gence suits by a woman against her husband have been allowed,[11] the statutes giving married women the right to sue in their own names have been the basis of recovery, the courts saying that the disability to sue their husbands has been removed by implication. Characteristically, conceptual jurisprudence has provided an inroad and recovery has been allowed against the employers of a negligent person who was a member of the family of the plaintiff although the same courts would have denied recovery against the employee directly.[12] Other manifestations of this approach are not wanting. A suit by the administrator of the estate of a daughter negligently killed by her father was not considered a suit by the mother against her husband, although the administrator brought suit for her benefit,[13] and a father was allowed to recover from his daughter's husband for her wrongful death, regardless of the fact that the daughter could not have recovered for her injuries had she survived.[14]

On principle there appears to be no reason for not allowing members of the family group recourse to the courts for an orderly adjudication of their claims against each other. But it must also be remembered that resort to the courts is infrequent unless an insurance company is involved and precaution should be taken to protect the insurer against collusion and other kinds of fraud as well as against liability for a risk which it has not assumed by the policy.

Injunctions—Possibility of Clarification by Declaratory Judgment—[Federal].—The plaintiff in a suit for unfair competition obtained a final decree restraining the defendant from the use of a trade name and from selling its product in a form similar to the plaintiff's. Thereafter the defendant filed a supplementary petition in the same court requesting a determination as to whether its recently initiated plan for marketing its product would violate the injunction. *Held*, in denying the petition, that such a procedure is contrary to the settled practice in the district and circuit and, moreover, calls upon the court to render an advisory opinion. *Kellogg Co. v. National Biscuit Co.*[1]

[11] Wait v. Pierce, 191 Wis. 202, 209 N.W. 475 (1926); Rains v. Rains, 97 Colo. 19, 46 P. (2d) 740 (1935); Miltimore v. Milford Motor Co., 197 Atl. 330 (N.H. 1938).

[12] Schubert v. August Schubert Wagon Co., 249 N.Y. 253, 164 N.E. 42 (1928); Koontz v. Messer, 320 Pa. 487, 181 Atl. 792 (1935); Pittsley v. David, 11 N.E. (2d) 461 (Mass. 1937).

[13] Albrecht v. Potthoff, 192 Minn. 557, 257 N.W. 377 (1934).

[14] Kaczorowski v. Kalkosinski, 321 Pa. 438, 184 Atl. 663 (1936). The court here said that as the derivation of the action was the tortious act itself, it came to the parties, entitled by statute to sue, free from the personal disabilities arising from the relationship between the deceased and the wrongdoer.

[1] 22 F. Supp. 801 (Del. 1938). This case has become moot because the Supreme Court recently decided that the Kellogg Co. was not guilty of unfair competition. For the history of the litigation see National Biscuit Co. v. Kellogg Co., 91 F. (2d) 150 (C.C.A. 3d 1937) injunction granted, *cert. denied*, 302 U.S. 733 (1937). On January 5, 1938, the district court issued a permanent injunction pursuant to the order of the circuit court of appeals. The petition in the instant case was presented on January 20, 1938. Subsequently, the defendant, Kellogg Co., petitioned the circuit court of appeals for a recall of its mandate ordering the injunction to be issued "for purposes of clarification." National Biscuit Co. v. Kellogg Co., 96 F. (2d) 873 (C.C.A. 3d 1938). On reconsideration the Supreme Court granted *certiorari*, 58 S. Ct. 1052 (1938), and reversed, Kellogg Co. v. National Biscuit Co., 59 S. Ct. 109 (1938), rehearing denied, 59 S. Ct. 246 (1938). For a case in accord with the Supreme Court decision see Canadian Shredded Wheat Co. v. Kellogg Co., [1938] 2 D.L.R. 145.

It has been said that equitable decrees should be so formulated as to give adequate protection to the plaintiff against further injury and reasonably to apprise the defendant as to what he is required to do.[2] While these requirements are easily met where the relief granted demands performance of a single definite act,[3] a court's decree must necessarily be couched in general terms, where the limits of the wrong are ambiguous and ill-defined. In such cases courts have held that a person acting in good faith is not guilty of contempt if placed in a dilemma by an ambiguous order of the court.[4] Furthermore, courts have, on occasion, ordered injunctions modified because too favorably disposed to the plaintiff,[5] or have dissolved injunctions because of their vagueness.[6]

As a partial remedy for the aforementioned difficulties a decree may embody certain specific provisions either as to what the defendant may do to avoid violation of the decree[7] or what he must do to comply with it;[8] and courts have at times issued so-called experimental decrees whereby the defendant is allowed a probationary period in which to remedy the wrong in question.[9] A more common procedure is to issue a decree and to retain jurisdiction to modify it if within a certain time such a decree prove unsatisfactory to either party.[10] The second and sixth circuits have adopted an interesting practice, not accepted by the court in the instant case,[11] which has been

[2] Collins v. Wayne Iron Works, 227 Pa. 326, 76 Atl. 24 (1910).

[3] See for example Rothery v. New York Rubber Co., 90 N.Y. 30 (1882).

[4] N.L.R.B. v. Bell Oil and Gas. Co., 98 F. (2d) 405 (C.C.A. 5th 1938). See also *In re* Miller & Harbough, 54 F. (2d) 612 (C.C.A. 9th 1931); Home Title Ins. Co. v. Britten Bldg. Corp., 227 App. Div. 631, 236 N.Y. Supp. 35 (1929); Mitchell v. Sperling, 229 App. Div. 204, 241 N.Y. Supp. 543 (1930); State v. Bailey, 132 Ore. 350, 285 Pac. 809 (1930).

[5] Wisconsin Electric Co. v. Dunmore Co., 35 F. (2d) 555 (C.C.A. 6th 1929), *cert. granted*, 281 U.S. 710 (1930), dismissed 282 U.S. 813 (1931).

[6] R. E. Hicks Corporation v. National Salesman's Training Ass'n, Inc., 19 F. (2d) 963 (C.C.A. 7th 1927); L. H. Henry and Sons v. Rhinesmith, 219 Iowa 1088, 260 N.W. 9 (1935). On nebulous injunctions see 19 Mich. L. Rev. 83 (1920); 23 Mich. L. Rev. 53 (1924).

[7] Walter Baker and Co., Ltd. v. Baker, 87 Fed. 209 (C.C. N.Y. 1898).

[8] G. & C. Merriam Co. v. Ogilvie, 170 Fed. 167 (C.C.A. 1st 1909); L. E. Waterman Co. v. Modern Pen Co., 197 Fed. 534 (C.C.A. 2d 1912); G. & C. Merriam Co. v. Saalfield, 198 Fed. 369 (C.C.A. 6th 1912); Shredded Wheat Co. v. Humphrey-Cornell Co., 250 Fed. 960 (C.C.A. 2d 1918); Coty, Inc. v. Prestonettes, Inc., 3 F. (2d) 984 (C.C.A. 2d 1924).

[9] Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); Babcock v. New Jersey Stock Yard Co., 20 N.J. Eq. 296 (1869); Collins v. Wayne Iron Co., 227 Pa. 326, 76 Atl. 24 (1910).

[10] Stetson v. Stetson, 14 F. Supp. 74 (N.Y. 1936); John H. Woodbury, Inc. v. William A. Woodbury Corp., 23 F. Supp. 162 (N.Y. 1938), motion to modify decree denied in 23 F. Supp. 768 (N.Y. 1938). Where hardship ensues the court may modify injunctions upon a petition stating a change in conditions even though no jurisdiction has been expressly retained. Ladner v. Seigal, 298 Pa. 487, 148 Atl. 699 (1930). For a collection of cases see 68 A.L.R. 1182 (1930).

[11] P. 802. See also Charles E. Hires Co. v. Consumers Co., 100 Fed. 809 (C.C.A. 7th 1900); Williams v. Mitchell, 106 Fed. 168 (C.C.A. 7th 1901); Sterling Remedy Co. v. Spermine Medical Co., 112 Fed. 1000 (C.C.A. 7th 1901); Vick Medicine Co. v. Vick Chemical Co., 11 F. (2d) 33 (C.C.A. 5th 1926); De Nobili Cigar Co. v. Nobile Cigar Co., 56 F. (2d) 324 (C.C.A. 1st 1932).

developed in suits for patent infringement[12] and unfair competition.[13] Here, prior to the issuance of an injunction, the defendant is permitted to present a new device for a determination by the court as to whether such device would violate the proposed injunction. It appears that this procedure has been also available after the entry of a decree and during the pendency of an appeal.[14] It is suggested that this practice should be more widely accepted since there is to date no adequate method for interpreting final decrees at the instance of the defendant.[15]

The court in the instant case dismissed the petitioner's supplementary bill on the additional ground that the defendant was seeking an advisory opinion. Such a view would preclude the entertaining of a similar complaint presented in an independent proceeding because of the constitutional clause limiting the jurisdiction of the federal judiciary to "cases or controversies."[16] It is submitted that the court's position is unsound in this regard and that the situation presented is subject to adjudication under the Federal Declaratory Judgment Act.[17] The declaratory judgment, in effect "an expanded bill *quia timet*,"[18] has been held proper even before the stage for coercive relief has been reached,[19] where a person seeks a determination that he is privileged to pursue a specified course of conduct without subjecting himself to a suit for damages or other forms of liability.[20] Thus a declaratory judgment was held proper where the plaintiff sought an adjudication that it was privileged to build on certain property and that its proposed construction would not violate certain covenants.[21] Such relief was likewise granted where the plaintiff as life tenant by virtue of a devise brought an action to determine whether he was entitled to demolish a private dwelling and build an apartment house in its stead without being liable for waste.[22] In *Woodward v. Fox West Coast Theaters*[23] a lessee was permitted to maintain an action for a declaratory judg-

[12] Kalamazoo Loose-Leaf Binder Co. v. Proudfit Loose-Leaf Co., 243 Fed. 895 (C.C.A. 6th 1917); Cincinnati v. New York Rapid Transit Corporation, 52 F. (2d) 44 (C.C.A. 2d 1931).

[13] Coca-Cola Co. v. Gay-Ola Co., 211 Fed. 942 (C.C.A. 6th 1914).

[14] O. & W. Thum Co. v. A. K. Ackerman Co., 257 Fed. 394 (C.C.A. 6th 1919).

[15] For cases where the plaintiff is granted supplemental relief after decree is entered see Armstrong v. De Forest Radio Telephone & Telegraph Co., 10 F.(2d) 727 (C.C.A. 2d 1926); Sundh Electric Co. v. General Electric Co., 217 Fed. 583 (D.C. N.Y. 1914). See also Hartford-Empire Co. v. Obear-Nester Glass Co., 95 F.(2d) 414 (C.C.A. 8th 1938); *cf.* Prang Co. v. American Crayon Co., 58 F.(2d) 715 (C.C.A. 3d 1932).

[16] U.S. Const. art. 3, § 2.

[17] 48 Stat. 955 (1934), 28 U.S.C.A. § 400 (Supp. 1938).

[18] See Meeker v. Baxter, 83 F. (2d) 183, 187 (C.C.A. 2d 1936); Hann v. Venetian Blind Corporation, 15 F. Supp. 372, 375 (Cal. 1936).

[19] Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937).

[20] Borchard, Justiciability, 4 Univ. Chi. L. Rev. 1 (1936); Borchard, Judicial Relief for Peril and Insecurity, 45 Harv. L. Rev. 793 (1932); Schroth, The "Actual Controversy" in Declaratory Actions, 20 Corn. L. Q. 1 (1934).

[21] Evangelical Lutheran Church v. Sahlem, 254 N.Y. 161, 172 N.E. 455 (1930); see also Brown v. Levin, 295 Pa. 530, 145 Atl. 593 (1929); Bristol v. Woodward, 251 N.Y. 275, 167 N.E. 441 (1929).

[22] Brokaw v. Fairchild, 135 Misc. 70, 237 N.Y. Supp. 6 (1929).

[23] 36 Ariz. 251, 284 Pac. 350 (1930). See also Kariher's Petition, 284 Pa. 455, 131 Atl. 265 (1925).

ment as to the validity of its lease with the defendant city prior to its making extensive improvements then contemplated. Similarly declaratory relief has been granted to determine the construction to be placed on a long term lease,[24] to ascertain the rights of a party under a contract which had been cancelled as between other parties to it,[25] to establish the validity of a contract of sale,[26] and to determine in a suit by the insured whether an insurance policy was still in effect.[27] A like remedy should be available in the instant case, where a party is bound by obligations imposed by an equitable decree rather than by a contract, deed, or will.

Certain objections may conceivably be made to the practice suggested. To a charge that unfair competition would be encouraged, the reply is that the Federal Declaratory Judgment Act authorizes the application of a new remedy but in no way alters the substantive law.[28] Nor would a suit for a declaration of rights unduly burden the defending party with litigation. The broad powers of the federal courts to impose costs will serve to obviate this objection.[29] Furthermore, the granting of declaratory relief rests upon the sound discretion of the court.[30] There seems, therefore, to be no valid objection to the use of a declaratory judgment as a device for interpreting equitable decrees,[31] at least when such action is brought in the court which issued such decree.

Labor Law—Jurisdiction of National Labor Relations Board—Scope of Interstate Commerce—[Federal].—The respondent, prior to the establishment of his present business, was employed as general supervisor of the L company, a partnership composed of his sons. Subsequent to a labor dispute in the partnership plant, he left his employment and moved to another state to establish his present business, the necessary capital having been advanced to him as a loan by the L company. The respondent operated under a standard agreement whereby he performed finishing operations exclusively for the L company, which in return supplied raw materials to no other finisher. As soon as the processing was completed, the finished goods were turned over to a representative of the L company, who assumed responsibility for their out-of-state shipment. The National Labor Relations Board found that the respondent was engaged in unfair labor practices,[1] and on petition to the circuit court of appeals to enforce the Board's cease and desist order, *held* (one judge dissenting), that the Board

[24] Washinton-Detroit Theatre Co. v. Moore, 249 Mich. 673, 229 N.W. 618 (1930). See also Sarner v. Kantor, 123 Misc. 469, 205 N.Y. Supp. 760 (1924).

[25] Gotham Amusement Corp. v. Glover, 1 N.Y.S. (2d) 712 (1937).

[26] Petroleum Exploration, Inc. v. Superior Oil Corp., 232 Ky. 625, 24 S.W. (2d) 259 (1930).

[27] Stephenson v. Equitable Life Assurance Soc., 92 F. (2d) 406 (C.C.A. 4th 1937). See Anderson v. Aetna Life Ins. Co., 89 F. (2d) 345 (C.C.A. 4th 1937).

[28] Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240 (1937); Davis v. American Foundry Equipment Co., 94 F. (2d) 441, 442 (C.C.A. 7th 1938).

[29] Federal Rules of Civil Procedure, rule 54(d).

[30] Aetna Casualty and Surety Co. v. Quarles, 92 F. (2d) 321 (C.C.A. 4th 1937); New York Life Ins. Co. v. Roe, 22 F. Supp. 1000 (Ark. 1938).

[31] See Beach v. Beach, 57 Ohio App. 274, 13 N.E. (2d) 581 (1937).

[1] 1 N. L. R. B. 864 (1936); 4 N. L. R. B. 596 (1937).