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THE MONETARY MINIMUM IN FEDERAL COURT JURISDICTION: I *

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Both Section 1331 of the Judicial Code, dealing with federal question jurisdiction, and Section 1332, which deals with diversity jurisdiction, contain the further jurisdictional requirement that the matter in controversy exceed the sum or value of $3,000, exclusive of interest and costs.¹

Originally, this amount had been over $500, exclusive of costs;² then over $2,000, exclusive of interest and costs;³

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* This is the first of two articles by Professor Ilsen and Mr. Sardell on this subject. The second article will appear in the May issue of the St. John’s Law Review.
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¹ For a criticism of the amount requirement in federal question jurisdiction, see Wechsler, Federal Jurisdiction and the Revision of the Judicial Code, 13 LAW & CONTEMP. PROB. 216, 225 (1948). It is important to remember that “The Judiciary Act of March 3, 1875, for the first time, invested the Circuit Courts of the United States, without reference to the citizenship of the parties, with original jurisdiction of all suits of a civil nature at common law or in equity, where the matter in dispute exceeded a prescribed sum, and the suit was one ‘arising under the Constitution or laws of the United States.’” Continental Nat. Bank v. Buford, 191 U.S. 119, 122 (1903).
² 1 STAT. 78 (1789) (for diversity cases); 18 STAT. 470 (1875) (for federal question cases).
³ 24 STAT. 552 (1887) (applying both to diversity and federal question cases).
and finally over $3,000, exclusive of interest and costs. In the Eighty-Second Congress a bill was introduced to increase the jurisdictional threshold to over $10,000, exclusive of interest and costs.

From the beginning suits between citizens of different states, or involving federal questions, could neither be brought in the federal courts nor removed to them, unless the value of the matter in controversy was more than a specified amount. Cases involving lesser amounts have been left to be dealt with exclusively by state courts, except that judgment of the highest court of a state adjudicating a federal right may be reviewed by this Court. . . . The policy of the statute calls for its strict construction.

Under statutory interpleader, the money, property or obligation which is the subject matter of the action must be of the "amount or value" of at least $500 before jurisdiction will attach. The basis of federal jurisdiction in this type of action is diversity of citizenship of the adverse claimants, not diversity of citizenship between the stakeholder or debtor on the one side, and the claimants on the other.

There are, however, important cases arising under federal law to which the jurisdictional amount requirement of Section 1331 does not apply. Most of these cases are specifically enumerated in Title 28.

It has been said that the "matter in controversy" is the end sought by the plaintiff and brought in issue by the de-

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5 H.R. 3098, 82d Cong., 2d Sess. (1952). This bill applies to and amends Section 1332 as well as Section 1331 of Title 28. It passed the House of Representatives on May 19, 1952, but was not acted upon by the Senate. The original recommendation of the Judicial Conference of the United States was to increase the amount to $7,500. See Report of the Judicial Conference of the United States, H.R. Doc. No. 365, 82d Cong., 2d Sess. 27 (1952).
fendant and that the term “matter in controversy” may be used interchangeably with “matter involved” and “matter in dispute.”

Relevant here is the “plaintiff-viewpoint” rule, so characterized by Professor (now Circuit Judge) Dobie in an article written by him in 1925. The rule may be stated as follows: the measure of the amount in controversy is “... the value to the plaintiff of the right which he in good faith asserts in his pleading that sets forth the operative facts which constitute his cause of action.” Although this view has been criticized, it does seem to conform with the language of the cases, and has been generally followed.

In limine, the matter in controversy must be one “capable of pecuniary estimation.” It has been held that where a state statute permitted a creditor to bring action on a claim before it was due and attach the property of the alleged creditor, a United States court of first instance had

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10 “It is not necessary that the defendant should controvert or dispute the claim. It is sufficient that he does not satisfy it.” In re Metropolitan Ry. Receivership, 208 U.S. 90, 103 (1908); see Gaines v. Fuentes, 92 U.S. 10, 20 (1875).
12 See Dobie, Jurisdictional Amount in the United States District Court, 38 HARV. L. REV. 733 (1925).
13 Id. at 734.
14 See Note, 4 VAND. L. REV. 146 (1950) citing, inter alia, Shipe v. Floral Hills, Inc., 86 F. Supp. 985 (W.D. Mo. 1949) (held that test was pecuniary result to either party which the decree would produce, either at once or in the future) and Sterl v. Sears, 88 F. Supp. 431 (M.D. Tex. 1950). See also Roncio v. Denver & R.G.W.R.R., 116 F.2d 604 (10th Cir. 1940).
15 St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938); Glenwood Light Co. v. Mutual Light Co., 239 U.S. 121 (1915). “It is well settled that the measure of jurisdiction in a suit for injunction is the value to plaintiff of the right which he seeks to protect.” Purcell v. Summers, 126 F.2d 390, 394 (4th Cir. 1942). “This, the so-called plaintiff’s viewpoint test... seems now well settled...” Central Mexico Light & Power Co. v. Munch, 116 F.2d 85, 87 (2d Cir. 1940). “If it is impossible to assign a pecuniary value to the thing in controversy, jurisdiction does not exist.” McGuire v. Amrein, 101 F. Supp. 414, 418 (D. Md. 1951). See Yankwich, Some Jurisdictional Pitfalls in Diversity Cases, 2 F.R.D. 383 (1942); Notes, 19 MICH. L. REV. 768 (1935), 17 N.C. L. REV. 427 (1939), 18 TULANE L. REV. 655 (1944); Comment, 49 YALE L. J. 274 (1939).
jurisdiction (under the federal statute then in force) over a suit brought by an Ohio corporation against a citizen of Nebraska for $530 past due and $1,664 to become due. But proceedings were held not removable from a state court to a federal court in the following instances: proceedings to compel arbitration, mandamus, inquisition of lunacy, divorce, and habeas corpus.

Obviously, it would be absurd if the preliminary question of determining jurisdiction were made to hinge on the final judgment resulting. Prima facie, therefore, the amount demanded in the complaint fixes jurisdiction, un-
less made fraudulently for the purpose of conferring jurisdiction, 26 or unless it is made clear on the face of the record that the requisite sum is not present. 27 In such a case, the fact that a higher amount is demanded will not confer jurisdiction, 28 although "[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." 29 In a recent case 30 it appeared that

[Further text]
plaintiffs licensed motion picture films to defendant-exhibitors under a percentage agreement and brought suit in a federal district court to recover sums allegedly withheld through systematic and continuous under-reporting of ticket sales. Defendants put the jurisdictional amount in issue, whereupon plaintiffs, unable to allege or show the exact amounts withheld, submitted affidavits substantiating a reasonable belief that more than $3,000 was involved. The court held:

The determination of this question is not dependent upon plaintiffs' producing before the Court at this time testimony of the ultimate facts which they hope to prove in the trial of the cases. It is enough if they show as facts that they have what they believe, in good faith, to be reliable information that circumstances which go to make up a matter in controversy exist, of a magnitude sufficient to invoke the jurisdiction of a Federal Court.\(^{31}\)

**AGGREGATING AMOUNTS**

In computing the amount in controversy, the courts have refused to add together the interests of different plaintiffs suing individually, though their interests may be in a common fund;\(^{32}\) the theory being, as expressed in one case, that

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2 Vand. L. Rev. 705. See also Loew's, Inc. v. Martin, 10 F.R.D. 143 (N.D. Ohio 1949).

31 Columbia Pictures Corp. v. Rogers, *supra* note 30 at 583.

32 Rogers v. Hennepin County, 239 U.S. 621 (1916) (three plaintiffs claiming to represent themselves and others like them similarly situated—550 members of a Chamber of Commerce—sued to restrain a county assessment against them amounting to $40 per individual, assessed by virtue of membership; held, no jurisdiction even though total sum involved exceeded requisite amount); Wheless v. St. Louis, 180 U.S. 379 (1901) (individual owners of lots which were assessed for an improvement sued to restrain the assessment; no single assessment amounted to $2,000; dismissal affirmed, the Court saying, at page 382: “The 'matter in dispute' within the meaning of the statute is not the principle involved, but the pecuniary consequences to the individual party, dependent on the litigation, as, for instance, in this suit the amount of the assessment levied, or which may be levied, as against each of the complainants separately.”); Clay v. Field, 138 U.S. 464 (1891) (appeal dismissed as to one of parties, whose interest in fund was below the then appellate jurisdictional minimum); Seaver v. Bigelow, 5 Wall. 208 (U.S. 1867) (Several creditors joined as plaintiffs to set aside conveyance of property as fraudulent. Action
where several persons are joined as plaintiffs, 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 relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, but each must stand or fall by itself alone.33

This case involved the former monetary limitation on the appellate jurisdiction of the Supreme Court, but the same principle seems to apply to aggregation in its original jurisdictional phase. Further, "... the rule applicable to several plaintiffs having separate claims, that each must represent an amount sufficient to give the court jurisdiction, is equally applicable to several liabilities of different defendants to the same plaintiff." 34

This principle has also been applied to deny aggregation of plaintiffs' claims even when it may be argued that they were derived from the same instrument,35 or where several plaintiffs have a community of interest.36 In an illustrative

was dismissed since interest of each creditor did not exceed jurisdictional amount, although total fund in litigation did.).

33 Clay v. Field, supra note 32 at 479-480.
34 Walter v. Northeastern R.R., 147 U.S. 370, 374 (1893) (action by railroad company to enjoin collection of taxes assessed in different counties, which individually did not amount to $2,000, though the aggregate amount exceeded that sum); Citizens' Bank v. Cannon, 164 U.S. 319 (1896); Fishback v. Western Union Telegraph Co., 161 U.S. 96 (1896) (action by Western Union to enjoin collection of separate county taxes by separate county officers where no one tax exceeded jurisdictional amount); Northern Pacific R.R. v. Walker, 148 U.S. 391 (1893) (The Court, however, declined to dismiss complaint since by amendment it might be retained as to some one of the defendants. Cause therefore remanded with such directions.); Matlaw Corp. v. War Damage Corp., 164 F.2d 281 (7th Cir. 1947), cert. denied, 333 U.S. 863 (1948); Fechheimer Bros. Co. v. Barnwasser, 146 F.2d 974 (6th Cir. 1945).
35 Pinel v. Pinel, 240 U.S. 594 (1916); cf. Diepen v. Fernow, 1 F.R.D. 378 (W.D. Mich. 1940), 27 Va. L. Rev. 704 (1941) (Three plaintiffs sued for personal injuries occasioned by same automobile accident; A's claim was over $3,000, B's and C's claims were each under $3,000. Court dismissed B's and C's claims, retained A's claim.).
36 Thomson v. Gaskill, 315 U.S. 442 (1942) (Conductors and brakemen sued railroad for deprivation of seniority rights under agreement between railroad and brotherhood; dismissed on ground that no individual trainman could show damage of $3,000. Court said, at page 447, that "[i]n a diversity litigation the value of the 'matter in controversy' is measured not by the monetary result of determining the principle involved, but by its pecuniary consequence to those
case, Charles T. Pinel, a resident of Michigan, died in 1888, possessed in fee simple of a tract of land and leaving a last will and testament which was admitted to probate, by which he left his entire estate to the defendants. He failed to provide for the plaintiffs, Herman Pinel and Sarah Slyfield, who were two of his children, and for another child, Charles W. Pinel. Plaintiffs averred in their complaint that their omission from the will was not intentional on the part of the testator, but was made by mistake or accident; that the laws of Michigan provide that when a testator shall omit to provide in his will for any of his children, and it shall appear that such omission was not intentional and was made by mistake or accident, such child shall have the same share in the estate of the testator as if he had died intestate; that after testator's death Charles W. Pinel conveyed all his interest in the estate to plaintiff Sarah Slyfield; and that by reason of the premises "...complainant Herman Pinel is entitled to an undivided one-eighth interest, and complainant Sarah Slyfield to an undivided two-eighths interest, or in all both complainants together to an undivided three-eighths interest in the aforesaid property, which said interests are of the value of $4,500 and upwards over and above all encumbrances." The prayer was in effect, that the title of plaintiffs to an undivided three-eighths interest in the land may be established. In denying jurisdiction, the Supreme Court held:

The settled rule is that when two or more plaintiffs having separate and distinct demands unite in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount. ... This case comes within the former class, since the title of each complainant is separate and distinct from that of the other; it being evident that the involved in the litigation.

\(37\) Pinel v. Pinel, supra note 35 at 596.
testator's omission to provide for one of his children by will, based upon mistake or accident, is independent of the question whether a like mistake was made with respect to another child. 38

The averment that the interests of the complainants "'... are of the value of $4,500 and upwards...' is not the legal equivalent of saying that the interest of either complainant is of the value of more than $3,000.'" 39

On a sale of land situated in Kentucky, the vendor lawfully reserved a vendor's lien for the unpaid portion of the purchase price, for which he took two promissory notes of $1,200 each, payable in one and two years. Singly, the notes did not fulfill the jurisdictional amount, but collectively, they did. Shortly thereafter, the notes were assigned to the plaintiffs, one to each; and by the law of Kentucky the vendor's lien passed to the assignees, as a common security for the payment of both notes, without any priority of right in either assignee. When the notes were unpaid at maturity, the two assignees brought suit in a federal court in Kentucky to enforce the vendor's lien, the plaintiffs and their assignor being citizens of Indiana and the defendant, who had acquired the land with notice of the lien, being a citizen of Kentucky. The defendant challenged the jurisdiction on the ground that the matter in dispute was not of the requisite jurisdictional value. The Supreme Court, in upholding jurisdiction, held that the action was of the latter class, namely, "'... when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest. . .'" The Court stated further:

... [the action's] controlling object—that which makes it cognizable in equity—is the enforcement of the vendor's lien, which is a single thing or entity in which the plaintiffs have a common and undivided interest, and which neither can enforce in the absence of the other. Thus, while their claims under the notes were separate and distinct, their claim under the vendor's lien was single and undivided, and the lien was sought to be enforced as a common security for the payment of both notes. 40

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38 Id. at 596.
39 Id. at 597.
A plaintiff has also been permitted, at times, to aggregate against multiple defendants. Thus where the heirs of one Evans, an intestate, brought suit in a federal court of first instance against several defendants to enjoin the enforcement of claims that had been allowed as liens on Evans' real estate by orders of a probate court, each claim being less than the requisite jurisdictional amount, but their aggregate exceeding that sum, the complaint alleged that these claims were not debts of the intestate, but that the defendants had conspired and confederated with the administrator to secure their payment out of the estate, and that the orders allowing them had been procured as the result of the conspiracy and the fraud practiced in pursuance thereof. The Supreme Court reversed a decree dismissing the complaint on demurrer, for want of jurisdiction, and held that, on the face of the complaint, the value of the matter in dispute was "... the aggregate amount of the claims fraudulently procured by the defendants acting in combination to be allowed in the Probate Court as claims against the estate. . . ." 41

CLASS ACTIONS

In those actions which the courts have recognized as true class actions, the amount in controversy is the total fund

41 McDaniel v. Traylor, 196 U.S. 415, 431 (1905). See also Woodmen of the World v. O'Neill, 266 U.S. 292 (1924). "A conspiracy to prosecute, by concert of action, numerous baseless claims against the same person for the wrongful purpose of harassing and ruining him, partakes of the nature of a fraudulent conspiracy; and in a suit to enjoin them from being separately prosecuted, it must likewise be deemed to tie together such several claims as one claim for jurisdictional purposes, making their aggregate amount the value of the matter in controversy." Id. at 297-298.

42 Fed. R. Civ. P. 23(a)(1). A true class action is described in the RESTATEMENT, JUDGMENTS § 86, comment b (1942) as "... an illustration of a situation where it is not feasible for all persons whose interests may be affected by an action to be made parties to it. It was invented by equity for situations in which the number of persons having substantially identical interests in the subject matter or litigation is so great that it is impracticable to join all of them as parties, in accordance with the usual rules of procedure, and in which an issue is raised which is common to all such persons." See Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356 (1921) illustrating a true class action. Consider Hansberry v. Lee, 311 U.S. 32, 132 A.L.R. 741 (1940); see Keeffe, Levy and Donovan, Lee Defeats Ben Hur, 33 CORNELL L.Q. 327 (1948); Note, Federal Class Actions—A Suggested Revision of Rule 23, 46 Col. L. Rev. 818 (1946).
sought to be recovered; this is so even though only plaintiffs whose interests are below the jurisdictional minimum bring the suit.\footnote{Buck v. Gallagher, 307 U.S. 95 (1939), 52 Harv. L. Rev. 1360 (lower court held in error in refusing petitioners [ASCAP] the right to produce evidence as to the cost of complying with a Washington statute regulating license agreements); Gibbs v. Buck, 307 U.S. 66 (1939) (suit to enjoin enforcement of Florida statute interdicting ASCAP as monopolistic; held, right of all members of ASCAP, not just profit of each, was the test); McDaniel v. Traylor, supra note 41; Miller v. National City Bank, 147 F.2d 798 (2d Cir. 1945); American Surety Co. v. Bank of California, 133 F.2d 160 (9th Cir. 1943).}

In other words, the claims of all the members of the class are considered for the purpose of obtaining the requisite jurisdictional amount.

It may be observed that the term "aggregation" or "aggregated" as used in some of the cases\footnote{See, e.g., Sturgeon v. Great Lakes Steel Corp., 143 F.2d 819 (6th Cir. 1944); Hackner v. Guaranty Trust Co., 117 F.2d 95 (2d Cir. 1941).} is somewhat confusing since in fact when the claim is joint, common or secondary, \textit{i.e.}, a true class action, the courts only consider, in determining whether the jurisdictional amount is present, the value of the claim of the entire class, \textit{i.e.}, the value of the single right which all the members of the class hold together.

In contradistinction to the true class action brought to enforce a joint, common or secondary right just discussed, Rule 23(a)(2) and (3) also provides for: (1) the class action in which the class members have several rights in the same common res involved in the action, generally referred to as the "hybrid" type,\footnote{For example, the creditors' action for liquidation or reorganization of a corporation is largely superseded by the adoption of reorganization provisions in the Bankruptcy Act, 52 Stat. 883 (1938), 11 U.S.C. § 501 et seq. (1952). In Pennsylvania Co. v. Deckert, 123 F.2d 979 (3d Cir. 1941), the court observed at page 983: "If the rights of the individual plaintiffs are separate causes of action and they have no right to a common fund or to common property, the class action at bar is a 'spurious' one. If, upon the other hand, the individual plaintiffs having individual causes of action have also a right to a common fund or in common property, the class action may be 'hybrid.' It should be borne in mind that the so-called spurious class cause may be turned by circumstances into the hybrid action. For example, if a corporation engaged in the sale of stock by fraudulent means to a number of individuals, under Rule 23(a) (2) they might join together as parties-plaintiff in one action to avoid multiplicity of suits though seeking separate judgments. This is the typical 'spurious' class action. If, on the other hand, the corporation which they were suing had become insolvent in the meantime and the plaintiffs were compelled to look to a common fund in the hands of a receiver for the payment of their claims, they would then become claimants in a receivership, the common hybrid action referred to by the learned district judge." See Dickinson v. Burnham, 197 F.2d 973 (2d Cir. 1952).} and (2) the class action in which
the persons are interested in a common question of law or fact and the action is permitted merely to avoid a multiplicity of suits, generally referred to as the "spurious" type.\(^4\)

On the matter of the jurisdictional monetary requirement, the fundamental difference between the true class actions on the one hand, and the hybrid and spurious class actions on the other, is that although the latter are authorized by Rule 23, they are \(". . . but a congeries of separate suits so that each claimant must, as to his own claim, meet the jurisdictional requirements,"\(^4\) i.e., in our present context, each plaintiff must, as to his own claim show the requisite amount in controversy.\(^4\)

**Actions by Shareholders**

The question presents itself in a stockholder's derivative action as to what determines the amount in controversy—the value of the plaintiff's stockholdings in the corporation or some other basis. The Supreme Court has held that, since plaintiffs in such cases often have only a small financial interest in a large controversy and their own financial stake is often insufficient to make up the jurisdictional amount,

\[ \ldots \text{[the] plaintiffs' possible recovery is not the measure of the amount involved for jurisdictional purposes but that the test is the damage asserted to have been sustained by the defendant corporation.} \]

Hence, although a plaintiff's own interest may be small, if the conditions laid down by Rule 23 of the Rules of Civil Procedure for secondary actions by shareholders are complied with and jurisdiction is established, the federal courts are empowered to entertain the case.\(^4\)


The reference to Rule 23 is not to Rule 23(a) discussed above under class actions but to Rule 23(b). It should not be overlooked that class actions are to be distinguished from the case where an action is brought by minority shareholders for the benefit of the corporation. Thus a shareholder may maintain an action in which he seeks to recover from one or more of the directors damages for harm which has been done to the corporation by the incompetency of the directors. Likewise a shareholder may bring an action against directors to require them to bring proceedings in the name of the corporation against third persons. In neither of these cases is there a class action, since the shareholder is acting in fact for the corporation itself and does not represent the other shareholders.

Hence, the jurisdiction is determined by the value of the object sought to be gained for the corporation. Where the
value of the corporate right itself is insufficient, jurisdiction of course will not lie. 54

"On the other hand, a shareholder having a certain class of stock may maintain an action on behalf of himself and all other holders of similar shares to prevent discrimination by the directors against his class or to determine the rights of the class in competition with the rights of other classes of shareholders." 55 The right is primary to the shareholder, and not secondary, and he must establish that his own interest reaches the jurisdictional value. 56 Again, we have not a true class action but, as some courts have held, only a spurious one. 57 So also, the members of an assessment insurance association suing (on behalf of themselves and other members) the directors and officers of the association, cannot claim that the assets of the association, in which the plaintiffs have an undivided interest, constitute the amount in controversy for jurisdictional purposes. The direct and primary purpose of the suit is to protect the separate and distinct interests of the plaintiffs. 58

ACTION AGAINST SHAREHOLDERS

In a suit brought by creditors on behalf of themselves and all other creditors of an insolvent bank against the stockholders of the bank to recover the amount of their statutory liability as such stockholders, the court is deemed to have jurisdiction over the fund sought to be collected, and such jurisdiction carries with it jurisdiction over all component parts of the fund. Hence the fact that liability of certain

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55 Restatement, Judgments § 86, comment e (1942).
57 See page 12 supra.
58 Woods v. Thompson, 14 F.2d 951 (7th Cir. 1926); cf. Cook v. Illinois Bankers' Life Ass'n, 46 F.2d 782 (7th Cir. 1931).
stockholders may be less than $3,000 does not deprive the court of jurisdiction as to them.\(^5\) The theory is analogous to that which obtains in suits to collect, for the benefit of creditors of corporations, unpaid subscriptions to stock.\(^5\) In *Bresch v. Braecklein*,\(^6\) certain bank stockholders, who had discharged their obligations under their stockholders’ liability, brought suit against other stockholders to create a fund by ratable contribution from such other stockholders. The fund was to be distributed among the plaintiffs. The size of the fund necessary to put plaintiffs and defendants on a parity basis was the amount in controversy; this is so notwithstanding that the claims of plaintiffs were separable between them since plaintiffs had a common and undivided interest in the fund.

**TAXPAYERS’ ACTIONS**

*Colvin v. City of Jacksonville*\(^6\) was an action by a single taxpayer, brought to restrain a threatened issue of bonds by the City of Jacksonville for $1,000,000. It was proved that the amount of taxes which would be levied on plaintiff’s property in case the bonds were issued would be less than $2,000, the sum then necessary to confer jurisdiction. Plaintiff contended that the amount of the bond issue, and not his tax liability was “the amount in controversy.” The trial court dismissed the complaint for want of jurisdiction. The Su-

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\(^6\) 133 F.2d 12 (10th Cir. 1943).

\(^6\) 158 U.S. 456 (1895). “There is no allegation that the loss or injury to any complainant amounts to the sum of $3000. It is well settled that in such cases as this the amount in controversy must equal the jurisdictional sum as to each complainant.” Scott v. Frazier, 253 U.S. 243, 244 (1920); Rogers v. Hennepin County, 239 U.S. 621 (1916). “The bill is filed by the plaintiff to protect its individual interests, and to prevent damage to itself. It must, therefore, affirmatively appear that the acts charged against the city, and sought to be enjoined, would result in its damage to [the jurisdictional amount]. . . .” El Paso Water Co. v. El Paso, 152 U.S. 157, 159 (1894).
Supreme Court in passing on the jurisdictional question upheld the lower court. In reaching this conclusion the Supreme Court examined *Brown v. Trousdale*, an earlier decision which was claimed to be contrary to its decision. In holding that it was not, the Supreme Court said:

There [Brown v. Trousdale], several hundred taxpayers of a county in Kentucky, for themselves and others associated with them, numbering about twelve hundred, and for and on behalf of all other taxpayers in the county, “and for the benefit likewise of said county,” filed their bill of complaint against the county authorities and certain funding officers, and all the holders of the bonds, seeking a decree adjudging the invalidity of two series of bonds aggregating many hundred thousand dollars, and perpetually enjoining their collection; and an injunction was also asked as incidental to the principal relief against the collection of a particular tax levied to meet the interest on the bonds. The leading question here was whether the case had been properly removed from the state court, and no consideration was given to the case upon the merits. As to jurisdiction of this court, we said: “The main question at issue was the validity of the bonds, and that involved the levy and collection of taxes for a series of years to pay interest thereon, and finally the principal thereof, and not the mere restraining of the tax for a single year. The grievance complained of was common to all the plaintiffs and to all whom they professed to represent. The relief sought could not be legally injurious to any of the taxpayers of the county, as such, and the interest of those who did not join in or authorize the suit was identical with the interest of the plaintiffs. The rule applicable to plaintiffs, each claiming under a separate and distinct right, in respect to a separate and distinct liability and that contested by the adverse party, is not applicable here. For although as to the tax for the particular year, the injunction sought might restrain only the amount levied against each, that order was but preliminary, and was not the main purpose of the bill, but only incidental. The amount in dispute, in view of the main controversy, far exceeded the limit upon our jurisdiction, and disposes of the objection of appellees in that regard.”

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64 *Colvin v. City of Jacksonville*, *supra* note 62 at 460-461. In *Scott v. Frazier*, 258 Fed. 669, 672 (D.N.D. 1919), *rev’d*, 253 U.S. 243 (1920), the court commented: “It is plain, therefore, that the court there regarded *Brown v. Trousdale* as in harmony with the decision which it was rendering, or that its language ought to be qualified so as to bring it into harmony.”
Thus the Supreme Court appears to have held that the ordinary taxpayer’s action involves merely his individual right and if the value of his particular right is less than the jurisdictional amount, the claims of other taxpayers cannot be added to the plaintiff’s to make up the requisite amount. Only in the unusual case, such as Brown v. Trousdale, where the Court found that the action was based on a public right, may the claims of the various taxpayers be aggregated.\(^6\)

**Creditors’ Actions**

The question has arisen whether the claims of creditors in a creditor’s bill may be aggregated in order to make up the necessary jurisdictional amount. As a general rule, this cannot be done since the rights of the plaintiffs are deemed separate and distinct and must satisfy the jurisdictional mandate.\(^6\) However, aggregation under special circumstances is permitted. A bill in equity was brought by some of the creditors of a corporation on behalf of all against the corporation and its stockholders. The claim was founded on the theory that, the corporation being insolvent and having no other assets, the sums due to it from the stockholders on their unpaid subscriptions to stock ought to be paid by them to the corporation as a trust fund to be distributed among the plaintiffs and all other creditors of the corporation, so far as required to satisfy their just claims. There was diversity of

\(^6\) Brown v. Trousdale has been cited quite frequently but in effect only to distinguish it. Nevertheless, it is submitted that the rule as stated is sound. A case cited by some text writers as standing for the public right theory is City of Ottumwa v. City Water Supply Co., 119 Fed. 315 (8th Cir. 1902), 59 L.R.A. 604 (1903). An examination of the opinion shows that plaintiff’s interest there was sufficient to confer jurisdiction, so that the language in the second paragraph of the opinion on page 318 was obiter. See Scott v. Frazier, supra note 64; Larabee v. Dolley, 175 Fed. 365 (C.C.D. Kan. 1909), rev’d on other grounds sub nom. Dolley v. Abilene Nat. Bank, 179 Fed. 461 (8th Cir. 1910), aff’d sub nom. Assaria State Bank v. Dolley, 219 U.S. 121 (1911).

\(^6\) "In the case at bar, if several creditors of the company, each with a debt less than $3000, had joined as plaintiffs, the demands could not have been aggregated in order to confer jurisdiction . . . . Nor can Karatz’s allegation that he sued on behalf of others similarly situated help him." Lion Bonding & Surety Co. v. Karatz, 262 U.S. 77, 86 (1923); Frank & Lambert, Inc. v. Rosengren, 97 F.2d 460 (6th Cir. 1938); Pianta v. H. M. Reich Co., 77 F.2d 888 (2d Cir. 1935); Auer v. Lombard, 72 Fed. 209 (1st Cir. 1896); Corcoran v. Royal Development Co., 35 F. Supp. 400 (E.D.N.Y. 1940), aff’d, 121 F.2d 957 (2d Cir.), cert. denied, 314 U.S. 691 (1941)."
citizenship between the plaintiffs and the defendants. The Supreme Court, observing that "[s]uch a bill can only be maintained by one or more creditors in behalf of all, and not by any one creditor to secure payment of his own debt to the exclusion of others," permitted aggregation of the claims for trial court jurisdiction and, as to the jurisdictional amount of $5,000, then required for appellate jurisdiction of the Supreme Court, the Court held that "[t]he trust fund so administered and ordered to be distributed ... amounting to much more than $5000, the appellate jurisdiction of this court is not affected by the fact that the amounts decreed to some of the creditors are less than that sum." 68

Where the question of aggregation or common fund is not involved, it has been held that both the creditor's claim and the value of the property sought to be made available must meet the requirement of the jurisdictional amount. 69

**INJUNCTION ACTIONS**

More than usual difficulty attaches to the problem of determining the value of the amount in controversy when we deal with actions seeking injunctive relief. Law review writers have attempted to distill from the cases specific classifications and categories,70 with the final result, how-

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68 Ibid. See Ackman v. Northern States Contracting Co., 110 F.2d 774 (6th Cir. 1940); Brusselback v. Cago Corp., 85 F.2d 20 (2d Cir.), cert. denied, 299 U.S. 586 (1936). "It is a well recognized rule that two or more creditors having separate and distinct demands, each less than three thousand dollars but aggregating more than that sum, exclusive of interests and costs, cannot join their demands in an action in order to confer jurisdiction upon a United States Court. But in a class action of this kind the aggregate amount of the bonds, and the aggregate amount of the fund sought to be produced for the benefit of all bondholders by the establishment and enforcement of the assessment lien, is the yardstick with which to determine the question whether the requisite amount is in controversy..." Hann v. City of Clinton, 131 F.2d 978, 982 (10th Cir. 1942). See also Essenkey Corp. v. Mangel Stores Corp., 10 F. Supp. 50 (S.D.N.Y. 1932); cf. Corcoran v. Royal Development Co., supra note 66.

70 See, e.g., Dobie, Jurisdictional Amount in the United States District Court, 38 Harv. L. Rev. 733 (1925); Comments, 25 Calif. L. Rev. 336 (1937), 49 Yale L. J. 274 (1939); Notes, 48 Harv. L. Rev. 95 (1934), 30 A.L.R.2d 602 (1953).
ever, as one writer puts it, that "[t]he Court [United States Supreme Court] thus appears to have worked out an instrument which . . . may leave litigants in particular cases somewhat in the dark as to their prospects of gaining admittance to the federal courts . . . ." 71

The inherent difficulty is that of determining just what is the "value of the right" sought to be protected from invasion or interference. In general, it has been said, that value is the damage to plaintiff's property which he will suffer if the matters complained of are not enjoined. Thus, in *Hunt v. New York Cotton Exchange*,72 the Exchange had brought suit to enjoin Hunt from receiving and using the quotations of sales made on the Exchange without its consent or approval. The Supreme Court held:

And the right to the quotations was declared as we said in *Board of Trade v. Christie Grain & Stock Company*,73 to be property, and the Exchange may keep them to itself or communicate them to others. The object of this suit is to protect that right. The right, therefore, is the matter in dispute, and its value to the Exchange determines the jurisdiction, not the rate paid by appellant [Hunt] to the Telegraph Company. The value of the right was testified to be much greater than $2000.74

In the course of its opinion, the Supreme Court cited *Mississippi & Missouri Railroad Company v. Ward*,75 to the effect that ". . . jurisdiction is tested by the value of the object to be gained by the bill." 76 In that case, plaintiff Ward, had ". . . filed his bill in the District Court, praying for an abatement of the Rock Island Bridge over the Mississippi river, averring it to be a public nuisance, specially injurious to him as an owner and navigator of steamboats to and from St. Louis, Missouri, to St. Paul, Minnesota." 77

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71 It should be noted, the writer states, that this instrument "... is well adapted to supporting the Congressional policy toward federal jurisdiction." Comment, 49 YALE L. J. 274, 284 (1939).
72 205 U.S. 322 (1907).
73 198 U.S. 236 (1905).
75 2 Black 485 (U.S. 1863).
76 See note 74 *supra*.
77 *Mississippi & Mo. R.R. v. Ward*, *supra* note 75 at 486. "Though this was a suit for the abatement of a nuisance, the principle, from the standpoint
Supreme Court, in determining that the jurisdictional amount was present, said: "But the want of a sufficient amount of damage having been sustained to give the Federal Courts jurisdiction, will not defeat the remedy, as the removal of the obstruction is the matter of controversy, and the value of the object must govern." If, by this statement, the Court intended to hold that the value of the bridge owned by the defendant represented the amount in controversy, the holding seems out of harmony with the later Supreme Court decisions commencing with *Hunt v. New York Cotton Exchange*. Ward's right to free navigation on the Mississippi River and the value of that right should be determinative of whether the jurisdictional amount is present.

The *Hunt* case was cited and approved in *Bitterman v. Louisville & Nashville Railroad Company* which was an action by the railroad to enjoin ticket brokers from dealing in non-transferable round trip tickets issued at reduced rates for passage over the lines of the railway. In sustaining jurisdiction, the Court held: "... the substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but by the value of the business to be protected and the rights of property which the complainant sought to have recognized and enforced."

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of the amount in controversy, is believed to be quite similar to suits to enjoin the continuance of a nuisance. Indeed, the great majority of the cases ... are suits for injunction." Dobie, *Jurisdictional Amount in the United States District Court*, 38 Harv. L. Rev. 733, 740 n.19 (1925).

78 Mississippi & Mo. R.R. v. Ward, supra note 75 at 492.

79 205 U.S. 322 (1907).

80 It should be noted that the Court in the *Mississippi* case at page 492 argued that Ward was not suing only for himself: "The private party sues rather as a public prosecutor than on his own account. ... He seeks redress of a continuing trespass and wrong against himself, and acts in behalf of all others, who are or may be injured ..." Cf. *Brown v. Trousdale*, 138 U.S. 389 (1891).

81 207 U.S. 205 (1907).

82 Id. at 225. See *Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.*, 239 U.S. 121 (1915), where the Court said, at page 126, that "[t]he District Court erred in testing the jurisdiction by the amount that it would cost defendant to remove its poles and wires where they conflict or interfere with those of complainant, and replacing them in such a position as to avoid the interference. Complainant sets up a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant. This right is alleged to be of a value in excess of the jurisdictional
Although the cryptic holding in the Mississippi case,\(^{83}\) has been cited in lower court decisions—in other words, cases apparently adopting the so-called defendant viewpoint\(^ {84}\)—it would appear that these cases cannot now be safely relied on in view of the decisions by the Supreme Court, starting with the Hunt case, which seem to adopt the plaintiff viewpoint.\(^ {85}\) And most of the more recent lower court decisions involving ordinary private injunction cases support this conclusion. In an action to enjoin continued trespasses, it has been held that the plaintiff must establish that the damage to his interest will exceed the jurisdictional amount; thus, if the trespasses sought to be enjoined will make the plaintiff’s property almost valueless and such property is worth over the requisite amount, jurisdiction exists.\(^ {86}\) Where the suit is one to enjoin infringement of a trade name or generally to enjoin unfair competition, the test has been held to be the

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\(^{85}\) Hunt v. New York Cotton Exchange, 205 U.S. 322 (1907). Of course, the determination in the Mississippi case, that not only past but potential damage will be considered in determining whether the jurisdictional amount is present, is supported by authorities. See Western & Atl. R.R. v. Railroad Comm’n, supra note 82; Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., supra note 82; Berryman v. Whitman College, 222 U.S. 334 (1912); Bitterman v. Louisville & N. R.R., supra note 81.

\(^{86}\) Lansden v. Hart, 180 F.2d 679 (7th Cir. 1950); Cerritos Gun Club v. Hall, 96 F.2d 620 (9th Cir. 1938); Swan Island Club v. Ansell, 51 F.2d 337 (4th Cir. 1931); N. C. L. Rev. 211; Fidler v. Roberts, 41 F.2d 305 (7th Cir. 1930); Winola Lake & Land Co. v. Gorham, 13 F. Supp. 721 (M.D. Pa. 1936); cf. Colony Coal & Coke Corp. v. Napier, 28 F. Supp. 76 (E.D. Ky. 1939).
entire worth of the business or the good will thus interfered with. 87

And, if the property right has a value in excess of $3,000 the federal court has jurisdiction even though the plaintiff had not suffered over $3,000 damages at the time suit was instituted. 88

However, it has been held that the measure may not be the entire value of the name sought to be protected, but only the amount of the injury actually threatened by the acts of the defendant. Thus where an Ohio oil company, making no sales in Connecticut except oil to industrial concerns, sought relief from alleged unfair competition by a Connecticut corporation making gasoline sales from a single filling station to residents of a city in Connecticut, the "amount in controversy" for jurisdictional purposes was not to be measured by the total value, wherever found, of the right for which protection was sought by the Ohio company but by the value of the portion thereof that was threatened by the acts of the Connecticut corporation. 89 A somewhat similar measure has been applied where the action is to enjoin price cutting of plaintiff's products in violation of fair trade contracts, 90 and to enjoin unlawful strikes or picketing. 91 In this type of

87 See Food Fair Stores v. Food Fair, 177 F.2d 177 (1st Cir. 1949); Hanson v. Triangle Publications, Inc., 163 F.2d 74 (8th Cir. 1947), cert. denied, 332 U.S. 855 (1948); Harvey v. American Coal Co., 50 F.2d 832 (7th Cir.), cert. denied, 284 U.S. 669 (1931); Wisconsin Elec. Co. v. Dumore Co., 35 F.2d 555 (6th Cir. 1929), cert. denied, 282 U.S. 813 (1931).

88 John B. Kelly, Inc. v. Lehigh Naval Coal Co., 151 F.2d 743 (3d Cir. 1945), cert. denied, 327 U.S. 779 (1946). (In an action by a lower riparian owner to enjoin nuisance and continuing trespass by discharges of refuse into navigable river, the jurisdictional amount is determined on the basis of the property right injured, and not by the monetary damages suffered by the plaintiff when the action was instituted.)


case, it has been held that "[i]t was not necessary that §3000 worth of property should be destroyed before the federal court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the district court jurisdiction." 92

A narrower view on what may be considered in determining the jurisdictional amount has been taken, it seems, in some of the later cases. Thus, where plaintiff sought to enjoin picketing of its stores by a union to secure collective bargaining rights, the court held that the amount in controversy had not been shown since the measure to be used was the loss of profits resulting from the decrease in business directly attributable to the picketing, of which proof was lacking.93

In deciding these last-noted cases, the lower courts were relying on the decision of the Supreme Court in KVOS, Inc. v. Associated Press.94 There the Associated Press, a non-profit membership corporation, sought to enjoin alleged pirating of its news by a radio station for the purpose of broadcasting what it styled "The Newspaper of the Air." Dismissing the bill, the Court said:

The bill seeks redress for damage to the respondent's business and for damage to the business of some or all of its members. The right for which the suit seeks protection is, therefore, the right to conduct those enterprises free of the alleged unlawful interference by the petitioner. No facts are pleaded which tend to show the value of that right. . . . [W]here the allegations as to the amount in controversy are challenged by the defendant in an appropriate manner, the plaintiff must support them by competent proof. The petitioner's motion was an appropriate method of challenging the jurisdictional allegations of the complaint. . . . This required the trial court to inquire as to its jurisdiction before considering the merits of the prayer for preliminary injunction. And in such inquiry complainant had the burden of proof. The only attempt to meet that burden is a reply

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92Tri-City Central Trades Council v. American Steel Foundries, supra note 91 at 730.
affidavit filed on behalf of respondent, wherein it is deposed "that the payments made by newspapers for said news sold to them by complainant in the territory served by said radio station is upwards of $8000 per month, which is being imperilled and jeopardized by the acts of defendant... by its unlawful and wrongful appropriation of complainant's news, and said sum greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, and complainant is in danger of losing said memberships and payments if defendant's practices in respect to pirating said news is not enjoined." 95

This affidavit was held by the Court to be "wholly inadequate." First, somewhat sophistically, the Court relied on the fact that the association operated not to make profit from furnishing news to its members, but rather divided the expense among them. And second, the Court stressed the failure on the part of the plaintiff to show that any member threatened to withdraw from the association as a consequence of the acts sought to be prohibited.

It is significant, however, that the Court dismissed the attempt by the Association to prove specific damage not as irrelevant, but as unsatisfactory. 96 It cannot be gainsaid that the rule of the KVOS case has not been strictly adhered to by subsequent lower court decisions. 97

Another class of injunction actions where a narrow rule is applied, is that in which an element of comity enters for the reason that the injunction sought is against action by state or municipal officials. 98 This fact provides an illum-

95 KVOS, Inc. v. Associated Press, supra note 94 at 277-278.
96 "The damage in the Associated Press case was to its members and this was not shown. Neither was it alleged or proved that any member threatened to withdraw or to reduce its payments." Gibbs v. Buck, 307 U.S. 66, 76 (1939). See Caron Corp. v. Wolf Drug Co., 40 F. Supp. 103, 105 (D.N.J. 1941); Note, 49 YALE L. J. 274 (1939).
97 See note 90 supra. See Hanson v. Triangle Publications, Inc., 163 F.2d 74 (8th Cir. 1947), cert. denied, 332 U.S. 855 (1948); Beneficial Industrial Loan Corp. v. Kline, 132 F.2d 520 (8th Cir. 1942); Indian Territory Oil & Gas Co. v. Indian Territory Illuminating Oil Co., 95 F.2d 711 (10th Cir.), cert. denied, 305 U.S. 607 (1938); Nash-Kelvinator Corp. v. California Refrigerator Repair Shop, 11 F.R.D. 313 (S.D. Cal. 1950).
98 "From the beginning suits between citizens of different states, or involving federal questions, could neither be brought in the federal courts nor removed to them, unless the value of the matter in controversy was more than a specified amount.... The policy of the statute calls for its strict construction.... Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine
nating clue toward explaining the somewhat contradictory
criteria which the courts have used to measure the value of
the matter in controversy. Stated baldly, and perhaps with
some measure of oversimplification, the difference is based
on whether the rights involved are public or private; or put
another way, whether the injunction is against governmental
action, either on the state or the municipal level.96

In the leading case of Healy v. Ratta,100 the action was
by a resident of Massachusetts selling vacuum cleaners
through travelling salesmen, to enjoin the Chief of Police of
Manchester, New Hampshire, from enforcing a state statute
imposing upon peddlers and hawkers statewide and local
license fees. The total annual tax for the conduct of busi-
ness in Manchester—the only tax directly involved—was
about $300. Plaintiff's ground for relief was that the statute
denied him the equal protection of the laws by exempting
certain classes of vendors in which the plaintiff was not in-
cluded. The district court granted the injunction measuring
the amount in controversy by the capitalized value of the
annual tax.101 The First Circuit Court of Appeals unani-
mously affirmed, apparently on the ground that the right to
do business in New Hampshire was the measure, although the
action involved only the local City of Manchester tax.102
The Supreme Court unanimously reversed the decree "with
instructions to the district court to dismiss the cause for want
of jurisdiction" on the ground that only the tax itself was
the matter in controversy and that it ($300) was far below
the jurisdictional minimum.

96 This distinction has been emphasized, inter alia, in law review notes and
comments. See Comments, Federal Courts: Jurisdictional Amount in Injunction
Suits in Federal District Courts, 25 Calif. L. Rev. 336 (1937); Federal
Jurisdictional Amount Requirement in Injunction Suits, 49 Yale L. J. 274
(1939).
95 (1934), 19 Minn. L. Rev. 768 (1935); Comment, 20 Iowa L. Rev. 159
(1934).
102 67 F.2d 554 (1st Cir. 1933).
It has been said that it is the value of the "object of the suit" which determines the jurisdictional amount in the federal courts.... But this does not mean objects which are merely collateral or incidental to the determination of the issue raised by the pleadings. The statute itself does not speak of objects of the suit. It confers jurisdiction only if "the matter in controversy exceeds...the sum or value of $3,000.00."... The tax, payment of which is demanded or resisted, is the matter in controversy, since payment of it would avoid the penalty and end the dispute.... Whether and in what manner the penalty for non-payment may be enforced in the event the tax is valid are but collateral and incidental to the determination whether payment may be exacted. Only when the suit is brought to restrain imposition of a penalty already accrued by reason of failure to comply with the statute or order assailed can the penalty be included as any part of the matter in controversy.... Whether and in what manner the penalty for non-payment may be enforced in the event the tax is valid are but collateral and incidental to the determination whether payment may be exacted. Only when the suit is brought to restrain imposition of a penalty already accrued by reason of failure to comply with the statute or order assailed can the penalty be included as any part of the matter in controversy.... Where a challenged statute commands the suppression or restriction of a business without reference to the payment of any tax, the right to do the business, or the injury to it, is the matter in controversy.... The disputed tax is the matter in controversy, and its value, not that of the penalty or loss which payment of the tax would avoid, determines the jurisdiction.\(^{103}\)

In reaching its decision, the Supreme Court found it necessary to distinguish two of its earlier decisions. Foremost, perhaps, was Berryman v. Board of Trustees of Whitman College.\(^{104}\) In that case, the college, claiming perpetual legislative exemption from taxation, under the terms of the charter creating it, resisted collection by the county of a claimed tax of $946.00. The action was commenced in a state court and, thereafter, was removed to a federal court. On a motion to remand, the issue was whether the jurisdictional amount was present. The Supreme Court held that not the tax itself, but the value of the contractual right to permanent exemption from taxation granted in the charter, was the measure, and upheld federal jurisdiction.

\(^{103}\) Healy v. Ratta, supra note 100 at 268-269. See Sociedad Española de Auxilio v. Buscaglia, 164 F.2d 745 (1st Cir. 1947), cert. denied, 333 U.S. 867 (1948).

Considering the averments of the bill, the amount and value of
the property of the corporation, and the nature and character of the
contract of exemption asserted, it cannot be doubted that the value
of the thing in issue, the contract right, exceeded in value the juris-
dictional amount. Granting that the uncertainties of the future and
the shifting ownership of property forbids, in a contest merely over
the validity of a tax, adding the sum of future taxes which might be
levied to the amount of taxes actually levied for the purpose of juris-
diction, that principle can have no application to a case where the
issue presented is not only the right to collect, but also to levy all
future taxes. The admission that the right to tax may be abridged
by contract, and that such contract may not be impaired without vi-
olating the Constitution, carries with it of necessity the power and the
duty to protect the contract right and in the nature of things causes
jurisdiction for such purpose to be measured by the value of the right
to be protected, and not by the value of some mere isolated element
of that right.¹⁰⁵

The ground for distinction as stated by the Supreme
Court in the Ratta case is that: “A different question is pre-
sented where the matter in controversy is the validity of a
permanent exemption by contract from an annual property
tax . . . .”¹⁰⁶ The soundness of this distinction has been ques-
tioned.¹⁰⁷

Its other decision, which the Supreme Court felt con-
strained to distinguish in the Ratta case, is Western & At-
lantic Railroad v. Railroad Commission of Georgia.¹⁰⁸ In
that case, the plaintiff had been directed by a state order to
establish and operate an industrial spur track. The installa-
tion of the track would cost $1,266.24 and the Supreme Court
allowed plaintiff to capitalize its annual costs on account of
interest on the initial investment, depreciation, maintenance
and operating expenses of the track in arriving at the con-
clusion that the jurisdictional amount was involved. The

¹⁰⁵ Berryman v. Board of Trustees of Whitman College, supra note 104 at
sub nom. Reiling v. Tawes, 341 U.S. 911 (1951); Sociedad Española de Auxilio
v. Buscaglia, supra note 103.
¹⁰⁷ See Note, 48 HARV. L. REV. 95, 99 (1934); Comment, 25 CALIF. L. REV.
¹⁰⁸ 261 U.S. 264 (1923).
Supreme Court in *Healy v. Ratta*, referring to the *Western & Atlantic Railroad* case, observed: "A different question is presented where the matter in controversy is . . . the validity of an order of a state commission directing a railroad to construct and maintain an unremunerative spur track . . . There the value of the matter drawn into controversy, . . . the order to maintain a permanent structure for an unlimited time, is more than a limited number of the annual payments demanded." 109 This is undoubtedly a sound distinction.110

The Supreme Court's reluctance to enjoin enforcement of state statutes or regulations was again emphasized in *McNutt v. General Motors Acceptance Corp.*111 The suit there was brought to restrain on constitutional grounds the enforcement of an Indiana statute regulating the business of purchasing contracts arising out of retail installment sales, including provisions for licenses, for classifications of contracts, and for fixing maximum finance charges. The answer traversed the allegation made in the complaint, that the requisite jurisdictional amount was involved, but no point was made before the three-judge district court that the jurisdictional amount was lacking. This court entered a decree upon findings of fact and conclusions of law, granting a permanent injunction. On direct appeal, the Supreme Court raised the question of jurisdiction and granted leave to file an additional brief on this question.

The Supreme Court, in reversing the decree below and remanding the case with directions to dismiss the complaint for the want of jurisdiction, laid down two principles. First, it held that the party seeking to invoke jurisdiction must prove that jurisdiction is present, thus resolving a long-standing conflict over the status of the burden of proof on that question.

The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be

109 See note 106 *supra*.
111 298 U.S. 178 (1936).
maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof. And where they are not so challenged the court may still insist that the jurisdictional facts be established or the case be dismissed, and for that purpose the court may demand that the party alleging jurisdiction justify his allegations by a preponderance of evidence. . . . Here, the allegation in the bill of complaint as to jurisdictional amount was traversed by the answer. The court made no adequate finding upon that issue of fact, and the record contains no evidence to support the allegation of the bill.113

On the second point, the Supreme Court held:

Respondent invokes the principle that jurisdiction is to be tested by the value of the object or right to be protected against interference. [citing cases] But in the instant case, the statute does not attempt to prevent respondent from conducting its business. There is no showing that it cannot obtain a license and proceed with its operations. The value or net worth of the business which respondent transacts in Indiana is not involved save to the extent that it may be affected by the incidence of the statutory regulation. The object or right to be protected against unconstitutional interference is the right to be free of that regulation. The value of that right may be measured by the loss, if any, which would follow the enforcement of the rules prescribed. The particular allegations of respondent's bill as to the extent or value of its business throw no light upon that subject. They fail to set forth any facts showing what, if any, curtailment of business and consequent loss the enforcement of the statute would involve. The bill is thus destitute of any appropriate allegation as to jurisdictional amount save the general allegation that the matter in controversy exceeds $3,000.113

Not much later, the Supreme Court had before it Kroger Grocery & Baking Co. v. Lutz,114 again a case involving an Indiana statute. There the plaintiff sued to restrain the enforcement of an order of the Milk Control Board of Indiana, made June 12, 1936, fixing selling prices of milk in a certain area. A three-judge district court dismissed the action for

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112 Id. at 189-190.
113 Id. at 181.
114 299 U.S. 300 (1936).
the want of jurisdiction on the ground that the requisite jurisdictional amount was not involved. The district court had found that the annual loss in profits would not exceed $500, and that the Milk Control Law would expire by limitation on July 1, 1937. To support its contention that the jurisdictional amount was present, plaintiff sought to capitalize its $500 loss at 5% so that the alleged amount in controversy amounted to $10,000. The Supreme Court, relying on its *McNutt* decision that the value of the right to be free from the regulation may be measured by the loss that would follow the enforcement of the rule prescribed, said "... that basis of ascertaining a capital loss is not available to complainant here, as the statute, and with it the order, expire by limitation on July 1, 1937. The hurt by reason of the regulation does not appear to be greater than the loss sustained while the statute is in operation." 115

Even where public problems are involved, the Supreme Court, in determining whether the jurisdictional amount is present, seems to have made a distinction between cases involving taxation or regulation and those involving prohibition. In *Gibbs v. Buck* 116 the Supreme Court had before it an appeal from the order of a three-judge district court refusing to dismiss a bill of complaint for failure, *inter alia*, to "... set out facts sufficient to show Federal or equity jurisdiction ..." 117 and "... granting an interlocutory injunction against the enforcement of a Florida statute aimed at combinations fixing the price for the privilege of rendering privately or publicly for profit copyrighted musical compositions." 118 The plaintiffs were the American Society of Composers, Authors and Publishers, a New York unincorporated association, commonly known as ASCAP; Gene Buck, as

117 *Gibbs* v. *Buck*, supra note 116 at 68.
118 Ibid.
president of the Society; various corporations publishing musical compositions; a number of authors and composers of copyrighted music; and several next of kin of deceased composers and authors. The injunction suit was brought by them "on behalf of themselves and others similarly situated, members of the Society, too numerous to make it practicable to join them as plaintiffs in a matter of common and general interest,"\(^{119}\) on the theory that the Florida law impinged upon rights given by the Copyright Act of 1909,\(^{120}\) deprived plaintiffs of rights without due process of law and without the equal protection of the laws, impaired the obligations of contracts already executed, and operated as an *ex post facto* law. ASCAP was founded to license performance of copyrighted music for profit for limited periods and otherwise protect copyrights. The Florida statute\(^{121}\) made it unlawful for owners of copyrighted musical compositions to combine into any corporation, association or other entity to fix license fees "for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit," when the members of the combination constituted "a substantial number of the persons, firms or corporations within the United States" owning musical copyrights. The statute declared the combination an unlawful monopoly, the price-fixing in restraint of trade, and the collection of license fees and all contracts by the combination illegal. In affirming the lower court, the Supreme Court held:

The essential matter in controversy here is the right of the members, in association through the Society, to conduct the business of licensing the public performance for profit of their copyrights. This method of combining for contracts is interdicted by the Florida statute. It is not a question of taxation or regulation but prohibition. Under such circumstances, the issue on jurisdiction is the value of this right to conduct the business free of the prohibition of the statute. To determine the value of this right the District Court had the admitted facts that more than three hundred contracts expiring in 1940

\(^{119}\) Ibid.


\(^{121}\) Presently Fla. Stat. § 543.01 (1951).
were in existence between the Society and the Florida users; that in 1936 alone almost sixty thousand dollars was collected from the users, and that similar sums were expected for the remainder of the term. While the net profits of the business in Florida is not shown, the business of the Society, as a whole, is profitable. The three publisher parties receive more than $150,000 yearly and individuals more than $5000 per year each. The cost of compliance with its requirements is evidence also of the value of the right of freedom from the act. The complainants, other than the Society, allege without traverse that the cost to each one of providing individually in Florida the services now provided by the Society for each member would exceed $10,000. Whether this is annually, for the length of the agreement or for some other term is not shown. From these facts, the finding of the District Court that the matter in controversy—the value of the aggregate rights of all members to conduct their business through the Society—exceeds $3000 in value is fully supported.\footnote{122}

In other words, the Court found in effect a true class action which involved the common and undivided interest of the members to license their music through ASCAP, although the actual amount in controversy was left rather nebulous except that in the judgment of the Court this interest was indubitably in excess of the jurisdictional minimum.\footnote{123}

The Supreme Court found occasion to distinguish this decision from that which it had rendered in the McNutt case. "There the State of Indiana had passed an act regulating, not prohibiting, the business of the Acceptance Corporation. \footnote{122} Gibbs v. Buck, 307 U.S. 66, 74-75 (1939). A companion case, Buck v. Gallagher, 307 U.S. 95 (1939), dealt with a State of Washington statute which purported not to prohibit, but only to regulate ASCAP activities, by requiring registration and that rates be assessed on a specific basis. The Court held at page 100: "Whether a state statute is regulatory or prohibitory, when a bill is filed against its enforcement . . . the matter in controversy is the right to carry on business free of the regulation or prohibition of the statute. Where the statute is regulatory the value of the right to carry on the business, as was said in McNutt v. General Motors Acceptance Corporation, supra, may be shown by evidence of the loss that would follow the enforcement of the statute. And this loss may be something other than the difference between the net profit free of regulation and the net profit subject to regulation. The difficulties of determining the value of rights by calculating past profits as compared with possible future profits, influenced by the single factor of statutory regulation, are obvious. This difference is not the only test of the value of the right in question. The value of the matter in controversy may be at least as accurately shown by proving the additional cost of complying with the regulation. This factor was not offered in evidence in the McNutt case." See Carl Fischer, Inc. v. Shannon, 26 F. Supp. 727 (D. Mont. 1938). \footnote{123} But see Gibbs v. Buck, supra note 122 at 88-92 (dissenting opinion).
The right for which protection was sought was the right to be free of regulation. It was to be measured by the loss, if any, following enforcement of regulation. This was not alleged or proved.” 124

As to the KVOS case 125—a non-public case—the Supreme Court made this observation:

... [R]elief was sought to enjoin alleged pirating, by radio, of news furnished by the Associated Press to its members. The right for which protection was sought was “the right to conduct those enterprises free of” interference. On the issue of the value of this right, it was deposed only that the Associated Press received more than $8,000 per month for news in the territory served by the broadcasting station and was in danger of losing the payments. The Associated Press was a non-profit corporation, operated without the purpose of profiting from its services to members and equitably dividing the expenses among them. The damage in the Associated Press case was to its members and this was not shown. Neither was it alleged or proved that any member threatened to withdraw or to reduce its payments. 126

Another case should be noted. In Petroleum Exploration, Inc. v. Public Service Commission, 127 the Supreme Court was concerned with an action to enjoin a state public service commission from prosecuting a rate investigation, regulatory rather than prohibitory. Bound by the finding of fact by the district court that the cost of compliance 128 would be in excess of the jurisdictional minimum, the Supreme Court found the value of the matter in controversy fulfilled the jurisdictional requirement, even though it did not find occasion for equitable intervention. 129

124 Gibbs v. Buck, supra note 122 at 75.
126 Gibbs v. Buck, supra note 122 at 75-76.
127 304 U.S. 209 (1938).
128 “It was found by the District Court from the testimony at the trial that the expense to plaintiff of complying with said orders would be more than $3000.00 in employing appraisers, geologists, engineers, accountants, etc., to show the original and historical cost of its properties, cost of reproduction as a going concern, and other elements of value recognized by the law of the land for rate making purposes.” Id. at 215.
129 As to an adequate form of state relief, see Illinois Commerce Comm'n v. Thomson, 318 U.S. 675 (1943). It should be kept in mind that equity may impose terms and conditions on the party at whose instance it proposes to act and that “[t]he power to impose such conditions is founded upon, and arises
As it appears from the cases just considered, the Supreme Court seems to have adopted the plaintiff viewpoint championed by Professor Dobie in contradistinction to the defendant viewpoint, even in injunction, nuisance and continuing trespass suits or the like, where the pecuniary value of plaintiff's status in the litigation may frequently differ from that of the defendant. Some of the comparatively recent lower court decisions, however, made the defendant viewpoint available as an alternative theory. Thus, in *Ronzio v. Denver & Rio Grande Western Railroad Co.*—an action originating in a state court against the railroad to quiet the title to certain water rights—the question whether the jurisdictional amount was present arose in connection with the railroad's petition for removal. The court held: "In determining the matter in controversy, we may look to the object sought to be accomplished by the plaintiffs' complaint; the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce." In reaching this conclusion the court relied on the holding of Justice Field in *Smith v. Adams* that:

By matter in dispute is meant the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken. It is conceded that the pecuniary value of the matter in dispute may be determined, not only by the money judgment prayed, where such is the case, but in some cases by the increased or diminished value of the

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130 See Dobie, *Jurisdictional Amount in the United States District Court*, 38 HARV. L. REV. 733 (1925). "Dean Dobie, who is now a Judge of the Fourth Circuit Court of Appeals, calls this 'the plaintiff-viewpoint rule.' It is not always easy to apply." Associated Press v. Emmett, 45 F. Supp. 907, 914 (S.D. Cal. 1942).

131 116 F.2d 604 (10th Cir. 1940). See Purcell v. Summers, 126 F.2d 390, 394 (4th Cir. 1942); Central Mexico Light & Power Co. v. Munch, 116 F.2d 85, 87 (2d Cir. 1940).


133 130 U.S. 167 (1889).
property directly affected by the relief prayed, or by the pecuniary result to one of the parties immediately from the judgment.\textsuperscript{134}

This case has been cited frequently by lower federal courts as recognizing the rule that the amount in controversy may also be viewed from the defendant's viewpoint. Thus, in \textit{Ridder Bros., Inc. v. Blethen}\textsuperscript{135} the majority observed that the "... value of the "thing sought to be accomplished by the action' may relate to either or any party to the action."\textsuperscript{136}

In a strong dissent, Circuit Judge Garrecht said:

A careful check of all the authorities cited by the appellants and quoted in the majority opinion will bear out the observation that the lower Federal courts have recognized the rule that the value in controversy may be viewed from the defendant's standpoint but there are no cases in which the United States Supreme Court has adopted this rule. I am of the opinion that the plaintiff's viewpoint rule is the one recognized by the Supreme Court. It is the reasonable rule because the plaintiff must open the case and in order to sue in the Federal Court the plaintiff must have a matter in controversy of the value of $3,000. If the plaintiff's right is not worth that much, there is no jurisdiction.\textsuperscript{137}

\textsuperscript{134} Id. at 175. The court in the \textit{Ronsio} case also relied on \textit{Cowell v. City Water Supply Co.}, 121 Fed. 53 (8th Cir. 1903), where that court said at page 57: "Perhaps these cases sufficiently illustrate and establish the rule that it is the amount or value of that which the complainant claims to recover, or the sum or value of that which the defendant will lose if the complainant succeeds in his suit, that constitutes the jurisdictional sum or value of the matter in dispute, which tests the jurisdiction of the Circuit Courts of the United States [now the United States District Courts]."

\textsuperscript{135} 142 F.2d 395 (9th Cir. 1944). The court also relied on \textit{Mississippi & Mo. R.R. v. Ward}, 2 Black 485 (U.S. 1863).

\textsuperscript{136} \textit{Ridder Bros., Inc. v. Blethen}, supra note 135 at 399.

\textsuperscript{137} Id. at 400-401. Some other recent lower court cases favoring the double viewpoint test are: \textit{MacCormick v. McCoy}, 94 F. Supp. 772 (S.D. Mo. 1950); \textit{Doggett v. Hunt}, 93 F. Supp. 426 (S.D. Ala. 1950); \textit{Sterl v. Sears}, 88 F. Supp. 431 (N.D. Tex. 1950); \textit{Shipe v. Floral Hills, Inc.}, 86 F. Supp. 985 (W.D. Mo. 1949); \textit{Griffith v. Enochs}, 43 F. Supp. 352 (W.D. La. 1942). See the rather cryptic statement in \textit{Thomson v. Gaskill}, 315 U.S. 442 (1942) at page 447: "In a diversity litigation the value of the 'matter in controversy' is measured not by the monetary result of determining the principle involved, but by its pecuniary consequence to those involved in the litigation." In \textit{Spieler v. Haas}, 79 F. Supp. 835 (S.D. N.Y. 1948), the court said at page 836: "Moreover, plaintiffs cannot make out the jurisdictional amount by referring to the prospective capital gain of their landlord. While it has been said that the increased value of the property affected may provide a basis for jurisdiction, \textit{Smith v. Adams}, . . . it was there suggested that the rule was limited to actions such as those to quiet title or remove a cloud therefrom."