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Declaratory Judgments -- Insurance

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NOTES AND COMMENTS

complicity in one is extremely weak evidence of identity with the other. The principal case, then, is apparently unsupported by the cases cited by the court, and seems definitely out of line with prior decisions involving the use of testimony as to other offenses to prove identity.

JOSEPH M. KITTNER.

Declaratory Judgments—Insurance.

Plaintiff, insurer, issued life policies to defendant, the insured, providing for waiver of premiums and payment of benefits in the event of the insured’s becoming disabled. Having refused to allow repeated claims for disability benefits, the insurer sought declaratory relief in a federal court to the effect that the insured was not disabled and that the policies were void for non-payment of premiums. Held, by the Supreme Court, the Federal Declaratory Judgment Act is constitutional, and a controversy was presented in which the insurer was entitled to declaratory relief.

In spite of three adverse Supreme Court dicta, it has been assumed generally that the Federal Declaratory Judgment Act, if invoked in an actual controversy, is valid. This assumption has found support in numerous decisions of state courts sustaining similar legislation, in the Supreme Court’s apparent change of attitude in Nashville, Chattanooga, and St. Louis Ry. v. Wallace, and in favorable decisions in the lower federal courts. The principal case is, however, the first square holding by the Supreme Court that the Federal Act is constitutional. The decision is equally significant as an indication of the increasing utility of the declaratory judgment in insurance cases.

6 288 U. S. 249, 264, 53 Sup. Ct. 345, 348, 77 L. ed. 730, 736 (1933) (declaratory judgment under Tennessee Statute held to be entitled to review in the Supreme Court).
An insurance policy may be invalid because of fraud or misrepresentation in its procurement, or it may lapse for breach of conditions or non-payment of premiums. Whatever the cause of the policy’s becoming inoperative, where there is a dispute between insurer and insured as to its validity, it is to the advantage of the insurer to secure a final adjudication of the dispute as soon as possible. The insurer may notify the insured of the rescission of the policy, but if the insured denies the insurer’s right to rescind and there is any doubt about the matter, the insurer is forced to maintain reserves to cover the policy until its action has been upheld by the courts. In the principal case the policies would continue in force under the waiver clause, in spite of failure to pay the premiums, if the insured were actually disabled. But the insured delayed bringing suit for disability benefits, and the question of his disability remained undetermined. Although the Statute of Limitations would begin to run against the insured as to the disability benefits, it would not operate against the beneficiary until the latter’s cause of action should accrue upon the death of the insured. The insured might not die until twenty or thirty years later, and at his death the beneficiary might bring an action on the policy, prove that the insured was disabled, that payment of premiums was unnecessary, and thus recover from the insurer. Throughout those years the insurer would have to set aside reserves to cover the policy and, unless permitted to take the initiative in bringing the controversy before the courts, would have to await passively an action by the other parties. Meanwhile many of its important witnesses might die or disappear and the memory of those remaining would be dimmed by the passage of time, with the result that its defenses would become materially weakened.

Before the enactment of declaratory judgment statutes the remedy of the insurer was the bill in equity for cancellation. But equitable relief was available only when the remedy at law was inadequate. In order to show this inadequacy it was not sufficient to prove fraud or misrepresentation in procurement of the policy or that the insured

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8 The insurer might be protected to some extent by a bill to perpetuate testimony or its equivalent under the codes. N. C. Code Ann. (Michie, 1938) §1822(1)-(4); McIntosh, North Carolina Practice and Procedure (1929) §985; Walsh, Equity (1930) §116.

9 An even more serious dilemma is presented by the disputed policy when it has been issued by a mutual company, in which the policy-holder is entitled to a voice in the management and a share in the profits. Until disputes of this kind are adjudicated there is a problem as to which policy-holders are entitled to vote in elections and share in the surplus of the company.


had defaulted in payment of premiums. It was necessary, in addition, to prove special circumstances under which the insurer would suffer not merely inconvenience but irreparable injury if left to its defenses. Such circumstances could be proved by showing that the policy contained an incontestable clause, for unless the insurer were allowed to sue in equity before the expiration of the contestable period he would be in danger of losing forever his right to contest upon grounds covered by the clause. The incontestable clause does not apply where the policy is contested for non-payment of premiums or breach of condition subsequent, and in such cases the presence of the clause in the policy does not make the remedy at law inadequate.

Insurance companies have sought to obtain through the declaratory judgment a more complete remedy than that afforded by the bill to cancel. The declaratory judgment provides a speedy and effective method of determining whether insurance policies are valid and operative by allowing the insurer to take the initiative in obtaining an adjudication of the issues. Policy-holders and beneficiaries have no legitimate complaint against its use since the right of jury trial upon questions of fact is specifically provided. The public, as well as the insurer, has a vital interest in the efficient management of insurance companies, and both should benefit by the elimination of uncertainty and delay. In deciding upon the applicability of the declaratory judgment to suits by the insurer to determine its liability upon a policy, courts have been faced with three problems: (1) whether such a suit presents an actual controversy, (2) whether a declaration of immunity from liability is a declaration of "rights and other legal relations," and (3) whether the availability of another remedy precludes declaratory relief.


The principal case decides that in such suits an actual controversy exists and that a declaration of non-liability is a declaration of "rights and other legal relations." The third problem has caused the greatest confusion among the state and lower federal courts. A number of courts have applied equity rules to petitions for declaratory judgments, refusing relief where there is a so-called adequate remedy at law,18 and requiring the insurer to wait and defend a future suit. Other courts, taking a more practical view of the situation, have refused to apply such a restriction.19 The provision in the statute for declarations "whether or not further relief is or could be prayed"20 and the result in the principal case, although the issue was not raised, would seem to indicate that the existence of another remedy is no absolute bar. Although the availability of another remedy should not, as a matter of law, automatically bar a declaratory judgment, the fact of its existence may be properly considered by the court in determining whether, in the exercise of its sound discretion, it should refuse declaratory relief. In Aetna Casualty and Surety Co. v. Quarles,21 the insurer asked for a declaration that it was not liable to a judgment creditor of the insured, holder of an automobile liability policy. A suit by the judgment creditor against the insurer, as provided in the policy, was already pending. The Fourth Circuit Court of Appeals held a refusal to grant a declaratory judgment under the circumstances to be a proper exercise of judicial discretion.

The extent of the courts' discretion to refuse relief under the Fed-


eral Declaratory Judgment Act is not clear. Whatever discretion exists is a judicial discretion subject to appellate review. The Uniform Declaratory Judgment Act, which has been adopted in North Carolina, makes refusal of declaratory relief discretionary where the uncertainty or the controversy giving rise to the proceeding would not be terminated. There is no such provision in the Federal Act, and it has been strongly contended that the federal courts have no power to refuse to entertain jurisdiction in the exercise of a discretion not based upon an established rule of law. In the Quarles case the court takes the position that it is implied that the granting of declaratory judgments shall rest in the court's discretion, since the statute merely gives the court power to grant the remedy without prescribing conditions under which it is to be granted. The possibility that the useful purpose of declaratory judgment statutes may be defeated by an abuse of judicial discretion is a danger that should be carefully guarded against. In the Quarles case, however, the granting of a declaratory judgment after an action had been brought against the insurer was unnecessary, and the decision is to be commended as an intelligent exercise of the court's discretion under the Federal Declaratory Judgment Act.

Moses Braxton Gillam, Jr.

Equity—Extent of Injunction Against Nuisances.

Plaintiffs petitioned to enjoin as a nuisance a roadhouse situated in plaintiffs' neighborhood. A dancing pavilion was operated in connection with the roadhouse where music was continuously played, and where patrons remained throughout the night cursing, gambling, drinking, and fighting. Notwithstanding the fact that some of the acts connected with the operation of the business were legitimate, the decree granted by the court enjoined the operation of the business in its entirety. As shown by the principal case, a lawful business may become a nuisance by reason of the manner of its operation. In framing a decree to enjoin such nuisances most courts in the absence of a statute hold that there cannot be abatement to the extent of closing out the whole busi-

22 Borchard, Declaratory Judgments (1934) 100.

1 Hunnicutt v. Eaton, 191 S. E. 919 (Ga. 1937).
2 Nevins v. McGavock, 214 Ala. 93, 106 So. 597 (1925); Junction City Lumber Co. v. Sharp, 92 Ark. 538, 123 S. W. 370 (1909); Sullivan v. Royster, 72 Cal. 248, 13 Pac. 655 (1887); Gilbert v. Davidson Constr. Co., 110 Kan. 298, 203 Pac. 1113 (1922); Block v. Fertitta, 165 S. W. 504 (Tex. 1914); Lewis and Spelling, Injunctions (1926) §288.