findings.

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[1] *Federal Trade Commission* v. *A. E. Staley Mfg. Co.*, 324 U.S. 746 (1945).

[2] Opening Brief on Appeal of Respondent Tri-Valley Packing Association, a corporation, p. 48.

DISSENTING OPINION

BY MACINTYRE, *Commissioner:*

I do not agree with the action of the majority providing, as it does, for the remand of this case. The proceeding has been too lengthy to this date. The complaint was issued in January 1960—nearly seven full years ago. The action by the majority insures that a substantial additional period will be added before the case can be terminated.

It seems to me that justice, not only for the respondents but for the public who has an interest in this proceeding, demands a decision as promptly and appropriately as possible. These prolonged proceedings somehow must be brought to an end. Is it justice to the respondents to have to indefinitely operate under the cloud of this litigation? After all this time, do they not have a right to an expeditious disposition of the charges against them? I think they do, and to me it is neither proper nor just to assign ths matter back to a hearing examiner for what will surely be a long, extended proceeding.

Fairness and due process are vital rights and should not be abridged. It is far more fundamental to the achievement of fairness and due process to provide these rights with equitable results to all concerned in substance rather than to pretend to be doing that in form. Excessive legalistic and technical form assertedly provided in the interests of fairness and due process may not enhance the substance of those rights and may well deny the substance of those rights to parties of interest in a proceeding such as this. For example, here the consuming public is vitally concerned and is entitled to an expeditious and appropriate conclusion of this matter. Any denial of the substance of those rights is also a denial of due process.

I suggest that the Commission could fairly determine the narrow issue posed by the majority without the lengthy proceeding here directed. The Commission could grant the respondents an opportunity for a hearing on this narrow issue without the necessity of a remand. Perhaps the issue could be resolved during a hearing of less than one day. The majority, however, will have none of this. Instead, here is a direction for a lengthy proceeding which will consume months of elapsed time.

The Commission at times has been criticized for its asserted inability to move and to get things done and the most scathing of this criticism has come from some of those at the Commission.

Too often one of the members of the Commission and others have complained that the Federal Trade Commission is a fit

article for a museum. Some of this criticism is directed against prolonged proceedings and ineffectiveness. To take part in this action of the majority is to help this criticism. I will not be so obliging.

I dissent.

NOTICE OF REMAND

Whereas, it appears that respondent P. F. Collier & Son Corporation, a wholly owned subsidiary of respondent Crowell-Collier Publishing Company, was dissolved at or about the end of December, 1960, subsequent to the issuance of the complaint herein, and that another wholly owned subsidiary of Crowell-Collier Publishing Company, namely, P. F. Collier, Inc., was organized by Crowell-Collier Publishing Company on or about January 1, 1961; and

Whereas, the Federal Trade Commission on September 30, 1966, issued its order reopening this proceeding and remanding it to the hearing examiner for the purpose, *inter alia*, of determining whether said P. F. Collier, Inc., a corporation with its principal offices located at 640 Fifth Avenue, New York, New York, is in fact the successor to respondent P. F. Collier & Son Corporation, continuing the same business enterprise in a new corporate form and thereby should be subject to an order should one be issued herein:

It is ordered, That a copy of said order and the accompanying Commission opinion be served upon P. F. Collier, Inc.;

It is further ordered, That said corporation be afforded the opportunity to participate in the taking of further evidence in this matter and presenting any evidence or argument which it may desire, in reply to the evidence and argument that may be introduced by counsel supporting the complaint.

ORDER REOPENING PROCEEDING AND REMANDING CASE TO HEARING EXAMINER*

The Commission having determined that this matter should be reopened to the extent set forth in the accompanying opinion [p. 1005 herein] and that determination of certain issues in this matter should be reserved until the hearings on remand have been completed:

It is ordered, That the proceeding be, and it hereby is, reopened for the limited purpose set forth in the accompanying opinion.

It is further ordered, That the matter be, and it hereby is,

*Now known as Crowell Collier and Macmillan, Inc.

remanded for further proceedings in accordance with the accompanying opinion.

It is further ordered, That the hearing examiner, upon completion of the said hearings, shall certify the record with his findings to the Commission for final disposition of the proceeding.

Commissioner MacIntyre dissented and has filed a dissenting