COMMENT ON RECENT DECISIONS

ADMINISTRATIVE LAW—PROCEDURE—FAIR HEARING—[Federal].—Petitioner instituted proceedings to determine the validity of an order of the Secretary of Agriculture fixing maximum rates for the Kansas City Stockyards under the Packers and Stockyards Act.[1] On the first appeal[2] the Supreme Court remanded the case to the district court to take testimony as to whether the Secretary had sufficiently considered the evidence taken by the trial examiners. It appeared that the Secretary issued the order on the basis of very extensive findings by the Bureau of Animal Industry, whose representatives had conducted the hearing, and of informal discussions with officials of the Bureau, but without hearing oral arguments, and without any brief furnished him by the government. On appeal from a decision of the district court sustaining the order, *held*, that there was not such notice to petitioner as is required for a "full hearing" under the statute.[3]

In a proceeding before the National Labor Relations Board for the reinstatement of employees, the testimony was heard before a trial examiner. The proceeding was then transferred to the Board, which heard oral arguments and ordered reinstatement upon its own findings of facts and conclusions of law. Defendant's motion to re-submit the case to the trial examiner for the preparation of an intermediate report was denied. The Circuit Court of Appeals denied the Board's petition for enforcement of the order, on the ground that refusal of the motion was error. *Held*, by the Supreme Court, reversing the decision below, that the proceedings which were had, sufficiently apprised the defendant of the nature of the charges and there was no right to insist on the filing of an intermediate report.[4]

The first *Morgan* Case[5] held that a "full hearing" under the Packers and Stockyards Act[6] requires opportunity to present evidence and to have it considered by the person making the final decision. The second *Morgan* Case[7] went further to include a reasonable opportunity to know the claims of the opposing party and to meet them. No such reasonable opportunity was given appellants. The Court pointed out that the examiner refused appellants an opportunity to examine and argue on the proposed findings of the examiner, that no specific complaint was filed, and that the oral arguments were very general. The opinion nowhere states definitely what constitutes adequate opportunity to know the opposing party's claims.

1. (1921) 42 Stat. 159, 166, ch. 64, (1927) 7 U. S. C. A. sec. 211.
2. Morgan v. United States (1936) 298 U. S. 468, 56 S. Ct. 906, 80 L. ed. 1288.
3. Morgan v. United States (1938) 58 S. Ct. 773, 82 L. ed. 757.
4. National Labor Relations Board v. Mackay Radio & Telegraph Co. (1938) 58 S. Ct. 905.
5. Morgan v. United States (1936) 298 U. S. 468, 56 S. Ct. 906, 80 L. ed. 1288.
6. (1921) 42 Stat. 159, 166, ch. 64, (1927) 7 U. S. C. A. sec. 211.
7. Morgan v. United States (1938) 58 S. Ct. 773, 82 L. ed. 757.

There is an intimation that the examiner should have allowed objections to his proposed findings. Yet the Court repeats the language of the first *Morgan* Case to the effect that while this is good practice, it is not essential to the validity of the proceedings.[8]

The *Mackay* Case[9] holds that no particular procedure is essential. It requires only that the opposing party know the claims of the government with opportunity to meet them. As long as the parties know the issues involved and have an opportunity to meet them, there is no error merely because the examiner has not prepared a list of proposed findings or because the complaint does not accurately state the government's claim.

In the second *Morgan* Case the Court intimates that a "full hearing" required by the statute includes no more than the fundamental requirements of fairness which are the essence of due process. The *Mackay* Case seems to be a decision on due process. The Court does not attempt to distinguish the cases, however; it simply suggests, in refusing the motion for a rehearing[10] in the *Morgan* Case, that they be compared.[11] The *Morgan* Case stresses the complexity of the evidence and exhibits, while the *Mackay* Case calls attention to the fact that there was only a single issue, which was known to both parties. The *Morgan* Case as supplemented by the Mackay Case would seem to indicate that the Court will consider the opportunity to know the claims of the opposing parties and to meet them as to each case, without compelling the administrative agency to follow any set procedure.

R. M. R.

APPEAL AND ERROR—COURT RULES—BRIEFS—[Missouri].—Two recent Missouri cases involved the enforcement of court rules regulating *briefs*. The Kansas City Court of Appeals, under a strict construction of the rules, dismissed an appeal because the "statement" did not fully inform the court of all facts essential to an understanding of the case.[1] The St. Louis Court of Appeals, however, denied a motion to dismiss an appeal where there was a failure to present "points and authorities" separate from the "argument" inasmuch as the appellant had made separate and distinct assignments of

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8. This is reasserted by the court in denying the petition for rehearing in the Morgan Case, (1938) 6 U. S. Law Week 15.

9. National Labor Relations Board v. Mackay Radio & Telegraph Co. (1938) 58 S. Ct. 905.

10. (1938) 6 U. S. Law Week 15.

11. Nowhere in either the Mackay Case or on the motion for rehearing in the Morgan Case does the court profess to distinguish them on the ground that the Morgan Case arose under the statutory requirement for a "full hearing" and the Mackay Case under due process. Neither did it rely on the distinction that the Morgan Case was entirely heard by the trial examiner while the Mackay Case was removed to Washington and the oral arguments heard before the Board. These two possible distinctions between the cases are factually present, however.

1. Evans v. Hilliard (Kansas City Ct. of App. 1938) 112 S. W. (2d) 886.