

authority of rule 53 that in any pending action the court may appoint a master.

Mr. WALSH. There are three reasons for spelling it out, Congressman Willis: First, that it is helpful to have the steps indicated; the most important is the second, which is the presumption I have described at some length.

Mr. WILLIS. I will come to that.

Mr. WALSH. And the third is that it provides that the master's compensation shall be at the expense of the Government and not at the expense of the parties.

Mr. WILLIS. Then, rule 53(b) provides that "a reference to a master shall be the exception and not the rule."

Mr. WALSH. That is right.

Mr. WILLIS. It further provides that in a nonjury case, a reference "shall be made only upon a showing that some exceptional condition requires it."

Mr. WALSH. That is correct.

Mr. WILLIS. You do not want to be bound by that rule?

Mr. WALSH. No, sir; we don't. We would like to say right here that this is an exceptional condition that requires it.

Mr. WILLIS. And you are familiar with the fact that is under the jurisprudence interpreting clause (b) of rule 53, to the effect that that subdivision (b) of this rule is but an emphatic reiteration of the law—

Mr. WALSH. Yes, sir.

Mr. WILLIS. As the above existed, that references to masters shall be the exception and not the rule?

Mr. WALSH. That is right. That is so the judges would not turn all their work over to the master and go fishing.

Mr. WILLIS. You deliberately want to get away from that and spell it out and make it a presumption that a referee can be appointed as a general rule, rather than the exception.

Mr. WALSH. Yes, sir.

Mr. WILLIS. You are also familiar with the jurisprudence that under clause (b) of rule 53 the adverse party could insist upon a showing that the exceptional situation existed? In other words, he was entitled to be heard before a Federal judge and to attack his finding that an exceptional rule existed.

Mr. WALSH. Yes, sir; and that was because he would have to pay half of the cost of the master, whereas here no one is going to pay the cost of the master except the Government.

Mr. WILLIS. Well, under the bill—I am now referring to page 3, the last line: "Any person or persons appointed by the court pursuant to this subsection shall have all the powers conferred upon a master by rule 53(c) of the Rules of Civil Procedure." You embrace, therefore, a single provision of rule 53, and that is part (c).

Mr. WALSH. Yes, sir.

Mr. WILLIS. Except, however, without embracing it, you rely upon (e) for the justification of a presumption that the finding of the master shall be binding unless clearly erroneous.

Mr. WALSH. Yes.

Mr. WILLIS. That is where you obtained those words?

Mr. WALSH. Yes, sir.