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## Editorial Notes

### CONTRIBUTORS TO THIS ISSUE

LOUIS SHANFELD, LL.B., Washington University, 1933, contributes *The Scope of Judicial Independence of the Legislature in Matters of Procedure and Control of the Bar*. This article won for Mr. Shanfeld the Mary Hitchcock Thesis Prize for 1933.

THE HONOURABLE WILLIAM RENWICK RIDDELL, LL.D., D.C.L., who is the author of *Anderson's Case—An Early Extradition Controversy*, is Justice of the Supreme Court of Ontario, Appellate Division. .

HUGH EVANDER WILLIS, B.A., 1897, M.A., 1899, LL.D., 1925, Yankton College; LL.B., 1901, LL.M., 1902, University of Michigan, who contributes *The Dartmouth College Case—Then and Now*, is Professor of Law at the University of Indiana.

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## Notes

### NEBBIA V. NEW YORK AND BUSINESS AFFECTED WITH THE PUBLIC INTEREST

The economic theory dominant until recently requires as little governmental interference as possible. Certain regulations have nevertheless been required and have been justified as exercises of the police power. Economic law has been considered so immutable that these regulations have not been allowed to extend to prices except when the judicial incantation that the regulated business was "affected with a public interest" was properly recited. Recently extreme doubt has been cast upon the immutability of so-called economic law and the more recent decision of the Supreme Court in *Nebbia v. New York*<sup>1</sup> has raised serious question with regard to the affectation principle. In order to view the decision with proper perspective it is necessary to examine the principle as it previously existed.

The seventeenth century inadvertance of Sir Matthew Hale and its misapplication<sup>2</sup> to nineteenth century conditions has been a source of much confusion. The principle of effectation with a public interest was first expressed in *Munn v. Illinois*<sup>3</sup> and reiterated in numerous subsequent cases. One of its most able statements was by Chief Justice Taft in *Wolff Packing Company v. Court of Industrial Relations*<sup>4</sup> when he said:

"Business said to be clothed with a public interest justify-  
ing some public regulation may be divided into three classes:

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<sup>1</sup> (1934) 54 Sup. Ct. 505.

<sup>2</sup> McAllister, Lord Hale and Business Affected with a Public Interest (1930) 43 Harv. L. Rev. 759.

<sup>3</sup> (1876) 94 U. S. 113.

<sup>4</sup> (1923) 262 U. S. 522, l. c. 535.