forced to contribute towards the support of another.[58]

An attempt to impose the cost of lighting one district upon another district is unconstitutional,[59] and "the assessment of one school district for the benefit of another would be a palpable trespass upon the rights of private property."[60]

That this act[61] provides for the taxation of one district for the benefit of another seems clearly evident because it provides that in case of a deficit each school district in the county shall be taxed proportionately to make up that deficit, notwithstanding the fact it may have been created by the retirement on pension of a large number of employees of one district only. It is, therefore, believed unconstitutional, and the refusal of the Supreme Court to set aside the order of the Commissioner of Education erroneous.

Declaratory Judgment—Insurance Contract—Availability of an Alternative Remedy

Defendant company issued an indemnity policy to plaintiff providing that it would defend in the name of and on behalf of the latter any claims or suits brought against it. One Ferenz was fatally injured while in the employ of plaintiff, and his next of kin instituted suit against plaintiff. The insured alleged it was served with a summons and complaint, and that the insurer, claiming non-coverage, refused to defend as per indemnity policy. The insured sought a declaratory judgment that defendant was bound to defend. *Held,* that a declaratory judgment will be denied where no uncertainty in the legal relations of the parties exists, and where another remedy is available. *Dover Boiler Works v.*

58. Secaucus v. Huber, *supra,* note 36; Essex Co. Park Commission v. West Orange, *supra,* note 57.

59. In Baldwin v. Fuller, *supra,* note 54, Mr. Justice Van Syckel said: "It seems equally clear that a tax for a state purpose must fall upon the state at large; for county purposes, upon the county; and for the public uses of any lesser political district, upon such district."

60. Mr. Justice Van Syckel in Baldwin v. Fuller case, *supra,* note 54, at p. 586.

61. See note 1.

New Jersey Manufacturers' Casualty Insurance Co., 18 N.J.Misc. 573, 15 Atl. 2d 231 (S. Ct. 1940).

The declaratory judgment act[1] is designed to provide a remedy for the adjudication of justifiable rights, duties, status, and other legal relations of the parties before either has incurred the risk of loss or damage before acting upon his own interpretation of them under a contract,[2] will,[3] statute,[4] or other legal instrument or relation.[5] This procedure is especially appropriate to insurance contracts at the initiative either of the insured, insurer, or third party, because these policies are often of long duration, look to future benefits, involve fiduciary relationships, and in the event of loss, create new relationships between insurer and the inujred person or beneficiary and the insured or principal debtor.[6] Declaratory relief is of utmost importance in deciding questions of coverage under a policy. If the insurance company defends, it may try an expensive negligence case in which a court may later hold it is under no duty to pay. On the other hand, should the insurer refuse to defend, it loses all opportunity to dispute the injured party's right to recovery. In deciding this narrow issue, the law offers

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1. N.J.S.A. 2:26-69. A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

2. McCrory Stores Corporation v. S. M. Braunstein, Inc., 102 N.J.L. 590, 134 Atl. 752 (E. & A. 1926) (where the construction of a lease was involved.) Cloverdale Union High School District v. Peters, 88 Cal. App. 731, 264 P. 273 (1928) (where plaintiff sought to establish that defendant had no right to claim salary under an alleged contract).

3. Johnson v. Talman, 99 N.J.Eq. 762, 134 Atl. 357 (Ch. 1926). In this case the executors sought a declaration of their power to sell certain estate property which they had contracted to sell, their power to do so being challenged by the lessee who was also a beneficiary.

4. Town of Kearny v. Mayor, etc., of the City of Bayonne, 90 N.J.Eq. 499, 107 Atl. 169 (Ch. 1919).

5. Empire Trust Co. v. Board of Commerce and Navigation, 124 N.J.L. 406, 11 Atl. 2d 752 (S. Ct. 1940).

6. E. M. Borchard, *Declaratory Judgments and Insurance Litigation*, 34 ILLINOIS LAW REVIEW 245-270 (1939).

no other method than the declaratory judgment.[7]

In the case under discussion, uncertainty as to the legal relations of the parties under the indemnity policy is decidedly present. The insured doesn't know whether it should go ahead and defend the liability suit because it is uncertain as to its rights. And similarly for the insurer company. It may defend when it was under no duty to do so, or it may let the insured defend, who may prepare a weak case, and then be under an obligation to pay. The fact that it is the insured who brings the suit does not prohibit the defendant from having its rights determined.[8] It would call for a far stretch of imagination to hold where the rights of the parties under the policy are clear and unequivocal, that an insurance company, knowing it is under a duty to defend would allow the insured to defend the case.

Even assuming that the parties are in hopeless confusion as to their rights and status, many courts are reluctant to grant declaratory relief where another remedy is available. The Supreme Courts of Michigan and Pennsylvania have given their support to this principle mainly on the grounds that any other interpretation would mean the practical abolition of all the established forms of actions at law and proceedings in equity, which was not intended by the enactment.[9] And in *Empire Trust Co. v. Board of Commerce and Navigation,* the New Jersey Supreme Court clearly points out that the declaratory judgment was intended to modify the common law rule that there is no justiceable controversy until a right has been invaded, and it supplements, and is not a substitute for, existing remedies.[10] As indicated by the court in the principal case, the plaintiff has another remedy available in the form of an action for damages for the breach of contract to defend and any loss sustained if the deceased's next of kin recovers in the suit. According to the views of some writers, however, the availability of

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7. 46 YALE LAW JOURNAL 286-299 (1936).

8. N.J.S.A. 2:26-72. When declaratory relief is sought, all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding.

9. Village of Grosse Pointe Shores v. Ayers *et al.*, 254 Mich. 58, 235 N.W. 829 (1931); Miller v. Siden *et al.*, 259 Mich. 19, 242 N.W. 823 (1932); *In re* Cryan's Estate, 301 Pa. 386, 152 Atl. 675, 71 A.L.R. 1417 (1930); Lisbon Village District v. Town of Lisbon, 85 N.H. 173, 155 Atl. 252 (1931).

10. *Supra,* note 5.

an alternative remedy should not defeat plaintiff's action for declaratory relief. They contend that it should make no difference through which door the litigants enter the court room, so long as they are properly there and the issue can be conclusively and effectively determined.[11] If the plaintiff here desires a milder, but equally effective, remedy, than the action at law for damages, it seems the relief should have been granted.

The case for the plaintiff is made stronger when it is considered that the declaratory judgment as an alternative remedy is important primarily in a procedural sense because of its simplicity and its availability in cases where delay in settlement of a controversy can be avoided. Because no special elements of damage nor any other peculiar requirements which may be necessary for coercive relief have to be proved, the court can more readily grant a declaratory judgment in lieu of another remedy.[12] But even admitting that the majority rule denies relief to the plaintiff where there is an alternative remedy, this rule seems applicable only where the breach has already occurred and damages sustained. Thus in the case of *Bell Telephone Co. v. Lewis*,[13] the court held that declaratory relief was not available where the injury is remediable by mandamus or on certiorari, but that it would be granted if the purpose of the proceeding were to have an adjudication of title to the land where there had been no trespass or other invasion of the claimed right, i.e., whether any damages were as yet sustained. And the courts have denied a declaratory judgment to forfeit a lease where an action of ejectment was available.[14] But in the instant case, there has only been a breach of the contract to defend and the suit by the deceased's next of kin has not been decided. Without any loss to the plaintiff, except from the breach of the contract to defend which is negligible and may yet be remedied, since otherwise plaintiff undoubtedly would not seek this relief, the availability of an alternative remedy does not seem to exist in the present, but only as

11. Borchard, *Declaratory Judgments in New Jersey*, 1 MERCER BEASLEY LAW REVIEW 29 (1932).

12. 44 YALE LAW JOURNAL 694 (1935).

13. 313 Pa. 374, 169 Atl. 571 (1934).

14. Eiffel Realty and Insurance Co. v. Ohio Citizens Trust Co. *et al.*, 55 Ohio App. 1, 8 N.E. 2d 470 (1937).

a contingency in the future. Of consequence the claim of the existence of another remedy to defeat plaintiff's complaint for declaratory relief is unwarranted.

It is submitted that a declaratory judgment should not have been denied to the plaintiff.

Fiduciaries—Guardians Ad Litem—Estoppel—Infants

The testator in 1932 created a life insurance trust whereby the defendant trust company was named as trustee, with directions to invest the proceeds in legal investments for trust funds and to pay the income therefrom to his mother, his widow, and infant children for life. The defendant trust company invested the proceeds in mortgages purchased from the Franklin Title and Guaranty Company. In 1934 the widow of the testator filed a bill praying that some of the trust corpus be advanced to one of the infants to aid him in his education. In this friendly suit all the interested parties appeared, including the other infant who was represented by a guardian *ad litem*. Here it was openly revealed that the defendant had illegally invested in the mortgages, a fact already known to the widow and her solicitor, and now made known to the guardian *ad litem* of the infant. In 1935 the defendant trust company presented an accounting to the adult *cestuis* and to the guardians *ad litem* of the two infants, appointed for the purpose of protecting their rights. Further particularity of the nature of the investments was provided to all. In 1937 the *cestuis que* trust filed a bill in equity praying for an accounting of the investments and that the defendant trust company be removed as trustee, charging that because of the corporate affiliations and the interlocking relationship of stockholders, officers, and directors between the mortgage company and the trust company, they were improper investments for the trust company to have made.

Held: Where the officers and directors of a corporate trustee are also officers and directors of another corporation, it is improper for the trustee to invest trust funds in securities purchased from such affiliated corporation and the *cestuis* have an absolute right to disavow such