RECENT CASES

Administrative Law—Conclusiveness of Findings of Fact by Federal Commissions—[Federal].—Certain practices of the respondent in furthering sales of its product in interstate commerce were declared "unfair," "false, deceptive, and misleading" by the Federal Trade Commission on the basis of a hearing before it, and a "cease and desist" order was issued. The appeal from a decree of the Circuit Court of Appeals reversed the order in part.[1] On *certiorari* to the Supreme Court, *held*, reversed. The Commission's findings of fact were conclusive since supported by testimony. "The courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission." *Federal Trade Commission v. Standard Education Society.*[2]

The Supreme Court has here, in the first opinion written by Justice Black, struck a decisive blow for administrative agencies by making its strongest unqualified statement on finality of commission fact findings.[3] Although statutes creating commissions commonly contain express provisions on finality of findings,[4] the majority of the Court apparently apprehensive[5] of decisions by administrative officials on increasingly numerous commissions, has frequently exposed itself to the accusation of "picking and choosing." By invoking the doctrines of "jurisdictional" and "constitutional" facts

[1] Fed. Trade Comm. v. Standard Education Soc., 86 F. (2d) 692 (C.C.A. 2d 1936).

[2] 58 S. Ct. 113, 116 (1937).

[3] Examples of qualifying language: "Findings made by a legislative agency after hearing will not be disturbed save as in particular instances they are plainly shown to be overborne. . . ." St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 54 (1936); "If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn . . . ." Fed. Trade Comm. v. Curtis Pub. Co., 260 U.S. 568, 580 (1923); "We will reverse or modify the findings only if clearly improper or not supported by substantial evidence." Wash., V. & M. Coach Co. v. Labor Board, 301 U.S. 142, 147 (1937); "Administrative findings on issues of fact are accepted by the court as conclusive if the evidence was legally sufficient to sustain them and there was no irregularity in the proceedings." Phillips v. Comm'r of Int. Rev., 283 U.S. 589, 600 (1931). But the clarity of the instant opinion was approximated by Justice Cardozo in Fed. Trade Comm. v. Algoma Lumber Co., 291 U.S. 67, 73 (1934): "What the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision forbid that exercise of power."

[4] For examples, see Fed. Trade Comm. Act, 38 Stat. 717 (1914), 15 U.S.C.A. § 45 (1927); National Labor Relations Act, 49 Stat. 453 (1935), 29 U.S.C.A. § 160(c) (1937).

[5] "It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—*in this instance a single deputy commissioner*—for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend. . . . . That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of bureaucratic character alien to our system" (italics added). Crowell v Benson, 285 U.S. 22, 56 (1932). See also St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 51 (1936); Interstate Commerce Comm. v. Louisville & N.R.R., 227 U.S. 88, 91 (1912).

the Supreme Court has exercised broad powers of review,[6] even to the extent of allowing a trial *de novo*.[7] And apart from those doctrines bits of evidence have been seized to invalidate commission findings.[8] Since the issue involved in the instant case could hardly have been called "constitutional" or "jurisdictional," the decision seems wholly consistent with those doctrines; but it is certainly an inroad upon review of ordinary findings. It may even indicate a tendency to adopt the view, long advocated by a minority of the Court, that the conclusiveness of findings should be extended even to "jurisdictional" and "constitutional" issues.[9] The recent changes in the personnel of the Court seem to make this not wholly improbable. The compelling arguments of procedural necessity, advanced by Justice Brandeis and others, show such an extension to be highly desirable.[10]

Conflict of Laws—Jurisdiction *in rem*—Federal Court Required To Aid Collection of State Penal Forfeiture—[Federal].—Within four months after the State of Texas had instituted suit in its own courts to confiscate oil allegedly produced by the debtor in violation of the state oil conservation laws, the debtor, in good faith, filed its petition in a federal district court in Texas for reorganization under section 77B of the Bankruptcy Act.[1] The state suit was restrained by the federal court under section 77B (c) (10),[2] and the trustee of the debtor took possession of the oil from the state court receiver. The lower court[3] refused permission to the State of Texas to establish in a state court that its title to the oil arose at the time of unlawful production. On *certiorari* to the Supreme Court, *held* (Justices Cardozo and Stone dissenting) reversed. Possession of the oil was not essential to the jurisdiction of the state court and denial of the State's petition was an abuse of discretion. *State of Texas v. Donoghue*.[4]

By permitting the state court, in an action *in rem*, to adjudicate title to the oil while not within its possession, the Supreme Court of the United States has acted clearly

[6] See Crowell v. Benson, 285 U.S. 22 (1932) (Longshoremen's and Harbor Workers' Compensation Act); St. Joseph Stockyards Co. v. United States, 298 U.S. 38 (1936) (rate making); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920) (rate making); International Shoe Co. v. Fed. Trade Comm., 280 U.S. 291 (1930) (restraint of trade).

[7] See Crowell v. Benson, 285 U.S. 22 (1932) (Longshoremen's and Harbor Workers' Compensation Act); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920) (rate making); Ng Fung Ho v. White, 259 U.S. 276 (1922) (deportation of alien).

[8] See International Shoe Co. v. Fed. Trade Comm., 280 U.S. 291 (1930); Fed. Trade Comm. v. Curtis Pub. Co., 260 U.S. 568 (1923).

[9] See Justice Brandeis' dissenting opinions in Crowell v. Benson, 285 U.S. 22, 65 (1932); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287, 292 (1920); Fed. Trade Comm. v. Gratz, 253 U.S. 421, 429 (1920); his concurring opinion in St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 73 (1936); and Justice Stone's dissenting opinion in International Shoe Co. v. Fed. Trade Comm., 280 U.S. 291, 303 (1930).

[10] Note 9 *supra*. See also Dickinson, Crowell v. Benson: Judicial Review of Administrative Determinations of Questions of Constitutional Fact, 80 U. of Pa. L. Rev. 1055 (1932).

[1] 48 Stat. 911 (1934), 11 U.S.C.A. § 207 (1937).

[2] 48 Stat. 911, 917 (1934), 11 U.S.C.A. § 207(c) (10) (1937).

[3] See State of Texas v. Donoghue, 88 F. (2d) 48 (C.C.A. 5th 1937).

[4] 302 U.S. 284 (1937).