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Conflicts of Law - Extended Application of Res Judicata in Administration of Decedents' Estates

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COMMENTS

CONFLICTS OF LAW—EXTENDED APPLICATION OF RES JUDICATA
IN ADMINISTRATION OF DECEDENTS' ESTATES—Too often traditional
rules of law are blindly followed without adequate re-evaluation

of their usefulness in terms of new trends and policies. One such neglected rule is the traditional refusal to apply *res judicata* principles in actions involving administrators or executors in different states where a decedent's estate is sued by a creditor of the decedent, or where the estate is suing a debtor of the decedent. This problem arises from the fact that the fundamental structure of administration of decedents' estates in the United States is founded on the principle of a separate administration within each jurisdiction where assets of the decedent are located. As a result there is often an excessive duplication of litigation which over-burdens our already crowded court dockets. Possibly this condition could be alleviated by more extensive application of the doctrine of *res judicata* in these cases. The purpose of this comment is to examine the existing law and its rationale, and to see in which situations *res judicata* could beneficially be applied.

I. *Existing Law and Rationale When Creditor Attempts To Bind Local Estate With Foreign Judgment*

For over a century it has been a generally recognized rule of law that judgments against a decedent's administrator in state *A* are not conclusive or binding on decedent's administrator or executor in state *B*.¹ The leading case of *Stacy v. Thrasher*² held that a creditor's judgment against an ancillary administrator was not conclusive in a second suit by the creditor against the domiciliary administrator. The same result is reached if the domiciliary administrator is sued first.³ Even if the same party is defending administrator in both jurisdictions, *res judicata* would not be applied.⁴ However, a distinction is made in the case of executors. If the same party is executor in both jurisdictions, a judgment in state *A* is binding on him in state *B*.⁵ But if there are two different executors, a judgment in the first suit may be used only as evidence in the second.⁶ While decisions go both ways⁷ in the hybrid situation of an executor and an administrator *cum testamento annexo*,

¹ CONFLICTS RESTATEMENT §§506 (1), 510 (1) (1934); STUMBERG, CONFLICTS OF LAW 443-446 (1951); GOODRICH, CONFLICTS OF LAW, 3d ed., §191 (1949).

² 6 How. (47 U.S.) 44 (1848).

³ McClean v. Meek, 18 How. (59 U.S.) 16 (1855).

⁴ Nash v. Benari, 117 Me. 491, 105 A. 107 (1918); Johnston v. McKinnon, 129 Ala. 223, 29 S. 696 (1901). *Contra*, Creighton v. Murphy, 8 Neb. 349, 1 N.W. 138 (1879).

⁵ Carpenter v. Strange, 141 U.S. 87 (1891); Owsley v. Central Trust Co. of N.Y., (S.D. N.Y. 1912) 196 F. 412.

⁶ Hill v. Tucker, 13 How. (54 U.S.) 458 (1851). The court permitted the judgment to be used as evidence in order to preclude the ancillary executor from pleading the statute of limitations as a defense.

⁷ Judgment conclusive: Garland v. Garland, 84 Va. 181, 4 S.E. 334 (1887); Latine v.

the majority have denied both *res judicata* and evidentiary effect. Furthermore, it makes no difference that the action was commenced against the decedent during his lifetime and later revived against his representative.⁸ The above rules were developed where the issue most frequently arises, that is, where a creditor attempts to use a judgment obtained against the estate in state *A* to bind the representative in state *B*, and an analysis of the rationale of the law as it applies to this one situation should precede a discussion of the applicability of the same principles to other situations in multi-state administration.

A. *In Rem or In Personam?* The separate administration of decedents' estates is justified by the power of each sovereign state to regulate the manner and circumstances under which property within its territory shall be transferred.⁹ This necessitates the appointment of an administrator in each jurisdiction where assets are found, since the authority and power of an administrator or executor under his letters testamentary extend only to the territory of the issuing state.¹⁰ Because of this territorial limitation on authority, the administration is sometimes considered a proceeding *in rem*¹¹ or quasi-*in-rem*¹² as to the assets in the jurisdiction. Thus any adjudication on the assets within one jurisdiction would not be conclusive on assets within another. However, if the proceeding is considered as an *in personam* action against the representative of the estate, whether or not the representative in the second suit is a party or privy to the first suit becomes the controlling issue.

B. *Privity.* Probably the reason most often given for denying *res judicata* between administrators is that no privity exists between administrators and executors authorized under laws of differ-

Clements, 3 Kelly (Ga.) 426 (1847). Judgment not conclusive: *Ela v. Edwards*, 13 Allen (95 Mass.) 48 (1866); *Richards v. Blaisdell*, 12 Cal. App. 101, 106 P. 732 (1909).

⁸ *Brown v. Fletcher's Estate*, 146 Mich. 401, 109 N.W. 686 (1906). *Contra*, *Creighton v. Murphy*, 8 Neb. 349, 1 N.W. 138 (1879).

⁹ See I WOERNER, *AMERICAN LAW OF ADMINISTRATION*, 3d ed., §157 (1923). Divided administrations are also justified on the basis that it permits local creditors to be satisfied first out of local assets, enabling them to avoid the inconvenience of filing claims outstate. See Buchanan and Myers, "The Administration of Intangibles in View of First National Bank v. Maine," 48 HARV. L. REV. 911 (1935), wherein the authors also trace the historical development of the administration of decedents' estates.

¹⁰ See I WOERNER, *AMERICAN LAW OF ADMINISTRATION*, 3d ed., §158 (1923).

¹¹ See Simes, "The Administration of Decedent Estates as Proceeding in Rem," 43 MICH. L. REV. 675 (1944). For administration on an entity theory, see Bayse, "Dispensing With Administration," 44 MICH. L. REV. 329 (1945). See also STUMBERG, *CONFLICTS OF LAW*, 2d ed., 439, n. 6 (1951). Cf. Baker, "In the Administration of Intangibles: Missouri's Section 466.010 in Perspective," 19 MO. L. REV. 1 at 13-19, 36-42 (1954).

¹² *Johnson v. Powers*, 139 U.S. 156 (1891). See 3 BEALE, *CONFLICT OF LAWS* 1552 (1935).

ent jurisdictions.¹³ The requirement of privity arises from the general rule that a judgment in personam is only binding on parties or privies.¹⁴ It is well recognized that administrators and executors are each in privity with the decedent and that a judgment against the decedent during his lifetime is binding on his representatives.¹⁵ Consequently, it has been contended that since the representatives are all in privity with the decedent, the source of their interests, they should also be in privity with each other.¹⁶ This conclusion is fallacious, however, if one adopts the classical definition of privity, viz., a "mutual or successive relationship to the same right of property."¹⁷ It is clear that the representatives in different jurisdictions do not succeed to, nor have a mutual relation to, the same property rights, but succeed only to those assets within their respective jurisdictions.¹⁸ Furthermore, even an administrator appointed in both states *A* and *B* is not considered to have been a party to an adjudication in state *A* when he is being sued in state *B* since he is sued in a different capacity in the second suit.¹⁹ In any case, it is doubtful that the lack of technical privity is the true reason for a denial of res judicata, since, as one court put it, a finding of privity is just a legal conclusion raised in order to justify the binding effect of a judgment in a particular case.²⁰ The real basis for refusing to apply res judicata in these cases is the questionable but accepted policy of separate administrations and the courts' interest in prevention of fraud.

C. *Prevention of Fraud.* The judges in the early opinions on the question of res judicata between administrators realized that the rules were based on mere technicalities causing much inconvenience,²¹ but sustained the results because they were afraid that a judgment procured by fraud or collusion in state *A* would be conclusively binding in state *B*. It was stated in the first leading opinion, *Brodie v. Bickley*:²²

¹³ *Stacy v. Thrasher*, 6 How. (47 U.S.) 44 (1848). See STORY, CONFLICT OF LAWS, 8th ed., §522 (1883).

¹⁴ 1 FREEMAN, JUDGMENTS, 5th ed., §407 (1925).

¹⁵ *Id.*, §492.

¹⁶ See *Latine v. Clements*, 3 Kelly (Ga.) 426 (1847). *Contra*, *Low v. Bartlett*, 8 Allen (90 Mass.) 259 (1864).

¹⁷ 1 GREENLEAF, EVIDENCE, 15th ed., §523 (1892).

¹⁸ *Wilson v. Hartford Fire Ins. Co.*, (8th Cir. 1908) 164 F. 817.

¹⁹ See *Nash v. Benari*, 117 Me. 491, 105 A. 107 (1918).

²⁰ *Taylor v. Sartorius*, 130 Mo. App. 23, 108 S.W. 1089 (1908). See *Developments in the Law of Res Judicata*, 65 HARV. L. REV. 818 at 855 (1952).

²¹ *Stacy v. Thrasher*, 6 How. (47 U.S.) 44 (1848); *Ingersoll v. Coram*, 211 U.S. 335 (1908).

²² 2 Rawle (Pa.) 431 (1830). The facts of this case gave adequate cause for the court's fear of possible collusion, since the foreign administrator in Barbados had confessed judgment.

"It is of little moment that such a [fraudulent] judgment is not conclusive and that if there be fraud in fact, the administrator here may show it. It is sufficient that the doctrine [res judicata] would shift the burden of proof in the first instance and send the defendant [administrator] abroad under every possible disadvantage, to investigate transactions, the secret springs of which must necessarily be hidden from him."²³

This aversion to placing the burden of proof of fraud on the local administrator was reiterated as a basis for the opinion of the Supreme Court in *Stacy v. Thrasher*, where the Court felt the shift "would cause much greater inconvenience and injury than any that can possibly result from the present decision."²⁴

Exactly how much fraud or collusion would occur if foreign judgments were binding is difficult to estimate. A real danger may exist, however, if a creditor has an ancillary administrator appointed²⁵ in state *A* in order that the creditor may file his claim against the decedent's assets in that state. It is quite possible that the administrator appointed will be friendly to the creditor, and, because of collusion, the administrator may not properly contest a disputable claim. If such a judgment²⁶ were conclusive elsewhere, there would be a real danger of prejudice to other creditors and devisees. Furthermore, it is possible the fraud involved may be considered intrinsic fraud, and the judgment may not be subject therefore to collateral attack.²⁷ Under present law no distinction is made as to whether the first suit arose in a domiciliary or ancillary administration. It might be argued that the judgment should be binding if the suit arose in the domiciliary state, for usually a relative is appointed there, and the likelihood of fraud would be minimal since he would have the best interests of the estate in mind.²⁸ If the same party is administrator in both states, the question of fraud will never even be raised.

²³ *Id.* at 437-438.

²⁴ 6 How. (47 U.S.) 44 at 61 (1848). For interesting variations in suits involving decedent's fraudulent transfers see *White v. Croker*, (5th Cir. 1926) 13 F. (2d) 321; *King v. Clarke*, 2 Hill Eq. (S.C.) 611 (1836).

²⁵ In some states the creditor himself can be appointed the administrator. See 2 WOERNER, *AMERICAN LAW OF ADMINISTRATION*, 3d ed., §239 (1923).

²⁶ Whether a claim allowed or disallowed by a probate court will be considered a judgment for purposes of full faith and credit may depend on individual state procedure and whether the claim was contested on the merits. See, e.g., *Taylor v. Barron*, 35 N.H. 484 (1857); *Goodall v. Marshall*, 14 N.H. 161 (1843).

²⁷ See "Intrinsic and Extrinsic Fraud and Relief Against Judgments," 4 *VAND. L. REV.* 338 (1951).

²⁸ But see *Strauss v. Philips*, 189 Ill. 9, 59 N.E. 560 (1901), where decedent's wife, the domiciliary administrator, did attempt to defraud the estate to the prejudice of other creditors.

Aside from the issue of fraud, would the application of res judicata in any other way prejudice creditors? If the decedent's estate is totally insolvent, the foreign judgment creditor would receive only his proportionate share of the total estate, for the estate would be treated as an entity in this situation.²⁹ On the other hand, if the estate on the whole is solvent, and the judgment creditor is satisfied before local creditors,³⁰ local creditors would be prejudiced only to the extent that they had to file claims elsewhere to be fully satisfied.³¹

D. *Distinction Between Administrators and Executors.* That there should be res judicata effect on judgments where the same party is executor in both states³² while not where the same party³³ is administrator has been criticized by most leading commentators.³⁴ The differentiation first arose in *Hill v. Tucker*,³⁵ where the Supreme Court distinguished the executor from the administrator on the basis that executors derive their authority from the will rather than from the state; and that as to creditors, executors are all in privity since they owe the same responsibility to creditors no matter where the assets exist³⁶ or where the executor is qualified. The Court's reasoning is no longer valid. Though the will may direct the choice of who shall be the executor and possibly delimit his powers, yet only by complying with conditions set forth in state statutes is the executor able to effectuate the administration.³⁷ Actually, both the executor and the administrator receive their power and authority from the state. Furthermore, in *Hill v. Tucker*, the court reasoned that because co-executors within the

²⁹ Estate of Hanreddy, 176 Wis. 570, 186 N.W. 744 (1922); CONFLICTS RESTATEMENT §§502, 503 (1934).

³⁰ Judgment creditors of the estate have priority over general creditors. 2 WOERNER, AMERICAN LAW OF ADMINISTRATION, 3d ed., §376 (1923).

³¹ It is possible the local creditors may be prejudiced if they relied on being satisfied out of local assets and did not file claims elsewhere until after they discovered the foreign judgments would consume the entire local estate. By that time the statute of limitations may have expired in other jurisdictions.

³² Note 5 supra.

³³ Note 4 supra.

³⁴ GOODRICH, CONFLICT OF LAWS, 3d ed., 571 (1949); 3 BEALE, CONFLICT OF LAWS 1550 (1935).

³⁵ Note 6 supra.

³⁶ In *Owsley v. Central Trust Co. of N.Y.*, (S.D. N.Y. 1912) 196 F. 412, the court justified the distinction on the theory that the executor takes title to all of the testator's personalty wherever situated so that voluntary payments made by nonresident debtors are good acquittance and an assignment by him enables the assignee to sue anywhere. However, these rights usually vest in the domiciliary representative whether executor or administrator. See GOODRICH, CONFLICT OF LAWS, 3d ed., §§187, 188 (1949).

³⁷ 1 WOERNER, AMERICAN LAW OF ADMINISTRATION, 3d ed., §172 (1923).

same jurisdiction are in privity with each other, executors qualifying in other jurisdictions must also be in privity. This conclusion does not necessarily follow if one adopts the traditional view of privity.³⁸

In the leading case on same-party executors, *Carpenter v. Strange*,³⁹ the Supreme Court did not attempt to distinguish executors from administrators, but stated simply that the prior judgment was conclusive because it was rendered by a court of competent jurisdiction upon the same subject matter, between the same parties,⁴⁰ for the same purpose. The question of fraud was not even raised since the fraud problem is not applicable in this situation.⁴¹ It is submitted that the straightforward approach of the court in the *Carpenter* case was appropriate to the case and that the same results should be reached in same-party administrator litigation. Thus if the judgment obtained in the foreign jurisdiction is defended on the merits by the same party who is administrator in the second suit, the judgment should be given full faith and credit. Because the possibility of fraud or collusion still prevails, however, if the judgment is rendered against a different administrator, there should be no *res judicata*.

II. *Application of the Law to Other Situations*

Often a broad rule of law, though properly suited to the specific situation under which it developed, may not be applicable to other similar situations where it would seem to be applicable. The purpose of the second half of this comment is to test the rules discussed in part I as they apply to three other situations, and to determine if the application of *res judicata* would be justified. It should be kept in mind that the policy of *res judicata* is to end needless litigation by preventing a party who has had one fair trial on a question of fact from retrying that question.⁴² Furthermore, it should be remembered that the administrators do possess a close identity of interest⁴³ in that they are all representing the same decedent's estate.⁴⁴

³⁸ See note 17 *supra* and adjacent text.

³⁹ 141 U.S. 87 (1891).

⁴⁰ It seems the court ignored the different representative capacities of the executor and realistically recognized the identity of the interest represented. But see note 19 *supra* and adjacent text.

⁴¹ It would be a highly unusual case where an administrator who had practiced collusive fraud in the first suit would raise his fraud in the second action.

⁴² *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522 (1931).

⁴³ See *Lomas v. Hilliard*, 60 N.H. 148 (1880).

⁴⁴ For the remainder of the comment no distinction between administrators and executors will be drawn.

A. *Judgment for the Estate in Creditor's Suit Against the Foreign Administrator.* Where a creditor has fully litigated his claim in state *A* and loses, both the *Restatement*⁴⁵ and one Supreme Court case⁴⁶ hold that a second suit in state *B* is not barred. However, the other few cases directly on point have barred a second suit. In *Lomas v. Hilliard*,⁴⁷ after a full hearing on the merits of the creditor's claim and a disallowance by the Vermont probate court, a second suit was not permitted in New Hampshire. The court stated that where the same party is administrator in both states,

"... he exercises his own judgment in both states in behalf of the same estate and to say that an adjudication of a matter concerning the estate in one state, to which he was a proper party, would not be binding on the parties in another state, because he happened to derive his representative character in both states from different sources, is, it seems to us, a technical refinement not often found in modern legal reasoning. It is not suggested that the assets of the estate would be any differently affected in one jurisdiction than in the other, although the proceedings in each state are had primarily with reference to the assets in that state; nor is it apparent how the same administrator could do any more or less in his defense against the claim in this suit in one state than in the other."⁴⁸

Although admittedly the court was influenced by the fact that the same party was administrator in both states, the basic logic of this holding applies equally well to different party administrators when asserting bar.⁴⁹ Of course, there is no mutuality here, for if the creditor had won there would be no *res judicata* effect. But mutuality is essentially an equitable doctrine requiring fairness and is not truly applicable here. The primary reason that the creditor does not have the benefit of *res judicata* is to prevent fraud, but the possibility of enforcing a fraudulently obtained judgment against the estate is not present when the estate wins the first suit. One might analogize this to defensive collateral estoppel where the

⁴⁵ CONFLICTS RESTATEMENT §511 (1934).

⁴⁶ In *Aspden v. Nixon*, 4 How. (45 U.S.) 466 (1846), it was a contesting heir rather than a creditor who after losing in England was allowed to sue again in the United States. Thus no question of full faith and credit was involved.

⁴⁷ 60 N.H. 148 (1880).

⁴⁸ *Id.* at 150.

⁴⁹ *Goodall v. Marshall*, 14 N.H. 161 (1843). Cf. *Sanborn v. Perry*, 86 Wis. 361, 56 N.W. 337 (1893), where there was no trial on the merits, but the statute of limitations defeated the first suit.

usual need for mutuality is often disregarded.⁵⁰ A recent analogous case of defensive collateral estoppel is *Riordan v. Ferguson*.⁵¹ In a prior action between the mortgagee and a grantee of several parcels of land from the mortgagor's larger tract, it was determined that the mortgage debt had been satisfied. Res judicata as a defense was successfully pleaded in a later foreclosure action by the mortgagee against another grantee of other parcels from the same mortgagor's tract. Though the grantees were not in privity with each other, they derived their interests from the same source as to possible defenses, and since a full adjudication was had on the merits, a second action was not allowed.

The limited authority on point indicates that res judicata is presently being applied by some courts when a creditor upon losing the first suit attempts to sue another administrator in another jurisdiction. However, it may be noted that this result is limited to cases where the issue was litigated on the merits, and is not reached where, for example, the claim was disallowed because the statute of limitations had run in the first jurisdiction.⁵²

B. *Judgment for Foreign Administrator in His Suit Against Debtor.* It is a generally accepted rule that once an administrator has procured a judgment against a debtor of the decedent, the cause of action is merged and no other administrator can sue, either on the debt or on the judgment.⁵³ Here the merger aspect of res judicata is utilized, but other administrators can not sue on the judgment. As usual, the reason given is that there is no privity. It could be argued that there is privity at least until a judgment is granted. A cause of action is a property interest, and, since each administrator mutually succeeds to the same transitory causes of action, they are mutually interested in the same property right. But it is said that once the judgment is rendered, the cause of action is appropriated to that jurisdiction,⁵⁴ so that the other administrators no longer have an interest. The merits of this last contention need not be seriously attacked, for there seems to be no pressing reason for permitting other administrators to sue on the judgment.

⁵⁰ Developments in the Law of Res Judicata, 65 HARV. L. REV. 818 at 862 (1952).

⁵¹ (S.D. N.Y. 1948) 80 F. Supp. 973.

⁵² *Wilson v. Hartford Fire Ins. Co.*, (8th Cir. 1908) 164 F. 817; 19 L.R.A. (n.s.) 553 (1909). See note, 41 IOWA L. REV. 271 (1956). *Contra*, *Sanborn v. Perry*, 86 Wis. 361, 56 N.W. 337 (1893), and cases collected in 19 L.R.A. (n.s.) 553 (1909).

⁵³ *Talmage v. Chapel*, 16 Mass. 71 (1819); *Hare v. O'Brien*, 233 Pa. 330, 82 A. 475 (1911); CONFLICTS RESTATEMENT §505 (1934).

⁵⁴ See *Coram v. Ingersoll*, (1st Cir. 1906) 148 F. 169, *revd. on other grounds* 211 U.S. 335 (1908).

Efficient collection of the judgment is possible at present because the successful administrator can sue on the judgment in any state where jurisdiction over the defendant can be attained.⁵⁵ Also, the debtor is not now subject to excessive attachments by several administrators, as might be the case if the rule were modified.

C. *Judgment for Debtor in Foreign Administrator's Suit Against the Debtor.* There is a scarcity of cases in which the question of res judicata has arisen where the administrator's suit in state *A* against a debtor was defeated and a second suit undertaken in state *B*.⁵⁶ In the one leading case, *Ingersoll v. Coram*,⁵⁷ the Supreme Court, in reversing the First Circuit,⁵⁸ held that the ancillary administrator was not barred from a second suit after judgment had gone against the domiciliary administrator. The Court admitted that the privity rationale in *Stacy v. Thrasher* was artificial and that it led to inconvenient and burdensome results from repetitious litigation. Yet the court felt constrained to deny the debtor relief because there was no mutuality in the sense that the estate as a whole would not be bound if it had lost as defendant in a creditor's suit in one state. It is submitted that this is an unwarranted extension of the normal mutuality rule. But even if one should accept the Court's mutuality extension, it should not be applied unless the same danger of fraud on the estate exists as when the suing creditor wins. It is unlikely that when an administrator sues a debtor he will be practicing collusive fraud on the estate at the instance of the debtor. For unless a large amount is involved, the debtor will probably not wish to draw attention to his debt or take the risks that would accompany such a fraudulent scheme. But if he should deliberately have a collusive ancillary administrator appointed, the domiciliary administrator would know of large outstanding debts and would be likely to check

⁵⁵ See note 53 supra.

⁵⁶ See *Aspden v. Nixon*, 4 How. (45 U.S.) 466 (1846), where the administrator of a contesting heir claiming decedent's estate was not barred from a second suit in the United States after losing a similar contest in England.

⁵⁷ 211 U.S. 335 (1908).

⁵⁸ *Coram v. Ingersoll*, (1st Cir. 1906) 148 F. 169, rev'd. on other grounds 211 U.S. 335 (1908). The Court barred a second action on a mutuality theory that if a judgment is binding when a plaintiff administrator wins, it should be binding also when he loses. Usually mutuality means that taking the same suit and parties, both parties should be able to assert res judicata principles regardless if they win or lose. The Court in the *Ingersoll* case has changed the format of the suit and has the debtor as plaintiff. But if the usual mutuality rule should be applied, res judicata would be applicable since if the same plaintiff administrator had won, defendant could have pleaded merger to another administrator's suit.

personally into the matter and defeat any such scheme.⁵⁹ Furthermore, as to non-collusive fraud by the debtor alone, it must be assumed that the supervisory court and the first administrator will do their utmost to uncover any fraudulent design. In addition, if bar could not be asserted, the result could create considerable burdens on interstate corporations. If a decedent possessed a claim against a multi-state corporation depending on a close fact question, the various administrators could sue the corporation in every state in which it does business until the estate finally wins a favorable jury verdict or forces the debtor corporation to compromise to prevent further nuisance suits. With the presently crowded court dockets, there is no room for unnecessary nuisance suits or relitigation of the same issue by parties who derive their cause of action from the same source. A debtor of the estate who wins on the merits in the first action should certainly be able to assert bar to further litigation by other administrators on the same cause of action.

Conclusion

Though the concept of separate administrations of decedents' estates will be with us for some time, it may be possible to alleviate some of its duplication of effort and excessive litigation through extended application of the *res judicata* doctrine in appropriate cases. Two trends in the law today lend support to such a result. First, there is a more extensive use of *res judicata* generally in recent years.⁶⁰ Secondly, there are already several breakthroughs in the walls supporting separate administrations. Executors and administrators under statutes in several states can sue⁶¹ and be sued⁶² outside their state of appointment. In the administration of small estates it has been suggested that the domiciliary representative be a universal administrator and completely eliminate the ancillary representative.⁶³ In view of these recent trends, in appropriate cases it is quite possible that the courts may adopt the contention

⁵⁹ Since the domiciliary administrator is often one who will share in the estate, he will no doubt make every effort possible to recover outstanding debts.

⁶⁰ See *Developments in the Law of Res Judicata*, 65 HARV. L. REV. 818 at 861-865 (1952). For illustrations of the increased use of *res judicata* on jurisdictional questions, see Rashid, "Full Faith and Credit Clause: Collateral Attack of Jurisdictional Issues," 36 GEO. L.J. 154 (1948); *Johnson v. Muelberger*, 340 U.S. 581 (1951).

⁶¹ I WOERNER, *AMERICAN LAW OF ADMINISTRATION*, 3d ed., §163 (1923); Bayse, "Dispensing With Administration," 44 MICH. L. REV. 329 at 413 (1945).

⁶² Scott, "Hess and Pawloski Carry On," 64 HARV. L. REV. 98 (1950). *Contra*, *CONFLICTS RESTATEMENT* §512 (Supp. 1948).

⁶³ Bayse, "Dispensing With Administration," 44 MICH. L. REV. 329 at 408 et seq. (1945).

that it is time that *res judicata* be applied more generally in the administration of decedents' estates. However, in those situations where real possibilities of fraud still prevail, the courts will probably retain the existing law.

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