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LIMITATIONS ON TAXING POWER ARISING OUT OF THE SITUS OF THE PROPERTY TAXED.

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5. *Collateral Inheritance Tax.*—"The right to take property by devise or descent is the creature of the law and secured and protected by its authority. The legislature might, if it saw proper, restrict the succession to a decedent's estate, either by devise or descent to a particular class of his kindred, say to his lineal descendants and ascendants:" *Eyre* v. *Jacob*, 14 Gratt. 422. LEE, J., p. 430. When the legislature requires a certain per centage of the estate passing by devise or descent to collateral kindred, it is called a collateral inheritance tax, or succession tax. It is a tax upon the civil privilege of taking the property devised or descended. Where the domicile of the decedent is in one state, and the situs of the property in another, the question arises in which state is the tax imposed. The general rule is that wherever the owner of the property is domiciled, there a tax may be imposed on the succession, although the property may be situated in another state: *Short's Estate*, 16 Penna. St. 63. But where the state has control over neither the domicile of the decedent or his property, it cannot impose the tax: *Hood's Estate*, 21 Penna. St. 106. In the first of these cases, Short resided in Philadelphia, owned large sums invested in stocks of corporations of other states, in

bonds of the state of Kentucky, and a bank deposit in the state of New York. This property was held liable to the succession tax in Pennsylvania on the principle that the situs of personal property follows the domicile of the owner. In the second case, Hood was born in Philadelphia in 1786, went to Cuba in 1814, became established in business there; in 1817 formed partnership with persons residing in Philadelphia, and had correspondents there; he lived in Cuba until his death, made occasional visits to Philadelphia, and died in France in 1850, while on a visit for his health. He had estate in Pennsylvania, and large estates in Cuba. Legacies to a large amount were given to persons residing in Pennsylvania. The executor paid the collateral inheritance tax on all the property in Pennsylvania, but refused to pay on the legacies derived from property in Cuba. The executor was sustained, the court deciding that where neither the personal property taxed, nor the domicile of its owner is within the state at the time of his death, such property is not subject to the collateral inheritance tax. These cases do not conflict with the doctrine that the state in which ancillary administration of an estate is granted may impose a collateral inheritance tax on all property situated in the state: *Alvany* v. *Powell*, 2 Jones' Eq. 51 (*ante*, p. 71), which has a visible, tangible existence, or even upon debts, which can only be collected by the ancillary administrator, who has the legal title to them: *St. Louis County* v. *Taylor's Administrator*, 47 Mo. 594; *The Attorney-General* v. *Hope*, 1 C., M. & R. 530; 8 Bligh 44. Nor do the cases last cited maintain a doctrine that would make it proper to have sustained the tax in *Hood's Estate*, upon the legacies derived from the property in Cuba. When the property is of such a character that it passes by delivery, it is subject to the collateral inheritance tax or probate duty where it is situated: *Attorney-General* v. *Bowens*, 4 M. & W. 171. This tax is due when settlement is made with the legatees, although the estate is not fully settled: *Attorney-General* v. *Pierce*, 6 Jones' Equity 144.

6. *Public Securities and Negotiable Instruments.*—The state bonds and bonds of municipal bodies and circulating notes of banks, which are treated as property where they are, and pass by delivery, are the subject of taxation wherever they are found, in the same manner as chattels: FIELD, J., in *State Tax on Foreign-held Bonds*, 15 Wall. 324. Probate duty in England, is mea-

sured by the property within the jurisdiction of the court: *Attorney-General* v. *Dimond*, 1 Cr. & Jer. 370. Where a portion of the estate of the decedent was composed of Russian, Danish and Dutch bonds, which were marketable securities, transferable by delivery only, and as to which it was never necessary to do any act whatsoever out of the kingdom of England, in order to make a transfer of any of the said bonds valid, they were held liable to the probate duty: *Attorney-General* v. *Bowens*, 4 M. & W. 190. Lord ABINGER says: "No ordinary in England could perform any act of administration within his diocese, with respect to debts due from persons resident abroad, or with respect to shares or interests in foreign funds payable abroad, and incapable of being transferred here; and therefore no duty would be payable on the probate or letters of administration in respect of such effects. But, on the other hand, it is clear that the ordinary could administer all chattels within his jurisdiction; and if an instrument is created of a chattel nature, capable of being transferred by acts done here, and sold for money here, there is no reason why the ordinary or his appointee should not administer that species of property. Such an instrument is in effect a saleable chattel, and follows the nature of other chattels as to the jurisdiction to grant probate:" *Attorney-General* v. *Bowens*, 4 M. & W. 190. But where the public securities, owned by the decedent who was domiciled in England, were of such a character that they were not transferable by delivery, but only transferable in the state where they were issued, they were held not liable to such duty: *Attorney-General* v. *Dimond*, 1 Cr. & Jer. 356; *Attorney-General* v. *Hope*, 1 C., M. & R. 530; 8 Bligh 44. The securities in the first case were called *rentes*, inscribed in the great book of the debt public of France; and in the second, they were registered stocks of the state of New York. The same principle is contained in those cases, which hold that state or municipal bonds which are required by various states to be deposited by foreign insurance, with the treasurer or other officer, are liable to taxation as property in the state: *British Com. Life Ins. Co.* v. *Commissioners*, 40 N. Y. (4 Keyes) 303; *People* v. *Home Insurance Co.*, 29 Cal. 533. It is to be observed, that the stocks which were held liable to probate duty in England, might have been held liable on the principle, that the situs of personal property is that of its owner, but the same principle would apply in the cases in which they were held not lia-

ble; the idea upon which they are based is that when the evidence of the debt is such that it passes by delivery, then the situs of the evidence of the debt is the situs of the debt, and it is taxable there. But where it is necessary that the evidence of the debt should be in the state of the debtor, in order to transfer the title to it, it is taxable in the state of the debtor, which is in accord with the Missouri and North Carolina cases on the subject: *Ante*, § 3, p. 69, etc. This principle extends to all negotiable instruments which pass by delivery, and they should be taxed where the instruments are situated. They are chattels personal; a negotiable note payable to the order of an unmarried woman becomes the property of her husband without her endorsement, it being a personal chattel, and not a chose in action: *McNeilage* v. *Halloway*, 1 B. & Ald. 218.

7. *Steamers and Sailing Vessels.*—The domicile of a vessel is its home port, or port at which it is required to be registered by the Acts of Congress, and this is the port nearest to the place where the owner or owners reside: 1 Stat. at Large 288, Bright. Dig. 824, pl. 3. The name of the vessel and of the port to which she belongs is required to be painted on her stern, on a black ground, in white letters of not less than three inches in length. Where an ocean steamer, owned and registered in New York, and regularly plying between Panama and San Francisco and ports in Oregon, remaining in San Francisco no longer than is necessary to land and receive passengers and cargo, and in Benicia only for repairs and supplies, a tax assessed by the state of California and paid, was recovered back, upon the ground that the steamer was not property within the state of California: *Hays* v. *The Pacific Mail Steamship Co.*, 17 How. 596. NELSON, J. "Whether the vessel, leaving her home port for trade and commerce, visits, in the course of her voyage or business, several ports, or confines her operations in the carrying trade to one, are questions that will depend upon the profitable returns of the business, and will furnish no more evidence that she has become a part of the personal property within the state, and liable to taxation, at one port than at others. She is within the jurisdiction of all or any one of them, temporarily, and for a purpose wholly excluding the idea of permanently abiding in the state, or changing her home port. We are satisfied that the state of California had no jurisdiction over these vessels for the purpose of taxation; they were not property abiding within its limits, so as to become incorporated with the other personal pro-

perty of the state; they were there but temporarily, engaged in lawful trade and commerce, with their situs at the home port where the vessels belonged and where the owners were liable to be taxed for the capital invested, and where taxes had been paid." A vessel registered in the port of New York, that nearest her owner's residence, one of a regular daily line of steamers between Mobile and New Orleans, is not taxable in Alabama: *Morgan* v. *Parham*, 16 Wall. 471. The fact that such vessel is enrolled by her master as a coaster at Mobile, Alabama, and that her license as a coaster is renewed from year to year, does not affect her registry or ownership in New York, nor make her liable to taxation as personal property in the state of Alabama.

In the cases which have been noticed on this subject, the home port and residence of the owner of the vessel were in a different state from that of the vessel, and the vessel being temporarily in the state in which she was used, was not liable to taxation in such state. But where the owner of a steamer resides in the state and the vessel is engaged on the waters of a river of that state, wholly within the state, the vessel is taxable in such state, notwithstanding she is registered and enrolled as a coasting vessel under the Acts of Congress. And it would seem that a vessel so engaged would be taxable in the state on whose waters she was plying, even if the owner resided in another state: *Battle* v. *Corporation of Mobile*, 9 Ala. 234; *Minturn* v. *Hays*, 2 Cal. 590. The charter of the city of New Albany allowed it to tax all real and personal property within the city. Meekin, a resident of the city, was part owner of a steamboat, enrolled at Louisville, and which touched occasionally at New Albany; a tax imposed on Meekin for his share of the boat was held illegal; it was not property within the city; and in a similar case, it was held the situs of a vessel is the place of its registration and port from which it regularly departs and returns: *The City of New Albany* v. *Meekin*, 3 Ind. 481; *Wilkey* v. *The City of Pekin*, 19 Ill. 160, S. P. The city of St. Louis, by its charter, had precisely the same power as New Albany. The St. Louis Ferry Company was incorporated in Illinois, and had an office there; the company were engaged in carrying passengers and freight across the river from St. Louis, Missouri, to East St. Louis in Illinois. The boats only touched at the wharf in St. Louis, as one of the termini of the voyage, and were not allowed to remain there more

than ten minutes, in pursuance of an ordinance of the city. When not in actual use, they were laid up in Illinois; their pilots and engineers resided there; their real estate and warehouse on it were there. The boats were enrolled in St. Louis; the company had an office there; its president, vice-president and principal officers lived there; the stockholders mainly resided there, and none of them in Illinois; the ordinary meetings of the directors were held, and its moneys received and disbursed, and corporate seal kept in St. Louis. The company paid to the city of St. Louis an annual ferry license; it erected, by permission of the city, wharf-boats at its wharf or public landing; it paid wharfage to the city at a stipulated annual amount, it was assessed and paid taxes on the value of the wharf-boats within the city limits. The city of St. Louis laid also a tax on the value of the ferry-boats, which was refused, on the ground that these boats were not property "within the city." The Supreme Court of Missouri held that the company was liable for the tax on the ferry-boats: *St. Louis* v. *The Ferry Company*, 40 Mo. 580. This decision was overruled by the Supreme Court of the United States: *St. Louis* v. *The Ferry Company*, 11 Wall. 423.

The latter court held that a corporation is a citizen of the state which created it; that jurisdiction of either person or property is necessary to the exercise of the taxing-power, and while it is true, as a general rule, that personal property follows the person, yet this doctrine does not stand in the way of the taxing power in the locality where the property has an actual situs. The enrolment of the vessel throws little light upon the question of actual situs, because she is required to be registered at her home port, and where her home port is depends upon the locality of the owner's residence, and not upon the place of enrolment. SWAYNE, J.: "The owner was, in the eye of the law, a citizen of Illinois, and from the inherent law of its nature could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore, when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. They did not so abide within the city of St. Louis as to become incorporated with and form part of its personal property. Hence they were beyond the jurisdiction of the authorities by which the taxes were assessed, and the validity of the taxes cannot be maintained."

8. *Goods in hands of Consignee, or in Transitu.*—Where goods are sent from one state to another merely for sale, the rule that personal property follows the person is not so far modified by their actual situs as to make them liable to taxation in the hands of the consignee: *The Parker Mills* v. *The Commissioners of Taxes*, 23 N. Y. 242, 245; *McCormick* v. *Fitch*, 14 Minn. 252; *People* v. *Coleman*, 4 Cal. 46.[1] The case of *The Parker Mills* announces the principle laid down, but it arose upon the construction of a statute, requiring "all persons and associations doing business in the state of New York, as merchants, bankers or otherwise, either as principal or partners, whether special or otherwise, and not residents of the state, to be assessed and taxed on all sums invested in any manner in said business, the same as if they were residents of the state." The Parker Mills was a foreign corporation, manufacturing nails in the states of Massachusetts and Rhode Island. It had a depot and agent in the city of New York, to whom it transmitted nails for sale. Its only business within the state consisted in making such sales, the proceeds of which were remitted at once to the corporation in Massachusetts; and where sales were upon credit, the securities received were sent to the corporation for collection. Annual sales, $300,000; value of nails in store on day of assessment, $10,000. It is said by the court that the object of this statute was to reach foreign corporations and persons engaged as partners of commercial or other firms, who resided in New Jersey or Connecticut, enjoyed the fruits of a profitable business carried on in New York, and yet, by reason of the rule that personal property is deemed to follow the person, they escaped taxation in New York. In these the investment of the funds has more or less of permanency. It is not the mere transit of property through the state for the purposes of a market. The court likens the case to that of a drover, who transports his herds of cattle to New York for sale, who may have his field or yard for keeping his cattle and his herdsman to take care of them. It is easy to perceive the difference between the case of the drover put, and that of the merchants doing business in New York, as to their permanency; but the difference between a merchant engaged in a

[1] See also *North* v. *Fayetteville*, 1 Winston's (N. C.), Equity 70; *Frank's Appeal*, 52 Penna. St. 367; *Duer* v. *Small*, 4 Blatch. C. C. 263, as to taxing business in one state when a person resides in another; also 19 Wall. 502–3, approving principle of New York statute quoted.

regular business and that of The Parker Mills Company, as to permanency, it is hard to perceive. But I do not understand the court as deciding that a statute taxing the property of a company carrying on such a business as The Parker Mills Company, would be void, because the situs of the property was not sufficiently permanent to make it property within the jurisdiction of the state, and to modify the rule that personal property follows the person; that would be to overrule *Hoyt* v. *The Commissioners of Taxes:* 23 N. Y. 224. They merely decide that the company was not taxable under the statute named.

In Transitu.—Goods in transit to a market are not liable to taxation in the state through which they pass to arrive at a market for sale: *State* v. *Eagle*, 34 N. J. L. (5 Vroom) 425; *Conley* v. *Chedic*, 7 Nevada 336; *Carrier* v. *Gordon*, 21 Ohio 605. The case in New Jersey arose under a statute which makes "a person liable to be taxed in the township or ward in which he resides, for all personal estate in his possession or under his control as trustee, guardian, executor, administrator or agent." An assessment was made on coal lying on a pier at Elizabethport, under the control of an agent. The coal was the property of a company doing business in Pennsylvania, was mined on their land in Pennsylvania, and sent by the cars of the Central Railroad to Elizabethport, to be there shipped by water to other markets for the purposes of sale. It was the custom of the company, when the coal arrives at Elizabethport, to have it separated according to sizes, and when a cargo of one size is obtained, it is shipped to points in New England, or up the Hudson river, as soon as a vessel can be chartered. None of the coal is sold for consumption at Elizabethport. DUPUE, J., delivering the opinion of the court, said: "The duties of the agents were simply to obtain and transmit orders to their principals, and superintend reshipment when delivered. The property was not in the state under such circumstances as to be liable to taxation here. The power of the state to tax subjects of commerce, where their transit for the purpose of commerce has ceased, and they have become incorporated and mixed up with the mass of property in the community, is well settled. But that a tax on the property belonging to a citizen of another state, in its transit to market in other states, which is delayed in this state, not for the purposes of sale, but merely for separation and assortment, for convenience of shipment to its desti-

nation, is a tax on commerce among the states, is too plain to require argument. It is not the mode in which the tax is imposed, nor the person against whom it is assessed, that determines whether the taxation is within the power of the state. If a tax can be levied on the quantity on the wharf within the state when the assessment is made, why not on every ton sent across the state throughout the year? A change in the mode and time of assessment is all that would be necessary to accomplish that purpose."[1] In the Nevada case, wood cut in California, owned by a citizen of that state, thrown into Carson river, and passing D. county in Nevada to find a market in O. county in Nevada, was held not taxable in D. county, under a statute requiring all property in the county a specified period to be taxed there, because the wood was in D. county at the period specified. In the Ohio case cited, the statute makes all tangible property in the state liable to taxation, whether owned by resident or non-resident. The property which was claimed to be exempt from taxation, because in transitu to another state, was property in Ohio, sold to a non-resident and merely awaiting the opening of navigation for its removal. It was held liable to taxation. The court say: "If the property is, at the time the *tax attaches, in transitu*, either through the state, or from a point in the state to one out of it, it is not within the state in the sense of the statute. Such was not the condition of this property; it had a situs when the tax attached. Simple purchase with intent to remove cannot change it."

9. *Double Taxation, or Taxation on Credits.*—The equality or justice of the policy of taxing credits, is a question upon which political economists, legislators and courts differ. A commission from the legislature of New York, in their report on this subject, condemn the practice of taxing credits, while a similar commission from Connecticut and one from New Jersey hold it to be a just and equitable mode of taxation: Report of Commissioner Wells *et al.*, 1871, to the New York Legislature, pp. 72–3. Mr. Walker, in his work, demonstrates the fairness of this system of taxation: Walker, Science of Wealth, ed. 1872, pp. 361–2–3.

As to the mortgagee, or, in case of a sale of land on credit

[1] Citing *Erie Railroad* v. *State*, 31 N. J. L. (2 Vroom) 531, where it was decided that a transit duty of three cents on every passenger, and two cents on every ton of freight, transported by corporations through the state, was void.

without mortgage, the holder of the notes for purchase-money, it is settled in several states that the taxation of the credits is not double taxation: *The People* v. *Rhodes*, 15 Ill. 304; *State* v. *Manchester*, 1 Dutcher 531; *People* v. *Whartenby*, 38 Cal. 461; *State* v. *Williamson*, 33 N. J. L. (4 Vroom) 77. The case in California decided it was not double taxation as to the mortgagee, but the question was reserved as to the mortgagor: *People* v. *McCrary*, 34 Cal. 459, also decides the same principle. In a subsequent case it was decided that where the mortgagee paid the tax on the debt, the mortgagor cannot complain of double taxation; it does not affect him. There was an intimation that perhaps the statute, which only allows the indebtedness of a person to be deducted from the amount of solvent demands, in ascertaining the amount of personal property to be taxed, conflicted with that provision of the Constitution requiring property to be assessed at its value, inasmuch as the value of the land in the hands of the mortgagor is his interest in the land, less the debt: *Lick* v. *Austin*, 43 Cal. 590. This question was most elaborately discussed in a late case in California; the former decisions were reviewed and sustained by a divided court: *Savings & Loan Society* v. *Austin*, 46 Cal. 415. CROCKETT and NILES, JJ., thought the taxation of the property mortgaged and of the debt secured was double taxation. The Savings and Loan Society was a banking corporation, with a capital of $500,000, which was invested in U. S. bonds. All the solvent debts due the corporation were for moneys deposited by depositors in the bank, which were loaned out at interest, to be repaid the depositors when returned by the borrowers, with interest accumulating from time to time. These loans were secured by mortgage. This corporation was assessed for solvent debts at $7,968,740, the amount of their loans. It was claimed that the depositors had been likewise assessed and had paid taxes on the deposits. A majority of the court, while holding the opinion just stated, thought it would have been a case of double taxation, if the record had sustained the claim set up that the depositors had been assessed and paid taxes on the deposits. BELCHER, J., says: "When money is deposited in a savings bank, to be loaned out for the benefit of the depositor, if it is taxed to the depositor, and the bank has loaned out the money and is taxed upon the note and mortgage, it is double taxation. In this case it does not appear that the taxes had been paid by the depositors on any of their

deposits, and therefore the question of double taxation does not arise. It must appear that the tax has been once paid or tendered by some one." This case is cited in a later case in the same state, as deciding that solvent debts are liable to taxation: *People* v. *Ashbury*, 46 Cal. 523.

Where property is taxed in one state, on account of the residence of the decedent, and in another because the evidences of debt in the hands of the ancillary administrator is in the latter state, the fact that it will be thus subject to double taxation is not weighed at all by the courts of the latter state: *St. Louis County* v. *Taylor's Administrator*, 47 Mo. 594. Such taxation may be unjust, but the court cannot disregard the law because it has that effect: *Tallman* v. *Butler County*, 12 Iowa 534; approved in 28 Iowa 370; *Toll Bridge Company* v. *Osborn*, 35 Conn. 7. But if a certain kind of property is clearly taxable under one section of the statute, the statute will be so construed as not to make the same property taxable again under another section of the statute: *Savings Bank* v. *Portsmouth*, 52 N. H. 17.

10. *Conclusion as to Taxable Situs of Personal Property.*—We conclude that the situs of personal property for the purposes of taxation depends in a great measure upon the nature of the property.

(*a.*) If it be chattels, which have a tangible existence, they are taxed in the locality in which they are situated.

(*b.*) Evidences of debt, such as state stocks and bonds of municipal corporations, transferable by delivery, and indeed all negotiable instruments which are of a chattel nature, are taxable where the evidence of the debt is actually situated.

(*c*) But chattels which are in transit from one state to another, seeking a market, or which are in the hands of a consignee for sale merely, are not subject to taxation in the state where they are actually situated, but in that of the owner.

(*d.*) Debts not negotiable are taxable where the owner resides; they follow his person.

(*e.*) But where it is necessary, in case of the death of the owner, to have administration in the state of the debtor, the legal title being in the ancillary administrator or executor, the assets of the estate recoverable in the ancillary forum may be taxed by that state. But legacies, the proceeds of property situated in the domiciliary forum, although passing to legatees through the hands of