Administrative Law—Res Judicata—Effect of Judicial Decision Against One Federal Agency on Administrative Proceedings of Another

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in refusing a complete review of the issue of confiscation, indicates a drift away from the doctrine of the *Ben Avon* and *St. Joseph Stockyards* cases. It appears that an independent judicial review of even "constitutional facts" will not be granted, at least in certain cases\textsuperscript{12}—probably in those where by balancing considerations relating to the nature of the issue involved, the character of the administrative body, the procedure followed, the character of the relevant evidence, and the public need for an immediate decision, the conclusion is reached that justice will be better achieved by giving finality to the administrative finding.\textsuperscript{14}

W. B. W.

**ADMINISTRATIVE LAW—RES JUDICATA—EFFECT OF JUDICIAL DECISION AGAINST ONE FEDERAL AGENCY ON ADMINISTRATIVE PROCEEDINGS OF ANOTHER—[Federal].—**Petitioner, which was engaged in advertising and selling in interstate commerce a vermiculphage for poultry, sought review of a cease and desist order of the Federal Trade Commission directed against false and misleading advertising of its "Gizzard Capsules." The order was challenged on the ground that such advertising had been held not false in a libel proceeding brought in a federal court by the United States against certain packages of the same product. *Held:* Since the underlying issue in both actions was the same, the Federal Trade Commission was bound by the court's decision in the previous case and could not decide that petitioner's advertising was false. *George H. Lee Co. v. Federal Trade Commission.*\textsuperscript{1}

As ordinarily stated, the rule of *res judicata* is that a right, question, or fact directly determined by a court of competent jurisdiction as a ground of recovery cannot be disputed in a subsequent suit between the same parties or their privies, even if the second suit is for a different cause of action.\textsuperscript{2} There is privity between officers of the same government potential which the petitioner contended ignored several of the above factors. Cf. Ely, The Conservation of Oil (1933) 51 Harv. L. Rev. 1209, 1218. For the background to the problem of state control see Marshall and Meyers, The Legal Planning of Petroleum Production: Two Years of Proration (1933) 42 Yale L. J. 702.


1. (C. C. A. 8, 1940) 113 F. (2d) 583.
2. Id. at 586; *Southern Pacific R. R. v. United States* (1897) 168 U. S. 1, 48; *Mitchell v. First Nat'l Bank* (1901) 180 U. S. 471, 480, 481. See
so that judgment in a suit between a party and a representative of the United States is *res judicata* in relitigation of the same issue between that party and another officer of the government. The defense of *res judicata* has been allowed in at least one case involving misbranding. In *George H. Lee Co. v. United States* the government was held to be estopped from prosecuting a second libel proceeding against a commodity allegedly misbranded under the Insecticide Act of 1910 because of an adverse judgment in a previous libel action charging misbranding of a different lot of the same commodity.

The instant case, holding administrative action barred because of previous adjudication of the issue by a court, suggests the related problem of the finality of administrative decisions. In connection with the grant of public lands it has been held that the Secretary of the Interior has no authority to annul the action of his predecessor approving a grant on the ground that such approval was obtained by fraud, since the fact that the grantee was entitled to the land under the statute was a "quasi-jurisdictional fact" which, when properly established, cannot be attacked collaterally. But where the act of the Secretary of the Interior involved the rejection of an application for a land patent, the issuance of a patent upon rehearing by a successor in office was held proper, since the department retains control over the subject matter until title passes from the govern-


3. Tait v. Western Maryland Ry. (1933) 289 U. S. 620, 627; George H. Lee v. Federal Trade Comm. (C. C. A. 9, 1940). Cf. Sunshine Anthracite Coal v. Adkins (1939) 310 U. S. 381, where, in a suit brought by a producer against the Commissioner of Internal Revenue to enjoin a collection of the excise tax imposed by the act on sales of bituminous coal, an order of the National Bituminous Coal Commission denying the producer's claim to exemption from the operation of the Bituminous Coal Act of 1937 was held *res judicata* as to whether appellant's coal was bituminous within the meaning of the Act.


5. (C. C. A. 9, 1930) 41 F. (2d) 460.

6. Cf. United States v. Certain Bottles of "Lee's Save the Baby" (D. C. D. Conn. 1929) 37 F. (2d) 137, where dismissal without trial of two informations charging misbranding under the Food and Drugs Act was held not *res judicata* in a subsequent libel proceeding against another misbranded lot of the same commodity. See also Aycock v. O'Brien (C. C. A. 9, 1928) 28 F. (2d) 817, where a judgment on an information charging a corporation with misbranding under the Food and Drug Act was held not *res judicata* in a civil action brought eleven years later by a person succeeding to the interests of the corporation to enjoin enforcement of a fraud order issued by the Postmaster General.


8. United States v. Minor (1885) 114 U. S. 233; Noble v. Union Logging R. R. (1893) 147 U. S. 165, 173. In the latter case the Court said that the United States can, on established equitable grounds, maintain a bill for the cancellation of an approval of a land grant obtained by fraud.
WHAT THE AIRFORCE MIGHT BE THINKING ABOUT US

The current state of the world is such that it is hard to imagine what the Airforce might be thinking about us. If the Airforce was to be asked what they would like from us, they might well say: 'We want to be respected as a profession, and we want to be able to carry out our duties in peace.'

However, it is also possible that the Airforce might be thinking about us in a different way. They might be wondering why we are not doing more to support them. They might be wondering why we are not doing more to ensure that they are properly trained and equipped. They might be wondering why we are not doing more to ensure that they have the resources they need to do their job.

The Airforce is a vital part of our national security, and we should be doing everything we can to support them. We should be doing everything we can to ensure that they have the tools they need to do their job, and we should be doing everything we can to ensure that they have the training they need to do their job.

In conclusion, the Airforce might be thinking about us in a number of different ways. They might be wondering why we are not doing more to support them, or they might be wondering why we are not doing more to ensure that they have the resources they need to do their job.

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