

adopt extra-legal means for the protection of its interests. Foster, *The Great Steel Strike and Its Lessons* 50 ff. (1920).

Parties—Judicial Control over Executive—Postmaster General as Indispensable Party in Suit against Local Postmaster—[Federal].—The Postmaster General, after conducting a hearing, held the plaintiff's business unlawful and issued a "fraud order," directing the defendant, a local postmaster, to stop the plaintiff's mail. The plaintiff sued, without joining the Postmaster General, to restrain enforcement of the fraud order. *Held*, the Postmaster General is an indispensable party. Decree dismissing complaint affirmed. *National Conference on Legalizing Lotteries v. Goldman*, 85 F. (2d) 66 (C.C.A. 2d 1936). On similar facts the Postmaster General was not considered an indispensable party, although dismissal was affirmed for other reasons. *Rood v. Goodman*, 83 F. (2d) 28 (C.C.A. 5th 1936).

The opposing results in these cases arose out of the conflict between the policy of giving easily accessible judicial protection from administrative rulings and the established rule that a suit in equity must join all those whose interests will be directly affected by the decree. As Judge Hand remarked in the *National Conference* case, in what must be considered a gem of judicial understatement, ". . . it must be owned that the law is not as clear as one might wish." 85 F. (2d) 66, 67. A series of Supreme Court decisions have held that in a suit against a subordinate federal officer the superior must be joined. *Warner Valley Stock Co. v. Smith*, 165 U.S. 28 (1897) (suit against commissioner of land office for issuance of land patents; Secretary of Interior held indispensable); *Gnerich v. Rutter*, 265 U.S. 388 (1924) (suit against prohibition director to compel issuance of liquor permits in addition to those granted by Commissioner of Internal Revenue; latter held indispensable); *Webster v. Fall*, 266 U.S. 507 (1925) (suit against disbursing agent in charge of payments to Indians to compel payments against terms of statute alleged to be unconstitutional; Secretary of Interior held indispensable). In a subsequent case it was summarily held, through Mr. Justice Holmes, that "there is no question" that the superior officer is not indispensable. *Colorado v. Toll*, 268 U.S. 228, 230 (1925) (suit by a state against a national park superintendent to enjoin enforcement of federal regulations allegedly inconsistent with the state's rights; Director of National Parks not joined). In the meantime numbers of cases were decided, although the superior officers were not joined, without any discussion of the problem. See, e.g., *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902) (suit against local postmaster to enjoin enforcement of fraud order without joining Postmaster General; decree dismissing bill reversed); *Leach v. Carlile*, 258 U.S. 138 (1922) (suit to enjoin enforcement of fraud order; dismissed on the merits).

If an injunction had been granted in the *National Conference* case extending to the local postmaster, his subordinates, and "all those with notice," the Postmaster General would have been effectually prevented from interfering with the plaintiff's mail. Since he found the plaintiff's business unlawful and it is his duty to protect the mails from unlawful correspondence, he would be under a duty to intervene in the trial or to provide the local postmaster with adequate defense. Hence the principal cases are not within the policy of Equity Rule 39 which permits proceedings without joinder of "proper parties" who are not within the jurisdiction, but envisages only decrees which

will not prejudice the absent parties. 33 Sup. Ct. xxix (1912), 28 U.S.C.A. 21, 132-43 (1928). See *California v. Southern Pacific Co.*, 157 U.S. 229, 256 (1895). Furthermore, to require the Postmaster General's staff to keep track of all suits attacking fraud orders brought against local postmasters and to provide adequate defense in these suits would be to impose some inconvenience and expense. But this inconvenience is not very great; rather it is much less than the inconvenience of defending minor officers who are attempting to enforce allegedly unconstitutional laws. See 3 U.S.L.W. 1237 (Aug. 18, 1936) (2000 suits brought against collectors of AAA processing taxes). And the requirement that the Postmaster General be joined would practically destroy the right to attack postal rulings in most cases because the suits would have to be brought in Washington, D. C., in order to get service on the Postmaster General. *Wheeler v. Farley*, 7 F. Supp. 433 (Cal. 1934). The difficulties of intervention by the Postmaster General with a local United States Attorney as counsel are slight compared with the difficulties and expenses of the citizen, unacquainted with lawyers in the District of Columbia, in filing suit and proving his case in Washington. The reason which Judge Hand reluctantly tendered for his decision, that a subordinate official might be unnecessarily bewildered by a "cross-fire" of conflicting orders from his superior and the courts in his own and other circuits, is admittedly unconvincing. The subordinate may obey his superior until a conflicting court order is directed toward him, and thereafter must obey the court. The only serious practical consideration for decision in these cases is the desirability of limiting the number of cases in which the Postmaster General will have to justify his rulings before a court. Though the injury may be slight in most of these cases and the threat of bureaucracy remote, it will be best in the long run to preserve a simple and efficient remedy for the citizen by discarding the rule applied in the *National Conference* case, or by passing a venue and process statute enabling a plaintiff to join a superior federal officer in any federal court and obtain personal service on him in Washington.

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Right of Privacy—Publication of Picture in Newsreel as Trade Purpose—[New York].—The plaintiff's picture, taken while she was exercising in a gymnasium with other stout women, appeared in the defendant's newsreel. She sued under § 51 of the New York Civil Rights Law providing: "Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade . . . may . . . sue and recover damages for any injuries sustained by reason of such use . . ." Cahill's N. Y. Cons. L. 1930, c. 7, § 51. *Held*, for the defendant. Publication of matters of public interest is not a trade purpose within the meaning of the statute. *Sweenek v. Pathe News*, 16 F. Supp. 746 (N.Y. 1936).

The New York statute, protecting individuals from invasions of their privacy for advertising or trade purposes, has neither flooded the courts with litigation nor given them particular difficulty in defining the scope of this protection. Traditional arguments for and against the recognition of a right of privacy failed to distinguish among the types of cases in which protection might be sought within this category. See Warren and Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890); Hadley, *The Right to Privacy*, 3 Northwestern L. Rev. 1 (1894). Common law courts have not drawn a distinction between advertising and other cases but have either refused to recognize any right of privacy or have extended protection on more general grounds. See *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 64 N.E. 442 (1902) (lack of