

## Legislative Clarification for Declaratory Judgments

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# Comments and Casenotes

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## LEGISLATIVE CLARIFICATION FOR DECLARATORY JUDGMENTS

The history of the Maryland version of the Uniform Declaratory Judgments Act has been far from happy. Originally passed as Chapter 294 of the Laws of 1939,<sup>1</sup> the Act, for all practical purposes, was driven from the local scene by a series of opinions decided by the Court of Appeals which, in effect, held that no relief by way of declaratory judgment could be obtained if there existed any other available and adequate remedy at law or in equity.<sup>2</sup> This view, though severely criticized both by the REVIEW<sup>3</sup> and by the leading authority on the subject<sup>4</sup> as being contrary to the expressed intent of the General Assembly, successfully survived.<sup>5</sup>

In an effort to preserve the beneficial progress and practical usefulness of the Act, and at the same time to declare its actual intention with respect to the subject, the General Assembly has repealed and re-enacted, with amendments, Article 31A of the Annotated Code.<sup>6</sup> The significance of the repealer is highlighted by a series of "whereas" recitals which acknowledge the fact that the Court of Appeals had held that a proceeding for a declaratory judgment was not appropriate within the contemplation of the Uniform Act if there existed an immediate cause of action between the parties for which one of the common remedies at law or in equity was adequate and available. The recitals further emphasize that it was the sense of the General Assembly that the real legislative

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<sup>1</sup> Md. Code (1939), Art. 31A.

<sup>2</sup> The most damaging decisions were *Porcelain Enamel & Manufacturing Co. v. Jeffrey Co.*, 177 Md. 677, 11 A. (2d) 480 (1940); *Caroline Street Permanent Building Association v. Sohn*, 178 Md. 434, 13 A. (2d) 616 (1940); *Morgan v. Deitrich*, 179 Md. 199, 16 A. (2d) 916 (1940); *Davis v. State*, 183 Md. 385, 37 A. (2d) 880 (1944).

<sup>3</sup> Case, *Declaratory Judgments in Maryland* (1942) 6 Md. L. Rev. 221.

<sup>4</sup> BORCHARD, *DECLARATORY JUDGMENTS* (2d Ed. 1941) 325-327.

<sup>5</sup> *Davis v. State*, 183 Md. 385, 37 A. (2d) 880 (1944). See also *Brown v. Trustees of M. E. Church*, 181 Md. 80, 28 A. (2d) 582 (1942), in which the Court granted relief by way of a declaratory judgment after an extended discussion of the Act, but added that the principles of declaratory relief were substantially the same under the Uniform Act as under the Act of 1888, Ch. 478, Md. Code (1939), Art. 16, Sec. 29. This dictum is not in accord with the better reasoned cases.

<sup>6</sup> Md. Laws 1945, Ch. 724.

intent in the passage of the Uniform Declaratory Judgments Act was that the existence of another adequate remedy at law or in equity should not preclude a judgment for declaratory relief in cases in which it was appropriate. In the light of these recitals, it can hardly be questioned that the new Maryland Declaratory Judgments Act has been passed for the expressed purpose of establishing a procedure which may be used as alternative to the existing remedies available at law or in equity. Moreover, it would seem clear that the decisions of the Court of Appeals which had held to the contrary have been effectively set aside.

Chapter 724 of the Laws of 1945 made two important changes in the wording of the Act. In order to correct certain erroneous reasoning found in at least one late Maryland decision,<sup>7</sup> the clause "nor shall the existence of another adequate remedy preclude a judgment for declaratory relief in cases where it is appropriate"<sup>8</sup> is omitted from Section 1 of the new law. This clause, which was obviously inserted in the original version of the Act to guarantee that declaratory procedure would be construed to be alternative to existing remedies,<sup>9</sup> had been relied upon by the Court of Appeals as authority for holding that the existence of one of the common remedies at law or in equity would preclude the use of declaratory relief.<sup>10</sup> This result had been reached by isolating the phrase "in cases where it is appropriate," and by stating that a declaratory judgment was inappropriate where the litigant could resort to an existing remedy at law or in equity. The deletion of this clause, coupled with the expressed statement of legislative intent found in the "whereas" recitals, should effectively preclude such reasoning in future cases.

The most sweeping change made by Chapter 724 appears in Section 6 of the new Act. Prior to its amendment, Section 6 in substance had provided that courts of record could refuse to enter a declaratory judgment or decree

<sup>7</sup> *Davis v. Sate*, 183 Md. 385, 389, 37 A. (2d) 880, 883 (1944).

<sup>8</sup> Md. Code (1939) Art. 31a, Sec. 1.

<sup>9</sup> BORCHARD, *DECLARATORY JUDGMENTS* (2d Ed. 1941) 325.

<sup>10</sup> In the *Davis* case, *supra*, n. 5, the Court said, at 183 Md. 389:

"Section 1 of the Uniform Act explicitly declares that the existence of another adequate remedy shall not preclude a judgment for declaratory relief 'in cases where it is appropriate'. However, we have decided that the Act is designed to supplement, not to supersede, existing remedies at law and in equity, and accordingly where an immediate cause of action exists for which one of the existing remedies is available and adequate, a proceeding for a declaratory judgment is not appropriate within the contemplation of the Act."

For a full discussion of the early decisions which had established this rule, see *Case, Declaratory Judgments in Maryland* (1942) 6 Md. L. Rev. 221.

where such declaratory judgment or decree, if rendered or entered, would not terminate the uncertainty of controversy giving rise to the proceeding.<sup>11</sup> This Section has been repealed and in its place the new Act provides:<sup>12</sup>

Relief by declaratory judgment or decree may be granted in all civil cases in which an actual controversy exists between contending parties, or in which the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or when in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which he has a concrete interest and that there is a challenge or denial of such asserted relation, status, right or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment or decree shall serve to terminate the uncertainty or controversy giving rise to the proceedings. When, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy must be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, or an equitable remedy, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment or decree in any case in which the other essentials to such relief are present; but proceeding by declaratory judgment shall not be permitted in any case in which divorce or annulment of marriage is sought. The Court may order a speedy hearing of an action for a declaratory judgment, and may advance it on the calendar.

The amendment to Section 6 is patterned after a similar change which was made two years ago in the Pennsylvania version of the Uniform Declaratory Judgments Act.<sup>13</sup> Originally drafted by Chief Justice Von Moschzisker of the Pennsylvania Supreme Court after his retirement from the bench, the amendment was specifically designed to rescue the Pennsylvania Act from a line of decisions which

<sup>11</sup> Md. Code (1939) Art. 31a, Sec. 6.

<sup>12</sup> Md. Laws 1945, Ch. 724, Sec. 6.

<sup>13</sup> P. L. 284, May 26, 1943; Pa. Stat. Annot. (Purdon, Supp. 1944) Tit. 12, Sec. 836.

had in effect emasculated it by judicial legislation.<sup>14</sup> These decisions, like the now overruled opinions of the Maryland Court of Appeals, had held that the declaratory procedure could not be used if another remedy at law or in equity was available.<sup>15</sup> This result had been reached despite the fact that the Pennsylvania Act had received at the outset a clear construction to the effect that the declaratory judgment procedure was designed to offer another method by which a party could call upon the courts to adjudicate his rights.<sup>16</sup>

While it is not altogether clear why the Court of Appeals refused to favor the original Maryland Declaratory Judgments Act with a construction in line with the overwhelming weight of authority elsewhere, it is abundantly clear that the General Assembly has refused to sanction the line of decisions which for all practical purposes wrote the Act out of existence on the grounds of legislative intent. That the new Act provides an alternative remedy to ordinary methods of procedure available at law or in equity cannot be questioned. The Act specifically states that it is not applicable to cases for which a statute provides a special form of remedy, but recites that it may apply to all cases for which a statute recognizes that the controversy is susceptible to relief through a general common law or equity remedy.<sup>17</sup> The only exceptions in

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<sup>14</sup> Borchard, *Pennsylvania's Clarifying Amendment For Declaratory Judgments* (1944) 92 Univ. of Pa. L. Rev. 50, 50-51.

<sup>15</sup> The latest Pennsylvania cases on the subject are *Stofflet & Tillotson v. Chester Housing Authority*, 346 Pa. 574, 31 A. (2d) 274 (1943); *Valley R. R. v. Delaware, Lackawanna & Western R. R.* 346 Pa. 579, 31 A. (2d) 276 (1943). Earlier cases included *Leafgreen v. La Bar*, 293 Pa. 263, 142 A. 224 (1928); *Nesbitt v. Manufacturers' Casualty Ins. Co.*, 310 Pa. 374, 165 A. 403 (1933); *Bell Telephone Co. v. Lewis*, 313 Pa. 374, 169 A. 571 (1934).

<sup>16</sup> *Kariher's Petition*, 284 Pa. 455, 131 A. 265 (1925). It is of paramount significance that the opinion in this case was written by Chief Justice Von Moschzisker, who subsequently drafted the amendment to the Pennsylvania Declaratory Judgments Act from which the Maryland amendment was taken. In the course of his opinion, Chief Justice Von Moschzisker said, at page 471:

"The declaratory-judgment procedure offers another method by which a party can call on the courts to adjudicate his rights, but it is the same as existing methods in that it follows due process of law."

<sup>17</sup> The only decision to date which has attempted to construe the new Act is *Rustless Iron & Steel Corporation et al. v. Public Service Commission et al.*, Circuit Court of Baltimore City, *The Daily Record*, July 16, 1945. In this case, a complaint was filed on May 23, 1944, by the People's Counsel for the State of Maryland with the Public Service Commission as a result of which the Commission undertook an investigation of the reasonableness of the electric rates charged by the Consolidated Gas Electric Light and Power Company of Baltimore. On April 18, 1945, the Commission, at the request of the Consolidated, issued and served on the parties a document

the latter group of cases are suits for divorce and annulment of marriage. It thus appears that with the exception of cases for which a statute specifically provides a special form of remedy and in divorce and annulment proceedings, Maryland litigants may now choose as a method for seeking judicial relief either one of the established remedies at law or in equity or the more expeditious and less quarrelsome method of suit for declaratory judgment. If the second choice is made and contested, it is to be hoped that the Court of Appeals will construe the new Act in the spirit in which it was re-enacted by the General Assembly.