

legislation into harmony with existing federal statutes and to avoid, so far as consistent with its purposes, any harsh or oppressive requirements, but in all this there is to be found no warrant for saying that there was a Congressional purpose to curtail the exercise of any constitutional power of the state over its alien residents or to protect the alien from state action which the Constitution prohibits and which the federal courts stand ready to prevent. See *Hague v. C. I. O.*, 307 U. S. 496, 518, 525 *et seq.*

Here compliance with the state law does not preclude or even interfere with compliance with the act of Congress. The enforcement of both acts involves no more inconsistency, no more inconvenience to the individual, and no more embarrassment to either government than do any of the laws, state and national, such as revenue laws, licensing laws, or police regulations, where interstate commerce is involved, which are equally applied to the citizen because he is subject, as are aliens, to a dual sovereignty.

The CHIEF JUSTICE and MR. JUSTICE McREYNOLDS concur in this opinion.

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RECONSTRUCTION FINANCE CORPORATION v.  
J. G. MENIHAN CORP. ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 200. Argued January 10, 1941.—Decided February 3, 1941.

1. Rule 54 (d) of the Rules of Civil Procedure providing that "costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law," is merely declaratory and effected no change of principle. P. 83.
2. The Reconstruction Finance Corporation, a government agency whose transactions are akin to those of private enterprise and

which is empowered by statute to sue and be sued, has not been endowed by Congress with governmental immunity from the costs and equitable allowances which are the natural and appropriate incidents of litigation. P. 83.

*Held*, that in an unsuccessful suit by the Corporation to enjoin alleged infringements of trade-marks the right to which it claims as part of property on which it has taken mortgages and assignments as security for a loan, the Corporation is liable for costs and the additional allowance made by courts of equity in such cases in accordance with sound equity practice.

111 F. 2d 940, affirmed.

CERTIORARI, 311 U. S. 625, to review the affirmance of a decree which reversed an order of the District Court denying costs and an additional allowance, 29 F. Supp. 853, in a suit to enjoin an alleged infringement of trade-marks.

*Mr. Clifford J. Durr*, with whom *Solicitor General Biddle* and *Mr. Hans A. Klagsbrunn* were on the brief, for petitioner.

*Mr. Arthur E. Sutherland, Jr.* argued the cause, and *Mr. George H. Harris* was on a brief, for respondents.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Petitioner, Reconstruction Finance Corporation, took mortgages and assignments of real and personal property of a corporation, including its trade-marks and trade names, as security for a loan. On a sale by the trustee in bankruptcy of the debtor, petitioner purchased the property. A new corporation undertook to use the trade-marks and petitioner sought an injunction. Decree went against petitioner. Defendants' application for costs and additional allowance was denied. 29 F. Supp. 853. This order was reversed by the Circuit Court of Appeals, 111 F. 2d 940, and we granted certiorari because of a conflict of decisions. See *Federal Deposit*

*Insurance Corporation v. Casady*, C. C. A. 10th, 106 F. 2d 784.

Rule 54 (d) of the Rules of Civil Procedure provides that "costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law." This provision was merely declaratory and effected no change of principle.

The Reconstruction Finance Corporation is a corporate agency of the government, which is its sole stockholder. 47 Stat. 5; 15 U. S. C. 601. It is managed by a board of directors appointed by the President by and with the advice and consent of the Senate. The Corporation has wide powers and conducts financial operations on a vast scale. While it acts as a governmental agency in performing its functions (see *Pittman v. Home Owners' Loan Corp.*, 308 U. S. 21, 32, 33), still its transactions are akin to those of private enterprises and the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign. *Sloan Shipyards Corp. v. United States Fleet Corporation*, 258 U. S. 549, 566, 567. Congress has expressly provided that the Reconstruction Finance Corporation shall have power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." There is nothing in the statutes governing its transactions which suggests any intention of Congress that in suing and being sued the Corporation should not be subject to the ordinary incident of unsuccessful litigation in being liable for the costs which might properly be awarded against a private party in a similar case.

We have had recent occasion to consider the status, in relation to suits, of a regional corporation chartered by the Reconstruction Finance Corporation and we have set forth the general principles which we think should govern in our approach to the particular question now presented. *Keifer v. Reconstruction Finance Corporation*, 306 U. S.

381. In the *Keifer* case we did not find it necessary to trace to its origin the doctrine of the exceptional freedom of the United States from legal responsibility, but we observed that "because the doctrine gives the government a privileged position, it has been appropriately confined." Hence, we declared that "the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work." *Id.*, p. 388. Recognizing that Congress may endow a governmental corporation with the government's immunity, we found the question to be "Has it done so?" That is, immunity in the case of a governmental agency is not presumed. We sought evidence that Congress had intended that its creature, considering the purpose and scope of its powers, should have the immunity which the sovereign itself enjoyed, and we noted the practice of Congress as an indication "of the present climate of opinion" which had brought governmental immunity from suit into disfavor. Accordingly, being unable to find that Congress had intended immunity from suit we denied it.

It was with a similar approach that we decided in *Federal Housing Administration v. Burr*, 309 U. S. 242, that the Federal Housing Administration was subject to be garnished under state law for moneys due to an employee. There, the Administrator under the National Housing Act was authorized "to sue and be sued in any court of competent jurisdiction, State or Federal." 49 Stat. 722. Starting from the premise indicated in the *Keifer* case that waivers by Congress of governmental immunity from suit should be liberally construed in the case of federal instrumentalities—that being in line with the current disfavor of the doctrine of governmental immunity—we concluded that in the absence of a contrary showing "it must be presumed that when Congress launched a governmental agency into the commercial

world and endowed it with authority to 'sue and be sued' that agency is not less amenable to judicial process than a private enterprise under like circumstances would be." Following that reasoning, the precise point of the decision was that the words "sue and be sued" normally embrace all civil process incident to the commencement or continuance of legal proceedings and hence embraced garnishment as part of that process.

These decisions chart our course. The Reconstruction Finance Corporation is expressly authorized to sue and be sued. It has availed itself of that authority to bring the defendants into court to answer the charge of trademark infringement. The defendants have successfully resisted the charge and the question is whether they should be denied the usual incidents of their success. We apply the principle that there is no presumption that the agent is clothed with sovereign immunity. We look as in the *Keifer* and *Burr* cases to see whether Congress has endowed petitioner with that immunity and we find no indications whatever of such an intent. We apply the farther principle that the words "sue and be sued" normally include the natural and appropriate incidents of legal proceedings. The payment of costs by the unsuccessful litigant, awarded by the court in the proper exercise of the authority it possesses in similar cases, is manifestly such an incident. The additional allowance made by courts of equity in accordance with sound equity practice is likewise such an incident. *Sprague v. Ticonic Bank*, 307 U. S. 161. We perceive no reason for holding that petitioner may avail itself of the judicial process in accordance with the authority conferred upon it and escape the usual incidents of that process in case its assertions of right prove to be unfounded. On the contrary, we think that the unqualified authority to sue and be sued placed petitioner upon an equal footing with private parties as to the usual inci-

dents of suits in relation to the payment of costs and allowances.

The judgment of the Circuit Court of Appeals is

*Affirmed.*

MR. JUSTICE BLACK took no part in the consideration and decision of this case.

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UNITED STATES *v.* GILLILAND *ET AL.*\*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF TEXAS.

No. 245. Argued January 10, 1941.—Decided February 3, 1941.

1. On an appeal under the Criminal Appeals Act the Court is concerned with the construction of the criminal statute involved and not with interpretation of the indictment as a pleading. P. 89.
2. That part of § 35 of the Criminal Code, as amended by the Act of June 18, 1934, which makes it a crime knowingly and willfully to cause to be made or used any false affidavit, etc., knowing the same to contain any fraudulent statement, "in any matter within the jurisdiction of any department or agency of the United States," is not restricted to cases involving pecuniary or property loss to the United States. P. 91.
3. The language and history of the amending Act show that it was intended to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. P. 93.
4. Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, embraces verified reports falsely and fraudulently stating the amount of petroleum produced from specified wells or received from other producers, which reports were filed with a Federal Tender Board in purported compliance with executive regulations promulgated by the Secretary of the Interior, with the approval of the President, under the "Hot Oil" Act of February 22, 1935. P. 95.

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\*In *United States v. Cohn*, 270 U. S. 339, first paragraph of headnotes, change "§ 65" to § 35.—REPORTER.