Kentucky Law Journal

Volume 25 | Issue 4 Article 7

1937

Judgments: Quasi-Judicial Bodies; *res judicata*

Barney Wilcox Baker
University of Kentucky

been proved that every contingency can not be specifically provided for. It seems that the vast public interest involved in securing an adequate national defense offsets any notion of involuntary servitude when the servitude imposed pertains to any phase of this national defense. It would seem that in curtailing the drug menace, there is also a public interest involved, differing more in kind than in degree. It requires but little reflection to perceive that unsurpassed activity of the forces of drug addiction would wreak grave social consequences, consequences calculated to motivate alarm and deference equal to that incited by the exigencies of war. This contention is borne out and emphasized by the definition of a drug addict as defined by the Narcotic Farm Act under which the Lloyd case was decided: "The term 'addict' means any person who habitually uses any habit-forming narcotic drug . . . so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such habit-forming drugs as to have lost the power of self-control with reference to his addiction".[1]

SAM MILNER.

JUDGMENTS: QUASI-JUDICIAL BODIES; RES JUDICATA

In an election held in a fourth class city in Kentucky, the certificate of the County Board of Election Commissioners filed with the common council showed that the plaintiff had received a majority of the votes cast for the office of councilman. He appeared at the proper place, took the required oath and assumed his duties as an authorized member of that board. The statute provides that, "The board . . . shall judge of the eligibility and election returns of its members".[1] Accordingly a contest was filed by his opponent before the common council. It asked that the plaintiff be declared ineligible to hold the office, and that his opponent be given the certificate of election. Plaintiff entered his answer and denial, but before the matter proceeded further the attorney for the contestant entered his motion for a simple dismissal. The order by the council allowing the motion declared further that the plaintiff had been duly elected. Four months later, represented by the same attorney, the contestant appeared before the council and stated that he had not advised or consented that the contest be dismissed, and that it had been done without his knowledge. He asked that the order of dismissal be set aside. This was done and a hurried trial resulted in a decision favorable to him. He was immediately sworn in as councilman, replacing plaintiff, and this action was entered in a circuit court of that state asking that he be restrained from in any way interfering with the plaintiff in his office as councilman. The Court of Appeals of Kentucky, in approving the judgment of the trial court in granting the relief sought, said, in the concluding paragraph of its opinion, "the order of the council made on January 28, 1936, seating Hughes and determining that he had

[1] 21 U. S. C. A. 221(b).

been duly elected, was a final disposition of the case and the later performance had on April 21 thereafter was *corum non judice* and void since such quasi-judicial bodies, when so functioning, are to be governed by the res judicata doctrine the same as, and for the same reason that, it applies to the duly constituted courts".[2]

Application of the doctrine of res judicata to findings of quasi-judicial bodies is not of late origin. This rule which forbids the reopening of a matter once judicially determined by a duly authorized court was not restricted to the judgments and decrees of such a court even under the early common law.[3] The courtroom has never been a very pleasant retreat for men whose differences were the result of honest misunderstanding. These differences have rested mainly in a mistake of fact, and, rather than submit them to courts and suffer the burdens of costs and delay which have always attached to courts, men early sought solution of them through voluntary boards of arbitration. Awards returned by them upon the questions submitted for their determination were as binding as judgments of a duly authorized court and could be successfully pleaded at common law in bar of any later action involving the same matter and between the same parties.[4] This method of voluntary arbitration as followed and enforced by the common law was looked upon with such favor that the legislatures of various states enacted statutes which gave the courts power to appoint arbitrators when applied to by one of the parties to the litigation.[5] These boards of compulsory arbitration proceed to hear the matter submitted for their determination, and their awards are given the effect of judgments which are conclusive upon the parties unless reversed on appeal.

The growth of government has made an ever increasing number of administrative bodies a necessity and often their duties require them to make decisions judicial in their nature. These statutory bodies have been given power to hear and determine facts from evidence submitted to them and to make orders and decrees concerning them. Most always the statute giving such boards or officers the power to render a judgment in a matter provides for an appeal, either to a court or a higher officer, but the judgment is binding and concludes the parties unless appealed in the time allowed and thereafter modified.

The decisions of such boards would have been without effect, except for the character of permanency given them by the application of the rule of res judicata. Two cases will suffice to demonstrate this statement.

---

[1] Carroll's Kentucky Statutes, 1930 Edition, Section 3486.
[2] Muncy v. Hughes, 97 S. W. (2d) 546 (Kentucky) (1936).
[3] 3 Black. Com. 16; Caldwell, Arbitration (2nd Amer. Ed., 1853), 264 et seq.
[4] Garvin v. Dawson, 13 Serg. & R. 246 (Pa. 1830); Loyd v. Barr, 11 Pa. 41 (1849).
[5] Constitution of Kentucky, Section 250; Carroll's Kentucky Statutes (1932 Ed.), Secs. 69, et seq.

The police commissioners of the city of Atlanta, Ga., by its charter, were authorized to exercise full direction and control over its police force and were given power to discharge any member guilty of immoral conduct. Complaint was filed against a policeman in which he was charged with immoral conduct committed before his contract of employment. A hearing resulted in his discharge. He sued for what would have been due him under his contract had he been allowed to have continued his services, setting up in his petition that he had been wrongfully discharged. The court held that the matter was res judicata. He was concluded by the judgment of the commissioners, and when he failed to seek a reversal by appeal, which the statute allowed, he was as definitely concluded by its terms as if it had been the judgment of a regularly constituted court, and the correctness of their ruling could no longer be questioned.[6]

Again, the statute of Indiana provided that claims against a county should be filed with its auditor and the board of commissioners for the county should have exclusive jurisdiction to determine their validity. A claim was presented and an order was made disallowing it. Later the statute was changed taking this power from the commissioners and the same claim was renewed in the proper court. It was held that the decision of the commissioners under their power at the time they acted was binding, and the matter closed.[7] By hearing the proof of claim and rendering a decision upon it, the commissioners constituted themselves a court of limited jurisdiction under the power given them under the statute and acted in a judicial capacity. Their decision was binding at the time it was made and could only be avoided by reversal on appeal.

Not every court has held that the allowance or disallowance of claims against a county or town is a judicial act.[8] However, judgments and orders of many boards and administrative officers acting in this capacity have come before state and federal courts for review and the application of the res judicata doctrine has been generally admitted.[9]

It is not necessary then that the person making the decision be a court. The essential requirements are that the party has power to pass upon the question submitted for his judgment, and that the decision be upon the merits after notice and hearing. The instant case was not lacking in any of these particulars. The council was the sole agency for hearing and passing upon the matter. The statute had made it so. There was notice and hearing. The decision was upon the merits. This last statement will not be so readily agreed to as will the two just preceding it, but a reference to the statement of facts will help to clear it up. It was stated there that the attorney for the contestant made his motion for a simple dismissal and the order by

[6] Queen v. Atlanta, 59 Ga. 318 (1877).
[7] Maxwell v. Fulton County, 119 Ind. 20, 19 N. E. 617 (1889).
[8] Sears v. Stone County, 105 Mo. 236, 16 S. W. 878 (1891).
[9] Placer County v. Campbell, 70 Cal. 127, 11 Pac. 602 (1886); Kelly v. Wimberly, 61 Miss. 548 (1884); Osterhoudt v. Rigney, 98 N. Y. 222 (1885); Colusa County v. DeJarnett, 55 Cal. 375 (1880).

the council allowing same declared the plaintiff elected and eligible to hold the office. The order of dismissal contained no term or expression granting a right or privilege to the contestant to take further legal proceedings in the matter. The contestant could not institute a new action for when such rights and privileges were not reserved in the order of dismissal the decision was presumed to have been rendered upon the merits and forever concluded the matter.[10] Neither could he have the order of dismissal and the judgment included therein set aside, for he was bound by the acts of his attorney in the case. An attorney has "exclusive control of the remedy, and may continue or discontinue it", meaning the suit.[11] And though the dismissal has the effect to destroy the cause of action because of ignorance of the law or fact which the attorney should have known, it will nevertheless be conclusive.[12]

The Council under the statute was given the exclusive power to determine the election returns and eligibility of its members and no appeal is granted from its decision in the matter. But once it has heard and determined the matter it cannot reopen the question again. Res judicata denies a re-adjudication of a matter in the court which rendered a former decision in the matter, the same as it would in a court unknown to the first action. This rule applies with equal force to deny a board the right to re-adjudicate a matter, once determined by it. In Hadley v. City of Albany, Mr. Hadley had been a candidate for mayor of Albany, New York. A statute of that state provided that the common council should judge of the election returns of the newly elected officers. The council canvassed the returns and declared him elected. Later a new canvass was had declaring another the winner. The court said in upholding the first canvass, the duty "having been once legally performed, the power of the council was exhausted; the board had no right to reverse its decision by making a different determination".[13] Once the council determined the plaintiff was elected, its powers in the matter ended.

Then, "a decision rendered by an officer or board of a state or municipal officers, when acting judicially, and which has by law the force and effect of a judgment, is a bar to further actions on the same matter between the parties or their privies", and the doctrine of res judicata "applies as well to their judicial or quasi-judicial acts as to the judgments of courts having general power".[14] Without the supporting influence of such a rule, their work would be without force and of no value.

BARNEY WILCOX BAKER.

---

[10] Durant v. Essex Co., 74 U. S. 154 (1868); Cooper, Equity Pleading, 270; Story, Equity Pleading, 793; Inter-Mountain Coal & Lbr. Co. v. Harris, 223 Ky. 253, 3 S. W. (2d) 602 (1928).

[11] Weeks, Attorneys 220; Barrett v. The Third Ave. Railroad Co., 45 N. Y. 628 at 635 (1871).

[12] Juneau County v. Hooker, 67 Wis. 332, 30 N. W. 357 (1886); Badon v. Mitchell, 14 N. D. 454, 106 N. W. 129 (1906).

[13] Hadley v. City of Albany, 33 N. Y. 603 (1865).

[14] 24 Am. & Eng. Cyc. of Law, 718; 23 Cyc. 1115.