

So do you know of any comparable statute presently on the books or ever put on the books, where we give to a person the right to pass upon any issue, particularly issues of that kind?

Mr. WALSH. I think you can do that, and I think that perhaps the basic difficulty that your questions raise is, thinking of this as an adversary proceeding.

The proceeding before the referee by the voter is not an adversary proceeding. Who is against him? The only question is, Is he qualified to vote? And if he is qualified to vote, he is entitled to do so.

I think it would be a shocking mistake if we tried to apply the Administrative Practices Act to the proceeding before the referee. We would never get done. This poor man would take longer to register than everybody else took to register and vote and go for a picnic for the rest of the day.

But, this should be thought of, I think, more in terms of a function comparable to a registrar, the administrative type of function which we allow a court to supervise.

For example, if a court order is a corporate election, and the management will not perform the functions required of it to conduct a corporate election, the court can appoint a special master to go in and conduct that special election.

Mr. WILLIS. And that special master is bound by the rules of procedure in rule 53.

Mr. WALSH. There would be no adjudication concerned with the conduct of the election. He would go in there the same as the secretary of a corporation would, and run it. In other words, he would not be conducting an adversary proceeding; and the same where you have a receiver to manage property. For example, if the life tenant is wasting property of an estate, the court can appoint a receiver to run that property. That receiver is not governed by the Administrative Procedure Act. He is not conducting an adversary proceeding; he is conducting an administrative activity to facilitate the order of a court.

I think I may have gotten into this in an answer I gave the chairman inadvertently, that the referee—I guess I did avoid saying that the referee was conducting a justiciable proceeding. He was conducting a preliminary to the justiciable part, which is by the judge.

I just thought we ought to keep that distinction clear. I think the word "referee" may suggest the conduct of a controverted proceeding, when in fact it was not so intended. It would perhaps be better if we called him a commissioner or something like that.

The CHAIRMAN. Will the gentleman yield a minute?

Mr. WILLIS. All right.

The CHAIRMAN. Isn't it the interpretation of the Constitution as to whether a right has been denied someone.

Mr. WALSH. Really, it is simply the implementation of the court's underlying order that this pattern of discrimination shall be terminated.

Mr. WILLIS. And that is what I am addressing myself to.

First, let me say I am not suggesting that the referee should be bound by the rules of administrative procedure nor by the rules of section 53. That is your job. What concerns me here is that in the ultimate, whereas in litigation before Federal courts the courts themselves and, for the guidance of the lawyers, the lawyers themselves refer to