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CURRENT LAW REVIEW DIGEST SERIES

Declaratory Judgments in Indiana, by Edwin Borchard. Indiana Law Journal. Volume XIX. April, 1944. Number 3.

This article, which treats of the historical development of the declaratory judgment under the Declaratory Judgment Act in Indiana since its adoption in 1927, is of particular interest to Indiana lawyers. The author cites *Brindley vs. Meara*, 209 Ind. 144, -98 N. E. 301 (1935) as being typical of a long line of Indiana decisions evincing the Indiana Supreme Court's "unfortunate" hostility to the Declaratory Judgment Act. The ruling in the Brindley case, supra, was that if in a particular case any other remedy is available, a declaratory action should be dismissed as inappropriate. The effect of the foregoing and subsequent decisions is, the author asserts, "practicallv repealing the Declaratory Judgment Act."

The various types of grievance susceptible of declaratory relief are discussed in the article, including its relation to public law. Under Section 2 of the Uniform Declaratory Judgment Act, any person interested under a written instrument, including a statute or municipal ordinance, may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights thereunder. Despite the Court's inclination to construe narrowly the Act in this respect, the author cites several Indiana cases wherein businessmen have availed themselves of declaratory judgments in challenging the constitutionality, construction or applicability of a statute or ordinance. For instance, in *Division of Labor* of *Dept. of Commerce* and *Industries vs. Indianapolis News Publishing Co.*, 109 Ind. App. 88, 32 N. E. (2nd) 722 (1941) a publishing company sued the Division, an administrative body, for a declaration *plus* injunction, that a 1929 statute prohibiting minors from working in gainful occupations did not apply to its newsboys. A declaration on the merits in the plaintiff's favor, together with injunctive relief, was allowed, which was surprising in lieu of the general tenor of the Indiana decisions.

The author further stresses the value of declaratory judgments as "civil adjudications of penal laws." The remedy is said to be particulary appropriate now in guiding businessmen dealing with the multitude of so-called "police power regulations," state and local, carrying penalties for their infraction. Thus where a declaration of rights is had before the "seeds of the controversy ripen," the jeopardized businessman is not subjected to a criminal trial in order to establish the validity, construction, or applicability of a law, the meaning of which is doubtful to both the businessman and enforcing officials. Illustrative of this sort of thing is *Dept. of State vs. Kroger Grocery and Baking Co.,—Ind.—*, 46 N.E. (2nd) 237 (1943). There the State Board of Pharmacy was threatening criminal prosecution against the Kroger Co. for selling vitamin capsules allegedly in violation of a regulation made in pursuance of a statute providing that "prescriptions" must be sold only in drug stores. Kro-

ger's contention was that the disputed article was an "accessory food" and hence not subject to the sales limitations prescribed by the Board, further contending that the regulation in question was void. The trial court rendered a declaratory judgment. However, when the case was appealed to the Indiana Supreme Court, a dismissal of the action was ordered for want of jurisdiction on the ground that a "criminal prosecution" was the appropriate action. Thus, the author contends, the spirit of the Act has been frustrated in Indiana.

The author concludes by saying: "A re-examination of the subject in the light of history and modern practice which would overrule *Brindley vs. Meara* and its stultifying effects, are indispensable to an efficient administration of justice." —*David S. Landis.*

Estate Planning, by Milton Elrod, Jr. Vol. 19, Indiana Law Journal—April, 1944, Number 3.

Estate planning concerns itself in a very large part with estate tax problems. Today federal estate tax liabilities are three and four times as great as those faced in estates of comparable size barely ten years ago. A good example, an estate after deductions, but before exemptions totaled a $100,000 net estate and paid a federal estate tax of $1,500. Today the tax on that estate is $4800.00. These increases in tax liabilities have resulted in part from substantial increases in the federal estate tax rates, of course, and in part from a reduction, a continuing reduction, in the federal estate tax redemption. The present tax exemption of $60,000 may seem at first, quite sufficient however even though this is true if one thinks in terms of the estate which will be subject to promote, which of course, is the estate with which we as lawyers are commonly concerned yet it is a fact that many types of property which are not part of the estate for probate purposes are part of the estate for federal estate tax purposes. Examples, property held in joint title with another person with the right of survivorship, property held in tenancy by the entirety by the husband and wife. Another example of property held which is ordinarily not considered part of the estate but is still taxable, is life insurance payable to named beneficiaries. Under Annuity Refunds Benefits, War Risk Insurance, Baby Bonds, Defense bonds are all part of the estate for federal estate taxing purposes. When we consider all of the property that must be considered for tax purposes, and when we think in terms of present day tax liabilities and exemptions and rates, we are very likely to find a surprising number of our clients in a taxable estate bracket.

There is a very real and a very acute problem faced by a very great number of men today. Estate planning has become an essential part of every estate. The first step your client can take in the way of sound estate planning and estate conservation, is to check once again in the light of today's tax and today's tax philosophies the cash demands that must be met in event of death. For times change and tax laws change; and as a result estate needs for cash change radically. A provision for

adequate funds to meet potential estate liabilities must be included in your clients estate planning. Upon the doing of this a step forward toward a sound estate plan has been taken. A real problem does exist, it would be profitable for lawyers to check this question further.

—*Theodore M. Ryan.*

Rylands v. Fletcher in Illinois, by Edmund W. Burke. Chicago Kent Law Review. Volume 22. March Issue, 1944.

Rylands v. Fletcher gave birth to the principles that an owner of land assumes absolute liability to others by bringing upon his land something that is inherently dangerous, or by participating in some activity upon his premises which is of an extrahazardous nature and likely to cause mischief if it escapes.

The author states that the late Professor Bohlen has championed on the theory that a person who engages in a hazardous enterprise, even though it be of economic value, should pay any damage inflicted as a consequence of the hazard inherent in the enterprise.

Under the disguise of a nuisance the principle has received far greater recognition than has been admitted in the United States. The author comes to the conclusion that the rule has been accepted by Illinois courts and cites various cases to prove his point.

In the case of the Chicago and Northwestern Railway Co. v. Heinerburg the court stated: "that a person, who for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape." Justice McAllister also cited Rylands v. Fletcher.

In conclusion Mr. Burke made the point clear that he was not unsympathetic with the early authorities who criticized the doctrine, but brought out the point that they lived at a time when this country had not reached its present state of economic and commercial development. There was reason then for encouraging industry, even if this encouragement took the form of providing immunity to the pioneers thereof from harms caused to others in the absence of willful or negligent fault. He then states that this period of American History is past and there is no reason now why a person who engages in an enterprise upon his own premises for his own gain should not pay for harms that he causes to other premises by reason of that enterprise, whether guilty of fault in the conduct of that enterprise or not.

—*William J. O'Connell.*