

Winifred C. Rollins GAUVREAU and Lester Cohen, Plaintiffs-Appellants,

v.

UNITED STATES PICTURES, INC., Defendant-Appellee.

No. 241, Docket 25425.

United States Court of Appeals Second Circuit.

Argued April 13, 1959.

Decided June 4, 1959.

Gustave B. Garfield, New York City, for plaintiffs-appellants.

Daniel Huttenbrauck, of Mendes & Mount, New York City (Frank A. Bull, of Mendes & Mount, New York City, on the brief), for United States Pictures, Inc., defendant-appellee.

Before CLARK, Chief Judge, and SWAN and MOORE, Circuit Judges.

PER CURIAM.

This is an attempted appeal from an order quashing service of process against one only of several defendants in an action for copyright infringement and unfair competition. The defendants in the action are United States Pictures, Inc., a producer of motion pictures, together with its president, Milton Sperling, and Warner Bros. Pictures, Inc., a distributor. The complaint alleges that United produced and Warner distributed a motion picture "The Court Martial of Billy Mitchell," which infringes an uncopyrighted story and a copyrighted book on the same subject matter written by the plaintiffs. The court quashed service against United because it was not doing business and suable in the Southern District of New York. But the action remains standing against Sperling, who was personally served there, and Warner, which does not challenge that it was doing business in the district. Since the complaint sets forth combined action on the part of the defendants to bring this picture to the public, it is apparent that the plaintiffs have but a single claim, not to be broken into separate parts for the purpose of immediate appeal as to one such part only. See the full discussion in *Republic of China v. American Express Co.*, 2 Cir., 190 F.2d 334, and cases such as *Hohorst v. Hamburg-American Packet Co.*, 148 U.S. 262, 13 S. Ct. 590, 37 L.Ed. 443; *Photometric Products Corp. v. Radtke*, 2 Cir., 157 F.2d 849; *Porter v. American Distilling Co.*, 2 Cir., 157 F.2d 1012; *Lopinski v. Hertz Drive-Ur-Self Systems*, 2 Cir., 194 F.2d 422, 424; *United States v. Woodard*, 5 Cir., 257 F.2d 805; *Lohr v. United States*, 5 Cir., 264 F.2d 619; and *Luria Bros. & Co. v. Rosenfeld*, 9 Cir., 244 F.2d 192, 194. Cases quashing service against a single defendant and thus terminating the entire case, e. g.,

Hutchinson v. Chase & Gilbert, Inc., 2 Cir., 45 F.2d 139, or Erlanger Mills v. Cohoes Fibre Mills, 4 Cir., 239 F.2d 502, are not in point.

Appeal dismissed.