case, in an attempt to conciliate the decisions, threw out a hint which may not only reconcile past decisions but may act as a guiding principle in future decisions.[7] The court stated that where the doctrine has been applied something more than the bare accident and injury has been alleged. Always some affirmative act of the defendant has been alleged which, coupled with the injury, has served to raise the inference of negligence. Whatver may be said of this principle as an operative rule, it does come close to harmonizing the opinions which has gone before. All of the cases applying the doctrine contained allegations of affirmative acts by the defendants which suggested negligence, as where a turn was made at too low and unsafe a speed and altitude, or where planes crashed in mid-air.[8] With one exception,[9] the cases where the doctrine was refused did not contain allegations over and above the accident and injury.[10] The exception refused the doctrine although all the circumstances seemed to demand it, but the plaintiff did not rely a great deal on the doctrine and failed to save his exceptions when it was not applied.

It would not seem unfair to put this burden on the plaintiff. In most cases the plaintiff would be capable of inserting allegations of this sort in his petition, where he would not be capable of alleging sufficient specific acts to enable him to win the case under the general rules of negligence. The allgations would have to be made with caution, the amount of caution depending on the jurisdiction, because allegations of too specific a nature may cause the plaintiff to lose the advantages of the doctrine altogether. A Texas court refused the plaintiff the use of the doctrine on the ground that he had alleged too many specific facts and therefore would have to stand on the specific allegations.[11] B. T. '38.

PHYSICIANS AND SURGEONS—"REPUTABLE" MEDICAL COLLEGE—DUE PROCESS—ADMINISTRATIVE ORDERS.—A Wisconsin statute authorizes the State Board of Medical Examiners to "license without examination a person holding a license to practice medicine and surgery . . . in another state, . . . upon presentation of the license and a diploma from a reputable professional college."[1] The statute does not specify any procedure whereby the Board can determine whether a particular medical college is in fact reputable. In that state of the law, the Board refused a license to an applicant who had graduated from a school not recognized by the Board as fulfilling the statutory requirements of reputability. In arriving at that decision, the

---

[7] Herndon v. Gregory (1935 Ark.) 81 S. W. (2d) 849.

[8] Seaman v. Curtis Wright Flying Service (1930) 247 N. Y. Supp. 251; McClusker v. Curtis Wright Flying Service (1933) 269 Ill. App. 502; Smith v. O'Donnell (1932) 215 Calif. 714, 12 P. (2d) 933; Stoll v. Curtis Wright Flying Service Inc. (1930) U. S. Aviation Rep. 148.

[9] Allison v. Standard Air Lines, supra note 5.

[10] Wilson v. Colonial Air Lines, supra note 5; Herndon v. Gregory, supra note 5.

[11] English v. Miller (1931 Tex.) 43 S. W. (2d) 642. For Missouri rule Kennedy v. Metropolitan St. Ry. Co. (1907) 128 Mo. App. 297, 107 S. W. 16.

[1] Wis. Stats. (1935) 147. 17.

Board had duly notified both the applicant and the medical college (The Chicago Medical School), and conducted a hearing upon the matter, allowing members of the medical faculty to testify as to the sort of instruction given by them. The Supreme Court of Wisconsin decided, in a mandamus action by the applicant against the Board, that the procedure used was adequate to the Board's rendering a valid decision on the point.[2]

The Supreme Court relied on its statement in a former case, "Since it (the law) requires the board to pass upon the reputability of the school in circumstances like those in this case, and places no limit upon the methods by which it shall gather information bearing on the subject for decision, it may proceed in any reasonable way, and candidates for licenses must submit to its judgments unless they transgress the boundaries of reason and common sense."[3] In that case, the petitioner contended that the Board had acted arbitrarily by finding the Wisconsin College of Physicians and Surgeons irreputable it simply relied on his holding of a year before without any intervening investigation. The case showed that there was an additional examination of the school in the meantime, and that the petitioner's evidence failed to show an abuse of discretion.

These two cases lead directly into a third set of facts, carefully distinguished from those of the instant case by the opinion of the Court. Such a situation is presented by *State ex rel. Milwaukee Medical College v. Chittenden et al., State Dental Board,* the facts of which shows that the Board had recognized the medical school's dental department, but later found it not to be reputable.[4] But in arriving at the latter decision, the Board had not given any notice or opportunity to be heard to the Milwaukee College. There the Court held that due process had been denied the College. The effect of these decisions is that once recognition has been given, it is necessary to have notice and hearing, before the Board may declare a school disreputable but only a reasonable determination by the Board is necessary in the first instance.

The case at hand is a very recent one; the other two are older. This case involves a situation arising on reciprocity, the other two do not. That distinction gives a definite clue to simplifying the whole matter of reputability in the future. In an early case, the Supreme Court of Wisconsin upheld the constitutionality of a statute giving the Board power to license graduates of medical schools located within the state without examination. The Court pointed out that the distinction was a reasonable one, inasmuch as there might be an actual difference between those schools located within the state, and those without, and because the Wisconsin legislature could regulate those within the state.[5] Hence, by virtue of this decision, the legislature could simply define as reputable those schools located within the state. As to the situation presented by applicants from other states, the matter

---

[2] State ex rel. Blank v. Gramling et al (1935) 262 N. W. 614.

[3] State ex rel Coffey v. Chittenden et al (1902) 112 Wis. 569, 88 N. W. 587.

[4] (1906) 127 Wis. 468, 107 N. W. 500.

[5] State ex rel Kellogg v. Currans (1901) 111 Wis. 431, 87 N. W. 561.

could be left entirely to the Board's discretion. The Supreme Court of Minnesota sums up the matter thus: "Reciprocity and comity import the granting of a favor, which conception of itself would seem to negative the right to complain of its denial, except where such right is clearly given."[6] Then, too, administrative discretion would have considerable free play as to schools within the state, it having been determined in Missouri that quo warranto would lie against a medical school not recognized by the Board,[7] and in Ohio that the Board was the proper agency to determine in the first instance if a medical college was not reputable, and hence carrying on its activities contrary to its charter.[8] In this manner, a state could leave considerable power to administrative discretion, prevent unqualified persons moving from state to state without sufficient examination, and relieve the courts of passing on the technical questions raised in determining the sufficiency of a medical course. W. H. M. '36.

TAXATION—BANK DEPOSITS—DUE PROCESS.—Appellant company was organized in Delaware. It maintained there, through the Corporation Service Co., a duplicate set of books in fulfillment of the laws of that state. The company's plants were located in Ohio, and its principal business offices were in Wheeling, West Virginia, from which office all contracts were approved, checks received and deposited, and in which the Directors' meetings were held. West Virginia imposed an ad valorem property tax on bank deposits in the state. In an action brought to recover the tax paid under protest it was *held*, that the tax did not violate the due process clause of the Fourteenth Amendment. *Wheeling Steel Co. v. Fox.*[1]

It is well settled that a state may not tax any property not within its jurisdiction without violating the due process clause.[2] The rule is established that a state may tax tangibles permanently located within its boundaries.[3] The courts have applied the maxim *mobilia sequuntur personam* in determining the situs of intangibles for the purpose of taxation.[4] The courts have felt that this maxim affords protection against multiplied taxation.[5] This fact was strikingly illustrated in the case of *Burnett v. Brooks.*[6] There the decedent, a subject of great Britain and a resident of Cuba, left stocks and bonds in a New York bank. The court held that for the purpose of taxation the United States had jurisdiction and applied the maxim as between the states thereby avoiding the hardship of possible double taxation.

---

[6] Wililams v. Minnesota State Board of Medical Examiners (1913) 120 Minn. 313, 139 N. W. 500.
[7] State v. St. Louis College of Physicians and Surgeons (Mo. 1927) 295 S. W. 537.
[8] State v. Hygeia Medical College (1899) 60 Ohio St. 122, 54 N. E. 86.
[1] (May 18, 1936) 3 U. S. Law Week 959; 56 S. Ct. 773.
[2] Farmers Loan & Trust Co. v. Minnesota (1930) 280 U. S. 204.
[3] Union Refrigerator Transit Co. v. Kentucky (1905) 199 U. S. 194.
[4] Blodgett v. Silberman (1928) 277 U. S. 1.
[5] Supra, note 2.
[6] (1933) 288 U. S. 378.