A Declaratory Judgment for Procedure

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Recommended Citation
Gavit, Bernard C., "A Declaratory Judgment for Procedure" (1936). Articles by Maurer Faculty. 1235.
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Those rules the trial court should have attempted administration of the rules visions, however, relate always to an the rules there announced. Those pro-
judge power to compel compliance with procedural errors, and to give the trial
settled during the pleading stage of the such controversy should be definitely
controversy. There is every reason why
ous and its exact meaning in the course
any code of procedure seems demon-
great many lawyers will constitute a
was reached and a party deprived of
appeal only where an outrageous result
represented, which would be reviewable on
the matter would have to be decided
ex parte) the judge should enter an order
power to define the terms used for the purposes of a pending case should be given the trial
courts, not as an administration of the rules, but as a power to prescribe a rule for the case at hand.
Where the rule is in terms broad, but intelligible, its specific application will cause difficulty. For example, pro-
posed rule 13 (b) provides for the pleading of “affirmative defenses.” In the cases of contract and statutory
rights this presumably continues the distinctions between a condition preced-
ent and a condition subsequent, be-
tween limitations and an exception or
proviso. Before the case is disposed
of the trial court will be called upon to
erule whether the situation presented in-volves one or the other. A plaintiff or
a defendant must now take chances on what that ruling will be when the question is raised during the trial.
There is every reason why some method should be provided whereby such ques-
tions, and other similar ones, can be
finally settled before trial.
The same considerations which support a declaratory judgment as to sub-
stantive rights support a declaratory judgment as to procedure.

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