

Estho v. Lear.

reversed; whereupon, it is adjudged and ordered by this court, that the judgment of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court, with directions to award a *venire facias de novo*.¹

*130] *HYPPOLITUS JOSEPH AUGUSTINE ESTHO *et al.* v. BENJAMIN L. LEAR, Administrator of THADDEUS KOSCIUSZKO.

Practice.

A case not being properly prepared in the circuit court for a hearing, the decree was reversed, and the cause remanded, with liberty to the plaintiff to amend his bill.

APPEAL from the Circuit Court of the district of Columbia in and for the county of Washington.

This case was argued by *Swann* and *Sampson*, for the appellants; and by *Wirt* and *Dandridge*, for the appellees.

MARSHALL, Ch. J., delivered the opinion of the court.—The appellants had filed their bill in the court of the United States for the county of Washington, alleging themselves to be the distributees and next of kin of Thaddeus Kosciuszko, deceased, who departed this life, intestate, as they allege, with respect to personal property in the United States. The bill charges that Thaddeus Kosciuszko, being about to leave America, deposited with Mr. Jefferson a paper writing, purporting to be a will, which was executed in Virginia, and is in the following words:

"I, Thaddeus Kosciuszko, being just on my departure from America, do hereby declare and 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 *131] make them happy and useful; and I make the said Thomas Jefferson executor of this. T. Kosciuszko."

"5th May 1798."

After the testator's death, Mr. Jefferson proved the will in the county court of Albermarle, but renounced the executorship. Letters of administration have since been granted on it, in the county of Washington, in this district, to Benjamin L. Lear, who is in possession of the fund which is referred to in the paper writing. The plaintiffs contend, that this paper writing is not a will; or if a will, cannot have effect, the bequest contained in it being one which the law will not sustain. They therefore contend, that this will being void and inoperative, they, as the next of kin, are entitled to this fund, there being no creditors to claim. The answer insists on

¹ For a further decision in this case, resulting in another reversal, see 12 Pet. 497.

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the validity of the will, and that the defendant is ready to carry the trust into execution.

Before the court can decide the intricate questions which grow out of this will, we think it necessary to possess some information which the record does not give. The domicile of General Kosciuszko is not stated; he was a native of Poland, and died in Switzerland; whether he was domiciled in Switzerland or not, does not appear. The law of domicile, with respect to wills, in cases of testacy, or regulating distribution, in cases of intestacy, may be material. It also appears, that the testator made a will in Europe. From the manner in which the subject is mentioned, we presume, that this makes no disposition of his property in the United States; but since we are informed of its existence, it would be desirable to see it.

We do not think the case properly prepared for decision; and therefore, direct that the decree be reversed and the cause remanded, with liberty to the plaintiff to amend his bill.

Decree reversed.

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Criminal law.—Counterfeiting.

Indictment in the circuit court of North Carolina, for the forgery of, and an attempt to pass, &c., a certain paper writing, in imitation of, and purporting to be, a bill or note issued by the president, directors and company of the Bank of the United States, founded on the 18th section of the act of 1816, establishing the Bank of the United States. The note was signed with the name of John Huske, who had not been, at any time, president of the Bank of the United States, but who, at the time of the date of the counterfeit, was the president of the office of discount at Fayetteville; and was countersigned by the name of John W. Sandford, who, at no time, was cashier of the mother bank, but was, at the said date, cashier of the said office of discount and deposit: *Held*, that this was an offence within the provisions of the law.

It is clear, that the policy of the act extends to the case; the object is to guard the public from false and counterfeit paper, purporting on its face to be issued by the bank; it could not be presumed, that persons in general could be cognisant of the fact, who, at particular periods, were the president and cashier of the bank; they were officers liable to be removed at the pleasure of the directors, and the times of their appointment or removal, or even their names, could not ordinarily be within the knowledge of the body of the citizens; the public mischief would be equally great, whether the names were those of the genuine officers, or of fictitious or unauthorized persons, and ordinary diligence would not protect them against imposition.

CERTIFICATE of Division from the Circuit Court of North Carolina. The defendant, Abel Turner, was indicted at May term 1832, in the circuit court, under the 18th section of the act incorporating the Bank of the United States, passed in April 1816.

The indictment contained four counts. The first count charged the defendant with having forged and counterfeited a bill or note issued by the orders of the president, directors and company of the Bank of the United States, the tenor of which said false, forged and counterfeited paper writing was as follows, to wit: "The president, directors and company of the Bank of the United States promise to pay twenty dollars, on demand, at their office of discount and *deposit, in Fayetteville, to the order of D. Anderson, cashier thereof—Philadelphia, the 4th of July 1827—John W. Sandford, cashier, John Huske, president"—with intent to defraud the president, directors and company of the Bank of the