

essentially the same conclusion as the *Memphis Oil Co.* case, but they based it on a different process of reasoning. In two cases where the facts were virtually identical with the present case, the amendment was allowed on the ground that all objections on the ground of form had been waived by the investigation made of the claim and that the only purpose of the amendment was to make a record which would be complete in form so as to aid the courts when the case was later taken to them. *Art Metal Construction Co. v. U. S.* (D. C. W. D. N. Y. 1929) 35 F. (2d) 379; *Zeller v. U. S.* (D. C. W. D. N. Y. 1929) 35 F. (2d) 870. The Court of Claims had taken the view that the amendment should be allowed since the commissioner could pay on an insufficiently stated claim and that the requirements as to form were only essential when an appeal was made to the courts. *Factors & Finance Co. v. U. S.* (Court of Claims 1932) 56 F. (2d) 903, *aff'd* (1933) 53 S. Ct. 287 (on the basis of the opinion in the *Memphis Oil Co.* case as far as the question of amendment was concerned).

It would seem that the result of these two cases is to encourage an attorney who is not quite sure of the ground on which the claim is to be finally supported to file a mere general claim without making any attempt to follow the regulations by being specific. If he does so, he can amend at any time before the claim is rejected, while if he attempts to follow the regulations, he must adhere to his first choice. This seems scarcely just. Moreover, any such practice must have the effect either of forcing the agents to investigate every feature of a complicated tax return as soon as a refund is claimed, or of being faced with claims on particular grounds for which they have not collected the evidence, which may no longer be completely available. G. W. S., '33.

LIBEL AND SLANDER—ABSOLUTE PRIVILEGE—STATEMENTS BEFORE COMMISSIONS.—An insurance agent whose license had been revoked by the insurance commissioner sued his former employers alleging the president of the defendant company had slandered him by maliciously making false statements to the commissioner in an effort to have his license revoked after he had transferred to a rival company. *Held.* Such statements are absolutely privileged because the insurance commissioner was acting in a quasi-judicial capacity. *Independent Life Ins. Co. v. Rodgers* (Tenn. 1933) 55 S. W. (2d) 767.

The scope and nature of absolute privilege have been well stated, "The publication of defamatory words may be under an absolute or under a qualified or conditional privilege. Under the former there is no liability although the defamatory words are falsely and maliciously published. The class of absolutely privileged communications is narrow and practically limited to legislative and judicial proceedings and acts of state". *Hassett v. Carroll* (1911) 85 Conn. 23, 81 Atl. 1013; *Odgers on Libel and Slander* (6th ed.) 189. When the occasion is absolutely privileged, the English courts extend this protection whether or not the words are relevant to the proceeding. *Dawkins v. Lord Rokeby* (1875) L. R. 7 H. L. 744; *Seaman v. Netherclift* (1876)

2 C. P. D. 53. The prevailing American rule insists that the words be actually relevant or that the speaker believed in good faith that they were relevant. *White v. Carroll* (1870) 42 N. Y. 161; *Rice v. Coolidge* (1876) 121 Mass. 393.

Historically, the earliest cases in which this privilege was extended to bodies which were not strictly courts of justice were those in which it was held applicable to courts martial. *Jekyll v. Moore* (1806) 2 Bos. & P. (N. R.) 341, 131 Eng. Repr. 658; *Dawkins v. Lord Rokeby*, *supra*. The English courts have extended the privilege arising out of judicial proceedings but little further. They have denied its application to bodies having the power to hold hearings and revoke licenses for cause. *Royal Aquarium v. Parkinson* (1892) 1 Q. B. 431; *Attwood v. Chapman* (1914) 3 K. B. 275; Gately, Law and Practice of Libel and Slander in Civil Actions (1924) 182-185. It is interesting to note that the opinion in the principal case quotes at length from the opinion in the *Royal Aquarium* case as containing a correct statement of the law, although the two cases reached diametrically opposite results (unless the kind of license involved be considered important, a distinction which is not made in any of the cases cited by the Court or found by the author). The American courts have been more liberal in extending the scope of this immunity, possibly because it was less dangerous since they insisted that the statements be relevant. The privilege has been extended to administrative bodies having the power to grant or revoke licenses after hearings. *McAlister & Co. v. Jenkins* (1926) 214 Ky. 302, 284 S. W. 88 (commission to license real estate agents); *Shummway v. Warrick* (1922) 108 Neb. 652, 189 N. W. 301 (state banking commission having power to grant or refuse a charter); *Vanderzee v. M'Gregor* (N. Y. 1834) 12 Wend. 545 (board of excise for liquor licenses); *Colony v. Farrow* (1896) 5 App. Div. 607, 39 N. Y. S. 460 (same); *Werner v. Ascher* (1893) 86 Wis. 349, 56 N. W. 869 (same). The same result is reached by a majority of the cases which deal with statements before a board or official having power to remove the plaintiff for cause after a hearing. *Peinhardt v. West* (1927) 22 Ala. App. 231, 115 So. 80; *Gates v. Kilgo* (1901) 128 N. C. 402, 38 S. E. 931; *Hancock v. Mitchell* (1919) 83 W. Va. 156, 98 S. E. 65; *Larkin v. Noonan* (1865) 19 Wis. 82; *contra: Roche v. O'Connell* (1895) 66 Conn. 175, 33 Atl. 920; *Peterson v. Steenerson* (1910) 113 Minn. 87, 129 N. W. 147. The courts have refused to extend this doctrine to cases in which the body before which the testimony was given merely had power to investigate and report to another group which might remove the official. *Blakeslee v. Carroll* (1894) 64 Conn. 223, 29 Atl. 473; *Mundy v. Hoard* (1921) 216 Mich. 478, 185 N. W. 872. The extension of the privilege to administrative bodies having power to grant money judgments has been taken almost as a matter of course. *Mickens v. Davis* (1931) 132 Kan. 49, 294 Pac. 896 (workmen's compensation commission); *Higgins v. Williams Pocahontas Coal Co.* (1927) 103 W. Va. 504, 138 S. E. 112 (same); *Arkansas Harbor Terminal Ry. Co. v. Taber* (Tex. Comm. of App. 1921) 235 S. W. 841 (state railroad commission in a reparation case). The Missouri Supreme Court has held that communications to the governor while

holding hearings whether or not he should honor a rendition demand for an alleged fugitive from justice are absolutely privileged. *Brown v. Globe Printing Co.* (1908) 213 Mo. 611, 112 S. W. 462 (even though the governor is under no legal duty to act no matter what he find. *Kentucky v. Dennison* (1861) 24 How. 66). The courts have disagreed whether the same doctrine should be applied to pardon proceedings. *Andrews v. Gardiner* (1918) 224 N. Y. 440, 121 N. E. 341 (not applied); *Connellee v. Blanton* (Tex. Civ. App. 1914) 163 S. W. 404 (applied). The announced test in all these cases is whether or not the official or board in question has the attributes of a court even though it is not part of the regular judicial hierarchy. As was pointed out in the principal case it is not enough that the official be empowered to hold hearings and commanded to exercise judicial discretion. His decisions must be such that they directly affect individual rights.

The decision in the present case seems justified. If absolute privilege is essential to the administration of justice in regular courts, it is just as essential in proceedings before administrative officials when their decision affects individual rights just as directly and bindingly as the decision of a court.

G. W. S., '33.

SEARCH AND SEIZURE—WARRANT BASED ON INFORMATION OBTAINED BY FRAUD.—Two prohibition agents were admitted to a lodgeroom of the Fraternal Order of Eagles on the representation that they were members in good standing of a distant lodge of the same organization. This was false. The cards and receipts produced on request prior to admission had been taken from other lodges without the consent or knowledge of any of the officers or members thereof. After the agents were admitted they were served with intoxicating liquor for which they paid. No physical search was made of the rooms at the time, the agents contenting themselves with observing all that could be seen from their table. Several days later they applied for a search warrant, using what they had seen to constitute the probable cause necessary for its issuance. A search warrant, regular on its face, was issued and the liquor then in the lodgerooms seized thereunder. Held, the information secured by the deceptive entry was illegally obtained and therefore the subsequent search and seizure was in violation of the Fourth Amendment to the Federal Constitution. *Fraternal Order of Eagles v. U. S.* (C. C. A. 3, 1932) 57 F. (2d) 93.

It has become settled that evidence obtained in an illegal search and seizure by Federal officers cannot be used if timely objection is made. *Weeks v. U. S.* (1913) 232 U. S. 383; *Silverthorne Lumber Co. v. U. S.* (1919) 251 U. S. 385; *Gould v. U. S.* (1921) 255 U. S. 298; *Amos v. U. S.* (1921) 255 U. S. 313. The majority in the present case cite these four cases alone as supporting their decision. Unfortunately their fact situations are so different that they should give but little comfort to the Court. In all four of these cases the original search and seizure was without any attempt to procure a warrant of any kind. The *Silverthorne* case is the most analogous, for in that the officers took the papers, made copies, and then returned them.