Chapter 17

Utilization and Exhaustion of Administrative Processes as Conditions Precedent to Review

DISINCLINATION on the part of the courts to intervene in fields where judicial or legislative powers have been vested in administrative agencies is evidenced by the development of the doctrines requiring litigants to address their complaints initially to administrative tribunals, rather than to the courts, and further requiring them to exhaust all possibilities for obtaining relief through administrative channels before appealing to the courts.

In this connection, there have developed several interrelated doctrines, including (1) the rule of prior resort, sometimes called the principle of primary jurisdiction; (2) the requirement of exhausting all available administrative remedies before appealing to the courts; and (3) the principle of estoppel for failure to utilize administrative remedies.[1] While all of these related principles may be bound up in a single case, and are not always treated separately in judicial opinions, yet such separation is convenient for purposes of analysis and discussion.

1. The Doctrine of Prior Resort

During the last two decades there has developed in the federal courts a strong inclination to refuse jurisdiction of a case wherein the issues are such that they could have been presented in the first instance to an administrative body. Similar principles are followed in many state courts, but with

[1] For a comprehensive general discussion, see E. B. Stason's article on "Timing of Judicial Redress from Erroneous Administrative Action," 25 MINN. L. REV. 560 (1941).

considerable variation from state to state, with occasional repudiation of the doctrine.[2]

The rule is frequently said to have been established in the *Abilene Cotton Oil* case.[3] There, suit had been brought in the Texas state courts to recover reparations for allegedly excessive rates charged by the railroad. It was defended on the ground that no prior application had been made to the Interstate Commerce Commission for relief. The court held that this defense was valid—that the Interstate Commerce Act by implication (despite the act's declaration that none of its provisions should be deemed to abridge existing common-law remedies) barred resort to the courts until the Interstate Commerce Commission had been permitted to pass upon the reasonableness of the challenged rate.

The reasons for the rule are well stated in *United States Navigation Co. v. Cunard Steamship Co., Ltd.*[4] In that case, plaintiff sought in the federal district court to enjoin an alleged restraint of trade, charging that the defendants had offered lower rates to shippers who agreed to ship none of their goods on plaintiff's vessels. A motion to dismiss was granted because the plaintiff had failed to resort first to the United States Shipping Board, the court suggesting that the inquiry as to whether the challenged combination was illegal would depend on many technical factors which might be better understood by the Commission than by the courts, and

[2] E.g., Main Realty Co. v. Blackstone Valley Gas & Electric Co., 59 R. I. 29, 193 Atl. 879 (1937). In Bell Telephone Co. of Pennsylvania v. Driscoll, 343 Pa. 109, 21 A. (2d) 912 (1941), the court in effect refused to apply the doctrine where to do so would involve assertedly irreparable injury. The federal courts appear to give little consideration to this argument. Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 58 S. Ct. 459 (1938); Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U. S. 752, 773, 67 S. Ct. 1493 (1947). Some of the state courts appear to apply the principle to newer agencies, but to adhere to established practices which in the case of some of the older agencies—e.g., local taxing boards—permitted more extensive judicial intervention.

[3] Texas & P. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 27 S. Ct. 350 (1907).

[4] 284 U. S. 474, 52 S. Ct. 247 (1932).

pointing out that only by requiring the initial presentation of all such questions to the administrative agency could uniformity of ruling be attained.

There are, in other words, two reasons for the rule: first, to take full advantage of administrative expertness; and second, to attain uniformity of application of regulatory laws.

The rule is apparently one of general applicability. It has a long history in the railroad and shipping cases of the type wherein it was first promulgated,[5] and has been extended into many other fields, including some not characterized by the technical complexities which underlay the development of the rule in the Interstate Commerce Commission cases where it originated. Among the fields of administrative activity to which the doctrine has been extended are those of trade regulation,[6] labor disputes,[7] and tax collection.[8]

Likewise, the rule has come to be applied not only to questions of a technical factual content but as well to issues of much broader character. It has been applied to issues of jurisdictional fact (which not long ago were thought to be exclusively for the courts),[9] issues as to the unreasonableness of

[5] Baltimore & O. R. Co. v. United States *ex rel.* Pitcairn Coal Co., 215 U. S. 481, 30 S. Ct. 164 (1910); Pennsylvania R. Co. v. Clark Brothers Coal Mining Co., 238 U. S. 456, 35 S. Ct. 896 (1915); Director General of Railroads *et al.* v. Viscose Co., 254 U. S. 498, 41 S. Ct. 151 (1921); Alabama & V. Ry. Co. v. Jackson & Eastern Ry. Co., 271 U. S. 244, 46 S. Ct. 535 (1926) [all of these cases, in fact, preceding the so-called birth of the rule in the *Abilene* case (1927), and being perhaps progenitors of the rule rather than instances of its application]; Midland Valley R. Co. v. Barkley, 276 U. S. 482, 48 S. Ct. 342 (1928); Board of Railroad Commissioners of North Dakota v. Great Northern Ry. Co., 281 U. S. 412, 50 S. Ct. 391 (1930).

[6] Federal Trade Commission v. Algoma Lumber Co., 291 U. S. 67, 54 S. Ct. 315 (1934); Federal Trade Commission v. R. F. Keppel & Bro., Inc., 291 U. S. 304, 54 S. Ct. 423 (1934).

[7] Newport News Shipbuilding & Drydock Co. v. Schauffler, 303 U. S. 54, 58 S. Ct. 466 (1938); Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 58 S. Ct. 459 (1938).

[8] Anniston Mfg. Co. v. Davis, 301 U. S. 337, 57 S. Ct. 816 (1937); United States v. Felt & Tarrant Mfg. Co., 283 U. S. 269, 51 S. Ct. 376 (1931).

[9] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 58 S. Ct. 459 (1938).

administrative regulations,[10] and some issues of law.[11] It has been held that an administrative officer could not be enjoined from enforcing an allegedly invalid administrative regulation without application first being made to the officer for modification of the objectionable rule.[12]

While there have been assertions that the doctrine has no application to "pure" questions of law [13] (such as might be raised by an issue as to the legality of the statute under which an agency operates) [14] there is but infrequently an opportunity to raise such a question. As distinctions between law and fact become constantly more blurred, and the enforcement of asserted legal rights comes to be conditioned largely upon administrative discretion, there are but few issues which the courts are likely henceforward to characterize as purely legal. Where the legal question is bound up with an administrative question, the rule of prior resort applies.[15]

The rule of prior resort will, it appears, be applied wherever the court believes (considering opportunities of utilizing technical competence and obtaining uniformity of rule) that the legislature intended the issues to be left to the administrative agency for initial determination.[16] In an era of increasing respect for administrative adjudication, it can be expected that there will be but few cases where the courts will conclude there was no such legislative intention. Only where it can be convincingly shown that an alleged administrative remedy

[10] Ambassador, Inc. v. United States, 325 U. S. 317, 65 S. Ct. 1151 (1945).

[11] Texas & P. Ry. Co. v. American Tie & Timber Co., Ltd., 234 U. S. 138, 34 S. Ct. 885 (1914); Aron v. Federal Trade Commission (D. C. Pa. 1943), 50 F. Supp. 289.

[12] P. F. Petersen Baking Co. v. Bryan, 290 U. S. 570, 54 S. Ct. 277 (1934).

[13] Great Northern Ry. Co. *et al.* v. Merchants' Elevator Co., 259 U. S. 285, 42 S. Ct. 477 (1922); and see discussion in United States Navigation Co., Inc. v. Cunard Steamship Co., Ltd., 284 U. S. 474, 52 S. Ct. 247 (1932).

[14] See 35 COL. L. REV. 230, 234 (1935).

[15] *Cf.*, Vom Baur, FEDERAL ADMINISTRATIVE LAW (1942) p. 199, § 219.

[16] See opinion of Brandeis, J., in Great Northern Ry. Co. *et al.* v. Merchants' Elevator Co., 259 U. S. 285, 42 S. Ct. 477 (1922).

would be plainly inadequate [17] will the courts excuse the requirement of prior resort to administrative remedies.

2. The Requirement of Exhausting Administrative Remedies

(a) *Historical basis of rule.* Not only must a question cognizable by an administrative agency be first presented to it, rather than to the courts, but there is a further requirement that the case must run the full gamut of administrative proceedings, before an application for judicial relief may be considered. This is the doctrine requiring exhaustion of administrative remedies. It means, in effect, that the administrative agency is entitled to the first and last word. It must be given an opportunity to speak first (this is the doctrine of prior resort), and it cannot be deprived of the power to pass upon the case until it has spoken its last word with reference thereto.

While this requirement of exhausting administrative remedies has a somewhat different historical background than the rule of prior resort, yet the two doctrines have developed into complementary parts of a general principle which ordinarily serves to preclude judicial consideration of a question while there remains any possibility of further administrative action.

The reasons for the rule requiring exhaustion of administrative remedies are basically the same as those which long ago led to the adoption of the familiar tenet of appellate practice that appeals may be taken only from a final judgment. If appeals to the courts were to be permitted while a matter was still pending before an administrative agency, the result would be productive of much confusion and delay. Piecemeal litigation would be permitted. Many unnecessary and even vexatious appeals would be taken. The work of the courts would be needlessly increased. Further, the taking of such

[17] Steele v. Louisville & N. R. Co., 323 U. S. 192, 65 S. Ct. 226 (1944).

interlocutory appeals would interfere with the most effective conduct of the work of the administrative agencies themselves.

Frequently, the rule has been applied in cases where equitable relief in the nature of an injunction is sought against an administrative agency,[18] and in such cases the result is often premised on the maxim that equitable relief will not be granted where some other adequate remedy is available. But the reason for the rule goes further. It is applicable to proceedings at law as well as suits in equity.[19]

The rule is said to be of special force where resort is had to the federal courts to restrain the action of state officers,[20] and in such cases it is sometimes suggested that a fundamental

[18] Pittsburgh, C., C. & St. L. Ry. Co. v. Board of Public Works of West Virginia, 172 U. S. 32, 19 S. Ct. 90 (1898); Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 29 S. Ct. 67 (1908); Porter v. Investors Syndicate, 286 U. S. 461, 52 S. Ct. 617 (1932).

[19] First Nat. Bank of Greeley v. Board of County Commissioners of County of Weld, 264 U. S. 450, 44 S. Ct. 385 (1924); Anniston Mfg. Co. v. Davis, 301 U. S. 337, 57 S. Ct. 816 (1937).

[20] Matthews v. Rodgers, 284 U. S. 521, 52 S. Ct. 217 (1932); Central Kentucky Natural Gas Co. v. Railroad Commission of Kentucky, 290 U. S. 264, 54 S. Ct. 154 (1933). Sometimes, proceedings in the state courts to review and revise orders of state agencies are themselves administrative in character. In such cases, a review of the order of the state agency in the federal courts may not normally be had until the state courts have been appealed to [Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 29 S. Ct. 67 (1908); Porter v. Investors Syndicate, 286 U. S. 461, 52 S. Ct. 617 (1932); 287 U. S. 346, 53 S. Ct. 132 (1932) (rehearing)], save possibly in cases where confiscation is presently in process and no relief to stay the confiscation may be had in the state courts [Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290, 43 S. Ct. 353 (1923)], or where other unusual circumstances are present [City Bank Farmers Trust Co., Executor v. Schnader, Attorney General of Pennsylvania, 291 U. S. 24, 54 S. Ct. 259 (1934)]. The problem of seeking relief in the federal courts from orders of state administrative agencies is further complicated by the provisions of the Johnson Act, 50 Stat. 738, 28 U.S.C. § 41 (1), limiting the jurisdiction of the federal district courts to grant injunctive relief in various types of cases where a plain, speedy, and efficient remedy may be had in the state courts. Still further complications arise from the tendency of the federal courts to extend the philosophy of the Johnson Act to cases where it does not in terms apply [as in the case of an application for a declaratory judgment—Great Lakes Dredge & Dock Co. v. Huffman, 319 U. S. 293, 63 S. Ct. 1070 (1943)], and the general disinclination of the federal courts to pass upon cases involving action of state administrative agencies, where questions of state law are fundamentally involved. Railroad Commission of Texas v. Pullman Co., 312 U. S. 496, 61 S. Ct. 643 (1941).

basis of the rule is the principle that comity between different departments of government requires that the federal courts should stay their hand until the state administrative processes have been completed. But the doctrine applies with just as great rigor where the appeal is from an agency of the federal government to the federal courts. Comity is not alone the basis for the rule.

Again, it is sometimes said that the doctrine is related to the familiar principle that official acts will be presumed to be correct and lawful—that if an error is committed in the initial steps of administrative activity it will be corrected by the higher administrative authorities.[21]

But the real basis for the rule is that it constitutes a doctrine of self-limitation which the courts have evolved in marking out the boundary line between the powers of the courts and those of administrative agencies. While it is sometimes suggested that the rule is fundamentally one of discretion, and may be relaxed in the sound judgment of the trial court,[22] yet such relaxation may be expected only in those cases, discussed below, where it is said that the rule does not apply. In general, it is to be considered a mandatory requirement—a rule of judicial administration, and not merely one governing the exercise of discretion.[23]

(b) *Instances of application of rule. Administrative appeals.* It is very commonly held, in a wide variety of situations, that if the original administrative determination may be appealed to an appellate administrative agency (or to a lower court exercising administrative functions) such administrative

[21] Delaware & Hudson Co. v. United States, 266 U. S. 438, 45 S. Ct. 153 (1925).

[22] Natural Gas Pipeline Co. v. Slattery, 302 U. S. 300, 58 S. Ct. 199 (1937).

[23] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 51, 58 S. Ct. 459 (1938); Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U. S. 752, 753, 67 S. Ct. 1493 (1947). See Berger, "Exhaustion of Administrative Remedies," 48 YALE L. J. 981 (1939), suggesting that the application of the doctrine should not be deemed discretionary.

remedies must be exhausted. Perhaps the most common instance of this application of the rule is in connection with state tax administration.[24] The rule has been frequently applied under similar circumstances in connection with decisions of the Interstate Commerce Commission.[25] It has been applied as to various state agencies.[26] In cases where further administrative appeals are provided for, the rule requiring exhaustion of administrative remedies appears clearly to be of general application, and one which may be invoked regardless of the nature or particular function of the agency involved, except as it may be modified by particular statutory enactment (*cf.*, Section 10 (c) of the Federal Administrative Procedure Act of 1946).

Administrative consideration continuing. It is even clearer that where the consideration of the case by the agency is still continuing, and no decision has as yet been reached, the courts will not normally interfere.[27]

Where it is claimed tribunal has no jurisdiction. The claim that the agency is exceeding its jurisdiction in a pending case is not ordinarily, in the federal courts at least, enough to afford a basis to transfer the proceedings into the courts, prior to the completion of the administrative proceedings.[28] In the state courts, however, there is some tendency to hold that where the jurisdiction of the agency is challenged, resort may be had directly to the courts for a decision on this question.[29]

[24] See, e.g., First Nat. Bank of Greeley v. Board of County Commissioners of County of Weld, 264 U. S. 450, 44 S. Ct. 385 (1924).

[25] E.g., United States v. Illinois Cent. R. Co., 291 U. S. 457, 54 S. Ct. 471 (1934).

[26] E.g., Hegeman Farms Corp. v. Baldwin, 293 U. S. 163, 55 S. Ct. 7 (1934).

[27] New Orleans v. Paine, 147 U. S. 261, 13 S. Ct. 303 (1893); Oregon v. Hitchcock, 202 U. S. 60, 26 S. Ct. 568 (1906).

[28] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 58 S. Ct. 459 (1938); Federal Trade Commission v. Claire Furnace Co., 274 U. S. 160, 47 S. Ct. 553 (1927); but *cf.*, Waterman S.S. Corp. v. Land (App. D. C. 1945), 151 F. (2d) 292.

[29] This is particularly true in tax cases. See, e.g., Koch v. City of Detroit, 236 Mich. 338, 210 N. W. 239 (1926).

Where unconstitutional administrative action is asserted. There are some suggestions that where it can be shown that the prescribed administrative remedy fails to comply with the requirements of procedural due process, the rule does not apply,[30] but the cases are not clear enough to indicate that any substantial relaxation of the rule is to be expected on this basis. In the more common case, where the administrative action is claimed to be unconstitutional as applied to the particular facts of the case, it is usually held that the administrative remedy must be pursued to the end,[31] and this holding seems to be fully in accord with requirements of orderly procedure and with the general principles on which the rule is founded.

Where underlying statute is assailed. Where it is claimed that the statute under which the agency is acting is itself unconstitutional, it may be that the question can be raised directly in the courts without first exhausting administrative proceedings.[32] But this has not been clearly established.[33]

(c) *When is administrative remedy exhausted?* Administrative proceedings frequently assume the character of a seamless web, which goes on and on and then starts over; and consequently questions sometimes arise, in connection with the requirement of exhausting administrative remedies, as to when this requirement has been satisfied.

Motions for rehearing. One of the most perplexing questions is whether the party seeking to appeal the administrative decision must file a motion for a rehearing of his case

[30] Utley v. St. Petersburg, 292 U. S. 106, 54 S. Ct. 712 (1934); Munn v. Des Moines Nat. Bank (C.C.A. 8th 1927), 18 F. (2d) 269; Kansas City Southern Ry. Co. v. Ogden Levee Dist. (C.C.A. 8th 1926), 15 F. (2d) 637.

[31] First Nat. Bank of Greeley v. Board of County Commissioners of County of Weld, 264 U. S. 450, 44 S. Ct. 385 (1924).

[32] Buder v. First Nat. Bank in St. Louis (C.C.A. 8th 1927), 16 F. (2d) 990.

[33] See Gorham Mfg. Co. v. State Tax Commission of State of New York, 266 U. S. 265, 45 S. Ct. 80 (1924); and Berger, "Exhaustion of Administrative Remedies," 48 YALE L. J. 981 (1939).

before the highest administrative body, before taking the case into the courts.

A comparatively early decision [34] indicated that application for rehearing was not a condition precedent to judicial relief when the pertinent statute merely conferred the privilege of filing such a motion, but did not make it mandatory, and the granting of the motion was entirely within the discretion of the agency. A number of subsequent decisions followed this holding, and it was commonly supposed that if the agency had already passed on the specific contentions which would be advanced in the motion for a rehearing, it was unnecessary to take this formal step. But later decisions cast doubt on the rule so stated.[35] It is now said by the Supreme Court that while there is "no fixed rule" requiring the filing of such a motion, yet it is to be considered a condition precedent to the right to seek judicial review where such device would offer "a new opportunity to obtain critical administrative review of the question." [36] The controlling inquiry in each case thus becomes whether or not a motion for rehearing would result in the agency's giving to the question involved its further considered attention. If such would be the case, the motion should be filed. Whether such would be the case depends, of course, on many factors which cannot be foretold in advance. The only safe rule of practice, consequently, is to file such a motion where provision therefor is made (unless the controlling statute makes it unnecessary, as appears to be the case

[34] Prendergast v. New York Telephone Co., 262 U. S. 43, 43 S. Ct. 466 (1923).

[35] Red River Broadcasting Co. v. Federal Communications Commission (App. D. C. 1938), 98 F. (2d) 282; Federal Power Commission v. Metropolitan Edison Co., 304 U. S. 375, 58 S. Ct. 963 (1938); Natural Gas Pipeline Co. v. Slattery, 302 U. S. 300, 58 S. Ct. 199 (1937); Peoria Braumeister Co. v. Yellowley (C.C.A. 7th 1941), 123 F. (2d) 637.

[36] Levers v. Anderson, 326 U. S. 219, 224, 66 S. Ct. 72 (1945), where the Supreme Court, reversing the lower court, held that on the particular facts involved, the application was merely a "normal, formal type of motion" and not a condition to judicial review.

in certain situations under Section 10 (c) of the Federal Administrative Procedure Act of 1946).

Indications of adverse decision. Normally, a justifiable belief that the agency will decide the case adversely to the litigant does not excuse going through with the administrative proceedings to their bitter end before seeking judicial review. Newspaper stories, declarations of counsel, or general statements by the agency as to its contemplated action are not normally enough to show that the final result of the administrative action is so well known as to make resort to the administrative process merely a waste of time.[37] But in rare cases, where it can be shown that the final decision has in fact been reached, and that nothing remains but the preparation and entry of the formal order, it may be held that resort to the courts is not premature, even though the administrative formalities have not been completed.[38]

Unreasonable delay. If delay on the part of an agency in deciding a case is so long and unreasonable, and so productive of hardship as to evidence a complete disregard of a party's substantial rights, it may be considered that all effective possibilities of obtaining administrative relief have been exhausted, and an appeal to the courts permitted.[39]

3. Estoppel by Reason of Failing to Exhaust Administrative Remedies

Ordinarily, when a petition seeking judicial redress of alleged administrative error is denied on the grounds that the petitioner has failed to exhaust his administrative remedy, it only means that the party must go back to the administrative agency and proceed to exhaust the remedies there available to

[37] Gilchrist v. Interborough Rapid Transit Co., 279 U. S. 159, 49 S. Ct. 282 (1929).

[38] City Bank Farmers Trust Co., Executor v. Schnader, Attorney General of Pennsylvania, 291 U. S. 24, 54 S. Ct. 259 (1934).

[39] Smith v. Illinois Bell Telephone Co., 270 U. S. 587, 46 S. Ct. 408 (1926).

him. It occasionally happens, however, that after such an attempt to take the case into the courts has been rebuffed, the petitioner finds that it is too late to seek further administrative consideration of the case. The administrative remedies which he failed to exhaust in the first instance are no longer available. The unfortunate petitioner in such cases must go without relief. He is deprived of the chance to have a hearing on his claim, before either the administrative agency or the courts.

This is the so-called doctrine of estoppel for failure to exhaust administrative remedies. It amounts to no more than applying the usual doctrine in cases where the results may be disastrous.

The principle is dramatically illustrated by the decision in *National Labor Relations Board v. Fairchild Engine and Airplane Corporation*,[40] where the respondent undertook to prove certain facts by a witness who testified to them from hearsay. The trial examiner ruled that in view of the circumstances of the case the hearsay would not be received. At the conclusion of the day's hearings, late in the afternoon, respondent offered to produce on the following day a witness who could testify to the facts in question from personal knowledge. The trial examiner refused to continue the hearing to permit this to be done; and the record was closed without this evidence; and the Board made a finding against respondent. On proceedings brought to enforce the order of the Board, the Court held that while this action of the trial examiner was arbitrary and unreasonable, still no relief could be afforded, because of the failure of the respondent to apply for leave to introduce additional testimony.[41] Accordingly, an

[40] (C.C.A. 4th 1944), 145 F. (2d) 214.

[41] Since such application could have been made directly to the court, it might be said that there was involved something more than a failure to exhaust an administrative remedy; but the case really falls within the same principle.

order was entered enforcing the Board's order. It was too late for respondent to obtain any relief from arbitrary administrative action.

The doctrine of estoppel is savagely harsh. There is some doubt to what extent it applies outside of cases where strong reasons of public convenience require that a final and unassailable determination be speedily reached. Typical of this category, of course, are tax cases, where the constant pressing need for the prompt collection of the public revenues is so dominant a factor in judicial thinking. It is in tax cases that the doctrine has most frequently been applied. A leading case is *First National Bank v. Board of Commissioners of Weld County*,[42] where the taxpayer's complaint was that its property had been assessed far above market value, while property of other taxpayers had been assessed not in excess of market value. In this type of case, of course, an assessment is ordinarily deemed void. But in the reported case, the taxpayer had neglected to appeal to the state tax commission or the state board of equalization; and a demurrer to its action to recover the excess taxes paid was upheld on the grounds that it had failed to exhaust administrative remedies which were available. After the defeat in the lawsuit, it was too late for the taxpayer to go back to the administrative authorities to obtain relief.

Even in tax cases, there are decisions which refuse to apply the doctrine where resort to the administrative remedy would be plainly futile or inadequate,[43] or where the tax statute was void.[44]

[42] 264 U. S. 450, 44 S. Ct. 385 (1924).

[43] Montana Nat. Bank of Billings v. Yellowstone County of Montana, 276 U. S. 499, 48 S. Ct. 331 (1928); Munn v. Des Moines Nat. Bank (C.C.A. 8th 1927), 18 F. (2d) 269.

[44] Buder v. First Nat. Bank in St. Louis (C.C.A. 8th 1927), 16 F. (2d) 990. See E. B. Stason, "Judicial Review of Tax Errors—Effect of Failure to Resort to Administrative Remedies," 28 MICH. L. REV. 637 (1930).

But despite the association of the estoppel rule with tax cases, and the fact that even in that field the doctrine is not unswervingly applied where the resulting inequities would shock the judicial conscience, it cannot be assumed that the doctrine is limited to the tax field. It has been applied in other situations and is seemingly of general application.[45]

[45] See Johnson v. United States (C.C.A. 8th 1942), 126 F. (2d) 242; and Leebern v. United States (C.C.A. 5th 1941), 124 F. (2d) 505.