

Mr. Watson?

Mr. WATSON. I can appreciate the problems you might encounter in moving from the district court to the circuit court. Your statement on page 3 that no provision is made for such a restraining order by a single judge—I do not see such restriction in the bill.

In fact, on page 5, line 7, it says specifically for the court of appeals in its discretion may restrain or suspend in whole or in part.

In other words, you will be moving from a district judge to a circuit judge but they would still have the right to give a restraining order, would they not?

Mr. BAKER. We construe that as requiring action not by a single judge of the court of appeals but by the court as such which ordinarily is composed of a panel of three judges.

Mr. WATSON. But is it not within the power and prerogative of a single judge to issue a restraining order?

I will grant you the filing of a petition shall not in and of itself stay the execution of any order of the Commission.

Perhaps we can get the Commission's counsel back up here and seek his interpretation of it.

My understanding of it was that even a single judge may temporarily restrain the execution in whole or in part of any pending order or orders that may be issued.

Mr. BAKER. We are apprehensive that it would not be so construed.

Mr. WATSON. If we could get some legislative history to help assure you in that regard, that would remove some of your objection to this bill?

Mr. BAKER. On that aspect, yes, indeed.

The CHAIRMAN. Would the gentleman like to have the counsel for the Commission?

Mr. HARVEY. I think that it would be helpful in a showing on irreparable damage here. What would counsel's opinion be?

Mr. GINNANE. It is counsel's opinion that this provision based upon many provisions for review of orders of other agencies, would require that the order be issued by the court and not by a judge.

In court of appeals practice you don't have to have three judges do it. Two can do it.

As I understand what they do on the review of the orders of these other agencies, a party gets before one judge and if he thinks the application for a stay has some merits, if necessary, he calls up another court of appeals judge.

I have discussed this with members of the Judicial Conference and I understand at their meeting they considered specifically the question it should be one judge or the court to issue a temporary restraining order.

They concluded that they could see no reason why there should be a different procedure solely for the orders of the Interstate Commerce Commission.

Mr. Chairman, may I add a brief comment or two?

Mr. WATSON. May we keep this matter in practical context?

As a practical matter, if a petitioner goes to a judge who determines there is merit to the request to stay the execution of the Commission's order, then there would be no difficulty in him requesting another judge to join him in such a restraining order.