

*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.

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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-

tion had not waived all property rights. *Board of Trade v. Christie Grain & Stock Co.* (1904) 198 U. S. 236; *Moore v. New York Cotton Exchange* (C. C. A. 2, 1923) 290 Fed. 61; *National Telegraph News Co. v. Western Union Telegraph Co.* (C. C. A. 7, 1902) 119 Fed. 294. The most closely analogous situation, where a rival press association was enjoined from copying news material from bulletin boards and published newspapers, on the ground of unfair competition, is distinguished in the present case. *International News Service v. Associated Press* (1918) 248 U. S. 215.

In the absence of a copyright (it is doubtful whether one is obtainable. See *National Telegraph News Co. v. Western Union Telegraph Co.*, *supra*) there would seem to be no absolute property in news reports for any length of time after the initial publication thereof. *Tribune Co. of Chicago v. Associated Press* (C. C. N. D. Ill., 1900) 116 Fed. 126. Nevertheless, a qualified or quasi-property right in these dispatches may exist, and it may comprise enough of the necessary characteristics to found a decree enjoining unfair competition, according to the *International News* case. The issue which remained for the court to solve, then, was the existence of unfair competitive methods.

In the present opinion it is held that the parties are not competing with each other, despite the allegations in complainant's bill, since defendant's broadcasts are free and without direct profit to it, while the papers bring a monetary return. Waiving the argument that the popularity of news programs may draw listeners to defendant's station and thereby enhance its attractiveness as a medium for advertisers, it is difficult to believe that if an advertising feature were added to the news broadcast, thereby profiting the station in the literal sense adopted by the court, it would necessarily result in a contrary judgment. Complainant's contention is pragmatically justifiable, and the presence of actual competition is supported by the reasoning of the German opinion referred to above and relied upon in the instant case. See also *Miles v. Louis Wasmer Inc.* (1933) 172 Wash. 466, 20 Pac. (2nd.) 847. The opinion in *Cheney Bros. v. Doris Silk Corp.* (C. C. A. 2, 1929) 35 Fed. (2nd.) 279 agrees with the decision under consideration, that the *International News* case was intended to cover only situations *substantially similar* to the one at bar. Room for interpretation obviously remains. And . . . "there is no fetish in the word 'competition.' The invocation of equity rests more vitally upon the unfairness." Denison J., in *Vogue Co. v. Thompson-Hudson Co.* (C. C. A. 6, 1924) 300 Fed. 509, 512.

The concluding argument of the District Judge follows the dissenting opinion of Mr. Justice Brandeis in the *International News* case. In substance it is that private vested rights or interests should not be allowed to hinder the development of modern more efficient modes of communication in which the public has a paramount right. This public interest, the basis of the German case, is the most appealing ground for the present decision.

T. S. MCP., JR. '36.