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a double-edged weapon; a contrary intention might have been inferred from the absence of any explicit provision in this title of the Act.

The Court also relied on economic reasoning to bolster its conclusion. According to the Court, consolidation of railroads involves savings which bear most heavily on the interests of labor. If this hardship is not mitigated, employee morale will be impaired, danger of disputes increased, and interruption of transportation rendered more probable. Even granting that the threat is of sufficient magnitude to overcome objections raised on the basis of the *Railroad Retirement Board* case, it is still possible to question the Commission's authority to deal with a problem normally dealt with by Congress. After eight years of depression, the harsh effects of railroad consolidations on labor are not so unforeseeable as to justify Congress in granting, and the Commission in exercising, such authority on grounds of emergency.¹⁹ The principal case sanctions a liberal extension of an originally wide discretion. The conditions here imposed, unlike past Congressional action and contrary to the holding of the *Railroad Retirement Board* case, seem only indirectly related to the maintenance of an adequate transportation system. The conditions, however, are not beyond the bounds of reasonableness.

V. K.

ADMINISTRATIVE LAW—JUDICIAL REVIEW OF ADMINISTRATIVE PROCEDURE—[United States].—The Federal Communications Commission after a hearing denied a corporation's application for a broadcasting license on the grounds that the applicant was not financially responsible and that the principal stockholder was not a resident of the locality in which the station would operate. As the first ground rested upon a mutual mistake of law and the Court of Appeals did not deem the second a considered basis for the decision, on appeal it reversed the decision and remanded the case for further consideration of the second ground.¹ Notwithstanding its own regulation to the effect that it will endeavor to fix the same date for hearing conflicting claims "excepting, however, applications filed after any such application has been designated for hearing,"² the Federal Communications Commission then set the case for a rehearing together with other conflicting applications filed subsequent to the setting of the original hearing of the case. The applicant resorted to the Court of Appeals for writs of prohibition and mandamus to require the Commission to hear the application separately and to decide the case upon the previous record. That court granted the writs,

19. Cf. *Skrmetta v. Alabama Oyster Comm.* (1936) 232 Ala. 371, 168 So. 168; *Basalt Rock Co. v. MacMillan* (Cal. App. 1926) 251 Pac. 322; *Lloyd v. Ramsay* (1921) 192 Iowa 103, 183 N. W. 333; *State ex rel. Wisconsin Inspection Bureau v. Whitman* (1928) 196 Wis. 472, 220 N. W. 929; *Associated Gas and Electric Co. v. Public Service Comm.* (1936) 221 Wis. 519, 266 N. W. 205.

1. *Pottsville Broadcasting Co. v. Federal Communications Commission* (App. D. C. 1938) 98 F. (2d) 288.

2. Rules of Practice, Rule 106.4. This has become sec. 12.21 of the Commission's Rules of Practice and Procedure, effective January 1, 1939.

and ruled that the commission was bound by its remanding order on the previous appeal.³ On *certiorari* the Supreme Court reversed the court's action, holding that by making "public interest, convenience, or necessity" the criterion for the issuance of a license, Congress left such questions of procedure to the judgment of the commission.⁴

Two antagonistic interests here confronted the court—that of the applicant in having effect given to its priority of filing and that of the public in a determination of conflicting applications on their merits. In deciding against the applicant the Supreme Court attempted more fully to effectuate the legislative purpose by refusing to restrict the commission to a set procedure. The commission, it held, except as limited by statute, is to be free to determine its procedure so as most efficiently to carry out its function.

Somewhat analogous is the latest Supreme Court phase of the litigation in *United States v. Morgan*.⁵ In that case, which involved an order of the Secretary of Agriculture prescribing maximum rates to be charged by market agencies in the Kansas City stockyards, a fund representing the difference between the rates charged and those prescribed was impounded pending determination of the controversy. When enforcement of the order was permanently enjoined because of the Secretary's failure to grant a full and fair hearing, as conceived by the Court under the statute,⁶ the Secretary re-opened the original proceeding and served his original findings of fact, conclusion, and order upon the market agencies, this time with an opportunity for them to file exceptions and make oral argument upon the exceptions. The agencies then petitioned the district court for a return of the money since the order was invalid, arguing that the proceedings should be terminated because under the Act the Secretary could not, in a proceeding instituted by himself, make an order for the payment of money.⁷ That court ordered the money returned to the agencies, but the Supreme Court on appeal ruled it must be held pending the Secretary's final determination of the reasonableness of the rates. The court, having impounded the money as a court of equity, must distribute it on equitable principles and in doing so is bound, in accordance with the Act which declares unreasonable rates to be unlawful, to give full effect to the Secretary's determination, despite the fact that that determination could not eventuate in an order. The court and the Secretary should each, in the language of the Supreme Court, act "in the performance of its prescribed statutory duty" with "regard to the appropriate function of the other in securing the plainly indicated objects

3. *Pottsville Broadcasting Co. v. Federal Communications Commission* (App. D. C. 1939) 105 F. (2d) 36.

4. *Federal Communications Commission v. Pottsville Broadcasting Co.* (1940) 309 U. S. 134.

5. (1939) 307 U. S. 183.

6. *Morgan v. United States* (1938) 304 U. S. 1, aff'd (1938) 304 U. S. 23.

7. " * * * The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or related to the matter or thing concerning which the inquiry is had, *except orders for the payment of money.*" Packers and Stockyards Act (1921), 7 U. S. C. A. sec. 210(c). (Italics supplied.)

of the statute."⁸ Thus in each of the foregoing cases courts were compelled to temper their strict power so as to give effect to administrative discretion.

The courts in general have recognized the expert character of administrative tribunals intrusted with the efficient regulation of economic processes. They have on the whole declined to impose their inexpert opinions on the tribunals' expert ones and have refused to reverse decisions or orders unless unconstitutional, beyond the statutory authority, or without any substantial evidence to sustain the supporting findings of fact.⁹ Recently the courts also have consistently refused to entertain any proceeding to question an administrative order until all administrative remedies have been exhausted¹⁰ except where the only question left for determination is one of law and hence properly presents a judicial issue.¹¹

The instant case illustrates the conflict between the desire for certainty growing out of a set procedure and a strict adherence to the court's mandate and the desire to allow an administrative commission to adapt its practice in a given case to the service of the public interest as envisaged by the commission.¹² The decision illustrates a strong present tendency in the Supreme Court to accept administrative bodies as agencies supreme within their sphere and entitled to the full exercise of the statutory powers in carrying out their functions.¹³

W. B. W.

8. (1939) 307 U. S. 183, at 191.

9. Interstate Commerce Commission v. Illinois Central R. R. (1910) 215 U. S. 452; Interstate Commerce Commission v. Union Pac. R. R. (1912) 222 U. S. 541; Manufacturers Ry. v. Interstate Commerce Commission (1918) 246 U. S. 457; Seaboard Air Line Ry. v. United States (1920) 254 U. S. 57; Mississippi Valley Barge Line Co. v. United States (1934) 292 U. S. 282; Swayne & Hoyt, Ltd. v. United States (1937) 300 U. S. 297; Rochester Telephone Corp. v. United States (1939) 307 U. S. 125. See also Dickinson, *Judicial Control of Official Discretion* (1918) 22 *Am. Pol. Sci. Rev.* 275, 4 *Selected Essays on Constitutional Law* 957; Gordon, "Administrative" Tribunals and the Courts (1933) 49 *L. Q. Rev.* 94, 419.

10. Prentis v. Atlantic Coast Line Co. (1908) 211 U. S. 210; Porter v. Investors Syndicate (1932) 286 U. S. 461; United States v. Illinois Central R. R. (1934) 291 U. S. 457; Myers v. Bethlehem Shipbuilding Corp. (1938) 303 U. S. 41; Bradley Lumber Co. v. National Labor Relations Board (C. C. A. 5, 1936) 84 F. (2d) 97; Administrative Action as a Prerequisite of Judicial Relief (1935) 35 *Col. L. Rev.* 230, 4 *Selected Essays on Constitutional Law* 940.

11. Gully v. Interstate Natural Gas Co. (C. C. A. 5, 1936) 82 F. (2d) 145.

12. Cf. Bevis, *Administrative Commissions and the Administration of Justice* (1928) 2 *U. of Cin. L. Rev.* 1, 21-27, esp. 25, 4 *Selected Essays on Constitutional Law* 92.

13. Cf. *National Labor Relations Board v. Waterman Steamship Corp.* (1940) 60 S. Ct. 493. Mr. Justice Stone has likened the rise of administrative law and its reception by the courts and the profession to that of equity in the seventeenth century. *The Common Law in the United States* (1936) 50 *Harv. L. Rev.* 4, 16-18; *United States v. Morgan* (1939) 307 U. S. 183, 191. This decision is a step away from such an antagonistic reception. Cf. *Jones v. Securities and Exchange Commission* (1936) 298 U. S. 1.