Procedure -- Appeal Effected by Broad Application of the Declaratory Judgment Act

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decision has not been without supporters,\textsuperscript{14} as was exemplified by criticism of
the Hobbs Bill.\textsuperscript{15}

While the decision in the instant case tends to keep the scope of criminal
interrogation by federal officers within reasonable bounds, inflexible applica-
tion of the rule may also have the effect of unduly restricting persons assigned
the duty of protecting public interests, since it may not give them sufficient
opportunity to question criminal suspects. This situation could be corrected
by making the admissibility of confessions dependent upon legislative
standards which bear greater logical relation to the validity of the confession
than does the present standard of a commitment statute which, as its history
reveals, was enacted for an entirely different purpose and had no such result
within its purview.\textsuperscript{16}

\textbf{PROCEDURE—APPEAL EFFECTED BY BROAD APPLICATION OF THE
DECLARATORY JUDGMENT ACT}

In 1939, forty-seven years after an adjudication, in 1892, of the priorities
and other rights of the parties in the waters of a creek, a suit was brought by
lower riparian owners to enjoin plaintiff from taking more water from the
creek than he was allowed under the 1892 decree. Judgment was rendered for
plaintiff. On appeal, the judgment was reversed and the injunction granted.
Plaintiff was also enjoined from asserting any claims contrary to the terms
of the 1892 decree. Thereupon, plaintiff petitioned for a rehearing, which was
denied. Plaintiff than petitioned the supreme court of the state for a writ of
supervisory control. Again his petition was denied. Plaintiff then started an
action in the lower court for a declaratory judgment as to his rights and for
relief against the injunction. A demurrer by the defendants was sustained,
and plaintiff appealed. \textit{Held}, demurrer overruled. An action for a declaratory
judgment and seeking relief from the injunction which restrained him from
asserting claims contrary to the mandates of the 1892 decree could be main-

The Montana Supreme Court has given a persevering litigant the rare
legal experience of having rights, defined on two previous occasions, reädd-
judicated,\textsuperscript{1} explaining that application of the doctrine of \textit{res judicata} will not

\begin{footnotesize}
\begin{enumerate}
\item Note, 28 M\textsc{inn.} L. Rev. 73 (1944) [commenting that the \textit{McNabb} decision is the
logical development of decisions excluding illegally obtained evidence as exemplified by
338 (1939)].
\item Note, 53 Y\textsc{ale} L. J. 758 (1944) (criticizing the Hobbs Bill as an unwarranted
interference with the judicial power of forming evidentiary rules).
\item 24 Cong. Rec. 1107 (1893) (illustrating that the reason for the adoption of
the former rule was to prevent officers in one part of a state from taking a prisoner the
whole length of the state to have a hearing before a particular commissioner, thereby
earning compensation for mileage).
\end{enumerate}
\end{footnotesize}
prevent a review where there appears to have been manifest error in the prior decision. The court, however, did not discuss the means available to effect such reviews, nor the particular method used by plaintiff.

The authorities clearly indicate that the Declaratory Judgment Act was intended neither as a substitute for a new trial, nor as a novel method to appeal a lost suit. The Act was designed, instead, for the purpose of allowing a declaration as to rights, not elsewhere determined, over which there is a real controversy. Assuming that there was a valid controversy in 1939, it would seem that the arguments raised at that time were silenced forever, if not by the final judgment in that cause, then by the action of the supreme court in denying the petition for the writ of supervisory control, which was the proper writ to test the operative effect of the final judgment.

That questions settled by a court having jurisdiction of the subject matter and parties may not thereafter be relitigated on petition for a declaratory judgment follows from a consideration of the purposes for which the Declaratory Judgments Act have been designed. Although the decision of the court achieved a result which was equitable, the broad application of the provisions of the Declaratory Judgments Act, if followed in future decisions, would seem to remove the finality of final judgments.

**STATUTORY CONSTRUCTION—MEANING OF "ACCOMPANY" AS USED IN FEDERAL PURE FOOD AND DRUG ACT**

Petitioner, on seven occasions, shipped drugs and booklets describing the drugs in the same cartons in interstate commerce. On thirteen other occasions the literature was shipped separately, and at different times, from the drugs. Both were displayed together in the retailer's store. The booklets contained false or misleading information concerning the drugs. Action was brought

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2. Avery Freight Lines v. White, 245 Ala. 618, 18 So.2d 394 (1944); State ex rel. Kansas City Bridge Co. v. Terte, 345 Mo. 93, 131 S.W.2d 587 (1939); Ferree v. Ferree, 273 Ky. 238, 115 S.W.2d 1055 (1938); Phelps County v. City of Holfrege, 133 Neb. 139, 274 N.W. 483 (1937); Back's Guardian v. Bordo, 234 Ky. 211, 27 S.W.2d 960 (1930); see Note, 154 A.L.R. 732 (1945).
5. State ex rel. Finley v. District Court, 99 Mont. 200, 43 P.2d 682 (1935). (The court explained that the function of the writ of supervisory control is to enable the supreme court to control the course of litigation in inferior courts where such courts are proceeding within their jurisdiction, but by mistake of law, or wilful disregard thereof, are doing gross injustice, and there is no appeal, or remedy by appeal is inadequate.).
6. In Ferree v. Ferree, supra at 238, 115 S.W.2d at 1056, the court said: "Were the rule otherwise, a proceeding would lie under the Declaratory Judgment Acts to determine whether the judgment passing upon the validity of a prior judgment was proper, and there would be no end to litigation." Accord, Traveler's Insurance Co. v. Wechler, 34 F. Supp. 717 (S. D. Fla. 1940); Anderson v. Wyoming Development Co., 60 Wyo. 417, 154 P.2d 318 (1944); State ex rel. Kansas City Bridge Co. v. Terte, supra.
7. As to the cognate question whether so broad a construction would serve a useful purpose generally, see Borchard, The Uniform Declaratory Judgments Act, 18 Mis. L. Rev. 239 (1934).