INDEX.

	PAGE
Application for Letters of General Administration	1
Bond for General Administration	2
Qualification for General Administration	7
Letters of General Administration	8
Application for Administration *ad Prosequendum*	9
Letters of Administration *ad Prosequendum*	11
Petition for Citation to Account	12
Order Directing Administratrix to Account	14
Petition to Adjudge Administratrix in Contempt	15
Order to Show Cause Why Administratrix Should Not Be Committed for Contempt	17
Refunding Bond and Release	18
Notice of Intention to Account	20
Affidavit of Publication	20
Final Accounting	21
Decree on Final Accounting	23
Petition for Order to Pay Money Over	24
Rule to Show Cause	26
Order Opening Decree Allowing Final Accounting	27
Objections to Account	27
Notice of Appeal to Prerogative Court	28
Affidavit of Thomas C. Mitchell	29
Order Dismissing Exceptions	30
Notice of Application to Vacate Decree	30
Petition to Vacate Decree	31
Affidavit of Edward P. Corsini on Petition	33
Order Opening Dismissal of Petition and Exceptions to Account	35
Case	36

New Jersey State Library

Witnesses for Petitioner.

PAGE

Riccardo Riccardi,
Direct 37
Cross 42
Re-direct 54
Re-cross 55

Nicholas Genovese,
Direct 56
Cross 57
Re-direct 60

Salvador Riccardi,
Direct 61
Cross 65
Re-direct 70

Frank J. Rinaldi,
Direct 71

Witnesses for Administratrix.

John Capraro,
Direct 73
Cross 76

Salvador Diana,
Direct 79

Mary Capraro,
Direct 80

Isabelle Capraro,
Direct 81
Cross 83
Re-direct 94

PAGE

Maria Capraro,
Direct 95
Cross 97

REBUTTAL.

Nicholas Genovese,
Direct 101

EXHIBITS.

	Admitted at Page	*Printed at Page*
P-1.—Power of Attorney	101	112
P-2.—Certificate of Marriage	101	115
Decree on Account		119
Decree Ordering Distribution		120
Notice of Appeal to Prerogative Court		122
Petition of Appeal, Prerogative Court		123
Answer to Petition of Appeal, Prerogative Court		124

ADDITIONAL TESTIMONY IN PREROGATIVE COURT.

Answers to Interrogatories Propounded to Rosa Lanza Capraro 125
Opinion 138
Final Decree 145
Notice of Appeal 148
Petition of Appeal 150

Application for Letters of General Administration.

(Filed May 5, 1927)

To the Surrogate of the County of Middlesex:

Isabella Capraro of the Borough of South Plainfield in the County of Middlesex and the State of New Jersey, applies for administration of the Estate of Joseph Capraro late of the County of Middlesex, who lately died, intestate, on the twenty-sixth day of April, A. D. 1927, and shows: That the next of kin and heirs at law of the said deceased, together with their respective residences or Post Office addresses, so far as the same are known or this applicant has been able to ascertain, are as follows:

Isabella Capraro (applicant) Widow of deceased, R. F. D.—Box 108-0—New Brunswick, N. J.

John Capraro (Minor 18 yrs.) Son of deceased, R. F. D.—Box 108-0—New Brunswick, N. J.

Mary Capraro (Minor of 16) Daughter of deceased R. F. D.—Box 108-0—New Brunswick, N. J.

This applicant further shows that administration is applied for in settlement of a claim of Five Thousand Dollars ($5000.00) against the Lehigh Valley Railroad Company.

And this applicant further shows that the Personal Estate for and in respect of which this administration is applied for does not exceed the sum of Five Thousand ($5000.00) Dollars to the best of her knowledge and belief.

Dated, New Brunswick, N. J.,
May 5, A. D. 1927.

her
ISABELLA (X) CAPRARO
mark
E. W.

Bond for General Administration.

STATE OF NEW JERSEY, }
MIDDLESEX COUNTY, } SS.:

her
ISABELLA (X) CAPRARO above named being
mark
E. W.

above named being duly sworn on her oath says, that the statements made in the foregoing application for administration are true.

her
ISABELLA (X) CAPRARO
mark
E. W.

Sworn and subscribed before me this }
5th day of May A. D. 1927. }

ELLA WHITTAKER,
Special Deputy—Surrogate.

Bond for General Administration.

(Filed May 5, 1927.)

KNOW ALL MEN BY THESE PRESENTS, THAT WE, ISABELLA CAPRARO as principal, and the AMERICAN SURETY COMPANY OF NEW YORK, having an office and principal place of business at No. 100 Broadway, in the City of New York, as Surety, are held and firmly bound unto the Ordinary of the State of New Jersey, in the sum of TEN THOUSAND ($10,000.00) Dollars, lawful money of said State, to be paid to the said the Ordinary, his Succes-

sors, or Assigns: To which payment, well and truly to be made, we bind ourselves, our Heirs, Executors, Administrators and Successors, jointly and severally, firmly by these Presents—SEALED with our SEALS, and dated the 5th day of May Anno Domini, one thousand nine hundred and twenty-seven.

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Isabella Capraro Administratrix of all and singular the Goods, Chattels and Credits of Joseph Capraro deceased, do make or cause to be made, a true and perfect inventory of all and singular the Goods, Chattels and Credits of the said deceased, which have or shall come into the hands, possession or knowledge of the said Administratrix or into the hands or possession of any other person or persons for the said administratrix and the same so made do exhibit, or cause to be exhibited into the Registry of the Prerogative Court in the Secretary's Office of this State, or into the Surrogate's Office of the County of Middlesex, at or before the expiration of three calendar months, from the date of the above written Obligation, and the same Goods, Chattels and Credits, and all other Goods, Chattels and Credits of the said deceased at the time of his death, which at any time after shall come into the hands or possession of the said administratrix or into the hands or possession of any other person or persons for the said administratrix do well and truly administer according to law; and further do make, or cause to be made, a just and true account of her administration, within twelve calendar months from the date of the above written Obligation; and all the rest and residue of the said Goods, Chattels and Credits, which shall be found remaining upon the account

of the said Administration, the same being first examined and allowed by the Judges of the Orphans' Court of the County or other competent authority, shall deliver and pay unto such person or persons respectively, as is, are or shall by law be entitled to receive the same. And if it shall hereafter appear that any last Will and Testament was made by the said deceased, and the Executor or Executors therein named, or any other person or persons, do exhibit the same in the said Prerogative Court or the Surrogate's Office of the County of Middlesex making request to have it allowed and approved; if the said administratrix being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) to the said Court, then the above Obligation to be void and of none effect, or else to remain in full force and virtue.

Her
ISABELLA X CAPRARO
Mark
EW

AMERICAN SURETY COMPANY OF NEW YORK,

H. A. G.
HENRY A. GIEGOLD
Resident Vice President.

H. K.
H. KELLER
Resident Assistant Secretary.

Sealed and delivered in the presence of

ELLA WHITTAKER

Bond for General Administration.

State of New Jersey, }
County of Hudson } ss.:
City of Jersey City }

On this 5th day of May 1927 before me, the subscriber, a Notary Public of New Jersey, duly commissioned and sworn, personally came H. KELLER who, being by me duly sworn, on this oath, saith: that he is one of the Resident Assistant Secretaries of the AMERICAN SURETY COMPANY OF NEW YORK, of the State of New York; that he resides in Union City, N. J.; that he knows HENRY A. GIEGOLD Resident Vice President of the AMERICAN SURETY COMPANY OF NEW YORK; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by the said Resident Vice-President and the said instrument signed by the said Resident Vice-President as Resident Vice-President of said Company, attested by deponent as Resident Assistant Secretary by order of the Board of Trustees of said Company, in deponent's presence, as the voluntary act and deed of said Company; that said Company has duly complied with all the requirements of Chapter 134 of the Laws of the State of New Jersey of the year 1902, and the amendments thereof and supplements thereto; that the good available assets of the Company exceed its liabilities as such liabilities are ascertained in the manner provided in said Chapter; that the AMERICAN SURETY COMPANY OF NEW YORK is duly incorporated under the laws of the State of New York, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said Chapter; that it has on deposit with the Superintend-

ent of Insurance of the State of New York, good securities worth at par and at market value at least Two Hundred Thousand Dollars ($200,000) held as security for all holders of its obligations, and has a fully paid up, safely invested, and unimpaired capital of Five Million Dollars; that said Company has appointed the Commissioner of Banking and Insurance as its Attorney in the State of New Jersey, upon whom process of law can be served, and has filed in the office of the Commissioner of Banking and Insurance a written instrument duly signed and sealed, certifying such appointment, and that the following is a true copy of a Resolution of the Board of Trustees of the said AMERICAN SURETY COMPANY OF NEW YORK, passed on the 18th day of January, 1927, at its regular Quarterly Meeting, to wit:

"RESOLVED, That the Resident Vice-Presidents be and they hereby are, and each of them is hereby authorized and empowered to execute and to deliver and attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

H. KELLER,
Resident Assistant Secretary.

Sworn and subscribed in the City of New Jersey in the County Hudson and State of New Jersey, this 5th day of May, A. D., 1927, before me, a Notary Public for the State of New Jersey, duly commissioned and sworn.

D. BUNCE,
Notary Public of N. J.

Qualification for General Administration.

(Filed May 5, 1927.)

Middlesex County, ss:

Isabella Capraro the administratrix within named being duly sworn according to law, did depose and say that Joseph Capraro the within named, died without a will as far as she knows and as far as she verily believes and that she will well and truly administer all and singular the goods and chattels, rights and credits which were of the said Joseph Capraro deceased, at the time of his death that have or shall come to her possession or knowledge or to the possession of any other person or persons for her use, and that she will make and exhibit into the Surrogate's office of the County of Middlesex a true and perfect account of her administration as lawfully required.

her
Isabella (X) Caprara.
mark

E. W.

Sworn and subscribed to before me at New Brunswick on the fifth day of May, Anno Domini, 1927.

Ella Whittaker,
Special Deputy-Surrogate.

Letters of General Administration.

(Filed May 5, 1927)

STATE OF NEW JERSEY }
MIDDLESEX COUNTY } SS.:

I, CHARLES FOREMAN, Surrogate of the said County of Middlesex, do certify that on the fifth day of May, 1927, the administration of the goods and chattels, rights and credits which were of Joseph Capraro, late of the County of Middlesex, who died intestate was granted by me to Isabella Capraro, of Borough of South Plainfield, Middlesex County, New Jersey, who is duly authorized to administer the same agreeably to law.

WITNESS my hand and seal of office on the fifth day of May in the year of our Lord one thousand nine hundred and twenty-seven.

CHARLES FOREMAN,
Surrogate.

Application for Administration *Ad Prosequendum.*

(Filed May 20, 1927)

To the Surrogate of Middlesex County:

Isabella Capraro of the Borough of South Plainfield in the County of Middlesex and the State of New Jersey applies for administration *ad prosequendum* of the Estate of Joseph Capraro late of the County of Middlesex, who lately died, intestate, on the twenty-sixth day of April, A. D. 1927, and shows: That the next of kin and heirs at law of the said deceased, together with their respective residences or Post Office addresses, so far as the same are known or this applicant has been able to ascertain, are as follows: R. F. D. Box 108-0, N. J. Isabella Capraro (Applicant), Widow of Deceased, New Brunswick. John Capraro (Minor, 18), Son of Deceased, New Brunswick. Mary Capraro (Minor, 16), Daughter of Deceased, New Brunswick.

This applicant further shows that the death of the said Joseph Capraro was caused by the wrongful act, neglect or default of the Lehigh Valley Railroad.

This applicant therefore prays that administration *ad prosequendum* may be issued to her in order that she may prosecute the above mentioned claim for damages arising by reason of the death of Joseph Capraro against the said Lehigh Valley Railroad.

her
ISABELLA (X) CAPRARO
mark

Dated, New Brunswick, N. J.,
May 20, A. D. 1927

Application for Administration Ad Prosequendum.

STATE OF NEW JERSEY }
COUNTY OF MIDDLESEX } ss.

Isabella Capraro above named being duly sworn upon her oath says, that the statements made in the foregoing application for administration *ad prosequendum* are true.

her
ISABELLA (X) CAPRARO
mark

Sworn and subscribed before me, this }
twentieth day of May, A. D. 1927. }

ELLA WHITTAKER,
Special Deputy Surrogate.

Letters of Administration *Ad Prosequendum.*

(Filed May 20, 1927)

STATE OF NEW JERSEY

MIDDLESEX COUNTY SURROGATE'S COURT

I, CHARLES FORMAN, Surrogate of the County of Middlesex, do certify that on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-seven, Administration *Ad Prosequendum* was granted by me to Isabella Capraro, of Borough of South Plainfield, Middlesex County, New Jersey, for the purpose of enabling her to prosecute an alleged claim in the next of kin of Joseph Capraro against Lehigh Valley Railroad who is alleged caused the death of the said Joseph Capraro by its wrongful act, neglect or default.

Witness my hand and Seal of office, the twentieth day of May, in the year
(L. S.) of our Lord one thousand nine hundred and twenty-seven (1927).

CHARLES FORMAN,
Surrogate.

Petition for Citation to Account.

MIDDLESEX COUNTY SURROGATE'S COURT

In the Matter *of* The Estate of Joseph Capraro, Deceased.	On Petition for Citation to Account. Petition.

To:

Charles Forman,
Surrogate of the County of Middlesex.

The petition of Rosa Lansa Capraro, by Ricardi Riccardo, her attorney in fact, of the City of New York, County of New York and State of New York, respectfully shows that:

1. The said Rosa Lansa Capraro was lawfully married to Joseph Capraro, late of the County of Middlesex, deceased, on the sixth day of February, 1902.

2. That the above marriage continued in full force and effect until the death of the said Joseph Capraro on April 26, 1927, intestate.

3. That one child was born of the marriage, but said child died in 1907, and that your petitioner is the lawful widow and sole heir and next of kin of the said Joseph Capraro, deceased.

4. That on the fifth day of May, 1927, the Surrogate of the County of Middlesex duly appointed one Isabella Capraro, who purported to be the widow of the said Joseph Capraro, deceased, administratix of the estate of the said Joseph Capraro, deceased.

5. That the said Isabella Capraro, whose true name is Isabelle Propato, was never lawfully married to the said Joseph Capraro, deceased, and is not the lawful widow of the said Joseph Capraro, deceased.

6. That the said Isabella Capraro has failed and neglected to file her account as administratrix of the estate of the said Joseph Capraro, deceased, although more than one year has elapsed from the date of her appointment.

Your petitioner therefore pays that a citation may issue requiring the said Isabella Capraro to account at the ensuing term of the Orphans' Court.

RICCARDO RICCARDI,
Petitioner.

Dated October , 1930.

STATE OF NEW JERSEY }
COUNTY OF UNION } ss.:

RICCARDI RICCARDO, being duly sworn according to law upon his oath deposes and says:

That he is the attorney in fact of Rosa Lansa Capraro the petitioner in the foregoing petition named, and that the matters and things therein contained are true to the best of his knowledge and belief.

RICCARDO RICCARDI.

Sworn and subscribed to before me }
this 30th day of October, 1930. }

EDNA R. ESALDO
Notary Public of N. J.

(L. S.)

Order Directing Administratrix to Account.

(Filed May 1, 1931)

MIDDLESEX COUNTY ORPHANS' COURT

In the Matter *of* The Estate of Joseph Capraro, Deceased.	On Petition for Citation to Account. Order Directing Administratrix to Account.

Rosa Lanza Capraro, widow of Joseph Capraro, late of the County of Middlesex, deceased, having filed her petition by Riccardo Ricciardi, her attorney in fact, alleging that Isabella Capraro, the administratrix of the estate of Joseph Capraro, deceased, has failed to state and settle her account in the office of the Surrogate of the County of Middlesex within the time limited by law therefor, and the rule to show cause made herein having been duly served, and the matter coming on to be heard, and no reason appearing to the contrary.

It is on this 20th day of April, 1931,

Ordered, adjudged and decreed that Isabella Capraro, administratrix of the estate of Joseph Capraro, deceased, late of the County of Middlesex, state and settle her account as such administratrix in the office of the Surrogate of the County of Middlesex, within ten days from the date of service of this order.

And it is further ordered that a true but uncertified copy of this order be served upon the said Isabella Capraro, within three days from the date hereof, personally or by leaving the same

at her residence or usual place of abode with a person above the age of fourteen years.

ADRIAN LYON,
Judge.

Served April 21, 1931.

Petition to Adjudge Administratrix in Contempt.

(Filed May 8, 1931)

To the Orphans' Court of the County of Middlesex:

The petition of Rosa Lanza Capraro, by Riccardi Riccardo, her attorney in fact, of the City of New York, County of New York, and State of New York, the widow of Joseph Capraro, late of the County of Middlesex, deceased, respectfully shows that:

1. This court by its order made on the 20th day of April, 1931, ordered and directed that Isabella Capraro, administratrix of the Estate of Joseph Capraro, deceased, state and settle her account as such administratrix in the Office of the Surrogate of the County of Middlesex within ten days from the date of service of the said order upon her.

2. The aforesaid order was duly served upon the said Isabella Capraro on the 21st day of April, 1931, by delivering to her personally a true but uncertified copy thereof, as directed in said order; but the said Isabella Capraro has made default and failed to state and settle her account as such administratrix in the office of the Surro-

gate of the County of Middlesex, as directed in the said order, and has disobeyed the order, and has disobeyed the order of this court.

Your petitioner therefore prays that the said Isabella Capraro be committed for contempt of this court by reason of her disobedience to the aforesaid order of this court.

Dated May 8, 1931.

RICCARDO RICCARDI.

STATE OF NEW JERSEY, }
COUNTY OF } SS.:

RICCARDI RICCARDO, being duly sworn upon his oath deposes and says that he is the attorney in fact of Rosa Lanza Capraro, the petitioner in the foregoing petition named, and that the matters and things therein contained are true to the best of his knowledge and belief.

RICCARDO RICCARDI.

Sworn and subscribed to before me this 7 day of May, 1931.

ENRICO VIGGIANI
Notary Public, N. Y. Co. No. 57
Reg. No. 3-V-80
Certificate filed in Bronx Co. No. 3
Reg. No. 33
Commission expires March 30th, 1933

(L. S.)

Order to Show Cause Why Administratrix Should Not Be Committed for Contempt.

(Filed May 8, 1931)

On reading and filing the petition of Rosa Lanza Capraro, by Riccardi Riccardo, her attorney in fact, setting forth that Isabella Capraro, administratrix of the Estate of Joseph Capraro, failed and neglected to state and settle her account as administratrix in the office of the Surrogate of the County of Middlesex as directed by an order of this court made on the 20th day of April, 1931;

It is on this 8th day of May, 1931, Ordered, that the said Isabella Capraro show cause before this court on the 22nd day of May, 1931, at 10:30 o'clock in the forenoon, Daylight Saving Time, why she should not be adjudged in contempt of this court because of her refusal to obey the order of this court made on the 20th day of April, 1931, as aforesaid.

And it is further ordered that a true but uncertified copy of this order and of the petition upon which the same is based be served upon the said Isabella Capraro, personally within 3 days from the date of this order.

ADRIAN LYON,
Judge.

Served May 9, 1931.

Refunding Bond and Release.

(Filed June 23, 1931)

Know All Men by These Presents, That I, John Capraro, of the Borough of South Plainfield, in the County of Middlesex and State of New Jersey, am held and firmly bound unto Isabella Capraro, administratrix of the estate of Joseph Capraro, deceased, in the sum of Two Thousand Six Hundred and Fifty-two Dollars, lawful money of the United States to be paid to Isabella Capraro, her successors or assigns, to which payment well and truly to be made I bind myself, my heirs, executors and administrators firmly by these presents.

Sealed with my seal and dated the 1st day of June, 1931.

Whereas, the above bounden John Capraro has received from the above named Isabella Capraro, administratrix of the estate of Joseph Capraro, deceased, One Thousand Three Hundred Twenty-six dollars, being his distributive share of the personal estate of the said Joseph Capraro, deceased.

Now the condition of this obligation is such that if any debt or debts truly owing by Joseph Capraro, deceased, shall be hereafter sued for and recovered, or otherwise duly made to appear, which there shall be no other assets to pay, that then and in every such case, if John Capraro, shall refund and pay back to Isabella Capraro, administratrix of the estate as aforesaid, his ratable part of such debt or debts, and of the cost of suit and charges, by reason of such administratrix to satisfy such debt or debts, then the above obli-

gation to be void, or else to remain in full force and virtue.

JOHN CAPRARO L. S.

Signed and Sealed in
the presence of

THOMAS C. MITCHELL

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX } SS.:

Be it Remembered that on this 1st day of June, 1931, before me, the subscriber, an Attorney at Law of New Jersey, personally appeared John Capraro, who, I am satisfied is the person in the within instrument of writing named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

THOMAS C. MITCHELL,
Attorney at Law of N. J.

Filed June 23, 1931.

CHARLES FORMAN,
Surrogate.

Notice of Intention to Account.

All persons concerned may take notice, that the Subscribed, administratrix, etc., of Joseph Capraro, deceased, intends to exhibit her final account to the Orphans' Court for the County of Middlesex, on Friday, the eleventh day of September, 1931, at 10 A. M., in the Term of April, 1931, for settlement and allowance; the same being first audited and stated by the Surrogate.

Dated, August 7, 1931.

ISABELLA CAPRARO,
Administratrix.

Affidavit of Publication.

State of New Jersey, } ss.:
County of Middlesex, }

HELEN E. ZINK of full age, being duly sworn on her oath, saith that she is bookkeeper of the "Daily Home News," a newspaper printed and published in the City of New Brunswick, Middlesex County and State of New Jersey, and that a notice, of which the annexed is a true copy, was published in said paper for the term of Five times once in each week successively, viz August 8-15-22-29 September 5 commencing on the 8 day of August 1931.

HELEN E. ZINK.

Sworn and subscribed before me this 9 day of September, A. D., one thousand nine hundred and 31—

RAYMOND C. DEHART
Notary Public of New Jersey
(L. S.)

Notary Public of N. J.
My Commission expires June 3, 1932.

Final Accounting.

(Filed Sept. 11, 1931)

The account of Isabella Capraro, Administratrix of the Estate of Joseph Capraro, deceased.

FIRST

This accountant charges herself as follows:

To payment by Lehigh Valley Railroad Company as damages resulting from death of deceased:	$5,000.00

SECOND

Paid:

P. Casey and Son	435.00
Holy Redeemer Cemetery	14.00
Funeral Church Service	15.00
Grave Plot—Holy Redeemer Cemetery	30.00
Joseph Le Banc	200.00
American Surety Company	61.84
	$755.84

RECAPITULATION

Accountant charges herself with	$5,000.00
Accountant prays allowance for	755.84
Balance in hands of Accountant, subject to the payments of commissions, counsel fee and Surrogate's fees	$4,244.16

From the foregoing balance the sum of $1626.00 has been paid John Capraro, son of deceased, and

the sum of $870.16 has been paid to Isabella Capraro, widow of deceased.

Dated: June 1st, 1931.

her
ISABELLA x CAPRARO
mark
Administratrix of the Estate
of Joseph Capraro, deceased.

Witness:

THOMAS C. MITCHELL

State of New Jersey }
County of Middlesex } ss.:

ISABELLA CAPRARO, of full age, being duly sworn according to law on her oath, deposes and says that:

1. She is the administratrix named in the foregoing account.

2. The account is in all things just and true both as to charges and discharges thereof according to the best of her knowledge and belief.

her
ISABELLA x CAPRARO L. S.
mark

Witness:

THOMAS C. MITCHELL

Sworn and subscribed to before me this }
1st day of June, 1931. }

THOMAS C. MITCHELL
Attorney at Law of N. J.

Filed June 4, 1931.

CHARLES FORMAN,
Surrogate.

Decree on Final Accounting.

(Filed Sept. 11, 1931)

The Surrogate having audited and stated the final account of Isabella Caprara, administratrix of the Estate of Joseph Caprara, deceased, and placed the same on the files of his office twenty days previous to the 11th day of September A. D. 1931, and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of her intention to settle the account on said 11th day of September, A. D. 1931, in this Court was given by said accountant according to law; and the Surrogate having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars, and no exceptions being made thereto,

It is, on this eleventh day of September, A. D. Nineteen hundred and thirty-one, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance remaining in the hands of said accountant amounting to the sum of $1748.00.

It is further ordered that from the aforesaid balance the said accountant be allowed the sum of $230.00 as and for her commissions, and that a counsel fee of $75.00 be allowed to Thomas C. Mitchell, proctor for said accountant and that the sum of $43.50 be allowed as Surrogate's fees on said accounting, leaving a balance for distribution of $1399.50.

ADRIAN LYON,
Judge.

Petition for Order to Pay Money Over.

(Filed Sept. 30, 1931)

To the Orphans' Court of the County of Middlesex:

The petition of Rosa Lanza Capraro, who resides in Terranova Di Pollino, Italy, by her attorney in fact, Riccardo Riccardi, of the City of New York, County of New York and State of New York, respectfully shows that:

1. She is the widow of Joseph Capraro, also known as Giuseppi Capraro, late of South Plainfield, New Jersey, deceased.

2. The said petitioner, Rosa Lanza Capraro, was married to the said Joseph Capraro on February 6, 1902, and the said Rosa Lanza Capraro and Joseph Capraro were never divorced in any court either in Italy or in the United States of America or in any other court of any other country. The said Joseph Capraro died on April 26, 1927, leaving as his only heir and next of kin this petitioner, who was at the time of his death and still is the lawful widow of Joseph Capraro.

3. Letters of administration were issued by the Surrogate of the County of Middlesex on May 20, 1927, to one Isabella Capraro whose real name is Isabella Propapo.

4. In the application for administratrix, the said Isabella Propapo stated that she was the widow of Joseph Capraro and that he left two children, John Capraro and Mary Capraro. Said statement by Isabella Propapo is false and untrue, since she was never the lawful wife of Joseph Capraro, and the two children mentioned are the natural children of Isabella Propapo but not legal heirs of Joseph Capraro.

5. The personal property in the estate consisted of the sum of $5,000.00 and the said Isabella Propapo has appropriated to her own use one-third of said $5,000.00, and the said Isabella Propapo has disposed of another third by giving the same to one John Capraro, a natural son of Isabella Propapo, whose real name is John Propapo. The remaining one-third is supposedly still in the account of the estate of Joseph Capraro and on deposit in the Plainfield Trust Company.

Your petitioner therefore prays that this court may direct and decree that the said sum of $5,000.00 and all other property left by Joseph Capraro be paid over to this petitioner, the lawful heir of said Joseph Capraro, and that the said Isabella Propapo be directed to pay over the said sum of money to this petitioner.

Dated: Sept. 30th, 1931.

RICCARDO RICCARDI.

State of New Jersey }
County of Union } ss.:

RICCARDO RICCARDI, being duly sworn according to law deposes and says that he is the attorney in fact of Rosa Lanza Capraro, aforementioned petitioner; that he is fully cognizant of all the facts involved in the above case and that he has personal knowledge of the facts alleged in the petition and that the matters and things contained therein are true to the best of his knowledge and belief.

RICCARDO RICCARDI.

Sworn and subscribed to before }
me this 3 day of Oct., 1931. }

EDNA R. ESALDO
Notary Public of N. J.

(L. S.)

Rule to Show Cause.

(Filed November 20, 1931.)

Rosa Lanza Capraro, the next of kin of Joseph Capraro, deceased, by her attorney in fact, Riccardo Riccardi, having presented her petition alleging that she is the widow of Joseph Capraro, deceased, and is entitled to the estate of the said Joseph Capraro, deceased, and that Isabella Propapo, also known as Isabella Capraro, who was appointed administratrix of the said estate by this court, has wasted and misapplied the funds of the said estate committed to her custody;

It is thereupon on this 20th day of November, 1931, Ordered that the said Isabella Propapo, also known as Isabella Capraro, show cause before this Court on the 4th day of December, 1931, at 10:00 a. m. at the Court house in the City of New Brunswick, Why all the property in the estate of the said Joseph Capraro, deceased, should not be turned over to the said Rosa Lanza Capraro;

It is further ordered that a true but uncertified copy of this Rule be served upon Isabella Propapo, also known as Isabella Capraro, within 5 days from the date hereof.

Adrian Lyon,
Judge.

Filed December 4, 1931.

Charles Forman,
Surrogate.

Order Opening Decree Allowing Final Accounting.

(Filed January 6, 1932.)

The matter having been opened to the Court by Edward P. Corsini, Proctor for Rosa Lanza Capraro, the petitioner, in the presence of Thomas C. Mitchell, Proctor for Isabella Propapo, also known as Isabella Capraro, administratrix of the estate of Joseph Capraro, and it appearing that the Decree allowing the final account in the above entitled estate was improvidently obtained;

It is ordered on this 31st day of December, 1931, that the said Decree allowing the final account should be and the same is hereby opened, set aside and vacated, and that Rosa Lanza Capraro, the petitioner, have twenty days in which to file exceptions to said final account and that hearing thereon be brought on in due course.

Adrian Lyon,
Judge.

Objections to Account.

(Filed January 6, 1932.)

Rosa Lanza Capraro, widow of Joseph Capraro, late of the County of Middlesex, deceased, through her attorney in fact, Riccardi Riccardo, hereby excepts to the account of Isabella Capraro, administratrix of the Estate of Joseph Capraro, deceased, for the following reasons:

The said accountant has not charged herself with the income from certain real estate owned by the said intestate situate in the Borough of South Plainfield, and the income from said property constitutes assets of the estate of the deceased.

The said accountant has paid the sum of $1,626.00 to one John Capraro, also known as John Propati, purported to be the son of Joseph Capraro, but said sum should not have been paid as the said John Capraro, also known as John Propati, is not the legal son of Joseph Capraro.

The said accountant has also paid to herself the sum of $870.16 as the purported widow of Joseph Capraro, but the said sum should not have been paid as the said Isabella Capraro is not the widow of Joseph Capraro.

Exception is further taken to the account in general and to the attempted distribution by the administratrix for the reason that Rosa Lanza Capraro is entitled to the whole of the estate as the widow and only heir and next of kin of the said Joseph Capraro.

ROSA LANZA CAPRARO,
by Atty-in-Fact, RICCARDI RICCARDO.

Dated, January 4, 1932.

Notice of Appeal.

(Filed February 4, 1932.)

Isabella Capraro, the administratrix of the Estate of Joseph Capraro, deceased, hereby appeals to the Prerogative Court from the decree entered herein on the 31st day of December, 1931, ordering the decree allowing the final account, filed herein, opened, set aside and vacated and every part thereof.

THOMAS C. MITCHELL,
Proctor for Appellant.

Dated, January 26, 1932.

Service of the within Notice
acknowledged this 26th day
of January, 1932.

EDWARD P. CORSINI.

Affidavit of Thomas C. Mitchell.

(Filed June 17, 1932.)

THOMAS C. MITCHELL, of full age, being duly sworn, deposes and says:

I am the attorney for Isabella Capraro, Administratrix of the estate of Joseph Caprara.

The hearing in the above matter was commenced on April 1st, 1932, and was adjourned until a date could be set by Edward P. Corsini, Attorney for Petitioner, and myself.

Corsini telephoned me about June 6th, 1932, and stated that he would set the case down for the continued hearing on June 10th, 1932. I notified my witnesses and was ready, but on June 9th, 1932, he called me and stated that he could not be ready and would like to have the case adjourned until June 17, 1932. I agreed to this and again notified my witnesses and was prepared to proceed at that time.

THOMAS C. MITCHELL.

Sworn and subscribed to before me this 17th day of June, 1932.

MYRTLE L. VOULLAIRE,
Notary Public of New Jersey.

Order Dismissing Exceptions.

(Filed June 17, 1932.)

It appearing from the affidavit of Thomas C. Mitchell, Attorney for the Administratrix, Isabella Capraro, that the above matter has been set down for hearing on June 17th, 1932, and there being no appearance for the petitioner and exceptant, Rosa Lanza Capraro, it is on this 17th day of June, 1932,

ORDERED that the said petition filed herein and the said exceptions filed herein, be and they are hereby dismissed and disallowed.

ADRIAN LYON,
Judge.

Notice of Application to Vacate Decree.

(Filed .)

To Thomas C. Mitchell, Proctor for Isabella Propati, also known as Isabella Capraro.

You and each of you are hereby notified that on the 8th day of July, 1932, at the Court House in New Brunswick at ten o'clock in the forenoon, or as soon as counsel can be heard, I shall apply to the Orphans' Court for an order vacating the order of dismissal of a petition filed in the above matter with the Surrogate's Office of Middlesex County on the 4th day of December, 1931, wherein the petitioner Rosa Lanza Capraro, sought a decree that all the property of the deceased, Joseph Capraro, be paid over to her as the sole lawful heir.

EDWARD P. CORSINI,
Proctor for Rosa Lanza Capraro.

Served June 30, 1932.

Petition to Vacate Decree.

(Filed December 4, 1932.)

The petition of Edward P. Corsini, Proctor for Rosa Lanza Capraro, shows unto your Honor as follows:

1. On the fourth day of December, 1931, Rosa Lanza Capraro, through her attorney in fact, Riccardo Riccardi, petitioned this Court for a decree that all the property of the deceased, Joseph Capraro, be paid over to her as his lawful widow and only lawful heir, and that Isabella Propati, also known as Isabella Capraro, the administratix of said Joseph Capraro, deceased, be directed to pay over this money to said Rosa Lanza Capraro.

2. Proceedings under this petition were stayed pending the outcome of an appeal to the Prerogative Court, which appeal was duly dismissed for non-prosecution.

3. Thereafter, your Honor determined that testimony be taken under this petition, to determine who is the lawful widow.

4. On April 1, 1932, the testimony of Riccardo Riccardi was taken and the matter was adjourned until both counsel could agree on a future date.

5. Thereafter both counsel agreed on a date, but adjourned the matter again by consent of both counsel. Petitioner had been in the habit of calling Thomas C. Mitchell, proctor for Isabella Propati, also known as Isabella Capraro, and adjourning the hearing from week to week until the 17th day of June, 1932, when counsel through some inadvertence failed to inform Mr. Mitchell for another adjournment and he appeared in

Court and had the petition dismissed without any notice.

6. Litigation concerning this estate has been going on for over two years. Rosa Lanza Capraro, for whom I am proctor, claims the entire estate as the lawful widow and only heir; that the proceeds of the estate amount to upwards of $5,000.00, and that she has expended considerable money in carrying on this litigation.

Your petitioner therefore prays that the order dismissing this petition be set aside and vacated and that the proceedings thereunder continue.

EDWARD P. CORSINI,
Proctor for Rosa Lanza Capraro.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss.:

EDWARD P. CORSINI, of full age, being duly sworn, according to law upon his oath deposes and says that:

1. He is the petitioner named in the foregoing petition and that the matter and things therein contained are true to the best of his knowledge and belief.

EDWARD P. CORSINI.

Subscribed and sworn to before me }
this 6th day of July, 1932. }

HAROLD LEWINE,
Attorney at Law of New Jersey.

Affidavit on Petition.

(Filed December 4, 1932.)

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss.:

EDWARD P. CORSINI, being duly sworn according to law, on his oath deposes and says:

1. That he is the proctor for Rosa Lanza Capraro, and has been entrusted with the care and management of all her rights against the estate of Joseph Capraro, deceased.

2. That on April 1, 1932, a hearing was begun in the above matter which had to be adjourned until both counsel could fix another date as some of the witnesses were ill.

3. That since April 1, 1932, and every week thereafter until the 15th day of June, 1932, deponent had been in the habit of calling Thomas C. Mitchell, the proctor of the administratrix of said deceased to adjourn the case from week to week.

4. That on the 15th day of June, 1932, deponent was informed that a death had occurred in the family of Riccardo Riccardi, of New York City, and that he and his brothers, who are also witnesses in the above matter, would not be able to be here on the 17th day of June, 1932, as planned.

5. Through oversight or inadvertence, deponent did not inform Mr. Mitchell of these facts and

ask for an adjournment, and that it was entirely on account of this oversight by counsel that there was no appearance in Court on June 17, 1932, when Mr. Mitchell had the matter dismissed.

6. Deponent further states that he has represented Rosa Lanza Capraro with reference to this litigation for over two years; that she has expended a considerable amount of money in conducting this litigation and that deponent verily believes that she has a just and legal cause of action against the said estate of Joseph Capraro, deceased.

EDWARD P. CORSINI.

Sworn and subscribed to before me this 6th day of July, 1932.

HAROLD LEWINE,
Attorney at Law of New Jersey.

Order Opening Dismissal of Petition and Exceptions to Account.

(Filed January 6, 1933.)

The matter having been opened to the Court by Edward P. Corsini, Proctor for Rosa Lanza Capraro, in the presence of Thomas C. Mitchell, Proctor for Isabella Propati, also known as Isabella Capraro, administratrix of the estate of Joseph Capraro, deceased, and it appearing by the duly verified petition and affidavit of Edward P. Corsini, filed herein, that the order of this court dated the 17th day of June, 1932, dismissing the petition of Rosa Lanza Capraro, which petition was duly filed with the Surrogate's Office of Middlesex County on the 4th day of December, 1931, and also disallowing the exceptions to the account filed by the said Isabella Capraro, administratrix of said estate was improvidently obtained:

IT IS ORDERED and ADJUDGED on this 8th day of July, 1932, that the said order dismissing the petition of Rosa Lanza Capraro, filed with the Surrogate of Middlesex County on December 4, 1931, and further disallowing the exceptions to the account filed herein, should be and the same is hereby opened, set aside and vacated.

ADRIAN LYON,
Judge.

Case.

MIDDLESEX COUNTY ORPHANS' COURT.

DECEMBER TERM, 1932.

IN THE MATTER

of

The Estate of JOSEPH CAPRARO.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before Hon. ADRIAN LYON, Judge, at the Middlesex County Court House, in the City of New Brunswick, New Jersey, on the sixteenth day of December, 1932.

APPEARANCES:

EDWARD P. CORSINI, Esq., SALVADOR DIANA, Esq., Attorneys for the Petitioner.

THOMAS C. MITCHELL, Esq., Attorney for the Administratrix.

RICCARDO RICCARDI, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath, saith:

Mr. Mitchell: It is understood that the previous testimony that this man has given is a part of the record.

The Court: I suppose so, if it can be found. Will it not help matters— Are the same witnesses being produced now that were produced on that former hearing?

Mr. Mitchell: This was the first witness, your Honor, and he testified on direct examination and cross examination had started when court adjourned.

Direct examination by Mr. Diana:

Q. Mr. Riccardi, where do you live? A. 336 East 119th Street, New York.

Q. How long have you lived there? A. In this house?

Q. Yes. A. That is one months, just a month now.

Q. Where were you born? A. Italy, Terranova DiPollino, Province Basicalata.

Q. When were you born? A. 1889, October 27.

Q. Do you know Rosa Lanza Capraro? A. Yes, I know.

Q. Where is Rosa Lanza Capraro at this time? A. In Terranova.

Q. Italy? A. Yes.

Q. Have you a power of attorney from the said Rosa Lanza Capraro? A. That is right.

Q. Is this the power of attorney and the translation of same? A. Yes.

Mr. Diana: I believe that that has already been marked for identification.

(The paper referred to was marked Exhibit P-1 for identification.)

Q. When did you come to America, Mr. Riccardi? A. The first time I come 1911.

Q. You came to America the first time in 1911? A. Yes.

Q. And did you go back to Italy again? A. I come back 1915, in June.

Q. After you came to America in 1911 when did you go back to Italy? A. 1915.

Q. Then when did you come back to America? A. I came back after the war, 1921.

Q. And have you lived in America ever since 1921? A. I just come back 1928 again.

Q. You went back to Italy in 1928? A. Yes.

Q. Just when did you come back to America? A. November, 1929.

Q. Were you in Italy, in Terranova, in 1902? A. 1902, sure.

Q. Did you know Guiseppi Capraro, the deceased? Did you know him? A. Sure, I know him. I know the family, the father.

Q. Did you know him in Italy? A. Yes.

Q. Did you see him when you came back to America? A. I just remember when he come in America.

Q. Were you present in Italy when Guiseppi Capraro and Rosa Lanza were married? A. Yes, sir.

Q. Did you see them married? A. I just see because they live across from my house Rosa Lanza.

Q. Did they have a ceremonial marriage? Did they go to church to get married? A. Years ago just in the municipal house the same day.

By the Court:

Q. What was the date of the marriage? A. Six February, 1902.

By Mr. Diana:

Q. Did you go in the church where they went into when they were married? A. Yes, because my father bring in the church, because was invited in the wedding.

Q. And did you see the priest join them as man and wife? A. I see just like I see you now.

Q. Speak out loud. A. I see just nice, yes, like I see the judge.

Q. Have you also obtained a marriage certificate from Italy? A. Yes.

Q. Is this the marriage certificate? A. Yes, this is the marriage certificate.

By Mr. Mitchell:

Q. A translation? A. That is translation, yes.

By the Court:

Q. By Guiseppi you mean Joseph, the testator in this case?

Mr. Diana: That is correct, your Honor.

The Court: Is there a will or administration?

Mr. Diana: Administration.

I ask that this be marked for identification.

(The paper referred to was marked Exhibit P-2 for Identification.)

By Mr. Diana:

Q. Did you see Rosa Lanza in 1928 just before you came to America the last time? A. I just see come to my house a week before I come back. They talk, say, "Please see that you protect my interests."

Q. Have you received letters from Rosa Lanza recently? A. Yes.

Q. Do you know whether she is still alive? A. Sure, still alive.

Q. When did Guiseppi Capraro die, do you know? A. Died 1927.

Q. Did you see Guiseppi Capraro here in America at any time? A. I see a lot of times, because he work for me, for my brother as a farmer.

Q. Where did you see Guiseppi Capraro? A. Journal Square, Jersey City.

Q. Did you also see him in New York City? A. Plenty of times.

Q. Were you ever at his house in South Plainfield? A. Before? No. I just go in 1930 when I go to see this woman to ask him because I wanted to settle the case and no bring in the court the case.

Q. Are you sure that the Guiseppi Capraro you saw in America is the same Guiseppi Capraro that married Rosa Lanza in Italy? A. Sure, the same Guiseppi Capraro.

Q. Do you know how long Guiseppi Capraro, or when Guiseppi Capraro came to America? A. What do you mean, how long?

Q. Do you know when Guiseppi Capraro came to America? A. One years after he was married.

Q. One year after he was married? A. Yes, in 1903.

Q. And did Rosa Lanza come with him? A. No.

Q. He came alone? A. Yes.

Q. Where did you find Guiseppi Capraro when you came to America in 1915? A. 115th Street, New York.

Q. He was then living in New York? A. Yes.

Q. And do you know how long he lived in New York City? A. Well, I think when I come back in Italy, 1915, I leave him in 115th Street. When I come back in 1921 I find in Plainfield.

Q. In 1921? A. Yes.

Q. In 1915, when you came to America, he was living in New York City? A. Yes.

Q. Do you know Isabelle Propati? A. Sure, I know her.

Q. Where does Isabelle Propati live now? A. In South Plainfield.

Q. Where was Isabelle Propati born, if you know? A. Born in the same my town.

Q. In your town? A. Yes, sir.

Q. And was she in your town when Guiseppi Capraro and Rosa Lanza were married? A. Yes.

The Court: Is she the same person who purports to be the administratrix of this?

Mr. Diana: That is correct.

The Court: What is her name?

Mr. Diana: Isabelle Propati.

Q. Do you know when Isabelle Propati came to America? A. I remember when he leave the town; I can't remember just the year.

Q. Was it after Guiseppi Capraro came to America? A. Yes.

Q. How long after? A. About four or five years.

Q. Four or five years after? A. Yes.

Q. How large is this village in Italy where you lived? A. That is a small town, that is about twenty-seven hundred population.

Q. Do you mean it was twenty-seven hundred in 1902 or today? A. All the time.

Q. Always about the same? A. All the time the same.

Q. Where did you live with respect to Rosa Lanza's house? A. Just across the block.

Q. And where did Guiseppi Capraro live prior to 1902? A. Guiseppi Capraro? Distance about one block and a half from Rosa Lanza to Guiseppi Capraro house. Perenza house.

Q. Where did Isabelle Propati's family live? A. He live about half a block from Guiseppi Perenza house.

Q. They all lived close together? A. The same street.

Q. Did you see Isabelle Propati after you came to America? A. I see plenty of times around 115th Street because I have grocery store down there and he live in the second floor on the top.

Q. So this Isabelle Propati lived in Italy in the same village. A. In the same town.

Q. The same lady that is mentioned in these papers as Isabelle Capraro? A. Sure.

Q. Is that the same lady? A. Yes.

Q. And is she in court now? A. Yes.

Q. Is that the lady over there (indicating)? A. Yes.

By the Court:

Q. Which one, the second one? A. No, the first one.

Mr. Diana: That is all.

By the Court:

Q. What was Rosa Lanza Capraro's name before she was married? A. Rosa Lanza.

The Court: Oh, yes. Proceed.

Cross-examination by Mr. Mitchell:

Q. When you were in Italy in 1902 did Rosa Lanza live across the street from you at that time? A. Yes.

Q. Didn't you say the last time you were on the stand that Rosa Lanza lived out in the country away from Terranova? A. I said——

Q. Did you say that? A. I said before Rosa Lanza married he lived across from my house. After he get married he live in the husband husband house, and I no see her after. I see just when I come back in Italy, 1928 and 1929.

Q. You never saw her after that, you say? A. After married he go on the father-in-law farm far away from the town and live together with the father-in-law and mother-in-law.

Q. Whose father-in-law and mother-in-law? A. John Capraro, father of Joe Capraro.

The Court: Her father-in-law.

Mr. Diano: Rosa Lanza's father-in-law.

The Court: Yes, they lived with Rosa Lanza's father-in-law out on the farm after they were married.

By Mr. Mitchell:

Q. How often did you see Rosa Lanza after she was married or after she was supposed to be married? A. How many times I see?

Q. Yes. A. I can't remember just how many times I see. I see once in awhile when I go to visit the mother and father, because they live across from my house.

Q. Between 1902 and 1911 did Rosa Lanza have any children? A. I don't know nothing. I just know——

Q. Did you see her when you went back to Italy in 1915? A. No, I no see her——

Q. How long did you stay? A. Because I go right away.

Q. How long were you in Italy in 1915? A. Right away the government take me for a soldier, and after the war I come right away back to America.

Q. You didn't come back to Terranova? A. I did. Just stay a little while and make soldier, and after the war I come back.

Q. When you went to Italy in 1928 did you see Rosa Lanza? A. Yes, I see in 1928.

Q. Where did you see her then? A. I see because she come to see me about her husband property because I come back to America. She say, "When you come back in America fight my case," and I say, "When I come back in America I ask some lawyer to help you."

Q. Who told her she had any interests in America? A. Because he knows.

Q. Who told her? A. Because a lot of country people come back in Italy and tell this woman take five thousand dollars and he got a house and twelve lots, and he says, "This woman take my husband property from me, no got nothing home."

Q. Did you tell her she had interests in America? A. No, sir; I didn't know nothing.

Q. Did Rosa Lanza ever have any children? A. Supposed to have children, I don't know.

Q. Do you know whether or not she has had any children? A. What?

Q. Do you know whether or not she has had any children since 1902? A. Might have had a child.

Q. She has had a child? A. I no say. I know you ask me before you say, "You know he make six children." I no see.

Q. You have seen her ten or twelve times in the past twenty years, haven't you? A. I suppose I see. He no come see me with the son. When he come to visit the mother he no bring no son. I am not interested in asking how many children you got or where is your son.

Q. When did you first see Guiseppi Capraro in this country? A. In this country?

Q. Yes. A. I see right away when he come here in 1911.

Q. Did you say anything to him about his marriage or about the children that were born to Rosa Lanza? A. He just ask me, he said, "My father safe and my mother safe, and my wife still live with my father and my mother?"

Q. Didn't say anything about Rosa Lanza? A. Yes, asked, "My wife, my father and mother still live?"

Q. Did he ask whether Rosa Lanza had any children? A. I know he ask me nothing like this. He ask me is still living my father and mother and my wife.

Q. How far out of the town did Rosa Lanza live after she was married? A. It is about a couple of mile. You got to walk a couple of hours to reach.

Q. Were you ever out to Rosa Lanza's house? A. No.

Q. You testified the last time you were on the stand that you were out to Rosa Lanza's house twice. A. The mother's house?

Q. Rosa Lanza's. A. Rosa Lanza no got a house.

Q. You were out to the house where Rosa Lanza was living, were you not? A. No.

Q. And you didn't testify the last time you were on the stand you were out to the house where Rosa Lanza was living? A. No, I say Rosa Lanza come to visit me to the mother and father across from my house.

Q. Do you know that you didn't say that Rosa Lanza came to you? A. Yes.

Q. Do you know that? A. She come to see me, yes.

Q. Did you say that the last time you were on the stand? A. What do you say?

Q. That Rosa Lanza came to see you. A. I say Rosa Lanza come to see me in my house.

Q. Did you say that the last time you were on the witness stand?

By the Court:

Q. The last time you were in court testifying about this case did you then say that Rosa Lanza came to see you? Did you say it then? A. Yes, I say Rosa Lanza come to see me in my house, yes.

Mr. Diana: The power of attorney has not been introduced in evidence. If counsel wants it marked in evidence, I will offer it. It is not in evidence at the present time, but I have no objection to his looking it over.

By Mr. Mitchell:

Q. Do you know Nicholas Luphrano? A. Who is this Nicholi Luphran?

Q. Nicholas Luphrano. A. I don't know.

Q. You don't know him? A. Plenty of Luphran in Italian. I don't know who you mean.

Q. Plenty of them in your town, is that right? A. Yes.

Q. Do you know that Rosa Lanza was married to Nicholas Luphrano? A. I know nobody else before or after Joseph Capraro.

Q. In fact you don't know anything about this case except the fact that Rosa Lanza was married to Guiseppi Capraro, is that right? A. That is all I know.

Q. And even if you knew anything other than that you would not say it, would you?

Mr. Diana: I object to that question.
The Court: Objection sustained.

By Mr. Mitchell:

Q. You say there is twenty-seven hundred people in that town? A. Yes, sometimes twenty-seven, sometimes twenty-eight, sometimes twenty-six, you know how the population go up and down. No more than twenty-seven or twenty-eight.

Q. Would you know most of the population in that town at the time you were there in 1902? A. 1902? Well, small town, no come no more than twenty-seven hundred, twenty-six hundred, twenty-eight hundred, that is all.

Q. How many Guiseppi Capraros did you know? A. I just know him.

Q. How many Capraro families are there in Terranova? A. Plenty of Capraro families.

Q. Plenty of Capraro families. How many would you say? A. I don't know, I can't remember how many. I just know a lot of names like that, and I know Guiseppi Capraro, son of John Capraro, that is this Guiseppi Capraro die in South Plainfield. That is all I know.

Q. Do you know any other Guiseppi Capraros in the same town? A. I know another one, Guiseppi Capraro, Guiseppi Ebone Capraro and the father they call Frank, and he shoemaker this one.

Q. Where does he live? A. He lives in the same town.

Q. Did you ever know another Guiseppi Capraro who lives in Jersey City? A. No, sir; not from my town.

Q. But you know that there were two Guiseppi Capraros in the town of Terranova, do you not?

Mr. Diana: I object to the form of the question. That was not his answer.

The Court: It is cross-examination.

Mr. Diana: The witness gave the middle name of the Guiseppi Capraro, and there is no reason why the record should show two Guiseppi Capraros when it is not the fact. I object to that for the reason that was not his answer.

By Mr. Mitchell:

Q. What is the middle name of the Guiseppi Capraro who married Isabelle Propati?

Mr. Diana: I object to that.

A. There was no marriage between Isabelle Capraro.

Q. Who told you there was no marriage between Guiseppi Capraro and Isabelle Propati? A. Because Guiseppi Capraro can't marry two wives, because he has got a wife in Italy.

Q. You are positive that it was this Guiseppi Capraro? A. What?

Q. You are positive it was no other Guiseppi Capraro? A. I sure. Guiseppi Capraro.

Q. Where did Rosa Lanza live before she was married?

Mr. Diana: The witness must have a chance to answer before the next question is asked.

The Court: It is a question whether his answer is complete or not. Of course, if he wants to qualify his answer he may do so.

By Mr. Mitchell:

Q. Where did Rosa Lanza live in 1902 before she was married? A. Terranova Di Pollino.

Q. She didn't live out in the country, did she? A. Just in the village after married.

Q. And was Isabelle Propati at this marriage that you speak of? A. What?

Q. Was Isabelle Propati at this marriage that you speak of? A. What marriage?

By the Court:

Q. When Guiseppi and Rose were married was this other woman Propati, was she there too at the wedding? A. Oh, yes.

Q. Was she at the wedding? A. I don't know at the wedding, I don't know, I no see him.

By Mr. Mitchell:

Q. Do you know Mary Capraro? A. Mary Capraro?

Q. Yes. A. I don't know what do you mean Mary Capraro. You got plenty of Capraro here.

Q. Do you know Mary Capraro who lives in South Plainfield? A. Living in South Plainfield?

Q. In South Plainfield. A. I don't know this.

Q. You don't know her? A. We got a lot of Capraro.

By the Court:

Q. Do you know a Mary Capraro living in South Plainfield? A. I know the daughter of that woman they call Mary Capraro.

By Mr. Mitchell:

Q. Did you know Mary Luphrano when you were in Italy in 1902? A. I don't remember.

Q. Do you know that lady with the white dress? A. I know her in 115th Street.

Q. You knew her at 115th Street? A. Yes.

Q. Do you know what her name is? A. Call the husband Dominick Black, that is all I know.

Q. You are sure of that? A. Everybody call like that, Dominick Black.

Q. Did you know that lady in Italy? A. Well, I can't remember that lady because she lived in the village all the time.

Q. You lived in the village all the time? A. He. I think he come from the village because I don't know him in the town.

Q. What was the name of the priest that is supposed to have married Rosa Lanza and Guiseppi Capraro? A. The name of the priest?

Q. Yes. A. In my town change priest every year sometime.

Q. You were there when they were married, weren't you? A. Yes, but I can't remember just right away the name of the priest, because I was a kid. I wasn't interested to ask the name of the priest. He change priest every year in my country and I don't know the name.

Q. In 1928, or when you came to America in 1929, did you bring this power of attorney with you? A. No, he sent it to me.

Q. When you went to Italy in 1928 you went to see Rosa Lanza? A. I no go see Rosa Lanza. Rosa Lanza come to see me a week before I leave the town.

Q. What month in 1928 did you go to Italy? A. In June.

Q. And when did you see Rosa Lanza? A. I see a couple of times when I come in the feast in the church, and after I no see no more. After he come see me a week before I leave the town.

Q. When? A. In November, 1929.

Q. She came to you in November, 1929? A. Come to see me.

Q. Just what did she say when she came to see you? A. She says, "When do you came back to America?" I say, "I come back next week," and she says, "Please when you come ask some lawyer to see about my husband's property in America, because I am the wife, that woman is not the wife." He mean Mrs. Propati. And I say, "All right, when I come to America I ask some lawyer to protect your interest," and he says, "I take power of attorney."

Q. When you came back in 1929 what lawyer did you go to? A. Mr. Kosa.

Q. Where? A. In New York.

Q. He refused to take the case, didn't he? A. No, he no refuse to take it.

Mr. Diana: I object to the question.

The Court: It might be competent, I don't know. I can't see that it is now. I have to take counsel's word for it that he is going to connect it up in some way. The mere fact that counsel didn't take the case means nothing.

By Mr. Mitchell:

Q. What did you do then after Mr. Kosa refused to take the case? A. He no refuse to take the case. I take it away from him after six months because I no trust him, and another thing because I find Judge D'Aloia in Newark, and Judge D'Aloia——

Q. Where did you go from Mr. Kosa? Who was the next lawyer?

Mr. Diana: I object. This line of examination is not material.

The Court: It goes to the sincerity of the action of this man representing this woman. I admit it. If it is immaterial of course it doesn't hurt you, if it is material it will be admitted. That is all.

By Mr. Mitchell:

Q. When did you go to Mr. D'Aloia? A. Mr. D'Aloia? In this case? When it was? He say, "I can't defend you in New Jersey, it is another State." He say, "I find for you good lawyer from Newark," and he get the name D'Aloia, that is a judge, he said. I said, "I no want to pay two lawyers." He said, "No, you no pay nothing, you go get him and he will represent you in New Jersey." He said, "You want to be glad you got good lawyer from Newark." When I see this lawyer he no do what he got to do, and I take it away from him.

Q. Then where did you go? A. To Mr. Diana.

Q. Did you go to anybody in Trenton? A. No, sir.

Q. Now, when you went to Italy in 1928 did you know that Guiseppe Capraro was dead? A. In 1928?

Q. Yes. A. I live in 115th Street when he die, Guiseppe Carpraro.

Q. Did you know he was dead when you went to Italy in 1928? A. Sure I know, because he die in 1927.

Q. What month in 1927 did he die? A. I think in April.

Q. What was your purpose in going to Italy in 1928? A. To visit my family.

Q. Did you ever see Guiseppi Capraro's family in South Plainfield? A. Guiseppi Capraro's family?

Q. Yes. A. I know Guiseppi Capraro no got a family in South Plainfield.

Q. Did you know Guiseppi Capraro had two children in South Plainfield? A. I know he said he lived with the woman Isabella Propati, but I don't know who belongs to these children.

Q. Did you go to South Plainfield to see Isabelle Capraro? A. I go three times.

Q. What did you go there for? A. I go first time just to tell him the wife in Italy he claim his property, the wife of Joe Capraro.

Q. Didn't you know that Isabelle Propati or Isabelle Capraro was in the same town when Guiseppi Capraro was married? A. Isabelle Propati in Italy? Sure, I know.

Q. Did you say anything about the case against the railroad when you came to that house? A. Sure, I just go for this.

Q. Did you talk to any children in the house? A. I no find no children. After he come the son and find me home and gave me some paper.

Q. Who did? A. Some American, and send date of certificate, the piece of notice and pictures and some other paper.

Q. What did they give you these papers for? A. Just because I ask him, "You try to get the witnesses, because I want to push the case for the railroad company." After Joe die. And he said, "I push the case and I lost the case." And I said, "Why did you push the case, you have nothing to do with it?" And he said, "He make two children."

Q. The case had already been settled when you were out there? A. No.

Q. Hadn't he already received the five thousand dollars in the case? A. He said, "I got five thousand dollars in the bank and I got six house and some lots."

Q. The case had been settled when you got out to see him in South Plainfield, hadn't it? A. I don't know nothing.

Q. Hadn't they received five thousand dollars? A. I no see no five thousand dollars, just he told me, he say, "The company pay me five thousand dollars after this man die, Joe Capraro."

Q. When did you first go to Mr. Diana? A. The same time.

Q. What time was that? A. I can't remember just the date. I said, "Who is your lawyer, Mr. Diana?" And he said, "I don't want to go to no court, because I am afraid somebody look up me." And I said——

The Court: Answer the question and then stop.

By Mr. Mitchell:

Q. What date did you go to see Mr. Diana the first time? A. I can't remember just the date, in 1930.

Q. When? A. 1930.

Q. 1930. And that was the first time you had gone to see the family of Guiseppi Capraro? A. Yes.

Mr. Mitchell: No further questions.

Re-direct examination by Mr. Diana:

Q. You say that you do know there was a child born in Italy of Rosa Lanza and his name is Salvador Capraro? A. Yes.

Q. And his name is Salvador Capraro? A. Yes.

Q. And you say he died? A. In 1925.

Q. What do you mean when you say village and town? You said that Isabelle Propati lived

in the village. A. No, Isabelle Propati live all the time in the town, but Rosa Lanza live in the village.

Q. What do you mean between village and town? A. The town is in the country, the village is like the farm, three or four farms together we call a village.

Q. When you speak of Terranova, is that the village or the town? A. No, the town.

Q. The village is the farm surrounding? A. Yes, around the town.

Q. All right. Do you know what Guiseppi Capraro's father's name was? A. John Capraro.

Q. And do you know his mother's name? A. Marie Christiana. That is not the husband name, that is his name.

Mr. Diana: That is all.

Re-cross-examination by Mr. Mitchell:

Q. In 1921 did you know that Rosa Lanza had a child? A. 1921?

Q. Or any children? A. In 1921 I was in America here, I don't know. I come back in America.

Q. Well, do you know that she had any children? A. I no see no children.

Q. Well, you knew she had a child die in 1925? A. I know this because the first son die. He die in 1925. He got the name Salvador Capraro.

Mr. Mitchell: That is all.

NICHOLAS GENOVESE, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Diana:

Q. Mr. Genovese, where do you live now? A. 334 East 115th Street, New York.

Q. Where were you born? A. In Italy.

Q. What part of Italy? A. In Terranova Di-Pollino.

Q. Is that the same town we have been speaking of in this case? A. Yes, sir.

Q. When did you come to America? A. I come in America in 1921.

Q. Were you in Italy when Rosa Lanza and Guiseppi Capraro were married? A. Yes, sir.

Q. Did you see them get married. A. Yes.

Q. Where did the marriage ceremony take place? A. They first went municipal hall, and then the church.

Q. And where did you see them get married, in the municipal hall or the church? A. Municipal hall and the church, both places.

Q. Did you know Rosa Lanza's family, her father and mother? A. No.

Q. Did you know Guiseppi Capraro's father and mother? A. Yes, sir.

Q. Did you know his family? A. Whose family?

Q. Guiseppi Capraro? A. Yes.

Q. In Italy? A. Yes.

Q. Did you ever see Guiseppi Capraro here in America? A. Yes, I saw him a month after I came from Italy, it was about the end of November, 1921.

Q. And did you talk to Guiseppi Capraro? A. Yes, he was come to see me and ask me if I see his family on the other side.

Q. And where did you see him? A. At that time he was living 324 East 113th Street, New York City.

Q. And did Guiseppi Capraro come to see you in New York City? A. He come to see me about the family on the other side.

Q. And did you know whether or not this Guiseppi Capraro who talked to you in New York City was the same Guiseppi Capraro who married Rosa Lanza? A. Positively, yes.

Q. And what did Guiseppi Capraro and you talk about when he came to see you in New York City? A. Well, he asked for his family, his father, his mother, and he asked for his wife, too.

Q. What name did he call his wife? A. Rosy, my wife Rosy.

Q. Do you know Isabelle Propati? A. Well, I didn't never know her since a year after I came from Italy.

Mr. Diana: That is all.

Cross-examination by Mr. Mitchell:

Q. You came to America in 1921? A. Yes.

Q. How many Capraro families do you know over in Terranova? A. Oh, a lot of Capraros, I can't tell how many there are.

Q. How many Guiseppi Capraros do you know? A. I only know one, I used to, he is dead now.

Q. You only knew one, and he is dead, is that right? A. Yes.

Q. Did you know any in Jersey City? A. No.

Q. Do you know Guiseppi Capraro who lives up on 115th Street at the present time? A. No.

Q. You don't know him? A. No.

Q. Do you know Nicholas Luphrano? A. Joseph Luphrano lives at 115th Street now.

Q. Yes. A. I do know.

Q. Then that is two Guiseppi Capraros you know, is that right? A. No two.

Q. You know one in Italy? A. No, no Guiseppi Capraro in Italy as far as I know.

Q. Do you know anybody in Terranova by the name of Luphrano? A. Luphrano?

Q. Yes. A. Plenty of them Luphrano.

Q. Do you know Nicholas Luphrano? A. No.

Q. About how long have you known Mr. Riccardi? A. Oh, I know since we were young boys.

Q. And he knows most of the people over in Terranova that you know, doesn't he? A. Sure, he knows.

Q. He knows the Luphranos, doesn't he? A. Luphranos?

Q. Yes, he knows some of the Luphranos, doesn't he? A. I don't know if he knows, he might know.

Q. When did you see Rosa Lanza last? A. I see Rosa Lanza a week before I come in America.

Q. Where did you see her? A. In my house.

Q. Where was she living in 1921. A. She used to live in the village.

Q. She was still living in the village where she had always lived, is that right? A. By this village I mean where they were about three thousand people.

Q. Where she had always lived, isn't that right? A. At the present time she has a house. They have some time. Holiday they go to the village.

Q. In 1921 was Rosa Lanza living in the same place where she had always lived since you have known her? A. You mean the same house?

Q. Yes. A. I don't know where she used to live in the village.

Q. How long have you known her? A. I know her since she got married to Guiseppi Capraro.

Q. You never knew her before she was married to Guiseppi Capraro? A. I didn't know.

Q. But you have known her since she was married to Guiseppi Capraro, haven't you? A. Yes, since she married Guiseppi Capraro.

Q. And after she was married, where did she live? A. In Guiseppi Capraro's parent's home, on the farm.

Q. Where is that, in the village or in the town? A. In the farm, out of town.

Q. And in 1921, she lived in the town where there was three thousand people, didn't she? A. That is where she come to see me.

Q. Didn't you just say she lived in the town? A. She came to see me in the town, but I can't say whether she was living there or not. She came to see me.

Q. Did you or did you not know where Rosa Lanza was living when she came to see you? A. No, I don't know where she was living.

Q. Then when you say she lived in the town where there was three thousand people you were wrong? A. No, I never see by her home.

Q. Do you know who she lived with over there? A. No, I don't know who she was living with.

Q. You don't know whether she was living with Nicholas Luphrano or not, do you? A. No.

Q. Did she have any children? A. No, I don't know if she did.

Q. You don't know if she had any children? A. No, I didn't see any children at all.

Q. Do you know Mary Capraro? A. No.

Q. Do you know that lady who is sitting down with the black coat and the white front? A. The first one?

Q. The one in the middle there? A. No, I don't know, I never see her.

Q. Did you know Isabelle Propati when she was in Italy? A. No.

Q. Did you ever come out to see Guiseppi Capraro when he was living in South Plainfield? A. Me?

Q. Yes. A. Only once, about a year after he came from Italy.

Q. That was in 1922? A. About that, 1922, about a year after I came.

Q. It wasn't in 1927, was it? A. No.

Q. What did you go to South Plainfield for? A. Because Guiseppi Capraro, he always come to work in New York, and we were friends, and then he invited me to go to see him in South Plainfield.

Q. How many times did you go out there? A. Only once, in his house.

Q. Did you see Mrs. Capraro out there? A. That lady there, she was in the house, yes.

Q. Did you see any children there? A. They were some children.

Q. How many children? A. I see one.

The Court: Is that important? It is admitted that he did live with this person as his wife, and had children by her.

Mr. Diana: That is correct, your Honor.

The Court: The issues here are very clear.

Mr. Mitchell: The entire question is based upon the credibility of the witnesses, and I am basing these questions on the fact of bias.

Re-direct examination by Mr. Diana:

Q. You say that you do know a Guiseppi Capraro in Jersey City? A. Now?

Q. Yes. A. No.

The Court: He said he knew one in 115th Street.

A. Yes, 115th Street.

By Mr. Diana:

Q. Who was this Guiseppi Capraro at 115th Street? A. He is some relative of Guiseppi Capraro who died.

Q. He is some relative? A. I am not sure, he is an old man.

Q. He is an old man? A. Yes, an old man.

Q. Is he much older than the Guiseppi Capraro that died? A. Oh, sure, he is away older.

Q. He isn't the man that married Rosa Lanza in Italy, is he? A. No, no, he has his wife with him there.

Mr. Diana: That is all.

Salvador Riccardi, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Diana:

Q. Mr. Riccardi, where do you live? A. 284 Pleasant Avenue, New York City.

Q. Where were you born? A. In Italy.

Q. Whereabouts in Italy? A. Terranova DiPollina.

Q. Is that the same community in which Rosa Lanza and Guiseppi Capraro were born and lived? A. Yes, sir.

Q. Were you in Italy when Rosa Lanza and Guiseppi Capraro were married? A. Yes, sir.

Q. Were you present at the church when they were married? A. Yes, sir.

Q. And did you see them married? A. Yes, sir.

Q. When did you come to America? A. Sixteenth of November, 1902.

Q. How long after Guiseppi Capraro and Rosa Lanza were married was it that you came to America? A. They got married, I believe, February of the same year, 1902.

Q. When did you see Guiseppi Capraro again after he was married to Rosa Lanza? A. I seen him next year, 1903, when he came here to this country.

Q. When he came here to America? A. Yes, sir.

Q. Where did he come to? A. To 115th Street, New York City.

Q. And is that the same Guiseppi Capraro that was married to Rosa Lanza? A. Yes, sir.

Q. Are you sure of that? A. Positively.

Q. How often did you see—did Guiseppi Capraro always live in New York City? A. For a long time.

Q. Until about when? A. Well, I believe he moved away from New York about twenty years ago, something like that.

Q. Where did he move to? A. To South Plainfield.

Q. And during the time that he lived in New York City did you see him often? A. All the time.

Q. Did you ever talk to him? A. Oh, yes.

Q. Did you ever do any business for him? A. I used to write letters to his wife on the other side.

Q. What was her name? A. Rosa Lanza.

Q. Could he write Italian? A. Not very well. Very little.

Q. And did he ask you to write these letters to her? A. Yes, sir.

Q. Did he keep up a correspondence with Rosa Lanza in Italy? A. For a couple of years.

Q. After he moved to South Plainfield did you ever see him? A. Yes, sir.

Q. Where? A. He came to New York many times to my house, and I went in his house also.

Q. South Plainfield? A. Yes, sir.

Q. Do you know when Guiseppi Capraro died? A. He died 1927, I believe.

Q. Do you know Isabella Propati? A. Yes, sir.

Q. Where did she come from? A. She came from the same town where I come from.

Q. And is that the same town Guiseppi Capraro came from? A. The same town.

Q. When did you first see or come to know Isabella Propati? A. Oh, I remember from the other side.

Q. You remember her from the other side? A. Yes, sir.

Q. Do you know when she came to America? A. Yes, I remember when she came here.

Q. When was that? A. I believe 1908 or 1907, something like that.

Q. Did you ever see Guiseppi Capraro and this Isabelle Propati together? A. I find in South Plainfield together.

Q. Do you know of your own knowledge whether or not this Isabelle Propati knew that Rosa Lanza Capraro was the wife of Guiseppi Capraro? A. I believe she does.

Mr. Mitchell: I object.

The Court: I will admit it.

A. I remember very well.

Q. How do you know that she knows? How do you know that Isabelle Propati knew that? A. Because when she came here I believe she was pretty old, she was about twenty-four or twenty-five or twenty-six years old, and she knew Rosa Lanza on the other side.

Q. Was Isabelle Propati——

Mr. Mitchell: If the Court please, I object to that.

The Court: Of course, that amounts to nothing. That is not an answer. That doesn't amount to anything.

Mr. Mitchell: I move that the testimony be stricken out.

The Court: Let that answer be stricken out.

By Mr. Diana:

Q. Was Isabelle Propati in Italy when Rosa Lanza was married to Guiseppi Capraro? A. I believe so.

Q. Do you know of your own knowledge whether or not Guiseppi Capraro was ever divorced from Rosa Lanza? A. Never was divorced from his wife.

Q. Do you know whether or not Guiseppi Capraro that you saw here in America to talk to and that you stated died in 1927 and that was living with Isabella Propati is the same man that married Rosa Lanza Capraro in Italy? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Were you always in constant touch with Guiseppi Capraro from the time he came to America until the time he died? A. Yes, sir.

Q. And do you know whether or not he lived in any other place except in New York City and South Plainfield? A. That is all he lived.

Q. Did he live at any other place? A. We used to go together.

Q. Did he ever live in any other place? A. No, New York and South Plainfield, that is all.

Q. And whereabouts in New York City did he live while he was there? A. The last time I remember was 115th Street.

Q. Do you know any other Guiseppi Capraros? A. Yes, I do.

Q. Do you know this Guiseppi Capraro who is now living in New York City? A. Yes, sir.

Q. And does he bear any relationship, is he any relation to Guiseppi Capraro that married Rosa Lanza? A. He is an uncle of Guiseppi Capraro.

Q. How old a man is he? A. Eighty years old.

Q. And how old is Guiseppi Capraro that married Rosa Lanza? How old was he when he died? A. He was very young, I don't remember his age, I believe a little bit over forty.

Q. And is there another Guiseppi Capraro in Italy? A. Well, I don't remember that.

Q. But you are sure that the Guiseppi Capraro that married Rosa Lanza was the one that died in South Plainfield? A. Yes, sir.

Mr. Diana: Take the witness.

Cross-examination by Mr. Mitchell:

Q. How long have you known Guiseppi Capraro in South Plainfield? A. I beg your pardon?

Q. How long have you known Guiseppi Capraro who died in South Plainfield? A. I know him for about thirty-two years.

Q. Thirty-two years? A. Yes, sir.

Q. And how old do you say he was when he died? A. Well, I don't remember exactly his age.

Q. You said about forty, didn't you? A. About forty, a little over forty, maybe.

Q. How old do you think he was? A. I don't know.

The Court: He said a little over forty.

By Mr. Mitchell:

Q. Would it surprise you to know that he was fifty-four years of age when he died? A. Maybe so.

Q. You have known him for thirty-two years, haven't you? A. Yes, I have.

Q. You knew him in Italy? A. Yes, sir.

Q. How many Capraro families did you know when you were in Terranova? A. Oh, there is a couple of them Capraro.

Q. How many? A. Well, there is one, two, three or more.

Q. Three or more Capraro families? A. Yes, sir.

Q. Besides this Guiseppi Capraro, the deceased, did you know any other Guiseppi Capraros among these families that are in Terranova? A. I just know two of them.

Q. Did you ever know a Guiseppi Capraro who lived in Jersey City? A. Yes, sir.

Q. The one in Jersey City, and you also know one on 115th Street, is that right? A. One is dead and one is 115th Street.

Q. Didn't you just say you knew one in Jersey City? A. I meant to say in Plainfield, the same one, he died.

Q. Did you know that Guiseppi Capraro was married to Isabelle Propati? A. I never know that.

Q. On November 21, 1907? A. He never can get married because he had a wife on the other side.

Q. Didn't you know that he went through a marriage ceremony on November 21, 1907? A. No.

Q. You weren't present at that wedding? A. No, sir.

Q. Do you know Guiseppi Yidso? A. No.

Q. Do you know Annunzio Christiano? A. No.

Q. Do you know any Luphranos over in Terranova? A. There is so many families Luphrano, but I don't know.

Q. Do you know any Nicholas Luphrano? A. No.

Q. When did Isabelle Propati come to this country? When did you say that she came to this country? A. I believe 1908, something like that.

Q. It wasn't 1907, was it? A. Maybe, I don't know, I don't remember exactly just the date.

Q. Well, you remember all the other dates, the date of the wedding over in Italy and the date you came here. A. Certainly, I remember.

Q. Did you ever talk over this case with Mr. Diana? A. No, sir.

Q. Never said a word about it to him? A. I just come as a witness, that is all.

Q. Did he ever ask you those questions that have been asked you on the stand? A. No, sir.

Q. How many times did you talk to him about the case? A. To who?

Q. Mr. Diana or Mr. Corsini? A. A couple of times.

Q. And he never asked you those questions before? A. Never.

Q. These letters you used to write from New York, who else did you write these letters to

besides Rosa Lanza? A. I used to write to his father.

Q. Did you ever write any letters to Isabelle Propati? A. No, sir.

Q. How many letters did you write to Rosa Lanza? A. Oh, I don't remember the number.

Q. How often did you write to her? A. When? Every two months I used to write one letter.

Q. Did you ever send money to her? A. Yes.

Q. Where was she living at the time you used to write these letters? A. Terranova Di Pollina.

Q. With whom was she living? A. She lived with her father-in-law.

Q. What was the father-in-law's name? A. Giovanni Capraro.

Q. Where did he live? A. Terranova.

Q. What part of Terranova? A. On the same town.

Q. Where did he live, in the town or outside of the town? A. I don't know. I come here he live in town.

Q. Didn't you know Guiseppi Capraro in Italy? A. Sure, I did.

Q. And didn't you know where he lived? A. In town.

Q. Where did his father and mother live? A. In town.

Q. In the town is where all the people are. A. People, and they have a little farm outside of the town.

Q. How far outside of the town? A. Just a couple of miles, or three miles, I just don't remember.

Q. Where did Rosa Lanza live after she was married? A. With the father-in-law.

Q. In the town? A. In the town.

Q. Not in the village? A. I don't know, sometime in the village and sometime in the town.

Q. They didn't live with the father and mother-in-law all the time? A. It is together, yes. They have a home in town and a home on the farm.

Q. When was the last letter you wrote to Rosa Lanza? A. Oh, it is many, many years back, just for a couple of years I write a letter to his wife.

Q. When did you write the last one? A. Oh, I don't remember, I can't figure so many years back.

Q. Did you write any letters from South Plainfield? A. No.

Q. Where did Isabelle Propati come to live when she came to America? A. They lived with the father and brother.

Q. When did she start living with Guiseppi Capraro? A. Well, it is about twenty years ago.

Q. Did you know that Isabelle Propati had any children? A. I seen one little girl, one little boy.

Q. And when did you see them? A. I seen right now, one here, one there.

Q. When did you see him first? A. Many years back.

Q. How many years back? A. About ten years, twelve, fifteen years, something like that.

Q. Did they live with Guiseppi Capraro? A. I know this woman live together.

Q. In New York? A. Yes, New York.

Q. How many years ago was that? A. Well, about fifteen years.

Q. Did Isabella Capraro and Guiseppi Capraro live together in 1908? A. No, I don't think so.

Q. Do you know? A. Not right away after she came from the other side.

Q. You don't know when she came from the other side, do you? A. Yes, I believe it was 1908, something like that.

Q. 1907, maybe? A. Maybe.

Q. When do you remember that Isabelle Capraro and Guiseppi Capraro lived together? A. Well, to my knowledge it is about——

Q. The date, not how long ago. A. They live together now.

Q. Now, when do you remember first seeing Isabelle Capraro and Guiseppi Capraro living together? A. I believe they live together nineteen or twenty years.

Q. Nineteen or twenty years. How often did you come to South Plainfield? A. I used to come once in a while, my son is there, not just coming to visit my friend.

Q. Do you know this man that is sitting alongside of those two women there, on the right of them? A. Yes, sir.

Q. What is his name? A. Anthony Luphrano.

Q. Did you ever know any of his family in Italy? A. No, I know in America.

Q. Isn't it a fact that their brother is his god father? A. I don't remember that.

Mr. Mitchell: I will withdraw the last question.

By Mr. Mitchell:

Q. Isn't it a fact that your father is his god father? A. Maybe, must be, but I don't remember that.

Q. But you don't know any of his family over in Italy? A. No, I remember here. I meet these people here in America.

Mr. Mitchell: That is all.

Re-direct examination by Mr. Diana:

Q. You said, as I understand you, Mr. Riccardi, that there was a Guiseppi Capraro in Jersey City.

Did you mean Jersey City? A. No, I meant Plainfield.

Q. There is no Guiseppi Capraro that you know of in Jersey City? A. No, sir.

Q. The only one you know of is the one in New York City that you said is eighty years old? A. Yes, sir.

Q. And this Guiseppi Capraro who married Rosa Lanza? A. Yes, sir.

Q. Do you know Guiseppi Capraro's father's name? A. Giovanni.

Q. Giovanni? A. Yes.

Q. And do you know his mother's name? Her maiden name? A. Maria, I don't remember the maiden name.

Mr. Diana: That is all.

Frank J. Rinaldi, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Diana:

Q. Mr. Rinaldi, where do you live? A. 613 South Fifth Avenue, Mount Vernon, New York.

Q. What is your profession? A. Attorney and counsellor at law, admitted to practice in the State of New York.

Q. For how long? A. Twenty-one years.

Q. Are you thoroughly familiar with the Italian language? A. I am.

Q. And have you studied the Italian language? A. I did when I was a boy.

Q. Do you feel absolutely competent to translate a document in Italian into the English language? A. I believe I am.

Q. I show you this document and ask you if the English of that is an exact translation of the Italian?

The Court: Did he translate it?

Mr. Diana: No, your Honor.

A. No, I haven't but I have read that all over before I took the stand, and now I testify under oath it is a true and correct translation of this Italian document.

By the Court:

Q. Are you an Italian? A. Yes, I am of Italian extraction. I am American born, but I am an Italian.

Mr. Diana: I offer this in evidence.

By the Court:

Q. Is that the marriage certificate? A. Yes.

Mr. Diana: Yes, your Honor, that is the marriage certificate.

Mr. Mitchell: I object until I can examine it.

The Court: Can't you leave that until later? Go on with the case. You can reserve the admission of it until you have had a chance to read it.

By Mr. Diana:

Q. Have you also read this translation from the Italian to the English? A. I have.

Q. And is that English a true translation? A. Yes, the Italian document purports to be a power of attorney, and this is a correct English translation of the same.

Mr. Diana: I offer that in evidence.

The Court: Let it be received in the same way.

Mr. Diana: That is all. That is our case.

The Court: I presume the issue in this case revolves on the identity of these persons. I am sensing that I may be wrong. Isn't that so?

Mr. Mitchell: Part of it, your Honor. The other feature of this case is that this woman Rosa Lanza was married to another person.

The Court: Before she married this man?

Mr. Mitchell: We deny she was ever married to this man.

ADMINISTRATRIX'S CASE.

JOHN CAPRARO, a witness produced on behalf of the administratrix, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Mitchell:

Q. Where do you live, John? A. I live in South Plainfield, on the New Durham Road.

Q. Are you the son of Guiseppi Capraro and Isabelle Capraro?

Mr. Diana: I object.

The Court: I admit it.

A. I am.

Q. When were you born? A. I was born on November 24, 1908.

Q. Where were you born? A. At 115th Street, 396.

Q. How long did you live with your family in New York? A. Oh, since 1908, to 1919.

Q. Is your mother in court? A. Yes.

Q. Can you point her out? A. The first woman, the skinny woman.

Q. Your father was Guiseppi Capraro? A. Yes.

Q. Did you live with your mother and father until your father died? A. Yes, and I am living with my mother now. I am supporting her.

Q. Were there any other children born by this marriage? A. No, not that I know of.

Q. I mean, by the marriage of your mother and father. A. Me and my sister, only two, John Capraro and Mary Capraro.

Q. Do you know Riccardo Riccardi? A. Yes, I do.

Q. Did he ever call at your house after your father's death? A. Yes.

Q. What did he say to you when he came there? A. Why, he came there, I think, it was on Saturday with Mr. Kosa.

Q. What year was this? A. It was some time in 1930, after the case that Mr. Diana defended was.

Q. Do you remember about what month? A. I don't remember the exact month, but I know it was in 1930 some time.

Q. What did he say? A. He wanted me and my sister to represent this Rosa Lanza that I didn't know of, so that he could sue the railroad for money. I told him I could not do a thing like that.

Q. What do you mean when you say he wanted you to represent somebody? A. To represent

this other woman I had never seen and who I don't know nothing about, this Rosa Lanza. All I know is that that is my mother over there (indicating), Isabelle Propati.

Q. What did Riccardi want you to do? A. He wanted me and my sister to represent this other woman on the other side, to say that we were her children so that he could get Simpson from Jersey City to sue the railroad company over again, and I says, "I can't do nothing like that." I would not do it.

Q. What lawyer represented your family, that is, your mother and your sister and yourself after your father died? A. Right there, Salvador Diana.

Q. Did you ever see Nicholas Genevese before? A. Yes, I did, I seen him about two weeks before my father died. He and another fellow, Gasparo Yidso, who is on the other side now, came over there and tried to buy some property which my father owned on the other side, and they didn't offer him as much as my father wanted, so he didn't sell the property.

Q. That was two weeks before your father died? A. Yes, sir. They had dinner there.

Q. Did you ever hear your father mention anyone by the name of Rosa Lanza? A. No, sir, not that I know of, and I can't find nothing about her in his papers.

Q. When was the first time you heard the name of this Rosa Lanza? A. When Riccardi came over to the house with Mr. Kosa.

Q. What did he tell you about Rosa Lanza? A. He said that this Rosa Lanza was married to my father, and I wouldn't believe it. I said, "That can't be so."

Q. How old was your father when he died? A. He was about fifty-two or fifty-four, something

like that, I don't know exactly his age, but he would be over fifty anyway.

Mr. Mitchell: Cross-examine.

Cross-examination by Mr. Diana:

Q. Mr. Capraro, you say you were born in 1908? A. Yes, sir.

Q. And of course what happened before 1908 you only know from hearsay? A. No, I can't.

Q. You say that Nicholas Genovese came and tried to buy some property from your father? A. Yes.

Q. Who was with him at the time? A. Gasparo Yidso.

Q. Is he also an Italian? A. Yes, sir.

Q. You say your father has some property in Italy? A. He still has it yet.

Q. Do you know who holds that property now in Italy? A. No, I don't know. As far as I know my mother has a paper made to her after his death, willing her this property.

Q. Do you know whether or not Rosa Lanza Capraro is now in possession of that property in Italy? A. I do not.

Q. You don't know that? A. No, sir.

Q. You have never tried to do anything about that property in Italy, have you? A. No, I have not.

Q. And neither has your mother tried to do anything about that property in Italy? A. No, sir.

Q. Do you remember just what took place when Mr. Nicholas Genovese talked to your father about this property? A. He wanted to buy property near the property that he owned himself. He was interested in some piece of property, I

don't know just what piece. I have endeavored to learn the location of the property. They didn't offer him the right price for it, so he would not sell it. Two weeks after that he was killed, and everything was over, and all I have is a letter home that my father wrote to them.

Q. And you have never written to Italy to inquire about deeds to this property in Italy or anything like that? A. No, sir, my uncle wanted to buy it, that is the last——

Q. Who is your uncle? A. Leonard Capraro.

Q. Where does he live? A. He lives with the wife and children, I imagine.

Q. Where? A. In Terranova.

Q. In Italy? A. Yes, sir.

Q. He wanted to buy the property? A. Yes, sir.

Q. Did he ever write to you and tell you he wanted to buy the property? A. Yes.

Q. Did you ever receive any letters from him? A. The last letter I received was about a year ago.

Q. And you don't know who has possession of this property at the present time? A. My mother has, I can show you the papers.

Q. You just told me that your mother had never inquired about this property in Italy A. She has somewhat like a will, all the property was willed to her after thirty-five hundred dollars in case of my father's death.

Q. Was that will taken to Italy? A. I think it was. I think Petrone took it with him.

Q. Do you know whether or not that will was filed in Italy? A. I don't know whether he filed it or not, but it has been filed here by the counsellor. It is written in Italian, and I don't understand much in Italian.

Q. Do you know whether or not it is a will or a deed? Do you know what a will is? A. It is a will that he left certain parts of the property to my mother. Now, I don't know the property, and I don't know even if I could read about it. I don't know where it is. I know it is in Terranova somewhere.

Q. Did this paper state whether the property was given immediately when this paper was filed or that the property would go to your mother when your father died? A. I don't know. The only man that can tell you about that is Petrone.

Q. Who is Petrone? A. Petrone represents us in Europe now.

The Court: This witness doesn't know anything about him so why take up time?

A. No, I don't know anything about him.

Q. You do say that Mr. Riccardo Riccardi told you that your father had a wife in Italy by the name of Rosa Lanza? A. He did say something like that, but I would not believe him. He can't have a wife in Italy.

Mr. Diana: That is all.

Mr. Mitchell: Mr. Diana, take the stand, please.

Mr. Diana: I think it is rather improper, for I am acting as associate counsel in this case.

The Court: I suppose he has a right to call you.

SALVADOR DIANA, a witness produced on behalf of the administratrix, being duly sworn, according to law, on his oath, saith:

Direct examination by Mr. Mitchell:

Q. Did you ever represent any of the Capraros? A. I did.

Q. Who did you represent? A. Isabelle.

Q. Isabelle Capraro? A. That is right.

Q. You represented her as the wife of Guiseppi Capraro? A. At the time I did.

Q. What was the reason for your representing her at that time? A. These people came to my office shortly after Guiseppi Capraro died and asked me to represent them to collect damages due to his death. I proceeded to investigate the case, and while I was investigating I was advised by them that they had made a settlement with the railroad direct, and they told me that the railroad had forced them into accepting this settlement, and I asked them to sign affidavits to that effect, to make certain that that was true. Then we brought the case in the Chancery Court in an attempt to set aside the settlement on the ground that it was obtained through duress and without the assistance of counsel, but during the trial it developed that the affidavits which these people gave me were—the testimony given on the stand by them was quite different from the affidavits they gave me, and of course we were not successful in upsetting the settlement.

Q. You were held in contempt as a result, were you not? A. I was what?

Q. You were held in contempt of court as a result of this action. A. These witnesses, their testimony was referred to the grand jury for perjury.

Q. Were you held in contempt of court? A. Indeed not.

Q. But you represented Mrs. Capraro as the wife of Guiseppi Capraro in South Plainfield, did you not? A. Absolutely.

Mr. Mitchell: That is all.

Mr. Diana: In answer to some of these questions I just wish to state, of course, at that time I did not know of this woman Rosa Lanza who lived in Italy, and I had no knowledge of that fact until Mr. Riccardi came into my office and disclosed these facts.

Q. When did he come into your office? A. Oh, about 1930, I think it was, or just prior to the time that these proceedings were instituted.

Q. Did you have any knowledge before that? A. I did not.

Mr. Mitchell: That is all.

Mary Capraro, a witness produced on behalf of the administratrix, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. Mitchell:

Q. You are the daughter of Isabelle Capraro and Guiseppi Capraro? A. I am.

Q. What is the date of your birthday? A. November 10, 1910.

Q. Where were you born? A. New York.

Q. You have lived with your family ever since? A. Sure, I have.

Q. Did you ever hear your father mention anyone by the name of Rosa Lanza? A. No, I did not.

Q. Were you present when Riccardo Riccardi called at your house in South Plainfield after your father's death? A. The first time I was not, but the second time I was.

Q. What occurred on this second visit? A. He wanted—he came over to our house and he said that we had not gotten enough money for our father's case, and he wanted to reopen the case with the Lehigh Valley Railroad, and we should say we were born on the other side and that that other woman was my mother, and we told him we would not do any such thing like that.

Q. And was that the first time you ever heard of Rosa Lanza? A. Rosa Lanza, that is the first time I ever heard of her.

Mr. Mitchell: Cross-examine.

Mr. Diana: No questions.

Isabelle Capraro, the administratrix being duly sworn according to law, on her oath, saith:

(The testimony of this witness was taken through the interpreter Mr. Frank J. Rinaldi.)

Direct examination by Mr. Mitchell:

Q. Mrs. Capraro, you are the widow of Guiseppi Capraro? A. Yes, sir.

Q. When were you married to Guiseppi Capraro? A. I have the paper of City Hall.

The Court: What is the date of it, Mr. Mitchell?

Mr. Mitchell: This is dated November 21, 1907.

Q. Is that the paper you received when you were married to Guiseppi Capraro? A. Yes, sir.

Q. Where were you married? A. New York, in the city hall in New York.

(The paper referred to was marked Exhibit D-1 for Identification.)

Q. When did you come to the United States from Italy? A. Thirteen years ago.

Q. What date was that?

The Interpreter: The witness corrects her testimony: "I have been in the United States twenty-seven years. We moved into South Plainfield,——"

By the Court:

Q. When? A. Thirteen years ago.

By Mr. Mitchell:

Q. Are you the mother of the two children or the girl and boy who were on the stand? A. Yes, sir.

Q. Who was the father of those children? A. Guiseppi Capraro, son of Anna Marie Christiano and John Capraro in the old country.

Q. From what part of Italy did you come? A. Terranova Di Pollino, Province of Basicalata.

Q. Is that the same town that your husband Guiseppi Capraro lived in? A. Yes, sir, but I didn't know him in Italy, because they lived in the country and I lived in the city.

Q. Did you know Rosa Lanza? A. No, never.

Mr. Mitchell: That is all.

Mr. Mitchell: I offer the marriage certificate in evidence.

Mr. Diana: I object until I have had a chance to inspect it.

Mr. Mitchell: All right.

The Court: I don't suppose that makes any difference in the case anyway, assuming it is regular. The question revolves upon the marriage in Italy between Guiseppi and Rose, that is where the issue is in this case, isn't that so?

Mr. Diana: That is correct, your Honor.

Mr. Mitchell: Yes, your Honor.

Mr. Diana: I object to the introduction into evidence of this certificate on the ground that this has been a record of New York, and it should be properly exemplified.

The Court: I know, but that is technical. If it is not properly exemplified I would give the parties a chance to have that done, but I do not think that is important in the case.

Mr. Mitchell: It is practically impossible to have the marriage certificate exemplified.

The Court: I will receive it. Let us get at the issue in the case.

Cross-examination by Mr. Diana:

Q. What was your maiden name? A. Isabelle Propati.

Q. And you say that you were born in Terranova? A. Yes, sir.

Q. When were you born? A. I don't remember when I was born, I only know that I am

fifty-four years of age. You are trying to confuse me.

Q. Do you know when you to came to America? What year you came to America? A. I remember the date, but I don't remember the year.

Q. Don't you know what year you came to America? A. No.

The Court: How many years ago? Ask her that. I think she said twenty-seven years ago.

A. Twenty-seven years.

By Mr. Diana:

Q. Then you came to America in 1907, didn't you?

The Court: She counts the time in a different manner. She said she was in the country twenty-seven years, and South Plainfield thirteen years. We can come to the conclusion that it would be 1905.

By Mr. Diana:

Q. When did you first meet Guiseppi Capraro? A. I met him in America. I met him in New York, but I don't remember when.

Q. How long after you came to America did you meet Guiseppi Capraro in New York? A. In the same year that I arrived. He lived in the house, in the home of one of my uncles. I didn't know he was that way.

Q. Do you know Mr. Riccardi? A. Yes.

Q. He came from the same town that you came from?

Mr. Diana: I ask that the witness be instructed to answer my questions.

Q. You knew Mr. Riccardi in Italy, didn't you? A. No, I met him in America.

Q. Didn't you ever meet Mr. Riccardi in Italy? A. No.

Q. You know Guiseppi Capraro's family in Italy, don't you? A. No.

Q. You know that his father's name was Giovanni Capraro, don't you? A. I knew that because after they died in Italy they sent money here in this country so we could have masses said for the repose of their souls, and that is when I learned that the father's name was Giovanni and the mother's name was Maria.

Q. Guiseppi's family lived in the town of Terranova, didn't they? A. Yes, in the same town, but their home was in the country.

Q. They had a farm in the country, isn't that right? They had a farm? A. Yes.

Q. And they also had a building in the town? A. Yes, they did. They had a small place where they used to come once in a while. I don't know. They used to tell me they had a small place there.

Q. This house was in the town, the small house was in the town? A. Yes.

Q. And they lived in this house excepting when they were working on the farm? A. I didn't see them, I lived far from them.

Q. How did you know that they had a house in town then? A. My husband told me after I married him and when letters came to him from Italy.

Q. Didn't you know that when you were in Italy? A. No.

Q. How old were you when you came to America? A. Twenty-eight years.

Q. And you had lived all your life up to that time in Terranova, hadn't you? A. Yes.

Q. Terranova is not a very large town, is it? A. No.

Q. It is a small town, isn't it? A. Small town, yes, and I always stayed in the town, I never went traveling.

Q. And everybody practically knows everybody else in a small town, don't they? A. Yes, I don't know.

Q. You knew practically everybody in town, didn't you? A. A few, my relatives and so forth, but I didn't bother with strangers. We don't go from house to house, we stay in our own house.

Q. Didn't you also help work on the farm while you were in Italy? A. Which farm?

Q. Did your people have a farm in Italy? A. Yes.

Q. And did you also work on that farm? A. Yes, I don't know anybody else's farm.

Q. How far was your farm from the farm of Capraro, Guiseppi Capraro? A. It is far, there is a stream of water in between the both farms.

Q. Do you know just where the Guiseppi Capraro farm is located? A. I never worked there, but they told me where it was. I didn't look it up in the registrar's office, I don't know.

Q. You know Mr. Salvador Riccardi, don't you? A. Yes, I know him. About two years ago he came to my house and insulted me because he wanted me to say that my two children were born in Italy and I brought them here. Could I do that thing?

Q. You knew him in New York City, didn't you? A. Yes, he had a store and then he failed.

Q. And your husband, as you say, Guiseppi Capraro and Salvador Riccardi were quite friendly in New York City, were they not? A. I

don't know. I was in the home of my own all the time and took care of my housework.

Q. He even came to visit you and Guiseppi Capraro, didn't he, in New York City? Salvador Riccardi even came to visit Guiseppi Capraro in New York City, did he not? A. I never saw him in my house.

Q. How did you know him in New York City then? A. He had a store, and I used to buy there, and then he failed and he ran away.

Q. Where did he run to? A. Terranova.

Q. You do know that he went to Terranova? A. Yes.

Q. How long ago? A. I don't remember.

Q. Where did he live in Terranova? A. He lived in the town.

Q. You saw them there in the town, didn't you, while you were in Italy? A. I never went back to Terranova. He used to go and come back.

Q. Do you mean Salvador Riccardi went and came back or do you mean Riccardo Riccardi? A. Riccardo Riccardi. They are brothers. The man I mean is Riccardo Riccardi.

Q. When I asked you whether you had met Salvador Riccardi in New York City, that was correct, that you had met him there, wasn't it? A. Yes, he had a store, everybody used to go there.

Q. Did Riccardo Riccardi have the store or did Salvador Riccardi have the store? A. No, Riccardo Riccardi, not Salvador.

Q. And did you see Salvador Riccardi in New York? A. No, I don't know these peeople. They lived on Pleasant Avenue, and I lived at 115th Street. What have I got to do with these people?

Q. You do know that they had a store in New York City, don't you? A. Yes, I am not the only one that knew it.

Q. And you knew that he failed in that store, didn't you? A. I knew he closed the store.

Q. And you knew he went to Terranova, Italy? A. Yes.

Q. When did Guiseppi Capraro come to America? A. I don't know. When I arrived here he was already here, and I think he had been here sometime before I came here.

Q. And did you know his father and mother in Italy? A. No.

The Court: She said that several times already.

Q. You know that Guiseppi had some property in Italy? A. Yes, sir, because Nicholas Genovese (indicating the gentleman) came to my house while my husband was alive, and he wanted to buy the property from my husband. He came with a man by the name of Gasparo Yidso.

Q. And your husband even wrote to Italy to his family and to Rosa Lanza, didn't he? A. No, I don't know that he wrote to Rosa Lanza, but I do know that he wrote to his mother and his father.

Q. You still insist that you did not know Mr. Salvador Riccardi in Italy? A. No.

Q. You are sure about that? A. Yes, I am sure. I swore to tell the truth.

Q. Did you know Nicholas Genovese in Italy? A. No, sir. Why do you suggest lies to me? I did not know him in Italy, I knew him here. I saw him in my house in South Plainfield.

Q. You knew that your husband Guiseppi Capraro had met these people in Italy, didn't you? A. I didn't know. How do I know? I didn't know him. I remember when he came to South Plainfield he wanted to buy the property, and I recognize him again today in court.

Q. Did you know that Rosa Lanza had a child born to her in Italy? A. When Mr. Riccardo Riccardi came to my house with an American, also they told me at that time that my children had a brother in Italy whose name was Salvador.

Q. Is that the only one you know about? A. Yes, and that afterwards he died.

Q. And you never heard of any other children that Rosa Lanza had in Italy, did you? A. No, but there is a lady here who got a letter from Italy, and in that letter they tell us that this lady has six children in Italy. Even Riccardo Riccardi told me the same thing.

By Mr. Mitchell:

Q. What woman is that?

Mr. Diana: Just a minute. I am cross-examining.

Mr. Mitchell: I wish to distinguish for the benefit of the Court.

The Court: Well, she may identify the woman if the woman is in court.

A. I received a letter myself from Petrone Propati.

By Mr. Diana:

Q. When did you receive that letter? A. About a few months ago.

Q. Did you write to Italy and ask for that letter? A. I wrote to a relative of mine on some business, and he answered and told me that this woman had six children and this Riccardo Riccardi told me the same thing.

Q. Why were you interested in these children, Mrs. Capraro? A. I wrote to him on account of my own business.

Q. And he answered you and told you about these children? A. That she is married.

Q. You asked about Rosa Lanza, didn't you? A. No, I did not.

Q. Why would he answer and tell about Rosa Lanza and these children if you did not ask about it? A. Because Riccardo Riccardi came to my home and said, "Let's get together and try this case against the company and get some money out of it, because Rosa Lanza has six children, and we won't send them anything."

Q. Did you write to these people in Italy and ask them about Rosa Lanza? A. No, I did not write any more.

Q. I ask again, why did these people answer that way? A. Then when I got in trouble a few months ago I wrote my relatives in Italy.

Q. And what did you write to them? A. I wrote and I told them that I was in trouble, and they answered back that she didn't live in Terranova now, she left the town of Terranova and she has six children.

Q. Then you did inquire about Rosa Lanza, didn't you? A. Yes, I wrote to my countrymen, and Petrone Propati, my relative.

Q. And you wrote her to find out how many children she had, isn't that it? A. Yes, because she was making trouble for me here.

Q. But you did know at the time that Rosa Lanza had been married to Guiseppi Capraro, didn't you?

The Court: At what time?

Mr. Diana: At the time she wrote this letter.

The Court: The gist of her testimony is very clear. She said when this trouble

came up which was occasioned by the claim that her husband had another wife, namely, this Rosa Lanza, that then in order to get the matter cleared up she wrote to her relative in Italy about Rosa Lanza, and she answered she had six children. That is the gist of her testimony.

By Mr. Diana:

Q. When did you first find out that this Rosa Lanza woman existed at all? A. When Riccardo Riccardi came to my home. Before that time I knew nothing of her.

Q. You had quite a long talk with Mr. Riccardi when he came to your house, didn't you? A. Two years ago when he came to insult me in my house.

Q. You had quite a long talk with him, did you not? A. Two years ago he came. He came twice.

Mr. Diana: I insist that the witness answer the question.

The Court: I think she has answered it as nearly as you can get it, and furthermore I cannot see how the testimony is helping me one bit with the issue in the case.

Mr. Diana: I am trying to get at that. I am trying to show that the witness is not telling the truth. That is the sum and substance of it.

The Court: It may be on certain incidental aspects of the case there is a discrepancy in her testimony, but on the main point as to whether or not this alleged husband of hers was married to this Rosa Lanza thirty years ago nearly the testi-

mony is not helping me a bit. That is the issue in the case, whether or not her husband was married to this Rosa Lanza. Of course, the presumption is, and you would have hard work to overcome it, that this woman did not know about it, did not know about Rosa Lanza, or she would not probably have married him in this country without a divorce. So that I can't see how it is helping us at all. Go on.

By Mr. Diana:

Q. Did your husband ever speak to you about a divorce? A. No.

Q. Did he ever mention about getting a divorce from Rosa Lanza? A. No.

The Court: If it is true that he was married to Rosa Lanza, as you claim, why, the chances are one hundred to one that he never said anything to this woman about it. He would not tell this woman that he had a wife in the old country.

By Mr. Diana:

Q. Have you filed this will that your husband is supposed to have left for this property in Italy?

The Court: There is no testimony that there was a will.

Mr. Diana: I will withdraw the question.

By Mr. Diana:

Q. Guiseppi Capraro has some property in Italy now, has he not? A. Yes.

Q. And do you know who is in possession of that property? A. My brother-in-law, the brother of the deceased, Leonardo Capraro.

Q. Isn't it a matter of fact that Rosa Lanza is in possession of that property? A. I don't know anything about it.

Q. You don't know anything about it? A. I am in America twenty-seven years.

Q. You haven't bothered at all about this property in Italy, have you? A. No, I don't know anything about it.

Q. You don't want to know anything about it. A. No.

Q. You went to Trenton to see the Vice Consul about this matter, didn't you? A. Yes, and I also went there concerning some lots that I bought twenty years ago on which I paid no taxes.

Q. The lots were where? A. And you told my counsel that you would have those deeds changed and you took that away.

Q. The lots were where?

Mr. Mitchell: If the Court please, I don't see how that has any bearing on this case at all.

The Court: Let us get the case closed as quickly as possible. It is not helping me a bit.

Mr. Diana: The difficulty is I can't get any responsive answers at all from this witness.

By Mr. Diana:

Q. You went to Trenton to speak to the Vice Counsel about this case, didn't you? A. No, sir.

Q. And you offered to settle this case for a thousand dollars, didn't you? A. For the property in Italy I wanted to settle for a thousand dollars.

Q. And you gave the Vice Consul a check for two hundred dollars the payment upon which was later stopped? A. Yes, because I didn't want to know anything at all about the property in Italy. I have abandoned it all. For me to go to Italy after this property is not worth while.

Q. Have you any papers at all that give you any right to this property in Italy? A. I sent it all to Italy to Petrone Propati.

Q. You are still not interested at all in this property in Italy? A. Yes, I have been told that I had to send money, and I have no money.

Mr. Diana: That is all.

Re-direct examination by Mr. Mitchell:

Q. After your husband's death did you receive letters from his father and mother? A. No, they died before. All he has in Italy is just one brother.

Mr. Mitchell: That is all.

MARIA CAPRARO, a witness produced on behalf of the administratrix, being duly sworn according to law, on her oath, saith:

(The testimony of this witness was taken through the interpreter, with Mr. Frank J. Rinaldi.)

Direct examination by Mr. Mitchell:

Q. Mrs. Capraro, are you any relation to the Mrs. Capraro who was just on the stand? A. No, I am not related to her, we just come from the same town in Italy.

Q. You come from Terranova Di Pollina? A. Yes, the same country. I came over in 1902.

Q. You came here in what month in 1902? A. The twenty-sixth of December.

Q. Did you know Guiseppi Capraro in Terranova? A. Yes, I knew him because we lived in the same town about one mile apart.

Q. What was your name before you were married? A. Maria Luphrano.

Q. Did you know Rosa Lanza in Italy? A. No, I don't know her, but people told me that——

Mr. Diana: I object to the answer.

The Court: I presume she is starting to tell what some people told her. Of course, that is incompetent and will have to be stricken out.

By Mr. Mitchell:

Q. Did you ever hear or know of Guiseppi Capraro, the one who lived in South Plainfield, being married while he was in Italy? A. I don't know.

Q. Did you know Guiseppi Capraro while he was in Italy? A. Yes, I knew him in Italy.

Q. Did you ever know that he was married in Italy? A. No, I didn't know that. I was here in America.

Q. Was Guiseppi Capraro married before you left Italy for America? A. No.

Q. Do you have a brother in Italy at the present time? A. Yes.

Q. What is his name? A. His name is Giovanni Luphrano. My husband's name is Capraro.

Q. Who is he married to?

Mr. Diana: I object to the question unless she knows it of her own knowledge,

The Court: I will admit it, but I don't see what it has to do with the case, who her brother married.

A. First he married some woman and he had four children, and this wife died, and after the death of this woman, the people, they tell me——

Mr. Diana: I object to the answer.

A. (Continuing.) —that he got together with Rosa Lanza, and from what people tell me, they say that she has six children.

Mr. Diana: I move that that be stricken out as hearsay.

The Court: It is hearsay, of course, but I don't see why you move to strike it out. I will strike it out.

Mr. Diana: That is something that transpired after they were married.

By Mr. Mitchell:

Q. How many Capraro families are there in and around Terranova, that you know of? A. I

am not so sure, but I think there is about four or five.

Q. Did you know any other Guiseppi Capraros in and around Terranova besides the one who married Mrs. Capraro here? A. The only one that I know is my brother-in-law, and his name is Guiseppi Capraro, and he has big children.

Q. How often did you see this Guiseppi Capraro, the deceased, in Italy before you left? A. I see him almost every day, because we lived close to one another.

Q. And you never heard of him or never knew him to be married to Rosa Lanza? A. I don't remember.

Mr. Mitchell: That is all.

Cross-examination by Mr. Diana:

Q. But you do know that there was a Rosa Lanza Capraro in Terranova, don't you? A. Yes, I know, because she married my brother.

Q. But you know she married your brother from what people have written back and told you? A. Yes.

Q. And you knew this Rosa Lanza when you came to America, didn't you? A. No, I didn't know her.

Q. Do you know who it is that they talk about when they say that Rosa Lanza married your brother? A. I don't know, except that they tell me that she is Rosa Lanza.

Q. And when did you first hear about this Rosa Lanza? A. When she married my brother.

Q. How long ago? A. Oh, maybe twenty-two years, or twenty-one, or twenty-two.

Q. This was about ten years after you came to America, is that it? A. I don't know, I don't remember myself.

Q. Well, was it about the same time that Guiseppi Capraro went to live with Isabelle Propati here in America? A. I don't know, it was some time. We also went to the wedding, when Guiseppi Capraro married Isabelle.

Q. Was that about the time that you heard that Rosa Lanza was living with your brother in Italy? A. It is more than a few years ago, more than a few years having elapsed.

Q. Do you mean that after Guiseppi Capraro and Isabelle united that about two years after that you heard that Rosa Lanza was living with your brother? A. Yes.

Q. And then you knew who this Rosa Lanza was that we are referring to, didn't you? A. I don't know her, and I never saw her, I just knew her by reputation.

The Court: This doesn't help us any. In the first place I ordered that stricken out, and in the second place if it should stand, there is no testimony——

Mr. Diana: I intend to tie that up.

By Mr. Diana:

Q. About this same time they started talking about Guiseppi's wife living with your brother, isn't that right? A. I don't know.

Q. You heard the gossip, didn't you, that Rosa Lanza, the wife of Guiseppi Capraro, was living with your brother? A. No, no, I didn't hear anything about that.

Q. What did you hear then? A. We heard that my brother had taken this Rosa Lanza.

Q. And this Rosa Lanza was the same woman who had married Guiseppi Capraro, wasn't she? A. I don't know that. I was here then.

The Court: That settles that. She does not know it.

By Mr. Diana:

Q. How long have you lived in South Plainfield, Mrs. Capraro? A. Eighteen years.

Q. Where did you live before that? A. 115th Street.

Q. How long did you live there? A. Sixteen years.

Q. And where did you live before that? A. 113th Street, between 113 and 115th.

Q. How long did you live there? A. About six months.

Q. How long have you been in this country altogether? A. I came to this country in 1902, and this is 1932, so figure it out yourself. I am here thirty years.

Q. You say you lived in South Plainfield eighteen years? A. Yes, sir.

Q. And in New York sixteen years? A. Yes, sir.

Q. That is thirty-four years, isn't it? A. I am not so sure. It is around that figure. I don't know how to calculate correctly, but I know that for at least fifteen years I was in New York, and I was in South Plainfield for the last seventeen or eighteen years. I am a mother fifty-five years of age, and I can't remember all these years.

Q. Do you remember what year you moved to South Plainfield? A. No, I am not so sure, but it is 1915 or 1916, I think.

Q. As a matter of fact, you came to America before 1902, isn't that correct? A. No, I am sure that I came here in 1902. I am not so sure how long I lived in New York and how long I

lived in New Jersey. I had a passport, but my children tore it up.

Q. You remember Salvador Riccardi, don't you? A. Yes, he used to have a store, and we used to shop there.

Q. You knew him in Italy, didn't you? A. Yes, I remember him when he was a little boy. They lived in the city and we lived in the country.

Q. And when you came to America they were still living in Italy, were they not? A. Yes, they were in Italy when I came here.

Q. Both of them, were they not? A. Yes.

Q. You are sure of that, are you not? A. Yes. I recall that they came to this country a short time after I came. They might have got here a little after or a lot after.

Q. Do you know that Salvador Riccardi came to America about two years after you did? A. I don't know, I don't remember.

Q. But you know it was some time after you came here? A. I only know that I left him in Italy. Now, if he came after, I don't know whether it was one month or six months or when it was.

Q. Did you ever tell Isabelle that Rosa Lanza was living with your brother in Italy? A. No, I never said anything, because Isabelle lived in New York, and I lived in the country.

Q. Didn't Isabelle ever come to visit you? A. When she moved here, then she came to see me.

Q. When she moved here did you tell her that Rosa Lanza was living with your brother? A. No. I heard it from other people, that Rosa Lanza had married my brother.

Q. Did you tell Guiseppi Capraro that Rosa Lanza was living with your brother? A. No.

Q. Why didn't you tell him? A. Because it was no business of mine.

Nicholas Genovese, Recalled—Direct.

Q. You didn't want to make any trouble, is that the idea?

Mr. Mitchell: I object to the question.

The Court: Why should she tell her?

Mr. Diana: The answer may disclose the reason, if your Honor please.

The Court: Well, it may, I suppose. She says she didn't, so that settles it.

A. I didn't know anything. It wasn't because I didn't want to make trouble. I just minded my own business.

Mr. Diana: That is all.

Mr. Diana: I request that these powers of attorney be entered in evidence.

The Court: Let them be marked.

(The paper referred to was received in evidence and marked Exhibit P-1.)

(The paper referred to was received in evidence and marked Exhibit P-2.)

PETITIONER'S REBUTTAL TESTIMONY.

NICHOLAS GENOVESE resumed the stand and testified further as follows:

Direct examination by Mr. Diana:

Q. Mr. Genovese, you have heard John Capraro and Isabelle Capraro, as she is called, testify that you went some time in 1927 to the house of Guiseppi Capraro and wanted to buy some property that was in Italy from him, is that true? A. Never.

Q. Did you go there for the purpose of discussing any property in Italy? A. No.

Q. What did you go there for? A. I just went there about a year after I came from the other side to see him.

Q. Were you there about two weeks before he died? A. No, no.

Q. Or any time during the year 1927? A. No.

Q. You are sure of that? A. I am sure.

Mr. Diana: That is all.

The Court: Very well.

Mr. Diana: If your Honor please, at this time I wish to state that some remark of counsel, which I think was very unethical, was made, and I think I would like to have the record produced of the chancery hearing, taken, I believe, some time in 1928, in the case of Capraro *v.* Lehigh Valley Railroad. Counsel very unethically, I think, asked me the question whether I wasn't held in contempt of court, which, as a matter of fact, was not true. The testimony in that case was referred to the grand jury by the Vice-Chancellor, the testimony given by John Capraro and his mother, because at that time it so varied, and there was absolutely no indication at all as to counsel's attitude or conduct during that trial or prior to it.

The Court: Do you want to be heard in argument on this case now?

Mr. Mitchell: If the Court please, the first thing I wish to say it that when this case came up July 8, I think it was, Mr. Corsini came to me and said: "We would like to get an adjournment at this time due to the fact that this Rosa Lanza is sailing

from Italy within a week, and she is going to be here to testify in this case." I very readily consented to such adjournment due to the fact that I thought the production of Mrs. Rosa Lanza an important feature of the case. Two weeks later Mr. Corsini stated she landed in this country, and he was going to have the case set down for hearing, which he did, but no Rosa Lanza has been produced.

The basis of this claim of next of kin is a marriage that was alleged to have been performed in 1902. The action itself is brought by Riccardo Riccardi as attorney in fact of Rosa Lanza. Mr. Riccardi took the stand during the first hearing of this case, if the Court remembers, and his testimony was somewhat at variance with the testimony he has given today.

The Court: I can tell you frankly, Mr. Mitchell, I don't remember a thing about it.

Mr. Mitchell: Nevertheless, he testified at variance to what had been said at that time. He said that he knows Rosa Lanza for many, many years, and he was present at this wedding to Guiseppi Capraro. Now, Guiseppi Capraro came to this country in 1907, or in 1905, I believe it was, and not in 1907, and he married the widow who is here in court today. We have the marriage certificate from New York, and *prima facie* evidence of a legal marriage in this country. Now, the testimony that has been produced on the part of this Rosa Lanza has been nothing but evasion. They know everything about Rosa Lanza and the marriage, but know nothing about anything

else in this Terranova where they had been residing for a number of years. Finally they admitted there were two other Guiseppi Capraros in this country, and maybe one or two on the other side. Mrs. Capraro who testified for the widow stated that she was in Terranova up until December, 1902. She saw Guiseppi Capraro practically every day of the week. She lived only a short distance from him. She also testified that she did not know of any wedding in which this Guiseppi Capraro participated, but she did know, or did say when questioned on re-cross examination that Rosa Lanza was married to her brother, and we can assume that it is the same Rosa Lanza. No attempt was made to prove otherwise. She was married to her brother, and had six children by him. She came to this country five or six months after this alleged marriage between this Guiseppi Capraro and this Rosa Lanza. She knew that Isabelle Capraro, the woman who married Guiseppi Capraro from that time, she knew them out here in South Plainfield, and at no time did she tell either one of them that their marriage was illegal, that the marriage that she attended in New York was illegal, and I contend that we have shown enough reasonable doubt in the case on the fact that Guiseppi Capraro who died in South Plainfield and whose widow is now in court is not the same Guiseppi Capraro who is alleged to have married Rosa Lanza, and I submit that the exception filed in this account be dismissed.

The Court: I just cannot take the view of it that you take. The issue in this case is whether Guiseppi, otherwise known as Joseph, was married to Rose Lanza. Now, we have the positive testimony of Riccardo Riccardi that he knew Joseph and he knew Rose, and that he was there and saw them married on February 6, 1902; that he was acquainted with Joseph, knew him in Italy, knew him in this country; and that Joseph was the same man here that was purported to be married to the present administratrix in this case as was married to Rose in Italy in 1902.

Nicholas Genovese also testified that he saw Joseph and Rose married in Italy at the time designated. He also testifies that he saw Joseph in this county in November, 1921, and that he saw Rose just before he came to this country, and that she spoke to him about property which her husband might have in this country. That was, I think, just before he came to this country after having returned to Italy.

Salvador Riccardi testifies that he was in Italy when they were married and saw them married, and that he used to write letters for Joseph to his wife Rose in Italy.

Now, I cannot think that those three persons have come here on the witness stand and deliberately perjured themselves on such testimony that is clear and unmistakable.

Furthermore there is produced here a marriage certificate which undoubtedly is authentic, because it is properly exemplified by the United States Consul, in which

it shows that Guiseppi Capraro and Rosa Lanza were married in the year 1902. It furthermore states that Guiseppi Capraro was the son of Giovanni Capraro, and that part of the relationship is confirmed by your witnesses, Mr. Mitchell, that the father of this Guiseppi was Giovanni. It is also testified to by the witnesses for the administratrix that this Joseph's family had property in the same way that witnesses on the other side have testified to, namely, that they had a place in town and that they had a farm outside of town, two or three miles. That is also testified to by witnesses on both sides. That makes it quite clear, it seems to me, that this Joseph and this Rose were married.

Now, of course, the presumption in law is that they are still married, or they were at the time of Joseph's death, unless testimony appears to the contrary. The legal presumption arises that a marriage status once formed continues until the contrary is proven. Now, there has been no proof of a divorce between Joseph and Rose, and therefore it is presumed that their marriage continued until the time of Joseph's death, and that she was his lawful wife. Now, it may be that Joseph and Rose both disregarded the marriage status, that he came to this country leaving her behind, not bringing her here; it may be that she thought that he had abandoned her, and that therefore she entered into a relationship with somebody else in Italy. That is possible. It may be also possible that he intended to abandon her when he came to

this country, and did not bring her here, and that he entered into this form of marriage with the new wife. That may be, and I am not so sure that that is not true. The inferences may be lawfully drawn from the testimony in this case that that perhaps is exactly what happened, but that does not change the legal status of these two persons. They were married. Their marriage continued until his death, and these marriages or relationships between him and the present woman, and her and the new man would not change the situation, of course. That is the way the case seems to me. It would be very, very helpful to this Court and to the parties in this case, and in the interest of justice, if an investigation could be made in Italy as to the persons involved here, and as to whether or not if they were married in Italy whether there was a divorce between them, but that has not been made in this case, and I have to decide it upon the testimony before me. I cannot come to any other conclusion from the testimony presented by the administratrix. It has not helped me one bit. It is too bad for these two children John and Mary. Of course, they do not know anything about it, and it is not likely that their father in this country would ever refer to any woman with whom he had been married in Italy, in fact, everything points to the fact that he would naturally keep it from them if he were married, and likewise it would be natural for him to keep it from the woman in this country with whom he had entered into a marriage relationship.

Now, that is all the testimony produced on the part of the administratrix except the lady who was on the witness stand last, Marie Capraro, and I cannot put much confidence in her testimony. She testified to what clearly was illegal testimony, as to hearsay about her brother, and even if that is true, there is no positive testimony that her brother and this particular Rose Lanza were married, were legally married. I thought when she first answered the question she was simply confirming the view that I have taken for the reason that she did not say on her direct examination they were married, and she said that she heard that her brother and Rose Lanza got together. That does not imply necessarily a marriage, of course, and on cross-examination she did say she heard her brother and Rosa Lanza had been married, but still a further doubt remained as to whether or not Rosa Lanza was the Rosa Lanza in question.

Upon the whole I cannot come to any other conclusion but that Rosa Lanza was the lawful wife of Guiseppi Capraro at the time he died, and that such rights as the law gives to her as his lawful wife upon his death will have to be recognized. I come to this conclusion rather reluctantly, but on the whole I don't see what other lawful conclusion I can come to.

Mr. Diana: We have also filed an exception to the account, and I believe therefore that an order directing this money to be turned over to the rightful widow would be in order.

The Court: Well, there was no will in the case, was there?

Mr. Diana: No will, an administration.

The Court: Well, now, to what is she entitled under the statute of distribution as his wife? Are there any children?

Mr. Diana: There were no children living. She would be therefore entitled to the whole of the estate as well as the real estate, of course, which will be decided under a different suit, in as much as there is no estate as to real property.

The Court: Didn't he die possessed of any personal property?

Mr. Diana: He left $5,000, the proceeds of the settlement on his death. It was placed in the estate, and, as I understand it now, it was partly disbursed, part of it going to John and part of it going to Isabelle, and the part which was to have been the third to Mary I understood was still in the bank. Since then it has been paid out, since the exceptions to the account were taken, because at the time the exceptions to the account were taken and filed, the account showed that that money was still in the bank then. If that money has been disbursed it has been during this proceeding.

Mr. Mitchell: It was disbursed, if the Court please, immediately after an order was signed by you dismissing these exceptions.

Mr. Diana: The records are right there, your Honor. They will show that at the time our exceptions were taken and their account filed, that that was in the account.

The Court: The exceptions were dismissed and then the case was opened?

Mr. Diana: That is right.

Mr. Mitchell: They were dismissed several times.

Mr. Diana: No, that is not so. The account was filed without notifying Rosa Lanza, and your Honor reopened the case on the ground that proper notice had not been given.

The Court: Of course, if that is so——

Mr. Diana: I think certainly this woman is in contempt of court if she has disbursed this money after the exceptions were taken.

Mr. Mitchell: If the Court please, the administratrix of the estate was never in control of this five thousand dollars, except her own share of it, which was paid immediately after the death.

The Court: By the railroad company?

Mr. Diana: To her as a general administratrix.

The Court: The whole sum?

Mr. Diana: With the understanding, of course, that one-third belonged to one son, or John, and one-third to Mary. That she was in charge of administrating that estate, to see that proper disbursement of that estate was made, she is under bond, of course, to that effect.

The Court: You claim, of course, that these children, being born out of lawful wedlock, are not entitled?

Mr. Diana: That is correct.

The Court: But they have received it. Who is the bondsman?

Mr. Diana: The American Surety Company.

The Court: Well, I suppose I will have to sign an order for the payment of the money as directed by the statute. I have no other alternative.

Mr. Mitchell: That order will be directed to the bonding company, will it not?

The Court: No, the administratrix. Then it is between the administratrix and the bonding company as to what shall happen.

Mr. Diana: If the administratrix does not pay, then it is our duty to look to the bondsman?

The Court: I suppose it is.

I, Wm. J. Lounsberry, a stenographer, duly appointed to report stenographically the evidence given before the Middlesex County Orphans' Court, do hereby certify that the foregoing is a true and correct transcript of the evidence given on the sixteenth day of December, 1932, in the hearing before Honorable Adrian Lyon, Judge, in the Matter of the Estate of Joseph Capraro.

In Witness Whereof, I have hereunto set my hand and seal on this sixth day of April, 1933.

Wm. J. Lounsberry (L. S.)

Exhibit P-1.

I, Adrian Lyon, Judge of the Middlesex County Orphans' Court, do hereby certify that the foregoing is a transcript of the evidence given upon the hearing in the Matter of the Estate of Joseph Capraro, on the sixteenth day of December, 1932, as certified by , the stenographer appointed to report such evidence stenographically.

In Witness Whereof, I have hereunto set my hand and seal on this day of April, 1933.

Adrian Lyon,
Judge.

Exhibit P-1.

Translation

No. 1857 of Repertory.

Special Power of Attorney

Victor Emanuel Third, for God's Grace and by the Will of the Nation, King of Italy.

In the year Nineteen Hundred Thirty, E. F. VIII, on Feb. 6, in Terranova di Pollino, in my Office located at Piazza del Progresso No. 1.

Before me, Salvatore Lonigro, Notary Public, residing in Terranova di Pollino, registered in the Notary District of Lagonegro, and in the presence of the undersigned witnesses, who have all the requisites required by the law, has personally appeared Rosa Lanza, daughter of Nicola, farmer, born and domiciled in Terranova di Pollino, of whose personal identity, I, Notary Public, am certain, who has declared to nominate

Exhibit P-1.

and to appoint, as in force of this Act, nominates and appoints as her special Attorney Mr. Riccardo Ricciardi, son of Domenick, granting and giving to him full authority and power to proceed to the ascertainment and to the liquidation of the estate of her husband Giuseppe Capraro, son of the late Giovanni, deceased in New York a few years ago, with faculty to proceed to the repartition, liquidation of accounts, balancing, attribution, payments, sale and cession, as in bonary accords, as by judiciary action, asking and giving the opportune releases.

And to the end that nothing should lack to said her attorney, the constituent confers to him every ample faculty for the execution of this mandate, promising to have his action, since now, valid and ratified.

I, Notary Public, requested, have received this Act, the contents of which, in presence of the witnesses, Nicola Viola, son of the late Giovanni, and Saverio Oliveto, son of the late Giuseppe, municipal guards, born and domiciled in Terranova di Pollino, I have read to the constituent, who has in entirety approved and confirmed, declaring that she could not sign because illiterate.

Written by me in one sheet of paper of which it occupies two full pages and two lines of the third page, and is subscribed by the witnesses and by me, Notary Public.

(Seal) Niccola Viola
Salvatore Oliveto
Salvatore Lonigro, Notary Public.

Exhibit P-1.

Seen for the legalization of the signature of Mr. Salvatore Lonigro, Notary Public, of Terranovo di Pollino.

Noepoli, Feb. 7, 1930—VIII.

(Seal of the Court of Noepoli) The Judge
(Signed) Luigi Rossi.

Royal Ministry of the Justice

See for the legalization of the signature of Luigi Rossi, Judge.

(Seal of the Royal Ministry of the Justice) Rome, Feb. 17, 1930—VIII.

The Officer in charge
(Signed) E. Bononome.

Ministry of the Foreign Affairs

Seen for the authenticity of the signature of Mr. E. Bononome.

(Seal of the Ministry of Foreign Affairs) Rome, Feb. 22, 1930—VIII.
By the order of the Minister
(Signed) V. Morrone.

This is to certify that the foregoing is a true copy of the annexed Power of Attorney.

Trenton, N. J., Jan. 3, 1931—IX.
Felice Ronca

(LS)

Royal Consular Agent of Italy.

2
(stamps)

Exhibit P-2.

Province of Potenza.
Commune of Terranova of Pollino.

A transcript of a record on file in the Bureau of Records, Marriage Certificates, of the year 1902,—Part I—No. 9.

Caprara Giuseppe.....and.....Lanza Rosa

In the year nineteen hundred and two, the 6th day of February, at past 1 o'clock P. M., in the City Hall of Terranova of Pollino, open to the public.

Before me Vincenzo Virgallita, an Alderman acting in substitution of the Mayor absent, Official of the City Office, duly appointed, personally appeared:

1st.—Caprara Giuseppe, 28 years old, a drover, born in Terranova, residing in Terranova, son of Giovanni residing in Terranova;

2nd.—Lanza Rosa, 17 years old, countrymaid, born in Terranova, residing in Terranova, daughter of Nicola, a resident of Terranova, and of Imperio Maria, residing in Terranova, who have requested me to unite them in marriage: to this effect they have exhibited to me the document hereinafter described; and upon examination of this and of those that had been already exhibited on requesting the banns of marriage, I insert all of them, duly visaed by me, in the volume of documents of this Register, appearing to me that there is no legal impediment to celebrate this marriage, I have read to said bride and bridegroom the articles 130, 131 and 132 of the Civil Code, then I have asked the bridegroom if he intends to marry Lanza Rosa who is here present, and I have asked the bride if she intends to marry Caprara Giuseppe who is here present;

Exhibit P-2.

and having both of them answered affirmatively in full intelligence even of the undersigned witnesses, I have pronounced them, in the name of the Law, man and wife.

To this deed have been present: Basile Francesco, 48 years old, property owner, and Genovese Leonardo, 54 years old, property owner, both residing in this Commune.

The document exhibited is a certificate of the banns which were executed by me, the first on the 5th day, the second on the 12th day of the month of January last past.

To the above marriage have given consent the parents of the bride, as it appears from the act of request of banns.

The present act, having been read to the parties concerned, has been subscribed by me and by the witnesses, having both bride and bridegroom declared of being illiterate.

Signature of Francesco Basile
Signature of Genovese Leonardo
Signature of Virgallita.

This is a true transcript from its original, from which it has been taken, at the request of the person interested to and for his own use, to be exhibited in Court.

Terranova of Pollino, August 13, 1932, Year X.
The Official of the City Office

LONIGRO SALVATORE

[Communal Seal of Terranova of Pollino.]

Exhibit P-2.

Visaed for the authenticity of the signature of the Official of the City Office of Terranova of Polino Mr. Salvatore Lonigro.

Noepoli, August 14th, 1932. X.

The Vice-Praetor
CARLOMAGNO.

{ Seal of Office of the Praetor of Noepoli }

Visaed the signature of the Vice-Praetor Carlomagno.

Rome, August 19th, 1932

The Official in charge

A. MOSCA.

{ Seal of the Ministry of Pardons and Justice and of the Affairs of Cultus }

Visaed by the Ministry of Foreign Affairs for the authenticity of the signature of Mr. Mosca.

Rome, August 31, 1932., Year X.

by order of the Ministry

V. MORONE.

{ Seal of the Ministry of Foreign Affairs }

Visa of the American Consul in Rome

Exhibit P-2.

I the undersigned, Ferdinand Valenti, Notary Public, duly appointed for Westchester County, certificate filed in New York County No. 225—Reg. No. 3 V146, knowing both the Italian and English languages, declare that this is the exact translation, to the best of my knowledge, of the attached transcript of a certificate of marriage into English from its original written in Italian,

Dated in New York County,
City of New York, State of New York,
this 14th day of Nov. 1932.

FERDINAND VALENTI
Notary Public, Westchester Co.
(L.S.) Certificate filed in N. Y. Co. No. 225
Reg. No. 3 V146
Commission expires March 30, 1933

Decree on Account.

(Filed January 6, 1933.)

MIDDLESEX COUNTY ORPHANS' COURT.

IN THE MATTER *of* The Final Account of ISABELLA CAPRARO, Administratrix of the Estate of JOSEPH CAPRARO, Deceased.	On Petition, Etc. Decree on Account— Adjudicating Exceptions Thereto.

The Surrogate having audited and stated the account of Isabella Capraro, Administratrix of the Estate of Joseph Capraro, Deceased, and placed the same on the files of his office twenty days previous to the day of December 16th, 1932, and having on the last day aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that all persons concerned in the account were duly cited according to law to appear before the Court,

And exceptions having been filed to the account by Rosa Lanza Capraro, widow of Joseph Capraro, Deceased, by her attorney in fact, Riccardo Riccardi, and the proofs and allegations of the parties having been heard and considered by the Court,

It is ORDERED, ADJUDGED and DECREED, on this 20th day of December, 1932, that the exceptions to the account with respect to the payment of the sum of $1,626.00, paid to John Capraro, and the sum of $870.16, paid to Isabella Capraro, Administratrix, be allowed.

Decree Ordering Distribution.

And the Court having examined the account of the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars.

It is ORDERED, ADJUDGED and DECREED, on this 20th day of December, 1932, that the account be amended in accordance with the foregoing, and that as so amended the account be allowed, and that there is a balance of $4,244.16 remaining in the hands of the accountant to be disposed of according to law.

ADRIAN LYON,
Judge.

Decree Ordering Distribution.

(Filed January 6, 1933.)

Rosa Lanza Capraro, the Sole Next of Kin of Joseph Capraro, also known as Giuseppe Capraro, Deceased, by her attorney in fact, Riccardo Riccardi, having presented her petition demanding that the entire Estate and personal property of the said Joseph Capraro, Deceased, be paid over to the said Rosa Lanza Capraro, as his lawful widow and his only next of kin, and a rule having been granted to show cause why the said Isabella Capraro, Administratrix of the said Estate, should not be directed and ordered to turn over to the said Rosa Lanza Capraro the said Estate of the said Joseph Capraro, Deceased, and this matter coming on to be heard before me at the Orphans' Court, at the Court House, in the City of New Brunswick, on the 16th day of December,

1932, in the presence of Thomas C. Mitchell, Proctor for the said Isabella Capraro, Administratrix, and Edward P. Corsini, Proctor for the said Rosa Lanza Capraro (Salvador Diana of Counsel), and the said Rosa Lanza Capraro, by her attorney in fact, having produced testimony to prove that she is the real and lawful widow of the said Joseph Capraro, Deceased, and the evidence and arguments on both sides having been heard by me,

It is, on this 20th day of December, 1932, Ordered, Adjudged and Decreed, that the said Rosa Lanza Capraro is the lawful widow of Joseph Capraro, Deceased, and that the said Rosa Lanza Capraro, as the lawful widow and only Next of Kin, is entitled to the whole of said Estate, amounting to the sum of $4,244.16, and that the said Isabella Capraro, Administratrix, is hereby ordered and directed to forthwith turn over and pay to the said Rosa Lanza Capraro, or her Solicitor, the said sum of $4,244.16.

It is further ordered that the said Solicitor and of Counsel of the said Rosa Lanza Capraro, Petitioner, be allowed the sum of $500.00 as Counsel fees.

ADRIAN LYON,
Judge.

Filed December 20, 1932.

FRANK A. CONNOLLY,
Surrogate.

Notice of Appeal.

(Filed January 17, 1933.)

To Edward P. Corsini, Esq., Proctor for Petitioner:

Sir:

PLEASE TAKE NOTICE, that Isabella Capraro, the administratrix of the estate of Joseph Capraro, deceased, hereby appeals to the Prerogative Court from the decree entered herein on the 20th day of December, 1932, ordering that payment in the sum of $4,244.16 be made by said administratrix to Rosa Capraro, as the sole next of kin and lawful widow of the said Joseph Capraro, deceased, and every part thereof.

Dated January 17, 1933.

Respectfully,

COLLINS & CORBIN,
Proctors for Appellant.

(Service acknowledged January 17, 1933.)

Petition of Appeal.

(Filed February 20, 1933.)

NEW JERSEY PREROGATIVE COURT.

In the Matter *of* The Appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon on December 20, 1932, in the matter of the estate of Joseph Capraro, Deceased.	Petition of Appeal.

To the Ordinary of the State of New Jersey:

The petitioner, Isabella Capraro of South Plainfield, Middlesex County, New Jersey, respectfully shows that:

1. The petitioner is the widow of the deceased Joseph Capraro, general administratrix and administratrix *ad prosequendum* of the estate of the said Joseph Capraro, late of the County of Middlesex.

2. On December 20, 1932, the Orphans' Court of the County of Middlesex, through the Honorable Adrian Lyon, made a decree adjudging that one Rosa Lanza was the lawful widow and only next of kin of said Joseph Capraro, and further decreeing that the said Rosa Lanza was entitled to the whole of the said estate amounting to $4,244.16, and further ordering that your petitioner pay the entire sum of $4,244.16 to Rosa Lanza.

3. Your petitioner complains and alleges that this decree and every part thereof is erroneous.

Dated February 16, 1933,
Jersey City, N. J.

COLLINS & CORBIN,
Proctors for Appellant, Isabella Capraro.

(Served February 20, 1933.)

Answer to Petition of Appeal.

(Filed)

The answer of Rosa Lanza Capraro, by her attorney in fact, Riccardo Riccardi, respondent to the petition of appeal of Isabella Capraro, appellant:

1. This respondent answering, denies the allegations contained in the first paragraph of appellant's petition of appeal filed herein.

2. This respondent admits the allegations contained in the second paragraph of appellant's petition of appeal filed herein.

3. This respondent denies the allegations contained in the third paragraph of appellant's petition of appeal filed herein.

4. This respondent is advised, believes and submits that the decree complained of by appellant is just and lawful and this respondent denies that the aforesaid decree or any parts thereof are erroneous, improper or illegal, and alleges that the whole of said decree is legal, proper and correct.

She therefore prays that the said petition of appeal may be dismissed with costs.

EDWARD P. CORSINI,
Proctor for Respondent.

SALVATORE DIANA,
Of Counsel with Respondent.

Interrogatories Propounded to Rosa Lanza Capraro.

[Filed October 13, 1933.]

NEW JERSEY, ss.:

THE STATE OF NEW JERSEY to The AMERICAN CONSUL at the City of Palermo, Island of Sicily, Country of Italy, or a person to (Seal) be duly authorized by him, GREETING: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, full power and authority, diligently to examine *de bene esse* on her oath and affirmation, Rosa Lanza (sometimes known as Rosa Lanza Capraro or Rosa Lanza Luphrano), in the Commune of Terranova of Pollino, Province of Potenza in the Country of Italy, upon certain interrogatories to be exhibited to you and annexed hereto, as well upon the part of the said appellant as well as upon the part of the said respondent, in a certain action now pending in our said Prerogative Court, wherein Isabella Capraro is appellant, and Rosa Lanza is respondent; therefore, we command you, that at certain days and places to be appointed by you for that purpose, you cause the said witness

to come before you, and then and there examine her upon her oath or affirmation first taken before you, and that you do take her examination and cause the same to be reduced to writing and signed by said witness and yourself, and when you have so taken such deposition you are to send same to us in our said Prerogative Court without delay, closed up under your seal, distinctly and plainly set together with the said interrogatories and this writ. And we further command you, before you act in or be present at the swearing or examination of said witness, you do take the oath or affirmation faithfully, fairly and impartially to execute this commission, and that you take such oath or affirmation before any person lawfully authorized to administer an oath or affirmation in the Country of Italy, where you reside.

WITNESS, LUTHER A. CAMPBELL, Ordinary of our Prerogative Court at Trenton, New Jersey, this 23rd day of August, 1933.

THOMAS A. MATHIS,
Registrar.

COLLINS & CORBIN,
Proctors.

Commissioner's Oath.

I do swear that I will faithfully, fairly and impartially execute the annexed commission. So help me God.

C. H. HALL, JR.

Sworn and subscribed to at Naples, Italy, this 2nd day of October, 1933, before me.

CHARLES BRIDGHAM HOSMER,
American Consul.

Interrogatories Propounded to Rosa Lanza Capraro.

Following are the questions propounded in behalf of the appellant, Isabella Capraro:

1. What is your name?

2. What is your age?

3. Where were you born?

4. Did you marry a Giuseppe Capraro?

5. If the answer to question No. 4 is "yes," when, where, and by whom was the wedding ceremony performed?

6. What were the names of the father and mother of Giuseppe Capraro, if you know?

7. Where did they live?

8. Did you live with Giuseppe Capraro after the wedding ceremony?

9. Did you and Giuseppe Capraro have any children?

10. If the answer to No. 9 is "yes", is the child, or are the children alive today?

11. If not, when did the child or children die?

12. When, if ever, did Giuseppe Capraro leave Italy and go to America?

13. Did you ever receive any letters from him? If so, when, how many, and how often did you receive the letter? When did you receive the last letter from him?

14. Where were the letters sent from?

15. Did he ever send you any money from America?

Interrogatories Propounded to Rosa Lanza Capraro.

16. If the answer to No. 15 is "yes", state in detail the amounts of money received and the approximate dates upon which they were received.

17. After Giuseppe Capraro left Italy, did you ever receive anything of pecuniary value or benefit from him?

18. If so, state in detail the dates upon which those things of pecuniary value were received, and the value of each.

19. Did you know Giovanni Luphrano?

20. Are you married to Giovanni Luphrano?

20A. If the answer to question No. 20 is in the affirmative, state the date upon which you were married, where you were married and by whom you were married.

21. If the answer to question No. 20 is "yes", state whether or not you have had any children with the said Giovanni Luphrano, and if so, give their names and the dates of their births.

22. Have you, since Giuseppe Capraro left Italy, been married to anyone else? If so, when and where, and to whom?

23. Have you had any children since Giuseppe Capraro left Italy? If so, give their names and the date of their births, and the name of the father of each.

24. With whom are you living now?

25. When, how, and from whom did you first learn of the death of Giuseppe Capraro?

26. Do you know Riccardo Riccardi?

Interrogatories Propounded to Rosa Lanza Capraro.

27. Did he advise you of the death of Giuseppe Capraro? If so, when, where, and under what circumstances?

28. Did he advise you to start suit?

29. Did you ever sign a power of attorney granting Riccardo Riccardi the power to act for you in this manner?

Following are the questions propounded in behalf of the respondent, Rosa Lanza Capraro:

1. Were you married to Giuseppe Capraro?

2. When were you married to Giuseppe Capraro?

3. If you were married to Giuseppe Capraro did you live with him as husband and wife? If so, for how long?

4. Did Giuseppe Capraro leave you? When did he leave you? Why did he leave you?

5. From the time that he left you in Italy, did he ever return?

6. Have you ever been divorced from Giuseppe Capraro?

7. Do you know of any suit commenced by your husband, Giuseppe Capraro, against you for divorce?

COLLINS & CORBIN,
Proctors for Appellant,
Isabella Capraro.

EDWARD P. CORSINI,
Proctor for Respondent,
Rosa Lanza.

Interrogatories Propounded to Rosa Lanza Capraro.

KINGDOM OF ITALY,
CITY AND PROVINCE OF PALERMO,
CONSULATE OF THE UNITED
STATES OF AMERICA,
} SS.:

I, Alfred T. Nester, Consul of the United States of America at Palermo, Italy, appointed commissioner to take the testimony of Rosa Lanza Capraro, by virtue of a commission from the Prerogative Court of the State of New Jersey, do hereby appoint and deputize a Consul or Vice Consul of the United States of America at Naples, Italy, to take the testimony of the said Rosa Lanza Capraro and to perform any other act which might be required of the commissioner in this case.

In testimony whereof, I hereunto set my hand and seal this fourteenth day of September, 1933.

ALFRED T. NESTER,
Consul of the United States of America.
(Seal)

Deposition of witness, produced, sworn, and examined the second day of October, 1933, at Naples, Italy, under and by virtue of a commission issued out of the New Jersey Prerogative Court at Trenton, New Jersey, in a certain cause therein depending and at issue between Isabella Capraro, Appellant, and Rosa Lanza, Respondent, as follows:

Rosa Lanza, residing Terranova di Pollino, Province of Potenza, Italy, 49 years of age, being duly and publicly sworn, and examined on the part of the Appellant, doth depose and say as follows:

Interrogatories Propounded to
Rosa Lanza Capraro.

First.—To the first interrogatory she saith: Rosa Lanza, widow Capraro.

Second.—To the second interrogatory she saith: 49 years.

Third.—To the third interrogatory she saith: Terranova di Pollino, Province of Potenza, Italy.

Fourth.—To the fourth interrogatory she saith: Yes.

Fifth.—To the fifth interrogatory she saith: In February, 1902, Terranova di Pollino, Province of Potenza, Italy, the Mayor.

Sixth.—To the sixth interrogatory she saith: Giovanni Capraro, and Anna Maria Cristigliana.

Seventh.—To the seven*th* interrogatory she saith: Terranova di Pollino, Province of Potenza, Italy.

Eighth.—To the eighth interrogatory she saith: Yes.

Ninth.—To the ninth interrogatory she saith: No.

Tenth.—To the tenth interrogatory she saith: .....

Eleventh.—To the eleventh interrogatory she saith: .....

Twelfth.—To the twelfth interrogatory she saith: One year after my marriage.

Thirteenth.—To the thirteenth interrogatory she saith: Yes, every month or two from the time he left me. I do not remember when I received the last letter.

Fourteenth.—To the fourteenth interrogatory she saith: New York.

Fifteenth.—To the fifteenth interrogatory she saith: Yes. C. H. Hall, Jr.

Sixteenth.—To the sixteenth interrogatory she saith: I do not remember.

Seventeenth.—To the seventeenth interrogatory she saith: Money.

Eighteenth.—To the eighteenth interrogatory she saith: I do not remember.

Nineteenth.—To the nineteenth interrogatory she saith: Yes.

Twentieth.—To the twentieth interrogatory she saith: No.

Twentieth (a).—To the twentieth (a) interrogatory she saith: .....

Twenty-first.—To the twenty-first interrogatory she saith: .....

Twenty-second.—To the twenty-second interrogatory she saith: No.

Twenty-third.—To the twenty-third interrogatory she saith: None.

Twenty-fourth.—To the twenty-fourth interrogatory she saith: Alone.

Twenty-fifth.—To the twenty-fifth interrogatory she saith: Six years ago, from friends of his (I do not remember their names) in my town.

Twenty-sixth.—To the twenty-sixth interrogatory she saith: Yes.

Twenty-seventh.—To the twenty-seventh interrogatory she saith: No.

Interrogatories Propounded to
Rosa Lanza Capraro.

Twenty-eighth.—To the twenty-eighth interrogatory she saith: No.

Twenty-ninth.—To the twenty-ninth interrogatory she saith: Yes.

CROSS-EXAMINATION.

First.—To the first cross interrogatory she saith: Yes, at Terranova di Pollino, Province of Potenza, Italy.

Second.—To the second cross interrogatory she saith: In February, 1902.

Third.—To the third cross interrogatory she saith: Yes, for one year.

Fourth.—To the fourth cross interrogatory she saith: No. He did not abandon me but he left for America in 1903 to earn money.

Fifth.—To the fifth cross interrogatory she saith: No.

Sixth.—To the sixth cross interrogatory she saith: No.

Seventh.—To the *second* cross interrogatory she saith: No.

her
X
mark ROSA LANZA.

Witnesses:

THERESA TORNABENE,
TINA MASTOWILL (?).

Sworn to and subscribed before me by the said Rosa Lanza, this second day of October, 1933.

C. H. HALL, JR.,
Vice Consul of the
United States of America,
Acting Commissioner.

Interrogatories Propounded to Rosa Lanza Capraro.

I appearing that Rosa Lanza, the witness, could not understand the English language, one Miss Theresa Tornabene, who well understands both the English and the Italian languages, was employed as interpreter and was sworn as follows:

> "You do solemnly swear that you know the English and Italian languages and that you will truly and impartially interpret the interrogatories and cross interrogatories to be propounded to Rosa Lanza, the witness now to be examined, out of the English language into the Italian language, and that you will truly and impartially interpret the answers of the said Rosa Lanza thereto, out of the Italian language into the English language."

and said Miss Theresa Tornabene interpreted accordingly.

THERESA TORNABENE.

IN WITNESS WHEREOF, I have hereunto set my my hand and seal of this office at Naples, Italy, this second day of October, 1933.

C. H. HALL, JR.,
Vice Consul of the
United States of America,
Acting as Commissioner.

(Seal.)
TT

Interrogatories Propounded to
Rosa Lanza Capraro.

KINGDOM OF ITALY,
CITY AND PROVINCE OF NAPLES,
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA, } ss.:

I, C. H. Hall, Jr., Vice Consul of the United States of America, in and for the consular district of Naples, Italy, the commissioner named in the annexed commission, do hereby certify that in pursuance of said commission I examined Rosa Lanza at my office in the city of Naples, Italy, on the second day of October, 1933, at 9:30 a. m. and that the said witness was duly sworn to testify the truth, and did depose to the matters contained in the foregoing deposition, and did, in my presence subscribe the same. And I further certify that the deposition was duly taken and is a true record of the testimony of the witness and of all questions and answers to the inserted; that I have subscribed my name to each single sheet thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Naples, Italy, this second day of October, 1933.

C. H. HALL, JR.,
Vice Consul of the
United States of America,
Acting as Commissioner.

(Seal.)

American Consular Service
Fee Stamps 2 for $5 each
$2 and $1.00 Cancelled

Fee No. 5754
$11 equal to L.....

Fee No. 5755
$2 equal to L.....

Endorsed:

"Filed Oct. 13, 1933,
THOMAS A. MATHIS,
Register."

Interrogatories Propounded to Rosa Lanza Capraro.

(Envelope.)

RACCOMANDATA (Cancelled Stamps)
AMERICAN CONSULAR SERVICE
Naples, Italy

R Napoli (N. 25)
2203
VIA S/S REX
7.25
P 7

To the Register
of the Prerogative Court,
Trenton,
New Jersey
U. S. A.

(At Bottom of Envelope.)

Deposition taken before me and sealed up, addressed, and transmitted by me, being deposited in the Naples Post Office this second day of October, 1933.

C. H. HALL, JR.
Acting as Commissioner.

(On Side of Envelope.)

The within deposition having been placed in an envelope, sealed up, and deposited in the post office at Naples, Italy, directed to the Register of the Prerogative Court, Trenton, New Jersey, U. S. A. by the Commissioner within named, was delivered to me by the Postmaster at Trenton this thirteenth day of October, 1933.

THOMAS A. MATHIS,
Register.

Interrogatories Propounded to
Rosa Lanza Capraro.

(Attached to Envelope.)

CERTIFIED COPY
of Depositions Taken

IN THE MATTER

of

ROSA LANZA (sometimes known as ROSA LANZA CAPRARO or ROSA LANZA LUPHRANO) Respondent

and

ISABELLA CAPRARO, Appellant.

NEW JERSEY PREROGATIVE COURT

I, THOMAS A. MATHIS, Register of the Prerogative Court of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of depositions taken In the Matter of Rosa Lanza (sometimes known as Rosa Lanza Capraro or Rosa Lanza Luphrano) respondent and Isabella Capraro, appellant, as the same is taken from and compared with the original filed October 13, 1933, now remaining on file and of record in my office.

WITNESS my hand and the Seal of the Prerogative Court at Trenton, this eleventh day of March, A. D. 1935.

THOMAS A. MATHIS
Register.

(Seal)

Opinion.

(Filed June 15, 1934.)

NEW JERSEY PREROGATIVE COURT.

In the Matter

of

The appeal from each and every part of a decree entered in the Middlesex County Orphans Court by the Honorable Adrian Lyon on December 20, 1932, in the Matter of the Estate of Joseph Capraro, deceased.

Opinion.

1. A fund recovered by an administrator under the Death Act must be administered in the Orphans Court. The Orphans Court has not the power to distribute the fund.

2. The only proper items of an administrator's account are the assets of and the outlays for the estate; it is upon these that the balance is struck and charged against the administrator.

On appeal from the Orphans Court of Middlesex County.

Collins & Corbin, for the Appellant.
Edward P. Corsini, for the Respondent.

Backes, Vice Ordinary:

Joseph married Isabella in New York in 1907. They lived together as husband and wife until he

was killed on the railroad in 1927. Isabella and two grown children survived. Charging the Railroad Company with responsibility for the death of the husband and father, Isabella settled for $5,000, and the Surrogate of Middlesex County granted letters of general administration to her, that she might make the settlement. Four years later, Rosa Lanza, who resides in Italy, whom Joseph married in Italy in 1902, put in an appearance to claim the fund and petitioned the Surrogate to compel Isabella, administratrix, to account. Obedient to a citation, Isabella filed an account in the Orphans Court charging herself with the $5,000 and praying allowances for funeral expenses, $755.84, for one-third share of the fund paid to her son, who had become of age, and for $870.16 which she had retained as part of her own share, whereupon Rosa Lanza filed exceptions to the discharges except the funeral expenses. The Orphans Court sustained the exceptions, ordered the account to be amended accordingly, and as amended that it be allowed, "and that there is a balance of $4,244.16 remaining in the hands of the accountant to be disposed of according to law." Subsequently, by a decree which recites that Rosa Lanza presented her petition demanding that the entire estate and personal property of Joseph be paid over to her as his widow and only next of kin, and after testimony taken and argument had, the Orphans Court "Ordered, adjudged and decreed that the said Rosa Lanza Capraro is the lawful widow of Joseph Capraro, deceased, and that the said Rosa Lanza Capraro, as the lawful widow and only next of kin, is entitled to the whole of said estate amounting to the sum of $4,244.16, and that the said Isabella Capraro, administratrix, is hereby ordered and directed to forthwith turn

over and pay to the said Rosa Lanza Capraro, or her solicitor, the said sum of $4,244.16." Isabella appeals from the decree of distribution.

The testimony before the Orphans Court disclosed marriage ceremonies, civil and religious, in Italy in 1902, between Joseph and Rosa Lanza, and that they lived together for a year, when he came to America, to New York, where he later met Isabella. Although they came from the same small town in the old country Isabella claimed not to have known him there, nor Rosa Lanza, and had never heard of the marriage between Joseph and Rosa Lanza. The judge of the Orphans Court concluded that Rosa Lanza was the lawful wife, and because, as he stated, "The legal presumption arises that a marriage status once formed continues until the contrary is proven," that she is the lawful widow. He seemed not to have considered the primary and stronger presumption of the legality of the marriage between Joseph and Isabella, arising from their ceremonial marriage, the family and their matrimonial relations for 20 years; nor the burden on Rosa Lanza to overthrow this presumption by proof of the validity of the prior marriage, and also by evidence negativing every reasonable possibility of its invalidity as well as every reasonable possibility that it did not subsist at the time of the second marriage. *Sparks* v. *Ross,* 72 N. J. E. 762. 79 N. J. E. 99. *Schaffer* v. *Schaffer,* 88 N. J. E. 192. *Schuler* v. *Schuler,* 114 N. J. E. 220. There was no proof before the Orphans Court that Joseph and Rosa Lanza had not been divorced. Proof of that was furnished on the appeal by Rosa Lanza's deposition that she had not instituted divorce proceedings and had heard of none brought by Joseph against her. There was, how-

ever, no proof below, nor on appeal, that in 1902 Joseph and Rosa Lanza were free to marry. It has been held that the presumption of the legality of a second marriage is not overcome by proof of a prior ceremonial marriage, unless it should also be proven affirmatively that at the time of prior marriage the parties were free from disabilities against a lawful marriage. *U. S.* v. *Green,* 98 Fed. Rep. 63. Whether there was error in the conclusion need not be passed upon, for we are of the view that the Orphons Court had no jurisdiction to order the distribution of the fund.

The fund recovered under the Death Act is no part of the decedent's estate. It is held by the administrator in trust for the exclusive benefit of the widow, surviving husband and next of kin of the decedent, to be apportioned among them as they would take of the decedent's estate under the statute of distribution. *Gottlieb* v. *North Jersey St. Ry. Co.,* 72 N. J. L. 480. Inasmuch as the Death Act directs the fund to be paid to an administrator "who has given bond as required by law," and the Orphans Court act (Sec. 46) prescribes the form of the bond to be given by administrators, with conditions to file with the Surrogate a true and perfect inventory, to well and truly administer according to law, to file a just and true account to be allowed by the Orphans Court, and the residue of the estate "shall deliver and pay unto such person or persons, respectively, as is, are or shall, by law, be entitled to receive the same," it is necessarily implied that the Orphans Court has jurisdiction of the *administration* of the fund, as it has over executors' and administrators' accounts of decedents' estates under the statute. To deny this orderly course of administering the fund would mean that there could

never be a breach of the quoted condition of the bond. That judicial function, however, is concluded when the administrator's account is allowed and approved. *Ordinary* v. *Barcalow,* 36 N. J. L. 15.

In stating the account for allowance and approval, the court, of course, correctly sustained the exceptions to the allowances sought by the accountant for the share paid to the son and the part appropriated by the widow, for distribution of the fund under the statute formed no part of the accounting. The only proper items of an administrator's account are the assets of and the outlays for the estate; it is upon these that the balance is struck and charged against the administrator. *Weyman* v. *Thompson,* 52 N. J. E. 265. And the Orphans Court's order approving the account and charging the accountant with the balance, $4,244.16, was the appropriate final adjudication of the administration; its second order, distributing the fund, was without authority in law.

Jurisdiction to order distribution is a judicial function separate and distinct from the supervisory powers over administrators' accounts. Distribution is not made by any authority or power inherent in the Orphans Court. *In Re Estate of James Rakin,* 20 N. J. E. 481. It is a power bestowed upon probate courts from the earliest period only by express legislative grant. In the cited case, Chancellor Williamson relates that when the office of administrator was created by the statute of Edward III and the Ordinary was compelled to appoint the next friend of the intestate to administer his goods, it required the statute of 22 and 23 Car. 2, ch. 10 to endow the Ordinary with authority to compel administrators to

make distribution. The authority of our Ordinaries, colonial and state, over administrators, their accounts and distributions, had its origin in these statutes and was the same as that exercised by the English Ordinary.

When the Orphans Court was created by the Act of December 16, 1784 (Pat. Laws, 59) and powers of the Ordinaries were divided with that Court, it was authorized to hear and determine all controversies respecting the existence of wills, the fairness of inventories, the right of administration and guardianship and the allowance of accounts of administrators, executors, guardians and trustees, practically in the same language as Sec. 2 of the present Orphans Court Act (C. S. 3813), but no power of distribution was granted. That came eleven years later in an act passed March 2, 1795 (Pat. Laws, 153), and was confined to distribution of intestates' estates.

Though the Orphans Court originally was given jurisdiction over executors and their accounts, it required an enabling act in 1872, now Sec. 173 of the Orphans Court Act, to vest it with power to order distribution of estates of testators.

In *Ordinary* v. *Smith,* 15 N. J. L. 92, Chief Justice Hornblower remarked that "the administrator having faithfully administered on the estate, and settled his accounts in the Orphans' Court, may fold his arms in security, until the persons claiming to be the next of kin, have obtained a decree of the proper tribunal, establishing their title, ascertaining the amount due to them respectively."

In *Ordinary* v. *Barcalow, supra,* Chief Justice Beasley held that an executor must settle his account in the Orphans Court, and failure to do so was a breach of his bond, notwithstanding, and he

held, that the Orphans Court had not the power to decree distribution. That was before the act of 1872 conferring the right.

In *Exton* v. *Zule,* 14 N. J. E. 501, it was held that a decree for distribution of an intestate's estate, although a separate adjudication, was nevertheless ancillary to a decree settling the administrator's account to the extent that notice of the settlement was notice of the application for the decree of distribution, but in *Adams* v. *Adams,* 46 N. J. E. 298, the Court of Appeals held that a decree for distribution of a testator's estate was not a natural sequence of the executor's settlement of the account and that notice of the application for distribution was essential to the decree of distribution. In the first named case the individuality of the decree of settlement and the order for distribution was recognized; in the second it was emphasized.

The Orphans Court, a tribunal of general jurisdiction with powers limited to matters committed to it by the statute (*Obert* v. *Hammel,* 18 N. J. L. 73. *In re Fulper Estate,* 99 N. J. E. 293) fully exercised and exhausted its jurisdiction implied in the Death Act. The power to settle the account did not carry with it the power to order distribution of the fund. That was a duty imposed by the statute upon the administrator, not upon the Court, and a determination by the Orphans' Court would not protect the administrator, nor bind the claimants. For his protection or for the ascertainment of their rights they must pursue the remedies provided by law, as in other matters of trust. It may be that the next of kin may recover their shares from the administrator at law, as was attempted in *Wallbrook* v. *Ocean County Trust Co.,* 9 Misc. 273, but it is thought that the

relief is to be had in Chancery only. *Frey* v. *Demarest,* 16 N. J. E. 236.

We have here the anomalous situation of a fund representing the loss to Isabella and her children, claimed by Rosa Lanza whose damages, if any, could not have been contemplated in the settlement, and who delayed her notice of claim until long after the administratrix paid out part of the fund, as she was in duty bound under the statute. It may be Chancery can adjust the equities.

The decree of the Orphans Court to distribute the funds is set aside.

Final Decree.

(Filed August 28, 1934.)

NEW JERSEY PREROGATIVE COURT.

In the Matter *of* The Appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon, on December 20, 1932, in the Matter of the Estate of Joseph Capraro, deceased.	On Petition. Final Decree.

This cause coming on to be heard in the presence of Collins & Corbin, proctors for the appellant, and Edward P. Corsini and Salvatore Diana, proctors for and of counsel with the respondent, and the pleadings and proof having been read,

and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proof and arguments, and it satisfactorily appearing to the Court that the deceased Joseph Capraro, married or undertook to marry Isabella Propati in New York City in 1907; that they lived together as husband and wife until April 27, 1927, at which time Joseph was killed on the Lehigh Valley Railroad; that he was survived by Isabella and their two grown children; that on May 5, 1927, the Surrogate of Middlesex County granted letters of general administration to Isabella; that Isabella settled the claim with the aforesaid Railroad Company for $5000; that this fund constitutes the only asset in her hands as general administratrix; that on the 20th day of April, 1931, on the petition of one Rosa Lanza, claiming to be the lawful widow of the deceased Joseph Capraro, an order directing the administratrix Isabella, to account, was made by Hon. Adrian Lyon, Judge of the Orphans' Court of Middlesex County; that by a decree dated the 20th day of December, 1932, signed by the Hon. Adrian Lyon, as Judge of the Orphans' Court of Middlesex County, it was ordered, adjudged and decreed that the sum of $4244.16 remained in the hands of the administratrix to be disposed of according to law; that on the 20th day of December, 1932, by a decree ordering distribution, signed by Hon. Adrian Lyon, as Judge of the Orphans' Court of Middlesex County, it was ordered, adjudged and decreed, that the said Rosa Lanza was the lawful widow of Joseph Caprara, deceased, and Isabella Capraro as administratrix of the estate of the deceased, was directed to turn over and pay to the said Rosa Lanza, or her proctors, the sum of $4244.16; that the Orphans' Court has no jurisdiction or power to order a de-

cree of distribution of funds recovered under the New Jersey Death Act;

It is, on this 27 day of August, 1934, by Luther A. Campbell, Ordinary of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Ordinary by virtue of the power and authority of this Court, does hereby, ORDER, ADJUDGE and DECREE:

1. That the decree signed on the 20th day of December, 1932, by Adrian Lyon, Judge of the Orphans' Court of Middlesex County, whereby the administratrix Isabella Capraro, was ordered and directed to turn over and pay to the said Rosa Lanza, or her proctor, the sum of $4244.16, is hereby set aside, reversed, and for nothing holden;

2. That no costs or counsel fee be allowed to the appellant at this time. In the event this cause is appealed to the Court of Errors and Appeals and the decree of this Court is affirmed therein, leave is hereby given to the appellant to renew her motion for costs and counsel fee in this Court.

Respectfully Advised:

JOHN H. BACKES
V. O.

LUTHER CAMPBELL
Ordinary.

As to form—Edward P. Corsini.

Consent is hereby given to the making and entering of the within final decree.

.....
Proctor for Respondent.

A True Copy

THOMAS A. MATHIS
Register

Notice of Appeal.

NEW JERSEY PREROGATIVE COURT.

I, THOMAS A. MATHIS, Register of the Prerogative Court of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of FINAL DECREE in the Matter of the Appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon, on December 20, 1932, in the Matter of the Estate of Joseph Capraro, Deceased, as the same is taken from and compared with the original filed August 28, 1934, and now remaining on file and of record in my office.

WITNESS my hand and the Seal of the Prerogative Court at Trenton, this Thirteenth day of March, A. D. 1935.

THOMAS A. MATHIS,
Register.

(Seal)

Notice of Appeal.

(Filed April 25, 1935.)

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER *of* The Appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon on December 20, 1932, in the Matter of the Estate of Joseph Capraro, deceased.	On Petition. On Appeal from Prerogative Court Decree. Notice of Appeal of Rosa Lanza Capraro.

Rosa Lanza Capraro hereby appeals from all that part of the decree made by the Ordinary on

the advice of Vice-Ordinary Backes in this cause bearing date August 27, 1934, and filed on August 28, 1934, which orders, adjudges and decrees, as follows:

> "That the decree signed on the 20th day of December, 1932, by Adrian Lyon, Judge of the Orphans' Court of Middlesex County, hereby the administratrix Isabella Capraro, was ordered and directed to turn over and pay to the said Rosa Lanza, or her proctor, the sum of $4,244.16, is hereby set aside, reversed and for nothing holden."

to the Court of Errors and Appeals in the last resort in all causes.

SALVADOR DIANA,
Proctor and Counsel for
Rosa Lanza Capraro.

I conceive there is good ground for appeal from the said part of the said decree in the above stated cause.

W. S. ANGLEMAN,
Of Counsel with Rosa Lanza Capraro.

Service of the within Notice of Appeal is hereby acknowledged this 24th day of April, 1935.

COLLINS & CORBIN,
Solicitors for Isabella Capraro,
Respondent.

Petition of Appeal.

(Filed April 25, 1935.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter *of* The Appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon, on December 20, 1932, in the Matter of the Estate of Joseph Capraro, deceased.	On Appeal from Prerogative Court. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Rosa Lanza Capraro, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the Prerogative Court by His Honor the Ordinary on the advice of the Honorable John H. Backes, Vice-Ordinary, bearing date August 27, 1934, and filed August 28, 1934, in a cause therein depending in the matter of the appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon, on December 20, 1932, in the matter of the Estate of Joseph Capraro, deceased, wherein Isabella Capraro was administratrix-appellant and Rosa Lanza Capraro was respondent, in this respect, to wit: that the said decree orders, adjudges, and decrees

"That the decree signed on the 20th day of December, 1932, by Adrian Lyon, Judge of the Orphans' Court of Middlesex County, whereby the administratrix Isabella Capraro was ordered and directed to turn over and pay to the said Rosa Lanza, or her proctor, the sum of $4,244.16, is hereby set aside, reversed, and for nothing holden."

And your petitioner humbly appeals from the said decree of the Ordinary which orders, adjudges, and decrees as aforesaid, upon the ground that the same is erroneous for that the Prerogative Court should not have set aside, reversed and held for naught the said decree signed on the 20th day of December, 1932, by Adrian Lyon, Judge of the Orphans' Court of Middlesex County, but should have affirmed the said decree.

Your petitioner therefore prays that the said decree of the Ordinary may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

SALVADOR DIANA,
Solicitor and Counsel for Appellant.

Service of the within Petition of Appeal is hereby acknowledged this 26th day of April, 1935.

COLLINS & CORBIN,
Solicitors for Isabella Capraro,
Respondent.

92 MAY.T.1935

New Jersey Court of Errors and Appeals

In the Matter *of* The appeal from each and every part of a decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon, on December 20, 1932, in the Matter of the Estate of Joseph Capraro, deceased.	On Appeal from Prerogative Court. Appeal of Rosa Lanza Capraro. Sat Below: Campbell, O., Backes, V. O.

BRIEF FOR APPELLANT.

This is an appeal from a decree of the Prerogative Court advised by Vice-Ordinary Backes reversing a decree of the Middlesex Orphans' Court made by Judge Lyon ordering distribution to Rosa Lanza Caprara, widow and only next of kin, of the balance of moneys received as death damages in the hands of the administratrix of the estate of Joseph Capraro, deceased.

Joseph Capraro, the decedent, was killed in an accident on the Lehigh Valley Railroad, and the Railroad Company had paid $5,000 as damages for his death to his administratrix, Isabella Capraro, the respondent, with whom he had been living and who claimed to have been his wife and by whom he had had two children. Capraro, previous to his relations with Isabella, had been married in Italy to Rosa Lanza Capraro, the appellant, and had lived with her there for a year before coming to this country. There were no

children of the marriage to Rosa Lanza Capraro. Isabella came to America from the same small place in Italy where Rosa and Joseph lived but claimed not to have known either Rosa or Joseph when living there although the three lived on the same street within a few blocks.

The only asset coming to the hands of the administratrix was this $5,000 death damages. In fact, Isabella's petition to be appointed as administratrix set forth:

> "This applicant further shows that administration is applied for in settlement of a claim of Five Thousand Dollars ($5,000.00) against the Lehigh Valley Railroad Company.
>
> "That this applicant further shows that the Personal Estate for and in respect of which this administration is applied for does not exceed the sum of Five Thousand ($5,000.00) Dollars to the best of her knowledge and belief."

Case, Application for Letters, p. 1, ll. 27-40.

Upon being appointed administratrix, Isabella gave bond in the sum of $10,000 on condition, among other things, that she

> ". . . do make, or cause to be made, a just and true account of her administration, . . . ; and all the rest and residue of the said Goods, Chattels and Credits, which shall be found remaining upon the account of the said administration, the same being first examined and allowed . . . , shall deliver and pay unto such person or persons respectively, as is, are or shall by law be entitled to receive the same."

Case, Bond, p. 3, ll. 35-40; p. 4, ll. 1-9.

On being ordered to account, on her failure to do so, the administratrix filed her accounting which showed that she charged herself with the

$5,000 death damages and with no other assets and that she had paid for bond, funeral and other expenses $755.84, for which she prayed allowance, leaving a balance in her hands subject to the payments of commissions, counsel fee and Surrogate's fees of $4,244.16, of which balance she had paid $1,626 to John Capraro, one of the two children, and had retained for herself as being the widow $870.16.

Case, Final Accounting, pp. 21, 22.

The Orphan's Court sustained exceptions to the account challenging the said payments of $1,626 and $870.16 and decreed (a previous decree, Case, p. 23, having been vacated, Case, p. 27):

> ". . . that there is a balance of $4,244.16 remaining in the hands of the accountant to be disposed of according to law."

Case, Decree on Account, pp. 119, 120.

A decree ordering distribution of this balance of $4,244.16 to Rosa Lanza Capraro "as the lawful widow and only Next of Kin" of the decedent was then made.

Case, Decree Ordering Distribution, pp. 120, 121.

From this decree of distribution "Isabella Capraro, the administratrix of the estate of Joseph Capraro, deceased," appealed to the Prerogative Court.

Case, Notice of Appeal, p. 122.

But the Petition of Appeal was made by Isabella Capraro personally and not as administratrix.

Case, Petition of Appeal, pp. 123, 124.

The Prerogative Court reversed the decree of the Orphans' Court on the ground that the Orphans' Court had no jurisdiction to decree distribution of the death damages.

Case, Prerogative Court Opinion, pp. 138-145;
Case, Prerogative Court Final Decree, pp. 145-147.

It is from this final decree of the Prerogative Court that this appeal is taken.

Case, Notice of Appeal, pp. 148-149;
Case, Petition of Appeal, pp. 150-151.

The question of jurisdiction was not raised in the Orphans' Court and was not raised originally on the hearing in the Prerogative Court. After the appeal was submitted in the Prerogative Court, the Vice-Ordinary raised the question in a memorandum to counsel and requested briefs on the question.

The only question raised in the Orphans' Court, and to which the testimony taken was directed, was as to whether Isabella or Rosa were the legal widow. The Orphans' Court held that Rosa was the legal widow and therefore entitled to the fund. It was to this question that the appeal from the Orphans' Court to the Prerogative Court was directed, and it was to this question that the Interrogatories propounded by Isabella to Rosa were made in the Prerogative Court. The Vice-Ordinary did not pass upon this question, as not being necessary to do so, as he held the Orphans' Court was without jurisdiction.

Case, Prerogative Court Opinion, p. 141, ll. 12-15.

The Questions Presented.

There are two questions presented:

1. Did the Orphans' Court have jurisdiction to make its decree of distribution?

2. If so, was Rosa Lanza Capraro, the appellant, or Isabella Capraro, the respondent, the legal widow?

The Orphans' Court, no question of its jurisdiction having been raised, decided that Rosa Lanza Capraro was the legal widow and made a decree of distribution accordingly.

The Prerogative Court, raising the question of jurisdiction of its own motion, decided that the Orphans' Court did not have jurisdiction and therefore said that it was not necessary to decide as to the legal widow.

The Statutes.

There are three statutes bearing on the subject, the death statute and two statutes relative to the Orphans' Court, one giving the Orphans' Court the right to make orders and decrees, the other directing the Orphans' Court to make a decree of distribution after accounting has been made.

The statute regulating the procedure for the recovery of damages for death by wrongful act is P. L. 1917, Chap. 180, p. 531 (1 Cum. Supp., C. S., p. 928). Its provisions are familiar. The action must be brought, except where decedent dies testate, when the executor brings the action, by an administrator *ad prosequendum*, and the statute provides that

> "The amount recovered in every such action shall be for the exclusive benefit of the

> widow, surviving husband, and next of kin of such deceased person, and shall be distributed to such widow, surviving husband, and next of kin, in proportion provided by law in relation to the distribution of personal property left by persons dying intestate."

And further provides that

> ". . . where such deceased person has left or shall leave him or her surviving a widow or husband but no children or descendant of any children and no parents, the widow or surviving husband, as the case may be, shall be entitled to the whole of the damages which she or he shall sustain, and which shall be hereinafter recovered in any such action, and the same shall be paid to her or to him."

And further provides that

> ". . . no payment in settlement of any such claim or in satisfaction of any judgment obtained in any such action, or proceeding brought, or instituted, under the act to which this act is a supplement, shall be made to such administrator *ad prosequendum,* but such payment shall be made in such settlement or in such satisfaction, only to a general administrator, who has given bond as required by law and who has been appointed on a petition which recites the amount to be so paid in settlement or in satisfaction of such judgment, or to one who has been appointed and who has filed with the tribunal appointing him, a supplemental bond with two able sureties, in form and amount sufficient, in the judgment of the tribunal with which such bond is filed, to protect those entitled to the proceeds of such settlement or such satisfaction, in the receipt of such proceeds."

The statute giving the Orphans' Court the right to make any order or decree in any matter connected with administration is P. L. 1920, Chap.

257, p. 475 (2 Cum. Supp., C. S., 2610). This statute says:

> "It shall be lawful for any executor, administrator, or trustee, at any time, to apply by petition to the Orphans' Court of the county wherein letters were granted to him, for its advice and direction in regard to any matter or thing in connection with the administration of his trust; and thereupon the said court shall, upon such notice to all persons in interest as it may by order direct, examine into the matter and hear the parties interested, who may appear, and make such order or decree in the premises as it shall deem advantageous to the parties in interest."

The statute relative to distribution is P. L. 1914, Chap. 47, p. 70 (2 Cum. Supp., C. S., p. 2628). This statute says:

> "After executors or administrators shall have legally accounted for the goods and chattels and credits of the deceased, the Orphans' Court of the proper county shall, by a decree of distribution, order a just and equal distribution of the personal estate whereof any deceased shall die intestate, which may remain after the payment of debts, funeral charges and just expenses, among the husband or widow as the case may be, and children, or deceased children's children, if any such there be, or otherwise to the next of kindred to the intestate in equal degrees, or legally representing their stocks, each according to his or her respective right, pursuant to the laws in such cases, and the rules and limitations hereinafter set down and the persons entitled to such distribution shall have their remedy at law, in cases of nonpayment, for the recovery of the same, against the executor or executors, administrator or administrators, so accounting, saving to every one supposing himself, herself or themselves aggrieved, his, her and their right of appeal."

1. Orphans' Court Had Jurisdiction.

Isabella Caprara, the general administratrix, was an officer duly appointed by the Surrogate for certain specific purposes, namely, to receive certain moneys and to disburse those moneys in a certain way. She gave a bond to the Ordinary to perform that service. To say that the Orphans' Court has no jurisdiction to direct its officer, the administratrix, to carry out the purpose for which that officer, the administratrix, was appointed and for the faithful doing of which she had given her bond to the Ordinary would be in effect to nullify the purpose moving to the making of the appointment, *i. e.,* to nullify the statute. To say that because the death damages are not part of the *general* assets of the estate, and, therefore, the Orphans' Court has no jurisdiction to order distribution, is to ignore the plain purport and meaning of the statute, which makes the general administratrix the one to receive the money and directs it to be dedicated to certain specific purposes, *i. e.,* to be distributed in the manner set forth in the statute. In other words, the death damages are made a *statutory* asset of the estate and are earmarked by the statute for a certain distribution by the administratrix. It would be a most narrow construction of the statute and of the inherent authority of the Court, aside from its statutory authority, to say that the Orphans' Court has no authority to order its officer to carry out the objects for which that officer was appointed.

Furthermore, the 1920 statute, above quoted, gives the Orphans' Court the right to make, after notice, examination, and hearing, orders or decrees "as it shall deem advantageous to the parties in interest." In this case, on the filing of the account, the administratrix asked the Court

to approve of what she had done and the payment of moneys to her son and to herself of certain moneys, and actually obtained a decree to that effect.

> Case, Final Accounting, pp. 21-22;
> Case, Decree on Final Accounting, p. 23.

This decree was later set aside as having been improvidently obtained, and objections were filed to the account.

> Case, Order Opening Decree, p. 27;
> Case, Objections to Account, pp. 27-28.

The administratrix gave notice of appeal from the order opening the decree.

> Case, Notice of Appeal, p. 28.

But, later, she thought better of it and abandoned her notice of appeal, and a hearing was held relative to the accounting. The result of this hearing was adverse to the administratrix.

> Case, Decree on Accounting, pp. 119-120;
> Case, Decree Ordering Distribution, pp. 120-121.

To say now that she did not ask directions from the Court what to do with this fund, and that, therefore, the Court was without jurisdiction would be to stultify herself. She cannot take advantage of the statute when the result is in her favor, and ignore it when the result is against her. She asked directions of the Court, and the Court gave them. The 1920 statute said the Court could do so.

Suppose the damages have been paid "to one who has been appointed," to use the language of the 1917 statute, prior to the settlement of the death damages, *i. e.,* to an administrator not

specially appointed for that one purpose, and the administrator has actively administered the general assets of the estate. On an accounting having been made of the general assets as well as the statutory asset of death damages, the administrator refuses to pay over to the distributees any assets, general or statutory, without an order of the Court, *i. e.*, an order of distribution, would a widow be obliged to get an order of distribution from the Orphans' Court for the balance of the general assets shown by the accounting and then be forced to another proceeding in the Court of Chancery or in the Supreme Court to get what the accounting also showed she was entitled to as death damages. Would such an unnecessary proceeding be tolerated? To state it is to refute it.

What may have been the law in the olden days and what may have been the decisions under a strict construction of the law as it was held to be then, cannot be controlling today after enabling statutes to remedy those very defects have been passed and a broader, fuller concept of the purpose of remedial legislation is given proper weight in the construction of today's legislation and of the powers of the Court to give the full benefit of the law without unnecessary circuity of action and without giving simply the shell in one court and telling you you must go to another court to look for the kernel.

The 1920 statute says, as above quoted, that after the administrator has legally accounted the Orphans' Court shall order distribution "pursuant to the laws in such cases." That is what was done in this case—distribution was ordered pursuant to the law in the case.

The practice followed by the Orphans' Court in this case was the customary practice.

It is most respectfully submitted that the Orphans' Court had jurisdiction.

2. Rosa Lanza Capraro Was the Legal Widow.

The marriage of decedent to Rosa Lanza Capraro was fully proven, and also it was fully proven that he lived with her a year in Italy before coming to this country, that he corresponded with her and sent her money, and that she had not been divorced and was still his wife at the time of his death. This is shown by the testimony taken on behalf of Rosa Lanza Capraro in the Orphans' Court and by the interrogatories propounded to her in the Prerogative Court on behalf of Isabella Capraro and the cross-interrogatories. Nothing that Isabella Capraro did or could have done after the marriage of Rosa Lanza Capraro to decedent can alter those facts or affect the status of Rosa Lanza Capraro as the widow of decedent. Nor can any presumption raised by any action of Isabella Capraro affect Rosa Lanza Capraro's status as the widow of decedent. The cases cited in the Vice-Ordinary's opinion deal with different situations than this, and the language of the decisions in those cases should be interpreted in the light of those different situations.

Case, Testimony, pp. 36-73;
Case, Interrogatories, pp. 127-133.

It is hard to understand the Vice-Ordinary's reasoning in his opinion (Case, Opinion, p. 140, ll. 21-32) that of two ceremonial marriages the greater presumption of legality is in favor of the second. What is inherently so sacred in a second marriage as to give it precedence as to the presumption of legality over the first? It is respectfully submitted that cannot be the true meaning of the cases.

It is most respectfully submitted that the proofs show that Rosa Lanza Capraro was married to decedent and became his widow at his death.

Conclusion.

If the Orphans' Court cannot order distribution of the funds to collect and disburse which it appointed the administratrix, then the administratrix cannot be compelled by the Court appointing her to carry out the very purpose for which the Court did appoint her. If the Orphans' Court can appoint an officer to do a certain thing but cannot call that officer to account if she does not do that for which she was appointed, a rather strange and, in fact, a very questionable situation would be presented.

The day of the special demurrer when every legalistic *t* must be crossed and every legalistic *i* must be dotted has passed.

The fund in this case is given by the statute for the exclusive benefit of the widow. Having determined who the widow is, are there any equities to adjust, as suggested by the Vice-Ordinary at the conclusion of his opinion, where he says, "It may be Chancery can adjust the equities"? The statute is explicit. It leaves nothing to adjust.

It is most respectfully submitted that the decree of the Prerogative Court should be reversed.

Salvador Diana,
Proctor and Counsel for Appellant.

W. S. Angleman,
Of Counsel.

May Term, 1935.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

(2692)

92 MAY.T.1935

New Jersey Court of Errors and Appeals

In the Matter of The Appeal from each and every part of a Decree entered in the Middlesex County Orphans' Court by the Honorable Adrian Lyon, on December 20, 1932, In the Matter of the Estate of Joseph Capraro, Deceased.	On Appeal from Prerogative Court

BRIEF OF THE ADMINISTRATRIX-RESPONDENT

(1)

Statement of the Case

The appeal of Rosa Lanza brings before this Court for review, a decree of the Prerogative Court advised by the Honorable Vice Ordinary John H. Backes, reversing a decree signed by the Honorable Adrian Lyon, sitting as Judge of the Middlesex County Orphans' Court.

Joseph Capraro the deceased herein, was killed by a Lehigh Valley Railroad train on April 26, 1927 (p. 11, ll. 11-13; ll. 27-30; p. 10, ll. 24-27). At the time of his death he was living in South

Plainfield, New Jersey, with his wife, the respondent herein, Isabella Capraro, and their two minor children, John, aged 18, and Mary, aged 16 (p. 1, ll. 21-26; p. 73, ll. 30-32; p. 80, ll. 32-40).

The respondent, Isabella Capraro, applied to the Surrogate of Middlesex County for letters of general administration of her husband's estate, on May 5, 1927 (p. 1, ll. 1-40), for the purpose of effecting a settlement in the amount of $5,000 with the Lehigh Valley Railroad Company (p. 1, ll. 27-36). Letters of general administration were granted to her by the Surrogate of Middlesex County on that date, and immediately thereafter she received a check in the amount of $5,000 from the Lehigh Valley Railroad Company in settlement of her claim against that company, which had arisen as the result of the wrongful death of the said Joseph Capraro. The money so paid under the provisions of the New Jersey Death Act, comprises the entire estate which came into the hands of the respondent herein (p. 21, ll. 11-14; l. 31).

No accounting was filed, and on April 21, 1931, an order was signed by the Honorable Adrian Lyon, Judge of the Orphans' Court of Middlesex County, directing the respondent herein to account to that court (p. 14, l. 1–p. 15, l. 9). This order was in response to a petition filed in that court by one Riccardo Riccardi as attorney in fact of one Rosa Lanza, who claimed to be the lawful widow of the deceased, Joseph Capraro (p. 12, l. 1–p. 13, l. 40). The respondent filed her accounting on September 21, 1931, and showed that the sum of $755.84 had been paid for funeral expenses and expenses of administration. She further showed that the sum of $1,626 had been paid to her son John, and that

the sum of $870.16 had been paid to herself as widow of the deceased (p. 21, l. 1–p. 22, l. 40). A decree of final accounting was signed by the Honorable ADRIAN LYON on September 11, 1931, which accounting showed a balance of $1,399.50 remaining in the hands of the administratrix, available for distribution to Mary Capraro, the daughter of Joseph Capraro, upon her attaining the age of twenty-one (p. 23, l. 38).

On November 20, 1931, Judge LYON in response to a petition filed by the said Riccardo Riccardi, signed a rule to show cause ordering the administratrix to show cause before that court, why all the property in the estate of Joseph Capraro should not be turned over to the said Rosa Lanza (p. 26, ll. 1-33).

On December 31, 1931, Judge LYON ordered that the decree of final accounting be opened, set aside and vacated, and afforded the said Riccardo Riccardi as attorney in fact for Rosa Lanza, twenty days within which to file objections to the accounting (p. 27, ll. 1-21). The objections to the accounting were duly filed by Riccardo Riccardi, and after various intermediate petitions and orders, the matter was brought on for hearing on December 16, 1932, before Judge LYON, sitting as Judge of the Middlesex County Orphans' Court (pp. 36-118).

On December 20, 1932, Judge LYON signed a decree, by the terms of which the accounting was amended to show a balance of $4,244.16 remaining in the hands of the administratrix, to be disposed of according to law (p. 119, l. 1–p. 120, l. 18). Thereafter Judge LYON signed a decree of distribution, by the terms of which it was ordered, adjudged and decreed, that Rosa Lanza Capraro was the lawful widow of Joseph Capraro

and his only next of kin, and as such entitled to the whole of his estate amounting to $4,244.16. By the terms of that order the administratrix was directed to pay to the said Rosa Lanza Capraro, the sum of $4,244.16 (p. 120, l. 21–p. 122, l. 35).

The respondent herein appealed from the decree ordering distribution, to the Prerogative Court. The matter was duly referred to Vice Ordinary Backes, who by an opinion filed on June 15, 1934, found that the order of the Orphans' Court, directing distribution of the fund, was without authority in law (p. 142, ll. 23-24). It is from the decree advised by the Vice Ordinary that this appeal has been taken (p. 143, l. 19–p. 147, l. 40).

(2)

Statement of the Facts

The deceased, Joseph Capraro, married the respondent herein, Isabella Capraro, in New York City on November 21, 1907 (p. 81, l. 36; p. 82, l. 10; see also Exhibit D-1, p. 81, ll. 31-32). The couple resided in New York City until 1919 and two children were born of their union, John on November 24, 1908 (p. 73, ll. 39-40) and Mary on November 10, 1910 (p. 80, ll. 33-37).

In 1919 Joseph and his family moved to South Plainfield, N. J. They were residing there on April 26, 1927, on which day Joseph was killed by a Lehigh Valley Railroad train.

Joseph was about fifty-three years old at the time of his death. He was born and raised in the Terranova of Pollino in Italy. He left Italy and

came to America in 1903 (p. 40, ll. 25-26). The appellant herein, Rosa Lanza, who lives in Italy and has always lived there, claims to have married Joseph in Italy on February 6, 1902 (p. 38, l. 22–p. 39, l. 10; Exhibit P-2, pp. 115-118; p. 31, ll. 15-17). She claims to have lived with him for one year up until 1903 at which time Joseph came to America alone (p. 131, ll. 34-34).

There is a conflict in the testimony regarding the appellant's status at the time of Joseph's death. Riccardo Riccardi, her attorney in fact, has seen her on several occasions since 1902. He admitted to the respondent herein that Rosa Lanza has had six children by a man named Giovanni Luphrano with whom she lives (p. 89, ll. 11-16; p. 89, ll. 34-38; p. 90, ll. 8-13). On cross examination his testimony was evasive but he admitted that she is supposed to have children (p. 44, ll. 25-26). Mary Capraro, who is the sister of Giovanni Luphrano, testified on cross examination that Rosa Lanza had married her brother, Giovanni, in Italy about the year of 1910 and that she has had six children by him (p. 97, l. 20–p. 98, l. 40). Rosa Lanza in her answers to interrogatories propounded to her, denied that she ever had any children by Joseph Capraro or by anyone else (question 9, p. 127; answer 9, p. 131; question 23, p. 128; answer 23, p. 123). She also denied having married Giovanni Luphrano (question 20, p. 128; answer 20, p. 132), or ever having been divorced from Joseph or of having any knowledge of any divorce suit brought against her by Joseph (questions 6 and 7, p. 129; answers 6 and 7, p. 133).

The testimony of Salvatore Riccardi is to the effect that Joseph could not write and that he,

Salvatore, wrote letters to Rosa for Joseph for about two years after Joseph came to America (p. 63, ll. 1-9; p. 69, ll. 7-14).

There is no suggestion in the record that the respondent or her two children ever had any knowledge or even suspicion that Joseph had or might have married prior to 1907 when he married Isabella (p. 75, ll. 34-39; p. 82, l. 39; p. 81, ll. 19-21) nor did they learn of Rosa Lanza's existence until almost four years after Joseph's death (p. 74, ll. 21-30; p. 75, ll. 32-38; p. 81, ll. 19-21).

We have here two women, the respondent, who married Joseph in 1907, who lived with him for twenty years until his death, who bore him two children, who was supported by him and who suffered the pecuniary loss as the result of his death. It was to compensate her and her children for that loss that the Lehigh Valley Railroad Company paid the $5,000 in settlement for Joseph's death. On the other hand, we have the appellant who claims to have married Joseph in 1902. She admits that she never saw him after 1903, which was twenty-four years prior to his death. She never heard from him after 1905. She received no support from him and she suffered no pecuniary loss by reason of his death. She has been married or has lived with another man since 1908 or 1909. She is the mother of six children by the other man and it was not until almost four years after Joseph's death or twenty-eight years after she had last seen him, that she made any claim to the relationship of wife. Now she seeks to recover a fund paid to the respondent admittedly to compensate the respondent for her loss.

(3)

Grounds of Argument

The argument of the respondent will be presented under the following headings:

I The Orphans' Court had no jurisdiction to decree distribution of funds paid under the New Jersey Death Act.

II The appellant is not the lawful widow of Joseph Capraro, deceased.

III The appellant is not entitled to share in the fund which came into the hands of the respondent.

IV The minor children of the deceased, Joseph Capraro are legitimate and as such are his only next of kin.

(4)

BRIEF OF THE ARGUMENT

I

The Orphans' Court had no jurisdiction to decree distribution of funds paid under the New Jersey Death Act.

It is undisputed in this case that the only funds that came into the hands of the respondent herein as administratrix were funds obtained from the Lehigh Valley Railroad Company in settlement of the alleged claim against it for the wrongful death of Joseph Capraro.

It is established beyond cavil that such funds form no part of the estate of the deceased.

Gottlieb v. *North Jersey Railroad Company,* 72 N. J. L. 480; 63 Atl. 339 (Court of Errors and Appeals, 1906);
Cetofonte v. *Camden Coke Company,* 75 Atl. 913 (Court of Errors and Appeals, 1909);
Manns v. *Sanford Company,* 82 N. J. L. 124 (Supreme Court, 1911); 81 Atl. 491.

The respondent held these funds as trustee for the benefit of those entitled to receive them (cases cited, *supra*). In this regard Vice Ordinary Backes said at page 141, lines 16 to 23:

> "The fund recovered under the Death Act is no part of the decedent's estate. It is held by the administrator in trust for the exclusive benefit of the widow, surviving husband and next of kin of the decedent, to be apportioned among them as they would take of the decedent's estate under the statute of distribution. *Gottlieb* v. *North Jersey St. Ry. Co.,* 72 N. J. L. 480."

The Orphans' Court made an order decreeing distribution of these funds. In making this order the Vice Ordinary held that the Orphans' Court exceeded its power.

It is true that the question of the Orphans' Court's jurisdiction was not raised in that Court. However, the defect is one which cannot be waived. It goes to the question of the jurisdiction and power of the court over the subject-matter and parties cannot by consent confer jurisdiction upon a court in this regard. Such question may be raised at any point in the proceedings.

Newkirk v. *Morris,* 12 N. J. Eq. 62 (Court of Chancery, 1858);
School District v. *Stocker,* 42 N. J. L. 115 (Supreme Court, 1880);
Board of Chosen Freeholders v. *C. R. R. Co. of New Jersey,* 68 N. J. Eq. 500; 59 Atl. 303; affirmed 70 N. J. Eq. 806; 65 Atl. 1117 (Chancery, 1904);
Chadwik's Will, 80 N. J. Eq. 168, 82 Atl. 918 (Prerogative Court, 1902);
Strubel's Estate, 87 N. J. Eq. 311, 101 Atl. 177 (Prerogative Court, 1917);
Handleman v. *Harris,* 93 N. J. L. 66, 107 Atl. 34 (Supreme Court, 1919).

The Orphans' Court is not a constitutional court and while it is a tribunal of general jurisdiction its powers are limited to matters committed to it by statute.

Ludlow v. *Ludlow,* 4 N. J. L. 219 (Supreme Court, 1818);
Tenbrook v. *McClone,* 12 N. J. L. 97 (Supreme Court, 1830);
Obert v. *Hammel,* 18 N. J. L. 73 (Supreme Court, 1840);
Potter v. *Berry,* 56 N. J. L. 454, 28 Atl. 668, affirmed 57 N. J. L. 201, 33 Atl. 455 (Court of Errors and Appeals, 1894);
In re Fulper, 99 N. J. Eq. 293 at 297, 132 Atl. 834 (Prerogative Court, 1926).

The power to order distribution is not made by any authority or power inherent in the court. It is derived solely from the Legislature.

Caruso v. *Caruso,* 106 N. J. Eq. 130, at 146 (Court of Errors and Appeals, 1929), 148 Atl. 882;

Estate of James Rakin, 20 N. J. Eq. 481 at 486 (Prerogative Court, 1869);
Smith v. *McDonald,* 71 N. J. Eq. 261 at 262 (Court of Errors and Appeals, 1906).

The Vice Ordinary in his learned opinion reviewed the history of the power of the Orphans' Court to decree distribution. He said at page 142, line 26 to page 143, line 27:

> "Jurisdiction to order distribution is a judicial function separate and distinct from the supervisory powers over administrators' accounts. Distribution is not made by any authority or power inherent in the Orphans' Court. *In Re Estate of James Rakin,* 20 N. J. Eq. 481. It is a power bestowed upon probate courts from the earliest period only by express legislative grant. In the cited case, Chancellor Williamson relates that when the office of administrator was created by the statute of Edward III and the Ordinary was compelled to appoint the next friend of the intestate to administer his goods, it required the statute of 22 and 23 Car. 2, ch. 10 to endow the Ordniary with authority to compel administrators to make distribution. The authority of our Ordinaries, colonial and state, over administrators, their accounts and distributions, had its origin in these statutes and was the same as that exercised by the English Ordinary.
>
> "When the Orphans Court was created by the Act of December 16, 1784 (Pat. Laws, 59) and powers of the Ordinaries were divided with that Court, it was authorized to hear and determine all controversies respecting the existence of wills, the fairness of inventories, the right of administration and guardianship and the allowance of accounts of administrators, executors, guardians and trustees, practically in the same language as

Sec. 2 of the present Orphans Court Act (C. S. 3813) but no power of distribution was granted. That came eleven years later in an act passed March 2, 1795 (Pat. Laws, 153), and was confined to distribution of intestates' estates.

"Though the Orphans Court originally was given jurisdiction over executors and their accounts, it required an enabling act in 1872, now Sec. 173 of the Orphans Court Act, to vest it with power to order distribution of estates of testators."

The present statute granting to the Orphans' Court power to decree distribution is to be found in Compiled Statute Supplement 1924, Section 146-168, page 2628:

"After executors or administrators shall have legally accounted for the goods and chattels and credits of the deceased, the Orphans' Court of the proper county shall, by a decree of distribution, order a just and equal distribution of the personal estate whereof any deceased shall die intestate, which may remain after the payment of debts, funeral charges and just expenses, among the husband or widow as the case may be, and children, or deceased children's children, if any such there be, or otherwise to the next of kindred to the intestate, in equal degrees, or legally representing their stocks, each according to his or her respective right, pursuant to the laws in such cases, and the rules and limitations hereinafter set down and the persons entitled to such distribution shall have their remedy at law, in cases of nonpayment, for the recovery of the same, against the executor or executors, administrator or administrators, so accounting, saving to every one supposing himself, herself or themselves aggrieved, his, her and their right of appeal (L. 1898, p. 778, (C. S. p. 3874), as amended L. 1914, c. 47, p. 70.)"

This is the only section authorizing that court to issue decrees of distribution and by its terms that power is confined to distribution of the personal estate of the deceased. Joseph Capraro, the deceased herein, left no personal estate to be distributed.

The Vice Ordinary held that the Death Act, since it requires the administrator to give a bond in the form required by Section 46 of the Orphans' Court (C. S. 1910, p. 3826, Sec. 46) impliedly gave the Orphans' Court jurisdiction over the *administration* of the fund. In this regard the Vice Ordinary said:

> "Inasmuch as the Death Act directs the fund to be paid to an administrator 'who has given bond as required by law,' and the Orphans Court act (Sec. 46) prescribes the form of the bond to be given by administrators, with conditions to file with the Surrogate a true and perfect inventory, to well and truly administer according to law, to file a just and true account to be allowed by the Orphans Court, and the residue of the estate 'shall deliver and pay unto such person or persons, respectively, as is, are or shall, by law, be entitled to receive the same,' it is necessarily implied that the Orphans Court has jurisdiction of the *administration* of the fund, as it has over executors' and administrators' accounts of decedents' estates under the statute. To deny this orderly course of administering the fund would mean that there could never be a breach of the quoted condition of the bond. That judicial function, however, is concluded when the administrator's account is allowed and approved. *Ordinary* v. *Barcalow,* 36 N. J. L. 15.
>
> "In stating the account for allowance and approval, the court, of course, correctly sustained the exceptions to the allowances sought by the accountant for the share paid to the son and the part appropriated by the

> widow, for distribution of the fund under the statute formed no part of the accounting. The only proper items of an administrator's account are the assets of and the outlays for the estate; it is upon these that the balance is struck and charged against the administrator. *Weyman* v. *Thompson,* 52 N. J. E. 265. And the Orphans' Court's order approving the account and charging the accountant with the balance of $4,244.16, was the appropriate final adjudication of the administration; its second order, distributing the fund, was without authority in law."

As we have attempted to point out above and as the Vice Ordinary so clearly stated in his opinion, the power to compel an accounting does not carry with it the power to order distribution of the balance shown to be in the hands of the accountant.

> *Ordinary* v. *Smith,* 15 N. J. L. 92 (Supreme Court 1835);
> *Ordinary* v. *Barcalow,* 36 N. J. L. 15 (Supreme Court, 1872);
> *Adams* v. *Adams,* 46 N. J. E. 298, 19 A. 15 (Court of Errors & Appeals, 1889).

The distinction between these judicial functions or powers is shown by the language of Chief Justice Hornblower in the case of *Ordinary* v. *Smith, supra,* which language was cited by the Vice Ordinary in his opinion. The Chief Justice said at page 99:

> "the administrator having faithfully administrated on the estate, and settled his accounts in the Orphans' Court, may fold his arms in security, until the persons claiming to be next of kin, have obtained a decree of the proper tribunal, establishing their title, ascertaining the amount due to them respectively."

There being no statute authorizing the Orphans' Court to order distribution of funds paid under the Death Act, and since that power can not be implied from an implied power over the *administration* of the fund, it must follow that the decree of the Orphans' Court was erroneous.

The appellant should seek relief in the Court of Chancery. While the respondent is nominally an administratrix she is in fact a trustee. The independence of the offices of administratrix and trustee is well recognized in New Jersey.

> *Pitney* v. *Everson,* 42 N. J. Eq. 361, 7 Atl. 860 (Court of Errors and Appeals, 1886);
> *In re Slaters Case,* 88 N. J. Eq. 296, 102 Atl. 384 (Prerogative Court, 1917).

The appellant is claiming as a *cestui que trust* entitled to equitable ownership of the fund. The Orphans' Court has no jurisdiction to determine in whom equitable title to property is vested.

> *O'Callahan's Estate,* 64 N. J. Eq. 287, 51 Atl. 64 (Prerogative Court, 1902);
> *Lippincott's Case,* 68 N. J. Eq. 578, 59 Atl. 884 (Prerogative Court, 1904);
> *In re Morrissey's Estate,* 91 N. J. Eq. 477, 110 Atl. 118 (Prerogative Court, 1920).

The Court of Chancery has exclusive jurisdiction over these matters.

In England, it has been held that the only remedy of the next of kin, for the recovery of funds paid to the administrator under the Death Act is an action in the Court of Chancery.

> See *Bulmer* v. *Bulmer* (1883), 25 L. R. Ch. Div., Eng. 409, 53 L. C. N. S. 402, 53 L. J. Ch. 402.

II

The appellant is not the lawful widow of Joseph Capraro, deceased.

The testimony before this Court conclusively establishes the fact that Joseph Capraro entered into a ceremonial marriage with the respondent herein in the City of New York on the 21st day of November, 1907. Furthermore, it is undisputed that Joseph Capraro and the respondent lived together as husband and wife from that day until the day of his death, some twenty years later, on April 26, 1927. It is also undisputed that two children were born of this marriage, John Capraro and Mary Capraro. The establishment of this marriage and the subsequent cohabitation of the parties thereto, brings into play a number of presumptions.

In the case of *Sparks* v. *Ross,* 72 N. J. Eq. 762, 65 Atl. 977 (Court of Chancery, 1907), affirmed 73 N. J. Eq. 735, 69 Atl. 185, a similar question was presented to the court. Vice-Chancellor Leaming said, at page 765:

> "The evidence against which the peremptory instruction was given disclosed a ceremonial marriage followed by a cohabitation of the parties as man and wife for over fifteen years, and then terminated only by the death of the husband. During that period they raised a family of children, and, except for the first year or so, resided in the same general section of this state where the alleged first wife resided. This raised a powerful presumption of the legality of the marriage against which a binding instruction could only be properly given when that presumption was clearly overcome. The power

> of the presumption of legality of such a marriage is found in the motives which govern human conduct and in the policy lying at the base of our social system. The conclusion of illegality involves the assumption that the parties have exposed themselves to the penal consequences of illegal acts and operates to bastardize their offspring. Their conduct during the fifteen years was a living declaration of its legality. It is manifest that the evidence of a prior marriage should be conclusive before such presumption of legality can be said to be clearly and wholly overthrown."

In the case of *Schaffer* v. *Schaffer,* 88 N. J. Eq. 192, 102 Atl. 246 (Court of Chancery, 1917), affirmed 88 N. J. Eq. 524, 105 Atl. 237, Vice-Chancellor BACKES said, at page 194:

> "The proof of a ceremonial marriage, and the fact that the petitioner and defendant lived in apparent matrimonial relation for fifteen years, raises a strong presumption of the legality of their marriage, and this presumption can only be overcome by clear and conclusive evidence of the validity of the first marriage and that it subsisted at the time the second was entered into. The burden of showing this is on the petitioner and to the extent of negativing every reasonable possibility of its invalidity."

In the case of *United States* v. *Green,* 98 Fed. 63 (C. C., S. D. Iowa, 1899), the court said at page 66:

> "To overcome the conclusion inevitable from these facts, the government asserts that during all this period Davis had a lawful wife living. It proves the bare fact that a marriage ceremony was had between Davis and Eliza Jane Callahan, and then asks the court, as a trior of the facts, to assume as a

> fact that the prior marriage was legal, without offering any evidence to show that the parties who entered into this ceremony were legally competent to contract in marriage. It may very well be that this prior marriage was legal and binding. It may be that it was not. The validity of the marriage between Davis and the defendant has never been denied by any one, until the government chose to question it by bringing this suit."

See also:

> *Michaels* v. *Michaels,* 91 N. J. Eq. 408, 110 Atl. 573 (Court of Chancery, 1920);
> *Strum* v. *Strum,* 111 N. J. Eq. 579, 163 Atl. 5 (Court of Chancery, 1932).

The appellant herein has the burden of establishing by clear and convincing evidence, the following facts:

1. That prior to November 21, 1907, she married the deceased, Joseph Capraro;

2. That the marriage was legal and valid, according to the *lex loci contractus* (Italy);

3. That at the time of the alleged marriage both she and the deceased were free to enter into a contract of marriage;

4. That the marriage continued and was existing at the time of the death of Joseph Capraro on April 26, 1927.

The appellant has failed to sustain this burden. The testimony shows a ceremonial marriage performed in Italy. There is no testimony to show that by the law of Italy this ceremony consti-

tuted a valid marriage. It appears that within one year from the day of the alleged marriage, the parties separated and never met again. It also appears that they both undertook to marry other persons, Joseph in 1907, and Rosa Lanza a year or so after. Joseph lived with the respondent for twenty years after 1907, he raised a family with her and he supported her and that family. Rosa Lanza, instead of taking steps to assert her rights as the wife of the deceased during this twenty-year period, married or entered into a relationship with Giovanni Luphrano, with whom she has had six children and with whom she continues to live.

Despite the fact that she continues to live in Italy, there is no proof before this Court to show that after his death she received the property of the deceased, which was located in Italy.

There is no testimony to show that the appellant or Joseph was free to enter into a contract of marriage at the time the alleged ceremony was performed in 1902.

While Rosa testified in answer to interrogatories propounded to her, that she was never divorced, her answers to the interrogatories, when considered in light of other testimony in the case, show her utter unreliability as a witness.

The appellant asks this Court to bastardize her own children, as well as the children of Joseph and Isabella, and to declare that she and Isabella are adulteresses. The situation presented in this case not only raises the presumption of the legality of the union of Joseph and Isabella, but it also raises a presumption of the legality of the union of Rosa Lanza with Giovanni Luphrano, and the testimony in this case,

when considered in light of the weight afforded to these two presumptions, falls far short of the requirements which have been established by our courts in cases of this nature.

III

The appellant is not entitled to share in the fund which came into the hands of the respondent.

(a)

The appellant suffered no pecuniary loss within the meaning of the Death Act, and therefore had no cause of action.

As we have pointed out under Point I, *supra,* the only funds in the hands of the respondent were monies paid to her under the provisions of the New Jersey Death Act. These funds form no part of the estate of the deceased.

Therefore, in order to ascertain the proper disposition to be made of these funds, we must examine the rights of the appellant from the time of the death of Joseph Capraro.

The philosophy and purpose of the New Jersey Death Act (Comp. Stat. 1910, pp. 1907-1911; Comp. Stat. 1924, pp. 927-929), is summarized by Justice Lloyd speaking for the Court of Errors and Appeals in the case of *Soden* v. *Trenton, etc., Traction Corp.,* 101 N. J. L. 393, 127 Atl. 558 (1925). At page 398, the Justice said:

> "* * * One may well suppose that the primary legislative concern in the act of 1848 is provision for those who may have been the dependents of the deceased, inas-

> much as the only damages recoverable are those sustained by the beneficiaries named. In that act it is the death of the injured person that creates the right of action, the language being 'its pecuniary injury resulting from such death to the widow and next of kin.' "

And again at page 399:

> "* * * The controlling feature in the Death Act is 'that damages are made recoverable for causing death as compensation for the pecuniary injury the designated beneficiaries have sustained by reason of the death,' and 'the pecuniary injury begins immediately on the death.' "

In order for a cause of action to arise under the "Death Act," two elements must coincide. They are, (1) that the deceased was survived by a widow or next of kin, and (2) that a pecuniary loss was sustained by such widow or next of kin by virtue of the death.

> *Cooper* v. *Shore Elec. Co.*, 63 N. J. L. 558, 44 Atl. 633 (Court of Errors and Appeals, 1899);
> *Basome* v. *Connolly,* 2 N. J. Misc. 558 (not officially reported) (Supreme Court, 1924).

Unless these two factors coincide, a jury verdict even for nominal damages, will be set aside. *Basome* v. *Connolly, supra.*

The term "pecuniary loss," as used in the "Death Act," was defined in the case of *Demarest* v. *Little,* 47 N. J. L. 28 (Supreme Court, 1885), as follows:

> "The deprivation of a reasonable expectation of a pecuniary advantage which would

have resulted by the continuance of the life of the deceased.''

See also

Paulmier v. *Erie R. R. Co.*, 34 N. J. L. 151 (Supreme Court, 1870);
Cooper v. *Shore Elec. Co., supra.*

It is undisputed that after his marriage with Isabella, the deceased did not correspond with the appellant, nor did he contribute to her support in any way. This marriage occurred twenty years prior to his death.

It is also undisputed that the respondent was ignorant of the alleged first marriage between the deceased, Joseph Capraro and the appellant herein, Rosa Lanza. Indeed, the very attorney who now appears for Rosa Lanza represented Isabella against the Lehigh Valley Railroad Company and contended that she and her children were entitled to damages as the widow and next of kin of the deceased (p. 79, ll. 9-15).

Thus it is apparent, that if the contention of the appellant, that she is the lawful widow of the deceased, Joseph Capraro, is correct, no cause of action ever existed against the Lehigh Valley Railroad Company for the wrongful death of Joseph Capraro.

The settlement under which the fund was paid over to the respondent if the appellant is correct, was occasioned by a mutual mistake of fact. It was based entirely upon the supposition that the respondent was the widow of the deceased and the two children, John and Mary, were his next of kin. These people had been supported by him and they are the persons who suffered a ''pecuniary loss'' within the meaning of the ''Death Act.''

The appellant herein, to establish a right to the fund in the hands of the respondent as trustee, must do so by establishing a claim under the Death Act. It is obvious that she never had such a claim. To say that while she had no claim in the first instance, a right arose upon the payment made under a mutual mistake of fact, would be a perversion of the plain language of the Death Act, and as such not tolerated in law.

(b)

The appellant is an adulteress and as such is barred from claiming any rights in the fund.

The record reveals that Rosa Lanza is the mother of six children at the present time. An examination of the testimony given by Riccardo Riccardi, her attorney-in-fact, will show that his answers to questions as to how many children the appellant has were evasive. While admitting that he has seen Rosa Lanza on several occasions since 1902, he would make no direct admission as to how many children she has. However, he admitted on the stand that she is supposed to have children (p. 44, ll. 25-26). Furthermore, he admitted to the respondent herein that she now has six children (p. 89, ll. 10-16; 33-38).

Marie Capraro, the sister of Giovanni Luphrano, testified that her brother had gotten together with, or married Rosa Lanza in Italy in the year 1910 (p. 96, ll. 25-28; p. 97, l. 20–p. 98, l. 40).

This testimony was elicited on cross examination without objection. Furthermore, it is clearly admissible under the pedigree exception to the hearsay rule.

The testimony of Rosa Lanza to the effect that she never had any children with anyone, when considered in light of the admissions of her attorney-in-fact and the testimony of her sister-in-law is clearly perjured and entitled to no weight in this proceeding.

The question as to effect of a woman's adultery upon her right to recover under the New Jersey Death Act has never been adjudicated in New Jersey. However, the New Jersey Death Act is patterned upon Lord Campbell's Act, which was passed in England in 1846, and consequently any construction of the English act will be given careful consideration by the New Jersey court.

> *Cooper* v. *Shore Elec. Co.*, 63 N. J. L. 558, 44 Atl. 633, Ct. of E. & A., 1899;
> *Soden* v. *Trenton Traction Co.*, 101 N. J. L. 393, 127 Atl. 558, Ct. of E. & A., 1925.

In the case of *Simpson* v. *Wood* (1888), 59 L. T. N. S. (Eng.) 218, 57 L. J. Q. B. N. S. 484, an action brought under Lord Campbell's Act by a widow, to recover damages for her husband's death, it was held that she could not recover, since at the time of the husband's death she was living apart from him and in open adultery with another.

To the same effect is *Harrison* v. *London & N. W. R. Co.* (1885), Cob. & El. (Eng.) 540.

See also:

> *Ovendorf* v. *N. Y. C. & H. R. R. Co.* (1907), 119 A. D. 638, 104 N. Y. S. 222;

F. & North & D. C. R. Co., v. *Floyd*, 21 S. W. 544;
Goen v. *Bolt & O. S. W. R.*, 179 Ill. Ap. 566.

Assuming for the purpose of argument that the appellant is the lawful widow of Joseph Capraro, nevertheless, she is precluded from claiming the fund for she had been living in open adultery with another man for nearly twenty years prior to the death of Joseph Capraro.

(c)

The appellant made no claim within the two year period of limitations as set by the Death Act.

There was no action for wrongful death at Common Law.

Giordini v. *McAdoo*, 93 N. J. L. 138, 107 Atl. 437 (Court of Errors and Appeals, 1919);
Soden v. *Trenton, supra.*

The right of action depends entirely upon the "Death Act" and this act provides (Comp. Stat. 1924, p. 928):

> "* * * Every such action shall be commenced or sued within two years after the death of such deceased person and not after."

This is not an ordinary statute of limitations, but bars the right as well as the remedy, and nothing can operate as a toll.

Bretthauer v. *Jacobson*, 75 Atl. 560 (not officially reported) (Supreme Court, 1910);

Lapsley v. *Public Service Corp.*, 75 N. J. L. 266, 68 A. 1113 (Supreme Court, 1907).

The first action taken by Rosa Lanza was the filing of a petition in the Orphans' Court of Middlesex County on or about April 20, 1931. This was four years after the death of Joseph. At that time, assuming she had a right of action originally, it was barred by the statute of limitations.

To permit her to recover the funds in the hands of the respondent would be a circumvention of the plain meaning of the Death Act.

IV

The minor children of the deceased, Joseph Capraro, are legitimate and as such are his only next of kin.

Joseph Capraro entered into a ceremonial marriage with Isabella Propati on November 21, 1907 (p. 86, ll. 12-16; Ex. D-1). He lived with said Isabella for twenty years as her husband. There is no suggestion in the record that the respondent herein had any knowledge of his previous marriage, until almost four years after his death. Two children were born of this union and lived with their parents until the time of the death of Joseph Capraro.

The effect of the decree of the Orphans' Court of Middlesex County was to declare this marriage a nullity. This decree was made on December 20, 1932.

The Legislature by Comp. Stat. Supp. 1931, Sec. 62-1, page 134, P. L. 1931, C-311, provided as follows:

> "A decree of nullity of marriage shall not render illegitimate the issue of any marriage so dissolved, except where the marriage, not being a ceremonial marriage, is dissolved because either of the parties to such marriage had another wife or husband living at the time of a second or other marriage."

By virtue of this statute John and Mary Capraro, the children of the deceased Joseph Capraro, were declared legitimate. Since they were legitimate children of Joseph Capraro and dependent upon him for their support, they were entitled to their distributive share of the proceeds of the settlement, consequently any finding that Rosa Lanza was entitled to the entire fund was clearly erroneous.

V

CONCLUSION

For these reasons we respectfully submit that the decree below should be affirmed, with costs to the respondent.

Submitted May Term, 1935.

EDWARD A. MARKLEY,
Of Counsel.

COLLINS & CORBIN,
Proctors of Respondent.

Exhibit D-1 (Omitted in State of Case)

STATE OF NEW YORK

CITY AND COUNTY OF NEW YORK

I JAMES J. SMITH an Alderman of the City of New York Do HEREBY CERTIFY that on the 21 day of November A. D. 1907 at the City Hall in the City of New York, I duly performed the

MARRIAGE CEREMONY

between Mr. Giuseppe Craparo of 415 East 115th Street and Miss Isabella Propato of 415 East 115th Street.

THAT the said parties were satisfactorily made known to me, and were of LAWFUL AGE, to contract Marriage, and that upon due inquiry by me made, there appeared no legal impediment to said Marriage.

I FURTHER CERTIFY, that the following persons, to wit:

Giuseppe Gizzo
Nunziato Cristiano

were present and became subscribing witnesses to said Marriage.

JAMES J. SMITH
Alderman New York City.

PHILIP MANGANO
Commissioner of Deeds,
(Seal) New York City.

BAR PRESS, INC., 47 WEST STREET, NEW YORK. BO. 9 – 0157-8
[5724]