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ACTIONS - STAY OF PROCEEDINGS TO AWAIT RESULT IN "TEST CASE" INVOLVING SIMILAR ISSUES

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RECENT DECISIONS

ACTIONS — STAY OF PROCEEDINGS TO AWAIT RESULT IN "TEST CASE" INVOLVING SIMILAR ISSUES — Suits were instituted by respondents, non-registered holding companies, in the District Court for the District of Columbia to enjoin the enforcement against them of the Public Utility Holding Company Act of 1935 [1] on the ground that it was unconstitutional. On the same day that the first of these bills was filed, the Securities and Exchange Commission began suit in a federal district court in New York to compel the Electric Bond & Share Company and others, members of another utility system, to register as required by the act. A cross-bill in that action contested the validity of the act and prayed for injunction against its enforcement. The defendants in the present suit, though they had not yet answered, moved for a stay in the proceedings until the validity of the act should be determined by the Supreme Court in the other suit. This motion was accompanied by a pledge not to enforce the act against respondents till such determination. The district court granted the motion, but the Court of Appeals for the District of Columbia reversed the order and remanded the cause.[2] In order to guide the district court in its reconsideration of the motion the Supreme Court granted certiorari. *Held*, that the court had power to stay the proceedings in this case, but had exceeded its discretion in so far as the stay was to continue till the determination by the Supreme Court of any appeal from the "test suit" and that at the most it should continue till the first decision in that suit. *Landis v. North American Co.*, 299 U. S. 248, 57 S. Ct. 163 (1936).

A court has the power, incidental to its inherent power to control its docket for convenience and order in practice, to stay the proceedings that are before it.[3] Of course, on such a basis there is no authority to stay the proceedings in another action than that in which the motion was made.[4] The order will not issue as a matter of right in any case, but its issuance is wholly within the discretion of the court, though there are typical situations in which such an order is considered particularly appropriate. One of these is presented when there is a prior action pending in which a decision should settle issues involved in the action where the stay is sought. There are several decisions to the effect that the parties to the action in which the stay is sought must also be parties to the prior proceeding and that it must raise the same issues and even afford the same relief, so that a determination of the issues in that proceeding will dis-

[1] 49 Stat. L. 838, 15 U. S. C., § 79 (1936).

[2] North American Co. v. Landis, (App. D. C. 1936) 85 F. (2d) 398.

[3] Post v. Banks, 67 App. Div. 187, 73 N. Y. S. 596 (1901).

[4] Raymore Realty Co. v. Pfotenhauer-Nesbitt Co., 139 App. Div. 126, 123 N. Y. S. 875 (1910). The relief by stay of proceedings is not to be confused with the equitable bill to enjoin a multiplicity of suits, which seeks to require the trial of the same, or similar, issues in one action. Southern Steel Co. v. Hopkins, 174 Ala. 465, 57 So. 11 (1911); Illinois Central R. R. v. Baker, 155 Ky. 512, 159 S. W. 1169 (1913).

pose of the controversy in both and a trial of the second will be unnecessary.[5] As a corollary to this rule it has been said that a stay will not be granted until both actions are fully at issue so that the court can determine whether such coincidence exists.[6] In the principal case the petitioners had not yet submitted their answer to the bills and a decision in the other proceeding would not be res judicata as to the issues in this suit. At the best a decision in the "test case" would simplify and possibly, as a practical matter, dispose of the local litigation. The case chosen might prove worthless as a test for a number of reasons,[7] and in the meantime the respondents would have suffered damages by delay through the effect that the existence of the act had on their ability to do business freely. On the other hand, it would be nearly impossible for the government to adequately meet suits by all the companies affected by the act, because of the variant and extensive fact questions which are involved in each case, though the questions of law, by the government's premise, are substantially similar. In any such case we are also presented with the interest of the public generally, which is also that of the courts, in avoiding unnecessary duplication of litigation that monopolizes the time of the courts. A balance must be reached between these several interests, and the principal case opens an appreciably greater field for the exercise of the power of the court to stay proceedings.[8] Since it can be assumed that both parties are primarily interested in a decision of the Supreme Court, it may be questioned what will be gained by a stay extending only until a decision by the district court in the suit against the Bond and Share Company, but the future events in the course of this litigation should present an interesting answer.

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[5] Dolbeer v. Stout, 139 N. Y. 486, 34 N. E. 1102 (1893); Bicalky Fan Co. v. Mosier & Summers, Inc., 177 App. Div. 372, 164 N. Y. S. 177 (1917); cf. De La Vergne Mach. Co. v. New York & Brooklyn Brewing Co., 125 App. Div. 649, 110 N. Y. S. 24 (1908); Wadleigh v. Veazie, (C. C. D. Me. 1838) Fed. Cas. No. 17,031; Jefferson Standard Life Ins. Co. v. Keeton, (C. C. A. 4th, 1923) 292 F. 53.

[6] Rosenberg v. Slotchin, 181 App. Div. 137, 168 N. Y. S. 101 (1917).

[7] For instance, the Bond and Share Company might agree to register under the act, or reorganize so as to be no longer subject to it. Again the losing party might not appeal, or the act might be held constitutional as to the Bond and Share Company by an opinion that would leave open the question whether it would be valid as to respondents.

See the case of Amos v. Chadwick, 9 Ch. Div. 459 (1878), where, after the plaintiffs in several actions against the same defendants which involved similar issues had agreed that one action should be a test action and decide their rights, the plaintiff in that action dismissed the suit.

[8] The nearest approach to the result of the principal case is in the case of Friedman v. Harrington, (C. C. D. Mass. 1893) 56 F. 860, where a bill to enjoin the enforcement of a Massachusetts statute, alleged to be unconstitutional, was stayed till the next term, at a time when the Supreme Court was already considering two cases attacking the same statute. Also see Kansas City So. Ry. v. United States, 282 U. S. 760, 51 S. Ct. 304 (1931).