

UNITED STATES of America, Appellant,

v.

**Lucille B. WOODBURY, Executrix of the Estate of Ray B.
Woodbury, deceased, Appellee.**

**Lucille B. WOODBURY, Executrix of the Estate of Ray B.
Woodbury, deceased, Appellant,**

v.

UNITED STATES of America, Appellee.

UNITED STATES of America, Appellant,

v.

**Ray B. WOODBURY, Aleutian Homes and Kodiak Construction
Company, Appellee.**

[Nos. 19767, 19768.](#)

United States Court of Appeals Ninth Circuit.

March 11, 1966.

2. The statute of limitations.

The government pleaded a total of 11 instances in which applications for funds were presented to the government, the first on June 22, 1953 and the last on October 26, 1953. Woodbury asserted, and the court held, that all but the last were barred by the special statute of limitations applicable to suits under the False Claim Act. That statute, 31 U.S.C. § 235, reads:

"Every such suit shall be commenced within six years from the commission of the act, and not afterward."

The government filed its action against Woodbury on April 29, 1959 (our No. 19,768). This was the commencement of a suit (Rule 3, F.R.Civ.P.) and the date of commencement was within six years of the making of each of the alleged false claims. Nevertheless, the court held that action upon all of the claims, except the last, is barred. Its reasoning is that No. 19,768 was improperly brought because the government's claims should have been asserted as compulsory counterclaims in the already pending action, our No. 19,767, brought by Woodbury against the United States, and that such a counterclaim was not filed until October 23, 1959, a date too late to avoid the bar of the statute. We have already noted that a motion for leave to file a counterclaim in No. 19,767 was made on October 2, 1959, more than two weeks before the court dismissed No. 19,768 as against Woodbury. Leave was granted on the same date (October 19) as the dismissal and the counterclaim was filed only four days later. The government moved as promptly as could reasonably be expected after it learned the court's views. It found itself in this position because the court put it there, not because it asked to be there.