

DECLARATORY JUDGMENTS: EXPERIENCE UNDER THE UNIFORM ACT

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Missouri wisely took a long forward step in 1935 by adopting the Uniform Declaratory Judgments Act.¹ This is one of the statutes drawn by the Commissioners of Uniform State Laws. It is to be hoped that the value of this act will serve to call to the attention of the Missouri Legislature other progressive and needed modern legislation drafted by this capable national organization. It has been pointed out by Justice Stone of the United States Supreme Court, in a recent article² that, in the case of any new statute, "the success of the remedy must depend in large measure upon the willingness of the judges to make use of it." It might be added that it also depends upon the vision and foresight of lawyers to find its full usefulness. Although our act has been in force only about five years, many cases under it have already reached our Supreme Court. A review of some of these cases, together with the historical background of the uniform act and its use in other states, may therefore be helpful at this time. The Missouri act is now Article 14, of Chapter 6 of the Revised Statutes of 1939³, and therefore has become a part of our general Code of Civil Procedure.

I. HISTORY OF DECLARATORY JUDGMENTS

Although the land of its origin seems to have been Scotland (where it was perhaps evolved from Roman legal sources), extensive use of the declaratory judgment in modern times was developed in England. It was there first authorized in Chancery, by a statute enacted in 1852.⁴ Its adoption had been advocated long before by Lord Brougham in his famous law reform speech, of February 7, 1828, in the House of Commons.⁵ It was widely

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1. Mo. Laws of 1935, 218.

2. Stone, *The Common Law in the United States* (1936) 50 Harv. L. Rev. 4, 8.

3. R. S. Mo. (1939) Secs. 1126-1130.

4. (1852) 15 & 16 Vict. c. 86.

5. Holdsworth, *The Movement for Reform in the Law, 1793-1832* (1940) 56 Law Q. Rev. 33 and 208.

extended in England through use of the rule-making power, granted by the judicature acts.⁶ An English court has said of its development: "The action of declarator has existed for hundreds of years in Scotland" (anything used so long in Scotland must be worth what it costs); and "the rules which have been elucidated by a long course of decisions in the Scottish courts may be summarized thus: The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradicter—that is to say, someone presently existing, who has a true interest to oppose the declaration sought."⁷ Our own courts have for a long time rendered what were really declaratory judgments in limited classes of cases "such as in the construction of wills, instructions as to the management of estates and trusts, bills of interpleader so far as the stakeholder is concerned, actions to quiet or remove cloud from title, cases stated to pass on the marketability of title to real estate, adjudication of boundaries between states, review of judgments of the Court of Claims, and naturalization proceedings."⁸ However, the broadening of the field by statute seems to have begun about 1919 in Florida, Michigan and Wisconsin. Thereafter, in 1922, came the Uniform Declaratory Judgments Act, now adopted in at least half the states, including Missouri. The Federal Declaratory Judgment Act, upon the same model,⁹ was adopted in 1934.

An interesting item in Missouri procedural history is the fact that when our present code was adopted, in 1848, it contained a provision¹⁰ which in effect provided for a declaratory judgment upon any agreed statement of facts. An explanation of this provision made at the time of its adoption states:

It not infrequently happens, that in a contemplated lawsuit, the facts are either not disputed or can be agreed upon; and that the only questions which remain between the parties are questions of law. The provisions of this article will enable parties thus situated to obtain an adjudication of the case without most of the expense and vexation usually attending law-suits, and in much less time; and in a manner

6. (1873) 36 & 37 Vict. c. 66; (1875) 38 & 39 Vict. c. 77.

7. *Russian Commercial & Industrial Bank v. British Bank* (1921) 90 L. J. K. B. N. S. 1089, 19 A. L. R. 1101, 1106.

8. 16 Am. Jur. 276.

9. (1934) 48 Stat. 955, 28 U. S. C. A. (Supp. 1940) sec. 400.

10. Now R. S. Mo. (1939) sec. 1263.

much more agreeable to the feelings of honest men who dislike contentions with their neighbors. Actions at law are intended to *compel* people to do that which is right and just; here we propose a way by which it may be done by *consent*. The affidavit (as to truth of facts) is necessary to prevent our courts of justice being turned into moot courts; or, what is worse, their being required to decide points of law in a case where one of the parties, or both, are unreal; and the decision is afterwards to be used in a cause between *real* parties litigant.¹¹

It seems remarkable that Missouri lawyers did not make more use of the opportunities for relief, in the nature of declaratory judgment, which this section was intended to afford. Agreement upon facts is not unusual, but an agreed statement of facts is distinguished from an agreed case under Section 1263. It has been held that, although the facts may be agreed upon, in whole or in part, in an ordinary case "the pleadings are left to perform their usual functions," and "the agreed statement 'stands in lieu of a special verdict.'"¹² Perhaps the only case reaching our Supreme Court which clearly shows it was brought under the method provided by Section 1263 is *Joplin Waterworks Co. v. Jasper County*.¹³ This waterworks case involved the right of Jasper County (also the Joplin School District) to tax the company's main water purifying plant, supply lines and distribution system, located therein, when its source of water and pumping station was located in Newton County. It was contended on appeal that "the controversy submitted by the parties to the agreed case is collusive and pretended, and not actual and real, and therefore the agreed case presents merely a moot or abstract question of law."¹⁴

The Supreme Court's ruling, which would certainly be applicable to declaratory judgment cases, was as follows:

The determinative factor is whether the proceeding presents an actual controversy involving adverse interests between the parties. * * * Although the proceeding under review is an amicable one, in the sense that the parties have

11. Wells, *Law Reforms, Pleading and Practice* (1849) 59.

12. *Byers v. Essex Inv. Co.* (1920) 281 Mo. 375, 219 S. W. 570. See also *Stanberry v. Jordan* (1898) 145 Mo. 371, 46 S. W. 1093; *Munford v. Wilson* (1852) 15 Mo. 540.

13. (1931) 327 Mo. 964, 38 S. W. (2d) 1068.

14. *Ibid.* 38 S. W. (2d) at 1075.

agreed upon the facts upon which the controversy depends, and have dispensed with the delay, expense, and technical forms of procedure which are incident to a formal action, by the submission of an agreed case, as authorized by the statute, *supra*, yet we are inclined to the view that the controversy submitted for decision and judgment herein is real and actual, involving the exercise by the respondents of an asserted right which is disputed by the appellant, and that the interests of the appellant, on the one hand, and of the respondents, on the other hand, are adverse.¹⁵

II. CONSTITUTIONALITY OF DECLARATORY JUDGMENT

The first decision on constitutionality of declaratory judgments was in Michigan.¹⁶ In that case, the first Michigan statute was declared unconstitutional on the ground that it required the performance of functions which were not judicial and which were not within any recognized judicial power. The court took the view that the purpose was "to make the courts the legal advisers of everybody," on moot questions. It cited the refusal of the United States Supreme Court in 1793 to give advisory opinions "by declaring their opinions on questions not growing out of the case before them," requested by President Washington through Mr. Jefferson, his Secretary of State.¹⁷ This Michigan test case unfortunately presented a situation in which, as stated in the dissenting opinion (on the ground that the case presented was not within the Declaratory Judgment Act), the plaintiff could not show "an actual concrete controversy, a bona fide contest, over asserted existing legal rights, between him and the defendant." The majority opinion in this Michigan case proceeded on the theory that the act was intended to include such situations. Another statute was enacted in Michigan, in 1929, which specifically provided that it applied only to "cases of actual controversies" and that the declarations of rights under it should "have the effect of final judgments."¹⁸ This act was held to be constitutional in a case involving the right of a lessee, under a 99-year lease of a theatre, to demolish the building and erect a new one to be used for other purposes; the lessor claiming this

15. *Ibid.* 38 S. W. (2d) at 1075, 1076.

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

17. See recent comment on this incident in separate concurring opinion of Mr. Justice Frankfurter in *Coleman v. Miller* (1939) 307 U. S. 433, 460.

18. Mich. Laws of 1929, No. 36.

would give him the right to forfeit the lease.¹⁹ This case, and others which have passed upon the constitutionality of Declaratory Judgment Acts, cited and relied upon *State ex rel. Hopkins v. Grove*.²⁰ In the *Grove* case, upholding the constitutionality of the Kansas Declaratory Judgment Act, it was said:

It is hardly conceivable that any fundamental principle of our government, beyond legislative control, prevents two disputants, each of whom sincerely believes in the rightfulness of his own claim, but each of whom wishes to abide by the law, whatever it may be determined to be, from obtaining an adjudication of their controversy in the courts without one or the other first doing something that is illegal.²¹

It would seem that all question as to constitutionality of acts providing the relief of declaratory judgment, and especially of the uniform act, has been finally settled by two recent decisions of the Supreme Court of the United States. In 1933, the Court considered the uniform act adopted in Tennessee, upon the contention that a declaratory judgment thereunder did not present "a case or controversy" to which the judicial power of the Court extended under Section 2 of Article 3 of the Constitution of the United States.²² The Court held against this contention, took jurisdiction (in the case of a taxpayer seeking a judicial declaration that a state excise tax on storage of gasoline was invalid under the Commerce Clause and the 14th Amendment) and said that "changes merely in the form or method of procedure by which federal rights are brought to final adjudication in the state courts are not enough to preclude review of the adjudication by this Court, so long as the case retains the essentials of an adversary proceeding, involving a real, not a hypothetical, controversy, which is finally determined by the judgment below."²³ The Court further held that "obviously the appellant, whose duty to pay the tax will be determined by the decision of this case, is not attempting to secure an abstract determination by the Court of the validity of a statute * * *, or a decision advising what the law would be on an uncertain or hypothetical state of facts,"²⁴

19. *Washington-Detroit Theater Co. v. Moore* (1930) 249 Mich. 673, 229 N. W. 618, 68 A. L. R. 106.

20. (1921) 109 Kan. 619, 201 Pac. 82, 19 A. L. R. 1116.

21. *Ibid.* 201 Pac. at 84.

22. *Nashville, C. & St. L. Ry. v. Wallace* (1933) 288 U. S. 249.

23. *Id.* at 264.

24. *Id.* at 262.

and that "while the ordinary course of judicial procedure results in a judgment requiring an award of process or execution to carry it into effect, such relief is not an indispensable adjunct to the exercise of the judicial function."²⁵ In 1937, the Court followed this decision, and other precedents, to uphold the validity of the Federal Declaratory Judgment Act of 1934,²⁶ in *Aetna Life Ins. Co. v. Haworth*.²⁷ The court said that the act of 1934, "in its limitation to 'cases of actual controversy,' manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense."²⁸

III. NATURE OF DECLARATORY JUDGMENT

A. *Legal or equitable*

It has been said that declaratory judgment proceedings are equitable in nature.²⁹ The Missouri Supreme Court has held that "relief by declaratory judgment is sui generis, and while not strictly legal or equitable, yet its historical affinity is equitable."³⁰ This equitable background is shown in Sec. 1120, R. S. Mo. (1939) covering relations of trustee and cestui qui trust, which is one of the first situations out of which declaratory judgments developed. However, it is also to be noted that this section specifically broadens the right to have such declarations include many kinds of fiduciaries such as executors, guardians and others mentioned, in situations which were not reached in equity. The act clearly includes many situations heretofore cognizable only in actions at law. It has, therefore, been suggested that "the statute providing for declaratory judgments may be regarded as a step toward the obliteration of the line which has heretofore separated law from equity."³¹ This would seem to be particularly true under our uniform act which authorizes "further relief * * * whenever necessary or proper," and which also provides that a fact issue "may be tried and determined in the same manner as issues of fact are tried and determined in

25. Id. at 263.

26. (1934) 48 Stat. 955, 28 U. S. C. A. (Supp. 1940) sec. 400.

27. (1937) 300 U. S. 227.

28. Id. at 239.

29. *Manchester v. Townshend* (1937) 109 Vt. 65, 192 Atl. 22, 110 A. L. R. 811.

30. *Liberty Mutual Ins. Co. v. Jones* (1939) 344 Mo. 932, 130 S. W. (2d) 945, 954.

31. 16 Am. Jur. 289.

other civil actions in the court in which the proceeding is pending."³² The equity rule as to costs also is established by the act.³³ *Liberty Mutual Ins. Co. v. Jones*³⁴ held that a declaratory judgment action could be heard with a cross action for affirmative equitable relief, and separate questions raised in each were decided. Considering it as an equitable proceeding raises interesting questions as to scope of appellate review, especially as to what extent the appellate court is bound by fact findings in the trial court.³⁵

B. *Real controversy or advisory opinion.*

One thing is certainly now settled, and that is that a declaratory judgment is neither an advisory opinion nor a decision of a moot question, because it must involve a real controversy in which the result would be *res judicata* between the parties.³⁶ Courts sometimes inadvertently decide moot questions incidentally in the course of an opinion. However, these parts of an opinion are classed as *obiter dictum*, and such declarations are not binding as precedents. An advisory opinion would be in the same class and could be binding on no one. Therefore, the proceeding must be between actual parties to an actual transaction who disagree about their rights or obligations with regard to it. As said in a leading English case, "it does not extend to enable any stranger to the transaction to go and ask the court to express its opinion in order to help him in other transactions."³⁷ Of course, it could not extend either to enable the parties to seek advice about a merely contemplated transaction.³⁸ Apparently this kind of case (at least as between the original parties thereto, as stated in the dissenting opinion) confused the Michigan Supreme Court, when it declared the first Michigan Act unconstitutional.³⁹ As recently pointed out in the United States Su-

32. R. S. Mo. (1939) secs. 1133-1134.

33. R. S. Mo. (1939) sec. 1135.

34. (1939) 344 Mo. 932, 130 S. W. (2d) 945.

35. See Part VI hereof.

36. See Annotations: (1920) 12 A. L. R. 52; (1921) 19 A. L. R. 1124; (1926) 50 A. L. R. 42; (1930) 68 A. L. R. 110; (1933) 87 A. L. R. 1205; (1935) 101 A. L. R. 689.

37. *Guaranty Trust Co. v. Hannay & Co.* (1915) 2 K. B. 536, 12 A. L. R. 1.

38. *Heller v. Shapiro* (1932) 208 Wis. 310, 242 N. W. 174, 87 A. L. R. 1201.

39. *Anway v. Grand Rapids Ry.* (1920) 211 Mich. 592, 179 N. W. 350, 12 A. L. R. 26, 51.

preme Court, it is not the exercise of judicial power, "to write legal essays or to give advisory legal opinions" (law reviews will afford opportunities for such mental exercise); that properly "a judge never gives a decision until the facts necessary for that decision have arisen;" and that courts should not do so because "the imagination of judges, like that of other persons, is limited, and they are not able to put before their minds all the complex circumstances which they ought have in their minds when giving a decision."⁴⁰ This is just as true of declaratory judgment cases as of all others. In accordance with this view it was held by the Missouri Supreme Court in *Vincent Realty Co. v. Brown*,⁴¹ that the effect of Section 4598a⁴², providing a lien for taxes in case of a sale, gift or transfer of all or a major portion of a company's assets, could not be determined in a case in which no such transfer had been made, and "there is no allegation therein from which it may be inferred that there is even a remote possibility of plaintiffs' selling or giving away the whole or major part of their assets." In short, no claim of lien had been made in the situation shown. A recent case on the other side of the line is *Currin v. Wallace*⁴³ in which the United States Supreme Court held there was an actual controversy. In that case, the Secretary of Agriculture, acting under the Tobacco Inspection Act of 1935,⁴⁴ promulgated regulations concerning the marketing of tobacco, on the theory that it was part of interstate commerce. Tobacco warehousemen and auctioneers sought a declaration against the Secretary that offering tobacco for sale at auction on the warehouse floor was not a transaction in interstate commerce and that the Tobacco Inspection Act was therefore unconstitutional. The United States Supreme Court held that this case presented an actual controversy.

C. Procedural only in nature.

The United States Supreme Court said that "the operation of the (Federal) Declaratory Judgment Act *is procedural only*;"

40. Separate concurring opinion of Mr. Justice Frankfurter in *Coleman v. Miller* (1939) 307 U. S. 433, 460. See also *Oldham County v. Arvin* (1932) 244 Ky. 551, 51 S. W. (2d) 657; *Vincent Realty Co. v. Brown* (1939) 344 Mo. 438, 126 S. W. (2d) 1162; *Heller v. Shapiro* (1932) 208 Wis. 310, 242 N. W. 174, 87 A. L. R. 1201.

41. (1939) 344 Mo. 438, 126 S. W. (2d) 1162, 1163.

42. Mo. Laws of 1937, 208.

43. (1939) 306 U. S. 1.

44. 48 Stat. 731, 7 U. S. C. A. (1939) sec. 511-511q.

that "the Congress is not confined to traditional forms or traditional remedies" in exercising its power over the jurisdiction of the federal courts; and that "in dealing with methods within its sphere of remedial action the Congress may create and improve as well as abolish or restrict."⁴⁵ This view as to procedural effect has also been taken in England.⁴⁶ This view would seem to have a precedent in our rule as to the remedy of quiet title which may be legal or equitable according to the issues raised by the pleadings.⁴⁷ It is also significant that, in the 1939 revision of our statutes, the Declaratory Judgments Act was placed in and made a part of our general code of civil procedure. Thus it seems logical to consider the remedy of declaratory judgment, not as a new kind of controversy or cause of action, but as an improved remedy for reaching and determining usual controversies or causes at an earlier stage of their development than was possible under "traditional forms" of the common law or other forms heretofore provided by our statutes.

IV. SCOPE OF REMEDY

A. *Matters in which it may be used.*

Section 1 of the Declaratory Judgment Act⁴⁸ authorizes courts "to declare rights, status and other legal relations whether or not further relief is or could be claimed." This is, of course, a general statement intended to cover the whole field. Sections 2, 3, and 4, of the act⁴⁹ enumerate specific situations in which declarations may be obtained. However, Section 5⁵⁰ specifically provides: "The enumeration in Sections 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty." Thus the courts are given wide latitude to apply this procedure and grant declaratory relief in situations where future circumstances show it to be required. Its use for

45. *Aetna Life Ins. Co. v. Haworth* (1937) 300 U. S. 227, 240 (italics supplied).

46. *Guaranty Trust Co. v. Hannay & Co.* (1915) 2 K. B. 536, 12 A. L. R. 1.

47. *Kimberlin v. Roberts* (1937) 341 Mo. 267, 107 S. W. (2d) 24; *Staford v. Shinabarger* (1935) 336 Mo. 856, 81 S. W. (2d) 626; *Williams v. Walker* (1933) 333 Mo. 322, 62 S. W. (2d) 840.

48. R. S. Mo. (1939) sec. 1126.

49. *Id.* at secs. 1127, 1128, 1129.

50. *Id.* at sec. 1130.

construction of rights under provisions of insurance policies, even before due and payable, is illustrated by the United States Supreme Court decision in *Aetna Life Ins. Co. v. Haworth*.⁵¹ It already has been used in many states to determine the validity of marriages and divorces and the legitimacy of children as affecting status, and property rights.⁵²

It is to be expected that most of the first cases to be brought under our act would be under the specifically enumerated situations. Cases where "rights, status or other legal relations are (or were claimed to be) affected by a statute," seeking to "have determined (a) question of construction or validity," (provided for in Section 2) were among the first to reach the Missouri Supreme Court. One of the first of these was *St. Louis v. Smith*.⁵³ A declaration was asked as to the liability of the city to pay a one per cent sales tax⁵⁴ on materials used in a paving project, a sewer, and a hospital, where the contractors agreed to furnish all work and materials and were to be paid one lump sum price for the completed work. The state auditor's construction was that the city was liable as the "consumer" under the law. The court ruled that the contractors were the "consumers," and that "the sale of materials by the dealer to the contractors was the taxable transaction." Certainly this was a clear case under the provisions of Section 2 of the act, which made it possible to determine the matter without a refusal to pay and a suit for penalties.⁵⁵

In *Vincent Realty Co. v. Brown*, the trial court declared a statute⁵⁶ unconstitutional which gave the state and its political subdivision a lien for taxes against the assets of corporations. This ruling was reversed, the supreme court holding that the plaintiff showed no "present interest" in the determination of the validity of the statute because it had no delinquent taxes and showed no transfer, or possibility of a transfer, of assets in

51. (1937) 300 U. S. 227. See also Annotations: (1933) 87 A. L. R. 1230; (1937) 108 A. L. R. 1009.

52. 16 Am. Jur. 315.

53. (1938) 342 Mo. 317, 114 S. W. (2d) 1017.

54. Mo. Laws of 1935, 411.

55. Other recent cases within this enumeration are *Vincent Realty Co. v. Brown* (1939) 344 Mo. 438, 126 S. W. (2d) 1162; *Liberty Mutual Ins. Co. v. Jones* (1939) 344 Mo. 932, 130 S. W. (2d) 945, 125 A. L. R. 1149; *Smith v. Pettis County* (1940) 345 Mo. 839, 136 S. W. (2d) 282; *Maxwell v. Andrew County* (Mo. 1940) 146 S. W. (2d) 621.

56. Mo. Laws of 1937, 208, sec. 4598a.

violation of the statute. However, in so ruling the supreme court did construe the statute by holding that "the lien declared * * * does not attach until the corporation makes a sale or gift of the whole or major part of its assets, at which time the lien must be discharged before a valid transfer can be effected."⁵⁷ This construction disposed of the contention that the statutory lien was a cloud on title preventing usual and ordinary sales of assets.

A very complete declaratory judgment was ordered in *Liberty Mutual Ins. Co. v. Jones*,⁵⁸ after the trial court had dismissed the petition for declaratory judgment and granted affirmative equitable relief to defendants on their cross bill. This case not only involved construction of statutes and determination of their effect upon the rights of insurance companies to use lay employees instead of lawyers in certain transactions; but also the effect of supreme court rules regulating the practice of law upon such transactions and their construction and enforcement by the Court's Bar Committees. This decision would, by analogy, seem to authorize determination of the extent of authority of administrative tribunals to make and enforce certain regulations, as would also *Currin v. Wallace*.⁵⁹ Both *Smith v. Pettis County*⁶⁰ and *Maxwell v. Andrew County*⁶¹ are cases of county officers seeking a determination of their rights to fees or compensation, requiring construction of statutes. The *Smith* case particularly illustrates how the remedy of declaratory judgment has made it possible for one, who desires only to have what is rightfully his, to obtain a determination of a complicated and ambiguously worded statute without incurring public misunderstanding of his position and consequent ill feeling which would be likely to result if the question could only be decided by suit against him after refusal to pay over alleged excess fees collected.

Perhaps the situations described in Section 1129, R. S. Mo. 1939 are those in which declaratory judgment will be used most. Of course, as already noted, declaratory judgments (although not heretofore so designated) have long been used in will construction and trust cases. The recent case of *State ex rel. Clay*

57. *Vincent Realty Co. v. Brown* (1939) 344 Mo. 438, 126 S. W. (2d) 1162, 1163.

58. (1939) 344 Mo. 932, 130 S. W. (2d) 945, 125 A. L. R. 1149.

59. (1939) 306 U. S. 1.

60. (1940) 345 Mo. 839, 136 S. W. (2d) 282.

61. (Mo. 1940) 146 S. W. (2d) 621.

*County Bank v. Waltner*⁶² involved the creation of an *inter vivos* trust in personal property by delivery thereof with oral directions. Title to this property, right to reduce it to cash, right to distribute the proceeds, and claims of administrators of the trustor's estate, of the executor of his widow's estate and of their heirs were all involved. The court pointed out that "jurisdiction over trusts is one of equity's original and inherent powers" and that "when necessary to complete relief in a particular case a court of equity may not only construe the trust but will aid in the discovery of trust funds." The court also pointed out that full, complete and adequate relief for disposition of all issues raised could not be had in the probate court nor in any of the other separate actions suggested. This case demonstrates not only how all of the broad powers of equity can be used in connection with declaratory judgment relief to settle many issues in one action (instead of requiring the expense and delay of several), but also how this action can bring these matters before the court for such determination at an earlier stage in the development of the controversy than was heretofore possible. Another wide field for future development and use of declaratory judgments is in the construction of contracts and rights, status, and relations thereunder. This is provided for specifically by Section 1127, R. S. Mo. 1939, and Section 1128, R. S. Mo. 1939. The latter section provides that "a contract may be construed either before or after a breach thereof." This makes it plain that a declaratory judgment may be had at the time when it is likely to do the parties the most good; namely, before damage has been sustained by either and before either is required to take a position which would inevitably result in damage. Such contract cases have not yet come to the appellate courts of Missouri. "In England during the World War numerous declaratory judgments were rendered as to the effect of the war upon various contracts."⁶³ Perhaps that is a development to be expected from our present national defense activities and their aftermath. In this connection it is well to consider, as pointed out in *Manchester v. Townshend*,⁶⁴ that since we have adopted the Uniform Declaratory Judgments Act, decisions of

62. (Mo. 1940) 145 S. W. (2d) 152.

63. 16 Am. Jur. 306.

64. (1937) 109 Vt. 65, 192 Atl. 22, 110 A. L. R. 811.

the highest courts of other states having like acts will have more authority as precedents than is usually true of decisions in other jurisdictions.

B. Limitations upon use.

Declaratory judgment is not a remedy to reopen cases which have gone to final judgment or to make a collateral attack on a judgment valid on the face of the record. In *State ex rel. Kansas City Bridge Co. v. Terte*,⁶⁵ it was sought to obtain a judgment declaring plaintiff to be the wife of an employee of a Missouri corporation and entitled as such to make claim under the workmen's compensation act, in spite of a Kansas divorce which under the allegations of the petition was voidable but not absolutely void on its face. It was held that the act "may not be invoked to test the validity of a judgment roll, admittedly valid and regular on its face, of a competent court, in an action against a stranger to the record of said judgment." The court further said that the "Declaratory Judgment Act was not intended as a substitute for a new trial or an appeal or review proceedings." In a somewhat similar case, *Ferree v. Ferree*,⁶⁶ declaration was sought that a divorce was void on the ground that it was obtained by the wife while the husband was confined in the penitentiary. The court held that "an action will not lie under the Declaratory Judgment Act to determine the propriety of a judgment in a prior action between the same parties." The court pointed out that if such an action was allowed, then "an action would lie under the Declaratory Judgment Act to determine whether the judgment passing upon the validity of a prior judgment was proper and there would be no end to that kind of litigation." Of course, it is clearly a different situation, if a judgment void on the face of the record is involved.⁶⁷ Removal of such judgment, by decree, as a cloud on title, is one of the oldest antecedents of declaratory judgments.

Comment upon the limitations as to moot questions and advisory opinions has already been made.⁶⁸ Section 6 of the act⁶⁹ specifically provides a broad limitation; namely, "The court may refuse to render or enter a declaratory judgment or decree where

65. (1939) 345 Mo. 95, 131 S. W. (2d) 587.

66. (1938) 273 Ky. 238, 115 S. W. (2d) 1055.

67. See *Hankins v. Smarr* (1940) 345 Mo. 973, 137 S. W. (2d) 499.

68. Part III B hereof.

69. Now R. S. Mo. (1939) sec. 1131.

such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Undoubtedly the purpose of this section is to give the court some discretion to determine, in border line cases, whether the situation has reached the stage where a declaratory judgment would really be final. If it would not actually settle the controversy because future developments might reasonably be expected to raise more or different questions, the court could properly refuse a declaration. However, this discretion should not be too strictly or narrowly exercised. The act itself declares that it is remedial; and that "its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered."⁷⁰

While both the uniform and federal acts make it clear that a declaratory judgment should not be denied merely because there are disputed questions of fact between the parties, nevertheless some courts have shown a tendency to refuse to make a declaration upon a case which essentially depends upon determination of disputed facts, "especially where the disputed questions of fact will be the subject of judicial investigation in a regular action."⁷¹ This seems to be on the theory that the principal purpose of the Declaratory Judgment Act is to make declarations of rights, status and other legal relations, which could not be made before its enactment, and not primarily to determine or try issues which could prior to that time be tried and settled in other actions.⁷² Perhaps a fair statement of this view would be that declaratory relief is proper in disputed fact cases when determination of disputed fact issues is merely incidental to the main purpose of declaring rights, status or other legal relations.

There is, however, good authority for a broader view. Professor Borchard argues that the uniform act authorizes the broader view, since the statute "provides that 'whether or not further relief is or could be claimed,' i. e., whether a coercive remedy like damages, injunction or specific performance (1) is

70. R. S. Mo. (1939) sec. 1137.

71. 16 Am. Jur. 294. See also *Transport Oil Co. v. Bush* (1931) 114 Cal. App. 152, 1 P. (2d) 1060; *Washington-Detroit Theatre Co. v. Moore* (1930) 249 Mich. 673, 229 N. W. 618, 68 A. L. R. 106; *Heller v. Shapiro* (1932) 208 Wis. 310, 242 N. W. 174, 87 A. L. R. 1201.

72. See Annotation (1933) 87 A. L. R. 1211.

also claimed, (2) could be claimed but is not claimed, or (3) could not be claimed, the declaratory judgment may not on that ground be denied."⁷³ The New York Court of Appeals recognized in *Woolard v. Schaffer Stores Co.*⁷⁴ that "while resort to the use of a declaratory judgment is usually unnecessary where an adequate remedy is already provided by another form of action 'no limitation has been placed upon its use.'" The court therein held that the trial court could "exercise its discretion in refusing to proceed to a declaratory judgment when other remedies are adequate" and should do so whenever "another action between the same parties, in which all issues could be determined is actually pending;" but that it is not bound to do so "solely for the reason that another remedy is available." This broader view has been taken in cases under the federal act.⁷⁵ The recent case of *State ex rel. Clay County Bank v. Waltner*⁷⁶ is also substantial authority for the broader view. It is apparent that this case involved many fact issues to be determined on oral testimony. The court wisely refused the contentions that the main disputed issues should be settled in a proceeding to discover assets or in any of the other separate actions suggested. It would seem unnecessary and unwise to limit the scope of declaratory judgment relief merely because it is necessary to make findings of fact, or because there are other actions in which such issues could be settled. Whether or not other remedies are as full, complete and adequate ought to be the soundest basis for determining whether or not a declaratory judgment proceeding should be allowed.

V. PRACTICE AND PROCEDURE

A. Parties.

The act provides that "all persons shall be made parties who have or claim any interest which would be affected by the declaration," and that "no declaration shall prejudice the rights of persons not parties to the proceeding."⁷⁷ This has been recently held to mean "that all persons should be made parties who have

73. Borchard, *Declaratory Judgments* (1939) 9 Brooklyn L. Rev. 1, 6 *Current Legal Thought* 59.

74. (1936) 272 N. Y. 304, 5 N. E. (2d) 829.

75. *Lukens Steel Co. v. Perkins* (App. D. C. 1939) 107 F. (2d) 627; *Aetna Casualty & Surety Co. v. Yeatts* (C. C. A. 4, 1938) 99 F. (2d) 665; *Stephenson v. Equitable Life Assur. Soc.* (C. C. A. 4, 1937) 92 F. (2d) 406.

76. (Mo. 1940) 145 S. W. (2d) 152.

77. R. S. Mo. (1939) sec. 1136.

'any right or interest in the subject or object of the suit' " as in an equity case.⁷⁸ The rule as to necessary parties could hardly be better stated than in the rule of the Scottish Courts (hereinabove stated) that there must at least be as a party "a proper contradicter," namely: "Someone presently existing, who has a true interest to oppose the declaration sought."⁷⁹ The act defines the word "person" to mean "any person (including a minor represented by next friend or guardian ad litem, and any other person under disability lawfully represented), partnership, joint stock company, corporation, unincorporated association or society or municipal or other corporation of any character whatsoever."⁸⁰ However, how to get an unincorporated association into court under the present state of the law in Missouri is another problem.⁸¹

Another specific provision of the act as to parties is that "in any proceeding which involves the validity of a municipal ordinance or franchise such municipality shall be made a party and shall be entitled to be heard;" and that "if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and shall be entitled to be heard."⁸² This does not specifically require the Attorney General to be made a party, but that would certainly be proper practice. This was done in *School District of Kansas City v. Smith*.⁸³ In that case (the State Auditor and Attorney General being made parties) it was held that the seller of goods was not a necessary party to an action to determine the constitutionality of a sales tax statute⁸⁴ where "the purchaser is taxpayer, and the seller, although responsible, is an agent or conduit" for collection. Thus the real party to the controversy, the purchaser, was entitled to bring the action against the collecting officer and the Attorney General. The requirement as to notice to the Attorney General recognizes the

78. *State ex rel. Clay County Bank v. Waltner* (Mo. 1940) 145 S. W. (2d) 152.

79. *Russian Commercial & Industrial Bank v. British Bank* (1921) 90 L. J. K. B. N. S. 1089, 19 A. L. R. 1101.

80. R. S. Mo. (1939) sec. 1138.

81. *Ruggles v. International Ass'n* (1932) 331 Mo. 20, 52 S. W. (2d) 860; *Newton County Exchange v. Kansas City Southern Ry.* (1930) 326 Mo. 617, 31 S. W. (2d) 803.

82. R. S. Mo. (1939) sec. 1136.

83. (1937) 342 Mo. 21, 111 S. W. (2d) 167.

interest of the state in the determination of the constitutionality of many statutes.

B. Pleadings.

Pleadings in declaratory judgment cases, of course, must be governed by general code provisions. In *Maxwell v. Andrew County*⁸⁵ it was held proper to order a reference, under general code provisions, where defendant's answer (to plaintiff's declaratory judgment petition) contained a counterclaim presenting a disputed long account. In *Liberty Mutual Ins. Co. v. Jones*⁸⁶ it was held that "there is no procedural reason why such an action may not be heard with a cross action for affirmative equitable relief." In the *Liberty Mutual* case, the appellate court decided constitutional questions raised in the petition for a declaratory judgment, although the trial court had dismissed plaintiff's petition and decided the case on defendant's crossbill. In *State ex rel. Clay County Bank v. Waltner*⁸⁷ it was held that the petition stated sufficient facts to show that the creation, enforcement, administration and distribution of a trust was involved so as to come within the terms of R. S. Mo. (1939) sec. 1129. It was also held therein that the statement as to all these matter did not constitute a misjoinder of separate causes of action to determine title to certain certificates (claimed to be part of the trust *res*), to enforce their payment, and to partition them. However, joinder of separate independent and distinct controversies against parties who do not have either joint interest or liability has been and no doubt should be refused.⁸⁸ Certainly the provisions of our present code would govern the matter of joinder of actions generally in declaratory judgment cases as in all others.

It certainly seems reasonable to believe that under our code, separate counts (or counterclaims or cross bills) for other relief could be joined in the same petition (or answer) with a count for a declaratory judgment. Of course joinder of counts which are not inconsistent has always been authorized by our code.⁸⁹ A good precedent for this, in declaratory judgment cases, would be the established practice of joining with a count for quiet title

84. Mo. Laws of 1935, 411-426.

85. (Mo. 1940) 146 S. W. (2d) 621.

86. (1939) 344 Mo. 932, 130 S. W. (2d) 945.

87. (Mo. 1940) 145 S. W. (2d) 152.

88. See Annotations: (1937) 110 A. L. R. 817; (1925) 41 A. L. R. 1223.

89. R. S. Mo. (1939) sec. 917.

(in effect a declaratory judgment) a count in ejectment (coercive relief)⁹⁰ and which authorizes also ancillary relief in aid thereof, like receivership.⁹¹ In *State ex rel. Public Service Commission v. Blair*⁹² it was contended "that the Declaratory Judgment Act does not authorize injunctive relief without a new proceeding." However, this contention was abandoned and therefore was not specifically decided, but the court commented that "the petition * * * makes a case for injunctive relief without regard to the Declaratory Judgment Act." It might be suggested that it should make no difference whether or not the declaratory judgment act specifically authorizes joinder of counts or requests for coercive or ancillary relief, if the general code of which that act is now a part does, by reasonable construction, authorize it.

C. *Affirmative relief sought by defendant.*

Undoubtedly a declaratory judgment action, like any other action, could be brought in by answer and cross bill.⁹³ It has been suggested that the cross bill could be used even in tort cases, to prevent the plaintiff from avoiding a final determination of the case by taking a nonsuit.⁹⁴ This course has been used in patent cases to obtain an adjudication on the validity of a patent or on the question of infringement.⁹⁵ Likewise, a defendant in a declaratory judgment case may by counterclaim or cross bill seek other affirmative relief.⁹⁶ Since the act contains no provisions as to pleading, except as to "further relief based on a declaratory judgment,"⁹⁷ the provisions of our general code must apply. Of course under it, the defendant in any case may seek any appropriate affirmative relief.

D. *Trial.*

The only provision of the act concerning trial of issues is Section 9.⁹⁸ It provides: "When a proceeding under this article

90. *Kimberlin v. Roberts* (1937) 341 Mo. 267, 107 S. W. (2d) 24.

91. *Ebbs v. Neff* (1930) 325 Mo. 1182, 30 S. W. (2d) 616.

92. (Mo. 1940) 146 S. W. (2d) 865, 868.

93. R. S. Mo. (1939) sec. 928 & 929.

94. See Borchard, *Declaratory Judgments* (1939) 9 Brooklyn L. Rev. 1, 6 *Current Legal Thought* 59.

95. *Edelman & Co. v. Triple A Specialty Co.* (C. C. A. 7, 1937) 88 F. (2d) 852.

96. *Liberty Mutual Ins. Co. v. Jones* (1939) 344 Mo. 932, 130 S. W. (2d) 945; *Maxwell v. Andrew County* (Mo. 1940) 146 S. W. (2d) 621.

97. R. S. Mo. (1939) sec. 1133.

98. *Id.* at sec. 1134.

involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending." The federal act provides that "when a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not."⁹⁹ In *Maxwell v. Andrew County*¹⁰⁰ it was held that a trial before a referee was properly ordered where the defendant in a declaratory judgment case filed a counterclaim involving a long account. Because of the equitable background of the remedy, it would seem to be within the province of the court to make findings of fact in most cases. Where it is desired to have a jury, it would seem more reasonable to have fact issues separately submitted to the jury without a general verdict. Such a jury determination could undoubtedly be ordered where requested by both parties or at the discretion of the judge. Certainly there is nothing in the uniform act to prohibit such practice. It would, in fact, seem to be authorized by our present civil code. Section 1120, R. S. Mo. (1939) (long in our general code) only requires general verdicts on issues "for the recovery of money only, or specific real or personal property." Section 1121, R. S. Mo. (1939) directly authorizes special verdicts "in all other cases, if * * * in the opinion of the court * * * necessary to determine any fact in controversy by the verdict of a jury." This would seem to be the better practice in declaratory judgment cases, and a good place to develop its use.¹⁰¹ In fact, it seems difficult to see how a general verdict could be satisfactory, because the declaration would always involve questions of law whether the facts were conceded or found by a jury verdict. To use the vernacular, declaratory judgment action seems to be "a natural" for use of special verdict practice.

E. Judgment or decree.

Whether a declaratory judgment action is decided for or against the plaintiff, there should be a declaration in the judg-

99. (1935) 49 Stat. 955, 1027, 28 U. S. C. A. (Supp. 1940) sec. 400. See also Federal Rules 57, 38 and 39, 28 U. S. C. A., following sec. 723c.

100. (Mo. 1940) 146 S. W. (2d) 621.

101. See Hyde, Fact Finding by Special Verdict (1941) 24 Journal of Am. Judicature Soc. 144.

ment or decree defining the rights of the parties under the issues made.¹⁰² In a case where grounds for declaratory judgment are shown, it is not proper practice merely to enter a judgment that the losing party takes nothing by his petition or counterclaim; or usually to sustain a demurrer and enter a judgment of dismissal.¹⁰³ Section 1 of the act specifically provides that "the declaration may be either affirmative or negative."¹⁰⁴ Therefore, no difficulty should be presented in preparation of a judgment either for or against the claims made in the petition. Of course, if no proper case for declaratory judgment is presented, as in *Vincent Realty Co. v. Brown*,¹⁰⁵ in case of a petition seeking an advisory opinion concerning future prospective action, it is proper to enter judgment dismissing the petition.

F. Granting Declaratory Relief *Sua Sponte*.

If plaintiff in any ordinary action is not entitled to damages or coercive relief sought, but could have maintained a declaratory judgment action on the facts shown, should the court *sua sponte* grant a declaration of rights? *Hasselbrink v. Koepke*¹⁰⁶ is authority that this may be done. There an action, as commenced, sought to enjoin interference with a claimed easement. The court found the evidence insufficient to authorize either injunction or award of damages. (It was shown that the easement had no present practical use to plaintiffs but would have a future value when they extended their building.) The court held that "plaintiffs' bill of complaint should not be dismissed but sustained, and a declaration of rights made upon the principle that plaintiffs acquired for a valuable consideration legal rights by deed, and are entitled to have those rights determined, declared and protected" so that they would be entitled, "when they desire to make use of it (the easement), to have such use."¹⁰⁷ No doubt situations will arise where a party has misconceived his remedy but in which a declaratory judgment might settle the controversy. This action by the court might save the expense and delay of further proceedings, and should be granted if the party entitled to it so desires.

102. *Smith v. Pettis County* (1940) 345 Mo. 839, 136 S. W. (2d) 282.

103. *Frazier v. Chattanooga* (1928) 156 Tenn. 346, 1 S. W. (2d) 736. As to action of appellate court in such situation see Part VI hereof.

104. R. S. Mo. (1939) sec. 1126.

105. (1939) 344 Mo. 438, 126 S. W. (2d) 1162.

106. (1933) 263 Mich. 466, 248 N. W. 869.

107. *Ibid.* 248 N. W. at 874.

G. Enforcement of Rights and Other Relief after Judgment.

The act (sec. 8) provides that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper."¹⁰⁸ This section also provides for application therefor "by petition to a court having jurisdiction to grant the relief;" and that such court "shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why such further relief should not be granted forthwith." There has been some disagreement concerning the effect of such a provision. A narrow view was taken in *Brindley v. Meara*¹⁰⁹ that such "further relief" must be interpreted as referring to additional declaratory relief. An annotation following this case¹¹⁰ shows that this view is not in accord with the weight of authority. This would hardly seem to be the intent of the above provision of the uniform act. A supplemental petition, in the same case, after declaratory judgment, for coercive or ancillary relief, at least before the case has been finally terminated so that the court had not lost its jurisdiction of the case, or a later independent action, would not seem to be out of harmony with our established procedure.¹¹¹ Undoubtedly it is necessary to have a remedy to enforce declared rights (again like ejectment in case of quiet title) if such rights are disregarded.

VI. APPELLATE REVIEW

A declaratory judgment is an appealable judgment because section 1 of the act provides that its "declarations shall have the force and effect of a final judgment or decree."¹¹² Section 7 of the act provides: "All orders, judgments and decrees under this Act may be reviewed as other orders, judgments and decrees."¹¹³ In the case of *School District of Kansas City v. Smith*,¹¹⁴ the court refused "to determine the applicability or non-applicability (of a sales tax statute) to the facts alleged in the petition" where it reversed the action of the trial court in sustaining a demurrer. In that situation, because the appellate court did not have all the

108. R. S. Mo. (1939) sec. 1133.

109. (1935) 209 Ind. 260, 198 N. E. 301, 101 A. L. R. 682.

110. (1935) 101 A. L. R. 689.

111. *Mills v. Metropolitan Street Ry.* (1920) 282 Mo. 118, 221 S. W. 1.

112. R. S. Mo. (1939) sec. 1126.

113. *Id.* at sec. 1132.

114. (1937) 342 Mo. 21, 111 S. W. (2d) 167.

facts, it remanded the case. The parties then had the right to make their proof. It has since been held that when the trial court fails to make declarations in its judgment settling the rights of the parties, the supreme court will do so under a statute authorizing it to "give such judgment as such court ought to have given."¹¹⁵ *Smith v. Pettis County* and *Liberty Mutual Ins. Co. v. Jones* were before the appellate court on the facts (proved or conceded) and a declaratory decree was directed, after the trial court had dismissed the declaratory judgment petition, without a declaration. This procedure was also approved by the United States Supreme Court in *Currin v. Wallace*¹¹⁶ where a Circuit Court of Appeals's decree¹¹⁷ entered after dismissal in the trial court, was affirmed. Certainly it is best that cases should be finally settled by being reversed and remanded with directions to enter a final decree whenever the record makes such a disposition possible.¹¹⁸

The question arises as to whether the equity rule of review applies in declaratory judgment cases. Of course, in many cases this would make no difference, because there would be no dispute about facts. For example, often in the construction of contracts, wills, and other written instruments only legal questions would be presented for decision. This would also be true where a case is presented upon an agreed statement of facts. The Declaratory Judgments Act only provides that a fact issue "may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending."¹¹⁹ What does that mean in a state which does not have separate courts of law and equity? If a declaratory judgment proceeding is *sui generis* with an equitable historical affinity, why would not the analogy of divorce proceedings be applicable? In *State ex rel. Couplin v. Hostetter*,¹²⁰ the court held that "divorce and alimony is a proceeding *sui generis* founded on statute, not purely a common law or equitable pro-

115. R. S. Mo. (1939) sec. 1229. *Smith v. Pettis County* (1940) 345 Mo. 839, 136 S. W. (2d) 282. See also *Liberty Mutual Ins. Co. v. Jones* (1939) 344 Mo. 932, 130 S. W. (2d) 945, 125 A. L. R. 1149.

116. (1939) 306 U. S. 1.

117. *Wallace v. Currin* (C. C. A. 4, 1938) 95 F. (2d) 856.

118. See *St. Louis Amusement Co. v. St. Louis County* (Mo. 1941) 147 S. W. (2d) 667.

119. R. S. Mo. (1939) sec. 1134.

120. (1939) 344 Mo. 770, 129 S. W. (2d) 1.

ceeding, but having qualities of both; that it has "a practice similar to equity;" and that "an appellate court determines the case de novo and is not bound by the findings of the court below, but may make a different finding of its own." This has always been the rule of appellate review in this state in divorce cases. The modern tendency, of course, is to combine law and equity and to get away from the distinctions which have only an historical and not a reasonable basis. The new federal rules make the equity rule apply to findings of fact in all cases tried without a jury.¹²¹ Is there any good reason why findings of fact, at least those not submitted to a jury but made by the trial court, should not be subject to the equity rule of review? And, if the equity rule applies completely, as in divorce cases, are not even those made by a jury only advisory?¹²² A different rule has, however, been adopted under the Federal act;¹²³ namely, would it be a law case if the parties were reversed and a usual action brought.

VII. CONCLUSION

The new complex relations of modern commerce and industry have made necessary better judicial methods for determination of controversies arising from such relations. Modern business moves at a swift pace. It is increasingly important not only to have controversies decided right but also at the right time. Too often old, inadequate or obstructive methods of procedure have resulted in such slow motion justice that rights have sometimes been established only after they had become valueless because of changed conditions. The movement to reform procedure, by elimination of many former means for delaying or evading a trial on the merits, showed important results in the adoption of the new federal rules. Many state procedural codes are being revised in accordance with this model. However, something more than speedier procedure is needed to solve many of the complicated questions of modern relations at the time they need to be decided. Better procedure can hasten determination of what are the effects or consequences of action taken or failure to take ac-

121. *Federal Rules of Civil Procedure and Proceedings of American Bar Association Institute* (Cleveland, 1938) 312 et seq. (Statement of William D. Mitchell, Chairman of the Advisory Committee of the U. S. Supreme Court on Rules of Civil Procedure).

122. See *Shaw v. Butler* (Mo. 1934) 78 S. W. (2d) 420.

123. *Pacific Indemnity Co. v. McDonald* (C. C. A. 9, 1939) 107 F. (2d) 446.

tion. But the crying need is sometimes to know what a person has a right to do, or whether it would be improper, perhaps disastrous, for him to take contemplated action, in situations already completely developed, or to know what rights others have already have against him. It is these situations (and they are many) for which the new idea of declaratory judgments provides the remedy. Lawyers undoubtedly will increasingly find in it better means for satisfactorily serving the interests of their clients. If they do, it is very likely that they will find increased demand for their services.

The old idea of the common law was to limit judgments to redress of wrongs and thus make litigation only a curative process. Declaratory judgments provide a means for preventive justice. As in preventive medicine, it may be possible to prevent great loss or damage by knowing, in time, what to do and what not to do. One complaint laymen frequently make about both lawyers and courts is that they tell you only what is wrong, and will not tell you what is right; what you cannot do, instead of what you can do. Now by use of declaratory judgments it is possible, in many instances, to find out what is right, as a guide for action. Where a declaratory judgment can be used, the lawyer does not have to guess at what to advise his client; in such situations he can find out. Of course, this remedy has decided limitations. It cannot decide an immediate course of action when decisions cannot wait for a court hearing. It cannot give advice about future events which may or may not occur. However, proper cooperation of courts and lawyers can broaden the scope of its usefulness. Decided cases certainly show many situations in which it has functioned adequately in a very helpful way. A civilized concept of the function of courts surely would not limit them from assisting in the determination of controversies until after these had resulted in a wrongful injury to or invasion of the rights of one of the parties. It is indeed fortunate for Missouri lawyers and their clients that the courts of this state will not be so limited in the future.