

tion official, and he is cited for contempt and is punished by order of the court, is it your opinion that the constitutional rights of that person, who is finally charged with contempt and has had a penalty inflicted, has had his day in court, or is it possible that his constitutional rights have been denied him?

Mr. WALSH. I think there was just one step in there that was dropped out.

Mr. WILLIS. All right. Restate it.

Mr. WALSH. In other words, you get the order of the court. Then that order is to be served not only on the State registrar but upon every official who is part of the State elective process. He is on notice that John Smith is qualified to vote, and John Smith has the counterpart of that order, his certificate of qualification to vote. Then, when he goes before an election official and is turned down, I don't think you can speak in general terms as to whether that election official is guilty of contempt of court or not, without having all of the facts spelled out.

If in fact the election official who turns down John Smith is acting in concert with the State registrar who was the defendant in the original case, and who has had notice of all these proceedings—in other words, he is really helping the State registrar defy the court order—then he also would be guilty of contempt.

When you get beyond that, you get into shadowy ground about which I just would not want to generalize.

Mr. WILLIS. Now, Mr. Chairman, would you yield?

The CHAIRMAN. Yes.

Mr. WILLIS. Let me see if I follow the mechanics of how this act would operate.

I clearly understand from your testimony—and that is the way I had read the bill—that before the voting referee comes into being, there must be a litigated matter pending, according to the terms of the bill, “that under color of law or by State action any person or persons have been deprived on account of race or color of any right or privilege secured by subsection (a) or (b) of this section, and that such deprivation was or is pursuant to a pattern or practice,” that after that litigation or pending action where the judge so finds, at that point and at that point only he may appoint a referee.

Mr. WALSH. Yes, sir; a referee with these particular powers.

Mr. WILLIS. With these particular powers.

Then this voting referee, however, would have a right to protect, according to the pattern of the bill, not only persons named in that original action but anybody in the area who feels that he is the victim of the pattern.

Mr. WALSH. Yes, sir; anybody who is a member of the same race.

Mr. WILLIS. In other words, we can call this initial action a class action for the benefit of those in it originally, those similarly situated.

Mr. WALSH. In a loose way; yes, sir.

Mr. WILLIS. Let us see what the bill does as to procedure, first.

Section (a) of rule 53 of the Rules of Civil Procedure provides: “The court in which any action is pending may appoint a special master therein.”

Could you not have proceeded under that general authority? I take it you prefer to spell it out, rather than relying upon the general