1923

Declaratory Judgments

Edson R. Sunderland
University of Michigan Law School

DECLARATORY JUDGMENTS.—The Connecticut legislature passed an act in 1921 authorizing courts to make binding declarations of rights. The act was attacked as unconstitutional on the same ground raised by the supreme court of Michigan against the Michigan Declaratory Judgment Act in the

case of *Anway v. Railway Co.*, 211 Mich. 592, 12 A. L. R. 26, namely, that declaring rights was not a judicial function. But the Supreme Court of Errors of Connecticut sustained the act as in no way contravening the constitution. *Braman v. Babcock* (Conn., 1923), 120 Atl. 150.

The court devoted very little space in its opinion to the *Anway* case. It only said that it had read that case and also the case of *State v. Grove*, 109 Kan. 619, which sustained the Kansas Declaratory Judgment Act, and that the reading of those cases confirmed it in its view that the Declaratory Judgment Act merely provided a novel mode of judicial procedure which was entirely free from the constitutional objection raised.

In answer to the assertion that declaring rights was not a judicial function, the court said: "Could it be claimed with any pretense of reason that the function was legislative or executive? The answer is obvious. We must then conclude that the function is judicial or that it falls outside of the three functions described as legislative, executive, or judicial. It would be a travesty to hold that this method of remedial justice could find no place in our system of government unless a place was made for it by an amendment of the Constitution. * * * We are not, therefore, required to hold that under our Constitution the general assembly is forbidden to enlarge our customary method of remedial justice by authorizing the novel mode of judicial procedure of permitting courts to render declaratory judgments, and thus to close the door to the use in this state of a method of judicial procedure which for more than half a century has been used to the great benefit of the commonwealth and people by those using kindred methods of jurisprudence, as in Great Britain. To hold that the judicial power of this state is confined to the consideration of cases where consequential relief only is sought would be enforcing a limitation upon judicial power in accord with custom rather than with reason and logic."

Since the decision of the *Anway* case, Virginia (Acts, 1922, ch. 517) and Kentucky (Acts, 1922, ch. 83), as well as Kansas (Laws, 1921, ch. 168) and Connecticut (Public Acts, 1921, ch. 258), have enacted similar statutes, and the Uniform Declaratory Judgment Act has been prepared, approved, and recommended by the Commissioners on Uniform State Laws. As said by Judge Thomas R. Gordon, of Kentucky, in discussing The Law of Declaratory Judgments and its Progress, in the VIRGINIA LAW REVIEW for January, 1923. "It may be assumed that the *Anway* case was not regarded as authority by any of those who participated in the drafting or adoption of any of those acts. That is certainly true as to those having in hand the preparation and consideration and ultimate passage of the Kentucky statute."

E. R. S.