

apprise the holder that they were payable in terms of Canadian currency, even in New York. Furthermore, the defendant was prepared to show that the plaintiff had paid for the bonds either in Canadian dollars to the extent of the face amount of the bonds or the equivalent in United States dollars at the current rate of exchange.¹⁵ It would seem clear, therefore, that the reasonable expectations of the parties should have been that the provision for payment in Montreal, New York or London was inserted merely as a multiple collection clause rather than as a multiple currency clause.¹⁶

Conflict of Laws—Administration of Decedent's Estate—Situs of Liability Insurance Policy for Purpose of Administration—[Illinois].—While driving through Illinois a domiciliary of Missouri was involved in an automobile accident resulting in his death and the injury of several residents of Illinois. The automobile was sold and the proceeds used to pay deceased's medical expenses. Several months later the public administrator of the Illinois county in which the decedent died was granted letters of administration upon the allegation that the decedent left personal property in Illinois consisting of an automobile and an automobile liability insurance policy. On the same day the injured residents of Illinois instituted suits naming as defendant the administrator of the estate. Subsequently, on the petition of an heir, the letters of administration were revoked by the county court on the ground that there was no property in Illinois to administer, since the automobile had been sold and the proceeds properly applied,¹ and since the liability insurance policy had never been brought into Illinois. On appeal from the judgment of the appellate court affirming the order of the county court, *held*, that since under the liability policy the decedent could have enforced his rights of exoneration and indemnification against the insurance company in Illinois, where the company was licensed to do business, the policy is an asset of the estate in Illinois; hence the county court had jurisdiction and was under a duty to appoint an administrator. Order of revocation reversed. *Furst v. Brady*.²

The Illinois court would have been without jurisdiction to appoint an ancillary administrator if it had been unwilling to expand the concept of assets to include a contingent right of exoneration and indemnification under a liability insurance policy.³ The instant case thus raises the question, in traditional terminology, as to what is the "situs" of a liability insurance policy for the purpose of administering the estate of a decedent. But it may be doubted whether a chose in action, an intangible represented by a liability policy, can be regarded as having a "situs"—the words "intangible" and "situs" being contradictory.⁴ The questions, therefore, are (1) where will the relationship represented by the policy be recognized and enforced, and (2) where, as a matter of policy in the administration of a decedent's estate, should it be enforced?

The courts have been influenced by several conflicting policies in administering de-

¹⁵ Defendant's Reply Brief, at 18, 19.

¹⁶ Note 8 supra. Cf. the multiple collection clause in *Levy v. Cleveland C. C. & St. L. R. Co.*, 210 App. Div. 422, 206 N.Y. Supp. 261 (1924).

¹ Ill. Rev. Stat. (1939) c. 3, §§ 71-72.

² 375 Ill. 425, 31 N.E. (2d) 606 (1940).

³ See *Robinson v. Carroll*, 87 N.H. 114, 174 Atl. 772 (1934); *Christy v. Vest*, 36 Iowa 285 (1873); *Jeffersonville R. Co. v. Swayne's Adm'r*, 26 Ind. 477 (1866).

⁴ See *Goodrich*, Conflict of Laws 468 (1938).

cedents' estates.⁵ The policy underlying the universal or single administration doctrine is to reduce the costs of administration and minimize taxation.⁶ Thus the domiciliary representative is regarded as the sole successor to all the personal property of the decedent.⁷ A second theory regards a relationship evidenced by an instrument as having a situs for the purpose of administration only where the instrument itself is found.⁸ A third policy, the protection of local claimants against a nonresident decedent, is represented by the holding in the instant case. To effectuate this policy, it has been held that choses in action are assets for the purpose of administration wherever the debtor is subject to suit.⁹ Since the insurance company, authorized to do business in Illinois, could have been sued there by the insured,¹⁰ it would seem that it was justifiably held that the insurance policy was an asset in Illinois.

Although the uniformity and economy of the single administration doctrine make it desirable as a general rule,¹¹ the holding of the principal case may be supported. Since the administrator of the decedent's estate is the instrumentality of the claimants against the insurer, it can hardly be doubted that he will give adequate notice of a suit for damages to the insurance company so that it may defend the action. And it is no inconvenience to the insurance company to defend any action brought against the administrator in Illinois, since the company, doing business in Illinois, will have local counsel readily available. Furthermore, since Illinois was the scene of the accident, the

⁵ 3 Beale, *Conflict of Laws* 1467 (1935).

⁶ Goodrich, *Problems of Foreign Administration*, 39 *Harv. L. Rev.* 797, 830-31 (1926).

⁷ See *Wilkins v. Ellett*, 9 *Wall. (U.S.)* 740, 742, (1869); *McKinzie v. United States*, 34 *Ct. Cl.* 278 (1899); *Putnam v. Pitney*, 45 *Minn.* 242, 47 *N.W.* 790 (1891).

⁸ Under this theory the mercantile specialty is expanded to include unsealed as well as sealed instruments. Consequently, the unsealed instrument is brought within the rule that a chose in action evidenced by a mercantile specialty is an asset to be administered by the administrator of the jurisdiction where it is found. See *Iowa v. Slimmer*, 248 *U.S.* 115 (1918) (notes and bonds); *New York Life Ins. Co. v. Smith*, 67 *Fed.* 694 (C.C.A. 9th 1895), cert. den. 159 *U.S.* 262 (1895) (insurance); *Merrill v. New England Mutual Life Ins. Co.*, 103 *Mass.* 245 (1869) (insurance); *Lang's Estate*, 301 *Pa.* 429, 152 *Atl.* 570 (1930) (promissory note); *Ellis v. Ins. Co.*, 100 *Tenn.* 177, 43 *S.W.* 766 (1897).

⁹ *New England Mutual Life Ins. Co. v. Woodworth*, 111 *U.S.* 138 (1884) (insurance); *Southern Pacific Co. v. DeValle da Costa*, 190 *Fed.* 689 (C.C.A. 1st 1911) (claim for wrongful death); *Rockford v. Metropolitan Life Ins. Co.*, 88 *Ind. App.* 540, 164 *N.E.* 713 (1929) (insurance); *Sharp v. Cincinnati, N.O. & T.P. R.*, 133 *Tenn.* 1, 179 *S.W.* 375 (1915) (claim for wrongful death).

In several jurisdictions administration has been permitted merely because a debtor was temporarily within the jurisdiction. *Saunders v. Weston*, 74 *Me.* 85 (1882); *Turner v. Campbell*, 124 *Mo. App.* 133, 101 *S.W.* 119 (1907); *Fox v. Carr*, 16 *Hun (N.Y.)* 434 (1879). In one case administration was authorized because the property of a debtor could be attached in the jurisdiction. *Wilmington Trust Co. v. De Paris*, 5 *Boyce (Del.)* 565, 96 *Atl.* 30 (1915).

¹⁰ *Ill. Rev. Stat. (1939) c. 73, § 724.* See *Nat'l Can Co. v. Weirton Steel Co.*, 314 *Ill.* 280, 145 *N.E.* 389 (1924); *Frank Simpson Fruit Co. v. Atcheson, T. & S. F. R. Co.*, 245 *Ill.* 596, 92 *N.E.* 524 (1910).

¹¹ Goodrich, *op. cit. supra* note 6; Carey, *A Suggested Fundamental Basis of Jurisdiction with Special Emphasis on Judicial Proceedings Affecting Decedents' Estates*, 24 *Ill. L. Rev.* 44 (1930). But see Buchanan and Myers, *The Administration of Intangibles*, 48 *Harv. L. Rev.* 911 (1935); cf. *Baker v. Baker, Eccles & Co.*, 242 *U.S.* 394, 404-405 (1917).

local forum is apt to be most convenient for witnesses, most of whom are probably local residents.¹² Nor will administration in Illinois for the purpose of enabling local tort claimants to reach the insurer prejudice general creditors of the estate, since the liability policy is not an asset subject to their claims. Finally, a judgment obtained by the tort claimants against the ancillary administrator will not affect the domiciliary administration, since the judgment cannot be enforced in Missouri.¹³

Insofar as the instant case is a mechanism by means of which injured persons may enforce their claims against the local assets of deceased non-resident tortfeasors, it represents a judicial complement to non-resident motorist statutes. These statutes have been held to create, for the purpose of service of process, a principal and agent relation between the tortfeasor and a state official, which is revoked upon the death of the tortfeasor.¹⁴ Consequently, if the tortfeasor has died, the statute is of no benefit to the tort claimant. But with the expansion of the concept of assets to include even contingent claims of exoneration and indemnification, the injured person, through the device of an administration of the decedent's estate,¹⁵ has an effective means of recovery at least to the extent of the insurer's liability.

Criminal Law—Conditional Pardon—Reservation of Right to Make Ex Parte Revocation—[Federal].—A conditional pardon granted to the petitioner provided that if he failed to fulfil its conditions he might "by executive order made and entered upon the Executive Journal, be re-arrested . . . and required to serve out the unexpired term of . . . [his] sentence." The pardon was revoked without notice or opportunity for a hearing. The petitioner thereupon instituted a habeas corpus proceeding in the county court, claiming that such arbitrary action violated due process, but the Kentucky Court of Appeals stayed the suit on the ground that the terms of the pardon reserved to the governor the right to make an ex parte revocation, and that by acceptance of the pardon the petitioner had consented to its terms.¹ A similar petition was then filed in the federal district court, which held that, while in its opinion the terms of the pardon did not reserve the right to make an ex parte revocation, in view of the contrary determination of this question by the highest court of the state, the writ should not be

¹² This argument would not be applicable where administration was sought in a state not the scene of the accident. The other reasons indicated, however, would seem sufficient to support administration. But the court might properly refuse to grant administration where the only relation between the state and the parties was that the insurer was licensed to do business in that state. But cf. *Gordon v. Shea*, 300 Mass. 95, 14 N.E. (2d) 105 (1938).

¹³ *First Nat'l Bank of Brush v. Blessing*, 231 Mo. App. 288, 98 S.W. (2d) 149 (1936); *Johnson v. Powers*, 139 U.S. 156 (1891); *Rosenthal v. Renick*, 44 Ill. 202 (1867).

¹⁴ *Donnelly v. Carpenter*, 55 Ohio App. 463, 9 N.E. (2d) 888 (1936); *Dowling v. Winters*, 208 N.C. 521, 181 S.E. 751 (1935); *Young v. Potter Title and Trust Co.*, 115 N.J.L. 518, 181 Atl. 44 (1935); *State ex rel. Ledin v. Davidson*, 216 Wis. 216, 256 N.W. 718 (1934). For a discussion of this restrictive interpretation of non-resident motorists' statutes see Culp, *Recent Developments in Actions against Nonresident Motorists*, 37 Mich. L. Rev. 58, 71 (1938).

¹⁵ *Gordon v. Shea*, 300 Mass. 95, 14 N.E. (2d) 105 (1938); *Robinson v. Carroll*, 87 N.H. 114, 174 Atl. 772 (1934).

¹ *Commonwealth ex rel. Meredith v. Hall*, 277 Ky. 612, 126 S.W. (2d) 1056 (1939).