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Declaratory Judgments

Edson R. Sunderland
University of Michigan Law School

DECLARATORY JUDGMENTS.—The subject of declaratory judgments has received a great deal of attention in the United States during the last few years, and the interest aroused has resulted in the enactment of statutes in a considerable number of states authorizing courts to declare the rights of parties in cases where relief of the conventional sort is inadequate, inconvenient or impossible. Such judgments may now be obtained in California, St. 1921, ch. 463; Connecticut, P. A. 1921, ch. 258; Florida, Laws 1919, No. 75; Hawaii, Laws 1921, Act 162; Kansas, Laws 1921, ch. 168; New Jersey, Laws 1915, ch. 116, Sec. 7; New York, Laws 1920, ch. 925, Sec. 473; Wisconsin, Laws 1919, ch. 242.

Following the suggestion first appearing in this REVIEW (16 MICH. L. REVIEW 69, December 1917) the Michigan legislature passed the first general act in this country giving courts of law and equity authority to render such judgments. PUB. ACTS, 1919, No. 150; 17 MICH. L. REV. 688. But when the first case under the new act came before the supreme court of Michigan the court itself raised the question of its constitutionality, and invited briefs from the attorney general and from some of the known supporters of the statute, upon the question whether it conferred upon the courts non-judicial functions. And in the opinion which the court rendered upon the case referred to, the statute was held to be vulnerable on the point suggested, and it was declared to be unconstitutional, Justices Sharpe and Clark dissenting. *Anway* v. *Grand Rapids Ry. Co.*, 211 Mich. 592. See comment on this case in 19 MICH. L. REV. 86, and 30 YALE L. JOUR. 161, and an article severely criticising it in 5 MINN. L. REV. 172, entitled DECLARATORY JUDGMENT, by JAMES SCHOONMAKER of the St. Paul bar.

After the decision in the *Anway* case, the legislature of Kansas, undaunted by the adverse action of the Michigan supreme court, enacted the Michigan Declaratory Judgment Act as a Kansas statute, using for the most part the exact provisions of the Michigan act, but adding the phrase "in cases of actual controversy," which did not appear in the Michigan law. See the text of this statute and comment thereon in 19 MICH. L. REV. 537.

Pursuing the course taken in Michigan, a constitutional attack was made on the Kansas law in the first case which arose under it. *State ex rel. Hopkins* v. *Grove* (Kan. 1921) 201 Pac. 82. By a remarkable coincidence this case was almost identical with the *Anway* case in Michigan. In the Michigan case the court was asked to declare whether the plaintiff had a right to enter into a contract which was possibly prohibited by a penal statute. In the Kansas case the court was asked to declare whether the defendant had a right to enter into an office from which he was possibly prohibited by a penal statute. In neither case had the party taken any legal step toward the questionable act,—in Michigan he had not entered into the contract, in

Kansas he had not entered upon the office. In each case the party wished an advance ruling by the court before risking the penalty.

The supreme court of Kansas unanimously upheld the validity of the declaratory judgment act and made the declaration asked. They referred to the *Anway* case as setting forth very fully the arguments against and in favor of its validity, in the majority and minority opinions, but deemed it unnecessary to go over the ground there covered. In regard to the view of the majority of the court as expressed in the *Anway* case, the Kansas court said:

"This view appears to us unsound, and to be the result of confusing declaratory judgments with advisory opinions and decisions in moot cases, and perhaps also of an inclination to treat a general practice that has been long established as having acquired the force of a constitutional guaranty."

The court said that the principle of the declaratory judgment had been practically approved in Kansas in the recent case of *State* v. *Allen*, 107 Kan. 407, where appeals by the state in criminal cases for the purpose of settling points of law, were held to be proper subjects for judicial cognizance. See comment on *State* v. *Allen* in 19 MICH. L. REV. 79.

The supreme court of Kansas has often given convincing demonstration that remedial progress is not incompatible with judicial soundness or constitutional security. The decision just rendered is a further proof that the American system of judicial supervision of legislation can be made workable in a land of rapid social development.

E. R. S.