Appeal and Error—Declaratory Judgments—Suit Prematurely Brought— Action by employer under Uniform Declaratory Judgment act to adjudicate obligation of the employer's insurance carrier to defend an action by an employee against the employer for alleged negligence whereby employee contracted silicosis. Silicosis is a non-compensible disease under the Workmen's Compensation Act. The employer also seeks to enjoin the employee's suit until the issue between the employer and employee has been adjudicated. From rules dismissing employer's action as to employee and dissolving restraint of employee's suit, the employer appeals. *Held,* for the employee on the ground that the appeal is premature. *Essex Foundry et al. v. Biondella,* 126 N.J.L. 157, 17 A. 2d 568 (E. & A. 1941).

There is no reason to go into a full discussion of the case on its merits, since the problem before us is primarily one of procedure. It is for us to decide merely whether or not an appeal should lie from the judgment rendered against the employer in this case.

The employee asked that the petition of his employer be dismissed as to him, but he did not join all parties to the cause in his motion, as is noted by the court in the case at bar.[1] Thus the situation is clearly before us. While the main cause is pending, there has been a rule on a motion to dismiss the complaint as to one of the parties defendant to the petition for a declaratory judgment. The employer seeks to appeal from the order so entered, and is told that he must await a final determination of the cause on its merits before he can question the wisdom of said rule or order. In the meantime he is forced to defend the case without the aid of his insurance carrier, which he may or may not be entitled to have, since the effect of dissolving the restraint upon the employee's action will produce exactly that result. The employee will immediately prosecute his suit without allowing time for the dispute between the employer and insurance carrier to be settled, naturally. The object of the employer's suit has been totally defeated because of a technicality, if the reason given may even be called a technicality.

Let us examine the reason that the appeal was denied. The court denied the appeal on the ground that it was premature since the order

1. Essex Foundry *et al.*, v. Biondella, 126 N.J.L. 157, 17 A. (2d) 568, at 569 (E. & A. 1941).

sought to be appealed from was not a "final" order. "Judgments are divided into two classes, interlocutory and final. An interlocutory judgment is a temporary judgment with respect to finality."[2] The word "final" has no mystical significance, but merely means that an end of some sort has been reached, as in common parlance. It is, of course, elementary that appeals lie only from "final" judgments.[3] There is a reason of fundamental importance for requiring a distinction between final and interlocutory judgments. If an appeal were to be allowed from every interlocutory judgment, decree, or order in the course of determining a case, an unscrupulous opponent might postpone indefinitely the final determination of the cause. The calendars of our courts would fall hopelessly behind current litigation and a condition of chaos would result.[4] We must also protect the plaintiff in the position of the employee here, whose action is being tied up pending the appeal of matters which may or may not deserve present consideration.

Now, while the statute was passed to facilitate litigation and to protect a plaintiff, it was not designed to work a hardship on a defendant. Therefore the courts have interpreted the meaning of the word "final" in the statute. The statute itself does not define "final", and so construction of the term became necessary.

An appeal will lie from a judgment which divests some right in such a manner as to make it impossible to place the parties in their original position after the termination of the action.[5] The fact that other procedings of the court may be necessary to carry into effect the rights of the parties, or that other matters may be reserved for consideration, doesn't prevent an order from being considered final.[6] The United States Circuit Court of Appeals for the 9th circuit in discussing a similar statute concerning appeals from judgments, treated the mean-

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2. Harris, *Pleading and Practice in New Jersey* (Rev. Ed. 1939) Sec. 584.

3. R. S. 2:27-349; Salaman v. Equitable Trust Co., 105 N.J.L. 649, 146 A. 423 (E. & A. 1929); Gottfried v. Gottfried, 106 N.J.L. 115, 148 A. 719 (E. & A. 1930); Freint v. Gilmore *et al.*, 110 N.J.L. 170, 164 A. 272 (E. & A. 1932); De Salvo v. Friedman, 112 N.J.L. 410, 169 A. 667 (E. & A. 1934).

4. Harris, *op. cit. supra* note 2.

5. Harrison v. Lebanon Waterworks Co., 91 Ky. 255, 15 S.W. 522 (1891).

6. Assatt v. Mitchell Coal Co., 150 F. 32, 10 L.R.A. (N.S.) 99 (1907); Moulton v. Cornish, 138 N.Y. 133, 33 N.E. 842 (1893).

ing of "finality" as applied to judgments thus: "Considering the construction given by the Supreme Court to the terms 'final decisions', 'judgments', or 'decrees', we reach the conclusion that the term 'final judgment' in said statute under consideration does not mean necessarily such decisions or decrees only which finally determine all the issues presented in the pleadings that, while these are undoubtedly final decisions, the terms are not limited to them, but also apply to a final determination of a collateral matter distinct from the general subject of litigation affecting only the parties to the particular controversy and finally determining that controversy. . . ."[7]

If no appeal is allowed from the order in this case, the employer's position will be altered so that it cannot be replaced as it was before. True, there has not yet been a final determination of *all* issues and *all* parties but there has been a final determination of *one* issue as between the parties concerned therewith.

The Uniform Declaratory Judgment Law, under which the employer sought a declaratory judgment, was intended to prevent hardships from occurring by declaring the rights of parties before litigation. The employer asked to have the legal relations between itself and its insurer declared before it was too late. It will be too late for all practical purposes if the employer must wait until final adjudication of all issues. A person interested under a contract or one whose rights are affected by a contract may have any question of construction or validity arising under the contract considered, and obtain a declaration of rights, status or other legal relations thereunder.[8] "This article is declared to be remedial in nature. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relationships. . . ."[9] There is a specific provision in this statute to the effect that "A declaratory judgment may be either affirmative or negative in form and effect, and shall have the force and effect of a final judgment or decree."[10]

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7. Bursh Electric Co. v. Electric Improvement Co., 51 F. 557, 2 C.C.A. 373 (1892).
8. R. S. 1937 2:26-69.
9. R. S. 1937 2:26-67.
10. R. S. 1937 2:26-75.

It is evident that in the present case it would not be fair or in accord with the law to deny an appeal to the employer. Under the Declaratory Judgments Law he is entitled to have his uncertainty cleared up. He is acting in good faith, and is not attempting to obstruct the path of the employee's suit with technical barriers. There will be no undue delay if this matter is allowed to be reviewed, but the injury to the employer will be unnecessarily severe if his appeal is denied. We find here a judgment which is clearly "final" in accord with judicial decisions and construction of the term "final", and which is brought by a party entitled to a declaration of his rights.

The employer is certainly entitled to have the action of the employee restrained temporarily until the obligation of the employer's insurance carrier is determined.

It is submitted that this appeal is not premature, and that in regard to the facts of the case it will be in accord with the law and with sound reasoning to allow this appeal.

Bills and Notes—Indorser's Liability—Timely Notice Required—Plaintiff was indorser of two notes held by defendant bank, in which plaintiff's funds were deposited. The notes were not paid on the date of maturity, and at the close of business on that day defendant bank debited plaintiff's account the amounts of the notes. Later that day, before 4:45 p.m., defendant mailed the notes to plaintiff, together with a letter explaining that plaintiff's account had been charged the value of the notes. Plaintiff alleged that his liability as indorser was secondary to that of the maker, and conditional upon the bank's having given the indorser due notice of dishonor upon presentment to the maker. *Held,* an indorser is liable on a note only after notice of dishonor has been given by the holder, and set-off of the amount against an account due the indorser may not be made before he is given such notice. It was improper for defendant bank to charge plaintiff's account as indorser for the amount of the notes when plaintiff had not been previously notified of the maker's