abuse of an administrative agency's discretion to disclose may be dangerous,[47] it is equally true that "There are dangers in spreading a belief that untruths and half-truths . . . . are to be ranked as peccadillos, or even perhaps as part of the amenities of business. When wrongs have been committed or attempted, they must be dragged to light and pilloried."[48] If a rule of secrecy should be imposed on the administrative agency in matters involving the interest of the investing public, what rules should restrict disclosure by business interests? How is the investor to react when he reads that a corporation official or banker has attacked the Securities and Exchange Commission?[49] Such statements would appear if the order for a hearing was only a paragraph long and contained no specification of charges.[50]

Bankruptcy—Reorganization—Jurisdiction under Section 77B to Set Aside Sale of Bonds—[Federal].—Two years after the court approved a voluntary petition for reorganization under Section 77B of the Bankruptcy Act, the bondholders' committee, without court authorization or ratification, sold to the sole stockholder of the debtor $264,000 worth of bonds out of a total of $446,000 outstanding, at 62 per cent of their

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parison. The qualitative analysis was made by assigning arbitrary weights to headlines (size and width) and length of items. E.g., a one column story received a weighting of four.

Type of Story	President	SEC	ICC	FTC	NLRB
Effort to Influence Legislation	146		7.5	9	6
Effort to Influence Policy	119	18			
Progress, Policy, Procedure	212.5	66	19.5		6.5
Facts from Records and Research		100.5	12.5		
What Agency Does and How	28		6		13.5
Personnel News	276.5	11			
Feature Stories	30.5		4.5		
Decisions and Rulings	11	49.5	82.5	13.5	27
Applications, Answers, Complaints		139	52.5	101	6.5
Hearings, Schedule, Testimony		243	42.5	16	39
Score	823.5	627	227.5	139.5	98.5
Total Number of Items	177	137	66	39	18

(Adapted from McCamy, Government Publicity 62–4 (1939).)

[47] Jones v. SEC, 298 U.S. 1, 32 (1936) (dissenting opinion of Mr. Justice Cardozo).

[48] Ibid.

[49] Cf. 30 Time, No. 7, at 51 (August 16, 1937) (response in press of president of Transamerica Corporation to private warning by San Francisco Stock Exchange); The Coast 39 (September, 1939) (remarks of A. P. Giannini, "Dirty, drunken skunk," as he passed SEC counsel table during the hearings of the Walston case in May, 1939).

[50] This is true for one of two reasons: either because newspapers are active in producing news or because by and large publishers support only social theories and governmental policies favored by the business elite of their communities, McCamy, op. cit. supra note 46, at 248, and works cited. Cf. 30 Time, No. 10, at 87 (September 6, 1937) (suit against bank president, subsequently found guilty of violating "his trust to the Anglo Bank and its stockholders," not reported by San Francisco newspapers).

face value. After purchasing the bonds, the stockholder submitted to the court a plan whereby the stockholder would take over all the assets and pay off the remaining outstanding securities at face value. On the day the plan was filed, former holders of $14,500 of the bonds petitioned the court, on behalf of themselves and others similarly situated, to impress a trust; to decree that the petitioners "have or obtain full title to and possession of said bonds upon terms as to this court shall be deemed equitable and fair;"[1] and for an accounting to recover funds diverted by the stockholder in breach of fiduciary duties. The demand for relief was predicated on allegations that the sale and the 77B proceedings were so conducted by the stockholder, the bondholders' committee, and the indenture trustee, as to conceal the true value of the bonds.[2] The district court dismissed the petition on the ground that it had no jurisdiction. On appeal, *held*, affirmed. *In re Lubliner & Trinz Theatres, Inc.*[3]

It may be contended that several specific provisions of Section 77B of the Bankruptcy Act[4] might have afforded the court technical grounds upon which to base jurisdiction. The court is empowered to exercise jurisdiction over "the debtor and his property wherever located"[5] to scrutinize some aspects of the relationship between security holders and other parties to the reorganization,[6] and to "make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act."[7]

Under the first two provisions and under the possible application of the third, a broader jurisdiction is conferred upon the reorganization court than that possessed by

[1] Transcript of Record 145.

[2] The allegations were 1) that the petitioners did not know, nor had the letter in which the committee submitted the offer informed them, that the purchaser was the sole stockholder of the debtor; 2) that the stockholder, during reorganization proceedings, had diverted leaseholds from the debtor to the stockholder or its other subsidiaries; 3) that although the interests of the subsidiary debtor whose bonds petitioners held were in conflict with the interests of the other subsidiary regarding claims on the principal debtor, the same committee represented the bondholders of both subsidiaries; 5) That the committee had made no disclosure of these facts to petitioners.

[3] 100 F. (2d) 646 (C.C.A. 7th 1938).

[4] 48 Stat. 912 (1934), 11 U.S.C.A. § 207 (1938). Chapter X of the Bankruptcy Act (52 Stat. 883 ff. (1938), 11 U.S.C.A. §§ 101 ff. (1938)) contains no additional provisions enabling the court to take jurisdiction of a situation such as that in the principal case, nor does it eliminate relevant sections of Section 77B.

[5] § 77B(a): . . . . the court "shall, during the pendency of the proceedings under this section, have exclusive jurisdiction of the debtor and its property wherever located for the purposes of this section." See In re Prudence-Bonds Co., 77 F. (2d) 328 (C.C.A. 2d 1935).

[6] § 77B(b): "Provided, That the judge shall scrutinize and may disregard any limitations or provisions of any depository agreements, trust indentures, committee or other authorizations affecting any creditor acting under this section and may enforce an accounting thereunder or restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claims filed by such committee member or agent, to the actual consideration paid therefor."

[7] 30 Stat. 546 (1898), 11 U.S.C.A. § 11 (15) (1927). This provision was included in the original act of 1898. It is applicable to all cases in which the court assumes jurisdiction under the bankruptcy power.

ordinary bankruptcy courts or by the courts under equity receivership practice.[8] However, existing interpretations of the provisions do not permit jurisdiction under those provisions unless the result is to benefit those who, at the time the court took jurisdiction, had claims against the debtor. Petitioners have no legal claim against the debtor; they will not have even an equitable claim until they have maintained an action against the purchaser for declaration of a constructive trust.[9]

A property interest sufficient to confer jurisdiction under the "property" clause might be established on two possible grounds. First, proof of petitioners' allegations concerning the stockholder's diversion of assets from the debtor would make those funds available to the debtor. It is doubtful, however, whether petitioners, even if they were creditors of the debtor, could sue to increase the debtor's estate.[10] Second, the debtor has a property interest in the property against which the bonds were issued. Courts have exercised jurisdiction on the basis of the debtor's property interest in order to restrain a creditor from selling collateral deposited by the debtor,[11] and to restrain a bondholder from prosecuting his suit in a state court against the indenture trustee for an accounting and distribution of the trust property.[12] Jurisdiction in these instances was exercised in order to protect those who had claims against the debtor; in the present case, since neither the stockholder nor the bondholders would benefit,[13] jurisdiction would be exercised for the benefit of those who have no claim against the debtor.

[8] The jurisdiction over property in the equity receivership practice and in ordinary bankruptcy was limited to "property in the possession of the debtor." Authorities defining the jurisdiction of the court in an equity receivership: Wheaton v. Daily Telegraph Co., 124 Fed. 61 (C.C.A. 2d 1903); Fidelity & Deposit Co. v. Johnson, 275 Fed. 112 (D.C. Mich. 1921); Gerdes, Jurisdiction of the Court in Proceedings under 77B, 4 Brooklyn L. Rev. 237, 243 (1935). Authorities defining the jurisdiction of the court in a bankruptcy action: Taubel, etc. Co. v. Fox, 264 U.S. 426 (1924); Mueller v. Nugent, 184 U.S. 1 (1901); Wabash R. v. Adelbert College, 208 U.S. 38 (1908); May v. Henderson, 268 U.S. 111 (1925); Harrison v. Chamberlain, 271 U.S. 191 (1926).

The "scrutiny" provision (§ 77B (b)) has no analogy in the bankruptcy or equity receivership practice; and although § 11 (15) is applicable to ordinary bankruptcy, it has a broader meaning under § 77B in that § 77B gives the court a broader jurisdiction than that possessed by other bankruptcy courts.

[9] 3 Bogert, Trusts and Trustees § 472 (1935).

[10] See Gruenwald v. Moir Hotel Co., 96 F. (2d) 932 (C.C.A. 7th 1938), cert. den. 305 U.S. 615 (1938).

[11] See In re Prudence-Bonds Co., 77 F. (2d) 328 (C.C.A. 2d 1935); cf. Continental Ill. Nat'l Bank and Trust Co. v. Chicago, R.I. & P.R., 294 U.S. 648 (1935), which arose under Section 77 (47 Stat. 1474 (1933), 11 U.S.C.A. § 205 (1938)), but is applicable here because the provision as to jurisdiction over property (§ 205 (a)) is substantially the same as that in § 77B.

[12] In re Prudence-Bonds Co., 75 F. (2d) 262 (C.C.A. 2d 1935).

[13] At the time the court passed on the petition, the sale of the assets to the stockholder had already been consummated. Therefore, a decree directing the stockholder to pay petitioner the difference between the face value of the bonds and the amount paid for them in the sale would not benefit the remaining bondholders, for they have already been paid face value; a decree rescinding the sale and necessitating a vote upon a plan of reorganization might actually be detrimental to the remaining bondholders, in that the assets of the debtor may not have afforded full participation to all bondholders.

It might be urged that the provision empowering the judge to scrutinize the relationship between security holders and other parties to the reorganization is sufficiently broad to enable the court to provide relief where an inequitable sale has occurred. That the court need not limit its power to take cognizance of inequitable dealings in securities to cases in which the court exercises jurisdiction before the committee has sold deposited bonds,[14] or to instances in which the committee itself is the purchaser,[15] seems to have been recognized by the same circuit court in which the principal case was heard. The court limited the claim of the committee's depositary bank, one of whose officers was a member of the committee, to the amount it had actually paid for collateral bonds of the debtor, on the theory that the bank had violated its fiduciary duty to other bondholders in not notifying them of the sale.[16] The contention that the court should impose a similar fiduciary duty upon a stockholder who is alleged to have dominated the bondholders' committee does not afford a strict analogy, since in limiting a claim to the amount paid therefor, the court is again exercising jurisdiction only for the benefit of those who have claims against the debtor.[17]

Although in the usual situation one who has no claim against the debtor cannot invoke the jurisdiction of the reorganization court, it may be argued that in the instant case the sale of 62 per cent of the outstanding bonds was so substantial a part of the reorganization as to make it necessary for the court to exercise its jurisdiction in order to give effect to the purpose of the act. The jurisdiction under the "property" and "scrutiny" clauses is not expressly limited to jurisdiction exercised for the benefit of those who have claims against the debtor; the imposition of the limitation in the interpretations is undoubtedly a reflection of the notion that in the ordinary case the protection of persons no longer creditors of the debtor is not a part of the reorganization process. In the principal case, however, the sale of petitioners' bonds was a part of the reorganization process, for it was in that sale that the purchaser, by obtaining 62 per cent of the outstanding bonds, acquired a large measure of control over the reorgani-

[14] In re Spruce Apartments, C.C.H. Bkcy. L. Serv. ¶ 4346 (D.C. Pa. 1936). The court stated that it had no jurisdiction to restrain the committee from selling, but then stated that the bondholders would not be better off if the court should restrain. The decision thus intimated that the court had discretionary jurisdiction.

It is interesting to note that in the same reorganization out of which the principal case arose, holders of the bonds of the other subsidiary petitioned the court to restrain the committee from selling their bonds to the stockholder. Since the stockholder then withdrew its offer to purchase, insofar as it related to the bonds of the other subsidiary, the court never ruled on the petition.

[15] § 77B (b), op. cit. supra note 6.

[16] In re Marquette Manor Bldg. Co., 97 F. (2d) 733 (C.C.A. 7th 1938), cert. den. 305 U.S. 648 (1938).

[17] Jurisdiction has also been assumed only for the benefit of those who have claims against the debtor, in other cases in which the court has relied wholly or partly upon the scrutiny clause. In re Schroeder Hotel Co., 86 F. (2d) 491 (C.C.A. 7th 1936); In re Glen Sheridan Realty Trust, 90 F. (2d) 151 (C.C.A. 7th 1937). The only intimation to the effect that the provision may be used for the protection of those who have sold their claims is a dictum in Security-First Nat'l Bank v. Rindge, 85 F. (2d) 557, 562 (C.C.A. 9th 1937), in which the court, in refusing at the debtor's instance to limit a purchaser to the amount paid for his claim, states that the only persons entitled to complain are the former bondholders themselves. "The purpose of the provision ['scrutiny'] is plainly to protect creditors, particularly from possible machinations of those who owe them a fiduciary obligation."

zation. It may even be said that the sale of bonds was the most important part of the reorganization process, for after the sale, the remainder of the proceedings was little more than a formality. To exclude so effective a transaction from the control of the court, merely because the transaction was not made a part of a formal plan, is to disregard the historical development of the reorganization technique. The trend of the development, even before the enactment of Section 77B, was to bring under the control of the court all the transactions by which the completed reorganization was effected. In the *Boyd* case,[18] it was held that even though the insolvency of the debtor entitled the bondholders to all the assets, a transaction between bondholders and stockholders whereby the stockholders obtained stock in the new company would not be valid against unsecured creditors. The transaction could not be considered a private one and therefore outside the jurisdiction of the court; for it was the completed reorganization that was important, and if in the completed reorganization stockholders had obtained priority over unsecured creditors, then the transaction whereby the stockholders obtained that priority must be considered a part of the reorganization. Following the *Boyd* case, counsel began for their own protection to present to the courts their "plans" for reorganization;[19] and thus through this and various other devices the court's control became perhaps greater than the actual decision in the *Boyd* case would have made necessary. Section 77B makes mandatory the confirmation of the plan by the court, but the inference cannot be made that Section 77B excludes from the court's consideration everything that is not formally included in the plan. On the contrary, it would seem that, in order to exercise control over all transactions effective in bringing about the reorganization in the principal case, the court should assume jurisdiction. The "property" or the "scrutiny" clause, or the general power to make such orders as are necessary to put into effect the provisions of the act could be utilized as a basis for such jurisdiction. A more direct basis for assuming jurisdiction in the instant case, however, may be found in the contention that the sale of bonds was a part of the plan of reorganization, and therefore must be confirmed by the court before it can be effective.

The act provides that a plan of reorganization "shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise."[20] Various objections, arising from the language of this clause, may be urged against the consideration of the sale as part of the plan of reorganization. Where a sale is of so small an amount of bonds as to have little effect on the reorganization proceedings, an attempt to include the sale in the plan might be objected to on the ground that the rights of creditors against the debtor have not been altered.[21] Furthermore, it might be argued that to include in a plan of reorganization a transaction not affecting the debtor-creditor relationship would be an unconstitutional exercise of the bankruptcy power.[22]

[18] Northern Pacific R. v. Boyd, 228 U.S. 482 (1913).

[19] Gerdes, A Fair and Equitable Plan, 1 Corp. Reorg. 195, 197 (1934).

[20] § 77B (b) (1).

[21] In the same reorganization out of which the principal case arose, the court refused to confirm the stockholder's "plan of reorganization," the only provision of which was that the stockholder would purchase all the bonds of the other subsidiary. The refusal was "for the sole reason that it is not a plan of reorganization," Transcript of Record 43.

[22] It is thought by some writers that the provision (§ 77B (b) (1)) was made mandatory in order to avoid an attack on its constitutionality, the assumption being that the bankruptcy

The first of these objections, at least, is applicable when there is a sale of a relatively small amount of bonds. Neither objection, however, is applicable to the present case for the sale of petitioners' bonds did affect the debtor-creditor relationship in that the sale enabled the purchaser to put through a formal plan which in turn affected the debtor-creditor relationship. That the alteration of the debtor-creditor relationship was not brought about in a single transaction would not seem to be a valid objection, for it has been held that a reorganization may be effected in a series of plans,[23] and that a plan affecting only the rights of stockholders is not unconstitutional as failing to affect the debtor-creditor relationship, when it was preceded by a composition with creditors.[24]

If the decision in the principal case holds that the district court did not have even discretionary jurisdiction, it would seem to place an undue limitation on the power of the bankruptcy court; it in effect permits parties, by their own agreement, to defeat the jurisdiction of the court. That private parties may not by agreement defeat the jurisdiction of the court has been held in numerous cases.[25] Thus in bankruptcy it has been held that where a sufficient sum of claims has once been filed to confer jurisdiction, the bankrupt cannot, by paying off enough of the claims to reduce the total to a sum below the statutory requirement, defeat the jurisdiction of the court.[26] Likewise, a provision in a trust agreement giving the trustee the exclusive power to enforce the security has been held void, because it ousts the jurisdiction of the court over suits by bondholders.[27] The analogy of these cases to the principal case becomes even stronger when the complexity of the reorganization proceedings is taken into account. Any attempt during a reorganization to defeat jurisdiction affects more than the immediate parties to the attempt, and in order to protect all parties, the court must guard its jurisdiction even more closely than must other courts, since the results of an attempt to defeat jurisdiction are generally more far-reaching in a reorganization. The act itself in some measure recognizes the importance of the power of the court to retain its jurisdiction, by providing means to prevent provisions in depositary agreements from defeating the court's jurisdiction.[28] It may be that control over the deposit agreement should not be exer-

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power may extend only to cases altering the debtor-creditor relationship, Finletter, The Law of Bankruptcy Reorganization 408 (1939); 2 Gerdes, Corporate Reorganizations § 1037 (1936).

[23] In re Prudence-Bonds Co., 79 F. (2d) 205 (C.C.A. 2d 1935); see Pepper v. Litton, 7 U.S. Law Week 639, 643 (U.S. S. Ct. 1939).

[24] In re Parker-Young Co., 15 F. Supp. 965 (D.C. N.H. 1936).

[25] Parties may not defeat the jurisdiction of one court by stipulating that their dispute shall be settled only in another court, Nute v. Hamilton Mut. Ins. Co., 6 Gray (Mass.) 174 (1856); Mut. Reserve Fund Life Ass'n v. Cleveland Woolen Mills, 82 Fed. 508 (C.C.A. 6th 1897); Int'l Travelers' Ass'n v. Branner, 109 Tex. 543, 212 S.W. 630 (1919). An agreement to arbitrate both as to liability and loss is invalid, Williams v. Branning Mfg. Co., 154 N.C. 205, 70 S.E. 290 (1911).

[26] In re Ryan, 114 Fed. 373 (D.C. Pa. 1902); cf. In re Monmouth Pine Lumber Co., 109 Fed. 308 (D.C. Ark. 1901); In re Levy, 110 Fed. 744 (D.C. Pa. 1901).

[27] First Nat'l Bank of Dallas v. Brown, 34 S.W. (2d) 412 (Tex. Civ. App. 1930). Contra: Jones v. Atlantic & W. R., 193 N.C. 590, 137 S.E. 706 (1927).

[28] § 77B (b), by empowering the judge to scrutinize the provisions of depository agreements, enables him to strike out provisions, such as those prohibiting bondholders from withdrawing from the agreement. The SEC interpretation of § 77B (h) (C.C.H. Bkcy. L. Serv. ¶ 3272 (1935)), so as to exempt from registration only those securities issued pursuant to a confirmed

cised to the extent of excluding provisions permitting the committee to sell the bonds; but when it appears after the sale that the effect of the sale has been to defeat the court's jurisdiction over a substantial part of the reorganization, it would seem that the court has power to disregard such attempted defeat of jurisdiction.

The opinion in the principal case may support the argument, however, that the case holds that the district court could have exercised discretionary jurisdiction,[29] and that the circuit court found that the dismissal of the petition would not have been an abuse of discretion.[30] The petitioners' position as an applicant for discretionary jurisdiction was weakened by several considerations. In the first place, taking jurisdiction of the petition would to some extent have slowed up the reorganization proceedings. Another consideration is that the petitioners had voluntarily relinquished their claims as creditors; this may have made their position weaker than it would have been if they had never had a clear claim. It is perhaps for this reason that a bankruptcy case in which the court took jurisdiction to determine conflicting claims of creditors, even after the claim had been allowed to one of them, can be distinguished.[31] Finally, the petitioners' admission that the purchaser was solvent and able to answer in damages in another forum weakened their contention that the loss of tactical position involved in going to another forum made it more convenient[32] for them to have their case heard in the reorganization court. It must be noted, however, that petitioners' loss in being forced to go to another court may be greater than a mere loss of tactical position; their loss may be loss of a substantive right. Whether the standard of fiduciary duties in reorganization proceedings is to be more stringent than the standard enforced by ordi-

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plan (except those exempt under § 77B (c) (10) of the Securities Act (48 Stat. 74 (1933) as amended 48 Stat. 905 (1934), 15 U.S.C.A. § 77C (10) (Supp. 1938)), provides an incentive for committees to obtain affirmative court approval of deposit agreements. See Protective Committees and Reorganization Reform, 47 Yale L. J. 229 (1937).

[29] In re Lubliner & Trinz Theatres, 100 F. (2d) 646, 651 (C.C.A. 7th 1938).

[30] If it is the holding of the circuit court that the district court had discretionary jurisdiction, it may be that in view of the supposition that the district court was more familiar with the details of the case, the circuit court should have sent the case back to the district court for determination of the discretionary issue. This was the procedure followed in Central Hanover Bank & Trust Co. v. President and Directors of Manhattan Co., 105 F. (2d) 130 (C.C.A. 2d 1939).

[31] In re United Cigar Stores Co., 75 F. (2d) 290 (C.C.A. 2d 1935). Contra: Nixon v. Michaels, 38 F. (2d) 420 (C.C.A. 8th 1930). Since § 77B gives the court the same jurisdiction as that possessed by a bankruptcy court after adjudication (§ 77B (o)), the case would seem to be an applicable precedent. An attempt to distinguish the case on the ground that in a bankruptcy case the court is distributing a fund, and is interested in seeing that the proper persons obtain it, is not persuasive, in view of the fact that the reorganization court is distributing interests in the debtor, and should be equally interested in seeing that the proper persons obtain those interests.

[32] In deciding the issue of discretion in the "property" cases, the courts balance the inconvenience to the property holder, resulting from the exercise of jurisdiction, against the resulting convenience to the reorganization proceeding, Continental Ill. Nat'l Bank & Trust Co. v. Chicago, R.I. & P.R., 294 U.S. 648 (1935); 38 Col. L. Rev. 344 (1938); 6 Univ. Chi. L. Rev. 690 (1939). Petitioner's contention in the instant case apparently was that the court should balance the inconvenience to the reorganization proceeding against the convenience to the petitioner.

nary courts has not yet been clearly ruled upon, but a recent Supreme Court decision seems to indicate that a higher standard may be required in reorganization proceedings.[33]

Constitutional Law—Federal Power of Eminent Domain—[Federal].—Courts[1] and commentators[2] have generally[3] agreed that the Constitution denies to federal agencies all powers which are not specifically granted to the United States or which are not appropriate for carrying into execution powers specifically granted to the United States. It has thus been urged that the federal government may not constitutionally condemn land for public purposes unless such condemnation may be justified as an exercise of one or more of the powers vested in the federal government by the Constitution.[4]

In the recent cases of *United States v. Dieckman*,[5] *United States v. Eighty Acres of Land*,[6] and *United States v. 458.95 Acres of Land*,[7] however, lower federal courts have departed from the above analysis. In order to sustain the use of federal condemnation to establish public recreational parks[8] and reforestation areas,[9] they appear to have argued that the federal government may constitutionally condemn land for any public purpose. If this doctrine is to be accepted, it must be maintained that the federal eminent domain power is a power, co-ordinate with, rather than resulting from, the powers enumerated in Article I, Section 8 of the Constitution. The instant cases rely most strongly upon the cases of *United States v. Threkeld*,[10] and *Kohl v. United States*.[11] In the *Threkeld* case the Supreme Court held that the power to condemn land for a railway to be used to transport wood from a nationally owned forest resulted from the specified federal power to dispose of and protect national property. The *Kohl* case maintained that the power to condemn a postoffice site flowed from the grant of power to establish post-offices and post-roads. Assertions in the *Kohl* and other cases that the eminent domain power is an inherent attribute of sovereignty[12] are accordingly rather weak authority for the results in the principal cases.

In order to reconcile the results in the *Dieckman*, *Eighty Acres of Land*, and *483 Acres of Land* cases with the position that the United States is a sovereignty with pow-

[33] Taylor v. Standard Gas Co., 306 U.S. 307 (1939); see Pepper v. Litton, 7 U.S. Law Week 639 (U.S. S. Ct. 1939).

[1] Carter v. Carter Coal Co., 298 U.S. 238, 291 (1936); Kansas v. Colorado, 206 U.S. 46, 83, 87, 89 (1907); Martin v. Hunter's Lessee, 1 Wheat. (U.S.) 304, 326 (1816).

[2] Willis, Constitutional Law 220 (1936); Rottschaefer, Constitutional Law 82 (1939).

[3] For a different viewpoint, compare the Wilson-Roosevelt theory of constitutional powers discussed in Willoughby, Constitutional Law 56–7 (2d students' ed. 1930).

[4] See Kohl v. United States, 91 U.S. 367, 374 (1875).

[5] 101 F. (2d) 421 (C.C.A. 7th 1939).

[6] 26 F. Supp. 315 (Ill. 1939).

[7] 22 F. Supp. 1017 (Pa. 1937).

[8] Cases cited in notes 5 and 7 supra.

[9] United States v. Eighty Acres of Land, 26 F. Supp. 315 (Ill. 1939).

[10] 72 F. (2d) 464 (C.C.A. 10th 1934); cf. Burley v. United States, 179 Fed. 1 (C.C.A. 9th. 1910).

[11] 91 U.S. 367 (1875).

[12] See Kohl v. United States, 91 U.S. 367, 371 (1875); United States v. Lynah, 188 U.S. 445, 465 (1903).