

THE NECESSITY FOR A COURT OF APPEALS
IN ADMINISTRATIVE MATTERS ARISING
BEFORE THE DEPARTMENTS OF
THE FEDERAL GOVERNMENT

The layman and especially his lawyer who have had contentious cases before the executive departments of the Federal Government have long recognized the need of a tribunal to which appeals would lie from the arbitrary decisions of such officials as the Comptroller of the Treasury, or the Assistant Attorneys-General of the Interior and the Postoffice Department, etc.

A tribunal for administrative cases on the order of the French Tribunal for "*actions contentieuses*" or the "*contencioso administrativa*" jurisdiction of the Spanish Tribunals. In some Latin-American countries there is a similar court for such cases known as the "*Tribunal de Cuentas*."

As matters now exist under our government, the decision of an administrative officer is usually final, except in a limited number of cases, and, for relief, a litigant is compelled to go to Congress, or to the President, a much overtaxed official, to request the latter to ask to have the matter in question referred to his Attorney-General for review, both of which actions are harassing, often without avail and the litigant is apt to become discouraged by the obstacles and delays and to feel that there is a lack of justice. In the consideration of a model for a Court of Appeals in administrative cases, the constitution of such foreign courts must be carefully looked into and some modifications will be found necessary to meet the requirements for such a court under our federal form of government. For illustration, the Civil Law Courts of this character, as a rule, have what is called delegated jurisdiction; in other words, such foreign courts are usually subordinate to a Department of Justice, or to the head of the government, or to both, and are not free and independent as is the case with our courts.^a More light may be had on this question by considering a few of the provisions made for the establishment of such a court in the Republic of Cuba under its constitution, which, like the Federal Constitution, does not recognize delegated jurisdiction but considers the judicial powers always independent.

^a See note, p. 558. "The Civil Law in Spain and Spanish-America."

This is more clearly expressed under Article 85 in connection with Article 81 of the *Fundamental Law of Cuba* on the subject which especially state that the courts will take cognizance of all action whether civil, criminal or contentious-administrative and which further provide that the judicial power is exercised in the courts in accordance with the laws governing their organization and power. Article 83, provides, among the powers of the Supreme Court, that of passing upon questions of jurisdiction between the courts directly subordinate to it or between those not having a common superior.

The Cuban law further provides that the contentious-administrative jurisdiction is exercised in the Republic by the Civil and Contentious-administrative Chambers of the Audiencia of Havana and of the Supreme Court (Article 2 and 10, *Law of March 6, 1906*).¹

The Civil and Contentious-administrative Chamber of the Audiencia of Havana consists of a presiding judge and four associate justices. (Articles IV, Order 80 of 1899, and III, Order 192 of 1901).

The Civil and Contentious-administrative Chamber of the Supreme Court consists of a presiding judge and six associate justices. (Articles III, Order No. 95, of 1901, and IX of the *Law of March 6, 1906*).

The said chambers form an integral part of the court to which they belong, have no subordinate or auxiliary personnel assigned thereto, especially for the exercise of the contentious-administrative jurisdiction, and, consequently, excepting the rules of procedure expressly prescribed for the hearing of appeals of this character, their interior organization, operation, and hierarchy, are governed by the provisions in force regulating the existence and powers of the courts of which they form part.²

¹ See also the following articles: II of Order No. 33, of 1899; VIII of Order 95, of 1901; VII of Order No. 41, of 1899; CIV of Order 92 of the same year, and V of Order No. 3 of 1901.

² The statement contained in this paragraph cannot be corroborated by specific legal precepts, expressly and literally so providing, but it is the result of a combination of all the provisions now regulating this jurisdiction, which have been transferred from the special courts to the ordinary courts and, consequently, if it is desired to express synthetically the actual state of the matter, it might be said that at the present time a procedure exists but no independent contentious-administrative courts.

The Civil and Contentious-administrative Chamber of the Audiencia of Havana take cognizance of the following contentious-administrative matters:

1—In first and last instance of contentious-proceedings instituted against any decisions of an administrative character, from which such an appeal lies, excepting the decisions of the President of the Republic. (Article III, Order No. 111, of 1901).

2—In the first instance of all such appeals interposed against decisions of the President of the Republic, from which appeal by this method lies. (Article V of the same Order.)³

The Civil and Contentious-administrative Chamber of the Supreme Court, takes cognizance of the following contentious-administrative matters:

1—Of appeals for annulment of judgment for a violation of law, or of legal doctrine, or for a breach of form, admitted against decisions in first and last instance by proper Chamber of the Audiencia of Havana. (Article III, Order 111 of 1901, in relation with CIII of Order No. 92, and paragraphs 11 and 12 of Article VII of Order 41 of 1899.)

2—Of appeals in complaint from decisions denying the admission of the appeals enumerated in the preceding paragraph: (Paragraph 9, Article VII, of Order No. 41, of 1899.)

3—Of the main issues involved, when an appeal interposed on account of a violation of law or of legal doctrine has been admitted. (Paragraph 12 of the same Article.)

4—Of appeals that may lie from decisions rendered in the first instance by the respective Chamber of the Audiencia of Havana, and of appeals in complaint against rulings denying the admission of appeals. (Article V, Order 111, of 1901, with relation to paragraph 18 of Order No. 41, of 1899.)

5—Of appeals for review, when they lie. (Paragraph 14, Article VII, Order 41, of 1899.)

In addition to the questions expressly mentioned in the preceding paragraphs, the said Chambers of the Audiencia and of the Supreme Court take cognizance of all other matters placed under their jurisdiction with relation to the contentious-administrative procedure by the laws of practice and other laws, as pro-

³ The Cuban Supreme Court by a decision of March 10, 1904, rendered by the Contentious-administrative Chamber upon an appeal of this character, *held*, that the provisions of the said article, which referred only to the Military Governor, were applicable to the resolutions of the President.

vided by Article XVII, of Order No. 80, of 1899, and paragraph 19 of Article XLI of the same year).⁴

The members of the Department of Public Prosecution attached to the courts of ordinary jurisdiction, which at the present time exercise the contentious-administrative jurisdiction, represent the public administration in matters of such character coming before said courts, there being no official exclusively and specially in charge of such representation under the law. (Article II, Royal Decree of January 8, 1892, and Article XII of Order No. III, of 1901.)⁵

As there is no special prosecution service for contentious-administrative proceedings, the fiscales of the courts taking cognizance of such proceedings shall participate therein with the same organization, interior government, unity and powers as when they exercise their functions in civil and criminal proceedings.

⁴ In addition, as particulars intimately related with contentious-administrative matters, attention is called to the fact that the Supreme Court takes cognizance *in banc* of appeals which may be interposed against the administrative application of laws, decrees, regulations or other provisions contrary to the Constitution, according to the precepts of the latter and the law of March 31, 1903 (see the additional chapter of *Title II* of the second part of this work), and that the Chamber of Administration of the same takes cognizance, in accordance with the provisions of Order No. 34 of 1902, of appeals from the decisions of the Railway Commission.

⁵ The Spanish Contentious-administrative Court of Havana, had a special fiscal; but this office was abolished by Article II of the Royal Decree of January 8, 1892, and since that time the duties of such fiscal have been discharged by a member of the regular department of public prosecution, although while discharging such duties he was under the jurisdiction of the Fiscal of the Supreme Court of the Kingdom. There has not been found, either before or after the American military intervention, nor at the time the local court was abolished, any express provision sanctioning this practice, nor any placing in the hands of the Fiscal of the Audiencia of Havana the representation of the administration before said court, which he had been exercising, no doubt under the belief that it was a duty or exclusive power of such fiscal, by reason of the representation and defence of the State being entrusted to him by the organic law. But such is not the case with the Supreme Court, where, notwithstanding that fact that if the same principles were applied, an express precept is unnecessary, or waiving the principles; the provision should be a common one for both courts. Order No. III of 1901, ignoring the Audiencia, provides in Article XII, that "The State shall be represented by the Department of Public Prosecution of the Supreme Court aforementioned, in the administrative proceedings had before the so-called Chamber of the Supreme Court."

The necessity for the establishment of such an American court, on account of the lack of proper judicial machinery to satisfactorily dispose of the various questions which are daily increasing before the executive branches of the government, is manifest. Such a court would no doubt relieve much embarrassment as well as the work of the Court of Claims and of the United States Supreme Court, which courts are becoming overtaxed by increasing business and would clearly define remedies which are now obscure and perplexing, even if they exist.

The newly created Court of Appeals for customs' cases is on the line of such an administrative court and could be made one section or chamber of the contemplated court which should have jurisdiction broad enough to cover the entire field.

Clifford S. Walton,