cause of its ownership, but a true excise levied on the results of the business of carrying on mining operations."[1854]

A convincing demonstration of the extent to which the *Pollock* decision had been whittled down by the time the Sixteenth Amendment was adopted is found in *Billings v. United States*.[1855] In challenging an annual tax assessed for the year 1909 on the use of foreign built yachts—a levy not distinguishable in substance from the carriage tax involved in the *Hylton* case as construed by the Supreme Court—counsel did not even suggest that the tax should be classed as a direct tax. Instead, he based his argument that the exaction constituted a taking of property without due process of law upon the premise that it was an excise, and the Supreme Court disposed of the case upon the same assumption.

In 1921, the Court cast aside the distinction drawn in *Knowlton v. Moore* between the right to transmit property on the one hand and the privilege of receiving it on the other, and sustained an estate tax as an excise. "Upon this point," wrote Justice Holmes for a unanimous Court, "a page of history is worth a volume of logic."[1856] Having established this proposition, the Court had no difficulty in deciding that the inclusion in the computation of the estate tax of property held as joint tenants,[1857] or as tenants by the entirety,[1858] or the entire value of community property owned by husband and wife,[1859] or the proceeds of insurance upon the life of the decedent,[1860] did not amount to direct taxation of such property. Similarly, it upheld a graduated tax on gifts as an excise, saying that it was "a tax laid only upon the exercise of a single one of those powers incident to ownership, the power to give the property owned to another."[1861] Justice Sutherland, speaking for himself and two associates, urged that "the right to give away one's property is as fundamental as the right to sell it or, indeed, to possess it."[1862]

Miscellaneous

The power of Congress to levy direct taxes is not confined to the states represented in that body. Such a tax may be levied in

---

[1854] 240 U.S. at 114.
[1855] 232 U.S. 261 (1914).
[1856] New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921).
[1857] Phillips v. Dime Trust & S.D. Co., 284 U.S. 160 (1931).
[1858] Tyler v. United States, 281 U.S. 497 (1930).
[1859] Fernandez v. Wiener, 326 U.S. 340 (1945).
[1860] Chase Nat'l Bank v. United States, 278 U.S. 327 (1929); United States v. Manufacturers Nat'l Bank, 363 U.S. 194, 198–201 (1960).
[1861] Bromley v. McCaughn, 280 U.S. 124, 136 (1929). *See also* Helvering v. Bullard, 303 U.S. 297 (1938).
[1862] Bromley v. McCaughn, 280 U.S. 124, 140 (1929).