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Equity -- Extent of Injunction Against Nuisances

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eral Declaratory Judgment Act is not clear. Whatever discretion exists is a judicial discretion subject to appellate review.\textsuperscript{22} 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.\textsuperscript{23} 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.\textsuperscript{24} In the \textit{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 \textit{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.

\textsc{Moses Braxton Gillam, Jr.}

\textbf{Equity—Extent of Injunction Against Nuisances.}

Plaintiffs petitioned to enjoin as a nuisance a roadhouse situated in plaintiffs' neighborhood. A dancing pavillion 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.\textsuperscript{1}

As shown by the principal case, a lawful business may become a nuisance by reason of the manner of its operation.\textsuperscript{2} 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-

\textsuperscript{22} \textsc{Borchard, Declaratory Judgments (1934) 100.}
\textsuperscript{23} \textsc{Uniform Declaratory Judgment Act \textsection 6, 9 Uniform Laws Ann. 127; N. C. Code Ann. (Michie, 1935) \textsection 628(e).}
\textsuperscript{24} 

\textsc{Morrison, Availability of the Federal Declaratory Judgment Act for Life Insurance Cases (1937) 23 A. B. A. J. 788, 791.}

\textsuperscript{1} Hunnicutt v. Eaton, 191 S. E. 919 (Ga. 1937). \textsuperscript{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); \textsc{Lewis and Spelling, Injunctions (1926) \textsection 288.}
ness if a change in the character of its conduct will remove the evils. Only that part of the activity complained of which is offensive is enjoined, and the defendant may continue his business if it can be separately conducted in a harmless way. Thus the following businesses were held to be nuisances, but the decree in each case was framed so as to enjoin only the illegal uses of the premises: a dance hall where the patrons used loud, profane, and vulgar language; a shoe shine parlor where the negro boys employed were noisy and boisterous; a dairy which caused noise, odors, and pests; an iron works which caused noise; a woodwork company where there was loud shouting of workmen and much smoke and noise; a filling station where there was noise and confusion; a poolroom where a large number of criminals, gamblers, and other low and dissolute characters congregated; and a barbecue stand where the employees scuffled in a loud and boisterous manner.

In declaring certain courses of action to be nuisances the legislatures of many states have provided for injunctions of a more rigorous form than those employed to suppress the above mentioned common law nuisances. Many states have passed statutes declaring houses of ill fame, illicit liquor establishments, gambling houses, and other places which foster conduct offensive to public morals to be nuisances. The statutes may be roughly classified into the following two groups: 1. Where the injunction is to be limited to the forbidden activity. 2. Where the entire business or place is to be closed for all purposes. The statutes of the vast majority of states including North Carolina are of the latter class. Thus under these statutes courts have closed a cafe operated in the same building with a house of prostitution, and an entire race track.

10 Block v. Fertitta, 165 S. W. 504 (Tex. 1914).
14 National Refining Co. v. Batt, 135 Miss. 819, 100 So. 388 (1924).
18 37 OKLA. STAT. ANN. (1937) §73. The statute is discussed in Gragg v. State, 73 Okla. 132, 175 Pac. 201 (1918); Ford v. State, 109 Okla. 79, 234 Pac. 635 (1925); PA. STAT. (Purden, 1936) tit. 68, §§467-73.
20 People v. Smith, 48 Cal. 251, 191 Pac. 996 (1920).
where only the betting on the horses was illegal. Some of the statutes under this class provide that so much of any building or structure as may be entered through the same outside entrance shall be closed. The North Carolina statute and several others provide that the place enjoined shall include any building, erection, or place or any separate part or portion thereof, or the ground itself. In none of these statutes of the second class is the deprivation of the use of the property absolute. For the owner may apply to the court for permission to reopen, and if it is satisfied with his good faith he may reopen his business by posting a bond conditioned that he will immediately abate the nuisance and prevent its repetition for a period of one year.

Most of the acts specified in the above statutes were nuisances at common law. But equity has been hesitant to enjoin nuisances where the conduct was also a crime. Hence the legislatures have acted to reassure equity courts of their jurisdiction and to encourage them with a more extensive weapon.

The court in the principal case reached its decision under its general equity powers, and not by statutory provision. It is probable that the extensive scope of statutory injunctions influenced the court in going that far.

HARRY LEE RIDDLE, JR.

Fraudulent Conveyances—Dower Where the Conveyance Is Set Aside—Interests of the Parties.

Plaintiff's husband, eleven months before their marriage, conveyed real estate to his mother in fraud of his creditors. Whereupon a creditor brought an action to set aside the conveyance, and caused notice of lis pendens to be filed. Plaintiff thereafter married the debtor, and subsequently a judgment was rendered setting aside the conveyance as to the creditor. After her husband's death the plaintiff claims dower in this land against the defendants, the purchasers (and their vendees), under a sale pursuant to the judgment in the action to which the wife was not a party. Held, fraudulent conveyances are valid as between the parties, and the plaintiff's husband was never beneficially seized during coverture so that dower would attach.

It is a generally accepted rule that an absolute conveyance of property in fraud of creditors is good as against all the world, except the

\(^{29}\) Pompono Horse Club v. State, 93 Fla. 415, 111 So. 801 (1927).