LEGISLATION AND ADMINISTRATION

DOES DUE PROCESS OF LAW REQUIRE AN ADVANCE NOTICE AND HEARING BEFORE A LICENSE IS ISSUED UNDER THE AGRICULTURAL ADJUSTMENT ACT?

FORREST REVERE BLACK*

The pertinent provision of the Agricultural Adjustment Act dealing with the issuance of licenses is section 8 (3).¹ It reads:

"In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

"(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. . . . Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than \$1,000 for each day during which the violation continues."

The problem to be analyzed in this article might be formulated as follows: Does the due process clause of the Fifth Amendment in its procedural aspect require an advance notice and hearing to be given by the Secretary of Agriculture before a license is issued under section 8 (3)?

GENERAL NOTIONS OF DUE PROCESS

At the outset, it should be noted that the due process clause, in the procedural aspect, has no definite and uniform meaning in the field of administrative action, as respects the necessity of advance notice and hearing.

Fundamentally, the explanation for this variation depends on three factors: first, the due process clause is an amorphous provision devoid of precise legal content; second, it has had an evolutionary development, meaning different things at different periods; and third, there is great practical difficulty in various situations in reconciling the pressing need for governmental efficiency with the proper protection of individual rights.

* Chief Attorney, Office of General Counsel, Agricultural Adjustment Administration. On sabbatical leave, 1934-35, University of Kentucky Law School.

¹ Section 8 (3) of Agricultural Adjustment Administration, 48 Stat. 31, 34, 7 U.S.C.A. § 608 (3) (1934).

More specifically, the meaning of the due process clause varies according to the type of governmental mechanism utilized by the administrative officer, the field of governmental power involved, and certain miscellaneous considerations. None of these factors is necessarily controlling in a case; each one may be of more or less weight, and each is affected by the presence or absence of the others. It is valuable, moreover, to be aware of these considerations, and, for that reason, a number of them will be set out below.

1. Whether an administrative ruling is quasi-judicial; that is, an application of existing law to present practical situations, or quasi-legislative, a setting down of rules for the future, has been given much weight. If the administrative body performs a legislative function, there is much authority that it may act without advance notice and hearing.² This is applicable to certain types of special orders,³ as well as to general regulations.⁴

2. Where so many persons are involved that advance notice and hearing would be impractical, its absence does not affect the validity of the administrative ruling. Justice Holmes, speaking with reference to equalization proceedings said:⁵

“Where a rule of conduct applies to more than a few people it is impracticable that every one should have a direct voice in its adoption. . . . There must be a limit to individual argument in such matters, if government is to go on.”

² Goodnow, *Principles of the Administrative Law of the U.S.* (1905), 26; 34 Col. L. Rev. 332 (1934).

³ The statute in *Health Department v. Rector of Trinity Church*, 145 N.Y. 32; (1895) requiring that all houses of a certain description should “upon direction of the board of health” be supplied with water “in sufficient quantity at one or more places on each floor occupied by a family.” No notice of hearing was given the owner. The court said that the changes might have been ordered specifically by the legislature without giving notice to persons affected thereby and asserted that the fact that the legislature had chosen to delegate a certain portion of its powers to the board of health did not alter the principle. It should be noted that the order in this case, though relating to an individual piece of property, was not in the nature of an adjudication requiring the ascertainment of facts from conflicting evidence, but was merely the declaration of the will of the governing authority—the making of a special regulation to fill in details of the statute which by reason of the flexibility of its requirements may be regarded merely as an amalgam of separate statutes passed in respect to each member of the class to which its general provisions relate. See Powell, *Administrative Exercise of the Police Power*, 24 Harv. L. Rev. 333, 335 (1911).

⁴ *Belcher v. Farrar*, 8 Allen (Mass.) 325 (1864); *U.S. v. Illinois Central R.R. Co.*, 291 U.S. 57 (1933).

⁵ 4. *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 445 (1915).

The same principle is applied in the closing of insolvent banks;⁶ in eminent domain proceedings;⁷ in the issuance of interstate commerce emergency car-service orders;⁸ and in assessments for local benefits.⁹

3. The quantum of review to which administrative action is subject also affects the type of prior administrative hearing required. Mr. Justice Cardozo recently said:¹⁰

"The hearing that commissions are to give must be adapted to the consequences that are to follow, to the attacks, and the review to which their orders will be subject."

4. The directness of interference of the administrative order with private rights has also been considered. In the *Norwegian Nitrogen Products Co.* case, the point was stressed that where the Tariff Commission acts in an advisory capacity to aid the President in changing the tariff rates, the hearing granted to the importer is no more than the right to make a statement since the Commission's findings would only indirectly affect the importer.¹¹

5. Where police power requires summary destruction of property, a prior hearing may be omitted consistent with due process, if property is not of too great value.¹²

⁶ *Bushnell v. Leland*, 164 U.S. 684 (1896); *Title Guaranty Company v. Allen*, 240 U.S. 136 (1916).

⁷ *Bragg v. Weaver*, 251 U.S. 57 (1919).

⁸ *Peoria R.R. Co. v. United States*, 263 U.S. 528 (1924); *Avent v. United States*, 266 U.S. 127 (1924).

⁹ *Davidson v. New Orleans*, 96 U.S. 97 (1877); *Londoner v. Denver*, 210 U.S. 373 (1908).

¹⁰ *Norwegian Nitrogen Products Co. v. U.S.*, 288 U.S. 294, 319 (1933).

This principle has been extended to a municipal legislative body in the case of *Belcher v. Farrar*, 8 Allen (Mass.) 325 (1864). The town selectmen adopted an ordinance requiring a kerosene factory to be closed as a nuisance without allowing the proprietor an opportunity to be heard. The ordinance was held valid on the ground that the statute conferring the power to close a business as a nuisance expressly provided that the determination of the selectmen might be reviewed in an action at law. The court seized upon this legislative recognition of the common law rule that the determination of an official cannot make a nuisance out of that which is not a nuisance in law, in order to draw from it a corollary doctrine that notice and hearing was unnecessary for the validity of a determination which was subject to review in a jury trial. The same general doctrine, in the absence of an express provision for jury trial in nuisance cases, is illustrated by the case of *City of Texarkana v. Reagan*, 112 Texas 317, 247 S.W. 816 (1923). The court said that in a nuisance case only a jury trial may with finality determine the issue of nuisance or no nuisance and that proof of an administrative hearing prior to destruction is inadmissible.

¹¹ *Norwegian Nitrogen Products Co. v. U.S.*, 288 U.S. 294, 319 (1933).

¹² *Lawton v. Steele*, 152 U.S. 133 (1894) (fish nets); *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908) (decayed food); *Porter v. City of Lewiston*, 270 U.S. 671 (1926) (delapidated buildings abutting a public highway).

6. Where the case involves the relation between the government and one of its officers, there is a historical practice sanctioning summary action without a hearing.¹³

7. As a corollary of the inherent sovereign power of the federal government to exclude aliens, a summary administrative exclusion, without a hearing, is permitted.¹⁴ And the steamship companies which brought the aliens to our country may be fined without notice and hearing.¹⁵

8. The Supreme Court of the United States has suggested that another test of the necessity for an advance hearing is based on the personnel of the administrative board; whether experts or laymen, men of ability or mere politicians.¹⁶

9. In tax cases, the expediency and necessity arguments are controlling on the question of advance notice and hearing. In *Hagar v. Reclamation District*,¹⁷ the court said that the necessity of the case demanded that the hearing be at a *later* stage. Hence a general notice with a hearing at some stage was sufficient.¹⁸ Nor would failure to take advantage of the opportunity for a hearing invalidate the proceedings.¹⁹ In some cases the chance to put in a formal statement of the value of the property taxed has been construed as a valid hearing.²⁰

10. There are certain types of administrative determinations in which both notice and hearing may be dispensed with entirely: ministerial, such as a levy of taxes when there was no question of value involved;²¹ where licenses were to be revoked due to the happening of events beyond the control of the administrative officer;²² where land titles were to escheat to

¹³ *Murray's Lessee v. Hoboken Land Co.*, 59 U.S. 272 (1855) (summary action against a delinquent government tax collector). See also *Coler v. Corn Exchange Bank*, 250 N.Y. 136, 164 N.E. 882 (1928). There is a line of cases holding that public officers may be removed from office without notice and hearing. *Boyd v. Pendegast*, 57 Cal. App. 504, 207 Pac. 713 (1922); *Gray v. McLendon*, 134 Ga. 221, 67 S.E. 859 (1910); *Wilcox v. People*, 90 Ill. 186 (1878); *People v. Whitlock*, 92 N.Y. 191 (1883); *State v. Frazier*, 39 N.Dak. 430, 167 N.W. 510 (1928); *Ekern v. McGovern*, 154 Wis. 157, 142 N.W. 595 (1913). See also *Foster v. Kansas*, 112 U.S. 206 (1884); *Wilson v. North Carolina*, 169 U.S. 592 (1898); *Reaves v. Ainsworth*, 219 U.S. 296 (1911).

¹⁴ *Ekiu v. U.S.*, 142 U.S. 651 (1892).

¹⁵ *Oceanic Steamship Co. v. Stranahan*, 214 U.S. 320 (1909).

¹⁶ *Yates v. Milwaukee*, 10 Wall. (U.S.) 497 (1870). ¹⁷ 111 U.S. 707 (1884).

¹⁸ See *Mott, Due Process of Law* (1926), 222, for list of cases.

¹⁹ *Kuntz v. Sumption*, 117 Ind. 1 (1889); *Mott, Due Process of Law* (1926), 224.

²⁰ *Central R.R. of Georgia v. Wright*, 207 U.S. 127 (1907).

²¹ *Hagar v. Reclamation District*, 111 U.S. 701 (1884).

²² *Kaiser Land and Trust Co. v. Curry*, 155 Cal. 638, 103 Pac. 341 (1909); *Martin v. State*, 23 Neb. 371, 36 N.W. 554 (1888); *People ex rel. Lodes v. Department of Health*, 189 N.Y. 187, 82 N.E. 187 (1907).

the state when those purchasing public lands defaulted in their payments.²³

11. Licenses to operate certain businesses such as saloons and pool halls generally may be revoked without a notice and hearing;²⁴ unless the revocation requires an act which is essentially judicial.²⁵

CLASSIFICATION OF ADMINISTRATIVE FUNCTIONS

Focusing attention upon the first consideration stated above, it is this writer's thesis that the issuing of licenses by the Secretary of Agriculture under section 8 (3) is legislative in nature, and that, therefore, no advance notice and hearing need be given.

It is well settled by the courts that the test to distinguish legislative, executive and judicial power depends upon the kind of action taken and not upon the kind of mental process involved in deciding whether and how to act.²⁶ Justice Holmes speaking for the court in *Prentiss v. Coast Line Co.*,²⁷ said, "It is the nature of the final act that determines the nature of the previous inquiry." The court in this case further said:²⁸

"A judicial inquiry, investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. . . . Legislation on the other hand looks to the future and changes existing conditions by making a new rule. . . . The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind."

John Dickinson in his *Administrative Justice and the Supremacy of Law*²⁹ indicates that one reason why our courts have held rate-fixing by a commission to be "legislative" would seem to be because it is a function which legislative bodies have been in the habit of exercising. In *Louisville & Nashville Railroad v. Garrett*,³⁰ the court said,³¹ "The legislature may act directly . . . or it may commit the authority to fix rates to a subordinate body." In *Honolulu Rebate & Transit Co. v. Territory of Hawaii*,³² speaking of rate regulation, the court stated,³³ "The legislature may dele-

²³ *Wilson v. Standefer*, 184 U.S. 399 (1902).

²⁴ See *Commonwealth v. Kinsley*, 133 Mass. 578 (1882); *Krueger v. Colville*, 49 Wash. 295, 95 Pac. 81 (1908); *Tuttrup, Revocation of Occupational Licenses*, 4 Wis. L. Rev. 180 (1927), reprinted in 13 Va. L. Reg. (N.S.) 97 (1927).

²⁵ *Balling v. Elizabeth Board of Excise*, 79 N.J.L. 197, 74 Atl. 277 (1909).

²⁶ Green, Separation of Governmental Power, 29 Yale L. Jour. 369 (1919).

²⁷ 211 U.S. 210 (1908).

²⁸ 211 U.S. 210, 226 (1908).

²⁹ Dickinson, *Administrative Justice and the Supremacy of Law* (1927), 18.

³⁰ 231 U.S. 298 (1913).

³² 211 U.S. 282 (1908).

³¹ 231 U.S. 298, 305 (1913).

³³ 211 U.S. 282, 291 (1908).

gate to an administrative body the execution in detail of the legislative power of regulation."

In further distinction of the two functions it may be added that legislative action is initiated by the enacting body, whereas the judiciary may act only when called upon to do so, and that while the former acts upon its own knowledge, the latter is guided by the pleadings and evidence in the case.³⁴ Legislation announces a general rule without reference to any particular case; adjudication is the application or elaboration of a rule to fit a specific case.³⁵

With the growth of administrative bodies and the complexity of modern governmental problems, it has become increasingly difficult to demarcate the limits of legislative, executive and judicial power. Dean Pound has shown that all adjudication involves in some degree the exercise of legislative and administrative functions also.³⁶ Further, any classification is based on a definition and³⁷ "all definitions are relative to the purpose of an inquiry." Justice Holmes has warned³⁸ "that to generalize is essentially to omit." And John Dickinson has declared that³⁹ "the unbridged interval between identity and resemblance is the slip betwixt cup and lip that lets in upon us all the perplexing problems of the legal order." But granting this, we do not think that it follows that the attempt to classify administrative power into quasi-legislative and quasi-judicial is futile. The courts have done so ever since the origin of the administrative movement and in the main the classification is a workable one. The critics, while belittling this attempt at classification, have presented no substitute analysis that is preferable.

By way of background we introduce several cases illustrating the orthodox classification of administrative powers. (1) **Executive discretion.** In *Hadden v. Merritt*,⁴⁰ the court held that the value of foreign coins as ascertained by the estimate of the Director of the Mint and proclaimed by the Secretary of the Treasury is conclusive upon both custom house officials and importers. The court said,⁴¹ "the duty . . . is the performance of an *executive function* requiring skill and the exercise of judgment and discre-

³⁴ Taylor v. Place, 4 R.I. 324 (1856); The Distinction between Legislative and Judicial Functions, A.B.A. Rep. (1885), 261.

³⁵ Dickinson, Administrative Justice and the Supremacy of the Law (1927), 21.

³⁶ Pound, Introduction to the Philosophy of Law (1922), 105 ff.

³⁷ Schiller, Formal Logic (2d ed.), 69, 70.

³⁸ Donnell v. Herring-Hall-Marvin-Safe Co., 208 U.S. 267, 273 (1908).

³⁹ Dickinson, Administrative Justice and the Supremacy of the Law (1927), 119.

⁴⁰ 115 U.S. 25 (1885).

⁴¹ 115 U.S. 25, 27 (1885).

tion, which precludes judicial inquiry into the correctness of the decision."

(2) **Judicial (or quasi-judicial) discretion.** In *United States ex rel. Riverside Oil Company v. Hitchcock*,⁴² the court said,⁴³ "Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions to which is confided the execution of the laws which regulate the purchase, selling, and care and disposition of the public lands. Neither an injunction nor mandamus will 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." The Secretary having jurisdiction to decide at all has necessarily jurisdiction to decide as he thinks the law is, and it is his duty so to do, and the courts have no power under those circumstances to review his decisions by mandamus or injunction. The courts have no general supervisory power over the officers of the Land Department by which they can control the decisions of such officers upon questions within their jurisdiction. (3) **Administrative duty.** In *United States ex rel. Parish v. MacVeagh*,⁴⁴ the court distinguished the *Riverside* case cited above in stating that where the reference by Congress to the Secretary of the Treasury to ascertain the amount due to a claimant and pay the same requires the exercise of discretion then the courts cannot control his decision; but where the statute simply requires him to ascertain the amount, according to prescribed rules, the duty is administrative.⁴⁵ One Parish had a contract with the United States government to deliver ice to the armies in the field in 1863. Congress on February 17, 1903, passed an act directing the Secretary of the Treasury "to determine and ascertain the full amount which should have been paid to Parish if the contract had been carried out in full without charge or default by either party" and to issue his warrant therefor. The court held that no judicial duty devolved upon the Secretary, nor has the Secretary power to determine what was right or proper but only the *administrative duty* of ascertaining the amount and paying the same; and the amount having been ascertained, the claimant is entitled to a writ of mandamus directing the Secretary to issue his warrant therefor. The court said,⁴⁶ "The duty enjoined required a reference in a sense to evidence, it may be, but it was to evidence whose probative force had been estimated and declared. It conduced to but one conclusion." It should be noted that the court did not characterize the Secretary's duty as *ministerial*, but as administrative. (4) **Legislative (or quasi-legislative) dis-**

⁴² 190 U.S. 316 (1903).

⁴³ 190 U.S. 316, 324 (1903).

⁴⁴ 214 U.S. 124 (1909).

⁴⁵ 214 U.S. 124, 131 (1909).

⁴⁶ *Supra* note 42.

cretion. A typical illustration of the exercise of quasi-legislative power by an administrative body is found in the cases wherein commissions have been delegated the power to fix rates of public utilities. The Supreme Court has said that⁴⁷ "the function of rate-making is purely legislative in its character, and this is true whether it is exercised directly by the legislature itself or by some subordinate or administrative body to whom the power of rate-fixing in detail has been delegated."

QUASI LEGISLATIVE ACTION NEED NOT BE PRECEDED BY
NOTICE AND HEARING

It is clear that no one has a right to be heard by a committee of Congress when that committee is considering proposed legislation. Mr. Luce in his authoritative work on legislative procedure says,⁴⁸ "The constitutional right of petition to Congress has nothing whatever to do with the claim to be heard in argument before a committee. It is a matter of discretion with a committee as to the mode in which it will seek information concerning subjects referred to its consideration." Hence no statute is subject to impeachment on the score of invalidity though notice to those affected has been omitted altogether.⁴⁹

Even where a hearing is afforded, as a privilege, the hearing is not similar to a trial as conducted by a court. The proponents of a bill and the contestants make their statements for and against, bringing forward such confirmatory documents, letters, reports, statistics as they believe to be important. In none of the congressional hearings has the practice ever prevailed of permitting the advocates of a measure to cross-examine the opponents, or the opponents the advocates, or of compelling the committee itself to submit to an inquisition as to data collected by its members through independent investigation. Further, the committee determines for itself whether its sessions shall be public or private. It is all a matter of discretion. Then if Congress in the Agricultural Adjustment Act, by a general regulation, had imposed a license on all processors, "associations of producers and others engaged in the handling, in the current of interstate or foreign commerce, of any agricultural product" no advance notice and hearing could have been insisted upon, as an indispensable requirement of due process of law. Since a general regulation by legislation does not require advance notice and hearing, the fact that the legislature delegates this power to an administrative officer does not change the rule.

⁴⁷ *Knoxville v. Knoxville Water Co.*, 212 U.S. 1, 7 (1908); *Louisville & Nashville Railroad Co. v. Garrett*, 231 U.S. 298 (1913).

⁴⁸ Luce, *Legislative Procedure* (1922), 143, 144.

⁴⁹ *Norwegian Nitrogen Products Co. v. U.S.*, 288 U.S. 294, 304 (1932).

Assuming that governmental powers of a nature similar to the license power have been used in other cases, analogies may be sought in the field of state police power for the two following reasons: (a) The nature of the "right" to engage in interstate commerce which is regulated by the license power is no different from that to engage in intrastate business and (b) Congress has a police power appurtenant to the exercise of the commerce power.

It is often assumed that the "right" to do interstate business is of a higher order than is the "right" to do intrastate business for the reason that the former owes its life to the commerce clause itself. This assumption is incorrect.⁵⁰ In the early case of *Gibbons v. Ogden*,⁵¹ Chief Justice Marshall said,⁵² "The Constitution does not confer the right of intercourse between state and state. . . . The Constitution found it an existing right, and gave to Congress the power to regulate it." In the *Minnesota Rate Cases*,⁵³ Mr. Justice Hughes in Hohfeldian terminology declared that⁵⁴ "the grant in the Constitution of its own force, that is without action by Congress, established the essential *immunity* of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority." The sound doctrine is that there is no constitutional right or privilege to engage in interstate or foreign commerce. The right or privilege arises under state law; and the commerce clause simply creates a jurisdictional immunity against an invalid "regulation" thereof.⁵⁵ Professor Willoughby has said,⁵⁶ "It would seem that it [the right to engage in interstate trade] is one that stands upon exactly the same common law plane as the right to hold property or to engage in any business not inherently illicit, and differs from them only in the fact that it is subject to general regulation by the federal government and withdrawn from regulation by the states."

Some of the best known federal statutes may be cited to show that Congress may exercise a federal police power under the commerce clause.⁵⁷ For the protection of commerce, statutes have regulated appliances necessary

⁵⁰ Gavitt, *The Commerce Clause* (1932), 32-37.

⁵³ 230 U.S. 352 (1913).

⁵¹ 9 Wheat. (U.S.) 1 (1824).

⁵⁴ 230 U.S. 352, 399 (1913).

⁵² 9 Wheat. (U.S.) 1, 211 (1824).

⁵⁵ *The Commerce Clause* (1932), 39.

⁵⁶ Willoughby, *The Constitutional Law of the U.S.* (2d ed. 1929), 1037.

⁵⁷ We are indebted to Professor Cushman for the following analysis taken from his admirable article, *National Police Power under the Commerce Clause*, 3 Minn. L. Rev. 289, 381, 452 (1918).

for safety,⁵⁸ hours of labor,⁵⁹ employers' liability,⁶⁰ physical obstruction of interstate commerce,⁶¹ and economic obstructions of interstate commerce.⁶² To prevent the use of interstate commerce and a conduit for injurious commodities and an aid to illicit transactions, Congress has regulated lottery,⁶³ obscene matter,⁶⁴ white slavery,⁶⁵ prize fight films,⁶⁶ unwholesome food and drugs,⁶⁷ parasites and infectious diseases.⁶⁸

In the light of the foregoing analysis we submit that state police power cases may be used by way of analogy, provided that the license power is used by the Secretary of Agriculture by way of regulation for police power purposes. Let us now consider the nature of the license power from this point of view. In theory and as a matter of statutory construction subsections (1), (2) and (3) of section 8 grant to the Secretary of Agriculture separate and independent powers. Subsections (1) and (2) provide for reduction of acreage, benefit contracts and marketing agreements, all of which are voluntary; subsection (3) provides for licenses which are coercive. From a practical standpoint, the voluntary devices standing alone are usually ineffective. Hence administrative practice has been to issue licenses in two types of cases: first, where there is already a marketing agreement and there is still a part of the industry which has not signed, and, second, where there is no marketing agreement at all, and the license power is used as a coercive measure to effectuate the declared policy of the act. When we examine the Declaration of Emergency and the Declaration of Policy, the police power aspect of the license provision becomes apparent. The license power is granted for the express purpose of removing a disparity between the prices of agriculture and other commodities, which disparity has obstructed the normal currents of commerce and for the purpose of balancing production and consumption so as to re-establish agriculture prices on a pre-war basis. Both of these are police power purposes. To effectuate the declared policy, the Secretary has utilized proration and price fixing devices appurtenant to the exercise of the license power.

⁵⁸ *Johnson v. S. Pacific Co.*, 196 U.S. 1 (1904).

⁵⁹ *Baltimore and Ohio Ry. Co. v. Interstate Commerce Comm.* 221 U.S. 612 (1910).

⁶⁰ *Second Employers' Liability Cases*, 223 U.S. 1 (1911).

⁶¹ *Morris v. U.S.* 229 Fed. 516 (C.C.A. 8th 1916).

⁶² *Loewe v. Lawlor*, 208 U.S. 274 (1907).

⁶³ *Champion v. Ames*, 188 U.S. 321 (1902).

⁶⁴ *U.S. v. Popper*, 98 Fed. 423 (D.C.N.D. Cal. 1899).

⁶⁵ *Hoke v. U.S.*, 227 U.S. 308 (1912).

⁶⁷ *Hipolite Egg Co. v. U.S.*, 220 U.S. 45 (1910).

⁶⁶ *Weber v. Freed*, 239 U.S. 325 (1912).

⁶⁸ *Reid v. Colorado*, 187 U.S. 137 (1902).

Two leading state police power cases by way of analogy establish the doctrine that if the legislature delegates quasi-legislative power to an administrative officer, there is no more reason for giving advance notice and hearing to persons affected by the action of the subordinate body than there would be, if the same action had been taken by the legislature directly.

In *Health Department of the City of New York v. Rector of Trinity Church*,⁶⁹ the court upheld a statute delegating to the Board of Health the power, without notice or hearing, to require landlords to supply tenants with water. While this was an exercise of the police power, it is obvious that it did not present a situation requiring prompt action which would ordinarily excuse the giving of notice and the affording of a hearing and the case cannot be distinguished on that basis. In this case (which has been quoted with approval by the Supreme Court of the United States) the court stated:⁷⁰

"Assuming that this act is a proper exercise of the power, in its general features, we do not think that it can be regarded as invalid . . . because the board is entitled to make the order, under the provisions of the act, without notice to and a hearing of the defendant. As to the latter objection, it may be said that, in enacting what shall be done by the citizen for the purpose of promoting the public health and safety, it is not usually necessary to the validity of legislation upon that subject that he shall be heard before he is bound to comply with the direction of the legislature. *People v. Board of Health*, 140 N.Y. 1, 6, 35 N.E. 320 [(1893)]. The legislature has power, and has exercised it in countless instances, to enact general laws upon the subject of public health or safety without providing that the parties who are to be affected by those laws shall first be heard before they shall take effect in any particular case. So far as this objection of want of notice is concerned, the case is not materially altered in principle from what it would have been if the legislature had enacted a general law that all owners of tenement houses should, within a certain period named in the act, furnish the water as directed. . . . If, in such case, the enforcement of the direct command of the legislature were not to be preceded by any hearing on the part of any owner of a tenement house, no provision of the state or federal constitution would be violated. *The fact that the legislature has chosen to delegate a certain portion of its power to the board of health, and to enact that the owners of certain tenement houses should be compelled to furnish this water after the board of health had so directed, would not alter the principle, nor would it be necessary to provide that the board should give notice and afford a hearing to the owner before it made such order.* I have never understood that it was necessary that any such notice should be given under such circumstances before a provision of this nature could be carried out." (Italics supplied.)

⁶⁹ 145 N.Y. 32, 39 N.E. 833 (1895).

⁷⁰ 145 N.Y. 32, 40, 39 N.E. 833, 835 (1895).

In *Commonwealth v. Sisson*,⁷² defendants were prosecuted for violation of an order of the fish and game commissioner prohibiting the discharge of sawdust into a river. The power to issue orders prohibiting the dumping of sawdust and other materials into rivers to protect the lives of fish in rivers was expressly delegated to the commissioner by the legislature. There was no provision for notice or hearing, and the commissioner in issuing the order to desist from discharging sawdust into the river did not give notice or afford a hearing to the defendants. It was assigned as error that the defendants were deprived of due process. In holding that the action of the commissioner was of a legislative character and that therefore no hearing or notice was required, the court relied upon many cases and stated:⁷³

"These acts provide that the board, after examination of dams upon rivers where the law requires fishways, is to determine whether the fishways in existence are sufficient, and to prescribe by an order in writing what changes or repairs, if any, shall be made, and at what times the fishways are to be kept open, and to give notice thereof to the owners of such dams. *The action of the fish commissioners under these acts is unquestionably legislative in character, and we cannot doubt that their action under them, exercised and acquiesced in by the public for this length of time, is valid. The result is that in our opinion the action of the board in the case at bar was the working out of details under a legislative act. The board is no more required to act on sworn evidence than is the legislature itself, and no more than in case of the legislature itself is it bound to act only after a hearing, or to give a hearing to the plaintiff when he asks for one; and its action is final, as is the action of the Legislature in enacting a statute, and, being legislative, it is plain that the question of fact passed upon by the Legislature in adopting the provisions enacted by them cannot be tried over by the court.*" (Italics supplied.)

If the issuance of licenses under section 8 (3) of the Agricultural Adjustment Act is a legislative function, then under the logic of the *Rector* and *Sisson* cases Congress may delegate to the Secretary of Agriculture the power to issue licenses without the necessity of giving advance notice and hearing to the persons to be licensed.

THE NATURE OF THE "LICENSE" POWER DELEGATED TO THE SECRETARY OF AGRICULTURE

Ernst Freund has said,⁷³ "The traditional form of administrative control of private action in Anglo American legislation has been through *enabling* powers exercised by way of license, permit, consent, approval or certification." In the typical license, the burden of moving is placed on the

⁷² 189 Mass. 247, 75 N.E. 619 (1905).

⁷³ 189 Mass. 247, 252, 75 N.E. 619, 621 (1905).

⁷⁴ Freund, Administrative Powers over Persons and Property (1928), 59.

individual affected, making the official action merely responsive to an application.⁷⁴ The power to issue a typical license may be a *ministerial* act where the law prescribes minutely the conditions under which the act is permissible—here the license, if required at all, is in the nature of a certificate the issue of which is a ministerial act. It is a *quasi-judicial* act where the law does not specify the conditions under which the act or thing is lawful, but requires a determination to be made from case to case according to the judgment of some authorized body.⁷⁵ A notice and hearing is almost invariably required.⁷⁶ Further the typical license may be used in certain cases to prohibit, but its general use is to regulate.⁷⁷ The older theory of license was predicated on the idea that an applicant had no right to a license unless the authorities saw fit to give him one. Therefore he was deprived of no right by their refusal.⁷⁸ This older theory is becoming less tenable as more and more occupations are brought under licensing regulations and the possibilities of making a living in unlicensed occupations are becoming proportionately narrower.⁷⁹ In theory, under a typical license, the distinction between the right to establish a practice and the right to pursue a practice already established seems to be inadmissible. By what process of reasoning could it be maintained that the right to enjoy property should be esteemed more sacred than the right to make contracts by which property might be acquired.⁸⁰ To recapitulate, the typical license is an exercise of an enabling power, in which the burden of moving is placed on the individual, who seeks the permit. It is granted or refused after notice and hearing. The nature of the power exercised is either ministerial or quasi-judicial and the purpose of the license is generally regulatory.

As contrasted with the typical license, under section 8 (3) the "license" is not issued (a) upon request, but is imposed as a general regulation; (b) it is not issued to an individual, but is a blanket regulation operative on a class; (c) not only does the Secretary of Agriculture take the initiative in determining whether a license shall be issued, but also it should be noted that this preliminary determination is unrestricted—it is an exercise of unqualified discretion. The Secretary may decide that the marketing

⁷⁴ *Ibid.*, 60.

⁷⁵ Freund, *Police Power* (1904), § 642.

⁷⁶ *Ibid.*, §§ 520-528.

⁷⁷ *In re Frazee*, 63 Mich. 396, 30 N.W. 72 (1886); *Love v. Detroit*, 128 Mich. 545, 87 N.W. 785 (1901).

⁷⁸ *Bassett v. Godschall*, 3 Wils. 121 (K.B. 1770).

⁷⁹ 24 Harv. L. Rev. 339 (1910).

⁸⁰ *State v. Gravett*, 65 Ohio St. 289 (1901).

agreements (which are voluntary) are effective and may decline to exercise the coercive license power altogether. Or he may impose it on one geographical area and not on another; or he may impose it on one class in a geographical area and not on other classes in that area, or elsewhere; (d) the license mechanism, under section 8 (3), is in effect a prolongation of the statute. When used, it is in effect a filling in of details to effectuate the policy of the Act; (e) the license power as delegated by section 8 (3) to the Secretary of Agriculture is an illustration of what Professor Freund would call a *regulative* power.⁸¹ "The reason (for the delegation) is one of convenience, primarily to relieve the legislature from a mass of detail, and secondarily perhaps to gain greater flexibility."

While recognizing that the distinction between legislative and judicial action is not as definite and clear cut as it is sometimes asserted to be, we submit that on the basis of the preceding analysis, the Secretary of Agriculture is exercising a delegated quasi-legislative power in issuing a license under section 8 (3). He is not making an administrative determination, which would be quasi-judicial, *i.e.*, applying existing law to concrete situations of fact. Rather he is laying down a general rule for a specified class to operate in the future. The regulative provisions appurtenant to the licensing power are subject to his discretion. The Secretary has seen fit to incorporate into the license price fixing and proration provisions and in some of the licenses he has also incorporated additional provisions dealing with unfair practices and charges.

Since, then, the Secretary is exercising a legislative function, he need not provide an advance notice and hearing before issuing a license. In support of this conclusion, we may consider by way of analogy the case of *United States v. Grimaud*,⁸² and distinguish the case of *Southern Railway Co. v. Virginia*.⁸³

In 1905, the Secretary of Agriculture was authorized to⁸⁴

"make provision for the protection against destruction by fire and depredations upon the public forests and forest reserves; . . . and he shall make such rules and regulations and establish such service as will insure the object of such reserves, namely, *to regulate their occupancy and use and to preserve the forests thereon from destruction*; and any violation of the provisions of this act or such rules and regulations shall be punished as prescribed in Revised Statutes, Sec. 5388." (Italics supplied.)

Under these acts the Secretary of Agriculture on June 12, 1906 promulgated the following: "Regulations 45: All persons must secure *permits*

⁸¹ Freund, *Administrative Power over Persons and Property* (1928), 14-15.

⁸² 220 U.S. 506 (1910).

⁸³ 290 U.S. 190 (1933), see 1 Univ. Chi. L. Rev. 643 (1934).

⁸⁴ 33 Stat. 628 (1905), 16 U.S.C.A. § 551 (1927).

before grazing any stock in a forest reserve" etc. (subject to certain exceptions). (*Italics supplied.*)

We desire to stress three points made by the court in the *Grimaud* case and to argue by analogy from these points, applying them to our present problem.

1. In the *Grimaud* case the court said,⁸⁵ "In the nature of things it was impracticable for Congress to provide general regulations for these various and varying details of management." The determination of such questions was a matter of administrative detail. "What might be harmless in one forest might be harmful in another. What might be injurious at one stage of timber growth or one season of the year might not be so at another."

So by analogy, Congress in passing the Agricultural Adjustment Act left to the Secretary of Agriculture the power to fill in the details. The voluntary devices mentioned in the Act, to wit, benefit contracts and marketing agreements, might not be effective in some industries, so the power to issue coercive licenses was expressly delegated to the Secretary of Agriculture, but he was given a broad discretion as to whether the power would be exercised. In the *Grimaud* case the Secretary, in his discretion, could issue a blanket permit; under the Agricultural Adjustment Act the Secretary could issue a blanket license. In both cases the regulation if issued was a prolongation of the statute.

2. In the *Grimaud* case the court said,⁸⁶ "No act of Congress in express terms declared it unlawful to graze sheep on a forest reserve." But the court further declared,⁸⁷ "To pasture sheep and cattle on the reservation, at will and without restraint, might interfere seriously with the accomplishment of the purposes for which they were established. But a limited and regulated use for pasturage might not be inconsistent with the object sought to be attained by the statute." The regulation in the *Grimaud* case, although not expressly delegated as to content was issued to effectuate the policy of the act declared in general terms:⁸⁸ "to regulate their occupancy and to preserve the forests thereon from destruction." So in the Agricultural Adjustment Act, there is no express provision for price fixing and proration devices appurtenant to the exercise of the license power, but there is a broad declaration of policy looking toward the "reestablishment of prices" and "the removal of price disparity." Just as regulation 45 was a proper exercise of administrative discretion in the *Grimaud* case so the

⁸⁵ 220 U.S. 506, 516 (1910).

⁸⁶ 220 U.S. 506, 521 (1910).

⁸⁷ 220 U.S. 506, 516 (1910).

⁸⁸ 33 Stat. 628 (1905), 16 U.S.C.A. § 551 (1927).

price fixing and proration devices were reasonable instrumentalities to effectuate the declared policy of the Agricultural Adjustment Act.

3. In the *Grimaud* case the court said,⁸⁹ "The Secretary did not exercise the power of declaring the penalty or fixing the punishment for grazing sheep without a permit; but the punishment is imposed by the act itself." So in the Agricultural Adjustment Act the penalty is provided by Congress. Section 8 (3) reads: "Any such person engaged in such handling without a license as required by the Secretary under this Section shall be subject to a fine of not more than \$1,000 for each day during which the violation continues." In both statutes Congress specified in advance the penalty for the violation of a regulation that might be made in the future by the Secretary of Agriculture in the exercise of a broad discretionary power.

Finally, it must be noted that regulation 45 was made by the Secretary of Agriculture in the *Grimaud* case without any advance notice and hearing to the persons affected thereby. Where the persons affected by any regulation or order cannot be definitely known the requirement that they must have notice and hearing before its issue might defeat the exercise of the power vested. Further, if an advance hearing were provided in such a case where many are affected, it might well be that the testimony introduced would have little probative value (1) as to the necessity of the regulation or (2) as to its specific content. The Secretary of Agriculture, under the broad discretion delegated to him, has the option, if he so desires, of relying on the advice of his technical advisors.

In *Southern Railway Co. v. Virginia*,⁹⁰ a Virginia statute⁹¹ provided that whenever, in the opinion of the Highway Commissioner, it should become necessary, for reasons of public safety and convenience, to eliminate dangerous railroad crossings over state highways, the Commissioner should notify and submit plans for their elimination to the railroad maintaining the dangerous crossings. In the event of disagreement, the railroad might, within sixty days, petition the State Corporation Commission for the substitution of its own plans for those of the Commissioner at which time, upon the hearing and adjudication, one of the plans would be approved. The court held that the failure to provide for a hearing prior to, or an adequate judicial review of the Commissioner's original decision as to the fact that the crossing was dangerous and required elimination, is a denial of due process rendering the statute unconstitutional.

It is well settled that a state acting through an administrative officer

⁸⁹ 220 U.S. 506, 523 (1910).

⁹⁰ 290 U.S. 190 (1933).

⁹¹ Va. Michie Code (1930), § 3974a.

may, as a valid exercise of the police power, ordain the removal of the grade crossings,⁹² even though the expense is wholly on the railway,⁹³ and this is true even though the structure is designed to carry ordinary street traffic in addition to railroad tracks with a resulting increase in cost.⁹⁴ The discretionary power of determining what crossings shall be eliminated may be exercised by the legislature itself without notice or hearing. In *New York and Northeastern Railroad v. Bristol*,⁹⁵ the court upheld a statute which ordered the removal by railroads of one grade crossing a year for every sixty miles of road operated in the state. It is also well settled that the determination of eliminating a grade crossing may be delegated to a municipal body to be exercised without notice and hearing.⁹⁶ In the case of *Chicago, Burlington and Quincy Railroad v. Nebraska*,⁹⁷ the court upheld the validity of a city ordinance requiring a railroad company to repair a viaduct in accordance with the plans furnished by the city. The legislature of Nebraska delegated to the city in question the express power to pass such an ordinance. No notice or hearing was provided for either by the statute or by the city ordinance. The court said, "But, if as we have seen, it would have been competent for the legislature to have put the burden of these repairs upon one of the parties or to have apportioned them among the parties, as it saw fit, so it may make an apportionment through the instrumentality of the city council. The latter was not directed to proceed judicially, but to exercise a legally delegated discretion."

Two interpretations have been advanced to distinguish the *Virginia* case from the case of *Chicago, Burlington and Quincy Railroad v. Nebraska*.⁹⁸

1. It has been suggested that in the Nebraska case a *city council*; as contrasted with the *Commissioner*, made the determination of the necessity of the grade elimination. (In both cases the determination was made without a hearing.) Some writers have argued that the court desired to restrict the use of the word "legislative" as a device for avoiding notice and hearing and were willing to concede that the city council exercised a legislative function, but that the Commissioner did not.⁹⁹ It should be

⁹² *Chicago, B. & Q. Ry. Co. v. Illinois*, 200 U.S. 561 (1905); *Lehigh Valley R.R. Co. v. Board of Public Utility Comm.*, 278 U.S. 24 (1928).

⁹³ *Chicago, B. & Q. Ry. Co. v. Nebraska*, 170 U.S. 57 (1897).

⁹⁴ *Mo. Pac. Ry. Co. v. Omaha*, 235 U.S. 121 (1914).

⁹⁵ 151 U.S. 556 (1894).

⁹⁶ *St. Louis v. Mo. Pac. Ry. Co.*, 262 Mo. 720, 174 S.W. 57 (1914).

⁹⁷ 170 U.S. 57 (1898).

⁹⁸ 170 U.S. 57 (1898).

⁹⁹ 1 Univ. Chi. L. Rev. 643, 644 (1934); 43 Yale L. J. 840, 841 (1934).

noted, however, that not only is there no express statement in the principal case that can be cited to support this interpretation but also that such an interpretation is directly in opposition to the well-established doctrine that¹⁰⁰ "It is the nature of the final act that determines the nature of the previous inquiry." The interpretation outlined above would place the cart before the horse and would assume that the nature of the power exercised is to be determined by examining the nature of the officer; if it is a legislative body that is exercising the power, *ergo*, the power must be legislative; if it is an administrative officer, the power could not be legislative.

2. A preferable interpretation is to be found in the express language of the principal case. The majority of the court reached the conclusion that the fact findings of the Commissioner (as to the necessity of eliminating the grade crossings) were made conclusive by the statute and could not be attacked in collateral proceedings. The court says:¹⁰¹

"Undoubtedly, the attempt to give to an administrative officer power to make a *final* determination in respect of facts—the character of a crossing and what is necessary for the public safety and convenience—without notice, without hearing, without evidence; and upon this *ex parte* finding *not subject to general review*, to ordain that expenditures shall be made for erecting a new structure. The thing so authorized is no mere police regulation." (Italics supplied.)

A note writer says:¹⁰²

"Although nothing in the statute specifically pointed to this conclusion, and although no reasons were stated by the court for this interpretation, it may be that the court placed undue emphasis upon the mandatory nature of the words of the statute and thus concluded that the question of eliminating the dangerous crossing could not be attacked in collateral proceedings. If this be the legal basis of the decision then certainly it appears to be contrary to the generally accepted doctrine that where a statute is capable of two interpretations, one constitutional and the other not, the constitutional interpretation should be chosen."

It is indeed true that the court in the *Virginia* case used the following broad language:¹⁰³

"But if we assume that a state legislature may determine what public welfare demands and by direct command require a railway to act accordingly, it by no means follows that an administrative officer may be empowered without notice or hearing to act with finality upon his own opinion and ordain the taking of private property. There is an obvious difference between legislative determination and the finding of an administrative official not supported by evidence. In theory at least the legislature acts upon adequate knowledge after full consideration and through members who represent the entire public."

¹⁰⁰ *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210 (1908).

¹⁰¹ 290 U.S. 190, 195 (1933).

¹⁰² 82 Univ. Pa. L. Rev. 400 (1932).

¹⁰³ 290 U.S. 190, 197 (1933).

But it is our contention that the language is *obiter dictum*. It must be read in the light of the whole context and restricted to a case wherein the administrative officer's determination is made without an advance hearing or an opportunity for a hearing or review at any stage. And even in this restricted sense, the broad language does not constitute a ground for the decision in the case.

It should be noted that this language follows the analysis wherein the majority of the court attempted to defend the difficult thesis that under the statute of Virginia, as construed by the Virginia courts, there was *no opportunity at any stage* to question or upset the Commissioner's initial finding that there was a necessity for the elimination of the said grade crossing. It is upon this point only that there is a clear clash between the majority and the dissent, and as we understand it this is the ground of the decision.

Referring to the broad language quoted above, three comments are pertinent.

1. If this broad language constitutes the decision in the case (or an independent ground for the decision) then it must be understood that the Supreme Court has endorsed a revolutionary doctrine, overruling *sub silentio* a long line of cases, many of which have been discussed *supra*. If this broad statement is construed as a universal affirmative then it follows that the law now is that no administrative action is valid under the due process clause unless there is an advance opportunity for notice and hearing. Surely no one will claim that the court intended to establish such a radical doctrine in the absence of express language to that effect.

2. The last sentence of the statement: "In theory at least the legislature acts upon adequate knowledge after full consideration and through members who represent the entire public" is pregnant with the inference that an administrative officer does not enjoy that presumption. Such an inference is contrary to numerous decisions, many of them recent, to the effect that there is a presumption of law (until a showing is made to the contrary) which accompanies all administrative acts to the effect that they have been properly performed, that they are regular and legal. This presumption has been applied specifically to executive orders of the President of the United States,¹⁰⁴ to the acts of the Secretary of Labor,¹⁰⁵ to the acts of the Commissioner of Internal Revenue,¹⁰⁶ to the acts of an Assistant At-

¹⁰⁴ *Lapeyre v. U.S.*, 17 Wall. (U.S.) 191 (1872); *U.S. v. Chemical Foundation*, 294 Fed. 300 (D.C. Del. 1924), affirmed 5 F. (2d) 191 (C.C.A. 3d 1925).

¹⁰⁵ *The Presidente Wilson*, 56 F. (2d) 742 (C.C.A. 2d 1932).

¹⁰⁶ *United Thacker Coal Co. v. Commissioner of Internal Revenue*, 46 F. (2d) 231 (C.C.A. 1st 1931).

torney General,¹⁰⁷ to the acts of a Deputy Collector of the Currency,¹⁰⁸ to the acts of a State Superintendent of Banks,¹⁰⁹ to the acts of miscellaneous boards, commissions and officers.¹¹⁰

3. The court having made the tenuous distinction between the attributes of legislative and administrative officers in the broad language quoted above is not content to let the matter rest there but proceeds by another *obiter dictum* to undermine the whole basis for the distinction. In attempting to answer the contention of the Supreme Court of Virginia that "should the power vested in the highway Commissioner be arbitrarily exercised, equity's long arm will stay his hand," the court said, "There is nothing to indicate what that court would deem arbitrary action or how this could be established in the absence of evidence or hearing. . . . There would be nothing to show the grounds upon which the Commissioner based his conclusion. He alone would be cognizant of the mental processes which begot his urgent opinion." If this be a valid criticism of the Supreme Court of Virginia's contention as applied to an administrative officer's determination, it should be obvious that it proves too much for the reason that the same considerations would apply in case the legislature directly passed an act having for its purpose the elimination of a certain grade crossing.

Under the doctrine of *stare decisis* the case of *Southern Ry. Co. v. Virginia* stands for the proposition that a state statute which attempts to authorize an administrative officer to require railway companies to eliminate existing grade crossings and substitute overhead crossings whenever, in his opinion, this is necessary for the public safety and convenience, and which provides *no notice to or hearing of a company on the existence of such necessity and no means of reviewing the officer's decision of it*, violates the due process of law clause of the Fourteenth Amendment. The fatal defect according to the court lies in the fact that the statute makes the administrative determination final, not subject to review and not subject to an at-

¹⁰⁷ May v. U.S., 236 Fed. 495 (C.C.A. 8th 1916).

¹⁰⁸ Young v. Wempe, 46 Fed. 354 (C.C.N.D. Cal. 1891).

¹⁰⁹ Broderick v. Aaron, 264 N.Y.S. 15 (1933), affirmed 266 N.Y.S. 970 (1933).

¹¹⁰ U.S. v. Indemnity Co. of North America, 4 F. Supp. 636 (S.D. Ala. 1933); Board of Conference Claimants v. Philipps, 187 Ark. 1113, 63 S.W. (2d) 988 (1933); Lloyd Corp. v. Bannock County, 53 Ida. 478, 25 P. (2d) 217 (1933); Maben v. Olsen, 187 Ia. 1060, 175 N.W. 512 (1919); Roberts v. Drake, 185 N.E. 285 (Ind. 1933); Mercer County Traction Co. v. United New Jersey Ry. and Canal Co., 64 N.J. Eq. 588, 54 Atl. 819 (1903); Evans v. Berry, 262 N.Y. 61, 186 N.E. 203 (1933); Miller v. Borough of New Oxford, 109 Pa. 85, 165 Atl. 766 (1933); Mazzoleni v. Transamerica Corp., 169 Atl. 127 (Pa. 1933); City of Farmersville v. Texas Louisiana Power Co., 55 S.W. (2d) 195 (Tex. Civ. App. 1932); Texas Motor Coaches v. Railroad Comm., 59 S.W. (2d) 923 (Tex. Civ. App. 1933); Vogel v. Central Texas Securities Corp., 62 S.W. (2d) 243 (Tex. Civ. App. 1933).

tack in collateral proceedings. The doctrine in *Southern Railway Company v. Virginia* is not controlling in the determination of our problem for the reason that the Agricultural Adjustment Act and the regulations thereunder provide for at least four hearings at various stages in the exercise of the license power.¹¹¹

In conclusion, it may be said that neither according to authority nor to the sense of the situation need the Secretary of Agriculture grant notice and hearing before issuing a license under section 8 (3) of the Agricultural Adjustment Act. Webster's statement,¹¹² "By the law of the land is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial," must not be wrenched from its context and erroneously used.

¹¹¹ These hearings are:

(1) The hearing provided for in General Regulations, series 3, section 300, under which any person licensed under the Act who considers himself injuriously affected by any term or condition of a license, may file with the Secretary a written application for modification of the license setting forth his grounds. The Secretary may then give due notice to all interested parties and set the complaint down for a hearing. This regulation has been continuously in effect since August 26, 1933.

(2) The adequate and complete administrative hearing provided for in General Regulations, series 3, section 200, for failure to comply with the terms and conditions of the license. In this proceeding, an alleged violator can introduce all the objections he could raise in a hearing prior to the issuance of the license.

(3) If the license of a distributor is revoked as a result of this hearing it then becomes necessary for the Secretary of Agriculture to enforce this revocation in a legal proceeding either (a) by way of injunction to restrain the distributor from doing business, or (b) by way of a suit to collect the fines imposed by the Act for doing business without a license. Each of these proceedings affords the distributor an additional opportunity for a hearing.

(4) Moreover, after the Secretary has revoked or suspended a license pursuant to section 8 (3), such licensee may file his bill in equity and may there be heard as to *whether* such order is "in accordance with law."

¹¹² *Dartmouth College v. Woodward*, 4 Wheat. (U.S.) 518 (1819).