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THE NATIONALIZATION OF JOINT STOCK BANKING CORPORATIONS IN SOVIET RUSSIA AND ITS BEARING ON THEIR LEGAL STATUS ABROAD*

For some time the courts of the most important countries have been dealing with this question, so that a thorough and dig-
gestive treatment appears imperative. The question is twofold:
(a) Have the Joint Stock Banking Corporations of the old Rus-
sian law ceased to exist, losing their character as juristic per-
sons? (b) Who has the property rights in such property of
these companies as is situated abroad? The solution will have to
be attempted from four different points of departure: (1) How
have foreign courts decided? (2) What has occurred in Soviet
legislation and administration? (3) A critical review of foreign
court practice and legal literature; (4) How is the property of
the nationalized corporations which is held abroad to be con-
sidered from the standpoint of international civil law?

I

The foreign courts have generally raised the question of
the continued existence of the old Russian Joint Stock Banks in
connection with the secondary question: Are the foreign branches

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translated by Prof. Edwin M. Borchard of Yale University.

of the old Joint Stock Banks still juristic persons? Only one United States and one German decision have expressed a definite attitude regarding the main question alone.

Before discussing the individual foreign decisions, it is necessary to call attention to the recognition or non-recognition of the Soviet government by the foreign governments concerned and its effect in international law. Recognition or non-recognition of the Soviet government is important not only for the motivation of the decisions, but also for the extent of their effectiveness in a juridico-political sense. The German government recognized the Soviet government in the peace treaty of Brest-Litovsk, November 7, 1917, as the lawful *de iure* government of the Federation of United Russian Soviet Republics. Great Britain declared her recognition *de facto* in the Anglo-Russian commercial agreement of March 16, 1921; Italy did so in the commercial treaty of February 7, 1924. France did not recognize the Soviet government *de iure* until October 28, 1924.¹ The United States of North America and Switzerland have not extended recognition.

1. The Kammergericht (in Prussia) decided on March 3, 1925, that the old Russian Joint Stock Banks had not yet lost their character as juristic persons on March 23, 1922, the last day considered in the decision, and that at that time their property situated abroad had not been transferred to the Soviet state.²

The decision dealt with a replevin and transfer judgment in the case of a German creditor against the account with a German bank of an old Russian Joint Stock Bank. These replevin and transfer judgments would be effective only if the debtor had not yet lost its claims on the German bank at the time the decisions were handed down. But this, in turn, depended on whether the debtor, at that moment, was still considered a juristic person.

¹ It is frequently held that recognition *de facto* has the same force as recognition *de jure*; Champcommunal, 14 REVUE DE DROIT INTERNATIONAL PRIVÉ 340 (1924); WHEATON, INTERNATIONAL LAW (1916) 36; Williams v. Bruffy, 96 U. S. 176, at p. 185 (1877).

² Juristische Wochenschrift (1925), H. 11, p. 1300.

The property of the banks, in the opinion of the Kammergericht, has only been "*de facto* withdrawn from private ownership" and the old Russian banks *de facto* exist no longer; but it is impossible to deduce from the Soviet decrees that the banks have also lost *de iure* their standing as juristic persons. There is the additional fact that "the Soviet government has not claimed as property of the Soviet Republic the property of the Russian banks abroad."

Three conclusions are to be drawn from this decision of the Kammergericht:

(a) Since the Soviet decrees, up to March 23, 1922, had not deprived the old Joint Stock Banks of their quality as juristic persons, and since no decree has been issued since March 23, 1922, which declares the old Joint Stock Banks to be legally dissolved, these institutions must be considered as still existing to-day.

(b) Since on March 23, 1922, the old Joint Stock Banks were still recognized as juristic persons, no dissolution of all Joint Stock Companies can have taken place up to that date, and since no dissolution of Joint Stock Companies through a formal law has taken place since, either in general, or in an individual case, all Joint Stock Companies formed under the old Russian law must still be recognized as juristic persons.

(c) Since the legislation of the R. S. F. S. R. can liberate the Russian "working" people only from "the yoke" of the "capital" under its jurisdiction, and since the foreign capital situated abroad is not subject to the legislation of the R. S. F. S. R., we are justified in assuming that the class-war "declaration of the rights of the working and exploited people"—treating Russian and foreign capitalists, abroad as well as at home, alike—can relate only to that capital which is directly employed within the Russian economic organism; and since the Soviet state, up to this time, has not made any claims to the property of nationalized Joint Stock Companies situated abroad, one will have to assume that in principle this property was not included in the rules of nationalization.

2. The Court of Appeals of the State of New York, in a decision of January, 1925,³ reaches the same result as the Kammergericht, though from different reasoning. The case dealt with the suit of a Joint Stock Insurance Company of the old Russian law against a North American bank, based on a contract of trust.⁴ The defendant denied that the plaintiff could legally act since the company had been liquidated and nationalized by ordinances and decrees of the R. S. F. S. R.; accordingly, defendant declared, the plaintiff had ceased to exist as a corporation, and its property had been confiscated. The Board of Directors had therefore ceased to function as an organ of the company and all acts done in the name of the plaintiff after December 1, 1918, had become void. The court of first instance, in spite of the non-recognition of the R. S. F. S. R. by the United States, assumed that the juristic personality of the plaintiff had been destroyed by the Soviet decree. But the Court of Appeals reversed this decision, basing its judgment on the following statements:

(a) Since the Soviet government has not been recognized by the government of the United States, the legislative acts of the Soviet government must be ignored by the American court, according to the ancient maxim of Anglo-American jurisprudence that a foreign law can be considered valid only if the government promulgating this law has been recognized.⁵

³ *Russian Reinsurance Co. et al. v. Stoddard et al.*, 240 N. Y. 149, 147 N. E. 703 (1925); 52 JOURNAL DU DROIT INTERNATIONAL (CLUNET) 451 (1925).

[Accord: *Severnoe Securities Corporation v. Westminster Bank*, 210 N. Y. Supp. 629 (1925), decided upon the authority of this case. In *First Russian Insurance Co. et al. v. Beha*, 240 N. Y. 601, 643, 148 N. E. 722 (1925) the Stoddard case rule is approved.—Ed.]

⁴ The American decisions do not refer to Russian banks. It will be shown, however, in discussing the legal changes in Soviet Russia, that the same treatment—only to a higher degree—is applied to the other Joint Stock Companies, especially the Insurance Companies, which are regulated in common with the banks in the old Russian credit law (Swod Sakonoff, Vol. XII, Part II).

⁵ *City of Berne in Switzerland v. Bank of England*, 9 Ves. 347 (1804); *Aksionairnoye Obschestvo Mechanicheskoyi Obratbotky Diereva A. M. Luther v. J. Sagor & Co.*, [1921] 1 K. B. 456; cf. *v. MENDELSSOHN-BARTHOLODY* in XI Rh. Ztsch. 155 *et seq.* For the American practice see DICKINSON, in 19 AM. JOUR. OF INT. LAW 263 (1925).

(b) Since the international civil law of the State of New York presumes the identity of foreign corporation law with the domestic,⁶ and since defendant has not refuted this presumption, the old organs of the old Russian Joint Stock Company are still considered capable of representing the company and the resolutions of the general stockholders' meetings, called to meet abroad, must be recognized as valid.

This rejection of Soviet law, based on a general principle, has been partly mitigated by another decision of the Court of Appeals of New York.⁷ This decision belongs to the series of judgments that treat the question of the continued existence of the old Russian Joint Stock Companies in connection with the question of the "juristic personality" of foreign branches.

The Court of Appeals decides upon appeal by referring to the case of *Sokoloff v. The National City Bank*.⁸ In opposition to the lower court, it holds that the non-recognition of Soviet Russia does not per se compel the court to deny all effectiveness to the nationalization decrees of the Soviet government and to recognize the defendant company as existing. The decrees of the Soviet government are effective in the United States so far as justice and public interest demand it. The banks have been nationalized. But the American branch is actually engaged in business, demands to be treated in general like a domestic corporation and therefore, in the opinion of the court, must be considered as provisionally legitimized. "Whether the bank is still a juristic person will have to be decided later."

This decision materially alters the position of the United States courts and concedes to the Soviet decrees a certain effec-

⁶ *Monroe v. Douglass*, 5 N. Y. 447, 451 (1851).

⁷ *James v. 2d Russian Ins. Co.*, 240 N. Y. 581, 148 N. E. 713 (1925), reprinted in part in DICKINSON, *op. cit.*, 272; cf. also L. F. CRANE, 52 JOUR. DU DR. INT. (CLUNET) 349 *et seq.* (1925).

[See *Joint Stock Co., etc. v. National City Bank*, 240 N. Y. 368, 148 N. E. 552 (1925), approving the language of this case.—Ed.]

⁸ 239 N. Y. 158, 145 N. E. 917 (1924); 52 JOUR. DU DR. INT. (CLUNET) 446 (1925), and DICKINSON, *op. cit.*, 269.

[Accord: *Sliosberg v. New York Life Insurance Co.*, 217 App. Div. 685, 217 N. Y. Supp. 226 (1926), decided upon the authority of this case.—Ed.]

tiveness in spite of the non-recognition by the United States. It is supported by former decisions in which United States courts have applied the laws of non-recognized states.⁹

3. The House of Lords, in two decisions of July 22, 1924, has defined its position concerning the questions touched upon in the judgment of the Kammergericht of March 3, 1925.¹⁰ In these decisions—they have both been quoted by the Kammergericht in the reasons for its judgment—not only the continued existence of the old companies in Russia is under discussion, but the right of foreign branches to sue and to be sued.

Both judgments reverse two decisions of the Court of Appeal.¹¹ The first suit is based upon the following facts:

Plaintiff, as the London branch of the Russian Commercial and Industrial Bank had contracted for the opening of a credit by the defendant, through the mediation of the Petrograd main house. As security, plaintiff deposited in a London Bank to defendant's account State Loan bonds of a corresponding value. In April, 1919, plaintiff repaid the loan to the defendant. Defendant refused to consent to the return of these bonds to the plaintiff, objecting that the agreement had been made on account of the Petrograd main house; plaintiff, as the London branch, had no right to receive the bonds, and the Petrograd main house had been dissolved as a juristic person by the decrees of the R. S. F. S. R.

⁹ DICKINSON, *op. cit.*, 269; 23 MICH. L. REV. 802 (1925). Of special significance is a decision of the Superior Court of Massachusetts, which considers the acts of a state, recognized *de facto*, as effective, even if at the moment the state has no recognized government, 17 AM. JOUR. OF INT. LAW 742 (1923). After the American Civil War, too, decrees of the non-recognized Confederate States were considered effective, Dickinson, *Unrecognized Governments*, 22 MICH. L. REV. 42 (1923).

¹⁰ Russian, etc., Bank v. Comptoir d'Escompte de Mulhouse, [1925] A. C. 112, and Banque Internationale de Commerce de Petrograd v. Gourassow, [1925] A. C. 150; v. MENDELSSOHN-BARTHOLDY, UEBERSEEDIENST (1925) 1016.

[See Collins & Co. v. Rossia Insurance Co., etc., [1926] 1 K. B. 1, in which the court took jurisdiction over a *de facto* Russian corporation and assumed credit would be given to its judgment by the Soviet government under the principles of international comity.—Ed.]

¹¹ Reversing [1923] 2 K. B. 630, and [1923] 2 K. B. 682; v. MENDELSSOHN-BARTHOLDY, XII Rh. Ztschr. 81 (1923); 51 JOUR. DU DR. INT. (CLUNET) 336 (1924).

The Court of Appeal rejected the complaint and decided that the Soviet decrees of January 26 and December 10, 1918, and of January 19, 1920 had dissolved the Petrograd main house, and that, even if this had not been the case, the power of attorney of the London branch must be considered voided in consequence of the fundamental change.¹² The decision was not unanimous. Lord Justice Atkin expressed the view that, first, the old bank in Petrograd was still in existence, and, second, the power of attorney of the manager of the London branch had not been voided. In the decrees of 1918 he does not see a dissolution of the corporation, especially since according to English law a corporation, even without capital and without a Chairman, may retain the status of a juristic person.¹³

Atkin thinks rather that the Soviet government reckoned with the independent continuation of the banking business through Russian banks and their branches which were not within its sphere of power, in order to claim, later on, rights emanating from such business transactions. The purpose of the nationalization decrees, accordingly, was merely to bring the capital of the banks under the control of the state, without impairing their status as independent juristic persons.

Add to this that the Joint Stock bank, under its old firm style, though with the addition of "Branch of the State Bank," was still in connection with its foreign branches in 1918. Even as late as November, 1922, the N. W. Petrograd branch of the State Bank endorsed a check drawn by the nationalized *Crédit Mutuel de Petrograd* on the *Russo-Asiatic Bank* in London to the order of the Russian commercial delegates in England. When the *Russo-Asiatic Bank* was sued in 1922, it did not claim that it was dissolved by the Soviet decrees and could therefore not be sued, although it, too, was a branch of a Russian banking corporation. Atkin thinks it improbable that banks should be dead as to their debtors, but not dead as to their creditors.

The case of the *Banque Internationale de Commerce de Petrograd* rests on the precedent of the above decision.

¹² Companies (Consolidation) Act 1908, 8 Edw. VII, c. 69, §§ 175, 195.

¹³ *Dresdner Bank v. Russo-Asiatic Bank*, [1923] 1 Ch. 209.

The Paris branch of the plaintiff sued for repayment of a loan. Although the plaintiff might as well have brought suit in a French court,¹⁴ in which, before the recognition of the Soviet government, the old Russian law was unconditionally binding,¹⁵ the suit was rejected by the Court of Appeal because, considering the established dissolution of the old banking corporations by the Soviet decrees, the plaintiff lacked the power to sue.

The House of Lords concurred in both cases with Atkin's dissenting opinion. Its decision is based on the following reasons:

(a) While the Court of Appeal assumed that the old banking corporations, by the decree of January 26 and the instruction of December 10, 1918, had been, if not actually dissolved, at least merged in the "People's Bank," which, in its turn, had been dissolved by the decree of January 19, 1920, together with the corporations merged in it, the House of Lords does not see in the Soviet decrees a dissolution of the private Joint Stock banks, and since the nationalization decrees run contrary to English legal thought, it interprets them as limited.

(b) The House of Lords leaves undecided the question whether the Russian Joint Stock banks still continue legally in their old organization which no longer conforms to the law, but it is only treating them as juristic persons in the form of their foreign branches, for reasons of legal equity and international private law, until current transactions shall have been liquidated.

4. The French courts, previous to the recognition of Soviet Russia, denied all effectiveness to the nationalization decrees and declared the old Russian law applicable in its fullest extent.¹⁶

¹⁴ Art. 14, Code Civil in connection with Art. 2 of the Russo-French Commercial Treaty of April 1, 1874.

¹⁵ A. Grouber and P. Tager, *La Revolution bolchévique et le statut juridique des Russes*, 51 JOUR. DU DR. INT. (CLUNET) 8 (1924).

¹⁶ Grouber and Tager, *op. cit.*, *supra* note 15; André Prudhomme, *La reconnaissance en France du Gouvernement des Soviets et des conséquences juridiques*, 52 JOUR. DU DR. INT. (CLUNET) 318 (1925).

The old banking corporations displayed a remarkable business activity in Paris and were recognized as juristic corporations according to foreign law.

Since the recognition of Soviet Russia, only one court decision has been handed down, which, in connection with some rulings of the President of the Tribunal de la Seine serving as referee, seems to inaugurate the beginning of a change from the former decisions. A few days before the recognition of the Soviet government, in conformance with the agreements reached in the Franco-Soviet negotiations, the Procureur de la Republique moved to sequester the property of the Russian state in France.¹⁷ He supported his motion before the President of the Tribunal de la Seine with the following reasoning:

Since the revolutionary events in the former Russian Empire have caused certain properties and rights to become *res nullius*, it is essential to nominate a provisional administrator for the properties, rights and interests hitherto administered by the Russian Commission for Liquidation.¹⁸

The President of the court approved this motion in a decree of October 22, 1924. This first decree is unimportant. The Russian Commission of Liquidation, created by an ordinance of June 29, 1920, and transformed several times by later ordinances, occupied itself solely with the liquidation of the assets and the property in France of the former Russian state.¹⁹ After the

¹⁷ Cf. A. KANTOROWITSCH, *SOWJETSKOYE PRAWO* (1925), No. 5, p. 41, and note 153, *infra*.

¹⁸ The motion is reproduced in 52 *JOUR. DU DR. INT. (CLUNET)* 250 (1925).

¹⁹ This commission was interministerial. Its political purpose was, on the one hand, to harmonize the acts of the old Russian government, and thereby of the political organization of the Russian emigrants, with French policy; on the other hand, to secure the claims of France upon the old Russian state, at least to a limited extent. Its most important powers were defined in Articles 2 and 3 of the decree of June 29, 1920, repeated in the decree of the Minister of Finance, October 4, 1923:

Art. 2. The Russian Commission of Liquidation is to effect the seizure of the sums which the old Russian state owes the French state.

Art. 3. Furthermore, the Commission has exclusive power to liquidate (1) The contracts and agreements made in France by the representatives of the former Russian state, whose settlement ought to have been effected by drawing on the loans of the Banque de France, guaranteed by French Treas-

recognition of the Soviet state a second decree was issued, by which the powers of the provisional administrator appointed by the first decree were extended to apply to all corporations of Russian law and specifically to the Russian banks. In the motion on which this decree is based it is stated: "considering that the Russian commercial corporations, especially the banks, which in Russia are subject to the legislation of the S. S. R., have branches in France, whose legal status at this time is uncertain and whose statutory administration is impossible . . ."

The decree of the President of the court places under the provisional administrator "the goods, rights, and interests of whatever character, detained in, or exercised by, the branches in France of all Russian corporations and specifically the Russian banks."²⁰ However, this decree is not final. It is true, though, that in general the decrees of the referee, especially the President of the Tribunal de la Seine, remain in force,²¹ and there is a strong presumption that the court will follow the opinion of the President.

On December 23, 1924, the Tribunal de la Seine decided that those Russian corporations which had meanwhile been transformed into corporations under the French law were not subject to forced administration.²² This is a provisional decision; the court left open the question whether the transformation was not purely fictitious and *in fraudem legis*, and therefore ineffective.

ury bonds. (2) The "stocks" resulting from these contracts and agreements. The commission is generally empowered to liquidate and recover all assets of the former Russian state in France, no matter of what origin.

It is empowered to learn of all steps taken in regard to these same assets by the representatives of the former Russian state in France and to have them furnish it any information which it may deem necessary.

It is permitted to have recourse in its operations of liquidation or recovery to all appropriate steps, of both amicable and litigious character.

The Russian Commission of Liquidation was dissolved by an ordinance of the Minister of Finance, October 22, 1924 (Journal Officiel, October 25, 1924).

The institution of the "Administrateur provisoire" rests on Art. 135, Code de proc. civ., and has been extended by the practice of the courts on the basis of a decision of the Tribunal de Commerce in Marseilles, April 5, 1877, and of the Cour d'Appel of Aix, April 16, 1877, 5 JOUR. DU DR. INT. (CLUNET) 161 (1878).

²⁰ 52 JOUR. DU DR. INT. (CLUNET) 532 (1925).

²¹ HAEGER, DER FRANZOESISCHE ZIVILPROZESS UND DIE DEUTSCHE ZIVILPROZESSREFORM, 96 *et seq.*

²² Banque générale pour le commerce étranger v. Jaudon *es qual.* Jaudon is the provisional administrator, 52 JOUR. DU DR. INT. (CLUNET) 418 (1925).

On May 12, 1925, the Tribunal de la Seine, in another case ²³ rendered a final decision.

The parties had concluded a reinsurance contract, December 23, 1918. The French company renounced this contract on October 14, 1919. It refused to pay to the Russian company the remainder of its credit, claiming that the Russian corporation, if not dissolved by the Soviet decrees, at least was not represented according to its constitution at the time.

The court non-suited the Russian company. In this the court took the stand that after the recognition of the Soviet government the laws of that government must be followed also by the French judge. It assumed that the old Russian corporation had lost its status as a juristic person and, even if this were not the case, it could no longer be represented by its old organs whose statutory term of office had expired.

The opposite stand is taken by the Tribunal de Commerce in Marseilles. In a decision of April 23, 1925,²⁴ it states that, while the Soviet laws are binding on the French judge owing to the recognition of the Soviet government, every foreign law may be applied only if it does not run contrary to the "ordre publique" (a formula of French international law corresponding to Art. 30 of the E. G. B. G. B.). The Soviet government cannot support its claims by the nationalization decrees nor by the assertion that the defendant company was neither represented nor organized according to its constitution. The first claim seems contrary to the "ordre publique," the second to the "*exceptio doli*." It is evident that the French decisions are not uniform.

5. The Court of the Swiss Confederacy, in spite of the non-recognition of the Soviet government by Switzerland, stated in

²³ *Compagnie d'assurance réunie et "Le Phenix Espagnol" v. Sjewernoje Strachowoje Obschtschestwo*. The decision has not yet been reprinted and discussed in legal literature. For details: I. M. RABINOWITSCH, *RUL*, July 5, 1925, and *Possljednija Nowosti*, Paris, May 5 and 16, 1925.

²⁴ *État Russe v. Cie Russe de Navigation à vapeur et de commerce "Ropit,"* 52 *JOUR. DU DR. INT. (CLUNET)* 391 (1925). From a somewhat unclear decision of the Tribunal de la Seine (*Nolde v. Korechkoff et Rapp*, Jan. 21, 1925), it appears that even after the recognition of Soviet Russia the old Joint Stock companies must not be considered as dissolved per se, *cf.* 52 *JOUR. DU DR. INT. (CLUNET)* 383 (1925).

a decision of October 10, 1924,²⁵ that the old Russian banking companies lost their status as juristic persons through the Soviet government and that their foreign branches could no longer be considered as existing in law. The matter at issue is the power of the plaintiff's branch in Geneva to become a party to the suit and to sue. The decision reverses a judgment of the cantonal court of Geneva, which considered the plaintiff capable of becoming such a party and to sue because the Soviet government had not yet been recognized by Switzerland and because the plaintiff's branch had been duly registered. The Confederated Court assumes that "non-recognition does not change the fact that Russian law exists, and if this law has caused the abolition of the Petrograd main house, the continued existence of a branch in Switzerland as a 'juristic person' cannot be maintained. For branch and main house form legally and economically an indivisible unit."

This decision of the Swiss Confederated Court is plainly opposed to the decisions of the House of Lords and of the Kammergericht, even disregarding the American decisions which, while conceding that the old Joint Stock companies have been dissolved by the Soviet legislation, nevertheless consider this legislation on the whole as negligible.

Thus it appears imperative to investigate more closely the Soviet decrees and their intra-Russian effects.

II

In dealing with the Soviet law the following points are to guide us: (a) Where are the Soviet decrees in force? (b) What is the history of the nationalization of the banks? (c) Is the old Russian law still in force and what is the legal view of the Bolsheviks? (d) How must the decrees under discussion be interpreted?

(a) On November 7, 1917 (Oct. 25, old style), the Bolsheviks in Petrograd gained control of the state and the R. S.

²⁵ *Banque internationale de commerce de Petrograd v. Hausner*, 52 *JOUR. DU DR. INT. (CLUNET)* 488 (1925).

F. S. R. was constituted. The legislation of the Russian Soviet government is valid only within the R. S. F. S. R., even though originally it claimed validity in the entire Russia.²⁶ It does not follow therefrom that in the other Soviet republics belonging to the R. S. F. S. R. the legal status remained unchanged. The legislation of the R. S. F. S. R. was taken over as a whole, either formally or, at least, as to its subject matter. In investigating the legal changes in the R. S. F. S. R. we are investigating at the same time the legal changes in the rest of the Soviet republics. The only question is: at what time the Soviet-Russian legal changes to be treated here took place in the other Soviet republics.

(b) When the Bolshevik party gained control on November 7, 1917, it had a political revolution behind and the economic revolution before it. The first decrees of the Soviet government were constitutional, agrarian, and laws to protect the workers.²⁷ The Soviet government, especially Lenin, intended a gradual and planful socialization of economic conditions. They had never considered a radical and immediate transition to "pure" communism. Lenin wanted to use the existing organizations of a private capitalistic character to keep intact the economic condi-

²⁶ On March 3, 1918, the Russian Soviet government was forced by the peace treaty of Brest-Litovsk to recognize the autonomy of the Independent Ukrainian People's Republic and the independence of Latvia, Esthonia, Lithuania, Poland and the Caucasus states. On November 13, 1918, the treaty of Brest-Litovsk was renounced by Russia and, ideally, the unity of the old Russian Empire was restored. In fact, however, the Soviet power had gained a firm hold only in a part of to-day's R. S. F. S. R. It was not until the fall of 1920 that the principal part of Siberia came under the control of R. S. F. S. R. and only when, November 15, 1922, the democratic People's Republic of the Far East was merged with the R. S. F. S. R., the boundaries of the latter in Siberia were definitely fixed. In the West, South and South-East they were fixed by degrees. February 5, 1919, the White-Russian Socialist Soviet Republic S. S. R. B., March 18, 1919, the Ukrainian Socialist Soviet Republic U. S. S. R., February 2, 1920, Esthonia, July 12, 1920, Lithuania, August 11, 1920, Latvia, October 13, 1921, Soviet-Aserbeidjan and Soviet-Armenia were recognized by the R. S. F. S. R., although the two latter as well as Georgia had previously, on May 2, 1920, been recognized as democratic republics. These recognitions created the R. S. F. S. R. as at present constituted. There still followed the change of the South-eastern boundaries by the incorporation of Khiwa and Bokhara, October 20, 1924. For the territorial expansion of the Soviet power in the Civil War, see M. LANGHANS, *VOM ABSOLUTISMUS ZUM RAETEFREISTAAT* (Leipzig, 1925) 126 *et seq.*; N. TIMASCHEFF, *GRUNDZUEGE DES SOWJETRUSSISCHEN STAATSRECHTS* (1925) 156 *et seq.*

²⁷ See H. KLIBANSKI, *DIE GESETZGEBUNG DER BOLSCHEWIKI* (published by the Osteuropainstitut in Breslau, Leipzig-Berlin, 1920), 85 *et seq.*

tions and, at the same time, give an opportunity to the workers and the official economic departments to penetrate, step by step, into an intact apparatus and learn by practice how to control it.²⁸ Two things were characteristic of Bolshevik procedure: the first aim was to make the workers' class politically privileged and to protect it economically (eight-hour day, etc.); but in addition, it was necessary for reasons of practical politics to strengthen the workers by wage increases and by economic advantages of all kinds, in order to gain their interest in the work of the party. This called forth a stubborn resistance on the part of commerce and industry, whose members opposed by counter strikes, lockouts and boycotts, the harsh measures of a government which they believed to be transitory and doomed to destruction. The consequence was an accentuation of the economic class war, which the Soviet government had not desired at all. Accordingly, the political class-war aspect became more and more prominent during the civil war and crowded the purely economic aspect into the background.

In the first stages the Soviet government tried to control the conflict. On November 14, 1917, Lenin published a decree "On the Opening of the Banks"²⁹:

"The private banks are closed. Employees and directors are present, but refuse to open the doors to the public. The workers are unable to receive their wages because the banks fail to honor the checks of factories and mills. Such conditions cannot be tolerated.

"The workers' and peasants' government hereby orders the banks to be open to-morrow, October 31 (old style) during the usual hours, 10 A. M. to 2 P. M.

"If the banks are not opened and checks are not honored, all directors and members of the directorates will be arrested and commissars of the Acting People's Commissar

²⁸ See the extensive quotations from Lenin by PJATAKOFF in *JAHRBUCH FUER POLITIK, WIRTSCHAFT UND ARBEITERBEWEGUNG* (1922-1923), 378 *et seq.*; A. AXELRODT, *DAS WIRTSCHAFTLICHE ERGEBNIS DES BOLSCHEWISMUS* (Olten, 1920), 45 *et seq.*

²⁹ W. KAPLAN-KOGAN, *RUSSISCHES WIRTSCHAFTSLEBEN SEIT DER HERRSCHAFT DER BOLSCHEWIKI* (published by Osteuropainstitut in Breslau, Leipzig-Berlin), 157 *et seq.*

for Finance will be placed in charge of all banks. Under their control the checks, marked with the stamp of the respective Factory Committees, will be honored.

"To maintain order, all banks will be guarded by soldiers.

"All rumors spread by the *bourgeoise* about a confiscation of capital are false. It is intended to take only such measures as will protect the interests of depositors through a strict control of the activities of the banks."

The Soviet government tried, it appears, in every way to keep the banking business alive, calmed the people interested, and denied expressly the rumor of the impending nationalization of the banks.

In the proclamation "Concerning the transition of power and of the means of production into the workers' hands," November 21, 1917,³⁰ we read:

"Take and guard like the pupil of your eyes the land, grain, factories, tools, products, transportation,—all this will henceforth be your common property to its fullest extent."

In other words, it is evident that the banks shall only be socialized at a later stage. This corresponds in general to the socialist theory.³¹ However, the proclamation already hints threateningly at the nationalization of the banks.

"It is perfectly understood that the large estate owners and capitalists, the higher employees and officials, who are closely allied with the bourgeoisie, who are inimical to the new revolution, who threaten to stop all banking activities, prevent and injure the work of the different institutions and impede them in every way"

"The resistance of the higher employees and officials will be broken. Nobody will be deprived of his property by us without a special state law about the nationalization of the

³⁰ GS. 1917, No. 2, Art. 22; Russische Korrespondenz, Year 1, Vol. 2, Nos. 14-16, 809 *et seq.*

³¹ N. BASSECHES, DAS WIRTSCHAFTLICHE GESICHT DER SOWJET UNION (Wien and Leipzig, 1925), 76; K. KAUTSKY and B. SCHOENLANK, GRUNDSATZUE UND FORDERUNGEN DER SOZIALDEMOKRATIE, 14 *et seq.*; *cf.* also the reports of the Commission for Socialization.

banks and syndicates. Preparations for this law have commenced. No working man and no worker will lose a kopek"

The intensity of the class war grew apace.³² On December 14, 1917, the decree of the Central Executive Committee concerning nationalization of banks was published.³³ Here we read:

"Banking is made a state monopoly" (Art. 1). All existing private Joint Stock banks and banking houses are merged in the Imperial Bank (Art. 2). The Imperial Bank takes over the assets and obligations of the enterprises to be liquidated (Art. 3). The regulations about the merger of private banks with the Imperial Bank will be published in a separate decree (Art. 4). This is done, according to the preamble, among other reasons, "to create a single People's Bank of the R. S. F. S. R."

The banks were seized. A Commissar, nominated by the Soviet government, replaced the old directorates. The anti-bolshevist, cadet, paper "Nasch Wjek" No. 15, of December 16 (29), 1917, reports:

"Armed men have seized the Petrograd banks, have arrested the directors, have seized the keys of the safes, and are now busy examining their contents. These measures are introduced not only for the fight against sabotage, but also for the realization of a reform, *viz.*, the nationalization of all credit institutions of Russia."³⁴

The majority of the bank employees persisted in the counter strike. The bank seizures continued. "Nasch Wjek" says on December 20, 1917 (January 2, 1918):

"Five of the twelve Moscow private banks have been 'nationalized' so far; the remaining seven will be nationalized to-morrow. All the banks have been occupied by Soviet troops.

³² Nov. 29, 1917, the decree about the 'Workers' control was issued (GS. 1917, No. 3, Art. 35), which practically deprived the owners of the right to dispose of their enterprises.

³³ GS. 1917, No. 10, Art. 150.

³⁴ Reprinted in KAPLAN-KOGAN, *op. cit.*, *supra* note 29, 159 *et seq.*

"The managers and directors of the seized banks were summoned to-day before the Finance Commission of the Workers' and Soldiers' Council. Here an order was read to them to hand over all business and the safekeys to commissars expressly appointed for this purpose."

In almost every place where the Soviet gained control, the government succeeded in taking over the management of the banks. Where no Soviet management was appointed, the banks, voluntarily or by compulsion, had to suspend business. Only smaller banks escaped seizure. The Joint Stock Banks, with which we are concerned, were always classified as larger banks. According to the credit law (Art. 1 and 6),³⁵ their basic capital had to be no less than 500,000 roubles.

The "Declaration of Rights of the working and exploited people," adopted by the third All Russian Congress of Councils, January 3, 1918,³⁶ confirms the "transfer of all banks to the property of the workers' and peasants' state as prerequisite for the liberation of the working masses from the yoke of capital." This declaration was incorporated in the constitution of the R. S. F. S. R. of July 10, 1918 (1, division 2, chap. e).

The Soviet government was not satisfied with depriving the former directorates of the management and with replacing them by its commissars; it took a further step on the way "to create a single people's bank of the R. S. F. S. R." as outlined in the decree of December 14, 1917. On January 26, 1918, the Council of People's Commissars published a decree "concerning the confiscation of the shares of the former private banks."³⁷ According to this decree, the shares of the former private banks are taken over by the state bank by absolute confiscation (Art. 1). At the same time all bank shares are declared null and void (Art. 2). The holders must surrender all their shares to the state bank. All acts proposing to transfer or to sell bank shares are prohibited and made criminal. A decree of December 29, 1917³⁸ had

³⁵ Swod Sakonoff, Vol. XI, part II, cf. KLIBANSKI, HANDBUCH DES GESAMTEN RUSSISCHEN ZIVILRECHTS, Vol. 3, 363.

³⁶ GS. 1918, No. 15, Art. 215.

³⁷ Iswestja No. 18, Jan. 26, 1918.

³⁸ GS. 1917, No. 13, Art. 185.

already decreed for ALL shares and other interest-bearing securities: "every payment of dividends and every transaction in such securities is prohibited." This ordinance was confirmed by the decree of April 18, 1918, "concerning the registration of shares, bonds, and other interest-bearing securities."³⁹ The system of "bearer" shares and "bearer" bonds is abolished. Henceforth interest-bearing securities are valid only if made out to the person named (Art. 1). Accordingly, all shares, bonds, and other interest-bearing securities must be surrendered and registered. Only the possessors of shares properly registered, and registered on time, can, in case of the nationalization of the enterprises, make any claims for compensation, to the amount, and under the conditions, laid down in the nationalization law (Art. 6, par. 2). Thus the expropriation without compensation, *i. e.*, confiscation, is not yet the rule, and the uncompensated confiscation of bank shares is an intentional exception.

On June 30, 1918, the People's Commissar for Finance published an ordinance declaring all unregistered shares, bonds, and other interest-bearing securities as null and void, whether or not they are held by persons inside or outside of Russia.⁴⁰

So far only private and Joint Stock banks were nationalized (decree of December 14, 1917)—the Nobles' and Farmers' Agrarian Banks, belonging to the state, were *liquidated* by decree of November 25, 1917;⁴¹ so also the Mutual Credit Companies, by decree of October 15, 1918,⁴² and the city banks by decree of December 2, 1918;⁴³ Foreign banks by decree of May 15, 1918;⁴⁴ city and provincial credit corporations (communal banks) by decree of May 20, 1919;⁴⁵ the Moscow People's Bank (Central-Cooperative Bank) was declared nationalized as late as December 2, 1918.⁴⁶ If therefore the decree of April 18, 1918, "concern-

³⁹ Iswestja No. 78, April 20, 1918.

⁴⁰ Iswestja, June 20, 1918.

⁴¹ GS. 1917, No. 4, Art. 56.

⁴² Sbornik dekretov i postavljennji po narodmu chosjaistwu (Collection of economic laws and ordinances), Vol. II, No. 72.

⁴³ Sbornik dekretov. II, No. 67.

⁴⁴ Confirmed by decree of Dec. 2, 1918, Iswestja No. 266, Dec. 5, 1918.

⁴⁵ GS. 1919, No. 18, Art. 237.

⁴⁶ Iswestja No. 268, Dec. 7, 1918.

ing registration of shares, bonds, and other interest-bearing securities by Art. 5 obligates all branches of the People's (Imperial) Bank, the state savings banks and all state and community institutions, also the non-nationalized Credit Institutes to assist in the registration, one must not conclude from this that the nationalization of the Joint Stock banks had not yet been effective April 18, 1918, and that the decree of December 14, 1917, is a purely political proclamation.

On the contrary, this decree had been put into effect, almost without exception, as early as the spring of 1918 in the whole sphere of power of the Soviet government. After the old directorates, in each individual case, had been replaced through administrative ordinance by public bank commissars, the banks which had been nationalized, not only in law but actually, were merged in a "single People's Bank." The individual banks were transformed into branches of the People's Bank. An ordinance of the Chief Commissariat of the People's Bank, April 12, 1918,⁴⁷ formally completes the new organization; beginning with April 1, 1918, the management of the former private banks is declared abolished. Their functions are transferred to the People's Bank of the R. S. F. S. R.; the individual branch banks are represented by the director of the corresponding branches of the People's Bank.

As far as the banks are active at all in the midst of the general economic debacle of the Civil War, they are engaged in centralizing the bookkeeping and clearing. Assets and obligations of the individual banks are transferred to the People's Bank, where separate accounts are opened for the individual branches, and the transactions of the individual branches with each other are settled by the "bookkeeping central" of the People's Bank, acting as a clearing house.

Meanwhile the transition to state management progressed. During the first half year the Soviet government had nationalized from case to case only. In general, nationalization was a

⁴⁷ *Izvestija* No. 32, April 12, 1918; *cf.* also Lenin, speech of March 8, 1918; *Collected Works* (Russian), XV, 306.

punishment.⁴⁸ Nationalization of whole industries, like that of the banks, December 14, 1917, was an exception, necessitated by civil war, blockade and economic class war. But in the summer of 1918 a systematic nationalization of the whole economic fabric commenced. The financing of the nationalized enterprises was to be unified.⁴⁹ By the decree of December 14, 1917, the Soviet government declared banking a *state monopoly*. But only the private Joint Stock banks and banking houses were nationalized. It now became necessary to extend nationalization to those credit institutions not yet nationalized and to subject them also to the bank monopoly. September 20, 1918, the Council of People's Commissars published a decree "on the further carrying out of bank nationalization."

"The People's Commissar for Finance is ordered to take administrative measures to carry out the nationalization or liquidation of all credit institutions still existing" (Art. 2).

The decree is not quite clear. Art. 1 says that the decree of December 14, 1917, laid down "the principle of banking monopoly in Russian through nationalization or liquidation of all the existing private and public credit institutions in Russia." But the decree of December 14, 1917, refers only to "all private Joint Stock banks and banking houses." The *public* credit institutes were always treated separately. The first liquidation of a public bank is found in the decree regarding the liquidation of the State Nobles' and Peasants' Agrarian Banks.⁵⁰ The remaining public credit institutes were dissolved only after the September decree.

The banking monopoly continued to be extended; separate decrees dealt with the liquidation of the Mutual Credit Associations, the Communal Banks and the nationalization of the Cen-

⁴⁸ P. WOHL, DAS INDUSTRIERECHT UND DIE INDUSTRIEPOLITIK DER BOLSCHEWIKI IN DER ERSTEN PHASE DER RUSSISCHEN REVOLUTION (Diss. Breslau, 1925), 62 *et seq.*

⁴⁹ The decree of Sept. 3, 1918, "on the safekeeping rules for the liquid cash of state institutions and nationalized enterprises" (Iswestja No. 193, Sept. 7, 1918), ordered the nationalized enterprises to deposit their liquid cash in the People's Bank exclusively. But at that time the majority of the large enterprises had already been nationalized.

⁵⁰ *Supra* note 41.

tral Cooperative Bank. Attention was concentrated primarily on changes in the organization of the banks declared nationalized by the decree of December 14, 1917. The commissars, whose names had been changed to "Branch Directors of the People's Bank," were found insufficient. Not only the personnel, but the whole management of the old banking institutions was to be changed completely; they were to be turned into mere receiving and clearing departments of the central institution. Boards of liquidation were appointed with the most detailed rules of procedure. On December 10, 1918, the People's Commissar for Finance published instructions "for the procedure in nationalizing the private banks, enlarging the decree of December 14, 1917, regarding the nationalization of the private banks."⁵¹ He says:

"The nationalization is to be carried through by local Boards of Liquidation. These Boards are to be composed of the manager of the nearest Imperial Bank branch as chairman, and of one representative of each of the former private banks and two representatives of the former Imperial bank.

"For the statement of liquidation, December 14, 1917 is to be the day of commencement. Regardless of the day of actual nationalization, all former private banks are working from that date for the account of the state, *i. e.*, of the People's Bank.

"Where it is intended to unite several branches into one department of the People's Bank, the statements of these branches are to be presented together.

"In order to effect the merging of the operations of the departments of the People's Bank, formed from the former private banks, with the People's Bank, a department of liquidation will be established to settle with the People's Bank."

It appears, then, that the merger of the former private banks with the People's Bank was also to be carried out in the matter of bookkeeping. On February 6, 1919, the manager of the People's Bank issued a circular letter "concerning the reorganization of the bank's central management."⁵² In this, the different sec-

⁵¹ GS. 1918, No. 98, Art. 997.

⁵² *Ekonomitscheskaja Zhisn* No. 27, Feb. 6, 1919.

tions of the bank are enumerated. In our investigation, Articles 5, 13, and 14, are important. Article 5 indicates the close affiliation between the People's Bank and the nationalized enterprises, excluding any private banking activity. In February, 1919, almost the whole industry was nationalized and there was no longer legal room for private banking.

Art. 5. Section for financing the nationalized industries and the economic operations of the public offices. The section has the following duties:

(a) to finance, according to estimates, the nationalized industrial enterprises for the account of the public treasury, and the organization of the mutual settlements of these enterprises with each other and with other public offices;

(b) to finance, according to estimates, the state institutions in the fields of purchase of merchandise, the procuring of raw materials and other economic measures, specifically for directing the financing of the People's Commissariats for victualling and for agriculture.

Art. 13. The (provisional) section for nationalization and liquidation of commercial credit banks. To this section are entrusted those acts connected with carrying out the decree concerning nationalization of the former private banks, especially,

(a) with conducting and managing those operations which refer to the transformation of the branches of the former private banks changed into branches of the People's Bank;

(b) with managing the liquidation of the mutual credit associations and the city communal banks.

Art. 14. The (provisional) section for liquidating the mortgage credit institutions.

Here, too, the aim is to create a close and organic connection between the central bank and those banking institutions which had already been transformed into departments

of the People's Bank. There are also new tasks connected with the liquidation of the public credit organs on the basis of the decree of September 20, 1918.

On March 4, 1919, the Council of People's Commissars published a decree "on liquidating the bonds of public enterprises."⁵³ It says:

"In view of the fact that all public (nationalized, sequestered, formerly public, etc.) enterprises, on the basis of the decree of the People's Commissaries regarding the financing of the enterprises,⁵⁴ will be furnished the necessary means from March 1, inst., only by financing according to estimates, the Council of People's Commissars decrees:

"1. Stocks and shares of Joint Stock companies or associations whose enterprises have been nationalized or sequestered, are annulled, even if these enterprises have not yet been placed under the management of the public offices and are being managed by their former owners by uncompensated lease.

"2. State enterprises are absolved from paying all debts to private persons and enterprises incurred before nationalization, among these also from payments of bonds, with the sole exception of wage payments to the workers.

"3. Debts of the state enterprises to other state enterprises or state institutions, to the People's Bank of the R. S. F. S. R. and all formerly private credit institutions now belonging to the People's Bank, also all arrears in taxes, both state and local, are annulled and cannot be claimed.

"4. The cash belonging to the state enterprises and the capital in the credit institutions are withdrawn from their disposal and will be added to the assets of the state treasury."

This decree is of special importance because it extends the rules applied in the decree of January 26, 1918, on confiscation of the capital of the former Joint Stock banks, to all nationalized Joint Stock companies, declaring their shares null and void, even if they have not actually passed to the management of the public

⁵³ GS. 1919, No. 10/11, Art. 108.

⁵⁴ *Ibid.*, Art. 107.

economic offices. The decree also shows how credit transactions disappear more and more in the pure state economics of the war-communistic days and become merely bookkeeping settlements, perforated by frequent decrees of debt cancellation. The sphere of the People's Bank becomes narrower and narrower. It is changed to an official department in its limited meaning. A decree of the Council of People's Commissars of October 5, 1919,⁵⁵ gives the bank the right to make seizures by administrative measure. All other banks have been either nationalized or liquidated and have actually disappeared.

On July 14, 1919, the People's Bank issues an instruction—here given in an abstract—to the Boards of Liquidation of the former private banks for execution, and to the branches of the People's Bank for information, regarding the acceleration and completion of the operations to nationalize the former private banks and regarding the general maxims to be followed in making up the statements of liquidation and final accounting.⁵⁶

Since it is important to complete the operations of nationalization concerning the former private banks as soon as possible, and since it is necessary to regulate the activities of the nationalized banks as departments of the single People's Bank by new rules, the Boards of Liquidation are ordered to complete within the shortest possible time (within two weeks from the receipt of this order) their work of nationalizing and liquidating the private banks and to submit to the section for questions of nationalization and liquidation of commercial credit banks, at the Central Administration of the People's Bank in Moscow, all material concerning the submitted questions, *viz.*:

1. the statements of liquidation of all former private banks, both those completely liquidated and those in process of merging;

2. the liquidation accounts from January 1, 1918 to December 13, 1918, both inclusive;

⁵⁵ GS. 1919, No. 51, Art. 495.

⁵⁶ Ekonomitscheskaja Zhishn No. 137, of June 26, 1919.

3. copies of the minutes regarding the taking over of all items of the statements, all values and the entire assets of the private banks.

In adding the interest for the assets before December 14, 1917, the regulations in force in the former private banks are to be observed, and the interest is to be added according to these terms, up to the actual nationalization of the banks.

The statement of liquidation must, under all conditions, be made up as of December 14, 1917. If it is impossible to do this, because books or documents have been lost, an affidavit is to be made out and, with reasons and explanations added, is to be sent to the Central Administration of the People's Bank, to be submitted to the People's Commissariat for Finance for its decision.

In recommending the above mentioned maxims to be followed, the section for the nationalization and liquidation of commercial credit banks considers it necessary to inform the Boards of Liquidation that the responsibility for any delays in the operations concerning the nationalization of the private banks, caused by tardy delivery of the material, rests with the Boards.

Thus the former private banks retain no independence whatever, even during liquidation. The instruction expressed the hope that business activity would soon revive; but this hope was not realized within the war-communistic economic management. A decree of the Council of People's Commissars of January 19, 1920, "on abolishing the People's Bank" ⁵⁷ replaces the entire cumbrous and ineffective apparatus by the Central Administration for the State Budget in the People's Commissariat for Finance. The former banking institutions are now incorporated in the financial offices, the finance departments of the local Executive Committees. But even within this organization they do not remain independent, not even as bookkeeping departments and units of liquidation.

⁵⁷ Iswestja, Jan. 25, 1920.

The circular letter of the Central Bureau of accounts and discounts, of August 30, 1921, "concerning immediate completion of operations of nationalization and liquidation in the former banking institutions" ⁵⁸ destroys even the last survivals of autonomy within the People's Commissariat. It states that the book-keeping transfer of assets and obligations, ordered by the decree of December 14, 1917, has taken place everywhere. The credits of the former banks have been entered in the corresponding accounts of the finance offices. Only those transactions are still to be entered which have been taken over into the statements of liquidation. All securities, protocols, books and documents are to be handed to the Central, or to the local archives. The former banking institutions exist no longer even in name. All accounting is to be done by the People's Commissariat for Finance and its finance offices with their uniform organization.

Paul Wohl.

Berlin, Germany.

(To be continued.)

⁵⁸ Iswestja of the People's Commissariat for Finance, August 15, 1921.