

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

NO. 860

SIOUX FALLS STOCK YARDS COMPANY,)
a corporation, WILLIAM MORLEY and)
HARRY MORLEY,)
Plaintiff and Respondents.)

-vs-)

CLARENCE C. CALDWELL, as Attorney General for the)
State of South Dakota and Ex-Officio member of the)
State Securities Commission of the State of South Dakota;)
HARRY O'BRIEN, as Insurance Commissioner of the)
State of South Dakota, and Ex-Officio member of the)
State Securities Commission of the State of South Dakota;)
Joseph L. Wingfield, as Public Examiner of the State of)
South Dakota and Ex-Officio member of the State)
Securities Commission, and Dan E. Hanson, as State's)
Attorney of Turner County, South Dakota.)
Defendants and Appellants.)

Appeal From the District Court of the United States, District of South Dakota, Eastern
Division.

MOTION TO ADVANCE.

Now come the appellants, and move the Court to advance the above entitled cause for
hearing and argument to an early date convenient to the Court.

In support of the motion to advance appellants respectfully show to the Court:

2.

This action was brought by respondents in the United States District Court for the District of South Dakota for the purpose of obtaining a permanent injunction against said appellants restraining said appellants from instituting criminal actions against respondents for violation of chapter 275, of the session laws of the State of South Dakota for the year 1915. An application was made by respondents to the Judge of said Court for a temporary or interlocutory injunction during the pendency of said action. A hearing was had upon the application of respondents for such interlocutory injunction under the provisions of section 266, of the act of Congress entitled "An act to codify, revise and amend the laws relating to the Judiciary", approved March 3rd, 1911, as amended by act of March 4th, 1913(37 Stat.L. 1013). The Judge of the District Court called to his assistance to hear and determine the application, two other Judges, as provided by said statute, namely, United Circuit Court Judge Walter H. Sanborn, and United States District Judge Thos. C. Munger, and an order was made in said cause by the said Judges, which granted the application of respondent for an interlocutory injunction, and which restrained appellants from instituting and prosecuting any actions, civil or criminal, against respondents under the aforesaid act of the legislature of the State of South Dakota, for alleged violations thereof, and from taking any proceedings for the enforcement of said act, against the said respondents. From this interlocutory order of injunction appellants have appealed to the Supreme Court of the United States.

The South Dakota act in question (Session Laws of 1915, page 657) is popularly known as a "Blue Sky Law." It was passed at the 1915 session of the legislature of South Dakota, was approved March 15th, 1915, and went into effect on July 1st, 1915. This act creates "A State Securities Commission" to consist of the public Examiner, the Attorney General and Commissioner of Insurance. It requires every person, corporation, copartnership, company or

3.

association, except those exempted under the provisions of the act, before selling, offering for sale, taking subscriptions for or negotiating for the sale in any manner whatsoever, in the State of South Dakota, any stocks, bonds, investments, contracts or other securities, of its own issue, to make application for a license or permit, and submit certain State Securities Commission, and to pay a filing fee prescribed by this statute. The said State Securities Commission shall hear such application, and if in the opinion of such Commission the sale of such contracts, stocks, bonds or other securities would work a fraud upon the purchaser, the Commission is authorized to disapprove the sale of same. If, however, said Commission shall not find that the proposed plan of business, or the proposed contracts, stocks, bonds or other securities are fraudulent, or are of such a nature that the sale of such contracts, stocks, bonds or other securities would in the opinion of the Commission work a fraud upon the purchaser thereof, then it is authorized to approve the sale of the same in the State of South Dakota, and issue its certificate to that effect. It is made unlawful for any investment company or dealer or representative thereof, to sell, take subscriptions for or negotiate for the sale in any manner whatever in South Dakota, any stocks, bonds, investment contracts or other securities, unless and until the said Commission has approved thereof and issued its certificate in accordance with the provisions of the statute. Penalties by fine and imprisonment in the county jail are prescribed for violations of the act.

Respondent's Bill of Complaint and Application shows that the complainant, the Sioux Falls Stock Yards Company, is a corporation of the state of Colorado, and that the complainants, William Morley and Harry Morley, are residents and citizens of the State of Iowa. That during the year 1915, both before and after July 1st, of that year, the Sioux Falls Stock Yards Company was engaged in the business of building and constructing a stock yards in the City of Sioux Falls, Minnehaha County, South Dakota, and was engaged at such time in selling certain of its capital

4.

stock for the purpose of raising sufficient capital to complete the construction of its said stock yards in the City of Sioux Falls. That the complainants, William Morley and Harry Morley were at such times engaged in the business of selling the stock of the Sioux Falls Stock Yards Company within the State of South Dakota. That in October, 1915, the defendant, Dan E. Hanson, as State's Attorney of the County of Turner, and State of South Dakota, at the instigation and request of the other defendants as members of the State Securities Commission, caused to be instituted against the complainants criminal proceedings for the violation of the provisions of said chapter 275, session laws of South Dakota for the year 1915, and that the defendants intend and will continue to prosecute the complainants for violations of said statute so long as complainants sell or offer for sale any stock of the Sioux Falls Stock Yards Company within the state of South Dakota. The complainants desire to continue the sale of the securities and stocks of the said Sioux Falls Stock Yards Company within the State of South Dakota, and that the business of said corporation cannot be promoted without the continued sale of its stock. That the acts of defendants under said chapter 275 are depriving complainants of the right to sell the capital stock of said Sioux Falls Stock Yards Company within the State of South Dakota, and deprives them of their property without due process of law in violation of section 1 of article 14 of the constitution of the United States and Section 2 of article 6, constitution of the State of South Dakota; that there is thereby denied to the complainants the equal protection of the laws as guaranteed to them by the fourteenth amendment to the Federal Constitution; that the law imposes a burden upon and practically prohibits interstate commerce, contrary to section 8 of article 1, of the constitution of the United States, and said statutes attempt to vest and delegate to the said State Securities Commission judicial powers unauthorized by law.

5.

The hearing for the interlocutory injunction was had upon the Bill of Complaint, which constituted the showing and application for the complainants. The appellants conceded the correctness of the facts alleged by complainants but contended that same did not constitute grounds for an injunction, thus in effect demurring to the application of complainants. The Court rendered no formal opinion but in the interlocutory injunction Order hereinbefore described, made a finding that chapter 275, session laws of South Dakota for the year 1915, was violative of the constitution of the United States, basing such finding in the order upon the decisions in *Alabama & No. Transportation Co. vs. Doyle*, 210 Fed. 173, *Wm. R. Compton Co. vs. Allen, et al*, 216 Federal 537, and *Bracey vs. Darst*, 218 Federal 482. The issue upon the appeal to this Court as made by the pleadings and record and the decision of the lower Court, is as to the constitutionality under the Federal Constitution of the said South Dakota Statute.

As reason why it is especially urgent and desirable that the cause in this Court be advanced to an early hearing, appellants enumerate the following:

1. That the issues and questions involved in this appeal are matters of public concern to all the people of South Dakota in that they involve the validity of a statute regularly passed and approved, and designed to protect the public against fraud.
2. That public officers of the state are charged with the administration and enforcement of this statute, and such administration and enforcement is seriously embarrassed by the question as to the validity of such statutes raised by the decision of the Federal District Court.
3. That such officers are compelled to take the risk of enforcing an invalid statute, or of allowing a valid statute to remain ignored and unenforced until its validity is determined.

6.

4. That such officers believing in the validity and constitutionality of the statute are insisting upon its enforcement except as they have been restrained by the Court as to the complainants in this case.

5. That investment companies and persons dealing in stocks, bonds and other securities within the State of South Dakota, are being compelled to submit to the provisions of a statute which may be determined to be unconstitutional and void; or to determine for themselves at their peril that same is unconstitutional and void, and take the risk of subjecting themselves to the penalties provided therein.

6. That the situation during the pendency of this appeal, and until the validity and constitutionality of said statute is finally determined, is such as will likely create a multiplicity of suits because of the uncertainty with reference to the validity of the law.

7. That the business of dealing in stocks, bonds and securities of investment companies is very extensive throughout the state of South Dakota; that the number of people engaged in selling stocks and securities of investment companies is large, all of whom will be directly affected in the determination of the question of the validity of such law. That the business of selling such stocks and securities reaches throughout the entire state in all sections thereof, and extends to all classes of people, and the administration of the law affects the entire people of the state.

8. That more than twenty states of the United States have passed blue sky laws in some form. That the question as to the power of the states to protect its people from fraud in the sale of stocks and securities under these laws is a new question but one of the greatest importance to the people throughout all of these various states. That the demand and need for legislation along this line is shown by the passage of laws to this end in so many states. That it is

7.

important and urgent in order to protect the public from fraud that the scope of the authority of the states under the Federal constitution to legislate along these lines, be determined to the end that proper and valid legislation may be secured as far as possible from the states, and to the end that the people, through Congress may supply the needed legislation along these lines where the power to legislate is denied the states.

WHEREFORE, Appellants respectfully submit their Motion together with the foregoing reasons in support thereof.

Clarence C. Caldwell
Attorney General.

Byron S. Payne
Asst. Attorney General.

Solicitors for Appellants.

The plaintiffs and respondents in the above entitled action hereby join in the foregoing motion to advance, and respectfully ask that said motion be granted, and they hereby waive all notice of hearing of the same.

Solicitors for Respondents.