Declaratory Judgments in Maryland

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What has happened to the Maryland version of the Uniform Declaratory Judgments Act? A casual examination of the Annotated Code will reveal that Article 31A is still very much in evidence. Unfortunately, however, its presence in the Code is not determinative of the value of the Act to Maryland law and procedure. To determine this value, consideration must be given to a series of recent Court of Appeals decisions, which, it is submitted, have so diluted the natural strength of the Act that what remains is merely a fragment of the original piece of useful and necessary legislation. It is the purpose of this comment, therefore, to point out the intended scope of the Uniform Declaratory Judgments Act, and to analyze the recent Maryland cases which have so materially restricted that scope.

The Declaratory Judgment Act was passed to give parties in interest a procedure by which courts of record could determine their corresponding rights, status, or legal relations in a simple manner not possible under existing legal remedies. The judgment thus obtained differs materially from those obtained in other ordinary actions in law or equity, since under a Declaratory Judgment as such, no coercive or executory relief is asked. Judgments giving only declaratory relief are far from new. Courts from time immemorial have entertained actions such as bills *quia timet*, bills of peace, bills of interpleader, bills for the perpetuation of testimony, bills for the rescission of written instruments, and annulment of marriage. In all of those procedures, the courts have recognized the necessity for passing judgments which determine right and status, which make clear existing doubts as to legal position, but which

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* Chairman, 1941-42, Student Editorial Board, Maryland Law Review.

1 Md. Code (1939) Art. 31a. While this comment is devoted primarily to the Maryland version of the Uniform Declaratory Judgments Act, yet the readers' attention is called to the somewhat similar fate which befell the earlier Maryland statute providing for declaratory judgments in equity, passed in 1888, and not specifically repealed by the enactment of the Uniform Act. This statute, with the cases decided under it, can be found in Md. Code (1939) Art. 16, Secs. 29-35. Particular attention should be called to the last case under the older statute, Saunders v. The Roland Park Co., 174 Md. 185, 189 A. 299 (1938).
do not attempt to coerce the defendant into a particular course of action.\textsuperscript{2}

Visualizing the utility of such peaceful procedures as opposed to the ordinary coercive actions, the framers of the Declaratory Judgments Act sought to extend this social and legal philosophy into broader fields. The result was the Uniform Act as it appears, with slight variations,\textsuperscript{3} in the Annotated Code of Maryland.

Section 12 of the Uniform Act provides that “This Act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and [it] is to be liberally construed and administered.”

Professor Borchard has described the three principal groups of cases which are appropriately brought for declaratory judgments, and the advantages of declaratory relief in these cases. The advantages in each group are stated by him as follows:\textsuperscript{4}

“(1) The substitution of a less technical, speedier, cheaper and more civilized joinder of issue in types of cases heretofore associated with hostile combat, the encrusted technicalities of special writs and irrevocably broken economic relations. The declaratory action proceeds on the assumption that a mild remedy will often satisfy, that responsible defendants, like government officials or large corporations, do not need more than a declaration of the law to obey it and that a coercive procedure under such circumstances is an expensive and often unnecessary luxury.

“(2) Aside from the substitution of a more civilized method of submitting disputes to judicial determination, the declaratory action has enabled the courts to pass on new types of cases which heretofore predicated adjudication on prior violence or destruction of the status quo. Thus, on the assumption that most people would observe the law if they could obtain an authoritative interpretation or construction of their

\textsuperscript{2}For a more extended comment on judgments giving no coercive relief, see Borchard, Declaratory Judgments (2d Ed. 1941) 6-7.

\textsuperscript{3}But for one exception the Maryland version of the Act is word for word with the Uniform Act. In Section 1 of Article 31A, an additional clause, not found in the Uniform Act, appears. It reads “nor shall the existence of another adequate remedy preclude a judgment for declaratory relief in cases where it is appropriate.” The importance of this addition will be discussed at another point in this comment.

\textsuperscript{4}Borchard, Declaratory Judgments (1939) 9 Brook. L. Rev. 1-2.
obligations, it has permitted a contract, franchise, statute, or other instrument to be construed before breach and without the necessity of destroying economic and social relations, as is now generally the case. Contracts, such as long-term leases, affected as never before by new events, such as legislation, change of circumstances or party act, may thus be kept alive while in litigation instead of requiring a purported breach or repudiation as a condition of judicial cognizance of the dispute.

"(3) The procedure has enabled a party who is challenged, threatened or endangered in the enjoyment of what he claims to be his rights, to initiate the proceedings against his tormentor and remove the cloud by an authoritative determination of the plaintiff's legal right, privilege and immunity and the defendant's absence of right, and disability. Corresponding to an ancient remedy of the Roman law, as reflected in the ceremonial of matrimony, it compels the challenger to come forward, prove his claim or ever thereafter remain silent. Thrown into jeopardy and danger by the threat or attack, the party charged has a legal interest in removing the cloud on his rights. This type of case, sometimes conveniently called the negative form of declaratory judgment, has attracted the widest attention because of the novelty of the fact situations presented to the courts. Both the second and the third types are designed to remove uncertainty and doubt from disputed legal relations and by clarifying and stabilizing them to perform the valuable social function of promoting security."

In passing the Uniform Declaratory Judgments Act, a legislature gives to the litigant a twofold method of procedure. First, a party is afforded a remedy in controversies where the ordinary drastic action has not yet accrued. In so doing, an attempt is made to give to parties a method of procedure by which their existing legal relations may be determined before the status quo has been broken, and where, for this reason no "ordinary" action would lie. Secondly, if the status quo has been breached, the act gives to parties who might have resorted to ordinary actions at law or equity a more expeditious and less

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5 Md. Code (1939) Art. 31a, Sec. 3.
violent form of action by declaration. In either case, however, procedure under the act substitutes, in the appropriate situation, a simple, efficient, and often amicable method for adjudicating disputed jural relations in place of the ordinary bellicose actions at law or in equity, which imply a breach of economic and social relations and are encumbered by procedural barnacles incidental to suit by ancient writs.

The act, as outlined above, is used to adjudicate affirmative relief. But its scope does not end there, for relief by declaration may also be utilized in a negative form. In seeking a declaratory judgment as a means of negation, the litigant has a new and useful method to determine a privilege or immunity, and, at the same time, to establish defendant’s “no right” or disability. A simple case situation can illustrate this point. A may obtain a declaratory judgment which will determine that he owes B nothing, or A may obtain a judgment determining that B has no right to assert an easement across his ground. In neither case is it essential that B shall have been guilty of overt acts which would give A an affirmative cause of action; by means of a Declaratory Judgment his rights and status can be settled.

Before declaratory judgment procedure can properly be used within the intendment of the Act as usually interpreted, it is necessary that certain conditions or prerequisites be fulfilled. It must be shown that there exists an actual controversy between petitioner and his adversary, that the issues are “ripe”, that each has a sufficient legal interest, and that there is a justiciable issue.

To be properly before the court, a plaintiff must show more than that he has some uncertain status or right to be established. He must show that the action is adversary in character, and “that there is a controversy between plaintiff and defendant subject to the court’s jurisdiction”. Failing to show such an “actual controversy”, the plaintiff’s petition will be dismissed on the ground that he is asking the court either for an advisory opinion, or bringing before it a “moot case”.

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6 Md. Code (1939) Art. 31a, Sec. 3.
7 For a more complete discussion, see Borchard, The Declaratory Judgment (1918) 28 Yale L. J. 1, 8-10.
8 Borchard, Declaratory Judgments (2d Ed. 1941) 20.
9 For a full discussion on the requirement that the plaintiff must present an actual controversy before he may secure declaratory relief, see Schroth, The “Actual Controversy” In Declaratory Judgments (1934) 20 Corn. L. Q. 1.
When the facts of a case are uncertain or contingent, when they require "judicial guess work", or when the issues are so related to the future that no immediate conflict of interests can be visualized, the courts will refuse a Declaratory Judgment. In such cases there is no "ripeness of issue". The plaintiff must be able to show, therefore, that the facts indicate an immediate danger to him or inevitable litigation against him before the courts will act. In other words "the danger of the plaintiff must be present, not contingent on the happening of hypothetical future events". A simple illustration is in point. A asks for a declaration of his rights "if, as, and when" he pays off the mortgage of B, the mortgagor, to C the mortgagee. A's bill will be dismissed because the issues are not ripe.

Before a plaintiff can secure a declaratory judgment, he must show that he has a protectible personal or money, interest at stake, which is being threatened by the defendant. A plaintiff cannot have a statute declared unconstitutional, therefore, unless he can show that the statute affects his "legal interest". Nor can a declaratory judgment be secured to deny the validity of a zoning ordinance, unless the plaintiff can show that his property or property interest was thereby damaged. It must be realized, however, that the concept "legal interest" is nebulous and capable of wide judicial interpretation. Professor Borchard contends that the Declaratory Judgments Act has widened the scope of the concept, since a far greater number of moral and economic interests are now, by judicial judgments, converted into protectible legal interests.

Granting that a plaintiff can show an actual controversy, the ripeness of the issue, and sufficient legal interest, he must also show that the case is justiciable before he can secure a declaratory judgment. If he presents a case which would require the court to assume the duties of the legislative or executive departments of the government, or of an administrative agency; or, if he petitions the court to decide abstract political questions, the plaintiff will be denied relief because he has presented no justiciable issue. At all events, the plaintiff must show that he brings before the

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10 BORCHARD, op. cit. supra, n. 8, 56.
11 See Heller v. Shapiro, 208 Wis. 310, 242 N. W. 174 (1932), noted (1932) 8 Wis. L. Rev. 81.
12 See Muskrat v. United States, 219 U. S. 346 (1911) for a leading case defining "legal interest".
14 BORCHARD, op. cit. supra, n. 8, 49.
court an actual "case" or "controversy" as defined by the Supreme Court in many of its decisions.\textsuperscript{15}

Declaratory judgments have at times been confused with cases calling for advisory opinions or "moot cases", and care must be taken to distinguish these essentially different situations. Cases calling for advisory opinions are those in which the plaintiff has no such interest that would justify judicial determination, or the parties defendant are so inadequate that no judgment rendered would be sufficiently conclusive. The judgment sought in an advisory opinion does not constitute specific relief to a litigant or affect his legal relations, but rather aids administrative or legislative authorities either in determining the validity of proposed legislation or the interpretation of laws already enacted.\textsuperscript{16} Judgments obtained under advisory opinions are not binding on any party, and cannot be "res judicata" in any case.\textsuperscript{17}

A "moot case" is one in which the issues have become "fictitious, colorable, hypothetical, abstract, academic, or dead."\textsuperscript{18} There is no actual controversy in such cases, and decisions rendered therein are binding on no one. They are therefore essentially different in every respect from situations calling for a Declaratory Judgment.

The scope and purpose of the Uniform Declaratory Judgments Act have had widespread appeal since its introduction into this country in 1919. Since that time the Act, with moderate variations, has been adopted into Federal procedure\textsuperscript{19} and by 39 states.\textsuperscript{20} Maryland adopted the Uniform Act in 1939, with the variation that, in its second sentence, the Maryland version adds to the uniform terminology: "nor shall the existence of another adequate remedy preclude a judgment for declaratory relief in cases

\textsuperscript{15} Old Colony Trust Co. v. Commissioner of Internal Revenue, 279 U. S. 716 (1929); Aetna Life Ins. Co. v. Haworth, 300 U. S. 227 (1937).
\textsuperscript{16} Muskrat v. United States, 219 U. S. 346 (1911); Gordon v. United States, 117 U. S. 697 (1885).
\textsuperscript{17} See Clovis and Updegraff, \textit{Advisory Opinions} (1928) 13 Iowa L. R. 188.
\textsuperscript{18} \textsc{Borchard, op. cit. supra, n. 8, 81-82.}
\textsuperscript{19} 28 U. S. C. A. 400.
\textsuperscript{20} Either the Uniform Act as such, or its substantial likeness has been adopted in Alabama, 1935; Arizona, 1927; California, 1921; Colorado, 1923; Connecticut, 1915; Florida, 1919; Idaho, 1933; Indiana, 1927; Kansas, 1921; Kentucky, 1922; Maryland, 1939; Massachusetts, 1929; Michigan, 1929; Minnesota, 1933; Missouri, 1935; Montana, 1933; Nebraska, 1929; New Hampshire, 1929; New Jersey, 1924; New Mexico, 1925; New York, 1920; North Carolina, 1931; North Dakota, 1923; Ohio, 1933; Oregon, 1927; Pennsylvania, 1923; Rhode Island, 1923; South Carolina, 1922; South Dakota, 1925; Tennessee, 1923; Utah, 1925; Vermont, 1931; Virginia, 1922; Washington, 1935; Wisconsin, 1927; Wyoming, 1923. Maine and West Virginia also adopted it in 1941.
where it is appropriate". Since it became law, the act has been a vehicle of procedure for eleven cases which have come before the Court of Appeals. It is the purpose of the comment to analyze those cases, discussing initially those instances in which relief was obtained in suits brought under the Act.

The first Maryland case to be brought under Article 31A was Levy v. Dundalk Co. There, the plaintiff, the purchaser of a piece of property, proposed to erect a building in violation of an equitable servitude claimed by the defendant. The Court sustained the plaintiff's position that such a servitude could not run in gross, and therefore ordered the cause remanded for a declaratory decree in conformity with the conclusions reached. The case is an illustration of those situations in which negative relief is sought, for here the petition was to establish an immunity on the part of the plaintiff and a "no right" on the part of the defendant. That the Act has particular utility in cases like Levy v. Dundalk Co. is easily demonstrated by the manifest hardship of requiring the plaintiff to breach the status quo and then be forced to restore it under a decision upholding the equitable servitude, as would have been the case under traditional procedures.

Two other cases in which relief was granted under the Uniform Declaratory Judgments Act deal with the law of contracts. In the first, the defendant notified the plaintiff that it considered certain acts of the plaintiff as amounting to a breach of a contract existing between them. Upon receipt of this notice, plaintiff sought a declaratory judgment in order to determine the parties' actual legal relations under the instrument. The court found that the notice of breach was inoperative and of no effect, and then determined the rights of the parties under the contract. The case illustrates how the Act may be used to defeat a defendant's efforts to terminate a contractual relation, or to preclude him from bringing a suit for damages because of an alleged breach. The petition in effect asks for both

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21 Supra, n. 3. That this clause has been completely ignored by the Court of Appeals is evident from an analysis of the cases decided under the Act. Maryland cases that are guilty of this omission are discussed at another point in this comment.

22 The technical wording of this sentence should be especially observed, because in each instance in which relief was obtained under the Act, defendant below made no objection to the method of procedure used.

23 177 Md. 636, 11 A. (2d) 476 (1940).

24 Had plaintiff been able to resort to a bill quia timet he would still have been seeking declaratory relief, as discussed above.

affirmative and negative relief, in that it asks that plaintiff’s status be determined, and that defendant has “no right” to treat the contract as broken. In *National Union Mortgage Corporation v. Potomac Consolidated Debenture Corporation*, plaintiff, on behalf of various bondholders, sought to have a subsection of certain debenture agreements construed. The rights of the parties were fully determined, and neither the parties concerned nor the court raised any objection to the Act as an appropriate method of procedure.

In two other cases brought under the Act, the Court of Appeals reached its decision without approving or condemning the procedure. In *Daniel Loughran Co. v. Lord Baltimore Candy and Tobacco Co.*, the plaintiff petitioned under the Act to have a Maryland Fair Trade statute declared unconstitutional. Plaintiff also asked that his status and rights be declared under the statute if it should be declared valid. A demurrer to the bill was sustained by the Court of Appeals, but no mention was made in the course of Judge Mitchell’s opinion of the propriety of the Act as a method of procedure for obtaining the relief asked. It is becoming customary, however, in states which have passed the Uniform Act to use this simple method of procedure to test the constitutionality of ordinances and statutes. It is submitted that Maryland is in line with those jurisdictions, for in *Baltimore v. Perrin*, the Act was used to determine the constitutionality of statutes, and in the alternative the proper construction and application thereof.

*Oursler v. Tawes* raised a constitutional law question by means of the Declaratory Judgments Act. There, the plaintiff sought to have the State Income Tax Law declared unconstitutional. The Court granted the relief prayed, since it reached the conclusion that one section of...
the statute was void but in all other respects the Act was valid. In commenting on the form of procedure, the court said:

"No issue has been raised as to the form of procedure, nor is there any controversy as to the facts involved in the two cases. As has been indicated, therefore, the basic question submitted by both of said cases centers around the constitutionality of Ch. 277 of the Acts of 1939 in so far as the same is designed to impose a tax on incomes in this state."32

It is possible to imply from this language that if an objection had been made to the procedure, the Court would have sustained it. It is submitted, however, that this is not the rule elsewhere, and should not be adopted here.

The most recent case to come before the Court of Appeals that sought a declaratory judgment is Hart v. The Mercantile Trust Co.32a In that case, decedent's children, specific legatees under his will, had entered into a compromise agreement with the residuary legatee, a corporation, under which the former assigned all their rights and interests under the will to the latter, and in return, the corporation had agreed to assign half of the net estate to the specific legatees. Upon a threat of payment to the Register of Wills of an inheritance tax amounting to seven and a half per cent., the rate paid by collaterals instead of the usual one per cent., the amount paid by children of the deceased, petitioners filed a bill for a declaratory judgment to determine the correct rate of taxation. The Court found that the specific legatees should be considered as the distributees of the portion passing to them, and that the rate of taxation should be one per cent. No question was raised as to the method of procedure used. The case is an excellent illustration, however, of a situation in which a declaratory judgment can be used to establish rights and settled issues before the status quo has been broken.32b

32 Supra, n. 30, 478.
32a 23 A. (2d) 682 (Md., 1942). See infra, circa, n. 65 for discussion of a case in which declaratory relief was denied in a tax case.
32b An even more recent case, decided after this comment had been set in type, in which declaratory relief was used without discussion of or objection to its propriety was Maryland Theatrical Corporation v. Brennan, 24 A. (2d) 911 (Md. 1942), where a statute was declared unconstitutional on a bill filed in an equity court. Without citing Article 31a, the opinion stated "the appellant is entitled to a decree so declaring," and later referred to the proper decree to be entered as a "declaratory decree".
The Maryland cases analyzed above raise no objection to the Uniform Declaratory Judgments Act as a method of procedure. Unfortunately, however, those cases do not constitute all the decisions in this state which have attempted to construe the scope of the Act, and, it is submitted, the four cases next to be analyzed have gravely impaired the utility and operation of the Uniform Act.

In *Porcelain Enamel & Manufacturing Co. v. Jeffrey Co.* the plaintiff made application to a court of law for a declaratory judgment to determine which of two contractors with the plaintiff had caused a delay, and therefore which might be held by the plaintiff in an action for damages. In effect, therefore, the plaintiff sought a declaration as to which of the two contracting parties had been guilty of a breach of contract. The Act specifically provides that a party may have his rights and status under a contract determined, and that such construction may take place either before or after breach. The Court reviewed decisions of two jurisdictions and then stated that in such situations as the instant case there was no settled interpretation of the Act, and that therefore the Court would apply its own judgment in ascertaining the meaning of the statute. In denying relief to the plaintiff the Court said:

"So confining it, the decision is that the Legislature cannot be supposed to have meant that resort to a declaratory judgment should take the place of an ordinary action for damages for breach of contract because information is lacking to the Plaintiff. The name 'declaratory judgment' and the subject of its 'rights, status, and other legal relations', would, in our opinion signify rather that uncertainty in the contract and its effect is to be removed."

The decision is unfortunate. Plaintiff asked that the contracts be construed and that the rights, duties, and obligations of the parties be outlined in a declaratory judgment. The Maryland Statute clearly gives him a right to ask this. The weight of authority elsewhere clearly sustains his position. It is submitted that the construction of the statute is therefore erroneous.

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82 177 Md. 677, 11 A. (2d) 480 (1940).
83 Md. Code (1939) Art. 31a, Secs. 2, 3.
84 California and Tennessee.
85 Supra, n. 33, 681.
86 Borchard, op. cit. supra, n. 8, 499 et seq. In this chapter on Contracts, Professor Borchard points out the possibility of the interpretation of contracts under a declaratory judgment either before or after breach. In
The case which struck a serious blow to the Maryland Uniform Act was *Caroline Street Permanent Building Association v. Sohn.* In that case a mortgagee sought to have a paper writing construed, which purported to give to the defendant certain real estate owned by plaintiff's mortgagor. It was the theory of plaintiff's case that the "agreement" was an attempt by the mortgagors to divest themselves of valuable security to the detriment of the mortgagee. The Court denied relief, stating that "where there exists an immediate cause of action between the parties for which one of the common remedies of law or equity is adequate and available, a proceeding for a declaratory judgment is not appropriate within the scope of the Act."

The effect of this decision is obvious. It completely nullifies one of the main purposes of the Act, e.g., to give a party a more expeditious and less violent means of procedure where the status quo has already been broken. Moreover, recourse to the remedy is discouraged by the fear that the Court will conclude, although in direct defiance of the Act which sought to forestall this precise error, that there is another remedy available.

The Court of Appeals cited twelve jurisdictions in support of its views in the *Caroline Street* case. It is submitted that the majority of these jurisdictions do not support the Maryland view, or that the cases cited have no application to the case at hand.

In Ohio, the question of whether the Declaratory Judgments Act is an alternative remedy has twice been before the courts. Both cases are cited by the Maryland Court of Appeals as answering this question in the negative. In such cases either affirmative or negative relief may be granted, and at all events parties' status may be determined thereunder. Can it be possible that the Court of Appeals, in the principal case, has denied to Maryland citizens this form of relief, especially in the light of the fact that it was specifically given to them under Sec. 3 of Art. 31a?

178 Md. 434, 13 A. (2d) 616 (1940).

In denying declaratory relief, the Court found that the correct procedure would have been in a creditor's bill.

Supra, n. 38, 444-445.

For a similar criticism of a case supporting the Caroline case, see Glasser, *The Declaratory Judgment as an Alternative Remedy in Ohio* (1937) 4 Ohio State L. Jour. 1, 19.

These include New York, Pennsylvania, Wisconsin, Indiana, Ohio, Michigan, Nebraska, New Jersey, New Hampshire, Virginia, California, and England.

the first case, a lower court held that a lessor who believed that a lease was forfeited could not have such an instrument construed under a declaratory judgment, since he could obtain the same relief in an action in ejectment. The case was immediately the point of justified criticism. In the later case, the Ohio Supreme Court changed this when it held that the validity of a note, depending on lack of consideration, could be determined under the Uniform Act even although the plaintiff might have availed himself of other remedies. The court clearly held, therefore, that the Act was an alternative remedy, and that it could be utilized notwithstanding that another remedy was available.

American National Bank & Trust Co. v. Kushner, from Virginia, is cited as authority in support of the Caroline case. But, in the Virginia case, plaintiff was granted the relief sought under Declaratory Judgment procedure, and therefore any remarks concerning the Act's not providing an alternative remedy were mere dictum. When the question was squarely raised in Virginia, however, the Court said:

"The fact that a plaintiff might by the institution of an action or suit or series of actions or suits, eventually through protracted and continuous litigation, have determined the same questions that may be determined once and for all in a declaratory judgment proceeding, has never, so far as we find, been held by the courts to deprive the courts of jurisdiction to enter a declaratory judgment wherein the entire rights of the parties can be determined and settled once and for all."

It is evident, therefore, that the Virginia Court does not support the Maryland position.

There is dictum in the Nebraska case of Stewart v. Herren which supports the view of the Maryland Court in the Caroline case. There, the constitution of Nebraska gave original jurisdiction over the appointment of guardians to the county courts, and the Supreme Court held that

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45 Supra, n. 41.
47 162 Va. 378, 174 S. E. 777 (1934).
49 125 Neb. 210, 249 N. W. 552 (1933).
this precluded the district court from passing a declaratory judgment removing one guardian and appointing his successor. The case is correct on this narrow point. The dictum to the effect that the Act is not an alternative remedy was not necessary in deciding the case however, and has been characterized as "gratuitous, inaccurate, and misleading surplusage." It has not been followed in Nebraska.

The Indiana case of Brindley v. Meara is cited by the Court of Appeals to sustain its position. In that case a declaratory judgment had already been obtained, and plaintiff endeavored to secure "further relief" as outlined in the Act. The Court held that the provision for "further relief" was unconstitutional, since it was broader in scope than the title of the Act. The case is not in point with the Caroline case, and is no authority for the position there taken. Wisconsin and New Jersey cases cited by the Maryland Court are not in point and have no relation to the question presented in the Caroline case.

Further to support the Caroline case, the Court of Appeals cited cases from Pennsylvania and the general laws of England as authority for its position. Early in the history of the Act in Pennsylvania, the courts of that state fell into the error of suggesting that the Declaratory Judgments Act could only be used when no ordinary form of action was available. Unlike Maryland, however, the courts of Pennsylvania have the protection of a poorly

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50 Borchard, op. cit. supra, n. 8, 335.
51 209 Ind. 144, 198 N. E. 301 (1935).
52 The Indiana case has been the object of criticism in a note in (1936) 22 Va. L. Rev. 588.
53 In Heller v. Shapiro, 208 Wis. 310, 242 N. W. 174 (1932) the plaintiff had been required to make payments on a loan secured by a mortgage on certain property. To prevent foreclosure, plaintiff sought a declaration of his right to subrogation in the position of the paid off mortgagee "if, as, and when the mortgage was paid off". The court held that the issues were not sufficiently ripe to allow adjudication and therefore dismissed plaintiff's bill. Also see Springdale Corp., et al., v. Fidelity Union Trust Co., 121 N. J. L. 536, 3 A. (2d) 565 (1939) where plaintiff's petition was apparently dismissed because he had sought relief at law and his place was rightfully in equity. Neither of these cases deal with the declaratory judgment as an alternative remedy.
54 See List's Estate, 283 Pa. 255, 129 A. 64 (1925). The theory of the Pennsylvania decisions denying relief was, in part, that the declaratory judgment was in the nature of an extraordinary remedy, to be granted only when there was no other available legal or equitable remedy. Such grounds were especially evident in decisions before the Pennsylvania Act was amended in 1935. There is no historical justification for such reasoning, nor can any be found in the Act itself. An extended comment on this same subject is found in Borchard, Declaratory Judgments in Pennsylvania (1934) 82 U. of Pa. L. Rev. 317.
worded statute which allows them wide latitude in the interpretation thereof.\textsuperscript{55} There is no disagreement among the authorities that in England, the declaratory judgment is an alternative and not an exclusive remedy.\textsuperscript{56} As a result, neither of these jurisdictions can be said to support the Maryland decision.

A leading case in New York which stands for the proposition that the Declaratory Judgments Act is not the proper procedure where other actions are available is \textit{James v. Alderton Dock Yards}.\textsuperscript{57} In that case defendant agreed with the plaintiff to pay him a fair commission if plaintiff could sell defendant’s business. Compensation to the plaintiff was not to be made, however, until defendant received all the proceeds from the sale. Not satisfied with the commission offered, plaintiff petitioned for a declaratory judgment before defendant had received all the proceeds of the sale. The court held that plaintiff should have waited until defendant had received the full sale price and then brought an ordinary action for breach of contract. Standing alone, this case supports the \textit{Caroline} case. However, the case is easily distinguished from it, and later New York authority is exactly contrary to the \textit{Caroline} case. In New York, rule 212 of their local Rules of Civil Practice provides that if in the opinion of the Court the parties should be left to relief by existing forms of action, it can decline to pronounce a declaratory judgment. There is no such provision in the Maryland Act. On the contrary, Section 1 of Article 31A of the Code provides, by way of addition to the uniform version, “nor shall the existence of another adequate remedy preclude a judgment for declaratory relief.”\textsuperscript{58}

It is submitted that if cases of other jurisdictions are to be regarded as persuasive authority in Maryland, they should be cases decided under statutes substantially similar to the Maryland Act. Neither the statute in Pennsylvania

\textsuperscript{55} Laws 1935, Art. 97, 228.
\textsuperscript{57} 256 N. Y. 298, 176 N. E. 401 (1931).
\textsuperscript{58} That New York supports the view that declaratory relief may be had even although there exists another adequate remedy at law or equity, is brought out in \textit{Woollard v. Schaffer Stores Co.}, 273 N. Y. 304, 5 N. E. (2d) 829. The court said: “We have never gone so far as to hold that, when there exists a genuine controversy requiring judicial determination, the Supreme Court is bound, solely for the reason that another remedy is available, to refuse to exercise the power conferred by Sec. 473 and rule 212.”
nor the practice in New York can be said to be thus similar. On the contrary, the Federal Declaratory Judgments Act, when read in conjunction with Federal Rule 57,\(^6\) is practically identical with the Maryland statute. In determining whether the Federal Act offered an alternative remedy to the litigant, Judge Parker, speaking at a time before the even more pointed terminology of Federal Rule 57 had come into the picture, said, in *Stephenson v. Equitable Life Assurance Society*:\(^60\)

"And that the remedy provided was intended as an alternative one in cases where other remedies are available is shown by the provision of the first paragraph that such judgments may be rendered whether or not further relief is or could be prayed."\(^61\)

The result of this investigation is obvious. The Court of Appeals, in deciding the *Caroline* case, put Maryland with the infinitesimal minority that holds the Declaratory Judgments Act is not available as an alternative remedy. The cases referred to by the Court to support its position, particularly when contrasted with the overwhelming number of cases the other way,\(^62\) do not represent such authority as should deprive the citizens of Maryland of such a valuable piece of legislative reform as the Declaratory Judgments Act.

The two remaining Maryland cases raise the problem of whether declaratory relief should be denied when there are special tribunals designated to try the facts in controversy. In *Morgan v. Deitrich*,\(^63\) the plaintiff filed a petition for a declaratory judgment to determine the effect of an agreement executed by one W upon an alleged codicil to his mother's will. The Court of Appeals denied declaratory relief, stating:

"A sufficient answer to those arguments would seem to be that the Orphans' Court for Harford County is the only tribunal vested with jurisdiction to order the probate or rejection of the paper writing alleged

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\(^6\) It is evident that the departure from Uniform Act terminology in the Maryland Act was styled after the wording in Rule 57. The Federal Rule states in part: "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." This sentence should be compared with the clause quoted from the Maryland Act, *supra*, n. 3.

\(^60\) 92 F. (2d) 406 (C. C. A. 4th, 1937).

\(^61\) Ibid.

\(^62\) Borchard, op. cit. *supra*, n. 8, 315-346.

\(^63\) 16 A. (2d) 916 (1940).
to be a third codicil to the will of Mrs. W and that the Circuit Court of Baltimore City has neither original nor concurrent jurisdiction with the Orphans' Court in admitting or refusing to admit the instrument to probate."

Confined to the narrow point of appropriate tribunals, the decision is probably correct, but unfortunately the Court reviews both the Porcelain Enamel case and the Caroline case with approval. As a result, the Morgan case must be considered a drawback to progressive procedure in Maryland.

In Williams v. Tawes, the plaintiff sought to have part of the Maryland Income Tax statute declared unconstitutional, and failing in this, she sought to have her status determined thereunder. Pointing out that the same legislature which had passed the Uniform Declaratory Judgments Act had also vested the Comptroller and/or the State Tax Commission with jurisdiction over such cases, the Court held that that of itself was sufficient to show that Article 31A could not be used in situations of this character. Where a tribunal is vested by the legislature with special jurisdiction in certain named cases, it is reasonable to believe that such tribunal should have exclusive jurisdiction. But, it is doubtful, at best, if this case on its facts falls within an appropriate application of the rule. Certainly, there is no reason for referring the question of constitutionality of the tax to the administrative official or board.

To attempt a prediction of the future of the Declaratory Judgments Act in Maryland would be to participate in a legal guessing game. On the strength of the Maryland decisions, however, it is evident that where the status quo has been broken, and thus where an ordinary action at law or equity is available, no relief by declaration can be obtained. Declaratory relief will probably be granted, on the other hand, where the status quo has not been broken but where doubts as to status arise from legal relations which are to be continued in the future. Neither

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61 Ibid., 918.
65 17 A. (2d) 137 (1941).
66 The plaintiff claimed that Sec. 244 (a) of Article 81 did not apply to income from a foreign fiduciary trustee, but if income were taxable it should be treated as "ordinary" income, as to which she was not taxable at more than 2½%.
66a See supra, circa, notes 30-32a for discussion of cases where declaratory relief was granted in tax cases, where no contest was made as to the propriety of such relief.
of these situations, however, covers the majority of cases in which the Act normally would be used. When the status quo has clearly been broken, plaintiff, in the majority of cases, will want executory relief rather than relief by declaration.

The great majority of cases which should come under the Declaratory Judgments Act are those in which the parties are in doubt as to the existence of the status quo. They seek, therefore, to have it determined, and if the court should find it changed, they seek to have their new status declared. Nowhere is this point illustrated more clearly than in Maryland litigation involving domestic relations, both concerning the validity of marriages and the recognition of divorces granted in the courts of other States. Aside from declaratory judgment procedure, the existing picture of this scene is a dismal one, consisting of overlapping and confusing procedures for some purposes, and doubtful or non-existent ones for others. Liberal use of declaratory procedure, apparently now impossible under the Caroline Street ruling would have improved the situation immeasurably in this regard.67

It is obvious that if the Maryland Court should find the status quo changed, i.e., a contract broken, a tenant wrongfully holding over, or a right of action accrued, it would say on authority of the Caroline case that plaintiff has a complete and adequate remedy at law or equity and therefore deny relief. The result is that, contrary to the terms of the Act, the Court has closed its doors to a considerable number of cases which were meant to be adjudicated by declaratory procedure and are so adjudicated in other states and in the federal courts.

It is difficult to see why the Court of Appeals should have so limited the scope of the Act. The great majority of states, as pointed out above, have reached the conclusion that the act is an alternative and not an exclusive remedy, and that therefore the existence of another remedy at law or equity is no reason at all to deny relief by declaration. These decisions have been based on the Uniform Act. The Maryland Act, however, departs from the wording of the Uniform Act in that the Maryland Act specifically states

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67 With reference to the confusion presently existent in Maryland domestic relations procedure, see Comment, The Confusing Maryland Domestic Relations Procedures (1940) 4 Md. L. Rev. 276. For mention of the possibility of using declaratory judgment methods, see Ibid., 279-280, notes 17 and 18; and Strahorn, Void and Voidable Marriages in Maryland and Their Annulment (1938) 2 Md. L. Rev. 211, 252-256.
that the existence of another adequate remedy will not preclude a judgment for declaratory relief.\textsuperscript{68} The result is, therefore, that not only does the Court depart from the weight of authority elsewhere, but also it ignores an attempted codification of that authority into the Act by the Maryland Legislature. It is submitted that where the legislative intent is so strongly averred, it should not be so lightly dismissed.

The legislature could, as has been done in the past,\textsuperscript{69} repeal and re-enact the statute, including therein a preamble which would leave no doubt as to the correct interpretation of the Act. It is also possible that the Court could adopt a rule of reason whereby a plaintiff would only be denied relief if it reasonably appeared that his rights would be better served in an ordinary action in law or equity.

The view in the 	extit{Caroline} case can and should be changed. If it is not, Maryland citizens will be forced to continue using antagonistic and quarrelsome remedies, instead of employing a peaceful and amicable method of procedure, better adapted to the purposes of justice. It is possible that the benefits sought under the Act will be bestowed upon the people of Maryland in some way not suggested here. This, however, is of little significance. The important end to be attained is to see that ultimately the beneficial progress and practical usefulness of the Act is restored to Maryland procedure.

\textsuperscript{68} 	extit{Supra}, n. 2, 59.

\textsuperscript{69} Md. Code (1939) Art. 9, Sec. 33. See the preamble and declaration of Legislative intent as found thereunder.