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UNITED STATES - GOVERNMENT CORPORATIONS - IMMUNITY FROM SUIT

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UNITED STATES — GOVERNMENT CORPORATIONS — IMMUNITY FROM SUIT — The Emergency Relief and Construction Act, passed by Congress in 1932,[1] authorized the Reconstruction Finance Corporation to create regional agricultural corporations, but did not expressly provide that such corporations might sue and be sued. However, Congress had made express provision to this effect with respect to the R. F. C. itself. The Regional Agricultural Credit Corporation of Sioux City, Iowa, was chartered by the R. F. C. in accordance with the statute. The plaintiff brought this action to recover damages for injuries to livestock alleged to have resulted from the negligence of the Regional Corporation in not providing proper care for the cattle delivered to it under a cattle feeding contract. The Regional Corporation demurred on the ground that it was a governmental agency and therefore not subject to suit. *Held*, that the Regional Corporation was not immune from suit in this action and judgment should be rendered against it. *Keifer & Keifer v. Reconstruction Finance Corporation*, (U. S. 1939) 59 S. Ct. 516.

The question of the amenability to suit of "government proprietary corporations" [2] is one of great importance at the present time, due to the ever increasing

[1] 47 Stat. L. 709 at 713, § 201(c).

[2] The term "government proprietary corporations" is borrowed from John Thurston. In his article "Government Proprietary Corporations," 21 VA. L. REV. 351 (1935), he defines them as corporations "engaged in the operation of an economic

number of these corporations.[3] It is essential to those dealing with them that their rights, liabilities, and immunities be defined. Are they so identified with the government that they share its immunity from suit? To what actions does the general power to sue and be sued extend? Perhaps the first and leading case to deal with this problem was *Bank of the United States v. Planter's Bank of Georgia*,[4] in which Chief Justice Marshall declared that the government by becoming a corporator waives its sovereignity. A very important group of cases on the question arose out of the dealings of the United States Shipping Board Emergency Fleet Corporation, organized under the laws of the District of Columbia, all the stock of which was held by the government. In a series of cases it was held that the corporation could sue and be sued in the same way as other corporations, both in contract and in tort.[5] Similarly it was held that the doctrine of laches, which does not affect the government itself, barred an action by the United States for damages done to a ship operated by the Shipping Board.[6] In view of these and other cases [7] it seems clear that when the corporation is given the power to sue or be sued by the express consent of the government, it should be deemed amenable to suit.[8] In the present case, the court threads its

undertaking, in which the government holds either the entire or a controlling interest." The device of stock ownership need not be employed. Proprietary is used to distinguish them from purely governmental corporations. In view of Justice Stone's opinion in Graves v. O'Keefe, (U. S. 1939) 83 L. Ed. 577, in which he states that when the national government lawfully acts through a corporation which it owns and controls, these activities are governmental functions, it appears doubtful whether there can be such a thing as a "governmental proprietary corporation" so far as the federal government is concerned. However, the term is useful for purposes of classification.

[3] The principal case lists forty such corporations authorized by Congress. There are additional ones chartered under general state or District of Columbia incorporation laws.

[4] 9 Wheat. (5 U. S.) 904 (1824).

[5] Sloan Shipyards Corp. v. United States Shipping Board Emergency Fleet Corp., 258 U. S. 549, 42 S. Ct. 386 (1922); U. S. S. B. Merchant Fleet Corp. v. Harwood, 281 U. S. 519, 50 S. Ct. 372 (1930); U. S. S. B. Emergency Fleet Corp. v. Greenwald, (C. C. A. 2d, 1927) 16 F. (2d) 948; Howarth v. U. S. S. B. Emergency Fleet Corp., (C. C. A. 2d, 1928) 24 F. (2d) 374; Lindgren v. U. S. S. B. Emergency Fleet Corp., (C. C. A. 4th, 1932) 55 F. (2d) 117; The Lake Monroe, 250 U. S. 246, 39 S. Ct. 460 (1919).

[6] The No. 34, (D. C. Mass. 1925) 11 F. (2d) 287, "when the United States engages in a business enterprise, it is subject to the same conditions as private citizens."

[7] Olson v. United States Spruce Production Corp., 267 U. S. 462, 45 S. Ct. 357 (1925); United States v. Lee, 106 U. S. 196, 1 S. Ct. 240 (1882); Gross v. Kentucky Bd. of Mgrs. of World's Columbian Exp., 105 Ky. 840, 49 S. W. 458, 43 L. R. A. 703 (1899); Herman v. Home Owners Loan Corp., 120 N. J. L. 437, 200 A. 742 (1938); Pennell v. Home Owners Loan Corp., (D. C. Me. 1937) 21 F. Supp. 497.

[8] There are a few cases irreconcilable with this view which hold that even when the government corporation is given the power to sue and be sued, it is not liable in a tort action. Lyle v. National Home for Disabled Volunteer Soldiers, (C. C. Tenn. 1909) 170 F. 242; Ballaine v. Alaska Northern Ry., (C. C. A. 9th, 1919) 259 F. 183; Prato v. Home Owners' Loan Corp., (D. C. Mass. 1938) 24 F. Supp. 844.

way through a series of arguments in holding the Regional Corporation liable in this action. Although the act authorizing the Regional Corporation did not state that it should be subject to suit, the Court infers that Congress intended that it should be, both because its parent corporation, the R. F. C., was, and because of the consistent legislative policy of making such government corporations amenable to suit. Having declared that its legal position is the same as if Congress had expressly empowered it to sue and be sued, the Court indicates that this includes liability to suits in tort. Had Congress intended to exclude such actions, it would have done so expressly as it did when it limited the jurisdiction of the Court of Claims to claims on contract, express or implied, or for damages, liquidated or unliquidated, in cases not sounding in tort.[9] While the Court's view on the corporations immunity to tort liability is not necessary to the decision of the case, since the action arose out of a bailment transaction and was, therefore, founded in contract, still it indicates that the Court does not look favorably on extending the immunity of the government to its corporate agencies in the absence of express declaration to this effect. The case is in accord with the increasingly liberal trend evident in the cases denying to municipal corporations immunity against tort liability, especially where a proprietary function can be spelled out by the court.[10]

John H. Uhl

[9] 28 U. S. C. (1934), § 250 (1) (Judicial Code, c. 7, § 145).

[10] Naumburg v. City of Milwaukee, (C. C. A. 7th, 1906) 146 F. 641; City of Winona v. Botzet, (C. C. A. 8th, 1909) 169 F. 321, 23 L. R. A. (N. S.) 204; Harris v. District of Columbia, 256 U. S. 650, 41 S. Ct. 610 (1921); Bilderback v. City of Klamath Falls, (D. C. Ore. 1924) 6 F. (2d) 642; Foss v. City of Lansing, 237 Mich. 633, 212 N. W. 952, 52 A. L. R. 185 (1928).