

HAW PIA, PLAINTIFF AND APPELLANT, VS. THE CHINA BANKING CORPORATION, DEFENDANT AND APPELLEE.

G.R. No. L-554. April 09, 1948

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0881540607af/>

FERIA, J.:

Plaintiff-appellant instituted this action in the Court of First Instance of Manila against the defendant-appellee, China Banking Corporation, to compel the latter to execute a deed of cancellation of the mortgage on the property described in the complaint, and to deliver to the said plaintiff the Transfer Certificate of Title No. 47634 of the Register of Deeds of Manila, with the mortgage annotated therein already cancelled, as well as to pay the plaintiff the sum of P1,000.00 for damages as attorney's fees and to pay the costs of the suit. The cause of action is that the plaintiff's indebtedness to the China Banking Corporation in the sum of P5,103.35 by way of overdraft in current account payable on demand together with its interests, has been completely paid, on different occasions, from October 7, 1942, to August 29, 1944, to the defendant China Banking Corporation through the defendant Bank of Taiwan, Ltd., that was appointed by the Japanese Military authorities as liquidator of the China Banking Corporation.

Upon having been served with summons the defendant-appellee China Banking Corporation made a demand from the plaintiff-appellant for the payment of the sum of P5,103.35 with interests, representing the debt of the said appellant, and in the answer it set up a counter claim against the plaintiff-appellant demanding the payment, within 90 days from and after the date Executive Order No. 32 on moratorium, series of 1945, has been repealed, of said amount due from the latter to the former by way of overdraft together with its interests at the rate of 9 per cent per annum to be compounded monthly, and the additional sum of P1,500 as attorney's fees and the costs of the suit.

After the hearing of the case, the trial court rendered a decision holding that, as there was no evidence presented to show that the defendant China Banking Corporation had authorized the Bank of Taiwan, Ltd., to accept the payment of the plaintiff's debt to the said defendant, and said Bank of Taiwan, as an agency of the Japanese invading army, was not authorized under the international law to liquidate the business of the China Banking Corporation, the payment has not extinguished the indebtedness of the plaintiff to the said defendant under article 1162 of the Civil Code. The court absolved the defendant China Banking Corporation from the complaint of the plaintiff, and sentenced the latter to pay the former the sum of P5,103.35 with interests within the period of 90 days from and after the above mentioned Executive Order No. 32 had been repealed or set aside, and ordered that, if the plaintiff failed to pay it within the said period, the property mortgaged shall be sold at public auction and the proceeds of the sale applied to the payment of said obligation. The plaintiff appealed from the decision to this Court.

The appellant's assignments of error may be reduced to two, to wit: First, whether or not the Japanese Military Administration had authority to order the liquidation or winding up of the business of defendant-appellee China Banking Corporation, and to appoint the Bank of Taiwan liquidator authorized as such to accept the payment by

the plaintiff-appellant to said defendant-appellee; and second, whether or not such payment by the plaintiff-appellant has extinguished her obligation to said defendant-appellee.

(1) As to the first question, we are of the considered opinion, and therefore hold, that the Japanese military authorities had power, under the international law, to order the liquidation of the China Banking Corporation and to appoint and authorize the Bank of Taiwan as liquidator to accept the payment in question, because such liquidation is not a confiscation of the properties of the bank appellee, but a mere sequestration of its assets which required the liquidation or winding up of the business of said bank. All the arguments to the contrary in support of the decision appealed from are predicated upon the erroneous assumption that the liquidation or winding up of the affairs of the China Banking Corporation, in order to determine its liabilities and net assets to be sequestered or controlled, was an act of confiscation or appropriation of private property contrary to Article 46, section III of the Hague Regulations of 1907.

The provisions of the Hague Regulations, section III, on Military Authority over Hostile Territory, which is a part of the Hague Convention respecting the laws and customs of war on land, are intended to serve as a general rule of conduct for the belligerents in their relations with each other and with the inhabitants, but as it had not been found possible then to concert regulations covering all the circumstances which occur in practice, and on the other hand it could not have been intended by the High Contracting Parties that the unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders, it was agreed that "Until a complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of international law, as they result for the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience."

Before the Hague Convention, it was the usage or practice to allow or permit the confiscation or appropriation by the belligerent occupant not only of public but also of private property of the enemy in a territory occupied by the belligerent hostile army; and as such usage or practice was allowed, a fortiori, any other act short of confiscation was necessarily permitted. Section III of the Hague Regulations only prohibits the confiscation of private property by order of the military authorities (article 46), and pillage or stealing and thievery thereof by individuals (article 47); and as regards public property, article 53 provides that cash funds, and property liable to requisition and all other movable property belonging to the State susceptible of military use or operation, may be confiscated or taken possession of as a booty and utilized for the benefit of the invader's government (II Oppenheim, 8th ed. section 137; 320 & 321, War Department; Basic Field Manual, Rules of Land Warfare FM 27-10). The belligerents in their effort to control enemy property within their jurisdiction or in territories occupied by their armed forces in order to avoid their use in aid of the enemy and to increase their own resources, after the Hague Convention and specially during the first World War, had to resort to such measures of prevention which do not amount to a straight confiscation, as freezing, blocking, placing under custody and sequestering the enemy private property. Such acts are recognized as not repugnant to the provisions of Article 46 or any other article of the Hague Regulations by well-known writers on International Law, and are authorized in the Army and Navy Manual of Military Government and Civil Affairs not only of the United States, but also in similar manuals of Army and Navy of other civilized countries, as well as in the Trading with the Enemy Acts of said countries.

Hyde in his International Law chiefly as interpreted and applied by the United States, Vol. 3, 6th ed., p. 1727, has the following to say:

"In examining the efforts of a belligerent to control in various ways property within its domain that has such a connection with nationals of the enemy that it may be fairly regarded as enemy property, it is important to inquire whether the attempt is made to appropriate property without compensation, divesting him not only of

title, but also of any right or interest in what is taken, without prospect of reimbursement, or whether those efforts constitute an assumption of control which, regardless of any transfer of title, is not designed to produce such a deprivation. The character of the belligerent acts in the two situations is not identical. To refer to both as confiscatory is not productive of clearness of thought, unless a loose and broad signification be attached to the term 'confiscation.' The point to be noted is that a belligerent may in fact deprive an alien enemy owner of property by process that are not essentially confiscatory, even though the taking and retention may cause him severe loss and hardship. Recourse to such non-confiscatory retentions or deprivations has marked the conduct of belligerents since the beginning of the World War in 1914. They may perhaps be appropriately referred to as sequestrations. The propriety of what they have involved is, therefore, hardly discernible by reference to objections directed against confiscatory action as such, and must be tested by other means or standards.

"A belligerent may fairly endeavor to prevent enemy property of any kind within its territory (or elsewhere within its reach) from being so employed as to afford direct military aid to its foe. Measures of prevention may, in a particular case, assume a confiscatory aspect. In such a situation the question may arise whether those measures are, nevertheless, excusable. It is believed that they may be, and that they are not invariably unlawful despite the absence of efforts to compensate the owners."

And in the footnote of the same page, said author adds:

"This analysis differs sharply from that of those who would regard almost all uncompensated deprivations of property as essentially confiscatory, and as, therefore, internationally illegal because of the further assumption or conclusion that confiscatory action must inevitably be so regarded. Belligerent States have not, however, generally acted on such a theory. They have in fact proceeded, especially since 1914, to exercise varying degrees of control over vast amounts of enemy private property by strictly non-confiscatory processes from which they have felt no sense of legal obligation to abstain. In so doing they have been creative of relatively fresh practices which logic has ordained and war terminating treaties have sanctioned. Thus it happens that proper estimation of the place of confiscation of enemy private property in the law of nations has become of less importance than formerly, because both of the reluctance of States—and notably of the United States to have recourse to it, and of their preference for non-confiscatory measures exemplified in sequestrations as a desirable and sufficient means of utilizing such property."

And Oppenheim in his *International Law*, Vol. 2, 6th ed., by Lauterpacht, says:

"But the desire to eliminate the financial and commercial influence of the enemy, and other motives, presently led in most States to exceptional war measures against the businesses and property of enemies, which, though not confiscation, inflicted great loss and injury. Sometimes these measures stopped short of divesting the enemy ownership of the property; but in other cases the businesses or property were liquidated, and were represented at the close of hostilities by nothing else than the proceeds of their realization, often enough out of all proportion to their value. In the Trading with the Enemy Act, 1939, provisions was made for the appointment of custodians of enemy property in order to prevent the payment of money to enemies and to preserve enemy property in contemplation of arrangements to be made at the conclusion of peace.

"The readjustment of rights of private property on land was provided for by the Treaties of Peace. The general principles underlying their complicated arrangements were that the validity of all completed war measures was reciprocally confirmed; but that while uncompleted liquidations on the territories of the Central Powers were to be discontinued, and the subjects of the victorious Powers were to receive compensation for the loss or damage inflicted on their property by the emergency war measures, the property of subjects of the vanquished Powers on the territories of the Allied and Associated Powers might be retained and liquidated, and the owner was to look for compensation to his own State. The proceeds of the realization of such property were not to be handed over to him, or to his State, but were to be credited to his State as a payment on account of the sums payable by it under the treaties."

In paragraph 143 (p. 313) of the same work, Oppenheim states that "Private personal property which does not consist of war materials or means of transport serviceable for military operations may not be as a rule seized". It is obvious that the word "seized" used therein signifies "confiscated" in view of the above quoted paragraphs, and therefore when Oppenheim says, in the footnote to said passage, "Nor may the occupant liquidate the business of enemy subject in occupied territories," he means "confiscate" by the word "liquidate".

Ernest K. Feildchenfeld in his "The International Economic Law of Belligerent Occupation (1942)" supports the foregoing conclusion of Hyde, when he says that "According to Article 46 of the Hague Regulations, private property must be respected and cannot be confiscated. This rule affords protection against the loss of property, through outright confiscation, but not against losses under lawful requisition, contribution, seizure, fines, taxes, and expropriation" (Par. 208, p. 51). And later on he adds: "A complete nationalization of a corporation for the benefit of the occupant could not be anything but a permanent measure involving final effects beyond the duration of the occupation. There is no military need for it because the same practical results can be achieved by temporary sequestration" (par. 385, p. 107).

Martin Domke in his Trading with the Enemy in World War II, pp. 4 and 5, speaking of Warfare on Economic and military fronts, says that "Freezing Control is but one phase of the present war effort; it is but one weapon on the total war which is now being waged on both economic and military fronts. Coupled with Freezing Control as a part of this nation's program of economic warfare are to be found export control, the promulgation of a Black List, censorship, seizure of enemy-owned property, and financial and lend-lease aid to allied and friendly nations. As to Japan, no official information is available as yet on steps taken by the Japanese Government. As a Commentary of April 11, 1942, points out, the Japanese Trading with the Enemy legislation enacted during the last war against Germany might throw some light on the views adopted by Japan in this matter."

The sequestration or liquidation of enemy banks in occupied territories is authorized expressly by the United States Army and Navy Manual of Military Government and Civil Affairs F. M. 2710 OPNAV 50-E-3, which, mandatory and controlling upon the theatre commanders of the U. S. forces in said territories, provides in its paragraph 12 the following:

"Functions of Civil Affairs Officers.—In the occupation of such territories for a considerable period of time, the civil affairs officers will in most cases be concerned with the following and other activities:

"1. MONEY AND BANKING.—Closing, if necessary and guarding of banks, bank funds, safe deposit boxes, securities and records; providing interim banking and credit needs; liquidation; reorganization, and reopening of banks at appropriate times; regulation and supervision of credit cooperatives and other financial agencies and organizations; execution of policies on currency fixed by higher authority, such as the designation of types of currency to be used and rates of exchange supervision of the issue and use of all types of money and credit; declaration of debt moratoria; prevention of financial transactions with enemy occupied territory."

The civil affairs officers are concerned, that is, entrusted with the performance of the functions enumerated above, when so directed by the chief commander of the occupant military forces.

Not only the United States Army and Navy Manual of Military Government and Civil Affairs but similar manuals of other countries authorize the liquidation or impounding of the assets of enemy banks or the freezing, blocking and impounding of enemy properties in the occupied hostile territories without violating article 46 or other articles of the Hague Regulations. They do not amount to an outright confiscation of private property, and were put into effect by the Allied Army in the occupied hostile territories in Europe during World War II.

The Combined Chiefs of Staff, in their Directive of May 31, 1943, on Military Government in Sicily, Italy, addressed to the Supreme Allied Commander, Mediterranean Theater, ordered:—"(h) An Allied Military Financial

Agency under the control of the Military Government shall be established with such sub-agencies as considered necessary," "(i) Military authorities on occupying an area shall immediately take the following steps: '(1) All financial institutions and banks shall be closed and put under the custody of the military forces'," (2) a general moratorium shall be declared. (j) * * * all papers of value, foreign securities, gold and foreign currencies shall be impounded with receipts granted to recognized owners, (k) "The Allied Military Financial Agency or any appointed agency by the MG will take into immediate custody all foreign securities and currencies, holding of gold, national funds and holdings of Fascist organizations for deposit." (Appendix on American Military Government, its Organization and Policies, by Hajo Holborn, 1947, pp. 116, 117.)

The Combined Directive of April 28, 1944, for Military Government in Germany Prior to Defeat or Surrender, provided that the Allied Forces "Upon entering the area of Germany will take the following steps and put into effect only such further financial measures as they deem to be necessary from a strictly military standpoint, (b) "Banks should be placed under such control as deemed necessary by them in order that adequate facilities or military needs may be provided and to insure that instructions and regulations issued by military authorities will be fully complied with." (c) "Pending determination of future disposition, all gold, foreign currencies, foreign securities, accounts in financial institutions, credits, valuable papers, and all similar assets held by or on behalf of the following, will be impounded or blocked and will be used or otherwise dealt with only as permitted under licenses or other instructions which you may issue: (1) German national state, provincial and local governments and agencies and instrumentalities thereof." (4) "Nazi party organizations including the party formations, affiliates and supervised associations, and the officials, leading members and supporters thereof; and (5) Persons under detention or other types of custody by Allied Military authorities and other persons whose activities are hostile to the interests of military government" (Holborn, supra, p. 141).

In the Allied Directive of June 27, 1945, to the Commander in Chief of the United States forces of occupation regarding the military government of Austria, the Commanding General of the United States forces of occupation in Austria, serving as United States member of the Allied Council of the Allied Commission for Austria, was authorized, subject to agreed policies of the Allied Council to close banks, insurance companies, and other financial institutions for a period long enough to introduce satisfactory control to ascertain their cash position and to issue instructions for the determination of accounts and assets to be blocked under paragraph 55 which authorized him to impound or block all gold, silver, currencies, securities accounts in financial institutions, credits, valuable papers, and all other assets falling within the following categories: a. Property owned or controlled, directly or indirectly, in whole or in part, by any of the following: (1) the governments, nationals or residents of the German Reich, Italy, Bulgaria, Rumania, Hungary, Finland and Japan, including those of territories occupied by them; (3) the Nazi Party, its formations, affiliated associations and supervised organizations, its officials, leading members and supporters; (4) all organizations, clubs or other associations prohibited or dissolved by military government; (5) absentee owners, including United Nations and neutral governments; (7) persons subject to arrest under the provisions of paragraph 7, and all other persons specified by military government by inclusion in lists or otherwise, (Holborn, supra, p. 192).

On the other hand, the provisions of the Trading with the Enemy Acts enacted by the United States and almost all the principal nations since the first World War, including England, Germany, France, and other European countries, as well as Japan, confirms that the assets of enemy corporations, specially banks incorporated under the laws of the country at war with the occupant and doing business in the occupied territory, may be legally sequestered, and the business thereof wound up or liquidated. Such sequestration or seizure of properties is not an act for the confiscation of enemy property, but for the conservation of it, subject to further disposition by treaty between the belligerents at the end of the war. Section 12 of the Trading with the Enemy Act of the United States provides that "after the end of the war any claim of enemy or ally of an enemy to any money or other property

received and held by the Alien Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

The purpose of such sequestration is well expounded in the Annual Report of the Office of the Alien Custodian for a period from March 11, 1943, to June 30, 1943. "In the absence of effective measures of control, enemy-owned property can be used to further the interest of the enemy and to impede our own war effort. All enemy-controlled assets can be used to finance propaganda, espionage, and sabotage in this country or in countries friendly to our cause. They can be used to acquire stocks of strategic materials and supplies * * * use to the enemy, they will be diverted from our own war effort.

The national safety requires the prohibition of all unlicensed communication, direct or indirect, with enemy and enemy-occupied territories. To the extent that this prohibition is effective, the residents of such territory are prevented from exercising the rights and responsibilities of ownership over property located in the United States. Meanwhile, decisions affecting the utilization of such property must be made and carried out. Houses must be maintained and rents collected; payments of principal and interest on mortgages must be made for the account of foreign debtors and foreign creditors; stranded stocks of material and equipment must be sold; patents must be licensed, business enterprises must be operated or liquidated, and foreign interest must be represented in court actions. The number of decisions to be made in connection with property is in fact multiplied by a state of war, which requires that productive resources be shifted from one use to another so as to conform with the requirements of a war economy.

The defendant-appellee, China Banking Corporation, comes within the meaning of the word "enemy" as used in the Trading with the Enemy Acts of civilized countries, because not only it was controlled by Japan's enemies, but it was, besides, incorporated under the laws of a country with which Japan was at war.

Section 2 (1) of the Trading with the Enemy Act of Great Britain provides that the expression "enemy" means: "any body of persons (whether corporate or incorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy." The control test has also been expressly adopted in the French Trading with the Enemy Act. The Italian Act regards as enemies "legal persons when enemy subject have any prevalent interests whatever in them." The Decree of the Dutch Government-in-exile of June 7, 1940, also adopted the control test by including in the term enemy subjects "legal persons in which interest of an enemy state or enemy subjects are predominantly involved." (Domke Trading with the Enemy Act, pp. 127-180.)

In the United States, the Trading with the Enemy Act has not adopted the control theory. But section 2-a of the said Act says that the word enemy shall be deemed to mean any "corporation incorporated within such territory of any nation with which the United States is at war." And the same definition is given to the word "enemy" by the Trading with the Enemy Act of the above named countries. The British Act in section 2 (1) defines as enemy "any body of persons constituted or incorporated in or under the laws of a state at war with his Majesty," it being immaterial that they are under the control of allied or neutral stockholders. Similarly the French Act regards as enemies, corporations incorporated in conformity with the laws of an enemy state. The decree of the Dutch Government-in-exile on June 7, 1940, considers as enemies legal persons "organized or existing according to or governed by the law of an enemy state." The German Act of January 15, 1940, I section 3 (1) 3, deems enemies all corporations, "the original legal personality of which is based on the laws of an enemy state." The Italian Act of 1938, section 5, regards corporations as enemies if they are enemy of nationality under the law of the enemy state. So too the Japanese Act, Chapter 1, No. 25, deems enemies "all corporations belonging to enemy countries." (See Martin Domke, Trading with the Enemy Act in World War II, pp. 120-122.)

Section 3-A of the Trading with the Enemy Act of the United Kingdom of September 5, 1939, as amended up to April 1, 1943, provides that "Where any business is being carried in the United Kingdom by, on behalf of, or under the direction of, persons all or any of whom are enemies or enemy subjects or appear to the Board of Trade to be associated with enemies, the Board of Trade may, if they think it expedient so to do, make * * *; "(b) an order (hereinafter in this section referred to as a winding up orders) requiring the business to be wound up;" and section 14 (c) of the same Act (that obviously makes it applicable to enemy territories occupied by the United Kingdoms armed forces) provides that "His Majesty may by Order in council direct that the provisions of this Act other than this section shall extend, with such exceptions, adaptations and modifications, if any, as may be prescribed by or under the order * * * (to the extent of His Majesty's jurisdiction therein) to any other country or territory being a foreign country or territory, in which for the time being His Majesty has jurisdiction." (The Trading with the Enemy Act in World War II, p. 481, by Martin Domke.)

Section 5 (b) of the Trading with the Enemy Act of the United States provides that "during the time of war or during any period in which national emergencies declared by the President, the President may under any agency that he may designate or otherwise and under such rule and regulation as he may prescribe," and "any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, etc." and section 6 (e) of the same Act provides that "any payment, * * * of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same * * * and shall in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, * * * with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

It is evident that the Trading with the Enemy Act of the United States, like that of the United Kingdom or Great Britain above quoted, and those of other countries, may be applied and enforced in a hostile territory occupied by the United States armed forces, because section 2 of said Act provides "That the words 'United States', as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof." After the liberation of the Philippines during World War II, properties belonging to Japanese Nationals located in this country were taken possession of by the Alien Property Custodian appointed by the President of the United States under the Trading with the Enemy Act, because, although the Philippines was not a territory or within the jurisdiction or national domain of the United States, it was then occupied by the military and naval forces thereof.

Of course it is obvious that the obligations assumed by the United States, in applying the Trading with the Enemy Act of the United States to properties within her national domain, is different and distinct from those arising from the application thereof to enemy properties located within the hostile territory occupied by her armed forces. In the first case, Congress is untrammelled and free to authorize the seizure, use, or appropriation of such properties without any compensation to the owners, for although section 2 of the Trading with the Enemy Act provides that "at the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury shall be settled by Congress," the owners of the properties seized within the national domain of the United States are not entitled to demand its release or compensation for its seizure, but what would ultimately come back to them, might be secured, not as a matter of right, but as a matter either of grace to the vanquished or exacted by the victor, for the case is to be governed by the domestic laws of the United States, and not by the Hague Regulations or International law (U. S. vs. Chemical Foundation, Inc., 272 U. S. 1; United States vs. S. S. White Dental Manufacturing Company, 274 U.

S., 402). While in the latter case, when properties are sequestrated in a hostile occupied territory by the armed forces of the United States, Congress can not legally refuse to credit the compensation for them to the States of the owners as payment on account of the sums payable by said States under treaties, and the owners have to look for compensation to their States, otherwise, they would violate article 46 of the Hague Regulations or their pledge of good faith implied in the act of sequestrating or taking control of such properties.

It is to be presumed that Japan, in sequestrating and liquidating the China Banking Corporation, must have acted in accordance, either with her own Manual of the Army and Navy and Civil Affairs, or with her Trading with the Enemy Act, and even if not, it being permitted to the Allied Nations, specially the United States and England, to sequester, impound, and block enemy properties found within their own domain or in enemy territories occupied during the war by their armed forces, and it being not contrary to the Hague Regulations or international law, Japan had also the right to do the same in the Philippines by virtue of the international law principle that "what is permitted to one belligerent is also allowed to the other."

Taking into consideration the acts of the Japanese Military Administration in treating the private properties of the so-called enemy banks, it appears evident that Japan did not intend to confiscate or appropriate the assets of said banks or the debts due them from their debtors, and thus violate article 46 or any other article of the Hague Regulations, it is true that, as to private personal properties of the enemy, freezing, blocking or impounding thereof is sufficient for the purpose of preventing their being used in aid of the enemy; but with regard to the funds of commercial banks like the so-called enemy banks, it was impossible or impracticable to attain the purpose for which the freezing, blocking and impounding are intended, without liquidating the said banks and collecting the loans given by them to hundreds if not thousands of persons scattered over the Islands. Without doing so, their assets or money loaned to so many persons can not properly be impounded or blocked, in order to prevent their being used in aid to the enemy through the intervention of their very debtors, and successfully wage economic as well as military war.

That the liquidation or winding up of the business of the China Banking Corporation and other enemy banks did not constitute a confiscation or appropriation of their properties or of the debts due them from their debtors, but a mere sequestration of their assets during the duration of the war for the purposes already stated, is evidenced conclusively by the following uncontroverted facts set forth in the briefs of both parties and amici curiae:

(1) Out of the sum of about P34,000,000 collected from the debtors by the liquidator Bank of Taiwan, the latter paid out to the depositors or creditors of the same bank about P9,000,000; and it is common sense that this last amount should not have been disbursed or taken out of the said amount of about P34,000,000 had it been the intention of the Japanese Military Administration to confiscate this amount collected by the Bank of Taiwan.

(2) The members of Chinese Associations were permitted to withdraw from their deposits with the China Banking Corporation a considerable amount of money which was paid out of the sum collected from the debtors of said bank, in order that they may pay the contribution legally exacted from them by the military occupant in accordance with article 51 of the Hague Regulations. And this showed the intention of the belligerent occupant not to confiscate the bank's assets and to act, at least in this respect, in accordance with said Regulations; because otherwise the Japanese Military Administration could have properly required the Chinese to pay the contribution out of their own funds, without diminishing or reducing the amounts collected by the Bank of Taiwan from the debtors of the China Bank.

(3) The collection of the aforementioned debts from the bank's debtors, as well as the payment of withdrawal by the depositors, were regularly entered into the books of said Banks, so that after liberation they could easily determine the respective amounts and the persons who had made the payments, which enabled all said banks to

reopen and continue their business; and the regular keeping of said books would have been unnecessary or useless, were it the intention of the military occupant to close definitely the enemy banks and appropriate all their resources.

(4) There was absolutely no reason for confiscating the funds of the banks collected from their debtors, because by sequestrating or impounding their assets or funds after the latter had been collected from their debtors, the principal purpose of preventing the possible use of the funds of the banks in aid of Japan's enemy was completely accomplished. Absolutely no other benefit could be derived by Japan from confiscating or appropriating the payments made in Japanese war military notes to the enemy banks by their debtors, because the Japanese Government could have them at will without cost, except that of the ink, paper and labor necessary for printing and issuing them.

(5) The annual report, 31st December, 1945, of the Chartered Bank of India, Australia & China (pp. 11-12), which had a branch in Manila liquidated by Japanese Military authorities as one of the enemy banks, clearly shows that the liquidation of said branch was a mere sequestration, impounding or control of its assets, and not a confiscation or appropriation thereof during the occupation by the Japanese. It says that during the enemy occupation the cash balance of our Branches were seized, their assets realized and repayment of varying amounts, but up to 100 per cent in one Branch at least, made to depositors. Said report reads, in its pertinent part, as follows:

"I informed you, when commenting upon the Balance sheet figures, for the year ending 31st December, 1942, that we had reason to believe that accounts of some of our occupied Branches had been partly or wholly liquidated, and that the liquidation of such accounts would ultimately bring about shrinkage in both Assets and Liabilities in the Balance Sheet figures. The information now in our possession and the various changes in the Balance Sheet figures to which I have referred above, confirm the correctness of this statement, for during the enemy occupation the cash balances of our Branches were seized, their assets realized where possible, and repayment of varying amounts, but up to 100 per cent in one Branch at least, made to depositors. Even so, the business of the offices of the Bank which remained under our own control throughout the war has steadily increased and has offset to a great extent decreases brought about by the partial liquidation of Branches which were in Japanese control." (Italics ours.)

It is obvious that the fact that Japanese Military authorities failed to pay the enemy banks the balance of the money collected by the Bank of Taiwan from the debtors of said banks, did not and could not change the sequestration or impounding by them of the bank's assets during the war, into an outright confiscation or appropriation thereof. Aside from the fact that it was physically impossible for the Japanese Military authorities to do so because they were forcibly driven out of the Philippines or annihilated by the forces of liberation, following the readjustment of rights of private property on land seized by the enemy provided by the Treaty of Versailles and other peace treaties entered into at the close of the first World War, the general principles underlying such arrangements are that the owners of properties seized, sequestered or impounded who are nationals of the victorious belligerent are entitled to receive compensation for the loss or damage inflicted on their property by the emergency war measures taken by the enemy, through their respective States or Governments who may officially intervene and demand the payment of the claim on behalf of their nationals (VI Hackworth Digest of International Law, pages 232, 233; 11 Oppenheim, sixth edition, page 263). Naturally, as the Japanese war notes were issued as legal tender for payment of all kinds at par with the Philippine peso, by the Imperial Japanese Government, which in its proclamations of January 3, 1942, and February 1, 1942, "takes full responsibility for their usage having the correct amount to back them up" (See said Proclamations and their official explanation, O. T. IMA Vol. 1, pp. 39, 40), Japan is bound to indemnify the aggrieved banks for the loss or damage on their property, in terms of Philippine pesos or U. S. dollars at the rate of one dollar for two pesos.

(2) The second question is, we may say, corollary of the first. It having been shown above that the Japanese

Military Forces had power to sequester and impound the assets or funds of the China Banking Corporation, and for that purpose to liquidate it by collecting the debts due to said bank from its debtors, and paying its creditors, and therefore to appoint the Bank of Taiwan as liquidator with the consequent authority to make the collection, it follows evidently that the payments by the debtors to the Bank of Taiwan of their debts to the China Banking Corporation have extinguished their obligation to the latter. Said payments were made to a person, the Bank of Taiwan, authorized to receive them in the name of the bank creditor under article 1162, of the Civil Code. Because it is evident the words "a person authorized to receive it," as used therein, means not only a person authorized by the same creditor, but also a person authorized by law to do so, such as guardian, executor or administrator of estate of a deceased, and assignee or liquidator of a partnership or corporation, as well as any other who may be authorized to do so by law (Manresa, Civil Code, 4th ed. p. 254.)

The fact that the money with which the debts have been paid were Japanese war notes does not affect the validity of the payments. The provision of article 1170 of our Civil Code to the effect that "payment of debts of money must be made in the specie stipulated and if it is not possible to deliver such specie in silver or gold coins which is a legal tender," is not applicable to the present case, because the contract between the parties was to pay Philippine pesos and not some specifically defined species of money. The Philippine peso and half-pesos including the Philippine Treasury Certificate was and is the legal tender in the Philippines under section 612 of the Administrative Code, as amended by Act No. 4199. As well stated by the Supreme Court of the United States in *Knox vs. Lee and Parker* (Legal Tender Cases, 12 Wall., 457-681, 20 Law. ed., 287). "The expectation of the creditor and the anticipation of the debtor may have been that the contract would be discharged by the payment of coined metals, but neither the expectation of one party to the contract, respecting its fruits, nor the anticipation of the other, constitutes its obligation. There is a well-recognized distinction between the expectation of the parties to a contract and the duty imposed by it. *Aspdin vs. Austin*, 5 Ad. & BL (N. S.) 671; *Dunn vs. Sayles*, *Ibid.* 685; *Coffin vs. Landis*, 46 Pa. 426. Were it not so, the expectation of results would be always equivalent to a binding engagement that they should follow. But the obligation of contract to pay money is to pay that which the law shall recognize as money when the payment is to be made. If there is anything settled by decision it is this, and we do not understand it to be controverted." (*Knox vs. Exchange Bank of Virginia*, 12 Wall., 457; 20 U. S. Supreme Court Reports, 20 L. ed., 287, 311.) In said case it was held that the Legal Tender Acts of Congress which made the treasury notes legal tender for payment of debts contracted before and after their passage were not inappropriate for carrying into execution the legitimate purpose of the Government. And this Court, in *Rogers vs. Smith Bell* (10 Phil., 319), held that "A debt of 12,000 pesos created in 1876 can now (1908) be paid by 12,000 of the Philippine pesos authorized by the Act of Congress of March 2, 1903, although at the time the loan was made which created the debt, the creditor delivered to the debtor 12,000 pesos in gold coin."

The power of the military governments established in occupied enemy territory to issue military currency in the exercise of their governmental power has never been seriously questioned. Such power is based, not only on the occupant's general power to maintain law and order recognized in article 43 of the Hague Regulations (Feilchenfeld says in his treatise on International Economic Law of Belligerent Occupation, paragraph 6), but on military necessity as shown by the history of the use of money or currency in wars.

As early as the year 1122, during the siege of Tyre, Doge Micheli paid his troops in leather money which he promised to redeem when he returned to Venice (Del Mar, Money and Civilization, 26), and when Frederick II besieged Milan he also used leather money to pay his troops, as well as in payment of wages (*id.* 33). When the French forces occupied the Ruhr in 1923, they finished the printing of some Reichsbank notes in process and issued them. (Nussbaum, Money in the Law, note 6, 158-59.) The British during the Boer War issued receipts for requisitioned goods and made such receipts readily negotiable, an arrangement very similar to the issuance of currency (Spaight, War Rights on Land, 396). During the American Revolution, the Continental Congress issued

currency even before the issuance of the Declaration of Independence, when the territory controlled by Congress was field in military occupation against the then legitimate Government. (Dewey, Financial History of the United States, 37-38; Morrison and Commager, Growth of the American Republic, 207; Nussbaum, op. cit. supra note 6, 172-173.) The Confederacy issued its own currency in Confederate territory (Thorington vs. Smith, 8 Wall., 1) and also in northern areas occupied from time to time during the war. (Spaight, op. cit. supra, note 19, 392.) The Japanese issued special occupation currency in Korea and Manchuria during the Russo-Japanese War of 1905. (Takahashi, International Law Applied to the Russo-Japanese War, 1908, 260-61; Spaight, op. cit. note 19, 397; Ariga, La Guerre Russo-Japonaise, 1908, 450 et seq.) The British also issued currency notes redeemable in Sterling in London at a fixed rate of exchange, in their occupation of Archangel during and after the first World War. (White, Currency of the Great War, 66; League of Nations, Currency After the War, 100.)

During the World War II, the Germans had been using a variety of occupation currencies as legal tenders on a large scale, the currency initially used in most occupied areas being the Reichskreditkassa mark, a paper currency printed in German and denominated in German monetary units, which circulated side by side with the local currency at decreased rates of exchange. And the Allies have introduced notes as legal currency in Sicily, Germany and Austria. The Combined Directive of the combined Chief of Staffs to the Supreme Allied Commander issued on June 24, 1943, directed that the task forces of the U. S. will use, besides regular U. S. coins, yellow seal dollars, and the forces of Great Britain will use besides British coins, British Military Notes (BMA), to supplement the local lire currency then in use (Hajo Holborn, American Military Government, 1947, pp. 115, 116). The Combined Directive for Military Government in Germany, prior to defeat or surrender, of April 28, 1944, directed the United States, British and other Allied forces to use Allied military mark and Reichsmark currency in circulation in Germany as legal tender and the Allied Military Marks will be interchangeable with the Reichsmark currency at the rate of Allied Mark for Reichsmark; and that in the event adequate supplies of them were not available, the United States forces will use Yellow seal dollars and the British forces will use British Military Authority (BMN) notes. (Holborn, op. cit. supra, p. 140.) And the American Directive on the Military Government of Austria of June 27, 1945, ordered that the United States forces and other Allied forces within Austria will use only Allied Military Schillings for pay of troops and other military requirements, declaring it legal tender in Austria interchangeably with Reichsmarks at a rate of one Allied military schilling for one Reichsmarks. (Holborn, op. cit. supra, p. 192.) In the above cited case of Thorington vs. Smith, the Supreme Court of the United States said:

"* * * While the war lasted, however, they had a certain contingent value, and were used as money in nearly all business transactions of many millions of people. They must be regarded, therefore, as a currency, imposed on the community by irresistible force.

"It seems to follow as a necessary consequence from this actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and from the necessity of civil obedience on the part of all who remained in it, that this currency must be considered in courts of law in the same light as if it has been issued by a foreign government, temporarily occupying a part of the territory of the United States."

According to Feilchenfeld in his book "The International Economic Law of Belligerent Occupation," the occupant in exercising his powers in regard to money and currency, may adopt one of the following methods according to circumstances: (1) When the coverage of the currency of the territory occupied has become inadequate as found in several Balkan countries during the War of 1914-18, and "the local currency continues to be used, an occupant may reorganize the national currency by appropriate methods, such as the creation of new types and supplies of coverage" (paragraph 272). (2) The occupant may, and not infrequently, use his own currency, in the occupied region. But this method may be found inconvenient if the coverage for their national currency had already become inadequate, and for that reason authorities are afraid of exposing it to additional strain, and for that reason an

occupant may not replace the local currency by his own currency for all currency for all purposes, and enforce its use not only for his own payment but also for payments among inhabitants (paragraph 285). (3) Where the regional currency has become inadequate and it is deemed inadvisable by the occupant to expose his own currency to further strain, new types of money may be created by the occupant. Such new currency may have a new name and may be issued by institution created for that purpose (paragraph 296). This last method was the one adopted by Japan in this country, because the coverage of the Philippine Treasury Certificate of the territory occupied had become inadequate, for most if not all the said coverage have been taken to the United States and many millions of silver pesos were buried or thrown into the sea near Corregidor, and Japan did not want to use her national currency, and expose it to additional strains.

But be that as it may, whatever might have been the intrinsic or extrinsic worth of the Japanese war-notes which the Bank of Taiwan has received as full satisfaction of the obligations of the appellee's debtors to it, is of no consequence in the present case. 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 January 3, 1942). Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan, through their States or Government, payments or compensation in Philippine peso or U.S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy. If Japan had won the war or were the victor, the property or money of said banks sequestered or impounded by her might be retained by Japan and credited to the respective State of which the owners of said banks were nationals, as a payment on account of the sums payable by them as indemnity under the treaties, and the said owners were to look for compensation in Philippine pesos or U. S. dollars to their respective States. (Treaty of Versailles and other peace treaties entered at the close of the first world war; VI Hackworth Digest of International Law, p. 232.) And if they cannot get any or sufficient compensation either from the enemy or from their States, because of their insolvency or impossibility to pay, they have naturally to suffer, as everybody else, the losses incident to all wars.

In view of all the foregoing, the judgment appealed from is reversed, and the defendant-appellee is sentenced to execute the deed of cancellation of mortgage of the property described in the complaint, and to deliver to the plaintiff-appellant the Transfer Certificate of Title No. 47634 of the Register of Deeds in Manila with the annotation of mortgage therein already cancelled, without pronouncement as to costs. So ordered.

Moran, C.J., Paras, Pablo, and Bengzon, JJ., concur.

CONCURRING

PERFECTO, J.:

Before September 14, 1939, Haw Pia secured an overdraft account from the China Banking Corporation up to the sum of P8,000 with the obligation to pay, on the bank's demand, the amounts withdrawn with interest at the rate of 9 per cent per annum, payable monthly, at the end of each month, the interests to be compounded in case of failure.

From September 14, 1939, to December 26, 1941, plaintiff withdrew several amounts and on a later date the balance amounted to P5,103.35.

On September 14, 1941, plaintiff mortgaged to defendant, as guaranty for the amounts of her indebtedness to the latter, her property described in transfer certificate of title No. 47634 of the Register of Deeds of Manila. One of

the conditions of the mortgage was that, in case of execution, plaintiff will pay an additional amount of 10 per cent of the debt which in no case shall be less than P1,500.

On January 2, 1942, the Bank of Taiwan was appointed by the Japanese military authorities of occupation as liquidator of the China Bank, and from October 7, 1942, to August 29, 1944, plaintiff made payments to the Bank of Taiwan amounting to P6,055.21 to liquidate her obligation with the China Bank, payments being made in Japanese military notes.

In the complaint filed by plaintiff on September 4, 1945, she prayed that the China Bank be required to return to her, her certificate of title No. 47634, with the mortgage cancelled, and to pay P1,000 as attorneys fees, plus costs.

On October 15, 1945, the China Bank, not recognizing the payments made by the plaintiff to the Bank of Taiwan, filed a cross complaint for the collection from the plaintiff of the amount of 15,103.35, with interest, plus P1,500 for attorney's fees and costs.

On March 12, 1946, the lower court rendered a decision declaring null and void the payments made by plaintiff to the Bank of Taiwan to satisfy her obligation to the China Bank, ordering her to pay to the China Bank the sum of P5,103.35 with interests and that, upon her failure to pay said amount within ninety days after Executive Order No. 32, series of 1945, on moratorium, shall have been revoked, the mortgaged property be sold at public auction and the product applied to the payment of the judgment.

The above are the facts in this case as stated in appellee's brief.

Appellant states that the mortgaged property consists of a lot and house located at No. 1134 Padre Algue street, Manila, and that the China Bank, being an enemy bank, was placed under liquidation of the Bank of Taiwan by virtue of Administrative Ordinance No. 11 issued by the Director General of the Japanese Military Administration dated August 1, 1942, and prays for reversal of the appealed decision and that the China Bank be ordered to execute a deed of cancellation of the mortgage and to deliver to her transfer certificate of title No. 47634, with costs.

For the purposes of the legal questions raised in this appeal, there is no substantial disagreement as to the pertinent facts. Disentangled from the morass of voluminous memoranda filed by the parties' counsel and amici curiae, giving to the record imposing bulkiness, all the controversy in this case can be reduced and simplified into the following questions: The amounts paid by Haw Pia to the Bank of Taiwan having been lost, unless and until they are recovered from the Japanese government, who should suffer the loss?

Justice, as we see it, allows only the following answer the creditor. The appropriation made by the Japanese of the money paid by Haw Pia, be it designated as a confiscation or plain highway robbery, was unquestionably aimed, not at the money as owned by Haw Pia, but as property of the China Bank. The Japanese appropriated appellee's credit, the money owed by Haw Pia to the China Bank, but not the property of Haw Pia.

Haw Pia would not have been molested if the Japanese had not taken possession of the credit held by the China Bank.

No question has been raised as to the value of the money paid. The presumption is that it covered completely the credit.

For all the foregoing, we vote for the reversal of the appealed decision and as prayed for by appellant, the mortgage executed by appellant in favor of appellee is declared cancelled, and appellee ordered to return to appellant transfer certificate of title No. 47634, without costs.

CONFORME

BRIONES, M.:

El presente caso es una de las derivaciones juridicas mas importantes de la ocupacion japonesa. No ha sido facil el hallar una solucion adecuada y justa, siquiera sea dentro de lo relativo que supone la creation de un derecho, de una justicia, en un medio tan esencialmente caotico y confuso como es toda guerra con su balumba compleja de consecuencias. Hay mucho de barbarie en toda guerra, maxime en una de agresion como la emprendida por los japoneses en 1941; asi que no es extrano que haya sido tan dificil para la humanidad el extraer de la barbarie un cuerpo de derecho, un sistema de justicia. El que esto exista ahora, permitiendo relativamente a los tribunales dirimir y resolver las disputas resultantes de las guerras, no solo habla alto de la perfectibilidad humana, de la capacidad basica del genero humano para el progreso en el orden moral y juridico, sino que constituye un feliz augurio, por encima de todos los pesimismos, de la victoria final de las fuerzas del bien sobre las tenebrosas potestades del mal. No hay controversia acerca de ciertos postulados a saber:

(a) Que las reglas de derecho internacional complementan nuestro derecho civil para la solution de ciertos conflictos y litigios. Esto rige particularmente en la materia que se refiere al pago de las obligaciones.

(b) Que la piedra de toque de la validez y eficacia, despues de la guerra, de los actos juridicos realizados durante la ocupacion militar por un beligerante de un territorio enemigo, es la legalidad de tales actos bajo las reglas conocidas de derecho interno y los usos y practicas generalmente sancionados en tiempo de guerra. Son legales tales actos? Entonces surten efecto tambien despues de la guerra. Son ilegales? Entonces son invalidos e ineficaces: los derechos y obligaciones de las partes contratantes se restauran en su condition original preguerra, como si ningun acto se hubiese ejecutado.

(c) Que el ocupante militar de un territorio enemigo no puede confiscar bienes de propiedad particular, a tenor de lo dispuesto en la Sec. III de las Regulaciones de La Haya. Asi que es importante definir el significado y alcance de la palabra "confiscation", tal como ella se emplea tanto en el derecho domestico como en el internacional. Desde luego la voz tiene la misma acepcion en ambos derechos. Segun el diccionario de la Real Academia de la Lengua Espanola confiscar es "privar a uno de sus bienes para aplicarlos al fisco". Escriche, en su Diccionario de Legislacion y Jurisprudencia, define el vocablo diciendo que es "la adjudication que se hace al fisco de los bienes de algun rea".

Confiscate. To adjudge forfeited; to appropriate property. The word is derived from the Latin "con" meaning: with, and "fiscus", a basket or hamper in which the Roman emperor's treasure was kept. Hence, the word means to transfer property from private use to public use; or to forfeit property to the prince or state. See *Ware vs. Hylton*, 1 U. S. (3 Dallas), 199, 234; 1 L. ed. (U. S.), 568, t.P3.

Confiscation. The seizure and appropriation of property belonging to an enemy. The law of nations prescribes that all property belonging to the enemy shall be liable to confiscation, but with certain modifications and relaxations of the rule. See 15 R.C.L. 187. (Law Dictionary with Pronunciations by Ballentine, p. 261.)

Confiscate. To appropriate to the use of the state.

Especially used of the goods and property of alien enemies found in a state in time of war. 1 Kent 52 et. seq. Bona confiscata and foriscata are said to be the same (1 Bla. Com. 299), and the result to the individual is the same whether the property be forfeited or confiscated but, as distinguished, an individual forfeits, a state confiscates, goods or other property. Use also as an adjective—*forfeited*. 1 Bla. Com. 299. (Bouvier's Law Dictionary, Vol. 1-A to E, p. 595.)

"Confiscation" may result from taking use of property without compensation, as well ss from taking title. U.S.C.A. Const. Amend. 5. Chicago, R. I. & P. Ry. Co. vs. U. S. (11) 52 S. Ct. 87, 92; 284 U. S. 80, 76 L. ed. 177.

The verb "confiscate" is derived from the latin "con," with, and "fiscus," a basket or hamper, in which the Emperor's treasure was formerly kept. The meaning of the word "confiscate" is to transfer property from private to public use, or to forfeit property to the prince or state. Ware vs. Hylton, 3 U. S. (3 Dallas), 199, 234; 1 L. ed., 568, 584.

Even if the war power includes right to confiscate debt due to an enemy national, "confiscation" is not consummated by mere declaration so as to automatically vest debt in government, but actual payment must be exacted. Frankel & Co. vs. L'Urbaine Fire Ins. Co. of Paris, France, 167 N. E., 430, 432; 251 N. Y., 243. (Words & Phrases, 8th ed., p. 575.)

(d) Que si al ocupante militar de un territorio enemigo no le esta pennitido confiscar bienes de propiedad particular, le esta permitido, sin embargo, secuestrar o embargar para determinados fines, entre ellos el enervar y debilitar la capacidad para guerrear del pals ocupado, o el evitar que los bienes objeto de secuestro o embargo puedan ser utilizados en daño y perjuicio del ocupante militar. (Hyde, International Law, Vol. 3, 6th ed., p. 1727; Oppenheim, International Law, Vol. 2, 6th ed., por Lauterpacht.)

(e) Que cuando la ocupacion militar del territorio enemigo dura algun tiempo, el ocupante puede, por medio de sus oficiales y agentes encargados de administrar los asuntos civiles, reorganizar los bancos, e inclusive liquidarlos. Esto esta categoricamente preceptuado en el Manual de Gobierno Militar y Asuntos Civiles del Ejercito y Marina de los Estados Unidos (United States Army and Navy Manual of Military Government and Civil Affairs F. M. 2710 OPNAV, 50-E-3). Resulta evidente que en tal caso la liquidacion no tiene el significado y alcance de una confiscation, sino que es solo una de las formas del secuestro o embargo, permitido por el derecho internacional, segun ya queda indicado.

Resulta evidente, de lo expuesto, que mientras la confiscation de bienes de propiedad particular esta condenada y prohibida por las Regulaciones de La Haya y es contraria a los usos y practicas de una guerra civilizada, no pudiendo, por tanto, surtir efectos validos y eficaces despues de la guerra contra la voluntad de las partes afectadas, no asi el simple secuestro o embargo, el cual, como ya hemos visto, estd autorizado por el derecho internacional para ciertos fines, entre ellos los indicados en el apartado "e" arriba expuesto. La cuestion ahora en orden es la siguiente: icomo se debe enjuiciar y conceptuar la liquidation de los bancos extranjeros en Filipinas por el Banco de Taiwan, que actuo como liquidador durante toda la ocupacion militar japonesa en nomtire y representation del ejercito del Mikado? ?Fue confiscacion, o fue mero secuestro, simple embargo? Los hechos convenidos y establecidos en autos conducen a una inevitable conclusion: que no se trata aqui de una confiscacion sino de un secuestro. No solo no hay en autos ninguna prueba de que el ejercito ocupante o el banco liquidador se apropiio de los creditos cobrados para usarlos en su beneficio o aplicarlos al fisco, sino que, por el contrario, consta sin discusion que de los 34 millones que produjo la liquidacion, unos 9 millones se pagaron a los depositantes de dichos bancos que retiraron total o parcialmente sus depositos, y a otros acreedores, figurando, por supuesto, entre tales depositantes y acreedores algunos extranjeros internados en los campos de concentracion. Este solo hecho basta y sobra para rechazar la idea o concepto de la confiscacion. Es que para sus gastos militares y de todo genero los japoneses no tenian necesidad de confiscar los creditos de los bancos extranjeros tenian para ello el llamado fiat money en cantidades ilimitadas. Como se dice bien en la ponencia, los japoneses disponian de imprenta, papel y tinta para producir papel moneda ad libitum . . .

Se admite que el banco demandado y otros bancos extranjeros puestos en su caso han tornado provecho de las mencionadas retiradas de deposito pagadas por el banco liquidador enriqueciendose en la extension y cuantia de

tales retiradas. Esta admision implica necesariamente otra admision mas importante, a saber que el dinero utilizado para satisfacer dichas retiradas de deposito procedia de los creditos liquidados; y que naturalmente tales dinero y creditos no habian sido confiscados sino secuestrados solamente. Ahora bien; cabe dividir y encasillar la liquidacion, declarando como confiscacion una parte, y como secuestro, otra. Indudablemente que no, pues ello seria un absurdo; la liquidacion no podia ser mitad confiscacion, mitad secuestro. Habiendo el banco demandado y sus congeneres aceptado implicitamente la teoria del secuestro al beneficiarse con las retiradas de deposito que se han acreditado a su favor, mal puede permitirseles repudiar dicha teoria cuando no les conviene gritando confiscacion con relacion a los otros creditos liquidados. Usando una frase vulgar, el que esta a las duras, tambien debe estar a las maduras, y viceversa. Esto debe regir tanto etica como jurfdicamente.

No hay por que discutir si los japoneses hicieron bien o mal al secuestrar el activo y los creditos de los bancos enemigos quidandolos en la forma en que los liquidaron. No se trata de eso; es decir, no se trata de nuestros puntos de vista, ni de nuestras preferencias. Desde luego que nuestro sentir es que todo lo que hicieron aqui fue malo, rauy malo—desde el comienzo hasta el fin. Basicamente, fundamentalmente la guerra que nos hicieron fue una infa-mia; la invasion de nuestro suelo fue pura barbarie. Pero de lo que se trata es si de acuerdo con el derecho intemacional vigente podian desarmar a los bancos enemigos se cuestrando y liquidando su activo, a fin de evitar que sus adversaries lo pudiesen utilizar en su daiio y lo activasen para fomentar el movimiento de resistencia contra la ocupacion; y ya hemos visto que en la etapa a que ha llegado el derecho intemacional en su continuado avance eso esta permitido. Tampoco hay por que discutir si la liquidacion de los cretlitos era la forma adecuada de secuestro o embargo, pues la opcion era suya—de los nipones—no nuestra.

Ahora, mas de tres afios despues de la guerra, en que los hechos se pueden avalorar desde mejor perspectiva, no resulta dificil explicar por que los japoneses recurrieron al arbitrio de la liquidacion como forma de secuestro del activo y creclitos de los bancos enemigos. El nipon es acaso el hombre mas suspicaz del mundo. Su ingenita suspicacia se acentuo en un 1,000 por 100 durante la ocupacion de Pilipinas porque con razon sospechaba de la hostilidad de una inmensisima mayoria de la poblaci6n—como que creia ver a un guerrillero en casi cada varon habil. iExtranara, pues, que con tal prejuicio y suspicacia presintiese la posi-bilidad de que los creditos por cobrar de los bancos enemigos, desperdigados por el pafs, se aprovecharan por America y sus aliados para animar el movimiento de resistencia, subvencionando con el capital de los mismos los servicios de informacion, el espionaje, el "sabotage," etc., etc? No da esto la clave de que el suspicaz invasor recurriese a la liquidacion para compeler el pago de las deudas bajo la pre-sion de la coaccion o amenaza, o estimularlo, si se quiere, mediante el impulso natural del instinto de conservacion? Repito: no se trata aqui ni mucho menos de justificar el secuestro; se trata simplemente de explicarlo para deducir las consecuencias juridicas de imperativa obligatoriedad bajo las reglas del derecho internacional.

Se ha puesto enfasis en los danos y perjuicios que sufri-rfan el banco demandado y otros bancos colocados en igual predicamento si se convalidaran los pagos en cuestion. La situaci6n, sin embargo, no es absolutamente irremediable. Habiendo el Japon causado esos danos con los procedi-mientos de secuestro y liquidacion que ejecuto para pro-mover sus objetivos militares, el mismo es desde luego responsable y esta obligado a pagar la correspondiente indemnizacion. Por tanto, el tiempo oportuno para dis-cutir esta cuestion sera cuando se negocie el tratado de paz con el Japon. Es de presumir que entonces los gobiernos de los paises afectados—es decir, los paises de origen de esos bancos—formularan un programa de reelamaciones en el que se incluiran los danos y perjuicios de que se trata; y es de presumir tambien que habra un arreglo entre dichos bancos y sus respectivos gobiernos. Esto es, por lo menos, lo que cabe esperar no solo porque es lo mas razonable y justo bajo las circunstancias, sino tambien porque es lo mas logico y hacedero a la luz de los precedentes, usos y practicas internacionales-

Es posible que estos bancos no consigan un reembolso complete de sus creditos liquidados por los japoneses. Pero cabe preguntar: ¿quien despues de una guerra, sobre todo si ha sido tan devastadora como la ultima, puede conseguir una completa reparacion de los danos sufridos en forma de vidas destruidas, de salud fisica y moral deshecha, de propiedades aniquiladas o robadas, etc., etc., quien? El que ha perdido a su padre, a su madre, a un hijo, a un ser querido en una palabra ¿puede acaso recobrarlo? Aunque recibiera una indemnizacion pecuniaria ¿llena esto plena-mente el vacio? ¿cura sobre todo el dolor moral? A los bancos afectados les queda, por lo menos, el consuelo de que sus perdidas resultantes de la liquidation forzosa por los japoneses han quedado casi cubiertas, bien con sus ganancias obtenidas en otras areas no directamente afectadas por la guerra, bien con ganancias logradas por ellos aqui mismo despues de la liberation, segun informes y datos autenticos. Así es la guerra: todos tienen su parte de dolor y sacrificio en ella; y uno no va a quejarse si por cual-quiera combination de circunstancias superiores a la voluntad humana, le toca en suerte sobrellevar una cruz mas pesada que la del proximo. C'est la guerre . . .

Se ha puesto asimismo enfasis en otro aspecto moral, etico, de la cuestion, a saber: el que algunos logreros se hayan lucrado precipitandose a pagar sus deudas durante el apogeo de la inflacion. Es indudable que algunos deudores pudieron aprovecharse de la inflacion pagando sus deudas durante el periodo en que el billete militar japonés tenia un poder adquisitivo muy bajo, pero esto no afecta a la cuestion fundamental de principio. Una vez establecido juridicamente que el banco liquidador tenia autoridad y facultad para recibir y aceptar pagos segun las reglas conocidas de derecho internacional y bajo los usos y practicas sancionados en tiempo de guerra, y una vez que el banco liquidador acepto y recibio dichos pagos sin discrimination en cuanto al dinero pagado, la extincion de la obligation tenia que seguir necesariamente. Habiendo comenzado la liquidation en un tiempo en que aun no habia inflacion—de hecho el billete militar japonés estaba casi a la par con el peso del Commonwealth—; y no habiendo el gobierno militar de ocupacion ni el banco liquidador establecido una escala de valores de acuerdo con las oscilaciones y curvaturas que sufriera dicho billete en el accidentado curso de la inflacion, no podemos ahora, so pena de incurrir en arbitrariedad, establecer fronteras de demarcation que separen el periodo normal del inflatorio, declarando valido lo pagado en el primer periodo, e invalido, total o parcialmente, lo pagado en el segundo. "El principio tiene que aceptarse integramente con todas sus consecuencias. O se tira de la manta para todos, o no se tira para nadie . . . El principio es indivisible.

Sobre la cuestion del legal tender, pareceme que nada se puede añadir a los luminosos razonamientos del Señor Magistrado ponente. Razones de dialectica, experiencia e historia abonan en favor de la tesis de que el ocupante militar de un territorio enemigo tiene poder para emitir billetes y ponerlos en circulation como moneda corriente. Quiero, sin embargo, destacar el siguiente hecho: que en Filipinas, en virtud de una ley economica elemental, el billete militar japonés arrojó el peso filipino del Commonwealth de las corrientes circulatorias, forzandolo a buscar escondite "para mejores tiempos." Así que sin haber sido condenado por la administration militar nipona, el peso del Commonwealth se eliminó por si mismo. Esto determinó un resultado economico indeclinable: el absoluto predominio del billete militar como instrumento de cambio y de pago, excepto solamente en las areas dominadas por las fuerzas de resistencia—las guerrillas. Así que, por encima de todas las abstracciones, los pagos hubieron de hacerse en billete militar durante la mayor parte de la ocupacion japonesa, excepto en muy corto tiempo durante los primeros meses en que el peso filipino alternaba indistintamente con el billete militar. De hecho las retiradas de deposito de los bancos en liquidacion se pagaron todas en billete militar.

Se revoca la sentencia.

DISSENTING

HILADO, J., with whom concur PADILLA and TUASON, JJ.:

I dissent.

On or about September 14, 1939, in the City of Manila, Philippines, Haw Pia obtained from the China Banking Corporation certain credit facilities in the form of overdraft withdrawable through promissory notes, letters of credit, trust receipts, bills of exchange, etc., and for the security thereof executed and delivered to the said bank the mortgage indenture known in the record as "Exhibit CC-plaintiff" or as "Exhibit Z" of "Defendant's Exhibit 1." It was stipulated in that mortgage indenture (12th clause), among other things, that should the mortgagee find it necessary to resort to the courts in order to collect the indebtedness, the interests or expenses, the mortgagee shall be allowed "a sum equivalent to ten per centum (10%) of all the amounts due, but in no case less than fifteen hundred pesos (P1500), as attorney's fees, said amount to be considered part of the principal sum hereby secured, this mortgage answering for its payment accordingly." Thus it becomes apparent that the obligation incurred by Haw Pia under the overdraft was payable in Philippine currency as Shown by the fact that 10 per cent of it was payable in fifteen hundred pesos Philippine currency, as indicated by the "F" sign and considering the date in which the agreement was made. At that time, as now, the "P" sign, used in the Philippines, stands for Philippine currency.

As of December 26, 1941, that overdraft account had a debit balance of P5,103.35 (defendant's Exhibit 2).

During the occupation, and under the Administrative Ordinance No. 11, dated July 31, 1942, issued by the Japanese occupation authorities, the defendant bank was allegedly placed under liquidation along with six other "banks of hostile countries," by the Taiwan Bank, as "liquidator." The latter bank, as pretended liquidator, and by virtue of said ordinance, received partial payments from Haw Pia on account of the aforesaid overdraft totalling P6,067.13 composed of the said former balance of P5,103.35 and P963.78 as interest. All these payments were made in Japanese military notes, P303.35 in 1942, P1,200 in 1943, and P4,563.78 in 1944.

Twice did the plaintiff Haw Pia ask the Taiwan Bank to cancel the mortgage aforesaid and the delivery of her torrens title covering the mortgaged property, but twice did said bank refuse the cancellation (statement by Haw Pia's counsel, p. 5, t. s. n.).

On August 31, 1945, plaintiff Haw Pia filed suit in the Court of First Instance of Manila against the China Banking Corporation and the Bank of Taiwan, praying for judgment ordering the defendants to deliver to her her Transfer Certificate of Title aforesaid, ordering the said defendants to execute a deed of cancellation of the mortgage and other remedies not pertinent to the present decision.

After certain subsequent proceedings the defendant China Banking Corporation filed its answer with special defenses and "cross-claim" under date of October 15, 1945, praying: (1) to be absolved from plaintiff's complaint; (2) that plaintiff be sentenced to pay defendant the sum of P5,103.35 with interests thereon at 9 per cent per annum from December 26, 1941, compounded monthly until paid, and the additional sum of P1,500 for attorney's fees and costs of suit; (3) that plaintiff be ordered to pay defendant the amount of the judgment within 90 days from and after the date on which Executive Order No. 32, series of 1945, (Moratorium order) is repealed or lifted; and (4) for general relief.

The trial court rendered judgment on March 12, 1946, absolving the defendant China Banking Corporation from the complaint and giving judgment pursuant to said defendant's "cross-claim." Upon this appeal, plaintiff-appellant's assignments of error may be reduced to the following: (1) whether or not the Japanese Military Administration or Japanese Army of occupation had authority to liquidate the so-called alien or enemy

banks through the Taiwan Bank or otherwise; and (2) whether payments made to said supposed liquidator in Japanese military notes by plaintiff-appellant has discharged her from her obligation to defendant-appellee China Banking Corporation.

1. Japanese occupation army, or the enemy property custodian of the Japanese Military Administration, or the latter itself, through Bank of Taiwan or otherwise, had no authority to liquidate enemy banks mentioned in Administrative Ordinance No. 11.

Appellant Haw Pia principally relies on Administrative Ordinance No. 11 issued by the Japanese Military Administration, the subject matter of which was "the liquidation of the banks of hostile countries." This contention is argued under the seventh proposition set forth on page 123 of the printed memorandum of Atty. Claro M. Recto, amicus curiae, as follows:

"VII. Under International Law, the Bank of Taiwan, acting as liquidator of the 'enemy*' banks and as direct representative of the office of the enemy property custodian of the* Japanese Military Administration and/or the latter itself, was lawfully authorized to demand and receive payments for and on behalf of the 'enemy' banks and inasmuch as it is admitted that the debtors paid the Bank of Taiwan, in that capacity, their debts to said 'enemy' banks, they have been and are not validly discharged from any obligation under the municipal law."

As stated in the aforequoted proposition, the theory is also there advanced that the payments made by the debtors to the Bank of Taiwan as such "liquidator" discharged their debts under the municipal law.

The lower court held against this contention, and the case has been brought here on appeal.

It seems self-evident that under article 1162 of the Civil Code, providing that "payment must be made to the person in whose favor the obligation is constituted, or to another authorized to receive it in his name," the authority of such other person to receive the payment must be lawful, that is, granted by the creditor himself or otherwise conferred by virtue of some provision of law. There is no question that the alien banks denominated "hostile" in Administrative Ordinance No. 11, did not confer such authority on the Bank of Taiwan nor on the Japanese occupation army, or the enemy property custodian of the Japanese Military Administration, or the latter itself, to collect or receive payment of the debts owed said banks by their prewar debtors, now involved herein, and the question arises whether said Bank of Taiwan or said Japanese occupation army, or enemy property custodian, or Japanese Military Administration, was by any law, international or municipal, authorized to do so.

Hereafter we will show that not only was such an authority lacking but it was absolutely denied under the provisions of the Hague Regulations of 1907. But long before said regulations were formulated, that is, as early as 1863, during the American Civil War and even before, it was already an established doctrine that no such authority is possessed by a conquering power, much less, therefore, by a mere military occupant, whenever the debt is owed to a private creditor and the credit belongs to him, as his private property.

In *Planters' Bank vs. Union Bank*, 16 Wall. (U.S.), 483; 21 Law. ed., 473, 479, decided by the United States Supreme Court, April 28, 1873, it was held:

"* * * And it is by no means to be admitted that a conquering power may compel private debtors to pay their debts to itself, and that such payments extinguish the claims of the original creditor. It does indeed appear to be a principle of international law that a conquering state, after the conquest has subsided into government, may exact payment from the state debtors of the conquered power, and that payments to the conqueror discharge the debt, so that when the former government returns the debtor is not compellable to pay again. This is the doctrine in *Phillimore on International Law*, Vol. 3, part 12, ch. 4, to which we have been referred. But the principle has no applicability to debts not due to the conquered state. Neither *Phillimore* nor *Bynkershoek*,

whom he cites, asserts that the conquering state succeeds to the rights of a private creditor.

"It follows, then, that the order of General Banks was one which he had no authority to make, and that his direction to the Union Bank to pay to the quartermaster of the army the debt due the Planters' Bank was wholly invalid * * *."

For all practical intents and purposes, by the aforesaid Administrative Ordinance No. 11, the Japanese occupation Commander, through the Bank of Taiwan, attempted to achieve what General Banks in the cited case was declared to have been devoid of legal authority to do.

The order of General Banks was made in the City of New Orleans when said city was in quiet possession of the United States forces after its capture more than 15 months previously and when it was in an undisturbed possession of the Union forces. "Hence," the court says, "the order was no attempt to seize property "flagrante bello" nor was it a seizure for immediate use of the Army. It was simply an attempt to confiscate private property - still, since the war had not ceased, though it was not flagrant in the district, and as General Banks was in command of the district, it must be conceded that he had power to do all that the laws of war permitted, except so far as he was restrained by the pledged faith of the government, or by the effect of congressional legislation. * * *" (21 Law. ed., 478.)

When the Administrative Ordinance No. 11 was promulgated, the City of Manila was in quiet possession of the Japanese Forces after its capture as an open city following the entry of the Japanese on January 2, 1942. Hence, paraphrasing the United States Supreme Court's opinion, the said ordinance was no attempt to seize the credits in question "flagrante bello," nor were they seized for the immediate use of the Army. In fact, the Japanese Army, having the absolute power and control over the printing of its military notes without any limitation, did not need to seize such notes in other people's possession in order to make use of the same. The so-called liquidation of said alien banks appears to have been solely motivated by the reason that the Japanese considered them as "hostile," as stated in the very title of the ordinance, and with the sole object, to all practical intents and purposes, of confiscating the credits involved and depriving the creditor banks of their rights therein. If under the laws of war, as found in the prevailing international law, the acts of General Banks were not held to be permitted thereby, the similar acts of the Japanese Commander in Chief or of the Japanese occupation army, of the Japanese enemy property custodian, or of the Japanese Military Administration, through their agent the Taiwan Bank, were positively forbidden by the provisions of international law contained in the Hague Regulations of 1907 and in force at the time of the promulgation of Administrative Ordinance No. 11 and the commission of the acts of the Taiwan Bank thereunder with respect to said alien banks and their credits.

If in the Union Bank case General Bank's army had no power to order payment to itself, it clearly had no power to order payment to its appointee, if there had been one, like the Bank of Taiwan as regards the Japanese occupation army in our case. The Hague Regulations contain in their preamble a very significant language negating the power and authority asserted here for the Japanese army of occupation. Said preamble stipulates:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." (Italics supplied.)

But not only this, but in the specific provisions of the regulations, we find articles 46, 47, and 53 which, respectively, enjoin respect for private property and prohibit confiscation of private property, sternly forbid pillage, and authorize the Army of occupation to take possession only of cash, funds, and realizable securities which are strictly the property of the State, among other specified items of property. For convenience, these

articles, in so far as pertinent, are quoted below:

"ARTICLE 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

"Private property can not be confiscated."

"ARTICE 47. Pillage is formally forbidden. * * *

"ARTICLE 53. An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State * * *." (Italics supplied.)

Amicus curiae Attorney Recto cites (pp. 149-150 of his printed memorandum) two paragraphs from the work of Arthur Garfield Hays entitled "Enemy Property in America," in an effort to further support his 7th proposition, but the fact is that this author in the passages quoted treats of the power of a belligerent to seize and confiscate enemy private property within its own domain. He does not say that the belligerent would also possess that power in a territory of its enemy temporarily occupied by it during the course of the war. Thus, the author says:

"In its acts each belligerent had before its eyes the possible extent of retaliation and was, therefore, guided in its procedure by the proportion of the enemy in its country as compared with that of its nationals in other countries. Germany dealt lightly with American property—and quite naturally, since German property under American control was many times that of American property under German control." (Italics supplied.)

In the case of *Co Kim Cham vs. Tan Keh*, 41 Off. Gaz., 779, it was held by the majority of the Court that the powers of the Japanese military forces in the Philippines, that is, in those parts thereof occupied by the Japanese Army during the war, were subject to and limited by the Hague Regulations. As already stated, these Regulations direct in the most solemn manner that private property be respected and be not confiscated. The municipal laws of this country at the time of the commencement of the Japanese occupation included, among others, these precepts of the Hague Regulations by virtue of that provision in our Constitution (Article II, section 3) to the effect that the Philippines adopts the generally accepted principles of international law as a part of the law of the Nation. So that, both by the direct injunctions of the Hague Regulations which bound Japan, and by the municipal law of the Philippines, said invader was under obligation to respect private property here and to refrain from confiscating, seizing and appropriating the same. There can be no doubt of Japan's obligations in the premises under the direct provisions of the Hague Regulations or the rules of international law as therein formulated. And so far as those rules were adopted as part of the municipal law of the Philippines, she was also enjoined to respect them, unless absolutely prevented, by article 43 of the same Regulations reading:

"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 laws in force in the country."

It is of course obvious that Japan was not absolutely prevented from respecting the laws of the Philippines which enjoin respect for and forbid confiscation of private property.

We have said above that the Japanese occupation army, or the enemy property custodian of the Japanese Military Administration, or the latter itself, through the Bank of Taiwan or otherwise, was absolutely denied under the provisions of the Hague Regulations of 1907 the authority to liquidate the enemy banks mentioned in Administrative Ordinance No. 11. We will now show it.

Article 53 of the Regulations, as we have recalled, allows the army of occupation to take possession only of cash, funds, and realizable securities which are strictly the property of the State. A liquidation such as that attempted by the Bank of Taiwan of the above-mentioned alien banks, necessarily and inevitably requires its taking possession

of the cash, funds, and realizable securities involved in the transactions to be liquidated. If that taking of possession is essential to the liquidation—if without it the liquidation would be impossible—but it is forbidden, how can it be said that the liquidation is permitted?

Article 46 of the Regulations, as we have seen, enjoins respect for private property, and forbids its confiscation. (Hereafter we will show that the so-called liquidation of the alien banks was in fact confiscation.) For the present we will speak of respect for it. Of course, it is beyond cavil that credits and contractual rights relating to any kind of property, whether money or otherwise, are property and if they belong to a private owner, are private property. Respect for such private property requires that it be not interfered with, that nothing be done with it, in a manner injurious to the rights of its owner without the owner's consent.

Even before the Hague Regulations of 1907 were adopted, international law already made it the duty of a belligerent occupant not to annul private rights nor to disturb the relations of the inhabitants to each other. In *U. S. vs. Percheman*, 7 Pet. (U. S.), 51, 8 Law. eel., 608, 617, Chief Justice Marshall, speaking for a unanimous court, said:

"* * * The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property remained undisturbed * * * (The great jurist was speaking of a case of conquest. With how much more vehemence he would have uttered his learned pronouncements, had he been referring to a mere provisional military occupation of enemy territory during the progress of a war, we can easily imagine.)

"* * * As the population does not owe the occupying commander allegiance, and as his authority is based merely on military necessity and so is provisional, it follows that, unless military exigencies imperatively demand otherwise, he must administer the existing territorial law, and must not interfere with the existing rights and obligations of the inhabitants, and in particular must not infringe the provision laid down in article 231 (II Wheaton's International Law, 7th English ed., p. 236; italics supplied).

"SEC. 283. If the occupant has performed acts which, according to International Law, he was not competent to perform, postliminium makes the invalidity of these illegitimate acts apparent. Therefore, if the occupant has sold immovable State property, such property may afterwards be claimed from the purchaser, whoever he is, without compensation. If he has appointed individuals to offices for terms outlasting the occupation they may afterwards be dismissed. If he has appropriated and sold such private or public property as may not be legitimately be appropriated by a military occupant, it may afterwards be claimed from the purchaser without payment of compensation." (II Oppenheim, International Law, 6th Rev. Ed., p. 483; italics supplied.)

If such illegitimate sale of immovable State property, and such illegitimate appropriation and sale of public or private property by the military occupant, are thus annulled, so must an illegitimate liquidation of private banks in the occupied territory be after the final defeat of the occupant, for "postliminium makes the invalidity of these illegitimate acts apparent."

Even the passage from Halleck quoted on page 142 of the amicus curiae's memorandum says that "the government established over an enemy's territory during the military occupation may exercise all the powers given by the laws of war to the conqueror over the conquered, and is subject to all the restrictions which that code embodies." (Italics supplied.)

In this connection, a most important distinction should be constantly kept in mind between the extent of control legally exercisable of enemy property within the belligerent's own domain and that within merely occupied territory: it is greater in the former than in the latter case. And to the former case refer the quotations supposed to

support the proposition on page 142 of the memorandum of the amicus curiae, as shown by the passage from Hyde (Memorandum, p. 143) subheaded thus:

"Control of enemy property within the national domain."

On the other hand, Oppenheim (p. 313), dealing with the military occupant's control of enemy property in the occupied territory, says:

"Private personal property which does not consist of war materials or means of transport serviceable for military operations may not as a rule be seized."

In his footnote to the above we read this categorical declaration of principle:

"Nor may the occupant liquidate the businesses of enemy subjects in occupied territories, although he can control them, and must certainly not sell their real estate (see above, section 140), even if the proceeds are to be handed over to them after the war." (*Italics supplied.*)

Hyde declares (Vol. III, p. 1878):

"Belligerent occupation, being 'essentially provisional,' does not serve to transfer sovereignty over the territory controlled, * * *. There has developed, accordingly, a body of law indicating the scope of the rights of the occupant over the hostile territory and limiting his freedom of action. The Hague Regulations of 1907 have exemplified it. It indicates the treat of the propriety of his conduct with respect to what is under his sway. While this law is essentially international in character and origin, it is also local, because it prevails in principle where the occupant asserts bis control." (*Italics supplied.*)

In G. R. No. L-409, *Laurel vs. Misa*, promulgated July 16, 1947, 44 Off, Gaz., 1176, we also held that there was no transfer of sovereignty in the Philippines during the Japanese occupation. Hence, the Philippine areas occupied by Japan did not become a part of her territory or domain, with the result that the rules governing the power and authority of the Japanese occupation army in the Philippines to control enemy property here during the occupation are those which obtain under the Hague Regulations and International Law for belligerent occupation of enemy territory during the course of a war, and not the laws of Japan herself governing her control over enemy property within her national domain.

"The rights of a belligerent occupant as such, during the period of control exercised over the hostile territory concerned are measured by the circumstances that he is to be regarded as a temporary possessor of what he controls rather than as a conqueror bent on the acquisition of the occupied area * * *. (III Hyde, p. 1879; italics supplied.)

"The Hague Regulations of 1907 announce that private property 'must be respected'; that such property 'cannot be confiscated,' also that 'pillage is formally forbidden,' an injunction seemingly applicable to public as well as private property, and possessed of wide implications * * *." (*Ibid.*, p. 1894.)

And Mr. Hyde maintains the theory, which is clearly justified by the Hague Regulations and the general principles of International Law, that debts due to the inhabitants of the occupied district are not to be distinguished from tangible property, and should also be immune from confiscation, and he very soundly maintains that if a private debtor owes a private creditor, both residing in that territory, no reason is apparent why the occupant should have the power to cancel the debt. He says:

"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." (Ibid., p. 1894, italics supplied.)

The alien banks involved here are not central or national banks but are entirely private in character. As such, they enjoyed complete immunity from being liquidated, were entitled to have their credits respected, and not taken possession of or confiscated by the Japanese occupant. Mr. Hyde says (Vol. III, p. 1898) that even in the case of central or national banks, the right of the occupant to control their operations or to administer them under its own auspices would not necessarily be decisive of its right to treat as public property all of the assets of the institution, embracing all deposits or securities held by it, opining that those shown to be held in trust for, or to belong to, private individuals, should be respected as private property, and their treatment governed by the Hague Regulations applicable to such property. As to private banks, their credits, funds, cash or securities are of course private property, no less than the deposits or securities held by them belonging to their depositors or held in trust for other parties dealing with them.

To the same effect is the article by Mr. Colby referred to on pages 143-145 in the memorandum of the amicus curiae. This article is entitled "Occupation under the Laws of War" (Vols. XXV and XXVI, Columbia Law Review), and throughout the article the author recognizes the limitations upon the powers of the occupant imposed by the Hague Regulations and the laws of war, and makes the following significant statement in the last paragraph:

"It is not my purpose to plead for unlimited power to occupant forces in all circumstances."

The same writer, as quoted on page 142 of the memorandum of the amicus curiae, makes his opinion more categorical in the following statement:

"The only remaining method is to check the acts (of the occupant) against the Hague Conventions" (in determining their lawfulness or unlawfulness)—(italics supplied).

Hall, an English writer on International Law, is one of the authorities cited by the amicus curiae. Concerning the fiction of substituted sovereignty as maintained by the older theories, and upon which the powers of confiscation had of old been asserted, he makes certain very categorical declarations which we shall quote below. Before doing so, however, we refer to that statement by Magoon (cited in amicus curiae's memorandum, p. 145) that "the right of confiscation is a sovereign right." Now, Hall characterizes those older theories as effete:

"Looking at the history of opinion with reference to the legal character of occupation, at the fact that the fundamental principle, of the continuing national character of an occupied territory and its population is fully established, at the amount of support which is already given to the doctrines which are necessary to complete its application in detail, and to the uselessness of the illogical oppressive fiction of substituted sovereignty, the older theories may be unhesitatingly ranked as effete and the rights of occupation may be placed upon the broad foundation of simple military necessity.

"155. If occupation is merely a phase in military operations, and implies no change in the legal position of the invader with respect to the occupied territory and its inhabitants, the rights which he possesses over them are those which in the special circumstances represent his general right to do whatever acts are necessary for the prosecution of his war; in other words he has the right of exercising such control, and such control only within the occupied territory, as is required for his safety and the success of his operation * * *. In its exercise (the authority of the occupant) however this ultimate authority is governed by the condition that the invader, only having a right to such control as is necessary for his safety and the success of his operations, must use his power within the limits defined by the fundamental notion of occupation, and with due reference to its transient character.

"160. Though the fact of occupation imposes no duties upon the inhabitants of occupied territory the invader

himself is not left equally free. As it is a consequence of his acts that the regular government of the occupied country is suspended, he is bound to take whatever means are required for the security of public order; and as his presence, so long as it is based upon occupation, is confessedly temporary, and his rights of control spring only from the necessity of the case, he is also bound, over and above the limitations before stated, to alter or override the existing laws as little as possible, whether he is acting in his own or the general interest. As moreover his rights belong to him only that he may bring his war to a successful issue, it is his duty not to do acts which injure individuals, without facilitating his operations, or putting a stress upon his antagonist. Thus though he may make use of or destroy both public and private property for any object connected with the war, he must not commit wanton damage, and he is even bound to protect public buildings, works of art, libraries, and museums." (Hall, p. 498; italics supplied.)

Later on we will discuss the question of whether or not there was military necessity for the Japanese occupation army to liquidate alien banks under Administrative Ordinance No. 11. At this point, it is well to quote that in the year 1942 Feilchenfeld, whom the amicus curiae also cites, said. This writer said:

"PAR. 12. The rules of belligerent occupation have been codified in Section III of the Hague Regulations, respecting the Laws and Customs of War on Land, entitled 'On military Authority over the Territory of the Hostile Estate,' and comprising articles 42-56 of the Regulations.

"PAR. 13. This body of law has survived all historical change since 1914 * * *." (Italics supplied.)

"PAR. 40. Section III of the Hague Regulations is the outcome of developments extended over many centuries.

"PAR. 41. During the nineteenth century earlier legal developments became consolidated under the influence of liberal ideas which restricted the traditional powers of occupants by subjecting them to rules against the assumption of full sovereignty and against undue interference with civilian and property interests." (Italics supplied.)

"PAR. 340. Since the powers of occupants are based on the right to protect military interests and to promote law and order, it would seem that an occupant may not interfere with purely private relationships, and may not, for instance, arbitrarily pass regulations under which the wealth of one individual is handed over to another." (Italics supplied.)

But the amicus curiae quotes (p. 149 of his memorandum) from the United States Army and Navy Manual of Military Government and Civil Affairs (FM-27-5 OPNAV 50-E-3) wherein, among other things, it is stated that in the occupation of the territories therein mentioned for a considerable period of time the civil affairs officers "will in most cases be concerned with," among other matters, "closing, if necessary, and guarding of banks, bank funds, etc.; liquidation, reorganization, and reopening of banks at appropriate times * * *."

In the first place, to be concerned with the liquidation of banks is certainly not tantamount to such officers making the liquidation themselves or ordering it; and if we construe the passage in the light of the prohibitions of the Hague Regulations already discussed, the conclusion is inevitable that it can not possibly be interpreted as authorizing the occupation officers to themselves make the liquidation of purely private banks. In the second place, to be concerned with such liquidation simply means that the officers in question have the power and the duty to seeing to it that, where such a liquidation is made as authorized by the laws governing the territory, under the economic circumstances created by or concurring during the occupation, it is done properly, legally and honestly—not that they themselves may take the initiative to effect or order the liquidation. What laws govern the occupied territory is, of course, determined primarily by the Hague Regulations, and in a suppletory manner, in all that has not been provided thereby, by "the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience" (Preamble, The Hague Regulations.)

The Field Manual cited by the amicus curiae and relied upon by him, by its own terms, is subordinated to the Rules of Land Warfare embodied in War Department Basic Field Manual (FM-27-10). The manual invoked by the amicus curiae contains the following provisions at the very beginning:

"For restraints on the discretion of the theater commander in dealing with persons and property in occupied territory, see War Department Field Manual 27-10 (Rules of Land Warfare)."

In turn, this Field Manual 27-10 is subordinated to the Hague Regulations which it quotes verbatim, article by article. The result is that the language of the manual relied upon by the amicus curiae must be deemed to be controlled and limited by the provisions of Field Manual 27-10 and the Hague Regulations incorporated therein.

Under article 53, paragraph 1, of the Hague Regulations, quoted in paragraph 320 of the Field Manual 27-10 aforesaid, said manual provides in paragraph 321:

"321. Two classes of movable property.—All movable property belonging to the State directly susceptible of military use may be taken possession of as booty and utilized for the benefit of the invader's government. Other movable property, not directly susceptible of military use, must be respected and cannot be appropriated." (Italics supplied.)

The cash, funds, or realizable securities of the private alien banks here were not "strictly the property of the state," nor "directly susceptible of military use."

As a matter of fact, it is not pretended that the Japanese army ever intended to use the military notes collected by the Bank of Taiwan from the prewar debtors of these alien banks for military purposes. It is asserted that the Taiwan Bank used them, or part of them, in paying withdrawals allegedly made by the alien banks' depositors or in the supposed payment of supposed obligations of the same banks.

Indeed, under the terms of article 53 of the Hague Regulations permitting an army of occupation to take possession only of cash, funds and realizable securities which are strictly the property of the state, necessarily prohibits the taking possession of those which are of private ownership even on the ground of military necessity. At this juncture, it behooves us to remember that even military necessity is powerless when confronted by the prohibitions of the modern laws and customs of war, particularly those which have been codified in the Hague Regulations of 1907. The Basic Field Manual on Rules of Land Warfare, FM-27-10, above referred to, speaking of "military necessity" provides:

"23. Military necessity.—Military necessity justifies a resort to all the measures which are indispensable for securing this objective (the submission of the enemy) and which are not forbidden by the laws and customs of war." (Italics supplied.)

Oppenheim says on page 268 of his work already cited above:

"But—to use the words of article 22 of the Hague Regulations—the belligerents have not an unlimited right as to the means they adopt for injuring the enemy." (Italics supplied.)

The very title and first paragraph of Administrative Ordinance No. 11, moreover, conclusively show that it was not military necessity that motivated the so-called liquidation of these alien banks, but solely the fact that they were considered and called "banks of hostile countries." For, if the Japanese feared (entirely without foundation) that the funds and assets of banks might be used against them, or, as was argued during the deliberation on this case, if they feared that the banks' debtors, unless made to pay to the Bank of Taiwan under the ordinance, might, through some secret arrangement (a very daring act it would have been) with the representatives of the banks, pay the amounts of their debts to the guerrillas or to the underground, why were these alien banks singled out for liquidation to the exclusion of the other banks existing in Manila? Besides, there would have been no need of such

liquidation. If this was the only purpose, the same objective could have been attained by the Japanese Army sealing the vaults and safes, closing the banks and placing them under guard, with the simple but most effective expedient of a proclamation of the Commander in Chief or even of an inferior officer, forbidding the debtors under pain of death—that was the vogue in those bloody days—to pay or deliver to the guerrillas, the underground, or to anybody else, any amount on account of their debts to the said banks.

In *Williams vs. Bruffy*, 96 U. S., 176; 24 Law. ed., 716, it was held that payment of debts to a party without authority to demand the payment is not valid. In that case the lack of authority arose from the unlawful combination of the confederate states to rise against the union in defiance of the constitution. In the case at bar the authority claimed for the Bank of Taiwan to exact the payments is sought to be derived from the Japanese occupation army, but that army, as we have seen, was denied by the Hague Regulations the power to liquidate or order the liquidation of private banks. Furthermore, if in the *Bruffy* case the confederacy was held to be an unlawful combination leading to the illegality or invalidity of the payment, in our case, the war of aggression which was being waged by Japan and, of which the Japanese occupation and the so-called liquidation of said alien banks were mere incidents, was far more unlawful for being a crime against humanity proscribed and penalized by modern international law. As solemnly declared in the Briand-Kellog Pact, of which Japan herself was a signatory, "unjustifiable war is a crime." The Geneva Protocol of 1924 for the Pacific Settlement of International Disputes declared that "a war of aggression constitutes and * * * international crime." So did the Eighth Assembly of the League of Nations in 1927. The Sixth Pan-American Conference of 1928 pronounced such a war "an international crime against the human species." (Report of Justice Jackson of the U. S. Supreme Court, as chief counsel for the U. S. in the prosecution of "Axis war criminals," of June 7, 1945.)

In *Williams vs. Bruffy*, supra, we read the following passage which is remarkably applicable by analogy to the case at bar:

"But, debts not being tangible things subject to physical seizure and removal, the debtors cannot claim release from liability to their creditors by reason of the coerced payment of equivalent sums to an unlawful combination. The debt can only be satisfied when paid to the creditors to whom they are due, or to others by direction of lawful authority. Any sum which the unlawful combination may have compelled the debtors to pay to its agents on account of debts to loyal citizens, cannot have any effect upon their obligations; they remain subsisting and unimpaired. * * *" (24 Law. ed., 719.)

The contention that the so-called liquidation of said alien banks was valid and legal runs counter to all of section III of the Hague Regulations which, as held in the *Co Kim Cham* case, regulated and controlled the powers of the Japanese occupation forces in the Philippines. This part of the Regulations is entitled "On Military Authority over the Territory of the Hostile State." Thus Feilchenfeld says:

"12. The rules on belligerent occupation have been codified in Section III of the Hague Regulations respecting the Laws and Customs of War on Land, entitled 'On Military Authority over the Territory of the Hostile State' and comprising articles 42—56 of the Regulations."

According to Taylor (p. 587) this section of the Hague Regulations clearly defines the extent to which the invader may subject the inhabitants of occupied territory and its resources to the necessities of war. He says:

"Since then, the whole subject has been regulated by Section III of the Hague Second Convention 'On Military Authority over Hostile Territory,' which clearly defines the extent to which the invader may subject the inhabitants of the occupied territory and its resources to the necessities of war."

Against the argument that because banking is a public function, it may be regulated by the occupant, it is sufficient to answer that the power of regulation can never be validly used to clothe what is really confiscation or

pillage. The subject of confiscation will be treated of separately hereafter. We would only advert here and now to those provisions of the Hague Regulations already quoted which deny to the occupant such a power as to put a privately owned bank out of business or to disturb and interfere with its legitimate contractual relations with its customers. The alien banks here involved do not even come within that class referred to by Mr. Hyde (Vol. III, 1898), where the particular fiscal organization bears such a relationship to the territorial sovereign as to justify the treatment of the bank as a public enemy concern, and its assets as public enemy property. Mr. Hyde's statement is as follows:

"In the case of banks functioning in occupied territory the question is likely to arise, whether the particular fiscal organization bears such a relationship to the territorial sovereign as to justify the treatment of it as a public enemy concern, and its assets as public enemy property. A variety of factors may call for due appraisal in each case that presents itself. Thus, the institution may be strictly a private concern as tested by the local law, conducting its affairs, however, chiefly for the benefit and possibly under the direction of, the territorial sovereign. Again, it may be wholly or for the most part owned by that sovereign. The depositors may be both private individuals and public agencies of the State within whose domain it operates." (Italics supplied.)

And Mr. Feilchenfeld (International Economic Law of Belligerent Occupation, pages 96-104), mentions under paragraph 357 both the Bank of France in 1870 and 1871 and the Bank of Belgium from 1914-1918 as having been treated as private institutions (and consequently protected under those provisions of the Hague Regulations enjoining respect for private property).

This author says:

"357. The treatment of central banks has been controversial. State practice is not available on all types of central banks. However, both the Bank of France in 1870 and 1871 and the Bank of Belgium from 1914 to 1918 were treated as private institutions." (Italics, supplied.)

Even Germany, the senior partner of Japan in World War II, before the Bank of Taiwan attempted the so-called liquidation here in question, had, by previous acts, recognized the unlawfulness of such a procedure. In his work, Feilchenfeld makes reference to the fact that the seizure of the assets of the local branch of the Bank of France in Kheims in 1870 was recognized as an error by the Germans (par. 360); that upon the capture of Strasbourg by the Germans on September 28, 1870, the German Governor General having in mind the administration of Alsace-Lorraine, "appointed a liquidator for the branch offices of the Bank of France and under which all funds belonging to the French State and held by these branches were to be confiscated."

Feilchenfeld adds:

"It appears that the Germans implicitly recognized both the general rules of law and the private law character of the Bank of France and of its branches. While changes were made in the administration of the branch offices, there was no intention to seize funds belonging to the bank. The decree extended only to state funds." (Paragraph 361.)

And in paragraph 362 he says:

"362. The course and the outcome of the negotiations have been rightly regarded as a further confirmation of the recognition of the rule that private bank funds may not be seized by an occupant, and that institutions like the Bank of France must be treated as private corporations." (Italics supplied.)

2. Conceding arguendo that Administrative Ordinance No. 11 validly authorized liquidation of alien banks—under such hypothesis the least that should be required of the liquidator was that in effecting the liquidation, it must not alter, disturb, much less annul, the substantive rights and obligations of the parties, the creditor banks and their pre-war debtors.

This is the kind of liquidation with which the civil affairs officers mentioned in the United States Army and Navy Manual of Military Government and Civil Affairs (FM 27-5 OPNAV 50-E-3) "will in most cases be concerned." In order that the liquidation might be made in that manner, there should be no impairment of the obligation of the preexisting contracts between the banks and their prewar debtors, for among the laws of the Philippines which the Japanese occupant was bound to respect, because he was not absolutely prevented from doing so, was the provision in our constitution against the impairment of the obligation of contracts; and this being a provision based upon natural justice, equity, and reason, so much so that the Japanese Government could not help approving its inclusion in the constitution of the puppet Republic that it established here during the occupation (Article VII, section 4 thereof), and considering that such impairment would inevitably entail the obliteration of property rights (in the present case to the tune of P34,311,330.14 in good Philippine money), it was "the principles of the law of nations, as they result from the usages established among civilized peoples, * * * the laws of humanity, and the dictates of the public conscience" (Preamble, The Hague Regulations), to impair the obligation of said contracts.

In a genuine bank liquidation the liquidator simply exercises in the collection of the credits the rights of the creditor bank, and in the payment of the debts simply fulfills the obligations of the same bank to its depositors or creditors, under its existing contracts with the other parties to the transactions involved. The liquidator does not possess the power to in any manner change, alter or modify, much less nullify, such rights or obligations. This is self-evident. So that if under the existing contract the bank has the right to be paid in genuine Philippine money because that was the money that it loaned to its debtor, and because the law so directs, the liquidator has no power to alter the bank's rights in this regard. The circumstance that the liquidator is an agent of an occupation army does not matter. Conversely, under such a contract the creditor bank or the liquidator, would not have had the right to demand payment in any other currency than the Philippine peso, the Japanese occupation notwithstanding. When the debt was contracted in the case at bar, a promissory note was executed and delivered by the debtor and there the amount contracted for was stated to be in pesos.

In the case of *Thorington vs. Smith*, 8 Wall. (U. S.) 1, 11-12; 19 Law. ed., 361, 364, the Supreme Court of the United States, *inter alia*, held:

"It is quite clear that a contract to pay dollars, made between citizens of any State of the Union, while maintaining its constitutional relations with the National Government, is a contract to pay lawful money of the United States, and cannot be modified or explained by parol evidence."

In the case at bar the contract between Haw Pia and the bank, like the "contracts between the other alien banks and their respective prewar debtors, were to pay pesos, and were made while the country was at peace under its legitimate government. And paraphrasing the foregoing pronouncement of the Federal Supreme Court, those contracts were clearly contracts to pay lawful money of the Philippines. In the *Thorington* case, the contract between debtor and creditor was made during the civil war and in a state which was in rebellion against the union. That is why parol evidence was allowed to prove what kind of dollars was meant by the contract, whether lawful money of the union or dollars of the confederacy.

Our case is radically different, because the contracts having been made during peace time, and they providing for the payment of pesos there could be no doubt that genuine Philippine pesos were meant. At that time nobody dreamed that there was going to be imposed upon our people such a thing as the Japanese military notes, a war currency without backing except the Japanese bayonet, quickly depreciating and eventually becoming worthless.

7 Am. Jur. (page 524, section 727) has this to say regarding the functions and powers of a liquidator:

"* * * He has, upon taking charge of the bank (insolvent bank), all the rights and equities in favor of the bank and for the benefit of the depositors, creditors, and stockholders * * *."

If, therefore, those "rights and equities" require payment in a certain currency, how can the liquidator have the power to alter them so as to make them payable in a different and depreciated, and ultimately worthless currency?

The Civil Code provides:

"ART. 1753. One who receives a loan of money or any other fungible thing acquires ownership thereof and is bound to return to the creditor an equal amount of the same kind and quality. (Italics supplied.)

"ART. 1754. The obligations of persons who borrow money shall be governed by the provisions of article 1170 of this code.

"ART. 1170. Payment of debts of money shall be made in the specie stipulated and, should it not be possible to deliver such specie, in silver or gold coin legally current in (the Philippines).

The "specie stipulated" spoken of in this article may be stipulated expressly or impliedly; and in the absence of an express stipulation, all reasons of natural justice and common sense tell us that the parties must have intended the debtor to pay his creditor in the same currency that he received from the latter indeed, article 1753 of the Code categorically so ordains. As against the above-quoted specific provisions of our law, which have not been shown to have counterparts in American law, the quotation from the Legal Tender Cases on pages 84-86 of Mr. Recto's memorandum are unavailing.

In a very recent decision of the Supreme Court of Spain, that of November 23, 1946, (Information Juridica, published in Madrid by the Ministerio de Justicia, pagina 128),

we read the following under the title "Jurisprudencia del Tribunal Supremo":

"Sentencia de 23 de noviembre de 1946.—Clausula de oro y depredacion del dinero.

"Contra la sentencia de la Audiencia de Albacete, confirmatoria de la del Juzgado, declarando ineficaz la consignacion, impagado el capital prestado y sus intereses, subsistente la garantia hipotecaria y estimando procedente la reconvenccion formulada por los demandados para que se condenase al actor al pago de dicho prestamo, se ha interpuesto el preaente recurso, cuyo primer motivo, amparado en el numero 1.º del articulo 1692 de la Ley de Enjuiciamiento Civil, denuncia la infraccion de los artlculos 1176 y 1180 delCodigo Civil y de la doctrina sustentada en la sentencia de esta Sala, invocada en dicho motivo, por entender que la consignation se hizo con observancia de todos los requisitos que la regulan, por lo que debe surtir los efectos del pago; pero la expresada alegacion no puede prosperar, porque pactado el pago en la escritura de prestamo en moneda corriente y legitima de oro o plata, y siendo evidente la enorme depreciacion de aquella en que se pago, no puede sostenerse que la consignation, que en todo caso, y conforme al articulo 1177 delCodigo Civil, habra de ajustarse a las disposiciones reguladoras del pago, se realizo conforme a las misma—condicion predsa para atribuirle efecto liberatorio—ni que el acreedor se opusiera sin razon a aceptarla, como dice el articulo 1176; y por ello, tal motivo debe ser desestimado de acuerdo con la doctrina recientemente sostenida por este Tribunal en sentencias de 4 de julio de 1944 y 12 de marzo y 26 de abril de 1946, pues en estas ultimas se trataba de clausulas donde expresamente se consignaba que el caso de hacerse el pago en papel se abonaria la diferencia de valor entre este y las especies monetarias de oro o plata, y no puede ponerse en duda que al pactarse, como en el caso presente, que el pago se verificaria en moneda corriente de oro o plata gruesa, fue la intencion de los contratantes que se realizase en moneda equivalents a la redbida al celebrarse el contrato de prestamo." (Informacion Juridica, publicada por el Ministerio de Justicia, Comision de Legislation Extranjera, en Madrid, Nums. 50-51, julio-agosto 1947, p. 128 [Jurisprudencia del Tribunal Supremo]; italics supplied.)

In our case the promise evidently was to pay in Philippine money, because: (1) that was the money loaned; and (2) that was the lawful money of the Philippines at the time Haw Pia contracted the overdraft. (Thorington vs. Smith, supra,)

It appears from the above-quoted decision that it was concerned with a loan secured by a mortgage contracted

before the adoption of a certain enormously inflated currency in Spain. It also appears therefrom that (a) the "Audiencia de Albacete" declared the consignment invalid, the principal loaned and its interest unpaid, the mortgage security subsisting, and upheld the counterclaim of the defendants (creditors) praying for judgment against the plaintiff (debtor) for the payment of the loan; and (b) that the judgment of the "Audiencia de Albacete" was sustained by the Supreme Court on two grounds, namely, (1) that it having been stipulated in the document of loan that the payment shall be in current gold or silver coin, and (translating) the enormous depreciation of that in which it was paid being evident, it can not be maintained that the consignment, which in any case, and pursuant to article 1177 of the Civil Code, must be in accordance with the provisions regulating payment, was made in accordance therewith—an indispensable condition to give it effect—nor that the creditor refused without reason to accept it, as article 1176 says, the contention of the appellants (debtors) could not be upheld and should be overruled; and (2) that in stipulating that the payment shall be made in current gold coin or "plata gruesa," the intention of the contracting parties was that it shall be realized "en moneda equivalente a la recibida al celebrarse el contrato de prestamo," the textual words of the decision reading: "* * * y no puede ponerse en duda que al pactarse, como en el caso presente, que el pago se verificaria en moneda corriente de oro o plata gruesa, fue la intencion de los contratantes que se realizase en moneda equivalente a la recibida al celebrarse el contrato de prestamo." (Italics supplied.) And how can it be seriously affirmed that the Japanese military notes were a "moneda equivalente" to our genuine currency?

Manresa, Volume 11, 4th edition, page 543, commenting on article 1753 of the Code, says:

"Prestamos en dinero.—Siempre se rigieron los pagos en metalico nor leyes especiales, en consideration al distinto valor de la moneda, siendo discutidissima entre los jurisconsultos la cuestion que con relation al contrato de prestamo podia producir esa alteration. Asi, mientras Cujas y Vinio opinaban que el prestamista, al efectuar el contrato, en su mente tenia el que a su termino se le devolviera una cantidad igual a la prestada para no enriquecerse a costa del prestatario ni empobrecerse por los riesgos del valor de la cosa prestada, Doneau y Pothier, estimaban que esos riesgos debian siempre ser de cuenta del acreedor. El Codigo resuelve la cuestion, determinando que los prestamos de dinero se rijan por lo dispuesto en el articulo 1.170; esto es, la restitution se hara, en la especie pactada, y no siendo posible entregar la especie, en la moneda de plata u oro que tenga' curso legal en España. En el primer caso, por la Ley del Contrato, el acreedor debe recibir la moneda especincamente determinada, monedas del mismo valor, peso y ley que corrian al tiempo del contrato. En su virtud, si se pacto la devolution en moneda de oro, asi debera hacerse, sin que quepa, como deciamos al comentar el citado articulo, pagar en plata, aunque sea abonando la diferencia del cambio, porque ello equivaldria a autorizar una variation en la especie pactada. * * * (Italics supplied).

The above-mentioned provisions of our municipal laws in force at the time of the Japanese invasion were expressly continued in force by the Commander in Chief of the Imperial Japanese Forces through his proclamation dated January 3, 1942 (I. O. J. of the Japanese Military Administration, 3rd ed., p. 2), in the following words:

"(4) So far as the Military Administration permits, all the laws now in force in the Commonwealth, as well as executive and judicial institutions shall continue to be effective for the time being as in the past * * *."

And in the specific matter of currency, the same Commander in Chief issued another proclamation, dated January 10, 1942 (Ibid, p. 38) from which we quote in part:

"The currencies which shall be sanctioned by the authorities of the Japanese Army to circulate in the Philippine Islands shall be the Peso military notes which are issued by the Imperial Japanese Government, and the Philippine Peso currency, which is already in circulation."

On February 6, 1942, said Commander in Chief issued another proclamation accompanied with an explanation

(Ibid, pp. 43-44), from which explanation the following partial quotation has been taken:

"Currencies approved by the Commander in Chief of the Imperial Japanese Forces at present are:

"I. Peso Military notes issued by the Imperial Japanese Government.

"II. Philippine Peso currency.

"* * * * *

"In short no currency is allowed to circulate except Peso military notes issued by the Imperial Japanese Government and Philippine Peso Currency."

We have reviewed all succeeding volumes of the Official Journal of the Japanese Military Administration, and have found no proclamation, order, or decree of any kind subsequently banning the use and circulation of the Philippine Peso currency which was already in use here at the time of the invasion. Much less have we found any proclamation, order or decree of any kind which, expressly or impliedly, order, the payment of prewar debts or obligations contracted in the currency of the Philippines, by means of the so-called Japanese "war notes" or "military notes." Among other authorities which can be cited, Hall, International Law, 7th edition, pages 498, 499, states the well-known and salutary rule that:

"* * * He (invader) is therefore forbidden as a general rule to vary or suspend laws affecting property and private personal relations, or which regulate the mortal order of the community."

Among such rules affecting property and private personal relations are the aforecited articles of the Civil Code. We have failed to find any proclamation, order, or decree of any kind of the Japanese military or civil authorities stationed in the Philippines during the war which has attempted to vary or suspend said laws.

However, the above is not all: we fail to find either in Administrative Ordinance No. 11 or in the numerous proclamations, orders, etc. of the Japanese Commander in Chief and of the Japanese Military Administration, published in the Official Journal of the said Administration, that would even hint that they intended thereby to impair the obligation of contracts already existing when the occupation began. Indeed, as already stated, such impairment was sternly forbidden in the constitution of the puppet Republic which was approved the Japanese Government. Even judging for a moment the rights of appellant Haw Pia herein from the point of view of the constitution of the puppet Republic, since she made the payments in Japanese military notes during the occupation, she must, in all justice and fairness, be held to respect the inhibition of that instrument against the impairment of the obligation of contracts, and should, therefore, not now be allowed to say that, because she paid Japanese military notes to the Bank of Taiwan in pretended satisfaction of her debt in genuine Philippine money to the China Banking Corporation, that payment was valid and that it entirely discharged her.

The pertinent provisions of the Civil Code, as well as the pertinent interpretative decisions of the Philippine and Spanish courts applying or construing the same, which were in force at the time these pre-war contracts of indebtedness were made by the alien banks and their pre-war debtors became parts and parcel of those contracts.

"Unless a contract otherwise provides, the law applicable thereto at the time of its making, including the law of the place where it is entered into, and the law of the place where it is to be performed, as the case may be, is as much a part of the contract as though it were expressed or referred to therein, for it is presumed that the parties had such a law in contemplation when the contract was made. So, when a statute prescribes a duty and a contract is made involving performance of that duty, such statute becomes a part of the contract; or, where the law authorizes the regulation of service rendered the public, such law becomes a part of and controls contracts providing for the public service. Likewise, where a contract is made in contemplation of state law, or of a particular statute, such law forms a part of the contract, whether or not incorporated therein, and the contract

will be construed in the light thereof. Similarly, the parties to a contract made with reference to the laws of a jurisdiction other than that of the place of contracting are deemed to have incorporated into the contract the law of such jurisdiction. However, it has been held that a contract cannot be construed with reference to a foreign law, unless the intent of the parties to be governed by such law is evident from the instrument itself without the aid of extrinsic evidence" (17 C. J. S. Contracts, section 330, pp. 782-784).

The U. S. Supreme Court held in *Northern Pacific Railway Company vs. Wall.*, 241 U. S., 87; 60 Law. ed., 905, 907:

"As this court often has held, the laws in force at the time and place of the making of a contract, and which affect its validity, performance, and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. *Von Hoffman vs. Quincy*, 4 Wall., 535, 550; 18 Law. ed., 408, 409; *Walker vs. Whitehead*, 16 Wall., 314, 317; 21 Law. ed., 357, 358; *Edwards vs. Kearzey*, 96 U. S., 595, 601; 24 Law. ed., 793, 796."

Now, what was the obligation of the contract between the debtor and the creditor in the instant case? It was constituted not only by what they undertook and promised in their written agreement, particularly as regards the currency in which the debt was to be paid, but also by the applicable legal provisions existing at the time of the making of said agreement, and at the place of the making thereof and where the payment of the debt was to be performed. The particular legal provisions so applicable have also been cited elsewhere in this opinion.

The case of *Walker vs. Whitehead*, 16 Wall. (U. S.), 314, 317; 21 Law. ed., 357, 358, and the case therein cited afford instances of impairment of the obligations of contracts applicable herein. Said the court:

"As this court often has held, the laws in force at the time and place of the making of a contract, and which affect its validity, performance, and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. *Von Hoffman vs. Quincy*, Wall., 535, 550; 18 Law. ed., 408, 409; *Walker vs. Whitehead*, 16 Wall., 314, 317; 21 Law. ed., 357, 358; *Edwards vs. Kearzey*, 96 U. S., 595, 601; 24 Law. ed., 793, 796. (*Northern Pacific Railroad Co. vs. Wall.*, 241 U. S., 87; 60 Law. ed., 905, 907.)

"It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement. Illustrations of this proposition are found, in the obligation of the debtor to pay interest after the maturity of the debt, where the contract is silent; in the liability of the drawer of a protested bill to pay exchange and damages, and in the right of the drawer and indorser to require proof of demand and notice. These are as much incidents and conditions of the contract as if they rested upon the basis of a distinct agreement. *Greem vs. Biddle*, 8 Wheat., 92; *Bronsen vs. Kinzie*, 1 How., 319; *McCracken vs. Hayward*, 2 How., 612; *People vs. Bon*, 10 Cal., 570; *Ogden vs. Saunders*, 12 Wheat., 231." (*Von Hoffman vs. Quincy*, 4 Wall. [U. S.], 535, 550; 18 Law. ed., 408, 409.)

"The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which affect its validity, construction, discharge and enforcement.

"Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment;

"The obligation of a contract 'is the law which binds the parties to perform their agreement';

"Any impairment of the obligation of a contract, the degree of impairment is immaterial, is within the prohibition of the Constitution;

"The states may change the remedy; provided no substantial right secured by the contract is impaired. Whenever such a result is produced by the act in question, to that extent it is void. The states are no more permitted to impair the efficacy of a contract in this way than to attack its vitality in any other manner. Against all assaults coming from that quarter, whatever guise they may assume, the contract is shielded by the Constitution. It must be left with the same force and effect, including the substantial means of enforcement which existed when it was made. The guaranty of the Constitution gives it protection to that extent. *Von Hoffman vs. Quincy*, 4 Walk, 535; 18 Law. ed., 403." (*Walker vs. Whitehead*, 16 Wall., 314, 317; 21 Law. ed., 357, 358; italics supplied.)

Administrative Ordinance No. 11 will be vainly scanned for an order to pay in Japanese war-notes debts payable in Philippine currency to the banks therein mentioned under the prewar loans, overdrafts, etc. granted by them to their prewar debtors. Such an order can not be found in any of the seven paragraphs of said ordinance (see memorandum of amicus curiae Recto, pages 10-11; Memorandum of amici curiae DeWitt, Perkins and Ponce Enrile, pages 2-3).

And this is perfectly understandable, because in his proclamation of January 10, 1942 (I. O. J. Japanese Military Administration, 3rd edition, page 38, and that of February 6, 1942, with its explanation, *Ibid.*, pages 43-44). Said commander allowed the use of both Japanese war notes and Philippine currency. Consequently, if the debtors paid in military notes it was their voluntary choice. Perhaps it will be affirmed in their defense that Japanese military notes were the only ones in circulation at the time. But the deadline set by Administrative Ordinance No. 11 for payments, that is, the due date fixed thereby, was September 30, 1942, and according to the Ballantyne Schedule (the reliability of which Mr. Recto seems not to question—page 33 of his printed counter-reply), in 1941-42, the genuine Philippine currency was at par with the Japanese military notes. And if we were to be guided, as we think we should be, by the well known rule of economics that the cheaper money drives the more valuable from circulation, during those two years when both moneys were at par, they must have been considered equally valuable by the public. And neither was to be expected to have been driven by the other from circulation. And let it not be forgotten that when the Japanese occupation of Manila commenced, there were about P230,000,000, Philippine money, in circulation in the Philippines, according to the 6th annual report of the High Commissioner to the Philippines to the President and Congress of the United States, covering the fiscal period July 1, 1941-June 30, 1942. Said report says that only P7,474,000, or only 3.2 per cent of that total was withdrawn from circulation. (Memorandum of amici curiae DeWitt, Perkins and Ponce Enrile, page 64.) The trouble is that these pre-war debtors did not pay on September 30, 1942, nor many months thereafter, but only when the Japanese military notes became increasingly depreciated and cheaper until finally they became practically worthless. And did they pay at those later dates in Japanese military notes because they were told by the Japanese military or civil authorities to pay in that specific currency? No. But they perhaps will say that they did so because, again, the military notes were the only ones to be had, and they were afraid that if they did not pay, any of the following consequences might befall them:

- (1) That they might be punished with death (although Administrative Ordinance No. 11 contains no such threat).
- (2) That they might be tortured (neither did the ordinance contain this threat).
- (3) that their mortgaged properties securing their debts might be foreclosed upon (the ordinance did contain this sanction).

Not only by positive legal provisions but by the eternal principles of natural justice and equity, in the absence of an express stipulation to the contrary, a debtor has the obligation to repay his debt in the same currency that he borrowed. This is right, just, and fair for both parties—the creditor will not be entitled to require payment in a more

valuable currency, while the debtor will not be allowed to pay in a less valuable one. This certainly was the situation between Haw Pia and the China Banking Corporation under their contract in question when the Japanese came. Did the Japanese occupant, even under his powers pursuant to international law, firstly as codified in the Hague Regulations, and secondarily by the general usage of modern civilized nations existing at the time of the adoption of said Regulations, have the power to alter those substantive rights and obligations of the parties? Most assuredly not. With all the present and potential atomic strength of the United States, with all the great army of Russia, with all the former powerful war machine of Japan or of Germany, none of these nations in the realm of law and justice could have pretended the right to wipe out such contractual rights and obligations which might exist in territories which might happen to have been occupied by their armies during the war. That by sheer military force any of them could have physically forced the inhabitants of such occupied territories to do acts in relation to their pre-existing contracts, is admitted; but that is in the realm of physical force. This Court, however, is called upon here to adjudicate questions in the realm of law and justice—we are here concerned not with the ill-named "right of force," but with the "force of right."

Under a separate heading entitled "Equities of the Case-Question of Conscience"—we shall discuss this aspect of the controversy.

The Legal Tender Cases cited on pages 84-87 of amicus curiae Recto's memorandum are not in point, for two reasons: (1) The American laws governing loans of money did not contain such specific provisions as articles 1753, 1754, 1170 and allied articles of the Civil Code; and (2) the American Congress had power to impair the obligation of contracts. As to the first reason, on page 85 of said memorandum, the following is quoted from the decision in the Legal Tender Cases:

"* * * But whether the obligation of the contract is thereby weakened can be determined only after considering what was the contract obligation * * *." (Italics supplied.)

Unlike the American law there applied, the Philippine law on the subject required the debtor under a loan of money "to return to the creditor an equal amount of the same kind and quality" (article 1753, Civil Code), and as expressed by Manresa (Vol. 11, 4th edition, page 543), in the quotation inserted on pages 36-37, *supra*.

"En su virtud, si se pacto la devolucion en moneda de oro, asi debiera hacerse, sin que quepa, corao deciamos al comentar el citado articulo, pagar en plata, aunque sea abonando la diferencia del cambio, porque ello equivaldria a autorizar una variation en la especie pactada. * * *." (Italics supplied.)

By analogy, if the contract stipulates for Philippine currency, no payment in Japanese military notes can legally be admitted, even paying the difference in the exchange rate.

And as to the power of the American Congress to impair the obligation of contracts,

"* * * Such constitutional provisions (against impairment of contractual obligations) are expressly directed at state action and operate to prevent impairment of a contract obligation by a state law; and they do not apply to or restrict congress or the United States, which may pass laws directly or indirectly impairing the obligation of contracts. * * *". (16 C. J. S., 694-695, and cases cited in support.)

3. Alleged liquidation, if allowed to produce its effects, tantamount to confiscation:

We must remember that said liquidation involved investments, by way of loans, by the alien banks to their prewar debtors in the total amount of P34,311,330.14 (printed memorandum of amici curiae DeWitt, Perkins and Ponce Enrile, pages 4-5). This amount is not disputed by any party herein. As a result of the so-called liquidation, if it were allowed to produce its effects, all this huge sum of money will be completely lost to said banks, excepting perhaps the relatively small sums which may result to be represented by voluntary withdrawals of their prewar

depositors during the occupation. Such withdrawals would be those which the depositors voluntarily made in Japanese money, accepting the military notes at par with Philippine currency. As of the date of Mr. DeWitt's letter to the Committee on War Claims, Congress of the Philippines, dated September 5, 1946 (Memorandum of amici curiae DeWitt, Perkins and Ponce Enrile, pages 22-23), the amount of those withdrawals was P1,927,841.22 for six of the seven banks, and his supplemental letter to the same committee of September 6, 1946 (same memorandum pages 24-25), added the figure for the China Banking Corporation, namely, P2,082,424.83. In said two letters the amici curiae explained how apparent withdrawals were found to be involuntary and how certain sums had been reinstated in favor of the depositors for that reason. The total of said voluntary withdrawals for the seven banks then would be P4,010,366.05 and this amount deducted from the P34,311,330.14 will leave a balance of P30,300,964.09, which should be the amount of the net loss to the alien banks if the so-called liquidation were to be held legal and valid. This last sum would be the amount that said banks would be deprived of, and as to which their rights as private creditors would be totally annulled and abrogated. After the occupation ended, consequent upon the Japanese unconditional surrender, no sum of money on account of the prewar loans was delivered to these banks, either by the Bank of Taiwan or the Japanese Imperial Forces, or the Japanese Military Administration, which all disappeared from the scene in so far as the unfinished pretended liquidation was concerned. If we are now to declare that as a legal consequence of that so-called liquidation these seven banks are no longer the creditors of their prewar debtors above referred to, that they have completely lost their contractual right to enforce payment of their prewar credits although they have not received payment at least of the above balance of P30,300,964.09: then, the inevitable result would be that the so-called liquidation was confiscation pure and simple, and what is worse, this Court, by m deciding, will have played the ignominious role of bringing about the consummation of what the Japanese oppressor so unlawfully and iniquitously commenced and was in process of executing when his defeat overtook him. This Court in *Peralta vs. Director of Prisons*, 42 Off. Gaz., 198, 212, 213, quoted from *Westlake International Law*, Part II, War, pages 97-98, the following passage:

"* * * The enemy's law depends on him for enforcement as well as for enactment. The invaded state is not subject to the indignity of being obliged to execute his commands."

On page 194 of his memorandum, amicus curiae Recto submits the proposition that sequestration is not confiscation and cites Hyde as his authority. However, it will be seen that Hyde speaks of sequestration within the belligerent's own national domain, and not within enemy territory occupied by him in the course of the war. As already pointed out elsewhere in this opinion, the Hague Regulations do not deal with the powers of the belligerent within his own domain in the matter of control of enemy property, so that Mr. Hyde's treatment of the subject relied upon by the amicus curiae has nothing to do with the different subject of the power of control of enemy property in occupied territory.

Furthermore, even sequestration of cash, funds, and realizable securities in occupied territory is proscribed by article 53 of the Hague Regulations. The municipal laws of the Philippines which at the time of the commencement of the Japanese occupation included, by virtue of our constitution, the generally accepted principles of international law, among them the same article 53 of the aforesaid Regulations, unquestionably prohibited such taking possession of the cash, funds, and realizable securities of the banks in question as was done under Administrative Order No. 11. This particular provision of the local municipal law the Japanese Army was certainly not absolutely prevented from respecting, as enjoined by article 43 of the Regulations.

4. Japanese occupation army had no power to impair the obligation of prewar contracts between the inhabitants of the Philippines—certainly it had no military necessity to do so.

As just reiterated, that army was bound by the Hague Regulations to respect the municipal laws of these Islands unless absolutely prevented. The principle of the inviolability of private contracts was not only found by said

army enshrined in the Philippine constitution, but must have been already a part of the juridical ideology of the Japanese government itself, since said government approved the constitution of the puppet Republic which likewise embodied the same principle. The Japanese army, therefore, should be deemed to have brought that same principle when invading this country. But the most important thing is that, being enjoined to respect that particular provision of the local municipal law, because not absolutely prevented, it was naturally prohibited from doing precisely the thing that was forbidden by it. The substantive rights and obligations of the alien banks which the Taiwan Bank attempted to liquidate and those of their prewar debtors, we have sufficiently discussed above. We have cited articles 1753, 1754, first paragraph, and 1170 of the Civil Code. We have quoted the judgment of the Supreme Court of Spain of November 23, 1946. We have already quoted on pages 36-37 of this opinion from the eminent Manresa under the heading "Prestamos en dinero" (Vol. 11, 4th ed., 543). All the above legal provisions were in force at the time and place of the making of the contracts by the said banks and their prewar debtors. Those legal provisions, therefore, became parts and parcel of the same contracts. And even the proclamation of the Japanese Commander in Chief of January 3, 1942 (I. O. J. Japanese Military Adm., 3rd ed., pp. 1-2) expressly guaranteed that "So far as the Military Administration permits, all the laws now in force in the Commonwealth * * * shall continue to be effective for the time being as in the past." No order, proclamation, or decree of that military administration, or of the Commander in Chief, or any other officer of the Japanese Army has been brought to our attention, and none can be found in all the volumes of the Official Journal of said Administration, that discontinued these particular provisions of our civil law and constitution. Certainly, no military reason or exigency could have required such a determination.

We have already quoted from Walker vs. Whitehead, supra (pp. 42-43 of this opinion). But in this connection would repeat the following passages therefrom upon the particular subject of impairment of contractual obligations:

"Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the constitution against impairment;

"The obligation of a contract 'is the law which binds the parties to perform their agreement';

"Any impairment of the obligation of a contract, the degree of impairment is immaterial, is within the prohibition of the constitution."

And if we force the creditor, who has loaned good Philippine money, to receive in payment depreciated or worthless Japanese military notes, are we not changing "the means of enforcement" of his contract? What is the enforcement of a contract of loan if it is not the collection of what has been loaned?

In Hepburn vs. Griswold, 8 Wall. (U. S.), 603; 19 Law. ed., 513, 521, the United States Supreme Court held:

"Now, it certainly needs no argument to prove that an Act, compelling acceptance in satisfaction of anything other than the stipulated payment, alters arbitrarily the terms of the contract and impairs its obligation, and that the extent of impairment is in the proportion of the inequality of the payment accepted under the constraint of the law to the payment due under the contract. Nor does it need argument to prove that the practical operation of such an act is contrary to justice and equity. * * *." (Italics supplied.)

Lastly, the impairment of the obligation of contracts involving, as it does, property rights and obligations already contracted for, and entailing as it must, damage and prejudice to the contracting parties, is against the dictates of public conscience within the meaning of the preamble to the Hague Regulations. The ordinary man in the street will so say because he feels that what had been agreed upon between honest men binds them in good faith and in conscience to its fulfillment. True it is, that dishonest men abound in the world, but when the preamble speaks of

"the public conscience" it refers to those who are honest, and who are presumed to constitute the majority. A more wise rule of conduct can hardly be enunciated. This court must not be the last to uphold and enforce it.

5. Japanese military notes not legal tender. Hence, their receipt was not compulsory, and any forced payment therewith was null and void.

In *Juilliard vs. Greenman*, 28 Law. ed. (U. S.), 204, 214, the United States Supreme Court held:

"It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with usage of sovereign governments. The power, as incident to the power of borrowing money and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty in Europe and America, at the time of the framing and adoption of the Constitution of the United States. The governments of Europe, acting through the monarch or the Legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin. This power has been distinctly recognized in an important modern case, ably argued and fully considered in which Emperor of Austria, as King of Hungary, obtained from the English Court of Chancery an injunction against the issue in England, without his license, of notes purporting to be public paper money of Hungary, *Austria vs. Day*, 2 Giff., 628, and 3 de G. F. & J. 217. * * *." (Italics supplied.)

Thus we see that both in Europe and America the power to impress the character of legal tender upon bills or notes is universally understood to belong to sovereignty.

In *Laurel vs. Misa*, supra, it has been definitely settled that there was no transfer of sovereignty to the Empire of Japan or to her Imperial Forces over the areas of the Philippines occupied by them during the late war. And this is in consonance with the enlightened doctrine of modern international law. (See also 36 Am. Jur., 468.) And this is as it should be. For the idea of legal tender is inseparable with that of money, and money is a standard of value by which all other values are measured. The adoption of such a standard, and the provision of what may stand for it as legal tender, whether coin or paper money, are aimed at that uniformity in the unit of value which is demanded by all sound economy. In their very nature these things require the characteristics of permanence and universality. Without these they would only create confusion and chaos in the country's business. To speak of legal tender not for all the Philippines but only for specified and isolated parts thereof during the Japanese occupation, is to incur in a contradiction in terms. The merely provisional government established by an occupation commander during the course of war should have nothing to do with establishing such standards for the economy of the country, particularly when his occupation is not extended over its entire territory, and his authority is not effectively exercised over all its people, but is confined to certain definite areas, more or less isolated, because of the geographical conditions of the archipelago and because of the continued resistance of the inhabitants of the major portion thereof. Currency or money should not be confused with legal tender. There may be currency or money in circulation, or allowed to circulate, which is not legal tender, because the sovereign has not decreed that they be received as such, in payment of public or private debts. Not even the allied military currency which was used in Sicily was made legal tender, presumably because the allies respected the principle that only the sovereign can establish a legal tender, and acknowledged that they were not the sovereign even while occupying Sicily. In a case where the court is so sharply divided, before we decide to declare the notorious Japanese military notes legal tender during the occupation, we must warn ourselves of the far reaching consequences to be expected. To mention just one instance, there is the Philippine National Bank fully 90 per cent of whose prewar investments, according to reliable information, were paid with those military notes during the occupation, and they total hundreds of millions of pesos, according to that information. Besides, what shall we say of the hundreds of

millions of pesos in the same war notes deposited with the same bank during the occupation? If we declare these notes legal tender, what will happen to our national bank? And what will happen to the economic life of this ravaged country? If this bank were to lose 90 per cent of its pre-war investments, totalling hundreds of millions of pesos, and to pay in good sound Philippine money other hundreds of millions of pesos of deposits made in that Japanese military currency, it will be instantly plunged into utter ruin and bankruptcy and still leave an enormous amount of unpaid obligations after its total destruction.

In this connection, the writer would propose that we take the precautionary step of requiring definite information from the bank itself. Under Rule 123, section 5, we have judicial notice, among other matters, of those which "are capable of unquestionable demonstration." The amount paid to the bank in Japanese military notes during the Japanese occupation to satisfy prewar debts is capable of unquestionable demonstration because it appears in the books of the bank. Hence, we can take judicial notice thereof, and in accordance with the same rule and section, we may receive evidence upon the same subject when we shall find it necessary for our own information, and we may resort for our aid to the books or documents of the bank, in which connection it is believed that the court would be satisfied with a mere certification from the proper bank official as to the total of such payments. In this way, if we must declare those military notes legal tender and thus bring about the complete ruin and destruction of the chief local banking agency for the economic rehabilitation of our people, the official depository of our government's funds, and the majority of whose capital and assets belong to our government, let us do it with full knowledge of the facts. If we must expose ourselves to the grave danger of going down in history as the authors of such a tremendous collapse in the economic life of our people just as they were struggling to rise from their financial prostration consequent upon the war; if we must face the accusing fingers of posterity in this regard, let us not place ourselves in the necessity of having to answer: "We did not know it was going to entail that result."

Upon their very face those Japanese military notes could not possibly be considered as legal tender. It is of general knowledge, and therefore within judicial notice, that all that appeared in those notes which might possibly be interpreted as a promise of the Japanese government to pay the face value thereof in the currency therein stated to the holder upon demand, or as a guarantee that the equivalent amount has been deposited in the treasury of the Japanese government in the same currency, were couched in the following words and figures:

"The Japanese Government-Ten Pesos", (or any other denomination in pesos or centavos) (A sample of the 10-peso military notes is annexed to the original of this opinion for ready reference).

I take it that no member of this Court would for a moment consider as legal tender, in the legitimate sense of the term—the only sense we should be interested in—a paper money not bearing either: (a) a certification by the government that there has been deposited in the treasury the amount therein stated payable to the bearer on demand in the money also therein stated; or (b) an absolute and unconditional promise of the government to pay to the bearer on demand the amount therein stated. Thus the majority opinion quotes (p. 25) from the Japanese Commander in Chief's proclamations of January 3 and February 1 (6), 1942, as follows:

"* * * Naturally, as the Japanese war notes were issued as legal tender for payment of all kinds at par with the Philippine peso, by the Imperial Japanese Government, which in its proclamation of January 3, 1942, and February 1 (6), 1942, 'takes full responsibility for their usage having the correct amount to back them up' * * *."

Now, it is apparent that, whether the words and figures thus printed on those notes be interpreted as a promise of the Japanese government to pay the stated amount to the holder on demand, or as a guarantee that said amount was in deposit in the treasury of Japan, such promise was an absolutely hollow undertaking, impossible of performance and such guarantee equally futile and meaningless, impossible of effectuation. The reason is the simple fact that the Japanese government did not have pesos but yen, nor was the peso currency in deposit in its

treasury. It is, therefore, self-evident that when the Japanese government, as the Japanese authorities in the Philippines would have us accept, promised or guaranteed the payment to the bearer on demand of the amounts represented by those military notes in pesos, it promised or guaranteed something which it could not fulfill, unless again we are to abuse our imagination and say that what was meant was that the promise or the guarantee was to be good only if and when the Japanese government should confiscate, or succeed in confiscating, the Philippine pesos, or if and when the Japanese government should succeed in somehow obtaining such pesos to redeem or pay its war notes. This should be more than the Filipino people can be made to swallow. Let us not exact so much naivete from them.

In the very nature of things, the concept of legal tender implies good faith besides legal authority, but when a whole people is made to accept as legal tender a paper "currency" which is impossible of redemption by the issuing government, let not this Highest Tribunal of the land be the instrument for forcing them to submit to such a regime. Even in the Legal Tender Cases (12 Wall., 457; 20 Law. ed., 287, 313), it was confessed by the Supreme Court of the United States that it was not there intended to assert that Congress might make anything which has no value—money. Said the Court:

" * * nor do we assert that Congress may make anything which has no value-money. What we do assert is that Congress has power to enact that the government's promises to pay money shall be for the time being equivalent in value to the representative of value determined by the coinage acts or to multiples thereof * * *."*
(Italics supplied.)

But how can a government's promise to pay money, which is impossible of fulfillment, have any value at all? Mark that the promise was made in terms of Pesos or Centavos (depending on the denomination), which money the Japanese government did and does not have. It is at times said, more or less loosely, that those war notes were intended to be redeemed in case Japan won the war. This is preposterous. Or will it be pretended that since the Japanese government did not possess the peso currency in which it thus promised or guaranteed payment, the poor creditor who was forced to accept war notes, at par with genuine Philippine currency, in complete satisfaction of a prewar credit, would have to, even in case Japan had won the war, ask that government for a settlement by which the face value in pesos of his war notes might be reduced to Japanese yen? In the first place, this is altogether beyond the terms printed in the military notes themselves, and they did not contain anything that would include such a supposition within their purview. In the second place, a paper money whose redemption is thus made so precarious, doubtful and conditional, is just the antithesis of legal tender; for legal tender does not become so by the mere order of a military occupant, however absolute and compelling that order may be in the military sense. The term "legal" in the name "legal tender" means just what it says, and legality is never predicated upon sheer military or physical compulsion. Just imagine the injustice of it; the pre-war creditor whom his pre-war debtor owed good Philippine money, is made to accept Japanese war notes, at par with the Philippine Peso, and is placed in the situation of not being able to have said notes redeemed because the Japanese government does not have the money which it therein promised or guaranteed to pay. In practical illustration, let us consider the case of any present holder of such war notes. If he went to Japan now and presented those notes for redemption to the Japanese Government, what would he find? No pesos but at most yen in the treasury of the Japanese government. But the yen is not the money or currency the payment of which is promised or guaranteed in the war notes that he presents. If he happens to be prewar creditor for, say P10,000, in genuine Philippine money, and has been forced to receive the war notes in the same face value and at par with his credit, if the war notes were considered legal tender, he has already lost all right to collect the original credit from his debtor. But the tragedy does not end here; for he can not possibly collect the equivalent amount in pesos from the Japanese government which, we are told, had the necessary amount to back up the war notes. The situation of such a creditor could not have been a whit better had he gone to Japan immediately upon receiving the war notes during the occupation, to seek the

redemption thereof, for the Japanese government possessed no more pesos then than now.

Are we going to further strain the predicament of this unfortunate creditor by holding that he can present and maintain a claim, diplomatic, administrative, or judicial, against the Japanese government upon its supposed promise or guarantee made in those military notes? And in the same breath tell him that those notes were legal tender?

At any rate, laws providing what shall be legal tender invariably make an exception of specific contractual provisions to the contrary. Thus section 1612 of our Revised Administrative Code, in providing that the Philippine silver peso and half peso, and gold coins of the United States, at the rate of one dollar for two pesos, shall be legal tender, makes the following express exception:

"unless otherwise specifically provided by contract."

Westerfield on Money, Credit, and Banking, page 15, has the following to say on the point:

"* * * A legal tender law * * * does not prevent contracting parties, unless specifically inhibited by law, from naming the specific money in which payment is to be made * * *."

If the creditor in our example contracted with his debtor for the payment of the debt in Philippine currency, he had under section 1612 of the Revised Administrative Code and the general doctrine of legal tender, as stated by Mr. Westerfield, to cite just one writer on the subject, the right to demand payment in that currency.

And yet, it is submitted that for the majority in this case there is no dodging the question, there is no possibility of avoiding the grave decision of the question whether those war notes were legal tender or not. For if they were, then their receipt was compulsory, saving an express contractual stipulation to the contrary (Rev. Adm. Code, sec. 1612; 40 C. J., p. 1490, sec. 2; Morris vs. Edwards, 1 Oh., 189, 204), but if they were not, no prewar creditor would legitimately be compellable to receive them in payment, any such payment forced by the enemy's pressure and duress, would necessarily be null and Void. (Civil Code, arts. 1265, 1267, 1268.) If they were legal tender, the hundreds of millions of pesos in Japanese military notes deposited during the occupation in the Philippine National Bank, for instance, would be valid and would now be payable in genuine money of this country. Then will that bank, and others similarly situated, be hurled into utter bankruptcy and ruin. In a case, which at best is doubtful, I decline to be among the authors of such an economic catastrophe.

6. Allies, including the Commonwealth of the Philippines, through their political departments reserved the right to assert nullity of illegal acts of Axis occupant—court bound to respect and enforce their declarations.

On July 10-12, 1943, an International Law Conference was held in London in which some of the most prominent international law jurists of today with experience in two world wars participated. They issued certain declarations and passed certain resolutions. Among their declarations which are pertinent here, because what applies to the Germans equally applies to the Japanese, were the following:

"Nothing has been more devastating to the National economy of occupied countries than this form of looting to which not even the faintest allusion is made in the Regulations, it being a new device entirely out of keeping with the assumptions of the basis of that document. The inflationary measures serve at the time the coordination of the monetary system of the occupied country with that of Germany (already heavily inflated) and the exploitation for the benefit of central Reich authorities of the available resources of the occupied territories; they enter thus into a system of policy and government which is on another plane altogether than that of belligerent occupation. Under the Hague Convention IV, belligerents who transgress the regulations have to pay damages; but the very subtlety of the destruction, thus wrought is such as to defy ordinary attempts at assessing damages, altogether apart from the fact that no payment of money damages can repair the social and national damage suffered. The bank notes themselves which were carried to a third country during the

occupation and are still located in a third country at the end of the occupation are in such a case invalid intrinsically or may be declared so as it was beyond the powers of the occupant to create the inflation either directly or by means of the occupant controlled bank of issue." (Italics supplied.)

"The vice of invalidity or nullity flows from an excess of powers or usurpation of power by the occupant. The occupant has, under international law, only a limited right of jurisdiction and administration. He has no right to dispose of goods or services acquired from the inhabitants for purposes other than the maintenance of the necessary forces of occupation and the welfare of the inhabitants, and he has no right to transfer titles to property, rights or interests outside the country. This applies in principle also to State property. Excess of powers or usurpation of power by the occupant may be expressed in the acts of the occupant himself or of his agents or helpers or abettors, whether these agents or helpers or abettors be persons of his own nationality, nationals or inhabitants of the occupied country or any other persons."

Among their resolutions were the following:

"(ii) The occupant does not succeed, even provisionally, to the status or rights of the sovereign whom he displaces. The occupant has at most, under international law, only limited rights of jurisdiction and administration; acts in excess of these limited rights are null and void in law and are not entitled recognition in the occupied country after its true sovereign is restored."

"(iii) The rights of the occupant do not include any right to dispose of property, rights or interests for purposes other than the maintenance of public order and safety in the occupied territory. In particular the occupant is not in international law vested with any power to transfer a title which will be valid outside that territory, to any property, rights or interests which he purports to acquire or create or dispose of; this applies whether such property, rights, or interests are those of the State or of private persons or bodies. This status of the occupant is not changed by the fact that he annexes by unilateral action the territory occupied by him.

"(iv) The civil administration, established in a country subject to belligerent occupation has no status in international law. Any rule of international law establishing the invalidity of transfers of, or dealings with, property, rights or interests effected by the occupant, applies also to similar transfers and dealings carried out by any associate or agent of the occupant acting for him or in his interests."

"(vi) Without prejudice to the foregoing rules, rightful ownership remains in the person who has been dispossessed of anything by outright confiscation or by any device resulting from political pressure by the occupant; the title of a party in a third country derived from the occupant or from his associates or agents is invalid." (Italics supplied.)

The full text of that inter-allied declaration with a prefixed statement of the government of the United Kingdom follows:

"London, January 5th, 1943.

"His Majesty's Government in the United Kingdom have today joined with sixteen other Governments of the United Nations, and with the French National Committee in making a formal declaration of their determination to combat and defeat the plundering by the enemy Powers of the territories which have been over-run or brought under enemy control. The systematic spoliation of occupied or controlled territory has followed immediately upon each fresh aggression. This has taken every sort of form, from open looting to the most cunningly camouflaged financial penetration, and has extended to every sort of property—from work of art to stock of commodities, from bullion and bank notes to stocks and shares in business and financial undertakings. But the object is always the same—to seize everything of value that can be put to the aggressor's profit and then to bring the whole economy of the subjugated countries under control so that they must enslave to enrich and strengthen their oppressors.

"It has always been foreseen that when the tide of battle began to turn against the Axis the campaign of plunder

would be even further extended and accelerated and that every effort would be made to stow away the stolen property in neutral countries and to persuade neutral citizens to act as fences or cloaks on behalf of the thieves.

"There is evidence that this is now happening, under the pressure of events in Bussia and North Africa, and that the ruthless and complete methods of plunder begun in Central Europe are now being extended on a vast and ever increasing scale in the occupied territories of Western Europe. (All this language is applicable to the Japanese methods throughout the Far Eastern Territories they occupied.)

"His Majesty's Government agrees with the Allied Governments and the French National Committee that it is 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, just as they have recently emphasized. their determination to exact retribution from war criminals for their outrages against persons in the occupied territories. Accordingly they have made the following joint Declaration, and issued the appended explanatory memorandum on its meaning, scope and application:

"DECLARATION

"The Governments of the Union of South Africa, the United States of America, Australia, Belgium, Canada, China, the Czechoslovak Republic, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, Greece, India, Luxemburg, the Netherlands, New Zealand, Norway, Poland, Yugoslavia and the French National Committee,

"Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries, that they intend 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 want only assaulted and dispoiled.

"Accordingly the governments making this declaration and the French National Committee reserve 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 residing in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transaction apparently legal in form, even when they purport to be voluntarily effected.

"The governments making this declaration and the French National Committee solemnly record their solidarity in this matter."

Now, Martin Domke, in his work entitled "Trading with the Enemy in World War II" says that "this warning was indorsed by the Commonwealth of the Philippines, in order to strengthen further Filipino resistance to Japanese occupation." In this connection, it has been asserted for the debtors of the alien banks that the so-called liquidation was impelled by the military necessity of weakening our resistance to the invader. By the same token, the action of President Quezon, as head of the Commonwealth Government, in endorsing and joining the London Declaration, was impelled by the no less pressing military necessity—which to us should be of overpowering force—to further strengthen that resistance. Now at this sovereign though young Republic is free, is its Highest Court going to give more effect to the decree of our former oppressor than to that of our own lawful Government—to obey the former and disobey the latter?

In *Philipps vs. Payne*, 2 Otto (U.S.), 130; 23 Law. ed., 649, the Supreme Court of the United States expressly acknowledged that "in cases involving the action of the political departments of the government the judiciary is bound by such action." (See also *Williams vs. Insurance Co.*, 13 Pet., 420; *Garcia vs. Lee*, 12 Pet., 511; *Kennel vs. Chambers*, 14 How., 38; *Foster vs. Neilson*, 2 Pet., 209; *Nabod of Carnatio vs. East Ind. Co. Ves. Jr.* 60; *Lucer vs. Barbon*, 7 How., 1; *R. I. vs. Mass.*, 12 Pet, 714.)

In accordance with the foregoing doctrine this Court is bound by the determination of the political department of the Commonwealth Government, through President Quezon and his exile cabinet, in adhering to the London Declaration, and to enforce what was there announced in respect to declaring invalid, among other things, any dealings by the governments with which the Allies were at war 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 said governments or which belong or have belonged, to persons, including juridical persons, residing in such territories." (Italics supplied.) This Court is bound by the determination of said political department of our government announced in the same declaration that the warning therein contained "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."

There can be no doubt that the pretended liquidation of the above mentioned alien banks under Administrative Ordinance No. 11 by the Taiwan Bank, as an agency of the Japanese Army, or Military Administration, comes squarely under the condemnation of the above quoted London Declaration, and, therefore, the condemnation of the political department of our own government then in exile in Washington. Will this Court go against that declaration? Have we the right to declare that President Quezon, as head of the political department of our government, did not have the power to bind us in this matter of the peculiar province of his department? Is the judiciary, through its highest court, going to break one of the most fundamental and best settled principles of republican government, and overthrow and nullify this most solemn decision of another coordinate branch upon a matter within its legitimate sphere? Shall we say that the Japanese were right, and President Quezon was wrong? And be it not forgotten that if this Court should so resolve, it would in effect be taking such an unprecedented course in an effort to uphold the validity of one of the most iniquitous acts of the worst despot that ever swayed this innocent country.

7. The acts of the Japanese military and civil authorities in the issue of their military notes, and the pretended liquidation of said alien banks were of political complexion.

In *Peralta vs. Director of Prisons*, 42 Official Gazette, 198, 210-211, this Court held that the crimes penalized by Act No. 65 (of the occupation regime), those penalized by Ordinance No. 7 (of the same regime), and certain other offenses therein specified, "are all of a political complexion, because the acts constituting those offenses were punished, as are all political offenses, for public rather than private reasons, and were acts in aid or favor of the enemy and directed against the welfare, safety and security of the belligerent occupant."

The reason and purpose which motivated the issue of those military notes are declared by the Commander in Chief of the Imperial Japanese Forces in his proclamation of January 3, 1942, *supra*, thus:

"The Imperial Japanese Army, in the occupied areas, will use the war-notes (military pass-money) endorsed and issued by the Imperial Japanese Government. * * *"

That reason and that purpose were public, *par excellence*, in character, for the support, welfare and security of said army was the public interest and concern of the Japanese Empire. The military notes were not issued for the private benefit of the persons serving as officers and men in that army.

The majority opinion in the same *Peralta* case proceeds to declare (p. 213):

"We have already held in our recent decision in the case of *Co Kim Cham vs. Valdez Tan Keh*, *supra*, that all judgments of political complexion of the courts during the Japanese regime, ceased to be valid upon the reoccupation of the Islands by virtue of the principle or right of *postliminium*. Applying that doctrine to the present case, the sentence which convicted the petitioner of a crime of a political complexion must be considered as having ceased to be valid *ipso facto* upon the reoccupation or liberation of the Philippines by

General Douglas MacArthur."

As a consequence, the punitive sentence imposed upon Peralta by the occupation court was held to have "ceased to be good and valid ipso facto upon the reoccupation of these Islands and the restoration therein of the Commonwealth Government."

By the same token, that proclamation of January 3, 1942, of the Japanese Commander in Chief, Administrative Ordinance No. 11, and the so-called liquidation attempted thereunder, being all of a political complexion, even to a superior degree, did not remain good, but automatically "fell through as of course," as stated by Hall:

"Thus judicial acts done under his control, when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal law, remain good. * * * Political acts on the other hand fall through as of course, whether they introduce any positive change into the organization of the country, or whether they only suspend the working of that already in existence * * *." (Hall, *International Law*, 6th ed., p. 483, italics supplied.)

8. The pretended liquidation, not having been terminated, even hypothetically supposing that it would have been otherwise valid, fell short of being validly consummated, and became impossible of consummation.

By its very nature, such a liquidation is not accomplished, does not become a fact, until the end of the process is reached—until the net result is determined in the final balance, either in favor of or against the banks. Before this net result, this final balance, could be reached, it is plain that all the credits of the banks be fully paid to, and all their obligations fully satisfied by, the liquidator. In regard to the payment of those credits, the Civil Code provides:

"ART. 1169. Unless the contract expressly authorizes it the creditor cannot be compelled to accept partial performances of the undertaking if which the obligation consists.

"* * * * *

Without the consent of the alien banks here spoken of, therefore—and that consent was never given—no partial payment, even in genuine Philippine money, could be validly applied to them by the pretended liquidator. Now, if those Japanese military notes were not legal tender, no one seems to deny that said notes, at least from January, 1943, to January, 1945, were increasingly lower in value than the awful money of the Philippines: it resulting that, computed under the Ballantyne schedule, by January, 1945, the face value of P34,311,330.14 of the military notes paid of the Taiwan Bank, was only equivalent to P16,119,305.78 in Philippine currency. (Amici curiae DeWitt, Perkins & Ponce Enrile's printed memorandum, page 5.) In other words, in terms of Philippine currency, less than half of the total credits was paid, even giving the military notes the Ballantyne schedule values in the respective years. This would be at best a partial payment which the creditor banks would at any rate not be compellable to receive, pursuant to article 1169 of the Civil Code, for certainly there was no stipulation in their contracts authorizing the debtors to pay in Japanese military notes, and for these to be computed in terms of Philippine money under a schedule still undevised, and even unforeseen, when said contracts were made.

But this is not all; in the instant case Haw Pia's own counsel in the lower court stated at the hearing that his client twice demanded from the Taiwan Bank the release of the mortgage, but the said bank refused it in both instances (t. s. n. 5). On pages 7-8 of the same transcript said counsel admitted that the Bank of Taiwan took possession of the China Banking Corporation and became liquidator without the consent of the latter bank, which was only forced by the Japanese Military Forces. Nobody pretends now that the so-called liquidation reached the net result, the final balance. And we all seem to agree that the banks have not received any amount from the "liquidator." Neither is it asserted that they were ever notified by it of any debit balance against them.

An unfinished liquidation is no liquidation at all. Are we to take over where the Japanese left off in the execution of Administrative Ordinance No. 11? How are we to do it?

Being of a political complexion, that ordinance "fell through," came to nothing, upon the cessation of the occupation. Indeed, we cannot for a moment think of the Supreme Court of this Republic executing a command of the Japanese occupant.

"* * * The enemy's law depends on him for enforcement as well as for enactment. The invaded state is not subject to the indignity of being obliged to execute his commands." (Westlake International Law, Part II, War, pp. 97-98, quoted in majority opinion in *Peralta vs. Director of Prisons*, 42 Off. Gaz., 198, 212-213; italics supplied.)

Any attempt now to continue and finish that pretended liquidation will meet these insuperable obstacles: (1) Administrative Ordinance No. 11 is no more; (2) at any rate this country "is not subject to the indignity of being obliged to execute" it; (3) collection of the prewar credits in question is forbidden by our moratorium law; and (4) we cannot credit the debtors for their payments in military notes under said ordinance without giving effect to and carrying out, even now that we are free from enemy occupation and control, such political acts of said enemy as the proclamation for the issue of the military notes for use of the army "in the occupied areas," and the said ordinance.

9. Consequences of occupant's illegal acts—postliminium—

"SEC. 283. If the occupant has performed acts which, according to International Law, he was not competent to perform, postliminium makes the invalidity of these illegitimate acts apparent. Therefore, if the occupant has sold immovable State property, such property may afterwards be claimed from the purchaser, whoever he is, without compensation. If he has appointed individuals to offices for terms outlasting the occupation, they may afterwards be dismissed. If he has appropriated and sold such private or public property as may not legitimately be appropriated by a military occupant, it may afterwards be claimed from the purchaser without payment of compensation." (II Oppenheim International Law, 6th Rev. ed., p. 483; italics supplied.)

If the Japanese occupant, therefore, had no power to liquidate the alien banks under consideration, postliminium would make the invalidity of that act "apparent." Paraphrasing the above quotation, if said occupant was without legal authority to liquidate said "enemy banks," or has illegally collected or received payments in military notes of prewar loans in genuine Philippine money, such payments can be declared null and void at the instance of the legitimate creditors, "without payment of compensation" which, in this case, means "without crediting any amount" to the payors of the military notes.

"The most important principle of law incident to belligerent occupation—one that was not established until the last century—is that occupation does not displace or transfer sovereignty. * * * The occupant's right and duty of administering the occupied territory are governed by international law. * * *

"In so far as the occupant acts within the scope of the authority permitted to him by international law, it is customary for the legitimate government, if and when it reacquires possession of the territory, to recognize his measures and give effect to rights acquired thereunder. If the occupant acts unlawfully, his measures will not receive that recognition. (McNair p. 320; italics supplied.)

"The right of 'postlimini,' says Vattel, is that in virtue of which persons and things taken by the enemy are restored to their former state on coming actually into the power of the nation to which they belong." (*Leitensdorfer vs. Webb*, 1 N. M. 34, 44.)

The Civil Code provides:

"ART. 1162. Payment must be made to the persons in whose favor the obligation has been constituted, or to

another authorized to receive it in his name."

If the Taiwan Bank was not authorized to receive the payment in the name of the alien banks, it was void, and it would have been void even if payment had been made with Philippine money.

But in behalf of Haw Pia article 1164 of the Civil Code is invoked. It stipulates:

"ART. 1164. A payment made in good faith to the person in possession of the credit shall release the debtor."

At the same time, also in her behalf, the following is quoted (amicus curiae's memorandum page 60) from the pertinent commentaries of Manresa:

"Partiendo de esas bases y de que la buena fe se presume siempre, seran obstaculos que impidiran tal presuncion los que demuestran el conocimiento por el deudor de los vicios de la posesion, y aun cuando su buena fe no pueda contradecirse, no hara eficaz el pago si falta tal posesion verdad, V. gr., si ha cometido la ligereza de pagar a quien solo ostenta el documento de un credito, cuya transmision necesita, cuando menos, el endoso u otro requisito cuya existencia no conste." (8 Manresa, Codigo Civil, pp. 274-275.)

It is not hard to demonstrate that the pretended validity of the payment made by Haw Pia to the Taiwan Bank cannot be founded upon either the article or the commentary. Both require good faith on the part of the debtor, and the commentary adds that the payment will not be valid if the debtor "ha cometido la ligereza de pagar a quien solo ostenta el documento de un credito, cuya transmision necesita, cuando menos, el endoso u otro requisito cuya existencia no conste." We all know that no indorsement or other form of assignment of the credits in question is asserted to have been made to the Taiwan Bank.

Were the payments made in good faith? Most assuredly not. Not alone by the precepts of positive law, but by the most rudimentary principles of natural justice ingrained in the good conscience of man, it is not good faith, it is not fair, it is not right, for a debtor, who before the war solicited and received a loan in good, sound Philippine Pesos, to pay it with the depreciated and ultimately worthless war notes or "military pass-money" of the Japanese occupant. If the Japanese army of occupation had not meddled at all with the contractual relations between Haw Pia and the China Banking Corporation, created before the war when the former applied for and obtained the loan or overdraft from the latter, there could be no question that it would have been against conscience for the debtor to pay or to offer payment with the Japanese "military pass-money," unless, of course, the creditor voluntarily agreed to that medium of payment. Now, supposing the Japanese army had ordered Haw Pia to pay that debt with those war notes would that order have changed the question of conscience, let alone for the moment the legal situation, as between debtor and creditor? Could such an order have made right what was essentially wrong? just, what was essentially unjust? fair, what was essentially unfair? As between debtor and creditor, the former's conduct would only have been in good faith, if she had persisted in her determination to pay her creditor (at least after the end of the occupation) in the same currency that she had borrowed from it when she was in need, regardless of the illegal and unjust interference of the meddlesome invader—if she had treated the interference as a matter exclusively between her and the latter, not affecting her innocent creditor whose responsible officials were in the concentration camp, absolutely deprived of any say in the matter.

But what is Haw Pia's attitude here? Planted upon the ground that pursuant to Administrative Ordinance No. 11 she has paid to the Taiwan Bank, during the occupation, an amount in Japanese "military pass-money" equal to her prewar indebtedness to the China Banking Corporation in genuine Philippine currency, she contends that she now owes her said creditor exactly nothing. In other words, she would profit by the illegal and unauthorized acts of the Japanese occupant under the pretended liquidation. If she had done without Japanese intervention what she did with or under it, to say the least she would have committed a fraudulent act. We take it that if it had only been possible for the creditor, if informed of what was going on outside the camp, to ask her why she was making

payment in those war notes, she would have replied that she realized it was not the right thing to do but that she was acting under Japanese pressure. But if now that the pressure has ceased she should assert the legality of the act, and contend that she has been discharged thereby, she becomes a "particeps criminis."

It would aid in solving the problem now confronting us, to pose this question: If the situation were reversed, and the instant debtors were the creditors and the present creditors the debtors, how would the former like it if the latter were to claim discharge under identical circumstances?

"One who assists another in any manner in carrying out a fraudulent purpose is a 'particeps criminis.' It is utterly immaterial what means he resorts to. If he invokes and adopts them, to aid in the perpetration of a fraud, he forfeits thereby the countenance of the law, and is a joint tortfeasor." (Alberger vs. White, 23 S. W., 92, 96; 117 Mo., 347; italics supplied; 6 Words and Phrases, First Series, p. 5185.)

But more than this, the law rightly extends still a wider protection over the innocent creditor. As hold by this Court, through Chief Justice Arellano, in *Panganiban vs. Cuevas*, 7 Phil, 477, 485:

"The payment made by Panganiban to the revolutionary government of the 1,300 pesos which he should have paid to Francisco Gonzalez in order to redeem the property, could not have extinguished the obligation incurred by him in favor of the latter. The Supreme Court of Spain, in a judgment rendered on the 28th of February, 1896, said: 'The payment of the debt in order to extinguish the obligation must be made to the person or persons in whose favor it was incurred or to his or their duly authorized agent. It follows, therefore, that the payment made to a third person, even through error and in good faith, shall not release the debtor of the obligation to pay and will not deprive the creditor of his right to demand payment. If it becomes impossible to recover what was unduly paid, any loss resulting therefrom shall be borne by the deceived debtor, who is the only one responsible for his own acts unless there is a stipulation to the contrary or unless the creditor himself is responsible for the wrongful payment'."

10. Equities of the Case—Question of Conscience.

Under No. 2 above we have adverted to the possibility of the debtors saying that, if they did not pay even only in Japanese military notes, any of the following consequences might befall them:

"(1) That they might be punished with death (although, Administrative Ordinance No. 11 contains no such threat).

"(2) That they might be tortured (neither did the ordinance contain this threat).

"(3) That their mortgaged properties securing their debts might be foreclosed upon (the ordinance did contain this sanction).

Suppose these debtors, or any of them, acted as they did, because they were afraid to be killed or tortured or to lose their mortgaged properties in an auction sale, if they did not. Will the "equities of the case"—"the question of conscience"—argue in their favor and against the creditors? that is, that we should hold them discharged from their aggregate obligations amounting to P34,311,330.14, and condemn the innocent creditors to the total loss of their legitimate investments? If the debtors, or any of them, made payment with the "military pass-money" because they verily believed the Japanese would kill them if they did not—and not because they wanted to practice a fraud upon their creditors by taking advantage of that opportunity to wipe out their obligations with cheap and ultimately worthless money—in that case they made the payment for the exclusive purpose of saving their lives or limbs. They saved both. Does equity still demand that the just rights of the innocent creditors be also annihilated although this consequence could not have been intended by the debtors (who in the present hypothesis are supposed to have acted in good faith)? If, again, they made payment with those war notes, not to thus defraud their creditors but simply because they feared that their mortgaged properties might be auctioned off, we see that

they save those properties. Does good conscience counsel that we confer upon them the special bounty of complete liberation from their just debts, altogether beyond their intention? And yet if we are, lastly, to assume that when they made those payments they intended to avail themselves of Administrative Ordinance No. 11 in order to pay with a different, inflated and ultimately valueless currency what they owed their creditors in sound money of this country, then they acted fraudulently, illegally and inequitably and this Court is not here to aid them.

Granting that neither party is to be blamed for the acts of the Japanese, the fact remains that it was the debtors who were illegally ordered to pay, they were the victims of the illegal order, and while they thereby acquired the right to lay a claim against the guilty party, they certainly are not authorized to visit the consequences upon the innocent creditors. So far as these were concerned, their responsible officials were in the concentration camp, and under the law so long as they were not legally paid, and their rights have not prescribed, they would always preserve their credits.

During the deliberation the following example was given: During the occupation the Japanese took away one of the two telephone apparatus which a Filipino had in his house, rented from the Telephone Co. It was pointed out that the one who suffered the damage was the Filipino, for having been deprived of the use of the apparatus, and not the company. In the first place, while the Filipino was prejudiced in that way, the company was also prejudiced by being thus deprived of its property. In the second place, the apparatus was a material thing capable of physical appropriation and removal, whereby the Filipino was effectively deprived of its use. Whereas in the case of the debts here in question, they are intangible things, incorporeal rights, incapable of physically being taken possession of and wrested from the creditors. All that the Japanese and the debtors did with respect to them were absolutely vain and futile to take away those incorporeal rights from the creditors. Thus in *Williams vs. Bruffy*, 96 U. S., 176; 24 Law. ed., 716, it was said:

"* * * Parties in the insurrectionary territory, having property in their possession as trustees or bailees of loyal citizens, may in some instances have had such property taken from them by force; and in that event they may, perhaps, be released from liability. Their release will depend upon the same principles which control in ordinary cases of violence by an unlawful combination too powerful to be successfully resisted.

"But, debts not being tangible things subject to physical seizure and removal, the debtors cannot claim release from liability to their creditors by reason of the coerced payment of equivalent sums to an unlawful combination. The debts can only be satisfied when paid to the creditors to whom they are due, or to others by direction of lawful authority. Any sum which the unlawful combination may have compelled the debtors to pay to its agents on account of debts to loyal citizens, cannot have any effect upon their obligations; they remain subsisting and unimpaired. * * *" (Italics supplied.)

The Japanese, could not only do the physical acts performed by them in pursuance of the so-called liquidation but could even burn or otherwise destroy the instruments of the credits due the banks; but without valid payment to the creditors or to another authorized to receive it, they were legally powerless to extinguish the incorporeal, the intangible rights of said creditors. The promissory notes, the mortgage indentures, etc., were but the titles to the rights themselves. The former were in the physical power of the enemy to destroy, the latter were not.

If payment in war notes had been offered to said banks and they had refused it, even though the debtors should have judicially consigned the said notes, the consignment would have been null and void as against the banks, for the reason that without their voluntary consent to receive payment in such different currency—thus effecting a novation of the contract in this regard—they could not be compelled to receive such payment. In the cases under consideration the banks have not given such a consent.

Of course, it is perfectly possible that, for varied reasons and purposes of their own, certain creditors voluntarily

received or even demanded payment of prewar debts with Japanese military notes. In such cases there can be no question of the validity of the payment. And this being so, there can be no occasion for another payment, or the debtor being obliged to pay again. But such is not the case of the banks involved in this discussion.

Again, there can be no dispute that contracts voluntarily entered into during the occupation in terms of the war notes were valid and, during the occupation, would have been dischargeable in that money; although thereafter they were dischargeable, if at all, only to the extent of their just obligation and value in terms of Philippine currency. (Presidential Executive Order No. 25.)

10-a. The alleged need of upsetting sales of properties in order to raise military notes for payment of prewar debts, if such payments were declared invalid.

It has been suggested during the deliberation that if payments with military notes of prewar debts were to be declared invalid, there would be need of also invalidating sales of properties which might have been made by the debtors in order to raise military notes for effecting such payments, and in case of subsequent transfers of the same properties there would also be need of cancelling these. There is absolutely no ground for this point for the simple reason that any such sales or transfers of property were voluntarily made, as the Japanese never ordered anybody to sell his property in order to pay his prewar debts, or any debts of his for that matter. The truth of the matter is that if such sales were made for effecting such payments, it must have been because the seller considered that it was worthwhile to make the sale and raise the requisite amount of military notes to pay his prewar debts. It might have been due to a desire to save mortgaged properties securing the prewar debts, which were considered more valuable than the properties sold in order to redeem them. The sale might have been effected because when the war notes were already much depreciated until they bordered on complete worthlessness, any small item of real or personal property would bring in thousands of pesos in military notes sought to wipe out the face value of prewar obligations in sound Philippine money. It is believed to be of common knowledge, and therefore within judicial notice, that during 1944 a suit or a dress could sell for as much as P4,000 in war notes; a chicken would sell for thousands of pesos in war notes, and any small item of property would bring in ridiculously fabulous prices.

11. View and attitude of legislative and executive branches of Philippine Government after liberation.

The provision of section 1 of Commonwealth Act No. 727 (which, however, never became law due to the veto of President Truman) that payments in Japanese military notes, war notes or military pass-money, as they have been variously called, of prewar debts "shall be considered valid," evidently shows that the Philippine Congress did not consider such payments already valid under the laws existing at the time of the enactment. It was precisely for this reason that the passage of that validating enactment was attempted. The legislature never passes laws enjoining the people "to consider valid" already valid transactions pursuant to already existing legislation.

Thereafter, the executive branch of the government which, as is well known, controls the Board of Directors of the Philippine National Bank, withdrew the appeal of said bank in civil case No. 71200, Manila Court of First Instance, *Milne vs. Philippine National Bank*, wherein the trial court had rendered judgment compelling the bank to pay to plaintiff Milne the amount of the latter's prewar deposit, despite the seizure of said deposit by the Japanese Military Administration during the occupation. That was a clear recognition by the executive department of the invalidity of such seizures of alien enemies' credits. As a consequence, there seems to be no dispute that the Philippine National Bank has paid all of its American and British depositors notwithstanding the seizure of their deposits by the Japanese Military Administration.

12. The alleged ratification:

Amicus curiae Recto on page 15 of his printed memorandum states as follows:

"Lastly, it need be stated that during the occupation all the 'creditor' banks including the China Bank allowed, under authority given by the Japanese Military Administration, withdrawals by their depositors up to certain limits. The amounts of such withdrawals stand now credited in favor of said banks in their books and have been considered, especially by the said banks, as valid to the full extent of the amounts represented on the face of the Japanese war-notes withdrawn. At least, no indication has yet been shown that the said banks would adopt any other attitude towards said withdrawals. In fact, speaking for his clients, Judge DeWitt is reported to have so stated in the course of the congressional hearings in the Philippine Congress on G. R. No. 437, commonly known as the Fiat Money Bill, and further admitted that said withdrawals were paid out of the collections made as aforesaid."

No evidence of record exists to support the fact above stated, but in the records of the official proceedings of the Committee on War Claims of the Philippine Congress, two letters, one dated September 5, 1946, and the other September 6, 1946, appear and from them amici curiae DeWitt, Perkins and Ponce Enrile have quoted excerpts on pages 22-25 of their printed memorandum. Both letters appear to have been written by Atty. C. A. DeWitt of the same firm. The excerpt from the letter of September 5, 1946, is as follows:

"During the hearings, a great deal was said as to withdrawals from the Bank of Taiwan by depositors or creditors of the foreign banks. We have secured the figures on those withdrawals, with the exception of those corresponding to the China Banking Corporation, which we have not been able to secure as yet. We shall send them on to the Committee as soon as they are available, as we understand that they are of considerable importance since they represent some millions of pesos which were forcibly debited to Chinese depositors and credited to Chinese associations, through which credits the Bank of Taiwan made forcible levies upon Chinese depositors.

"As to the other six banks, the total withdrawals aggregated P3,514,254.22. Of this amount, the six banks have reccredited their former creditors the amount of P1,586,313 because it was found that the withdrawals thereof were not voluntary on their part. The question is still under examination as to the remaining withdrawals. Undoubtedly, the figure of P1,586,313 will be increased, but, as it stands today, the net withdrawals (gross withdrawals less reinstatements) is P1,927,941.22.

"Of course, where the withdrawal is voluntary, then no court will permit the withdrawing creditor to collect the same amount again. The case is one of a creditor receiving from a third party a payment on account or in satisfaction of a debt and being thereby precluded in respect thereto from afterwards suing the debtor.

"In Fletcher Moulton L. J. in *Hinachand Punamoband vs. Temple*, 1911, 2 K. B., 330, the Court said:

"The way in which this is worked out in law may be that it would be an abuse of the process of the Court to allow the creditor under such circumstances to sue, or it may be, and I prefer that view, that there is an extinction of the debt."

"Abbot C. W., in *Welby vs. Drake*, 1825 I. G. & P., 557, said that it would be a fraud, if after accepting payment from a third party a creditor could sue the debtor for the debt.

"It is our view that such payments by the Bank of Taiwan should be regarded as payments by a negotiorum gestor under the provisions of articles 1888 and 1901 of the Civil Code, and in closing accounts between the Bank of Taiwan and any foreign banks for whose accounts such payments were made, the Bank of Taiwan would receive credit for such payments, without in any way becoming a recognized agent of the foreign bank for whose account the payment was made.

In a remote case that such payments should exceed the indebtedness resulting from the settlement of accounts, such excess would go to the Alien Property Custodian as an enemy asset."

The excerpt from that of September 6, 1946, reads:

"TO THE COMMITTEE ON WAR CLAIMS,
Congress of the Philippines
Manila

"H. B. No. 437
(Fiat Money Bill)

"Gentlemen:

"In Part III of my letter to you of yesterday, I discussed the question of the status of withdrawals from the Bank of Taiwan by depositors or creditors of the foreign banks, and stated that we had then secured the figures on those withdrawals, with the exception of those corresponding to the China Banking Corporation which we had not been able to secure as yet and promised to send them on to the Committee as soon as they are available. We have now received them. The total withdrawals from the Bank of Taiwan, corresponding to the China Banking Corporation, were P5,354,312.48. Of this amount P3,271,887.65 had been reinstated up to July 31, 1946, leaving a net balance of withdrawals of P2,082,424.83.

"With these figures in hand, we may now give the total figures on withdrawals for all seven foreign banks. The total withdrawals aggregated P8,868,566.70. Of this amount, the foreign banks have re-credited to their former creditors a total of P4,858,200.65, because it was found that the withdrawals thereof were not voluntary on their part. The question is still under examination as to the remaining withdrawals. Undoubtedly, the figure of P4,858,200.65 will be increased, but, as it stands today, the net withdrawals (gross withdrawals less reinstatements) are P4,010,366.05.

"The second paragraph, Part III, of my letter of yesterday should be amended to read accordingly."

It now appears that Atty. Recto was referring to the facts contained in the above quoted excerpts. From these facts it results that the books of the Taiwan Bank point to payments for account of these seven alien banks totalling P8,868,566.70, said to have been made to depositors of said banks and others, the books also showing the debit entries against said depositors and others in their accounts. They do not show, however, the origin of the money with which those payments were effected. They show that of the aggregate sum of P8,868,566.70 the banks have re-credited their depositors and other creditors with P4,858,200.65, as of September 6, 1946, for the reason that it was discovered that the withdrawals thereof were not voluntarily made by said depositors and creditors; this leaves a balance of P4,010,366.05 as of September 6, 1946, which last figure was at the time the amici curiae's memorandum was prepared still under examination as to the voluntary character of the withdrawals. We do not find even from the letter of September 5, 1946, that the banks took credit for those withdrawals, and there is no independent evidence of this fact. The amici curiae, speaking for the banks, now affirm that pursuant to article 1163 of the Civil Code those withdrawals by depositors or payments to creditors would only be valid against the banks in so far as they may have been beneficial to the latter. Commenting on the same article, Manresa has the following to say:

"Pago hecho a un tercero.—Este pago puede revestir diferentes formas, de las cuales dependera su mayor o menor eficacia.

"El supuesto de que expresamente se ocupa el Código en este lugar, por ser el que mayores dificultades puede ofrecer, es el de que se pague a un tercero en favor del cual nada se hubiese estipulado, ni al cual se hubiese designado en la obligación, ni autorizado con posteridad para recibir el pago de aquella. Refiriéndose a tal supuesto, exige el Código como condition de validez para el pago, y fija como medida de la eficacia de este, el mismo requisito que en el parrafo y caso anterior del propio artículo deja establecido: la utilidad de pago para el acreedor. Con motivo de esto y refiriéndose a la prueba de tal utilidad, repetimos lo que antes hemos dicho

que esa prueba incumbe al deudor que pago, y en este caso con motivo mas poderoso aun que en el anterior porque la utilidad para el acreedor de un pago hecho a tercera persona es tan dificil, que no puede presumirse, y necesita una prueba cumplida de parte de aquel a quien su demonstration ha de aprovechar." (Italics supplied.)

Applying the article and the commentaries to the instant case, the third person would be the Taiwan Bank, and the measure of the validity or efficacy of the payment as against the banks would be the benefit or utility which they might have meant to them, and that is no other than the face value of the amount in Japanese military notes which might have been voluntarily withdrawn by the depositors or voluntarily received by the creditors from the Taiwan Bank and which the latter, as a sort of negotiorum gestor, paid out to them. But this falls far short of constituting a ratification for the simple reason that ratification necessitates the exercise of the will of the party ratifying, while the provisions of article 1163 of the Code are independent of such will. Upon the whole, there is a complete absence of evidence of ratification.

The transcript in this case is only ten pages long and does not contain the testimony of any witness but merely stipulations of facts between counsel, and identification of exhibits. The documentary evidence is likewise brief and likewise fails to furnish any evidence of such ratification. Indeed, the letter of the defendant China Banking Corporation under date of September 19, 1945, made a written demand (Exhibit 2) upon plaintiff Haw Pia for the immediate payment of her indebtedness to the bank in the form of overdraft "amounting to P5,103.35 as of December 26, 1941, together with interest thereon at the rate of 9 per cent per annum from said date compounded monthly." This amount is exactly that stated in plaintiff's Exh. "Z" under the column entitled "Amount". This shows just the opposite of ratification. It shows that the bank did not recognize any validity in the supposed liquidation in so far as it was concerned. Naturally, the question having been submitted to the courts and pending decision thereby, neither party could be expected to make any material alterations in their books of account—they, perforce, have to await the final decision of the courts.

The writer believes that, the issues of the instant case not requiring it, we should not here attempt to lay down rulings or make pronouncements calculated to serve as guides for possible future disputes. However, if the majority should opine otherwise, as some members of the Court seem to think, with a view to avoiding useless multiplicity of suits, the following norms are submitted for the purpose:

- (1) Payments of prewar debts with Japanese military notes during the occupation, voluntarily received by the creditors are valid, because the creditors, who had the right to refuse such payments, agreed to receive them, thus pro tanto novating their contracts with the debtors;
- (2) But it was just as obviously beyond the power and right of the debtors to change, against their creditors' will, the currency in which their obligations were justly and legally dischargeable and, by compelling their creditors to receive the different currency—especially if this was an inflated or practically worthless one—to virtually extinguish their credits, for as was declared by Chief Justice Arellano in *Panganiban vs. Cuevas*, supra:

'** * * Un credito no se extingue contra la voluntad del acreedor, sino por sentencia judicial o la prescription de toda accidn.' (7 Jur. Fil., 501.)

- (3) Where the debtor was compelled to make such payment and the creditor to receive it under enemy duress, and one or the other, or both should have thereby suffered any prejudice in his or their respective rights, then such one, or such other, or both was or were the victim or victims of the enemy's illegal acts, and should suffer the respective prejudice thus caused him by the enemy, with the corresponding right of action against the latter;
- (4) But where, as here, the debtor alone acted, whether in obedience to or independently of the orders of the Japanese occupant, his acts and those of said occupant in the premises cannot affect the rights of the creditor,

without prejudice to his right of action against said occupant.

(5) Any erroneous, even if bona fide, belief of the debtor that the Japanese occupant had the power to do what he did in respect to the afore-mentioned prewar creditor-debtor relations, did not validate an otherwise invalid payment, just as the erroneous, even if bona fide, belief of Panganiban (in *Panganiban vs. Cuevas*, supra) that the Revolutionary Government had the power to collect or receive from him the 1,300 pesos that he paid it instead of D. Francisco Gonzalez, did not extinguish his obligations contracted in favor of the latter, because said Chief Justice Arellano;

"* * * como se ha declarado en sentencia de casacion de 28 de Febrero de 1896, para que el pago de lo debido extinga las obligaciones, debe hacerse a las personas en cuyo favor estuvieren constituidas o a cualquiera otra autorizada para recibirlo; siguiendore de ello que la entrega de lo adeudado hecha a un tercero siquiera se haga por mero error y de buena fe, no libera al deudor de su obligation de pagar ni perjudica al acreedor en su derecho a cobrar, y que si por la imposibilidad de recuperar lo indebidamente pagado, resultasen perjuicios irreparables, recaen estos sobre el deudor engañado, como unico responsable de sus propios actos, a no mediar sobre este punto pacto en contrario, o culpabilidad del acreedor que origine responsabilidades al mismo imputables." (7 J. F. 501-502; italics supplied.) The reason for the law would be the same here, whether the error relates to the powers of the Taiwan Bank as supposed liquidator, or to the general powers of the Japanese occupant; hence, its provisions should be the same in the instant case;

(6) Where both prewar creditor and debtor honestly believed that the Japanese occupant had the legal power during the occupation to make prewar debts payable in the occupation war notes, without either having induced the other into that belief, and both acted in accordance therewith, neither should be allowed to undo what has thus been done, each being bound to shoulder any prejudice that his own voluntary acts may have caused him,—all on the strength of the above quoted doctrine in *Panganiban vs. Cuevas*, supra.

(7) Where the creditor has not given his voluntary consent to receive war notes during the occupation in payment of a prewar obligation due him, and where the debtor has taken, or attempts to take, advantage of the orders of the Japanese occupant in order to force said creditor to receive such payment, with or without judicial consignation in the courts, such debtor would be acting in bad faith, illegally, fraudulently and against good conscience, and any judgment in his favor would be nothing short of legalizing, sanctioning and putting a premium on such bad faith, fraud and iniquity.

(8) Hypothetically conceding that the Japanese occupant made the military notes legal tender by virtue of the Commander in Chief's proclamations of January 10 and February 6, 1942, then it must also be recognized that by the same proclamation and by the same authority the Philippine peso was simultaneously made legal tender, since the said proclamations expressly allowed the continued use of the Philippine peso alongside with the military notes; and considering that said Commander in Chief did not direct the inhabitants (not covered by Administrative Ordinance No. 11) to pay their obligations among one another, much less prewar obligations, consequently leaving the debtors at liberty to pay such obligations or not and, if they did, to pay them in either of the two currencies, which gives rise to the necessary inference that the occupant never ordered such prewar debtors to act unjustly, fraudulently, and in bad faith toward their creditors by paying the latter with cheaper or practically worthless money; considering that any such payments with war notes of prewar debts owed in Philippine currency forced or attempted to be forced by debtors upon their creditors, not under orders of the occupant but as voluntary acts of the debtors, were acts done in bad faith, fraudulently and unjustly; considering that such prewar debtors did not have to pay their prewar debts during the war, which by operation of law suspended the due dates of such debts and suspended the earning of interest thereon; considering further that when the Japanese Government approved the constitution of the occupation "Republic," in whose Article XI, section 8, it was provided that "all property rights and privileges acquired by any person, entity or corporation, since the outbreak of the Greater East

Asia War, shall be subject to adjustment and settlement upon the termination of the said war," which provision necessarily comprised acts consisting in payments with military notes of prewar debts, whatever supposed parity might have existed between the Philippine peso and the military note peso, and therefore whatever supposed character as legal tender the said war notes might have had before, were as a necessary consequence abolished thereby payments of prewar debts with military notes thus forced or attempted to be forced by such debtors upon their creditors after the approval of the said occupation constitution in October, 1943, could not possibly be recognized as valid upon the basis of such parity and legal tender character.

(9) Even where the creditor refuses to receive a legal tender in settlement of his credit, his right is not cancelled thereby, but will merely be subject to be outlawed by the statute of limitations, if he persists in his refusal during the statutory period.

"* * * if a debtor offers a legal tender in settlement of his debt, the creditor is obligated to accept this or receive nothing; the debt will not be cancelled by the creditor's refusal to accept duly tendered legal tender, but it will in time be outlawed by the statute of limitations, if the creditor persists in his refusal to take the legal tender offered * * *." (Westerfield, Money, Credit and Banking, page 15.)

Judgment reversed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.