**Armstrong Vs. Lear**

**Armstrong Vs. Lear**

**SooperKanoon Citation** : sooperkanoon.com/79089

**Court** : US Supreme Court

**Decided On :** 1827

**Appeal No.** : 25 U.S. 169

**Appellant** : Armstrong

**Respondent** : Lear

**Judgement** :

Armstrong v. Lear - 25 U.S. 169 (1827)
U.S. Supreme Court Armstrong v. Lear, 25 U.S. 12 Wheat. 169 169 (1827)

**Armstrong v. Lear**

**25 U.S. (12 Wheat.) 169**

*APPEAL FROM THE CIRCUIT COURT*

*FOR THE DISTRICT OF COLUMBIA*

## SYLLABUS

A testamentary paper executed in a foreign country, even if executed so as to give it the effect of a last will and testament by the foreign law cannot be made the foundation of a suit for a legacy in the courts of this country until it has received

probate here, in the court having the peculiar jurisdiction of the probate of wills and other testamentary matters.

The bill, filed on the chancery side of the circuit court, stated that Thaddeus Kosciuszko, on 5 May, 1798, placed a fund in the hands of Thomas Jefferson, and executed a will, as follows:

"I, Thaddeus Kosciuszko, being just on my departure from America, do hereby declare and

Page 25 U. S. 170

direct that should I make no other testamentary disposition of my property in the United States, I hereby authorize my friend Thomas Jefferson to employ the whole thereof in purchasing negroes from among his own or any others and giving them liberty in my name, in giving them an education in trade or otherwise, and in having them instructed for their new condition in the duties of morality which may make them good neighbors, good fathers or mothers, husbands or wives, in their duty as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful. And I make the said Thomas Jefferson my executor of this."

"T. KOSCIUSZKO, 5 May, 1798"

The bill further stated that the said Kosciuszko, about 18 June, 1806, being then domiciled in Paris, executed a certain will or writing testamentary as follows:

"Know all men by these presents that I, Thaddeus Kosciuszko, formerly an officer of the United States of America in its revolutionary war against Great Britain and a native of Liloane, in Poland, at present residing at Paris, do hereby will and direct, that, at my decease, the sum of $3,704 current money of the aforesaid United States, shall of right be possessed by and delivered over to the full enjoyment and use of Kosciuszko Armstrong, the son of General John Armstrong, Minister Plenipotentiary of the said states at Paris, for the security and performance whereof I do hereby instruct and authorize my only lawful executor in the United

States, Thomas Jefferson, President thereof, to reserve, in trust for that special purpose, of the funds he already holds belonging to me, the aforesaid sum of $3,704 in principal, to be paid by him, the said Thomas Jefferson, immediately after my decease, to him, the said Kosciuszko Armstrong, and in case of his death to the use and benefit of his surviving brother. Given under my hand and seal, at Paris, this 28 June, 1806."

"THADDEUS KOSCIUSZKO [Seal]"

"In presence of"

"CHARLES CARTER"

"JAMES M. MORRIS "

Page 25 U. S. 171

That the said testator, on the day of the date of said writing, signed and sealed it in presence of two competent witnesses, who attested the same and acknowledged it on the same day as his act and deed before Fulwar Skipwith, commercial agent, and agent for prize causes for the said United States at Paris, and delivered it to the said John Armstrong. That the complainant is advised that the said paper is a last will and testament, and must operate as such, and revokes *pro tanto* the bequests and appropriation made in the will first mentioned. That General Kosciuszko died 15 October, 1817, leaving said testament unrevoked. That said Jefferson refused to take letters testamentary under said will, and that the defendant was duly appointed administrator with the will annexed; that the estate has come to his hands, and that he has been often requested to pay to complainant the $3,704 aforesaid, with interest, and refuses to pay until an order or decree of this Court in the premises. The bill prayed for a discovery of the funds in defendant's hands and whether the said writing made at Paris is authentic, and payment of said legacy with interest, and for general relief.

The answer of the defendant admitted that he was administrator with the will annexed of General Kosciuszko, and that the instrument mentioned in

complainant's bill, and exhibited with it, was executed and acknowledged as it purports to be, and that said Kosciuszko was at the time domiciled and resident at Paris, but submitted whether he was bound to pay said legacy upon an instrument so executed and acknowledged, inasmuch as Mr. Jefferson received a letter from General Kosciuszko dated as late as 15 September, 1817, in which he thus affirms his first will. "After my death you know its invariable destination" (speaking of this fund). The answer admitted that Mr. Jefferson renounced, and the defendant was appointed, administrator with the will annexed, as stated in the bill. The defendant admitted funds to have come to his hands to an amount larger than stated in the bill. The answer further stated that among the papers received by the defendant from Mr. Jefferson, is a letter from Mr. Politica to said Jefferson, enclosing a dispatch from the Vice Roi of Poland

Page 25 U. S. 172

to him, by which it appears that the whole estate of said Kosciuszko may hereafter be claimed by a Mayor Estko, as the heir at law of said Kosciuszko; that there were also two letters from a Mr. Zeltner to Mr. Jefferson, by which it appears that Kosciuszko had disposed of the greater part of his fortune in favor of the children and other relations of Zeltner.

The cause was set down for a hearing in the court below upon the bill and answer, and a *pro forma* decree dismissing the bill was entered by consent, and an appeal taken to this Court.

Page 25 U. S. 175

MR. JUSTICE STORY delivered the opinion of the Court.

The bill in this case is brought against the administrator with the will annexed of General Kosciuszko for the purpose of establishing a right of the plaintiff to receive payment out of the assets of the testator of a certain bequest to him contained in a supposed testamentary writing, executed by the testator at Paris in France in June, 1806. This supposed testamentary writing is set forth in the bill and averred

to be in the nature and of the effect of a last will or writing testamentary, but it does not appear to have been admitted to probate either in France or in the proper orphan's court of this district. The answer admits the existence and authenticity of the instrument and submits to the court its import and legal effect and whether it is to be deemed a last will and testament, and it also admits assets in the hands of the administrator sufficient to discharge the bequest. The cause was heard in the court below upon the bill and answer, and from the decree dismissing the bill the present appeal has been brought to this Court.

The cause has been argued here upon several points, involving a good deal of learning, and some doctrines of international law. We do not enter into an examination of them, because our judgment proceeds upon a single point, and will in no event prejudice the merits of the plaintiff's claim.

By the common law, the exclusive right to entertain jurisdiction over wills of personal estate belongs to the ecclesiastical courts, and before any testamentary paper of personalty can be admitted in evidence, it must receive probate in those courts. Lord Kenyon, in *The King v. Inhabitants of Netherseal,* 4 Term 258, said,

"we cannot receive any other evidence of there being a will in this case than such as would be sufficient in all other cases where titles

Page 25 U. S. 176

are derived under a will, and nothing but the probate or letters of administration, with the will annexed are legal evidence of the will in all questions respecting personalty."

This principle of the common law is supposed to be in force in Maryland, from which this part of the District of Columbia derives its jurisprudence, and the probate of wills of personalty to belong exclusively to the proper orphan court here, exercising ecclesiastical jurisdiction. If this be so, and nothing has been shown which leads us to a different conclusion, then it is indispensable to the plaintiff's title to procure in the first instance a regular probate of this testamentary paper in the orphan's court of this district, and to set forth that fact in his bill. The treaty

stipulations, the act of Congress, and the principles of the law of France, which have been cited at the argument, attributing to them the full force which that argument supposes to establish the validity of the instrument, do not change the forum which is entitled, by the local jurisprudence, to pronounce upon it as a testamentary paper, and to grant a probate. It is one thing to possess proofs which may be sufficient to establish that a testamentary instrument had been executed in a foreign country under circumstances which ought to give it legal effect here, and quite a different thing to ascertain what is the proper tribunal here by which those proofs may be examined for the purpose of pronouncing a judicial sentence thereon.

For this reason, the decree of the court below is to be

*Affirmed, but without prejudice, so that the instrument may be submitted to the decision of the proper probate court.*