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On December 4, 1889 there was introduced in the United States Senate a bill1 destined to give its sponsor, Senator Sherman of Ohio, a place in American history as enduring as that of another Sherman, whose classic four-word description of war has undoubtedly assured him some sort of immortality. For, whenever governmental restraints upon the activities of business corporations in the United States are discussed, officially or academically, the usual point of departure is the Sherman Act2—the subsequent enactment of the Federal Trade Commission Act,3 Clayton Act4 and other antitrust legislation5 notwithstanding.

This situation is especially true of corporate activity involving the combining of two or more business corporations, engaged in interstate commerce, into a single organization through the medium of merger or consolidation—and understandably so. The Sherman Act, and more particularly section 2 of the act,6 is still the only substantive federal

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1. The bill was introduced under the title “A bill to declare unlawful trusts and combinations in restraint of trade and production.” 21 Cong. Rec. 96 (1889).
2. 26 Stat. 209 (1890).
5. In a broad sense, legislation requiring the prior approval of the Interstate Commerce Commission, Civil Aeronautics Board and other regulatory agencies to the merger or consolidation of corporations under their jurisdiction, or to the establishment of specified intercorporate relationships on the part of such corporations, might be regarded as antitrust legislation, a term which has long since become a misnomer. By way of example, see Civil Aeronautics Act of 1938, 49 U.S.C.A. §§ 488, 489 (1951); Communications Act of 1934 § 222, 57 Stat. 6, 47 U.S.C.A. §§ 222(b), (c), (d), (e) (1955) and, Interstate Commerce Act of 1887 § 5, 24 Stat. 380 (1887) as amended, 49 U.S.C.A. § 5(2), (14) (1955).
6. Section 1 of the act is directed toward restraints of trade by parties acting in concert. Section 2 of the act is directed toward monopoly, whether resulting from unilateral or multil-
legislation on monopoly and, unless made inoperative by immunity legislation or other congressional action, the pertinent provisions of the statute still "define" the monopolization status under the federal antitrust laws of any proposed or completed merger or consolidation.\(^7\)

In a very real sense, however, the law on the subject of monopoly has not been provided by the Sherman Act but, of necessity, by the United States Supreme Court in interpreting the meaning of the word "monopolize" in the extremely abbreviated statutory text.\(^8\) In the course of interpretation, the Court has rejected the literal definition as well as the historic legal conception of a monopoly,\(^9\) and has made reason and morality the essential criteria for distinguishing between monopolistic and non-monopolistic corporate combinations.\(^10\) More recently, in indicating ap-

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\(^7\) Sections 2 and 7 of the original Clayton Act made unlawful certain specific behavior (price discrimination and certain acquisitions of stock in another corporation or corporations) which would have the effect of tending to create a monopoly. 38 Stat. 730, 731 (1914). Inasmuch as any act which would tend to create a monopoly, including the act of stock acquisition (see Northern Securities Co. v. United States, 193 U.S. 197 (1904)), would presumably be unlawful under the unqualified language of Section 2 of the Sherman Act (see note 6 supra), the legislative enumeration of specific acts provided no substantive augmentation of the then existing statutory law of monopoly. Moreover, since 1914, alleged violations of the Sherman Act have remained the basis for judicial determinations as to what constitutes monopolizing. The Clayton Act, of course, did create an important new procedure and forum for dealing with alleged monopolistic behavior.


\(^8\) See note 6 supra.

\(^9\) The literal definition of a monopoly is "to sell alone" or "exclusive sale". The concept of aloneness or exclusiveness was preserved in the early English law of monopoly (as opposed to the law of restraints on trade generally) which had its origin in the seventeenth century and was directed toward the curtailment of exclusive rights and privileges to carry on designated business activities granted by authority of the crown. See Formoy, The Historical Foundation of Modern Company Law 11-16 (1923).

\(^10\) It is not intended to present in this study a critique on the judicial interpretation of section 2 of the Sherman Act. However, it might be of some utility to indicate briefly that the Supreme Court and other federal tribunals, in determining whether any proposed or completed combination of business corporations will be or is a monopoly (i.e. "monopolizes"),
proval of the *Alcoa* case, the Court also seems to have acknowledged the possibility of a monopoly being an economic state of being. The latter judgment—which is a moral judgment—has usually been based on the “rule of reason.” The rule was first enunciated as a dictum by Chief Justice White in a judicial setting in which the monopolization and “restraint of trade” provisions of the Sherman Act were completely assimilated. Standard Oil Co. v. United States, 221 U.S. 1, 49-70 (1911). As formulated by the Chief Justice, the rule in substance made illegal only “undue” restriction of competition or “undue” obstruction of trade, thereby opening a broad avenue for purely subjective value judgments on the part of the tribunal. It is ironic that the dictum, which was addressed to restraints of trade generally, has since been applied only infrequently in cases involving restraints of trade other than monopolization. See United States v. Trenton Potteries Co., 273 U.S. 392 (1927); United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940); United States v. Univis Lens Co., 316 U.S. 241 (1942); United States v. Masonite Corp., 316 U.S. 265 (1942). But see Appalachian Coals, Inc. v. United States, 288 U.S. 344 (1933). It is obvious, of course, that monopolization is a restraint of trade but, because of the specific provisions of section 2 of the Sherman Act regarding monopolization, the doctrinal development of the case law affecting the merger and consolidation of corporations has been different from that affecting combinations in restraint of trade generally.

11. United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945). The court held that where a single corporate enterprise (including subsidiary producing corporations) makes positive and successful efforts to organize, utilize and augment facilities under its control in such a way as to exclude competition from the market of the present and the future, further efforts to exclude competition are not necessary to constitute monopolization within the purview of section 2 of the Sherman Act. The holding was responsible for a new concept of monopolization under the Sherman Act, which has been defined as “monopoly in the economic sense—that is, power to fix prices or to exclude competition—plus a carefully limited ingredient of purpose to use or preserve such power.” Rep. Att’y Gen. Comm. on Antitrust Laws 43 (1955). This is an excellent statement of the extent to which the “Alcoa” tribunal recognized a judicially defined monopoly as an economic monopoly under the Sherman Act but a caveat is in order: a “monopoly” as well as “monopolization” still remains a judicially defined concept under the Sherman Act and at any time may be distinguished from the economic fact by the tribunal. In this regard, note Judge Hand’s dictum in the “Alcoa” case to the effect that entrepreneurs who obtained complete (100%) control of a market through legitimate competitive effort or the peculiar nature of the consumer’s market would be “mons

12. The monopoly concept of the “Alcoa” case (supra note 11) was expressly approved and adopted by the Supreme Court in *American Tobacco Co. v. United States*, 328 U.S. 781, 813-15 (1946). The case has never been distinguished or qualified in pertinent subsequent Supreme Court decisions and has been favorably cited in *Times Picayune Pub. Co. v. United States*, 345 U.S. 594, 626 (1953); *Lorain Journal Co. v. United States*, 342 U.S. 143, 153 (1951); *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 174 (1948). ([“A” vertically
Be that as it may, the rationale of federal courts in deciding whether a merger or consolidation of business corporations has created or will create a monopoly has been limited to a determination and evaluation of the effect of such action on competition in the judicially defined industry or market. Mergers and consolidations involving corporations engaged in productively unrelated business activities could not possibly affect the competitive situation and, accordingly, would not be subject to regulation under the monopolization provisions of the federal antitrust laws.

The United States is currently in a period of widespread mergers and consolidations of productively unrelated business enterprises, commonly described as conglomerate mergers or consolidations. The holding company, like other aggregates of business units will constitute monopoly which, though unexercised, violates the Sherman Act provided a power to exclude competition is coupled with a purpose or intent to do so. United States v. Griffith, 334 U.S. 10, 105-07 (1948).

By reason of an unfortunate procedural quirk, the “Alcoa” case could not be heard by the Supreme Court. The Court, because of the disqualification of several justices, was unable to provide the required statutory quorum and the three senior Circuit Judges sat as a statutory court of final appeal. United States v. Griffith, 334 U.S. 10, 105-07 (1948). Therefore, even in the absence of subsequent approval by the Supreme Court, the decision would have more significance than the usual Court of Appeals decision.

In antitrust cases of the past several decades, “industry” and “market” have been loosely used as synonymous terms, the latter being more commonly used in recent cases. The difficulties inherent in classifying areas of modern business activity into more or less definitive industries or markets constitute a formidable barrier to the regulation of relatively small business corporations with concentrated activity in a small geographical area or relatively large business corporations which are extensively engaged in multifaceted activities. The relevant factors are not always ascertainable, even theoretically. Practically, such elementary variables as the precise identity of the pertinent product (goods or services produced), the geographical confines of the market of the producer or distributor, and the relevant scope of the producer's integration of its industrial activities (vertical or horizontal) often elude even qualitative delimitation. See Rep. Att'y Gen. Comm. on Antitrust Laws 44-45 (1955); Hamilton And Associates, Price and Price Policies § 1 (1933); Chamberlin, The Theory of Monopolistic Competition c. 4, 5 (1933); Macdonald, Product Competition in the Relevant Market Under the Sherman Act, 53 Mich. L. Rev. 69 (1954); Hale, Trust Dissolution: "Atomizing" Business Units of Monopolistic Size, 40 Colum. L. Rev. 615 (1940); Note, 54 Colum. L. Rev. 550 (1954).

I.e., enterprises engaged in business activities which are so dissimilar as to be incapable of being integrated on either a horizontal or vertical basis.

These conglomerate combinations are undertaken ostensibly for the purpose of diversifying the business activities of the surviving corporation or constituent corporations. Not infrequently, however, the dominant or exclusive motivation is that of utilizing the tax credits of non-prospering corporations, increasing the size of corporate enterprises or increasing the personal fortunes of the promoter(s) of the combination.

A recent example of such a combination is found in the consolidation of the Martin-Parry Corporation (manufacturer of diverse metal products), Prosperity Company, Inc. (manufacturer of laundry and dry cleaning machines) and the New York and Cuba Mail Steamship Company into the Ward Industries Corporation on March 16, 1956. Moody, Industrials 2221 (1956).
pany device is also being used extensively to obtain the practical effect of merging such enterprises through the creation of parent, wholly-owned subsidiary relationships.\textsuperscript{16} Unless one of the corporations involved in a proposed conglomerate merger or consolidation is a banking, insurance or public utility corporation, the combination can take place and has been taking place with legal impunity, regardless of the size of the surviving or newly formed corporation or the over-all scope of its economic activities. There are in the United States today no effective legal restraints, in federal or state law, upon the merger or consolidation of productively unrelated "industrial" corporations.\textsuperscript{17}

Whether the federal government will ever enact legislation to limit or prohibit future combinations of productively unrelated enterprises or other non-monopolistic combinations of American "industrial" corporations is problematical. Far from problematical, however, is the prospect that the states and other incorporating jurisdictions\textsuperscript{18} will ever attempt to accomplish this objective by the universal repeal of all legislation authorizing corporate mergers and consolidations. In fact, the very suggestion that action for this purpose might be initiated by a single state legislature would be considered preposterous in this industrialized age. Nonetheless, the absence of such legislation would not be without precedent in the nation's

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\item \textsuperscript{16} As a matter of fact, the device is more extensively used than outright merger or consolidation. Inasmuch as the subsidiary corporation retains its corporate identity, these acquisitions of corporate stock are not legally mergers and will not be so regarded for purposes of this study. For a history of the legislation authorizing intercorporate stockholding in New York State, see Freedland, History of Holding Company Legislation in New York State: Some Doubts as to the "New Jersey First" Tradition, 24 Fordham L. Rev. 369 (1955).
\item \textsuperscript{17} A recent example of the holding company type of acquisition is represented by the diversification activities of the Penn Texas Corporation since 1953. See Moody, Industrials 2603 (1956) ; Barrons, April 9, 1956, p 1.
\item \textsuperscript{18} Current federal antitrust laws are not designed to regulate the combining of such corporate enterprises. There are still a few states which limit the combination of business corporations (other than banking, insurance and public utility corporations) to the merger or consolidation of corporations engaged in business of the same general character or of the same or a similar nature. E.g. N.J. Stat. Ann. tit. 14, c. 12, § 1; La. Rev. Stat. tit. 12, § 47 (1951). However, industrial corporations domiciled in these states which desired to participate in a conglomerate merger or consolidation—and decided it was worth the candle—could reincorporate in a more benign jurisdiction which did not so limit corporate combinations. E.g. N.Y. Stock Corp. Law § 86; Del. Code § 251 (1953). Consequently, as long as there is one state or other incorporating jurisdiction which authorizes conglomerate combinations, it cannot be said that prohibitory laws in other states can effectively restrain such combinations.
\item \textsuperscript{18} Alaska, Puerto Rico and the Virgin Islands are the only incorporating jurisdictions among the states, territories and dependencies of the United States without some form of legislation authorizing the merger or consolidation of business corporations.
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history. For, during a substantial part of our national existence, there was no general enabling legislation in any state authorizing corporate mergers or consolidations—and even the combining of designated individual corporations into a single corporation by special act of the legislature was decidedly out of the ordinary.

The historical development of general legislation authorizing the merger and consolidation of New York business corporations, which will be treated definitively in this study, is illustrative of the incapacity of most American business corporations to combine resources and organizations until well into the nineteenth century. For purposes of this study, enabling legislation will be defined as legislation of a general character authorizing the combination of two or more business corporations into a single corporation by way of merger or consolidation. Any unqualified reference to "legislation," "enabling legislation," "combination" (etc.) will relate exclusively to general legislation and to the combining of corporations in this manner.

I. MERGER, CONSOLIDATION AND THE VOLUNTARY SALE OF CORPORATE ASSETS: BASIC LEGAL DISTINCTIONS

There are undoubtedly business situations in which the management and shareholders of interested corporations may find that, for purposes of achieving the desired economic result, it is of no consequence whether a proposed transaction takes the form of a merger, consolidation or voluntary sale of all assets by one or more of the corporations, especially when payment for the assets is made in the stock of the acquiring corporation. In legal contemplation, however, there are and always have been distinctions between the processes of corporate merger, corporate consolidation and the disposal of the assets of one corporation to another through the medium of sale.


20. I.e., a sale freely made by representatives of a prospering corporation pursuant to authorization by stockholders as opposed to a forced sale by representatives of a non-prosperous corporation or a receiver, trustee, sheriff or other officer of the court.

21. On the other hand, the practical economic differences from the standpoint of creditors' rights, tax benefits (etc.) may be very real in any particular business situation. For some undifferentiated statistics regarding mergers, consolidations and sales of corporate assets during the 1951-1954 period, see F.T.C., Report on Corporate Mergers and Acquisitions 37-65 (1955).

22. For a discussion of the extent to which the distinction creates real pragmatic differences under modern statutes, see Hills, Consolidation by Sale of Assets and Distribution of Shares, 19 Calif. L. Rev. 349 (1931); Amsler, Organic Changes in the Corporation: Amend-
The basic distinction between the latter and the other courses of action is that merger and consolidation always imply a combining of corporate organizations as well as corporate assets and necessarily result in the automatic extinction of the corporate existence of one or all of the participating corporations. On the other hand, under general corporation laws, the corporate existence and identity of corporations participating in the sale and purchase of all the assets of a corporation are in no wise affected by the sale—although the disposing corporation may choose to initiate dissolution proceedings immediately after the sale.

There is also a fundamental legal distinction between the merger and the consolidation of business corporations, notwithstanding the tendency of some courts and legislatures (including New York legislatures) to confuse or "merge" the two processes on occasion. In a merger, one corporation retains its corporate existence and the other participating corporation or corporations lose their corporate existence, being absorbed by and becoming a part of the surviving corporation. In a consolidation, all the participating corporations lose their corporate existence and become constituents of a newly formed corporation. In the main, this classic discussion, Merger and Consolidation, Sale of Assets, 4 Baylor L. Rev. 449 (1952) (Texas corporation law); Note, 28 Geo. L. J. 92 (1939).

23. Under the provisions of special charters and early corporation acts, which required the corporation to carry on a prescribed, specific type of business activity—usually within a limited geographical area and for a stipulated maximum term—there is considerable doubt whether the disposition of all corporate properties by some corporations might not result in the termination of their corporate existence by operation of law. Cf. Cole v. Millerton Iron Co., 133 N.Y. 164, 30 N.E. 847 (1892). More recent legislation would permit the corporate shell to continue in existence indefinitely and to renew the same or other business activities at any time.

Illustrative of the modern tendency is the metamorphosis of the ACF-Brill Company in 1955 from a long standing manufacturer of street cars, buses and other vehicles to an operator of food stores under the name of ACF-Wrigley Stores. Moody, Industrials 2272 (1956).

24. It has been held that a merger is not effected when seven corporations sell all their assets to another corporation and complete dissolution shortly thereafter. Argenbright v. Phoenix Finance Co., 187 Atl. 125 (Del. Ch. 1936).


tinction between the merger and consolidation forms of corporate combination has been consistently recognized by the courts in language as well as decision and will be preserved in this study.

The legal distinctions between corporate merger, corporate consolidation and the sale of all the assets of one corporation to another corporation do not represent mere niceties of procedure but are substantive in nature, and the three processes cannot be interchanged by intercorporate agreement or other intercorporate action.

II. THE COMMON LAW RULE: NEW YORK AND OTHER AMERICAN JURISDICTIONS

In New York and other American jurisdictions, business corporations have never been able to combine legally without express legislative authority, regardless of whether the corporations may have been engaged in the same or completely dissimilar types of business activities or may have been competing or non-competing enterprises. There is no in-

27. By way of example, see statement of court in In re Bergdorf's Will, 149 App. Div. 529, 532, 133 N.Y. Supp. 1012, 1014 (2d Dept' 1912):

"We agree with the contention of the learned counsel for the appellant that there is a marked difference under our statutes between the consolidation and merger of two or more corporations, and that upon consolidation a new corporation springs into existence and the prior corporations are dissolved and cease to exist . . . while under the statutes authorizing a merger of corporations, one is continued without the formation of a new corporation and the others are merged in it . . . . The Legislature must have been presumed to have known these well-recognized distinctions and, by omitting any reference to consolidation in the Banking Law and providing merely for a merger of banking corporations, it must have intended to preserve such distinctions . . . ."

The decision, involving the legal right of the Guaranty Trust Company to act as executor in lieu of the corporation which it absorbed, was sustained by the Court of Appeals, 205 N.Y. 309, 99 N.E. 714 (1912). See also Irvine v. New York Edison Co., 207 N.Y. 425, 101 N.E. 358 (1913).

28. American Loan & Trust Co. v. Minnesota & Northwest R.R., 157 Ill. 641, 42 N.E. 153 (1895); Cole v. Millerton Iron Co., 133 N.Y. 164, 30 N.E. 847 (1892); Lotham v. Boston, Hoosac Tunnel & West. Ry., 38 Hun. 265 (N.Y. 1885); 15 Fletcher, Cyc. Corp. § 7043 (perm. ed.); Stevens, Corporations § 193 (2d ed. 1949); Ballantine, Corporations § 289 (2d ed. 1946); 8 Thompson, Corporations § 6020 (3d ed. 1927 and 1931 supp.).

In Oklahoma, prior to the enactment of legislation authorizing merger and consolidation, it was held that the sale of all the assets of one banking corporation to another did not constitute a merger or consolidation. In First State Bank v. Lock, 113 Okla. 30, 33, 237 Pac. 665, 609 (1925), the court stated: "It is well settled that corporations can only consolidate when authorized by law, and then in the manner provided by law. It is conceded that there is no law in this state authorizing the consolidation of corporations, and even though some of the parties to the transaction herein involved used the words 'consolidate', or 'consolidation', same could have no legal effect. Under the law in this state a corporation can only be extinguished by the expiration of the term for which its charter was granted, or by dissolution in the district court in the manner provided by law."

Some English cases indicate that a combining of corporate organizations, usually referred
herent corporate power which would permit a business corporation to acquire another business corporation, to be acquired by another business corporation or to surrender its corporate existence in order to become a constituent part of a newly formed corporation—even with the consent of all interested stockholders. Within the limits of its corporate charter or certificate, however, a corporation could acquire all the assets of another corporation without statutory authorization. Occasional references in decisions or literature to the consummation of common law mergers or consolidations upon the unanimous approval of the interested stockholders are erroneous and are intended to describe a "combining" of corporate assets in this manner rather than the combination of corporations (as corporations) resulting from a merger or consolidation. There are no "de facto" corporate mergers or consolidations.

Not only did business corporations lack the power of combination at common law but even the power of the legislature to authorize mergers or consolidations has been challenged, albeit unsuccessfully, on constitutional grounds. From the beginning, pertinent statutes have required to as an "amalgamation," can only be accomplished pursuant to legislative authorization. The Great Northern Ry. v. Eastern Counties Ry., 9 Hare 306, 66 Eng. Rep. 520 (1851); The East Anglian Ry. v. Eastern Counties Ry., 11 C.B. 775, 138 Eng. Rep. 680 (1851).

29. In New York and the majority of American jurisdictions, the common law rule required the unanimous consent of the stockholders of the disposing corporation to consummate the sale. People v. Ballard, 134 N.Y. 269, 32 N.E. 54 (1892); Abbot v. American Hard Rubber Co., 33 Barb. 578 (N.Y. 1861); Kean v. Johnson, 9 N.J. Eq. 401 (1851); 6 Fletcher, Cyc. Corp. § 2947 (perm. ed.); Ballantine, Corporations § 281 (2d ed. 1946). The view, however, is not universally accepted and, in some states, a sale can be effected with the consent of the holders of the majority of the stock. Beidenkopf v. Des Moines Life Ins. Co., 160 Iowa 629, 142 N.W. 434 (1913); Bowditch v. Jackson Co., 76 N.H. 351, 82 Atl. 1014 (1912). For a commentary on the state of authority and the merits of the conflicting rules, see Warren, Voluntary Transfers of Corporate Undertakings, 30 Harv. L. Rev. 335 (1917); Note, 19 Va. L. Rev. 166 (1932).

30. See Levy, Rights of Dissenting Stockholders to Appraisal and Payment, 15 Cornell L.Q. 420 (1930). But see In re Interborough Consolidated Corp., 277 Fed. 455, 457 (S.D. N.Y. 1921). For the common law rule governing the sale of corporate assets, see note 29 supra.

31. "It is not a sufficient answer to say that the transfer was rather formal than real, because before its occurrence the Millerton Co., having the same stockholders and officers, managed and conducted the business of the National Company before the transfer, as well as after, and that what occurred was a practical consolidation. Companies may consolidate, but under the permission and safe-guards of the statute, all of which were disregarded. . . ." Cole v. Millerton Iron Co., 133 N.Y. 164, 168, 30 N.E. 847, 848 (1892).


In 1932, however, the Delaware Supreme Court judicially legislated an ad hoc "de facto" merger for the benefit of creditors. Drug, Inc. v. Hunt, 35 Del. 339, 168 Atl. 87 (1932).

32. See Clearwater v. Meredith, 68 U.S. (1 Wall.) 25 (1863) (Indiana statute); Beechwood Securities Corp. v. Associated Oil Co., 104 F.2d 537 (9th Cir. 1939) (California statute); Beloff v. Consolidated Edison Co., 300 N.Y. 11, 87 N.E. 2d 561 (1949); Bingham v. Savings Invest-
that the holders of at least the majority of the voting stock of the participating corporations consent to any proposed merger or consolidation. It is still open to question whether a state legislature has the power, under the “contract” or due process provisions of the federal constitution to authorize such corporate action upon the consent of stockholders owning less than a majority of the voting stock.\textsuperscript{33}

III. NEW YORK ENABLING LEGISLATION: PRIOR TO 1890\textsuperscript{24}

Prior to March 22, 1811, the date of the first general incorporation act\textsuperscript{25} in New York State, every business corporation was individually incorporated.\textsuperscript{33} Cf. rationale of court in Beloff v. Consolidated Edison Co., 300 N.Y. 11, 19, 87 N.E. 2d 561, 564 (1949): “It is the settled law of this State that under the express reservation of power therefor in our State Constitution... ‘the Legislature has the right at any time it sees fit to alter, suspend and repeal the charters of corporations’... that this constitutional provision is part of the contract or charter of every New York corporation... and that it authorizes the Legislature to make appropriate non-confiscatory statutory provisions for mergers.... It is fully as well settled that if the merger (or consolidation) is duly consummated in accordance with the statutes, the remedy of appraisal and payment is the only one available to dissenting shareholders, and that such dissenters on such an appraisal are entitled to receive fair and full compensation for all their rights.... It is settled, too, that statutes authorizing mergers may lawfully be applied even to corporations formed and stock acquired before their enactment. In short, the merged corporation’s shareholder has only one real right; to have the value of his holding protected, and that protection is given him by his right to an appraisal.... He has no constitutional right to deliberate, consult or vote on the merger, to have prior notice thereof or prior opportunity to object thereto. His disabilities in these respects are the result of his status as a member of a minority, and any cure thereof is to be prescribed by the Legislature if it sees fit. In none of this do we see any deprivation of due process, or of contract rights.” (Citations omitted.) See also Dodd, op. cit. supra note 32 at 744-52.

34. 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. In instances where a session law is the substantive source of a current (1956) 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.

35. 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 1795, c. 59, approved...
corporated by special act of the legislature. Two hundred and sixty-three enterprises were so incorporated before the enactment of the 1811 statute and, by way of background, it might be noted that none of these corporations was granted the power of merger or consolidation—the only combination activity predating the general act being the merger of the Schoharie Creek North Bridge Company and the Charleston Turnpike Company by direct legislative action.

In addition to the 1811 statute, only two general incorporation acts became law in New York before the adoption of the “self incorporation” provisions of the state constitution in 1846, but by 1890, when a general revision of New York statutory law was undertaken, the number had increased to fifty-two. All of the statutes, with the exception of the Business Corporations Act of 1875, were limited in scope to specific types of business activities.

In spite of the proliferation of pre-1890 general incorporation acts, however, the Banking Act of 1882 alone made provision for corporate

February 21, 1799 (creating a general incorporation act for aqueduct companies which apparently could be operated for profit).

36. 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.

37. N.Y. Laws 1807, c. 175, § 23. The corporations were “united” as “The President, Directors and Company of the Canajohary and Charleston Turnpike Road”. The statute contained a statement to the effect that the consent of the interested stockholders had been previously obtained.

38. N.Y. Laws 1814, 38th sess., c. 12 (privateering associations); Laws 1838, c. 260 (free banking act for commercial banks).

39. 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 (1946) ) 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 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 (1955).

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.

40. 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.”
Consequently, since no enabling provisions were contained in the Revised Statutes of 1827-1828 or any amendments thereof, all other legislation of the period authorizing combination took the form of independent statutes.

New York business corporations were granted the power of combination on ten occasions during this period. For the most part, the enabling legislation authorized combination by way of consolidation, the legislature apparently reasoning that intercorporate action resulting in the creation of a new corporation was more in keeping with a policy of self-incorporation than the merging of one corporation into another.

The power of combination was first granted on April 6, 1849, when self-incorporated turnpike corporations were authorized to consolidate. No procedure was prescribed for effecting the consolidation and no provision was made for giving dissenting stockholders a right to redeem their stock. The legislation, although the skimpiest in text and most inadequate in substance of any general legislation authorizing combination ever passed by a New York legislature, remained in effect without amendment until repealed in 1890.

The next consolidation statute, enacted in 1867, was unquestionably the most important enabling legislation of the pre-1890 period. The statute authorized the consolidation of two or more corporations with the same or similar corporate objects, organized under the General Manufacturing Act of 1848 as amended and extended, to carry on "one kind of business" authorized by the act of incorporation. The latter legislation had always included certain types of non-manufacturing companies within its purview and by 1866 had been extended to "the formation of

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43. N.Y. Laws 1849, c. 250, § 8.
44. N.Y. Laws 1867, c. 960, §§ 1, 2, 7. The new corporation was given complete intra-state freedom of operation and the power to carry on business outside of the state to the same extent that such power may have been enjoyed by any of the constituent corporations. The maximum capital of the new corporation was limited to the combined capital of the constituent corporations. The statute was immaterially amended in 1877. Laws 1877, c. 374, § 2.
45. See 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."

Notwithstanding its broadly worded provisions, several decades and 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.
corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes.” In 1884, supplemental legislation was enacted which authorized all domestic manufacturing corporations engaged in the same or similar business activities, including specially chartered corporations, to consolidate and carry on any kind of business authorized in their corporate charters or certificates.

Other legislation of the pre-1890 period granting New York business corporations the power of consolidation was limited to non-competing railroad corporations having continuous lines, domestic self-incorporated

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; Laws 1865, c. 234, at 378; Laws 1865, c. 307, at 514; Laws 1866, c. 371, § 1; Laws 1866, c. 799, § 1 (as amended by Laws 1871, c. 657, § 1) Laws 1867, c. 248, § 1; 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 823); Laws 1871, c. 657, § 2; Laws 1872, c. 426, at 1015; Laws 1874, c. 149, § 1; Laws 1875, c. 113, at 100; Laws 1875, c. 365, at 351; Laws 1877, c. 374, § 1 (as supplemented by Laws 1880, c. 241, § 2); Laws 1879, c. 290, § 1; Laws 1880, c. 85, §§ 1, 5; Laws 1881, c. 650, at 891; Laws 1882, c. 273, § 1; Laws 1884, c. 267, at 331; Laws 1885, c. 84, at 192; Laws 1888, c. 313, at 542; Laws 1890, c. 508, at 913.

46. Early in 1866, the title of the act was amended to “An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical or other purposes.” N.Y. Laws 1866, c. 799, § 2. 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.

47. N.Y. Laws 1884, c. 367, §§ 1, 2, 7. The statute was in force concurrently with the 1867 legislation, cited supra note 44, and, with respect to self-incorporated manufacturing corporations, represented an alternative statutory basis for consolidation. Excepting the more limited application of the 1884 statute and differences as to maximum capital requirements, the provisions of both enactments were virtually identical. The later legislation limited the maximum capital of the new corporation to “the fair aggregate value of the property, franchises and rights of the several companies thus to be consolidated.”

48. N.Y. Laws 1869, c. 917, §§ 1, 2. The statute authorized the consolidation of domestic corporations or domestic and foreign corporations “whenever two or more railroads of the companies or corporations so to be consolidated shall form a continuous line of railroad with each other, or by means of an intervening railroad bridge or ferry.” Parallel and competing lines were expressly denied such power. Id. § 9. Subsequently, it was provided that the continuous line might be effected through the juncture of branch lines. Laws 1881, c. 685, at 921. Legislation was also enacted after 1869 authorizing the consolidation of domestic railroad corporations in the “continuous line” category which had not yet been constructed or were in the process of construction. Laws 1875, c. 108, at 96 (self-incorporated corporations); Laws 1883, c. 387, at 555 (any domestic corporation). In 1875, a supplemental and apparently superfluous statute authorized the consolidation of eligible railroad corporations with Pennsylvania railroad corporations, subject to Pennsylvania laws. Laws 1875, c. 256, §§ 1, 2.

An example of earlier legislation authorizing the consolidation of individual railroad corporations is the 1853 statute permitting the consolidation of any or all of nine specified corporations. N.Y. Laws 1853, c. 76, at 110.
building corporations and domestic self-incorporated banking associations located in the same city, town or village. Eligible railroad corporations were also permitted to consolidate with foreign corporations.

Uniformly, the consent of the holders of two thirds of all the stock of each of the participating corporations was necessary to effect corporate consolidations during this period, a requirement which was retained without change until 1923. With the exception of the enabling legislation affecting turnpike corporations, dissenting stockholders were given a redemption option. This has been a concomitant of most legislative grants authorizing consolidation, and it is arguable that at least dissenting stockholders in pre-existing corporations would be entitled to such an option as a matter of constitutional right under the “contract” and due process provisions of the federal constitution.

The power of combination by way of merger was seldom granted during this period. Self-incorporated fire insurance stock companies were the only business corporations authorized to enter into an outright merger. Railroad corporations in the relationship of lessor and lessee were also permitted to merge through a novel stock exchange “installation” plan. The plan authorized the lessee corporation to issue additional stock for the specific purpose of exchanging the newly issued stock for that of the lessor corporation and, upon acquiring all the stock of the latter corporation, a merger could be formally consummated at the instance of the lessee corporation without further action by the stockholders of either. As early as 1851, self-incorporated telegraph companies were

49. N.Y. Laws 1873, c. 616, §§ 1, 2.
51. In 1923, the consent requirement in the case of most corporations was changed to two-thirds of the voting stock. See text accompanying note 131 infra.
52. Cf. N.Y. Stock Corp. Law §§ 87, 91 (7); N.Y. Insurance Law § 503.
53. This question has never been decided by the United States Supreme Court and, in view of the prevalence of appraisal statutes at the present time, the court will probably never have occasion to pass judgment on the question. State courts have held that there is no constitutional requirement for redemption with respect to stockholders of participating corporations organized after the enactment of the consolidation statute. Thompson v. Indiana Union Traction Co., 183 Ind. 590, 110 N.E. 121 (1915); Mayfield v. Alton Railway, Gas & Elec. Co., 193 Ill. 528, 65 N.E. 100 (1902). It has also been held, however, that dissenting stockholders in participating corporations organized prior to the enactment of a merger statute have a constitutional right of redemption notwithstanding the state’s reserved power to alter and amend the corporate charter. Lauman v. Lebanon Valley R.R., 30 Pa. 42 (1858). For a discussion of the scope and interpretation of various state appraisal statutes, see Lattin, Remedies of Dissenting Stockholders Under Appraisal Statutes, 45 Harv. L. Rev. 233 (1931).
54. N.Y. Laws 1873, c. 616, §§ 1, 2.
55. N.Y. Laws 1867, c. 254, at 444; see present N.Y. Railroad Law, § 149. An intermediate phase of this combination plan permitted directors of the lessee corporation by their own resolution to become, ex officio, the exclusive directors and managers of the lessee railroad corporation upon the lessee corporation’s acquisition of the majority of the stock.
expressly authorized to unite facilities and activities with any telegraph corporation and, possibly, to combine organizations.\(^6\)

In no instance did the legislation authorizing merger afford dissenting stockholders a redemption option.

IV. INTEGRATION OF NEW YORK STATUTORY BUSINESS CORPORATION LAW\(^{56a}\)

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 the Business Corporations Law.\(^{57}\) In 1892, due to inadequate and conflicting provisions, the General Corporation, Stock Corporation and Business Corporations Laws\(^{58}\) were redrafted with incidental or substantial changes, and the Banking Law and Insurance Law were introduced for the first time.\(^{59}\) 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 County\(^{60}\) and the New York City Marketing Company Act of 1871,\(^{61}\) 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.\(^{62}\)

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\(^{56}\) The power to acquire the stock of other business corporations by way of purchase or exchange of stock was granted only sparingly to New York business corporations prior to 1890. See Freedland, History of Holding Company Legislation in New York State: Some Doubts as to the "New Jersey First" Doctrine, 24 Fordham L. Rev. 372-77 (1955).

\(^{56a}\) A telegraph company was authorized to extend its lines and "unite with any other incorporated telegraph company" with the consent of the holders of two thirds of the stock of the interested corporations. N.Y. Laws 1851, c. 98, at 178. The writer believes that the more reasonable interpretation of the language in context indicates that the uniting refers to a physical union of lines. The language, however, is susceptible of being construed as authorizing combination. There are no decisions in point.

\(^{56a}\) This section is a virtual restatement of the writer's presentation in the Fordham Law Review article, supra note 55.

\(^{57}\) See Appendix.

\(^{58}\) Ibid.

\(^{59}\) Ibid.


\(^{62}\) See Appendix.
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. In 1911, the law was extended to freight terminal companies. In the course of the general revision of 1926, district steam corporations were included within the purview of the law but the provisions relating to navigation, tramway, bridge and turnpike corporations were completely eliminated. By virtue of the same revision stage coach corporations were merged in the new omnibus corporation classification.

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. In the 1892 revision, the law was made specifically inapplicable to water companies serving or located in New York City and a few years later was also made inapplicable to moneyed and "transportation" corporations. 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 1924 the law was virtually repealed and all but a few of its provisions were re-enacted in other general laws. Since April 17, 1952, with the repeal and redistribution of the two surviving sections, the law has had only historical significance.

The General Corporation Law 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

63. N.Y. Laws 1890, c. 566, art. I-IX.
64. N.Y. Laws 1911, c. 778, at 2075.
65. N.Y. Laws 1926, c. 762, §§ 1, 2; now N.Y. Transportation Corporations Law §§ 1, 2.
66. N.Y. Laws 1926, c. 762, § 60, now N.Y. Transportation Corporations Law § 60.
67. N.Y. Laws 1890, c. 567, § 1; Laws 1892, c. 691, § 1.
68. N.Y. Laws 1892, c. 691, § 16.
69. N.Y. Laws 1895, c. 671, § 1; Laws 1896, c. 460, at 428. "Transportation" corporations refer to enterprises incorporated under the Transportation Corporations Law.
70. N.Y. Laws 1923, c. 737, § 134 (2). Only five sections (12-16) survived the repeal.
71. See N.Y. Laws 1952, c. 805, §§ 1, 3.
72. 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. 697, § 34 (repeal).
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. In the 1892 revision the law was made only partially inapplicable to such corporations. Thirty-one years later the legislation was 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." In the same year, for the first time, the law became an incorporation statute.

There is one other general law which merits consideration in any study relating to New York legislation of the post-1890 period authorizing merger or consolidation. 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, eventually affected every corporation subject to the Railroad Law and Transportation Corporations Law.

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73. See N.Y. Laws 1890, c. 563, § 25; Laws 1890, c. 564, § 72; Laws 1892, c. 687, § 33.
74. N.Y. Laws 1890, c. 564, § 1.
75. N.Y. Laws 1892, c. 688, § 1. 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 applicable provisions of the revised article had previously been included in other articles of the Stock Corporation Law.
76. N.Y. Laws 1924, c. 441, § 2.
77. N.Y. Laws 1907, c. 429, at 889. In 1910, the statute became chapter 48 of the Consolidated Laws without amendment. Laws 1910, c. 48, 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; Laws 1905, c. 737, at 2092.
78. The law was extended, in piecemeal fashion, to telegraph and telephone companies (N.Y. Laws 1910, c. 673, § 3), steam corporations (Laws 1913, c. 505, § 3), omnibus corporations (Laws 1931, c. 531, § 2), water works companies (Laws 1931, c. 715, § 3), motor carriers of freight (Laws 1938, c. 543, § 2). Cf. N.Y. Public Service Law, art. 3-A, 3-B, 4-A, 4-B, 5. 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. 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; 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; Laws 1945, c. 855, § 6, 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;
Aided materially by the early enactment of legislation authorizing the intercorporate exchange of stock, the legal power of New York business corporations to merge and consolidate underwent considerable expansion during the post-1890 period. Unlike the historical development of the power of intercorporate stockholding, however, the liberalization of the power of combination was not marked by a sudden, radical change in legislative policy at the very outset of the period. It was, rather, a gradual evolutionary process, without noteworthy changes, which extended over many decades.

Notwithstanding the general tendency to constantly enlarge the power of combination after 1890, there have always been significant limitations upon the diversity of business activities which can be affected by any proposed combination. Combination is still limited essentially to the merger or consolidation of corporations organized under the same general corporation law, the merger of title insurance companies with trust companies and banks being the notable exception. The power of public utility and moneyed corporations is even more particularly restricted and, as recently as 1923, the power of “ordinary” commercial enterprises to combine extended only to corporations engaged in the same or similar business activities.

The most comprehensive enabling legislation of the period, from the standpoint of scope of application, was enacted before 1900. This was the pro forma merger provision of the Stock Corporation Law, which became law in 1896. The provision, which was as insubstantial in substance as it was comprehensive in application, authorized any domestic corporation owning all the stock of any other domestic corporation “organized for or engaged in business similar or incidental to that of the possessor corporation...to merge such other corporation” pursuant to a resolution by the directors of the possessor corporation. This power was later expanded...
tended to permit merger between domestic and foreign corporations but, after 1936, the approval of the Public Service Commission was required whenever the proposed merger involved a corporation under its jurisdiction. From 1925 to 1936, approval had been required whenever the possessor corporation was under the jurisdiction of the Commission.

In 1936, the requisite stock ownership by the possessor corporation was reduced to ninety-five per cent of each class of stock in the case of gas companies, electric companies and gas and electric companies and, in the following year, the reduction was applied to the holdings of these corporations in district steam corporations. Since 1949, the reduction in the prescribed holdings of the possessor corporation has been made applicable to all corporations. After the consummation of a pro forma merger, the possessor corporation enjoyed the same powers and privileges it had possessed before the merger.

The 1896 statute was the initial legislation in New York State authorizing a domestic business corporation to merge with a wholly-owned domestic subsidiary corporation engaged or authorized to engage in similar or incidental business activities, regardless of the nature of the parent corporation's business. Its greater historical importance, however, probably stems from its unique status as the only legislation in the history of the state to supplement the non-conflicting provisions of all general corporation laws relating to combination. The necessity for enabling legislation to authorize a corporation to merge a wholly-owned subsidiary corporation, engaged in the same kind of business, is also compelling evidence of the statutory nature of the merger process. All mergers between parent and subsidiary corporations, susceptible of consummation by directorate action on the part of the parent corporation, will hereafter be referred to as pro forma mergers.

Other New York legislation authorizing combination, enacted in 1890 and succeeding years, has always had a more specific application—and
considerably more substance—than the *pro forma* merger provision of the Stock Corporation Law. It will be of advantage, therefore, to survey the remaining enabling legislation of the post-1890 period with reference to the types of business corporations affected, namely, moneyed corporations, railroad and other public utility corporations and other corporations:

A. Moneyed Corporations

1. Insurance Companies

In granting the power of combination to insurance corporations during the post-1890 period, the New York legislature proceeded with great caution. Whenever the power was granted, the approval of the Superintendent of Insurance as well as the consent of the holders of two thirds of the stock of participating stock companies or the concurrence of a prescribed percentage of the membership votes of mutual companies was required. Moreover, mutual companies were denied the power completely until 1927.

During the first decade of the period, domestic fire insurance stock companies continued to be the only insurance corporations allowed to combine. In 1901 title guaranty (title insurance) corporations were permitted to merge with domestic trust companies as well as with other domestic title guaranty corporations and, subsequently, were also authorized to merge with domestic investment corporations (until 1938), credit guaranty companies and commercial banks. In 1920, the legis-

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90. 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. 1827-28, 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).

91. Originally, the merger power of the preceding period (see text accompanying note 54 supra) and consent of two thirds of the stock were preserved, but the requisite number of consenting stockholders was reduced from sixty percent to fifty percent. N.Y. Laws 1892, c. 690, § 129. In 1899, all domestic fire insurance stock corporations were authorized to merge or consolidate and the consent of a minimum number of stockholders was no longer required. Laws 1899, c. 165, § 1. Although the statute stated that the merger or consolidation would produce a "new corporation," it is probable that, in the context of the legislation, a "new corporation" also comprehended a surviving corporation. The statutory language was used in the Insurance Law for almost 40 years without benefit of or apparent necessity for judicial interpretation.

92. N.Y. Laws 1901, c. 677, § 2. The surviving corporation acquired all the rights and privileges of the absorbed corporation. 1905 N.Y. Ops. Att'y Gen. 425; 1907 id. 593; N.Y. Laws 1916, c. 345, § 1. Title guaranty companies were redenominated title insurance companies in 1938. Laws 1938, c. 531, art. 5.

93. Merger with investment corporations was authorized in 1916 but the statute specifically provided that the surviving corporation should be limited to its original rights and privileges. N.Y. Laws 1916, c. 343, § 1. The power was terminated in 1938. Laws 1938, c. 531, § 1 (creating § 182 of Insurance Law). Merger with credit guaranty companies and commercial banks respectively, initially authorized in 1929 and 1938, was a by-product of
lature granted the most substantial combination power accorded con-
temporary New York business corporations when it authorized merger or consolidation by and between domestic and foreign fire insurance and marine insurance stock corporations, provided the foreign corporation was legally transacting business in New York State.\(^4\) In 1927, all mutual insurance companies, other than fire insurance mutual companies, were allowed to combine.\(^5\)

Casualty insurance stock companies were first permitted to merge or consolidate in 1929 and, from inception, their power extended to combination with foreign corporations.\(^6\) Life and health insurance stock companies were not allowed combination in any form until 1935, when the merger and consolidation of domestic and foreign companies was authorized.\(^7\)

Combination between stock and mutual insurance companies is still prohibited but, since the 1939 revision of the Insurance Law,\(^8\) all insurance companies (other than cooperative fire and windstorm assessment companies) have been permitted to merge or consolidate within their type classifications on a nationwide basis, and title guaranty companies the assumption of credit guaranty functions by title guaranty companies and commercial banking functions by trust companies. Laws 1929, c. 290, § 3; Laws 1938, c. 531, § 1, now N.Y. Insurance Law § 441.

94. N.Y. Laws 1920, c. 564, § 1. Originally, the foreign corporation was compelled to change its domicile. In 1929, the domestic corporation was allowed to change its domicile upon compliance with certain conditions. Laws 1929, c. 285, at 712.

Cf. Laws 1938, c. 691, at 1860, which permitted any domestic stock corporation, holding all the stock of a fire or marine insurance company and authorized to carry on fire or marine insurance activities, to merge or consolidate with such insurance company under certain conditions and retain the name of the insurance company. This provision was not reenacted in the 1939 revision.

95. N.Y. Laws 1927, c. 464, at 1149 (with consent of three fourths of members). The combination power included both consolidation and merger. For a brief six-year period prior to 1927, mutual employers liability and compensation companies had been permitted to merge or consolidate. Laws 1917, c. 299, § 1; Laws 1923, c. 812, § 9 (repeal).

96. Originally, in the event of combination with a foreign corporation, the latter was required to change its domicile. N.Y. Laws 1929, c. 286, § 1. In the following year, the domestic corporation was conditionally permitted to change its domicile. Laws 1930, c. 719, at 1318.

97. N.Y. Laws 1935, c. 360, § 1. The domestic corporation was conditionally permitted to change its domicile.

98. N.Y. Laws 1939, c. 882, §§ 389, 441, 481, 482, 484, 485, 486, 488, 494, now N.Y. Insurance Law §§ 390, 441, 481, 482, 484, 485, 486, 488, 494. The types of insurance corporations in the 1939 revision were generally classified as follows: life, accident and health, cooperative life and accident, casualty and surety, fire and marine, cooperative fire and windstorm, life of property, title insurance. The consent requirement for mutual companies was reduced to two thirds of the total membership votes. The combination of fire and windstorm assessment companies was limited to those carrying on business in a common intrastate territory.
still retain their pre-1939 power to merge with trust companies and commercial banks. More recently, pro forma merger was authorized between trust companies and commercial banks possessing fiduciary powers and wholly-owned subsidiary title insurance corporations.

2. Banking Corporations

The legislative policy regarding the combining of corporations subject to the Banking Law had a curious development during the post-1890 period. The Banking Law of 1892 originally retained the limited consolidation power of the 1882 act applicable to commercial banks. In 1895, this provision was repealed and statewide combination exclusively by way of merger, applicable to all types of banking corporations except savings banks, was substituted. Merger is still the exclusive method of combination for all corporations subject to the Banking Law.

The 1895 merger provision remained substantially unchanged for thirty-one years. In 1926, the legislature initiated the trend which led to a marked contraction in the permissible geographical area within which combination might be effected and culminated in the universal elimination of statewide combination in the 1938 amendments to the Banking Law. However, the scope of permissible mergers, which originally had been limited to merger between banking corporations of the same type, was gradually extended to mergers between and among trust companies, commercial banks, and safe deposit companies and also to the merger

99. N.Y. Laws 1949, c. 579, at 1326, now N.Y. Insurance Law § 442. The approval of the superintendent of banks was required. Parent title insurance companies were also given the pro forma merger power.

100. N.Y. Laws 1892, c. 689, § 45 (within same village, city or town). Cf. Laws 1892, c. 409, §§ 48-50.

101. N.Y. Laws 1895, c. 382, §§ 1, 2.

102. I.e., commercial banks, trust companies, building and mutual loan corporations, cooperative savings and loan associations and safe deposit companies.

103. N.Y. Laws 1926, c. 81, at 240 (merger of national banks with state banks and trust companies located within same county, city, town or village); N.Y. Laws 1933, c. 328, § 2 (merger of savings and loan associations located within same county or borough in first class cities and, elsewhere, within same or adjoining county).

104. N.Y. Laws 1938, c. 654, § 97, now N.Y. Banking Law § 600 (1), (2), (3), (4). With the exception of savings and loan associations and savings banks, the area was confined to the same city or banking district. The merger of savings and loan associations was limited to associations located in the same or adjoining counties. For savings banks, see note 109 infra.

105. The merging of banks and trust companies was first authorized in 1923. N.Y. Laws 1923, c. 8, § 1. See present N.Y. Banking Law § 600(1). The merging of safe deposit companies with commercial banks or trust companies was first authorized in 1942. Laws 1942, c. 233, at 838, now N.Y. Banking Law § 600(4).
of title guaranty and now obsolete credit guaranty corporations with investment companies, trust companies and commercial banks.\textsuperscript{106}

In 1956, the \textit{pro forma} merging of a subsidiary safe deposit company into a parent commercial bank or trust company owning ninety-five percent of the outstanding shares of each class of its stock was authorized.\textsuperscript{107}

Consistent with the frequently evidenced legislative policy of discouraging large savings banks,\textsuperscript{108} these enterprises were not permitted to combine until 1914 and then only within a very limited intrastate area.\textsuperscript{109}

Since 1895, every combination of banking corporations has required the approval of the Superintendent of Banks.\textsuperscript{110} After 1932, personal loan associations (companies) could avail themselves of the more liberal provisions of the Stock Corporation Law governing combination.\textsuperscript{111}

\section*{B. Railroad and Other Public Utility Corporations}

The power of railroads to combine was substantially enlarged during this period, principally through the enactment of three amendments to the Railroad Law of 1890.

The 1890 statute integrated the provisions of pre-1890 legislation relating to consolidation.\textsuperscript{112} In 1892, the legislature inaugurated the policy of controlled monopoly in the railroad field and authorized the consolidation of corporations owning competing and parallel lines, but, except in

\textsuperscript{106} N.Y. Laws 1901, c. 677, § 2 (trust companies and title guaranty companies). For the further extension of the legislative authorization for the merging of banking and insurance companies, see note 93 supra.

\textsuperscript{107} N.Y. Laws 1956, c. 39, § 1, now N.Y. Banking Law § 601(4). For other instances of pro forma mergers between parent and subsidiary corporations, see text accompanying notes 55, 82-85 supra and 115 infra.

\textsuperscript{108} Note, for example, the current limitations upon the establishment of branches and the maximum amount of individual deposits. N.Y. Banking Law §§ 240, 237. Maxima for individual deposits were imposed upon savings banks in New York City and Kings County as early as 1853 (Laws 1853, c. 257, § 5), twenty-two years before the first general act for the incorporation of savings banks (Laws 1875, c. 371, at 404). Recent attempts to obtain a very modest augmentation of the power to establish branches have proved unsuccessful. See N.Y. Times, Feb. 1, 1956, p. 39, col. 6.

\textsuperscript{109} Initially, the power was generally limited to the merger of savings banks located within the same or adjoining counties but, as to savings banks located in first class cities, was further limited to institutions within the same county or borough. N.Y. Laws 1914, c. 369, § 487(2). Subsequently, the latter limitation was applied to savings banks located in cities with a minimum population of 250,000. Laws 1938, c. 684, § 97, now N.Y. Banking Law § 600(2).

\textsuperscript{110} N.Y. Laws 1895, c. 382, § 1 (34), now N.Y. Banking Law § 601.

\textsuperscript{111} N.Y. Laws 1932, c. 399, § 3, now N.Y. Banking Law §§ 362-64. For earlier law, see Laws 1914, c. 369, § 487(1), and pre-1932 amendments thereto.

\textsuperscript{112} N.Y. Laws 1890, c. 505, §§ 70, 71; see present N.Y. Railroad Law §§ 140(1), 141. The statute also referred to "merger" but only provided the procedural mechanism for consolidation.
the case of street railroad corporations, the exercise of the power was conditioned upon the approval of the regulatory agency having jurisdiction.\textsuperscript{113} In 1938, railroad corporations owning continuous lines were authorized to merge.\textsuperscript{114} The 1867 law which empowered the lessee railroad corporation to absorb wholly-owned lessor corporations by action of the directors was reenacted without substantive change and, except for the subsequent additional requirement of official approval, remains unchanged to date.\textsuperscript{115} Early in the period, the various combining powers were extended to railroad corporations which carried on operations, wholly or in part, in foreign countries.\textsuperscript{116} After the enactment of the Public Service Commissions Law in 1907, the combination of non-competing as well as competing railroad corporations required the approval of the Public Service Commission.\textsuperscript{117}

Corporations organized under the Business Corporations Law prior to January 1, 1917, which owned more than two thirds of the outstanding stock of a domestic railroad corporation on that date, were given the unusual power of absorbing the railroad corporation and thereby becoming a railroad corporation, subject to the approval of the Public Service Commission and the consent of the holders of two thirds of the stock of the surviving corporation.\textsuperscript{118}

Domestic gas and electric light companies\textsuperscript{119} and bridge and turnpike corporations\textsuperscript{120} were the only corporations organized under the Transportation Corporations Law which were authorized to combine prior to 1911. Thereafter, the combination of domestic freight terminal,\textsuperscript{121} water

\textsuperscript{113} N.Y. Laws 1892, c. 676, § 80, now N.Y. Railroad Law § 150. See also Laws 1507, c. 429, § 54; present Public Service Law § 54.

\textsuperscript{114} N.Y. Laws 1938, c. 630, §§ 1, 2, now N.Y. Railroad Law §§ 140(1), 141.

\textsuperscript{115} N.Y. Laws 1890, c. 565, § 79, now N.Y. Railroad Law § 149.

\textsuperscript{116} N.Y. Laws 1895, c. 921, § 1; see N.Y. Railroad Law § 154.

\textsuperscript{117} N.Y. Laws 1907, c. 429, § 54, now N.Y. Public Service Law § 54; Consol. Laws 1910, c. 49, §§ 140(1), 141, 149, 150, 154, now N.Y. Railroad Law §§ 140(1), 141, 149, 150, 154.

\textsuperscript{118} N.Y. Laws 1917, c. 771, § 1, now N.Y. Railroad Law § 156.

\textsuperscript{119} The statute authorized consolidation. N.Y. Laws 1890, c. 566, § 61(3). It was ambiguous, however, with regard to the power of a gas company to consolidate with an electric company. Cf. People v. Rice, 138 N.Y. 131, 33 N.E. 346 (1893); Young v. Roundout & Kingston Gas Light Co., 129 N.Y. 57, 29 N.E. 83 (1891). The ambiguity was eliminated and consolidation expressly authorized in the 1926 revision. Laws 1926, c. 762, § 11(4), now N.Y. Transportation Corporations Law § 11(4).

\textsuperscript{120} N.Y. Laws 1890, c. 566, § 138. Consolidation of bridge corporations, turnpike corporations, and bridge and turnpike corporations, was authorized. The power was terminated by the elimination of the bridge and turnpike classifications in the 1926 revision.

\textsuperscript{121} The power was originally limited to pro forma merger under the Stock Corporation Law (see text accompanying note 82 supra) and consolidation with other domestic freight corporations or other domestic corporations authorized to engage in such business. In the event
works and telephone companies was also authorized. With the exception of pre-1926 consolidations involving bridge or turnpike corporations, compliance with the pertinent provisions of the Business Corporations Law or successor Stock Corporation Law was also authorized. With the exception of pre-1926 consolidations involving bridge or turnpike corporations, compliance with the pertinent provisions of the Business Corporations Law or successor Stock Corporation Law was also necessary to effect the combination and, after 1907, the approval of the Public Service Commission was also required. At present, telegraph, omnibus, ferry, pipe line and district steam corporations lack any power of combination other than the power of pro forma merger conferred in the Stock Corporation Law.

C. Other Corporations

The only power of combination provided in the Stock Corporation Law prior to 1923, the year in which the statute became an incorporation law, was the pro forma merger authorization described earlier in this study. Therefore, with the exception of pro forma merger, the combination provisions of each general incorporation law since 1890 have been definitive —there never having been a provision authorizing combination in the General Corporation Law.

The incorporation statute, under which “industrial” or “ordinary” business corporations (i.e., business corporations other than moneyed and public utility corporations) were organized from 1890 to 1923, was the Business Corporations Law. This statute made provision for the consolidation of domestic “industrial” corporations “carrying on a business of the same or a similar nature.” The superseding provision of combination, the latter corporations were required to engage in the freight terminal business exclusively. N.Y. Laws 1911, c. 778, § 1(157), now N.Y. Transportation Corporations Law § 105.

122. N.Y. Laws 1939, c. 447, at 985, now N.Y. Transportation Corporations Law § 47. Merger and consolidation were expressly authorized.

123. N.Y. Laws 1950, c. 479, § 1, now N.Y. Transportation Corporations Law § 30-a. Merger and consolidation were expressly authorized.

124. It is probable that the original consolidation power of domestic gas and electric corporations and freight terminal corporations was enlarged to include the power of merger (other than pro forma merger) in 1937 concurrently with the enlargement of the “consolidation” power in the Stock Corporation Law. N.Y. Laws 1937, c. 359, § 1, now N.Y. Stock Corp. Law § 86. There are no decisions in point.

125. In addition to the requirement contained in the enabling legislation, the Public Service (Commissions) Law has always required the approval of the commission prior to the transfer or sale of the franchises, property or stock of “transportation” corporations. N.Y. Laws 1907, c. 429, §§ 69, 70; Laws 1910, c. 673, § 3; Laws 1911, c. 778, § 1 (156), (157); Laws 1931, c. 715, § 3; see present N.Y. Public Service Law §§ 69, 70, 99(2), 100, 101, 89-f, 89-h; N.Y. Transportation Corporations Law §§ 103, 104.

126. See text accompanying notes 82-85 supra.

127. N.Y. Laws 1890, c. 567, § 13; Laws 1892, c. 691, § 8; Laws 1923, c. 787, § 2 (repeal). As to what is meant by similar business activities, see Young v. Roundout & Kingston Gas Light Co., 129 N.Y. 57, 29 N.E. 83 (1891); 1911 N.Y. Ops. Att’y Gen. 141; 1912 id. 33.
the 1923 Stock Corporation Law was also limited to the consolidation of domestic "industrial" corporations, but, unlike its precursor, did not require the business of the constituent corporations to be of the same or a similar nature. Eleven years later, consolidation with foreign "industrial" corporations was authorized and, in 1937, the combination power was enlarged to authorize merger. Since 1937, therefore, "ordinary" New York business corporations have enjoyed the power to merge or consolidate their enterprises into a polyfunctional corporation through the consensual agreement of their shareholders.

With the exception of pro forma mergers, every combination of New York stock corporations from 1890 to 1923 required the consent of the holders of two thirds of all the outstanding stock of each of the participating corporations. After 1923, in keeping with the "liberal" trend of the 1920's to delegate substantial legislative authority to corporate promoters and corporate managers, the consent of holders of designated classes of stock in all corporations (other than post-1939 insurance companies) could be dispensed with by the insertion of an appropriate exclusionary provision in the certificate of incorporation or other certificate filed pursuant to law.

128. N.Y. Laws 1923, c. 787, § 86: "Any two or more corporations, organized under the laws of this state for the purpose of carrying on any kind of business which a corporation organized under article two of this chapter might carry on may be consolidated into a single corporation. . . ." The newly formed corporation was expressly endowed with all the powers of the constituent consolidating corporations. Id. § 38.

129. N.Y. Laws 1934, c. 611, § 1; see present N.Y. Stock Corp. Law §§ 86, 88, 91.

130. N.Y. Laws 1937, c. 359, § 1, now N.Y. Stock Corp. Law § 86. "Any two or more domestic business corporations may be consolidated into a single corporation which may be either a new corporation or any one of the constituent corporations, by the filing of a certificate . . . but . . . no such certificate may confer on the consolidated corporation any powers, rights, privileges or franchises which may not be exercised by a corporation organized pursuant to article two of this chapter. . . ."

The merger power was created by permitting one of the participating corporations to preserve its original corporate status. For the conformance of the pre-existing consolidation power of foreign-domestic corporations to this provision, see Laws 1937, c. 359, § 6, now N.Y. Stock Corp. Law § 91.

131. N.Y. Laws 1923, c. 787, § 131, now N.Y. Stock Corp. Law § 51; see also Laws 1951, c. 170, § 1. The legislation expressly provides, with immaterial exceptions, that "such provisions of such certificate shall prevail, according to their tenor, in all elections and in all proceedings, over the provisions of any statute which authorizes any action by the vote or written consent of the holders of all the shares, or of a specified proportion of the shares of the corporation."

In the writer's opinion, the language of section 435 of the current Insurance Law which provides for stockholder consent, with "each stockholder to be entitled to one vote for each share of stock held by him," would preclude the possibility of any stockholder of a New York insurance company being deprived of his right to vote on a proposed merger or consolidation affecting his company, the broad language of the Stock Corporation Law notwithstanding. See N.Y. Laws 1939, c. 882, § 485, now N.Y. Insurance Law § 485. Ironically,
At present, dissenting stockholders of any stock corporation participating in a consolidation are given a redemption option, but this situation did not prevail throughout the post-1890 period. Prior to the 1939 revision of the Insurance Law and the removal of turnpike and bridge companies from the category of transportation corporations in 1926, stockholders in insurance, turnpike and bridge corporations objecting to a proposed consolidation had no statutory right to compel the corporation to redeem their stock.

Not all dissenting stockholders of New York business corporations participating in a present day merger are entitled to a redemption option. Dissenting stockholders of any railroad corporation or banking corporation surviving a merger have not possessed this statutory right for some time, the former since the initial railroad merger legislation of 1938 and the latter since 1949. Moreover, since 1953, similarly disposed stockholders of any corporation surviving a merger consummated under the authority of the Stock Corporation Law have enjoyed only a qualified redemption option. Although objecting stockholders of all merging insurance companies may redeem their stock under current legislation, this option was limited to stockholders of merging title guaranty corporations prior to 1939.

Combinations of domestic and foreign corporations have always been subject to the legislative concurrence of the foreign jurisdiction.

VI. NEW YORK ENABLING LEGISLATION:
HISTORICAL MILESTONES

From the foregoing survey of general legislation authorizing the merger and consolidation of New York business corporations, there emerge the following milestones:

1. The earliest (general) legislation in New York State authorizing the combining of two or more business corporations was enacted on April

the most "liberal" of all incorporating jurisdictions, the State of Delaware, requires the consent of the holders of two thirds of all the "capital stock" of the participating corporations in order to effect a merger or consolidation. Del. Code Ann. tit. 8, § 251(c) (1953).

For the legislative history of section 51 of the Stock Corporation Law, with particular reference to its effect upon the voting rights of preferred stockholders in the event of merger or consolidation, see Study and Recommendations of the New York Law Revision Commission, N.Y. Leg. Doc. No. 65(G) (1951).

132. N.Y. Stock Corp. Law §§ 85(7), 87, 91(7); Railroad Law § 161; Banking Law § 604; Insurance Law §§ 390, 503. Dissenting stockholders of transportation corporations are afforded the option through the application of pertinent provisions of the Stock Corporation Law.


135. N.Y. Laws 1953, c. 588, §§ 1, 2, now N.Y. Stock Corp. Law §§ 87, 97(7).

136. For pre-1939 merger authority of title insurance (title guaranty) corporations, see text accompanying notes 92, 93, 99 supra.
6, 1849, when the consolidation of self-incorporated turnpike corporations was authorized.

2. The earliest legislation in the state authorizing the merger of business corporations was the act of April 3, 1867, which authorized merger between parent and wholly-owned subsidiary railroad corporations by directorate action on the part of the parent corporation (i.e., \textit{pro forma} merger) whenever the corporations were also in a lessee-lessee relationship.

3. The first statute authorizing the merger of business corporations, other than \textit{pro forma} merger, was enacted in 1873 and applied to self-incorporated fire insurance stock corporations.

4. The first statute authorizing combination with foreign corporations was the 1869 consolidation grant to non-competing railroad corporations having continuous lines.

5. The most important legislation authorizing combination prior to the 1890 and 1892 general revisions of New York corporate law was the 1867 statute authorizing the consolidation of corporations with the same or similar objects, organized under the General Manufacturing Act of 1948, as amended, to carry on one kind of authorized business activity.

6. The most important legislation of the early post-1890 period was the 1896 amendment of the Stock Corporation Law authorizing \textit{pro forma} merger between all parent corporations and wholly-owned subsidiary corporations engaged in business similar or incidental to that of the parent corporation. Subsequently, this authorization was extended to parent corporations owning only ninety-five per cent of each class of stock of the subsidiary corporation.

7. The broadest combination power ever granted in the state is found in the current provisions of the Stock Corporation Law, originally enacted in 1934, which authorize the merger or consolidation of any “ordinary” or “industrial” corporation (i.e., any corporation other than a moneyed or public utility corporation) with any other domestic or foreign “ordinary” or “industrial” corporation.

8. The most restrictive legislative policy ever adopted in the state regarding corporate combinations, which confines the combination of banking corporations to the merger of corporations located within a very limited geographical area, was first adopted in 1926 and is still in effect. Savings banks were completely denied the power to merge or consolidate until 1914.

9. Telegraph, omnibus, ferry, pipe line, and district steam corporations are still unable to consolidate and, with the exception of \textit{pro forma} mergers authorized in the Stock Corporation Law, are also unable to merge.

10. Since the last decade of the nineteenth century, every merger and consolidation affecting banking corporations or insurance corporations
has required the respective approval of the Superintendent of Banks or Superintendent of Insurance and, after the establishment of the Public Service Commission in 1907, combinations affecting railroads or other public utility corporations have also required official approval.

11. There appears to be a modern legislative tendency to eliminate or curtail the redemption option of stockholders of corporations surviving the merger process, as evidenced in the 1938 merger provisions of the Railroad Law, the 1949 amendment of the Banking Law and the 1953 amendment of the Stock Corporation Law.

ADDENDUM

During the past several decades, there has been an increasing interest in the continuing growth of very large corporate enterprises in the United States, a phenomenon frequently referred to as "corporate bigness."

Under existing state and federal laws, there seems to be no reason why any "well behaved" business corporation cannot continue to expand its assets indefinitely through internal growth—apparently an inevitable process insofar as most of our very large business corporations are concerned. Neither antitrust legislation nor other laws are designed to arrest such growth.

The growth of individual corporate enterprises by external expansion through mergers, consolidations and acquisitions of all the stock or assets of other business corporations is circumscribed to some extent by antitrust laws and other legislation whenever an insurance, banking or public utility corporation is involved or it is judicially determined that competition may be unduly affected. The growth of individual "industrial" corporations, however, through mergers, consolidations and acquisitions involving other "industrial" corporations engaged in productively unrelated activities, is currently neither subject to legislative control by Congress nor effective control by any state legislature.

It is more than an academic possibility that, at some future date, the tendency to concentrate the bulk of the nation's corporate wealth, business activities (and concomitant economic power) in fewer, larger and ever growing individual corporate enterprises will be determined to be contrary to public policy and a proper subject for governmental regulation. It is submitted that the antitrust approach to regulation would be inadequate for the purpose and would be completely inappropriate as well as inadequate in the regulation of corporate growth achieved through the medium of conglomerate corporate combinations and acquisitions.

In the course of implementing any prospective regulatory policy, therefore, Congress may decide to deprive all industrial corporations of the power to enter into conglomerate mergers and consolidations. Whatever the merits of such congressional action, the record should show that the resulting situation would not be a novel development in our nation's economic history.
## APPENDIX

### CHRONOLOGICAL TABLE OF GENERAL CORPORATION LAWS,
**NEW YORK: 1890-1956**

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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 1903 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.

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 1932, the repeal of the law was finally effected upon the repeal and redistribution of the two surviving sections. See Laws 1926, c. 782, § 2; Laws 1932, c. 805, §§ 1, 3.

7. Did not become an incorporation statute until 1923.