

Case No. 4,726.

FENDALL ET AL. V. TOCHMAN.

[1 Hay w. & H. 259.]¹

Circuit Court, District Of Columbia.

May 17, 1847.

CIRCUIT COURT, DISTRICT OF COLUMBIA—DETERMINING AUTHORITY OF RIVAL COUNSEL—ISSUE SENT UP BY ORPHANS' COURT.

It is not a proper issue to be sent up by the orphans' court to the circuit court for a determination as to which of the contending parties or counsel has a right to manage the case in said orphans' court. Under the act of Maryland of 1799, c. 101, § 20, and sections 15 and 17, the court has no jurisdiction in the case.

[This was an action at law by Philip R. Fendall and Joseph H. Bradley against Gaspard Tochman.]

On the 25th of February, 1847, Gaspard Tochman, a counselor of this court, presented to the court here the following record and order from the orphans' court for the county of Washington, and prayed that the same may be filed and entered in the minutes of the court, which is done accordingly in the words following, to wit: "Said Gaspard Tochman, an attorney and counselor at law duly admitted to practice in the circuit court of this district, as well as in the supreme court of the United States, on behalf of the heirs of the late General Thaddeus Kosciusko, on the 29th day of January, 1847, having filed here in this court a certain petition for an order of distribution to one George Bomford, administrator de bonis non of said Kosciusko, Philip R. Fendall and Joseph H. Bradley, also attorneys and counselors, duly admitted to practice in the courts aforesaid, appeared in this court and represented that they alone are authorized to manage the claims of said heirs on said Bomford, administrator as aforesaid, and denied the right and power of said Tochman to interfere in any manner in the prosecution of said claims, and subsequently, to wit: on the 12th day of February, 1847, filed here in this court their petition of that date claiming for themselves the power aforesaid, and denying the same to said Tochman, to which petition having on the 16th of said month filed his answer and thereupon moved in open court for an issue in this cause to be made up and sent to the circuit court of the District of Columbia sitting as a court of common law, to be there tried according to the statute in such case made and provided. This court now here orders and directs the following issue to be framed and made up and sent and certified the same to said court, to be there tried according to the statute in such case made and provided, viz: In which of the attorneys and counselors at law exists the true power and authority to manage and prosecute said claims of said heirs of General Thaddeus Kosciusko? Nathn. Pope Causin, Judge." And thereupon the said Gaspard Tochman moved the court that a jury may be impanelled and sworn to try the issue aforesaid. But the court having considered the said motion and the record and order aforesaid, and the Maryland act of 1799, c. 101, § 20, and section 15

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and section 17, refused to grant the said motion and to order a jury to be impanelled and sworn to try the said issue, being of opinion that the said issue is not such an issue as is provided for in said act, and that the court has no jurisdiction in the case; and therefore it is, on this 17th day of May, 1847, ordered by this court that the case be remanded to the orphans' court with a certificate of the opinion of this court.

¹ [Reported by Hon. William Cranch, Chief Judge.]