which laid down that as the law for Louisiana with an express limitation in the power of the court to modify it, and that it had invaded the rule long received as an axiom, that the descent, alienation, and transfer of real estate was governed rightfully by the law of the State wherein it lay. We are quite satisfied that Congress had no such intent in passing the act of 1867.

The effort to support the course of the marshal, by showing that he acted under a rule of the court, is hardly worth consideration. The mere circumstance that for a few months that officer, acting under the construction of the act of 1867, which we have just shown to be erroneous, had advertised only in the newspapers selected by the clerk of the House of Representatives, did not constitute a rule of the court.

We are of opinion that the sale should have been set aside for want of the advertisement in the parish where the land lay. The judgment of the Circuit Court affirming the sale is, therefore, REVERSED, and the case remanded with directions to proceed

IN CONFORMITY TO THIS OPINION.

St. Louis v. The Ferry Company.

The ferry-boats of a corporation incorporated in one State, and carrying passengers, &c., forward and back across a river to a city situated in another State, are not taxable under a law taxing boats "*within* the city," in a case where the relation of the boats to the city was simply that of contact, as one of the termini of their voyage; and the place where they were laid up when not in use, and where their pilots and engineers resided, and where the real estate of the corporation including a warehouse was situated, was on the opposite shore and in another State. This is not altered by the facts that the boats were enrolled in pursuance of our navigation acts at the city; that the ferry company had an office there; that its president, vice-president, and other principal officers lived there; that the stockholders mainly resided there, and none in the State opposite; that there the ordinary business meetings of the di-

rectors were held, and its moneys received and disbursed, and the corporate seal kept.

ERROR to the Circuit Court for the District of Missouri.

A statute of Missouri enacts that "shares of stock and all other interests held in steamboats, keel-boats, wharf-boats, and all other vessels," shall be taxable for State purposes; and by its charter the city of St. Louis has authority to tax all property *within the city*, so taxable.

In this state of statutory enactment the city authorities of St. Louis laid a tax on the value of all ferry-boats used by the Wiggins Ferry Company, in ferrying passengers and cargo on the Mississippi River, between the city of St. Louis, Missouri, and East St. Louis, in Illinois, on the opposite shore. The ferry company refused to pay the tax, on the ground that these boats were not "property *within* the city," and the question was whether they were so or not.

The case as found by the court below (to which it had been submitted under the act of March 3d, 1865),* was this:

The ferry company was incorporated by the laws of Illinois, and had its principal office in St. Louis, Missouri. There its president, vice-president, treasurer, superintendent, and other chief officers resided; there the ordinary business meetings of the directors were held, and there the seal of the corporation was kept. The company's minor officers, such as engineers and pilots on its ferry-boats, resided in Illinois, opposite the city of St. Louis, where its real estate was situated, also its warehouse and some other property. The ferry-boats, when not in actual use, were laid up by the Illinois shore, and were forbidden, by a general ordinance of the city of St. Louis regulating ferries and ferry-boats, to remain at the St. Louis wharf or landing longer than ten minutes at a time. The city exacted from the company an annual ferry license, which was paid. It permitted the company to erect landing or wharf-boats at its wharf or public landing, for the convenience and exclusive use of its

* The reader who does not recall the provisions of this act may see them *supra*, towards the bottom of page 141.

ferry-boats, for which wharf-boats the city charged the company a stipulated annual wharfage, which was also paid. The company was assessed and taxed for the value of these wharf-boats within the city limits, in addition to the ferry license and wharfage.

The stockholders of the ferry company resided mainly in St. Louis. Some, however, resided in Ohio, some in New York, and some elsewhere, but none in Illinois. The meetings of the company as a corporation for the election of directors had been generally held in Illinois, but the meetings of the directors for the election of its officers and appointment of its employees had been generally held in St. Louis, Missouri. All the principal business of the company done by its directors, superintendent, and other agents, had been transacted in St. Louis. The money collected and received by it for ferriages and other dues were kept in St. Louis, and the books of the company were kept there, and some of the disbursements of the company were there made by its treasurer. The personal property belonging to the company, assessed for taxes by the city, for which these suits were brought, consisted solely of its already mentioned ferry-boats. On these as well as on its other property it was duly assessed in Illinois, and paid taxes there. The ferry-boats were enrolled at St. Louis under the laws of the United States; that is to say, under the acts of 1789 and 1792, which require every vessel to be registered in the district to which she belongs, and declare that her home port shall be that at or near to which her owner resides.

Upon this same state of facts, the Supreme Court of Missouri, in *The City of St. Louis* v. *Wiggins Ferry Company*,* had adjudged that the company was bound to pay the tax.

The court below decided that the ferry company, being a corporation created by the State of Illinois, and the ferry-boats not being within the limits of St. Louis except as they habitually touched at its wharf for the delivery of passengers and cargo, was not taxable for its boats by the city, as prop

* 40 Missouri, 580.

erty within it. The fact that the principal business office of the company was in St. Louis, and that the ferry-boats were enrolled at the port of St. Louis, under the United States laws, did not, as the court below considered, essentially change the case. Judgment having been accordingly entered for the ferry company, the city excepted to the law as declared by the court upon the facts, and tendered its bill of exceptions, which was signed and sealed.

Mr. J. M. Krum, for the plaintiff in error:

Were these boats "within the city" of St. Louis? That is the only question in the case.

The enrolment at the port of St. Louis is not indeed conclusive as to the *situs* of the property. It may but indicate the domicile or home port of the vessels, but it is a circumstance to be considered in connection with the other facts in determining the question at issue.

What are these other facts? The managers of the boats resided in St. Louis, and there received and disbursed the earnings of the boats, keeping their office there, and the ferry company itself keeping its principal office there. These facts, taken in connection with the fact that the boats had already been enrolled at the last-named port, lead to the conclusion that the property was "within" the city of St. Louis. It is manifest that all the practical, life-giving, and fiscal operations of this corporation were performed within the city of St. Louis. There was its head and the centre of its operations.

The payment of the tax in Illinois neither proves nor tends to prove that the *situs* of the property was in that State. Nor does the payment of a ferry-license to the city of St. Louis and of a wharfage tax on the wharf-boats of the company show anything contrary to our view. These are matters foreign to the question.

The question now before this court was adjudicated in *The City of St. Louis* v. *Wiggins Ferry Company*. The facts in that case were the same as in this. That decision is a decision of the court of last resort of Missouri, construing

and giving effect to its laws in respect to property situate *within* and owned or claimed by a *resident* of the State. The refusal of the court below to conform its judgment to the decision of the Supreme Court of Missouri is good ground for reversing the judgment in this case.

Messrs. M. Blair and F. A. Dick, contra:

The boats were not "within the city."

A corporation actually and permanently resides within the State by whose law it is created; and there has the legal status of a citizen and inhabitant of such State, where only its stockholders can assemble and act as one body.*

The officers and agents of the company who actually remain with and control the boats do not reside in Missouri, "but opposite the city of St. Louis, where its real estate is situated, also its warehouse and some other property." The boats when not running are laid up at the same place; and it is contrary to the city ordinance concerning ferry-boats, when on the St. Louis side, that they remain there "longer than ten minutes at a time." The point of departure on each trip of the boats was from the port where she was laid up and at rest. To that port each boat returned, and when it so returned, and not until then, was such trip at an end. Under such a state of facts there is no room for a constructive presence in St. Louis or a constructive possession of the boats by the general or fiscal officers of the company.

The home port of a vessel, when owned by one person, is that at or near which the owner usually resides; and this is not changed by her enrolment at another port, especially when the first-named port is not a port of enrolment. This company, as we have said, being created by Illinois, resides there.†

But there are higher grounds on which to rest the unlawfulness of the tax. It is imposed upon a National vessel engaged in commerce between two of the States on a navigable

* Insurance Co. *v.* Francis, *supra*, 210.

† The Golden Gate, Newberry, 308; Hays *v.* Pacific Steamship Co., 17 Howard, 596.

river. Vessels so engaged are subject only to National taxes and regulations, and are expressly withdrawn from State taxation. A tonnage tax is simply a tax upon vessels, and belongs exclusively to the National government under the provisions giving power to Congress to collect taxes and duties and to regulate commerce with foreign nations and among the several States; and having belonged to the States before the adoption of the Constitution, was surrendered by them in the clause saying that "no State shall, without the consent of Congress, lay any duty of tonnage." [The learned counsel went into a full argument on this point.]

Mr. Justice SWAYNE delivered the opinion of the court.

The plaintiff in error instituted five suits in the St. Louis Circuit Court for the recovery of taxes alleged to be due from the ferry company to the city. Upon the petition of the company they were removed into the Circuit Court of the United States for that district. In that court, by the consent of the parties, the causes were consolidated and thereafter proceeded to trial as one case. The counsel upon both sides entered into a written stipulation waiving a jury, and the cause was submitted to the court, pursuant to the act of Congress of March 3d, 1865. The court found the facts specially, and the finding is a part of the record. Judgment was given for the defendant. The city excepted and has brought the case here for review.

The bill of exceptions was unnecessary. The facts having been specially found by the court, they are before us for examination as if they were embodied in the special verdict of a jury. The question presented for our consideration, as prescribed by the statute, is, whether they are sufficient to support the judgment. The bill of exceptions gives them no effect which they would not have had without it, and raises no question which would not have been as well presented if it had not been taken.

The controversy relates to taxes imposed by the city upon the ferry-boats of the defendants, used in conveying freight

and passengers across the Mississippi River between the city of St. Louis and the opposite Illinois shore. The company was required to pay a specific sum for a license, and a tax was imposed upon its wharf-boat, attached to the city landing. Both were duly paid. Payment of the taxes upon the ferry-boats was refused, and the several suits, consolidated into the one before us, were instituted by the city to recover the amount claimed to be due.

In the jurisprudence of the United States a corporation is regarded as in effect a citizen of the State which created it. It has no faculty to emigrate. It can exercise its franchises extra-territorially only so far as may be permitted by the policy or comity of other sovereignties. By the consent, express or implied, of the local government, it may transact there any business not *ultra vires*, and, "like a natural person, may have a special or constructive residence, so as to be charged with taxes and duties or be subjected to a special jurisdiction."* It is for the local sovereign to prescribe the terms and conditions upon which its presence by its agents and the conducting of its affairs shall be permitted.†

It has been said that the power of taxation for the purposes of the commonwealth is a part of all governmental sovereignty and is inseparable from it. It is for the legislature to decide what persons and property shall be reached by the exercise of this function and in what proportions and by what processes and instrumentalities taxes shall be assessed and collected. The authority extends over all persons and property within the sphere of its territorial jurisdiction. When called into activity there can be no limit to the degree of its exercise except what is found in the wisdom of the law-making power and the operation of those conservative principles which lie at the foundation of all free government.‡

* Glaize *v.* South Carolina Railroad Co., 1 Strobhart, 72; Cromwell's Executors *v.* Charleston Insurance and Trust Co., 2 Richardson, 512.

† Bank of Augusta *v.* Earle, 13 Peters, 588; Lafayette Insurance Co. *v.* French, 18 Howard, 405

‡ McCulloch *v.* State of Maryland, 4 Wheaton, 428; Providence Bank *v.* Billings, 4 Peters, 563.

Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra vires* and void. If the legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action.

In the eye of the law personal property, for most purposes, has no locality. *Mobilia sequuntur personam; immobilia situm. Mobilia non habent sequelam.* In a qualified sense it accompanies the owner wherever he goes, and he may deal with it and dispose of it according to the law of his domicile. If he die intestate, that law, wheresoever the property may be situate, governs its disposal, and fixes the rights and shares of the several distributees.* But this doctrine is not allowed to stand in the way of the taxing power in the locality where the property has its actual *situs*, and the requisite legislative jurisdiction exists. Such property is undoubtedly liable to taxation there in all respects as if the proprietor were a resident of the same locality.† The personal property of a resident at the place of his residence is liable to taxation, although he has no intention to become domiciled there.‡ Whether the personal property of a resident of one State situate in another can be taxed in the former, is a question which in this case we are not called upon to decide.§

Upon looking into the enactments under which the taxes in question were assessed, it is obvious that their purpose

* Story's Conflict of Laws, § 379; Broom's Maxims, 501, 502; In re Ewin, 1 Crompton & Jervis, 156.

† International Life Assurance Company *v.* Commissioners of Taxes, 28 Barbour, 318; Hoyt *v.* The Commissioners, 23 Id. 228; Story's Conflict of Laws, 550.

‡ Finley *v.* Philadelphia, 32 Pennsylvania State, 381.

§ Wilson *v.* The Mayor of New York, 4 E. D. Smith, 678; Hoyt *v.* The Commissioners, 23 New York (Court of Appeals), 228.

was not to tax the property through the proprietor, but to tax the things themselves by reason of their being "within the city." The point for us to decide, therefore, is, whether they are covered by the legal provisions under which the taxes were imposed. If the taxing officer acted without authority the taxes were invalid, and the city is not entitled to recover in this action.

The boats were enrolled at the city of St. Louis, but that throws no light upon the subject of our inquiry. The act of 1789, section 2,* and the act of 1792, section 3,† require every vessel to be registered in the district to which she belongs, and the fourth section of the former act, and the third section of the latter, declares that her home port shall be that at or near which her owner resides. The solution of the question, where her home port is, when it arises, depends wholly upon the locality of her owner's residence, and not upon the place of her enrolment.‡

The company has an office in Illinois. Its minor officers, such as engineers and pilots, lived in Illinois, where its real estate, including a warehouse, was situated. The company had also an office in St. Louis. Its president and vice-president and other principal officers lived in the city, and there the ordinary business meetings of the directors were held, and the corporate seal was kept. The court found that the boats, "when not in actual use, were laid up by the Illinois shore, and were forbidden, by a general ordinance of the city of St. Louis regulating ferries and ferry-boats, to remain at the St. Louis wharf or landing longer than ten minutes at a time." A tax was paid upon the boats in Illinois. Their relation to the city was merely that of contact there, as one of the termini of their transit across the river in the prosecution of their business. The time of such contact was limited by the city ordinance. Ten minutes was the maximum of the stay they were permitted to make at any one time. The owner was, in the eye of the law, a citizen of

* 1 Stat. at Large, 55. † Ib. 287.

‡ 3 Kent, 133, 170; Hill *v.* The Golden Gate, Newberry, 308; S. B. Superior, Ib. 181; Jordan *v.* Young, 37 Maine, 276.

that State, 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 as to become incorporated with and form a 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.† In our opinion, the facts found are sufficient to support the judgment.

It has been insisted ably and learnedly by the counsel for the defendant in error, that the taxes in question are taxes upon the tonnage of vessels engaged in interstate commerce, and are prohibited by the Constitution of the United States. No argument as to this aspect of the case has been submitted by the counsel upon the other side. We have not found it necessary to consider the subject, and we express no opinion upon it.

JUDGMENT AFFIRMED.

UNITED STATES *v.* HOWELL.

1. The sixth section of the act of February 25th, 1862, to punish the counterfeiting of treasury notes is not void for repugnancy in its reference to uttering or passing such counterfeited notes.
2. Nor is an indictment pursuing the language of the statute bad because it describes the note passed by the prisoner as a false, forged, and counterfeit note of the United States, issued under the authority of that statute or of other statutes authorizing the issue of such notes.
3. The words "false, forged, and counterfeit," necessarily imply that the instrument so characterized is not genuine, but only purports to be, or is in the similitude of such an instrument, and this implication is according to good usage and is supported by adjudged cases.

ON a certificate of division between the judges of the Circuit Court for the District of California.

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* Hays *v.* Pacific Steamship Company, 17 Howard, 599; City of New Albany *v.* Meekin, 3 Indiana, 481.

† Railroad Company *v.* Jackson, 7 Wallace, 262.