

The Application of the Declaratory Judgment to Matrimonial Actions

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THE APPLICATION OF THE DECLARATORY JUDGMENT TO MATRIMONIAL ACTIONS.—That the remedy afforded by a declaratory order is gradually being recognized as of great utility is evidenced by a recent decision of the Appellate Division in the first department.¹ In that case plaintiff sought a declaration that she was the wife of defendant; that the divorce he secured in Mexico was of no effect in law; and that his alleged second marriage was a nullity. The further relief prayed for, with which this paper will not concern itself, was the enjoining the husband from cohabiting with his second wife and that such alleged second wife be enjoined from using his name. Before we consider the conclusions there made it would be consonant with a proper understanding of the subject to briefly relate the nature and purpose of declaratory judgments.

Courts at common law were created to redress private wrongs and punish the commission of crimes. Tribunals then took no interest unless one person actually wronged another. Not only law courts but courts of equitable jurisdiction did not assume to exercise their broad powers unless an actual controversy arose concerning the infringement of the rights of parties. In 1852 for the first time the courts of England were empowered to grant relief declaratory in nature in addition to their powers to award corrective or coercive relief.² In the United States, it was not until Prof. Borchard in a series of brilliant articles³ brought the attention of jurists and legislators to the true value of declaratory judgments that statutes to that effect were passed in various states. The progress of this form of relief was dealt a severe blow when a statute similar to that passed in England was declared unconstitutional in Michigan. The court in its interpretation (which has been subjected to considerable criticism)⁴ contended that an application to the courts for advice in matters as to which controversies have not arisen presents all the objectionable characteristics of a moot case and as such was a

¹ *Baumann v. Baumann*, 222 App. Div. 460 (1928).

² 15 and 16 Vict., ch. 86: "No suit in the said court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the court to make binding declarations of right without granting consequential relief."

³ "The Declaratory Judgment—A Needed Procedural Reform." 28 *Yale L. J.* 1.

⁴ "Several of the leading law journals which have assumed the important function of examining critically the decisions of the courts from the standpoint of their adherence to law and principle, have been unanimous in condemning the Michigan decision as devoid of foundation in law or reason," 34 *Harv. L. Rev.* 716; see also 19 *Mich. L. Rev.* 86, 30 *Yale L. J.* 161.

conferment of non-judicial powers.⁵ Notwithstanding, the New York legislature enacted section 473 of the Civil Practice Act,⁶ authorizing the issuance of declaratory orders.

The *Baumann* case presents for the first time in this state a decisive determination of the question whether matrimonial actions are within the provisions relative to declaratory judgments. The contentions raised against such extension were twofold; first, that in view of the fact that matrimonial actions are entirely statutory and that since the sections applicable thereto are so detailed in their provisions it would be but proper to conclude that they are all-embracing and exclusive of every other form of remedy; second, that the section relating to annulments⁷ in itself provides a more complete remedy and one more effective in determining the rights of all concerned.

The first argument can be very quickly disposed of when we appreciate that the Supreme Court at all times before and after the passage of either the sections relating to matrimonial actions or those relating to declaratory orders has had the power to determine the validity of a marriage as incident to ejectment actions or in claims for priority in letters of administration. In other countries by judicial decision the mere existence of other forms of relief does not preclude the application for a declaratory judgment.⁸ To narrow the provisions of this beneficent remedy would be in effect to defeat its very purpose. This the court perceived when it stated "The language of section 473 is general and all-embracing. * * * We think the action for declaratory judgment for the relief sought for by the plaintiff is permissible and the provisions of articles 67-70 of the Civil Practice Act, at most, furnish *alternative remedies.*"⁹

⁵ *Anway v. Grand Rapids R. Co.*, 211 Mich. 592, 179 N. W. 350; 12 A. L. R. 26 (1920).

⁶ "The Supreme Court shall have power in any action or proceeding to declare rights and other legal relations on request for such whether or not further relief is or could be claimed, and such declarations shall have the force of a final judgment. Such provisions shall be made by rules as may be necessary and proper to carry into effect the provisions of this section." C. P. A. 473. See also Rules of C. P. 210-214.

⁷ "An action to annul a marriage upon the ground that the former husband or wife of one of the parties was living, the former marriage being in force, may be maintained by either of the parties during the lifetime of the other, or by the former husband or wife." N. Y. Civ. Prac. Act § 1134.

⁸ "The mere fact that another remedy exists is no ground at all of itself for refusing the declaration. The English and Colonial courts regard the declaratory relief as an alternative remedy." 36 Yale L. J. 403.

⁹ *Supra* note 1.

To say that an action for annulment or divorce is a more complete remedy is to fail to appreciate the differing results. In the principal case a mere decree of annulment would not mention the Mexican judgment. It is this divorce secured by fraud that the plaintiff seeks to have declared a nullity. Consequently, since there is no statutory action to annul a divorce the proper remedy would seem to be a declaration to that effect. That divorce on the records and a public representation thereof is humiliating and degrading both to the plaintiff and her children. For might it not be inferred, as it generally is, that a divorce is secured through the defendant's misconduct? Again, assuming that plaintiff obtained an annulment of the second marriage that would not prevent the defendant from remarrying in another state and asserting the validity of the divorce secured by fraud in Mexico.

Both in the United States and England there are numerous authorities sustaining the extension of declaratory orders into the realm of matrimonial actions.¹⁰ In a few states there are specific statutes granting this form of relief in declaring and determining a marriage status.¹¹ Courts have even gone so far as to declare such status where actually no divorce or annulment was sought.¹² Then too, in order to avoid future complication, such as controversies over property rights and legitimacy, the courts have interfered to remove whatever cloud there may be upon a marriage contract.¹³

It was argued that if courts are empowered merely to determine the status of parties to a marital agreement a congested calendar will ensue. That apprehension is not well founded. The same argument was made against the enactment of the provisions relating to declaratory orders and is always made when new legislation is proposed. In point of fact although section 473 has now been in effect since May, 1921, the reported decisions under the section have not exceeded thirty.

"British and continental practice has demonstrated that the courts have not exhausted their usefulness by the employment of their curative functions, but that there remains a large field for the application of their

¹⁰ *In re Phillips* (1903), 1 Ch. 128, a declaratory judgment was entered adjudicating a marital status; in *Schilson v. Her Majesty's Attorney General* 22, Weekly Reports 831; West v. Lord Sackville (1903), 2 Ch. 378; *Kitzman v. Kitman*, 167 Wis. 308, 166 N. W. 789 (1918); *Sharon v. Sharon*, 67 Cal. 185, 7 Pac. 635 (1885).

¹¹ Uniform Declaration Judgment Act, Laws of Wisconsin (1925), Chapter 400, 247.03; Laws of California, C. C. P. Section 1050.

¹² *Greenberg v. Greenberg*, 218 App. Div. 104, 218 N. Y. Supp. 87 (1926); *Dodge v. Campbell*, 220 N. Y. Supp. 262 (1927).

¹³ *Gargan v. Sculley*, 82 Misc. 687, 144 N. Y. Supp. 205 (1913); *Webster v. Webster*, N. Y. L. J., April 19, 1927; June 10, 1927.

preventive functions which in this country has barely been touched. Under the procedure authorizing declaratory judgments, with its simplicity, its capacity to serve important ends of corrective justice without legal hostilities, its utility in deciding many questions which cannot now be brought before judicial cognizance, and its efficacy in removing uncertainty from legal relations before it has ripened into a bitter litigation, the American public may look forward to a more amicable and simple method of adjusting many conflicts and to an enlarged social service from its courts."¹⁴

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¹⁴ 34 Harv. L. Rev. 716.