

Chapter 28

Declaratory Judgments

Chapter 28

NOTES OF DECISIONS

A court of record has power to define rights, status and legal relations at the instance of litigants having adverse claims. **Status of trust company**, *American Trust Co. v. McCallister*, (1931) 136 Or 338, 299 P 319; **validity of horse racing scheme**, *Multnomah County Fair Assn v. Langley*, (1932) 140 Or 172, 13 P2d 354; **validity of bond issue**, *Redmond Realty Co. v. Cent. Ore. Irr. Dist.*, (1932) 140 Or 282, 12 P2d 1097; **status of addition to city charter**, *Salem v. Ore.-Wash. Water Serv. Co.*, (1933) 144 Or 93, 23 P2d 539; **extent of liability on a bond**, *New Amsterdam Cas. Co. v. Hyde*, (1934) 148 Or 229, 34 P2d 930, 35 P2d 980; **validity of school consolidation**, *School Dist. 1 v. School Dist. 45*, (1934) 148 Or 554, 37 P2d 873; *Tompkins v. Dist. Boundary Bd.*, (1947) 180 Or 339, 177 P2d 416; *Webb v. Clatsop School Dist.*, (1950) 188 Or 324, 215 P2d 368; **seniority rights of employe**, *Burton v. Ore.-Wash. R.R. & Nav. Co.*, (1934) 148 Or 648, 38 P2d 72; **construction of a will**, *Anderson v. Anderson*, (1935) 150 Or 476, 46 P2d 98; **constitutionality of enactment**, *Multnomah County v. First Nat. Bank*, (1935) 151 Or 342, 50 P2d 129; *Portland v. Welch*, (1936) 154 Or 286, 59 P2d 228; *American Fed. of Labor v. Bain*, (1940) 165 Or 183, 106 P2d 544; **determination of water rights**, *Jordan Valley Irr. Dist. v. Title & Trust Co.*, (1936) 154 Or 76, 58 P2d 606.

Applicability of tax law, *Atkinson v. State Tax Comm.*, (1937) 156 Or 461, 62 P2d 13, 67 P2d 161; **validity of school district resolution**, *Glines v. Bain*, (1937) 157 Or 358, 72 P2d 33; **rights created by contract**, *Lakeshore Gardens Drainage Dist. v. Ore.-Calif. Power Co.*, (1939) 162 Or 26, 90 P2d 1038; *Lewis v. Shook*, (1949) 185 Or 67, 201 P2d 908; **preparation of tax foreclosure list**, *Childs v. Marion County*, (1940) 163 Or 411, 97 P2d 955; **construction of deed**, *Erickson v. Erickson*, (1941) 167 Or 1, 115 P2d 172; **construction of statute**, *Central Ore. Irr. Dist. v. Deschutes County*, (1942) 168 Or 493, 124 P2d 518; *Woodard Lbr. Co. v. Unemp. Comp. Comm.*, (1944) 173 Or 333, 145 P2d 477; *Swift & Co. v. Peterson*, (1951) 192 Or 97, 233 P2d 216; **jurisdiction of a commission**, *Union Pac. R.R. v. Bean*, (1941) 167 Or 535, 119 P2d 575; *Cabell v. City of Cottage Grove*, (1943) 170 Or 256, 130 P2d 1013; **construction of insurance policy**, *Clark Motor Co. v. United Pac. Ins. Co.*, (1943) 172 Or 145, 139 P2d 570; **validity of order made by municipal board**, *Drake v. Portland*, (1943) 172 Or 558, 143 P2d 213; **use of funds by municipal corporations**, *Stringham v. Union County P.U.D.*, (1948) 182 Or 565, 178 P2d 698, 187 P2d 150.

The Declaratory Judgments Act is sufficiently broad in its scope and objectives to make the adjudication of the title to real or personal property an appropriate subject for a declaratory decree. *Blomgren v. Dahl*, (1952) 196 Or 249, 248 P2d 700.

The construction of partnership agreements and the determination of the existence of a partnership are proper subjects for judgment of declaration. *Id.*

Plaintiffs did not have requisite standing to seek a judgment delimiting the Governor's discretion in granting a

reprieve to the convicted murderer of plaintiff's son. *Eacret v. Holmes*, (1958) 215 Or 121, 333 P2d 741.

Permission to resort to declaratory judgment relief is a matter of sound discretion of the court. *Employers Mut. Liab. Ins. v. Bluhm*, (1961) 227 Or 415, 362 P2d 755.

It is an abuse of discretion for the court to entertain a declaratory judgment action when to do so is manifestly unwise and unnecessary, such as when another court already has jurisdiction of the issues that can be raised. *Employers Mut. Liab. Ins. v. Bluhm*, (1961) 227 Or 415, 362 P2d 755; *Union Pac. R.R. v. Mason*, (1962) 232 Or 486, 376 P2d 61; *Nelson v. Knight*, (1969) 254 Or 370, 460 P2d 355.

The declaration will be refused where in the court's opinion it is inexpedient for some reason outside the record. *Campbell v. Henderson*, (1965) 241 Or 75, 403 P2d 902.

Plaintiff has the burden of proof throughout the case in seeking a declaratory judgment. *Aetna Cas. and Sur. Co. v. Martin Bros. Container and Tbr. Prods. Corp.*, (1966) 258 F Supp 145.

The Declaratory Judgment Act is a "provision of law" by which paternity may be established or declared within the meaning of subsection (5) of ORS 109.070. *Thom v. Bailey*, (1971) 257 Or 572, 481 P2d 355, aff'g 3 Or App 97, 471 P2d 809.

The statutes do not prescribe a particular form for a declaratory judgment or decree. *Rayson v. Rush*, (1971) 258 Or 315, 483 P2d 73.

FURTHER CITATIONS: *Recall Bennett Com. v. Bennett*, (1952) 196 Or 299, 249 P2d 479; *Windle v. Flinn*, (1952) 196 Or 654, 251 P2d 136; *Foeller v. Housing Authority*, (1953) 198 Or 205, 256 P2d 752; *Hale v. Firemen's Fund Ins. Co.*, (1956) 209 Or 99, 302 P2d 1010; *Linn Plywood Corp. v. Millmen's Union*, (1960) 222 Or 265, 352 P2d 594; *Schmitt v. Culhane*, (1960) 223 Or 130, 354 P2d 75; *Kern County Land Co. v. Lake County*, (1962) 232 Or 405, 375 P2d 817; *United Medical Lab. Inc. v. Columbia Broadcasting Sys.*, (1966) 256 F Supp 570, 258 F Supp 735; *Richey v. Sumoge*, (1966) 257 F Supp 32; *Portland Paramount Corp. v. Twentieth Century-Fox Film Corp.*, (1966) 258 F Supp 962; *David v. London Shirt Co.*, (1966) 259 F Supp 848; *Stearns v. Comm. of Public Docks*, (1967) 246 Or 36, 423 P2d 748; *Michaels v. State Tax Comm.*, (1967) 2 OTR 445; *Girt v. Tri-County Metropolitan Transp. Dist.*, (1970) 4 OTR 92.

ATTY. GEN. OPINIONS: Review of metropolitan service district proceedings, tax levy, (1970) Vol 34, p 959.

LAW REVIEW CITATIONS: 40 OLR 257, 263, 45 OLR 53, 210-221; 46 OLR 344-353; 4 WLJ 80-85.

28.010

NOTES OF DECISIONS

1. In general
2. Justiciable controversy

1. In general

A taxpayer can obtain a declaratory judgment determin-

ing the validity of a school consolidation even though its legality is normally tested by quo warranto. *School Dist. 1 v. School Dist. 45*, (1934) 148 Or 554, 37 P2d 873.

In a suit to foreclose tax liens, in which the defendant petitioned for a declaration as to its rights, the court has the power to enter a declaratory judgment and decree as prayed for. *Jordan Valley Irr. Dist. v. Title & Trust Co.*, (1936) 154 Or 76, 58 P2d 606.

A declaratory judgment is not rendered until the rights of the parties have become fixed under an existing state of facts. *United States v. Bauman*, (1943) 56 F Supp 109.

A judgment may be rendered in favor of the plaintiff in a declaratory judgment proceeding if the defendant consents to the rendition of the judgment. *Dannells v. United States Nat. Bank*, (1943) 172 Or 213, 138 P2d 220.

Declaratory judgment proceedings are sui generis and are controlled largely by equity practice. *Consolidated Freightways, Inc. v. Flagg*, (1947) 180 Or 442, 176 P2d 239, 177 P2d 422.

On appeal from a declaratory decree, the Supreme Court is not bound by the findings of fact entered in the circuit court. *Id.*

A complaint which prays for a decree declaring an Act unconstitutional can be treated as a request for a declaratory judgment, even though the purpose of the suit is to prevent injury to property rights. *Miles v. Veatch*, (1950) 189 Or 506, 220 P2d 511, 221 P2d 905.

The court cannot in any contempt proceeding issue an opinion interpreting its decree. *Harris v. Harris*, (1951) 192 Or 361, 232 P2d 818.

Even if there are issues that cannot be worked out in the law action or proceedings supplemental thereto, if such issues are hypothetical and speculative, they do not afford a basis for a declaratory judgment suit. *Union Pac. R.R. v. Mason*, (1962) 232 Or 486, 376 P2d 61.

In declaratory judgment proceedings the court cannot award relief outside the issues of the case. *Heintz v. Sinner*, (1962) 232 Or 529, 376 P2d 478.

A cause of action was stated by allegations that the polls at a special school election were prematurely closed, depriving plaintiff of his right to vote and thereby affecting the election result. *Webb v. Clatsop School Dist.*, (1950) 188 Or 324, 215 P2d 368.

Tort claimant was refused declaratory judgment to determine liability of tort-feasor's insurance carrier under insurance policy where no judgment had been rendered against tort-feasor. *Hale v. Fireman's Fund Ins. Co.*, (1956) 209 Or 99, 302 P2d 1010.

2. Justiciable controversy

Although no injury need be alleged, an actual bona fide controversy between adverse parties must exist before a declaratory judgment will be rendered. *Oregon Creamery Mfg. Assn. v. White*, (1938) 159 Or 99, 78 P2d 572; *American Fed. of Labor v. Bain*, (1940) 165 Or 183, 106 P2d 544; *Hickey v. Portland*, (1941) 165 Or 594, 109 P2d 594.

An application for a declaratory judgment is not demurrable for failure to state facts sufficient to constitute a cause of suit or action so long as the complaint avers a justiciable controversy. *Central Ore. Irr. Dist. v. Deschutes County*, (1942) 168 Or 493, 124 P2d 518; *Cabell v. City of Cottage Grove*, (1943) 170 Or 256, 130 P2d 1013; *Webb v. Clatsop School Dist.* (1950) 188 Or 324, 215 P2d 368; *Portland Gen. Elec. Co. v. City of Estacada*, (1952) 194 Or 145, 241 P2d 1129.

Where the complaint sets forth a justiciable controversy the court must make a declaration as to the rights of the parties. *Central Ore. Irr. Dist. v. Deschutes County*, (1942) 168 Or 493, 124 P2d 518.

The statute of limitations does not commence to run on the right to a declaratory judgment until a justiciable con-

troversy arises. *Pape v. Title & Trust Co.*, (1949) 187 Or 175, 210 P2d 490.

An issue is ripe for judicial determination when the interests of the plaintiff are in fact subjected to or imminently threatened with substantial injury. *Oregon Newspaper Publishers Assn. v. Peterson*, (1966) 244 Or 116, 415 P2d 21.

A justiciable controversy existed because plaintiff had a legal interest which would blossom into legal title to the property, if the court decided in plaintiff's favor. *Jaquith v. Hartley*, (1966) 243 Or 27, 411 P2d 274.

FURTHER CITATIONS: *Elfstrom v. Brown*, (1961) 229 Or 595, 366 P2d 728, 368 P2d 333; *School Bd. of School Dist. U2-20 Jt. v. Fanning*, (1962) 232 Or 593, 377 P2d 4; *Oregon Farm Bureau v. Thompson*, (1963) 235 Or 162, 378 P2d 563; *Burnett v. W. Pac. Ins. Co.*, (1970) 255 Or 547, 469 P2d 602.

ATTY. GEN. OPINIONS: Use of declaratory judgment statutes by a state department, 1936-38, p 89.

LAW REVIEW CITATIONS: 22 OLR 372; 39 OLR 138.

28.020

NOTES OF DECISIONS

See also cases under ORS 28.010.

The mere existence of a statute purporting to give a public official certain powers does not create a justiciable controversy warranting declaratory relief. *Oregon Creamery Mfg. Assn. v. White*, (1938) 159 Or 99, 78 P2d 572.

This Act makes no distinction between a collateral and a direct attack or between a de jure or de facto corporation — if there is a justiciable issue between the parties wherein the legal status of a party is affected by a municipal charter or ordinance, he may "obtain a declaration of rights, status or other legal relations thereunder," and he need not be confined to the remedy of quo warranto. *Portland Gen. Elec. Co. v. City of Estacada*, (1952) 194 Or 145, 241 P2d 1129.

Despite this section, courts do not have jurisdiction to entertain a declaratory judgment action unless there is a justiciable controversy. *Cummings Constr. Co. v. School Dist. 9*, (1965) 242 Or 106, 408 P2d 80.

The parties cannot confer jurisdiction upon the courts by stipulation in the absence of a justiciable controversy. *Id.*

Mere difference of opinion as to the constitutionality of an Act does not afford ground for invoking a judicial declaration having the effect of adjudication. *Gortmaker v. Seaton*, (1969) 252 Or 440, 450 P2d 547.

LAW REVIEW CITATIONS: 13 OLR 86; 46 OLR 344-353.

28.030

CASE CITATIONS: *Heintz v. Sinner*, (1962) 232 Or 529, 376 P2d 478.

28.040

NOTES OF DECISIONS

In order to obtain a declaratory judgment directing a trustee to abstain from doing a particular act, the plaintiff must have a substantial interest in the trust. *Fox v. Title & Trust Co.*, (1929) 129 Or 530, 277 P 1003.

FURTHER CITATIONS: *Stanley v. Mueller*, (1957) 211 Or 198, 315 P2d 125.

28.060

NOTES OF DECISIONS

A declaratory judgment proceeding cannot be employed

for the purpose of reviewing and reversing the court's previous orders. In re Baker's Estate, (1937) 156 Or 256, 67 P2d 185.

Tort claimant was refused declaratory judgment to determine liability of tort-feasor's insurance carrier under insurance policy where no judgment had been rendered against tort-feasor. Hale v. Fireman's Fund Ins. Co., (1956) 209 Or 99, 302 P2d 1010.

FURTHER CITATIONS: Salem v. Ore.-Wash. Water Serv. Co., (1933) 144 Or 93, 23 P2d 539; Oregon Creamery Mfg. Assn. v. White, (1938) 159 Or 99, 78 P2d 572.

28.070

NOTES OF DECISIONS

Assignments of error are not indispensable in declaratory judgment proceedings. Heintz v. Sinner, (1962) 232 Or 529, 376 P2d 478.

FURTHER CITATIONS: Killies v. Williams, (1956) 208 Or 234, 300 P2d 408; Emerson v. Hood R. Co., (1960) 223 Or 112, 353 P2d 247, 354 P2d 74.

28.080

NOTES OF DECISIONS

Supplemental relief is not limited to a declaration of the rights of the parties but may include a decree ordering that a litigant perform certain acts. Lowe v. Harmon, (1941) 167 Or 128, 115 P2d 297.

FURTHER CITATIONS: Union Pac. R.R. v. Bean, (1941) 167 Or 535, 119 P2d 575.

28.090

NOTES OF DECISIONS

Plaintiffs were not entitled to jury trial where the relief sought was equitable. Webb v. Clatsop School Dist., (1950) 188 Or 324, 215 P2d 368.

A suit for a declaratory decree may be united with an action for a money judgment as supplemental or incidental relief. Lewis v. Miller, (1957) 197 Or 354, 251 P2d 876.

In proceedings under this Act, if the relief sought is equitable and the issues of fact are tried as in equity, equitable procedure will be followed on appeal. Oregon Farm Bureau v. Thompson, (1963) 235 Or 162, 384 P2d 182.

The plaintiff insurer had the burden of proving his affirmative allegations. First Nat. Bank v. Malady, (1965) 242 Or 353, 408 P2d 724.

FURTHER CITATIONS: Union Pac. R.R. v. Mason, (1962) 232 Or 486, 376 P2d 61; Reif v. Botz, (1965) 241 Or 489, 406 P2d 907.

LAW REVIEW CITATIONS: 45 OLR 210-221.

28.100

CASE CITATIONS: Gorman v. Jones, (1962) 232 Or 416, 375 P2d 821.

28.110

NOTES OF DECISIONS

The courts have no jurisdiction to make a declaration unless all persons "who have or claim any interest which would be affected by the declaration" are parties. Stearns v. Commr. of Pub. Docks, (1965) 240 Or 255, 401 P2d 25; Stanley v. Mueller, (1957) 211 Or 198, 315 P2d 125; Ore. State Employees Assn. v. Holman, (1970) 4 Or App 320, 478 P2d 657.

All of the taxpayers need not be made parties defendant in an action to obtain a declaratory judgment to determine the validity of an election on the acquisition of a municipal water plant. Salem v. Ore.-Wash. Water Serv. Co., (1933) 144 Or 93, 23 P2d 539.

A declaratory judgment proceeding against the state and certain officials was properly dismissed where the state gave no consent to be sued. Lucas v. Banfield, (1947) 180 Or 437, 177 P2d 244.

Plaintiff had standing to challenge the rule. Oregon Newspaper Publishers Assn. v. Peterson, (1966) 244 Or 116, 415 P2d 21.

In suit of administrator against deceased's spouse concerning an alleged prenuptial agreement barring spouse's right to take property of deceased, legatees under the will were necessary parties. Stanley v. Mueller, (1957) 211 Or 198, 315 P2d 125.

FURTHER CITATIONS: Cabell v. City of Cottage Grove, (1943) 170 Or 256, 130 P2d 1013; Tompkins v. Dist. Boundary Bd., (1947) 180 Or 339, 177 P2d 416; In re Swanson Estate, (1962) 231 Or 405, 373 P2d 422.

LAW REVIEW CITATIONS: 13 OLR 86.

28.120

CASE CITATIONS: Salem v. Ore.-Wash. Water Serv. Co., (1933) 144 Or 93, 23 P2d 539; Oregon Creamery Mfg. Assn. v. White, (1938) 159 Or 99, 78 P2d 572; Childs v. Marion County, (1940) 163 Or 411, 97 P2d 955; Lewis v. Shook, (1949) 185 Or 67, 201 P2d 908; Demers v. Peterson, (1953) 197 Or 466, 254 P2d 213; Stanley v. Mueller, (1957) 211 Or 198, 315 P2d 125.

LAW REVIEW CITATIONS: 34 OLR 195.

28.150

NOTES OF DECISIONS

Cases construing uniform statutes are entitled to great weight, for uniformity of law through uniform legislation necessitates uniformity of judicial interpretation. Consolidated Freightways, Inc. v. Flagg, (1947) 180 Or 442, 176 P2d 239, 177 P2d 422.