SITUS OF PERSONAL PROPERTY FOR PURPOSES OF TAXATION

Necessity for Taxing Personal Property: One of the objections to a system of taxation is the ease with which it may be dodged by the taxpayer, or, to be more accurate, the supposed taxpayer. If any considerable portion of the property subject to taxation may by secreting from the assessor escape taxation, this means that the property which is taxed must bear more than its fair share of the burden. This gives the dishonest property owner, the tax dodger, an advantage over the honest taxpayer. In other words, it puts a premium upon dishonesty and cleverness in secreting property from the gaze of the assessor. The form of property in which this can be successfully done is personal property. In the case of real estate, the ownership of which must be a matter of record and the locality a constant one, secreting from the assessor is impossible and tax dodging is limited to under valuation. For this reason, many favor the tax on real property as a more workable system of taxation than any other, and the extremist, the single taxer, insists that it should be applied to the exclusion of all other forms of property tax. But with the rapid increase in the value of personal property, due in large part to the growth of corporations, some of which, e. g., insurance companies and express companies, have millions of dollars' worth of personal property and practically no real estate, the propaganda of the single taxer has been confined to academic discussion and stands little chance of being adopted by taxing bodies. That per-
sonal property must for some time at least continue subject to taxation may be taken as an established fact. It is therefore necessary to meet and solve as best we may the difficulties in the way of applying a system of taxation to this transitory and more or less elusive and evanescent form of property.

**Forms of Personal Property:** For purposes of taxation we may divide personal property into two forms, tangible and intangible. The former being corporeal, such as live stock, implements, merchandise, is much less readily secreted than the latter, which consists of such property as shares of stock in corporations, notes, debts, and choses in action in general. From the standpoint of taxation the latter have therefore presented the greatest difficulty, and our attention will for that reason be given mainly to these.

**Mobilia Sequuntur Personam:** The common law fiction that movables follow the person and that therefore they should be taxed at the domicile of the owner has caused no small amount of confusion because of the inherent difficulty in applying it and the tendency upon the part of some courts to force to the point of interfering with justice a mere fiction which could have been intended merely as a means of furthering justice. If an assessor finds a herd of cattle permanently located within his taxing district on the date when the assessment roll is completed, it does not accord with common sense to say that he shall not assess them unless he can find that the owner is domiciled within the district, rather than leave their assessment to the assessor in the district where the owner is domiciled, which assessor will in all probability not know anything of the existence of the herd, provided the owner is not truthful enough to report the fact. It can readily be seen that a strict adherence to this fiction would greatly facilitate the escape of a vast amount of personal property from assessment anywhere.

**Story's View:** In discussing this fiction, Justice Story says: "The exceptions to the maxim mobilia sequuntur personam have become so numerous that it cannot be safely invoked for the decision of any but the simplest cases at the present day; if indeed a case can ever be safely decided upon a maxim. The exceptions would probably be less frequent if the maxim were lex situs mobilia regit."

**View of the Supreme Court:** In discussing this same question the Supreme Court of the United States, speaking through

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1 Conflict of Laws, 8th Ed., p. 543 (a).
Chief Justice Waite, says: "The power of taxation by any state is limited to persons, property, or business within its jurisdiction. Personal property, in the absence of any law to the contrary, follows the person of the owner, and has its situs at his domicile. But for the purposes of taxation, it may be separated from him, and he may be taxed on its account at the place where it is actually located. These are familiar principles, and have often been acted upon in this court and in the courts of Illinois. If the state has actual jurisdiction of the person of the owner, it operates directly upon him. If he is absent, and it has jurisdiction of his property, it operates upon him through his property."2 And in a later case, the court, speaking through Justice Bradley, says: "If the owner of personal property within a state resides in another state which taxes him for that property as part of his general estate attached to his person, this action of the latter state does not in the least affect the right of the state in which the property is situated to tax it also. It is hardly necessary to cite authorities on a point so elementary."3 And in a still later case, Justice Gray, in delivering the opinion of the court, discusses the origin and decadence of the fiction with a conciseness leaving nothing to be desired: "The old rule, expressed in the maxim *mobilia sequuntur personam*, by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middle Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in the amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs*, the law of the place where the property is kept and used."4

*Reasons for Departure from the Fiction:* It may therefore be taken as an established rule of American law that personal property may acquire a situs of its own for the purpose of taxation. Nor are there wanting sufficient practical reasons why this should be so. When property of any kind is located in a state, legal protection must be given to it by that state. This protection may involve considerable expense and it follows that the

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2 Tappan v. Merchants' National Bank, (1873) 19 Wall. (U. S.) 490, 499, 22 L. Ed. 189.
state should be allowed to provide for this by levying on said property reasonable taxation, i.e., the same rate of taxation as levied on like property owned by its own residents. A disregard of the fiction is also necessary at times to prevent large corporations, whose property consists in large part of franchises, to escape taxation on millions of dollars' worth of property productive of immense dividends used for the purpose of doing business in states other than the one in which their main office is situated. As said by Justice Brewer in *Adams Express Co. v. Ohio:* "In conclusion let us say that this is eminently a practical age; that courts must recognize things as they are and as possessing a value which is accorded to them in the markets of the world, and that no fine-spun theories about situs should interfere to enable these large corporations, whose business is carried on through many states, to escape from bearing in each state such burden of taxation as a fair distribution of the actual value of their property among those states requires."

*Situs of Tangible Personal Property of Common Carriers:* Where the tangible personal property of a common carrier is employed entirely within a state and not in interstate or foreign commerce the situs as well as the form of taxing it is a question for the state. But where it is engaged in interstate or foreign commerce the question of its situs is then one which must be determined so as not to conflict with the power of Congress to regulate interstate and foreign commerce. In this case the states may tax it only where it has a taxable situs and the form must not be one which discriminates against it as compared with other property of the state.

*Taxable Situs of Ships:* The fact that a steamboat or other vessel is used in interstate or foreign commerce does not prevent its being taxed by a state, but its situs for purposes of taxation is its home port, and what is its home port is determined by its registry. The act of Congress requires that every vessel shall be registered at the port nearest to the place where its owner resides, and the name of this port must be painted on its stern, in large letters. In the case just cited it was held that vessels registered at the custom house in New York and engaged in transporting passengers and freight between San Francisco and

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5 (1897) 166 U. S. 185, 41 L. Ed. 965, 17 S. C. R. 604.
7 1 U. S. Stat. at L., p. 287, Sec. 3, R. S. Secs. 4141, 4178.
Panama had no taxable situs in San Francisco. Nor does the fact that she is subsequently enrolled in another state as a coaster affect her situs for purposes of taxation. So long as the vessel is engaged in interstate commerce, the mere physical presence of it in a state no more fixes its situs there than does the physical presence of a passenger on an interstate train passing through the state. While the state having jurisdiction may tax vessels as other personal property of the state in proportion to their value, it may not levy a tonnage tax, which is specifically prohibited by the constitution of the United States and where the vessels are engaged in interstate or foreign commerce, they may not be required to pay a license tax or any other tax which would be a regulation of commerce.

Ferry-boats: Where ferry-boats operate between ports of different states it becomes important to determine which state has jurisdiction to tax them. This question came before the Supreme Court of the United States in *St. Louis v. The Ferry Co.* The ferry company owning the boats was incorporated in Illinois. The boats operated between East St. Louis, Ill., and St. Louis, Mo., and when not in use were laid up on the Illinois side of the river. Under these circumstances the court decided that, although registered in St. Louis, their home port and hence their situs for purposes of taxation was in Illinois, not in Missouri, and that the latter state had no jurisdiction over them for purposes of taxation.

Rolling Stock: But a matter which has caused much more difficulty and is more important because it affects more property and more states is the determination of the taxable situs of the cars and engines of railway companies where such property is used in interstate commerce and remains in no one state during the whole year. As the states within which such property was used during a considerable portion of the year were compelled to give it protection, they very naturally felt that such property was subject to their powers of taxation. Their first attempt at a solution of the problem was the imposition of a license tax on such property for the privilege of operating within the state. But in *Pickard v. Pullman Southern Car Co.* it was held that this was

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8 Morgan v. Parham, (1872) 16 Wall. (U. S.) 471, 21 L. Ed. 303.
10 (1871) 11 Wall. (U. S.) 423, 20 L. Ed. 192.
11 (1886) 117 U. S. 34, 29 L. Ed. 785, 6 S. C. R. 635.
an unconstitutional exercise of the taxing power of the state, as it was a direct interference with interstate commerce. The tax in this case did not purport to be a property tax but a privilege tax of fifty dollars for each car operated over any railway lines within the state. In delivering the opinion of the court, Justice Blatchford said: "The car was equally a vehicle of transit, as if it had been a car owned by the railroad company, and the special conveniences or comforts furnished to the passenger had been furnished by the railroad company itself. As such vehicle of transit, the car, so far as it was engaged in interstate commerce, was not taxable by the state of Tennessee; because plaintiff had no domicile in Tennessee and was not subject to its jurisdiction for purposes of taxation; and the cars had no situs within the state for purposes of taxation; and the plaintiff carried on no business within the state, in the sense in which the carrying on of business in a state is taxable by way of license or privilege."

This sweeping decision made it look discouraging for the states, but they had not as yet exhausted their ingenuity as to method of taxing such property or their logic in convincing the Supreme Court that the property under such circumstances might have a taxable situs within the state. The state of Pennsylvania hit upon a theory which, though not entirely logical and accurate, is, nevertheless, not so illogical and inaccurate as to make it unconstitutional. It levied a tax upon the capital stock of Pullman's Palace Car Company, an Illinois corporation, some of whose cars were engaged in the transportation of passengers to and fro through Pennsylvania. The basis for the assessment on the capital stock was such proportion of the capital of the company as the number of miles of railway in Pennsylvania over which the cars of the company were run bore to the total mileage of track in that and other states over which its cars were run. This is not strictly accurate because the number of cars per thousand miles of road may be considerably greater in one state than in another. But the rule nevertheless furnishes a fairly practical working basis. In sustaining the constitutionality of the law, the court says: "The tax on the capital of the corporation, on account of its property within the state, is, in substance and effect, a tax on that property. . . . The cars of this company within the state of Pennsylvania are employed in interstate commerce; but their being so employed does not exempt them from taxation by the state; and the state has not taxed them because of their being so employed, but because of their being within its territory and
jurisdiction. The cars were continuously and permanently employed in going to and fro upon certain routes of travel. If they had never passed beyond the limits of Pennsylvania, it could not be doubted that the state could tax them, like other property within its borders, notwithstanding they were employed in interstate commerce. The fact that instead of stopping at the state boundary, they cross that boundary in going out and coming back cannot affect the power of the state to levy a tax upon them. The state, having the right, for the purposes of taxation, to tax any personal property found within its jurisdiction, without regard to the place of the owner's domicile, could tax the specific cars which at a given moment were within its borders. . . . This was a just and equitable method of assessment; and, if it were adopted by all the states through which these cars ran, the company would be assessed upon the whole value of its capital stock, and no more."

Undoubtedly a state may tax in proportion to its value the average amount of the rolling stock of a railway which is in habitual use within the state even though some or all of it may at times pass out of the state and their places be taken by others. In the case of Marye v. B. & O. R. Co., the court, discussing a tax on railway rolling stock, said: "And such a tax might be properly assessed and collected in cases like the present where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing, according to the exigencies of the business. In such cases the tax might be fixed by an appraisement and valuation of the average amount of the property thus habitually used, and collected by distraint upon any portion that at any time might be found." The same rule has been applied to refrigerator cars owned by independent companies and leased to the railroads.

These numerous decisions of the court of last resort may be said to have established this as a principle of American law. It is interesting to note the progress made since the strong dissenting opinion by Justices Bradley, Field, and Harlan in Pullman's Palace Car Co. v. Pennsylvania, cited above, in which we find the following language: "It seems to me that the real question in the present case is as to the situs of the cars in question. They

12 Note 4, supra, 141 U. S. at pp. 25, 26.
13 (1888) 127 U. S. 117, 32 L. Ed. 94, 8 S. C. R. 1037.
are used in interstate commerce between Pennsylvania, New York and the Western States. Their legal situs no more depends on the states or places where they are carried in the course of their operations than would that of any steamboats employed by the Pennsylvania Railroad Company to carry passengers on the Ohio or Mississippi. But the distinction made by the majority of the court between land and water transportation, as regards the taxable situs of the instruments used, is, we think, sound legally and practical economically.

Express Companies: The personal property of an express company, such as office fixtures, horses, wagons, and cars which do not go outside of the state present little difficulty, but express cars and other movable property used in interstate commerce present the same difficulties as the Pullman and refrigerator cars and are governed by the same rules. Where an express company is a purely domestic corporation the taxable situs for its personal property would be the principal place of business of the corporation; this would apply to its cars as well as to the rolling stock of a railway company, but the legislature may vary this. With express companies, the larger question in regard to taxation is the taxation of its intangible personal property which is usually several times as large as that of its tangible property, and the question of its taxable situs will be dealt with later.

Telegraph and Telephone Companies: With reference to telegraph and telephone companies, there is not so much of their tangible personal property moving from state to state and hence the question of the taxable situs of such property is not so much a question of adjusting the taxing powers of the state to the federal regulation of interstate commerce. It is mainly one of adjustment between the local units of the states. In Western Union Tel. Co. v. Borough of New Hope the court sustained a license tax of one dollar per pole and two dollars and a half per mile of wire on the telegraph, telephone, and electric light poles and wires within its limits, notwithstanding the fact that this was proven by the company to be more than the total income from the business done by the company in the borough. But with these, as with express companies, the larger part of their property is usually intangible. As to their tangible property the difficult ques-

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10 Note 4, supra, 141 U. S. at p. 34.
17 (1903) 187 U. S. 419, 47 L. Ed. 240, 23 S. C. R. 204.
tions arise in fixing the valuation rather than in determining their situs.

*Timber:* While growing timber is a part of the realty and the question of its situs presents no difficulty, being that of the land on which it grows, when severed it becomes personal property and like other personal property can acquire a situs of its own. Logs or lumber, unless actually in transit in interstate commerce, would be subject to taxation wherever it might be when the assessment roll is completed. If in transit it would not have a situs of its own and would be taxed at the domicile of the owner, unless before shipment it had acquired a situs different from that of the domicile of the owner.\(^\text{18}\)

*Coal:* Until mined, coal is a part of the realty and is taxed as such, but as soon as it is mined it becomes personalty and would be taxable where taken to the surface through the main workings, unless as a result of transportation it has acquired a situs at another place. The same principles determine the taxable situs of ore.\(^\text{19}\) As to when coal shipped from one state into another ceases to be in transit and acquires a taxable situs, the case of *Brown v. Houston*\(^\text{20}\) is interesting. It was held in this case that a cargo of coal shipped from Pittsburgh, Pa., and offered for sale in New Orleans had a taxable situs there even though it might later be exported to another state, as claimed by the plaintiffs would be done.

*Live Stock:* This is a form of tangible personal property which may readily acquire a situs of its own and does if permanently located in a taxing district other than that of the owner's domicile. Though live stock does not acquire a situs of its own during continuous transit in interstate commerce, it does when unloaded at stockyards and offered for sale there;\(^\text{21}\) or if shipped under a bill of lading which allows of the animals being fed for an indefinite time at an intermediate point and then shipped to a point in another state without a new bill of lading, they acquire a taxable situs at their feeding station.\(^\text{22}\) In the Maryland case the court stated with clearness the principle on which the cattle

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\(^{18}\) Osterhout v. Jones, (1884) 54 Mich. 228, 19 N. W. 964. As to when lumber is constructively in transit, see Corning v. Masonville Twp., (1889) 74 Mich. 177, 41 N. W. 831.  
\(^{19}\) Eureka Hill Mining Co. v. Eureka, (1900) 22 Utah 447, 63 Pac. 654.  
\(^{20}\) (1885) 114 U. S. 622, 29 L. Ed. 257, 55 S. C. R. 1091.  
are held to have acquired a taxable situs in Baltimore County: "In this case the place of destination, upon their shipment from the west, is Baltimore County; and in the latter place the owners keep them until they shall have determined what disposition shall be made of them. The property, then, not being in transit, either through the state or from a point in the state to a point outside, is property within the state within the meaning of the statute." 23 "It then quotes with approval from Carrier v. Gordon: 24 "The safer rule is to consider property actually in transit as belonging to the place of its destination, and property not in transit as property in the place of its situs, without regard to the intention of the owner, or his residence in or out of the state." Clearly the intention to ship at a future time cannot determine the situs, as that would make the taxation of most movable property depend upon the mere intention of the owner, a fact too difficult of ascertaining to furnish a workable basis for deciding whether or not the state may collect revenue for its support.

In the Texas case the cattle were shipped to Chicago, Kansas City, etc., from Oklahoma, but were held for feeding at the defendant's cotton-seed mill in Montague County, Texas. We quote from the opinion of the court: "We are not inclined to hold that cattle in Texas while being fattened in the owners' pens for the outside markets are too transient to have a situs and to be taxable here. Indeed, feeding cattle for such markets has become, as grazing cattle has long been, a permanent as well as extensive and profitable pursuit of the Texas people. It is a local industry, and during the feeding season the cattle, from whatever source they may come, become an important part of the mass of the personal property of the state, enjoying alike the protection of our laws and subject to the common burden of taxation. Still less are we inclined to hold that cattle so situated are exempt from local taxation in consequence of the commerce clause of the Federal Constitution. If it should be so held, then to what movable property in the states may not this ever-expanding clause be extended? The paper cloak of an adjustable through bill of lading, like those found in this record, may thus be easily made broad enough to cover from local taxation all the cattle of Texas, whether grazing in pastures, or on the open range, or feeding in pens. To the feeding in transit privilege, need only be added

23 Note 21, supra.
24 (1871) 21 Ohio St. 605.
the grazing in transit privilege, and all will be covered. If the owner may be allowed ninety days for feeding, why may he not be allowed six months or a year or two for grazing? In both cases the cattle may be said, figuratively speaking, to be on their way to Chicago or other market, but not in the sense of interstate commerce or tax laws."  

In Nolan v. San Antonio Ranch Co., it was held that where a herd of cattle pastures in more than one county the percentage of the herd taxed by each county shall be the same as the percentage which the pasture in that county is of the whole pasture, and that the location of the general management of them was immaterial. This is, of course, a proper matter for control by the state legislature, and the statute providing for the above distribution among the subordinate taxing units would be clearly constitutional. Where a farm is partly in one township or county and partly in another, other factors than the extent of land in each may determine the taxable situs of stock kept thereon. For instance, where the barn is in one taxing district and the house in another, and the live stock is kept or fed in the barn during part or all of the year, the subdivision in which the barn rather than the one in which the house is located would be the taxable situs of the stock kept on such farm.

Dogs: There is conflict of authority as to whether or not dogs are property at all. If property, they are, of course, personal property and if taxed for purposes of revenue the same rule as to situs would hold in regard to them as in regard to other domestic animals. In Mullaly v. People, the court, after examining the old rules under which dogs were considered ferae naturae, said: "The artificial reasoning upon which these rules were based is wholly inapplicable to modern society. Tempora mutantur et legis mutantur in ills. Large amounts of money are now invested in dogs, and they are largely the subjects of trade and traffic. In many ways they are put to useful service, and so far as pertains to their ownership as personal property, they possess all the attributes of other personal property." It was held in this case that they came under the statutory designation of personal property. Even though not looked upon as property, they may still be taxed for regulative purposes. It is then in the nature of a

25 Note 22, supra.  
20 (1891) 81 Tex. 315, 16 S. W. 1064.  
28 (1881) 86 N. Y. 395.
license or privilege tax and the situs would naturally be that of the owner's domicile.

**Intangible Personal Property**

*Public Stocks and Bonds:* We will not discuss here the right of the state to tax evidences of public indebtedness, but will confine ourselves to the question of their situs when taxable at all. That the taxable situs of such property is the domicile of the owner may be regarded as fairly well settled in this country since the decision of the Supreme Court of the United States in the case of the *State Tax on Foreign-Held Bonds,*

[citation]
cited with approval in *Erie Railroad Co. v. Pennsylvania.*

Thus a resident of Nebraska could not be taxed in Illinois on bonds of the city of Chicago held by him.

*Shares of Stock in Private Corporations:* Contrary to the rule as to public stock, private corporation stock may be taxed in the state of the incorporation regardless of the residence of the owner of such stock, as this class of stock has a taxable situs at the domicile of the corporation. In *Tappan v. Merchants' Bank,*

[citation]
the court, speaking through Chief Justice Waite, said: "Shares of stock in national banks are personal property. They are made so in express terms by the act of Congress under which such banks are organized. They are a species of personal property which is in one sense intangible and incorporeal, but the law which creates them may separate them from the person of their owner for the purposes of taxation, and give them a situs of their own. This has been done. . . . The shareholder is protected in his person by the government at the place where he resides; but his property in this stock is protected at the place where the bank transacts his business. He requires for it the protection of the government there, and it seems reasonable that he should be compelled to contribute there to the expenses of maintaining that government. It certainly cannot be an abuse of legislative discretion to require him to do so."

In corporations over which the states have control, their legislatures may fix the situs of their stock for purposes of taxation, as Congress has done in the case of the stock in national banks.

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29 (1872) 15 Wall. (U. S.) 300, 21 L. Ed. 179. [Cleveland, etc., R. Co. v. Pennsylvania.]
31 Note 2, supra.
The fact that the stock is taxed at the domicile of the corporation does not, however, prevent the state in which the stockholder resides from taxing it there as a part of his personal property.\textsuperscript{33} Whether or not the legislature will exercise this power is a question of expediency, not one of legal right. As said by the supreme court of Ohio in \textit{Bradley v. Bander},\textsuperscript{34} "The constitutional power to tax shares of stock, owned by our citizens in corporations located without the state, does not depend on whether or not the capital of the corporation is or is not taxed in the state where the corporation is created. The power is the same, whether the capital of the corporation is taxed there or not." The Ohio statute taxing residents on shares of stock in non-resident as well as in domestic corporations was held constitutional by the Supreme Court of the United States in \textit{Sturges v. Carter}.	extsuperscript{35} This may safely be regarded as an established principle.

\textit{Corporate Franchises:} There is pretty general agreement in this country that corporate franchises are personal property and not mere naked powers, but rather powers coupled with an interest which vest in the corporation by virtue of its charter.\textsuperscript{36} Whatever may be the form of the balance of its property, the franchises of a corporation are personalty.\textsuperscript{37} There is also general agreement that they are taxable just as much as any other property, unless specifically exempted.\textsuperscript{38} Nor is it necessary that they be mentioned eo nomine, but are taxable under a statute requiring all property in the state, not exempt, to be taxed.\textsuperscript{39} Of course, the states may not without the consent of Congress tax the franchises granted by the federal government; hence the franchise of a national bank is not taxable by a state. The taxable situs of this species of personalty (the franchises of a corporation) is the domicile of the corporation, i.e., where its principal office is located.\textsuperscript{40} The question of situs does not occasion as much difficulty as does the question of valuation.

\begin{itemize}
\item \textsuperscript{34} (1880) 36 Ohio St. 28, 38 Am. Rep. 547.
\item \textsuperscript{35} (1885) 114 U. S. 511, 29 L. Ed. 240, 5 S. C. R. 1014.
\item \textsuperscript{36} Society for Savings v. Coite, (1867) 6 Wall. (U. S.) 594, 18 L. Ed. 897.
\item \textsuperscript{37} Monroe County Sav. Bank v. Rochester, (1867) 37 N. Y. 365.
\item \textsuperscript{38} New Orleans, etc., R. Co. v. New Orleans, (1892) 143 U. S. 192, 36 L. Ed. 121, 12 S. C. R. 406.
\item \textsuperscript{39} Fond du Lac Water Co. v. Fond du Lac, (1892) 82 Wis. 322, 52 N. W. 439, 16 L. R. A. 581.
\item \textsuperscript{40}See Minn. G. S. 1913, Sec. 1999. As to what is a franchise tax, see Cooley, Taxation, I, 3rd ed., 676 et seq.
\end{itemize}
The certificate of a corporation is not necessarily final as to the domicile of a corporation. In Wisconsin the location designated in its articles of incorporation is not conclusive as to its principal office or place of business so as to enable it to escape the fair burdens of taxation, but the state may inquire whether or not the designation in its charter conforms to the facts. In Michigan, also, the place where its actual business is transacted and not the place named in the charter, where the two do not correspond, is considered the situs for purposes of taxation. The purpose of this is clearly to prevent a corporation from dodging its fair share of taxation by naming a small town, where the tax rate is low, as its principal place of business, notwithstanding the fact that its actual business is done in a large city where the rate is much higher.

However just and practical this view may seem, it is not the one held by the New York courts. In Western Transp. Co. v. Scheu it was held that the principal office of a domestic corporation was conclusively fixed by its articles of incorporation, that this was as true for purposes of taxation as for other purposes, and that only in that place could it be lawfully taxed on its personal property. And in a later case it was held that the place designated by the articles of incorporation was no less conclusive, even though it appeared that it was deliberately chosen to avoid taxation in the place where the actual operations were intended to be conducted. In this case the place named in the articles was Clarkstown, a little inland village in Rockland County, which could not possibly be the principal place of business of this corporation. But this did not trouble the court, which disposes of the matter in the following cavalier way: "If the company had a principal office so located by its certificate, then it was to be taxed where its financial concerns were transacted. It is urged that the purpose for which the principal office of the plaintiff was located in the county of Rockland was to avoid taxation. That may be. . . . We held that to be immaterial in the case of the Western Transportation Company. We have nothing to do with the motive. We deal only with the fact." But it would seem to

41 Milwaukee S. S. Co. v. Milwaukee, (1892) 83 Wis. 590, 53 N. W. 839, 18 L. R. A. 353.
43 (1859) 19 N. Y. 408.
44 Union Steamboat Co. v. Buffalo, (1880) 82 N. Y. 351.
one possessed of average common sense that they dealt only with
the fiction and not with the fact. The fact was—and this is undis-
puted—that their principal place of business was in Buffalo,
regardless of where they said it was.

In the case of corporations not under the control of the federal
government, either by virtue of their creation or the character of
their business, it is competent for the legislature of the state to
make of a foreign corporation doing business within it a domestic
corporation for purposes of taxation. In Young v. South
Tredegar Iron Co., Judge Lurton, later of the Supreme Court of
the United States, says: "It is not, in our judgment, optional
with such corporations as to whether they will or will not become
domestic corporations as required by this act. Sound reasons of
public policy, in view of the rapid increase of the number of cor-
porations, and the vast amount of wealth engaged in corporate
business, demanded legislative regulation as to the terms upon
which corporations of other states should be suffered to carry on
business within this state. The legislation by which the corpora-
tions of other states are made corporations of this state is clearly
within the legislative power." Where the only franchise granted
to a foreign corporation is not the right to exist, i. e., the right to
become a domestic corporation, but is merely the right to do
business, the form of taxing this franchise is a license tax and
the situs of the property for the purposes of levying this tax is
the principal place of business of such foreign corporation within
the state. Foreign insurance companies may be so taxed.8

Tax on Gross Receipts: Closely related to a franchise tax on
a corporation is a tax on its gross or net receipts. It is more com-
monly levied on gross receipts so as to prevent the corporation
from reducing the taxable fund by unnecessary expenses. Though
a state may tax a corporation engaged in interstate commerce on
receipts derived from local business, it may not tax it on receipts
derived from interstate commerce. Although this statement con-
flicts with the decision in the case of the State Tax on Railway
Gross Receipts, it is undoubtedly in accord with the weight of
authority in this country. It will be noted that the cases cited

45 Ducat v. Chicago, (1870) 10 Wall. (U. S.) 410, 19 L. Ed. 972.
46 (1866) 85 Tenn. 189, 2 S. W. 202, 4 Am. St. Rep. 752.
47 (1872) 15 Wall. (U. S.) 284, 21 L. Ed. 164. [Philadelphia & Reading
R. Co. v. Pennsylvania.]
48 Fargo v. Michigan, (1887) 121 U. S. 230, 30 L. Ed. 888, 7 S. C. R.
857; Philadelphia, etc., S. S. Co. v. Pennsylvania, (1887) 122 U. S. 326,
30 L. Ed. 1200, 7 S. C. R. 1118; Ratterman v. Western Union Tel. Co.,
include steamship, express, telegraph, and railway companies, and substantially overrule the decision in the *State Tax on Railway Gross Receipts*. In fact, the court says in *Steamship Co. v. Pennsylvania*: "A review of the question convinces us that the first ground on which the decision in *State Tax on Railway Gross Receipts* was placed is not tenable; that it is not supported by anything decided in *Brown v. Maryland*; but, on the contrary, that the reasoning in that case is decidedly against it. The second ground on which the decision referred to was based was, that the tax was upon the franchise of the corporation granted to it by the state. If intended as a tax on the franchise of doing business,—which in this case is the business of transportation in carrying on interstate and foreign commerce—it would clearly be unconstitutional."49 Where the state has jurisdiction to levy a franchise tax, and it undoubtedly has in the case of corporations created by it, the gross receipts may be taken as a measure for determining the value of the franchise. The situs for taxing gross receipts would be the principal place of business of the corporation, as in the case of franchises already discussed.

**Good Will:** The taxation of the good will of the business of a private individual or partnership corresponds to the taxation of the franchise of a corporation. Though it has been held by the courts of New York and Indiana that good will is neither real nor personal property,50 it has market value and is the subject of purchase and sale as other personal property and has been decided

(1888) 127 U. S. 411, 32 L. Ed. 229, 8 S. C. R. 1127; Pacific Express Co. v. Seibert, (1892) 142 U. S. 339, 35 L. Ed. 1035, 12 S. C. R. 250; New York, etc., Ry. Co. v. Pennsylvania, (1895) 158 U. S. 431, 39 L. Ed. 1043, 15 S. C. R. 896; McHenry v. Alford, (1898) 168 U. S. 651, 42 L. Ed. 614, 18 S. C. R. 242. These cases are not to be confounded with such cases as *United States Express Co. v. Minnesota*, (1912) 223 U. S. 335, 56 L. Ed. 459, 32 S. C. R. 211, aff'g 114 Minn. 346, 131 N. W. 489; *Maine v. Grand Trunk Ry. Co.*, (1891) 142 U. S. 217, 35 L. Ed. 994, 12 S. C. R. 121, holding that a state tax upon the property within the state of a foreign corporation engaged in interstate commerce is not invalid though the value of the property is calculated upon the amount of its gross receipts. In the latter case the tax was called a franchise tax. It was held not to be a tax upon gross receipts. See, also, *Western Union Co. v. Taggart*, (1896) 163 U. S. 1, 41 L. Ed. 49, 16 S. C. R. 1054; *Adams Express Co. v. Ohio State Auditor*, (1897) 165 U. S. 194, 41 L. Ed. 683, 17 S. C. R. 305; Galveston, etc., Co. v. Texas, (1908) 210 U. S. 217, 52 L. Ed. 1031, 28 S. C. R. 638.

49 Note 48, supra, 122 U. S. at p. 342.

to be such by the courts of England and the United States.\textsuperscript{51} In a note to the latter case cited the authorities on the subject are given. The situs is the place where the business is carried on.

\textit{Debts:} Debts, whether due from an individual, a private corporation, a state, or one of its subdivisions, unless exempted by statute, constitute a form of personal property which is subject to taxation and its situs is the domicile of the one to whom such debt is owed.\textsuperscript{52} In the case cited the debt was to be paid to a resident of Connecticut and it was contended that this tax was unconstitutional because it was a regulation of interstate commerce, abridged the "privileges or immunities of citizens of the United States," taxed property situated outside the state, violated the sovereignty of Illinois over property within her borders, impaired the obligation of contracts, deprived plaintiff of his property without due process of law.

In disposing of these objections, Justice Harlan, speaking for the court, said: "Plainly, our only duty is to enquire whether the Constitution prohibits a state from taxing in the hands of one of its resident citizens a debt held by him upon a resident of another state, and evidenced by the bond of the debtor, secured by deed of trust or mortgage upon real estate situated in the state in which the debtor resides. The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the state imposing the tax. The debt is property in his hands constituting a portion of his wealth, from which he is under the highest obligation, in common with his fellow-citizens of the same state, to contribute for the support of the government whose protection he enjoys. That debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond wherever actually held or deposited is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the debt, for purposes of taxation, affected by the fact that it is secured by a mortgage on real estate situated in Illinois. It may undoubtedly be taxed by the state when held by a resident therein."

Nor is the taxing power of the state in which the creditor is


\textsuperscript{52} Kirtland v. Hotchkiss, (1879) 100 U. S. 491, 25 L. Ed. 558.
located affected by the fact that the same property is taxed in another state. Whether the former state shall on this account exempt such property from taxation by it is a question of expediency which it alone must determine, as there is no federal question involved. For, as said by the court in the case just cited, this "is a matter which concerns only the people of that state, with which the federal government cannot rightly interfere." Neither does the fact that the debt is one against another state affect its situs, or the right of the state in which the creditor resides to tax the property.\(^5\) Where there is but one state involved and it is a question between different taxing units within it as to the taxable situs of bonds, notes, credits, and choses in action in general, the matter is regulated by statute, but in the absence of statutes, the domicile of the owner, not that of the agent, governs, although there is conflict of authority on this point.\(^5\) In the case cited, which was one involving the situs of promissory notes, the court says: "The thing taxed is the debt, a species of intangible property incapable of an actual situs independent of the owner." The opposite view is taken in People ex rel. Jefferson v. Smith.\(^5\)

That the domicile of the creditor rather than that of the debtor should be the situs for taxing debts seems clear. For as said by the Supreme Court of the United States in Railroad Co. v. Pennsylvania:\(^5\) "Debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property and in their hands they may be taxed. To call debts the property of debtors is simply to misuse terms." In accord with this line of reasoning the supreme court of Montana in construing a statute requiring property to be taxed in the county "where the same may be found," held that a mortgage is not taxable in the county where it is recorded, unless the mortgage itself is owned there.\(^5\)

The argument in favor of taxing mortgages and choses in action, which are required to be recorded in order to maintain priority as a lien, at the situs where they are recorded is an administrative rather than a logical one. Undoubtedly fewer such in-

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53 Bonaparte v. Tax Court, (1881) 104 U. S. 592, 26 L. Ed. 845.
54 Boyd v. Selma, (1891) 96 Ala. 144, 11 So. 393.
55 (1882) 88 N. Y. 576.
56 Note 30, supra.
57 Gallatin County v. Beattie, (1878) 3 Mont. 173.
Instruments would escape taxation under this method than under the one providing for their taxation at the domicile of the creditor. If, however, the place of record is made the situs for purposes of taxation, as may be provided by the legislature, and the tax is collected from the mortgagor, provision should be made allowing him to deduct this from the amount due on the mortgage.

*Bank Deposits:* Money deposited in bank, unless it is a special deposit which calls for the return of the identical pieces of money deposited and makes the bank a mere bailee, is not tangible property for purposes of taxation, but for this as for commercial purposes is a mere credit and the relation between the depositor and the bank is that of debtor and creditor rather than that of bailor and bailee.\(^5^8\) Being a debt, their situs for purposes of taxation follows the rule of *mobilia sequuntur personam* and hence is at the domicile of the creditor. In *Pyle v. Brenneman*, just cited, the Circuit Court of Appeals says: “A deposit in bank to the credit of a depositor, and subject to his check, is not a bailment. It is a loan. The depositor does not retain a property in any particular funds, but the money which he deposits goes into the funds of the bank. The bank owes him the amount, and the relation of debtor and creditor is created by the transaction. . . . This is the law as it is declared by both the federal and the state courts in this country, and in obedience to it we hold that the deposits of Brenneman in the banks of Sistersville are debts due him by the banks, and that the situs of the property is the domicile of the creditor.” In this case, diversity of citizenship gave the federal courts jurisdiction.

But this rule makes it possible for most depositors to escape taxation on their deposits in banks. Where but one state is involved, if the legislature would make the location of the bank


In *Fidelity, etc., Trust Co. v. Louisville*, (1917) 245 U. S. 54, 62 L. Ed. 145, 38 S. C. R. 40, a taxpayer domiciled in Kentucky carried on business in Missouri, depositing his gains therefrom in banks in Missouri. After his death, a claim was made upon his estate by the city of his domicile to recover omitted taxes in respect of those deposits. It was held by the Supreme Court of the United States that, conceding without argument that the deposits could have been taxed by Missouri, under the authority of *Liverpool, L., & G. Ins. Co. v. Orleans Assessors*, (1911) 221 U. S. 346, 55 L. Ed. 762, 31 S. C. R. 550, L. R. A. 1915C 903, and *Metropolitan Life Ins. Co. v. New Orleans*, (1907) 205 U. S. 395, 51 L. Ed. 853, 27 S. C. R. 499, the deposits were also taxable in Kentucky, and that such double taxation is not subject to any constitutional objection.
the situs and where more than one state is concerned an inter-
state agreement to that effect were made, this would establish a
rule under which it would be very difficult for bank deposits to
escape taxation. The daily, weekly, or monthly averages could
be taken as the basis for valuation. Even in the absence of spe-
cific legislation on the point, there are cases which hold that the
location of the bank is the proper situs.\(^5\)

**Annuities:** Though an annuity, if given with words of inher-
itance, will for purposes of descent be treated as real estate, for
purposes of taxation it is treated as personal property. Its situs
is that of the domicile of the annuitant, and for the same reason
that the taxable situs of a debt is the domicile of the creditor. An
annuitant can be assessed only on the amount due and unpaid at
the date of assessment and not on the principal sum producing
the annuity.\(^6\)

**Seats in Stock Exchange:** A seat, which is equivalent to
membership, in a stock or produce exchange, although intangible,
is a right which has marketable value, can be bought and sold,
and is a species of personal property. Yet it was held in Thomp-
son v. Adams\(^6\) that "the seat is not property in the eye of the
law, . . . . It is the mere creation of the board, and, of course,
was to be held and enjoyed with all the limitations and restrictions
which the constitution of the board chooses to put upon it." But the Supreme Court of the United States in Page v. Edmunds\(^6\)
says: "Undoubtedly the seat in the board 'was to be held and
enjoyed with all the limitations and restrictions which the board
chooses to put upon it.' We expressed that limitation in Hyde v.
Woods, 94 U. S. 525, but we decided nevertheless that a seat was
property."

As a valuable form of personal property there is no reason
why it cannot or should not be taxed by the state legislature;
although it was held in People v. Feitner\(^6\) that a seat was not
taxable under the general statute taxing personal property; a like
decision was rendered by the Maryland supreme court in Balti-
more v. Johnson,\(^6\) and the supreme court of California in San

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\(^{5}\) New Eng. Mut. Life Ins. Co. v. Board of Assessors, (1908) 121
La. 1068, 47 So. 27, 26 L. R. A. (N. S.) 1120.

\(^{6}\) State v. Cornell, (1865) 31 N. J. L. 374.

\(^{61}\) (1880) 93 Pa. St. 55.


\(^{63}\) (1901) 167 N. Y. 1, 60 N. E. 265, 82 Am. St. Rep. 698.

\(^{64}\) (1903) 96 Md. 737, 54 Atl. 646, 61 L. R. A. 568.
Franco v. Anderson,\(^65\) that a seat "has no such qualities as make it assessable and taxable as property. It is a mere right to belong to a certain association with the latter's consent, and to enjoy certain personal privileges and advantages which flow from membership of such association. . . . It is too impalpable to go into any category of taxable property." But this reasoning, or rather dogmatic form of assertion, is not convincing and does not square with present-day standards of justice in the distribution of the burdens of taxation. In Minnesota, it is settled that membership in a board of trade is property, and taxable.\(^66\) As the right can be exercised only at the place where the exchange is located and there receives its protection, that is naturally its situs for purposes of taxation.

\textit{Copyrights and Patent Rights:} While the states may not tax the incorporeal right of an author or inventor to his idea or invention or discovery, which right is conferred by the federal government,\(^67\) they may tax the tangible articles in which the ideas, invention, or discovery are embodied. Thus it was held in \textit{Weber v. Virginia},\(^68\) that letters patent granted by the United States did not exempt from the tax or license laws of Virginia the tangible articles produced in accordance with the rights conferred by these letters patent. As said by the court: "It is only the right to the invention or discovery—the incorporeal right—which the state cannot interfere with. Whatever rights are secured to inventors must be enjoyed in subordination to the general authority of the state over all property within its limits." It then quotes with approval the language of Justice Harlan in, \textit{Patterson v. Kentucky}.\(^69\) "The right of property in the physical

\(^{65}\) (1894) 103 Cal. 69, 36 Pac. 1034, 42 Am. St. Rep. 98.
\(^{66}\) State v. McPhail, (1914) 124 Minn. 398, 145 N. W. 108.
\(^{67}\) People ex rel. Edison Elec. Illum. Co. v. Assessors, (1898) 156 N. Y. 417, 51 N. E. 269, 42 L. R. A. 290; Commonwealth v. Westinghouse, etc., Co., (1892) 151 Pa. St. 265, 24 Atl. 1107; Commonwealth v. Phila. Co., (1893) 157 Pa. St. 527, 27 Atl. 378; People ex rel. A. T. Johnson Co. v. Roberts, (1899) 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126 (copyright). It seems to be established that when the tax is not upon the property of the corporation, but is in the nature of a privilege tax, the fact that a part of the capital is invested in patents or copyrights is not a reason for exemption. State ex rel. Marsden Co. v. State Board, (1898) 61 N. J. L. 461, 39 Atl. 638. That practically the whole capital of a corporation is represented by patent rights which are not subject to taxation does not prevent the assessment against it of a franchise tax regulated by the amount of the capital which is employed within the state. People ex rel. U. S. Aluminum Printing Plate Co. v. Knight, (1903) 174 N. Y. 475. 67 N. E. 65, 63 L. R. A. 87.
\(^{68}\) (1880) 103 U. S. 344, 26 L. Ed. 565.
\(^{69}\) (1878) 97 U. S. 501, 24 L. Ed. 1115.
substance of the discovery is altogether distinct from the right in the discovery itself, just as the property in the instruments or plates by which copies of a map are multiplied is distinct from the copyright of the map itself." The taxable situs of the tangible property is the same as that of other tangible property already discussed.

The Right to Bequeath and Inherit Property: The right or privilege to bequeath property is not generally looked upon as a natural right inherent in one by reason of his membership in human society, but is rather an artificial, conventional right or privilege conferred upon one by the state to say who shall enjoy the use of his property after his death. The same is true of the right or privilege of taking property by will or inheritance. As the state confers this right, it may say under what conditions or restrictions and subject to what burdens it shall be exercised. Hence the right of the state to levy inheritance or succession taxes. This is not a tax on property but upon its transmission. Hence the states may tax a bequest of property to the United States, notwithstanding the fact that it cannot tax the property of the United States.70

After deciding that "the tax is not a tax upon the property itself, but upon its transmission by will or by descent," the court quotes with approval the language of Chief Justice Taney in Mager v. Grina:71 "The law in question is nothing more than the exercise of the power which every state and sovereignty possesses of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. . . . If a state may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy." The situs for the taxation of this incorporeal right of transmitting and receiving property is the domicile of the decedent and, unless otherwise provided by statute or agreement, the place where the property transmitted is located. Thus New York may levy an inheritance tax on money deposited in its banks, even though Pennsylvania, in which the

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71 (1850) 8 How. (U. S.) 490, 12 L. Ed. 1168.
decedent was domiciled, has levied a like tax on the right to bequeath the money.\textsuperscript{72}

\textbf{Situs of Tangible and Intangible Property in Case of Qualified Ownership}

\textit{Trust Property:} In general, the taxable situs of trust property is the residence of the trustee. This is the rule laid down in \textit{Smith v. Byers}.\textsuperscript{73} And in \textit{People v. Albany Assessors}\textsuperscript{74} it was held that the trustee was liable for the taxes on trust property even though the property was located in a foreign jurisdiction. And in \textit{Dorr v. Boston}\textsuperscript{75} it was held that shares of stock in a corporation held by non-resident trustees are not taxable to resident beneficiaries. But, as in the case of personal property held directly by the owner, it is competent for the legislature to fix the situs of trust property, when such property consists of personality, but not, of course, unless it has jurisdiction over the trustee or property. Thus it was held by the Rhode Island court that a statute providing that personal property held in trust should be taxed at the residence of the beneficiary was inoperative where both the trustee and property were outside the state.\textsuperscript{76} Where there are several trustees and they do not all reside in the same jurisdiction, the weight of authority is that they are taxed pro rata as to the personal property held in trust, as neither jurisdiction can tax the trustee residing outside of it.\textsuperscript{77} The fact that a majority of the trustees reside within the jurisdiction would not give it authority to tax the whole fund.

\textit{Decedents' Estates:} The personal property of a decedent has its situs for purposes of taxation at the domicile of the executor or administrator.\textsuperscript{78} But there is some conflict on this point. The Missouri court holds that the taxable situs of the personal property of a decedent is his last place of residence rather than the residence of his personal representative.\textsuperscript{79} A like decision was reached by the Connecticut court in the case of \textit{Cornwall v.}

\textsuperscript{73} (1871) 43 Ga. 191. So declared in State v. Willard, (1899) 77 Minn. 190, 79 N. W. 829.
\textsuperscript{74} (1869) 40 N. Y. 160.
\textsuperscript{75} (1856) 6 Gray (Mass.) 131.
\textsuperscript{76} Anthony v. Caswell, (1885) 15 R. I. 159, 1 Atl. 290.
\textsuperscript{77} Trustees v. City Council of Augusta, (1892) 90 Ga. 634, 17 S E. 61.
\textsuperscript{78} State v. Corson, (1888) 50 N. J. L. 381, 13 Atl. 265.
\textsuperscript{79} Stephens v. Booneville, (1864) 34 Mo. 323.
The New Jersey holding would seem to be the more logical, as for purposes of taxation the personal representative is looked upon as owner; he is constructively in possession; and where listing is required, as is usually the case with personal property, he is the one legally required to do the listing. This view accords with the weight of authority. In Minnesota, by statute, the personal property of the estate of a deceased person is listed and assessed at the place of listing at the time of his death.

Infant's Property: Although not entirely free from conflict, it is a general rule that the situs for purposes of taxation of the personal property of an infant in the custody of a guardian is the residence of the guardian rather than that of the infant. But where the infant acquires a separate domicile with the consent of the guardian, it was held, in *Kirkland v. Whately*, that the taxable situs of his personal estate becomes that of the infant. In the case of the death of an infant, still having a guardian, the situs of his personal property for purposes of taxation shifts from the guardian's domicile to that of the administrator.

### Double Taxation

*In General:* In devising a system of taxation there are two main considerations which must never be lost sight of—adequacy of revenue and justice in the distribution of the burden. A failure to meet the first requisite will cripple the activities of the state, and a disregard of the second will cause dissatisfaction and demoralization. Double or duplicate taxation does not accord with our sense of justice in the distribution of the burden, in that the property of some is compelled in this way to bear more of the burden than an equal amount of the same class of property owned by others. The injustice of this readily appears when we reflect that if all the property were owned by the state no one would contend for a rule which would require some of the tenants to pay rent twice while others were assessed but once on the same kind of property. In the case of real property, double taxation is not resorted to where the whole interest is held by the same person. But in the case of personal property, double taxation is not uncom-

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80 (1871) 38 Conn. 443.
81 Minn. G. S. 1913, Sec. 2008.
82 Tousey v. Bell, (1864) 23 Ind. 433; Minn. G. S. 1913, Sec. 2009.
83 (1862) 4 Allen (Mass.) 462.
mon, and however unfair it may be, it is not, apart from a constitutional prohibition, illegal. We are here concerned with double taxation of personal property only, and with reference to this species of property only in so far as double taxation results from double situs. This may happen where the property has a taxable situs in more than one subdivision of the same state or where it has a taxable situs in more than one state.

Where More than One Situs in Same State: As already suggested, double taxation in the same state may be prevented by a provision in the constitution prohibiting it. In many cases where there is no constitutional provision the statutes provide that a receipt for taxes paid on person or property in one part of the state shall be good throughout the state against demands for taxes on the same person or property for that year. A failure on the part of the legislature seems inexcusable. And this is equally true whether the question of double situs results from a moving about of the property or from the fact that the owner is domiciled in one part of the state and the personal property located in another part. Where the statute has not dealt with the question of the situs of personal property located in one district and the owner domiciled in another, the courts usually hold that the domicile of the owner is the situs for purposes of taxation. This is particularly so of intangible personal property. Where it is a dispute between different districts of the same state, there is no federal question involved so as to bring it into the United States courts. Double taxation within a state does not violate the provision of the federal constitution in the Fifth Amendment requiring due process of law, or the Fourteenth Amendment. In discussing this question the Supreme Court of the United States says, in Davidson v. New Orleans: "Whenever by the laws of a state, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnox-

85 Boyd v. Selma, note 54, supra.
86 (1877) 96 U. S. 97, 24 L. Ed. 616.
ious it may be to other objections. It may violate some provisions of the state constitution against unequal taxation; but the federal Constitution places no restraints on the states in that regard."

Where Situs in Different States: When double taxation results from the fact that personal property has a taxable situs in more than one state the question becomes more complicated. It then requires intervention by the federal courts or interstate comity. Until recent years it was held that taxation of the same property during the same year by more than one state was something which the federal courts were powerless to prevent. It has also been held by a number of the state courts that this is not double taxation; but this distinction is one of form, not of substance. In substance it is double taxation, because the burden upon the property is double, notwithstanding the fact that the provisions in the state constitutions against double taxation are construed to mean a duplication of burdens by the taxing authorities of the same state. The decisions of the Supreme Court of the United States have now established the principle that where tangible personal property is taxed at the place where it is permanently located, i.e., where it has a situs of its own, it cannot be also taxed at the domicile of the owner in another state, but this is because of a lack of jurisdiction of the state of the domicile, rather than because it would result in double taxation. In Delaware, etc., R. Co. v. Pennsylvania, decided in 1904; the court, speaking through Justice Peckham, says: "It is plain that in the case at bar the coal had lost its situs in Pennsylvania by being transported from that state to foreign states for the purposes of sale, with no intention that it should ever return to its state of origin. Taxation of the coal in this case deprived the owner of its property without due process of law, and the owner is entitled to the protection of the Fourteenth Amendment, which prevents the taking of its property in that way." This decision was approved in Ayer & Lord Tie Co. v. Kentucky.

This principle has not as yet been extended by the Supreme Court to intangible personalty, and in Union Refrigerator Transit

Co. v. Kentucky\textsuperscript{90} it suggests the reason for not doing so: "There is an obvious distinction between tangible and intangible property, in that the latter is held secretly; that there is no method by which its existence or ownership can be ascertained in the state of its situs, except, perhaps, in the case of mortgages or shares of stock. So, if the owner be discovered, there is no way by which he can be reached by process in a state other than that of his domicile or the collection of the tax otherwise enforced. In this class of cases the tendency of modern authority is to follow the maxim mobilia sequuntur personam." In Selliger v. Kentucky\textsuperscript{91} the court refused to allow the taxation of warehouse receipts at the domicile of the owner, where the tangible personal property for which they were a receipt was outside the jurisdiction of the taxing state, which meant that the situs for taxation of the receipt was the same as the property and that taxing the property taxed the receipt. The same had already been held with regard to bills of lading.\textsuperscript{92}

The determination of situs of personal property where the property is in one state and the owner in another is a subject which for its satisfactory settlement requires an agreement between the states. In other words, it is a question for settlement by interstate comity, which would bring about the adoption of a uniform rule throughout the United States, rather than for each state to adopt whatever rule seems necessary in order to give it the largest possible amount of property subject to taxation by it. The fact that absolute justice and equality can never be reached in taxation ought not to discourage the attempt to make reasonable efforts to remove manifest evils.

EDWIN MAXEY.

\textsuperscript{90} (1905) 199 U. S. 194, 50 L. Ed. 150, 26 S. C. R. 36, 4 Ann. Cas. 493. This case fully affirms the doctrine that a state cannot tax a domestic corporation upon its tangible personal property permanently located in other states.

\textsuperscript{91} (1909) 213 U. S. 200, 53 L. Ed. 761, 29 S. C. R. 449.