

cient to satisfy their claims. Thus, in *Texas v. Florida*,⁴⁶⁸ the State of Texas filed an original petition in the Supreme Court against three other states who claimed to be the domicile of the decedent, noting that the portion of the estate within Texas alone would not suffice to discharge its own tax, and that its efforts to collect its tax might be defeated by adjudications of domicile by the other states. The Supreme Court disposed of this controversy by sustaining a finding that the decedent had been domiciled in Massachusetts, but intimated that thereafter it would take jurisdiction in like situations only in the event that an estate was valued less than the total of the demands of the several states, so that the latter were confronted with a prospective inability to collect.

Corporate Privilege Taxes.—A domestic corporation may be subjected to a privilege tax graduated according to paid-up capital stock, even though the stock represents capital not subject to the taxing power of the state, because the tax is levied not on property but on the privilege of doing business in corporate form.⁴⁶⁹ However, a state cannot tax property beyond its borders under the guise of taxing the privilege of doing an intrastate business. Therefore, a license tax based on the authorized capital stock of an out-of-state corporation is void,⁴⁷⁰ even though there is a maximum fee,⁴⁷¹ unless the tax is apportioned based on property interests in the tax-

⁴⁶⁸ 306 U.S. 398 (1939). Resort to the Supreme Court's original jurisdiction was necessary because in *Worcester County Co. v. Riley*, 302 U.S. 292 (1937), the Court, proceeding on the basis that inconsistent determinations by the courts of two states as to the domicile of a taxpayer do not raise a substantial federal constitutional question, held that the Eleventh Amendment precluded a suit by the estate of the decedent to establish the correct state of domicile. In *California v. Texas*, 437 U.S. 601 (1978), a case on all points with *Texas v. Florida*, the Court denied leave to file an original action to adjudicate a dispute between the two states about the actual domicile of Howard Hughes, a number of Justices suggesting that *Worcester County* no longer was good law. Subsequently, the Court reaffirmed *Worcester County*, *Cory v. White*, 457 U.S. 85 (1982), and then permitted an original action to proceed, *California v. Texas*, 457 U.S. 164 (1982), several Justices taking the position that neither *Worcester County* nor *Texas v. Florida* was any longer viable.

⁴⁶⁹ *Kansas City Ry. v. Kansas*, 240 U.S. 227 (1916); *Kansas City, M. & B.R.R. v. Stiles*, 242 U.S. 111 (1916). Similarly, the validity of a franchise tax, imposed on a domestic corporation engaged in foreign maritime commerce and assessed upon a proportion of the total franchise value equal to the ratio of local business done to total business, is not impaired by the fact that the total value of the franchise was enhanced by property and operations carried on beyond the limits of the state. *Schwab v. Richardson*, 263 U.S. 88 (1923).

⁴⁷⁰ *Western Union Tel. Co. v. Kansas*, 216 U.S. 1 (1910); *Pullman Co. v. Kansas*, 216 U.S. 56 (1910); *Looney v. Crane Co.*, 245 U.S. 178 (1917); *International Paper Co. v. Massachusetts*, 246 U.S. 135 (1918).

⁴⁷¹ *Cudahy Co. v. Hinkle*, 278 U.S. 460 (1929).