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Federal Crop Insurance--Federal Register as Effective Notice (Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947))

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relationship between the printed material and the drug. It matters not that there is a time interval of weeks, months, or even years [9] between the shipment of the drug and the mailing of the literature. There is a violation if the court finds the necessary "textual relationship," and this relationship, when found, constitutes "accompanying" within the meaning of the disputed section. As Mr. Justice Douglas said: "One article or thing is accompanied by another when it supplements or explains it, in the manner that a committee report of the Congress accompanies a bill." [10]

However, as suggested in the dissenting opinion (in which three justices concurred), there is a need for congressional revision of the phraseology of other sections of the Act, if the courts are to be spared the necessity of further judicial interpretations of ambiguous statutes. Guided by the intent of the law-makers the courts will continue to seek the protection of the unsuspecting consumers, but that worthy purpose can be rendered easier of accomplishment by a timely clarification of the statutes involved.

W. G.

FEDERAL CROP INSURANCE—FEDERAL REGISTER AS EFFECTIVE NOTICE.—Plaintiff, an Idaho farmer, procured crop insurance from the Federal Crop Insurance Corporation [1] after receiving the assurance of local agents of the corporation that the crop was insurable. Thereafter, plaintiff's crops failed and he sought recovery under the terms of the policy. The corporation opposed any recovery under the policy on the ground that the plaintiff's crop was uninsurable. Neither the plaintiff nor the agents knew that under the Wheat Crop Insurance Regulations, which had been duly published in the Federal Register, the crop was actually uninsurable.[2] The Idaho state court in which the plaintiff brought his action, invoking the doctrine of equitable estoppel, allowed evidence to the effect that plaintiff was not apprised of the regulations and had been misled by the representations of the corporation's agents into believing that the crop was insurable. On appeal to the Idaho Supreme Court judgment for plaintiff was affirmed.[3] *Held,* reversed 5 to 4. Estoppel is not applicable here, for the appearance of rules and regulations in the Federal Register is ". . . sufficient to give notice of such [rules and

[9] One count in the informations against Kordel alleged that the printed matter was posted 561 days after the shipment of the drugs.

[10] Kordel v. United States, 335 U. S. 345, 350, 93 L. ed. 73 (1948).

[1] The Corporation, a government agency, was created in 1938 by the Federal Crop Insurance Act, 52 STAT. 72 (1938), 7 U. S. C. § 150 *et seq.* (1946), for the purpose of insuring farmers' crops against loss due to drought and other causes.

[2] 7 Code Fed. Regs. § 414 (Supp. 1945), 10 Fed. Reg. 1585 (1945).

[3] 67 Idaho 196, 174 P. 2d 834 (1946).

regulations] to any person subject thereto or affected thereby." [4] *Federal Crop Ins. Corp. v. Merrill,* 332 U. S. 380, 92 L. ed. 51 (1947).

This case, today known as the "Idaho Farmer's Case," is in accord with several decisions handed down since the creation of the Federal Register in 1935. In *Flannagan v. United States,* it was held that one selling beef after publication in the Federal Register of regulations fixing the maximum price, was charged with knowledge of the maximum price.[5] Publication in the Federal Register is notice of the maximum rent allowed to be charged under the Emergency Price Control Act.[6] Where the Interstate Commerce Commission's general order was published in the Federal Register, it was sufficient notice to motor carriers of the authority of the Commission's agents as created by the general order.[7] In an action to recover brokerage commissions for procuring a purchaser for buses, it was assumed that plaintiff knew of the O.P.A. price regulations that were violated by the agreed selling price of the buses.[8] It has been stated that the instant case was squarely decided on true legal principles.[9] The agency created by the Federal Crop Insurance Act was given the power to ". . . adopt, amend, and repeal by-laws, rules, and regulations . . ."; [10] and, to the plaintiff, who sought to come within the act ". . . the Regulations had the effect of law." [11] The principle that ignorance of the law is no excuse seems irrefutably to support the decision of the court. However, as is evidenced by the division of the court, the decision in this case in view of the surrounding circumstances, clearly presents a case of inequitable hardship. Mr. Justice Jackson, in his dissenting opinion, realistically refers to the ". . . absurdity of holding that every farmer who insures his crop knows what the Federal Register contains. . . . If he were to peruse this voluminous and dull publication as it is issued from time to time,

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[4] Federal Register Act, 49 STAT. 502 (1935), 44 U. S. C. § 307 (1946). A second proposition, not treated here, upon which the Court denied recovery, is the well established principle ". . . that persons dealing with an agent of the United States are charged with notice of the limitation upon his authority and the United States is bound only by the acts of an agent which are within his authority." *See* Farm Security Administration, Department of Agriculture v. Herren, 165 F. 2d 554, 564 (C. C. A. 8th 1948), and cases there cited.

[5] 145 F. 2d 740 (C. C. A. 9th 1944).

[6] Henderson, Administrator, O.P.A. v. Baldwin *et al.,* 54 F. Supp. 438 (W. D. Pa. 1942). *Cf.* Flannagan v. United States, 145 F. 2d 740 (C. C. A. 9th 1944).

[7] United States v. Alabama Highway Express, Inc., 46 F. Supp. 450 (N. D. Ala. 1942).

[8] Slack v. Glenwood Sightseeing Bus Co., 181 Misc. 988, 47 N. Y. S. 2d 876 (City Ct. 1944).

[9] Lavery, *The Federal Register, and the Need of its Reform,* 2 LAWYER AND LAW NOTES 1 (1948-9).

[10] 52 STAT. 77 (1938), 7 U. S. C. § 1506(e) (1946).

[11] Felder v. Federal Crop Ins. Corporation, 146 F. 2d 638 (C. C. A. 4th 1944).

in order to make sure whether anything has been promulgated that affects his rights, he would never need crop insurance, for he would never get time to plant any crops." [12] Considering that neither the local agency in Idaho nor the regional office of the corporation in Denver knew of the exclusion that rendered plaintiff's 1945 crop uninsurable, it may well be that mere *publication* of these countless 'Regulations' [of Federal Administrative Agencies] is not enough to call forth the doctrine that ignorance of the law is no excuse.[13] To date, 100,000 of these regulations have been published in the Federal Register; ". . . they are often overlapping, and sometimes contradictory, and very often modify or repeal each other . . . ." [14] Though they have been placed in bound volumes, numbering forty-seven since December, 1946, they have not been codified so as to be as usable as the four volumes of the "United States Code" and its supplement. The spirit of the dissent, therefore, presents an equally strong and converse maxim or rule of law, namely, that, "A law not properly published to the people is no law." [15]

J. W. C.

PENAL LAW — ADVERTISING CONTESTS CONSTITUTING LOTTERIES.—The Pepsi-Cola Company of New York was engaged in an advertising campaign in the form of "Treasure Top" contests. Contestants were required to complete the sentence, "Pepsi-Cola hits the spot because . . . ." A bottle cap was to be submitted with each entry. Cash prizes were to be awarded on the basis of aptness, originality and interest. Complainants are engaged in the business of bottling, selling and distributing the soft drink known as Pepsi-Cola. Defendants contended that the contest was a lottery and as such against the public policy of the state as declared by the constitution and by statute.[1] From a decree denying a temporary injunction restraining defendants from interfering in any way with the carrying on of the contest, complainants appeal. *Held,* decree reversed and remanded, on the ground that the exercise of skill by contestants removed it from the nature of a lottery. *Minges v. City of Birmingham,* — Ala. —, 36 So. 2d 93 (S. Ct. Ala. 1948).

The three necessary elements of a lottery are the offering of a prize, the awarding thereof by chance, and the giving of a consideration for an opportunity to win the prize. All the essential elements must be present to constitute the scheme a lottery.[2] The elements

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[12] 332 U. S. 380, 387, 92 L. ed. 51, 55 (1947).
[13] Lavery, *"The Federal Register"—Official Publication for Administrative Regulations, etc.,* 7 F. R. D. 625, 633 (1948).
[14] *Id.* at 636.
[15] *Id.* at 634.
[1] ALA. CONST. § 65 (1901).
[2] Grimes v. State, 235 Ala. 192, 178 So. 73 (1937).