remitted to other actions initiated by him[816] or an appeal may suffice. Accordingly, a surety company, objecting to the entry of a judgment against it on a supersedeas bond, without notice and an opportunity to be heard on the issue of liability, was not denied due process where the state practice provided the opportunity for such a hearing by an appeal from the judgment so entered. Nor could the company found its claim of denial of due process upon the fact that it lost this opportunity for a hearing by inadvertently pursuing the wrong procedure in the state courts.[817] On the other hand, where a state appellate court reversed a trial court and entered a final judgment for the defendant, a plaintiff who had never had an opportunity to introduce evidence in rebuttal to certain testimony which the trial court deemed immaterial but which the appellate court considered material was held to have been deprived of his rights without due process of law.[818]

When Process Is Due.—The requirements of due process, as has been noted, depend upon the nature of the interest at stake, while the form of due process required is determined by the weight of that interest balanced against the opposing interests.[819] The currently prevailing standard is that formulated in *Mathews v. Eldridge*,[820] which concerned termination of Social Security benefits. "Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail."

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[816] Lindsey v. Normet, 405 U.S. 56, 65–69 (1972). However, if one would suffer too severe an injury between the doing and the undoing, he may avoid the alternative means. Stanley v. Illinois, 405 U.S. 645, 647 (1972).

[817] American Surety Co. v. Baldwin, 287 U.S. 156 (1932). *Cf.* Logan v. Zimmerman Brush Co., 455 U.S. 422, 429–30, 432–33 (1982).

[818] Saunders v. Shaw, 244 U.S. 317 (1917).

[819] "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." Goldberg v. Kelly, 397 U.S. 254, 262–63 (1970), (quoting Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)). "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria & Restaurant Workers v. McElroy, 367 U.S. 886, 894–95 (1961).

[820] 424 U.S. 319, 335 (1976).