

defense on the merits, invited a judicial determination of the controversy.

The motion is granted. . . .”

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3) Supreme Court of Nebraska

In re Buder's Estate. Wellensiek v. Britza. Jan. 24, 1928 (217 N. W. 618)

Konsularbefugnisse — Vertragsauslegung.

1. *Nur die im Empfangsstaat entstandenen Urkunden dürfen vom Konsul beglaubigt werden.*

2. *Wenn alle beteiligten Personen in Deutschland wohnende Deutsche sind oder waren, sind für Fragen des materiellen Erbrechts nur die deutschen Gerichte zuständig. Die Zuständigkeit der amerikanischen Gerichte erstreckt sich nur auf die Verwaltung des Nachlasses, Befriedigung der amerikanischen Gläubiger usw. Der dann verbleibende Rest des Nachlasses ist dem Nachlaßverwalter in Deutschland oder dem in einem deutschen Gerichtsverfahren festgestellten Berechtigten auszuhändigen.*

3. *Bei der Auslegung einzelner Sätze eines Staatsvertrages ist stets der ganze Abschnitt zu berücksichtigen, in dem der auszulegende Satz enthalten ist.*

Tatbestand. In Deutschland wohnende deutsche Hinterbliebene einer in Deutschland wohnhaft gewesenen deutschen Erblasserin klagen auf Verteilung des in den Händen des Alien Property Custodian der Vereinigten Staaten befindlichen Nachlasses. Andere, ebenfalls deutsche in Deutschland wohnhafte Hinterbliebene machen Gegenansprüche geltend. Dem Gericht werden aus Deutschland stammende Urkunden vorgelegt, die von den deutschen Konsuln in Washington und Chicago beglaubigt worden sind.

Aus den Gründen "...We think the county court of Clay county had jurisdiction to appoint the administrator in this proceeding for two reasons: (1) The fund in the hands of the Custodian was ubiquitous, i. e. it had its location in any state or county within the United States, and therefore was, constructively at least, in Clay county, which was a quite appropriate place to initiate these proceedings as the county from which the fund was taken in the first place by the Custodian. United States v. Tyndale (C. C. A.) 116 F. 820...

We think, however, that in view of the facts that decedent was domiciled and died in Germany and her heirs domiciled there, none of them ever having resided in the United States, and the personal property is to be distributed according to the laws of Germany, the authority of the county court should be exercised only for the purpose of collecting the assets of the estate, adjudicating any claims of creditors in this state against the estate, providing for their payment, and after payment

of costs of administration turn over any balance to the proper representative of the estate in Germany or to the persons entitled thereto as determined by proper proceedings to that end had in Germany. As to all other matters the administration here should be treated as purely ancillary, and questions of heirship and distribution left for the determination of the country of the domicile. Were the contest between citizens or residents of this country, or a resident of this country and a resident of Germany, a different situation would be presented.

In view of further proceedings in the county court, we deem it proper to consider another matter. The copies of the judgments of the German courts are not certified and authenticated as required by the statutes of this state, and the attempt to justify their reception in evidence under the certificate of the German consuls in Washington and Chicago must fail because the Treaty of 1871 between Germany and the United States (17 Stat. 921) gave no authority to consuls to authenticate judicial records (at common law or law of nations, see *Catlett v. Pacific Ins. Co.*, 5 Fed. Cas. No. 2, 517, p. 291) . . . The only words which might be claimed as conferring such authority are 'other instruments', but under the familiar rule of construction, *ejusdem generis*, those words are to be construed as referring to the same class of instruments mentioned in the earlier part of the paragraph, namely, unilateral acts, wills, bequests, and contracts specified. Moreover, under a proper construction of the treaty, the certification authorized had reference only to contracts and acts made in the country where they are certified; that is, the American consul in Germany certifies to the authenticity of contracts and acts made in Germany, and the German consul certifies to those made in America. It seems to us it was not the intention to authorize the German consul in this country to certify and authenticate contracts and acts made and done in Germany about which he could have no personal or official knowledge. . . . Whether or not the Consular Treaty of 1871, under consideration, was abrogated or suspended by the state of war with Germany, we need not decide, though it may be remarked in passing that it was not revived by positive enactment by the Treaty of Peace with Germany in 1921 (42 Stat. 1939); but a treaty covering the same subject, but in more restrictive terms, was ratified October 14, 1925.

It results from these considerations that the judgments of the district and county courts are reversed and the proceedings remanded to the district court, with instructions to remand the same to the county court for further proceedings in conformity with this opinion."

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