June 1961

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cided that an account stated could be created between an architect and his employer.

The court refused to take jurisdiction in the principal case on the ground that it appeared to a legal certainty that \( P \) could not recover the jurisdictional minimum. In reaching this decision, the court was apparently convinced by law decided in jurisdictions other than West Virginia. Since the law was not settled in West Virginia, the court's procedure appears to be contrary to accepted jurisdictional principles. *Calhoun v. Kentucky-West Virginia Gas Co.*, 166 F.2d 530 (6th Cir. 1948). There is no doubt that if the court had taken jurisdiction that it would have probably been justified in ruling that \( P \) could not recover more than the amount listed on his statement. But the point proposed is that the better procedure would seem to be that the court should have taken jurisdiction and then decided the law. This would have precluded the creation of any ambiguity as to how a legal certainty is determined, thereby making the path a little easier for subsequent litigants who must prognosticate.

*Esdel Beane Yost*

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**Federal Courts—Limitations on the Use of the Federal Declaratory Judgment Act in Determining the Validity of Fund Transfers Under the Labor Management Relations Act**

*Ps*, trustees of a joint labor-management health and welfare fund, sought a determination of the validity of a proposed transfer of surplus funds in the health and welfare fund to a newly established pension plan. *Ds* are the union and management. Action is for a declaratory judgment. *Held*, dismissed for lack of jurisdiction. The Declaratory Judgment Act did not give federal courts jurisdiction over the administration of trusts, but only enlarged the range of remedies where federal jurisdiction previously existed. *Kane v. Shulton, Inc.*, 189 F. Supp 882 (D.N.J. 1960).

An understanding of the statutes imposing restrictions on payments to employee representatives is necessary in order to fully understand the issue presented by the instant case. Payments or contributions by employers and receipts or acceptance by representatives of employees of money or other things of value are expressly prohibited, with certain specific exceptions. 61 Stat. 157 (1947), 29 U.S.C. § 186 (1952). Included among the exceptions
are payments for health and welfare benefits for employees and contributions to authorized pension plans. A number of requirements have been placed on the establishment and maintenance of these employee benefit funds. The requirement of importance in the principal case is that these funds must be kept separate. "Employer payments intended for employee pensions or annuities must be made to a separate trust not to be used for any other purposes." Ziskind, The Law of Employee Benefit Plans, 1955 Wash. U.L.Q. 112, 126 (1955).

In the instant case, the union and management executed a memorandum of understanding which called for the transfer of surplus health and welfare funds to a newly established pension plan. The legality of such a transfer, under the Labor Management Relations Act, supra, 29 U.S.C. § 186 (1952), was questioned by the trustees of the health and welfare fund. Thus, the trustees sought a determination of the issue in the federal district court on the basis of federal question jurisdiction. The issue raised by the District Court of New Jersey was whether the determination of the proper administration of a federally required trust presents a federal question. The answer was no. To be within the realm of federal jurisdiction, the statute must further fashion the duties of the trustees. Although there appears to be some room for doubt concerning what rights and duties are devolved upon the trustees of the union-management funds by federal statute, it is clear that each individual state will be left to determine the proper administration of the fund, according to state trust law. The federal court was not authorized to determine the question of the operation of a trust under state law. Moses v. Ammond, 162 F. Supp. 866 (S.D.N.Y. 1958). "If . . . (The Labor Management Relations Act, supra, 29 U.S.C. § 186) . . . in itself conferred jurisdiction upon the Court it would be a delegation of a broad equitable powers upon the Courts to regulate Union Welfare Funds which would result in the birth and establishment of a federal law for the administration of welfare trusts. This Congress did not intend." Sanders v. Birthright, 172 F. Supp. 895, 901 (S.D. Ind. 1959).

edies available in the federal courts but did not extend their juris-
diction.” Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950). “(J)urisdiction must exist either because a federal question is involved or because of diversity of citizenship, since jurisdiction does not exist merely because a declaratory judgment is sought.” 26 C.J.S. Declaratory Judgments § 114 (1956). However, a basic area of misunderstanding remains concerning the manner in which remedies have been broadened through the Declaratory Judgment Act. Simply stated, the act provides a remedy for a person threatened with liability who could not otherwise have his status adjudicated until his adversary asserted his claim in court. See 16 AM. JUR. Declaratory Judgments § 6 (Supp. 1960).

In the instant case, the trustees relied on subsection (e) of the Labor Management Relations Act, supra, 29 U.S.C. § 186, permitting injunctive relief of unlawfully administered funds, in an attempt to obtain federal jurisdiction. When reading the statement of purpose of the Declaratory Judgment Act, it appears that perhaps the trustees were entitled to a determination of the validity of the transfer of funds; but combine a reading of the statement of purpose of the Labor Management Act, supra, 29 U.S.C. § 186, and the holding in this case appears. If the state must decide the issue of what constitutes the proper administration of the trust (the validity of the transfer of funds), how then may the federal courts enjoin such a determination by the state? One doesn’t eat toadstools to see if they are mushrooms. Why then should the federal court be empowered to enjoin the improper administration of a trust, and yet be incapable of determining what is improper?

James William Sarver

Income Tax—Transaction Entered Into For Profit—Proper Basis For Computing Deductible Loss

Decedent taxpayer, for whose estate this action was instituted, was president of the Phoenix Hosiery Company as well as its controlling stockholder. In October, 1944, decedent personally granted, as an incentive, written options to key executives and employees of the company to purchase from him a stipulated number of shares of Phoenix common stock at a price well below the current market and below his cost basis. In 1945, two of the company's