

I respectfully suggest that that is not the real reason for the extreme reluctance which exists on the part of Federal judges to appoint "masters."

The real reason is that by its nature and consequence the procedure of reference to a master "nullifies the right to an effective trial before a constitutional court."

See *In re Tom R. Watkins*, praying for a writ of mandamus, decided by the U.S. Court of Appeals, Fifth Circuit, November 24, 1959 (271 F.2d 771).

The quoted language is at page 775, and reference is there made to the case of *Beacon Theatres, Inc. v. Westover* (1959, 359 U.S. 560, 79 S. Ct. 948, 3 L. Ed. 2d 988).

In that case, at pages 508-509, Justice Black speaking for a majority of the Court says:

Our decision is consistent with the plan of the Federal Rules and the Declaratory Judgment Act to effect substantial procedure reform while retaining a distinction between jury and nonjury issues and leaving substantive rights unchanged.

Then follows language which is summarized in 79 S. Ct. 948, headnote 18, as follows:

In Federal courts, equity has always acted only when legal remedies were inadequate.

As Justice Black points out, that rule is derived from a long line of cases one of the earliest of which is *Hipp v. Babin* (60 U.S. 271, 19 How. 271, 15 L. Ed. 633). Note: See Equity, Supreme Court Digest, key No. 46.

Despite these ancient rules of law, despite the limitations upon the judicial power of the United States as set out in the Constitution, despite the 10th amendment; the Attorney General would have a Federal court become a registration board, and permit the claims of thousands of applicants who have never submitted those claims to proper State tribunals, to be adjudicated in a proceeding said to be ancillary to a pending proceeding, an ex parte proceeding, and to be adjudicated by a so-called supplementary decree. (Prepared statement of Judge Walsh before the committee, p. 6.)

The applications which would be filed by those who were not parties to the original action would in no sense be such a complaint as is required by Federal Rules of Civil Procedure No. 3 for the commencement of a civil action in a Federal court.

A civil action in a Federal court is commenced by the filing of a complaint with the court.

Rule 3: Other rules provide for the issuance of process, the service of process, the filing of defensive pleadings; rules 4, 5, 8, and 12 for example.

Unless those rules are complied with there is no suit in the Federal court. There being no suit at all, there is no ancillary suit.

But even if we can denominate this strange new application as a complaint, a suit it is not in any sense heretofore adjudicated by the Federal courts ancillary to the civil action which, filed by the United States of America, had preceded.

That action created by the Civil Rights Act of 1957 permits the United States of America to institute a civil action for preventive