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## Constitutional Law-Validity of the Uniform Declaratory Judgment Act

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*Constitutional Law—Validity of the Uniform Declaratory Judgment Act.* Appellee prayed for a determination of the rights and obligations of the parties under a written contract for the sale of shares of stock in a corporation. Although the complaint alleged no invasion of appellee's rights, the lower court acknowledged the prayer in a judgment rendered pursuant to the Indiana enactment of the Uniform Declaratory Judgment Act. The judgment pronounced the rights and obligations which devolved upon the parties from the construction which the court placed upon the disputed provisions of the contract. This appeal challenges the constitutionality of the statute. Held, the Uniform Declaratory Judgment Act does not offend the Indiana constitution.<sup>1</sup>

Although a complete realization of the value of preventative justice is an account in modern history, the declaratory judgment is not an adventure in the judicial process. Here, as elsewhere in the evolution of human understanding, discovery is nothing more than a consciousness of the old. When the first judgment was rendered in favor of a defendant a declaratory judgment was given. There was no consequential relief demanding execution; no one was summoned to conduct or reprimanded for conduct; it was merely a declaration that a duty did not exist, or, if the duty and its correlative right did exist, there had been no violation. More pronounced illustrations are readily available in the history of Anglo-American jurisprudence. An action to remove cloud from title, the giving of instructions to a trustee, the founding of boundary lines, a suit to construe a will, *quia timet*—all carry the impress of their modern sequel, the declaratory judgment.<sup>2</sup> History, then, is in accord with the recent decisions which have sustained preventative justice.

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<sup>27</sup> Yazoo, etc., R. R. v. Jackson Vinegar Co. (1912), 226 U. S. 217; 19 Minn. L. R. 119.

<sup>28</sup> 45 Harv. L. R. 1102.

<sup>29</sup> 2 Ind. L. J. 620, 624.

<sup>30</sup> Burns' 1933, sec. 40-201.

<sup>31</sup> Compare other legislative devices set out in 45 Harv. L. R. 1102.

<sup>1</sup> Rauh v. Fletcher Savings & Trust Co. (1935), 194 N. E. 334 (Ind. Sup. Ct.).

<sup>2</sup> Nashville, C. & St. L. R. Co. v. Wallace (1933), 288 U. S. 249; *State ex rel. Hopkins v. Grove* (1922), 109 Kan. 619, 201 Pac. 82; Farabaugh and Arnold, *The Uniform Declaratory Judgments Act* (1928), 3 Ind. L. J. 351.

The contention is invariably raised, and was raised by appellant in this case under Article 3, Section 1 of the Indiana constitution, that a declaratory judgment is in violation of the doctrine of separation of powers. Such a challenge presupposes an usurpation of power by one branch of government at the expense of another. The legislative department, whose power is limited to the formulation of social control, has no claim to the application of social control to specific cases. Neither the theoretical nor the practical limitations upon the executive branch embrace a power to determine private controversy. It follows that the power to render declaratory judgments resides with the judiciary unless such a power is outside the governmental purview. Despite the ostensible independence of the departments of government, it is necessary that an agency of government apply the doctrine of separation of powers. A partial destruction of the doctrine is, therefore, inherent to its enforcement. As guardian of the doctrine, the judiciary is supreme. Unless prohibited by the construction which the judiciary places upon the constitution, it is within the province of the judiciary to ascertain whether government has the power to give declaratory judgments and, if so, to allocate that power. The conclusion is that the judiciary has transcended the doctrine of separation of powers so that, under a realistic viewing, the courts may assimilate unto the judiciary that which appears to them to be generic to the judicial character. Upon this principle it is believed that the Uniform Declaratory Judgment Act is not a grant of power. It was within the exclusive ambit of judicial power to render declaratory judgments without the polite surplusage of legislative enactment.<sup>3</sup> As a logical incident to the functioning of a court under the broad, general grant of power conferred by Article 7, Section 1 of the Indiana constitution, the declaratory judgment has always been at the discretion of Indiana courts.

The function of the judiciary is in the application of a formulated social control to specific cases which results in a final determination, the judgment. That is an adjudication. What, then, are the elemental requisites recognized by the judiciary as indispensable to a judgment? An analysis of the decisions reveals that these problems must be resolved before the word, judgment, takes on definition. 1. It has been said that a judgment must carry consequential relief. 2. There must be adverse parties which implies the further requirement of an actual "case or controversy". 3. The proceedings must accord with rules prescribed by law. 4. The court must have jurisdiction of the subject-matter. 5. The court must have made a reasonable exercise of jurisdiction over the person. 6. The judgment must be *res judicata*.

The following observations attempt to reveal, upon precedent and principle, which, if not all, of the above matters are necessary to a judicial judgment and, having determined the requisites, to ascertain whether those elements are included within the declaratory process.

We have already seen that consequential relief was not accorded in many of the historical actions. After all, the right to damages, to execution, is a remedial or secondary right. It is ancillary to and meaningless without a primary or antecedent right. The former is the protector; the latter the protectorate. The right of freedom from bodily harm, the right of freedom of locomotion, the whole bundle of rights protecting the social interests are

<sup>3</sup> Gavit, *Procedure Under The Uniform Declaratory Judgment Act (1933)*, 8 Ind. L. J. 409. In *Guaranty Trust Co. v. Hannay (1915)*, 2 K. B. 536, the court said, "I can not doubt that had the Court of Chancery in those days (before 1852) thought it expedient to make merely declaratory judgments they would have claimed and exercised the right to do so".

the reason for government, the values which the judicial organism complements, and in the glorification of which remedy is given. The law cannot justify itself by permitting the destruction of a right only that the law may offer a remedy. Prevention is preservation of the right. Through the declaratory judgment the right becomes more nearly inviolate. To say that the law is incapable of recognizing a right before the right is invaded is a proposition which the hospitality of common sense cannot welcome. To force a person into possible illegality merely because his complaint does not include an assertion that some alleged right has been violated and his prayer fails to ask damages is to forget that the remedy exists only to protect the antecedent right. In the case of *Nashville, C. & St. L. R. Co. v. Wallace*,<sup>4</sup> the United States Supreme Court dispelled dictum in *Gordon v. United States*<sup>5</sup> with a holding that consequential relief is not essential to a judgment. There is a conclusive fund of opinion from the state decisions substantiating a like proposition.<sup>6</sup>

The federal constitution limits the jurisdiction of federal courts to "cases and controversies". If the word controversy is shorn of popular connotation and given the technical dress which the decisions have fashioned, confusion is resolved into the simple admission that any case before a court must involve factual experience and a legal capacity of a party must be the subject of litigation. The facts of any particular case necessarily determine whether there is a controversy in the legal sense. Moot questions are not sanctioned by the Declaratory Judgment Act. Dicta in the earlier federal cases,<sup>7</sup> evidently based upon a misconception of the holding in *Muskrat v. United States*,<sup>8</sup> warned that the declaratory judgment was not a "case or controversy". Nevertheless, a recent decision of the United States Supreme Court held that an issue decided in a state court pursuant to a declaratory judgment statute is a "case and controversy" to which the jurisdiction of the federal courts attaches.<sup>9</sup> With a single and temporary interruption,<sup>10</sup> the state courts have upheld declaratory judgments either as a judgment resulting from a controversy<sup>11</sup> or upon the theory that they are not bound by the "cases and controversies" clause since that phrase does not appear in their constitutions.<sup>12</sup> With the decision of *Zoercher v. Agler*,<sup>13</sup> the Indiana Supreme Court had the decision turn upon whether there was a controversy. The Indiana Appellate Court, in *Owen v. Fletcher Savings and Trust Building Co.*,<sup>14</sup> formulated the decision upon a like issue. Yet the Indiana Supreme Court in

<sup>4</sup> (1933) 288 U. S. 249.

<sup>5</sup> (1865) 117 U. S. 697.

<sup>6</sup> *State ex rel. Hopkins v. Grove* (1922), 109 Kan. 619, 201 Pac. 82; *Blakeslee v. Wilson* (1923), 190 Calif. 479, 213 Pac. 495; *Braman v. Babcock* (1923), 98 Conn. 549, 120 A. 150; *In re Kariher's Petition* (1925), 284 Pa. 455, 131 Atl. 265.

<sup>7</sup> *Liberty Warehouse Co. v. Grannis* (1927), 273 U. S. 70; *Willing v. Chicago Auditorium Assn.* (1928), 277 U. S. 274.

<sup>8</sup> (1911) 219 U. S. 346.

<sup>9</sup> *Nashville, C. & St. L. R. Co. v. Wallace* (1933), 288 U. S. 249.

<sup>10</sup> *Anway v. Grand Rapids R. R. Co.* (1920), 211 Mich. 592, 179 N. W. 305.

<sup>11</sup> *Washington-Detroit Theatre Co. v. Moore* (1930), 249 Mich. 673; 229 N. W. 618; *Miller v. Miller* (1924), 149 Tenn. 463, 261 S. W. 965; *Braman v. Babcock* (1923), 98 Conn. 549, 120 Atl. 150; *In re Kariher's Petition* (1925), 284 Pa. 455, 131 Atl. 265; *McCrary Stores Corp. v. Braunstein, Inc.* (1926), 102 N. J. L. 590, 134 Atl. 752; *City of Milwaukee v. Chicago and Northwestern Ry.* (1930), 230 N. W. 626 (Wis.).

<sup>12</sup> *Grant Coal Mining Co. v. Coleman* (1932), 204 Ind. 122, 179 N. E. 778; *Sheldon v. Powell* (1930), 99 Fla. 782, 128 So. 258; *Morton v. Pacific Construction Co.* (1929), 283 Pac. 281 (Arizona); *Patterson's Executors v. Patterson* (1926), 144 Va. 113, 131 S. E. 217; *State ex rel. Hopkins v. Grove* (1922), 109 Kan. 619, 201 Pac. 82; *Blakeslee v. Wilson* (1923), 190 Calif. 479, 213 Pac. 495.

<sup>13</sup> (1930) 202 Ind. 214, 172 N. E. 907.

<sup>14</sup> (1934) 189 N. E. 173; (1934) 10 Ind. L. J. 99.

Grant Coal Mining Co. v. Coleman<sup>15</sup> and in the decision under investigation declared that the court was not bound by the Indiana constitution to proceed only in "cases and controversies". The judicial pattern begun in Zoercher v. Agler<sup>16</sup> has evidently been marred by judicial neglect.

The proceeding under the declaratory judgment act is in accord with law in so far as the proceeding complies with the general rules of procedure ordinarily applicable. It is a difficult question whether the declaratory judgment statute is itself adjective or substantive law. If the enactment confers a new jurisdiction upon the courts, it necessarily falls within the scope of substantive law, unless, as some opinion has it, neither the formal distinctions of substance nor of procedure are applicable to describe jurisdictional problems. This enactment does not extend the jurisdiction of the courts to new subject-matter for the substantive rights of parties protected by the courts remain untouched. Furthermore, as we have attempted to show, the courts had jurisdiction to render declaratory judgments prior to the statute. The declaratory judgment is merely a judicial recognition of the legal capacities of parties, that is, a declaration of rights, powers, privileges, and immunities. Although decisions have intimated that a jurisdictional problem may be involved, they have resolved the statute to be a matter of practice and procedure, a method of exercising jurisdiction.<sup>17</sup>

There is no question of a jurisdiction of the person associated with the rendition of declaratory judgments since that jurisdiction must have been acquired and reasonably exercised as in any other type of determination.

It is submitted that if the elements above discussed and accepted as requisites to a judgment are present, the judgment is *res judicata*.<sup>18</sup>

J. F. T.

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*Parties—Real Party in Interest.* The complaint in substance alleged that the appellant was the owner of a certain truck, and while driving the same upon the highway in the state of Indiana, the appellee, through its agent and employee, carelessly and negligently drove its truck at a high rate of speed and in consequence ran into the truck of appellant, thereby damaging it. The appellee filed a general denial and also an affirmative answer to the complaint. In the affirmative answer it was alleged that the appellee was not the proper party in this suit because it had been paid in full for the damages by the State Automobile Insurance Association and for this reason such Association had been subrogated to the rights of the appellee; and, therefore, it and not the appellee was the real party in interest. On appellee's demurrer to this answer being overruled, this appeal was taken. Held, that the demurrer should have been sustained.<sup>1</sup>

It will be remembered that at common law the subrogee had no rights in the law courts for he obtained subrogation only at the hands of equity. Subrogation was strictly a creation of the equity courts. Hence, it necessarily followed that the subrogor was the proper party in an action at law. An assignment stood practically upon the same footing even though it was of a legal nature rather than equitable. The assignee could not bring his action in his own name, but was required to bring it in the name of his assignor. To

<sup>15</sup> (1932) 204 Ind. 122, 179 N. E. 778.

<sup>16</sup> (1930) 202 Ind. 214, 172 N. E. 907.

<sup>17</sup> *In re Kariher's Petition* (1925), 284 Pa. 455, 131 Atl. 265; *Sheldon v. Powell* (1930), 99 Fla. 782, 128 So. 258.

<sup>18</sup> Borchard, *The Constitutionality of Declaratory Judgments* (1931), 31 Colum. L. R. 561.

<sup>1</sup> *Williamson v. Purity Bakeries of Indiana, Inc.* (1935), (Ind. App.).