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REVIEW SECTION

THE UNIFORM DECLARATORY JUDGMENTS ACT

JUDGE LANNEAU D. LIDE *

This legislative enactment, which already constitutes a part of the statutory law of most of the States, was adopted by the General Assembly of South Carolina at its 1948 session, having been approved and become effective on April 7, 1948. See Acts 1948, page 2014, No. 815. This act clearly seems highly potential of good in the functioning of our Courts, looking to *preventive* justice and the early and complete settlement of controversies. Indeed, declaratory judgments have become an important part of the general law of this country, and are now sometimes treated as constituting a separate subject. 16 Am. Jur. 273. For a better understanding of the statute immediately under consideration, we may

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refer briefly to the history of declaratory judgments, including an earlier statute of South Carolina.

This is of course a well recognized innovation upon the original common law conception of the function of Courts, which was limited to corrective relief, rather than declaratory relief. Litigation on the law side of the Court arose out of wrongs committed, whether *ex contractu* or *ex delicto*, and the Court (except in criminal cases) stood as the department of the government to redress private wrongs, and to maintain justice between the parties, so that our system of law grew and developed out of conflicts and tensions; and this basic ideology of the law will of course measurably abide.

But in the development of civilization the concept of justice and its furtherance widens, and the function of the Courts is accordingly enlarged. In other words, it sometimes occurs that it would be highly desirable for the Court to declare the rights of the parties and their legal status, without waiting for a case where damages would lie or some peremptory remedy be required.

It will be remembered in this connection that the common law was a rather hard and fast system, but the exigencies of circumstances and the needs of the people sometimes resulted in its modification through the use of *fictions*. And while fictions in the strict sense have not been used in obtaining declaratory judgments from the Courts, this needed relief has on occasion been obtained by methods which might be deemed *indirect*. It should also be observed that equity, a system wisely devised to remedy the inherent defects of the law, had already provided an appropriate proceeding in a limited class of cases.

I refer of course to the time honored *quia timet* bill in equity, to wit, a suit to remove a cloud from a title or to quiet title. This type of suit affords a method of obtaining a judgment of the Court, of a distinctly declaratory nature, as to certain matters affecting the title to real estate, without awaiting any direct breach of the rights of the plaintiff, and is often used to that end. And attention may be directed to our statutory action to quiet title originally enacted in 1916, and now embodied in Sections 878-884, Code 1942. The effect of this statute is to enlarge and liberalize the original equitable remedy, and it is rather surprising that it seems to have been used so little. See *Forshur Timber Co. v. Santee*

River Cypress Lbr. Co., 203 S. C. 225, 178 S. E. 329, and the very recent case of *Tolbert v. Greenwood Cotton Mill*, opinion filed July 6, 1948.

Another method of obtaining a declaratory judgment upon the status of a title, before there has been any active dispute, is as an *indirect* incident to the equitable suit for specific performance, and the same has frequently been used to settle questions of title, although any possible objection to the title may be highly remote. And even without the benefit of modern declaratory judgment acts, the validity of a municipal bond issue has often been determined, upon what is in effect a friendly suit, although brought in good faith, alleging constitutional and other objections to the act under which the bonds were issued or to the proceedings relating to the issuance thereof. But the uniform declaratory judgments act would seem much more readily available.

The type of litigation to which I have just referred could not of course be considered improper or partaking in any sense of *collusion*, such as that considered in the case of *Walker v. New Amsterdam Casualty Co.* 157 S. C. 381, 154 S. E. 221, wherein the Court held in effect that collusion would not be tolerated, the same being a secret agreement between two persons that the one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose. The purpose of such cases as those above mentioned is entirely laudable, and there is no question about the good faith of such judicial proceedings; but the fact remains that often in cases of this character both sides desire the same result, and this condition imposes a greater responsibility upon the Court—a responsibility, however, which should at least be shared by counsel. While the uniform declaratory judgments act would not entirely obviate this difficulty, its more direct procedure would probably be quite helpful.

This suggests the classic story of the respected lawyer who was employed by a business man he had not previously represented, and was entirely unaware of the fact that his client entertained the hope that his side of the case would not prevail, but it so happened that counsel displayed such unusual energy

and zeal that instead of losing the case he actually won it, and substantial justice was presumably thus effected.

It is important to remember that South Carolina has had since the year 1922 a statutory provision permitting declaratory judgments. The act of 1922 was embodied in Section 660, Code 1942, which for convenience I quote as follows:

"No action or proceeding in any court of record where-in the construction of a deed, a will or written contract is sought or involved shall be open to the objection that a merely declaratory judgment, decree or order is sought, and the court may make binding declarations of the rights of parties to such action or proceedings under such instruments whether other relief is or could be claimed or not."

A careful consideration of this statute will show that it is a remedial statute of considerable scope, facilitating the construction of "a deed, a will or written contract"; and yet during the course of more than twenty years there has been very infrequent use of the statute. However, an illustration of its availability and effectiveness in the construction of a will, may be seen by reference to the case of *DesPortes v. DesPortes*, 157 S. C. 407, 154 S. E. 426. On the other hand, the case of *Daniel, Attorney General v. Conestee Mills*, 183 S. C. 337, 191 S. E. 176, is an illustration of the inadequacy of Section 660, because it "limits declaratory judgments to the construction of a deed, a will, or written contract," and hence the Court was precluded from passing upon the important question of the constitutionality of a certain act in that cause. But this reminds us of the former more limited power of the Court with regard to the construction of a trust deed. *O'Cain v. O'Cain*, 51 S. C. 348.

The "Uniform Declaratory Judgments Act" has frequently been before the Courts in many of the States wherein it has been enacted, and the law in general appears to be fairly well settled up to the present time. I do not think any useful purpose could be subserved by attempting to review the numerous decisions, but it should be recalled at the outset that the scope of this act is much broader than our Code Section 660, for under the present act a deed, will, written contract, statute, municipal ordinance or franchise may constitute the basis of a declaratory judgment; and a contract may be con-

strued either before or after there has been a breach thereof. Persons interested in trusts or estates of various kinds "may have a declaration of rights or legal relations in respect thereto", and the general powers conferred extend to "any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty".

Moreover, under the uniform act, although a declaratory judgment or decree is essentially one which does not in itself involve executory or coercive relief, provision is made for the granting of such relief, upon the basis of a declaratory judgment, under certain conditions.

The uniform act also very wisely contains a provision that where the determination of an issue of fact is involved the same must be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court in which the proceeding is pending. And the act contains the following important sentence: "All existing rights to jury trials are hereby preserved." The act also contains provisions to the effect that it is a remedial statute; "its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relation; and is to be liberally construed and administered."

Without attempting further to analyze this act, there are certain general principles which I think may be properly drawn from the decisions construing and applying the act, and one of these is that the statute does not authorize the adjudication of abstract, academic or moot questions. Hence one of the essentials is that a declaratory judgment must be based upon a justifiable controversy, although the word "controversy" is given a very liberal construction and is sometimes held to include the "ripening seeds of a controversy." 16 Am. Jur. 282-284.

Although as stated, a *controversy* is essential to an action for a declaratory judgment, it is by no means necessary that there shall have been a violation of a right, a breach of duty, or other *wrong* by one party against the other. This is indeed one of the marked distinctions introduced by the declaratory judgment legislation, and one of its decided advantages, because in certain cases by seeking declaratory relief there is an escape from the unpleasant tensions so often incident to litigation. Indeed, there is a widespread opinion that litigation

is a sort of necessary evil. While I do not concur in this view, it remains true that any expedient operating in the interest of good will should be fostered.

It will also be observed that under the terms of the act in question the Court may refuse to render a declaratory judgment or decree where the same "would not terminate the uncertainty or controversy giving rise to the proceeding".

The following paragraph quoted from 16 Am. Jur. 281-282 seem to be an admirable statement of the commendable purpose and real value of the act now under consideration:

"In general, it may be said that declaratory judgments acts are designed to supply former deficiencies in legal procedure and to furnish a full and adequate remedy where none existed before, rather than to supplant or displace pre-existing and effective remedies or to provide a substitute for other regular actions. Their real value lies in the fact that in cases coming within their scope they enable parties to have their rights and obligations determined without either of them being obliged to assume the responsibility and the risk of acting upon his view of the matter and thus repudiating what may subsequently be held to be his obligations or violating what may be held to be the other party's rights. They are not intended to furnish a means by which the courts may be called upon for mere advisory opinions or required to decide moot or abstract questions."

The uniform act, with all its potentialities for good, will be of no avail unless some use is made of it in appropriate cases. It appears that the enactment of this law marks a step forward, and I trust that the experience of those interested in the Judicial Department of the State will vindicate the wisdom of the Legislative Department, to the promotion of the common welfare.