RECENT CASES

Certiorari—Scope of Review of Administrative Decisions on Common-Law Writ—"Jurisdictional Facts" Must Appear in Record—[Illinois].—The plaintiffs, six police captains and one acting-captain, were charged with "conduct unbecoming a police officer" and "neglect of duty" rising out of their alleged failure to suppress gambling in their respective districts and their failure to enter in the station complaint books written communications received from the commissioner of police. In accordance with section 12 of the Civil Service Act,[1] the plaintiffs were duly served with written "charges and specifications" and a "schedule of particulars." They received due notice of the time and place of the hearings, and were present and represented by counsel at the hearings conducted before the Civil Service Commission of the City of Chicago. On June 16, 1944, following the hearings, the commission found against the plaintiffs and ordered them discharged. The only records on file with the commission on that date were a brief finding and decision, characterized by the commission as a "press release," the certification of this finding to the police commissioner, and the minutes of the commission—all substantially alike and to the same effect, that the officers had been found "guilty as charged." The plaintiffs sought a writ of certiorari from the Superior Court of Cook county to review the commission's proceedings. Upon issuance of the writ, the commission submitted a detailed record of its finding and decision, prepared several days after June 16 but predated to June 16 to correspond with the date of the discharge order. The trial court refused to recognize the return as responsive to the writ and granted the plaintiff's motion to quash the commission's record.[2] On appeal to the Illinois Appellate Court, *held*, the commission's brief finding and decision of June 16 was a nullity in that it did not contain any "jurisdictional facts," and the detailed findings and decision prepared subsequent to that date were no part of the return since the commission had exhausted its jurisdiction on June 16 and could not make subsequent findings and decisions. The court further ruled that when the action of the Civil Service Commission is challenged on the ground that jurisdictional

[1] Ill. Rev. Stat. (1945) c. 24½, § 51.

[2] The writ of certiorari issued by the trial court had stipulated that only the record up to and including June 16, 1944, be certified in the return. The court interpreted the commission's amplified return as rendering the commissioners guilty of contempt and so adjudged them until they purged themselves by changing the date on the report on each case from June 16 to the date when the report was actually typed and filed. The Appellate Court in the instant case (cited in note 3 infra) declared that the return should not have been so limited, but held the error harmless in view of its holding that the commission's jurisdiction terminated on June 16 when the discharge order was issued declaring that the writ did not stop short of the commission's jurisdiction but was co-extensive with it.

requisites were not met, the record must include a transcript of the testimony, which will be reviewed by the court to determine if there was sufficient evidence to support the commission's finding. *Cartan v. Gregory.*[3]

The instant case raises and illustrates the problem of the scope of review on the common-law writ of certiorari. Illinois courts early limited the scope of the common-law writ of certiorari as a means of reviewing the determination and proceedings of subordinate courts and administrative tribunals to an inquiry into their jurisdiction and their procedural due process.[4] A long line of decisions has reiterated this doctrine,[5] which is in accord with the common-law rule.[6] Thus the Illinois Supreme Court has held that under a common-law writ of certiorari it is not necessary to certify the evidence but the trial must be on the record alone;[7] nor is the reviewing court to try the cause upon the allegations of

[3] 329 Ill. App. 307, 68 N.E. 2d 193 (1946).

[4] People v. Wilkinson, 13 Ill. 660 (1852); Com'rs of Sonora v. Supervisors of Carthage, 27 Ill. 140 (1862).

[5] Chicago and Rock Island R. Co. v. Fell, 22 Ill. 333 (1859); Donahue v. County of Will, 100 Ill. 94 (1881); People v. Lindbloom, 182 Ill. 241, 55 N.E. 358 (1899); Joyce v. Chicago, 216 Ill. 466, 75 N.E. 184 (1905); Hine v. Roberts, 309 Ill. 439, 141 N.E. 166 (1923). Statutory certiorari is an entirely different matter in Illinois, conferring on the reviewing court authority to inquire into questions of law and fact. Review of Administrative Orders in Illinois, 31 Ill. L. Rev. 230, 244 n. 98 (1936).

[6] The common-law rule has not always been clearly understood. Professor Goodnow, writing in 1891, revealed the confusion which American courts long entertained as to the office of the common-law writ of certiorari. He showed how the statutory prohibitions imposed by Parliament to curb the use of the writ in England and the subsequent ruling that such prohibitions did not apply where the proceeding was invalid for want of jurisdiction led to the widespread notion in America that the writ would not lie to correct other than jurisdictional errors. See Freund, Administrative Powers over Persons and Property 261 (1928). To refute this mistaken notion that the writ would lie to correct only jurisdictional errors, Judge Campbell wrote an opinion in Jackson v. People, 9 Mich. 111 (1860), which appears to have given rise to another misapprehension. He argued that the common-law writ of certiorari extended to correct errors at law: since in those cases where Parliamentary statutes purported to shut out the certiorari the court could still issue it to review questions of jurisdiction, courts must have reviewed more than jurisdictional facts before the prohibitions. Goodnow replies that they did—they reviewed the regularity or irregularity of the proceedings as well as the naked fact of jurisdiction, citing Ex parte Hopwood, 15 Ad. & El. N.S. 121 (Q.B., 1850). But they did not review errors of law, citing Rex v. Justices of Monmouthshire, 8 Barn. & Cress. 137 (K.B., 1828). Goodnow discounts the cases cited by Judge Campbell to support the latter's thesis, as applying only to a review of summary convictions by justices of the peace (a class of cases special in its character in connection with which a widening of the scope of review under the writ was made; see note 19 infra) or as proving that on certiorari jurisdictional facts should be returned and considered (see note 14 infra). Goodnow, The Writ of Certiorari, 6 Pol. Sci. Q. 493, 528 (1891).

Since certiorari from the beginning was distinguished from the writ of error by the fact that it issued to non-common-law courts, and since the most frequent question of law which such courts had to determine was their own jurisdiction, it was to be expected that questions of jurisdiction would make up the great bulk of justiciable issues in the early cases. The so-called Cardiff Bridge case, Rex v. Inhabitants of Glamorganshire, 1 Ld. Raym. 580 (K.B., 1700), the earliest case in which certiorari was issued to review the determination of administrative officers, illustrates, as it served to establish, the pattern.

[7] See Carroll v. Houston, 341 Ill. 531, 534, 173 N.E. 657, 658 (1930).

the petition or any issue of fact;[8] nor may it review errors of law or errors in the application of law to the facts.[9]

American jurisdictions appear to have grouped themselves into three main categories on the question of the scope of review on the common-law writ of certiorari.[10] At one extreme is the traditional common-law position referred to.[11] Occupying a middle position are those jurisdictions whose courts have made certiorari coincident with a writ of error to bring up all errors of law.[12] The most liberal position is that adopted by New York whose statutes, having abolished the common-law terminology, go on to permit a review of the weight or preponderance of evidence in any case involving a review of an administrative body's determination.[13]

Although nominally subscribing to the common-law doctrine, Illinois courts have not been immune to the pressures which have resulted in other jurisdic-

[8] Kammann v. City of Chicago, 222 Ill. 63, 78 N.E. 16 (1906).

[9] People v. Lindbloom, 182 Ill. 241, 55 N.E. 358 (1899).

[10] Certiorari to Administrative Tribunals in Missouri, 27 Wash. U.L.Q. 85 (1941); 1 Univ. Chi. L. Rev. 801 (1934), noting Schireson v. Walsh, 354 Ill. 40, 187 N.E. 921 (1933); Review of Acts by Non-Judicial Bodies by Certiorari, 19 Iowa L. Rev. 609 (1934); 17 Corn. L.Q. 103 (1931), noting Timmins v. Civil Service Com'rs, 276 Mass. 142, 177 N.E. 1 (1931); 36 Yale L. J. 1017 (1927), noting Winneskiek County Bank v. District Court, 203 Iowa 1277, 212 N.W. 391 (1927); 24 Mich. L. Rev. 844 (1926), noting State ex rel. Schiewitz v. Wisconsin Real Estate Broker's Board, 188 Wis. 632, 206 N.W. 863 (1926). More precisely, the possible "categories" number more than three, courts having frequently placed their holdings on very narrow grounds, e.g., that on certiorari inquiry will be made only into naked jurisdictional errors, Minaker v. Adams, 55 Cal. App. 374, 203 Pac. 806 (1921); that certiorari will lie to review errors of law, Mayor of Medford v. Judge of First District of Eastern Middlesex, 249 Mass. 465, sub nom. Coolidge v. Bruce, 144 N.E. 397 (1924); to review errors of fact, Tolbert v. Kellis, 34 Ga. App. 49, 128 S.E. 204 (1925); as a means of harmonizing lower court opinions with prior decisions of the state supreme court, State v. Allen, 306 Mo. 197, 267 S.W. 832 (1924); see Certiorari in Missouri, 2 Kansas City L. Rev. 35 (1934); but these and similar holdings will be seen to fit readily into one of the three suggested categories.

[11] Discussions of other jurisdictions which have cleaved substantially to the traditional view may be found in Use of Writ of Certiorari to Review Orders of Administrative Tribunals in Colorado, 21 Notre Dame Lawyer 63 (1945); Review by Certiorari in Indiana, 16 Ind. L.J. 397 (1941); Certiorari to Administrative Tribunals in Missouri, 27 Wash U.L.Q. 85 (1941); Review of Acts of Non-Judicial Bodies by Certiorari, 19 Iowa L. Rev. 609 (1934). But the tenor of most of these discussions reveals that these jurisdictions, like Illinois, have more recently been moving in the direction of expanding the scope of review, by means more or less consciously articulated by the courts.

[12] People ex rel. Cook v. Board of Police, 39 N.Y. 506 (1868), is perhaps the classic case. See also Milwaukee Iron Co. v. Schubel, 29 Wis. 444 (1872); Jackson v. People, 9 Mich. 111 (1860); Dryden v. Swinburne, 20 W. Va. 89 (1882). Goodnow, op. cit. supra note 6. Included in the phrase "errors of law" as here used is the notion that the failure of the record to show sufficient facts to justify the administrative tribunal's decision is an error of law. It is this inclusion which materially extends the scope of the review.

[13] N.Y. Civ. Prac. Ann. (Cahill, 1937) §§ 1283, 1296. This act in effect transforms the reviewing court into a judge and the administrative tribunal into a jury, 17 Corn. L.Q 103 (1931), noting Timmins v. Civil Service Com'rs, 276 Mass. 142, 177 N.E. 1 (1931). See also the proposed Uniform Administrative Procedure Act, National Conference of Commissioners on Uniform State Laws and Proceedings, Handbook, 384 (1940); Certiorari to Administrative Tribunals in Missouri, 27 Wash. U.L.Q. 85, at 105 n. 121 (1941).

tions' adopting a more liberal view. They have achieved by another avenue the results which a consistent adherence to the traditional view of the scope of review on common-law certiorari would make impossible. The technique employed to accomplish this desired result is found in the Illinois courts' application of the doctrine of "jurisdictional facts."[14]

What is meant by "jurisdiction" in this context is far from clear. Courts following the common-law rule described above have operated on the theory that the jurisdiction of a subordinate tribunal depends upon its satisfying two prerequisites: first, the law must have conferred the power to act upon the person and subject matter; second, the formalities laid down by the statute must be adhered to by the authority doing the act—these formalities to include not only those stipulated in the statute conferring authority, but general procedural due process.[15] Courts not infrequently speak of these two aspects of jurisdiction as though they were separate and distinct.[16] The Illinois decisions, while not maintaining this distinction,[17] nevertheless, revealed for many years an unwillingness to extend the concept of jurisdiction any further;[18] especially if the subordinate tribunal was an administrative body.[19]

[14] Professor Dickinson has defined the "jurisdictional fact" doctrine as "that where a statute purports to confer on an administrative agency a power to make decisions, but is construed as conferring that power only over . . . . certain kinds of objects, situations or acts, then the fact-question of whether or not in any given case . . . . the object, situation or act was, *in fact*, of the kind specified in the statute goes to the jurisdiction of the administrative agency to make the decision at all." He goes on to point out that "the practical result of the doctrine . . . . is to throw open for complete re-examination in court facts, which, if they were not held to be 'jurisdictional,' would be concluded either by the decision of the administrative body or at least by the evidence at its disposal." He recognized that this doctrine may easily become an instrument with which to undermine the effectiveness of administrative action, and, therefore, speaks approvingly of the practice of the courts in the common-law certiorari cases to limit their review to the evidence presented before the tribunal whose jurisdiction is in issue. Dickinson, Crowell v. Benson: Judicial Review of Administrative Determinations of Questions of "Constitutional Facts," 80 U. of Pa. L. Rev. 1055, 1059–67 (1932).

[15] Goodnow, op. cit. supra note 6, at 518.

[16] People v. Lindbloom, 182 Ill. 241, 245, 55 N.E. 358, 360 (1899). Review of Administrative Orders in Illinois, 31 Ill. L. Rev. 230, 242 (1936).

[17] Thus where an administrative body had proceeded illegally—i.e., had not given proper notice and hearing—the court decided there was a failure of jurisdiction. Com'rs of Highways v. Harper, 38 Ill. 104 (1865); Hamilton v. Com'rs of Highways, 203 Ill. 269, 67 N.E. 792 (1903); Blunt v. Shephardson, 286 Ill. 84, 121 N.E. 263 (1918).

[18] Doolittle v. Galena & Chicago Union R. Co., 14 Ill. 380 (1853); Hamilton v. Town of Harwood, 113 Ill. 154 (1885); McKeown v. Moore, 303 Ill. 448, 135 N.E. 747 (1922); Hopkins v. Ames, 344 Ill. 527, 176 N.E. 729 (1931).

[19] A distinction between the scope of review on common-law certiorari of a quasi-judicial body's determination and one made by an administrative tribunal was drawn early in England when it was seen that a slavish adherence to the common-law rule did not satisfy the requirements of justice in the English cases which concerned summary convictions before justices of the peace. These officials combined administrative and judicial duties but were regarded as essentially administrative officers and so fell within the scope of certiorari rather than the writ of error reserved for the common-law courts whose functions were exclusively

The change in attitude came with the enormous growth of government by administrative agencies and the accompanying desire for a fuller review. In Illinois, this was met by a relaxing of the common-law rule through an expansion of the concept of jurisdiction in two directions. One movement might be termed *vertical*—moving from a narrow to a broad definition of jurisdiction by means of a succession of related cases. Thus the Illinois Supreme Court, in a line of cases involving the removal of policemen from the civil service rolls, progressed from a declaration that the scope of review on the writ of certiorari is narrowly confined to a determination of whether the commission had jurisdiction of the subject matter and of the person of the petitioner,[20] to a broad holding that the commission lacked jurisdiction because the record failed to set forth in sufficient detail all of the required "jurisdictional facts."[21] A second movement might be termed *lateral*—alternately expanding and contracting the definition of "jurisdictional facts" to suit the exigencies of the particular case before the court. More recent decisions of Illinois courts reveal an extension of this definition from "the facts which were actually found and which are substantially in the language of the charges and specifications . . . . ,"[22] to such facts as "show that the board acted upon evidence" including "the testimony upon which the decision was based in order that the court may determine whether there was any evidence fairly tending to sustain the order."[23]

Although uncertainty and confusion has attended the application of this nebulous doctrine of "jurisdictional facts," the recent trend in Illinois has been

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judicial. The undesirability of applying the same standard to the justices of the peace qua judicial officers as was applied to them qua administrators was patent in the cases involving individual liberties jeopardized by summary convictions under a procedure completely foreign to that of English criminal law. So an exception was made to the rule to permit courts to review errors of law, other than those turning on the question of jurisdiction in those cases where the authority reviewed was clearly a judicial body. In this country the dogma of separation of powers resulted in making the justices of the peace almost exclusively judicial officers from the outset. But, since they retained the character of courts of limited jurisdiction, certiorari rather than the writ of error lay to review their acts. The extension of the scope of review on certiorari to errors of law in cases involving these purely judicial functionaries appears early and seems to have been accomplished almost unconsciously. It was in taking the next step, i.e., applying the liberalized rule to administrative authorities—or in refusing to do so—that courts in the United States split. For a more complete account of this process, see Goodnow, op. cit. supra note 6, at 518–23.

[20] Joyce v. City of Chicago, 216 Ill. 466, 75 N.E. 184 (1905).

[21] Funkhouser v. Coffin, 301 Ill. 257, 133 N.E. 649 (1921).

[22] People v. Finn, 247 Ill. App. 53, 57 (1927). See also People v. City of Chicago, 243 Ill. App. 100, 108 (1926).

[23] See Carroll v. Houston, 341 Ill. 531, 536, 173 N.E. 657, 659 (1930). A similar interpretation of "jurisdictional facts" as being such facts in the record as show that the action taken was based on evidence fairly tending to sustain the determinations thus made was used by the Illinois Supreme Court to quash the proceedings of a county board of review in a tax assessment case, Jarman v. Board of Review, 345 Ill. 248, 178 N.E. 91 (1931), and likewise by the Illinois Appellate Court to overrule the trial court's quashing of the writ of certiorari in a case involving a widow's claim against the Chicago Policeman's Retirement Board, Shivlock v. Retirement Board, 301 Ill. App. 84, 21 N.E. 2d 784 (1939).

unmistakably in the direction of extending the doctrine, with a consequent expansion of the scope of review on the common-law writ of certiorari.[24] In view of the solicitude of courts to protect personal liberties, it is not surprising to note that this departure first appeared in a court decision in Illinois[25]—as in New York[26]—in a civil service removal case.[27] The case of *Funkhouser v. Coffin*[28] decided that the return to the common-law writ must not only include evidence affirmatively showing the jurisdiction of the tribunal, but also must show that the board acted upon evidence and, further, that the evidence was such as fairly to sustain the order.[29] To reach this goal, the court relied heavily for precedents on cases which rested on statutory authority to review the evidence.[30] Although the court faced the problem created by its reliance on inexact precedents and reconciled the cases to its own satisfaction,[31] the hiatus between the old and new positions is evident. Indeed, so long was the step, it is surprising that the court did not go on to apply the "substantial evidence" test—a frank inquiry into the evidence and a declaration that where the evidence makes no case, the determination will be quashed. This was the position arrived at by Michigan in

[24] Beginning with the leading case of Funkhouser v. Coffin, 301 Ill. 257, 133 N.E. 649 (1921), the decisions have generally held that whereas "ordinarily the question of the sufficiency of the evidence will not be reviewed by the higher court," still "where the question is whether jurisdictional facts were or were not established the record must show facts giving the inferior tribunal jurisdiction, and the evidence may be properly reviewed by the court." Carroll v. Houston, 341 Ill. 531, 535, 173 N.E. 657, 658 (1930). Most of the cases expressing this point of view are gathered in People v. Allman, 329 Ill. App. 296, 68 N.E. 2d 203 (1946).

[25] Funkhouser v. Coffin, 301 Ill. 257, 133 N.E. 649 (1921).

[26] People v. Board of Police, 39 N.Y. 506 (1868).

[27] Actually the earliest departure from the old rule was via the statutory route under the Workmen's Compensation Act of 1913 when certiorari became the regular method of reviewing decisions of the Industrial Commission. Courter v. Simpson Construction Co., 264 Ill. 488, 166 N.E. 350 (1914). Section 19 of the Act provided that the record should contain the evidence, and Hahnemann Hospital v. Industrial Board, 282 Ill. 316, 118 N.E. 767 (1918), decided that the court will review the evidence to decide the jurisdictional question. Freund, Administrative Powers over Persons and Property 262, n. 9 (1928).

[28] 301 Ill. 257, 133 N.E. 649 (1921).

[29] One writer has stated that this decision can be confined to the narrower interpretation, i.e., that it is enough that the jurisdictional facts appear in the record, Review of Administrative Orders in Illinois, 31 Ill. L. Rev. 230, 243 (1936). But the principal case, as well as those cited in notes 23 and 24 supra, indicate that the courts today have no disposition to so narrow the holding.

[30] Hahnemann Hospital v. Industrial Board, 282 Ill. 316, 118 N.E. 767 (1918); Tazewell Coal Co. v. Industrial Comm'n, 287 Ill. 465, 123 N.E. 28 (1919); Glos v. Woodard, 202 Ill. 480, 67 N.E. 3 (1903).

[31] Answering the contention of counsel that the Hahnemann and Tazewell cases were under a special statute which required the evidence to be preserved, and that, therefore, those authorities were not in point, the court said: "We cannot so hold. It is clear that in the Hahnemann case the court was not laying down the rule simply because the statute required the evidence to be preserved, but in accordance with the general rule governing the common-law writ of certiorari, for it cites the general doctrine as to this writ laid down in 4 Ency. of Pl. and Pr. 262, 11 Corpus Juris 205, and 5 R.C.L. 265. . . ." Funkhouser v. Coffin, 301 Ill. 257, 262, 133 N.E. 649, 651 (1921).

1860,[32] by New York in 1868,[33] and by Wisconsin in 1872.[34] Instead, the Illinois decisions since the *Funkhouser* case have pricked out an uncertain line between the old common-law notion and a frank acceptance of certiorari as having the same office for reviewing administrative decisions as the writ of error enjoys for reviewing judicial decisions. The result has been to establish two contradictory lines of cases: one extending the "jurisdictional facts" doctrine when a fuller review is to be made,[35] the other contracting the doctrine when the administrative tribunal's decision is to be upheld.[36] That the courts have not been unaware of this inconsistency is made clear by the opinion delivered in *People v. Allman*,[37] decided the same day as the principal case, in which all the leading cases are collected, a majority of them reconciled, and three apparently overruled. But if the *Allman* case does much to clarify the present situation, it cannot provide a remedy for the vice latent in the "jurisdictional facts" doctrine itself: the defect inherent in any attempt to arrive at a desired end—here, to review the evidence—by a means unsuited to accomplish it. The unsatisfactory nature of this process of "using indirections to seek directions out" is apparent to anyone reading the cases in search of some continuity.

The principal case may well be criticized on this count. Faced with the assumed necessity of finding a failure of jurisdiction before it could look into the evidence, the court was compelled to resort to a finding that the Civil Service Commission, if it wished to escape losing its jurisdiction, must have in its files prior to issuing a discharge order the entire record of the proceedings before it *reduced to its final form.* In short, the first half of the instant opinion rests on a denial to the commission of the nunc pro tunc procedure regularly engaged in by courts.[38] The holding that the commission may not prepare, type, and file the documents actually making up its findings and decision subsequent to its formal discharge order because its jurisdiction was "exhausted" with the filing of that order appears to be unique.[39] Since such a construction imposes on the

[32] Jackson v. People, 9 Mich. 111 (1860).

[33] People v. Board of Police, 39 N.Y. 506 (1868).

[34] Milwaukee Iron Co. v. Schubel, 29 Wis. 444 (1872).

[35] Besides the cases cited in note 23 supra, see Kilroy v. Retirement Board, 297 Ill. App. 261, 17 N.E. 2d 527 (1938); Frye v. Hunt, 365 Ill. 32, 5 N.E. 2d 398 (1936); Crocher v. Abel, 348 Ill. 269, 180 N.E. 852 (1932).

[36] People v. Finn, 247 Ill. App. 53 (1927); People v. Ames, 277 Ill. App. 312 (1934); Johaaski v. City of Chicago, 274 Ill. App. 423 (1934).

[37] 329 Ill. App. 296, 68 N.E. 2d 203 (1946).

[38] A nunc pro tunc order quashing a writ of certiorari which appeared "to have been entered from minutes kept by the judge and the clerk of the court at the time the original order was directed to be ordered" is not open to objection. Funkhouser v. Coffin, 221 Ill. App. 14, 23 (1921). It is not without significance that the instant court failed to refer to this commonplace judicial procedure, a point relied upon by the defendants.

[39] In McCarthy v. Geary, 229 Ill. App. 414 (1923), and Buttimer v. Geary, 229 Ill. App. 524 (1923), it was held to be error to strike from a return in certiorari a transcript of evidence prepared from a stenographer's notes after service of the writ and introduced as part of the

commission a requirement more rigid than is imposed by the statute governing it, the holding would appear to be open to the charge of judicial regulation in excess of that contemplated by the legislature. A frank adoption of the "substantial evidence" rule would obviate the necessity for such unsatisfactory holdings. The Illinois legislature has recognized the need and supplied the remedy in the recently adopted Administrative Review Act,[40] which provides that the hearing and determination of the reviewing court shall extend to all matters of law and fact presented by the entire record.[41] Owing to the experimental nature of this legislation and the reluctance of some administrative agencies to disturb their present review procedures, the act has not been uniformly adopted but at present applies only to those administrative bodies operating under a statute which has incorporated the act's provisions. The Illinois Act to Regulate the Civil Service of Cities is not yet among this number.[42] Nevertheless, it is submitted that, prior to the incorporation of the act in all regulatory statutes, courts—given this clear legislative mandate—might justifiably abandon the uncertain and unwieldly machinery of the "jurisdictional facts" doctrine in favor of the "substantial evidence" rule, a step which would serve to bring judi-

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return. The court said in the McCarthy case, "We are referred to no cases holding that the transcript of shorthand notes of a case is a subsequent 'proceeding' . . . . and upon reason it cannot be. Transcribing shorthand notes taken at the trial is no more a subsequent 'proceeding' than binding the proceedings in one record would be. 'Proceedings' are intrinsic acts in the process of litigation, not the merely manual clerical work of transcribing the evidence and making up the record." McCarthy v. Geary, 229 Ill. App. 414, 417 (1923). The objection that in the instant case the notes were not those of a regular reporter but rather those of one of the commissioners and that they were not filed with the commission's records prior to their use in preparing the return would not seem to take the case out of this holding. Moreover, as the court in the Buttimer case pointed out, "a trial before the Civil Service Commission 'is not a common-law or criminal proceeding, but an investigation' in which the precision and formality required in actions at law are not essential," citing Joyce v. City of Chicago, 216 Ill. 466 (1905). Buttimer v. Geary, 229 Ill. App. 524, 527 (1923).

In Benton Coal Co. v. Industrial Comm'n, 321 Ill. 208, 151 N.E. 520 (1926), it was held that an administrative tribunal had no authority to allow the filing nunc pro tunc of a document which had not been filed within the jurisdictional statutory period. The Benton case may be distinguished from the principal case, for it concerned the limitation of the right to review under the Workmen's Compensation Act, while in the instant case there is no showing that the commission in filing its findings and decision nunc pro tunc violated any statutory limitation. Moreover, the notion that the commission's jurisdiction was "exhausted" following the issuance of its discharge order tends to throw doubt on one of the commission's own rules which provides that after the entry of a decision and a discharge order, the commission may entertain a petition for a rehearing. Civil Service Laws and Rules for the City of Chicago, Rule VI, Sec. 5, p. 28 (1925).

[40] Ill Rev. Stat. (1945) c. 110, §§ 264–279.

[41] To prevent unwarranted judicial interference with administrative functions, the act also provides that the administrative body's findings and conclusions on questions of fact shall be prima facie true and correct, and, further, that no new or additional evidence shall be heard by the reviewing court. Ibid., § 274.

[42] Some forty-nine regulatory statutes have been brought within the scope of the act, including the Illinois Civil Service Act (covering state employees). A brief discussion of the purpose and scope of the Administrative Review Act by one of its draftsmen may be found in Mills, The Illinois Administrative Review Act, 28 Chi. Bar Rec. 7 (1946).

cial decisions in line with clearly-stated legislative policy and obviate a resort to such extreme measures as the court in the instant case felt compelled to adopt.

Constitutional Law—Freedom of Speech—Requirement that Speeches and Program Be Submitted as Condition Precedent to Use of Public Auditorium Invalid—[California].—The petitioners, members of the San Diego Civil Liberties Committee, applied to the respondent school board for the use of a high school auditorium for a series of meetings. The California Civic Center Act[1] empowered the respondent board to require a copy of the program and speeches to be filed in advance and to permit the use of the school facilities only in accordance with regulations adopted by the board. The petitioners refused to submit a copy of their program and speeches. Thereupon the respondent agreed to grant the petitioners use of the auditorium upon the sole condition that the petitioners file an oath of non-affiliation with any organization seeking to overthrow the government by violence. The petitioners refused to comply and instituted mandamus proceedings in the California Supreme Court to compel the respondent board to grant the use of the auditorium free from any conditions. *Held*, the writ of mandamus should issue, two justices dissenting. Those sections of the California Civic Center Act requiring copies of the program and speeches to be filed in advance with the respondent board are an unconstitutional restriction upon freedom of expression. *Danskin v. San Diego Unified School District.*[2]

The vigorous dissent in this case questions the majority opinion's application of the clear and present danger test, noting the limited degree to which that test has been employed by courts in the past. An examination of the origin and previous application of this judicial test seems to substantiate the minority opinion. Few cases have directly considered the validity of a statute regulating the conduct of meetings in public auditoriums. *Davis v. Massachusetts*[3] was the leading case on the closely related question of statutes governing public meetings in streets and parks. As a consequence of this decision, statutes regulating freedom of expression by requiring a permit as a condition precedent to a public meeting were upheld by the courts where arbitrary and unlimited discretionary powers were not placed in the hands of the licensing official.[4] The test employed in determining the statute's validity in these cases was whether the restriction constituted a proper and reasonable exercise of a state's police power.[5]

[1] Cal. Education Code (Deering, 1944) §§ 19431–39.

[2] 171 P. 2d 885 (Cal., 1946). [3] 167 U.S. 43 (1897).

[4] Bloomington v. Richardson, 38 Ill. App. 60 (1889); Commonwealth v. Abrahams, 156 Mass. 57, 30 N.E. 79 (1892); Duquesne v. Fincke, 269 Pa. 112, 112 Atl. 130 (1920); Buffalo v. Till, 182 N.Y. Supp. 418 (App. Div., 1920).

[5] See also Cox v. New Hampshire, 312 U.S. 569 (1941); Anderson v. Wellington, 40 Kan. 173, 19 P. 719 (1888); Chicago v. Trotter, 136 Ill. 430, 26 N.E. 359 (1891); Fitts v. Atlanta, 121 Ga. 567, 49 S.E. 793 (1905); People ex rel. Doyle v. Atwell, 232 N.Y. 96, 133 N.E. 364 (1921); Commonwealth v. Surridge, 265 Mass. 425, 164 N.E. 480 (1928); Coughlin v. Chicago Park District, 364 Ill. 90, 4 N.E. 2d 1 (1936).