

Michigan Law Review

Volume 52 | Issue 1

1953

Civil Procedure - Judgments - Res Judicata Effect of Declaratory Judgments

Robert G. Russell S.Ed..

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Civil Law Commons](#), [Civil Procedure Commons](#), and the [Legislation Commons](#)

Recommended Citation

Robert G. Russell S.Ed., *Civil Procedure - Judgments - Res Judicata Effect of Declaratory Judgments*, 52 MICH. L. REV. 141 (1953).

Available at: <https://repository.law.umich.edu/mlr/vol52/iss1/10>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CIVIL PROCEDURE—JUDGMENTS—RES JUDICATA EFFECT OF DECLARATORY JUDGMENTS—In a former action brought pursuant to the Colorado Declaratory Judgment Act,¹ plaintiff was declared to have the right to use a certain roadway

¹ Colo. Stat. Ann. (1935), Rules of Civil Procedure, c. 6, rule 57, p. 223.

as dedicated and defendant was enjoined from interfering with or obstructing plaintiff's use of the same. Thereafter, plaintiff brought the present action to recover damages allegedly resulting from defendant's blockading of the road prior to the bringing of the former action. On appeal from a judgment for plaintiff, *held*, reversed. Where, as here, the damages were antecedent and might with propriety have been determined in the same proceeding in which the declaratory judgment alone was sought, such judgment should operate as a bar to any subsequent claim therefor. *Lane v. Page*, (Colo. 1952) 251 P. (2d) 1078.²

Both the Federal Declaratory Judgment Act³ and the Uniform Declaratory Judgment Act,⁴ which Colorado has adopted, provide that declarations "shall have the force and effect of a final judgment or decree." It is generally agreed that a declaratory judgment is *res judicata* as to the right therein adjudicated,⁵ provided of course that a justiciable controversy⁶ is presented. However, the principal case is in apparent conflict with the weight of authority as to whether a subsequent action based (1) on the right adjudicated in the declaratory proceeding, and (2) on facts or conditions which existed prior to, but were not raised in, the declaratory judgment is barred by *res judicata*.⁷ In holding that the subsequent action is not so barred it has been asserted either that it would be unreasonable to hold that a court had jurisdiction to determine the rights of the parties, but that the successful party had no remedy to enforce such rights after they had been determined,⁸ or that the remedy to enforce such rights as determined by a declaratory judgment is intended to supplement

² It does not appear from the decision whether plaintiff in the second action was attempting to avail himself of the further relief provision of the Colorado statute, c. 6, rule 57(h), p. 224. To the effect that a party who has a justiciable and accrued cause of action may not avail himself of a declaratory proceeding see *Edwards v. Edwards*, 90 Cal. App. (2d) 33, 202 P. (2d) 589 (1949); *Pitzer v. City of East Chicago*, 222 Ind. 93, 51 N.E. (2d) 479 (1943).

³ 28 U.S.C. (Supp. V, 1952) §2201.

⁴ 9 U.L.A. 234, §1 (1951).

⁵ *Morecroft v. Taylor*, 225 App. Div. 562, 234 N.Y.S. 2 (1929); *Great Northern Ry. Co. v. Mustad*, 76 N.D. 84, 33 N.W. (2d) 436 (1948). See 2 ANDERSON, DECLARATORY JUDGMENTS 1079, §459 (1951).

⁶ For a discussion of the concept of justiciable controversy see "Developments in the Law—Declaratory Judgments—1941-1949," 62 HARV. L. REV. 787 at 794 et seq. (1949). The justiciable requirement is founded on the fact that federal courts and most state courts cannot give advisory opinions. See *Conroy v. Civil Service Comm.*, 75 Cal. App. (2d) 450, 171 P. (2d) 500 (1946), where a declaratory judgment was held subject to collateral attack on the grounds that the controversy determined thereby was non-justiciable.

⁷ *Lynch v. Bailey*, 99 N.Y.S. (2d) 585 (1950) (plaintiff's failure to demand damages when he secured a declaratory judgment against a partnership held not a bar to a subsequent action for damages resulting from his forced withdrawal from the partnership prior to the first action); *Winborne v. Doyle, Jr.*, 190 Va. 867, 59 S.E. (2d) 90 (1950) (declaratory judgment as to plaintiff's right to rents held no bar to a separate action for the fair rental value of the property); *Cooke v. Gaidry*, 309 Ky. 727, 218 S.W. (2d) 960 (1949) (here note the wording of the Kentucky Declaratory Judgment Act cited in the case, §639a-4, Civil Code of Practice); cf. *Schleicher v. Schleicher*, 120 Conn. 528, 182 A. 162 (1935). As to the effect of merger and bar in such a situation see JUDGMENTS RESTATEMENT §77, comment b (1942); 10 A.L.R. (2d) 787 (1950).

⁸ 2 ANDERSON, DECLARATORY JUDGMENTS 1059, §451 (1951).

rather than to supersede other causes of action.⁹ As general propositions these assertions are no doubt true. However, it is submitted they are of little utility in deciding the issue presented in the principal case. It is generally recognized that executory or coercive relief may be sought either in association with or as a supplement to declaratory relief.¹⁰ Even though the operative facts which give rise to a coercive cause of action have accrued, the plaintiff if he so desires may seek the milder remedy of a declaratory judgment.¹¹ Having done so the crucial question becomes whether or not he may, after the declaratory judgment, assert those same operative facts and obtain coercive relief under the "further relief" provision of either the federal or uniform act.¹² Here it is apparent that the majority of courts that have dealt with this problem have failed to distinguish between the plaintiff's right to coercive relief initially and his right to coercive relief after the declaratory judgment. In the latter case, either on the basis of *res judicata* or procedural necessity, further coercive relief should be confined to those situations in which the declaration is either disobeyed or disregarded.¹³ To allow the plaintiff to bring successive actions based on the same operative facts but on different grounds or theories is to sanction multiplicity.¹⁴ There is no indication that the declaratory judgment acts were intended to abrogate the rule that vexatious litigation is to be discouraged. In the principal case, it does not appear that the defendant had disregarded either the declaratory judgment or the injunction. Plaintiff's second action was predicated solely on acts occurring prior to the declaratory judgment and since in Colorado a claim for damages may be asserted in a declaratory proceeding, it is submitted that the principal case reached a correct result.

Robert G. Russell, S.Ed.

⁹ *Winborne v. Doyle, Jr.*, note 7 *supra*.

¹⁰ BORCHARD, *DECLARATORY JUDGMENTS*, 2d ed., 438 (1941).

¹¹ *Id.* at 315. Borchard states that there are two general types of action in which declaratory relief may be invoked: (1) actions in which no coercive relief is sought or even possible, i.e., where the plaintiff seeks a declaration that he is privileged to act, and (2) actions where the plaintiff, though capable of suing for an executory or coercive relief, contents himself with the milder declaration of rights as adequate to his need and purpose. See *Kaleikau v. Hall*, 27 *Hawaii* 420 (1923), where declaratory relief was refused because another remedy was available.

¹² 28 U.S.C. (Supp. V, 1952) §2202; 9 U.L.A. 342, §8 (1951). That further relief is limited to further declaratory relief see *Brindley v. Meara*, 209 *Ind.* 144, 198 *N.E.* 301 (1935). *Contra: Morris v. Ellis*, 221 *Wis.* 307, 266 *N.W.* 921 (1936). See Borchard, "An Indiana Declaratory Judgment," 11 *IND. L.J.* 376 (1936).

¹³ That is, the proceeding would be ancillary and would be based on the court's inherent power to issue orders to enforce its own judgments or decrees. See BORCHARD, *DECLARATORY JUDGMENTS*, 2d ed., 441 (1941): "Consequential or executory relief may be demanded either in association with or as a supplement to declaratory relief, should the declaration be not observed and coercion become necessary. . . . Since further or coercive relief could have been demanded in combination with the declaration, in the same action, there is no reason why it cannot be demanded in an ancillary motion should the declaration be disobeyed or disregarded." See also *id.* at 500-501.

¹⁴ As to whether a decree granting or refusing an injunction (not in a declaratory proceeding) is *res judicata* in an action for damages in relation to a matter concerning which the injunction was asked in the first suit see 26 *A.L.R.* (2d) 446 (1952); *Newby v. Bock*,