CHAPTER VI

The Unified Administration

1. THE NECESSITY FOR A UNIFIED ADMINISTRATION

THE general rule from which all discussion must start is that a personal representative who is appointed in one jurisdiction has no authority *per se* to act in any other. This is the result of two theories.

The most likely explanation for the development of the rule was the extremely influential concept of the sovereign character of each legal order. The rule was developed in the ecclesiastical courts of England, where quite probably each archbishop was jealous of the power of the other and therefore would not permit the other's appointees to act in his jurisdiction.[1] The rule was popularized in the legal world by Story, who founded his system of conflict of laws on a sovereignty-comity theory. We have seen that a modern writer like Beale will still explain the rules as the result of the lack of power of a legal order to make its law by its own force operate in other jurisdictions.[2] This theory, in order to be a satisfactory explanation, presupposes that the other states, because they are not compelled to do so, will refuse to recognize that the laws of that state do have force in their jurisdictions. As a matter of fact, these other jurisdictions frequently recognize the operative force of the law of the first state in their territories, and this forms the basis of those rules generally classified in the field of conflict of laws. In

[1] See *supra* Chapter I, pp. 15–16.
[2] See quotation, *supra* Chapter II, p. 31.

many situations involving foreign personal representatives, effect is given to the law of another state. This should cause us to realize that the important point of view of analysis is not that of the state which appointed the personal representative, but rather the state in which the personal representative attempts to perform some action and which must determine whether that action is proper. Therefore we have to turn from the logical-legal explanations of a Beale and consider the question from the attitude of the forum. Why has the forum adopted the general rule excluding foreign executors and administrators? What exceptions has it made to this general rule? Why were these exceptions made? Should the exceptions be extended further? Should the general rule be abolished altogether?

The real and only justification for the general rule limiting the authority of the foreign personal representative to the territory of the appointing state is the desire to protect local creditors. In the vast majority of cases, the only purpose which a foreign executor or administrator can have in wanting to act in the forum is to collect decedent's assets. If he is permitted to do so, the local creditors can no longer satisfy their claims out of property located in the jurisdiction. Story pictured the undesirable consequences of permitting the removal of decedent's assets when he wrote:

> Persons, domiciled and dying in one country, are often deeply indebted to foreign creditors, living in other countries, where there are personal assets of the deceased. In such cases it would be a great hardship upon such creditors to allow the original executor or administrator to withdraw those funds from the foreign country, without the payment of such debts, and thus to leave the creditors to seek their remedy in the domicile of the original executor or adminis-

trator, and perhaps there to meet with obstructions and inequalities in the enforcement of their own rights from the peculiarities of the local law."[3]

In order to protect the local creditor's interest, the forum as a general rule has required that decedent's property located in the jurisdiction be administered there, and after all local creditors have been paid the proceeds will be transmitted to the principal administration for distribution. Therefore, in weighing the desirability of a unified administration against the current requirement of separate administrations, on one side of the scales must be placed the interests of local creditors in local assets.

Notwithstanding the necessity of caring for local citizens who have claims against the estate, many exceptions have been made in favor of permitting action in the state by a foreign personal representative. Thus we have seen that there are many situations where a foreign personal representative is permitted by common law or legislation to sue,[4] that he may be allowed to sell land,[5] and is generally permitted to collect movable chattels and debts located in the forum.[6] This indicates a rather extreme dissatisfaction with the operation of the general rule. So the next logical question is, why have the courts and legislatures in general been so willing to make the exceptions?

The result of applying the general rule is to require an ancillary administration in the state where the property is located. Such an administration is quite

[3] Story, COMMENTARIES ON THE CONFLICT OF LAWS, 2nd Ed., sec. 512 (1841).

[4] See *supra* Chapter II, pp. 35–54.

[5] See *supra* Chapter IV, pp. 125–128.

[6] See *supra* Chapter V.

expensive. There will be the added cost which will always arise from duplication of effort, and more particularly there will be court costs, attorney's fees, and administrator's fees. This added expense must be paid out of the assets of the estate. The expense will diminish the amount of the property available for distribution to the heirs, devisees, or legatees of the decedent. They are as entitled to protection, not only from the domiciliary court, but all courts, as is any group or class of creditors. The heirs and beneficiaries of the decedent should be entitled to demand as inexpensive an administration of the estate as is possible to insure that they will receive more of the decedent's property.

However, if the estate is insolvent, the added expense of various ancillary administrations would mean that there is less of decedent's property available to pay decedent's claims. Treating the estate as a whole and the decedent's creditors as a single group, the application of the rule harms the very class it was designed to protect. Therefore, on the other side of the scales we can place the interest of the heirs and legatees and also the creditors as a general class in having as inexpensive an administration as possible so that there will be more assets for the payment of claims and for distribution.

Another point which argues against the ancillary administration is the time factor. The general practice is that the ancillary administration will follow the established probate proceeding of the state, and after all the claims have been paid and the administrator has made his final accounting, the remaining assets will be transmitted to the principal or domiciliary administration for distribution. This means that the domiciliary administration must be kept open until various ancillary administrations are concluded. This problem of co-

ordinating the various administrations may prolong the principal administration for months and will thus delay the distribution of property. The law should have a definite policy in favor of not tying up property for lengthy periods of time and for seeing that the dependents of decedent get clear title to his property as soon as possible. Thus another factor to be weighed against the general rule is the delay in the conclusion of probate proceedings caused by ancillary administration.

Another important fact which militates against separate administrations is the uncertainty as to the proper personal representative with whom to deal. If a third party resides in the domiciliary state, he may deal with the domiciliary personal representative with confidence that any transactions will be valid. Likewise, if the party resides in a state where an ancillary administration has been taken out, he may carry out any transactions with the ancillary administrator. However, if he lives in a state in which there is no ancillary administration, he can never be sure that a later administration will not be taken out and therefore can never rest assured that in transactions begun with the decedent a completion with the domiciliary representative will be treated as valid in the state where he resides. Since third parties, regardless of where they live, have created contractual obligations with the decedent as a single person, they ought to be entitled in the event of his death to look to a single person to whom they will perform. Therefore, it is important to achieve certainty and unity in the successor or personal representative of the decedent.

Another factor which is becoming of more importance in the conditions of our modern society is a necessity

for a unified policy of conservation and management of an estate. Many estates today, even moderate-sized ones, are made up largely of business enterprises and interests spread over a number of states which the decedent has held and managed as integrated property. The value of such an estate will depend largely on the market values of the property interests, which will be higher when operated in an integrated fashion. Such an estate on decedent's death can only be satisfactorily managed as a whole if advantages are to be taken of fluctuating values and continued business operation. If the estate is managed by several administrators completely independent of one another, the value of the estate may decline sharply. Therefore, another reason against having ancillary administration is the necessity for a unified management of the estate.

Thus we see that in deciding the factors pro and con on this question, on the side of the separate administrations there is the desire to protect local creditors. In favor of some program of unified administration, we have (1) the desire to eliminate expense, (2) the prevention of delay, (3) the necessity to achieve certainty as to decedent's representative, and (4) the avoidance of multiple management of integrated assets. Since these various factors may not be of equal weight in reaching an answer, there should be a brief consideration of how important it is today to protect local creditors by requiring an ancillary administration.

When Story wrote, it was not clear whether a jurisdiction might discriminate against a foreign creditor by refusing to pay his claim until all claims presented by creditors residing in that state were paid. If a local creditor residing in the forum can be made junior to all claimants who are citizens of the state where domiciliary ad-

ministration is being had, or if the domiciliary state can refuse to pay any but resident creditors, there is much force in arguing the necessity for an ancillary administration in the forum. In deciding this question, the practice of the states in their treatment of foreign creditors is much more important than their theoretical power to discriminate against the foreign claimants. This problem has been largely resolved in this country by the decision in *Blake* v. *McClung*.[7] This involved a receivership in Tennessee of an English corporation which was insolvent. There was a Tennessee statute which gave a priority in the distribution of the corporation's assets to Tennessee creditors over those residing in other states. The Supreme Court of the United States held that this statute was unconstitutional under the "privileges and immunities" clause.[8] In the opinion, the court said:

> "We adjudge that when the general property and assets of a private corporation, lawfully doing business in a State, are in course of administration by the courts of such State, creditors who are citizens of other States are entitled, under the Constitution of the United States, to stand upon the same plane with citizens of such State, and cannot be denied equality of right simply because they do not reside in that State, but are citizens residing in other States of the Union."[9]

While the case deals with the administration of insolvent corporations, the case is very analogous to the administration of a decedent's estate, and the result would be the same if a state attempted to give a preference to its

[7] 172 U.S. 239, 19 S.Ct. 165, 43 L.Ed. 432 (1898).

[8] United States Constitution, Art. IV, sec. 2. "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

[9] 172 U.S. at 258.

own citizens having claims against a decedent's property over creditors from other states.

While the above decision does not prevent discrimination against foreign corporations having claims,[10] and certainly does not prevent foreign countries from giving priorities to their nationals over claimants from the United States, it is unlikely that a creditor of decedent will be discriminated against among the class of creditors to which he belongs if he files a claim in a foreign estate administration. So the only real difficulty involved is the inconvenience in presenting a claim in a foreign jurisdiction. In the time of Story, this was a real problem. Today, however, with our almost instantaneous communication systems and our very rapid transportation facilities, there is little real inconvenience involved in presenting a claim in the administration being had in a foreign tribunal. Certainly, this slight inconvenience and the expense involved do not outweigh the interest of the heirs and other creditors in having a unified administration.

Even if there were discrimination against a creditor in a foreign jurisdiction in exceptional cases and also some little inconvenience in presenting and collecting his claim, a very forceful argument can be made in favor of unified administration. In modern societies, a party dealing with other persons must take many risks. If the other party is insolvent, he may not be

[10] Blake v. McClung, 172 U.S. 239, 19 S.Ct. 165, 43 L.Ed. 432 (1898), held that a foreign private corporation was not a citizen within the meaning of the privileges and immunities clause and therefore could be discriminated against in favor of local creditors. There has been some doubt thrown on this position by cases decided later by the Supreme Court of the United States which hold that a private corporation is a citizen within the privileges and immunities clause. See: Kentucky Finance Corporation v. Paramount Auto Exchange, 262 U.S. 544, 43 S. Ct. 636, 67 L.Ed. 1112 (1923).

able to enforce fulfillment of the obligation. The contract may be unenforceable because of impossibility of performance. Another risk which the party can be made to take is that if the other party dies, he will be left to whatever remedies are provided him by the domiciliary administration in collecting his debts. Certainly a nondomiciliary forum is just as interested in achieving a system of speedy, unified, and inexpensive administrations as it is in protecting local creditors. This can only be accomplished if it will refrain from requiring an ancillary administration and will recognize the foreign domiciliary personal representative in all matters, in the hope that the foreign jurisdiction will reciprocate by treating its domiciliary administrations in the same manner. If the only way to bring this about is to send the local creditor to the domiciliary administration in another jurisdiction, there is no really serious objection to that. The multitude of legislation which has this effect indicates that the states have no real qualms about refusing to protect local creditors if they will receive fair treatment in the state of principal administration.

It should be abundantly clear by now that the writer is completely in favor of a single unified administration on a decedent's estate. It seems to me that the advantages to be gained so greatly outweigh the desire to protect local creditors that there can be little serious debate. This is the view which has been reached by the vast majority of the writers who have considered the problem.[11] The really important question is how to

[11] Basye, "Dispensing with Administration," 44 Mich. L. Rev. 329 at 409 (1945); Cheatham, "The Statutory Successor, the Receiver and the Executor in Conflict of Laws," 44 Col. L. Rev. 549 (1944); Hopkins, "The Extraterritorial Effect of Probate Decrees," 53 Yale L. J. 221 (1944); Niles, "Model Probate Code and Monographs on Probate Law:

achieve what is generally regarded as the highly desirable result of a unified administration.

2. Requirements for a Unified Administration

In order to achieve a unified administration, there must be some changes made in the present law. This is obvious from the number of ancillary administrations which are still necessary to administer a large estate. Before we decide the best means of bringing about these changes, it is important to determine what is necessary to achieve the unified administration and to what extent these requirements are met by the present law.

The first obvious requirement is that the personal representative must be subject to the control of only one court. If any case involving the property of the estate or raising questions about the management of that property, he should be answerable only to the court which appointed him. As was seen in Chapter III, this is the general result under the existing law. With few and relatively unimportant exceptions, foreign tribunals will not assume jurisdiction over personal representatives in any matter touching their representative character. Consequently, this raises no problems.

A second essential is that there be only one administration on each estate. This may seem a truism, but there is a serious question whether a single administration on a decedent's estate is completely desirable. The single administration presupposes the designation of one jurisdiction as the only one which can administer

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A Review," 45 Mich. L. Rev. 321 at 339 (1947); Note, "The Capacity of Executors and Administrators to Sue in a Foreign Jurisdiction," 50 Col. L. Rev. 518 at 523 (1950).

Contra: Buchanan & Myers, "The Administration of Intangibles in View of First National Bank v. Maine," 48 Harv. L. Rev. 911 at 950 (1935).

decedent's property. The obvious state to select is the domiciliary one. However, there are instances where the domiciliary state is not the best jurisdiction in which to hold the administration. If a decedent were domiciled in Michigan at the date of his death, but all of his property consisted of a business operated in New York and all of his creditors and debtors resided there, it would be very unsatisfactory to attempt to administer that estate wholly in Michigan. To attempt to lay down a standard which provides that the state where the most property is located or where the majority of the parties are found is to be the place where the single administration is to be held would lead to the unfortunate result of so uncertain a criterion that the states would be fighting over which one was entitled to administer the assets.

One solution to this problem is to retain the principle of separate administrations and try to eliminate only undesirable and unnecessary ancillary administrations. The way to accomplish this seems to be to leave the matter in the discretion of the probate court to whom the parties apply for ancillary administration. If the domiciliary personal representative can show that only a small portion of the decedent's estate is in the forum and only a few of the heirs and creditors in relation to the total number are present there, the probate court should have the jurisdiction to refuse to grant the administration. Such a provision appears in the Uniform Ancillary Administration of Estates Act.

"The [probate court] may deny the application for ancillary letters if it appears that the estate may be settled conveniently without ancillary administration. Such denial is without prejudice to any subsequent application if it later appears that ancillary administration should be had."[12]

[12] Uniform Ancillary Administration of Estates Act, section 3.

This must be accompanied by legislation which gives the foreign domiciliary representative the power to perform all the functions of administration in the forum. If such discretion were wisely exercised by the courts, the worst features of the separate administrations could be eliminated.

Such a solution does not seem satisfactory to me, however. Two of the reasons previously given for the necessity of the unified administration were the need for management of integrated business interests by a single personal representative and the need to achieve certainty as to the personal representative so that obligors of the decedent could deal with him with confidence. As long as there are ancillary administrations, such policies cannot be completely effectuated. Further, leaving the matter in the discretion of the various probate courts with such a broad standard of decision may well mean that the courts in many localities will require that there be ancillary administrations in nearly as many situations as it is required under the present law.

I feel that it is necessary to provide for one administration on an estate. Since the succession to movable property is determined by the law of the domicile[13] and since the administration there is always regarded as the principal one by Anglo-American courts, the domiciliary administration should be selected as that single administration. It is true that frequently a substantial part of the property and a majority of the decedent's creditors will be located in other jurisdictions. This does not present an insurmountable barrier to the unified administration. Let us take the extreme hypothetical case posed before. A decedent was domi-

[13] RESTATEMENT, CONFLICT OF LAWS, sec. 303 (1934).

ciled in Michigan, but his property, a going business, and all the parties were in New York. If New York were to permit the personal representative appointed in Michigan to perform the functions of administration in its jurisdiction, the problem could be handled adequately. The Michigan court could authorize the personal representative to manage the business property in New York. It could require him to follow the same procedure for the payment of claims in New York as he does in Michigan. He would give notice in New York of the administration and be available there at specified times over a designated period to receive claims against the estate. The claims, after having been approved by the probate court at the domicile in Michigan, could be paid in New York. Such a procedure, while following closely an ancillary administration, does not mean that the domiciliary representative has to subject himself to the procedure and control of each legal order in which the decedent left property. Such activity in other jurisdictions could be handled by the personal representative himself or by an agent. The personal representative should be required to follow this procedure only in those states where the decedent left a substantial portion of his property and where a number of creditors are who would be inconvenienced by having to come to the domiciliary forum to present their claims. Such a procedure would adequately handle the rare situation where it would be better to have a nondomiciliary forum as the place of unified administration. It will also enable the creditors in those jurisdictions where it is most common and profitable today to require an ancillary administration to be dealt with in a satisfactory manner.

The third necessity for a unified administration is

that the domiciliary representative be treated as having title to all of the decedent's property wherever located for purposes of administration. This will require that the states forego their right to require an ancillary administration which gives title of the property within the jurisdiction to the local administrator. While this will be a substantial difference in the probate law of Anglo-American states, it is not a revolutionary or startling change. There are many analogous situations where a fiduciary in much the same position as a personal representative, such as a universal successor, statutory receiver, or trustee, is treated as having title to property in other jurisdictions.

As was pointed out in the first chapter, the universal successor who performs the functions of administration in civil-law systems takes title to all of the decedent's property. This title will be recognized even by common-law courts as to property in their jurisdictions.[14] If the universal successor can be treated thus, it is difficult to see why the domiciliary personal representative cannot be.

Secondly, a statutory receiver is said to have title to the property of a corporation wherever it may be. The receivership is strikingly similar to a probate administration, and the receiver is very much akin to the personal representative.[15] When a business is insolvent, he takes over and manages all its property, frequently operates the business, and then pays the assets at the

[14] The Sultan of Turkey v. Tiryakian, 213 N.Y. 429, 108 N.E. 72 (1915); Vanquelin v. Bouard, 15 C.B. (N.S.) 341 (1863).

[15] The similarities between the personal representative and the statutory receiver are noted and a strong argument is made for the treatment of the personal representative in a similar fashion to the statutory receiver in Cheatham, "The Statutory Successor, the Receiver and the Executor in the Conflict of Laws," 44 Col. L. Rev. 549 (1944).

conclusion of the receivership in equal shares to the creditors. He is a fiduciary conserving the property for the benefit of the corporation's creditors. Originally, the receiver was appointed by a court of equity and was said to be limited to the territory of the appointing court, just as a personal representative is.[16] This result is based on the same theory, i.e., that an appointee cannot have authority to act outside the jurisdiction of the court which appointed him. It was also justified on the same policy, that the state wanted to protect local creditors of the corporation by requiring an ancillary receivership on the corporation's property in the jurisdiction. It became obvious that this was totally unsatisfactory when a large nation-wide corporation went into receivership and had to be operated. So it was held that in the situation where the receiver was appointed in pursuance of a statute of the state of incorporation which made him an assignee of the corporation's property, he had title to that property which will be recognized in other states.[17] According to Beale,

> "Other states will recognize this succession (so like the French doctrine of univeral succession on death), and will give this statutory receiver all movables of the corporation within the state, and will allow the statutory receiver to sue on a claim due to the corporation."[18]

It is difficult to see how a statute of a state can be more effective in assigning title to the property of a corporation than a decree of a court created by the same legal order, but certainly the result, although not too

[16] Standard Bonded Warehouse Co. v. Cooper & Griffen, 30 F.(2d) 842 (W.D. N.C. 1929).

[17] Relfe v. Rundle, 103 U.S. 222, 26 L.Ed. 337 (1880); Clark v. Willard, 292 U.S. 112, 54 S.Ct. 615, 78 L.Ed. 1160 (1934).

[18] Beale, A TREATISE ON THE CONFLICT OF LAWS, 1570.

logical, is a necessary and desirable one. If the statutory receiver can take title to all the property of a corporation organized in the state, it is hard to understand why the personal representative cannot take title to all the property of a decedent domiciled in the jurisdiction at his death. Of course, this depends on the attitude of the nondomiciliary states in which the decedent left property, but if they are going to recognize the title of a foreign statutory receiver, they ought to be prepared to do so with a foreign personal representative.

Also, a trustee is a similar fiduciary who has always been treated as having title to the trust *res* regardless of its location.[19] This may be because the common law never distinguished between the personalities of a trustee and of an individual as was done with the receiver and the personal representative.[20] In the modern English legislation, principally the Administration of Estates Act of 1925,[21] it has been provided that the personal representative holds the property of the estate as a trustee. This raises the problem whether such a provision will be treated as vesting title to all of the decedent's property, wherever it may be located, in the English executor or administrator in the same way

[19] Shirk v. City of La Fayette, 52 F. 857 (C.C. D.Ind. 1892); Roby v Smith, 131 Ind. 342, 30 N.E. 1093 (1891).

[20] Cheatham, *supra* note 15 at 553–554.

[21] "Subject to the powers, rights, duties and liabilities herein-after mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto. . . ." 9 Halsbury's STATUTES OF ENGLAND, 2nd Ed., 716 (Land Transfer Act, 1897. 60 & 61 Vict. 65, sec. 2).

"On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—

(a) as to the real estate upon trust to sell the same; and

(b) as to the personal estate upon trust to call in sell and convert into money such part thereof as may not consist of money. . . ."

9 Halsbury's STATUTES OF ENGLAND, 2nd Ed., p. 734 (The Administration of Estates Act, 1925. 15 Geo. 5 c. 23, s. 33).

as was done with the statutory receiver or as an ordinary trustee. This depends not so much on the wording of the English legislation as it does on the effect given it by the courts of other jurisdictions as to property located there. I feel that such a provision will not change the rules discussed in this book. The nondomiciliary courts will be inclined to say that the legislation as to the nature of the personal representative applies only to property within the jurisdiction of the English Parliament and that it cannot enlarge the control of an English personal representative over property outside England.

Two things are required on behalf of the nondomiciliary states in addition to refraining from requiring ancillary administrations in order to place title in the domiciliary representative. The foreign domiciliary personal representative must be permitted to collect all the assets of the decedent located in the jurisdiction and to give a valid discharge to all obligations satisfied to him. Secondly, he must have the power to bring any necessary actions in the courts of the state to compel an obligor of the decedent to perform the obligation to himself and to recover property of the decedent from wrongful possessors. Nearly half of the states have legislation permitting such suits[22] and over half have statutes providing that a foreign personal representative can give a valid discharge to a person who pays a debt or surrenders property of the decedent to him.[23] In those states, little change is necessary. Our problem is to secure changes in the states which retain the common law and to work out a uniform system throughout the nation. By no means should such attempts at uni-

[22] See *supra* Chapter II, note 92.

[23] See *supra* Chapter V, pp. 163–166.

formity and unity in the administration of a decedent's estate be limited to the United States, but it is here that the problems caused by the separate administrations are the most frequent and pressing.

3. Means of Achieving the Unified Administration

This area of the administration of decedents' estates points up more than any other the unsatisfactory results of the forty-eight separate private law systems we have in this country. The United States is by population, customs, and geography one nation. The state boundaries are unquestionably artificial. Therefore, the population and its movable property are extremely fluid. And yet that population and property are governed by widely differing legal systems depending on their location at any given time. This condition gives rise to a multitude of conflict of law problems which are often bewildering and frequently difficult of solution. It is this situation which has made the United States the cradle for much of modern conflict of laws. There is nothing inherently necessary in maintaining the states as separate legal institutions. The movement for uniform legislation and the expansion of federal activity in many legal areas indicate the desirability of one legal system for the entire country. One such legal order could provide for a unified administration of decedents' estates in the territory of the United States and thus eliminate all the problems raised by separate administrations. Since this would require drastic constitutional amendment, such a solution is not even remotely possible and the answer must come from other directions.

As long as there are a number of separate legal orders in the territory of the United States, a completely unified administration is a rather forlorn hope. Even if all

the legal orders participated in the achievement of a system of unified administrations, it is very likely that the multiple statutes and decisions would reach a variety of results in the various states.[24] However, the fact that about half of the states retain the common-law rules with little or no statutory modification indicates that the desire to solve this problem is not all-pervading. Therefore, we must treat unified administration as an ideal and work toward the elimination of as much of the unnecessary ancillary administrations as possible.

The states could as a matter of comity through court decision go a long way towards achieving a sufficient unified administration and, as a matter of fact, have done so. If the courts would permit a foreign personal representative always to sue to collect assets, would refuse to permit any actions brought against a foreign personal representative, and would not interfere with his collection of local assets, there would be little need for an ancillary administration. If this were coupled with the power to refuse to grant an ancillary administration in the state unless it were absolutely necessary for efficient administration, most of the problems would be solved. However, the doctrine of *stare decisis* will influence the courts to retain most of the rules which are currently in force, and the evolutionary process which the common law takes is not rapid enough to give an immediate solution. The answer would seem to have to come from legislation.

The legislation must be adopted in all the forty-eight

[24] The Uniform Negotiable Instruments Law was adopted in all forty-eight states quite early. The experience with that piece of legislation has been that cases decided in pursuance of the same act by different courts in different states do not always produce uniformity. See Britton on BILLS AND NOTES, 19–22.

states. There has been a great deal of piecemeal legislation dealing with specific problems, but in only about half of the states. In order to achieve unified administration of a decedent's estate, there must be legislation adopted in each state in which the decedent might leave property, and that legislation must have in effect the same provisions. This will, of course, require the enactment of some uniform legislation.

Naturally, the desirability of such legislation has not escaped the notice of the National Conference of Commissioners on Uniform State Laws, and they have promulgated and adopted two acts in this area. The Uniform Powers of Foreign Representatives Act[25] was adopted by them in 1944. It has not been adopted in any state.[26] The Act in essence provides that in the absence of an ancillary administration, the foreign personal representative "may exercise all powers which would exist in favor of a local representative." This will include the power to maintain actions and to give a valid discharge to persons who deliver property or pay debts to him. The Act has the further advantage of permitting such action only by the domiciliary representative. A unified administration requires action by only one administrator, and the logical one to select is the domiciliary representative.

The Uniform Ancillary Administration of Estates Act[27] was adopted by the National Conference of Commissioners on Uniform State Laws in 1949. It has been adopted in Wisconsin.[28] In addition to providing

[25] See *infra* Appendix A.

[26] Handbook of the National Conference of Commissioners on Uniform State Laws, 1953. Table at 317.

[27] See *infra* Appendix B.

[28] Handbook of the National Conference of Commissioners on Uniform States Laws, 1953. Table at 317.

that the probate court may refuse to grant ancillary administration, the purpose of the Act is to permit the foreign personal representative appointed in the domicile to act as ancillary administrator. Not only is he preferred in the appointment of an ancillary administrator, but he may be substituted for a local administrator already appointed. The Act attempts to achieve as unified an administration as possible by providing that in the insolvent estate all creditors, regardless of their residence, are entitled to share equally in the assets of the ancillary administration, taking into account what they have received in other administrations. The important provision in this Act is that which provides that the probate court may refuse to grant an ancillary administration if the estate can be conveniently settled without it. There can be no truly unified administration as long as there is any ancillary administration on the estate. If the jurisdiction will refrain from requiring local administrations except when absolutely necessary, it will be possible to achieve a high degree of unity in probate administrations in this country.

Any legislative remedy which is to be adopted in the various states must have two viewpoints, that of administrations which are domiciliary in the state and that of estates where the decedent is domiciled elsewhere. In the case of the nondomiciliary estate, the provision must be that the domiciliary representative takes title to all of the property of the decedent in the state and that he may maintain actions to collect this property and may discharge obligations due to the estate. The Uniform Powers of Foreign Representatives Act is well drafted to accomplish this and consequently should be adopted in all the states. In addition, the

state must adopt legislation providing that no ancillary administration may be had in the state on a non-domiciliary estate. The Uniform Ancillary Administration of Estates Act, while well drawn to eliminate the unnecessary ancillary administration, still retains the principle of separate administrations and should not be adopted. Under such a legislative program, the domiciliary representative could perform all the functions of administration in the state.

Some changes must be made in the probate practice of the state dealing with a domiciliary estate in order to achieve unified administration. It must be made clear and certain that creditors from other jurisdictions will be treated in exactly the same way as creditors resident in the state in order to alleviate the fear of other states that their residents might be discriminated against. Secondly, the personal representative must be placed under a duty to collect all the assets in those states which participate in this program of a unified administration. Finally, in those frequent situations where a decedent maintained extensive contacts with another jurisdiction or jurisdictions so that he has substantial property interests and creditors there, the personal representative should be required to give notice of the administration, and to receive and pay claims in that locality.

There is doubt whether many states will be interested in adopting such a legislative program. The strongest reason is probably the inertia which is usually responsible for maintaining the status quo. A second reason for the retention of the present system is that the ancillary administration provides fees for the bar which will not be available under a unified administration. Only a minority of the lawyers are motivated by this

consideration, but their active interest in retaining the ancillary administration is usually strong enough to overcome the less enthusiastic efforts of the rest of the bar at reform. The third reason, and the one which is always given to support the rule, is the desire to protect local creditors. As we have seen, the state of the common and statute law in this country at present is such that foreign administrators can remove assets from the jurisdiction in a large number of situations, and thus the local creditors are often unprotected. Further, under a system of unified administration where the domiciliary state treats all creditors equally, the interests of local creditors will be protected just as well as they can be by requiring an ancillary administration. So this reason is not so impelling as it would seem at first.

One plan has been suggested which will exert strong pressure towards a uniform system of unified administrations in the United States.[29] The Federal Government has authority to enact bankruptcy legislation under which the property of any person who is insolvent may be administered. Under this power, it could provide a system of single administration on any decedent's estate which is insolvent. The solvent estates would still be under the control of the separate states, but as the experience of the bankruptcy legislation indicates, the states are strongly influenced to make their law conform to any federal enactment in the field.

It is impossible to see an adequate solution to this problem in the immediate future. The difficulties are likely to become worse rather than better. The rules of ancillary administration were developed in a semi-feudal society where the population was almost com-

[29] Nadelmann, "Insolvent Decendent's Estates," 49 MICH. L. REV. 1129 at 1161–1162 (1951).

pletely immobile. A person today no longer lives his life in as nearly a stationary fashion as a building or tree. In the jet age, a person's community may well become the world. In the world of tomorrow with its ever-increasing commercial types of property, to attempt to chop up a man's property interests into segments based on their location at his death and to administer each segment separately from the rest will lead to the most unsatisfactory results. This is one area where it is imperative to change the rules designed in an older society for those which are more suitable for the present and the future. As Justice Holmes said in another connection:

> "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."[30]

[30] Holmes, "The Path of the Law," 10 HARV. L. Rev. 457 at 469 (1897).