plicability of declaratory relief. *Sigal v. Wise* (1932) 114 Conn. 297, 158 Atl. 891. In that case it was said that one great purpose of the acts is to enable parties to settle their differences in advance of any invasion of rights so as to avoid the expense and disturbance of lawsuits. . . . "Fully to carry out" these purposes "it is sometimes necessary to determine rights which will arise or become complete only in the contingency of some future happening." In *Post v. Metropolitan Life Insurance Co.* (1929) 237 N. Y. Supp. 64, it was said that the Declaratory Judgment Statute "was designed to supply the need for a form of action that would set controversies at rest before they led to the repudiation of obligations, the invasion of rights, and the commission of wrongs. The benevolent purposes of the statute should not be thwarted by narrow and technical construction."

J. W. '37.

EVIDENCE—MOTION PICTURES.—The plaintiff sued for damages for injuries to his nervous system, claiming total and permanent disability, and his physician testified that the plaintiff's condition "will get progressively worse" and "will manifest more organic signs as time progresses." Defendant introduced motion pictures taken while plaintiff was unaware, showing him doing various chores, including taking down a cherry tree ten feet high. This evidence was *held* admissible to prove the complete manual dexterity of the plaintiff and the likelihood of his speedy rehabilitation. *Smalley v. New York Central Ry. Co.* (D. C., E. D. N. Y., No. L-6235, Feb. 11, 1935) U. S. Law Week, Feb. 26, 1935, p. 14.

During the earlier development of motion pictures the courts hesitated to recognize their validity as evidence. The first New York case was *Gibson v. Gunn* (1923) 202 N. Y. Supp. 19, a suit by a dancer for personal injuries. As the defendant, in order to prove that the actual damage he had caused was slight, relied upon the fact that before the accident the plaintiff's leg had been amputated, the plaintiff showed a motion picture, portraying her in various dances, proving that in spite of her artificial leg she had been an expert dancer before her injury by the defendant. The appellate court held such evidence inadmissible for the reasons that motion pictures in themselves present fertile field for exaggeration of one's emotions and actions, that plaintiff had offered no evidence as to how this picture had been prepared, and that the evidence was irrelevant and hearsay. Thus, under the first reason given, it would seem that all motion pictures must be excluded, a view limited by later decisions. Despite the court's unsupported statement to the contrary, it appears clear that the evidence was neither irrelevant nor hearsay.

Later cases excluding motion pictures as evidence based their decisions on grounds not in conflict with *Smalley v. N. Y. Cent. Ry., supra.* In *Massachusetts Bonding & Ins. Co. v. Worthy,* (Tex. Civ. App. 1928) 9 S. W. (2nd) 388, an action on an insurance policy, the court sustained exclusion of motion pictures disproving plaintiff's claim of total disability, for the reason that the defendant had failed to identify them or verify their ac-

curacy. And in *State, for Use of Chima, v. United Ry. & Elec. Co. of Baltimore* (Md. 1932) 159 Alt. 916, the court sustained the exclusion of motion pictures for irrelevancy.

It was not until 1934, apparently, that an appellate court held that in a particular case before it motion pictures would be admissible. In *Boyarsky v. Zimmerman Corp.* (1934) 270 N. Y. Supp. 134, a case similar in facts to the *Smalley case,* the court held it error to exclude motion pictures disproving plaintiff's claim of incapacity, pointing out the rapid development of motion pictures and their remarkable accuracy. By dicta, the court held that the rules as to the admission of photographs were applicable to motion pictures, which rules are recognized to be: 1) The pictures must be relevant. *Hooks v. Genl. Storage & Transfer Co.* (Ark. 1933) 63 S. W. (2nd) 527; *Hampton v. Ry.* (1897) 120 N. C. 534, 27 S. E. 96; and *Verrann v. Baird* (1889) 150 Mass. 142, 22 N. E. 630; compare with *Gibson v. Gunn, supra,* where this rule was misapplied, and *State, for Use of Chima, v. United Ry. & Elec. Co. of Baltimore, supra,* where it was correctly applied. 2) They must not excite sympathy or unfair prejudice. *Cooper v. R. Co.* (1893) 54 Minn. 379, 56 N. W. 42; *Selleck v. Janesville* (1899) 104 Wis. 307, 80 N. W. 944. 3) They must be an accurate representation. *Riggs v. Metropolitan St. Ry. Co.* (1909) 216 Mo. 304, 115 S. W. 969. Compare with *Gibson v. Gunn, supra.* 4) They must be verified by a witness who is qualified by observation to speak. *Mayor, etc., of Baltimore v. State* (1918) 132 Md. 113, 103 Atl. 426; *Hindson v. Ashby* (1896) 2 Ch. 1, 65 L. J. Ch. 515; *Pace v. Cochran* (1915) 144 Ga. 261, 86 S. W. 934; *U. S. Shipping Board v. St. Albans Ship* (1931) A. C. 632. Note that *Gibson v. Gunn, supra,* was justified upon this ground by the court in the *Boyarsky* case. The decision in *Mass. Bond. & Ins. Co. v. Worthy, supra,* rested squarely upon this ground. 5) Whether the pictures have been properly verified is a question for the discretion of the court. *Hassam v. Stafford Co.* (1909) 82 Vt. 444, 74 Atl. 197; and *Mass. Bond. & Ins. Co. v. Worthy, supra.*

A question arises as to the applicability of the best evidence rule. An analysis of the motion picture cases already decided will show that the rule is not applicable in these particular cases. But should the plaintiff offer a motion picture to show the extent of his incapacity when it would be proper for the jury to observe him in court, the picture should be excluded as not the best evidence obtainable. Photograph cases adopting this rule are: *MacLean v. Scripps* (1893) 52 Mich. 214, 218; *Sharp v. State* (1927) 115 Neb. 737, 214 N. W. 643; *Farina v. Com.* (1925) 212 Ky. 303. X-ray photographs are regarded as best evidence. *Daniels v. Iowa City,* (1921) 191 Ia. 811, 183 N. W. 415. For a discussion as to the application of the best evidence rule to photostatic copies of books and documents, see note, 33 Mich. Law Rev. 611.

Sound pictures will present an interesting problem, for the objection of hearsay will be present in all cases where there is an assertion offered for the purpose of proving its truth. Cases allowing phonograph records as evidence are: *Loring v. Boston Elev. Ry. Co.* (1905) Superior Court of Suffolk Co., Mass., Boston Transcript, Dec. 12, phonograph records allowed to show noise made by defendant's trains; and *Boyne C. G. & A. R. Co. v. Anderson* (1901) 146 Mich. 328, 109 N. W. 429.

Another issue will arise in cases where the motion pictures are offered merely to illustrate the evidence. Photographs for this purpose were admitted in *Smith v. Territory* (1902) 11 Okla. 669, 69 Pac. 805; and *Fulton v. Chouteau County Farmers' Co.* (Mont. Sup. Ct. 1934) 37 Pac. (2nd) 1025. For further discussion as to the general problem of motion pictures, see note, 36 Law Notes 108-10, 2 Wigmore on Evidence (2nd ed., 1923) sec. 798, and R. C. Beckett, *Motion Pictures in Evidence* (1932) 27 Ill. Law Rev. 424-7. J. C. L. '36.

INFANTS—JUVENILE COURTS—JURISDICTION OVER CRIMES.—Daniecki was indicted, tried, and convicted for murder in a criminal court. Daniecki petitions for a writ of habeas corpus on the ground that at the time of the murder he was a minor under the age of 16, and should have been tried by a juvenile court. A statute had vested the juvenile court with exclusive jurisdiction to hear and determine all cases against a child under 16 who was charged with committing any offense or act for which he could be prosecuted; all such cases were to be tried by a judge without a jury; it was further provided that no child could be tried for a crime except with the consent of the judge of the juvenile court, who in his discretion might transfer the case to a criminal court. Comp. St. of New Jersey Supp. 1930, sec. 53. *Held,* the statute is unconstitutional as regards indictable offenses where the constitutional right to trial by jury exists. The vice of the statute is in creating a juvenile court to try all manner of crime and subjecting the culprit to a possible trial by a judge without a jury. *Ex parte Daniecki,* (New Jersey, Feb., 1935), 177 Atl. 91.

The statutes of the various states vary as to the forum in which the juvenile delinquents are to be tried. The majority of the states leave the matter to the discretion of the judge of the juvenile court except where a serious felony is involved. *State v. Alexander* (Okla. Cr. 1921), 196 Pac. 969; *Johnson v. Com.* (1917), 176 Ky. 339, 195 S. W. 818. He may transfer the case to a criminal court or keep it in the juvenile court. The basis for his decision is whether the child is incorrigible or not. *Powell v. State* (1932), 96 Ala. 936, 141 So. 201; *Ashley v. Commonwealth* (1930), 236 Ky. 543, 33 S. W. (2d) 614; *Wiggins v. State* (Tenn. 1927), 289 S. W. 498; *People vs. Ross* (1926), 235 Mich., 433, 209 N. W. 663; *State v. Burnett* (N. C. 1920), 102 S. E. 711; *People v. Woeff* (1920), 182 Cal. 728, 190 Pac. 22; *Ex parte Powell* (1912), 6 Okla. Cr. 495, 120 Pac. 1022; *State ex rel. Johnson v. Quigg* (Fla. 1922), 90 So. 695. In these states the juvenile court is vested with exclusive original jurisdiction except in serious felony cases and if a minor gets into a criminal court it is the duty of the criminal court to transfer the case immediately to the juvenile court. *Compton v. Commonwealth* (Ky. 1922), 240 S. W. 36; *Ex parte Hightower* (Okla. 1907), 165 Pac. 624.

The old idea of "guilt" and the right to trial by jury to ascertain guilt still prevails in some of the states as to the delinquent. In these states the minor has a right to trial by jury on demand. However, in cases of serious felony a criminal trial would be mandatory. Colorado provides for a jury