

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOE RAY COLPITT,

Plaintiff,

vs.

DEWEY BARTLETT, Governor,
State of Oklahoma, and

G. T. BLANKENSHIP, Attorney
General, State of Oklahoma,

Defendants.

No. 70-C-10 Civil

FILED

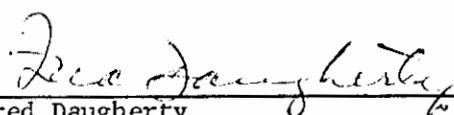
MAY 5 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER

Upon consideration of Plaintiff's Motion for New Trial, the
Court finds that the same should be overruled.

It is so ordered this 5 day of May, 1970.


Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TRANSPORT INDEMNITY COMPANY)
and WESTERN-GILLETTE, INC.,)

Plaintiffs)

v.)

No. 69-C-9

ROBERT EUGENE KING,)
Administrator With Will Annexed of)
the Estate of J. F. King, a/k/a)
J. Floyd King, deceased,)

Defendant)

FILED

MAY 8 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

STIPULATION

Come now the parties hereto by and through their respective counsel of record and state that the judgment which was rendered in the United States District Court for the District Of Kansas in an action entitled Transport Indemnity Company and Western Gillette, Inc., plaintiffs v. Floyd Chase, Executor of the Will of J. F. King, a/k/a J. Floyd King, defendant, No. KC-2864, has now been fully and completely satisfied and, therefore, the parties hereto stipulate and agree that the captioned action be dismissed with prejudice to the bringing of any future actions, at cost of defendants without proctor's fees.

WEEKS, THOMAS, LYSAUGHT, BINGHAM & JOHNSTON
CHARTERED
Home State Bank Building - FAirfax 1-7500
Minnesota Avenue at Fifth Street
Kansas City, Kansas 66101

and

CHURCH & ROBERTS

By *Donald Church*
Donald Church

501 Philtower Building
Tulsa, Oklahoma 74103
LUther 3-8156; A. C. 918

Attorneys for Plaintiffs

KELLER, WILBERT, PALMER & LASSMAN

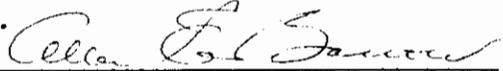
By *Randall D. Palmer*
204 National Bank Building
Pittsburg, Kansas
Attorneys for Defendant

and

H. G. E. Beauchamp
H. G. E. Beauchamp
Miami, Oklahoma
Attorney for Defendant

ORDER

Upon stipulation of the parties hereto, the above-captioned action is hereby dismissed with prejudice to the bringing of any future actions, at cost of defendants without proctor's fees.

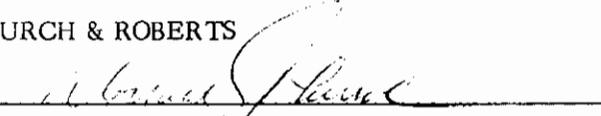

ALLEN E. BARROW
United States District Judge.

Approved:

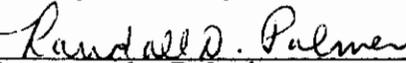
WEEKS, THOMAS, LYSAUGHT, BINGHAM & JOHNSTON
CHARTERED

and

CHURCH & ROBERTS

By 
Attorneys for Plaintiffs

KELLER, WILBERT, PALMER & LASSMAN

By 
Attorneys for Defendant

and


H. G. L. BEAUCHAMP
Miami, Oklahoma
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

N. C. LEWIS,)
)
 Plaintiff,)
)
 vs.)
)
 S. H. KRESS COMPANY,)
 a Corporation,)
)
 Defendant.)

NO. 69-C-117

FILED

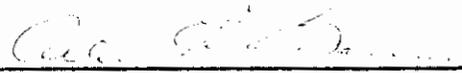
MAY 8 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER OF DISMISSAL

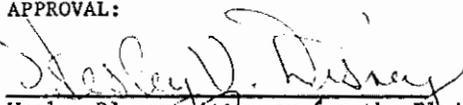
ON this 8 day of May, 1970, upon the written application of the parties for a dismissal with prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the cause of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

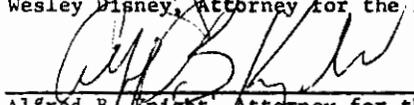


JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:



Wesley Disney, Attorney for the Plaintiff



Alfred B. Knight, Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EDDIE THULIN AND CAROL THULIN,

Plaintiffs,

vs.

HARTZ MOUNTAIN PRODUCTS CORP.,
A FOREIGN CORPORATION,

Defendant.

)
)
) 69-C-218
)
)
)
)
)
)

FILED

MAY 8 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

JUDGMENT

Findings of Fact and Conclusions of Law having been
entered this date,

IT IS ORDERED that judgment be entered in favor of
the defendants and against the plaintiffs.

ENTERED this 8 day of May, 1970.



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EDDIE THULIN AND CAROL THULIN,)
)
 Plaintiffs,)
)
 -vs-) NO. 69-C-218
)
 HARTZ MOUNTAIN PRODUCTS CORP.,)
 A FOREIGN CORPORATION,)
)
 Defendant.)

FILED

MAY 8 1970

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT M. M. EWING, CLERK
U. S. DISTRICT COURT

The above-entitled action was commenced by Eddie Thulin and Carol Thulin as Plaintiffs, citizens of Oklahoma, against Hartz Mountain Products Corporation, a citizen of New York, as Defendant. On this 16th day of April, 1970, the case comes on for trial to the Court without a jury, and the Court having considered the evidence, the stipulations of the parties, and their briefs and the case having been submitted to the Court, the Court being fully advised in the premises makes the following findings of fact, conclusions of law and order for judgment herein:

FINDINGS OF FACT

1. The Defendant markets several thousand pet products including insecticides such as the one involved in the instant litigation, a dog flea powder. This particular powder was, during the period of time involved, manufactured for the Defendant by the Thompson-Hayward Chemical Company of Kansas City, Kansas. The Plaintiffs had purchased a small can of said powder several months prior to the date of injury, November 5, 1968. The injury

occurred to Mrs. Thulin on that date but Mr. Thulin had used it on their dogs several times without incident to himself or to the dogs.

2. The injury complained of by Plaintiff, Mrs. Carol Thulin, was a contact dermatitis with an associated neurogenic disorder which began immediately upon use of the product on the above date.

3. The testimony is unrefuted that the ingredients of the flea powder do not of themselves create an irritation. Any such reaction would have to be idiosyncratic or so rare that the manufacturer could not be charged with knowledge that such could exist.

4. Approximately 7,000,000 packages or cans of this powder have been marketed by the Defendant and this is the first complaint to their knowledge concerning skin irritation or reaction.

5. Plaintiff, Carol Thulin, either contracted poison ivy off the fur of the dog or had a genuine reaction to the ingredients of the powder but if she did it was idiosyncratic.

6. The Defendant had placed cautionary information on the label of this product which exceeds the requirements of the governmental agencies regulating same and which more than fulfills its obligation to the public.

CONCLUSIONS OF LAW

Upon the foregoing facts the Court makes the following conclusions of law:

The Defendant is not liable to the Plaintiffs for the reasons that the label on the product contains all necessary cautions and warnings, the powder itself is not injurious or harmful to the vast majority of the public, and it is doubtful that the product caused the injury

Plaintiff, Carol Thulin, sustained but even if it did she is such a rare individual that her reaction to it was idiosyncratic.

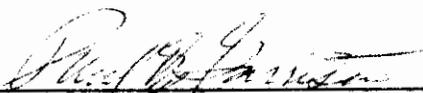
Let the judgment of this Court be entered accordingly.

DATED, this 16th day of April, 1970.



ALLEN E. BARROW,
United States District Judge

APPROVED AS TO FORM:



Attorney for Plaintiffs



Attorney for Defendant

occurred to Mrs. Thulin on that date but Mr. Thulin had used it on their dogs several times without incident to himself or to the dogs.

2. The injury complained of by Plaintiff, Mrs. Carol Thulin, was a contact dermatitis with an associated neurogenic disorder which began immediately upon use of the product on the above date.

3. The testimony is unrefuted that the ingredients of the flea powder do not of themselves create an irritation. Any such reaction would have to be idiosyncratic or so rare that the manufacturer could not be charged with knowledge that such could exist.

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5. Plaintiff, Carol Thulin, either contracted poison ivy off the fur of the dog or had a genuine reaction to the ingredients of the powder but if she did it was idiosyncratic.

6. The Defendant had placed cautionary information on the label of this product which exceeds the requirements of the governmental agencies regulating same and which more than fulfills its obligation to the public.

CONCLUSIONS OF LAW

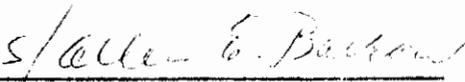
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Plaintiff, Carol Thulin, sustained but even if it did she is such a rare individual that her reaction to it was idiosyncratic.

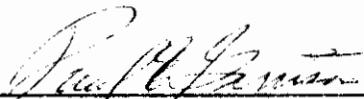
Let the judgment of this Court be entered accordingly.

DATED, this 16th day of April, 1970.



ALLEN E. BARROW,
United States District Judge

APPROVED AS TO FORM:



Attorney for Plaintiffs



Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM G. (BILL) ROBISON,)
)
) Petitioner,)
 vs.) No. 70-C-139
)
)
 RAY H. PAGE,)
)
) Respondent.)

FILED

MAY 8 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

The petitioner herein is presently incarcerated in the Oklahoma State Penitentiary from a judgment and sentence of the District Court of Tulsa County, Oklahoma, allegedly entered on February 15, 1967, for a term of from 1 to 5 years for possession of explosives, after former conviction.

Petitioner was represented in the trial of this case in the District Court by his self-retained attorney, Mr. Ollie Gresham. An appeal was taken to the Court of Criminal Appeals of the State of Oklahoma and is reported as William Gordon Robison, plaintiff in error, v. The State of Oklahoma, defendant in error, Okl. Cr. 444 P.2d 845 (Sept. 4, 1968).

After the Opinion in the above cause was filed, and on a date not shown petitioner alleges that he applied for "post-conviction appeal" to the Court of Criminal Appeals of the State of Oklahoma, which was denied in Case No. A-15,880. In his Petition here petitioner says that the facts and issues raised in his present Petition are precisely the same which petitioner raised in the State Appeals Court on Motion for Post-Conviction Appeal in Case No. A-15,880. Petitioner's Petition for Post-Conviction Appeal does not appear in the file in this case, nor does it appear why petitioner would request authority for post-conviction appeal when he had previously appealed from his original conviction.

In the Petition before the Court here now, question No. 10 of the questionnaire furnished to petitioner for his completion and execution states as grounds for his Petition and for his being held in custody unlawfully as follows:

- "(a) received erroneous sentence. arrested without a warrant, or probable cause. denied effective aid of counsel, all violative of petitioner's Constitutional rights, amendments 4, 5, 6, and 14 of the United States Constitution."

According to the record before this Court the petitioner has not exhausted his state remedies in that he has not presented to the State Courts for consideration his assertion that he was

arrested without warrant or probable cause, nor his assertion that he has been denied effective counsel. These questions were not touched upon by the Court of Criminal Appeals in its written Opinion, supra, nor in its Memorandum Opinion filed March 4, 1970, denying habeas corpus or appeal out of time, and this Court must assume, therefore, that these questions have not been properly presented to the State Courts for consideration and determination, and the petitioner not having exhausted his state remedies,

THIS PETITION IS DISMISSED.

Dated this 7th day of May, 1970.

Leslie Robinson
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 5.75 Acres, more or less, in)
 Rogers County, Oklahoma, including)
 all accretions and riparian rights)
 thereto, and L. W. Grant, Jr., et)
 al, and Unknown Owners,)
)
 Defendants.)

CIVIL ACTION NO. 67-C-28
Tract No. 402

FILED

MAY 11 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

J U D G M E N T

1.

NOW, on this 8 day of May, 1970, this matter comes on for disposition on application of plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the court, after having examined the files in this action and being advised by counsel for plaintiff, finds:

2.

This judgment applies to the estate condemned in Tract No. 402, as such estate and tract are described in the Complaint and the Declaration of Taking, as amended, filed in this action.

3.

The court has jurisdiction of the parties and subject matter of this action.

4.

Service of process has been perfected either personally, or by publication notice, as provided by Rule 71A of Federal Rules of Civil Procedure on all parties defendant in this cause who are interested in subject tract.

5.

The Acts of Congress set out in Paragraph 2 of the Complaint herein give the United States of America the right, power, and authority to condemn for public use the estate described in Paragraph 2 herein. Pursuant thereto, on February 3, 1967, the United States of America filed a Declaration of Taking of a certain described estate in a tract of land described therein and designated as Tract No. 402. Pursuant to

the terms of the aforesaid Acts, title to the described estate in said Tract No. 402 vested in the Plaintiff at the time of filing the Declaration of Taking.

6.

Because of a change in channel right-of-way requirements for the subject project, it became necessary to revise the size, shape and location of the said Tract No. 402. To assist in such revision the Plaintiff and the former owners, on December 5, 1969, executed and filed herein an instrument entitled Stipulation for Exclusion of Property and Revestment of Title. Pursuant to the terms of such stipulation, title to the entire estate taken in Tract No. 402 by virtue of the Declaration of Taking filed on February 3, 1967 was revested in the former owners.

7.

On April 22, 1970, the Plaintiff filed an Amendment to Declaration of Taking which amendment substituted a new and correct description and plat of Tract No. 402 in lieu of the description and plat thereof set forth in the original Declaration of Taking.

Likewise on April 22, 1970, Plaintiff filed an Amendment to Complaint which set forth the correct description of the said Tract No. 402.

8.

At the time of filing the Declaration of Taking, and again at the time of filing the Amendment thereto, there was deposited in the registry of the Court, as estimated compensation for the taking of the described estate in subject tract, certain sums of money, and part of this deposit has been disbursed, as set out below in Paragraph 15.

9.

On the date of filing the Amendment to Declaration of Taking, the owners of the estate taken in subject tract were the defendants whose names are shown below in Paragraph 15. Such named defendants are the only persons asserting any interest in the estate taken in such tract, all other persons having either disclaimed or defaulted, and such named defendants are entitled to receive the just compensation awarded by this judgment.

10.

The owners of subject tract and the United States of America have executed and filed herein a stipulation as to just compensation, wherein they have agreed that just compensation for the estate condemned in subject tract is in the amount shown as compensation in Paragraph 15 below, and such stipulation should be approved.

11.

This judgment will create a deficiency between the amount deposited as estimated compensation for subject tract and the amount fixed by the stipulation as to just compensation, and the amount of such deficiency should be deposited for the benefit of the owners. Such deficiency is set out below in Paragraph 15.

12.

It Is Therefore ORDERED, ADJUDGED AND DECREED that the Stipulation described in Paragraph 6 above, revesting title in the owners, to the property condemned by the original Declaration of Taking, is approved.

13.

It Is Further ORDERED, ADJUDGED AND DECREED that the United State of America has the right, power, and authority to condemn for public use the tract particularly described in the Amendment to Declaration of Taking filed in this case and designated therein as Tract No. 402; and such tract, to the extent of the estate described in the Complaint, as amended, on file in this case, is condemned, and title to such described estate is vested in the United States of America as of April 22, 1970.

14.

It Is Further ORDERED, ADJUDGED AND DECREED that on the date of taking, the owners of the estate condemned herein in subject tract were the defendants whose names appear below in Paragraph 15, and the right to receive the just compensation for the estate so taken in this tract is vested in the parties so named.

15.

It Is Further ORDERED, ADJUDGED AND DECREED that the stipulation as to just compensation described in Paragraph 10 above, is hereby approved, and the sum therein fixed is adopted as the award of just

compensation for the estate condemned in the subject tract, as follows:

TRACT NO. 402

Owners:

L. W. Grant, Jr., a/k/a Louis W. Grant, Jr.
and Mary Grant

Award of just compensation
pursuant to stipulation \$5,042.00 \$5,042.00

Deposited as estimated compensation:

With original Declaration 2,799.00
With Amendment
to Declaration 1,784.00
Total 4,583.00

Disbursed to owners 2,799.00

Balance due to owners \$2,243.00

Deposit deficiency \$ 459.00

16.

It Is Further ORDERED, ADJUDGED AND DECREED that the Plaintiff shall deposit in the registry of this Court, in this civil action to the credit of Tract No. 402, the deposit deficiency in the sum of \$459.00.

When such deposit has been made the Clerk of this Court shall disburse from the deposit for the subject tract, jointly to:

L. W. Grant, Jr.
and Mary Grant \$2,243.00

/s/ Allen E. Barrow

UNITED STATES DISTRICT JUDGE

APPROVED:

Robert A. Markon

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INTERSTATE COMMERCE COMMISSION,
Plaintiff,

v.

MATTOON MOVING AND STORAGE CO., INC.,
Defendant.

CIVIL ACTION NO. 70-C-104

FILED

MAY 13 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
PERMANENT INJUNCTION

This cause having come on for consideration by the Court, and upon the complaint of the plaintiff, and the subjoined consent of the defendant, the plaintiff being represented by its attorney, Edward W. Arnn, and the defendant being represented by its president, Francis D. Adams, as hereunto subscribed, the Court, upon consideration thereof, now makes and enters the following:

FINDINGS OF FACT

- I. This action is brought by the Interstate Commerce Commission under the provisions of 49 U.S.C. 322(b)(1), and under the general laws and rules relating to suits in equity arising under the Constitution and the laws of the United States.
- II. Defendant Mattoon Moving and Storage Co., Inc., herein-after referred to as Mattoon, is a corporation duly organized and existing according to law, with its principal place of business at 1522 East Sixth Street, Tulsa, Oklahoma, within the jurisdiction of this Court pursuant to 49 U.S.C. 322(b)(1).
- III. That at all times herein mentioned, defendant was engaged in acting as an agent for common carriers of household goods in interstate or foreign commerce by motor vehicle for compensation on public highways and, pursuant to such transportation activities, defendant is subject to the provisions of

Part II of the Interstate Commerce Act (Title 49, Chapter 8, U. S. Code).

IV. That on various dates and on numerous occasions since 1967, the defendant has held itself out to transport household goods as agent for common carriers of household goods by motor vehicle as hereinafter described and that such holding out is within the jurisdiction of this Court.

V. That defendant, pursuant to its form of advertising, particularly in the telephone directories for Tulsa, Oklahoma, has held itself out and is holding itself out to transport household goods in interstate or foreign commerce for and on behalf of three principals, namely, National Van Lines, Inc., Burnham Van Service, Inc., and Kessell Transfer & Storage, Inc., without any restrictions as to the type of service performed.

VI. That at all times herein mentioned there was not in force, and there is not now in force with respect to said defendant, a license issued by the Interstate Commerce Commission, or any other authority, authorizing the above-described brokerage operations and activities of the defendant.

CONCLUSIONS OF LAW

I. This Court has jurisdiction of the parties and the subject matter of this action by virtue of the provisions of 49 U.S.C. 322(b)(1), and under the general laws and rules relating to suits in equity arising under the Constitution and the laws of the United States.

II. That the above holding out to transport household goods in interstate or foreign commerce for and on behalf of three principals constitutes a violation of 49 U.S.C. 311(a), and as such is subject to be enjoined by this Court upon the application and suit of plaintiff under the express provisions of 49 U.S.C. 322(b)(1).

PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the defendant Mattoon Moving and Storage Co., Inc., its agents, employees and representatives, and all other persons, firms and corporations acting by or under its direction and authority, or in active participation with it, be permanently enjoined and restrained from holding themselves out to transport household goods in interstate or foreign commerce for and on behalf of more than one principal without any restrictions as to the type of service to be performed, unless and until such time, if at all, as there is in force with respect to said defendant, a license issued by the Interstate Commerce Commission authorizing such brokerage operations and activities of the defendant.

Signed this 7th day of May, 1970.

(S) Luther Bohanon
Luther Bohanon, Judge
United States District Court

The entry of the foregoing is hereby consented to and the factual statements therein are stipulated to be true and correct.

Mattoon Moving and Storage Co., Inc.

By (S) Francis D. Adams
Francis D. Adams, President

(S) Edward W. Arnn
Edward W. Arnn
Of Attorneys for Plaintiff
Interstate Commerce Commission
Room 9A27 Federal Building
819 Taylor Street
Fort Worth, Texas 76102

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Raymond L. Thornton and
Ruth V. Thornton,

Defendants.

Civil No. 70-C-97

FILED

MAY 14 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 13 day of May, 1970. The defendants, Raymond L. Thornton and Ruth V. Thornton, appearing not; and

The Court being fully advised and having examined the file herein finds that due and legal personal service of summons has been made on the defendants, Raymond L. Thornton and Ruth V. Thornton, on April 16, 1970; and

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note on the following described real property located in Tulsa, Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Seven (7), LAKE-VIEW
HEIGHTS AMENDED ADDITION to the City of
Tulsa, County of Tulsa, State of Oklahoma,
according to the recorded plat thereof.

The Court further finds that the material allegations of Plaintiff's Complaint are true and correct;

That the defendants, Raymond L. Thornton and Ruth V. Thornton, did, on September 10, 1963, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note for the sum of \$8,800.00, with interest thereon at the rate of $5\frac{1}{4}\%$ per annum and further providing for the payment of monthly installments of principal and interest; and

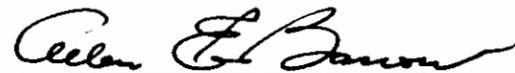
It further appears that the defendants, Raymond L. Thornton and Ruth V. Thornton, made default under the terms of the aforesaid mortgage and mortgage note by reason of their failure to make monthly installments due thereon on January 1, 1969, which default has continued and that by reason thereof the defendants, Raymond L. Thornton and Ruth V. Thornton, are now indebted to the Plaintiff in the sum of \$8,184.20, as

unpaid principal, with interest thereon at the rate of 5 $\frac{1}{4}$ % per annum from January 1, 1969, until paid, plus the cost of this action accrued and accruing.

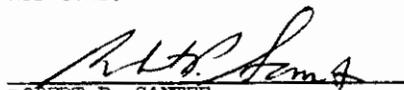
IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Plaintiff, United States of America, have and recover judgment against the defendants, Raymond L. Thornton and Ruth V. Thornton, for the sum of \$8,184.20, with interest thereon at the rate of 5 $\frac{1}{4}$ % per annum from January 1, 1969, until paid, plus the cost of this action accrued and accruing, and the sum of \$26.00 expended for abstracting fees.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement, the above-described real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part hereof.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOE RAY COLPITT,

Plaintiff,

vs.

DEWEY BARTLETT, Governor
State of Oklahoma, and

G. T. BLANKENSHIP, Attorney
General, State of Oklahoma,

Defendants.

No. 70-C-10 Civil

MAY 10 1970

MAY 10 1970

A. H. EWING, CLERK
U.S. DISTRICT COURT

C O U R T

Plaintiff has filed a Motion to Reconsider, Set Aside and Vacate the Court's Orders entered after March 5, 1970, when it filed notice of appeal in this case, on the ground that the Court was deprived of any power to further act in the case. It is, thus, Plaintiff's contention that the Court's Order dismissing his action entered subsequent to his notice of appeal is null and void. To support this proposition, Plaintiff has quoted indiscriminately from note 17, Rule 3, F.R.App.P., 28 U.S.C.A., apparently without any attempt to make any analysis of the holdings of the cases cited or to relate them to the facts, circumstances, or nature of this case.

None of the cases cited involved an appeal from the denial of a three judge court. The law respecting the power of a single district judge in connection with actions in which right to a three judge court is claimed has been clearly and succinctly stated by the Tenth Circuit Court of Appeals:

"A single judge may dismiss for lack of subject-matter jurisdiction and his determination is made on the basis of the allegations of the complaint. In *per se* *Yorkey*, 250 U.S. 50, 54 S.Ct. 3, 78 L.Ed. 151.

His refusal to convene a three judge court may be reviewed by the court of appeals. *Idlewild Bon-Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 62 S.Ct. 1294, 8 L.Ed.2d 794. If the trial court was correct in holding that subject-matter jurisdiction is not alleged, there is no need of pursuing further the question of the need for a three-judge court." *Board of Education v. State of Oklahoma*, 409 F.2d 665 (Tenth Cir. 1969), at p. 667.

It has been held in the precise situation of this case that a district court, after deciding that no three judge court was merited, has power to retain jurisdiction of the case to dispose of it on summary judgment, notwithstanding a notice of appeal filed after denial of the three judge court and before granting summary judgment.

"We are confronted at the threshold with a question of the jurisdiction of this court. The order of October 14, 1964, denying convention of a three judge court, was not a final decision from which an appeal would lie (28 U.S.C.A. § 1291); it did not terminate the litigation on the merits--the usual test of appealability. *Catlin v. United States*, 324 U.S. 229, 238, 65 S.Ct. 631, 89 L.Ed. 911 (1945). Rather the order constituted merely an interlocutory determination that Eason was not entitled to a three judge court. The district court still had to reach the merits of Eason's claims under the Civil Rights Act. Thus the district court, notwithstanding the filing of the notice of appeal, properly retained jurisdiction to act on the defendants' motions." *Eason v. Dickson*, 390 F.2d 585 (Ninth Cir. 1968), at pp. 587-588.

Plaintiff's Motion is wholly without merit and will be denied.

Plaintiff's Motion to Reconsider, Set Aside, and Vacate is denied.

It is so ordered this 13 day of May, 1970.


 Fred Daugherty
 United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack Story, John Story and
Melba Story

vs

70-C-135

David A. Helms, Chief,
Real Estate Division,
Department of the Army,
Tulsa District, Corps of
Engineers

FILED

MAY 15 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

Nick Robson, et al

vs

70-C-136

David A. Helms, Chief,
Real Estate Division,
Department of the Army,
Tulsa District, Corps of
Engineers

ORDER

This matter comes on for hearing this 15th day of May, 1970, pursuant to regular assignment before the Honorable Fred Daugherty, Judge of the United States District Court for the Northern District of Oklahoma, the Plaintiffs appearing in person and by their attorneys, Ed D. Foster, Jr., and Larry Patton of the firm of Kerr, Davis, Irvine, Burbage & Foster, Attorneys of Oklahoma City, Oklahoma, and the Defendant David A. Helms appearing in person and by his attorney, Hubert A. Marlow, Assistant United States Attorney for the Northern District of Oklahoma.

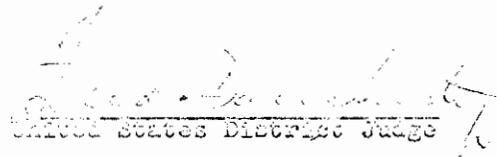
Whereupon in open Court the Defendant renews his motion to dismiss and in furtherance thereof advises the Court:

1. That the Defendant has no authority to institute condemnation proceedings on behalf of the Government.
2. That the Defendant has not prepared or transmitted a Condemnation Assembly to the Division Engineer, Dallas, Texas, concerning the lands which are the subject of the above styled and numbered causes; nor has the Defendant made any recommendation concerning such lands to the said Division Engineer.
3. That prior contacts between the parties have been for the purpose of estimating the cost of acquiring the lands which

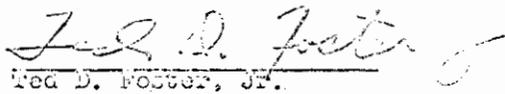
are the subject of this proceeding and determining whether or not such lands can be acquired by direct purchase.

Thereupon, after hearing argument of counsel, the Court finds the motion of the Defendant to dismiss should be sustained.

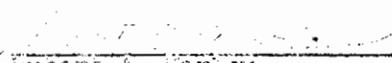
IT IS THEREFORE ORDERED that the Defendant's motion to dismiss is sustained and the Plaintiffs' proceedings are hereby dismissed without prejudice.


United States District Judge

Approved:


Fred D. Foster, Jr.


Larry Patton
Attorneys for Plaintiffs


Hubert A. Marlow
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack Story, John Story and
Melba Story

vs

70-C-135

David A. Helms, Chief,
Real Estate Division,
Department of the Army,
Tulsa District, Corps of
Engineers

FILED

MAY 15 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

Nick Robson, et al

vs

70-C-136

David A. Helms, Chief,
Real Estate Division,
Department of the Army,
Tulsa District, Corps of
Engineers

ORDER

This matter comes on for hearing this 15th day of May, 1970, pursuant to regular assignments before the Honorable Fred Daugherty, Judge of the United States District Court for the Northern District of Oklahoma, the Plaintiffs appearing in person and by their attorneys, Ned D. Foster, Jr., and Larry Patton of the firm of Kerr, Davis, Irvine, Burbage & Foster, Attorneys of Oklahoma City, Oklahoma, and the Defendant David A. Helms appearing in person and by his attorney, Hubert A. Marlow, Assistant United States Attorney for the Northern District of Oklahoma.

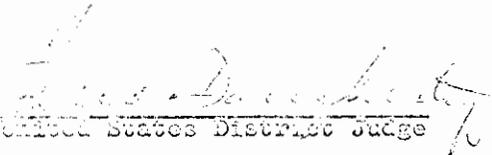
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1. That the Defendant has no authority to institute condemnation proceedings on behalf of the Government.
2. That the Defendant has not prepared or transmitted a Condemnation Assembly to the Division Engineer, Dallas, Texas, concerning the lands which are the subject of the above styled and numbered causes; nor has the Defendant made any recommendation concerning such lands to the said Division Engineer.
3. That prior contacts between the parties have been for the purpose of estimating the cost of acquiring the lands which

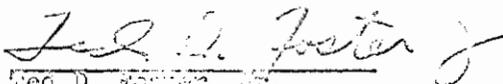
are the subject of this proceeding and determining whether or not such lands can be acquired by direct purchase.

Thereupon, after hearing argument of counsel, the Court finds the motion of the Defendant to dismiss should be sustained.

IT IS THEREFORE ORDERED that the Defendant's motion to dismiss is sustained and the Plaintiffs' proceedings are hereby dismissed without prejudice.


United States District Judge

Approved:


Ted D. Foster, Jr.


Larry Patton
Attorneys for Plaintiffs


Eugene A. Harlow
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BUTLER PAPER COMPANY,]
]
 Plaintiff,]
]
 vs.]
]
 BUSINESS FORMS, LTD. and]
 MANEKE-KINZIE PRINTING COMPANY,]
]
 Defendants.] Civil Action
 No. 67-C-111

FILED

MAY 18 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

ON this 15 day of May, 1970, comes the Plaintiff, Butler Paper Company, by its attorney, Franklin D. Hettinger, and the Defendant, Maneke-Kinzie Printing Company, by its attorney, R. Dobie Langenkamp, and the Plaintiff, Butler Paper Company having filed a Dismissal with Prejudice on the 14th day of May, 1970;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all causes of action against said Defendant, Maneke-Kinzie Printing Company be hereby dismissed with prejudice at the cost of the Plaintiff.

15/ Luther Bohanon
LUTHER BOHANON,
JUDGE OF THE U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE TRENTON CORPORATION,)
Plaintiff,)
vs.)
TULSA PIPE COATING, INC.,)
Defendant.)

Civil Action
No. 69-C-61

FILED

MAY 19 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER OF DISMISSAL

In accordance with the request and consent of the
parties hereto:

1. Plaintiff's Complaint and Defendant's
Counterclaim are hereby dismissed without
prejudice.
2. Each party is to pay its own costs.

Dated: May 10, 1970

William H. Griffith
United States District Judge

Approved and Consented to:

Pat Malloy
PAT MALLOY
Attorney for Defendant
813 Thurston National Building
Tulsa, Oklahoma 74103

James R. Head
JAMES R. HEAD
Head & Johnson
Attorney for Plaintiff
424 Beacon Building
Tulsa, Oklahoma 74103

William H. Griffith
William H. Griffith
Whittemore, Hulbert & Belknap
Of Counsel for Plaintiff
3053 Penobscot Building
Detroit, Michigan 48226

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,
Plaintiff,
vs.
Willard D. Brunley and
Velma Brunley, and William
Crofut,
Defendants.

Civil No. 69-C-301

FILED

MAY 19 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER CONFIRMING MARSHAL'S SALE

NOW on this _____ day of May ~~1969~~ ¹⁹⁷⁰ there coming on for hearing Motion of the Plaintiff, United States of America, to confirm the sale of real property made by the United States Marshal for the Northern District of Oklahoma, on May 6, 1970, under an Order of Sale dated January 27, 1970, and issued in this cause out of the Office of the Court Clerk for the United States District Court for the Northern District of Oklahoma, of the following described property, to-wit:

Lot One (1), Block Six (6), LAZY H ADDITION, an Addition to the City of Sapulpa, Creek County, Oklahoma, according to the recorded plat thereof,

and the Court having examined the proceedings of the United States Marshal under the aforesaid Order of Sale and no one appearing in opposition thereto and no exceptions having been filed, finds that due and legal notice of the sale was given by publication once a week for at least four (4) weeks prior to the date of sale in the Sapulpa (Okla.) Daily Herald, a newspaper published and of general circulation in the County of Creek, State of Oklahoma, and that on the day fixed therein the above-described property was sold to the the Administrator of Veterans Affairs, it being the highest and best bidder therefore.

The Court further finds that the sale was made in all respects in conformity with the law and judgments of this Court and that the sale was legal in all respects.

IT IS WHEREFORE ORDERED, ADJUDGED and DECREED that the United States Marshal's Sale and all proceedings under the Order of Sale issued herein, be and the same are hereby approved and confirmed.

IT IS FURTHER ORDERED THAT any Clerk, United States Marshal for the Northern District of Oklahoma, make and execute to the purchaser, the Administrator of Veterans Affairs, a good and sufficient Deed for such premises.

FRED DAUGHERTY

UNITED STATES DISTRICT JUDGE

APPROVED:

ROBERT P. BANTER
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS H. FLEEGER,)
)
 Plaintiff,)
)
 vs.)
)
 GENERAL INSURANCE COMPANY)
 OF AMERICA, a corporation,)
)
 Defendant.)

FILED

MAY 31 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

Civil Action No. 68-C-72

ORDER OVERRULING PLAINTIFF'S
MOTION FOR NEW TRIAL

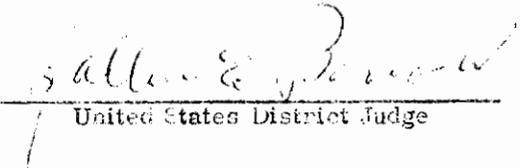
NOW on this 21st day of May, 1970, there comes before the Court for its consideration and ruling the Motion for New Trial heretofore filed by the plaintiff.

WHEREFORE, the Court having reviewed in detail the argument and authorities submitted by counsel for both the plaintiff and the defendant, it appears to the Court that further argument upon this Motion is not required and, therefore, the Court is now ready to rule upon said Motion at this time.

It is the determination of the Court that the plaintiff's Motion for New Trial is not well taken and that the orders of this Court made and entered on April 15, 1970, (1) overruling the plaintiff's motion for partial summary judgment; and (2) sustaining the defendant's motion for summary judgment, were properly made and do correctly dispose of the legal questions raised by the plaintiff's Motion for New Trial.

NOW, THEREFORE, it is the order and decree of this Court that the plaintiff's Motion for New Trial is hereby overruled, exception allowed.

Ordered the day and year first above stated.


United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LINDA COLLINS, Administratrix,)
)
) Plaintiff,)
 vs.) No. 69-C-155
)
) GRAND RIVER DAM AUTHORITY,)
) A Corporation,)
)
) Defendant.)

FILED

MAY 21 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

SUMMARY JUDGMENT

This cause comes on for consideration by the Court upon Motion for Summary Judgment filed by the defendant under Rule 56(b)(c) Federal Rules of Civil Procedure; the parties have filed in this cause Stipulation of Facts which the Court adopts and approves, and based upon the Stipulation of Facts so filed, pleadings in this cause and upon the authority of Ruth E. Teague, appellant, vs. Grand River Dam Authority, appellee, ___ F.2d ___ United States Court of Appeals, Tenth Circuit, Opinion filed April 17, 1970, defendant's Motion is sustained, and accordingly summary judgment is hereby entered in favor of the defendant, Grand River Dam Authority.

Dated this 20th day of May, 1970.

Lester Robinson
United States District Judge

IEU:lg
5/19/70

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILBERT MONTELL BROWN,

Plaintiff

vs.

S. M. FALLIS, District Attorney, County of Tulsa, Oklahoma; JACK PURDIE, Chief of Police, Tulsa, Oklahoma; G. T. BLANKENSHIP, Attorney General of the State of Oklahoma; DEWEY BARTLETT, Governor of the State of Oklahoma; individually and in their official capacities,

Defendants

Civil Action
No. 70-C-54

FILED

MAY 22 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT.

JUDGMENT

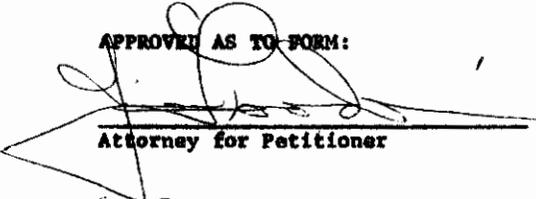
Now on this 12th day of May, 1970, the Court having made certain findings of fact and conclusions of law, as reflected in the proceedings on file herein, finds that Judgment should be entered denying the petitioner's motion for leave to file an appeal in forma pauperis.

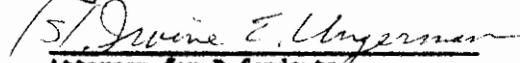
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the motion filed herein by Wilbert Montell Brown seeking leave to appeal in forma pauperis to the United States Supreme Court be and the same is hereby denied.

LUTHER BOHANON

United States District Judge

APPROVED AS TO FORM:


Attorney for Petitioner


Attorney for Defendants

LAW OFFICES
UNGERMAN,
GRABEL,
UNGERMAN
& LEITER

SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANDREW KAPICS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 69-C-250

FILED

MAY 25 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

O R D E R

The Court has for its consideration the stipulation of the plaintiff and the defendant whereby it was agreed that the defendant would pay the plaintiff the sum of \$4,250.00, in full settlement and satisfaction of any and all claims which plaintiff now has or may hereafter acquire against the defendant by virtue of the incident giving rise to the suit, and further

The Court has for its consideration the dismissal entered by the plaintiff which was occasioned by the defendant paying to the plaintiff the settlement sum of \$4,250.00 and, based on such stipulation and dismissal,

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that his action against the defendant be dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RAYMOND L. BENNETT and ILLENE G. BENNETT,)
Husband and Wife,)
)
) Plaintiffs,)
-vs-)
)
)
SYLVESTER HOWELL, et al,)
)
) Defendants.)
_____)

CIVIL ACTION ✓
No. 70-C-89

FILED

MAY 25 1970 *DS*

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER TO REMAND

This matter coming on to be heard upon the motion of Raymond L. Bennett and Illene G. Bennett, husband and wife, and their attorney, Troye Kennon, for an order to remand the above entitled action to the District Court of Tulsa County, State of Oklahoma, and the Court, having examined the files and records in this cause, and being fully advised in the premises, finds that said order should be granted.

IT IS THEREFORE ORDERED that the above styled and numbered cause be and it is hereby remanded to the District Court of Tulsa County, State of Oklahoma, for a final determination of the issues thereon.

5/27/1970

Katherine Bohannon

JUDGE

APPROVED AS TO FORM:

NATHAN G. GRAHAM
United States District Attorney

By:

Robert P. Santee
Robert P. Santee
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

WILSHIRE OIL COMPANY OF TEXAS,)
)
 Plaintiff,)
)
 vs.)
)
 L. E. RIFFE and)
 C. HOMER RIFFE,)
)
 Defendants.)

No. 67-C-195

FILED

MAY 28 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

MOTION TO DISMISS

Come now the plaintiff, Wilshire Oil Company of Texas, and
the defendants, L. E. Riffe and C. Homer Riffe, and move that the
trial court dismiss the subject cause.

Dated this 25th day of May, 1970.

WILSHIRE OIL COMPANY OF TEXAS

By Robert J. Woolsey
Robert J. Woolsey, Attorney

L. E. RIFFE and C. HOMER RIFFE

By James R. Bagleton
James R. Bagleton, Attorney

ORDER

On this 25th day of May, 1970, pursuant to the above Motion and
for good cause shown, it is CONSIDERED, ORDERED, ADJUDGED
and DECREED that the subject cause be dismissed.

Allen C. Bannock

United States District Judge

IN THE DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARION LYNN MUMPHREY

Plaintiff

vs

BENNIS FRANK SEACAT

Defendant

NO. 69-C-122

FILED

MAY 29 1970

RECEIVED CLERK
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the plaintiff, through her attorneys, Sexton, Wiggins & Christian, by Eddie N. Christian, and the defendant, through his attorneys, Best, Sharp, Thomas & Glass, by Joseph F. Glass, and stipulate that the above captioned cause of action be dismissed with prejudice to filing a future action herein.

Eddie N. Christian

Attorney for Plaintiff
Joseph F. Glass

Attorney for Defendant

ORDER

And now on this 20th day of May, 1970, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled cause be, and the same is hereby dismissed with prejudice to the rights of the plaintiff to bring any future action arising from said cause of action.

James E. ...

Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JACK EDGAR McBRIDE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

)
)
) 69-C-259
)
)
) **FILED**
)
) MAY 28 1970

M. M. EWING, CLERK
U. S. DISTRICT COURT

ORDER OVERRULING MOTION TO VACATE SENTENCE PURSUANT TO
§2255 AND DISMISSING THE CAUSE OF ACTION AND COM-
PLAINT

This matter coming on for consideration on the Motion to Vacate Sentence pursuant to §2255, the plaintiff, Jack Edgar McBride being represented by his attorney, Tommas D. Frazier, and the defendant, United States of America, being represented by Hubert Bryant; the Court having carefully perused the briefs in support and opposition to said motion, the affidavits filed by the Government, the complete trial record, having pre-tried the matter and having heard statements and arguments of counsel, being fully advised in the premises, finds:

At the outset, when plaintiff filed his affidavit to proceed in forma pauperis, the Court was unaware of the fact that plaintiff had retained counsel from Florida in addition to his trial counsel, Thomas D. Frazier. Had the Court so known, plaintiff would not have been allowed to subpoena witnesses from various and far flung parts of the Country at Government expense.

When the Court became aware of the fact that plaintiff sought to require the presence by subpoena of witnesses who resided in excess of 100 miles of the Court, the Court advised counsel for plaintiff that this was a civil action and pursuant to Rule

45 of the Federal Rules of Civil Procedure, witnesses living in excess of 100 miles of the Court were not required to respond to subpoenas. Nevertheless, when the Court requested plaintiff's counsel to submit a list of witnesses, plaintiff still sought to subpoena witnesses in excess of 100 miles. This list of witnesses included Judges, law enforcement officials, Newspapermen, Warden, etc.

FINDINGS OF FACT

1. The Court finds that the plaintiff herein complains that perjured testimony was used in the case in chief of the Government in United States of America vs. Jack Edgar McBride, 67-CR-104. Specifically plaintiff complains that the then United States District Attorney, Lawrence A. McSoud, and an FBI agent, Clark Miller, allowed one Floyd Cumby, to testify falsely.

2. The Court further finds that the criminal case was appealed to the Tenth Circuit Court of Appeals and an opinion was rendered on March 11, 1969, affirming the trial court and stating: "The entire record reveals that the case against the appellant was strong and convincingly established his guilt."

3. The Court has carefully reviewed the trial transcript and the file in the original criminal litigation, and, has the benefit of having personally heard the entire trial (which lasted 4 days), at the trial observed the witnesses, their demeanor, candor and manner, and the duly empanelled jury had the same opportunity to so observe.

4. The affidavit on file in this matter of Lawrence A. McSoud denies under oath that he knowingly used, or allowed to be used, perjured testimony.

5. The affidavit on file in this matter of Clark Miller denies that he knowingly furnished or aided in furnishing perjured testimony.

6. That the then District Attorney, Lawrence A. McSoud, inquired at the outset of the witness, Floyd Cumby, as to his criminal record. That the witness, Floyd Cumby,

delineated his criminal background to the jury as to all offenses, including prior capital offenses, that he had been charged and convicted of at that time. That the record reflects that it was after the trial that Floyd Cumby was charged and convicted of another capital crime in Tulsa, Oklahoma, for a crime which had been committed sometime ago and was unsolved until confessed to by Cumby.

7. Plaintiff apparently concludes that the mere fact that Floyd Cumby was convicted of a capital offense after testifying in this criminal case supports his conclusion that Cumby's testimony was perjured.

8. Plaintiff apparently further concludes that conflicts in testimony go to prove his contention that the use knowingly of perjured testimony by the District Attorney, citing to the fact that in Cumby's testimony he stated that two sentences imposed in Louisiana were concurrent whereas they were in fact consecutive. Further, plaintiff alleges that Cumby testified that he did not take the stand against Favor.

9. Plaintiff further contends that the government's failure to mention an alleged FBI search, after the purported crime, of a 1949 Pontiac owned by McBride but in the possession of someone unconnected with the crime and after said vehicle had been traded for a 1964 Oldsmobile, and the additional fact that there was an alleged meeting between government officials and some of the witnesses at the Darby Lane Motel constituted the suppression of evidence favorable to the accused and would have altered the results of the trial.

10. Plaintiff further contends that if the agents of the FBI were aware that Cumby would utter perjured testimony at the trial, such knowledge would be imputed to the District Attorney.

11. The Court further finds that a pre-trial conference on this §2255 motion was held May 12, 1970, and Jack Edgar McBride was present and represented by counsel, Thomas D. Frazier. At such pre-trial conference the Court directed plaintiff and/or his attorney to file a brief within 10 days from that date setting forth the names of the witnesses and a summary of the testimony to be adduced to prove his allegations. Plaintiff has wholly failed to file such brief within the time directed by the Court.

CONCLUSIONS OF LAW

Accordingly, the Court makes the following conclusions of law, based on the facts hereinabove stated.

1. There can be no doubt that the jury was eminently aware of the past criminal records of the government witness, Floyd Cumby, and took such record into consideration in giving weight to the credibility of the witness.

2. The mere fact that a witness is thereafter convicted of a capital offense does not constitute grounds for the conclusory allegation that the District Attorney knowingly used perjured testimony in the trial of the case.

3. That in every trial of a case there is bound to be some trivial conflicts of testimony of a witness. The mere fact that there was some conflict in Cumby's testimony had no bearing on the material evidence of conviction. Such insignificant conflict does not constitute perjury and certainly does not sustain plaintiff's burden of proving his charge of knowingly using perjured testimony. Such conflicts are resolved by the jury. The jury is the sole judge of the credibility of a witness, and if they chose to give some credence to the witness, Cumby, it was solely within their province.

4. The undisclosed evidence asserted by plaintiff has not been shown to be germane to the issue of the trial. Furthermore, it cannot be considered to be suppression of evidence favorable to the accused that might have exonerated the defendant or have been of material importance to the defense or altered the results of the trial.

5. Plaintiff, as recited in paragraph 8 of the Findings of Fact contends that Cumby testified that he did not take the stand against Favor, the record reveals that Cumby testified that he did not take the stand against Yates.

6. That even if the FBI was aware that Cumby would utter perjured testimony, and this Court does not so find, such knowledge would not be imputed to the District Attorney.

7. A §2255 motion does not give a defendant the right to retry his jury trial and conviction or as in the instant case serve as a second appeal of the prior conviction.

8. That the petitioner has failed to sustain the burden of his charge of knowingly using perjured testimony. Furthermore, the plaintiff has not furnished this Court with any summary of testimony to be adduced that would substantiate plaintiff's charges.

9. That the Motion to Vacate Sentence pursuant to §2255 should be overruled and the complaint and cause of action dismissed.

IT IS, THEREFORE, ORDERED that the Motion to Vacate Sentence pursuant to §2255 be and the same is hereby overruled and the complaint and cause of action are hereby dismissed.

ENTERED this 28 day of May, 1970.


UNITED STATES DISTRICT JUDGE