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Mayor and Alderman of Beverly [7] the Massachusetts Supreme Court stopped all flights under five hundred feet over the plaintiff's house, even though there was no absolute evidence to the effect that it had damaged the plaintiff.

Rhyne, in "Airports and the Courts" [8] explains why the nuisance theory is the "best" theory. "In evaluating the five theories of air space ownership or air rights, it seems clear that of the five, the so-called 'nuisance' theory is the only reasonable basis for decision. Under the *ad coelum* theory, easement, or statutory theories an aviator making one low flight could be sued in trespass and could be forced to pay nominal damages to the landowners. It is unreasonable to assume that every aviator knows the use to which all the land over which he flies is being put and he would hardly acquire such knowledge from one flight over it. In fact, the 'nuisance' theory gives the aviator more than one chance to become acquainted with the use and claims of the surface owner so that he may adjust his flying accordingly and it is only when he does actual damage or persists in low flights which have a cumulative damaging effect that he is subject to liability. If the aviator violates Federal, state or local laws by low flights he should, of course, be prosecuted criminally for such violations, but such laws should not be construed as giving a right to civil damages to uninjured landowners over whose property the statutory violations occurred."

Roger D. Gustafson.

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A NEW FORUM FOR STOCKHOLDERS.—By George D. Hornstein. Abstracted from Vol. XLV, No. 1, Columbia Law Review.—This article which was no doubt written as a sequel to the article entitled *Legal Controls For Intracorporate Abuse — Present and Future* has for its purpose the delineation of the insufficiency in the governing of the corporation policy of the minority stockholders. The first fact pointed out which causes such a conclusion to be drawn is that up to the present time no correctives for the situation of the poor position of the minority stockholders have been carried into use save those proposed and effected by the federal government in the establishment of federal administrative agencies in this field. Furthermore the author points out from a close study of the records that no state has substituted an administrative agency in place of an individual stockholder to act as the party complainant in suits in equity for the relief ordinarily sought in

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7 35 N. E. (2d) 242, 309 Mass. 388 (1941).

8 Rhyne, Airports and the Courts, p. 163.

stockholders' suits. There are also some other deficiencies on the part of the states as well as its judicial officers in protecting the interests of the average small stockholder. In later paragraphs of the treatise the author goes on to point out that nothing has been done to make the stockholders' derivative suit more effective. Rather than showing a trend in that direction, it has developed that the courts, especially in New York, have handed down decisions recently, which, if they are persistently followed, will strangle the stockholders' derivative suit.

The author after criticizing the condition as it is now does not leave the subject without mentioning some of the good things that have been done in this field recently. He speaks of the two federal administrative agencies which at present are very limited in their scope of operation but he also looks to them as the precedent setters and hopes that by their action today bigger and better steps may be taken in the field of protecting the small stockholders in the near future. In speaking of these administrative groups he analyzes them rather carefully as follows: "(A) The legal theory underlying allowance of these claims and the power in the administrative body to pass on them; (B) The machinery, comparable to the examination before trial in ordinary litigation, to uncover the evidence; (C) Non-applicability of the statute of limitations in a proceeding before an administrative body; and (D) Compensation of counsel who increase the assets of one corporation by procuring allowance of claims against an affiliated company or a disallowance of claims by the latter."

Taking these subdivisions of the analysis separately we can delve more fully into their meaning. First the legal theory. The first thing discussed under this heading is the claims by one corporation against an affiliated corporation. These are split into two groups: one where the corporation is held liable for its behavior in the operation of an affiliated corporation precisely as an individual under existing tort principles, and second where the corporation in the same situation is held liable where an individual would not be. After having laid this basic foundation he goes on to point out the situation as it existed before the SEC and the ICC and the situation as it exists now citing cases under both regimes.

Subdivision two deals with the machinery to uncover the evidence. Under this subdivision the author points out that evidence must be developed to justify disallowance of a parent company's claim. He shows the effectiveness of the SEC and the ICC in this situation citing the cases which were brought before these two administrative boards. Probably the sentence that best expresses the author's point is this: "The wholesome investigatory power of both Commissions presents a refreshing contrast to the frustration of most stockholders when they endeavor to obtain the necessary legal proof, even in the most flagrant cases of misconduct, e.g., Hopson, Insull, and Kreuger." This sentence of course is a highlight of the paragraph which really drives home the