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C. Richard lobst

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THE UNIFORM DECLARATORY JUDGMENTS ACT
IN PENNSYLVANIA

The Uniform Declaratory Judgments Act has been in effect in Pennsylvania since 1923.¹ However, due to the necessities of Pennsylvania practice, the courts resorted to the declaratory judgment in many fields long before the act was passed, although the judgment rendered was not called by that name. Judgments rendered in suits against the Commonwealth are in effect declaratory judgments, since no executory process followed as of course in such cases, and the distinctive characteristic of a declaratory judgment is that the declaration stands by itself.² Likewise a judgment in an equitable proceeding to remove a cloud from the title to real estate, where no consequential relief is granted, is in effect a declaratory judgment, as is one rendered in a case stated to pass on the marketability of the title to real estate.

Jurisdiction under the Declaratory Judgments Act will not be assumed in a particular case unless the court is satisfied that an existing controversy, or the ripening seeds of one, exists between the parties.³ By "existing controversy" is meant a controversy regarding the law relating to an existing fact or set of facts.⁴ In the case of *Reese v. Adamson*,⁵ a petition for a declaratory judgment was presented by the poor directors of a certain county, against the county controller, county treasurer, and county commissioners, setting forth that the plaintiffs were uncertain as to their rights and duties, and praying that the court declare them under certain statutes as to the levy and collection of taxes. The pleadings failed to show that a real controversy existed or was anticipated with anyone as to said rights and duties, so the court held that it was not a proper case for declaratory relief. As a matter of fact, all that the petition asked for was a mere advisory opinion. If a set of facts had

¹Act of June 18, 1923, P. L. 840.

²Kariher's Petition (No. 1), 284 Pa. 455 (1925).

³Kariher's Petition, *supra*.

⁴*Brewer v. Brasted*, 11 Pa. D. & C. 103 (1928).

⁵297 Pa. 13 (1929).

existed which would have indicated that the plaintiffs had been or would be interfered with in the discharge of their duty owing to a conflict between the statutes involved, the court intimates that it would be a proper case for the rendition of a declaratory judgment.

A declaratory judgment will not be granted merely to decide moot or imaginary cases that do not exist in fact. This is illustrated in *Bell Telephone Co. v. Lansdowne Borough*,⁶ where the Telephone Company petitioned for a declaratory judgment to test the validity of a zoning ordinance, but failed to allege that it contemplated the present acquisition of land in the restricted district for a use prohibited by the ordinances, nor did it aver the probability that it would be necessary in the near future for it to acquire land therein for such purpose, and the court dismissed the petition, since the necessary controversial elements were lacking. It seemed that the petitioner's chief fear was that sometime it might desire to purchase land and erect a business building in the area upon which the ordinance placed zoning restrictions.

Courts will not render declaratory judgments if there is another statutory remedy available which has been specially provided for the particular type of case. *Dempsey's Estate*,⁷ illustrates this rule. In that case there was a citation upon an executor to show cause why he should not file an account. He answered denying management of the estate or possession of assets, and then petitioned for a declaratory judgment to have determined to what extent, if any, he was obliged to account. The court dismissed the petition, holding that the relief sought would be as speedily and effectively obtained under the proceedings already pending. In another case,⁸ there was a petition for a declaratory judgment to annul a marriage on the ground that one of the parties was married to a third person at the time of the performance of the ceremony. The petition was refused, since the statutory remedy under the act

⁶18 Dela. Co. Repts. 307 (1927).

⁷288 Pa. 458 (1927).

⁸Shallenberger v. Shallenberger, 8 Pa. D. & C. 235 (1926).

of Apr. 14, 1859,⁹ is available to annul bigamous marriages, the procedure being the same as in cases of divorce.

As to the practice in declaratory judgment cases, the petition must be presented to a court of record,¹⁰ and the way to determine in which court the petition is to be presented is by using the following test: If the particular court had jurisdiction over the subject-matter or the parties independent of the act, a declaratory judgment could be rendered, that is to say, provided the other requisites are present. If the particular court did not have jurisdiction independent of the act, it will not get jurisdiction by reason of the act.¹¹ The same precision and formality should be observed in the petition asking for a declaratory judgment as in the pleadings in other cases, and the petitioner must be one who would have standing to be a party if the action were in one of the usual forms.¹² The case of *Rockwood & Co. v. Pusey*,¹³ is interesting because it is an odd one. An action of replevin was brought, and there was a rule for judgment for want of a sufficient affidavit of defense. The defendant then sought to use the affidavit of defense as a petition for a declaratory judgment, but the court refused so to use it, saying that the act contemplates a distinct proceeding by petition, and not the grafting of an application for a declaratory judgment on a pending action at law.

Acceptance or rejection of jurisdiction may depend largely upon the manner in which the facts are shaped and pleaded, to the end that a real issue shall be presented for decision. Thus, in a great many instances, the situation is largely in the hands of counsel. The case of *Carter et al., School Directors v. Blakely Borough School District*,¹⁴ illustrates how the facts could be shaped to get a case before

⁹P. L. 647.

¹⁰1923 P. L. 840, Sec. 1.

¹¹Additional Law Judge, 53rd Judicial Dist., 10 Pa. D. & C. 577 (1927); *Frederick's Estate*, 10 Pa. D. & C. 591 (1927).

¹²Additional Law Judge, 53rd Judicial Dist., *supra*.

¹³95 Pa. Super. Ct. 129 (1928).

¹⁴29 Lackawanna Jurist 91.

the court so that a declaratory judgment would be rendered. In the above case the School District of the Borough received authority from the voters of the district for a bond issue to erect and equip a new school building and put an addition to another building. The members of the School Board petitioned the court for a declaratory judgment, the petition stating that the petitioners considered it advisable and desired to erect a gymnasium, and asked the court to decide whether the erection of the gymnasium was within the purpose approved by the voters, and if so, that the court enter a judgment authorizing them to so spend the remaining money. The court dismissed the petition, saying that a judgment rendered would be merely an advisory opinion, since the school directors would not be bound thereby to erect a gymnasium, but could change their mind about doing so. A proper case for a declaratory judgment could have been created with little difficulty. All that was necessary was a resolution of the board of directors to erect the gymnasium, an appropriation of money for preliminary plans, and a notice from the treasurer or other interested party, denying the authority of the board so to act. This would have created an issue within the scope of declaratory judgment procedure.

The main purpose of the act is to provide a convenient method of determining the disputed interests of parties under statutes, ordinances, deeds, wills, and written contracts.¹⁵ The act has been used to construe leases;¹⁶ to obtain construction of wills;¹⁷ to construe statutes and ordinances;¹⁸ to construe a deed of trust;¹⁹ to decide the

¹⁵Ladner v. Siegel, 294 Pa. 268 (1928); Wagner v. County of Somerset, 96 Pa. Super. Ct. 434 (1929).

¹⁶Girard Trust Co. v. Tremblay Motor Co., 291 Pa. 507 (1928); Spector v. Bonwit Teller Co., 10 Pa. D. & C. 101 (1928); Dattolo v. Stevenson, 93 Pa. Super. Ct. 588 (1928).

¹⁷Kariher's Petition, *supra*; Brown's Estate, 289 Pa. 101 (1927); Morris v. Morris, 13 Pa. D. & C. 634 (1930); Kidd's Estate, 293 Pa. 21 (1928); Paine's Estate, 13 Pa. D. & C. 629 (1930).

¹⁸Cupp Grocery Co. v. Johnstown, 288 Pa. 43 (1927); Brookville's Election, 5 Pa. D. & C. 54 (1924); Taylor v. Haverford Twp., 299 Pa. 402 (1930).

¹⁹Devlin's Trust Estate, 284 Pa. 11 (1925).

effect of building restrictions in deeds;²⁰ to construe indemnity contracts;²¹ to construe an ordinary deed.²² In the case of *Fox, District Attorney v. Ross*,²³ the act was made use of by one appointed district attorney by the Board of Judges to fill a vacancy, to have the length of the term for which he was appointed judicially determined, and also to determine whether the appointment was legally made. In *Sterret's Petition*,²⁴ the act was used to declare the rights, status, and duties of a sheriff in relation to the enforcement of law under an executive order of the President of the United States. In another case, the court refused to use the act to determine the extent of an injunction in regard to contemplated acts, saying that the declaratory judgments act is not to be used to modify or elucidate a decree of court.²⁵ Whether the Supreme Court will use the act to annul a marriage is still an open question, since no such case has yet gone up to our highest court. However there is a Superior Court case and a County Court case upon this point. In the case of *McCalmont v. McCalmont*,²⁶ the paramour of a woman divorced for adultery in Pennsylvania petitioned for a declaratory judgment. He married her in Maryland during the lifetime of her former husband, and both parties were residents of Pennsylvania. The act of Mar. 13, 1815,²⁷ forbade such a marriage. But the court refused the petition on two grounds: First, that there was another method available for the speedy determination of the issue involved, and second, that it is a matter of judicial discretion whether or not jurisdiction will be taken of a particular case. As a matter of fact, there was no

²⁰*Garvin & Co. v. Lancaster County*, 290 Pa. 448 (1927); *In re Plastic Club*, 7 Pa. D. & C. 50 (1925); *Hoffman's Petition*, 7 Pa. D. & C. 88 (1925); *O'Neil v. Lex*, 9 Pa. D. & C. 149 (1927).

²¹*Malley v. American Indemnity Co.*, 297 Pa. 216 (1929).

²²*Equitable Gas Co. v. Smith*, 13 Pa. D. & C. 616 (1930).

²³7 Pa. D. & C. 263 (1926).

²⁴9 Pa. D. & C. 430 (1926).

²⁵*Ladner v. Siegel*, *supra*.

²⁶93 Pa. Super. Ct. 203 (1928).

²⁷6 Sm. L. 286, Sec. 9.

other remedy available,²⁸ but the court was right as far as the second ground is concerned.²⁹ Since the only reason the petition was refused is because the court used its judicial discretion, the case cannot be cited as authority for the proposition that the declaratory judgments act will not be used to annul a marriage, in a proper case. In the case of *Duchi v. Duchi*,³⁰ the court rendered a declaratory judgment declaring null and void a purporting marriage between first cousins. There was no other remedy available, and the court did well to clear up the undesirable status of being a party to a void or voidable marriage. If a proper case comes before our Supreme Court it can make real use of the declaratory judgments act in annulling purporting marriages.

Before the court will entertain a petition, the parties must all be before the court.³¹ In addition to the persons in interest being made formally parties to the proceeding, they must be notified that they have been made parties or that they shall appear and defend, otherwise the judgment rendered will not be *res judicata*.³² Thus there is no denial of due process.³³ The declaration may be either affirmative or negative in form and effect, and has the force and effect of a final judgment or decree.³⁴ Under section six of the act, the court may refuse to render a declaratory judgment where it would not terminate the controversy or uncertainty giving rise to the proceedings. Section seven provides for an appeal as in other cases, and section nine provides for the right to a jury trial if the facts are in dispute.

Courts view the act with favor, as is evidenced by a remark made by the court in the case of *Girard Trust Co. v. Tremblay Motor Co.*, *supra*, to the effect that the parties could have avoided certain difficulties if they had sought a

²⁸*Seibert v. Seibert*, 3 Pa. D. & C. 142.

²⁹*Brewer v. Brasted*, *supra*.

³⁰11 Pa. D. & C. 610 (1928).

³¹*Schoen's Petition*, 6 Pa. D. & C. 256 (1924).

³²*Carter et al, School Directors, v. Blakely Borough School District*, *supra*.

³³Additional Law Judge, 53rd Judicial District, *supra*.

³⁴1923, P. L. 840, Sec. 1.

declaratory judgment at an earlier stage of their dealings. In another case,³⁵ the Supreme Court, per Chief Justice Moschzisker, said that the declaratory judgments act is an excellent piece of legislation when kept within proper bounds. To summarize, a declaratory judgment will not be granted: 1. When the court is asked to decide moot or imaginary cases that do not exist in fact.³⁶ 2. When a mere advisory opinion is asked for, to which the answer would not be binding, and the judgment rendered would not be *res judicata*.³⁷ 3. Where the court has no jurisdiction over the subject-matter or the parties.³⁸ 4. Where there is another statutory remedy available which has been specially provided for the particular type of case.³⁹ 5. Where the court is asked to pass upon future rights in anticipation of an event that may not happen, unless special circumstances warrant an immediate decision and all parties appear in court.⁴⁰

C. Richard Iobst

LIABILITY OF DRAWER ON FORGED ENDORSEMENTS OF NEGOTIABLE INSTRUMENTS

As a general rule,¹ the drawer-depositor, upon showing a forged endorsement on his check, is permitted to recover the amount paid thereon by the drawee-bank. The reason for this rule is that there is a contract implied from the relation of the parties and from general business custom, between the bank and its depositor, to the effect that the former is to pay the latter's check to the person designated

³⁵Taylor v. Haverford Township, *supra*.

³⁶Bell Telephone Co. v. Lansdowne Borough, *supra*.

³⁷Carter et al., School Directors v. Blakely Borough School District, *supra*.

³⁸Additional Law Judge, 53rd Judicial District, *supra*.

³⁹Shallenberger v. Shallenberger, *supra*.

⁴⁰Conemaugh Iron Works Co. v. Delano Coal Co., 298 Pa. 182 (1929).

¹Cf. 52 A. L. R. 1297; 22 A. L. R. 1228.