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# FEDERALLY OWNED CORPORATIONS AND THEIR LEGAL PROBLEMS

ROBERT H. SCHNELL\*

## I

An effective device in the technique of governmental administration which has reached full development during the past few years is the use of a corporation entirely owned and operated by the federal government. This has become a favored method of carrying out plans and projects. Such government corporations are of two major types. One is the individual corporation entirely owned by the government and functioning directly as a federal agency. The government now directly owns and operates about twenty separate corporations of this type, the best known of which are probably the Reconstruction Finance Corporation, the Tennessee Valley Authority, and the Home Owners Loan Corporation.<sup>1</sup> The other type is represented by groups of corporations, the members of which receive their charters directly from Congress or from some agency designated by Congress for that purpose. Such corporations are supervised by the government and used as governmental instrumentalities. Sometimes the government owns all or a part of their capital stock and at other times it has no direct pecuniary interest in them. These groups of corporations operate in the field of home, farm, and commercial credit and financing. The Federal Land Banks, the Joint Stock Land Banks, the Production Credit Corporations, and the National Banks are of this second type.<sup>2</sup>

The right of Congress to create corporations for the execution of the powers conferred by the Constitution and the propriety of designating the corporations so created as agencies or instrumentalities of the government have been discussed and sustained in cases concerning

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<sup>1</sup> Some of the other corporations are the Panama Railroad Company, the Inland Waterways Corporation, the Warrior River Terminal Company, the RFC Mortgage Company, the Federal Farm Mortgage Corporation, the Federal Deposit Insurance Corporation, the Commodity Credit Corporation, the Export-Import Banks, the Federal Surplus Relief Corporation, the Electric Home and Farm Authority.

<sup>2</sup> Some of the other groups of corporations are the National Farm Loan Associations, the Federal Intermediate Credit Banks, the National Agricultural Credit Corporations, the Banks for Coöperatives, the Production Credit Associations, the Federal Credit Unions, the Federal Home Loan Banks, the Federal Savings and Loan Associations, the National Mortgage Associations.

the Second Bank of the United States,<sup>3</sup> a canal company,<sup>4</sup> a National Bank,<sup>5</sup> an interstate railroad,<sup>6</sup> and a private corporation organized to build a bridge between New York and New Jersey.<sup>7</sup> The power to create government owned corporations has been directly upheld in *McCullough v. Maryland*<sup>8</sup> and *Smith v. Kansas City Title and Trust Company*<sup>9</sup> in which the currency and fiscal powers were held sufficient to sustain the Second Bank of the United States and the Federal Land Banks and Joint Stock Land Banks.

The right to own and use the present day corporations, as such, is unquestioned, but the operations of each individual corporation may have to be justified under some constitutional power. The legality of each of these agencies will depend not on its form but rather on what it is doing and authorized to do, as will also the various operations of each of the corporations.<sup>10</sup> These constitutional questions will not be discussed in this article.<sup>11</sup> Nor will the creation, organization, and actual operations of the several corporations be described.<sup>12</sup> Emphasis will be placed instead upon legal problems (other than constitutionality) concerning the corporations.

<sup>3</sup> *McCulloch v. Maryland*, 17 U. S. 316, 4 L. ed. 579 (1819); *Osborn v. Bank of the United States*, 22 U. S. 738, 6 L. ed. 204 (1824).

<sup>4</sup> *Georgetown v. Alexandria Canal Co.*, 37 U. S. 91, 9 L. ed. 1012 (1833).

<sup>5</sup> *Farmers' and Mechanics' National Bank v. Dearing*, 91 U. S. 29, 23 L. ed. 196 (1875).

<sup>6</sup> *California v. Central Pacific Railroad Co.*, 127 U. S. 1, 8 Sup. Ct. 1073, 32 L. ed. 150 (1888).

<sup>7</sup> *Luxton v. North River Bridge Co.*, 153 U. S. 525, 14 Sup. Ct. 891, 38 L. ed. 808 (1894) (Congress has power to construct bridges over navigable waters between states for the accommodation of interstate commerce by land and it may exercise such power through a corporation).

<sup>8</sup> 17 U. S. 316, 4 L. ed. 579 (1819).

<sup>9</sup> 255 U. S. 180, 41 Sup. Ct. 243, 65 L. ed. 577 (1921).

<sup>10</sup> For example, the Tennessee Valley Authority was upheld in *Ashwander v. Tennessee Valley Authority*, 56 Sup. Ct. 466 (1936), but the decision is limited to the construction and operation of Wilson Dam for purposes of national defense and improvement of navigation.

<sup>11</sup> The constitutionality of the now operating government owned corporations has been thoroughly discussed in a recent law review article, Culp, *Creation of Government Corporations by the National Government* (1935) 33 MICH. L. REV. 473.

<sup>12</sup> For discussions of the organization and operations of past and present federally owned corporations, see, VAN DORN, *GOVERNMENT CORPORATIONS* (New York, 1926); Chase, *Government in Business* (1935) 41 CURRENT HISTORY 641; Note (1935) 83 U. OF PA. L. REV. 346; (Note) *Incorporation of Federal Agencies* (1934) 28 ILL. L. REV. 1082; Thurston, *Government Proprietary Corporations* (1935) 21 VA. L. REV. 351, 465; SCHEMECKEBIER, *NEW FEDERAL ORGANIZATIONS* (Wash. 1934); DIMOCK, *GOVERNMENT-OPERATED ENTERPRISES IN THE PANAMA CANAL ZONE* (Chicago, 1934); (Note) *The Tennessee Valley Authority Act* (1934) 43 YALE L. J. 815; (Note) *State Taxation and Regulation of the Tennessee Valley Authority* (1934) 44 YALE L. J. 326; BREWSTER, *AN OUTLINE OF THE NEW DEAL ADMINISTRATION* (Washington, 1934).

## II

Before consideration is given to such legal problems concerning government owned corporations, the use of the corporate form of organization by the government as an administrative device warrants consideration. The main question which offers itself for an attempted solution is, Why are corporations used instead of some other administrative organization? Secondly, Since corporations are used, why are they not all federal corporations chartered by Congress? Why have some of them been incorporated under state laws? From these main questions spring a number of incidental questions and propositions which likewise deserve consideration.

Various reasons have been set forth by the text writers as to the advantages of general incorporation. A corporation is a convenient method of combining and using a large amount of capital, contributed by one or many individuals, without further liability to those financing the enterprise. Further, it enables these persons to act as a single individual. A business operated by a corporation may be carried on continuously without regard to the death of one or more of the owners or to the transfer of interests from one owner to another. And the concentration of the management of the business in the hands of the officers and directors leaves the other owners free to follow other enterprises of their own.<sup>13</sup> The existence of the corporation is separate from that of its stockholders, and large business enterprises can be operated more easily and efficiently by a corporation acting as a unit than if all the owners of the business tried to run it directly. Also, the transfer of ownership of the business as represented by the shares of stock is much easier than if the undertaking were not incorporated.<sup>14</sup>

However, these reasons for incorporation do not seem to be valid when applied to government ownership and operation of an enterprise. The idea of a separate corporate entity does often have a psychological advantage, but not always, because the cases have either respected or disregarded the corporate entity, depending upon the situation presented to the courts. The only other advantage of this type that the government might obtain would be to limit its liability in the undertaking of the specific corporation. But in view of the large capital provided by the government for its corporations and the probability that the government itself will make up any further losses incurred by them, as it did in the case of the Emergency Fleet Corporation, this

<sup>13</sup> 1 THOMPSON, CORPORATIONS (3d ed. 1927) §5.

<sup>14</sup> 1 COOK, CORPORATIONS (8th ed. 1923) §1, n. 2. See also, *Flint v. Stone Tracy Co.*, 220 U. S. 107, 162, 31 Sup. Ct. 342, 55 L. ed. 389 (1910); Munson, *One Man Companies* (1895) 11 LAW QUARTERLY REVIEW 185; CLARK, CORPORATIONS (3d ed. 1916) ch. 1 *passim*.

does not seem to be among the reasons for the use of the corporate device in governmental operations.

The main reason advanced for the use of corporations by the government is that the corporate form is a convenient method of operation providing elasticity of control and freedom from the usual governmental red tape.<sup>15</sup> This general proposition has been stated in various ways at different times and has also been divided up into a number of specific advantages said to be gained from the use of government owned corporations.

It has been said that the ordinary machinery of government is too cumbersome to operate speedily and efficiently.<sup>16</sup> A corporation is supposed to be better able to act along strictly business lines than is the government itself.<sup>17</sup> And the use of a corporation permits government officials to do things without encountering the usual system of governmental checks and balances.<sup>18</sup>

<sup>15</sup> The earliest modern presentation of this was in a statement made to a Senate Committee in 1905 by William Howard Taft, then Secretary of War. He said: "I hope that nothing will be done to merge the corporate entity of the [Panama] Railroad Company into that of the Government or the [Isthmian Canal] Commission. Under the present arrangement, it is just as easy to have close supervision over the management of the railroad as if it were nominally operated by the Commission, and the corporate form secures the utmost convenience and elasticity of control." *Statement of Hon. William H. Taft, Secretary of War, Before the Committee on Interoceanic Canals of the United States Senate* (Washington, 1905) 32.

<sup>16</sup> Edward N. Hurley was the wartime chairman of the United States Shipping Board. In his book concerning the activities of the Shipping Board and the Emergency Fleet Corporation he praises the use of the corporate agency to carry out the war shipping program. He says that the Shipping Act was wisely drawn "in so far as the necessity of building ships with the machinery of a private corporation was recognized. It is to the credit of Congress," he adds, "that it recognized the utter hopelessness of relying upon the cumbersome machinery of the government to build merchant ships for war or peace." He also holds that the system of governmental checks and balances makes the use of a corporation preferable to the use of a regular governmental agency when it is necessary to carry out a large project speedily. HURLEY, *THE BRIDGE TO FRANCE* (Philadelphia, 1927) 23-24.

<sup>17</sup> *Annual Report of the Inland Waterways Corporation for the Calendar Year 1925* (Gov't Printing Office, 1926) 1-5.

<sup>18</sup> See, SURFACE, *THE GRAIN TRADE DURING THE WORLD WAR* (New York, 1928) at 50: "After much consideration it was decided that the most satisfactory form of organization for this purpose [stabilization of the price of wheat and regulation of the wheat market] would be that of a private corporation organized under the laws of some State. . . . This corporate form of organization would permit the government agency to carry on active trading operations, and to expeditiously and economically work through the established marketing machinery of the country. The ordinary rules of the United States Treasury for making purchases and receiving money are far too cumbersome to be of service in the kind of operations which it was proposed to carry on."

District Judge Mayer said in *Federal Sugar Refining Co. v. U. S. Sugar Equalization Board, Inc.*, 268 Fed. 575, 587 (S. D. N. Y. 1920): "The very incorporation of defendant, The Sugar Board, demonstrates that the ordinary methods of transacting business by executive departments was inadequate, and doubtless subject to embarrassment by a maze of unworkable statutes and regulations,

These theories were expressed by Mr. Justice Brandeis in a case in which the Emergency Fleet Corporation was held to be a department of the government within the meaning of the Post Roads Act and entitled to preferential telegraph rates. The Justice said, "An important, if not the chief reason for employing a corporate agency was to enable the Government to employ commercial methods and to conduct the operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure and with its control over the financial operations of the United States."<sup>19</sup>

More recently, this was a little differently expressed by President Roosevelt who, in his message to Congress concerning the development of the Tennessee Valley, proposed "legislation to create a Tennessee Valley Authority—a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise."<sup>20</sup>

The *United States News*, in an article concerning government corporations, said: "The Government 'corporation' to-day is replacing the Government 'commission' as the favored agency through which the

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and that the elastic powers of a business corporation would enable the purchase and sale of sugar to be engaged in with the same facility as such transactions ordinarily go forward at the hands of individuals or business corporations."

See also, BERNHARDT, *GOVERNMENT CONTROL OF THE SUGAR INDUSTRY IN THE UNITED STATES* (New York, 1920) ch. 3.

<sup>19</sup> *U. S. S. B. Emergency Fleet Corporation v. Western Union*, 275 U. S. 415, 423, 48 Sup. Ct. 198, 201, 72 L. ed. 345, 349 (1928).

The same language was used by Mr. Justice Brandeis in *Skinner and Eddy Corp. v. McCarl*, 275 U. S. 1, 8, 48 Sup. Ct. 12, 14, 72 L. ed. 131, 135 (1927).

Mr. Justice McReynolds has said: "Generally agents of a corporation are not agents of the stockholders and cannot contract for the latter. Apparently this is one reason why Congress authorized organization of the Fleet Corporation." *United States v. Strang*, 254 U. S. 491, 493, 41 Sup. Ct. 165, 166, 65 L. ed. 368, 370 (1921).

Mr. Justice Stone has said: "The Emergency Fleet Corporation was created as a government agency to construct a fleet of vessels to meet a wartime emergency. It was in order to better fulfill that purpose that Congress chose an instrument having the power to contract, as well as all the other powers of a private corporation, but with its every action government controlled and all its assets supplied from government sources. The advantages of resorting to such powers in meeting the national emergency were used as grounds for the choice of this particular form of agency when the Urgent Deficiency Bill was pending in Congress." *U. S. S. B. Emergency Fleet Corporation v. Harwood*, 281 U. S. 519, 525, 50 Sup. Ct. 372, 373, 74 L. ed. 1011, 1015 (1930).

<sup>20</sup> Tennessee Valley Authority, *General Information* (Dec., 1933) 1.

See also, Executive Order of President Wilson authorizing the Grain Corporation: "Whereas, in order to enable the United States Food Administration to efficiently exercise the authority granted by said act . . . and to enable said United States Food Administration to purchase and sell said commodities in the manner and by methods customarily followed in the trade, it is expedient and necessary that a Corporation should be organized, all the stock of which . . . shall be . . . owned by the United States." *Executive Order* No. 2681, Aug. 14, 1917.

President acts to get things done in a hurry. . . . They provide the Executive with ready means for cutting through the red tape that entwines the regular governmental organizations, and for getting around legal restrictions that might hamper action in syphoning money from the Treasury to the vast new Federal projects."<sup>21</sup>

It has evidently been felt by the various people interested that the government itself is not suited for business enterprises. They seem distrustful of the ability of a bureau or commission or other governmental department to function in an efficient and businesslike manner. This proposition, by itself, does not seem valid. There is no reason why, for example, a bureau in the War Department named the Tennessee Valley Division could not operate as efficiently and perform the same functions as an independent corporation called the Tennessee Valley Authority. The tradition of governmental inefficiency, in general, could be changed by the application by a specific governmental agency of the same methods as are used by a business corporation. Besides, all business corporations are not operated efficiently as is shown by their numerous bankruptcies.

This general theory of the inability of the government to use efficient business methods seems to be a general and probably incomplete summary of the various specific reasons why there is a desire to use a government owned corporation instead of some regular branch of the government.

For example, a corporation's own legal staff or counsel handles actions by or against the corporation at all stages. Ordinarily, when a government agency goes to court, the Department of Justice handles the case. However, a corporation can have the advantage of having its case handled by counsel familiar with and interested in the general field and acquainted with the specific points in suit. A suit by the United States, in litigation, can be compromised only by the Attorney-General. However, the officers and legal staff of a corporation may do as they please concerning the action at any stage of the proceedings.

Similarly, no money claim by or against the United States may be compromised except by the Solicitor of the Treasury Department. However, the corporate device offers the advantage of flexibility in exercise of discretion concerning claims. The corporation can settle claims against it in any manner it sees fit; and, whenever necessary or advisable, it can write off or remit all or any part of a loan it has made or a claim it possesses.

<sup>21</sup> The United States News, vol. 1, no. 22, Oct. 16, 1933, at 341.  
See also, N. Y. Herald Tribune, May 19, 1935, §II, at 1.

The ability to sue and be sued in the corporate name as a separate entity is also considered an advantage. The government is not subject to suit except as it may permit, but a corporation may be sued at any time for anything.<sup>22</sup>

The actual administrative advantages of a corporation are pointed to as among the reasons why the corporate form is used. For example, counsel for one of them has pointed out that the creation of a corporation and the allocation to it of a particular function centers its administration and makes it easier for the general public and the other government departments and agencies to deal with it. The operations and activities of the corporation can be carried on efficiently and rapidly under decisions of its own officers. Contracts may be entered into by the corporations without the necessity of complying with the formalities required for the making of contracts with the regular departments of the government.

The financing of a corporation and its activities is easier than if it were a regular branch of the executive department. The corporation has two sources of funds, paid in capital and borrowed money. These are provided for in its charter and in the legislation or executive order setting it up. With these funds available, the corporation is not dependent upon annual appropriations by Congress. Usually the capital fund of the corporation, provided of course out of government monies, is large enough to provide for continued operation of the corporation without further appeals to Congress. Furthermore, each of the corporations is usually authorized to borrow money upon its own credit. Although maximum amounts which may be borrowed are usually fixed, they are large enough not to hinder the financial operations of the corporation.

A further advantage of having independent funds is that their use by the corporation is not limited except by a broad general policy. The ordinary Congressional appropriation may be expended for only the objects authorized. However, a corporation is able to use its free discretion in the expenditure of its funds.

Another reason for the creation as administrative agencies of some of the corporations was their freedom from the rules of the Treasury Department and later the General Accounting Office. Unless otherwise ordered, each corporation developed and used its own system of accounting and auditing. This freedom from accounting rules and practices and from checks by the General Accounting Office eliminated

<sup>22</sup> See, *post* pp. 249-253.



most of the red tape ordinarily surrounding governmental expenditures and made it easier for the corporations to carry on their programs.<sup>23</sup>

However, this advantage is not now available to government corporations. On January 3rd, 1934, an executive order<sup>24</sup> was issued ordering that all accounts of all receipts and expenditures by governmental agencies, including corporations, created after March 3rd, 1933, the accounting procedure for which is not otherwise prescribed by law, shall be rendered to the General Accounting Office in such manner, to such extent, and at such times as the Comptroller-General may prescribe, for settlement and adjustment pursuant to the act<sup>25</sup> setting up the General Accounting Office. This order, together with provisions in most of the charters granted by Congress, now makes the government owned corporations comply with the same accounting practices and rules as the other government agencies.

These reasons as to why corporations are used apply generally to all the government owned corporations regardless of the method of their inception. However, another question arises—why are State incorporated agencies used?

A reason given for the organization of one of the state chartered agencies is that a program involving the use of a corporation was planned for immediate execution while Congress was not in session and so the officials in charge went to Delaware for a charter.

Another reason given for state incorporation, whether Congress was in session or not, was the desire to avoid Congressional action. It was easier to organize a corporation as authorized by executive order than to introduce a bill in Congress for the chartering of the same corporation, and have Congressional hearings, debates, and inquiries. Furthermore, the passage of a charter through Congress was likely to be a slow procedure, and rapid organization was desired. Also, while it was possible that Congress might refuse to charter a corporation to carry out some proposed project, it was improbable that once a state corporation had been organized and the project gotten under way that Congress would order the corporation dissolved and liquidated.

Five of the recent government corporations are organized under the laws of Delaware. The usual reason given as to why Delaware was chosen in preference to another state is that the Delaware corporation laws are extremely liberal and especially suitable for the type of

<sup>23</sup> This freedom is criticized by McGuire, *Government by Corporations* (1928) 14 VA. L. REV. 182. Mr. McGuire was and is counsel in the General Accounting Office.

<sup>24</sup> EXECUTIVE ORDER No. 6549, Jan. 3, 1934.

<sup>25</sup> Title III of the Act of June 10, 1921, 42 STAT. 23 (1921).

government corporation desired. And in addition, the state of Delaware waived the payment of incorporation taxes and annual franchise taxes and also permitted the first meeting of incorporation to be held outside the state.

The Export-Import Banks were chartered in the District of Columbia and the Tennessee Valley Associated Coöperatives, Incorporated was incorporated under the laws of Tennessee. The Banks were incorporated in the District of Columbia so that they could perform a banking business there as domestic corporations. The Coöperatives Corporation was probably incorporated in Tennessee because it was the most convenient place. It was organized under the auspices of the Tennessee Valley Authority, which has its headquarters in Tennessee, as an affiliate. This seems to be the most apparent reason for selecting that state as a place of incorporating in preference to Delaware.

In addition to these reasons already presented for the government's use of corporations for carrying out certain functions, there seems to be another type of explanation which might be listed as psychological. Several different ideas and attitudes enter into the making up of this classification.

There is an American tradition against the government's going into what is commonly called "business." Yet the government actually is operating various business enterprises through its corporations. The corporate device readily lends itself to reconciling these two conflicting facts. Technically, the corporation is a unit separate and distinct from the government. The theory of a corporate entity can be applied even though the United States owns all the stock and the corporation's policies are formulated by highly placed government officials. There seems to be conveyed to the minds of the bystanders the inchoate idea that even though the government owns and runs these corporations they are not *quite* the government.<sup>26</sup>

Along the same line it might also be argued that the use of these corporations helps the government's credit because the debts of the corporation are not the debts of the government itself. Bonds which the corporations issue represent corporate indebtedness although the United States may guarantee the bonds. While the government will

<sup>26</sup> The writer questioned numerous persons, at random, as to their idea of the status of such government corporations as the Reconstruction Finance Corporation, the Home Owners' Loan Corporation, and the Federal Subsistence Homesteads Corporation. The general response was that these were not engaged directly in governmental operations. The government itself was not acting when these corporations did things. Rather, these were thought of as separate agencies under the patronage and supervision of the government and financed with federal funds.

ultimately bear any losses incurred, at present such indebtedness of the corporations is only a contingent debt of the Treasury.

Again, the idea of the government's going into business in competition with private enterprise and making money out of its operations is objected to by some people. However, it is expected that few, if any, of the government owned corporations will ultimately show a loss. The Reconstruction Finance Corporation showed a net profit of \$65,175,963.18 for its operations from February 2nd, 1932, through December 31st, 1934. The Panama Railroad Company shows a net profit each year, and similarly the Inland Waterways Corporation is currently earning a small margin of profit. The Export-Import Banks, the Electric Home and Farm Authority, and the Tennessee Valley Authority are expected not to lose money. The Home Owners' Loan Corporation and the Federal Subsistence Homesteads Corporation are taking ample security on the money they loan; and, even though they may have to take over some of the properties upon default on the mortgages, the corporations expect to liquidate eventually with a net profit. If these were branches of the executive departments conducting business operations and loaning money, there would probably be more objection than there is now to having what is called a corporation do the same things.

Another aspect of this general idea is the use of names and the effect it has on the general public. Opposition to the government's actually loaning almost five billion dollars with another two billion authorized to various enterprises through a separate agency called the Reconstruction Finance Corporation is probably much less than if the same thing were done by a "Loan Division of the Treasury Department." Then also, there is the impression that the proper agency to carry on business enterprises is a corporation. The word "corporation" generally connotes successful and large scale business enterprises, which it might be improper or unsuitable for the government to conduct itself. This idea ties in with what was said previously concerning the attitude that regular governmental machinery is too cumbersome to operate efficiently and expeditiously.

Furthermore, there is less likelihood of having Congress interfere in the operations of a corporation than of a governmental department. After the corporation is chartered and its general policy outlined, it is generally permitted to operate free from any other interference or control. A corporation seems to be something that is further from the reach of Congress than a regular agency. Of course, this is actually not so because the stock of the corporations is owned by or on behalf

of the United States; and Congress, representing the government, can direct how the stock shall be voted and the corporations run. But the aura of the corporation as an independent unit serves generally to prevent Congress from so doing. There have been and still are instances in which legislation has been enacted involving existing and already operating corporations.<sup>27</sup> Such legislation has usually affected only the general policy of the corporation involved or has been designed to widen its powers.<sup>28</sup>

The particular advantages ascribed to the corporate device could easily enough be given to any other agency. For example, Congress could set up a division in one of the departments and make exceptions for it as far as the applicability of the general rules pertaining to the Justice and Treasury Departments and the General Accounting Office is concerned. An agency of the government, called by any name desired, operating within one of the executive departments could be given similar powers and functions as have been given to agencies called corporations. However, there are drawbacks to this possibility. If Congress began to make exceptions in favor of specific agencies, immediately other agencies would want similar exceptions made on their behalf. There would probably be a scramble among the various agencies for concessions and preferences to an even greater extent than is now true. And exceptions in some instances might open the way for a break down of the general rules set forth for the operation of governmental departments. And even were Congress willing to go ahead and make it just as practical and advantageous to utilize another named agency instead of a corporation, the psychological advantages which inhere in the use of a corporation would be lost.

An alternative would be the passage by Congress of some type of general incorporation law applying to government owned corporations. One type might be a general law which would be compulsory for all corporations engaged in interstate commerce or in carrying out any powers of the federal government.<sup>29</sup> Or such a statute might be restricted so as to apply only to all corporations federally owned and

<sup>27</sup> See, for example, Reconstruction Finance Corporation Act, as amended, 15 U. S. C. A. §§601 *et seq.* (1935).

<sup>28</sup> However, in the case of the Sugar Equalization Board Congress did direct the conduct of a particular transaction. See, Joint Resolution of Feb. 9, 1923, 42 STAT. 1224; Joint Resolution of Feb. 12, 1923, 42 STAT. 1226.

<sup>29</sup> See, Schnell and Wettach, *Corporations as Agencies of the Recovery Program* (1934) 12 N. C. L. REV. 77, 97.

See also, Thelen, *Federal Incorporation of Railroads* (1917) 5 CALIF. L. REV. 273; Bunn, *Federal Incorporation of Railway Companies* (1917) 30 HARV. L. REV. 589; Watkins, *Federalization of Corporations* (1935) 13 TENN. L. REV. 89. For a criticism of the chartering by Congress of various specific organizations, see, Jameson, *Incorporation by the United States* (1927) 13 A. B. A. J. 624.

operated.<sup>30</sup> In any event, such a general incorporation law should be carefully drawn so as to cover all the phases of creation, operation, and liquidation of government corporations. The legal rules pertaining to them should be simplified and codified. The status of the corporation in the governmental field should be fixed. The extent to which it is to partake of governmental privileges and immunities should be established, and at the same time its private corporate character as a separate entity should be settled.

Certainly, a codified set of rules for the creation and operation of federally owned corporations is feasible and advisable. The corporate form of administration has shown itself to be useful, and present indications are that their use will be continued, if not expanded, in the future. Both the "practical" and "psychological" advantages of a corporation could be retained, and at the same time the creation and conduct of and rules pertaining to government corporations could be simplified and unified.

### III

Among the first questions which arise in connection with government owned corporations is one concerning their status in the courts. There have been numerous cases setting forth rules to govern suits involving such corporations, and they touch upon varied points of practice and procedure.

That government owned corporations are subject to suit was established by the Supreme Court in *Sloan Shipyards Corp. v. U. S. S. B. Emergency Fleet Corporation*.<sup>31</sup> The case involved actions against the Fleet Corporation for tort and for breach of contract, which were defended on the ground that they were suits against the United States involving more than \$10,000 and were cognizable only in the Court of Claims. The Court refused to clothe the Corporation with the government's immunity from suit and said that even though the Fleet Corporation was an instrumentality of the government, acted as an agent of the United States, and was owned by the government, it was nevertheless answerable for its acts and bound by its contracts and suable in a court of competent jurisdiction like any private individual or corporation.<sup>32</sup> This rule has been reaffirmed in numerous cases

<sup>30</sup> This has been proposed by Field, *Government Corporations: A Proposal* (1935) 48 HARV. L. REV. 775. This article presents the reasons why a general incorporation law for government owned corporations is advisable. It also suggests and explains in detail the various features which should be covered by such a statute.

<sup>31</sup> 258 U. S. 549, 42 Sup. Ct. 386, 66 L. ed. 762 (1922), *petition for rehearing granted*, 42 Sup. Ct. 588 (1922). Notes (1922) 36 HARV. L. REV. 218; (1923) 32 YALE L. J. 283; (1924) 8 MINN. L. REV. 426.

<sup>32</sup> See also, *U. S. S. B. M. F. C. v. Harwood*, 281 U. S. 519, 50 Sup. Ct. 372, 74 L. ed. 1011 (1930), holding the Fleet Corporation subject to suit and liable

involving the Fleet Corporation, and in a few cases involving some of the other government owned corporations, and in view of their language is probably equally applicable to all the government owned corporations.<sup>33</sup>

That some of the corporations presently operating may sue and be sued in the corporate name is definitely settled by statute. The char-

on contracts executed by it in its own name even though the Corporation acted for the United States as known principal.

<sup>33</sup> Among the cases in which the suability of a government owned corporation has been asserted are: *Commonwealth Finance Corp. v. Landis*, 261 Fed. 440 (E. D. Pa. 1919); *Gould Coupler Co. v. U. S. S. B. E. F. C.*, 261 Fed. 716 (S. D. N. Y. 1919); *McComb v. U. S. Housing Corp.*, 264 Fed. 589 (D. C. Del. 1920); *Lord and Burnham Co. v. U. S. S. B. E. F. C.*, 265 Fed. 955 (N. D. Ill. 1920); *Perna v. U. S. S. B. E. F. C.*, 266 Fed. 896 (E. D. Pa. 1920); *Banque-Russo Asiatique-London v. U. S. S. B. E. F. C.*, 266 Fed. 897 (E. D. Pa. 1920); *Ingram Day Lumber Co. v. U. S. S. B. E. F. C.*, 267 Fed. 283 (S. D. Miss. 1920); *Federal Sugar Refining Co. v. U. S. Sugar Equalization Board, Inc.*, 268 Fed. 575 (S. D. N. Y. 1920); *Pope v. U. S. S. B. E. F. C.*, 269 Fed. 319 (S. D. Fla. 1920); *American Cotton Oil Co. v. U. S. S. B. E. F. C.*, 270 Fed. 296 (E. D. La. 1921); *Eichberg v. U. S. S. B. E. F. C.*, 273 Fed. 886 (C. of A., D. of C. 1921); *Traylor Engineering and Manufacturing Co. v. U. S. S. B. E. F. C.*, 277 Fed. 248 (E. D. Pa. 1922); *Buffalo Union Furnace Co. v. U. S. S. B. E. F. C.*, 283 Fed. 673 (W. D. N. Y. 1922), *aff'd*, 291 Fed. 23 (C. C. A. 2nd, 1923), *writ of error dismissed*, 268 U. S. 707, 45 Sup. Ct. 510, 69 L. ed. 1168 (1925); *John G. Wright and Co. v. U. S. S. B. E. F. C.*, 285 Fed. 647 (S. D. N. Y. 1922); *Atlantic Corp. v. U. S. S. B. E. F. C.*, 286 Fed. 222 (D. C. N. H. 1923); *Puget Sound Machinery Depot v. U. S. S. B. E. F. C.*, 293 Fed. 768 (W. D. Wash. 1923); *Providence Engineering Corp. v. Downey Shipbuilding Corp.*, 294 Fed. 641 (C. C. A. 2nd, 1923); *Stewart v. U. S. S. B. Emergency Fleet Corporation*, 7 F. (2d) 676 (E. D. N. Y. 1925); *U. S. S. B. E. F. C. v. Texas Star Flour Mills*, 12 F. (2d) 9 (C. C. A. 5th, 1926); *Cohn v. U. S. S. B.*, 20 F. (2d) 56 (C. C. A. 6th, 1927); *U. S. S. B. E. F. C. v. Tabas*, 22 F. (2d) 398 (C. C. A. 3rd, 1927); *U. S. v. Skinner and Eddy Corp.*, 28 F. (2d) 373 (W. D. Wash. 1928); *Lindgren v. U. S. S. B. M. F. C.*, 55 F. (2d) 117 (C. C. A. 4th, 1932); *U. S. v. Brown*, 247 N. Y. 211, 160 N. E. 13 (1928); *Ingersoll-Rand Co. v. U. S. S. B. E. F. C.*, 187 N. Y. Supp. 695 (1921); *Cox v. Sykes Bros.*, 237 N. Y. 376, 143 N. E. 227 (1924), *aff'g* 204 App. Div. 442, 198 N. Y. Supp. 178 (1923) which *aff'd*, 189 N. Y. Supp. 268 (1921).

*Ballaine v. Alaska Northern Ry. Co.*, 259 Fed. 183 (C. C. A. 9th, 1919) and *Keeley v. Kerr*, 270 Fed. 874 (D. C. Ore. 1921) are to the contrary, but they are evidently overruled *sub silentio* by subsequent decisions. See, *post* pp. 17-21 and notes.

For a discussion and comparison of some of the cases, with a survey of the theories under which the government owned corporations have been held subject to suit, see Note (1929) 27 MICH. L. REV. 786.

This is only a partial list of cases holding that a government owned corporation is subject to suit. There are also numerous cases in which suit has been permitted against various federal corporations, but the question of suability has not been discussed. Some of these cases, which have been disposed of according to general principles of law, are *U. S. S. B. Emergency Fleet Corp. v. Bank Line Transport & Trading Co.*, 22 F. (2d) 430 (N. D. Cal. 1927) (libel dismissed for want of prosecution by plaintiff, Fleet Corporation); *The Helen Fairlamb*, 271 Fed. 507 (E. D. Pa. 1921) (libel for collision); *Gowanus Storage Company v. U. S. S. B. Emergency Fleet Corporation*, 271 Fed. 528 (E. D. N. Y. 1921) (libel against Fleet Corporation for damages); *The Monongahela*, 282 Fed. 17 (C. C. A. 9th, 1922) (libel for collision, Fleet Corporation, defendant); *The Mascot*, 282 Fed. 766 (C. C. A. 3rd, 1922) (libel for collision, Fleet Corporation, defendant); *Groton Iron Works v. U. S. S. B. Emergency*

ters granted by Congress to the Inland Waterways Corporation,<sup>34</sup> the Reconstruction Finance Corporation,<sup>35</sup> the Tennessee Valley Authority,<sup>36</sup> the Home Owners Loan Corporation,<sup>37</sup> the Federal Deposit Insurance Corporation,<sup>38</sup> the Federal Farm Mortgage Corporation,<sup>39</sup> and the Federal Savings and Loan Insurance Corporation,<sup>40</sup> each contain a section so providing. Similarly, the statutes under which the state chartered corporations are organized provide that corporations organized pursuant to such state laws shall be capable of suing and being sued.<sup>41</sup>

Thus, the single question of liability to suit of government owned corporations is settled by the Congressional charters, the state incorporation laws, and the decisions in the *Sloan Shipyards* and subsequent cases.

A similar problem concerning corporations owned by foreign governments has been decided the same way. In *Coale v. Société Coop-*

Fleet Corporation, 283 Fed. 812 (D. C. Conn. 1922) (contract Fleet Corporation, defendant); *W. R. Grace and Co. v. Panama Railroad Company*, 285 Fed. 718 (C. C. A. 2nd, 1922); *U. S. S. B. Emergency Fleet Corporation v. Levensaler*, 290 Fed. 297 (C. of A., D. of C., 1923) (action for breach of contract, Fleet Corporation, defendant); *McCall v. U. S. S. B. Emergency Fleet Corporation*, 294 Fed. 989 (W. D. Wash. 1924) (libel for wages, Fleet Corporation, defendant); *Virginia Bridge and Iron Co. v. U. S. S. B. Emergency Fleet Corporation*, 300 Fed. 249 (D. C. Ala. 1924) (procedure question, Fleet Corporation, defendant); *Sanday v. U. S. S. B. Emergency Fleet Corporation*, 1 F. (2d) 390 (S. D. N. Y. 1924), *aff'd*, 6 F. (2d) 384 (C. C. A. 2nd, 1925), *cert. denied*, 269 U. S. 556, 46 Sup. Ct. 19, 70 L. ed. 409 (1925) (charter party action, Fleet Corporation, defendant); *Gonzales v. U. S. S. B. Emergency Fleet Corporation*, 3 F. (2d) 168 (E. D. N. Y. 1924) (tort for injuries, Fleet Corporation, defendant); *American Manufacturing Co. v. U. S. S. B. Emergency Fleet Corporation*, 7 F. (2d) 565 (C. C. A. 2nd, 1925) (contract, Fleet Corporation, defendant); *Thompson and Daley v. Panama Railroad Company*, 5 F. (2d) 957 (C. C. A. 5th, 1925); *R. B. Doak and Co. v. U. S. S. B. Emergency Fleet Corporation*, 11 F. (2d) 523 (C. C. A. 5th, 1926) (contract, Fleet Corporation, defendant); *U. S. S. B. Emergency Fleet Corporation v. Turner*, 11 F. (2d) 921 (C. C. A. 5th, 1926) (contract, Fleet Corporation, defendant); *Callister v. U. S. S. B. Merchant Fleet Corporation*, 21 F. (2d) 447 (E. D. N. Y. 1927) (libel, Fleet Corporation, defendant); *The Carlton*, 48 F. (2d) 193 (C. C. A. 5th, 1931) (libel, Fleet Corporation, defendant); *Inland Waterways Corporation v. Hallet and Carey Co.*, 52 F. (2d) 13 (C. C. A. 8th, 1931); *Goltra v. Inland Waterways Corporation*, 49 F. (2d) 497 (C. of A., D. of C., 1931); *Inland Waterways Corporation v. Standard Commercial Tobacco Company*, 65 F. (2d) 715 (C. C. A. 5th, 1933); *Richmond Fairfield Railway Co. v. United States Housing Corporation*, 72 F. (2d) 78 (C. of A., D. of C., 1934) (action for breach of covenant against the Housing Corporation).

<sup>34</sup> Act of June 3, 1924, 43 STAT. 360 (1924), 49 U. S. C. A. §151 (1929).

<sup>35</sup> Act of Jan. 22, 1932, 47 STAT. 5 (1932), 15 U. S. C. A. §601 (1935).

<sup>36</sup> Act of May 18, 1933, 48 STAT. 58 (1933), 16 U. S. C. A. §831 (1935).

<sup>37</sup> Act of June 13, 1933, 48 STAT. 128 (1933), 12 U. S. C. A. §§1461 *et. seq.* (1935).

<sup>38</sup> 48 STAT. 168 (1933), 12 U. S. C. A. §264 (1935).

<sup>39</sup> Act of Jan. 31, 1934, 48 STAT. 344 (1934), 12 U. S. C. A. §1020 (1935).

<sup>40</sup> Act of June 27, 1934, 48 STAT. 1246, 1255 (1934).

<sup>41</sup> DEL. REV. CODE (1915) c. 65, §2; D. C. CODE (1929) tit. 5, §263; TENN. ANN. CODE (Williams, 1934) §3722.

*erative Suisse des Charbons*<sup>41a</sup> the court held that a corporation chartered by the Swiss government and partially owned and controlled by it was subject to suit for breach of contract. The court said that such corporation was a separate entity and could not plead governmental immunity. In *United States v. Deutsches Kalisyndikat*<sup>41b</sup> it was held that the United States could maintain a suit to enjoin violation of the anti-trust laws against a corporation organized under the general corporation laws of France, eleven-fifteenths owned by the French Government, and engaged in selling potash for both the French Government and private interests. The court held that the corporation was a separate entity distinct from its stockholders and that this suit was not against a sovereign state but against a private corporation.<sup>41c</sup>

In a case involving the Amtorg Trading Corporation, which is a New York corporation operated and entirely owned by the Soviet Government, it was alleged that since the United States had not then recognized the Union of Socialist Soviet Republics the corporation had no standing in court.<sup>41d</sup> The court, however, refused to pierce the corporate veil and said that the Amtorg Corporation was a citizen of New York entitled to appear in the courts of the United States and that the court was not concerned with the ownership of its stock or the residence of its stockholders. The court said that the corporation, even though owned by the government, did not take on the character of a sovereign and that consequently, even though the unrecognized Soviet government could not sue in American courts,<sup>41e</sup> the Corporation owned and operated by it could appear and sue.<sup>41f</sup>

The distinct entity theory was also applied to a corporation owned by the Brazilian government. In *In re Companhia de Navegacao Lloyd Brasileiro*,<sup>41g</sup> the corporation was petitioning for limitation of li-

<sup>41a</sup> 21 F. (2d) 180 (S. D. N. Y. 1927); Note (1928) 26 MICH. L. REV. 333.

<sup>41b</sup> 31 F. (2d) 199 (S. D. N. Y. 1929); Notes (1929) 42 HARV. L. REV. 1078; (1930) 28 MICH. L. REV. 457.

<sup>41c</sup> See, Hervey, *The Immunity of Foreign States When Engaged in Commercial Enterprises: A Proposed Solution* (1929) 27 MICH. L. REV. 751. See also, (Note) *Government Corporations: Legal Status of the Canadian National Railway and Subsidiaries* (1935) 3 GEO. WASH. L. REV. 455.

<sup>41d</sup> *Amtorg Trading Corporation v. United States*, 71 F. (2d) 524 (Ct. of Cust. & Pat. App. 1934), *rev'g* U. S. Cust. Ct., Reap. Dec. 2668 (1931). See also, *Amtorg Trading Corporation v. N. Y. Indemnity Co.*, 256 N. Y. 671, 177 N. E. 187 (1931) (mem. dec.), *aff'g* 242 N. Y. Supp. 811 (1930) (mem. dec.) and *Amtorg Trading Corporation v. Comm. of Int. Rev.*, 65 F. (2d) 583 (C. C. A. 2nd, 1933) which permitted suits by the Amtorg Corporation but did not raise the question of its standing in court.

<sup>41e</sup> See, *The Penza*, 277 Fed. 91 (E. D. N. Y. 1921); *Soviet Republic v. Cibrario*, 235 N. Y. 255, 139 N. E. 259 (1923), *aff'g* 201 App. Div. 888, 193 N. Y. Supp. 952 (1922). See also, *The Sapphire*, 78 U. S. 164, 20 L. ed. 127 (1871).

<sup>41f</sup> See, (Note) *Immunity of Soviet State-Owned Property from Judicial Process* (1924) 3 GEO. WASH. L. REV. 65.

<sup>41g</sup> 7 F. (2d) 235, 238 (E. D. La. 1925).



ability and opposing a motion for a *dedimus potestam* for the taking of testimony in Vera Cruz by written interrogatories. The court said that the fact that the petitioner in the case was a corporation owned by the government of Brazil, and its officers were officers of that government did not clothe the corporation with the character of a sovereign, and that the corporation had standing in court as a private litigant.

In *Molina v. Comision Reguladora Del Mercado de Henequen*,<sup>41a</sup> a corporation created by the State of Yucatan, Mexico, to assist in carrying out its policies concerning the growth and sale of hemp was held subject to suit in New Jersey. The decision was upon two grounds: one, that the corporation was a separate entity and did not have the immunity from suit granted to a foreign sovereign, and, second, that even if the corporation were the same as the State, the State of Yucatan was only a member of the federated state of Mexico and was not such a sovereign state as is immune from the jurisdiction of the courts of another sovereign.<sup>41b</sup>

But after suability is settled, questions as to liability arise.

A corollary of the axiom that the federal government may not be sued except with its consent is that the government is immune from tort liability. There are two primary theories for this doctrine: one, that the State—the King under common law—can do no wrong; the other, that since the government is exempt from suit and since it has not consented to be sued for torts, there can be no tort committed by the United States. However, the agent of the government, if he or it commits a wrong, is answerable for those wrongful acts.<sup>42</sup>

Do corporations, organized, operated, and entirely owned by the federal government, share the government's immunity from tort liability? Or, are they to be considered as separate entities liable for their misdeeds?

These questions seem to have first arisen in the case of *Panama Railroad Company v. Curran*.<sup>43</sup> A Mrs. Curran sued the Panama Railroad for damages claimed to have resulted from injuries sustained by her in consequence of the defendant's alleged negligence in permitting the floor of a commissary operated by it to be in a dangerously slippery condition. The suit was defended on the ground, among oth-

<sup>40</sup> 91 N. J. L. 382, 103 Atl. 397 (1918).

<sup>41</sup> See also, *Kungliz Jarnvagsstyrelsen v. Dexter & Carpenter, Inc.*, 32 F. (2d) 195 (C. C. A. 2nd, 1929).

<sup>42</sup> The origin, development, and application of the doctrine of governmental immunity from tort claims is thoroughly discussed in Borchar, *Government Liability in Tort* (1924-1927) 34 YALE L. J. 1, 129, 229, 36 YALE L. J. 1, 757, 1039. See also, McGuire, *Tort Claims Against the U. S.* (1931) 19 GEORGETOWN L. REV. 133.

<sup>43</sup> 256 Fed. 768 (C. C. A. 5th, 1919).

ers, that the Railroad was a corporate entity all of whose stock was owned by the United States and that it was acting in the place of the government and therefore was not liable for torts. The court, in holding the defendant liable, adhered to the theory that a corporation is an entity distinct from its stockholders and said that "from the fact that one owns all the stock of a private corporation it does not follow that the acts of the corporation are to be treated, not as its acts, but as the acts of its sole stockholders." The court relied on the early case of *The Bank of the United States v. The Planters' Bank of Georgia*<sup>44</sup> as its authority. This case involved a bank in which the state of Georgia was a shareholder and which was trying to clothe itself with the sovereignty of the State. However, the Supreme Court, with Chief Justice Marshall writing the opinion, held that it was a distinct entity and partook of none of the characteristics of its stockholder. The court said: "It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted."<sup>45</sup> These principles were applied in the *Curran* case as being in point even where the federal government was involved.

Both before and after the *Curran* case, there were cases in the Supreme Court and other federal courts holding the Panama Railroad liable for torts committed by it, but in which the corporation had made no claim of sovereign immunity and its governmental aspect was not presented or discussed.<sup>46</sup>

An opposite view to that set forth in the *Curran* decision was taken

<sup>44</sup> 22 U. S. 904, 6 L. ed. 244 (1824).

<sup>45</sup> 22 U. S. 904, 907, 6 L. ed. 244, 244 (1824). See also, *Bank of Kentucky v. Wister* 27 U. S. 318, 7 L. ed. 437 (1829).

<sup>46</sup> *Panama Railroad Company v. Bosse*, 249 U. S. 41, 39 Sup. Ct. 211, 63 L. ed. 466 (1919), *aff'g* 239 Fed. 303 (C. C. A. 5th, 1917); *Panama Railroad Company v. Toppin*, 252 U. S. 308, 40 Sup. Ct. 319, 64 L. ed. 582 (1920), *aff'g* 250 Fed. 989 (C. C. A. 5th, 1918); *Panama Railroad Company v. Pigott*, 254 U. S. 552, 41 Sup. Ct. 199, 65 L. ed. 400 (1921), *aff'g* 256 Fed. 837 (C. C. A. 5th, 1919); *Panama Railroad Company v. Beckford*, 231 Fed. 436 (C. C. A. 5th, 1916); *Panama Railroad Company v. Robert*, 256 Fed. 773 (C. C. A. 5th, 1919); *Panama Railroad Company v. Rock*, 272 Fed. 649 (C. C. A. 5th, 1921).

See also, *Panama Railroad Company v. Strobal*, 282 Fed. 52 (C. C. A. 5th, 1922).

Similarly, *Pacific Mail Steamship Company v. Panama Railroad Company*, 251 Fed. 449 (C. C. A. 2nd, 1918), *cert. denied*, 248 U. S. 567, 39 Sup. Ct. 9, 63 L. ed. 424 (1918), involved a tort claim against the corporation. The railroad was held not liable as a matter of law on the facts of the case, with no claim or mention being made of possible immunity as a governmental instrumentality.

by the court in the case of *Ballaine v. Alaska Northern Railway Company*.<sup>47</sup> This was an action for malicious prosecution which was defended mainly upon the ground that the United States owned the Railroad. The court held that in acquiring the stocks and bonds and property of the Railroad, the United States acted in its sovereign capacity, and in exercising entire control, possession, ownership, and management, the government had merely employed the corporate organization as an agency through which to execute the purposes of the statutes authorizing purchase, construction, and operation of railroads in Alaska. The court also said that if this action were allowed and the plaintiff recovered, an execution issued against the railroad and its property attached would produce a situation in which there was "a judgment creditor interfering with the property owned by the United States, held, it is true, in the name of the railroad company, yet so held for the account of the United States by and through an agency in the form of a corporation."

The only case concurring in the view of the *Ballaine* case is *Keeley v. Kerr*.<sup>48</sup> The case, holding that the Emergency Fleet Corporation was not subject to suit for a tort committed by its agent, was decided by a district court in Oregon upon the authority of the *Ballaine* case which had been decided in that circuit.<sup>49</sup>

Before the Supreme Court finally passed upon the question of whether or not a government owned corporation was immune from tort liability, three other cases arose in which liability was imposed even though the United States was the sole stockholder of the defendant corporation.

A district court in Louisiana held in the case of *American Cotton Oil Company v. U. S. S. B. Emergency Fleet Corporation*<sup>50</sup> that the Fleet Corporation, although entirely owned by the federal government, could be sued at law for a tort. A similar decision was rendered in *Panama Railroad Company v. Minnix*.<sup>51</sup>

*Federal Sugar Refining Company v. United States Sugar Equaliza-*

<sup>47</sup> 259 Fed. 183 (C. C. A. 9th, 1919), *aff'd* 5 Alaska 694 (1917); Notes (1920) 20 COL. L. REV. 217; 8 A. L. R. 995.

<sup>48</sup> 270 Fed. 874 (D. C. Ore. 1921).

<sup>49</sup> The case of Sloan Shipyards Corporation v. U. S. S. B. Emergency Fleet Corporation, 268 Fed. 624 (W. D. Wash. 1920) when decided in the lower court followed the *Ballaine* case but was later reversed by the Supreme Court.

<sup>50</sup> 270 Fed. 296 (E. D. La. 1921).

<sup>51</sup> 282 Fed. 47 (C. C. A. 5th, 1922). In *McComb v. U. S. Housing Corp.*, 264 Fed. 589 (D. C. Del. 1920), when the Housing Corporation allegedly acted in excess and abuse of its lawful authority in connection with the requisition of land, the court, without especially discussing the liability of the Corporation to tort actions, held that an action to redress injuries caused by the unauthorized act was not a suit against the government and could be maintained against the corporation.

tion Board, Incorporated<sup>52</sup> involved a tort committed by a government owned corporation which had been organized under the laws of Delaware as a part of the government's war-time Food Administration.<sup>53</sup> The court held that this was a private corporation chartered by the state of Delaware and governed by its general corporation laws, among which are powers for a corporation to sue and be sued. The fact that the government owned all the stock and, through government officials, operated the company was not deemed sufficient to give the corporation sovereign character. The court said that the federal government, when using a private corporation, had to take it as it was and with whatever rights and liabilities the law of the chartering state might impose upon it. The *Planters' Bank* case was used by the court to sustain its holdings. The *Ballaine* case was distinguished on the ground that it was decided on the special facts of the case involving an Act of Congress directing the acquisition of railroads which was carried out by using a corporate organization as an agency of the government.

This question of corporate liability for tort when all the stock is owned by the government first came directly before the Supreme Court in *Sloan Shipyards Corporation v. United States Shipping Board Emergency Fleet Corporation*.<sup>54</sup> This suit was against the Fleet Corporation for wrongful action by it in connection with certain property belonging to the plaintiff. The district court had dismissed the action on the ground that the Fleet Corporation was an instrumentality of the government and that a suit against it was a suit against the United States which could not be held liable in tort.<sup>55</sup>

The Supreme Court, however, held that the Fleet Corporation was an agent of the United States created to perform certain functions, but that nevertheless, the agent, merely because it was such, could not escape answering for its wrongful acts. The court looked to its incorporation under the general corporation laws of the District of Columbia which permitted it to sue and be sued and said that the fact that the United States owned all the stock did not affect the legal position of the company. The court held strictly to the theory of a distinct corporate entity and refused to give the corporation the cloak of the government's immunity. Mr. Chief Justice Taft wrote a dissenting opinion in which he claimed that the acts of the Corporation

<sup>52</sup> 268 Fed. 575 (D. C. N. Y. 1920).

<sup>53</sup> See, VAN DORN, GOVERNMENT OWNED CORPORATIONS (1926) 170-197.

<sup>54</sup> 258 U. S. 549, 42 Sup. Ct. 386, 66 L. ed. 762 (1922); Notes (1922) 36 HARV. L. REV. 218, (1923) 32 YALE L. J. 282.

<sup>55</sup> *Sloan Shipyards Corporation v. U. S. S. B. Emergency Fleet Corporation*, 268 Fed. 624 (W. D. Wash. 1920), *reargument*, 272 Fed. 132 (W. D. Wash. 1921).

were acts of the government itself and that there could be no liability imposed except as might be permitted by statute.

Since the *Sloan Shipyards* case, there have been numerous cases holding the Fleet Corporation and the Panama Railroad Company liable in tort. Some of the decisions have discussed the claim of sovereign immunity by the Corporations,<sup>56</sup> while others have imposed liability according to the facts and law of the case with no discussion of the governmental character of the Corporations.<sup>57</sup>

The tenor of the cases indicates that tort claims against any of the present day corporations will probably be allowed. And, even though the cases so far decided have involved only corporations chartered in a state or the District of Columbia, there is no indication that any distinction should be made between the several corporations because of the various methods used in chartering them.

The *Sloan Shipyards* case<sup>58</sup> held that the Fleet Corporation could be sued for and was liable for a breach of contract. In *U. S. S. B. Merchant Fleet Corporation v. Harwood*,<sup>59</sup> the Fleet Corporation defended a breach of contract action on the ground that it was acting as agent for the government and therefore was not personally liable on the contract. The Supreme Court disregarded this defense and held that the Fleet Corporation was liable on contracts executed by it in its own name even though the Corporation was acting as the known agent of the government.<sup>60</sup> These two cases clearly indicate the liability of

<sup>56</sup> 50 S. C. 207, 74 L. ed. 686 (1930) *aff'g* 28 F. (2d) 725 (C. C. A. 4th, 1928); *Lindgren v. U. S.*, 281 U. S. 38, 50 S. Ct. 207, 74 L. ed. 686 (1930); *U. S. S. B. Emergency Fleet Corporation v. O'Shea*, 5 F. (2d) 123 (C. of A., D. of C. 1925); *Wallace v. U. S. S. B. Emergency Fleet Corporation*, 5 F. (2d) 234 (W. D. Wash. 1925); *Cohn v. United States Shipping Board*, 20 F. (2d) 56 (C. C. A. 6th, 1927). See also, *Lindgren v. U. S. S. B. Merchant Fleet Corporation*, 55 F. (2d) 117 (C. C. A. 4th, 1932), *cert. denied*, 286 U. S. 542, 52 Sup. Ct. 499, 76 L. ed. 1280 (1932).

<sup>57</sup> *Panama Railroad Company v. Johnson*, 264 U. S. 375, 44 Sup. Ct. 391, 68 L. ed. 748 (1924), *aff'g* 289 Fed. 964 (C. C. A. 2nd, 1923); *The Allianca* 290 Fed. 450 (E. D. Va. 1923); *Shea v. U. S. S. B. Emergency Fleet Corporation*, 202 N. Y. Supp. 809 (1924); *Theoktistou v. Panama Railroad Company*, 6 F. (2d) 116 (C. C. A. 5th, 1925), *cert. denied*, 269 U. S. 569, 46 Sup. Ct. 25, 70 L. ed. 416 (1925); *Zinnel v. U. S. S. B. Emergency Fleet Corporation*, 10 F. (2d) 47 (C. C. A. 2nd, 1925); *United States Shipping Board v. Greenwald*, 16 F. (2d) 948 (C. C. A. 2nd, 1927); *Howarth v. U. S. S. B. Emergency Fleet Corporation*, 24 F. (2d) 374 (C. C. A. 2nd, 1928). See also, *Grant v. U. S. S. B. Emergency Fleet Corporation*, 22 F. (2d) 488 (C. C. A. 2nd, 1927).

<sup>58</sup> *Supra* note 31.

<sup>59</sup> 281 U. S. 519, 50 Sup. Ct. 372, 74 L. ed. 1011 (1930), *aff'g* 32 F. (2d) 680 (C. C. A. 2nd, 1929) *which reversed* 26 F. (2d) 116 (D. C. Conn. 1928).

<sup>60</sup> See also, *U. S. S. B. Emergency Fleet Corporation v. South Atlantic Dry Dock Co.*, 300 Fed. 56 (C. C. A. 5th, 1924) which held that the Fleet Corporation was liable on contracts made by it for work on ships in its possession and operated by it even though the ships were owned by the United States and the other party knew it; *Dietrich v. U. S. S. B. Emergency Fleet Corporation*, 9 F. (2d) 733 (C. C. A. 2nd, 1925). *Smith v. Emergency Fleet Corporation*, 26 F.

a government owned corporation upon a contract entered into by it.<sup>61</sup>

Not only may a government owned corporation sue and be sued, but in certain instances it has been held that the United States is a proper party plaintiff in suits involving government corporations.

The United States was permitted to enjoin the collection of taxes levied against the Emergency Fleet Corporation,<sup>62</sup> the Spruce Production Corporation,<sup>63</sup> and the United States Housing Corporation<sup>64</sup> although the question of whether the government was a proper party was not raised. In these cases, the taxes levied upon the corporations were held invalid because they were declared to be in effect taxes upon the property of the United States; evidently it was assumed that the United States was a proper party because of its interest in the property and the result.

In an action brought by the United States and the Spruce Production Corporation to recover damages for breach of a contract between the Corporation and the defendant, it was held that the United States was a proper party plaintiff. The court said that the government was seeking to enforce a right in which it had a real and substantial interest and consequently could join in a suit by a corporation owned by it.<sup>65</sup>

In a suit to quiet title to property requisitioned by the Housing Corporation, the United States was held to be the real party in interest and entitled to maintain the action.<sup>66</sup>

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(2d) 337 (C. C. A. 2nd, 1928) which held the Fleet Corporation not relieved of liability for damages caused to cargo by deviation (in violation of the shipping contract) even though it defended on the ground of agency for the United States. *U. S. S. B. Emergency Fleet Corporation v. Tabas*, 22 F. (2d) 398 (C. C. A. 3rd, 1927).

<sup>61</sup> There are two cases before the Harwood case which are to the contrary. *Astoria Marine Iron Works v. U. S. S. B. Emergency Fleet Corporation*, 295 Fed. 415 (D. C. Ore. 1924) held that the Fleet Corporation was not personally liable on a contract for ship construction made as authorized agent of the President and where the contract expressly recited that the Corporation, as agent, represented the United States, as owner, and that the work was to be done for and paid for by the owner. *W. P. Tanner-Gross Co. v. James W. Elwell & Co.*, 2 F. (2d) 396 (S. D. N. Y. 1924) held that the Fleet Corporation was not personally liable on a contract made by it as disclosed agent of the United States.

More recently, *Galveston Dry Dock & Construction Co. v. U. S.*, 7 F. Supp. 460 (S. D. Tex. 1934) held that the Merchant Fleet Corporation was not liable on a contract executed by it as agent for the Shipping Board for repairs to a vessel of the Shipping Board. See also, *id.*, 13 F. (2d) 608 (C. C. A. 5th, 1926); *id.*, 31 F. (2d) 247 (C. C. A. 5th, 1929).

<sup>62</sup> *U. S. v. Coghlan*, 261 Fed. 425 (D. C. Md. 1919).

<sup>63</sup> *U. S. v. Clallam County, Wash.*, 283 Fed. 645 (W. D. Wash. 1922), *aff'd*, 262 U. S. 341, 44 Sup. Ct. 121, 68 L. ed. 328 (1923).

<sup>64</sup> *City of New Brunswick v. U. S.* 276 U. S. 547, 48 Sup. Ct. 371, 72 L. ed. 693 (1928), *rev'g* 11 F. (2d) 476 (C. C. A. 3rd, 1926), *which rev'd* 1 F. (2) 741 (D. C. N. J. 1924).

<sup>65</sup> *Erickson v. U. S.*, 264 U. S. 246, 44 Sup. Ct. 310, 68 L. ed. 661 (1924).

<sup>66</sup> *U. S. v. Stein*, 48 F. (2d) 626 (N. D. Ohio 1921).

In an action by the Reconstruction Finance Corporation upon a promissory note obtained by it in consequence of a purchase of the assets of a defunct bank, the United States was permitted to intervene as a party plaintiff and prosecute the action. The court held that the Corporation was acting merely as a representative of the United States and functioning as an agency of the government and that consequently the United States, as principal, could properly join with its agent in bringing any action for the conservation of the government's rights or to recover moneys due to its agents.<sup>66a</sup>

In some of the cases concerning the Fleet Corporation, the courts also said that the Corporation was acting only as the agent of the government and not in its corporate capacity and that the United States, as principal, could bring suit. Thus, an action to recover overpayment by the Fleet Corporation on a contract for propellers,<sup>67</sup> and suits in admiralty to recover under charter parties entered into by the Fleet Corporation<sup>68</sup> were sustained when brought by the United States alone.<sup>69</sup>

On the other hand, the United States was held not to be the real party in interest in a suit to foreclose mortgages given to the Fleet Corporation, "representing the United States of America." The court there held that the Fleet Corporation was acting as a separate corporate entity and not as agent of the United States.<sup>70</sup>

In *United States v. New Amsterdam Casualty Co.*,<sup>71</sup> the court refused to permit suit by the United States, as principal, on a contract of the Fleet Corporation because the instrument in suit was under seal and only named parties to a sealed instrument could bring suit on it. However, in another action on the same surety contract, the United States was permitted to sue as assignee and to allege defaults suffered by it as principal.<sup>72</sup>

In an action against the government to recover excess income

<sup>66a</sup> *Reconstruction Finance Corporation v. Krauss*, 12 F. Supp. 44 (D. C. N. J. 1935).

<sup>67</sup> *Russell Wheel and Foundry Co. v. U. S.*, 31 F. (2d) 826 (C. C. A. 6th, 1929), *aff'd* 11 F. (2d) 531 (E. D. Mich. 1926).

<sup>68</sup> *U. S. v. Courtright-Dinnick Co.*, 28 F. (2d) 142 (E. D. Pa. 1928) (libel to recover demurrage for a delay in loading a vessel of the Fleet Corporation); *U. S. v. Gano-Moore Co.*, 35 F. (2d) 395 (E. D. Pa. 1929) (libel to recover excess of dispatch moneys retained by the defendant improperly and not due because of delay in loading); *U. S. v. Czarnikow-Rionda*, 40 F. (2d) 214 (C. C. A. 2nd, 1930) (libel to recover demurrage defendant agreed to pay to Fleet Corporation); *The Lake Galera*, 60 F. (2d) 876 (C. C. A. 2nd, 1932).

<sup>69</sup> *Contra: U. S. v. Mathews*, 282 Fed. 266 (C. C. A. 9th, 1922).

<sup>70</sup> *Providence Engineering Corp. v. Downey Shipbuilding Corp.*, 294 Fed. 641 (C. C. A. 2nd, 1923).

<sup>71</sup> 52 F. (2d) 148 (S. D. N. Y. 1931).

<sup>72</sup> *U. S. v. New Amsterdam Casualty Co.*, 55 F. (2d) 377 (S. D. N. Y. 1932). See also, *New Amsterdam Casualty Co. v. U. S.*, 16 F. (2d) 847 (C. C. A. 4th, 1927).

taxes paid, the United States was permitted to maintain a counterclaim on a bond given to the Fleet Corporation, the government claiming both as principal and assignee of the instrument.<sup>73</sup> Similarly, in a suit by the United States to recover overpayments to the defendant by the Fleet Corporation on a series of war-time contracts, the defendant was permitted to use as set-offs claims it had against the Fleet Corporation, but the court held that no judgment could be given against the United States for the defendant's excess claims.<sup>74</sup>

The defense of laches<sup>75</sup> and the statute of limitations<sup>76</sup> have been allowed to defeat an action by the Fleet Corporation, and on this basis would presumably be good against the other government corporations. However, in an action brought by the United States to recover demurrage under a charter party entered into by the Fleet Corporation, the defendant was not allowed to use laches as a defense to defeat the government's claim.<sup>77</sup> But, in a libel by the United States for damages to a vessel of the Shipping Board, the defendant was allowed to set up the defense of laches against the government.<sup>78</sup> And on the other hand, a defendant was not permitted to use the statute of limitations to defeat an action brought by the United States to recover overpayment of charter hire made by the Fleet Corporation.<sup>79</sup>

Although the federal statutes forbid the assignment of unliquidated claims against the United States,<sup>79a</sup> a suit by an assignee of a claim may be maintained against the United States where the claim was originally against the Emergency Fleet Corporation, against whom assignments are not forbidden.<sup>79b</sup>

<sup>73</sup> *Crane v. U. S.*, 55 F. (2d) 734 (Ct. Cl. 1932). See also, *American Shipbuilding Co. v. U. S.*, 60 Ct. Cl. 1005 (1925). A decision by the Comptroller-General in 1928 held that the United States could set off a debt due the Fleet Corporation by a bankrupt marine engineering corporation against a claim of the bankrupt against the United States. 7 Dec. C. G. 576 (1928).

<sup>74</sup> *U. S. v. Skinner and Eddy Corp.*, 28 F. (2d) 373 (W. D. Wash. 1928). See also, *Skinner and Eddy Corp. v. McCarl*, 275 U. S. 1, 48 Sup. Ct. 12, 72 L. ed. 131 (1927); *U. S. v. Skinner and Eddy Corp.*, 5 F. (2d) 708 (W. D. Wash. 1925); *U. S. v. Skinner and Eddy*, 35 F. (2d) 889 (C. C. A. 9th, 1929).

<sup>75</sup> *The No. 34*, 11 F. (2d) 287 (D. C. Mass. 1925).

<sup>76</sup> *U. S. v. Brown*, 247 N. Y. 211, 160 N. E. 13 (1928) (dictum).

<sup>77</sup> *U. S. v. Czarnikow-Rionda Co.*, 40 F. (2d) 214 (C. C. A. 2nd, 1930); *The Lake Galera*, 60 F. (2d) 876 (C. C. A. 2nd, 1930). But see, *U. S. v. Jacksonville Forwarding Co.*, 1925, A. M. C. 958, in which laches was permitted to be used as a defense to a libel by the United States on the ground that when the government enters business outside of strict government matters it can allow its claim to be barred by laches just as may a private individual.

<sup>78</sup> *The No. 34*, 11 F. (2d) 287 (D. C. Mass. 1925).

<sup>79</sup> *U. S. v. Brown*, 247 N. Y. 211, 160 N. E. 13 (1928) (dictum).

<sup>79a</sup> 35 STAT. 411 (1908), 31 U. S. C. A. §203 (1927).

<sup>79b</sup> *Providence Engineering Corporation v. Downey Shipbuilding Corporation*, 3 F. (2d) 154 (E. D. N. Y. 1924); *Charles Nelson Company v. United States*, 11 F. (2d) 906 (W. D. Wash. 1926); *Rhodes v. United States*, 8 F. Supp. 124 (E. D. N. Y. 1934).



There is a general rule in respect to garnishment that the United States, or a state, or even a local governmental unit cannot be subjected to liability as a garnishee in a controversy between private litigants.<sup>80</sup> The tenor of the cases indicates that the Fleet Corporation, and by analogy the other government owned corporations, would also fall within this rule. The cases in point are somewhat confused.

The first case involving garnishment of the Fleet Corporation did not produce a clear decision on the point.<sup>81</sup> Four actions, the Corporation being garnishee in two of them, were consolidated for trial. The Corporation moved to dismiss all the actions, and the District Court denied its motion. The court indicated that upon a trial of the cases that garnishment of the Corporation would not be permitted where it was acting as the United States or where its property and assets were in the actual use of the government. On the other hand, if it were acting in its capacity as a private corporation, garnishment would be permitted. Thus, so far as garnishment generally is concerned, the court did not adopt either view of the Corporation's status but rather left the situation to be decided by the facts of each case.

In a case in the state courts of Pennsylvania, it was held that the Fleet Corporation, although it was an agency of the United States and all its stock was owned by the government, nevertheless had only the status of any other business corporation and did not take on aspects of sovereignty. Garnishment of the Corporation was permitted.<sup>82</sup>

On the other hand, the Court of Appeals of the District of Columbia has held that the Fleet Corporation, although it may be sued in certain cases like a private corporation, is an instrumentality of the government and cannot be subject to attachment or garnishment in a case involving solely the rights or liabilities of other parties.<sup>83</sup>

A recent case in which the Home Owners Loan Corporation was summoned as garnishee held that the funds of the Corporation are not subject to garnishment in an action against a creditor of the Corpora-

<sup>80</sup> See, 28 C. J. 55-65.

<sup>81</sup> *Commonwealth Finance Corp. v. Landis*, 261 Fed. 440 (E. D. Pa. 1919). (Emergency Fleet Corporation, garnishee).

<sup>82</sup> *Haines v. Lone Star Shipbuilding Co.*, 268 Pa. 92, 110 Atl. 788 (1920) (U. S. S. B. Emergency Fleet Corporation, garnishee); 275 Pa. 260, 118 Atl. 909 (1922).

<sup>83</sup> *McCarthy v. U. S. S. B. Merchant Fleet Corporation*, 53 F. (2d) 923 (C. of A., D. of C., 1931), *cert. denied*, 285 U. S. 547, 52 Sup. Ct. 408, 76 L. ed. 938 (1932). In an earlier case, the Court of Appeals of the District of Columbia held invalid a garnishment proceeding against the Fleet Corporation on the ground that the debt the plaintiff was seeking to attack was a judgment of a court of another jurisdiction not attachable in the District of Columbia. The question of immunity of the Fleet Corporation from garnishment was not discussed. *Merchant Fleet Corporation v. Hirsch Lumber Co.*, 35 F. (2d) 1010 (C. of A., D. of C. 1929).

tion even though the Home Owners Loan Corporation Act provides that the Corporation may sue and be sued in any court of competent jurisdiction.<sup>84</sup> The decision was based upon two grounds. One, that the Home Owners Loan Corporation is a public corporation owned by the government and operated by it as an instrumentality of the United States and therefor not subject to garnishment proceedings without express statutory provision for them. The other, that the funds of the Corporation are deposited in the Treasury with the Treasurer of the United States and the rule that moneys in the possession of the United States are not subject to garnishment is applicable in this situation.

In the light of these conflicting decisions, it is probable that if further garnishment cases arise the courts will be likely to adopt the attitude that the corporations are performing governmental functions and that they cannot be garnished because such proceedings would interfere with the operations of the government.

Whether or not the property of a government owned corporation is subject to attachment before or during a suit against it or on execution to enforce a judgment rendered against it is a question which cannot yet be definitely answered. The Suits in Admiralty Act exempts vessels of the Fleet Corporation from seizure on a libel in rem.<sup>85</sup> The same Act also provides that judgments rendered against the United States or the Fleet Corporation in a libel in personam brought under the Act shall be paid out of the United States Treasury.<sup>86</sup> Thus, this Act prohibits the seizure in admiralty suits of ships belonging to the Fleet Corporation and provides a method of payment of judgments obtained in such suits. But, beyond a few dicta in some of the cases involving the war-time corporations and a recent decision of the Supreme Court, there are no precedents upon which to base a definite statement as to the possibility of attaching property of the corporations generally.

The case of *Federal Land Bank of St. Louis v. Priddy*<sup>86a</sup> did permit an attachment against a Federal Land Bank. Although this case did not involve a typical completely government owned and operated

<sup>84</sup> Gill v. Reese, U. S. L. Week, April 23, 1935, at 7 (Munic. Ct. of Cleveland, Ohio, March 29, 1935).

<sup>85</sup> Post p. 35-38 and n. 113-121.

<sup>86</sup> Act of March 9, 1920, c. 95, §§ 8, 41 STAT. 527 (1920), 46 U. S. C. A. §748 (1927). U. S. S. B. Emergency Fleet Corporation v. Rosenberg Brothers and Co., 276 U. S. 202, 48 Sup. Ct. 256, 72 L. ed. 531 (1928); Johnson v. U. S. S. B. Emergency Fleet Corporation, 280 U. S. 320, 50 Sup. Ct. 118, 74 L. Ed. 451 (1930); Schaefer v. U. S. S. B. Emergency Fleet Corporation, 242 N. Y. Supp. 522 (1930). See also, 27 Dec. Compt. Treas. 987 (1921); 2 Dec. Compt. Gen. 751 (1923); 3 Dec. Compt. Gen. 566 (1924) (a judgment rendered by an English ct.).

<sup>86a</sup> 295 U. S. 229, 55 Sup. Ct. 705, 79 L. ed. 1408 (1935).

corporation, it does furnish an indication that when the situation does arise the courts may permit an attachment. Federal Land Banks are privately operated under government supervision and the United States owns but approximately fifty per cent of their capital stock.<sup>86b</sup> This case was an action against the St. Louis Land Bank commenced by an attachment of the real property of the defendant. The Bank applied for a writ of prohibition to prevent the judge of the Circuit Court from proceeding with the trial of the case after he had denied its motion to vacate the attachment. The Bank argued that it was a federal instrumentality, immune from mesne process of attachment, by virtue of its organization and functions under federal statutes. The application was denied by the Supreme Court of Arkansas. The United States Supreme Court considered the status of the Land Banks and placed emphasis upon the fact that even though they are government instrumentalities they have numerous attributes of private corporations. The Court said, "Federal Land Banks were intended to be subject to the incidents of suit, including attachment and execution. In creating federal land banks as government instrumentalities, but with many of the purposes and activities of private corporations, in exempting them alone from taxation, and at the same time subjecting them, like joint-stock land banks, to suit" as fully as natural persons, "Congress cannot be thought to have intended that either class of banks should be immune from attachment, and their judgment creditors relegated to a receivership, allowed as a matter of grace, as the sole means of collecting their judgments. In the present case it does not appear that the attachment would directly interfere with any function performed by petitioner as a federal instrumentality. We reserve the question whether a different result would be required if such interference were shown."

*United States v. Kinney*<sup>86c</sup> was a case involving a proceeding in which the United States claimed goods which had been levied upon under a judgment rendered against the Fleet Corporation in a suit in which it was garnishee. A motion of the plaintiff in execution for an order directing the marshal to sell the goods was granted. The Court evidently assumed that garnishment of the Fleet Corporation with execution on and sale of its property on the garnishment judgment were permissible. The case was decided on procedural points, and the governmental status of the Fleet Corporation was not discussed.

The cases indicate that garnishment proceedings against government

<sup>86b</sup> See, Pamphlet, *Statements of Condition of Federal Land Banks and Federal Intermediate Credit Banks* (Govt. P. O. 1935) 4, 9.

<sup>86c</sup> 264 Fed. 542 (E. D. Pa. 1920), *appeal dismissed*, 254 U. S. 663, 41 Sup. Ct. 64, 65 L. ed. 464 (1920).

owned corporations will not be allowed when they will affect the operations of the corporation as an agency of the government. Following this rule, it would seem that the courts could refuse to allow property of a corporation to be attached before or during a suit. Tying up of its property during litigation might be held to hamper the operations of the corporations and to be an interference with governmental administration. In those instances in which governmental functions have been involved, the courts have tended to disregard the corporate entity and to clothe the government owned corporation with its stockholder's privileges. So, a similar course might be pursued in attachment proceedings.

It seems more likely, however, that the courts will follow the cases permitting suit on a theory of a distinct corporate entity and hold that the corporations are subject to attachment as well. Since suit may be brought, there should be no reason why a plaintiff should not be able to utilize all possible devices in prosecuting his action. Although a plaintiff would probably have but infrequent occasion to use attachment proceedings in an action against a government owned corporation, it would seem that attachment should be available if necessary. And, since the courts have held the corporations liable to suit like any private corporation, it would seem likely that the courts would hold that all the usual or possible incidents of an action are permitted.

Two cases indicate that this latter theory would be followed if the question of liability of a government owned corporation to attachment should arise. A libel in personam with an attachment of the money of the Fleet Corporation was permitted in *U. S. S. B. Emergency Fleet Corporation v. Banque Russo Asiatique, London*.<sup>87</sup> A consignee of a cargo carried by a Fleet Corporation vessel brought the suit to recover demurrage charges it had been forced to pay in order to receive the cargo. The court held that the libelant was not limited to a libel in personam against the United States or the Fleet Corporation under procedure as prescribed by the Suits in Admiralty Act but was entitled to begin its action by libel and foreign attachment pursuant to rule 2 of the Supreme Court Admiralty Rules. And in *Harwood v. U. S. S. B. Emergency Fleet Corporation*<sup>88</sup> an attachment of property of the Fleet Corporation pending trial of an action was evidently permitted although the attachment was later dissolved because of certain provisions of the Connecticut statutes as to attachments in general.

The same two courses are open to the court with respect to levy and sale of the property of a corporation under execution on a judgment against it. Following the theory that the property of the corpora-

<sup>87</sup> 286 Fed. 918 (C. C. A. 3rd, 1923).      <sup>88</sup> 300 Fed. 433 (D. C. Conn. 1924).

tions is more or less the property of the government and that any interference with it would hinder the operations of the government, they could disregard the corporate entity and declare the corporations' property exempt from execution. The cases involving taxation and garnishment together with the other cases giving the corporations governmental character could be used as a basis for such a decision.

On the other hand, the theory of a distinct corporate entity can be followed through to this end. Since a corporation may be sued and is liable for torts and breaches of contract, a successful plaintiff should be permitted to make whatever judgment is rendered effective by an execution and sale if necessary. If execution should not be permitted, the right to sue would be valueless should the corporation refuse to pay judgments against it. That the courts would be likely to follow this view if the question arose is indicated by the language used in some of the decisions involving government corporations.

*Sloan Shipyards Corp. v. U. S. S. B. Emergency Fleet Corporation*<sup>89</sup> held that the Fleet Corporation was subject to suit. In the course of the opinion, Mr. Justice Holmes said: "The meaning of incorporation is that you have a person, and as a person one that presumably is subject to the general rules of law."<sup>90</sup> Later on, he said: "The transfer of the property of the Fleet Corporation to the Shipping Board<sup>91</sup> . . . may affect the value of the remedy afforded by the present suit but not the jurisdiction of the Court." This would indicate that he thought that the Corporation's assets were liable in satisfaction of the judgment.

Mr. Chief Justice Taft said in his dissenting opinion in the same case: "The Court suggests that judgments thus obtained will be good only against the Fleet Corporation and the claimants must run the risk of getting a judgment against a debtor which cannot pay. Congress has taken over all the assets of the Fleet Corporation so that such judgments will be valueless except so far as Congress shall conclude to pay them."

In *United States Grain Corporation v. Phillips*<sup>92</sup> there is the statement that "it is true that the legal title was in the Corporation, that the property of the Corporation might have been taken to pay a judgment against it, and that in other ways the difference of personality would be recognized."

<sup>89</sup> 258 U. S. 549, 42 Sup. Ct. 386, 66 L. ed. 762 (1922).

<sup>90</sup> Italics here and in immediately following quotations are the writer's.

<sup>91</sup> By the Act of June 5, 1920, c. 250, §4, 41 STAT. 988, 990 (1920), 46 U. S. C. A. §863 (1928).

<sup>92</sup> 261 U. S. 106, 113, 43 Sup. Ct. 283, 286, 67 L. ed. 552, 556 (1923).

In the case holding the Sugar Equalization Board liable for a tort<sup>93</sup> District Judge Mayer used two sentences from which it might be inferred that he thought that the Corporation would have to pay judgments out of the corporate assets and that, if necessary, such assets might be attached and sold under execution. He said: "But the incorporation under a state statute [Delaware] of a business corporation cannot deprive the agent thus created of its right as a corporation to make a profit nor *relieve it of its corporate liabilities*. . . . The property of the corporation cannot become the property of the stockholders until all provable claims are liquidated, no matter what the purpose of the stockholder may be, and the government's position as a stockholder is no different from that of a sovereign state which is a stockholder."

District Judge Foster in *American Cotton Oil Co. v. U. S. S. B. Emergency Fleet Corporation*<sup>94</sup> raised the question of execution by saying: "There is no good reason why the corporation should not be sued for damages arising for tort as well as from breach of contract. The question may arise as to whether or not the property of the corporation may be seized and sold to satisfy a judgment, but there is no need to consider that in connection with the exception in this case. After the plaintiff has established his claim, if he does so, there will be time enough to consider the method of collection."

In only one case has there been a direct statement on the point, and then it was merely dictum. The Panama Railroad was sued for damages caused by its negligence in the case of *Panama Railroad Company v. Minnix*.<sup>95</sup> In holding the Company liable, Circuit Judge King said: "While the United States is the sole stockholder of that corporation, the corporate entity of that company is maintained, and the railroad is operated by the corporation . . . the liability of the Panama Railroad Company to suit, as any other railroad company, and *its property to seizure*, is not affected by the fact that the United States is the sole stockholder."

Even in *Ballaine v. Alaska Northern Railway Company*<sup>96</sup> which held that the Alaska Railroad, being owned by the government, could not be sued for a tort,<sup>97</sup> the court suggested that should a judgment be given against the Railroad, the plaintiff would look to its property for satisfaction. This was one of the reasons which influenced the

<sup>93</sup> Federal Sugar Refining Co. v. U. S. Sugar Equalization Board, Inc., 268 Fed. 575, 586 (S. D. N. Y. 1920).

<sup>94</sup> 270 Fed. 296 (E. D. La. 1921).

<sup>95</sup> 282 Fed. 47, 49 (C. C. A. 5th, 1922).

<sup>96</sup> 259 Fed. 183 (C. C. A. 9th, 1919).

<sup>97</sup> This case does not represent the law. See, *supra* p. 256.

court to decide that a tort action could not be brought because such a result would probably interfere with the government.<sup>97a</sup>

These questions as to the possibility of attachment and of execution seem at the present time to be more or less academic. In none of the cases involving the Fleet Corporation, the Panama Railroad, or the other government owned corporations have the questions been directly raised or decided. Nor does it seem likely that they will arise.

An attachment is generally used when it appears that the defendant might evade paying any judgment rendered in the suit or when the defendant has property which can be reached by the plaintiff but is not readily available for a personal action. Neither of these reasons holds true for a government corporation.

Execution is used when the defendant fails to pay a judgment rendered against it. As a matter of fact, once a final judgment is given against a government corporation it is paid and discharged. Although the corporations resist claims to the utmost, depending upon each individual case, once the matter has been finally determined settlement is made without further controversy. It has not been, and probably will not be, necessary for a plaintiff to levy upon the corporations' property and sell it under execution to satisfy his judgment. Since the passage of the Federal Declaratory Judgment Act,<sup>98</sup> it would be convenient to sue these corporations in that form of proceeding, for a judgment, being final, would in all probability be obeyed as faithfully as any existing judgment taking coercive form.

Another problem in connection with suits involving government owned corporations concerns the question of the jurisdiction of various courts to entertain the actions. In general, it may be said that the corporations are treated as separate entities distinct from the government and that the various rules as to state and federal jurisdiction are applied in determining in what courts they may sue and be sued.

The federal district courts have jurisdiction of suits by or against a corporation chartered by Congress where the United States owns more than one-half of the corporation's capital stock and the amount in controversy exceeds \$3,000, on the ground that such a suit arises under the laws of the United States.<sup>99</sup> It has also been held that ac-

<sup>97a</sup>In a case concerning a corporation partially owned and operated by the Swiss government, the court, in holding the corporation liable for breach of contract, added a dicta that "property of the corporation taken on execution would not be property of the Swiss Federation." *Coale v. Société Coöperative Suisse des Charbons, Basle*, 21 F. (2d) 180 (D. C. N. Y. 1921).

<sup>98</sup>Act of June 14, 1934, 48 STAT. 955, 28 U. S. C. A. §400 (1935).

<sup>99</sup>Judicial Code §24, 28 U. S. C. A. §41 (1) (1927); *Pacific Railroad Removal Cases*, 115 U. S. 1, 5 Sup. Ct. 1113, 29 L. ed. 319 (1884); *Texas and Pacific Railroad Co. v. Cox*, 145 U. S. 593, 12 Sup. Ct. 905, 36 L. ed. 829 (1892); *Oregon*

tions against the Fleet Corporation are cognizable in the federal courts regardless of the amount in controversy because such suits arise under a law regulating commerce.<sup>100</sup> However, an action at law against the Fleet Corporation under the Merchant Marine Act for the death of a seaman is held not removable to the federal courts. This is because of the provisions of the Federal Employers' Liability Act, incorporated in the Merchant Marine Act, that the state and federal courts shall have concurrent jurisdiction of such actions and that no case brought in a competent state court shall be removed to the federal courts.<sup>101</sup>

Short Line and Utah Northern Railway Co. v. Skottowe, 162 U. S. 490, 16 Sup. Ct. 869, 40 L. ed. 1048 (1896); Texas and Pacific Railway Co. v. Cody, 166 U. S. 606, 17 Sup. Ct. 703, 41 L. ed. 1132 (1897); Matter of Dunn, 212 U. S. 374, 29 Sup. Ct. 299, 53 L. ed. 558 (1909); Union Timber Products Co. v. U. S. S. B. Emergency Fleet Corporation, 252 Fed. 320 (W. D. Wash. 1918); American Cotton Oil Co. v. U. S. S. B. Emergency Fleet Corporation, 270 Fed. 296 (E. D. La. 1921); Rosenberg v. U. S. S. B. Emergency Fleet Corporation, 271 Fed. 956 (D. C. Ore. 1920); Atlantic Corp. v. U. S. S. B. Emergency Fleet Corporation, 286 Fed. 222 (D. C. N. H. 1920). In Harry Porter Co., Inc. v. U. S. S. B. Emergency Fleet Corporation, 284 Fed. 397 (S. D. N. Y. 1922), and Hill v. Emergency Fleet Corporation, 284 Fed. 398 (S. D. N. Y. 1922), it was held that suits against government corporations chartered by Congress are removable on this ground regardless of the amount in controversy, but Delpit v. U. S. S. B. Emergency Fleet Corporation, 19 F. (2d) 60 (C. C. A. 9th, 1927) was to the contrary and did not permit removal because the jurisdictional amount of \$3000 was not involved.

The Act of Feb. 13, 1925, 43 STAT. 941 (1925), 28 U. S. C. A. §42, taking away jurisdiction of the district courts over suits involving a corporation chartered by Congress where the jurisdictional fact is that the suits arise under the laws of the United States because of federal incorporation, does not apply to corporations incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than half of its capital stock. See also, U. S. S. B. Emergency Fleet Corporation v. South Atlantic Dry Dock Co., 19 F. (2d) 486 (C. C. A. 5th, 1927).

However, Belden v. Aetna Life Insurance Co., 3 F. Supp. 809 (W. D. Tex. 1933) held that a suit against the Federal Intermediate Credit Bank of Houston and *other defendants was not removable* from a state court to the federal district court even though the bank is chartered and incorporated under an Act of Congress and its capital stock is owned entirely by the United States Government, although as a plaintiff in a proper case it would have the right to originally invoke the federal jurisdiction, or as a sole defendant to remove to the federal court.

<sup>100</sup> 36 STAT. 1092 (1911), 28 U. S. C. A. §41 (8) (1927); Ingram Day Lumber Co. v. U. S. S. B. Emergency Fleet Corporation, 267 Fed. 283 (S. D. Miss. 1920); Harry Porter Co., Inc. v. U. S. S. B. Emergency Fleet Corporation, 284 Fed. 397 (S. D. N. Y. 1922); Hill v. Emergency Fleet Corporation, 284 Fed. 398 (S. D. N. Y. 1922); James v. U. S. S. B. Emergency Fleet Corporation, 12 F. (2d) 89 (E. D. Pa. 1926); Katz v. U. S. S. B. Emergency Fleet Corporation, 32 F. (2d) 14 (E. D. N. Y. 1929). *Contra*: Delpit v. Emergency Fleet Corporation, 19 F. (2d) 60 (C. C. A. 9th, 1927).

<sup>101</sup> Reges v. U. S. S. B. Emergency Fleet Corporation, 299 Fed. 957 (E. D. N. Y. 1924); see also, Leon v. U. S. S. B. Emergency Fleet Corporation, 286 F. 681 (S. D. N. Y. 1921); Martin v. U. S. S. B. Emergency Fleet Corporation, 1 F. (2d) 603 (S. D. N. Y. 1924); Villard v. U. S. S. B. Emergency Fleet Corporation, 1 F. (2d) 570 (E. D. N. Y. 1924); Atianza v. U. S. S. B. Emergency Fleet Corporation, 3 F. (2d) 845 (E. D. N. Y. 1924).



A corporation chartered by Congress is considered a domestic corporation in each state in which it does business.<sup>102</sup> It is not, however, a citizen of any particular state for the purpose of giving jurisdiction to the federal courts on the ground of diversity of citizenship.<sup>103</sup>

Those federally owned corporations chartered under the laws of some states are domestic corporations in the state of incorporation. And the conclusion would seem to follow that they are citizens of such state for purposes of jurisdiction in the federal courts on the grounds of diversity of citizenship when the other requisite jurisdictional facts are present.<sup>103a</sup>

Also, cases involving state chartered corporations would seem within federal jurisdiction on the ground that they arise under the laws of the United States.<sup>104</sup> Although they are not chartered by Congress, the corporations are organized pursuant to Executive Order, based upon a federal statute, in order to carry out federal laws.

In all these instances, the state courts would also have jurisdiction of suits brought by or against the government owned corporations.<sup>105</sup>

The venue of actions to which a government corporation is a party is probably determined according to the rules set forth governing the venue of civil suits in the federal courts.<sup>106</sup> Since the corporations are treated as private corporations for the purpose of suit and for jurisdictional purposes, it is logical that they should be similarly treated as far as concerns venue. A few cases on this point indicate as much.

*Leon v. U. S. S. B. Emergency Fleet Corporation*<sup>107</sup> held that a

<sup>102</sup> *Twin Falls National Bank v. Reed*, 44 Idaho 573, 258 Pac. 526 (1927); *In re Cushing's Estate*, 40 Misc. Rep. 505, 82 N. Y. Supp. 795 (1903); *Commonwealth v. Texas and Pacific Railroad Co.*, 98 Pa. St. 90 (1881); *Texas and Pacific Railroad Co. v. Weatherby*, 41 Tex. Civ. App. 409, 92 S. W. 58 (1906). See also, N. Y. Civ. Prac. Act. § 7 (7); *Jacobsen v. Emergency Fleet Corporation*, 128 Misc. Rep. 138, 217 N. Y. Supp. 856 (1926).

<sup>103</sup> *Bankers' Trust Co. v. Texas and Pacific Railroad Co.*, 241 U. S. 295, 36 Sup. Ct. 569, 60 L. ed. 1010 (1916). See also, *Texas v. I. C. C.*, 258 U. S. 158, 42 Sup. Ct. 261, 66 L. ed. 531 (1922); *Anderson v. U. S. Fidelity and Guaranty Co.*, 8 F. (2d) 428 (S. D. Fla. 1925).

<sup>103a</sup> See, *Olson v. U. S. Spruce Production Corp.*, 267 U. S. 462, 45 Sup. Ct. 357, 69 L. ed. 738 (1925).

<sup>104</sup> See, *supra* note 99.

<sup>105</sup> *Atlantic Corp. v. U. S. S. B. Emergency Fleet Corporation*, 286 Fed. 222 (D. C. N. H. 1923); *Puget Sound Machinery Depot*, 293 Fed. 768 (W. D. Wash. 1923) (holding that the Fleet Corporation is subject to suit in a state in which it does business); *U. S. S. B. Emergency Fleet Corporation v. Sherman and Ellis, Inc.*, 208 Ala. 83, 93 So. 834 (1922); *Ingersoll-Rand Co. v. U. S. S. B. Emergency Fleet Corporation*, 184 N. Y. Supp. 272 (1920), *aff'd*, 195 App. Div. 838, 187 N. Y. Supp. 695 (1921); *Haines v. Lone Star Shipbuilding Co.*, 275 Pa. 260, 118 Atl. 909 (1922).

*Contra*: *Southern Bridge Co. v. U. S. S. B. Emergency Fleet Corporation*, 266 Fed. 747 (S. D. Ala. 1920).

<sup>106</sup> 36 STAT. 1101 (1911), 28 U. S. C. A. §112 and §§113-118 (1927).

<sup>107</sup> 286 Fed. 681 (S. D. N. Y. 1921). See also, *Panama Railroad Co. v. Johnson*, 264 U. S. 375, 44 Sup. Ct. 391, 68 L. ed. 748 (1924).

suit brought under the Seaman's Act which authorizes a seaman suffering personal injuries to sue at law for damages and provides that jurisdiction shall be in the court of the district in which the employer resides or in which his principal office is located<sup>107a</sup> could not be brought in the New York District Court without a showing that the principal office of the Fleet Corporation was within that jurisdiction within the meaning of the statute. And in *Caceres v. U. S. S. B. Emergency Fleet Corporation*<sup>108</sup> it was held that the venue of such an action against the Fleet Corporation is in the District of Columbia, the principal office of the Corporation.<sup>109</sup>

The case of *Wallace v. U. S. S. B. Emergency Fleet Corporation*<sup>110</sup> held that the Fleet Corporation is subject to an action at law for injuries to an employee in the district in which it maintained an office and place of business where it transacted business to bring it within the purview of the state laws as to doing business within the state. Service of process in this tort action on the district director of the Fleet Corporation in charge of its business within the district in which the suit was brought was sufficient, the defendant being a corporate entity doing business within the state.

*Commercial Trust Co. v. U. S. S. B. Emergency Fleet Corporation*<sup>110a</sup> raised the question of venue of suits against the Fleet Corporation. The court proposed two possibilities. One, that since the Corporation is organized in the District of Columbia and is not a citizen of any state, it may be sued in no federal court except in the District of Columbia without its consent. The other, that the question of venue coalesces with the Corporation's "presence" and "doing business" in the district in which the suit is brought. The court held, however, that the general appearance of the Corporation waived any defects as to venue and did not apply either rule. *Yaselli v. U. S. S. B. Emergency Fleet Corporation*<sup>110b</sup> held that where the jurisdiction of a federal court depends on the fact that the cause of action arises under the laws of the United States, the suit may be brought only in the district of which the defendant is an inhabitant and that the defendant may raise the question upon a special appearance.

<sup>107a</sup> See, 38 STAT. 1185 (1915), 46 U. S. C. A. §688 (1927).

<sup>108</sup> 299 Fed. 968 (E. D. N. Y. 1924). See also, *Panama Railroad Co. v. Vasquez*, 271 U. S. 557, 46 Sup. Ct. 596, 70 L. ed. 1085 (1926); *Wienbroer v. U. S. S. B. Emergency Fleet Corporation*, 299 Fed. 972 (E. D. N. Y. 1924); *Atianza v. U. S. S. B. Emergency Fleet Corporation*, 3 F. (2d) 845 (E. D. N. Y. 1924).

<sup>109</sup> However, in a case of this kind, objection to jurisdiction on the ground that the suit is not brought in the district of the employer's residence may be waived, *Mannion v. U. S. S. B. Emergency Fleet Corporation*, 9 F. (2d) 894 (C. C. A. 2nd, 1925).

<sup>110</sup> 5 F. (2d) 234 (W. D. Wash. 1925).

<sup>110a</sup> 48 F. (2d) 113 (C. C. A. 2nd, 1931). <sup>110b</sup> 298 Fed. 198 (S. D. N. Y. 1924).

The Tennessee Valley Authority Act provides that "the Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits."<sup>111</sup> The residence of the other corporations chartered by Congress is probably Washington, and of the state chartered corporations presumably at the respective state capitals.

In summary, it may be concluded that state and federal courts have concurrent jurisdiction of actions by or against the federally owned corporations. However, in order to confer jurisdiction on the federal courts, either originally or on removal, the necessary jurisdictional facts as set out in the Judicial Code<sup>112</sup> must be present. Thus, for the purpose of determining jurisdiction, as well as suability, the government owned corporations are treated as distinct entities and general rules are applied.

Suits in admiralty against the Fleet Corporation are in a classification of their own. Special rules have been set forth by the statutes and decisions.

In 1919, the Supreme Court, construing the Shipping Board Act, held that a vessel owned by the Fleet Corporation was subject to seizure and attachment by a libel in rem.<sup>113</sup> Ordinarily, the ships owned by the government are immune from seizure, but the Act of 1916 provided that any of the vessels of the Shipping Board while solely employed as merchant vessels should be subject to all laws, regulations, and liabilities governing merchant vessels, even though the United States was interested therein as owner, either in whole or in part.<sup>114</sup> And this Act was construed to permit seizure of vessels requisitioned and employed through the Fleet Corporation.

This liability to seizure of merchant vessels operated by the government and the Fleet Corporation was regarded as detrimental to the public interest and was an obstruction to the government's operation of commercial shipping. In 1920, Congress passed the Suits in Admiralty Act<sup>115</sup> to remedy the situation. This provided that no ves-

<sup>111</sup> 48 STAT. 63 (1933), 16 U. S. C. A. §831g (a) (1935). Whether this statute would serve to take the T. V. A. out of the rule that a corporation chartered by Congress is not a citizen of any particular state for the purpose of jurisdiction in federal courts on the grounds of diversity of citizenship, *quaere?* See, *supra*, p. 269 and note 103.

<sup>112</sup> 36 STAT. 1091 (1911), 28 U. S. C. A. §41 (1927).

<sup>113</sup> The Lake Monroe, 250 U. S. 246, 39 Sup. Ct. 460, 63 L. ed. 962 (1919).

<sup>114</sup> Act of Sept. 7, 1916, c. 451, 459, 39 STAT. 730 (1916). For section, as amended, see 46 U. S. C. A. §808 (1927).

<sup>115</sup> Act of March 9, 1920, 41 STAT. 525 (1920), 46 U. S. C. A. §§741-752 (1927).

The Federal admiralty jurisdiction extends to all waters that are in fact

sel owned by or for or in the possession of the United States or a corporation completely owned by the government should be subject to arrest or seizure. Instead, provision was made for a libel in personam against the corporation or the United States in admiralty proceedings where a merchant vessel was involved.<sup>115</sup> The procedure for bringing suits and for their conduct and for obtaining satisfaction of judgments is prescribed by the Act.

A number of cases hold that this Act furnishes the exclusive remedy in admiralty against the Fleet Corporation on all maritime causes of action arising out of its possession or operation of merchant vessels.<sup>116</sup> Nevertheless, there are other cases which hold that the Act does not apply to all such suits. A libel in personam with an attachment of the money of the Fleet Corporation was brought in *U. S. S. B. Emergency Fleet Corporation v. Banque Russo Asiatique, London*.<sup>117</sup> It was an action to recover demurrage charges, and the court held that the libelant was not limited to a libel in personam against the United States or the Fleet Corporation under procedure as prescribed by the Act but was entitled to begin its action by libel and foreign attachment pursuant to Rule 2 of the Supreme Court Admiralty Rules. Also, in *John G. Wright and Company v. U. S. S. B. Emergency Fleet*

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navigable. *The Robert W. Parsons*, 191 U. S. 17, 24 Sup. Ct. 8, 48 L. ed. 73 (1903). See also, *The Genessee Chief*, 53 U. S. 466, 13 L. ed. 1058 (1851); *The Montello*, 87 U. S. 430, 22 L. ed. 391 (1874); *In re Garnett*, 141 U. S. 1, 8, 11 Sup. Ct. 840, 841, 35 L. ed. 631 (1891); *Donnelly v. U. S.*, 228 U. S. 243, 262, 33 Sup. Ct. 449, 455, 57 L. ed. 820 (1912).

<sup>115</sup>The Act has been held not to prevent a libel in rem against a ship owned by the United States when in a foreign port. It does not "authorize a suit in personam against the United States as a substitute for a libel in rem when the United States vessel is not in a port of the United States or one of her possessions." *Blamberg Bros. v. U. S.*, 260 U. S. 452, 43 Sup. Ct. 179, 67 L. ed. 346 (1923).

<sup>116</sup>*U. S. S. B. Emergency Fleet Corporation v. Rosenberg Bros. and Co.*, 276 U. S. 202, 48 Sup. Ct. 256, 72 L. ed. 531 (1928); *Johnson v. U. S. S. B. Emergency Fleet Corporation*, 280 U. S. 320, 50 Sup. Ct. 118, 74 L. ed. 451 (1930); *Smith v. U. S. S. B. Emergency Fleet Corporation*, 26 F. (2d) 337 (C. C. A. 2nd, 1928); *Royal Insurance Co. v. U. S. S. B. Emergency Fleet Corporation*, 30 F. (2d) 946 (S. D. N. Y. 1929); *Wenstein v. Black Diamond S. S. Corp.*, 40 F. (2d) 590 (C. C. A. 2nd, 1930); *Independent Casing and Supply Co. v. Roosevelt S. S. Co.*, 44 F. (2d) 858 (S. D. N. Y. 1930); *Dietrich v. U. S. S. B. Emergency Fleet Corporation*, 59 F. (2d) 202 (C. C. A. 2nd, 1932); *Shea v. Export S. S. Corp.*, 253 N. Y. 17, 170 N. E. 477 (1930), *rev'd* 226 App. Div. 696, 233 N. Y. Supp. 893 (1929); *Filippo v. U. S. S. B. Emergency Fleet Corporation*, 228 App. Div. 115, 239 N. Y. Supp. 323 (1930); *Duffy v. U. S. S. B. Emergency Fleet Corporation*, 240 N. Y. Supp. 875 (1930). See also, *Schaefer v. U. S. S. B. Emergency Fleet Corporation*, 242 N. Y. Supp. 522 (1930) in which an action against the Fleet Corporation based on liability arising out of operation for the United States of a merchant vessel was held not within the jurisdiction of the state court when the judgment was payable out of the United States Treasury.

<sup>117</sup>286 Fed. 918 (C. C. A. 3rd, 1923).

*Corporation*<sup>118</sup> it was held that a common law action against the Fleet Corporation for damage to cargo carried by it was not within the provisions of this Act. Likewise, a libel in personam brought for loss of cargo because of deviation was permitted against the Fleet Corporation in *Smith v. U. S. S. B. Emergency Fleet Corporation*,<sup>119</sup> the court saying that the Suits in Admiralty Act did not prevent a suit in admiralty against the Fleet Corporation under ordinary rules but was designed to eliminate and replace libel in rem against vessels of the United States or the Corporation.<sup>119a</sup> And *Wallace v. U. S. S. B. Emergency Fleet Corporation*<sup>120</sup> held that a common law action by an employee for injuries could be maintained, the Act not excluding it.

This Act applies to any corporation in which the United States or its representatives own the entire outstanding capital stock, except the Panama Railroad Company. The vessels owned and operated by the Inland Waterways are evidently exempt from seizure under a libel in rem, leaving only the admiralty remedy of a libel in personam.<sup>121</sup> The Shipping Act of 1916 authorized the President to transfer to the Shipping Board vessels owned by the Panama Railroad, and, presumably, after they have been transferred they come within the admiralty rules relating to government vessels. When the ships are being operated directly by the Panama Railroad they evidently are considered private merchant vessels and subject to the general admiralty laws, including libel in rem.

*(To be concluded)*

<sup>118</sup> 285 Fed. 647 (S. D. N. Y. 1922).

<sup>119</sup> 2 F. (2d) 390 (S. D. N. Y. 1924).

<sup>119a</sup> See also, *Marshall Hall Grain Co. v. U. S. S. B. Emergency Fleet Corporation*, 14 F. (2d) 141 (D. C. Mass. 1926).

<sup>120</sup> 5 F. (2d) 234 (W. D. Wash. 1925). See also, *Lindgren v. U. S. S. B. Merchant Fleet Corporation*, 55 F. (2d) 117 (C. C. A. 4th, 1932).

<sup>121</sup> See, in addition to cases in note 115, *supra*, *In re Boyer*, 109 U. S. 629, 3 Sup. Ct. 434, 27 L. ed. 1056 (1884); *Perry v. Haines*, 191 U. S. 17, 24 Sup. Ct. 8, 48 L. ed. 73 (1903).