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S. Samuel Difalco

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Foreign Law in the New York Surrogate's Court: A View from the Bench*

HON. S. SAMUEL DIFALCO**

Almost five years ago, New York revised its entire statute regulating procedure in the Surrogate's Courts of the State.¹ At the same time, a revision was made of the laws dealing with the substantive matters finding everyday application in these courts.² However, no detailed consideration was or could have been given to the laws of sister states or foreign countries in this area. It was not within the power of the New York legislators nor the Commission on Estates³ to change or affect such foreign laws. Nevertheless, the Commission did consider the laws of many jurisdictions in the reports underlying its recommendations. This was essential because foreign law is applicable in so many estate matters, from those involving the most basic elements of authentication of a document to entitle it to

*The following article is adapted from an address by the Honorable S. Samuel Difalco delivered before the American Foreign Law Association on May 11, 1972.

**B.C.S. New York University 1929; LL.B. New York University 1930; admitted to the New York Bar 1930; former Justice, Supreme Court, New York County, and presently Judge, Surrogate's Court, New York County.

1. SURROGATE'S COURT PROCEDURE ACT (McKinney 1967) [hereinafter cited SCPA]. See MEMORANDUM OF THE COMMISSION ON LAW OF ESTATES ON THE SURROGATE'S COURT PROCEDURE ACT, SCPA at xli (McKinney 1967).

2. ESTATES, POWERS AND TRUSTS LAW (McKinney 1967) [hereinafter cited EPTL]. See MEMORANDUM OF THE COMMISSION ON LAW OF ESTATES ON THE ESTATES, POWERS AND TRUSTS LAW, EPTL at xxxix (McKinney 1967).

3. The Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates [hereinafter cited as Commission on Estates] was created on April 22, 1961 to ". . . make a comprehensive study of the relevant provisions of the real property law, the personal property law, the decedent estate law, the surrogate's court act and such other statutes as the commission may deem advisable for the purpose of correcting any defects that may appear in the laws relating to estates and their administration, the descent and distribution of property, and the practice and procedure relating thereto, and for the purpose of modernizing, simplifying and improving such law." Law of April 22, 1961, ch. 731, [1961] Laws of New York 2063.

admission into evidence, to cases in which the foreign law may override the laws of the State of New York.

The revisions of the New York laws also amply recognized foreign national law.⁴ For example, New York has its own established method for the administration of estates in which a person is appointed as fiduciary, whether he be an executor or an administrator. However, in foreign lands, the office of a fiduciary is oftentimes unknown. The property of a decedent goes directly to his heirs, subject to the obligations which the decedent incurred during his lifetime.⁵ Article 16 of the Surrogate's Court Procedure Act recognizes these diverse foreign methods of estate administration. It allows the person entitled to receive the property of the decedent at his foreign domicile to designate the ancillary fiduciary in New York.⁶

The legislative declaration of purpose set forth in Section 1601 of the Act further shows cognizance of foreign laws. It states:

It is the intent and purpose of this article that ancillary administration shall be granted in this state only when there is an actual administration in the domiciliary jurisdiction. If the law of such jurisdiction does not provide for the appointment of a fiduciary but vests the property of a decedent in a person or persons subject to the obligation to pay the decedent's debts and expenses and the legacies bequeathed in his will or the distributive shares provided by law, such a person shall be recognized as the person acting therein to administer the decedent's estate in accordance with the law thereof, but only if such person has complied with all the requirements of such jurisdiction to entitle him to receive the property of the decedent and is acting or will act there to administer the estate.

JUDICIAL CONTROL OVER FOREIGN HEIRS

Judicial decisions in New York have similarly given substantial consideration to matters of transnational concern, including but not limited to foreign laws. In all courts, the course of judicial decision frequently mirrors the course of the then current history.⁷ The courts strive to make their decisions relevant to the needs of the world around them. It has been my experience, gained from a judicial career of over a quarter cen-

4. See FIFTH REPORT OF THE TEMPORARY STATE COMMISSION ON THE LAW OF ESTATES, Leg. Doc. No. 19 (1966).

5. See R. B. SCHLESINGER, *COMPARATIVE LAW* 23 (3rd ed. 1970) and authorities there cited.

6. SCPA § 1601 (McKinney 1967).

7. See, e.g., LON L. FULLER, *ANATOMY OF THE LAW* (1968); JAMES BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE* (1901); CHARLES WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* (1922); and HOLMES, *THE COMMON LAW* (1881).

tury, that the members of the judiciary meet the needs of their constituency—the intelligent voice of the people and the members of the bar.

Some will recall the genesis of the present Section 2218 of the Surrogate's Court Procedure Act.⁸ When the legislation was first enacted in 1939,⁹ war clouds hovered over Europe and the chilling stories of the fate of millions of persons of the Jewish faith and others made all of us shudder. In brief, it granted discretion to the court to withhold funds of a foreign beneficiary where the court was in doubt whether such beneficiary would receive the use, benefit and control of the legacy or where the government of the state of which the beneficiary was a resident would confiscate it in whole or in part.

Refusal to permit the transmission of the funds to proscribed countries was not only an economic warfare measure to deprive the enemy of funds to finance its war machine, but at the same time afforded a haven for these sequestered funds ultimately to reach the deserving beneficiaries or their surviving kin when more stable international conditions returned.

Following the defeat of the Nazis, the cold war began and the Iron Curtain of the communist bloc descended, making it once again imperative to continue the beneficent purposes of this legislation. The Surrogate's Courts, immune to the political and other pressures which could be used against individuals to require them to send moneys abroad, could take both an objective and overall humane approach to the problem.

While the policy of the New York Courts as regards Section 2218 and its predecessors has at times been the subject of criticism,¹⁰ my colleagues

8. Originally enacted as § 269 of the former Surrogate's Court Act and later renumbered as § 269-a, the present § 2218 of the SCPA (McKinney Supp. 1971-72) provides for the deposit in court for the benefit of a legatee, distributee or beneficiary:

- * * *
2. Where it shall appear that a beneficiary would not have the benefit or use or control of the money or other property due him or where other special circumstances make it desirable that such payment be paid into court for the benefit of the beneficiary or the person or persons who may thereafter appear entitled thereto. The money or property so paid into court shall be paid out only upon order of the court or pursuant to the order or judgement of a court of competent jurisdiction.
 3. In any such proceeding where it is uncertain that an alien beneficiary or fiduciary not residing within the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or possession of the United States would have the benefit or use or control of the money or property due him the burden of proving that the alien beneficiary will receive the benefit or use or control of the money or property due him shall be upon him or the person claiming from, through or under him.

9. Law of April 24, 1939, ch. 343, [1939] Laws of New York 791.

10. See, e.g., *The Court of Appeals*, 1959 Term, 10 BUFFALO L. REV. 173 (1960-61).

and I believe that an overall view will confirm the validity and wisdom of our position over the years. One cannot forget that because of the adamant position of my eminent predecessor, Surrogate Foley, the Soviets changed their inheritance laws so as to facilitate inheritance of foreign assets by Soviet nationals.¹¹ In the same way, this judicial position of impounding funds led to the creation of state enterprises in the Soviet bloc countries which established stores where hard-to-obtain consumer items were purchasable only with hard foreign currencies and recipients thereby received somewhat more benefit than the common currency of the nation.¹² Today with the thaw in the cold war, the need to withhold funds has been sharply reduced. The Surrogate's Courts now transmit funds to the countries of the European communist bloc with very limited restrictions.¹³

In 1968, a majority of the United Supreme Court in *Zschernig v. Miller*¹⁴ declared that an Oregon statute,¹⁵ which in addition to the use, benefit and control features found in the New York statute, also contained reciprocity and escheat provisions, constituted an impermissible interference with foreign affairs. When the constitutionality of our statute was challenged in our Court of Appeals a few months later in *Matter of Leikind*,¹⁶ Judge Breitel for the majority found no constitutional infirmity and distinguished *Zschernig v. Miller* on the ground that our statute contained no provisions for reciprocity or escheat.¹⁷ Accordingly, Section 2218 still possesses constitutional vitality.

11. See, e.g., *In re Alexandroff's Estate*, 61 N.Y.S.2d 866 (Sur. Ct., N.Y. Co., 1945, Foley, S.). Furthermore, goods passing to Soviet heirs by inheritance abroad are exempt from customs duty U.S.S.R. 1962 GRAZH. KOD. (Civil Code) Art. 57 (1962).

12. As for example, the Tuzex Foreign Trade Corporation in Prague, Czechoslovakia.

13. Recent cases exemplifying the very limited restrictions on transmittal of funds to Soviet bloc countries include: *Matter of Becher*, 61 Misc.2d 46, 304 N.Y.S.2d 628 (Sur. Ct., N.Y. Co., 1969) (East German beneficiary); *Matter of Kina*, 29 App. Div.2d 563, 286 N.Y.S.2d 773 (2d Dep't 1967), *aff'd*, 23 N.Y.2d 720, 244 N.E.2d 57, 296 N.Y.S.2d 366 (1967) (Polish beneficiary); *Matter of Padworski*, 53 Misc.2d 1043, 281 N.Y.S.2d 276 (Sur. Ct., Dutchess Co., 1967) (Russian beneficiary).

14. 389 U.S. 429, 88 S. Ct. 664, 19 L. Ed. 2d 683 (1968).

15. ORE. REV. STAT. § 111.070 (1957).

16. 22 N.Y.2d 346, 239 N.E.2d 550, 292 N.Y.S.2d 681 (1968).

17. 22 N.Y.2d 346, 351, 239 N.E.2d 550, 552, 292 N.Y.S.2d 681, 685. Judge Breitel, speaking for the majority in *Leikind*, stated:

Moreover the majority opinion in the *Zschernig* case . . . arguably accepted 'benefit, use or control' provisions as valid, provided State courts did no more than 'routinely read' foreign laws and provided there was no palpable interference with foreign relations in their application. Thus, if the courts of this State, in applying the 'benefit, use or control' requirements, simply determine, without animadversions, whether or not a foreign country, by statute or otherwise, prevents its residents from actually sharing in the estates of New York

Related to the concern of the Surrogate's Courts with the receipt of funds by residents of Nazi and Communist countries is the manner in which these Courts treated applications to declare holocaust victims dead, and determined the identity of their distributees and other persons entitled to funds withheld during the period of hostilities. My distinguished predecessors, Surrogates Delehanty and Collins, fashioned procedures¹⁸ to determine if such victims were dead which were both pragmatic and understanding. They realized that in the face of the exceptional circumstances presented, the strict application of the usual common law principles¹⁹ regarding proof of death would often result in hardship and injustice.

NONDOMICILIARY ESTATES

Another question frequently presented to the Surrogates is the question whether to exercise original jurisdiction over the estate of a nondomiciliary. Generally, original probate jurisdiction is declined only where the will offered for probate has already been probated or established, or denied probate in the testator's domicile.²⁰

The recent decision in *Matter of Heller-Baghero*,²¹ which unanimously affirmed my initial determination²² regarding jurisdiction is instructive. In that case, a 1962 will of the decedent had been established in the Austrian court. Thereafter, I entertained a proceeding for the probate

decedents, the statute would not be unconstitutional under the explicit rationale of the *Zschernig* case.

22 N.Y.2d 346, 351-52, 239 N.E.2d 550, 553, 292 N.Y.S.2d 681, 685 (footnotes omitted).

18. Where there was no evidence to the contrary, official Declarations of Death issued by foreign governments were accepted as sufficient evidence of death. *Matter of Elias*, 189 Misc. 279, 70 N.Y.S.2d 856 (Sur. Ct., N.Y. Co., 1947, Delehanty, S.); *Matter of Magre*, 189 Misc. 246, 73 N.Y.S.2d 467 (Sur. Ct., N.Y. Co., 1947, Collins, S.); *Levy & Levy, Proving the Death of a Non-resident Alien*, 24 CONN. B.J. 324 (1950).

The standards in European statutes as to the presumption of death were also applied in situations where the missing person was a European domiciliary. *Matter of Gauds*, 189 Misc. 861, 73 N.Y.S.2d 779 (Sur. Ct., N.Y. Co., 1945, Delehanty, S.); *Matter of Jansons*, 189 Misc. 554, 73 N.Y.S.2d 685 (Sur. Ct., N.Y. Co., 1947, Collins, S.); *Szabad & Blum, Proving Death of Victims of Nazi Oppression*, 24 N.Y.U.L.Q. REV. 577 (1949).

19. Under common law, death is presumed at the close of a continuous absence abroad for a period of seven years, during which time nothing is heard from the person. The burden of proof is on the person claiming a right for which proof of death is essential. *See* 22 AM. JUR. 2d DEATH § 304.

20. *See* SCPA § 201 (McKinney 1967) and Practice Commentary there following.

21. 26 N.Y.2d 337, 258 N.E.2d 717, 310 N.Y.S.2d 313 (1970).

22. *Matter of Heller-Baghero* (Sur. Ct., N.Y. Co., 1969) 161 N.Y.L.J., March 4, 1969, at 54, col. 5, *aff'd*, 32 App. Div.2d 328, 302 N.Y.S.2d 235 (1st Dep't 1969), *aff'd*, 26 N.Y.2d 337, 258 N.E.2d 717, 310 N.Y.S.2d 313 (1970).

of a later 1964 will which had been executed in New York, revoking prior wills, and naming a New York resident as executor. The will also recited that the testator's residence was in New York, a comparatively unimportant factor certainly not determinative of the issue of domicile. Additionally, and most important—as in many of these cases—substantial assets (90%) were located within New York County.

The Court of Appeals determined²³ that the Surrogate had discretion to entertain jurisdiction.²⁴ Nevertheless, the opinion of our highest court makes the following pointed observation:²⁵

If, however, the Surrogate has power to entertain an original probate proceeding as a matter of discretion, the particular facts of this case may justify such action. This is not to say that the interests of comity are insubstantial, or that probate of the 1964 will in New York, in opposition to the 1962 will probated in Austria, will not result in inconsistent awards to the extent that each jurisdiction has physical power over the property within its boundaries. Interests of orderliness, and of unitary administration, generally require that disposition of the property in the same estate, be uniform.

Matter of Utassi,²⁶ presented an unusual fact situation revolving about two sisters, and posed the question of whether property could devolve upon a state as legal heir in the absence of other legal heirs. The first sister died testate in New York in 1935 leaving her entire estate to her surviving sister, a resident of Lucerne, Switzerland. The New York administrator c.t.a. had not completed the administration of the estate when the second sister died intestate in Lucerne in 1944. The second sister left no heirs.²⁷ She possessed property in Switzerland, part of which consisted of shares in American corporations. In addition, she had succeeded to the assets in her predeceased sister's estate which still remained physically in New York.

23. 26 N.Y.2d 337, 345, 258 N.E.2d 717, 722, 310 N.Y.S.2d 313, 319-20.

24. The court noted, 22 N.Y.2d 337, 344, 258 N.E.2d 717, 721, 310 N.Y.S. 313, 318-19, that:

[T]he only [real] issue is of the validity of the 1962 and 1964 wills, and not whether the law of New York or Austria governs the intrinsic validity, or effect, of the will or devolution of the property when not disposed by will. The construction of the wills and questions of rights of election or forced heirship covering personality would be governed by Austrian law, if, as alleged, the deceased was an Austrian domiciliary (EPTL 3—5.1, subd. [b], par. [2]; see *Matter of Clark*, 21 N.Y.2d 478, 483, 349).

25. 26 N.Y.2d 337, 344, 258 N.E.2d 717, 721, 310 N.Y.S.2d 313, 318-19.

26. *Matter of Utassi*, 29 Misc.2d 237, 217 N.Y.S.2d 389 (Sur. Ct., N.Y. Co., 1961), *aff'd*, 20 App. Div.2d 232, 246 N.Y.S.2d 478 (1st Dep't 1964), *aff'd*, 15 N.Y.2d 436, 209 N.E.2d 65, 261 N.Y.S.2d 4 (1965).

27. Under Swiss law, if there exist no other heirs, the canton (and/or a municipality named in the cantonal legislation) is designated a statutory heir. Swiss Civil Code (ZGB) § 466.

The Attorney General of New York relied upon *Matter of Menschefreund*²⁸ which held that where there are no heirs under the law of the situs-New York- or of the domicile-California—and the law of the domicile calls for an escheat, the personalty in New York will escheat to the State of New York as a matter of public policy. He argued before me that the language of a foreign statute should not disguise the fact that the taking by the foreign government was an escheat despite the fact that the foreign government declared itself an heir and was taking the property by inheritance rather than by sovereign right.

I overruled this contention in an opinion²⁹ which was adopted by the majority of the Appellate Division. In the unanimous opinion of affirmance in the Court of Appeals, Judge Bergan emphasized as the distinguishing factor from *Menschefreund* the creation under Swiss Law of an inheritance in favor of a public body. He said:³⁰

Nothing in our statutory law relating to abandoned property, which functionally is a statutory mechanism to hold assets found in this state for the benefit of a future lawful claimant, or in any New York public or legal policy, should lead us to discredit the law of succession of Switzerland, where Etelka [the surviving sister] was domiciled and died.

Our view of the Swiss law ought not to be parochial. On the contrary we should accord the Swiss statute of succession the recognition which comity between enlightened governments requires.

In sum, under Swiss law, and that of other civil law countries³¹ the right of the state to take is not a confiscatory right predicated upon escheat, but a right of inheritance. Where the right is one of escheat, for example, under California law or Czechoslovakian law,³² New York State will retain the assets under the Abandoned Property Law.³³ *Utasi* thus put to rest the question which I had answered in *Matter of Turton*,³⁴ but which had been left open by the Court of Appeals when it decided the case.³⁵ It is a clear illustration of true international comity in which

28. 283 App. Div. 463, 128 N.Y.S.2d 738 (1st Dep't 1954), *aff'd*, 8 N.Y.2d 1093, 170 N.E.2d 902, 208 N.Y.S.2d 453 (1960), *cert. denied*, 365 U.S. 842 (1961).

29. *Supra* note 26.

30. 15 N.Y.2d 436, 442, 209 N.E.2d 65, 67, 261 N.Y.S.2d 4, 78.

31. *E.g.*, Federal Republic of Germany, BGB § 1936; Italy, C. Civ. § 586.

32. Under California law whenever the title to any property fails for want of heirs or next of kin, it reverts to the people. CAL. GOV'T CODE § 182 (West 1966). For a discussion of Czech law regarding escheat see *Matter of Matous*, 53 Misc.2d 255, 258, 278 N.Y.S.2d 70, 73 (Sur. Ct., Richmond Co., 1967).

33. N.Y. ABANDONED PROPERTY LAW (McKinney 1944).

34. *Matter of Turton*, 20 Misc.2d 569, 192 N.Y.S.2d 254 (Sur. Ct., N.Y. Co., 1959), *aff'd*, 9 App. Div.2d 759, 193 N.Y.S.2d 1001 (1st Dep't 1959), *rev'd*, 8 N.Y.2d 311, 170 N.E.2d 190, 206 N.Y.S.2d 761 (1960).

35. *Matter of Turton*, 8 N.Y.2d 311, 170 N.E.2d 190, 206 N.Y.S.2d 761 (1960).

our courts will give extra-territorial effect to foreign law, even when it involves the devolution of property physically located here.

While involving only a sister-state dispute between the community property State of Louisiana and the State of New York, *Matter of Crichton*,³⁶ has reverberations in the field of international law as well. In *Wyatt v. Fulrath*,³⁷ the Court of Appeals permitted Spanish non-domiciliaries under a community property regime to make dispositions under New York law which would have been violative of the law of Spain.

In *Crichton*, the testator, a New York domiciliary, made no provision for his surviving spouse. The bulk of his estate consisted of intangible personal property having a situs in Louisiana. The executrix initiated an ancillary proceeding in Louisiana for approval of her inventory and computation of Louisiana inheritance taxes. The wife made a claim to part of the Louisiana assets by reason of that State's community property laws. Over objection, the Louisiana Court issued an injunction restraining the executrix from disposing of the Louisiana property. While this Louisiana proceeding was pending, the executrix filed an intermediate account in New York in which she allowed the claim of the widow on the basis of the Louisiana community property laws. A child of a prior marriage objected to the allowance of the claim on the ground that the Louisiana laws were inapplicable. The objection was unanimously sustained in all the courts.³⁸ It was held that the choice-of-law problem should be resolved by determining which jurisdiction had the paramount interest in the application of its law. Here, it was felt that all significant contacts were with New York and its law was determinative.

The conflict was thus resolved by applying the New York marital-domicile doctrine³⁹ rather than the Louisiana-situs rule⁴⁰ as to personal

36. 49 Misc. 2d 405, 267 N.Y.S.2d 706 (Sur. Ct., Westchester Co., 1966), *aff'd*, 26 App. Div. 2d 639, 272 N.Y.S.2d 987 (2d Dep't 1966), *aff'd*, 20 N.Y.2d 124, 228 N.E.2d 799, 281 N.Y.S.2d 811 (1967).

37. 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

38. *Supra* note 35.

39. The New York doctrine of marital domicile holds that a woman upon marriage takes the domicile of her husband by operation of law. In re *Daggett's Will*, 255 N.Y. 243, 174 N.E. 641 (1931). Matrimonial domicile is the domicile of the husband, from the moment of marriage until the matrimonial unit is dissolved. *Matter of Crichton*, *supra* note 35.

40. The rule is found in La. Code of 1870 and is quoted by Judge Keating, 20 N.Y.2d 124, 131 n.5, 228 N.E.2d 799, 804 n.5, 281 N.Y.S.2d 811, 817 n.5:

All property acquired in this State by non-resident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community acquets and gains between citizens of this State.

property. While the decision could have been based upon traditional conflict-of-laws rules in this area,⁴¹ the Court of Appeals preferred to discuss the contacts of both states and held irrelevant those contacts with Louisiana which had been urged to support the application of Louisiana's property laws. Judge, now Ambassador, Keating concluded his opinion as follows:⁴²

In situations such as that present in this case, where the foreign jurisdiction has no interest in the application of its law, where there was no clear expression of intent that foreign law govern and where we have the power to apply our own law and give effect to the policy this State has adopted in regulating the rights of married persons we should apply our own law.

The overriding importance of the testator's domicile in relation to public policy is further evidenced by *Matter of Clark*.⁴³ In *Crichton*, decided some six months before *Clark*, the Court of Appeals observed that our laws are designed to encourage investment of funds in this State by permitting a nondomiciliary to designate New York Law as applicable to determine questions of law relating to testamentary dispositions of personal property located here as well as *inter vivos* trusts having a situs in this State.

Bearing in mind this expression of New York public policy, let us look at the facts in *Clark*. The testator, a domiciliary of Virginia, died leaving the bulk of his \$23,000,000 estate in securities in a New York bank. He had made a will in 1962 designating New York law to control the construction, regulation and determination of its provisions. He established a trust for his widow, a resident of Virginia, satisfying the requirements of former Section 18 of the Decedent Estate Law.⁴⁴ Accordingly, the widow had no right of election if New York law were deemed applicable. Under applicable Virginia law, the widow had an absolute right to take outright one-half of his estate. Despite the testator's declared intention and the ostensible implications derived from prior cases such as *Wyatt* and *Crichton*, the Court of Appeals issued a *caveat* that a testator may not unilaterally reduce or impair the spouse's right to a share of his

41. EPTL § 3-5.1 (McKinney 1967) codifies the prior well-established rule that the law of decedent's last domicile governs the testamentary disposition and intestate distribution of personal property. *Matter of Hyde*, 177 Misc. 666, 31 N.Y.S.2d 497 (Sur. Ct., N.Y. Co., 1941), *Matter of Brown*, 133 Misc. 457, 233 N.Y.S. 145 (Sur. Ct., Clinton Co., 1929), *Matter of Meyer*, 117 Misc. 511, 192 N.Y.S. 717 (Sur. Ct., Queens Co., 1921), *Matter of Utassi*, 15 N.Y.2d 436, 209 N.E.2d 65, 261 N.Y.S.2d 4 (1965).

42. *Matter of Crichton*, 20 N.Y.2d 124, 137-38, 228 N.E.2d 799, 808, 281 N.Y.S.2d 811, 823 (1967).

43. 21 N.Y.2d 478, 236 N.E.2d 152, 288 N.Y.S.2d 993 (1968).

44. Now EPTL § 5-1.1 (McKinney 1967).

estate assured her by the law of their domicile.⁴⁵ Testators, unhappy with the domiciliary provisions for a surviving spouse, may not defeat the legitimate expectations of the latter by seeking to invoke New York law rather than the law of the domicile.

CONCLUSION

From among a legion of cases in the Surrogate's Courts, I have chosen those just discussed as representative of the interest and importance of foreign law. Throughout my discussion there has been implicit a recognition of the role of the public policy of New York and the legitimate demands of comity.

In estates with foreign involvement, these principles must have a basic play with common law concepts. New York, the center of commercial activity, often finds estate assets within its boundaries. It has been in a unique position to evolve enlightened and just settlements of estates through equitable application of these three principles. This, as I hope I have demonstrated, has been accomplished.

45. *Matter of Clark*, 21 N.Y.2d 478, 487, 236 N.E.2d 152, 157, 288 N.Y.S.2d 993, 1000 (1968).