1981 May 12

[L. LOIZOU, HADJIANASTASSIOU AND DEMETRIADES, JJ.]

THE MUNICIPALITY OF LIMASSOL,

Appellant-Plaintiff,

v.

ARCHBISHOP OF CYPRUS CHRYSOSTOMOS AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal No.* 5955).

Civil Procedure—Practice—Stay of proceedings—Discretion of the Court—Principles applicable—Decision by Municipality that building in a ruinous and dangerous state and action for a declaration entitling it to pull it down—Stay of proceedings in the action pending determination of recourse against said decision—Could not properly be made, in the circumstances of this case, in view of urgent nature of the case which had to be decided as quickly as possible in the public interest.

Respondent-defendant 1 was the owner of a two-storey building at Limassol and respondent-defendant 2 was the tenant of the ground-floor of such building and was using it as a barber shop. The appellant Municipality after examining the said building and coming to the conclusion that it was dangerous to the people passing by as well as to the safety of the tenant and those visiting his barber shop addressed a letter calling upon respondents 1 and 2 to take immediate steps to pull down the building. The respondents failed to comply with this notice and the appellant Municipality brought an action against them at the District Court of Limassol seeking, *inter alia*, a declaration that it was entitled to pull down the building. The respondents filed a recourse in the Supreme Court, under Article 146 of the Constitution, challenging the validity of the above decision of the Municipality and also filed an application at the District Court of Limassol for an Order that all proceedings in the above action be stayed pending the final determination of the recourse.

Upon appeal against the order of the District Court staying the proceedings:-

Held, that though the Court has an inherent jurisdiction to stay proceedings such jurisdiction is a discretionary one to be exercised very sparingly and only in exceptional cases when an action ought not to go on beyond all reasonable doubt; that the mere fact that the respondents have applied before a Judge of the Supreme Court, in a recourse under Article 146 of the constitution, in the circumstances of this case, is not a reason to grant a stay of the proceedings in view of the urgent nature of the proceedings which had to be decided as quickly as possible in the public interest once the interest of the public, including the tenant and the people visiting his shop, was involved; that, therefore, the trial Judge has not exercised his inherent powers to grant a stay properly; accordingly the appeal must be allowed and the trial Judge should hear and determine the proceedings.

Appeal allowed.

Cases referred to:

Shackleton v. *Swift* [1913] 2 K.B. 312;

Attorney-General v. *Ibrahim*, 1964 C.L.R. 195;

Hinckley and South Leicestershire Permanent Benefit Building Society v. *Freeman* [1940] 4 All E.R. 212 at pp. 216-217;

Yates and Another v. *Paterson and others* [1954] 1 All E.R. 619 at p. 621;

HjiNicolaou v. *Gavriel and Another* (1965) 1 C.L.R. 421 at p. 432;

State Machinery Import Co. v. *Limassol Licensed Porters Association and Others* [1979] 1 C.L.R. 506;

Lawrance v. *Norreys* [1890] A.C. 210, at p. 219;

Salaman v. *Secretary of State for India* [1906] 1 K.B. 613 at p. 638;

Goldsmith v. *Sperrings Ltd.*, [1977] 2 All E.R. 566 at pp. 574-575;

Starr v. *National Coal Board*, [1977] 1 All E.R. 243 at pp. 247-248, 250;

Thompson v. *South Easter Railway Co.* [1882] 9 Q.B.D. 320;

Adamson v. *Tuff Moore and Roberts* [1881] 44 Law Times 420;

Perry v. *Croydon Borough Council* [1938] 3 All E.R. 670;
Williams v. *Hunt* [1905] 1 K.B.D. 512;
Poulette v. *Hill* [1893] 1 Ch. 277.
Re Chapman's Settlement [1953] 1 All E.R. 103.

Appeal.

Appeal by plaintiff against the order of the District Court of Limassol (Artemis, D.J.) dated the 10th May, 1979, (Action No. 2602/78) whereby all proceedings in the above action were stayed pending the final determination of recourse No. 32/79 filed with the Supreme Court by defendant 2.

J.P. Potamitis, for the appellant.

A.P. Anastassiades, for the respondents.

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: In this case the appellant, the Municipal Corporation of Limassol, appeals against the order of a Judge of the District Court of Limassol dated 10th May, 1979, whereby he stayed the proceedings in Action No. 2602/78 pending the final determination of an application made by respondent 2 before one member of the Supreme Court of Cyprus in recourse No. 23/79.

On 20th November, 1978, the Municipal Corporation of Limassol commenced an action by a writ of summons against defendant 1, the Archbishop of Cyprus, and defendant 2 Costas Papoutsos of Limassol, informing them that if they would fail to enter an appearance, judgment would be signed against them in their absence.

By the statement of claim, the Municipal Corporation alleged that defendant 1 is the owner of a two storey building situated at Christodoulos Hadjipavlou Street No. 133, and within the municipal limits. Defendant 2 is the tenant of the ground floor of the said building and has been using it as a barber shop.

The Committee of the Municipal Corporation, having examined the safety of that building—being a ruinous one—reached the conclusion that it was dangerous to the people passing by through the said street, as well as to the safety of the tenant and

those who visited his barber shop including the owners of the neighbouring building.

With that in mind, the Committee addressed a letter to the tenant drawing his attention to the dangers, and called upon the owners, defendants 1 and 2, to take steps immediately to pull down that building. In addition, the said Committee made it clear that if they failed within a period of three days to do so, the Committee would proceed with the pulling down of the said building and of taking every necessary step for the safety of the public; and that they would hold them liable for all the costs needed for that operation.

The defendants, having failed to comply with the contents of that notice, and particularly because defendant 2 refused to leave the said premises, the Municipal Corporation sought a declaration of the Court (1) that it was entitled to pull down the said building belonging to defendant 1 and occupied by defendant 2; (2) an order prohibiting both defendants from stopping and/or interfering with the pulling down of the whole building; (3) an order ordering both defendants to evacuate immediately the said building in order to enable the plaintiffs to pull it down; and (4) that the plaintiffs would be entitled to collect from defendant 1 all the costs which the plaintiffs would spend for pulling down the building.

On 28th February, 1978, the plaintiffs made an application seeking judgment against defendant 2 for failing to file his defence in time. On 28th December, 1978, counsel for the plaintiffs made an application seeking judgment against defendant 1 as per the statement of claim alleging that defendant 1 failed to enter an appearance to the writ of summons which was served on him on 30th November, 1978.

On 23rd January, 1979, counsel appearing for defendant 2 made an application to the Court viz., that all proceedings in this action be stayed pending the final determination of applicant's recourse No. 32/79, filed with the Supreme Court of Cyprus, (copy of which is attached hereto as *exhibit* A). This application was based on Article 146(4) and (5) of the Constitution of the Republic of Cyprus, and the inherent powers of the Court, and rule 48 of the Civil Procedure Rules.

In support of this application, the affiant, Costas Papoutsos, alleged that he was a statutory tenant of the premises in question, and according to the advice of his lawyers, the letter addressed to him dated 9th November, 1978, containing the said decision on which the action was based is null and void and of no effect whatsoever. In addition, the affiant alleged that he had filed a recourse 32/79 in the Supreme Court of Cyprus, and he was asking that the said decision of the Municipal Corporation of Limassol be declared null and void for the reasons stated in the copy of the recourse marked *exhibit* A. The affiant further alleged that because there was a likelihood—as his lawyers advised him—that the Supreme Court might decide that the decision of the Municipal Corporation is not a valid one, it is just and reasonable that the trial Court should issue or grant an order suspending the operation of the proceedings in the present action until the determination and/or decision of the Supreme Court. The applicant concluded that if by chance the Court will refuse to grant an order, the refusal would have adverse results regarding the present case and it would entail irreparable loss to him. Finally, he prayed that it was just and reasonable to grant in his favour the order sought.

On 30th January, 1979, counsel for defendant 2 filed a notice opposing the application of the Municipal Corporation dated 28th December, 1978, and fixed for hearing on the 2nd February, 1979. This application was based on rule 48, on the inherent powers of the Court and Article 146(4) and (5) of the Constitution of the Republic.

In support of this application, the affiant, Costas Papoutsos, alleged that the relief sought by the plaintiffs, the Municipal Corporation in the said action No. 2602/78, depends on the legality or not of the decision of the said Municipal Corporation which has been sent to him by a letter dated 9th November, 1978. He further stated that because he was disputing both the real facts referred to in the said letter of the Municipal Corporation, and particularly those upon which the said Municipal Corporation has based the relevant decision, as well as the legal and constitutional validity of such a decision after the advice given to him by his lawyers, he filed in the Supreme Court a recourse against the Municipal Corporation by which he is doubting the legality of the said decision for the reasons appearing in the said recourse.

In addition, he alleged that the District Court of Limassol lacks competence and jurisdiction to examine the validity or not of the said decision of the Municipal Corporation on which the said Corporation relies in the present action; and that the present application *ex parte* of the plaintiffs cannot stand because both his application, as well as the filing of his defence in the present action should be filed when the recourse which is pending before the Supreme Court is decided.

Finally, he went on to add that in the meantime he had filed an application to stop the proceedings in the present action till the delivery of the decision of the Supreme Court, and that the recourse has been fixed for hearing on the 15th February, 1979.

On 31st January, 1979, counsel appearing for the Municipal Corporation opposed the application of defendant 2, and the said opposition was based on Articles 144 and 146(1) of the Constitution, and on the Civil Procedure Rules, Order 48, rule 4.

In support of this application, the Municipal Secretary Savvas Georghiou, in his affidavit said that the application by the applicant cannot stand and cannot be supported by the legal and factual elements (as he was advised by counsel). Finally, in paragraph 4 he said that the adjournment of the present proceedings in the action would prolong the time of trying the case and in accordance with the opinions of the municipal engineers—which he believes as being true—the passage of time entails danger to the passers by and to the owners of the neighbouring buildings, as well as to all those who use the barber shop of defendant 2. Finally, he denied that the pulling down of the said building would cause irreparable damage to defendant 2, but he went on to state that even if the recourse would succeed, it was only a question of money, and the municipal corporation was in a position to compensate defendant 2.

The trial Judge, having considered the arguments and contentions of both counsel, he reached the conclusion that the proceedings should be stayed pending the determination of the recourse of the applicant. The learned Judge, in taking that stand said at p. 22:-

> "Even though I am of the view that proceeding and deciding upon this Action will not mean encroaching upon the exclusive jurisdiction of the Supreme Court as I will not

be deciding upon the validity of the decision (since the decision is presumed to be a valid one until the opposite is decided), I feel that if I proceed and determine the Action and, if I give Judgment for the Plaintiffs and subsequently the Supreme Court annuls the decision I will have enforced a void decision and despite the pronouncement of the invalidity of the act it will be impossible to make redress if the building will have been demolished by then. In such a case I feel that compensation would not be a sufficient remedy and I feel that what ought to be done is to preserve the status quo until the question of the validity of the decision is determined by the appropriate Court.

As legal issues must be determined as speedily as possible this Court should not be allowed to say that the fact that a decision upon the matter by the Supreme Court may entail delay, is a reason in favour of dismissing the Application".

There is no doubt that subject to the provisions of the Municipal Corporations Law (as re-enacted) and of any other law in force, the duties and powers of the Municipal Councils are enumerated in part 3 of the law. According to s. 137, the council has power to deal also with buildings which are in a dangerous state. This section says that:

"If any building within any municipal limits is deemed by the council to be in a ruinous state and dangerous to passengers or to occupiers of the neighbouring buildings, the council shall immediately cause a proper hoarding or fence to be put for the protection of passengers, and shall cause notice in writing to be given to the owner of the building, if he is known and resident within the municipal limits, and shall also cause a notice to be put on the door or other conspicuous part of the building or otherwise to be given to the occupier thereof, if any, requesting him forthwith to take down, secure or repair the building as the circumstances shall require; and if the owner or occupier does not begin to repair, take down or secure the building within the space of three days after any such notice has been so given or put up as aforesaid, and complete the repairs or taking down or securing as speedily as possible, the council may cause all or so much of the building as

shall be in a ruinous condition and dangerous as aforesaid to be taken down, repaired, rebuilt or otherwise secured in such a manner as shall be requisite:

Provided that if the condition of the building is such that in the interests of the public safety it is necessary that it be taken down, secured or repaired immediately, the council shall forthwith proceed to cause the same, or so much thereof as is in a dangerous condition, to be taken down, secured or repaired without service of notice on the owner or occupier as herein provided for. In any of the foregoing circumstances all expenses incurred by the municipal corporation in putting up every fence or hoarding and in taking down, repairing, rebuilding, or securing the building, shall be paid by the owner thereof, unless he is actually a pauper, and may be recovered as a civil debt".

The first question raised in this appeal is whether the trial Court has jurisdiction to stay proceedings pending the determination of the recourse filed by defendant 2 before the Supreme Court of Cyprus. Time and again it has been said the Court has an inherent jurisdiction to stay proceedings and that such jurisdiction is a discretionary one to be exercised by the Court if it thinks fit and in a proper case, terms may be imposed, but it ought to be very sparingly exercised and only in very exceptional cases. The general practice is, however, that you should not stay actions unless the action, beyond all reasonable doubt, ought not to go on. (See Vaughan Williams, Lord Justice in *Shackleton* v. *Swift* [1913] 2 K.B. at p. 312).

Counsel for the appellant argued, both before the trial Court and in this Court, that the Court in deciding to examine the question of staying the proceedings, should look in exercising its discretion by applying the principles applicable in cases of interim orders, and that in the present case should determine (a) that there is no question of irreparable damage once the building is in a ruinous condition and should not stay the proceedings because the Municipal Corporation is in a position to compensate defendant 2 for any loss which he may suffer; (b) that it was not necessary for the applicant to file a recourse before the Supreme Court under Article 146 of the Constitution because the learned Judge had jurisdiction to decide questions

of unconstitutionality of a law or a decision just raised before him. He relies on *The Attorney-General* v. *Ibrahim*, 1964 C.L.R. 195. Finally, counsel invited the Court to take the stand that this is not a proper case for the Court to have exercised his discretionary power to stay the proceedings.

In *Shackleton* v. *Swift* [1913] 2 K.B. 304, Vaughan Williams, L.J., dealing with the question of staying the proceedings in an action, had this to say at pp. 311–312:-

> "To stay an action, to say that an action shall not be tried, is generally to take a step which ought not to be taken except in a very clear case. It not unfrequently arises under the Judicature Act and Rules that there is an application to stay an action, or an application to declare that an action is frivolous, and in those cases the practice under the Judicature Act has always been not to stay the action under the general powers of the Judicature Act, because it is a strong thing to say to a plaintiff who is bringing an action that his complaint will not be heard, to say that it will be stayed without there having been a trial, without the evidence having been heard. Generally speaking, the consequence is that the judges are very slow to stay actions; that does not mean that there is no discretion in the judges; but the general practice is that you should not stay actions unless the action, beyond all reasonable doubt, ought not to go on.....
>
> In the present case we have this difficulty—that Rowlatt J. came to the conclusion that this action ought to be tried, it seems a strong thing for other judges to say that there is clearly no cause of action; especially is that so in a case where the power to stay the action is a discretionary power. The Judge who heard the case at chambers exercised his discretion".

In *Hinckley and South Leicestershire Permanent Benefit Building Society* v. *Freeman*, [1940] 4 All E.R. 212, Farwell, J., dealing with the adjournment of proceedings, and with the inherent power of a Court to adjourn proceedings for a stated time, said at pp. 216–217:-

> "The proposition that this Court has not power to adjourn any matter on any proper ground is new to me. No doubt

the Court cannot postpone the hearing of a matter indefinitely, because, if a Court did so, it might thereby lead to defeating justice altogether, and a mere arbitrary refusal to hear a particular case is not a matter which, when dealing with litigation, would ever become a recognised thing. I cannot conceive any Judge taking a course of that sort. However, to say that the Court has not always an inherent power to direct that any matter which comes before it should stand over for a period if the Court thinks that that is the proper way to deal with the matter is a proposition entirely new to me.....

If the master is wrong in a particular case in thinking that that is the way to proceed, the litigant has his remedy in taking the matter to the Judge, and, if the Judge takes the view which the master took and the litigant is still dissatisfied, he can go higher and obtain, if he can a reversal of the Judge's direction. To my mind, however, it is quite beyond anything which I have ever heard suggested in Court to say that the Court has not jurisdiction under its own procedure in a proper case to direct that a matter should stand over for such period as the Court, in all the circumstances, thinks justice requires.

In my judgment, the master had the jurisdiction, which was a proper jurisdiction, to make the order which he has made, and, as far as this summons seeks to get the master's direction reversed on the ground that he had no jurisdiction to make it, in my judgment, it fails, and should be dismissed".

In *Yates and Another* v. *Paterson and others* [1954] 1 All E.R. 619, Sir Raymond Evershed M.R., dealing with the very same question said at p. 621:-

"There is, I think, no doubt that, if a judge adjourns a case, just as if he refused an adjournment of a case, he has performed a judicial act which can be reviewed by this Court, though I need not say that an adjournment, or a refusal of an adjournment, is a matter prima facie entirely within the discretion of the Judge. This Court would, therefore, be very slow to interfere with any such order, but, in my judgment, there is no doubt of the jurisdiction

of this Court to entertain appeals in such matters. Counsel for the plaintiffs referred us to *Hinckley & South Leicestershire Permanent Benefit Building Society* v. *Freeman* and *Maxwell* v. *Keun* as authority for what I have said. It may well be that, if a case, and an important case, is known to be subject to appeal to the House of Lords, or from a judge of first instance to the Court of Appeal, a judge may reasonably and properly think that it is in the general public interest not to decide another case on the same lines until the result of the case under appeal has become known. I say that it may be so. It depends very much on all the circumstances of the particular case, and, if the judges of the Chancery Division have reached the conclusion that in the public interest it would be better generally to postpone dealing with applications of this kind until the decision in *Re Chapman* is known, then I should feel that it was, prima facie at any rate, a matter for the Chancery judges to decide. Whether any such decision by the judges has been come to I do not, of course, know. I have said what I have because I desire to confine my judgment to the particular case which we have before us. The point which counsel for the plaintiffs stressed most strongly before us is this. It is essential, in order that the proposed compromise should be effective at all, that the settlor should live until the date when the Court approves, if it does approve, of the present scheme. There is evidence before us to show that the settlor, who is of the ripe age of eighty years, is also in a very delicate, not to say precarious, state of health. Indeed, it is said by the deponent to the affidavit, Dr. Ritchie, that, although it is impossible to say how long he is likely to live, his health is such that he might die within a very short space of time. Whatever be the right answer to a case not affected by a consideration of that kind, it does seem to me that it might do a real injustice if this case were adjourned, perhaps for some months, and during that period the settlor were to die, and, therefore, I have come to the conclusion that we ought to intervene in this case, and that the fact that *Re Chapman* is pending before the House of Lords is not a sufficient justification for the judge's decision to adjourn the present case".

In Cyprus the question of the adjournment of cases has also

occupied the time of the Courts, and in *Eleni Gr. HjiNicolaou* v. *Mariccou Antoni Gavriel and Another*, (1965) 1 C.L.R. 421, Zekia, P. had this to say at p. 432:-

> "It should be borne in mind that the Court may adjourn the hearing of a case only 'if it thinks it expedient for the interests of justice', that is, in order to do justice between the parties and not for any other reason: see *Maxwell* v. *Keun and others*, [1928] 1 K.B. 645; [1927] All E.R. Rep. 335; *Hinkley and South Leicestershire P.B.S.* v. *Freeman* [1941] Ch. 32; [1940] 4 All E.R. 212; *Re Yates' Settlement Trusts* [1954] 1 All E.R. 619; *Efstathios Kyriacou & Sons Ltd.* v. *Mouzourides* (1963) 2 C.L.R. 1; and Civil Procedure Rules, Order 33, rule 6".

In *State Machinery Import Co.* v. *Limassol Licensed Porters Association and Others*, (1979) 1 C.L.R. 506, on March 11, 1978, the District Court of Limassol made an order in Action No. 1748/77 by which there were added ninety-six new co-defendants. Against that order there was filed civil appeal No. 5825 on March 20, 1978. On March 29, 1978, the respondents in this appeal applied for stay of the proceedings in the action pending the determination of appeal No. 5825 and in the exercise of its discretion the trial Court made an order to that effect on April 8, 1978.

On Appeal, Triantafyllides, P., said at p. 508:-

> "It is clear that, depending on whether or not the order for the addition of the ninety-six co-defendants is unheld, the respondents, as defendants in the action, will have to frame their statement of defence accordingly; they will, therefore, be affected by the outcome of appeal No. 5825, which was made against that order, especially as the action cannot be proceeded with separately against, respectively, the respondents and the ninety-six new defendants, who will continue to be defendants if the order for their addition is upheld in appeal No. 5825.
>
> We, consequently, cannot hold that it has been established to our satisfaction that the trial Judge, who granted the appeal from order for stay of proceedings, has exercised his discretion in a wrong manner, so as to render it necessary for us to intervene in favour of the appellants".

There is no doubt, having regard to the authorities quoted, that the Court may, if it thinks it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms (if any) as it may think fit. (See our own rule 6 Order 33 of the Civil Procedure Rules). But I would reiterate that unlike the jurisdiction under the Rules of Court, the Court has also an inherent jurisdiction to stay or dismiss proceedings, but such jurisdiction should be sparingly exercised and only in very exceptional cases.

In *Lawrance* v. *Norreys*, [1890] A.C. 210, H.L., Lord Herschell said at p. 219:–

> "It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved".

(See also *Salaman* v. *Secretary of State for India*, [1906] 1 K.B.D., 613, C.A. at p. 638.

In a recent case, *Goldsmith* v. *Sperrings Ltd.*, [1977] 2 All E.R. 566, Lord Denning M.R. had this to say regarding the stay or dismissal of proceedings at pp. 574–575:–

> "In a civilised society, legal process is the machinery for keeping order and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done...
>
> I know that the remedy by staying the process is a strong remedy, and only to be exercised in exceptional cases. But there are cases in which justice may require it to be done. And then it should be done if the evidence is sufficient for the purpose".

In *Starr* v. *National Coal Board*, [1977] 1 All E.R. 243, Lord Scarman, L.J., dealing with the question of whether the Court has jurisdiction to grant a stay, said at pp. 247–248:–

> "There are a number of propositions of law which are not in dispute, and I mention them straight away so that one may approach and consider that which is in issue between the parties. It is accepted that, where a plaintiff refuses to undergo a medical examination requested by a defendant, the Court does have an inherent jurisdiction to grant a stay until such time as he submits to such examination when it is just and reasonable so to do. It is also recognised that a stay, if granted, does either shut out the plaintiff from the seat of justice or compel him against his will to submit to a medical examination: and, of course, that is an invasion of his personal liberty".

Then, having quoted a number of cases on this particular issue the learned Lord Justice concluded as follows at p. 250:–

> "And so in every case, as I see it, the particular facts of the case on which the discretion has to be exercised are all-important. The discretion cannot be exercised unless each party does expose the reasons for his action. I have already indicated that I do not regard this as a question of onus of proof. There is, in my judgment, a duty on each party in such a situation to provide the Court with the necessary material known to him, so that the Court, fully informed, can exercise its discretion properly. However, I would add this comment: that at the end of the day it must be for him who seeks the stay to show that, in the discretion of the Court, it should be imposed.
>
> Applying those principles, I think that the first question, as one turns to the facts of the case, which one has to ask is: was the defendants' request for the examination of the plaintiff by Dr. X a reasonable request? I have no doubt that it was. Dr. X is a distinguished consultant neurologist. The opinion of a consultant neurologist was needed in order that the defendants might properly repair their case. Sometimes, of course, one would not have to go further, and one could, as for instance, in *Edmeades* v. *Thames Board Mills Ltd* [1969] 2 All E.R. 127, impose a stay merely because the reasonable request had been refused.

But sometimes one has to go further and to consider the plaintiff's reasons for refusing the request; and the present case is, in my judgment, such a one".

See also as to inherent jurisdiction to stay proceedings, 30 Halsburys Laws of England, 3rd edn., 407 paragraph 767 and 768 of the same textbook as to which are the circumstances in which the action may be stayed. It is equally true to say that where there are cross actions between the same parties arising out of the same matter, one of them may be stayed. (*Thompson* v. *South Eastern Railway Co.*, [1882] 9 Q.B.D. 320; and *Adamson* v. *Tuff Moore and Roberts*, [1881] 44 Law Times 420); and there is power to stay proceedings pending the trial of its action (*Perry* v. *Croydon Borough Council*, [1938] 3 All E.R. 670).

Finally, even if the plaintiff had a recourse to separate actions or proceedings in respect of the same subject matter, when all the relief to which he is entitled ought to be obtained in one action, a stay may be in one or more of the actions. (See *Williams* v. *Hunt*, [1905] 1 K.B.D. 512 at pp. 514–515, following *Poulette* v. *Hill*, [1893] 1 Ch. 277).

Having quoted a great number of authorities in a variety of circumstances in which an action may be stayed, we turn now to consider whether the trial Judge rightly and properly exercised his inherent powers to grant a stay. With respect to the decision of the trial Judge, these proceedings were of an urgent nature once it involved the interest of the public including the tenant, and the people who were visiting his barber shop.

In our view the trial Judge, as the authorities show, may grant a stay in order to do justice to the parties, and that such inherent jurisdiction to stay proceedings should be sparingly exercised, and only in very exceptional cases. This is indeed one of those exceptional cases, but with respect, the trial Judge did not give sufficient reasons, in our view of the urgency of the matter,and misdirected himself because at the end of the day it was for the respondent who sought to stay the proceedings to show that in the discretion of the Court, it should be imposed. We would, therefore, adopt and follow the reasoning of Lord Scarman in *Starr* v. *National Coal Board* (*supra*) on this point.

In view of the material before the trial Judge, and applying

the principles enunciated in a number of cases quoted earlier, and fully aware that this Court would be slow to interfere with such orders, we have decided—having regard to the general public interest, to interfere with his decision to stay the proceedings in that action. But it may well be that if a case, and an important case, is known to be subject to appeal to the Supreme Court, a Judge may reasonably and properly think that it is in the public interest not to decide another case on the same lines until the result of the case under appeal. We say that it may be so. It depends very much on all the circumstances of the particular case and the urgency of the matter. The mere fact that the respondent has applied before a Judge of the Supreme Court in a recourse under Article 146 of the Constitution, with respect, in the particular circumstances of this case, is not a reason to grant a stay of the proceedings, because there is evidence before us to show that this is an urgent case, and it is in the public interest to be decided as quickly as possible.

With that in mind, and fully cognisant that the case of *Chapman*, [1953] 1 All E. R. 103, referred to by counsel in the case of re *Yates* (*supra*), is distinguishable, and for the reasons we have given, we have reached the conclusion to allow the appeal and order accordingly that the trial Judge should hear and determine the proceedings.

For the reasons we have stated, this appeal should be allowed, but in the circumstances of this case, we make no order as to costs.

Appeal allowed. No order as to costs.