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Declaratory Judgments

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DECLARATORY JUDGMENTS*

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General Survey

Declaratory judgments in certain special cases have been rendered in Anglo-American courts from time immemorial. For example, interpleader suits, suits by fiduciaries to obtain judicial instructions, and suits to quiet title; it may be said that the recent statutes providing for declaratory judgments do not inaugurate any novelty but they merely have the effect of extending such declaratory jurisdiction to include a wider range of legal and equitable relations.

The distinguishing characteristic of the declaratory judgment is that it may conclusively declare the existing rights of litigants without necessarily being followed or accompanied by execution or by other coercive process or order to give effect to the declaration.

The proceeding is an implement of preventive justice rather than of curative justice, having for its purpose the settlement of disputes before there has been an overt act or physical invasion of a party's rights.

Stated another way, the purpose is to obtain a judicial declaration as to disputed rights before there has been any change in the status quo; before a party has acted on his own interpretation of his rights; or before a wrong has been committed which might destroy or impair rights. An adjudication may be obtained first without having to act at one's peril, without first incurring a penalty or liability for damages.

Under this procedure, a party can more effectively assert his legal position, without having to assume that cocksureness that is humiliated by an adverse adjudication. As was aptly said during a debate in Congress when the Federal Declaratory Judgment Bill was under consideration:

> Under the present law you take a step in the dark and then turn on the light to see if you have stepped into a hole. Under the declaratory judgment law, you turn on the light and then take the step.

In addition to the settlement of private disputes, the declaratory judgment proceeding has equal value in the field of administrative law, in which an adjudication may be obtained without the prior necessity of a possible violation, and risk of fine or imprisonment.

The declaratory judgment proceeding is highly beneficial in obtaining

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an adjudication of rights which formerly were obtainable only by resorting to the extraordinary legal remedies and injunctions. It has been said by Professor Borchard of Yale that the injunctive process and the proceedings for extraordinary legal remedies, all of ancient origin, have accumulated a vast cargo of technicalities, so that one resorting to such remedies often finds himself engulfed in a procedural bog.

The first Florida declaratory judgments statute was enacted 30 years ago.[1] In 1943, Florida adopted the Uniform Act, with modifications.

The 1919 Act applied only to bills in equity for the construction of a deed, will, contract or other instrument *in writing*, and for a declaration of the rights of the person interested therein. The supreme court held that this statute was limited to questions of construction and to the declaration rights existing under such construction.[2]

The 1943 Act broadens the jurisdiction so as to afford relief to any interested person who may be in doubt as to his rights under a deed, will, contract, memorandum or other instrument in writing and whose rights, status or other legal or equitable relations are affected by such writing or by any such statute, regulation or municipal ordinance, including the determination of any question of construction or *validity*. The court is expressly authorized to ascertain any class of creditors, devisees, legatees, heirs, next-of-kin, or others; to direct a fiduciary to abstain from doing any particular act; and also to determine any question arising in the administration of an estate or trust.

Comparison of Uniform and Florida Acts

The Act of 1943 differs from the Uniform Act in that it expressly authorizes the court to determine the existence or nonexistence of any immunity, power, privilege or right, or of any *fact* upon which they may depend, whether such immunity, power, privilege or right is presently existing or will arise in the future. For that reason and also because of other additions which we have in the Florida Act that are not contained in the Uniform Act, cases decided under the Uniform Act have to be valued in the light of these conspicuous differences.

It has been held in some cases under the Uniform Act that the court may refuse a declaratory judgment where the determination turns only upon a question of fact. (As has been seen, the Florida statute has expressly authorized the courts to determine a question of fact.) These cases would not prevent the determination under the Florida Act of an immunity, power, privilege or right depending upon a question of fact.

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1. C. 7857, Acts of 1919.
2. Stuart v. Stephanus, 94 Fla. 1087, 114 So. 767 (1927).

Unlike the Uniform Act, the Florida statute of 1943 authorizes the court to grant relief by way of anticipation with respect to any act not yet done or any event which has not yet happened. The exact meaning and effect of this provision are yet to be determined by the court. The term "relief by way of anticipation" is not self-defining. How and to what extent the court may grant relief by way of anticipation is something yet to be explored. By that is not meant that the court may not declare rights that depend on future events, but there one approaches a no-man's land. All contracts look to the future.

Another difference between the Florida Act and the Uniform Act is that the Uniform Act vests the court with discretionary power to refuse a judgment where it would not terminate the controversy or the uncertainty. This discretionary power of refusal is conspicuously omitted from the Florida statute; but the omission may be more apparent than substantial, for the court would hardly be likely to proceed to a useless declaratory judgment that obviously would not terminate the controversy or remove the uncertainty.

Future Rights

In some of the decisions from other states there are dicta to effect that the court will not declare "future rights." These dicta are somewhat confusing. Of course the courts would not constitute themselves advisors on hypothetical issues because that would not be a judicial function. On the other hand, declarations can be and are frequently made in respect of future events, especially those events that are practically certain to occur and, of course, future events involving acts which a contracting party is obligated to do. For example, the court may declare what rights would vest or exist upon the death of a certain person, assuming of course that those interests which would be affected by the event, and by the declaration are adequately represented in the proceedings.

In a Florida case,[3] the court refused to declare what would be the rights, under a will, of two charitable corporations who were contingent remaindermen, because such remainder interests were dependent upon whether one of two persons would die without issue. However, if the vesting of a future right depends not only upon the happening of a certain future event that is bound to occur, but depends upon the happening of two or more future events and the sequence in which they happen, there would be considerable doubt as to the holding. Surely the court would be less disposed to declare what rights would exist if B died after A, and also what the rights would be on the other hand if A died after B. In short, the death of B after

3. Van Roy v. Hoover, 96 Fla. 194, 117 So. 887 (1928).

the death of A is not a future event that is practically certain to happen. It is not certain at all, for no one could say whether B will die after A or whether A will die after B.

There are numerous instances in which the courts declare rights that would exist only upon the happening of a future event. The cases are almost innumerable. For example, (1) the liability of a surety company in the event that a judgment is entered against the assured, and even in the event that judgments aggregating a certain sum should be rendered against the assured; (2) the right to future damages—although not the amount of future damages—as well as the right to present damages and the amount of present damages; (3) whether a tenant will be entitled to a renewal of his lease at the end of his present term, or entitled to exercise some other option. An instance in which the court will declare future rights where the future event is not certain, would be the right of subrogation of a surety upon payment of a certain claim. Of course the surety may never pay the claim.

Other future rights which may be declared are the right to future interest, rents, royalties or profits; the right to a pension in the event of retirement; the right of a widow in the event of her husband's death; the right to redeem a mortgage; the right to cancel a long-term contract; the obligation to make certain payments in the event a person shall be married; the right to deliver goods or to cancel a contract upon the termination of war; liability for or immunity from future taxation.

The court may declare whether or not a party has the right or the obligation to build or make certain improvements upon expiration of a certain period of time or upon the happening of a certain event.

The construction or effect of a deed or other written instrument may be clear, unambiguous and altogether free from doubt at the time of its execution; yet, some subsequent event or some change of circumstances may necessitate a declaration as to the rights of the parties. A common example, familiar to most lawyers, is the suit to declare rights of parties in respect of a restrictive covenant, where changes in the neighborhood have occurred since the covenant went into effect.

In the Florida statute [4] there is a special provision relating to jury trials which is not contained in the Uniform Act. There is no need to dwell upon that provision except to comment on the fact that it leaves in some doubt and some uncertainty the right of a party to obtain a special verdict of the jury or to submit issues of fact or special interrogatories. The word "may" is used, and it is highly possible that might leave it within the discretion of the judge as to whether the party would have a right to submit to the jury issues of fact found in answer to special interrogatories.

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4. FLA. STAT. § 87.08 (1943).

Individual Rights

Another important provision contained in the Florida statutes [5] is the categorical statement that the right of no party shall be affected—that is, no person shall be affected—who is not a party to the proceeding. There is a sentence, "No declaration shall prejudice the right of persons not parties to the proceedings." [6] That raises the question, of course, to what extent a declaratory judgment proceeding will invoke and apply the equitable doctrine of virtual representation. Persons who are admittedly not before the court may be bound under the doctrine of virtual representation because they are members of a class of persons, and the class is represented before the court so as to bind the members of the class who are absent.

The Florida statute [7] also contains an express provision which is of considerable importance; that an adequate remedy, or any other remedy shall not preclude the application of the declaratory judgment statute.

Florida Decisions

In one case [8] the court refused to determine the validity of a tax deed under the Declaratory Judgment Act of 1919, holding that the statute contemplated first, a construction of a written instrument, and second, a declaration of rights following such construction; that the statute did not authorize an exploration of matters of fact antecedent to the issuance of the deed to determine its validity. Another case [9] involving the validity of a drainage tax deed reached the same result.[10] *Lippman v. Shapiro*,[11] a recent Florida decision, was a suit to obtain a declaratory judgment regarding the rights of an assignee of an open account. The case was governed by the statute of 1919. The suit was dismissed upon the ground that there was no written instrument requiring construction, the court holding that a simple and unambiguous assignment of an open account could not under the statute be made the subject of a chancery suit, thereby depriving the defendants of a right to trial by jury; the opinion added that, ". . . if this were not true, then every suit on an alleged promissory note, bond or other written obligation could be instituted in chancery instead of at law."

Future Interests—Wills

One of the most interesting aspects of this question involves the determination of future interests. The problem is well illustrated by a California

5. Fla. Stat. § 87.10 (1943).
6. *Ibid.*
7. Fla. Stat. § 87.12 (1943).
8. Stuart v. Stephanus, 94 Fla. 1087, 114 So. 767 (1927).
9. Cook v. Portious, 98 Fla. 373, 123 So. 765 (1929).
10. See note 2 *supra*.
11. 151 Fla. 327, 9 So.2d 631 (1942).

case,[12] where the will provided that on the death of the life beneficiary the trust corpus was to go to "then living" children of the life beneficiary. There were only two children of the life beneficiary and they entered into an agreement whereby each renounced a one-half interest in the trust and agreed that one-half of the trust should become the property of the heirs of the one who should predecease the life beneficiary. The reason for the agreement was that without such an agreement if one of these children of the life beneficiary should die during the lifetime of the life beneficiary, the heirs and their decendents would have been excluded. That agreement had been entered into while the life beneficiary was still living. Thereafter and while the life beneficiary was still living one of the children (parties) repudiated the agreement and claimed to be no longer bound by it. A suit for declaratory judgment was brought to determine the validity of the agreement and whether or not the parties were bound. The court took jurisdiction of the case and entered a declaratory judgment, holding that the agreement was valid and that the parties were bound. That suit was instituted while the life beneficiary was still living, thus furnishing an interesting example of a case in which the court will determine future rights that might possibly come into existence upon the happening of an event sometime in the future. The case also suggests other instances in which parties enter into an agreement which on its face appears to be perfectly unambiguous, perfectly valid, and binding, particularly in that class of cases where there may be some relationship of trust and confidence. Such a relationship would include a member of a family, or parent and child, or husband and wife, or people in some other relationship which could or might be termed a relationship of trust and confidence.

In a recent Connecticut case,[13] the court determined whether the survivor of three daughters of the testator had a power to appoint the principal of a trust fund. The only persons with a possible adverse interest would have been the future children of the plaintiff, whose birth was highly improbable. The reasoning of the court was that it was necessary in the determination of estate and inheritance taxes. In a later case,[14] the Connecticut court denied relief because of failure to bring in as parties persons who might qualify as heirs upon the death of the life beneficiary.

Where there is any chance of that contention being made, there is always some doubt about whether there is a valid contract. It seems that where a person has entered into a contract of an ante-nuptial nature that the relationship between the contracting parties is such that it could very well at

12. Caldwell v. Rosenberg, 47 Cal.2d 143, 117 P.2d 366 (1941).
13. Wooster v. Union and N. H. Trust Co., 132 Conn. 309, 43 A.2d 734 (1945).
14. Brennan v. Russell, 133 Conn. 442, 52 A.2d 308 (1947).

some later time be contended that this relationship of trust and confidence held the contract open.[15]

In an Idaho case [16] there was a contract for the sale of land. The vendor in the contract had been in an insane asylum and after being released, he and the vendee entered into this contract; he paid part of the money, and the vendee had some serious misgivings about whether the vendor was competent and whether he had a valid contract. He brought suit for a declaratory decree which the court in Idaho dismissed upon the ground that there was no dispute between the parties. The court said, "The vendor says he is competent and he doesn't dispute the validity of his contract; and the vendee claims he has a good contract; then there is no dispute." The heirs may have been waiting for the vendor to die so they could then contend that the contract was invalid because the vendor was incompetent.

In a suit [17] by beneficiaries under a will to have the will declared invalid, the court upheld the will providing what unborn grandchildren were to take in the event of the children's death prior to distribution at the time that the youngest became thirty years of age, but the rights of such contingent beneficiaries were not declared. That case was decided under the Uniform Statute.

The fact that the determination of estate and inheritance taxes may turn upon the declaratory judgment seems to be a circumstance tending to support the exercise of the court's discretion in the matter as indicated in the *Wooster* case,[18] and In re *Mayer*.[19] There are numerous cases in which the desirability of settling estate or inheritance taxes has been mentioned as a medium for taking jurisdiction [20] and where the court refused to take jurisdiction or to render a declaratory decree.

The cases covered are those in which there is no dispute between the parties as to what the will means, or whether it is valid. That suggests the question of whether or not it is necessary in any case to have a dispute to come into court. If a judicial declaration in favor of a plaintiff would be obviously prejudicial or adverse to the interest of the defendant, there would seem to be a justiciable controversy, unless the defendant expressly admits the plaintiff's claim. In other words, suppose the defendant, who is the adverse party against whom you have brought your declaratory judgment proceeding or are contemplating bringing it, simply doesn't dispute it. He doesn't admit it and he doesn't deny it. He says, "I refuse to take a position, but I don't waive anything. I don't admit what you claim and I don't deny

15. See note 12 *supra*.
16. Whitney v. Randall, 58 Ida. 49, 70 P.2d 384 (1937).
17. Story v. First National Bank & Trust Co., 115 Fla. 436, 156 So. 101 (1934).
18. See note 13 *supra*.
19. 73 N. Y. S.2d 715, 189 Misc. 700 (1947).
20. National Shawmut Bank v. Morey, 320 Mass. 492, 70 N.E.2d 316 (1946).

it or waive anything." Where is there a justiciable controversy? It has been suggested that if a judicial declaration in favor of the plaintiff would be obviously prejudicial or adverse to the interest of the defendant, that would constitute a justiciable controversy.

The refusal of the defendant to dispute or contradict does not deprive plaintiff of right to relief provided defendant does not admit the plaintiff's claim. In short, the plaintiff may force the defendant to admit or to deny plaintiff's claim. If the defendant admits the plaintiff's claim, an order or judgment dismissing the suit expressly on that ground would seem to be just as good and binding against the defendant as a judicial declaration by the court. The foregoing seems to be necessarily deducible from the opinions in two cases.[21] The State of Texas instituted a suit against the State of Florida [22] and other states to obtain a declaratory judgment from the United States Supreme Court in reference to a decedent's property. There is some discussion by the United States Supreme Court in that case which bears on this problem. It is the opinion of the writer that the court cannot be deprived of jurisdiction and the plaintiff be deprived of the rights of declaratory judgment by a noncooperative and noncommittal adversary.

The following cases show the pitfalls in respect of future and contingent interests and where all parties to be affected are not before the court in person. Declaratory judgment proceedings are often class suits; and care must be taken to see that all members of the class are present by representation so as to be effectively bound by a decree. In *Van Roy v. Hoover*,[23] the Supreme Court of Florida affirmed a decree refusing to construe a will upon the ground that the contingency that certain persons might survive the life beneficiary was a contingency that might never arise, holding that when and if such contingency did arise, it would be time enough to settle the question whether or not there was an intestacy as to the remainder interest. In a Florida case,[24] suit was brought for the construction of a deed; and the court refused to determine what would be the status of a possible grantee who might receive a conveyance from a living life tenant who also had a reversionary interest subject to an intermediate contingent estate, holding that to render such a judgment would be to determine rights that were not before the court. Another Florida case [25] was a suit by a vendor against a second purchaser to declare the rights of the parties in respect of the recording of an unacknowledged prior contract to another person and of the expungement of such recording. The court said that while such record was

21. Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U. S. 270 (1941); *In re* Kariber's Petition, 284 Pa. 455, 131 Atl. 265 (1925).
22. Texas v. Florida, 306 U. S. 398, 407 (1934).
23. See note 3 *supra*.
24. Tarkersley v. Davis, 128 Fla. 507, 175 So. 501 (1937).
25. Lassiter v. Curtiss-Bright Co., 129 Fla. 728, 177 So. 201 (1937).

not constructive notice, it might, nevertheless, have imparted actual notice of the rights of such prior purchaser. Moreover, the prior purchaser was not a party to the suit and the court held that her interests, if any, could not be affected by the decree. In the *Sample* case,[26] the Supreme Court of Florida held that under the declaratory judgment statute it was not necessary that there be an "actual controversy." It has been held under the Federal Declaratory Judgment Act, and the Act expressly provides, that there must be an "actual controversy." Therefore, it is conceivable that a suit properly brought in the state court under the Florida declaratory judgment statute, though otherwise removable to the federal courts, might not be removable because of the lack of an "actual controversy." The *Sample* case was an action to set aside a declaratory decree construing a will. Among other objections to the declaratory judgment, it was urged that persons affected were not before the court. In answer to this, the supreme court said that if that were true, such persons would not be bound by the decree, but that as all the parties in the suit to impeach the declaratory decree were parties to the previous suit, they were bound and had ample opportunity to make their defenses. In a suit to set aside a declaratory decree which had been entered on service by publication, the court held that the constructive service statute had not been followed, and that therefore the service was defective and the declaratory decree was not binding on the plaintiffs in the later suit.[27]

Class Suits

According to the great weight of authority [28] unborn contingent remaindermen may be represented, in case there are no living members of the same class, by the persons who hold estates which precede or follow theirs, provided some one or more of such persons would be adversely affected by the decree equally with the class not *in esse* and would therefore have the same interest and be equally certain to present to the court the merits of the question upon which the decree is sought.

In a comparatively recent Florida decision,[29] there was a suit for a declaratory judgment to determine the amount of an attorney's fee. Constructive service was obtained against the defendant. The court held that there was nothing but a personal claim; that there was no *res;* that the court couldn't exercise its jurisdiction to quiet title to money that the plaintiff had collected at some prior time—whether or not he still had the money in his pocket or whether he had done something with it. It will be recalled that the first paragraph of the constructive service statute [30] includes the

26. Sample v. Ward, 156 Fla. 210, 23 So.2d 81 (1945).
27. Cone v. Benjamin, 157 Fla. 800, 27 So.2d 90 (1946).
28. See Note, 120 A.L.R. 880 (1939).
29. Ake v. Chancey, 152 Fla. 677, 13 So.2d 6 (1943).
30. Fla. Stat. § 48.01 (1941).

construction of "any contract or other written instrument." The court said, "Furthermore a declaratory decree must be predicated on a claim supported by a *rem*." It is a serious question whether this sentence really means what it appears to mean taken all by itself. It would seem to be a serious implication upon the application of the declaratory judgment statute. But it is possible that what it means is that the declaratory decree "where it depends on constructive service" (I am reading something into the opinion that is not in there)—must be predicated upon a claim supported by a *rem*.

Insurance

There has been a very large class of insurance cases in which the declaratory judgment statute has been invoked. One of the most interesting cases under the federal statute is the *Aetna Life Insurance Co.* case [31] which has certainly established a very broad jurisdiction in the insurance cases under the federal statutes, and in the application of the various state laws. While a suit at law [32] was pending against the insurer to recover disability benefits, insurer filed a bill in equity to cancel the policy for fraud. During pendency of the equity suit, the insured changed the beneficiary, naming his estate as beneficiary. Because of such change, the lower court had held that the bill no longer had any equity. This ruling was reversed by the supreme court, which held that the jurisdiction of the lower court over the subject matter was not lost by the act of the defendant *pendente lite*. The declaratory judgment statute was not cited in the opinion.

There have been a great many cases on the question of coverages; a leading case is *Camden Fire Insurance Co. v. Daylight Grocery*.[33] On the question of casualty coverage, cases have determined the negligence of the tortfeasor, whether or not there is misrepresentation; breach of warranty or condition; violation of law; unauthorized or prohibited driver; or a violation of area or territorial restrictions.

Administrative Law

The following cases indicate the extent to which the procedure has been used in the field of administrative law:

The *Amos* case,[34] decided in 1922, was a suit against the state comptroller to declare unconstitutional the gasoline tax statute alleged not to have been signed by the presiding officers of the Senate and House until after the time within which acts are required by the constitution to be so signed. The

31. Aetna Life Insurance Co. v. Haworth, 300 U. S. 227 (1937).
32. Mutual Benefit Health and Accident Ass'n v. Ott, 151 Fla. 185, 9 So.2d 383 (1942).
33. 152 Fla. 669, 12 So.2d 768 (1943).
34. Amos v. Gunn, 84 Fla. 285, 94 So. 615 (1922).

court first affirmed an order overruling a demurrer to the bill of complaint; and, later, on rehearing, the court reversed the lower court and directed the bill to be dismissed, with leave to amend so as to make specific allegations of fraud in connection with the signing of the bill.

In a suit by the attorney general to obtain a declaratory judgment regarding the validity of Everglades Drainage District taxes,[35] the lower court dismissed the bill on the merits of the issue. Although the decree was affirmed, the supreme court, by Terrell, J., said the court did not think that the declaratory judgment statute contemplated this kind of suit, no reasons being stated in the opinion for this conclusion, except reasons which touch the merits of the controversy. *City of Miami v. K. C. Hink* [36] was a suit against the city to determine the validity of a liquor licensing ordinance. *Satan Fraternity v. Board of Public Instruction* [37] was a suit to determine the validity of the statute forbidding school fraternities. *Ball v. Branch* [38] was a suit against county commissioners to obtain a decree declaring a certain statute unconstitutional. The statute related to the public health service of the City of Tampa and County of Hillsborough. This suit resembles the case of *Alsop v. Pierce*,[39] in that it was one seeking a declaration regarding the functions of public officials; a similar suit [40] was to obtain a declaration regarding the duties of county commissioners in respect to the preparation of ballots for an election. *Miller v. Doss* [41] was a suit against the tax assessor for a declaratory decree claiming that the tax assessor had arbitrarily exempted certain property from taxation. It does not appear from the report that the plaintiff had any personal or proprietary interest in the subject matter of the suit, or that he sued otherwise than as a citizen. Nor does it appear that the property owner whose property was alleged to have been wrongfully exempted was made a party. The *Alsop* case [42] was a suit brought by the mayor of the city of Jacksonville against the City Commission for a declaratory judgment as to the rights, powers and jurisdiction of the respective parties under the city charter. The City Commission, which was defendant in the case, contended that such a controversy was not a proper one under the declaratory judgment statute; but the supreme court said, "it would be difficult to find a more appropriate case for the law permitting declaratory judgments." In a suit [43] by a number of labor unions for a declaratory decree against the attorney general and against a number of corporate

35. State v. Everglades Drainage District, 155 Fla. 403, 20 So.2d 397 (1945).
36. 156 Fla. 87, 22 So.2d 627 (1945).
37. 156 Fla. 222, 22 So.2d 892 (1945).
38. 154 Fla. 57, 16 So.2d 524 (1944).
39. 155 Fla. 185, 19 So.2d 799 (1944).
40. Cobb v. Board of City Comm'rs., 155 Fla. 60, 19 So.2d 505 (1944).
41. Miller v. Doss, 36 So.2d 442 (Fla. 1948).
42. See note 39 *supra*.
43. A. F. of L. v. Watson, 159 Fla. 333, 31 So.2d 394 (1947).

employers, the bill was dismissed upon the ground of multifariousness, the court asserting that it combined six different law suits in one bill of complaint. It is interesting to note that on appeal of that case,[44] the United States Supreme Court by Douglas, J., said, ". . . and other actions, such as suits for a declaratory judgment, would seem to be available in the State Courts."

In a suit [45] involving train limit law, the state attorney general had said that he did not know whether he would enforce the law or not, and the court dismissed the suit. Thereafter the attorney general immediately commenced two prosecutions while the declaratory judgment proceeding was still in the circuit court of appeals; but that court affirmed the lower court judgment and dismissal and held that the plaintiff would have to file a new declaratory judgment suit.[46]

The Federal Declaratory Judgment Act was enacted in 1934.[47] It applies by its terms to cases of "actual controversy" and the court is authorized to declare rights and other legal relations of any interested party. The act was amended in 1935 [48] so as to incorporate an express exception with respect to federal taxes. It has been held that this exception implies that declaratory judgments may be rendered with respect to state taxes, and such judgments are frequently rendered.

The tone of many decisions rendered under the early declaratory judgment statute has been thoroughly sarcastic. Comments such as, "The Court is called upon for legal advice . . . to decide moot questions." But the tone of the decisions and the attitude of the courts have undergone an obvious change in the last 15 or 20 years, especially since so many of the states have adopted the Uniform Declaratory Judgment Statute. In recent years the decisions have been conspicuously much more liberal.

As will be recalled, the Federal Declaratory Judgment Statute employs the phrase "actual controversy." But the Supreme Court of Florida has held that an actual controversy is not necessary.[49] The phrase "actual controversy" involves a question of interpretation, and there are some ill-defined twilight zones on whether or not an actual controversy exists in a given situation. But the fact that the Supreme Court of Florida has held that an actual controversy is not necessary may very well raise some serious doubts as to whether a party could get into the federal courts, for example, on

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44. A. F. of L. v. Watson, 327 U. S. 582 (1946).
45. Southern Pacific Co. v. Conway, 115 F.2d 746 (1940).
46. See City of Pensacola v. Johnson, 159 Fla. 566, 28 So.2d 905 (1947), where the court held that it was not a judicial function to determine by declaratory decree whether homesteads should be taxable for payment of municipal bonds before issuance of the bonds by the city in question was authorized at a special election not yet held.
47. 48 STAT. 955 (1934); as amended, 28 U. S. C. § 400 (1946).
48. 49 STAT. 1027 (1935), 28 U. S. C. § 400 (1946).
49. See note 26 *supra*.

diversity of citizenship, in a case arising under the Florida statute, where a federal court might have border-line jurisdiction.

The Federal Judicial Code, which has been completely rewritten, omits the provision in the federal statute which expressly provided for written interrogatories to the jury. The reviser's note states that the reason for the omission is that a party can present his special interrogatories under the Federal Rules of Civil Procedure, Rule 49.[50] Now there is a question whether that procedure has the same effect or not. Under the Federal Declaratory Judgment Statute a party had the right to submit special interrogatories to the jury; but under Rule 49 of the Federal Rules of Civil Procedure, insofar as it has been interpreted by the courts in Florida, it is not a matter of right, but is a matter within the discretion of a certain judge.

50. 28 U. S. C. Fed. R. Civ. P. (1946).