

Mr. WILLIS. But that section is not binding, the whole section. Those two words only are brought into play.

Mr. WALSH. That is right.

Mr. WILLIS. Now under litigation before a Federal court, the proceedings are governed by the rules of procedure.

Mr. WALSH. Yes, sir.

Mr. WILLIS. Now, under litigation before a Federal court, the provisions are governed by the Administrative Procedure Act.

Mr. WALSH. Right.

Mr. WILLIS. But in this case you spell out no rules to govern the referee, except that part underscored in your new proposal, saying that the hearing before him shall be ex parte, and so on.

Mr. WALSH. It is not a proposal. It is simply an example of what could be put in there if someone else wished to propose it.

Mr. WILLIS. But, anyway, so far as this referee is concerned, who is appointed to adjudicate or pass upon the rights of parties not before the court originally, the general public who feel that they are under this pattern, you spell out no rule of procedure that obtains before the referee provision, voting referee?

Mr. WALSH. That is correct, as it is now drawn.

The CHAIRMAN. Will the gentleman yield at that point?

Mr. WILLIS. Yes.

The CHAIRMAN. Would it not be possible for the judge to lay down some ground rules there for the referee?

Mr. WALSH. Yes, Mr. Chairman. That was our assumption, and that is why none are spelled out here. We would assume each judge would want to spell that out in his order appointing the referee.

Mr. WILLIS. Coming to such crucial rights, let us take the normal application of rule 53. Frankly, in the press and in the general discussion of the reach of your proposal, I had been led to believe, well, this is the usual thing; we have this masters' proposition in bankruptcy cases, in patent infringement cases, in compensation cases, in difficult and intricate accounting procedures. But now we come to find out that the only thing that your proposal adopts that is comparable to rule 53 is that one spelling out the powers, but beyond giving him the powers of subpoena, and spelled out in detail—you give him powers, but you do not spell out the rules of the game before him, and you trust that the Federal judge will do them.

Mr. WALSH. Yes, sir. I say that that is our judgment. Now we are not dogmatic about it, and we recognize that any group of lawyers like this may wish to spell those procedures out. That is quite all right with us.

Mr. WILLIS. That very seriously concerns me. We know that under the Administrative Procedure Act, which governs determinations on quasi-judicial cases before Federal agencies and boards, there is a detailed spelling out that those examiners will protect a man's right to have a lawyer, that the person involved, whether it is an adversary procedure technically or not, is entitled to counsel. When we come to the Rules of Federal Procedure delineating proceedings before the master, we have the same thing, saying that parties who might be involved must be notified, that they shall have the right to counsel, that the person aggrieved is entitled to a speedy proceeding.