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JUDGMENTS - DECLARATORY JUDGMENTS - USE IN STATUTORY INTERPRETATION

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JUDGMENTS — DECLARATORY JUDGMENTS — USE IN STATUTORY INTERPRETATION — A mining company, subject to the Fair Labor Standards Act,[1] brought an action against the United States District Attorney for Idaho for a declaratory judgment that it was not subject to threatened criminal prosecu-

[1] 52 Stat. L. 1060 (1938), 29 U. S. C. (Supp. 1939), § 201.

tions and penalties under the act. The company had not included the forty minutes allowed for lunch in estimating the number of hours worked by its employees. The employees and their labor union threatened to sue, claiming the lunch period was part of their working hours and that they were therefore to that extent required to work overtime without extra pay. The Department of Labor and the Department of Justice threatened to enforce criminal penalties for violations of the act. On motion to dismiss, *held*, that the motion should be overruled because an actual substantial controversy within the meaning of the Federal Declaratory Judgment Act[2] was presented. *Sunshine Mining Co. v. Carver*, (D. C. Idaho, 1940) 34 F. Supp. 274.

The passage of the Federal Declaratory Judgment Act opened to litigants in the federal courts[3] a practical method of determining disputes without recourse to the coercive processes, thereby substituting a peaceful method of determining rights between parties for the old contentious actions at law or in equity which were available only after injuries had been committed or threatened and often aroused long-standing animosities.[4] The lower federal courts at first disagreed as to the right of a petitioner under the terms of the act to obtain a declaration of his nonliability under a given set of circumstances, a few cases[5] holding that a determination of "rights" did not include[6] a decision of that

[2] "(1) In cases of actual controversy . . . the courts of the United States shall have power . . . to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree. . . ." Judicial Code, § 274d, 48 Stat. L. 955 (1934), as amended by 49 Stat. L. 1027 (1935), 28 U. S. C. (Supp. 1939), § 400.

[3] For a discussion of the scope of the declaratory judgment under state statutes, see: Sunderland, "The Types of Controversies in Which Declaratory Judgments Have Been Rendered," 4 MICH. JUDICIAL COUNCIL REPORTS, appendix 1 (1934); Borchard, "Recent Developments in Declaratory Relief," 10 TEMP. L. Q. 233 (1936); Borchard, "Declaratory Judgments, 1939," 9 BROOKLYN L. REV. 1 (1939).

[4] 36 MICH. L. REV. 466 (1938). For discussions of the history and theory of the declaratory judgment, see: Sunderland, "A Modern Evolution in Remedial Rights, —The Declaratory Judgment," 16 MICH. L. REV. 69 (1917); Borchard, "The Declaratory Judgment in the United States," 37 W. VA. L. Q. 127 (1931); BORCHARD, DECLARATORY JUDGMENTS (1934); Borchard, "The Federal Declaratory Judgments Act," 21 VA. L. REV. 35 (1934).

[5] Columbian Nat. Life Ins. Co. v. Foulke, (D. C. Mo. 1936) 13 F. Supp. 350, reversed (C. C. A. 8th, 1937) 89 F. (2d) 261 (note 7, infra); New York Life Ins. Co. v. London, (D. C. Mass. 1936) 15 F. Supp. 586.

[6] Professor Borchard has always argued against this view: "The action for a so-called negative declaration is simply a broadening of the equitable action for the removal of a cloud from title to cover the removal of clouds from legal relations generally. . . . The importance of the power to sue on the part of an endangered or potentially endangered or disputed possessor of rights is that judicial protection may be obtained before the danger has ripened into catastrophe and before the other party has commenced suit to enforce his claims." BORCHARD, DECLARATORY JUDGMENTS 19 (1934).

nature. However, the contrary view [7] was upheld by the Supreme Court in *Aetna Life Insurance Co. v. Haworth.*[8] The principal case illustrates a further extention of this interpretation of the act by pointing out a method whereby a person threatened with criminal penalties [9] under a federal regulatory statute can determine the applicability of the statute without running the risk of actually incurring penalties by deliberately violating the regulations. The Fair Labor Standards Act provides a maximum number of hours for a work week but it does not state whether the lunch period should be considered in computing the number of working hours.[10] In the face of this uncertainty as to his legal position and the threat of prosecution for violation of the act, the employer in the principal case was permitted to have his liability in respect to the alleged violations determined without running the risk of pecuniary loss or punishment in case of an adverse decision in a criminal prosecution. As a matter of policy the decision is to be approved. As regulatory statutes continue to increase in number, the individual's freedom of action is proportionately diminished; he is compelled more and more to act in accordance with statutory restrictions, which are usually enforced by penalties.[11] Private rights can be more adequately protected by a speedy adjudication of the meaning and applicability of a regulation than by a criminal prosecution.[12] The limitations on the use of the Declaratory Judgment Act as a method of statutory interpretation are not entirely clear. The types of cases in which a declaratory judgment could possibly be given have been classified [13] as (1) cases in which wrongs have been committed and damage already incurred, (2) controversies in which irreparable injury is impending, (3) cases where a real dispute exists but no rights have been impaired or injury threatened, and (4) cases which are moot in that no dispute exists and the litigant merely desires an advisory opinion.[14] There would seem to be no justifiable reason for excluding class three.[15] A "substantial controversy" may

[7] Ohio Casualty Ins. Co. v. Plummer, (D. C. Tex. 1935) 13 F. Supp. 169; Commercial Casualty Ins. Co. v. Humphrey, (D. C. Tex. 1935) 13 F. Supp. 174; Columbian Nat. Life Ins. Co. v. Foulke, (C. C. A. 8th, 1937) 89 F. (2d) 261.

[8] 300 U. S. 227, 57 S. Ct. 461 (1937).

[9] Declaratory judgments of the validity, construction, and application of criminal statutes have generally been permitted under state declaratory judgment statutes. See annotation in 129 A. L. R. 751 (1940).

[10] Fair Labor Standards Act of 1938, 52 Stat. L. 1063, § 7 (1938), 29 U. S. C. (Supp. 1939), § 207.

[11] BORCHARD, DECLARATORY JUDGMENTS 341-342 (1934); Sawyer, "Law and Practice in Aid of Industrial Individualism," 9 GEO. WASH. L. REV. 1 (1940).

[12] BORCHARD, DECLARATORY JUDGMENTS 561-562 (1934), and cases cited.

[13] See Schroth, "The 'Actual Controversy' in Declaratory Actions," 20 CORN. L. Q. 1 at 20 (1934); notes in 49 HARV. L. REV. 1351 (1936) and 15 N. Y. UNIV. L. Q. REV. 266 (1938).

[14] Courts have uniformly refused to decide this type of case because no judicial controversy exists within the meaning of constitutional provisions. Muskrat v. United States, 219 U. S. 346, 31 S. Ct. 250 (1911); United States v. Evans, 213 U. S. 297, 29 S. Ct. 507 (1909).

[15] United States v. West Virginia, 295 U. S. 463, 55 S. Ct. 789 (1935); Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 56 S. Ct. 466 (1936).

exist even though no damage has been done and no danger immediately impends.[16] An actual dispute between two parties which has not yet reached the "battle" stage nevertheless could be decided by the use of the declaratory judgment advantageously to both sides. Moreover, while the declaratory judgment is only an alternative remedy when it is used in the first two classes of cases, it is the *sole* means of determining controversies of the third type.

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[16] State courts have little difficulty in applying declaratory actions to this type of controversy: Morton v. Pacific Construction Co., 36 Ariz. 97, 283 P. 281 (1929) (interpretation of contract); Post v. Metropolitan Casualty Ins. Co., 227 App. Div. 156, 237 N. Y. S. 64 (1929), affirmed in 254 N. Y. 541, 173 N. E. 857 (1930) (interpretation of contract); Colver v. Miller, 127 Kan. 72, 272 P. 106 (1928) (construction of a deed); Ohio-Kentucky Coal Co. v. Auxier, 239 Ky. 442, 39 S. W. (2d) 662 (1931) (interpretation of a lease).