All that the Taft-Hartley Act provides for is the cooling off period of eighty days, during which cooling off period negotiations for settlement will take place.

In the facts of this case, the Union already had four times postponed a strike. They had waited ninety-nine days, nineteen days longer than they could have waited under the Taft-Hartley Act injunction and, at the end of the eighty days there would be nothing left but seizure in the event an agreement was not reached during the eighty day period.

We think that the Taft-Hartley Act certainly in spirit if not in letter was more than effectively complied with by the Union in the four-time postponement of the strike and the wait of ninety-nine days.

In that connection, your Honor, with your permission, I should like to read a portion of the letter that the Chief Executive sent to the Vice President a few days ago on this subject when the question came up as to whether there should be passed an amendment to a supplemental appropriation bill preventing the use of any funds by the Government, in that bill, for steel purposes.

I quote from Page No. 4192 of the Congressional Record of Monday, April 21, 1952—a letter from the President to [fol. 1407] the President of the Senate:

> "Some members of Congress may feel that, in spite of all the steps already taken, the Taft-Hartley Act should yet be invoked. It appears to me that another fact-finding board and more delays would be futile. There is nothing in the situation to suggest that further fact-finding and further delay would bring about a settlement. And it is by no means certain that the Taft-Hartley procedures would actually prevent a shut-down.
>
> Furthermore, a Taft-Hartley injunction in this situation would be most unfair, since its effect would simply be to force the workers to continue at work for another eighty days at their old wages—despite the fact that they have already remained at work for more than 100 days since their old contract expired, and despite the fact that the Government's Wage Stabilization Board has already recommended a wage increase. To freeze the status quo by injunction would,

of course, be welcomed by the companies, but it would be deeply and properly resented by the workers."

Now, in closing, your Honor, I should like to address myself to the limited prayer sought in these proceedings by United States Steel.

[fol. 1408] United states Steel argues that such an injunction, that is, an injunction merely against an increase in wages, would preserve the status quo and not injure the public because the Union could not strike against the United States.

I submit, your Honor, if the Government is enjoined from taking the action it deems appropriate, that is, effecting an increase in wages and an increase in prices, both of which are contemplated, on the theory that the seizure is or may be unlawful, there is no assurance that the Union will not strike. As a matter of fact there have been three wild-cat strikes already, under the seizure. Under the circumstances if the seizure were declared unlawful, through the issuance of an injunction, the Union may well feel free to strike. The Government could not then invoke the Taft-Hartley Act, but, while no injunction is issued, we say that the plants are legally seized.

Any attempt of the Union to enjoin, under the Mine Workers theory could succeed only after long litigation and a long shut-down during which no steel would be produced.

Hence, your Honor, we say that an injunction against the wage increase may well create a worse situation than that which exists at the present time because it would give [fol. 1409] rise to the immediate possibility of a strike and,—against that, if such a situation occurred, the legal situation would be so clouded that it would be difficult for anyone to work out a remedy.

We think, your Honor, that upon a balancing of all the equities this Court should not throw this matter into further confusion but should withhold relief, if any be warranted to the plaintiffs, until a final decision on the merits of the case.

If you enjoin a price increase the industry can sit the situation out indefinitely.

They are in the same position now. In fact, their oral statement is merely a reiteration of what they have said so often before. Their policy was then, "no wage increase; no price increase."

Still they want no control of their plants, no real interference—they would have exactly what they want, if their limited prayer is granted, and they can afford to sit here and just wait.

The Court: Then, why are they here?

Mr. Baldridge: What?

The Court: If what you say is true, why are they here?

Mr. Baldridge: It is a game, I think, your Honor.

Mr. Kiendl: Some game!

Mr. Baldridge: While these court proceedings are going [fol. 1410] on preparations for them could be finally and properly made and the parties interested in wage and price aspects of the matter could be working, negotiations could be going on, particularly with experts in the field, and certainly reasonable men can work out something and the situation is not an insoluble one. We think that a great deal more uncertainty than now exists would be injected into the situation were your Honor to enjoin a price increase at this time.

Now, I cannot tell your Honor just what the recommended wage increase will be. I read yesterday from the testimony of Mr. Stephens, Vice President of the United States Steel Company before the Labor Committee of the Senate that the complete package, 20 cents, industry is willing to give (See Appendix A of this record, the last sheet appearing in the volume of this report).

Suppose the Government put in a wage increase on a package basis of 20 cents and your Honor would enjoin them. Then, that much progress toward resolving the differences, as between management and the Union, would be destroyed.

We just think it is not a situation in which the Court should inject itself because it would make an already difficult situation worse.

I might also say your Honor, that this question of a projected wage increase is not a "two-way street".

The day before yesterday, the Secretary of Commerce, [fol. 1411] on April 23, 1952, addressed the following let-

ter—and I should like to hand your Honor a copy of it—the Secretary of Commerce addressed a letter to Mr. Roger L. Putnam, Director of the Economic Stabilization Agency, which I will read. The letter is dated April 23, 1952, and is as follows:

> "This will confirm the understanding which we reached in our meeting on Saturday afternoon, April 19, 1952, that you will prepare as quickly as practicable, and in a form suitable for issuance by me as an order, recommendations, coming within the scope of your functions as Administrator of the Economic Stabilization Agency, for changes in terms and conditions of employment which you believe I should put into effect in the steel industry at this time.
>
> It is understood that you will consult with and secure the approval of the Attorney General as to the le*ag*lity of the recommended changes under the terms of Executive Order 10340. Upon receipt of your recommendations, I shall promptly submit them to the President for his approval with the understanding that I will suggest to the President that he call upon you if he has any questions concerning the recommendations.
>
> [fol. 1412] It is my further understanding that you will inform me of the basis upon which the steel firms now under my control may apply for price increases to which they may be entitled.
>
> Finally, it is understood that I will make appropriate public announcement of the fact that I am relying upon you*r* for explicit recommendations concerning changes in terms and conditions of employment coming within the scope of your functions as Economic Stabilization Administrator.
>
> By working together in this manner, I believe that we can most effectively maintain uninterrupted production of steel for the national defense."

I might add there again that this is a pretty clear indication that Mr. Sawyer is the alter ego of the President in this matter.

The Court: Would not that be considered as self-serving?

Mr. Baldridge: I beg your pardon?

The Court: I say: Would not that letter of Mr. Sawyer's be considered as a self-serving letter?

The date of the letter is April 23, 1952.

Mr. Baldridge: You can make an argument on a mechanical date. But, this is just the outcome of months of negotiations in an attempt to settle this rather serious controversy between management and the Union.

[fol. 1413] On the same date, April 23, 1952, Mr. Putnam, the Administrator of the Economic Stabilization Agency, addressed a letter to Mr. Ellis G. Arnall, Director of the Office of Price Stabilization, and I would like to read these two excerpts, your Honor, to indicate that, so far as the Government is concerned, this controversy is not a "one-way street" controversy.

Mr. Putnam, the Administrator of Economic Stabilization Agency, wrote, as I say, Mr. Arnall, Director of the Office of Price Stabilization, on April 23rd, the following:

> "For some time the Office of Price Stabilization has been ready to issue a regulation to permit the steel industry to apply for price increases under Section 402(d)(4) of the Defense Production Act of 1950, as amended, the so-called Capehart Amendment. The preparation of this regulation was begun at the request of the steel industry but, as we both know, the issuance of it was held up several weeks ago at the request of that industry.
>
> I do not think it is desirable to delay further the issuance of a Capehart regulation for steel. I believe it is incumbent upon us to make available to the steel companies the necessary machinery for obtaining the [fol. 1414] price increase to which they may be entitled, and to do it as promptly as possible."

I would like to call attention to one further thing, your Honor:

The day after the seizure occurred, the President sent a message to the Congress explaining why he took the action which he did take, and he asked the Congress that if it had different ideas he would welcome a consideration of them, and if Congress wanted to pass legislation in the premises he would be glad to consider it.

This is a letter from the President of the United States, dated April 9, 1952, and is addressed to the Congress of the United States; I quote from it as follows:

> "It may be that the Congress will deem some other course to be wiser. It may be that the Congress will feel we should give in to the demands of the steel industry for an exorbitant price increase and take the consequences so far as resulting inflation is concerned.
>
> It may be that the Congress will feel the Government should try to force the steelworkers to continue to work for the steel companies for another long period, without a contract, even though the steelworkers have already voluntarily remained at work without a contract for 100 days in an effort to reach an orderly [fol. 1415] settlement of their differences with management.
>
> It may even be that the Congress will feel that we should permit a shut-down of the steel industry, although that would immediately endanger the safety of our fighting forces abroad and weaken the whole structure of our national security.
>
> I do not believe the Congress will favor any of these courses of action, but that is a matter for the Congress to determine.
>
> It may be, on the other hand, that the Congress will wish to pass legislation establishing specific terms and conditions with reference to the operation of the steel mills by the Government. Sound legislation of this character might be very desirable."

The President has not only taken it into his confidence the legislative branch of the Government but has asked their help, their assistance, and in the event they are interested has invited them to give him that help and assistance. They certainly are interested, in view of the large number of hearings being held at the present time both before the Committees of the House and the Committees of the Senate.

In order to give the Court some additional background, I would like to refer to a statement made by the head of the Office of Price Stabilization in his testimony on April

16th, before the Senate Committee on Labor and Public [fol. 1416] Welfare. It is not something that is relative specifically to the matter now before the Court but it will be helpful in focusing the background of the picture, I think.

Quite apart from what the steel companies may be entitled to under the so-called Capehart Amendment the stabilizing formula which was devised for the purpose of preventing inflation or holding it down provides that a concern may be eligible for increase in prices only when its net earnings fall below 8*t* per cent of the highest three years of the four year period from 1946 to 1949 and, in connection with that, I would like to read a statement of Ellis Arnall, Director of Price Stabilization, before the Senate Labor Committee on April 16, 1952, where he says:

> "As the chart shows, the industry earned $843,000,000, on the average, during the 1947-1949 base period. This represented a return of 18.5 per cent on net worth, or owners' investment. Taking 85 per cent of this rate gives a minimum rate of return under the Earnings Standard of 15.7 per cent on net worth. Applying this rate to current net worth would produce a current minimum earnings figure of $936,000,000, shown as the last bar on the chart.
>
> Actual 1951 earnings were $1,918,000,000. Thus the [fol. 1417] industry could absorb cost increases amounting to a little less than a billion dollars, the difference between these last two bars."

I submit, your Honor, that in the circumstances in which we find ourselves before your Honor, with attempts being made by these Government agencies that have been working on this matter for months, there has been acquired a great deal of background and expert knowledge, and that your Honor ought to leave the matter just where it is and deny both the several motions of the plaintiffs for temporary injunction against seizure, as well as the oral application of United States Steel for a temporary injunction against a wage increase.

I thank you.

The Court: The Court will stand in recess for five minutes.

(Thereupon at 11:30 o'clock a.m. recess was had until 11:35 o'clock a.m., when the following occurred:)

[fol. 1418] Mr. Wilson: If Your Honor please, at the moment I should like to take up where I left off yesterday in anticipating, and accurately so as I did, the reliance of the Government upon the Myers case.

Before doing that I would like to say a word or two about this matter of the action being one against the President. I shan't spend but a moment on that.

I think there is no validity in the argument. I think Your Honor's observation yesterday of hundreds of thousands of suits against Cabinet Officers is contrary history to that proposition.

I think this idea that the President is an indispensable party in a situation where a man is acting as a trespasser is fully answered in United States v. Lee in 106 U. S., where that exact contention was made by the defendant, and refused to be accepted by the Supreme Cort.

That, of course, has been brought up to date on the Land v. Dollar case, in all of the force that existed in the Lee case.

But there is nothing to that proposition. I don't want to burden the Court with an argument that the President can be sued in a case where he is not being sued, but I would like to remind the Court of a sentence in Mississippi v. Johnson, and a sentence in Kendall v. the United States, which seemed to reflect some kind of a reservation by the [fol. 1419] Supreme Court to the effect that it is an absolute thing that under no circumstances may the President be sued.

Now, as I say, I don't havee to take the burden of that argument, but there are qualifications which have been indicated by the Supreme Court.

In Mississippi v. Johnson at page 498 the Court says:

> "We shall limit our inquiry to the question presented by the objection, without expressing any opinion on the broader issues discussed in argument, whether, in any case, the President of the United States may be required by the process of this Court, to perform a

> purely ministerial act under a positive law, or may be held amenable, in any case, otherwise than by impeachment for crime."

I say that the Court was not willing in Mississippi v. Johnson to lay down the blanket, absolute rule which Mr. Baldridge argues.

Also in another case upon which he relies, Kendall v. The United States, which was a suit against the Postmaster General, we find this phrase employed by the Supreme Court:

> "The executive power is vested in a President, and as far as his powers are derived from the Constitution, he is beyond the reach of any other department except [fol. 1420] in the mode described by the Constitution through the impeaching powers."

Now, of course, I don't know what the Supreme Court had in mind, but this again in an early case is an indication that the Supreme Court was not willing to announce the doctrines as broadly as that for which Mr. Baldridge argues.

In Holzendorf v. Hay, which is one of our own cases, reported in 20 Appeals here, that was a simple question of not being able to control the discretion of the Executive.

Marbury v. Madison was cited in support of it. That is all the case stands for.

So that I say that certainly under the United States v. Lee, and the cases which follow it, there is nothing to this proposition either from the point of view that this is a suit against the President or that the President is an indispensable party in this suit against Mr. Sawyer.

The Court: I haven't heard Goltra v. Weeks mentioned.

Mr. Wilson: That is in one of the briefs that has been submitted; yes, Your Honor.

The Court: I think it is relevant. Do you?

Mr. Wilson: Yes, Your Honor, I think so.

If Your Honor please, coming back to the point that I was urging upon Your Honor yesterday, these several Supreme Court cases which I relied upon should be directly [fol. 1421] disposed of. I disposed of In re Neagle and In re Debs upon the simple proposition that in those cases

the President was performing his power under the "take care" clause of the Constitution. It was aptly said by Judge Augustus Hand when he was sitting in the District Court in the Western Union Cable case in 272 Fed. page 311, affirmed by the Second Circuit in the same volume at page 893, that in referring to those cases, the In re Neagle, In re Debs—the Chinese Exclusion cases were added although they are not relied upon by the Government in this situation—Judge Hand pointed out that Congress had passed laws for the carrying of the mails in the Debs case and in the holding of the Circuit Courts, and the executive department was enforcing these laws or seeing that enforcement was not impeded.

They are not complicated cases. They are very simple propositions, easily disposed of in that way.

And the Prize cases also relied on by the Government are easily disposed of. There was an underlying statute. There was a ratification of the Act by Congress. It was essentially a war power as well. All of that is pointed out in one or more of the briefs which have been submitted to Your Honor. There is nothing in any of those three cases from which it could be argued that there is inherent power in the President. I doubt seriously if I can state [fol. 1422] it accurately that there is the use of the word "inherent" in any of those cases.

Now, as I was saying to Your Honor yesterday, I want to face very frankly certain statements of Chief Justice Taft in the Myers case. As I said to Your Honor yesterday I accurately anticipated Mr. Baldridge when he referred to the language of Chief Justice Taft that I read to Your Honor yesterday.

Now, it will be remembered that in that case the question was whether the President had the power to remove a postmaster without the consent of the Senate. The specific provision which was first considered was of course the power to appoint which carried with it the necessity of the approval of the Senate. However, as I said to Your Honor, the Chief Justice in reaching that decision in the case that the President had the power to remove without the consent of the Senate, did so upon the "take care" clause, based it upon the theory that the President could not perform all

of the executive services himself, that he needed reliable and competent assistants, and that when he had one who was not performing his duty, then he ran the risk of not exercising adequate power under the "take care" clause, and he had a right to remove him.

Now, it is true, as I said, and as Your Honor has been [fol. 1423] told, that there is certain language of the Chief Justice in the case about a general grant of power, and certain specifications that follow it, and certain limitations.

I want to go back into history for a few moments to appraise Your Honor, or at least remind Your Honor, of what I am sure Your Honor already knows, that this question of inherent power is not a matter which has arisen for the first time from the brief of the gentlemen of the Department of Justice in this case.

This problem of whether the President has inherent power was raised in the early days of our Republic, and was raised in connection with the proposition for which Mr. Baldridge argued here today, namely, that since in Article I where it says the legislative power is vested in the Congress, the words "herein granted" are mentioned. He said that those words do not appear, and they do not, in Article II having to do with the Executive, and in Article III having to do with the judiciary; and therefore that there are broad general unlimited grants of power in the second and third articles that are not in the first article.

I say that that very question was considered and debated in the early days of the Republic, and that undoubtedly the prevailing view was in support of our position that [fol. 1424] there is no great reservoir of power, that there is limited power, that the powers of the President are simply these which are given to him under the Constitution.

Now, having that in mind, I want to come to the Humphrey case which was decided after Chief Justice Taft was no longer on the Court, and which has a direct bearing upon the Myers case.

In the Humphrey case, as your Honor may recall—it is 295 U. S. at page 602—Humphrey was a Federal Trade Commissioner who had been appointed by President Hoover. His seven-year term expired in 1938. Shortly after President Roosevelt took office in 1933 he wrote to

Mr. Humphrey and said, "You and I don't see eye to eye in the field in which you function. Therefore, I should like to have your resignation."

Mr. Humphrey after some deliberation politely refused to submit his resignation, as a result of which the President removed him or thought he removed him.

Mr. Humphrey sued in the Court of Claims for the compensation to which he would have been entitled to for the remainder of his term. The Supreme Court sustained his executor's right to that compensation, because in the meantime Mr. Humphrey had died.

Now I should point out that in that case the Federal [fol. 1425] Trade Commission Act in Section 1 provided that the Commissioners could not be removed by the President except for negligence or deficiency or other misfeasance. None of these things applied, and the question was whether the President could remove him and whether the limitation in Section 1 upon the right of a President to remove was constitutional.

I won't take much time to discuss this case except to point out that the Supreme Court found, unlike the status of Myers, the Postmaster, found that Humphrey and the Federal Trade Commission did not perform executive but performed quasi-legislative and quasi-judicial functions; and therefore there was no occasion under the "take care" clause for the President to have had the power to remove him.

But the significant thing is this, and this will bring me in a moment to the nub of what I want to point out to Your Honor:

When the Humphrey case was decided, the opinion was written by Justice Sutherland. Justice McReynolds had written one of the two principal dissents in the Myers case. The three dissenting Judges in the Myers case had been Justice Holmes, Justice McReynolds, and Justice Brandeis. Justice Holmes wrote a short dissenting opinion. The others wrote very elaborate opinions. As a result all of [fol. 1426] the papers in the case encompassed some 250 pages in the Supreme Court Report.

The principal constitutional argument was advanced by the dissenting opinion of Mr. Justice McReynolds. While

the controversy centered principally around this power of the President to remove without the advice and consent of the Senate, which by the way had as Your Honor knows plagued our country as a controversial issue almost from its inception, that in the case because of this dictum of Chief Justice Taft in which he unnecessarily reached over into a broader discussion which has been accepted by some students of constitutional law as dealing with the problem of inherent power, that was the occasion for Justice McReynolds' dissent to attack vigorously that approach to the situation.

So that when the Humphrey case was decided, and Justice McReynolds and Justice Brandeis were still on the Supreme Court—Justice Holmes was no longer there—the opinion of the Supreme Court came out this way in reference to the Myers decision. I am quoting from the Humphrey decision at page 626:

> "In the course of the opinion of the Court, expressions occur which tend to sustain the Government's contention, but these are beyond the point involved and, [fol. 1426] therefore, do not come within the rule of stare decisis."

The Government's contention in that case was for some kind of inherent power in the President.

I will continue with my quote:

> "In so far as they are out of harmony with the views here set forth, these expressions are disapproved."

That was a unanimous opinion in the Supreme Court in the Humphrey case, and it is very interesting that at the very bottom of it Justice McReynolds in polite judicial language said, "I told you so, and I refer you to my opinion in the Myers case."

I say the result of the unanimous action of the Humphrey case has been to accept the doctrine of Justice McReynolds in which he vigorously attacks this theory of inherent power in the President.

Now somewhere I have seen the claim of the Government that the remarks of Mr. Madison in the First Congress,

and of course we know that from the point of constitutional interpretation, the remarks of the members of the First Congress have been looked upon with great respect, and in the comments of Mr. Madison somewhere in that era it is claimed that he vouched for and supported the doctrine of inherent power.

I submit that he did not. I submit that Justice Mc-[fol. 1428] Reynolds has found the observations of Mr. Madison which are to the contrary. It is said in the opinion:

> "Mr. Madison emphasized the doctrine that the powers of the United States are particular and limited; that the general phrases of the Constitution must not be expounded as to destroy the particular enumerations explaining and limiting their meaning; and that latitudinous exposition would necessarily destroy the fundamental purpose of the Founders."

I say, therefore, that Your Honor's study of this situation will convince you that even Mr. Madison was not a true advocate of the inherent power of the President.

I want to add to that, as Justice McReynolds has so accurately and clearly assembled in his dissent, that in the well-known debates of 1835 when again this question of whether the President's powers were expressed and only implied, or whether they were inherent, that Mr. Clay and Mr. Webster and Mr. Calhoun were all advocates of the proposition that there are no inherent powers in the President.

I should like to take the time, as much as I regret doing it, reading to the Court about a dozen or fifteen lines. I am quoting from Webster who states it far more eloquently and forcefully than I could ever hope to do. It is a quotation from Webster's Works in which he says this:

> [fol. 1429] "He pointed out the evils of uncontrolled removals and, I think, demonstrated that the claim of illimitable executive power here advanced has no substantial foundation. The argument is exhaustive and ought to be conclusive. It is true, that the Constitution declares that the executive power shall be vested in the President; but the first question which then arises is, What is executive power? What is the degree, and

> what are the limitations? Executive power is not a thing so well known, and so accurately defined, as that the written Constitution of a limited government can be supposed to have conferred it in the lump. What is executive power? What are its boundaries? What model or example had the framers of the Constitution in their minds when they spoke of 'executive power'? Did they mean executive power as known in England, or as known in France, or as known in Russia? All these differ from one another as to the extent of the executive power of government. What, then, was intended by 'the executive power'? Now, sir, I think it perfectly plain and manifest, that, although the framers of the Constitution meant to confer executive power on the President, yet they meant to define and limit that power, and to confer no more than they did [fol. 1429] thus define and limit. When they say it shall be vested in a President, they mean that one magistrate, to be called a President, shall hold the executive authority; but they mean, further, that he shall hold this authority according to the grants and limitations of the Constitution itself."

Now the burden in my argument in this connection, if the Court please, is that whatever dictum was indulged in by Chief Justice Taft in the Myers case hinting or squinting at the possibility of some inherent power, some unfixed indefinable illimitable power in the President has been repudiated and disapproved by a unanimous court in the Humphrey case, which undoubtedly in doing so must have accepted the theories of Mr. Justice McReynolds as he expressed them in the Myers case in his dissent, and as he relied upon the statements such as Clay and Webster and Calhoun.

There are other quotes, but I shan't take the time, Your Honor, to quote them to Your Honor.

As Judge Hand said in the Western Union case:

> "If the President has the original power sought to be exercised, it must be found expressly or by implication in the Constitution. It is not sufficient to say that he must have it because the United States is a

sovereign nation and must be deemed to have all cus-
[fol. 1431] tomary national powers."

The Court: What is the citation?

Mr. Wilson: 272 Fed. page 311.

So I say to the Court in conclusion upon this proposition there is no case which has really sustained the argument of the Government of inherent powers in the President. The powers are limited.

Maybe Article II does not use the phrase herein granted as does Article I, but the whole doctrine, the whole constitutional doctrine which has grown up is to the effect that these are granted powers to the President and they are not without some circumscription, and that under the first clause which says that the executive power shall be vested in a President, that is not some illimitable grant of power. But while it may have some vitality of its own, its vitality is read in connection with the specifications which follow.

Now, Justice McReynolds goes to the point of arguing that if the first section were a general grant of power, then why the specifications that follow, why refer to Commander-in-Chief, why refer to the pardon power, why refer to the appointment of ambassadors, and that sort of thing, if they were to delimit a broad general power which independently existed.

We say no such broad general power exists. We say [fol. 1432] there is no such doctrine as inherency in this situation. We say that the idea of implied power arising in principle the same way that the implication arises with respect to the legislative powers applies equally to the President under his powers.

Now, if Your Honor please, so much for the constitutional end of things.

I remember at the closing of the argument yesterday afternoon Mr. Baldridge was asked to bring to Your Honor one or more cases in which the power of the President to make the seizure under this or similar circumstances had been adjudicated by the courts. I didn't hear him come in here this morning with any cases. I heard him refer to the Merryman case on another point, and Your Honor has disposed of that far better than I could.

In the Government's brief on page 26 they refer to four cases; two Circuit Court of Appeals cases, and two District Court cases; in which they pick out the dictum to refer to the broad constitutional power of the President.

I say in the first place that it is dictum in every one of those cases, including the case in our own Court of Appeals. But besides that there was a statute in all of those situations. Besides that, in more than one of them there was an actual state of war existing.

I think these cases do not adjudicate the proposition for [fol. 1433] which Mr. Baldridge was arguing. And I didn't hear him this morning supplement those cases by any one that did.

I have the Court of Claims opinion in the Pewee case. And while I think that Mr. Kiendl disposed of that quite thoroughly this morning, I should like to read one sentence from the opinion of the Court of Claims.

> "The material facts in that case are the same. (Referring to the United Mine Workers case.) The only difference is that in that case the seizure was under the War Labor Disputes Act, whereas this seizure was prior to the passage of that Act."

Here is the sentence I want to read.

> "This, however, seems to us immaterial, since in this case the authority of the Secretary of the Interior to seize the mines is not put in question."

And that same condition of the record proceeded to the Supreme Court and controlled the Supreme Court in its decision affirming the Court of Claims.

I think I am about through, Your Honor. I would only sum up this constitutional situation, to go back to it for a moment, by saying that it is a pretty pitiful situation when the Government of the United States must come into this Court and say to Your Honor that, "We rely upon Sections 1, 2 and 3 of Article II of the Constitutuion, we rely upon [fol. 1434] implied, inferred, inherent and residual power. We think that the President has this power in time of peace or in time of war if the emergency is sufficient for it."

I say that that is not helping the Court. That indicates the greatest show of weakness that is possible on the part of the Government. They cannot sustain this seizure. They cannot help Your Honor to point to a single clause of the Constitution to sustain it. The- can't point out a single authority of the courts to sustain it.

They simply throw the mass of the Constitution and the mass of these decisions at Your Honor and say, "Here they are. We say they hold a certain thing."

I say to the Court they don't hold those things. I say there is no Congressional, there is no constitutional, there is no theory upon which the power of seizure can be sustained in this case.

Mr. Kiendl: May it please the Court, I shall be very, very brief, and I hope confine my remarks strictly to rebuttal.

Mr. Baldridge opened his argument yesterday with a statement that the United States Steel Company had substantially conceded the legality of this seizure.

Now I know of nothing that I said or nothing that I intended to say that could be misinterpreted as a concession [fol. 1435] on my part that my client had conceded the legality of this seizure. Our position is directly to the contrary.

Mr. Baldridge yesterday raised some question about this affidavit of Mr. Stephens, the Vice President of the United States Steel Company, that I told your Honor I thought was one of the most important documents before you, and which I analyzed to some extent in my argument.

That same question regarding Mr. Stephens' affidavit was again raised this morning. The burden of Mr. Baldridge's argument was that in effect Mr. Stephens before the Committee on Labor and Public Welfare of the United States Senate had made an implied unconditional offer yesterday. He said a 12½ cent raise an hour would mean a 20-cent raise. I want to point out to your Honor what cannot be denied, that Mr. Stephens' testimony before that subcommittee is exactly consistent with the contents of his affidavit that I read in some detail to your Honor in my argument yesterday.

Now the portion that Mr. Baldridge read, and I would like the record to show that it is contained at Page 274 of

the stenographic transcript of the hearings on April 22, 1952, and the two little sentences that he referred to were these: Mr. Stephens came before that committee with a prepared statement, and he was reading from it, and he [fol. 1436] read this:

> "They later increased their wage offer to twelve and a half cents. (That is the companies.) The settlement offered by the companies would increase their total employment cost by more than twenty cents per hour."

And Senator Taft, as this record conclusively shows, questioned Mr. Stephens about that portion of his statement as follows, and I read from page 298 of that record:

> "Senator Taft. Mr. Stephens, you say on page 15 that they later increased their wage offer to twelve and a half cents per hour. So that an offer by the companies would increase their total employment costs by more than twenty cents an hour. Was that offer contingent upon any increase in price, or was that an outright definite offer?

And Mr. Stephens replied, and entirely consistent with his affidavit:

> "So far as our negotiations are concerned, Senator Taft, we had no reference to price in the negotiations in which that offer was made. That offer was contingent upon the satisfactory composition of the issues. There were a great many issues in this case with which we were dealing, issues of management rights and many other things."

[fol. 1437] And that is consistent with the affidavit in which he says he was dealing with this as one over-all package, and not offering to settle any particular issue, but only all of them.

Now, Mr. Baldridge in his argument yesterday has given Your Honor the impression that the United States Steel Company is in the delightful, I think he said, "comfortable" position, where it can take a free ride here, no strike,

no wage increase, and then come into the Court of Claims and recover the money damages it has sustained as a result of this seizure.

This morning he says that the steel company can sit out that situation indefinitely. And when Your Honor says, "Why are they here asking for relief?" he had to rely on the almost childish suggestion that the United States Steel Company is here playing a game.

We are playing the most important game that the United States Steel Company or any other branch of industry in this country has every played. We are asking this Court to maintain the status quo in this litigation until there can be a full plenary trial on the merits.

And what is our position? I am authorized to tell Your Honor without any reservation that the United States Steel Company is prepared to go to trial on the merits of this case immediately. That is the suggestion that was [fol. 1438] made to Your Honor at a hearing before you on April 10, 1952. In that report it appears that the reason there was no immediate trial was because Mr. Baldridge took this position, and I read from page 8 of that transcript:

> "Mr. Baldridge. If the Court please, we feel as the moving parties, that this is a most important matter for the courts to decide. Because it is an important and serious matter, as both sides agree, we don't feel we should be rushed into an early trial."

And on page 10 he said:

> "This matter is suddenly laid in our laps as counsel for the Government. It is a matter of tremendous importance. We want to make as thorough a preparation as we can. Until we have studied it a little more, I am not in a position to make a commitment."

Now one final thing and I am finished, Your Honor.

Your Honor asked me yesterday, and you asked Mr. Baldridge yesterday, to find cases on this proposition regarding the express powers and the necessary and the implied powers of the Executive under the Constitution. I referred Your Honor then to our brief. I now tell Your

Honor we cover that point, we think completely and persuasively, in Point 4 of our brief at pages 10 to 13. But we find no specific case that we can add to that argu- [fol. 1439] ment.

Mr. Baldridge has found none. Now, why not? We think the answer to it is perfectly clear. It is because of the position that Mr. Baldridge took yesterday and again today when Your Honor asked him questions about the powers of the Executive, here is what transpired. I will only take a second to read it, Your Honor.

> "The Court: So you contend that the Executive has unlimited power in time of an emergency?
>
> "Mr. Baldridge: He has the power to take such action as is necessary to meet the emergency.
>
> "The Court: If the emergency is great it is unlimited, is it?
>
> "Mr. Baldridge: I suppost if you carry it to its logical conclusion, that is true."

Of course, it is true. And this morning Mr. Baldridge made the shocking and amazing assertion to this Court that the Constitution limited the powers of Congress. It limited the powers of the judiciary. But in no wise it limited the power of the executive. And that, it seems to me, in my humble opinion, gets us back to the point where we are necessarily coming to the existence of the royal prerogative under those very cases that he argued to Your Honor yesterday.

Now we say in conclusion that Mr. Baldridge's position [fol. 1440] acting for Mr. Sawyer in this case, is contrary to all accepted American democratic principles of government.

Mr. Tuttle: Your Honor, I intend to be very brief and confine myself strictly to rebuttal.

I want to say first that I think that the citation by Mr. Baldridge this morning of the Merryman case, the decision by Chief Justice Taney, was most unfortunate for his side of the case. There was a civil war. There was a power at time of insurrection and invasion to suspend the writ of habeas corpus. The military authorities seized the al-

leged traitor in his home and refused to turn him over to the judiciary on a writ of habeas corpus.

Chief Justice Taney said this concerning the "take care" power section of Article II:

> "With such provisions in the Constitution expressed in language too clear to be misunderstood by any case, I can see no ground whatever for supposing that the President in any emergency or in any state of things can authorize the suspension of the privileges of a writ of habeas corpus or the arrest of the citizen except in aid of the judicial power. He certainly does not faithfully execute the laws if he takes upon himself legislative power by suspending the writ of habeas corpus and the judicial power also by arresting and imprison- [fol. 1441] ing a person without due process of law."

Then Chief Justice Taney makes the acknowledgment which Your Honor referred to, that notwithstanding that was constitutional law, and notwithstanding that the President had no inherent power under the circumstances except to act in aid of the judicial power which he was not doing, all he could do would be to submit a copy of his letter to the President for such advice which the President might wish to honor.

The much referred to Mississippi case can be disposed of in one sentence, it seems to me. That was a case where the President himself was named. An original bill was being filed by the State of Mississippi against Andrew Johnson, then President of the United States. The question solely was whether a bill with his name in it as a personal defendant would be received by the Supreme Court as long as that name was there.

The Supreme Court said that this was the issue and the only issue:

> "The Attorney General objected to the leave asked for upon the ground that no bill which makes a President a defendant should be allowed to be filed in this Court."

There was nothing about acting against those who claimed to be merely alter egos. The name of the President

[fol. 1442] of the United States was in the bill as a defendant, and all the Court held was that as long as that name was in the bill, the bill could not be filed. They didn't deal with what could be filed if the name was not there.

Now, just one thing about the reference to these words "herein granted" which Mr. Baldridge says, as I understood him, to be in the legislative sense and in the judicial sense but not in the executive sense.

He builds his vast structure of undefined and illimited power, among other things, on the absence of those words in Article II.

I call your attention to the fact that although he said—and I agree with him—that the judicial power and the legislative power are delegated and limited powers, those words "herein granted" do not appear in connection with the judicial power either.

> "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."
>
> "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

So that notwithstanding that sweep of judicial power [fol. 1443] in all cases, and notwithstanding the absence of the words "herein granted" I agree with Mr. Baldridge that the judicial power of the judicial branch of the Government is as much limited by the entire delegation theory of our Government and in this Constitution as is the legislative and the executive.

I call attention in that connection while we are considering parallels in that Article II dealing with the executive, there is no declaration that the executive power shall extend to all matters involving the common defense or the general welfare. That alone is found in Article I dealing with the legislative power.

Now in closing let me say this: I think that what has been said here and claimed by the Government raises a constitu-

tional issue as serious, if not more serious, than any that has confronted this country since the Scott decision.

This is the proposition and the steps by which it is built up. This seizure was without the authority of any statute. This seizure was without any express grant of authority in the Constitution. It is made not as an implied incidental act in performance of some express grant, but is rested on some inherent power to protect the common defense and the general welfare.

Then it is carried further because it is said that the [fol. 1444] President's decision is ipso facto because the President's decision is beyond judicial scrutiny, and the court has no jurisdiction. That decision of the President is immune from the judicial branch of the Government simply because it is the announcement of the President.

Then it is carried further. The next step is to say that immunity which he has extends all down the line of those whom he orders to perform what he has decreed. If it extends to the Defendant Sawyer, who is the sole defendant here, it would extend to his assistants. It would go down the line.

So that we have here advanced by the Department of Justice the proposition that in the name of general welfare, in the name of common defense, the President has a power not granted in terms by the Constitution, not a mere implication from any of the grants made in Sections 2 and 3 of Article II, but is based on the theory that what has not been forbidden to him by the Constitution is resident in him; that in the exercise of that power he is immune, his assistants are all immune.

Mr. Baldridge said yesterday that even if Mr. Sawyer were enjoined by this Court or any other court, the President could in effect snap his fingers at that and designate somebody else to carry out the order.

So on down the line as fast as the courts could issue [fol. 1445] injunction orders.

I don't recall a case in the history of this country, whether the history is judicial or whether it is administrative or by learned writers anywhere that that series of propositions have ever been claimed by anybody, even by our most aggressive Presidents.

He says that it is in aid of the theory of the enlargement of the executive power. Where are the limits? He says the only limit that he knows of is the ballot box.

Is that a remedy? In the hands of a strong executive with millions of persons in the employ of the executive department? Is that the remedy which the Founders of this Government looked to when they set up a Government of delegated power only, or did they look to the restrictions in the Constitution which reserved to the states and the people everything that was not delegated in express terms or by necessary implication in the carrying out of that which was delegated in express terms?

To say that the President in effect is the steward has implications as to the people of the United States that they are wards of the steward. That is a constitutional issue which rises far above the interests of any steel companies in this case or of any labor unions. That is an issue which concerns the whole future of liberty in this country because what can be done by a benevolent executive imposing [fol. 1446] restrictions on himself can be done by one not so disposed later on feeling the urge for unlimited power and a conviction that all is well as long as he is the steward of the American people and that the courts are concerned with his idea of the welfare.

One sentence to sum up the judicial point of view which is about to be overthrown here if the Department of Justice has its way . That is in the case of House v. Mayes, 219 U. S. at page 281. Here is the authentic ring of the American tradition as laid down by the Founding Fathers:

> "An extended discussion of the general question of constitutional law raised by the assignments of error is rendered unnecessary by former decisions of this Court. There are certain fundamental principles which those cases recognize and which are not open to dispute. In our opinion, they sustain the power of the State to enact the statute in question. (State of Connecticut.) Briefly stated, those principles are: That the Government created by the Federal Constitution is one of enumerated power,"—

The Government, that takes in the executive, the legislative and judiciary.

> "—and cannot, by any of its agencies exercise an authority not granted by that instrument, either in ex- [fol. 1447] press words or by necessary implication; that a power may be implied when necessary to give effect to a power expressly granted."

It is a Government of enumerated powers. The President is an executive having only enumerated powers. He never was created as Chief of State or the "steward" of the American people.

The Court: I will recess until 1:30.

(Thereupon at 12:30 o'clock p.m. the Court recessed until 1:30 o'clock p.m. this date.)

[fol. 1448] AFTER RECESS

(Pursuant to the recess heretofore taken the consideration of the above-entitled matter was resumed at 1:45 p.m. this date, when the following occurred:)

The Court: Mr. Westwood, is this mimeographed brief a duplicate of the typewritten brief formerly filed?

Mr. Westwood: Yes, sir.

The Court: With the exception of page 7?

Mr. Westwood: It is a duplicate all the way, Your Honor.

The Court: Well, why did you file this?

Mr. Westwood: Oh, well, because there are two dockets, Your Honor. We filed two complaints. Under one a twenty-day summons was issued; under the other a sixty-day summons was issued. I filed a second copy so that each jacket could have the brief in it.

The Court: So this mimeographed brief is identical with the typewritten brief?

Mr. Westwood: Identical with the typewritten brief, Your Honor .

The Court: But it is filed in a separate case?

Mr. Westwood: That is right.

The Court: One is against Charles Sawyer individually,

and the other is against Charles Sawyer, Secretary of [fol. 1449] Commerce?

Mr. Westwood: Yes, Your Honor. The wording in the complaint is the same in both cases. There is simply a difference in the issuance of the summons.

The Court: One went to his office and the other went to his home?

Mr. Westwood: Yes, Your Honor. In addition, if desirable, we have additional mimeographic copies, if they would be convenient for Your Honor's use.

I assume one is enough.

The Court: Yes.

Do you have some rebuttal?

Mr. Day: No, Your Honor.

The Court: Mr. Bane?

Mr. Bane: No, Your Honor.

The Court: Do you wish me to take up the Lavino case now?

Mr. Baldridge: Before you do that, Your Honor, may I have about two minutes?

The Court: All right.

Mr. Baldridge: There are about two cases in the Government memorandum on the taking power, that I neglected to call to Your Honor's attention this morning. They deal with the Government's power to take in the absence of statute. Those are the cases of United States v. Russell, [fol. 1450] 14 Wall 623——

The Court: Those two are in your brief, are they not?

Mr. Baldridge: Yes, they are, Your Honor. But I just wanted to highlight them because they are rather important on this point.

The Court: All right.

Mr. Baldridge: The other is United States v. Pacific Railroad, decided at 120 U. S. 227.

The Court: That is in your brief also?

Mr. Baldridge: That is correct, Your Honor.

Then I call Your Honor's attention particularly to the quote from the Russell case in Footnote 47 at the bottom of page 53 of Government's memorandum.

The Court: On the dissenting opinion? Is that the one you mean?

Mr. Baldridge: No, Your Honor.

The Court: Oh, the Russell case.

Mr. Baldridge: Yes, Your Honor. Footnote 47, the bottom of page 53.

Then one further observation, Your Honor. I think the remarks of plaintiffs' counsel in reply but emphasize the fact that Your Honor should not decide the constitutional question on these particular motions.

Finally, I want to say that we had an emergency situation here. Somebody had to deal with it. The legislative [fol. 1451] rule was too slow. As of April 8th, midnight, the Taft-Hartley rule was too slow. In either event, there would have been an indefinite stoppage of steel production.

Are we to say, then, that there is no power in Government any place to meet as serious a situation as this, when it confronts the security of this nation?

The Court: Then you assail the efficacy of our Government procedures set up by the Constitution?

Mr. Baldridge: I beg your pardon?

The Court: You assail the efficacy of our Government procedures set up by the Constitution?

Mr. Baldridge: Not at all, Your Honor. I just say, to have employed them on the night of April 8th would have resulted in a strike which would have stopped steel production which is so necessary to the national defense.

The Court: Do you think that is an answer to my question?

Mr. Baldridge: Well, I am just pointing out, we think that the Executive had the power, and it seems passing strange to say that faced with such a grave situation of national concern there is no power any place in Government to meet it. We think there was and is.

The Court: You have lack of confidence in the procedure set up by the Constitution to deal with an emergency situ- [fol. 1452] ation?

Mr. Baldridge: No, I do not, Your Honor. I just say that as of midnight on April 8th this seizure procedure appeared to be the only effective way to avoid a strike and to avoid a cessation for an indefinite period of production of steel necessary to national security and national defense.

The Court: Well, we have had crises before in this country, and we have had governmental machinery that was adequate to cope with it.

You are arguing for expediency. Isn't that it?

Mr. Baldridge: Well, you might call it that, if you like. But we say it is expediency backed by power.

The Court: All right, thank you.

All right, Mr. Childs.

Mr. Childs: May I proceed, Your Honor?

The Court: Yes. This is the Lavino case?

Mr. Childs: Yes, sir.

ORAL PRESENTATION ON BEHALF OF E. J. LAVINO & CO.

By: Randolph W. Childs, Esquire.

Mr. Childs: I wish to thank the Court for the courtesy of permitting me to address this Court, because I sense that history is being made in this court room.

I appear on behalf of the E. J. Lavino & Co., which we claim is not engaged in the steel industry and not engaged [fol. 1453] in a labor dispute or controversy.

I shall not argue two of the points contained in our statement of points. One of them relates to the right of the Court to enjoin Charles Sawyer, and the other relates to the great constitutional question that has been argued yesterday and today.

With respect to that constitutional question, however, I cannot refrain from saying that it seems to me that the argument of the Attorney General of the United States, which as I understand it is that the President has unlimited and uncontrollable powers to act in an emergency of his proclamation, proves too much, because it converts him from an executive with limited powers to a ruler with absolute power against whom there is no remedy, in the language of the Attorney General, except by the ballot box and impeachment.

Experience on this hemisphere has shown that a strong ruler will dispense with even those safeguards.

I might also say that I have heard it said that the Constitution of the United States is what the Justices say it is. But today was the first time I ever heard it said that the

constitutional powers of the President are what the President says they are.

Getting down to this particular case, I want to argue only one point, and that is, irrespective of whether the [fol. 1454] Executive Order is valid or invalid it is not applicable to this plaintiff, and if construed to be applicable, is invalid as to him.

This Executive Order 10340 contains two recitals, and they are very brief, among others:

> "Whereas a controversy has arisen between certain companies in the United States producing and fabricating steel and the elements thereof and certain of their workers represented by the United States Steel Workers of America, CIO, regarding terms and conditions of employment; and
>
> "Whereas the controversy has not been settled through the processes of collective bargaining or through the efforts of the Government, including those of the Wage Stabilization Board, to which the controversy was referred on December 22, 1951, pursuant to Executive Order No. 10233, and a strike has been called for" and so forth.

Now, what are the facts regarding this plaintiff?

In the first place, the plaintiff does not produce steel. It is not a part of the Steel Industry. At the utmost it might be said to be a supplier to steel companies, and there are many suppliers, some of whom have contracts with the Steel Workers whose plants were not seized.

[fol. 1455] What does E. J. Lavino & Co. produce? It has three plants. One is a basic refractories plant at Plymouth Meeting, Pennsylvania. That plant produces refractories which are used for lining furnaces, and it has many customers outside the steel industry.

There are two other plants, one at Sheridan, Pennsylvania, and one at Lynchburg, Virginia, which produce ferromanganese.

The principal competitors of Lavino, outside of a couple of steel producers in the case of ferromanganse, are not in the steel industry, and their workers, their hourly workers, are not represented by the Steel Workers.

The classification, as shown by the affidavit of Mr. George P. Gold, filed yesterday or the day before, of the wage classifications are entirely different. There is a small area where in connection with furnace operations theer is some relationship to the wage classifications of the employees of Lavino and those of the Steel Workers, but even there there are differences in job content.

Historically Lavino has never participated in collective bargaining with the Steel Workers in conjunction with the steel producers. It has never been a part of any nation-wide bargaining. Its contract expires not December 31st as in the case of the steel producers, but January 31st.

[fol. 1456] No settlement of the steel companies would determine the issues that would exist as between Lavino and its workers. Another thing is, referring to price relief, that obviously no price relief which can be given to steel companies will be applicable in the case of Lavino, because some of its most important ingredients, for example manganese, are imported from countries which are not subject to price control.

So much for the nature of Lavino's business.

Take the labor controversy. Our contract, as I say, expires January 31, 1952. It was not until March 21st that Philip Murray sent us a telegram saying that he was ready to engage in collective bargaining negotiations with us, and that the chief of his bargaining committee would get in touch with us. He never did get in touch with us.

As of April 4th the local in our Plymouth Meeting plant posted a notice, the substance of which—I guess rather than give the substance I had better give the exact notice from the brief. It says this:

> "Contract negotiations between E. J. Lavino & Company and Local No. 3216 will commence Tuesday or Wednesday of next week. In the event a strike takes place in the basic steel industry on April 8th, employees at E. J. Lavino & Co. will not be in-
> [fol. 1457] volved."

On April 7th we received from Mr. Murray a letter which he had written on April 4th stating to us that a strike would be called in our plant at 12 o'clock April 8th, and that is the

first intimation we ever had of any labor controversy, if you would call controversy something that had not been the subject of discussion between employer and employee in this whole situation.

I suggest that it is very absurd for the Government to proceed against E. J. Lavino & Co. under an order based on a statement that there was a labor controversy pending between Lavino and its workers, or representatives of its workers, and long drawn-out negotiations had taken place; that this labor controversy which never existed could not be settled through the ordinary means of conciliation and so forth.

The fact that there was no labor controversy was set forth in the complaint, or was verified in the affidavit of one vice president and the affidavit of Mr. Gold who was vice president in charge of labor relations and other things. It was only the day before yesterday that we learned from the defendant's affidavit, that said this matter has been referred by the President on December 23, 1951, to the Wage Stabilization Board, that any claim was made that we were [fol. 1458] party to the controversy. Whereupon we called up Mr. Taylor in the office of the Department of Justice and he was very courteous and gave us a copy of a letter written on the stationery of the White House on December 29, 1951, giving a list wherein it was said there was a labor controversy pending between the company and the steel workers, and that was referred to the Wage Stabilization Board.

Now, here is the important thing, Your Honor: We had no knowledge of that letter until Mr. Taylor advised us of its the other night. In fact, I would not know it existed except that I have implicit faith in anything Mr. Taylor told me over the telephone.

We have no knowledge of that letter. It was not sent to us by the President. It was not sent to us by Mr. Feinsinger, and it was not sent to us by the Steel Workers.

My contention is that the letter therefore is without any effect whatsoever.

I am not going to take up the time of this Court to argue that due process requires notice, and so forth. I think it was absolutely meaningless.

Suppose, for example, that there had been no controversy at all with any employer, and the President had made a proclamation, or statement saying there was a controversy. He could not manufacture one.

[fol. 1459] The Court: He could not what?

Mr. Childs: I say he could not manufacture a controversy, because none ever existed.

The Court: The Attorney General claims that the President has unlimited powers.

(Laughter)

Mr. Childs: Well, with all due respect, I think that argument is something like my suit. I could not get a taxicab at noon and it is all wet.

(Laughter)

We have a courteous letter from Mr. Sawyer in which he refuses to return possession of our plants to us as we had asked, and he says the reason he refused to return possession is that he cannot be assured that a strike will not go on if he turns the plants back to us.

While Mr. Sawyer is courteous, I think he is also quite paternalistic in his attitude, because the real question is whether he seized our property lawfully or unlawfully. If he has seized them unlawfully, then we want them back again.

Just one word about irreparable injury in our case. I call Your Honor's attention to the fact that we have competitors, particularly in the basic refractories field, whose workers are not represented by the Steel Workers. Obviously if the Secretary of Commerce stays in possession, [fol. 1460] increases our wage rates, and so forth, we are going to be put at a distinct unfair disadvantage with respect to these competitors, who are represented by different unions; that is, we deal with unions whose contracts have not expired.

Secondly, on the matter of relief there is one thing applicable to our case and that of the steel companies, and that is, instead of sitting around the bargaining table having concessions made and considered, and counter concessions made, if the Government imposes certain terms

then that fixes the level at which collective bargaining agreements start, and it means that for all time that level is set and we the employers are deprived of that great right of collective bargaining.

For all the reasons advanced in our moving papers, in our complaint, we ask the Court to decree and direct Charles Sawyer to return our plants to us, in order that we may go on about our business, in order that we may sit down with the representatives of our employees free from the fetters of this lawless and intolerant Government seizure.

Mr. Baldridge: Your Honor, when the President referred the wage dispute to the War Labor Board on December 22, 1951, he appended a list of the steel companies, some of them mills, some of them war producers, some of them [fol. 1461] fabricators, and some in other classes, which he had been advised were in a wage dispute with the United Steel Workers Union. Upon receipt of a copy of Mr. Gold's affidavit which sets out about what counsel has indicated here, we checked with Secretary of Commerce Sawyer to see whether he would be in a position to release this particular company.

At the time the seizure took place, in order to cover everybody, undoubtedly there were some companies that were not having wage difficulties. Since the seizure a number of companies have been released from the seizure order because it has been found upon investigation that they were not having wage troubles with the unions.

So Mr. Sawyer gave an affidavit on April 23rd, when we called this matter to his attention. It is on file as a matter of record in this case. In it he says in paragraph 5:

> "On April 12, 1952, I excluded from the operation of the aforesaid Order No. 1 all plants, facilities and properties other than the Plymouth Meeting plant and Sheridan plant in Pennsylvania, and the Lynchburg plant in Lynchburg, Virginia, of the E. J. Lavino Company.
>
> "After consideration of statements received from [fol. 1462] E. J. Lavino & Co. and from United Steel Workers of America, CIO, I have formed the judgment that at Plymouth Meeting, Sheridan, and Lynchburg plants strikes will take place in the event that the

plants are returned to E. J. Lavino & Co. As the purpose of Executive Order 10340 is to protect the interests of national defense by providing uninterrupted forged steel and steel products, I have refused to return possession of these plants to E. J. Lavino & Co. at the present time."

Now, we are willing to do this additional check, if Your Honor please. We will check again with the Secretary and let Your Honor know within twenty-four hours whether his views with respect to the situation surrounding this plant are the same today as they were on April 23rd. If the Secretary feels that the situation is such that the company can be released, then we have no objection to the motion of the company.

Mr. Childs: I might say that I hope that he will think that they should be released, and that you will so advise His Honor. But in the event he does not feel that way about it, I still press for the release of our plants directed by this Court.

I would like to hand up a typewritten copy of our [fol. 1463] "Memorandum Re Effect of Preamble in Executive Order 10340."

(Handed up.)

I think I have made it clear that there was no controversy and therefore this order should not apply to us.

Mr. Baldridge: I do not like to press the matter too far, Your Honor——

The Court: Anything that is of assistance to me I welcome, Mr. Attorney General.

Mr. Baldridge: Thank you, Your Honor.

Your Honor's statement a moment ago that the Attorney General has insisted that the Executive has unlimited powers—the argument we make here has been directed to this sole point on power: That is, that in the circumstances of this particular case there is inherent power in the Executive to seize.

Now, we are not called upon in these proceedings to say that the President has that power under any and all cir-

cumstances. We do say that in circumstances such as exist in this case he has the inherent power to seize and he did seize.

The Court: Anything further, gentlemen?

(No response.)

The Court: I shall take the case under submission and give it attention to the exclusion of any other court business. When I am ready to file my decision I shall notify the [fol. 1464] Clerk's office and one hour thereafter I shall file the decision. Counsel, therefore, are only required to keep in touch with the Clerk's office in order to be present when the decision is filed.

The Clerk's office might also advise the press room so that the press can call there if they so desire.

I want to take this occasion, gentlemen, to thank you for the assistance you have given me in this case and the great amount of research that you have done. I appreciate it very much.

The court will now stand adjourned until return of the Court.

(Thereupon, at 2:05 o'clock p.m. the instant hearing was concluded.)

[fol. 1465] Reporter's Certificate

(omitted in printing)

[fol. 1480] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF PROCEEDINGS—Filed May 6, 1952

Washington, D. C.,
Wednesday, April 30, 1952.

PROCEEDINGS INCIDENT TO:

(a) The signing by the Court of Preliminary Injunctions; and the
(b) Notice of Appeal; and the
(c) Application for Stay.

The Court having on April 29, 1952, filed in the office of the Clerk of the Court its opinion herein, as more particularly appears in the records of the Clerk of the Court, and [fol. 1481] counsel for the parties having communicated to the Court their desire to appear for the purposes hereinbefore set forth, the said counsel at 10 o'clock in the forenoon on Wednesday, April 30, 1952, did appear in open court

Before Honorable David A. Pine, Judge of the United States District Court for the District of Columbia, there being

Present: The same parties, by their same counsel as appeared on Thursday, April 24, 1952, and Friday, April 25, 1952, and there were had the following

PROCEEDINGS

The Court: Do you wish to address the Court?

Mr. Wilson: May it please the Court: Pursuant to the opinion of your Honor, filed yesterday, counsel for all of

the plaintiffs are here this morning to submit an order for a preliminary injunction.

The orders are essentially uniform; I think such variations, if any, as appear in any of them are quite immaterial, perhaps the change of a "singular" to a "plural" expression, or something of that sort.

The one possible exception perhaps will be that about which Mr. Westwood will address you, having to do with the United States Steel Company, and having to do with the [fol. 1482] adopting by the United States Steel Company of the idea suggested in the last paragraph of your Honor's opinion.

We have submitted these orders to the gentlemen from the Department of Justice, before midnight last night, and we have not varied very much in our final writing of it.

In the three cases in which two suits have been filed, that is to say Youngstown Sheet and Tube Company, et al., Republic Steel Corporation, and United States Steel Company, the parties are submitting identical orders in both cases.

Your Honor will probably recall that in each of those three instances, that is to say, in respect to each of these three plaintiffs, in one case Mr. Sawyer is sued as an individual and in another case he is sued as an individual and as Secretary of Commerce.

Your Honor will remember that there was some question about the time in which answer could be made, and I wish to state to the Court that I was served this morning in the Youngstown case with a motion to dismiss or quash the case because of the twenty day summons, which was served in the earlier of the two cases. However, that is a matter not before you and that can be left to be disposed of, without prejudice, in the future.

Since the two cases are pending, we deem it advisable, subject to your Honor's approval, to submit identical orders in both cases——

[fol. 1483] The Court (interposing): What do you have to say about the bond?

Mr. Wilson: We would like to submit this to your Honor, in all seriousness:

We gave that very careful and great consideration last evening and concluded that what was needed here was a

formal compliance with the rules and, in that situation, if your Honor will agree with us, we believe that a nominal bond is all that is required under the circumstances and, as I say, we have given very, very serious thought to that and we submit that the bond should be in the penalty of one hundred dollars.

The Court: Who else would like to be heard?

Mr. Westwood: May it please the Court: On behalf of the United States Steel Company we filed in the Clerk's office, immediately after reading your Honor's opinion, a request for leave to withdraw the verbal amendment made to our motion for a preliminary injunction, and we served on the Government's attorney last night a copy of that request.

We have drawn the proposed order in the same form as that in which the Youngstown Sheet and Tube Company have drawn their order, and we have inserted a phrase, right at the beginning, after the reference to the motion for a preliminary injunction, that the plaintiff, having with-
[fol. 1484] drawn its verbal motion to amend the original and written motion, now wishes to make that formally, and, with your Honor's leave, I hereby withdraw the verbal amendment.

We have given Government counsel a copy of the form of the order that we are submitting to your Honor.

This (referring to a paper writing handed to the Court) is the proposed order in one suit, and this (referring to another paper writing) is the proposed order in the other suit.

As Mr. Wilson has said, we have two complaints.

The Court: Except for the one clause, your proposed order is identical to or with the order proposed by Mr. Wilson.

Mr. Westwood: Yes, your Honor unless there be a "plural" expression in place of a "singular" expression.

The Court: What do you have to say about a bond?

Mr. Westwood: We believe, as does Mr. Wilson, your Honor, that this is the kind of situation where the damage to the defendant, as a result of a wrongful issuance of an injunction, would not be other than nominal.

We have endeavored to make some search of the cases, your Honor, and just do not find anything in the cases that

seemed to us suggestive one way or the other in reasoning the matter out. They do not appear to say much about it, but there can be no possible significant damage to the [fol. 1485] defendant.

Mr. Broun: On behalf of Bethlehem Steel Company, and others, in Civil Action No. 1549-52, I now hand up to you a form of order that is I think identical, in substance, with the one presented by Mr. Wilson in behalf of the Youngstown Sheet and Tube Company, et al.

That is just a copy (referring to a paper writing handed to the Court but the original will be placed before your Honor.

The Court: Do you have the same conditions with respect to bond?

Mr. Broun: As to that, I agree with what Mr. Wilson and with what Mr. Westwood said, and that is that we believe, in the circumstances of this case, that there is no indication or likelihood of any damage resulting to the defendant, other than a nominal damage, if, indeed, there is any likelihood of damage to him at all; particularly in the light of your Honor's ruling.

We think that the bond should be nominal.

The Court: Anyone else?

Mr. Bane: In behalf of Jones & Laughlin Steel Corporation, I ask the Court to enter an injunction identical to that presented by Mr. Wilson on behalf of the Youngstown Sheet and Tube Company.

In presenting an order in the matter now before the [fol. 1486] Court I wish to say that I agree entirely with what Mr. Wilson has said and with what Mr. Westwood has said.

I think that the bond covering any damages cannot possibly be large in this case.

I cannot see how, in any circumstance, Charles Sawyer as an individual or as Secretary of Commerce could have any claim of any kind.

The Court: Mr. Tumulty?

Mr. Tumulty: Your Honor, on behalf of Armco Steel Corporation and on behalf of Sheffield Steel Corporation I hand Your Honor a form of order which is substantially the same form of order as that handed to you by counsel for the Youngstown Sheet and Tube Company, et al.

As far as the question of bond is concerned, I believe my position is exactly the same as that expressed by the counsel for the other plaintiffs, and we feel, as they do, that a nominal bond is sufficient to cover the situation.

The Court: Mr. Boyd?

Mr. Boyd: If your Honor please, on behalf of the Republic Steel Corporation, I hand you orders identical in form with those previously handed to your Honor, in both cases in which Republic Steel Corporation is plaintiff, being Civil Action No. 1539-52 and Civil Action No. 1647-52.

I think Mr. Wilson has correctly stated the position applicable to Republic Steel.

[fol. 1487] In respect to the bond, the rule makes it clear I think that the bond is designed to indemnify the defendant for any losses that he may sustain, and I submit that, in these cases, the defendant cannot suffer any losses and I submit, accordingly, that a nominal bond would serve all the purposes of the rules.

I do not understand that the rule contemplates even any provision for costs and for that reason I do not think the item of costs should be considered.

The Court: He would not lose any salary?

Mr. Boyd: I do not think so, your Honor.

The Court: And he would not have to pay any attorney's fees?

Mr. Boyd: No. The Department of Justice, I take it, will serve him without any compensation.

The Court: Mr. Peacock?

Mr. Peacock: If the Court please, I have an order identical to that filed by Republic Steel except that after "in consideration" there has been inserted "the pleadings herein."

On the bond, I say "Amen".

The Court: Is there anyone else to be heard for the plaintiffs?

(There was no response made by any of counsel at the Bar.)

[fol. 1488] The Court: Now, Mr. Attorney General, do you have any objection to the form of the order?

Mr. Baldridge: No, your Honor; we do not.

I suspect that each of the orders for a preliminary injunction are substantially identical. We have looked over two or three, but we are advised by counsel for the plaintiffs that they are substantially identical.

We have no objection.

The Court: What do you have to say about the bond?

Mr. Baldridge: Well, your Honor, we do not think that damages in this case are nominal, as suggested by the plaintiffs.

We think that the damages are incalcu*l*able.

The Court: To Mr. Sawyer personally?

He is the defendant.

Mr. Baldridge: To Mr. Sawyer and to the principal whom he represents.

The Court: Who is that?

Mr. Baldridge: The President of the United States.

The Court: How can he be damaged personally?

Mr. Baldridge: We are engaged in a tremendous defense effort.

A strike has occurred as a result of the proceedings here.

As long as the strike lasts production for the defense [fol. 1489] effort will be stopped.

I do not think it is possible to calculate the end result in damages.

Further, in the——

The Court (interposing): But I have ruled Mr. Attorney General, that the President is not a party to this case.

Mr. Baldridge: I know, your Honor.

The Court: And you say that the President is entitled to damages if this injunction is wrongfully issued?

Now, what is the damage to him?

Mr. Baldridge: We think, your Honor, that the damages go further than that; they run to the protection of the country in this particular period of emergency.

But, as I was about to say——

The Court (interposing): I am sorry that I interrupted you.

Mr. Baldridge: In the interest of expedition in the handling of the case from here on in the Court, while we think the damages are incalculable, we are not insisting that the Court take time to consider our position in the matter.

We do think that because the damages are incalculable, for the reason stated, that the Court should look with favor on the defendant's application here for a stay.

I should like to present that to your Honor at this time. [fol. 1490] The Court: If I sign these orders, then I think your motion for a stay would be in order.

Mr. Baldridge: If your Honor——

The Court (interposing): I am making the bond one hundred dollars on the assumption that the only requirement is that I obey the rules which resuire the bond but, under the present circumstances, I am of the opinion that, so far as Mr. Sawyer is concerned, he is not in a position personally to suffer any damages whatever and, therefore, in compliance with the rule, I shall make the bond $100, which is only a formal compliance.

(At this point the Court signed certain papers before it.)

The Court: Your represented Youngstown Sheet and Tube Company, did you, Mr. Wilson?

Mr. Wilson: Yes.

The Court: I shall not read more than one order presented to me in the case of Youngstown vs. Sawyer, in Civil Action No. 1635-52, and I will rely on the assurance of counsel, as members of the Bar, that the other orders submitted are identical, or substantially identical.

If there is any question about that being so, I will read each one of them.

Is that assurance given me?

Mr. Broun: Yes.

Mr. Westwood: With the exception of the point I indi- [fol. 1491] cated in connection with United States Steel.

The Court: All are identical with the exception of those in the United States Steel Company cases.

Mr. Broun: Yes.

Mr. Westwood: That is correct.

I will read this one over (indicating a document in the hands of the Court).

The others are substantially the same.

Mr. Broun: Yes, your Honor.

As I see it, the only difference is the clause in the order submitted by the United States Steel Company that: the plaintiff having withdrawn its verbal motion——

Mr. Westwood (interposing): That is correct.

The Court: Gentlemen, pursuant to the rule, normally, findings of fact and conclusions of law are necessary, but I think that my opinion probably covers all the conclusions of law and perhaps all the findings of fact that are necessary and my opinion can serve as a record of findings of fact and conclusions of law.

Is that correct?

Mr. Wilson: Just to corroborate that—and we deliberately considered that and considered Rule 52 having to do with findings of fact and conclusions of law,—I say that your Honor's statement is correct.

Rule 52 now contains this language:

> [fol. 1492] "If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein."

Also, in the preamble of the order we accept that interpretation of the rule because we take it that you have made findings of fact and conclusions of law.

The Court: Do you think the rule, then, requires detailed findings as to the irreparable features of the law? I did not give any detailed findings, because of the opinion.

You don't think that that is necessary?

Mr. Wilson: That is our interpretation and that is what we read there.

You say, in your opinion, your Honor:

> "I first find as a fact, on the showing made and without burdening this opinion with a recital of facts, that the damages are irreparable."

That is, in our view, a finding of fact that there is irreparable injury.

The Court: Are all others in agreement?

Mr. Broun: We are all in agreement, I think I can say; we are in agreement, not only as to the irreparable damage, but all other essential facts and allegations of fact, and conclusions of law.

I think the opinion contains a sufficient statement of findings of fact and conclusions of law, and that the rule is [fol. 1493] met.

The Court: Does the defendant have any other view with respect to the findings of fact?

Mr. Baldridge: No, not under the Rule. I think the statement is a statement of findings of fact and conclusions of law.

The Court: Now, Mr. Baldridge, I assume you wish at this hearing to make a motion for a stay.

First I will pass on the appeal to the Circuit Court of Appeals.

That will be received and duly filed.

Mr. Baldridge: Yes.

The Court: Now what is before me?

Mr. Baldridge: Second, the application for a stay of the orders granting the preliminary injunction.

As to that, I have only two matters to add as to the basis of the application:

One is that a work stoppage in the steel industry will immediately jeopardize and imperil the national defense and the defense of those joined with this nation in resisting aggression, and,

Second: That the head of the United Steel Workers of America, C.I.O., has announced that such work stoppage will immediately result if the order appealed from herein is not stayed.

[fol. 1494] According to the best information we have at the moment a strike in the steel plants throughout the country has been called.

The Court: May I have your application?

Mr. Baldridge: Yes (handing a document to the Court).

The Court: Your applications will be received and filed.

Mr. Baldridge: And I would like to hand up to your Honor a consolidated form of order on the defendant's application for a stay.

In the "order" portion there is a blank as to whether it is granted or denied.

The Court: What suggestion as to terms do you propose, if any?

Mr. Baldridge: I do not understand.

The Court: I think the rules provide that when a stay of an injunction is granted the Court may make such

conditions and terms as he believes to be in the interest of justice.

Do you have any suggestions at this time?

Mr. Baldridge: Not at this time, your Honor.

The Court: Supposing I look at that rule and see what it says.

It is Rule 62 (c):

> "When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an in- [fol. 1495] junction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party."

That is the one I had in mind.

Do you have any suggestion as to that at this time?

Mr. Baldridge: No, your Honor, except this matter is of such tremendous importance that we urge your Honor to rule promptly—we would hope immediately—upon our application for a stay, because if your Honor is not disposed to grant such a motion, then we should like to seek such relief elsewhere, and, in view of the very critical situation created by the nationwide strike, we urge your Honor to give us an immediate ruling on the application, as prompt a ruling as is consistent with the consideration of the matter.

The Court: I will hear the other side.

Mr. Wilson: Speaking so far as Youngstown Sheet and Tube Company, et al., is concerned, we oppose the granting of a stay pending an appeal.

We think this is not the kind of a case where, pending an appeal, there would be mooted any pending questions, and we think on the question of the balancing of the equities that your Honor has so thoroughly gone into that at Page 12 [fol. 1496] and 13 of your Honor's opinion, that we could not add anything to it.

We think, under the circumstances, and in the exercise of sound discretion, the weight is in favor of the plaintiffs against your Honor exercising the discretion you have to stay your Honor's decision pending an appeal.

Therefore, we are opposed to it.

Mr. Boyd: The statement which Mr. Baldridge makes, your Honor, with respect to the strike, is rather astounding: Your Honor will realize that the strike took place even before the order was signed.

Mr. Murray, the head of the United Steel Workers of America, C. I. O., saw fit to call the workers out on strike even before your Honor had signed the order—before the order was even drawn.

I do not think that Mr. Baldridge is in a position to say that staying the order would cause the strikers to return to their jobs.

Mr. Broun: Bethlehem Steel also opposes the stay requested by the Government.

We think there is very little, if any, difference, in the situation as to whether you should issue a stay or issue a preliminary injunction.

We think that we are entitled to our plants back and we think that the action taken overnight by the United [fol. 1497] Steel Workers of America, C. I. O., has been unwarranted in calling a strike.

There is nothing now that can be served by the granting of a stay, nothing.

Mr. Westwood: I add, only, your Honor this: That the request Mr. Baldridge makes would seem to us, if granted, to imply that there was some basis for a claim of right as asked for the plaintiff, to which your Honor adverted at Page 13 of your opinion and took into account and rejected when you acted on the motion for a preliminary injunction.

I can see no considerable difference between the question now presented to your Honor and the question that was so fully presented on the motion for the preliminary injunction.

Mr. Bane: Jones & Laughlin opposes the motion which your Honor is now giving attention to, largely for the reason stated by Mr. Westwood and the others.

What Mr. Baldridge is asking for now is that you reverse the judgment which has just entered.

The strike which was called last night I think amply answers the question before your Honor.

Mr. Tumulty: Armco and Sheffield also desire to oppose

the application for a stay and, in addition to the reasons advanced by counsel for the other plaintiffs I desire to point out the fact that the Court found irreparable damage, [fol. 1498] found the existence of irreparable damage, and the granting of a stay would cause a continuance and an aggravation of the damage referred to by the Court on Page 13 of its opinion, and I agree with Mr. Bane that it would be, in effect, a reversal of the decision of the Court.

In addition to all of that there is the fact that the defendant has itself remedies in the appellate courts including the right to appeal there for relief in the way of a stay.

It would be entirely inappropriate for this Court to enter any order which would have the effect of perpetuating the course of unconstitutional conduct pursued by the Government.

Mr. Peacock: We endorse what has been said.

The Court: Do you have any rebuttal, Mr. Attorney General?

Mr. Baldridge: No, your Honor. I have stated our position as fully as we think is called for under the circumstances.

The Court: The application for a stay is denied.

You will now be permitted, Mr. Attorney General, to seek relief elsewhere in case you are so advised.

Mr. Baldridge: Yes, sir.

The Court: Is there any further business to come before this Court in this matter?

Mr. Wilson: No, your Honor.

[fol. 1499] Mr. Westwood: And may the record show that I have made a motion to withdarw the verbal amendment which was made to our written motion and that that leave has been granted?

The Court: Yes; leave is granted.

The Court will now stand adjourned until the return of the Court.

(Thereupon the instant hearing was concluded.)

[fol. 1500] Reporter's certificate (omitted in printing).

[fol. 1178] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1952

No. 11,404

CHARLES SAWYER, Department of Commerce, Washington, D. C., Appellant,

v.

UNITED STATES STEEL COMPANY, Appellee

No. 11,405

CHARLES SAWYER, 4000 Cathedral Ave., N. W., Washington, D. C., Appellant,

vs.

UNITED STATES STEEL COMPANY, Appellee

No. 11,406

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Appellant,

vs.

BETHLEHEM STEEL COMPANY, et al., Appellees

No. 11,407

CHARLES SAWYER, Secretary of Commerce, Department of Commerce, Washington, D. C., Appellant,

v.

REPUBLIC STEEL CORPORATION, a New Jersey Corporation, Appellee

No. 11,408

CHARLES SAWYER, Westchester Apartments, Washington, D. C., Appellant

v.

REPUBLIC STEEL CORPORATION, a New Jersey Corporation, Appellee

[fol. 1179] No. 11,409

CHARLES SAWYER, Westchester Apartments, Washington, D. C., Appellant

vs.

JONES & LAUGHLIN STEEL CORPORATION, a Pennsylvania Corporation, Appellees

No. 11,410

CHARLES SAWYER, The Westchester, 4000 Cathedral Ave., N. W., Washington, D. C., Appellant

v.

THE YOUNGSTOWN SHEET AND TUBE COMPANY, a Body Corporate, Youngstown, Ohio, The Youngstown Metal Products Company, a Body Corporate, Youngstown, Ohio, Appellees

No. 11,411

CHARLES SAWYER, Secretary of Commerce, U. S., The Westchester, 4000 Cathedral Ave., N. W., Washington, D. C., Appellant

v.

THE YOUNGSTOWN SHEET AND TUBE COMPANY, a Body Corporate, Youngstown, Ohio, The Youngstown Metal Products Company, a Body Corporate, Youngstown, Ohio, Appellees

No. 11,412

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Washington, D. C., Appellant

vs.

E. J. LAVINO & COMPANY, a Delaware Corporation, Appellee

[fol. 1180] No. 11,413

CHARLES SAWYER, Individually and as Secretary of Commerce of the United States of America, Appellant

vs.

ARMCO STEEL CORPORATION and SHEFFIELD STEEL CORPORATION, Appellees

[fol. 1166] IN UNITED STATES COURT OF APPEALS

[File endorsement omitted]

APPLICATION FOR STAY PENDING APPEAL FROM ORDER GRANTING PRELIMINARY INJUNCTION—Filed April 30, 1952

The above-entitled action was instituted following the issuance by the President of the United States of Executive Order 10340 dated April 8, 1952, and the taking possession by the defendant of the plants, facilities and other properties of the plaintiff pursuant thereto to the extent stated in the defendant's Order No. 1 dated April 30, 1952.

The complaint prayed for temporary and final injunctions against continuation of defendant's possession, and also for a preliminary injunction against any action by the defendant which would alter the conditions of employment existing at the time possession was taken.

Upon the submission of extensive affidavits in opposition to the issuance of a preliminary injunction and following oral argument and the filing of briefs, the United States District Court for the District of Columbia on April 30, 1952 entered an order temporarily enjoining further possession or control by defendant of plaintiffs' plants, facilities and other properties.

The defendant filed a notice of appeal from said order on April 30, 1952.

On April 30, 1952 the defendant presented to the said District Court, and it denied, an application for a stay of the said injunctive order pending appeal.

The defendant intends to file within 6 days a petition to the Supreme Court of the United States for a writ of certiorary to review said order.

[fol. 1167] The defendant respectfully moves that the said order granting a preliminary injunction be stayed pending the filing within said period of a petition to the Supreme Court of the United States for a writ of certiorari and until the disposition thereof, and, in the event certiorari is granted, pending the issuance of the mandate of that Court, for the following reasons:

1. It interferes with sovereign functions of the United States.

2. The decision that the Government possession is unlawful was in effect a decision that the employees might lawfully strike, and they have done so, thus jeopardizing and imperiling our national defense and the defense of those joined with this Nation in resisting aggression as found by the President in Executive Order No. 10340, and as established by the uncontested affidavits of Robert A. Lovett, Secretary of Defense; Gordon Dean, Chairman of the United States Atomic Energy Commission; Manley Fleischman, Administrator of the Defense Production Administration; Henry H. Fowler, Administrator of the National Production Authority; Oscar L. Chapman, Secretary of the Interior; Jess Larson, Administrator of General Services; Homer C. King, Acting Administrator of the Defense Transportation Administration; Charles Sawyer, Secretary of Commerce; Harry Weiss, Executive Director of the Wage Stabilization Board; and Nathan P. Feinsinger, Chairman of the Wage Stabilization Board, filed herein.

3. The Government possession under Executive Order No. 10340 had the effect of keeping the steel plants and facilities in operation while collective bargaining between the plaintiff and the United Steel Workers of America, CIO, looking toward possible agreement and return of the plants and facilities continued, and an order staying the order of the District Court seems to be the only possible action which would result in re-establishing that situation immediately. The longer the delay, the more difficult it will become to resume operations.

4. The Court was without power, under the circumstances of this case, to enjoin Presidential action.

[fol. 1168] This application is made upon the entire record and affidavits in this case, all of which is by reference made a part hereof.

Respectfully submitted, (Sgd.) Holmes Baldridge,
Assistant Attorney General.

Of Counsel:

James R. Browning, Edward H. Hickey, Marvin C. Taylor, Samuel D. Slade, Benjamin Forman, Herman Marcuse, T. S. L. Perlman, Attorneys, Department of Justice.

Before Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy, and Washington, Circuit Judges

ORDER—Filed April 30, 1952

These cases came on to be heard on the original records of the United States District Court for the District of Columbia, and on appellant's applications for stay of the orders of the District Court entered herein on April 30, 1952, and said applications for stay were argued by counsel.

On consideration whereof, and in order fully to preserve the jurisdiction of the Supreme Court and of this Court in these controversies, it is

Ordered by the Court that the orders of the District Court granting the preliminary injunctions in these cases be, and they are hereby, stayed until 4:30 o'clock P. M., Daylight Saving Time, on Friday, May 2, 1952, and, if petitions for writs of certiorari in these cases have then been filed in the Supreme Court, then until the Supreme Court acts upon the petitions for writs of certiorari; and, if the petitions for writs of certiorari be denied, then until the further order of this Court.

Per Curiam.

Dated April 30, 1952.

Chief Judge Stephens and Circuit Judges Clark, Wilbur K. Miller, and Proctor are of the opinion that the Government has made no showing whatever which would justify this Court in staying Judge Pine's orders.

[fol. 1181] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

APPLICATION TO ATTACH CONDITION TO STAY IN ORDER TO PROTECT APPELLEES FROM IRREPARABLE INJURY—Filed May 1, 1952

*The appellees pray that this Court attach to its stay of the injunction issued by the District Court herein a con-

dition to the effect that the appellant shall not alter the terms and conditions of employment prevailing between any of the appellees and its employees at the time of the appellant's seizure of the appellees' properties except with the consent of the appellee concerned, or, alternatively, except in accordance with a collective bargaining agreement between such appellee and its employees.

The appellees respectfully request immediate oral argument on this motion.

At the time the motion for preliminary injunction was brought on for argument before the Court below, the appellant was about to change the terms and conditions of employment *by his order,* and appellant's counsel refused to agree even for a limited period of time that no such change would be made. Again appellant's counsel [fol. 1182] made a similar refusal in this Court. The record discloses, therefore, that at any moment the appellant will carry out his pending threat to change the employment conditions. This change will impose increased wages and other employment costs involving millions of dollars which will be paid from the appellees' funds and, even more seriously, will drastically alter each appellee's bargaining position with a powerful union. For this injury the appellees have no remedy except this motion—otherwise they are helpless.

Respectfully submitted, (S.) John J. Wilson, John C. Gall, Attorneys for appellees The Youngstown Sheet and Tube Company and The Youngstown Metal Products Company; (S.) Edmund L. Jones, Howard Boyd, Attorneys for appellee Republic Steel Corporation; (S.) James C. Peacock, Attorney for appellee, E. J. Lavino & Company; (S.) Joseph P. Tumulty, Jr., Attorney for appellee Armco Steel Corporation; (S.) Bruce Bromley, Attorney for appellee Bethlehem Steel Company; [fols. 1183-1195] (S.) John C. Bane, Jr., Attorney for appellee Jones & Laughlin Steel Corporation; (S.) John Lord O'Brian, (S.) Howard C. Westwood, Attorneys for appellee United States Steel Company.

[fol. 1196] Before Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy, and Washington, Circuit Judges.

ORDER—Filed May 1, 1952

These cases came on for hearing on appellees' application to attach conditions to the stay order of this Court entered herein on April 30, 1952, and said motion was argued by counsel.

On consideration whereof, it is ordered that said application to attach conditions to the stay order be, and it is hereby, denied.

Dated: May 1, 1952.

Per CURIAM:

Chief Judge Stephens and Circuit Judges Clark, Wilbur K. Miller, and Proctor dissent from the foregoing order because they maintain the view, announced by them yesterday, that no stay order should be issued against the decision of the District Court; and because they are further of the view that such stay order having been issued, there should be attached thereto the proviso sought by the appellees, to wit:

> "Provided, however, that, for the duration of this stay, the appellant shall not alter the terms and conditions of employment prevailing between any of the appellees and its employees at the time of the appellant's seizure of the appellees' properties, except with the consent of the appellee concerned, or, alternatively, except in accordance with a collective bargaining agreement between such appellee and its employees; this proviso, however, shall not continue as to any appellee beyond twelve o'clock noon on Saturday, May 3, 1952, unless such appellee files its reply to the appellant's petition for writ of certiorari in the Supreme Court by that time."

[fol. 1197] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 11404-13

CHARLES SAWYER, Appellant

v.

UNITED STATES STEEL COMPANY, et al., Appellees

MEMORANDUM—May 2, 1952

Before Stephens, Chief Judge, and Edgerton, Clark, Wilbur K. Miller, Prettyman, Proctor, Bazelon, Fahy and Washington, Circuit Judges.

[fol. 1198] OPINION—Filed May 2, 1952

EDGERTON, PRETTYMAN, BAZELON, FAHY and WASHINGTON, *Circuit Judges:* The order entered by this court on April 30, 1952, was designed, as it recited, to preserve the jurisdiction of the United States Supreme Court and of this court over the controversies here presented, pending appeal.

The District Court thought that there was "utter and complete lack of authoritative support" for the Government's position, and that the steel companies would suffer irreparable injury by any continuance of Government possession of the mills.

The Supreme Court said as long ago as 1871:

> ". . . Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into the public service, or may be seized and appropriated to the public use, or may even be destroyed without the consent of the owner. . . . Exigencies of the kind do arise in time of war or impending public danger, but it is the emergency, as was said by a great magistrate, that gives the right, and it is

> clear that the emergency must be shown to exist before the taking can be justified. Such a justification may be shown, and when shown the rule is well settled that the officer taking private property for such a purpose, if the emergency is fully proved, is not a trespasser, and that the government is bound to make full compensation to the owner." *United States* v. *Russell,* 13 Wall. 627-8 (U. S. 1871).

Only last year the Supreme Court held that "the United States became liable under the Constitution to pay just compensation" for a taking under circumstances closely parallel to those of the present case. *United States* v. *Pee Wee Coal Co.,* 341 U. S. 114, 117.

[fol. 1199] In the case before us the Chief Executive took possession of the steel plants as President and as Commander-in-Chief. When that action was challenged, his delegated representative—the Secretary of Commerce—submitted to the court, in the form of affidavits of the Secretary of Defense and other officials primarily responsible for the national security, the evidence which they said "fully proved" the emergency.

Under these circumstances, the cases we have cited, and many others, indicate there is at least a serious question as to the correctness of the view of the District Court to which we have referred.

The Supreme Court has said an appellate court is empowered "to prevent irreparable injury to the parties *or to the public* resulting from the premature enforcement of a determination which may later be found to have been wrong." *Scripps-Howard Radio* v. *Comm'n,* 316 U. S. 4 at 9. (Emphasis added.) See also *Virginia R. Co.* v. *Federation,* 300 U. S. 515, 552.

This case was before the District Court upon a motion for a preliminary injunction. Upon such a motion, the Supreme Court has ruled:

> ". . . Even in suits in which only private interests are involved the award is a matter of sound judicial discretion, in the exercise of which the court balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction. . . .

[fols. 1200-1201d] "But where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff." *Yakus* v. *United States,* 321 U. S. 414, 440.

In the affidavits in this record, defense officials are emphatic that continued production of steel is of vital importance to the national security, and submit data in support of that view. On the other hand, the companies may suffer monetary loss. But as to this the Government concedes that any such loss will be compensable under the Constitution, and the Supreme Court cases above cited support that view. Upon these considerations, we think that the preliminary injunction issued by the District Court must be stayed as we have ordered.[1]

Chief Judge Stephens and Circuit Judges Clark, Wilbur K. Miller and Proctor dissent from the foregoing opinion.

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[1] The pertinent part of our order of April 30, 1952, is:

"Ordered by the Court that the orders of the District Court granting the preliminary injunctions in these cases be, and they are hereby, stayed until 4:30 o'clock P.M., Daylight Saving Time, on Friday, May 2, 1952, and, if petitions for writs of certiorari in these cases have then been filed in the Supreme Court, then until the Supreme Court acts upon the petitions for writs of certiorari; and, if the petitions for writs of certiorari be denied, then until the further order of this Court."

[fol. 1598] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1951

No. 744

THE YOUNGSTOWN SHEET AND TUBE COMPANY, et al.,
Petitioners,

v.

CHARLES SAWYER, Respondent

No. 745

CHARLES SAWYER, Secretary of Commerce, Petitioner,

v.

THE YOUNGSTOWN SHEET AND TUBE COMPANY, et al.,
Respondents

STIPULATION DESIGNATING PARTS OF RECORD TO BE PRINTED

It is hereby stipulated and agreed by and between the parties hereto that the portions of the record to be printed shall be as shown in the attached Enclosure A. It is further stipulated and agreed that reference on brief and on argument may be made to portions of the record not printed.

Sturgis Warner, Of Counsel for Petitioners in No. 744 and for Respondents in No. 745. Philip B. Perlman, Solicitor General, Of Counsel for Respondent in No. 744 and for Petitioner in No. 745.

[fol. 1599] Enclosure A to Stipulation Designating Parts of Record to be Printed

From Record U. S. D. C., District of Columbia in Youngstown Sheet and Tube Company, et al. v. Charles Sawyer, Secretary of Commerce (No. 1635-52, D. D. C.; No. 11,411 D. C. Cir.)

Complaint for injunction and for a declaratory judgment
Executive Order 10340
Motion for preliminary injunction
Memorandum in support of motion

Affidavit of Herman J. Spoerer
Affidavit of Walter E. Watson
Opposition to motion for a preliminary injunction
Executive Order 10340 (omitted, printed *supra*)
Telegram from Charles Sawyer
Order No. 1 of Charles Sawyer
Affidavit of Robert A. Lovett
Affidavit of Gordon Dean
Affidavit of Manly Fleischmann
Affidavit of Henry H. Fowler
Affidavit of Oscar L. Chapman
Affidavit of Jess Larson
Affidavit of Homer C. King
Affidavit of Charles Sawyer
Affidavit of Harry Weiss
(Enclosures omitted)
Affidavit of Nathan P. Feinsinger

Opinion, Pine, J., April 29, 1952.
Preliminary Injunction and Order Fixing Amount of Bond, April 30, 1952.
Notice of Appeal, April 30, 1952.
Application in U. S. District Court for Stay of the order granting preliminary injunction, April 30, 1952.
Order of Pine, J., denying application for stay, April 30, 1952.
Designation of record on appeal, April 30, 1952.
Order to transmit original record, Pine, J., April 30, 1952.

[fol. 1600] From Record in United States Steel Company v. Charles Sawyer (No. 1625-52, D. D. C.; No. 11,404 D. C. Cir.)

Complaint for declaratory judgment and injunctive relief
(Exhibits omitted)
Motion for preliminary injunction
Points and authorities in support of motion
Amendment No. 1 to Complaint
Affidavit of Wilbur L. Lohrentz
Affidavit of Lewis M. Parsons
Affidavit of John A. Stephens
Opposition to motion for a preliminary injunction (omitted in printing)

Motion to withdraw verbal amendment and to proceed on the basis of motion for preliminary injunction—Granted

(Record corresponds in other material respects to record in Youngstown Steel and Tube Co., Case No. 1635-52, D. D. C.)

From Record in United States Steel Company v. Charles Sawyer (No. 1624-52, D. D. C.; No. 11,405, D. C. Cir.)

Notice of Special Appearance

Motion to Dismiss or, in Lieu Thereof, to Quash the Return of Service of Summons

(Record corresponds in other material respects to record in United States Steel Co., Case No. 1625-52, D. D. C.)

From Record in Youngstown Sheet and Tube Company v. Charles Sawyer (No. 1550-52, D. D. C.; No. 11410, D. C. Cir.)

Motion for temporary restraining order

Order of Holtzoff, J., denying temporary restraining order

Notice of Special Appearance—(Omitted. Corresponds to notice printed in United States Steel Co., Case No. 1624-52, D. D. C., printed *supra.*)

Motion to Dismiss or, in Lieu Thereof, to Quash the Return of Service of Summons—(Omitted. Corresponds to motion printed in United States Steel Co., Case No. 1624-52, D. D. C., printed *supra.*)

(Record corresponds in other material respects to record in Youngstown Sheet and Tube Co., Case No. 1635-52, D. D. C.)

[fol. 1601] From Record in the Armco Steel Corporation, et al. v. Charles Sawyer, individually and as Secretary of Commerce (No. 1700-52, D. D. C.; No. 11,413, D. C. Cir.)

Complaint for declaratory judgment, permanent injunction and other relief.

Motion for Preliminary Injunction.

(Record corresponds in other material respects to record in Youngstown Sheet and Tube Co. case No. 1635-52, D. D. C.)

From Record in Bethlehem Steel Co., et al. v. Charles Sawyer, individually and as Secretary of Commerce (No. 1549-52, D. D. C.; No. 11,406, D. C. Cir.)

Complaint for Declaratory Judgment and Injunctive Relief.
Affidavit of R. E. McMath.
Motion for a Temporary Restraining Order and Order to Show Cause.
Order of Holtzoff, J., denying Temporary Restraining Order (omitted, printed *supra*).
Motion for Preliminary Injunction.
Affidavit of Bruce Bromley in Support of Motion for Preliminary Injunction.

(Record corresponds in other material respects to record in Youngstown Sheet and Tube Co. case No. 1635-52, D. D. C.)

From Record in Jones & Laughlin Steel Corporation v. Charles Sawyer (No. 1581-52, D. D. C.; No. 11,409, D. C. Cir.)

Complaint.
Motion for temporary restraining order and preliminary injunction.
Affidavit of William R. Elliot.

(Record corresponds in other material respects to record in Youngstown Sheet and Tube Co. case No. 1635-52, D. D. C. Omitted in printing.)

From Record in Republic Steel Corporation v. Charles Sawyer, Secretary of Commerce (No. 1647-52, D. D. C.; No. 11,407, D. C. Cir.)

Complaint.
Affidavit of Eugene Magee.
Affidavit of John M. Schlendorf.
Motion for Preliminary Injunction.

[fol. 1602] (Record corresponds in other material respects to record in Youngstown Sheet and Tube Co. case No. 1635-52, D. D. C.; Omitted in printing.)

From Record in Republic Steel Corporation v. Charles Sawyer (No. 1539-52, D. D. C.; No. 11,408, D. C. Cir.)

Motion for temporary restraining order.

Order of Holtzoff, J., denying temporary restraining order (omitted, printed *supra*).

Notice of Special Appearance (Omitted. Corresponds to notice printed in United States Steel Co. case, No. 1624-52, D. D. C., printed *supra*.)

Motion to Dismiss or, in Lieu Thereof, to Quash the Return of Service of Summons (Omitted. Corresponds to motion printed in United States Steel Co. case, No. 1624-52, D. D. C., printed *supra*).

(Record corresponds in other material respects to record in Republic Steel Corporation case No. 1647-52, D. D. C.)

From Record in E. J. Lavino & Company v. Charles Sawyer, individually and as Secretary of Commerce (No. 1732-52, D. D. C.; No. 11,412, D. C. Cir.)

Complaint.

Exhibits A, B, D—omitted in printing.

Exhibit C—Notice of Taking Possession.

Exhibit E—Letter from E. J. Lavino & Co. to Charles Sawyer dated April 10, 1952.

Exhibit F—Telegram from Charles Sawyer to E. J. Lavino & Co. dated April 12, 1952.

Exhibit G—Telegram from E. M. Lavino to Charles Sawyer dated April 14, 1952.

Motion for preliminary injunction.

Statement of points and authorities in support of motion for preliminary injunction.

Affidavit of Andrew Leith.

Affidavit of Charles Sawyer.

Affidavit of George B. Gold (with Exhibit A thereto).

Exhibit A—Sheridan, Pa. Plant—Payroll ending 4/13/52.

(Record corresponds in other material respects to record in Youngstown Sheet and Tube Co. case No. 1635-52, D. D. C. Omitted in printing.)

[fol. 1603] Transcript of proceedings before Holtzoff, J., April 9, 1952.

Transcript of proceedings before Bastian, J., April 10, 1952.

Transcript of proceedings before Pine, J., April 10, 1952.

Transcript of proceedings before Pine, J., April 24-25, 1952.

Transcript of proceedings before Pine, J., April 30, 1952.

From record in Court of Appeals (Case Nos. 11,404-11,413).

Application for Stay pending appeal from order granting preliminary injunction, Case No. 11,411 (Applications in cases Nos. 11,404-11,410 and 11,412-11,413 are identical and are omitted in printing).

Order dated April 30, 1952 staying orders of the United States District Court for the District of Columbia.

Application of Appellees to Attach Condition to Stay in Order to Protect Appellees from Irreparable Injury.

Order dated May 1, 1952 denying application of appellees to attach condition to stay.

Opinion of the Court dated May 2, 1952.

This Stipulation.

[fol. 1604] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 744

YOUNGSTOWN SHEET AND TUBE COMPANY ET AL., Petitioners,

vs.

CHARLES SAWYER

ORDER ALLOWING CERTIORARI—Filed May 3, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is assigned for argument on Monday, May 12th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton, with whom Mr. Justice Frankfurter concurred, voted to deny certiorari, and filed a memorandum expressing their reasons therefor.

[fol. 1605] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 745

CHARLES S. SAWYER, Secretary of Commerce, Petitioner,

vs.

YOUNGSTOWN SHEET AND TUBE COMPANY ET AL.

ORDER ALLOWING CERTIORARI—Filed May 3, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is assigned for argument on Monday, May 12th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton, with whom Mr. Justice Frankfurter concurred, voted to deny certiorari, and filed a memorandum expressing their reasons therefor.

[fol. 1606] SUPREME COURT OF THE UNITED STATES

JOURNAL OF SATURDAY, MAY 3, 1952

Present: Mr. Chief Justice Vinson, Mr. Justice Black, Mr. Justice Reed, Mr. Justice Frankfurter, Mr. Justice Douglas, Mr. Justice Jackson, Mr. Justice Burton, Mr. Justice Clark, and Mr. Justice Minton.

No. 744. The Youngstown Sheet and Tube Company et al., petitioners, *v.* Charles Sawyer; and

No. 745. Charles Sawyer, Secretary of Commerce, petitioner, *v.* The Youngstown Sheet and Tube Company et al. On petitions for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit. *Per Curiam:* Certiorari granted. Mr. Justice Burton, with whom Mr. Justice Frankfurter concurred, voted to deny certiorari, and filed a memorandum expressing their reasons therefor. The cases are assigned for argument on Monday, May 12, next.

The order of the District Court entered April 30, 1952, is hereby stayed pending disposition of these cases by this Court. It is further ordered, as a provision of this stay, that Charles S. Sawyer, Secretary of Commerce (respondent in No. 744 and petitioner in No. 745) take no action to change any term or condition of employment while this stay is in effect unless such change is mutually agreed upon by the steel companies (petitioners in No. 744 and respondents in No. 745) and the bargaining representatives of the employees.

Memorandum by Mr. Justice Burton with whom Mr. Justice Frankfurter concurred:

The first question before this Court is that presented by the petitions for a writ of certiorari bypassing the Court of Appeals. The constitutional issue which is the subject of the appeal deserves for its solution all of the wisdom that our judicial process makes available. The need for soundness in the result outweighs the need for speed in reaching it. The Nation is entitled to the substantial value inherent in an intermediate consideration of the issue by the Court of Appeals. Little time will be lost and none will be wasted in seeking it. The time taken will be available also for constructive consideration by the parties of their own positions and responsibilities. Accordingly, I would deny the petitions for certiorari and thus allow the case to be heard by the Court of Appeals. Such action would eliminate the consideration here of the terms of the stay of the order of the District Court heretofore issued [fol. 1607] by the Court of Appeals. However, certiorari being granted here, I join in all particulars in the order of this Court, now issued, staying that of the District Court.

Adjourned until Monday, May 5, next, at 12 o'clock.