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A CRITICAL STUDY OF THE BANKING LAWS OF THE PHILIPPINE ISLANDS

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INTRODUCTION

At common law, the right of private banking was exercisable by individuals without legislative sanction. (Bank of Augusta vs. Earle, 13 Pet. 519.) In the Philippines, and in almost all countries, now, however, the business of banking is regulated by statute. Such regulation becomes necessary in view of the nature of banks.

Strictly speaking the term *bank* implies a place for the deposit of money, as that is the most obvious purpose of such an institution. (Oulton vs. German Savings and Loan Society, 17 Wall. 109.) The deposits made with a bank by numerous individuals aggregate to enormous amounts, and since most banks are corporations in form, unless there is strict government supervision and control of their business, it would not be difficult for banks to defraud the unsuspecting public of their deposits. Because, although it may be true that banks serve a public purpose which justifies their creation, the fact remains however that they are primarily organized by private individuals for private profit, and the human desire to amass wealth would surely lead banks to take advantage of their business at the sacrifice of unwary depositors, unless the state regulated and supervised them. (Talbott vs. Silver Bow County, 139 U. S. 438.)

The word "bank", however, is not limited to incorporated companies engaged in the banking business. As defined in the Administrative Code, it "includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are

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received for discount or for sale." (Section 1499, Administrative Code; also, Oulton vs. German Savings and Loan Association, 17 Wall. 109.) The object of banking is to aid the operation of the laws of commerce by serving as a channel for carrying money from place to place as the rise and fall of supply and demand require. (Auten vs. United States National Bank, 174 U. S. 125.)

In this work, the laws governing banks and banking will be studied in a more or less broad perspective. It will not be possible, in view of the time at the disposal of the writer to make a detailed examination, analysis, and comparison, of each and every law and section of the laws with respect to banks in the Philippine Islands. But an effort will be made to give as a complete view of these different laws as far as they concern the relations of banks with the public and with the state. Matters covered in general provisions of the Corporation Law, although having application to banking corporations, will not be dealt with.

BANKS IN GENERAL

Organization of Banks as Corporations.—Banks in general are governed by the Banking Law (Act No. 3154), the provisions of which will be the main basis of the work. Special provisions are also contained in the Corporation Law (Act No. 1459, as amended), and so both will be considered together in discussing banks in general.

Two special kinds of banks are treated in the Corporation Law: savings and mortgage banks, and commercial banking corporations. They are defined thus:

"Any banking corporation organized primarily for the purpose of accumulating the small savings of depositors and investing them together with its capital, in bonds or in loans secured by bonds, bullion or real estate mortgages hereinafter provided or in any combination of the aforementioned forms of investment shall be known as a savings and mortgage bank for the purpose of this Act." (Sec. 103, Act No. 1459, as amended.)

"A commercial banking corporation is a corporation which receives the money or others on deposit and uses it, together with its own capital, to form a joint fund which it makes a business of employing either directly or indirectly in one or more of the following uses:

The making of loans;

The maintenance of a note circulation; or

The purchase, sale or collection of bills of exchange or other kinds of negotiable paper." (Sec. 116, Act No. 1459, as amended.)

The Corporation Law (Act No. 1459, as amended) provides that five or more persons, not exceeding fifteen, a majority of whom are residents of the Philippine Islands, may form a private corporation for any lawful purpose by filing with the Bureau of Commerce articles of incorporation duly executed and acknowledged before a notary public, setting forth certain particulars specified in said law. To engage in the banking business is a lawful purpose for which a corporation may be organized.

But section 1 of the Banking Law (Act No. 3154) provides that "the provisions of existing laws to the contrary notwithstanding, banks may be organized hereunder in the Philippine Islands, provided that the incorporators show under oath that they are residents of the Philippine Islands, that the capital subscribed amounts to fifty thousand pesos or more, and that of such subscribed capital, fifty per centum or more has been paid in cash and is in the possession of the treasurer of the bank. The Bureau of Commerce shall not register the articles of incorporation of a banking corporation organized hereunder nor certify to its incorporation, unless the Insular Treasurer certifies that the capital required by this section has been subscribed and paid in."

The requirement that at least fifty thousand pesos of the capital stock has already been subscribed and that fifty per centum of such subscribed stock should have already been paid in cash, is a variation from the general requirement of the Corporation Law for incorporation that at least twenty per centum of the entire number of authorized shares of capital stock has been subscribed, and that at least twenty-five per centum of the subscription has been paid to the treasurer either in actual cash or in property of equivalent value. (Section 9, Act No. 1459, as amended.) Reading the two sections of the two laws cited, together, it is submitted that when it is proposed to establish a banking corporation, it will be necessary to show not only that fifty thousand pesos worth of capital stock has been subscribed, but that said fifty thousand pesos is equal to at least 20% of the capital stock authorized. And of the said subscription, it will

not be enough that 25% has been actually paid for; 50% is the amount required. Furthermore, the payment of the subscriptions must be in actual cash. The use of "cash" in Act No. 3154 excludes payment in property; otherwise, the law would have clearly said so, as it did in Act No. 1459.

Aside from the foregoing special requirements for the incorporation of a banking corporation, the Corporation Law itself, as amended, adds the following: "The Director of Commerce shall not hereafter file the articles of incorporation of any bank, banking institution, or building and loan association, unless accompanied by a certificate of authority issued by the Bank Commissioner, under his official seal, certifying that such concern is authorized under the laws of the Philippine Islands to engage in the business for which it is proposed to be incorporated. And it shall be the duty of the Bank Commissioner to issue such certificate within thirty days from the receipt of the application therefor, unless he has evidence to show that the establishment of the proposed institution will be prejudicial to the interests of the public, in which case he shall state his reasons for refusing to issue the certificate: *Provided, however,* That in case of the refusal of the Bank Commissioner to issue such certificate, if the parties applying therefor shall deem themselves aggrieved by reason of the refusal of the Bank Commissioner as aforesaid, they may appeal within thirty days after such refusal, to the Secretary of Finance, as provided in section one hundred and ninety and six-sevenths hereof." (Section 9-½, Act No. 1459, as amended.)

Before a banking establishment can be incorporated, therefore, it has to file with the Bureau of Commerce, not only the required articles of incorporation, but also the certificate of the Insular Treasurer required by Section 1 of Act No. 3154, and the certificate of the Banking Commissioner required by Act No. 1459, as amended. Both these requirements are intended for the protection of the public.

There are, however, certain special classes of banking corporations for which additional special requirements are prescribed by the law as conditions precedent to their incorporation. These requirements are ordinarily about the amount of capital stock which has already been paid in cash. As noted above, the general requirement of the Banking Law for banks in general is a subscription of at least fifty thousand pesos, of which fifty per centum must be paid up in cash.

A larger amount is, however, required with respect to savings and mortgage banks and commercial banking corporations. The required paid up capital in such cases is made to depend upon the population of the city or town in which the bank is established. The larger the population of the locality, the higher the amount of paid up capital required for incorporation. The reason for this proportional increase in the requirement of paid up capital lies in the assumption that the larger the population, the larger will be the aggregate deposit of money that can be made with the bank, and a larger paid up capital must be exacted to safeguard a larger depositing public.

For savings and mortgage banks, it is provided: "A certificate to the effect that the articles of incorporation have been filed shall not be issued unless such article show, under oath of the incorporators, that such corporation has a capital stock paid in cash of not less than ₱200,000 if the proposed institution has its head office or a branch in a city or municipality with a population of 75,000 persons or more, and not less than ₱100,000 if located in a city or municipality with a population less than 75,000 persons but more than 50,000 persons, and ₱50,000 if located in a city or municipality with a population of less than 50,000 persons. The population of any city or municipality shall be deemed to be that shown in the records of the Department of the Interior as certified to by the Secretary of the Department." (Section 103, Act No. 1459, as amended.)

Commercial banking corporations must have a paid-in capital stock of not less than ₱500,000 if located in a city or municipality with 200,000 persons or more; ₱100,000 if in a municipality with less than 200,000 but more than 50,000 persons; and ₱50,000 if in a city or municipality with less than 50,000 persons. (Section 118, Act No. 1459, as amended.)

Powers In General.—In general, a banking corporation has all the powers granted to it as a corporation by Act No. 1459, as amended. Specifically, however, it has special powers and functions peculiar only to banks and banking institutions. Act No. 3154 provides: "Any banking corporation organized under this Act, in addition to the general powers incident to corporations as set forth in Act No. 1459 and its amendments, shall have all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange,

coin and bullion; and by loaning money on personal security or real estate, or on bonds or evidences of debt of the debt of the Government of the United States, the Philippine Islands or the City of Manila, or of any province or municipality of the Philippine Islands authorized by law to issue bonds." (Section 2.) Specific limitations and definitions of these peculiar powers of banks are laid down by the law and will be touched upon later in this work.

Deposits.—The most obvious purpose of a banking institution is the receiving of deposits from depositors. Deposits made with banks may be divided into two classes, those in which the bank becomes bailee of the depositor, the title to the thing deposited remaining the latter (special deposits), and the deposit of money peculiar to the banking business, in which the depositor, for his own convenience, parts with the title to his money and loans it to the bank, and the latter, in consideration of the loan and the right to use the money for his own profit, agrees to refund the same or any part thereof upon demand or within such other time as may be agreed upon. (Marine Bank vs. Fulton County Bank, 2 Wall. 252.) The latter kind of deposit is the one ordinarily referred to in banking laws. (Brown vs. State, 25 Ariz. 518, 22 Pac. 225.) It is a general deposit, and the bank becomes liable for its amount as is a legal tender. (Thompson vs. Riggs, 5 Wall. 663.)

Banks may receive deposits from any person. Married women and minors may, in their own right and in their own names, make deposits and receive and receipt for deposits; but in case any natural guardian or guardian appointed by the court shall give notice in writing to the bank not to make payment of deposits to the minor of whom he is a guardian then such payment shall be made only to the guardian. (Section 7, Act No. 3154, and Section 109, Act No. 1459, as amended.) This rule, at first glance, would seem to be an exception to the general principle that married women and minors do not have capacity to contract. It will be noted, however, that a deposit with a bank does not create an obligation against the depositor, but an obligation against the bank. Hence, there would be no harm—in fact a lot of good becomes possible—by allowing married women and minors to make deposits in their own names. But when the bank makes payment of the deposit to the depositor, such payment must be a valid one. A general rule of the civil law is that payment to an incapacitated person does not

discharge the obligation, except in so far as it is beneficial to the latter. In consonance with this principle, the exception is made that when a guardian advises the bank not to make payment to a depositor who is a minor, payment should be made to the guardian.

Because a deposit creates the relation of debtor and creditor between the bank and the depositor, the deposit must be returned by the bank to the creditor upon demand or at such times as the law or the regulations of the bank prescribe. Act No 1459, as amended regarding savings deposits, provides in section 111:

"Savings deposits shall be returned to the depositors or to their legal representatives upon the petition in the manner and at the time and under the conditions which shall be determined by the board of directors and stipulated in a regulation which shall be in conformity with law and approved by the Bank Commossioner. A brief and clear resume of such regulation shall be printed in the pass books issued by the savings and mortgage bank.

"Savings and mortgage banks may require by their by-laws that depositors shall give notice of not more than ninety days of the intended withdrawal of their deposits, and any savings and mortgage bank requiring such notice may decline to make payment of any deposit until such notice is given and the time prescribed in its by-laws for such notice has expired. No savings and mortgage bank may stipulate with its depositors that it renounces the right to require by its by-laws at least thirty days previous notice before the withdrawal of deposits.

"Savings and mortgage banks are hereby expressly prohibited from paying and savings deposit or interest thereon, or any portion of the savings deposit or any check or draft or note drawn upon it by savings depositors, unless the pass book be produced and the proper entry be made therein at the time of making the payment: *Provided, however,* That savings and mortgage banks may make regulations governing payments to depositors in case of the loss of pass books or in case of other circumstances which make the production of the pass book impossible without loss or serious inconvenience to depositors. Such regulations shall be subject to the approval of the Bank Commissioner who may make uniform regulations for all savings and mortgage banks in this connection. Notwithstanding

the provisions of this section, payment shall be made to depositors upon the judgment or order of a court of competent jurisdiction."

The regulations which may be promulgated under this provision of the law will constitute an integral part of the contract of deposit, so that the depositor cannot ask for the return of his deposit unless he does so in conformity with such regulations. On the other hand, the bank is under obligation to use ordinary care so that payment should be made only to the depositor and not to an impostor or forger. (Dinini vs. Mechanic's Savings Bank of Winstead, 85 Conn. 225, 82 Atl. 580.)

Thus, payment by a savings bank of a deposit to a person not entitled to receive it, even though the person presents the pass book, will not discharge the bank from liability to the owner, if at the time of payment any fact or circumstance was brought to the knowledge of the bank officers reasonably calculated to excite suspicion and inquiry by an ordinarily careful person, and the officers failed to make inquiry or to exercise proper care; and the bank cannot avoid liability by the adoption of arbitrary rules and causing them to be printed in its pass books. (Gerardi vs. New York Savings Bank, 109 N. Y. Supp. 22.) But the bank is required to use only ordinary care in paying out its depositor's funds, and, if such care be exercised, a depositor cannot recover because his funds were paid out to a stranger. (Krishkan vs. New York Savings Bank, 156 N. Y. Supp. 298.) Where the savings bank deposit book contained a rule that if any person should present the book and obtain the amount deposited, and the actual depositor should not have given previous notice of loss or theft, the bank would not be responsible for wrongful payment, the bank was held not liable to the owner of the deposit, where it paid money to one not entitled thereto, who presented the book, where it exercised ordinary care, and the depositor failed to comply with the rule as to notice of loss or theft of the book. (Bulakoweki vs. Philadelphia Savings Fund Society, 270 Pa. 538, 113 Atl. 553.)

The liability of the Bank for the deposit is toward the depositor alone, unless it is ordered by a competent court to hold the funds for, or pay them over to, another person. A depositor is presumed to be the owner of the funds standing in his name in a bank deposit, and where a bank is not chargeable with notice that the money deposited therein is the property of another person, it is justified in paying out the money to the de-

positor, or upon his order, and so doing cannot be held liable to any other person who claims to be the true owner. (Fulton Iron Works vs. China Banking Corporation, 55 Phil. 208.) But where funds are deposited to the joint account of two persons, as of husband and wife, the bank cannot, without special authority, pay them out to only one of them. (Gish Banking Company vs. Leachman's Adm'r., 163 Ky. 720, 174 S. W. 492.)

However, the bank may apply the deposit to the payment of obligations in its favor and against the depositor. (Padgett vs. Bank of Mountain View, 141 Mo. App. 374, 125 S. W. 219.) Such a step would not at all be a conversion of the deposit, inasmuch as under our Civil Code compensation takes place when, among other conditions, two persons are reciprocally debtor and creditor of each other, and when both debts are in money, liquidated, and due and demandable.

Depositor's Security.—Since the depositor, by making the deposit, becomes a creditor of the bank for the amount thereof, it seems only proper that for his safety, he must be given some preference by law over property owned by the bank. Thus, it is provided by Act No. 3154 that "the capital stock and assets of every bank organized under this Act constitute the security of depositors and depositors have the priority of right over all others to such assets. The directors of the bank shall not create any debt or liability against the corporation for any purpose whatever other than for deposits made with it and the reasonable and necessary current and running expenses of said bank." (Section 5.) This provision, in effect, gives the depositors a prior lien upon the capital stock and assets of the bank for the payment of their deposits.

The law also requires that a certain amount of lawful money should be on hand for the purpose of being used in payment of deposits when called for. This fund constitutes a reserve for deposits. The general rule as to the amount of this reserve and the effect of its diminution is contained in Act No. 3154:

"Every bank organized under this Act shall at all times have on hand, in lawful money of the Philippine Islands or of the United States, an amount equal to at least twenty per centum of the aggregate amount of its deposits. The term 'lawful money of the Philippine Islands' shall include the Treasury certificates authorized by Act Numbered Three thousand and fifty-eight, and the term 'lawful money of the United States' shall

include gold and silver certificates of the United States and bank notes issued by the Federal Reserve Banks." (Sec. 9.)

"Whenever the lawful money as defined in the last preceding section of any bank shall be below the amount of twenty per centum of its deposits, such bank shall not diminish the amount of such lawful money by making any new loans or discounts, nor make any dividends of its profits until the required proportion between the aggregate amount of its deposits and its lawful money has been restored. In case of the violation of this provision the business of the bank may be wound up in the manner provided in Article Eight, Chapter XII of the Administrative Code of nineteen hundred and seventeen." (Section 10.)

The foregoing provisions, it must be remembered, apply only to banks in general. Special provisions regarding reserves for deposits are made with respect to special kinds of bank. Thus:

"All savings and mortgage banks shall at all times keep on hand or on deposit with the Insular Treasurer or his duly authorized representative either in lawful money of the Philippine Islands or of the United States, or in Philippine Government or United States Government bonds, an amount equal to at least five per centum of their total deposit liability. Reserve deficiencies shall be penalized at the rate of one per centum per month upon the amount of the deficiency and for the period of its duration in accordance with a regulation to be issued by the Bank Commissioner. The penalty assessed shall be collected by the Collector of Internal Revenue in accordance with the rules, regulations and procedure to be determind by him. Nothing in this paragraph shall be construed as limiting in any way the powers of the Bank Commissioner to compel a savings and mortgage bank to maintain its legal reserves." (Section III, Act No. 1459, as amended.)

And every commercial banking corporation "shall at all times have on hand in lawful money of the Philippine Islands or of the United States, an amount equal to at least eighteen per centum of the aggregate amount of its deposits in current accounts which are payable on demand and of its fixed deposits coming due within thirty days. Such commercial banking corporation shall also at all times maintain a reserve equal in amount to at least five per centum of its total savings deposits. The said reserve may be maintained in the form of lawful money of the Philippine Islands or of the United States, or in

bonds issued or guaranteed by the Government of the Philippine Islands or of the United States. Such bonds may be kept on hand in the vaults of the bank or may be kept on deposit with the Insular Treasurer or with any fiscal agent of the Philippine Government abroad. The depositing bank shall have the right to collect the interest accruing on such securities and to substitute from time to time other securities issued and guaranteed by the Government of the Philippine Islands or of the United States for those already on deposit. But any such commercial banking corporation in the Philippine Islands which shall have given the security required by section six hundred twenty-five of Act Numbered Twenty-seven hundred eleven, as said section provided, shall not in addition to such security be required to hold a reserve of eighteen per centum and five per centum of the amount of such Government deposits as may be made therein, the provisions of any other law or by by-laws of the commercial banking corporation to the contrary notwithstanding." (Section 125, Act No. 1459, as amended.)

"Whenever the reserve as defined in the last preceding section of any commercial banking corporation shall be below the amount required in that section such commercial banking corporation shall not diminish the amount of such reserve by making any new loans or discounts, or declare any dividends out of its profits until the required proportion between the aggregate amount of its deposits and its reserve has been restored. Reserve deficiencies shall be penalized at the rate of one per centum per month upon the amount of the deficiencies and for the periods of their duration in accordance with a regulation to be issued by the Bank Commissioner. The penalty assessed shall be collected by the Collector of Internal Revenue in accordance with the rules, regulations and procedure to be determined by him. In the case of any commercial banking corporation whose reserves is continuously deficient for a period of thirty days, the business of such corporation may be wound up by the Bank Commissioner in accordance with section sixteen hundred and thirty-nine of Act Numbered Twenty-seven hundred and eleven, as amended, known as the Administrative Code." (Section 126, Act No. 1459, as amended.)

The reserve for deposits is required of all banking institutions and deficiencies thereof are penalized for the protection and convenience of the depositors. Every now and then depositors apply for the withdrawal of deposits, and on some occasions, the aggregate of the withdrawals requested may be so

great that unless there is a reserve, as provided for, the depositors' demands may not be granted, thus causing great inconvenience and perhaps great losses to depositors. It is to avoid such occurrences, which may lead to an ungrounded panic among depositors, that the reserve to meet deposits falling due or immediately demandable is required.

To further assure that the depositors would be repaid their money upon demand, it is provided that "whenever there is a call by depositors for repayment of their deposits and the call so made equals or exceeds the moneys actually available in the bank and disposable for the purpose of paying deposits, the bank shall not make any new loans or investments of the funds of the depositors or of the earnings of such funds until the call of the depositors has been satisfied. Any officer or director of a bank organized under this act making or authorizing the making of any new loan or investment of funds of depositors or of the earnings of such funds in violation of this section shall be punished by imprisonment for not less than one year nor more than five years and by a fine of not less than ₱1,000 nor more than ₱5,000." (Section 12, Act No. 3154; also Section 112, Act No. 1459, as amended.)

It will be seen that in all the provisions regarding reserves for the payment of deposits, the amount of the reserve is made to depend upon the amount of the deposits. But as already stated, under the Banking Law "the capital stock and assets of every bank organized under this Act constitute the security of depositors and depositors have the priority of right over all others to such assets," it may happen that although the reserve reaches the amount required by the law, there would be insufficient funds or assets of the bank if a sudden panic came and every depositor demanded the return of his deposit. To minimize the possibility of non-payment of the deposits in such a case by commercial banking corporations, the law has provided:

"If the total deposits in such a commercial banking corporation amount to more than ten times the unimpaired capital stock and surplus, additional capital shall be paid in so that as nearly as possible the bank shall have at least one peso of unimpaired capital and surplus for each ten pesos of deposits. The adjustment of the capital stock account herein required shall take place on the thirty-first day of December of each year." (Section 118, Act No. 1459, as amended.) The same provision is made with respect to savings and mortgage banks. (Section 103, Act No. 1459, as amended.)

It is evident from what has been discussed that the law makes every possible effort to see to it that the depositor gets his money back when he wants it. This tendency of the law is easily explained by the fact that unless the confidence of the public is maintained in the ability of the bank to give them their money when they need or want it, nobody would make any deposit with the bank, and this would greatly handicap the bank in the fulfillment of its other purposes or aims such as the granting of loans and discounts, due to diminished cash.

Surplus and Reserve Funds.—All banking institutions are required, before declaring any dividends, to set aside a certain percentage of the net profits for the reserve surplus fund. This fund is maintained for the purpose of meeting losses in the conduct of the business of the bank. Act No. 3154 provides: "Before declaring any dividend, twenty per centum of the net profits must be deducted and set aside as a part of the reserve fund, and of the reserve fund thereby created not more than sixty per centum shall be invested in loans."

A different percentage is however fixed by the Corporation Law with respect to savings and mortgage banks and commercial banking corporations. In both cases, the amount required to be set aside for the surplus is only ten per centum of the net profits. In both cases also, the bank is allowed free disposal of any excess in the surplus over twenty per centum of its liabilities, inclusive of stock. (Sections 110 and 127, Act No. 1459, as amended.) The accumulation of a larger surplus than that required is not prohibited by the law.

Liabilities.—Banking corporations, like any other legal person, may incur obligations and liabilities in the conduct of their business. The law, however sees to it that banks do not incur liability to such an extent as may prejudice depositors, who are in effect only unsecured creditors. A banking corporation acting in bad faith can defeat the rights of depositors to a refund of their deposits by simply incurring heavy obligations and securing them with the mortgage of all its properties and assets, if there were no law regulating their power to contract such obligations. Just as the law carefully provides for reserves and security for deposits, does it provide for the proper limitation and regulation of obligations contracted by the banking corporation, as will be evident from the provisions of the law to be presently set forth. For, without the provisions of law limiting the power to incur obligations, the requirement of re-

serves and other security for deposits would be clearly insufficient for the protection of the depositors, inasmuch as the required reserves are only a small percentage of the aggregate of deposits.

Thus, Act No. 3154 provides generally: "The directors of the bank shall not create any debt or liability against the corporation for any purpose whatever other than for deposits made with it and the reasonable and necessary current and running expenses of said bank: *Provided, however,* That banks organized under this Act may contract loans on the security of property mortgaged to the same." A careful reading of this provision shows that it is an absolute prohibition to obligate the bank for other than necessary running expenses. The provision so allowing banks to contract loans does not form an exception to the principle that it is the intention to safeguard the property and assets of the bank for the benefit of the depositors, because such loans are permitted only when secured by property which does not really belong to the bank from the very beginning, but only mortgage to it.

Savings and mortgage banks may, however, with the approval of the Bank Commission, incur liabilities for money borrowed provided such liabilities do not, in the aggregate, exceed fifty per centum of the paid-up and unimpaired capital of such corporations. The unencumbered assets of every savings and mortgage bank constitutes the security of depositors to have priority of right over all others to such assets. (Section 107, Act No. 1459, as amended.)

A more liberal limitation is placed upon obligations which can be incurred by commercial banking corporations. It is provided:

"No such commercial banking corporation shall at any time be indebted or in any way liable to an amount exceeding the amount of its capital stock at such time actully paid in and remaining undiminished by losses or otherwise, except on account of demands of the following nature:

"(1) Moneys deposited with or collected by the bank;

"(2) Bills of exchange or drafts drawn against money actually on deposit to the credit of the bank or due thereto;

"(3) Liabilities to the stockholders of the bank for dividends or reserve profits." (Section 121, Act No. 1459, as amended.)

The Supreme Court had placed somewhat a broad interpretation to the words "capital stock" used in the section quoted. It has held, in effect, that a banking corporation may guarantee bonds to the value of ₱3,000,000 although its paid up capital is less than ₱1,000,000 at the time, if it is shown that the person for whom the guarantee is made has transferred property to the bank at the time, and the value of such property exceeds the amount of the bonds. As the Court put it, "in other words, with the value of the real property transferred to it, the Philippine Trust Company had enough capital and assets to meet the amount of the bonds guaranteed with interest thereon." (Carlos vs. Mindoror Sugar Co., XXXI O.G. 2854, September 21, 1933.)

It is submitted that "capital stock" is used in the law cannot have the meaning apparently attributed to it by the decision cited. The purpose of the limitation of the obligations that the commercial banking corporation may incur to the amount of its paid up capital stock is to preserve other property outside the capital stock paid in for creditors who are unsecured, composed largely if not entirely of depositors.

It may also be said that another underlying reason for the limitation upon the amount of the obligations of banking corporations in the desire of the government to preserve the stability of banks. Thus, limitations are likewise placed upon the amount of deposit which banks may receive or accept from any single depositor. Except with the approval of the Bank Commissioner, no savings and mortgage bank and no commercial banking corporation may carry on deposit with another person, firm, corporation, or entity, an amount in excess of twenty-five per centum of the unimpaired capital and surplus of such banks after deducting sums due by it to such person, firm, corporation, or entity. (Sections 106 and 118, Act No. 1459, as amended.) Unless such limitation is made, a bank could receive deposits from another person or entity to an amount that may be so great that its own life would depend upon the will of the depositor who could at any time demand the repayment of his deposit and place the bank in a position of difficulty.

Another limitation upon the power of banks to incur liability is found in Section 190-2/7 of the corporation law which provides as follows:

"No savings and mortgage bank commercial banking corporation, trust corporation, building and loan association, or any

other banking institution subject to the supervision of the Bureau of Banking, shall enter directly or indirectly into any contract of guaranty or suretyship or shall guarantee the interest or principal of any obligation of any other person, firm, company, association, corporation, or other entity. The provisions of this section shall not, however, be held to apply to the borrowing of money by any such institution through the rediscounting of its receivable or otherwise as may be permitted by law nor to the granting or guaranteeing of acceptance credits in the ordinary course of business of any such institution. Nor shall the provisions of this section apply to the certification of checks or to transactions involving their release of documents attached to items received for collection nor to any other transaction which may properly be regarded as coming within the common usage and practice of commercial banking institutions."

Loans.—The giving of loans constitute a major activity of banks, and is regulated by law more minutely and carefully than the incurring of obligations. Strict regulation in this regard is made necessary by the fact that the money given in loans is obtained generally from persons who have so sufficient security for the return of their money. Stockholders and depositors of banks place their money in the hands of the institution which gives them out in loans. Unless such loans are regulated by law, it would be possible for a bank to give loans on worthless, if not fictitious security, and thus in effect embezzle the money of its stockholders and depositors.

The law therefore carefully specifies the period or duration of the loans that may be given, the amount of the loans in relation to the value of the security given and to the capital stock and surplus of the bank, and the nature of the securities for which loans may be given.

Banks, under Act No. 3154, are authorized to loan money on personal security or real estate, or on bonds or evidences of debt of the Government of the United States, the Philippine Islands or the City of Manila, or of any province or municipality of the Philippine Islands authorized by law to issue bonds. (Section 2.)

Loans by banks under Act No. 3154 may not be for more than one year in duration. (Section 2.) In the case of savings and mortgage banks, however, the loans shall not be for a longer period than five years, unless the loan be payable in monthly, quarterly, semiannually or annual installments, in which case

it may have a maturity not to exceed ten years. (Section 104, Act No. 1459, as amended.) Loans made by commercial banking corporations on the security of real estate shall in no case have a maturity in excess of five years. (Section 117, Act No. 1459, as amended.)

Short durations are allowed because the aim of the law is to prevent the money of the bank from being held for undue lengths of time. The presence of liquid assets in the hands of the bank is protested.

With respect to the amount of the loan that may be given, in relation to the value of the security, Act No. 3154 provides as to loans secured by real estate:

"No loan shall be made on real estate unless it is secured:

"(a) By a duly registered mortgage or dead of trust to the corporation of unincumbered improved or actually cultivated real estate: *Provided, however,* That the amount loaned shall not exceed forty per centum of the reasonable market value of the real estate which is security for the loan or of the assessed value thereof, whichever may be the smaller; or

"(b) By first mortgage transferred to the corporation as collateral security on improved and otherwise unincumbered real estate: *Provided, however,* That the mortgage transferred to the corporation as collateral security with interest accrued and due shall not exceed forty per centum of the reasonable market value of the real estate which secures such mortgage, or of the assessed value thereof which ever may be the smaller." (Section 2.)

The amount of the loan which savings and mortgage banks may give on the same securities, however, has been fixed at a maximum of sixty per centum of the appraised value of the real estate including the value of the insured improvements thereon which is security for the loan. In determining the amount to be loaned upon a given parcel of real estate careful consideration shall be given to the prices at which surrounding property has been sold, the assessed value of the property offered as security, and the revenue producing capacity of such property. (Section 105, paragraphs 1 and 4, Act No. 1459, as amended.) It will be noticed that not only the amount of the loan in relation to the value of security is different, but also the basis of determining the value of the property. Whereas under Act No. 3154, the basis is either the market value or the assessed value, according to which is the smaller, under Act No. 1459, as to savings and

mortgage banks, the basis is the *appraised* value which is determined by a careful consideration of the various factors expressly named by the law. The same amount of loan and basis of value is provided for loans on real estate security by commercial banking corporations. (Section 117, Act No. 1459, as amended.)

In all cases, however, loans on real estate security can be given only when the title to such real estates, free from all encumbrances, shall be in the mortgagor, and the mortgage shall be a preferred claim on the property therein described as against the whole world. (Section 4, Act No. 3154, and Sections 106 and 117, Act No. 1459, as amended.)

With respect to loans on security other than real estate, different maximum amounts are allowed. Banks under Act No. 3154 are authorized: (1) To make loans, on, or to discount notes secured by, harvested and stored crops: *Provided,* That no loan on the security of such harvested and stored crops shall exceed sixty per centum of the market value there on the date of the loan; *Provided, further,* That the crops so mortgaged shall be insured by the mortgagor for the benefit of the bank for the amount of the loan: *And provided, finally,* That if, owing to any circumstance whatever, the value of the crops given as security shall diminish, the mortgagor shall obligate himself to funrnish additional security or refund such part of the loan as the bank may deem necessary. Such loans shall be granted for a period of not more than three months. (2) To make loans to agriculturists on standing crops of the natural products of the Philippine Islands, such as rice, copra, sugar, tobacco, corn, maguey, etc., not in excess of one-half of the estimated value of such crops: *Provided, however,* That before granting such loans, the bank may require additional security in the nature of mortgages on real estate, duly registered in the name of the debtor, or chattel mortgages, including those of live stock, machinery, and agricultural implements, or personal bonds with sufficient surety or sureties, satisfactory to the bank. (Section 3.) Since no special provisions are made in Act No. 1459 and its amendments on loans secured by the classes of property mentioned in the foregoing section of Act No. 3154, which is a general law on banks, it is submitted that it applies with respect to commercial banking corporations. However, it cannot apply with respect to saving and mortgage banks, because section 105 of Act No. 1459, as amended, expressly limits the loans and investments of such banks to particular kinds of securities, among which crops, either harvested or standing, are not mentioned.

Said section 105 of Act No. 1459, as amended, however, provides for the following other loans not provided for in Act No 3154: (1) Loans secured by pledge to the corporation of gold or silver bullion: *Provided,* That the loans shall not exceed ninety per centum of the value of the pledge by which the loan is secured. (2) Loans secured by bonds or evidences of debt of the Government of the United States or of the Philippine Islands authorized by law to issue bonds; and loans secured by bonds or evidences of debt of any person, firm, company, corporation, or other entity guaranteed both as to principal and interest by the Government of the Philippine Islands or by the Government of the United States: *Provided, however,* That any loan made upon the security of such bonds or evidences of debt shall not exceed the face value of such bonds or evidences of debt, or the market value thereof, whichever may be the smaller.

Not only does the law limit the amount of particular loans in relation to the value of the security given therefor, but provisions are also made limiting the amount of the loans in relation to the capital stock and surplus of the bank. On this point the Corporation Law provides:

"The direct indebtedness to a saving and mortgage bank of any person, firm, corporation, or entity shall be limited to twenty-five per centum of the unimpaired capital stock and surplus of the savings and mortgage bank: *Provided, however,* That this limitation shall not apply to loans secured by the pledge of gold and silver bullion in accordance with sub-paragraph (2) of section one hundred and five, nor to bonds or evidences of debt—or loans secured by such bonds or evidences of debt—of the Government of the United States or of the Government of the Philippine Islands, or of any province, city or municipality, in the Philippine Islands when such bonds or evidences of debt of such province, city or municipality are guaranteed as to principal and interest by the Government of the Philippine Islands, nor shall this limitation apply to drafts, bills of exchange, acceptances or notes arising out of current commercial transactions which are guaranteed by solvent banks operating in the Philippine Islands." (Section 106.)

"The total liabilities to a commercial banking corporations of any person, or of any company, corportion, or firm, for money borrowed, including in the liabilities of the company or firm the liabilities of the several members thereof, shall at no time exceed fifteen per centum of the unimpaired capital and surplus of such

bank. But the discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed; and in addition to the fifteen per centum of the unimpaired capital stock and surplus of a banking corporation hereinabove provided for, the total liabilities of any borrower may amount to a further fifteen per centum of the unimpaired capital stock and surplus of such banking corporation provided such additional liabilities are secured by shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable staples, such staples are fully covered by insurance, and when such staples have a market value equal to at least one hundred and twenty-five per centum of such additional liabilities." (Section 119.)

The law in thus limiting the aggregate amount of loans that can be granted to a single borrower prevents undue favoritism by the bank in favor of particular individuals. If no such limits had been prescribed, it would be possible for a bank to give as many loans to a person as he had separate property or properties with which to secure each loan, and the aggregate of such loans may go up to enormous amounts. The law intends that banks should allow as many of the public as can fulfill the requisite conditions, to benefit from its loans.

The exceptions made by section 106 of Act No. 1459, as amended, find justification in the fact that the securities excepted have values which seldom, if ever, depreciate—gold or silver bullion and government bonds.

Another index of the intention of the law to place all loans made by banks above favoritism or undue influence by or upon some members of the management or board of directors, there is an almost universal prohibition upon directors to borrow money from the bank or even to act as guarantor or surety for a borrower. Act No. 3154 makes the sweeping provision that "none of the said banks shall, directly or indirectly, loan money to a director or officer of the same." Violation of the provision is punishable by imprisonment and fine. (Section 11.)

The same absolute prohibition is reproduced in more extensive form and with a broader scope for savings and mortgage banks. "No director or officer of any savings and mortgage bank shall, either directly or indirectly, for himself or as the representative or agent of others, borrow any of the

deposits or funds of such bank, nor shall he become a guarantor, indorser, or surety for loans from such bank to others or in any manner be an obligor for moneys borrowed of the banks or loaned by it. The office of any director or officer of a savings and mortgage bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment not exceeding ten years and by a fine of not less than one thousand nor more than five thousand pesos." (Section 113, Act No. 1459, as amended.)

With regard to commercial banking corporations, however, the law is not so very strict. In fact, the director or officer is placed in almost the same category as an outsider. The law provides: "No such commercial banking corporation shall loan money to any director or officer thereof, unless such loan shall previously have been approved in writing by a majority of the directors thereof, excluding the borrowing director, and such approval shall have been entered upon the records of the bank." (Section 123, Act No. 1459, as amended.)

The purpose of the Legislature in making the foregoing provisions is plainly to erect a wall of safety against temptation for a director of the bank. The prohibition against indirect loans is a recognition of the familiar maxims that no man may serve two masters—that were personal interest clashes with fidelity to duty, the latter almost always suffers. If, therefore, it is shown that the husband is financially interested in the success or failure of his wife's business venture, a loan to a partnership of which the wife of a director is a member, falls within the prohibition. (People vs. Concepcion, 44 Phil. 126.)

Criminal intent is not required by the law to make the offending director guilty. The crime is complete when the borrowing is consummated. So, a bank director voluntarily borrowing money, which he knew was in the bank's possession, in violation of the statute prohibiting loans to directors, is guilty of a felony, though he took the money in the belief that it came from another bank. (State vs. Lindberg, 125 Wash. 5., 215 Pac. 41.)

Banks are, furthermore, prohibited to 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. (Section 120, Act No. 1459, as amended.) By virtue of this provision of the law, it has been held that banks have no lien on their own stock for indebtedness of the stockholders; if banking corporations were given a lien of their own stock for the indebtedness of stockholders, the prohibition against granting loans or discounts upon the security of the stock would largely become ineffective. (Fua Cun vs. Summers, 44 Phil. 705.)

Power to Acquire and Hold Real Estate.—Like any other corporations not organized expressly for the purpose of dealing in real estate, banking corporations have only a limited power to acquire and hold realty. The Banking Law provides in this connection:

"The said banks may purchase, hold and convey personal and real property, as follows:

"(a) The lot with the building thereon in which the bank conducts and carries on its business.

"(b) Such property, personal or real, as may have been mortgaged, pledged, or conveyed to it in good faith in trust for its benefit by reason of money loaned by it in pursuance of the regular business of the bank; and such personal or real property as may have been purchased by it at sales to satisfy pledges, mortgages or deeds of trust executed to it on account of money loaned by it, and such personal or real property as may have been conveyed to it by borrowers in satisfaction and discharge of loans made by the bank to them: *Provided,* That, if at the public auction held as a result of the foreclosure of a mortgage, no bidder offers for the property being sold a sum equal to the amount of the loan, the interest, and the costs of the litigation, the bank may purchase the property: *Provided, however,* That the bank shall sell real estate purchased as such auction within a period of three years." (Section 6.)

The Corporation Law, however, in providing that savings and mortgage banks and commercial banking corporations may purchase, hold, and convey real and personal property identical to those mentioned in the Banking Law, places a limit upon the value or amount that may be invested in real property for the lot and building necessary for the accommodation of the offices

of the corporation. It is provided that the investment for such items shall not exceed twenty-five per centum of the unimpaired capital and surplus of the bank. Also, it is provided that property acquired in satisfaction of loans must be sold within five years after title to the property had vested in the bank. (Sections 108 and 122, Act No. 1459, as amended.) This period differs from that set down in the Banking Law, which is only three years. Besides, the Banking Law seems to limit the property that must be disposed of by the bank within said period only to "real estate purchased at such auction" in the foreclosure of mortgages in its favor. This language excludes real estate not purchased at auction in foreclosure, but simply transferred to the bank in satisfaction or discharge of loans made by it. The Banking Law thus differs materially even from the general provisions of the Corporation Law on the matter, for section 13, sub-section 5, authorizes corporations in general to purchase real estate when necessary for the collection of loans, but they must dispose of real estate so obtained within five years after receiving the title.

The period within which the property purchased should be disposed of is reckoned, according to the Banking Law, from the date of the auction sale at which the property was acquired. Under special provisions of the Corporation Law, it is from title vests in the bank. These two moments are not always identical. For, if the real estate is covered by Torrens title, as it usually is, then title does not vest in the bank from the moment of the purchase at auction, but only from the moment said purchases is registered in the registry of deeds. The registration is the operative act which, according to the Land Registration Act (No. 496), vests the title in the transferee of registered real property.

The Supreme Court, however, has adopted a more liberal interpretation. It has held that it is only when the transferee actually receives the owner's duplicate certificate of title that it can be said to have an "unequivocal and unquestionable power to pass a complete title." The failure to receive the certificate soon after registration because of undue delay on the part of the office of the register of deeds should not be counted against the bank. Also, in estimating the period during which a corporation may be allowed to hold property purchased at its own foreclosure sale, deduction should be made of any period during which the corporation was under obligation to sell the land to a particular person by reason of the acceptance by the corpora-

tion of his offer to buy, but the sale was made nugatory by virtue of the failure of the purchaser to carry out the contract. (Government vs. El Hogar Filipino, 50 Phil. 399.)

Transactions During Insolvency.—Both the Banking Law and the Corporation Law provide that "Any director or officer of a bank organized under this Act who receives or permits or causes to be received in said bank any deposit or who pays out or permits or causes to be paid out any funds of said banks or who transfers or permits or causes to be transferred any securities or property of said bank after said bank has been declared insolvent shall be punished by a fine of not less than one thousand and not more than ten thousand pesos and by imprisonment for not less than two nor more than ten years." (Section 14, Act No. 3154, and Sections 115 and 129, Act No. 1459, as amended.)

This provision is obviously designed to prevent the bank from prejudicing, by reason of its insolvency, its depositors who may not have knowledge thereof, and creditors whose credits exceed the assets of the bank. The transfers would be fraudulent transfers under the Insolvency Law, and the deposits would be in violation of the prohibition of the Insolvency Law against payment to an insolvent during the proceedings in insolvency.

PHILIPPINE NATIONAL BANK

The Philippine National Bank has been organized and is governed by a special charter enacted by the Philippine Legislature. The charter is contained in Act No. 2938, as amended by Acts No. 3005, 3033, and 3695.

It is not the purpose of the writer to make a detailed analysis of the charter of the bank. Only the most salient provisions of the charter will be touched upon for the purpose of showing features in it which may differ from the provisions of the laws governing banks in general.

The Philippine National Bank is a corporation, and its charter expressly provides, among its powers: "(e) To exercise the powers granted in this Act and such incidental powers as may be necessary to carry out the business of banking within the limitations prescribed in this Act; and (f) To exercise, further, the general powers mentioned in the Corporation Law in so far as they are not inconsistent or incompatible with the provisions of this Act." It will therefore be necessary only to dwell upon those powers, duties, and activities of the Philippine National Bank peculiar to itself.

Government Ownership of Stock.—Section 4 of the charter of the National Bank provides: "The Government of the Philippine Islands, not later than June thirtieth, nineteen hundred and twenty-one, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment of said shares of the Government to be made as hereinafter provided. The remaining shares may be offered to the provincial and municipal governments or to the public at a price not below par which the board of directors of the Bank shall from time to time determine: *Provided*, That the Government of the Philippine Islands, upon agreement with the board of directors of the Bank, may at any time after June thirtieth, nineteen hundred and twenty-one, purchase all or part of the stock on hand at a price not below par." The voting power of the Government is vested in the Governor-General (now the President) of the Philippine Islands. The charter vested this power in the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. The Supreme Court, however, has held that the power voting government stocks is an executive power and properly belongs to the chief executive. (Government of the P. I. vs. Springer, 50 Phil. 259.)

To insure that the National Bank should be government-controlled, the charter also provides that "at no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands." (Section 8.)

Stock ownership by the Government, however, does not make the National Bank a public corporation. As was said in a South Carolina case, "In the case of the United States Bank against the Planters' Bank of Georgia (9 Wheat. 907), Chief Justice Marshall, who delivered the opinion of the court, said: 'The suit is against a corporation and the judgment is to be satisfied by the property of the corporation and not of the corporators. The state does not by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the state of Georgia, although the state holds an interest in it. It is, he says, a sound principle, that when a government becomes a partner in a trading company, it divests itself, so far as concerns the transactions of the company, of its sovereign character, and takes that of a private citizen.' I cannot distin-

guish that case from the one now under consideration. It is true, that the state of Georgia held but a part of the interest in that bank, and the state of South Carolina owns the whole in this. But, nevertheless, we may, in truth, says, in the language of that opinion, the Bank of the state of South Carolina is not the state of South Carolina; it is only a corporation created for particular purposes, possessing the same powers and privileges of other corporations, and no more. The state did not transfer any portion of its sovereignty to this corporation, nor communicate to it any of its privileges or prerogatives, but has placed it on the same level with other corporate bodies, with the same privilege of suing, and liability of being used, as an incident to such corporations." (Band of South Carolina vs. Gibbs, 7 McCord [S. C.] 377.) Substantially the same ruling has been laid down by our Supreme Court; it held that the fact that the Government happens to be a stockholder in a corporation does not make it a public corporation. (National Coal Co. vs. Collector of Internal Revenue, 46 Phil. 583.)

Being a gvernment-controlled, it has been made the sole depository of the Insular Government and of the provincial and municipal governments in the Philippine Islands, without prejudice to power of the Secretary of Finance to direct the deposit of the funds of the Insular Government or of the provincial or municipal governments and of the Postal Savings Bank with the Insular Treasury instead of with the National Bank if the public interest so requires. Deposits of the Government with the National Bank earn a rate of interest not less than what said Bank pays to private persons on similar deposits. (Section 15.)

Loans.—The main purpose of the loans which the National Bank is authorized to grant is to encourage agriculture in the Philippine Islands. Hence, it is authorized to loan not to exceed seventy per centum of its capital and surplus and all amounts realized from the sale of real estate bonds provided in the charter. Such loans shall be for the purpose of promoting agriculture and shall be secured by first mortgages on farm lands in the Philippine Islands. In no case shall such loan exceed sixty per centum of the actual value of the land, including the value of the permanent improvements thereon, such as buildings and machinery if the same form an integral part of the agricultural development: *Provided, however*, That whenever the bank may deem it advisable, the mortgages shall contain a clause obliging the mortgagor to insure to their full value in the name of the

National Bank such buildings and improvements. Such mortgages shall not be for less than one year nor for more than thirty years from its date. The said mortgages may, by their terms, be made payable at one time or in installments: *Provided,* That when the due date of the mortgage is five years or more after the date of its execution, the principal and interest of the loan shall be made payable by its terms in equal installments of not more than one year each. (Section 9, as amended by Act No. 3033.) Loans made by the National Bank on real estate security are required to be for the purpose of promoting agriculture.

Aside from loans secured by real estate, however, the Bank is authorized to grant the following loans on security other than real estate:

(1) Loans on harvested and stored crops: *Provided,* That no loan on the security of such harvested and stored crops shall exceed seventy per centum of the market value thereof on the date of the loan: *Provided, further,* That the crops so mortgaged shall be insured by the mortgagor for the benefit of the National Bank for their entire market value: *And provided, finally,* That if, owing to any circumstance whatever, the value of the crops given as security shall diminish, the mortgagor shall obligate himself to furnish additional security or refund such parts of the loans as the Bank may deem necessary. Such loans shall be granted for three months, subject to three months' extension, in the discretion of the Bank. (Section 10 [b], Act No. 2938.) It will be noted that this same provision is found in the Banking Law (Act No. 3154), the only difference being that the charter of the National Bank allows an extension of three months at the discretion of the Bank, while the Banking Law arbitrarily limits the period of the loan to three months. It is submitted, however, that the mere failure of the Banking Law to express that extension may be given, would not prevent a bank from so granting an extension when it finds the same necessary or advantageous.

(2) Loans to agriculturists on installments, on standing crops of the natural products of the Philippine Islands, such as rice, hemp, copra, sugar, tobacco, corn, maguey, etc., not in excess of three-fifths of the estimated value of such crops: *Provided, however,* That before granting such loans, the National Bank may require additional security in the nature of mortgages on real estate duly registered in the name of the debtor or chattel mortgages, including those of live stock, machinery, and agri-

cultural implements, or personal bonds with sufficient surety or sureties, satisfactory to the Bank. (Section 10 [c], Act No. 938.) An identical provision is found in the Banking Law, with the sole difference that the National Bank is authorized to loan a larger amount than that authorized in the Banking Law, which allows only one-half of the estimated value of the crop.

(3) Loans to the several provincial and municipal governments and to any other branch or subdivision of the Government of the Philippine Islands on promissory notes guaranteed by the Central Government, as shown by the endorsement thereon of the Secretary of Finance, approved by the Governor-General of the Philippine Islands. (Section 10 [a], Act No. 2938.)

The loans enumerated above, except the first, shall have maturities not exceeding one year, renewable from year to year, in the discretion of the Bank. (Section 10 [e], Act No. 2938.) Short terms are allowed for these loans, because the purpose for which they are intended are by their nature temporary and the money necessary to repay the loan is thus available immediately, as when crops are sold. It is also provided that they are renewable from year to year to accommodate those agriculturists who do not have large capital and who, after payment of their loans may not have enough with which to start a new planting season unless a new loan is granted to them.

Consonant with the purpose of enabling the greatest number of persons to benefit from loans made by the National Bank, it is provided that "the total liabilities to the Bank of any person, or of any company, corporation, or firm for money borrowed, including the liabilities of the several members thereof, shall at no time exceed ten per centum of the capital stock of such Bank actually paid in and unimpaired, and ten per centum of its unimpaired surplus fund: *Provided, however,* That the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the Bank; but the discount of bills of exchange drawn in good faith against actually existing values and the discount of business or commercial paper actually owned by the person negotiating the same shall not be considered a money borrowed." (Section 10 [e], Act No. 2938.) This prevents one person or entity from borrowing so large an amount as to deprive others who may also need the help of the Bank the opportunity to get loans. The percentage specified here is less than that specified by the Corporation Law for savings and mortgage banks (25%) and for commercial banking corpora-

tions (15%), but in effect, the amount may be larger, because of the large capital of the Philippine National Bank.

Like other banks, the National Bank is prohibited to make any loan or discount on the security of the shares of its own capital stock, or to be a 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; but 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. (Section 19 [a], Act No. 2938.)

Also, it shall not "directly or indirectly grant loans to any of the members of the board of directors, the general manager, assistant general manager, and employees of the bank, nor to agents or employees of the branch banks, and no loan shall be granted to a corporation, partnership or company wherein any members of the board of directors is a shareholder, agent or employee in any manner, except by the unanimous vote of the members of the board, excluding the member interested: *Provided*, That the total liabilities to the Bank of any corporation wherein any of the members of the board of directors is a shareholder, agent or employee in any manner, shall at no time exceed ten per centum of the surplus and paid up capital of the Bank." (Section 29, Act No. 2938.) This prohibition is much broader than the prohibition contained in the Banking Law or in the Corporation Law, inasmuch as not only officers and directors are covered, but agents and employees as well.

When loans secured by mortgage are unpaid at maturity and the mortgage is foreclosed, the charter gives to the mortgage debtor "the right, within one year after the sale of the real estate as a result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the Bank by reason of the execution and sale and for the custody of said property." (Section 32, Act No. 2938.) This right given by the charter to the debtor is not found in any provision of the Corporation Law or of the Banking Law, and must be deemed as exclusively applicable to mortgages foreclosed by the National Bank under its charter. In all other cases, the mortgage debtor has no right to redeem from a judicial foreclosure sale executed under the provisions of the Code of Civil Procedure.

Bonds.—The National Bank is expressly authorized to issue real estate bonds in any sum not to exceed ninety per cent of the amount of real estate loans held by said bank. "Said bonds shall be engraved. Said bonds shall be signed by the president of the Bank, authenticated by the Insular Auditor and shall bind the bank to pay the bearer thereof on the date therein named the principal sum mentioned in said bond with interest payable semiannually at such rate as the board of directors may fix. Said bonds shall be payable, both principal and interest, in gold coin of the United States: *Provided, however,* That bonds held by persons or corporations resident in the Philippine Islands, shall be payable in lawful money of the Philippine Islands, or in gold coin of the United States at the option of said Bank. The amount of said real estate bonds outstanding as herein provided, falling due on any given date or prior to such given date, shall never at any time exceed the real estate notes as described in section nine herein held by the said Bank, which fall due on the said given date or prior thereto.

"Said real estate bonds shall be receivable by the Insurance Commissioner under section one hundred and seventy-eight of Act Numbered Twenty-four hundred and twenty-seven. Said bonds shall also be receivable by way of security in all customs and internal revenue transactions where security is required, and in any all cases where by statute security may be required in dealings with the Government. Said bonds shall be exempt from any and all taxes levied or assessed by the Government of the Philippine Islands, or any department, division, or subdivision thereof.

"Said real estate securities against which bonds are issued as provided herein shall be deposited with the Treasurer of the Philippine Islands, and each of said bonds when issued shall bear on its face a certificate of the Insular Treasurer in words and figures as follows:

"I hereby certify that there are on deposit in the Treasury of the Philippine Islands first mortgage real estate securities in the sum of one hundred and eleven and one-ninth per cent (111-1 9%) covering real estate of an appraised value of one hundred eight-five and five twenty-sevenths per cent (185 5 27%) of the face value of this bond; which said real estate securities or other first mortgage real estate securities equal value or the proceeds thereof are to be held by me as security, additional to

the promise of the Philippine National Bank for the prompt payment of this bond, principal and interest.

. . . . . .

Treasurer of the Philippines.

"Changes in this Act or in the laws of the Philippine Islands which may hereafter be made shall not in any manner affect the real estate bonds issued hereunder which may be outstanding at the time of such change or changes, nor shall any such change or changes affect the rights of any holder or holders thereof.

"The principal and interest of said real estate bonds shall be payable in Manila or New York, at the option of the holder thereof except as hereinafter provided." (Section 11, Act No. 2938.)

"Said bonds shall be issued in such amounts and form, at such times, and for such periods as may be expressly provided by resolution of the board of directors of the National Bank. Said bonds shall be *redeemable at par* on or before the date of their maturity and shall contain a provision to the effect that they are subject to *redemption by lot* at such date as the Bank may designate: *Provided, however,* That such of the bonds so chosen by lot for redemption as have not been outstanding for at least three-fourths of the period for which issued shall be retired with a premium of five per centum of the par value thereof. The bonds so chosen for redemption shall cease to bear interest beginning with the date set for their withdrawal, and the aforesaid selection by lot shall take place at least one hundred days before the date of the withdrawal: *And provided,* That the serial numbers of the bonds so selected shall be published for a period of not less than three months in two daily newspapers of general circulation in the Philippine Islands, and by notification of the Bureau of Insular Affairs at least three months before said redemption." (Section 12, Act No. 2938.)

The issuance of bonds by the National Bank is a means whereby it may raise funds for extraordinary purposes. The bonds issued are promissory notes of the bank in favor of the bearer, and they are secured by the real estate mortgages in favor of the bank on agricultural loans provided for in section 9 of the charter. The law makes the bonds acceptable securities in obligations in favor of the government, and exempts them from taxation.

Circulating Notes.—It is expressly provided in the Corporation Law that "No corporation organized under this Act shall create or issue bills, notes, or other evidence of debt for circulation as money." (Section 16.) The charter of the National Bank, however, expressly empowers the Bank to issue circulating notes in an amount not exceeding the paid-up capital stock and surplus of said Bank plus the amount of gold coin of the United States held in the Bank's own vaults or to its order in the Treasury of the Philippine Islands or of the United States or in solvent National Banks of the United States or in any Federal Reserve Bank thereof: *Provided, however,* That in cases of emergency, and subject to the approval of the Governor-General, (now the President), the Secretary of Finance may authorize the National Bank to rediscount commercial paper of not over six months maturity, secured by experts or imports, and may issue against said commercial paper circulating notes for sums not to exceed seventy-five per centum of the issue to be thereof, the remaining twenty-five per centum of the value deposited in lawful currency in the vaults of the Insular Treasury, as a reserve for their redemption.

Said circulating notes, if issued in cases of emergency, shall be subject to a tax in favor of the Insular Government of one-fourth of one per centum per month.

The securities described in section ten, subsection (a), of the charter Act No. 2938, and the proceeds thereof shall be held inviolable for the payment and redemption of said circulating notes. Said circulating notes shall be engraved and shall be payable on demand to the bearer in lawful money of the Philippine Islands. There shall at all times be held by said National Bank a sum not less than twenty-five per cent of the total amount of said circulating notes issued and outstanding and not covered by gold coin of the United States as herein provided for in lawful money of the Philippine Islands.

Said sum shall be available only for the purpose of redeeming the circulating notes herein provided for.

It is further provided that in addition to the circulating notes above provided, for, said National Bank shall have authority to issue its circulating notes against gold coin of the United States to the full value thereof: *Provided, however,* That such gold coin against which circulating notes have been issued shall be held by said Bank and used for no other purpose except the redemption of said circulating notes. The said Bank, however, shall have the privilege of redeeming said circulating

notes in any lawful money of the Philippine Islands. Such circulating notes shall be exempt from any and all taxes levied or assessed by the Philippine Government, or any department, division or subdivision thereof.

The said circulating notes shall be receivable by the Philippine Government in payment of all taxes; dues or other claims due or owing to said Government, and shall be redeemed by the Bank on demand, in lawful money of the Philippine Islands, at the Central Office in Manila.

The necessary drawings, designs, plates and engraving for the circulating notes provided for in this section shall be approved by the Governor-General upon the recommendation of the Secretary of Finance and the Board of Directors of Bank, and the printing thereof shall be made and executed through the Secretary of the Treasury of the United States upon the request of the General Manager of the Bank, through the Insular Treasurer, approved by the Secretary of Finance and the Governor-General.

Such notes, when completed at the Bureau of Engraving and Printing at Washington, shall be delivered to the Bureau of Insular Affairs at Washington, the Chief of which Bureau shall receipt therefore in the name of the Government of the Philippine Islands after having varified the count thereof. The Chief of said Bureau shall thereupon transmit such notes to the Treasurer of the Philippine Islands, and shall also give notice to the Auditor for the Philippine Islands of the denominations and amount of the notes so transmitted to said Treasurer. Upon delivery of such notes to the Treasurer, the Auditor shall received the count thereof and of the duplicate receipts so received the Auditor shall retain one, and the other shall be transmitted by the Auditor with his countersignature to the Chief of the Bureau of Insular Affairs at Washington.

Upon receiving such notes the Treasurer of the Philippine Islands shall preserve the same free from all opportunity for loss by theft, and shall be held responsible for the same as money. The Auditor and Treasurer shall each keep separate accounts in which shall be recorded the amount and the denominations of the notes which are delivered to the Philippine National Bank. Such notes shall be delivered only to the General Manager of said Bank or his authorized representative by the Insular Treasurer who is authorized to make such delivery only upon the receipt by him of a duly certified copy of a resolution of the Board of Directors of the Philippine National Bank which shall

state the amount and denominations requested and upon which shall be endorsed the approval of the Secertary of Finance and the Governor-General: *Provided,* That the Insular Treasurer is authorized at any time to exchange new notes for an equivalent amount of mutilated note or notes otherwise unfit for circulation: *And Provided, further,* That said Treasurer is authorized at any time to exchange notes of one denomination for an equivalent amount of notes of another denomination.

Mutilated notes and such notes of the Philippine National Bank as are otherwise unfit for circulation when received by the Insular Treasurer shall be accounted for and destroyed as nearly as may be in accordance with existing provisions of law relating to mutilated and unfit treasury certifictes. The said bank shall pay additional compensation to employees of the Treasury Bureau who may be designated by the Insular Treasurer to assist in the counting, assorting, destruction, and accounting for said mutilated and unfit notes. Otherwise all the necessary expenses incurred by the Insular Treasurer under the provisions of this paragraph shall be reimbursed by said Bank." (Section 14, Act No. 2938.)

The bank notes issued by the National Bank pursuant to this authority contained in its charter are in effect negotiable promissory notes payable on demand which may pass from hand to hand as money. Although it is not legal tender, it is expressly provided that it shall be accepted by the government for payment of all obligations in favor thereof.

As promissory notes payable on demand, they may be presented at any time to the National Bank for redemption or payment in gold or silver coin.

Reserves.—In order to meet demands for payment of the circulating notes of the Bank, as well as demands for the repayment of deposits made with it, the law provides that the Bank must always have on hand specified amounts of lawful money of the Philippine Islands or of the United States, either in its own vaults or with the Treasury of the Philippine Islands, as follows:

"Twenty-five per cent of the circulating notes outstanding not covered by gold coin as provided in section eighteen of Act Numbered Twenty-six hundred and twelve, as amended by this Act.

"Twenty per cent of the demand deposits outstanding and credited on its books, and of the fixed deposits maturing within thirty days; except funds as are on deposit with solvent

banks in the United States and collateraled by securities approved by the Insular Treasurer, or in solvent banks approved by the Insular Treasurer: *Provided*, That if the National Banks or Federal Reserve Banks of the United States, such funds may be considered as constituting a part of the twenty per cent specified in this section up to a sum to be fixed from time to time by the Secretary of Finance, with the approval of the Governor-General.

"Whenever the lawful money kept by the Bank in all its vaults or with the Treasury of the Philippine Islands as required in this section shall be below the amount herein prescribed, the Bank shall not diminish the amount of such lawful money by making any new loans or discounts until the required proportion between the aggregate amount of its deposits and circulating notes and its lawful money has been restored: *Provided, however*, That the Secretary of Finance, at the request of the board of directors of the Bank duly approved by the Board of Control (now the President of the Philippines), whenever in his judgment the general interests of the country require it, shall be authorized to suspend for such period as may be necessary the requirement of maintaining the proportion of the reserve specified in this Act. The Bank shall make a daily report showing the condition of the reserve as required by this Act, and the amount thereof and place where kept." (Section 44, Act No. 2938.)

Notwithstanding this provisions, however, The Corporation Law provides: "The percentage of reserve to deposits in the case of the Philippine National Bank is hereby fixed at eighteen per centum of demand deposits and fixed deposits payable within thirty days, and five per centum of saving deposits, in the same manner as is prescribed in this section for commercial banking corporations in general, which reserve against saving deposits may consist of Philippine Government or United States bonds." (Section 125.) It is also provided that the penalties imposed for deficiencies in reserve commercial banking corporations shall be applicable to the Philippine National Bank. (Section 126.) However, these provisions of the Corporation Law are made applicable only in case the National Bank agrees to accept them. (Section 119, Act No. 1459, as amended.)

Officers.—The affairs and business of the National Bank is directed and its property managed and preserved by a board of directors of nine members. (Section 16, Act No. 2938.) No director or employee of any other bank is eligible as member

of the board of directors of the National Bank. (Section 17, Act No. 2938.) The chief executive of the bank is a general manager appointed by the Board of directors with the advise and consent of the Board of Control (now the President of the Philippines.)

The Secretary of Justice is the attorney for the National Bank, but he may, whenever he may deem it proper, in specific cases delegate his duties to the Solicitor-General, the fiscal of the city of Manila or any provincial fiscal, as the case may be; nevertheless, the board of directors of the Bank, with the approval of the Secretary of Justice, has the power to employ such additional attorneys as may be necessary. (Section 21, Act No. 2938.)

The Insular Auditor is ex-officio auditor of the Bank and may, with the advise and consent of the Board of Control (now the President of the Philippines), appoint a representative who shall be the chief of the auditing department of the Bank. (Section 22, Act No. 2938.)

Because of their official duties in connection with the Bank, the Secretary of Finance, the Bank Commissioner, the Insular Auditor, and the Latter's representative, the chief of the auditing department of the bank, are prohibited from owning stock in the National Bank, or from becoming indebted to said Bank, directly or indirectly in any sum. (Section 27, Act No. 2938.)

BANK OF THE PHILIPPINE ISLANDS

Like the Philippine National Bank, the Bank of the Philippine Islands, formerly known as the Banco Español-Filipino, is governed by a special charter. The Bank, however, is not a creation of the Philippine Legislature, but of a Royal Decree of the King of Spain during the Spanish regime. It was founded in 1851 by a joint-stock company, and was recognized by a Royal Decree of February 7, 1896. (Article 1, Act No. 1790.) In 1907, the Philippine Legislature enacted Act No. 1790, as a new charter amending and confirming the Spanish charter of the Bank. It provided, however, that "the charter and statutes of the Bank hereinafter set forth by way of amendment and confirmation shall not take effect until the same shall be duly and in legal form accepted by the proper authorities of the bank representing the corporation." (Section 1, Act No. 1790.)

Powers.—The Bank has the power to engage in all banking transactions, and even in the trust business. After an enumeration of banking transactions in which it may engage,

the law mentions "and such other banking operations, under regulations established by the board of directors, as may be within the incidental powers of a bank; but no powers shall be exercised which are not expressly granted by this Act, if such exercise is prohibited by the Governor-General (now the President) of the Philippine Islands."

A peculiar provision in the charter is found in paragraph 23 of Article V. It says: "The authority conferred under paragraphs 18, 19, 20, 21, 22, and 23 (all relative to the trust business), of this article, shall be subject to amendment, alteration, or repeal by the Philippine Legislature." Bearing in mind the charter itself was not to take effect unless accepted by the representatives of the bank, and considering that there is no express reservation of the right to alter, amend or repeal the charter, it seems that the Philippine Legislature cannot alter the charter of the Bank except with regard to the paragraphs mentioned. Any alteration outside of those six paragraphs cannot be valid without the acceptance of the changes by the Bank; otherwise the change would be an impairment of the obligation of contracts, which is prohibited by the Constitution.

Loans.—The Bank is authorized to make loans on collateral security to three-fourth of the value of such security; on real property, provided the amount of the loan does not exceed 50% of the value of the property and the buildings or improvements thereon are insured to at least 75% of their value; on vessels to not more than one-half of the value of the ship. (Articles V and X, Act No. 1790.)

Like other banks, it may not make loans or discounts on the security of its own shares of stock, nor purchase or hold the same, unless necessary to prevent loss upon a debt previously contracted in good faith; and such shares so purchased must be sold in public or private auction within six months after acquiring the same. (Article VI.) Also, no loans may be granted to directors or officers of the bank, unless approved by a majority of the board. (Article V.)

The total liabilities to the bank of any entity (including its members) shall at no time exceed 10% of the capital stock actually paid in and unimpaired, and 10% of its unimpaired surplus fund. (Article VIII.)

Note Circulation.—The note circulation of the Bank is limited to nine million pesos, which represent the paid up and unimpaired capital of the bank. If in the course of its operations, such paid up and unimpaired capital shall fall below the

amount of the notes in circulation, the Governor-General (now the President) shall require the capital to be increased, or the notes decreased, or both, until the balance is regained; and in the meantime commercial paper conforming to the statutes of the Bank and acceptable to the chief executive shall be deposited with the Treasurer of the Philippine Islands for any excess in amount of circulating notes above the value of the paid up and unimpaired capital as determined by him. (Article XXIV.)

The circulating notes issued by the Bank are made receivable by the public treasury in payment of taxes, and are made subject to the taxes imposed by law. (Articles XXVII and XXVIII.) It will be noted here that the circulating notes of the Philippine National Bank are exempt from taxation, except when issued in case of emergency. (Section 14, Act No. 2938.)

The bank is required to maintain at all times a reserve for its circulation of notes, consisting in lawful money of the Philippine Islands or of the United States, in an amount equal to 25% of the aggregate amount of the notes in circulation. The reserve maintained on January 1, 1928, is required to be increased every year for 14 years, by an annuity equal to 5% of the aggregate value of the notes in circulation on January 1, 1928, so that after fifteen years, the original reserve together with the fifteen annuities shall represent an amount equal to the aggregate of the notes in circulation on January 1, 1928. Said reserve and added annuities shall be deposited in the Insular Treasury and available for the purpose of redeeming the notes of said Bank. (Article XXXI.)

Reserve.—The Bank is required to have a reserve fund or surplus, of at least 15% of the capital stock issued and outstanding, which shall be subject to the same obligations as the capital, and to be made up of the net profits resulting from the operations of the bank after deducting the dividends paid upon the capital. It may also create an additional reserve fund for the purpose of distributing dividends when the amount actually earned in any year does not reach 6% of the capital stock, but this fund shall not be applied to the increase of the capital stock of the Bank. (Article XIX.)

The above-mentioned funds are created from profits of the Bank. The distribution of dividends is to be made at least once in each six months, when in the judgment of the general board

of directors earnings justify the declaration of a dividend. Should the profits not exceed 7% per annum on the par value of each share, the entire amount shall be distributed; should there be an excess over said 7%, it shall be divided 2/3 to the stockholders and 1 3 to the legal reserve mentioned above, until said reserve fund shall amount to not less than 25% of the capital stock; after which any surplus shall be divided among the stockholders in whole or in part, or may be used for the creation of the voluntary reserve fund also mentioned in the foregoing paragraph, as the board of directors may deem best. (Article XX.)

Aside from the foregoing legal and voluntary reserves and the reserve for the redemption of circulating notes, however, the Bank is required to maintain a reserve for its deposits. This reserve shall be in lawful money of the Philippine Islands or of the United States equal to 20% of its deposits in current accounts which are payable upon demand and of the fixed deposits due in thirty days. (Article XXXI, last paragraph.)

Notwithstanding this provisions, however, the Corporation Law provides: "The percentage of reserve to deposits in the * * * Bank of the Philippine Islands is hereby fixed at eighteen per centum of demand deposits and fixed deposits payable within thirty days, and five per centum of savings deposits, in the same manner as is prescribed in this section for commercial banking corporations in general, which reserve against savings deposits may consist of Philippine Government or United States bonds." (Section 125.) It is also provided that the penalties imposed for deficiencies in reserve upon commercial banking corporations shall be applicable to the Bank of the Philippine Islands. (Section 126.) However, these provisions of the Corporation Law are made applicable only in case the Bank of Philippine Islands agrees to accept them. (Section 119, Act No. 1459, as amended.)

Monte de Piedad and Savings Bank

The Monte de Piedad and Savings Bank was organized in accordance with the cannon law, having been created by the royal order of the King of Spain of July 8, 1880, made under the royal patronate powers then existing in the crown of Spain. Various decrees affecting the organization of the Monte de Piedad had been promulgated by the Governor-General of the Philippine Islands, as vice royal patron prior to the royal order of July 8, 1880, which decrees were referred to and confirmed in said royal order.

The royal order referred to created, according to the purpose expressed therein, an institution for the safe investment of the savings of the poor classes and to assist the needy in time of need by loaning such savings to them at a low rate of interest. Its statutes and by-laws are subject to the will of the Catholic Archbishop of Manila, and may be changed by him at his pleasure. (Government of the Philippine Islands vs. Monte de Piedad, 35 Phil. 42.)

The governing statutes of the Institution not being public statutes, they will not be discussed here inasmuch as they are not part of our laws. It is sufficient to say that the Monte de Piedad, in its business as a savings bank is necessarily subject to the provisions of the Corporation Law regarding Savings and mortgage banks.

RURAL BANKS

The Rural Banks Law (Act No. 3896) was approved on Nov. 16, 1931, the same day on which the law creating rural credit associations was approved. The purpose of the Rural Banks Law is to facilitate the granting of loans to farmers, especially in those places where the Philippine National Bank does not have branches.

Rural banks are in the nature of agencies of the Philippine National Bank in its purpose to promote agriculture in the country. The National Bank has supervisory and directory powers over all banks established under the Act No. 3896. The supervision and direction provided for consists in the power to regulate the operation of the banks; particularly the amounts of loans that may be granted to farmers, the terms and conditions under which such loans are to be made, to prescribe the books of account and other records to be kept by the banks, to examine the banks' accounts and business, and to liquidate, in its discretion and without the necessity of instituting court proceedings, any bank violating any provision of the Rural Banks Law or any lawful requirement established by the Philippine National Bank in accordance with the law, and any bank the business of which is deemed by the Philippine National Bank to be conducted in an unsafe manner. (Section 7.)

No rural bank can operate under the law without the approval of the National Bank, "Before any individual, registered general co-partnership, or corporation may operate a bank under this law, it shall first file an application with the Philippine National Bank, stating among other things, the amount of capital it has available for investment and that it is willing

and prepared to observe the provisions of this law and such rules and regulations as may be prescribed by the Philippine National Bank, which shall issue the corresponding certificate of authority in case it is satisfied that the applicant meets all the necessary requirements." (Section 2.)

It will be seen that rural banks need not be organized expressly formed for the purpose of engaging in the banking business. They may be individuals, partnerships or corporations engaged in some business but desirous to engage also in the business of rural banks. It is required only that such individual or partnership or corporation must be residing or doing business in the Philippine Islands and that the capital set aside, if an individual or partnership, or the capital subscribed and paid in if a corporation, is equal to that required by the National Bank and in the possession of the treasurer of the Bank, if a corporation. (Section 1.)

As soon as the bank is organized, however, even if the individual, partnership or corporation so organizing as a bank continues to engage in other business, it is necessary that the capital for the rural bank be kept separate from other funds used for other business, and separate books of account shall be kept for transactions of the bank. (Sections 3 and 4.)

And when copartnerships or corporations are organized expressly for the purpose of engaging in the business of rural banks, their articles of association or by-laws shall be made and carried out in accordance with the rules and regulations prescribed by the National Bank. (Section 10.) Even the loans made by such banks should be under such terms and conditions as may from time to time by fixed by the Philippine National Bank. (Section 5.)

Rural banks may secure additional capital from the Philippine National Bank in its discretion in the form of a loan at a preferential rate of interest on first mortgage or other good security and under such other terms and conditions as may be fixed by the Philippine National Bank: *Provided,* That banks indebted to the Philippine National Bank shall set aside from their net profits, at each annual closing of accounts, a sum not less than twenty per centum of their net profits, until the amounts so set aside shall be equal to fifty per centum of the outstanding loan: *Provided, further,* That the amounts so set aside may be invested in securities or investments approved by the Philippine National Bank. (Section 6.)

Rural banks are exempt from all taxes, charges and fees of every name and nature, except the income tax. (Section 14.) The funds and property of every rural bank shall likewise be exempt from attachment or execution during the period of its operation, unless the bank was organized in fraud of creditors, in which case it shall be liquidated, the Philippine National Bank to be considered as a preferred creditors to the extent of the total of such loans as it might have extended in favor of said bank. (Section 15.) These provisions are clearly intended to encourage the organization of rural banks. The growth and progress of such banks in turn will greatly aid farmers of the country and thus the principal objective of the law, i. e., to promote agriculture, will be attained.

The Rural Banks Law provision with respect to the power of rural banks to acquire and hold real and personal property is substantially the same as the provision of the Banking Law (Act No. 3154), and differs from the Corporation Law on the same point, in that the period within which real estate acquired in public auction at foreclosure sales is fixed at three years. In contrast to both the Banking Law and the Corporation Law, however, the Rural Banks Law has the following proviso: "That before the real estate just mentioned is offered for sale, the original owner thereof shall be allowed to redeem the same upon payment of the principal, accrued interest, and other necessary expenses." (Section 9.) This privilege of redemption is in line with a similar privilege granted to mortgage debtors of the Philippine National Bank by its charter. It is easy to see that the aim is to avoid, as much as possible, the deprivation of a farmer of his real property which is his source of livelihood. This is incidental to the main purpose of the Philippine National Bank and the Rural Banks under it: the promotion of agriculture.

The remaining provisions of the law need not be discussed, inasmuch as they are quite identical with similar provisions already discussed earlier in this work in connection with banks in general. (See Sections 11 and 12.)

Foreign Banking Corporations

Act No. 3520, on foreign banking corporations, seeks to protect depositors and creditors, of Philippine branches of foreign banks, who are residents or citizens of the Philippine Islands. This intention is evident from the fact that only such foreign banking corporations as receive deposits payable in the Philippine Islands are subject to its provisions. (Section 4.)

Also, it is expressly provided that "residents and citizens of the Philippine Islands who are creditors of a foreign banking corporation doing business in the Philippine Islands shall have preferential rights to the assets which such banking corporation" is required to have in the Philippines or deposited with a trustee abroad designated by the Bank Commissioner. Such assets shall at least be equal to ninety per cent of its deposits payable in the Philippine Islands. (Section 1.)

The requirement of having the amount of assets specified before a foreign banking corporation can do business in the Islands, is evidently not exclusive of the requirement that before a foreign corporation can do business in the Islands it must secure a license therefor from the Director of Commerce. It is submitted that the requirement in section 1 of Act No. 3520 is an additional one to that of the license from the Director of Commerce, required by the Corporation Law.

Act No. 3520 limits the amounts of the loans that can be given to a single borrower in the Philippines by a Philippine branch of a foreign banking corporation. It provides:

"The total liabilities to a branch of a foreign banking corporation doing business in the Philippine Islands of any person, or of any company, corporation or firm for money borrowed, including in the liabilities of the company or firm, the liabilities of the several members thereof, shall not exceed an amount to be determined as follows:

"Five per cent of its average deposits payable within the Philippines during the preceding calendar year, plus fifteen per cent of the amount due by such branch to the home office and branches outside the Philippine Islands, after deducting from such amount sums due such branch from the home office and outside branches: *Provided, however,* that additional liabilities may be incurred by a borrower up to five per cent of the said average deposits and fifteen per cent of the said net amount due to home office and branches outside the Philippine Islands, provided such additional liabilities are secured by the shipping documents, warehouse receipts, or other similar documents, transferring or securing title covering readily marketable, nonperishable staples, when such staples are fully covered by insurance, and when such staples have a market value equal to at least one hundred and twenty-five per cent of such additional liabilities. The discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial and business paper actually owned by the person nego-

tiating the same, shall not be considered as money borrowed within the meaning of this section.

"The net amount due the home office and branches outside the Philippine Islands shall not be reduced during the life of any loan if by such loan would become illegal.

"Nothing in this Act shall be considered as restricting in any manner loans made by a branch of a foreign banking corporation operating within the Philippine Islands for account of its home office or branches outside the Philippine Islands.

"During the first year of the existence of a branch of a foreign banking corporation commencing business in the Philippine Islands after the date when this Act shall take effect, the Bank Commissioner, with the approval of the Secretary of Finance, shall determine the maximum amount which may be loaned to any one borrower." (Section 2.)

UNCLAIMED BALANCES

Act No. 3936 requires that within the month of January of every odd year, all banks shall forward to the Insular Treasurer a statement, under oath of their respective managing officers, of all credits and deposits held by them in favor of persons known to be dead, or who have not made further deposits or withdrawals during the preceding ten years or more, arranged in alphabetical order and stating the particulars enumerated by the Act. (Section 2.) The statements so furnished will thereupon be published once a week for three consecutive weeks in at least two newspapers of general circulation in the locality where the bank is situated, and the Attorney-General, upon being informed of the existence of such unclaimed balances, shall institute the proceedings for the escheat of said balances to the Government. (Section 3.) "Unclaimed balances" as used in the Act includes credits or deposits of money, bullion, security, or other evidence of indebtedness of any kind, in favor or any person unheard from for a period of ten years or more. When such balances are escheated to the Government, they shall be deposited with the Insular Treasurer to the credit of the Government of the Philippine Islands to be used as the Philippine Legislature may direct. (Section 1.)

The proceedings under this Act is *in personam* so far as concerns the bank, and *quasi in rem* so far as concerns other claimants. The judgment in such case therefore is final upon all claimants who do not appear at the trial of the case. (Security Savings Bank vs. California, 263, U. S. 282.)

CONCLUSION

The foregoing discussion of the banking laws in the Philippines shows one main point: Banks are very carefully regulated by the Government in almost all activities. The more important banks are becoming to the community, the greater the degree of surveillance that the government exerted.

In the Philippines, legislative control of banks and banking is made through statutes and special charters. The carrying out of the provisions of the law, however, is left largely, if not entirely, to the Bureau of Banking provided for in Chapter 41-A of the Administrative Code. The organization of a separate bureau in the government solely for the supervision and regulation of banks and banking shows that the government tends towards greater control.

Such tendency is only proper. Thousands and thousands of people entrust their savings and accumulated earnings to banks, in the hope of being able to depend upon them in case of need. If the business of banks should not be carefully and strictly regulated by the government with the end in view of preserving the stability of banks and safeguarding the deposits of those who entrust to them their money, it is not difficult to imagine that helpless depositors can be easily robbed of their hard-earned savings by intangible corporations.

The government, especially through the Philippine National Bank and the rural banks, is also endeavoring to extend all possible credit facilities to farmers for the development of agriculture. The provisions of the charter of the Philippine National Bank and of the Rural Banks Law make possible the attachment of such aim.

The government however should not forget that commerce and industry are just as important to the life of the Philippines as is agriculture, and credit facilities should be extended as much as to merchant as to farmers. It is the opinion of the writer that it is in this respect that our banking laws are deficient, and that in view of the nationalistic tendency in our economic life the deficiency should immediately be corrected by proper legislation.

It will perhaps be noticed that the discussion in this work involved a study of many laws scattered in our statute books. Some of the provisions on identical points vary according to what law contains the provision thereon * * *. This fact may often lead to confusion and expensive though avoidable litiga-

tions. It is therefore suggested that it would be for the better if the National Assembly should take upon itself the task of compiling the banking laws, outside of special charters, in one statute. This would bring about uniformity, clearness, and convenience.