

# THE CONFLICT OF LAWS PROBLEMS RESULTING FROM THE TRANSFER OF DECEDENTS' PROPERTY TO NEW OWNERS IN NEW YORK STATE

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## I. Introduction

In the laws of Western European countries the decedent's property passes by operation of law to the heirs upon the decedent's death, without any intermediary. This is the concept of universal succession according to which the personality of deceased is continued in the heir. "This is the predominating system on the European Continent, in Latin America, in Muhammedan laws, and in East Asia."<sup>1</sup>

In the American, English and Scottish system there is a substantial difference. In this system the property does not pass by operation of law to the private persons concerned, but to a fiduciary who is really a personal representative of the deceased and who is called executor if he is nominated in the will of decedent or administrator if he is not nominated in the will or in case of intestacy, then appointed by the court. But "at common law, compulsory administration of decedent's estates was restricted to the personal estate"<sup>2</sup> and the real estate "immediately passes to that person who is finally entitled to keep it, that is to the heir-at-law or the testamentary devisee."<sup>3</sup> However recent de-

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<sup>1</sup> Martin WOLFF, *Private International Law*, Second Ed. p. 601.

<sup>2</sup> Ernst RABEL, *The Conflict of Laws*, Ann Arbor, Volume 4, p. 406.

<sup>3</sup> Max RHEINSTEIN, "European Methods for the Liquidation of the Debts of Deceased Persons", 20, *Iowa L. Rev.* 431, (1935).



velopments marked a tendency to modify this bifurcation. In England and in some American States administration now extends to real property<sup>4</sup>.

So in these states the executor or administrator is vested with the title to real property and but uses it for the payment of debts, generally only when the personal assets are not sufficient for that purpose.

## II. Principles of the law of succession in anglo-american system as opposed to those of the european continent

In the Anglo-American system of jurisprudence the inheritance is the residue, if (any, or the ever there is one), (in other words the inheritance is) the, net balance of the estate which is left after the debts and specific legacies have been paid, and which has to be handed over by the executor (or administrator) to their heir. The heir therefore, is merely a residuary legatee.<sup>5</sup>

The judicial intervention in the Anglo-American law of succession is very apparent and distinct. A will is not effective if it is not probated in a court. A court of competent jurisdiction must decide that the will has been proved that this will is the last will of the deceased. In the countries which adopted the first system explained above such certification by a court is not necessary, except in case of denial by an interested party or parties. If there is no contest there is no necessity to go the court for certification.

Another feature of the law of succession in Anglo-American system which can be distinguished from the first system is that while immovables are subject to the law of their situs according the old maxim (*Tot hereditates quot patrimonia diversis territori is obnoxia*), the decedent's movable property is subject to the law of the deceased's last domicile, according to the maxim (*mobilia sequuntur personam*). In most of the countries which adopted the first system there is unity of succession, thus either the national law of the deceased at the time of his death (Cuba, Czechoslovakia, Egypt, Germany, Greece, Italy, Japan,

<sup>4</sup> RABEL, *op. cit.* p. 406.

<sup>5</sup> WOLFF *op. cit.* p. 602.



Mexico, Netherlands, Philippines, Poland, Portugal, Spain, etc.)<sup>6</sup> or the law of the last domicil of the decedent (Brazil, Chile, Colombia, Denmark, Ecuador, Norway)<sup>7</sup> governs the descent and distribution of the succession. The French law which is a very important and substantial part of the European Continental law follows the Anglo-American system in this regard. Thus while the immovables are subject to the law of their situs, the movable property is governed by the law of the deceased's last domicil.<sup>8</sup>

Another important feature of the European Continental system is the fundamental distinction between heirs and legatees.

In general terms succession includes descent and distribution, (*dévolution et transmission de la succession*) and administration. Succession may be either intestate or testate. Probate of contested wills is a necessity in both systems. Even in the Anglo-American system no will is valid before probate by the competent court.

It is evident that substantive and procedural problems exist within this general domain of succession. Administration which is a procedural matter is governed by *lex fori* while the substantive are governed by what we can call "law of inheritance" or "law of succession".

### III. Administration of decedent's estates in general

Administration is the process by which the assets are realized and the debts paid before the distribution of the residue. There is no jurisdictional restriction in so far as the power to appoint an administrator by the proper court is concerned<sup>9</sup>. However for his appointment the statutes commonly require that there be some functions to perform, some circumstances to exist. An administrator will be appointed in one or more of the following places as general rule:

"(a) where the decedent was domiciled at the time of his death;

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<sup>6</sup> RABEL, *op. cit.* 258-259.

<sup>7</sup> *Ibid*, 257-258.

<sup>8</sup> Henri BATTIFOL, *Deuxieme édition*, 1955, p. 706.

<sup>9</sup> Elliott E. CHETHAM / Herbert F. GOODRICH / Erwin N. GRISWOLD / Willis L.M. REESE, *Cases and Materials on Conflicts of Laws*, 1957, 872.



“ (b) where there are assets of the decedent at the time of the death of the decedent or at the time of the appointment of the administrator;

“ (c) where there is jurisdiction over the person or property of one who is alleged to have killed by his wrongful act, if the statute under which recovery is sought permits suit by the administrator appointed in such state.”<sup>10</sup> .

The state of the decedent's domicile in many respects is more important than other states where an administrator may be appointed. In fact “Notwithstanding the jurisdiction for ancillary administration of another state where in assets are located, the state of decedent's domicil is recognized for many purposes as of paramount importance. Consequently, since there certainly should not be more than one domiciliary administration, a finding of domicil of the decedent is a jurisdictional fact.”<sup>11</sup>. So it is necessary first to take out the letters of administration in the state of the decedent's domicile and probate his will if ever he has one, in order to ask for the letters of administration of the state of a non-resident decedent. This is another limitation for the appointment of administrator. However this rule is not absolute, in unusual circumstances the court may grant these letters without waiting for the decree of the state of the last domicil of the deceased. This may happen when almost all of the assets are located within the state or the rights and interests of some interested party are in jeopardy.

Simultaneous administration in more than one state may create very complicated problems as the powers of each administrator. “Some of these problems could be avoided if it were possible for administration to take place as though the estate were a single unit, irrespective of state lines. Unfortunately the course of American decisions has been such as to make it necessary to treat administration in each state, for some purposes at least, as separate from administration in other states.”<sup>12</sup> .

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<sup>10</sup> *Restatement, Conflict of Laws* sec. 467 (1934).

<sup>11</sup> Fowler HARPER / Charles W. TAINTOR 11 / Charles Wendell CARNAHAN / Ralph S. BROWN, Jr. *Conflict of Laws*, 1950, 914.

<sup>12</sup> George Wilfred STUMBERG, *Principles of Conflict of Laws*, Second Ed. 1951, p. 439.



The appointment of an administrator or of an executor is not an absolute rule for the administration and transfer of decedent's estates. In fact administration does not take place as a rule in many small estates if no one is adversely affected by its absence. Specially courts held this rule valid with respect to the estates of deceased minors. *Segelken v. Meyer*, 94 N. Y. 473 (1884), *Roughan v. Chenango Valley Savings Bank*, 158 App. Div. 786; (1913) 144 N.Y.S. 508 affirmed (1915) 21-N.Y. 696, 110 N.E. 1049 (small estate); *In re Tangerman*, 226 App. Div. 162, 235 N.Y.S. 213 (small) (1929), 70 A.L.R. 386 (1931).

If a person wants no administration of his property after his death he has some means at his disposal by which he can transfer his estate directly without the dispense or interference of an administrator. One of these devices is to create *inter vivos* trusts or joints estates<sup>13</sup>. Insurance is another such device, and in New York and many other states savings bank account can be set up in trust for another. (whose beneficiaries are others than himself), those "totten trusts" are not considered testamentary dispositions so transfer of the (these) deposits to the beneficiaries is direct.

(Beside the deceased) statutory promossions (the statutes) in many instances cause the wawer of (dispense with) the administration. So the family of the deceased may receive's an allowance before the net balance is calculated, as a social necessity, to prevent immedrate destitution (otherwise the family might be in need). For example paragraph 200, of the Surrogate's Court Act, of New York makes provision for surviving spouse or minor children is case where there is no surviving spouse<sup>14</sup>. This such non administration dispositiono (allowance which is set apart) may be made for other purposes too. In fact the New York Court held in *Matter of Horn*, 151 Misc. 261, 273 N.Y.S. 259 that when there is not sufficient funds to pay funeral expenses, the exempt money or property may be used for their payment.

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13 *Matter of Totten*, 179 N.Y. 112, 71 N.E. 748 (1904).

14 Joseph A. COX, *The Administration of Foreign Estates in New York* 1952, p. 19, Note(c).



#### IV. Administration of decedent's estates in new york state and conflict of laws problems resulting from this administration

In the administration of the estates "the main object to be attained is the prompt, fair and convenient handling of an estate for the benefit of those concerned therein".<sup>15</sup> This poses many problems. One of them which has been already explained above. Is that simultaneous administration creates difficulties. Would it is not be better if there was only one administration and not one main and several ancillary administrations? The objective of administration to be more easily realize if we could do away with the ancillary administrations. That could be attained if the states could agree that a successor of a deceased person domiciled within one state, (which could be) as determined through some uniformly accepted (*criterion or*) *criteria* be vested with the title to all of the decedent's property.

Those who may be appointed as administrators: The New York Surrogate Court Act gives a list of persons who may be appointed by the courts as administrators in case of intestate succession. The surviving spouse, the children, the parents, or brothers and sisters who will share in the distribution may apply and receive the letters of administration. The Court has to follow the order given in this list. *In re Winkhous* 157 Misc. 560, 284 N.Y.S. 52 (1935); *In re Kelly*, 238 N.Y. 71, 143 N.E. 795. In case of more than one person in the same class is entitled to be administrator there is no statutory preference. The Court may choose the one who is best in its judgement, to be administrator. If there is nobody to be appointed as administrator than the Public Administrator is given letters of administration, according to the sections paragraphs 118 and 136-n of the N.Y.S. C. A. The courts held that the right of a consul representing nonresident distributees was not superior to the right of the Public Administrator. *In re Conde's Will*, Misc. 357, 259 N.Y.S. (1932); *In re Fuchs* 126 Misc. 90, 213 N.Y.S. 431 (1925).

In addition to beside the kinship and being entitled to share in the distribution of the estate, two important requirements to be an administrator are residency within the New York State and the United States citizenship. In fact Paragraph 94 of the NY. Surrogate Act states

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<sup>15</sup> Chapter II, Topic 1, Introduction.



that: "No person is competent to serve as an executor, administrator, testamentary trustee or guardian, who is:

1. Under the age of twenty-one years;
2. An adjudged incompetent;
3. An alien not an inhabitant of this state;
4. A felon

5. Incompetent to execute the duties of such trust by reason of drunkenness, dishonesty, improvidence or want of understanding."<sup>16</sup> A felon is the person who has committed a felony which is a crime punishable by death or imprisonment in a state prison according to the PENAL LAW, Second section paragraph. Non-residence excludes a candidate for letters of administration only when he is also an alien. "Non-residence excludes only when the claimant is not a citizen of the United States, but where that citizenship exists, the non-residence is immaterial, and has no effect upon the priority of right." *Libbey v. Mason*, 112 N.Y. 525, 528 (1889). Alienage plus non-residence disables a widow and children in toto, *Matter of Paola*, 36 Misc. 514, 73 N.Y.S. 1062 (1901). A new case too indicates this rule. *In re Hampton's Will*, 3 Misc. 2d 141, 151 N.Y.S. 2d. 151, (1956). The court ruled that a non-resident alien distributee is disqualified from receiving letters of administration. But a resident though not a citizen may be appointed, *Tanas v. Municipal Gas Co.* 84 N.Y.S. 1053 (1903).

There is a difference in the power to designate a candidate in cases of resident estates and foreign estates. In cases of estates of resident decedents not only may a non-resident may not be appointed administrator, but he may not designate a resident as administrator through an assignment of his interest or by power of attorney, *In re Ferrigan*, 87 N.Y.S.16, 92 AD 376 (1904), *In re Mora*, 133 Misc. 254, 232 N.Y.S. 325 (1928); *In re Brantaci's Estate*, 137 Misc. 50, 242 N.Y.S. 235 (1930); *In re Kassam's Estate*, 141 Misc, 366, 252 N.Y.S. 706 (1931) affirmed 235 App. Div. 609, 255 N.Y.S. 835 (1932); *In re Marret*, 152 Misc. 713, 274 N.Y.S. 117. Thus in case of foreign estates, thus the decedent being resident of another state or of a foreign country, parag-

<sup>16</sup> Surrogate Court Act, *op.cit.* p, 172.



raph 161 of the N.Y.S. C.A. gives to the foreign executor, to foreign administrator and to the persons entitled to the possession of the personal property of the decedent, (if such persons are not citizens of the United States or aliens not residing in New York) the power "to designate and authorize the appointment of another person, in which even letters may be issued to the person so designated. If conflicting designations or joint plural designations are made the Surrogate may in his discretion appoint one or more of the persons so designated". The designation has to be done "by instrument proved and authenticated in the form prescribed by section forty-five of the Decedent Estate Law or acknowledged and proved in such form as suffices to effect the recording real property".<sup>17</sup>

*In re De Los Salmone' Estate*, 203 Misc. 1068, 119 N.Y.S. 2d, 76 (1953) ancillary letters were to designee of testator's sister who was declared to be testator's sole legatee and heir in accord with Spanish law. *In re Regensburger's Estate* 126 N.Y.S. 2d. 849 (1953) the Court before granting letters of administration found as fact that the absentee was dead and issued letters to the designee of person entitled to possession in foreign country of personal estate of such decedent, *In Matter of Tatomina*, A AD 2d, 711, 153 N.Y.S. 2d, 250, (1956) affirmed 2 N.Y. 2d. 878, 161 N.Y.S. 2d, 135 the court ruled that where the only persons interested in decedent estate and in a cause of action for his death have designated an attorney in fact to receive letters, their designee should be appointed as administrator.

*In re Estate of Garcia* (N.Y.L.J. I/14/1953 p. 138 col. 3) the Court ru-

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<sup>17</sup> Those who apply to be administrator have to prove that there is a property whose owner has deceased. Death may be proved by death certificate (N.Y.C.P.A. paragraph 398 and New York Public Health Law Art 20), hospital records (*Palmer v. John Hancock Mutual Life Yns. Co* 150 Misc. 669, 270 N.Y.S. 10 (1934); tomstone and cemetery records (*Layton v. Kraft*, 111 App. Div. 842, 98 N.Y.S. 72, (1906), *Pirrung v. Supreme Council of Catholic Mutual Benefit Association*, 104 App. Div. 571, 93 N.Y.S. 575, (1905), church records (*Meehan v. Supreme Council* 95 App. Div. 142, 88 N.Y.S. 821, (1904) affirmed 194 N.Y. 577, 88 N.E. 1125 (1909); family bible (*Matter of Whalen*, 146 Misc. 176, 261 N.Y.S. 761 (1932); insurance records (*Hartshorn v. Metropolitan Life Ins. Co*, 55 App. Div. 471, 67 N.Y.S. 13, (1900), army and navy records, veteran administration records).



led that the designee of the sole universal legatee and heir of decedent under Spanish law should be given letters of ancillary administration, because the heir was the sole person entitled under Spanish law to the possession of decedent's personal property. *In Re Weil Estate*, 111 N.Y.S. 2d, 828 *affirmed* 305 N.Y. 635 (1952) the court ruled that alien nonresident may designate trust company as administrator of decedent's estate.

Another requirement to be an administrator is ability to read and write English according to the Paragraph 95 of the N.Y.S. C.A. Those who apply to be administrator have to prove that there is a property whose owner has deceased. Death may be proved by death certificate (N.Y.C.P.A paragraph 398 and New York Public Health Law Art 20), hospital records (*Palmerv . John Hanceck Mutual Life Ins.Co* 150 Misc 669, 275.N.Y.S 10 (1934); tombstone and cemetery records (*Layton v. Kraft* ,111App. Div. 842, 98 N.Y.S 72.(1906), *Pir-rung v. Supreme Council of Catholic Mutual Benefit Association*, 164 App . Div. 571, 93 N.Y.S. 575 ,(1905), church records (*Meehan v. Supreme Council* 95 App.Div.142, 88 N.Y.S.821, *affirmed*194 N.Y. 577, 88 N.E.1125 (1909); family Bible (*Matter of Whalen*, 146 Misc.176, 261 N.Y.S. 761 (1932). Insurance records (*Hartshorn v. Metropolitan Life Ins.Co*, 55 App. Div.471, 67 N.Y.S 13, (1990), army and navy records, veteran administration records.) But when there is no direct evidence of the death the court faces a real problem. On one hand the court has to act fast for the collection and preservation of the presumed dead person's assets and on the other hand, the court has to establish the death. For this double purpose the Court grants what is called letters of temporary administration. But as soon as the Court is able to establish the death of missing persons the temporary administrator is superseded by the administrator. The letters of temporary administration are issued, if the following conditions are met:

- 1) that if the person were dead the Surrogate would have jurisdiction,
- 2) that the person cannot be found after a diligent search,
- 3) that there is reasonable ground to believe that he is dead,
- 4) that the appointment is necessary to protect his property and his rights and also to protect his creditors and his kin who would share in the distribution if his death was established.



“The cases hold that administration at the domicil is proper even though no assets are left within the state”.<sup>18</sup> However some assets or res is necessary for granting letters of administration. In fact for example in *Matter of Riggle*, N.Y.L.J.7/6/1959 (Surr. Ct. Nassau County) the New York Court issued ancillary letters of administration to foreign executrix of Illinois decedent in an action against decedent for automobile accident which took place in Wyoming. The Insurance company defended suit against decedent who was served personally in Nassau County, but later died. The Court said: “There is no dispute that there must be some res, assets or debtor in this county and state to warrant the issuance of ancillary letters by this court.....This court therefore determines that the insurance policy written in this county by a company doing business in New York, with the obligations of exoneration and indemnity arising therefrom constitutes a sufficient res, asset and/or debt to give this court jurisdiction to grant ancillary letters of administration with the will annexed herein”.

Choses in action have been distinguished by the courts for administrative purposes between choses which have a commercial character such as negotiable instruments and bonds, and those such as bank deposits and simple contract debts which can be called simple choses in action”.<sup>19</sup> As to simple choses in action, as distinguished from negotiable instruments and other obligations involving additional considerations, the common-law rule was that they were to be regarded as situated at the domicil of the debtor”.<sup>20</sup> *In re De Baum's Will*, 162 Misc. 111, 293 N.Y.S. 836 (1937).

The mobility of the population creates a problem. It may happen that the debtor moves to a new domicil after the death of his creditor but before the appointment of an administrator, in an old case New York Court granted letters of administration in the new domicil of the debtor, *Stearns v. Wright*, 51 N.Y. 600 (1872). We were not able to find any

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<sup>18</sup> Bert Earl Hopkins “Conflict of Laws in Administration of Decedent's Intangibles” 28 *Iowa L. Rev.* 422; *Watson v. Collins Adm'*, 37, Ala 587 (1861); *Nickel v. Vogel*, 76 Kan, 625, 92 Pac. 1105 (1907); *Holburn v. Pfanmiller*, 114 Ky, 831, 71 S.W. 940 (1903) *Connors v. Cunard S.S. Co.* 204 Mass, 310, 90 N.E. 601 (1910), *Wolf v. Gills*, 96 Okla, 6,

<sup>19</sup> Hopkins, *op. cit.* 430.

<sup>20</sup> *Ibid.*



New York case granting ancillary administration with the purpose of enforcing a claim elsewhere than at the domicil of the debtor, while there are some cases of other states which granted ancillary administration where it was possible to find and sue the debtor, *In re Buder's Estate* 117 Neb. 52, 219 N.W. 808, (1928); *Wall v. American Smelting and Refining Co.*, N. J. Eq. 131, 108 Atl. 235 (1919); *Manning v. Leighton* 65 Vt. 84, 26 Atl. 258 (1892).

A New York Court granted motion to dismiss proceedings to compel filing of account by administrator of one Yugoslav partner brought by temporary administrator of other Yugoslav partner, holding that parties involved were all non-residents, no part of claim arose in New York State, and Court has discretion to dismiss. *Estate of Wamoscher*, N.Y.L.J. p. 7, co. 6, 2/23/1958 (Surr. Ct. N.Y.Co.). So where there is no assets, no any relation whatsoever to any claim in favour of the estate, ancillary administration will not be granted.

Here there are two problems to be considered: Firstly, if/in order to enable the persons having an interest in the estate to claim this interest in any state where it is possible to enforce it, alternative *situs* is accepted, then we will have needless multiplication of ancillary administrations. This fact will cause another a second problem, which is, the possibility of conflicting jurisdiction with respect to enforcement of the same claim. However there is a safeguard against these two problems. In many instances the probate courts did not grant ancillary administration just because there were assets in the state. *In re Spencer's Estate* 7. N.Y.S. 2d. 891, (1938). *In re MacKean's Will* 259 App. Div. 728, 18 N.Y.S. 2d. (1940). The probate court held that a divided administration had to be avoided, if possible, in order to avoid greater expense and to avoid a clash of interest among the different sets of creditors. Here *forum non conveniens* doctrine helps the Court in exercising rule of discretion.

New York courts have held that the State had jurisdiction to administer the estate of a decedent whether resident or non resident, if such estate is located within the jurisdiction of the state or within the jurisdiction of the county where the interested party makes his application for letters of administration, to be more precise. *Kirkbridge v. Van Note* 275 N.Y. 244, 9 N.E. 2d. 852 (1937).



Above we mentioned that for purposes of administration the ecclesiastical courts developed rules which distinguished between simple contracts and speciality debts. The latter were regraded as an embodiment of the obligation and were treated as an asset where found at the owner's death, while simple chooses were localized at the residence of the debtor<sup>21</sup>. Negotiable instruments are best example to speciality debts or of "mercantile speciality". And the cases dealing with the conflict of laws in administration of negotiable instruments have placed an increasing emphasis upon the possession of the instruments, while a declining importance upon the residence may be seen in same cases. In *Wheeler v. Comptroller of State of New York*, 233 U.S.434 (1914) the Court said: "But it is plain that bills and notes, whatever they may be called come very near to identification with the contract that they embody. An indorsement of the paper carries the contract to the indorsee. An indorsement in blank passes the debt from hand to hand so that whoever has the paper the debt. It is true in some cases there may be a recovery without producing and surrendering the paper, but so may there be upon a bond in modern times. It is not primitive tradition alone that gives their peculiarities to bonds, but a tradition laid hold of, modified and adopted to the convenience and understanding of business men. The same convenience and understanding apply to bills and notes, as no one would doubt in the case of bank notes which technically do not differ from others". Ibid. at 439.

The Restatement of Conflict of Laws states the following rule with regard to the administration of negotiable instruments "Sec. 479. Payment to Administrator in Possession of Negotiable Instrument of Claim Represented By It.

(1) The administrator in possession of a negotiable instrument belonging to his decedent is entitled to payment thereof and only such administrator or his transferee is so entitled". Here Restatement adopts the mercantile theory and puts emphasis on possession rather than location of negotiable instrument at the death. So we think that Prof. Hopkins is right to consider Prof. Beale's observation in favour of location of the document too narrow<sup>22</sup>.

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<sup>21</sup> *Ibid.* 613.

<sup>22</sup> *Ibid.*



The United Supreme Court had accepted in a dictum that the situs of the negotiable instruments was the domicil of debtor, *Wyman v. Halsstead*, 109 U.S. 654, (1884). The Court said: "The general rule of law is well settled, that for the purpose of founding administration all simple contracts debts are assets at the domicil of the debtor, and that the locality of such debtor for this purpose is not affected by a bill of exchange or a promissory note having been given for it".

In 1918 the Supreme Court did not follow this dictum but adopted the mercantile doctrine in *State of Iowa v. Slimmer*, 248 U.S. 115 (1918). In this case Iowa State wanted to file an original bill in the Supreme Court against the State of Minnesota and some Minnesota residents in order to have some claim to taxes. The estate consisted almost entirely of promissory notes, which, it was alleged by the State of Iowa, were kept in Minnesota for a number of years preceding the death with view of defrauding Iowa of taxes. One of the defendants was appointed as special administrator in Minnesota after falsely stating that the decedent's domicil was Minnesota, whereas he had in fact been domiciled in Iowa. Iowa was asking an adjudication that no part of the estate was in Minnesota and only Iowa had jurisdiction to administer the property. The Court held that the notes which were in possession of a resident agent were estate in that state and subject to the administration there. The domicil of the decedent is without regard here, ruled the Court. A newer case supporting this view is in *Re Hanford*, 113 Misc. 639, 185 N.Y.S. 254.

Then we can conclude that the possessor of an instrument which can be defined as "mercantile speciality" may ask to be appointed administrator, the only requirement then being the possession of the instrument at the time of application.

A New York court has denied administration after the assets have been removed out of state, *In re Rogers' Will*, 225 App. Div. 286 (1930), 232 N.Y.S. 609, (1930) *affirmed* 254 N.Y. 592, 173 N.E. 880 (1930).

It is interesting to note that the practice of the Probate Court in two other states, Tennessee and Kentucky, was just the opposite. There the courts held that the removal of chattels after the death of the owner will not defeat the jurisdiction of the state to administer them, *Anderson v. Louisville and N.R. Co.* 128 Tenn. 244, 159 S.W. 1086 (1913) *Embry v. Miller* A.K.Marsh (8 Ky.) 300, Dec. 732.



If the chattels are brought into the New York Jurisdiction after the decedent's death, the court may grant letters of administration after checking the circumstances and purposes under or for which the property was brought into the state. The Court rejected such letters in *Hoes v. N.Y. N.H. and H.R. Co.* 173 N.Y. 435, 66 N.E. 119 (1903) because property of trifling value was brought against good faith, *mala fides*

If there is already an administrator appointed in one jurisdiction, the removal of the property to a new jurisdiction or state will not result into the appointment of a new ancillary administrator, Rather the second state will simply not administer the estate *Matter of McCabe*, 84 App. Div. 145, 82 N.Y.S. 180 (1903), *affirmed* 177 N.Y. 584, 69 N.E. 1126 (1904).

Another requirement for the appointment of ancillary administration is that there must be some assets unadministered within the jurisdiction. In fact in a recent case there was objection to the appointment of a New York administrator on the ground that there were no assets "unadministered" under the N.Y. Surrogates, Court Act paragraph 45 (3). *Estates of Bobes*, N.Y.L.J. Dec. 3, 1958, p. 12 col. 5 (Surr. Ct. N.Y. Co.). The Court there held that it had jurisdiction to issue ancillary letters of administration. Bobes died in Spain where he had his domicil. Among his property he had stock in a Cuban corporation which was taken over by a New York Corporation after his death. The New York Corporation refused to pay over to the domiciliary executor and widow, until the executor had been appointed ancillary administrator by the New York Court. The Court held that "Here we are not dealing with property temporarily in the possession of the domiciliary executors, but rather with property in possession of a third person who will not deliver it even to the estate representative without litigation". Such property is "unadministered for the purposes of New York Surrogates Act. Subdivision held the court".

The New York S.C.A., Section 159 allows administration only for personality. The Court followed this restriction in *In re Kely*, 134 Misc. 399, 235 N.Y.S. 683 (1929). In *Spratt v. Syme* 104 App. Div. 232, 93 N.Y.S. 728 (1905) the court held that even though the decedent has left nothing but real property in New York the presence of local creditors with the power to have the land sold for payments of their debts was a sufficient ground to grant the letters of administration.



Cash in bank (*In re McCullough's Estate*, 129 Misc. 113, 221 N. Y. S. 535 (1926), a debt owed to the decedent *In re Warburg* 129 Misc. 832, 223 N.Y.S. 780 (1927), and a cause of action to recover for services *In re Mesa Y Hernandez*, 172 App. Div. 467, 159 N. Y. S. 59 (1916) were among other things held enough to confer jurisdiction on the New York Court for granting letters of administration.

What happens if two different parties apply for domiciliary administration and receive letters of administration in the capacity of domiciliary administrators? Such a case arose in 1935. A Mrs. Fisher died in New Jersey and her husband applied for and received general letters of administration upon his petition that his was a resident of New Jersey. Under New Jersey Law he was to receive all her personal property and so exclude his brother-in-law who was the only other heir. The brother, even though there was already a domiciliary administration in existence, applied to a New York Court for his appointment as domiciliary administrator contending and proving that his sister was domiciled in New York at the time of her death. He received the letters of administration. Under the New York Law, the brother would inherit a substantial part of the estate. Upon receipt of the Letters of domiciliary administration, he asked from the New Jersey Court revocation of the grant of general administration the husband and his own appointment as ancillary administrator. This was done, *In re Fischer's Estate* 118 N.J.Eq. 599, 180 Atl. 633 (1935). What would be result if The New Jersey court had insisted on its first finding? Even though "special rules of law that have been developed during the past centuries aid in its (domicil's) determination"<sup>23</sup> "the determination of a person's domicil may involve a difficult question of fact in situations where he has more or less divided his time among two or more states. See, e. g., *Texas v. Florida*, 306 U.S. 398, 59 Sup. Ct. 563."<sup>24</sup>

The controversy had to be solved by the Supreme Court and this would take some time and delay the administration and distribution of the estate which may be crucial to some of the interested parties.

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<sup>23</sup> Willis L.M. REESE / Robert S. GREEN., *Selected Readings on Conflict of Laws*. P. 485 and note 12.

<sup>24</sup> *ibid*



### 3- The Collection and Realization of assets

As soon as one is appointed administrator he must take possession of what is left, preserve and collect assets, if necessary by actions at law. Not only creditors and distributees of the estate but the debtors of the estates also have an obvious interest in the collection of assets by the administrator. The debtors want to be sure that their payment is good.

However there are some restrictions on the administrator. First of all an administrator may neither sue nor be sued as such outside the state of his appointment. "The theory is that the administrator has no authority to act outside the state of his appointment and that therefore in the absence of statute, he cannot sue elsewhere on claims which belonged to the decedent."<sup>25</sup> Many arguments are put forward in defense of this rule, In *Smith v. Union Bank*, 30 U.S. (5 Pet.) 516 (1831), the Supreme Court held that the exercise of jurisdiction over the administrator by a court other than appointing Court would amount to the impingement upon the sovereignty of the latter court and its orderly administration of estates. The Restatement on Conflict of Laws and *Jefferson v. Beall*, 117 Ala. 436, 23 So. 44, 67 Am. St. Rep. 177 (1898) state that the foreign representative had no power to act for the estate out of the jurisdiction of the appointing court. Another and less persuasive argument is that the appointing Court is not bound to recognize the forum's judgment, because the appointing Court has power to control the account given by administrator, a foreign judgment would restrict its liberty and authority to control. *Greer v. Ferguson*, 56 Ark. 324, 19 S. W. 966 (1892); *Judy v. Kelly*, 11 Ill. 211, 50 Am. Dec. 455 (1849). A better argument is that local administration letter protects local creditors. *Ghilain v. Couture*, 84 N. H. 48, 146 A. 395.

New York courts pointed out in many instances that the administrator may neither sue nor be sued as such outside the state of his appointment, *In re Killough's Estate* 148 Misc. 73, 265 N.Y.S. 301 (1933); *Levy v. Doyle*, 13 Misc. 2d. 274 (1958). In the last case the court ruled that the administrator of the estate of a decedent who died a resident of Switzerland might not enforce collection of debt due estate of decedent from another non-resident not present nor served in this ancil-

<sup>25</sup> STUMBERG, *op. Cit.* P. 444 and *Restatement on Conflict of Laws*, sec. 507



lary jurisdiction, as this could possibly subject the debtor to double liability since the domiciliary legal representative might not be bound by the judgment in that action. Hence an attachment and levy thereunder in action brought by ancillary administration versus a non resident was vacated. The court held that an ancillary administrator is limited to collection of the assets of the deceased located in this state.

The administrator although cannot sue outside his state of appointment, he may after obtaining a judgment against a debtor of the estate in the state of his appointment, sue upon it in another state: Restatement on Conflict of Laws, Sec. 505. After the judgment the claim is merged in it "which becomes an asset for which the administrator is responsible" <sup>26</sup>. The Judgment bars also suit by other administrators, *Talmadge v. Chapel*, 16 Mass. 71 (1817). But if the debtor had won the decision that does not bar other administrators to sue him. Restatement, sec. 506, *Ingersol v. Coram*, 211 U.S.335, 29 S. Ct. 92, 53 L. Ed. 208 (1908). However if the same person is executor in different states the judgment against him in one state would bar him to further proceedings in another state. Restatement Sec. 506, 2. *Carpenter v. Strange* 141 U. S. 87. The doctrine behind these two rules is that each administration derives its authority from a different state since each of them is independent from the others the judgment against one administrator does not affect the claims of another. On the second rule "the reason is said to be that there is privity, although the executor does derive his authority in each state not only from the will but also from his confirmation by a probate court."<sup>27</sup>

Many states enacted law in order to give the foreign administrators right to sue. However the effort of legislatures to make them generally amenable to being sued was held unconstitutional. *Helme v. Buckelew*, 229 N. Y. 363, N. E. 216 (1920).

Even if the court has jurisdiction upon the administrator as an individual to bind him as representative of the estate violates due process. *Mc Masters v. Gould*, 240 N. Y. 379, 148. N. E. 556 The authority exists on the point that "even consent to be sued in a representative capa-

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<sup>26</sup> *ibid*

<sup>27</sup> *ibid*.445



city does not cure the defect in jurisdiction."<sup>28</sup>

The administrator may be sued in his state of appointment but the judgment rendered against him may not be enforced nor proved against the estate in another state.<sup>29</sup>

One problem in the collection of assets is the voluntary payment by the debtor. As an administrator appointed in any state may sue the debtor in his own state if he can obtain jurisdiction of the defendant or of property belonging to him, in other words, if the administrator can serve process on the debtor, *Fox v. Carr*, 16 Hun 434 (N. Y. 1879). Consequently if a debtor makes a voluntary payment to an administrator who is able to get service upon him or on his property, this is a good discharge of the debt without regard to the residence of the debtor.<sup>30</sup> But if the debtor has been sued for the same debts in different states it cannot be considered a good discharge *In re Ryan's Will*, 136 Misc. 261, 241 N. Y. S. (1932), the court held a voluntary payment made to a domiciliary representative before the issuance of ancillary letters was good discharge. While the voluntary payment to a local administrator is good, some courts have refused to recognize the payment to a foreign administrator as a discharge under any circumstances. This is merely because, for them, the administrator has only power to administer within the state of appointment and his legal personality ends outside.<sup>31</sup>

However, the Supreme Court in *Wilkins v. Ellett* 9 Wall 740 (U.S. 1869) held that the voluntary payment made to the domiciliary administrator, who was a foreign administrator *for local creditors*, was a good discharge. The court referred to the rule that for purposes of succession the personal estate has no other locality than that of the deceased domicil. "The original administrator therefore with letters taken out at the place of domicile is invested with the title to all the personal property of the deceased for the purpose of collecting the effects of the estate, paying the debts and making the distribution," said the Co-

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<sup>28</sup> CHEATHAM / GOODRICH / GRISWOLD / REESE, *op.cit.* 894

<sup>29</sup> STUMBERG, *op.cit.*, 445, *Restatement on Conflict of Laws*, Sec. 51

<sup>30</sup> *Restatement, op.cit.* Sec. 480 b

<sup>31</sup> HOPKINS, *op. Cit.* 435



urt. Cases following the *Wilkins v. Ellett* line of argument have upheld, as a good discharge, payment to foreign administrator when there was no local administrator appointed prior to payment and in the state where the payment was made, there were no creditors: *Schulter v. Bowery Sav. Bank*, 117 N.Y. 125, 22 N.E. 572 (1889); *In re Kilough's Estate*, 182 Atl. 34 (N.J.1935)

The cases which held a voluntary payment to be a good discharge in the absence of local administration, did not make a distinction between payment to a domiciliary administrator and payment to an ancillary one. In other cases courts, while recognizing the right of the domiciliary administrator to collect voluntary payments from other states where there is no local administration, rejected the power of ancillary administrator to collect such debts even though there was no local administration in the states of debtors, stating that ancillary administration was strictly confined to state of his appointment. *Wolfe v. Bank of Anderson*, 123 S.C. 208, 116 S.E. 451 (1922) *Goodman v. First National Bank*, 218 Ky, 229, 291 S.W. 54 (1927)

Restatement, on Conflict of Laws Sec. 482 adopts the view that either the absence of local administrator or lack of knowledge of a local administrator is sufficient for a good discharge. The New York Court of Appeals used the lack of knowledge of local appointment as determining test for the discharge of payment in *Maas v. German Savings Bank*, 176 N.Y. 377, 68 N.E. 658. "We, consequently, conclude that the act of the bank, in making the payment to him in good faith without knowledge that another administrator had been appointed in this state, operated as a discharge of the indebtedness" said the court.

#### 4. The payment of debts and duties

The administrator has to pay local creditors. He has the power to sell the personal estate. If there is not sufficient personal property to pay the creditors, which administrator has the power to sell the real property? Is the administrator appointed at his last domicile? Or is the administrator appointed by the state in which the land lies.

The cases hold only the court of the state in which the land is located, or its administrator or executor, has the power to sell the land, and no others. *Parsons v. Lyman*, 20 N. Y. 103 (1859), *Hoffer v. Coyle*, 212 Ind.



520, 8 N.E. 2d. 827 (1937). This is because land owned by a decedent is subject to administration as part of his estate only when, and to the extent that, a statute provides.<sup>32</sup> It can be administered only in the state where it is situated and only by an administrator appointed by a proper court of that state. Another question arises when the will gives the executor a power of sale, which executor has this power? Is it the executor appointed at the domicile? Or in any other state than where the land is situated?" Most of the cases hold that the power of sale may be exercised only by the executor appointed in the state where the land is situated. *Lucas v. Tucker*, 17 Ind. 41 (1861), *Wells Fargo and Co. v. Walsh*, 87 Wis. 67, 57 N.W. 969 (1894).<sup>33</sup> But in many other cases "it has been widely held that if a personal representative derives authority to sell land from the will, he may proceed with the sale without qualifying as local administrator."<sup>34</sup>

Another problem is to which state must an inheritance tax be paid when real estate is situated in one state and owned by a person domiciled in another? The cases hold that the tax may be exacted by the state in which the land or real estate is situated.<sup>35</sup> *In re De Stuer's Estate*, 199 Misc. 777, 99 N.Y. S. 2d. 739 (Surr. Ct. 1950)

The administrator has to pay the federal estate tax which is a tax on the transfer of property at death. This is not a succession tax upon the benefits received by devisees and legatees but an excise or death duty against the estate as a whole. The tax is paid out of the estate before its distribution, according to Internal Revenue Code, section 826 (b). Afterwards it is allocated among the persons in whose behalf the tax was paid, unless otherwise provided by the testator in his will. *Young Men's Christian Association v. Davis*, 265 U.S. 47 (1927).

The administrator beside the federal estate tax has to pay also the New York State Estate Tax. This is a tax on net estate of resident de-

<sup>32</sup> CHEATHAM / GOODRICH / GRISWOLD / REESE, *op. Cit.* 889

<sup>33</sup> Edward S. STIMSON, "Conflict of Laws and The Administration of Decedents real Estate" in *Selected Readings on Conflict of Law op. Cit.* P.958

<sup>34</sup> STUMBERG, *op. cit.* 456 citing *Bacharach v. Spriggs*, 173 Ark, 250 (1927) and *Green v. Alden*, 92 Maine 177 (1898). In some states a foreign administrator may by statute apply to sell land

<sup>35</sup> STIMSON, *op. cit.*, p,959



cedents. There is no tax if the net estate, after deduction of exemptions, does not exceed 2000 dollars. The New York tax too is equitably shared by the persons who receive the title to the property after the transfer. However the Decedent Estate Law, section 124, indicates that the testator may change the *pro rata* arrangement in his will.

International Conventions to bar double taxation will help foreign administrators avoid the double taxation. However the United States is only party to three such conventions: those with Canada, France and United Kingdom.

The order of payments is the following according paragraph 2L2 of the New York Surrogates Court Act:

1. Debts entitled to preference under the laws of the United States and the state of New York;
2. Taxes assessed on property of the deceased previous to his death;
3. Judgments docketed, and decrees entered against the deceased accordingly to the priority thereof respectively.
4. All recognizances, bonds, sealed instruments, notes, bills and unliquidated demands and accounts.<sup>36</sup>

The same paragraph asks and orders the administrator to "proceed with diligence to pay the debts of the deceased" *Matter of Miner*, 39 Misc. 605, 80 N.Y.S.643 (1903).

The notice to creditors may be given to creditors by inserting "a notice once in each week for six months in such newspaper or newspapers printed in the county as the surrogate directs, requiring all persons having claims against the deceased to exhibit the same with the vouchers therefore, to him, at place to be specified in the notice, at or before a day therein named, which must be at least six months from the day of the first publication of the notice." according to the Paragraph 207. of the N.Y.S.C.A. The notice is permissive and not mandatory. *In re Bailey. Estate* 147 Misc. 142, 264. N.Y.S. 441 (1933), *In re Reinhardt*, 202 Misc. 424, 114 N.Y.S. 2d. 208 (1952).

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<sup>36</sup> GIBERT-BLISS, *Civil Practice of New York, op. cit.* Vol. 13 B Paragraphs. 207-319



The paragraph 208 of the N.Y.S.A. states that the administrator or executor who payed any assets or moneys in satisfaction of any lawful claims, or of any legacies or in making distribution to the next kin is not liable if the claim against the deceased person was not presented to the administrator on or before the day fixed presentation of claims in the notice published and if no notice was published seven months after the appointment of the adminsitator. In a recent case, *Vigunas Estate*, 134 N.Y.S. 2d 216 (1954) the court held that though claim was not presented within seven months from issuance of letters, where the executrix had not advertised to bar claims of creditors nor made any effort to ascertain validity of widow's claims, but distributed the entire estate without accounting to herself as sole legatee the court had power to order accounting.

“An ancillary representative has a duty to render an account of his ancillary adminsitration to the court which jurisdiction in which was appointed.”<sup>37</sup> But this accounting has not to be a formal accounting. In fact In *Kahn's Will*, 144 N.Y.S. 2d, 253, *affirmed* 2 AD 2d, 893, 156 N.Y.S.2d, 1056 (1955) the court ruled that fiduciary may settle his accounts by informal accounting out of court, and such informal accounting is as effectual for all purposes as settlement pursuant to judicial decree.

The courts of other jurisdiction cannot force the admistrator appointed by a state court to account for his adminstration, *Souier v. Houghton*, 131 Misc. 129, 226 N.Y.S. 162 (1927), *Lassen v. Hambuechen* 185 Misc. 632, 57 N.Y.S. 2d. 615 (1945).

*In re Van Zandt's Estate*, 142 Misc. 663, 255 N.Y.S. 359 (1951) the court held that the place for final accounting of executors is in the forum of original adminsitration and not in that of ancillary administration.

The debts to be payed and to account for by the administrator or the executor can be classified in three categories:

1. The debts which existed before and at the death of deceased person for which the decedent was liable

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<sup>37</sup> CYOX, *op. cit.* 56-57 citing at footnote 61 *In re Roeben's Will* (1939) 171 Misc.548, 13 N.Y.S. 2d 53, *affirmed* (1940) 259 App. Div. 866, 20 N.Y.S. 2d. 401, *motion denied*, *In re Roeben's Will* (1941) 285 N.Y. 807, 35 N.E. 2d. 195.



2. The debts which originate in the succession especially the claims of the legatees,
3. The debts which arise out of the administration and liquidation of the estate, thus funeral and inheritances taxes, commissions of administrator and compensation of attorneys.

The statute regulates the commission of the administrator or the executor in New York State. Section 285 of the New York Surrogates Court act, provides 5 percent on receiving and paying out money not exceeding 2000 dollars, 2 \_ percent on next 20.000 dollars, 1 \_ percent on next 28.000 dollars and 2 percent on all sums over 50.000 dollars.

Solvency is very important in payment of debts. If the estate is solvent the administrator may pay the local creditors in full. As for payment of foreign creditors, this is a matter of discretion in New York State, *In re worch's Estate* 124 Misc. 280, 208 N.Y.S.652 (1925). If the estate is insolvent, However local creditors are paid an amount which is their *pro rata* share of the whole estate, but they will receive that share directly from the ancillary administration, *In re Van Bokkelen's Estate*, 155 Misc. 289, 279 N.Y.S. 420.

If the estate is insolvent some courts decline to pay foreign creditors out of local assets although local creditors will receive only their proportional share. *Churchill v. Boyden* 17 Vt. 319.

### 5. The Distribution of the Residue

The distribution of the residue is the final step in the administration of an estate. In fact, the object of all administration is to perform all the necessary operations thus, collection and realization of assets, and the payment of the debts and duties, in order to have a residue or net balance to distribute. The three stages of administration are common to American and English laws.<sup>38</sup>

The distribution of the personal property is governed by *lex domicili* of the deceased. For this reason asset remaining in the hands of an ancillary administrator or executor after the payment of local creditors, in the absence if special circumstances must be transferred to the ju-

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<sup>38</sup> CHEATHAM, op.cit.48



jurisdiction of the domicile of the decedent for distribution. *In re Brun's Estate*, 173 Misc. 94, 19 N.Y.s. 2d, 154 (1939); *In re Van Zandt's Estate*, *op. cit.*, *In re Van Bokkelen's Estate*, *op. cit.* *In re Beresford Estate*, 146 Misc. 140, 262 N.Y.S. 78 (1932). The New York Surrogates Act Section 164 reads: "The person to whom ancillary letters are issued as prescribed in this article, must unless otherwise directed in the decree awarding the letters, or in a decree made upon an accounting; or by an order of the surrogates, made during the administration of the estate; or by the judgment or order of a court of record, in an action to which that person is a party, transmit the money and other personal property of the decedent, received by him, after the letters are issued, or then in his hands in another capacity, to the state, territory or country, where the principal letters were granted, to be disposed of pursuant to the laws thereof." A case may be cited as an example of the application of this rule. In *Matter of Horwich*, 10 Misc. 2d. 79, 170 N.Y.s. 2d 472 (1957) the court held that an ancillary representative unless otherwise directed must transmit property in his hands to the state where the principal letters were granted. In another case involving a British subject the Court held that an executor is not required to transmit funds to the representative of deceased's estate in England for discharge of British death duties and the court could exercise its discretion permitted under section 164 an direct delivery of balance of the estate to trustees of an intervivos trust which has its situs in this jurisdiction *Matter of Mc Neel*, 10, Misc. 2d. 359, 170 N.Y.S. 2d. 893 (1957) *In Estate of Lamar*, N.Y.L.J. Dec. 8, 1958 (Surr. Ct. N.Y. County, 1958), Decedent was a American citizen domiciled in Cuba, with all his Personal property being located in New York in custody and brokerage accounts. Temporary administrator and executor of American assets asked judicial instructions as to whether he may pay over balance of estate remaining in his hands to persons entitled in Cuba under will without obligation or provision for death taxes that may due and unpaid the taxing authorities of the Republic of Cuba. The Court held that in the absence of treaty there is no obligation on part of one jurisdiction to aid in enforcement of revenue laws of another. This decision is against the provisions of Paragraph 164 in our opinion, does not make treaty's existence a condition or a prerequisite for the transfer of assets to the country of the decedent domicil. In a Oregon case, *In re Krachler's Estate*, 199, Ore 448, 263 P.2d. 769 (1953) the court held that a citizen and resident of Germany was not entitled to



take as legatee under will of a naturalized American citizen who died on December 8, 1943, in Oregon. The court based its decision on a Oregon statute which only permitted a nonresident alien to take as legatee in cases where a reciprocal right is accorded citizens of the United States. After an exhaustive examination of material, the court found that German Law did not give to American legacies legally enforceable rights equal to those which Oregon would give to German legatees in absence of the Oregon Reciprocal Rights Act.

In general if there is no creditors in the domiciliary jurisdiction or elsewhere the court having control of ancillary administration will direct payment of the surplus or net balance directly to the distributees.

As a concluding remark on distribution we want to indicate that New York Legislature amended Paragraph 269 of the N.Y.S.C.A, in 1939 after the fast development of world events. Now where a non resident alien is entitled to money or property of a decedent and where there is "contingent" possibility of confiscation of such money or property by his government in whole or in part if transmitted him through ordinary channels, the Surrogate exercising his sound discretion, may direct that the property or the money be paid into court for "the benefit of such legatee, distributee, beneficiary of a trust or such person or persons who may there after appear entitled thereto". A very recent case where the Court applied this rule is *Matter of Lukmin*, N.Y.L.J. 2, 117. 60 p. 13 col. 5. Where the surrogate Court of Kings County directed that distributives shares of all Lithuanian residents an nationals involved be deposited whit the Treasurer of the City of New York pursuant to the provisions of New York Surrogates Act Section 269.



## V. Conclusion

The Federal Structure of the United States is a source of many conflict of laws problems in general. Even though in all state jurisdictions the personal property of the decedent is subject to the law of his domicile at his death and his realty to *lex rei sitae*, their administration creates many problems as the persons who may be appointed administrators, the jurisdiction where such administrations may be founded, the payment of the debts, the assignment of debts, the probate of wills, and finally distribution of estates. There is no doubt that the process of administration is a matter of local law. Priorities, the time for proof and the manner for making proof are governed by the law of the place where the claim is filed. The authority of cases and Section from 497 to 499 Restatement on Conflict are supporting this view. *Blake v. McClung*, 172 U.S. 238 (1897) seems to establish a rule according to which a state may not under the Constitution of the United States prefer its own citizens over those of other states in administering the assets of decedents.<sup>39</sup> This case involved inability to provide for preferences to citizens in receivership proceedings.

So to conclude we can point out a new two essential rules: that a foreign administrator who does not reside in New York cannot be granted letters of administration, in New York but his New York resident designee may be granted. And a foreign consul is not ex-officio entitled, in absence of treaty, to the administration of the estate of his nationals dying in New York.

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<sup>39</sup> Edward S. STIMSON- Conflict of laws and the administration of decedents personal property-46 Nove 1960 *Virginia Law Review*, p. 1345.