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CONSTITUTIONAL LAW—POWER OF FEDERAL COURTS TO GIVE DECLARATORY JUDGMENTS.—*Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace* (1933) 53 S. Ct. 345 holds that a litigation arising under the Uniform Declaratory Judgments Act of Tennessee is within the judicial power of the Supreme Court as a "case or controversy". Plaintiff sought a judicial declaration that a state excise tax levied on the storage of gasoline was unconstitutional as a violation of commerce and due process of law clauses, as applied to a plaintiff engaged in interstate commerce. The court recognized that there were valuable legal rights actually controverted by adverse parties which would be directly and substantially affected by a binding adjudication of these rights. Although injunctive or other relief is normally sought, *Pierce v. Society of Sisters* (1925) 268 U. S. 510; *Euclid v. Ambler Realty Co.* (1926) 272 U. S. 365, such relief is not an indispensable element in a judicial controversy, *Fidelity National Bank v. Swope* (1927) 274 U. S. 123. The court then says, "But the Constitution does not require that the case or controversy should be presented by the traditional forms of procedure invoking only traditional remedies."

Strong dicta of four prior decisions disclosed a distinctly contrary position. In *Liberty Warehouse Co. v. Grannis* (1927) 273 U. S. 70, a case involving a prayer for a declaratory judgment authorized by a Kentucky statute was brought originally in the federal courts relying upon the Conformity Act. The court refused to consider the case on the ground that there were no adverse parties before the court, indicating a decided distaste for declaratory judgments. In *Liberty Warehouse Co. v. Burley Tobacco Growers' Assn.* (1928) 276 U. S. 71, the opinion of the court (by Justice McReynolds) says, "This court has no jurisdiction to review a mere declaratory judgment." In the case of *Willing v. Chicago Auditorium Assn.* (1928) 277 U. S. 274, involving an alleged cloud on title, Justice Brandeis says that to grant such relief as a declaratory judgment is beyond the power conferred on the federal judiciary. Justice Stone in a separate concurring opinion points out that this statement is unwarranted dicta. In *Piedmont & Northern Ry. v. U. S.* (1930) 280 U. S. 469 the Supreme Court again indicated its hostility to the declaratory judgment by stating that such a remedy is not within the equity jurisdiction of the federal courts.

Twenty-six states, England, and Scotland make use of this social mechanism in providing relief for adverse parties before valuable legal rights are actually damaged. Borchard, *The Constitutionality of Declaratory Judgments* (1931) 31 Columbia L. Rev. 561. It is evident from a perusal of the four opinions cited above that the chief obstacle to the validity of such judgments centered in the belief that they did not fit the legal concept of justiciable controversies. In *Muskrat v. United States* (1911) 219 U. S. 346 it was remarked that "judicial power . . . is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction." In that case, there were no adverse parties before the court. In *Gordon v. United States* (1864) 2 Wall. 561 (memorandum opinion, undelivered opinion pre-

pared by Chief Justice Taney just before his death, printed in 117 U. S. 697) there was no possibility of the court's rendering a final judgment. These and other similar cases are distinguished, and the nature of a declaratory judgment admirably contrasted in *In Re Kariher's Petition* (1925) 284 Pa. 455, 131 Atl. 265. The declaratory judgment is merely a remedial change, a variation in the procedure by which a party may protect a valuable legal right. The court must be "satisfied that an actual controversy, or the ripening seeds of one, exists between the parties, all of whom are sui juris and before the court, and that the declaration sought will be of practical help in ending the controversy." If these elements are not present, the court will refuse jurisdiction on grounds independent of the nature of declaratory judgments.

It is gratifying that the Supreme Court at the first time it was called upon to squarely face the issue in an actual decision recognized the true significance of the declaratory judgment and distinguished its ill-considered dicta of previous cases. Such a position has long been urged. See Borchard, *The Constitutionality of Declaratory Judgments*, supra. S. M. R., '33.

FIXTURES—RIGHT OF REMOVAL BY REMOTE ASSIGNEE DESPITE CONTRACT OF VENDOR.—Plaintiff agreed to sell a tract of land to S. under an executory contract of sale, retaining title until all installments were paid. The contract provided that upon a breach by S., plaintiff should have the right of immediate possession, together with all improvements. Defendant was a tenant of J., a remote assignee of S.'s rights under the contract. Under his contract with J. defendant had the right to remove the improvements in question, which were of a permanent nature. Upon plaintiff's asserting his right of reentry, the court granted an injunction preventing defendant from removing certain improvements placed by him on the land. *Willard v. Geary* (Tex. Civ. App. 1932) 53 S. W. (2d) 489.

It is clear that even without an agreement, if the improvements had been made either by S. or by J. the right of removal would have been lost, for buildings and other fixtures erected by one in possession of land under a contract of purchase become a part of the realty. 1 Thompson, *Real Property* 206. The purchaser in such a case stands in a position analagous to that of a mortgagor, and has no greater rights of removal than the mortgagor has as against the mortgagee. 26 C. J. 675.

But the problem here is not so simple. It obviously involves a conflict of interests, calling for a balancing of equities. There seem to be no other reported cases precisely in point; but workable analogies are more abundant.

In *Harris v. Hackley* (1901) 127 Mich. 46, 86 N. W. 389, a conditional seller of fixtures to the vendee of land was granted recovery against the vendor of the land holding title, in spite of an agreement between the vendor and vendee of the land that the former should get all improvements. The court held that the agreement between the vendee and the conditional seller kept the property personalty even though the vendee might have intended it