

THE TAX SITUS OF PERSONAL PROPERTY.

The tax laws of American states generally follow the common law division of property into real and personal, the latter of which, according to the classification of Blackstone,¹ includes chattels real (estates in real property less than freeholds) and chattels personal, subdivided into choses in possession (tangible personalty) and choses in action (intangible personalty). Chattel interests in real estate, however, when they are assessed separately from the fee, are usually classed as real property by local statutes,² though they are taxed as personal property in a few states.³ The question as to where a leasehold is taxable as personal property when the lessee is domiciled in a state other than that of the situs of the land has apparently never been directly adjudicated. As writers on private international law treat chattels real as *immobilia*, they would seemingly be incapable of having a taxing situs apart from that of the land.⁴

The question of the taxing situs of chattels personal, however, has arisen in a large number of cases, and in practically all of them the decision has hinged on the applicability of a celebrated maxim of jurisprudence, phrased variously as *Mobilia sequuntur personam* or *Mobilia inhaerent ossibus domini*. This maxim originated in the middle ages when personal property, consisting mainly of jewels, gold, and scrip, was easily portable.⁵ It was incorporated by the English courts into the law of bankruptcy⁶ and was also followed by them in the distribution of decedents' estates, but its application in cases involving taxation seems first to have been made by American judges. It is noteworthy that the maxim was never quoted in the English decisions on questions of situs arising under the poor rates, the only general personal property tax which Great Britain has had in comparatively modern times.⁷ Its extension to taxation by American courts was probably due to certain economic theories by which they were consciously or unconsciously influenced, and as these theories have been modified the operation of the maxim has been correspondingly restricted.

¹2 Bl. Comm. 386.

²People vs. International Salt Co., 233 Ill. 223; Ocean Groves, etc., Assn. vs. Reeves, 80 N. J. L. 464.

³Wilgus vs. Com., 9 Bush (Ky.) 556; Jones vs. Adams, 104 Miss. 397.

⁴Minor on Conflict of Laws 39; Dicey, Conf. L. 72; Wharton, Conf. L. sec. 286.

⁵Francis Wharton: Late Works on Private International Law, 6 So. Law Rev. 680, 686.

⁶Sill vs. Worswick, 1 H. Bl. 690.

⁷Earby's Case, 2 Bulstrode 354; Rex vs. Shepherd, 1. B. & Ald. 109.

When questions concerning the situs of personalty for taxation were first presented to our courts, about the middle of the nineteenth century, the duty of paying taxes was thought to rest on political allegiance. Accordingly states generally required their citizens to pay taxes upon all their personal property wherever it might be located in return for the personal protection afforded by the domiciliary government. For the purpose of extending jurisdiction to such property the maxim *Mobilia sequuntur personam* was adopted. Massachusetts in particular clung to this theory, and for many years her statutes declared that "personal estate shall for the purposes of taxation include goods, chattels, money and effects wherever they are * * * within or without the state."⁸ Under this statute it was held that the interest of a Boston man in goods situated in St. Louis and owned by a partnership of which he was a member was taxable in Massachusetts.⁹ The power so exercised by Massachusetts was generally conceded to be valid but in many states statutes were so construed as to prevent the taxation of tangibles having an actual situs outside the state.¹⁰ The theory of these decisions was that the legislature intended to levy taxes on property and not on the person of the owner and that the maxim was fallacious so far as the situs of tangible property was concerned. Nevertheless such taxation subsisted to some extent¹¹ till 1905, when the Supreme Court of the United States declared that it violated the due process clause of the fourteenth Amendment to the Federal Constitution.¹² The court held that the State of Kentucky could not tax railroad cars owned by one of its corporations which were permanently situated and taxed in another state, because Kentucky gave no protection to such property and to tax it would be taking property without due process of law. The Supreme Court had previously applied this reasoning to a case involving real property.¹³ The rule in this case, however, applies only to personalty which acquires a permanent situs outside the state. Property which is merely removed from the jurisdiction

⁸Laws of 1867.

⁹*Bemis vs. Boston*, 14 Allen 366.

¹⁰*Hoyt vs. Com'rs*, 23 N. Y. 224; *New Albany vs. Meekin*, 3 Ind. 481; 56 Am. Dec. 224; *Alvany vs. Powell*, 2 Jo. Eq. 51; *State vs. St. L. Co.* Ct. 47 Mo. 594; *San Francisco vs. Flood*, 64 Cal. 504; *Fisher vs. Com'rs*. 19 Kan. 414; *Meyer vs. Pleasant*, 41 La. Ann. 645.

¹¹*State vs. Haight*, 6 Vroom. (N. J.) 279.

¹²*Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S. 194; *Delaware etc. R. Co. vs. Penn.*, 198 U. S. 341.

¹³*Louisville etc. Co. vs. Kentucky*, 188 U. S. 385.

temporarily does not lose its actual situs there for the purpose of taxation.¹⁴

The Supreme Court has adhered strictly to the doctrine stated in the Union Refrigerator Transit Co. case, supra, and several attempts to evade it indirectly have been unsuccessful. Thus in *Selliger vs. Kentucky*¹⁵ the court held that a resident of Kentucky could not be forced to pay taxes there on warehouse receipts for whiskey stored in Germany, whither it had been exported to escape taxation. The receipts were not shown to be negotiable by German law but were considered by the court as "mere conveniences for getting quasi-possession of the goods" and therefore not subject to taxation since the whiskey itself was not taxable in Kentucky. Nor can a state tax tangible property outside its borders under the guise of a fee based on the amount of capital stock of a foreign corporation, and imposed on the company as a condition to its being permitted to do business within the state.¹⁶

The maxim *Mobilia sequuntur personam* seems never to have been regarded by the courts as prohibiting a state from taxing tangible personalty within its borders owned by a non-resident, though it was followed as a rule of statutory construction in a New York decision,¹⁷ holding that the words "property within the state" did not apply to property actually situated there but owned by a non-resident, in the absence of an express provision to that effect. The constitutional power of a state to tax tangible property permanently located in its territory and protected by its government regardless of the residence of the owner has long been settled.¹⁸ It is necessary, however, that the property have an actual, permanent situs within the state and not be simply in transit between two other states.¹⁹ The taxation of property in transit is also forbidden by the Federal Constitution as an interference with interstate commerce.²⁰ If the property is stopped in the state for reasons not

¹⁴New York Central, etc. R. Co. vs. Miller, 202 U. S. 584; Com. vs. Amer. Dredging Co., 122 Pa. St. 386.

¹⁵213 U. S. 200.

¹⁶Western Union Tel. Co. vs. Kansas, 216 U. S. 1, Pullman Co. vs. Kansas, *id.* 56.

¹⁷Wilson vs. Mayor, 4 E. D. Smith 675, 1 Abb. Prac. 4.

¹⁸Brown vs. Houston, 114 U. S. 622; Coe vs. Errol, 116 U. S. 517.

¹⁹Coal Co. vs. Carrigan, 39 N. J. L. 35; Robinson vs. Longley, 18 Nev. 71; Oil Co. vs. Ehrhardt, 244 Ill. 634; Lumber Co. vs. Columbia, 62 N. H. 286.

²⁰Kelley vs. Rhoades, 188 U. S. 1.

connected with its transportation, it may be taxable there even though it is later to continue in shipment.²¹

The applicability of the maxim *Mobilia sequuntur personam* to the taxation of tangible chattels had apparently been completely refuted when it was employed by the United States Supreme Court as the basis of a rather remarkable decision, which settled the long vexed question of the taxing situs of ships. It had been decided at an early date, according to principles governing property in transit, that ships were not taxable at ports where they called on their voyages if they were owned and enrolled or registered elsewhere,²² though a vessel may of course acquire an actual situs within a particular state so as to be taxable there regardless of where the owner lives.²³ Text-writers generally stated that vessels not acquiring any actual situs were taxable at their home ports or the ports at or nearest which the owners resided,²⁴ the Supreme Court of the United States having held that registry at a port within a particular state did not necessarily give it a taxing situs there.²⁵ Later it was held that a state acquires no power to tax ships merely because the name of one of its cities appears upon the sterns of the vessels as the port from which they hail.²⁶ The question was not affirmatively settled until 1911, when the United States Supreme Court in *Southern Pacific Railway Co. vs. Kentucky*²⁷ decided that ships which do not remain within any single state long enough to acquire an actual situs there are taxable not at the place of registry or hailing port, but at the domicile of the owner. The State of Kentucky was permitted to tax ocean steamers owned by the Southern Pacific Railway Company, which was incorporated under the laws of that state, though the vessels had never been in any port of Kentucky and probably never would be. The court said: "The ancient maxim which assigns to tangibles as well as intangibles the situs of the owner for purposes of taxation has its foundation in the protection which the owner receives from the government of his

²¹Eoff vs. Kennefick, 96 S. W. (Ky.) 986; Burlington etc. Co. vs. Willets, 118 Ill. 559; Hudson vs. Miller, 10 Kan. App. 532; Fenell vs. Pauley, 112 Iowa 94; Hardesty vs. Fleming, 57 Texas 395; McCutchen vs. Board of Equalization, 94 Atl. (N. J.) 310.

²²Hayes vs. Pacific Mail S. S. Co., 17 Howard 596; Morgan vs. Parham, 16 Wall. 423.

²³Old Dominion S. S. Co. vs. Virginia, 198 U. S. 299; Northwestern Lumber Co. vs. Chehallis Co., 25 Wash. 95.

²⁴37 Cyc. 808; Judson on Taxation sec. 189; 2 Willoughby on Constitutional Law 717.

²⁵St. Louis vs. Ferry Co., 11 Wall. 423.

²⁶Aver & Lord Co. vs. Kentucky, 202 U. S. 409.

²⁷222 U. S. 232.

residence and the exception to the principle is based upon the theory that if the owner by his own act gives to such property a permanent location elsewhere the situs of the domicil must yield to the actual situs and resulting dominion of another government."

The decision in the Southern Pacific case is squarely opposed to one involving similar facts by the English Court of King's Bench in 1817.²⁸ The reasoning in it seems somewhat inconsistent with that of the Union Refrigerator case, *supra*, since in both cases the property taxed received no benefits from the State of Kentucky, while the corporations themselves received the same benefits. The practical effect of the two decisions, however, squares with the common sense view that all property should be taxable somewhere and no property should be taxed simultaneously by different jurisdictions.

With respect to the taxation of intangible personalty or choses in action the maxim *Mobilia sequuntur personam* is generally conceded to be more logically applicable than in the case of tangibles. Property of this nature is incapable of acquiring an actual situs, and the owner's domicile is the most convenient place of assessment²⁹ in view of the inquisitorial methods usually necessitated for bringing intangible property to light. The general rule has been thus stated by the United States Supreme Court:³⁰ "All the property there can be in the nature of things in debts belongs to the creditors to whom they are payable and follows their domicile wherever that may be." Hence it is held generally that a non-resident is not taxable in the state of his debtor on moneys loaned, though the rule is subject to important qualifications to be stated later.³¹ Nor can the same result be attained by taxing a mortgage securing the debt as personal property,³² but the mortgagee's interest in mortgaged land may constitutionally be taxed as real estate, though he be a non-resident.³³ The case most frequently cited in support of the rule that credits are not taxable at the debtor's domicile is State Tax on Foreign Held Bonds, *supra*, which held that a state cannot tax bonds issued by one of its corporations which were owned and held by residents of other states on the constitutional ground

²⁸Rex vs. Shepherd, 1 B. & Ald. 109.

²⁹Union R. T. Co. vs. Ky., 199 U. S. 194, 205.

³⁰State Tax on Foreign Held Bonds, 15 Wall. 300, 320.

³¹Goldart vs. People, 106 Ill. 25; Railey vs. Board of Assessors, 44 La. Ann. 765.

³²Davenport vs. Railroad Co., 12 Iowa 539; Northwestern etc. Co. vs. State, 155 N. W. 609 (Wis.)

³³Savings & Loan Society vs. Multnomah, 169 U. S. 421.

that the obligation of the bonds as contracts was thereby impaired. The reasoning of the court has been severely criticised³⁴ and declared to be inconsistent with later decisions,³⁵ but the holding on the facts remains the law.³⁶ Many *dicta* in the opinion have been since disapproved by the Supreme Court, however, as the broad principles therein laid down have been qualified.

On the other hand it is definitely settled that the state in which the creditor is domiciled may generally tax his credits owed to him by non-residents. The Supreme Court of the United States held in *Kirtland vs. Hotchkiss*³⁷ that such taxation was constitutional that the maxim *Mobilia sequuntur personam* made the creditor's domicile the taxing situs of choses in action even in the absence of express legislation to that effect.³⁸ The rule applies to a debt secured by a mortgage on land in another state,³⁹ to a deposit in a bank situated in another state,⁴⁰ and shares of stock in a foreign corporation.⁴¹

The maxim *Mobilia sequuntur personam*, however, is by no means thorough going even regarding intangibles. There has been a gradual recognition of the fact that this class of property, while it cannot be said to acquire an actual situs, may sometimes become so localized as to become taxable elsewhere than at the owner's domicile. This is but a logical extension of the theory of territorial location or economic allegiance under which tangible personalty is held to be taxable at its actual situs instead of at the owner's domicile as prescribed by the theory of political allegiance.

Shares of corporate stock form an important example of intangibles which are thus capable of localization outside the owner's domicile. The doctrine was first applied to stock in national banks which the National Banking Act made taxable only in the states where the respective banks were located. In *Tappan vs. Merchants National Bank*⁴² this provision was declared valid, the court holding that the law creating the corporation might separate the shares from

³⁴Hollis R. Bailey; Situs of Choses in Action, 11 Harv. L. Rev. 95, 104ff.

³⁵U. S. vs. Erie Ry. Co., 106 U. S. 327.

³⁶Buck vs. Beach, 206 U. S. 392, 400.

³⁷100 U. S. 491.

³⁸Accord. State vs. Gaylord, 73 Wis. 316; Grundy Co. vs. Tennessee Coal Co., 94 Tenn. 295; Matter of Bronson, 150 N. Y. 1; State vs. Earl, 1 Nev. 394; Mackay vs. San Francisco, 113 Cal. 392.

³⁹Kirtland vs. Hotchkiss, supra.

⁴⁰Pacific etc. Co. San Francisco, 133 Cal. 14; Hunt vs. Turner, 54 Fla. 654.

⁴¹Hawley vs. Malden, 232 U. S. 1; Ogden vs. St. Joseph, 90 Mo. 532; Greenleaf vs. Morgan County, 184 Ill. 226.

⁴²19 Wall. 490.

the person of their owner for the purpose of taxation. "Every owner takes the property subject to this power of taxation under state authority and every non-resident by becoming an owner voluntarily submits himself to the jurisdiction of the state in which the bank is established for all the purposes of taxation on account of his ownership." The principle was extended by many state courts to corporations of all sorts⁴³ though others held that the maxim *Mobilia sequuntur personam* prohibited such taxation.⁴⁴ The constitutionality of state statutes fixing the taxing situs of shares of stock in domestic corporations was affirmed by the United States Supreme Court in *Corry vs. Baltimore*,⁴⁵ which involved an act taxing shares of stock owned by non-residents in Maryland corporations and requiring the corporation to pay the tax assessed on account of the stockholders. Following the Tappan case, *supra*, the court held "that the sovereignty which creates a corporation has the incidental right to impose reasonable regulations concerning the ownership of stock therein" such as making the stock taxable in the state, compelling the corporation to pay the tax in behalf of the non-resident shareholders, and giving the company a right of recovery against the shareholders for indemnity. The inconsistencies between this case and the State Tax on Foreign Held Bonds, *supra*, have been criticised by legal writers and economists,⁴⁶ who have pointed out the fact that there is no distinction in principle between the position of a foreign bond holder and that of a foreign stockholder, since both are in reality creditors of the corporation, having only choses in action and no direct legal interest in the business. A statute taxing foreign held bonds would therefore seem to be as reasonable a regulation as one taxing foreign held stock, and one would no more impair the obligation of a contract than the other.

Another class of cases closely related to the preceding, which is constantly increasing in number and importance, comprises those holding that intangibles may acquire a "business situs" for purposes

⁴³*Tax Col. vs. Insurance Co.*, 42 La. Ann. 1172; *State vs. Rogers*, 79 Mo. 283; *Faxton vs. McCosh*, 12 Iowa 527; *City of Madison vs. Whitney*, 21 Ind. 261; *Street Ry. Co. vs. Morrow*, 87 Tenn. 406; *Wiley vs. Com'rs.*, 111 N. C. 397; *Danville Bank vs. Parks*, 88 Ill. 170.

⁴⁴*Griffith vs. Watson*, 19 Kan. 23; *Oliver vs. Washington Mills*, 14 Allen 359; *State vs. Ross, Zab.* (N. J.) 571; *Com. vs. Standard Oil Co.*, 101 Pa. St. 119; *Rosenberg vs. Weekes*, 67 Tex. 578; *State vs. Gaylord*, 73 Wis. 316.

⁴⁵196 U. S. 466.

⁴⁶Willoughby on Constitutional Law 958; Prof. J. H. Beale, Jr.: *Taxation of Foreign Corporations*, 17 Harv. L. Rev. 248; Seligman, *Essays in Taxation*, 8th ed., p. 289ff.

of taxation apart from the owner's domicile. From a comparatively early time a few courts had upheld the right of a state into which money had been sent by a non-resident for investment and re-investment through a local agent to tax these credits despite the maxim *Mobilia sequuntur personam*.⁴⁷ The right of a state to give such property a taxing situs at the debtor's domicile was affirmed by the Federal Supreme Court in *New Orleans vs. Stempel*,⁴⁸ which distinguished the State Tax on Foreign Held Bonds case on the ground that the doctrine of the latter applied only when the evidences of the debt were in the possession of the creditor in another state and not when they were held by a local agent. Shortly afterward in *Bristol vs. Washington County*,⁴⁹ a similar case was presented except that the resident agent retained only the mortgages while the notes themselves were kept by the owner in another state and only sent to the agent for purposes of renewal, collection, and foreclosure of the securities. The court held that the property acquired a business situs in the agent's domicile and was "exclusively under the protection of the laws of that state." The same conclusion was reached in *State Board of Assessors vs. Comptoir National D'Escompte*,⁵⁰ in which the credits were based on loans by a foreign bank in the form of foreign exchange or overdrafts, secured by collateral in the hands of a local agent. Physical presence of the evidences of credits as the test of taxing situs was finally repudiated entirely in the case of *Buck vs. Beach*,⁵¹ in which the State of Indiana was forbidden to tax notes payable by a resident of Ohio to a resident of New York, which had been sent to the payee's agent in Indiana for the purpose of evading taxation elsewhere.

The foregoing decisions illustrate the evolution in the theory underlying this class of cases, counter to the view once widely held that a credit evidenced by negotiable paper, a tangible object should have the same situs as the paper itself.⁵² The true ratio decidendi is brought out in *Metropolitan Life Insurance Co. vs. New Orleans*,⁵³ which involved taxation in Louisiana of loans made by a New York life insurance company through a local agent upon the security of its policies. The notes with the policies attached were

⁴⁷*Catlin vs. Hull*, 21 Vt. 152; *Wilcox vs. Ellis*, 14 Kan. 588.

⁴⁸175 U. S. 309.

⁴⁹177 U. S. 133.

⁵⁰191 U. S. 388.

⁵¹206 U. S. 392.

⁵²*Blackstone vs. Miller*, 188 U. S. 189; *Buck vs. Beach*, supra, dissenting opinion; *Monongahela etc. Co. vs. Assessors*, 2 L. R. A. (N. S.) 637; *Judson on Taxation* sec. 397; 21 Harv. L. Rev. 50.

⁵³205 U. S. 395.

kept at the New York office and sent to the agent only for re-delivery upon payment. The court said: "Moreover neither the fiction that personal property follows the domicile of its owner nor the doctrine that credits evidenced by bonds or notes may have the situs of the latter can be allowed to obscure the truth. We are not dealing here merely with a single credit or a series of separate credits but with a business." The power of taxing such property was held to depend upon the same principles as that of taxing capital employed in business by residents. As a corollary to this proposition the Supreme Court subsequently held⁵⁴ that the credits need not be evidenced by writing at all and that unpaid insurance premiums owed to a foreign insurance company were taxable under this theory. "The legal fiction expressed in the maxim *Mobilia sequuntur personam*," said the court "yields to the fact of actual control elsewhere. And in the case of credits, though intangible, arising as did those in the present instance the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile."

The business situs rule applies to many other species of intangible personalty than moneys loaned,⁵⁵ bank deposits,⁵⁶ and bank accounts.⁵⁷ Express and telegraph companies whose business extends over a large number of states may be taxed in each state where they own property upon a valuation exceeding the intrinsic worth of such property, based upon its value in connection with other property located elsewhere with which it forms a business unit.⁵⁸ This assessment of an intangible quality of tangible property is practically taxing the "good will" of the corporation which is distributed over all the state where business is done without regard to the domicile of the corporation. This doctrine has been restricted by the United States Supreme Court however, so as to prevent a state from indirectly taxing property located elsewhere owned by the corporation, but not necessarily used in the actual conduct of the business.⁵⁹ In Mississippi foreign corporations have been taxed upon leases of timber land from which turpentine is produced as representing personal property employed

⁵⁴Liverpool & London & Globe Insurance Co. vs. Orleans Assessors, 221 U. S. 346.

⁵⁵Bristol vs. Washington Co., supra.

⁵⁶New Orleans vs. Stempel, supra.

⁵⁷Armour Packing Co. vs. Clark, 124 Ga. 369.

⁵⁸2 Willoughby on Constitutional Law 719; Adams Express Co. vs. Ohio, 165 U. S. 194; 166 U. S. 185; State vs. Wells Fargo Co., 150 Pac. 836 (Nev.)

⁵⁹Fargo vs. Hart, 193 U. S. 490.

in business within the state.⁶⁰ These cases would also seem to justify the view previously stated that chattels real, being *immobilia* are taxable at the situs of the land, but the Mississippi Court did not base the decisions upon the latter ground. The most recent application of the business situs rule by the Supreme Court of the United States has been to seats in stock exchanges held by non-residents in affirming the constitutionality of a Minnesota statute taxing property of this nature.⁶¹ It is impossible to lay down any definite rule as to when intangibles acquire a business situs, as each case depends upon its individual facts.

Since, as we have seen, intangible personalty is now considered capable of acquiring under certain circumstances a quasi-actual situs for taxing purposes apart from the owner's domicile, and the courts have recognized the injustice of double taxation by conflicting jurisdictions,⁶² consistency would demand the further extension of the rule laid down by the United States Supreme Court prohibiting taxation by the state of the owner's domicile of property having an actual situs elsewhere. That there is some tendency in this direction is shown by two recent decisions of the Supreme Court of Kentucky. In *Com. vs. West India Oil Refinery Co.*,⁶³ a Kentucky corporation which carried on all its business in the West Indies was held not taxable on money, bank deposits, and accounts located outside the state, which were properly taxable where the business was conducted. The case involved the same statute which had been declared unconstitutional by the United States Supreme Court in the *Union Refrigerator Transit Co.* case with respect to tangibles. "No practical distinction can be drawn," said the Kentucky court, "between the money of the corporation in its office in Cuba or that deposited in a bank there or that due on its books for its products which have been sold and not paid for. It is all employed in the business in Cuba or Porto Rico. It has its situs there. It has no situs in Kentucky." The decision was not unanimous, but it was followed by the same court last year in *Com. vs. B. F. Avery & Sons*⁶⁴ which presented substantially the same question. No other court appears to have gone so far as to state this rule as a proposition of constitutional law, but the courts of Missouri and several other states have refused to construe statutes

⁶⁰Harrison Naval Stores Co. vs. Adams, 104 Miss. 299; Union Naval Stores Co. vs. Adams, id. 381.

⁶¹Rogers vs. Hennepin Co., 36 Sup. Ct. 265.

⁶²Union Refrigerator Transit Co. vs. Kentucky, supra; Buck vs. Beach, supra.

⁶³138 Kentucky 828.

⁶⁴163 Kentucky 828.

as authorizing taxation of intangible personalty having another taxing situs elsewhere when a clear intention to that effect is not expressed by the legislature.⁶⁵ Other decisions have denied that there is any constitutional inhibition against double taxation of intangible personalty where the taxes are levied by different jurisdictions, refusing to take into account the taxability of property by another state.⁶⁶ The constitutional question awaits adjudication by the United States Supreme Court, having been expressly reserved in *Hawley vs. Malden, supra*.

The development in modern times of so many new species of personal property which from their very nature cannot or do not ordinarily follow the person of their owner has resulted in the general recognition by jurists that the maxim *Mobilia sequuntur personam*, in whatever branch of jurisprudence it is applied, must be regarded purely as a legal fiction. Its applicability must therefore be judged and limited by another Maxim, *In fictione juris consistit aequitas*. This fiction comported with the theory that taxation was justly a matter of political allegiance, that a portion of one's property wherever situated must be given in payment for protection afforded by his domicile. As government has become more and more territorial rather than personal, and the property tax has been definitely stamped as a tax on property and not on income, the fiction embodied in the maxim does not accord with the view that a state may justly tax all property within its territorial borders, whether such taxation be justified as compensation for protection rendered the property or it be based simply on the necessity of absorbing revenue from the property within its jurisdiction. At any rate the fiction is not justly applied if it makes double taxation possible. As we have seen, the courts now recognize this so far as tangible property is concerned in holding that the fictitious must yield to the actual situs. The injustice of double taxation of intangible personalty should be prevented by discarding the maxim when property of this nature acquires a quasi-actual situs. The maxim would then be restricted solely to property which does not or cannot acquire an actual or quasi-actual situs, in which case resort to the fiction would be proper in order to prevent the property from escaping taxation altogether.

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⁶⁵Leavell vs. Blades, 237 Mo. 695; Wilcox vs. Ellis, 14 Kan. 588; People ex rel. vs. Smith, 88 N. Y. 576.

⁶⁶Bellows Falls etc. Co. vs. Com., 109 N. E. 891 (Mass.) Dyer vs. Osborne, 11 Rhode Island 321, 23 Am. Rep. 460; Seward vs. Rising Sun, 79 Ind. 351; Bacon vs. Com'rs, 126 Mich. 22.