Ennis Vs. Smith

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Appellant : Ennis

Respondent : Smith

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Ennis v. Smith

55 U.S. (14 How.) 400

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Origin of the fund in controversy.

Mr. Jefferson's letter concerning it.

General Kosciusko made four wills. One in the United States, in 1798; another in Paris, in 1806; the third and fourth were made at Soleure, in Switzerland, whilst he was sojourning there in 1816 and 1817.

The first and second wills were revoked by the third, and he died intestate as to his estate in the United States.

But the first will, before it was known that he had made the others, was probated by Mr. Jefferson in Virginia, and when Mr. Jefferson learned that the General had made other wills, he transferred the fund to the Orphans' Court of the District of Columbia. The orphans' court managed the fund for some time, and then Benjamin L. Lear was appointed the administrator of Kosciusko with the will annexed. He died, leaving a will, and George Bomford one of his executors. Bomford qualified as such, and afterwards became the administrator of Kosciusko *de bonis non.* He took into his possession, as executor, the estate of Lear, and also the funds of Kosciusko, which had been administered by Lear, and first made his return to the orphans' court of the administered funds of Kosciusko, as executor of Lear. Afterwards they were returned by him to the orphans' court, as administrator *de bonis non* of Kosciusko. The orphans' court deeming that his sureties as administrator *de bonis non* of Kosciusko were insufficient or that they were not liable for any waste of them on account of the funds having been received by him as executor of Lear, and not as administrator *de bonis non,* called upon him for other sureties, under the Act of Congress of 20 February, 1846. He complied with the call, and gave as sureties, Stott, Carrico, and George C. Bomford, and Gideon, Ward, and Smith.

The original bonds of Bomford were given to the orphans' court under the law of Maryland, which prevailed without alteration in that part of the District of Columbia which had been ceded by Maryland, until Congress passed the Act of 20 February, 1846. The defendant Stott, Carrico, and George C. Bomford, and Smith, Ward, and Gideon, became the sureties of Bomford, as administrator *de bonis non* of Kosciusko, under the Act of 20 February, 1846.

In the State of Maryland, if an executor or administrator changes any part of an estate from what it was into something else, it is said to be administered. If an administrator *de bonis non* possesses himself of such changed estate, of whatever kind it may be, and charges himself with it as assets, his sureties to his original bond as administrator *de bonis non* are not liable for his waste of them. They are only liable for such assets of the deceased as remain in specie, unadministered by his predecessor, in the administration. Such is the law of Maryland applicable to the sureties of Bomford in the bond given when he was appointed administrator *de bonis non* of Kosciusko.

But when other sureties are called for by the orphans' court, under the third section of the Act of February 20, 1846, and are given, they do not bear the same relation to the administrator that his original sureties did, and they will be bound for the waste of their principal to the amount of the estate, or funds which he has charged himself by his return to the orphans' court as administrator *de bonis non,* when it called for additional sureties, and for such as the administrator may afterwards receive.

The bonds taken by the orphans' court in this case were properly taken under the Act of 20 February, 1846.

General Kosciusko's Olographic will of 1816 contains a revoking clause of all other wills previously made by him, and not having disposed of his American funds in that will, nor in the will of 1817, he died intestate as to such funds.

The second

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article in the will of 1817, "Je legue tous mes effets, ma voiture, et mon cheval y comprise a Madame et a Monsieur Zavier Zeltner, les homme ce dessus" -- record, 105 -- is not a residuary bequest to them of the rest of his estate not specifically disposed of in the wills of 1816 and 1817.

General Kosciusko was sojourning in Switzerland when he died, but was domiciled in France, and had been for fifteen years.

His declarations are to be received as proof that his domicil was in France. Such declarations have always been received, in questions of domicile, in the courts of France, in those of England, and in the courts of the United States.

The presumption of law is that the domicil of origin is retained until residence elsewhere has been shown by him who alleges a change of it. But residence elsewhere repels the presumption, and casts upon him who denies it to be a domicile of choice, the burden of disproving it. The place of residence must be taken to be a domicile of choice unless it is proved that it was not meant to be a principal and permanent residence. Contingent events, political or otherwise, are not admissible proofs to show, where one removes from his domicile of origin, for a residence elsewhere, that the latter was not meant to be a principal and permanent residence. But if one is exiled by authority from his domicile of origin, it is never presumed that he has abandoned all hope of returning back. The abandonment, however, may be shown by proof. General Kosciusko was not exiled by authority. He left Poland voluntarily to obtain a civil status in France, which he conscientiously thought he could not enjoy in Poland whilst it continued under a foreign dominion.

Personal property, wherever it may be, is to be disturbed in case of intestacy according to the law of the domicile of the intestate. This rule may be said to be a part of the *jus gentium.*

What that law is when a foreign law applies must be shown by proof of it, and in the case of written law, it will be sufficient to offer as evidence the official publication of the law, certified satisfactorily to be such. Unwritten foreign laws, must be proved by experts. There is no general rule for authenticating foreign laws in the courts of other countries, except this, that no proof shall be received "which presupposes better testimony behind, and attainable by the party." They may be verified by an oath, or by an exemplification of a copy under the great seal of the state or nation whose law it may be, or by a copy proved to be a true copy by a

witness who has examined and compared it with the original or by the certificate of an officer authorized to give the law, which certificate must be duly proved. Such modes of proof are not exclusive of others, especially of codes and accepted histories of the law of a country. *See also* the cases of *Church v. Hubbart,* 2 Cranch 181, and *Talbot v. Seeman,* in 1 Cranch 1, 7 [argument of counsel -- omitted]. In this case, the Code Civil of France, with this endorsement, "Les Garde des Sceaux de France a la Coeur Supreme Des Etats Unis," was offered as evidence to prove that the law of France was for the distribution of the funds in controversy. This Court ruled that such endorsement was a sufficient authentication to make the code evidence in this case and in any other case in which it may be offered. By that code, the complainants named in this suit as the collateral relations of General Kosciusko are entitled to receive the funds in controversy in such proportions as are stated in the mandate of this Court to the court below.

The documentary proofs in this cause, from the orphans' court, of the genealogy of the Kosciusko family, and of the collateral relationship of the persons entitled to a decree, and also of the wills of Kosciusko, are properly in evidence in this suit. The record from Grodno is judicial -- not a judgment *inter partes,* but a foreign judgment *in rem,* which is evidence of the facts adjudicated against all the world.

MR. JUSTICE CATRON did not sit in this cause.

The whole case is set forth in the opinion of the Court.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

The purpose of this suit is to recover for the descendants of the sisters of General Kosciusko the funds which he owned in the United States at the time of his death.

Several points are suggested by the pleadings.

We will consider such of them as we think necessary, after having stated the origin of the fund in controversy, and the management of it, from the time that Kosciusko placed it under the care of Mr. Jefferson until the death of Colonel Bomford, the administrator *de bonis non,* in eighteen hundred and forty-eight.

General Kosciusko came to the United States early in our revolutionary war, to join our army. He did so at first as a volunteer. In October, 1776, he received from Congress the commission of Colonel of Engineers. He served with great distinction until the close of the war, and then retired from the army, after our independence had been acknowledged, with the rank of Brigadier General. He stood prominently with those great men of our own country, with whom he had given seven years of his life to secure its freedom and nationality. He returned to Poland, poorer than when he came to us, and was, in fact, our creditor for a part of his military pay.

His subsequent career in Europe is a part of its history. All that we can say of it in connection with this case is that he returned to the United States after he was released from the prisons of Catherine by her son and successor, the Emperor Paul. Whilst he was absent from the United States, a military certificate for twelve thousand two hundred and eighty dollars and fifty-four cents, had been issued as due to him for services during the war. Not having been for several years in a situation to claim or to receive it until his return to the United States, in 1798, Congress passed an act in 1799, 6 Stat. 32, directing the Secretary of the Treasury to pay to him the amount of the certificate, with interest from the first day of January, one thousand seven hundred and ninety-three, to the thirty-first of December, one thousand seven hundred and ninety-seven. It was not a gratuity, but a simple act of justice, graduated then by the inability of our country to do more. It yet remains for us to give some national testimonial of his virtues, and of his services in the war of our independence. Seven years of peril and suffering, of wise forecast in counsels of war, and of dauntless bravery in the field, may claim from our people grateful recollections, and the expression of them in the best way that they can be commemorated by art. The cadets at West Point, unaided by the government, have reared to his memory a monument there, and it is the only

memorial of him upon the face of our land.

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That military certificate, with a part of the interest upon it, was the basis of the fund now in controversy.

It was paid to Kosciusko, was invested in American stocks in his own name, and placed under the care and direction of Mr. Jefferson.

In a letter from Mr. Jefferson in answer to one from H. E. M. De Politica, the Russian Minister at Washington, of the 27th of May, 1819, written by the latter at the instance of the Viceroy of Poland, to make inquiries about the fund, Mr. Jefferson says:

"A little before the departure of the General from America in 1798, he wrote a will, all with his own hand, in which he directed that the property he should possess here at the time of his death should be laid out in the purchase of young negroes, who were to be educated and emancipated -- of this will he named me executor, and deposited it in my hands. The interest of his money was to be regularly remitted to him in Europe. My situation in the interior of the country rendered it impossible for me to act personally in the remittances of his funds, and Mr. John Barnes, of Georgetown, was engaged under a power of attorney to do that on commission, which duty he regularly and faithfully performed until we heard of the death of the General. We had in the meantime, by seasonably withdrawing a part of his funds from the bank in which he had deposited them and lending them to the government during the late war, with England, augmented them to seventeen thousand one hundred and fifty-nine dollars sixty-three cents, to-wit: $12,499.63, in the funds of the United States, and $4,600 in the Bank of Columbia, at Georgetown. I delayed for some time the regular probate of the will, expecting to hear from Europe, whether he had left any will there which might affect his property here. I thought that prudence and safety required this, although the last letter he wrote me before his death, dated September 15th, 1817, assured me of the contrary, in these words:"

" Nous avancons tous on age, c'est pour cela, mon cher et respectable ami, que je vous prie de vouloir bien et comme vous avez tout le pouvoir, arranger qu'apres la mort de notre digne ami, Mr. Barnes, quelqu'un d'aussi probe que lui prenne sa place, pour que je recoive les interests ponctuellement de mon fonds; duquel, apres ma mort, vous savez, la destination invariable, quant a present faites pour le mieux comme vous pensez."

" *Translation* "

" We all grow old, and for that reason, my dear and respectable friend, I ask you, as you have full power to do, to arrange it in such a manner that, after the death of our worthy friend, Mr. Barnes, someone, as honest as himself may take his place,

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so that I may receive the interest of my money punctually, of which money, after my death, you know the fixed destination. As for the present, do what you think best."

"After his death, a claim was presented to me on behalf of Kosciusko Armstrong, son of General Armstrong, of three thousand seven hundred and four dollars, given in Kosciusko's lifetime, payable out of this fund and subsequently came a claim to the whole, from Mr. Zeltner, under a will made there. I proceeded, on the advice of the Attorney General of the United States, to prove the will in the state court of the district in which I reside, but declined the executorship. When the General named me his executor, I was young enough to undertake the duty, although, from its nature, it was likely to be of long continuance; but the lapse of twenty years or more had rendered it imprudent for me to engage in what I could not live to carry into effect. Finding now, by your letter of May 27, that a relation of the General's also claims the property, that it is likely to become litigious, and age and incompetence to business admonishing me to withdraw myself from entanglements of that kind, I have determined to deliver the will and the whole subject over to such court of the United States as the Attorney General of the United States shall advise, probably it will be that of the District of Columbia, to

place the case in his hands, and to petition that court to relieve me from it, and to appoint an administrator, with the will annexed. Such an administrator will probably call upon the different claimants to interplead, and let the court decide what shall be done with the property. This I shall do, sir, with as little delay as the necessary consultations will admit; and when the administrator is appointed, I shall deliver to him the original certificates which are in my possession. The accumulating interest and dividends remain untouched in the Treasury of the United States and Bank of Columbia."

The facts of this letter are referred to and admitted in the answer of the defendants, but we preferred to give them in the language of the writer.

Mr. Jefferson carried out his intentions, and letters of administration were granted to the late Benjamin F. Lear. He received, in different kinds of stock and in dividends which had accrued since the death of Kosciusko, $25,931.43 1/2; $4,100.62 1/2 of which, were applied by him for the payment of United States six percents, which had been purchased on account of the estate, by the direction of the orphans' court when it had the control of the fund. It is not necessary, for the purposes of this suit, to inquire into the correctness of Mr. Lear's accounts of his administration. There is nothing on the record making them

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doubtful. He died in 1832, and it appears from the books and papers from which the final account of his administration was made that the funds in his hands had been increased to $31,785.27. Colonel Bomford, his successor, charged himself with that sum.

The accounts of both, however, must be looked into for another purpose. And that is to determine, from the changes made by Lear in the funds, and in his mode of managing them, in what official relation to Lear Bomford received them, and why it is, though he did so as the executor of Lear, that the defendants in this suit, by becoming his bondsmen under the Act of 20 February, 1846, have made themselves liable for the *devastavit* of their principal. And here we will consider

that point of the case.

It appears from the accounts of Lear that he thought he was authorized, as administrator, to change the funds of the estate into other funds and to lend them upon private securities without the permission of the orphans' court. Most if not all of them, in whatever way invested by him, were in his own name at the time of his death. Bomford took them as his executor and settled an account with the orphans' court in which he charged himself, as executor of Lear, with all the stocks, bonds, mortgages, and other securities for the payment of money, and the money of the estate, which Lear had, as administrator, at the time of his death. In fact, the funds, excepting the stock of the Bank of Columbia, were converted into money in Lear's hands, and Bomford took them, as his executor, with the obligation, as such, to account for the same to whomsoever might be entitled to Kosciusko's estate. This being so, the question arises whether or not his sureties, as executor of Lear, were not liable for any waste of the estate by him, instead of his sureties as the administrator of Kosciusko, upon the ground that the latter were only liable, by their bonds, for so much as he received as administrator, and not for what he had possessed himself of as the executor of Lear.

Bomford, it must be remembered, was the executor of Lear, and became also, by appointment of the orphans' court, the administrator *de bonis non cum testamento* of Kosciusko under the laws of Maryland as they were of force in that part of the District of Columbia which had been a part of Maryland when Congress took jurisdiction over the same. His bonds in both relations to the two estates of Lear and Kosciusko were given under that law, and the obligations of himself and his sureties are determined by what has been the judicial interpretation and administration of it in Maryland, uncontrolled by any decisions of other courts elsewhere.

We understand by the laws of Maryland as they stood when Congress assumed jurisdiction over the District of Columbia that the property of a deceased person

was considered to be administered whenever it was sold or converted into money by the administrator or executor or in any respect changed from the condition in which the deceased left it. It did not go to the administrator *de bonis non* unless, on the death of the executor or administrator, it remained in specie or was the same then that it was when it came to his hands. When the assets have been changed, it is said in Maryland that the property has been administered. In that sense, all the funds received by Lear and changed by him into other securities were administered by him. If this suit, then, had been brought against the first sureties of Bomford in his original bond as administrator *de bonis non* of Kosciusko, they would not have been answerable. For any waste of the estate of Kosciusko, the remedy would have been against him and his sureties as executor of Lear, and if the assets had been wasted by Lear, Lear's securities would have been answerable. Nor would the circumstance that Bomford charged himself with these assets as administrator *de bonis non* make any difference. His sureties could be made liable only for the assets which legally came to his hands -- that is, for what remained in specie, unadministered. Nor could he make them liable for more by charging himself, in his account as administrator, with any property which had been changed by his predecessor or administered, as it is said to be in Maryland when such a change is made by an administrator or executor.

Such being the law as to the responsibility of Lear and his sureties and of Bomford and his original sureties, it was urged in the court below, as we see from the decision of the learned judge who gave that court's opinion and here also in argument by the counsel of the defendants, that it applied equally to Bomford's second and third sets of sureties, who became so under the Act of Congress of 20 February, 1846, 9 Stat. 4. So the court below decided, but we think it did so erroneously. The error consists in this, that the bonds of these defendants were treated as if they were the same as the original bonds given by the first sureties of Bomford under the Maryland law, and that the relations of Bomford to the estate of Kosciusko were precisely such as they were when he came into the possession of the Kosciusko funds, as the executor of Lear. The argument was this: that as Bomford had, from the character of the assets at the death of Lear, a valid right to them, as Lear's executor, and was bound by law to administer them as Lear was

that he would not have any legal right in them as administrator *de bonis non,* to bind these defendants as

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his sureties for any of his defaults, particularly as it appears from his accounts, including the last of them, that he charges himself with a balance of $43,504.40 in his ninth account, the items of which related to transactions which had taken place before the date of either of the bonds of the defendants.

Now upon such a state of facts it must be admitted that Bomford himself was bound for the amount stated by him to be due in an account of assets of the estate of Kosciusko, and that his original sureties were not under the Maryland law, for those assets which had been administered by Lear.

For what purpose then, it may be asked, did the orphans' court call upon Bomford, after he had rendered his eighth account, to give other sureties under the penalty, if he did not do so, that he would be displaced as administrator and that another administrator would be appointed in his stead, unless it was to secure that amount for which he had become personally liable, though it had been originally received by him as executor, but for which there were no sureties in fact, when the defendants became so? They became his sureties under the 3d section of the Act of 1846, 9 Stat. 4. That section provides that whenever the orphans' court shall be satisfied that the security which has been taken or which may hereafter be taken from an executor or administrator is insufficient by reason of the removal or insolvency of any of the sureties, or because the penalty of the bond is too small, or from any cause whatever, that the court may call upon the administrator or executor to give additional security, and if there shall be a failure to comply with such order, the court is empowered to appoint another administrator in the stead of the first, and to require, from him removed, to hand over to his successor the unadministered assets, and to enforce compliance with such an order by fine and attachment or any other legal process. The act and the proceedings of the orphans' court under it, towards the administrator, Colonel Bomford, cover exactly such a case as this. The object of the law, and the purpose of the court, were to

get from the administrator additional and adequate security for the funds which he had stated in his sworn account to be still unadministered in his hands, without any regard to the fact which could not then have been known to the court whether they had been misused or not by him, but which, from his rendered account, it might properly have been inferred had not been. The act permits the court, in the cases mentioned in the 3d section, not only to take security for assets which might in future come to the hands of the administrator, but for such as he had already received and returned to the court as in his hands, or of which he ought to have made a return, and which may not have been

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properly administered. If that be not the proper interpretation of the act, it would be nugatory and idle. Instead of the power of the court being enlarged by it, it would be just as powerless to act in the cases mentioned in the 3d section as it had been under the law of Maryland. The bonds of the defendants were manifestly given with reference to the accounts which had been filed in the orphans' court by Colonel Bomford. They must have so understood it, for in one of them the action of the orphans' court under the law of 1846 is recited, and the record shows that the sureties in the other took from their principal a counter-security to indemnify them on account of his failure to discharge all of his duties as administrator. The bonds of the defendants are distinguishable from the original bonds which the administrator gave, the latter having been given before any inventory was returned, or account stated in the court, and when no particular sum was due from the administrator, and the bonds of these defendants were given for a sum certain, returned to the court by the administrator, due by him in that character.

All of us concur in thinking that the bonds of the defendants were properly taken under the act of 1846. That the orphans' court called for them to secure the amount with which the administrator then stood charged, and such as he might afterwards get. They were accepted and approved by the court for that purpose, and the sureties gave them with a full knowledge of the state of the account which the administrator had filed. All of us think also that they are answerable for his waste unless something else in the case can relieve them.

The first objection is that Kosciusko did not die intestate as to his personal property in the United States, and that the same passed, by the second article of the will of 1817, to M. and Madame Zavier Zeltner, of Soleure, in Switzerland.

2. That there is no proof in the case that Kosciusko was domiciled at his death in France, and if he was, that the complainants have failed to prove what the law of France was at that date for the distribution of the personal estate of one who dies domiciled there.

3. It is also said that it is not proved that those persons named in the bill as being entitled to the fund sued for have such a relationship to Kosciusko as entitled them to receive it.

We will consider these objections in their order.

Kosciusko made four wills. One of them in the United States, in 1798, which, after his death, Mr. Jefferson proved in the Court of Albemarle, in Virginia. His second will was made in Paris in 1806, in which he charged the fund mentioned in the first will with a legacy to Kosciusko Armstrong. His third and fourth wills were made at Soleure, in Switzerland, the third

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on 4 June, 1816, and the fourth on 10 October, 1817. It is not denied that he made the first, second, and fourth wills, but the defendants attack the third on account, as they suppose, that the probate of it had been taken in the Orphans' Court in Washington, without due proof of its execution, and they rely upon the fourth will to show that it contains a residuary article in favor of Monsieur and Madame Zeltner after the payment of specific legacies.

We think that all of the wills have been proved according to the rules of evidence, and that the authenticated exemplification of that of 1816, from the registry of it in France, recorded in the Orphans' Court for the District of Columbia, is all that can be required. With these wills in view, we have the means to decide the effect of them on the property in controversy.

The olographic will of 1816 contains a revoking clause. It is in these terms: "Je revoque tous les testaments et codiciles que j'ai pu faire avant le present auquel seul je m'arrete comme contenant mes dernieres volantes." Translated in the record: "I revoke all the wills and codicils which I may have made previous to the present, to which alone I confine myself, as containing my last wishes."

The right to revoke a will exists now in every nation, though the exercise of it is differently regulated. It may be done by an express revocation, or by certain acts which of themselves infer, or from which the law infers, a revocation. "Ambulatoria est voluntas defuncti usque ad vitae supremum excitum." Nor can one bind himself in a testament not to make another.

"Nemo potest in testamento suo cavere, ne legis in suo testamento locum habeant; quia nec tempore, aut conditione finiri obligatio haeridis legatorum nomine potest."

Dig.Lib. 34, tit. 41. 4; Dig.Lib. 30, tit. 1, l. 55. In England, the manner of revocation is prescribed by the 6th and 22d sections of the Statute of Frauds. In Spain and in Holland, a will may be revoked by an act confined to the revocation of that testament, without making any other disposition, or by making another testament which expressly revokes the former if either manner as it may be used is executed with the forms and solemnities which the law required to give validity to the first will. By the customs of Paris and Normandy, revocations could be made by a simple declaration before two notaries, or before one notary and two witnesses, without its being done in any prescribed form. And by the same customs, a declaration in the handwriting of a testator, and signed by himself, revoked his testament, and the effect of it was to make him intestate. Law 25, tit. 1, 6; Voet. lib. 28; tit. 3, n. 1; Matth. de Success; disp. 8, n. 18. But we learn from Touillier and from the Code Civil that these customs

were abolished, and that in France, wills may be revoked in whole or in part, by a subsequent will or by an act before notaries, containing a declaration of such

intention. Touillier liv. 3, tit. 2; Don. et Test. ch. 5, n. 619; Pothier des Don. Test. ch. 6, 2, 1; Art. Code Civil, 969, 1035-36-38.

The will of 1816 was made at Soleure while Kosciusko was sojourning there after he had left Vienna in 1815, whither he had gone from Paris, at the instance of the Emperor Alexander, that he might be advised with concerning the affairs of Poland. It is an olographic will, wholly written in the handwriting of the testator according to the 970th article of the Code Civil. It gives specific legacies to persons residing in France, charged upon funds owned by the testator in France, and his executor was a notary at Morcu, in the Department of Seine and Marne, which is the opening of the will, the testator says, in the department of his residence at Berville.

Within the month of Kosciusko's death, the will was taken to Paris and recorded there pursuant to law. The executor, having received authority from the proper tribunal to act as such, paid, according to the will, the legacies given by it. *See* arts. Code Civil, 999, 1000. The wills, then, of 1798 and of 1806 were revoked by the will of 1816, and as the testator did not make in it any disposition of his American funds, he died intestate as to them unless the second article in the will of 1817 has the effect of a residuary bequest to the persons named in it.

It is, "I bequeath all of my effects, effets, my carriage and my horse included, to Madame and to Mr. Zavier Zeltner, above named." It will be seen by the first clause in the will that they are the father and mother of Emilie Zeltner, to whom he bequeathed about fifty thousand francs of France, charged upon funds in England, in the hands of Thompson, Bonard & Co.

We shall be aided, in the construction of the second article of the will of 1817 by keeping in mind what were the relations between himself and the Zeltner family as they are disclosed by his wills of 1816 and 1817. He makes them in both wills his legatees, except a legacy to General Baszkoyski; two small legacies to his executors; two thousand francs to the poor, and one thousand for his own burial. His chosen friends were without fortune. He says so in that memorable letter which he wrote to the Emperor Alexander after the allies had entered Paris, in

1814, from which it may be seen, when his country was nearest his heart, that his friend was there too. Fletcher's Poland: Harp.Fam.Lib. 301; Ozinski 4, p. 175. To the two daughters of that friend, Andrew Lewis Zeltner, with whom he had lived for fifteen years, he gives all of his funds in

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France, amounting to ninety-five thousand francs, excepting a legacy to his executor. To the daughter of Zavier Zeltner, with whom he was staying when the wills of 1816 and 1817 were made and where he died, he bequeaths fifty thousand francs; and it is to him and to his wife that he says, "I bequeath all my effects, my carriage and horse included." From its place in the will of 1817, and from the connection of the words "all my effects, with my carriage and horse included," it would be a very strained construction, to make the words "all of my effects" comprehend his personal estate in the United States, it being neither alluded to in any way in this will nor in that of 1816. Except insofar as it might, under the will of 1816, have been applied to the payments of the legacies given in that will, upon the failure of the funds upon which they were first charged. Effects, in French, or the word "effets," has the same meaning in common parlance and in law, that it has in English. Its meaning properly in either, when used indefinitely in wills, but in connection with something particular and certain, is limited by its association to other things of a like kind. It is from the subject matter of its use that intention of something else is to be implied, and that of course may be larger or less. In some instances in wills, the word has carried the whole personal estate. When in connection with words of themselves of larger meaning, or of fixed legal import, as there were in the case of *Bosley v. Bosley,* 55 U. S. 390 , decided at this term of the Court, such a clause in a will is residuary. 5 Madd.Ch. 72; 6 Madd.Ch. 119; Cowper 299; 15 Vesey 507.

Such being the rule, it is our opinion that the second article in the will of 1817 is not residuary, and that it has no relation to the funds in controversy.

It follows, then, that as the wills of 1798 and of 1806 were revoked by the will of 1816, and as no disposition was made in it or in the will of 1817 of the funds in

controversy, that General Kosciusko died intestate as to them, and that they may be distributed to his relations who may be entitled to inherit from him, according to the law of his domicile at the time of his death.

We now proceed to the question of domicile.

In the will of 1806, he describes himself as "an officer of the United States of America, in their revolutionary war against Britain, and a native of Lithuania, in Poland, at present residing in Paris." In the will of 1816, made at Soleure, his language is:

"I, the undersigned Thaddeus Kosciusko, residing at Bervile, in the Township Genevraye, of the Department of Seine and Marne, being now or at present at Soleure, in Switzerland."

In the will of 1817, nothing is said of his residence. The record shows that he went from the United States

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to France in 1798, that he was there in 1806, when he said he resided at Paris. There is no proof that he was not continuously in France until 1815, when he went to Vienna. We know too, historically, that he left it in June of that year for Soleure, when he found out that it had been determined in the Congress of Vienna to erect the Duchy of Warsaw into a Kingdom, without including in it his native province of Lithuania.

We do not, however permit the historical facts just alluded to, or any other of a like kind, to have any weight in forming our conclusion concerning his domicile at the time of his death. The facts in the record are sufficient for that purpose.

In the first place, his declarations that his residence was in France, in the way they were made in his wills, with an interval of ten years between them, would, upon the authority of adjudged cases, be sufficient to establish *prima facie* his domicile in France. Such declarations have always been received in evidence when made previous to the event which gave rise to the suit. They have been received in the

courts of France, in the courts of England, and in those of our own country. In two questions of domicile in France, such declarations in a power of attorney and in other instruments were received as evidence. Denisart, tit. Domicil, 1. In the English courts there are many cases in which like declarations have been offered and received. 5 Term 512, and the observations of Mr. Evans, axon et un 2 Poth.Obl.App. No. 16, 11. *Rawson v. Haigh,* 2 Bing. 99; 9 Moore 217; *S.C.,* W. & M. 353. Lord Tenterden, 1 Bing.N.C.; 5 C. & P. 575; 1 Taylor, 376. In the United States, the case of *Gorham v. Canton,* 5 Greenleaf 266, is to the same effect, and in Massachusetts, in the cases of *Thorndike v. Boston,* 1 Metcalf, and *Kiburn v. Bennett,* 3 Metcalf 199, it was ruled that in a case where the question of domicile was raised, the declarations and letters of a party whose domicile was disputed were admissible in evidence, especially if made previous to the event which gave rise to the suit. We find also in 8 Pickering 476 that the will of a grandfather in 1774, in which he was described as being of O., and another will in which he is described as resident in O., were admissible evidence to prove that the grandfather had obtained a settlement at O.

Kosciusko's domicile of origin was Lithuania, in Poland. The presumption of law is that it was retained, unless the change is proved, and the burden of proving it is upon him who alleges the changes. *Somerville v. Somerville,* 5 Vesey 787; Voet, Pand. tit. 1, 5, n. 99.

But what amount of proof is necessary to change a domicile of origin into a *prima facie* domicile of choice? It is residence

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elsewhere, or where a person lives out of the domicile of origin. That repels the presumption of its continuance and casts upon him who denies the domicile of choice the burden of disproving it. Where a person lives is taken *prima facie* to be his domicile until other facts establish the contrary. Story's Com. 44, 6 Rule; *Bruce v. Bruce,* 2 Bos. & Pul. 228, n. 239; 3 Ves. 198, 291; Hagg. Consist. 374, 437. It is difficult to lay down any rule under which every instance of residence could be brought which may make a domicile of choice. But there must be, to constitute it,

actual residence in the place with the intention that it is to be a principal and permanent residence. That intention may be inferred from the circumstances or condition in which a person may be as to the domicile of his origin, or from the seat of his fortune, his family and pursuits of life. Pothier, Introd. Gen. aux Cout. 4; D'Argentie, Cout. Art. 449; Touillier, lib. 1, tit. 3, n. 371; 1 Burge Com.Confl.Laws, 42, 43. A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession, office, or calling, it does change the domicile. The result is that the place of residence is *prima facie* the domicile, unless there be some motive for that residence not inconsistent with a clearly established intention to retain a permanent residence in another place. The facts in the case place the residence of Kosciusko in France under the principle just stated.

It is averred in the bill that France was his residence. The defendants deny it, admitting, however, that from the time he left the United States, he was a sojourner in France and Switzerland until he died. But they aver that he did not remove to France at any time of his life with the intention to make it his permanent residence. And they further charge that he never did abandon the hope that circumstances would favor his return to Poland when its political condition would permit him to resume his rights and duties as a citizen of it. Such an averment implies that he had voluntarily left Poland for France without having been forced to do so, and that his return depended upon political contingencies which might never happen, and which we know did not occur. It places upon the defendants the burden of proving the intention, the complainants having shown and the defendants having admitted that he had *prima facie* a domicile in France. They have not done so. There is nothing in the record disproving the averment of his domicile in France, and we must, from his own declarations and other

proofs in the record, receive it as a fact that he was domiciled there at the time of his death.

The error of the argument and of the averment against Kosciusko's domicile in France is this: that they considered him a forced exile from Poland, and that he had only made France his asylum during banishment.

In such a case, it is true, a person cannot be presumed to have abandoned all hope of return to his country, whatever length of time may have passed since he was driven from it. But Kosciusko is not placed in that predicament by any proof in the case. Nor could such proof have been made, for it is well known, when he was liberated by the Emperor Paul, that it was done without restraint or inhibition of any kind. He was offered high military command and presents of princely amount, which he declined to accept. He came to the United States, and afterwards went voluntarily to France, where he lived for fifteen years. He could have returned to Poland at any time if he had chosen to do so. Not having done so, the conclusion ought to be that he abandoned his residence there for a residence in France, which cannot be affected, as to its permanency, by any event which might have happened to induce him to change it again to the domicile of his origin. This is coincident with the fact that he had been made a French citizen by a decree of the National Assembly of France in August, 1792. Knowing that such a naturalization would not have the effect of investing him with the privileges of a native born citizen if he did not become domiciled in France unless his residence there was expressly dispensed with in the letters of naturalization, he went to France to get a civil status which he could not conscientiously enjoy in Poland whilst it continued to be under a foreign dominion. Pothier, Tr. des Personnes &c.;, P. 1, tit. 2, 3; Denesart, tit. Aubaine.

These general principles of jurisprudence in respect to domicile, by which Kosciusko's has been determined, are such as the courts of France would have ruled in this case.

Kosciusko's intestacy as to the funds in controversy and his domicile having been determined, we will now state the law as to the right of succession in such cases.

For several hundred years upon the continent and in England, from reported cases for a hundred years the rule has been that personal property, in cases of intestacy, is to be distributed by the law of the domicile of the intestate at the time of his death. It has been universal for so long a time that it may now be said to be a part of the *jus gentium.* Lord Thurlow speaks of it as such in the House of Lords in the case of *Bruce v. Bruce.* Erskine, in his Institutes of the Law of Scotland, B. 3, tit. 9, 4, 644,

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says, this rule is founded on the laws of nations. He says

"When a Scotsman dies abroad *sine animo remanendi,* the legal succession of his movable estate in Scotland must descend to his next of kin according to the law of Scotland, and where a foreigner dies in this country *sine animo remanendi,* the movables which he brought with him hither ought to be regulated not by the law of the country in which they locally were, but that of the proprietors *patria,* or domicile whence he came and whither he intends again to return. This rule is founded in the law of nations, and the reason of it is the same in both cases -- that since all succession *ab intestatio* is grounded upon the presumed will of the deceased, his estate ought to descend to him whom the law of his own country calls to the succession as the person whom it presumes to be most favored by the deceased."

The law of Scotland had been different in this particular, but it was brought into harmony with the law of the rest of Europe by the decision of the House of Lords in *Bruce v. Bruce,* 6 Brown's Par.Cases 550, 566; 2 Bos. & Pul. 226, 230, 231; Lord Stair's Institutes B. 3, tit. 8, 5; Hogg & Lashley, House of Lords, June 25, 1788; Robertson on Personal Success. 131; *Omman v. Bingham,* House of Lords, March 18, 1776; *Colville & Landor v. Brown & Brown,* Dict. Success. Ap. 1, 4; W. & S. 28.

The earliest case reported in the English books is that of *Pipon v. Pipon,* Am. 6, 27. Lord Hardwicke recognized in it the rule that the personal estate, in cases of

intestacy, followed the person and becomes distributable according to the law or custom of the place where the intestate lived. Among other reasons given by him is that a contrary rule would be extremely mischievous, and would affect our commerce. No foreigner could deal in our funds but at the peril of his effects' going according to our laws, and not those of his own country. He reaffirmed the same in a few years afterwards in *Thorne v. Watkins,* 2 Ves. 35. Lord Kenyon did the same, when he was Master of the Rolls in 1787, in *Killpatrick v. Killpatrick,* which will be found cited in Robertson on Personal Succession 116. In 1790, the House of Lords acted upon the rule in *Bruce v. Bruce,* and two years afterwards, in *Hogg v. Lashley.* Many cases followed in the English courts, and the only question since has been what was the domicile of the intestate at the time of his death? In the United States, the rule has been fully recognized. 14 Martin 99; 3 Paige 182; 2 Gill & Johns. 193, 224, 228.

The rule prevails also in the ascertainment of the person who is entitled to take as heir or distributee. It decides whether primogeniture gives a right of preference, or an exclusive right

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to take the succession; whether a person is legitimate or not to take the succession; whether the person shall take *per stirpes* or *per capita,* and the nature and extent of the right of representation. Story's Conflict of Laws.

But, it is objected, before the rule can be applied in this suit against the defendants, that the complainants must prove what the law of France is for the distribution of the fund. It is said that has not been done.

For this purpose, the Code Civil of France was offered in evidence, but it was objected to.

It is true that the existence of a foreign law, written or unwritten, cannot be judicially noticed unless it be proved as a fact by appropriate evidence.

The written foreign law may be proved by a copy of the law properly authenticated. The unwritten must be by the parol testimony of experts. As to the manner of authenticating the law, there is no general rule except this, that no proof shall be received, "which presupposes better testimony behind, and attainable by the party." They may be verified by an oath, or by an exemplification of a copy under the great seal of a state, or by a copy, proved to be a true copy by a witness who has examined and compared it with the original, or by a certificate of an officer, properly authorized, by law, to give the copy, which certificate must be duly proved. But such modes of proof as have been mentioned are not to be considered exclusive of others, especially of codes of laws and accepted histories of the law of a country.

In *Picton's Case,* Lord Ellenborough said:

"The best writers furnish us with their statements of the law, and that would certainly be good evidence upon the same principle as that which renders histories admissible. There is a case [continued Lord Ellenborough] in which the History of the Turkish Empire, by Cantemir, was received by the House of Lords after some discussion. I will therefore receive any book that purports to be a history of the common law of Spain. B.N.P. 248, 249; 30 How.St.Tr. 492; 2 Phil.Ev. 123; 1 Salk. 281; *Morris v. Harmer,* 7 Pet. 554; 3 Cary 178; 11 Clark & Fin.; *Russel's Peerage Cases,* 3 Wend. 173."

Lord Tenterden, in *Lacon v. Heggins,* Stark. 178, admitted a copy of the Code Civil of France, produced by the French Consul, who stated that it was an authentic copy of the law of France upon which he acted in his office and that it was printed at the office for printing the laws of France, and would be acted upon in the French courts. In the *Russel Peerage Case,* Lord Campbell said:

"The most authentic form of getting at foreign law is to have the book which lays down the law. Thus we have had the Code Napoleon in our courts. It is better than to examine

a witness, whose memory may be defective and who may have a bias influencing his mind upon the law."

The supreme court of New York has held that an unofficial copy of the Commercial Code of France could not be proved by the French Consul residing at New York, though he stated it to be conformable to the official publications and that it was an exact copy of the laws furnished by the French government to its Consul at New York. Had it been an official copy and sworn to be such by the Consul, it would have been received in evidence, as the Irish statutes were in *Jones v. Maffet,* 5 Serg. & R. Rawle 523, where they were sworn to by an Irish barrister, and that he received them from the King's printer in Ireland. In *Church v. Hubbart,* 2 Cranch 187, this Court said that the edicts of Portugal offered in evidence would have been admissible if the copies of them had been sworn to be true copies by the American Consul at Lisbon, instead of his having given his consular certificate that they were true copies, because it was not one of the functions of a consul to authenticate foreign laws in that way.

The court said

"The paper offered to the court is certified to be a copy compared with the original. It is impossible to suppose that this copy might not have been authenticated by the oath of the consul, as well as by his certificate."

It will be seen that what the court required was a verification of the original, upon oath, and that then the edicts would have been admissible in evidence. They were municipal edicts, too, it should be remembered, and not one of those marine ordinances of a foreign nation on a subject of common concern to all nations which may, according to the manner of its promulgation, be read as law without other proof. *Talbot v. Seeman,* 1 Cranch 1.

The rule of this Court has always been, since those cases were decided,

"That the laws of a foreign country, designed only for the direction of its own affairs, are not to be noticed by other countries unless proved as facts, and that the sanction of an oath is required for their establishment unless they can be

verified by some other such high authority that the law respected not less than the oath of an individual."

The question in this case is has the Code Civil, which was offered in evidence, a verification equivalent to the oath of an individual?

Opinions and cases may be found in conflict with the cases cited, but from a perusal of many of them we find that they have been formed and decided without a careful discrimination between what should be the proof of foreign written and unwritten law, and when written laws, either singly or in statute books, or in

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codes, have been offered in evidence without a sufficient authentication that they were official publications by the government which had legislated them, or when written laws have been offered, properly proved to be official, but which were equivocal in their terms and in the judicial administration of which there have been or may be various interpretations, making it necessary to call in experts, as in cases of an unwritten law, to state how the law offered in evidence is administered in the courts of the country of which it is said to be the law. In England, until recently it was not doubted that a foreign written law was admissible in evidence when properly authenticated. But in the *Sussex Peerage Case,* 1844, in 11 Clark & Finnelly 115, several of the judges gave their opinions upon the subject. Lord Brougham in that case differed from Lord Campbell, and said that the Code Napoleon ought not to be received in an English court and that, before it could be received from the book, an expert acquainted with the text and the interpretation of it must be called. And so it was ruled afterwards by Erle, Justice, in 1846, in *Cocks v. Purdy,* 2 C. & K. 269, in which fragments of a code were offered as evidence. But his Lordship's opinion and the case of *Clark v. Purdy* must be taken subject to the facts upon which the point arose. In the first it was whether Doctor Wiseman, who had been called as a witness, could refer, whilst giving his evidence of the law of Rome on the subject of marriage, to a book whilst it was lying by him. In the other case, fragments of laws were offered.

This point had been settled by Lord Stowell in *Dalrymple v. Dalrymple,* 2 Hagg. 54. Lord Brougham again expressed the same opinion in his sketch of Lord Stowell in the second series of the Statesmen of the Time of George III, 76. But Lord Langdale, who also sat with the other judges in the *Sussex Peerage Case,* gave the rule, with its qualifications, in the case of the *Earl of Nelson v. Lord Bridport,* 8 Beav. 527. After stating the rule, coincidently with the opinion of Lord Brougham, he says:

"Such I conceive to be the general rule, but the case to which it is applicable admits of great variety. Though a knowledge of foreign laws is not to be imputed to the judge, you may impute to him such a knowledge of the general art of reasoning as will enable him, with the assistance of the bar, to discover where fallacies are probably concealed and in what cases he ought to require testimony more or less strict. If the utmost strictness was required in every case, justice might often stand still, and I am not disposed to say that there may not be cases in which the judge may not without impropriety take upon himself to construe the words of a foreign law and determine their application to the case in question, especially if

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there should be a variance or want of clearness in the testimony."

Notwithstanding the differences in the cases cited, we think that the true rule in respect to the admissibility of foreign law in evidence may be gathered from them. In our view, it is this that a foreign written law may be received when it is found in a statute book with proof that the book has been officially published by the government which made the law. Such is the foundation of Lord Tenterden's ruling in *Lacen v. Higgens,* 3 Starkie 178. The case in 5 Sergeant & Rawle 523 has the same basis. Though there are other reasons for the admission of the laws of the states into the courts of the United States as evidence when they are officially published, yet they are only received when the genuineness of the publication is apparent. This Court has so ruled in *Hind v. Vattier,* 5 Pet. 398, and in *Owings v. Hull,* 9 Pet. 607, 34 U. S. 625 . It is true that we are called upon as judges to

administer the laws of the states in the courts of the United States, and that the states of the Union are not politically foreign to each other, but there is no connection between them in legislation, and we only take notice of their laws judicially when they are found in the official statute books of the state.

With these views, it remains for us to show that the Code Civil, offered in evidence in this case by the complainants to prove their right to the succession of the intestate estate of General Kosciusko, is authenticated in such a way that it may be received by the court for the purpose for which it was offered. It was sent to the supreme court in the course of our national exchanges of laws with France. It is one of the volumes of the Bulletin des Lois a Paris L'imprimerie royale, with this endorsement, "Les Garde des Sceaux de France a la court Supreme Des etats Unis." Congress has acknowledged it by the act, and the appropriation which was given to the Supreme Court to reciprocate the donation. We transmitted to the Minister of Justice official copies of all the laws, resolutions, and treaties of the United States and a complete series of the decisions of this Court. We do not doubt, whenever the question shall occur in the courts of France, that the volumes which were sent by us will be considered sufficiently authenticated to be used as evidence. The gift and the reciprocation of it are the fruits of the liberal age in which we live. We hope for a continuance of such exchanges between France and the United States, and for a like intercourse with all nations. Businessmen, jurists, and statesmen will readily appreciate its advantages. It will save much time and expense when questions occur in the courts of different nations involving the rights of

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foreigners if the written laws of every nation were verified in all of them by certified official publications to the governments of each. In the now rapid transit of persons and property out of the sovereignties to which they belong into the different parts of the world, such a verification would often speed and save the rights of emigrants, sojourners, and merchants.

We think that the Code Civil, certified to the court as it is, is sufficiently authenticated to make it evidence in this suit, and that it would be so in any other case in which it may be offered.

We proceed to state the law from it, applicable to the case.

It has been determined that the domicile of General Kosciusko was in France at the time of his death, that he died intestate as to his funds in the United States, and that they were to be distributed according to the law of his domicile.

It has been proved that he survived his parents, died without issue, and that these complainants are the lineal descendants of two of his sisters, one of whom died before her brother and the other afterwards.

The fact of their relationship, notwithstanding the objection which was made to the proof of it, is sufficient. The proofs are decrees of the Court of Nobility of the Government of Grodno, and another of the Court of Kobryn in the Russian Province of Lithuania. The originals are in the orphans' court, and were filed in it in the regular course of judicial proceeding. Both of them are authenticated copies of judicial proceedings in the courts from which they are brought. The competency of the jurisdiction of those courts in the matters decided in the decrees is proved by witnesses skilled in the law of the governments of Lithuania. Lithuania we know to be now a Russian province, governed by its own laws except as they may be modified by the Emperor's edicts. It is divided into three governments, Wilna, Grodno, and Minsk, with a governor general over them. The decree of the Assembly of the Department of Grodno is an exemplified copy of that made on 7 May, 1843, in the case of the heirs of Kosciusko, and contains the genealogical chart of the descendants of the sisters of Kosciusko.

It is not a judgment *inter partes,* but a foreign judgment *in rem,* and is evidence of the facts adjudicated against all the world. The decree from the Court of Kobryn is also proved to be a judicial record. From both we learn that the persons named in the bill of the complainants are the collateral kinsmen of General Kosciusko. By the laws of France, they may take his estate by succession.

We shall reverse the decision of the court below, and direct the funds in controversy to be divided among them according to the 750th article of the Code, which is that in case of the

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previous decease of the father and mother of a person dead without issue, his brother and sister, or their descendants, are called to the succession, to the exclusion of ancestors and other collaterals.

All of the objections which were made against the rendition of a decree in favor of the complainants having been considered and overruled, it only remains for us to announce the sum for which the decree shall be given and the proportions to be paid by the defendants, as the sureties of Bomford, under the act of 1846.

It has been heretofore stated that these bonds were given under that act to secure the amount then returned to the orphans' court by the administrator, and such assets as he might afterwards receive in that character. In his ninth account, he charges himself with a balance from the eighth account of $41,914.47, and after giving the estate credit for the sums subsequently received and claiming credits, he admits that there was due to the estate on the 7th of June, 1847, $43,504.40, including the stock of the Bank of Washington, which was after his death transferred to Lewis Johnson, who became the administrator of Kosciusko with the will annexed.

We shall enter a decree against the defendants for the sum of $37,924.40, with interest from 7 June, 1847, until the same shall be paid.

The said decree is to be binding upon the sureties, Carrico, Stott, and George C. Bomford, and upon the sureties Gideon, Ward, and Smith, jointly and severally in the proportion which their respective bonds bear to the sum decreed, and the costs which have accrued in this suit. But in the event that the sureties in either bond do not pay the sum decreed against them or any part thereof, then the sureties in the other bond shall be answerable for and pay the same to the extent of their respective bonds.

We shall also order a decree to be entered against the defendant Lewis Johnson not subjecting him to any costs from his having been made a defendant in this suit, directing him to turn over to the complainants the stock of the Bank of Washington, to which he is entitled as the administrator *de bonis non* of Kosciusko, and the dividends which have accrued thereon, allowing to him out of the same the costs incurred as administrator, commissions, and such reasonable counsel fees as may have been paid by him for services in matters pertaining to this case in the orphans' court and to this suit after his account shall be filed, and be credited to him in the orphans' court.

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ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of said circuit court dismissing the complainants' bill in this cause be, and the same is hereby reversed and annulled. And this Court proceeding to render such decree as the said circuit court ought to have rendered, doth order adjudge and decree as follows:

First. That the legal domicile of Thaddeus Kosciusko, the party under whom the complainants below claim, was at the period of his death in 1817 in France.

Second. That as to the property and fund in controversy, he, the said Kosciusko, died intestate, his will of the 4th of June, 1816, in the proceedings mentioned, having revoked his prior will of 5th of May, 1798, and 28th of June, 1806, and without disposing of said fund, and the same not having been disposed of by the will of 10 October, 1817.

Third. That the said property and fund is to be distributed according to the law of France, the place of his domicile at the time of his death.

Fourth. That by the said law of said domicile at said period, the said property belongs in equal moieties to the collateral kindred who were the lineal descendants of the two sisters in the case mentioned, of said Kosciusko, and complainants in the bill mentioned -- that is to say, one moiety thereof to Hippolitus Estho and Roman Estho, grandsons of his sister Ann, and to Louisa Narbut, her granddaughter, a widow, and in the proportions between them of one-half of said moiety to said Hippolitus Estho, and the other half of said moiety to said Roman Estho and Louisa Narbut, in equal shares -- and the other moiety thereof to Vlandislaus Wankowieg, to Hippolitus Wankowieg, Adam Bychowiec, and to Michael Szyrma, also complainants, and in the proportions between them, as follows, that is to say to Vlandislaus Wankowieg and Hippolitus Wankowieg, each of them one-half of five sevenths, and of one-third to each of another seventh, and to Michael Szyrma, one-third of a seventh, and to Adam Bychowiec, one-seventh.

Fifth. That the defendants sureties in the bond of 7 May, 1846, for $20,000, in the proceedings mentioned, taken under the authority of the Act of Congress of 20 February, 1846 -- that is to say, James Carrico, Samuel Stott, and George C. Bomford -- and the other defendants' sureties in the

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other bond therein mentioned, also taken under said act of Congress, and dated 4 January, 1847, for $40,000 -- that is to say, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, are each, and to the extent hereinafter decreed, responsible to the complainants for the amount also hereinafter decreed.

Sixth. It is further adjudged and decreed that there is due, and that the same be paid, by said defendants to the complainants above named, in the proportions herein stated, the sum of $37,924 40/100 with interest on said sum, at the rate of six percentum, from the 7th day of June, 1847, till paid -- that is to say that the said defendants, James Carrico, Samuel Stott, and George C. Bomford, are jointly and severally bound to pay to said complainants, of said $37,924 40/100, the sum of $12,641.46 2/3, with interest thereon as aforesaid, from 7 June, 1847, till paid, and one-third of the costs of this suit, in both courts, and they are hereby ordered and

decreed to pay the same. And that the said defendants, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, are jointly and severally bound to pay to said complainants the balance of said sum of $37,924 40/100, being the sum of $25,282.93 1/3, with interest from 7 June, 1847, till paid, and two-thirds of the said costs, and they are hereby ordered and decreed to pay the same.

Seventh. And it is further ordered, adjudged, and decreed that in the event the said sureties in the first bond, to-wit: James Carrico, Samuel Stott, and George C. Bomford, do not pay the said $12,641.46 2/3, with interest, and one-third of the costs, so decreed to be paid by them as aforesaid, and every part thereof, that then the said Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, the sureties in the second bond, as aforesaid, are bound to pay the same, and every part thereof to the extent of the penalties of their said bond. And that in the event that the said Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, the sureties in the second bond, do not pay the said $25,282.93 1/3, with interest and two-thirds of the costs, so decreed to be paid by them, as aforesaid, and every part thereof, that then the said James Carrico, Samuel Stott, and George C. Bomford, the sureties in the first bond, as aforesaid, are bound to pay the same, to the extent of the penalty of their said bond.

And it is further ordered, adjudged, and decreed that the defendant, Lewis Johnson administrator *de bonis non* of Thaddeus Kosciusko, transfer and deliver over to said named complainants the stock of the Bank of Washington, belonging to him as such administrator, amounting at its par value, to the sum of $5,580, together with all the dividends which have accrued on the same, less the costs of his administration and reasonable counsel fees

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and such commissions as administrator, as the orphans' court may legally allow.

And it is further ordered, adjudged, and decreed that the said sums of money and stock so decreed to be paid and transferred by the above-named defendants be paid and transferred to the above-named complainants, Hippolitus Estho, Roman

Estho, Louisa Narbut, Vlandislaus Wankowiez, Hippolitus Wankowiez, Adam Bychowiec, and Michael Szyrma in the proportions stated and adjudged in the preceding fourth clause of this decree.

Eighth. It is further ordered, adjudged, and decreed that the decrees *pro confesso* against Roman Estho, Louisa Narbut, born Estho, Thadea Emilie Wilchelmine Zeltner, Maria Charlotte Julia Marguerette Zeltner, Bonnisant Pere, General Baszkoyski, Emilie Zeltner, Mr. and Mrs. Edward Zeltner, Zavier Amieth, Dr. Sheerer, Miss Ursula Zeltner, and Kosciusko Armstrong, by the said circuit court be, and the same is hereby, affirmed.

And lastly, it is ordered, adjudged, and decreed that this cause be, and the same is hereby, remanded to the said circuit court with directions to that court to carry the aforesaid decree of this Court into effect.