

359 U. S.

Per Curiam.

KOLLER ET AL. v. UNITED STATES.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT.

No. 362. Argued March 26, 30, 1959.—Decided April 20, 1959.

A suit for damages under § 26 (b) (1) of the Surplus Property Act is not a suit to enforce a civil fine, penalty or forfeiture and, therefore, is not subject to the five-year limitation of 28 U. S. C. § 2462. *Rex Trailer Co. v. United States*, 350 U. S. 148.

255 F. 2d 865, affirmed.

Robert H. Malis argued the cause and filed a brief for petitioners.

Lionel Kestenbaum argued the cause for the United States. On the brief were *Solicitor General Rankin*, *Assistant Attorney General Doub* and *Samuel D. Slade*.

PER CURIAM.

The judgment is affirmed. *Rex Trailer Co. v. United States*, 350 U. S. 148 (1956).

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE WHITTAKER join, dissenting.

I do not agree that disposition of this case is controlled by the decision in *Rex Trailer Co. v. United States*, 350 U. S. 148. Believing that § 26 (b) (1) of the Surplus Property Act of 1944, 40 U. S. C. § 489 (b) (1), imposes a civil penalty, and that an action thereunder is therefore subject to the five-year limitation provided in 28 U. S. C. § 2462, I would reverse. Cf. *United States ex rel. Marcus v. Hess*, 317 U. S. 537; *Erie Basin Metal Products, Inc., v. United States*, 150 F. Supp. 561 (Ct. Cl.). See *Priebe & Sons v. United States*, 332 U. S. 407.