Virginia Vs. West Virginia

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Court : US Supreme Court

Decided On : 1911

Appeal No. : 222 U.S. 17

Appellant : Virginia

Respondent : West Virginia

Judgement :

Virginia v. West Virginia - 222 U.S. 17 (1911)
U.S. Supreme Court Virginia v. West Virginia, 222 U.S. 17 (1911)

Virginia v. West Virginia

No. 3, Original

Motion to proceed with the further hearing and termination of the case

Submitted October 10, 1911

Motion overruled October 30, 1911

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I N EQUITY

SYLLABUS

Even if the question in litigation is important and should be disposed of without undue delay, a state cannot be expected to move with the celerity of an individual; a motion made in this case by complainant that the court proceed to determine all questions left open by the decision in 220 U. S. 220 U.S. 1 denied without prejudice.

The conference suggested by this Court, 220 U.S. 220 U. S. 36 , is one in the cause to settle the decree, and not to effect an independent compromise out of court.

The facts are stated in the opinion.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a motion on behalf of the Commonwealth of Virginia that the court proceed to determine all questions

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left open by the decision of March 6, 1911. 220 U. S. 220 U.S. 1. The grounds of the motion are these: on April 20, 1911, the Virginia Debt Commission wrote to the Governor of West Virginia, referring to the suggestion of a conference between the parties in the decision, and requested that he would take steps that would lead to such a conference at an early date. At that time, the Governor of West Virginia had called an extra session of the legislature upon another matter. The Constitution forbade the legislature, when so convened, entering upon any business except that stated in the call, but as there were twenty-six days between the call and the session that followed it, there was time for the Governor to issue a further proclamation on the subject of the debt. The Governor, in his message to the legislature, referred to the matter, and put as questions to be considered whether the appointment of the Virginia Debt Commission was enough to require West Virginia now "to take the initiative," and whether a commission should be appointed to meet the Virginia Commission. He also stated that if, without formal

action of three-fifths of the body under the constitution, a majority should express to him the opinion that the legislature ought to be called into extraordinary session to consider the matter, he should deem it sufficient reason for a call. But it seems that he did not use his power of his own motion, or receive such an expression as induced him to use it, and the legislature does not meet in regular session until January, 1913. The Commonwealth of Virginia concludes from these facts that there is no likelihood of a conference with any satisfactory results.

The Attorney General of West Virginia answered that the members of the legislature convened in May, 1911, were elected before this cause had been argued, and under conditions that left them uncertain as to the wishes of their constituents; that the Governor was of opinion that he could not constitutionally amend his proclamation so

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as to embody consideration of the debt, and that there is no one in West Virginia except the legislature that has power to deal with the matter. He then suggested a doubt whether the Virginia Debt Commission was empowered to deal with the case in its present phase in view of the provision in the resolution creating it that it should not negotiate except upon the basis that Virginia is bound only for the two-thirds of the debt that she had provided for, and concluded that this Court ought not to act before the West Virginia Legislature, at its next regular session, can consider the case in the spirit anticipated by the opinion of the court.

With regard to the doubt implied by the Governor of West Virginia whether it now is incumbent upon that state to take the initiative, and that suggested by its Attorney General, whether the Virginia Debt Commission has the necessary power, we are of opinion that neither of them furnishes a just ground for delay. The conference suggested by the Court is a conference in the cause. The body that directed the institution of the suit has taken the proper step on behalf of the plaintiff, and it is for the defendant to say whether it will leave the Court to enter a decree irrespective of its assent, or will try to reach a result that the court will accept. The conference is not for an independent compromise out of court, but an

attempt to settle a decree. The provision as to negotiations, in the Virginia resolution preceding the statute authorizing this suit, refers, we presume, to a settlement out of court, and has nothing to do with the conduct of the cause. If the parties in charge of the suit consent, this Court is not likely to inquire very curiously into questions of power if, on its part, it is satisfied that they have consented to a proper decree.

A question like the present should be disposed of without undue delay. But a state cannot be expected to move with the celerity of a private business man; it is enough if

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it proceeds, in the language of the English Chancery, with all deliberate speed. Assuming, as we do, that the Attorney General is correct in saying that only the legislature of the defendant state can act, we are of opinion that the time has not come for granting the present motion. If the authorities of West Virginia see fit to await the regular session of the legislature, that fact is not sufficient to prove that, when the voice of the state is heard, it will proclaim unwillingness to make a rational effort for peace.

Motion overruled without prejudice.