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Administrative Law—A Widening of Judicial Review

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C.P.A. § 522; FED. R. CIV. P. 6(c) for statutory incorporations of the rule.

This writer believes the decision in the instant case is sound. The petitioners in fact were not subject to a trial on the merits when the chief witness refused to testify. A strict application of *res judicata* in a field where it is usually known only in a modified form, would be to destroy altogether the usefulness of the police commissioner's board. The continuing public interest in the integrity of public servants demands, at the very least, that newly available evidence be presented to official scrutiny and evaluation.

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ADMINISTRATIVE LAW—A WIDENING OF JUDICIAL REVIEW

Proceeding by an employment agency operator to annul a cease and desist order of the State Commission Against Discrimination (S. C. A. D.). The Commission moved to compel the operator to comply with its order. *Held:* Order affirmed upon a finding by the court that the evidence was sufficient to sustain the Commission's determination of unlawful employment practices. *Holland v. Edwards,* 282 App. Div. 353, 122 N. Y. S. 2d 721 (1st Dep't 1953).

After accepting the determination of the Commission, the court states that it may make any order which it deems should have been made. The court declares that its scope of review, in this case, is broader than that admissible under C. P. A. Art. 78.

As a general rule, the reviewing court's function is exhausted after finding a rational basis for the conclusions of the administrative body and sufficient evidence in the record to warrant such conclusions. *Universal Camera Corp. v. N. L. R. B.,* 340 U. S. 474 (1951); *Board v. Hearst Publications,* 322 U. S. 111 (1943); *Matter of Mounting & Finishing Co. v. McGoldrick,* 294 N. Y. 104, 60 N. E. 2d 825 (1945). Thus, in an appeal by the Labor Relations Board to reinstate its determination, the court declared that where more than one reasonable inference could be drawn from the evidence presented, the decision of the Board will not be upset. *Matter of Stork Restaurant v. Boland,* 282 N. Y. 256, 26 N. E. 2d 247 (1940).

Petitioners in a recent case asserted that the Board of Regents had dealt too severely with them and had ignored weighty considerations in suspending their license to practice medicine. The

court, affirming the Board's action, declared, "[I]t is enough to say that we are wholly without jurisdiction to review such questions." *Barsky v. Board of Regents of University of New York*, 305 N. Y. 89, 99, 111 N. E. 2d 222, 226 (1953). Thus, even in the disciplinary area, the court refused to widen its scope of review. See 3 BFLO. L. REV. 56.

The declaration by the court, in the instant case, of the power of review which it possesses over S. C. A. D. transcends the accustomed view of judicial review in New York. The statute setting up this agency declares that "the court shall have the power to grant such temporary relief of restraining order as it deems proper, and to make and enter . . . an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission." N. Y. EXECUTIVE LAW § 298. The court indicates that it is this statute which instigates a departure from the ordinary type of judicial review as provided for in C. P. A. Art. 78. However, reference to this Article reveals very little difference, if any, in the scope of review provided therein. It states that "the court may annul or confirm, wholly or partly, or modify the determination reviewed, . . . and may direct appropriate action or inaction by the respondent (administrative agency)." N. Y. C. P. A. Art. 78, § 1300.

It is submitted that, because of the striking similarity of wording in the two sections, little precedent value should be placed upon the court's declaration of its broader scope of review in the instant case.

Vincent A. DeIorio

CRIMINAL LAW—COERCED CONFESSIONS

Defendants were convicted of murder. At their trial, confessions, alleged to have been coerced, were admitted in evidence. The question of coercion was left to the jury under the charge to consider them only if they were found to be voluntary. *Held* (6-3) affirming: (1) the jury could reasonably have found that the confessions were voluntary: (2) it was not a violation of due process for the judge to refuse to charge that the jury must acquit if it found that the confessions were coerced. *Stein v. New York*, 346 U. S. 156 (1953).

The first case in which the United States Supreme Court reversed a state conviction involving the use of a coerced confession held that due process, guaranteed by the Fourteenth Amendment,