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Declaratory Judgments—Declaration of Qualifications of Candidates for Office

separate existence from that of the sole owner of all its stock, then the debt is still owing to the estate of the testatrix. If on the other hand, the corporate fiction is to be disregarded, then the corporation and the nephew are one and the same and the debt is no longer owing.

The decision of the court seems well founded both on logic and authority. In its words: "The value of the capital stock of the Service Laundry Company as an asset of L. E. Williams at the date of the death of the testatrix was directly and proportionately affected by the amount of the note held by Mrs. Henson, and if the effect of the will is to release the corporation from the obligation to pay the note, the value of the capital stock owned by L. E. Williams will be directly and proportionately enhanced in value thereby. The personal wealth of L. E. Williams will be increased to the same extent, by the cancellation of this note as if it had been a note executed by him individually and constituting his personal obligation."

M. E. S., '31.

DECLARATORY JUDGMENTS—DECLARATION OF QUALIFICATIONS OF CANDIDATES FOR OFFICE.—In a recent Kentucky decision applicants seeking a declaration of disqualification of certain candidates for city offices for corrupt practices, were refused a declaratory judgment, the court holding that they were not entitled to it under the provisions of the Declaratory Judgment Act (Civ. Code Prac. sec. 639a—1, 2) which authorized a declaration of the rights and duties of a person or persons in certain situations, though no consequential or other relief were asked for, provided that an actual controversy existed. The decision was based on the lack of such controversy. *Dietz et al. v. Zimmer et al.* (Ky. 1929) 21 S. W. (2d) 999.

There can be no doubt that the declaratory judgment fills a long-felt need in American jurisprudence. The great economic burden involved in the determination of legal relations arises not only from the slowness of movement of the machinery of the courts once a controversy has been submitted to them, but also, and more directly, from the necessity for the commission of a wrong and the invasion of a right, with consequent damage, before the courts have jurisdiction over the situation. The efficacy of the declaratory judgment as a means of preventive justice, its usefulness in removing uncertainty from legal relationships, forces daily its more widespread recognition and application. It has been used, pursuant to statutes, in connection with the construction and validity of wills, contracts, leases, and insurance policies; to declare the marital status of individuals; to decide title to real and personal property, and to adjudicate existence or non-existence of easements. However, it is not applied to moot cases, in which no existing rights are concerned; nor is it used in a merely advisory capacity as an expression of the law and applied to certain facts not necessarily in dispute. *Hoard v. Jordan* (1919) 23 Ga. App. 656, 99 S. E. 144; *Kelly v. Jackson* (1925) 206 Ky. 815, 268 S. W. 815; *Yates v. Beaseley* (1923) 133 Miss. 30, 97 So. 676.

It is apparent that the present case presented no such controversy. The plaintiffs were voters, seeking merely to have certain of the defendants disqualified as candidates and certain other defendants given the right to ap-

pear as candidates in their places. The decision is in accord with the principle enunciated in *State v. Circuit Court of Marathon County* (1922) 178 Wis. 468, 190 N. W. 563. In that case the question in issue was whether the court could enjoin the county clerks from placing on the official ballot the name of a regularly nominated candidate for state senator on the ground that he was ineligible. It was held that the eligibility of a nominee to office could not be judicially determined until after election, even though non-eligibility were plainly disclosed. Prior to an election voters have no interest in the eligibility of candidates which entitles them to file any sort of action. P. S. A., '31.

HUSBAND AND WIFE—AUTHORITY OF WIFE TO PLEDGE CREDIT OF HUSBAND.—In a suit by a mercantile establishment against defendant whose wife was furnished by him with ample means to pay cash for articles of clothing, it was held that the wife was without right to purchase a fur coat on her husband's credit and that the husband was entirely absolved from liability. *Saks v. Huddleston et ux.* (D. C. 1929) 36 F. (2d) 537.

The decision undoubtedly follows the almost universal holding. *McCreery and Co. v. Martin* (1913) 84 N. J. L. 626, 87 Atl. 433; *Wickstrom v. Peck* (1914) 136 App. Div. 608, 148 N. Y. S. 596; *Eder v. Grifka* (1912) 149 Wis. 606, 136 N. W. 154. The leading case of *Wanamaker v. Weaver* (1903) 176 N. Y. 75, 68 N. E. 135, enunciated the theory that marriage and cohabitation do not constitute a holding out of the wife as an agent to purchase necessaries. Although a presumption of such agency may exist, it is only *prima facie*, and may be rebutted by proof that the husband either furnished the necessaries himself or gave the wife ample allowance. It is true that some early English cases held a *contra* view, chiefly expressed in dicta, as in *Johnson v. Sumner* (1858) 3 Hurlst. & N. 261, 157 Eng. R. 469, but the modern doctrine is in accord with the principal case. *Morel Bros. v. Westmoreland* (1903) 1 K. B. 64; note (1903) 65 L. R. A. 529, 542.

In the principal case the court, after citing authority, thus justifies its decision: "Its tendency will be to check extravagance (one of the most pronounced of modern evils), and at the same time protect husbands, who in good faith have made such provision for their wives as their means and station in life warranted, from debts thoughtlessly and needlessly contracted, and often beyond the capacity of the husband to pay." And as to the merchant, "The present-day means available to merchants for the ascertainment of the moral and financial responsibility of patrons and customers are such that little apprehension need be indulged on account of the rule we have just announced."

In view of the imposing array of authority it is with some hesitation that one ventures the criticism that the doctrine is not one well adapted to modern usage. Unfortunately the mercantile practice is not what the courts wish or think it to be, and apparently it will not be changed. In the city of St. Louis, as disclosed by the credit department of a large department store, it is the practice *not* to question the wife's authority when she opens an account in her husband's name. It is found to be embarrassing, often to the point of losing trade, to ask too many questions. The princi-