

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

(Continued from March issue)

(c) The legislation and administrative practice which has just been described, would not have dissolved the Joint Stock companies as corporations with the status of juristic persons, if one uses as a measure the standard of the old law. In the old Russian law, Joint Stock companies required a concession given by a law, and just as the constitution could be amended only with the collaboration of the legislative power, so the dissolution required a special law.⁵⁹ Joint Stock banks received separate treatment, their legal status being regulated by the credit law; their concession issued from the officials by administrative measure, and they were dissolved by special ministerial ordinances, published in the Senate Gazette.

Joint Stock banks had to be dissolved, if their capital dwindled to less than one-third of the shares issued⁶⁰ and also, it was frequently held, if all shares were in the possession of one person.⁶¹ The nationalization decrees of the Soviet government realized both of these premises. The property of the banks was expropriated and the shares declared null and void; this is sometimes interpreted to mean that all shares were to be placed in the hands of the People's Bank.⁶² But even then, according to

⁵⁹ Swod Sakonoff, Vol. X, Bk. IV, Pt. III, c. 4, §§ 2140, 2153f, 2196; see KLUBANSKI, *HDBCH.* III, 285, 311, 321; G. F. SCHERSCHENJEWITSCH, *KURS TORGOWAWO PRAWA* (Commercial Law Course), (4th ed., Petrograd, 1908), 470 *et seq.*

⁶⁰ Credit Law, Arts. 119-123.

⁶¹ SCHERSCHENJEWITSCH, *op. cit.*, *supra*, note 59, at 475.

⁶² This view was especially voiced in the judgment of the House of Lords. Its correctness will be discussed below. Anyway, no distinction is made between foreigners and natives (decree of the People's Commissar for Finance, June 30, 1918, *Iswestja*, June 30, 1918). Whether international public law permits an uncompensated expropriation in the case of foreigners is doubtful—this, too, will have to be discussed below. At any rate, the expropriation *per se* is effective, and if one follows the view of the House of Lords, the Soviet government was entitled to assume that the bank shares were assembled in the hands of the People's Bank.

the old law, the dissolution could not have been ordered solely by administrative decree—one might see such a decree in the occupation of the banks, which was brought to public notice, especially since a formal publication in the Senate Gazette was made impossible by the dissolution of the Senate—but liquidation had to be resolved either by a resolution passed at the general stockholders' meeting or by judicial decision after an inspection ordered by the officials upon request of part of the shareholders.⁶³ According to old Russian law, therefore, the dissolution of the banks was not legal, as the House of Lords expressly states.

It is permissible to pass over this objection by which the legality of all Soviet legislation can be contested because the acts of a victorious revolutionary government must be considered legal even if they formally contradict old maxims of law.⁶⁴ But even without this revolutionary "law of emergency" a solution can be reached.

On November 24 (Dec. 7), 1917, the Council of People's Commissars issued the first fundamental decree "on the courts,"^{64a} by which "the existing ordinary courts" are abolished (Art. 1) and local courts take the place of the Justices of the Peace.

"In their decisions the local courts apply the laws of the overthrown governments only in so far as they have not been abolished by the revolution and do not contradict the revolutionary conscience and the revolutionary idea of law. All laws are considered abolished which contradict the decrees of the Central Executive Committee and the Minimum-Program of the Russian Socialdemocratic and Socialrevolutionary party" (Art. 5).

On February 17, 1918 the second decree "on the courts"⁶⁵ followed, which regulates the establishment of the higher courts. Art. 36, par. 1, reads:

⁶³ Credit Law, Art. 115.

⁶⁴ J. JELLINEK, *ALLGEMEINE STAATSLEHRE* (Berlin, 1922), 342 *et seq.*, and 477; *idem*, *VERFASSUNGSÄNDERUNG UND VERFASSUNGSWANDLUNG* (1906), 4; R. STAMMLER, *WIRTSCHAFT UND RECHT* (Leipzig, 1906), 483, 495; BIERLING, *PRINZIPIENLEHRE*, Vol. II, 365; RADBRUCH, *RECHTSPHILOSOPHIE*, 163; *cf.* also ECKSTEIN, J. W. (1919), 137.

^{64a} GS. 1917, No. 4, Art. 50.

⁶⁵ GS. 1918, No. 26, Art. 420.

In civil and criminal cases the court may apply the laws valid at present only in so far as they have not been abolished by decrees of the Central Executive Committee and of the Council of People's commissaries and in so far as they are not incompatible with the socialist idea of law.

The first ordinance "on Popular Courts," November 30, 1918, states:

In deciding all cases the Popular Court applies the decrees of the workers' and peasants' government. If an applicable decree is lacking or is incomplete, it is to be guided by the socialist idea of law.

Note: It is prohibited to refer in judgments and decisions to the laws of the overthrown governments.

This maxim is repeated in par. 22 of the second ordinance "on the Popular Court of the R. S. F. S. R.," of October 21, 1920.⁶⁶

The decrees of November 30, 1918, and of April 21, 1920, do not expressly declare the old law abolished, but merely prohibit the courts from referring to it. Many authorities considered this prohibition merely as a rule of procedure, by which the material validity of the laws is not affected.⁶⁷ To this it must be objected that the application of a law by the judge is his most important function; James Goldschmidt, indeed, has gone so far as to consider the law in the first place as material justice, as a norm addressed to the judge.⁶⁸ If a law prohibits the application of another law, or of a whole group of laws, that means, in my opinion, materially that these laws have been abolished. It may be assumed, therefore, as certain that the Swod Sakonoff together with all subsidiary laws was abolished both formally and materially by the decree of November 30, 1918.⁶⁹

⁶⁶ *Sistematitscheski Sbornik wazneischich dekretov, 1917-1920* (Systematic Collection of the Most Important Laws), (Moscow 1920), No. 11.

⁶⁷ See L. ZAITZEFF, *La Russie soviétique et le droit*, 48 *REVUE PÉNITENTIAIRE ET DE DROIT PÉNAL*, No. 8/10 (1924); J. RABINOWITSCH, *J. W.* (1924), 634.

⁶⁸ JAMES GOLDSCHMIDT, *FESTSCHRIFT FUER HUEBLER* (1905).

⁶⁹ So also H. FREUND, *DAS ZIVILRECHT SOWJETRUSSLANDS* (Berlin, 1914), 15; A. GOICHBARG, *DIE ERSTE GESETZSAMMLUNG DER R. S. F. S. R.* (Berlin, 1921), *Introd.*; KURSKIY, *RUSS, KORR. YEAR*, I, Vol. 2, No. 19/20, 1171.

Even the decree of November 24, 1917, was a thorough interference with the existing legal order. The old laws were to be applied only as far as they were not abolished by the revolution and did not contradict the revolutionist idea of law. All laws not in harmony with the Bolshevist or socialist-revolutionary program are considered abolished. Here then, formally and consciously, free play is allowed the normative force of a new idea of law. Accordingly, we ask whether the old law had not been abolished even before November 30, 1918, by the sanction in advance of the "normative power of facts."

Law has only secondary significance for the orthodox-Marxist Bolshevists. It is considered an "ideological superstructure,"⁷⁰ a "system of social relations which responds to the interests of the ruling classes and is protected by their organized power."⁷¹ The law of the Soviet state, according to its leading Soviet jurist, Goichbarg, rests, "not on its authority, but on its revolutionary expediency."⁷² Law does not exist for its own sake. "Decrees and ordinances are merely technical political instruments, and only the general maxims in them are binding": thus Stutschka, former People's Commissar for Justice.⁷³ "A proletarian revolution must start from the premise that all bourgeois laws are considered abolished by virtue of the revolution, unless they have been expressly left in force: Our principle is diametrically opposed to the bourgeois view of the continuity, *i. e.*, the continuing existence, *per se*, of the whole legal apparatus—in spite of revolution."⁷⁴ The decree of November 24, 1917, is interpreted as follows by its author, Stutschka: "We have decided the question of bourgeois law, rather cautiously, indeed, but with full determination, in the sense that the old laws

⁷⁰ See K. MARX, VORWORT ZUR KRITIK DER POLITISCHEN OEKONOMIE; J. PODBOLZKI, MARXISTISCHE THEORIE DES RECHTS (Russian), (Moscow, 1923), 163 *et seq.*, 197.

⁷¹ Art. 1 of the ordinance of the People's Commissar for Justice, Dec. 12, 1919, "on the principles of criminal law" (GS. 1919, No. 60, Art. 590).

⁷² A. GOICHBARG, UEBER DIE GRUNDSATZE DER PRIVATEN EIGENTUMSRECHTS (Moscow, 1924), 9.

⁷³ P. STUTSCHKA, DIE REVOLUTIONAERE ROLLE DES RECHTS UND DES STAATS (Moscow, 1923), 89 *et seq.*

⁷⁴ STUTSCHKA, *Das Problem des Klassenrechts und der Klassenjustiz*, RUSS. KORR., Year 3, Vol. 2, No. 7/10, 673.

are abolished. We replaced the old laws by our decree and the revolutionary consciousness of the judges of the people.”⁷⁵ “The proletarian revolution could neither leave the old laws in force, nor could it create new laws in an instant.” There was “a court without laws.” “From the beginning we took the stand that—through the revolutionary idea of law—we had to create a new proletarian, and therefore transitory, class law. The first task of the October revolution was the destruction of the whole old legislation.”⁷⁶

These quotations from the writings of the leading Soviet jurists might be continued *ad libitum*. Two features are characteristic: first, the old, authoritative, unified, legal order is replaced by a revolutionary “Cadi-justice,”⁷⁷ and, second, the proletarian Marxist class law, which has been elevated to the status of a source of justice on the basis of the Bolshevik program, rejects from the outset the notion of any rightfully acquired subjective right, especially the subjective rights of property.⁷⁸ The change brought about by the revolutionary right is so significant, that it appears incompatible with the maintenance of the old legal order. Consequently, by a corresponding interpretation, the decree of November 24, 1917, must be understood as abolishing the old law in its most essential parts.⁷⁹ Accordingly, the old law cannot and must not be used in interpreting the nationalization decrees, especially the decrees about nationalization of the banks and the confiscation of all bank shares, which are here under discussion.

To make possible the interpretation of these decrees under the new legal ideas of the Soviet legislation and administration,

⁷⁵ *Ibid.*

⁷⁶ S. BRANDENBURGSKI, *Das Rechtswesen und die Gesetze der R. S. F. S. R.*, RUSS. KORR., Year 3, Vol. 2, No. 11/12, 801.

⁷⁷ See MAX WEBER in GRUNDRISSE DER SOZIALÖKONOMIK, Div. 3 (Wirtschaft und Gesellschaft), (Tuebingen, 1922), part 1; DIE WIRTSCHAFT U. DIE GESELLSCHAFTLICHEN ORDNUNGEN, 157, chap.: RECHTSSOZIOLOGIE, 467 *et seq.*, and 662.

⁷⁸ H. FREUND, *op. cit.*, *supra* note 69, 24 *et seq.*; A. PILENKO, LA LEGISLATION SOVIÉTIQUE ET LA CONFÉRENCE DE LA HAYE (Paris, 1922), 46. For the time after the establishment of the “Nep.,” see A. L. THAL, *Die Struktur der Wirtschaftstraeger in der russischen Gemeinwirtschaft*, AUSLANDSRECHT (1925), fasc. 3; S. TSCHLJENOW, *Die Oekonomische Politic und die revolutionaere Gesetzlichkeit*, NARODNOJE CHOSJAISTWO (1921), No. 8/9, 23.

⁷⁹ FREUND, too, *op. cit.*, *supra* note 69, assumes that the old law in its essentials had been abolished before Nov. 30, 1918.

we must first discuss some general legal effects of the Soviet revolution. Since its commencement, and especially in the early days of the war-communistic period, here to be treated, the whole administrative practice of the Soviet government rests on the maxim that industrial freedom has been abolished.⁸⁰ The right to an undisturbed exploitation of an industrial enterprise, considered as private right of an immaterial character and as a public subjective right, recognized also in the old Russian Empire, is absolutely opposed to the Bolshevik idea of law which starts from the social ownership of the means of production and therefore recognizes no right to an industrial activity and a public right only for "social-economic" purposes. Accordingly the idea of a juristic person undergoes a change. The idea of a private association for a definite purpose recedes into the background and is replaced by the idea of a public, social-economic, purposive, ownership. The private juristic person, recognized for its own sake as bearer of independent rights and duties, must give way to the "economic bearer," the effective economic unity of public right.⁸¹ Public administration, intent upon creating a true order, imposes rights and duties on the actual possessors of an enterprise, that is, upon the enterprise itself, regardless of him to whom it belongs under the no longer recognized private right. The right of property is recognized, if at all, only as an actual "social-economic" *usus* and *possessio rei*. The juristic person is volatilized into its economic substratum, its enterprise—independent of its real, corporate or institutional existence, which for the first time is inadmissible for the very reason that it is private.⁸²

No decree of nationalization mentions the dissolution of Joint Stock companies; formally, it is always sufficient to order

⁸⁰ The "Nep." has changed something in this. However, the industrial freedom of par. 5 of the BGB. and the preamble, Art. 1 of the decree of May 22, 1922, concerning the basic property rights in private law (GS. 1922, No. 36, Art. 423), is merely a formal principle, which, in substance, is done away with by the State Monopoly; cf. SCHRETER, *SISTEMA PROMYSCHLJENNOWO PRAWA S. S. S. R.* (System of Soviet industrial law), (Moscow and Petrograd, 1924), 15. What is said above is unconditionally valid for the war-communistic time.

⁸¹ L. THAL, *Wirtschaftsverwaltung und Wirtschaftsverfassung Sowjet-russlands*, in *RECHT UND WIRTSCHAFT*, Year II (1922), 323; *ibid.*, *AUSLANDS-RECHT* (1925), fasc. 3.

⁸² B. SSAMOLOW, *Industrie und Recht*, *NARODNOJE CHOSJAISTWO* (1922), No. 2, 17 *et seq.*

the transition of the entire industrial property to the state, and, in a given case, the dissolution of the previous management also.⁸³ It is hardly to be assumed that those decrees which radically transformed the whole economic order in the direction of a pure state ownership, should have halted directly in the face of the fictitious—according to the prevailing Russian theory—juristic personality of the Joint Stock companies. It is much more plausible to interpret them thus: the Joint Stock companies as juristic persons were dissolved by the normative power of the revolutionary idea of right, especially through the administrative practice of the Soviet, in accordance with the Bolshevist program.

If the decree of March 4, 1919⁸⁴ "annuls the shares of the Joint Stock companies whose enterprises have been nationalized or sequestered, even if these enterprises have not yet been transferred to the management of the public economic offices," that is only an apparent contradiction. The shares are no longer considered as giving the right of membership, but merely as forming a value for certain mutually independent persons. The old corporate organization of the Joint Stock companies could no longer exist because their private-economic purpose was considered counter-revolutionary and based on class hostility, therefore contrary to law, and because the old legal basis had been withdrawn. Under the regime of the Bolsheviks no Joint Stock company in Russia has held a general stockholders meeting.⁸⁵

There is another interpretation of these contradictions in the wording of the laws, given by Lenin himself:

"We do not feel proud that we must change decrees already promulgated. But he who has a deeper conception of the situation and knows the immense historical significance of the task imposed upon the Russian proletariat, if he is a true socialist, cannot reproach us. Nobody can demand

⁸³ See the decrees of nationalization, reprinted in KLIBANSKI, *DIE GESETZGEBUNG DER BOLSCHEWIKI*, 109, 120, and 37 *et seq.*

⁸⁴ G. S. 1919, No. 10/11, Art. 108.

⁸⁵ The decree continues: "even if the enterprises (of the J. S. companies) are managed by their former owners on uncompensated lease." Disregarding the fact that it is questionable whether a J. S. company can have property as a juristic person, the legal fiction of a leasing of the enterprise by a J. S. company, no longer legally represented, must appear perfectly absurd.

that we find the vital nerve of the new organization at the first stroke. That cannot even be expected of an expert, be he ever so great." ⁸⁶

It would be of no purpose to omit entirely the legal view and administrative practice of the Bolsheviki and interpret literally those fighting decrees, composed hastily and without care.

(d) Having discussed general principles our investigation has led us to the concrete question: What legal effect had the diverse decrees concerning the nationalization of the banks?

Nationalization is a peculiar conception of Soviet law. It has a two-fold content:

1. Nationalization brings about *expropriation*. But nationalized property is not transferred to the state as a private right of *usus* and *manus* but acquires a new content of a publico-legal character. The right of use is determined by the right of public administration; the right of disposal, by its being bound to a public purpose.

The nationalized property does not fall to the state *qua Fiscus*, but to the State *qua bearer of the supreme power*.

2. The nationalization has also effects regarding industrial law. It procures for the State the sole power to exercise industrial activity. Monopoly often is the most important content of nationalization.⁸⁷

The legal institution of nationalization has a two-fold application in the legislation and administration of the Soviet state. It can be regulated as a unit, but it usually consists of two acts, each the complement of the other. We must distinguish:

1. *The normative nationalization*. It does not bring about the expropriation of the former owners, but takes from them

⁸⁶ Lenin, Speech in the 1st Congress of Economic Councils, stenogram (Moscow, 1918), 62.

⁸⁷ See WOHL, *op. cit.*, *supra* note 48, at 70. An example of such a nationalization, in which the monopoly effect crowds out the expropriation effects, is the nationalization of foreign trade. No expropriation was intended here; it took

merely the right to dispose of the things nationalized and imposes an industrial ban on the nationalized enterprise. Through this nationalization the right to the enterprise, while formally still private, is changed actually into a public right. Formally, however, the enterprise has not yet been transferred to public management and is therefore not yet the property of the state. The former owners and entrepreneurs lose also the right to dispose of the industrial enterprise. Before nationalization, private industrial activity was not permitted, since industrial freedom was not recognized, but nevertheless was tolerated; after nationalization it is forbidden. All industrial legal transactions of the actual possessors are effective only so far as the official administration does not protest.

2. *The administrative nationalization.* The enterprise is actually taken over by the state administration and is incorporated into the public administrative property by ordinance. Thereby it is transferred to state ownership and is directly administered by the state. Only the public economic office, or the directorate appointed by it, has the right to represent the enterprise. Here the Soviet decrees speak of completed nationalization and call these enterprises state enterprises in the narrower sense.⁸⁸

The question is how the nationalization of the banks must be interpreted. The decree of December 14, 1917, declared banking a state monopoly and ordered the J. S. banks and banking houses to be merged in the Imperial Bank. No details about the nationalization are given. It has only potential significance that Art. 5 gives to the Imperial Bank the provisional management of the private banks. This does not carry with it direct state administration. The word "nationalization" itself appears only

place much later, unconnected with the nationalization of the foreign trade. "Nationalization of Foreign Trade" even in the view of the Soviet jurists has only a declarative significance. We are dealing with a pure monopoly. The later laws speak only of such monopoly.

⁸⁸ In several decrees of nationalization it is ordered that the former owners are to continue the management by lease; in others, that the former management is changed to an organ of the state and its members are subordinated to the state as officials. The former method seems to show that provisionally only the normative nationalization has been ordered; in the second case the nationalization is both normative and administrative.

in the title of the decree. The decree of December 14, 1917, must thus be considered a purely normative nationalization order. The former owners are no longer capable of disposing of the property but the property itself has not yet been transferred to the state. The activity of the banks is permitted only so far as the state administration does not protest.

But the administrative nationalization did not delay long, a phenomenon recurring everywhere where the merely normative decrees of nationalization contained no special rules about continuing the administration and failed to regulate the legal relation of the former owners to the state. With the occupation of the banks and the appointment of commissars, administrative nationalization commences. By this, the bank is incorporated in the public economic administration and the managing powers of the old directorate are transferred to the commissar of the state.

The occupation of the banks and the appointment of the commissar were due to administrative ordinances. These ordinances were issued in the different cities at diverse times, and their contents varied. Sometimes, only the occupation of the banks was ordered, and the commissar appointed later on by a second ordinance. In most cases, it is true, both ordinances were issued together. In any case it is difficult to fix uniformly the moment at which nationalization had been completed, the property transferred to the state, and the administration carried on by officials. But these questions are only of secondary importance here; they are merely criteria for the principal question: when was the status as juristic persons abolished for the old Joint Stock banks?

It might be assumed that the Joint Stock companies had already been dissolved by the normative nationalization effected by the decree of December 14, 1917, in connection with the decree "on courts" of November 24, 1917. At the same time that the banking industry of the J. S. banks was made a state monopoly, the statutory purpose of such companies, *viz.*, private banking, was declared illegal. There is good reason for considering that a company is dissolved whose statutory purpose has been prohibited. The decree of December 14, 1917, ordered the liquidation of

banking enterprises, and even assuming that the J. S. companies were not dissolved by the announcement of the state banking monopoly, they can only be considered companies in process of liquidation. However, even this view appears doubtful, if the diverse administrative nationalization ordinances are referred to, and if one considers, quite apart from the repeal of the old J. S. companies' legislation, that the ordinances referred to here deprived the bank president, the most important organ of the J. S. companies, of his power to represent the company and of his power to administer the affairs of the bank, and appointed a commissar in his stead. But, especially during the early period, administrative ordinances of nationalization issued by local authorities must be considered equal to decrees and ordinances. The Soviet state had abolished the separation of powers, every official authority was at the same time legislative and administrative, and every ordinance of the local authorities was as effective legally as a decree, if it did not conflict with the rulings of a higher instance.⁸⁹

We are *compelled* to assume that the decree of January 26, 1918 definitely destroyed the juristic personality of the J. S. banks, then in process of liquidation and under state management. The bank shares were declared null and void, which means that the individual right to membership in the company, represented by the share, and the corresponding share in the property of the company have been annulled. The annulment of the personal right to membership necessarily carried with it the destruction of the corporation. The confiscation at the same time of the participation in the right of property, must be viewed as the last administrative measure of nationalization, by which the entire property of the J. S. company is transferred to the state.

We have to concede that the decrees about the nationalization of the banks and the confiscation of their capital stock differ

⁸⁹ REISSNER, DER STAAT DER BOURGEOISIE UND DIE R. S. F. S. R. (Moscow, 1923), 386; MAGEROWSKI, STAATSGEWALT UND STAATSAPPARAT (Moscow, 1924), 125 *et seq.*; ENGEL, GRUNDZUEGE DER SOVIETCONSTITUTION (Petrograd, 1923), 168 *et seq.*; ARCHIPOW, SOWJETSKOJE PRAWO (1924), No. 2, 41 *et seq.*; DAS RECHT SOWJETRUSSLANDS (Tuebingen, 1925), Year 1; N. N. ALEXEJEW & N. TIMASCHEFF, RECHTSBILDUNG UND RECHTSVERWIRKLICHUNG; N. TIMASCHEFF, GRUNDSATZE DES SOWJETRUSSISCHEN STAATSRICHTS (1915), 133 *et seq.*

from the practice of nationalization generally used at later periods. The later decrees always start with expropriation, then the state monopoly is announced, and the concluding article orders the former management to continue the business in the service of the Soviet government or by uncompensated lease; at the same time the installation of the future apparatus for public administration (Chief Committees, District Committees, etc.) and the appointment of commissars are ordered.⁹⁰ Even the pure monopoly decrees start with the establishment of a direct public administration. For instance, Art. 1 of the ordinance of the Council of People's Commissars regarding the textile monopoly, July 22, 1918,⁹¹ states:

“ . . . In order to monopolize the textile industry, the Council of People's Commissars decrees: all textiles stored in warehouses within the republic are subjected to state management.”

The rules for this management apply even to the smallest detail. The decree “on nationalization of the larger industrial enterprises . . .” of June 28, 1918,⁹² orders in a long preamble that the enterprises and businesses enumerated in the decree are transferred to the property of the state, together with their entire assets.

Art. I. In the mining industry:

(a) all enterprises belonging to J. S. companies dealing with the production of fuel.

(e) the following gold mines: (there follows an enumeration by name of the individual J. S. companies).

Art. XIII. Of the other industries:

(b) all J. S. companies with a capital of at least 1,000,000 Rbs., after 1914, which own factories to produce artificial oils, soap, and stearine.⁹³

⁹⁰ See decree of the Council of People's Commissars, June 20, 1918, “On Nationalization of the naphtha industry,” *Iswestja*, June 22, 1918.

⁹¹ *Iswestja*, July 1, 1918; *Sbornik dekretov*, Vol. I, No. 186.

⁹² *GS*, 1918, No. 47, Art. 559.

⁹³ Given in abstract after *KLIBANSKI, op. cit., supra* note 83, at 31.

Art. V, par. 32. "The entire personnel, directors and members of the management are taken over by the R. S. F. S. R. and will receive their former salaries from the income of their enterprise and from the public treasury."

If the procedure in the nationalization of the banks was not as clear and uniform, the practical reason is that the technique of legislation and the application of nationalization had not been fixed sufficiently at that time. While the later decrees either comprise normative or administrative nationalization, or prepare the ground for administrative nationalization sufficiently so that a simple administrative ordinance of the competent economic offices completes the nationalization, "carries through," and incorporates the enterprise into the state administration, the nationalization of the banks rests on three different acts of the state.

The first decree of December 14, 1917, contains no rule of expropriation, and even before this is ordered, the individual banks are incorporated by administrative ordinance into the banking organization of the state. The formal expropriation follows haltingly. Later on, during the course of nationalization of all fields of economics, the insufficiency of the first decree becomes evident. After "the transition of all banks into the ownership of the peasants' and workers' state" had been confirmed, as a program, together with many other things, in the declaration of rights of the working and exploited people, January 3, 1918—in order "at last to strike at the vital nerve of the organization",—on January 26, 1918, the decree about the confiscation of all bank shares is published. If it was not sufficient to order "the transition of the entire property of the J. S. banks into the ownership of the state," as was done in the other decrees of nationalization, two reasons were responsible: first, it was assumed that the property of the banks had been transferred to the state by the administrative ordinances;⁹⁴ second, it was intended to completely cover

⁹⁴ "The notion of property in the Soviet decrees is totally different from that usual among us. Not only individual, real, things are property; there is also a property in an enterprise and in capital. The private right of objects is changed into a public right in property." Cf. ВОЕН, *op. cit.*, *supra* note 48, at 72 *et seq.*

this precise problem of the foreign shareholders and the confiscation of the entire stock capital was meant to destroy any private right of participating in the banking capital of the state.

An explanation which would conclude, from the divergence in the formulation of the expropriation, that the domestic property of the former J. S. banks had not been transferred to the Soviet state, would be contrary to the intention of the legislator and to the social function of the law. Indeed, nobody has dreamed of interpreting the decrees in that sense. The assumption, however that the property of the J. S. banks had been transferred to the Soviet state can only rest on the decree of January 26, 1918. No other decree has ordered the expropriation of the banks, with the possible exception of the great general decree of nationalization of November 29, 1920,⁹⁵ Articles 1 and 2 of this decree stated:

1. All enterprises owned by private persons and companies, if having more than five workers, in case of mechanical work, or more than ten workers in case of non-mechanical work, are declared nationalized.

2. The entire property, all businesses and capitals of the enterprises named in Article 1 . . . are declared to be the property of the R. S. F. S. R.

This decree evidently refers to those manual or semi-manual enterprises which had not yet been comprised in the former decrees of nationalization. This has not been contested so far. It would be absurd, indeed, to assume that the J. S. banks had been owners of their property as late as November, 1920, even if merely formally, at a time when the incorporation of the "former private banks" into the organization of the People's Bank and the bookkeeping merger of the whole banking apparatus had been completely carried out. This, also, nobody has claimed so far.

Now, in the case of all other nationalizations, it is stated expressly that the property of the enterprises declared nationalized is transferred to the ownership of the state. Should the

It is perfectly intelligible, therefore, that the Soviet government believed it had accomplished the expropriation of the banks by mere administrative ordinance. See text to notes 30-37.

⁹⁵ GS. 1920, No. 93, Art. 512.

Soviet state have proceeded differently only in the important nationalization of the banks? Should it have seized the property of the banks informally, without any legal basis, though the proclamation of November 21, 1917 expressly says: "nobody will be deprived by us of his property without a special state law concerning the nationalization of the banks,"⁹⁶ although precisely in nationalizing the banks there was fear of international complications? Therefore, the decree of January 26 must be unconditionally interpreted thus: that "the confiscation of the stock capital of the former private banks, . . . of the original, reserve and special capital," forms an expropriation of the bank property. To the usual formula: "the property of the company is transferred to the ownership of the R. S. F. S. R." there corresponds Art. 1 of the decree of January 26, 1918.

"1. The stock capital of the former private banks (original, reserve, and special) is absolutely confiscated and transferred to the ownership of the R. S. F. S. R."

The expropriation of the stock capital by confiscation is stripped of its peculiarity, if one considers that by the decrees of December 29, 1917, and April 18, 1918, the confiscation of shares "has been prepared and has been completed by the ordinance of June 30, 1918."⁹⁷

But if one assumes that through the confiscation of the stock capital the property of the "former private banks" has been transferred to state ownership, one is compelled to assume simultaneously that the property rights of the shareholders have perished. The formal objection that only the property of the J. S. companies was expropriated at that time, and that the shares had not lost their claims to property to be acquired in the future, fails because: first, the precise object here is the expropriation of the "capital," that is the property, both present and future; and, second, the state banking monopoly renders impossible any future private acquisition in connection with banking. The ordinance prohibits the J. S. banks from transacting any business uncon-

⁹⁶ *Supra* note 30 and text, p. 399.

⁹⁷ *Supra* note 40 and text, p. 402.

nected, at least secondarily, with banking, and the old Russian law, which in this case is to be adduced as normative for the interpretation, stated, in contrast to our law, that J. S. companies can neither acquire claims nor incur obligations by transactions of the directorate which are contrary to statute.⁹⁸

The claims of stockholders to property based on their shares have thus been destroyed by the confiscation of the stock capital. And this same principle will have to be applied to personal rights of participation as contained in the Stock law. A J. S. company cannot exist as a corporation without a body of members bound by personal law. Thus the J. S. banks have lost their status as juristic persons by the decree of January 26, 1918.

Only thus can the later decrees be explained. The declaration of rights of the working and exploited people, January 3, 1918, announced a political program. But when it was taken over into the constitution by the Fifth Pan-Russian Congress of Councils in July, 1918, it became a normative fundamental law. Almost all points in the program of Art. 2 had in the meantime been realized. It was less important to make demands for the future than to build up administratively, and to sanction legally, what formally had already been achieved. This holds good also for the confirmation of the expropriation of the banks. This ordinance has normative force for the R. S. F. S. R. This also holds in the other Soviet republics, all of which have embodied in their constitutions, by content, that fundamental declaration of rights of the working and exploited people. The occupation of the banks and the appointment of commissars kept pace with the territorial expansion of the Soviet power. One is entitled to say that this first law of the R. S. F. S. R. formed the common law of the proletarian revolution as the embodiment of the "socialist idea of law." The constitutions of the other Soviet republics—published everywhere at a much earlier state of development of the revolution than in the R. S. F. S. R.—gave to the

⁹⁸ "The legal standing and the power of action of J. S. companies depends on the statutes, not on general law. *E. g.*, if a land credit bank loans money on notes, the transaction is ineffective, except that the concrete case involves a so-called auxiliary transaction; even this is contested." See KLIBANSKI, Vol. 3, bk. 4, part III, ch. 4. Swod Sakanoff, Hdbch. Bem. zu par. 2153, 316 *et seq.*

nationalization of the banks a normative and positively legal foundation. The definitive expropriation of the banks and the dissolution of the J. S. banks, therefore, took place in the other Soviet republics simultaneously with the enforcement of the constitution, except as even earlier laws can be proven to have existed.

In the White-Russian Social Soviet republic S. S. R. B. the laws of the R. S. F. S. R. were in force until the declaration of independence on March 18, 1919. Accordingly, there too, the date of January 26, 1918, is decisive. Those J. S. banks which were domiciled within the present Ukrainian Socialist Soviet Republic U. S. S. R. were dissolved by the constitution of March 14, 1919; the Caucasian banks, by the constitution of the three Caucasus republics of 1920 and 1921.⁹⁹ On June 1, 1919, the Central Executive Committee of the R. S. F. S. R. had published a decree concerning the union of all Soviet republics,¹⁰⁰ which provided for uniformity of legislation and administration for War, Economics, Railways, Finances and Labor. After the conquest of the Ukraine, the provisional Ukrainian Soviet Government, "in accordance with the decree of the Pan-Russian Central Executive Committee (of the R. S. F. S. R.) of June 1, 1919" published a decree (January 27, 1920) "on uniting the governmental activity of the U. S. S. R. and the R. S. F. S. R."¹⁰¹ This decree expressly provides that all laws of the R. S. F. S. R. relating to the spheres of the departments to be united, become effective in the U. S. S. R.¹⁰² The fourth Ukrainian Soviet congress confirmed this decree. Corresponding decrees have been issued in the other Soviet republics.

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(To be concluded)

⁹⁹ The constitution of the Transcaucasian Federative Soviet Republic of Dec. 13, 1922, also contains a similar provision.

¹⁰⁰ GS. 1919, No. 22, Art. 264.

¹⁰¹ Ukrainian GS. 1920, No. 1, Art. 7.

¹⁰² Ukrainian GS. 1920, No. 13, Art. 245.