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Constitutional Law-Declaratory Judgments- Federal Rule

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CONSTITUTIONAL LAW — DECLARATORY JUDGMENTS — FEDERAL RULE—

Tennessee placed a tax on gasoline purchased by Appellant outside the State and stored within it pending use in Appellant's business as an interstate rail carrier. Appellant brought suit in a Tennessee Chancery Court, under the Uniform Declaratory Judgments Act, to have the tax act declared unconstitutional under the commerce clause and the Fourteenth Amendment. The Tennessee court upheld the act; Appellant appealed to the United States Supreme Court, which pointed out that before it could have jurisdiction, under Article III, Sec. 2, of the Federal Constitution, a case or controversy must be presented. Held, in determining this question, the court looks to the nature of the proceeding which the statute authorizes, and the effect of the judgment rendered upon the rights which Appellant asserts. That Appellant, whose duty to pay the tax would be determined by this decision, was "not attempting to secure an abstract determination by the court of the validity of a statute, or a decision advising what the law would be on an uncertain or hypothetical state of facts," but that so long as its rights arising under the Constitution and laws of the United States are protected by invoking the judicial power to review a judgment of a State court, a case or controversy is presented, and it is immaterial that no decree of execution is necessary under the judgment.¹

The controversy here was termed "real and substantial," and the court, thus having jurisdiction, proceeded to a finding against Appellant affirming judgment below, on the constitutional questions. This is a complete reversal of opinion by the United States Supreme Court. Although the question of the validity of declaratory judgments has never before been squarely presented to the court, there have been a number of cases in the past in which the court used dicta that a declaratory judgment is one which constitutes an abstract determination as to what the law would be on an uncertain or

⁴⁵ (Ga.) 144 S. E. 51 (1928).

¹ Nashville, C. & St. L. Ry. v. Wallace (Feb. 6, 1933), 53 Sp. Ct. 345.

hypothetical state of facts—in other words that it is a moot question, one in which no actual rights will be affected.²

Much criticism has been directed at the court since it first suggested that declaratory judgments did not fall within the Constitution's judicial clause limiting the jurisdiction of the Constitutional courts to cases or controversies,³ led principally by Professor Borchard of the Yale Law School.⁴ Justice Stone, who wrote the opinion in the principal case, pointed out in his concurring opinion in *Willing v. Chicago Auditorium Assn.*,⁵ that the question of the constitutionality of declaratory judgments was not before the court in that case, and that to express any opinion about it was, in effect, to give a declaratory judgment.

Declaratory judgments have, in fact, been given by the Federal Courts for many years, in cases involving naturalization,⁶ the construction of wills,⁷ the quieting of titles,⁸ state boundary questions,⁹ an action to pass on an election, and to declare the location of a county seat in territory (Dakota, in this case),¹⁰ a declaration that an award made by the Mexican-American Arbitral Tribunal had been obtained by fraud,¹¹ and suits to determine matrimonial or other status.

The court, in the principal case, does not expressly overrule any of the cases mentioned; but it must be inferred that its decision has this operative effect. Justice Stone has adroitly led the other members of the court to uphold the declaratory judgment. This clearly seems to be true since Justice Brandeis, who wrote the opinion in the *Willing* case, did not dissent here. It would seem safe to say, therefore, that should legislation be adopted by Congress authorizing the rendering of declaratory judgments in suits originally begun in Federal courts, the Supreme Court would uphold it in cases meeting the requirements laid down by the principal case.¹²

W. T. H.

² *Muskrat v. United States* (1911), 219 U. S. 361, 31 Sp. Ct. 250; *Texas v. Interstate Commerce Commis.* (1921), 258 U. S. 162, 42 Sp. Ct. 261; *Fairchild v. Hughes* (1922), 258 U. S. 128, 42 Sp. Ct. 274; *Massachusetts v. Mellon* (1923), 262 U. S. 447, 43 Sp. Ct. 597; *New Jersey v. Sargent* (1926), 269 U. S. 328, 46 Sp. Ct. 122; *Postum Cereal Co., Inc., v. California Fig Nut Co.* (1927), 272 U. S. 693, 47 Sp. Ct. 284; *Fidelity Nat. Bank & Trust Co. v. Swope* (1927), 274 U. S. 123, 47 Sp. Ct. 511; *Willing v. Chicago Auditorium Assn.* (1928), 277 U. S. 274, 48 Sp. Ct. 507, and see (1933) 31 Mich. L. Rev. 404; Borchard, *The Declaratory Judgment in the United States* (1931), 37 W. Va. L. Q. 127; Borchard, *The Constitutionality of Declaratory Judgments* (1931), 31 Col. L. Rev. 561.

³ Art. III, Section 2; for definition of "case" and "controversy", see *Muskrat v. United States* (1911), 219 U. S. 361, 31 Sp. Ct. 250.

⁴ See his article cited in note 2, *supra*, and other articles cited in note 12, *infra*.

⁵ (1928) 277 U. S. 274, 48 Sp. Ct. 507.

⁶ (1927) *Tutun v. United States*, 270 U. S. 568, 46 Sp. Ct. 425.

⁷ *Gainey v. Fuentes*, 92 U. S. 10.

⁸ *Sharon v. Tucker*, 144 U. S. 533, 12 Sp. Ct. 720.

⁹ *Louisiana v. Mississippi*, 202 U. S. 1, 26 Sp. Ct. 408.

¹⁰ *Smith v. Adams*, 130 U. S. 167, 9 Sp. Ct. 566.

¹¹ *La Abra Silver Mining Co. v. United States*, 175 U. S. 423, 20 Sp. Ct. 168.

¹² (1928) 3 Cin. L. Rev. 561, address by Professor Borchard before the Cincinnati Lawyers Club, May, 1928; (1928) 3 Ind. L. J. 351; 9 Tex. L. Rev. 172, chiefly valuable for its citation of all articles on the subject up to and including 1930; (1931) 6 Ind. L. J. 118, case note, stating kinds of actions in which declaratory judgments have, in fact, been rendered in the past; Borchard, *The Constitutionality of Declaratory Judgments* (1931), 31 Col. L. Rev. 561, probably the best and most complete article on the subject. Cf. (1932), 45 Harv. L. Rev. 1089, the only article arguing against the desirability of the declaratory judgments in Federal courts.