

THE TRUE MEANING OF THE TERM "JURISDICTION."

There is perhaps no word used in legal language, the precise meaning of which is less authoritatively determined than jurisdiction. As very justly remarked in the note to the subject of "jurisdiction" in the "American and English Encyclopedia of Law," "There is perhaps no word in English law that has been more frequently defined than this of 'jurisdiction.' From the earliest times we find the question of its proper definition engaging the attention of jurists." Yet there is no more familiar word in legal language. And there is none to which it is more important that precise and exact meaning be given. It does seem a little strange, therefore, that an exact and precise definition of this term should not long since have been settled. This must be due either to the general difficulty that attends the making of definitions, or to a want of agreement among jurists as to the elements that properly enter into the idea or legal notion for which the term is supposed to stand. Inquiry will probably show the latter to be the cause. Yet it seems to me there is no word known to the law more capable of exact definition. An examination of the essential nature of the idea for which the term is supposed to stand, will doubtless disclose the difficulty, and the nature of it, which has been encountered in defining the word; and which definition bears the closest correspondence to the idea itself. Though it has seemed to the writer that notwithstanding the want of general agreement as to the precise definition of the word itself, the legal notion usually attempted to be conveyed by its use is generally well understood. Upon the other hand, I think, the want of precise definition has led to some confusion and error, especially in the Federal courts, where the question of what is called jurisdiction is so frequently involved, and in that large class of cases involving questions of the collateral impeachment of judgments and questions of the extent to which parties may confer upon the courts the right to deal with the persons, *res* or subject-matter in litigation.

The nature and essence of the idea usually called jurisdiction, I think, can be readily ascertained by an examination of some of the principal cases where the idea is present, and a definition of the term is given.

I shall first state some of the principal and most generally accepted definitions. An examination of these, and of the idea intended to be conveyed by them, will, I think, disclose at once the degree of correspondence between them, and whatever of difficulty there may be in making exact definition.

The "American and English Encyclopedia of Law," 244, defines jurisdiction as "the authority by which judicial officers take cognizance of and decide causes." Bouvier gives the same definition. Anderson's Law Dictionary gives it as the "power to hear and determine a cause." In Hales, Anal., Sec. 11, jurisdiction is defined as "the right by which judges exercise their power." Halifax, Anal., V. 3, C. 8, No. 4, defines it as "the power of hearing and determining causes and of doing justice in matters of complaint." In *Ex parte Walker*, 25 Ala. 81, it is defined as "the power or authority to pronounce the law on the case presented, and to pass upon and settle by its judgments the rights of the parties touching the subject-matter in controversy, and to enforce such sentence." In *Jones v. Brown*, 54 Iowa, 74, it is said that jurisdiction is defined to be the authority of law to act officially in the matter then in hand; in Pennsylvania, the power and authority to declare the law.

Perhaps the most generally quoted definition is that given by Mr. Justice Baldwin in *United States v. Arredondo et al.*, 6 Peters, 691, and in *State of Rhode Island v. State of Massachusetts*, 12 Peters, 657. In the former case Justice Baldwin says: "The power to hear and determine a cause is jurisdiction; it is *coram Judici*, whenever a case is presented which brings this power into action; if the petitioner states such a case in his petition that on a demurrer the court would render judgment in his favor, it is an undoubted case of jurisdiction, whether on an answer denying and putting in issue the allegations of the petition, the petitioner makes out his case, is the exercise of jurisdiction conferred by the filing of a petition containing all the requisites and in the man-

ner prescribed by law." In the latter case the same Justice says: "Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on a case before a court, their action is judicial or extrajudicial; without the authority of law, to render a judgment or decree, upon the rights of the litigant parties. If the law confers the power to render judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action by hearing and determining it."

In *Windsor v. McVeigh*, 93 United States, 274, Mr. Justice Field defines jurisdiction to be, "the right to hear and determine." And in *Munday v. Vail*, 34 New Jersey Law, 418, it is said, that "jurisdiction may be defined to be the right to adjudicate concerning the subject-matter in the given case."

Now the subject and nature of this inquiry make it wholly unnecessary that any considerable number of cases wherein the term jurisdiction has been defined should be cited, or that there should be any extensive citation of such definitions from the writings of commentators. It is sufficient to say that the most universal definition given, and that most generally accepted is, that "jurisdiction is the power to hear and determine a cause." We find it thus stated, with very few exceptions, in every decision, and by every text writer. I shall notice the exceptions more at large in another connection. The definitions given are generally accompanied with more or less elaboration of the idea supposed to be expressed by and contained in them. That is, courts and writers usually accompany what is properly the definition of the term with a description or statement of the elements supposed to constitute the idea for which it stands. And generally, with the exceptions to be hereinafter discussed, it is here rather than in the terms of the definition itself that the difference between jurists appears.

It will be observed that the definitions above given readily fall into two classes. Indeed this is true of all the definitions to be found in the books. The most numerous class

includes those definitions stating in more or less varying terms, but substantially, that jurisdiction is the *power* to hear and determine a cause; the other class, which is small, stating substantially that jurisdiction is the *right* to hear and determine a cause. All of the above definitions, excepting that in Hale, that given by the New Jersey Court in the Munday case, and that by Justice Field in the Windsor case, are illustrative of the first class; the other three of the latter class. It will be perceived that the basis of this classification is the use of the terms "power to hear and determine," in the first class, and "right to hear and determine," in the second class. The soundness of this classification depends upon whether or not the terms "right" and "power" as used in the above definitions are synonymous. If they are not, then one class of definitions is inaccurate. One of them, there being no others, must be correct.

It may be true that there is nothing in the opinions in the Munday and Windsor cases to indicate that the justices delivering those opinions employed the word "right" in dissent from the use of the word "power" in the definition of jurisdiction. Nevertheless they used the term; and whether or not it was employed purposely, it is not here necessary to inquire. It may be fairly assumed, however, that the word "right" was employed with a full appreciation of whatever, if anything, the term imported in distinction from the word "power."

Whether the above classification be sound, and whether one class of definitions rather than the other the more accurately expresses the legal notion called jurisdiction, is the particular question to be examined in this article.

Now let us put the definitions of jurisdiction entirely out of view for the time being, and examine the idea itself for which that term is supposed to stand.

But before entering upon this examination there are some considerations worthy to be noticed.

It is understood that the term jurisdiction is used in legal language with reference to courts. Now the idea of a court carries with it the idea of power—of judicial power. That is, the power of government which is exerted by a magistracy, called a court, for the accomplishment of certain pur-

poses; which are to hear and determine controversies involving the rights and interests of the citizen or of the public, and to enforce whatever judgment shall be reached. Manifestly the court and the *power* in the court are inseparable. Separated, if such an idea can be conceived, one would be an idle abstraction unless lodged elsewhere, the other a concrete absurdity. We cannot think of one without thinking of both together. We cannot speak of one without at the same time conveying an idea of both. Now it is the most striking characteristic of a court that its power is not exerted *sua sponte*. It must be moved by something extraneous to itself. It would hardly be intelligible to speak of *power* to exert power. To speak of *right* to exert power is intelligible; it is philosophical. Hence it would seem that if courts can exert their power only when moved thereto by something extraneous, then it may be affirmed that the right of a court to exert its power does not depend upon that power itself, but upon something outside.

Power, then, and right to exert power are two different things. The former may be predicated of a court without reference to any case; the latter can be predicated of a court only with reference to a particular case. They stand for and present to the mind the most distinct notions; notions, it is true, most indissolubly associated, but nevertheless distinct.

When, therefore, it is predicated of a court that it has jurisdiction, it seems to me this fact is asserted, not merely of the court considered as separate from the power it is organized to wield, but of both together. It is only of the efficient entity resulting from the organization of the court in union with its endowment of power, that jurisdiction is affirmed. Now that to which something is attributed cannot itself be an element of the attribute. It would seem, therefore, that whatever elements constitute the notion of jurisdiction, the idea of court, that is, of the union of power with the agency that wields it, is not amongst them.

The application of the foregoing principles will, it seems to me, materially aid in getting a nearer and clearer view of the nature and essence of jurisdiction, and which of the above classes of definitions, if either, bears the closer correspondence to the idea intended to be expressed by that term.

The idea or legal notion called jurisdiction is, of course, present in every case. It is a complex idea, and compounded of several simpler, elementary notions. That is, jurisdiction, whatever it may be defined to be, depends, and must depend, upon the presence at once in a case of several things. These original elements from which it is compounded must be the same in their essential nature in every case, whatever the character of the court; whether it be what is called a court of general or limited and special jurisdiction; of original or appellate jurisdiction. Therefore any adjudicated case, whether the question of jurisdiction is involved or not, ought to present a complete view of the idea. But it may be that a more convenient view can be obtained from an examination of those cases where questions of jurisdiction are involved. For the most part I shall examine such cases.

In every adjudicated case where jurisdiction is held to be absent, it will be found that the ruling is predicated upon the absence from the case of some single constituent. Hence the absence from a case of any essential element of jurisdiction is the absence of the whole. That is, there is no jurisdiction.

The simpler ideas constituting the notion of jurisdiction it seems to me are: the idea of a supposed injured party complaining; of an injury within the power of the court to redress; of some formal and substantial statement of injury; and of a party complained against. These four elements are essential to every case. A fifth may appear, depending upon the character of the case; that is the idea of some particular property, or *res*. These elementary notions accumulate in the case in the order stated, and result in jurisdiction.

Now let us examine any one of the above cited cases and ascertain if the foregoing analysis of the notion of jurisdiction be correct. One case will serve this purpose as well as another. Take *Munday v. Vail*. In the first place we have an agency called a court established in New Jersey by the sovereign hand of that state, and endowed by the state with a certain quantum of *its* power. And if I am right in what I have said above, this agency and the power granted to it, united, constitute the thing concerning which jurisdiction is to be predicated. It will be thus observed that I am considering *power* in the court as not contained in the notion of jurisdiction.

The case was ejection. In that case we find Matilda Vail complaining—the first element of jurisdiction; second, we find that real estate, the title and possession of which were in her, was wrongfully withheld—second element; thirdly, we find a declaration exhibiting this injury in such form and substance as enabled the court to see that redress was within reach of its power—third element; fourth, we find parties complained against—fourth element. And in this particular case we find the fifth element above mentioned, the *res*; that is, the real estate in question and sought to be recovered. In this case the question of jurisdiction was involved because the judgment of another court of New Jersey was collaterally attacked and impeached. The decree impeached in the Munday case, or rather the case in which that decree was rendered, was wanting in the third element of jurisdiction above mentioned; that is, the decree gave a species of relief for which there was no basis in the formal and substantial statement of injury exhibited to the court. In *Reynolds v. Stockton*, 140 U. S. 254, the same point as to jurisdiction was involved and adjudged; that is, the judgment or decree must be responsive to the issues. And this is but another mode of stating that the relief, if any, must be based upon the facts exhibited to the court by the parties pleading. These propositions merely affirm in substance the necessity of the presence in the case of the third element above stated, to save jurisdiction.

The two last cases cited show distinctly those elements—and those only—into which I have resolved jurisdiction; that is, considering jurisdiction as independent of and not embracing power in its constitution. Precisely the same elements are to be found in *Windsor v. McVeigh*, above mentioned, with the additional element of a *res*. The case being ejection, and involving the title and possession to the *res*. In this case also there was a collateral attack upon and impeachment of the judgment of another court. The fourth element of jurisdiction was found wanting in the case the judgment in which was successfully attacked; that is, there was wanting a party complained against. It is obvious that the cause or reason of the absence, in contemplation of law, of the party complained against can make no differ-

ence. Now it is quite unnecessary to multiply citations. I think no adjudicated case can be found that does not contain at least the first four essentials, each distinctly present. And no case can be found where there was a distinct absence of one of them, where it was not held that there was no jurisdiction. It would be as superfluous to cite any number of cases in support of these propositions as impracticable to cite every case.

Another view of these elementary notions constituting jurisdiction may be had. It is said in the books almost universally that jurisdiction is made up of three things: Jurisdiction of the person, of the subject-matter and of the *res*. Obviously there cannot be what is called jurisdiction of the *res*, if the nature of the case does not involve a *res*. Under any classification of the elements of jurisdiction, therefore, the element of *res* is purely incidental. Now let us examine the other two and see if they may be resolved into the elements I have mentioned.

First. It is clear that jurisdiction of the person means of the parties on both sides of a cause. It can make no difference that the party complaining comes into court of his own motion. His coming is necessary, since it is characteristic of courts, as already adverted to, that they do not in the first instance move *sua sponte*. The first and fourth elements are therefore included in the familiar expression that "courts must have jurisdiction of the person."

Second. Are the second and third elements, and they alone, or more or less, contained in the familiar proposition, "That courts must have jurisdiction of the subject-matter"? This is not so obvious. Let us examine it.

And first, what is meant by the subject-matter? Generally defined, the "subject-matter" of an action is the thing in dispute, the matter in controversy between the parties. (Bouvier Law Dictionary—title, Subject-Matter; Works on Courts and Juris., Sec. 12.) For example, in assumpsit, the subject-matter is the contract between the parties, its breach by the defendant, and the money demanded on account thereof. And by jurisdiction of this subject-matter is meant that the court may exert its power to redress an injury resulting from the breach of contract, by awarding, and enforcing

the payment thereof, such sum of money as it may determine to be compensation for the injury. Obviously the elements of "subject-matter" with reference to itself are very different from its elements as related to jurisdiction. As said above, the essential nature of "subject-matter" as an element, or embracing elements, of jurisdiction must be the same in every case. Whatever may be the nature or character of the subject-matter with reference to itself, still if the alleged injury be within the power of the court to redress, and that injury is formally and substantially exhibited to the court, then has the court jurisdiction of the subject-matter. "Subject-matter," then, as related to jurisdiction, does contain the second and fourth elements above mentioned, and no others. And it is believed that no case can be found where other or additional or different elements enter into the idea of subject-matter as a constituent of jurisdiction.

From whatever side we view the notion of jurisdiction, or however we approach it, it is believed no other or different ideas will be found to enter into its constitution. Of course the legal notion of jurisdiction is purely an abstract one. These elements we have been considering, *as constituent ideas of the notion of jurisdiction*, are, as they must be, considered in the abstract. They are *per se* concrete things. Parties, injury, formal and substantial exhibition of injury to the court, and *res*, are all concrete. As such concrete things they are the elements of and make the "case" before the court. There must, then, be a complete "case" before the court. If not, there is no jurisdiction. And it may be affirmed universally, that if any one of the four concrete ingredients which constitute a case be wanting, there is no "case"; that is, there is no case upon which the court can adjudicate. There likewise is no jurisdiction; that is to say, each several ingredient of a case furnishes a corresponding ingredient of jurisdiction.

It is the "case," then, that furnishes the jurisdiction; that is, each concrete ingredient of the cause to be adjudicated, becomes, considered with reference to jurisdiction, an element of that legal notion. As we have seen, the sovereign, that is the state, organizes the court and endows it with power, and the exertion of this power upon the case is the

thing called jurisdiction. The nature and essence, then, of jurisdiction is simply this: the exertion of the power of the state through an agency called a court upon a controversy or dispute brought before the court and resulting in an adjudication; that is, a judgment that the truth of one side or the other shall be established and maintained.

To which of the above classes of definition, then, does this idea called jurisdiction the more closely correspond? It seems to me to the smaller class: that jurisdiction is the "right to hear and determine a cause." If the foregoing analysis be correct, then this conclusion results necessarily, whatever may be its practical value. It points also to a distinction between "power" and "jurisdiction." And if such a distinction in fact exists, it only fortifies the correctness of the above conclusion.

Now power, that is "judicial power," is defined to be the "power to hear and determine a cause" (*State ex rel Attorney-General v. Hawkins*, 44 Ohio St. 109). It is not perceived how there can be any doubt or dispute as to the correctness of this definition. It seems quite unnecessary therefore to cite further authority. The terms in which jurisdiction is so generally defined are identical with those in which the Ohio court states the definition of "judicial power." It would seem that "power" and "jurisdiction" are not and cannot be the same thing. If what I have said be correct, they each flow from different sources: the one from the state, the other from the case before the court. They are essentially different in their nature and constitution. Power cannot be resolved into any known ingredients. It is a simple unit. And while we speak of the powers of government, of judicial, legislative and executive power; of taxing power, and of police power; still these classifications are purely designations of convenience. Whatever it is called, the power of government is one and the same thing, however and by whatsoever agency exerted. It is the *purpose* for the accomplishment of which power is exerted that gives to it the character of judicial or executive or legislative. The nature and constitution of jurisdiction have already been sufficiently dwelt upon.

Mr. Justice Caton, in *Curtiss v. Brown*, 29 Ill. 201-231, noticed this distinction between power and jurisdiction. He

said: "We often find *jurisdiction* denied where the *power* exists but ought not to be exercised, and in this sense is the word *jurisdiction* usually used, when applied to courts of chancery." This language of the learned justice is certainly a most explicit acknowledgment of the distinction. As shown by Justice Caton, the distinction was noticed and not questioned in *Bangs v. Duckinfield*, 18 N. Y. 595. It is true that this distinction was spoken of in those cases with reference to courts of chancery. But it is not perceived why the grounds and reason of the distinction are not equally applicable to a court of common law, or to any court, for that matter.

It may be observed, too, that the language of the learned judge in *Curtiss v. Brown*, most clearly points to jurisdiction as the *right* to hear and determine. In substance it is that jurisdiction is often denied because existing power *ought* not to be exercised. This is the same with saying that jurisdiction is the *right* to exercise power; that is, the right to hear and determine.

My limited space must prevent a further pursuit of this discussion. Whatever of practical value there might be in fixing upon one of the above definitions rather than the other as the more correct; and whatever of practical value may be in maintaining and observing the distinction between power and jurisdiction, are questions, the scope, and perhaps importance, of which are quite beyond what might be possibly left to me within the limits of this article. I can only say in conclusion that I believe them to be of importance, frequently of very great importance, more particularly in cases involving the collateral impeachment of judgments.

John W. Walsh.

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