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THE BUSINESS SITUS OF CREDITS

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When one man borrows money from another and promises to pay him back, there commonly arises what we may colloquially call a debt. The reason that it arises is that upon proper proceedings the lender can get a judgment against the borrower. Some prefer to put the cart before the horse and to say that the reason that the lender can get a judgment is that the transaction has created a debt. One way of putting it may be as good as another, so long as we know what we are talking about and understand that the nature of the transaction must be tested by its results and therefore *ex hypothesi* must depend upon what those results will be. Whenever after a lending-and-borrowing transaction we are justified in guessing that a court upon proper demand will render a judgment, we are justified in believing that a debt has arisen. But at bottom the existence of this debt depends upon faith as to what some court will ultimately do.

If we proceed next to inquire where this debt is located, we find scope for an analysis somewhere similar to that just applied to its existence. In the simple case supposed, the only touchable elements in the transaction are the borrower and the lender. We put to one side the currency or what-not actually borrowed, because it may pass out of reach or out of existence. If the borrower and the lender are in different jurisdictions, where is the debt located? If the essence of the debt is a faith that a court

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will render a judgment, our task seems to be that of putting salt on the tail of this faith. Whose faith counts most, that of the borrower or that of the lender? The illimitable reaches of such an inquiry are apparent. So we may as well stop before we begin. If "location" implies existence in some special spot of space, our simple debt is located nowhere. It isn't that kind of animal. Any talk about its location is necessarily a medley of metaphor and analogy. If we say that the debt is located in one place or another, we can mean only that it can be dealt with as though it were located in one place or another. Whatever fictitious "location" is thus assigned to a debt, the fiction and the assignment are but devices for reaching results. For practical purposes a debt may be regarded as being where it can be treated as though it were. If we find a court treating a debt as though it were in the pocket of the debtor or in the pocket of the creditor, we may say that for the particular purpose in issue, the debt is where it thus gets caught.

Yet we must not forget that any use of the term "location" in this connection is fictional and metaphorical. If the term "*situs*" means no more and no less than the term "location," it is as fanciful to speak of the *situs* of a debt as to speak of its location. Those who thus use "*situs*" must agree with Professor Beale that "the true view would seem to be that a chose in action not being corporeal has no *situs* for any purpose."¹ If, however, we take "*situs*" as a verbal sign for the place where a debt or chose in action may effectually be dealt with, then the taint of Ananias is removed. For there are places in which debts and choses in action are effectually dealt with. When "*situs*" is thus used merely as a tag for a result, we must avoid the vicious circle of also using the tag as a reason for the result. We cannot eat our cake and have it too. If we choose to say that a debt has its *situs* for garnishment wherever the debtor may be served with process for the reason that the courts have in fact allowed it to be garnisheed wherever such service is possible, we must forego the privilege of saying that a debt can be garnisheed wherever the debtor may be served with process

¹ "Summary of the Conflict of Laws," 3 CASES ON THE CONFLICT OF LAWS, 1 ed., 507. In "The Exercise of Jurisdiction *In Rem* To Compel Payment of a Debt," 27 HARV. L. REV. 108, 115 (December, 1913) Professor Beale puts the same idea as follows: "The true doctrine would seem to be that a debt has in fact no *situs* anywhere; not merely because it is intangible but because as a mere forced relation between the parties it has no real existence anywhere." Cf. Mr. Justice Hughes in *Liverpool etc. Ins. Co. v. Board of Assessors*, 221 U. S. 346, 354, 31 Sup. Ct. 550 (1911): "When it is said that intangible property, such as credits on open account, have their *situs* at the creditor's domicile, the metaphor does not aid. Being incorporeal, they can have no actual *situs*. But they constitute property; as such they must be regarded as taxable, and the question is one of jurisdiction."

for the reason that it has its *situs* wherever such service is possible. If we choose to say that a debt has its *situs* for taxation at the domicile of the creditor because that is where it can in fact be taxed, we cannot say that it may be taxed there because that is where it has its *situs*. "*Situs*" cannot be at one and the same time a way of stating results and the means of reaching them. Such jolly little games of Ring-Around-the-Rosy have no proper place in the law. We therefore confine our use of "*situs*" to the results of judicial decisions. Since courts exist to reach results, and not solely to indulge in metaphysical speculation, some things are so because courts make them so. So a chose in action may have a *situs* because the courts endow it with one.

That there is no such animal as the *situs* of a debt *in rerum natura* is evident from the fact that its *situs* for garnishment differs from its *situs* for taxation. Jurisdiction over the debtor is enough to subject the debt to attachment.² Jurisdiction over the debtor is not enough to subject the debt to taxation.³ Jurisdiction over the creditor is enough for taxation⁴ and not enough for garnishment.⁵ The *situs* of a debt for garnishment may move about from day to day as the debtor migrates. The *situs* for taxation stays at the domicile of the creditor however far he wanders from his own fire-side. No general statement about the *situs* of a debt is likely to be true. There is a *situs* for garnishment and a different *situs* for taxation. These differences exist because duly authorized judicial tribunals make them exist. They are so because courts say they are so. *Situs* and the absence of *situs* are both fabricated products. To understand their composition we should inquire into the process of their manufacture. Our present inquiry is confined to a peculiar kind of *situs* for taxation, known as business *situs*; and the manufacturer with whose product we are primarily concerned is the Supreme Court of the United States.

The first Supreme Court decision on the subject of business *situs* is *New Orleans v. Stempel*⁶ decided on December 4, 1899. Here a New York guardian of a New York ward objected to being

² *Chicago, Rock Island etc. R. Co. v. Sturm*, 174 U. S. 710, 19 Sup. Ct. 797 (1899); *Harris v. Balk*, 198 U. S. 215, 25 Sup. Ct. 625 (1904).

³ *State Tax on Foreign-Held Bonds*, 15 Wall. 300 (1872) as approved with modification in *Buck v. Beach*, 206 U. S. 392, 408, 27 Sup. Ct. 712 (1907).

⁴ *Kirtland v. Hotchkiss*, 100 U. S. 491 (1879); *Fidelity & Columbia Trust Co. v. Louisville*, 245 U. S. 54, 38 Sup. Ct. 40 (1917); *Maguire v. Trefry*, 253 U. S. 12, 40 Sup. Ct. 417 (1920); *Cream of Wheat Co. v. Grand Forks County*, 253 U. S. 325, 40 Sup. Ct. 558 (1920).

⁵ Obviously the chose in action cannot be reduced to possession unless there is power to seize the debtor or some of his belongings. I have not come across any case where garnishment was attempted elsewhere than where there was power over the debtor.

⁶ 175 U. S. 309, 20 Sup. Ct. 110 (1899).

taxed by Louisiana on a deposit in a New Orleans bank and on notes "largely secured by mortgages on real estate in New Orleans" which "notes and mortgages were in the city of New Orleans, in possession of an agent of the plaintiff, who collected the interest and principal as it became due and deposited the same in a bank in New Orleans to the credit of the plaintiff."⁸ It is to be assumed that the debtors were domiciled in Louisiana, but the opinion of the court gives no hint that this was deemed of any importance. The two other possible bases for the Louisiana tax were the conduct of business in the state through an agent and the presence of the notes and mortgages in the state.⁹ The former appears as the ground on which the statute sought to reach these credits;¹⁰ the latter seems to be the justification found by the Supreme Court for permitting the tax.¹¹ Indeed the case, standing by itself, might well be taken as authority for the proposition that debts represented by notes and secured by mortgage have a *situs* where the notes and the mortgages have their physical presence. Yet, since the case was one in which the creditor ran a loaning business through an agent within the taxing state, it may be received in good society as an exponent of the theory of business *situs*, after it has lost respectability as an effort to treat notes and mortgages as chattels.

It seems to be only when he is considering whether these credits are taxable under the Louisiana statute that Mr. Justice Brewer adverts to the fact that a regular loaning business was done within the state. He quotes that part of the statute which, after declaring that credits and promissory notes shall be subject to taxation, says:

"And this shall apply with equal force to any person or persons representing in this state business interests that may claim a domicile elsewhere, the intent and purpose being that no nonresident, either by himself or through any agent, shall transact business here without paying to the state a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations, or credits arising from the business done in this state are hereby declared assessable within this state, and at the business domicile of said nonresident, his agent or representative."¹²

⁷ *Ibid.*, 312.

⁸ *Ibid.*

⁹ The fact that the notes were secured by mortgage of Louisiana land which would give Louisiana power to tax the creditor on his interest in Louisiana realty under the doctrine of *Savings & Loan Society v. Multnomah County*, 169 U. S. 421, 18 Sup. Ct. 392 (1898) was not made a basis for taxation by the Louisiana statute.

¹⁰ See quotation from the statute cited in note 12, *infra*.

¹¹ See quotations from the opinion cited in notes 27 and 28, *infra*.

¹² 175 U. S. 309, 313.

The learned Justice then reviews the decisions of the Louisiana court showing that this court excluded from the statute simple debts not evidenced by any writing such as insurance premiums due and unpaid¹³ and a bank deposit,¹⁴ but held taxable a bank deposit which was the fruit of a continuing business conducted by an agent within the state.¹⁵ After this conspectus, Mr. Justice Brewer declares:

“From this review of the decisions of the supreme court of the state it is obvious that moneys, such as these referred to, collected as interest and principal of notes, mortgages, and other securities kept within the state and deposited in one of the banks of the state for use or reinvestment, are taxable under the act of 1890. They are property arising from business done in the state; they were tangible property when received by the agent of the plaintiffs, and, as such, subject to taxation, and their taxability was not, as the court holds, lost by their mere deposit in a bank. It is true that when deposited the moneys became the property of the bank, and for most purposes the relation of debtor and creditor arose between the bank and the depositor, yet as evidently the moneys were to be kept in the state for reinvestment or other use they remained still subject to taxation, according to the decision in 49 La. Ann. 43. With regard to the notes and mortgages, it may be conceded that there is no express decision of the supreme court to the effect that they were taxable under the law of 1890, yet the reasoning of that court in several cases and its declarations, although perhaps only *dicta*, show that clearly in its judgment they had a local *situs* within the state, and were by the statute of 1890 subject to taxation.”¹⁶

Here seems to be a confusion of two or more ideas. The bank deposit is the fruit of business transactions within the state and it is a metamorphosis of something tangible. Not only is it the

¹³ *Liverpool etc. Co. v. Board of Assessors*, 44 La. Ann. 760, 11 So. 91 (1892); *Ralley v. Board of Assessors*, 44 La. Ann. 765, 11 So. 93 (1892). From the opinion in the second case Mr. Justice Brewer quotes the following from page 770: “There is no doubt of the legislative power to modify the rule of comity, *Mobilia personam sequuntur*, in many respects. Moveables having an actual *situs* in the state may be taxed there, though the owner be domiciled elsewhere. Even debts may assume such concrete form in the evidences thereof that they may be similarly subjected when such evidences are situated in the state, as in the case of bank notes, public securities, and, possibly, of negotiable promissory notes, bills of exchange, or bonds.

“But as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any *situs* distinct from the domicile of the creditor, and no legislative power exists to change that *situs* so far as nonresident creditors are concerned. As said by the Supreme Court of the United States: ‘To call debts property of the debtors is simply to misuse terms. 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. Their debts can have no locality separate from the parties to whom they are due.’ State Tax on Foreign-Held Bonds, 15 Wall. 300.” (175 U. S. 309, 313-314).

¹⁴ *Clason v. New Orleans*, 46 La. Ann. 1, 14 So. 306 (1894).

¹⁵ *Bluefields Banana Co. v. New Orleans Board of Assessors*, 49 La. Ann. 43, 21 So. 627 (1897).

¹⁶ 175 U. S. 309, 316.

fruit of past business transactions but it is an implement of present and future business transactions. The idea that the deposit is the reincarnation of something tangible formerly possessed seems a trifle mystical; it is an idea equally applicable to any debt due upon the sale of a chattel. At best it can be but a make-weight tossed on to a balance which the court was determined to tip against the taxpayer.

For fuller justification for holding the notes to be within the Louisiana statute, Mr. Justice Brewer goes outside of the Louisiana decisions. He is still professedly confining himself to the interpretation of the Louisiana statute when he says:

"If we look to the decisions of other states we find the frequent ruling that when an indebtedness has taken a concrete form and become evidenced by a note, bill, mortgage, or other written instrument, and that written instrument evidencing the indebtedness is left within the state in the hands of an agent of the nonresident owner, to be by him used for the purposes of collection and deposit or reinvestment within the state, its taxable *situs* is within the state."¹⁷

Some of the opinions in the cases reviewed seem to lay stress on the fact that business is done within the taxing state,¹⁸ while others appear to content themselves with pointing out that the scrap of paper is like a chattel, taxable where found.¹⁹ One of them lays down explicitly that the property does not exist where

¹⁷ *Ibid.*, 317.

¹⁸ "We are not only satisfied that this method of taxation is well founded in principle and upon authority, but we think it entirely just and equitable, that, if persons residing abroad bring their property and invest it in this state, for the purpose of deriving profit from its use and employment here, and thus avail themselves of the benefits and advantages of our laws for the protection of their property, their property should yield its due proportion towards the support of the government which thus protects it." *Catlin v. Hull*, 21 Vt. 152, 161 (1849), quoted in 175 U. S. 309, 317.

"If the owner is absent, but the credits are in fact here, in the hands of an agent, for renewal or collection, with the view of reloading the money by the agent as a permanent business, they have a *situs* here for the purpose of taxation, and there is jurisdiction over the thing." *Goldart v. People ex. rel. Goar*, 106 Ill. 25, 28 (1883), quoted in 175 U. S. 309, 318.

¹⁹ "That the furniture in the mansion and the money in the bank were, under these provisions, properly assessable to the relators is not seriously disputed. And I am unable to see why the money due upon the land contracts must not be assessed in the same way. The debts due upon these contracts are personal estate, the same as if they were due upon notes or bonds; and such personal estate may be said to exist where the obligations for payment are held. Notes, bonds, and other contracts for the payment of money have always been regarded and treated in the law as personal property. They represent the debts secured by them. They are the subject of larceny, and a transfer of them transfers the debt. If this kind of property does not exist where the obligation is held, where does it exist? It certainly does not exist where the debtor may be, and follow his person. And while, for some purposes in the law, by legal fiction, it follows the person of the creditor and exists where he may be, yet it has been settled that for the purpose of taxation this legal fiction does not, to the full extent, apply, and that such property belonging to a nonresident creditor may be taxed in the place where the obligations are held by his agent." *People ex. rel. Westbrook v. Ogdensburgh*, 48 N. Y. 390, 397 (1872), quoted in 175 U. S. 309, 318-319.

the debtor may be and follow his person.²⁰ Nowhere in the opinion is there any evidence that jurisdiction over the debtor has any relation to jurisdiction to tax his debt. The Stempel Case would lead us to assume that, if the theory of business *situs* results in allowing debts to be taxed in the jurisdiction where the debtor resides, this is a mere coincidence.

When Mr. Justice Brewer passes from quotation and summary of the opinions of state courts, he says nothing more about the fact that these credits were business assets and a revolving fund continually employed within the state. He takes pains to prove that prior Supreme Court decisions do not insist that debts can have no other *situs* than the domicil of the creditor. He says of *State Tax on Foreign-Held Bonds*²¹ that it is confined to a case in which the bonds are in the possession of the creditor without the covetous state, and "is not to be taken as a denial of the power of the legislature to establish an independent *situs* for bonds and mortgages when those properties are not in the possession of the owner."²² He cites cases showing that corporate stock may have its *situs* at the domicil of the corporation²³ and that a debt secured by a mortgage of land may be treated as an interest in the land and taxable where the land lies.²⁴ He recognizes that in *Kirtland v. Hotchkiss*²⁵ "it was assumed that the *situs* of such intangible property as a debt evidenced by a bond was at the domicil of the owner,"²⁶ but he explains the case as one which merely enforced a personal contribution measured by intangibles and which carried no implication against a legislative rule that debts may get a *situs* elsewhere than at the domicil of their owner. None of these decisions actually supports the decision which Mr. Justice Brewer was in the process of reaching. All that can be said of them is that they do not foreclose the possibility of what the court was about to do. For positive precedents Mr. Justice Brewer must depend on the state decisions which he adduced apparently for the sole purpose of establishing that the tax before him was due under the Louisiana statute.

Nowhere in the opinion is it distinctly stated that the case involved any constitutional issue. There is talk of *situs*, but no mention of the Fourteenth Amendment. Technically the case

²⁰ See passage quoted in note 19, *supra*.

²¹ Note 3, *supra*.

²² 175 U. S. 309, 320.

²³ *Tappan v. Merchants' National Bank*, 19 Wall. 490 (1873).

²⁴ *Savings & Loan Society v. Multnomah County*, note 9, *supra*.

²⁵ Note 4, *supra*.

²⁶ 175 U. S. 309, 321.

may stand for no more than an interpretation of the statute, federal jurisdiction apparently having obtained by reason of diversity of citizenship. Yet Mr. Justice Brewer seems to have the constitutional issue in mind in the concluding paragraphs of his opinion. He refers to the fact that by statute bills and notes are made subject to seizure and sale on execution just as chattels are, and asserts that "it would seem to follow that the state has power to establish a like *situs* within the state for purposes of taxation."²⁷ This is a *non sequitur*. A simple debt may be garnisheed where the debtor is caught but it is not therefore subject to taxation at the same place. It is elementary that *situs* for attachment and *situs* for taxation are not necessarily identical. But Mr. Justice Brewer insists on looking at a promissory note as a chattel. We get the underlying reason for the decision in the paragraph which immediately precedes the statement of the court's conclusion. Here Mr. Justice Brewer assures us:

"It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; and yet they are but promises to pay—evidences of existing indebtedness. Notes and mortgages are of the same nature; and while they may not have become so generally recognized as tangible personal property, yet they have such a concrete form that we see no reason why a state may not declare that if found within its limits they shall be subject to taxation."²⁸

Such is the genesis of the doctrine of business *situs* of credits, so far as the doctrine is that of the Supreme Court of the United States. The significant thing is that it does not appear to be a doctrine of business *situs*, except by a few reflections of the light from decisions of state courts. The Supreme Court goes rather on the notion that the property taxed is the piece of paper physically located in the taxing jurisdiction and thus having a *situs* there like any other chattel so located. As Mr. Justice Moody says of this decision and a later one²⁹ on the same Louisiana statute: "In both of these cases the written evidences of the credit were continuously present in the state, and their pres-

²⁷ *Ibid.*, 322.

²⁸ *Ibid.*, 322-323.

²⁹ *State Assessors v. Comptoir National D'Escompte*, 191 U. S. 388, 24 Sup. Ct., 109 (1903).

ence was clearly the dominant factor in the decisions.”³⁰ Mr. Justice Holmes had earlier cited *New Orleans v. Stempel*³¹ for the statement that courts “have been loath to recognize a distinction for taxing purposes between what is called money in the bank and actual coin in the pocket” and so “the practical similarity more or less has obliterated the legal difference.”³² Yet in *Buck v. Beach*,³³ decided in 1907, Mr. Justice Peckham puts the Stempel Case on the ground that “the capital of the owner was thus invested in the state”³⁴ and says that “the notes did not alter the nature of the debt, but were merely evidence of it.”³⁵ What he means by this becomes more apparent a little later when he says:

“There are no cases in this court where an assessment such as the one before us has been involved. We have not had a case where neither the party assessed nor the debtor was a resident of or present in the state where the tax was imposed, and where no business was done therein by the owner of the notes or his agent relating in any way to the capital evidenced by the notes assessed for taxation. We cannot assent to the doctrine that the mere presence of evidences of debt, such as these notes, under the circumstances already stated, amounts to the presence of property within the state for taxation. That promissory notes may be the subject of larceny . . . does not make the debts evidenced by them properly liable to taxation within the state, where there is no other fact than the presence of the notes upon which to base the claim.”³⁶

These contradictory intimations show that the Supreme Court has not been continuously clear in its collective mind as to just what was the initial justification brought forward for taxing credits elsewhere than at the domicil of the creditor. This mind was divided in *Buck v. Beach*³⁷ from which quotation has just been made. Mr. Justice Day in dissenting cited the Stempel Case along

³⁰ In *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395, 400, 27 Sup. Ct. 499 (1907).

³¹ Note 6, *supra*.

³² In *Blackstone v. Miller*, 188 U. S. 189, 205, 23 Sup. Ct. 277 (1903).

³³ 206 U. S. 392, 27 Sup. Ct. 712 (1907).

³⁴ *Ibid.*, 404-405.

³⁵ *Ibid.*, 405.

³⁶ *Ibid.*, 406. In *Wheeler v. Sohmer*, 233 U. S. 434, 34 Sup. Ct. 607 (1914), Mr. Justice Holmes, with the connivance of Justices Day, Lurton and Hughes, tried to explain *Buck v. Beach* as a case in which the notes were present only temporarily in the state which sought to tax them. These four judges insisted that permanent presence of notes gives them a *situs* like that of a chattel both for inheritance taxation and for property taxation. Justices McKenna and Pitney held that presence of the notes is enough to justify an inheritance tax, but were careful to say that it is not enough to justify a property tax. Mr. Justice McKenna made it very clear that neither *Buck v. Beach* nor any of the cases on business *situs* sanctioned a property tax merely because of the physical presence of notes evidencing the obligations. The three dissenting justices agreed with Mr. Justice McKenna's analysis of *Buck v. Beach*, so that on the most recent ballot, five justices voted against treating promissory notes as chattels.

³⁷ Note 33, *supra*.

with others³⁸ in support of the assertion that "this court in a series of cases has held that notes, bonds, and mortgages may acquire a *situs* at the place where they are held."³⁹ He insists that in the Stempel Case "there was no fact of investment and reinvestment of capital."⁴⁰ He notes that Mr. Justice Moody had observed that the presence of the notes was clearly the dominant factor in that decision. Yet he agrees that the precise point whether presence of the notes alone gives *situs* had not been actually decided in the previous cases. And before the quarrel in *Buck v. Beach*⁴¹ there had been Supreme Court decisions allowing the taxation of credits away from the domicile of the creditor even though the evidences thereof were not retained in the taxing state. Thus it was manifest that the Supreme Court, even if it had at one time been of the opinion that presence of the notes is enough to give a *situs* to the debts they represent, had also been of the opinion that such obligations may acquire a business *situs* without the aid of the presence of the notes.

The first manifestation of this opinion appeared in *Bristol v. Washington County*⁴² which was argued less than two months after the filing of the opinion in the Stempel Case and was decided at the same term of court. There a Minnesota agent ran a loaning business for a New York principal, retaining possession of the mortgages, but not of the notes. The notes were sent to Minnesota only when necessary for renewal or collection or for foreclosure of the mortgages. During the latter part of the period in question the Minnesota agent had no power to discharge the mortgages. After reciting these facts, Chief Justice Fuller declared:

³⁸ Of the cases cited, two are on business *situs*: *Bristol v. Washington County*, note 42 *infra*, and *State Assessors v. Comptoir National D'Escompte*, note 45 *infra*. Both these cases are later declared not to be based on the idea that the paper evidencing the debt had a physical *situs* in the taxing jurisdiction. *Liverpool etc. Ins. Co. v. Board of Assessors*, note 75 *infra*. *Blackstone v. Miller*, note 32, *supra*, another case relied on by Mr. Justice Day to establish that notes are like chattels, did not involve a note, but a simple bank deposit. Moreover, the case was later declared not to be application to property taxation. See *infra*, pages 102-103. *Carstairs v. Cochran*, 193 U. S. 10, 24 Sup. Ct. 318 (1904), also cited by Mr. Justice Day, involved whiskey, which formerly at least was not intangible. *Scottish Union etc. Ins. Co. v. Bowland*, 196 U. S. 611, 25 Sup. Ct. 345 (1905) involved bonds deposited with a state official to secure the policy-holders within a state as required by statute. The opinion was by Mr. Justice Day who remarked at pages 619-620: "A considerable part of the opinion of the court below and the discussion in the briefs of counsel goes to the question of the power of the state to tax bonds, held as these were, within its jurisdiction. At the oral argument, however, the learned counsel representing the insurance company conceded that there was legislative power to impose the taxes in question. A reference to the decisions of this court makes it perfectly plain that such taxation is within the power of the state." Then follow citations of the business-*situs* cases and the whiskey case. If the decision today represents the view of the Supreme Court, it must be either because bonds are treated as different from ordinary notes or because securities deposited under such a statute are thought of as having a business *situs*, as is made clear by *Wheeler v. Sohmer*, note 36, *supra*.

³⁹ 206 U. S. 392, 411.

⁴⁰ *Ibid.*

⁴¹ Note 33, *supra*.

⁴² 177 U. S. 133, 20 Sup. Ct. 585 (1900).

“Nevertheless the business of loaning money through the agency in Minnesota was continued during all these years just as it had been carried on before, and we agree with the circuit court that the fact that the notes were sent to Mrs. Bristol in New York, and the fact of the revocation of the power of attorney did not exempt these investments from taxation under the statutes as expounded in the decision to which we have referred. And we are unable to perceive that any rights secured by the Federal Constitution were infringed by the statutes as thus interpreted so far as the *situs* of these loans and mortgages was concerned.”⁴³

Instead of giving a reason for regarding as of no importance what seemed to be regarded as the dominating factor four months earlier, the Chief Justice contents himself with repeating his assertion. With reference to the Stempel Case he says:

“There the money, notes, and evidences of credit were in fact in Louisiana, though their owners resided elsewhere. Still, under the circumstances of the case before us, we think, as we have said, that the mere sending of the notes to New York and the revocation of the power of attorney did not take these investments out of the rule.

“Persons are not permitted to avail themselves for their own benefit of the laws of a state in the conduct of business within its limits, and then to escape their due contribution to the public needs through action of this sort, whether taken for convenience or by design.”⁴⁴

The second paragraph may have been designed as a reason. It has the flavor of moral condemnation of the late Mrs. Bristol for having the notes sent to her in New York instead of leaving them in Minnesota. But if presence of the notes confers *situs*, as Mr. Justice Brewer so unmistakably intimated in the Stempel Case, there can be no more sin in sending the notes from one jurisdiction to another and thus shifting their *situs* than there is in changing one's domicile or in removing any chattel from one state to another. What the Chief Justice is now saying is that the basis of the *situs* of credits is the doing of business in the state and not the presence of pieces of paper there.

Yet three years later, when the Louisiana statute again came before the Supreme Court, Mr. Justice Day works hard to sustain a tax on the ground that the tangible evidence of credits was physically within the jurisdiction. This was in *State Board of*

⁴³ *Ibid.*, 143-144.

⁴⁴ *Ibid.*, 144.

*Assessors v. Comptoir National D'Escompte*⁴⁵ which involved loans apparently made by way of overdrafts. In effect, however, the so-called check which the borrower drew against no funds and gave to the lending bank was merely a memorandum of the amount borrowed. Mr. Justice Day says that "the exact question is whether these checks . . . are evidence of credits . . . having a local *situs* in New Orleans, and constitutionally taxable within the meaning of the Louisiana statute."⁴⁶ While enough is said about the fact that the Comptoir was engaged in business in Louisiana to warrant the assumption that the court thought such business activity essential to the jurisdiction asserted by that state, the dominant ground of the decision, as Mr. Justice Moody later reminds us,⁴⁷ is the presence in the state of these so-called checks. Mr. Justice Day returns to this idea when he sums up by saying:

"Applying these principles to the facts in the case, we have no doubt that these checks, secured in the manner stated, and given for the purpose of evidencing an interest-bearing debt, were the evidences of credits for money loaned, localized in Louisiana, protected by its laws, and properly taxable there."⁴⁸

By this time the Supreme Court had become unanimous. Yet the opinion doubtless represents the pet attitude of the judge who wrote it—an attitude which those of differing mind did not bother to combat so long as they agreed with the result reached. Mr. Justice Day and Mr. Justice Brewer were the two dissentients in *Buck v. Beach*⁴⁹ in which they insisted unsuccessfully that the presence of notes in a state is alone sufficient to subject them to taxation there.⁵⁰ This idea was here denied by their seven colleagues, though when these two justices had stressed the same idea earlier in the Stempel Case and in *Bristol v. Washington County*,⁵¹ their colleagues had been content to keep still so long as they could find other grounds on which the same result might stand. Justices Harlan and White had dissented in the Stempel Case, presumably because they

⁴⁵ 191 U. S. 388, 24 Sup. Ct. 109 (1903), note 29, *supra*.

⁴⁶ *Ibid.*, 401.

⁴⁷ In addition to the full description of the method by which the loans were made and evidenced, there is the following summary of the law induced from previous decisions: "From these cases it may be taken as the settled law of this court that there is no inhibition in the federal Constitution against the right of the state to tax property in the shape of credits, where the same are evidenced by notes or obligations held within the state, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business." 191 U. S. 388, 403-404.

⁴⁸ 191 U. S. 388, 404.

⁴⁹ Note 33, *supra*.

⁵⁰ See note 36, *supra*, for the Supreme Court's later attitude as to what was decided in *Buck v. Beach*.

⁵¹ Note 42, *supra*.

thought that neither the running of a loaning business nor the presence of the notes nor both combined conferred jurisdiction to tax. Mr. Justice White concurred in *Bristol v. Washington County*⁵² "on the ground of *stare decisis* only."⁵³ He might have drawn the distinction that in the first case the notes were permanently in the taxing state while in the second they were not. His failure to do so indicates the possibility that in the *Stempel Case* the idea that a note was like a chattel was not such a favorite with the court as a whole as with the writer of the opinion.

In these early opinions the court appears to have been feeling its way. It didn't dare drop completely the idea that there was something tangible either located in the taxing state or in some physical or fanciful fashion having its headquarters there, as an individual has his "technically pre-eminent headquarters"⁵⁴ in some place which thereby becomes his domicil even though he spends most or all of his time somewhere else. The same idea persists to a degree in *Metropolitan Life Ins. Co. v. New Orleans*,⁵⁵ decided in 1907, where loans to Louisiana policy holders of a New York insurance company were held taxable in Louisiana, although the notes and the policies securing them were kept in the home office in New York. They were sent to the New Orleans agent to deliver to the makers when they were paid, but it did not appear whether or not they went to New Orleans to have the interest payments indorsed on their backs. Mr. Justice Moody persuades himself that somehow or other these continued to be Louisiana notes. As he puts it:

"The notes and securities were in Louisiana whenever the business exigencies required them to be there. Their removal with the intent that they shall return whenever needed, their long-continued though not permanent absence, cannot have the effect of releasing them as the representatives of investments in business in the state from its taxing power. The law may well regard the place of their origin, to which they intend to return, as their true home, and leave out of account temporary absences, however long continued."⁵⁶

Somewhat enigmatically the learned Justice adds that "neither the fiction that personal property follows the domicil of its owner,

⁵² *Ibid.*

⁵³ 177 U. S. 133, 149.

⁵⁴ Mr. Justice Holmes in *Williamson v. Osenton*, 232 U. S. 619, 625, 34 Sup. Ct. 442 (1907).

⁵⁵ 205 U. S. 395, 27 Sup. Ct. 499 (1907).

⁵⁶ *Ibid.*, 402.

nor the doctrine that credits evidenced by bonds or notes may have the *situs* of the latter, can be allowed to obscure the truth.’⁵⁷ For this he cites *Blackstone v. Miller*⁵⁸ which four years earlier had allowed New York to impose an inheritance tax on the transfer of a deposit in a New York bank made by an Illinois decedent. Thus “the truth” might seem to be that a debt has its *situs* at the domicile of the debtor, for in *Blackstone v. Miller*⁵⁹ Mr. Justice Holmes had asserted that “power over the person of the debtor confers jurisdiction.”⁶⁰ Yet in the very next paragraph Mr. Justice Holmes went on to say that the views he was expressing in no way conflicted with the point decided in *State Tax on Foreign-Held Bonds*,⁶¹ for there the bonds were held out of the taxing state and “bonds and negotiable instruments are more than merely evidences of debt,”⁶² since “the debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions.”⁶³ Thus if *Blackstone v. Miller*⁶⁴ had any possible application to a property tax, it clearly did not imply that when notes were in one jurisdiction the “truth” was that the obligation was in another. Moreover, before the Metropolitan Case was decided, the court had already heard the argument in *Buck v. Beach*⁶⁵ in which two months later Mr. Justice Peckham put *Blackstone v. Miller*⁶⁶ to one side by saying that cases on inheritance taxes are not apposite to property taxes.⁶⁷ At the same time he affirmed that with the exception of taxes on the interest of a mortgagee in the mortgaged premises, the principle upon which *State Tax on Foreign-Held Bonds*⁶⁸ was decided “has not been otherwise shaken by the later cases.”⁶⁹ Thus instead of a judicially revealed truth that a debt has its *situs* where the debtor is, we have a judicially revealed truth that jurisdiction over the debtor does not in and of itself give jurisdiction to tax the debt.

⁵⁷ *Ibid.*

⁵⁸ 188 U. S. 189, 23 Sup. Ct. 277 (1903).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, 206.

⁶¹ Note 3, *supra*.

⁶² 188 U. S. 189, 206.

⁶³ *Ibid.*

⁶⁴ Note 58, *supra*.

⁶⁵ Note 33, *supra*.

⁶⁶ Note 58, *supra*.

⁶⁷ “Cases arising under collateral inheritance tax or succession tax acts have been cited as affording foundation for the right to tax as herein asserted. The foundation upon which such acts rest is different from that which exists where the assessment is levied on property. The succession or inheritance tax is not a tax on property, as has frequently been held by this court (*Knowlton v. Moore*, 178 U. S. 41, and *Blackstone v. Miller*, 188 U. S. 189), and therefore the decisions arising under such inheritance tax cases are not in point.” 206 U. S. 392, 408. Notwithstanding this explicit assertion, other Justices of the Supreme Court from time to time cite inheritance tax cases as though they applied of their own force to property taxes.

⁶⁸ Note 3, *supra*.

⁶⁹ 206 U. S. 392, 408.

What truth then is it that Mr. Justice Moody will not explicitly expose but will not have obscured? Perhaps it is what was in his mind a moment earlier when he found the controlling consideration in *Bristol v. Washington County*,⁷⁰ to be "the presence in the state of the capital employed in the business of lending money."⁷¹ Mr. Justice Moody seems to think that somehow or other the capital loaned to the Minnesota farmers had a real presence in Minnesota as property of the lender, although both lender and notes were in New York. This presence seems to be due to the succession of acts and negotiations which take place in the debtor state. Combination and repetition seem to create a presence that cannot come from an isolated loan and mortgage. For in the Metropolitan Case Mr. Justice Moody is careful to say:

"We are not dealing here merely with a single credit or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the state of Louisiana, and employed a local agent to conduct that business. It was conducted under the laws of the state. The state undertook to tax the capital employed in the business precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed, it caused the credits arising out of the business to be assessed. We think the state had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the state evidences of credits in the form of notes. Under such circumstances they have their taxable situs in the state of their origin."⁷²

Here is jurisdiction over the debt, not because of the presence of the debtor, not because of the presence of any security given for the debt, not because any single debt was negotiated within the state, but because an agent was running a recurrent loaning business within the state.

That such a business would be subject to an excise tax admits of no dispute. Such an excise tax might be measured by the face value of all the loans negotiated during the year or by the amount outstanding at any given time. But how the capital from which the loans come can have in the state any presence which capital making but a single loan would lack is nowhere made clear. All that the Metropolitan Insurance Company had in New Orleans

⁷⁰ Note 42, *supra*.

⁷¹ 205 U. S. 395, 402.

⁷² *Ibid.*, 402-403.

was an agent and some debtors. Its capital thus allocated to New Orleans is nothing but some obligations due from New Orleans debtors plus some power on the part of a New Orleans agent to deal with the debtors as to their borrowing and paying. Such collective capital was no more physically present in New Orleans than any single intangible was present there or anywhere. The faint aroma of the idea that the notes themselves had some lingering physical connection with their place of origin may be neglected as equally fanciful. The basis of the Louisiana tax must be either the domicile of the debtor or the running-a loaning business within the state or the combination of the two.

That the domicile of the debtor is not alone enough to justify the tax is established by the reaffirmation of *State Tax on Foreign-Held Bonds*.⁷³ Would the doing of business be alone enough to justify the tax? This can not be definitely answered from the Supreme Court decisions. In all the Supreme Court cases in which the doctrine of business *situs* has been applied, the taxing state has been the domicile of the debtors as well as the place where the business was conducted. In *Buck v. Beach*⁷⁴ the exemption was put on the ground that the mere presence of the notes in Indiana did not give them a *situs* there and this was said to be the sole question before the court. The notes were secured by mortgage of Ohio lands and were presumably the obligations of Ohio makers. The Indiana agent seems to have been a nonfeasant secreting bailee and not a negotiator. The case therefore does not decide that the debts due from Ohio borrowers could not have had a *situs* in Indiana if the transactions with regard to their creation, continuation and extinction took place in Indiana. Until such a case arises, there must be some uncertainty as to how the Supreme Court will decide it. Nevertheless there is not a little reason to suspect that the court might not discover a business *situs* unless the domicile of the debtor as well as the conduct of business is within the taxing jurisdiction.

The basis for this suspicion is the emphasis placed by Mr. Justice Hughes in *Liverpool etc. Ins. Co. v. Board of Assessors*⁷⁵ on the fact that the taxing state was the domicile of the debtor. This case like most of its ancestors involved a New Orleans tax on a foreign insurance company. The credits here taxed were not loans by the company to the policy-holders but were amounts owing

⁷³ Note 3, *supra*.

⁷⁴ Note 33, *supra*.

⁷⁵ 221 U. S. 346, 31 Sup. Ct. 550 (1911).

from the policy-holders for over-due premiums. The debts were not evidenced by any notes, so that here was a case where the idea that the tax was on notes as a species of chattels could find no foothold.

It was easy to establish from the prior cases that notes given for debts need not remain in the state of their origin in order to let that state tax the credits and that a check given as a memorandum would do as well as a formal note. But it was still urged that Louisiana could not tax credits which were not evidenced by any writing at all. As counsel put it: "The legislature has not the power to localize an abstract credit away from the domicile of the creditor."⁶ To this, Mr. Justice Hughes replied:

"The asserted distinction cannot be maintained. When it is said that intangible property, such as credits on open account, have their *situs* at the creditor's domicile, the metaphor does not aid. Being incorporeal, they can have no actual *situs*. But they constitute property; as such they must be regarded as taxable, and the question is one of jurisdiction.

"The legal fiction expressed in the maxim *mobilia sequuntur personam* 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 debt, of course, is not property in the hands of the debtor; but it is an obligation of the debtor, and is of value to the creditor, because he may be compelled to pay; and power over the debtor at his domicile is control of the ordinary means of enforcement. *Blackstone v. Miller*, 188 U. S. pp. 205, 206. Tested by the criteria afforded by the authorities we have cited, Louisiana must be deemed to have had jurisdiction to impose the tax. The credits would have had no existence save for the permission of Louisiana; they issued from the business transacted under her sanction within her borders; the sums were payable by persons domiciled within the state, and there the rights of the creditor were to be enforced. If locality, in the sense of subjection to sovereign power could be attributed to these credits, they could be localized there. If, as property, they could be deemed to be taxable at all, they could be taxed there."⁷

Here twice Mr. Justice Hughes makes the point that the taxing state was the domicile of the debtor. Since, as we have seen, this alone would not be enough to authorize that state to levy a property

⁶ *Ibid.*, 354.

⁷ *Ibid.*, 354-355.

tax, it seems strange that Mr. Justice Hughes lays so much stress on it unless it has an importance in conjunction with the running of a loaning business within the jurisdiction that it does not have alone. He refers to it again a little later when he says:

“But, as we have seen, the jurisdiction of the state of his domicile, over the creditor’s person, does not exclude the power of another state in which he transacts his business, to lay a tax upon the credits there accruing to him against resident debtors, and thus to enforce contribution for the support of the government under whose protection his affairs are conducted.”⁷⁸

The decision is certainly confined by the opinion to a tax on amounts due from resident debtors. It is also confined to such obligations as arise from a more or less continuous course of transactions within the state. Mr. Justice Hughes speaks of credits “arising as did those in the present instance;” he says that “they would have had no existence save for the permission of Louisiana,” and that “they issued from the business transacted under her sanction within her borders.” In *Orient Insurance Co. v. Board of Assessors*,⁷⁹ decided at the same time, the contention that the sums due for premiums were debts of the agents and not of the policy holders prompted the answer:

“If, however, it can be said that these accounts were due from the agents, still this would not avail the plaintiffs. The premiums were the consideration for the insurance contracts; they were the returns from the local business. Charging the premiums to the local agents did not withdraw the credits accruing to the corporations in the business transacted within the state from its taxing power.”⁸⁰

Thus we see that we may select passages from Supreme Court opinions which indicate that the important element in business *situs* is the doing of business within the state and other passages which lean hardest on the fact that the debtors are domiciled within the state. But we know that domicile of the debtor is not of itself sufficient to justify the taxation of the debt. Therefore we are certain that to have a business *situs* of credits, the credits must be the product of a business within the jurisdiction. We have reason to surmise that the Supreme Court may insist that this business must be one with borrowers or other debtors domiciled in the jurisdiction where the business is carried on. Yet it is

⁷⁸ *Ibid.*, 256.

⁷⁹ 221 U. S. 358, 31 Sup. Ct. 554 (1911).

⁸⁰ *Ibid.*, 359-360.

possible that a court may emphasize the importance of the domicil of the debtor when that helps to justify the tax and may yet find sufficient other justification when a loaning business has dealings with extra-state borrowers. The difficulty of prophesying is enhanced by the fact that the judges of the Supreme Court have seldom agreed with each other on the issues of the taxation of intangibles away from the domicil of their owner. The various opinions would make a multi-colored coat for Jacob. To disagreement about what ought to be the rules and the limits of the rules is added disagreement about what previous cases really stand for. If the Supreme Court is unable to agree as to just what it has decided it is not strange that others may have doubts on points here and there. Since the decisions thus far have been reached by the path of policy and not by the path of logic, it takes a mind-reader and not a logician to know what the decisions of the future will be. The path of policy twists and turns in ways difficult if not impossible to foresee. At present we must still be curious whether the Supreme Court will assign a business *situs* to credits at the place where they are negotiated with non-resident borrowers. We must also be uncertain as to just how much business must be done in order to localize debts at the place of their creation. Will ten debts do or does it take twenty? And will debts arising from a sufficient business always remain taxable at their birthplace or will they lose their business *situs* as soon as the business ceases?

A court which is called upon to answer these questions may do well to start with a recognition that a money lender who establishes a local facility for his operations is in competition with local banks. His enterprise is one that may be declared to be a privilege subject to license restrictions⁸¹ and one that may be required to be conducted in corporate form.⁸² The fact that any such enterpriser is a non-resident who makes use of resident individuals instead of a domestic corporation ought not to save him from any taxes that local banks must bear. Such banks may be taxed on the capital employed or on the income derived from that employment whether their borrowers are within or without the state. When by localizing the management of his capital a non-resident individual behaves just as a local bank behaves, he too should be subject to taxation on that capital or the income there-

⁸¹ Engel v. O'Malley, 219 U. S. 128, 31 Sup. Ct. 190 (1911).

⁸² Shallenberger v. First National Bank of Holstein, 219 U. S. 114, 31 Sup. Ct. 189 (1911).

from without regard to any other *situs* or *locus* than the *situs* or *locus* of the management of his undertaking. Credits acquire what is called a business *situs* only when they are the tools of business operations. While the taxes on such credits which we have been considering have been property taxes, the justification for their application has been the fact that the credits instead of being isolated and quiescent were in a sense companions in activity. Since the acquisition of a business *situs* is conditioned on such interrelated activities, it may be urged that in fixing the detailed requirements and qualifications of such a *situs* we should look to the canons of fairness and policy to be found in the principles established for the taxation of business rather than to those in the principles peculiarly applicable to the taxation of persons or of property quite apart from any employment in business. If this idea meets with favor, the domicile of the debtors loses all significance, and the place where the business is conducted becomes the controlling factor.

To these same canons of business taxation we may look for guidance in settling the minor matters in the requisites of business *situs*—whether the business must be continuous and continuing and what must be its volume. An excise may be imposed on the making of a single loan through a domesticated agency, and this excise may be measured by the amount of the loan. Whether the single transaction may be subjected to repeated annual excises so long as the loan remains unpaid is at best doubtful. An insurance company which solicits no new business within a state but merely continues existing policies on the lives of residents, collecting the premiums at its extra-state office, is immune from a license tax.⁸⁸ So it would seem that no excise may be imposed on outstanding loans after an extra-state lender has withdrawn all authority from a local agent. Some continuing authority of the local agent would be requisite to repeated excises and so may well be held requisite to the continuance of business *situs*. If this continuing authority includes power to make new loans as well as to collect old ones a state may probably levy an excise measured by the capital involved in both enterprises. This seems a fair inference from the established power of a state to impose on an insurance company writing new business an excise measured by premiums paid on lives within the state without regard to the

⁸⁸ *Provident Life Assurance Society v. Kentucky*, 239 U. S. 103, 36 Sup. Ct. 34 (1915).

place of payment, whether within or without the state.⁸⁴ Premiums which escape assessment if no new business is done are caught if business is continued. So on the principles of excise taxation we may contend that the business *situs* of all credits outstanding continues so long as the local agents retain power to sow as well as to reap. Where these agents lose power to make new loans and retain only the authority to collect outstanding balances, a more difficult question arises. They would be subject to an excise on their collecting activities which might be measured by the amounts that they gather in. Possibly such an excise might be measured by the capital which they hold themselves out to gather in, since courts are far from fussy as to the assessment of excise taxes when it is certain that an excise may be levied. The particular capital represented by the outstanding loans is as much localized in the state as it ever was, so long as local agents retain power to collect those loans. Even if this capital would not be a proper measure for the assessment of an annual recurring excise on the enterprise of employing it in business within the state, it might justifiably be held liable to a property tax on the theory that its previously acquired *situs* continued so long as the local management over it continued even though the local management over other capital had ceased. On the whole our intermediate case of continuing power to collect outstanding loans after loss of power to make new ones seems to satisfy the requirements of fairness in continuing a business *situs* even if power of local agents to make collections would not be enough to confer an initial business *situs* on loans originally negotiated without the state.⁸⁵

Whatever official answer is given to these subordinate questions, it is to be hoped that the reasons therefor will not proceed on the assumption that the inquiry is whether the debt as property is within or without the state. Such a question has no substance except as it acquires it from the answer authoritatively given to it. The real issue is whether it is fair to all the parties concerned to

⁸⁴ *Equitable Life Assurance Society v. Pennsylvania*, 238 U. S. 143, 35 Sup. Ct. 829 (1915).

⁸⁵ In *Fidelity etc. Trust Co. v. Louisville*, 245 U. S. 54, 38 Sup. Ct. 40 (1917), in which a citizen of Kentucky was held taxable by Kentucky on a bank deposit in a Missouri bank, Mr. Justice Holmes conceded for the purpose of the decision that the deposit would be taxable in Missouri. It was the fruit of Missouri business transactions but represented profits no longer used in the Missouri business. From this we may infer that credits which are the product of business continue to have a business *situs* in the state of origin so long as business continues even though the particular credits are withdrawn from the business. The propriety of the inference is, however, weakened by the fact that the statement is *dictum* and expressly confined to the purposes of the case in which the issue was a wholly different one, and also by the fact that Mr. Justice Holmes has in other opinions interpreted previous cases as going further in favor of the taxing state than a majority of his colleagues have been willing to concede.

allow a state to extract revenue from a loaning business conducted within its territory. There would be no doubt of an affirmative answer if it were not for the fact that the capital employed in this business or the income therefrom must contribute their quotas to the state in which the owner and recipient is domiciled. It seems tough to make him pay twice when he would pay only once if his activities were confined to his own state. On the other hand it seems tough on the state which fosters the productivity of his capital to deny it the power to reap revenue therefrom. On the issues raised by such conflicting considerations the judgment of Solomon would seem to possess the peculiar wisdom for which that lawmaker was noted. Unfortunately our law is not equipped to order the partitions and divisions that a wise despot might find appropriate. So it makes various compromises. It allows land and chattels to be taxed where they are and not where they are not. It allows the ordinary simple obligation to pay to be taxed where the obligee owes allegiance but not where the obligor chooses to dwell. Obligations of a peculiar character or created in peculiar ways may often be taxed twice, since the Supreme Court has not seen fit to extend to intangibles the rule applied to tangibles which makes immunity from taxation at the domicile of the owner the correlative of liability to taxation elsewhere.

The severity of this refusal is mitigated somewhat by the success with which the persons interested escape from paying what may lawfully be demanded. Yet a system which is fair only to the dishonest and the crafty has not much to commend it. As a result the general property tax as applied to intangibles has pretty much broken down. In its place we are substituting the classified property tax, which lures intangibles from their hiding places by offering to treat them with moderation, and the income tax which in effect reaches the same result in the same way, since the rate on income seldom takes such heavy toll as the rate on capital. At the same time the operation of income tax laws bids fair to increase bi-state double taxation. The Supreme Court allows income to be taxed in the state in which it is earned and in the state in which the recipient resides. Thus it is more expensive for persons to reap reward from a distance than from their own home town. With respect to money loaned at interest the borrower will be likely to pay the freight. This may in time induce the several states to adjust their systems to conform to the judgment of Solomon even though not required to do so by the lesser wisdom of the Constitution as revealed to the Supreme Court of the United States.