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LOUISIANA PRACTICE—DECLARATORY JUDGMENT ACTION AS SUBSTITUTE FOR BILL IN NATURE OF INTERPLEADER AND AS ALTERNATIVE REMEDY

Plaintiff employer, invoking the Uniform Declaratory Judgments Act,[1] instituted an action for the purpose of determining its liability under the Louisiana Employers' Liability Act[2] for the death of an employee who had died as a result of an accident during the course and within the scope of his employment. Defendants were the deceased employee's legal widow, and his three illegitimate minor children by another woman. Plaintiff prayed primarily for a declaratory judgment decreeing that plaintiff was not indebted to any of defendants for compensation. In the alternative, should the court find that some or all of the defendants were entitled to receive compensation, plaintiff prayed for a declaratory judgment determining the compensation due, and the persons entitled thereto.[3] In effect, the plaintiff sought to limit compensation to the widow alone, contending that under R.S. 23:1232 the existence of the dependent widow precluded any award to the illegitimate children. *Caddo Contracting Co. v. Johnson*, 222 La. 796, 64 So. 2d 177 (1953).

The workmen's compensation aspect of this case has already been discussed.[4] The purpose of this casenote is to discuss the real effect of the procedure employed and to consider an important procedural question which, though not raised under the facts of this case, is nevertheless suggested thereby.

The procedure employed by plaintiff in this case actually provides an effective substitute for the bill in the nature of interpleader—a remedy not available under present Louisiana procedure. In 1922, Louisiana adopted an interpleader statute,[5]

1. La. R.S. 1950, 13:4231 et seq.
2. La. R.S. 1950, 23:1021 et seq.
3. See Caddo Contracting Co. v. Johnson, 54 So. 2d 827 (La. App. 1951).
4. See infra p. 301.
5. La. R.S. 1950, 13:4811 et seq. The interpleader statute is available only if plaintiff is a stakeholder who admits liability. Placid Oil Co. v. George, 221 La. 200, 59 So. 2d 120 (1952); Transo Investment Corporation v. Oakley, 37 So. 2d 560 (La. App. 1948). See also American Surety Co. of New York v. Brim, 175 La. 959, 144 So. 727 (1932).

This point was not raised nor discussed in the very recent case of Humble Oil & Refining Co. v. State Mineral Board, 223 La. 46, 64 So. 2d 839 (1953), but in view of plaintiff's prayer there is some doubt as to plaintiff's right to have invoked the statute. Plaintiff prayed that, in the event one of the defendants, Salt Domes, Incorporated, was declared to be the successful claimant, the excess of the deposit over its claim be returned to plaintiff. If the interpleader statute can be invoked only where plaintiff is a mere

under which a stakeholder who asserts no interest in a debt or fund may deposit it into the registry of the court, and may implead the rival claimants thereto and force them to assert their claims contradictorily against each other. The essentials of the bill in the nature of interpleader,[6] however, provide a broader and more effective remedy. Thus it permits a party, who denies liability in whole or in part on a claim asserted against him independently by two or more claimants, to protect himself against the harassment of double or multiple suits, by allowing him to implead the rival claimants and to require them to assert their claims contradictorily against him as well as against each other. Under the bill in the nature of interpleader, the prosecution or continued prosecution of separate suits by the rival claimants may be enjoined. This latter possibility represents really the only difference between the bill in the nature of interpleader and the substitute provided by the procedure in the *Johnson* case.

In the instant case, neither the defendants nor the courts questioned the plaintiff's right to invoke the Uniform Declaratory Judgments Act. Under the facts presented, there appeared to be no valid objection thereto, as the plaintiff had no other adequate remedy, and otherwise might possibly have been subjected to the harassment of separate suits by the rival claimants. A more difficult problem would have been presented to the court had another adequate remedy been available to the plaintiff. Such problem could have been solved only by a determination of whether or not the declaratory action is an alternative remedy.

The Uniform Declaratory Judgments Act does not provide in express terms, as does the federal rule,[7] that the existence of other adequate remedies shall not bar declaratory relief. The act does, however, contain certain provisions which would sustain the position that a court has jurisdiction of declaratory relief provisions, notwithstanding the availability of other adequate remedies. Thus, R.S. 13:4231 provides in part that "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations *whether or not*

stakeholder, and as such asserts no interest in the debt or fund which he places at the disposal of the court, there is some doubt that the test of this requirement was met in this case.

6. For an excellent discussion of the differences between the strict bill of interpleader and the bill in the nature of interpleader, see the opinion of Mr. Justice Stone in Texas v. Florida, 306 U.S. 398 (1939).

7. Rule 57 of the Federal Rules of Civil Procedure provides in part: "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."

further relief is or could be claimed," and R.S. 13:4242 declares that the act "is to be liberally construed and administered." In view of the express declaration in the Federal Rules, R.S. 13:4245 further supports the position that declaratory relief shall not be barred by the existence of other adequate remedies. R.S. 13:4245 provides that the act "shall be interpreted and construed . . . to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees."

Professor Edwin M. Borchard, a co-draftsman of the act, in his book on declaratory judgments, states that there are two general types of action in which declaratory relief is invoked:[8] (1) where the plaintiff seeks a declaration that he is privileged to act, or that he is not indebted to, or is immune from a liability asserted by, the defendant, or where he requests the construction of a disputed contract before breach, and actions in which no coercive decree is sought or even possible; and (2) where the plaintiff, though capable of suing for an executory or coercive decree, contents himself with the milder declaration of rights as adequate to his needs and purpose. The predicate for his inclusion of the second type of action in which declaratory relief may be invoked is Professor Borchard's position that the declaratory action is an alternative remedy. This conclusion is clearly substantiated by the fact that, in the great majority of cases in which declaratory judgments have been rendered, it would have been perfectly possible to obtain relief by invoking another remedy.[9] There is, of course, as Professor Borchard points out, a distinction between the problem of whether the declaratory judgment is available where another adequate remedy exists and the case where a special statutory proceeding has been provided as an exclusive remedy for the particular type of case in hand. But

8. See Borchard, Declaratory Judgments 315 (2 ed. 1941).

9. The following are examples of cases where declaratory judgments were issued even though another adequate remedy existed: suit for a declaration of the right to money or other property, where it would have been possible to sue for damages or the property or money itself; action to establish one's interest in a gift, legacy, or real property, where it would have been possible to sue for the property or its equivalent or for possession or ejectment; taxpayer's suit for a declaration of the invalidity of public action, where he could usually have obtained either a mandamus or an injunction; suit to establish the existence of a lien on chattels, where either replevin or an action for conversion were available; suit to obtain a declaration of rights under a will, where it might have been possible to bring a statutory bill for the construction of the will or coercive decree; suit to establish the invalidity of a divorce, where annulment of the second marriage might have been sought. For supporting citations see Borchard, Declaratory Judgments 327-329.

this quite evidently does not mean that whenever there is statutory relief provided that it is necessarily exclusive. That should, in all cases, depend on the presumed intent of the Legislature.

If further evidence is needed to support Professor Borchard's view that the declaratory action is an alternative remedy, it may be observed that long before the enactment of any of the modern declaratory judgment acts, the courts were accustomed to render what amounted to declaratory judgments in certain limited classes of cases.[10] The declaratory judgment statutes, therefore, permit only a more general use of a device which has heretofore existed in many fields.

One recent survey of the decided cases in the various American jurisdictions indicates "that courts are becoming progressively more liberal in assuming jurisdiction of action for declaratory judgments where other remedies are available."[11] This survey indicates, however, that, by the weight of authority, the right to use the declaratory action is not absolute in all cases where other remedies are available, but rests in the discretion of the court.[12] Thus, where a coercive or executory remedy is not only presently available and adequate, but is better, more effective and more convenient, the court will decline jurisdiction of the declaratory action. However, even though another remedy is adequate, if the proceedings for declaratory relief will serve some useful purpose, the court will entertain jurisdiction of the action for a declaratory judgment.[13]

In view of the increasing use of the Uniform Declaratory Judgments Act in Louisiana, a determination of whether the declaratory judgment can be invoked when another remedy is available is of considerable procedural importance. While this question was neither answered nor presented in the *Johnson* case, this case does demonstrate quite convincingly the utility and flexibility of the declaratory action. The use here of the declaratory judgment as a workable substitute for the badly needed bill in the nature of interpleader serves to improve the present Louisiana procedure.

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10. See Borchard, Declaratory Judgments 137-149.
11. See Note, Right to declaratory relief as affected by existence of other remedy, 172 A.L.R. 847-848 (1948). See also 14 A.L.R. 2d 836, § 13 (1950).
12. Ibid.
13. Ibid.