Buffalo Law Review

Volume 4 | Number 1 Article 9

10-1-1954

Administrative Law—Requirement of Hearing

John J. Cooney

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).

which may not be taken away except by due process.[29] In addition, in a case such as this, a hack driver's license being a condition precedent to his making of a living, it may be said that the driver has a property right in the license from this point of view.[30] Hence, in a proceeding to revoke the petitioner's license for alleged withholding of change from passengers, due process required a hearing, though the statute was silent.

In the instant case, a "hearing" was actually afforded the petitioner but it was found insufficient on several grounds. The court pointed out that no essential of a fair trial may be omitted at such a hearing. "The party whose rights are being determined must be fully apprised of the claims of the opposing party and of the evidence to be considered, and must be given the opportunity to cross examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal."[31] Here, the "hearing" consisted of a reading of a hack bureau memorandum and an identification of the driver by the complainants. No actual testimony was taken, no sufficient previous notification was given petitioner, and the "record" on which he was suspended was insufficiently set out.

Power to Compel Production of Documents

The power of investigating committees and commissions to compel the production of relevant documents and papers is reaffirmed in *Alexander et al. v. New York State Commission to Investigate State Agencies in Relation to Pari-Mutual Harness Racing.*[32]

Though the power of agencies to compel production of documents is not unlimited, it is quite broad. "The power to require a witness to produce books and papers is necessarily limited to a 'proper case' . . . [which] is ordinarily one where the books and papers called for have some relevancy and materiality to the matter under investigation."[33] Hence a subpoena duces tecum will be quashed ". . . only where the futility of the process to uncover anything legitimate is inevitable or obvious. . . ."[34] The majority of the court found the information demanded fell within this definition.

---

29. *Wignall v. Fletcher,* 303 N.Y. 435, 103 N.E. 2d 728 (1952).
30. *Truax v. Corrigan,* 257 U.S. 312 (1921).
31. *Friedel v. Board of Regents,* 296 N.Y. 347, 352-353, 73 N.E. 2d 545, 547-548 (1947), *Heaney v. McGoldrick,* 286 N.Y. 38, 45, 35 N.E. 2d 641, 644 (1941), *Matter of Greenbaum v. Bingham,* 201 N.Y. 343, 347, 94 N.E. 853, 854 (1911).
32. 306 N.Y. 421, 118 N.E. 2d 588 (1954). The respondent Commission was established under section 6 of the Executive Law.
33. *Carlisle v. Bennett,* 268 N.Y. 212, 217-218, 197 N.E. 220, 222 (1935).
34. Judge Cardozo in *Matter of Edge Ho Holding Corp.,* 256 N.Y. 374, 382, 176 N.E. 537, 539 (1931).