SUPREME COURT OF THE UNITED STATES

TUESDAY, APRIL 24, 1973

ORDERED:

1. That the rules and forms as approved by the Judicial Conference of the United States, to be known as the Bankruptcy Rules and Official Bankruptcy Forms, be, and they hereby are, prescribed pursuant to Section 2075, Title 28, United States Code, to govern the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act, in the proceedings and to the extent set forth therein, in the United States district courts, the District Court for the District of the Canal Zone, and the District Courts of Guam and the Virgin Islands.

[See *infra*, pp. 995–1141.]

2. That the aforementioned Bankruptcy Rules and Official Bankruptcy Forms shall take effect on October 1, 1973, and shall be applicable to proceedings then pending, except to the extent that in the opinion of the court their application in a particular proceeding then pending would not be feasible or would work injustice, in which event the former procedure applies.

3. That General Orders in Bankruptcy 1 to 7 inclusive, 9 to 12 inclusive, 14 to 26 inclusive, 28 to 40 inclusive, 42 to 45 inclusive, 47, 50, 51, 53, and 56 and Official Forms in Bankruptcy 1 to 13 inclusive, 15 to 20 inclusive, 22 to 47 inclusive, and 70 to 72 inclusive, heretofore prescribed by this Court, be, and they hereby are, abrogated, effective October 1, 1973.

4. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit the said new Bankruptcy Rules and Official Bankruptcy Forms to the Congress at its present session on or before the first day of May, 1973.

ORDERED:

1. That the rules and forms as approved by the Judicial Conference of the United States, to be known as the Chapter XIII Rules and Official Chapter XIII Forms, be, and they hereby are, prescribed pursuant to Section 2075, Title 28, United States Code, to govern the forms of process, writs, pleadings, and motions and the practice and procedure under Chapter XIII of the Bankruptcy Act, in the proceedings and to the extent set forth therein, in the United States district courts, the District Court for the District of the Canal Zone, and the District Courts of Guam and the Virgin Islands.

[See *infra,* pp. 1143–1215.]

2. That the aforementioned Chapter XIII Rules and Official Chapter XIII Forms shall take effect on October 1, 1973, and shall be applicable to proceedings then pending, except to the extent that in the opinion of the court their application in a particular proceeding then pending would not be feasible or would work injustice, in which event the former procedure applies.

3. That General Order in Bankruptcy 55 and Official Forms in Bankruptcy 58 to 62 inclusive, heretofore prescribed by this Court, be, and they hereby are, abrogated, effective October 1, 1973.

4. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit the said new Chapter XIII Rules and Official Chapter XIII Forms to the Congress at its present session on or before the first day of May, 1973.

MR. JUSTICE DOUGLAS, dissenting.

I cannot agree to the Court's submission of the proposed Bankruptcy Rules to the Congress.

Once I was knowledgeable in the bankruptcy field, having taught the course for some years, made my own field studies of it, and written extensively about various bankruptcy problems. I worked closely with Cong. Walter Chandler to produce the Bankruptcy Act of 1938,

52 Stat. 840. In that Act the advisory committee of which I was a member kept all power to punish for contempt in the hands of the district court and out of the hands of the referees. Section 41 of the 1938 Act was derived from § 41 of the 1898 Act, 30 Stat. 556.

The proposed new Rule 920 makes a change, giving referees power to cite and punish for contempt in both the civil and criminal sense. Misbehavior during a hearing or so near the place thereof as to obstruct the same under the proposed Rule may be punished summarily, if the referee saw or heard the conduct and it was committed in his actual presence. All other contempts imposed by a referee must be only after notice and hearing.

The Advisory Notes call this grant of power to the referees "minor," since referees will not be allowed to imprison an offender or fine him more than $250. But the proposed Rule does change § 41 of the present Act which has been with us at least since 1898.

I once knew most of the referees in the Nation and worked with them on various projects. But they, too, flourish under Parkinson's Law; and their power grows like that of a prince in a medieval kingdom. That may not be ominous when it relates only to administrative detail. But it is for me alarming to vest appointees of bankruptcy courts with the power to punish for contempt. Chief Justice Taft in *Cooke* v. *United States,* 267 U. S. 517, 539, noted that the exercise of contempt power is "a delicate one and care is needed to avoid arbitrary or oppressive conclusions." Great differences of view have been expressed in this Court over the scope of the "contempt" power of judges. Mr. Justice Black, with whom I concurred, said in dissent in *Frank* v. *United States,* 395 U. S. 147, 160: "Those who commit offenses against courts should be no less entitled to the Bill of Rights than those who commit offenses against the public in general."

Walter Nelles long ago reminded us that summary procedure of contempt is a "legal thumb-screw," the "most autocratic of judicial powers," and "in practice the most indefinite." Summary Power to Punish for Contempt, 31 Col. L. Rev. 956, 957 (1931). *In re Oliver,* 333 U. S. 257, 274, marked the scope of the contempt power as being " 'the least possible power adequate to the end proposed.' " Extension of the contempt power to administrative arms of the bankruptcy court is not consistent with close confinement of the contempt power. The cases indicate how great emotional outbursts are wrapped up in the exercise of the contempt power. *Sacher* v. *United States,* 343 U. S. 1. I would not extend the contempt power to bankruptcy referees. Perhaps I am wrong. But that issue has never been considered, debated, or voted upon by this Court. The Court is merely the conduit for the Rules. It does not purport to approve or disapprove. As I have said on other like occasions, it has merely placed its imprimatur on the Rules without reading, let alone discussing, these Rules.

Forty years ago I had perhaps some expertise in the field; and I know enough about history, our Constitution, and our decisions to oppose the adoption of Rule 920. But for most of these Rules I do not have sufficient insight and experience to know whether they are desirable or undesirable. I must, therefore, disassociate myself from them.

If these Rules go to the Congress they should be sent by the Judicial Conference, not by this Court.