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ACTIONS-DECLARATORY JUDGMENTS-JURISDICTION TO GRANT

RECENT DECISIONS

ACTIONS—DECLARATORY JUDGMENTS—JURISDICTION TO GRANT—A will was duly probated in the county court. By it the plaintiff and defendant were appointed guardians of the testator's minor children. The guardians did not get along together, and could not agree as to how the funds of their wards should be invested. Finally, proceedings were properly brought in the county court to have questions concerning the care of the funds settled. While such proceedings were pending, the plaintiff, evidently not content to have the difficulty settled in this manner, brought an equity suit in the district court against her co-guardian under the Declaratory Judgments Act, in which she asked that a new separate guardianship be authorized, that a corporation be appointed as the new guardian, and that the court direct such guardian as to the investment of the funds. The court granted the relief requested and the defendant appealed. *Held,* that the district court had no jurisdiction [1] to deal with the case presented by the plaintiff's bill because the state statutes gave the county court exclusive jurisdiction of probate matters, including the guardianship of minors, and the Declaratory Judgments Act did not modify that exclusive jurisdiction. *Stewart v. Herten,* (Neb. 1933) 249 N. W. 552.

The court was clearly correct in holding that the Declaratory Judgments Act does not authorize a court to deal with any subject matter which would otherwise be beyond its judicial power.[2] Its only effect is to give a better remedy in respect to matters already within the jurisdiction of the court.[3] If the district court had no power to administer guardianship estates, because that matter was committed to the exclusive jurisdiction of the county court, it cer-

[1] The question of jurisdiction was raised by *amici curiae.*

[2] Hatzell v. Dover, 208 Ky. 149, 270 S. W. 723 (1925).

[3] See generally Sunderland, "A Modern Evolution in Remedial Rights,—The Declaratory Judgment," 16 MICH. L. REV. 69 (1917); Borchard, "The Declaratory Judgment in the United States," 37 W. VA. L. Q. 127 (1931).

tainly could not acquire such power merely by employing a new form of remedy.[4] But the court unfortunately went further and said that the Declaratory Judgments Act did not apply because another adequate remedy was available. The case presented no such problem, but was fully controlled by the jurisdictional limitation imposed upon the district court. If the decision had been confined to the question before the court, the State would have perhaps escaped the misfortune of an endorsement by its highest tribunal of so needless and unsatisfactory a restriction upon the availability of the declaratory judgment.[5]

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[4] Young v. Bridges, (N. H. 1933) 165 Atl. 272; Moore v. Louisville Hydro-Electric Co., 226 Ky. 20, 10 S. W. (2d) 466 (1928). And see, Colson v. Pelgram, 259 N. Y. 370, 182 N. E. 19 (1932); Jefferson County ex rel. Coleman v. Chilton, 236 Ky. 614, 33 S. W. (2d) 601 (1930); Back's Guardian v. Bardo, 234 Ky. 211, 27 S. W. (2d) 960 (1930).

[5] That declaratory relief is not precluded by the availability of another adequate remedy: Borchard, "The Declaratory Judgment as an Exclusive or Alternative Remedy," 31 MICH. L. REV. 180 (1932); Tolle v. Struve, 124 Cal. App. 263, 12 Pac. (2d) 61 (1932); Sheldon v. Powell, 99 Fla. 782, 128 So. 258 (1930). In accord with the dictum in the principal case see Kaleikau v. Hall, 27 Hawaii 420 (1923); In re Cryan's Estate, 301 Pa. 386, 152 Atl. 675 (1930).