North Dakota Law Review

Volume 16 | Number 5 Article 2

1939

The Declaratory Judgement

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CODE REVISION

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Hiring; Liens; Livestock; Militia, Soldiers and Sailors; Mines and Miners; Minors; Motor Vehicles; Municipal Government; Negotiable Instruments; Nuisances; Obligations; Occupations and Professions; Offices and Officers; Partnership; Probate Procedure; Property; Public Buildings and Institutions; Public Utilities; Public Welfare; Recreation, Sports and Amusements; Sales and Exchange; State Government; Succession; Descent; Wills; Taxation; Townships; Trusts, Uses and Powers; Warehousing and Deposit; Waters; Weeds; Weights and Measures; Workmen's Compensation; and General Provisions.

Each of these titles are being logically divided into chapters. Some of these titles may have to be changed during the course of revision. It would be very helpful if the members of the Bar would consider these titles and make any suggestions which they deem pertinent.

CODE COMMISSION.
By C. L. Young,
Clyde Duffy,
A. M. Kuhfeld,
Commissioners.

THE DECLARATORY JUDGMENT

Alternative Relief — There are two lines of authority upon the question of whether the declaratory judgment is proper as an alternative remedy. One view is that the remedy is proper only when an ordinary remedy is not available. The second and seemingly more reasonable attitude is that declaratory relief can be had whether a remedy at law is to be had or not. Most authorities consider this the majority and better interpretation. Borchard, Declaratory Judgments, (1934) p. 151.

As yet, this issue has not been directly raised in any North Dakota court, but on analysis of decided cases involving the declaratory judgment, it appears that North Dakota leans toward the majority view. In agreement to reduce the debt, and subsequent repudiation by the defendant city, plaintiff brought an action for a declaratory judgment which was allowed by the court, although it is plain that the action could have been brought on the contract. Jones Lumber Co. v. City of Marmarth, 67 N. D. 309, 272 N. W. 190; (1937). In another case, State v. Divide County, where the question of the paramountcy of a state mortgage and county tax liens were in issue, a declaration was allowed. Here, the State could have brought foreclosure proceedings as was done in a similar case cited in the opinion of the court. State v. Burleigh City, 55 N. D. 1, 212 N. W. 217; (1927). The court, in ruling that action for declaratory relief was proper, listed the requirements for the use of that remedy as follows: (1) a justiciable controversy between (2) parties whose interests were adverse, (3) the party seeking declaratory relief must have a legal

interest, and (4) the issues involved must be ripe for judicial determination. Langer v. State, 284 N. W. 238 (1939). There is no statement as to whether or not the declaratory judgment is proper as an alternative remedy, but the natural implication from the absence of any negative statement, is that relief by declaration may be given whether there is a remedy at law or not.

On examination of the North Dakota law on this subject, the Uniform Declaratory Judgment Act, it seems capable of but one interpretation. It reads in part: "Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Com. Laws of N. D., 1925 Supp. Sec. 7712al. That is, even if the plaintiff could have or has asked for coercive relief, the fact that he chose or also chose a declaration is not a bar to his action. Continuing, that act states: "No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for." Comp. Laws of N. D. 1925 Supp. Sec. 7712al. That is, even if coercive relief might have been possible, the action is not open to objection because it was brought for a declaration. Borchard, commenting on the Michigan act which is identical to our own, says: "Thus a declaration may be asked (1) even though a coercive decree is also sought; (2) even though a coercive decree could be but is not sought; (3) or even though a coercive decree could not have been sought. . ." Borchard, Declaratory Judgments, p. 159, (1934).

Of course, there are numerous exceptions to the above stated conclusions where it is in the discretion of the court as to the propriety of declaratory relief. The Act especially provides for such situations as follows: "The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings." Comp. Laws of N. D., 1925 Supp. Sec. 7712a6. So, if a declaration would not satisfactorily dispose of the case, or if another method would give a more satisfactory result, it is up to the discretion of the court as to whether a declaratory judgment should be allowed. The same situation arises if it appears that a pending suit will better settle the issues involved. Where there is a special statutory method for the determination of a particular type of case, the courts uniformly hold that it is not proper for a declaration to ursurp the statutory remedy as provided by legislative mandate. Borchard, Declaratory Judgments, p. 148; (1934). Several courts have fallen into error traceable to the above exceptions. Relying on cases where a declaration had been denied because of some exceptional circumstance, they reached the conclusion that a "declaratory action could be employed only when no ordinary remedy was available." Borchard, Declaratory Judgments, p. 148; (1934).

The above quotation indicates the minority view, first established by a ruling of the Supreme Court of Hawaii of 1923, the court refusing to try by declaration the conflicting claims of two

sets of officials of a fraternal society on the ground that Quo Warranto was the proper remedy. Kakeikau v. Hall, 27 Hawaii 420, (1923). This decision preceded a long line of cases holding the declaratory judgment proper as an alternative remedy. Pennsylvania courts in certain will cases fell into the same error in suggesting that the declaratory action could be employed only when no ordinary form of action was available, because the main purpose of the Act was to insure a speedy determination of issues. Borchard, Declaratory Judgments, p. 150; (1934). In a Washington decision (1939) the court said, "The proceeding for a declaratory judgment is not a substitute or alternative for the common law or statutory actions existing when the declaratory judgment act was passed in this state." Peoples Park v. Anrooney, 100 Wash. Dec. 43, 93 P. (2d) 362. They relied partly on a Minnesota decision which said, "The Act was not designed to supplant other remedies well established and working satisfactorily." Farmers & Merch. Bank v. Billstein, (1928) 204 Minn. 224, 283 N. W. 138. Minnesota, in turn, relied on a New Hampshire and a Pennsylvania decision along with several others as authority. Lisbon Village Dis. v. Lisbon, 85 N. H. 173, 155 A. 252, 1931. Bell Tel. Co. v. Lewis, 313 Pa. 374, 169 A. 517, (1934.) In the Pennsylvania case, a declaration had been denied because of a special statutory remedy. These states and a few others refuse to allow a declaratory judgment as an alternative remedy.

Briefly summarizing, under the minority holding declaratory relief should be granted only when there is no other remedy available. By the majority view, the courts will render a declaratory decree even though coercive relief is also sought, could be sought, or could not be sought, with exceptions as before noted. The latter holding is considered the sounder and more reasonable one. Quoting Borchard, "A court should not insist that a plaintiff adopt his most drastic and expensive remedy, when a simple, mild, and inexpensive remedy will determine the issue and preserve his rights . . . Self-restraint, the willingness to invoke arbitration and declaration of rights instead of hostilities and coercion, is a mark of civilization and should be encouraged, not discouraged." Borchard, Declaratory Judgments, p. 162; (1934).

It is submitted that the declaratory judgment should properly be considered as an alternative remedy, available whether or not other relief is possible.

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CAN A LAWYER MAKE A LIVING?

[This excerpt from an article with the above title in 'The Law Student' by Irving Shore, of San Francisco, based in part on the pamphlet 'The Economics of the Legal Profession' by Dean Lloyd K. Garrison of the Wisconsin Law School, seems to indicate, (1) that lawyers are not comparatively worse off than other professions, and (2) that the primary cause of the Bar's economic