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Chapter 7: Commercial Law and Banking

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C H A P T E R 7

Commercial Law and Banking

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A. Commercial Law

§7.1. **The Uniform Commercial Code.** The ferment continues as to this joint product of the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Locally little was attempted in the 1956 SURVEY year. The Special Commission to Investigate and Study the Uniform Commercial Code made its report [1] and was permitted to expire. The report itself suspended judgment on the Code, partly because of the activity of the sponsoring bodies, but perhaps principally because of the imminence of the long awaited Report of the New York Law Revision Commission. In March of 1956 that body announced its conclusions after a three year study.[2] Fundamentally, the New York report agreed with the desirability of codification and approved many of the changes wrought by the Code. The New York Commission did quarrel with some of the policy determinations of the Code and regarded some of its provisions as ambiguous and defective in form. It concluded that the Code should not be adopted in New York without a comprehensive re-examination and revision. Such a re-examination has been continuous, and even before the New York Commission Report was published, changes had been wrought as a result of its study and hearings. The sponsoring organizations have repeatedly shown a willingness to listen to suggestions and to modify the Code where appropriate, or to furnish the basis for their determination that change would be inappropriate.[3]

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§7.1. [1] House No. 2672 (1956).

[2] New York Legis. Doc. (1956) No. 65(A), dated February, 1956.

[3] The Official Draft of the Text and Comments of the Uniform Commercial Code was completed and published in 1952. Changes were recommended by groups whose interest in and study of the Code was intensified when Pennsylvania was about to enact the Code. Prior to the Code's adoption in Pennsylvania, the Editorial Board met on December 29, 1952, and February 16, 1953, and recommended

In a project of this magnitude we must obviously expect as the price of reform and uniformity that each jurisdiction will be called upon to alter some prior policy decisions. It seems that this is not a prohibitive price to pay for the clarification of ambiguity and the assimilation of desirable new policies in existing law. By determining at the beginning of this century to codify our law in the various uniform laws, we committed ourselves to a procedure which limited the courts by reason of their reluctance to judicially legislate.[4] Thus the courts, already somewhat shackled by the doctrine of stare decisis, were confined so that they were unable to play their common law role of recognizing new procedures and policies and incorporating them into the law. The attainment of this end now requires a periodic revision of our statutes after hard intensive analysis. This seems to be precisely what the Code offers.

§7.2. **Recording and regulation of conditional sales contracts.** Two enactments during the 1956 SURVEY year added to the technical requirements relating to conditional sales. The first[1] amends G.L., c. 255, §12 so that the seller must now specifically set forth in the contract the amount of any insurance premiums included in the contract. Failure to do so gives the vendee a valid defense against the recovery of all finance charges and fees exclusive of insurance charges. The second[2] is the legislative response to *Crown Shade & Screen Co. v. Karlburg*,[3] which held that conditional sales contracts for shades, screens, and combination windows are not required to be recorded under G.L., c. 184, §13. The legislature has now added "storm windows and doors of a permanent type" to articles listed in that chapter, so that a conditional seller of these items must now record or lose his security as against subsequent encumbrances or grantees of the realty. It is perhaps also worthy of note that one bill[4] was introduced providing for the recording of all conditional sales contracts by city and town clerks. No provision was made as to the effect of recording or failure to record, which appear to be basic

changes in both text and comments. After enactment in Pennsylvania on April 6, 1953, the life insurance industry objected that Article 9, governing security transactions, might affect loans secured by an assignment of a life insurance policy. This objection was met by excluding such transactions from Article 9, Pa. Act of July 27, 1953, P.L. 624. In 1955, Supplement No. 1 to the 1952 Official Draft of the Texts and Comments of the Uniform Commercial Code was issued, incorporating some changes as a result of the New York hearings.

[4] A striking example of this phenomenon appears in a recent Rhode Island decision, Lombardi v. California Packing Sales Co., — R. I. —, 112 A.2d 701 (1955), where in a warranty action by a retail buyer of food against a wholesaler, the Rhode Island court for the first time adopted the requirement that privity of contract is a requisite in such an action, indicating that case law to the contrary stretched legal concepts and that the alteration of the common law was a matter for legislative consideration.

§7.2. [1] Acts of 1956, c. 160.

[2] Id., c. 158.

[3] 332 Mass. 229, 124 N.E.2d 238 (1955), noted in 1955 Ann. Surv. Mass. Law §7.3.

[4] House No. 1999 (1956), which proposed the amendment of G.L., c. 255, §3.

to an adequate recording requirement. The bill was ultimately withdrawn.

§7.3. Civil effect of submerged motor vehicle statute. Legislation enacted in 1956 [1] requires one engaged in the business of selling motor vehicles to warn the buyer under the sanction of a fine that the vehicle's motor or electrical system has been submerged in water, if the seller knows of this fact. This is the legislative recognition of the problem of the unsuspecting buyer of an automobile which was submerged during the hurricanes and floods that have in recent years beset segments of the Commonwealth and the other New England states. Solicitude for the buyer extends merely to the point of informing him of the facts. Beyond that the buyer must proceed only with weapons afforded by the civil law. Where the seller is a casual or non-professional seller,[2] or where he has no knowledge of the submersion, the statute is inapplicable. At least one other state struck at the problem by administrative rather than legislative action.[3]

The practical significance of this statute must perhaps await the next hurricane outbreak. It now raises several questions of legal significance relating to statutes making criminal some particular conduct in the creation or performance of a contract. May the buyer obtain the benefits of the defense of illegality by asserting the violation of this statute when he is sued for the contract price or contract damages? If so, may the statute be used as a defense to a restitutionary action brought by the seller to recover the value of the car? May the buyer utilize a violation of this statute affirmatively, claiming that the violation of the statute is evidence of negligence in a tort action for an injury caused by a defect due to the submersion, or that it somehow affects the seller's warranty obligation?

An examination of the statute itself leads to no explicit answer to these problems. When we review the legislative history of the act we find that the provision was originally offered as an amendment to the Sales Act to be inserted after G.L., c. 106, §56.[4] If enacted as offered, the provision would have been grouped under the heading "Actions for Breach of Contract" and would have immediately followed Section 56, entitled "Remedy of the Buyer for Damages." It was not so

§7.3. [1] Acts of 1956, c. 216, inserted as G.L., c. 266, §92A.

[2] Compare Uniform Commercial Code §2-314, which imposes the warranty of merchantibility upon all sellers who are "merchants." This seems to be a parallel recognition of an added duty upon the professional seller.

[3] Connecticut responded to the problem shortly after the floods through directives issued by the Motor Vehicle and Insurance Commissioners to all automobile dealers and insurance companies advising that registration would be refused for any vehicle which had been totally or almost totally damaged by the flood, that the insurance companies were requested to report to the Commissioner of Motor Vehicles all claims on flood-damaged vehicles, and that used car dealers were required to report the sale of any car damaged by the flood.

[4] House No. 737, Senate No. 544 (1956). As introduced the bill included all sellers within the prohibition and also failed to distinguish cases where the seller knew of the submersion from cases where he had no such knowledge. In 1955 this same bill was proposed as House No. 1671 and was defeated.

enacted; rather, it was inserted into Chapter 266 dealing with crimes against property.

May we therefore conclude that the legislature intended that this statute should not affect the civil rights and obligations of the parties? Or is this merely an attempt to retain the symmetry of the Sales Act unmarred by local determinations as to the rights of the buyer?

Some tentative answers to these questions might be offered under existing case law in the light of the Supreme Judicial Court's treatment of similar issues. There is a likelihood that the buyer would be able to assert the defense of illegality in a suit by the seller for the price or for contract damages.[5] Similarly, it seems that this defense would be available in a restitutionary action.[6] The writer doubts the utility of the statute to the buyer affirmatively, although mere relevance of the statute to the case may be enough to make the violation evidence of negligence.[7]

A guess as to a future result really misses the point. As the architect of the prohibition, the legislature should consider and specify its intention as to the civil consequences attendant upon a violation. In at least one other instance the intention has been supplied,[8] and in another it was furnished after a decision by the Court.[9] Otherwise, conclusions which are actually contrary to the legislative purpose may be reached as to the civil effect of the statute.

§7.4. **Prouty v. Roberts revisited.** For the first time since the decision in 1850, the case of *Prouty v. Roberts*[1] has been cited by the Massachusetts Supreme Judicial Court. The case has had wide currency elsewhere.[2] It was an action against the maker of a note, and there was an offer of proof that the note was not the property of the plaintiff, since the plaintiff knew that his predecessor had obtained the note by false and fraudulent pretenses from the payee. The Supreme Judicial Court affirmed the trial court's determination that this was no defense, stating that the plaintiff proved legal title to the

[5] Tocci v. Lembo, 325 Mass. 707, 92 N.E.2d 254 (1950), broadened the availability of illegality as a defense to contract action.

[6] Hawes Electric Co., v. Angell, 332 Mass. 190, 124 N.E.2d 257 (1955), noted in 1955 Ann. Surv. Mass. Law §4.3.

[7] Massachusetts follows a minority rule that the court will examine the criminal statute to determine whether or not the legislature in the particular instance intended to establish tort liability. See 1955 Ann. Surv. Mass. Law §4.3. No cases could be found determining the effect of this kind of statute upon the warranty liability of a seller.

[8] G.L., c. 112, §6. This section provides that the unauthorized practice of medicine is a crime punishable by fine or imprisonment, adding specifically, "A person rendering medical service in violation of this section shall recover no compensation therefor."

[9] G.L., c. 140, §96, amended after the decision in Modern Finance Co. v. Holz, 307 Mass. 281, 29 N.E.2d 922 (1940).

§7.4. [1] 6 Cush. 19 (Mass. 1850).

[2] Cases are collected in Beutel's Brannan Negotiable Instruments 884 (7th ed. 1945). Professor Chafee gave impetus to this circulation in Progress of the Law — Bills and Notes, 33 Harv. L. Rev. 255, 256, 264 (1919).

note by the payee's endorsement, that there was no fraud upon the defendant, and that payment by the maker to the plaintiff would be a good discharge of the instrument. A maker, drawer, or acceptor could not set up in an action at law the equities of others. The local resurrection of the case occurred in *Nichols v. Somerville Savings Bank*.[3] It was there held that the lower court erred in directing a verdict for the plaintiff in an action against the drawer of a check which the named payee endorsed in blank and handed to the plaintiff when it appeared that: (1) the check was given to the plaintiff, as broker, under the terms of a written purchase and sale contract for a restaurant business, with provision for the buyer depositing $1000 to be held in escrow by the plaintiff, and for the plaintiff receiving one half the money deposited upon a forfeiture; (2) the plaintiff stated upon being handed the check that it was a deposit and that the plaintiff would hold it until December 7, when the papers were to pass; and (3) on December 2 the plaintiff, prior to the passing of any papers, opened an account in another bank with the deposit of the check, payment upon which had then been stopped by the defendant-drawer at the request of the payee. Defendant's attempt to interplead the seller failed in the lower court, and an action by the seller against the buyer resulted in a verdict for the buyer. The plaintiff had urged that *Prouty v. Roberts* precluded the defendant in this case from setting up the payee's defense.

The *Nichols* holding might be reached upon a number of grounds. First, *Prouty v. Roberts* clearly has no application to the cases where the plaintiff lacks even legal title, i.e. where the plaintiff is not a holder. Here the defendant is utilizing his own defense, since he promised to pay only the owner of the instrument, and that promise does not run to the plaintiff. This would be true for example where the plaintiff takes through the forged endorsement of the payee's signature on an order instrument or where there has been no delivery. In *Nichols* it could be found that there had been no delivery to the plaintiff, since he was given possession upon the condition that he should hold the instrument until the time for the passage of papers under the purchase and sale contract. Second, there appears to be a long-standing exception to *Prouty v. Roberts* enabling the defendant to utilize the third party payee's defense where the payee notifies the defendant of the defense and demands non-payment to his transferee.[4] This appears to be the case in *Nichols*, and in fact an examination of the record discloses that the payee signed a written stop-payment request directed to the drawer-defendant. Third, the Court's reliance upon Section 59 of the Uniform Negotiable Instruments Law might lead one to conclude that *Prouty v. Roberts* is being substantially overruled. Cases which have not followed *Prouty v. Roberts* have

[3] 333 Mass. 488, 132 N.E.2d 158 (1956).

[4] Carrier v. Sears, 4 Allen 336 (Mass. 1862); Merchants' Exchange National Bank v. New Brunswick Savings Institution, 33 N.J.L. 170 (1868); Brown v. Penfield, 36 N.Y. 473 (1867).

leaned on the same inference.[5] Actually, the contrary implication may be drawn from other sections of the act.[6] Finally, the two cases cited as authority for the decision in the *Nichols* case could be read to mean that an agent can sue on an instrument although it is endorsed and he is in possession of it without the consent of the principal. The Court chose to rely on these cases, although they were cited in neither brief. The first, *Towne v. Wason*,[7] cannot be said to stand for this conclusion, since it clearly appears that the legal title holders had notified the maker not to pay the instrument. This obviously is consistent with the previously mentioned exception to *Prouty v. Roberts*. The other case cited, *New England Trust Co. v. New York Belting & Packing Co.*,[8] also fails to support this premise. In that case the action was brought by a pledgee of the instrument after the secured debt had been paid, simply for the benefit of the makers of other pledged notes. The Court stated there could be no suit for contribution without the consent of the co-surety and that a bill in equity was the appropriate remedy in any event.

Thus it seems that the *Nichols* case merely adds to the Massachusetts law the notion that the defendant may assert a third party's defense to an instrument when he has been notified by the third party not to pay the instrument because of the defense. The case might also mean that the defendant himself gets a defense when the plaintiff has received an instrument from the payee under an unfulfilled conditional delivery. It would seem rash to conclude that *Prouty v. Roberts* has in any way been rejected; it has only been distinguished.

B. Banking

§7.5. **Flexible mortgages.** Chapter 92 of the Acts of 1956 amends G.L., c. 183, §28A relating to so-called flexible or adjustable real estate mortgages. Section 28A applies to all mortgages including all banking institutions, state and federally chartered, doing business in the state. The new act adds "improvements" to the list of purposes for which a mortgagee, after the original mortgage is taken, may make additional advances on mortgaged real estate upon the security of the original mortgage. The rights of a holder of an encumbrance recorded prior to September 1, 1956, or the rights of the original borrower, are not affected by improvements made under the act unless such holder or borrower assents thereto in writing.

There has been no final adjudication as to the effect of Section 28A on the rights of creditors or holders of encumbrances intervening between the date of the recording of the original mortgage and the date of the new advance, in cases of additional advances made under Sec-

[5] Beutel's Brannan Negotiable Instruments Law 886 (7th ed. 1945).
[6] Britton, Bills and Notes 766 (1943).
[7] 128 Mass. 517 (1880).
[8] 166 Mass. 42, 43 N.E. 928 (1896).

tion 28A without their knowledge or consent, and not covered by the specific exceptions in Section 28A.

§7.6. Small loans regulation. After a number of years of effort, legislation has finally been enacted substantially amending the small loans law.[1] It applies to all lending institutions doing business in the Commonwealth, including federally chartered banks and associations. Loans subject to the small loans provisions are broadened from $300 to $1500. In lieu of the statutory maximum rate of interest and charges of 2 percent per month, the rates hereafter will be fixed, after hearing, by a board of five called the Small Loans Regulatory Board, consisting of the Commissioner of Banks, the State Treasurer, the Commissioner of Corporations and Taxation, and two members to be appointed by the Governor. The present statutory rate of 2 percent per month and the present ceiling of $300 remain in effect until the new board is established and takes action on the rates up to the new $1500 maximum. The act clarifies the former status of banking institutions, state and federally chartered, by expressly exempting them from obtaining small loan licenses and from certain rules and regulations, and by specifically providing that they shall be subject to the small loans law with respect to the authorized maximum interest rates.

§7.7. Crimes against banks. Chapter 297 of the Acts of 1956 amends G.L., c. 266, §53A, relative to crimes against state-chartered banking institutions, by clarifying and strengthening that provision of Section 53A which deals with certain loans by such banks. Before the amendment, Section 53A prohibited loans by such banks to those known to be insolvent. The new provision bars loans or extension of credit by the bank when the total assets of the borrower are known to be less than his total liabilities other than debts subordinated to the bank's loan, unless the loan is adequately secured or is necessary for the protection of existing loans. This change was considered advisable as the result of the investigation and trial of *Commonwealth v. Maitland.*[1]

§7.8. Federal National Mortgage Association. Chapter 204 of the Acts of 1956 enables all state-chartered banking institutions to sell or assign real estate mortgages to, and to purchase stock in, the Federal National Mortgage Association, commonly called FNMA, created under the National Housing Act of 1954[1] to provide a secondary market for residential mortgages. Congress has provided FNMA with several

§7.6. [1] Acts of 1956, c. 689.

§7.7. [1] Massachusetts Superior Court, Criminal Business, Suffolk County, Docket Nos. 42 to 92 and 98 to 109. The indictments in this case were returned on March 5, 1954. The defendant Maitland pleaded guilty and defendants Greenberg and Taylor were found guilty by a jury which returned its verdict on March 30, 1955. Defendant Reese was found guilty by the jury, which returned its verdict on March 12, 1956.

§7.8. [1] 68 Stat. 590 (1954), 12 U.S.C. §1703.

substantial appropriations. Under recently amended regulations, a bank may sell qualifying mortgages (currently required to be federally insured or guaranteed) to FNMA for slightly less than the balances due thereon, and must purchase common stock in FNMA in an amount equal to not less than 1 and not more than 2 percent of such balances. With the aid of the federal funds and the stock subscriptions of selling banks, it is intended to provide liquidity to banks for further mortgage financing and to retard the decline in mortgage lending.

§7.9. Investment legislation. Chapter 298 of the Acts of 1956 establishes the Massachusetts Higher Education Assistance Corporation for the purpose of making loans to students domiciled in Massachusetts, including minors, to aid and assist them to fulfill a program of higher education. Section 5 of that act authorizes certain institutions, notwithstanding any other provisions of law, to make contributions or loans to the Corporation or to make investments in its securities, and Section 14 provides that the income on securities and obligations of the Corporation and the deposits of financial institutions invested therein shall be free from taxation within the Commonwealth.

In the new legislation[1] on the Massachusetts Port Authority it is provided that all classes of state-chartered banking institutions may invest in securities of the Authority. Under Section 30 of the same act so much of the deposits of savings banks as may be invested in these securities are exempt from the deposit tax.

§7.10. Safe deposit boxes: Bank's obligation under power of attorney. In *McQuade v. Springfield Safe Deposit & Trust Co.*,[1] the plaintiff executor sought to hold the defendant trust company liable for permitting a person appointed under the decedent's power of attorney to have access to a safe deposit box, alleging that at the time of such access the decedent was incompetent. In addition, the plaintiff claimed that the power of attorney was defective, and also charged the defendant with negligence and conversion. In finding for the defendant, the Court held, on the facts, that at the time of access the defendant did not have notice of the alleged incompetency and had no reasonable cause to make inquiry as to the decedent's competency before permitting access to the box under the power of attorney. It also was held that the power of attorney was not defective and that there was no evidence of negligence or conversion by the defendant. The significance of this decision is that if a power of attorney for access to a safe deposit box is good when made, subsequent incompetency does not vitiate the power if the bank has no notice thereof or reasonable cause to believe that the incompetency has occurred.

§7.11. Savings banks: Deposit insurance. Chapter 324 of the Acts of 1956 is the principal legislation affecting Massachusetts savings

§7.9. [1] Acts of 1956, c. 465, §18. The Port Authority legislation is discussed more fully in §18.1 *infra*.

§7.10. [1] 333 Mass. 229, 129 N.E.2d 923 (1955).

banks, and revises the savings bank deposit insurance structure. Since 1934 the deposits of all Massachusetts savings banks have been insured in full by the Deposit Insurance Fund of the Mutual Savings Central Fund, Inc. The latter was established by Chapter 44 of the Acts of 1932 originally to provide a liquidity fund for savings banks, and all savings banks are required to be members. By Chapter 43 of the Acts of 1934 the Deposit Insurance Fund was established within the corporate entity of the Mutual Savings Central Fund, Inc., and deposits of all savings banks were required to be insured in full by that fund. Resources of both funds have been provided by assessments on member banks and, since 1939, all savings banks have been required to pay annual assessments to the Deposit Insurance Fund. The life of the Mutual Savings Central Fund, Inc., including that of the Deposit Insurance Fund, was scheduled to expire in March, 1957, and legislative action in 1956 was thus necessary.

The 1956 legislation substantially amends the 1932 and 1934 acts. The 1932 act is amended by extending indefinitely the corporate life of the Mutual Savings Central Fund, Inc., and thus the Deposit Insurance Fund. Provisions relative to the number and election of directors have been revised. Savings banks may now[1] have their deposits insured in the Federal Deposit Insurance Corporation, commonly called the FDIC. However, because the FDIC insurance is limited to $10,000 for each depositor and to certain accounts, any savings bank which joins the FDIC must continue to be a member of the state-organized Deposit Insurance Fund; and deposits in excess of $10,000, not insured by the FDIC, continue to be insured by the Deposit Insurance Fund. Thus the principle established in 1934 that the deposits of Massachusetts savings banks must be insured in full is continued under the 1956 act, either by insurance in full of all deposits in the state-organized fund or by the combination of insurance up to $10,000 by the FDIC and by the Deposit Insurance Fund for amounts in excess of $10,000. After the effective date of FDIC insurance the deposits of a bank joining it no longer will be insured by the Deposit Insurance Fund to the extent that they are insured in the FDIC, currently $10,000 for each depositor or account.

No action is required of any savings bank under the new law unless it wishes to join the FDIC. If it does, the bank must comply with the procedure set forth in Chapter 324 and also must meet the FDIC entrance conditions prescribed by federal law and FDIC regulations.

§7.12. **Savings banks: Other legislation.** There were several other bills passed by the legislature specifically applicable to savings banks. Chapter 244 of the Acts of 1956 provides in Section 3 that G.L., c. 154, regulating the assignment of wages, shall not be applicable to or control deposits by the payroll deduction method, made in any savings or cooperative bank. The amendment includes such deposits within a group of transactions already exempted from the control of G.L.,

§7.11. [1] This is accomplished by amendments to the 1934 act and the insertion of Section 67A in G.L., c. 168.

c. 149, §148 regulating the weekly payment of wages. The use of such payroll deduction deposits was also extended to an employee's joint account.[1]

There were several 1956 acts making minor changes in savings bank operating provisions, as appearing in the 1955 recodification. The maximum charge for loans by a savings bank on the security of its own deposit books has been fixed for those instances in which an extra dividend has been declared.[2] The limitation on the examination charge by the Commonwealth to certain large savings banks was removed so that the charge of 5 cents per $1000 of assets is now based upon all of the bank's assets rather than upon the first $100,000,000 thereof.[3] The maximum authorized deposits in savings banks of private retirement or pension systems or associations was increased.[4] The effective date of retirement under Chapter 501 of the Acts of 1955, relative to retirement benefits for certain retiring or retired officers and employees of savings banks, was changed.[5] The securities of religious, charitable, and educational corporations organized under the laws of Massachusetts were made exempt from the savings bank deposit tax.[6]

§7.13. **Cooperative banks: Share insurance.** The major 1956 legislation affecting Massachusetts cooperative banks pertains to the insurance of their shares. Except for names and minor details, the history of cooperative bank share insurance and the text of the applicable statutes are identical with savings bank deposit insurance. The Co-operative Central Bank was established by Chapter 45 of the Acts of 1932, for the purpose of providing a reserve fund for cooperative banks and all banks are required to be members. As in the case of savings banks, since 1934 all cooperative bank shares and deposits — more frequently for these purposes called "accounts" — have been insured in full by the Share Insurance Fund of the Central Bank. That fund was established by Chapter 73 of the Acts of 1934 within the corporate entity of the Central Bank, but its assets and liabilities are separate from the reserve fund. Resources were accumulated by both funds by assessments on member banks and, in the case of the Share Insurance Fund, annual assessments have been required by statute since 1938. The corporate life of the Co-operative Central Bank, and thus the life of the Share Insurance Fund, was scheduled to expire in 1957.

§7.12. 1 Acts of 1956, c. 244, §1.

2 Acts of 1956, c. 88 provides that such rate shall not exceed 1 percent more than the combined rates of the ordinary and extra dividends.

3 Id., c. 171.

4 Acts of 1956, c. 175 increases the maximum deposit in such cases from $75,000 to $75,000 or 1½ percent of the deposits of the savings bank, whichever is the greater.

5 Acts of 1956, c. 221 provides that the period of retirement covered by the act shall commence on November 1, 1953, rather than on November 1, 1954. The purchase of annuities under this retirement program was also authorized by Chapter 224 of the Acts of 1956.

6 Id., c. 463.

Chapter 323 of the Acts of 1956 makes amendments to the 1932 and 1934 acts, similar to those enacted in regard to savings banks. The corporate life of the Co-operative Central Bank has been extended indefinitely, thus automatically extending the existence of the Share Insurance Fund. Changes have been made in the number and election of directors. Cooperative banks may now[1] join the Federal Savings and Loan Insurance Corporation, commonly called the FSLIC, and have their shares insured therein. Because the FSLIC's insurance is limited to $10,000 for each account, any cooperative bank which joins the FSLIC must continue to be a member of the state-organized Share Insurance Fund. The latter fund continues to insure accounts in excess of $10,000 not insured by the FSLIC. Thus, as in the case of savings banks, accounts of cooperative banks must continue to be insured in full either wholly by the state-organized Share Insurance Fund or by the combination of insurance up to $10,000 by the FSLIC and by the Share Insurance Fund for amounts in excess thereof. The accounts of a cooperative bank joining FSLIC will, after the effective date, no longer be insured by the Share Insurance Fund to the extent that they are insured by the FSLIC, currently $10,000 for each account. Detailed amendments to the 1934 act are identical or substantially similar to those enacted in Chapter 324 for savings banks.

A cooperative bank need not take any action under the new law unless it wishes to join the FSLIC, in which event the procedure set forth in the new act must be complied with and the bank also must meet the FSLIC entrance conditions under its regulations and applicable federal law.

§7.14. **Cooperative banks: Other legislation.** Several other acts are specifically applicable to cooperative banks. Chapter 246 of the Acts of 1956 amends G.L., c. 170, §49 by providing that a cooperative bank must obtain the approval of the State Board of Bank Incorporation before converting from a cooperative bank to a federal savings and loan association. Chapter 244 of the Acts of 1956, referred to in relation to savings banks in Section 7.12 above, authorizes cooperative banks to arrange with employers to receive deposits from their employees, by payroll deduction. The remaining cooperative bank acts pertain to operating and investment procedure and to employees' pensions.

§7.15. **Trust companies.** In addition to the legislation relative to small loans reviewed above, several acts were passed in 1956 specifically applicable to trust companies. Chapter 94 modifies the real estate mortgage investment limitations relating to the savings department by eliminating the ceiling of 7½ percent of deposits on the aggregate of loans of the 70 percent of value classification. Chapter 197 increases the amount which a trust company may invest in bank premises, without the approval of the Commissioner of Banks, from 25 to 30 percent of its paid-in capital and surplus account. Chapter 242 authorizes trust companies in their commercial departments to

§7.13. [1] This was accomplished by amendments to the 1934 act and the addition of the new Section 34A of G.L., c. 170.

invest in certain mortgages of real estate in amounts aggregating not in excess of 7 percent of the bank's total deposits.

§7.16. Credit unions. The principal legislation affecting credit unions, apart from the general legislation referred to in Section 8.11, includes the following acts. Chapter 33 requires that members' accounts be verified each three years, instead of the previous requirement that passbooks must be certified each three years. Chapter 91 increases from $1500 to $3500 the maximum amount of a secured personal loan which may be made by certain credit unions. Chapter 126 authorizes unpaid honorary presidents. Chapter 144 revises the procedure for collecting deposits by payroll deduction, from members of credit unions operated by employees of a city, town, or district. It is therein provided that the city, town, or district treasurer must make such deductions if the by-law or ordinance so requires and may make the deduction unless contrary to a by-law or ordinance.