

11670-11670
D. Williams

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK R. CREEDON, Housing Expediter, Office
of Housing Expediter,

Appellant,

vs.

DOROTHY F. BORDERS,

No. 11670

MRS. A. C. SHALBERG,

No. 11672

MRS. RICHARD DAVIS,

No. 11673

ADOLPH NEUBERT,

No. 11674

L. R. CHAMBERS,

No. 11675

GEORGE ROUSE,

No. 11676

HERMAN HAGE and EDWARD C. HAGE,

No. 11677

J. H. JEFFERS, d/b/a Norblad Hotel,

No. 11678

Appellees.

Transcript of Records

Upon Appeals from the District Court of the United States
for the District of Oregon

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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No. 11670

United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

DOROTHY F. BORDERS,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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c/o Commercial Iron Works,
Portland, Oregon.

VICTOR E. HARR,
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For Appellee.

In the District Court of the United States
for the District of Oregon

No. Civ. 3429

PHILIP B. FLEMING, Administrator Office of
Temporary Controls,

Plaintiff,

vs.

DOROTHY F. BORDERS,

Defendant.

COMPLAINT FOR INJUNCTION AND
TREBLE DAMAGES

Comes Now the Plaintiff above named and alleges:

Count I.

1. That the Office of Price Administration was duly created by Act of Congress pursuant to Section 201(a) of the Emergency Price Control Act of 1942, and amendments thereto; that by virtue of Executive Order 9809 (11 F.R. 14,281), issued by the President of the United States on December 12, 1946, Philip B. Fleming is the duly appointed, qualified, and acting Administrator of the Office of Temporary Controls and has been invested with all the functions of the Administrator of the Office of Price Administration.

2. That jurisdiction of this action is conferred upon this court by Section 205(a), Section 205(c), and Section 205(e) of the Act, as amended.

3. That the defendant, Dorothy F. Borders, residing at 1817 N. E. Weidler Street, Portland, Oregon, at all times hereinafter mentioned, has been the landlord and operator of housing accommodations located at the above address, within the jurisdiction of this court, and during all of said times has rented and offered for rent housing accommodations at said address.

4. That in the judgment of said Administrator, the defendant engaged in acts and practices which constitute a violation of Section 4(a) of the Emergency Price Control Act of 1942 as amended (50 U.S.C.A. 901 et seq.), hereinafter referred to as "the Act," in that the defendant has violated the Rent Regulation for Housing (10 F.R. 13528) issued in accordance with the provisions of Section 2(b) of the Act; and, therefore, pursuant to Section 205(a) of the Act, the Administrator applies to this court for the injunctions and orders hereinafter set forth to enforce compliance with said Section 4(a) of said Act.

5. That at all times mentioned herein since July 1, 1942, there has been and is now in effect the Rent Regulation for Housing issued pursuant to Section 2(b) of the Act for the Portland-Vancouver Defense-Rental Area (10 F.R. 13528) establishing regulatory provisions for the use and occupancy of housing accommodations within the Portland-Vancouver Defense-Rental Area.

6. That said Rent Regulation for Housing establishes, by Section 4 thereof, maximum rents for the

use and occupancy of housing accommodations within the Portland-Vancouver Defense-Rental Area and by Section 2(a) thereof prohibits the demand or receipt of rents higher than said established maximum rents.

7. That on or about February 6, 1946, the Area Rent Director of the Portland-Vancouver Defense Rental Area, pursuant to Section 5(c) (i) and Section 4(e) of the Housing Rent Regulation, issued orders decreasing maximum rent, effective July 1, 1942, for apartment 1 within housing accommodations located at 1817 N. E. Weidler Street, Portland, Oregon; that defendant has refused to reduce the rental for such apartment or to make refunds of excess rent collected prior to the date of issuance of the aforesaid order.

8. That more than thirty (30) days has elapsed since the occurrence of the aforesaid overcharges; that the tenant so overcharged has not instituted any actions for damages on account of said overcharge within thirty (30) days from the date thereof, pursuant to Section 205(e) of the Emergency Price Control Act, as amended and extended.

Count II.

1. Plaintiff re-alleges and incorporates here in Paragraphs one, two, three, four, five, six and eight of Count I as fully as though set forth herein.

2. That on or about February 6, 1946, the Area Rent Director of the Portland-Vancouver Defense-Rental Area, pursuant to Section 5(c) (i) and Sec-

tion 4(e) of the Housing Rent Regulation, issued orders decreasing maximum rent, effective July 1, 1942, for apartment 2 within housing accommodations located at 1817 N. E. Weidler Street, Portland, Oregon; that defendant has refused to reduce the rental for such apartment or to make refunds of excess rent collected prior to the date of issuance of the aforesaid order.

Count III.

1. Plaintiff re-alleges and incorporated herein Paragraphs one, two, three, four, five, six and eight of Count I as fully as though set forth herein.

2. That on or about February 6, 1946, the Area Rent Director of the Portland-Vancouver Defense-Rental Area, pursuant to Section 5(c) (i) and Section 4(e) of the Housing Rent Regulation, issued orders decreasing maximum rent, effective July 1, 1942, for apartment 3 within Housing accommodations located at 1817 N. E. Weidler Street, Portland, Oregon; that defendant has refused to reduce the rental for such apartment or to make refunds of excess rent collected prior to the date of issuance of the aforesaid order.

Count IV.

1. Plaintiff re-alleges and incorporates herein Paragraphs one, two, three, four, five, six and eight of Count I as fully as though set forth herein.

2. That on or about February 6, 1946, the Area Rent Director of the Portland-Vancouver Defense-

Rental Area, pursuant to Section 5(c)(i) and Section 4(e) of the Housing Rent Regulation, issued orders decreasing maximum rent, effective July 1, 1942, for apartment 4 within housing accommodations located at 1817 N. E. Weidler Street, Portland, Oregon; that defendant has refused to reduce the rental for such apartment or to make refunds of excess rent collected prior to the date of issuance of the aforesaid order.

Count V.

1. Plaintiff re-alleges and incorporates herein Paragraphs one, two, three, four, five, six and eight of Count I as fully as though set forth herein.

2. That on or about February 6, 1946, the Area Rent Director of the Portland-Vancouver Defense-Rental Area, pursuant to Section 5(c)(i) and Section 4(e) of the Housing Rent Regulation, issued orders decreasing maximum rent, effective July 1, 1942, for apartment 5 within housing accommodations located at 1817 N. E. Weidler Street, Portland, Oregon; that defendant has refused to reduce the rental for such apartment or to make refunds of excess rent collected prior to the date of issuance of the aforesaid order.

Wherefore, the plaintiff demands:

1. A preliminary and final injunction enjoining the defendant, his agents, servants, employees and all persons in active concert or participation with him from directly or indirectly demanding or receiving for accommodations subject to said Rent

Regulation for Housing rents in excess of the maximum rent permitted by said regulation as heretofore or hereafter amended or extended, or in excess of the maximum rent established by any other regulation relating to rents issued pursuant to the Emergency Price Control Act of 1942, as heretofore or hereafter amended or extended.

2. An Order directing said defendant to deliver to plaintiff's attorney of record certified checks payable to any and all tenants overcharged, in the amount of the overcharges established herein.

3. Judgment for the plaintiff on behalf of the United States of America and against the defendant in the amount of three times the established overcharges, less any payment to tenants as a result of the Order of the Court as prayed for in paragraph two above in the prayer.

4. The costs of the action expended herein.

5. Such other Order enforcing compliance with Section 4 of the Act and such further and different relief as the Court may deem just and proper.

Dated this 28 day of January, 1947.

/s/ SYLVANUS SMITH,

/s/ VICTOR E. HARR,

Assistant U. S. Attorney.

[Endorsed]: Filed Jan. 28, 1947.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the defendant, Dorothy F. Borders, through and by her attorney, Dellmore Lessard, and moves the Court for an order dismissing the complaint of the plaintiff on file herein upon the following grounds:

(a) That plaintiff has no legal capacity to sue.

(b) That said complaint does not state facts sufficient to constitute a suit against this defendant in that it appears on the face of said complaint that plaintiff's cause of suit is founded upon the Emergency Price Control Act of 1942, which said Act expired on June 30, 1946.

(c) That said complaint does not state facts sufficient to cause a suit against the defendant in that it appears on the face of said complaint that plaintiff's cause of suit is founded upon the Price Control Act of 1942 as amended and extended, and said Act is unconstitutional and void for the reason that said Act is in violation of the 5th Amendment to the Constitution of the United States, and also for the reason that said act pretends to assume power in behalf of the United States Government which is reserved by the Constitution to the states or to the people.

Dated at Portland, Oregon, this 19th day of February, 1947.

/s/ DELLMORE LESSARD,
Attorney for Defendant.

A true copy mailed Sylvanus Smith, OPA attorney, Feb. 19, 1947.

[Endorsed]: Filed Feb. 21, 1947.

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND
REINSTATE CASE ON THE DOCKET

Comes Now the plaintiff above named and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, Jr.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

In the District Court of the United States
for the District of Oregon

PHILIB B. FLEMING, Administrator,
Office of Temporary Controls,
Plaintiff,

vs.

A. C. SHALBERG,	No. 3430
ADOLPH NEUBERT,	No. 3435
DOROTHY F. BORDERS,	No. 3429
L. R. CHAMBERS,	No. 3462
GEORGE ROUSE,	No. 3463
HERMAN HAGE and EDWARD O. HAGE,	No. 3464
J. H. JEFFERS, d/b/a NORBLAD HOTEL,	No. 3465
MRS. RICHARD DAVIS,	No. 3431

Defendants.

STATEMENT OF POINTS AND AUTHORITIES RELIED ON BY THE PLAINTIFF IN SUPPORT OF HIS MOTION TO VACATE JUDGMENT OF DISMISSAL AND REINSTATE CASES ON THE DOCKET

Each of these cases was dismissed by this Honorable Court on the 6th day of March, 1947. Since that time there have been certain decisions which the plaintiff desires to bring before this Court which the

plaintiff believes may convince the Court that it has jurisdiction in these matters, and that therefore, these cases should be reinstated on the docket and the judgment of dismissal vacated.

The question of the right of Mr. Fleming to be substituted or to commence action, the latter question which involves the same difficulties in regard to cases brought pursuant to the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9809, has received the attention of several courts throughout the country. Substitutions of the validity of the commencement of these actions has been allowed in every Circuit, including the 9th, and a vast number of Districts throughout the country, without the writing of a formal published opinion. To the best of this writer's knowledge and after an exhaustive search, to date the question has been decided in written opinions by the following courts in the following cases:

Bowles v. Ell-Carr Company, Inc., ano. (Civil 33-668) by Judge Caffee of the Southern District of New York, on March 19, 1947.

Porter v. American Distilling Company, Inc., by Judge D. J. Bright, also of the Southern District of New York.

Porter v. Bowers, District Court of the Western District of Missouri.

Fleming v. Mohawk Wrecking Company by Justice Douglas of the United States Supreme Court on April 28, 1947.

All of the above cited cases were in favor of the substitution of Fleming for Porter.

Contrary opinion has been held by the District Court of Hawaii, in

Porter v. Hirahara, 60 F. supp. 441, decided January 19th by Judge McLaughlin,

and by the District Court of Oregon, in

Porter v. Ryan, 69 Fed. 446,

and by Judge DeVries of the California Municipal Court in Long Beach on January 30, 1947, in

Porter v. Johnson.

It is realized by the plaintiff that none of the District Court authorities cited is binding on this court. However, the plaintiff would like to quote the language of one of these District Courts as being at least persuasive. The District Court of New York in the American Distilling Company case (*supra*) after discussing the question of substantial need (which we are not concerned with here as all of these cases were originally brought in Fleming's name) the Court at length expounded on the various objections raised by the defendant in opposition to the plaintiff's Motion for Substitution.

“However, say the defendants, neither the Office of Administrator nor the Office of Price Administration has been abolished, and there can be no successor; that the statutory authorities cited by the President in the first paragraph of Executive Order 9809 as justifying his action do not help; the Office of Price Ad-

administrator is still vacant, Fleming's appointment is as the head of a new agency, and Sec. 201(b) of the Emergency Price Control Act (which defendants contend is the only section under which the President might otherwise proceed in the instant case) has not been complied with, in that the functions of the Office of Price Administrator have not been transferred 'to any other department or agency of the Government having other functions relating to' the commodity or commodities over which the O.P.A. has exercised jurisdiction. This is particularly so, it is argued, because prior to December 12, 1946, when Porter resigned, the Office of Temporary Controls did not exist, and, therefore, did not have any functions then exercised by the OPA.

Let us examine the authorities cited in the Order.

Title I of the First War Powers Act of December 18, 1941, is found in 50 U.S.C. App. Secs. 601-605. By Sec. 601 the President is authorized by Congress 'to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties and powers hitherto by law conferred upon any executive department commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end is authorized to make such regulations and to issue such or-

ders as he may deem necessary * * *. Provided further That the authority by this title granted shall be exercised only in matters relating to the conduct of the present war.”

By Sec. 602 the President was authorized to utilize, coordinate or consolidate any executive or administrative commissions, bureaus, agencies, office or officers then existing by law and to transfer any duties or powers from one existing department, agency, office or officer to another.

It has been held that, under the wording of Sec. 601, the powers conferred upon the President to transfer functions was intended to extend to any and all functions, whether existing before or after the passage of the First War Powers Act; and this was in a case where the right of the President acting under that section, enacted in December, 1941, was questioned in transferring by executive order the right to approve maximum price regulations conferred upon the Secretary of Agriculture by Sec. 3(e) of the Emergency Price Control Act, enacted in January, 1942, to the War Food Administration. *California Lima Bean Growers Assn. v. Bowles*, 150 F. (2) 964-966.

While Sec. 601 does not specifically state that new agencies may be created which will consolidate functions of other agencies, the statute has been construed as authorizing such action. The functions of the Federal Housing Administration, Federal Home Loan Bank Board, Home Owners Loan Corporation, Federal Savings and Loan Insurance Com-

pany, and the United States Housing Authority were consolidated in the National Housing Agency. (Ex. Order 9070, 7 F.R. 1529, Feb. 24, 1942); and later the War Food Administration was created to include many agencies relating to food (Ex. Orders 9322, of March 26, 1943, amended by Ex. Order 9334 of April 19, 1943; Code of Fed. Reg., Cum. Suppl., Titles 1-3, pgs. 1262, 1293. See also Executive Order 9347 (8 F.R. 7207) consolidating May 27, 1943, other agencies in the Office of War Mobilization; Executive Order 9361 (8 F.R. 2071) in the Office of Economic Warfare on July 15, 1943; and in the Surplus War Property Administration on Feb. 19, 1944, by Order 9425 (9 F.R. 2071). This construction by the Executive, it is settled, is entitled to persuasive weight. *Billings v. Truesdell*, 321 U.S. 542-552. And Congress has appropriated funds for the use of these agencies, indicating its acquiescence in such construction, particularly where, with knowledge, it fails to amend the Act.

Brooks v. Dewar, 313 U. S. 354, 361.

It is argued that the word "executive" as used in Sec. 601 has some special meaning, and must be distinguished from agencies created by Congressional Act, as in the Emergency Price Control Act. I cannot see that the word "executive" as used means anything more than a bureau, commission or agency created to exercise executive duties. The section does not attempt to distinguish a body or office erected by executive order from one erected by Congressional enactment. As a matter of fact, the

power to create any agency or office given to the President, is conferred by Congressional Act, and there would seem to be no logical distinction between any agency established by Congress by an Act and an agency established by Congress through an Act delegating to the President the Congressional power to establish such agency. And the multitude of words used in Sec. 601—"including" functions, duties and powers conferred upon any "executive department, commission, bureau, agency, governmental corporation, office or officer"—shows a much more comprehensive construction than the definition to which defendants seek to limit "executive."

United States v. Paramount Publix Corporation, 73 F. (2) 103.

It has been said that the court must not hunt for limitations or scrutinize the wording with a confining intent, but should seek for the purpose and spirit of the enactment. *United States v. Russell-Taylor, Inc.*, 64 F. Supp. 748-752.

It would not be amiss, in this connection, to call attention to Sec. 133y-5 of the Reorganization Act of 1942 (5 U.S.C.A. Sec. 133y et seq) in which "agency" is defined as meaning "any executive department, commission, independent establishment, corporation * * * board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government. Such term does not include the Comptroller General of the United States or the General Account-

ing Office, which are part of the legislative branch of the Government.” That clearly indicates that the agencies mentioned, which are charged with regulatory functions, are executive agencies and a part of the executive branch of the government.

Part III of the Second War Powers Act of 1942 became effective March 27, 1942, and is found in 50 U.S. App. Sec. 633, but would seem to have no application to the present dispute.

Section 201 (b) of the Emergency Price Control Act of 1942 became effective January 30, 1942, and is found in 50 U.S.C.A. App. Sec. 921. By that section, the President is authorized to transfer any of the powers and functions conferred by the Act upon the Office of Price Administration “with respect to a particular commodity or commodities to any other department or agency of the Government having other functions relating to such commodity or commodities” except powers or functions conferred by law upon the Secretary of Agriculture, or with respect to any agricultural commodity (which distilled spirits is not, *Dowling Bros. Distilling Co. v. United States*, 153 F. (2) 353), except powers and functions relating to priorities and rationing.

As to this, it is urged that no authority is conferred except to transfer functions to another agency which already has functions relating to a particular commodity then administered by the Price Administrator.

The construction sought to be placed seems inadmissible. Simultaneously with the transfer of functions of the Temporary Controls Administrator, there was created the Office of Temporary Controls

to take over the functions of the OPA and other agencies. There was thus an "agency of the Government having other functions relating to such commodity." And the new agency is a part of the Office for Emergency Management of the President, established pursuant to the Reorganization Act of 1939 (5 U.S.C., Sec. 133 et seq.; particularly Sec. 133s effectuating Plan I following Sec. 133t) and responsible for over-all direction of price control, certainly a function relating to commodities. See Ex. Order 8248,-I, September 8, 1939, Code of Fed. Regulations, Cum. Suppl. Title 1-3, page 576; Administrative Order May 25, 1940; id. page 1320; Ex. Order 9250, of Oct. 3, 1942, id; page 1213.

Section 2 of the Stabilization Act of 1942, effective October 2, 1942, may be found in 50 U.S.C.A. App. Sec. 962. It does not seem to have any application to the situation here presented.

It is next asserted that Fleming cannot be the successor of Porter because under Sec. 201(a) of the Emergency Price Control Act of 1942 (50 U.S.C.A. App. Sec. 921(a), the Price Administrator can only be appointed by the President "with the advice and consent of the Senate"; and Fleming's appointment has never been confirmed by the Senate; citing *Porter v. Hirahara* and *Porter v. Ryan*, *supra*.

By that section the Office of Price Administration is created, to be under the direction of a Price Administrator, "appointed by the President, by and with the advice and consent of the Senate." But as shown before, any of the powers and functions con-

ferred upon the Office of Price Administration with respect to a commodity or commodities may be transferred by the President "to any other department or agency of the Government having other functions relating to such commodity or commodities."

No statute is mentioned that the appointment of Fleming as Temporary Control Administrator must be confirmed by the Senate. He has not been appointed Administrator of the Office of Price Administration. He is not appointed Administrator solely of OPA functions; his duties comprehend much more. And the agency of which he has been appointed Administrator has "other functions relating to such commodity or commodities" as described above. This sentence does not refer solely to existing departments or agencies, nor limit the power to transfer to them. It was undoubtedly contemplated that changing conditions would require or suggest a shifting or consolidation of functions, and this was to be permitted except with reference to certain powers or functions of the Secretary of Agriculture.

Certainly Mr. Fleming, as Administrator, can bring action now for violation of the regulations of OPA by over ceiling sales, were such action not otherwise barred. If he can sue, he can be substituted in a pending action.

If the President had usurped legislative power by Executive Order 9809, Congress would certainly have known it and remonstrated. But, to the contrary, after Mr. Fleming's appointment, he testified

before the House sub-committee on Appropriations on the Presidential request for a deficiency appropriation, and there was no objection either then or in the subsequent bill passed by the Senate on March 5, 1947, and now Public Law 20, 80th Cong., 1st Session, which specifically refers to the transfer of the functions of OPA to the Office of Temporary Controls by Executive Order 9809, and thus, I think, ratifies the President's action. *Isbrandtsen-Moller Co. v. United States*, 300 U. S. 139, 147; *Swayne & Hoyt, Ltd. vs. United States*, id. 297, 301.

Reading section 921 (b) of the Emergency Price Control Act with section 601 of the First War Powers Act, as I think they must be, I can see no valid objection to Mr. Fleming acting as Temporary Control Administrator in the maintenance and further prosecution of this action, as the President directs in paragraph 2 of Executive Order 9809.

Even the termination of the Emergency Price Control Act would not abate rights vested or liabilities incurred prior thereto. Sec. 901.

Finally, it is asserted that because the OPA has not been abolished, no one can be designated to continue pending suits by other than Congress, it has not acted in that respect, or authorized the President to take its place by designating a new agency for that purpose; and Executive Order No. 9809, is attempting to accomplish that result is invalid.

The argument here is substantially a reiteration of that previously referred to. If my answer is sound, that the President acted within his powers in erecting the Office of Temporary Controls, with

Mr. Fleming as Administrator, there does not seem to be any objection to conferring upon such Administrator, who is to exercise the consolidated functions of the several agencies, the power to continue pending litigation.”

And this court concluded “In doing this simple thing, the Constitution has not been validated or weakened. Congress has not been by-passed, the law is still enforced and the violator is held to answer.”

Regardless of the status of this question heretofore, any question or any doubt raised by the decisions of the District Courts of Oregon or Hawaii or the Municipal Court of Long Beach would seem to be resolved by the decision of Justice Douglas of the Supreme Court in *Fleming v. Mohawk Wrecking Company*, No. 583, which the plaintiff respectfully submits, is binding on this Court. This case was on appeal before the Supreme Court at the time of Administrator Porter's resignation. On Motion of the Acting Solicitor General a Motion for Substitution of Fleming was allowed. Thereafter the defendant filed a Motion to vacate the order substituting Fleming, which was briefed and argued at length before that Court. The Court first reviewed the history of the Emergency Price Control Act as enacted in 1946, the subsequent decontrol of most of the commodities controlled thereby, and the creation of the Office of Temporary Controls by Executive Order in December, 1946, and discussing the objections as raised by the defendant in the following language:

“It is argued that the President had no authority to transfer the functions of the Price Administrator to another agency and to vest in an officer appointed by the President the power which the Emergency Price Control Act, Sec. 201, had conferred upon an Administrator appointed by the President by and with the advice and consent of the Senate, and it is said that even though such authority existed, it came to an end with the cessation of hostilities.

By Sec. 1 of the First War Powers Act of 1941, 55 Stat. 838, 50 U.S.C.A. App. Supp. v. Sec. 601, the President is

“authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary* * *.”

That power may be exercised “only in matters relating to the conduct of the present war.” Sec. 1, and expires six months after “the termination of the war.” Sec. 401.

On December 31, 1946, after the creation of the Office of Temporary Controls, the President, while recognizing that “a state of war still exists,” by

proclamation declared that hostilities had terminated. The cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton v. Kentucky Distilleries & W. Co.*, 251 U.S. 146, 161, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues during that emergency. *Stewart v. Kahn*, 11 Wall. 493, 507. Whatever may be the reach of that power, it is plainly adequate to deal with problems of law enforcement which arise during the period of hostilities but do not cease with them. No more is involved here.

Section 1 of the First War Powers Act does not explicitly provide for creation of a new agency which consolidates the functions and powers previously exercised by one or more other agencies. But the Act has been repeatedly construed by the President to confer such authority. Such construction by the Chief Executive, being both contemporaneous and consistent, is entitled to great weight. See *United States v. Jackson*, 280 U.S. 183, 193; *Billings v. Truesdell*, 321 U.S. 542, 552-553, and the appropriation by Congress of funds for the use of such agencies stands as confirmation and ratification of the action of the Chief Executive. *Brooks v. Dewar*, 313 U.S. 354, 361.

Nor do we think there is merit in the contention that the First War Powers Act gave the President authority to transfer functions only from agencies in existence when that Act became law. It is true that Sec. 1 authorizes the President "to make such

redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon" any agency. But the latter clause is only an illustration of the authority granted, not a limitation on it. It makes clear that the authority extends to existing agencies as well as to others. That construction is supported by Sec. 5 of the Act which states that upon its termination all executive and administrative agencies "shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this title to the contrary notwithstanding." As stated by the Emergency Court of Appeals, unless Sec. 1 authorizes the President to redistribute functions of agencies created after the passage of the Act, the reference in Sec. 5 to functions "hereafter" provided by law is "Wholly meaningless." *California Lima Bean Growers Ass'n. v. Bowles*. 150 F. 2d 964, 967. Nor is that result affected by the subsequent enactment of the Emergency Price Control Act which in Sec. 201 (b) authorized the President to transfer any of the powers and functions of the Office of Price Administration "with respect to a particular commodity or commodities" to any government agency having other functions relating to such commodities. Whatever effect that provision may have, it does not purport to deal with general enforcement functions and so restricts in no way the authority of the President under the First War Powers Act to trans-

fer them. Yet enforcement functions are all that are involved in the present cases.

We need not decide whether under the First War Powers Act the President had authority to transfer functions of an officer who need be confirmed by the Senate to one appointed by the President without Senate confirmation. For Sec. 2 of the Act provides:

“That in carrying out the purposes of this title, the President is authorized to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, governmental corporations, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, governmental corporation, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto.”

The authority to “utilize * * * offices, or officers now existing by law” is sufficient to sustain the transfer of functions under the Executive Order from Porter, resigned, to Fleming. For prior to the Act, Fleming had been appointed from the President and confirmed by the Senate as Federal Works Administrator. He thus was the incumbent of an office “existing by law” at the time of the passage of the Act and by virtue of Sec. 2 could be the lawful recipient through transfer by the President of the functions of other agencies as well. To hold that an officer, previously confirmed by the Senate, must

be once more confirmed in order to exercise the powers transferred to him by the President would be quite inconsistent with the broad grant of power given the President by the First War Powers Act. Any doubts on this score would, moreover, be removed by the recognition by Congress in a recent appropriation of the status of the Temporary Controls Administrator. That recognition was an acceptance or ratification by Congress of the President's action in Executive Order No. 9809. *Swayne & Hoyt, Ltd. v. United States*, 300 U.S. 297, 301-302; *Brooks v. Dewar*, *supra*."

It might be remarked that this decision of the United States Supreme Court as written by Justice Douglas as regards to this point was the unanimous decision of the Court.

Respectfully submitted,

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

No. Civil 3429

PHILIP B. FLEMING, Administrator Office of
Temporary Controls,

Plaintiff,

vs.

DOROTHY F. BORDERS,

Defendant.

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON, Jr.,

Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of Cause.]

DOCKET ENTRIES

1947

- Jan. 28 Filed complaint for injunction and treble damages.
- Jan. 28 Issued summons—to Marshal.
- Feb. 4 Filed summons with Marshal's return.
- Feb. 21 Filed motion to dismiss.
- Mar. 6 Entered order dismissing for want of prosecution.
- May 17 Filed motion to vacate judgment and reinstate case on docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 24, inclusive, constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 3429, in which Philip B. Fleming, Administrator, Office of Temporary Controls, is plaintiff and appellant, and Dorothy

No. 11672

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

MRS. A. C. SHALBERG,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,

Commercial Iron Works;

VICTOR E. HARR,

Assistant United States Attorney,

U. S. Court House, Portland, Oregon;

C. E. KNOWLTON, JR., and

JOHN E. HEDRICK,

3312 White Building,

Seattle 1, Washington,

For Appellant.

No record of attorney for Appellee.

In the District Court of the United States
for the District of Oregon

No. Civil 3430

PHILIP B. FLEMING, Administrator Office of
Temporary Controls,

Plaintiff,

vs.

MRS. A. C. SHALBERG,

Defendant.

COMPLAINT

[Complaint for Injunction and Treble Damages is similar to the same as set out in companion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND REINSTATE CASE ON THE DOCKET

Comes Now the above plaintiff and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON,

JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Jan. 28 Filed complaint for injunction and treble damages.
- Jan. 28 Issued summons—to Marshal.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- Apr. 3 Filed summons—returned unexecuted.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 21, inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 3430, in which Philip B. Fleming, Administrator, Office of Temporary Controls, is plaintiff and appellant, and Mrs. A. C. Shalberg is defendant and appellee; that said transcript has been prepared by me in accordance with the designation of record on appeal filed by the appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 27th day of June, 1947.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 11672. United States Circuit Court of Appeals for the Ninth Circuit. Frank R. Creedon, Housing Expediter, Appellant, vs. Mrs. A. C. Shalberg, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 30, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 11673

United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

MRS. RICHARD DAVIS,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,

c/o Commercial Iron Works;

VICTOR E. HARR,

Assistant United States Attorney,

U. S. Court House, Portland, Oregon;

C. E. KNOWLTON, Jr., and

JOHN E. HEDRICK,

3312 White Building, Seattle 1, Washington,

For Appellant.

No record of attorney for Appellee.

In the District Court of the United States
for the District of Oregon

No. Civil 3431

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Plaintiff,

vs.

MRS. RICHARD DAVIS,

Defendant.

COMPLAINT

[Complaint for Injunction and Treble Damages is similar to the same as set out in companion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND
REINSTATE CASE ON THE DOCKET

Comes Now the plaintiff above named and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON,
JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Jan. 28 Filed complaint for injunction and treble damages.
- Jan. 28 Issued summons—to Marshal.
- Mar. 6 Filed summons.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 21, inclusive, constitute the transcript of record upon appeal from a judgment of said court in a cause therein numbered Civil 3431, in which Philip B. Fleming, Administrator, Office of Tempo-

rary Controls, is plaintiff and appellant, and Mrs. Richard Davis is defendant and appellee; that said transcript has been prepared by me in accordance with the designation of record on appeal filed by the appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 27th day of June, 1947.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 11673. United States Circuit Court of Appeals for the Ninth Circuit. Frank R. Creedon, Housing Expediter, Appellant, vs. Mrs. Richard Davis, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 30, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 11674

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

ADOLPH NEUBERT,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,

c/o Commercial Iron Works;

VICTOR E. HARR,

Assistant United States Attorney,

United States Court House, Portland, Oregon;

JOHN E. HEDRICK and

CHARLES E. KNOWLTON, JR.,

3312 White-Henry-Stuart Building,

Seattle 1, Washington,

For Appellant.

No record of Attorney for Appellee.

In the District Court of the United States
for the District of Oregon

No. Civil 3435

PHILIP B. FLEMING, Administrator Office of
Temporary Controls,

Plaintiff,

vs.

ADOLPH NEUBERT,

Defendant.

COMPLAINT

[Complaint for Injunction and Treble Damages is similar to the same as set out in companion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND
REINSTATE CASE ON THE DOCKET

Comes Now the above plaintiff and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON,
JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Jan. 28 Filed complaint for injunction and treble damages.
- Jan. 28 Issued summons—to Marshal.
- Feb. 28 Filed summons with Marshal's return.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 21, inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 3435, in which Philip B. Fleming, Administrator, Office of

Temporary Controls, is plaintiff and appellant, and Adolph Neubert is defendant and appellee; that said transcript has been prepared by me in accordance with the designation of record on appeal filed by the appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 27th day of June, 1947.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 11674. United States Circuit Court of Appeals for the Ninth Circuit. Frank R. Creedon, Housing Expediter, Appellant, vs. Adolph Neubert, Appellee Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 30, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 11675

United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

L. R. CHAMBERS,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,
c/o Commercial Iron Works;

J. ROBERT PATTERSON,
Assistant United States Attorney,
U. S. Court House, Portland, Oregon;

C. E. KNOWLTON, JR., and

JOHN E. HEDRICK,
3312 White Building,
Seattle 1, Washington,

For Appellant.

No record of Attorney for Appellee.

In the District Court of the United States
for the District of Oregon

No. Civil 3462

PHILIP B. FLEMING, Administrator Office of
Temporary Controls,

Plaintiff,

vs.

L. R. CHAMBERS,

Defendant.

COMPLAINT

[Complaint for Injunction and Treble Damages is similar to the same as set out in companion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND
REINSTATE CASE ON THE DOCKET

Comes Now the above plaintiff and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator, of Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON,
JR.

[Endorsed]: Filed June 5, 1947.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Feb. 12 Filed complaint for injunction and for treble damages.
- Feb. 12 Issued summons—to Marshal.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- Mar. 20 Filed summons—returned unserved.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entering order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 22, inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 3462, in which Philip B. Fleming, Administrator, Office of

Temporary Controls, is plaintiff and appellant, and L. R. Chambers is defendant and appellee; that said transcript has been prepared by me in accordance with the designation of record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 27th day of June, 1947.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 11675. United States Circuit Court of Appeals for the Ninth Circuit. Frank R. Creedon, Housing Expediter, Appellant, vs. L. R. Chambers, Appellee. Transcript of Record. Upon Appeal for the District Court of the United States for the District of Oregon.

Filed June 30, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 11676

United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

GEORGE ROUSE,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,
c/o Commercial Iron Works;

J. ROBERT PATTERSON,
Assistant United States Attorney,
U. S. Court House, Portland, Oregon;

C. E. KNOWLTON, JR., and

JOHN E. HEDRICK,
3312 White Building,
Seattle 1, Washington,
For Appellant.

REUBEN G. LENSKE,
American Legion Building,
Portland, Oregon,
For Appellee.

In the District Court of the United States
for the District of Oregon

No. Civil 3463

PHILIP B. FLEMING, Administrator Office of
Temporary Controls,

Plaintiff,

vs.

GEORGE ROUSE,

Defendant.

COMPLAINT

[Complaint for Injunction and Treble Dam-
ages is similar to the same as set out in com-
panion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be
and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now defendant and moves the court for an order dismissing the above-entitled suit.

In the event the above motion is denied, defendant moves that plaintiff set forth in said complaint the period that they claim the alleged violations occurred.

/s/ REUBEN G. LENSKE,

Attorney for Defendant,
American Legion Bldg.

Among the grounds for dismissal, defendant will stress that the plaintiff has no right to bring said cause.

Service of the above motion accepted this 26th day of March, 1947.

/s/ VICTOR E. HARR,

Assistant U. S. Attorney.

I certify that on March 26th, 1947, I served the Office of Temporary Controls, OPA, with the within Motion by their attorney, Sylvanus Smith, in that I deposited a copy of the within Motion with the office of the U. S. Attorney with the understanding that it would be forwarded to Mr. Smith.

/s/ S. I. SPIEGEL.

[Endorsed]: Filed March 27, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND
REINSTATE CASE ON THE DOCKET

Comes Now the plaintiff above named and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON,
JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Feb. 12 Filed complaint for injunction and for treble damages.
- Feb. 12 Issued summons—to Marshal.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- Mar. 6 Filed summons with Marshal's return.
- Mar. 27 Filed defendant's motion for order of dismissal.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 22, inclusive, constitute the transcript of record upon the appeal from a judgment of said

No. 11677

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK R. CREEDON, Housing Expediter,
Appellant,

vs.

HERMAN HAGE and EDWARD C. HAGE,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,

c/o Commercial Iron Works;

J. ROBERT PATTERSON,

Assistant United States Attorney,

U. S. Court House, Portland, Oregon;

EDWARD B. TWINING,

Assistant United States Attorney,

U. S. Court House, Portland, Oregon;

C. E. KNOWLTON, JR., and

JOHN E. HEDRICK,

3312 White Building,

Seattle 1, Washington,

For Appellant.

E. B. McCUTCHAN,

1212 Failing Building,

Portland, Oregon,

For Appellees.

In the District Court of the United States
for the District of Oregon
Civil Action File No. 3464

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Plaintiff,

vs.

HERMAN HAGE and EDWARD C. HAGE,
Defendants.

COMPLAINT

[Complaint for Injunction and Treble Dam-
ages is similar to the same as set out in com-
panion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between J. Robert Patterson, Assistant United States Attorney, of attorneys for plaintiff, and E. B. McCutchan, attorney for defendants, that defendants shall have an extension of time in which to answer or otherwise plead to plaintiff's Complaint until the 1st day of April, 1947.

Dated at Portland, Oregon, this 6th day of March, 1947.

/s/ E. B. TWINING,
Of Attorneys for Plaintiff.

/s/ E. B. McCUTCHAN,
Attorney for Defendants.

[Endorsed]: Filed March 6, 1947.

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be and it is hereby dismissed for want of jurisdiction.
March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND
REINSTATE CASE ON THE DOCKET

Comes Now the above plaintiff and respectfully moves the Court to vacate the judgment and dismissal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,
/s/ JOHN E. HEDRICK,
Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON.

[Endorsed]: Filed June 5, 1947.

DOCKET ENTRIES

1947

- Feb. 12 Filed complaint for injunction and for treble damages.
- Feb. 12 Issued summons—to Marshal.
- Feb. 14 Filed summons with Marshal's return.
- Mar. 6 Filed stipulation for extension of time to answer until April 1, 1947.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order continuing motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

In the District Court of the United States
for the District of Oregon

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered 1 to 23, inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 3464, in which Philip B. Fleming, Administrator, Office of Temporary Controls, is plaintiff and appellant, and Herman Hage and Edward C. Hage are defendants and ap-

No. 11678

United States
Circuit Court of Appeals
For the Ninth Circuit

FRANK R. CREEDON, Housing Expediter,
Appellant,
vs.

J. H. JEFFERS, doing business as NORBLAD
HOTEL,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SYLVANUS SMITH,
c/o Commercial Iron Works;

J. ROBERT PATTERSON,
Assistant United States Attorney,
U. S. Court House, Portland, Oregon;

C. E. KNOWLTON, JR., and

JOHN E. HEDRICK,
3312 White Building, Seattle 1, Washington,
For Appellant.

No record of attorney for Appellee.

In the District Court of the United States
for the District of Oregon

No. Civil 3465

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls,

Plaintiff,

vs.

J. H. JEFFERS, doing business as NORBLAD
HOTEL,

Defendant.

COMPLAINT

[Complaint for Injunction and Treble Dam-
ages is similar to the same as set out in com-
panion cause No. 11670 on pages 4 to 9.]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

Now at this day It Is Ordered that this cause be
and it is hereby dismissed for want of jurisdiction.

March 6, 1947.

[Title of District Court and Cause.]

MOTION TO VACATE JUDGMENT AND REINSTATE CASE ON THE DOCKET

Comes Now the above plaintiff and respectfully
moves the Court to vacate the judgment and dis-

missal entered in the above case and to reinstate the case on the docket.

In support of this Motion plaintiff attaches hereto and hereby makes a part hereof the attached Statement of Points and Authorities.

Dated this 16th day of May, 1947.

/s/ C. E. KNOWLTON, JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 17, 1947.

[Statement of Points and Authorities Relied on by the Plaintiff in Support of His Motion to Vacate Judgment of Dismissal and Reinstate Cases on the Docket is similar to the same as set out in companion cause No. 11670 on pages 12 to 28.]

[Title of District Court and Cause.]

ORDER CONTINUING HEARING ON
MOTION TO DISMISS

Now at this day It Is Ordered that the hearing on the motion of the plaintiff to vacate judgment and reinstate this cause on the docket of this court be and it is hereby continued for future hearing.

May 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff named above, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the Order dismissing plaintiff's Complaint entered in this action on March 6, 1947.

/s/ JOHN E. HEDRICK,

/s/ CHARLES E. KNOWLTON, Jr.,

Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Feb. 12 Filed complaint for injunction and for treble damages.
- Feb. 12 Issued summons—to Marshal.
- Mar. 6 Filed summons with Marshal's return.
- Mar. 6 Entered order dismissing for want of jurisdiction.
- May 17 Filed motion to vacate judgment and reinstate case on the docket.
- May 17 Filed statement of points in support of above motion.
- May 22 Entered order to continue motion to vacate judgment for future setting.
- June 5 Filed notice of appeal by plaintiff.
- June 5 Filed designation of record on appeal.

[Endorsed]: No. 11678. United States Circuit Court of Appeals for the Ninth Circuit. Frank R. Creedon, Housing Expediter, Appellant, vs. J. H. Jeffers, doing business as Norblad Hotel, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 30, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK R. CREEDON, Housing Expediter, Office
of Housing Expediter,

Appellant,

vs.

DOROTHY F. BORDERS,

No. 11670

MRS. A. C. SHALBERG,

No. 11672

MRS. RICHARD DAVIS,

No. 11673

ADOLPH NEUBERT,

No. 11674

L. R. CHAMBERS,

No. 11675

GEORGE ROUSE,

No. 11676

HERMAN HAGE and EDWARD C. HAGE,

No. 11677

J. H. JEFFERS, d/b/a Norblad Hotel,

No. 11678

Appellees.

Transcript of Records

Upon Appeals from the District Court of the United States
for the District of Oregon

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

In the Circuit Court of Appeals of the United States
for the Ninth Circuit

Nos. 11670, 11672, 11673, 11674, 11675, 11676,
11677, 11678

STATEMENT OF POINTS

Plaintiff Appellant, Philip B. Fleming, by his attorneys, Charles E. Knowlton, Jr., and John E. Hedrick, designates the following as his statement of points on appeal:

1. The District Court of the United States for the District of Oregon erred in dismissing the action.

2. The District Court of the United States for the District of Oregon erred in holding that plaintiff is not an officer of the United States and authorized by law to sue and is not the true and valid successor of Paul A. Porter, Administrator, Office of Price Administration.

Dated this 16th day of June, 1947.

/s/ CHARLES E. KNOWLTON,
JR.,

/s/ JOHN E. HEDRICK,

Of Attorneys for Plaintiff.

[Endorsed]: Filed June 28, 1947.

At a Stated Term, to wit: The October Term, 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-fifth day of August, in the year of our Lord one thousand nine hundred and forty-seven.

Present:

Honorable Francis A. Garrecht,
Senior Circuit Judge, Presiding;

Honorable Albert Lee Stephens,
Circuit Judge;

Honorable Homer T. Bone,
Circuit Judge.

[Title and Causes.]

ORDER FOR SUBSTITUTION OF PARTY APPELLANT

Upon consideration of the petition of Frank R. Creedon, Housing Expediter, that he be substituted as party appellant herein in the place and stead of Philip B. Fleming, and good cause therefor appearing,

It Is Ordered that said petition be, and hereby is granted, and that Frank R. Creedon, Housing Expediter, be, and he is hereby substituted, as party appellant in each of above causes in the place and

stead of Philip B. Fleming, Administrator, Office of Temporary Controls, and these actions shall hereafter be designated as Frank R. Creedon, Housing Expediter, Office of Housing Expediter, appellant, versus Borders, No. 11670; vs. Mrs. A. C. Shalberg, No. 11672; vs. Mrs. Richard Davis, No. 11673; vs. Adolph Neuberg, No. 11674; vs. L. R. Chambers, No. 11675; vs. George Rouse, No. 11676; vs. Hage, et al., No. 11677, and vs. J. H. Jeffers, etc., No. 11678.

[Title of Circuit Court of Appeals and Cause.]

ORDER CONCERNING PRINTING OF RECORDS OF EIGHT CASES NOT CONSOLIDATED

Upon application of the appellant and it appearing to the Court that good cause having been shown, therefore it is hereby

Ordered that the record of the above entitled eight cases on this appeal be printed as one record under the title of all causes, and it is further

Ordered that in said record only one complaint be printed under the title of all causes, and it is further

Ordered that only one order of substitution wherein Frank R. Creedon, Housing Expediter, Office of the Housing Expediter, plaintiff, being substituted for Philip B. Fleming, Administrator,

Office of Temporary Controls, be printed under the title of all causes.

Done this 22nd day of September, 1947.

WILLIAM DENMAN,
U. S. Circuit Judge.

Presented by:

/s/ JOHN E. HEDRICK,
Attorney for Plaintiff.

[Endorsed]: Order, etc., filed Sept. 22, 1947.