Effect of Payment of Pre-War Debts to the Liquidator Bank of Taiwan During the Occupation

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1. *The Case*

By Administrative Ordinance No. 11 of August 1, 1942, the Director-General of the Japanese Military Administration in the Philippines decreed the liquidation of certain domestic banks and branches of foreign banks operating in the Philippines. Of the seven banks placed in liquidation, three were of domestic incorporation, but with stock control in the hands of non-Filipino citizens. These were the People's Bank & Trust Company, the China Banking Corporation, and the Philippine Bank of Communications. The rest, branches of foreign banks licensed to do business in the Philippines, were the National City Bank of New York, the Chartered Bank of India, Australia & China, the Hongkong & Shanghai Bank, and the Nederlandsch Indische Handelsbank.

Pursuant to the liquidation ordinance, as liquidator, the Bank of Taiwan, required the debtors of the liquidated banks in the Philippines to pay their indebtedness, regardless of the terms and dates of maturity. In this, the Bank of Taiwan was backed up by the Japanese Military Administration. At the same time, the liquidator paid off part of the deposits in said banks. After liberation, the question arose as to whether or not payment of said obligations made to the Bank of Taiwan during the occupation legally and effectively discharged the debts.

2. *Approach to the Problem*

Under Art. 1162 of the Civil Code, in order that an obligation may be validly discharged by payment, said payment must be made to the person in whose favor the obligation was constituted or to another authorized to receive payment in his name.

The debtors of the liquidated banks paid to the Bank of Taiwan. The latter bank certainly was not the party in whose favor the obligation was constituted. The next and logical inquiry then would be whether or not the Bank of Taiwan was that "another authorized to receive payment" in the name of the liquidated banks. Now, it would certainly be most naive to expect to find express or implied authority given by the liquidated banks to the Bank of Taiwan to receive payments for the debts in their behalf. It would be more sensible to inquire into the power of the Japanese Military Administration, under whose authority the Taiwan Bank acted, to order the liquidation of the banks. If the

Japanese Military Administration could have ordered liquidation, then the demand to debtors to pay, having been issued as necessary incident to the liquidation, would likewise be valid. If that were so, then payment by the debtors in obedience to such valid orders, should discharge the debts. Only thus, if at all, may the validity of such payments be established.

3. *Status of the Japanese Military Administration*

The Japanese Military Administration was a de facto government established and maintained by military forces who invaded and occupied a territory of the enemy in the course of war, denominated as government of paramount force. (Ko Kim Cham v. Valdez Tan Keh, 40 O.G. No. 8, p. 779; Peralta v. Director of Prisons, G.R. L-49).

Its existence was maintained by active military power of the Japanese armed forces in the Philippines against the rightful authority of an established and lawful government. As such, it had to be obeyed in civil matters by the inhabitants of the Philippines. (See Thorington v. Smith, 8 Wall 1).

The Japanese Commander-in-Chief could exercise governmental authority over those portions of Philippine territory then actually in the control of the Japanese Forces. This is the extent of the authority of a military occupant. (See New Orleans v. Steamship Co., 20 Wall 387; Kelly v. Sanders, 99 U.S. 441; Macleod v. U.S. 229 U.S. 416, 57 L. ed. 1260; see also Oppenheim, Vol. II, sec. 167, and arts. XLII and XLIII, Hague Convention of 1899).

All acts of the Japanese Commander-in-Chief necessarily depended upon his discretion, and in this respect the act of every military commander was the act of the Commander-in-Chief until disapproved or annulled and of necessity was to be obeyed as such. (See Hefferman v. Porter, 98 D. 459). Since occupation was an incident of war and flowed directly from the right to conquer, we do not look to the constitution or political institutions of Japan for the rules by which the Japanese Military Administration was regulated or limited. Such authority and rules were derived from the laws of war as established by the usage of the world and confirmed by the writings of publicists and decisions of courts—in fine, from the law of nations. As to this doctrine, the authorities are in agreement. (See Halleck, International Law. vol. 2, p. 44).

4. *The Hague Regulations*

It cannot be said that the nature of the relationship between the belligerent occupants and the inhabitants of occupied territory is at all precisely or clearly defined. For the most part, however, it is embodied in the rules for the exercise of "Military Authority over the Territory of the Hostile State" to be found in Sec. III of the Regulations annexed to the Hague Convention of 1907.

The Regulations contain the so-called "general participation clause." This clause requires that the Regulations are to be

applicable and operative only if all the parties at war are parties to the Convention. The fact, however, is that not all the powers involved in the present war ratified or adhered to its contents. The discussion that follows applying the Hague Regulations, therefore, are of necessity premised on the fact that said Regulations are notwithstanding considered as confirmation and interpretaton of already existing law. None of the powers has so far formally denounced the Convention, which thus strengthens the supposition that said Regulations remain the recognized basis for international order in war-time relationships.

Nor must the fact ever be lost sight of, throughout this inquiry, that the Regulations were adopted in 1907 in an atmosphere of 19th century liberalism, shaped by the basic philosophy of that era and drafted for the conditions of a 19th century liberal world; that, thereafter, the world has changed fundamentally in thought and conditions. In the discussion of the present problem, these factual changes must of necessity be taken into account or else risk the inquiry being merely academic and unproductive of any practical results.

The rules governing military occupation are found in Articles 42 to 56 of the Regulations. The pertinent provisions shall, however, be cited as need therefor logically arises in the course of the discussion.

5. *Japan's power of seizure.*

International practice seems to have been that a belligerent may take possession of private property of an enemy situated within its own territory, although not those of enemy aliens in occupied territory. Thus the German Government, under the Hague Regulations, may not take into custody private property of Frenchmen in occupied France, although it could seize private property of Frenchmen within German territory. Sequestration was the rule during the first world war. Instances thereof are reported by Lawrence in his book. (See Lawrence. International Law, pp. 403-404).

But one salient fact must be borne in mind in this connection. The Philippines was not then an integral part of the United States nor were its inhabitants American citizens. It seems apparent to the writer that the justification for such rule of non-seizure of properties of the enemy inhabitants of occupied territory by the military occupant was the practical impossibility of controlling and administering all such property and interning all such enemy inhabitants. At any rate, the doctrine arose from international practice rather than from any definite rule of international law. Such rule of non-seizure will not apply in this present case involving American and allied properties situated in the Philippines.

The right of the Japanese Military to interne only Americans and other allied citizens found in the Philippines upon occupation has never been questioned. It was the undeniable right of Japan as a belligerent to determine who were her enemies. The Japanese consistent-

ly declared that only Americans, the British and other allied citizens, and not the native inhabitants of the colonies of these powers, were her enemies. Having interned the local managers or agents of the allied banks, the considerations necessitating the application of control measures over the property and assets of the banks became very cogent.

It seems clear to the writer, therefore, that the doctrine of non-seizure of enemy property in occupied enemy territory finds no application in the present instance. It would have been a different matter if the Japanese forces had occupied California, for instance, in which case they could not interne California citizens and take their properties into custody.

Nor is this conclusion unsupported by any accomplished fact. During World War I, Germany took control of French property in occupied Belgium, and of Belgian property in occupied France. (See Feilchenfeld, par. 6, p. 106).

The reasonable conclusion deducible from the discussion up to this stage of the inquiry is that the Japanese Forces in the Philippines had the right to take possession of the properties of the American, British, Chinese and Dutch banks doing business in the Philippines prior to the occupation.

6. *Japan's power to liquidate enemy assets*

For authority in support of the power of the Japanese Military Administration over the debts owing in favor of the banks, the Hague Regulations are directly applicable in the case of those credits pertaining to the National City Bank of New York. Article 55 of the Regulations provides authority for the Japanese Military Administration to take possession of the cash, funds and other realizable securities of the hostile estate. The National City Bank was an instrumentality of the United States Federal Government. (National City Bank of New York v. Posadas, 60 Phil. 650).

Under Art. 55, the power of the belligerent occupant is limited to administration and usufruct. The writer believes that in view of said provision, the most that the Japanese Military Administration could have done validly was to collect the fruits or interests of the credits, being under the obligation to protect the capital of such realizable assets. The Japanese Military Administration, under its general power of administration and usufruct as provided for in Art. 55, could not have validly ordered the liquidation of the assets of the National City Bank. Much more so if it be considered that under the terms of the liquidation ordinance, the debts were declared collectible whether or not they had matured.

Oppenheim (International Law, vol. I, p. 303) quotes a case where the occupants' claim to seize public securities were rejected. A Polish landowner in 1911 hypothecated his estate to the Russian Treasury by judicial decree as a security for the sum of 10,916 roubles. During the German occupation of this

district of Poland in World War I, he settled the claim with the German authorities for 3,-800 roubles. After the war, the Polish Supreme Court refused to recognize the settlement of the claim and the cancellation of the mortgage. The said court ruled that the occupant had no authority to dispose of public property in the form of bank funds, securities and other assets.

It is thus apparent that the act of the Japanese Military Administration in decreeing the liquidation of the debts owing in favor of the National City Bank by ordering the debtors thereof to pay regardless of whether or not the debts were matured, finds no sanction in international law.

As to the liquidation of the other banks, no provision of the Regulations seem to be directly applicable in point. The writer observes, however, that the provision previously discussed, referring to the seizure of State cash, funds and other realizable securities by the occupant enemy, may be availed of to arrive at a rational conclusion.

The writer advances the hypothesis that inasmuch as the belligerent occupant, dealing with public funds, assets and realizable securities, is limited to administration and usufruct thereof, then, in those cases where said occupant may seize enemy private assets, funds and securities, it can claim no greater right over them than the exercise of the powers of administration and the enjoyment of the usufruct thereof. This becomes readily acceptable when one considers that in Art. 46 of the Regulations there is express prohibition against the confiscation of private property in occupied territory.

The power of the Japanese Military Administration to administer and control the assets of enemy subjects in occupied territory can count with the support of authorities. It may, however, be seriously doubted if said occupant can validly liquidate enemy banks. Openheim (International Law, 6th ed, p. 313) states that the occupant may not "liquidate the business of enemy subjects in occupied territory although he can control them and certainly must not sell their real estate even if the proceeds are to be handed over to them after the war." MacNair (Legal Effects of War, 2nd ed., p. 341) in his discussion of the case of the Bank of Ethiopia v. National Bank of Egypt and Ligouri (1937 Ch. 513) expresses the view that undoubtedly a belligerent occupant would be entitled in the interest of the welfare of the inhabitants to control the operations of so important a bank as the Bank of Ethiopia which was the only bank of issue in the country. But it would be investing the occupant with a degree of power which it is difficult to reconcile with the rules of international law to permit him to liquidate the bank and dispose of its assets in the course of the occupation.

7. *Illustrative cases*

The Germans in the War of 1870 recognized the immunity of private credits when the

German Crown Prince Wilhelm, Commander of the German Third Army, issued a proclamation forbidding the seizure of the branch of the Bank of France at Rheims. (Feilchenfeld, The International Economic Law of Belligerent Occupation, par. 213).

The Austrians during the occupation of Venetia seized bonds and shares belonging to the sisters Mazzoni. The Court, citing the Hague Regulations, held that the bonds and shares could not be used for the army; consequently, they were not subject of requisition, and therefore the seizure had been tantamount to pillage and the title of private citizens had not been extinguished. (Court of Venice, January 8, 1922, Annual Digest, 1927-28 Case No. 284). The Hungarian Supreme Court followed the same line in its decision of March 27, 1922, according to which requisitions effected in time of occupation were to be regarded as unlawful if the requisition had been resorted to merely to compensate third persons affected by previous requisitions and not to satisfy the needs of the army. The Belgian Courts also refused to give effect to illegal requisitions. (Feilchenfeld, op. cit. p. 495).

Cases involving World War II have already arisen in the United States where (previous to the declaration of war by the U.S.) German officials in occupied territories asserted rights in courts as "fiduciaries" of assets of citizens of such countries, and the courts refused to recognize such claims. (Koninklyke Lederfairiek "Oisterwizk" NV v. Chase National Bank, 1941, 177 Misc. 186, 30 NYS 2nd 518, aff'd 262 App. Div. 815, 32 NYS 2nd 131; Amsterbank NV v. Guaranty Trust Co., 177 Misc. 548, 31 NYS 2nd 194; see also Johnson v. Briggs, 12 NYS 2nd 60).

8. *The problem from the standpoint of agency.*

For the purpose of the present discussion, the inquiry is directed to one specific bank, say the Chartered Bank of India, which is a British bank.

British banks carying on business in the Philippines were branches and agents of British corporations. Under the principles of international law, upon enemy occupation of the Philippines, all persons resident in the Philippines became, at least in a technical or territorial sense, enemies of Great Britain. (Per Lord Wright in the Sovfrancht case, 1943, I-All England Reports pp. 84-86). The agency of the British branches in the Philippines (say the Chartered Bank) was thereby abrogated and the agents lost their respective capacity to contract for and bind their principals.

It follows that the Chartered Bank in the Philippines, like branches of other allied banks, thereby lost power as agents to act on behalf of their principals in the Philippines. No case can possibly be conceived of whereby these branches could have paid or received money or have given discharges for debts during all the while that the war lasted.

There is a leading British case on this subject—Maxwell

v. Grunhunt, 1914 (31 T.L.R. 79). In that case, the agent in British territory of one who was enemy to England both in the national and territorial sense claimed the right to collect debts due to his principal and pay the debts due from the latter pursuant to a power of attorney granted to him upon the eve of the outbreak of the war. He also applied for the appointment of a receiver of the assets of the business. His claim was refused by the British Course because the agent could have no greater right than his principal who, being an alien enemy, could not sue.

In justification of the act requiring the debtors of the Chartered Bank to pay their pre-war debts to the Taiwan Bank, there could be no validity for the claim that said payments were made to said Taiwan Bank as agent of the Chartered Bank in the Philippines. The outbreak of the war severed all relations of agency between the local branches of the allied banks and the home banks. It follows that if the local branches could no longer act as agents of the home banks, there is no way by which the Taiwan Bank could claim similar agency.

If the converse case be considered — i.e., payments made to depositors of British banks in occupation currency during the occupation — the position appears to be the following. The depositors presented their demands by cheque or otherwise to the banks which were under the control of the Japanese and the liquidators appointed by them. The liquidators, having seized the cash balances, paid out money equivalent to the face value of the demands in occupation currency, which the depositors accepted and could use as de facto money.

Under the circumstances, the writer advances the view that said payments made by the Taiwan Bank on the cash balances of the depositors should be regarded in the same light as payment made by a third party in the discharge of an obligation. It might be said that there was consideration from the bank to the third party in the form of the cash balance. After all, the depositors can have no cause for complaint. They received the money which, though it was in occupation currency, was nevertheless made use of by them as de facto money. The case is different as to the liquidated banks for the reason that they never received the benefits of the payments made in settlement of the liquidated obligations.

That this conclusion is sound may be gathered from the British case, Welby v. Darke (1825 I C & P 557), wherein Abbot, C.J., observed that it would be fraud if, after accepting payment from a third party, a creditor could sue the debtor for the debt. Having drawn on their balances, the banks' creditors may be taken to have sold the proceeds for the occupation currency. Accepting this, they cannot be heard to say that they have not been paid.

10. *Conclusion.*

From the foregoing discussion, the writer has arrived at the conclusion that payment of pre-war debts owing to Ameri-

can and allied banks made to the liquidator bank of Taiwan pursuant to the liquidation ordinance, are not valid and do not discharge said obligations. The effect of such a conclusion would be to hold that the debtors are still liable to said banks with the consequent right of these banks to require payment of said obligations in the full amount thereof, or in such amounts as then remained unpaid, upon resumption of business by said banks in the Philippines.

The writer is not unmindful of the fact that hardship or even injustice may be caused to debtors who in good faith tried to settle their obligations during the occupation. But the rights of the parties must be settled somehow, and in effecting the settlement, it may happen that full justice cannot be given to both. Therefore, the concern of the law should be to effectuate such adjustment of the rights of the parties that would result in the least possible disturbance of the social equipoise.

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The Constitution and Parties

LEGISLATION is always exercised by the majority. Majorities have nothing to fear, for the power is in their hands. They need no written constitutions, defining and circumscribing the powers of the government. Constitutions are only intended to secure the rights of the minority. They are in danger. The power is against them; and the selfish passions often lead us to forget the right.—*JUDGE NATHAN GREEN, Bank of the State v. Cooper, 10 Tenn. 606.*

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