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HISTORY OF HOLDING COMPANY LEGISLATION IN NEW YORK STATE: SOME DOUBTS AS TO THE "NEW JERSEY FIRST" TRADITION

FRED FREEDLAND*

INTRODUCTION

VIRTUALLY all writers on corporate law and history and many lawyers appear to believe that New Jersey was the first state to provide by legislation the fundamental basis for the holding company, namely, the authority for one business corporation to own the stock of another business corporation. The purpose of this study is twofold: (1) to demonstrate that New Jersey could not have been the first state to permit one business corporation to hold another business corporation's stock, having been preceded by New York in sanctioning this activity, and (2) to indicate, by a detailed historical presentation of the legislative action of New York on the subject, that the enactment of such restrictive legislation as the integration provisions of the Federal Public Utility Holding Company Act of 1935 is not such a radical innovation in the governmental regulation of American business corporations as those unfamiliar with such legislation may be inclined to assume.

Intercorporate stockholding is so much of a commonplace in our present day economy that one may be prone to forget that, almost without exception, the authority for such corporate activity is and always has been ultimately based upon positive legislative action. At common law, in New York and virtually every other American jurisdiction, it has been uniformly held that a business corporation has no inherent authority to hold the stock of another business corporation, even if both corporations are engaged in exactly the same type of business venture.¹

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In view of the frequent citation of New York Session laws in this study, the prefix "N.Y." will only be inserted before the initial citation of such laws in each paragraph, unless further insertions are necessary for purposes of clarification.

1. It is the well settled rule in virtually every jurisdiction that the power of intercorporate stockholding is derived exclusively from an express or implied legislative grant. Courts have invariably restricted the implied power to holdings acquired in the ordinary course of business as outright payment for debts owing or as collateral for the payment of debts and have required an express grant for holdings acquired by way of purchase or exchange of stock. *People ex rel. Peobody v. Chicago Gas Trust Co.*, 130 Ill. 268, 283-85, 22 N.E. 798, 800-02 (1889); *Elkins v. Camden and Atlantic R. R.*, 36 N.J. Eq. 5, n. 10 (1882); *Talmage v. Pell*, 7 N.Y. 328, 340-48 (1852) (dictum); *Ballantine, Corporations* § 88 (2d ed. 1946); 5 *Thompson, Corporations* §§ 4064-4067, 4071, 4073 (3d ed. 1927 and 1931 Supp.). But see *Booth v. Robinson*, 55 Md. 419 (1880); *State ex inf. Hadley v. Missouri Pacific Ry.*, 237 Mo. 338, 141, S.W. 643 (1911).

It is in statutory law, therefore, that the genesis and development of legalized holding company activity by business corporations in the United States is to be found and, more particularly, in the statutes of the various states.² The course of such legislation in the State of New York will be definitively treated in this study.

For purposes of this study, "holding company legislation" will be defined as legislation of a general character authorizing one business corporation to acquire the stock of another business corporation by purchase or exchange of stock and to hold such stock. Any unqualified reference to "stockholding," "power of intercorporate stockholding," (etc.) will relate only to the holding of stock which has been acquired in this manner.

This definition necessarily excludes legislative grants, express or implied, authorizing the corporate holding of stock acquired as outright payment for debts owing or as collateral for the payment of debts,³ as well as grants of intercorporate stockholding powers to business enterprises individually incorporated by special act of the legislature, the exclusive method of incorporation in New York prior to March 22, 1811 and the prevailing method until the statutory implementation of the "self-incorporation" provisions of the 1846 state constitution.⁴ By way of back-

2. Apparently, no federal legislation authorizing intercorporate stockholding has ever been enacted. There has been, of course, federal legislation limiting holding company activity authorized by the state of domicile, notably the Public Utility Holding Company Act of 1935, 49 Stat. 803; for current provisions of amended statute, see 15 U.S.C.A. §§ 79, 79a-79z (latest amendment 1949). For other examples, see antitrust restrictions contained in §§ 408 and 409 of the Civil Aeronautics Act of 1938 (52 Stat. 1001-03 (1938)), 54 Stat. 1235 (1940), 49 U.S.C.A. §§ 488, 489) and § 5 of the Interstate Commerce Act of 1887, as amended by § 11 of the Panama Canal Act of 1912, § 407 of the Transportation Act of 1920, §§ 201 and 202 of the Act of June 16, 1933, § 7 of the Transportation Act of 1940 and § 4(a) of the Act of August 2, 1949, 37 Stat. 566 (1912), 41 Stat. 480, 481 (1920), 48 Stat. 217-20 (1933), 54 Stat. 905-10 (1940) 63 Stat. 486 (1949); for text of most recent amendments, see also 49 U.S.C.A. § 5 (2) (14).

3. See note 1 *supra*.

4. Prior to 1846 there were only three general incorporation statutes enacted by the New York Legislature, namely, the 1811 act for the incorporation of certain manufacturing enterprises, the 1814 act for the incorporation of privateering associations, and the Free Banking Act of 1838. N.Y. Laws 1811, c. 67; Laws 1814, c. 12 (38th sess.); Laws 1938, c. 260. The 1811 statute was amended on several occasions prior to 1846 (see note 5 *infra*) and the 1814 statute was of extremely limited duration, becoming inoperative about 1816 and being expressly repealed in 1828, effective December 31, 1829. (See N.Y. Laws 1828 (2d sess.) c. 21, § 1(180)).

The new constitution adopted by the State of New York in 1846 not only permitted business enterprises to be incorporated without recourse to the legislature in each instance but established "self incorporation" (the process whereby a group of individuals incorporate themselves in pursuance of a general incorporation statute) as the basic public policy of the state. The constitution (N.Y. Const. art. VIII, § 1(1846)) provided as follows:

"Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the

ground, however, it might be noted that in the 263 charters specially granted to New York business corporations prior to March 22, 1811, the date of the state's first general incorporation statute,⁵ only one corporation, the Manhattan Company, was unequivocally granted a power of intercorporate stockholding.⁶

objects of the corporation cannot be attained under general laws. All general laws, and special acts passed pursuant to this section may be altered from time to time or repealed."

These provisions have been retained intact to date. See N.Y. Const., art. X, § 1.

Theoretically, the legislature could so exercise its judgment as to grant special charters as a matter of course, and thereby nullify the self-incorporation requirement. Moreover, in view of a probable holding of the Court of Appeals that the judgment of the legislature is not subject to judicial review, such conduct might well be considered legal. *People v. Bowen*, 30 Barb. 24 (N.Y. 1859), *aff'd*, 21 N.Y. 517 (1860) (by implication). Practically, however, self-imposed restraints, public opinion and the gubernatorial veto constituted effective forces in frustrating any such policy. Cf. Veto Message by Governor Morgan, N.Y., Ass'y J., 82d Sess. 1143 (1859). Quære, further, as to what would have been the ultimate judicial rule, if the legislature had adopted such a policy. To what extent special charters were granted in the absence—or presence—of appropriate general corporation laws, the writer has undertaken definitely to ascertain for only four random years of the 1846-1889 period. In 1854, twenty charters were specially granted to business corporations. During the years 1872 and 1873, the number of charters totalled sixty-six. In 1875, only three grants were specially made. Only two of these eighty-nine special charters (See N.Y. Laws 1854, c. 144, at 332, Oneida Plank Road Company; Laws 1873, c. 340, at 527, Stoney Clove Turnpike Road Company) seemed to relate to activities coming within the purview of a coexisting general law.

5. N.Y. Laws 1811, c. 67. The statute, which was applicable to the incorporation of enterprises engaged in the manufacture of woolen, cotton, linen, glass and certain metal products, may have been the first general incorporation statute in the United States. See Dodd, *The First Half Century of Statutory Regulation of Business Corporations in Massachusetts*, Harvard Legal Essays 67, n. 13 (1934). But cf. Mass. Acts 1798, c. 59, approved February 21, 1799 (creating a general incorporation act for aqueduct companies which apparently could be operated for profit). The legislation was originally limited to five years in duration but in 1816, after a lapse of one week, was revived and extended to May 1, 1817. N.Y. Laws 1816, c. 58, § 1 (March 29, 1816). Thereafter, it was again allowed to lapse but was subsequently revived on March 31, 1818, with a provision that it remain in effect for another five year period. Laws 1818, c. 67. In 1821, however, the act was permanently embodied into law (Laws 1821, c. 14) and continued in effect until repealed in the general revision of 1890.

During the decade following its enactment, the act was amended to include within its scope enterprises engaged in the manufacture of clay commodities, earthenware, pins, beer, ale or porter, the extracting of lead from ore, the manufacture of leather in Greene, Delaware and Oneida counties, and the manufacture of coarse salt in the western district of the state. N.Y. Laws 1815, c. 47; Laws 1816, c. 58, § 2; Laws 1817, c. 223; Laws 1819, c. 102; Laws 1821, c. 231, § 19.

6. This conclusion is based upon an analysis undertaken by the writer in conjunction with an unpublished study relating to the growth of New York business corporations.

The charter to the President and Directors of the Manhattan Company authorized the use of ". . . surplus capital . . . in purchase of public or other stock. . ." N.Y. Laws 1799, c. 84, § 8. The corporation was organized as a water company but, possibly due to the active interest of Aaron Burr in its operations, was granted the exceptional power of conducting banking operations as well as the unique power of intercorporate stockholding.

It has been generally assumed by writers in the fields of law, economics and history that the initial holding company legislation in the United States originated in the State of New Jersey in the year 1888, 1889 or 1893.⁷ Even if the granting of intercorporate stockholding powers to "moneyed" corporations for investment purposes, in statutes of general import, were to be summarily excluded from the purview of holding company legislation—an arbitrary exclusion completely without historical justification⁸—the assumption is of questionable validity. It is submitted that this study will establish that at least one state, the State of New York, preceded the State of New Jersey in the enactment of such legislation.

I. HOLDING COMPANY LEGISLATION, NEW YORK: PRIOR TO 1890

Prior to the general revision of New York statutory law in 1890 and 1892, the general acts relating to business corporations (which were also

It opened its first banking office on September 1, 1799, and for the past several generations has functioned exclusively as a banking corporation, until very recently under the name of the Bank of Manhattan. On March 31, 1955, it absorbed the Chase National Bank and became the Chase Manhattan Bank.

During the pre-1811 period, several insurance companies and the mammoth American Fur Company, a trading company, were granted the power to invest their capital in stocks "created" or "authorized" by acts or under the laws of Congress, New York State, designated states or any state. See N.Y. Laws 1801, c. 56, § 12 (1887 reprint ed.) (Columbian Insurance Company); Laws 1802, c. 40, § 11 (Marine Insurance Company of New York); Laws 1802, c. 67, § 2 (Washington Mutual Assurance Company of the City of New York); Laws 1805, c. 72, § 11 (Commercial Insurance Company of New York); Laws 1806, c. 152, § 15 (Eagle Fire Company of New York); Laws 1807, c. 12, § 7 (Phoenix Insurance Company of New York); Laws 1808, c. 140, § 11 (American Fur Company); Laws 1809, c. 149, § 14 (Mutual Insurance Company of the City of New York); Laws 1810, c. 19, § 12 (Ocean Insurance Company); Laws 1810, c. 20, § 15 (New York Firemen Insurance Company); Laws 1811, c. 40, § 11 (Albany Insurance Company). However, such "stock" probably referred to stock issued by the federal or state governments as part of their public debt rather than stock authorized to be issued by business corporations. Apart from taxation, the sale of government stock, which had all the indicia and incidents of present day government bonds, was the usual method employed by both federal and state governments to obtain funds during the early years of the nation's history. Cf. N.Y. Laws 1815, c. 141 ("An Act to create a public and transferable stock, and to buy and collect additional taxes for the use of the State").

7. See N.J. Laws 1888, c. 259, at 385; N.J. Laws 1888, c. 295, at 445; N.J. Laws 1889, c. 265, § 4, at 414; N.J. Laws 1893, c. 171, § 1, at 301. These statutes will be given detailed consideration in the discussion of the "New Jersey first" tradition, pp. 399-409, *infra*.

8. Historically, insurance companies, trust companies and other "moneyed" corporations have been in no better legal position than other business corporations with respect to holding corporate stock in the absence of statutory authorization. See, e.g., 1 Cook, Stock, Stockholders and Corporation Law §§ 316, 317 (3d ed. 1894); Noyes, Intercorporate Relations § 268 n. 2 (2d ed. 1909); 6 Fletcher, Cyc. Corporations § 2826 (perm. ed. 1950). Consequently, there is no valid reason for excluding general legislation authorizing intercorporate stockholding by moneyed corporations from the concept of general holding company legislation. The fact that such stock might be held for investment is irrelevant.

incorporation statutes) were limited in scope to specific types of business activities—the Business Corporations Act of 1875⁹ excepted. In all, the New York Legislature enacted fifty-two such statutes during the period from 1811 through 1889. It was not, however, until the enactment of the general act for the incorporation of life and health insurance companies on June 24, 1853,¹⁰ that any business corporation was empowered to hold stock in another business corporation pursuant to a general incorporation act or other legislation of a general character. This power had not been granted in any of the fifteen general corporation acts previously enacted or in the Revised Statutes of 1827-1828, which contained several provisions relating to business corporations.¹¹

The 1853 act authorized life and health insurance companies to invest surplus funds in the stocks of domestic business corporations by providing as follows:

"It shall be lawful for any company organized under this act, to invest its funds or accumulations in . . . the stocks of the United States, stocks of this state, or of any incorporated city in this state, if at above par, *and any stocks created under the laws of this state* that shall be, at the time of such investment, at a market value in the city of New York, at or above par."¹²

9. N.Y. Laws 1875, c. 611, at 755. The statute included within its scope all business activity except "banking, insurance, construction and operation of railroads or the aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money and safe deposit companies."

10. N.Y. Laws 1853, c. 463, at 887. Section 22 of the statute repealed such provisions of the 1849 statute (Laws 1849, c. 308), cited note 11 *infra*, as were applicable to life and health insurance companies.

11. See N.Y. Rev. Stat., 1827-1828, pt. I, c. 18, tit. I (turnpike corporations), tit. II (moneyed corporations), tit. III (all corporations), tit. IV (special provisions relating to certain corporations); Laws 1811, c. 57 (corporations manufacturing certain textile, glass and metal products); Laws 1814, 38th sess., c. 12 (privateering associations); Laws 1838, c. 260, at 245 (Free Banking Act for commercial banks); Laws 1847, c. 210, at 216 (turnpike and plankroad companies); Laws 1848, c. 37, at 48 (gas light companies); Laws 1848, c. 40, at 54 (manufacturing, mining, mechanical or chemical corporations); Laws 1849, c. 303, at 441 (marine, fire, life and health insurance companies); Laws 1850, c. 140, at 211 (railroad companies); Laws 1851, c. 122, at 234 (building, mutual loan and accumulating fund associations); Laws 1852, c. 228, at 302 (ocean navigation companies); Laws 1853, c. 117, at 179 (building construction companies); Laws 1853, c. 135, at 213 (ferry companies). Although some of these statutes were amended prior to 1853, none of the amendments conferred a power of intercorporate stockholding.

12. N.Y. Laws 1853, c. 463, § 8, at 889. (Emphasis added.) Removed from context, the italicized language might be construed to be limited to investment in the public (government) stocks in circulation at the time (see note 6 *supra*). However, in view of the specific mention and enumeration of government stocks in immediately prior text, such a construction would hardly be tenable. Additional evidence that not merely public stocks were intended by such language is found in the use of an almost identical clause in the act relative to capital investments and its supersedure twenty days later by an amendment which specifically substituted the stocks "of the State of New York." See N.Y. Laws 1853, c. 463, § 6, at 888; Laws 1853, c. 551, § 1, at 1029. Except for this change, the text of the original section was kept sub-

For a brief twenty-four day span, extending from June 24 to July 17, 1853, life and health insurance companies were also authorized to invest capital funds in the stock of domestic business corporations,¹³ the only time prior to 1892 during which any "self-incorporated"¹⁴ insurance company was authorized to invest any of its capital funds in corporate stock and the only time in the history of New York State when any such insurance company might legally invest all of its capital funds in this manner.

The power accorded life insurance companies to invest surplus funds in corporate stock had a chequered history during the pre-1890 period. In 1860, when the general act was amended for the first time, the companies were completely divested of the power and continued to be so restricted during the following seven years.¹⁵ In 1868 the power was reinstated in the identical language of the original legislation and was conferred upon all domestic life insurance companies, including companies organized under special acts of incorporation.¹⁶

As the result of a substantial broadening of the ambit of the general act in 1865,¹⁷ the investment power conferred in the 1868 amendment was extended to all non-life insurance companies incorporated under the act except fire and marine insurance companies. From 1881 to 1892 the amendment overlapped and, to some extent, conflicted with an 1881 amendment to another section of the general act, primarily designed to regulate the investment of capital funds of domestic insurance corporations other than life, fire and marine insurance companies, which provided specifically that any such insurance corporation could invest "funds accumulated in the course of its business" in the same securities authorized for the investment of surplus funds of fire insurance companies.¹⁸

On June 25, 1853, the day following the enactment of the general legis-

stantially intact in the amendatory statute and the obvious and only reason for the change was to preclude investment in stocks of domestic private corporations. Existing life and health insurance companies could avail themselves of the provisions of the statute by filing and publishing a declaration of intentions. N.Y. Laws 1853, c. 463, § 21, at 896.

13. N.Y. Laws 1853, c. 463, § 6, at 888 (authorization); Laws 1853, c. 551, § 1, at 1029 (termination of authorization). See also note 12 *supra*.

14. Self-incorporation refers to the process whereby a group of individuals incorporate themselves in pursuance of general legislation without further recourse to the legislature.

15. N.Y. Laws 1860, c. 328, § 2, at 559; Laws 1862, c. 300, § 3, at 504; Laws 1866, c. 525, § 1, at 1132.

16. N.Y. Laws 1868, c. 318, §§ 1, 2, at 682.

17. N.Y. Laws 1865, c. 328, § 1, at 546. Only fire and marine insurance companies could not be incorporated under the act. In 1879 the companies eligible for incorporation were more particularly defined as companies insuring the following risks: life, health, accident, fidelity bond, lives of horses and livestock, plate glass, boiler explosion, burglary and theft. Laws 1879, c. 485, § 1, at 530.

18. N.Y. Laws 1881, c. 560, at 800. The 1868 amendment was not repealed until 1892. Laws 1892, c. 690, § 290, at 2037.

lation authorizing life and health insurance companies to engage in holding company activity, fire and inland navigation insurance companies were granted an unconditional power to invest surplus funds in the stock of domestic business corporations.¹⁹ Ten years later the power was limited to investment in the stock of domestic banking corporations.²⁰ The limitation was of brief duration, however, and in 1864 the investment power was enlarged to permit the acquisition of the stock of domestic and federal "solvent dividend paying institutions."²¹

In 1857 marine insurance companies were granted the same unconditional power of investing surplus funds in corporate stock as that originally granted to fire insurance companies²² but, unlike the latter organizations, continued to enjoy the power without modification until the 1892 revision.

The general act of 1887 providing for the incorporation of trust companies²³ sanctioned the indiscriminate use of trust funds for investment in and purchase of corporate stock but limited the maximum holdings in any particular corporation to \$20,000.²⁴

Insurance companies and trust companies carried on the substantial holding company activity of the period. No other moneyed corporations²⁵ were authorized to hold corporate stock and, excepting possibly an 1853 amendment to the general incorporation act for telegraph companies which *may* have unwittingly permitted the formation of a pure holding

19. N.Y. Laws 1853, c. 466, § 8, at 907: ". . . may be invested in or loaned upon the pledge of the stock, bonds or other evidences of indebtedness of any institution incorporated under the laws of this state, except their own stock. . . ."

For "reincorporation" of existing companies, see Laws 1853, c. 466, § 18, at 912.

20. N.Y. Laws 1863, c. 246, at 436.

21. N.Y. Laws 1864, c. 563, § 1, at 1305.

22. N.Y. Laws 1857, c. 469, at 14 (v. 2). The authorization was identical in language with the provisions of the 1853 grant to fire insurance companies quoted note 19 supra.

23. As defined in the act, a trust company included "all trust, loan, mortgage, security, guarantee and indemnity companies, or associations which may in any way receive moneys on deposit," but specifically excluded banks of deposit and discount and savings institutions. N.Y. Laws 1887, c. 546, § 37, at 712.

24. N.Y. Laws 1887, c. 546:

"Sec. 21. All trust companies organized under this act . . . shall have power: . . .

11. To purchase, invest in and sell stocks . . .

"Sec. 27. The trustees shall have a discretionary power of investing moneys received by them in trust . . . in such real and personal securities as they may deem proper; but no trust company shall hold stock in any private incorporated company beyond twenty thousand dollars."

25. The designation of corporations having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances, as "moneyed corporations" was introduced into the law as early as the Revised Statutes of 1827. N.Y. Rev. Stat. 1827-1828, pt. I, c. 18, tit. II § 51. In substance, the classification has been retained to the present day. See N.Y. General Corporation Law § 3(6).

company,²⁶ such authority was conferred upon non-moneyed corporations on only five occasions prior to 1890 and confined in each instance to rather specialized situations.

The power of intercorporate stockholding granted prior to 1890 to business corporations, other than moneyed corporations and possibly telegraph companies, was uniformly of limited scope and, with one exception, took the form of an amendment or technical supplement to the acts of 1848 and 1850 providing respectively for the formation of manufacturing (etc.) corporations²⁷ and railroad corporations.²⁸

In 1866 manufacturing companies incorporated under the general manufacturing (etc.) act of 1848 were authorized to hold stock in any corporation engaged in supplying or transporting materials required in the

26. The 1853 amendment to the original general incorporation act authorized the formation of companies "for the purpose of owning any interest in any such line or lines of electric telegraph." N.Y. Laws 1853, c. 471, § 1, at 931. This might be construed to contemplate the ownership of an interest in telegraph companies operating such lines, especially in view of later legislation specifying "own or hold." (Emphasis added.) Laws 1862, c. 425, § 1, at 761 ("own and hold"); Laws 1890, c. 566, §§ 100, 101 at 1152 ("owning any interest"; "hold or own any interest"); Consol. Laws 1909, c. 63, §§ 100, 101 ("owning any interest"; "hold or own any interest"); Laws 1926, c. 762, § 25, at 1416 ("acquire and own any interest"). The permissible objects of incorporation set forth in the original general incorporation act of 1848 were limited to the single purpose "of constructing a line of wires of telegraph through this state. . . ." Laws 1848, c. 265, § 1, at 392.

27. N.Y. Laws 1848, c. 40, at 54. The full title of the act was originally "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes." Early in 1866, the title was amended to "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical or other purposes." Laws 1866, c. 799, § 2, at 1749. Later in 1866, the title was further and finally amended to read "An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes." Laws 1866, c. 838, § 1, at 1896.

Notwithstanding its broadly worded provisions, twenty-three piecemeal amendments were required to permit the incorporation of the larger segment of ordinary commercial enterprises under the act and ten additional amendments to permit the incorporation of certain other commercial enterprises carrying on operations which were not necessarily confined to the county of their situs. See N.Y. Laws 1851, c. 14, at 16; Laws 1855, c. 301, at 516; Laws 1857, c. 262, at 549 (as supplemented by Laws 1883, c. 240, at 243); Laws 1863, c. 63, at 87; Laws 1864, c. 337, §§ 1, 3, at 783, 784; Laws 1865, c. 234, at 378; Laws 1865, c. 307, at 514; Laws 1866, c. 371, § 1, at 828; Laws 1866, c. 799, § 1, at 1749 (as amended by Laws 1871, c. 657, § 1, at 1435); Laws 1867, c. 248, § 1, at 417; Laws 1868, c. 781, at 1749; Laws 1869, c. 605, at 1443; Laws 1871, c. 535, at 1130 (as supplemented by Laws 1881, c. 58, at 64, Laws 1881, c. 232, at 338, Laws 1881, c. 589, at 825); Laws 1871, c. 657, § 2, at 1435; Laws 1872, c. 426, at 1015; Laws 1874, c. 149, § 1, at 174; Laws 1875, c. 113, at 100; Laws 1875, c. 365, at 351; Laws 1877, c. 374, § 1, at 385 (as supplemented by Laws 1880, c. 241, § 2, at 364); Laws 1879, c. 290, § 1, at 383; Laws 1880, c. 85, §§ 1, 5, at 197, 198; Laws 1881, c. 650, at 891; Laws 1882, c. 273, § 1, at 341; Laws 1884, c. 267, at 331; Laws 1885, c. 84, at 192; Laws 1888, c. 313, at 542; Laws 1890, c. 508, at 913.

28. N.Y. Laws 1850, c. 140, at 211.

business of the holding company, while so engaged and for two years thereafter.²⁹ During the following decade all corporations organized under the act³⁰ were given this authority and were also empowered to hold, for an unlimited period, stock in corporations using or manufacturing materials mined or produced by the holding company.³¹ Both statutes, in expressly providing for the issuance of stock by the holding company in payment for the stock acquired, also legalized the mutual acquisition of intercorporate stock interests through the exchange of stock.

Railroad corporations were first granted the power of intercorporate stockholding in 1867, as an incident of the legislative policy encouraging railroad corporations leasing the property of other railroad corporations to acquire control or outright ownership of the lessor corporations. In furtherance of this policy, the lessee corporation was authorized to issue additional stock for the express purpose of exchanging such stock for that of the lessor corporation and could ultimately acquire the entire stock of the lessor corporation in this manner.³² In 1875, all railroad corporations were given the power to hold the stock of foreign corporations owning fuel producing lands³³ and subsequently, by virtue of an 1882 supplement to the general manufacturing (etc.) act of 1848, were also authorized to subscribe for, take and hold stock in domestic organizations organized for the construction of intrastate union railway depots.³⁴

The necessity for special legislative action as late as 1882 to permit railroad corporations to subscribe for, take and hold stock in corporations engaged in the construction of such an integral part of a railway system as a union railway depot aptly illustrates both the inflexibility of the contemporary judicial rule against intercorporate stockholding and the restrictive policy of the New York Legislature in granting such authority to business corporations, other than insurance and trust companies, prior to 1890.

II. INTEGRATION OF NEW YORK STATUTORY BUSINESS CORPORATION LAW

In 1890 an attempt was made to reformulate the major portion of the statutory business corporation law of the state within the compass of five general laws, namely: the General Corporation Law, the Stock Corporation Law, the Railroad Law, the Transportation Corporations Law, and

29. N.Y. Laws 1866, c. 838, § 3, at 1897.

30. For types of non-manufacturing corporations which came within the purview of the statute, see note 27 *supra*.

31. N.Y. Laws 1876, c. 358, at 334.

32. N.Y. Laws 1867, c. 254, at 444; see present N.Y. Railroad Law § 149. Railroad corporations were first authorized to lease their roads in 1839. Laws 1839, c. 218, at 195.

33. N.Y. Laws 1875, c. 586, § 2, at 706; now N.Y. Railroad Law § 8(9).

34. N.Y. Laws 1882, c. 273, § 2, at 341; now N.Y. Railroad Law § 8(9).

the Business Corporations Law.³⁵ In 1892, due to inadequate and conflicting provisions, the General Corporation, Stock Corporation and Business Corporations Laws³⁶ were redrafted with incidental or substantial changes, and the Banking Law and Insurance Law were introduced for the first time.³⁷ In the course of the general revision of 1890 and 1892 all the earlier general corporation acts, excepting the 1868 act for the incorporation of fishing companies to operate in the salt waters of Suffolk County³⁸ and the New York City marketing company act of 1871,³⁹ were repealed. Frequently, however, incidental provisions or major portions of some of the pre-1890 statutes were literally or substantially incorporated into the revised legislation.

In 1910 an official consolidation of all New York legislation was completed and the foregoing general corporation laws, as amended and revised, became the definitive code of New York statutory business corporation law.⁴⁰

With regard to the purview of the respective general corporation laws, the Railroad Law, Insurance Law and Banking Law more or less "speak for themselves" and require no further elucidation. The purview of the other laws, not being as readily discernible from their titles, will be described in greater detail.

The Transportation Corporations Law of 1890 applied to ferry, navigation, stage coach, tramway, pipe line, gas and electric light, water works, telegraph and telephone, turnpike and bridge corporations.⁴¹ In 1911, the law was extended to freight terminal companies.⁴² In the course of the general revision of 1926 district steam corporations were included within the purview of the law but the provisions relevant to tramway and turnpike corporations were completely eliminated.⁴³ By virtue of the same

35. See Appendix.

36. *Ibid.*

37. *Ibid.*

38. N.Y. Laws 1868, c. 161, at 343. Repealed by Consol. Laws 1909, c. 4, § 25 (Business Corporations Law).

39. N.Y. Laws 1871, c. 820, at 1886. Repealed by Consol. Laws 1909, c. 4, § 25 (Business Corporations Law).

40. See Appendix. It is quite possible, in spite of the excellent work of the consolidators, that some pre-existing legislation may have been overlooked and technically may still survive. Note the erroneous classification of the act of 1877 relating to plate glass insurance companies (N.Y. Laws 1877, c. 439) as an incorporation statute. 3 Report of N.Y. Board of Statutory Consolidation 2950 (1907). This inaccuracy is preserved in the introductory historical note to McKinney, N.Y. Insurance Law at 3.

41. N.Y. Laws 1890, c. 566, art. I-IX, at 1137-64.

42. N.Y. Laws 1911, c. 778, at 2075.

43. N.Y. Laws 1926, c. 762, §§ 1, 2, at 1410; now N.Y. Transportation Corporations Law §§ 1, 2.

revision stage coach corporations were merged in the new omnibus corporation classification.⁴⁴

The Business Corporations Law of 1890 was of indeterminable scope and applicable to types of business enterprises which could not be incorporated under other general corporation laws.⁴⁵ In the 1892 revision the law was made specifically inapplicable to water companies serving or located in New York City⁴⁶ and a few years later was also made inapplicable to moneyed and "transportation" corporations.⁴⁷ Inasmuch as the scope of the law had always been limited to accomplish the same result, the reason for such specific exceptions is not apparent. In 1923 the law was virtually repealed and all but a few of its provisions were reenacted in other general laws.⁴⁸ Since April 17, 1952, with the repeal and redistribution of the two surviving sections,⁴⁹ the law has had only historical significance.

The General Corporation Law⁵⁰ and Stock Corporation Law of 1890 and 1892 were the two general corporation laws which transected all other business corporation laws and formed the residual estate of New York business corporation law. In the event of conflict, provisions of these laws were subordinate to the provisions of other general corporation laws.⁵¹ In all other corporate matters the General Corporation Law (which has never become an incorporation statute) and the Stock Corporation Law governed, and served to supplement and unify other existing statutory business corporation law.

The Stock Corporation Law was initially inapplicable to moneyed corporations.⁵² In the 1892 revision the law was made only partially inapplicable to such corporations.⁵³ Thirty-one years later the legislation was

44. N.Y. Laws 1926, c. 762, § 60, at 1421; now N.Y. Transportation Corporations Law § 60.

45. N.Y. Laws 1890, c. 567, § 1, at 1167; Laws 1892, c. 691, § 1, at 2042.

46. N.Y. Laws 1892, c. 691, § 16, at 2050.

47. N.Y. Laws 1895, c. 671, § 1, at 445; Laws 1896, c. 460, at 428. "Transportation" corporations refer to enterprises incorporated under the Transportation Corporations Law.

48. N.Y. Laws 1923, c. 787, § 134(2), at 1421. Only five sections (12-16) survived the repeal.

49. See N.Y. Laws 1952, c. 806, §§ 1, 3, at 1734, 1735.

50. It is worthy of note that the 1892 version of the law marked the demise of the general manufacturing (etc.) act of 1848, which, with its numerous amendments, was the most important general corporation act of the pre-1890 period. N.Y. Laws 1892, c. 687, § 34, at 1813 (repeal).

51. See N.Y. Laws 1890, c. 563, § 25, at 1064; Laws 1890, c. 564, § 72, at 1079; Laws 1892, c. 687, § 33, at 1813.

52. N.Y. Laws 1890, c. 564, § 1, at 1067.

53. N.Y. Laws 1892, c. 688, § 1, at 1824. Article I, containing the general and reorganization provisions of the law, was the only article which continued to be inapplicable. In 1909, this article, as revised, was made partially applicable to moneyed corporations. However, the

made all inclusive in scope and extended "to any stock corporation created under or by a general or special law, except as to matters for which provision is made in any other corporate law."⁵⁴ In the same year, *for the first time*, the law became an incorporation statute. Whenever mention is made of the Stock Corporation Law, it will be necessary to bear in mind the broad potential scope of the statute. On the other hand, it should also be remembered that many business corporations authorized to hold corporate stock are not stock corporations and are unaffected by the statute.

There is one other general law which merits consideration in any study relating to New York holding company legislation of the post-1890 period. That is the Public Service (Commissions) Law which, originally introduced in 1907 and initially applicable only to railroads, street surface railroads and gas and electric companies,⁵⁵ eventually affected every corporation subject to the Railroad Law and Transportation Corporations Law.⁵⁶

applicable provisions had previously been included in other articles of the Stock Corporation Law.

54. N.Y. Laws 1924, c. 441, § 2, at 812.

55. N.Y. Laws 1907, c. 429, at 889. In 1910, the statute became chapter 48 of the Consolidated Laws without amendment. Laws 1910, c. 480, at 923. Among other things, the Public Service Commission(s) ousted from jurisdiction and supplanted the board of railroad commissioners, board of rapid transit commissioners and commission of gas and electricity. These latter agencies were originally created by Laws 1882, c. 353, at 444; Laws 1891, c. 4, §§ 1-3, at 3, 4; Laws 1905, c. 737, at 2092.

56. The present title, Public Service Law, was adopted in 1930. N.Y. Laws 1930, c. 782, § 3, at 1411. The law was extended, in piecemeal fashion, to telegraph and telephone companies (Laws 1910, c. 673, § 3, at 1931), steam corporations (Laws 1913, c. 505, § 3, at 1193) omnibus corporations (Laws 1931, c. 531, § 2, at 1295), water works companies (Laws 1931, c. 715, § 3, at 1557), motor carriers of freight (Laws 1938, c. 543, § 2, at 1362). Cf. present N.Y. Public Service Law, art. 5, 4-A, 3-A, 4-B, 3-B. In 1921, the law was amended to provide for the establishment of a transit commission which, in cities of more than one million population, divested the Public Service Commission of jurisdiction over the activities of railroads. Laws 1921, c. 134, § 3, at 386. The transit commission, in turn, was subsequently relieved of most of its authority by the creation in 1924 of the board of transportation. Laws 1924, c. 573, § 1, at 1038; cf. present N.Y. Rapid Transit Law, art. II. In 1943, the transit commission was abolished and two years later its former jurisdiction was formally assumed by the Public Service Commission. Laws 1943, c. 170, § 1, at 574; Laws 1945, c. 855, § 6, at 1892, now N.Y. Public Service Law § 5(1). To some extent, the jurisdiction of the Commission over the activities of corporations operating surface transportation facilities in cities with more than one million population has been curtailed. See Laws 1950, c. 163, at 687; Laws 1953, c. 618 at 1451; present N.Y. Public Service Law § 5-d. Since 1951, publicly owned and operated transit facilities have not been subject to the jurisdiction of the Commission in any respect. Laws 1951, c. 401, at 1071; now N.Y. Public Service Law § 5-c.

III. HOLDING COMPANY LEGISLATION NEW YORK: 1890—1955⁵⁷

Concurrently with the integration of the statutory business corporation law in New York State, there occurred a liberalization of legislative policy which, very early in the post-1890 period, resulted in a phenomenal expansion of the power of intercorporate stockholding granted to business corporations. In fact, the change in policy was so drastic that many of the initial legislative authorizations were subsequently qualified and never fully reinstated. Insurance companies, trust companies and public utility corporations, for example, do not possess as extensive a power of intercorporate stockholding today as they did in 1892.

In surveying the holding company legislation of the period commencing in 1890, business corporations will be divided into the following tripartite functional classifications: moneyed corporations, railroad and other public utility corporations, other corporations.

A. Moneyed Corporations⁵⁸

1. Insurance Companies

The Insurance Law of 1892 conferred upon all insurance companies, other than town and county cooperative insurance corporations, a power of intercorporate stockholding which was even broader than the generous legislative grants of 1853.⁵⁹ The law authorized the investment of capital funds in excess of the minimum requirements, as well as surplus funds, in the stock of any solvent "federal" corporation or of any solvent corporation of any state, excepting its own stock or the stock of other insurance companies.⁶⁰ In 1897 the latter prohibition was limited to the stock of

57. A chronological table of the general corporation laws of this period is contained in the Appendix. This period will sometimes be referred to as the "post-1890" period.

In instances where legislation enacted during this period is the substantive source of a current (1955) provision of the Consolidated Laws, such legislation will be cited as "N.Y. Laws, c. (etc.); now N.Y. Railroad (or other) Law §" Inasmuch as this is an historical study, it is the statute representing the original substantive source of the current provision which will be cited as the source legislation. Technical repeals, supersedes and amendments of the source legislation, which are substantively immaterial for purposes of this study, will be disregarded. Therefore, the statute cited will not necessarily be the literal replica or the most recent enactment of the current provision. For pre-1890 source legislation see notes 33, 34 supra.

58. For types of business corporations designated as moneyed corporations, see note 25 supra.

59. For the pre-1890 power of insurance companies, see pp. 372-75 supra.

60. "The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities in which deposits are required to be invested or in the public stocks or bonds of any one of the United States, or in the stocks, bonds or evidence of indebtedness of any solvent institu-

insurance companies carrying on the same kind of insurance business but the investing insurer was expressly forbidden to obtain "control" of any other insurance company.⁶¹

In 1906, as an aftermath of the Armstrong investigation,⁶² life insurance companies were completely divested of the power to invest in corporate stocks⁶³ and continued to be without such authority for more than two decades. In 1928 the legislative policy was relaxed to some extent and, between 1928 and 1939, surplus funds and capital funds, in excess of the prescribed minimum, could be legally invested in the preferred or guaranteed stocks of solvent issuing or guarantor corporations which had achieved a satisfactory net earnings record during the five years immediately preceding acquisition, provided the total investment in the preferred stock of any corporation did not exceed either ten percent of the outstand-

tion incorporated under the laws of the United States or of any state thereof, except its own stock, or the stock of any other insurance corporation or in such real estate as it is authorized by this chapter to hold." N.Y. Laws 1892, c. 690, § 16, at 1938.

See also Laws 1892, c. 690, §§ 176, 178, 205, at 2002, 2003, 2009; Consol. Laws 1909, Insurance Law, c. 33, §§ 16, 176, 178, 205; Laws 1920, c. 422, at 1047. Town and county cooperative insurance corporations were specifically excluded from the purview of the section until 1910. Laws 1892, c. 690, § 57, at 1958; Consol. Laws 1909, Insurance Law, c. 28, § 57. In 1910, these companies were renamed cooperative fire insurance corporations and made subject to the provisions of § 16 of the Insurance Law. Laws 1910, c. 328, § 1, at 583 (creating new § 268).

Prior to 1939, deposits were only required of stock and mutual life, health and casualty insurance companies and credit guaranty corporations. N.Y. Laws 1892, c. 690, §§ 71, 177, at 1960, 2003; Laws 1906, c. 326, § 20, at 777; Consol. Laws 1909, Insurance Law, c. 33, §§ 71, 77; Laws 1922, c. 659, §§ 2, 3, at 1804, 1805. The amount of the deposit was either equal to or less than the minimum capital requirement. The provisions applicable to credit guaranty corporations were repealed in 1929, after which date such corporations could no longer be organized. Laws 1929, c. 290, § 2, at 724.

From 1892 to 1915, stock and mutual fire insurance companies could establish a voluntary special reserve fund for extraordinary conflagrations, which was to be invested and the investments deposited with the superintendent of insurance. N.Y. Laws 1892, c. 690, §§ 130, 131, at 1985, 1986; Consol. Laws 1909, Insurance Law, c. 33, §§ 130, 131; Laws 1915, c. 369, § 1, at 1237. Apparently, until the fund exceeded one-half of the value of the capital stock, it was treated in the nature of minimum capital for investment purposes. From 1892 to 1911, life or casualty insurance companies operating on a cooperative or assessment plan could voluntarily deposit securities with the superintendent. Laws 1892, c. 690, § 215, at 2017; Consol. Laws 1909, Insurance Law, c. 33, § 215; Laws 1911, c. 536, § 3, at 1214.

61. N.Y. Laws 1897, c. 218, § 1, at 91.

62. The Armstrong investigation of the operations of life insurance companies was conducted by a special joint committee of the legislature, which had the late Charles Evans Hughes as counsel. The disclosure of many illegal and undesirable practices on the part of the companies and their officers, set forth in detail in a legislative report, resulted in many substantive changes in the Insurance Law. See Report of the Joint Committee of the Senate and Assembly Appointed to Investigate the Affairs of Life Insurance Companies, N.Y. Ass'y Doc. No. 41 (1906).

63. N.Y. Laws 1906, c. 326, § 36, at 797.

ing preferred stock of the issuing corporation or two percent of the assets of the investing insurer.⁶⁴ This power of intercorporate stockholding was not perceptibly affected by the general revision of the Insurance Law in 1939⁶⁵ and, although subsequently augmented by minor authorizations permitting investment in the stock of certain public housing and real estate corporations and in the shares of certain building and loan and savings and loan associations,⁶⁶ remained substantially unchanged until 1951. In 1951 a significant change was effected when the Insurance Law was amended to permit investment in the common stock of solvent corporations, other than insurance companies, banks or trust companies, which had achieved a satisfactory net earnings record within the ten years immediately preceding acquisition, provided (1) the stock was duly registered on a national securities exchange, and (2) the total investment in the common stock of any corporation did not exceed either two percent of the outstanding common stock of the issuing corporation or one-tenth of one percent of the admitted assets of the investing insurer, and (3) the "aggregate cost" of the "investment" in all common stocks (including acquisitions through reorganizations, etc.) did not exceed the "... lesser of

64. Originally, the issuing corporation or guarantor corporation was required to earn a minimum of four percent on its outstanding capital stock in each of the five years immediately preceding acquisition. N.Y. Laws 1928, c. 539, § 1, at 1165. Subsequently, the maintenance of the four percent earnings record for the two years immediately preceding acquisition and one other year during the five year period became acceptable. Laws 1937, c. 360, at 902.

65. In the 1939 revision, stockholding was authorized in the preferred stock of an issuing corporation which, during the two years immediately preceding acquisition, had earned one and one half times its fixed charges plus the maximum annual contingent interest and preferred dividend requirements, and in the guaranteed stock of a guarantor corporation which, during the year immediately preceding acquisition, had earned one and one half times its fixed charges, provided that during the five year period immediately preceding acquisition, the issuing or guarantor corporation had also maintained a record of average net earnings which satisfied these respective criteria. N.Y. Laws 1939, c. 882, §§ 81(3), 82(1), at 2583, 2587. As previously, the maximum investment in the eligible preferred stock of any corporation was limited to ten percent of the outstanding stock of the issuing corporation and two percent of the admitted assets of the investing insurer. *Ibid.* In 1951, the net earnings required of qualifying issuing corporations for the two years immediately preceding acquisition was confined to either of the two years, and the maximum investment in the eligible preferred stock of any corporation was increased to twenty percent. Laws 1951, c. 400, § 2, at 1057; see present N.Y. Insurance Law §§ 81(3), 82(1).

66. As the result of a series of post-1940 enactments, the stock of certain public housing, redevelopment and real estate investment corporations are currently authorized for investment, provided the entire issue is reserved for insurance companies. N.Y. Laws 1940, c. 345, at 989; Laws 1946, c. 557, § 3, at 1199; Laws 1951, c. 400, § 4, at 1070; see present N.Y. Insurance Law § 81(9). In 1949, the shares of certain building and loan associations and savings and loan associations were made eligible for investment, provided the total investment in such shares did not exceed twenty-five percent of the admitted assets of the investing insurer. Laws 1949, c. 645, § 1, at 1475; now N.Y. Insurance Law § 81(12). See also N.Y. Insurance Law § 82(1).

three percent of the admitted assets or one-third of the surplus (to policyholders)" of the investing insurer.⁶⁷ As a result of this legislation, life insurance companies have been given the authority, for the first time since 1906, to hold the common stock of business corporations other than federally insured building and loan or savings and loan associations and certain public housing and real estate corporations.

Securities guaranty corporations, corporations for insurance of the life of property and post-1938 title guaranty (insurance) corporations have always enjoyed the same power of intercorporate stockholding as life insurance companies.⁶⁸

Since 1906, however, all other insurance companies have possessed a much broader power and, until 1939, retained the liberal authorization granted in 1892 (and incidentally expanded in 1897) with minor variations. With the exception of a 1930 amendment to the Insurance Law which limited investment in the securities of any business corporation other than an insurance company to ten percent of the invested assets of the investing insurer,⁶⁹ these variations were concerned with the further modification of the rule limiting stock holdings in other insurance companies and eventually resulted in shifting the emphasis from outright prohibitions against acquisition to restrictions upon the overall amount of such holdings.⁷⁰ For the past sixteen years, the latter holdings, in-

67. N.Y. Laws 1951, c. 400, § 5, at 1070; now N.Y. Insurance Law § 81(13). In order that its common stock be eligible for investment, the corporation had to maintain a past earnings record which satisfied the following criteria: (1) a record which would make all of its obligations and preferred stock eligible for investment by life insurance companies, and (2) annual payment of cash dividends on common stock and average annual earnings, during the prescribed ten year period, equal to at least four percent of the par value or issue value of all common stock outstanding during such period.

In 1952, the limitation upon the maximum investment was formally amended to "one-third of the surplus to policyholders." N.Y. Laws 1952, c. 482, at 1224.

68. For a period of approximately twelve months (1912-1913), during which life insurance companies were also without power to acquire corporate stock, securities guaranty corporations were limited to holding securities which they were authorized to guarantee, namely, the obligations of New York State and the various civil divisions thereof. At all other times, their power of intercorporate stockholding was expressly conformed to that of life insurance companies. See N.Y. Laws 1909, c. 302, § 1, at 565 (original incorporation act); Laws 1912, c. 233, at 447; Laws 1913, c. 304, § 2, at 553. After 1929, such corporations could no longer be organized. Laws 1929, c. 290, § 1, at 722. For post-1938 title guaranty (title insurance) corporations and corporations for insurance of life of property, see notes 74 and 75 *infra*.

69. N.Y. Laws 1930, c. 717, § 1, at 1312.

70. As indicated previously in this study (pp. 381-82 *supra*), the absolute prohibition contained in the 1892 law was initially qualified in 1897. In 1907, it was further qualified to permit surety companies to invest in the stock of other surety companies engaged exclusively in operations outside of the United States. N.Y. Laws 1907, c. 239, § 1 at 446. In 1910, the companies were deprived of this power. Laws 1910, c. 634, § 6, at 1676. In 1912, the power was reinstated and, subsequently, was made dependent upon the approval of the

cluding proportionate holdings of intermediate subsidiaries, have been limited to thirty-five percent of the surplus to policy holders or fifty percent of the surplus above the liabilities and capital of the investing insurer, whichever amount might be the greater.⁷¹

In the 1939 revision of the Insurance Law, fire, marine, life and all other insurance companies were required to establish specific reserves.⁷²

superintendent of insurance and extended to corporations principally engaged in the surety business. Laws 1912, c. 233, § 1, at 447; Laws 1913, c. 304, § 2, at 553.

In 1921, the power of incorporate stockholding was further extended to permit all insurance companies, other than life insurance companies, to invest to the extent of twenty percent of their capital in the stock of similar type companies exclusively engaged in operations abroad. N.Y. Laws 1921, c. 255, § 1, at 955. Two years later, the power was enlarged to permit investment by such insurance companies in their own stock and in the stock of similar type insurance companies, subject to the approval of the superintendent of insurance and, in the case of fire and marine insurance companies, also subject to special compliance with certain statutory conditions. Laws 1923, c. 606, § 1, at 913. From 1925 to 1939, any stock insurance company, other than a life insurance company, was permitted to invest an amount, not to exceed fifty percent of its surplus, in the stock of any insurance company other than its own without the approval of the superintendent. Illogically, however, investment was forbidden in the stock of any business corporation, which directly or indirectly held any interest, investment or equity of any other nature whatsoever in the stock of an insurance company in an amount exceeding five percent of the corporation's total assets. Investments by mutual insurance companies were completely within the discretion of the superintendent. Laws 1925, c. 202, §§ 1, 2, at 429.

71. N.Y. Laws 1939, c. 882, § 86, at 2590; now N.Y. Insurance Law § 86.

72. The general reserve funds were the loss or claim fund required of virtually all companies, the unearned premium fund required of virtually all companies other than life insurance companies, and a policy valuation reserve fund required of companies engaged in the sale of life insurance, non-cancellable disability insurance and annuities. N.Y. Laws 1939, c. 882, §§ 72, 73, 74, at 2575; now N.Y. Insurance Law §§ 72, 73, 74. There were also special reserve funds prescribed for some companies. Laws 1939, c. 882, §§ 206, 239(5), 364(1b, 2b), 404, 434, at 2708, 2741, 2808-09, 2825, 2844; Laws 1940, c. 529, § 2, at 1432; now N.Y. Insurance Law §§ 206, 239(5), 379, 404. For the effect of reinsurance on reserve fund requirements, see Laws 1939, c. 882, § 77, at 2576; Laws 1952, c. 171, at 787; present N.Y. Insurance Law § 77.

Prior to the general revision of 1939, the maintenance of reserves by virtually all insurance companies, whether prescribed or voluntary, was exclusively a matter of properly recording and computing bookkeeping liabilities and had no effect on the investment authority of the companies. The two exceptions to the rule were the voluntary special reserve fund for extraordinary conflagrations authorized for stock fire insurance companies between 1892 and 1915, which was apparently investable in minimum capital investments exclusively until it amounted to more than one-half of the capital stock (N.Y. Laws 1892, c. 690, § 131, at 1986; Consol. Laws 1909, Insurance Law, c. 33, § 131; Laws 1915, c. 369, § 1, at 1237), and the guaranty fund required of title guaranty companies until 1938, which consisted of two-thirds of the company's capital and was investable exclusively in minimum capital investments. Laws 1892, c. 690, § 176, at 2002; Consol. Laws 1909, Insurance Law, c. 33, § 176; Laws 1929, c. 290, § 2, at 724; Laws 1938, c. 531, at 1329 (creating new § 176). To the extent that the latter fund may have exceeded the prescribed minimum capital, this requirement was at variance with the usual rule regarding the investment of residue capital funds.

Although the use of such reserve funds for the acquisition of corporate stock has never been prohibited, the investment of a substantial portion of the reserves has always been limited to issues of stock eligible for investment by life insurance companies (other than common stock issues made eligible in the 1951 legislation) and to other types of investments.⁷³

In the same 1939 legislation, it was also provided that insurance companies, other than life insurance, title insurance (title guaranty)⁷⁴ and property depreciation insurance (insurance for life of property)⁷⁵ companies, could invest funds, not required for minimum capital and reserve investments, in the stock of any solvent "non-insurance" corporation, subject to certain limitations relating to the acquisition of control, the amount investable by the investing insurer and the stock held in insurance companies by the issuing corporation⁷⁶—an authorization which is still in

73. Technically, the authorization to invest reserve funds in corporate stock defined the post-1939 intercorporate stockholding power of life insurance companies rather than vice versa. N.Y. Laws 1939, c. 882, § 82(1), at 2587; now N.Y. Insurance Law § 82(1). For a detailed description of eligible stock issues, see pp. 383-84 *supra* notes 65-67. The 1951 authorization to invest in common stock was specifically restricted to life insurance companies. N.Y. Laws 1951, c. 400, § 5, at 1070; now N.Y. Insurance Law § 81(13).

As a condition precedent to investment in other issues of corporate stock, a non-life insurance company was required to maintain, on a current basis, cash and "reserve investments" (including minimum capital investments) free from lien or pledge in an amount equal to at least fifty percent of the aggregate amount of its unearned premium and loss reserves. N.Y. Laws 1939, c. 882, § 80, at 2581; now N.Y. Insurance Law § 80.

74. In 1938, the intercorporate stockholding power of title guaranty (title insurance) companies, which were not incorporated under the Banking Law, was expressly conformed to that of life insurance companies. N.Y. Laws 1938, c. 531, at 1334 (creating new § 176); now N.Y. Insurance Law § 435(2). Relevant Provisions were repeated verbatim in Laws 1939, c. 882, § 435(2), at 2845.

75. These corporations, which could be incorporated for the first time in 1937, were originally denominated corporations for insurance of life of property and in 1940 were redesignated companies for insurance of life of property. They have always possessed the same authority to invest in corporate stock as life insurance companies. N.Y. Laws 1937, c. 386, § 1(281), at 977, Laws 1939, c. 882, § 403(2), at 2825. Laws 1940, c. 529, § 2, at 1435; now N.Y. Insurance Law § 403(2).

76. N.Y. Laws 1939, c. 882, §§ 85, 87, at 2588, 2590; now N.Y. Insurance Law §§ 85, 87. Investment was prohibited in any case where the majority of the outstanding or voting stock of the issuing corporation was or, after acquisition, would be directly or indirectly owned, either jointly or severally, by the investing insurer, its parent company, subsidiaries or stockholders or where the majority of the voting stock of the issuing corporation was owned directly or indirectly by or for the benefit of one or more officers or directors of the investing insurer. In the absence of conflicting statutory provisions, the maximum investment in the stock and other securities of any particular corporation, exclusive of certain corporate obligations guaranteed by the federal government, was limited to ten percent of the admitted assets of the investing insurer. Cf. Laws 1930, c. 717, § 1, at 1312, cited *supra* note 69. The maximum investment in the stock of corporations domiciled outside of the United States was more strictly limited. Investment in the stock of corporations, which had more than twenty percent of their assets directly or indirectly invested in the stock of

effect today. At no time, therefore, during the post-1890 period, have these insurance companies been completely divested of the power to hold either the common or preferred stock of business corporations other than insurance companies.

From 1892 to the present, no insurance company has ever been authorized to invest its minimum capital funds in the stock or other securities of any business corporation.⁷⁷ Between 1890 and 1892, no portion of the capital could be invested in this manner.

2. *Banking Corporations*

The most important holding company activity undertaken in New York State today by moneyed corporations, other than insurance companies, is being carried on by savings banks. This is a relatively recent development. During at least the first four decades of the post-1890 period, it was the trust company and not the savings bank which held the dominant position.

At the very beginning of the period the broad pre-1890 power of trust companies to use trust funds to acquire corporate stock was liberalized to permit holdings in any corporation in an amount equal to ten percent of the trust company's capital and, in the following decade, to permit holdings in an amount equal to ten percent of its combined capital, surplus and undivided profits.⁷⁸ With these amendments, the power was retained without substantial change⁷⁹ until 1936. In that year the holding of corporate

insurance companies, was completely prohibited. Cf. Laws 1925, c. 202, § 1, at 429, cited *supra* note 70.

77. N.Y. Laws 1892, c. 690, §§ 13, 16, 17, at 1936, 1938, 1939; Consol. Laws 1909, Insurance Law, c. 33, §§ 13, 16, 17; Laws 1920, c. 422, § 1, at 1047; Laws 1939, c. 882, § 79, at 2580. Cf. present N.Y. Insurance Law, § 79. Eligible securities consisted principally of the obligations issued by the United States, states and certain intrastate municipalities, which were not in default.

78. N.Y. Laws 1892, c. 689, § 159, at 1911; Laws 1904, c. 479, § 1, at 1221. The 1892 law provided as follows:

" . . . The moneys received by any such corporation in trust may be invested *in its discretion* in the securities of the same kind in which its capital is required to be invested, or . . . such real or personal securities as it may deem proper. No such corporation shall hold stock in any private corporation to an amount in excess of ten percent of the capital of the corporation holding such stock." (Emphasis added.)

This text represents Laws 1887, c. 546, § 27, at 711, as amended by Laws 1890, c. 439, § 1, at 801.

79. In 1903, stockholding in moneyed corporations, excepting safe deposit corporations located on or adjacent to the premises of the trust company, was limited to holdings of ten percent of the outstanding stock of the moneyed corporation. N.Y. Laws 1903, c. 121, at 283. Subsequently, collateral stockholdings were included within this ten percent limit but the limitation was completely removed with respect to the stock of duly licensed foreign investment companies and banks, certain domestic investment companies, and banking and trust companies incorporated in foreign countries. Laws 1914, c. 369, § 190(10), at 1351; Laws 1918, c. 98, § 2, at 208, Laws 1926, c. 259, at 462.

stock, except in certain moneyed corporations, was made entirely dependent upon the authorization of the banking board.⁸⁰ In the following year, upon the consolidation of banks and trust companies into a single legislative classification, any investment in corporate stock, other than the stock of certain safe deposit and domestic investment companies, was similarly conditioned.⁸¹ Previously, in 1935, investment in the capital stock, debentures and other obligations of an affiliated securities corporation had been limited to a varying maximum of ten percent or less of the trust company's funds, and a similar limitation of twenty percent or less has been placed upon the aggregate investment in the securities of all such affiliates.⁸²

In 1929 investment companies were given the most extensive power of intercorporate stockholding ever granted to a corporation under the jurisdiction of the Banking Law. These companies were permitted to deal and invest indiscriminately in the stocks of any domestic or foreign corporation, provided that the investment in the stock of any single moneyed corporation did not exceed ten percent of the combined capital and surplus of the investment company and the aggregate investment in the stocks of moneyed corporations did not exceed thirty percent of the capital and surplus.⁸³ Originally, the power had been limited to dealing and investing in the stock of domestic corporations engaged in business incidental to or of the same general character as that of the investment company.⁸⁴

Commercial banks were not authorized to hold the stock of another business corporation until 1912. In that year, subject to the approval of the superintendent of banks, they were accorded the very limited power of investing in the stock of safe deposit companies located on the premises.⁸⁵ Shortly thereafter, the power was extended to permit the conditional holding of stock in domestic investment companies and duly licensed foreign banks.⁸⁶ In 1934, investment in corporate stocks approved by the

80. N.Y. Laws 1936, c. 859, § 4, at 1794. The eligible moneyed corporations were those enumerated in note 79 *supra*. The ten percent limit as to the amount investable was preserved.

81. N.Y. Laws 1937, c. 619, § 1(97), at 1394; now N.Y. Banking Law § 97. The long standing unconditional authorization to invest ten percent of the trust company's assets in the stock of safe deposit companies located on or adjacent to the premises of the trust company was made subject to the approval of the superintendent rather than the banking board.

82. N.Y. Laws 1935, c. 699, § 2, at 1391; now N.Y. Banking Law § 103(9). The ten percent and twenty percent maxima included the combined total of investments, loans, repurchase agreements, collateral balances and extensions of credit made with reference to the securities of the affiliated securities corporations.

83. N.Y. Laws 1929, c. 465, at 992; now N.Y. Banking Law § 508(5).

84. N.Y. Laws 1922, c. 622, at 1668; Laws 1926, c. 596, at 1065. The 1922 statute limited the amount of investment to a percentage of the capital.

85. N.Y. Laws 1912, c. 101, at 174.

86. Investment in these stocks was limited to ten percent of the combined capital and surplus of the investing bank. N.Y. Laws 1918, c. 98, § 1, at 207.

banking board was also permitted.⁸⁷ Three years later, the intercorporate stockholding power of commercial banks was made coextensive with that of trust companies.⁸⁸

Industrial banks, first organized under a general law in 1931, were originally granted the limited power of holding stock in domestic corporations engaged in business incidental to or of the same general character as that of the industrial bank.⁸⁹ After 1937 even the exercise of this limited power was made subject to the approval of the banking board.⁹⁰

Savings banks, which were constitutionally required to be non-stock corporations after 1874,⁹¹ were the last of the moneyed corporations to be authorized to invest in the stocks of other business corporations. Although authorized to hold other corporate securities as early as 1898,⁹² it was not until 1934 that these institutions were given any power of intercorporate stockholding, and then only with respect to the stock of domestic trust and mortgage loan companies in which a minimum of twenty savings banks owned the entire capital stock.⁹³ This extremely narrow authority, moreover, could not be exercised without the approval of the banking board. In 1938 the initial authorization was extended to investment in the stock of any domestic corporation in the "wholly owned by savings banks" category, and authorized corporate stockholding was generally made more flexible by permitting investment in "securities of corporations, which securities are made eligible for investment by savings banks by the banking board."⁹⁴ During the following decade the stock of certain housing corporations, in which no person or corporation other than a savings bank directly or indirectly held a stock interest, was also made eligible for investment upon the approval of the banking board.⁹⁵

Very recently, in 1952, the intercorporate stockholding power of savings banks was markedly expanded and, subject to *general* regulation by the banking board, investment was authorized in the preferred, guaranteed and common stock of any issuing or guarantor corporation which had

87. N.Y. Laws 1934, c. 502, § 1, at 1169.

88. N.Y. Laws 1937, c. 619, § 1(97), at 1394; now N.Y. Banking Law § 97. See also Laws 1937, c. 619, § 1(103(9)); now N.Y. Banking Law § 103(9). For power of trust companies see pp. 387-88 *supra* and accompanying notes.

89. N.Y. Laws 1931, c. 490, § 3, at 1174.

90. N.Y. Laws 1937, c. 888, § 6, at 1994; now N.Y. Banking Law § 292(8).

91. N.Y. Const. art. VIII, § 4 (1846), as amended in 1874; now N.Y. Const. art. X, § 3 (*verbatim*).

92. See N.Y. Laws 1898, c. 236, at 712.

93. N.Y. Laws 1934, c. 255, § 1, at 748.

94. N.Y. Laws 1938, c. 352, § 1 (235 (18)), at 1022; now N.Y. Banking Law § 235(18) (19).

95. See N.Y. Laws 1940, c. 618, § 1, at 1637; Laws 1945, c. 319, § 1, at 788; Laws 1949, c. 522, at 1200 ; cf. present N.Y. Banking Law § 235 (21).

achieved a satisfactory net earnings record in the past.⁹⁶ The net earnings requirements were virtually the same as those prescribed in 1951 for corporations issuing or guaranteeing stock eligible for investment by life insurance companies, being identical with respect to preferred and guaranteed issues and slightly more liberal with respect to issues of common stock.⁹⁷ However, the authorized maximum investment in the stock of any issuing corporation and the authorized aggregate investment in all eligible corporate stocks were considerably more restricted than in the case of life insurance companies.⁹⁸ The same 1952 amendment to the Banking Law also conditionally authorized savings banks to invest in the stock of certain investment companies registered under the federal "Investment Company Act of 1940."⁹⁹

Except for the additional authorization to invest in the shares of other savings and loan associations, originally granted in 1928, (cooperative) savings and loan associations since 1898 have enjoyed the same power of intercorporate stockholding as savings banks.¹⁰⁰

96. N.Y. Laws 1952, c. 705, § 1, at 1537; now N.Y. Banking Law §§ 235(26) (a), (b), (c). The common stock of a bank, trust company or national banking corporation was excluded from the authorization. After April 29, 1955 investment in the stock of certain fire and casualty insurance companies was accorded special treatment. Laws 1955, c. 828, §1; now N.Y. Banking Law § 235 (26) (d).

97. The only difference in the net earnings requirement was that, although the corporation issuing the common stock was required to pay all dividends on common stock from earnings during the preceding ten year period in order that the stock be eligible for investment by savings banks, it was not also required to maintain average annual earnings of four percent on the par or issue value of the common stock during the period. For the intercorporate stockholding power of life insurance companies in 1951, see pp. 383-84 *supra* and notes 65-67 *supra*.

98. The amount investable in the stock of any corporation was limited to one percent of the savings bank's assets and two percent of the outstanding shares of the issuing corporation.

The maximum aggregate investment in eligible corporate stock (including the stock of approved investment companies) was limited to five percent of the savings bank's assets or fifty percent of its surplus fund and undivided profits, whichever amount might be less. An additional maximum limitation of three percent of assets or one-third of the surplus fund and undivided profits, whichever amount might be less, was imposed upon the combined investment in eligible common stock and all stock or shares of approved investment companies. Finally, the aggregate investment in eligible corporate stock (including the stock of approved investment companies), together with the total of certain other investments, could not exceed the amount of the surplus fund and undivided profits of the savings bank. N.Y. Laws 1952, c. 705, § 1, at 1537, see N.Y. Banking Law § 235 (26) (g), (h), (i), (j). For approved investment companies, see note 99 *infra*.

99. N.Y. Laws 1952, c. 705, § 1; now N.Y. Banking Law § 235 (26) (e). In addition to the registration requirement, all the stock of the investment company, other than qualifying shares for directors, was to be held by savings banks, and the eligible investments of the investment company were to be substantially the same as those of savings banks, with the holding of stock in any issuing corporation being limited to five percent of the outstanding stock of such corporation.

100. The initial authorization of 1898 expressly limited the investment of deposits and

B. Railroad and Other Public Utility Corporations

From 1890 to 1892 the intercorporate stockholding power of New York public utility corporations was essentially the same as in the preceding period.

The preexisting legislation, which authorized railroads to hold the stock of foreign corporations owning extrastate fuel producing lands and the stock of domestic corporations formed for the purpose of erecting union railway depots, was incorporated into the Railroad Law of 1890.¹⁰¹ Similarly, the power of a lessee railroad corporation to acquire the stock of the lessor corporation was preserved.¹⁰² Public utility enterprises incorporated under the Transportation Corporations Law ("transportation" companies) continued to be completely devoid of any intercorporate stockholding power. The only novel legislation was an 1890 statute which prohibited railroad companies from holding stock in navigation corporations incorporated under the Transportation Corporations Law of 1890.¹⁰³ Since such stockholding was illegal under applicable common law prior to the 1892 revision of the Stock Corporation Law, the substantive effect of the statute prior to 1892 was confined to specially chartered railroad corporations possessing the authority to hold such stock.

Excepting this prohibition against stockholding by railroad companies, all public utility corporations were granted an unrestricted power of intercorporate stockholding upon the enactment of the Stock Corporation Law

income to the same securities approved for investment by savings banks. N.Y. Laws 1898, c. 348, at 1013. This authorization was retained in subsequent legislation (see Consol. Laws 1909, Business Corporations, c. 2 § 236; Laws 1914, c. 369, § 384(4)(b), at 1457; Laws 1939, c. 341, § 7, at 759; present N.Y. Banking Law § 379(5)) and, in 1928, was augmented to permit investment in shares of other savings and loan associations, with the qualification that the maximum investment in the shares of any one association would be limited to \$10,000 and the aggregate investment in all such shares would not exceed ten percent of the association's liability to shareholders. Laws 1928, c. 256, at 738. In 1939, the limitation on the aggregate investment was changed to ten percent of the capital. Laws 1939, c. 341, § 7, at 759; see present N.Y. Banking Law § 379(6). From 1910 until the 1939 amendment, the amount authorized for investment in corporate stock was limited to funds which were not needed to meet the loan requirements of members. See N.Y. Laws 1910, c. 126, § 10, at 208 (creating new § 218(d)); Laws 1914, c. 369, § 384(4), at 1457; Laws 1939, c. 341, § 7, at 759.

101. N.Y. Laws 1890, c. 565, § 4(9), at 1034; now N.Y. Railroad Law § 8(9). For earlier legislation, see p. 377 *supra*.

102. N.Y. Laws 1890, c. 565, § 79, at 1106. After 1910 the approval of the Public Service Commission was required. Consol. Laws 1910, c. 49, § 149; see present N.Y. Railroad Law § 149. For earlier legislation, see p. 377 *supra*.

103. N.Y. Laws 1890, c. 566, § 10, at 1138; Consol. Laws 1909, Transportation Corporations Law, c. 63, § 10. The provision was omitted in the superseding general act of 1926. Laws 1926, c. 762, at 1410.

Cf. N.Y. Laws 1917, c. 805, § 4, at 2709 (now N.Y. Public Service Law § 49(3)(e)) which prohibits any competing rail carrier from holding stock in water carrier corporations.

of 1892,¹⁰⁴ a power which they continued to exercise without qualification for the next thirteen years. Thereafter the power was either curtailed by the legislature or its exercise made subject to the approval of designated administrative regulatory bodies, the initial restraint being imposed in 1905 when gas and electric companies were forbidden to acquire the stock of any corporation engaged in the same or similar business without the approval of the newly established gas and electric commission.¹⁰⁵

Two years later the legislature enacted the Public Service Commissions Law¹⁰⁶ which, among other things, effectively superseded the 1905 statute and the Stock Corporation Law in defining the extent to which public utility or other corporations could hold the stock of gas, electric and common carrier corporations. Subsequently, the provisions of the law were extended to stock holdings in other public utility corporations. The power of utility corporations to hold stock in business corporations other than utility corporations, however, has not been affected by the Public Service (Commissions) Law and continues to be governed by the legislative policies incorporated in the Stock Corporation Law.

From the time public utility corporations (excepting telephone and telegraph companies) initially came within the purview of the Public Service (Commissions) Law,¹⁰⁷ they were prohibited from acquiring any stock interest in corporations engaged in the same or similar business without the approval of the Public Service Commission or its affiliate bodies.¹⁰⁸ In 1930 telephone and telegraph companies were similarly restricted.¹⁰⁹ Previously, in 1911, the acquisition of the stock of carrier corporations by electric corporations, and the acquisition of the stock of electric corporations by street railroad corporations, had been made

104. N.Y. Laws 1892, c. 698, § 40, at 1834. The pertinent text is quoted at p. 397 *infra*. The provision was applicable to all non-moneyed corporations in the absence of conflicting legislation. To the effect that it supplemented rather than conflicted with the specific stock-holding provisions of the Railroad Law, see *Oelbermann v. New York and Northern Ry.*, 77 Hun 332, (N.Y. Sup. Ct., Gen. T. 1894).

105. N.Y. Laws 1905, c. 737, § 13, at 2097. Repealed by Laws 1907, c. 429, § 87, at 938 (Public Service Commissions Law).

106. N.Y. Laws 1907, c. 429, at 889.

107. For the historical development of the law, see notes 55, 56 *supra*.

108. The pertinent legislation, and the particular public utility corporations affected, follow: Common Carriers, N.Y. Laws 1907, c. 429, § 54, at 920 (railroads and street railroads); Laws 1926, c. 846, at 1571 (all corporations which are engaged in the "carrier" business and subject to the jurisdiction of the Public Service Commission); see present N.Y. Public Service Law § 54(2). Gas and Electric, Laws 1907, c. 429, § 70, at 931; see present N.Y. Public Service Law § 70. Steam, Laws 1913, c. 505, § 3(83), at 1202; now N.Y. Public Service Law § 83. Omnibus, Laws 1931, c. 531, § 2(63), at 1304; now N.Y. Public Service Law § 63. Water Works, Laws 1931, c. 715, § 3(89)(h), at 1568; now N.Y. Public Service Law § 89(h).

109. N.Y. Laws 1930, c. 785, at 1416; now N.Y. Public Service Law § 100; cf. Laws 1910, c. 673, § 3(100), at 1941.

subject to such approval.¹¹⁰ Since 1945 the veto power has been vested exclusively in the Public Service Commission.¹¹¹

The Public Service Commission's regulatory power with regard to the acquisition of public utility stocks by public utility corporations engaged in the same or similar business as that of the issuing corporation has always been somewhat more extensive than its power with respect to acquisitions by public utility corporations engaged in "legislatively" dissimilar business or by corporations other than public utility corporations. Originally, acquisitions by the latter corporations of the stock of railroad, gas and electric and steam corporations were absolutely restricted by statute to ten percent of the stock of the issuing corporation, but no reduction in current holdings was required.¹¹² The ten percent limitation was conditional in the case of acquisitions of stock in telephone and telegraph companies, being subject to removal by action of the Commission.¹¹³ In 1918 the Commission was also given such discretion with respect to acquisitions of stock in gas and electric companies¹¹⁴ and, before 1940, was empowered to remove the statutory limitation on stockholding in all public utility corporations except steam corporations.¹¹⁵ Since 1930 the limitation has been confined to voting capital stock.¹¹⁶

Apropos of the continual expansion of the power given to the Commission since 1907 to remove the statutory limitation on stock acquisitions, it would appear that the legislature's initial aversion to the formation of pure holding companies in the public utility field¹¹⁷ was dispelled in the course of time. Whether this change of attitude was due to the legislators' abiding confidence in the policy judgments of the Public Service Commission or

110. N.Y. Laws 1911, c. 788, at 2094, 2096; see present N.Y. Public Service Law § 54(2), 70.

111. See N.Y. Laws 1943, c. 170, § 1, at 574; Laws 1945, c. 855, § 6, at 1892, now N.Y. Public Service Law § 5(1).

112. N.Y. Laws 1907, c. 429, §§ 54, 70 at 920, 931 (railroad, gas and electric corporations); Laws 1913, c. 505, § 3(83), at 1202 (steam corporations).

113. N.Y. Laws 1910, c. 673, § 3(100), at 1941; now N.Y. Public Service Law § 100.

114. N.Y. Laws 1918, c. 420, at 1269.

115. N.Y. Laws 1931, c. 531, § 2(63), at 1304 (omnibus corporations); Laws 1931, c. 715, § 3(89)(c), at 1566 (water works corporations); Laws 1939, c. 784, at 1846 (gas and electric corporations); Laws 1939, c. 854, at 2151 (railroad corporations); now N.Y. Public Service Law §§ 63, 89(h), 70, 54(2). Regarding steam corporations, see Laws 1913, c. 505, § 3(83), at 1202; Laws 1930, c. 787, at 1419; present N.Y. Public Service Law § 83.

116. N.Y. Laws 1930, cc. 785-83, at 1416 — 1422 (telephone and telegraph, gas and electric, steam and railroad corporations); Laws 1931, c. 531, § 2(63), at 1304 (omnibus corporations); Laws 1931, c. 715, § 3(89)(h), at 1568 (water works corporations). See present N.Y. Public Service Law §§ 100, 70, 83, 54(2), 63, 89(h).

117. Cf. *Op. Transit Comm.*, 30 N.Y. State Dep't Rep. 123, 131(1923): "The prohibition against holding more than ten percentum of this capital stock was evidently intended to prevent a mere holding company It constitutes an absolute bar laid down by the Legislature, which cannot be removed by the Commission."

more "practical" considerations has never been made explicit. The Commission's record of performance could have scarcely justified the change. In fact, the administration of the Public Service (Commissions) Law had fallen into such disrepute by 1929 that, at the instance of Governor Roosevelt, a special joint commission was appointed to investigate alleged maladministration and inquire into possible defects in the law.¹¹⁸

Whatever the motivation, there exist at present only four instances in which the legislature has failed to delegate to the Commission, in some measure, its power to regulate corporate holding of the stock of public utility corporations. Two of the exceptions take the form of absolute statutory prohibitions, illegalizing the acquisition of any securities of freight terminal corporations by railroad or express corporations¹¹⁹ and the acquisition of the stock of common carriers by water by competing rail carriers.¹²⁰ Another exception is found in the statutory maximum of ten percent imposed upon certain public utility corporations and all corporations other than public utility corporations in their acquisitions of the voting capital

118. The Commission was composed of three senators, three assemblymen and three gubernatorial appointees. The three gubernatorial appointees (Messrs. Walsh, Bonbright and Adie) submitted a separate, dissenting report which presented the Commission in a much less favorable light than the majority report of the legislators. However, even the apologetic majority felt constrained to withhold positive approval. By way of illustration, see Report of Commission on Revision of the Public Service Commissions Law, N.Y., Leg. Doc. No. 75(1930) at 14: "Some of the Commissioners have been charged with being 'utility minded' and having been remiss in the performance of their duties. While we recognize the shortcomings in the administration of its functions as these appear in certain portions of the hearing, we believe that the charge cannot be sustained that utility regulation through the Public Service Commission is a failure. Many of the shortcomings noted are due to the inadequacy of the staff and the added duties to which reference is later made.

"We think it fair to say that the Commission by over-estimating the judicial side, has neglected what was originally conceived to be its primary function — to advance the interests of the public in relation to the service of the utility companies. . . ."

Cf. Minority Report of Commissioners Walsh, Bonbright and Adie, *id.* at 258: "On the basis of this intensive investigation we find that effective public utility regulation in the state of New York has broken down and that the consumers of the state have been abandoned to the exploitation of the public utility companies without any effective restraint by the Public Service Commission."

The legislature reacted to the investigators' findings in its usual way and, in the course of the following decade, assigned to the Commission the very substantial additional responsibility of determining the extent to which corporations, other than public utility corporations, should be allowed to hold stock in utility corporations in excess of the former statutory maximum. Possibly, such legislation was intended to be the legislators' "logical" response to the majority recommendation that "the authority of the Commission with respect to . . . acquisitions of stock of utility corporations be strengthened and extended." (See Majority Report, *supra* at 7).

119. N.Y. Laws 1911, c. 778, § 1(154), at 2077; now N.Y. Transportation Corporations Law § 101.

120. N.Y. Laws 1917, c. 805, § 4, at 2709; now N.Y. Public Service Law § 49(3)(e).

stock of steam corporations.¹²¹ The unconditional power conferred upon corporations, owning the majority of the (voting) capital stock of a telephone or telegraph company at the time of the 1910 revision of the Public Service Commissions Law, to increase their stock holdings without limit and without the approval of the Commission represents the only other deviation from currently prevailing legislative policy.¹²² Corporations, which were majority stockholders in other public utility corporations at the time of the 1910 and other pertinent revisions of the law, have always been compelled to seek commission approval in order to augment their holdings.¹²³

With the exception of such limitations as have been enumerated above, railroad and other public utility corporations, by virtue of the operation of the Stock Corporation Law of 1892 and of 1923, have enjoyed the same power of intercorporate stockholding from 1892 to date as other non-moneyed business corporations.

Legislation has been enacted in New York State since 1905 designed to regulate the holding company activities of public utility "holding" companies as well as public utility "operating" companies. However effective the conscientious enforcement of such laws may have made the regulation of operating companies, it is doubtful whether the top holding companies — most of which are foreign corporations with interstate holdings — could have been or at present can be effectively regulated by the state,¹²⁴ not-

121. N.Y. Laws 1930, c. 787, at 1419; now N.Y. Public Service Law § 83. Cf. Laws 1913, c. 505, § 3(83), at 1202.

122. N.Y. Laws 1930, c. 785, at 1416; now N.Y. Public Service Law § 100. Cf. Laws 1910, c. 673, § 3(100), at 1941.

123. See N.Y. Laws 1910, c. 480, at 923, Consol. Laws 1910, c. 45, § 54(2), 70 (railroad, gas and electric corporations); Laws 1913, c. 505, § 3(83), at 1202 (steam corporations); Laws 1931, c. 531, § 2(63), at 1304 (omnibus corporations); Laws 1931, c. 715, § 3(89)(h), at 1568 (water works corporations). See present N.Y. Public Service Law §§ 54(2), 70, 83, 63, 89(h).

124. Cf. Report of William J. Donovan, Counsel, on Revision of the Public Service Commissions Law, N.Y. Leg. Doc. No. 75(1930) at 141: "Intercorporate stock holdings which bring about an affiliation between domestic and foreign utilities tend to develop the growth of interstate transactions. Such transactions raise certain Federal questions, which are discussed elsewhere. . . ."

Cf. § 1(a) of Public Utility Holding Company Act of 1935, 49 Stat. 803 (1935, 15 U.S.C.A. § 79a(a) (1952): "Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, . . . (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public utility companies [i.e., gas and electric operating companies]."

Regarding the extent of foreign holding company activities in New York State in 1930, it has been officially stated that ". . . for several years past there has been a persistent effort to vest control of public utilities operating in this State, in foreign holding corporations. . . ." Suggested Report of Senator Thayer on Revision of the Public Service Commissions Law, N.Y., Leg. Doc. No. 75(1930) at 220.

withstanding ostensibly formidable statutory sanctions.¹²⁵ Foreign holding companies could and did acquire more than ten percent of the (voting) stock of domestic utility corporations in complete disregard of statutory requirements.¹²⁶ Moreover, the statute does not expressly prohibit indirect acquisitions in excess of the ten percent maximum and it has been held that the holdings of subsidiary corporations are to be excluded for purposes of determining compliance with the statutory requirement.¹²⁷ The activities of these holding corporations with respect to stockholdings in gas and electric companies, however, were ultimately brought under regulation in 1935, upon the enactment of the federal Public Utility Holding Company Act.¹²⁸

C. Other Corporations

Since 1890 the capacity of the "ordinary" business corporation (i.e., a corporation other than a public utility or moneyed corporation) to hold the stock of other business corporations has been derived from two non-concurrent legislative sources, the Business Corporations Law and the Stock Corporation Law. During the first two years of the post-1890 period

125. The enforcement provision, complementing the substantive regulatory provisions, has always provided as follows: "Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of any provision of this [chapter] shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such [railroad, etc. corporation], or shall be recognized as effective for any purpose."

See N.Y. Laws 1907, c. 429, §§ 54, 70, at 920, 931; Laws 1910, c. 673, § 3(100), at 1941; Laws 1913, c. 505, § 3(83), at 1202; Laws 1931, c. 531, § 2(63), at 1304; Laws 1931, c. 715 § 3(89)(h), at 1568; now N.Y. Public Service Law §§ 54, 70, 100, 83, 63, 89(h).

126. For example, the pre-1930 acquisition by the Delaware-domiciled United Corporation and affiliates of a substantial stock interest, exceeding ten percent, in the Niagara Hudson Power Corporation, the largest New York electric holding company. See Report of William J. Donovan, Counsel, on Revision of the Public Service Commissions Law, N.Y., Leg. Doc. No. 75 (1930) at 141. In 1928, holding companies owned or controlled operating companies which furnished 98.5 percent of the electricity consumed in the state by consumers other than electric corporations. *Ibid.* A Delaware-domiciled railroad holding company, the Pennroad Corporation, seems to have also "violated" the law with impunity. See *Steckler v. Pennroad Corp.*, 136 F. 2d 197 (3d Cir. 1943), cert. denied, 320 U.S. 757 (1943).

The foreign holding company's acquisitions were usually accomplished through intermediate acquisitions by subsidiary corporations or purchase on the open market, and prior application to the Public Service Commission, if legally necessary, would be impracticable. Whether the Commission could nullify acquisitions, in excess of the ten percent limitation, made by a foreign corporation through direct negotiation with the domestic public utility company, has never been judicially determined. Cf. *New York State Electric Corp. v. Public Service Commission*, 227 App. Div. 18, 236 N.Y. Supp. 41 (3d Dep't 1929), motion to dismiss appeal denied, 253 N.Y. 555, 171 N.E. 780 (1930), appeal dismissed 260 N.Y. 32, 182 N.E. 237 (1932).

127. *Weis v. Coe*, 180 Misc. 321, 44 N.Y. S. 2d 791 (Sup. Ct. 1943).

128. 49 Stat. 803 (1935).

the power was derived exclusively¹²⁹ from the Business Corporations Law. Since 1892 the Stock Corporation Law has provided the exclusive source of such power.

From 1890 to 1892 the power of "ordinary" New York business corporations to hold corporate stock was not appreciably different from that existing in 1889, notwithstanding the repeal of the general manufacturing (etc.) act in 1890. The intercorporate stockholding provisions of the earlier legislation were incorporated verbatim into the Business Corporations Law of 1890¹³⁰ and, because of the broader scope of the 1890 statute, were extended to all business corporations which could not be incorporated under any other general corporation law. Consequently, most New York business corporations, during this very brief transitional period, could only hold stock in corporations with which they had definitely prescribed business relations.¹³¹

In 1892, the relevant provisions of the Business Corporations Law were repealed¹³² and the superseding provisions of the revised Stock Corporation Law, in language which is almost the literal replica of the current statutory authorization, conferred an unrestricted power of security holding upon all corporations subject to its exclusive jurisdiction. The legislation provided as follows:

"
 "Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporations, domestic or foreign. . . ."¹³³

The exercise of the power has always been subject to such limitations as

129. With regard to the exclusiveness of this legislation, mention must be made of the following ambiguous provision of the 1890 Stock Corporation Law (N.Y. Laws 1890, c. 564, at 1073) § 40:

" . . . But any domestic corporation, transacting business in this state and also other states, or foreign countries, may invest its funds in the stocks, bonds or securities of other corporations, owning lands in this state or such states, if dividends have been paid on such stocks continuously for three years immediately before such loans are made, or if the interest on such bonds or securities is not in default; and such stocks, bonds or securities shall be continuously of a market value twenty percent greater than the amount loaned or continued thereon."

Although the earlier text of the provision seems to use "invest" and "loan" interchangeably, the last clause clearly indicates that security holding by way of collateral holdings was intended.

130. N.Y. Laws 1890, c. 567, § 12, at 1171.

131. For the precise scope of the provisions of the general Manufacturing Act (etc.) of 1848, as amended, see note 27 *supra*. After all sections had been severally repealed in various 1890 laws, the act was expressly repealed by N.Y. Laws 1892, c. 637, § 34, at 1813.

132. The provisions were omitted in the revised 1892 statute. N.Y. Laws 1892, c. 691, at 2042.

133. N.Y. Laws 1892, c. 688, § 40, at 1834; now N.Y. Stock Corp. Law § 18.

have been contained in the Public Service (Commissions) Law and other pertinent general laws.

Available legislative history does not indicate what prompted this profound change of policy within the 1890-1892 period. It may have been nothing more than the very practical consideration of preserving or increasing state revenues by making New York an attractive, or the most attractive, domicile for incorporating business enterprises.¹³⁴ Withal, the "pure" holding company was a legal possibility in New York as early as 1892 and, subject to the limitations of pertinent foreign law and certain New York legislation relating to moneyed and public utility corporations, the "ordinary" New York business corporation has had the capacity for the past sixty-three years to enter into an unrestricted intercorporate stockholding relationship with any domestic or foreign business corporation — a relationship of inestimable importance in the history and growth of the business corporation in the United States.

IV. HOLDING COMPANY LEGISLATION, NEW YORK: HISTORICAL MILESTONES

From the foregoing detailed exposition of the history of (general) holding company legislation in the State of New York, there stands out in sharp relief the following milestones:

1. The earliest holding company legislation in the state was enacted on June 24, 1853, when life and health insurance companies were granted the broad power of investing surplus funds in the stock of any domestic corporation which was selling at par on the date of acquisition. Almost simultaneously, on June 25, 1853, fire and inland navigation companies were given an even broader power of investing surplus funds in corporate stock.

2. The earliest holding company legislation in the state authorizing intercorporate stockholding by a business corporation, other than a moneyed corporation, was enacted on April 28, 1866, when manufacturing companies incorporated under the general manufacturing (etc.) act of 1848 were granted the limited power of holding stock in any corporation engaged in supplying or transporting materials required in the business of the holding company, while so engaged and for two years thereafter. In 1876, the power was expanded and extended to all corporations organized under the statute.

3. In 1867, and on two other occasions prior to 1883, railroad corporations were given limited authority to hold corporate stock.

4. Trust companies, in the general incorporation act of 1887, were granted a very broad power of intercorporate stockholding.

134. See 2 Cook, *Stock and Stockholders* 1603-05 (3d ed. 1894); Report of Joint Committee on Trusts, N.Y. Sen. Doc. No. 30, (1897) at 3, 4; Address of President Russell Before The West Virginia Bar Association, 27 *Am. L. Rev.* 105 (1893).

5. The most far reaching holding company legislation in the history of the state was included in the 1892 revision of the statutory corporation law, when insurance companies were given almost unlimited authority to invest in the stock of other business corporations, and business corporations, other than moneyed and railroad corporations, were granted an unrestricted power of intercorporate stockholding. In the course of succeeding decades, the power was curtailed — in the case of insurance companies by specific exclusions and in the case on non-moneyed corporations by the limiting effect of relevant provisions of other general laws, notably the Public Service (Commissions) Law originally enacted in 1907.

6. There has been a very recent trend toward liberalizing legislative restrictions on intercorporate stockholding in favor of certain moneyed corporations. This has been evidenced most significantly in the 1951 legislation authorizing life insurance companies to hold the common stock of non-moneyed corporations which had achieved a satisfactory earnings record in the past and in the 1952 legislation authorizing savings banks to hold under general regulation the preferred, guaranteed and common stock issues of any business corporation satisfying similar past earnings requirements — the only substantial authorization to hold common stock granted to life insurance companies since 1906, and the first time in history that savings banks had been given the authority to hold, under *general* regulation, the stock of business corporations which were not wholly owned by savings banks.

V. THE "NEW JERSEY FIRST" TRADITION

In view of the enactment prior to 1888 of New York legislation of a general character authorizing one business corporation to hold the stock of another business corporation, it is the contention of this writer that the well established "New Jersey first" tradition, ascribing the origin of holding company legislation in the United States to certain New Jersey legislation enacted in 1888 or shortly thereafter, can be supported only if the following dual premise is tenable: (a) That the tradition is limited to legislation which confers an unrestricted power of intercorporate stockholding upon all domiciliary corporations and is assumed to be categorically different from other general legislation authorizing intercorporate stockholding because of its all inclusive scope, and (b) that such unrestricted power is conferred in one or more of the pertinent New Jersey statutes.

It is submitted that a critical examination of the New Jersey legislation and other relevant data will disclose that this premise is wholly untenable.

A. *Pertinent Legislation*

The "New Jersey first" tradition is usually predicated upon certain legislation enacted in 1888, 1889 or 1893, the proponents not being in

complete agreement as to the precise date of the effective legislation. The legislation embraces four statutes,¹³⁵ including two statutes enacted in 1888.

The purview of the first 1888 New Jersey statute,¹³⁶ which is ambiguous almost to the point of unintelligibility, will be reserved for later consideration. The second 1888 statute authorized intercorporate stockholding on the part of hotel and water transportation companies in certain very limited situations.¹³⁷ The 1889 statute authorized all corporations formed under the 1875 general corporation act, as amended, to purchase "the stock of any company or companies owning, mining, manufacturing or producing materials, or other property, necessary for their business. . ."¹³⁸ and the 1893 statute conferred an unrestricted power of intercorporate stockholding upon such corporations.¹³⁹ At the time of the enactment of the 1889 and 1893 statutes, the incorporation provisions of the general corporation act were inapplicable to moneyed corporations (with the exception of title and credit guaranty companies) and railroad, turnpike and most other public utility corporations.¹⁴⁰

It was not until the 1896 revision of the general corporation act that any statute was enacted in New Jersey which, in unqualified and unequivocal language, purported to grant to all domiciliary business corporations the unrestricted power to hold the stock of other business corporations.¹⁴¹ However, even the unqualified intercorporate stockholding provisions of this statute were judicially construed to be inapplicable to insurance companies¹⁴² and to be limited by the objects of incorporation.¹⁴³

B. *The Tradition*

In a sense, the "New Jersey first" tradition is more of an economic than a legal tradition in its parturition and development, having been announced

135. N.J. Laws 1888, c. 269, at 385; N.J. Laws 1888, c. 295, at 445; N.J. Laws 1889, c. 265, § 4, at 414; N.J. Laws 1893, c. 171, § 1, at 301.

There were also in effect prior to 1893 two laws authorizing designated corporations to subscribe to and hold the stock of corporations to be formed for certain limited purposes. N.J. Laws 1885, c. 28, at 34 (authorizing corporations owning land at or near state seaside resorts to subscribe to stock of certain railroad corporations); N.J. Laws 1891, c. 175, at 329 (authorizing corporations engaged in constructing works of internal improvement or public use to subscribe to stock of corporations to be formed for carrying on the same kind of construction activity.)

136. N.J. Laws 1888, c. 269, at 385 (enacted on April 4, 1888).

137. N.J. Laws 1888, c. 295, at 445 (enacted on April 17, 1888).

138. N.J. Laws 1889, c. 265, § 4, at 414.

139. N.J. Laws 1893, c. 171, § 1, at 301.

140. See § 10 of the General Corporation Act of 1875 (N.J. Rev. Stat. 1875), as amended and supplemented by N.J. Laws 1888, c. 80, at 112; N.J. Laws 1889, c. 22, at 34; N.J. Laws 1889, c. 264, § 1, at 411; N.J. Laws 1893, c. 118, § 1, at 205.

141. N.J. Laws 1896, c. 185, § 51, at 294.

142. *Robotham v. Prudential Insurance Co.*, 64 N.J. Eq. 673, 53 Atl. 842 (1903).

143. *State v. Atlantic City & S.R.R.R.*, 77 N.J.L. 455, 72 Atl. 111 (1909).

earlier and more frequently and categorically by economists and economic historians than by lawyers or legal historians. For example, Clark, Cook, Fletcher, Frost, Marshall, Noyes, Parker, Spelling, Stevens, Taylor, Thompson and other authors of standard treatises on corporation law during the past sixty years, with the exception of Ballantine and Conyngton, have been silent on the subject — and perhaps advisedly so.

However, insofar as this writer's extensive (but undoubtedly incomplete) examination of the literature has disclosed, no positive dissent has been registered by any commentator in the field of law, economics or history and the tradition seems to have been universally accepted. Ballantine and Conyngton, writing some thirty years apart, both take the "New Jersey first" position; the former with some degree of caution,¹⁴⁴ the latter without reservation, but erroneously quoting the provisions of the 1896 statute as the 1888 law in order to support his position.¹⁴⁵

Among the relatively few other legal commentators who have taken a stand on the origin of holding company legislation in the United States, there is complete acceptance of the traditional view but a lack of unanimity as to the date and scope of the effective New Jersey legislation. No less an authority on corporate organization than Paul D. Cravath, in publicly affirming the tradition in 1916, declared 1889 to be the date of the initial legislation.¹⁴⁶ Dodd, writing twenty years later, cited the first 1888 statute as the ground breaking legislation but evidently did not believe it to be all inclusive in scope.¹⁴⁷ More recently, Compton, although recognizing the

144. "New Jersey seems to have been the first jurisdiction to give express authority to purchase shares in other corporations under a general incorporation law. . ." (citing both 1888 statutes and in the 1893 statute). Ballantine, *Corporations* 237 (2d ed. 1946).

145. "New Jersey was the first state to enact statutes specifically empowering corporations organized under its laws to hold the stock of other corporations. The law was adopted in the year 1888, and reads as follows. . ." (quoting the provisions of Section 51 of the General Corporation Law enacted in 1896). Conyngton, *Manual of Corporate Organization* 342 (3d ed. 1913).

146. In a lecture delivered before the Association of the Bar of the City of New York on March 1 and 8, 1916, Mr. Cravath stated: "It was the law in most of the states until a few years ago, that a corporation had no power to hold the stock of other corporations. The general power to do so was not conferred by statute until the enactment of Chapter 693 of the Laws of 1892. It was conferred a few years earlier in New Jersey [in 1889]."

See Stetson, Byrne, Cravath, *The Reorganization of Corporations, Bondholders and Stockholders Protective Committees etc., Some Legal Phases of Corporate Financing, Reorganization and Regulation* 230 (1917).

Mr. Cravath was in error in implying that the limited power of intercorporate stockholding conferred in the 1889 New Jersey statute was identical with or comparable to the very broad power conferred in the 1892 New York statute.

147. Dodd, *Statutory Developments In Business Corporation Law, 1886-1936*, 50 *Harv. L. Rev.* 30, n. 7 (1936). Professor Dodd, in apparent recognition of the indeterminate scope of the first 1888 statute, also cites the three subsequent statutes as the basis for his "New Jersey first" position.

existence of pre-1888 general holding company legislation in New York State, concurs in the tradition on the premise that the first 1888 New Jersey statute conferred "upon all corporations of that state the privilege of stockholding in other corporations."¹⁴⁸

Among the many concurring economists and non-legal historians of the past sixty years whose views have come to the attention of this writer, the lack of unanimity as to the date of the initial New Jersey legislation is even more striking. Those advancing the 1889 date, including Meade, Ripley, Jones and Seager and Gulick, are in the majority.¹⁴⁹ The spokesmen for the 1888 date, including Curtis, Gerstenberg and Bonbright and Means, nevertheless constitute a formidable minority.¹⁵⁰ Several writers

148. Compton, *Early History of Stock Ownership By Corporations*, 9 *Geo. Wash. L. Rev.* 125, 132 (1940).

149. Mead, *Trust Finance* 36-41 (1903) (erroneously cites and quotes text of 1896 statute as the 1893 statute); Montague, *Trusts of Today* 20-21 (1904); Stevens, *Industrial Combinations and Trusts* 67, 78 (1913); Ripley, *Trusts, Pools and Combinations* xix (2d ed. 1916); Jones, *The Trust Problem in the United States* 30 (1921) (erroneously cites and quotes text of 1896 statute as the 1893 statute); Seager and Gulick, *Trust and Corporation Problems* 36, 54 (1929); Mead, *Corporation Finance* 534 (7th ed. 1933) (erroneously defines scope of 1889 statute as the acquisition of "securities issued by corporations of other states"); Twentieth Century Fund, Inc., *Big Business Its Growth and Place* 25 (1937); G. W. Edwards, *The Evolution of Finance Capitalism* 163 and accompanying footnotes (1938); Tippetts and Livermore, *Business Organization and Control* 170 (2d ed. 1941); Cochran and Miller, *The Age of Enterprise* 190 (1942); Bogart and Kemmerer, *Economic History of the American People* 494 (2d ed. 1947); Mitchell and Mitchell, *American Economic History* 635, 659 (1947); Waugh, *Principles of Economics* 571 (1947); Pegrum, *The Regulation of Industry* 61 (1949); Ise, *Economics* 219 (2d ed. 1950); McGrane, *The Economic Development of the American Nation* 412 (2d ed. 1950); 2 Harlow, *Growth of the United States* 283 (4th ed. 1951); Kiekhofer, *Economic Principles, Problems and Policies* 116 (4th ed. 1951); Stocking and Watkins, *Monopoly and Free Enterprise* 31 (1951); Craf, *Economic Development of the United States* 380 (1952); Burns, Neal and Watson, *Modern Economics* 435 (2d ed. 1953); Robertson, *History of American Economy* (1955); Wilcox, *Public Policies Toward Business* 97 (1955); Robinson, *The Holding Corporation*, 18 *Yale Rev.* 407 (1910).

150. See Curtis, *Trusts and Economic Control* 34 (1931) (erroneously cites and quotes text of 1896 statute as the 1893 statute); Bonbright and Means, *The Holding Company* 55-57 (1932) (erroneously states 1888 statute to be supplement to "general stock corporation law" and limited in application to corporations incorporated thereunder); Haney, *Business Organization and Combination* 253 (3d ed. 1934) (erroneously cites and quotes text of 1896 statute as the 1893 statute); Rohlfing, Carter, West and Hervey, *Business and Government* 231 (4th ed. 1941) (erroneously states 1888 statute to be amendment of "general stock corporation code" and limited in application to corporations incorporated thereunder); Taylor, *Financial Policies of Business Enterprise* 55 (1942); Lynch, *The Concentration of Economic Power* 167 (1946) (erroneously cites and quotes text of 1896 statute as the 1888 statute); Hoagland, *Corporation Finance* 636 (3d ed. 1947) (erroneously refers to 1888 statute as a constitutional amendment); Burtchett and Hicks, *Corporation Finance* 583-584 (2d ed. 1948); Cherrington, *Business Organization and Finance* 402 (1948) (erroneously states substance of 1893 statute to be that of 1888 or 1889 statute); Fainsod and Gordon, *Government and the American Economy* 437 (2d ed. 1948); Jome, *Corporation Finance* 527 (1948); 2 Bining

refer either to an approximate date,¹⁵¹ an obviously inappropriate date¹⁵² or no specific date.¹⁵³

It is not uncommon to find that a writer in the economic field has misstated the substance of particular New Jersey holding company legislation, usually because of a failure to verify or distinguish between the provisions of specific enactments, including the 1896 statute.¹⁵⁴ Were it not for this tendency, Richard N. Owens, the author of a current economic text, might be regarded as the one commentator who has expressly rejected the tradition. Professor Owens, although pointing out even more explicitly than Compton that New York enacted general legislation in 1866 and 1876 authorizing conditional intercorporate stockholding by "manufacturing" corporations, nonetheless seems to support the traditional view on the mistaken assumption that the 1889 New Jersey statute authorized unrestricted intercorporate stockholding on the part of industrial and possibly other corporations.¹⁵⁵ In fact, the latter legislation was very

and Klein, *A History of the United States* 78 (1951); Gerstenberg, *Financial Organization and Management* 485 (4th ed. 1951); Machlup, *The Political Economy of Monopoly* 187, 242 (1952); 2 Dewing, *Financial Policy of Corporations* 862 and footnote (5th ed. 1953) (by implication); Johnson and Kroos, *The Origins and Development of the American Economy* 195 (1953); Anshen and Wormuth, *Private Enterprise and Public Policy* 90 (1954); Bining, *The Rise of American Economic Life* 383 (3d ed. 1955); Mund, *Government and Business* 112 (2d ed. 1955) (erroneously cites May, 1888 as date and states that the acquiring corporation could issue stock in payment for stock acquired).

In an earlier work, Professor Dewing expressly refers to "New Jersey first" and cites 1890 as the date of the initial statute. See Dewing, *Corporation Finance* 229 (2d ed. 1931).

Control: *A Solution of the Trust Problem in the United States* 70 (2d ed. 1914).

151. Evans, *Basic Economics* 96 (1950) ("About 1890. . .").

152. Seligman, *Principles of Economics* 344 (12th ed. 1929) (cites the year 1899); Flink, *The American Economy* 180 (1948) (cites the year 1890); Shannon, *American Economic Growth* 439 (3d ed. 1951) (cites the year 1899); H. R. Smith, *Economic History of the United States* 391 (1955) (about 1891).

153. C. D. Edwards, *Maintaining Competition* 135 (1949); Van Hise, *Concentration and Control: A Solution of the Trust Problem in the United States* 70 (2d ed. 1914).

154. See parenthetical remarks in notes 149, 150 *supra* and note 155 *infra*. This tendency, of course, is not unique to writers on economics, as evidenced by inaccuracies in the statements of Conyngton and Cravath quoted notes in 145, 146 *supra*.

155. See Owens, *Business Organization and Combination* 369-70 (4th ed. 1951): "In New York, the first grant of authority to an industrial corporation to own stock in another was embodied in a law passed in 1853, which permitted manufacturing companies to purchase stock in mining companies under certain conditions. This principle was extended in 1866 and again in 1876. Yet, even with these special provisions, New York did not permit a manufacturing company to buy stock in a competing company. It was not until 1892 that this authority was embodied in the general incorporating act. . . ."

"The general use of the holding company device in the industrial field dates from 1889. In that year, the state of New Jersey amended its general incorporation law by inserting a provision that one corporation might have the power to purchase, hold, sell and transfer the stocks, bonds or other obligations of another corporation. Many other states soon amended

similar in text and scope to the 1876 New York statute.¹⁵⁶

C. Commentary

In accordance with the definition of holding company legislation used in this study, which in substance also defines the approach used by Bonbright and Means¹⁵⁷ and expressly or impliedly by most other commentators in treating of the history of legislation authorizing holding company activity, the scope of the intercorporate stockholding power granted by the legislature is immaterial, provided the grant is included in legislation of a general character as opposed to grants included in special acts of incorporation.

There is no doubt that, if the scope of general legislation authorizing intercorporate stockholding is immaterial, the "New Jersey first" tradition must be rejected. For, even if legislative grants of broad powers of intercorporate stockholding to New York insurance companies in 1853 and the following decades were to be arbitrarily excluded,¹⁵⁸ the State of New

their laws to permit manufacturing and other industrial corporations to own stock in other companies."

The foregoing excerpt contains three misstatements of fact. There was no 1853 law authorizing intercorporate stockholding on the part of New York manufacturing companies but there was an 1853 amendment to the general manufacturing (etc.) act of 1848 authorizing any corporation organized under the statute to issue stock in payment for mines or other property purchased in carrying on its business. N.Y. Laws 1853, c. 333, § 2, at 705. The intercorporate stockholding authority conferred upon New York corporations in 1892 was contained in the Stock Corporation Law, which did not become a "general incorporating act" until 1923. Finally, the 1889 New Jersey statute did not grant to all industrial corporations the unrestricted power to hold stock in other business corporations. Because of such inaccuracies, it is difficult to evaluate precisely Professor Owen's position regarding the origin of holding company legislation in the United States.

156. See note 161 *infra*.

157. Bonbright and Means, *The Holding Company* 55-57 (1932).

158. Historically, the legal position of insurance companies with respect to intercorporate stockholding has been no different from that of "industrial" and other business corporations. See note 8 *supra*. Nevertheless, there seems to be a universal tendency in the literature to ignore the intercorporate stockholding activities of insurance companies in discussing the history of general legislation in the United States authorizing intercorporate stockholding—possibly on the theory that such stockholding is for investment purposes.

In order to keep this commentary on the "New Jersey first" tradition within the frame of reference adopted by all of its proponents, this writer will accept this unhistoric and unrealistic view for present purposes. However, certain facts, as obvious as they are basic, should be noted: 1) insurance companies are *unquestionably* business corporations; 2) no holding company legislation has ever been enacted in New York, or probably in any other state, which prevented insurance companies from exercising exactly the same rights and privileges as other business corporations with respect to their corporate stock holdings; 3) prior to 1892, there were no limitations whatsoever upon the amount of stock a New York insurance company could hold in any business corporation, including other insurance companies, and the investing insurer could gain control of any business corporation at least as readily as any manufacturing, public utility or other type of business corporation authorized to hold corporate stock;

York enacted general legislation enabling many business corporations to hold the stock of other business corporations long before 1888.¹⁵⁹

Assuming *de arguendo* that the scope of holding company legislation were a material element of the tradition, it would avail its proponents little. Earlier New York legislation of much broader scope preceded the second 1888 New Jersey statute,¹⁶⁰ the 1876 New York statute granting a similar but somewhat broader power of intercorporate stockholding to almost as many types of business corporations as the 1889 New Jersey statute,¹⁶¹ and the relevant provisions of the 1892 New York Stock Corporation Law granting the same unconditional power of intercorporate stockholding as the 1893 New Jersey statute to more types of business corporations.¹⁶²

4) the aggregate preferred and common stock holdings of life insurance companies in the United States, excluding assessment companies, amounted to \$2,615,297,429 on December 31, 1953 and the aggregate stock holdings of fire, marine and casualty insurance companies on December 31, 1952 amounted to \$4,386,361,238. (See *The Spectator Insurance Year Book, Life Insurance 218A (1954)*; *Fire, Marine and Casualty Insurance xi (1953)*); and 5) with the 1951 New York legislation (pp. 383-84 and note 67 *supra*) authorizing the conditional acquisition of common stock just commencing to take effect, the common stock holdings of life insurance companies can be expected to increase materially in the future.

The New Jersey legislature did not grant any power of intercorporate stockholding to domiciliary insurance companies until 1896, at which time a conditional authorization to invest in stocks other than "industrials" was conferred. See N.J. Insurance Law § 32 (1875), N.J. Rev. Stat. 1875, as amended by N.J. Laws 1888, c. 92, at 124, N.J. Laws 1896, c. 87, at 129.

159. See pp. 376-77 *supra*.

160. For example, N.Y. Laws 1866, c. 838, § 3, at 1897; Laws 1875, c. 586, § 2, at 706; Laws 1876, c. 358, § 1, 3, at 334.

161. Compare the relevant text of the statutes:

"Section three of chapter eight hundred and thirty-eight of the laws of eighteen hundred and sixty-six . . . is hereby amended to read as follows:

"Sec. 3. It shall be lawful for any company heretofore or hereafter organized under the provisions of this act, or the act hereby amended, to hold stock in the capital of any corporation engaged in the business of mining, manufacturing or transporting such materials as are required in the prosecution of the business of such company so long as they shall furnish or transport such materials for the use of such company and for two years thereafter, and no longer; and also to hold stock in the capital of any corporation which shall use or manufacture materials, mined or produced by such company. . ."

(N.Y. Laws 1876, c. 358, § 1)

"4. *And be it enacted*, That section fifty five of the same act be and hereby is amended so as to read as follows:

"55. *And be it enacted*, That the directors of any company incorporated under this act may purchase. . . the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for their business. . ."

(N.J. Laws 1889, c. 265, § 4)

For scope of New York General Manufacturing (etc.) Act of 1848, as amended, and the New Jersey general corporation act of 1875, as amended, see notes 26, 27 *supra*.

162. Compare the relevant text of the statutes:

"The stock corporation law is amended to read as follows, to take effect immediately. . .

"Sec. 40. . .

Therefore, if the scope of pertinent legislation were to be regarded as a material element of the tradition, it is only those commentators advocating the first 1888 statute as the initial New Jersey legislation whose position could *possibly* be maintained and, as a practical matter, only the position of those contending that the scope of the statute is all inclusive and categorically different from earlier general legislation authorizing intercorporate stockholding.¹⁶³

Among the many proponents of the tradition whose views have come to the attention of this writer, relatively few construe the first 1888 statute¹⁶⁴ as all inclusive in scope (i.e., conferring an unrestricted power of intercorporate stockholding upon all domiciliary corporations) and Compton alone is explicit in concluding that, for this reason, the statute is categorically different from earlier general legislation authorizing intercorporate stockholding.¹⁶⁵ However, assuming for the moment that this distinction were historically justified and did not represent a decidedly minority point of view among commentators, it would not "save" the tradition — because

"Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign. . ."

(N.Y. Laws 1892, c. 688, § 40)

"1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for any corporation or corporations created under the act [1875 general corporation act] to which this is a further supplement to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation or corporations created under the laws of this or any other state. . ."

(N.J. Laws 1893, c. 171, § 1)

The New Jersey General Corporation Act of 1875, as amended to 1893, excluded from its purview other business corporations in addition to moneyed corporations. See p. 400 *supra*.

163. Differences in the scope of pertinent statutes are not subject to quantitative measurement and only a difference representing a categorical "setting apart" could be considered material.

164. The statute reads as follows:

"An Act concerning corporations of this state, and of other states, doing business in this state.

"1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for any corporation of this state, or of any other state, doing business in this state and authorized by law to own and hold shares of stock and bonds of corporations of other states, to own and hold and dispose thereof in the same manner and with all the rights, powers and privileges of individual owners of shares of the capital stock and bonds or other evidences of indebtedness of corporations of this state.

"2. And be it enacted, That this act shall take effect immediately.

Approved April 4, 1888"

165. Cf. Lynch, Hoagland, Burtchett and Hicks, Fainsod and Gordon, Mund, Johnson and Kroos *op. cit. supra* note 150; Conyngton, Compton *op. cit. supra* notes 145, 148. Among these authors, Compton, Fainsod and Gordon and Mund are the only commentators who make this statement definitely and unequivocally. Lynch and Conyngton come to this conclusion by assuming the relevant text of the 1896 general revision of the New Jersey corporation law to be the text of the 1888 statute.

the first 1888 statute did not confer an unrestricted power of intercorporate stockholding upon all New Jersey business corporations.

As has been mentioned previously, the language of the (first) New Jersey statute of April 4, 1888 is utterly ambiguous. Moreover, notwithstanding statements in the literature to the contrary, it was not a formal supplement to the then existing general corporation law but a definitive independent statute which was not specifically related to any other enactment. In this respect it was unlike other pertinent New Jersey legislation.¹⁶⁶

In the opinion of this writer the first 1888 statute conferred no substantive power of intercorporate stockholding whatsoever, but was remedial in nature and accorded to New Jersey corporations, owning and holding the stock of foreign corporations by virtue of *other* legal authorization (e.g., special charter), certain rights, powers and privileges in dealing with such stock, to wit — the same rights, powers and privileges accorded to personal stockholders in New Jersey corporations in dealing with their stock. It also accorded these same rights, powers and privileges to foreign corporations doing business in New Jersey and *otherwise* legally authorized to own and hold the stock of New Jersey [and other non-domiciliary] corporations. This interpretation is not only supported by the garbled language of the statute but also by an official compilation of New Jersey laws relating to business corporations, published in 1893, in which the statute is captioned as follows: "Rights of corporations holding the stocks and bonds of other corporations."¹⁶⁷ In the same compilation the 1893 statute is captioned: "Corporations may acquire and dispose of shares of other corporations,"¹⁶⁸ and it would appear that the compiler, a contemporary reporter, was of the opinion that, while the 1893 statute did confer upon corporations a substantive power of intercorporate stockholding, the first 1888 statute had no such effect.

Under no feasible interpretation could the language of the statute be construed to confer, or to purport to confer, a broader substantive power than to authorize the acquisition and holding of stock of foreign corporations by New Jersey corporations and by foreign corporations doing business in New Jersey and so authorized by the state of domicile. To the extent that such evidence is of value, this interpretation is supported by the following descriptive "caption" in the margin of the original session

166. The 1889 and 1893 statutes are formally designated as supplements to the General Corporation Act of 1875, and the second 1888 statute specifically relates to certain corporations organized under the act.

167. See The General Law of the State of New Jersey Concerning Corporations Approved April 7, 1875 Together With Acts Amendatory, Supplementary and Relating Thereto in Force July 4, 1893 (compiled under the direction of the Secretary of State 1893), § 120.

168. *Id.* at § 122.

laws: "Corporations may own and dispose of stocks and bonds of corporations of other states."¹⁶⁹

Whatever the proper interpretation, it is submitted that the statute cannot be construed to confer an unrestricted power of intercorporate stockholding upon all New Jersey corporations. In substantiation of this conclusion, the following additional evidence is offered:

1. The intercorporate stockholding authorization contained in the second 1888 statute and the 1889 and 1893 statutes were of more or less limited scope and the enactment of such legislation would have been unnecessary and incongruous if the *coexisting* statute of April 4, 1888 were all inclusive in scope. Although the second 1888 statute and the 1889 statute also authorized the issuance of stock by the acquiring corporation in payment for the stock acquired and, arguably, the text authorizing intercorporate stockholding might be considered as prefatory and surplusage rather than substantive, not even this theoretical argument would obtain in the case of the 1893 statute. The first 1888 statute and the three subsequent statutes were repealed on the same day, April 21, 1896,¹⁷⁰ the date of the enactment of the revised general corporation law.

2. The first 1888 statute does not expressly authorize New Jersey corporations to acquire corporate stock by way of purchase or otherwise but makes it lawful for such corporations "to own and hold" corporate stock with all the rights, powers and privileges of natural persons. The possibility that "to own and hold" does not imply the right to purchase is strengthened by the inclusion of language expressly authorizing purchase in the three subsequent statutes.¹⁷¹

3. The legislative history of the first 1888 statute, although all too meagre and inconclusive, nevertheless establishes that the Senate Committee on Corporations rejected the original bill, containing an express provision that New Jersey Corporations might "own and hold and dispose of shares of the capital stock . . . of corporations of this state, as investment or otherwise or by way of payment for debts due such corporations," and reported out an amended bill containing the text of the present statute.¹⁷² The amendment could hardly have been made for the sake of

169. N.J. Laws 1888, c. 269, at 385.

170. The first and second 1888 statutes were repealed by a general repealing act. N.J. Laws 1896, c. 190, §§ 10, 12, at 324, 325. The 1889 and 1893 statutes were repealed by the general repeal provisions of the 1896 revision of the General Corporation Law. N.J. Laws 1896, c. 185, § 118, at 317.

171. See N.J. Laws 1888, c. 295, § 1, at 445; N.J. Laws 1889, c. 265, § 4, at 414; N.J. Laws 1893, c. 171, § 1, at 301.

172. The original bill, S. 277, was introduced in the Senate on March 26, 1888 (see N.J. Sen. J. 1888, at 657) and provided as follows:

"AN ACT concerning corporations of this state and of other states, doing business in this state.

"1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey,

clarification and the action of the committee would seem to justify the conclusion that, whatever else may have been contemplated, it was *not* the intention of the New Jersey legislature to confer upon its domiciliary corporations the substantive power to acquire the stock of domestic corporations, by way of investment or otherwise.

In view of the foregoing, it must be concluded that the "New Jersey first" tradition cannot be supported on the factual premise, advanced by most of its proponents, that either the New Jersey act of April 4, 1888 or act of May 9, 1889 represents the initial general legislation in the United States authorizing one business corporation to hold stock in another business corporation. Moreover, in the opinion of this writer, the tradition cannot be supported on the "semantic" premise, advanced by relatively few of its proponents, that the act of April 4, 1888 (the first 1888 statute) represents the initial legislation in the United States wherein a state conferred an unrestricted power of intercorporate stockholding upon all domiciliary business corporations.¹⁷³

That it shall be lawful for any corporation of this state, or of any other state, doing business in this state and authorized by law to own and hold shares of stock and bonds of corporations of other states, to own and hold and dispose of, with all of the and the same rights powers and privileges as individual owners, shares of the capital stock, and bonds or other evidences of indebtedness of corporations of this state, as investment or otherwise, or by way of payment for debts due such corporations.

"2. *And be it enacted*, That this act shall take effect immediately."

[The bill is on file in the Office of the Secretary of State at Trenton, New Jersey and is erroneously captioned as having been introduced on February 26].

The bill was reported out of the Committee on Corporations with amendments on March 27. See N.J., Sen. J. 1888, at 694. There were no further amendments and the original bill, as revised in Committee, ultimately was enacted into law as the first 1888 statute, being unanimously passed by the Senate on March 28 and the Assembly on March 29, and approved by the Governor on April 4, 1888. See N.J., Sen. J. 1888, at 705, 719, 724; Minutes of Assembly 1888, at 809, 810, 813, 846; N.J. Laws 1888, c. 269, at 385.

173. If indiscriminate holding company activity was engaged in by corporations organized under the general corporation act prior to 1893 and by other business corporations prior to 1896, it was because of the state's purportedly liberal but really lax law enforcement policy with respect to business corporations. As one of the leading New Jersey practitioners of the pre-1900 decade has remarked, "it was not until 1893, a year after a similar act had been passed in New York, that the general act was passed declaring expressly that it should be lawful for any corporation of the state of New Jersey to purchase, hold and sell the stock or bonds of any other corporation in the same manner as an individual might do; but even before this it had already been the practice of corporations, under the advice of counsel, to purchase and deal in such stocks under the policy indicated in existing statutes and the general power to hold and deal in property of every kind, in the same manner as natural persons." Keasbey, *New Jersey And The Great Corporations*, 13 Harv. L. Rev. 198, 207, 208 (1899).

Furthermore, whatever New Jersey business corporations may have been doing surreptitiously by way of acquiring the stock of other business corporations, the American (National) Cotton Oil Company appears to be the only prominent domiciliary corporation which may

APPENDIX

CHRONOLOGICAL TABLE OF GENERAL CORPORATION LAWS
NEW YORK: 1890-1955¹1890-1908²

Page	Ch	Laws
1060	563	1890 General Corporation Law. ³
1066	564	1890 Stock Corporation Law. ³
1082	565	1890 Railroad Law.
1136	566	1890 Transportation Corporations Law.
1167	567	1890 Business Corporations Law. ³
3	4	1891 Rapid Transit Railway Act (applicable to cities with over 1,000,000 population). ⁴
1800	687	1892 General Corporation Law.
1824	688	1892 Stock Corporation Law.
1842	689	1892 Banking Law.
1930	690	1892 Insurance Law.
2042	691	1892 Business Corporations Law.
165	326	1895 Personal Loan Associations Act. ⁵

have openly engaged in indiscriminate holding company activity before 1893. See Ripley, *Trusts, Pools and Corporations* xx (2d ed. 1916) ("... yet relatively few concerns seem to have taken advantage at once of the means made ready to hand by the New Jersey legislature. The American Cotton Oil Co. in 1889 and the United States Rubber Co., four years later were pioneers"); Jones, *The Trust Problem in the United States* 31 (1921). Although there is concrete evidence that the company, which was incorporated for manufacturing purposes, was engaged in such holding company activity on May 20, 1901 (See 13 Report of the Industrial Commission on Trusts and Industrial Combinations 680 (1901)), there is no conclusive evidence that its acquisitions of corporate stock prior to 1893 were not authorized under the intercorporate stockholding provisions of the 1889 statute.

As for the substantive and procedural advantages afforded by early New Jersey corporation laws, which made the state the favored domicile of large business corporations prior to 1913, see Keasbey, *New Jersey And The Great Corporations*, 13 *Harv. L. Rev.* 198, 246 (1899); Dill, *Some Aspects of New Jersey's Corporate Policy* (1903) (A somewhat biased but nonetheless informative presentation made by the foremost contemporary expert on New Jersey corporation law in an address before the Pennsylvania Bar Association on June 29, 1903). The state lost its favored position in 1913 upon the enactment of the Seven Sisters laws sponsored by Governor Wilson. N.J. Laws 1913, c. 18, at 32, amending General Corporation Law § 51 (1896).

1. Intervening or superseding amendments or repeals of insubstantial parts of a statute will not be reported in this chronology.

2. Except as otherwise indicated, all the general corporation laws in force at the close of the year 1908 were repealed in the 1909 consolidation and, with or without revision, became part of the Consolidated Laws. The Railroad Law was not repealed or so integrated until 1910.

3. Amended and superseded in 1892 by law bearing same title.

4. Continued as an unconsolidated law until 1941.

5. Consolidated into the Banking Law in 1909.

CONSOLIDATED LAWS⁶

1909-1910				
Page	Ch	Laws	Consol. Laws	
13	10	1909	(c.2)	Banking Law.
13	12	1909	(c.4)	Business Corporations Law.
15	28	1909	(c.23)	General Corporation Law.
16	33	1909	(c.28)	Insurance Law.
20	61	1909	(c.59)	Stock Corporation Law. ⁷
345	219	1909	(c.63)	Transportation Corporations Law.
923	481	1910	(c.49)	Railroad Law.
1911-1955				
1239	369	1914	(c.2)	Banking Law.
1377	787	1923	(c.59)	Stock Corporation Law.
1410	762	1926	(c.63)	Transportation Corporations Law.
1521	650	1929	(c.23)	General Corporation Law.
2530	882	1939	(c.28)	Insurance Law.
1768	800	1941	(c.48-a)	Rapid Transit Law.

6. With the exception of the Business Corporations Law and Railroad Law, all the original consolidated laws subsequently underwent general revision and were expressly or practically superseded. The Business Corporations Law was virtually repealed by N.Y. Laws 1923, c. 787, § 2, only five sections being preserved. Shortly thereafter three of these sections were repealed and, in 1952, the repeal of the law was finally effected upon the repeal and redistribution of the two surviving sections. See Laws 1926, c. 762, § 2; Laws 1952, c. 806, §§ 1, 3.

7. Did not become an incorporation statute until 1923.