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Constitutional Law--Declaratory Judgments

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RECENT CASE NOTES

CONSTITUTIONAL LAW—DECLARATORY JUDGMENTS—Appellees brought action under Uniform Judgment Acts, Section 680.1 to 680.15 Burns' Supplement, as taxpayers, against state board of commissioners, city of South Bend, and the auditor of St. Joseph county. The tax board, on review, had reduced the levy of the county under the power derived from Chapter 15, Acts of 1915. The appellees contend that this act is unconstitutional since the taxing power has been taken away from the municipality and given to an administrative body with final judgment. The complaint alleged an actual controversy and asked the court to decide the rights, status and legal relations between the parties. Appellants contend that the appellees could not come under the Declaratory Judgments Act unless there was some damage to personal or property rights. The lower court held the statute conferring power on the tax commission unconstitutional. *Held*: Reversed, both the tax commission and the Declaratory Judgments Act upheld. *Zoercher v. Agler*, Supreme Court of Indiana, July 2, 1930, 172 N. E. 186.

The question of the constitutionality of the Declaratory Judgment's Act was not entirely settled by the court in the decision. The specific point decided was that a taxpayer could come into court under the statute with a "public right" and have the legal relations declared, although the petitioner's rights are affected indirectly. But in a dictum, there is strong support for the legislation if only a "private right" is involved. The statute seemingly makes no difference in what kind of right is involved for it states, "Any person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of validity arising under the instrument . . . and obtain a declaration of rights, status and other legal relations thereunder." The act further provides that it shall be "liberally construed and administered."

The common objection to this sort of determination of questions has been that it is not truly a judicial function, but a legislative one. A common definition of legislative power has been the power to lay down the rules for future conduct, whereas the judicial function is the application of the law to the facts. Justice Field (in dissenting opinion) in *Sinking Fund Cases*, 199 U. S. 727, 25 L. Ed. 504; *Smith v. Strother*, 68 Cal. 194, 196, 8 Pac. 852, 853; *Prentis v. Atlantic Coast Line*, 211 U. S. 226. There seems to be no logical difference between applying the law to the facts in the future as well as to those in the past. The state courts are under no constitutional limitations as the Federal courts under their interpretation of "cases and controversies." Article III, Sec. 2, of the Federal Constitution. As a practical matter, the courts entertain suits constantly which are in effect nothing more than declarations: (1) Suits to quiet title and remove clouds on title; (2) Construction of wills, trust instruments and directions to trustees; (3) Proceedings to register title; (4) Statutes which provide for determination of heirs without an order of distribution; (5) Stockholders suing corporation to enjoin payment of tax which they believe to be illegal; (6) Appeal by the State in criminal cases. There are many cases

too where the declaration of rights are very necessary for the complete administration of justice: (1) Declaration where there is a present possibility of immediately creating a cause of action and thus avoid formal hostilities; (2) Declaration where one party has a present right for relief, but the other will suffer prejudice by delay in bringing the action; (3) Plaintiff has no right of present relief but there is probability that defendant will assert a hostile right; (4) Where the cause of action is in an inchoate state and the rights may be declared before consummation of the cause of action; (5) No cause for relief but plaintiff's dealings with third persons depend on the determination of the question between defendant and himself; (6) No present cause of action has accrued but there is a probability that one will accrue. These instances show the scope of the law if applied freely by the court as it indicated in its dictum.

In *Willing v. Chicago Auditorium Ass'n.*, 48 S. Ct. 507, 510, the Supreme Court of the United States indicated by a dictum that a declaratory judgment Act would be unconstitutional. That case seemed to follow a rule laid down in *Muskrat v. U. S.*, 219 U. S. 346, 31 S. Ct. 250. The Indiana case, however, follows the decided weight of authority in recent State decisions. *State v. Grow*, 109 Kan. 619, 201 Pac. 82; *Petition of Kariher*, 284 Pa. 455, 131 Atl. 265; *Bramen v. Babcock*, 98 Conn. 549, 120 Atl. 150; *Blakeslee v. Wilson*, 190 Cal. 479, 213 Pac. 195.

R. R. D.