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Administrative Law—Res Judicata

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Res Judicata

The familiar rule that the peace and good order of society require that there be an end to litigation holds as well for the decisions of administrative tribunals as well as those of courts of law.[14] However, the peculiar characteristics of the administrative process are such that a rigid application of the doctrine of res judicata is inappropriate.[15] Decisions of administrative tribunals are traditionally characterized as judicial or quasi-judicial on the one hand, and legislative, administrative, or ministerial on the other.[16] Res judicata is usually held applicable to decisions of the first type and inapplicable to those of the second type, although investigation will show that the doctrine is not always applied in the first type and sometimes is applied in the second.

The application of the doctrine of res judicata to administrative proceedings began in New York with a dictum in *Osterhoudt v. Rigney.*[17] In a taxpayer's action to vacate audits of town accounts as audited, it was held that the applicable statute did not permit revision of the audits. The court then went on to say that "[t]he rule which forbids the reopening of a matter once judicially determined by a competent jurisdiction applies as well to the decisions of special and subordinate tribunals as to decisions of courts exercising general judicial powers."[18] Lower courts have followed this dictum rather rigidly,[19] but a recent case seems to have cut into the extent of its authority. In *Evans v. Monaghan,*[20] res judicata was held not to preclude the police commissioner from retrying police officers on department charges where they had been previously acquitted of the same charges due to the refusal of the chief witness to testify. The court cited the cases which established the heretofore prevailing rule of the applicability of res judicata in such determinations and was at pains to point out that the doctrine should not be lightly dismissed.[21] It then proceeded to hold that this case was taken out of the sphere of the rule because of the availability of "newly discovered evidence" not available at the first trial. Of course, even "newly discovered evidence" would not justify a retrial of criminal is-

14. *Johnson v. Towsley,* 13 Wall. 72 (1871), *Osterdoudt v. Rigney,* 98 N.Y. 222 (1885).

15. See DAVIS, ADMINISTRATIVE LAW 563.

16. *Prentis v. Atlantic Coast Line Co.,* 211 U.S. 210 (1908).

17. See note 14 *supra.*

18. 98 N.Y. at 234.

19. *Hyland v. Waldo,* 158 App. Div. 654, 143 N.Y. Supp. 901 (1st Dep't 1913), *Stowell v. Santoro,* 256 App. Div. 934, 9 N.Y.S. 2d 866 (2d Dep't 1939), *Jones v. Young,* 257 App. Div. 563, 14 N.Y.S. 2d 84 (3d Dep't 1939).

20. 306 N.Y. 312, 118 N.E. 2d 452 (1954).

21. 306 N.Y. at 324, 118 N.E. 2d at 458, quoting from *People ex rel. Finnegan v. McBride,* 226 N.Y. 252, 123 N.E. 374 (1919).

sues, but double jeopardy is not here applicable since these departmental charges are civil in nature. It was held that there was no difference in principle between a case where a witness offers to testify after refusing at a previous trial, and that of a witness who later recants his testimony given at a previous trial. In the latter case, the recantation amounts to newly discovered evidence, which, in a proper case, is grounds for a new trial.[22] The instant situation was held to be analogous and the same principle to apply.

The Appellate Division had come to the same conclusion by carefully distinguishing the previous line of cases invoking res judicata and apparently holding that, new charges and new evidence being introduced, the issues at the second trial were not identical with those of the first.[23] The Court of Appeals assumed that the charges and issues were the same, notwithstanding the additional charges of perjury, but nevertheless found that a second trial was proper. It is in this that the real significance of the case is to be found. It appears that the application of res judicata is not necessary even where the charges and issues are the same, so long as evidence is available which was not so before.

Requirement of Hearing

In acting in an adjudicatory capacity, an administrative agency, like a court of law, must accord the parties affected a full and fair hearing.[24] Hence, where the exercise of a statutory power adversely affects property rights, due process requires that courts imply the requirement of notice and hearing even though the statute involved may contain no provision for a hearing.[25]

Such a situation is presented by *Hecht v. Monaghan*,[26] involving the hack licensing provisions of the New York City Charter.[27] Provision is made for revocation of such licenses in designated cases,[28] but nowhere is it provided that a hearing be held prior to revocation.

The Court of Appeals has recently held that an individual's driver's license is a thing of such value as to constitute property

22. *People v. Shilitano*, 218 N.Y. 161, 112 N.E. 733 (1916).
23. *Evans v. Monaghan*, 282 App. Div. 382, 123 N.Y.S. 2d 662 (1st Dep't 1953).
24. *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U.S. 88 (1913).
25. *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950), *Bauer v. Acheson*, 106 F. Supp. 445 (D.C.D.C. 1952), *People ex rel. Copcutt v. Board of Health of City of Yonkers*, 140 N. Y. 1, 35 N. E. 320 (1893).
26. 307 N. Y. 461, 121 N. E. 2d 421 (1954).
27. NEW YORK CITY CHARTER § 436, NEW YORK CITY ADMINISTRATIVE CODE § 436-2.0.
28. NEW YORK CITY ADMINISTRATIVE CODE § 436-2.0 (27).