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# The Supreme Court of Pennsylvania and the Origins of King's Bench Power

Bernard F. Scherer\*

On May 22, 1722 ("Act of 1722"), the General Assembly of Pennsylvania established a "Supreme Court" consisting of three justices, one of whom was to act as the Chief Justice.<sup>1</sup> The legislature defined the function of the court as follows:

[The justices shall] exercise the jurisdictions and powers hereby granted concerning all and singular the premises according to law, as fully and amply, to all intents and purposes whatsoever, as the Justices of the Court of King's Bench, Common Pleas, and Exchequer, at Westminster, or any of them, may or can do.<sup>2</sup>

That jurisdiction has remained largely undisturbed, notwithstanding the statutory jurisdiction conferred upon the supreme court as original<sup>3</sup> and extraordinary jurisdiction.<sup>4</sup>

There are a number of remarkable occasions where the supreme court has sought to invoke the King's Bench powers.<sup>5</sup> An examination of the origins and tenets of this King's Bench power may as-

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1. 1 SMITH LAWS 139 (1810).

2. 1 SMITH LAWS 140 (1810).

3. "The Supreme Court shall have original but not exclusive jurisdiction of all cases of: (1) Habeas corpus. (2) Mandamus or prohibition to courts of inferior jurisdiction. (3) Quo warranto as to any officer of Statewide jurisdiction." 42 PA. CONS. STAT. ANN. § 721 (1981).

4. 42 PA. CONS. STAT. ANN. § 726 (1981). Section 726 reads as follows:

#### Extraordinary Jurisdiction

Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or district justice of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.

*Id.*

5. One of the most interesting instances is the court's Letter of Address to the Governor and General Assembly in *In re* 42 Pa.C.S. § 1703, 394 A.2d 444 (Pa. 1978). The court, asserting that the judicial rule-making power was exclusive, explicitly refused to apply the Public Agency Open Meeting Law to the court's rule making function as dictated by the legislature. *In re* § 1703, 394 A.2d at 446-47.

sist in the understanding of a difficult and important aspect of commonwealth law. This article examines the history of the King's Bench power in England and in Pennsylvania and concludes that the Supreme Court of Pennsylvania has expanded the King's Bench power beyond its original parameters.

### I. THE KING'S BENCH IN ENGLAND

In an illuminating passage, English jurist, Sir William Blackstone, advanced the following explanation for the creation by William of Normandy (1027-1087) of the King's Bench or the *aula regia*. The court, conducting secular business, was made up of the king's chosen officers, who were aided by justices and barons, to form a court of advice.<sup>6</sup> This court was bound to follow the king's household in "all his [the king's] progresses and expeditions."<sup>7</sup> Consequently, court proceedings proved burdensome to litigants. King John (1167-1216) readily consented to the court being permanently established at Westminster.<sup>8</sup>

The power of the King's Bench itself was considerably curbed by the Magna Carta.<sup>9</sup> By the reign of Edward I (1239-1307), the court's power had been distributed into what Blackstone described as several "distinct courts of judicature."<sup>10</sup> The practical aspects of dispensing justice required an allocation of power: all writs were issued by the Court of Chancery, all disputes of citizens were heard by the Court of Common Pleas, the wealth of the king was administered by the Exchequer, and the King's Bench reserved jurisdiction over appeals, criminal matters, and the concerns of the king.<sup>11</sup>

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6. 3 WILLIAM BLACKSTONE, COMMENTARIES, \*37, \*38 [hereinafter BLACKSTONE]. [T]he conqueror, fearing danger from these annual parliaments, contrived also to separate their ministerial power, as judges, from their deliberative, as counsellors to the crown. He therefore established a constant court in his own hall . . . . This court was composed of the king's great officers of state resident in his palace . . . . These high officers were assisted by certain persons learned in the laws, who were called the king's justiciars or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of court of appeal, or rather of advice, in matters of great moment and difficulty. All these in their several departments transacted all secular business both criminal and civil, and likewise the matters of the revenue.

*Id.* See also HENRY DE BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND 2, L. 3, Tr. 1, ch.7 (Sir Travers Twiss ed.) (London, Longman 1879).

7. 3 BLACKSTONE at \*38.

8. *Id.*

9. *Id.* at \*39.

10. *Id.*

11. *Id.* at \*39, \*40. Blackstone stated that:

The distribution of common justice between man and man was thrown into so provi-

The King's Bench obtained some superintendency over the Common Pleas, the Chancery and the Exchequer,<sup>12</sup> however Blackstone indicated that all four courts were equally subject to direction by the "baronial court,"<sup>13</sup> presaging the House of Peers.<sup>14</sup>

As the King's Bench superintended the Common Pleas, Exchequer, and other courts, the King's Bench, itself, was superintended. Blackstone observed of the King's Bench: "Yet even this so high and honorable court is not the *dernier resort* of the subject; for, if he be not satisfied with any determination here, he may remove it by writ of error into the house of lords."<sup>15</sup>

Throughout these peregrinations, the Supreme Court of Judicature remained the "House of Peers," having no original jurisdiction, but possessing the power to resolve the injustices and errors of the lower courts.<sup>16</sup> As a consequence of this role, the House of Peers became the court of final recourse.<sup>17</sup>

Although the King's Bench and Common Pleas Bench originally emerged from the Magna Carta as equals, the King's Bench assumed a more supervisory position. Because of differing jurisdictions, the concern of the King's Bench with offenses against the

dent an order, that the great judicial officers were made to form a check upon each other: the court of chancery issuing all original writs under the great seal to the other courts; the common pleas being allowed to determine all causes between private subjects; the exchequer managing the king's revenue; and the court of king's bench retaining all the jurisdiction which was not cantoned out to other courts, and particularly the superintendence of all the rest by way of appeal; and the sole cognizance of pleas of the crown or criminal causes.

*Id.* See also 4 EDWARD COKE, INSTITUTES 99 (London, E. and R. Brooke 1797).

12. BLACKSTONE at \*43.

13. *Id.* at \*39. "The high steward, with the barons of parliament, formed an august tribunal for the trial of delinquent peers; and the barons reserved to themselves in parliament the right of reviewing the sentences of other courts in the last resort." *Id.*

14. As a result of the Appellate Jurisdiction Act of 1876, the House of Peers is now known as the Lords of Appeal in Ordinary. 39 & 40 Vict., ch. 59, § 6 (1876) (Eng.).

15. BLACKSTONE at \*43.

16. *Id.* at \*56.

17. *Id.*

The House of Peers, which is the supreme court of judicature in the kingdom, having at present no original jurisdiction over cause, but only upon appeals and writs of error, to rectify any injustice or mistake of the law committed by the courts below. . . . They are therefore in all causes the last resort, from whose judgment no further appeal is permitted; but every subordinate tribunal must conform to their determinations; the law reposing an entire confidence in the honor and conscience of the noble persons who compose this important assembly, that . . . they will make themselves masters of those questions which they undertake to decide, and in all dubious cases refer themselves to the opinions of the judges who are summoned by writ to advise them, since upon their decision all property must finally depend.

*Id.*

peace of the kingdom and against the person of the king, and the concern of the Common Pleas Bench with one commoner against another commoner, the superintendence of the King's Bench was not an unexpected outcome. However, the King's Bench was not the supreme judicial seat. From the time of the Norman conquest through the Magna Carta to the American Revolution, the House of Peers, a vestige of the original *aula regia*, continuously superintended the King's Bench.

## II. THE KING'S BENCH IN PENNSYLVANIA

The Act of 1722<sup>18</sup> articulated the powers of the supreme court in Pennsylvania, among which was that of the King's Bench. In addition, the Act made it quite clear that an appeal lay from the supreme court.<sup>19</sup> However, the American Revolution destroyed the appeal to the House of Peers of England and thus, the right to appeal from the supreme court and other courts was lost. Pennsylvania's first post-revolution constitution provided the following provision relating to the courts. "The supreme court, and the several courts of common pleas of this commonwealth, shall, besides the powers usually exercised by such courts, have . . . such other powers as may be found necessary by future general assemblies, not inconsistent with this constitution."<sup>20</sup>

Instead of clarifying the Constitution of 1776 with regard to the supreme court, the General Assembly restored the Court of Writs and Errors as it had existed in England prior to the American Revolution. On February 28, 1780, the General Assembly passed "An Act for Erecting a High Court of Errors and Appeals" ("1780 Act").<sup>21</sup> The prologue of the 1780 Act explained that it sought to remedy the loss of the right of appeal to England.<sup>22</sup> The 1780 Act

18. 1 SMITH LAWS 131 (1810).

19. 1 SMITH LAWS 140-41 (1810).

Saving to all and every person and persons, his, her or their heirs, executors and administrators, their right of appeal from the final sentence, judgment or decree of any court within this province, to his Majesty in Council, or to such court or courts, Judge or Judges, as by our sovereign lord the King, his heirs or successors, shall be appointed in Britain, to receive, hear, and judge of appeals from his Majesty's Plantations.

*Id.*

20. PA. CONST. § 24 (1776).

21. 10 PA. STAT. AT LG. 52 (1904).

22. *Id.* at 52-54 (1904). The Act of February 18, 1780 reads in part:

Whereas by the laws of the late province, now state, of Pennsylvania a very expensive, difficult and precarious remedy was provided for parties injured by erroneous judgments, sentences and decrees given or pronounced therein, by establishing an

established the High Court of Errors and Appeals, which consisted of the judges of the Supreme Court, the judge of the Admiralty Court, and the President of the Supreme Executive Council together with "three persons of known integrity and ability" to be commissioned for terms of seven years.<sup>23</sup> The 1780 Act directed all parties whose appeals from the Pennsylvania Supreme Court to the King of England had not been adjudicated by July 4, 1776 to refile their appeals with the Council of Errors and Appeals.<sup>24</sup> Thus, at least in principle, the link with the "House of Peers" was restored.

In 1791, the composition of the High Court of Errors and Appeals was changed to include the justices of the supreme court and the newly created president judges of the courts of common pleas with "three other persons of known legal abilities," constituting a total of twelve judges.<sup>25</sup> The court was directed to meet once a year at Philadelphia.<sup>26</sup> The High Court of Errors and Appeals was disbanded in 1806.<sup>27</sup>

Although the tenure of the Pennsylvania High Court of Errors and Appeals was brief, the legislation of 1722 and 1780 demon-

appeal from the final judgment, sentence or decree of any court within the said province to the king of Great Britain in council, or to such court or courts . . . . And whereas it is requisite that the good people of this commonwealth, who have adopted the common law of England, should enjoy the full benefit thereof by the erection of a competent jurisdiction within this state for the hearing, determining and judging in the last instance upon complaints of error at common law; . . . .

Be it therefore enacted . . . , [t]hat when any final judgment shall be hereafter given [in the Supreme Court] . . . the party . . . against whom such judgment, decree or sentence shall be given, may sue forth, in the case of a complaint of error in the supreme court, a writ of error, according to the course of the common law.

*Id.*

The supreme court acknowledged this superintendence in *Mayle v. Pennsylvania Dept. of Highways*, 388 A.2d 709 (Pa. 1978). "It should be noted that between 1780 and 1806, the Supreme Court of Pennsylvania was inferior to the High Court of Errors and Appeal of Pennsylvania." *Mayle*, 388 A.2d at 711 n.8.

23. 10 PA. STAT. AT LG. 54 (1904).

24. *Id.* at 56.

[A]ny party or parties who have heretofore appealed in any cause from the Supreme Court of the late province of Pennsylvania to the King of England in council, and upon which no judgment was had before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy six, to bring a new writ of error according to the common law and not otherwise before the said court of errors and appeals, and the said court is hereby empowered and enjoined to proceed therein to judgement . . . .

*Id.* See also Erwin C. Surrency, *The Court's Place in History*, 43 PA. B. ASS'N Q. 440 (1972).

25. 3 SMITH LAWS 33 (1810).

26. *Id.* at 34. The decisions of the court can be found in *Dallas Reports*.

27. 18 PA. STAT. AT LG. 64 (1915).

strated that the General Assembly wished to follow the English practice of superintending the King's Bench, Common Pleas, and all other inferior courts.<sup>28</sup> In 1834, the supreme court became the sole court of appellate review and was directed to sit in each county.<sup>29</sup>

### III. THE SUPREME COURT AND THE ASSERTION OF SUPERINTENDENCE OF THE KING'S BENCH POWER

As early as 1803, the supreme court, much like the King's Bench of England, assumed superintendency over the lower courts and sought to exercise plenary powers. In *Burginhofen v. Martin*<sup>30</sup> and *Overseers of the Poor v. Smith*,<sup>31</sup> the supreme court asserted the power to review proceedings in cases where no right of appeal existed and concluded that the jurisdiction of the supreme court could not be taken away, except by negative terms or "irresistible implication."<sup>32</sup>

The first full discussion by the merged Court of Errors and Appeals and the supreme court relative to the powers of the King's Bench appears to be *Commonwealth v. Nathans*.<sup>33</sup> In certiorari proceedings brought by guardians of the poor to compel the maintenance of a wife and children by a deserting husband, the appellants relied on the King's Bench powers conferred by the Act of 1722 in order to remove the case from the Court of Quarter Sessions to the supreme court for trial.<sup>34</sup> While the supreme court asserted that it possessed the superintendency of the King's Bench power, Chief Justice Gibson, writing for the court, attempted to limit that power as a vehicle for cases of the first instance coming before the court.<sup>35</sup> However, in 1886, the supreme court affirmed

28. 10 PA. STAT. AT LG. 56 (1904).

29. 34 PA. L. 341 (1834).

30. 3 Yeates 478, 479 (Pa. 1803).

31. 2 Serg. & Rawle 362, 365 (Pa. 1816).

32. *Overseers*, 2 Serg. & Rawle at 366. The court held that:

[i]t is a general rule, that the jurisdiction of *this court* cannot be taken away, except by express terms or irresistible implication. I know that we have heretofore exercised jurisdiction in cases like the present, although I do not recollect that the jurisdiction was ever objected to. It has been taken for granted that we possessed it. Here are no express words ousting our jurisdiction, nor is there any necessary implication; on the contrary, this seems to be a case, in which the matter would be brought before the session, *without an appeal* . . . .

*Id.*

33. 5 Pa. 124 (1847).

34. *Nathans*, 5 Pa. at 124.

35. *Id.* at 125.

its superintendency to remove criminal cases in order to permit the supreme court to exercise oyer and terminer jurisdiction,<sup>36</sup> and later upheld its authority to grant changes in venue in civil cases.<sup>37</sup>

It was not until *Carpentertown Coal & Coke Co. v. Laird*,<sup>38</sup> that the supreme court unequivocally asserted plenary superintendency of the King's Bench power. *Carpentertown* involved a petition for a writ of prohibition seeking to prevent assessment of damages and to grant injunctive relief as to further mining pursuant to an act of the legislature creating a mining commission, a quasi-judicial body.<sup>39</sup> The supreme court addressed the question of whether it was vested with the power to enter the writ and prevent an inferior judicial tribunal from assuming jurisdiction, notwithstanding the legislative enactments to the contrary.<sup>40</sup> Delivering the opinion of the court, Justice Stern stated:

It is suggested . . . that although this court has assumed the power to issue writs of prohibition the question as to its constitutional right so to do has not heretofore been challenged or discussed. Be that as it may, the justification for the court's exercise of such power is to be found in the Act of May 22, 1722, 1 Sm.L. 131, 140, section XIII, 17 P.S. §41 note, which vested in the Supreme Court all the jurisdictions and powers of the three superior courts at Westminster, namely, the King's Bench, the Common Pleas and the Exchequer. Inherent in the Court of King's Bench was the power of general superintendency over inferior tribunals, a power which was of ancient inception and recognized by the common law from its very beginnings. Blackstone says, Book III, \*42: 'the jurisdiction of this Court [of King's Bench] is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below.'<sup>41</sup>

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A *certiorari* is a writ doubtless of very extensive application, and this court has all the revisory powers of the King's Bench over inferior jurisdictions; but it has not been shown, nor can it be, that when a special jurisdiction has been created by statute, that court can snatch it from the hands of the magistrates to whom it has been given, and exercise it in their place. That would be an act of usurpation. . . . [a] *certiorari* lies to remove it into the King's Bench, only after judgment, and for purposes of revision as to regularity.

*Id.*

This view was also followed in *Carpenter's Case*, 14 Pa. 486 (1850), as well as *Chase v. Miller*, 41 Pa. 403 (1862), where the court refused to review the facts in an election contest when such review "is expressly excluded by statute." *Chase*, 41 Pa. at 411. See also *Schmuck v. Hartman*, 70 A. 1091, 1092 (Pa. 1908) (citing *Gosline v. Place*, 32 Pa. 520, 523 (1859)).

36. *Commonwealth v. Balph*, 3 A. 220, 230 (Pa. 1886).

37. *Apex Hosiery Co. v. Philadelphia County*, 200 A. 598 (Pa. 1938).

38. 61 A.2d 426 (Pa. 1948).

39. *Carpentertown*, 61 A.2d at 427.

40. *Id.* at 428.

41. *Id.*



Although the court declined to issue the writ, there is no doubt that the supreme court in *Carpentertown* asserted the plenary power of the King's Bench.

Apart from relying upon Blackstone, Justice Stern did not cite further. The paragraph following the passage relied upon by Justice Stern, continued:

For this court [King's Bench] is likewise a court of appeal, into which may be removed by writ of error all determinations of the court of common pleas, and of all inferior courts of record in England; . . . Yet even this so high and honorable court is not the *dernier resort* of the subject; for, if he be not satisfied with any determination here, he may remove it by writ of error into the house of lords, or the court of exchequer chamber, as the case may happen, according to the nature of the suit and the manner in which it has been prosecuted.<sup>42</sup>

Thus, Blackstone confirms that while the King's Bench possessed superintendency power, it was, from the beginning itself to be superintended. The Act of 1722 reflected Blackstone in that the statute provided for the grant of further appeal from the supreme court.<sup>43</sup> Such appeal was made infeasible by the American Revolution,<sup>44</sup> but was reestablished by the Act of 1780.<sup>45</sup>

The most evident assertion of the King's Bench power of superintendence is found at *In re Bell's Petition*.<sup>46</sup> In *Bell*, the court held that where appellate review is not authorized by statute or is expressly prohibited, appellate review "for certain purposes is obtainable" in the supreme court by the exercise of the King's Bench power.<sup>47</sup> Further, the supreme court has also ordered injunctive relief, although a case had not been commenced in any other court.<sup>48</sup>

42. 3 BLACKSTONE at \*43.

43. 1 SMITH LAWS 140-41 (1810). See note 19 for text.

44. *Id.* at 40-41. Note (c) provides the following:

The revolution of course destroyed the appeal to Great Britain; but for reviewing the final judgments of the Supreme Court, a writ of error lies to the High Court of Errors and Appeals, (chap. 1564) [which court is now abolished, and no writ of error lies from the final decision of the Supreme Court, except (in cases within its jurisdiction,) to the Supreme Court of the United States].

*Id.*

45. 10 PA. STAT. AT LG. 52 (1904). See notes 21-24 and accompanying text.

46. 152 A.2d 731 (Pa. 1959).

47. *Bell*, 152 A.2d at 734 (relying upon *Carpentertown Coal & Coke Co. v. Laird*, 61 A.2d at 428); see notes 38-41 and accompanying text.

48. See *Deer Creek Drainage Basin Auth. v. County Bd. of Elections*, 381 A.2d 103 (Pa. 1977). In a vigorous dissent, Justice Pomeroy stated "[t]hat the instant case, which has not been in any other court and concerns no lower court judge, is not within this Court's King's Bench powers is too plain for discussion." *Deer Creek*, 381 A.2d at 112 n.8 (Pomeroy, J., dissenting).

The most recent assertion of the supreme court's King's Bench power is found in the case of *In re 42 Pa.C.S.A. § 1703*.<sup>49</sup> A lengthy "Letter of Address" was published to the other branches of government setting forth the supreme court's basis for its noncompliance with the provisions of the Public Agency Open Meeting Law ("Open Meeting Law").<sup>50</sup> The supreme court stated that the application of the Open Meeting Law to the exercise of the supreme court's exclusive jurisdiction in the establishment of rules of procedure for state courts, was an unwarranted intrusion that "must be viewed with the greatest of skepticism."<sup>51</sup> The "Letter" concedes that there may have been some doubt about the delegation of the rule making power to the supreme court prior to the 1968 constitution when the legislative grant was made.<sup>52</sup> The supreme court observed that although other jurisdictions have provided for joint rule-making power between the legislature and the judiciary, the authority to promulgate rules in Pennsylvania belongs exclusively to the supreme court.<sup>53</sup>

#### IV. DEBATE ON THE KING'S BENCH POWER AT THE CONSTITUTIONAL CONVENTION OF 1968

During the debates of the constitutional convention of 1968, questions as to the jurisdiction and extent of the King's Bench powers surfaced and were vigorously discussed. Delegate Hook initially raised the issue of the jurisdiction of the supreme court.<sup>54</sup> Delegate (Judge) Woodside replied to Hook's query that in addition to statutory jurisdiction, the supreme court possesses an "inherent jurisdiction," the King's Bench powers, which cannot be taken away without the court's own approval.<sup>55</sup>

Conversely, Delegate Mattioni argued that to suggest that the supreme court's power could not be removed was in conflict with article II of the Pennsylvania Constitution, which grants the legislative function to the General Assembly.<sup>56</sup> As to the removal of the

49. 394 A.2d 444 (Pa. 1978).

50. *In re 42 Pa.C.S.A. § 1703*, 394 A.2d at 445. The Public Agency Open Meeting Law, Pub. L. 486, No. 175, is codified at 42 PA. CONS. STAT. § 1703 (1990).

51. *In re § 1703*, 394 A.2d at 448.

52. *Id.* at 446-48. See Act of June 21, 1937, Pub. L. No. 1982 n. 392 (codified as amended at 17 P.S. § 61, current version at 42 PA. CONS. STAT. ANN. §§ 1702, 1722 (1981)).

53. *In re § 1703*, 394 A.2d at 447.

54. PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968 JOURNAL, Vol. II, No. 44, 841 (February 15, 1968) [hereinafter JOURNAL].

55. JOURNAL, cited at note 54, at 841-42.

56. *Id.* at 843. Delegate Mattioni asked, "[d]oes not this seem to come in conflict with

King's Bench power of the supreme court, Delegate Woodside argued that the supreme court has the privilege to determine whether its jurisdiction, including the King's Bench powers, should be removed and the legislature must secure the court's approval to change jurisdiction.<sup>57</sup>

Delegate Hook, having originally raised the controversy, pursued the debate. Hook observed that while the Pennsylvania Constitution was to set forth that the supreme court would be the highest court possessing all judicial power, the constitution would also provide that the court's jurisdiction was to be provided by law.<sup>58</sup> Hook further queried, "Does this mean that the General Assembly then can pull away from the [s]upreme [c]ourt certain inherent powers it now has?"<sup>59</sup> Woodside explained that the legislature can remove any jurisdiction that it has granted to the court, but the consent of the court would otherwise be required.<sup>60</sup>

In a subsequent exchange, Delegate Stroup asked whether the committee's purpose was to protect the King's Bench powers by preserving the "advise-and-consent jurisdiction"<sup>61</sup> and inquired why the committee would remove the General Assembly's power to change statutory jurisdiction.<sup>62</sup> Woodside again answered that the supreme court, as the head of the judicial system, should maintain control over its own jurisdiction.<sup>63</sup>

The language of the present constitution seems to reflect the quandary posed by these discussions. The constitution provides that the supreme court "shall have such jurisdiction as shall be

Article II which states that the General Assembly shall have the legislative function? By requiring prior approval as far as the Supreme Court is concerned you are . . . tying the hands of the General Assembly." *Id.*

57. *Id.*

58. *Id.* at 844.

59. *Id.*

60. JOURNAL, cited at note 54, at 844. Delegate Woodside stated:

It means that the legislature can take away some of the jurisdiction of the Supreme Court which the legislature gave to it, of course. As a matter of fact, I guess it could take away from it other jurisdiction, but it cannot do it without the advise and consent of the Supreme Court. We felt that was sufficient protection, because we thought that no Supreme Court of this Commonwealth would ever agree to the legislature taking away its King's Bench powers, which was the thing we wanted to preserve in the Supreme Court.

*Id.*

61. *Id.* at 846.

62. *Id.*

63. *Id.* at 846. See also an exchange between Delegate Scranton (later Governor) and Delegate Kaufman (later justice of the supreme court) on the same topic, the conferral by the legislature of jurisdiction. *Id.* at 875-76.

provided by law."<sup>64</sup> At the same time, article V, section 10(a) provides that "[t]he Supreme Court shall exercise general supervisory and administrative authority over all the courts . . . ."<sup>65</sup> The provisions of the Judicial Code enacted in 1978 seem to further confirm this anomaly.<sup>66</sup>

## V. CONCLUSION

The King's Bench power is not a claim unique to the Pennsylvania courts: comment on the theory has been advanced in other jurisdictions.<sup>67</sup> In general, the King's Bench power has been advanced in the Pennsylvania experience on two fronts. First, the power has been used to establish the supreme court's superintendency over all inferior courts in matters ranging from powers of rule-making to plenary jurisdiction. The Supreme Court of Pennsylvania has viewed this power as constitutional, or at least quasi-constitutional in nature as provided for in the present and previous Pennsylvania constitutions. During the 1968 Constitutional Convention debates, delegates expressed clear misgivings about the legislative role assumed by the supreme court.

Secondly, the assertion of the King's Bench power by the supreme court places the exercise of the power beyond further Pennsylvania appellate review. In England, the King's Bench was never intended as the court of last resort, whether in matters of superin-

64. PA. CONST. art. V, § 2(c).

65. PA. CONST. art. V, § 10(a).

66. 42 PA. CONS. STAT. ANN. § 502 (1981). Section 502 reads:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers:

(1) All powers necessary and appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.

(2) The powers vested in it by statute, including the provisions of this title.

*Id.*

The supreme court has also construed section 726, entitled Extraordinary Jurisdiction, as a further elaboration of the King's Bench powers. See note 4 for the text of section 726 and *Commonwealth v. Lang*, 537 A.2d 1361, 1363 n.1 (Pa. 1988); see also *In re* *Petition of Blake*, 593 A.2d 1267 (Pa. 1991).

67. See for example *People ex rel. Graves v. District Court of the Second Judicial Dist.*, 86 P. 87 (Colo. 1906); *Brooks v. State ex rel. Richards*, 79 A. 790 (Del. 1911); *Lamb v. State*, 107 So. 535 (Fla. 1926); *State ex rel. Pleasure v. McClellan*, 5 So. 600 (Fla. 1889); *Ryan v. Housing Auth. of Newark*, 15 A.2d 647 (N.J. 1940); *Specht v. Central Passenger Ry. Co.*, 68 A. 785 (N.J. 1908); *People v. Goodrich*, 149 N.Y.S. 406 (N.Y. App. Div. 1914); *In re Steinway*, 53 N.E. 1103 (N.Y. 1899).

tendence or review of error, and continues to be subject to review by the House of Peers.

Similarly, the Pennsylvania Judiciary Act of 1722 contained a right of appeal to the House of Peers. Subsequent to the American Revolution, a court not unlike the House of Peers, the Court of Errors and Appeals, was established and functioned for nearly two decades before the consolidation of its ultimate appellate authority with that of the supreme court. It is important to note that such a transfer was effected by legislative initiative.

The grant by the Pennsylvania General Assembly in 1722 of the power of the King's Bench to the supreme court assured the adoption and survival of this court's powers in the early years of the eighteenth century. The long and elaborate history of the King's Bench<sup>68</sup> clearly demonstrates that the superintendence of this court stemmed from the fact that the King's Bench, as a court, was largely concerned not only with matters affecting the safety of the realm in the nature of examining allegations of treasonous conduct, but with the exercise of broad criminal jurisdiction at a time when offenses now considered civil, were regarded as criminal. In consequence of that superintendence, the King's Bench sought to supervise the work of the inferior courts by the use of the King's Bench supervisory writs of prohibition or certiorari.

The Supreme Court of Pennsylvania was vested with that limited superintendence in 1722. However, in asserting the King's Bench power, the supreme court did not recognize that the King's Bench power itself was to be superintended.

The legislative initiative by the Provincial Assembly in 1722, representing the grant of the King's Bench power to the Supreme Court of Pennsylvania, reflected the conscious intent by the General Assembly to adopt the English judicial system as it existed in eighteenth-century England. Evident in the Act of 1722 was the provision of a right of further appeal from the King's Bench matters to the English House of Peers and Crown. Equally clear was the intent of the post-Revolution General Assembly of Pennsylvania to continue that right of appeal as witnessed by the creation of the High Court of Errors and Appeals in 1780. Viewed in this light, the unfettered King's Bench prerogative both as a fact finder and court of final recourse as asserted in *Carpentertown* and *Bell's Pe-*

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68. See THE PUBLICATIONS OF THE SELDEN SOCIETY, 105 volumes (1887 and supp. series 1965). See also JAMES F. BALDWIN, THE KING'S COUNCIL IN ENGLAND DURING THE MIDDLE AGES (1965).

*tition*, differs markedly from the role intended for the Supreme Court of Pennsylvania.

