

cannot properly be urged as a delay for resuming the taking of testimony, because, as Mr. Whiteley has just explained, the deposition has not yet been taken and notwithstanding that we are now going on with the taking of the testimony.

MR. WHITELEY: I rest upon my explanation of that matter.

THE EXAMINER: I questioned Mr. Whiteley a short while ago as to the delay of the deposition, if you receive it at all, would you allow the non-receipt of the deposition to interfere with the conclusion of the case?

MR. WHITELEY: If the deposition be not taken by the time we are ready to close our case I shall ask the Examiner to allow us to close the case with the exception of the receipt of this deposition, and then proceed to take such steps that I am advised is possible may be taken to secure as promptly as possible the taking of the deposition.

MR. SMITH: I wish to go on record at this time, so that there will be no misunderstanding on this question, that we reserve the right to decline to proceed with our case until that of the government is completed. We do not know what there will be in this deposition and while I do not pass on that question now, I am quite sure that we would not wish to proceed with our case until the government has closed. It might be something that could make a difference in our case and it would make it awkward if the deposition came in later.