R. v. NORTHUMBERLAND COMPENSATION APPEAL TRIBUNAL. Ex parte SHAW. (1952) 1 ALL E.R. 122.

CERTIORARI – SPEAKING ORDER – ERROR OF LAW ON FACE OF RECORD

This case raises an interesting point in administrative law. It clears the air surrounding the prerogative writ of certiorari. It should also ease the minds of people who regard the modern trend of sub-delegation to inferior tribunals as dangerous to liberty. From many of these boards there is no appeal and prior to this case there was doubt whether a superior court could use the writ of certiorari in any more than a supervisory capacity to determine whether the board had exceeded its jurisdiction. That the scope of review is broader than this now seems clear.

The applicant, a clerk to a joint hospital board had been compensated by the Gosforth Urban District Council for loss of employment, and being dissatisfied appealed to the compensation tribunal which upheld the award. He moved in the divisional court of the King's Bench Division for an order of certiorari to remove the decision into the High court on the ground of an error of law on the face of the record; this error allegedly consisted in a failure by the board to take into account his service with the hospital board as it ought to have done under the National Health Service (transfer of officers and compensation) Regulations, 1948. It was admitted in the High Court that the decision was wrong, but it was submitted even assuming the error appeared on the face of the record, that the tribunal had acted within its jurisdiction and that therefore the superior court lacked power to issue the writ. The Divisional Court however made the order and the tribunal appealed.

The Court of Appeal dismissed the appeal holding that certiorari does lie, not only where an inferior tribunal exceeds its jurisdiction, but also where an error of law appears on the face of the record.

The court applied R. v. Nat bell Liquors, Ltd. (1922) 2 A.C. 128; Singleton, L.J. quoted Lord Sumner as follows; "that the superior court should be bound by the record is inherent in the nature of the case. Its jurisdiction is to see that the inferior court has not exceeded its own, and for that very reason it is bound not to interfere in what has been done within that jurisdiction, for in so doing it would itself, in turn, transgress the limits within which its own jurisdiction of supervision, not of review, is confined. That supervision goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise." He goes on to say that Lord Sumner showed how, and why, certiorari fell into disuse in the case of convictions before magistrates, yet there was no alteration in the law as to certiorari. And so it appeared to him that in cases such as the one before the court certiorari would lie if there was an error on the face of the proceedings.

Lord Justice Denning's judgement contains an erudite dissertation on the history and application of certiorari in nearly all fields: conviction by magistrates, orders of justices, statutory tribunals, and arbitrator's awards. Following this review he says; "....the court of King's Bench has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by a tribunal which, on the face of it, offends against the law. The King's Bench does not substitute its own views for those of the tribunal, as a court of appeal would do. It leaves it to the tribunal to hear the case again, and in proper case may command it to do so. When the King's Bench exercises its control over tribunals in this way, it is not usurping a jurisdiction which does not belong to it. It is only exercising a jurisdiction which it always had."

Lord Justice Morris summarizes the law in these words: "Cases were cited in argument before us which showed that in times past certiorari lay where justices recorded decisions which were on the face of them bad in law. It was said, however, that this was not shown to have been the practice in the case of non-judicial tribunals. But there is no warrant for the view that the controlling power exercised by certiorari over inferior courts varies according to the description of, or the composition of, the inferior court. Once the body concerned is properly to be described as an inferior court in the sense in which this expression is now well understood, then, subject to any statutory provision, an order of certiorari will issue on any of the grounds recognized by law. It was further said that, though these grounds were formerly wide enough to include cases where decisions were, on the face of them, bad in law, there has in recent years been a contraction, with the result that certiorari no longer lies for such reason. It is said that this basis for the exercise of the controlling power has fallen into abeyance. I can find no justification for this contention."

There is surely wisdom in the words of Singleton, L. J. who says in speaking of the lack of appeals to the courts from many of these tribunals: "I most earnestly wish in such cases, where difficult questions of law, and of interpretation, must arise, that there should be given some right of appeal. After all, it is the function of the courts to determine questions of law. Tribunals are sometimes given an unduly difficult task. There must be a feeling of dissatisfaction if it is recognized that a decision of a tribunal is wrong in law and yet there is no power to correct it. I am satisfied that the course I have suggested would result in a saving of time, and of expense, and would be for the public good."

John P. Funnell, U.N.B. Law III