

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

eral law is in issue, the fact that defendants claim the property as officers or agents of the United States does not make the action one against the United States until it is determined that they were acting within the scope of their lawful authority.⁹⁸⁰ On the other hand, the rule that a suit in which the judgment would affect the United States or its property is a suit against the United States has also been repeatedly approved and reaffirmed.⁹⁸¹ But, as the Court has pointed out, it is not “an easy matter to reconcile all of the decisions of the court in this class of cases,”⁹⁸² and, as Justice Frankfurter quite justifiably stated in a dissent, “the subject is not free from casuistry.”⁹⁸³ Justice Douglas’ characterization of *Land v. Dollar*, “this is the type of case where the question of *jurisdiction* is dependent on decision of the *merits*,”⁹⁸⁴ is frequently applicable.

Larson v. Domestic & Foreign Corp.,⁹⁸⁵ illuminates these obscurities somewhat. A private company sought to enjoin the Administrator of the War Assets in his official capacity from selling surplus coal to others than the plaintiff who had originally bought the coal, only to have the sale cancelled by the Administrator because of the company’s failure to make an advance payment. Chief Justice Vinson and a majority of the Court looked upon the suit as one brought against the Administrator in his official capacity, acting under a valid statute and therefore a suit against the United States. It held that, although an officer in such a situation is not immune from suits for his own torts, his official action, though tortious, cannot be enjoined or diverted, because it is also the action of the sovereign.⁹⁸⁶ The Court then proceeded to repeat the rule that “the action of an officer of the sovereign (be it holding, taking, or otherwise legally affecting the plaintiff’s property) can be regarded as so individual only if it is not within the officer’s statutory powers, or, if within those powers, only if the powers or their exercise in the particular

⁹⁸⁰ *Land v. Dollar*, 330 U.S. 731, 737 (1947).

⁹⁸¹ *Oregon v. Hitchcock*, 202 U.S. 60 (1906); *Louisiana v. Garfield*, 211 U.S. 70 (1908); *New Mexico v. Lane*, 243 U.S. 52 (1917); *Wells v. Roper*, 246 U.S. 335 (1918); *Morrison v. Work*, 266 U.S. 481 (1925); *Minnesota v. United States*, 305 U.S. 382 (1939); *Mine Safety Co. v. Forrestal*, 326 U.S. 371 (1945). See also *Minnesota v. Hitchcock*, 185 U.S. 373 (1902).

⁹⁸² *Cunningham v. Macon & Brunswick R.R.*, 109 U.S. 446, 451 (1883), quoted by Chief Justice Vinson in the opinion of the Court in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949).

⁹⁸³ *Larson*, 337 U.S. at 708. Justice Frankfurter’s dissent also contains a useful classification of immunity cases and an appendix listing them.

⁹⁸⁴ 330 U.S. 731, 735 (1947) (emphasis added).

⁹⁸⁵ 337 U.S. 682 (1949).

⁹⁸⁶ 337 U.S. at 689–97.