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Taxation—Government Corporations—The Reconstruction Finance Corporation

reasoning has been practically invincible against the railroads' attempts to upset it. Sole encouragement for the benefit argument has been found in obvious cases where the sole beneficiary was a private landowner (*Chicago, M. & St. P. Ry. v. Holmberg* (1930) 282 U. S. 162) and in dissents (*Chicago, B. & Q. Ry. v. Grimwood* (1906) 200 U. S. 561). The effect of federal legislation on the question has often been raised by the railroads. The Transportation Act of 1920 has been held to have no application. *Lehigh Valley R. C. v. Bd. P. U. Comm., supra; Chicago & N. W. Ry. v. Ill. Comm. Comm., supra; Golf, C & S. R. Co. v. La. Pub. Serv. Comm.* (1922) 151 La. 635, 92 So. 143. Federal aid to state highways had been held previously to have no relevance to allocation of costs by these orders. *Chicago, R. I. & St. P. Ry. v. Pub. Serv. Comm., supra.*

The Nashville Railroad in the present case synthesized these specific contentions into a general plea of "changed conditions." The reaction of the Supreme Court evinces a sound appreciation of modern railway economics. The case suggests the last step in the progression from absolute, to equally divided, to equitably distributed liability on the part of the railroads, for the cost of abolishing and separating grade crossings in the interest of public safety.

C. M. W. '36.

TAXATION—GOVERNMENT CORPORATIONS—THE RECONSTRUCTION FINANCE CORPORATION.—The Reconstruction Finance Corporation, as the holder of shares of preferred stock of Kentucky state banks and national banks located in Kentucky was *held* not subject to the annual tax imposed upon shares of stock of state banks and of national banks doing business in the state. *United States and Reconstruction Finance Corporation v. Lewis et al.* (D. C., W. D. Ky. April 8, 1935); U. S. Law Weekly, April 16, 1935, p. 8.

The Law Weekly digest of the case indicates the basis of the court's decision to be that the property of the Corporation is in reality the property of the Federal Government and hence governed by the rule that the property of the United States Government is not subject to State taxation, (it being admitted that the tax is one against the owner of the shares of stock and not against the bank itself. *Bank Tax Cases* (1866) 3 Wall. 573).

It has been long established that an instrumentality of the Federal Government is not subject to taxation by a state. *McCullock v. Maryland* (1819) 4 Wheat. 316. Generally, however, this exemption extends only in so far as such taxation may impair the efficiency of such federal agencies in performing their governmental functions. Accordingly state non-discriminatory taxes on the property of these agencies, as distinguished from a tax on their privileges, has been upheld. *Thomson v. Union Pacific R. R.* (1869) 9 Wall. 579, *Railroad v. Peniston* (1873) 18 Wall 5. But when the property of the federal agency is entirely owned by the Federal Government state taxation is not possible. *Van Brocklin v. Anderson* (1885) 117 U. S. 151. Likewise property owned by a corporation is equally exempt when all the stock in the corporation is owned by the United States. *King County v.*

U. S. Shipping Board Emergency Fleet Corp. (C. C. A. 9, 282 Fed. 950; *Clallam County v. United States* (1923) 263 U. S. 341. Such a result is reached by disregarding the corporate fiction and looking at the true ownership.

The principal case may be sustained by the doctrine that property of a corporation whose stock is owned by the United States is property of the United States and hence exempt from state taxation. However, it is to be noted that the cases cited in support of this principle involved corporations exercising war-time governmental functions. Federal taxation has been sustained as against a state owned body which performed functions of a commercial rather than governmental character. *South Carolina v. United States* (1905) 199 U. S. 437 (state-owned liquor dispensary). Under this decision it would have been logical to sustain state taxation against property of those federal agencies not performing strictly governmental functions, though they be owned entirely by the Federal Government. And it might be argued that the Reconstruction Finance Corporation would fall within this class. See note (1935) 20 St. Louis L. Rev.

I. J. W. '35

UNFAIR COMPETITION—NEWS BROADCASTING—LITERARY PROPERTY IN NEWS REPORTS.—Complainant corporation sought an injunction to restrain defendant radio station from reading over the air during its regular news broadcasts portions of news stories, sometimes verbatim and sometimes rearranged, "pirated" from the regularly published editions of complainant's member newspapers, the stories including press association dispatches and local news gathered by the member papers and alleged to be the property of the association by virtue of its contract with its members. The bill alleged the existence of direct competition between the defendant and the complainant's members in that both derive profit from the sale of advertising. On motion to dismiss, *Held:* The "pirating" of news does not constitute unfair competition, for the fact that the members compete for profit in advertising with defendant does not make them competitors for profit in the dissemination of news, and the bill is dismissed. *Associated Press. v. KVOS, Inc.* (D. C. W. D. Wash., 1934) 9 F. Supp. 279.

The only decision directly in point on this type of situation is an unreported case in the United States District Court where an injunction was granted on substantially the same set of facts, *The Associated Press v. Sioux Falls Broadcast Association,* Cause No. 377, S. D. Eq., D. C. S. Dak., March 14, 1933, and that ruling the instant case declines to follow. But cited with approval is a German opinion denying the relief sought with the positions of the parties reversed and the radio station seeking to prevent republication of its news by the press. *Opinion of the Reichsgericht of April 29, 1930,* reported in Archiv für Funkrecht, Vol. III, p. 425, and in No. II Journal of Air Law 63 (1931). Familiar cases involving pirating from stock and news ticker services contained the element of contract relationship, lacking here, and injunctions issued on the ground of inducing breach of that relation, or because of the conception that restricted publica-