NOTES

THE FEDERAL JURISDICTIONAL AMOUNT REQUIREMENT AND JOINDER OF PARTIES UNDER THE FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure articulate a utilitarian objective of an efficient judicial process effectuated, in part, by encouraging the settlement in one action of all issues arising from a single transaction or occurrence. However, the implementation of this important purpose is frequently subverted by an overly narrow construction of federal jurisdictional limitations. In particular, the present interpretation of the jurisdictional amount requirement has deprived litigants of the contemplated benefits of the liberal provisions concerning permissive joinder of parties. The resulting inconvenience to the parties is occasioned by a splitting of the action when several plaintiffs, otherwise properly joined, are relegated to the state courts for inability to assert the requisite jurisdictional amount. A brief examination of the justifications which have, in the past, supported a restrictive approach to federal jurisdiction discloses their present inapplicability in view of the reorientation of procedure introduced by the Federal Rules. Although Congressional justifications for a jurisdictional amount requirement remain valid and not incompatible with the joinder of parties, a suggested reinterpretation of the amount provision in accordance with the policy of the Federal Rules seems necessary.

The basic conflict of policy between the joinder provisions of the Federal Rules and the present interpretation of the jurisdictional amount requirement of the Judicial Code was clearly presented in the recent case of *Anicola v. J. C. Penney Company*.[1] The plaintiff-wife's suit to recover $3000 for injuries caused by defendant's negligence was joined with the plaintiff-husband's claim of $1500 for loss of consortium.[2] Had joinder of plaintiffs, which is virtually unlimited under Rule 20,[3] been the sole

1. 98 F. Supp. 911 (E.D. Pa. 1951).

2. Plaintiffs were attempting to join under a Pennsylvania rule of civil procedure identical, in effect, to Federal Rule 20.

3. FED. R. CIV. P. 20 provides: *"Permissive Joinder of Parties.* (a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of, or arising out of, the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action."

consideration, joinder would have been permitted and both claims, arising from the same occurrence, would have been settled in one action. However, the court held that the two claims could not be joined to aggregate the jurisdictional amount. Therefore, the husband's claim was dismissed for want of jurisdiction, and the wife was given leave to amend and allege a claim exceeding $3000.

Although the jurisdictional amount requirement is not constitutionally imposed, a statutory limitation has existed since the original Judiciary Act of 1789.[4] The Judicial Code presently provides that the federal district courts shall have original jurisdiction over all civil actions, involving a federal question or a controversy between citizens of different states, wherein the matter in controversy exceeds the sum or value of $3000.[5] Thus, the only change in the jurisdictional amount facet of the limitations on federal jurisdiction has been an increase from the original $500 to $2000 in 1887[6] to the present $3000 in 1911.[7]

Congressional reluctance to confer full jurisdiction[8] and judicial adherence to the principle of strict construction of jurisdictional grants are purportedly based on several considerations. One justification concerns the relationship between federal and state courts, which at times within our history has been of practical political importance.[9] The jurisdictional amount requirement, however, has never been of any great consequence in effectuating this desired comity, since it has only a tenuous connection with the issue of federalism in the court system.[10] More relevant, and considered by some writers to be the most important basis for the amount requirement, is the desirability of reducing the bur-

4. 1 STAT. 78 (1789).

5. 28 U.S.C. § 1331 (federal question); § 1332 (diversity of citizenship). Statutory exceptions to the requirement include actions arising under any Act of Congress regulating commerce, *id.* § 1337; actions arising under any Act of Congress relating to patents, copyrights, or trademarks, *id.* § 1338; all matters and proceedings in bankruptcy, *id.* § 1334. Insofar as the problem presently considered is concerned, diversity is the principal area of jurisdiction requiring an amount in controversy since, frequently, federal question cases may be brought under a special statute not requiring a jurisdictional amount.

6. 24 STAT. 552 (1887).

7. 36 STAT. 1087 (1911).

8. See Frankfurter, *Distribution of Judicial Power Between United States and State Courts,* 13 CORNELL L.Q. 499 (1928). Since the leading case on the diversity requirement, Strawbridge v. Curtis, 3 Cranch 267 (U.S. 1806), federal jurisdiction based on diversity of citizenship has always been construed to require complete diversity. However, it has been suggested that the Constitutional grant of jurisdiction over controversies between citizens of different states requires only partial diversity. Chafee, *Federal Interpleader Since the Act of 1936,* 49 YALE L.J. 377 (1940).

9. See Healy v. Ratta, 292 U.S. 263 (1933); Frankfurter, *supra* note 8, at 500.

10. Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure,* 45 YALE L.J. 393 (1936).

den on the federal courts.[11] Admittedly, the requirement has this effect, but only in furtherance of its main function of protecting litigants.[12] Litigation in the federal courts is more expensive in time and money, and the requirement of a minimum amount in controversy is designed to confine suits involving small sums to state tribunals.

It should be noted that the statutory requirement has never, in terms, stated that *each* plaintiff must have the specific amount in controversy. However, the fundamental tenet of federal courts to view their jurisdictional limits strictly is nowhere more strongly reflected than in the construction placed upon the jurisdictional amount requirement. First enunciated in *Oliver v. Alexander,*[13] the general rule is that each plaintiff, claiming separately, must assert a claim exceeding the jurisdictional amount. Only when plaintiffs assert a common right may the aggregated value of their claims be the measure of the necessary sum in dispute.[14] This narrow interpretation, adopted in the *Alexander* case, has since been adhered to with rare exceptions.[15]

In 1934, after many years of effort by interested groups, Congress empowered the Supreme Court to prescribe rules for the district courts of the United States and the District of Columbia.[16] The rules were to be purely procedural: "said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant."[17] The Supreme Court appointed a distinguished Advisory Committee to assist in the formulation of the rules, and, in accomplishing this undertaking, the Advisory Committee received suggestions, advice, and criticism from members

11. *Id.* at 416.

12. "Congress has always been unwilling to permit suits for small sums to be brought into its own Courts, not because it specially wanted to save the Courts labor, or even because it wished to uphold their dignity, but principally, if not solely, for the protection of litigants. Where the amounts at issue are not large, litigation in the federal courts may be unduly burdensome." ROSE, FEDERAL JURISDICTION AND PROCEDURE 211 (5th ed. 1938). *See* Adams v. Douglas County, 1 Fed. Cas. No. 52, at 106, 107 (C.C.D.Kan. 1868).

13. 6 Pet. 143 (U.S. 1832). The Court was considering the amount requirement for appeal to the Supreme Court.

14. Shields v. Thomas, 17 How. 3 (U.S. 1855). For early development of the jurisdictional amount requirement, see the discussion in Gibson v. Shufeldt, 122 U.S. 27 (1887). See also, 27 VA. L. REV. 704 (1941).

15. See Dobie, *Jurisdictional Amount in the United States District Courts,* 11 VA. L. REG. (N.S.) 513 (1926). The construction adopted in the *Alexander* case was applied for the first time to the amount requirement for district court jurisdiction in Walter. v. Northeastern R. R., 140 U.S. 370 (1892).

16. 28 U.S.C. § 2072 (1948). Prior to the adoption of the Federal Rules, procedure in federal district courts was to conform with the procedure in state courts. For a history of procedure in the federal courts, see HOLTZOFF, NEW FEDERAL PROCEDURE AND THE COURTS 1-8 (1940).

17. *Ibid.*

of the bar throughout the nation.[18] Following two years of work by the Committee, the proposed Rules were adopted by the Supreme Court, forwarded to Congress, and became effective September 16, 1938.

Basically, the Rules seek to foster an efficient judicial process to be accomplished in part by enabling the settlement, in one suit, of all issues arising out of one transaction.[19] Particularly, "on the matter of joinder . . . it is desirable that all matters in dispute between litigants be brought to issue and settled quickly and directly as possible."[20] The considerations underlying this policy are evident, although of no little importance. Joinder reduces the time and expense of litigation for the parties as well as for the courts.[21] The liberal Rules on counterclaims,[22] cross-claims,[23] third party practice,[24] and interpleader[25] emphasize the desire to implement fully this basic proposition.

A re-examination of the jurisdictional amount requirement in the light of the policy manifested by the Federal Rules suggests the desirability of accepting the jurisdiction of all claims arising out of one transaction where *one* plaintiff asserts a claim exceeding the jurisdictional amount. That this is an acceptable solution is indicated by the statute governing removal of actions from state to federal courts, where a similar approach is expressly adopted.[26] Provided one plaintiff, with a separate and independent cause of action, satisfies the original juris-

18. See AMERICAN BAR ASSOCIATION, PROCEEDINGS OF THE INSTITUTE ON FEDERAL RULES, CLEVELAND (1938); PROCEEDINGS OF THE INSTITUTE ON FEDERAL RULES, WASHINGTON AND NEW YORK (1938).

19. See Clark, *The New Federal Rules of Civil Procedure: The Last Phase—Underlying Philosophy Embodied in Some of the Basic Provisions of the New Procedure,* 23 A.B.A.J. 976 (1937).

20. Clark, *supra* note 19, at 977; Clark, *Proposed Federal Rules of Civil Procedure,* 22 A.B.A.J. 447, 449 (1936).

21. "The primary purpose of any set of rules for legal procedure would seem to be clarity and certainty in conjunction with possibilities of celerity in the dispatch of business. The main purpose to be kept in mind is the convenience and saving of time of witnesses and parties and minimizing expenses of litigation so far as is consistent with the preservation of substantial rights of parties." Chestnut, *Analysis of Proposed New Federal Rules of Civil Procedure,* 22 A.B.A.J. 533, 534 (1936).

22. FED. R. CIV. P. 13 (a) and (b). For a discussion of jurisdictional problems under Rule 13, see Ohlinger, *Jurisdiction, Venue and Process as to Counterclaims and Third Party Claims; Rules 13 and 14 of the Federal Rules of Civil Procedure,* 6 FED. B.J. 420 (1945).

23. FED. R. CIV. P. 13 (g) and (h).

24. FED. R. CIV. P. 14. For a discussion of jurisdictional problems, see Holtzoff, *Some Problems Under Third Party Practice,* 3 LA. L. REV. 408 (1941); Shulman and Jaegerman, *supra* note 10; Comment, 46 MICH. L. REV. 1069 (1948).

25. FED. R. CIV. P. 22. See Chafee, *supra* note 8.

26. 28 U.S.C. § 1441 (c): "Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction."

diction requirements of the federal court, the court may retain all claims not otherwise within its original jurisdiction. Thus, in respect to removal, Congress has recognized the "sound social policy"[27] underlying the joinder of parties provision and has intimated that the preservation of federalism in the court system may, in certain instances, yield to the consideration of convenience to the parties.[28] A contrary proposal—that of allowing the suit to be split—was attempted from 1866 to 1876 and resulted in ". . . confusion, embarrassment, and increase in the cost of litigation. . . ."[29] These were sufficient grounds for providing that the entire action could be removed to the federal court, ". . . thereby expressly conferring ancillary or incidental jurisdiction to hear and determine a controversy wholly between citizens of the same state,"[30] or a controversy in which less than the jurisdictional amount was involved. No such encroachment on state judicial power is involved in the suggestion under consideration as proper joinder and other requisites of jurisdiction would continue to be applicable.[31] Consequently, the sole effect of the reinterpretation of the amount requirement would be to permit jurisdiction of suits in which all parties comply with other jurisdictional requirements, and one plaintiff asserts a claim exceeding $3000. No tenable objection is apparent as to why original jurisdiction should not be as broad as removal jurisdiction. Inconveniences similar to those alleviated by the removal statute should also be avoided when original jurisdiction is invoked.

A more liberal interpretation would not substantially increase the burdens of the federal courts, for even under the present construction the courts retain jurisdiction of the claim meeting the amount requirement. The right of action of each party must arise out of "the same transaction, occurrence, or series of transactions or occurrences," and a common question of law or fact must be involved for plaintiffs to join under Rule 20. Hence, in most cases, substantially the same proof would

27. See Clark, *Proposed Federal Rules of Civil Procedure*, 22 A.B.A.J. 447, 449 (1936).

28. See MOORE, COMMENTARY ON THE UNITED STATES JUDICIAL CODE 253 (1949), for comment on constitutionality of the removal statute and some justifications for it.

29. Texas Employers Insurance Ass'n v. Felt, 150 F.2d 227, 234 (5th Cir. 1945). During that period plaintiff could continue his suit in the state court against those defendants who could not remove to the federal court.

30. *Ibid.*

31. If the aims of the Federal Rules of Civil Procedure were to be completely effectuated, it would require a modification of the rule of *Strawbridge v. Curtis*. But, requiring only partial diversity of citizenship would greatly increase litigation in the federal courts. A consideration of the merits or lack of merits in diversity jurisdiction is beyond the scope of this discussion, although jurisdictional problems in this area are comparable to those discussed presently, insofar as they relate to effective implementation of the Federal Rules.

be admissible in support of all claims. On the other hand, refusal to adjudicate those claims which do not exceed the requisite amount not only may inconvenience the plaintiffs, but also increases unnecessarily the case load in the state courts. Further, the benefit of retaining jurisdiction of all claims inures to the defendant in eliminating the necessity of defending two actions—one or more in the state court and one in the federal court.

In the past, plaintiffs' attempts to join as here suggested have encountered summary rejection.[32] Among the arguments advanced against the present proposal is that plaintiffs may not aggregate their claims to achieve the jurisdictional amount.[33] However, the problem is not one of aggregation. Jurisdiction of the entire action would be invoked by one plaintiff's assertion of the requisite amount and the amount, large or small, of other plaintiff's claims would seem to be of little consequence. Yet, present judicial characterizing of the attempted joinder as an attempt to aggregate claims brings the issue within the general rule of *Oliver v. Alexander* and permits dismissal without thorough consideration of the problem.

In the past, conditions may have justified the restrictive consequences of viewing joinder as an aggregation question. The possibilities for forum shopping afforded by the *Swift v. Tyson* doctrine,[34] furnished a real need for examining closely the asserted basis for federal jurisdiction, including the jurisdictional amount requirement. The demise of that rule removed an important justification for narrowly construing the amount provision. Furthermore, when the rule against aggregation was declared in the *Alexander* case, joinder of parties with separate causes of action was extremely limited,[35] while today joinder is encouraged. The *Alexander* case itself involved the amount requirement for appellate jurisdiction; later decisions applied the rule to the amount requirement

32. See note 37 *infra*.

33. Pinel v. Pinel, 240 U.S. 594 (1916); Atwood v. National Bank of Lima, 115 F.2d 861 (6th Cir. 1940); Diepen v. Fernow, 1 F.R.D. 378 (W.D. Mich. 1940) (The proposal here advanced was the basis for the attempt to join as plaintiffs in this case); Hagee v. Kansas City S. Ry., 104 Fed. 391 (C.C.W.D.Mo. 1900); Note, 80 U. OF PA. L. REV. 106 (1931).

34. 16 Pet. 1 (U.S. 1842). The case interpreted the Rules of Decision Act, 28 U.S.C. § 1652 (1948), to mean that federal courts were not bound to follow state judicial decisions. Erie v. Tompkins, 304 U.S. 64 (1938), overruled this in holding that the laws of the state, which the federal courts must apply "except in matters governed by the Federal Constitution or by acts of Congress," included state judicial decisions.

35. ". . . [T]he common law will not tolerate a joint action except by persons who have a joint interest and upon a joint contract. If the cause of action is several, the suit must be several also." Oliver v. Alexander, 6 Pet. 143, 146 (U.S. 1832).

for original jurisdiction.[36] Although there are, as previously noted, other cogent reasons for the amount requirement, insofar as protection to litigants is concerned, the two situations differ considerably. Denial of an opportunity to appeal terminates the case forthwith. However, a refusal to accept original jurisdiction merely relegates the claimant to the state courts, splitting the trial of causes arising out of the same transaction when some claimants can and others cannot satisfy the jurisdictional amount.[37] An uncritical acceptance of the *Alexander* rule is unjustifiable in the light of these changed circumstances.

Another objection to a construction of the amount requirement granting the court jurisdiction over claims less than the requisite amount is that the jurisdiction of the court would be extended in violation of Rule 82, which proscribes construction of the Federal Rules so as to extend or limit the jurisdiction or venue of actions in the federal courts.[38] However, the suggestion that federal jurisdiction embrace *all* plaintiffs, properly joined, in a suit in which *one* plaintiff claims the requisite amount is not extending the jurisdiction of the federal courts by virtue of any one of the Federal Rules. Jurisdiction would be posited, not on the grounds that Rule 20 permits joinder, but rather because the jurisdictional amount requirement need only be met by one plaintiff. A reinterpretation of the requirement is not prohibited by Rule 82.

In addition, Rule 82 has not been insurmountable in the construction of other Rules. For instance, if there is jurisdiction in the main cause, the defendant may bring in a third party defendant without proving independent grounds of jurisdiction.[39] Moreover, until 1946 this view was accepted even when the third party defendant was impleaded on the theory that he was liable directly to the plaintiff.[40] Although the basis

36. See note 15 *supra.*

37. Hackner v. Guaranty Trust Co., 117 F.2d 95 (2d Cir. 1941); Takashi Kataoka v. May Dept. Stores Co., 115 F.2d 521 (9th Cir. 1940); Mitchell v. Great American Indemnity Co., 87 F. Supp. 961 (W.D. La. 1950); Shapiro Bros. Factors Corp. v. Automobile Insurance Co., 40 F. Supp. 1 (D. N.J. 1941); *cf.* Edelhertz v. Matlack, 42 F. Supp. 309 (M.D. Pa. 1941); Grosvenor v. Guenther, 42 F. Supp. 249 (E.D. Mich. 1941).

38. See Diepen v. Fernow, 1 F.R.D. 378 (W.D. Mich. 1940).

39. Shepperd v. Atlantic States Gas Co. of Pennsylvania, Inc. v. Pennsylvania R.R., 167 F.2d 841 (3rd Cir. 1948); Goodard v. Shasta S.S. Co. v. Oldman Boiler Works, Inc., 9 F.R.D. 12 (W.D. N.Y. 1949).

40. Before the 1948 amendments to the Federal Rules, defendant could be impleaded on this theory. This provision was deleted due to holdings that plaintiff was not required to amend his pleading to assess a claim against the third party defendant unless he so chose and that he could not do so if the third party could not have been joined originally. Friend v. Middle Atlantic Transportation Co., 153 F.2d 778 (2d Cir. 1946), *cert. denied,* 328 U.S. 865 (1946). (First time question was presented on the appellate level.) See Clark, *Experience Under the Amendments to the Federal Rules of Civil Procedure,* 8 F.R.D. 497 (1949).

for third party practice, avoidance of circuity of action, is no more significant than the purposes underlying joinder of parties, the consideration of settling all issues arising out of one transaction is presently given effect by adjudicating a claim by defendant, not within the original jurisdiction of the court. The new claim is regarded as being within the court's ancillary jurisdiction, a judicially created concept,[41] and the proscription of Rule 82 is successfully evaded. An equally liberal construction has been accorded Rule 82 with respect to the service of process under Rule 4(f).[42] Under the Federal Interpleader Statute[43] an interesting technique has been employed to circumvent the jurisdictional requirement of diversity of citizenship. If a stakeholder and one of the claimants are co-citizens, the stakeholder is held to be a nominal party and the diversity requirement is satisfied by the citizenship of the claimants.[44] If all the claimants are co-citizens, the stakeholder institutes his action under common law interpleader and is regarded as a real party in interest resulting in necessary diversity between the stakeholder and the claimants.[45] Evidently, jurisdictional limitations may be elastic when procedural conditions so warrant.

An even greater departure from the *Alexander* rule would permit federal courts to take jurisdiction when all plaintiffs' claims aggregate the requisite amount, although no one plaintiff's claim exceeds that amount. Arguments supporting such a proposal are again predicated on the convenience to the parties of settling all claims in one suit. However, denial of jurisdiction would work no hardship by splitting the suit, since under the present decisions no one plaintiff may invoke federal jurisdiction. Furthermore, the amount requirement, in effect, would be removed where there are multiple plaintiffs as it would be a rare case in which aggregation of plaintiffs' claims would not exceed $3000. The result would be an unnecessary increase in litigation in federal courts, and it is questionable whether any resulting convenience to the parties would outweigh the added burden on the federal courts.

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41. See Silberg, *Ancillary Jurisdiction in the Federal Courts,* 12 J. AIR L. 288 (1941).

42. Mississippi Publishing Corp. v. Murphree, 326 U.S. 438 (1946). The *Murphree* case held that Rule 4(f) enlarged federal court jurisdictional limits to include the whole state, where the courts, prior to the Rules, would have had jurisdiction only within their respective districts.

43. 28 U.S.C. § 1335 (1948); FED. R. CIV. P. 22.

44. Treines v. Sunshine Mining Co., 308 U.S. 66 (1939). Citizenship of a nominal party is not considered under the rule of *Strawbridge v. Curtis.* Notes, 5 Mo. L. REV. 249 (1940); 25 WASH. U.L.Q. 479 (1940).

45. Rosetti v. Hill, 162 F.2d 892 (9th Cir. 1947); Note, 21 So. CALIF. L. REV. 276 (1948).

If the federal courts are unwilling to adopt a more liberal view of the amount requirement, reversing a long line of precedents, the conflict could to some extent be alleviated by refusing to entertain jurisdiction of an original action where the result would be to split the suit. A prudent exercise of discretion in a situation concerning splitting of suits arising out of the same transaction would depend, primarily, upon whether joinder is permitted in the state court involved.[46] If it were possible for all plaintiffs to join in that court, then the federal court should refuse to exercise original jurisdiction. Should plaintiffs join in the state court and defendant, if a non-resident, removed to a federal court, where under the remand statute the court has been conferred an expressly limited discretion to retain the entire suit or remand all claims not within its original jurisdiction, then the federal court should retain and adjudicate all claims. If joinder is precluded under the state procedure, the federal court could properly take jurisdiction of the individual claims meeting the jurisdictional amount requirement. Plaintiffs could not join in any event, and the particular plaintiff may be removed to the federal court.

Federal courts in equity historically have exercised discretion in refusing to invoke their jurisdiction.[47] In relation to the present problem, such discretion should be exercised only when it is important that a cause be litigated in a state court rather than federal court.[48] If the reform inherent in the Rules cannot be effectuated in the federal courts, and the result may be achieved in the state court, the suit should be litigated in the latter. Although no American cases have been found in which a court sitting in law has attempted to exercise such discretion,[49]

46. For Indiana rule on joinder of parties, see IND. STAT. ANN. § 2-213 (Burns 1933). In Indiana joinder of parties with separate causes of action is not possible; however, the courts have an inherent power to order actions consolidated for trial. "The result is in truth the same as that accomplished under the Federal Rules of Civil Procedure . . . so that after all the question presented is one of trial convenience, depending largely upon the question as to whether or not the actions present a common question of law and fact." 2 GAVIT, PLEADING AND PRACTICE IN INDIANA 1874 (1941).

47. See, *e.g.*, Burford v. Sun Oil Corp., 319 U.S. 315 (1948); Railroad Comm. of Texas v. Pullman Corp., 312 U.S. 496 (1940); Pennsylvania v. Williams, 294 U.S. 176 (1925).

48. Meredith v. Winter Haven, 320 U.S. 228 (1943). For important policies which are sufficient cause for refusing to exercise jurisdiction, see Pennsylvania v. Williams, 294 U.S. 176 (1925).

49. However, "courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal." Canada Malting Co. v. Paterson Steamships, 285 U.S. 413, 422 (1932). For an English case in which a court of law refused to exercise its jurisdiction, see Logan v. Bank of Scotland [1906] 1 K.B. 141 (C.A.) (Court in London refused jurisdiction where cause of action arose in Scotland, all the witnesses and evidence were in Scotland, and the branch bank in London had no concern in the cause of action.)

there seems to be no basis for limiting the exercise of this prerogative to cases of an equitable nature. The importance of the purpose of the Federal Rules should be controlling, whether the court exercises law or equity powers. Actions at law based solely on diversity of citizenship as grounds for federal jurisdiction seldom present such important questions that it is imperative a federal court take cognizance of them.

Refusal to exercise jurisdiction to avoid splitting the suit is similar to the venue doctrine of forum non conveniens. Introduced into the federal system by judicial decision,[50] statutory authorization was unnecessary to grant courts discretion to dismiss on grounds of the existence of a more convenient forum. Similarly, the absence of specific congressional approval should not restrict judicial solution of the present situation. The advantage to the parties of litigating all claims in one action is equally as important as the trying of a cause in a convenient forum and is a reasonable basis for federal courts, in law and equity, to refuse to exercise their jurisdiction.[51]

The problem of the jurisdictional amount requirement as a deterrent to the implementation of the Federal Rules has been placed in proper perspective. There is no extension of jurisdiction problem within the meaning of Rule 82 as many courts assume; nor is it a matter of aggregating claims to achieve the jurisdictional amount. Removal of this impediment to an effective utilization of the joinder provisions of the Rules requires a new interpretation of the amount requirement. The present rule rests on conditions of over a century ago which are no longer relevant to the main purpose of the amount requirement. While not greatly increasing the work of the federal courts, the acceptance of juris-

50. The doctrine was first evolved in England and adopted by the courts in law and equity in several of the American states. The federal courts have been reluctant but eventually accepted the doctrine prior to statutory enactment. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). See Note, 23 IND. L.J. 82 (1947); Comment, 1 STAN. L. REV. 497 (1949).

51. Two statutory changes, although not within the scope of this discussion, are possibilities in the solution of the problem. Abolition of diversity of citizenship as a basis of federal jurisdiction would remove the only practical justification for requiring a jurisdictional amount. With only federal question cases litigated in the federal courts, no jurisdictionl amount should be necessary. This change was embodied in the Norris-LaGuardia Bill, S. 939, 72d Cong., 1st Sess. (1932), H.R. 11508, 72d Cong., 1st Sess. (1932), but failed to become law. See Frankfurter, *supra* note 8; Yntema, *The Jurisdiction of the Federal Courts in Controversies Between Citizens of Different States*, 19 A.B.A.J. 71, 149, 265 (1933).

Removal of foreign corporations from their status as non-residents would have substantially the same effect as complete abolition of diversity since it is estimated that 80% of diversity cases involve corporations. This suggestion, too, has been before Congress. Attorney-General's Bill, S. 937, 72d Cong., 1st Sess. (1932); H.R. 10594, 72d Cong., 1st Sess. (1932). For interesting statistics concerning the jurisdictional basis for litigation in federal courts see Clark, *Diversity of Citizenship Jurisdiction of the Federal Courts*, 19 A.B.A.J. 499 (1933).

diction of all claims arising from one transaction where one plaintiff asserts a claim exceeding the requisite jurisdictional amount would accommodate litigants by preventing duplicate suits in state and federal courts and a multiplicity of suits in state courts where joinder is less liberal. Although the new interpretation would require a modification of the judicial practice to strictly construe jurisdictional requirements, it would permit the policy underlying the Federal Rules, an equally basic judicial policy, to be more fully implemented.

ACCESS TO OFFICIAL INFORMATION: A NEGLECTED CONSTITUTIONAL RIGHT

The Las Cruces Sun-News, a New Mexico newspaper, recently sought permission to attend a United States Navy test firing of a special rocket at White Sands proving grounds. The request was denied for "security reasons."[1] Earlier this year investigation through confidential sources revealed that in 1950 the Bureau of Internal Revenue discovered the adulteration of liquor in 368 taverns in the vicinity of Albany, New York. The Bureau levied fines upon the offenders without bringing them into court or revealing the fraud. The Bureau's chief counsel took the position that such compromises are not matters of public record, but are effected solely in the interest of the individual and the Bureau.[2] In Oregon, a secret hearing was held by the state board of education concerning the demand of the dental school to be separated from the university medical school.[3] The board offered to allow a reporter to attend only on the condition that she pledge to keep the matter "off the

1. Advance clipping from Shop Talk, Oct. 1, 1951, the official publication of the New Mexico Press Ass'n, Inc.

2. INTERIM REPORT OF COMMITTEE ON FREEDOM OF INFORMATION TO AMERICAN SOCIETY OF NEWSPAPER EDITORS 4 (April 21, 1951). Other records not readily available to the public in New York include marriage licenses. In Yonkers, only 63 of 123 issued in January and 15 of the 40 obtained in February were made public. *Id.* at 3. Many other instances of official secrecy are revcaled in Pope, *Suppression of News,* Atlantic Monthly, July, 1951, p. 50.

3. Communication to the INDIANA LAW JOURNAL from the Oregonian. The letter also describes a secret hearing conducted by the state director of agriculture concerning certain dairies' violations of the sanitary bottle-cap law. The director took the position that bad publicity might injure the violators' business.

The secrecy which encompasses meetings of school boards is not peculiar to Oregon. The public has been barred from school board deliberations in Chicago, Ill.; Columbia, Mo.; Denver, Colo.; Roanoke, Va.; Providence, R. I.; Evansville, Ind.; Flint, Mich.; and Baltimore, Md., "just to name a few." Raymond, *News the People Can't Get,* Reporter No. 7, Oct. 2, 1951, p. 26.