

1920

## Payment of Debt to Foreign Representatives or Heirs

Robert B. Fizzell

Follow this and additional works at: <https://scholarship.law.missouri.edu/lr>



Part of the [Estates and Trusts Commons](#)

---

### Recommended Citation

Robert B. Fizzell, *Payment of Debt to Foreign Representatives or Heirs*, 18 Bulletin Law Series. (1920)  
Available at: <https://scholarship.law.missouri.edu/lr/vol18/iss1/3>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in University of Missouri Bulletin Law Series by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

## Payment of Debt to Foreign Representatives or Heirs

At common law an executor or administrator has no authority to administer upon any property of the deceased the situs of which is without the state of his appointment. "Every grant of administration is strictly confined in its authority and operation to the limits of the territory of the government which grants it, and does not *de jure* extend to other countries."<sup>1</sup> It is, therefore, uniformly held that the domiciliary representative cannot proceed to a foreign state and in his official capacity maintain an action to collect the assets of the deceased located there.<sup>2</sup> Each

1. Mr. Justice Story in *Vaughn v. Northrup* (1841) 15 Pet. 1, 5.

2. *Naylor's Admr. v. Moffatt* (1859) 29 Mo. 126; *Cabanne v. Skinner* (1874) 56 Mo. 357; *Gregory v. McCormick* (1895) 120 Mo. 657, 25 S. W. 565; *Sommer v. Franklin Bank* (1904) 108 Mo. App. 490, 83 S. W. 1025; *Miller v. Hoover* (1906) 121 Mo. App. 568, 97 S. W. 210. See also *Beattie Mfg. Co. v. Gerardi* (1919) 214 S. W. (Mo. Sup.) 189.

Where, however, the defendant fails to object to the prosecution of the suit by the foreign representative, either by demurrer or answer, he cannot raise the question on appeal. *May v. Burk* (1883) 80 Mo. 675; *Gregory v. McCormick* (1893) 120 Mo. 657, 25 S. W. 565; *Sommer v. Franklin Bank* (1904) 108 Mo. App. 490, 83 S. W. 1025; *Beattie Mfg. Co. v. Gerardi* (1919) 214 S. W. (Mo. Sup.) 189.

The rule that a foreign domiciliary representative cannot sue in Missouri upon a claim due the deceased does not prevent his maintaining an action in Missouri upon a judgment secured by him in his representative capacity in another state, the judgment debtor having moved to this state. *Hall v. Harrison* (1855) 21 Mo. 227; *Tittman v. Thornton* (1891) 107 Mo. 500, 17 S. W. 979. It is said in the latter case that under such facts, the foreign representative should sue in his own name as trustee of an express trust.

Likewise, the foreign representative can sue in Missouri, in his own name upon a contract made with him as such representative. *Abbott, Admr. v. Miller, Admx.* (1846) 10 Mo. 141; *Wolf v. Sun Ins. Co.* (1898) 75 Mo. App. 306.

In *Richardson v. Busch* (1906) 198 Mo. 174, 188, 95 S. W. 894, Valiant, J. propounds this question: "A man owns a farm just across our line in Kansas on which he has a herd of cattle; he dies and an admin-

sovereign state reserves to itself the power to grant letters of administration which shall operate *exclusively* upon all assets within its jurisdiction.

It is equally true, however, that the personal property of a decedent passes to his distributees according to the law of domicile, regardless of the situs of such property.<sup>3</sup> Influenced no doubt by this principle, the great weight of authority is to the effect that the domiciliary executor or administrator has title to all of the personalty of the decedent, wherever situated, even though he cannot maintain an action for the foreign assets.<sup>4</sup> This

istrator is appointed and qualified in Kansas and takes possession of the estate; the legal title to the herd of cattle vests in the Kansas administrator, but some one leaves the gate open and the cattle stray across the line into Missouri and some one here takes possession of them; does the act of the cattle in straying across the line extinguish the title of the Kansas administrator, or are the doors of our courts closed against him if he seeks to recover his own." It would seem clear that in such case where the Kansas administrator has reduced the property to possession in his own state, the courts of Missouri would be open to him to protect his title. *Miller v. Hoover* (1906) 121 Mo. App. 568, 571-2, 97 S. W. 210; *Hill v. Barton* (1916) 194 Mo. App. 325, 188 S. W. 1105. As said in *Abbott, Admr. v. Miller, Admx.* (1846) 10 Mo. 141, "A valid title to property acquired in one country, according to the local law, will be deemed valid and respected as a perfect title in every civilized country."

By statute (Sec. 1737, R. S. Mo. 1909) a foreign executor or administrator may sue in Missouri on a cause of action which has accrued under the laws of another state where, by such laws, such representative is alone authorized to maintain the suit. See *Voris v. C. M. & St. P. Ry. Co.* (1913) 172 Mo. App. 125, 157 S. W. 835.

3. The Missouri statute to this effect (Sec. 260, R. S. Mo. 1909) enacted in 1845 (R. S. 1845, p. 102, Sec. 19) is merely declaratory of the common law. *Richardson v. Lewis* (1886) 21 Mo. App. 531; *Austin's Estate* (1897) 73 Mo. App. 61, 66; *Comerford v. Coulter* (1899) 82 Mo. App. 362, 365; *Wyatt, Admr. v. White* (1915) 192 Mo. App. 551, 557, 183 S. W. 1107.

4. *McLain v. Parker* (1913) 88 Kan. 873, 131 Pac. 153; *Compton's Admr. v. Borderland Coal Co.* (1918) 179 Ky. 695, 201 S. W. 20; *Rand, Adm. v. Hubbard* (1842) 4 Met. 252, 258; *In re Washburn's Estate* (1891) 45 Minn. 242, 47 N. W. 790; *In re Cape May & D. B. N. Co.* (1881) 51 N. J. L. 78, 16 Atl. 191; *Petersen v. The Chemical Bank* (1865) 32 N. Y. 21; *Schluter v. Bowery Sav. Bank* (1889) 117 N. Y. 125, 22 N. E. 572; *Harper v. Butler* (1829) 2 Pet. 239; *Williams v. Ellett* (1882) 108 U. S. 256, 2 S. C. 641; *Owsley v. Central Trust Co.* (1912) 196 Fed. 412, 418.

*Contra, Murphy v. Crouse* (1901) 135 Cal. 14, 66 Pac. 971; *Walker v. Welker* (1894) 55 Ill. App. 118, 122; *Dial v. Tappan* (1880) 14 S. C. 573. And see *Brown, Jr. v. Smith* (1906) 101 Me. 545, 64 Atl. 915.

rule is stated in this state in the recent case of *State ex rel. Abercrombie v. Holtcamp*,<sup>5</sup> although earlier cases incline to the opposite view.<sup>6</sup>

With the foregoing rules in mind, let us assume that a non-resident of this state dies owning a note made by a resident of this state. Can the local debtor safely pay his debt to the non-resident executor, administrator or legal distributees of the decedent's estate? If such payment be made, may such party nevertheless be compelled to account for such debt to an ancillary administrator subsequently appointed in Missouri?

*Payment to the foreign representative.* As stated above, it is generally held that the domiciliary representative has title to all of the assets of the deceased, regardless of the situs thereof. It should follow that payment by a local debtor to such representative constitutes a valid discharge of the indebtedness. The fact that the foreign representative could not institute suit in this state and thus enforce payment to him should not affect the situation since this result is not due to any infirmity in the foreign representative's title to the asset, but is based on a mere personal incapacity to sue.<sup>7</sup> The situation might be different, of course, if, prior to the payment, an ancillary administrator had been appointed in Missouri and the local debtor informed of such fact.<sup>8</sup> The *power* of this state to appoint an administrator to take charge of the assets in this jurisdiction cannot be questioned.<sup>9</sup>

5. (1916) 267 Mo. 412, 421, 185 S. W. 201.

6. *Naylor's Adm. v. Moffatt* (1859) 29 Mo. 126; *Crohn v. Clay County State Bank* (1909) 137 Mo. App. 712, 118 S. W. 498. See also *McCarty v. Hall* (1850) 13 Mo. 480.

7. *Williams v. Ellett* (1882) 108 U. S. 256, 2 S. C. 641.

8. See *Maas v. German Savings Bank* (1903) 176 N. Y. 377, 68 N. E. 658, where it is held that the appointment of a local administrator prior to the date of payment to the foreign administrator is immaterial if the local debtor did not have knowledge of such appointment at the time he made such payment. In *Citizens Nat. Bank v. Sharp, Admr.* (1880) 53 Md. 521, it is said that the validity of the payment to the foreign representative is dependent upon the non-existence of local administration.

9. The situs for purposes of administration of simple contract debts and of promissory notes owing by residents of this state to non-resident deceased creditors is within this state. *McCarty v. Hall* (1850) 13 Mo. 480; *In the Matter of Partnership Estate of Henry Ames & Co.* (1873) 52 Mo. 290; *Becraft v. Lewis* (1890) 41 Mo. App. 546. Likewise a judg-

If, however, prior to such appointment, the local debtor pays the domiciliary representative who then has title to the asset, a local administrator subsequently appointed should not be able to compel a second payment.

The great weight of authority supports the view just expressed. It is generally held that payment to the domiciliary representative is valid and constitutes a discharge of the debt.<sup>10</sup> The reasoning of the courts is well stated in *In re Williams' Estate*.<sup>11</sup> In this case the domiciliary administrator appointed in Iowa had compromised with a non-resident corporation a cause of action for the negligent killing of the deceased, the accident

ment rendered in a foreign state against a person then a resident of such state, but now a resident of Missouri has upon the death of the plaintiff a situs in this state for purposes of administration. *Miller v. Hoover* (1906) 121 Mo. App. 568, 97 S. W. 210. For a discussion of this case see 20 Harvard Law Rev. 326.

10. *Marcy v. Marcy* (1864) 32 Conn. 308, 320; *Selleck v. Rusco* (1878) 46 Conn. 370; *Bull v. Fuller* (1889) 78 Ia. 20, 42 N. W. 572; *In re Williams' Estate* (1906) 130 Ia. 553; 107 N. W. 608; *Ames v. Citizens Nat. Bank* (1919) 181 Pac. (Kan.) 564; *Fidelity Trust Co. v. Williams* (1907) 32 Ky. L. R. 303, 105 S. W. 952; *Compton's Admr. v. Borderland Coal Co.* (1918) 179 Ky. 695, 201 S. W. 20; *Thorman v. Broderick* (1900) 52 La. Ann. 1298, 27 So. 735; *Citizens Nat. Bank v. Sharp, Admr.* (1880) 53 Md. 521; *Hutchins, Adm. v. State Bank* (1847) 12 Met. 421; *Gardiner v. Thorndike* (1903) 183 Mass. 81, 66 N. E. 633; *Morrison v. Hass* (1918) 229 Mass. 514, 118 N. E. 893; *In re Washburn's Estate* (1891) 45 Minn. 242, 47 N. W. 790; *Dexter v. Berge* (1899) 76 Minn. 216, 78 N. W. 1111; *In re Cape May & D. B. N. Co.* (1881) 51 N. J. L. 78, 16 Atl. 191; *Williams v. Storrs* (1822) 6 Johns. Ch. 353, 357; *Doolittle v. Lewis* (1823) 7 Johns. Ch. 45, 49; *Parsons v. Lyman* (1859) 20 N. Y. 103, 112-113; *Schluter v. Bowery Sav. Bank* (1889) 117 N. Y. 125, 22 N. E. 572; *Maas v. German Savings Bank* (1903) 176 N. Y. 377, 68 N. E. 658; *Gray's Estate* (1887) 116 Pa. St. 256, 11 Atl. 66; *In re Schinn's Estate* (1895) 166 Pa. St. 121, 30 Atl. 1026; *Amsden v. Danielson* (1895) 18 R. I. 787, 31 Atl. 4; *State to use of Bank of Wayne v. Fulton* (1898) 49 S. W. (Tenn. Ch. App.) 297; *Mackey v. Cox* (1855) 18 How. 100, 104; *Wilkins v. Ellett* (1869) 9 Wall. 740; *idem* (1882) 108 U. S. 256, 2 S. C. 641.

In *Riley v. Moseley, Admr.* (1870) 44 Miss. 37, it was held that where a resident of Mississippi paid his debt to the domiciliary representative in Tennessee, both parties being in Tennessee at the time of payment, the debt was discharged because at such time the debtor was subject to suit in Tennessee since he was personally within that state. Cf. *Klein v. French* (1880) 57 Miss. 662, 669; *City Savings & Trust Co. v. Branchiere* (1916) 111 Miss. 774, 72 So. 196.

11. (1906) 130 Ia. 553, 107 N. W. 608.

having taken place in Michigan. In upholding the payment to the domiciliary representative (the appellee) the court said: "The appellee, as principal administrator, took title at once to the entire personal estate of the deceased, wherever situated. True his letters of authority did not entitle him to go into a foreign state and enforce his rights by action in the courts, but they did authorize him to take possession of the assets of the estate wherever found, if he could do so peaceably, and to receive payment of debts and claims due to the estate wherever the same was voluntarily made, and his quittance or discharge given therefor was valid against the claim of an ancillary administrator subsequently appointed."

A few courts have held, however, that payment to a foreign representative is without legal effect.<sup>12</sup> The Missouri decisions, while not in accord, seem to incline to the latter view. The cases will be stated in their chronological order.

*Bartlett v. Hyde*.<sup>13</sup> One Garrett who apparently was a resident of Kentucky, died in Missouri and certain money belonging to him came into the defendant's possession. The plaintiff was appointed administrator in this state on November 9th, and three days later an administrator was appointed in Kentucky. In an action brought by the Missouri administrator to recover the money left by the deceased, the defendant offered to prove that he had paid the Kentucky administrator and that all of the expenses of the last illness were paid. The lower court refused to admit such evidence and judgment was rendered for the plaintiff. The ruling was affirmed on appeal. The court seemed to disregard the fact that payment had been made to the legal representative of the deceased's estate and treated the case as if the defendant had endeavored to make distribution of the decedent's assets without administration. This, the court said, could not be

12. *Ferguson v. Morris* (1880) 67 Ala. 389, 395; *Equitable Life Assurance Soc. v. Vogel's Executrix* (1884) 76 Ala. 441, 447; *Walker v. Welker* (1894) 55 Ill. App. 118; *Young, Adm. v. O'Neal* (1855) 3 Sneed (Tenn.) 55; *Vaughn v. Barret* (1833) 5 Vt. 333. In *McCully v. Cooper* (1896) 114 Cal. 258, 46 Pac. 82 and in *Klein v. French* (1880) 57 Miss. 662, 669, it is said that payment to a foreign representative may be good if there be no local creditors and no local administration.

13. (1834) 3 Mo. 490.

done. It should be noted that in this case an administrator had been appointed in Missouri before the defendant paid the domiciliary representative. Since the defendant did not plead or offer to prove that he made his payment in ignorance of the appointment in this state, it may perhaps be inferred that he had knowledge of such appointment prior to such payment.

*Crohn v. Clay County State Bank.*<sup>14</sup> A resident of Iowa died leaving two deposits in Missouri banks—one in Jackson County and the other in the defendant bank in Clay County. About a month after the date of death, the defendant paid the domiciliary administrator in Iowa the sum on deposit in defendant's bank. Shortly thereafter the public administrator of Jackson County was appointed administrator of the decedent's estate, and, after collecting the deposit in the Jackson County bank, filed suit against defendant for the account paid by it to the Iowa administrator. There was no showing that the deceased owed any debts in Missouri. The Kansas City Court of Appeals held that notwithstanding the defendant's prior payment, the plaintiff was entitled to recover. The decision was rested on the ground that the Iowa administrator had no title to the Missouri assets.

*Troll v. Landgraf.*<sup>15</sup> A resident of Illinois died owning negotiable promissory notes made by residents of Missouri and secured by deeds of trust on Missouri real estate. The Illinois administrator distributed these notes among the heirs. Prior to final settlement, however, the public administrator of St. Louis filed notice that he had taken charge of the estate of the deceased in Missouri, and made demand upon the Illinois administrator for the notes in question. The latter, "as a son and one of the heirs at law" of the decedent, filed a petition in the Probate Court of the City of St. Louis to set aside and vacate the authority of the public administrator to administer upon any part of the estate. It was held by the St. Louis Court of Appeals that the public administrator had no right to take charge of the estate; that under the facts the property was not left "in a situation exposed to loss or damage" or "liable to be injured, wasted or

14. (1909) 137 Mo. App. 712, 118 S. W. 498.

15. (1914) 183 Mo. App. 251, 168 S. W. 268.

lost" and that, therefore, the statute<sup>16</sup> did not authorize administration by the public administrator.

*Bell v. Farmers & Traders Bank.*<sup>17</sup> A resident of Iowa died leaving a deposit in the defendant bank in Missouri. No administrator being appointed, the defendant paid the account to the heirs at law, part of whom lived in Missouri and part in Iowa. Thereafter the plaintiff was appointed administrator in Missouri, and instituted this action to collect the account. The plaintiff's contention was that administration was necessary before the heirs of the decedent could acquire any title to the account, and that the defendant's payment to the heirs afforded it no protection whatever. The St. Louis Court of Appeals rejected this view and held that in the absence of any debts the heirs could, without administration, distribute among themselves the assets of the deceased.

*Troll v. Third National Bank of St. Louis.*<sup>18</sup> The public administrator of St. Louis county filed a petition alleging that one Lucia M. Laird, a resident of Illinois, died owning thirty-three shares of stock in the defendant bank, the stock certificate being in the possession of the executrix in Illinois; that plaintiff, as ancillary administrator appointed in this state, had title to the stock and was entitled to all dividends declared thereon since the date of death of the stockholder. The prayer was that the defendant be ordered to deliver to the plaintiff, as administrator, a certificate for the stock, and to pay to the plaintiff all dividends declared since the stockholder's death. The defendant bank demurred to the petition. The Supreme Court held (the decision being *in banc*) that the demurrer should be overruled. Inasmuch as there were assets in this state,<sup>19</sup> the court held that the

16. Sec. 302, R. S. Mo. 1909.

17. (1915) 188 Mo. App. 383, 174 S. W. 196.

18. (1919) 211 S. W. (Mo. Sup.) 545. This decision is followed without discussion in the very recent cases of *Troll v. Third National Bank* (1919) 216 S. W. (Mo. Sup.) 922; *Troll v. United Railways Co.* (1919) 216 S. W. (Mo. Sup.) 923; *Troll v. National Bank of Commerce* (1919) 216 S. W. (Mo. Sup.) 923.

19. The situs for purposes of administration of stock in a Missouri corporation is within the state, regardless of the domicile of the owner. *Richardson v. Busch* (1906) 198 Mo. 175, 95 S. W. 894. The contrary



public administrator had authority to administer thereon. The case of *Troll v. Landgraf*, *supra*, holding that the public administrator was not authorized to act under the statute because the property in this state was being properly cared for and was not actually in danger, was not cited, but the decision was in effect rejected for the court, in construing the statute said, "Any estate with no administrator to look after it is exposed to loss. We think this clause clearly authorized the public administrator to act."<sup>20</sup> The court did not attempt to distinguish between the stock in the defendant bank and the dividends thereon declared since the decedent's death and paid to the foreign executrix. The ruling in *Crohn v. Clay County State Bank*, *supra*, which would require a second payment to the local administrator was, therefore, tacitly approved.

The foregoing cases seem to be the only ones in this state having a direct bearing upon this subject. No two of them approach the question from quite the same angle, and each stands practically alone so far as relying upon the others is concerned. While *Crohn v. Clay County State Bank* deals with the question most directly, this decision has been cited but once since it was rendered, and then not on the point under discussion. None of the four earlier cases is referred to in *Troll v. Third National Bank*.

The ruling in *Crohn v. Clay County State Bank* has resulted in considerable hardship in many cases where non-residents

rule prevails in Kansas where it is held that the situs of stock in a corporation of that state is at the domicile of the deceased stockholder. *In re Miller's Estate* (1913) 90 Kan. 819, 136 Pac. 255.

20. The language quoted from *Troll v. Third National Bank* is squarely opposed to the reasoning in *Troll v. Landgraf*, referred to above. In the latter case the St. Louis Court of Appeals said: "We think it altogether absurd to say that there was property of the deceased left in this state exposed to loss or damage. The situation was one entirely agreeable to those in interest and there was no occasion whatsoever for the public administrator or anyone else to interfere." For a discussion of the Missouri statute by Cooley, C. J., see *Reynolds v. McMullen* (1885) 55 Mich. 568, 22 N. W. 41.

As to the right of the public administrator to administer upon personalty brought into the state after the decedent's death see *McCabe v. Lewis* (1882) 76 Mo. 296; *Turner v. Campbell* (1907) 124 Mo. 133, 101 S. W. 119; *Hill v. Barton* (1916) 194 Mo. App. 325, 188 S. W. 1105.

have died leaving deposits in Missouri banks or owning other assets situated in this state. If the local debtor cannot safely pay the domiciliary representative of the decedent's estate, ancillary administration in Missouri becomes a necessity. This frequently entails expense and delay out of all proportion to the amount involved. Whether or not the decision is correct on principle is, therefore, a natural inquiry.

The court in the *Crohn* case states that its decision is justified "by the duty which a state owes its own citizens who may be creditors, as well as to itself in the way of taxation."<sup>21</sup> So far as the latter point is concerned, it should not be entitled to great weight. This state has the unquestioned right to enact any legislation necessary to enable it to collect taxes upon the property of non-resident decedents located in this jurisdiction, and, within the last few years, it has exercised this right. Section 11 of the Inheritance Tax Law<sup>22</sup> imposes severe penalties upon any resident who pays a debt or delivers property to the foreign representatives of a decedent's estate without giving notice to the proper officials and either securing their consent to such payment or delivery or retaining an amount sufficient to pay any tax which may be assessed. In view of this legislation, it is certainly no longer necessary to hold that payment to the foreign representative is ineffective because a different view might result in the debt's escaping taxation in this state. The simple and direct way to insure the collection of any taxes due lies in compelling the local debtor to see that such taxes are paid, not by holding that, after the local debtor has paid the foreign representative, such payment is without effect.

The other ground given for the decision in *Crohn v. Clay County State Bank* is that the duty which a state owes its own citizens who may be creditors of the non-resident decedent requires the holding that payment to the foreign representative be deemed ineffective. Under this reasoning, since payment to a local administrator is granted in order to protect local creditors, it would seem that the existence of such creditors should be a

21. (1909) 137 Mo. App. 712, 715, 118 S. W. 498.

22. Laws of Missouri, 1917, p. 119.

prerequisite to the appointment of an administrator. This, however, is not the law in this state. The existence of local creditors is immaterial,<sup>23</sup> the decisive factor being the existence of assets within the state.<sup>24</sup> In the *Crohn* case for instance it did not appear that there were any creditors of the deceased in this state.

In actual practice there is no necessity for the rule in order to protect possible domestic creditors. If there are such creditors and they desire local administration upon any asset within the state they should procure the appointment of an administrator and should advise any local debtor of such appointment before the latter pays his debt to the non-resident domiciliary representative. If such an appointment has not been made, or if it has been made but the local debtor has not been informed of such fact, payment by the latter to the domiciliary representative should be sustained. Under such circumstances the debtor has not only paid the person whom he naturally would pay under the circumstances, but he has paid the person who, under the great weight of authority, had actual title to the asset.<sup>25</sup> Such payment should constitute a valid discharge of the indebtedness. A local creditor of the non-resident decedent is put to no great

23. *Richardson v. Busch* (1906) 198 Mo. 174, 95 S. W. 894; *Troll v. Third National Bank* (1919) 211 S. W. (Mo. Sup.) 545; *Becraft v. Lewis* (1890) 41 Mo. App. 546.

24. See the foregoing authorities cited under note 23. See also *Miller v. Hoover* (1906) 121 Mo. App. 568, 97 S. W. 210; *Turner v. Campbell* (1907) 124 Mo. App. 133, 101 S. W. 119.

If the decedent left assets within the state then, it is said by many courts, administration is necessary to protect possible creditors, there being no sure way of determining whether or not creditors exist except through administration. *Becraft v. Lewis* (1890) 41 Mo. App. 546; *Crohn v. Clay County State Bank* (1909) 137 Mo. App. 712, 118 S. W. 498; *McCully v. Cooper* (1896) 114 Cal. 258, 46 Pac. 82; *Brown, Jr. v. Smith* (1906) 101 Me. 545, 64 Atl. 915; *Mansfield v. McFarland* (1902) 202 Pa. 173, 51 Atl. 763. This argument was well answered in *Bell v. Farmers & Traders Bank* (1915) 188 Mo. App. 383, 174 S. W. 196, discussed above, where the court said: "It is true that it is not possible to know with certainty that the deceased left no debts, but it is sufficient on that score if none have appeared and that the administration is not had in order to enable a creditor to reach the assets."

25. See cases cited under note 4.

hardship if he be required to prove up his claim at the domicile of his debtor.<sup>26</sup>

It has been held in Missouri that a local administrator who collects an account due the estate by a non-resident, is chargeable for such asset as administrator, and not merely as trustee.<sup>27</sup> This in itself is a clear recognition of the right of a domiciliary representative to collect the personal assets of the decedent wherever they may be situated. And the general rule that such representative has legal title to all of the assets has been stated recently by the Supreme Court.<sup>28</sup> To hold that payment to such representative is valid would be the logical consequence of these decisions.

The decisions in *Bartlett v. Hyde*, *Crohn v. Clay County State Bank* and *Troll v. Third National Bank* may find some support upon the technical ground that the plaintiff's right to the asset sued for could not be challenged in a collateral proceeding. This principle was relied upon in the last mentioned case

26. No distinction should be made between payment to an executor and payment to an administrator. At common law title to a decedent's personality vested in his executor by force of the will while an administrator's authority was derived from his appointment. See *Ellis v. Ellis* (1905) 1 Ch. 613; *Marcy v. Marcy* (1864) 32 Conn. 308; *Wilson v. Wilson* (1873) 54 Mo. 213; 32 Harvard Law Review 315, 318-319. In *Stagg v. Green* (1871) 47 Mo. 500, it is said that this distinction has not been adopted in the United States and that here even an executor does not derive his power solely from the will, but rather from the court appointing him.

27. *McPike v. MCPike* (1892) 111 Mo. 216, 230, 20 S. W. 12. See also *State to use of Bank of Wayne v. Fulton* (1898) 49 S. W. (Tenn. Ch. App.) 297, 301.

28. *State ex rel. Abercrombie v. Holtcamp* (1916) 267 Mo. 412, 185 S. W. 201. In *Morton v. Hatch* (1873) 54 Mo. 408, a legatee of a Kentucky testator was allowed to sue upon a debt owed the deceased by a resident of this state. The court held that since administration had been effected in Kentucky, the legatee had title to the asset. This ruling implies the recognition of the domiciliary representative's right to administer upon all of the decedent's assets, wherever situated.

29. *Troll v. Third National Bank* (1919) 211 S. W. (Mo. Sup.) 545, and cases cited; *Green v. Tittman* (1894) 124 Mo. 372, 27 S. W. 391; *Meyer v. Nischwitz* (1917) 198 Mo. App. 101, 199 S. W. 442. Where, however, the appointment is *coram non judice* and void, the validity of the appointment is subject to collateral attack. *Wright v. Hetherlin* (1919) 209 S. W. (Mo. Sup.) 871.

and is, of course, a well settled rule.<sup>29</sup> In *Richardson v. Cole*,<sup>30</sup> however, it was clearly held that where the facts showed that an administrator was not equitably entitled to the asset in controversy, the defendant could plead and prove such facts and that they constituted, not a collateral attack on the administrator's title or power, but an equitable defense to the action.<sup>31</sup> Likewise, it has been held that where suit is brought by the local administrator for an asset situated without the state, such fact may be shown as a bar to the action.<sup>32</sup> Under this reasoning, it might well be held that where a local debtor has in good faith paid the domiciliary representative, such fact may be set up in a suit by an ancillary administrator to show first, an equitable defense, and secondly, that there was no asset within the state at the time suit was instituted.

*Payment to the heirs or distributees.* The foregoing discussion has been confined to a payment made by a local debtor to a non-resident domiciliary executor or administrator. Suppose that such payment be made direct to the non-resident heirs or distributees of the decedent's estate. Does a payment of this kind stand on the same basis as payment to the legal representative of the decedent's estate?

In *Bell v. Farmers & Traders Bank*,<sup>33</sup> discussed above, the court held that payment to the heirs of the non-resident decedent constituted a defense to an action brought by a local administrator subsequently appointed. To the administrator's contention that he had succeeded to the title to all of the deceased's assets in this state, the court answered that the distributees at all times had the equitable title to the personalty of a decedent, and that where, as here, he left no debts and a distribution had been effected without administration, such distribution should not be set aside in favor of an administrator who would be but a dry trustee of the assets for the distributees.

It is difficult if not impossible to reconcile the rulings in

30. (1901) 160 Mo. 372, 379-380, 61 S. W. 182.

31. To the same effect see *Bell v. Farmers & Traders Bank*, *supra*.

32. *Richardson v. Busch* (1906) 198 Mo. 174, 95 S. W. 894.

33. (1915) 188 Mo. App. 383, 174 S. W. 196.

*Bell v. Farmers & Traders Bank* and *Crohn v. Clay County State Bank*. In the former case payment by a Missouri debtor to the heirs of the non-resident decedent is held good, while in the latter case payment to the *domiciliary administrator* of the deceased is held ineffective. The title of non-resident heirs to personal property situated in Missouri is certainly not superior to the title of a legally appointed domiciliary executor or administrator. A court which would uphold a payment to the former would do likewise in the case of payment to the latter. The two decisions seem to represent conflicting views of the two courts which rendered them.

Can the ruling in *Bell v. Farmers & Traders Bank* be sustained? The general rule is, of course, that title to personal property passes, upon the owner's death, to his executor or administrator, and not to his heirs or distributees. Thus the former alone can sue for the property or for an injury thereto,<sup>34</sup> and this is true even though the deceased left no debts and the claimant is the sole distributee.<sup>35</sup> The heirs can only secure title through administration. It has been said that "administration is justifiable if for no other reason than to transfer the title."<sup>36</sup> Under this reasoning it would follow that the decision in the *Bell* case was erroneous; that payment to the decedent's heirs or distributees cannot discharge the indebtedness and is wholly without effect since the legal representative alone has title to the asset.

There are, however, important qualifications of the foregoing rules. The title of an executor or administrator is not absolute but exists primarily for two purposes: to pay the debts of the deceased and to distribute the estate among the parties entitled thereto. The representative is in effect a trustee for the

34. *State to use of Coste v. Fulton* (1864) 35 Mo. 323; *Smith v. Denny* (1865) 37 Mo. 20, 23; *Vastine v. Dinan* (1868) 42 Mo. 269, 272; *Green v. Tittman* (1894) 124 Mo. 372, 27 S. W. 391; *State ex rel Hounson v. Moore* (1885) 18 Mo. App. 406, 411; *Becraft v. Lewis* (1890) 41 Mo. App. 546; *McMillan v. Wacker* (1894) 57 Mo. App. 220; *Jacobs v. Maloney* (1896) 64 Mo. App. 270; *People's Savings Bank v. Hoppe* (1908) 132 Mo. App. 449, 111 S. W. 1190.

35. *Adey v. Adey* (1894) 58 Mo. App. 408. See, however, *Mahoney v. Nevins* (1905) 190 Mo. 360, 88 S. W. 731.

36. *Becraft v. Lewis* (1890) 41 Mo. App. 546, 553.

creditors and distributees. The latter are the equitable owners of the property.<sup>37</sup> Consequently it is held that where the debts of the estate are paid, the heirs, prior to an order of distribution, may institute suit against an administrator for breach of his bond.<sup>38</sup>

More than this, it is now established in this state that under certain circumstances title to personalty may be acquired by the distributees without administration. In the leading case on this point, *Richardson v. Cole*,<sup>39</sup> one Lillie Fagin died intestate owning certain personalty in the possession of the defendant Cole. All of the heirs of the deceased made a written assignment of their respective interests in the estate to a sister of the decedent and authorized Cole to deliver the property to said sister. This Cole, the defendant, did. Twelve years later the public administrator took out letters on the estate and instituted suit against Cole and the decedent's sister to recover the property which was in Cole's hands at the time of the deceased's death. It was held that the plaintiff could not recover. While recognizing the rule that an administrator has the legal title to the personalty owned by his intestate, the court held that the equitable title was at all times in the heirs or distributees and that where, as here, there were no debts, and distribution had been effected many years before, an equitable defense was presented to the administrator's claim.

The decision in *Richardson v. Cole* is supported by a number of cases wherein the courts of this state have recognized the title of the heirs or distributees of a decedent without administration on the property.<sup>40</sup> In *McDowell v. Orphan School*,<sup>41</sup> the

37. *Stagg v. Green* (1871) 47 Mo. 500, 501; *Stagg v. Linnenfelser* (1875) 59 Mo. 336, 341; *Richardson v. Cole* (1901) 160 Mo. 372, 376, 61 S. W. 182; *Mahoney v. Nevins* (1905) 190 Mo. 360, 368, 88 S. W. 731; *McCracken v. McCaslin* (1892) 50 Mo. App. 85, 88; *Troll v. Landgraf* (1914) 183 Mo. App. 251, 259, 168 S. W. 268; *Bell v. Farmers & Traders Bank* (1915) 188 Mo. App. 383, 387-388, 174 S. W. 196.

38. *State ex rel Midgett v. Matson* (1869) 44 Mo. 305; *State to use of Kelley v. Thornton* (1874) 56 Mo. 325.

39. (1901) 160 Mo. 372, 61 S. W. 182.

40. *Craslin v. Baker* (1844) 8 Mo. 437; *State ex rel Midgett v. Matson* (1869) 44 Mo. 305; *Stagg v. Green* (1871) 47 Mo. 500, 501; *State to use of Kelley v. Thornton* (1874) 56 Mo. 325; *Stagg v. Linnenfelser*

heirs, without administration, were permitted to maintain a suit upon a claim owned by their deceased ancestor. In all of these cases the chief requisite to a recognition of the title of the heirs is said to be the absence of any debts owed by the decedent. If the latter died leaving debts, the necessity of administration before the heirs can acquire title is recognized.<sup>42</sup>

In *Bell v. Farmers & Traders Bank*, the heirs to whom the Missouri bank turned over the deposit standing in the decedent's name, paid the debts and distributed the remainder among themselves. The public administrator subsequently appointed who sought to hold the bank for a second payment of the deposit did not represent any creditor or other person having any equitable interest in the estate. He had only a personal interest in having the property pass through his hands for the purpose of collecting his fees thereon. The case was, therefore, within the rule laid down in *Richardson v. Cole* where it was said that it would be "a mockery of justice" for a court of equity to require a payment to an administrator "merely for the purpose of allowing him to obtain it and use it and then pay it back to them (the heirs) less his costs and commissions."

Under the cases last referred to it would seem that if a non-resident dies leaving no creditors in Missouri,<sup>43</sup> a local debtor can safely pay the heirs or distributees of the estate. The

(1875) 59 Mo. 336, 341; *Mahoney v. Nevins* (1905) 190 Mo. 360, 368, 88 S. W. 731; *McCracken v. McCaslin* (1892) 50 Mo. App. 85, 88; *McDowell v. Orphan School* (1900) 87 Mo. App. 386; *Griesel v. Jones* (1906) 123 Mo. App. 45, 99 S. W. 769; *Pullis v. Pullis* (1907) 127 Mo. App. 294, 298, 105 S. W. 275; *Painter v. Painter* (1909) 146 Mo. App. 598, 601-602, 124 S. W. 561; *Todd v. James* (1911) 157 Mo. App. 416, 421, 138 S. W. 929.

41. (1900) 87 Mo. App. 386.

42. The distinction made in the cases cited that the decedent left no debts is, of course, inconsistent with the rule that administration is entirely independent of the existence of debts. It is also inconsistent with the statement repeatedly made in the cases that it is impossible to know whether or not the deceased left debts until administration is duly had. See cases cited under notes 23 and 24 *supra*.

43. On principle, a local debtor should be protected in paying the heirs only when the deceased left no creditors, whether in Missouri or elsewhere. Creditors of the decedent should have the right to secure the appointment of an administrator and through him to collect the assets of the deceased wherever situated, although, of course, such ad-



latter have the beneficial title to the asset, and such title should be recognized in preference to the title of an administrator subsequently appointed. If, however, the non-resident left debts in this state, an administrator representing creditors would have an interest which would prevent the heirs from acquiring title, and payment to the latter would not constitute a discharge of the indebtedness.

The above conclusion, while justified under the authorities cited, probably is not a correct statement of the law in the light of the decision in *Troll v. Third National Bank*<sup>44</sup> discussed above. In the latter case the court states without qualification that the existence of debts is wholly immaterial in determining the right of the administrator to recover the assets situated in this state. The existence of assets in the state is said to be the sole test. Unless the *Troll* case can be distinguished on the ground that the defendant was attempting to attack collaterally the powers and duties of the administrator (and even on this the *Richardson* case is *contra*, holding that the defendant is merely setting up an equitable defense), the weight of the decision in *Richardson v. Cole* and in similar cases recognizing the title of the heirs without administration is seriously affected.

On principle there seems to be no valid reason for rejecting the ruling in *Bell v. Farmers & Traders Bank*, based as it is upon *Richardson v. Cole*. If the non-resident left creditors in this state, the title of the heirs should not be recognized. Administration should be had and the creditors afforded an opportunity of proving up their claims against the estate. A local debtor of the decedent should ascertain at his peril that there are no local creditors before he pays the *heirs* of the deceased. If, however, there are no creditors and payment is made to the heirs, the asset has reached the parties ultimately entitled to receive it, and it would be a useless expense to permit a local administrator to take charge of the asset. He would be but a dry trustee for the heirs who have already received payment. To

administrator could not maintain a suit outside the state of his appointment.

44. (1919) 211 S. W. (Mo. Sup.) 545.

permit him to enforce a second payment is both inequitable and unnecessary.

Likewise, on principle, the local debtor should be sustained in paying his debt to the foreign domiciliary executor or administrator. In such case it should not be necessary for the local debtor to determine that the deceased left no creditors in this state. The domiciliary representative has legal title to the asset, and he is legally bound to use any sum collected for the payment of any creditor's demand. It is submitted that payment to such representative should constitute a valid discharge of the debt, and that the contrary rule laid down in *Crohn v. Clay County State Bank* and tacitly approved in *Troll v. Third National Bank* imposes an unnecessary burden upon the local debtor and should be modified in future decisions on this subject.

ROBERT B. FIZZELL.<sup>45</sup>

Kansas City, Missouri.

45. Mr. Fizzell received his collegiate training in University of Illinois and his legal training in the Harvard Law School. At present he is the junior member of the firm of Bowersock & Fizzell, Fidelity Trust Bldg., Kansas City, Missouri.—Ed.