

# Concerning the Haw Pia Case \*

By CHARLES CHENEY HYDE \*\*

THE decision of the Supreme Court of the Philippine Republic in the Haw Pia case constitutes internationally illegal conduct upon the part of the Philippine Government which is productive of a solid claim for compensation in behalf of alien nationals or creditors who suffered loss as a direct consequence of such decision. The Japanese decrees which permitted Haw Pia, a local debtor, fully to satisfy her pre-war peso indebtedness to the local office of a foreign creditor bank by payment in a greatly depreciated Japanese military currency were in violation of International Law. They permitted the debtor to satisfy her debt in a currency not contemplated by the parties and of little or no value at the time of payment. By such payment a mortgage of property given to secure such debt was satisfied of record. The recognition by the Supreme Court of the Philippines of the Japanese decrees which resulted in this harmful-producing act is also a violation of International Law by such court.

This decision will do the utmost harm to American interests in the Philippines unless remedied by Philippine legislation or some kindred process.

In the Haw Pia case there has been confusion of thought manifested in various quarters due in part to failure to observe all the relevant facts in the case, to failure also to observe the character of the practice that has grown up in relation to the privileges of a belligerent occupant especially in relation to uses of legal tender, and to failure to observe the nature of certain acts on the part of the Japanese agency or so-called liquidator in the present case, and finally, to observe the failure of the Philippine Republic to heed certain contractual undertakings which it has accepted. This series of failures has muddled discussions, banished clearness of thought and produced bland and naive conclusions on some points that were irrelevant. Thus, for example, the Court itself in the present case strongly intimated that if the conduct of the Japanese occupant were not confiscatory (and the Court felt that it was not), there was no

---

\* See 23 *Philippine Law Journal*, No. 3, p. 575, for a complete report of the decision of the Supreme Court of the Philippines in *Haw Pia v. China Banking Corporation*, G.R. No. L-554, April 9, 1948. It was ruled that the Japanese military occupants of the Philippines during the last war had the power to order the liquidation of the China Banking Corporation, an enemy-owned institution established in occupied territory; and that payments with Japanese military notes of pre-war obligations made to the liquidator of the bank discharged the obligations.—Editor.

\*\* Hamilton Fish Professor of International Law and Diplomacy, Columbia University; Formerly the Solicitor for the Department of State of the United States of America; Associate of the Institute of International Law; author of *International Law* in three volumes.

reason not to respect the Japanese faith which, by making small denominations of Japanese pesos legal tender, even at a time when they were practically valueless, allowed such pesos to be used as the means of paying a debt due to the creditor or mortgagee. As a matter of fact and of law the impropriety of the conduct here complained of (embracing both that of the Japanese Government including the liquidator, and that of the Government of the Philippines including the Supreme Court) did not depend upon its being satisfactory. The absence of that quality in what is complained of was in reality immaterial. Other factors quite sufficed to reveal its internationally illegal character.

In a word, various aspects of the case have been dealt with by the courts and commentators in a fantastic way that might be called old-fashioned, because of failure to seek light on what state practices ordained, and because ignorance thereof served to bolster up conclusions that could not have been reached if faithful and penetrating studies of that practice had been made. Again, loose treatment of some secondary materials has pointed to neglectful and superficial work. Thus, for example, the views of this writer have more than once been quoted or cited as indicating the rights of a belligerent occupant as such when those views had reference to a different matter, and notably to what a belligerent State might do with respect to alien enemy property found within its own domain. Much more important, "no question has been raised as to the value of the money paid."<sup>1</sup>

"Despite the confusion that exists as to the precise meaning of legal tender, it may be said with substantial accuracy that today the term refers to that quality given money by the appropriate legal authority which will enable a debtor to meet the requirements of contract or the purchaser to meet the obligations of cash transactions, or a person to make payment to his government, in so far as the question of what constitutes a legal money is concerned."<sup>2</sup>

In the present case it appears that the Japanese Government by appropriate decrees in 1942 and 1943 made Japanese military pesos of small denominations legal tender for the payment of debts and that regardless of the lack of consent of existing creditors.

The practice of states shows that belligerent occupants have not infrequently, by resorting to the power to make a particular currency legal tender, caused it to be accepted by all residents of occupied territory even when that currency was somewhat depreciating. Thus at times the interested and offended creditor has found that a debt due to him had shrunk in value when payment was sought to be made by the new legal

---

<sup>1</sup> Mr. Justice Perfecto in his concurring opinion, p. 4.

<sup>2</sup> Walter E. Spahr, "Problems Caused by Misconceptions of the Meaning of Legal Tender, Lawful Money, and Money Receivable for Specified Purposes," *Money and the Law*, New York University V, School of Law, Proceedings, Institute on Money and the Law 1945, p. 33.

tender. On the other hand, the practice of States, as will be noted later, reveals also quite clearly that no belligerent State has been permitted or allowed through the exercise of the legal tender-making power to cause the creditor to accept something that was very greatly depreciated in payment of a debt due him by a local debtor so that payment in the currency of the occupant was less than twenty percent of the existing value of the local currency.

Certain facts in the Haw Pia case stand out. When the Japanese Government in 1942 made its military pesos of small denominations (the largest being ten-peso notes) legal tender, they were in fact of about the same value as Philippine pesos. But in the interval before Mrs. Pia sought to pay her debt to the creditor bank on August 29, 1944, two or three significant things happened. In the first place Japanese pesos shrank in value to such a degree that when the debtor sought to pay her debt they were about three or four percent of the value of a Philippine peso. In fact a hundred and thirty five Philippine pesos would have sufficed if she could have gotten the equivalent value in Japanese pesos.

Next, it is to be noted that vast amounts of Japanese pesos of large denominations had been issued before Mrs. Pia sought to pay her debt. In fact unnumbered one-thousand pesos notes are still in evidence. Yet no proclamation has been seen indicating that the Japanese Government ever declared military notes of denominations higher than ten pesos to be legal tender.<sup>3</sup> Again, it should here be observed that according to information received from a representative of the Far Eastern Commission at Washington, between January 1942 and July 1945, the amount of pesos issued in the Philippines by Japanese authorities was between 6,623,551,000 pesos and 11,148,642,000 pesos.<sup>4</sup> If Mrs. Pia acquired thousand peso Japanese notes through which to pay her debt she would have sought to settle it through a medium that in all probability was not legal tender at the time. Again, quite apart from that circumstance if Mrs. Pia were permitted to satisfy her debt with Japanese pesos, she was permitted to do so with a currency that gave her much, in a debt-paying sense, for practically nothing. This was so obvious that the Taiwan Bank itself, aware of the grotesqueness and injustice of the transaction declined to release the mortgage to her. The precise reason for the declination are not known. Still the liquidator, if it may be called such, aware at the time of the lack of interest of the Japanese Government in the cause of the debtor, possibly found it easy to assume that it was not

---

<sup>3</sup> See Ross, Selph, Carrascoso & Janda of Manila under date of November 4, 1948, to Mr. Andrew Kirkpatrick, New York. The statement in the decision of the Court, p. 18, that "As we have already stated, the Japanese war-notes were issued as legal tender at par with the Philippine peso, and guaranteed by Japanese Government 'which takes full responsibility for their usage having the correct amount to back them up (Proclamation of Jan. 3, 1942)'" can only be applicable, in view of the lack of evidence, to what the Japanese Government did in 1942, and in 1943.

<sup>4</sup> See Annex sent by Major General Frank R. McCoy to the writer, Oct. 22, 1948.

the design of the occupant to rob the creditor for the benefit of the debtor, in a matter in which no public Japanese interest was then involved.

We now come to the question whether a belligerent occupant has the right through such uses of a depressed currency, by making it legal tender and continuing it as such, to oblige a creditor to accept in payment of a debt something that was at the time of payment practically or almost worthless. As has been suggested above, there is no evidence manifested by any practices that have been seen which indicates that occupying powers (other than Japan) have sought by causing a depressed currency to be legal tender, to oblige a creditor to accept in payment of a debt something that was of little value. The scope of the occupant's right depends upon the degree of harm wrought to the creditor by the occupant's decrees.

In a word, the practice which has developed shows a significant and complete abstention from such conduct on the part of occupants and also vigorous and successful restrictions from foreign offended States when it was attempted. In general the abstention and the correction of abuses may be regarded as establishing a general rule of International Law forbidding the occupant to make it possible for the debtor to rob his creditors

---

The wording is as follows:

"B. *Estimate of the Total Amount of Japanese Military Peso Notes Issued in the Philippines*

The only known and available estimate of the total amount of Japanese military peso notes issued in the Philippines places this amount at 7,959,642,000 pesos. This estimate is contained in an article entitled "Estimate of Monthly Issues of Japanese Military Notes in the Philippines" in the *Bulletin of Philippine Statistics* for December 1945 (Vol. 1., No. 2). However, the author of this article, a leading official in the Philippine Bureau of the Census and Statistics, hints at disagreement with the source on which his estimate is based and states that the total amount "could have reached" the sum of 11,148,642,000 pesos.

It should be borne in mind that the two figures given above are merely estimates and are not very well substantiated in the article in question. According to the article, the only definite source of information is a statement furnished to the Office of the Supreme Commander for the Allied Powers in Tokyo on September 29, 1945 by a certain T. Katsube, "Liaison Officer of the Central Liaison Office in Tokyo." According to the article, this statement gives the total of Japanese military peso notes issued by the Southern Region Development Bank (Nampo Kaihatsu Kinko) in the Philippines between July 1, 1942 and December 31, 1944 as 4,873,551,000 pesos and estimates that approximately 250,000,000 pesos were issued by this bank every month from January 1945 through July 1945—thus making the total amount issued by the bank in the period July 1942 through July 1945 approximately 6,623,551,000 pesos. The Filipino author of the article in the *Bulletin of Philippine Statistics* then chooses the apparently arbitrary figure of 1,336,091,000 to represent the amount of Japanese peso currency that was issued in the period January through June 1942 by another Japanese bank in Manila before the establishment of the Southern Region Development Bank. Moreover, this Filipino official reaches the higher total called "possible" in the first paragraph by calling Katsube's estimates for amounts of Japanese peso currency issued in the period January through July 1945 too low and substituting some apparently arbitrary figures of his own.

In conclusion, on the basis of the available evidence, it can merely be stated that the figure for the total amount of Japanese military peso notes issued in the Philippines during the period January 1942 and July 1945 probably lies somewhere between the two figures of approximately 6,623, 551,000 pesos and approximately 11,148,642,000 pesos.

by the satisfaction of a debt through a greatly depreciated and practically worthless currency. Indeed what has taken place amounts to an impressive practice reflecting the creation or acknowledgment of a prohibitive rule of International Law. The general tenor of the Hague Regulations of 1907 is in complete harmony with this limitation of the right of the occupant as thus set forth. Or, to express it differently, those Regulations call for the limitation. Before considering the text of them another matter deserves consideration, for purposes of background.

Belligerent occupation being "essentially provisional" does not serve to transfer sovereignty over the territory controlled. Thus rights of the belligerent occupant during the period of its control over the hostile territory concerned are measured by the circumstance that it is to be regarded as the temporary possessor of what it controls rather than as a conqueror bent on the acquisition of the occupied territory. This must be constantly borne in mind. The fact of the distinction has sufficed to produce a body of law developing the conclusion that normally the chief function of the occupant in the absence of resistance to its authority, and prior to an armistice, is that of the administrator of justice over the area concerned rather than that of a military contestant engaged in an offensive operation, bent on an active endeavor to destroy the enemy, and utilizing its position as occupant for such an end. Thus the occupant is not deemed to be free, even for the purpose of enhancing its economic power, to commit acts that do direct injury to, and are disdainful of the property of enemy persons of any nationality within the occupied area, so long as they do not subject themselves to the imposition of penalties for misbehavior.

This body of law is unique in protecting the inhabitants of the occupied district in their relations with each other such as those, for example, revealed in their contracts and debts, and when no matter of resistance to the power of the occupant is involved. Thus the belligerent occupant by reason of his very achievement in having gained the mastery over a district under his control finds himself in quite a different relation to private property within his actual grasp than does the commander of an army in the field. The common needs or demands of the latter chargeable to military necessity, and for the purpose of protecting a force against attack, or to enable it to engage in an offensive operation, are not likely to be felt by the belligerent occupant who has once established himself in hostile territory. We find that the Hague Regulations which as international common law are controlling, although not all belligerents of the Second World War were signatories, have placed great stress upon the fact of private ownership of property as a basis of a claim for compensation in case of seizure. As the writer has had occasion to say elsewhere: "It is believed that no distinction should be made between tangible and intangible or incorporeal private property, such as debts due to the

inhabitants of the occupied district, with respect to the duty of the belligerent to refrain from confiscation. If the debtor is a private individual residing in that territory and the creditor an inhabitant of the occupied district, no reason is apparent why the occupant should be entitled to cancel the debt."<sup>5</sup> Speaking generally, the belligerent occupant enjoys no such freedom with respect to alien enemy private property within the occupied area as is enjoyed by a belligerent in the treatment of such property as it finds in its own domain.

Now let us examine the text of the Hague Regulations. They serve as a useful and authoritative guide. A faithful commentator has pointed to the vagueness of limitations on the scope of the occupant's governmental power as delineated in the text of the Regulations.<sup>6</sup> Still, there are some definite prohibitions that stand out. Thus, for example it is declared in Art. 43 that "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the law in force in the country."<sup>7</sup> The obligation to respect "the laws in force in the country", "unless absolutely prevented from so doing", would imply an obligation not to wreck the debtor-creditor relation of persons residing in the occupied territory and notably, as in the present case, by rendering practically worthless the duty of a resident debtor to pay a debt to a resident alien creditor. In fact such an obligation may be fairly said to exist and be a requirement of International Law quite apart from the Hague Regulation that has been quoted.

In what immediately follows it is sought to point out what the facts of the international life reveal as to the practice of occupants in the course of recent wars in attempting to control or modify the debtor-creditor relationships of private individuals and particularly of alien residents, within occupied areas, by issuing occupational currency and by making it legal tender.

There is a well known precursor for the collapse of the Japanese military currency in recent times, i.e. the German inflation after World War. I. The leading case was decided by the Reichsgericht on November

<sup>5</sup> Hyde, *Int. Law*, 2 Ed., III, 1895.

<sup>6</sup> Nanette Dembitz Berman in *Federal Bar Journal*, July 1947, Volume 8, pp. 357, 390-391.

<sup>7</sup> Declared R. Lemkin in his *Axis Rule in Occupied Europe, Laws of Occupation—Analysis of Government—Proposal for Redress*, 1944, p. 55: "The occupant violates international law by creating a special currency system in order to enrich himself beyond the limits imposed by the Hague Regulations. He is entitled only to requisitions and contributions for the needs of the army, with due respect for the resources of the occupied country; he cannot legally strip the country of its financial and economic resources by a specially created financial mechanism."

28, 1932.<sup>8</sup> The facts were very similar to those in our case. The debtor-plaintiff, on April 1, 1920, offered to pay a debt which was secured by a mortgage. Acceptance having been refused the debtor filed a claim for entry of satisfaction. The decision was in plaintiff's favor. The German currency was, on April 1, 1920 depreciated by about 90 per cent.<sup>9</sup> The sweeping judicial revaluation was replaced by legislative revaluation less than three months later, i.e. on February 14, 1924.<sup>10</sup>

The evidence is admittedly scant. Collapse of a currency did not occur so frequently that it could be otherwise. Nevertheless the evidence shows convincingly that legislation and courts did not admit the destruction of property invested in loans. This principle of law and equity may not be violated by the Government of the Philippines without a breach of international law. This breach would, it is submitted, never have been thought of if the domestic banks had not been protected by the fact that they did current business and, therefore, the duty to repay deposits at the minimum rate was no burden to them.

At the Peace Conference after the first World War on January 25, 1919, a Commission was appointed "to inquire and to report upon the violations of international law committed by Germany". Material was collected under 32 heads of which number 16 was "Debasement of the currency, and issue of spurious currency."<sup>11</sup> The facts which were deemed by the Commission to be a violation of international law are described in this pamphlet<sup>12</sup> as far as Poland and Serbia are concerned. To mention an example one of the facts is the

"Issue of 862 millions of new coin under the name of 'Polish marks', current only in that part of Russian Poland ruled by the Governor-General of Warsaw. All requisitions were paid for by this means."

The facts in Serbia are more fully known from a letter which the Prime Minister of Serbia, Mr. Pasic, wrote to Mr. Clemenceau on May 15, 1919, as follows:<sup>13</sup>

"The enemy has put in circulation in Serbia about 1,000,000,000 francs of paper money, which is at present without any value. All negotiable property of Serbia which was not destroyed, stolen, or plundered was bought by the enemy authorities and by their na-

<sup>8</sup> Zivilsenat V 31/23, Entscheidungen in Zivilsachen 107, 78-94.

<sup>9</sup> Even depreciation by not much more than one half was deemed sufficient to justify revaluation; Reichsgericht, Dec. 6, 1927, Dec. 15, 1927, and January 16, 1928, Juristische Wochenschrift 1928, 158, 1384, and 1801 and the notes by Mugel, Juristische Wochenschrift 1928, 160 and 494.

<sup>10</sup> Third Emergency Tax Ordinance, Reichsgesetzblatt, 174.

<sup>11</sup> Commission of Responsibilities, Conference of Paris, 1919, Violation of the Laws and Customs of War, Carnegie Endowment for International Peace, Division of International Law, Pamphlet No. 32, Oxford, 1919, p. 18.

<sup>12</sup> p. 43.

<sup>13</sup> Peace Conference Bulletin No. 300, May 22, 1919; reprinted by P. M. Burnett, "Reparations at the Paris Peace Conference, From the Standpoint of the American Delegation", Vol. II, 1940, p. 13, 15.

tionals for that paper money which had been given legal value. On the other hand, the Serbian population was obliged to exchange Serbian bank-notes still in their possession for that paper money; at the time of that forced exchange, the Serbian bank-notes were exchanged for half of their face value, causing bearers a loss of 50%. It is one of the most important and one of the most disastrous damages suffered by Serbia among all those that she has suffered under the yoke of the enemy. The population is therefore now in possession of a large quantity of paper money which is worthless. When these bank-notes were put on the market, their value was guaranteed only by a cash deposit in the proportion of one kreutzer for one crown; as these notes were used in payment for all transactions in occupied Serbia, one can say that they played the part of disguised "bons of requisitions". As it has been admitted, without opposition, that "bons of requisitions" must be reimbursed, we ask that this paper money which had no and has no real monetary value, and which represents really "bons of requisition" should be reimbursed; if this was not done and in view of the mass of those notes which the enemy has put in circulation on our territory, the economic re-awakening of the country will be impossible."

The draft of the First Sub-Committee of the Paris Peace Conference tabulated the categories of damages to be indemnified in 31 sections. Section 22 reads:

"Injury resulting to Allied nations, from the necessity to which they have been put of redeeming monetary instruments and in general all obligations expressed in terms of enemy money held by the inhabitants (public or private persons) of territories which have been in the power *de jure* or *de facto* of the enemy Powers, or held by prisoners of war and interned civilians."<sup>14</sup>

The provision was not incorporated in the final draft because first, apparently Belgium had been able to make an agreement directly with Germany in December, 1918,<sup>15</sup> secondly it was deemed unnecessary to repeat in the Peace Treaty obligations which were clearly established by bilateral prearmistice obligations; thirdly, the remaining obligations of Germany were obligations to the government (after the returning governments had redeemed the currency issued on orders of Germany) rather than obligations to private persons; and fourthly, the damage caused was comparably minor since the value of the mark had only been reduced by 44 per cent.<sup>16</sup>

The full legislative and administrative documentation is accessible in the cases of Belgium and Roumania. By a German decree dated

---

<sup>14</sup> Preliminary Peace Conference Commission on the Reparation of Damage, First Sub-Committee [English Official] Minutes, 116-233; Reprinted by Burnett, II, 529, 539.

<sup>15</sup> Foreign Relations of the United States, Paris Peace Conference, 1919, Vol. IX (1946), p. 527.

<sup>16</sup> For. Rel., op. cit. Vol. V (1944), 53-54, 323, 344-345, 375-376. The figure of 44 per cent is based on a statement by the French Finance Minister Klotz that the value of the mark stood after the reoccupation at 70 French centimes whilst the par value was francs 1.25, op. cit., 54.

January 9, 1915 franc notes to be issued by a Belgian bank, the Societe Generale de Belgique, were declared to be legal tender<sup>17</sup> The notes issued by the Societe Generale were covered by a deposit of marks at the Reichsbank in Berlin amounting at the time of the armistice to 1,600,000,000 marks. By the protocol of Spa agreed upon in December 1918, Germany transferred the 1,600,000,000 marks to the Societe Generale. By the same agreement the right was reserved for the Belgian Government to require the exchange of these marks at the rate of 1.25 Belgian francs—1 mark.<sup>18</sup> Having returned, the Belgian Government exchanged the marks which were in circulation in Belgium including the 1,600,000,000 marks at the rate of 1.25 franc for the mark. The negotiations for indemnification and revaluation with the German Government were protracted over a period of more than ten years but Germany yielded finally to the claim of Belgium in the "Agreement regarding the Marks", signed at Brussels July 13, 1929.<sup>19</sup>

The facts concerning the issue of local currency in Roumania were very similiar. Germany planned the issuance of notes in Roumanian currency which were to be redeemed in case of a victorious peace by the Roumanian Government and in the opposite case by the Reichsbank.<sup>20</sup> The Banca Generala Romana issued 2,114,727,947 lei 91 which were covered by a deposit at the Reichsbank in Berlin amounting to 1,691,782,306 marks.<sup>21</sup> It was mentioned on the back of the notes that the payment was guaranteed by a deposit in marks lying at the Reichsbank.<sup>22</sup> Contrary to the Belgian case the deposit at the Reichsbank was not transferred to Roumania after the armistice. However, Germany recognized her obligation to hold at least the deposit at the disposal of the Roumanian Government.<sup>23</sup> The dispute was settled on November 10, 1928 by an agreement between Germany and Roumania according to which the Reichsbank undertook to aid with the stabilizaton of the Roumanian currency.<sup>24</sup>

It will be observed that in the cases of Belgium and Roumania, Germany had pledged her own currency by depositing the equivalent of the local currency in marks at the Reichsbank.

---

<sup>17</sup> Piranne et Vauthier, *La legislation et l'administration allemande en Belgique*, Paris, New-Haven, 1926, p. 14 et seq.

<sup>18</sup> Kraus and Rodiger, *Urkunden zum Friedensvertrage*, I, 1920, p. 61.

<sup>19</sup> League of Nations, *Treaty Series*, No. 2390.

<sup>20</sup> Minutes of a meeting at the War Office, Berlin, Oct. 29, 1916, *A Memoir Showing the Roumanian Government's Point of View Regarding Germany's Obligation of Refunding the Security for the Bank Notes Issued by the 'Banca Generala Romana'*, p. 32.

<sup>21</sup> Memorandum of the Assessor Delegate of Roumania at the Final Service of the Commission of Reparations, Jan. 1, 1921, *Memoir*, 44-48.

<sup>22</sup> *Id.*, 4. *Id.*, 51-63.

<sup>23</sup> Correspondence between German and Roumanian Governments in the year 1921.

<sup>24</sup> Baron Boris Nolde, *La Monnaie en droit international public*, *Recueil des Cours*, 1929, II, 311.

In the course of World War II, "Allied Military Currency" was issued by the United States and Great Britain in Italy.<sup>25</sup> The denominations consisted of 1, 2, 5, 10, 50, 100, 500 and 1,000 lire. The rate of exchange being one cent to the lira, the value of the highest note was no more than 10 dollars. Soldiers received their pay in this money by which also supplies and materials for the Army were procured. Simultaneously with the issuance of the so-called AM lire an appropriation accounting procedure was set up by the Army to prohibit the possibility that the issuance of such currency would have the effect of increasing the Army's appropriation beyond that provided by the Congress. AM lire were not only disbursed for wages to troops and purchases of supplies but also for payment of local government employeas, maintenance of hospitals and schools, and loans to municipalities and banks.<sup>26</sup>

Apparently it was planned at first to leave the redemption of that latter category of issuance to the Italian authorities. Obviously this attitude was in accordance with the Rules of the Hague Convention. However, it seems that the reserve which was set up in the Autumn of 1944 was designed to redeem also this category of notes.<sup>27</sup>

The purpose, degree and measures by which inflation is prevented are decisive of the propriety of what is done. What the American authorities planned to do may be described in the words of the Treasury opinion noted above.<sup>28</sup>

"We shall undoubtedly supply the inhabitants with more goods than we take from them, and our whole aim will be to improve economic conditions in occupied areas, rather than use those areas for our own benefit. Our announced program is one of relief and rehabilitation rather than one of exploitation.

As long as the wealth of the occupied territory is not impaired, and is, in fact, enhanced by our military occupation, through a net gain in useful goods, the currency is protected against the real inflation Germany is imposing by draining off economic wealth.

As long as we follow sound policies of taxation in the occupied territory, and protect the economic structure against price inflation, we will maintain the value of the currency against any depreciation due to internal causes."

<sup>25</sup> The facts have been described by Mr. Donald L. Kemmerer, Assistant Professor of Economics, University of Illinois, *Allied Military Currency in Italy*, *The Commercial and Financial Chronicle*, Sept. 21, 1944 and address on January 16, 1945, *Allied Military Currency in Constitutional and International Law, Money and the Law, Proceedings, The Institute on Money and the Law 1945*, New York University, 1945, p. 83-92.

<sup>26</sup> Treasury Memorandum "Re Opinion on the Legality of the Issuance of AMG currency in Sicily", December 23, 1943, *Occupation Currency Transactions, Hearings Before the Committees on Appropriations, Armed Services and Banking and Currency, United States Senate, 80th Congress, First Session*, p. 73, 82; Navy Department, Office of the Chief of Naval Operations, *Civil Affairs Studies, I. Illustrative Cases from Military Occupation*, 10 June 1944, 51.

<sup>27</sup> See Kemmerer, *loc. cit.*, 90.

<sup>28</sup> n. l. p. 82.

The United States lived up to these aims as need not to be proved in our days of the Marshall Plan and the Foreign Economic Administration.

The foregoing experiences of Germany with respect to its conduct in the First World War and also the later experience of the Allied Powers embracing the United States are self-explanatory. They are referred to at some length because they offer no precedent for what Japan sought to do as an occupant of the Philippines.

In the present case the Bank of Taiwan is constantly referred to as the "Liquidator" of the China Banking Corporation.<sup>29</sup> This leads to the question whether it properly or adequately performed its function as liquidator. The liquidation of a corporation is synonymous with the winding up of the affairs of the corporation. There is no proper or complete liquidation in which debts to creditors are not settled and paid as well as assets reduced to a liquid state.<sup>30</sup> In the present case, only about ten per cent of the deposits of foreign banks were allowed to be withdrawn.

The conduct of the liquidator in the present case had also another significance. Its retention of money representing debts due by foreign banks to depositors served in fact to be a convenient means of preserving them so that they would be subjected to the dangers of inflation and deterioration of currency which the Japanese Government might later apply. Thus here was a process whereby the occupant held within its grip something which later by a method akin to confiscation it could ruin the value of, contrary to the injunctions of the Hague Regulations. Looked at in this way, the conduct of the liquidator as an agency of the Japanese Government together with the later action of that Government united jointly to facilitate and also effectuate the commission of an international wrong. That wrong was of a type which Articles 43 and 46 of the Hague Regulations of 1907 appeared to forbid.

A third conclusion is to be drawn from the same fact. There would be a discrimination against non-Filipinos not permissible pursuant to

<sup>29</sup> The decision of the Court, p. 1.

<sup>30</sup> Soviet government confiscating and appropriating properties of dissolved Russian insurance companies did not become "liquidator" of assets of such corporations so that its title to New York assets of Russian corporations and subsequent assignment to United States would be recognized in courts of United States, "liquidation" of corporation implying winding up and distribution of assets among creditors and stockholders. *United States v. Bank of New York & Trust Co.*, D.C. N.Y., 10 F. Supp. 269, 271."

See also: *New York Title & Mortgage Co. v. Friedman*, 276 N.Y.S. 72, 153 Misc. 697; *Rohr v. Stanton Trust & Savings Bank of Great Falls*, 245 P. 947, 76 Mont. 248; *Gilna v. Barker*, 254 P. 174, 177, 78 Mont. 357; *In re Silkman*, 105 N.Y.S. 872, 875121 App. Div. 202; *People ex rel. Palmer v. Acme Plate Glass Mut. Ins. Co.*, 10 N.E. 2d 988, 991, 292 Ill. App. 275; *L. D. Garrett Co. v. Morton*, 71 N.Y.S. 17, 19, 35 Misc. 10; *Wilson v. Superior Court in and for Santa Clara County*, 43 P. 2d 286, 288, 2 Cal. 2d 632; *Gibson v. American Ry. Express Co.*, 193 N.W. 274, 278, 195 Iowa, 1126; *Northwest Bancorporation v. Commissioner of Internal Revenue*, C.C.A. 8, 88 F. 2d 293, 296; *Henry v. Alexander*, 194 S.E. 649, 651, 186 S.C. 17; *Young v. Blandin*, 9 N.H. 2d 313, 316, 215 Minn. 111; *Gorn & Hardart Banking Co. v. United States*, D.C. Pa., 34 F. Supp. 89, 90.

international law. Filipinos, axis nationals and neutrals were able to utilize the payments received by them at a time when they had value. The foreign banks on the other hand could not pay more than ten per cent of their deposits and remained indebted to their depositors in full.

Returning to the Hague Regulations, it will be noted that Article 46 declared that "private property \* \* \* \* \* must be respected". Debts, as will be observed later, may be fairly deemed to be embraced within the concept of property. At least a kindred obligation that rests upon the occupant for the benefit of the residence of the occupied territory.

In Article 53 it is said that "An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war." The permission here given to the occupant is far from granting a privilege permitting interference in the financial relations between debtor and creditor who happen to reside within the occupied area. While the United States Rules of Land Warfare printed in 1940 quote the several injunctions without comment, expressing no attempt to construe them any narrow way, there is a comment on the occupant's privilege of seizure of private property by way of military necessity for the support of other benefits of the Army or of the occupant. (§330) It may be observed in passing that even this interpretation is a purely military one, and not necessarily decisive of the design of the parties to the Hague Regulation.

The main point here to be noted is the definite and clean-cut obligation imposed by the Hague Regulations upon the belligerent occupant as such to respect private property of occupants of the district occupied and by implication the contractual relations existing between them. It is in the light of this background that it becomes important to observe in a judicial spirit how far the acts complained of in the *Haw Pia Case* by the Japanese agency coupled with the subsequent action taken by the Supreme Court of the Philippine Republic serve to defy the broad injunction that has been laid down.

In the Second World War Germany did not issue military currency in occupied territories but caused local currency to be issued to an excessive degree. For example in France payment of occupation costs was required at the rate of

Fr. Fcs. 4000,000,000 a day from 25 June, 1940 to 30 April, 1941;

Fr. fcs. 300,000,000 a day from 1 May, 1941 to 10 November, 1942;  
and

Fr. fcs. 500,000,000 a day from 11 November, 1942 to 11 August, 1944.<sup>31</sup>

Some facts with respect to currency and inflation in France, Belgium, Netherlands and Denmark may be seen from the table which follows:

<sup>31</sup> Bank for International Settlements, 14th Annual Report, 1st April, 1943—31st March 1944 (1944), 216.

OCCUPATION COSTS, NOTE CIRCULATION, BANK DEPOSITS  
DEVELOPMENT DURING GERMAN OCCUPATION  
IN WORLD WAR II.<sup>32</sup>

1	2	3	4	5	6	7	8
	Occupation Costs <sup>33</sup> (Billions)	Note Circulation Increase (Billions)	Percent	Bank Deposits Increase (Billions)	Percent	Percent of ap- preciation of dollar ex- change rates, July 31, 1945 compared with August 24, 1945	Percentage by which the in- crease in the wholesale price index exceed- ed that of U. S. mid- dle 1939 with 1939
France	865 Fr. fcs	from 151 Fr. fcs		from 137 Fr. fcs			
(Domestic expenditure	800 " )	to 640 "	324	to 414 "	202	24	217
Belgium	143 B. fcs	from 28 B. fcs		from 27.6 B. fcs			
(Domestic expenditure	92.5 " )	to 104 "	272	to 70.3 "	155	33	Not available
The Netherlands	10.38 Fl.	from 1.15 Fl.		from 3.16 Fl.			
(Domestic expenditure	7.08 " )	to 4.38 "	281	to 6.37 "	102	30	162
Denmark	5.15 D. Kr.	from .6 D. Kr.		from 4.706 D. Kr.			
(Domestic expenditure	3.926 " )	to 1.658 "	176	to 9.128 "	94	0	67

<sup>32</sup> Columns 1 to 6 are adapted from the 14th Annual Report, 213-237. Columns 7 and 8 from Frank A. Southard, Jr., Some European Currency and Exchange Experiences: 1943-1946, Princeton University, International Finance Section, Department of Economics and Social Institutions, Essays in International Finance, No. 7 (1946), 9. The figures stated by Mr. Southard are calculated from the 15th Annual Report of the Bank for International Settlements, The Statist, The Economist, and the Federal Reserve Bulletin.

<sup>33</sup> including billeting, requisitions, and clearing deficit.

Contrary to Germany's attitude in the first World War the issuance of local currency in the second was not backed by a deposit of Reichsmarks. The inflationary consequences were considerable but certainly smaller than might have been expected. The principal growth of inflation took place in France after the liberation while it was prevented by legislative measures in Belgium<sup>34</sup> and in Denmark.<sup>35</sup>

The Japanese military administration, on January 3, 1942, proclaimed that "war-notes (military pass-money) endorsed and issued by the Imperial Japanese Government" in denominations up to ten pesos should be legal tender. The Kokuji No. 8, dated July 18, 1943, did not go further. Nevertheless notes of higher denomination were issued. Even thousand-peso notes without number are in evidence. Totally disregarding the needs of the national economy of the Philippines, the Japanese military administration issued notes by which the pre-war circulation of notes of the Philippines was increased at least by more than 2,750 per cent. As noted above, an "Estimate of the Total Amount of Japanese Military Peso Notes Issued in the Philippines" which the writer received from the Far Eastern Commission, Washington, D.C. will be found in the Annex (attached to footnote to page 144 above). Whether 6,623,551,000 or 7,959,642,000 or 11,148,642,000 military notes were issued is not decisive for our problem. The circulation of notes of the Philippines before the war was 230,000,000 pesos.<sup>36</sup> Hence, the increase of circulating notes of all kinds was 2,780, 3,361, or 4,747 per cent. A comparison with the increase in France, Belgium, the Netherlands and Denmark shows how excessive and utterly reprehensible the attitude of the Japanese occupation authorities was.

Where the inflation reached the same degree as in the Philippines, i.e. the other countries which are occupied by the Japanese—Hong Kong, the Colony of Singapore, and the Netherlands Indies—the situation was remedied by legislation after the victorious government returned. Pursuant to these statutes<sup>37</sup> payments which were made on pre-occupation debts during the occupation are not credited with the face value but only according to a scale. These scales are different in the three countries, although the principle according to which they were found is the same i.e. the value of the occupation currency measured by the value of the territory's own currency during the successive months of the occupation. Some details may be seen in the table which follows.

<sup>34</sup> See 14th Annual Report, 226-227.

<sup>35</sup> See 14th Annual Report, 234-235.

<sup>36</sup> Sixth Annual Report of the High Commissioner of the Philippines to the President and Congress of the United States, covering the Fiscal Period July 1, 1941—June 30, 1942, as quoted by Mr. Justice Hilado, p. 30.

<sup>37</sup> Hong Kong, June 4, (1948), 90 Supplement to the Hong Kong Government Gazette, 143 to 156; Colony of Singapore, publication of March 11, 1949, Supplement to the Government Gazette, 1949, 331 to 345; Netherlands-Indies, May 3, 1947. Staatsblad van Nederlandsch-Indie, 1947, No. 70, p. 1, 23 to 29.

Percentage Credited to Pre-occupation Debts  
When Payments were made in Occupation Currency <sup>38</sup>

1	2	3	4	5
	Netherlands Indies	Hong Kong	Colony of Singapore	Philippines
1942				
December	100	100	100	100
1943				
January	100	75	95	95
February	100	75	85	91
March	100	75	76	87
April	100	75	66	83
May	100	70	56	80
June	100	65	45	77
July	100	60	39	71
August	100	49	35	67
September	90	40	33	63
October	80	35	31	59
November	70	35	30	56
December	60	35	26	40
1944				
January	50	33	22	25
February	50	25	17	20
March	50	20	13	17
April	50	15	12	11
May	50	15	11	8
June	50	11	11	7
July	50	10	10	5
August	50	8	8	4
September	50	6	7	3.3
October	40	5	7	2.5
November	30	4	6	1.7

<sup>38</sup> Col. 2 taken from Art. 52 of the statute mentioned before; col. 3 and 4 computed from the schedule of the two statutes also mentioned before; col. 5 computed from the so-called Ballantyne Formula which was proposed but did not become the law of the Philippines.

Mrs. Haw Pia owed 4,967.13 pesos before the occupation began. This debt was paid in military notes as follows:

103.35 on October 7, 1942;  
2,000 in rates of 100.00 in the following 20 months;  
400 on July 31, 1944;  
1,000 on August 9, 1944;  
1,011.92 on August 29, 1944 ;and  
451.86 on August 29, 1944

None of Mrs. Pia's payments which were made after December 1942 would be credited to her on the face value if the transactions had taken place in Hong Kong, Singapore or the Netherlands Indies, although the phrasing of the three statutes is different.

Section 3 (2) of the Hong Kong statute provides that payments which were made in occupation currency shall be revalued in accordance with the scale mentioned above and shall be a valid discharge of such debt only to the extent of such revaluation . . . . .

"(ii) if due was not demanded by the creditor or by his agent on his behalf (a custodian or a liquidator are not put on a par) and was not payable under a contract the parties to which expressly stipulated that it should be of the essence of such contract that payment should be made on a date certain or (iii) if due and demanded was made within three months of such demand."

The provision of the statute of Singapore which is interesting to us is Section 4 (2) (c). Payments which were made in occupation currency to a Custodian or liquidation officer in respect of a pre-occupation capital debt exceeding two hundred and fifty dollars in amount were to be revalued except where such payments was caused by duress or coercion (committed by the Custodian, a liquidation officer or a creditor against a debtor).

According to Articles 52 and 58 of the statute of the Netherlands Indies any payment made during the occupation in occupation currency and all book transactions are to be revalued even if such payments were made in accordance with a judgment by a court, an arbitration award or a private settlement.

According to the Ballantyne formula, which ought to be the law, Mrs. Pia would be credited only with a payment of 1359.00 in Filipino pesos; according to the laws of Singapore, Hong Kong and the Netherlands Indies with payments of 1233.47; 1348.77 and 3,165.24 pesos respectively.

Mrs. Pia was not the only one who took advantage of the depreciating currency in the Philippines. The following percentages of the loans owed to the Manila Branch of the National City Bank were paid to the Japanese liquidator in 1944:

January . . . . .	1.42
February . . . . .	.77
March . . . . .	.76
April . . . . .	.74
May . . . . .	.89
June . . . . .	14.17
July . . . . .	12.45
August . . . . .	2.64
September . . . . .	4.00
October . . . . .	5.20
November . . . . .	9.69

It will be observed that the payments made in the first five months were monthly .92 of one per cent. In June the percentage jumped to 14.17. The average in the six months from June to November 1944 was 8.03 per cent. The cause of the sharp increase of payments is not to be attributed to any known and new demand of the liquidator.

It may be assumed that the Government of the Philippines would have enacted a statute similar to the three of the other East Asiatic countries if it had not been able to protect its own banks by the minimum balance rule thus discriminating against the foreign banks which had not been able to do current business during the occupation.<sup>89</sup>

The refusal of the liquidator, the Bank of Taiwan, twice to release the mortgage in the Haw Pia case stands out as a significant fact. Of course, it is possible that the liquidator received payment of 4,563.78 pesos made by the debtor in August 1944 merely for what it was worth. It may have been known to the liquidator at the time that Japanese military pesos of larger denominations than ten peso notes had not been made legal tender, or it may have doubted whether they had been tender. Hence the liquidator may have felt obliged, in case payment were made in such larger Japanese notes, not to regard them as adequate for the settlement of the debt. Or, the liquidator may have been influenced by the vastness and impropriety of the Japanese acts of inflation which if allowed to enable the debtor to pay her debt therewith, would have amounted to sheer robbery of the creditor, both violative of precedent and hurtful to the prestige of the Japanese Government. In a word, there are numerous reasons any one of which might have served to put the liquidator on its guard, and to cause it to leave the matter to its own later decision. Be that as it may, it is a reasonable assumption that shrewd debtors ran to the windows of the Bank of Taiwan in the attempt to take advantage of the decrease of the value of the occupation currency, one peso of the Philippines being then equivalent to at least fifteen pesos of the military notes.

<sup>89</sup> See page 152.

We now come to an important contractual undertaking by the Philippine Republic. The Government of the Philippines undertook to invalidate all Japanese dealings by which property in which nationals of United Nations were interested was hurt by violations of rules of International Law. Evidence of this undertaking is seen in the "Inter-Allied Declaration Against Acts of Dispossession Committed in Territories under Enemy Occupation or Control (with covering Statement by His Majesty's Government in the United Kingdom and Explanatory Memorandum issued by the Parties to the Declaration)". London, January 5, 1943,<sup>40</sup> to which the Government of the Commonwealth of the Philippines adhered on January 19, 1943.<sup>41</sup>

The explanatory memorandum on the "meaning, scope and application" of the Inter-Allied Declaration was issued by the signatories of the Inter-Allied Declaration. Nevertheless, the memorandum has been published, as far as the writer is aware, only by the British Government in a Command Paper. The covering statement of the British Government stated it to be the aim of the Inter-Allied Declaration to combat the policy of the enemy and

"to bring the whole economy of the subjugated countries under control so that they must slave to enrich and strengthen their oppressors."

It was said by the Allied Governments to be

"important to leave no doubt whatsoever of their resolution not to accept or tolerate the misdeeds of their enemies in the field of property, however, these may be cloaked."

In the Declaration itself the Allied Governments stated their intention

"to do their utmost to defeat the methods of dispossession practiced by the Governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled."

Accordingly these Governments reserved

"all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected."

<sup>40</sup> Cmd. 6418, Miscellaneous No. 1 (1943).

<sup>41</sup> Manuel L. Quezon to Mr. Cordell Hull, Secretary of State reprinted (1943) 3 *The United Nations Review*, 78.

In the explanatory note, issued by the Parties the following statement was made:

"It is obviously impossible for a general declaration of this nature to define exactly the action which will require to be taken when victory has been won and the occupation or control of foreign territory by the enemy has been brought to an end. Dispossession has taken many forms and all will require consideration in the light of circumstances which may well vary from country to country."

"In so far as transfers or dealings are confined in their scope to the territory of a particular country, the procedure of examination and the decision reached regarding their invalidation will fall to be undertaken by the legitimate Government of the country concerned on its return. The Declaration marks, however, the solidarity in this important matter of all the participating Governments and of the French National Committee, and this means that they are mutually pledged to assist one another as may be required."

"The expression of solidarity between the parties also means that they are agreed so far as possible to follow in this matter similar lines of policy, without derogation to their national sovereignty and having regard to the differences prevailing in the various countries. The parties making the Declaration have accordingly decided as a first step in this direction to establish a committee of experts, who will consider the scope and sufficiency of the existing legislation of the Allied countries concerned for the purpose of invalidating transfers or dealings of the nature indicated in the Declaration in all proper cases."

It is not here contended that the Allied Nations contemplated on January 5, 1943 the consideration of payments made to banks in the currency of the occupied European countries as invalid. The inflation in these countries had not progressed to a degree that such thoughts came to the minds of the signatories. It is here contended, however, that property is "dispossessed" within the meaning of the Inter-Allied Declaration where the degree of inflation is as great as that indicated in the figure in the table above given on page 155 of this document.

If this be a correct statement, the governments participating in the agreement of January 5, 1943, found themselves legally obliged to reach a determination that debtors were not relieved from liability by payments of debts to occupation authorities, when through a larger inflation such payment would amount to practical robbery of the creditor for the benefit of the debtor.

International Law was not changed by the Inter-Allied Declaration of January 5, 1943, but was simply applied to the changing economic warfare of the enemy. It is significant that in that application the signatories pledged themselves to invalidate acts of the enemy in consequence of which the rights of their several nationals were violated. The procedure

was left to the returning States or Governments; likewise the setting of limits in borderline cases. But where there became evident a clear violation of the injunction of International Law, that violation was to be recognized and was to be remedied by the returning entity or State. Here was acknowledged an obligation by the respective contracting parties to remedy with respect to each other, lawless conduct sustained by the nationals of any of them at the hands of the enemy.

The Inter-Allied Declaration of January 5, 1493, in the light of the official interpretation given to it, has a direct bearing upon the obligation assumed by the Philippine Republic in the *Haw Pia* case. It is evidence of definite undertaking by the Republic to undo the consequences of acts mutually regarded as wrongful, and manifested in the inflationary conduct of Japan that was contemptuous of the rights of alien creditors growing out of debts due them by Philippine debtors. Of direct consequence of the agreement was the obligation on the part of the Republic by some appropriate process to permit no local agency, judicial or other, to give effect to the Japanese decrees. Technically the methods of so doing were unimportant. An appropriate legislative enactment would have been a salutary step. Again, the executive authorities of the Republic by merely informing the judiciary of what had taken place would have in all probability sufficed to cause the Court to regard the Japanese action as invalid.<sup>42</sup> In a word, the whole Philippine Republic was bound internationally by the terms of the international agreement to which it was a party. Thus, when the Supreme Court, through ignorance of what had taken place, or for any other reason, regarded as enforceable or valid the Japanese edicts, it made itself the means by which its own country violated an international obligation laid down by contract. It thereby established a valid claim in behalf of the alien victims who were nationals of one of the contracting parties for compensation on account of their loss. It may be observed also that this contractual obligation of the Philippine Republic is a continuous one, and remains a warning to the Republic lest its courts or other agencies, by continuing to ignore what has been agreed upon, thus enlarge the fiscal obligations of the Republic, if those bodies proceed hereafter to enforce the Japanese inflationary edicts.

It has been pointed out that the Declaration of January 5, 1943 did not constitute new international law but adapted the existing international law to changing conditions.<sup>43</sup> That adaptation revealed the sharp obligation of the government of the Philippines to do everything in its power to re-establish and gain respect for the debts as owed before the beginning of the occupation. But it must not be forgotten

<sup>42</sup> The Declaration of January 5, 1943 is not mentioned in the Opinion of the Court in the *Haw Pia* case. Mr. Justice Hilado, whose dissent was filed two weeks later, refers on page 46 of his opinion to the adherence by the Government of the Philippines by quoting Martin Domke's work on *Trading with the Enemy in World War II*.

<sup>43</sup> See page 163.

that a like obligation sprang also from the provisions of international law as they were known before the Declaration of January 5, 1943 was accepted.

As suggested above on page 152 contractual obligations, embracing, of course, debts between residents of an occupied area, must be considered as property, and as such within the purview of the Hague Regulations, although they are not in terms therein distinguished from other kinds of property. Reference may be made in this connection to the wording of the Treaty of Versailles, of June 28, 1919,—“Property, Rights and Interests.”<sup>44</sup> This wording was taken over by the Peace Treaties with the satellites.<sup>45</sup> That language was chosen in order to exclude all doubts. The word “property” would have been sufficient. It is interesting in this connection to note the text of Article 79, Part VII, Sec. II, (1) of the Peace Treaty with Italy, signed on January 20, 1947:

“Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which on the coming into force of the present Treaty are within its territory and belong to Italy or to Italian nationals and to apply such property or the proceeds thereof to such purposes as it may desire.

\* \* \* \* \* All Italian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.”

It is inconceivable that a returning sovereign should be bound by the requirements of international law to recognize as lawful those acts of its enemy while a belligerent occupant, which in the light of practice were contemptuous of what international law forbade. Moreover it is unthinkable that a returning sovereign would allege that, in dealing with the property of its co-belligerents in an occupied area, it possessed a freedom that was not yielded to its enemy.<sup>46</sup>

In the *Haw Pia* case the Court laid stress on the terms of the American Trading with the Enemy Act. In that document the words “United States” were defined by the Act as meaning

“all land and water, continental or insular, in any way within the the jurisdiction of the United States or occupied by the military or naval forces thereof.”

Section 2 in which the definitions are lodged has not been changed from the time when the Trading with the Enemy Act went into force on October 6, 1917<sup>47</sup> until the present time. When the Trading with the Enemy

<sup>44</sup> Article 297 (b), U.S. Treaty Vol. III, 3452.

<sup>45</sup> See, e.g. Treaty with Italy, Art. 79 (1).

<sup>46</sup> The text-writers do not mention the problem because no co-belligerent ever thought that it might be entitled to violate property owned by nationals of a co-belligerent by recognizing wrongful acts of the enemy and taking advantage of such recognition in favor of the nationals of the returning Government and to the detriment of nationals of co-belligerents.

<sup>47</sup> c. 106, §2, 40 Stat. 411.

Act went into force, this provision was not in contradiction of the Hague Rules of 1907, since the Alien Property Custodian was not entitled to do more than control and sequester. When the Custodian became entitled to do more on November 4, 1918,<sup>48</sup> the First World War was practically ended and nobody thought of utilizing the Trading with the Enemy Act as a justifier of governmental activities within the occupied territory of Germany. Nor did any official or commentator think of applying the Act to events in occupied territory (Italy or Germany) in the Second World War.<sup>49</sup>

No tangible property or debts owed by debtors resident in Germany (or other territories occupied by the American Army) to German banks or other creditors of German or other nationality resident in Germany were taken under control or into custody by the American Alien Property Custodian or by the Office of Alien Property, of the Department of Justice.<sup>50</sup> This is an important factor in the present case, which has been completely lost sight of by our opponents. There was solid reason for this abstention by the Alien Property Custodian—namely the terms of the Hague Regulations of 1907, which like other contractual and non-contractual requirements of International Law were as a part of the law of the land<sup>51</sup> directly binding upon all agencies of the United States, and automatically restrained the freedom of the Alien Property Custodian.

What follows is not by way of summary or recapitulation, but merely a brief statement of the several difficulties and improprieties in the *Haw Pia* case that have been noted above. They vary in importance and significance; but they dovetail together in such a way as to reveal and accentuate the wrongful conduct of both the occupant and the Court, as well as the resulting responsibility that has been thrust upon the Republic.

It is not shown that the debtor sought to pay her debt to the liquidator in denominations of Japanese pesos that had been made legal tender by the occupant. The liquidator did not fulfill its normal functions as such because it did not pay, except in small part, debts of foreign banks due to depositors. The liquidator, for reasons of its own, declined to release

<sup>48</sup> c. 201, § 1, 40 Stat. 1020, changing the wording of § 7 (6) of the Trading with Enemy Act.

<sup>49</sup> Only property outside of Germany is embraced within The Law No. 5, on Vesting and Marshaling of German External Assets, issued October 30, 1945, by the Allied Control Council. It will also be observed that Germany had agreed to all conditions to be imposed upon her by the victorious powers in the so-called "Unconditional Surrender" of May 7 and 8, 1945, in which the provisions number 4 are as follows: "This act of military surrender is without prejudice to and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to Germany and the German armed forces as a whole." *The Axis in Defeat, A Collection of Documents on American Policy Toward Germany and Japan*, Dept. of State Publ. 2433 (1947), 23, 24.

<sup>50</sup> The Philippines may not be considered as enemy territory occupied by the American Army. They were regarded as part of the United States up to July 4, 1946.

<sup>51</sup> *The Paquete Habana*, 175 U.S. 677, 700; *Skiriotes v. Florida*, 313 U.S. 69, 72.

the mortgage to the mortgagee. In consequence of the inflation that ensued, a payment of the debt in Japanese pesos, at the time of attempted payment in August, 1944, spelled a satisfaction in worthless currency that to all intent and purposes robbed the creditor of its property, and was thus sharply contrary to what previous practices had ordained and was without precedent. It violated also the spirit of the Hague Regulations of 1907, which notably in Article 43 stood for the very antithesis of such action, obliging the occupant to take all measures in its power to restore and ensure, as far as possible, public law and safety. Finally, through acceptance of the Inter-Allied Declaration of January 5, 1943, as officially interpreted, the Republic made definite commitments obliging it to undo by some appropriate process the harm done by the Japanese enactments. The Republic failed to satisfy this obligation, and found itself contractually delinquent when its tribunal proceeded to release the mortgage.

\* \* \*

#### REPUBLICANISM

Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchized citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his government and whenever possible, it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it.

MAYA v. DEL FIERRO  
G.R. No. 46863