

*Tom R. Watkins*, application for mandamus, which is not a voting case—it is a business case, involving some business deal down in the State of Mississippi.

The Circuit Court of Appeals of the Fifth Circuit, speaking through Judge John R. Brown, held in that case that a special master, or master, was improperly appointed, because a party, under the present Federal system, was entitled to a trial by a constitutional court.

Now, I can see that cases, of course—can perceive of cases where even under the strict rules that seem to exist now, under the statutory procedure, under the Federal Rules of Civil Procedure, where a special master, or master, could be appointed after a court has ruled and say it appears from the course of dealings between the complainant and the defendant, that the complainant is entitled to recover under the law of this case. But the amount that he is entitled to recover is in doubt. And he will appoint a master, a referee, an auditor, or what-not, in order to ascertain that amount. I think that a Federal court has that power.

Mr. MEADER. Well, now, let us take it one step further:

Do you agree that it would be perfectly legal and constitutional for this Congress to pass as a law what is now the procedure and the power of the district court with reference to appointing referees?

Mr. BLOCH. Oh, yes, certainly. The Congress fixes the jurisdiction. The district courts are creatures of the Congress, and their jurisdiction is defined by the Congress.

Mr. MEADER. Certainly it would not be illegal for the Congress to pass as a statute something which the courts are already doing by court order.

Mr. BLOCH. To do what?

Mr. MEADER. For Congress to pass as a law or enact into law existing procedure of the courts with reference to the appointment of referees.

Mr. BLOCH. They have already done it. The Federal Rules of Civil Procedure are in vogue, are the law, because Congress has impliedly adopted them. The Federal Rules of Civil Procedure are really an act of Congress.

Mr. MEADER. If the Congress, in adopting such a law, were to alter the rules of procedure with reference to appointing referees, and procedure under them—referees or masters—but not in any way impairing any constitutional rights, there certainly could be no question about the constitutionality of such a statute, could there?

Mr. BLOCH. To my mind there could not. I think that the Congress could broaden the present rule 53 without impinging upon the Constitution.

Mr. MEADER. All right.

Now let's go back to your statement, because I believe——

Mr. BLOCH. Unless it went to the point of violating the seventh amendment.

Mr. MEADER. I believe that you have contended that H.R. 10035 and companion bills are unconstitutional—that is the legislation to which you directed your statement this morning—the bill providing for the appointment of voting referees.

Now, if we assume that there is nothing in this legislation which violates the constitutional rights of any individual, then isn't it