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How Broad is Narrow Certiorari?

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NOTES

HOW BROAD IS NARROW CERTIORARI?

Administrative tribunals,[1] hybrid progeny of legislatures, were necessitated by the growth and complication of our society and economy. In Pennsylvania, as elsewhere, they continue to grow in number and power, because they desirably combine facility, promptness, and expertise. However, while they greatly alleviate the burden on our court system, they create a multitude of complex problems in their own right. One of the more serious of these problems is to what extent these administrative tribunals may operate free of judicial supervision. Although it is clear that they are not courts in the usual sense, they do exercise judicial, or as is more often said, quasi-judicial powers. Since the government of Pennsylvania, like that of the Federal government, is based on a system of checks and balances, it would seem that when the General Assembly creates a judicial or quasi-judicial body which operates independently of the judicial branch, they are by their encroachment violating the system.

Although intermediate interpretation or application of the law by administrative tribunals may be unobjectionable on the ground that their decision, if erroneous, may be corrected by judicial review, it does seem that any attempt by the legislature to grant exclusive jurisdiction to bodies other than courts should not be countenanced. Nevertheless, the General Assembly of Pennsylvania has in many instances declared that certain tribunals shall have exclusive jurisdiction and that their decision shall not be subject to appeal or review by any court of the state.[2] Although the constitutionality of such statutory efforts has not been questioned, the Supreme Court of Pennsylvania has ruled that the General Assembly may not derogate the court's constitutional power to issue a certiorari[3] to any body which exercises judicial or quasi-judicial power. This position seems sound and in accord with the use of certiorari at

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[1] For the purpose of this article the term "administrative tribunal" includes any body which exercises judicial or quasi-judicial functions and does not proceed in the manner of Common Law courts. This definition includes Common Law courts when they exercise special statutory jurisdiction and depart from their usual method of procedure.

[2] Court of Quarter Sessions exercising a special statutory jurisdiction under First Class Township Code, Act of May 27, 1949, P.L. 1955, 53 P.S. 19092-403; Department of Banking, Banking Code, 1933, May 15, P.L. 624, art. XIV, § 1406 C, 7 P.S. 819-1406C; Board of Arbitration and Claims, Act of May 20, 1937, P.L. 728, 72 P.S. § 4651. Board of Finance and Revenue, Act of April 9, 1929, P.L. 343, § 503, 72 P.S. § 503.

[3] Pa. Const., art. V, sec. 3 (1874); Appeal of Commissioners of Northamption County, 57 Pa. 452 (1868).

Common Law,[4] and except for an occasional wayward decision,[5] the Court has firmly adhered to it.[6] But the fact that an administrative tribunal's decision or order may be reviewed is meaningless unless the scope of such review is known. Unfortunately the Court has been neither clear nor consistent on this point, but on the contrary it has by vague and variable language and conflicting results, made this one of the haziest areas of Pennsylvania law.

One of the factors contributing to the confusion is the Act of May 18, 1919, which resulted in a distinction between "broad" and "narrow" certiorari. The statute is still in effect and as a result, review of decisions of administrative tribunals, when appeal is prohibited, is said to be on a narrow certiorari.[7] Although the Act is responsible for broadening the review on certiorari in some cases it has no effect on certiorari to administrative tribunals whose decisions are not subject to appeal. Consequently an examination of pre-1919 as well as post-1919 cases is necessary to any study of narrow certiorari.

PRE-1919

Prior to the Act of 1919, there was no "broad" or "narrow" certiorari, only Common Law certiorari. It was not necessary to prohibit appeal prior to the Act since the rule was—where the legislature created an administrative tribunal and did not provide for appeal, no appeal could be had.[8] This omission did not, however, prevent the Court from issuing the Common Law writ of certiorari.[9] When the Supreme Court issued the writ to a lower court[10] there was no dispute as to its effect. The writ brought up the record which was examined to determine whether or not the court below had jurisdiction and whether or not its proceedings were regular; in keeping with the highly formalized practice typical of the early Common Law courts, the merits of the case could not be considered. If an appellant wished his case to be considered on the merits he had to use the proper remedy, i.e. appeal or writ of error. Either of these gave the aggrieved party a right to have the case reviewed on

[4] Smith v. Cross, (1703) 7 Mod. Rep. 138, 87 E.R. 1148; *sub nom* Cross v. Smith, 2 Ld. Raymd. 836, 12 Mod. Rep. 643, 1 Salk 148, 3 Salk 79; Grenville v. College of Physicians, (1700) 12 Mod. Rep. 386, 88 E.R. 1398; Ball v. Pattridge (1666), 1 Sid. 296, 82 E.R. 1116.

[5] See In re Shorts Estate, 315 Pa. 561, 173 Atl. 319 (1934); Explained in Hotel Casey Co. v. Ross, 343 Pa. 573, 23 A.2d 737 (1942); See also dissenting opinion of Jones, J. in Delaware County National Bank v. Campbell, 378 Pa. 311, 328, 106 A.2d 416 (1954).

[6] Robb's Nomination, 188 Pa. 212, 41 Atl. 477 (1898); Dauphin Deposit Trust Co. v. Myers, 388 Pa. 444, 130 A.2d 686 (1957).

[7] Dauphin Deposit Trust Co. v. Myers, *supra* note 6.

[8] Appeal of Commissioners of Northampton County, *supra* note 3; Independence Party Nomination, 208 Pa. 108, 57 Atl. 344 (1904).

[9] Robb's Nomination, 138 Pa. 212, 41 Atl. 477 (1898).

[10] The term court is used exclusively in reference to judicial bodies proceeding in the course of the Common Law as opposed to administrative tribunals defined in note 1, *supra.*

the merits, and although this right could be lost by failure to comply with procedural rules, the remedy did exist.

In contrast, an appeal or writ of error, except by statute, is not appropriate to administrative tribunals because they are not courts. Therefore, the only method of obtaining review when the legislature did not provide for an appeal, was by certiorari.[11] Despite this singularity of remedy, the Court originally refused to distinguish between a certiorari to an administrative tribunal and one issued to a lower court where other remedies were available. This early inflexibility is aptly illustrated by the language of Justice Sharswood in *Carpenter's Appeal*[12] which was from an administrative tribunal:

> "Upon a common law certiorari, as this, we can only examine the record to see if the court had jurisdiction and the proceedings were regular. This has been so often decided that it is to be hoped that sometime or other parties will leave off bringing such cases into this court, with the idea that they may get the proceedings reversed on the merits." [13]

In subsequent decisions the court adherred to this view and said that on a certiorari, in any case, they could do no more than determine whether or not the court below had jurisdiction and whether or not its proceedings were regular.[14] There were, however, many decisions which indicated otherwise, as for example *The Appeal of the Commissioners of Northampton County*[15] where the court said:

> "It is beyond all question that . . . this court is authorized to examine and review the proceedings . . . and *determine the extent and limits of its* (the tribunal below) *power and regularity of its exercise.*" (Emphasis added.)

The Court then went on to say that the Court of Quarter Sessions sitting as an administrative tribunal did not have the "power" to withdraw, more than a year later, the approval it had given to the plans for construction of a new county jail. The Court of Quarter Sessions had exclusive jurisdiction by statute and since the General Assembly had not provided for appeal the case was before the court on a certiorari. There was no mention of lack of jurisdiction or regularity of proceedings,[16] the only basis for reversal being that the Court of Quarter Sessions had misinterpreted the statute and exercised "power" not

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[11] Robb's Nomination, 138 Pa. 212, 41 Atl. 477 (1898).

[12] 11 W. N. C. 162 (1882).

[13] A review on the merits is one based on substantive law as opposed to formal requirements.

[14] Election Cases, 65 Pa. 20 (1870).

[15] 57 Pa. 452, 453 (1868).

[16] Although the case was heard before the Court of Quarter Sessions, the proceedings were not in the course of the Common Law since the Court had jurisdiction by statute and proceeded in accordance therewith.

granted thereby. More briefly stated, they had committed an error of law and this was ground for reversal.

Still later, it was said in *In re Germantown Avenue:* [17]

> "We cannot on a certiorari reverse the findings of the learned judge upon the facts, neither can we reverse his rulings upon the law, *where they are the logical deductions from the facts as found.*" (Emphasis added.)

The significance of these cases can only be appreciated if one understands that a review on a certiorari was limited to questions of jurisdiction and regularity of proceedings because a certiorari brought up only the record, consisting of docket entries and formal proceedings. The record does not include the opinion or reasons for the decision [18] and yet both the *Northampton* and *Germantown* cases went beyond the record, otherwise it would have been impossible to ascertain that the tribunal below had exceeded its power in the one case, or made a ruling upon the law which was not a logical deduction from the facts as found in the other case. Consequently these cases overcame the real obstacle to adequate review of administrative tribunals' decisions. They simply broadened the record. This paved the way for the opinion in *Independence Party Nomination* [19] where the court said:

> "As a general rule the opinion of the court is not part of the record strictly so-called, and in common law actions the review on a certiorari is confined to the judgment without reference to the reasons of the court in entering it. In equity suits the rule is the other way and the reason and the opinions of the chancellor are always open to an examination to discover the grounds of his action. *Proceedings on a summary petition, like the present,* occupy a middle ground. They are not open to a review on the merits, but as a mere inspection of the docket entries or the formal proceedings would disclose nothing, we must look at the opinion as well as the action of the court to see the basis on which it acted. Thus in regard to licenses to sell liquor, it was said in *Pollard's Petition,* 127 Pa. 507(522) 'the granting of wholesale liquor licenses is a matter specially committed by act of Assembly to the Courts of Quarter Sessions. Upon the Writ of Certiorari we may review their proceedings so far as to see whether they have kept within the limits of the powers thus conferred, and have exercised them in conformity with the law. We are of the opinion that these powers have been exceeded and that upon the face of the record the petitioner was entitled to her license.' We may therefore examine the opinion of the court below so far as to ascertain the basis of its action." (Emphasis added.)

While it is true that *Independence Party* did not hold that findings of fact by administrative tribunals might upon a certiorari be reviewed and reversed,

[17] 99 Pa. 479, 483 (1882).
[18] Chase v. Miller, 41 Pa. 403 (1862).
[19] 208 Pa. 108, 57 Atl. 344 (1904).

it does stand for the proposition that the Court has the power on a certiorari to examine the opinion, determine the basis for the decision, and correct all errors of law.[20] Since this power is of constitutional derivation it should remain unaffected by any statute.[21] The Court took the position that the legislature might very well create bodies which are not courts and assign to them the function of intermediately interpreting and applying the law, but they could not infringe upon the authority of the Supreme Court to ultimately decide questions of law. So long as this view prevailed administrative tribunals could not summarily misapply or override the law. A mere inspection of the record to determine jurisdiction and regularity of proceedings does not have this effect. Thus, prior to 1919, the only distinction between review on appeal and a review on a certiorari was that on a certiorari the court would not examine the testimony or disturb findings of fact, but would correct errors of law.[22]

Post-1919

The Act of May 9, 1889, by providing that all appellate proceedings before the Supreme Court shall be called "appeals" affected the writ of certiorari in name only.[23] However, the Act of May 18, 1919, did more, by providing that:

> ". . . in any proceedings heretofore or hereafter had in any court of record of this Commonwealth where the testimony has been or shall be taken by witnesses, depositions, or otherwise, and where an appeal has been or shall hereafter be taken from the order, sentence, decree or judgment, entered in said proceedings, to the Superior or Supreme Court such testimony shall be filed in said proceedings, and the effect of said appeal shall be to remove, for the consideration of the appellate court, the testimony taken in the court from which the appeal is taken, and the same shall be reviewed by the appellate court as a part of the record, with like effect as upon an appeal from a judgment en-

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[20] Error of law as used here does not include findings of fact contra to the weight of the evidence.

[21] Pa. Const. art. V, sec. 3 (1874). Note that the Court of Common Pleas does not have power to issue certiorari to administrative tribunals but only to lower *courts*. Nobles v. Pillet, 16 Pa. Super. 386. Although the Superior Court does not have any constitutional power nor any express statutory power to issue the writ, they did in several cases issue it to administrative tribunals from which appeal was prohibited under their "general supervisory power." Mark's License, 115 Pa. Super. 256, 176 Atl. 254 (1934); Neptune Club's Liquor License, 124 Pa. Super. 549, 190 Atl. 156 (1937). These and similiar cases followed Independence Party Nomination, 208 Pa. 108, 57 Atl. 344 (1904).

[22] In Michigan the same result was reached by a ruling that certiorari is not limited to jurisdiction and regularity of proceedings in any case. Jackson v. People, 9 Mich. 111, 77 Am. Dec. 491 (1860). In Utah the court held the writ to be limited but declared all errors of law to be errors of jurisdiction. County Board of Equalization v. State Tax Commissioner, 88 Utah 219, 50 P.2d 418, (1935). For an opinion using language almost identical with Independence Party Nomination, see Milwaukee Iron Co. v. Schubel, 29 Wis. 444 (1872). Certiorari will not generally lie to review decisions of Federal administrative tribunals. Degge v. Hitchcock, 229 U.S. 162 (1913).

[23] Rand v. King, 134 Pa. 641, 19 Atl. 806 (1890); Rimer's Contested Election, 316 Pa. 324, 175 Atl. 544 (1934).

tered upon the verdict of a jury in an action at law, and the appeal so taken shall not have the effect only of a certiorari to review the regularity of the proceedings of the court below."

The broadest interpretation of this statute, if made, would eliminate any difference between certiorari and appeal. If the words "any proceedings" and "court of record" refer to administrative tribunals as well as to courts, and it seems that they do,[24] it would logically follow that where a certiorari would lie before, an appeal could now be had. Although the Supreme Court did construe the Act to include administrative tribunals, they did not so broadly interpret the Act. Instead, after a somewhat stumbling search the court concluded that there are now two types of certiorari, *broad* and *narrow*.

Broad certiorari is simply the certiorari of old, implemented by the Act of 1919. The scope of review on a broad certiorari is clearly set forth in the statute and the court has held that it will lie to administrative tribunals only when the General Assembly does not prohibit appeal. Apparently on the basis of whatsoever the General Assembly giveth, the General Assembly may taketh away, it is said that broad certiorari will not lie where the legislature expressly prohibits appeal;[25] or where it declares that the decisions of the tribunal shall be final [26] or conclusive,[27] or remain unaffected.[28] In this event the act of 1919 does not operate and the certiorari which lies is called narrow certiorari. Thus, if the statute creating an administrative tribunal is silent as to appeal, a broad review may be had; but if by any appropriate verbiage an appeal is prohibited, only a narrow review is allowed.

The puzzling title of this article merely restates the question—what is the scope of this narrow review? The pre-1919 cases seem to provide a ready made answer. Since the Supreme Court's power to issue a certiorari is by virtue of a constitutional provision,[29] it may not be taken away or lessened by statute,[30] and since *Independence Party Nomination* clearly stated the scope of review on a certiorari as it existed without modification by the Act of 1919, how can there be any doubt as to the scope of narrow certiorari? Perhaps the use of the word "narrow" misled the court, for it is clearly a misnomer. A certiorari is a certiorari and the fact that a legislative provision may make it broader in some cases does not necessitate the conclusion that it becomes more

[24] The Act was applied to broaden review of decisions of statutory tribunals. Rimer's Contested Election, *supra* note 23.

[25] Kaufman Construction Co. v. Holcomb, 357 Pa. 514, 55 A.2d 534, 174 A.L.R. 189, (1947).

[26] Grimes v. Dept. of Public Instruction, 324 Pa. 371, 188 Atl. 337 (1936); White Twp. School Directors Appeal, 300 Pa. 422, 150 Atl. 744 (1930).

[27] Dauphin Deposit Trust Co. v. Myers, 388 Pa. 444, 130 A.2d 686 (1957).

[28] Commonwealth v. Cierce, 286 Pa. 296, 133 Atl. 795 (1926).

[29] Pa. Const. art V, sec. 3 (1874).

[30] Robb's Nomination, 188 Pa. 212 (1898).

narrow in all the others. However, this was the conclusion reached in *Twenty-first Senatorial District Nomination,*[31] decided in 1924, where the court in rejecting the pre-1919 position as stated in *Independence Party Nomination* rather vaguely said:

> "Where in a statutory proceeding, the legislature fails to provide for an appeal, and because of that omission, the action of the tribunal involved is generally speaking, considered final, a certiorari to inspect the record, in the broadest sense allowed by our cases, may nevertheless issue; but where the legislature, as in the statute before us particularly states that no appeal shall be permitted, then review, beyond determining questions of jurisdiction, cannot be had, and under circumstances such as those at bar, a certiorari for the latter purpose cannot be broadened into something more extensive, either by our prior rulings on the general subject in hand, or by the operation of the Act of April 18, 1919, P. L. 72."

This language seemed to indicate that the court was reverting to the very early view on certiorari and disregarding entirely *Independence Party.* Subsequently, in *Sterret v. MacLean*[32] there was again an about face. The court said:

> ". . . yet we are entitled, as we said in *Independence Party Nomination,* 208 Pa. 108, 111,—under the general supervisory powers of the court on certiorari,—to inspect the whole record with regard to the regularity and propriety of the proceedings to ascertain whether the court below exceeded its jurisdiction or its proper legal discretion: See Pollard's Petition, 127 Pa. 507, 527."

Since the case was before the court on a narrow certiorari it seemed that the method by which the General Assembly prohibited appeal (pre-1919 they had only to remain silent on the question while post-1919 they had to use particular words) did not matter. So long as the proceedings are summary, i.e. out of the course of the Common Law, the court would on certiorari correct errors of law.

The obvious conflict of *Sterret v. MacLean* and *Twenty-first Senatorial District* caused some difficulty. So in 1934 the Court undertook to finally settle the question in *Rimer's Contested Election.*[33] It is unfortunate that the Court did not choose a case in which the scope of review on narrow certiorari was in

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[31] 293 Pa. 557, 560, 143 Atl. 189, 190 (1928). See also Foy's Election, 228 Pa. 14, 76 Atl. 713 (1910); Twenty-eighth Congressional Dist. Nomination, 268 Pa. 313, 112 Atl. 74; Bauman Election Contest Case, 351 Pa. 451, 41 A.2d 630 (1945).

[32] 281 Pa. 273, 279, 126 Atl. 566, 568 (1924). See also Comm. v. Cierce, 286 Pa. 296, 133 Atl. 795 (1926); Bangor's Electric Co. Petition, 295 Pa. 228, 145 Atl. 128 (1929).

[33] 316 Pa. 324, 175 Atl. 544 (1934).

issue. Instead, in *Rimer's,* which was before them on a broad certiorari the court dogmatically declared that:

> 1. When the General Assembly was silent as to appeal the Act of 1919 applied and a broad review, that is a review identical with that on an appeal, would be given.
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> 2. When the General Assembly prohibited appeal certiorari would lie only in the narrow sense and the Court could do no more than determine whether or not the tribunal had jurisdiction and had proceeded in a regular manner.
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> 3. Election cases are an exception to the rule and on a narrow certiorari, regardless of legislative action, review of election cases (which are tried before administrative tribunals) will always be at least broad enough to permit correction of errors of law.

The Court went on to say that the rule in *Independence Party Nomination* and other cases following it [34] was applicable only to election cases. It should be noted, however, that in all of the cases in which the rule was applied there was no distinction made between election cases and other types of cases. The distinction that was made is that election cases are tried by a tribunal proceeding in a summary manner, as opposed to other cases tried before courts proceeding in the course of the Common Law. But this is true of all cases tried before administrative tribunals and there seems no good basis for restricting the rule to election cases, particularly since a liquor licensing case is cited as authority in *Independence Party Nomination.*

Whether or not theoretically correct, *Rimer's* purported to establish the scope of narrow certiorari and was followed in later cases [35] which declared that where a statute expressly provides that there shall be no appeal, the merits of the controversy cannot be considered even though the interpretation given to the facts or the law by the governmental agency below may have been erroneous. After the rules espoused in *Rimer's* became firmly entrenched there again came the effort to broaden the scope of review. The task was not an easy one. One method of accomplishing it was illustrated in *Grimes v. Department of Public Instruction.*[36] The court there held, in effect, that when an administrative tribunal commits an error of law, it exceeds its jurisdiction.

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[34] Cases cited note 32 *supra.*

[35] Comm. v. Cronin, 336 Pa. 469, 9 A.2d 408 (1939); In re Elkland, 330 Pa. 78, 148 Atl. 13 (1938); State Board of Undertakers v. Frankinfield, 329 Pa. 440, 198, Atl. 302 (1938); Philadelphia Saving Fund Society v. Banking Board of Pa., 383 Pa. 253, 118 A.2d 272 (1956); Swank v. Myers, 386 Pa. 331, 126 A.2d 267 (1956).

[36] Cases cited note 26 *supra.*

The Court said that although an administrative tribunal's construction of the law is persuasive, it cannot by erroneous construction enlarge or diminish its jurisdiction. This theory that errors of law constitute errors of jurisdiction clashed with earlier rulings that jurisdiction is something different than power and is nothing more than the competency to "determine controversies of the general class to which the case presented for its (the tribunal's) consideration belongs." [37] This earlier theory prevailed and the rule of the *Grimes* case was discarded. The Court was then left with the very limited power, on narrow certiorari, to determine whether or not the tribunal was competent to try cases of the general class of the one involved and whether or not the proceedings were regular.

Our Court was not so obtuse that it did not recognize this as a threat to the tenet that ours shall be a government of laws and not of men. With such a limited power of review they could do nothing to prevent abuse of power by the tribunals. If tribunals decided to vary their interpretation and application of the law from case to case, nothing could be done to correct the resulting injustice. In *Hotel Casey Co. v. Ross* [38] the Court made a violent extension of the use of mandamus [39] in order to reverse a decision of the Board of Finance and Revenue. The sole basis for the reversal was the Board's misinterpretation of the statute. Again the Court was seeking to circumvent the harsh rule resulting from the dicta of *Rimer's Contested Election* in order to correct an error of law. But alas, this too did pass, for in *Kaufman Construction v. Holcomb* [40] it was said that mandamus could not be used as a means of circumventing the General Assembly's prohibition of appeal. This was followed by a lengthy discussion of narrow certiorari concluded by a reiteration of the supposed rule of *Rimer's* case. The Court was not at all disturbed by the fact that in a case not directly involving narrow certiorari they were attempting to decide its scope and were using as authority an earlier case in which narrow certiorari was not at all in issue.[41]

Thus far each attempt to insure that every man would have his day in court, had met with failure. The court complacently refused, on narrow certiorari, to do more than determine whether or not the tribunal had jurisdiction

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[37] Skelton v. Lower Merion Twp., 298 Pa. 471, 148 Atl. 846 (1930); Witney v. Lebanon City, 369 Pa. 308, 85 A.2d 106 (1952); Koontz v. Messner, 314 Pa. 434, 172 Atl. 457 (1934).

[38] 343 Pa. 573, 23 A.2d 737 (1942).

[39] "The principle is well established that mandamus lies to compel the performance of a ministerial act, but it is equally well established that the writ will not issue, where a body clothed with deliberative and discretionary powers has acted, to compel a revision or modification of its decision; . . ." Reese v. Board of Mine Examiners, 248 Pa. 617, 622, 94 Atl. 246, 248 (1915).

[40] *Supra,* note 25. *But see* Arthur v. Pittsburgh, 330 Pa. 202, 198 Atl. 637 (1938).

[41] In Rimer's Contested Election the case was before the Court on a broad certiorari and the Kaufman Constr. Co. v. Holcomb case was before the Court on a writ of alternative mandamus.

or whether or not the proceedings were regular,[42] until *Dauphin Deposit Trust Company v. Myers;*[43] where once again the court made an effort to preserve the judiciary's right to rule ultimately on questions of law. The manner in which they did it is open to much criticism.

It is said in the opinion that: "There is no doubt that the Department of Banking misinterpreted . . . the act."[44] The review was upon a narrow certiorari and in both the headnotes and the body of the opinion appears the declaration that the ". . . review is limited to the question of jurisdiction and the regularity of proceedings; the merits of the controversy cannot be considered even though the interpretation given to the facts or the law by the governmental agency or the Court below may have been erroneous."[45] Since the Court also says that jurisdiction relates solely to the competency to determine controversies of the general class to which the case in question belongs, and that it is "clear as crystal"[46] that the Department of Banking had jurisdiction and that its proceedings were regular, it seems a little peculiar that the Court should have reversed the Department of Banking's order. Nevertheless the Court did reverse, on the basis that by misinterpreting the statute the Department had exceeded its statutory powers.

Although the language of *Dauphin Deposit* is reminiscent of *Sterret v. MacLean* and some of the pre-1919 cases,[47] there is no reference to them. Instead the Court relied for authority on three Federal cases.[48] Regardless of the method, the Court accomplished the feat of restoring the scope of review warranted by the pre-1919 cases, and again provided a method of preventing abuse of power by administrative tribunals, for if it is not within administrative tribunals' statutory powers to misinterpret the statute it would logically follow that it is also not within their power to misapply or override the law. In short, every error of law amounts to an "excess of powers."

The *Dauphin Deposit* case was quickly affirmed in *Scott Township Appeal*[49] where the Court in reversing the decision of an administrative tribunal because of an erroneous interpretation of the statute said that on a narrow

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[42] Philadelphia Saving Fund Society v. Board of Banking of Pa., 383 Pa. 233, 118 A.2d 561 (1955); Addison Case, 385 Pa. 48, 122 A.2d 272 (1956); Swank v. Myers, 386 Pa. 331, 126 A.2d 267 (1956); Delaware County National Bank v. Campbell, 378 Pa. 311, 106 A.2d 416 (1954).

[43] 388 Pa. 444, 130 A.2d 686 (1957).

[44] *Id* at 459, 130 A.2d at 694.

[45] *Id* at 444, 460, 130 A.2d at 687, 694.

[46] *Id* at 461, 130 A.2d at 694.

[47] Robb's Nomination, 138 Pa. 212, 41 Atl. 477 (1898); Appeal of Commissioners of Northhampton County, 57 Pa. 452 (1868). *See also* White Township School Directors Appeal, 300 Pa. 422, 150 Atl. 744 (1950) where "scope of power" is also used.

[48] *Cf.* United States v. Walker, 109 U.S. 258, 266 (1883); Bigelow v. Forrest, 9 Wall. 339 (1869); Ex parte Lange, 18 Wall. 163 (1873).

[49] 388 Pa. 539, 130 A.2d 695 (1957).

certiorari it will now "direct its inquiry to (1) the jurisdiction of the court below, (2) the regularity of the proceedings therein held, and (3) *the scope of powers possessed by the court.*" [50]

Even though these two cases do not explicitly renounce *Rimer's* and *Twenty-first Senatorial District* they do, in terms of result, overrule them. It seems, therefore, that there is now a return to the view of *Independence Party* and that on a narrow certiorari the Court will examine the opinion, determine the basis of the decision and correct errors of law found, regardless of legislative attempts to enjoin or limit judicial review. Thus narrow certiorari differs from broad certiorari and appeal only in that the Court does not on narrow certiorari have the power to review the testimony and may not disturb the findings of fact made below.[51]

In view of the conflicting language of *Dauphin Deposit* and the failure to explain the term "power", the interpretation given the case may be too broad. But it does seem a logical one and is supported by the *Scott Township* case where the same Court, using the *Dauphin Deposit* case as authority, gave a review on the legal merits of the case. The only way the Court may, with certainty, preserve the power to ultimately rule on the law, and insure that there will be a method of preventing abuse of power and discretion by administrative tribunals is to clearly overrule those cases which render judicial review impotent. Without this it shall always be possible to upset the view of the *Dauphin Deposit* case and the *Scott Township* case.

"Wherever the right to review exists, the power to correct follows as a necessary corollary. . . ." [52] The obvious soundness of this proposition should deter further efforts to sterilize the Court's power to review decisions of administrative tribunals. So long as the Court adheres to that proposition, administrative tribunals will not be free to indiscriminately misconstrue or misapply the law. To say that administrative tribunals may proceed in a summary manner and that in deference to the technical knowledge of the members of such tribunals the Court will lend great weight to their rulings on the law is only to say that the benefits of such bodies will be utilized to the maximum. But, to abandon the traditional judicial safeguards at the trial level and prohibit remedy of even the most blatant injustice by limiting review is to tread a narrow path between due process and bureaucratic tyranny. Whether the

[50] *Id* at 541, 130 A.2d 697.

[51] For an indication that the scope of review on mandamus may be equally broad or at least unsettled, *see* Duncan Meter Corp. v. Gritsavage, 361 Pa. 607, 610, 65 A.2d 402, 403 (1949) where, years after the Kaufman case the Court said: "If a [city] controller abuses discretion or acts under a mistaken view of the law, mandamus will lie to compel proper action: Hotel Casey Co. v. Ross. . . ." (*see* note 38 *supra*).

[52] Foy's Election, 228 Pa. 14, 16, 76 Atl. 713, 714 (1910).

Supreme Court of Pennsylvania has finally taken a decisive stand on the issue, or is merely continuing the judicial teeter-totter of the past, remains to be seen. Because the previous inconsistency and indecision gave rise to many unfavorable results and because experience points to the rule of the *Independence Party* and *Scott Township* cases as the desirable result, the prognosis is favorable.[53]

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[53] For earlier writings on narrow certiorari, *see* Note, *Power of the Courts Over Administrative Boards,* 78 U.PA.L. REV. (1929); Reader, *Methods of Judicial Review Where No Direct Appeals Are Provided,* PENNSYLVANIA BAR ASSOCIATION QUARTERLY, 303, 317 (1939).