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Declaratory Judgments -- Recent Trends

Joe Eagles

knowledge of the plaintiff's first marriage tends to show that the breach did not result proximately from the disclosure. But the disclosure itself was a clear invasion of the plaintiff's right of privacy in his communications with others.[19] In an analogous class of cases dealing with the tapping of telephone wires, substantial compensatory damages are recoverable, even where there is no injurious use of the information obtained.[20] If the right of privacy in communications is to receive the protection which its importance to the individual merits, it would seem that the courts should assess substantial damages upon those who violate it.

ERVID ERIC ERICSON.

Declaratory Judgments—Recent Trends.

Plaintiff sued in the New York state courts for an injunction to restrain the sale of reclassified stock of defendant corporation and for a declaratory judgment as to the rights of preferred stockholders under the Delaware reclassification statute. The cause was removed to the Federal District Court in New York, the injunction denied, and the complaint dismissed without prejudice to any rights plaintiff might have in the matter. On appeal the Circuit Court of Appeals affirmed the denial of an injunction, but held it was error to dismiss the application for a declaratory judgment.[1]

In three leading cases,[2] the Supreme Court of the United States uttered dicta, criticized as unwarranted and inappropriate,[3] to the effect that the requirements of a case or controversy under Article III of the Constitution prevented declaratory judgments in the Federal Courts, originally or by removal. These dicta were followed in subsequent cases.[4] Recently, by a unanimous opinion in *Nashville,*

[19] Green, *The Right of Privacy* (1932) 27 ILL. L. REV. 237, 252.

[20] Rhodes v. Graham, 238 Ky. 225, 37 S. W. (2d) 46 (1931) commented on (1932) 11 ORE. L. REV. 217.

[1] Harr *et. al.* v. Pioneer Mechanical Corp., 65 F. (2d) 332 (C. C. A. 2d, 1933).

[2] Liberty Warehouse Co. v. Grannis, 273 U. S. 70, 47 Sup. Ct. 282, 71 L. ed. 541 (1927); Liberty Warehouse Co. v. Burley Tobacco Growers Co-op. Ass'n., 276 U. S. 71, 48 Sup. Ct. 291, 72 L. ed. 473 (1928); Willing v. Chicago Auditorium Ass'n., 277 U. S. 274, 48 Sup. Ct. 507, 72 L. ed. 880 (1928).

[3] Borchard, *The Supreme Court and the Declaratory Judgment* (1928) 14 A. B. A. J. 633, 635.

[4] State of Arizona v. State of California, 283 U. S. 423, 51 Sup. Ct. 522, 75 L. ed. 1154 (1931); Lamoreaux v. Kinney, 41 F. (2d) 30 (C. C. A. 9th, 1930); Marty v. Nagle, 44 F. (2d) 695 (C. C. A. 9th, 1930); City of Osceola, Iowa v. Utilities Holding Corp., 55 F. (2d) 155 (C. C. A. 8th, 1932); Chicago Bank of Commerce v. McPherson, 62 F. (2d) 393 (C. C. A. 6th, 1932.)

C. & St. L. R. Co. v. Wallace,[5] the Court seemingly reversed itself and to some extent opened the Federal Courts for declaratory judgments. In that case, on appeal from the Supreme Court of Tennessee, a declaratory judgment under the Tennessee Declaratory Judgment Act was held entitled to review in the Supreme Court as of right under Section 237a of the Judicial Code.

The principal case is the first reported application for a declaratory judgment in the Federal Courts since the Nashville case. In the latter, a declaratory judgment was used for a situation traditionally handled by injunction. This may imply a limitation upon the scope of declaratory judgments in the Federal Courts. The case under discussion, however, seems free from this limitation, for here the Circuit Court of Appeals held a declaratory judgment available notwithstanding its approval of the order denying an injunction.

On the question of removal the Court said in *Willing v. Chicago Auditorium Ass'n*[6] that an application for a declaratory judgment should have been remanded to the state courts for failure to present a case or controversy under Article III. In the principal case, also a removal case, the Court apparently takes a different view,[7] unless the last sentence quoted in the note from the opinion qualifies its position. If that qualification is effective, must some more traditional type of procedure be invoked to gain standing in the Federal Courts in order to secure, as an adjunct thereto, a declaratory judgment?

Five cases have come before the Supreme Court of North Carolina since the Uniform Declaratory Judgment Act[8] was enacted in 1931. In three of these cases the declaratory judgment was denied.

[5] Nashville, Chattanooga, and St. Louis Ry. v. Wallace, 288 U. S. 249, 53 Sup. Ct. 345, 77 L. ed. 444 (1933). (Plaintiff sued in courts of Tennessee for a declaratory judgment to the effect that a state excise tax was, as applied to him, unconstitutional. The Supreme Court of Tennessee held the tax valid, and plaintiff appealed to the Supreme Court of the United States) commented upon (1932) 42 YALE L. J. 974, (1932) 46 HARV. L. R. 850.

[6] *Supra* note 2.

[7] Harr *et al.* v. Pioneer Mechanical Corp., *supra* note 1, at 335 ("The name given the relief sought is of no particular moment. The controversy is clearly adverse and over matters which are justiceable in a District court when there is a diversity of citizenship and the requisite amount is involved. We think *Nashville, Chattanooga, and St. Louis Ry. v. Wallace* is authority for deciding the case fully on the merits. An added reason is found in that, where equitable jurisdiction has been properly invoked in an adversary suit for the purpose of seeking an injunction, the court may dispose of the entire controversy between the parties to the action").

[8] N. C. CODE ANN. (Michie, 1931) §628. See Van Hecke, *The North Carolina Declaratory Judgment Act* (1931) 10 N. C. L. R. 1, for valuable discussion of the procedure, uses and advantages of declaratory judgments.

In the other two it was granted. This does not mean that the Act has not been given liberal interpretation or that the potentialities of the procedure as an alternative remedy[9] have been overlooked. The denials were based on plaintiff's failure to present an adversary dispute on a question of legal import in connection with his application for a declaratory judgment to settle his racial status;[10] on the belief that probate under provisions of Section 4163 of the consolidated statutes ought still to be the exclusive procedure to determine the validity of a will;[11] and on the fact that plaintiff's complaint stated a cause of action which had already accrued under an insurance policy, and not a prayer for anticipatory relief.[12] The two instances in which the Court upheld declaratory judgments illustrate the value of the new remedy. In one a deed was construed in advance of any breach of covenants and the rights of the parties set forth.[13] In the other, a recent and most important case, the Court determined the rights of the city, the traction company, and the public under a street-car franchise from the city of Raleigh.[14]

JOE EAGLES.

Evidence—Trial Judge's Power of Comment.

In *Quercia v. United States*[1] the court charged the jury that defendant had wiped his hands during his testimony and that such a mannerism was almost always an indication of lying, and further, that he thought everything the defendant said was a lie. *Held:* Prejudical error.

Under the common law, trial judges had the power of commenting and expressing their opinion upon the evidence.[2] This rule is still followed in English courts[3] and in the federal courts of the

[9] N. C. CODE ANN. (Michie, 1931) §628 ("Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed").

[10] *In Re* George C. Eubanks, 202 N. C. 357, 162 S. E. 769 (1932). See Miller v. Currie, 242 N. W. 570 (Wis. 1932) (a declaratory judgment as to plaintiff's legitimacy is possible under the Uniform Declaratory Judgment Act.) Commented upon (1932) 46 HAR. L. REV. 336.

[11] Poore v. Poore, 201 N. C. 791, 161 S. E. 532 (1931).

[12] Green v. Inter-Ocean Casualty Co. of Cincinnati, 203 N. C. 767, 167 S. E. 38 (1932).

[13] Walker v. Phelps, 202 N. C. 344, 162 S. E. 727 (1932).

[14] Carolina Power and Light Co. v. Isley, 203 N. C. 811, 167 S. E. 56 (1933).

[1] 77 L. ed. 996 (1933).

[2] Capitol Traction Co. v. Hoff, 174 U. S. 1, 19 Sup. Ct. 580, 43 L. ed. 873 (1899); HALE, HISTORY OF THE COMMON LAW (1792) 291; 16 C. J. 939 §2308b.

[3] Jefferson v. Paskell, 1 K. B. 57 (1916).