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Declaratory Judgments

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State. It is apparent that he printed these ballots without rotating the names intentionally and for the designed purpose of taking an unfair advantage over the Free Press. This act of perfidy on the part of Frisky Buckles, occurring at the primaries is not so fatal to the Free Press as had it been pulled off in the fall, and we are glad he exposed this crookedness in the primary." Verdict for plaintiff. HELD: Affirmed. The publication exceeds fair comment and criticism as the libelous statements are set forth as facts.

DECLARATORY JUDGMENTS

In the December issue of the Los Angeles Bar Association Bulletin we find an article by Hon. L. R. Yankwich, Judge of the Superior Court, in which he designates some recent uses or applications of the Declaratory Judgments Act.

In the first reported California case, *Blakeslee vs. Wilson,* 190 *Cal.* 479, it was resorted to by an attorney for a determination of his rights under a contract of employment on a contingent fee basis. As the question arose on demurrer, the Supreme Court, while upholding the constitutionality of the statute, had no occasion to determine what relief could or could not be granted under it.

In *James vs. Hall,* 55 *Cal. App. Dec.* 355, it was used to determine a person's rights to certain motion picture films and productions.

Again, where the record showed that a controversy not only existed but was being continually waged as to the rights of parties under a lease, the Court, in *Lane Mortgage Co., vs. Crenshaw,* 56 *Cal. App. Dec.* 1163, held it to be the duty of the trial court to determine such rights.

The Kansas statute has been used in a number of cases. In one case, *State vs. Kansas City,* 110 *Kan.* 603, 204 *Pac.* 690, the statute was employed to determine the right of a city to issue internal improvement bonds, bearing a rate of interest greater than five per cent, without reserving the privilege of prepayment at the end of five years, and the Court said this:

"The proceedings in this case serve to illustrate operation of the Declaratory Judgment Act. Execution of the city's internal improvement program placed it in this dilemma: If privilege of prepayment were not written in the bonds, the city and its officers were exposed to prosecution by the State for abuse of corporate power and violation of law, and the securities might not be marketable. If privilege of prepayment were written in the bonds, a heavy financial burden would be placed on the taxpayers, perhaps unnecessarily. Formerly, the city would have been compelled to choose one course or the other, and abide the consequences. The law officers of the State could not give a binding interpretation of the statute, and, because of its ambiguity, could not consent to the course which the city claimed it was authorized to pursue. Therefore, a controversy existed, justifiable under the Declaratory Judgment Act. The action was commenced in the district court on February 7, 1922, and the defendant answered instanter. The cause was heard on the petition and answer, and a stipulation that the pleadings stated the facts. The declaration of the district court was rendered February 7, and the appeal was lodged in this Court on February 10. This Court was in session when the appeal was filed. Because of the public importance of the question involved, the cause was advanced for immediate hearing, and on February 10 it was submitted for final decision, an oral argument and briefs of counsel which accompanied the

appeal papers. The city may now proceed with its improvements without any of the embarrassment and without any of the delay which would have been encountered if the remedy of declaration of right had not been available."

It has seemed to us, during the past two years, that the remedy could and should have been resorted to in order to obtain judicial construction of the meaning of the term "loss" as contained in the 1927 amendment of the compensation law, to avoid the delay which has occurred in payments to claimants whose permanent injuries have resulted in stiffness of joints instead of severance, and to avoid numerous separate appeals.

PRESUMPTIONS

How frequently one reads the following in the opinion of a court of last resort: "The findings of the trial court are presumed to be correct," or "There is some evidence to support the judgment of the trial court, hence it must be affirmed."

Undoubtedly a long line of decisions support the position taken. Even where the reviewing court might have arrived at a different result if originally tried before it, yet if there is not a clear preponderance of the evidence against the findings, the judgment will not be disturbed. The reason for such a rule is set out in *Ott vs. Boring,* 121 *N. W.* 126, as follows: "It is recognized that there are many things which cannot be spread upon the printed record, but may properly be considered by a trial court and are of great, and often controlling, significance in determining the truth as between conflicts from the mouths of witnesses. As experience shows, and from the very nature of things, justice is much more likely to be done by leaning pretty strongly upon the initial determination than by endeavoring to treat a disputed matter from an original standpoint. Hence the rule that there must not only be a preponderance of evidence against such determination, but there must be a clear preponderance. The significance of the word 'clear' is not always fully appreciated. Manifestly, that requires the preponderance to be so apparent as to manifestly outweigh any probable legitimate influence upon the triers of those advantages for discovering the truth which the reviewing tribunal cannot have."

Yet, judging by what we occasionally hear, the thing that seems to impress lawyers as well as laymen is the alleged fact that, in the everyday consideration of questions by human beings acting in the capacity of trial judges, final judgments occasionally may be entered upon the basis of a bad breakfast, or an uncanny ability to determine political ground tremors, as well as upon fair and equitable application and consideration of fundamental legal principles as related to evidentiary facts; and as these things can no more appear in the record than some other matters, they come away from the court of last resort with a feeling that the real issues involved in their particular case are virtually left unsolved, and the fact that "justice is more likely to be done by leaning pretty strongly upon the initial determination than by endeavoring to treat a disputed matter from an original standpoint" makes little or no appeal to them. It is easy enough to make a broad application of law and legal principles, so long as they affect the other lawyer or the other lawyer's clients, but it isn't so easy to make the application or to acknowledge its correctness when our own interests or those of our clients are adversely affected.