Ch. 1909).

7. Hutchinson v. Board of Health, 39 N.J.Eq. 569 (E. & A. 1885); State v. Dupont, etc., Co., 79 N.J.Eq. 31, 80 Atl. 998 (Ch. 1911).

8. Ford v. Sheldon, 95 N.J.Eq. 408, 124 Atl. 65 (Ch. 1924); Public Utility Commissioners v. Lehigh Valley R.R. Co., 106 N.J.L. 411, 149 Atl. 263 (E. & A. 1929).