THE LAW OF LIENS IN THE PHILIPPINE ISLANDS AS COMPARED WITH THAT PREVAILING IN THE UNITED STATES

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CHAPTER IX

ATTORNEYS

ATTORNEY'S RIGHT TO LIEN.

A. CLASSES.

The lien to which an attorney-at-law may be entitled is of two kinds: 1. General or retaining lien, and 2. The special, particular or charging lien.

1. *The General or Retaining Lien.*

General Nature of this Lien.—Under the American law, an attorney, in the absence of any contract to that effect, has a general or retaining lien for a general balance due him arising out of his professional employment, upon all papers of his client which came into his possession in the course of his professional employment. This lien is one in which there is no right of sale. The attorney simply can detain the papers from his client, and the lien is valuable to the extent the papers are necessary and indispensable to the client, or, has stated in some of the cases, to the extent the client can be worried thereby. It is a lien which cannot be actively enforced, and amounts simply to a mere right to retain the papers until a settlement and payment is made. (McDonald, Shea & Co. *v.* Railroad, 93 Tenn. 281, and authorities there cited.) It is a common-law lien founded upon possession (Jones on Liens, sec. 113). Where different States of the Union have by statute declared for a general lien in favor of an attorney, such statutes are nothing but a re-enactment of the common-law (Sayre *v.* Thompson, 18 Neb. 43).

The rule that prevails in the United States with regard to the existence of an attorney's general or retaining lien obtains with equal force in Philippine jurisprudence. Thus section 37 of the Code of Civil Procedure provides: "A lawyer shall have a lien upon all the funds and papers and documents of his client which may lawfully have come into his *possession, and may retain the same until* his lawful fees and disbursements due to him from his client have been paid, and apply such funds to the satisfaction thereof."

What This Lien Adheres to.—This lien of the attorney may attach to, (a) papers, (b) property, or (c) money, of the client in the attorney's possession.

a. *Upon Papers.*—The authorities in the United States seem to be uniform in holding that an attorney's retaining lien exists on all papers, deeds, vouchers and other documents of his client placed in the attorney's hands in his professional employment; and it makes no difference what the purpose may have been in placing them in the attorney's hands. (Sanders *vs.* Seelye et al., 128 Ill. 631; Mechem on Agency, sec. 2267 and the authorities there cited.) The Court of Appeals of the State of New York, in the Matter of the Application of Knapp, 85 N. Y. 293, through Mr. Justice Danforth said:

> "The general proposition that an attorney has a lien for his costs and charges upon deeds or papers, or upon moneys received by him on his client's behalf in the course of his employment, is not doubted, nor does it stand upon questionable foundations. It comes to us *super antiquas vias*, as early as the year 1734 it was held by Lord Chancellor Talbot to arise upon a contract implied by law and as effectual as if it resulted from an express agreement."

But in order to the creation of the lien, the papers must not only have come into the actual possession of the attorney, but they must have so come into his possession in his character as attorney at law. (Mechem on Agency, sec. 2267, and authorities therein cited.)

From a perusal of section 37 of our Code of Civil Procedure, it will be seen that the foregoing interpretations placed by the American courts upon the question of a lawyer's right to retain papers, documents, etc., of his client, is equally applicable to the Philippine Islands. Thus said section 37 provides: "A lawyer shall have a lien upon all the funds and *papers and documents of his client which may lawfully have come into his possession*, and may retain the same until his lawful fees and disbursements due to him from his client have been paid, and may apply such funds to the satisfaction thereof." The phrase "which *may lawfully have come into his possession*" means that *they must have so come into his possession in his character as an attorney at law.*

b. *Upon Property.*—The attorney's lien extends to articles of property belonging to the client which come into the attorney's possession while in a professional capacity, as upon articles which are delivered to him to be used as evidence in the cause. (Mechem on Agency, sec. 2268.)

c. *Upon Money.*—An attorney's general or retaining lien also attaches to all money collected and held by him, for his client, within the course of his employment as attorney. But it does not attach until the money is collected and in the hands of the attorney. (Clark & Skyles on the law of Agency, Vol. 2, p. 1570; sec. 37, Act 190), and is not to be confounded with the attorney's special, particular or charging lien hereafter to be noticed.

How Lien May Be Lost.—As the general or retaining lien of the attorney depends wholly upon possession, it necessarily follows that the lien will be lost *if the possession be voluntarily surrendered.* It is not lost, however, if the possession be wrongfully or fraudulently obtained from him, and he may recover possession by a proper action. (Mechem on Agency, sec. 2272.)

2. *The Special or Charging Lien.*

General or Retaining and Special or Charging Lien Distinguished.—There is a wide distinction to be observed between the retaining lien, which as has been said is the right to retain documents, papers, and funds of the client *in the attorney's possession*, and the charging lien, which seeks to charge the fruits of the suit,—for instance, the judgment, or the real estate recovered, or other of the clients property,—with the lien, *and which lien does not at all* depend upon possession by the attorney. The two liens are entirely different in origin, or grounds on which they are based, and in their nature, extent and mode of enforcement. The general or retaining lien is merely a *passive right* of retainer of papers or moneys reduced to possession, whereas the charging lien is rather *an active right*, enabling the attorney to take active steps to *charge* the judgment or fund with his claim, and to secure the aid of the court for his protection. The general lien exists for all fees and costs due the attorney by the client for professional services rendered at any time, and in any cause; on the other hand, special lien exists only for fees and costs for services rendered in the particular cause in which the judgment upon which they are a lien was rendered.

The charging lien did not exist at common law. It had its origin in the desire of the court, based upon principles of equity and justice, to protect the attorney by not allowing the party, as said by Lord Kenyon, "to run away with the fruits of the cause without satisfying the legal demands of his attorney, by whose industry, and in many instances at whose expense, those fruits are obtained." (In Read *vs.* Dupper, 6 T. R. 361.)

Existence of Special or Charging Lien.

Under the American Law: This charging lien of the attorney has been adopted by statute, or enforced by the courts, in some form, in a majority of the United States, although it does not exist in all of them. These statutes are by no means uniform, nor are the decisions harmonious. (Mechem on Agency, sec. 2276.)

In the Philippine Islands, an attorney's special or charging lien exists. The case of Valencia *vs.* Jimenez, 11 Phil. Rep., 495, is a direct authority on the point. In the said case, it appeared that one of the attorneys, after the entry of the judgment in the action, had caused to be entered upon the records of the Court of First Instance in which the judgment was rendered a statement of their claim to a lien thereon with lawful fees and disbursements in the action, and caused written notice thereof,

to be delivered to the adverse party. Section 37 of the Code of Civil Procedure reads:

> "* * * He shall also have a lien to the same extent upon all judgments and decrees for the payment of money, and executions issued in pursuance of such judgments and decrees which he has secured in a litigation of his client, from and after, but not before, the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment or decree, or issuing such execution, and shall have caused written notice thereof to be delivered to the adverse party, and shall have the same right and power over such judgments, decrees, and executions to enforce his lien as his client had or may have, to the extent that may be necessary for the payment of his just fees and disbursements."

Our Supreme Court in construing said section, following the American practice, held that a lien was thereby created, and that the latter clause of said section 37 "gave the attorney an *interest in the judgment* and power over it and to enforce it like to that of their clients."

What this Lien Protects.—This lien being conferred in consideration of the services and expenses of the attorney in producing or securing the judgment or fund to which it applies, it protects only those fees, costs and expenses which were earned or incurred *in the particular* suit in which the judgment or fund was recovered, and does not secure the attorney's general balance of account, nor fees earned or expenses incurred in other suits. (Mechem on Agency, sec. 2278 and the authorities therein cited.)

In the Philippine Islands, the right of attorneys to collect fees for professional service, under section 37 of the Code of Civil Procedure, is restricted to the personal funds of the client, to amounts awarded to the latter by final decision, but does not comprise sums of money which, according to the same decision, must be applied to the payment of a legitimate debt of the client ordered to be made in such decision by virtue of a prior counterclaim. (De la Peña *vs.* Hidalgo, 20 Phil. Rep., 333.)

Particular Steps Required to Enable Attorneys to Carry Lien into Effect.—In the Philippine Islands, an attorney's special or charging lien takes effect, from an after, but not before, (1) the time when he shall have caused a statetement of his claim of such lien to be entered upon the records of the court rendering such judgment or decree, or issuing such execution, and (2) shall have caused written notice thereof to be delivered to the adverse party. (Section 37, Act 190; Valencia *vs.* Jimenez, 11 Phil. Rep. 496.)

AGENTS, FACTORS, BROKERS, AUCTIONEERS

AGENT'S LIEN.

Under the American Law, agents have, for the payment of their commissions, advances, disbrursements and responsibilities, in the course of their agency, an established right, which in many cases become more important and effectual than any other

means of remedial redress; that is to say, an agent's lien. (Byers *vs.* Danley, 27 Ark. 77.) Story, in his work on Agency, 433, defines this lien "to be a right in one man to retain that which is in his possession, belonging to another, until certain demands of him, the person in possession are satisfied It is a qualified right therefore, which may be exercised over the property of another person." The evident reason why the lien is given, is that by the expenditure made and liabilities assumed the agent has benefited the principal, and protected the fund or, at least, improved the principal's condition. (Underhill *vs.* Jordan, 76 N. Y. Sup. 266.)

The rule obtaining *in the Philippine Islands* is similar to that prevailing in the United States, for article 1730 of the Civil Code provides that "the agent may retain the things which are the objects of the agency in pledge until the principal says the agent the indemnity for all losses and damages incurred in complying with the agency, without fault nor imprudence on the part of the said agent, and reimbursements, for all amounts advanced by the said agent."

LIEN NOT AFFECTED BY INSOLVENCY OF PRINCIPAL UNKNOWN TO AGENT.

If moneys have been advanced or, liabilities incurred by the agent upon the faith of the solvency of the principal, and he becomes insolvent while the proceeds and fruit of such advances or liability are in the possession of the agent, or within his reach, and before they have come to the actual possession of the principal, within every principle of equity the agent has a lien upon the same for his protection and indemnity. (Muller *vs.* Pondir, 55 N. Y. 325, 14 Am. Rep. 259.)

FACTOR'S LIEN—FACTOR DEFINED.

A factor is one whose business it is to receive and sell goods for a commission. A factor, under the American law, is equivalent to our *comisionista* under the mercantile commission, for both a factor—under the American law—and a *comisionista*—under the Code of Commerce—act in their own name. (Wood *vs.* Hayes, 81 Mass. 375; Delaume *vs.* Agar (La.) McGloin, 97, 100; Boanco, Mercantile Law, Vol. 2, p. 367.) As a matter of fact, factors of Commission Merchants are nearly quite synonymous: The former is the more common in the language of the law, the latter in the language of commerce. (Mechem on Agency, sec. 986-a.)

IN GENERAL.

Under the American law, a factor has a general lien upon all goods of his principal consigned to him and in his possession, upon their proceeds, and upon securities taken for the price, for the whole amount of existing liabilities, including advances, commissions, and expenses, in good faith, incurred by him in the course of his employment, extending to a general balance of account due from the principal to him, as factor, but not to debts outside of the agency. And he has a right to retain the proceeds of the sale of such goods to meet and pay these liabilities as the several debts become due, or until he shall otherwise be relieved or discharged therefrom. (Clark

& Skyles on the Law of Agency, Vol. 2, sec. 867.) A factor's lien rest upon its manifest tending to aid the interest of trade and commerce, and to promote confidence and a liberal spirit on the part of factors in respect to advances to their principals. It is deemed to exist in all cases, until the contrary presumption is clearly established. (Martin *vs.* Pope, 6 Ala. 532, 41 Am. Dec. 68, citing Story on Agency, sections 388, 389, and Paley on Agency, sections 127, 128.)

In this jurisdiction a lien in favor of the factor is recognized, identical to that which a factor in the United States has. Thus article 276 of the Code of Commerce provides:

> "Merchandise forwarded on consignment shall be understood as especially bound to the payment of the commission fees, advances, and expenses he may have made on account of its value or proceeds.
>
> As a consequence of this obligation:
>
> 1. No agent can be dispossessed of the merchandise he receives on consignment until he is previously reimbursed for his advances, expenses, and commissions charges.
>
> 2. The agent must be paid from the proceeds of said merchandise, or must be preferred over the other creditors of the principal, with the exception of the provisions of article 375 (relating to carrier's lien)."

CHARACTER OF LIEN.

The lien of a factor is but a special interest and does not give the factor a right of ownership over the property, whatever the amount of advances, disbursements, or liabilities made by him. The owner may, at any time before the factor has sold the goods, reclaim them upon paying the advances made, with interest and expenses. It is merely a right to retain in his possession the goods, money, or securities, until he has been reimbursed; or if not reimbursed within a reasonable time after demand, to sell so much as will repay him his advances and disbursements. (Mechem on Agency, sec. 1034; Jordan *vs.* James, 5 Ohio, 88; United States *vs.* Villalonga, 23 Wall. (U. S.) 35; The Packet, 3 Mason, 334, Fed. Cas. No. 10, 655.)

Under the Code of Commerce, the character of the lien is identical to that of the American law for said code in article 276 says that "no agent can be dispossessed of the merchandise he receives on consignment until he is previously reimbursed for his advances, expenses, and commission charges." In other words, he has a right to retain in his possession the goods, money or securities until he has been reimbursed.

PROVISIONS COMMON TO AGENTS AND FACTORS.

Bot under the American law and the law obtaining in the Philippine Islands a factor's and an agent's lien being dependent upon possession, it does not come into existence or take effect until the property on which it is claimed has lawfully and in good faith come into the actual or constructive possession of the factor. (Rice *vs.*

Austin, 17 Mass. 197; Desha *vs.* Pope, 6 Ala. 691, 41 Am. Dec. 76; The Frances, 8 Cranch (U. S.) 418; Art. 276, Code of Commerce.) Actual possession as a general rule is sufficient; and such possession by the factor or agent is notice of his lien to creditors and purchasers (Straborn *vs.* Union Stock-Yards & Transit Co., 43 Ill. 424, 92 Am. Dec. 142.)

WAIVER OR LOSS OF LIEN.

Inasmuch as the lien of a factor and that of an agent, *under the American law*, is founded upon possession, the lien may be lost by the agent's or factor's voluntary parting with the possession of the goods to which it attaches. The lien only continues while the factor or agent himself has the possession, and therefore, if he pledges the goods for his own debt, or suffers them to be attached, or otherwise voluntarily part with them or the contive over them, the lien is lost. (Holly *vs.* Huggeford, 8 Pick. (Mass.) 73, 19 Am. Dec. 303; Sawyer *vs.* Lorillard, 48 Ala. 332; Archer *vs.* McMechan, 21 Mo. 43.) If the agent or factor reship the goods to his principal, he cannot afterwards stop them in transitu. (Sweet *vs.* Pym, 1 East 4; Kruger *vs.* Wilcox, 1 Ambler 252.)

The necessity of possession by the factor or agent in order to maintain his lien is also felt under the Spanish law. Thus article 276 of the Code of Commerce provides that "in order to enjoy the preference mentioned in this article, it shall be a necessary condition that the merchandise be in the posession of the consignee or agent, or that it is at his disposal in a public store or warehouse, or that the shipment was made consigned to his name, the bill of lading, stub, or transportation contract having been received signed by the carrier." In the same way if possession is parted with, the lien is lost. The lien belongs to the class known as possessory liens.

BROKER DEFINED.

A broker is generally defined as one who is engaged for others on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. (19 Cyc. 186; Henderson *vs.* State, 50 Ind., 234; Black's Law Dictionary.) A broker is one whose occupation it is to bring parties together to bargain, or to bargain for them, in matters of trade, commerce or navigation. (Mechem on Agency, sec. 13; Wharton on Agency, sec. 695.) Judge Story, in his work on Agency, defines a broker as an agent employed to make bargains and contracts between other persons, in matters of trade, commerce, or navigation, for a compensation commonly called brokerage. (Story on Agency, sec. 28.)

BROKER'S LIEN.

As it has been previously stated, an agent generally has a lien upon the property committed to his care for all his commissions, expenditures, advances, and services made and performed in and about the property as intrusted to his agency; and bro-

kers, being a well-known class of agents, come within the operation of this rule. For instance, the position of a stock-broker buying stocks on a margin is very similar to that of a factor who holds property consigned to him for sale, and upon which he makes advances. He is in possession of the property of his principal, he has all the *indicia* of title, he can sell the stock in his own name, and when he sells he can retain his advances from the proceeds. The relation of pledgor and pledgee exists, as in the case of factors. He may sell upon notice to secure his advances, where the stock for his own debt to a third person. So that a client may often invest a broker with the office of a factor. And if an analogy between the many rights and duties of a stock-broker, purchasing stock on margin, and an ordinary factor, were sufficient to establish the right of a general lien, then it would seem that it might well be allowed to exist. (Doss Passos on Stock-Brokers and Stock-Exchanges, Vol. 2, p. 804.)

But as a broker ordinarily has not the property of his principal in his possession, he, strictly speaking, can have no lien, since he has nothing to which it can attach; he may, however, be in a situation to exercise the right of a particular lien. Thus, where he sells a cargo of merchandise, he may have a lien upon the proceeds in his hands for his commissions in effecting the particular sale, though not for his entire claim against the owners. (Clark & Skyles on the Law of Agency, Vol. 2, p. 1698.)

All the foregoing discussion regarding a broker's lien applies with equal force here in the Philippine Islands for identical reasons.

AUCTIONEERS.

DEFINED.

An auctioneer is one whose business it is to sell property, real or personal, at public auction, to the highest bona fide bidder. (Clark & Skyles on the law of Agency sec. 887.)

AUCTIONEER'S LIEN.

Under the American law, it is the unquestionable right of the auctioneer to retain out of the gross proceeds in his hands the expenses incurred and his charges and commissions for selling the property. (Succession of Dowler, 29 La. Ann. 439; Lewis *vs.* Mason, 94 Mo. 552.) In case of personal property, an auctioneer, employed to sell, may ordinarily maintain an action for the price, or for the property itself. This doctrine stands upon the right of the auctioneer to receive, and his responsibility to his principal for, the price of the property sold, and his lien thereon for his commissions. An auctioneer has a possession, coupled with an interest, in goods which he is employed to sell; not a bare custody, like a servant or shopman, but a special property, with a lien for the charges of the sale, and an interest in the proceeds. (Tuler *vs.* Freeman, 57 Mass. 262.) In case of real estate, he can have no such special property, and would not ordinarily be entitled to receive the price. But when the terms of his employment, and of the authorized sale, contemplate the payment of a deposit into his hands at the time of the auction, and before the completion of the sale by the

delivery of the deed, he stands, in relation to such deposit, in the same position as he does to the price of personal property sold and delivered by him. He may receive and receipt for the deposit; his lien for commissions will attach to it. (Thompson *vs.* Kelly, 101 Mass. 291, 3 Am. Rep. 353.)

Under the law prevailing in the Philippine Islands, the auctioneer likewise has a lien on the proceeds of the sale in his hands for expenses incurred and his charges and commissions for selling the property. He has what is called a right of retention, as the Louisiana Courts express it. The principle here stated is supported by the following reasons:

(1) An auctioneer, in making a sale, whether of personalty or realty' is, primarily, the agent of the seller (4 Cyc. 1040-1041).

(2) An agent, according to article 1730 of the Civil Code, may retain the things, which are the object of the agency, in pledge, until the principal pays him the indemnity for all damages and injuries caused to him in complying with the agency, when there is no fault or imprudence on the part of said agent, and reimbursements for sums advanced in executing the agency. Money in the case of the auctioneer, takes the place of things in agency; and

(3) Article 1780 of the Civil Code provides that the depositary may retain the thing (in this case, the money) deposited, in pledge, until the total payment of what is due him on account of the deposit.

CHAPTER X

CORPORATE STOCK

LIENS ON CORPORATE STOCK.

LIEN OF CORPORATION ON ITS MEMBER'S SHARES.

A corporation has no lien at common law upon the shares of its members for debts due it for the following reasons:

(1) Secret liens are repugnant to the general policy of the common law;

(2) No claim to such a lien can be made because of possession since such a possession as a corporation has of its member's shares does not give it a possessory lien for their debts. The corporation really has no possession of stock that it has issued to its members except in case they transfer it to the corporation. The corporation is not a debtor to its members for the stock it has issued to them, so that no right can arise against them by way of set-off; and

(3) It would operate as a restraint upon the transfer of stock, in the nature of a restraint of trade, which is not allowed except by express provision of statute. (Jones on Liens, sec. 375, citing many authorities.)

As will have been seen, the lien of a corporation upon the shares of its members for any indebtedness due it is not a common law lien, but is product of the statute and also of an express contract in the nature of a by-law adopted by a majority of the share-

holders creating such a lien. If a lien is created by a by-law adopted by a majority of the shareholders it does not bind a purchaser without notice. (Thompson on Corporations (2d ed.), sec. 4007.)

The same rule as that which obtains by the weight of authority in the United States, may be said to apply in this jurisdiction inasmuch as our Corporation Law (Act 1459) was borrowed from American jurisprudence, and as such it should follow the precedents established by its creator.

LIEN OF CORPORATION ON STOCK FOR UNPAID SUBSCRIPTION.

The last paragraph of section 35 of our Corporation Law (Act 1459) reads:

> "No share of stock againts which the corporation holds any unpaid claim shall be transferable on the books of the corporation."

A condition inserted in the body of a certificate of stock was of the following tenor:

> "No transfer of the stock described in this certificate will be made upon the books of the bank until after the payment of all indebtedness due the bank by the person in whose name the stock stands on the books of the bank, except with the written consent of the president or cashier."

The condition just quoted is similar to section 35 of Act 1459 referred to above. The Supreme Court of California in the case of Jennings *vs.* Bank of California, 79 Cal. 323, 21 Pac. 852, 5 L. R. A. 233, 12 Am. St. 145, which was an action for damages for the refusal of the defendant to make a transfer upon its books of certain stock to the plaintiff, had occasion to construe the said condition and said: "The insertion in a certificate of stock of a bank of a provision that no transfer of the stock will be made upon the books until after the payment of all indebtedness due to the bank from person in whose name the stock stands upon the books, and the subsequent borrowing of money by the stockholder, without anything to exclude the idea of security on the stock, creates an implied contract from which an equitable lien arises. * * * The bank had an undoubted right to say to any stockholder: "We discount your note; but remember, until it is paid we shall hold your stock in security. You shall not be permitted to transfer it until you pay us .... Call this answer of the bank what you please,—lien, set-off legal or equitable, pledge, retainer, stoppage, course of dealing, general undertaking, usage, contract express or implied,—it is a bar in law and equity to this action."

All the preceding discussion results necessarily in the holding that both under the *American law*—there being a statutory provision or an express contract—and our present law a corporation has a lien on the stock of its members for unpaid subscriptions.

CORPORATION MAY PURCHASE DELINQUENT STOCK WHICH IS SOLD.

If, at the sale of the stock for unpaid subscription, no bidder offers to pay the amount due with expenses of advertising and costs of sale, the same may be bid in

by the corporation, through the secretary or clerk or president or any shareholder thereof, and the amount of subscription due, together with the expenses of advertising and costs of sale, shall be credited as paid in full on the books of the corporation and entry of the transfer of the stock to the corporation made. (Sec. 44, Act 1459.) The legal title to all stock purchased by the corporation at sales of stock for unpaid subscription is vested in the corporation, and the stock so purchased may be disposed of by the stockholders in accordance with law and the by-laws of the corporation by a majority vote of all the remaining shares. (Sec. 45, Act 1459.)

CREDITORS HAVE NO LIEN ON PROPERTY OF CORPORATION.

While a corporation is a going concern no lien attaches over its property to secure the credits of its creditors. The property of a corporation is not so affected by the indebtedness of such corporation that it cannot be sold, transferred, or mortgaged to bona fide purchasers for a valuable consideration, except subject to the liability of being appropriated to pay the indebtedness. Such a doctrine has no existence. (Fogg *vs.* Blair, 133 U. S. 534.) The general creditors of a corporation have no lien upon the property of the corporation by virtue of the doctrine that the capital stock is a trust fund for the protection of creditors. A party may therefore deal with a corporation in respect to its property in the same manner as with an individual owner, and with no greater danger of being held to have received into his possession property burdened with a trust or lien. As between a corporation and its creditors, a corporation is simply a debtor and does not hold its property in trust or subject to a lien in their favor in any other sense than does an individual debtor. (Hollins *vs.* Brierfield, etc., Co., 150 U. S. 371.)

(a) EXCEPTION:

After insolvency the capital of a corporation as represented by its subscribed apital stock is a trust fund pledged for the payment of the debts of the corporation. Elliott on Private Corporations, sec. 317, citing many cases.) The theory that the assets of a corporation are a trust fund held by a corporation for the benefit of creditors has no application until the corporation becomes insolvent. (Fear *vs.* Bartlett, 81 Md. 435, 32 Atl. 322, 33 L. R. A. 72 In.) It is the settled doctrine of the Supreme Court of the United States expressed in the case of Hollins *vs.* Brierfield, etc., Co., supra, that "the corporation is an entity, distinct from its stockholders as from its creditors. Solvent it holds its property as an individual holds it, free from the touch of a stockholder who, though equitably interested in, has no legal right to, the property. Becoming insolvent, the equitable interest of the stockholders in the property, together with their conditional liability to the creditors, places the property in a condition of trust, first, for the creditors, and then for the stockholders. Whatever of trust there is arises from the peculiar and diverse equitable rights of the stockholders as against the corporation in its property and their conditional liability to its creditors.

It is rather a trust in the administration of the assets after possession by a court of equity than a trust attaching to the property, as such, for the direct benefit of either creditor or stockholder."

What has just been said obtains both under the American jurisprudence and under our present law, the Corporation Law as has been said being a creature of its creator—the American law.

BANK CAN HAVE NO LIEN ON ITS OWN STOCK.

In the United States, under the National Banking Act of 1864, a bank cannot have a lien on its own stock held by a debtor, although its articles of association and its by-laws are framed with a direct view to giving it such a lien. The general policy of the National Banking Act of 1864 prohibits loans upon the security of shares of its own capital stock. (Jones on Liens, sec. 384, citing many cases.)

Under Our Corporation Law, the same doctrine apparently obtains in the Philippine Islands, for section 120 of Act 1459 provides that "no bank organized under this Act shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, or, in default thereof, a receiver may be appointed to close up the business of the bank in accordance with law."

ANONYMOUS PARTNERSHIPS HAVE NO LIEN ON THEIR OWN STOCK.

Under the Code of Commerce, anonymous partnerships are prohibited from making loans or extending credits upon the security of their own shares. Such organizations are only permitted to purchase their own shares with the profits of their capital for the purpose of amortization, but in the event of a justifiable reduction of the corporate capital, amortization of a portion of the capital may be effected. (Union Farmacéutica Filipina *vs.* Francisco Icasiano, 9 Phil. Rep. 319; Articles 166 and 167, Code of Commerce.)

(*To be continued.*)