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DECLARATORY JUDGMENT WHERE CRIMINAL ACTION IS PENDING

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DECLARATORY JUDGMENT WHERE CRIMINAL ACTION IS PENDING—Subsequent to the filing of an information against him before a Justice of the Peace by the Secretary of Agriculture of the State of Iowa for violation of the Iowa Cream Grading Act,[1] plaintiff applied to the District Court for an injunction against the proceeding before the Justice, and requested a declaration that he was not subject to the act. The District Court denied the injunction, but issued a decree declaring that plaintiff was not subject to the Cream Grading Act. On appeal, *held*, affirmed. Where complicated legal issues cannot be determined with equal facility by a Justice of the Peace because of his lack of knowledge of law, a declaratory judgment is proper. Dissent: since the State Constitution grants jurisdiction to the Justice of the Peace, his lack of legal skill is no basis for making an exception to the rule that a declaratory judgment will not be granted after information has been filed in a criminal proceeding. *Ostrander v. Linn*, (Iowa 1946) 22 N.W. (2d) 223.

In the past, courts have been extremely reluctant to interfere with the prosecution of criminal proceedings, on the ground that the use of judicial process to restrain criminal actions would be an unwarranted meddling with the administrative branch of government.[2] The better and more recent view is that the declaratory judgment is ideally fitted, and should be used more frequently, to test the applicability and constitutionality of regulatory statutes containing penal clauses.[3] Although the courts have uniformly refused to intervene after the

[1] Iowa Code (1946) c. 195.

[2] Reed v. Littleton, 275 N.Y. 150, 9 N.E. (2d) 814 (1937); Moresh v. O'Regan, 122 N.J. Eq. 388, 192 A. 831, dissent 194 A. 156 (1937); see discussion, BORCHARD, DECLARATORY JUDGMENTS, 2d ed., 1022 (1941).

[3] BORCHARD, DECLARATORY JUDGMENTS, 2d ed., 1022 et seq. (1941).

initiation of a criminal action,[4] declaratory relief is sometimes given by a federal court where a civil action against an insurer is pending in a state court.[5] However, these cases have been distinguished on the ground that federal and state courts have concurrent jurisdiction,[6] and, furthermore, the recent tendency has been to refuse a declaration when the same issues are involved in the state court.[7] In many of the cases dealing with this question, there is language to the effect that declaratory relief is refused only because the issues can be finally determined in the prior case and a declaratory judgment would serve no useful purpose.[8] Where it appears that the issues cannot be determined in the earlier suit, it is reasonable that a declaratory judgment should be given, although declaratory relief is not proper when the same result can be obtained by appeal to the court which is asked to give the declaratory judgment.[9] The inferior legal ability of a Justice of the Peace, on which the majority largely bases its decision in the principal case, does not seem to be proper ground for avoiding the rule that a declaration will not be given when there is another suit pending.[10] Courts of equity will intervene to restrain future prosecutions where it appears that threatened multiple suits will cause irreparable property damage, even though prosecution has been commenced prior to the request for a declaration.[11] Under Iowa law, an appeal from the judgment of a Justice Court results in a trial de novo on the merits.[12] If the plaintiff in the principal case is unsuccessful in his defense before the Justice and wishes to appeal, he will have to institute what amounts to a new proceeding in the district court. While his appeal is pending, he will be faced with the alternative of suspending his business or being

[4] Updegraff v. Atty. Gen., 298 Mich. 48, 298 N.W. 400 (1941); Spence, Chief of Police v. Cole, (C.C.A. 4th, 1943) 137 F. (2d) 71; 23 CORN. L. Q. 314 (1938).

[5] Ohio Casualty Ins. Co. v. Marr, (D.C. Okla. 1937) 21 F. Supp. 217; Employers' Liability Corp. v. Ryan, (C.C.A. 6th, 1940) 109 F. (2d) 690.

[6] State ex rel. U.S. Fire Ins. Co. v. Terte, Judge, 351 Mo. 1089, 176 S.W. (2d) 25 (1943).

[7] Dewey Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 62 S. Ct. 1173 (1942), in which the court suggests that the refusal of jurisdiction be made mandatory where the issues can be settled in a suit pending before a state court.

[8] Aetna Casualty & Surety Co. v. Quarles, (C.C.A. 4th, 1937) 92 F. (2d) 321; Maryland Casualty Co. v. Faulkner, (C.C.A. 6th, 1942) 126 F. (2d) 175; Maryland Casualty Co. v. Consumers Fin. Service Inc., (C.C.A. 3d, 1938) 101 F. (2d) 514.

[9] Jefferson County ex rel. Coleman v. Chilton, 236 Ky. 614, 33 S.W. (2d) 601 (1930), in which the court says that giving a declaratory judgment ". . . would, in a real sense convert our jurisdiction from appellate into original by means of a circuitous procedure not contemplated by the Constitution."

[10] Carbide & Carbon Chem. Co. v. U.S. Ind. Chem., Inc., (C.C.A. 4th, 1944) 140 F. (2d) 47 at 49. The court says, "when it is said in the cases that declaratory relief should be refused 'where a proceeding involving identical issues is already pending in another tribunal where they can be tried with equal facility,' the 'equal facility' refers to matters affecting the convenience of parties and witnesses and the position of the case on the docket as affecting a speedy hearing, not to the knowledge or lack of knowledge of the trial judge."

[11] Cowan v. City of Buffalo, 247 App. Div. 591, 288 N.Y.S. 239 (1936); Cline v. Frink Dairy Co., 274 U.S. 445, 47 S. Ct. 681 (1927).

[12] Iowa Code (1946) § 601.91; Yost v. Gadd, 227 Iowa 621, 288 N.W. 667 (1939).

subjected to numerous further prosecutions. Since the plaintiff alleges that further proceedings are threatened, there are grounds for the intervention of a court of equity to prevent irreparable damage to his property.[13] In view of the fact that the declaratory judgment is designed to give broader relief than the older equity procedure,[14] a declaration should be proper in such a case even though there is a criminal action pending. Unlike a declaratory judgment based on the inability of a Justice of the Peace to determine complicated questions of law, a judgment based on these grounds is not a usurpation of the constitutional jurisdiction of the Justice of the Peace. The declaration is designed to protect the plaintiff against future proceedings, not to interfere with the present action before the Justice on the theory that such a court is not competent to deal with the problems involved.

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[13] Cowan v. City of Buffalo, 247 App. Div. 591 at 598, 288 N.Y.S. 239 (1936). The court said, "The moving papers, however, go further, and allege that defendants threaten to arrest and prosecute the plaintiff for all subsequent infractions of the regulation. . . . Under such circumstances it may be fairly said . . . that he [the plaintiff] has brought himself within the exception to the rule that equity will not restrain the enforcement of a void ordinance."

[14] Sunshine Mining Co. v. Carver, United States Dist. Atty., (D.C. Idaho 1940) 34 F. Supp. 274. BORCHARD, DECLARATORY JUDGMENTS, 2d ed., 1022 et seq. (1941).