

Banking Act of the United States, wisely refrains from any enactment on the subject of loans or discounts made to directors. It leaves their conduct in all particulars to the supervision of the common law, which, as it has been above laid down, must be regarded as requiring only proper and efficient enforcement to render it fully equal to the task thus imposed upon it, of securing perfect purity in the administration of the bank's affairs.

55. LOANS TO DIRECTORS.—In the absence of legislative prohibition there is no rule of the common law which prevents the making a loan or discount to a director any more than to any other person. Only a director, applying for such a loan, must not vote or officially aid in the discussion concerning its allowance. The same principles of law will be applied to this as to other loans: but they will be rigidly enforced, and the proceedings will be severely scrutinized (1). He must behave himself strictly like any other *outside* customer of the corporation. He must cause his request to be acted upon by the majority of his co-directors, strictly exclusive of himself. It is probable that any circumstances of impropriety or suspicion attendant upon the fact of his making the application at all, or upon the manner of the making it or the procuring its acceptance, will be construed with a degree of stringency as against him, greater than would be exercised towards an ordinary outside borrower. Under any circumstances favoritism or fear of offending are too likely to have some influence in such a transaction, and even the suspicion of them cannot be too carefully guarded against. Prudence no less than right feeling should prevent the applicant from even being present at the discussion and vote.

Although, as we have said, the present Act wisely refrains from any enactment on the subject of loans and discounts made to directors, such subject has not been entirely ignored. A provision inserted in schedule D, will be found to have reference thereto. This requires a statement of the "aggregate amount of loans to and liabilities, direct or indirect, of Directors, and firms of which they are partners" to be appended to each monthly return. In this manner publicity is given to any extraordinary abuse of the powers vested in the board, and the shareholders are thus afforded ample opportunity to exercise their rights with regard to the framing of a by-law to restrain the otherwise unlimited power of the directors.

(1) See Conynham's Appeal, 57 Penn. St. 474.