State Regulation of Foreign Banks

Joseph L. Abraham

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IN 1935, Vasilios Eliopoulos of Chicago was convicted of fraudulently receiving relief benefits. The charge was that he had filed a pauper's affidavit with his application, when, in fact, he owned a substantial certificate of deposit in the National Bank of Greece issued at its New York office. Eliopoulos pleaded that the Greek Government had passed a law which prevented him from cashing his certificate. The court could not understand how the laws of Greece concerned a deposit made in this country, and sentenced him to one year in the house of correction.

Eliopoulos was telling the truth. The National Bank of Greece had received deposits in New York illegally. He was only one of the thousands of Greeks throughout the United States who had entrusted their savings to this bank. Upon receipt of these funds the bankers removed them to Greece, where they now remain frozen by currency restrictions. Most of the money, estimated at as much as $25,000,000.00, remains unpaid today.

That was five years ago. But New York's laws and enforcement methods have not eliminated the means by which this bank provisioned the coffers of a foreign country. Another alien institution could repeat the manoeuvre now. Indeed, the possibility that other banks may choose such a method to rehabilitate their impoverished countries after the conclusion of the present war makes it imperative that New York authorities direct serious attention to this potential danger.

Before analyzing the laws of New York in this respect, it will be helpful to note briefly the policy and laws of America generally concerning foreign banks. Contrary to the traditional freedom that American financial institutions have commonly enjoyed abroad, foreign banks which wish to operate in the United States face severe restrictions. By statute expressly or by implication they can do no business at all in

† Member of the New York Bar.
2. See pp. 352-355 and note 57 infra.
3. The exact amount of the deposits thus blocked within Greece is unknown. It has been estimated as between “four, five and six million dollars”, Marley v. National Bank of Greece, 20 F. Supp. 214, 215 (S. D. N. Y. 1937), and $25,865,906.00. Report on Bill Relative to the Regulation of Secured Debts Due to Realty Banks in Foreign Exchange (Greek Government Press, 1936) 116-117.
Six states permit them to conduct a limited business, excluding the receipt of deposits, but in two of these the scope allowed is so narrow as to make operation financially prohibitive. Only five states

6. CAL. GEN. LAWS (Deering, 1937) Act 652, § 7 (can buy, sell, pay or collect bills of exchange, issue letters of credit, receive money for transmission and transmit it and make loans); MO. STAT. ANN. (Supp. 1939) §§ 5394, 5396 (same powers as Cal., supra); N. Y. BANKING LAW § 200 et seq. (similar to Cal. See pp. 349-351 and notes 37 et seq. for full discussion of New York laws); WASH. REV. STAT. ANN. (Remington, 1939) § 3247 (can lend money on mortgage securities, and buy and sell exchange, coin, bullion or securities). See note 7 infra for Louisiana and Ohio, and see note 8 infra in reference to California and Washington.

7. In Louisiana, foreign banking corporations can lend money and deal in foreign exchange, but for this privilege they must pay an annual license fee of $500, plus 5% of the gross interest earned. LA. GEN. STAT. ANN. (Dart, 1939) §§ 541, 605; LA. CONST. ART. X, § 9. OHIO GEN. CODE ANN. (Page, 1939) § 710-40 excepts all banking powers other than the lending of money.

8. MASS. ANN. LAWS (Michie, 1939) c. 167, §§ 37-45A (on equal basis with domestic banks); N. J. REV. STAT. (1937) tit. 17, c. 16 (no foreign corporation shall transact any business “except to the extent that similar corporations of New Jersey are permitted to transact business in” the domiciliary state of the foreign corporation). ORE. CODE ANN. (Supp. 1935) §§ 22-1301-22-1309 (almost equal basis with domestic banks; capital and surplus within state must equal 10% of deposits, cannot advertise greater amount of capital or surplus than it so has within state, but can accept bills of exchange on basis of entire paid up capital and surplus); TENN. CODE ANN. (Michie, 1938) §§ 4118, 5951, 5956; Deposit Bank of Monroe Co., Ky. v. Cherry, 20 Tenn. 305, 319, 98 S. W. (2d) 521, 525 (1936) semble (can qualify under general foreign corporation statutes); UTAH REV. STAT.
authorize the highly desirous deposit function. In the two\(^0\) remaining jurisdictions their status is ambiguous. Thus foreign banks are barred from such important and populous centers as Chicago, Philadelphia and Detroit, and in New York, Los Angeles and San Francisco they cannot accept money for deposit.

Several reasons support these apparently discriminatory regulations. One commonly advanced is that most aliens and citizens of foreign extraction have known predilections for trading with and trusting people of their own nationality, whose customs and language they readily understand.\(^9\) Such persons often lend themselves to patriotic appeals on behalf of afflicted fatherlands. Against these advantages peculiar to foreign banks, our states must protect their own institutions.

These grounds alone present no serious danger, unless exploited for illegal purposes. Why shouldn't foreigners and foreign bankers enjoy these natural benefits on strange soil? Moreover, the exclusion of foreign banks does not eliminate them. Such foreign institutions can merely organize state banks, control them by stock ownership,\(^10\) and staff the subsidiaries with aliens. Few state laws prohibit this procedure.\(^11\)

The other reasons advanced are more impelling. Most foreign countries do not practice separation of Bank and State so definitely as does America. This is especially true in the totalitarian states,\(^12\) and in several

\(^{9}\) See e.g. Journal of Commerce, July 14, 1939, p. 2, col. 4, where it is suggested that "foreign holders of balances in the United States would be reluctant to entrust their investment accounts to American concerns simply because in doing so they would have to deal with strangers." See also FAIRCHILD, IMMIGRATION (Rev. ed. 1933) 281.

\(^{10}\) In 1935, there were 13 such subsidiaries in the United States having a total of 35 offices. Phelps, Foreign Banks in the United States (1935) 28 Banking, J. Am. Bankers' Ass'n 30.

\(^{11}\) Some states either regulate the relations between parent and subsidiary, or prohibit or limit the holding of stock of one bank by another. Such statutes are not aimed at foreign institutions, but seek to prevent "chain" or "group" banking within the state, Legis. (1935) 48 Harv. L. Rev. 659, 664, 666. One state expressly precludes domestic and foreign corporations from doing "group" or "chain" banking. Miss. Code Ann. (Supp. 1939) § 671.

\(^{12}\) In U. S. S. R. the banks remain conventional joint-stock companies, but the gov-
weaker nations where one or more banks may have a virtual mortgage on the whole economic life. In such instances, the banks could use, and have used, their American offices for the selfish manipulation of foreign exchange regardless of the economic injury to us.

Then too, every state has numerous protective laws concerning supervision, inspection and reserve requirements to a degree unknown in other countries. It would be practically impossible to extend the force of these to main offices abroad, and we would have to forego much of our public control over foreign banks. This would not only handicap our rigidly regulated local institutions, but would also deprive American depositors in foreign banks of the safety our rules assure.

Today foreign currency and exchange restrictions are so prevalent that the free interchange of money across national lines is almost non-existent. This presents the constant and serious danger that local depositors in foreign banks will find their funds blocked within another country, as did the depositors in the National Bank of Greece.

These considerations combined present a strong case for the exclusion of alien banks. It is highly improbable, however, that such arguments evoked the extant restrictive statutes. Most of these laws have been effective for years, or are codifications of previous policy, and they strike banks of sister states with equal vigor as those of foreign countries.

government owns the entire stock. The state guides the policies according to its demands. In Germany and Italy, although private property still exists, the Nazi and Fascist governments own a large percentage of the capital of banks, and the bankers must act as the respective governments direct. Plaut, Banking under Dictatorship (London, 1939) 99 The Accountant 467-469.

14. (1932) Report of the Governor of the National Bank of Greece, 33, in which the governor characterized the loss for persons outside of Greece resulting from the decrees mentioned on page 343, supra, as a necessary sacrifice by "Greeks abroad on behalf of their afflicted country", and he exhorted "let them consider this loss as a national contribution, as it really is."


18. Phelps, op. cit. supra note 4, at 194.

19. In only Arkansas and Indiana do banks of foreign countries enjoy less favorable
Many of them supplement statutes regulating branch banking by domestic banks, even within the state of organization.20

It is safe to assume that two overlapping and typically American forces induced the present laws. The first is the historic antipathy to branch banking of any kind, dating back over a hundred years.21 This objection arises, not only because branch banking complicates supervision, but also because it tends towards monopoly, permits drainage of funds from local centers to metropolitan districts, and diminishes the personal elements in banking.22 The second is that we have no definite national banking policy. Instead, we find forty-eight states each jealously guarding its right to establish and regulate all financial institutions within its borders.23 To permit unlimited foreign banking would tend to nullify this right.24 Indeed, it was not until 1933 that a National Bank organized under the laws of the United States was permitted to have American branches outside of the city of its main office.25 Even now such branches must locate within the state where the Bank is situated, and then only if the local banks of the particular state have that authority by state law expressly, and not merely by implication.26 It is true that since 1930

20. Nine states prohibit branch banking of all kinds, seventeen restrict branches to limited areas within the state, while seventeen also permit state wide branch banking, and five states have no legislation, 2 C. C. H. 1933 Banking Law State Serv. § 17,609.


23. Chapman, Concentration of Banking (1934) 12, 175; League of Nations, loc. cit. supra note 21. See also note 15 supra. Some states' constitutions manifest this attitude.


26. 48 Stat. 189, 190 (1933), 12 U. S. C. § 36 (c) (2) (1934). Before the enactment of this statute, however, in isolated cases a few National Banks assumed the right to
there has been a marked legislative tendency towards wider branch banking. But the state banking supervisory authorities, as well as the bankers themselves, still vigorously oppose branch banking across state lines.

Foreign bankers hardly appreciate the impact of these two forces, especially since branch banking and strongly centralized organizations characterize many foreign systems. At times these bankers have assailed our restrictive legislation as an unfair national policy aimed to exclude them from a profitable field. This attitude was very articulate just after World War I. The Latin American countries particularly condemned our refusal to practice "reciprocity" in banking, and a few of our own bankers and journalists voiced support. Some of these nations even enacted or planned retaliatory legislation. Such reaction, however, was not widespread, and in 1936 American banks were operated interstate branches. *Hearings before Committee on Banking and Currency on H. R. 141,* 71st Cong., 2d Sess. (1930) 462. One example is the First Camden National Bank & Trust Company, of Camden, N. J., which has operated a branch in Philadelphia since 1813. Such branch now is legal, however, since the Act of 1927 provided that any National Bank which continuously maintained not more than one branch for a period of more than 25 years immediately preceding the approval of the act may continue to operate such branch. 44 Stat. 1228 (1927) 12 U. S. C. § 36 (a) (1934).

27. Boeckel, *supra* note 25, at 150. As of December 31, 1929, 22 states prohibited branch banking of all kinds, 10 permitted branches in limited areas within the state; only nine allowed state-wide branches, while seven had no legislation on the subject. 16 FED. RES. BULL. (1930) 258. Compare this with the present day summary in note 20, *supra*.


32. See authorities cited *supra* note 31.

33. But a potential danger of retaliation still exists in some countries. Thus in Italy and Japan the Ministry of Finance, in granting licenses to foreign banks, may take in
The deepest concern of the foreign bankers, as well as the public at large, is the laws of New York. The importance of New York City as a financial and monetary center and its concentration of alien population almost compels many foreign banks to establish direct contact with the United States through offices there. Of the 42 licensed offices of foreign banks in the United States, 31 are in New York City. These serve as American bases for their international business and domestic activities throughout the nation. If New York's laws are too repressive, their business all over the country suffers. On the other hand, inadequacy of these laws or improper enforcement affect the entire United States.

For many years the laws of New York have reserved the cream of the banking business for its own institutions. Only New York state banks, and National and Federal Reserve banks, can receive deposits, make discounts or issue notes or other evidence of debt to be loaned or put in circulation as money. Banks of sister states and foreign countries can obtain only limited licenses issued on yearly bases to operate “agencies”. These agencies can buy, sell and collect bills of exchange, issue letters of credit, receive money for transmission and transmit it by draft, check, cable or otherwise, and make loans, but they cannot receive deposits or make discounts.

An applicant for such a license must furnish the Superintendent of account the treatment their banks receive in the applicant’s country. Allen, Cope, Dark & Wetheridge, Commercial Banking Legislation and Control (1938) 257-258, 291.

4. American Banking Abroad (1937) 30 Banking, J. A.M. Bankers' Ass'n. 43.
6. (1940) N. Y. Leg. Doc. No. 24, 44. These figures exclude three banks of other states of the United States. One foreign institution has two offices, and one agency was licensed since the publication of the Document. The other eleven are located as follows: San Francisco—5; Los Angeles—2; Seattle—2; Boston and Portland, Ore., one each.
7. N. Y. Banking Law § 131. See note 38, infra.
8. N. Y. Banking Law §§ 131, 200-204; Society Million Athena, Inc. v. National Bank of Greece, 166 Misc. 190, 193, 2 N. Y. S. (2d) 155, 158 (Sup. Ct. 1937), aff'd, 254 App. Div. 728, 4 N. Y. S. (2d) 1004 (1st Dep't 1938). Nor can foreign banks conduct a general trust business in New York. They may act only as executor and trustee when so appointed by a will, then subject to limitations. N. Y. Banking Law § 131 (3), (4). In addition to banks, licensed steamship, express and railroad companies may engage in the transmission of funds. N. Y. Gen. Corp. Law § 18. Prior to the passage of Laws of 1921, c. 354 (N. Y. Gen. Bus. Law §§ 160-166) these companies acted without regulation, and appointed agents indiscriminately without assuming responsibility for their conduct. As a result there were hundreds of agents and sub-agents who fleeced helpless immigrants of thousands of dollars. While this latter law helped to cure the abuses, it is quite inefficient. Attempts for more stringent legislation have all failed. Report of the Joint Committee on the Exploitation of Immigrants (1924) New York State Leg. Doc. No. 76 1-43.
Banks satisfactory proof of the nature of its business and financial
condition, and designate the superintendent as its attorney upon whom
may be served all process in any action against it by residents of the
state. The bank also has to file a certificate stating the amount of its
paid, and unpaid subscribed, capital, and the actual value of its assets
which is required to be at least $250,000 more than its liabilities. With
this it must submit a detailed financial statement of a date within sixty
days of the time of the application. It is assessed an annual fee of $250.\textsuperscript{39}

Once a license is granted, the agency is under the supervision of the
State Banking Department, but no more extensively so than a New York
state institution. The agency must file reports when requested,\textsuperscript{40} and
the superintendent has power to examine it to determine whether it has
violated any law, or for any other purpose.\textsuperscript{41} He may revoke its license
if it engages in unauthorized practices,\textsuperscript{42} and he may take possession of
its property and business\textsuperscript{43} for the same reasons as he may those of a
state bank. In addition, he may do so if the foreign corporation is in
liquidation elsewhere. In either case the claims of creditors of the New
York agency are preferred against the assets of the corporation within
the state.

Nothing prevents an agency from sharing offices or personnel with a
state bank, and it may use the word "bank" or its equivalent as freely
as an uninhibited domestic bank. The agency is not required to indicate
publicly that its functions are limited or that it cannot accept deposits
or make discounts, except that it must display its limited license "con-aspicuously" in its place of business.\textsuperscript{44}

Foreign bankers apparently find these agencies profitable, for thirty
banks representing eleven countries have such offices in New York
today.\textsuperscript{45} Their principal business constitutes dealing in foreign exchange,
effecting remittances between the United States and foreign countries,
and encouraging and financing foreign trade. The uncertainties of Spring
and Summer of last year and the subsequent outbreak of war have not
diminished the efficacy of such offices, but on the contrary have added
new functions. It is well known that Hitler's pre-war and present policies
have sent an enormous flow of European capital in search of American
sanctuary, and such agencies are invaluable in acting as custodians and

\textsuperscript{39} N. Y. Banking Law §§ 26, 200, 201.
\textsuperscript{40} Id. § 204.
\textsuperscript{41} Id. § 36 (4).
\textsuperscript{42} Id. § 40.
\textsuperscript{43} Id. § 606 (4).
\textsuperscript{44} Id. § 202 (1).
\textsuperscript{45} See note 36 supra.
investors of such funds and securities. Indeed, the main purpose of the agency of the Swiss Bank Corporation, it was explained, is to act as custodian of the Bank's gold, and the agency of the Société Générale de Paris was reportedly opened to act as financial agent for the now defunct French Buying Commission—a direct outgrowth of the war. Several other commercial banks in central and European countries during the past year have weighed the possibilities of establishing agencies for similar reasons. The English bankers, on the other hand, who already operate six agencies in New York, have seen no need for new affiliates.

If a foreign bank does not obtain an agency license and thus does not subject itself to the supervision of the Banking Department, it cannot exercise any of the powers explained above and it has no right and privilege to transact business here. If it does not maintain an office in the state, however, it may make loans secured by a mortgage on real property, accept assignments of mortgages covering real property situated in the state, and also make loans through corporations authorized to do banking in the state. But if it wishes to do more it must obtain a license. There is no statutory authority for a "representative" or "representative office".

In an effort to prevent unlicensed banking, the law provides that no person or corporation, except a National Bank and Federal Reserve Bank or a corporation authorized by the Superintendent to transact business in New York, shall use any office sign at the place where such business is transacted having on it any artificial or corporate name, or other words indicating that such place is the office of a bank. Nor can such person or corporation use or circulate any letterheads, circulars or any written or printed paper, having thereon any words of that nature. Some foreign banks have found it desirable to organize and control through stock ownership a domestic bank, either alone or in conjunction

46. N. Y. Times, July 30, 1939, § 3, p. 4, cols. 1, 2; Journal of Commerce, Oct. 14, 1939, p. 4, col. 5. The Credit Suisse, another large Swiss bank, organized a non-banking corporation in New York to prevent its foreign assets "from falling into the hands of another government". Wall Street Journal, July 21, 1939, p. 5, col. 6. This bank, however, subsequently established an agency for its purpose. N. Y. Times, May 5, 1940, § 3, p. 5, cols. 4-6.

48. N. Y. Times, Nov. 4, 1939, p. 23, cols. 6, 7.
51. N. Y. Banking Law § 200 (last paragraph).
52. See pp. 360-361 and notes 88, 89 infra.
with an agency. No statute prevents this. The subsidiary is subject to the New York banking laws to the same extent as, and no more than, any other domestic bank, and it must maintain its funds and business entirely separate. All directors, except one, are required to be citizens of the United States and at least a majority of them must be citizens and residents of New York State. The parent bank, by virtue of its stock control, becomes liable to examination by the state banking authorities, if they can devise means to examine a banking office located in a foreign state or country.

Such, in summary, are the present New York laws affecting foreign banks. They were substantially identical in 1930 when the National Bank of Greece pierced them quite successfully and revealed their flaws. In 1926, this bank opened an agency in New York City under a limited license, but four years later it inaugurated a deposit business, a pursuit specifically reserved for New York bankers. To do this it organized a New York state bank named the Hellenic Bank Trust Company, furnishing $1,500,000 capital in return for 95% of the stock. Since the Hellenic Bank was a domestic corporation, it could receive deposits, provided it maintained them according to law. Naturally, this did not empower the Hellenic to act as deposit conduit into its foreign parent.

After the formation of the new bank, the National Bank of Greece continued its agency, and the Hellenic opened offices with it. Indeed, the two banks had not only the same address, but also the same telephone number, the same management and the same personnel. The Governor and Sub-Governor of the National Bank of Greece became directors of the Hellenic, although neither had ever been in this country. There

55. N. Y. BANKING LAW § 116 (4).
56. Id. § 36 (6) (b).
was almost a total merger of identities. Paradoxically, the same person as president of the Hellenic Bank Trust Company had authority to receive deposits, but as chief agent of the National Bank of Greece he could do so only if he violated the law.

Immediately the two institutions acting as a unit undertook a joint advertising campaign for deposits, by joint newspaper advertisements mailed throughout the country—all in a foreign language. The keynote was that the two banks were one and the same, that customers could deal with either bank without distinction, and that the Hellenic was a "branch" of the National Bank of Greece operating legally according to New York laws. The banks promised interest as high as 5½%. They appealed to the little man and the thrifty, and baited the patriotic Greek with patriotic slogans. Theybannered the word "savings" illegally, and stated that the National Bank of Greece did not belong to private interests but to the "Greek Nation". Actually, it belonged to private stockholders who were receiving dividends of 340%. The bankers promised to repay deposits in New York in the same kind of dollars as made on two days notice, without any expense.

Thousands thronged the New York office. Others responded by mail. The depositor received a certificate in exchange for his money. This paper bore only the name of the National Bank of Greece, which had no authority to issue it. Nothing on the certificate suggested that the Hellenic Bank shared in the transaction, and the deposits were not entered on its books, although it alone could receive them legally. The certificate was dated "at Athens", but the words "issued at New York" were stamped in. It was signed and delivered by an officer in New York.

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1994, which discloses that three of the nine directors were residents of Athens, Greece. This was a blatant violation of N. Y. Banking Law § 123 (amended and renumbered as § 116 (4), cited note 55, supra), which required each director to be a citizen of the United States and at least three-fourths of them to be residents of New York or a contiguous state.

59. No bank or trust company or corporation other than a savings bank or a savings and loan association "shall make use of the word 'saving' or 'savings' or their equivalent in its banking business, or use any advertisement containing the word 'saving' or 'savings'." N. Y. Banking Law § 258 (1) (formerly § 279).


61. In justice to the Hellenic Bank Trust Company, which is a solvent going institution today, it should be noted that the Hellenic was, and still is, accepting deposits in the regular course of its own business, which have always been received and maintained according to law. Its business in this connection was separate and apart from the activities of the National Bank of Greece mentioned in the text. These legitimate deposits are in no wise affected by the Greek currency restrictions and are guaranteed by the Federal Deposit Insurance Corp.
The certificate undertook to repay in the same currency as the deposit at the main office in Athens, or at any branch on demand.

As if to add to our financial crisis of the early 1930's, the National Bankers of Greece removed these deposits as received to their home offices beyond the jurisdiction and supervision of the State of New York. Then in 1932, the Greek government issued a decree which translated all foreign currency deposits in Greek banks into Drachmae, cutting the American deposits to two-thirds of their value. This same decree banned the exportation of foreign exchange from Greece, and prevented the return of the dollar deposits to the United States, where by law they should have remained the entire time.

In March 1933, at the suggestion of the Banking Department, the National Bank of Greece terminated its license and discontinued its New York agency. It also revoked the power of attorney appointing the Superintendent of Banks as its agent for service of process. About the same time, it disposed of all of its assets here, including its stock in the Hellenic Bank Trust Company. It did maintain a "special representative", although there was no statutory authority for such. Soon thereafter, the certificates of deposit commenced to mature, and many depositors presented them to the Hellenic and the special representative for redemption. The bankers however, instead of paying, offered bank books of the National Bank of Greece issued in terms of the de-valued Drachma.

Numerous depositors acquiesced in this conduct. But a few sued immediately and obtained summary judgments, in spite of the bankers' attempt to interject the Greek decrees as a defense. Others sued later and had difficulty in obtaining jurisdiction over the Greek bank, because the authority of the special representative had been withdrawn. The courts held, however, that service of process upon the Superintendent of Banks as statutory agent was good, although the power of attorney appointing him as such had been purportedly revoked—the reason that the causes of action accrued in New York and arose out of contracts made while the National Bank of Greece was doing business there. By the terms of the statute this service favored New York residents only, but the courts protected the non-resident plaintiffs on the

65. N. Y. BANKING LAW § 200 (3).
ground that the National Bank of Greece was still doing business in New York at the time through the Hellenic as its agent, and service on the latter was valid. 66

Strangely enough, none of the plaintiffs who thus perfected jurisdiction secured a judgment. A few of them were dragged through the courts for over three years before they settled on the best terms available. 67

Some rather important law was enunciated during the litigation, however, which is of general interest. In one case the State Supreme Court 68 had upheld the complaint as stating a valid cause of action in behalf of all of the depositors and creditors, and had also installed a receiver of the assets of the National Bank of Greece within New York. The Appellate Division unanimously affirmed, 69 but the Court of Appeals made serious modifications. 70 The latter approved the complaint, but merely as stating separate causes of action in favor of each individual depositor, which had to be separately alleged, on the ground that the depositors did not have the requisite common interest to permit one to sue on behalf of all. It further ruled that there was no authority to appoint a receiver or liquidator of the assets in New York of a foreign corporation under the circumstances, especially since there was no statute granting such power and the corporation was not in liquidation at its domicile.

The court did indicate that perhaps the Superintendent of Banks had power to act as statutory liquidator under Section 606 (4) of the Banking Law, 71 although the bank had ceased to do business in New York and was no longer licensed. But at most, the creditors themselves could obtain a judicial receivership only after the superintendent had refused

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67. Thus Thomas and Mary Geogas were in court from October 1936 until November 1939, in an effort to retrieve $8,000 they deposited in 1931. During the litigation there were five different appeals, four of which were taken by the bankers, and all of which eventually terminated in favor of the depositors. Even so the case never reached the stage of trial. The plaintiffs ultimately settled for 40% in cash and 60% in deposit credit in Greece. This latter sum cannot be removed from Greece unless the extant exchange restrictions are lifted. See Records: Geogas v. National Bank of Greece, Sup. Ct., N. Y. Co., No. 648 (1937); Hartman v. National Bank of Greece, Sup. Ct., N. Y. Co., No. 27745 (1939).
69. 256 App. Div. 804, 9 N. Y. S. (2d) 895 (1st Dep't 1939).
70. 281 N. Y. 282, 22 N. E. (2d) 374 (1939).
71. This section provides in part that the "superintendent may also forthwith take possession of the business and property in this state of any foreign banking corporation, which has been licensed by him under the provisions of this chapter" if certain unhealthy conditions appear to exist. (Italics inserted).
to proceed.\footnote{72} The superintendent had taken no action thus far, nor expressed his refusal to do so. This decision terminated the efforts of the depositors to restore their savings, and they now await the pleasures of foreign bankers and a foreign government to refund their money. Thus we see that New York's seemingly repressive regulations in actuality have allowed one alien corporation liberties unknown to domestic institutions. There is evidence, too, that the National Bank of Greece was not the only foreign banking corporation receiving deposits in New York. Only recently the writer found bank deposit slips in the office of another such agency. It is difficult to conceive what purpose such slips might serve other than to assist the making of forbidden deposits.

The New York Legislature should take immediate steps to remedy the statutory and administrative defects which the aforementioned cases exposed and to dispel all possibilities of repetition. This is no easy task. Above all, the legislators should protect our citizens and alien residents against further exploitation. But at the same time they should not drive the foreign banking offices from New York. These offices are valuable for our foreign trade. The many legitimate banks should not suffer because one, or perhaps a few others, acted illegally. Then too, we should not unnecessarily subject American banks with foreign branches to retaliatory laws.\footnote{73} The legislature should conduct a comprehensive investigation, determine all the facts, and balance the conflicting considerations before enacting any new laws.

There seem to be at least three courses of action: (1) to exclude foreign banks and subsidiaries entirely; (2) to liberalize the present restrictive laws so as to authorize the receipt of deposits, but with proper precautions; (3) to maintain the status quo to the extent of converting the existing restrictions and safeguards into reality.

It requires no legislative inquiry to eliminate the first alternative as too stringent, especially if it is possible to solve the problem by more moderate means and without risking injury to our international trade and banking.

The correct procedure may well be to grant alien banks wider privileges\footnote{74} as suggested in the second course. In this connection it is inter-

\footnote{72} The depositors had contended that the statute did not include a foreign corporation which, no longer licensed and no longer doing business, had withdrawn from the state with the superintendent's consent. See the italicised phrases in note 71, \textit{supra}. They further argued that if the statute did include such corporation, the right of the superintendent was not exclusive so as to eliminate a judicial receivership on the application of creditors. Brief for Respondents, pp. 86-89, Society Million Athena v. National Bank of Greece, 281 N. Y. 282, 22 N. E. (2d) 374 (1939).

\footnote{73} See pp. 348-349 and notes 31-33 \textit{supra}.

\footnote{74} Professor C. W. Phelps, who made a comprehensive study of foreign banking in
testing to note that the National Bank of Greece was able to accomplish its plan at least partly because its agency was not permitted to receive deposits in America and hence the banking authorities did not require it to file reports on that phase of its business. 75 There is adequate precedent in seven states for authorizing such acceptance of deposits. 76 In addition, New York has its own models, although they never became effective. In 1920, both houses of the legislature passed a bill 77 which permitted foreign banks to receive deposits. It was vetoed by Governor Smith, 78 however, on the grounds that it inadequately protected depositors and that domestic banks would have to compete with foreign ones on unequal terms. Another bill 79 passed the Assembly in 1923, but died in the Senate. With these bills and statutes, and the lesson of the National Bank of Greece as guides, the legislature may now be able to

the United States as well as of American banking in other countries, recommended equal treatment of foreign branch banks with our own domestic establishments. Phelps, op. cit. supra note 4, at 204-209.


76. Note 8 supra. In addition, Indiana allows banks of other states of the Union to accept deposits. Note 19 supra. As protective measures, these statutes generally subject the foreign banks to the supervision of, and examination by, the state banking department. compel them to maintain reserves similar to those of domestic banks and require the foreign banks to appoint the banking supervisor as attorney for service of process. Additional precautionary measures are: (1) Requirement for security deposit in trust for domestic creditors, N. J. Rev. Stat. (1937) tit. 17, § 16-3 (c); (2) Minimum capital and surplus requirement, id. tit. 17, § 16-3 (b); (3) Provision that foreign banks segregate to, or maintain in, the state the same amount of capital as is necessary to organize a separate state bank, Cal. Gen. Laws (Deering, 1937) Act 652, § 7; Ore. Code Ann. (1930) §§ 1301, 1303; Wash. Rev. Stat. Ann. (Remington, 1939) § 3248; (4) Condition that bank can withdraw from state only after filing statement of obligations or property within the state, Ind. Stat. Ann. (Burns, 1939) § 18-2321; Ore. Code Ann. (Supp. 1935) § 22-1303.

77. S. 1920, Printed No. 2026. This bill empowered agencies in cities of more than 1,000,000 population to discount commercial paper, receive deposits and buy and sell exchange, coin or bullion and lend money on real or personal security, if the assets of the foreign bank exceeded its liabilities by $1,000,000 and the bank had a combined capital and surplus of at least that amount. The agency could pay no interest on deposits above 3%, and none at all on balances less than $3,000. It had to deposit securities with the superintendent of $200,000 in value, and had to comply with all regulations imposed on state banks including reserve requirements.

78. Public Papers of Alfred E. Smith Governor 1920 (N. Y. 1921) 326.

79. Assembly Bill 1923, Printed No. 2305. This bill gave the same powers as the 1920 bill supra, but limited them to banks of foreign countries. It had similar protective provisions. Moreover it prohibited interest on deposits of less than $5,000, and required each agency to keep separate books and records and preserve them for six years. In the event of the cessation of the agency for any reason, creditors in the United States were preferred as against the securities deposited with the superintendent.
enact a law of this nature free from the fatal defects of its predecessors.

In light of the facts now known, it is submitted, the proper method is the third alternative mentioned above. The principal problems are to prevent the agencies from representing that they possess any of the forbidden powers, and to render violations more easily detectible; to eliminate the blending of an agency with a subsidiary and the resulting confusion of functions; and to protect all American creditors of an agency against the latter's withdrawal from the state without meeting its obligations.

The first step demands that each foreign bank submit to the banking department for approval in advance of publication copies of all of its advertisements and literature, including translations of those in foreign languages. No foreign bank should refer to its agency as a "branch", for this represents to the public that its New York establishment has full banking powers. It does not appear entirely unfair to require all agencies to indicate expressly that they cannot make discounts or receive deposits. As an aid to inspection, all the bank's records in the United States should be in English, and all foreign language notices and office signs sub-titled in English. In regard to enforcement, it is interesting to note that the present statute authorizes, but does not direct, the superintendent to examine every agency as to activities forbidden as well as those allowed. This is a delicate matter, but the statute should make such examination mandatory, and also require the agencies to report periodically on the type of business they transact.

In instances where a foreign bank has both an agency and a domestic subsidiary, the two must operate entirely separately. They should not share offices, or have interlocking managements or personnels or advertise jointly to an extent that may cause the two organizations to appear as one. In the event the foreign bank cannot maintain two separate payrolls, it must choose one of the two vehicles for its American representation. Then too, if it does have only a subsidiary, the dealing between, the latter and its parent should be closely scrutinized, and their activities divorced.

Under existing laws, an agency can withdraw from the state without

80. C.f. Tex. Stat. (Vernon, 1936) art. 491, which permits certain foreign banks to continue to use their corporate name within the state, provided they add "without banking powers".

81. N. Y. Banking Law, former § 84 so provided. But N. Y. Laws 1938, c. 684, § 146 repealed it without providing a substitute.

82. N. Y. Banking Law § 36 (4). In the words of the statute the superintendent is authorized to examine every agency "for the purpose of ascertaining whether it has violated any law".
any notice or formality whatever. No provision protects its creditors, except Section 200 (3) of the Banking Law which provides that New York residents who made contracts with the agency while it was doing business here may get jurisdiction over the foreign bank by serving process upon the Superintendent of Banks, even though the power of attorney appointing him as agent for such service has been revoked. This benefits residents only, and should extend to non-residents as well. Even so, the jurisdiction may be illusory if the foreign corporation has no property within the state, for even in peace time currency restrictions seriously impede the realization of any domestic judgment sued upon in a foreign nation. The customer who has dealt with the agency in New York should not be sent abroad to look for assets. A statute should compel the foreign bank to deposit a stated amount of cash or approved securities with the superintendent in trust for such creditors, or file a bond. To supplement this, a withdrawal procedure should require the agency to file a sworn statement of its debts with the superintendent, and give public notice of the proposed discontinuance of its business, advising all creditors to file claims with the banking department. Only after a reasonable time has elapsed and the superintendent is satisfied that all creditors have been paid should he issue a permit to withdraw and return the assets deposited.

The Banking Laws are also vague as to the power of the courts to appoint a receiver of the assets within the state of a foreign corporation which is no longer licensed. As previously indicated, the New York Court of Appeals has held that an individual creditor cannot obtain such appointment, but left open the question whether the superintendent can assume charge of the assets. Unless the necessity for a receiver under these circumstances is eliminated by the creation of a withdrawal procedure as herein suggested, the Legislature should speak affirmatively on this point, and specify the rights of individuals in the event that the superintendent refuses or fails to act.

Another phase of the law demands clarification. Sections 201, et seq. of the Banking Law authorize an agency to transact the business of “receiving money for transmission or transmitting the same by draft, check, cable or otherwise”. Under this provision an agency could claim the right to solicit and forward money to its home office abroad for deposit there. The customer in response to an advertisement would merely bring his money to the agency office in New York, and direct

83. See p. 354, supra.
84. Two states require such filing. See note 76 supra.
85. See pp. 355-356, supra.
the agent to "transmit" the sum to the foreign office with advice for the latter to keep it on deposit there. The home office on receipt would mail a certificate of deposit directly to the customer, which certificate could be made payable in the foreign country, in foreign money and subject to foreign laws. 86 Such a transaction offends New York's policy as much as, and presents the same hazards as, the receipt of a deposit by the agency itself in New York. Section 131 of the Banking Law probably prohibits such dealings, 87 but it is not clear. An amendment should state the proscription unequivocally.

A dangerous gap in the Banking Laws does not concern the licensed offices, but rather the unlicensed. A number of foreign banks which have no agencies or subsidiaries here find it necessary to have some type of representation in New York to protect their interests. They limit their conduct presumably to non-banking activities, and have chosen either to employ an individual representative, or have a licensed bank, usually a foreign agency, act as their "representative office" or "agent". There is no statutory sanction for this, but it is not prohibited, unless the unlicensed bank engages in one or more of the transactions reserved for domestic banks and licensed agencies, 88 or unless in connection with the business carried on it uses an office sign, letterhead or other printed matter having thereon its corporate name, or other words indicating that its business is that of a bank. 89

Obviously a representative can hardly represent without using its principal's corporate name as an office sign, on letterheads, or as a telephone listing. This has placed such representatives and foreign banks in a dilemma. They must either incur an annual license expense of $250 or engage in questionable conduct. Since such a disbursement is unwarranted in view of the limited business transacted, a number of them have chosen the latter alternative. Perhaps this aberration seems harm-

86. This is the argument by which the National Bank of Greece sought to justify its receipt of deposits in America described herein. See Record on Appeal, p. 56, Society Million Athena v. National Bank of Greece, 254 App. Div. 728, 4 N. Y. S. (2d) 1004 (1st Dep't 1938). The obvious fallacy in such contention is that the certificates of deposit were actually issued in New York before the money was sent anywhere, and the deposits were made in response to solicitations for them at the "New York establishment" of the foreign bank. See p. 353, supra.

87. This Section provides in part that no bank unless expressly authorized "shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits."

88. N. Y. Banking Law § 131. See also id. § 517 relating to foreign "investment companies".

89. Id. §§ 132, 180, Opinion, Att'y Gen. N. Y. (1922) 66. See note 53 and pp. 351, supra.
less, but it may lead to serious disregard of the banking statutes and widespread unauthorized banking. In fact, two of these "representatives" have already offered to transmit monies to a foreign country, a pursuit forbidden to unlicensed individuals and corporations.\(^9\)

The problem of these representatives and unlicensed corporations should be solved. They might, for example, be permitted to use the banking name of their principal with the prefix "Representative of", either as an office sign, letterhead, or telephone listing. All banking powers should be denied them, but they should be subjected to the inspection of the banking department to assure compliance with the prohibition. A minimum license fee adequate to defray the cost of inspection should be assessed.\(^9\) Their offices should not be located with any bank,\(^2\) and they should display a notice indicating the limitations upon their authorized business.

**Conclusion**

From the above discussion, it appears that the present New York legislation regulating foreign banks and its enforcement are based quite clearly on the assumption that foreign bankers will obey the law rather than violate it. This gives them the benefit of a doubt we are loath to grant our domestic bankers. The activities of the National Bank of Greece have proved that this assumption is unsafe. With international morality now at a low ebb, this naive attitude should be discarded entirely. The laws and their enforcement, whether or not they follow one of the patterns suggested, should rest upon the realistic premise that some foreign banks are apt to act contrary to our set standards. To this prime consideration the other factors mentioned herein, though important in themselves, should be subordinated.

\(^{90}\) See note 50 and p. 351, supra.

\(^{91}\) California is the only state which has a statute of this nature. Cal. Gen. Laws (Deering, 1937) Act 652, § 12c. It permits a representative of a foreign corporation to maintain an office in the state "as an office of a representative and not the place of business of a bank or trust company"; the representative may use a sign indicating such place is the office of a representative of a foreign bank or trust company, and may use the latters' circulars, letterheads and other printed matter. The representative must have a license from the superintendent and pay an annual fee of $50. At present, of the five authorized representatives in California all are from banks of other states in the United States. Thirteenth Annual Report of the Superintendent of Banks of the State of California (1939) 193.

\(^{92}\) Cf. N. Y. Banking Law § 163, which places a similar restriction on private bankers.