4-1-1935

Declaratory Judgments -- Jurisdiction of the Federal Courts

Harry W. McGalliard

Follow this and additional works at: http://scholarship.law.unc.edu/nclr

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.unc.edu/nclr/vol13/iss3/8

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.
Declaratory Judgments—Jurisdiction of the Federal Courts.

The first important question to arise under the recently enacted Federal Declaratory Judgment Act⁴ is one of jurisdiction. In the absence of express provision to the contrary,² it is generally held that declaratory judgment acts do not enlarge a court’s jurisdiction as to parties and subject-matter of a suit.⁸ Jurisdiction is a preliminary matter to be determined according to prevailing rules. Thus if parties of diverse citizenship are engaged in an actual controversy over property exceeding $3,000.00 in value, such a case would be within a federal court’s jurisdiction⁴ for purposes of a declaratory judgment suit. If the value of the property is less than $3,000.00, it would not.⁸ Similarly, if jurisdiction hinges on whether a given question is a “federal question,” this ought to be decided in the affirmative⁸ in order to be eligible for a declaratory judgment.

A more difficult problem is presented when the question is admittedly a “federal question,” arising under an Act of Congress, which act, however, prescribes a special procedure. For example, a labor union in Illinois sought a declaration of its rights under the famous Sec. 7 (a) of the N.I.R.A.⁷ The N.I.R.A. provides that proceedings to enforce the Act shall be instituted by or under the direction of the Attorney-General.⁸ The court dismissed the suit, holding that it was without jurisdiction to entertain a private suit.⁹ The court relied upon a similar construction of the Sherman Anti-Trust Law,¹⁰ and upon

2 The major provision of the federal statute merely declares, “In cases of actual controversy the courts of the United States . . . shall have power to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed.” Declaratory Judgment Act, supra note 1.
3 Borchard, DECLARATORY JUDGMENTS (1934) 135 et seq.
5 Supra note 4.
8 48 STAT. 196 (1933), 15 U. S. C. A. §703 (c) (1934) (“. . . It shall be the duty of the several district attorneys of the United States, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain . . . violations.”)
10 Payne Lumber Co. v. Neal, 244 U. S. 459, 37 Sup. Ct. 718, 61 L. ed. 1256 (1916) (Petitioner sought to enjoin concerted action to prevent use of nonunion-made materials manufactured in other states. Suit dismissed, Justices McKenna,
the assumption that Congress in enacting the N.I.R.A. must have adopted that result.11

A decision to the contrary was made in Michigan. Certain milk distributors who were being harassed by administrative officials for non-compliance with regulations promulgated under the A.A.A. sought a declaratory judgment of their duties. The A.A.A. contains a provision similar to the N. I. R. A. and the Sherman Anti-Trust Law, providing that enforcement proceedings shall be instituted by the Attorney-General.12 In this case the court, without discussing the question of jurisdiction, ruled that the petitioner was entitled to a declaratory judgment.13

These two cases may be distinguished in one respect. In the N.I.R.A. case the petitioner was definitely seeking to determine what rights had affirmatively risen by virtue of the act.14 In the A.A.A. case the petitioner, far from seeking to discover any right, was interested rather in the negative aspect; that is, whether the law imposed any new duties upon him.15 However, in substance, the two petitioners were equally interested parties seeking a declaration of legal relations created by a federal statute.

Which case presents the preferable attitude? It is suggested that there is a valid distinction between a suit in which the subject matter and parties could never be within the federal jurisdiction and a suit in which the whole problem hinges on an Act of Congress which admittedly would present a proper federal question if only the suit were instituted by the Attorney-General. Further, it is open to serious question whether a declaration of private rights is within the conception of Congress as to what should constitute enforcement by the government. At the time of the enactment of the Sherman Act, no such question could have arisen for declaratory judgments were then unknown in America. The "New Deal" statutes raise a host of problems the

---

14 Hary v. United Electric Coal Co., 8 F. Supp. 655 (E. D. Ill. 1934) (petitioner sought to determine what new rights of collective bargaining had been granted to labor under §7 (a) of the N. I. R. A.).
15 Black v. Little, 8 F. Supp. 867 (E. D. Mich. 1934) (petitioner sought to determine whether the A. A. A. required intrastate milk distributors to conform to licensing requirements of A. A. A. boards.).
solution of which may change the entire course of government and industry. If the N.I.R.A. or the A.A.A. is to be interpreted by any court, that is, if any court ever has jurisdiction, it will be a federal court. No one can be a more interested party than one whom the statutes and codes in express terms purport to affect. It is frequently said that an interest in security, the preservation of social equilibrium, and an avoidance of unnecessary disputes underlie the declaratory judgment acts. Therefore, when jurisdiction hinges on the question as to who may sue under a given statute, it would seem more in keeping with the appropriate social policy to hold a private suit sufficient for a declaratory judgment.

HARRY W. MCGALLIARD.

Evidence—Hearsay—Admissibility of Medical Records.

Plaintiff brought an action under a war risk policy to recover for alleged total disability. The defense introduced evidence of a position of employment formerly held by the plaintiff, and also a notation, made by a physician, since deceased, upon the plaintiff's application for such employment reading as follows, "Showing no disease with heart and lungs o.k. application accepted". This latter was objected to as hearsay. Held, that the evidence was properly admitted as part of the res gestae of plaintiff's applying for employment.1

The most common situation in which the admissibility of medical records has been litigated is that involving medical history charts and other records of hospitals. Such records, when containing communications made by a patient to his physician for the purpose of treatment, are protected by the statutory physician-patient privilege,2 even though the records be kept pursuant to some legal requirement.3 However, once

---

1 Jennings v. United States, 73 F. (2d) 470 (C. C. A. 5th, 1934).
2 Massachusetts Mut. Life Ins. Co. v. Board of Trustees of Mich. Asylum for the Insane, 178 Mich. 193, 144 N. W. 538 (1913) (writ of mandamus to permit examination of the records of insane asylum denied); Price v. Standard Life & Acc. Ins. Co., 90 Minn. 264, 95 N. W. 1118 (1903) (hospital records denied admission as evidence); Metropolitan Life Ins. Co. v. Swain, 149 Miss. 455, 115 So. 555, 557 (1928) ("The records consisted of statements of the physician who treated [insured] while a patient in the hospital. The relation of physician and patient exists between the physician who has cause to make an examination and diagnosis of him in a hospital, as well as outside of a hospital, or whether a pay patient or charity patient, and such physician may not deliver his testimony so acquired in open court or have it written down in so-called reports for consideration as evidence in contravention of our privileged communication statute."); Toole v. Franklin Inv. Co., 158 Wash. 696, 291 Pac. 1101 (1930) commented upon (1930) 5 TExhs. L. Q. 300.
3 It should be noted that the privilege granted by the North Carolina statute is not absolute. N. C. Code Ann. (Michie, 1931) §1798 contains this proviso: "That the presiding judge of a superior court may compel such a disclosure, if in his opinion it is necessary to a proper administration of justice."
4 Smart v. Kansas City, 208 Mo. 162, 105 S. W. 709 (1907).