IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-A ppellee,

v.

SAMUEL OKIN,
Defendant-Appellant.

BRIEF FOR PLAINTIFF-APPELLEE

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STATEMENT OF THE CASE

THE APPEALS

This case presents three appeals from orders entered in the District Court for the Southern District of New York by Judge Simon H. Rifkind. The appeals are as follows:

1. An appeal from a preliminary injunction entered on January 7, 1943 enjoining defendant from making false and misleading statements in connection with the solicitation of proxies from stockholders of the Electric Bond and Share Company;

2. An appeal from the same preliminary injunction as resettled on February 17, 1943, and entered on March 2.1943;[1]

3. An appeal from an order entered on May 11, 1943, adjudging the appellant in contempt of court "by reason of his disobedience of the preliminary injunction entered January 7, 1943, in transmitting to stockholders of Electric Bond and Share Company

through the mails a letter dated January 11, 1943, which contained false and misleading statements . . ."

The order adjudging the defendant in contempt decreed that he is fined $4,918.63 to defray the expense of printing and mailing, postage prepaid, a copy of the said order together with a brief explanatory statement of counsel to the Securities and Exchange Commission addressed to all stockholders of Electric Bond and Share Company to whom the defendant mailed his letter dated January 11, 1943. (528)* The order further provides for remission of so much of the fine as exceeds the actual expense. (529) Under the order, the defendant may purge himself of contempt by mailing a correcting letter to the same effect but over his own signature. (530)

THE ISSUES TO BE CONSIDERED

The questions before this Court are

(1) whether the appeals from the preliminary injunction of January 7, 1943, and the resettled injunction of February 17, 1943, are moot;

(2) whether the Court below properly held the defendant in contempt of Court and properly required him to pay the expenses of correcting of the false and misleading statements contained in his letter mailed to stockholders dated January 11, 1943.

THE STATUTE AND RULES RELATING TO PROXY SOLICITATIONS

Section 12(e) of the Public Utility Holding Company Act of 1935 makes it unlawful for

"any person to solicit by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company . . . in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors . . . or to prevent the circumvention of the provisions of this title or the rules, regulations or orders thereunder."

Substantially similar provisions appear in the Securities Exchange Act of 1934[2] (Sec. 14(a)).

The Commission has promulgated, pursuant to Section 14(a) of the Securities Exchange Act, certain "proxy rules" known as Regulation X-14. By virtue of Rules U-60 and U-61, adopted under the Public Utility Holding Company Act of 1935, Regulation X-14 is made applicable to the solicitation of proxies "regarding any security of a registered holding company." Rule X-14A-5 of Regulation X-14 provides:

"No solicitation subject to Section 14 (a) of the Act shall be made by means of any form of proxy, notice of meeting or other communication containing any statement which, at the time and in the light of the circumstances under which it is made, is false or

misleading with respect to any material fact, or omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading."

In general, the proxy rules require those who solicit proxies, consents, or authorizations to make full and fair disclosure of information necessary to an intelligent exercise of the stockholder's right to give or withhold his proxy. The rules require that material used in connection with a solicitation shall give certain specified information, that soliciting material shall be filed with the Commission before it is transmitted to security holders, and that, as provided in Rule X-14A-5, information transmitted to security holders shall be truthful and not misleading.

STATEMENT OF FACTS

Some background concerning prior actions and previous communications by the defendant is necessary to a proper understanding of the facts to be considered upon the present appeals.

1. BACKGROUND

Electric Bond and Share Company (hereinafter referred to as Bond and Share) is a registered holding company within the meaning of the Public Utility Holding Company Act of 1935. Okin during the period from December 1941 to April 1942 purchased at an average cost of one dollar per share 9,000 shares of the common stock of Bond and Share (129, 155).

In September 1942 Okin began to mail copies of a certain letter to stockholders of Bond and Share. On October 2, 1942, the Commission commenced an action in the District Court for the Southern District of New York in which it sought to enjoin Okin from continuing to mail this letter. The letter did not actually request the execution of proxies on Okin's behalf but was alleged to be subject to the Commission's proxy rules because it was the beginning of a campaign by the defendant to solicit proxies for the election of a slate of directors to be named by him, and to have himself appointed an officer of Bond and Share. The complaint charged that the letter violated the Commission's rules because it contained false and misleading statements. The District Court dismissed the complaint on the ground that the letter in question was not subject to the Commission's proxy rules. This Court, in an opinion dated January 4, 1943 (*S.E.C. v. Okin*, 132 F. (2d) 784 (C.C.A. 2d, 1943)), reversed the District Court and held the letter subject to the Commission rules. It also held that if the Commission could prove the facts alleged in its complaint "it may be able not only to secure from the district court an injunction against further publication of the 'false' or 'misleading' assertions but an affirmative direction that before the defendant proceeds to solicit any proxies, he shall correct the misinformation which he has already spread among the shareholders."

2. THE PRESENT ACTION

On or about October 19, 1942, Okin mailed another letter to the stockholders of Bond and Share. This letter likewise did not request the formal execution of proxies, but the Commission was of the opinion that this letter was also subject to the Commission's rules and that it contained false and misleading statements.[4]

On November 9, 1942, Okin filed with the Commission a proposed letter and form of proxy. This letter was intended to solicit the formal execution of proxies by the stockholders of Bond and Share. The proxy form designated Okin as the stockholder's proxy to vote at a special meeting of stockholders to be called in the future and to vote to place Okin and his associates in control of the Board of Directors.

On November 18, 1942, the Commission filed its complaint in the present action seeking a preliminary and permanent injunction to restrain the appellant from mailing the proxy soliciting material he had filed on November 9, 1942 (12). The complaint charged that the proposed letter contained false and misleading statements in violation of Rule X-14A-5 of Regulation X-14 and otherwise violated the Commission's rules. The complaint also charged that the mailing of the October letter constituted a violation of the proxy rules.

On January 7, 1943, the District Court, after argument, entered a preliminary injunction sub-paragraph (b) of which prohibited the circulation of specified types of false and misleading statements. The proposed November letter was never mailed. Instead, on January 11, 1943, Okin filed with the Commission proxy soliciting material dated January 11, 1943. Although informed that in the opinion of the Commission's staff this letter also contained false and misleading statements (32, 33, 35, 36, 42, 43, 44, 92, 94), Okin mailed this letter to stockholders of Bond and Share on or about January 13, 1943 (44, 45, 59).

On January 20, 1943, the Commission served Okin with an order to show cause why he should not be adjudged in contempt on the ground that by mailing his January 11 letter he had violated the injunctive decree of the court entered on January 7.[5]

On March 1, 1943, Judge Rifkind rendered an opinion finding Okin in contempt of Court and directing the correction of two false and misleading statements contained in the letter of January 11.

On May 11, 1943, the order adjudging defendant in contempt was entered. A stay of the enforcement of this order pending the determination of this appeal was granted by this Court.

On May 18, 1943, while these appeals were pending, Judge Harold P. Burke entered a final judgment in this action permanently enjoining Okin from violating the Commission's proxy rules.

ARGUMENT

I. THE APPEALS FROM THE ORIGINAL PRELIMINARY INJUNCTION OF JANUARY 7, 1943, AND FROM THE RESETTLED PRELIMINARY INJUNCTION DATED FEBRUARY 17, 1943, ARE MOOT.

Since the filing of notices of appeal from the original preliminary injunction of January 7, 1943, and the resettled injunction dated February 17, 1943, a final judgment granting the Commission a permanent injunction was entered on May 18, 1943. The preliminary injunction cannot now be the subject of an appeal. An identical case was before the Supreme Court in *Smith v. Illinois Bell Telephone Co.*, 270 U. S. 587, 588, 589. Mr. Justice Sutherland there stated:

"The appeal in No. 193 is from an order, previously entered, granting an interlocutory injunction. A motion to dismiss that appeal on the ground that the order for the interlocutory injunction had become merged in the final decree was submitted but consideration postponed to the hearing on the merits. The motion is now granted and the appeal in No. 193 dismissed. *Shaffer v. Carter*, 252 U.S. 37, 44; *Pacific Telephone & Telegraph Co. v. Kuykendall*, 265 U.S. 196, 205. In the cases cited, both interlocutory and permanent injunctions had been denied; here they were granted; but the record discloses no reason which prevents the same principle from being applicable."[6]

It is, therefore, submitted that the appeals from the preliminary injunctions in this case are moot.[7] There remains for consideration by this Court only the appeal from the order of May 11, 1943, adjudging the defendant in contempt.

II. THE CONTEMPT ORDER OF MAY 11 WAS PROPER

In our view the only appeal properly before this Court is the appeal from the order of May 11 holding Okin in contempt of the preliminary injunction of January 7, 1943. The order of May 11 in substance held that a letter, dated January 11, 1943, and mailed by Okin after he had full notice of the order of January 7, contained false and misleading statements prohibited by the order of January 7 (527, 528). The contempt order was based on two particular passages in Okin's January letter which were held to be false and misleading (462, 463, 470). The Court ordered the payment of a fine to cover the cost of mailing to stockholders corrections of the false and misleading statements made to them in Okin's letter (528). The correcting material was in the form of a letter from counsel for the Securities and Exchange Commission (448-456, 528). However, by the same order Okin was given the opportunity to purge himself by sending out a correcting letter in prescribed form over his own signature (530).

The contempt order is attacked on several grounds. First, it is argued that the order of January 7 was invalid and that consequently there could be no contempt of that order; second, it is argued that the statements were not false and misleading and did not violate the order of January 7; and third, it is argued that the fine imposed was improper.

We shall show that the order of January 7 cannot be attacked in these proceedings, that the statements made by Okin were false and misleading and violated the order of January 7 and that the fine imposed was proper in all respects.

A. THE DEFENDANT MAY NOT HERE DISPUTE THE VALIDITY OF THE PRELIMINARY INJUNCTION

The defendant has argued that the preliminary injunction of January 7, 1943, was invalid because the court did not enter Findings of Fact and Conclusions of Law prior to the entry of the preliminary injunction and because he claims the order was too broadly drawn and, therefore, in violation of Title 28, U.S.C., Section 383.

Whether or not the order would be valid on direct attack,[8] it is clear that Okin cannot raise the point in these proceedings. In *Brougham v. Oceanic Steam Navigation Company*, 205 F. 857 (C.C.A. 2d, 1913), this court said:

"But if a court have jurisdiction to make an order it must be obeyed however wrong it may be. . . . Errors must be corrected by appeal and not by disobedience. A person proceeded against for disobeying an injunction can never set up as a defense that the court erred in issuing it. He must go further and make out that in the law there was no injunction because the court had no right to adjudicate. These principles have been laid down over and over again * * *

"The injunction having been issued by the district court within its jurisdiction and the plaintiff in error having disobeyed it, he was, in our opinion properly adjudged in contempt."

The district court here clearly had jurisdiction under Section 25 of the Public Utility Holding Company Act of 1935 to enter an injunction against false and misleading statements (*S. E. C. v. Okin*, 182 F. (2d) 784 (C.C.A. 2d, 1943)).[9]

After he knew of its issuance, the defendant violated the injunctive decree (47). Apropos of this very type of situation, the Court in *Economist Furnace Company v. Wrought Iron Range Company*, 86 Fed. 1010 (C.C., D. Ind., 1898), said at page 1011:

"It is of no avail for the defendants to say, even if the order were justly subject to that criticism, that it is broader or more general in its prohibition than was warranted by the bill; or that by reason of its generality or otherwise it was open to different constructions. It is well settled that under such circumstances the parties should apply to the court to modify or dissolve the order, or to construe it so as to remove doubts as to its meaning. 10 Am. & Eng. Enc. P1. & Prac. 1105; Shirk v. Cox, 141 Ind. 301, 40 N.E. 750; Hawkins v. State 126 Ind. 294, 26 N.E. 43."

and further in the same opinion:

“Upon a careful consideration of it, it seems very clear to the court that there was a deliberate and intended violation of the restraining order, both in letter and spirit. It was a continuous and repeated violation, and with no excuse whatever save that the violation was committed by parties who undertook to construe the order of the court for themselves; and in accordance with their construction of it they claim that they abstained from doing such acts as fell within the letter of the order. But the duty of the defendants was obedience not only to the letter, but to the spirit, of the order. ‘It has been declared that those who undertake to see how near they can come to doing the prohibited acts without passing the line will be very apt to overstep the bounds, and render themselves guilty of contempt.’ Craig v. Fisher, Fed. Cas. No. 3,332. It is of no avail that the defendants have all testified that they had no intention of violating the restraining order. They knowingly and purposely committed the acts which worked the violation of the order.”

B. THE COURT PROPERLY HELD THAT THE STATEMENTS FOR THE MAILING OF WHICH OKIN WAS HELD IN CONTEMPT WERE FALSE AND MISLEADING AND VIOLATED THE ORDER OF JANUARY 7.

The Court found that two statements made in Okin’s letter, dated January 11, were false and misleading and in violation of the injunction. Okin contests the finding as to the character of the statements and as to the extent of the injunction order.

1. *The statements were false and misleading.*

We believe a mere recital of Okin’s statements and the District Court’s discussion of them will show their false and misleading character.

The first statement on which the contempt order was based is as follows:

“At this point, I also instituted a proceeding in the Supreme Court of the State of New York to compel the Electric Bond and Share Company to divest itself of control over the management of Electric Power & Light Corporation and American Power & Light Company and its subsidiaries which was so detrimental to the interests of the Electric Bond and Share Company and its stockholders as hereinafter stated. Although many millions of the company’s assets had been invested in the stock of these companies, their market value had fallen to such an extent that they did not represent more than approximately three (3%) percent of the value of the entire assets of the company and the income therefrom was so comparatively small with respect to the entire income of the company that it was obvious that the operation of these many companies was not only in my opinion causing substantial losses to the Electric Bond and Share Company but in addition was for the benefit solely of enabling the business associates and friends of the management of Electric Bond and Share Company to continue to receive very lucrative salaries.”

Judge Rifkind stated:

“Defendant admitted upon the argument that the operation of the mentioned companies did not, in fact, cause ‘substantial losses’ to Electric Bond and Share Company in the sense that outgo exceeded income; that he really meant that the capital invested could be more profitably employed elsewhere. In his affidavit defendant has offered additional explanations. None of them makes the statement true. It would be generous to call the statement misleading. The circulation of such a statement was clearly forbidden by the injunction and constitutes a violation thereof.” (463, 464)[10]

The second statement which the Court held to be false and misleading is embraced in the following paragraph:

“On February 20th, 1942, the Securities and Exchange Commission made an order wherein it permitted the Electric Bond and Share Company to only use $2,000,000 of the said $5,000,000 towards the purchase of its preferred stock and retained jurisdiction as to the remaining $3,000,000 ‘pending the formulation by the company of an exchange plan or plans for DISTRIBUTION OF ASSETS TO THE PREFERRED STOCKHOLDERS’.”

Concerning this statement, Judge Rifkind said:

“It is asserted by plaintiff that the quoted clause is improperly quoted because it is capitalized and that it is misleading because it induces security holders to believe that the Commission intends that all of the assets of the corporation be distributed to the preferred stockholders when, in fact, the Commission has never taken any such position. It is not questioned that the quotation is accurate except for its capitalization. Nevertheless it is clearly misleading in its new setting. Read in the context of the Commission’s opinion (Release No. 3339) in an atmosphere of lawyers’ idioms it conveys one meaning. In its new context, in its headlined form, it is very likely to convey the impression that the Commission is awaiting plans for the distribution of all the corporate assets of the preferred stockholders. Defendant is a lawyer and alive to the different connotation of the clause against its new background. That is why he selected that quotation. I conclude that circulation of this paragraph was violative of the injunction.” (471, 472)

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In connection with the false and misleading statements circulated by Okin and for which he has been adjudged in contempt, it would appear to be appropriate to point out that the Commission was organized to protect investors because Congress found that investors, many with small holdings, are generally uninformed and do not have the understanding of business enterprises which more sophisticated persons have. It is against this background that Congress determined that the ordinary rules of fraud and deceit and the doctrine of caveat emptor were inadequate and that it was necessary to require affirmative information to be given and to prohibit not only direct false statements but also the omission of statements necessary to make the statements made not misleading (see Section 17(a) of the Securities Act of 1938 and Rule X-14A-5 involved in the

present case). Under the statute statements and omissions must be tested by the likelihood that they would mislead security holders generally and not a more sophisticated group.[11]

2. *The mailing of the false and misleading statements was in violation of the preliminary injunction.*

The order of January 7, 1943, provided, *inter alia*, that Okin was enjoined from

"(b) Making use of the mails * * * to solicit any proxy * * * in respect of the common stock of Electric Bond and Share Company by means of any * * * communication containing any statement which at the time and in the light of the circumstances under which it was made is false or misleading with respect to any material fact, or omits to state any material fact necessary to be stated in order to make the statements therein not false or misleading concerning:

(1) the plaintiff's position respecting distribution of assets to preferred stockholders of Electric Bond and Share Company; . . .

(7) the acquisition or disposition of the securities of Electric Bond and Share Company; . . .

(9) the wasting of assets of Electric Bond and Share Company;

(14) any other statement which at the time and in the light of the circumstances under which it is made is false or misleading with respect to any material fact, or which omits to state any material fact necessary to be stated in order to make the statement made therein not false or misleading, similar to those specifically set forth above in this subdivision (b) or of similar purport or object." (Vol. 2, 130-134)

The false and misleading statement relating to alleged substantial losses caused Electric Bond and Share Company by its operation of Electric Power and Light Corporation and American Power and Light Company and its subsidiaries clearly violated paragraphs (b) (9) and (14) of the decree. The false and misleading statements relating to distribution of assets to the stockholders of Electric Bond and Share Company violated paragraphs (b) (1), (7), and (14) of the preliminary injunction.

The appellant has frequently stated that his letter, dated January 11, was approved by members of the Commission's staff (see his brief, pp. 12, 43, 69, 71, 81). The record clearly shows the contrary (35, 36, 43, 90, 91, 92, 93, 94). It also shows that before appellant mailed the letter he was warned that members of the Commission's staff believed it to be false and misleading (35, 94).

C. THE COURT'S ORDER WAS A PROPER EXERCISE OF DISCRETION

In a case of civil contempt such as this, it is proper for the Court to fine the defendant an amount necessary to correct the violation of its order. *Rivers v. Miller*, 112 F. (2d) 439 (C.C.A. 5, 1940). Apparently Okin does not dispute that an order requiring payment to the Commission directly to defray its expenses in sending out corrective matter would be proper.

He argues, however, that the direction of the Court that he pay the expense of printing and mailing directly to The Legal Intelligencer was an abuse of discretion since it was an order to pay money to a "total stranger to this proceeding."

The Legal Intelligencer is a printing company whose bid for printing and mailing the correcting material was the lowest of three submitted to the Commission (533, 534). In order to avoid the complexity of governmental bookkeeping involved in the receipt of money by a governmental agency, the disbursement by it of a portion thereof to a printer, and the repayment of the remainder to Okin, the Commission requested the Court to order the money to be paid directly to the lowest bidder, The Legal Intelligencer. It would seem that no difference in principle exists between payment to the Commission for the purposes indicated and payment directly to the printer.

Okin also challenges the amount of the fine. It is clear that the fine imposed was based on the lowest amount of money necessary to obtain correction of defendant's false and misleading statements.

The amount of the fine is sufficient to defray the expenses of sending material correcting Okin's misrepresentations to all the common stockholders of Electric Bond and Share Company. Okin has stated that the misrepresentations did not go to all stockholders and that it is proper to fine him only the amount necessary to mail corrections to those stockholders who received the original false statements. The Commission has indicated that it has no objection to this. However, Okin failed to supply the Court with the list of the stockholders who received the misrepresentations and it was, therefore, not possible for the Court to make a more specific order.

The order of the Court adequately protects Okin in the event that he makes a proper showing as to the number of persons to whom his original letter was mailed. The order contains specific provision for remission of so much of the fine as exceeds the amount necessary to mail correcting material to the stockholders to whom the defendant mailed his false statements. The ultimate amount which will be paid is the lowest possible under the circumstances. The fact that the defendant may have to deposit additional funds for a period of 15 days is a condition imposed upon him by his own failure to advise the court definitely concerning the names and addresses of the persons to whom he mailed the false and misleading statements.

III. CONCLUSION

The appeals from the orders of January 7 and February 17, 1943, should be dismissed as moot. The order of May 11, 1943, should be affirmed.

Respectfully submitted,

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June, 1943

[1] The Commission believes these two appeals to be moot because a final injunction has since been entered. See p. 8 *infra*.

* References are to folios of the printed record. Unless otherwise indicated all references are to volume one.

[2] Act of June 6, 1934, c. 404, 48 Stat. 881, 15 U.S.C., Sec. 78n (a) *et seq*.

[3] Rule U-61 makes Regulation X-14 applicable generally to "the solicitation of any authorization regarding any security of a registered holding company." Rule U-60 defines the word "authorization", as used in Rule U-61, to include "any proxy, power of attorney, consent or authorization," as those words are used in Section 12(e) of the Act.

[4] Judge Burke in his opinion rendered on May 17, 1943, upon the granting of the permanent injunction determined that the October letter was subject to the Commission's rules.

[5] The next day Okin served the Commission with an order to show cause why an order should not be made resettling the preliminary injunction entered on January 7, 1943, upon the ground that the decree was too broad and, therefore, violated Section 383 of the Judicial Code (Title 28, U.S.C.). On February 17, 1943, the Court resettled its injunctive decree entered on January 7, 1943. It entered the resettled injunction on March 2, 1943.

[6] See also *Sterling v. Constantin*, 287 U.S. 378, 386; *Champlin Refining Co. v. Commission*, 286 U.S. 210, 224; *Robinson v. Slater S.S. Co.*, 81 F. (2d) 744, 745 (C.C.A.

9th, 1936); *Baker v. Walter Baker & Co., Ltd.*, 83 Fed. 3, 4, 5 (C.C.A. 4th, 1897); *Moore Dry Dock Co. v. Pillsbury*, 98 F. (2d) 115 (C.C.A. 9th, 1938).

[7] This point is also the subject of a motion by the Commission to dismiss the appeals. The motion is to be argued at the same time as the appeals.

[8] That the order would be valid on direct attack see *Dealtry v. Posse School, Inc.*, 100 F. (2d) 470 (C.C.A. 1st, 1938); *Larkin v. Hinderliter Tool Company*, 60 F. (2d) 491 (C.C.A. 10th, 1932).

[9] The appellant at pages 82 and 83 of his brief has made the argument that the order entered January 7, 1943, having been resettled on February 7, 1943, was extinguished to the same effect as though it had never existed, and consequently, defendant cannot be held in contempt of a non-existent order. The appellant in support of his contention quotes the following language from the court's opinion in *Young v. White*, 158 App. Div. 763, 143 N. Y. Supp. 934 (2d Dept., 1913):

"When the order of June 17 was resettled by the order of June 24, the former order became a nullity. The appeal, therefore, insofar as it relates to the order of June 17 is dismissed."

It would seem clear that the court in using the word "nullity" was using it only in the sense that after the entry of the resettled order any appeal from the earlier order became moot. Cf. p. 8 *supra*.

[10] Defendant offered two "explanations" for his assertion that the statement in question was not false or misleading. The first of these is based upon the premise that the words "operation of these many companies" refers to the servicing arrangement between the subsidiaries of Electric Bond and Share Company, such as American Power & Light Company and Electric Power and Light Corporation and their subsidiary companies with Ebasco Services, Inc., a wholly owned subsidiary of Electric Bond and Share Company. Clearly, no such inference can be drawn from the quoted language. Moreover, the "explanation" is itself false and misleading since Electric Bond and Share Company derives a profit from the servicing operations of Ebasco Services. There is, therefore, no basis for the assertion that the "servicing arrangements" cause "substantial loss to Electric Bond and Share Company" (67, 68, 69).

The second "explanation" is that the operation by Electric Bond and Share Company of American Power and Light Company and Electric Power and Light Corporation has compelled Electric Bond and Share Company to remain a holding company under the Public Utility Holding Company Act of 1935 to the detriment of the Electric Bond and Share Company. This statement is likewise untrue. Even if Electric Bond and Share Company were to divest itself of all interest in American Power and Light Company and Electric Power and Light Corporation, it would still remain a holding company subject to the provisions of the Public Utility Holding Company Act of 1935 by reason of its

interest in its other subsidiaries, i. e., American & Foreign Power Company, American Gas and Electric Company and National Power and Light Company (69, 70, 71).

It would appear clear, therefore, that the additional “explanations” do not make the statement in the January letter true.

[11] *Cf. F. T. C. v. Standard Education Society*, 302 U.S. 112, 116.