company with a capital say of $100,000 and $100,000 surplus, if by any chance it made a loss that year, the directors will be put in this quandary: shall they pay dividends or make up that loss out of the profits of the year and perhaps cut off dividends to do so? From the public and financial standpoint, continuity of dividends is very essential, and, therefore, the effort is to create a financial structure which will result in a capital which the ordinary fluctuations in values will not impair, especially during the early life of the company and to protect this capital by creating a surplus or reserve. Now, that surplus may be from earnings, but in the initial stages it must be from stock premium on shares. That is to say, of the price paid for a share, so much is received as capital and so much as stock premium. In the old days of par value stock—whether preferred or common—the situation was met by selling $100 shares at $110, and $10 went into the stock premium reserve and $100 went into capital. It is not necessary to repeat, after Mr. Long's very able expostion, that there should be no distinction between par value and no par value stock and that what was and is good practice in the case of par stock is good in the case of no par. All conditions are fully set out on the share certificates and in the prospectus, so that there could be no mistake on the part of a shareholder, and the creditor was also protected. Before 1924, no par value was exactly in the same position as par value stock. You could create a stock premium or cushion reserve. It did not make any difference to anybody; it did not harm anybody; but in 1924 when the Act was amended with regard to the amount of capital required to be paid up before the company commenced business, the amendments went further than was intended, and resulted in the whole consideration received from the share becoming capital.

Now, I have spoken of the disadvantage of having no stock premium, but let me call your attention by a few illustrations to the practical difficulty one runs up against in dealing with that section and which, frankly, has driven a lot of corporations either into Ontario where they have this provision, or into the United States. A company wants to acquire the stock of another company. It offers the shareholders of that company one share of its stock for one share of their stock. Under the Act the consideration received for the company's stock is its capital. What is the consideration received? Some value has to be put on that stock that it acquires. It may be quoted in the market or it may not. If it is quoted in the market and you apply the market price, that market price may be the price at the end of a long boom such as the boom that broke last autumn, and the consideration, we will say, is the market quote say $90 when you made the exchange, therefore, your capital is $90 share in October. In December the stock is down to $50 or $60 your capital is depleted by half, an absolute loss of capital.

The logical and proper thing to do when the company exchanges its stock for the shares of the other company is to say "what does that share represent?" It represents a certain capital and a certain surplus in the books of that company whose stock is acquired and the wise person would say "take that into the books of the company acquiring the stock in the same way, that is treat as capital what is shown as capital in the books of the company whose stock is acquired and treat the surplus in the same way." If you do not do that you are not dealing fairly with the shareholders or the public, because what the acquiring company can do is this: Suppose the Act stands as it is the consideration for that stock is $90 a share; $90 is the purchasing company's capital but market fluctuations have knocked that down to $40. Very well, the capital is depleted, but the company goes on doing business and paying dividends because it is still earning money. It can go further than that. It can cause the company whose stock it acquired to declare a dividend and the purchasing company notwithstanding its depleted capital can declare it out again, and in effect it is declaring a dividend out of capital.