In the

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26620

JOHN J. KING,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the United States District Court for the Northern District of Texas

BRIEF FOR APPELLANT

JOHN J. KING

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SPECIFICATION OF ERROR

Appellant-Claimant asserts the following error, which he intends to urge on this appeal:

> *The Trial Court erred in refusing to enter a judgment for the Appellant-Claimant adjudicating his ownership of the weapons involved, subject to the rights that the United States may have acquired by condemnation.*

STATEMENT OF THE CASE

This action is one of three proceedings in which claimant John J. King has put in issue his ownership of the same items of property, two weapons originally owned by the alleged assassin of President Kennedy. Accordingly, claimant believes it would be helpful to place this case in its proper perspective by chronologically discussing the various actions involving the issue of ownership of the rifle and revolver.

First Denver Action. The First Denver Action, John J. King vs. Nicholas deB. Katzenbach, was filed in the United States District Court for the District of Colorado on May 24, 1965 (Appendix, p. 20). In that action Claimant King sought to replevy the rifle and revolver which have been the subject of all of the litigation. That action was delayed by the Denver court pending the Attorney General's efforts to obtain the passage of a bill to authorize condemnation of the weapons, and further pending the forfeiture action in which this appeal is now taken. Following the confirmation of the weapons by the United States, rendering a replevin suit inappropriate, the First Denver Action was dismissed.

Dallas Action. The case in which this appeal is taken is a libel proceeding against the subject rifle and revolver filed in the United States District Court for the Northern District of Texas on September 10, 1965. The United States sought to forfeit the weapons under the provisions of the Federal Firearms Act, and Claimant King intervened claiming the weapons and affirmatively praying for adjudication of his ownership (Appendix, pp. 9-17). An Order of Forfeiture was entered by the Trial Court on February 24, 1966 (Appendix, p. 47). This Court reversed that judgment on July 29, 1966, and issued its Mandate on August 22, 1966 (Appendix, p. 49). No further action was taken by the Trial Court until July 16, 1968, when it vacated its prior Order of Forfeiture and dismissed the libel action without adjudicating Claimant's claim to ownership of the weapons (Appendix, p. 57). This is the order from which this present appeal is perfected.

Second Denver Action. On November 1, 1966, the Attorney General published in the Federal Register his determination to acquire title to the weapons pursuant to the provisions of Public Law 89-318 (set forth in full in Appendix 1 to this Brief). Pursuant to the provisions of the same law,

Claimant King filed a claim for compensation for the taking of the weapons in the United States District Court for the District of Colorado, which action is now pending. In the Second Denver Action, the United States has asserted that Claimant is not entitled to just compensation by reason of the claim of the United States that it, and not Claimant, was the owner of the subject weapons prior to their taking under Public Law 89-318.

The question presented on this appeal is whether the Trial Court in the Dallas action erred in dismissing the action without determining the issue of Claimant's ownership:

(a) Where the statute applicable to forfeiture of property specifically provides for a judgment determining ownership;

(b) Where the Claimant had filed a proper pleading affirmatively asserting his ownership and praying its adjudication;

(c) Where the case had been heard and had proceeded to judgment, appeal and remand and no further proceedings were required other than entry of an order fully adjudicating the controversy; and

(d) Where a dismissal without adjudication results in the certain prospect of further litigation of the ownership issue in the third action in which that issue has been raised by the pleadings.

B R I E F O F A R G U M E N T

I. STATEMENT OF FACTS

In essence, Claimant King comes to this Court complaining of the Trial Court's refusal to adjudicate. The above statement of the case and the issue presented cover the relevant matters involved.

There has not been any finding of fact on the non-adjudicated issue of ownership, but all of the basic facts establishing Claimant's ownership of the weapons, were fully stipulated as follows:

> (a) Oswald purchased the rifle (Appendix, pp. 32-34 and 38, Stips. 9, 10, 11, 18 and 27) and the revolver (Appendix, pp. 33, 34 and 38, Stips. 12, 13, 14, 19 and 27).
>
> (b) The rifle and revolver were acquired by Oswald during his marriage to Marina N. Oswald (Appendix, p. 42, Stip. 41). They are therefore presumed to be community property. V.A.T.S. Art. 4619. There is no evidence in this regard to overcome this presumption (Appendix, p. 42, Stip. 42).
>
> (c) Marina N. Oswald sold all interest in the rifle and revolver to Claimant (Appendix, pp. 38 and 39, Stips. 29-31) pursuant to the authority granted by Texas Probate Code, §§ 160 and 167.

In view of the above stipulations, the complete disposition of this action upon the prior remand, after the completion of lengthy and expensive proceedings both in the Trial Court and in this Court, would have required only a fifteen minute review of the Stipulation of Facts.

II. LEGAL AUTHORITIES

A. The Federal Rules and Applicable Statute Specifically Provide that Ownership Should be Determined in This Action.

The Supplemental Rules for Certain Admiralty and Maritime Claims provide, in part, as follows:

> (9) DISPOSITION OF PROPERTY; SALES.
>
> (a) ACTIONS FOR FORFEITURES. In any action in rem to enforce a forfeiture for violation of a statute of the United States the property shall be disposed of as provided by statute. . . ." [Rule E(9)(a)]

Section 2465 of Title 28 of the United States Code, insofar as relevant, further provides as follows:

> "Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; . . ."

It is clear that the above rule and statute provide that any issue of ownership as to the subject property shall be laid at rest in disposing of the forfeiture action. In the ordinary case, of course, the judgment would direct physical delivery of the property to the successful claimant, the right to such delivery being a normal consequence of a determination of the claimant's ownership. In this rather unusual case, however, the intervening passage of Public Law 89-318, providing for condemnation of the weapons, and the Attorney General's subsequent election to make the condemnation under that statute,* made delivery inappropriate but in no way militate against the requirement for determining ownership.

In many cases the property sought to be forfeited might, by reason of intervening events, no longer be available for delivery to a successful claimant. For example, perishable

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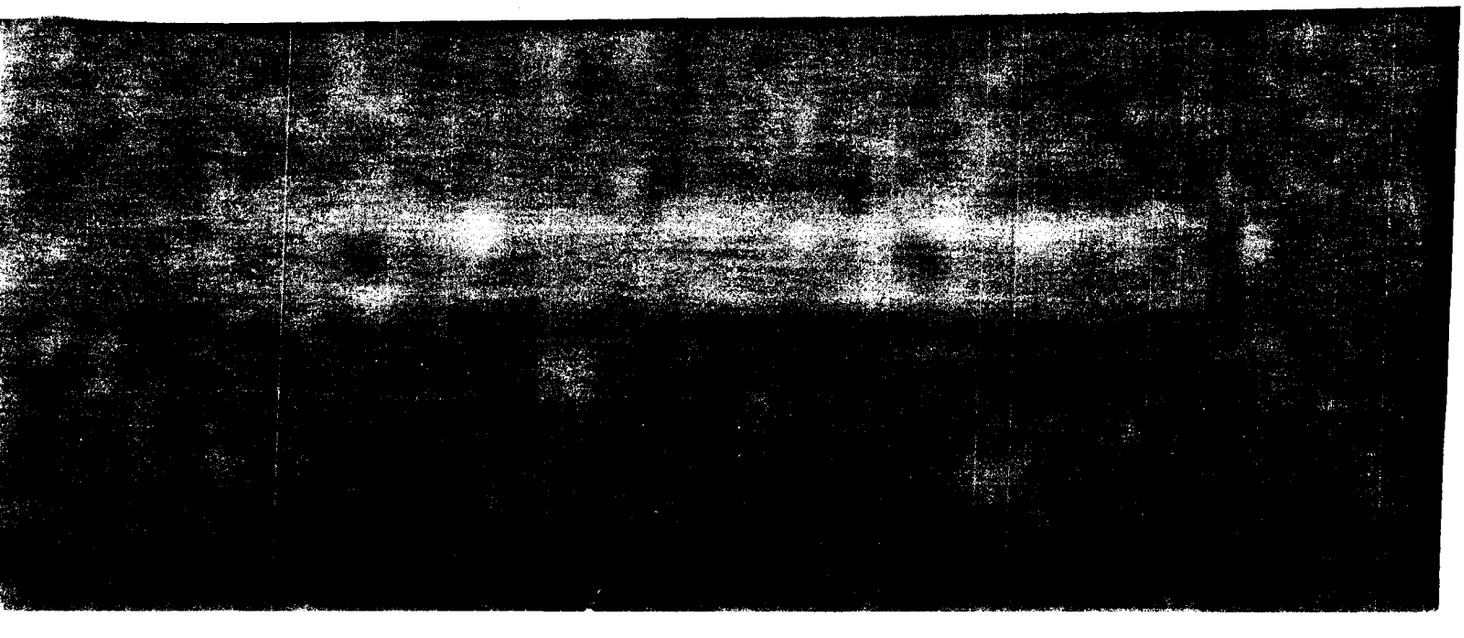
*The condemnation of the weapons was not undertaken until several months after the prior remand. The case was decided on July 29, 1966 and was remanded on August 22, 1966 (Appendix, p. 49). The taking was made by publication in the Federal Register on November 1, 1966. The statement in this Court's earlier opinion that "The United States Government is entitled to retain possession and permanent title to***" the rifle and revolver (364 F.2d 235, at p. 235), was apparently made under the mistaken impression that the taking by notice had already been made.

property might be sold pending a forfeiture action, and the ownership would still be determined in order to adjudicate the question as to who is entitled to the proceeds of the sale. The rules specifically provide that in such case the cash fund shall be held to abide the event of the action rather than leaving the ownership issue to the necessity of a separate, subsequent proceeding. Supplemental Rules for Certain Admiralty and Maritime Claims, Rule E(9)(b) and (c) (See Appendix 2 to this Brief, App. 2-3).

In the original trial, the Trial Court held that the weapons had been forfeited. Upon such a conclusion, the matter of Claimant King's ownership was immaterial, and consequently the Trial Court made no findings of fact on that point. However, when this Court reversed the Trial Court and held that the weapons had not, in fact, been forfeited, Claimant's ownership became material. No new trial proceedings were required since the facts pertinent to ownership were fully stipulated and the ownership issue had previously been submitted on such stipulations. Upon the prior remand by this Court, all that was necessary to a full adjudication



was a brief reference to the Stipulation of Facts.* Such full adjudication was clearly required by the above quoted rule and statute.

B. *The Order of Dismissal Entered Below Without Adjudication of the Claimant's Affirmative Claim for Relief Contravenes the Provisions of Rule 41(a)(2).*

As originally instituted by the United States, this was technically an action *in rem* against the rifle and revolver, there being no party other than the United States. It will be noted, however, that the Government did recognize in its Libel of Information (Appendix, p. 5) that Claimant King was claiming ownership of the weapons. In any event, when Claimant intervened, he affirmatively prayed for the relief authorized by statute, that is, the determination of his ownership and an order decreeing delivery of the weapons to him (Appendix, pp. 9, 10, 15 and 17).

Regardless of the peculiar terminology in an action where the property is treated as the "defendant" and found "guilty" or "not guilty," the entire proceedings were a

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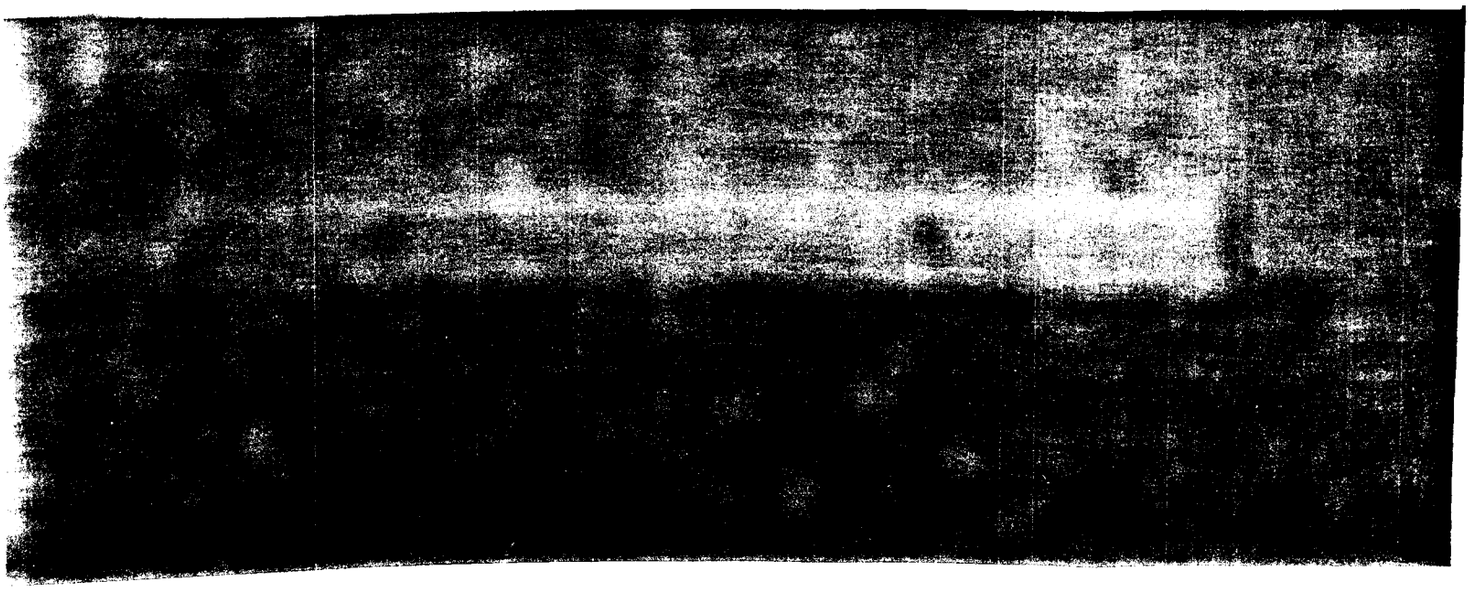
*The Trial Court, in its Pretrial Order (Appendix, p. 43) stated: ". . .All of the facts and exhibits are set forth in the stipulation by the parties filed herein. . . ."

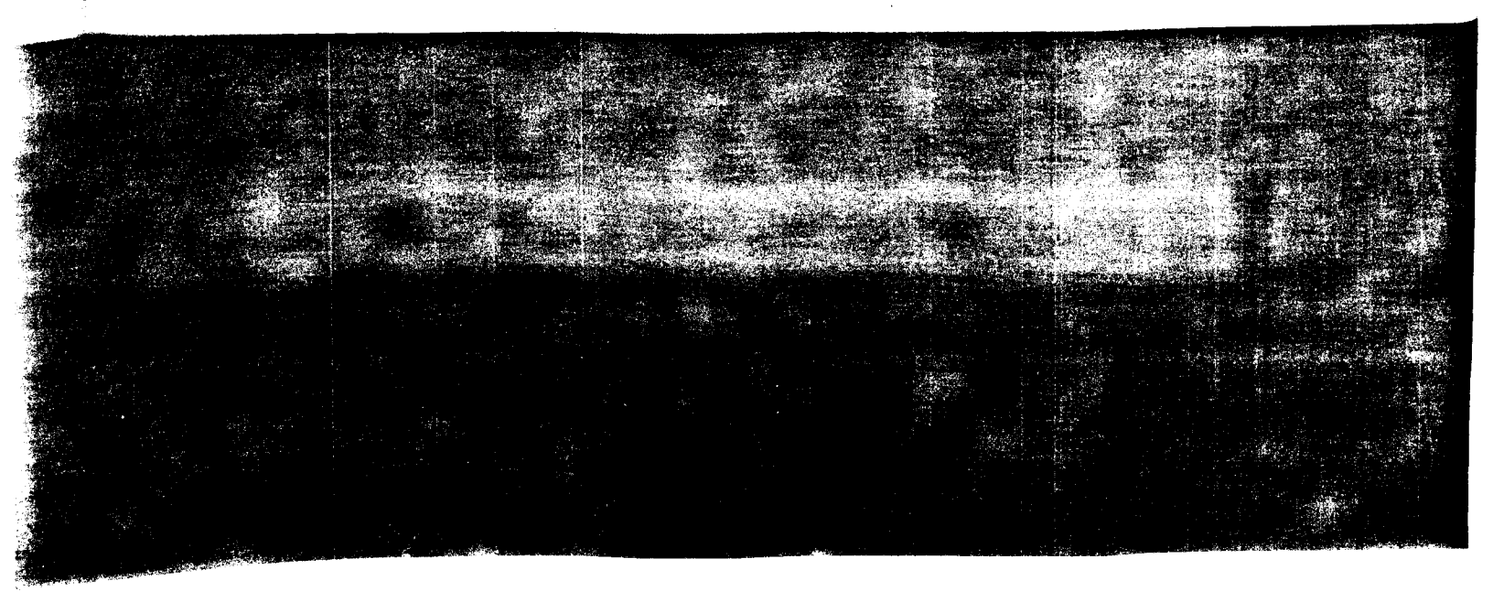


contest of ownership between the United States and Claimant. Under these circumstances, Claimant's prayer for delivery of the weapons is, in substance, a counterclaim, regardless of the fact that it was not denominated as such in the pleadings. Due to the nature of forfeiture proceedings, it would appear impossible to use the label "counterclaim" since the vessel, rifle, or whatever the object at issue, would not appear capable of making a counterclaim.

Under the 1966 amendments, the Federal Rules of Civil Procedure were made applicable to the type of libel proceeding involved here. Rule 1, Rule 81 (See Appendix 2 to this Brief, App. 2-1, 2-2). Upon the prior remand, therefore, Rule 41 governing the dismissal of actions was fully applicable to this action. That rule provides, in relevant part, as follows:

> " . . . If a counterclaim has been pleaded by a defendant prior to service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. . . ." [Rule 41(a)(2)]

The Trial Court's order merely provided for a dismissal of the action at the request of the United States, and made no provision for the continuation of Claimant King's affirmative



claim for relief. This type of order is obviously prohibited by Rule 41 if, as Claimant contends, the term "counterclaim" is applicable to the affirmative claim asserted by Claimant in this action.

It has long been settled that when the United States files a libel of information against property, it opens itself up for affirmative claims of relief with respect to that property by interested parties. *In The Siren*, 7 Wall 152, 19 L.ed. 129 (1869); *United States v. The Theckla*, 266 U.S. 328, 69 L.ed. 313 (1924).

It is also clear that a counterclaim means any affirmative claim for relief sought over against an opposing party, however denominated. Rule 13.

Furthermore, under the rules, Claimant had an absolute right to intervene and claim ownership of the property. Rule 24(a). What can be the meaning of Rule 24(a) in giving an absolute right of intervention to Claimant as opposed to the permissive intervention provided in Rule 24(b) if the intervenor cannot obtain an adjudication of his claim?

We are dealing with the application of rules written in terms of *in personam* proceedings to an action where a physical object is the defendant. It is submitted that this application

of the rules requires us to view the real substance of the controversy, which is, obviously, one between Claimant King and the United States. A reasonable application of either the letter or the policy of Rule 41 requires that King's affirmative claim for relief must be considered a counter-claim. The clear purpose of the applicable provision of Rule 41 is to prevent the very type of occurrence that has happened here; that is, *the dragging of a claimant from court to court and through proceeding after proceeding without determining his claim.*

The policy behind the rule should be especially strong where the litigant with the bottomless purse seeks to thus harass the individual seeking only to protect his property rights. In connection with these weapons, Claimant King first brought a replevin suit to obtain an adjudication of his ownership. Adjudication there was prevented by the bringing of a forfeiture action at a distant point. At great expense, King then sought adjudication of his ownership in that forfeiture action for over two years, and after the case was fully submitted on stipulation of all facts, order entered, appeal taken, and original order reversed and remanded, he is faced with the Government taking, in effect, a voluntary nonsuit.

Claimant is now threatened with additional vexatious litigation as to his title in still another proceeding. Clearly, the prohibition against a dismissal which causes a counterclaim to collapse without determination was intended to meet this very problem.

Obviously, the affirmative claims of ownership asserted in libel proceedings are in substance claims over against the United States and must be considered as counterclaims in applying a set of rules which were adopted as applicable, even though in making such adoption, the Supreme Court did not change the nomenclature throughout the rules in order to fit past pleading practices in libel actions.

The courts have consistently applied the Federal Rules so as to get to the heart of the matter rather than basing results on the technical name given pleadings. For example, in *Harvey Aluminum, Inc. v. American Cyanamid Co.*, 203 F.2d 105 (2nd Cir. 1953), cert. denied 345 U.S. 964 (1953), the Second Circuit held that an "answer" had been entered even though no document purporting to be such had been filed, but elaborate proceedings, motions and testimony had been undertaken on applications for injunctive relief prior to answer date. There, the court stated:

". . . The purpose of this rule is to facilitate voluntary dismissals, but to limit them to an early stage of the proceedings before issue is joined. . . . The amount of research and preparation required of defendants was stressed by the Committee Note when Rule 41(a) 1 was amended in 1948 as a reason for adding the reference to a motion for summary judgment. . . . The hearing before Judge Sugarman on the plaintiff's motion for a preliminary injunction required several days of argument and testimony, yielding a record of some 420 pages. Further, the merits of the controversy were squarely raised and the district court in part based its denial of the injunction on its conclution [sic] that the plaintiffs' chance of success on the merits was small. Consequently, although the voluntary dismissal was attempted before any paper labeled 'answer' or 'motion for summary judgment' was filed, a literal application of Rule 41(a) 1 to the present controversy would not be in accord with its essential purpose of preventing arbitrary dismissals after an advanced stage of a suit has been reached. . . ." [203 F.2d at 107]

C. Legal Precedent Requires Reversal Even Aside from the Express Provisions of the Statute and Rules Above Discussed.

The appellate courts have had occasion to consider similar cases arising both before the Federal Rules were adopted and also in situations where there was no statute specifically directing that the ownership be determined. Even in these cases, the decisions uniformly support reversal of the order below as an abuse of judicial discretion.

Factors which have led the appellate courts to reverse dismissals without full adjudication as an abuse of discretion may be briefly summarized as follows:

(1) *The fact that the defendant has asserted a claim for affirmative relief,*

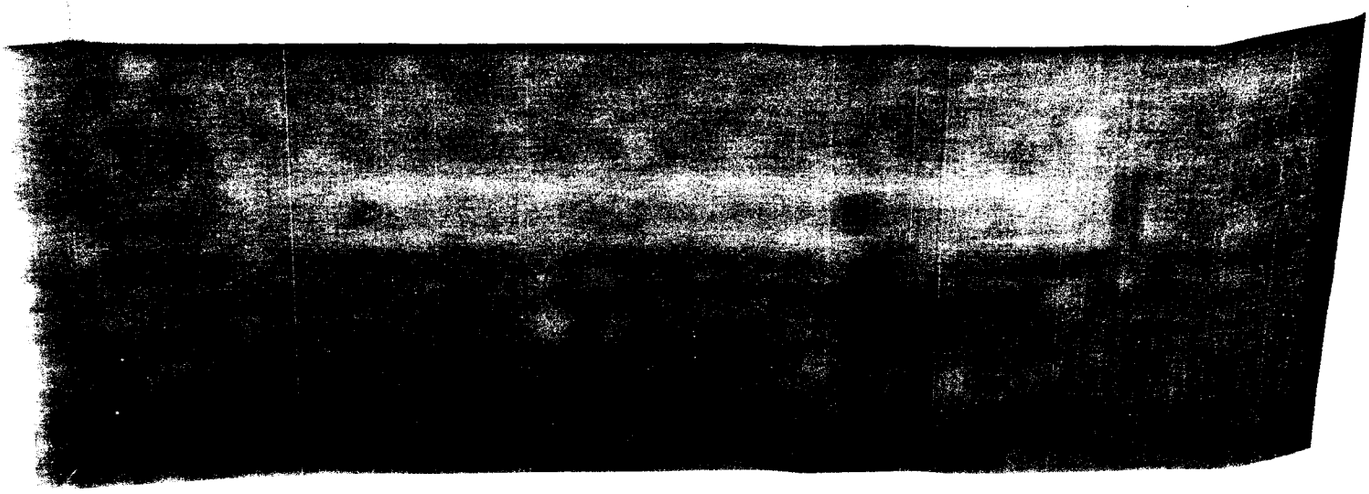
(2) *The fact that dismissal was made after the proceedings were well advanced, and*

(3) *The fact that dismissal might result in duplicitous or prolonged litigation.*

In a number of the decisions to be cited, the presence of *any one* of the above factors was held sufficient to render the dismissal an abuse of discretion. In the instant situation, *all* of the above factors are present.

1. *The Claim for Affirmative Relief Precludes Dismissal Without Adjudication of Ownership.*

As above discussed, it is Claimant's contention that, under the rules applicable to the proceeding below, the Trial Court was prohibited from permitting a dismissal without preserving the Claimant's rights on his claim for affirmative relief. Even prior to such rules, it has been generally held that a party seeking affirmative relief should not be foreclosed from obtaining such relief in the existing action by the granting of a dismissal to the plaintiff. *Sauter v. First*



National Bank of Philadelphia, 8 F.2d 121 (7th Cir. 1925); *City of Detroit v. Detroit City Ry. Co.*, 55 Fed. 569 (Cir. E. D. Mich. 1893). See also, *Whitall-Tatum v. Corning Glass Works*, 11 F. Supp. 338 (W.D. N.Y. 1935). The basis for these rulings was set forth by Chief Justice Taft *In the Matter of The Skinner & Eddy Corporation*, 265 U. S. 86, 68 L.ed. 912 (1923), as follows:

> "The usual ground for denying a complainant in equity the right to dismiss his bill without prejudice, at his own costs, is that the cause has proceeded so far that the defendant is in a position to demand on the pleadings an opportunity to seek affirmative relief, and he would be prejudiced by being remitted to a separate action. Having been put to the trouble of getting his counter case properly pleaded and ready, he may insist that the cause proceed to a decree." [298 U. S. at 93-94, 68 L.ed. at 914]

2. The Advanced Stage of These Proceedings Required Full Disposition of the Action.

It is difficult to imagine a case where less remained to be done to fully adjudicate the issues before the trial court. As the court's Pretrial Order stated, all the facts were stipulated (Appendix, p. 43). The issue of ownership to be decided upon remand would have required only the briefest of hearings and the perusal of a very few simple and

straightforward stipulations of fact pertinent to ownership.

Since the action had proceeded to the point where claimant King was entitled to favorable adjudication of his ownership, the order entered without covering this issue was not proper even prior to the adoption of the Federal Rules, including Rule 41. As stated by the Supreme Court in *Chicago and A.R.R. Co. v. Rolling Mill Co.*, 109 U.S. 702, 27 L.ed. 1081 (1883):

> "It may be conceded that when an original bill is dismissed before final hearing, a cross-bill filed by a defendant falls with it. It may also be conceded that, as a general rule, a complainant in an original bill has the right, at any time upon payment of costs, to dismiss his bill. But this latter rule is subject to a distinct and well settled exception, namely: that after a decree, whether final or interlocutory, has been made, by which the rights of a party defendant have been adjudicated, *or such proceedings have been taken as entitle the defendant to a decree*, the complainant will not be allowed to dismiss his bill without the consent of defendant." [109 U.S. at 713, 27 L.ed. at 1085] [Emphasis added]

It has generally been held improper to permit a plaintiff to drop his action without adjudication where considerable evidence has been taken or any position acquired by the opposing party that would be prejudiced by such dismissal. *Young v. John McShain, Inc.*, 130 F.2d 31 (4th Cir. 1942); *Olsen v. Muskegon Piston Ring Co.*, 117 F.2d 163 (6th Cir.

1941); *Georgia Pine Turpentine Co. v. Bilfinger*, 129 Fed. 131 (Cir. W.D. No. Car. 1904); *Gregory v. Pike*, 67 Fed. 837 (1st Cir. 1895); *Colonial Oil Co. v. American Oil Co.*, 3 F.R.D. 29 (E.D. So. Car. 1943); *Bassick Mfg. Co. v. Seltzer*, 37 F.2d 579 (E.D. Pa. 1930).

An almost identical situation to that presented here was involved in the case of *Colonial Oil Co. v. American Oil Co.*, supra, where the plaintiff sought a voluntary dismissal while the case was awaiting a new trial *after having been tried, appealed and reversed.* After refusing such motion for dismissal, the District Court reached the conclusion that the successful defendant had acquired important rights as a result of the progress of the litigation of which it should not be deprived by an order of dismissal. And in *Cincinnati Traction Bldg. Co. v. Pullman-Standard Car. Mfg. Co.*, 25 F. Supp. 322 (D. Dela. 1938), the District Court stated:

> "Plaintiff has chosen the forum and has required defendant to answer and prepare its defense at great expense. *In such case defendant is entitled to have the controversy finally adjudicated so that it may definitely know its rights. . .* " [25 F. Supp. at 322-3] [Emphasis added]

See also *Henjes v. Aetna Ins. Co.*, 39 F. Supp. 418 (E.D.N.Y. 1941); *Roth v. Great Atlantic & Pacific Tea Co.*, 2 F.R.D. 182 (S.D. Ohio 1942).

3. *If Upheld, the Order Appealed From Will Result in Duplicitous and Prolonged Litigation*

The dismissal of this suit by the Trial Court without reaching a decision on the record before it will necessitate relitigation of the identical issue of Claimant's ownership of the weapons in yet another action. Such duplicitous and prolonged litigation causes a burden both to the judicial system and to Claimant.

Once an action proceeds to trial, with the attendant necessity of a great expenditure of time and money in preparation therefor, the parties should be entitled to the benefit of the law of that case with the adjudication of the issues presented to the court. This principle of res judicata hastens reliance on judicial action and tends to eliminate vexation and expense to parties, wasted use of judicial machinery and the possibility of inconsistent results.

This Court has recently made known its distaste for unnecessary duplicitous litigation in the case of *A.C.F. Industries, Inc. v. Guinn*, 384 F.2d 15 (5th Cir. 1967), cert. denied 390 U.S. 949 (1968), where the action of the trial court in setting aside a stay order in another proceeding was overruled as an abuse of judicial discretion.

In *Georgia Pine Turpentine Co. v. Bilfinger*, supra, a patent infringement suit, the plaintiff's motion to dismiss, after the pleadings had been completed and both parties had taken proofs, was denied. Since the defendant had not pleaded for affirmative relief, the court noted that such dismissal was within the sound discretion of the trial court, but nevertheless stated, "Such motion . . . will not be granted in a case where 'such proceedings have been taken as entitle the defendant to a decree.'" [129 Fed. at 131] After noting that the defendant had established its case affirmatively by the proofs, the court went on to ask these questions:

> "Would it, then, be just and equitable here to grant complainant's motion now, after defendants have been subjected to the trouble and expense of defending the suit and bearing the detrimental consequences of the litigation until it could be submitted for final decision? Would it be just and equitable to nullify their efforts and expense incurred in producing the proofs showing that the charge of infringement made against them was and is wholly unfounded?" [129 Fed. at 132]

and then answered them, thusly,

> "The bill of complainant should not be dismissed, as complainant now proposes, also because of the pendency of similar suits in other districts, involving the same apparatus, the same process, as in the case at bar, and based on these same patents. The pendency of at least one other suit

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> on this kind (in the Western District of Georgia) is shown by the proofs in the case at bar, the fact having been brought out by the cross-examination of defendants' witness Bilfinger by complainant's counsel. This other suit was commenced after defendants answered here, and no proofs have yet been taken. If this suit here should now be merely dismissed by an order on request of complainant, the same issue will be required to be litigated in the other case. This procedure may be repeated by complainant as often as it may succeed in inducing the courts to dismiss its bills before judgment, and without prejudice after the proofs are taken and the case set down for final hearing. Such proceeding would certainly be vexatious to the utmost, and work irreparable injury to defendants' interests. For these reasons, complainant's motion is denied, and the case will be considered and decided by the court on the proofs, and a judgment entered therein." [129 Fed. at 132]

Even aside from the statutory and rule provisions requiring full adjudication, the Trial Court's failure to take fifteen minutes for an adjudication to terminate a three-year proceeding, constituted a gross abuse of discretion requiring reversal.

C O N C L U S I O N

This action has been pending in one stage or another for more than three years. In the preliminary stages of the suit the parties entered into a stipulation as to the facts which were controling of the disposition of the case,

and the matter went to trial based on that record. After the Trial Court's Order of Forfeiture was reversed by this Court, and a subsequent delay of almost two years, the Trial Court dismissed the action without decision on a vital issue and without a hearing.

This Court in its prior opinion said, by way of dictum, that "The United States Government is entitled to retain possession and permanent title to * * *" the rifle and the revolver, 364 F.2d 235, at 235. As a prediction, the quoted statement seems to be correct. However, at the time (the opinion of this Court was dated July 29, 1966 and its Mandate was filed in the Trial Court on August 23, 1966), the United States had not elected to acquire title to the weapons. Public Law 89-318, enacted for this purpose and approved on November 2, 1965, provided that title to certain items, including the weapons, should be vested in the United States upon publication in the Federal Register of a determination by the Attorney General as to which of such items should be acquired by the United States. Such determination was not made with respect to the rifle and revolver until a determination dated October 31, 1966 was published on November 1,

1966 in the Federal Register, and the matter of compensation for the taking of the rifle and revolver is now pending before the United States District Court for the District of Colorado.

Claimant submits that upon reversal of the original Order of Forfeiture that the proper judgment to have been entered by the Trial Court is specified by 28 U.S.C. § 2465, with appropriate provisions for the effect of the subsequently enacted Public Law 89-318. However, even if no finding on the question of Claimant's ownership of the weapons had heretofore been made, the Trial Court should have reached such finding and conclusion on the basis of the record before it, and the failure to do so and the dismissal of the action without fully adjudicating the issue constitutes a gross abuse of the Trial Court's discretion.

Claimant King therefore submits that this Court should vacate the order dismissing the libel and render its judgment determining that Claimant was the owner of the weapons

in question prior to any taking by the United States under Public Law 89-318.

Respectfully submitted,

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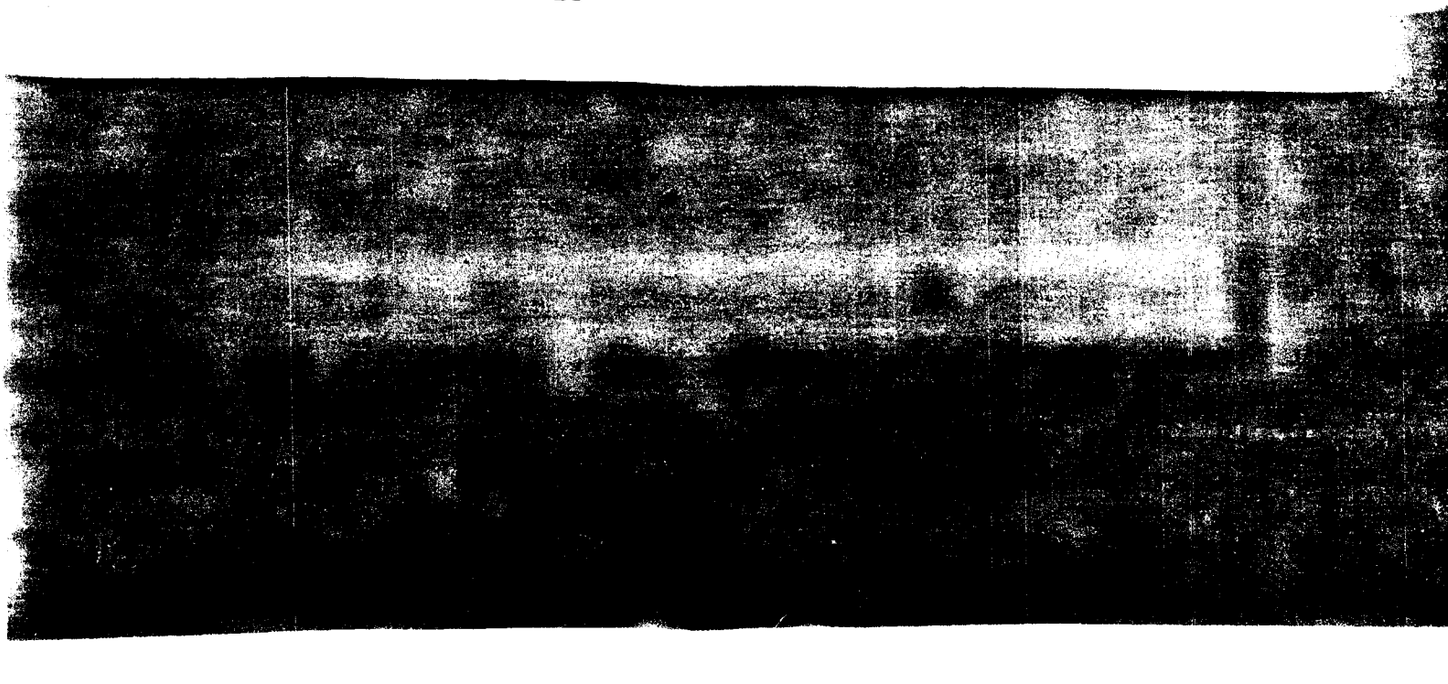
CERTIFICATE OF SERVICE

It is hereby certified that service of two copies of this Brief, together with a copy of the Appendix being filed herewith, has been made on opposing counsel Kenneth J. Mighell, Assistant U. S. Attorney, U. S. Courthouse, Dallas, Texas, and William A. Gershuny, Attorney, Department of Justice, Washington, D.C., by depositing in the United States mail in accordance with the Federal Rules of Appellate Procedure this 28th day of September, 1968.

William C. Garrett

William C. Garrett



APPENDIX 1

PUBLIC LAW 89-318; 79 STAT. 1185

[H. R. 9545]

An Act providing for the acquisition and preservation by the United States of certain items of evidence pertaining to the assassination of President John F. Kennedy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

It is hereby declared that the national interest requires that the United States acquire all right, title, and interest, in and to, certain items of evidence, to be designated by the Attorney General pursuant to section 2 of this Act, which were considered by the President's Commission on the Assassination of President Kennedy (hereinafter referred to as "items"), and requires that those items be preserved by the United States.

Sec. 2. (a) The Attorney General is authorized to determine, from time to time, which items should, in conformity with the declaration contained in the first section of this Act, be acquired and preserved by the United States. Each such determination shall be published in the Federal Register.

(b) Whenever the Attorney General determines that an item should be acquired and preserved by the United States, all right, title, and interest in and to, that item shall be vested in the United States upon the publication of that determination in the Federal Register.

(c) The authority conferred upon the Attorney General by subsection (a) of this section to make determinations shall expire one year from the date of enactment of this Act, and the vesting provisions of subsection (b) of this section shall

be valid only with respect to items described in determinations published in the Federal Register within that one-year period.

Sec. 3. The United States Court of Claims or the United States district court for the judicial district wherein the claimant resides shall have jurisdiction, without regard to the amount in controversy, to hear, determine, and render judgment upon any claim for just compensation for any item or interest therein acquired by the United States pursuant to section 2 of this Act; and where such claim is filed in the district court the claimant may request a trial by jury: Provided, That the claim is filed within one year from the date of publication in the Federal Register of the determination by the Attorney General with respect to such items.

Sec. 4. All items acquired by the United States pursuant to section 2 of this Act shall be placed under the jurisdiction of the Administrator of General Services for preservation under such rules and regulations as he may prescribe.

Sec. 5. All items acquired by the United States pursuant to section 2 of this Act shall be deemed to be personal property and records of the United States for the purposes of laws relating to the custody, administration, and protection of personal property and records of the United States, including, but not limited to, sections 2071 and 2112 of title 18 of the United States Code.

Sec. 6. There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Approved November 2, 1965.

APPENDIX 2

FEDERAL RULES OF CIVIL PROCEDURE

Rule 1. Scope of Rules. These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

* * * * *

Rule 13. Counterclaim and Cross-Claim.

(a) COMPULSORY COUNTERCLAIMS. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. . . .

(b) PERMISSIVE COUNTERCLAIMS. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

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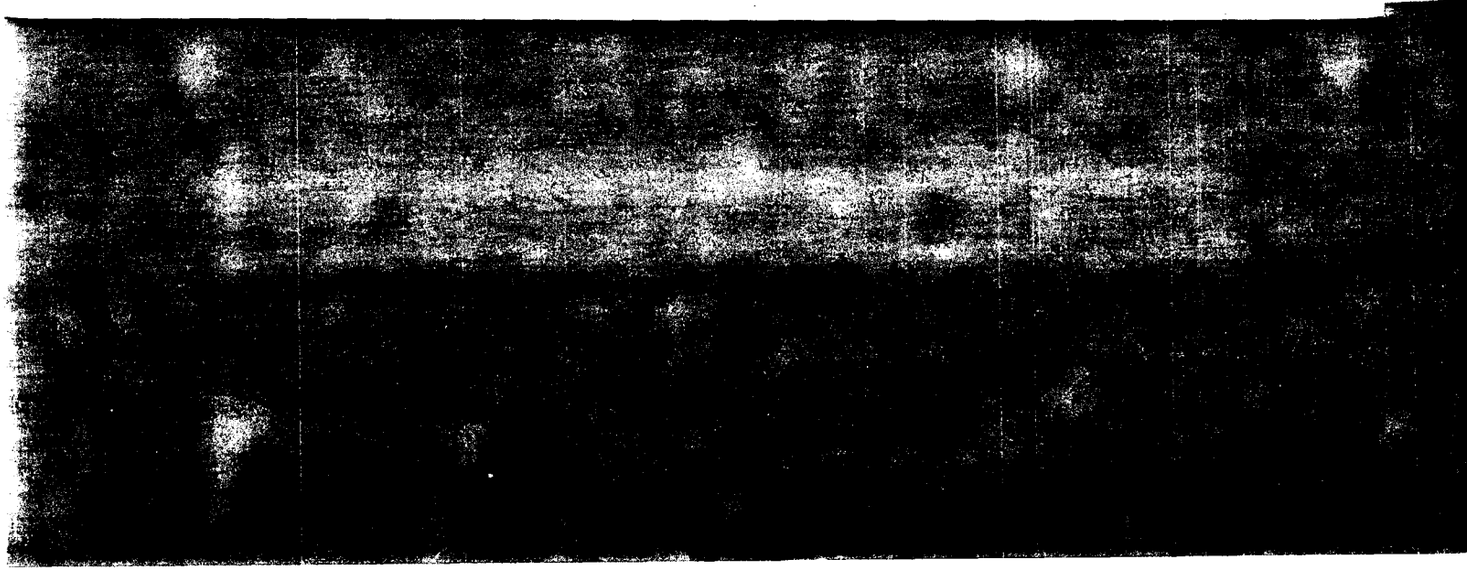
(d) COUNTERCLAIM AGAINST THE UNITED STATES. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof.



Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

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Rule 41. Dismissal of Actions.

(a) VOLUNTARY DISMISSAL: EFFECT THEREOF.

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(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

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Rule 81. Applicability in General.

(a) TO WHAT PROCEEDINGS APPLICABLE.

(1) These rules do not apply to prize proceedings in admiralty governed by Title 10, U.S.C., §§7651-81.

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SUPPLEMENTAL RULES FOR
CERTAIN ADMIRALTY AND MARITIME CLAIMS

Rule E. Actions In Rem and Quasi In Rem: General Provisions.

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(9) DISPOSITION OF PROPERTY; SALES.

(a) ACTIONS FOR FORFEITURES. In any action in rem to enforce a forfeiture for violation of a statute of the United States the property shall be disposed of as provided by statute.

(b) INTERLOCUTORY SALES. If property that has been attached or arrested is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action, or if the expense of keeping the property is excessive or disproportionate, or if there is unreasonable delay in securing the release of property, the court, on application of any party or of the marshal, may order the property or any portion thereof to be sold; and the proceeds, or so much thereof as shall be adequate to satisfy any judgment, may be ordered brought into court to abide the event of the action; or the court may, on motion of the defendant or claimant, order delivery of the property to him, upon the giving of security in accordance with these rules.

(c) SALES; PROCEEDS. All sales of property shall be made by the marshal or his deputy, or other proper officer assigned by the court where the marshal is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.