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 Ex-
tradition Controversy, is Justice of the Supreme Court of
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HUGH EVANDER WILLIS, B.A., 1897, M.A., 1899, LL.D., 1925,
Yankton College; LL.B., 1901, LL.M., 1902, University of
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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 im-
mutable 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 re-
cited. Recently extreme doubt has been cast upon the immuta-
bility of so-called economic law and the more recent decision of
the Supreme Court in Nebbia v. New York1 has raised serious
question with regard to the affectation principle. In order to
view the decision with proper perspective it is necessary to ex-
amine the principle as it previously existed.

The seventeenth century inadvertance of Sir Matthew Hale and
its misapplication2 to nineteenth century conditions has been a
source of much confusion. The principle of affectation with a
public interest was first expressed in Munn v. Illinois3 and re-
iterated in numerous subsequent cases. One of its most able
statements was by Chief Justice Taft in Wolff Packing Company v.
Court of Industrial Relations4 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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1 (1934) 54 Sup. Ct. 505.
2 McAllister, Lord Hale and Business Affected with a Public Interest
   (1933) 43 Harv. L. Rev. 769.
3 (1876) 94 U. S. 113.
4 (1923) 262 U. S. 522, l. c. 535.