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CORPORATIONS—APPRAISAL STATUTES—TIME WITHIN WHICH DEMAND FOR APPRAISAL MUST BE MADE—A resolution to merge the corporation in which plaintiff held shares with defendant corporation was adopted by the shareholders over plaintiff's objection. Eight days later, plaintiff made written demand on defendant corporation for payment of the fair value of his shares. The statute required that such demand be made upon the surviving corporation "within twenty days after the merger . . . was effected,"¹ and provided that a merger became effective upon issuance of a certificate of merger by the Department of State.² The articles of merger were not promptly filed and the certificate of merger did not issue until 42 days after the plaintiff's demand was received. The court below dismissed plaintiff's petition for appointment of appraisers to fix the value of his shares, construing the phrase, "within twenty days after the merger . . . was effected," as fixing both the beginning and the end of the period in which demand must be made. On appeal, *held*, reversed. Since the statute fixed the ending date only, plaintiff was entitled to demand payment of the fair value of his shares at any time after the shareholders approved the plan of merger and before the expiration of twenty days after the merger was effected. *Duddy v. Conshohocken Printing Co.*, (Pa. 1948) 60 A. (2d) 394.

The Pennsylvania statute governing mergers does not require articles of merger to be filed at any particular time after approval by the shareholders,³ and the only requirement for notice of filing to dissenting shareholders is that the corporation "advertise its intention to file articles of merger . . . at least three days prior to the day on which the articles . . . are presented to the Department of State."⁴ If dissenters are required to wait until the filing of the articles before

¹ 15 Pa. Stat. Ann. (Purdon, 1938) § 2852-908.

² *Id.* § 2852-906.

³ *Id.* § 2852-901 et seq.

⁴ *Id.* § 2852-904.

making a demand upon the corporation for the payment of the fair value of their shares, this right could easily be frustrated by dilatory tactics on the part of the corporation. Furthermore, the notice required is insufficient to assure dissenters actual knowledge of the date of filing, and even though the corporation does not delay, shareholders have no convenient means of knowing when the certificate of merger is issued by the secretary of state. An additional factor supporting the result in the principal case, although not mentioned by the court, is that by the Pennsylvania statute, appraisal and payment of fair value is made the exclusive remedy for dissenting shareholders.⁵ Therefore, interpretations should be avoided that weaken the protection given to minority shareholders by statute in substitution for rights previously enjoyed by them.⁶ Only those qualifications absolutely essential for the protection of the corporation should condition the dissenting shareholder's remedy; otherwise he is left without adequate protection. This necessity is not so great in most states where appraisal is only one of the remedies afforded the dissenting shareholder.⁷ Since dilatory practices by striking shareholders may adversely affect underwriting arrangements,⁸ it is desirable to limit the time in which the demand may be made by dissenters. However, it is inconceivable that the corporation will be subject to greater harassment if this period is increased by permitting such demands immediately following adoption of the merger plan, as long as the final date, upon which shareholders' demands can be made, remains the same. It is of importance to shareholders considering the merger proposal to know before they act the maximum number of shares for which fair value must be paid if the merger is approved. Thus, for the benefit of other shareholders and the corporation, the statute requires that a dissenting shareholder identify himself by filing a written objection with the corporation prior to or at the meeting of shareholders at which the plan is submitted.⁹ On the other hand, the provision for demand subsequent to approval of the plan is designed to give the dissenter a period of time in which to determine whether he will retain his stockholdings in the continuing corporation or take the value thereof.¹⁰ Since this provision was intended for the protection of dissenting shareholders and a liberal construction of it does not detract from the protection given to the other shareholders and the corporation, the decision in the principal case seems correct.

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⁵ *Id.* § 2852-908, as amended, *id.* (Supp. 1947) which confers the right to appraisal upon dissenting shareholders, contains the following in paragraph C: "The rights and remedies at law or in equity of any shareholder who desires to object to or to dissent from any merger or consolidation shall be limited to those prescribed under this section and such rights and remedies under this section shall be exclusive."

⁶ *Mills v. Penn-Lox Co.*, (Ohio App. 1940) 36 N.E. (2d) 828. See also 46 MICH. L. REV. 562 (1948).

⁷ 15 FLETCHER, *CYC. CORP.*, perm. ed., § 7165 (1938); 17 MINN. L. REV. 328 (1933); Weiner, "Payment of Dissenting Shareholders," 27 COL. L. REV. 547 at 557 (1927).

⁸ Lattin, "A Reappraisal of Appraisal Statutes," 38 MICH. L. REV. 1165 (1940).

⁹ See note 1, *supra*; *In re Universal Pictures*, (Del. Ch. 1944) 37 A. (2d) 615.

¹⁰ *In re Camden Trust Co.*, 121 N.J.L. 222, 1 A. (2d) 475 (1938).