Foreword

THE distribution and administration of property on death is a subject of perennial interest, whether from a comparative or a practical point of view. Provision must be made to care for the assets in the estate of the decedent pending their liquidation and/or transfer to those respectively entitled—the family heirs, the legatees, the creditors, and the tax authorities. This process of administration may be organized, as in the Civil Law, by operation of law, casting the universal succession on the legitimate heir, or by the appointment of a fiduciary, as in the Common Law, to administer the estate for the benefit of those interested. In the process, complications may arise, not only from differences in the rules applying to different types of assets—of which the distinction made in the Common Law and certain other systems of succession, between interests in land, governed by the law of the situs, and other property, subject to the personal law of the domicil or nationality, is a common illustration—but especially when the assets are found in a number of jurisdictions, with variations in their laws and systems of administration, each in effective control of some part of the estate. With the increased fluidity of property across state borders and widespread interstate or international investments, the frequency of such situations, where it is necessary to provide for the simultaneous administration of decedents' estates in several states, has correspondingly multiplied, notably in the United States. In this subject matter, the position of the personal representative of the

deceased appointed in one state, as respects administration of property located elsewhere, is of central practical interest, as the present study sufficiently evinces.

In dealing with the legal rules affecting foreign personal representatives, the author of the present monograph is to be commended for the lucid analysis in the following pages of the principal questions that an executor or administrator appointed in one state will encounter in the administration of a single estate on a multi-jurisdictional basis: his right to sue and liability to suit in other states, the effects of his extra-legal action outside the state of his appointment, and the possibilities of reforming existing laws so as to make feasible a system of single administration of decedents' estates. This analysis is preceded in the first chapter by a useful historical and comparative survey, summarizing the basic differences between the Civil Law system of universal succession and the Anglo-American system of divided administration and suggesting that the latter, as derived from the practice in the ecclesiastical courts, is in a sense an historical accident. Doubtless, the principle of the latter system that the management of a single mass of property should be divided, for official purposes, among as many jurisdictions as there may be in which property is found, owes its durability to the dispersion of authority in the field of private law within the United States and in the international sphere. But the principle is a source of practical difficulty that has inspired the important exceptions that have had to be introduced to secure a reasonable measure of adjustment in settling estates in a world governed by many territorial sovereigns. It is to the author's credit that he has not limited himself

to careful consideration of these improvisations but has also constructively contemplated the needs of modern life that argue for the development of a unified system to administer estates that pass on death. This is a subject that obviously concerns every lawyer and everyone else.

HESSEL E. YNTEMA

Preface

THE preparation of this work was undertaken as the research project which is the major requirement for the degree of Doctor of the Science of Law at the University of Michigan. The topic was suggested by a discussion in a course on Conflict of Laws under Professor Yntema, which arose out of a consideration of several leading cases, notably *Wilkins* v. *Ellett*, *Maas* v. *German Savings Bank*, and *Vaughan*. v *Northrup*. The rules developed to deal with extraterritorial actions of personal representatives caught my interest as one of the most graphic illustrations of a field where blind adherence to the system of legal logic has obscured what is obviously a socially undesirable result. It is hoped that this discussion, if it does not pose satisfactory solutions, will at least demonstrate the problems which need to be solved.

Some expression of gratitude must be made to those people who have assisted me materially in this project. First I wish to thank the Committee on Graduate Study at the University of Michigan Law School, who awarded me a fellowship from the William W. Cook Research Fund for my year of study there. My great debt is to Professor Hessel E. Yntema, who taught me Conflict of Laws and who, as chairman of my graduate committee, guided this work with tolerance and understanding. I am also deeply indebted to Professor Lewis M. Simes, who read my drafts carefully and made a number of very helpful suggestions. A word of gratitude must be given to Alan Mewett, who graciously helped me with any problems that I had in the English materials. Whatever merit there is in this study is due in large measure to the helpfulness of these people.

BANKS MCDOWELL, JR.