Michigan Law Review

Volume 47 | Issue 2

1948

FEDERAL COURTS-APPEALS-FEDERAL RULE 54(b) AND THE FINAL JUDGMENT RULE

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COMMENTS

FEDERAL COURTS—APPEALS—FEDERAL RULE 54(b) AND THE FINAL JUDGMENT RULE—

A.—*The Final Judgment Rule*

The Judicial Code provides that "the circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions . . . in the district courts, in all cases save where a direct review may be had to the Supreme Court. . . ."[1] But what is a final (that is, appealable) decision? The final judgment rule, originated by the English common law courts[2] and embodied in the Federal Judiciary Act of 1789,[3] was stated by Justice Brandeis in *Collins v. Miller*[4] to require "that the judgment to be appealable should be final not only as to all the parties, but as to the whole subject matter and as to all the causes of action involved."[5]

Application of this rule to every case has not been satisfactory, or so it would seem from the number of exceptions that have been made. There are express statutory exceptions when the district court makes certain interlocutory orders or decrees concerning an injunction,[6] a receivership,[7] or matters of admiralty.[8] There are also judicial exceptions to the rule, such as those mentioned by Judge Frank in *Clark v. Taylor*[9]: "(1) An order dismissing a claim of a creditor in a receivership, although the claims of the other creditors remained undetermined. (2) An order that one party to an interpleader has no right against another, with the rights of other parties still undecided. (3) An order denying title of

[1] Judicial Code, § 128 a, 28 U.S.C.A. (Supp. 1947) § 225 (a).

[2] Crick, "The Final Judgment as a Basis for Appeal," 41 YALE L.J. 539 (1932).

[3] 1 Stat. L. 85 ("final judgments and decrees").

[4] 252 U.S. 364, 40 S.Ct. 347 (1920).

[5] Id. at 370.

[6] "Where, upon a hearing in a district court, or by a judge thereof, in vacation, an injunction is granted, continued, modified, refused, or dissolved by an interlocutory order or decree, or an application to dissolve or modify an injunction is refused, or an interlocutory order or decree is made appointing a receiver, or refusing an order to wind up a pending receivership or to take the appropriate steps to accomplish the purposes thereof, such as directing a sale or other disposal of property held thereunder, an appeal may be taken from such interlocutory order or decree to the circuit court of appeals. . . . The appeal . . . must be applied for within thirty days from the entry of such order or decree. . . ." Judicial Code, § 129, 28 U.S.C. (1946) § 227.

[7] Ibid.

[8] "In all cases where an appeal from a final decree in admiralty to the circuit court of appeals is allowed an appeal may also be taken to said court from an interlocutory decree in admiralty determining the rights and liabilities of the parties. . . . *Provided*, That the same is taken within fifteen days after the entry of the decree. . . ." Judicial Code, § 129, 28 U.S.C.A. (Supp. 1947) § 227.

[9] (C.C.A. 2d, 1947) 163 F. (2d) 940.

but one of several claimants in a condemnation proceeding. (4) An order dismissing claims of only some of the plaintiffs in a trust accounting action, where the divers plaintiffs' claims were not joint. (5) An order denying intervention when it is a matter of right."[10]

B. *The Original Federal Rule 54 (b)*

The original Rule 54 (b)[11] provided that, when more than one claim for relief was presented in an action, the district court, "upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence" which was "the subject matter of the claim," might enter a judgment "disposing of such claim." Although it was for the circuit court of appeals to decide whether the judgment was final so as to give it appellate jurisdiction,[12] yet the rule was apparently an attempt to redefine the established meaning of a final decision, as that phrase is used in the jurisdictional statute.[13] No longer was a final decision one that completely determined the case and settled all the claims. It was, rather, a decision which settled all the claims arising out of one transaction or occurrence, even though other claims were still pending in the same action. Was it possible for a rule, intended to deal with procedure, to change the interpretation of a jurisdictional statute? The issue seems to have been ignored by the courts, despite assertions that the Federal Rules "do not affect the jurisdiction of the appellate courts to which they are not directed."[14]

1. *The unit of appeal.* The courts seem to have saved their energies to wrestle with the problem of determining the part of an action which the rule purported to make appealable. As one decision followed another, the problem became more, rather than less, complicated. Perhaps a brief summary of the divergent attacks upon the problem will indicate why a revision of Rule 54 (b) was a practical necessity.

a. *Appealability of wholly unrelated claims.* When there were several wholly unrelated claims in an action, a complete disposition of any one of these was appealable.[15] That much was clear.

[10] Id. at 947.

[11] 28 U.S.C.A. (1941) foll. § 723 c.

[12] "Even when the parties have not raised the issue, it is the duty of the court to determine whether a 'decision' is 'final' under Judicial Code, § 128, 28 U.S.C.A. § 225. . . . This is a matter for the appellate court to decide, whatever may have been the view of the trial court." Audi Vision, Inc. v. R.C.A. Mfg. Co., (C.C.A. 2d, 1943) 136 F. (2d) 621 at 623.

[13] See note 1, supra.

[14] Hunteman v. New Orleans Public Service, Inc., (C.C.A. 5th, 1941) 119 F. (2d) 465 at 466. Also see Collins v. Metro-Goldwyn Pictures Corp., (C.C.A. 2d, 1939) 106 F. (2d) 83 at 85; 3 MOORE, FEDERAL PRACTICE, § 54.02 (1938).

[15] Reeves v. Beardall, 316 U.S. 283, 62 S.Ct. 1085 (1942).

b. *Claims arising in part out of the same transaction or occurrence.* Although the Supreme Court gave its sanction [16] to the view that it was "differing occurrences or transactions" [17] that was the basis of the unit of appeal, this vague language lent itself to widely varying tests of appealability. If it is assumed that the occurrences or transactions did not have to be wholly different, just how different did they have to be?

(1) *Substantial additional evidence test of appealability.* If "the same evidence, without substantial additions" [18] would support both the disposed of and undisposed of claims, the decision was not appealable; but, if substantial additional evidence was needed, the decision was appealable.[19] This evidentiary approach is more easily stated than applied to the facts of a given case; and, even if the test could be applied, there was no certainty that it might not be disregarded in favor of the next test to be discussed.[20]

(2) *Central fact test of appealability.* According to one view, claims connected by a "central fact," [21] could not be independently appealed. But what was a central fact? In one case the court found the central fact to be "the royalties collected by ASCAP for AKM and by AKM for ASCAP and the legality and fact of offset between them"; [22] but, unfortunately, the court gave no very helpful clue that counsel might use to recognize a central fact before its identity was revealed by the circuit

[16] Ibid.

[17] Id. at 285, citing with approval the concurring opinion of Clark, C.J., in Atwater v. North American Coal Corp., (C.C.A. 2d, 1940) 111 F. (2d) 125 at 126.

[18] Clark v. Taylor, (C.C.A. 2d, 1947) 163 F. (2d) 940 at 947.

[19] The substantial additional evidence test was applied in Collins v. Metro-Goldwyn Pictures Corp., (C.C.A. 2d, 1939) 106 F. (2d) 83 (order dismissing claim for infringement of a copyright book by a movie of the same name held appealable though a claim for unfair competition in using the title of the book as the title of the movie was still pending); but see the statement of Clark, C.J. that he withdrew his "somewhat qualified support of that case with respect to its particular facts," though "the 'law' . . . was impeccable," in Musher Foundation, Inc. v. Alba Trading Co., (C.C.A. 2d, 1942) 127 F. (2d) 9 at 13, and note 2. Also see Sidis v. F-R Publishing Corp., (C.C.A. 2d, 1940) 113 F. (2d) 806 (order dismissing claims for violation of privacy in five states and infringement of a civil rights statute in a sixth state held appealable though a claim of malicious libel in nine other states was still pending); Musher Foundation, Inc. v. Alba Trading Co., ibid. [though a claim of trade mark ("Bertola") infringement was still pending, order dismissing claim of unfair competition (as to use of word "infused") held appealable]; Munson Line, Inc. v. Green, (C.C.A. 2d, 1948) 165 F. (2d) 321 at 322 (order dismissing two of three counts "to be proved by substantially the same evidence" held not appealable).

[20] See Clark v. Taylor, (C.C.A. 2d, 1947) 163 F. (2d) 940, (both appellant and appellee urged the substantial additional evidence test to justify the appeal but without success).

[21] Clark v. Taylor, (C.C.A. 2d, 1947) 163 F. (2d) 940 at 947.

[22] Clark v. Taylor, id. at 943. Cf. Crutcher v. Joyce, (C.C.A. 10th, 1943) 134 F. (2d) 809.

court of appeals. Since the central fact test discouraged interlocutory appeals while the substantial additional evidence test was considerably more favorable to them, it is not inconceivable that a circuit judge might adopt the test which was the more in keeping with his philosophy as to the desirability of interlocutory appeals; and the resulting uncertainty as to which test would be applied in a given case was good reason for a simplification of the original Rule 54 (b).

(3) *Separate action test.* One case suggested that claims could be appealed separately if they "could be litigated together only because of the permissible joinder provisions" [23] of the Federal Rules.

(4) *Analogical tests of appealability.* Because the same concept of transaction or occurrence was basic to both the appealability of a judgment and the compulsory nature of a counterclaim, a judgment disposing of a permissive counterclaim was held appealable, even though a compulsory counterclaim was still pending; [24] a judgment disposing of the main claim was held not appealable while a compulsory counterclaim was still pending; [25] and a judgment disposing of a compulsory counterclaim was held not appealable while the main claim was pending.[26]

It was also suggested that, if a counterclaim would not be *res judicata* if omitted, such a counterclaim was permissive and therefore independently appealable.[27]

Also, the dismissal of a non-federal claim of unfair competition which was not sufficiently related to the federal claim of patent infringement to support federal jurisdiction was held appealable.[28]

Finally, it should be pointed out that the concept of joint liability was sometimes useful in determining whether a decision was appealable, for a "judgment or order dismissing an action as to less than all of several defendants jointly charged" was not appealable.[29]

[23] California Apparel Creators v. Wieder of California, Inc., (C.C.A. 2d, 1947) 162 F. (2d) 893 at 902.

[24] Audi Vision, Inc. v. R.C.A. Mfg. Co., (C.C.A. 2d, 1943) 136 F. (2d) 621.

[25] Ibid.

[26] Toomey v. Toomey, (App. D.C. 1945) 149 F. (2d) 19; Libbey-Owens-Ford Glass Co. v. Sylvania Industrial Corp., (C.C.A. 2d, 1946) 154 F. (2d) 814; Nachtman v. Crucible Steel Co. of America, (C.C.A. 3d, 1948) 165 F. (2d) 997.

[27] Frank, C.J., dissenting in Libbey-Owens-Ford Co. v. Sylvania Industrial Corp., (C.C.A. 2d, 1946) 154 F. (2d) 814 at 817.

[28] Musher Foundation, Inc. v. Alba Trading Co., (C.C.A. 2d, 1942) 127 F. (2d) 9. Also see Collins v. Metro-Goldwyn Pictures Corp., (C.C.A. 2d, 1939) 106 F. (2d) 83.

[29] Atwater v. North American Coal Corp., (C.C.A. 2d, 1940) 111 F. (2d) 125 at 125; Hunteman v. New Orleans Public Service, Inc., (C.C.A. 5th, 1941) 119 F. (2d) 465; Western Contracting Corp. v. National Surety Corp., (C.C.A. 4th, 1947) 163 F. (2d) 456 (principal and surety). Also see 47 COL. L. REV. 239 at 248 (1947) for discussion of confusion of the word, "joint." Cf. Studer v. Moore, (C.C.A. 2d, 1946) 153 F. (2d) 902.

c. *Appealability of interlocutory orders with regard to one claim.* The original Rule 54 (b) did not refer to interlocutory orders with regard to one claim, perhaps because the rule was not intended to deal with them. Whether such an order was appealable was to be determined, not under Rule 54 (b), but under the statute [30] giving the circuit courts of appeals jurisdiction over appeals from final decisions. *Kasishke v. Baker* [31] involved an action to compel defendants to convey to plaintiff a one-tenth interest in certain oil and gas leases and for an accounting of profits from a joint venture involving the same leases. A judgment which directed the defendants to make proper conveyances within a specified time was held appealable by the Tenth Circuit Court of Appeals although the court retained the matter of the accounting for later action. The court made no mention of Rule 54 (b) but decided, in the light of precedent, that the judgment was a final decision. The court then concluded, "Why not determine that question [whether plaintiff is an owner of a 10 per cent interest in the leases] now, and avoid any uncertainty as to the right to an accounting, which the parties all admit will be expensive and require much time? Practical considerations in the administration of justice suggest the necessity of treating the judgment as final." [32] In *Biggins v. Oltmer Iron Works* [33] an erroneous partial summary judgment upon which execution had been ordered was held appealable by the Seventh Circuit Court of Appeals notwithstanding the argument that Rule 54 (b) stood in the way. If an appeal were not allowed, the judgment would be "subject to review only upon the entry of a judgment disposing of the entire claim. In the meantime, the property of defendant could be seized and sold in satisfaction," so that defendant's "right of review . . . would be of doubtful value." [34] Thus, it would seem that the original Rule 54 (b) did not cover those situations in which an interlocutory order with regard to one claim was held an appealable final decision under the jurisdictional statute. This construction of the rule avoids possible conflict between the rule-making power and that statute.

2. *Running of appeal period.* One of the chief difficulties under the original Rule 54 (b) was that an attorney was never quite sure whether a decision which did not dispose of the entire case was final and appealable. Therefore, to protect against the barring of the right of appeal by lapse of time, the only safe course for the party adversely affected by a decision was to appeal. One law review writer suggested that the appeal period might be considered to run from the time of the final disposition

[30] See note 1, supra.
[31] (C.C.A. 10th, 1944) 144 F. (2d) 384.
[32] Id. 386.
[33] (C.C.A. 7th, 1946) 154 F. (2d) 214.
[34] Id. at 217, 218.

of the entire case in the district court, even as to a decision which could have been, but was not, appealed before such final disposition.[35] No court gave any sanction to that view, but Judge Frank recommended it as a proper subject of statutory enactment.[36] What little authority there was seemed to indicate that the time for appeal ran from the time of the appealable decision, even though all of the issues in the case were not adjudicated.[37]

C. *The Revised Rule 54 (b)*

The second attempt to alter the final judgment rule consisted of taking the offending language (that is, "transaction or occurrence") out of Rule 54 (b) and giving the district court the discretion to decide what claim or claims should be independently appealable.[38]

Although a claim was the smallest appeal unit mentioned in the original Rule 54 (b), two circuit courts of appeals allowed appeals in hardship cases from interlocutory orders with regard to one claim.[39] A like result should be reached under the revised rule, because it, too, does not purport to deal with appeals from such orders.[40] The appealability

[35] 49 YALE L.J. 1476 at 1482 (1940).

[36] Clark v. Taylor, (C.C.A. 2d, 1947) 163 F. (2d) 940 at 952, note.

[37] In Kasishke v. Baker, (C.C.A. 10th, 1944) 144 F. (2d) 384, discussed supra, the court said at p. 386, "The defendants must either appeal or be met later with the contention that having failed to appeal they are precluded from questioning the plaintiff's ownership of a ten per cent interest in the leases." In Jefferson Electric Co. v. Sola Electric Co., (C.C.A. 7th, 1941) 122 F. (2d) 124, although the main action remained to be tried, an order involuntarily dismissing a counterclaim involving closely related matters was held appealable because it was an adjudication on the merits under Rule 41 —no express mention being made of Rule 54 (b); and the court stated that such an order was appealable, if at all, within the statutory three months for appeals from final orders. But see Libbey-Owens-Ford Glass Co. v. Sylvania Indust. Corp., (C.C.A. 2d, 1946) 154 F. (2d) 814 at 817, where it is said of the Jefferson case, "The court appears to have been mislead by the effect of Federal Rule 41 (b,c) making such a dismissal an adjudication upon the merits. It did not cite the more pertinent and decisive rule, 54 (b)."

[38] The Amendments to Federal Rules of Civil Procedure, 28 U.S.C.A. (Supp. 1948) foll. § 723 c, adopted by the Supreme Court on Dec. 27, 1946, 329 U.S. 839 (1946), and since become effective, together with Notes of the Advisory Committee, are conveniently set forth in 10 Fed. Rules Serv. xci, comparing the terms of the revised rules with the terms of the original rules. For other comments on Rule 54 (b) see 47 COL. L. REV. 239 (1947) and 56 YALE L.J. 141 (1946).

[39] See Kasishke v. Baker, (C.C.A. 10th, 1944) 144 F. (2d) 384, and Biggins v. Oltmer Iron Works, (C.C.A. 7th, 1946) 154 F. (2d) 214, discussed supra.

[40] The revised rule provides that, when the district judge does not appropriately mark a decision final, "any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims. . . ." Arguably, an interlocutory order with regard to one claim is a decision "which adjudicates less than all the claims" and therefore falls within the letter of the rule. However, the rule merely states that a decision which is not marked final and "which adjudicates less than all the claims shall not *terminate* the action as to any of the

of interlocutory orders is entirely controlled by the final decision statute [41] as interpreted by the courts.

The real problem as to the revised rule is the possible conflict with the statute giving the circuit courts of appeals appellate jurisdiction. The rule restates the final judgment rule [42] as follows: "Any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims. . . ." However, the rule qualifies this position by stating that, when more than one claim is presented in an action, "the court may direct the entry of a final judgment upon one or more but less than all of the claims . . . upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Arguably, this is an invalid attempt to use the rule-making power to alter the meaning of the phrase, final decision, in the jurisdictional statute. That phrase has been interpreted by the courts to embody the final judgment rule "that the judgment to be appealable should be final . . . as to all the parties, . . . as to the whole subject-matter and as to all the causes of action involved"; [43] but now Rule 54 (b) changes this construction by providing that a judgment as to a claim may be made appealable even though the whole action has not been disposed of.

However, it is possible to read the revised Rule 54 (b) and the jurisdictional statute together in such a way that there is little conflict between them. The district judge may be said to have power, not only to consolidate actions for hearing and trial [44] and to order a separate trial on any claim in a single action,[45] but also to separate into distinct actions for purposes of judgment claims which are brought as, or consolidated into, one action but which could have been separately brought and tried. The district judge does not have discretion to make a decision upon one branch of an action final; he has discretion only to separate one complex

claims . . ." (italics supplied). The rule does not cover the situation where an interlocutory order with regard to one *claim* which does not purport to terminate the action is an appealable final decision under Judicial Code, § 128 a, 28 U.S.C.A. (Supp. 1947) § 225 (a), as interpreted, or under exceptions thereto quoted in notes 6 and 8, supra. Because the rule states that a decision which is not marked final and which does not adjudicate all the claims does not terminate the action as to any of the claims, it does not follow that the rule means that a decision which is not marked final and which does not adjudicate all the claims cannot be appealable under the jurisdictional statute.

[41] See note 1, supra.

[42] There are really two branches of the final judgment rule: that interlocutory orders with regard to one claim are not appealable and that all claims in an action must be adjudicated before any are appealable; and there are exceptions to both branches of the rule. If the analysis set forth in note 40, supra, is correct, then the revised Rule 54 (b) deals only with the second branch of the rule.

[43] Collins v. Miller, 252 U.S. 364 at 370, 40 S.Ct. 347 (1920).

[44] Federal Rule 42 (a).

[45] Federal Rule 42 (b).

action into several actions for purposes of judgment. Such a power deals with procedure, so there is no conflict with the jurisdictional statute, because, since the action has been separated into several actions for purposes of judgment, the judgment upon each branch of the original action can become a final decision within the meaning of the final judgment rule. This interpretation of Rule 54 (b) has the advantage of being relatively easy to apply, for there is no great problem as to the nature of the unit of appeal, a claim, though the same could not be said about the nature of a transaction or occurrence.

However, as a matter of policy, is it wise to give the district judge the discretion to separate an action for purposes of judgment? Although the trial judge may not appreciate the value of an appeal from what he considers a fair decision,[46] yet he is the person most conveniently situated to determine whether an immediate appeal is necessary.[47]

A distinct advantage of the revised rule is that it should eliminate the uncertainty as to when the appeal period begins to run. When one action is separated into several for purposes of judgment and there is a decision completely disposing of one of the newly created separate actions, there clearly seems to be a final judgment upon which the appeal period begins to run at once. But what of dispositions of claims or interlocutory orders as to one claim which statutes or judicial decisions have made appealable though the action is not fully adjudicated? Though not marked final, do such appealable decisions start the appeal period running? As to the express statutory provisions for interlocutory appeal,[48] there is no difficulty in determining when the appeal period begins to run, for the situations in which appeal will lie are clearly stated and the appeal period is expressly stated to run from the entry of the order. But the problem as to those more or less uncertain judicial exceptions to the final judgment rule which permit appeals from orders as to one claim which are interlocutory in nature but treated as final decisions remains unaffected by the rule.[49] And the problem as to those more or less uncertain judicial exceptions to the final judgment rule which permit appeals from decisions of claims before the whole action is disposed of presents, perhaps, a trap for the unwary. Relying upon Rule 54 (b), which in terms covers this situation, counsel might not appeal, because the decision is not marked final, only to find later that the time for appeal began to run when the appealable decision was made.[50]

[46] See the dissent of Frank, C.J., in Clark v. Taylor, (C.C.A. 2d, 1947) 163 F. (2d) 940 at 942, note 2.

[47] 56 YALE L.J. 141 at 149 (1946).

[48] See notes 6 and 8, supra.

[49] See the second paragraph of part C, supra.

[50] See Blackwood v. Shaffer, 44 Kan. 273 at 276, 24 P. 423 (1890), where the court said, "When a case is brought to the supreme court for the purpose of having any

D. *Proposed Changes in Jurisdictional Statute*

Since the scope of the judicial exceptions to the final judgment rule is not at all certain, thereby making it difficult in situations where Rule 54 (b) is not controlling to determine when an appeal will lie, it is suggested that the statute giving appellate jurisdiction to the circuit courts of appeals should be amended, first to define final decision as a decision which adjudicates all the claims in a civil action or in a branch of a civil action that has been severed for judgment and, second, to list all the specific situations in which interlocutory appeals might lie. Such a list might include; (1) the situations in which interlocutory appeals are already provided for by statute.[51] Further, (2) a decision of any preliminary question (such as is raised by an objection to venue or jurisdiction or an objection to the complaint as failing to state a claim for relief), which question, if answered one way, would necessitate a trial, while, if answered the other way, would make a trial unnecessary, should be appealable so long as there is a showing that the appeal is made in good faith and not as a mere device to delay the action. The circuit judges could act individually in determining whether the appeal was made in good faith and had such merit as to deserve consideration by a full court; and, to prevent undue delay, the appeal should be given preference over other matters and arguments kept as short as practicable. (3) If an action has been disposed of, except for proof of the extent of the damages or for an accounting, an interlocutory appeal should be allowed upon a showing that proof of the extent of the damages or the accounting would be time-consuming and costly.[52] (4) A decree for the sale of particular property should be appealable, even though such matters as the distribution of the proceeds remain undetermined.[53] (5) A decree directing immediate payment of money and ordering execution should be appealable[54] unless the party adversely affected can obtain protection by means of a bond.[55] (6) An order authorizing the issuance of receiver's certificates, secured upon property in the court's custody, should be appealable, when a reversal of the order, after the issuance and sale of the certificates,

judgment or order of the court below reviewed, everything necessarily involved in such judgment or order is reviewable in the supreme court; but the order of the court below in this case, sustaining the demurrer to the third paragraph of the defendant's answer [such an order being appealable under the Kansas statutes], is not involved in any other order, or in any judgment of the court below, and hence it is not reviewable upon this principle. If the demurrer had been overruled, a different rule would apply." The court held that the time for appeal ran from the date of the appealable order sustaining the demurrer rather than from the date of the judgment disposing of the rest of the case.

[51] See notes 6 and 8, supra.

[52] See discussion of the Kasishke case in part B 1 c, supra.

[53] ROSE, FEDERAL JURISDICTION AND PROCEDURE, 4th ed., § 651 (1931).

[54] Ibid.

[55] Seagram-Distillers Corp. v. Manos, (D.C. S.C. 1938) 25 F. Supp. 233.

would not discharge the lien upon the property.[56] (7) There are other types of decision which might well be proper subjects for interlocutory appeal. The six situations mentioned by Judge Frank, as quoted at the beginning of the comment, might be included in the list.

Such suggestions are put forth not as a definitive solution to the perplexing problems discussed above but merely to propose further means for securing "the just, speedy, and inexpensive determination of every action."[57]

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[56] See note 53, supra.
[57] Federal Rule 1.