Washington University Law Review

Volume 3 | Issue 3

January 1919

Administrative Determinations

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ADMINISTRATIVE DETERMINATIONS

To what extent do courts recognize as conclusive the determinations by tribunals established by law in connection with the executive department of government?

According to the philosophy of government prevailing at the time our Federal Constitution was adopted the prime object of law was to protect society against criminals and to secure for each citizen the greatest possible measure of individual liberty. While section eight of Article One of the Constitution gave Congress broad powers covering such subjects as taxation, borrowing money, regulating commerce, coining money, adopting rules of naturalization, establishing postoffices and post roads, establishing courts, declaring war and raising armies, providing for a navy, and finally the comprehensive power to provide for the general welfare, Congress at first contented itself with providing the agencies necessary to carry out what theretofore were clearly recognized as govenmental functions It made provision for the army and navy, made regulations with respect to foreign commerce, established courts inferior to the Supreme Court, provided for postoffices and postal routes, and for a currency.

At this time the colonies covered but a small area and the colonists were engaged principally in agriculture. But in the course of time a large public domain was acquired, industry became diversified, manufactures grew, commerce assumed vast proportions, the question of transportation demanded attention, immigration increased rapidly, and it became necessary to adopt measures and provide agencies for the regulation of these matters. So it came about that Congress, by appropriate legislation, created boards and commissions to put these measures into operation, giving them authority to adopt rules for facilitating the work committed to them. While the functions of these bodies were largely ministerial and administrative, their exercise frequently involved the decision of questions of law and the determination of questions of fact—duties judicial in character. It was quite natural that the right of such bodies to exercise functions so nearly akin to those recognized as judicial should be challenged, for the Federal Constitution emphasized the division of governmental functions into executive, legislative and judicial, and conveyed the thought that neither of these departments should encroach upon the others.

And again the provision of the Fifth Amendment to the Consti-

tution that no person shall be deprived of life, liberty or property without "due process of law" furnished the basis for the argument that the decisions of some of these administrative tribunals at any rate, were invalid because they deprived a citizen of his liberty or property without due process of law.

As preliminary to a discussion of the question of the conclusiveness of the determination of administrative tribunals, let us first inquire how, under our fundamental theory of the separation of the powers of government, the agent of the executive department can in any case assume to act judicially.

The courts have held that such duties may be delegated to these tribunals and have placed their ruling upon the broad ground of necessity and convenience. Evidently much of their work was routine in character, some of a highly technical nature, so that taken all together it could be done much more efficiently, economically and promptly by administrative officers than by the courts. True, the management and control of these matters by the executive department does involve the determination of private property rights, but the right of the individual must yield to public necessity, and the action of Congress in establishing the various administrative boards and commission has been sustained by the courts.

Before considering the matter of how far the court will recognize as conclusive the determination of these tribunals the question of their right to consider a particular controversy, in a word, their jurisdiction may be briefly discussed. There are three conditions upon which a valid exercise of jurisdiction by these bodies depends.

First, the Constitution provides in the Fifth Amendment, that no person shall be deprived of life, liberty or property without due process of law; therefore the procedure of these agencies must be of a character to satisfy this constitutional guaranty.

Second, since the authority of these bodies depends upon statutes, it must appear that their action in any proceeding is within the scope and power conferred by the statute; in other words, the statute must confer jurisdiction over the matter to be determined.

Third, the attempted exercise of jurisdiction by the tribunal in question must not have been brought about by a fraud practiced upon it.

Now let us take these up in their order.

First, as to due process of law. If an administrative board acting within the statutory jurisdiction makes a decision adverse to the prop-

erty right of a citizen, can that citizen complain that he has been denied due process of law, and demand a trial in the courts? The answer depends upon the meaning of the phrase, "due process of law."

The Supreme Court is the proper body to determine this question and it has repeatedly held that the clause does not require the process of a court of law. Any method of procedure which conforms to the fundamental principles of natural justice and protects the individual from arbitrary and oppressive action is due process of law. This proposition is stated in Murray v. Hoboken Land & Improvement Co., 18 Howard 272, as follows: "The article is a restraint on the legislative as well as on the executive and judicial powers of the Government, and cannot be so construed as to leave Congress free to make any process 'due process of law,' by its mere will. To what principles then are we to resort to ascertain what process enacted by Congress is due process? * * * We must examine the Constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in England before the emigration of our ancestors."

So in the case of Springer v. U. S., 102 U. S. 586, it was held that in order to enforce the payment of taxes, Congress may cause property to be distrained and sold, and that the owner of such property is not thereby deprived of it without due process of law. In this case the Court says: "The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to the delays of litigation is unreason."

However, the limitation on such power was expressed in a general way in Chin Low v. U. S., 208 U. S. 8, where it was held that the Legislature cannot vest in any official, a purely personal, arbitrary power, and that to do so is a denial of due process of law.

On these interpretations, then, the proceedings of administrative commissions in general have been held to constitute due process of law, and in most cases the statutes under which they derive their authority have been held to be constitutional.

The statute creating a commission or board, or vesting such powers as we have been considering in an officer, having been found to make due provision for such a hearing as will satisfy the requirement of due process of law, we come to the second limitation upon the power of these administrative tribunals, found in the fact that

their jurisdiction is necessarily limited by the terms of the enabling statute under which they act.

The exercise of judicial power by administrative officers must, in practically every instance, be authorized by some legislative act so that we cannot view the general working of this law without considering in each instance the effect of the particular statute involved.

When acting within its statutory jurisdiction the action of an administrative body is binding, but its determination that it has jurisdiction may be attacked directly in a court of law and is always subject to review.

The Legislature may make the powers of these bodies broad or narrow, but a person whose property rights are affected has a right to insist that the tribunal keep within its statutory jurisdiction. Its action in his case must be within the scope of the authority conferred, and he has a right to have the question determined by a court of law.

The courts, as a rule, while announcing that these statutes shall receive a reasonable construction, are not inclined to extend the powers conferred by implication, and this is especially true in taxation and revenue cases.

A good example of these cases is McClean v. Jephson, 123 N. Y. 142, where in holding a tax assessment invalid, the court says: "There is no prerogative of a government which is more liable to abuse than that which authorizes it to seize and appropriate the property of the citizen for public purposes, and none which is regarded with more jealous scrutiny by the courts. The authority of its officers to exercise the power of taxation has uniformly been carefully scrutinized and limited to the express warrant of the statute and cannot be extended by implication or construction."

Moreover these tribunals may not themselves interpret the statute so as to confer jurisdiction upon themselves, where, in fact, no such jurisdiction was intended, and conclude the parties in interest by such determination. As was said in the case of Dorn v. Backer, 61 N. Y. 261: "it may be said now to be settled, that assessors cannot acquire jurisdiction by deciding that they have it. Before assessing the plaintiff for taxation in the town of Ava, it was essential that he should be a resident of that town, and, if not, they had no jurisdiction."

The case of McClean v. Jephson, cited above, states the proposition so well as to justify an extended quotation: "Some of the duties of the assessors are judicial in their nature, and as to them, while acting within the scope of their authority, they are protected

from attack collaterally to the same extent as other judicial officers; but they are subordinate officers, possessing no authority, except such as is conferred upon them by statute, and it is a well settled and salutary rule that such officer must see that they act within the authority committed to them. * * * So when their right to act depends on the existence of some fact which they erroneously determine to exist their acts are void."

The third limitation upon administrative action which I have mentioned is fraud, in which is included imposition and mistake. A review on this ground is not peculiar to this class of cases, but applies generally to all branches of the law. As a matter of course any judicial decision is reviewable if the court has been the victim of a fraud by one of the parties. I mention fraud merely to clear the field of all collateral matter before taking up the precise question suggested by the title of this paper.

To recapitulate, then, there are three grounds upon which the action of an administrative body may be held for naught, because the basis of its action was lacking in some fundamental requisite.

In order to reduce the proposition to its lowest and simplest terms, and avoid all confusion, I have eliminated the three considerations just discussed, and shall now consider the question on the assumption that the administrative body has jurisdiction, that it acts according to due process of law, and that it did not assume jurisdiction because of some fraud perpetrated upon it and that its decision is not tainted with fraud.

If then we have a case which has been decided by an administrative tribunal, and is not open to attack on any one of the above grounds, is the decision conclusive and final? The answer (which must, in view of the numerous types of statutes and commissions, necessarily be general) is that the decision is final as to the findings of fact but not as to the holdings of law. The courts are practically a unit in holding the determinations of these various tribunals conclusive as to facts. The most obvious and practical reason for this is that to hold otherwise would be to defeat the very purpose of creating such boards by permitting every case to be appealed. It will be necessary to review only a few of the numerous cases which support this proposition.

Of the land office cases, O'Connor v. Gertgens, 85 Minn. 481, is illustrative. It was there ruled that the proposition is well settled that the authority to hear and determine all questions of fact in the

land department is exclusively within the control of the officers of that department. The court goes on to say that the jurisdicion thus conferred by statute is judicial in its nature, and the decisions of the department officers when acting within their jurisdiction are final and conclusive in the absence of fraud, imposition, or mistake.

The case of Bates & Guild Co. v. Payne, 194 U. S. 106, announces the same rule with relation to the postal department. The postmaster there had excluded from the mail as second-class matter a periodical publication known as "Masters in Music." Each number of the publication was devoted exclusively to the portrait, biography and works of some famous musician, and the postmaster based his refusal to allow it as second-class matter on the ground that each number was a complete volume in itself. The Supreme Court in holding this to be principally a question of fact on which the decision of the postmaster was conclusive, cites the land office decision and states that it is a long settled practice of the court to treat the decisions of the land department upon a question of fact as conclusive, although such proceedings to a certain extent involve the exercise of judicial powers. The same rule was applied to the decisions of the commission of immigration as appears from examination of the cases involving the exclusion of Chinese and Japanese immigrants. See case of Ekiu v. U. S., 142 U. S. 651. In that case a female subject of the Emperor of Japan was excluded under a statute commanding the exclusion of "a person liable to become a public charge." On appeal the petitioner wished to introduce evidence as to her condition, but this was excluded. To quote from the opinion of the court: "But on the other hand, the final determination of those facts may be entrusted by Congress to executive officers, and in such case, as in all others in which a statute gives discretionary power to an officer to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine or controvert the sufficiency of the evidence on which he acted."

On the other hand, however, the courts are almost as unanimous in holding that administrative determinations are not conclusive as to questions of law. The courts are loath to relinquish any of their jurisdiction over legal questions, and do not accept the decisions of other tribunals; maintaining that where such a question is involved everyone has a right to an adjudication by a regularly constituted court of law. A most instructive case on this phase of the question is The American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, which arose on appeal from the decision of the postmaster, that

the correspondence of the school should be excluded from the mail as being a fraud on the public, because the school taught healing by psychology. In discussing the question the court concedes that the decision of the postmaster on matters of fact is conclusive. However, it is a different matter, says the court, when the evidence before the postmaster in any view of the facts fails to show that there was a violation of any law. In such a case if the postmaster decided that there *was* a violation of law this would be a pure mistake of law on his part, because the facts being conceded, whether they amounted to a violation of the statute would be a legal question and not a question of fact. On this reasoning the court held that the decision of the postmaster involved a mistake of law and was, therefore, reviewable.

The land office decisions are more favorable to the power of administrative bodies, due to a liberal statute, yet James v. Iron Co., 107 Federal 596, a land case, is quite similar to the McAnnulty case. After affirming the authority of the land department to hear and determine claims to public lands subject to its disposition, the court affirms that the decision is not impregnable to direct attack as to errors of law. The legal title derived from the action of the department may be charged with a trust for the benefit of the party lawfully entitled to the land either on the ground (1) that upon the facts found its officers fell into a clear error in the construction of the law, or for the reason (2) that, through fraud or gross mistake, they fell into a misapprehension of the facts before them.

There are, however, some few scattered cases which apparently hold that the decisions of administrative tribunals are conclusive as to law as well as to fact. Decatur v. Paulding, 14 Pet. 497, is one of the earliest decisions to this effect, and U. S. v. Hitchcock, 190 U. S. 316, is another often cited. In the latter case, it was sought by mandamus to compel the Secretary of the Interior to vacate an order rejecting a selection of public land. The Court held, however, that neither mandamus nor injunction would lie against an officer of the land department to control him in discharging an official duty which requires the exercise of his judgment and discretion, and this notwithstanding the fact that the Court also held that the decision of the Secretary was not subject to review on writ of error. Again the case of In re Ota, 96 Fed. 487, strongly maintains this view. Here the exclusion of an alien was involved, the Commissioner of Immigration having acted under the very liberal and comprehensive statute of 1903, which provides that the decision of immigration officers, if adverse to the alien, shall be final. Under this statute it was held that when the executive officers of the government on a hearing such as is contem-

plated by the law have decided that an alien is not entitled to enter the United States the Courts are without jurisdiction to review that determination upon questions either of law or of fact.

There is a line of cases which hold that where a department has uniformly for a long period of time adopted a certain construction of a statute that the Courts will accept such construction as correct and binding. However, the Courts usually go no further than to hold that such construction is entitled to great weight and should be adopted unless it is clearly erroneous. To this effect are the cases of U. S. v. Philbrick, 120 U. S. 59, U. S. v. Healey, 160 U. S. 145, and McFadden v. Mining Co., 97 Fed. 670.

True, in the case of Bates & Guild Co. v. Payne (supra) the Court disregarded a practice of the post office department which had been observed for sixteen years, but there was a strong dissent by the Chief Justice and by Mr. Justice Harlan in which the Chief Justice expressed his views as follows: "We had supposed it to be firmly settled that the established practice of an executive department charged with the execution of a statute will be respected and followed, especially if it has been long continued, unless such practice rests upon a construction of a statute which is clearly and obviously wrong."

Now while there are cases which hold that the determination of these administrative boards are conclusive as to the law, the great weight of authority seems to support the contrary view, while all the cases seem to agree that the findings of fact are conclusive.

But there is a class of cases fitting in between the two classes just discussed. In these cases (and they are very numerous) the question involved is one of mixed law and fact. This point has been raised in three cases famous in the field of administrative law, and in each the decision has been to the effect that where the question is one of mixed law and fact the decision is not reviewable. Mr. Justice Miller states the proposition concisely in Marquez v. Frisbie, 101 U. S. 473, as follows: "This means, and it is a sound principle, that where there is a mixed question of law and fact, and the Court cannot so separate it as to see clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive."

This point was also one of the main questions in Bates & Guild Co. v. Payne (cited above), in which the Court refused to go the full length of the proposition stated by Mr. Justice Miller, but intimated that the Court might on occasion review questions of mixed law and fact. The rule was summarized to be "that where the decision of a question of fact is committed by Congress to the judgment and discretion of a head of a department, his decision thereon is conclusive;

and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the Court will not ordinarily review it, although they may have the power and will occasionally exercise the right of so doing."

The case of Coal Co. v. Evans, 80 Fed. 425, was in effect in accord with Marquez v. Frisbie, for it was there held that in a bill attacking a decision of the land department on the ground that its officers misconstrued the law, the evidence and findings must be set out in such a manner that the Court can separate the findings of fact from the conclusion of law, and unless sufficient facts are shown to make it plain that an error of law was committed such a bill cannot be sustained.

To summarize, then, an examination of the cases tends to show that the law upon this question is as follows:

I. That decisions of administrative tribunals are always reviewable where (a) the requirements of due process of law have not been observed, (b) where the tribunal acted outside of the scope of its jurisdiction, and (c) where the decision is tainted with fraud.

II. That, absent the above objections the decisions of administrative tribunals are (a) universally held conclusive as to its findings of fact, (b) that where the question is one of mixed law and fact they are conclusive unless the rulings upon the law and findings of fact can be separated and it can be shown that the error is one of law, and (c) that these determinations are reviewable in all cases where there has been an erroneous application of the law.

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