

Sec. 1—The Congress

Legislative Powers

then, of course, Congress has authorized the Supreme Court to prescribe rules of procedure for the lower federal courts.⁹⁵

Filling up the details of statutes has long been standard practice. For example, the Court upheld a statute requiring the manufacturers of oleomargarine to have their packages “marked, stamped and branded as the Commissioner of Internal Revenue . . . shall prescribe,” rejecting a contention that the prosecution was not for violation of law but for violation of a regulation.⁹⁶ “The criminal offence,” said Chief Justice Fuller, “is fully and completely defined by the act and the designation by the Commissioner of the particular marks and brands to be used was a mere matter of detail.”⁹⁷ *Kollock* was not the first such case,⁹⁸ and it was followed by a multitude of delegations that the Court sustained.⁹⁹

Contingent Legislation.—An entirely different problem arises when, instead of directing another department of government to apply a general statute to individual cases, or to supplement it by detailed regulation, Congress passes contingent legislation. Under such legislation, Congress commands that upon the finding of certain facts by an executive or administrative officer, a previously enacted statute be revived, suspended, or modified, or that a new rule be put into operation. Since the delegated function in such cases is not that of “filling up the details” of a statute, authority for it must be sought under some other theory.

Contingent delegation was approved in an early case, *The Brig Aurora*,¹⁰⁰ where the Court upheld the revival of a law by the issuance of a presidential proclamation. After previous restraints on British shipping had lapsed, Congress passed a new law stating that those restrictions should be renewed in the event the President found and proclaimed that France had abandoned certain practices that

⁹⁵ The power to promulgate rules of civil procedure was conferred by the Act of June 19, 1934, 48 Stat. 1064; the power to promulgate rules of criminal procedure was conferred by the Act of June 29, 1940, 54 Stat. 688. These authorities are now subsumed under 28 U.S.C. § 2072. In both instances Congress provided for submission of the rules to it, presumably reserving the power to change or to veto the rules. Additionally, Congress has occasionally legislated rules itself. *See, e.g.*, 82 Stat. 197 (1968), 18 U.S.C. §§ 3501–02 (admissibility of confessions in federal courts).

⁹⁶ *In re Kollock*, 165 U.S. 526 (1897).

⁹⁷ 165 U.S. at 533.

⁹⁸ *United States v. Bailey*, 34 U.S. (9 Pet.) 238 (1835); *Caha v. United States*, 152 U.S. 211 (1894).

⁹⁹ In one such case, for example, the Court upheld an act directing the Secretary of the Treasury to promulgate minimum standards of quality and purity for tea imported into the United States. *Buttfield v. Stranahan*, 192 U.S. 470 (1904). *See also* *United States v. Grimaud*, 220 U.S. 506 (1911) (upholding act authorizing executive officials to make rules governing use of forest reservations); *ICC v. Goodrich Transit Co.*, 224 U.S. 194 (1912) (upholding delegation to prescribe methods of accounting for carriers in interstate commerce).

¹⁰⁰ 11 U.S. (7 Cr.) 382 (1813).