DECLARATORY JUDGMENT SUITS

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ONE OF THE MOST significant developments in the administration of justice in the last half century is the addition of the declaratory judgment as one of the remedies which is available to litigants. Because it enables a person to have his rights determined when future action without such a determination may jeopardize his interests, this remedy has proved to be extremely useful.

The advantages of a declaratory judgment suit are best explained by comparing this type of action with a traditional coercive action. Under the older practice, the usual remedy was an action for damages which could be brought only after the defendant had breached a contract or had done some other act which injured the plaintiff. A defendant could not obtain a judicial determination of his rights before he acted; he must act at his peril. If a defendant believed that he had certain rights under a contract, he could act accordingly, but he might be liable for damages. If he refrained from acting, he might be waiving valuable rights to which he was entitled.

An action for a declaratory judgment enables a person to obtain a determination of his rights before he acts so that the element of peril is removed. Thus, should a dispute develop as to the interpretation of a contract or some other instrument, the parties may adjudicate their differences at once instead of being compelled to wait until after one of them breaches the contract, making himself liable for damages. The dispute may be litigated before rather than after the challenged step is taken, so that a person may be able to look before he leaps. One author, in discussing declaratory judgments, recently wrote:

> Its virtue thus lies in marking out for the parties, when the case so requires, the path which they may lawfully follow, instead of compelling them to wait for judicial action until missteps have occasioned damage or loss —in enabling a plaintiff assailed by doubt or uncertainty arising from adverse claims or clouds, to avoid the resulting peril and insecurity by obtaining an authoritative adjudication of his rights, before risking disaster by acting on his own assumption or guess or incurring prejudice by not acting because of fear of consequences. (Millar, *Civil Procedures of the Trial Court in Historical Perspective*, 381 (1952).

An action for a declaratory judgment may be useful even after the right to bring a traditional coercive action has become available. At common law, a person against whom a claim was asserted was unable to bring an action in order to obtain a determination of the validity of the claim. Thus, if the person who was asserting the claim failed to bring suit, the claim could be used to harass the potential defendant for several years. However, an action for a declaratory judgment provides the potential defendant with a way of obtaining relief since he may initiate an action to have his alleged liability adjudicated. This action is similar to a traditional coercive action except that the parties are reversed.

Even a person who could bring a common-law action for damages may wish to bring an action for a declaratory judgment. Since a declaratory action is a milder method of ascertaining one's rights than an action for damages, its use may create less ill will than would the use of a common-law action. For this reason a New Jersey court stated that "Various aspects of the remedy give to it a civilized character." (Utility Blade & Razor Co. v. Donovan, 111 A2d 300, N. J. App. Div., 1955.)

The types of disputes that may be determined by declaratory judgments are extremely diverse since this relief is available wherever there is uncertainty as to rights or liabilities, or wherever persons may have to act at their peril if their rights are not determined. However, a few situations in which this remedy is available will be discussed in order to illustrate its usefulness. The most common type of declaratory judgment suit is one which is brought to determine the rights of parties under a contract before it has been breached. Many of these actions involve a dispute as to liability under a contract of insurance, usually automobile liability insurance. Declaratory judgments have proved to be very useful where there is a dispute as to the coverage of the policy since no settlement can be made until this issue is determined. The insurance company will not pay the injured person until its liability on the policy is clear, and the insured is hesitant to act until the insurance company's liability is determined. Even the injured person would benefit by an early determination of the insurance company's liability. If the insurance company is liable, the injured person may not wish to settle his claim with insured, but if the insurance company is not liable, the injured person may wish to settle with the other party for a nominal sum. Thus, no one can act without jeopardizing his rights until the question of coverage is determined. The dilemma in which the parties find themselves was pointed out in an Ohio case. The court stated:

> The plaintiff [insured] is at sea. . . . He would be at a loss to know whether he should settle the claims or stand trial on them. If he settles, the defendant insurance company might claim he had paid too much. Having to face suits will naturally anger his customers and cause loss of business. If it is determined that that policy covers the loss to customers . . . then the insurance company should step in and take over the responsibility of adjustment and settlement of these claims. Otherwise plaintiff will be faced with a multiplicity of suits by customers, the necessity of defending them, of having counsel, etc. At least he should know where he stands, and I think the law contemplates just such use of the declaratory judgment statute wherein a speedy determination may be had of plaintiff's rights under the policy. Also, the insurance company does not know where it stands, either. If the policy covers such loss, it should know it and get busy thereafter, and give the plain-

About the Author

George B. Fraser, Jr., became a professor in the College of Law in 1949. He graduated from Dartmouth in 1936; received his legal training at Harvard and George Washington; practiced law in Washington, D. C., 1939-41; was a lieutenant commander, USNR, during World War II; and was teaching law at the University of Idaho when he joined our faculty. For the past three years he has served as draftsman on a committee of the Oklahoma Bar Association, working on a revision of the Code of Civil Procedure. Many of his proposals have been made a part of the state's judicial administration, and he has received high praise for his excellent work from the president of the Bar Association and others in his profession.

tiff that service which he paid for. (Auito v. American Casualty Co., 89 N.E.2d, 313, Ohio C.P. 1949.)

Either the injured or the insurance company may bring an action to obtain a determination of their rights under the policy. In the above case the insured initiated the action against the insurance company.

Declaratory judgment suits may be used to determine the title or right to possession of property, whether real or personal. In such actions the court may determine the construction or validity of deeds, leases, wills, and trust agreements, or it may determine rights where no instrument is involved, as rights acquired by adverse possession. Easements and restrictive covenants are frequently litigated in declaratory actions. In addition, courts may determine personal rights and status in such actions. For example, in one case the court determined a wife's marital status after her husband had procured a Mexican divorce. This was desirable since the wife had a right to know if the divorce was valid or if she was still married. Also, courts may determine legitimacy, paternity, and the right to custody of children in declaratory judgment suits.

A person may have the validity of a state statute or a municipal ordinance determined in a declaratory action. This is an especially useful remedy if the legislation is criminal since the person is not compelled to violate the statute or become a respondent in a criminal action in order to obtain a determination of its validity or construction. As stated by one court, "Plaintiffs seeking a declaratory judgment are not required in advance to violate a penal statute as a condition of having it construed or its validity determined." (Dill v. Hamilton, 291 N.W.62, Neb. 1940.) This statement should indicate the significance of declaratory judgments as a method of preventing persons from acting at their peril.

Declaratory judgment statutes are remedial in that they provide an additional remedy for litigants; they have not changed either the substantive rights of the parties or the method of trial. Both the Federal Rules and the Uniform Declaratory Judgments Act specifically preserve the right to a trial by jury in declaratory judgment suits. The right to a jury trial exists where such a right would exist in a coercive action based on the same facts. Judge Murrah of Oklahoma once stated in an opinion, "The procedural remedy afforded by the declaratory judgment act is neither legal nor equitable, however, its utilization does not alter or invade the right of trial by jury as

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SPADEFOOT TOADS

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AMONG THE MOST INTERESTING of North American native animals are the spadefoot toads (genus Scaphiopus), so-called because of the spadelike structure on each hind foot by which the animal burrows into the soil. Despite the fact that the first one of these toads was discovered over a century ago, we still have much to learn about their habits. Many generally well-qualified zoologists of the United States who live where these animals occur in abundance have never even seen one, and only within the past fifteen years have the tadpoles of all undoubted species of the spadefoots become recognized, even by specialists particularly interested in them.

The spadefoots inhabit suitable local niches in most regions of central and southern North America from southern Canada (in the West only) to beyond Mexico City to the south. Eight forms have been named, although some of these are not yet securely established as distinct from some others. The six generally recognized species are (1) the eastern or solitary spadefoot (technically, *Scaphiopus holbrooki* Harlan), (2) the southern spadefoot (*S. couchi* Baird), (3) the western spadefoot (*S. hammondi* Baird), (4) the plains spadefoot (*S. bombifrons* Cope), (5) the Mexican spadefoot (*S. multiplicatus* Cope), and (6) the savannah spadefoot (*S. hurteri* Strecker). Some believe that the forms *hammondi, bombifrons,* and *intermontanus* constitute subspecies or regional races of one basic species. Others think that there should be two genera recognized, *Spea* and *Scaphiopus* (in a restricted sense). Others hold them to represent subgenera, with four forms in each. All of this uncertainty in the names applied reflects our inadequate understanding of the evolution of the group. For our purpose here it suffices to use the common name without prejudice as to the final technical distinctions which will later be made as knowledge advances.

My own experience with spadefoots has been largely with the four forms which occur in Oklahoma, namely the savannah spadefoot, the plains spadefoot, the southern spadefoot, and the western spadefoot. The last mentioned has never been found breeding in Oklahoma; I have studied this one in New Mexico.

Spadefoot toads are small, short-legged animals of secretive nocturnal habits. They range in length, as adults, from two to four inches, although some females may be slightly larger. Their color varies so much as to baffle general description; but some shades of brown, grey, or dark green are common on the back, the belly being characteristically immaculate white. In at least three forms, white or whitish areas also occur on the back. A few are warty; others are smooth. The skin is delicate and thin, more like that of a frog than of a toad. It secretes a thin watery mucus much like that of a frog. All adult females (and, to a much smaller extent, males) secrete a musty-smelling material which when handled is irritating to human mucous membranes and has a very unpleasant, extremely peppery taste. I tried it once and once was enough! This is thought to protect the animals from predators, the females needing protection more than the males because they are by nature the "custodians" of the eggs, all-important for the survival of the race.

Spadefoots are as nearly entirely nocturnal as any North American animal. Almost never has one been found active except at night, and then only during breeding. They often are very secretive, as well. For example, I have several times observed thousands, sometimes literally hundreds of thousands, of young savannah spadefoots emerging from a pool at their metamorphosis and have hoped each time to collect samples of them in the region of the pool to study their growth rates. Always, within two weeks, usually much less, they have almost completely disappeared. Only twice have I found one or a few individuals of known age and on both occasions the animals were of a size which showed rapid growth. From this it must follow that the animals were active and feeding either in

observation offers still more problems. But after all, this is what keeps us intellectual workers happy. If we knew it all now, about the spadefoots or anything else, life would be boring indeed.

Books

The Agricultural Regions of the United States. By Ladd Haystead and Gilbert C. Fite. University of Oklahoma Press, 1955. Reviewed by Thomas Harry McKinney.

This book is a concise analysis of the economic and geographic factors that make American agriculture what it is today. It is designed to be severely functional and is intended as a tool for students, county agricultural agents, teachers of vocational agriculture, businessmen, and all others interested in understanding why our nation's farm output is the largest and one of the most varied in the world today. At the same time, the authors express the hope that some of the drama, the beauty, and the quiet emotional liaison between the husbandman and his environment show through the utilitarian goals.

Almost everybody has his own idea of what he considers to be the typical American farm. The picture he has in mind is usually based on limited observation or childhood experience. The authors contend that the "typical" American farm is nonexistent. Furthermore, they feel that this fallacy of reasoning from the specific to the general causes many people to make errors in judging modern American agriculture. "Farm patterns not only have changed incredibly in the last generation, but are in a continuous process of change right now." For this reason, "nobody can make a fair judgment on anything concerned with American agriculture unless he has a clear picture in mind of the scope, variegation, and transitions of this highly mutable industry."

Eleven chapters are devoted to fact-filled discussions of agriculture in the various geographic regions of the United States, ranging from "New England: Land of Abandonment" to "The Western Slope: Land of Tomorrow." Useful, up-to-date information on soil groups; crop and livestock production; and number, size, and class of farms is presented, by states, for each region.

Ladd Haystead and Gilbert Fite have done a competent job in presenting a brief but thoroughgoing analysis of agriculture in the United States. They have succeeded where other writers often fail. They include the enormous quantity of statistical data needed in a book of this type, yet they do it in such a way that the reader is not burdened or bored by its presence. As well as being informative, the book is easy to read and interesting.

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at common law." (Hargrove v. American Central Ins. Co., 125 F2d, 226, 10 Cir. 1942.)

Forty-six of the forty-eight states have passed declaratory judgment acts; Oklahoma and Mississippi are the two exceptions. However, the federal courts in Oklahoma may grant declaratory judgments. As a result, this remedy is available in Oklahoma where citizens or corporations of other states are involved, but the action must be brought in a federal court. An Oklahoma citizen cannot bring such an action in the courts of his own state. Since this remedy has such enormous and far-reaching possibilities in preventive relief—prevention of uncertainty and misunderstanding as to rights—Oklahoma courts should be authorized to grant declaratory judgments.