o/a 2-11-86

SUPREME COURT OF FLORIDA

CASE NO. 67,080

IN RE: FORFEITURE OF:

1978 Chevrolet Van; VIN: CGD1584167858; Approximately $4,478.00 in U.S. Currency; and One .45 Caliber Automatic Star Handgun; Serial No. 1481675.

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Brief of Amicus Curiae State of Florida

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Statutory Forfeitures were not "part" of the common law in England or America. Such forfeitures were statutory created by Parliament.

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Prior to 1845 many states passed and courts upheld in rem forfeiture statutes that did not authorize jury trials. Since 1845 even more states have passed and then courts upheld statutes that allowed summary in rem forfeiture hearings to be heard without a jury.

Consequently, there was no "right" to a jury trial in common law or in many statutes in in rem forfeiture proceedings.

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Florida historically has enacted statutes that have permitted in rem forfeitures and allowed such hearing to be heard without a jury. Sections 932.701-932.704 are similar to these older statutes and should be interpreted the same.

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ARGUMENT

PART I

A CLAIMANT OF PROPERTY SEIZED PURSUANT TO THE FLORIDA CONTRABAND FORFEITURE ACT, SECTIONS 932.701-932.704, FLORIDA STATUTES (1983), HAS NO RIGHT TO A JURY TRIAL IN THE FORFEITURE PROCEEDING HELD PURSUANT TO THAT ACT

INTRODUCTION

1.

THE ISSUE BEFORE THIS COURT

This is a case of first impression before this Court. At no time in the history of this State has this Court been called on to determine if a claimant of seized property has a "right" to a jury trial in a forfeiture proceeding held pursuant to the Florida Contraband Forfeiture Act (Act) Sections 932.701-932.704, Florida Statutes (1983).

This case is before the Court pursuant to Rule 9.120(b), Florida Rules of Appellate Procedure, because of the conflict between the decisions of the First and Fourth District Courts of Appeal. The First District Court of Appeal in Smith v. Hendry, 454 So.2d 663 (Fla. 1st DCA 1984), was the first of these two courts to rule on the issue of a "right" to a jury trial in a forfeiture proceeding. When the issue was raised by the Smiths, the court stated the "contention is without merit because "[t]he Florida Contraband Forfeiture Act did not exist at common law,

and there is therefore no right to a jury trial in a forfeiture proceeding under this Act". Smith, Id. at 664.

However, the Fourth District Court of Appeal, in this case below (found at 467 So.2d 808 (Fla. 4th DCA 1985)), disagreed with the First District and found that a claimant did have a "right" to a jury trial in a forfeiture proceeding held pursuant to the provisions of the Act. They based their decision on United States v. One 1976 Mercedes Benz 280S, 618 F.2d 453 (7th Cir. 1980). That court found in

> [t]he analysis of One 1976 Mercedes of the existence of forfeiture proceedings at common law with the right to jury trial. . . .

and therefore

> Article I, Section 22, of the Florida Constitution entitles one to a jury trial in forfeiture proceedings under Chapter 932, Florida Statutes.

Id. at 809. The Fourth District Court of Appeal, in criticizing the First District's opinion, stated

> [t]he question is not whether this specific Act existed at that time, but whether forfeiture proceedings were known to the common law.

Id. at 809 (emphasis added).

The State respectfully submits that the Fourth District

Court misstated the issue and therefore their decision is in error. The State contends the issue is not whether forfeiture proceedings were "known to the common law" but rather the issue is (a) were statutory in rem forfeiture proceedings[1] "part" of the common law and (b) was there a "right" to a jury trial in a statutory in rem forfeiture proceeding.

The State intends to show in this brief that statutory in rem forfeiture proceedings were not part of the common law, and there was no "right" to a jury trial in a forfeiture proceeding. The fact that some statutory in rem forfeiture proceedings were held before a jury was because the English Parliament or the early American legislatures allowed such proceedings to be heard within the jurisdiction of a common law court.

2.

FLORIDA AND THE COMMON LAW

As stated in Section 2.01, Florida Statutes,

> The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said

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[1] The Florida Contraband Forfeiture Act, Sections 932.701-932.704, Florida Statutes (1983) is a "statutory in rem" forfeiture act.

> statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state.

This position was first stated in Section 1 of the Act of November 6, 1829, passed by the Territorial Government of Florida. This Court has often held that the common law of England was expressly made a part of the law of Florida. Knapp v. Fredricksen, 148 Fla. 311, 4 So.2d 251 (1941); Blood v. Hunt, 97 Fla. 551, 121 So. 886 (1929); Moseley v. Edwards, 2 Fla. 429 (1849); Williams v. Moseley, 2 Fla. 304 (1848).

However, that does not mean the legislature by statute, or the people through their Constitution, can not modify the common law or the adopted English statutes. The legislature may modify the common law. Barfield v. Addington, 104 Fla. 661, 140 So. 893 (1932). But, until modified by the legislature, the old common law is in force in Florida. LeRoy v. Reynolds, 141 Fla. 586, 193 So. 843 (1940); English v. English, 66 Fla. 427, 63 So. 822 (1914); Caras v. Hendrix, 62 Fla. 446, 57 So. 345 (1912).

When interpreting the law, the courts must first look to the Constitution and statutes, and only if no authority is found may it look to the common law. Dunahoo v. Bess, 146 Fla. 182, 200 So. 541 (1941). However, only where the common law doctrine is clear must a court observe it. Duval v. Thomas, 114 So.2d 791 (Fla. 1959).

What then is the "common law"? The common law, as defined

in 1 KENT, COMMENTARIES *471, includes the principles, usages and rules of actions applicable to the government and security of persons and property which do not rest for their authority upon any express or positive statute or other written declaration but upon statements of principals found in the decisions of the courts. See, Kansas v. Colorado, 206 U.S. 46 (1907). See also 15A Am. Jur. 2d Common Law §1 (1976); 11 Am. Jur. Common Law §2 (1938). It embraces the unwritten law, as distinguished from statutory or written law, and based on custom and usage. As stated by Blackstone:

> The authority of these maxims rests entirely upon general reception and usage; and only the method of proving, that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it.

1 W. BLACKSTONE COMMENTARIES *67-73.

As this Court once said:

> "Our `Anglo-American legal tradition,' which we term the common law is primarily an English institution. It is not a fixed body of well-defined rules embodied in the written records of this or the mother country, but is rather a method of juristic thought or manner of treating legal questions worked out form time to time by the wisdom of mankind. It is a doctrine of reason applied to experience. Its rules were promulgated in feudal times, an age of dense ignorance, crude customs and primitive society, when slight value was attached

> to life, liberty or property, when commerce was almost unknown and property was of little value. In the time of Henry II the King's courts became organized, and from these local rules or customs began to evolve the common law. By the genius of Coke these rules or customs were remolded into vital pulsating principles, and were passed on to the English Colonies in this country, where they have by reason and interpretation attained their most complete logical development. We are therefore more essentially a common-law country than England herself."

Quinn v. Phipps, 93 Fla. 805, 824, 113 So. 419, 425 (1927); recited in Orr v. State, 129 Fla. 398, 406-407, 176 So. 510, 513 (1937).

To determine the common law one then has to look to the decisions of courts in cases bearing upon that subject. See also, Spokane Methodist Homes, Inc. v. Department of Labor & Industries, 81 Wash. 2d 283, 501 P.2d 589 (1972); Windust v. Department of Labor & Industries, 52 Wash. 2d 33, 323 P.2d 241 (1958) (common-law rules are court decisions in nonstatutory fields to which the doctrine of stare decision applies).

Thus the first question that must be answered is: was an in rem forfeiture proceeding "part" of the common law?

3.

FLORIDA AND THE "RIGHT" TO A JURY TRIAL

The pertinent provision of Article I, Section 22 of the Florida Constitution (1968) states:

> The right of trial by jury shall be secure to all and remain inviolate.

This first appeared in Article I, Section 6, Florida Constitution (1838).

While the right of trial by jury is preserved for all and not denied, State v. Webb, 335 So.2d 826 (Fla. 1976); Orr v. Avon Florida Citrus Corporation, 130 Fla. 306, 177 So. 612 (1938), it is not unlimited. State v. Webb, supra. The "right" to a trial by jury only applies to those cases "in which the right was recognized at the time of the adoption of the State's first constitution"[2] Webb, 335 So.2d at 828. This holding is only the most recent of many from this Court. See also, Carter v. State Road Dept., 189 So.2d 793, 795 (Fla. 1966); Dudley v. Harrison McCready & Company, 127 Fla. 687, 173 So. 820, 825 (1937); State ex rel Sellars v. Parker, 87 Fla. 181, 100 So. 260, (1924); Camp Phosphate Co. v. Anderson, 48 Fla. 226, 37 So. 722, 729-730 (1905); Hathorne v. Panama Park Co., 44 Fla. 194, 32 So. 812,

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[2] State's first Constitution, the Constitution of 1838, became effective in 1845.

(1902); Blanchard v. Raines' Ex'x, 20 Fla. 467, (1884); Flint River Steamboat Company v. Roberts, 2 Fla. 102, 113-114 (1848). The "right" does not extend to those controversies where the "right" was not known at the time the first constitution was adopted. See, Pugh v. Bowden, 54 Fla. 302, 45 So. 499 (1907).

Consequently, it must be determined if there was a "right" to a trial by jury in a statutory in rem forfeiture proceeding in 1845 under the common law.[3]

A.

A STATUTORY IN REM FORFEITURE PROCEEDING WAS NOT PART OF THE COMMON LAW

The primary meaning of "forfeit" is to "lose by some error, fault, or crime". WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY (1966), p. 891. It derives from the word forfaire - to commit a crime. Id. "Forfeiture" means "the divesting of the ownership of particular property of a person on the account of a legal duty and without compensation to him; loss of some right, privilege,

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[3] Since the Seventh Amendment to the United States Constitution does not apply to the states and is binding only on the federal courts, Dudley v. Harrison, McCready & Co., supra; Florida East Coast Railways Co. v. Hayes, 67 Fla. 101, 64 So. 504 (1914), federal decisions, such as One 1976 Mercedes, supra, interpreting the right to a jury in federal courts will not be relied upon as authority for that proposition.

estate, honor, office or effects in consequence of a crime. Id. See also, Howard Cole & Company v. Williams, 157 Fla. 851, 27 So.2d 352 (1946).

Blackstone defined forfeiture as:

> A punishment anexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they become vested in the party injured, as a recompense which he alone or the public together with himself hath sustained.

2 W. BLACKSTONE, COMMENTARIES *267.

A forfeiture is a manner of punishment. It is used to insure a prescribed course of conduct by taking property from one who does not follow the proper course of conduct. See, Howard Cole & Company, supra. However, this Court has also ruled that a forfeiture is a penalty for failing to comply with the law. Florida State Board of Architecture v. Seymour, 62 So.2d 1 (Fla. 1962).

A statutory forfeiture proceeding is in rem, that is, it is an action against the object being forfeited as if the object itself is the "guilty" party. The effect of a forfeiture is to transfer the title of the object being forfeited to the state. See, Section 932.703, Florida Statutes (1983).

Forfeitures, as we know them, originated in England. Two types were known, common-law and statutory in rem. Common-law forfeitures arose upon the "conviction" of a person for a

felony. See, 4 W. BLACKSTONE, COMMENTARIES *380-387. Land, profits, goods and chattels were all subject to forfeiture. Id. Upon conviction of a felony, the offender forfeited all his personal estate, goods, and chattels to the crown. Id. However, lands were not forfeited to the king until attainder - the judgment of death. Id.

Common-law forfeiture, attainder and deodand are little known in the legal history of the United States. This type of forfeiture was not against the property, but flowed as a consequence of the conviction of the offender.[4] The Palmyra, 25 U.S. (12 Wheat.) 1 (1827). In other words, the offender's rights were not divested, nor did the crown obtain title, until death or conviction. Id. at 14. This type of forfeiture action was in personam, not in rem. The doctrine above was never applied to forfeitures created by statutes in rem. Id.

The second type of forfeiture was the statutory in rem forfeiture proceeding. As the name implies, such in rem proceedings were created by statute by Parliament to punish one for acting contrary to prescribed law. 3 W. BLACKSTONE, COMMENTARIES *261-262. To encourage one to obey the law,

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[4] "It is well known, that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the crown. The forfeiture did not, strictly speaking, attach in rem; but it was a part, or, at least, a consequence, of the judgment of conviction."

The Palmyra, 25 U.S. (12 Wheat.) at 14.

Parliament permitted property to be seized and forfeited if was involved in the illegal activity. The object seized was considered the offender, Palmyra, id., and the legal action was directed at the object as if it were the guilty party. A statutory forfeiture proceeding is civil in nature, and in rem against the object. In Re Approximately 48,900 Dollars, 432 So.2d 1382 (Fla. 4th DCA 1983); City of Tallahassee v. One Yellow 1979 Fiat, 414 So.2d 1100 (Fla. 1st DCA 1982).

There is no question that statutes enacted by Parliament authorized seizure and forfeiture of items used in the violation of the law. Some more notable acts in America's history authorizing forfeiture were the Navigation Act of 1660, 12 Car. II, ch.18; Navigation Act of 1696, 7 & 8 Wm. III, ch.22; Molasses Act of 1733, 6 Geo. II, ch.13; Sugar Act of 1764, 4 Geo. III, ch.15.[5]

While statutory in rem forfeiture proceedings existed in England, were they "part" of the "common law"? To that the answer seems clear, in rem proceedings were not part of the "common law". 2 BROWN, CIVIL & ADMIRALTY LAW, 111, Percival v. Hickey, 18 Johns. 257, 292; 1 KENT, COMMENTARIES *378.[6] Whatever

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[5] For a more complete list of some of the English statutes permitting in rem forfeitures, see People v. One 1941 Chevrolet Coupe, 37 Cal.2d 283, 231 P.2d 832 (1951), f.n. 2.

[6] See also, C.J. Hendry Co. v. Moore, 318 U.S. 133, 137, where the Court said "[b]ut to the generalization that a judgment (Cont. on next page)

court exercised jurisdiction of an in rem proceeding, it did so only because the parliament granted that court the jurisdiction when enacting the statute.[7] What the legislature granted, the legislature could taketh away, and as we will see, in America Parliament did just that.

In rem proceedings were not part of the custom or usage of England. Only the common-law forfeiture (loss of property upon conviction of a crime) was historical to English law and decisions. In rem proceedings were created by statute to achieve a particular end; to force subjects to obey the king's law.

B.

THERE WAS NO "RIGHT" TO A JURY TRIAL IN A IN REM FORFEITURE PROCEEDING

1.

COURTS OF ENGLAND

Under English law, a court was defined to be a "place wherein justice is judicially administered" 3 W. BLACKSTONE, COMMENTARIES *23. The courts were part of the crown, represented by the judges chosen by the king. Id. at 24. There were many

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in rem was not a common law remedy there is an important exception", referring to the sometimes concurrent jurisdiction of in rem proceedings in admiralty and common law courts in English Law.

[7] A discussion of what courts in England and America exercised in rem jurisdiction will be discussed post.

courts, each with differing jurisdiction. Id. Some were of record, some not. Id. A court of record was one where the acts and proceedings were written down. Id. All such counts were the king's courts. Id.

The English courts up to the time of the American Revolution were:

> 1. Court of Common Pleas or Common Bench.
>
> This was a court of record, the highest in England. It was a court of common-law to hear property cases and civil injuries. This heard actions between private subjects.

Id. at 37-40.

> 2. King's Bench.
>
> The supreme court of common law in England. Over all inferior courts. Heard both civil and criminal cases.

Id. at 41-43.

> 3. Court of Exchequer.
>
> It was the lowest of the three courts mentioned. Was both a court of law and equity. To order the revenue of the crown and collect the king's debts. It too was a common law court.

Id. at 43-46.

> 4. High Court of Chancery.
>
> A court of common law and equity. Could not hear a factual issue dispute, had to pass case to King's Bench.

Id. at 46-52.

5. Maritime Courts.

To determine maritime injuries upon the seas. Proceedings in civil law. Not a court of common law. No jury trials permitted.

Id. at 69-70.

The common law courts had jury trials, admiralty courts did not.

2.

IN REM FORFEITURE PROCEEDINGS WERE HEARD IN BOTH COMMON-LAW AND ADMIRALTY COURTS

As stated above, in rem proceedings were not part of the common-law. If there was a "right" to a jury trial, then in rem proceedings could only have been heard in the common law courts. As we shall see, Parliament, in its legislative enactments, gave both common law courts and admiralty courts jurisdiction of in rem proceedings. Therefore, there was no "right" to a jury trial in a forfeiture proceeding through such proceedings were often heard in common law courts.

In the statutes cited in footnote 2 of People v. One 1941 Chevrolet Coupe, 37 Cal.2d 283, 231 P.2d 832 (1951), most all could be heard in common law courts sometime in English history. When that occurred, juries were assembled to decide the cases. See, People, id. at 839-41, f.n. 14. However, many acts of Parliament permitted in rem proceedings to be heard without a

jury, either before a justice of the peace or before an admiralty or vice admiralty court. Some examples are:

> 12 Car. II, ch. 18 - Navigation Act of 1660.
>
> This statute authorized forfeiture of ships, goods and commodities for violation of this trade act.
>
> The forfeiture case could be heard in any court of record or, if seized at sea, in an admiralty court in a case of condemnation.

7 & 8 Wm. III, ch. 22 - Navigation Act of 1696.

> This statute was enacted by Parliament to modify 12 Car. II, ch. 18 which was being disobeyed by the American colonists by their refusal to pay the required duties to the crown. To stop this disobedience, Parliament placed jurisdiction of forfeiture of all acts in the hands of the new vice admiralty courts in America.[8]

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[8] In 1702, the Board of Trade asked the advice of the Attorney General in England whether all forfeitures made under the Navigation Act of 1696 or other acts were to be tried exclusively in the admiralty or vice admiralty courts of the colonies. The Attorney General answered the question affirmatively by stating:

> "The Act (7 & 8 Wm. III) gave the admiralty court in the plantations, jurisdiction of all penalties and forfeitures for unlawful trading, either in defrauding the king in his customs, or importing into, or exporting out of, the plantations, prohibited goods; and of all frauds in matter of trade, and offenses against the acts of trade, committed in the

(Cont. on next page)

In particular, §6 of the act spoke to prohibiting frauds in America, hiding goods and other violations of the act. §7 authorized that penalties and forfeitures can be seized, sued upon or received in

> "any of his Majesty's courts at Westminister . . . or in the court of admiralty held in his Majesty's plantations . . . at the pleasure of the officer or informer"

Based upon this act and the Attorney General's opinion, the vice-admiralty courts in America assumed jurisdiction over forfeitures in causes arising from the violation of the laws of trade, commerce and revenue, which resulted in a greater obeyance in the law in the colonies. REEVES ON SHIPPING. This jurisdiction continued to be exercised by the colonial courts of admiralty down to the revolution. 2 BROWN, CIVIL AND ADMIRALTY LAW 492.

8 Geo. I, ch. 18, Act of 1721.

> This was an Act concerned, in part, with the illegal importation of brandy. The act authorized such liquor and ships under 15 tons to be seized and forfeited in a summary proceeding. §16 of the act states that the case "may be examined into, proceeded upon, heard, adjudged, and determined, before two or more justices of the peace" (justices of the peace were part of the common law court

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plantations." 2 Chalmer's Opinions 187, 193.

system). The act went on to say that the decision of the justices of the peace were good, valid and final. There was no right to an appeal or writ of certiorari, "no law, statutes or provision to the contrary".

6 Geo. II, ch. 13, Molasses Act of 1733.

This was an act to give commercial advantage to British sugar growers in America by laying a duty on sugar and molasses purchased from other West Indies islands. If a violation of the act occurred, or the duty not paid, the act authorized seizures to be made with all forfeitures to be prosecuted in

> "any court of admiralty in his Majesty's colonies or plantations in America (which court of admiralty is hereby authorized, impowered and required to proceed to hear and finally determine same) or in any court of record in said colonies or plantations where such offense is committed, at the election of the informer or prosecutor."

3 Geo. III, ch. 22, Act of 1763

This was an act of customs and reviews. Duties were placed on tea, coffee, foreign brandy, rum and other liquor. Forfeitures proceedings were to be in the admiralty courts in the colonies or other courts of record at the election of the prosecutor or informer.

4 Geo. III, ch. 15, Sugar Act of 1764

The act was passed to raise revenue to pay for the defense of the colonies. Duties were laid on sugar, indigo, coffee, wines, silks and calicoes. §41 stated that violations of the act would lead to a forfeiture of goods and

ships. The case was to be prosecuted in a court of admiralty, court of vice admiralty, or any court of record "at election of prosecutor or informer". In §46, if a case was brought by information in America, it was taken to "the judge or court before whom the same shall be tried".

6 Geo. III, ch. 52, Act of 1765

New duties on molasses, sugar, coffee and silk. To prevent the relanding of sugar, the act allowed forfeiture of horses, carts, cattle or other carriages used in the removal of sugar from a ship. In America the cases were to be heard in the admiralty courts as in other cases of trade and customs violations.

8 Geo. III, ch. 22, Act of 1767

Tired with all the smuggling in the colonies and the refusal of colonial juries to order forfeitures, Parliament took all forfeiture jurisdiction from the colonial common law courts and placed that jurisdiction in the vice admiralty courts. The act covered violations of all acts of parliament of revenue and customs. All appeals in forfeiture cases in colonial admiralty courts were to the colonial vice admiralty courts.

9 Geo. III, ch. 38, Silk Act of 1768

All forfeitures under this act were to take place only in the courts in Westminster or the colonial admiralty courts.

It is thus very clear that under English law in 1775, in rem forfeiture proceedings were not part of the common law nor even heard in the common law courts of America. While Parliament

often chose before 1700 to place forfeiture jurisdiction concurrently in both the admiralty and common law courts, after 1700, and especially in the American colonies, forfeiture jurisdiction was taken away from the common law courts and placed in the admiralty and vice admiralty courts exclusively. The trend at the time of the revolution was toward greater use of the admiralty courts with their exclusive jurisdiction in in rem forfeiture proceedings.

3.

AMERICAN DECISIONS AND STATUTES

Early United States Supreme Court decisions held that in rem proceedings were part of the admiralty jurisdiction of the federal courts and not part of the common law. In other words, these courts continued the trend started by Parliament in 1696 to have all in rem proceedings heard by the admiralty courts. These cases all stated that forfeiture jurisdiction was exclusively in the admiralty courts and not concurrent with the common law court.

The first case to reach this conclusion was United States v. La Vengeance, 3 U.S. (3 Dall.) 297 (1796). The case dealt with seizure of a ship for the illegal exportation of weapons. The United States tried to show this was either a criminal case or a civil suit triable at common law, both of which required a trial by jury. The Court rejected that opinion and held that it

was a civil cause in the nature of an in rem proceeding against the ship as the offender and within the jurisdiction of the admiralty court. While the Court had the opportunity to declare that there existed concurrent common law jurisdiction, it did not. The rule was later followed in United States v. The Sally, 6 U.S. (2 Cranch) 406 (1805); United States v. The Betsey and Charlotte, 8 U.S. (4 Cranch) 443 (1808); and The Samuel, 14 U.S. (1 Wheat.) 9 (1816).

However, beginning with The Sarah, 21 U.S. (8 Wheat.) 391 (1823), the Court declared that in federal courts, all seizures on land were to be tried in the district courts sitting as courts of common law. This stems from an interpretation of section 9 of the Judiciary Act of 1789, 1 Stat. 76. See also C.J. Hendry Co. v. Moore, supra; One 1976 Mercedes 280S, supra.[9]

Both before and after the American Revolution, the states enacted laws that permitted forfeiture of property in in rem proceedings without the use of a jury trial.

In Hendry, 318 U.S. at 147-148, the Supreme Court gave an example of a New York law, Act of April 11, 1787, 2 Laws of New York, 509, 517, that permitted forfeiture of ships and goods for the violation of that act. The cause could be prosecuted in a New York Court of Admiralty. This court, like its predecessors, did not have jury trials.

[9] Since the Seventh Amendment to the United States Constitution does not apply to Florida, the result reached in those decisions are not binding on this Court.

Also in Hendry is footnote 15, 318 U.S. at 150. This note traced the early American history of state laws permitting forfeiture of ships and nets seized for illegal fishing. The New Jersey, Massachusetts, Deleware, and Pennsylvania statutes mentioned in the footnote all permitted a forfeiture hearing to be heard without a jury. In Smith v. Maryland, 59 U.S. (18 How.) 71 (1855) the U.S. Supreme Court upheld a Maryland statute, Chapter 254 (1833), that had permitted the seizure of a ship for the illegal taking of oysters in Chesapeake Bay. The statute authorized a hearing before two justices of the peace without a jury.[10] See also, Art. 41, §29-32, Maryland Code (1860).

Other states have enacted laws, since 1845, that allow for the forfeiture of property without a trial by jury. Some examples are:[11]

Alabama	Dowda v. State, 203 Ala. 441, 82 So. 324 (1919) Act of legislature to forfeit property used in the manufacture of liquor. A house and property were seized. The Supreme Court of Alabama ruled that the forfeiture of property used to maintain a nuisance is a proceeding in which a

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[10] This procedure is quite similar to that enacted by Parliament in §16 of 8 Geo. I, ch. 18, allowing summary proceedings to seize ships of less than 15 tons in the illegal liquor trade.

[11] All these states have provisions similar to Florida's protection of the right to a jury trial in their respective constitutions.

trial by jury did not exist at common law. The proceeding was civil in rem against the property, citing to La Vengenance, supra and Barnacoat v. Six Casks of Gun Powder, 42 Mass. (1 Mect.) 225 (1840).

In re One Chevrolet Automobile (Senior v. State, 205 Ala. 337, 87 So. 592 (1921).

Alabama Supreme Court upheld a forfeiture under the Prohibition Act of 1919 (Laws 1919, p. 13). As the cause of action did not exist at the common law, no right to a jury trial existed.

U-Haul Company of Alabama v. State, 316 So.2d 685 (Ala. 1975).

Supreme Court of Alabama upheld the forfeiture of a trailer use to carry illegal liquor. §247, Title 29, Code of Alabama did not permit a jury trial. The court held it was no violation of the constitution to deny jury trial.

* * * *

Arkansas

Kirkland v. State, 72 Ark. 171, 78 S.W. 770 (1904)

Supreme Court of Arkansas upheld the Act of Feb. 13, 1899 (Acts 1899, p. 11). The Act permitted a forfeiture hearing to be held without a jury before a chancellor. Legislature intended summary process. No violation of state constitutional guarantee of right to jury trial.

Cole v. State, 144 Ark. 533, 222 S.W. 1060 (1920) restating Kirkland.

* * * *

Indiana

Campbell v. State, 171 Ind. 702, 87 N.E. 212 (1909)

Indiana Supreme Court upheld Act of February 13, 1907 (Acts of 1907, p. 27,

c. 16) that permitted summary procedure in the forfeiture of illegal alcohol. Court upheld the denial of a request for a jury trial by the trial court. Due process only requires a fair hearing. Court ruled that this in rem proceeding was statutory and not a case under the common law. Such statutory proceedings are not entitled to a trial by jury. (citing a number of older Indiana cases).

* * * *

Kansas

State v. Lee, 113 Kan. 462, 215 P. 299 (1925).

Kansas Supreme Court. An action to condemn and forfeit an automobile as a nuisance under Laws 1919, c. 217. The law defined vehicles used in transporting intoxicating liquor into or in the state as a nuisance. Law also provided for trial in a summary manner before the court. Court held the statute and trial without jury not violative of Kansas Bill of Right §5 (similar to Florida's) because such a forfeiture proceeding did not exist at common law with a right to a jury trial.

State v. Robinson, 118 Kan. 775, 236 P. 647 (1925) follows State v. Lee in automobile forfeiture.

State v. Brown, 119 Kan. 874, 241 P. 112 (1912).

Forfeiture of a car under the statute involved in State v. Lee, supra. The court upheld the statute . Case was affirmed on appeal in Van Oster v. Kansas, 272 U.S. 465 (1926).

State v. Davidson, 136 Kan. 406, 15 P.2d 404 (1932).

Forfeiture of a car by a judge. Supreme Court again upheld trial without jury in a summary forfeiture proceeding.

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Kentucky — Rickman v. Commonwealth, 204 Ken. 848 , 265 S. W. 452 (1924)

Court of Appeals of Kentucky (their Supreme Court). This was an action under Acts 1922, p. 114, that permitted the seizure and forfeiture of land, vehicles or animals used in the illegal production or transportation of intoxicating liquors. Court held that such a proceeding did not require a trial by jury.

* * * *

Louisiana — State v. Bradley, 446 So.2d 803 (La.App.2 Cir. 1984)

Ruling that a forfeiture proceeding did not have to be heard with a jury. Court relied upon LRS 32:1550-1552, which did not provide for a jury trial and State v. Manuel, 426 So.2d 140 (La. 1983) which did not afford a jury trial in forfeiture proceedings.

* * * *

Michigan — State Conservation Department v Brown, 335 Mich. 343, 55 N.W. 2d 859 (1952).

Michigan Supreme Court. This was an in rem proceeding to forfeit a fish net that was illegally used. The court found that the common law did not afford such a remedy. Therefore, Michigan's Constitution did not protect a right to a jury trial where it did not exist a common law. No jury trial was necessary under the law.

* * * *

Minnesota — State v. One 1921 Cadillac Touring Car, 157 Minn. 138 , 195 N.W. 778 (1923)

Minnesota Supreme Court. This was an action to forfeit a car under Section 2, Chapter 335, Laws 1921. The court, relying on State ex rel v. Ryder, 126 Minn. 95, 147 N.E. 953 (1914), ruled that since no jury trial was necessary in a summary proceeding to abate a nuisance, no jury trial was required here to forfeit a vehicle used to aid a nuisance.

* * * *

Montana — State v. Kelly, 57 Mont. 123, 187 P. 637 (1920).

Supreme Court of Montana ruled that a forfeiture proceeding was in rem in nature and not part of the common law so there was no right to a jury trial.

* * * *

Tennessee — Caneperi v. State, 169 Tenn. 472, 89 S.W. 2d 164 (1936).

Tennessee Supreme Court upholding a statute that permitted forfeiture of property in a summary manner at a trial without a jury. No right at common law to a jury trial at a summary hearing.

* * * *

A number of federal courts have upheld state statutes forfeiting property without jury trials. See, Mulger v. Kansas, 123 U.S. 623 (1887), where the Supreme Court upheld a Kansas statute that permitted the destruction of a brewery where the law made the brewery a nuisance; Lawton v. Steele, 152 U.S. 133 (1894), where the Supreme Court upheld a New York law allowing the summary distruction of fishing nets used in violation of New York's fishing laws.[12]

4.

Right to Trial by Jury

There is no question that there was no "right" to a jury trial in an admiralty court. While the ordinary common law remedy carried with it the right of a jury trial, in rem forfeitures, as stated above, were not part of the common law and thus no "right" to a jury trial existed. It was entirely up to Parliament, by placing the statute under the jurisdiction of a particular court, whether or not a forfeiture could be hear solely by a judge or by a jury. As can be seen by the historical development of the in rem proceeding, especially after 1696, Parliament often placed jurisdiction for such proceedings in courts that had no juries and after 1768 all forfeiture proceedings in America were held in courts that had no juries. Therefore, there never was a "right" to a jury trial in an in rem forfeiture proceeding in English law prior to July 4, 1775.

An examination of the various acts of Parliament show that there were options as to where the forfeiture proceeding were to

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12 It must be noted that some states take the opposite view and hold jury trials are required in forfeiture proceedings. See, People v. One 1941 Chevrolet Coupe, 37 Cal.2d 283, 231 P.2d 832 (1951); Commonwealth v. One 1972 Chevrolet Van, 385 Mass. 198, 431 N.E. 2d 209 (1982); Colon v. Lisle, 153 N.Y. 188, 47 N.E. 302 (1897); Keeter v. State, 82 Okl. 89, 198 P. 866 (1921); State v. 1920 Studebaker Touring Car, 120 Or. 254, 251 P. 701 (1921).

be tried. One of those options was often the admiralty or vice admiralty courts in which there was no trial by jury.

Furthermore, many of the acts provided that the prosecutor or informer could choose between the admiralty courts and the common law courts in which to bring the action. If the "right" to a jury trial lies with the defendant, that "right" was of little value if the prosecutor could place the action in an admiralty court, a court without a jury.

It is therefore clear that there was no "right" in common law to have a forfeiture in rem proceeding heard at a jury trial before 1775.

Part II

HISTORY OF FLORIDA STATUTES CONCERNING FORFEITURES

Unlike the federal forfeiture act discussed in U.S. v. One 1976 Mercedes, supra, the Florida Contraband Forfeiture Act (Sections 932.701-932.704, Florida Statutes) (Act) provides a special statutory proceeding for enforcement. This proceeding consists of the following statutory directives:

> 1. The seizing agency must make diligent search and inquire as to the owner of the subject property.
>
> 2. Notice must be given in two ways. First, the seizing agency must give notice by registered mail, return receipt requested, to all persons having any interest in the property.

Second, the seizing agency must publish notice of the forfeiture proceeding once each week for two (2) consecutive weeks in a newspaper of general circulation in the county where the seizure occurred.

The notice must be mailed and first published at least four (4) weeks prior to filing the rule to show cause and shall describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the proceeding will be filed and the anticipated date for filing the rule to show cause.

3. The seizing agency shall promptly proceed by rule to show cause in the circuit court.

4. The seizing agency shall produce due proof that the contraband article was being used in violation of the provisions of the contraband forfeiture act.

5. In addition to offering proof that the property was not used in violation of the Forfeiture Act, the owner of the seized property may establish that he neither knew nor should have known after a reasonable inquiry that such property was being employed in criminal activity. Under such circumstances, no property shall be forfeited.

6. Any lienholder may establish that he neither knew, nor should have known after a reasonable inquiry that such property was being used or was likely to be used for illegal activity, that such use was without his consent, express or implied, and that the lien had been perfected in the manner prescribed by law prior to such seizure.

> 7. Finally, the Act specifically rejects the common law remedies by providing that neither replevin nor any other action to recover any interest in such property shall be maintained in any court, except as provided in this act.

These special proceedings afforded by the current Act can be traced to those found in the predecessors to the current Act. Indeed, for seventy-three (73) years the State of Florida has provided for the seizure and forfeiture of contraband and associated property without the intervention of a jury.

Starting in 1913, Section 5, Chapter 6513, Laws of Florida (1913), the legislature provided for seizure and destruction of intoxicating liquors. That act stated in pertinent part:

> The Circuit Judge shall hear said cause in term or in vacation and shall hear testimony in said cause and decide said cause without the intervention of a jury and shall promptly render a decree according to the evidence. . . . The Court shall find the value of said liquor and the owner or claimant may take an appeal as in equity causes. . . . Section 5, Chapter 6513, Laws of Florida (1913) (emphasis added)

Five years later, Section 15, Chapter 7736, Laws of Florida (1918) expanded upon the preceeding act to provide for forfeiture of all personal property which may have been used to facilitate the violation of the act, "including automobiles, motor trucks, wagons, buggies, boats, vessels and other water craft, and all machines traveling through the air, and all other means of

conveyance used to facilitate the violation of any of the provisions of this act." As in the present Act, the 1918 statute provided for a rule to show cause hearing as follows:

> . . . notice shall be signed by the Circuit Judge citing such person or persons to appear and show cause, if any, why such things should not be adjudged forfeited and disposed of as in this Section provided.
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> * * * *
>
> But if any person shall appear at such hearing and claim the things and interpose any defense to such affidavit, the Circuit Judge shall determine whether the evidence adduced proves beyond a reasonable doubt that such things are forfeited, and make his written order accordingly.
>
> * * * *
>
> And if the State, or the Sheriff, or the Claimant shall be dissatisfied with the decision of said Circuit Judge they shall have the right within ten days of the making of the order to appeal from the final decision of the Court to the Supreme Court in the same manner as appeals in Chancery are taken under general law.
>
> * * * *
>
> The hearing before the Circuit Judge shall be informal and he shall have the power and authority to make all needful rules and orders to carry this Section into effect. Section 15, Chapter 7736, Laws of Florida (1918).(emphasis added)

In the 1918 statute, as in our present Act, the State Attorney was earmarked to represent the Sheriff at forfeiture proceedings. Section 15, Chapter 7736, Laws of Florida (1918).

The 1918 statute remained the law of the land throughout prohibition (as Section 15, Chapter 7736, Laws of Florida (1918); Section 5483, Revised General Statutes (1920); and Section 7627, Compiled General Laws (1927). Like our present forfeiture act, the courts interpreted the 1918 statute to protect the innocent owner, if said owner was without knowledge that the property would be employed in an illegal manner. See Spratt v. Gray, 81 Fla. 200, 87 So. 760 (Fla. 1921); Armstrong v. State, 85 Fla. 452, 96 So. 399 (Fla. 1923); The Katie L., 90 Fla. 554, 106 So. 414 (Fla. 1926). See also, State v. One Hudson Roadster Automobile, 104 Fla. 301, 139 So.2d 821 (Fla. 1932).

Section 9, Chapter 19301, Laws of Florida (1939) was passed to combat the flourishing moonshine business in Florida. Like its 1918 predecessor, this statute provided for forfeiture of vehicles as well as personal property. The statute required that the seized article be proceeded against promptly, and stated that the forfeiture "shall be in the nature of a proceeding in rem against the property so seized." Within the statute itself was a form for a notice citation to "be served on the parties to whom it is directed in the same manner as summons in chancery." A form for an order, requiring the claimant to "show cause why the prayer of such petition should not be granted," was also included in the body of the statute. Finally, the statute provided:

> But if any person file an answer to said petition, the circuit judge shall proceed to try such issues without a

> jury, and according to his findings on such issues he shall make such orders as shall be proper. Section 9, Chapter 19301, Laws of Florida (1939); renumbered Section 562.40 Florida Statutes (1951).

The constitutionality of this statute was upheld in State v. Dubose, 152 Fla. 304, 11 So.2d 477 (1943), and Scarborough v. Newsome, 150 Fla. 220, 7 So.2d 321 (1942).

Aside from proceeding without a jury, each of these early forfeiture statutes makes reference to either equity or the court of chancery. The 1913 statute provided that "the claimant may take an appeal as in equity causes." Section 5, Chapter 6513, Laws of Florida 1913. The 1918 statute provided for an appeal "in the same manner as appeals in Chancery are taken under general law." Section 15, Chapter 7736, Laws of Florida (1918). The 1939 statute required that a notice citation be served "in the same manner as summons in chancery." Section 9, Chapter 19301, Laws of Florida (1939), Section 562.40 Florida Statutes (1951). Thus it appears that the roots of forfeiture law in Florida are entrenched in the courts of equity, where a jury trial is not, and has never been, available.[13]

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[13] Section 932.701-932.704 is a special proceeding, somewhat equitable in nature. As previously set forth, the early predesessors to our present forfeiture act provided that appeals be taken, and pleadings be served "as in equity." The proceeding for an order of forfeiture is one in rem, not against the owner (Cont. on next page)

Meanwhile, in 1933, the Florida Legislature passed pioneer legislation controlling, and making illegal certain narcotic drugs in the State of Florida. This act, Chapter 16087, Laws of Florida (1933) provided for forfeiture of illegal drugs (Section 14), and declared structures and vehicles where narcotics were illegally used to be a public nuisance. Specifically, the act stated:

> Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance. Chapter 16087, Section 13, Laws of Florida (1933).

In 1945 the legislature enacted "in personam" legislation providing for forfeiture of vehicles, boats, and aircraft used in violation of the narcotic drug laws in Florida. Unlike previous in rem forfeiture statutes, Chapter 22799, Laws of Florida (1945), did not proceed by rule to show cause, but rather provided for forfeiture upon conviction of the person illegally

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or possessor of the property, but against the property itself. Goldsmith Grant Co. v. U.S., 254 U.S. 505, 511 (1921). The object of the proceeding is to take the property for the State. In other words, it is one to foreclose the rights of all persons who may claim adversely to the government. The form of the order, and nature of the relief sought is such as is obtained in the court of Chancery. See Chafee and Re cases and materials on Equity, 49-62 (Fifth Edition, 1967).

using said vehicle.[14] This statute remained relatively intact as Section 398.24, Florida Statutes, until 1973 when it was repealed. No language from this statute survives in our present Contraband Forfeiture Act.

In 1957 the predecessor to our present "Florida Contraband Forfeiture Act" became law. Chapter 57-384, Sections 8, 9, and 10, Laws of Florida, provided for forfeiture of any vessel, vehicle or aircraft used in violation of Chapter 57-385 (concerning illegal narcotics). At that time, narcotics-related forfeitures became in rem proceedings, with the same familiar "rule to show cause" used in alcohol related forfeitures since 1918. Chapter 57-385, Section 9, Laws of Florida contains the following familiar language:

> 1. The state attorney within whose jurisdiction the vessel, vehicle, or aircraft has been seized because of its use or attempted use in violation of any provision of this act shall proceed against the vessel, vehicle, or aircraft by rule to show cause in the circuit court having jurisdiction of the offense, and have it forfeited to the use of or the sale by the law enforcement agency making the seizure on producing due proof that the vehicle was being used in violation of the provision of this act. Chapter 57-385, Section 9, Laws of Florida.

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[14] This is a form of the classic common-law forfeiture from England. Upon conviction, the offender would lose his property. See Part I, ante.

This language, would become the heart of Section 404.09, Florida Statutes (1957), later Section 893.12, Florida Statutes (1973), Section 943.33, Florida Statutes (1975) and finally Section 932.704, Florida Statutes (1983).[15] And unlike that federal statute, in the course of 73 years of active litigation, not one of Florida's rule-to-show-cause forfeiture statutes has failed to pass constitutional muster for not affording a jury trial.

PART III

A.

SECTIONS 932.701-932.704, FLORIDA STATUTES ARE NEARLY IDENTICAL TO "NUISANCE" STATUTES

The key point of the Act is that it declares those enumerate items used in or facilitating the sale, conveyance, or transfer of controlled substance, gambling devices, illegal tobacco, liquor, or motor fuels to be contraband property. See, Section 932.701. This is an exercise of the police powers of this State to aid in stopping the unlawful acts described in the Act. See, Section 932.702. These provisions are not only similar to the older "prohibition" and gambling laws of Florida but also to other states.

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[15] No similar language is found, or has even been found in the Federal Forfeiture Statute interpreted by the court in United States v. One 1976 Mercedes Benz 280S, supra.

As stated in Part II above, Florida has long had in its history laws which sought the seizure and forfeiture, and sometimes destruction, of illegal intoxicating liquors[16] and gambling devices,[17] including vehicles boats or structures. The State would submit that the intent of the legislature all these years is that narcotics, illegal whiskey and gambling devices are nuisances that can be outlawed and all property used to aid these illegal activities can be taken by the State pursuant to statute. Such authority rests upon the police powers of a state to protect the health, safety, and morals of the people. See, City of Miami v. Kayfetz, 92 So.2d 798 (Fla. 1957); Fine v. Moran, 74 Fla. 417, 77 So. 533 (1917).

Other states, with statutes similar to our past liquor statutes, have permitted forfeiture of property at hearings without jurys.[18] It was reasoned that the police powers of those state allowed the legislatures to pass laws abating a nuisiance

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16 See Chapter 6513, Laws of Florida (1913); Chapter 7736, Laws of Florida (1918); Section 7627, Compiled General Laws (1927); Chapter 19301, Laws of Florida (1939); Chapter 28073, Laws of Florida (1953); Chapter 72-230, Laws of Florida.

17 See, Chapter 18143, Laws of Florida (1937); Chapter 22858, Laws of Florida (1945); Chapter 29712, Laws of Florida (1955); Chapter 57-236, Laws of Florida; Chapter 74-385, Laws of Florida.

18 The reason for this analysis is because the liquor laws during prohibition made liquor, per se, illegal just as our narcotics statutes do today.

and taking property without a jury because the common law allowed such summary proceedings without a jury. See, 4 W. BLACKSTONE, COMMENTARIES *280. See, State v. Kelly, supra, forfeiture of an automobile - summary proceedings did not allow trial by jury; Caneperi v. State, supra., citing to the past case of State v. Howse, 134 Tenn. 67, 183 S.W. 510 (1916) that summary proceeding was held without a jury trial at common law (citing to Blackstone); State v. Lee, supra - forfeiture of an automobile by a summary proceeding to stop a nuisance; State v. Rickman, supra, state has power to abate nuisance and have summary proceeding without a jury - forfeiture of land permitted where liquor illegally manufactured; State v. Brown, supra.

Many of Florida's statutes are quite similar to those states! Florida's statutes did permit summary proceedings on forfeitures. See laws cited above but espically Section 7627, Compiled General laws (1927) and State v. One Hudson Roadster, supra, where this Court upheld a forfeiture under that act and the summary proceeding held before the circuit court. Therefore, Section 932.701-932.704, as a successor to those statutes should also be found to be a statute anthorizing the taking of property in a summary manner, that is, at a full and fair hearing but without right to trial by jury. It would seem consistent to classify the forfeiture proceeding allowing the taking of a vehicle used in the narcotics trade as analogous to forfeitures of vehicles used in the illegal liquor trade to which summary proceedings without jury trials applied.

B.

THE TYPE OF PROCEEDING HERE IS SIMILAR TO A SUMMARY EQUITY PROCEEDING

Not only in forfeiture cases, but throughout the Florida law, the term "rule to show cause" has been used to denote a summary proceeding. In Deyen v. Slatcoff, 66 So.2d 483 (Fla. 1953), this Court ruled that a rule to show cause, concerning the illegal transfer of an automobile to defraud creditors, "was a summary proceeding especially authorized by law and limited as above set forth, and no trial by jury was required." 66 So.2d at 485. More recently, in Cerrito v. Kovitch, 457 So.2d 1021 (Fla. 1984) this Court stated that "by requiring that usurious interest be forfeited, the legislature made it clear that the main purpose of the statute was to prevent violators from benefiting by charging usurious interest." Id. at 1023. The Court went on to hold that the usury statute, by requiring forfeiture of usurious interest does not create a legal action triable by jury. Id. Suffice it to say, an order to show cause is notice of the pendency of a summary proceeding. Chambers v. Blickle Ford Sales, Inc., 313 F.2d 252 (2nd Cir. 1963); 60 C.J.S. Motions and Orders, §20.

Similar to an equity hearing, the Florida forfeiture procedure provides a measure of equity that is absent in its federal counterpart. Under federal law, the owner's innocence or

lack of knowledge is no defense in a forfeiture action and illicitly used property is forfeited despite the owners innocence or lack of knowledge. Colero-Toledo v. Pearson Yacht Leasing, Co., 416 U.S. 663 (1974). There, the Pearson Yacht Company was in the business of leasing expensive pleasure yachts in the United States and Puerto Rico. It leased a $19,800 yacht to two Puerto Rican residents. An express prohibition against use of the yacht for unlawful purposes was included in the lease. Puerto Rican authorities later seized the yacht from the lessees because a single marijuana cigarette was found on board.

After the yacht was forfeited to the Commonwealth, a three judge United States District Court ruled that the forfeiture was unconstitutional, because the Pearson Yacht Company didn't know that its property would be used for an illegal purpose and it was without fault in renting the yacht. On appeal, the U.S. Supreme Court reversed the decision and declared the yacht forfeitable. Justices Stewart and Douglas dissented. They believed "that the forfeiture of property belonging to an innocent and non-negligent owner violates the constitution". But the majority of Justices held that forfeiture statutes can be applied to innocent, ignorant, non-negligent owners, such as the Pearson Yacht Company. Furthermore, the Court held that such forfeitures do not violate the innocent owner's constitutional rights in any manner.

Florida law is less harsh. The Florida Act gives the owner the opportunity to come into equity and prove lack of knowledge that the vehicle was being employed in criminal activity. When this occurs, equity will relieve the innocent owner from the forfeiture. Florida law also gives the innocent lienholder or mortgagor the same opportunity to come into equity to be relieved of the forfeiture. This has been the law in the state of Florida since 1921. See Section 15, Chapter 776, Laws of Florida (1918); Spratt v. Gray, 81 Fla. 200, 87 So. 760 (1921).

CONCLUSION

For the above stated reasons, the Amicus Curiae, State of Florida, submits that the decision of the Fourth District Court of Appeal should be reversed.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: BRUCE B. JOLLY, Esquire, 1322 S.E. 3rd Avenue, Ft. Lauderdale, Florida 33301; and KENNETH E. DELEGAL, Esquire, 222 S.E. 10th Street, Ft. Lauderdale, Florida 33316, this 17th day of January, 1986.

ERIC J. TAYLOR
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