November, 1931

ANNOUNCEMENT

The University of Pennsylvania Law Review takes pleasure in announcing the inauguration, with this issue, of the department of legislation. Subjects of current interest and importance will be discussed fully from a legislative standpoint.—Ed.

NOTES

The Law School—This year’s enrollment is about 11% below that of 1930-31. Several causes may be operating to bring about this present trend, which is not peculiar to Pennsylvania. The most obvious is the business depression which has made it impossible for some parents to carry sons through three more years of University training, and for some students to find part-time employment needed to meet their marginal requirements. First year enrollment shows, however, a satisfactory increase in the proportion of students attracted from a distance within and without the State of Pennsylvania.1

1 1930-31 enrollment was 494; this year’s enrollment is 441.
2 Institutional and geographic distribution of the First Year:

Degree Distribution, First Year Class

<table>
<thead>
<tr>
<th>University of Pennsylvania:</th>
<th>Gettysburg</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>College</td>
<td>Guiford</td>
<td>1</td>
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<tr>
<td>Wharton</td>
<td>Haverford</td>
<td>1</td>
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<tr>
<td>Miscellaneous</td>
<td>Harvard</td>
<td>I</td>
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<tr>
<td></td>
<td>Lafayette</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Lehigh</td>
<td>8</td>
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<tr>
<td>Other Institutions:</td>
<td>McGill</td>
<td>1</td>
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<tr>
<td></td>
<td>Muhlenberg</td>
<td>1</td>
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<tr>
<td></td>
<td>New York</td>
<td>1</td>
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<tr>
<td></td>
<td>Notre Dame</td>
<td>2</td>
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<tr>
<td></td>
<td>Pennsylvannia Military</td>
<td>1</td>
</tr>
<tr>
<td>Bucknell</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Colgate</td>
<td>Pennsylvania State</td>
<td>11</td>
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<tr>
<td>Columbia</td>
<td>Princeton</td>
<td>14</td>
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<tr>
<td>Cornell</td>
<td>Smith</td>
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<td>Davidson</td>
<td>St. Joseph's</td>
<td>5</td>
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<tr>
<td>Delaware</td>
<td>St. Thomas</td>
<td>1</td>
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<tr>
<td>Dickinson</td>
<td>St. Vincent</td>
<td>1</td>
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<tr>
<td>Duke</td>
<td>Susquehanna</td>
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</tr>
<tr>
<td>Franklin and Marshall</td>
<td>Swarthmore</td>
<td>3</td>
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<tr>
<td></td>
<td>Temple</td>
<td>18</td>
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<tr>
<td>Geneva</td>
<td>University of Illinois</td>
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<tr>
<td>Georgetown</td>
<td>University of Maryland</td>
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Geographical Distribution

<table>
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<tr>
<th>Philadelphia</th>
<th>76</th>
<th>41+%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pennsylvania (outside Phila.-elphia)</td>
<td>77</td>
<td>42 %</td>
</tr>
<tr>
<td>Other States and foreign Countries</td>
<td>29</td>
<td>15+%</td>
</tr>
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</table>

Distribution in Classes

| First Year | 182 |
| Second Year | 127 |
| Third Year | 124 |

Total 441

(95)
With deepest regret we announce the death of four of our official staff.

Margaret Center Klingelsmith, for thirty-one years Librarian of the Biddle Law Library, died January 19. A writer of charm and a learned scholar of early common law history, Mrs. Klingelsmith with a unique knowledge of books brought the library to a position of eminence among the great law school libraries of the country. Layton B. Register has been appointed to succeed her. He announces the recent acquisition of a valuable library of some 4000 volumes of foreign and comparative criminal law now being catalogued and made ready for scholars in this special field.

But a short time later Miss Sarah Center, cataloguer of the library, died. This position has been filled by Edith Harris West, A. B., LL. B.

Stevens Heckscher, Esq., long a helpful friend of the Law School and since 1929 Associate in Law, teaching Legal Ethics, died on May 8. Professor Reynolds D. Brown has resumed charge of this course, which he had taught for many years.

On September 18 we learned of the tragic death by automobile accident of Professor Austin Tappan Wright, while on his way eastward from California to resume his teaching after a year’s leave of absence. Professor Lloyd has elsewhere in this issue so well expressed the universal affection and respect felt for Professor Wright that I need here only to outline the faculty adjustments made to replace his loss this year.

Corporations will be taught by Robert Dechert, Esq.; Partnerships will be taken by Earl G. Harrison, Esq. (LL. B. 1923) of the firm of Saul, Ewing, Remick and Saul of Philadelphia. Professor Wright’s course in Admiralty has been dropped this year. Professor John Dickinson will teach Taxation in place of Mr. Dechert. Carroll R. Wetzel, Esq., returns as Associate in Law to teach Sales.

Other interesting changes should be recorded. We welcome as Visiting Professor of Law, Frederick Keating Beutel, A. B., LL. B., S. J. D., of Tulane University Law School, New Orleans. He will teach Agency, Bills and Notes, and First Year Property.

At the July Pennsylvania Bar Examinations the Law School sent up 114 new candidates of whom 70% passed. This was the largest number for any one institution and the highest percentage of passes with one exception.

Herbert F. Goodrich.

The Necessity of a Notice and Hearing in Administrative Determinations—The question of what rules shall be applied to establish the conclusiveness or validity of a determination made by an administrative officer or board, and affecting the person or property of an individual is essentially one of policy.
On the one hand it is desirable that administrative officers should be free to exercise their judgment and discretion in acting to promote what they conceive to be the public good. This is the purpose for which they have been appointed. Frequently they are specialists in a field requiring technical skill in making determinations. Utilities commissioners and health authorities are—at least in theory—selected because of scientific qualifications. On the other hand is the necessity of safeguarding the interests of individuals from gross errors of judgment, overzealous extensions of authority, arbitrariness and oppression by particular officers, as well as from whims of public opinion recklessly disregardful of long-established and socially-beneficial private rights. One of the most efficient methods of protecting the individual from misuse of administrative authority is to allow him a fair opportunity to be heard by the determining officers prior to their final decision on a matter affecting his interests. He may be able to disclose facts unknown to them or to reveal the question in a new light. If the authorities are dishonest a public hearing will restrict their opportunities for oppression or graft. If they are incompetent a record of what occurs at the hearing may enable a reviewing body, whether judicial tribunal or superior board, to correct their errors. If they are neither unfair nor unskilled, a simple presentation of the individual’s case will tend to bring about a just decision rendered with full knowledge of all the facts and interests involved. And notice to the person affected, in sufficient time to prepare his case, of the time and place of the hearing, is a necessary element of the opportunity to be heard. Notice and hearing, however, detract to some extent from administrative efficiency. They involve delay and expense. Publicity may deter government investigators from frankly reporting a harsh truth, or disturb the relationship of confidence and discipline between inferior and superior officer. Since the American and English law of administrative bodies is still in a formative state and has hardly yet had time to develop fixed rules covering the more usual situations of administrative procedure, a court is often obliged to determine the necessity or sufficiency of notice and hearing in a particular case by balancing the desirability of governmental efficiency against the safeguard afforded by notice and hearing in situations of the general type presented by the case at bar.

Elements such as the existence of safeguards other than notice and hearing may affect the balance. The findings of fact of an administrative officer or board may be subject to a complete review on the merits in a tribunal where notice and hearing are to be had; or they may be subject to reversal only when they have so little support in the evidence that a jury verdict based on the same testimony would be set aside; or a determination may be entirely conclusive as to matters of fact and be only reviewable for errors of law. An inconclusive determination can often be rendered ex parte where a conclusive determination upon the same

3 State ex rel. Meader v. Sullivan, 58 Ohio St. 504, 51 N. E. 48 (1898); Goodnow, op. cit. supra note 2, at 422.
4 Kwock Jan Fat v. White, 253 U. S. 454, 40 Sup. Ct. 566 (1920); State v. Lamos, 26 Me. 258 (1846).
6 Blunt v. Shepardson, 286 Ill. 84, 121 N. E. 263 (1918); Kuntz v. Sumption, 117 Ind. 1, 19 N. E. 474 (1888).
8 For an illustration of the diverse results that have been reached in balancing the equities presented by a particular factual situation, compare the decision in Rex v. Local Government Board, Ex parte Arlidge [1914] 1 K. B. 159, with that in Local Government Board v. Arlidge, supra note 7, and with the criticisms in Dicey, The Development of Administrative Law in England (1915) 31 L. Q. Rev. 148; in Pound, The Revival of Personal Government (1917) 4 Proc. N. H. Bar Ass’n (n. s.) 13; and in Note (1914) 28 Harv. L. Rev. 198.
subject would require notice and hearing.9 Another factor mentioned in some of the decisions is the personnel of the determining board, whether composed of experts or laymen, whether apt to contain men of recognized ability or merely local politicians.10 It is also important that the determining officer is an obscure appointive functionary or that he is the holder of a post making him directly responsible to the electorate and exposing his conduct to continual publicity.11 Despite the indefiniteness of the elements involved the situations in which notice and hearing are requisite to the validity of administrative determinations have been approximately defined by the decisions of the last half century.

There are, moreover, two balances in which American courts have tested the validity of administrative procedure, a constitutional balance, and an administrative balance. Utilizing the former, a court determines whether the particular procedure adopted does or does not deny "due process of law" or some other constitutional right.12 Utilizing the latter a court decides whether or not the procedure is a fair and proper manner of proceeding viewed in the light of the generally accepted principles of judicial and governmental action.13 Under either doctrine there is the same balancing of interests, the same consideration of whether the procedure was "just", had respect to the "fitness of things", and was carried on "under the forms, and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy."14 Generally speaking, the procedure followed by the administrative officers should involve a clearer disregard of these requirements to induce a court to reject it for unconstitutionality than for it to be condemned as violative of the common law of administrative bodies.15 American courts have commonly tended to consider the problem a constitutional one instead of a mere question of proper administrative procedure. This has had the advantage—or disadvantage—of enabling the courts to insist on their own view of procedural requirements in the

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9 Kuntz v. Sumption, supra note 6. The decision in the leading case of Chicago, Milwaukee & St. Paul Ry. Co. v. Minnesota, 134 U. S. 418, 10 Sup. Ct. 452, 702 (1890), that denial of notice and hearing by a state railroad rate commission was a denial of "due process of law", was expressly placed upon the ground that by the law of the state the decision of the commission as to the reasonableness of a rate was not reviewable by the courts. For the various methods of judicial review, as used in Pennsylvania, see Note (1929) 78 U. of Pa. L. Rev. 232.

10 Yates v. Milwaukee, 10 Wall. 497 (1870); People ex rel. Copcutt v. Board of Health of City of Yonkers, 140 N. Y. 1, 35 N. E. 320 (1893); Dickinson, op. cit. supra note 2, at 262.

11 Shurtleff v. United States, 189 U. S. 311, 23 Sup. Ct. 535 (1903) (limitation on President's power to remove officeholders strictly construed); Wilcox v. People, 90 Ill. 185 (1878) (same as to Governor's power to remove). In Local Government Board v. Arlidge, supra note 7, the "parliamentary responsibility" of the Board was emphasized.

12 "'Due process of law' is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative, or executive in its nature." Stuart v. Palmer, 74 N. Y. 183, 190 (1898).

13 "In judging what is 'due process of law' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these: and, if found to be equitable or admissible in the special case it will be adjudged to be 'due process of law'; . . ." Bradley, J., in Davidson v. New Orleans, 96 U. S. 97, 107 (1877).

14 "It is a rule founded on the first principles of natural justice older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights. . . ." Stuart v. Palmer, supra note 12, at 190. And see Chin Yow v. United States, 208 U. S. 8, 28 Sup. Ct. 201 (1908); State ex rel. Medical College v. Chittenden, supra note 1; Cooper v. Board of Works, 14 C. B. (n. s.) 180 (1863); DeVerteuil v. Knapps [1918] A. C. 557; Frankfurter, The Task of Administrative Law (1927) 75 U. of Pa. L. Rev. 614.

15 Chicago, Milwaukee & St. Paul Ry. Co. v. Minnesota, supra note 9, at 457, 10 Sup. Ct. at 266.

face of contrary statutory provisions. It has also permitted federal courts to regulate state administrative bodies. On the other hand it has tended to prevent the development of administrative law as a distinct branch of our legal system.

In many cases the power of an administrative officer or board to make a determination is derived from a statute which prescribes no specific method to be followed by the authorities in arriving at their decision. Where this is the situation it is commonly said that notice and hearing will be implied, that is, the court will presume that the legislature meant the authorities to act with reference to the safeguards proper to the case. Particularly is this true if without notice and hearing the action of the officials would involve a denial of "due process", for under such circumstances the statute would be rendered unconstitutional, unless interpreted as requiring notice and hearing. But in New York, apparently by reason of a legislative custom to include in a statute express provisions for notice and hearing whenever such procedure was contemplated by the legislators, it is held that a requirement of notice and hearing is not to be read into a statute even to forestall a judicial declaration of its unconstitutionality. If a statute is interpreted as dispensing with notice and hearing where to do so involves a denial of "due process", the grant of a full hearing by the administrative officers, as a favor, will not validate their proceedings, since the statute from which they purported to derive their authority to act in the first instance was unconstitutional.

By application of the various lines of reasoning outlined above, the courts have worked out rules covering the more customary administrative determinations. Perhaps the best generalization that can be made of the whole field is that there must be one notice and one hearing however summary, at some stage in the proceedings in order to prevent a determination affecting individual interest from involving a denial of "due process of law". What more may be required in certain situations, and what exceptions, if any, exist to the general rule can only be discovered by an examination of the cases relating to the particular type of determination in issue.

Determinations involving the obligations of an official to the government itself, and the correlative obligations of the government to its servants form a class presenting special problems of its own. The relationship of employer and employee as well as the relationship of citizen and magistrate is involved. The necessity of maintaining discipline and efficiency within the governmental machine

People, for use of State Board of Health v. McCoy, 125 Ill. 289, 17 N. E. 786 (1888); State ex rel. Medical College v. Chittenden, supra note 1; Cooper v. Board of Works, supra note 13.


People ex rel. Fonda v. Morton, 148 N. Y. 156, 42 N. E. 538 (1896); People ex rel. Lodes v. Dep't of Health of New York City, 189 N. Y. 187, 82 N. E. 187 (1907). In People ex rel. Copcutt v. Board of Health of City of Yonkers, supra note 10, a similar decision was placed on the ground that notice and hearing should not be implied in a statute authorizing the abatement of nuisances because speedy action was desirable for the protection of the public.


"Undoubtedly where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; so, also, where title or possession of property is involved." Field, J., in Hagar v. Reclamation Dist. No. 108, 11 U. S. 701, 708, 4 Sup. Ct. 663, 667 (1884).

"In the comparatively few cases in which such question has arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence'; or if the facts found do not, as a matter of law, support the order made." Lamar, J., in Interstate Commerce Comm. v. Louisville & Nashville Ry. Co., 227 U. S. 88, 91, 33 Sup. Ct. 185, 186 (1913). And see Pittsburg, C. & St. L. Ry. Co. v. Backus, 154 U. S. 421, 14 Sup. Ct. 1114 (1894); Koarui Yamataya v. Fisher, supra note 17.
counts heavily. Accordingly the rule has long been fixed that, in the absence of statute, appointive officers possessing no definite term of office may be dismissed by the officer having the power of removal without notice and hearing.21 But if a constitution or statute provides that removal is to be for specified causes only, then notice and hearing must be given,22 unless the language or circumstances of the enactment lead to a contrary inference.23 This power of summary dismissal is nothing but the ordinary "firing" power of the private employer and is not to be limited except as the legislature sees fit. In at least one respect, however, the government may enforce the obligations of its servants by a procedure over-reaching anything permissible to a private employer; for the government may determine the amount due it from a revenue officer, and then may collect the amount claimed, by distress upon his property, without allowing him any opportunity to challenge the correctness of the accounting unless he prevents the distress by posting security for the amount claimed, to abide the result of a subsequent judicial review of the accounting.24

Although it has been often said that the government's urgent need for financial supplies, necessary for the performance of its duties towards the community, dispenses with the requirement of a formal procedure in matters of taxation and revenue,25 nevertheless "due process" requires notice and hearing where others than government officers are concerned. In assessment cases generally, whether for taxes 28 or for improvement benefits,27 notice and hearing must be given at some period prior to collection.28

In assessment proceedings notice and hearing customarily occur in the latter rather than in the earlier stages of the proceedings.29 If the owner objects to the valuation placed on his property by the assessor he may appeal to a reviewing board, usually called a "board of equalization", and present his case before it.30 It is to be noted in tax cases that the assessor's work is primarily dependent on

21 Shurtleff v. United States, supra note 11; People ex rel. Gere v. Whitlock, 92 N. Y. 191 (1883).
23 Trainor v. Board of Auditors, 89 Mich. 162, 50 N. W. 809 (1891) (express provision for "charges and evidence" in one statutory ground of removal, but not in others); People ex rel. Fonda v. Morton, supra note 18 (statute extended to all ex-soldiers in state employment even if only common laborers).
24 Murray's Lessee v. Hoboken Land & Improvement Co., 18 How. 272 (1855). Despite the fact that this decision was expressly put on the ground that the procedure here outlined did not substantially differ from that customarily employed against revenue officers in England and the Colonies, this case has often been used to justify "high-handed" methods of enforcing the revenue laws against others than government officers.
27 Hagar v. Reclamation Dist. No. 108, supra note 20; Corcoran v. Board of Aldermen of Cambridge, 199 Mass. 5, 85 N. E. 155 (1908); State v. Jersey City, supra note 5.
28 While a board of tax review or equalization can only alter the original valuation placed by the assessor on an individual's property after notice and hearing, it may alter the general rate of assessment for a whole county or city without granting a hearing to the taxpayers or their representatives, Bi-Metallic Investment Co. v. State Board of Equalization, 239 U. S. 441, 36 Sup. Ct. 141 (1915).
29 In such event the board is regarded as acting in a legislative rather than an administrative capacity.
30 See, for an illustration of such procedure, Kuntz v. Sumption, supra note 6.
31 Palmer v. McMahon, 133 U. S. 660, 10 Sup. Ct. 324 (1890); Corcoran v. Board of Aldermen of Cambridge, supra note 27. "... due process of law requires that at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, or by publication, or by law, fixing the time and place of the hearing." Londoner v. Denver, 210 U. S. 373, 385, 28 Sup. Ct. 708, 714 (1908).
personal knowledge and skill rather than on information obtainable only from others;\textsuperscript{33} that the review is by a direct appeal to a superior administrative authority instead of by a collateral proceeding in a judicial tribunal; such as a bill to restrain collection of the tax; and finally that the reviewing board makes an entire new decision on the merits. The situation would be entirely different were the decision of the assessor conclusive as to findings of fact, or conclusive even within the limits of a jury verdict. In such event the taxpayer would come before the board with much of his case prejudged against him by an \textit{ex parte} determination, and consequently would be deprived of "due process".\textsuperscript{33} But where there is an appeal on the merits to a "board of equalization" the taxpayer has the same opportunity to present his case before the board as he would have had before the assessor, and the state is saved the burden of a hearing except where an owner feels that injustice has been done him. For similar reasons assessments are also valid where the taxpayer's first opportunity to be heard occurs in a formal judicial proceeding brought to enforce the tax.\textsuperscript{32}

Notice and hearing, though of a rather summary character, are requisite to the validity of appraisements and valuations made by customs officers.\textsuperscript{34}

Where the determination of a public utility commission is involved, or the decision of any other of the increasing number of boards regulating business, notice and hearing are essential.\textsuperscript{35} The administrative authorities are here considered to be restricting the use of property in ways otherwise legal, and consequently they must respect the doctrine that deprivation of property without "due process of law" is unconstitutional. The strict conformity to this doctrine which the Supreme Court—and Congress also—has imposed upon the Interstate Commerce Commission and similar bodies seems particularly important as setting a high standard of procedure in an expanding field of administrative activity. An example of the willingness of the federal courts to require notice and hearing in utilities cases is found in their broadly inclusive attitude respecting the classes of persons sufficiently affected by an administrative proceeding to be entitled to a hearing. The Transportation Act of 1920 provided that no railroad should purchase another without the consent of the Interstate Commerce Commission. Although the intention of the act was primarily to protect the public interest in free competition and not to protect the interests of individual railroads, the Supreme Court held in the \textit{Chicago Junction Case}\textsuperscript{37} that any railroad whose traffic might suffer from the proposed purchase had the right to intervene in the proceedings and be heard by the Commission. Under the present Federal Radio Act giving any broadcasting station the right to object to the grant of a license to another station whose operation might interfere with its own service, it has recently been held that the objecting station is entitled to a hearing by the Federal Radio Commission before a license is granted to the applicant.\textsuperscript{38}

\textsuperscript{33} State v. Jersey City, \textit{supra} note 5.
\textsuperscript{34} Kuntz v. Sumption, \textit{supra} note 6.
\textsuperscript{36} Origet v. Hedden, 155 U. S. 228, 15 Sup. Ct. 92 (1894); Tariff Act, 1922, \$ 501; 42 \textit{Stat.} 766, 19 U. S. C. 381.
\textsuperscript{38} Mr. Justice Brandeis lists the following determinations of the Interstate Commerce Commission as requiring notice and hearing under the Hepburn Act of 1906 and the Transportation Act of 1920: unreasonable rates, discriminatory rates, switching connections, division of joint rates, pooling, railroad control of water carriers, valuation, extension of time for new construction, and abandonment; an order for the issuance of securities requires no hearing, Chicago Junction Case, 264 U. S. 258, 265, 44 Sup. Ct. 317, 319 (1924).
\textsuperscript{39} \textit{Supra} note 36.
In sharp contrast to this tendency of the federal courts is the rather lukewarm attitude towards notice and hearing taken by the state courts in cases involving the police power. At the common law an officer who made an arrest was not required to give a hearing to the supposed culprit before taking him into custody, but if there was no sufficient ground for the arrest the officer was liable to an action for false imprisonment. So also if an officer abated an alleged public nuisance he need give no notice to the owner of the property about to be destroyed, but he ran the peril of satisfying a jury that a nuisance had actually existed. The ancient methods of relief against arbitrary official action by means of damage suits early came to be applied to administrative determinations by officials, irrespective of fitness, because of their foundation in custom and the law of the land, the ancestors of "due process".

In Belcher v. Farrar, decided in 1864, town selectmen adopted an ordinance requiring a kerosene factory to be closed as a nuisance without allowing the proprietor an opportunity to be heard. The ordinance was held valid on the ground that the statute conferring the power to close a business as a nuisance expressly provided that the determination of the selectmen might be reviewed in an action at law. The court seized on this legislative recognition of the common law rule, that the determination of an official cannot make a nuisance out of that which is not a nuisance in law, in order to draw from it a corollary doctrine that notice and hearing were unnecessary for the validity of a determination which was subject to review in a jury trial. Four years later, in Salem v. Eastern Railway Co., an action was brought by a municipality to recover the expense of draining a pond from the owner, who had refused to do the draining after the municipal authorities had determined ex parte that the pond constituted a nuisance. The court held that this determination was not conclusive of the issue "nuisance or not" in the suit at bar, because it had been rendered in another proceeding to which the defendant had not been a party inasmuch as he had not been heard. But the court also said that while such a determination could not be binding in personam it would be binding in rem, since the pond was within the jurisdiction of the municipality, and consequently it would protect from damage suits those who had abated the alleged nuisance. The opinion thus placed administrative determinations on a parity with judicial determinations when rendered with jurisdiction of either the party or the res—notice and hearing being essential to the former jurisdiction, but not to the latter—instead of placing them on a parity with purely ministerial and non-discretionary acts as in Belcher v. Farrar.

In the leading case of Miller v. Horton the Massachusetts court was in effect forced to choose which of these two decisions it would follow. A statute gave a state board power to kill diseased animals. The defendant killed the plaintiff's horse in pursuance of an order of the board made without a hearing. The plaintiff having brought an action of tort for killing the horse, the jury found that the horse was not diseased. Had the court chosen to follow the analogy of a judicial determination in rem it could have upheld the decision of the board against collateral attack; instead it concluded that the board had power to kill

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59 See Groenvelt v. Burwell, 1 Ld. Raym. 454, 467 (1699).
60 Hutton v. City of Camden, 39 N. J. Law 122 (1876), in stating that the issue of "nuisance or not" can only be determined in judicial proceedings and without respect to a prior administrative determination even after hearing, typifies the condition existing prior to the growth of an administrative procedural law when determination by a court was conceived to be the only alternative to determination by an officer in any way he saw fit.
61 Goodnow, op. cit. supra note 2, at 414.
62 8 Allen 325 (Mass. 1864).
63 Yates v. Milwaukee, supra note 10; Cooley, Constitutional Limitations (8th ed. 1927) 1329n.
64 98 Mass. 431 (1898).
65 152 Mass. 540, 26 N. E. 100 (1891).
diseased cattle only, that is, that its function was ministerial rather than determinative, and intimated that if the statute intended to give the board a determinative power it would be unconstitutional unless compensation was provided for mistakes of the board, or unless the owner was entitled to a hearing before the board acted. 46

Two years later in the New York case of People ex rel. Copcutt v. Board of Health of City of Yonkers 47 the doctrine of collateral attack was carried still further. The Board after a hearing ordered certain mill-ponds destroyed as nuisances. The owner brought certiorari to review this determination. The Court of Appeals denied the writ on the ground that if the ponds were not nuisances the owner would have a right of action for damages against the Board if they were destroyed, and that the existence of this right of action made it unnecessary for the Board to grant a hearing, and also rendered unnecessary a direct review of the Board’s determination by certiorari.

However historically sound the rule may be that an ex parte determination is not unconstitutional if it is subject to a full review on the merits in an action at law for damages or a bill in equity for an injunction, 48 the extension of this rule so as to exclude review by any other process, or so as to dispense with the necessity for notice and hearing prior to the administrative determination, is subject to criticism as a matter of sound administrative practice. It forces the officers to act at their peril unless they obtain a prior judicial adjudication of the very question which the legislature intended them to decide for themselves. It obliges the individual to resort to cumbersome and expensive proceedings to mend that which need not have been done; and unless he can act swiftly enough to obtain the interposition of an injunction it allows his property to be destroyed subject to a right of action against individuals of dubious solvency. 49 Finally it does away with the chief advantage of a hearing, namely, to inform the determining authorities in order that they may arrive at a correct decision. It is not noticeable that the doctrine of collateral attack is not applied in the utilities or tax cases. While the language of the opinions is sufficiently sweeping to extend it to all cases falling under the police power, nearly all the decisions involve an emergency, an apparent imminent danger to the community, as a threatening epidemic, which will brook no delay for notice and hearing. 50 Restricted to cases where speed of action is preferable to accuracy of decision, the provision of notice and hearing for the first time in a collateral action may possibly be the most practical solution of a problem apt to involve hardship on someone. 51

A possibility that seems to have been overlooked in many cases is that of keeping the alleged nuisance under quarantine until there has been time to have a hearing. This is eminently practicable in cases where a particular use of property

46 Similar decisions involving the destruction of epidemic-threatening property are: North American Cold Storage Co. v. Chicago, 211 U. S. 306, 29 Sup. Ct. 101 (1908); Pearson v. Zehr, 138 Ill. 48, 29 N. E. 854 (1891); Lowe v. Comoy, 120 Wis. 151, 91 N. W. 742 (1904).

47 Supra note 10. See also Board of Health of City of Yonkers, 140 N. Y. 12, 35 N. E. 443 (1893).

48 See People ex rel. Copcutt v. Board of Health of City of Yonkers, supra note 10.

49 See Goodnow, op. cit. supra note 2, at 418.

50 Goodnow, op. cit. supra note 2, at 418. In Layton v. Steele, 152 U. S. 133, 14 Sup. Ct. 499 (1894), and Health Dept. of City of New York v. Trinity Church, 145 N. Y. 32, 39 N. E. 833 (1895), no emergency was involved, yet in the former case property was allowed to be destroyed, and in the latter an order carrying a penalty for violation was permitted to be made, both without a hearing, on the ground that they were subject to attack in the courts.

51 Dickinson, op. cit. supra note 2, at 260; Goodnow, op. cit. supra note 2, at 417. In North American Cold Storage Co. v. Chicago, supra note 46, the court intimated that to apply the doctrine of collateral attack to other than emergency situations would involve a denial of “due process”, but held that it was for the legislature to determine when an emergency existed.
rather than the nature of the property itself is in question. Temporary closing of a business pending final determination has been held to involve no tort liability by analogy to imprisonment pending trial.\footnote{Belcher v. Farrar, supra note 42.}

Although \textit{Salem v. Eastern Railway Co.} has not been followed in the United States, some English cases have tended to uphold the distinction there drawn. Thus the \textit{ex parte} determination of a justice as to the unfitness of meat for food is conclusive on the question of whether the food is to be destroyed,\footnote{Supra note 44.} but is not conclusive in a proceeding to exact a statutory penalty for exposing the meat for sale.\footnote{\textit{White v. Redfern}, 5 Q. B. D. 15 (1879).} While the Supreme Court of the United States has been willing to go further than this in protecting an individual from arbitrary destruction of his property,\footnote{Waye v. Thompson, 15 Q. B. D. 342 (1885).} it has not been willing to go so far in protecting him from amercement by administrative fiat; for, notwithstanding that an “infamous crime” requires a jury trial as a matter of constitutional right,\footnote{\textit{Chin Yow v. United States}, 142 U. S. 651, 12 Sup. Ct. 260 (1924).} a pecuniary penalty for violation of customs or immigration regulations may be imposed by the officials without notice and hearing, collected summarily by the Treasury, and cannot be recovered by an action at law because in such action the officers’ findings of fact will be held conclusive.\footnote{\textit{Oceanic Steam Navigation Co. v. Stranahan}, 214 U. S. 320, 29 Sup. Ct. 671 (1908).} The complete denial of notice and hearing under this ruling was justified by the Supreme Court in \textit{Oceanic Steam Navigation Company v. Stranahan} because of the “plenary power” of Congress over imports and immigrants.

Expanded to full length the argument runs thus: Congress has power to exclude immigrants entirely; therefore it has power to admit immigrants subject to whatever conditions it chooses to impose; therefore it may impose as conditions (1) that whoever attempts to bring in a certain type of immigrant shall be subject to a penalty, and (2) that whoever attempts to bring in immigrants shall submit to the determination of the immigration authorities as to whether these immigrants are within the forbidden type. Admitting the soundness of this argument constitutionally, its application to situations where, as in the \textit{Oceanic} case, the legislature has not expressly closed the door to notice and hearing goes very far towards dispensing with any necessity for a hearing as a requirement of administrative law, in those situations where it would not have been unconstitutional for the legislators to deny altogether the privilege of a hearing.

The earliest of the exclusion cases, \textit{Ekiu v. United States}, tended to a similar result, but the later decisions have established the rule that there must be a notice and hearing in all cases involving the right to enter or remain in the United States, at least where the person affected claims to be a citizen,\footnote{\textit{Wong Wing v. United States}, 163 U. S. 228, 16 Sup. Ct. 977 (1896).} or has once entered the United States so as to “become a part of its population” and “subject to its jurisdiction”.\footnote{\textit{United States ex rel. Tisi v. Tod}, 264 U. S. 131, 44 Sup. Ct. 260 (1924).}

In general where the determination under consideration is one involving something which is not considered so much a matter of right as a beneficence or...
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gift offered by the government to those fulfilling certain requirements, as are
pensions and land grants, there is a tendency to consider that the legislature
intended the officers charged with the administration of the gift to be unhampered
by procedural safeguards against arbitrary decisions. Postal cases are usually
considered to be within this classification, yet notice and hearing are granted by
statute where mailing privileges are at stake. The government monopoly of the
postal service, however, prevents use of the mails from being in reality a mere
favor. But the granting or withdrawing of licenses furnishes the greater part of
the determinations falling under the "gift" classification. The progressive diminu-
tion in the number of occupations which can be exercised without a license of
some sort seriously impairs the force of the view taken in a number of decisions
that the granting or refusal of a license is a purely discretionary matter requiring
no hearing. This is recognized in another group of decisions requiring a hear-
ing before the refusal of a license. Licenses to practice as a physician, to
prosecute claims before an official board, and to deal in alcohol have been held
to require a hearing. Revocation or refusal to renew a license requires notice
and hearing even where refusal to grant the license does not, the courts consid-
ering that a business or clientele built up in reliance upon the license is a vested
right of property which cannot be destroyed until proceedings at least quasi-
judicial have been had. 

Summarizing, there seems to be a tendency to adopt, even in cases where no
constitutional right is involved, the principle broadly laid down by Justice Holmes
in Miller v. Horton that no matter where the legislature "draws the line the
owner has a right to a hearing on the question whether his property falls within
it, and this right is not destroyed by the fact that the line might have been drawn
so differently as unquestionably to include that property." Considered as a prin-
ciple of administrative law and of statutory construction, the majority of the
decided cases are in accord with this statement.

H. J. S.

a Dickinson, op. cit. supra note 2, at 286.


c In re Schonmaker, 15 Misc. 481, 38 N. Y. Supp. 167 (1895).

d Gage v. Censors of New Hampshire Eclectic Medical Society, 63 N. H. 92 (1884).

e Goldsmith v. United States Board of Tax Appeals, 270 U. S. 117, 46 Sup. Ct. 215
(1926).

f Smith v. Foster, 15 F. (2d) 115 (S. D. N. Y. 1926). In this and the two preceding
cases the applicant had satisfied all technical or professional requisites for a license and was
rejected solely because not "worthy of public confidence".

g Garfield v. United States ex rel. Spalding, 32 App. D. C. 153 (1908); Phillips v. Bal-
ingher, 37 App. D. C. 46 (1911); Courier-Journal Co. v. Federal Radio Comm., 46 F. (2d)
614 (Ct. of App. D. C. 1931) (refusal to renew broadcasting license on former terms); Blunt v. Shepardson, supra note 6; Lillienfeld v. Commonwealth, 92 Va. 818, 23 S. E. 882
(1896).

h "Whether the right to practice medicine or law is property, in the technical sense, it
is a valuable franchise, and one of which a person ought not to be deprived, without being
offered an opportunity, by timely notice, to defend it." People for use of State Board of

In New York a building permit cannot arbitrarily be revoked after construction has
been started, City of Buffalo v. Chadeayne, 134 N. Y. 163, 31 N. E. 443 (1892), but a license
to sell milk may be revoked without notice and hearing on the ground that there is no vested
right to continue in the milk business, even though a valuable good will is involved, People ex rel. Lodes v. Dept. of Health of City of New York, supra note 18. In the latter case,
however, the court said that the licensee might have a remedy by mandamus if the revoca-
tion was "arbitrary, tyrannical, and unreasonable", or "based upon false information", thus
apparently applying the doctrine of collateral attack.

i Supra note 45, at 546. In Londoner v. Denver, supra note 30, it is said that although
a legislature may fix a tax without notice and hearing, yet if it commits to some subordinate
body the duty of apportioning it, "due process" requires a notice and hearing.
Aggregation of Plaintiffs' Claims to Meet the Jurisdictional Minimum Amount Requirement of the Federal District Courts—In every case where the jurisdiction of a federal court is sought by two or more plaintiffs whose claims are separately less than the requisite amount, it becomes necessary to decide whether or not they may be aggregated. Naturally the question has been presented many times and only too frequently has it been answered affirmatively in one case and negatively in another although the facts of the two cases have been indistinguishable. Yet, in the opinions, there is a repeated reiteration of a single fundamental rule and one looks in vain for dissenting opinions and directly overruled prior decisions. A question of so necessarily frequent presentation demands what is tantamount to a rule-of-thumb as a guide to the answer, a rule that is quickly and easily applied and is productive of consistent decisions. To determine whether the rule that has been used meets this standard and to explain why its application has brought about inconsistent decisions is the purpose of this note.

The question was presented for the first time in an admiralty case, Olivier v. Alexander, decided by the United States Supreme Court nearly a century ago. An appeal had been taken by the defendant from several decrees in favor of the plaintiffs, seamen who were suing for wages. The decrees for less than the jurisdictional amount were dismissed; since the claims were separate and based on individual contracts they could not be aggregated. A joint suit was permitted, the Court explained, merely for the sake of convenience. That parties may not tack their separate claims merely because they are permitted, by statute or otherwise, to sue together has been asserted clearly and unequivocally many times since. It is significant that the Court seemed to think a joint suit necessary if the plaintiffs were to be permitted to aggregate the amounts of their claims:

“If the law were otherwise, it would operate in a most unjust and oppressive manner; for then the seamen would be compellable to file a joint libel; and if any controversy existed as to the claim of a single seaman, all the others would be compellable to be dragged before the appellate tribunals and incur enormous expenses, even when their own rights and claims were beyond all controversy, and in truth, were not controverted.”

1 The United States District Courts have jurisdiction “when the matter in controversy exceeds, exclusive of interest and costs, the sum or value (italics the writers) of $3,000 and (a) arises under the constitution or laws of the United States, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects”, Judicial Code § 24, par. 1 (28 U. S. C. A. § 41, par. 1). It has jurisdiction regardless of the amount in controversy in the situations set out in the first part of the sentence of paragraph one, ibid., i. e., “all suits of a civil nature, at common law or in equity, brought by the United States or an officer thereof authorized to sue; or between citizens of the same State claiming under grants of different States.” Paragraphs 4-25 of § 24 (28 U. S. C. A., pars. 4-25) enumerate exceptional instances of cases arising under the federal laws in which no jurisdictional amount is necessary.

2 The writer recalls no single dissenting opinion from his search through the reporters of the last hundred years. Nor was any case discovered that expressly overruled a prior inconsistent one.

3 In determining whether claims may be aggregated the same general rule is applicable to the original jurisdiction of the District Courts and the appellate jurisdiction of the Supreme Court, Walter v. Northeastern R. Co., 147 U. S. 370, 13 Sup. Ct. 348 (1892); Putney v. Whitmire, 66 Fed. 385 (C. C. S. C. 1895). The amount is different ($5,000) as is the yardstick by which it is precisely measured, Dobie, Federal Procedure (1928) §§ 56, 207.


5 See for statements of this nature, Greene County v. Thomas, 211 U. S. 598, 29 Sup. Ct. 188 (1908); Hughes, Federal Procedure (2d ed. 1913) 233.

6 Per Justice Story, Olivier v. Alexander, 6 Pet. 143, 147 (U. S. 1832).
Shields v. Thomas distinguished the Olivier case and several other admiralty cases following it and enunciated a differentiating criterion that is the essence of the present rule. The distributees of intestate's personal property brought a bill in equity against the husband of the administrator alleging that he had converted part of the estate. The language of Chief Justice Taney has become classic.

"The matter in controversy . . . was the sum due to the representatives of the deceased collectively; and not the particular sum to which each was entitled, when the amount due was distributed among them, according to the laws of the state. They all claimed under one and the same title. They had a common and undivided interest in the claim; and it was perfectly immaterial to the appellant how it was to be shared among them. He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to take, the dispute was among themselves and not with him."

It is evident that the test used in this case was not the jointness or separateness of the suit. A joint interest, in its technical sense, was not necessary, for the distributees held title as tenants-in-common. The dictum of the Olivier case was disregarded. But, as against the defendant, there was a single issue, the right to the property, which was common to the plaintiffs by virtue of their connection with one and the same title, that is, the intestate's. There was, as has been aptly termed, an "integrated right" against the defendant.

Brief mention of another phase of the law of jurisdictional amount will be helpful in the analysis of the rule as to aggregation. In injunction suits, brought by a single complainant, two tests are commonly enumerated by writers: one, the amount or value claimed by the complainant, the other the amount or value which the respondent will lose if the complainant succeeds. The second was enunciated in Mississippi & Mo. R. Co. v. Ward. Sharp criticism has been leveled at this test on the ground that it brings confusion and uncertainty into

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8 17 How. 3 (U. S. 1854).
10 Several other phrasings of this principle have also gained prominence: "The joinder in one suit of several plaintiffs . . . who might have sued . . . in separate actions (italics the writers) does not enlarge the appellate jurisdiction; . . . when property or money is claimed by several persons suing together, the test is whether they claim it under one common right, the adverse party having no interest in its apportionment or distribution among them, or claim it under separate and distinct rights, each of which is contested by the adverse party", Gibson v. Shufeldt, 122 U. S. 27, 30, 7 Sup. Ct. 1066, 1067 (1886); "If several persons be joined in a suit, . . . and have a common and undivided interest, though separable as between themselves, the amount of their joint (italics the writer's) claim or liability will be the test of jurisdiction; but where their interests are distinct, and they are joined for the sake of convenience only and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have a relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated . . .", Clay v. Field, supra note 5 at 479, 11 Sup. Ct. at 425 (1890); see similar statements in Troy Bank v. Whitehead, supra note 5 at 40, 32 Sup. Ct. 249 (1911); Finel v. Pinel, 240 U. S. 594, 596, 36 Sup. Ct. 416, 417 (1916).
11 Shields v. Thomas, supra note 8, at 5.
12 See the language used in Gibson v. Shufeldt, supra note 10.
13 See quotation from Clay v. Field, supra note 10.
14 Dobie, supra note 4, § 58, at 158.
15 Hughes, supra note 7, § 58; 1 Foster, Federal Practice (6th ed. 1920) § 13; Rose, Federal Jurisdiction and Procedure (4th ed. 1931) § 218; and see Dobie, supra note 4, at 134, 2 Black 485 (U. S. 1862).
what ought to be clear-cut and definite. The recent decisions indicate a tendency to abandon the second test, the "defendant-viewpoint" as it has been called, but the Ward case and those following it have never been expressly overruled, and their force is still effective in some of the lower federal courts.

Is not the test of the Shields case based primarily on the "defendant-viewpoint"? Since a joint interest in the plaintiffs is not required is it not the defendant's threatened loss rather than the plaintiff's interest, which is in fact distinct from that of his co-plaintiff, that determines the amount in controversy? His interest in the whole of the matter in dispute is solely for the purpose of obtaining his particular portion. Were the "plaintiff-viewpoint" rule strictly applied to this situation aggregation would be denied. Technically, joint suits would not be an exception, for in them the interest of each is for the whole amount and therefore the problem of aggregation would never occur. In view of the overcrowded federal dockets, particularly in non-federal matters, such a rule as this might be employed with desirable results.

It is significant that the Shields and the Ward Cases were decided within eight years of each other by substantially the same bench. However, the rule of the former from continual reiteration has become so firmly entrenched that it is not likely ever to be disturbed judicially; its soundness has never been questioned, but it has brought about no few inconsistent decisions. It is based on a distinction between a principle common to all and a right or title common to all (an "integrated" right). In the language of a lower federal court judge,

"The 'matter in dispute', within the meaning of the statute, is not the principle or rule of decision which is involved in the controversy, and which may be common to the interests of all the parties to the litigation, but it is the money value which is at stake; and the claims of the several parties cannot be added together to form the matter in dispute, unless each party has an undivided interest in a claim to the property that is the subject of the litigation." As the logic of this distinction is not self-evident, very naturally in applying the rule the dividing line is bent and stretched and cases properly belonging on the one side are inadvertently placed on the other with results as already set forth. The rule has been called "technical"; it is clearly that. But a logical rule is less necessary than one applied logically. Since it is firmly rooted in our law some good may be done by showing wherein the courts have become confused in its application.

Dobie, Jurisdictional Amount in the United States District Courts (1926) 38 Harv. L. Rev. 733; (1926) 11 Va. L. Rev. 513, contained in part, also, in Dobie, supra note 4, § 56. This writer urges forcefully what he terms the "plaintiff-viewpoint" rule as a means of reaching consistent results. See comment as to this in Rose, supra note 15.


Ibid.


Dobie, supra note 4, at 158.
The cases fall into a few definite groups. The first, taxpayer's suits, have caused little difficulty. Here the distinction between a principle common to all and a right common to all has been recognized. The citizen's constitutional guaranty is, in these cases, a principle common to all. But the rights against the person or persons violating this guaranty derive in no way from a common source. They are inherently distinct to the individual.

A class of cases apparently rife with confusion both in the Supreme Court and in the lower federal courts, is that embracing what are termed "creditors bills". In these cases suit is brought by one or more in behalf of others similarly situated either to obtain property that a debtor has disposed of or threatens to dispose of by fraudulent preference; or to have a receiver appointed for an insolvent corporation; or to compel shareholders to pay into court as a "trust fund" what is owing to the insolvent corporation on unpaid subscriptions; or to enforce shareholder's statutory liability. In all of these cases there is an existing fund or one sought to be created, out of which the creditors are entitled to satisfy their claims. The principle of the Shields case is invariably invoked and urged upon the courts. In the earlier cases this was done unsuccessfully. The claims of the creditors were recognized as being separate, both against the defendant or defendants and among themselves. There was no common title giving rise to a single common right; after the principle common to all, the right to reach particular property, was determined there still remained to be determined the validity of the separate claim of each creditor.

However, the combined force of repeated efforts finally came to fruition. The facts of Handley v. Stutz were most conducive to a misstep. A bill was brought by three creditors, two of whom had claims separately satisfying the jurisdictional requirement. The remaining one, and the many others later join-

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29 See particularly Clay v. Fields, supra note 10, Seaver v. Bigelow, Gibson v. Shufeldt, both supra note 26. In the last mentioned case there is an excellent compilation and discussion of all of the cases preceding it.

30 Supra note 27.
ing, all claimed less. It was then well established that if one creditor's claim satisfied the requirement jurisdiction would be retained to give relief to the others similarly situated. In fact, the Court was bound by a prior decision to do so. The misstep was made in the dictum of Justice Gray, who four years before had made an exhaustive survey of the previous cases.

"Such a bill as this could not have been filed in his (the creditor's) own behalf only, and the case does not fall under that class in which creditors, who might have sued severally, join in one bill for convenience and to save expense."

Justice Gray was apparently led astray by the fact that such a suit must necessarily enure to the benefit of all of the creditors. But that fact has no pertinence in the application of the rule concerning aggregation. It abandons the test, the "oneness" of the plaintiffs' rights. This idea combined with a "defendant-viewpoint" attitude on the part of some lower federal courts and developed a theory that the amount of the "trust fund" should be taken as the matter in controversy. Consequently these decisions are inconsistent with those in which the rule of the Shields case is correctly applied. They are confusing because often "lip-service" is paid to the rule. The latest expression of the Supreme Court reasserts the test of the Shields case and confines Handley v. Stutz to its decision. In Lion Bonding & Surety Co. v. Karatz, Justice Brandeis, speaking for the Court, says briefly:

"Where a creditor's bill has been entertained by this court, the amount of a single plaintiff's claim has been enough to satisfy the jurisdictional requirement."

At the present time only a few cases have decided the question of aggregation where shareholders of a corporation have been the plaintiffs. These, so far as the writer could find, are from the lower federal courts. They fall generally into two classes: (a) the "representative suit" or "stockholders bill" as it is variously called; (b) suits in equity to have a receiver appointed and the corporation's assets liquidated for the benefit of the shareholders.

The first is technical in its nature. It is brought to enforce a corporate right that the managers refuse to prosecute or in the breach of which they are themselves engaged. Either of these situations must be shown before the shareholders are entitled to bring suit.

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5. The Court affirmed Troy Bank v. Whitehead & Co., *supra* note 5, in which the principle of the Shields case was correctly applied and which reversed the lower court's decision in 184 Fed. 932 (C. C. Ky. 1910) (Bill by transferees of two notes, secured by a single lien, to enforce the lien); cf. Farmer's Loan & Trust Co. v. Waterman, 106 U. S. 265 (1882) (the liens here were separate).


Since the right involved is a single one, belonging to a single legal person, the corporation, the fact that under exceptional circumstances it may be protected by many should not alter its 'primary character. The interest of the shareholders, although manifestly several, is secondary.\textsuperscript{41} The cases uniformly so hold.\textsuperscript{42}

Either because of a failure to distinguish the essential difference between these two classes, or else because of the continuing influence of the \textit{Ward} and \textit{Handley} cases the majority of lower federal courts have held the "matter in controversy" in the second class of cases to be the amount of the "trust fund".\textsuperscript{43} This is plainly incorrect, for the shareholder's interest here is no different from the creditor's under like circumstances, and in the latter it has been pointed out the law is now definitely settled; the separate claim must exceed the requisite amount. It makes no difference that the suit is that of a class, in which all are mutually interested, for:

"... that it may be properly a class action does not affect the rule against aggregation, because the rule is necessarily only applicable to those class actions in which several claimants to a fund are joined as plaintiffs asserting common and undivided rights therein."\textsuperscript{44}

It is well to note in conclusion that the bulk of cases pertaining to the amount requirement arise in diversity of citizenship controversies, a field of concurrent jurisdiction with state courts. This portion of federal jurisdiction has suffered serious attacks\textsuperscript{45} and has had its very existence threatened to extinction by projected legislation.\textsuperscript{46} The rule governing aggregation has been carelessly applied in the past partly because some courts have not been reluctant to accept jurisdiction of the disputes. This seems to be changing with the increasing amount of business brought before the federal courts.\textsuperscript{47} Lion Bonding & Surety Co. v.

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\textsuperscript{41} Ballantine, \textit{Private Corporations} (1927) § 185; Clark, \textit{Corporations} (3d ed. 1916) 484; Note (1931) 15 Minn. L. Rev. 453.
\textsuperscript{42} Hill v. Glasgow, 41 Fed. 610 (C. C. Ky. 1888) (to restrain director's alleged illegal use of corporate funds); McKee v. Chautauqua Assembly, 124 Fed. 808 (C. C. N. Y. 1903); Larabee v. Dolley, 175 Fed. 365 (C. C. Kan. 1905), reversed on other grounds, \textit{sub nom.} Dolley v. Abilen Nat. Bank, 179 Fed. 467 (C. C. A. 8th, 1910); Hutchinson Box Board & Paper Co. v. Van Horn, 290 Fed. 424 (C. C. A. 8th, 1924); Haynes v. Fraternal Aid Union, 34 Fed. (2d) 305, 308 (D. C. Kan. 1929), "Those were cases, where each plaintiff claimed that somebody owed \textit{him} something, and are not in point here. The plaintiffs claim that the defendants owe the \textit{society} money in excess of \$3,000"; I Foster, \textit{supra} note 38; cf. Harvey v. Raleigh & G. R. Co., 89 Fed. 115 (C. C. N. C. 1898); Carpenter v. Knolwood Cemetery, 198 Fed. 297 (D. C. Mass. 1912).
\textsuperscript{43} Kent v. Honsinger, Taylor v. Decatur Mining & Land Co., Towle v. American B., L & Inv. Co., all \textit{supra} note 39. A contrary and, it is submitted, a more correct view was taken in Jacobs v. Mexican Sugar Co., 130 Fed. 595 (C. C. N. J. 1904) in which it was said, "He (shareholder or creditor) seeks the intervention of the court in its (the corporation's) affairs, in the manner provided by statute, to save himself as far as possible from financial loss. . . . If successful there will, in the final outcome, when the corporation's affairs are wound up, be a money decree establishing his right to share in what is realized if the assets go far enough, or in favor of others who are necessarily brought into court by the proceeding if they do not." Eberhard v. Northwestern Mut. Life Ins. Co., 241 Fed. 353, 356 (C. C. A. 6th, 1917).
\textsuperscript{44} For a thorough discussion of the many aspects of this particular problem see, Frankfurter, \textit{Distribution of Judicial Power Between United States and State Courts} (1928) 13 Cornell L. Q. 499; Brown, \textit{The Jurisdiction of the Federal Courts Based on Diversity of Citizenship} (1929) 78 U. of Pa. L. Rev. 179.
\textsuperscript{45} Norris Bill, S. 3151, 70th Congress.
\textsuperscript{46} See, for example, peremptory refusal to aggregate in class suits in recent cases, Woods v. Thompson, 14 Fed. (2d) 951 (C. C. A. 7th, 1926); Cohn v. Cities Service Co., 45 Fed. (2d) 687 (C. C. A. 2d, 1930) (Stockholder's suit to prevent alleged unlawful withdrawal of offer of right to subscribe for shares).
\end{small}
Karats is a landmark in a field outstanding for a generous acceptance of jurisdiction. It should be followed in other classes of cases. The minimum amount is recognizedly too low. But to increase it would be unavailing were aggregation of claims freely permitted to accompany the increase. By scrutinizing carefully the nature of the issue and permitting aggregation only where the interests of several plaintiffs are common to a single title or right, the essence of the rule as it has been frequently stated, much of the abuse on federal jurisdiction in non-federal matters can be eliminated. Further, consistent decisions will thereby be forthcoming, a factor of no trifling importance.

D. J. S.