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Complaint of Dorothy P. B. Caruso.

(Filed November 16, 1923.)

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

Complainant Dorothy P. B. Caruso (born Dorothy P. Benjamin), widow of Enrico Caruso, shows and charges as follows:

1. Complainant's husband, Enrico Caruso, died in the City of Naples, Kingdom of Italy, on August 2, 1921, being a resident and citizen of said Kingdom of Italy at the time of his death, leaving him surviving as his only next of kin and heirs at law, his widow, the complainant herein, Dorothy P. B. Caruso; an infant daughter, Gloria Caruso, now four years of age (said daughter being the lawful child of said Enrico Caruso and complainant Dorothy P. B. Caruso); and two sons, Rodolfo Caruso, of full age, and Enrico Caruso, Jr. (the latter being of the age of twenty years and upwards but being emancipated for the purpose of transacting business and managing his estate under the Italian law); and, also, a brother Giovanni Caruso, of full age.

Said sons, Rodolfo Caruso and Enrico Caruso, Jr., were natural sons born to said Enrico Caruso by another mother than complainant, but were recognized by the deceased as his children during his lifetime.

Said Gloria Caruso resides with complainant.

Rodolfo Caruso resides at the City of Florence, in the Kingdom of Italy.

Enrico Caruso, Jr., at present resides at Florence, in the Kingdom of Italy.

Giovanni Caruso resides in the City of Naples, Kingdom of Italy.

2. Complainant and the said Rodolfo Caruso, Enrico Caruso, Jr., and Giovanni Caruso, were at the time of the death of said Enrico Caruso and ever since have been and still are citizens of the Kingdom of Italy.

3. Said Enrico Caruso left a testamentary document bearing date January 4, 1919, a true copy of which in the Italian language is hereto annexed, marked Exhibit A, and of which a true translation into the English language is hereto annexed marked Exhibit B.

Said document purports to name decedent's sons, Rodolfo Caruso and Enrico Caruso, Jr., and his brother, Giovanni Caruso, as his universal heirs, leaving to complainant, his wife, Dorothy P. B. Caruso, such part of his estate as is prescribed by the Italian law, charging the universal heirs with the support of his step-mother, Maria Castaldi.

Said document was made prior to the birth of decedent's lawful daughter, Gloria, and makes no provision for her or any after-born child.

4. Upon the death of said Enrico Caruso, questions arose, under the Italian law, as to the extent to which decedent's lawful daughter, Gloria Caruso, being born subsequent to the making of said testamentary document, was entitled to share in decedent's estate, and whether said estate should be distributed as in case of complete intestacy or as controlled by said testamentary document in all other respects except as to the interest of the daughter Gloria, and the latter determined as though in case of intestacy.

5. Such proceedings were thereafter had in the Italian Courts of competent jurisdiction in the premises as resulted in the appointment of Amedeo Canessa as Special Guardian for the infant, Gloria Caruso (complainant being under the Italian law the natural and general guardian of said infant), and the appointment of Manlio Tizzani as General Guardian for Enrico Caruso, Jr.

6. Thereafter said Amedeo Canessa, Special Guardian for said infant, Gloria Caruso, and Manlio Tizzani, General Guardian for the infant, Enrico Caruso, Jr., and all other parties in interest entered into an agreement for a family settlement of the estate of said Enrico Caruso and of all questions and controversies which might arise with respect thereto, and the division of said estate, in substance, as follows, viz.:

> by the payment of the debts, taxes and costs of administration;
>
> provision for the maintenance of decedent's stepmother, Maria Castaldi;
>
> setting apart for the infant, Gloria Caruso, certain specific property and a fund of 500,000 lire;
>
> division of the balance of said estate, one-half thereof to the daughter Gloria Caruso, and one-eighth thereof respectively to complainant, Dorothy P. B. Caruso, Rodolfo Caruso, Enrico Caruso, Jr., and Giovanni Caruso; all as will more fully appear by the translation of said agreement hereto annexed, being part of Exhibit C.

7. Thereafter, on or about October 12, 1921, complainant, Dorothy P. B. Caruso, and Rodolfo Caruso, Giovanni Caruso, Amedeo Canessa, Spe-

cial Guardian, &c., of Gloria Caruso, and Manlio Tizzani, General Guardian for Enrico Caruso, Jr., did file their petition in the Civil and Penal Tribunal of the City of Naples, Kingdom of Italy, the same being a court of competent and general jurisdiction in the premises, setting forth the aforesaid testamentary document, a statement of the contentions and questions arising thereunder and the aforesaid agreement of family settlement, and praying the sanction of the Court for said agreement, whereupon said Court, after referring said petition to the Attorney General and receiving the latter's recommendation with respect thereto, did under date of October 21st, 1921, pronounce its decree confirming the settlement aforesaid and decreeing that the estate of the decedent be settled, divided and paid over in accordance therewith.

True and correct translations of the aforesaid petition and of the decree of said Court made thereon, including a translation of said settlement agreement, are hereto annexed, marked Exhibits C and D.

8. No executor or administrator or other official exercising the functions of such has been appointed by any Court in the Kingdom of Italy, and complainant is advised that under the Italian law in the case of testacy, where the testator does not himself name executors, and, likewise, in the case of intestacy, no one is ordinarily appointed by the Court to exercise the functions of executor or administrator, the legatees, devisees and heirs and distributees taking by direct authority of decedent's will and the operation of law respectively.

9. Decedent died possessed of a large estate, the greater part thereof being located in the King-

dom of Italy; also certain property and choses in action located in the State of New York, and also certain rights arising under a written contract made by the said Enrico Caruso with the Victor Talking Machine Company, a corporation of the State of New Jersey, having its principal place of business and location in the City of Camden, in this State.

Said agreement provides, in substance, for the payment to said Enrico Caruso for an indefinite time of a royalty of ten per cent. upon sales by said Company of talking machine records of the voice of said Enrico Caruso, the amount of the royalties to be so paid to be ascertained and paid at the end of each calendar year.

A true copy of said agreement is hereto annexed, marked Exhibit E.

10. In order to facilitate the collection of said royalties, complainant, together with one Bruno Zirato, a creditor, petitioned the Ordinary of the Prerogative Court of the State of New Jersey, for the appointment of complainant as ancillary administratrix of the estate of said Enrico Caruso in the State of New Jersey, and such proceedings were thereafter had thereon that the Ordinary of said Court, on January 17, 1922, made his order that letters of ancillary administration of the goods and chattels, rights and credits, of the said Enrico Caruso within the State of New Jersey, be granted to complainant upon her entering into bond to the Ordinary in the sum of $250,000, with sureties to be approved by any Special Master of the Court of Chancery.

Pursuant thereto letters of ancillary administration issued to complainant out of the Prerogative Court of the State of New Jersey on January 26, 1922, of the goods and chattels, rights and

credits which were of Enrico Caruso, late of the City of Naples, Kingdom of Italy.

11. Thereafter, said Court, under date of January 27, 1922, made its further order that complainant, as administratrix, give public notice to the creditors of said estate to bring in their debts, demands and claims, under oath, within six months from said date in the manner prescribed by law.

Complainant did, in fact, give such notice as prescribed by said order and upon filing proof thereof said Court did make its further order under date of August 14, 1922, barring all creditors who had not filed proof of their claims within the time in said order directed from any action therefor against complainant as administratrix.

12. Complainant shows and charges that no debts whatever have been proved or claims filed with her as administratrix, or with anyone acting in her behalf, and that there are no creditors of said estate residing in the State of New Jersey and that none of the heirs or next of kin of decedent, nor any of the persons named in said testamentary document, nor any of the beneficiaries under said settlement agreement, are resident in the State of New Jersey.

13. Complainant further shows that subsequent to her appointment as administratrix in New Jersey, as aforesaid, she received on February 3, 1922, from the Victor Talking Machine Company as royalties payable under the aforesaid contract for the year ending December 31, 1921, the sum of $422,891.56, and has also received sundry sums of money as interest thereon and on the investment thereof, all as will more fully appear by the account hereto annexed.

14. Complainant is advised and states the fact to be that under the law of the Kingdom of Italy, she, as surviving parent, is the natural and general guardian of her daughter, Gloria Caruso, during the latter's minority and until she reaches the age of twenty-one years, and, as such, entitled to receive from time to time all income belonging to said infant and to use, hold, or otherwise dispose of the same without accountability.

15. Thereafter it was ascertained that said royalties were likely to decrease in amount with the lapse of time and the consequent public forgetfulness of the fame of Enrico Caruso, and that said royalties should be considered partly as the exhaustion of the corpus of the estate as represented by said contract and part only as income therefrom, and such proceedings were thereafter had in the Consull Chamber of the First Section of the Civil and Penal Tribunal of Naples, the same being a court of competent jurisdiction in the premises, as resulted in its order or decree dated June 16, 1922, among other things providing, as transalted:

> "7. Authorize the Victor Talking Machine Co. to pay each year the 10% due to Comm. Caruso as following: 1/8 to Mr. Rodolfo Caruso, 1/8 to Mr. Giovanni Caruso, 1/8 to Mrs. Dorothy Benjamin Caruso, 1/8 to Enrico Caruso, minor, and of the remaining 4/8 due to the minor Gloria Caruso, to pay 2/8 without restrictions to Mrs. Dorothy Benjamin Caruso as mother, tutor and legal administratrix of the property of her minor daughter Gloria Caruso until her coming of age, and to deposit the other 2/8 in the Banco di Napoli at its New York offices in the name of Gloria Caruso with the pupillary restrictions."

The designation in the last mentioned decree of Mrs. Benjamin Caruso, widow, refers and is intended to refer to complainant, the name "Benjamin" being her family name before marriage to Enrico Caruso.

A correct translation of said decree and supporting petition are hereto annexed marked Exhibit F.

16. On or about February 2, 1923, complainant received from Victor Talking Machine Company a remittance of the further sum of $125,177.66, being the royalties payable under the aforesaid agreement for the year ending December 31st, 1922.

Said remittance was made by check to the order of the complainant as administratrix but received by her as agent for the parties entitled thereto under the seventh clause of the Italian decree of June 16, 1922, above set forth, and the said money is now in course of distribution in accordance with the provision of the said Italian decree of June 16, 1922.

17. Complainant annexes hereto a true account of all moneys received by her as administratrix (being the royalty payment of February 3, 1922, and accumulations thereon); also of the disbursements therefrom, and the securities now held therefor, marked Exhibit G.

Complainant further shows that she has fully administered all moneys coming into her hands as administratrix and that pursuant to the Italian law all assets of said estate now in her hands, including all rights under the aforesaid contract with the Victor Talking Machine Company, belong to the persons specified by the aforesaid family settlement agreement and the decrees of the

Italian Courts validating and confirming the same, without the intervention of administration or other intermediate process.

Complainant being without adequate remedy at law therefor prays for relief as follows:

(1) That Rodolfo Caruso, Enrico Caruso, Jr., Giovanni Caruso, Gloria Caruso, Maria Castaldi, Victor Talking Machine Company and Fidelity & Deposit Company of Maryland, as surety on the complainant's bond as administratrix, may make answer to this bill of complaint, but without oath.

(2) That the accounts of complainant as administratrix may be settled and a decree made for the distribution of the moneys in complainant's hands to the persons entitled thereto, as aforesaid.

(3) That it may be determined what portion of the moneys arising or to arise out of the aforesaid royalty contract is principal and what portion is income, and that the determination of the Italian Court with respect thereto be ratified and confirmed.

(4) That it may be decreed that the moneys heretofore received by complainant as administratrix, subject to the costs of administration, and all moneys hereafter payable under said royalty contract, and all rights in said contract itself, are the property of complainant and the aforesaid Gloria Caruso, Rodolfo Caruso, Enrico Caruso, Jr., and Giovanni Caruso, in the proportions above specified, and that said Victor Talking Machine Company be decreed to pay over the royalties from time to time accruing under said agreement to said individuals, or their lawful representa-

tives, directly and without further intervention of complainant as administratrix.

(5) That upon settlement of the accounts of complainant and payment by her of such moneys as may be found by your Honor to be due and payable, that she be discharged as administratrix, and that she and her surety be relieved of further liability upon her aforesaid bond as administratrix.

(6) That process of subpoena issue pursuant to the practice of this Court directed to Rodolfo Caruso, Enrico Caruso, Jr., Giovanni Caruso, Gloria Caruso, Maria Castaldi, Victor Talking Machine Company and Fidelity & Deposit Company of Maryland.

(7) That complainant have such further relief as may be equitable and just.

McDermott, Enright & Carpenter,
Solicitors for and of Counsel with
Complainant.

Exhibits A, B, C, D, E and F, annexed to bill of complaint, not printed because included in the evidence.

Exhibit G, being Administratrix's Account to October 17, 1923, shows receipts of $585,727.68 and disbursements, including investments, of $579,-156.99; balance on hand, $6,570.69; also investments held by Administratrix, U. S. Treasury Certificates, par value $286,500.

Answer of Gloria Caruso, Infant, by Guardian ad Litem.

(Filed April 9, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLPHO CARUSO, *et al.*,
Defendants.

On Bill, Etc.

The answer of Gloria Caruso, an infant under the age of twenty-one years, by Jesse R. Salmon, Clerk of the Court of Chancery of New Jersey, her Guardian *ad litem.*

This defendant, Gloria Caruso, answering the bill of complaint, says that:

1. Answering paragraph 1 of the bill, this defendant admits that Enrico Caruso died in the City of Naples, Kingdom of Italy, on August 2nd, 1921, being a resident and citizen of said Kingdom of Italy at the time of his death, leaving him surviving the complainant and this defendant, this defendant being the lawful child of said Enrico Caruso and complainant, as is alleged in the bill. Defendant further admits that she resides with complainant. As to the remaining allegations of paragraph 1 of the bill, this defendant has no knowledge or information sufficient to form a belief, and therefore neither admits nor denies the same, but leaves the complainant to her proof thereof.

Answer of Gloria Caruso, Infant, by Guardian ad Litem.

2. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the bill and therefore neither admits nor denies the same but leaves complainant to her proof thereof.

3. If, upon final hearing of this cause, it shall appear that the facts set forth in the bill are true, and that such proceedings were had in Italy as resulted in the settlement referred to in the bill, and the orders and decrees of the Italian Court confirming such settlement, and if such settlement shall appear to have been made substantially in accordance with the facts set forth in the bill, then this defendant tenders herself ready and willing to ratify said agreement of settlement and to accept the same; provided, however, that if the accomplishment of such settlement shall require the payment of any moneys or funds now belonging or hereafter payable to this defendant to any guardian or other representative of this defendant, whether a resident or a non-resident of this State, then said guardian or other representative, if a non-resident, should be required to make proof that he has given adequate security as such guardian or other representative at the place of his residence in double the amount of the value of such money or funds, over and above the value of any other property in the hands of such guardian or representative, or be required to give adequate security in this State, in accordance with the statute in such case made and provided, and be required to account from time to time to this Court for any funds so paid to him, and the income thereon; or, if such guardian or other representative be a resident of this State, he should be required to give

adequate security in this State, and to account, in accordance with the rules and practice of this Court.

NORMAN GREY,

Solicitor for and of Counsel with Jesse R. Salmon, Clerk of the Court of Chancery of New Jersey, Guardian *ad litem* of Gloria Caruso, an Infant.

Answer of Enrico Caruso, Jr., by Guardian ad Litem.

(Filed April 9, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et al.*,
Defendants.

On Bill, Etc.

The answer of Enrico Caruso, Jr., an infant under the age of twenty-one years, by Jesse R. Salmon, Clerk of the Court of Chancery of New Jersey, his Guardian *ad litem*.

This defendant, Enrico Caruso, Jr., answering the bill of complaint, says that:

1. Paragraphs 1, 2 and 3 of the bill are admitted.

2. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, and therefore neither admits nor denies the same, but leaves complainant to her proof thereof.

3. If, upon final hearing of this cause, it shall appear that the facts set forth in the bill are true, and that such proceedings were had in Italy as resulted in the settlement referred to in the bill, and the orders and decrees of the Italian Court confirming such settlement, and if such settlement

shall appear to have been made substantially in accordance with the facts set forth in the bill, then this defendant tenders himself ready and willing to ratify said agreement of settlement and to accept the same; provided, however, that if the accomplishment of such settlement shall require the payment of any moneys or funds now belonging or hereafter payable to this defendant to any guardian or other representative of this defendant, whether a resident of or a non-resident of this State, then said guardian or other representative, if a non-resident, should be required to make proof that he has given adequate security as such guardian or other representative at the place of his residence in double the amount of the value of such money or funds, over and above the value of any other property in the hands of such guardian or representative, or be required to give adequate security in this State, in accordance with the statute in such case made and provided, and be required to account from time to time to this Court for any funds so paid to him, and the income thereon; or, if such guardian or other representative be a resident of this State, he should be required to give adequate security in this State, and to account, in accordance with the rules and practice of this Court.

NORMAN GREY,

Solicitor for and of Counsel with Jesse R. Salmon, Clerk of the Court of Chancery of New Jersey, Guardian *ad Litem* of Enrico Caruso, Jr., an Infant.

Answer of Victor Talking Machine Company, Defendant.

(Filed January 28, 1924.)

IN CHANCERY OF NEW JERSEY.

Between:

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

On Bill, Etc.

Victor Talking Machine Company, one of the defendants named in the Bill of Complaint in the above-entitled action, a corporation of the State of New Jersey with its principal office in the City of Camden in said State, answering the said Bill of Complaint, says:

1. In answer to paragraph 1 of the Bill, defendant admits, that complainant's husband, the late Enrico Caruso, died on August 2, 1921, in the City of Naples, Kingdom of Italy, at the time of his death, leaving him surviving his widow, the complainant herein, Dorothy P. B. Caruso; an infant daughter, Gloria Caruso (said daughter being the lawful child of said Enrico Caruso and complainant, Dorothy P. B. Caruso); two sons, Rodolfo Caruso and Enrico Caruso, Jr.; and, also, a brother Giovanni Caruso; and that said sons, Rodolfo Caruso and Enrico Caruso, Jr., were natural sons born to the said Enrico Caruso by another mother than complainant. Defendant has no knowledge or information sufficient to form a

belief as to the remaining allegations of the said paragraph and, therefore, neither admits nor denies the same but leaves complainant to her proof thereof.

2. Defendant has no knowledge or information sufficient to form a belief as to the matters alleged in paragraphs 2, 3, 4, 5, 6, 7 and 8 of the bill, and, therefore, neither admits nor denies the same but leaves complainant to her proof thereof.

3. In answer to paragraph 9 of the bill, defendant admits that decedent died possessed of certain rights arising under a written contract between the said Enrico Caruso and this defendant, and admits that the copy of said agreement annexed to the bill and marked Exhibit E, is a true copy of said agreement. Defendant has no knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph and, therefore, neither admits nor denies the same but leaves complainant to her proof thereof.

4. Defendant admits on information and belief, the allegations of paragraph 10 of the Bill.

5. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 11 and 12 of the Bill and, therefore, neither admits nor denies the same, but leaves complainant to her proof thereof.

6. In answer to paragraph 13 of the Bill, defendant admits and alleges that it paid the complainant, and that complainant received, as Ancillary Administratrix within the State of New Jersey of the goods and chattels, rights and credits of the said Enrico Caruso, the sum of $422,891.56, as royalties payable for the year ending December 31, 1921, under the aforesaid con-

tract between the said Enrico Caruso and this defendant, and denies that said sum was paid to, or received by, complainant in any other capacity than the representative capacity above stated. Defendant has no knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph and, therefore, neither admits or denies the same, but leaves complainant to her proof thereof.

7. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 14 and 15 of the Bill and, therefore, neither admits nor denies the same but leaves complainant to her proof thereof.

8. In answer to paragraph 16 of the Bill defendant admits and alleges that it paid the complainant, and complainant received, as Ancillary Administratrix within the State of New Jersey of the goods and chattels, rights and credits of the said Enrico Caruso, the sum of $125,177.66, as royalties payable for the year ending December 31, 1922, under the aforesaid contract between the said Enrico Caruso and this defendant, and denies that the said sum was paid to, or received by, complainant in any other capacity than the representative capacity above stated. Defendant has no knowledge or information sufficient to form a belief as to the remaining allegations of the said paragraph and, therefore, neither admits nor denies the same but leaves complainant to her proof thereof.

9. Defendant has no knowledge or information sufficient to form a belief as to the facts alleged and the documents referred to in paragraph 17 of the Bill, and, therefore, neither admits nor denies the same but leaves complainant to her proof thereof.

Answer of Victor Talking Machine Co., Defendant.

First Defense.

10. This defendant denies that the alleged order or decree of June 16, 1922, has any extraterritorial effect or any effect in this State, and particularly that it has any effect as an adjudication determining the rights of parties to the goods and chattels, rights and credits of the late Enrico Caruso in this State; and defendant therefore, while desirous of carrying out all of its obligations under its said contract with the late Enrico Caruso, opposes the prayer of said Bill insofar as it seeks to have it decreed that the moneys hereafter payable under the said contract, and all rights in said contract itself, are the property of complainant and the aforesaid Gloria Caruso, Rodolfo Caruso, Enrico Caruso, Jr. and Giovanni Caruso, in the proportions specified in the said alleged order or decree of June 16, 1922, and that this defendant be decreed to pay over the royalties from time to time accruing under said agreement, to the said individuals or their lawful representatives, directly and without further intervention of complainant as administratrix. This defendant further tenders itself as ready and willing to pay the said royalties to such party or parties as may be finally adjudged in this cause to be the parties lawfully entitled, upon discharge of the administratrix herein, to the rights arising out of said contract.

Second Defense.

11. The said contract of this defendant with the late Enrico Caruso, as distinguished from the royalties accruing under said contract, constitutes assets within the United States of the estate of

the said Enrico Caruso, and as such is subject to the estate tax imposed by Title IV of the United States Revenue Act of 1921. Defendant is informed and believes and therefore avers, that this estate tax, insofar as the same is applicable to the said contract, has not yet been paid and in view of the difficulty of determining the appraisal value of the said contract for the purposes of said tax, may not be paid before this case comes on for final hearing; and that complainant's discharge as administratrix prior to the payment of such tax might subject this defendant to claims by the United States Government therefor. Defendant opposes so much of the prayer of the Bill as asks for a decree settling the accounts of complainant or discharging her as administratrix or relieving her or her surety from liability on her bond as administratrix unless and until such tax is paid.

THIRD DEFENSE.

12. The said contract of this defendant with the late Enrico Caruso constitutes assets within the State of New Jersey of the estate of the said Enrico Caruso, and the transfer thereof by will or through intestacy is subject to the inheritance tax of this state. This defendant is informed and believes and therefore avers that the said inheritance tax, insofar as the same is applicable to the said transfer, has not yet been paid and may not be paid before this case comes on for final hearing; and that complainant's discharge as administratrix prior to the payment of such tax, might subject this defendant to claims by the State of New Jersey therefor. Defendant opposes so much of the prayer of the Bill as asks for a decree settling the accounts of complainant or discharging

her as administratrix or relieving her or her surety from liability on her bond as administratrix unless and until such tax is paid.

FOURTH DEFENSE.

13. This defendant denies that any portion of the moneys arising or to arise out of its said contract with the late Enrico Caruso constitute principal or can properly be regarded as assets of the estate of the said Enrico Caruso and denies that the determination of the Italian Court with respect thereto should be ratified or confirmed by this Court.

Defendant respectfully prays that the costs incurred by defendant in this cause, together with a reasonable counsel fee, may be allowed it, to be charged against the estate of the said Enrico Caruso in New Jersey.

LOUIS B. LE DUC,
Solicitor for and of counsel with Defendant, Victor Talking Machine Co.

Replication to Answer of Victor Talking Machine Company.

(Filed May 1, 1924.)

IN CHANCERY OF NEW JERSEY.

DOROTHY P. B. CARUSO, Complainant, *vs.* RODOLFO CARUSO, *et als.*, Defendants.	On Bill, Etc.

1. Complainant joins issue upon the answer of the defendant Victor Talking Machine Company, as set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9.

REPLY TO FIRST DEFENSE.

2. Complainant joins issue upon the first defense of said Company as set forth in paragraph 10 of its answer.

REPLY TO SECOND DEFENSE.

3. Complainant replying to the second defense of the defendant Company as set forth in paragraph 11 of its answer, denies that the contract therein referred to as distinguished from the royalties accruing thereunder, constitutes assets within the United States of the estate of said Enrico Caruso, subject to the estate tax of the United States as therein averred.

Replication to Answer of Victor Talking Machine Company.

Complainant denies that anything in said defense set forth constitutes a reason for denying complainant's discharge as administratrix as prayed for in the complaint.

REPLY TO THIRD DEFENSE.

4. Complainant replying to third defense of defendant Company denies that said contract constitutes assets within the State of New Jersey of the estate of said Enrico Caruso, subject to inheritance tax under the laws of the State of New Jersey, and denies that anything in said defense contained is sufficient reason for denial of complainant's discharge as administratrix, as prayed for in the complaint.

REPLY TO FOURTH DEFENSE.

5. Complainant joins issue upon the fourth defense of the defendant Company.

McDERMOTT, ENRIGHT & CARPENTER,
Solicitors for Complainant.

Counterclaim of Defendant Victor Talking Machine Company.

(Filed December 22, 1924.)

IN CHANCERY OF NEW JERSEY.

Between:

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et al.*,
Defendants.

On Bill, Etc.

By way of counterclaim against the complainant herein, the defendant Victor Talking Machine Company says:

1. It repeats all the allegations contained in its answer to the Bill of Complaint.

2. The obligation of this defendant to pay royalties, as provided in the written agreement between this defendant and the said Enrico Caruso (copy of which agreement is annexed to the Bill as Exhibit E) is unlimited in time. By reason of the extraordinary popularity which the records of Caruso's voice have enjoyed both before and since his death and the supremacy of his vocal art, the demand for his records so manufactured and sold by this defendant will probably continue indefinitely, and sales of such records so manufactured by this defendant and the accrual of royalties on account of such sales will likewise continue indefinitely.

Counterclaim of Defendant Victor Talking Machine Company.

3. If this Court should hold that the ancillary administratrix, complainant herein, should be forthwith discharged and this defendant directed to pay royalties to parties designated by the Court, as prayed by complainant, the following results will obtain: As time progresses and the various beneficiaries so held to be entitled to share in the royalties earned by the sale of such records die (or, as may frequently occur, assign their rights to such royalties, either by voluntary or involuntary assignment), the number of parties claiming to share in such royalties will progressively increase and the difficulties of distributing such royalties will correspondingly increase. Before royalties can be paid out to any new claimant, it will be necessary to determine the legal status of such party, and whether such party is legally entitled to share in such royalties, and the proportionate share thereof to which he or she may be entitled. All of the present claimants are aliens and their assignees and distributees will probably be aliens, so that the determination of each such claimant's rights will probably have to be made in each instance by reference to foreign laws and/or the validity and application of foreign decrees and judgments and foreign judicial proceedings. The added difficulties of locating missing distributees (who may be entitled to such royalties without knowledge of their rights), will further be presented.

4. When this defendant originally secured, by contract with the said Enrico Caruso, the right to record his voice, the parties did not foresee the nature and unlimited extent of the demand for the records of the said Caruso after the latter's death,

nor the difficulties incident to distribution of royalties. This defendant cannot, without great and undue effort and expense, conduct the investigations necessary to ascertain the facts surrounding the claims of parties (particularly aliens) to share in such royalties, nor to locate the parties legally entitled thereto, nor to examine and pass upon the vexed questions of law (particularly the law of foreign countries) which will inevitably be presented from time to time. In consequence, the distribution of royalties to the parties entitled is likely, in many instances, to be delayed, and even in many cases withheld for want of evidence which would justify payment by this defendant; and this defendant may further be induced through misleading information or advice or want of sufficient information and advice to pay royalties to parties not legally entitled thereto.

5. Complainant further shows that the distribution of such royalties to the parties legally entitled thereto, as said royalties accrue, would be more appropriately and expeditiously conducted by a receiver appointed by this Honorable Court (preferably a Trust Company having perpetual corporate life), who might receive such royalties periodically from this defendant, giving good and sufficient acquittance and discharge therefor, ascertain the parties legally entitled to share in the same, and make distribution thereof accordingly; without which the royalties so accruing in the future may in many cases be dissipated, through payment, in good faith, to parties not legally entitled thereto or withheld, in good faith, from parties rightfully entitled thereto; and defendant would further be subjected to a multiplicity

of law suits by claimants and other parties feeling themselves aggrieved, all of which suits would necessarily be brought in the Courts of New Jersey as the forum of the situs of the said contract between defendant and the said Enrico Caruso.

This defendant is without adequate remedy at law and therefore prays:

1. That the complainant answer this counterclaim and each allegation made therein.

2. That ancillary administration of so much of the estate of said Enrico Caruso in this State as consists of the agreement between this defendant and said Enrico Caruso may be continued indefinitely; or, in the alternative, upon discharge of such administration, that a receiver be appointed by this Honorable Court to receive from this defendant, as the same accrue, the royalties earned by the sale of records under the said agreement, to give this defendant good and sufficient acquittance and discharge therefor, and to pay and distribute the said royalties to the parties lawfully entitled thereto, and to account periodically to this Court.

3. That this defendant may have such other and further relief as may be just and equitable.

LOUIS B. LEDUC,
Solicitor for Defendant
Victor Talking Machine Company.

Amended Answer of Gloria Caruso.

(Filed June 14, 1926.)

IN CHANCERY OF NEW JERSEY.

54-620.

Between
DOROTHY P. B. CARUSO,
Complainant,
and
RODOLFO CARUSO, *et als.*,
Defendants.

On Bill, Etc.

The amended answer of Gloria Caruso, infant defendant, by Jesse R. Salmon, Clerk of the Court of Chancery of New Jersey, her guardian *ad litem*.

This defendant, Gloria Caruso, answering the bill of complaint, says that:

1. Answering paragraph 1 of the bill, this defendant admits that Enrico Caruso died in the City of Naples, Kingdom of Italy, on August 2nd, 1921, being a resident and citizen of said Kingdom of Italy, but avers that he was resident and domiciled in Sesto Fiorentino and not in Naples. Defendant avers that he left surviving him as his only next of kin and heirs at law his infant daughter, Gloria Caruso, this defendant, whose interest is subject to the rights of his widow, the complainant, Dorothy P. B. Caruso, and denies that his two sons, Rodolfo Caruso and Enrico Caruso, Jr., and his brother Giovanni Caruso, are his next of kin and heirs at law.

Amended Answer of Gloria Caruso.

2. Further answering paragraph 1 of said bill, defendant admits the averments that Rodolfo Caruso and Enrico Caruso, Jr., were natural sons born to Enrico Caruso and admits that they were born by a mother other than the complainant, but denies that they were recognized by the deceased as his children during his lifetime.

Defendant avers that the Civil Code of Italy, Book I, Title VI, Chapter III, Section 1, Articles 179, 180 and 181 provide that natural children can be given a legal status by recognition by a parent, but Article 180 expressly provides that a child cannot be recognized who is born to persons one or both of whom at the time of conception, were bound in marriage with another person.

Defendant avers that the mother of the said Rodolfo Caruso and Enrico Caruso, Jr., was Ada Giachetti Botti who, at the time of the conception of each of these children, was married to Dr. Gino Botti, who was another person than said Enrico Caruso, and therefore these children could not have been recognized by Enrico Caruso so as to be given, under Italian law, any rights of inheritance in his estate if he had died intestate.

3. Further answering paragraph 1 of said bill, defendant admits that she resides with her mother, the complainant, and admits that Rodolfo Caruso, Enrico Caruso, Jr., and Giovanni Caruso reside as stated in said bill.

4. Answering paragraph 2 of said bill, defendant admits that Rodolfo Caruso, Enrico Caruso, Jr., and Giovanni Caruso were at the time of the death of the said Enrico Caruso citizens of the Kingdom of Italy but she has no knowledge or information as to where they have resided since that time.

As to the citizenship and residence of complainant, defendant avers that her mother, the complainant, was a natural born citizen of the United States; that by virtue of her marriage to the said Enrico Caruso complainant acquired Italian citizenship; that subsequent to the death of the said Enrico Caruso complainant married a British subject, from whom she has subsequently been divorced.

Defendant further avers that she, this defendant, is a citizen of the United States of America, born in the City and State of New York on December , 1919.

5. Answering paragraph 3 of said bill, defendant has neither knowledge nor information sufficient to form a belief as to whether or not Enrico Caruso left a testamentary document bearing date January 4th, 1919, as set out therein.

Defendant avers that the Civil Code of Italy, Book III, Title II, Chapter II, Section V, Article 888 provides that a testamentary document made by one who at the date of the will did not have or was in ignorance of having legitimate children or descendants is revoked by law, by the subsequent birth of a legitimate child.

Defendant avers that the decedent Enrico Caruso had no legitimate child other than this defendant, that therefore any testamentary document made prior to this defendant's birth was thereby revoked, and therefore she denies that said Enrico Caruso died testate leaving a will and she avers that by her birth on December , 1919, the testamentary document set forth in said bill, made prior to her birth, is rendered null and void.

6. Defendant denies the averment of paragraph 4 that questions arose after her father's death as

to her rights under the Italian law in his estate. She avers that there could be and were no questions as to these. That her subsequent birth revoked and nullified any testamentary paper executed prior to the date of her birth and therefore ended all legal effect of the paper mentioned and set forth in said bill, and that her father, said Enrico Caruso, died intestate; that the mother of Rodolfo Caruso and Enrico Caruso, Jr., was, at the time of each of their conception a married woman married to a man other than their father, Enrico Caruso, and that it was impossible under Italian law to give said children any legal status by recognition or otherwise by which they could share or take or have any interest in the estate of Enrico Caruso who had died intestate, and that therefore Giovanni Caruso, the brother of Enrico Caruso, Rodolfo Caruso and Enrico Caruso, Jr., had no interest in her father's estate. That she was born on December , 1919, and her father, Enrico Caruso, died on August 2nd, 1921; that had he desired that they or any of them should share in his estate he would have executed a new will after her birth; and that in case of intestacy under Italian law, all of his property passed to this defendant, subject to the usufruct right of defendant's mother, Dorothy Park Benjamin Caruso, now Dorothy B. Ingram, in one-fourth of the income from said estate, but to no share of the principal thereof.

7. Defendant denies the averments of paragraph 5 of said bill. She avers that the proceedings referred to in said bill were had in a Court in Naples, Italy. She denies that said Court had any jurisdiction over this estate.

She avers that the Civil Code of Italy, Book III, Title II, Chapter III, Section I, Article 923,

as well as Article 94 of the Code of Civil Procedure of Italy, provides that the Succession is opened at the time of death at the place of last domicile of decedent.

She avers that, at the time of his death, the legal domicile of the decedent was Sesto Fiorentino, Italy, where it had been established on September 13th, 1904, upon transference from Milano, Italy, and she therefore avers that the Court in whose jurisdiction Sesto Fiorentino is comprised had jurisdiction over all questions in connection with the settlement of the succession and kindred matters to the exclusion of any other Court in Italy and had jurisdiction over the succession and distribution of property of decedent situated in all parts of Italy. Therefore she avers that the Court in Naples was without any jurisdiction in these premises because Sesto Fiorentino, Tuscany, Italy, is not within the juridical circuit of the Naples Court, but is in another juridical circuit.

8. Further answering the averments contained in paragraph 5 of said bill, defendant has neither knowledge nor information sufficient to form a belief as to the proceedings taken in said Court in Naples, but she avers that the said Court was without any jurisdiction over defendant or over the estate of her father, Enrico Caruso.

9. Defendant denies the averments of paragraphs 6 and 7 of said bill.

10. Further answering paragraphs 5, 6 and 7 of said bill, this defendant avers that any such agreement, if made, as set forth in paragraph 7 of said bill, was fraudulent and is null and void as to this answering defendant and is against her interests and rights, and that any such decree by

said Court, if made as set forth in paragraphs 5, 6 and 7 of said bill, is of no effect elsewhere.

11. Further answering paragraphs 5, 6 and 7 of said bill, defendant avers that the Italian law as to the devolution of an intestate's estate is contained in the following sections of the Italian Code:

The Civil Code of Italy, Book III, Title II, Chapter I, Article 721, provides that the successions devolve to legitimate descendants, to ascendants, to collaterals, to natural children and to spouses in the order and following the rules established regarding them.

Article 736 provides that the legitimate children and their descendants without distinction between them or whether born from different marriages succeed their father, mother and every other ascendant. They succeed per capita when they are all in the first degree; per stirpes when all or some of them succeed by representation.

Article 737 provides that under the name of legitimate children is understood also legitimatized children, adopted ones and their descendants.

(This does not include recognized children.)

Article 743 provides that natural children have no right to the succession of their parents, when their filiation is not legally recognized or declared.

Article 744 provides that where there are recognized natural children and legitimate children or their descendants, the recognized natural children have a right to one-half of the share which would be their expectancy if they had been legitimate (Art. 768).

Article 752 provides that the rights accorded by the preceding articles are not extended to children to whom the law does not give recognition.

Section V, Article 753, provides that when there are surviving legitimate children of a deceased spouse the surviving spouse has in the estate of the other the usufruct of a share of inheritance equal to that of each child including in the number of children the spouse also.

That where natural children share with legitimate children the usufruct of the surviving spouse is a share equal to that going to each legitimate child.

That the usufruct share can never be greater than a one-quarter of the estate.

12. Further answering paragraphs 5, 6 and 7 of said bill, defendant avers that Book III, Title II, Chapter II, Section IV, Articles 805 and 806 of the Italian Code restrict the testamentary capacity of a testator to one-half of his estate, and provide that the other one-half of his estate cannot be disposed of by will, but goes to the legitimate, legitimatized and adopted children.

13. Defendant avers that in construing and applying these code provisions, the Italian Courts held as follows:

(1) That where there are legitimate and recognized natural children the division among them, under Article 744, is by dividing the corpus by the total number of children of both classes and then allocating to the legitimates one-half of the shares allocated to each of the recognized natural children.

(2) That by the widow's usufruct is meant a life interest in a given share of the income of the estate.

(3) That the class legitimatized children is a distinct term and does not include the class known as recognized or declared natural children.

14. Defendant therefore avers that under the Italian Law (as shown by Exhibits C and D, page 7 attached to the bill in this cause) the following legal propositions might be applicable to the distribution of this estate.

(a) Giovanni Caruso had no interest in the estate, the provisions of the testamentary document having been revoked.

If its provisions had not been revoked but were in force the devolution of the estate would be:

To Gloria Caruso ½ of the corpus and ½ of the income (the legitima).

To Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr., to each 1/6 of the corpus and of the income 1/6 less the widow's usufruct of ¼ of the total income or to each 1/12 of the income.

(b) If the testamentary provisions were revoked, and if the natural sons, Rodolfo Caruso and Enrico Caruso, Jr., had been capable of recognition legally and had been recognized as a fact, the distribution would be as follows:

To Gloria Caruso 2/3 of the corpus and ½ of the income.

To Giovanni Caruso nothing.

To Rodolfo Caruso and to Enrico Caruso, Jr., to each, 1/6 of the corpus and ⅛ of the income.

To the widow no corpus and ¼ of the income.

(c) If no recognition and no will:

To Gloria Caruso all the principal and ¾ of the income.

To the widow ¼ of the income.

To Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr. nothing.

Defendant therefore avers that if every one of the quibbles (claimed to have been questions) arising as to the devolution of this estate, had been

determined against this answering defendant; if there was such a testamentary paper; if it had not been revoked by this defendant's subsequent birth; if Rodolfo Caruso and Enrico Caruso, Jr. had not been born of an adulterous connection by a mother married to some other person than Enrico Caruso, at the time of each of their conception, and if they had been susceptible of being recognized and had actually been given the status of recognized natural sons by Enrico Caruso, then this answering defendant would have received more than the share she received under this so called settlement. And she avers that this so called settlement was not such in fact but was a confiscation and dividing up of the lawful property of this infant defendant by and among these interested parties and is fraudulent and void as to her.

She avers that the sum of 500,000 Lire (about $22,000) and the collections of gold boxes, watches and gold disk (which latter did not exist in fact) which were tacked on to her share, and were a mere pittance in this large estate, was more than balanced by a policy of insurance on the life of Enrico Caruso in the Union Central Life Insurance Company of Cincinnati, Ohio, in payment of which the sum of $25,778.42 was paid on February 24th, 1922, to complainant as Administratrix of the Estate of Enrico Caruso and no portion of which, as far as this defendant has knowledge, was ever credited to her but it was divided by said Administratrix one-quarter to each, herself, Rodolfo Caruso, Enrico Caruso, Jr. and Giovanni Caruso, claiming to act under the terms of said agreement.

15. Further answering paragraphs 5, 6 and 7 of said bill, this defendant avers that this agree-

ment was made between and this court proceeding was obtained and carried out by parties interested adversely to this defendant and in fraud of her rights.

Amedeo Canessa, stated by the bill to have been appointed by the Naples Court as special guardian of this defendant, was interested adversely to her and profited by this so called settlement, as follows: said Amedeo Canessa owed the decedent, Enrico Caruso, at the time of his death 594,000 Lire, or about $25,000. This debt has never been paid to decedent's estate, and in the division of the corpus of the estate this debt was allotted to the share of this answering defendant and is listed as one of the assets of her share.

Defendant's mother, the complainant, also was equally interested in this settlement against the interest of defendant and profited by it. She was entitled to no share of the principal of this estate, and at most was entitled to one-fourth of the income thereof. She secured by this settlement one-eighth of the principal and one-eighth of the income.

As natural guardian of this defendant, Gloria Caruso, her mother was entitled to all of the income of this defendant's estate during the nineteen years remaining of her minority, so that the increase of corpus, although accompanied by a decrease of income in her own right, was greatly to complainant's benefit.

Defendant's mother, the complainant, further profited by this settlement as follows:

The contract which the decedent made with the Victor Talking Machine Company is set out at length as Exhibit E attached to the bill in this cause. Defendant avers that this contract was a sale of Caruso's present and future efforts and

that the payments agreed upon therein are not income but are principal of his estate. By this settlement and this Court decree it was agreed and ordered that one-half of the payments on same should be considered as income, so that defendant's mother also profited, as did the other parties, by this settlement, by this large annual amount and the principal of defendant's estate is thereby diminished.

Defendant avers that she was the sole loser by this settlement and that the same is against her interest, is fraudulent as to her and is null and void.

16. Defendant further avers that the alleged agreement between the parties as set forth in Exhibit F attached to the bill of complaint provided:

> "(d) To distribute, finally the net amount received from the insurance policies to each intestate or beneficiary, who should become known during the inventory operations; according to the deceased will, however expressed, and without obligation of imputation or collocation."

This provision was presented to the Naples Court and this distribution was ordered by that Court.

Defendant has no knowledge as to what insurance was thus included, nor the beneficiaries named therein, nor the exact meaning of this clause.

She avers, however, that she has knowledge of one policy at least on the life of Enrico Caruso, No. 635492 of The Union Central Life Insurance Company, and that settlement for said policy was made by said Company by payment of its check of $25,778.42 to said Dorothy P. B. Caruso, Adminis-

tratrix of the Estate of Enrico Caruso, deceased on February 24th, 1922. She is informed and believes that this sum was divided by said Administratrix, one-fourth to each, herself, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr. claiming to act under this settlement and decree.

17. Further answering paragraphs 5, 6 and 7, this defendant avers that this decree of this Naples Court was not given after a hearing before it on the merits of the case. It was given on a set of facts submitted to it and on the face of it shows that the merits were not presented to it. It was a consent decree, consented to by the guardian *ad litem* of this defendant and is against her interests. The decree is entitled to no effect in this Court.

18. Further answering paragraphs 5, 6 and 7, this defendant avers that this decree of the Naples Court is without definitive character and therefore does not create an immutable juridical condition, and thus it has not the authority of an adjudicated matter and is of no effect outside of that Court.

19. Further answering paragraphs 5, 6 and 7 of said bill, this defendant avers that this decree of the Naples Court is a consent decree and is entitled to no effect in this Court because consent decrees are not given effect internationally in such circumstances as the present.

20. The averments of paragraph 8 are admitted, but it is denied that this has any legal effect on the property of said Enrico Caruso, deceased, located in New Jersey and of which this Court has jurisdiction.

21. Paragraph 9 of the bill is admitted except that the payments under the Victor contract are for a limited period.

22. The averments of paragraphs 10, 11, 12 and 13 are admitted.

23. Defendant admits the averments of paragraph 14 of said bill, but avers that the right under Italian law in complainant as guardian in answering defendant's inheritance from her father to receive without subsequently accounting for same, but to her own use, all of defendant's income arising from this source, has no application to assets of her father's estate in New Jersey, and that her share of such assets and the income therefrom, and, therefore, the payments made on the Victor Talking Machine contract belong to her and should not be paid over to her mother, Dorothy B. Ingram, as guardian under the Italian law, but should be protected and conserved for this answering defendant by a guardian appointed by this Court for this purpose.

24. Defendant has neither knowledge nor information sufficient to form a belief as to the averments of paragraph 15 of said bill. She avers however, that they would seem to show that that Court and the parties conceded that the payments on the Victor contract were at least partly capital and partly income. She avers however, that a decree of the Naples Court has no effect on assets of the estate of Enrico Caruso in New Jersey or on assets belonging to this answering defendant in New Jersey and therefore on payments made under the Victor Talking Machine Company contract.

25. Answering the averments of paragraph 16 of said bill, this defendant admits that the Victor Talking Machine Company made a further payment on or about February 2nd, 1923, of $125,177.66 for the year 1922.

It is denied that such payment was or could have been received by complainant in any other capacity than as Administratrix and was or could have been distributed by her except as Administratrix under authority of this Court, and it is averred that if same has been distributed except as determined by this Court, complainant and her surety are responsible therefor.

26. Defendant has neither knowledge nor information sufficient to form a belief as to the averments contained in paragraph 17 of said bill, and of the account attached to said bill and of the accumulations and disbursements and the administration of complainant of said estate, and avers that same should be properly audited and proved in this Court.

27. Further answering said bill, this defendant avers that she is a citizen of the United States of America, born in New York City, State of New York, on December , 1919.

Defendant therefore prays:

I. That prayers Nos. 2 and 5 of the bill be allowed and that prayers Nos. 3 and 4 be denied.

II. That this Court shall decree that the contract between Enrico Caruso and The Victor Talking Machine Company and all of the payments made by virtue of same are principal of this estate.

III. That all of the principal of this estate in New Jersey and therefore, including the Victor

contract and payments thereunder be decreed to be the property of this defendant, Gloria Caruso, as sole distributee of the estate of Enrico Caruso, deceased, subject to the payment of such share or proportion of the income arising therefrom as Dorothy B. Caruso Engram may be entitled to receive during her lifetime.

IV. That a guardian be appointed for this answering defendant and her assets be turned over to such guardian.

V. That this answering defendant have such further relief as may be equitable and just.

MARTIN V. BERGEN,
Solicitor for and of counsel with the Guardian *ad litem* of Gloria Caruso, infant defendant.

Petition of Dorothy P. B. Caruso.

(Filed February 25, 1927.)

IN CHANCERY OF NEW JERSEY.

(Docket 54, page 620.)

Between

DOROTHY P. B. CARUSO,
Complainant,

against

RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, GLORIA CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Defendants.

To the Honorable Chancellor of the State of New Jersey:

The petitioner Dorothy P. B. Caruso shows to the Court as follows:

1. That she is the widow of Enrico Caruso, deceased, late a resident and citizen of the Kingdom of Italy, and that she is the Ancillary Administratrix of said Enrico Caruso in the State of New Jersey; that she was appointed such Ancillary Administratrix by order of the Ordinary of the Prerogative Court of the State of New Jersey made on the 17th day of January, 1922, and that pursuant to such order she has furnished a bond to said Ordinary in the sum of $250,000.00, on which the surety is Fidelity & Deposit Company of Maryland.

2. That heretofore and on or about the 16th day of November, 1923, this petitioner filed her complaint in this Court whereby she set forth that she had received certain moneys for the estate of Enrico Caruso as Ancillary Administratrix of such estate and prayed that her accounts as such Ancillary Administratrix be settled and a decree be made for the distribution of moneys in her hands to the persons entitled thereto, and for other relief therein set forth.

3. That thereafter Gloria Caruso, infant defendant in said proceeding, made answer by Jesse R. Salmon, Clerk of the Court of Chancery of New Jersey, her guardian *ad litem,* contesting the proposed distribution of the funds in the hands of your petitioner as such Ancillary Administratrix and claiming, among other things, that the entire principal of the estate in New Jersey be decreed to be the property of said Gloria Caruso as sole distributee subject to the proportion of income to which her mother, Dorothy P. B. Caruso, your petitioner, is entitled during her lifetime.

4. That the issues made by said complaint and answer have not yet been settled or disposed of.

5. That the said Enrico Caruso died on the 2nd day of August, 1921, and that he left him surviving his widow, Dorothy P. B. Caruso, your petitioner, and Gloria Caruso, the infant defendant herein, his only legitimate child; that he also left him surviving a brother, Giovanni Caruso, and two natural sons, recognized by him, to wit, Rodolfo Caruso and Enrico Caruso, Jr.

6. That he left a paper writing purporting to be a Will dated January 4, 1919, whereby he gave

his property to his brother and two sons above mentioned, appointing them as his heirs and charging them with the support of his stepmother, Maria Castaldi; and directed that his widow should receive the share in his estate to which she would be entitled under the Italian law.

That said Will was made before the birth of the infant defendant Gloria Caruso and made no provision for her or any after born child.

7. That after the death of said Enrico Caruso such proceedings were had in the Italian Courts of competent jurisdiction as resulted in the appointment of Amedeo Canessa as special guardian for the infant, Gloria Caruso, and that all the parties in interest, including the said Amedeo Canessa as special guardian for said infant, together with your petitioner and the other persons named in the Will of decedent, entered into an Agreement for a settlement of the said Enrico Caruso's estate, whereby, after payment of debts, costs of administration and provision for maintenance of decedent's stepmother, there was set apart for Gloria Caruso, the infant daughter, certain specific property and a fund of 500,000 Lire, and the balance of the estate was to be distributed, one-half to the daughter, Gloria Caruso, and one-eighth thereof respectively to your petitioner, Dorothy P. B. Caruso, to Rodolfo Caruso, to Enrico Caruso, Jr., and to Giovanni Caruso; and that said Agreement was confirmed and approved by Decree of the Civil and Penal Tribunal of the City of Naples dated October 21, 1921, and Decree of the same Court of June 16, 1922.

8. That pursuant to said Agreement a partition was thereafter effected of certain property whereby there was assigned to the infant Gloria

Caruso certain real estate in Italy of the estimated value of approximately 1,885,000 Lire and certain personalty including in addition to tangible property in New York and Italy, Government and Railroad Bonds of the estimated value of about 3,464,500 Lire and various claims and demands amounting to about 876,000 Lire.

That the real estate referred to has produced and produces no income inasmuch as the entire proceeds received by way of rental under the present laws restricting the amount of rent that can be demanded are absorbed by the taxes and expenses of upkeep, as petitioner is informed by her agent in Italy.

9. That a demand was made in Italy for a tax chargeable to the decedent and known as the patrimony tax and which was due by him in his lifetime, but which he had failed to pay. That the amount of said tax was assessed against the several beneficiaries proportionately under the agreement referred to and that the amount assessed against Gloria Caruso the infant was approximately 1,507,225 Lire.

That upon application to the Italian Court, viz.: the Tribunal of Naples, the petitioner was by order of September 8, 1926, authorized to pay the said share of Gloria Caruso in the said patrimony tax out of the capital of said Government bonds assigned to her, but with the proviso that the income from the remaining bonds should be applied exclusively in the purchase of similar bonds until the original amount held for her was restored and that it is estimated that this will necessitate the application of such income solely to this purpose for six or seven years to come.

10. That the income that may be derived from the 500,000 Lire above referred to as assigned to

said infant is also by order of the Court directed to be accumulated until she shall reach 21 years of age.

11. That the petitioner is the mother of said Gloria Caruso and under the law of Italy is her natural and legal guardian and entitled to receive and administer all of her income except so far as restricted by the orders of the Italian Courts.

12. That it was further provided by the decree of the Italian Court, viz.: the Tribunal of Naples, under date of June 16, 1922, that only one-half of the sums received from the Victor Talking Machine Company on account of royalties and payable to said Gloria Caruso should be at the unrestricted disposition of her mother as guardian, and that the other half should be deposited in the Banca di Napoli at its New York office in the name of said Cloria Caruso with pupillary restrictions, that is to say, to be accumulated for her benefit.

13. That the petitioner was duly appointed Ancillary Administratrix of the estate of decedent in New Jersey as above stated and proceeded to collect the property of said estate in New Jersey, but that she is prevented from applying the income so collected to the use and maintenance of the infant by the pendency of the Contest made on behalf of the said infant by her guardian *ad litem* as above set forth.

14. That the assets in the State of New Jersey consist principally in the sums paid and due under the contract made by decedent in his lifetime with the Victor Talking Machine Company for royalties upon certain records made by him.

15. That petitioner has as such Ancillary Administratrix received from said Victor Talking

Machine Company and now has on deposit in the Union Trust and Hudson County National Bank and earning interest at the rate of 4% per annum a sum of approximately $560,000. and that she is advised and believes that about the first of February, 1927, the said Victor Talking Machine Company will make a further payment on account of said royalties of about $80,000.

16. That the said infant is entitled in case the agreement between the parties made in Italy and above referred to is ultimately upheld, to one-half of the amounts above stated, viz., $320,000., subject to taxes and expenses and that in the event that such Agreement is declared to be invalid in the Courts of New Jersey, she will be entitled to a much larger proportion of said sum.

17. That petitioner in her personal capacity has an income of approximately $9,000. per annum applicable to the support of herself and another child as well as said Gloria Caruso and that the said sum is insufficient to support the said Gloria Caruso in the style and manner to which she has been accustomed and to which she is entitled in view of the estate left by her Father and the share of same which will ultimately fall to her.

18. That the annual expenses of maintaining the household in the manner to which the said infant is accustomed are approximately as follows:

Rent of Apartment in New York City		$6,000.00
Salaries of Servants		4,500.00
Insurance		500.00
Various household expenses, light, telephone and sundries		2,000.00
Food for household		7,200.00
Clothing		5,000.00
Automobile		4,000.00
		$29,200.00
Less income of Mrs. Caruso as above		9,000.00
		$20,200.00
Expenses relating specifically to infant.		
Nurse—salary	$1,500.00	
Education—school	600.00	
French and Italian	1,100.00	
Music	500.00	
Dancing lessons	100.00	
Doctor for medical attention	500.00	
Clothing for infant	2,000.00	
Approximate expenses of annual trip to Italy and return with infant and of residence there pursuant to Order of Italian Court by which it was provided that at least 4 months of the year should be passed in Italy by Infant—transportation and other expenses	4,000.00	10,300.00
Total		$30,500.00

19. That heretofore the annual expenses as indicated above have been met out of the income of the petitioner and by application of principal belonging to her and from funds received on account of the minor's interest in the income of the Estate. That the petitioner's income is insufficient to maintain the said household and that on account of the Order of the Italian Court referred to in paragraph 9 preceding, she will not receive any income for the infant from the Italian property for a number of years to come.

20. Petitioner therefore submits that she should be allowed out of the income of the estate of Enrico Caruso in the State of New Jersey as above set forth an annual amount of not less than $30,500. for the support, maintenance and education of Gloria Caruso, infant herein, and that she as Ancillary Administratrix should be authorized to charge the same against the interest of the said Gloria Caruso in the said estate upon the settlement of her account and that she as Mother and natural guardian of the said Gloria Caruso be authorized to apply the said amount to the expenses of her maintenance, education and household as above set forth and further that in the event that the Agreement made in Italy between the parties should ultimately be upheld, the sums so paid for her support be charged against the one-half of the income of Gloria Caruso from royalties which was by the Decree of the Tribunal of Naples of June 16, 1922, placed at the disposition of her Mother, as Mother, Guardian and Administratrix and petitioner prays for relief as follows:

1. That the petitioner as such Ancillary Administratrix be authorized to pay from the funds

in her hands the sum of $30,500 per annum to herself as Mother, Guardian and Administratrix of the said Gloria Caruso and to charge the same against the interest of the said Gloria Caruso in the said estate as the same may be ultimately determined, providing, however, that in case the Agreement made in Italy between the parties should be upheld then the sums so paid be charged against the one-half of the income of Gloria Caruso from royalties which were by the Decree of the Tribunal of Naples of June 16, 1922, placed at the disposition of her Mother as Guardian, Mother and legal administratrix.

2. That the petitioner as Mother, Guardian and Administratrix of said Gloria Caruso be authorized to apply the said sum of $30,500 per annum to her maintenance, education and household expenses, including the support of the household in a style such as she has been accustomed to, and consistent with the estate to which she is entitled.

That petitioner have such other relief as may be equitable and just.

JOHN J. TREACY,
Solicitor for Complainant.

Petition of Dorothy P. B. Caruso.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

DOROTHY P. B. CARUSO, the petitioner named in the foregoing petition, being duly sworn, deposes and says that she had read the foregoing petition subscribed by her and knows the contents thereof and that the facts therein stated are true of her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

DOROTHY P. B. CARUSO.

Sworn to before me this 7th day of February, 1927.

M. C. KENNEDY
Notary Public Kings County
Kings Co. Clerk No. 184, Reg. No. 8226
N. Y. Co. Clerks No. 564 Reg. No. 8404
Term expires March 30, 1928

(SEAL)

Answer of Gloria Caruso.

(Filed February 25, 1927.)

IN CHANCERY OF NEW JERSEY.

54-620.

Between: DOROTHY P. B. CARUSO, Complainant, *and* RODOLFO CARUSO, *et als.*, Defendants.	On Petition of Dorothy P. B. Caruso.

Gloria Caruso, by her guardian *ad litem,* Jesse R. Salmon, answering the petition of Dorothy P. B. Caruso, respectfully shows:

1. The facts set forth in paragraphs 1, 2, 3 and 4 of the petition are admitted.

2. The facts set forth in paragraph 5 are admitted, except as to the averment that the late Enrico Caruso had recognized his two natural sons, Rodolfo Caruso and Enrico Caruso, Jr. This is denied.

3. The facts set forth in paragraph 6 are admitted.

4. The facts set forth in paragraph 7 are denied.

5. Defendant has no knowledge nor information sufficient to form a belief as to the facts set forth in paragraphs 8, 9 and 10 of said petition.

6. Defendant denies the facts set forth in paragraph 11 of said petition. She admits that peti-

tioner had such right as to defendant's assets in Italy, but avers that petitioner has remarried since the death of defendant's father and avers that by reason of such remarriage she lost such right. Defendant avers that the laws of Italy have no application to defendant's assets situated in New Jersey and that petitioner has no right as natural guardian over her assets in New Jersey and denies that petitioner is her legal guardian in New Jersey.

7. As to the facts set forth in paragraph 12, defendant avers that the agreement of distribution provided, among other things, as therein set forth and that the Tribunale of Naples approved of this provision of said agreement. She avers that on petitioner's remarriage petitioner lost any right given to her by such decree of the Italian Court. And avers that the specific Italian Court which rendered this decree had no jurisdiction over her Italian assets, and avers that no Italian Court has jurisdiction over her New Jersey assets and that this decree has no affect on her assets in New Jersey or over the question as to what is principal and what is income thereof or to whom her New Jersey income is to be paid.

8. Defendant denies the facts set forth in paragraph 13 of said petition. She admits that petitioner is New Jersey Ancillary Administratrix of the Enrico Caruso Estate but denies that petitioner has any right to the use of the income of the assets thereof situated in New Jersey, for any purpose whatsoever, except to hold same as Administratrix until ordered by this Court to distribute same, and avers that no such order has been made.

9. Defendant admits the facts set forth in paragraphs 14 and 15 of said petition.

10. Defendant denies the facts set out in paragraph 16. She admits that if this Court gives binding effect to said alleged agreement, this defendant is entitled to one-half of the said estate in New Jersey. She avers, however, that there are many questions involving, among others, the right of the Administratrix to make payments out of this fund for debts of decedent and succession and other taxes due to the United States and Italy which will enter into the accounting and distribution of this estate and which may increase defendant's receipts from same and her equities in such receipts and that there is a claim being litigated by the Federal Government for $82,000 for income taxes for 1922 which may decrease the amount coming to her.

11. Answering paragraphs 17, 18 and 19, defendant denies that petitioner's personal income is only $9,000 per annum, but avers that in her personal capacity she has an annual income far greater than that sum applicable to the support of herself and her two children, one of which is this defendant, and avers that petitioner has the duty to support defendant without the use of defendant's income for that purpose, and avers that petitioner has ample incomes of her own with which to do so, and avers that $9,000 is a sufficient sum for that purpose.

12. Further answering the averments of paragraph 18 of said petition, defendant avers that she was born on December 18th, 1919, and that she is therefore seven years of age, and she denies that the expenses and items scheduled in said

paragraph are necessary or proper expenses for her support, maintenance and education.

13. Further answering the averments of paragraph 19, defendant has no knowledge nor information sufficient to form a belief as to the facts set forth in paragraph 19 of said petition.

14. Answering the averments of paragraph 20 of said petition defendant denies that petitioner should be allowed any amount out of defendant's assets in New Jersey for defendant's support, maintenance and education.

Further answering said petition, defendant avers:

15. Defendant's father, Enrico Caruso, died on August 2nd, 1921, a citizen of Italy, domiciled at Sesto Fiorentino. He had for many years been a resident of New York City engaged in business there and defendant was born in that City on December 18th, 1919. Defendant is therefore, an American citizen, seven years of age. Defendant resides with her mother, born an American citizen, who according to the petition, has resumed her permanent residence in the State of New York and this allowance is asked to maintain defendant there eight months of the year.

16. Enrico Caruso left a paper purporting to be a last will executed on Jannary 4th, 1919, and prior to the birth of defendant, and therefore under the laws of Italy said will was of no effect as to defendant, who is his only legitimate child, and she was entitled to succeed, under Italian laws, to all of decedent's property, subject only to the usufruct of her mother, the petitioner, of one-fourth of the incomes.

17. Under the laws of Italy a mother has the right, until she remarries, to all the incomes of a minor, for the child's maintenance and education and support, without any accountability when she arrives at 21 years of age.

18. By this paper purporting to be a will, it was directed that his estate should be divided between his brother, Giovanni Caruso and his two illegitimate sons, Rodolfo Caruso and Enrico Caruso, Jr., who should make provision for the support of his stepmother. That his widow, the petitioner, should take that which the Italian law gives her. No provision was made as to any child to be born. The mother of the two sons is Ada Giachetti Botti who was at the time of their respective births the wife of a man other than Enrico Caruso. They are therefore, adulterine, natural sons and do not inherit under Italian laws in case of intestacy, nor does the brother, Giovanni Caruso.

19. Sesto Fiorentino is located in the jurisdiction of the Tribunale Civile and Penale of Florence, Italy, and that court has jurisdiction exclusive of any other Italian court over the succession to the Italian assets of the Estate of Enrico caruso, deceased, and also over the Italian estate of defendant.

20. Shortly after the death of Enrico Caruso the parties named in the will, that is the petitioner, Giovanni Caruso and Rodolfo Caruso, entered into an agreement; secured from the Civile and Penale Court of Naples, Italy (which court had no jurisdiction in the matter) the appointment of guardians *ad litem* for the defendant and for Enrico Caruso, Jr., then also a minor, who joined in the agreement as such. Subsequently this

agreement was presented to said Court of Naples and by consent of all parties, was ratified by it.

21. This agreement is a single, indivisible, entire contract. It provides as follows:

(a) That a sum of 500,000 Lire shall be taken from the New York assets of Enrico Caruso and deposited with the Bank of Naples as a trust fund for defendant.

(b) The balance of all of his assets shall be distributed one-half to defendant and one-eighth to each, petitioner, Giovanni, Rodolfo and Enrico Caruso, Jr., except some specific articles which were distributed among them.

(c) The United States taxes shall be paid out of the New York assets.

(d) A sum of 7,000,000 Lire shall be put in the hands of petitioner from which she is to pay the debts of decedent, finish the mausoleum for decedent, support the entire family for one year, pay the Italian taxes and account for any balance which is to be distributed proportionately.

(e) Certain art, coin and arms collections were to be sold, and the proceeds divided proportionately.

(f) 30,000 Francs in Paris, less French taxes, are to be divided proportionately, in kind.

(g) The balance of the New York assets (the whole listed at $461,000) shall be divided proportionately.

(h) Petitioner as natural guardian shall not receive the incomes from the 500,000 Lire fund which are to accumulate for defendant.

(i) Petitioner as natural guardian shall receive, without accountability, one-half of the royalties arising from defendant's one-half of the Victor contract, the other one-half to accumulate for defendant, but interest from these accumulations to be paid to petitioner as natural guardian without accountability.

(j) Petitioner shall receive, as natural guardian, all the other incomes arising from the assets of defendant (such incomes petitioner could use as her own without subsequent accountability).

22. Under the laws of Italy, the administration of a minor's estate is in a body called a Family Council consisting of the nearest relatives and a local officer called the Pretore. The Family Council which has assumed control of defendant's estate consists of the Naples Pretore, the petitioner, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr. and the two so appointed guardians *ad litem,* and it was by their petition that the said Tribunale Civile and Penale of Naples has taken jurisdiction and has made decrees in reference to same.

23. After the death of Enrico Caruso petitioner married an English citizen and they are since divorced. This remarriage under Italian law would have deprived petitioner of her right without accountability as natural guardian to the incomes of defendant's assets; nevertheless, under this agreement of division, and with the consent of this Family Council, petitioner is still enjoying this right and is receiving defendant's Italian incomes except from the 500,000 Lire fund, and has received $23,000 from defendant's one-half of her royalties in New Jersey. Defendant has no

knowledge of the disposition of the New York assets.

24. Defendant further avers that this agreement is an entire, indivisible contract; that it includes not alone the division of the New Jersey assets of the Estate of Enrico Caruso, but also the adjudication as between principal and income of defendant's assets in New Jersey and payments of the incomes of defendant arising from her New Jersey assets. That it has never been presented for approval to this Court until the present proceeding and has not been approved by it. That notwithstanding this fact the parties proceeded to carry out its terms and defendant is informed have done so by distribution of the Italian assets and allowing petitioner the incomes from defendant's Italian assets and that petitioner has distributed large portions of the New Jersey royalties under its terms.

25. Defendant avers that this agreement and this whole course of procedure by petitioner and by these parties is a fraud on defendant and that it is an attempt by them to despoil her of her estate to their own profit and should not be approved and made effective by this Court. Defendant further avers that any attempt by petitioner to secure any benefit of this agreement or to secure any relief made beneficial to petitioner because of this agreement is asking this Court to assist petitioner in this fraud on defendant. Petitioner is not in this Court with clean hands.

26. As far as this present petition is concerned, the result of this agreement is or would be that petitioner instead of receiving of her own right one-fourth of all the incomes of the Estate of Enrico Caruso is receiving or would receive

the incomes from her own one-eighth share thereof, and defendant, instead of receiving three-fourths of all the incomes, will receive the incomes from her one-half share thereof. Defendant avers that the present petition is to ask this Court to make good this difference in income to petitioner. Defendant avers that by her own act petitioner has reduced the income available to her for living purposes and for defendant's support and has reduced the mode of living to which she and defendant are entitled. Defendant avers that whether or not this act be fraudulent as to defendant, petitioner can ask no relief of this Court to improve a status created by her own act.

27. The deed of settlement shows that the total estate of Enrico Caruso was, at the appraisement figures given therein, as follows:

In Italy:		
Real Estate,	Lire	6,013,203.67
Personalty,	"	14,367,406.88
		20,380,610.55
Various other personalty distributed by the agreement, not valued.		
Various art and coins and arms collections to be sold in Naples and New York:		
In New York:	$461,305.35	8,303,490.00
(defendant is informed this is $581,000.00)		28,684,100.55
In Paris:	30,000 Francs	
In Berlin:		
In New Jersey:		
The royalties payable on the Victor contract.		

Life Insurance:

Defendant has not been able to obtain information as to life insurance taken out by decedent, although defendant believes it to be considerable in amount. It was of sufficient importance to be mentioned in the partition agreement. Defendant avers that one policy of $25,778.42 was paid to petitioner as Administratrix in New York.

The 30,000 Francs would appear from the deed to have been distributed in kind after deduction of French taxes.

The New York assets. Defendant has never been able to obtain definite information as to these assets. Petitioner was appointed Administratrix but has not filed an inventory or an account. The decree of the Italian Court of October 21st, 1921 ordered the payment out of these funds of a sum of 500,000 Lire in trust for the defendant and of all Federal and New York estate taxes. Defendant is informed that one life insurance policy was paid into this fund amounting to $25,778.42.

Defendant is informed that the assets in New York amounted to about $581,000. and of this $300,000. was claimed and taken out as a gift *causa mortis* by petitioner. Defendant has no information as to whether the 500,000 Lire ordered to be set aside as a trust for defendant was ever so paid, nor as to what has been done with these assets.

Of the Italian assets 7,000,000 Lire were given to petitioner to pay Italian taxes, debts of decedent, for the erection of a mauseleum, for support of the entire family for one year, etc., the balance to be distributed by petitioner among the parties to the agreement, pro rata. Defendant has no knowledge as to the use of this fund, but avers

that debts of decedent and Italian taxes were paid out of the New Jersey and New York assets.

28. The New Jersey assets consists of a contract by which Enrico Caruso sold records of various songs to the Victor Talking Machine Company for future payment of 10 per cent. of the selling price. The value of this contract has and will diminish.

Defendant avers that these royalties are not income. She avers either (a) that they are instalment payments and are principal of the estate, and that the income of the estate is the returns from investments of these payments; or (b) that this withering contract should be sold and its sale price would be capital, or, if that is inadvisable as defendant believes it to be, that this contract should be valued and out of the royalties a sum should be allowed as income equal to interest at a proper rate which such appraisement if invested could be expected to earn, and the balance of the royalties would be capital.

29. Under the agreement defendant was to receive:

In Italy:

Real Estate,	1,885,203.67
Debts payable (at least 594,000 paid in cash)	876,000.00
Furniture, etc.,	464,087.95
Danish bonds, 64,800 Corone 4%,	119,252.00
110 Obligations R. R. Livornesi 3%	33,936.00
Italian Government Bonds Consolidate 5%, @ 80.	3,007,375.00
Italian Nat. Loan (prestito Nazionale at 75)	303,950.00
Lire	6,689,804.62

Also:
½ of sales of art and coin cellections,
½ of balance of 7,000,000 Lire Fund,
Various specific objects,

From New York:
A fund of 500,000 Lire,
½ of the balance,

From Insurance:

From Paris:
½ of 30,000 Francs, 15,000

From New Jersey:
½ of royalties,
30. Petitioner was to receive:

From Italian Assets:

Real Estate,	528,000.00
Furniture, etc.,	251,604.46
Italian Government Bonds, 3.50% @ 73,	766,500.00
Italian Government Bonds (Consolidate) 5% @ 80	126,472.00
Lire	1,672,576.46

⅛ of Balance of 7,000,000 Fund
⅛ of art and coin collections sold
Various Specific Articles

From New York:

Gift causa mortis,	$300,000.00

⅛ of balance to be distributed

From Paris:

⅛ of 30,000 Francs,	3,750.00

From Life Insurance:
" *New Jersey:* ⅛ of royalties,

31. Defendant is informed that petitioner has already distributed to herself from these New Jersey royalties, $34,500. She has no information as to whether any other payments were made.

Amount now in Administratrix hands, approximately,	$625,000.00
Deduct amount belonging to Gloria,	16,859.49
	$609,000.00

Of this petitioner of her own right is entitled (a) under the agreement, in her own right to ⅛, $76,125.00; or (b) under defendant's claim that all the royalties are capital, to ¼ of the investment proceeds, (now invested at 4%), $24,360 or $6,090 annually and this amount is rapidly increasing. Or (c) under defendant's claim that the contract should be appraised and that interest should be allowed on same, as income, to ¼ of such interest, which would be a much larger amount annually than $6,090.

32. Defendant avers that she has no information as to what assets or property or sources of income petitioner may have outside of that derived from the Caruso estate and she asks that that may be shown on a hearing in this case.

33. Defendant avers that petitioner has the income from:

Incomes from all the Italian assets of defendant and of her own (as set aside by and valued in the agreement of division) as follows:

From	real estate,	6,541,203.67
"	furniture, etc.,	715,692.41
"	debts due,	282,000.00
"	cash,	594,000.00
"	Bonds:	
	Danish 4%,	119,252.00
	Railroad 3%,	33,936.00
	Italian Government 5%,	3,917,308.75
	Italian Government 3.50%	1,050,000.00
	" "	405,267.00
		Lire 13,658,659.83

From	5/8 of balance of 7,000,000 Lire Fund		
"	5/8 of sales of collections		
"	various special objects		
"	life insurance,		
"	gift causa mortis,		$300,000.00
"	5/8 balance of New York assets,		
"	New Jersey royalties, already distributed,		$34,500.00
"	1/4 of income from investments of $609,000—$6,090 annually		
	Or if capitalized—a greater sum annually		
	From other sources at least $9,000 annually		

34. Defendant has neither knowledge nor information sufficient to form a belief, as to:

(a) the values of the assets of the estate of Enrico Caruso and whether the figures stated in the agreement represent the actual monetary values of the assets or whether they are figures arbitrarily arrived at, to show relative values, for the purpose of allotment;

(b) as to moneys received from the sales of the collections and disposition made of same;

(c) as to the insurance on the life of Enrico Caruso and disposition made of same;

(d) as to the disposition made of the 7,000,000 Lire Fund and balance of same.

(e) as to the disposition made of the New York assets, and amount of same.

(f) as to the amount of incomes arising from these assets, but she avers that the credit Canessa which was one of the "debts due" and was allotted to defendant of $33,000 or 594,000 Lire, has been paid in cash, and that the real estate allotted to defendant consisted of numerous houses for rental to tenants.

(g) as to the other incomes which petitioner has.

Defendant avers that these matters are in the knowledge of petitioner and she asks that they may be proved.

35. Defendant further avers that the jurisdictions being exercised by this Court over the estate of Enrico Caruso and the estate of this defendant are ancillary in nature and that the Court should not make an order as to defendant's maintenance, education and support and subject her assets and income within this jurisdiction to such an order until the exhaustion of her incomes in both Italy and New York.

36. Defendant further avers that petitioner in basing her position on this alleged settlement and the approval thereof by the Naples Court, and thereby securing these incomes from defendant's assets, has set up that the Italian Court has passed

on the matters of the proper allowance to be made to her for defendant's maintenance, education and support, and is now estopped from asking this Court to do so. Defendant avers that the Italian Court which took jurisdiction of this matter by special decrees has refused to give petitioner the use of the incomes of defendant:

(a) arising from the 500,000 Lire fund to be set aside for her;

(b) from ½ of the royalties arising from the Victor contract; and

(c) (as she is informed by paragraph 9 of said petition) on September 8, 1926, on incomes from bonds until such incomes repay to the principal an amount of approximately 1,507,22 Lire used to pay a debt of decedent. Defendant avers that when this last decree was made the petitioner had full knowledge of the existing status as to the New Jersey royalties and of the attack on the rectitude and binding effect of this agreement, and the decree of August 2nd, 1925, evidences that said court also had knowledge of the same when the decree of September 8th, 1926, was entered and therefore the latter decree is a finding of that court that petitioner is not entitled at this time to any further of the incomes of defendant for this purpose.

Defendant further avers that if this decree of September 8th, 1926, was consented to by petitioner, she cannot now come into this Court with a view of counteracting that to which she assented.

37. Defendant further avers that an attempt to use the income from her New Jersey assets for her maintenance, support and education before the use of her incomes from her Italian and New York assets, for that purpose, is a recognition and

application of the Italian rule that the income of a child during minority shall be given to the parent without accountability, in that it enables the mother, petitioner, to save these incomes as her own property by the expenditure of New Jersey incomes for the purpose for which such Italian and New York incomes were intended to be used.

38. Defendant avers that whatever may have been the standard of living as measured by expenditures to which defendant was entitled during the life of her father, that standard is much cut down and reduced since his death.

(a) By the absence of his earnings. The royalties from the Victor Company are not income, but are either wholly or chiefly principal. Such royalties are not to be taken as a standard from which to determine the proper rate of her living.

(b) By the action of her mother, the petitioner, in attempting to make this settlement which reduces respondent's ownership and enjoyment from the whole principal of her father's estate and ¾ of the incomes thereof to ½ of each, and herself from ¼ of the income of the whole estate to ⅛ thereof.

(c) By the unusual succession and inheritance and other taxes which have taken large portions of the principal and temporarily of the incomes.

(d) By the condition put on petitioner by the Family Council, after her remarriage, in consenting that she should continue to receive, as her own, defendant's income; that petitioner should visit Italy each year——

These causes with many others have resulted that defendant is not entitled, at least temporarily, to live at a rate measured by her mother's

home being run at an annual expense of $39,500.00 as set forth in said petition, if she was ever entitled to live at that rate of expense, which defendant denies.

39. Defendant further avers that although she admits that petitioner is entitled of her own right, either to ¼ of the incomes arising from the New Jersey assets of the estate of Enrico Caruso or, if the agreement if sustained, to ⅛ of both principal and income thereof, nevertheless at the present time, nothing can be paid to petitioner on account of same;

(a) until it is determined what amount, if any, of the royalties is income and what amount is principal. This may include not only a determination of the proportion of the current royalties but also an apportionment of those received for the year 1921 of $422,891.56, Enrico Caruso having died August 2nd, 1921.

(b) until the net amount arising from the royalties is ascertained, which cannot be ascertained until the now pending Revenue tax questions are finally adjusted.

(c) until repayments have been made by petitioner to the New Jersey estate of amounts improperly withdrawn by her from same.

Petitioner as New Jersey Administratrix has made payments of large sums out of same, in alleged carrying out the said agreement, without any order from any court authorizing her to do so, as follows:

For Federal Income Taxes due by decedent:			
1919 additional,	$29,015.93		
1920 "	83,729.39	$112,745.32	
For Federal Income Taxes:			
1921, 4th instalment,	20,212.63		
additional,	3,866.92	24,079.55	
" Federal Inheritance Tax,		33,902.42	
" State Inheritance Tax,		800.00	
" Italian Taxes,		30,225.91	
In Distribution:			
To Mrs. Caruso,	11,500.00		
" Enrico Caruso, Jr.,	11,500.00		
" Rodolfo Caruso,	8,500.00		
" Giovanni Caruso	4,000.00		
" Gloria Caruso (taken by Mrs. Caruso)	23,000.00	58,500.00	
		$270,253.20	
For Gloria's Taxes:			
Income 1922 (3 instalments)		6,384.09	
Income 1923 (1 instalment)		1,665.08	
For Gloria's Taxes and deducted from her ½ share of her royalties:			
1924 Income Tax (4 instalments)	5,483.37		
1925 Income Tax (3 instalments)	3,828.54	9,311.91	

(d) until it is ascertained that there is nothing due to defendant on an accounting by petitioner of the assets in New York, petitioner's present residence.

40. Defendant further avers that nothing can be paid to petitioner for defendant's maintenance, education and support out of defendant's income arising from the New Jersey royalties at the present time.

(a) until it is shown that petitioner has not sufficient income in her own right to provide for same.

(b) until it is shown that there are no incomes from defendant's assets in New York and Italy to pay any deficit necessary.

(c) until it is determined what amount, if any, of the royalties is income and what amount is principal. This may include not only a determination of the proportion of the current royalties but also an apportionment of those received for the year 1921 of $422,891.56, Enrico Caruso having died August 2nd, 1921.

(d) until the net amount arising from the royalties is ascertained, which cannot be ascertained until the now pending Revenue tax questions are finally adjusted.

(e) until any losses by improper deductions or payments by petitioner as Ancillary Administratrix or by prepayments of taxes out of principal which should come from incomes are repaid to the principal.

(f) until provision is made from incomes for the payment of a claim of $82,000, an additional assessment made on defendant's Federal income

tax of 1922 if to be paid out of the New Jersey assets, which defendant denies.

MARTIN V. BERGEN,
Solicitor of the Guardian *ad litem* of
Gloria Caruso, defendant.

Affidavit of Dorothy P. B. Caruso.

(Filed March 16, 1927.)

IN CHANCERY OF NEW JERSEY.

DOROTHY P. B. CARUSO,
Complainant,

against

RODOLFO CARUSO, *et al.*,
Defendants.

Docket 54
Page 620.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:
CITY OF NEW YORK,

DOROTHY P. B. CARUSO, being duly sworn, deposes and says that she is the petitioner herein. That she has read the two affidavits of Alfred F. Seligsberg submitted simultaneously herewith and that she herewith declares that the said affidavits are true.

Deponent is thoroughly familiar with all her property in the United States, and the various investments and knows that the schedule annexed to Mr. Seligsberg's affidavit and marked Exhibit

A, is a correct statement of her investments and of the income thereon earned.

That your deponent has incurred an indebtedness at the Fifth Avenue Bank amounting to $60,500, as she did not wish to sell her investments and as she has always hoped and still hopes to pay for such indebtedness out of her share of the New Jersey royalties. That the said indebtedness was incurred on account of the heavy taxation in Italy, and because of the failure of the distribution of the New Jersey estate she was called upon to expend more than her available income.

That deponent has left the handling of her Italian estate and the income thereof, and the cash collections and disbursements, to her Italian attorneys. That she has never handled these collections personally. That under the Italian custom all the heirs jointly administer the estate and through such attorneys, the entire estate was handled for and in behalf of all the heirs. That the sum of 7,000,000 Lire which was set aside by the Sanseverino deed of distribution in order to pay debts incurred in the course of administration and to pay for the mortuary chapel, funeral, inheritance taxes, registration fees and other payments, was never handled by deponent personally, but that the receipt and disbursement of such money was handled directly by the attorneys for the estate.

That during the administration of the estate in Italy, many unforeseen expenses had to be met and that as the funds of the infant were not available and as the other heirs found themselves without any funds whatsoever, deponent was compelled to advance large sums of money for the benefit of all the other heirs and in order to make such payments, deponent was in fact compelled to sell some of the securities which had been allocated to her in the distribution of the Italian estate and pledge the remaining securities, with the result that out-

side of the real estate which deponent personally owns in the City of Florence, no assets remain free and unpledged.

Deponent further says that she has received but very little income from Gloria's Italian estate as usufructarian, owing to the fact that the rents of Gloria's real estate were unfortunately low and the real estate and other taxes which were to be paid out of Gloria's income, were disproportionately high. That her attorney, Mr. Consolazio, has at various times informed deponent that the charges she had to meet out of Gloria's income, have been thus far, in excess of Gloria's actual income and the said Consolazio has further informed her at various times that for many years to come she can expect but very little income from Gloria's estate as the decree of the Court of Naples impounding Gloria's income until her capital, on account of the payment of the patrimony tax, was reconstituted, would practically result in deponent's receiving no appreciable income from Gloria's estate for many years.

Deponent further says that she has seen the telegram received this morning by Mr. Seligsberg, alluded to in his affidavits, and that she believes that the telegram truthfully gives a statement of deponent's prospective income from her own and from Gloria's Italian estates.

DOROTHY P. B. CARUSO.

Sworn to before me this 14th day of March, 1927.

BEATRICE GOLDMAN
Notary Public, New York County
County Clerk's Nos. New York 142,
Kings 125, Bronx 24
Register's Nos. New York 8065,
Kings 8100, Bronx 2894
Commission Expires March 30, 1928
[SEAL]

Affidavit of Alfred F. Seligsberg.

(Filed March 16, 1927.)

IN CHANCERY OF NEW JERSEY.

Dorothy P. B. Caruso, Complainant, *against* Rodolfo Caruso, *et al.*, Defendants.	Docket 54 Page 620.

State of New York, County of New York, City of New York, } ss.:

Alfred F. Seligsberg, being duly sworn, deposes and says that he is an attorney at law, duly admitted to practice in the courts of the State of New York, residing at 30 West 70th Street, in the City of New York, and is a member of the firm of Wise & Seligsberg, with offices at 15 William Street, Borough of Manhattan, City of New York. Deponent says that he has been ever since the Fall of 1921, attorney for Dorothy P. B. Caruso as ancillary administratrix of the goods, chattels and credits of Enrico Caruso deceased, in the State of New York, and has been counsel for her in the same capacity in the State of New Jersey.

Deponent further states that he has been the personal attorney for Mrs. Caruso during the same period. That he is fully familiar with her personal estate in America and that Beatrice Goldman, the cashier of deponent's office, has been the private secretary of Mrs. Caruso for

many years and has attended to her financial business and made out her income tax returns. That deponent is thoroughly familiar with all the financial affairs of Mrs. Caruso and the transactions which she has had ever since the Fall of 1921. That Mrs. Caruso's sole estate in America consisted of bonds and cash which her late husband had given to her during his lifetime. That the amount of said gift as scheduled in the Federal Inheritance Tax Return of the estate, was about the sum of $275,923.18. That Mrs. Caruso has spent large amounts of her capital in supporting herself and her daughter Gloria, ever since the death of her husband, and especially due to the fact that since February, 1924, she has received no part of the royalties under the contract with the Victor Talking Machine Company of which, under the Italian decree, she would be entitled personally to one-eighth and as mother of Gloria to an additional two-eighths of such royalties. That hereto annexed, marked Exhibit A, is a schedule of the securities constituting the estate of Mrs. Caruso in America at the present time. That the said securities at the present time produce a gross income of $12,225. That Mrs. Caruso, however, has incurred an indebtedness during the past few years, to the Fifth Avenue Bank, amounting to $60,500 and the interest charge on such indebtedness running at 5½% amounts to $3,327.50, giving Mrs. Caruso a net annual income of $8,897.50. That deponent knows of no other income produced from any property of Mrs. Caruso in America.

That the New York estate is kept in the Fifth Avenue Bank in two different accounts. In the General account, Exhibit B, there was a balance on February 1, 1927, of $527.88. That a second

account, known as the Special account, Exhibit C, shows a cash balance on March 3, 1927, of $2,179.04 and United States Treasury Certificates of the par value of $17,000, showing assets therefore, slightly in excess of $20,000. That this account represents the proceeds of the auction of the objects of art left by Enrico Caruso. That part of the said goods belonged to the Italian Estate and part of it to the American Estate. The said assets are still in process of administration; and there is an outstanding claim of the Metropolitan Opera Company and there are administration charges and eventually there will have to be an accounting between the Italian Estate and the American Estate as to the exact proportion to which each is entitled. In addition, Gloria may be entitled to part of this fund in payment of proceeds of objects given to her by the Italian decree. The court's attention is called to this matter, simply to show that the assets of the New York Estate cannot be considered in any way in computing the income of Mrs. Caruso as these assets are still in process of administration and Mrs. Caruso is not entitled to receive any part of the interest earned by such assets.

There is in the hands of deponent, a fund of $33,000 which the firm of C. & E. Canessa, whose counsel deponent was, paid to the deponent for the benefit of Gloria Caruso. This fund, deponent holds in a special account at the Fifth Avenue Bank of New York, which special account has been earmarked as the property of Gloria Caruso and which must eventually be turned over pursuant to the Italian decree, to the Bank of Naples as the property of Gloria. Under the Italian law, Mrs. Caruso is entitled to the income of this fund, which amounts approximately to the sum of $1,525

per year. This account was collected by deponent in the Summer of 1924 and the income has thus far not been paid to Mrs. Caruso because it was thought best to keep this amount in the hands of deponent in the event that it was found that Mrs. Caruso, as administratrix, was entitled to some offset from the funds of Gloria. This account is invested in securities in which savings banks are permitted to invest, and is in no way part of the assets of the New York Estate, but was part of the assets of the Italian Estate and allocated by the Italian distribution to Gloria Caruso as her own property. The reason why the income has not been paid to Mrs. Caruso is that deponent has no right, without the permission of C. & E. Canessa, to turn over this amount to anyone but the Bank of Naples, and as of course, C. & E. Canessa must pay this to the Bank of Naples, they will not give their consent to any other disposition of the said fund or the income thereof; and deponent, as stated above, has not turned it over to the Bank of Naples as in such event the moneys would become part of the Italian Estate and in the event that Mrs. Caruso should be entitled to any offset from Gloria's fund, it would be more difficult to obtain if it had become part of the Italian Estate of Gloria.

Deponent knows of no other assets in America, belonging to Gloria Caruso, which are producing income.

As to the Italian assets of Mrs. Caruso and of Gloria, deponent can only make these statements upon information and belief. Deponent has had many interviews with Gabriele Consolazio and Giovanni Porzio, the Italian counsel for the Italian Estate. Deponent has not been in charge of the administration of the Italian Estate but he has

been repeatedly assured by the Italian attorneys that the income produced by Gloria's Italian Estate is smaller than the amounts which Mrs. Caruso has been paying for the administration, upkeep and taxes and other expenses connected with Gloria's Italian Estate.

Deponent annexes hereto, marked Exhibit D, a translation of a letter which he received from Mr. Consolazio dated November 11, 1926. The said letter refers to two copies of decrees. The first decree refers to an order of the court decreeing that the sum of 37,000 Lire, being the amount chargeable to Gloria as the excess of cost over the contract price of the mortuary chapel of her deceased father, be paid from the income of Gloria, thus charging the said excess cost of 37,000 Lire really upon Mrs. Caruso, who was entitled to such income as the usufructuary of her daughter. The second decree alluded to by Mr. Consolazio refers to the payment of Gloria's half of additional assessment for patrimony tax, amounting to 1,507,-225 Lire. The Court of Naples, by its order dated the 8th day of September, 1926, decreed that sufficient government bonds belonging to the estate of Gloria should be sold to meet the payment of Gloria's share of such tax and that the income from the remainder of Gloria's securities should be accumulated until the entire amount paid for such tax on behalf of Gloria should have been reintegrated as capital. Deponent is informed and believes that it will take about seven years to reconstitute Gloria's capital, and until the expiration of such period Mrs. Caruso will not be entitled to receive any interest from Gloria's government bonds.

Deponent further says that outside of the said government bonds, as deponent is informed and

verily believes, Gloria's Italian securities amount to very little, but the exact amount deponent does not know. That Gloria is the owner of several apartment and tenement houses in the City of Florence, but owing to the fact that since the war the rents have not been raised because of government restriction, and the taxes having increased, the income to Gloria from such real estate holdings in Florence is very small, if any. Any income which Mrs. Caruso may get from Gloria's estate in Italy is subject to certain charges for taxes and other expenses, and deponent has been informed and verily believes that at no time since the distribuiton of the estate has Mrs. Caruso ever received any appreciable amount as income from Gloria's Italian Estate.

Deponent calls the attention of the court to a translation hereto annexed, marked Exhibit E, of an excerpt of another letter from Mr. Consolazio, dated January 29, 1927, to which Mr. Consolazio annexed a schedule of expenses incurred by Mrs. Caruso for the account of Gloria. From this it would appear that from August, 1921, to December, 1926, Mrs. Caruso had expended for Gloria over 1,679,000 Lire. Under the Italian Code, a usufructuary must meet, as stated above, certain expenses out of the income of the minor's estate, and according to Mr. Consolazio's statement these amounts were payable by Mrs. Caruso out of Gloria's income. Deponent believes that as a matter of fact the said amount of 1,679,000 Lire exceeds the gross income of Gloria for the like period.

As to Mrs. Caruso's own income from Italy, deponent knows that Mrs. Caruso has made many advances for taxes, expenses and other payments to the various heirs, and that her entire Italian

Estate practically consists of only an apartment house in the City of Florence, which was allocated to her in the distribution of the estate. That as the apartment house, owing to the fact that the government has restricted the raising of rents, has given but little income, if any, after the payment of taxes and administration expenses.

To summarize: As to the financial condition of Mrs. Caruso, deponent affirmatively states that Mrs. Caruso's income from her American Estate does not exceed the sum of $9,000; that the income from the Canessa fund is about the sum of $1,525, but has not been received by Mrs. Caruso for the reasons as above stated; that as to the income of Gloria's estate from Italy, to which Mrs. Caruso is entitled as mother, deponent has been informed by the Italian counsel, whose word he has no reason to disbelieve, that for many years to come Mrs. Caruso will not receive any income whatsoever therefrom; that as to Mrs. Caruso's Italian Estate, deponent is sufficiently familiar with the facts to know that her income therefrom will be very negligible.

ALFRED F. SELIGSBERG.

Sworn to before me this
15th day of March, 1927.

BEATRICE GOLDMAN
Notary Public, New York County
County Clerk's Nos.
New York 142, Kings 125, Bronx 24
Register's Nos.
New York 8065, Kings 8100, Bronx 2894
Commission Expires March 30, 1928

(Seal)

Exhibit A, Annexed to Affidavit of Alfred F. Seligsberg.

		Rate	*Annual Income*
50	shares American Tobacco Co. Pfd	$7.00	$350.00
100	" American Power & Light Pfd	7.00	700.00
100	" Consolidated Gas Common	5.00	500.00
100	" Celluloid Pfd.		
100	" General Motors Pfd	7.00	700.00
100	" Gulf States Steel 1st Pfd	7.00	700.00
100	" Lehigh Valley Coal	2.50	250.00
100	" National Power & Light Pfd	7.00	700.00
200	" North American Pfd	3.00	600.00
100	" Montgomery Ward A	7.00	700.00
100	" Oppenheimer & Co. Pfd	8.00	800.00
50	" Penn. Water & Power Com	8.00	400.00
50	" Phoenix Hosiery Co. Pfd	7.00	350.00
100	" West Penn Pfd	7.00	700.00
$5,000.	Austrian Gov. 7% 1943	7%	350.00
5,000.	Brazil 1952	7½%	375.00
10,000.	German Genl. Elect. 1945	7%	700.00
2,000.	German External Loan	7%	140.00
5,000.	State of San Paulo	8.00	400.00
30	shares American Power & Light Pfd	7.00	210.00
100	" Eastman Kodak Common	8.00	800.00
100	" Electric Light & Power Pfd	7.00	700.00
50	" Electric Light & Power Com.		
100	" International Cement Pfd.	7.00	700.00
$5,000.	Czecho Slovakia 1951	8%	400.00
	Gross Annual Income		$12,225.00
	Due Fifth Avenue Bank on Loan $60,500, 5½%		3,327.50
	Net Annual Income Year 1927		$ 8,897.50

Exhibit B, Annexed to Affidavit of Alfred F. Seligsberg.

GENERAL ACCOUNT.

	Receipts				
	Jan. 17/1922	Bal. from Col. Tr. Co. & 5th Ave. Banks			$149,449.92
	18	Feist & Company—royalties			3 .22
	23	Sold $70,000. U. S. Treas. Notes		$70,000.00	
		Interest		577.12	70,577.12
	25	Bal. from Hudson Tr. Company			656.50
10	Feb. 15	Sold $15,000. U. S. Treas. Notes		$15,000.00	
		Interest		163.21	15,163.21
	28	Union Central Life Ins. Co.			25,778.42
	Mar. 16	Sold $18,000		$18,052.21	
		Interest		202.50	18,254.71
	20	L'Italia Press Co.—dividend			100.00
	Apr. 6	Sold $2,000. U. S. Treas. Cert.		$ 2,005.51	
		Interest		27.69	2,033.20
	14	U. S. Treas. Dept. Refund 1913 Income Tax			2,346.11
	June 10	State of New York—1920 refund			1,266.44
	12	Sold $20,000.		$20,038.62	
		Interest		442.58	20,481.20
20	15	U. S. Treas. Notes—interest			112.50
	Sept. 15	Sold $5,000.		$ 5,005.00	
		Interest		55.32	5,060.32
		Sold $15,000.		$15,266.39	
		Interest		437.26	15,703.65
		Interest			294.11
	Jan. 15/1923	L'Italia Press Co.—dividend			100.00
		Johnson & Higgins—return premium			5.27
	25	Sold $500.		$ 507.31	
		Interest		8.66	515.97
	Mar. 10	Johnson & Higgins—ins. premium refund			45.94
	15	Interest U. S. Treas. Notes			700.61
	Apr. 6	Johnson & Higgins—ins. premium refund			222.50
	July 20	Johnson & Higgins—ins. premium refund			3.34
30	Sept. 15	Interest—U. S. Treas. Notes			225.64
	Nov. 19	Johnson & Higgins—ins. premium refund			2.22
	Dec. 20	Sold $2,000. Treas. Notes		$ 2,017.90	
		Interest		25.04	2,042.94
	Jan. 17/1924	Sold $1,000.		$ 1,008.35	
		Interest		16.18	1,024.53
	18	Sold $2,000.		$ 2,009.40	
		Interest		16.31	2,025.71
	23	Sold $1,000.		$ 1,007.22	
		Interest		16.96	1,024.18
		Additional Interest January 18			16.31
	Mar. 15	Interest U. S. Treas. Notes			83.11
	28	Sold $1,500.		$ 1,508.49	
40		Interest		2.51	1,511.00
	Sept. 15/1924	Interest on U. S. Treas. Notes			47.51
	Nov. 28	L'Italia Press Co. (dividend)			100.00
	Jan. 13/1925	L'Italia Press Co. (dividend)			100.00
	Mar. 15/1925	Interest on U. S. Treas. Notes			47.49
	Mar. 15/1925	Redeeded $2,000. U. S. Treas. Notes			2,000.00
	Jan. 13/1926	L'Italia Press Co. (dividend)			100.00
	Jan. 13/1927	L'Italia Press Co. (dividend)			100.00
		TOTAL RECEIPTS			$339,324.90
		TOTAL EXPENDITURES			$338,797.02
		February 1, 1927, Balance on Deposit			$ 527.88

Exhibit B, Annexed to Affidavit of Alfred F. Seligsberg.

GENERAL ACCOUNT—EXPENDITURES.

1922				
Jan. 18	Bought $130,000 U. S. Treas. 4¾ Notes, due Dec. 15/22	$130,000.00		
	Interest	1,000.29	$131,000.29	
	Gabriele Consolazio (under decree Naples Tribunal)		10,000.00	
	Bruno Zirato (creditor—claims vs. estate)		1,476.65	
	N. M. Guinsberg (creditor—claims vs. estate)		764.87	
20	Dorothy Caruso (advanced expenses per bill)		618.64	10
	Giovanni Caruso (on account of distrib. share)		5,000.00	
	Francis Carlson Co. (claims vs. Estate)		147.00	
	Hudson Safe Dep. Co. rental		31.25	
	Harold Regenstein (premium on bond)		880.00	
	Joseph (claims vs. Estate)		36,441.90	
	E. M. Gattle Co. (claims vs. Estate)		26,410.00	
23	Wise & Seligsberg (claim v. estate)		393.41	
	Vanderbilt Hotel (claim v. estate)		4,215.08	
Feb. 3	Bruno Zirato (services to estate)		2,000.00	
14	Giovanni Caruso (on acct. of dis. share)		10,000.00	
	Rodolfo Caruso (on acct. of dis. share)		3,000.00	
18	Harold Regenstein (prem. on bond)		83.90	
Mar. 1	Bought $25,000. U. S. Treas. Notes..	$25,509.31		
	Interest	186.10	25,695.41	
3	Bruno Zirato (February services) etc.		135.00	20
	Harold Regenstein (premium on bond)		600.00	
13	Manhattan Storage Warehouse Co.		122.00	
	Collector of Internal Revenue (1921 Income Tax)		20,212.62	
21	P. J. Curry (appraisal)		750.00	
31	Bruno Zirato (serv. & disb.)		102.70	
Apr. 4	N. M. Guinsberg (ins. premiums)		720.75	
11	State Tax Commission (1921 state tax)		524.02	
13	Wise & Seligsberg (serv. re 1913 refund)		586.52	
June 12	Col. of Int. Rev. (2nd instal. 1921 income tax)		20,212.62	
Sept. 14	Col. of Int. Rev. (3rd instal. 1921 income tax)		20,212.62	
Nov. 8	Metropolitan Opera Co. (Loan)		2,669.58	
20	N. M. Guinsberg (fire ins. premiums)		308.99	
1923				
Jan. 16	State Tax Commission (1919 Addtl. taxes)		940.71	
19	H. L. Regenstein (premium on bond)		880.00	
	Johnson & Higgins (insurance premiums)		352.26	
Feb. 15	Hudson Safe Dep. Co. (rental etc.)		85.00	30
	Manhattan Stor. & Warehouse Co.		45.00	
	Johnson & Higgins (Ins. premium)		3.45	
Apr. 6	Manhattan Stor. & Warehouse Co.		45.00	
13	State Tax Commission (1922 State Taxes)		331.64	
May 24	Receiver of Taxes (1923 Personal Taxes)		546.00	
Dec. 14	Col. of Int. Rev. (4th instal. G. C. 1922 tax)		2,128.01	
1924				
Jan. 11	Harold Regenstein (prem. on bond)		880.00	
	Touche Niven & Co. (claims vs. estate etc.)		1,021.55	
	Col. of Internal Rev. (addtl. Fed. Est. Tax)		2,182.63	
Mar. 4	Harold L. Regenstein (prem. on bond)		400.00	
	Thomas E. Rush (services)		1,500.00	
Dec. 13	Col. Int. Rev. (4th instal. G. C. 1923 income tax)		304.45	
1926				40
Jan. 29	Empire Safe Dep. Co. (rental safe dep. box)		75.00	
Feb. 1	Harold L. Regenstein (prem. on bond)		880.00	
1927				
Jan. 28	Harold L. Regenstein (prem. on bond)		880.00	
	Exchange on 5 Italia Press Co. div. cks.		.50	
	TOTAL EXPENDITURES		$338,797.02	

Exhibit C, Annexed to Affidavit of Alfred F. Seligsberg.

SPECIAL ACCOUNT

RECEIPTS.

1923					
Mar.	17	Proceeds from Sale			$ 98,531.15
Aug.	1	Curtin & Brockie (premium refund)			5.94
Sept.	15	Interest on Treasury Notes			2,018.75
Dec.	27	Emile Tabbagh (proceeds)			7,490.00
1924					
Jan.	2	Amer. Art Assn. (proceeds of combination sale)			35.59
Jan.	15	Sold $8,000. Treas. Cert.		$7,890.00	
		Interest		113.92	8,003.92
	17	" $1,000. T. C.		$ 986.25	
		Interest		14.47	1,000.72
Mar.	8	" $1,000. T. C.		$ 1,000.00	
		Interest		20.43	1,020.43
	15	Interest			1,955.00
	31	Sold $5,000. T. C.		$ 5,000.00	
		Interest		9.23	5,009.23
		" $35,000. T. C.		$34,518.75	
		Interest		64.67	34,583.42
Apr.	22	" $1,000. T. C.		$ 986.25	
		Interest		4.39	990.64
June	3	" $15,000. T. C.		$14,793.75	
		Interest		138.58	14,932.33
	4	" $3,000. T. C.		$ 2,958.75	
		Interest		28.05	2,986.80
	16	" $1,000. T. C.		$ 986.25	
		Interest		10.74	996.99
	25	" $1,000. T. C.		$ 986.25	
		Interest		11.77	998.02
July	10	Curtin & Brockie (return insurance premium)			25.36
		Sold $11,000. T. C.		$10,848.75	
		Interest		148.63	10,997.38
Sept.	15	Interest on T. C.			425.00
Nov.	3	Treasurer of U. S. (refund D. C. 1923 income tax)			3.86
1925					
Jan.	7	Interest on Treas. Certif.			361.25
Mar.	15	Sold, $3,000. T. C.		$ 2,958.75	
		Interest		40.14	2,998.89
Sept.		Interest on T. C.			361.25
1926					
Mar.	15	" " "			361.25
Sept.	15	" " "			361.25
Dec.	15	" " "			145.53
					$196,599.95

Exhibit C, Annexed to Affidavit of Alfred F. Seligsberg.

EXPENDITURES.

1923				
Apr. 23	Bought $95,000. U. S. Treasury Cert...	$93,693.75		
	Accrued Interest	358.89	94,052.64	
	James McGuire (packing etc.)		185.00	
	Amedio Canessa (transportation charges, etc.)		1,840.75	
	Ernest Govett (cataloging, etc.)		200.00	
May 11	Curtin & Brockie (insurance premiums)		975.54	
June 1	Bruno Zirato (services to date)		350.00	
14	Kouchakji Freres (appraisal of glassware)		250.00	
1924				
Jan. 11	Hudson Forwarding Co. (customs charges, etc.)		126.50	
	Touche Niven & Co. (services re art sale)		587.00	
	Wise & Seligsberg (services & disbursements)		10,335.17	
	Bought $7,000. U. S. Treas. Cert.	$ 7,000.00		
	Interest	85.81	7,085.81	
	Wise & Seligsberg (sale disbursements)		457.70	
Jan. 18	Curtin & Brockie (insurance premiums)		154.50	
	C. & E. Canessa (commission re art sale)		1,279.15	
Mar. 14	Col. Internal Revenue (G. C. 1st instal. 1923 tax)		2,220.09	
	Col. Internal Revenue (D. C. 1923 tax in full)		15.45	
27	Col. Internal Revenue (addtl. 1918 taxes)		39,488.10	
Apr. 12	State Tax Commission (1923 State Tax G. C.)		424.92	
	State Tax Commission (1923 State Tax D. C.)		64.71	
May 31	Dorothy Caruso (proceeds from sale)		18,012.37	
June 9	Col. Int. Revenue (2nd instal. G. C. 1923 taxes)		1,110.04	
19	Col. Int. Revenue (Addtl. inheritance taxes)		1,114.22	
July 8	Wise Whitney & Parker (services etc.)		10,112.57	
10	Hudson Safe Deposit Co. (rental safe dep. bx.)		75.00	
1925				
Jan. 3	Wise & Seligsberg (services & disbursements)		2,903.68	
			$193,420.91	
	March 3, 1927 Cash Balance on Deposit		3,179.04	
	U. S. Treas. Certif. 3½%		17,000.00	

Exhibit D, Annexed to Affidavit of Alfred F. Seligsberg.

GABRIELE CONSOLAZIO
Via Giuseppe Fiorelli 12
Naples

November 11, 1926

Mr. Alfred Seligsberg
15 William Street
New York

Dearest Friend:

Herewith are two copies of the decrees, one regarding the excessive cost of the chapel by which decree Mrs. Caruso is obligated to make the payment out of the income and not the principal of Gloria, and the other decree by which the mother is obligated to pay the patrimony tax allotted to the share of Gloria, also with the income and not touch the capital of the minor, and we have to do with an amount not at all small viz a million and a half lire, while the tax on the patrimony is an actual and real confiscation or appropriation which the government makes of a part of the capital of its citizens; I send you also the photographs of the receipts of the succession tax paid until now and there remains besides these to pay another 500,000 Lire in five years, as the additional tax amounted to a little bit more than L. 600,000 and the first amount was paid the 4th of December 1925 as the enclosed photographed copy shows.

Mrs. Caruso, in addition, pays on account of her daughter and always from the income, the annuity to the step-mother of Commendatore Caruso, Mrs. Castaldi, of which half is borne by Gloria.

Exhibit E, Annexed to Affidavit of Alfred F. Seligsberg.

The mother pays in addition, the administration expenses of Gloria's property in Florence, all the real estate taxes, provincial and communal taxes which are not at all light, and finally pays all the legal and judicial expenses and defensive assistance, also the proper maintenance of Gloria, which are neither few nor light. Assuredly the income of the estate of the minor in Italy has never been nor actually is sufficient to pay all the taxes and all these expenses. Thus, Mrs. Caruso was compelled to take from her capital in order to get along, and therefore it was necessary to obtain the judgment of the Tribunal of which I enclose a copy, to pay with the capital of the minor, the patrimony tax to which she is subject, and thereafter to reconstruct the same capital out of the income which will mature in successive years.

If you wish further information, I am always at your service.

G. Consolazio.

Exhibit E, Annexed to Affidavit of Alfred F. Seligsberg.

Naples, January 29, 1927.

Dear Seligsberg,

I enclose a summary account of what Mrs. Caruso has paid until now for the account of Gloria without taking into account the amount which will represent the share of Gloria of the patrimony tax, and that is about Lire 1,200,000, which according to the decision of the Tribunal in Naples must be taken from the principal of Gloria,

which afterwards must be reintegrated with the income. The decree by which this is established is in your possession.

Now as you see the income produced by the estate of the minor in Italy has been completely absorbed by the payments made by the mother, and therefore the Tribunal in New Jersey can well take this matter into account without having any illusions that the mother could succeed to live with the income produced by the estate of the child in Italy.

This has never occurred nor can it occur in the future taking into account the last decree of the Tribunal which prevents Mrs. Caruso from touching the income until the reintegration of the capital taken for payment of the patrimony tax.

Expenses incurred by Mrs. Dorothy Benjamin, widow of Caruso, for account of the minor, her daughter Gloria.

1. For annuity due to Mrs. Maria Castaldi from August 1921 to the 31st of December 1926, L. 2,000 monthly for account of Gloria paid	L.	64,000.00
2. For succession taxes ascertained after the instrument of division and after the payment of the principal tax of L. 3,847,-194.45 which is not allotted because set aside before proceeding to the division; on the payment of 3rd February 1923 for account of Gloria	"	248,538.70
a) on the payment of 27th June, 1925	"	32,082.92

Exhibit E, Annexed to Affidavit of Alfred F. Seligsberg.

b) on the payment of 4th December 1925 ..... " 58,752.60

c) her share of expenses and fees in the proceeding of increase of the estate values for the reduction of the supplemental tax from L. 1,300,000 to L. 600,000; Expenses and fees for the instrument of the payment of such tax in annual rates of L. 100,000 each ..... " 18,000.00

3. Share charged to the minor of the payments made after exhaustion of the money set aside with the instrument of division to complete the purchase of the ground around the funeral chapel, to continue the work of construction with the firm of Chiurazzi, and other expenses inherent, except the residuum of L. 70,000 ..... " 63,800.00

4. Expenses for multiple succession proceedings, family councils, opinions, translations, journeys, completion of the fee for appraisal, for the division and transport of gold coins, transport of art objects from Florence to New York, liquidation of old proceedings relative to the property in Florence and other expenses for documents, legal proceedings, etc. ..... " 38,845.00

Exhibit E, Annexed to Affidavit of Alfred F. Seligsberg.

5. Patrimony tax paid for the account of Gloria until the year 1926 and share of the expenditure chargeable to the minor for the agreement with which the taxes were reduced from about L. 6,000,000 to L. 3,000,000	"	445,000.00
6. Expenses, fees, trips, legal proceedings, notarial expenses and taxes for rectifying the instrument of division, for the mortgages of Gloria, for the charges of the real property, for transferring and tying up in the name of Gloria, the securities in the name of bearer with the Bank of Naples, Branch of Florence, to increase the rent of the property of Gloria in Florence, for the document Canessa for the payment of the income of Gloria in the sum of $33,000, for partial recovery and investment of the funds of Gloria	"	80,000.00
7. Real estate taxes, other taxes and expenses of administration paid for the property of Gloria in Italy from August 1921 to 31st December 1926	"	650,000.00
Total		L. 1,679.019.22

Affidavit of Alfred F. Seligsberg.

(Filed March 16, 1927.)

IN CHANCERY OF NEW JERSEY.

Between
DOROTHY P. B. CARUSO,
Complainant,
and
RODOLFO CARUSO, *et als.*,
Defendants.
54-620

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK,
} ss.:

ALFRED F. SELIGSBERG, being duly sworn, deposes and says: That on February 28th, 1927, he sent the following cable to Mr. Consolazio:

"APPLIED TO NEW JERSEY CHANCELLOR FOR ALLOWANCE TO MADAM CARUSO FROM GLORIAS INCOME STOP CHANCELLOR MUST KNOW EXACTLY WHAT MADAM CARUSO WILL RECEIVE DURING YEAR NINETEEN TWENTYSEVEN AS NET INCOME FROM GLORIAS ITALIAN ESTATE AFTER PAYMENT OF GLORIAS TAXES AND EXPENSES ALSO WHAT SHE WILL RECEIVE AS HER OWN INCOME FROM HER ITALIAN ESTATE STOP PLEASE CABLE IMMEDIATELY"

That in reply to this cable deponent received a cable from Mr. Consolazio translated as follows:

Affidavit of Alfred F. Seligsberg.

"AFTER THE LAST DECREE CONTAINING THE PROHIBITION OF COLLECTING THE INCOME IN THE BANK OF NAPLES MADAM RECEIVES FROM HER ESTATE AND GLORIAS ESTATE A NET INCOME OF ABOUT FIFTY THOUSAND LIRE ANNUALLY STOP SENDING DETAILED ACCOUNT".

Deponent expects to receive a detailed account possibly before the consideration of this matter by the Court, and when received will ask the permission of the Court to submit the further details.

From the above cable of Mr. Consolazio it would appear that the joint net income for many years to come of Mrs. Caruso from her own and Gloria's estate would amount to about 50,000 lire, which will not exceed the sum of $2,200, and it is possible that this sum will be subject to further charges.

Deponent wishes to call the Court's attention to the statement contained in the answer in paragraph "27" that the New York estate amounted to $461,305.35. This figure is evidently based upon the assumption that the amount collected on February 1, 1922, from the Victor Talking Machine Company for royalties, to wit, the sum of $422,891.56, and deposited in The Fifth Avenue Bank in the City of New York, was part of the New York estate. The Italian inventory made by Mr. Consolazio contained a statement of these collections and the figures in the Sanseverino Deed quoted by the guardian in the said paragraph evidently include this amount as part of the New York assets.

That the only insurance payable to the estate was a policy of $25,000 in the Union Central Life Insurance Company and that the proceeds of such policy as collected were deposited in the general

account of the New York administration, as will appear in Exhibit B annexed to the deponent's original affidavit. That in addition there was a policy in the Mutual Life Insurance Company for 100,000 lire which was payable in quarterly parts to the widow and to Gloria, Enrico, Jr., and Rodolfo. That the said insurance was payable in lire and was not collected by the ancillary administratrix, but was payable directly to the beneficiaries.

That deponent has annexed to his main affidavit a full and true statement of all moneys collected in the New York administration.

ALFRED F. SELIGSBERG.

Sworn to before me this
15th day of March, 1927.

BEATRICE GOLDMAN
Notary Public, New York County
County Clerk's Nos. New York 142, Kings 125, Bronx 24
Register's Nos. New York 8065, Kings 8100, Bronx 2894
Commission expires March 30, 1928

(SEAL)

Answer of Victor Talking Machine Company, Defendant, to Petition of Dorothy P. B. Caruso.

(Filed March 3, 1927.)

IN CHANCERY OF NEW JERSEY.

(Docket 54, page 620.)

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, GLORIA CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and the FIDELITY and CASUALTY COMPANY OF MARYLAND,
Defendants.

On Bill, Etc.

Respondent, Victor Talking Machine Company, answering the petition of Dorothy P. B. Caruso, filed herein, says that:

1. It admits the allegations of paragraph 1 except that it has no knowledge or information sufficient to form a belief as to whether the late Enrico Caruso was a resident or a citizen of the Kingdom of Italy at the time of his death and, therefore, neither admits nor denies the same.

Answer of Victor Talking Machine Company, Defendant, to Petition of Dorothy P. B. Caruso.

2. The allegations of paragraphs 2 to 4 are admitted.

3. It is admitted that said Enrico Caruso died on the 2nd day of August, 1921, and that he left him surviving his widow, Dorothy P. B. Caruso, your Petitioner, and Gloria Caruso, the defendant herein, his only legitimate child; that he also left him surviving a brother, Giovanni Caruso, and two natural sons, Rodolfo Caruso and Enrico Caruso, Jr. As to the other allegations in said paragraph it has no knowledge or information sufficient to form a belief and, therefore, neither admits nor denies the same.

4. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 6 and, therefore, neither admits nor denies the same.

5. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 7 and, therefore, neither admits nor denies the same. It further avers that the Italian Courts had no jurisdiction to appoint said guardian so far as concerns the Estate of said Caruso in New Jersey; that said guardian had no authority to enter into said Agreement of Settlement so far as it concerns the said Estate in New Jersey; that the Italian Court referred to was without jurisdiction to confirm and approve said Agreement so far as it concerns said Estate in New Jersey and its Decrees purporting to do so are of no force and effect in this State; and that said Decrees are consent decrees and as such are not given, internationally, any force and effect in this State.

Answer of Victor Talking Machine Company, Defendant, to Petition of Dorothy P. B. Caruso.

6. It has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 8, 9 and 10 and, therefore, neither admits nor denies the same.

7. It admits that the petitioner is the mother of said Gloria Caruso, but as to the other allegations of paragraph 11 it has no knowledge or information sufficient to form a belief and, therefore, neither admits nor denies the same.

8. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 12 and, therefore, neither admits nor denies the same. It further avers that said Italian Court was without jurisdiction to make said Decree so far as it concerns the Estate of said Caruso in New Jersey and to that extent the said Decree is of no force and effect in this State.

9. The allegations of paragraph 13 are admitted.

10. It admits that the said assets in the State of New Jersey consist in sums paid under the contract made by decedent in his lifetime with the Victor Talking Machine Company for royalties upon certain records made by him, but denies the other allegations of paragraph 14 and avers that said assets further consist principally in the said contract, as distinguished from sums due under said contract.

11. Answering paragraph 15, it avers that since the death of the late Enrico Caruso the royalties have accrued under his said contract and been paid by it as follows:

Answer of Victor Talking Machine Company, Defendant, to Petition of Dorothy P. B. Caruso.

Date of Royalty Statements	*Total Royalties Accrued as per Statement*	*Amounts Withheld for U. S. Gov't Income Tax*	*Amounts Paid to Petitioner as Ancillary Administratrix*
Feb. 1, 1921	$479,653.25	$56,761.69	$422,891.56
Feb. 1, 1922	136,062.68	10,885.02	125,117.66
Feb. 1. 1923	115,113.25	9,210.66	105,922.59
Feb. 1, 1924	122,075.34	7,324.52	114,750.82
Feb. 1, 1925	75,738.53	4,544.31	71,194.22
Feb. 1, 1926	78,116.00	3,905.80	74,210.20
Totals	$1,006,779.05	$92,632.00	$914,147.05

Respondent has no knowledge nor information sufficient to form a belief as to the allegations in said paragraph that Petitioner now has on deposit in the Union Trust and Hudson County National Bank and earning interest at the rate of four per cent. per annum a sum of approximately $560,000.00, and, therefore, neither admits nor denies the same.

12. The allegations of paragraph 16 are admitted.

13. Respondent has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 17 to 19 of the petition and, therefore, neither admits nor denies the same.

Respondent further answering says that—

14. It does not oppose the prayer of the petition, and has no interest therein, except insofar as the determination by this Court of the issues raised by said petition involves the construction of the said contract between the respondent and the late Enrico Caruso and a determination of the nature of the rights acquired by said respondent thereunder. Respondent avers that the aforesaid

contract effected a grant, assignment and sale by the said Enrico Caruso to respondent of all his rights in and to the recorded renditions of songs sung by him for respondent under said contract, and that the royalties paid by respondent under said contract were not license payments for the use of the said recorded renditions but were and are installment payments of the purchase price of the aforesaid rights.

(Signed) Louis B. LeDuc,
Solicitor for Respondent,
Victor Talking Machine Company.

Opinion.

(Filed December 15, 1927.)

IN CHANCERY OF NEW JERSEY.

Between
Dorothy P. B. Caruso,
Complainant,
and
Rodolfo Caruso, Enrico Caruso, Jr., Giovanni Caruso, Gloria Caruso, Maria Castaldi, Victor Talking Machine Company and Fidelity & Deposit Company of Maryland,
Defendants.

54-620.
On Petition, &c.

1. The doctrine of retaining jurisdiction to settle the entire controversy is confined to the determination of rights dependent upon, or at least germane to, the subject matter and main purpose

of the bill; jurisdiction will not be retained to adjust independent controversies between the parties or controversies beyond the scope of that raised by the bill.

2. It is not an inflexible rule that the court of chancery, having acquired jurisdiction for one purpose, is bound to retain the case for complete relief; the matter, in many instances, rests upon the sound discretion of the court.

3. There is no relation between the question presented by a bill for the settlement of the accounts of an administratrix and for distribution and her discharge, and a petition by such administratrix as mother and natural guardian of an infant for an allowance out of the minor's estate in New Jersey, for her support, maintenance and education, according to her station in life: such a suit would have to be the subject of an independent and original bill.

4. However, where no objection to jurisdiction is made, but consent is given to trial by affidavits,—a particular feature of chancery jurisdiction,—and the court has jurisdiction of the subject matter, the cause will be retained and decided.

5. Nothing can be taken as admitted against an infant, either by his default or on the answer of his guardian; but the rule that the next friend or guardian, cannot, by admissions or stipulations surrender the rights of an infant, does not prevent a guardian from assenting to such arrangements as will facilitate the determination of the case in which the rights of the infant are involved.

6. As a general rule a widow is not bound to support her minor children out of her own property if they have means of their own, and she is entitled to a complete indemnity out of their estate for the money expended by her for their maintenance, within proper limits.

7. The general policy of the law is to leave the question of the necessity of expenditure of personal estate, both income and principal, to the judgment of the guardian in the first instance, subject to the affirmance of the court on the settlement of the accounts, and, in all *ordinary* cases this affords protection both to the guardian and the infant.

8. But, *held,* that the instant case is not an ordinary one, and this court may, in its discretion, authorize the guardian in advance as to how much of the estate of the ward may be expended for the benefit of the minor; assuming that such authorization be made.

9. It appears that the prerogative court, upon proper showing, being made there, may appoint Mrs. Caruso a special guardian for her infant daughter for the purpose of prosecuting the claim for the minor's support out of moneys of the infant, according to her station in life, as made by the petition filed herein.

10. The father, and upon his death, the mother, is guardian by nature of all the infant children, but this guardianship extends only to the custody of the person, and not to the estate, of the infant; the legal obligations and claims of a parent in regard to the children are sometimes designated by saying that he is guardian of the children by nature and for nurture: guardianship for nurture

vests in the father, and upon his death, the mother; and is for the bringing up and taking care of the children, but does not contemplate that the expenses shall be borne by the infant's estate; and the guardian by nature having only the custody of the infant, and not of his estate, cannot have awarded to him or her any of the estate of the infant, as natural guardian.

11. According to the law of New Jersey, a guardian for the infant within this jurisdiction, who can and will give proper bond for the faithful performance of the duty of guardianship must be appointed here, in order to have property belonging to the infant awarded to such guardian.

12. The rights and powers of guardians are considered as strictly local, and as not entitling them to exercise any authority over the person or personal property of their wards in other states.

13. A guardian may be appointed here for the purpose of permitting that guardian,—for which appointment the mother has the first and best right,—to apply for the support of the daughter according to her station in life.

On petition of widow and mother for an allowance out of infant's estate for her support &c.

Mr. John J. Treacy (Mr. James Barclay, of the New York Bar, on the brief), and Mr. Alfred S. Seligsberg (of the New York Bar) for petitioner.

Mr. Martin V. Bergen and Mr. Marcel Viti (of the Philadelphia Bar), *contra.*

Walker, Chancellor.

Dorothy P. B. Caruso, widow of Enrico Caruso, deceased, filed her bill of complaint herein, in

which she set out that Enrico Caruso died in the city of Naples, Kingdom of Italy, on August 2, 1921, being a resident and citizen of such Kingdom at the time of his death, leaving him surviving his only next of kin and heirs at law, the complainant, his widow, an infant daughter, Gloria Caruso, then four years of age (the daughter being the lawful child of the said Enrico Caruso and complainant, Dorothy P. B. Caruso), and two sons, Rodolfo Caruso, of full age, and Enrico Caruso, Jr. (the latter being then of the age of twenty years and upwards and being emancipated for the purpose of transacting business and managing his estate under the Italian law), and also a brother Giovanni, also of full age; that said sons, Rodolfo and Enrico, were natural sons, born to Enrico Caruso by another mother than complainant, but were recognized by the deceased as his children during his lifetime; that such sons and brother all then resided at Naples, Italy, being citizens of the Kingdom of Italy; that Enrico Caruso left a testamentary document, bearing date January 4, 1919, a true copy of which in the Italian language and a translation into English, are annexed to the bill of complaint. By the translated document, it appears that he provides that his sons Rodolfo and Enrico and his brother Giovanni, should be his universal heirs; and gave to his wife Dorothy, the part which the Italian law grants to her; and provided until her death, for his stepmother, Maria Castaldi. Such document was made prior to the birth of decedent's lawful daughter, Gloria, and makes no provision for her or any after-born children. Upon the death of Enrico Caruso questions arose under the Italian law as to the extent to which decedent's lawful daughter, Gloria Caruso, being born subsequent to the making of

such testamentary document, was entitled to share in decedent's estate, and whether such estate should be distributed as in case of complete intestacy or as controlled by such testamentary document in all other respects except as to the interests of the daughter Gloria, and the latter determined as though in case of intestacy; and such proceedings were thereafter had in the Italian courts to obtain jurisdiction in the premises as resulted in the appointment of a special guardian of the infant Gloria (complainant being under the Italian law the general guardian of said infant), and the appointment of a general guardian for Enrico Caruso, Jr.; and thereafter Amedeo Canessa, special guardian for the infant Gloria, and Manlio Tizzani, general guardian for the infant Enrico Caruso, Jr., and all other parties in interest, entered into an agreement for a family settlement of the estate of said Enrico Caruso of all questions and controversies which might arise with respect thereto; and division of said estate in substance was made, agreed upon and approved by the Italian court. The bill prayed for the settlement of the accounts of Mrs. Caruso as ancillary administratrix appointed by the Prerogative Court of this State, for distribution to those entitled thereto (the persons named in the Italian judgment), and that she may be discharged as such administratrix &c.

Messrs. McDermott, Enright & Carpenter signed the bill as solicitors and of counsel with complainant.

Thereafter, the clerk of this court was appointed guardian *ad litem* for Gloria Caruso, and Norman Grey, Esq., was assigned by the court as his solicitor and counsel. Mr. Grey died, and afterwards Martin V. Bergen, Esq., was appointed in his place

and stead. An answer and an amended answer have been filed for Gloria Caruso, the infant defendant, by her guardian *ad litem,* through counsel. An answer has been filed by the clerk of this court, guardian *ad litem* for Enrico Caruso, Jr. As he is now of age he may be represented by counsel of his own choice. See, *Moore* v. *Moore,* 74 N. J. Eq. 733. The Victor Talking Machine Company has also filed an answer and a counterclaim to the bill of complaint.

Afterwards, the complainant herein, Dorothy P. B. Caruso, filed a petition in this court setting forth among other things, that she filed her complaint in this court setting forth that she received certain moneys of the estate of Enrico Caruso as ancillary administratrix, and prayed that her accounts as such might be settled and a decree made for the distribution of moneys in her hands to the persons entitled thereto, and for other relief as therein set forth; that Gloria Caruso, infant defendant in said proceeding, made answer by the clerk of this court, her guardian *ad litem,* contesting the proposed distribution of the funds in the hands of the petitioner as such ancillary administratrix, and claiming among other things that the entire principal of the estate in New Jersey may be decreed to be the property of said Gloria Caruso, as sole distributee, subject to the proportion of income to which her mother, the petitioner, is entitled in her lifetime; that the issues made by the complainant, and the litigious (amended) answer mentioned have not yet been disposed of or settled; that the before mentioned settlement was arrived at and that the agreement therefor was confirmed and approved by decree of the Civil and Penal Tribunal of the City of Naples, dated October 21, 1921, and decree of the

same court on June 16, 1922; that the issues raised in the case are pending; and asks for allowance out of the estate of Enrico Caruso in New Jersey of an annual amount for the support, maintenance and education of the infant, Gloria Caruso, as she is accustomed and is entitled to enjoy.

This petition was signed by John J. Treacy, Esquire, as solicitor for complainant. On it is a notice directed to Martin V. Bergen, Esquire, solicitor of the guardian *ad litem* for Gloria Caruso, and to McDermott, Enright & Carpenter, Esquires, solicitors of complainant, ancillary administratrix, notifying them that on a certain day, at the chancery chambers, state house, Trenton, the solicitor for the petitioner would apply to the chancellor for an order in accordance with the prayer of the said petition. Service of the petition and notice was acknowledged by Mr. Bergen, and by Messrs. McDermott, Enright & Carpenter. The filing of the last mentioned petition in this case was irregular.

The doctrine of retaining jurisdiction to settle the entire controversy is confined to the determination of rights dependent upon, or at least germane to, the subject matter and main purpose of the bill. Jurisdiction will not be retained to adjust independent controversies between the parties or controversies beyond the scope of that raised by the bill. 21 C. J. 148. We are not without decisions bearing on that question in this state. In *Shaw* v. *Beaumont Co.*, 88 N. J. Eq. 333, it is held that it is not an inflexible rule that, when the court of chancery, have once acquired jurisdiction for one purpose, is bound to retain the case for complete relief; whether the court will do so, so as to include all the points in controversy between the parties, rests somewhat in the discre-

tion of the chancellor. The rule applied in this case, where the court of chancery under an agreement, had jurisdiction to make an accounting, excluded therefrom items under two former agreements, which were cognizable at law; and this was held proper by the court of errors and appeals. It has been laid down in this court that amendments must be germane, that is, akin or closely allied to the pleading amended, and while they are allowed in equity with great liberality, the doctrine has not been extended so far as to permit the substitution of an entirely different case from that made in the original bill or petition. *Fodor* v. *Kunie*, 92 N. J. Eq. 301, 304. This illustrates the principle. I lay out of view complainant appearing as petitioner in the same cause by different solicitors of record. See, *In re Stewart,* 85 N. J. Eq. 3; also *State* v. *Merra,* 99 N. J. Eq. 480, on solicitors of record, generally.

Now, as shown, the bill in this case was for the settling of the accounts of the complainant as administratrix and for a decree of distribution to the persons entitled thereto, &c. What possible relation that has to the question presented by the petition, namely, the payment to Mrs. Caruso from the estate of the infant defendant Gloria of an allowance out of the estate of Enrico Caruso in New Jersey, for the support, maintenance and education of Gloria according to her station in life, is not perceived. Therefore, it is not germane, and, therefore, in strictness, would have to be the subject of an independent and original bill of complaint. The case made by the bill in this case has peculiar features and prays, among other things, for the decision of certain equitable questions arising under the agreement of the late Enrico Caruso with the Victor Talking Machine

Company, and the decree of the Italian court above mentioned, and is therefore properly filed herein under a long line of cases in this state. See, *Vaiden* v. *Edson,* 85 N. J. Eq. 84. See also, *In re Reiley,* 92 N. J. Eq. 567.

However, counsel for Gloria's guardian *ad litem* argued this case, together with counsel for the petitioner, orally and on briefs; and made no objection to jurisdiction on the argument, but does in his brief. He says that the application is by petition and the matter comes before this court on affidavit. Trial by affidavits is a particular feature of chancery jurisdiction. *In re Hayden,* 5 N. J. Adv. R. 1662. The proper practice in this matter should have been by bill with its accompanying testimony in open court. *In re Barry,* 61 N. J. Eq. 135, at p. 136. See, also, *Recr.* v. *First Natl. Bank,* 34 N. J. Eq. 450. And counsel further says: "We have no desire, however, to stand on such technicalities in this matter." In the circumstances, therefore, I shall consider and decide the case. There is authority for this. In *Buckley* v. *Perrine,* 55 N. J. Eq. 514, the court of errors and appeals said: "When an infant has been brought before a vice chancellor on *habeas corpus,* and the petitioner for the writ and the person in possession of the infant make counterclaims to the permanent custody of the infant, they may, by entitling their pleadings in the court of chancery and filing them with the clerk of that court, presenting therein an issue which only that court is competent to try, indicate their purpose to transfer the controversy into that court, and so give that court complete jurisdiction of their cause." And, in the instant case, the court of chancery is the proper forum in which to try the issues tendered by the petitioner in this cause, and

therefore the waiver interposed on behalf of Gloria is complete and jurisdiction obtains.

Nothing can be taken as admitted against an infant, either by his default or on the answer of his guardian *ad litem*. *Shultz* v. *Sanders,* 36 N. J. Eq. 154, 156; affirmed *Ibid.,* p. 293. The rule that a next friend or guardian *ad litem* cannot, by admissions or stipulations, surrender the rights of an infant, does not prevent a guardian *ad litem* or *prochain amy* from assenting to such arrangements as will facilitate the determination of the case in which the rights of the infant are involved. *Kingsbury* v. *Buckner,* 134 U. S. 650; 33 Law ed. 1047, 1048, 1059.

As a general rule, a widow is not bound to support her minor children out of her own property if they have means of their own, and she is entitled to a complete indemnity out of their estate for the money expended by her for their maintenance, within proper limits. *Pyatt* v. *Pyatt,* 46 N. J. Eq. 285, 287. This is the declaration of the court of errors and appeals, and is the law of the land. *In re Barry,* 61 N. J. Eq. 135, Vice Chancellor Emery observed, at p. 140, that the general policy of this state has been to leave the question of the necessity of the expenditure of the personal estate, both income and principal, to the judgment of the guardian, in the first instance, subject to the affirmance of the orphans' court on the settlement of the accounts, and that in all *ordinary* cases this course affords protection both to the guardian and the infant. See, also, *In re Vieweger,* 93 N. J. Eq. 527.

Now it becomes necessary to decide whether this is an ordinary case, for, if so, the guardian of the infant becoming possessed of her property, must decide, in the first instance, what, if any-

thing, is necessary to expend for her and rely upon the courts passing her accounts in the last analysis; but, if the case is not an ordinary one, then this court may, in its discretion, authorize the guardian, in advance, as to how much of the estate of the ward he may expend for the benefit of the minor with safety to himself. This case falls within that category. It is too complicated to require the guardian, in the first instance, to make these expenditures and rely upon their being approved and settled afterward, assuming that such award shall be made. I am not unmindful that Mrs. Caruso is at present restrained from expending Gloria's money in the estate in New Jersey; but that does not prevent deciding the issue raised. And if the question were ultimately decided in favor of the petition the injunction would be modified or dissolved.

But it does not appear that this defendant has any general guardian. The petitioner, Mrs. Caruso, recently filed a petition in the prerogative court praying that letters of guardianship of the person and property of Gloria be granted to her, but the petition alleged that no general guardian had been appointed by any court in any jurisdiction for the minor. Authority for appointing a guardian for a non-resident infant of property of such infant here is, under Sec. 43 of the orphans' court act, *Comp. Stat.*, p. 3824, amended P. L. 1924, p. 67; and see *In re Caruso,* 5 N. J. Adv. R. 667, and that provides that the ordinary shall have full authority to appoint a special guardian for the property, real and personal, within this state of any non-resident minor. And it was held that as a guardian *ad litem,* namely, a special guardian, had been appointed for the infant in this court in this case to conserve and protect the only

property, real and personal, within this state, which she, the non-resident minor, had, it abundantly appeared that it was absolutely unnecessary to appoint any other guardian to protect that property. It will be observed that the decision there was that it appeared to be *unnecessary* to appoint any other guardian than the one already in existence to protect the property of the infant in this state. *In re Caruso,* 5 N. J. Adv. R. 667.

That case is not this case. For here the petition of the mother presents an affirmative claim for relief by asking for payment to herself for the support &c of her infant daughter according to her station in life, for the benefit of the infant. And the question is, May not the prerogative court, upon proper showing being made there, appoint Mrs. Caruso a special guardian for such infant for the purpose for which the present petition was filed. In fact, she was given leave to apply for special guardianship for a certain other purpose in the case just mentioned, but did not do so; and now, having here made a different showing, may she not make the application just mentioned? And I think she may.

In the United States the father, and upon his death, the mother, is guardian by nature of all the infant children, but this guardianship extends *only* to the custody of the person, and not the estate, of the infant; the legal obligations and claims of the parent in regard to the children are sometimes designated by saying that he is guardian of the children by nature and for nurture. Guardianship for nurture vests in the father, and after his death, the mother. *Custody of Infants, Hochheimer*, p. 6. A guardianship for nurture is what the term applies, namely, the bringing up and taking care of children. *Bouv, Law Dic.*

(*Rawle's ed. Rev.*), Vol. 3, p. 2387. But this does not contemplate that the expense shall be borne by the infant's estate. That question is independent.

It was decided by the Court of Errors and Appeals in *Graham* v. *Houghtalin,* 30 N. J. L. 552, that a guardian by nature is guardian of the person only, and not of the estate, Ibid. p. 556. The power to direct payment of principal of an estate for the support, maintenance or education of a minor, is dependent upon the statute, which has reference only to a general, statutory or testamentary guardian, and does not include payment to a guardian by nature. *In re Lucey,* 98 N. J. Eq. 314, 317. And, as seen, a guardian by nature having only the custody of the infant, and not of his estate, cannot have awarded to him or her any of the estate of the infant as natural guardian. There must, therefore, according to our Law, be a guardian for an infant within this jurisdiction, who can and will give the proper bond for the faithful performance of the duty of guardianship, in order to have the property belonging to the infant awarded to such guardian. He must ordinarily be a general guardian, and that by appointment of a competent court. But under our statute a special guardian may be appointed with reference only to the property in this state. Of course, an administratrix has no authority to collect money and expend the same in the support, maintenance and education of a minor; that is entirely foreign to the office of administratrix. Now, Mrs. Caruso files her petition as mother and natural guardian of Gloria, applying for the award already mentioned, and asks that she, as ancillary administratrix in New Jersey, be authorized to charge the same against the interest of Gloria in

the estate upon the settlement of her (Mrs. Caruso's) account &c. As shown, this cannot be done.

Mr. Justice Story's opinion supports the proposition that the rights and powers of guardian are considered as strictly *local* and as not entitling them to exercise any authority over the person or personal property of their wards in other states, upon the same general reasoning and policy which have circumscribed the rights and authorities of executors and administrators. *Story Confl. L.*, Sec. 499.

From what has gone before, it is perfectly clear that nothing can be awarded to Mrs. Caruso for the infant out of her interest in the New Jersey property in the present status of the parties. Both the mother and daughter are non-residents. The mother, as natural guardian, is not the guardian of the estate of the infant in New Jersey. As administratrix here she has no capacity to take for the daughter's support, according to her station in life, or otherwise. No guardian has been appointed for the infant anywhere. Such a guardian may be appointed here for the purpose of permitting that guardian,—for which appointment the mother has the first and best right,—to apply, as stated. And when and if appointed, whether or not she would be entitled to an award, and if so, how much, is a question upon which no opinion is now expressed; and, consequently, the other questions raised, namely, as to the validity, by comity, of the Italian decree; the amount if any, to be awarded for Gloria according to her station in life &c.; and what is principal and what income under the contract between the late Mr. Caruso and the Victor Talking Machine Company, are expressly reserved.

The result at present reached is, that Mrs. Caruso may apply to the prerogative court to be appointed special guardian for the estate of her infant daughter, Gloria Caruso, in New Jersey, to the end that she may apply here for an allowance out of such estate for the support, maintenance and education of Gloria according to her condition in life.

Petition.

IN CHANCERY OF NEW JERSEY.

(Docket 54, page 620.)

Between

DOROTHY P. B. CARUSO,
Complainant,

against

RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, GLORIA CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Defendants.

To the Honorable Edwin R. Walker, Chancellor of the State of New Jersey:

The petition of Dorothy P. B. Caruso respectfully shows:

That in February, 1927, she filed a petition in this cause praying that the ancillary administra-

trix be authorized to pay from the funds in her hands the amount of $30,500 per annum for the maintenance, education and household expenses of Gloria Caruso.

Your petitioner sets forth that she, Dorothy P. B. Caruso, has since the filing of the petition above mentioned been appointed Special Guardian of the estate in New Jersey of said Gloria Caruso for the purpose of applying for and receiving such allowance as to the Court may seem proper for the purpose aforesaid.

Your petitioner prays for such an allowance as before she has prayed and such relief as to the Court may seem equitable and proper.

DOROTHY P. B. CARUSO.

Dated: January 24, 1928.

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

DOROTHY P. B. CARUSO, being duly sworn upon her oath according to law, deposes and says that she is the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of her knowledge and belief.

DOROTHY P. B. CARUSO.

Sworn and subscribed to before me }
this 24th day of January, 1928. }

Opinion.

CARUSO *v.* CARUSO, *et al.*

Court of Chancery of New Jersey, March 14, 1928.

(*Syllabus by the Court.*)

1. **Descent and distribiution Key 26—Guardian and ward Key 137—Infants Key 47—Judgment Key 925, 929—Foreign decree is only enforced by comity; foreign decree disposing of property in New Jersey by giving one-half to infant entitled to two-thirds under New Jersey intestate laws and making mother guardian, with right to appropriate infant's share without accounting, although confirming family agreement, should not be enforced; under New Jersey intestate laws, infant, only child, is entitled to two-thirds personalty of father leaving widow; under New Jersey laws, guardian is required to account to ward; infant held incompetent to give consent to family agreement concerning division of father's property on which foreign decree was based (Orphans' Court Act, § 169, as amended by Act Feb. 16, 1918 [P. L. p. 179; 2 Comp. St. Supp. 1924, p. 2628, § 146—169]).**

A foreign decree is only enforced here by comity, but in disposing of property whose situs is in the jurisdiction of New Jersey such decree is not to be enforced here, even where it confirms a family agreement, when it gives one-half to an infant, who is entitled to two-thirds under our intestate laws, and makes the mother guardian, with right to appropriate the infant's share to herself without accounting; our law allowing the infant

two-thirds, as stated, and requiring a guardian to account; besides, the infant was incompetent to give consent to the agreement.

2. Property Key 6—Personal property has no locality; owner's domicile determines validity of transfer of personalty, subject to law of situs.

Personal property has no locality, and the owner's domicile determines the validity of the transfer thereof, but this is subject to control to the contrary by the positive or customary law of the country where it is found.

3. Judgment Key 925, 929—Though foreign judgments are enforced by comity, no wrong, injury, or injustice may be done thereby to country's own citizens, nor may policy of country's own law be contravened or impaired; foreign decree dividing intestate's personalty contrary to New Jersey laws will not be enforced in New Jersey.

While foreign judgments are enforced by comity, nevertheless a restriction of this rule is that no wrong, injury, or injustice may be done to its own citizens, and to see that the policy of its own law is in no way contravened or impaired. No citizen is here appealing for protection, but our own local law is to be vindicated.

Opinion.

4. **Infants Key 33—Rights of infants are not superior to those of adults, but infants' rights must be protected by courts while adults must protect own rights.**

The rights of infants are not superior to those of adults, and the difference between the two classes of persons is that the rights of infants must be protected by the court, while adults must protect their own.

5. **Infants Key 84, 95, 108—Nothing can be taken as admitted against infant, either by default or on answer of his guardian; next friend or guardian cannot, by admissions or stipulations, surrender infant's rights.**

Nothing can be taken as admitted against an infant, either by his default or on the answer of his guardian; and it is the rule that a next friend or guardian cannot, by admissions or stipulations, surrender the rights of an infant.

6. **Parent and child Key 3(1)—Parents' duty to children is to give them education suitable to station in life.**

The last duty of parents to their children is that of giving them an education suitable to their station in life, a duty pointed out by reason, and of far the greatest importance of any.

New Jersey State Library

Opinion.

7. Parent and child Key 3(2)—Generally, widow is not bound to support minor children out of her own property if they have means; generally, widow is entitled to complete indemnity out of her minor children's estate for money expended by her for their maintenance within proper limits.

As a rule, a widow is not bound to support her minor children out of her own property if they have means, and she is entitled to a complete indemnity out of their estate for the money expended by her for their maintenance within proper limits.

8. Guardian and ward Key 30(3)—Ordinarily, guardian should settle in advance as to how much of ward's estate may be expended for ward, relying on court to pass account; in extraordinary case, guardian may apply to court for authority in advance as to amount of expenditure for ward's maintenance and education.

In an ordinary case, the guardian, in the first instance should settle in advance as to how much of the estate of the ward may be expended for her benefit, relying on the court afterwards to pass the account, but in an extraordinary case (such as this one) the guardian is at liberty to apply to the court to authorize her in advance as to how much she may spend for the maintenance and education of her ward in the manner befitting her condition in life, limited, of course, by the means at her command available for the purpose.

Opinion.

9. **Guardian and ward Key 30(1)—"Necessaries" to be furnished ward from estate consist of food, drink, clothing, medical attention, and suitable residence; liability of ward's estate for necessaries is not limited to articles required to sustain life, but extends to those ordinarily necessary and suitable, in view of rank, position, future earning capacity, and mode of living of husband or father.**

"Necessaries" consist of food, drink, clothing, medical attention, and a suitable place of residence, and they are regarded as necessaries in the absolute sense of the word; however, liability for necessaries is not limited to articles required to sustain life; it extends to articles which would ordinarily be necessary and suitable, in view of the rank, position, fortune, earning capacity, and mode of living of the husband or father.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Necessaries (For Infants).]

10. **Guardian and ward Key 30(3), 168—New Jersey court may make allowance to guardian for living expenses of ward out of property in state according to station in life, regardless of foreign decree attempting to deal with such property; foreign court may not make allowance for living expenses of ward as to property not within its jurisdiction.**

An allowance may be made for the living expenses of the infant according to her station in life, not by the Italian tribunal as to property here, but only by this court, her property being within this state and subject to the judgment of

its courts; especially so, as the Italian law crystalized in its decree is far less favorable to this infant than our own law operating upon the status presented.

11. Descent and distribution Key 79—Usufruct from royalties payable under contract to estate held "income" subject to court's order as to allowance for infant ward.

The fund subject to the order of this court in this cause is all personal estate; and the usufruct from the royalties payable by the V. T. M. Co. to the estate of E. C., deceased, is all income.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Income.]

12. Descent and distribution Key 79—Personal property and income retain characteristics as such and pass to successors in same character as they existed in intestate's hands.

Personal property and income retain their characteristics as such and pass to successors in the same character as they existed in the hands of the intestate.

13. Executors and administrators Key 314(3, 6), 315(5)—Guardian and ward Key 30(1)—Under singer's contract to make phonograph records for corporation and making it apply for benefit of his heirs, corporation has no interest whether such fund is principal or income to distributees; corporation under contract to pay singer for making phonograph records held to have no interest in distribution of fund to his heirs; corporation bound by contract to pay singer for making

phonograph records would be protected by order of court of competent jurisdiction disposing of fund payable to singer's heirs; corporation contracting to pay singer for making phonograph records held nominal and not necessary party to proceeding for allowance out of singer's daughter's estate for maintenance and education.

E. C., a famous tenor, in his lifetime contracted in writing with the V. T. M. Co. to make records of his voice in solos and concert numbers, and sold the exclusive right therein to the company for a certain period, at a price and for royalties to be paid thereafter, the covenant said that the same should apply to and be for the benefit of his heirs, executors, administrators, and assigns; under this agreement the duty of the company is to pay in cash, and it has no interest as to whether that fund is principal or income to the distributees; and no interest in the distribution of the fund after it passes to one entitled to receive it, and would be amply protected by the order of a court of competent jurisdiction disposing of the fund; the company is merely a nominal, and not a necessary, party to the instant suit.

14. **Descent and distribution Key 26, 55, 79—Fund due under singer's contract to make records inuring to benefit of his heirs passed on his death to his beneficiaries as income; only legitimate child of intestate held entitled to two-thirds of surplus of personal estate and surviving widow entitled to one-third (Orphans' Court Act, § 169, as amended by Act Feb. 16, 1918 [P. L. p. 179; 2 Comp. St. Supp. 1924, p. 2628, § 146—169]).**

E. C., under the terms of the contract mentioned, sold all the products of his remarkable tenor voice, which were recorded, as stated, outright and exclusively to the V. T. M. Co., for the period mentioned, and as the selling price was to him income, and he expressly covenanted that it should inure to the benefit of his heirs, etc., the character of the fund was not changed upon his death and passed to his beneficiaries as income also.

15. Parent and child Key 3(2)—Mother, guardian of infant, on giving proper bond, may have allowance from ward's estate for maintenance and education according to station in life.

Allowance made to the guardian for the maintenance and education of the infant, according to her station in life, upon the guardian giving proper bond.

Suit by Dorothy P. B. Caruso, special guardian of Gloria Caruso, a minor, against Rodolfo Caruso and others. On the guardian's petition for an allowance out of infant ward's estate for her maintenance and education according to her station in life. Allowance made.

John J. Treacy, of Jersey City, and Alfred F. Seligsberg, of New York City (James Barclay, of New York City, on the brief), for petitioner.

Martin V. Bergen and Marcel Viti, both of Philadelphia, Pa., for the guardian *ad litem.*

Walker, Chancellor. Application having been made by Mrs. Dorothy P. B. Caruso for letter of guardianship of the estate of Gloria Caruso, her infant daughter, in the Prerogative Court of this state, after leave granted in this cause, and hav-

ing been appointed by that court on January 24, 1928, special guardian of the said minor for the purpose of applying to the Court of Chancery for an allowance from her estate for her support, maintenance, and education according to her station in life, the question of the amount of bond to be given by the guardian was reserved until the court should have adjudicated the matter of allowance to be applied for. The authority for such appointment, and the facts of the case are fully set out in Re Caruso (N. J. Prerog.) 137 A. 154, and Caruso *v.* Caruso (N. J. Ch. 139 A. 812).

In Caruso *v.* Caruso, *supra,* questions reserved until the guardian for Gloria might be appointed, were: (1) As to the validity, by comity, of the Italian decree; (2) the amount, if any, to be awarded for Gloria according to her station in life; and (3) what is principal and what income, under the contract between the late Enrico Caruso and the Victor Talking Machine Company. These questions are therefore now ripe for decision.

[1] First. As to the validity in New Jersey by comity, of the Italian decree.

Assuming that this decree, and amendments, made in Italy upon the application of the Caruso heirs (named in his testamentary paper filed there), who were all present before the court and who had entered into a family agreement or settlement which the court approved, operated by its terms on all the parties, nevertheless an interested party was the infant daughter of Enrico Caruso, and of his wife, Dorothy P. B. Caruso, the petitioner herein, who (the infant) appeared by a guardian appointed by the Italian court and consented to its decree; but, in this state, as will

hereinafter appear, an infant may neither consent herself, nor her guardian for her, to any substantive principle affecting her rights, and therefore the Italian decree cannot operate to defeat the right of Gloria to her interest in the property of her father in this state, which is subject to the jurisdiction of our courts—even assuming the validity of the Italian decree for other purposes in this state, and which it therefore is unnecessary to decide.

It will be observed that the Italian decree undertakes to deal with the property of the late Mr. Caruso arising out of his contract with the Victor Talking Machine Company, and which is the subject of the controversy in this cause.

After dividing certain property of the decedent to the consenting heirs, including the infant Gloria, it proceeds to adjudge division of the residue, as follows: One-half to decedent's daughter, Gloria; the other one-half, one-quarter to Mrs. Caruso, widow; one-quarter to Rodolfo Caruso (natural, though recognized, son); one-quarter to Enrico Caruso (natural, though recognized son); and one-quarter to Giovanni Caruso, brother. That makes one-eighth each to the last four. The decree also provides, among other things, as follows:

> "Art. 2. In virtue of the amicable and good-natured arrangement interceded among the constituted heirs and ratified by the Tribunal of Naples, thanks to deliberation of October 21, 1921, First Section, which in the full her contents is accepted by all the constituted parties and herewith inclosed a copy, the patrimony of the defunct Commander Enrico Caruso, son of the late Marcellino, is distributed as follows:
>
> "One half to the legitimate daughter, Gloria, besides special allowance of the capital

of lire 500,000, as in narration, and the collections; the other half, always in full property, for one-fourth to Mrs. Dorothy Benjamin, Caruso's widow, another fourth to Mr. Rodolfo Caruso, another fourth to the minor Enrico Caruso (now of age), and the last fourth to Mr. Giovanni Caruso, son of the late Marcellino, defunct man's brother german.

"Art. 3. From the patrimony of the regretted Commander Enrico Caruso, ascertained through the inventories in narration, accepted from the heirs in their contest and in all the declaration therein contained, ascertained also through the sworn verification, herewith inclosed, before proceeding to the formation and attribution of the quotas, are made, as said in narration, the following previous deductions to put aside:

"(1) The copyrights correspond with the reward of 10 per cent. by the respectable Victor Talking Machine Company on the sale of the disks for grammophone performed by Commander Enrico Caruso, which reward shall be in the future divided and attributed to all the heirs in proportion of their quotas."

The decree, predicated on the settlement, gives one-half to the infant and makes the mother guardian, with right to appropriate the infant's share to herself without accounting, while our law gives the mother only one-third and the daughter two-thirds, and requires the mother, as guardian, to account.

[2] The Supreme Court of the United States in Black *v.* Zacharie & Co., 3 How. 483, 513, 11 L. Ed. 690, 704, held:

"It is well settled as a doctrine of international jurisprudence, that personal property has no locality, and that the law of the owner's domicile is to determine the validity

of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found to the contrary."

[3] In London, etc., Bank *v.* Aronstein, 117 F. 601, the Circuit Court of Appeals of the Ninth Circuit, said, at p. 608:

"Recognition of its [the corporation's] existence in other states, and enforcement of its contracts made therein, rest upon comity, and not upon inherent right. Under this comity California extends to foreign corporations the privilege of exercising the powers conferred by their charters beyond the limits of the country wherein they have their origin and existence. The only restriction on this rule of comity is that in giving effect to the foreign laws the state has properly taken the precaution to prescribe regulations and impose certain conditions, in order that no wrong, injury, or injustice may be done to its own citizens, and to see that the policy of its own laws is in no way contravened or impaired."

No citizen is here appealing for protection, but our own local law is to be vindicated.

In Freeman on Judgments (5th ed.) §1484, p. 3048, it is laid down:

"The courts of one nation have no authority over persons resident, or immovable property situate within the territorial limits of another nation, unless founded upon the voluntary submission of such persons to the jurisdiction of the foreign courts."

That, of course, means persons *sui juris.*

[4, 5] And it has been held in this state that while the rights of infants are not superior to

those of adults, the difference between the two classes of persons is that the rights of infants must be protected by the court, while adults must protect their own. In re Shreve, 87 N. J. Eq. 7, 103 A. 683, affirmed Id., 87 N. J. Eq. 710, 103 A. 683; for the reasons given by the Chancellor. And this court held in Caruso *v.* Caruso, *supra,* that nothing can be taken as admitted against an infant, either by his default or on the answer of his guardian; and that it is the rule that a next friend or guardian cannot, by admissions or stipulations, surrender the rights of an infant. And this court held that minors cannot make any election themselves, and a guardian is without authority to make it for them. Brengel *v.* O'Toole (N. J. Ch.) 140 A. 28.

It therefore appears that the rights of the infant Gloria were not concluded by the Italian decree, and this application of her guardian lies in her behalf.

[6] Second. As to the amount, if any, to be awarded to Gloria's guardian for her support, maintenance, and education according to her station in life.

[7, 8] The last duty of parents to their children is that of giving them an education suitable to their station in life, a duty pointed out by reason and of far the greatest importance of any. 1 Bl. Com. *451. As a rule, a widow is not bound to support her minor children out of her own property if they have means, and she is entitled to a complete indemnity out of their estate for the money expended by her for their maintenance within proper limits. Pyatt *v.* Pyatt, 46 N. J. Eq. 285, 287, 18 A. 1048. See, also, Caruso *v.* Caruso, *supra.* And it has already been held in this court

that the instant case is not an ordinary one, requiring the guardian to make the allowance in the first instant, relying upon the court afterwards to pass the account, but is an extraordinary one, and this court may, in its discretion, authorize the guardian, in advance, as to how much of the estate of the ward may be expended for her benefit; assuming that such authorization be made. Caruso *v.* Caruso, *supra.*

It is, of course, one of the first and highest duties of a guardian to provide for the maintenance and education of his wards in manner befitting their condition in life, limited, of course, by the means at his command available for the purpose. Re Adkins, 33 Ont. L. 110.

[9] Necessaries, it is stated, consist of food, drink, clothing, washing, medical attention, and a suitable place of residence, and they may be regarded as necessaries in the absolute sense of the word. However, the liability for necessaries is not limited to articles required to sustain life; it extends to articles which would ordinarily be necessary and suitable in view of the rank, position, fortune, earning capacity, and mode of life of the husband. 30 C. J. 601. And this, of course, means that of the father when he is dead. Such things are necessaries, in the legal sense, as are usual and proper for the use of a family in the circumstances of the parties. Sulter *v.* Mustin, 50 Ga. 242, 244. The question as to what are, and what are not, necessaries in a case of this kind depends in large measure upon the scale and style of living adopted by the husband. Wickstrom *v.* Peck, 163 App. Div. 608, 148 N. Y. S. 596, 598.

The rule is that where an infant has property of his own and his father is dead, or is not able to support him, he may be maintained and edu-

cated as may be fit out of his income of property his own, by the person in whose hands the property is held; and a court of equity will allow all payments made for this purpose which appear upon investigation to have been reasonable and proper. Schouler, Marriage, Divorce, Separation, and Domestic Relations, pp. 869, 871.

As was truly said by Hochehimer in Custody of Infants, p. 169, an administrator appointed under the laws of a foreign state cannot act as such in another state, nor, for like reasons, can a guardian appointed by virtue of the statutes of one state exercise any authority elsewhere over the person or property of his ward.

[10] And so it appears that an allowance may be made for the living expenses of the infant Gloria according to her station in life, not by the Italian tribunal, but only by this court, her property being within this state and subject to the judgment of its courts; especially so, as the Italian law, crystallized in its decree, is far less favorable to this infant, than is our own law, operating upon the status present.

The petitioner, Mrs. Caruso, among other things, in her original petition filed in this cause, prays that she may be authorized to apply the sum of $30,500 per annum, to the maintenance, education, and household expenses, including the support of the household in the style such as the infant has been accustomed to and consistent with the estate to which she is entitled, and alleges the following:

> "That the petitioner in her personal capacity has an income of approximately $9,000 per annum, applicable to the support of herself and another child as well as said Gloria Caruso, and that the sum is insufficient to support the said Gloria Caruso in the style and manner to which she had been accus-

tomed and to which she is entitled, in view of the estate left by her father and the share of same which will ultimately fall to her.

"That the annual expenses of maintaining the household in the manner to which the said infant is accustomed are approximately, as follows:

Rent of apartment in New York City		$ 6,000.00
Salaries of servants		4,500.00
Insurance		500.00
Various household expenses, light, telephone, and sundries		2,000.00
Food for household		7,200.00
Clothing		5,000.00
Automobile		4,000.00
		$29,200.00
Less income of Mrs. Caruso as above		9,000.00
		$20,200.00

"Expenses relating specifically to infant:

Nurse, salary	$1,500.00	
Education—school	600.00	
French and Italian	1,100.00	
Music	500.00	
Dancing lessons	100.00	
Doctor for medical attention	500.00	
Clothing for infant	2,000.00	
Approximate expense of annual trip to Italy and return with infant and of residence there pursuant to order of Italian court by which it was provided that at least 4 months of the year should be passed in Italy by infant — transportation and other expenses	4,000.00	10,300.00
		$30,500.00"

This petition is verified generally by the petitioner's affidavit to the petition annexed.

Mr. Alfred F. Seligsberg, the New York attorney for Mrs. Caruso, swears that he is thoroughly familiar with her personal estate and corroborates her as to the matter of income she claims. And this case was not requested to be set down for trial, but all parties interested in this question attended before the Chancellor and submitted to the more or less summary hearing on petition, answers, and affidavits.

While the fact of Mrs. Caruso's income is alleged to be much greater than stated, objection is not made to the form in which it is stated and sought to be proved. And the counsel on both sides have submitted their own affidavits as to the facts, which is contrary to established practice (Garrett *v.* Garrett, 86 N. J. Eq. 293, 98 A. 848) and, besides, the affidavits abound in all sorts of hearsay, characterizations, and conclusions, contrary to the rule which requires that facts only may be testified to by witnesses, leaving all inferences to be suggested by way of argument and to be decided by the court. Also in violation of established rule. In re McCraven, 87 N. J. Eq. 28, 99 A. 619. However, nothing appears to warrant the court declining to decide this cause.

It matters not how small or how large Mrs. Caruso's income is, if her infant daughter, Gloria, has an income of her own which is ample for her support, for under our doctrine, she, as guardian, is entitled to use that, or as much of that as may be reasonably necessary, for the upbringing of her child according to its station in life, and the amount that may be used is the subject of adjudication here.

Mr. Bergen in his affidavit makes this statement, which is accepted by the parties:

"Deponent further says that the payments made by the Victor Talking Machine Company to Dorothy P. B. Caruso, ancillary administratrix of Enrico Caruso, since his death are as follows:

For the year 1921	$422,981.56
For the year 1922	125,177.66
For the year 1923	105,922.59
For the year 1924	122,475.34
For the year 1925	71,194.22
For the year 1926	74,210.20
For the year 1927	74,762.75

"In these payments the Victor Company deducted 5 per cent. from the amount due under the agreement, as a withholding at source on account of income tax.

"Deponent states that large sums were for a time disbursed and distributed by the ancillary administratrix out of these New Jersey assets, but the sums as received during the last few years are deposited under the order of this court in a depository named by it, and payments out of the same are restricted. Deponent avers that the total sum now on deposit as the whole balance of these Victor payments is, as of February 15, 1928, $741,-449.20, and that these sums are deposited under an agreement by which they draw 4 per cent. interest."

By order of this court dated March 31, 1925, it was directed that all moneys and securities in the hands of, or which shall come into the hands of, the ancillary administratrix (Mrs. Caruso) be deposited and retain on deposit with the Union Trust & Hudson National Bank of Jersey City, subject to such orders and decrees as may be made in this suit, and that no payment shall be made therefrom except upon order of this court in the above-mentioned cause, etc.

Opinion.

The late Enrico Caruso died August 2, 1921, without any original will proved in New Jersey, or any copy of one proved elsewhere filed here, and his estate left here, so far as his infant daughter is concerned, is distributable under the Orphans' Court Act of 1918 (P. L. p. 180; 2 Comp. Stat. Cum. Supp. p. 2628), which is one-third of the surplus of the personal estate to the widow and all the residue to the children; and as there is but one legitimate child, then the remaining two-thirds to that child.

[11] The fund subject to the order of this court in this cause is all personal estate, and that includes money, chattels, things in action, and evidences of debt. Bouv. Law Dict. (Rawle's 3d Rev.), p. 2577. And this is all money. However, it may be corpus or income, or part one and part the other, and that will be the next question. Therefore the amount to be awarded for the annual support of the infant according to her station in life will be reserved until that question is decided. For there is a conflict here as to what the fund represents, whether corpus or income; the petitioner, Mrs. Caruso, claiming that all is income, and the guardian *ad litem* claiming for the infant Gloria that all is corpus. And it is suggested that it may be part income and part corpus.

I think that Mrs. Caruso, as guardian of her infant daughter, is entitled to an allowance for the upbringing of Gloria according to her station in life, out of the income of the estate of Gloria; but, if it be corpus, then another rule applies, and that is, that encroachment may be made upon principal only when necessary for the maintenance and education of an infant.

In Stephens *v.* Howard's Ex'r, 32 N. J. Eq. 244, Vice Chancellor Van Fleet held that where a legacy vests in an infant but is payable when it attains a certain age, and its father is unable to support it, and the interest arising from the legacies is not sufficient for that purpose, a court of equity may, in advance of the time fixed for payment by the will, order the principal of the legacy applied to the support of the legatee. However, the question of the necessity of expenditure out of the principal of an infant's estate for his maintenance is sometimes left to the judgment of the guardian, subject to the supervision of the court on the settlement of the estate. Pfefferle *v.* Herr, 75 N. J. Eq. 219, 223, 71 A. 689, 138 Am. St. Rep. 518. The question of allowance and the amount thereof will therefore be deferred until after the decision of the next question.

[13] Third. What is principal and what income under the contract between the late Enrico Caruso and the Victor Talking Machine Company?

Now, the agreement in question was made January 1, 1919, between the Victor Talking Machine Company, a corporation, with its principal place of business in Camden, N. J., called the Victor Company, and Enrico Caruso, then residing in the city of New York, called the artist; that he agreed at mutually convenient times to go to the recording laboratory of the Victor Company for the purpose of making records of his voice and would there sing, and when requested would repeat, for the Victor Company, forty selections of solos and concert numbers; the company to make records and to manufacture, advertise, license, and sell any or all rights and powers in all parts of the world, etc.; that during the life of the artist,

in the period of ten years, the Victor Company agreed to pay him the sum of $100,000 each year, which sum was thereby guaranteed; that certain accounts were to be kept, etc., and an allowance or royalty of 10 per cent. of the list or catalogue price of such records was to be paid by the Victor Company; that if at the end of any year the allowance at the rate indicated should exceed the sum of $100,000, the Victor Company agreed to pay to the artist whatever should be the excess of such allowances over the sum of $100,000; for so much of the period of the agreement as should remain after the minimum payments shall cease, the Victor Company should pay the artist the percentage royalty appearing to be due for such remainder; the artist agreed that he would not, during the period mentioned, make or permit to be made a record of his voice for any other person, party, or concern than the Victor Company, etc. Covenants were to apply to, bind, and were for the benefit of the heirs, executors, administrators, successors, and assigns of the parties. So much for the agreement. And the obligation of the Victor Company under it to Mr. Caruso in his lifetime, and to his estate after his death, was and is to pay in cash the sums specified therein.

It is perfectly apparent that the duty of the Victor Company is fixed by its contract with the artist, and that duty simply is to pay for the records in cash as therein specified. Its interest does not extend beyond payment to the proper person. It has no interest whatever as to whether the fund is principal or income to the distributees; it has no interest whatever in the distribution made of the fund after it passes to one entitled to receive it, and it would be amply protected by

the order of a court of competent jurisdiction disposing of the fund. It is merely a nominal, and not a necessary, party to this suit. See Oliver *v.* Jersey City, 63 N. J. Law 634, 44 A. 709, 48 L. R. A. 412, 76 Am. St. Rep. 228.

Under the Italian agreement residing in the decree there, one half of the Victor royalties go to Gloria, but the agreement provides that of her share of these royalties one half should be segregated in the Italian bank for her, and the other half should be paid to Mrs. Caruso, giving force to the Italian law that the mother (the father being dead) is the natural guardian of the infant and as such is entitled to all the infant's income during her minority without accountability. Our law gives the infant two-thirds instead of one-half, and requires accountability by the guardian —a distinct advantage over the Italian law in both respects.

In Robinson *v.* Pierce, 278 Pa. 372, 123 A. 324, the decedent leased, demised, and granted the right to mine and remove coal lying under the ground, the grantee to pay a certain sum each year until all the coal leased should be paid for, and the court said, at p. 376 (123 A. 325):

> "If the transfer by Robinson constituted a sale in place, and we so hold, the payments of royalties or rents are to be treated as purchase money, and for the purpose of distribution considered as personalty. Hosack *v.* Crill, 18 Pa. Super. Ct. 90, affirmed 204 Pa. 97 [53 A. 640]; Dorr *v.* Reynolds, 26 Pa. Super. Ct. 139; Hope's Appeals, 29 Wkly. Notes Cas. 365 [3 A. 23]; Fairchild *v.* Fairchild [Pa.] 9 A. 255; Murray's Est., 216 Pa. 270 [65 A. 675]."

In Eley's Appeal, 103 Pa. 300, at p. 306, the court said:

"In seeking for the testator's intention, we derive little or no assistance from that class of cases in which it has been properly held that a lease of the exclusive right to mine and remove coal or other minerals, without limitation as to quantity or time, is practically a sale of the coal or other mineral in place, and consequently a sale of a portion of the land itself. The word income means the gain which accrues from property, labor or business. In its ordinary and popular meaning, it is strictly applicable to the periodical payments, in the nature of rent, which are usually made under coal and other mineral leases, and we have no doubt it was used in that sense by the testator."

The proceeds of sale of building stone taken by executors from quarries on testator's land, which were open before his death and never abandoned, are part of income given by testator to widow and son. Gaines *v.* Green Pond Mining Co., 33 N. J. Eq. 603 (Court of Errors and Appeals). See, also, Mulford *v.* Mulford, 42 N. J. Eq. 68, 6 A. 609.

Very little is to be gained by delving into cases of testamentary disposition to ascertain the intention of the testator, as remarked by the Superior Court of Pennsylvania. Here we have no expressed intention of the late Mr. Caruso as to the character in which his estate should pass to any inheritor. So we must ascertain what this income is, by ascertaining what our law says it is.

[12] The proceeds of the sale of land for the purpose of distribution retain the character of real estate. Servis *v.* Dorn, 76 N. J. Eq. 241, 76 A. 246; Hackensack Trust Co. *v.* Tracy, 86 N. J. Eq. 301, 303, 99 A. 846. And, equally, personal property and income retain their characteristics

as such and pass to successors in the same character as they existed in the hands of the intestate. A receiver takes the property of the defunct corporation in the same situation as it was in the possession of the corporation itself. Bankers Trust Co. *v.* Maxson (N. J. Ch.) 134 A. 875. See, also, Kuser *v.* Wright, 52 N. J. Eq. 825, at p. 828, 31 A. 397.

In Aronson *v.* Baker, 43 N. J. Eq. 365, 367, 12 A. 177, Vice Chancellor Van Fleet said that the acquisition and succession to literary property (consisting of literary, dramatic, or musical composition, or design for work of ornament or utility planned by the mind of an artist) are governed by the same legal rules which control the acquisition and succession of other property of the same general class.

[14] There can be no doubt but that Mr. Caruso, under the terms of the above-mentioned agreement, sold all the products of his remarkable tenor voice, which were recorded, as stated, by the Victor Company, outright and exclusively to that company for the period named, and that the selling price was to him income; and he expressely covenanted that the purchase price should inure to the benefit of his heirs, etc. It could have been made payable to him, or, in the case of his death, to his heirs, in a gross sum, but, instead, was made payable in installments as to him, and necessarily as to them. The character of the fund is not thereby changed; that is, is not changed from income into corpus because made payable in installments instead of a gross sum. In my opinion, the payments to be made under this agreement are clearly income—all income. The usufruct from the royalties payable by the Victor

Talking Machine Company to the estate of Enrico Caruso, deceased, is all income.

Having concluded that these payments are income, and that it is distributable one-third to Mrs. Caruso, the widow, and two-thirds to Gloria Caruso, the infant child, according to the intestate laws of New Jersey, I find that Mrs. Caruso, the mother, as guardian in this state appointed by decree of the Prerogative Court for the limited purpose of applying for an allowance from the estate of Gloria for her support, maintenance, and education, is entitled, although having an income of her own, to be awarded a sum in this court's judgment, out of the estate of Gloria, to be devoted to that purpose according to her station in life.

The late Mr. Caruso, husband of the petitioner and father of the infant defendant, was, as is well known, the most distinguished tenor singer of his day, commanded large audiences, was a very great money earner and a rich man. The family lived in commensurate style, and, had he lived, they doubtless would have had everything that heart could desire. Instead, he died and left the money. And it is befitting that the court should make an allowance for the support of the young daughter according to her station in life.

Mrs. Caruso claims an expenditure of $10,300 specially relating to the infant, which I do not deem unreasonable. Of her own expenses there are rent, $6,000; salary of servants, $4,500; food, $7,200; automobile, $4,000; and in my judgment, the infant should make some contribution toward these necessary expenses, as she enjoys their benefit.

[15] I will allow $1,000 per month, or $12,000 a year, out of the proceeds due and to grow due

under the Victor Company's contract with the artist until the further order of the court; the allowance to commence on the date of the filing of the petition therefor. The guardian to give bond to the ordinary, with surety, to be approved by him, for the faithful performance of her duties in the premises, in the penal sum of $25,000.

The parties hereto, or either of them, are at liberty to apply to this court for further direction if occasion shall require.

Decree accordingly.

Decree.

(Filed April 16, 1928.)

IN CHANCERY OF NEW JERSEY.

DOROTHY P. B. CARUSO, Complainant, *vs.* RODOLFO CARUSO, ENRICO CARUSO, Jr., GIOVANNI CARUSO, GLORIA CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendants.	On Petition for Allowance

Dorothy P. B. Caruso, Special Guardian of Gloria Caruso, a minor under the age of fourteen years, appointed by the Prerogative Court of the State of New Jersey for the purpose of applying

to the Court of Chancery in the above entitled cause for an allowance from the funds now or hereafter coming into the hands of the complainant as Administratrix of the Estate of Enrico Caruso, deceased, and subject to accounting in the above entitled cause, having made such application to this Court in the above entitled cause, and the peitioner herein as Special Guardian of said infant having given bond to the Ordinary of the State of New Jersey for the faithful performance of her duties in the premises in the penal sum of $25,000.00.

It is, on this tenth day of April, 1928, on motion of John J. Treacy, Solicitor of petitioner, Martin V. Bergen, appearing as Solicitor for Thomas Barber, Guardian *ad litem* of Gloria Caruso, ordered that the sum of One Thousand Dollars per month be allowed to the said Dorothy P. B. Caruso as Special Guardian for said Gloria Caruso for the support, maintenance and education of the said Gloria Caruso, and that said sum be paid by the complainant, Dorothy P. B. Caruso, as Administratrix of the Estate of said Enrico Caruso, deceased, to the said Dorothy P. B. Caruso as Special Guardian aforesaid, said allowance to commence as of the date of the filing of the petition herein, namely, February 25, 1927, and to continue until the further order of this Court in the premises.

Further ordered that said payments be made on the 25th day of each month in advance, and that the accumulated payments to and including March 25th, 1928, amounting to the sum of Fourteen Thousand Dollars, be made in one sum.

Further ordered that Hudson County National Bank be and it hereby is authorized and directed to pay the above sums of money out of the moneys

on deposit with it from time to time subject to order in the above entitled cause, upon the checks or drafts of the said Dorothy P. B. Caruso as Ancillary Administratrix of the Estate of Enrico Caruso, deceased, which checks or drafts shall not need countersignature.

Further ordered that any party is to be at liberty to apply to this Court for further directions or relief in the premises if occasion shall require.

E. R. WALKER, C.

Opinion.

(Filed December 4, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

54-620.
On Bill for Distribution &c.

1. In conformity with the law which recognizes the validity of foreign judgments and decrees as matter of comity between sovereign states, the original decree of an Italian court, ordering distribution of the assets of the estate of E. C., is valid here, save so far as it conflicts with the distribu-

tion declared by the statute of this state as to property situate here, for the benefit of the infant G. C., who, under our law, acquires a greater advantage than she does under the Italian decree; and no consent can be given for such infant which will waive any of her substantive rights.

2. The legislature, and not the courts, makes public policy.

3. A court of equity in one state has power to restrain its own citizens or other persons within the control of its processes, from the prosecution of suits in other states or in foreign countries, whether the threatened inequitable conduct consists of a prosecution or an action, or whatever it may happen to be.

4. Our courts will not assume, directly or by indirection, any appellate jurisdiction over the courts of foreign countries, nor proceed in giving judgment here upon the idea that such foreign courts are in the least degree incompetent or unwilling to do full and complete justice in all cases that are fairly within their jurisdiction; and this rule is one of reciprocity.

5. Nor should the Italian courts presume that this court is in the least degree incompetent to do full and complete justice in cases within its jurisdiction, regarding property that is here and subject to our laws.

6. A threat of reprisal upon the parties litigant will not deter this court one iota in doing its full duty, under the law of this state in its operation on property situate here, for the benefit of an infant whose protection is the duty and function of this court of equity and good conscience.

7. The usufruct arising from the agreement between E. C. and the V. T. M. Co. is income and not principal.

8. The general duties of an administrator are to collect the effects of the decedent, to pay the claims against his estate and distribute the residue to those entitled thereto.

9. A trustee is one in whom some estate, interest or power in or affecting property is vested for the benefit of another.

10. The duties of an executor or administrator and those of a trustee are well recognized in the law as being distinct.

11. Where in an instrument no real estate is involved, the word "heirs" means "next of kin" in reference to the personalty mentioned.

12. The income arising under the agreement between E. C. and V. T. M. Co., will be distributed directly by the company to the next of kin of E. C., deceased, and others interested under the Italian decree, in the proportions indicated, without the creation of any other trustee for the purpose: the trust under the agreement will continue indefinitely; and the court of chancery has jurisdiction to establish and enforce it.

13. The infant, although awarded one-half of the estate here by the foreign tribunal, as against two-thirds given her by our law, is not entitled to participate in her mother's share of the New Jersey assets, because being given much more than the Italian decree awards her out of the property situate in New Jersey, she must take her share under our statute *cum onere*: she cannot have the advantage of both our law and the Italian decree,

when they conflict and our law gives her the advantage.

On application for discharge of administratrix and for distribution. On final hearing on pleadings and proofs.

Messrs. McDermott, Enright and Carpenter, and Mr. John J. Treacy (Mr. James Barclay, of the New York bar, on the brief), and Mr. Alfred F. Seligsberg (of the New York bar), for complainant.

Mr. Martin V. Bergen and Mr. Marcel Viti (of the Philadelphia bar), for Clerk in Chancery, guardian *ad litem* for Gloria Caruso, infant.

Mr. Merritt Lane and Mr. John L. Griggs, for Enrico Caruso, Jr.

Mr. Louis B. Le Duc and Mr. John Dashiell Myers (of the Philadelphia bar), for Victor Talking Machine Company.

Walker, Chancellor.

There has already been an opinion written upon various phases of the litigation in this case, *Caruso* v. *Caruso,* 6 N. J. Adv. R. 638. The decision here to be made is largely the application of law already decided in the case cited, where I said, at p. 640: "As to the validity in New Jersey, by comity, of the Italian decree. Assuming that this decree, and amendments, made in Italy upon the application of the Caruso heirs (named in his testamentary paper filed there), who were all present before the court and who had entered into a family agreement or settlement which the court approved, operated by its terms on all the parties, nevertheless, an interested party was the infant

daughter of Enrico Caruso, and of his wife, Dorothy P. B. Caruso, the petitioner herein, who, the infant, appeared by a guardian appointed by the Italian court and consented to its decree; but, in this state, as will hereafter appear, an infant may neither consent herself, nor her guardian for her, to any substantive principle affecting her rights, and, therefore, the Italian decree cannot operate to defeat the right of Gloria to her interest in the property of her father in this state, which is subject to the jurisdiction of our courts —even assuming the validity of the Italian decree for other purposes in this state, and which it therefore is unnecessary to decide."

Now, in conformity with the law which recognizes the validity of foreign judgments and decrees as matter of comity between sovereign states, I hold upon this final hearing that the original decree of the Italian court ordering distribution generally of the assets of the estate of Enrico Caruso, deceased, is valid here, save so far as it conflicts with the distribution declared in New Jersey for the benefit of the infant Gloria Caruso, who, under our law, acquires a far better standing than she does under the Italian decree; for here she obtains two-thirds of the income from the Victor Talking Machine Company, which is income of the estate of her deceased father, whereas, by the Italian decree, she receives only one-half and it makes her mother guardian, with right to appropriate the infant's share to herself without accounting; while our law gives the mother only one-third and the daughter two-thirds, and requires the mother, as guardian, to account. *Caruso* v. *Caruso,* 6 N. J. Adv. R. 642. The consent given by her guardian in Italy to the decree of that kingdom's court cannot be accepted here, for the

reasons stated in *Caruso* v. *Caruso,* 6 N. J. Adv. R. 643, citing *Caruso* v. *Caruso,* 5 N. J. Adv. R. 1805, 1811.

An amendment to the decree of the Italian court is truly astonishing. It breathes defiance to the court of chancery of New Jersey, and declares that it will retaliate and enforce the distribution which it has decreed, out of the estate which it controls so as to make up to those denied *pro tanto* distribution of New Jersey assets, to the end that the infant may receive only what the Italian decree provides, and may deny to her what the genius of our law gives her in that behalf.

In the brief submitted on behalf of Enrico Caruso, Jr., is the following:

> "To so act with respect to the property, supposedly within the control of this court, as that, to say the best for the infant, there will be reprisals wherever reprisals are possible. The Italian Court, by the decree of August 26, 1925, has frankly stated that, if its decrees are not recognized by the courts of this state, the decrees of this court will not be recognized in Italy and all of the aid and assistance which the Italian Courts can give will be devoted to making reparation to Enrico Caruso, Jr., and Rodolfo Caruso for what this court may take away from them, and, in this connection, let us also say that no Italian Court will recognize the decree of this Court directing the distribution of any monies in the control of this Court or directing the Victor Talking Machine Company to pay otherwise than in accordance with the Italian decree as protecting the Victor Talking Machine Company. Nor do we believe that the courts of any other jurisdiction, outside of the United States, will recognize the decree of this court as protecting the Victor Talking Machine Company."

In what singular contrast is this, both on the part of the Italian Court and counsel for Enrico Caruso, the younger, is the language of Chancellor Pitney in *Bigelow* v. *Old Dominion Copper Co.*, 74 N. J. Eq. 457, at p. 473, where he said:

> "I have not the least doubt or difficulty about the power of a court of equity in one state to restrain its own citizens, or other persons within the control of its process, from the prosecution of suits in other states or in foreign countries. The power proceeds from the undoubted authority that a court of equity possesses over persons within its jurisdiction to restrain them from doing anything that is contrary to equity and good conscience, to the wrong and injury of others, whether the threatened inequitable conduct consists in the prosecution of an action or whatever it may happen to be.
>
> "The court of equity thus appealed to, acts *in personam* and it is immaterial whether the threatened inequitable conduct is to be carried on within or without the limits of the jurisdiction. *1 High. Inj.* §103; *Story Eq. Jur.* (12th ed.), §§899, 900; *Margerum* v. *Moon*, 63 N. J. Eq. (18 Dick.), 586, and cases cited.
>
> "But on general principles, equity will not interfere with the right of any person to bring an action for the redress of grievances—the right preservative of all rights—except for grave reasons, and on grounds of comity the power of one state to interfere with a litigant who is in due course pursuing his rights and remedies in the courts of another state ought to be sparingly exercised. The courts of New Jersey ought not to assume, directly or by indirection, any appellate jurisdiction over the courts of Massachusetts, nor proceed in giving judgment here upon the idea that the courts of that commonwealth are in the least degree incompetent or unwilling to do full

and complete justice in all cases that are fairly within their jurisdiction."

The rule enunciated by learned chancellor, and above quoted, is, of course, one of reciprocity, and is, or ought to be, recognized by the courts of all countries.

The power of the court of chancery of New Jersey to restrain its own citizens *or other persons within the control of its process* from the prosecution of suits in foreign countries, is postulated. And the assertion is made that the courts of New Jersey ought not to assume, directly or by indirection, any appellate jurisdiction, nor proceed in giving judgment here upon the idea that the courts of foreign states are in the least degree incompetent or unwilling to do full and complete justice in all cases that are fairly within their jurisdiction.

Now, the power in this court exists, and turning this general principle upon the Italian court, it may well be asserted that the Italian court should not presume that this court is in the least degree incompetent to do full and complete justice in cases that are within its jurisdiction, regarding property that is here and subject to our laws. Our law is here involved. And I regard its application as mandatory on this court in the circumstances before me. A threat of reprisal upon the parties litigant will not deter this court one iota in doing its full duty under the law of this state in its operation on property situate here, for the benefit of an infant whose protection is the duty and function of this court of equity and good conscience.

The Supreme Court of the United States in *Black* v. *Zacharie & Co.*, 3 How. U. S. 483; 11 Law

ed. 680, 704, held: "It is well settled as a doctrine of international jurisprudence, that personal property has no locality, and that the law of the owner's domicile is to determine the validity of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found to the contrary." There is a positive law of this state operating upon the property which is found here, namely, the statute of distribution, the latest enactment of which is to be found in *P. L.* 1918, p. 180, *Comp. Stat. Cum. Supp.*, p. 2628, §169. This provision reflects the public policy of this state and is to be enforced by this court unless waived by all parties who are *sui juris*. The legislature, and not the courts, makes public policy. And the grant of the legislature must fix for the courts the character and limit thereof. *Trenton Potteries Co.* v. *Oliphant*, 58 N. J. Eq. 507, 524; *Dittman* v. *Distilling Co. of America*, 64 N. J. Eq. 537, 545; *Earle* v. *American Sugar Refining Co.*, 74 N. J. Eq. 751, 762.

It is submitted on behalf of the guardian *ad litem* that the court of Naples had no jurisdiction to make the decrees it did, and that, because the deceased was not domiciled there but in the Province of Florence, Tuscany, Italy. The complainant contends to the contrary, that the domicile of the deceased was at Naples, and that the tribunal of that Province had power to appoint a special guardian for the infant, and having acquired jurisdiction for that purpose retained it for the family settlement, and that this was set at rest by the expressed approval of the Public Minister (Attorney General), whose function, among others, under judicial ordinances of Italy, is to pass upon the jurisdiction of the court.

I should not assume, directly or indirectly, any appellate jurisdiction over the Italian courts, and on this subject I deem it to be my duty to leave it where the Italian court leaves it, that is, assume the jurisdiction of the court of Naples to approve the family settlement, and, for that matter, order a distribution of the estate according to its decision; but, I repeat, that does not give the decree validity in New Jersey for the purpose of varying our positive law of distribution founded upon public policy; and that, as to the infant, must be the decision here.

Mrs. Caruso, the mother of the infant Gloria, in her bill of complaint filed herein, asserts the following:

> "Complainant is advised and states the fact to be that under the law of the Kingdom of Italy, she, as surviving parent, is the natural and general guardian of her daughter, Gloria Caruso, during the latter's minority and until she reaches the age of twenty-one years, and, as such, entitled to receive from time to time all income belonging to said infant, and to use, hold, or otherwise dispose of the same without accountability."

A mere glance at this claim, crystallized in the decree of the Italian court, shows that it cannot for a moment be given effect in this state as against the rights of the child guaranteed by our law of distribution, which would give her two-thirds of this estate and for which accountability exists, as this secures her share of the estate to her; the other does not. This is but a statement of the law of New Jersey. See, *Caruso* v. *Caruso*, 6 N. J. Adv. R., p. 648.

Complainant further alleges in her bills that she has fully administered all moneys coming into her

hands as administratrix and that pursuant to the Italian law all assets of said estate now in her hands, including all rights under the aforesaid contract with the Victor Talking Machine Company, belong to the persons specified by the family settlement and agreement and decrees of the Italian court, validating and confirming the same. This proposition cannot be admitted, as the trust is not ended but must continue for an indefinite period.

The bill prays, among other things, that the accounts of complainant as administratrix may be settled and a decree made for the distribution of the moneys in the complainant's hands to the persons entitled thereto, as aforesaid; that it may be determined what portion of the moneys arising or to arise out of the aforesaid royalty contract is principal and what portion is income, and that the determination of the Italian Court with respect thereto be ratified and confirmed; that it may be decreed that the moneys heretofore received by complainant as administratrix, subject to the costs of administration, and all moneys hereafter payable under said royalty contract, and all rights in said contract itself, are the property of complainant and the aforesaid Gloria Caruso, Rodolfo Caruso, Enrico Caruso, Jr. and Giovanni Caruso, in the proportions above specified, and that said Victor Talking Machine Company be decreed to pay over the royalties from time to time accruing under said agreement to said individuals, or their lawful representatives, directly and without further intervention of complainant as administratrix; that upon settlement of the accounts of complainant and payment by her of such moneys as may be found to be due and payable, that she be discharged as administratrix, and that she and

her surety be relieved of further liability upon her aforesaid bond as administratrix; and this bill is apparently filed under the general doctrine of *In re Riley,* 92 N. J. Eq. 567.

Because of the continuing character of the contract between Enrico Caruso and the Victor Talking Machine Company, which, according to the bill of complaint itself, provides for the payment of royalties "for an indefinite time * * * upon sales by said Company of talking machine records of the voice of the said Enrico Caruso, the amount of royalties to be so paid to be ascertained at the end of each calendar year," a trustee will have to be appointed, or the Victor Talking Machine Company may be decreed to make distribution from time to time, as hereafter stated. Mrs. Caruso herself prays for that, while contesting as to the amount of the shares.

It has already been determined that the usufruct arising from this agreement is income and not principal. *Caruso* v. *Caruso,* 6 N. J. Adv. R. 638, 652. And in the agreement Mr. Caruso expressly covenanted with the Victor Talking Machine Company that the purchase price should inure to the benefit of his heirs &c. The covenant was mutual, the exact language being:

> "The covenants of and rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto."

While this gift to the heirs of the late Enrico Caruso will continue indefinitely, the ancillary administratrix, who claims to have administered the estate of decedent, will have nothing to do with the continued collection and disbursement. The Victor Talking Machine Company may be ordered

to disburse directly to the ascertained beneficiaries, until the minority of the infant is removed by efflux of time. The court is not obliged to raise a trusteeship to receive and disburse the fund, as the Victor Talking Machine Company can do it without such intervention. See, *In re Riley, supra.*

The general duties of an executor (and likewise an administrator) are to collect the effects of decedent, to pay the claims against his estate and distribute the residue to those entitled thereto. And a trustee is one in whom some estate, interest or power in or affecting property is vested for the benefit of another; and while an executor is a trustee in the broadest sense, he is not a trustee in the general acceptation of the term. *In re Hibbler's Estate,* 78 N. J. Eq. 217. The duties of an executor (or administrator) an those of a trustee are well recognized in the law as being distinct. *Ibid,* p. 219.

Chief Justice Beasley said, speaking for the court of errors and appeals, in *Pitney* v. *Everson,* 42 N. J. Eq. 361, at p. 366: "It is true that throughout the will trustees are called executors, but this is a mere *descriptio personarum,* and even if otherwise intended, could not, as has been remarked already, alter, in any respect, the substantial qualities and attributes of the estate, which, in point of fact, has been called into existence." Thus it will be seen that no matter what the designation in a will, the office, whether of executor or trustee, will be determined by the character of the estate confided to, and the powers to be exercised by, the representative of the deceased.

Now, deceased Mr. Caruso appointed no trustee, but stipulated in the contract that it should run for the benefit of his heirs. As real estate is not involved, but only personal property, the word

"heirs" means "next of kin". *Smith* v. *Robinson,* 83 N. J. Eq. 384; *Meeker* v. *Forbes,* 84 N. J. Eq. 271; *In re Buzby,* 94 N. J. Eq. 151.

The duty of the administratrix is plain. It has been performed she says. The record in the prerogative office shows that she has taken an order to bar creditors, but not accounted. She must therefore account. The court is obliged to appoint a trustee, or may provide that the Victor Talking Machine Company distribute the fund directly to the beneficiaries, and that it will do in this case. That the trust must continue is obvious; and the court of chancery has jurisdiction to establish it. *Amparo Mining Co.* v. *Fidelity Trust Co.,* 75 N. J. Eq. 555.

The equitable rule is clear that where a voluntary trust is created for the benefit wholly or partly of a person other than the grantor creating it, and the relation of trustee and *cestui que trust* is thus established, it will be enforced. *Filley* v. *Fownes,* 81 N. J. Eq. 498, 499.

The Italian decree being necessarily valid at home, and, as already held, will be recognized and enforced here upon principles of international comity, save so far as it conflicts with our positive rule of law as to the distribution of an intestate's estate to his infant daughter, for whom consent could not be given, here or abroad, to accept less than the genius of our law gives to her as her share. The mother's share under our law of distribution is subject to the Italian decree and will inure to the benefit of the other members of the family who are provided for in the judgment of that court, as well as herself.

The infant, although awarded one-half of the estate here by the foreign tribunal, as against two-thirds given to her by our law, is not entitled to

participate in her mother's share of the New Jersey assets, because, being given much more than the Italian decree awards her, she must take her share under our statute *cum onere.* She cannot have the advantage of both our law and the Italian decree where they conflict and our law gives her an advantage.

One who accepts a benefit under a deed or will must adopt the whole contents of the instrument, renouncing every right inconsistent with it. *Yawger* v. *Yawger,* 37 N. J. Eq. 229, 248; *Ashby* v. *Ashby,* 59 N. J. Eq. 547, 556. The general principle is that he who accepts a benefit takes it *cum onere.* Where the court, as in this case, gives to an infant the benefit of our law, as against a less advantageous gift to her under a foreign decree, she cannot have both the court's award and the gift under the decree. And this is not adjudging a forfeiture. See, *Pam. Eq. Jur.* (4th ed.), Vol. 1, §460.

The result reached is that the foreign decree will be recognized to the extent mentioned, complainant must account as ancillary administratrix, and may then be discharged as such. The Victor Talking Machine Company may be appointed trustee to distribute two-thirds of the issues and profits arising under the agreement to Gloria Caruso, infant, under proper restrictions, and the balance of one-third to the other parties named in the Italian decree, in the proportions adjudged and in accordance with that decree, excepting, of course, the infant, Gloria Caruso.

The complainant is entitled to enter a decree in this court and her solicitors should give notice to the others of a motion here to settle and sign such decree.

Final Decree.

(Filed January 4, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

54-620
On Bill, Etc.

The complainant, Dorothy P. B. Caruso, having filed her bill of complaint herein against Rodolfo Caruso, Enrico Caruso, Jr., Giovanni Caruso, Gloria Caruso, Maria Castaldi, Victor Talking Machine Company and Fidelity & Deposit Company of Maryland, as defendants; and defendants, Rodolfo Caruso, Enrico Caruso, Jr., Giovanni Caruso, Gloria Caruso and Maria Castaldi being returned not served, and an order of publication having been made against them and notice thereof duly mailed and published as directed in said order, and the then clerk of this court, Jesse R. Salmon, having been duly appointed as Guardian *ad litem* for the defendants, Gloria Caruso and Enrico Caruso, Jr., infants under the age of twenty-one years; and answers having been filed herein by the Guardian *ad litem* of said infants, Enrico Caruso, Jr., and Gloria Caruso, and answer and counter-claim by the defendant, Victor Talking Machine Company, and said defendant, Enrico Caruso, Jr., having since attained his majority and entered his appearance herein; and the

defendants, Rodolfo Caruso, Giovanni Caruso, Maria Castaldi and Fidelity & Deposit Company of Maryland not having answered said bill, the same being now taken as confessed against them, and issue being joined upon the answers of the answering defendants and counter-claim of the defendant, Victor Talking Machine Company, and said cause coming on to be heard in the presence of John M. Enright and Alfred F. Seligsberg (of the New York Bar), of counsel with complainant, in association with John J. Treacy, and James Barclay (of the New York Bar), of counsel with complainant, Dorothy P. B. Caruso, in her individual capacity; Martin V. Bergen and Marcel Viti (of the Philadelphia Bar), of counsel with the Guardian *ad litem* of Gloria Caruso; Merritt Lane and John L. Griggs, of counsel with the defendant Enrico Caruso, Jr., and Louis B. Le Duc and John Dashiel Myers (of the Philadelphia Bar), of counsel with defendant, Victor Talking Machine Company, upon bill and answer of said answering defendants, and the counter-claim of defendant, Victor Talking Machine Company, and replies thereto, and proofs; and the court having considered the same and the arguments of the respective counsel;

And it appearing to the court that Enrico Caruso died on August 2nd, 1921, a resident and citizen of the Kingdom of Italy; that there survived him his widow, the complainant, Dorothy P. B. Caruso, an infant daughter, Gloria Caruso, then upwards of one and a half years of age, being his only lawful child, and two sons, Rodolfo Caruso, of full age, and Enrico Caruso, Jr., the latter being then an infant under the age of twenty-one years; that he also left surviving him a brother, Giovanni Caruso, of full age; and that

the two sons Rodolfo Caruso and Enrico Caruso, Jr., were natural sons born to Enrico Caruso by another mother than complainant, to whom he was not married; that the said Enrico Caruso, deceased, left a paper writing in the nature of a testamentary document bearing date January 4th, 1919, by which it appears that he provided that his sons, Rodolfo Caruso and Enrico Caruso, Jr., and his brother, Giovanni Caruso, shall be his universal heirs and gave to his wife, Dorothy P. B. Caruso, that which the Italian law grants to her, and provided until her death for his stepmother, Maria Castaldi; that such document was made prior to the birth of decedent's lawful daughter, Gloria Caruso, and made no provision for her or any after-born children, and that neither such testamentary paper nor any original will is proved in New Jersey, nor, if proved out of this state, is any copy of such filed here; and the court being of opinion that distribution of the assets of Enrico Caruso found in New Jersey must be made under the theory that he died intestate, and, distributed according to the statute of this state in such case made and provided, so far as his infant daughter, Gloria Caruso, is concerned;

And it further appearing that after decedent's death the Caruso heirs (named in the testamentary paper) entered into a family settlement or agreement by which they purported to divide the estate of Enrico Caruso in certain shares agreed to by them, giving one-half to Gloria Caruso and dividing the other one-half among the other four parties in equal shares, certain additional specific provisions being allotted to Gloria, which family settlement or agreement was presented to and approved by the Tribunale Penale e Civile of Naples by a decree thereof, all being present be-

fore that court, the infant Gloria appearing by a Guardian appointed by that court, who consented to the decree, and that the estate in Italy and elsewhere left of Enrico Caruso was apportioned under its terms; and this court being of opinion that substantive principles affecting the rights of Gloria Caruso were consented to by her Guardian appointed by the Italian court, but that such consent is unlawful and cannot bind the said infant under the law of this state, and cannot, and does not, affect her status and right of property under the law of New Jersey; ,

And it further appearing that on January 1st, 1919, the decedent, Enrico Caruso, had entered into a contract with the Victor Talking Machine Company, a corporation of New Jersey, having its principal office in Camden, New Jersey, by which he was to receive ten per cent. of the selling price of discs of vocal renditions made by him for that Company, such payments to be made for an unlimited period of time and containing a covenant which provided as follows:

> "The covenants of and rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto."

That under this agreement various payments were made to Enrico Caruso during his life, and have been paid since then to the ancillary administratrix, who is the complainant in this cause, and are accruing and will be made in the future, and that these payments are assets within the State of New Jersey and the jurisdiction of this court;

And it further appearing that by the terms of the agreement and the decrees of the Naples court the complainant, Dorothy P. B. Caruso, was made

Guardian of Gloria Caruso, and also was given, among other things, the right to appropriate to herself without accountability, one-half of the share allotted to Gloria Caruso of these Victor Talking Machine Company payments;

And it appearing to this court that the original and supplemental decrees of the Naples court ordering distribution generally of the assets of the estate of Enrico Caruso, deceased, are valid here and binding on all the parties to it other than as to the infant Gloria Caruso, but are not valid here or binding as to her because of her infancy;

It is, on this fourth day of January, nineteen hundred and twenty-nine, ORDERED, ADJUDGED AND DECREED:

1. That the complainant, Dorothy P. B. Caruso, account in this court for all moneys received by her as ancillary administratrix under appointment of the Ordinary of the State of New Jersey, from the Victor Talking Machine Company or from any other source, and the disbursements made by her therefrom and thereout.

2. That of the amount remaining after the payment of the expenses of administration, including such expenses of this suit as may be hereafter fixed and determined, two-thirds part thereof shall be paid to the infant, Gloria Caruso, as shall be hereafter ordered; one-twelfth thereof to Dorothy P. B. Caruso, one-twelfth thereof to Giovanni Caruso, one-twelfth thereof to Rodolfo Caruso and one-twelfth thereof to Enrico Caruso, Jr.

3. That upon the coming in, passing and approval of the account of the complainant, and upon making the payments aforesaid, said complainant may be discharged as ancillary administratrix as aforesaid.

4. That a trust exists under the contract made between Enrico Caruso, in his lifetime, and the Victor Talking Machine Company, bearing date January 1st, 1919. That no trustee will now be appointed in substitution for said Victor Talking Machine Company, but that all subsequent payments to be made under said contract shall be paid by the said Victor Talking Machine Company directly as follows: Two-thirds to Gloria Caruso, as shall be subsequently ordered; one-twelfth to Dorothy P. B. Caruso, her executors, administrators or assigns; one-twelfth to Giovanni Caruso, his executors, administrators or assigns; one-twelfth to Rodolfo Caruso, his executors, administrators or assigns; one-twelfth to Enrico Caruso, Jr., his executors, administrators or assigns; but that the Victor Talking Machine Company shall make no payments to any of them until further order of this court, but until such time shall deposit all payments in the Camden Safe Deposit & Trust Company, as depository, to be distributed under order of this court; said Victor Talking Machine Company being hereby appointed as Trustee for each of said distributees according to their rights and interests under said contract, and this decree, *pro tanto;* allowance of compensation to said Trustee, in the event that it be entitled thereto, to abide the further order of this court.

5. That this bill be retained for the purpose of further accounting by said administratrix and by the Victor Talking Machine Company with respect to the payments hereby directed to be made, with leave to any party in interest to apply to this court for further directions herein as occasion may require.

E. R. WALKER,
C.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

54-62.

DOROTHY P. B. CARUSO, Complainant, *and* RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, GLORIA CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendants.	On Petition for Allowance. On Decree.

The defendant, Gloria Caruso, by her guardian *ad litem,* Thomas Barber, hereby appeals from the interlocutory decree made in the above entitled cause, on the 10th day of April, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

May 17th, 1928.

MARTIN V. BERGEN,
Solicitor for and of counsel for the defendant, Thomas Barber, Guardian *ad litem* of Gloria Caruso.

I conceive there is good cause for appeal in the above entitled cause.

MARTIN V. BERGEN,
Of counsel with defendant, Thomas Barber, Guardian *ad litem* of Gloria Caruso.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

DOROTHY P. B. CARUSO,
Complainant-Appellee,

vs.

RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Defendants-Appellees,

and

GLORIA CARUSO,
Defendant-Appellant.

On Appeal from the Court of Chancery.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Gloria Caruso, by her guardian *ad litem,* Thomas Barber, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by an interlocutory decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the tenth day of April, 1928, in a certain cause in said Court of Chancery, wherein the said Dorothy P. B. Caruso was complainant and the said Gloria Caruso and others were defendants, in this respect, to-wit, that the said decree adjudges and orders that the sum of One Thousand Dollars per

month be allowed to the said Dorothy P. B. Caruso as Special Guardian for the said Gloria Caruso for the support, maintenance and education of the said Gloria Caruso, and that said sum be paid by Dorothy P. B. Caruso as Administratrix of the Estate of said Enrico Caruso, Deceased, to the said Dorothy P. B. Caruso as Special Guardian.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid because the same is erroneous on the following grounds:

1. It is the duty of Dorothy P. B. Caruso to support her daughter, Gloria Caruso, from her own funds, without recourse to Gloria Caruso's estate.

2. The Court of Chancery has jurisdiction over an ancillary estate of Gloria Caruso, and should not make an allowance for her maintenance out of the New Jersey estate, if she has funds in her places of domicile, Italy or New York, available and sufficient for the purpose.

3. An Italian Court (concededly for this purpose only the domiciliary Italian Court) has considered and made provision for Gloria Caruso's maintenance and this ancillary court should not make another order allowing an additional amount for that purpose.

4. This decree for maintenance, if necessary for that purpose, is rendered so by a scheme carried out in Italy to withdraw Gloria Caruso incomes and assets from this New Jersey jurisdiction into Italy, by compelling the use, for her support, of her New Jersey incomes, which otherwise would be capitalized, and capitalizing her incomes in Italy which should be used for her support.

5. No proof was submitted that there are not sufficient incomes arising from the Italian and New York assets of Gloria Caruso, for her maintenance and support, without recourse to her ancillary New Jersey assets. There is not sufficient proof before the Court.

6. The payments from the Victor Talking Machine Company are principal and are not income, both of Enrico Caruso's Estate and of Gloria Caruso's Estate.

7. The amount allowed is based on a finding that distribution of the Estate of Enrico Caruso should be made under the New Jersey statute of distributions, as far as Gloria Caruso is concerned, under which Gloria Caruso would receive ⅔ of these royalties, whereas distribution of his estate should be made as provided for by the Italian law in case of intestacy.

8. The allowance is excessive in amount.

MARTIN V. BERGEN,
Solicitor for and of Counsel with
Appellant.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

DOROTHY P. B. CARUSO, Complainant-Appellee, *vs.* RODOLFO CARUSO, *et als.*, Defendants-Appellees, *and* GLORIA CARUSO, Defendant-Appellant.	On Appeal from Chancery.

Dorothy P. B. Caruso as ancillary administratrix of Enrico Caruso, deceased, joins issue upon the petition of appeal of the infant Gloria Caruso by her guardian *ad litem* in the above entitled cause.

McDERMOTT, ENRIGHT & CARPENTER,
Solicitors for Complainant-Appellee.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO,
Complainant-Appellant,

and

RODOLFO CARUSO, *et als.*,
Defendants-Respondents.

On Appeal from Chancery.

The petition of Dorothy P. B. Caruso, the complainant-appellant in the above entitled cause, respectfully shows that your petitioner finds herself aggrieved by a Final Decree made in the Court of Chancery of New Jersey by the Hon. Edwin Robert Walker, Chancellor, bearing date the 4th day of January, 1929, in a cause wherein the said Dorothy P. B. Caruso is complainant, and Rodolfo Caruso, Enrico Caruso, Jr. Giovanni Caruso, Gloria Caruso, Maria Castaldi, Victor Talking Machine Company and Fidelity & Deposit Company of Maryland, are defendants, in this respect to wit: that said decree adjudges that distribution of the assets of Enrico Caruso, deceased, found in New Jersey must be made under the theory that he died intestate and distributed according to the statute of this State in such case made and provided so far as his infant daughter Gloria Caruso is concerned; that the agreement of family settlement between the heirs of Enrico Caruso and the decree of the Tribunale Penale e Civile of Naples approving the same, and the consent thereto by

the guardian appointed by said Court for the infant Gloria Caruso, are unlawful and cannot bind said infant under the laws of this State, and cannot and do not affect her status and right of property under the law of New Jersey;

that by the terms of the said agreement and the decrees of the Naples Court, petitioner Dorothy P. B. Caruso was made guardian of Gloria Caruso and also was given, among other things, the right to appropriate to herself without accountability one-half of the share allotted to Gloria Caruso of the Victor Talking Machine Company payments;

that the original and supplemental decrees of the Naples Court ordering distribution generally of the estate of Enrico Caruso, are valid in New Jersey and binding on all the parties to it other than as to the infant Gloria Caruso, but are not valid here or binding as to her because of her infancy;

further, that said decree orders, adjudges and decrees, among other things, that out of the amount remaining in the hands of petitioner as Ancillary Administratrix, the two-thirds part thereof shall be paid to the infant Gloria Caruso, one-twelfth thereof to Dorothy P. B. Caruso, one-twelfth thereof to Giovanni Caruso, one-twelfth thereof to Rodolfo Caruso and one-twelfth thereof to Enrico Caruso, Jr., and that a trust exists under the contract made between Enrico Caruso in his lifetime and the Victor Talking Machine Company, bearing date January 1, 1919, and that all payments subsequent to said decree to be made under said contract, shall be paid by the said Victor Talking Machine Company directly as follows, viz: Two-thirds to Gloria Caruso, as shall be subsequently ordered; one-twelfth to Dorothy P. B.

Caruso, her executors, administrators or assigns; one-twelfth to Giovanni Caruso, his executors, administrators or assigns; one-twelfth to Rodolfo Caruso, his executors, administrators or assigns; one-twelfth to Enrico Caruso, Jr., his executors, administrators or assigns, but that the Victor Talking Machine Company shall make no payments to any of them until further order of said Court of Chancery, but until such time shall deposit all payments in the Camden Safe Deposit & Trust Company, as depository, to be distributed under order of said Court;

further, that said decree appoints the Victor Talking Machine Company as trustee for each of said distributees, according to their rights and interests under said contract and said decree, *pro tanto,* and further provides that allowance of compensation to said trustee shall abide the further order of said Court.

And your petitioner humbly appeals from said decree as aforesaid upon the ground that the same is erroneous in the above particulars and fails to recognize the decrees of the Tribunale Penale e Civile of Naples more particularly set forth in complainant's bill, as binding not only upon the adult parties thereto, but, also, upon the infant Gloria Caruso; and is further erroneous in that it orders distribution of the assets in the hands of the Ancillary Administratrix in New Jersey, to Gloria Caruso, infant, as though the said Enrico Caruso died intestate, and decrees the distribution of the remainder of said assets pursuant to the decrees of the Tribunale Penale e Civile of Naples; and is further erroneous in decreeing that a trust exists under the aforesaid contract between Enrico Caruso and the Victor Talking Machine Company, and that all subsequent payments under

said contract shall be paid by said Victor Talking Machine Company directly as follows: two-thirds to the infant Gloria Caruso, one-twelfth to Dorothey P. B. Caruso, one-twelfth to Giovanni Caruso, one-twelfth to Rodolfo Caruso and one-twelfth to Enrico Caruso, Jr., but that none of said payments shall be made until the further order of the Court, but deposited as in said decree stated, and appointing said Victor Talking Machine Company as trustee for each of said distributees hereunder;

whereas, said decree should have granted relief to the complainant according to the prayer of her bill of complaint, and ordered distribution of the moneys in her hands, as well as the moneys hereafter to grow due from time to time under the aforesaid Victor Talking Machine Company contract, in accordance with the decrees of the Tribunale Penale e Civile of Naples, aforesaid.

Your petitioner, therefore, prays that said decree of the Chancellor may be reversed, set aside and for nothing holden in the particulars aforesaid, to the end that a decree may be made herein as prayed for by petitioner in her bill of complaint, and that petitioner may have such relief in the premises as to this honorable Court shall seem meet.

McDermott, Enright & Carpenter,
Solicitors for and of Counsel with
Appellant.

Notice of Appeal.

(Filed January 18, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

54-620
On Bill &c.

Complainant hereby appeals from so much of the Final Decree made in the above entitled cause on the 4th day of January, 1929, as adjudges and decrees that out of the moneys remaining in her hands as Ancillary Administratrix, after payment of expenses of administration, the two-thirds part thereof shall be paid to the infant Gloria Caruso; the one-twelfth thereof to complainant, Dorothy P. B. Caruso; the one-twelfth thereof to Giovanni Caruso; the one-twelfth thereof to Rodolfo Caruso and the one-twelfth thereof to Enrico Caruso, Jr.; also from that part of said decree which adjudges and decrees that a trust exists under the contract made between Enrico Caruso in his lifetime and the Victor Talking Machine Company, bearing date January 1, 1919, and that all payments subsequent to said decree to be made under said contract shall be paid by the said Victor Talking Machine Company directly as follows, viz: Two-thirds to Gloria Caruso, as shall be subsequently ordered; one-twelfth to Dorothy P. B. Caruso, her executors, administrators or assigns;

one-twelfth to Giovanni Caruso, his executors, administrators or assigns; one-twelfth to Rodolfo Caruso, his executors, administrators or assigns; one-twelfth to Enrico Caruso, Jr., his executors, administrators or assigns, but that the Victor Talking Machine Company shall make no payments to any of them until further order of said Court of Chancery, but until such time shall deposit all payments in the Camden Safe Deposit & Trust Company, as depositary, to be distributed under order of this Court;

also from so much of said decree as appoints the Victor Talking Machine Company as trustee for each of said distributees, according to their rights and interests under said contract and said decree, *pro tanto,* and further provides that allowance of compensation to said trustee shall abide the further order of the Court;

all to the Court of Errors and Appeals in the last resort in all causes.

McDermott, Enright & Carpenter,
Solicitors for and of Counsel with
Complainant-Appellant.

I conceive that there is good ground for the above appeal.

John M. Enright,
Of Counsel with Complainant.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

54-620.
On Bill, &c.

PLEASE TAKE NOTICE that Dorothy P. B. Caruso, in so far as her interest as an individual is concerned, joins in the appeal filed in her behalf from the final decree made in the above entitled cause on the 4th day of January, 1929, by McDermott, Enright & Carpenter.

TREACY & TREACY,
Solicitors for Dorothy P. B. Caruso,
individually.

To:

MARTIN V. BERGEN,
Sol'r for Guardian *ad litem.*

LOUIS LE DUC,
Sol'r for Victor Talking Machine Co.

MCDERMOTT, ENRIGHT & CARPENTER,
Sol'rs for Dorothy P. B. Caruso.

Answer of Enrico Caruso, Jr., to Petition of Appeal of Dorothy P. B. Caruso.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between DOROTHY P. B. CARUSO, Complainant-Appellant, *and* RODOLFO CARUSO, *et als.*, Defendants-Respondents.	On Appeal from Chancery.

The answer of the respondent Enrico Caruso, Jr., to the petition of appeal of the appellant Dorothy P. B. Caruso.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 4th day of January, 1929, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent says that he has taken an appeal in the above entitled cause and has filed a petition of appeal, and he says that, except in so far as said decree is challenged by his said petition of appeal, and especially in so far as said decree, presupposing that it is correct as to the force and effect of the proceedings in the Courts of the Kingdom of Italy and of the contract of settlement made in

Italy, directs that the complainant Dorothy P. B. Caruso shall have no interest in the one-third of the proceeds of the contract between Enrico Caruso and the Victor Talking Machine Company, and that said one-third should be distributed as in said decree provided, is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

MERRITT LANE,
Solicitor for and of counsel with
Respondent Enrico Caruso, Jr.

Answer of Gloria Caruso, Defendant-Respondent, to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO,
Complainant-Appellant,

and

RODOLFO CARUSO, *et als.*,
Defendants-Respondents.

The answer of Gloria Caruso, by her guardian *ad litem,* Thomas Barber, the above named defendant-respondent, to the petition of appeal of Dorothy P. B. Caruso, the above named complainant-appellant:

Answer of Gloria Caruso to Petition of Appeal.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a final decree was on January 4, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes and therefore avers that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this respondent.

MARTIN V. BERGEN,
Solicitor for and of Counsel with Thomas Barber, Guardian *ad litem* of Gloria Caruso, Defendant-Respondent.

Answer of Victor Talking Machine Company, Defendant-Respondent, to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO,
Complainant-Appellant,

and

RODOLFO CARUSO, *et al.*,
Defendants-Respondents.

The answer of Victor Talking Machine Company, the above named defendant-respondent, to the petition of appeal of Dorothy P. B. Caruso, the above named complainant-appellant:

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto admits that a final decree was on January 4, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes and therefore avers that the said decree is agreeable to equity; and it prays that the same may be affirmed, with costs to be taxed in favor of this respondent.

LOUIS B. LE DUC,
Solicitor for and of Counsel with Victor Talking Machine Company, Defendant-Respondent.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

54-620.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

On Bill, Etc.

The defendant, Enrico Caruso, Jr., hereby appeals from so much of the final decree made in the above entitled matter by the Chancellor upon the 4th day of January, 1929, as

1. ORDER, ADJUDGES and DECREES that of the amount remaining in the hands of Dorothy P. B. Caruso, after the payment of the expenses of administration, two-thirds part thereof shall be paid to the infant Gloria Caruso, as in the decree thereafter ordered.

2. ORDERS, ADJUDGES and DECREES that a trust exists under the contract made between Enrico Caruso in his lifetime and the Victor Talking Machine Company bearing date of January 1, 1919, and that there should be paid directly by the said Victor Talking Machine Company two-thirds of the proceeds of said contract to Gloria Caruso and that no payment should be made to this defendant until further order of the Court and that

until such time the said Victor Talking Machine Company should deposit said payments in the Camden Safe Deposit & Trust Company, as depository, to be distributed under the order of the Court; and as appoints said Victor Talking Machine Company as trustee for each of the distributees.

3. ORDERS, ADJUDGES and DECREES that this defendant is entitled to but one-twelfth of the proceeds of said contract.

MERRITT LANE,
Solicitor for and of counsel with Defendant-Appellant Enrico Caruso, Jr.

I conceive that there is good ground for the above appeal.

MERRITT LANE,
Of Counsel with Defendant-Appellant Enrico Caruso, Jr.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between DOROTHY P. B. CARUSO, Complainant-Appellant, *and* ENRICO CARUSO, JR., Defendant-Appellant, *and* RODOLFO CARUSO, *et als.*, Defendants-Respondents.	On Appeal from Chancery. Sat Below, Walker, C.

To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Enrico Caruso, Jr., the defendant-appellant in the above entitled cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery of New Jersey by the Hon. Edwin Robert Walker, Chancellor, bearing date the 4th day of January, 1929, in a cause wherein the said Dorothy P. B. Caruso is complainant, and Rodolfo Caruso, and others, are defendants, in this respect, to wit: that said decree orders, adjudges and decrees:

1. That of the amount remaining in the hands of Dorothy P. B. Caruso after the payment of the expenses of administration, two-thirds part

thereof shall be paid to the infant Gloria Caruso, as in the decree thereafter ordered;

2. That a trust exists under the contract made between Enrico Caruso in his lifetime and the Victor Talking Machine Company bearing date of January 1, 1919, and that there should be paid directly to the said Victor Talking Machine Company two-thirds of the proceeds of said contract to Gloria Caruso and that no payment should be made to this defendant until further order of the Court and that until such time the said Victor Talking Machine Company should deposit said payments in the Camden Safe Deposit & Trust Company, as depository to be distributed under the order of the Court; and as appoints said Victor Talking Machine Company as trustee for each of the distributees;

3. That this defendant is entitled to but one-twelfth of the proceeds of said contract.

And your petitioner humbly appeals from said decree as aforesaid upon the ground that the same is erroneous in the particulars aforesaid because the said decree fails to recognize the decrees of the Italian Tribunal more particularly set forth in the proceedings below, as binding not only upon the adult parties thereto but also upon the infant Gloria Caruso; and also because the said decree fails to recognize the binding force and effect of the contract of settlement made in Italy, to which contract the infant Gloria Caruso was a party represented by guardian, and which contract was approved by the Court; and also because said decree orders distribution of the assets in the hands of the Ancillary Administratrix in New Jersey to Gloria Caruso, infant, as though the said Enrico died intestate, upon the ground that to dis-

tribute the estate and to settle the rights of the parties to the proceeds of the contract between Enrico Caruso and Victor Talking Machine Company in accordance with the Italian decrees and the contract of settlement would be, as to Gloria Caruso, contrary to the public policy of the State of New Jersey; and said decree is further erroneous in that it decrees that a trust exists under the aforesaid contract between Enrico Caruso and the said Victor Talking Machine Company and that out of all subsequent payments under said contract there should be paid by said Victor Talking Machine Company to the infant Gloria Caruso, two-thirds and only one-twelfth to Enrico Caruso, Jr.; and is further erroneous in that it provides that such payments should not be made until the further order of the Court but should be deposited as in said decree stated; and is further erroneous in that said decree appointed said Victor Talking Machine Company as trustee for each of said distributees thereunder:

Whereas, said decree should have ordered distribution of the monies in the hands of the Ancillary Administratrix in accordance with the decrees of the Italian Courts and of the contract of settlement and should have fixed the rights of the parties in the contract in accordance with such decrees and said contract, and should have adjudicated that this defendant was entitled to have that portion of the monies in the hands of the said Administrarix and that interest in the proceeds of the contract as provided for him by the Italian decrees and contract of settlement, and said decree should have recognized the interest of this defendant directly in said contract and the proceeds thereof and should have directed said Victor Talking Machine Company to pay the proportion

of the proceeds of said contract to which he is entitled directly to him and without the intervention of any trust.

Your petitioner, therefore, prays that such decree of the Chancellor may, in the particulars aforesaid, be reversed, set aside and for nothing holden, to the end that a decree may be made herein as hereinabove indicated, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

MERRITT LANE,
Solicitor for and of Counsel
with Defendant-Appellant
Enrico Caruso, Jr.

Answer of Gloria Caruso, Defendant-Respondent, to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO,
Complainant-Appellant,

and

ENRICO CARUSO, JR.,
Defendant-Appellant,

and

RODOLFO CARUSO, *et als.*,
Defendants-Respondents.

The answer of Gloria Caruso, by her Guardian *ad litem,* Thomas Barber, the above named de-

fendant-respondent, to the petition of appeal of Enrico Caruso, Jr., the above named defendant-appellant:

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a final decree was on January 4, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes and therefore avers that the said decree is agreeable to equity; and it prays that the same may be affirmed, with costs to be taxed in favor of this respondent.

Solicitor for and of Counsel with Thomas Barber, Guardian *ad litem* of Gloria Caruso, Defendant-Respondent.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

54-620.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO, *et als.*,
Defendants.

On Bill, &c.

The defendant, Gloria Caruso, by her guardian *ad litem,* Thomas Barber, hereby appeals from so much of the final decree made in the above entitled matter by the Chancellor upon the 4th day of January, 1929, as

1. Orders, adjudges and decrees that of the amount remaining in the hands of Dorothy P. B. Caruso, Ancillary Administratrix of Enrico Caruso, Deceased, after the payment of the expenses of administration, two-thirds part thereof shall be paid to the infant, Gloria Caruso, one-twelfth thereof to Dorothy P. B. Caruso, one-twelfth thereof to Giovanni Caruso, one-twelfth thereof to Rodolfo Caruso and one-twelfth thereof to Enrico Caruso, Jr.

2. Orders, adjudges and decrees that all subsequent payments to be made under the contract made between Enrico Caruso, in his lifetime, and

the Victor Talking Machine Company, bearing date January 1st, 1919, shall be paid as follows: two-thirds to Gloria Caruso, one-twelfth to Dorothy P. B. Caruso, her executors, administrators or assigns; one-twelfth to Giovanni Caruso, his executors, administrators or assigns; one-twelfth to Rodolfo Caruso, his executors, administrators or assigns and one-twelfth to Enrico Caruso, Jr., his executors, administrators or assigns.

3. Orders, adjudges and decrees that Gloria Caruso is entitled to but two-thirds of the proceeds of the said contract.

MARTIN V. BERGEN,
Solicitor for and of counsel
with Defendant-Appellant,
Gloria Caruso.

I conceive that there is good ground for the above appeal.

MARTIN V. BERGEN,
Of Counsel with Defendant-
Appellant, Gloria Caruso.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO,
Complainant-Respondent,
and
RODOLFO CARUSO, *et als.*,
Defendants-Respondents,
and
GLORIA CARUSO,
Defendant-Appellant.

On Appeal from Chancery.
Sat Below, Walker, C.

To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Gloria Caruso, by her Guardian *ad litem,* Thomas Barber, the defendant-appellant in the above entitled cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery of New Jersey by the Hon. Edwin Robert Walker, Chancellor, bearing date the 4th day of January, 1929, in a cause wherein the said Dorothy P. B. Caruso is complainant, and Rodolfo Caruso and others, are defendants, in this respect, to-wit: that said decree orders, adjudges and decrees:

1. That the amount remaining in the hands of Dorothy P. B. Caruso, Ancillary Administratrix of Enrico Caruso, Deceased, after payment of the expenses of administration, shall be distributed a

⅔ part thereof to Gloria Caruso and a 1/12th part thereof to each, Dorothy P. B. Caruso, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr., as in the decree ordered.

2. That subsequent payments to be made under the contract made between Enrico Caruso in his lifetime and the Victor Talking Machine Company bearing date January 1, 1919, shall be distributed a ⅔ part thereof to Gloria Caruso and a 1/12 part thereof to each, Dorothy P. B. Caruso, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr.

3. That this defendant, Gloria Caruso, is entitled to but a ⅔ part thereof.

And your petitioner appeals from said decree as aforesaid upon the ground that the same is erroneous in that it orders distribution of the assets in this State of the Estate of Enrico Caruso, Deceased, under the statutes of this State providing for the distribution of the estate of an intestate, under which statutes Gloria Caruso would receive a ⅔ part thereof; and upon the further ground that it did not order distribution of such assets, found in this State, under the law of Italy providing for the distribution of the estate of an intestate, under which Gloria Caruso would receive all thereof subject to the right of her mother, Dorothy P. B. Caruso, to receive, during her said mother's life, ¼ of the income therefrom; and on the further ground that it did not decree that the payments which have arisen and will in future arise from the said contract are principal, not income, and that Gloria Caruso therefore is entitled

to all of said payments less one-fourth of the incomes arising from their investments; and on the further ground that it accorded any effect whatsoever in New Jersey to the Neapolitan agreement and decrees; and on the further ground that it treated the said Naples decrees as adjudications of the estate of the decedent; and on the further ground that it refused to find that the said Tribunale Civile e Penale of Naples had no jurisdiction to render a decree binding in this State over the subject matter in controversy; and on the further ground that it refused to allow the issuance of commissions to establish the law and jurisprudence of decedent's domicile controlling the devolution of his estate and the facts and circumstances in issue.

Your petitioner, therefore, prays that such decree of the Chancellor may, in the particulars aforesaid be reversed, set aside and for nothing holden, to the end that a decree may be made herein as hereinabove indicated, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

MARTIN V. BERGEN,
Solicitor for and of counsel
with Defendant-Appellant,
Gloria Caruso.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

DOROTHY P. B. CARUSO,
Complainant,

and

RODOLFO CARUSO *et al.*,
Defendants.

Before

Hon. EDWIN ROBERT WALKER,
Chancellor.

Trenton, N. J., June 14, 1926.

Appearances:

JOHN M. ENRIGHT, Esq., Attorney for Dorothy P. B. Caruso; A. SELIGSBERG, Esq., and EDMUND WISE, Esq., of Counsel.

MARTIN V. BERGEN, Esq., Attorney for Gloria Caruso; MARCEL VITI, Esq., of Counsel.

LOUIS B. LE DUC, Esq., Attorney for Victor Talking Machine Company; JOHN DASHIELL MYERS, Esq., of Counsel.

Mr. Enright opened for Complainant.

Mr. Bergen opened for Guardian of Gloria Caruso.

Mr. Le Duc opened for Victor Talking Machine Company.

Mr. Enright: I offer a supplemental account of the complainant as ancillary administratrix in New Jersey showing receipts and disbursements subsequent to the date of the filing of the bill up to June, 1926.

Received and marked in evidence C-1.

Mr. Enright: I offer as one exhibit vouchers showing the payment as set forth both in the original bill and the supplemental account.

The Court: They will be received on this hearing. If there is any occasion to have a detailed account hereafter it will have to go before a Master. I cannot sit here and examine all these vouchers.

Mr. Enright: I think it is formal because the technical phase in this case is the accounting sought.

Received and marked in evidence as one exhibit, C-2.

Mr. Enright: I offer certified document entitled Certificate Releasing Estate Tax Lien, signed R. M. Estes, Deputy Commissioner, referring to the Deputy Commissioner of Internal Revenue.

Received and marked in evidence C-3.

Mr. Enright: It seems to me that that disposes of one of the Victor defenses.

I offer certified copy of the death certificate of Enrico Caruso in Italian, and also offer a translation of it for the convenience of the Court.

Received and marked in evidence C-4.

Mr. Bergen: I am compelled to object to this C-4. I object to the contents of it.

The Court: On what ground?

Mr. Bergen: On the ground that it avers that Caruso was a citizen of Naples. He was not.

The Court: This is only a link in the chain of evidence. The certificate states that. You aver

that is not true. You will have to disprove that, I presume. I shall admit it. It is not conclusive against you, of course.

Mr. Enright: I think I should prove formally that no debts have been proved in New Jersey, and the only way I know of doing that is to offer my own evidence as to the advertisement calling for the filing of proofs with us.

JOHN M. ENRIGHT, called as a witness for the complainant, being duly sworn, testifies as follows:

I have represented the complainant throughout the proceedings in New Jersey relative to the estate of Enrico Caruso, both in the Prerogative Court and in this suit, and have had personal charge of the handling of the matter in my office.

An order was taken limiting the time of creditors to prove their claims under oath in New Jersey, and requiring proof to be filed with ourselves, I mean with my firm as attorneys for the administratrix.

I also had charge of taking the order barring creditors.

No proofs of claim whatever were filed with us either within the time limited or any other time, nor as far as I have been able to ascertain on inquiry have any such claims been filed with anyone else. As far as I know there are no creditors.

The Court: No claims in this State against the estate of Caruso; no creditors. Any cross-examination?

Mr. Enright: The death certificate in Italian is marked C-4. This translation will bear the same number C-4 A.

The Court: Yes. You are offering the translation. What proof have we that that is a proper translation? If the other side do not object, it goes in.

Mr. Bergen: I should like the privilege of examining that paper.

Mr. Enright: I will make the formal proof and the proof as to translation.

The Court: You want to offer a translation of the Italian in English. I suppose Mr. Bergen cannot go over that in a minute or two. Ordinarily of course, the translation is made in open court by witnesses before the Court.

Mr. Bergen: I think we can agree on that.

Mr. Enright: I will withdraw that offer of translation for the present and put them all in Italian for the present.

I now offer in Italian certified copies of the following records which I may say have been translated. I believe copies of our translations were furnished to Mr. Bergen some time ago. Copy of decree of the Civil and Penal Tribunal of Naples, dated August 12th, 1921, appointing Amedeo Canessa Curator for Gloria Caruso.

Mr. Bergen: Are you going to offer all these together or just one after the other?

The Court: They had better be offered separately.

Mr. Bergen: Then I object to that unless the jurisdiction of this court over this matter is proven.

The Court: I shall admit it subject to proof of jurisdiction.

Mr. Le Duc: I make the same objection for the Victor Talking Machine Company.

The Court: That will be allowed.

Received and marked in evidence C-5.

Mr. Enright: Proceedings of the family council, approved by the Civil and Penal Tribunal of Naples with decree dated August 26th, 1921, appointing Tizzani Manlio guardian of Enrico Caruso, Jr.

The Court: You offer that?

Mr. Enright: Yes.

Mr. Bergen: I make the same objection as before.

Same ruling and exception.

Mr. Leduc: We reserve our rights.

The Court: I shall admit all these documents. They will be received subject to objection.

Mr. Myers: As to questions of form, exemplification, and so forth?

The Court: Yes.

Received and marked in evidence Exhibit C-6.

Mr. Enright: The next certified copy is the record of a so-called legal opinion of Alessandro Guarachino, dated September 5, 1921, which record shows that it was communicated to the judges of the First Section of the Naples Tribunal October, 1921, and attached to the petition for confirmation to that Court of October 12, 1921. This particular certified copy is from the archives of a Notary——

The Court: Who is Alessandro Guarachino?

Mr. Enright: He is a professor of law over there and in explaining this document the record shows that it was attached to the moving papers before the Tribunal when the matter of confirmation of this family settlement first came up, and among the papers submitted and before the Court was the opinion of this Italian lawyer.

The Court: How does that become of any consequence or validity here?

Mr. Enright: It is our position—perhaps I am anticipating somewhat the defense—that the issue

dealt with by a foreign court may be shown by what we would call—you may go outside the record of a foreign court and show what was actually before it when the decree was pronounced. This record shows that it was before the court as part of the petition, although not made up in the court record, and is referred to, I believe, in the decree of the court, not by the name of Guarachino.

The Court: The Court's opinion would be of some value here.

Mr. Enright: This elucidates the Court's opinion and shows the issue upon which the Court's opinion was based.

The Court: I shall admit it subject to objection.

Mr. Bergen: I object to the admission of opinions of Italian lawyers which were presented to the Court. It is practically a brief presented to the Court.

The Court: It seems to me it was an argument made to the Court. I very much doubt its validity here, but I will admit it subject to objection.

Mr. Seligsberg: It came about in this way: the Special Guardian for Gloria wanted advice, and this being a question of voluntary jurisdiction in such cases the courts in Italy always take advice from big experts. The Special Guardian submitted the whole matter to Guarachino, this professor of law, in order to get his idea of what the reasonable family settlement should be, and Guarachino recommended certain changes in the family settlement, as you will see, and this was attached to the petition, as they do in Italy in questions of voluntary jurisdiction, as it is called; and the Court absolutely followed the reasoning and the ideas of this law professor; and we simply put it in to illustrate further the argument of the

Court and the bona fides of the transactions over there.

The Court: It will be received subject to objection, to be argued out more fully on final hearing.

Received and marked in evidence Exhibit C-7.

Mr. Enright: I offer petition to and decree of the Civil and Penal Tribunal of Naples in the same matter, dated October 21st, 1921, registered October 22nd, 1921.

Mr. Bergen: I make the same objection.

Same ruling and exception.

Mr. Myers: Same objection for the Victor Company.

The Court: Received subject to objection.

Marked Exhibit C-8 in evidence.

Mr. Le Duc: We have not had the benefit of examining it. It seems to me that the formal requirements in these various exhibits may be of some importance, if they do not answer the requirements of our law. We must insist on full formal proof, and if it is not offered it may be that it should be threshed out at this time. It may be in perfectly good form but we have not seen it. I suggest that we be given a chance——

Mr. Seligsberg: All the documents are certified to by the Clerk of the Court, and his signature is certified to by the Presiding Judge of the Court, and his signature in Court is certified to by the American Consul.

Mr. Le Duc: It seems to me that there is one omission that is of considerable importance. The cases on certification of foreign records hold that the signature of the Presiding Judge of the Court in which the record is filed must be authenticated —either the judge of a presiding court—or better yet by a high officer of the government, preferably a secretary of state or a governor of a state, and

the Court's seal affixed to the record, and that seal attested in turn by the American Consul.

The Court: I doubt that. There was a case in this Court about ten years ago decided by Vice-Chancellor Backes, in which the records of some such body, in Hungary I think required far less certification than you suggest. Anyhow these documents are received subject to objection as to validity and if I should find that they were not formally executed I will give the other side an opportunity to supply the defects.

Mr. Le Duc: Is this the certification of the Clerk of the Court certifying that the copy is the entire record of the proceeding, or is it simply a certification of the acuracy of the proceeding?

Mr. Enright: It certifies to the accuracy of the particular document.

Mr. Le Duc: It does not certify that it is a full record filed in the Court. That seems to me a possible ground of objection.

The Court: It seems to me it is.

Mr. Bergen: I do not understand this putting in of the records in piecemeal.

The Court: My understanding is when you offer the record you have to offer the entire record.

Mr. Seligsberg: We have offered the entire record but such a thing as a judgment roll does not exist in Italy.

The Court: If this petition and the decree thereupon are the only papers in the Court, that is the entire record.

I won't embarrass either side on the matter of formal proof.

Mr. Enright: I next offer the petition to and decree of the Civil and Penal Tribunal at Naples approving the division of June 16th, 1922.

Received and marked in evidence C-9.

Discussion.

Mr. Enright: I offer petition to and order of the same court dated June 13th, 1924, giving the Bank of Naples certain powers with respect to the distribution of money. It is a part of the record but not relevant to the real contest in this case.

The Court: It will be received subject to objection.

Received and marked in evidence Exhibit C-10.

Mr. Enright: I offer the petition to and decree of the same court continuing the guardianship of the mother, Mrs. Caruso, upon her remarriage, dated December 28th, 1923.

The Court: Continuing her guardianship of her daughter Gloria. What was the name of the man she married?

Mr. Bergen: Ingram.

Mr. Seligsberg: She has been divorced since.

Received and marked in evidence Exhibit C-11.

Mr. Enright: I offer a certified copy of a legal opinion of Professor Grippo introduced before the same Court.

The Court: For what purpose was that offered before the Italian Court?

Mr. Enright: On an application made last summer to have the Court instruct the widow whether in view of questions which had been raised as to the status of these sons the settlement should still be carried out. So that on that application——

The Court: What was the decree?

Mr. Enright: Reaffirming——

Mr. Bergen: Was there a decree made in the court?

Mr. Seligsberg: Yes.

The Court: Was it based partially or wholly on that opinion?

Mr. Enright: It was one of the moving things before the Court.

Discussion.

The Court: I will admit it subject to objection; but I must say that I doubt very much its efficacy in this court.

Received and marked in evidence Exhibit C-12.

The Court: If there be an adjudication of the Italian Court on any phase of this case, and the Court had power to make it, and the parties were before it, and I have the adjudication here, and it has to be given effect, it makes no difference whose opinion it is based on.

Mr. Bergen: Can you tell me when the opinion of Grippo was filed?

Mr. Seligsberg: The petition to the Court shows that it was attached.

Mr. Enright: I next offer petition to and decree of the same Court dated August 21st, 1925, reaffirming the settlement.

The Court: What was the occasion for that reaffirmance?

Mr. Bergen: The Italian lawyers thought in view of the information they had from this side that questions had been raised as to whether or not the Court was fully informed as to the family situation at the time of passing its first decree, that the Court should be so informed, and then asked whether it still desired the decree carried out or not.

Received and marked Exhibit C-13 in evidence.

Mr. Enright: I offer the so-called Deed of Partition of the estate and the approval thereof by the Court dated the 16th of June, 1922.

Received and marked in evidence Exhibit C-14.

Mr. Enright: This record is a certified copy of the Deed of Partition with the attached decree of the Court approving it.

The Court: A Deed of Partition of the estate of Enrico Caruso, deceased. Who were the parties to that agreement?

Mr. Seligsberg: This is the same partition and order which we have already filed. The deed is signed by Dorothy Benjamin Caruso and Amedeo Canessa, the guardian for Gloria, the guardian for Enrico, Jr., Rodolfo Caruso, and then the witnesses and the notary.

Mr. Le Duc: I understand the document is not offered as a court record, but is offered as a deed between the parties.

Mr. Enright: The original is recorded or filed with the notary in Naples. This is the so-called San Severino partition.

The Court: How is it certified?

Mr. Seligsberg: The whole thing is certified together in one document, the deed, the petition on the deed, and the order approving the division under the deed. It is one record.

Mr. Le Duc: Is it offered as the act of the parties or the act of the Court?

The Court: It partakes of the nature of both, according to the statement made, the confirmation by the Court.

Mr. Le Duc: It seems to me that if this is offered as the act of the parties, a binding agreement or deed, that the proof should be different from the character of proof adduced for the other documents. I make the objection.

The Court: Do you think the subscribing witnesses should be called?

Mr. Le Duc: I think the signatures should be proven in due legal form.

The Court: I do not know anything about the recording laws of Italy.

Mr. Seligsberg: Everything is deposited with the notary, and the notary keeps it, and he issues an extract, which is really a certified copy of that, and that has the value of a Court record.

The Court: Notaries have very great powers in foreign countries.

Mr. Le Duc: I would suggest that it ought to be offered with formal proof.

The Court: It is offered and received subject to objection, and you will have an opportunity to object further.

Received and marked in evidence Exhibit C-14.

Mr. Enright: That completes our formal proof. It is our understanding that records when properly certified are prima facie evidence of their contents, and these are formally proved.

The Court: Do you purpose making any other proof?

Mr. Enright: I think that is our case.

Mr. Bergen: If the Court please I would ask that Mr. Enright make photostats of these papers and let Mr. Le Duc and myself have them.

The Court: You are entitled to have copies in some way. You are entitled to make the copies yourself if they will not furnish them.

Mr. Seligsberg: Mr. Bergen has been furnished with a copy of the Italian text of every document, and with a copy of the translation of every document, except that the certificates have not been furnished to him because I gave other recertifications to Mr. Bergen; but the text has been furnished to Mr. Bergen both in Italian and in English. They have not been furnished to the Victor Talking Machine Company because I did not think they were very much interested in it.

Mr. Bergen: The trouble is that I cannot examine these things except at the expenditure of a good deal of trouble and a good deal of time. The making of photostats is a very simple and easy thing.

Mr. Seligsberg: I have duplicates of those very papers, and you probably examined them.

Mr. Bergen: Very carefully.

The Court: Why now say that you want time to examine and want photostat copies made of them?

Mr. Bergen: The question of the presentation properly in the Court——

Mr. Enright: If Mr. Bergen will send back the copies, I will furnish those same copies as a compliance with what he wants.

Mr. Seligsberg: The only things that have not been furnished are the certificates.

The Court: Send in copies with the certificates.

Mr. Enright: Will you send back everything I have given you, and I will hand them back to you again?

The Court: They rest.

Mr. Bergen: If your Honor please, I have to repeat the motion which I made last, two weeks ago, that I will have to take testimony in Italy, in Buenos Aires, and in various other places. I have not been able to do that, or have not done it. I want leave to take testimony.

The Court: You want leave to take testimony in foreign countries?

Mr. Bergen: Yes, I have a right to prove my case in foreign countries.

The Court: You have a right to do that. The question is whether you should not have done it *pendente lite.*

Enrico Caruso died in 1921; this case was filed in 1923; it has been dormant for three years. During vacation testimony might be taken.

Mr. Enright: I do not want to foreclose getting the whole case before your Honor. I do think, however, that there should be some sort of limitation upon the proof, the time of proof, and the scope of proof.

Taking this testimony will be a very expensive proposition; and quite possibly if it roams over the wide field that Mr. Bergen has indicated in his opening it would be in our view a wholly unnecessary cost on the estate. He tenders certain issues of law, which he is in as good a position to prove now as he ever will be. He has Mr. Viti with him. As to his statement that he wants to take testimony in South America, I don't know what South America has got to do with it. What do you expect to prove in South America, Mr. Bergen?

Mr. Bergen: I expect to prove first the various things offered in my petition. I expect to prove the fact that the mother of these boys was Ada Giachetti Botti.

The Court: That will be admitted?

Mr. Seligsberg: No, your Honor.

Mr. Bergen: Then I have to prove it. I expect to prove that she was a married woman at the time of the conception of these two boys.

The Court: I understand that the formal proof to be put it by you is that these two boys were illegitimate.

Mr. Seligsberg: Yes.

The Court: How does it become material——

Mr. Bergen: If those two boys were born of a mother who was not married to another man Caruso could have recognized them.

The Court: But if they were born of a woman not married to Caruso, but not a married woman at all——

Mr. Bergen: They could be recognized.

The Court: But the children of the wife of another man could not be recognized as the children——

Mr. Seligsberg: That is the law of Italy.

The Court: You do not concede that this woman that bore the children was a married woman?

Mr. Enright: We say that is immaterial because under Italian law what they call a research of legitimacy is not open in this case; that adulterine origin can only be proved under Italian law in a limited class of cases which does not include this case. I have heard it said that this woman that he alleges to be the mother is now in South America; so I assume that he is going to ask her. There is an objection arising there as to whether the mother is competent under our law or under the Italian law to bastardize her own issue.

The Court: How not competent under our law?

Mr. Enright: She would have to testify to the non-access of her husband, I suppose.

Mr. Seligsberg: Neither the husband nor the wife can testify to the non-accessibility of the husband during coverture. The most sacred presumption of our law is the presumption of legitimacy, and you can only overcome that by the strongest evidence of non-access during coverture and that non-access cannot be proven either by husband or wife. That is the law.

The Court: I never tried a case in which the question was involved.

Mr. Enright: In addition to that, under the Italian Code——

The Court: You know the law is, if you take interrogatories under a commission in foreign countries, you have to submit the interrogatories to the Court for approval.

Mr. Enright: Mr. Bergen wants to take this testimony under open commission.

The Court: The Court does not have to grant that.

Mr. Enright: I assume he can serve notice that he is going to take depositions *de bene esse* of the person and in the place desired. In an issue as costly as this the question of its competency ought to be tried out; and it is our contention that these Italian decrees, the last of which you will see from the opinion of the Judge argues or considers in full the effect of the alleged adulterine origin of these children—that was one of the things mooted before the Court, and the Court gives its exposition of what the Italian law is, and holds, even if the statement Mr. Bergen now makes were true in fact, that these children were born of Caruso and a married woman, it would make no difference to their status to take as recognized children of Caruso, he having formally recognized them as his children, because a research is not permitted in a case such as this.

The Court: What is the reason a research is not permitted?

Mr. Seligsberg: Under the Italian law they have no divorce, so that they have many more bastards than we have. Either the father can recognize a bastard or the mother, or both, or neither of them. You can have a child described as "parents unknown" and the child has no relations in the world. But one of the principal laws of the country is that if either or both the parents was married a recognition cannot be had——

The Court: If either of the parents was married to some other person——

Mr. Seligsberg: Yes; an adulterine cannot be recognized by the married person, by either person. So that your Honor will understand the whole scheme of this I may say that if I was married and my wife had a child, and I claimed it to be adulterine I would have sixty days after the

birth of the child, after it had been recognized legally as my child, to come to the Court and say, "It is not my child." This was not done in this case. In this case Caruso recognized both of these children.

The Court: He recognized them for years.

Mr. Seligsberg: The legal recognition of these children was made at the time of birth. In one case Caruso described himself as father and "mother unknown". And in the other case he said that the mother was an unknown unmarried woman not related to him in the degrees of consanguinity, which prevents a marriage.

Now, the Courts have held unanimously, when such a recognition has taken place, it can only be attacked in two ways. If there be a judgment of any preceding court by which these children have been estopped as adulterines, then you can attack them. It is rather hard for us to understand this law. For instance, a case like this might come up: If a married woman was raped by an unmarried man, and the unmarried man had been afterwards convicted in a criminal proceeding of rape, and incidental to that criminal proceeding the judge had inquired into the paternity or the maternity of the child, then that criminal proceeding would show the adulterine origin of the child, and that judgment may always be introduced against the child.

The Court: We have no such law.

Mr. Seligsberg: No. In all the Continental jurisdictions the Penal and Civil jurisdiction is limited. They have not got this full separation of penal and civil jurisdiction that we have. The other case in which you can attack the adulterinity of a child is by written declaration, and there the courts are very divergent. Seventy-five per cent.

of the courts say that you cannot introduce a written declaration—that even a written declaration cannot be used to attack the adulterinity of the child. Twenty-five per cent. say that you can introduce a written declaration to show the child was adulterine, but in such a case the written declaration must be made at the time.

If I, as a bachelor, had left a last will and testament and said "I give $50,000 to my son John Smith, a son of Mrs. Eliza Smith", the written declaration would show on its face that that boy was adulterine, and the Court says in many cases, We won't recognize that.

Now, Mr. Bergen raised this issue about a year and a half ago; and we were much upset about it, because we did not understand the Italian law; and by and by I deciphered this law out of the Italian reports, and found the law to be as I had explained it to your Honor; and I think on the whole it is accepted by Mr. Bergen.

Mr. Bergen: Oh, no.

Mr. Seligsberg: There is no question but that is the Italian law. In fact, without wishing to prejudice Mr. Bergen, I say, just as an explanation, I had a detailed conference with Mr. Bergen, and he said, Mr. Seligsberg, if I do not get a written declaration, I won't take the depositions.

I went to Italy last summer, and I said to the Italian lawyers, I must prove to my own satisfaction that I am not proving a fraud upon Gloria, and to the Court's satisfaction what the Italian law is as to this adulterine, and I want an authoritative opinion, and we got Professor Grippo, who is in Italy what Charles E. Hughes is in the United States.

Professor Grippo is a man 79 years of age, a Senator, President of the Bar Association, a Cabi-

net Minister, a man of astounding learning. He gave me his opinion, and this opinion is in the record subject to final admission. I said, this opinion is very good, but we have to prove the Italian law as a matter of fact. If you can get me more than that I shall be very well satisfied. They said, "Could we get a decree of the Court?" I said, "If you can, so much the better".

This whole matter, which Mr. Bergen had raised, was submitted to the Court, and this whole question of law, which is now submitted to your Honor again, has been passed upon by the Court of Naples, in a very learned opinion. Although you will find that Professor Grippo's opinion is final, it is the Court's opinion. In fact, he said, "What is the use of going to the Court?" He thought his opinion was better. I wanted your Honor to understand this question of law.

Mr. Bergen: Mr. Seligsberg, may I ask you one question: We had the record in Naples searched after the date of that decree, and we could not find it. Was that decree passed in August?

Mr. Seligsberg: No; that decree is of record.

Mr. Enright: May I read to your Honor from that decree— a translation of it. This is a translation of one of the exhibits (reading) * * *

Recess until 2 P. M.

After Recess.

(After discussion.)

The Court: If she said they were her children there would be some presumption that they would be the children of her husband, of course. What would be the situation if she said they were her children?

Mr. Bergen: If she said they were her children they would be her children and out of this case.

The Court: And the children of her husband?

Mr. Bergen: And the children of her husband. The theory of the whole case is that these are Caruso's children; in other words, that is a conceded fact.

The Court: Do you concede that they were?

Mr. Bergen: That they were Caruso's children we do not attempt in any way to dispute.

The Court: They assert it, and you concede it.

Mr. Bergen: We concede it.

The Court: Nothing can be conceded for the infant.

Mr. Bergen: Under the sanction of the Court it can be, yes.

The Court: I have heard so much about this case and seen so much in the newspapers that I am prepared to concede, even on behalf of an infant here for whom I am the guardian and protector, that that is a fact.

Mr. Bergen: We have no proof, or have never heard anything, to the contrary.

The Court: What is the object of taking the testimony of this woman in South America?

Mr. Bergen: The object of taking the testimony is to prove who is the mother of these two boys.

The Court: What is the purpose back of that?

Mr. Bergen: The purpose back of that is to show they could not be recognized by Caruso, because Caruso was not the husband of this woman.

The Court: They were recognized in fact, but they cannot be in law.

Mr. Bergen: They cannot be in law; and it might be a question whether they were in fact under Italian law, when this thing was first pre-

sented to the notice of the Court. On that specific question I should like to read you that section. This is the first opinion of the Italian court in Naples.

The Court: You are reading from one of the exhibits offered by the other side?

(Mr. Bergen reads to the Court.)

Mr. Bergen: If he did not recognize these children by fact or law they are out of this case. If they were the sons of Botti and Mrs. Botti they are out of this case. We have no knowledge of Caruso's being the father. We want to prove that Mrs. Botti was the mother of these children.

The Court: Her name was Giachetti?

Mr. Viti: But they revert as widows to their maiden names.

The Court: Now I shall hear the other side on that. I shall hear anything you have to say against the right of Mr. Bergen to take this testimony.

Mr. Enright: I would like to read this statement of the general principle in Corpus Juris, citing cases—we understand it is the law—under the title of Judgments, Weight and Sufficiency (Reading. . . .).

As we view it, this record is conclusive unless it is impeached, as stated here, for lack of jurisdiction or for fraud, and the evidence which should be permitted in this case necessarily should be such evidence as is admissible to prove one or the other of those things. All that has been stated as to the parentage of these children, these sons, is irrelevant to the matter before your Honor, unless it tends to show fraud in the foreign judgment. When the matter first came before the court of Naples——

The Court: Unless it tends to show fraud in the adjudication, you mean?

Mr. Enright: Yes, sir; unless it tends to show that the decrees of the forign court, which we have offered here as disposing of the subject matter, were obtained by fraud; and I suppose that Mr. Bergen's argument is that there was such a suppression of material facts as amounted to a fraud upon the Court. He has picked out a sentence in the decree of 1921, which says "It is noted that the question of recognition is not contested." I think that is the language.

Mr. Bergen: "Not challenged by any of the parties hereto".

(After Argument.)

The Court: Mr. Bergen, I think I will grant your request to take testimony in South America.

Mr. Enright: Will your Honor limit the time for taking it?

The Court: Yes. . . .

If the other side want it I think I will limit this to a commission with Interrogatories attached.

Mr. Enright: Yes, sir.

The Court: You will have to take an order for a commission and frame Interrogatories and have them approved, and your cross-interrogatories will have to be approved.

Mr. Enright: Did your Honor fix the time?

Mr. Viti: It would be very difficult to stipulate the length of time in which they must be returned. We can issue them forthwith, but in regard to the execution of it we are at the mercy of the Consul General, and counsel in the case locally.

Mr. Bergen: We can be here tomorrow week with our interrogatories.

Mr. Enright: That is the 22nd; that means they will be served upon us before that.

The Court: Certainly * * * What else is open?

Mr. Bergen: We have both of us to take proof as to all this Italian law.

The Court: How are you going to prove that?

Mr. Bergen: By depositions in Italy.

The Court: How many witnesses do you want to examine there?

Mr. Bergen: I take it that these opinions which have been filed in this Italian court by these two gentlemen who have been spoken of—that is an attempt to have this kind of thing proven not under oath. I want proof——

The Court: These opinions are mentioned and referred to under decrees of the Italian court as having been the basis to some extent of adjudication, so I suppose they are received as a factor having some part in the adjudication; that is not to say that they will be ultimately regarded as controlling.

Mr. Enright: They were not offered upon that theory, but upon the theory that this question of adulterine origin was before the Court; and therefore that the opinions have a bearing upon the charge that there had been a fraudulent suppression of fact upon the court itself. That is the only theory upon which I offered them.

The Court: They are in the case, and I suppose they are admissible as part of the opinion of the court emanating from some Doctor of Laws.

Next Tuesday you are to submit your commission and interrogatories to South America, and the following Tuesday you can submit your Commission and Interrogatories for Italy. You are to

give those interrogatories to them at least five days before the return day.

Mr. Enright: May I ask whereabouts they intend to take the testimony in Italy?

Mr. Bergen: We have not settled that.

The Court: You should have known that. I cannot understand this delay.

Mr. Viti: This case extends all over the Peninsula. It has its ramifications in Florence, in Naples, in Bologna and in Milan. In addition to being a tenor of note, Mr. Caruso seems to have been a litigant by force of circumstances.

The Court: I do not see what that has to do with this case for an accounting of assets in New Jersey * * *

Mr. Viti: The proceedings are in four jurisdictions. The parties also resided in France, where there was further litigation involving these very questions * * *

The Court: The only question is as to the illegitimacy of these boys. Mr. Bergen says, "Yes, they are illegitimate and they should not have been recognized by Italian law." That is the sole and only point on that question. There is no use going to Bologna or Florence for testimony on that point.

Mr. Viti: We are going to prove that this woman was the mother of these boys.

Mr. Enright: If I might be permitted, sooner or later this Court has got to decide when this testimony comes in, whether it is admissible or not. Mr. Bergen has suggested that regardless of this Naples decree, even though it be allowed to stand, it has no bearing in this court at all; this court is going to investigate and apply the Italian law and make its own distribution. If that is the decree of this court that changes the whole theory of our case very much.

Discussion.

The theory on which we have been going is that the Court of the domicile, its decisions distributing the estate, are controlling here in the absence of fraud or lack of jurisdiction of that Court; that those were the issues to be tried. Upon those naked issues the scope of the testimony that we would expect to meet and rebut would be testimony that tended to show fraud in the Neopolitan decree.

If, on the other hand, the intention is to show that that Neapolitan decree is of no value, is to be thrown out of the window whether right or wrong, that this Court will now determine as a fact what was the family status of these litigants, and make its own distribution on what it conceives to be the Italian law, we have an entirely different and much more complex situation to deal with; but unless the Court does take that latter view I cannot see what can possibly be the effect of this testimony they say they are going to bring out in Italy, so long as the Italian Court in its decree has said that the testimony does not influence it to change its decree; that the family settlement was a proper settlement, and that it has decreed that the property should be divided accordingly—so long as that stands we either give effect to it here or disregard the thing altogether; and if we concede in principle that the Neapolitan decree is binding, if it was not fraudulently obtained, and then simply bring out facts, which for the sake of argument the Neapolitan Court concedes in its latest decree, but says are unworthy to cause it to change its previous opinion as a matter of law—if that is the situation, what are we going to do with this evidence after it gets back here?

It cannot possibly prove more than the Neapolitan Court for the sake of argument has conceded, and for the sake of this argument having proved at great expense what the Italian Court says it will concede, are you then going to say, upon the testimony of Mr. Viti or somebody else as to what the Italian law is, or what he thinks it ought to be, that this Neapolitan decree was wrong as a matter of law, when that Court has said that it is right and is the basis of this distribution of the estate?

The Court: What do you want me to do? Do you want me to decide that question first, and then if I hold that this Court does not have to give effect to that decree and is not concluded by it, go on and try the case along the lines suggested?

Would you prefer to argue and try out this question of *res adjudicata,* whether that record is conclusive on this Court?

Mr. Bergen: If they are going to concede the contents of my answer, I present certain theories of law——

The Court: They have either got to file a replication to your answer or move to strike it out.

Mr. Bergen: In other words, I have to back up the averments of my answer with Italian law on the subject.

The Court: You attack the law and they have to establish it. They can establish it by the testimony of a witness who knows the Italian law, or they can establish it by our own law, upon the theory that our own law holds that that conclusion is final and binding here.

Mr. Bergen: Every decision Mr. Enright has read, every sentence, always said enforceable, and enforceable if the Court had jurisdiction and there was no fraud.

The Court: Do you want an opportunity to try out the question of fraud?

Mr. Bergen: We ought to try out the question of fraud; and certainly the Court will not enforce the decree of another Court if there was fraud or that Court had no jurisdiction.

The Court: Certainly not. If both sides consent I shall hear argument on the question irrespective of fraud, solely and only as to whether this decree being a decree of an Italian Court is under our law *res adjudicata* and binding upon me here.

If you want to do that, I will hear that single question. I am willing to hear you on that sole question, to determine by our own law whether we will give effect to foreign decrees, such as this decree, as a preliminary; and then if I hold that that is not conclusive, the whole question is open, and both sides can take testimony to show what the Italian law is and what the facts are. That won't hurt anybody particularly.

Mr. Bergen: If this testimony has to be taken, I suppose the summer time is the best time to clean it up * * *

Mr. Seligsberg: Under the leading case of Hilton against Gio a foreign decree is presumptive evidence, and unless there is fraud or lack of jurisdiction it is presumptive evidence. It puts the burden upon Mr. Bergen to show there is no jurisdiction. We do not have the burden of proving that it has jurisdiction. Mr. Bergen must prove that we have not got jurisdiction.

The Court: If this foreign decree is *prima facie* evidence of jurisdiction in the foreign court you are concluded on that.

Mr. Bergen: If it is not *prima facie* evidence the burden of proof is on them.

The Court: You do not agree upon that at all. The question is whether I have to hold under the law of New Jersey on this preliminary hearing this adjudication is conclusive or not. Suppose I should hold that it is presumptively conclusive if not rebutted, then I suppose I would have to give you permission to rebut it. Is it worth while to do that? I doubt it. It is probably better to take the other tactic.

Come in next Tuesday on the commission to South America and the following Tuesday on the commission to Europe.

Adjourned to 10:30 A. M. June 22, 1926.

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Friday, the Fourth day of May, 1928, at ten-thirty, A. M. (Daylight Saving Time).

Before:

Hon. Edwin Robert Walker,
Chancellor.

Appearances:

Messrs. McDermott, Enright and Carpenter, by Mr. Enright (Alfred F. Seligsberg, Esquire, and Milton Winn, Esquire, of of counsel) solicitors for Complainant;

Martin V. Bergen, Esquire (Marcel Viti, Esquire, of counsel), solicitor for defendant Gloria Caruso;

Louis B. Le Duc, Esquire (John Dashiell Myers, Esquire, of counsel), solicitor for defendant Victor Talking Machine Company;

Discussion.

MERRITT LANE, Esquire (JOHN L. GRIGGS, Esquire, of counsel), solicitor for defendant Enrico Caruso, Jr.;

JOHN J. TREACY, Esquire (JAMES BARCLAY, Esquire, of counsel), for Dorothy P. B. Caruso, individually.

Mr. Bergen: I think it is encumbent upon me to make this statement: The infant, represented by her guardian, has voluminous and numerous defenses to this case. Her defense rests upon testimony to be taken in Italy and various other places. That testimony has not been taken, as yet. We come now to a final hearing before that. I take it that I cannot, on behalf of her, waive anything, even if I wanted to, and that those defenses must be put in before this Court.

The Court: You cannot waive anything on behalf of the infant, but there have been delays——

Mr. Bergen: I am practically certain that I can explain the delays on my part.

The Court: It has been decided that infants have no greater rights than adults, only the Court is their protector to a reasonable extent.

Mr. Bergen: The case then came before your Honor on a petition for maintenance, and your Honor filed an opinion in that case, and it was followed up by a decree, without any recitals in the decree, and in that opinion your Honor states that you have decided that distribution will be made, ignoring the Italian law, under New Jersey law; your opinion so states. Therefore, for me to ask that I should, or for me to go to Italy, with the frightful expense and delay of proving her case, after your Honor has stated what your Honor is going to do in this case—in other words, you have stated that distribution will be made under the New Jersey law——

The Court: Did I decide in the opinion that an adult party to the suit might not be bound by the Italian decree, even in this Court?

Mr. Bergen: No. Your Honor decided that so far as Gloria was concerned, at least, distribution would be made under the New Jersey statute of distribution, and that you would not recognize the Italian law of distribution. With that before me, I cannot put this estate to the expense of proving a case which your Honor has decided against me. Therefore, without waiving any rights on behalf of Gloria, I simply have no proof to offer. I cannot waive them, but why should I prove a case where your Honor has stated that, so far as Gloria is concerned, you will decide it under the New Jersey law, and ignore the Italian law? Therefore, without waiving anything on behalf of Gloria, her defense or anything of the kind, I have no proof to present at this time.

The Court: Very well.

Mr. Enright: When this was before your Honor at the session of June 14, 1926, we offered, and there was received, authenticated copies, in Italian, of various decrees and proceedings. It was stated that translations of those would be offered. I would like to put those translations in evidence. They have been translated, or the translation supervised by Mr. Seligsberg, and copies furnished to the other side.

The Court: Is there any objection to the putting in of those papers, Mr. Bergen?

Mr. Bergen: I think not, your Honor.

The Court: They will be received.

ALFRED F. SELIGSBERG, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

Direct examination by Mr. Enright:

Q. Mr. Seligsberg, where do you reside? A. 30 West Seventieth Street, New York City.

Q. You are a member of the bar of the State of New York? A. I am.

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

Q. Do you read it and speak it? A. Yes.

Q. Have you examined the Italian documents heretofore offered in this case, marked Exhibits C-4 to C-14, inclusive? A. I did.

Q. And have you either translated or supervised the translation of those documents? A. I may say that some of them I had primarily translated by someone else, and then I checked and corrected the entire translation, so I can say I made the translation of every document.

Q. Have you had the translations made by you or checked by you typewritten? A. Yes.

Q. Are these documents which I show you the translation, as verified by you—as made or verified by you? A. Those are the translations which I checked, and they are all true copies of the documents in evidence, as translated.

Q. Are they correct translations of the Italian originals? A. They are.

Mr. Enright: I offer those documents in evidence, and suggest that they be marked with the marking of the original exhibit, with an "a" after it.

The Court: There can be no objection to that. That may be done. You have no objection, Mr. Bergen?

Mr. Bergen: I have no objection.

Mr. Enright: I offer in evidence the translation of Exhibit C-4.

Said document is marked Exhibit C-4a.

Mr. Enright: I also offer in evidence the translation of Exhibit C-5.

Said paper is marked Exhibit C-5a.

Mr. Enright: And also translation of Exhibit C-6.

Said translation is marked Exhibit C-6a.

Mr. Enright: This is a translation of Exhibit C-7. I offer that.

Said translation is marked Exhibit C-7a.

Mr. Enright: I offer the translation of the next exhibit, C-8.

Said document is marked Exhibit C-8a.

Mr. Enright: I also offer in evidence the translation of Exhibit C-9.

Said translation is marked Exhibit C-9a.

Mr. Enright: And also the translation of Exhibit C-10.

Said paper is marked Exhibit C-10a.

Mr. Enright: I also offer in evidence the translation of Exhibit C-11.

Said document is marked Exhibit C-11a.

Mr. Enright: And this is the translation of Exhibit C-12. I offer that in evidence.

Said translation is marked Exhibit C-12a.

Mr. Enright: I offer in evidence the translation of Exhibit C-13.

Said translation is marked Exhibit C-13a.

Mr. Enright: And the last one is the translation of Exhibit C-14. I now offer that.

Said translation is marked Exhibit C-14a.

Mr. Enright: I offer in evidence an authenticated copy, authenticated before the

United States Consul at Naples, of a document in Italian, declaring the civil status of Enrico Caruso, deceased, together with the translation of that.

Mr. Bergen: I object to that until we know what this royal commissioner is.

Mr. Enright: I have some other evidence as to the function of that officer, which I will offer later.

The Court: I think I will admit it. I am inclined to think it is admissible.

Mr. Bergen: It would seem to me, your Honor, that the records are not admissible unless we know who the officer is.

The Court: I have admitted them. You may renew the objection on the argument. I will admit it for present purposes.

Said document of declaration of civil status, with its translation, are marked Exhibits C-15 and C-15a, respectively.

Mr. Bergen: I would like to question the witness, your Honr.

The Court: You may.

Cross-examination by Mr. Bergen:

Q. Those translations that you have put in, of "C-4" to "C-14", are the same as the copies you sent to me? A. Yes.

Q. They are exactly the same? A. Yes, they are.

FRANCESCO RAGNO, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Enright:

Q. Where do you live at the present time? A. 2720 Cruger Avenue, New York.

Q. Are you a native of the Kingdom of Italy? A. Yes, sir.

Q. When did you come to the United States? A. 1924.

Q. Before that time you had resided continuously in the Kingdom of Italy? A. Yes, sir, and colonies.

Q. What was your occupation there? A. Lately I was in the Italian Magistrature, and 1924 I asked to be put in pension; I was put in pension. I came into the United States.

Q. Before that time your occupation was that of a magistrate administering the Italian law? A. Yes, sir.

Q. Are you familiar with the Italian law? A. I think I am.

Q. Under what institute or constitution are the courts of Italy created?

Mr. Bergen: I object to this man testifying as to the Italian law. A man who is in a ministerial office is not a lawyer.

Mr. Enright: I wish to prove by him for the sake of the formal record the royal decree of 1862, as set forth in the publication they use.

By the Court:

Q. Are you a lawyer by profession? A. Yes, sir.

The Court: You didn't bring that out. I think you may be able to qualify him as an expert witness.

Mr. Enright: He was not a practicing lawyer over there. The business of judge is an occupation for which men are trained.

The Court: Perhaps you had better qualify him.

Q. How did you prepare yourself for your career as a magistrate or judge? A. Any judge must be a graduate as a lawyer and doctor in jurisprudence; then to enter the magistrature we have a national contest about all matters of law. Then, well, we have in the magistrature, if you wanted to be put, for instance, on public ministry, we have to win another contest, and I won this contest for Italian law; any judge, any magistrate, after three years in the magistrature, is a de jure advocate.

By the Court:

Q. When did you outstrip your competitors and become a magistrate? A. What?

Q. How long ago was it that you qualified for the magistrature? A. I entered the magistrature in 1913.

Q. Fifteen years ago? A. I left in 1924.

Q. What offices did you hold? A. Sometimes was a judge's relator, and for the last eight years I was a public minister.

Q. A public administrator? A. Yes; it is the same as the law for all matters that come before the Court.

The Court: I think the witness is qualified. If you desire to ask him any questions, Mr. Bergen, you may do so.

Cross-examination by Mr. Bergen:

Q. Are you a practicing attorney in the courts of Italy? A. I was in the magistrature, and after two years I got my degree; I won the contest. I entered the magistrature and until I left in 1924, I was always in the magistrature. I made the practice, making the judge the public administrator.

Q. Can you practice in the courts of Italy? A. A magistrate cannot practice as a lawyer; he is a judge.

Q. Can you plead a case in the courts of Italy today? A. What?

Q. Can you bring a suit in any court in Italy? A. No, because the third man brings a suit; we have to take our conclusion; the public minister takes his conclusion before the Court, and the Judge decides it. When I was a judge, I made my sentence, my judgment.

Q. Are you an advocate in Italy? A. Yes.

Q. You are an advocate? A. After three years in the ministerial work we are de jure advocates.

Q. Are you an advocate in Italy? A. No, I am in the United States.

Q. Were you when you were in Italy in 1924? A. In 1924 I was put on pension, in March, and in April I came to the United States.

Q. Before March were you an advocate? A. I was in the magistrature.

Q. Were you an advocate? A. I don't know what you mean.

Q. Were you an advocate or a lawyer in Italy before you accepted a pension and came to the United States? A. No, sir, because they can't be an advocate——

Mr. Bergen: This is objected to.

The Court: I will admit him; he studied law; this man has shown he is qualified to be a witness, and I will allow it.

Q. Where did you graduate? A. The University of Palermo, in Sicily.

Q. In the Department of Law? A. In the University.

Q. In what department? A. Palermo.

Q. In what department? A. Law.

Further direct examination by Mr. Enright:

Q. Mr. Ragno, what is the source of the authority of the courts of Italy; what is the source of power and authority and jurisdiction of the courts in Italy? Is there a constitution, or what? A. Well, the courts in Italy are instituted by Royal Decree after the regular laws, and the tribunals are constituted under the provisions of the judicial ordinance.

Q. At the time of the death of Caruso in 1921, what was the judicial ordinance constituting the courts? A. The judicial ordinance of 1865.

Q. I show you a volume printed in Italian, and ask you to say what that is and whether you identify anything in it as being the ordinance you refer to. A. All right. This is the law; this is the law. Sometimes this law was afterwards modified about something; for instance, the competence of pretors, was originally 250 lire. Then it was for another law it was raised to 500 lire and then to 5,000 lire.

Q. Has there been any change in the statement contained in that printed document respecting the power of the tribunals?

Mr. Bergen: May I ask what book this is?

Mr. Seligsberg: I searched for this de-

cree of 1865, the Royal Decree which promulgated the law which established the Italian courts, and I found yesterday in the Bar Association this old publication which has the laws of 1865, and this is a copy which I got from the Bar Association and borrowed for the purpose of bringing it here.

Mr. Bergen: This is not an official publication.

The Court: I will admit it subject to the objection. You may look the question up and argue it later. I have no doubt personally, that it is entirely authentic.

Mr. Bergen: What is this book?

Mr. Enright: The name of the book is "Cronaca Legislativa Supplemento Al Minotore Dei Tritrinali"——

The Court: Mr. Enright will send you a copy of the title page.

Q. Will you give us in English the title page of the volume you are referring to? A. "Legislative Chronicle and Supplements to the Minotore Tribunals Containing all the Laws and Regulations and Circulars and Disposition, Amended by the Various Powers of the State. Milan. Printed by Guseppe Redaelli."

Mr. Enright: There also appears on the title page, Association of the Bar of the City of New York.

Q. Calling your attention to page 384 and what follows, will you tell us what appears there? A. Yes. Official Record No. 2626 Decree.

Q. Is that the decree of the King? A. Yes.

Q. A copy of the decree of the King? A. Yes, sir; all decrees are printed that way.

Q. And it is under that decree of the King that the Courts in Italy are constituted? A. Yes, absolutely.

By the Court:

Q. Does it tell what the courts are there; is that stated in the volume. A. The Conciliatory.

Mr. Enright: I thought, having identified this, I would offer the particular sections and have those translated by Mr. Seligsberg.

The Court: All right; you may.

Mr. Enright: I offer in evidence from this volume in the Italian language the Royal Decree of 1865, and particularly call attention to Title 1, Chapter 1, Article 1, Article 2; Chapter 3, Article 41, Article 42; paragraph 1, paragraph 2 and paragraph 3. Title 3, Chapter 1, Article 129, Article 130; Chapter 2, Article 139; Article 140.

Said book is marked "Exhibit C 16."

Q. Have you a copy, in Italian, of the Italian Civil Code and Code of Civil Procedure? A. Yes.

Q. And Civil Code? A. Yes, sir, I have.

Q. Does that book correctly set forth in Italian the provisions of the codes in effect at the time of its date?

Mr. Bergen: How can this gentleman possibly answer such a question as that?

The Court: I think he can. What is your objection?

Mr. Bergen: We want to know what this book is.

The Court: You may cross-examine him on that, if you so desire.

Cross-examination by Mr. Bergen:

Q. What is the book? A. A book containing all the codes of Italy; we use these books, judges and advocates and everybody.

Q. Is that an official copy of the laws of Italy? A. Nobody uses an official copy, because there is only one official record of the laws in Italy; we use all these private books.

Further direct examination by Mr. Enright:

Q. Are copies of that edition used by the advocates and by the courts in Italy, as containing the code law of the Kingdom? A. Yes; everybody uses these. It might be printed by one editor or another editor, but——

The Court: As I understand it, under the Statutes of this State, certain books issued by certain foreign states and governments may, upon proof that they are such books, be offered in evidence. I think, that irrespective of that entirely, anybody who is an expert in the law of a state or country may take the stand and state that such a book contains the law of the land.

Mr. Bergen: We object, your Honor; there are official copies.

The Court: Yes; but if the law is published in a non-official book, I think an expert witness can say that that is the law. Do you object to this on the ground that the book is non-official?

Mr. Bergen: I object to the use of this book, and the book itself. If he can remember the law and swear that that is the law, I think your Honor is correct. If this

is an official book, I have no objection. But it is not, and there are official copies. They must have them.

Mr. Seligsberg: It does not exist.

The Court: The objection will be overruled and the book admitted.

Said book is marked "Exhibit C 17."

The Court: You will please furnish Mr. Bergen with a complete translation of the title page.

Mr. Enright: May I ask Mr. Seligsberg to read it?

The Court: Yes.

Mr. Seligsberg: "The Codes for Practice; the Codes of the Codes; the Civil Code; the Commercial Code; the Code of Civil Procedure; the Penal Code and the Code of Penal Procedure, with the Entire Most Recent Laws and of Most Frequent Consultation. Notes and Annotations, Co-Ordinate and Analytical Alphabet; General Index. Turin Typographical Union, Torinesi Editors, formerly Firm Bomba, 1925."

Q. I will ask you whether the following numbered sections, as printed in that book, were in force and were the law in August of 1921, and if they were, whether any changes have been made to the present time. These are the numbers I wish to direct your attention to: Code of Civil Procedure, Section 346? A. All right; I have the article here. This article was the law existing in 1921 in Italy—346 Civil Procedure.

Q. Code of Civil Procedure, Section 84? A. Yes, sir, the same.

Q. Code of Civil Procedure, Section 187? A. Yes, sir.

Q. Code of Civil Procedure——

By the Court:

Q. What does that mean? The question was asked simply "Code of Civil Procedure, Section" so and so, and the answer was "Yes". Do you mean the same answer applies; do you mean it is the same? A. It was existing in 1921, according to the law. It is the law of Italy, Civil Procedure Law of Italy.

Q. Also the Civil Code, Section 251? A. Yes, sir, the same answer.

Q. Section 252? A. All right.

Q. Section 253? A. Yes, sir.

Q. Section 296? A. Yes, sir, the same answer.

Q. Civil Code, Article 224, or Section 224? A. Yes, sir, the same answer.

Q. Section 228? A. Yes, sir.

Q. Section 230? A. Yes, sir.

Q. Section 231? A. Yes, sir.

Q. Section 1304? A. Yes, sir.

Q. Section 232? A. Yes, sir, 232?

Q. Yes. A. All right.

Q. Section 237? A. Yes, sir.

Q. Section 925? A. Yes, sir.

Mr. Enright: I offer in evidence the particular sections of the Italian Code as identified by this witness, bearing the numbers above stated.

By the Court:

Q. Are these articles, numbers or sections of the code you have mentioned, the law of Italy? A. Yes, sir.

Q. Were they in 1921? A. Yes, sir.

Q. And have been since? A. Yes, sir.

The Court: That will be received.

Q. Was there a law in Italy in 1921 requiring a public record of the deaths of persons in Italy? A. The Civil Code.

Q. In what place, under the law of Italy in effect at that time, was it required that the record of such deaths be kept?

Mr. Bergen: I object to the question.

The Court: On what ground?

Mr. Bergen: "In what place?" Let us have the law itself.

The Court: Very well; I will sustain that.

A. Well, it is 350 of the Civil Code.

By the Court:

Q. Section 250? A. Article 350.

Q. State what it says. A. This is—I don't know if I can translate very well.

The Court: Mr. Seligsberg can. Is there any objection?

Mr. Bergen: No objection.

Mr. Seligsberg: Section 350 of the Civil Code: "The certificates of birth, of marriage and of death must be made in the commune in which such facts occur."

Q. Now, is there any law that prescribes the particular office or place in the commune where the certificate shall be filed? A. Before the civil status officer.

Q. And are authenticated copies of such records so filed received in evidence in the courts of Italy? A. Absolutely.

Mr. Bergen: To the question before this last one he again gave the effect of the statute without reading the statute. I would like to have the statute read.

The Court: Do you refer to some other section than that which Mr. Seligsberg translated?

Mr. Bergen: Yes, it was another section.

The Court: All right; if there is another section Mr. Seligsberg will translate that.

Mr. Bergen: The section before the last; will you not be kind enough to read that?

By the Court:

Q. What is the number of it? A. 351, 352, Chapter 1st.

The Court: Will you kindly read this, Mr. Seligsberg?

Mr. Seligsberg: Section 351: "The certificates and declarations to be made before the officials of the civil status are received in presence of two witnesses chosen by the interested parties, which shall be of male sex and shall have attained 21 years and reside in the commune."

The Witness: 386.

Mr. Seligsberg: 386: "The certificate of death shall be written by the official of the civil status after the declaration of two witnesses who know about it."

352: "The certificates relative to the civil status must set forth the commune, the house, the year, the day, the hour, in which they have taken place; the name and the family name, and the character of the official before whom they are made; the

name, the family name, the age, the profession, the domicile or the residence of the persons therein indicated, in character, as declarants, and of the witnesses, and the documents presented by the parties. The official of the civil status will read these certificates and will mention therein the fulfillment of this formality."

353: "The acts shall be subscribed by the declarants and by witnesses and by the officer; if the declarants or the witnesses cannot write their names, cannot subscribe the certificates, that shall be mentioned in case of such impediment."

The Court: Well, it seems that the document has to be filed; I suppose that is to be inferred.

The Witness: Article 387.

Mr. Seligsberg: I will read first 356; "The registers of the civil status shall be kept in duplicate original."

387: "The certificates of death shall set forth the place, the day, the hour, of the death; the name, the family name, the age, the profession, the domicile or the residence of the deceased; the name, the family name, of the surviving spouse, if the deceased was married, or of the predeceased spouse if he or she were a widow or widower; the name, the family name, the age, the profession and the domicile of the declarants. The same act shall set forth besides, as far as they know, the name, the family name, the profession, the domicile of the father and the mother of the deceased, and the place of his birth."

The Court: The one you read before this one seems to indicate a filing and a depositary.

Mr. Bergen: I have no questions.

Cross-examination by Mr. Lane:

Q. I show you "Exhibit C-4", and ask you whether that document is a document which, in the courts of Italy, would be received in evidence under the practice in Italy? A. This is a regular certificate of death emanated by the commune of Naples.

Q. Would the court take that as evidence? A. This must be recognized by the courts in Italy as evidence.

Q. I show you "Exhibit C-15", and ask you whether that is a paper which would be received by the Courts and recognized by the Courts upon its production—the courts of Italy? A. This is a regular certificate emanating from the office of the civil status of Naples; this must be recognized as a public certificate by the courts of Italy.

Q. This book, which has been offered in evidence and marked "C-16", is that book, or copies of that book, books like it, used in the courts of Italy by the advocates and the judges? A. Yes, sir; practically we use these books to show the law existing in the Kingdom of Italy, before the courts.

Q. Is that book used in the courts of Italy as authenticated, "C-17"? A. Yes, we use these books to show the law existing in the Kingdom of Italy.

Q. I show you "Exhibit C-14", and ask you whether that paper, that document, is a document

which would be received in evidence in the courts of Italy upon its production? A. Yes, sir.

Mr. Bergen: Mr. Seligsberg says he has re-translated "C-14".

Mr. Seligsberg: It is the same thing, only I re-translated it; that has never been before the Court.

Mr. Bergen: In my affidavit in the maintenance case I presented a copy of "C-14" to your Honor, and your Honor quotes in your opinion from this deed, from that translation.

The Court: Is there any material difference?

Mr. Seligsberg: No.

Mr. Bergen: I imagine not; except your Honor quotes from it in your opinion, and it would seem to me to be a difficult thing to have two translations before the Court.

The Court: Not necessarily. I suppose it will be all right?

(Stenographer repeats the last question.)

A. This release must be recognized for evidence before the courts of Italy.

Q. I show you "Exhibit C-8", which is the decree of the Court of 1925, and ask you whether that document is a document which is recognized, or would be recognized, in the courts of Italy upon its mere production?

Mr. Bergen: That is itself a decree of the Court.

Q. Would that be recognized in any court of Italy, not only in the court in which it was made? A. This, must be recognized before the courts of Italy.

Q. Any court of Italy? A. Absolutely.

Q. Not only the court who made it? A. No, absolutely.

Q. I show you "Exhibit C-13", and ask you whether that is a document which would be recognized as evidence and recognized as binding in any court of Italy in which it was produced, by its own force?

Mr. Bergen: If the Court please, these questions are asked concerning these decrees; of course, a decree of the Court is a decree of the Court.

The Court: We haven't got a decree of the New Jersey courts; we have a decree of the Italian courts.

A. This document is a regular document that must be recognized as evidence by any court in the Kingdom of Italy.

Q. Under the law of Italy, if a child of a subject of Italy who has died in Italy, a resident of Italy, the child also being a resident of Italy, the mother before her marriage having been an American citizen, is that child while a minor, a subject of the Kingdom of Italy under the laws of Italy, or not?

Mr. Bergen: I object to that. I want to see the law itself.

The Court: I suppose there is something to that; I will permit it, however.

A. The child, a son of an Italian citizen, who has died an Italian citizen, is a citizen itself,—the child.

By the Court:

Q. Is that the same with reference to a daughter; you said a son. Is it so with reference to a daughter? A. If the daughter is a child of an Italian citizen, she is an Italian citizen.

Q. By virtue of the laws of Italy? A. Yes, sir. Here is the law, of June 13, 1912, No. 555 of Article 1st.

The Court: Let Mr. Seligsberg read it.

Mr. Seligsberg: The law of the 13th of June, 1912, on Italian citizenship. I read the first paragraph:

"1. Citizens by Birth. First, the child of a father citizen. Second, the son of a mother citizen, if the father is unknown and did not have the Italian citizenship, nor that of another state, where the child does not follow the citizenship of the foreign father according to the law of the state to which the latter belongs. Third, who is born in the realm if both genitors are either unknown or do not possess the Italian citizenship, nor that of another state where such child does not follow the citizenship of the foreign parent according to the law of the state to which the latter belongs."

The Court: I don't see that that applies.

Mr. Seligsberg: No, it does not.

Re-direct examination by Mr. Enright:

Q. Will you turn to your code again? A. Yes, sir.

Q. I will ask you whether Sections 71 and 82 of the Code of Civil Procedure were in effect in August, 1921, and are still in effect, the changes have to do with the pretors, do they not? A. All right. 82, all right; and 71, all right, too.

Q. Is that so? A. Yes, sir.

Mr. Enright: I offer those sections in evidence.

Re-cross-examination by Mr. Bergen:

Q. That book of yours to which you are referring, does it contain any memorandum which shows amendments to any of this Code since 1921? A. This book shows some modifications that happened until 1925.

Q. Does it show, specifically, whether these sections that you have referred to were in effect, as read or shown, in 1921, and that they have not been amended since, 1925? A. If I don't see any modification between 1921 and 1925, I can answer "Yes".

Q. But, does the book itself tell us whether amendments have been made to those sections? A. Yes, it refers to making modifications.

Q. Turn to an amendment of a section made since 1921. A. I don't understand that.

The Court: You are referring to any amendment?

Mr. Bergen: Yes, sir, any amendment.

A. See this article (indicating)? If in the notes I don't find any indication of any modification of the law, I can answer "Yes, the original law was existing in 1921."

Q. That book itself shows if amendments have been made between 1921 and 1925? A. No.

Q. Are you trusting to your own memory, or trusting to the statements given by the book itself? A. Well, we use these books; we trust all these books.

By the Court:

Q. Counsel simply wants to know if you are testifying entirely from memory, or from memory plus what you find in the book. A. The book confirms my memory and my knowledge. I remember that those articles are existing now like they were existing in 1921.

ALFRED F. SELIGSBERG, being re-called on behalf of the complainant, testified as follows:

Direct examination by Mr. Enright:

Q. Mr. Seligsberg, have you translated the Royal Decree, 2626, of December, 1865, as printed in "Exhibit C-16?" A. I have; at least the sections which you have propounded to the witness.

Q. And is this typewritten paper I hand you, a correct translation of the sections there indicated of the decree? A. Yes, sir.

Mr. Enright: If the Court please, since these papers exist in a rather fragmentary way, I would like to read them in evidence.

The Court: Probably it would be the best thing to do.

Mr. Seligsberg: "Royal Decree, No. 2626, of the 6th of December, 1865, Title 1, Chapter 1, Article 1: Justice in civil and penal matters is administered by conciliators, Pretors, Civil and penal tribunals, courts of appeal, courts of assize and the court of cassation."

Q. May conciliators be translated as arbitrators? A. Yes.

Q. Article 2?

The Court: Is this a continuance?

The Witness: Yes, sir.

The Court: Go on.

The Witness: "Article 2. Together with the court of civil and penal tribunal, is established an office of public ministry. The functions of the public ministry in relation to the pretors are exercised in the manner and in the cases determined by law.

"Chapter 3, Article 41: There is a civil and penal tribunal in each of the districts designated in the lists."

Q. Is there a list attached, and if so, will you translate what it says about any tribunal that is local to Naples? A. There is a list attached of the personnel of the civil and penal tribunal, under which list the name of the court of Naples appears.

Q. Article 42? A. "Article 42: To the civil and penal tribunals there belongs first, to judge any civil and commercial matters in first instance and in appeal of all the cases referred to them by the law. Second, to exercise the functions of the tribunal of commerce where such does not exist. Third, to judge any penal matter in first instance and in appeal of accused submitted to them by the law. Fourth, to exercise all other powers which, by the law, are assigned to them.

"Title 3, Chapter 1 of the Public Ministry, Article 129. The public minister is the representative of the executive power in connection with the judicial authority and is subjected to the direction of the minister of justice.

"Article 130: The function of the public minister with the Court of Cassation and with the

Court of Appeals is exercised by general procurators, and with the civil and penal tribunals, by procurators of the King.

"Chapter 2, Article 139: The public minister carries out the observance of the laws; prompt and regular administration of justice, conservation of rights of the state, of the moral bodies, and of the persons who have not full judicial capacity, using for such purpose in case of urgency all conservating provisions which may be necessary.

"Article 140: In civil matters the public ministry gives its advice and proceeds also by action in the cases respectively determined by law."

Q. Have you translated Section 346 of the Code of Civil Procedure? A. Yes.

Q. And if so, is this typewritten paper a correct translation? A. It is.

Q. Read it. A. "This is the Code of Civil Procedure, Section 346. The public minister functions in the cases indicated by the law, and all the cases which regard, first, the state; second, donations, and legacies made for the benefit of the poor; third, the status of persons and guardianships; fourth, matrimony and separation of spouses; fifth, minors interdicted, disabled, declared absent, and generally, all those which are represented or assisted by a guardian or administrator delegated by public authority; sixth, jurisdiction on account of matter of value and conflicts of jurisdiction; seventh, objections to the judge or to the officers of the public ministry or a civil action against them; eighth, those who are for public reasons beyond the realm and are not represented in the action. The public ministry can command the communication of acts in all matters in which it believes it necessary for the observance of the law and the judicial authority, on its own initiative may so order it."

Alfred F. Seligsberg, Recalled—Cross.

Q. Have you also translated, and have you produced your translations, of the following sections of the Code of Civil Procedure and the Civil Code, namely, the Code of Civil Procedure, Section 84; the Code of Civil Procedure, Section 187, Section 778; the Civil Code, Sections 251, 252, 253, 296, 301; Civil Code, Sections 224, 228, 230, 231, 1304, 477, 232, 237 and 925? A. In Section 84, the civil tribunal——

Q. I am asking you whether you have translated those sections of the codes? A. Yes.

Q. As identified by Mr. Ragno? A. Yes.

Q. And are the translations as typewritten, of those sheets before you, correct translations? A. They are.

Mr. Enright: I offer them in evidence.

Said papers are marked "Exhibit C-18".

Further cross-examination by Mr. Treacy:

Q. Can you translate Section 753? A. Section 753: "When a spouse dies leaving legitimate children surviving, the other spouse has in the estate the usufruct of hereditary portion equal to those of each child, the spouse being included in such number of children. If there are natural children and legitimate children, the usufruct of the spouse is of a portion equal to that which belongs to each legitimate child, such portion of the usufruct can never exceed one-quarter of the estate and can be established in the manner established by Article 819."

By the Court:

Q. How long has that been a law of Italy? A. Since 1865; there has been no amendment to that.

Q. That section which you have just translated,

as I heard it, was that illegitimate children share with legitimate children, share and share alike? A. No, the illegitimate child which is lawfully recognized takes half the share which it would have taken if it is legitimate.

Q. You didn't read it so. A. No; that is not in that section.

COMPLAINANT RESTS.

(Mr. Lane asks leave to put in further evidence if he should see fit, and Mr. Bergen asks the same thing. There is no objection.)

Adjournment taken to June 8, 1928, at the same place.

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Saturday, the second day of June, 1928, at ten-thirty o'clock, A. M. (Daylight Saving Time),

Before:

Hon. EDWIN ROBERT WALKER,
Chancellor.

Appearances, as heretofore noted.

Mr. Bergen: If your Honor pleases, I offer in evidence the birth certificate of Gloria Caruso.

The Court: Where was it made?

Mr. Bergen: In New York.

Mr. Lane: May I ask the purpose of the offer?

Mr. Bergen: To show that Gloria Caruso is an American citizen.

Mr. Lane: I object to it on the ground that it is irrelevent and immaterial for that purpose.

The Court: I will admit it.

Said birth certificate is marked Exhibit GC-1.

Mr. Bergen: Then, I offer the marriage certificate of Enrico Caruso and Dorothy Park Benjamin.

Said marriage certificate is marked Exhibit GC-2.

Mr. Bergen: I offer in evidence a photostatic copy of the will of Enrico Caruso, as proven in Naples.

The Court: Is it in the pleadings?

Mr. Bergen: Yes, sir.

The Court: Well, I will admit it.

Said photostatic copy of will, is marked Exhibit GC-3.

Mr. Bergen: The next exhibit which I desire to offer is a book that in some way —I don't know how—I failed to bring up here today. It has been submitted to Mr. Seligsberg, and he has had it and gone over it and knows what it is. I would like to offer that, although I haven't it here actually to be marked.

The Court: What does it show?

Mr. Bergen: It is a record of the proceedings which occurred between Enrico Caruso and a lady named Ada Grachetti Botti, which occurred in Milan, in Italy, in which, among other charges, Madame Botti made the charge under oath, that she was the mother of Enrico Caruso and Rodolfo Caruso, the two natural sons of Caruso, who are defendants in this case, and charged

him in criminal proceedings, with criminally having falsified his return of their birth certificate, in which he stated they were born of an unknown mother.

The Court: Was Caruso present in Court?

Mr. Bergen: Caruso was present in Court, and was tried for this charge. It is the record of the trial.

Mr. Enright: We object to it on the ground that if this book were here and properly authenticated, which it is not, the record would be incompetent and immaterial to any issue involved in this case. It is offered to show the adulterine origin of the children. There is already in the record of this case a certified copy of the proceedings of the Naples Court in connection with this very Caruso Estate, which holds that the Milan record is inadmissible and incompetent under the Italian law, to prove the adulterine origin of the children.

The Court: As I understand, these children are stated in the proceedings to be illegitimate children. What more do you want?

Mr. Lane: I join in the objection of Mr. Enright. And I object on the further ground that any charges which may have been made in the Milan Court in the proceedings referred to here, are of no binding force and effect as evidence either here or under the law of Italy. And on the further ground that Gloria Caruso is concluded by the decree.

The Court: The children are not the children of any lawful wife of Enrico Caruso. You admit that?

Mr. Lane: Yes, sir.

The Court: You might show the judgment of the Court, if you had that judgment, properly authenticated. I cannot admit, over objection, a record that is not in Court. Besides, I do not think it is essential.

These children are alleged to have been born of a married woman, married at the time, and whose husband was not Caruso. You admit that, do you not?

Mr. Lane: That is not admitted. I don't stand on the fact that the book is not here.

The Court: Do you object because the book is not here, Mr. Enright?

Mr. Enright: No, I don't wish to be technical. I think you ought to see the size of the book the Court is to be burdened with.

The Court: I will admit it tentatively for identification, and deal with it afterwards.

Said book is designated Exhibit GC-4, tentatively for identification.

Mr. Bergen: I offer in evidence the complaint which was made by Giachetti in the court in that proceeding, and which does not appear in the record.

The Court: In that proceeding in Italy?

Mr. Bergen: Yes, sir.

Mr. Enright: I make the same objection.

Mr. Lane: I object to it on the same grounds.

The Court: It will be admitted.

Said complaint is marked Exhibit GC-5.

Mr. Bergen: I offer in evidence a petition made by Ada Giachetti to the Civil Court of Milan, in which she asks that cer-

tain sums of a fund which had been put in trust for her by Caruso, remainder to be to these two boys, should be made part of it to her; I believe it is that the income should be advanced to her for a certain purpose; in which she states that she is the mother of these two boys. And I will put in evidence the following that, the decree of the Court.

Mr. Enright: I make the same objection to all this.

Mr. Lane: I join in the objection.

The Court: I will admit that.

Said petition and decree are marked Exhibits GC-6 and GC-7, respectively.

Mr. Bergen: If your Honor pleases, I have five or six certificates here, which were sent to me. They are the formal certificates of various officers, declaring the civil status of Caruso; they are not authenticated by our American consul. They were sent to me in that form. I didn't deem it wise to return them to Italy, because these papers will have to go to Italy later, and a lot of time would be lost, and there would be confusion. I desire to offer these in evidence, subject to their being authenticated. I want to offer them so they might be put in our interrogatories which we will have to send.

Mr. Lane: A great many of the exhibits offered by us through the course of this trial—I think all of them—have been objected to because they were not properly authenticated. My suggestion is that all objections with respect to admission of these papers upon the ground that they are not properly authenticated, be withdrawn,

subject to the right of counsel to object with respect to the specific papers.

(Each solicitor agreed to the above stipulation.)

Mr. Bergen: I offer a certificate of the Milan office, and ask that it be marked GC-10.

Said certificate is marked Exhibit GC-10.

Mr. Bergen: I offer in evidence a certificate by the office of Sesto Fiorantino.

Said certificate is marked Exhibit GC-11.

Mr. Bergen: I offer another certificate by the same office.

Said certificate is marked Exhibit GC-12.

Mr. Bergen: And another certificate by the same office.

Said certificate is marked Exhibit GC-13.

Mr. Bergen: I offer another certificate by the same office.

Said certificate is marked Exhibit GC-14.

Mr. Bergen: And I offer another certificate by the same office.

Said certificate is marked Exhibit GC-15,

Mr. Bergen: And another certificate by the same office.

Said certificate is marked Exhibit GC-16.

Mr. Bergen: I ask you to produce the decree of July 10, 1926.

(Mr. Seligsberg produces paper).

Mr. Bergen: I offer in evidence the decree of the Naples Court rendered in this matter on July 10, 1926, and ask that it be marked GC-20.

Said decree is marked Exhibit GC-20.

Mr. Bergen: I offer in evidence the decree of the same court, dated September 8, 1926 in the proceedings in that court.

Said decree is marked Exhibit GC-21.

Mr. Bergen: I offer in evidence the contract made between the Victor Talking Machine Company and Enrico Caruso, dated January 1, 1919. Formal proof is waived by counsel.

Said contract is marked Exhibit GC-22.

Mr. Bergen: May I now call Mr. Seligsberg, your Honor?

The Court: Yes, you may.

ALFRED F. SELIGSBERG, being recalled, testified as follows:

Direct examination by Mr. Bergen:

Q. Mr. Seligsberg, did you know the deceased, Enrico Caruso? A. Yes.

Q. How long did you know him? A. Since the year 1907, I believe.

Q. Were you on terms of intimacy with him? A. Yes, sir.

Q. You also represented him, as I understand? A. I did.

Q. Were you present in Italy at the time of his death? A. No.

Q. Do you know how long he was in Naples before he died? A. Well, it is only hearsay whatever I know.

Q. How long was it? A. He left for Naples, and then went out to Serento at a small hotel there, and two or three days before his death I think he returned to Naples.

Q. Why did he return there, do you know? A. To consult a doctor, because in Serento he couldn't have the proper medical treatment.

By the Court:

Q. That is hearsay? A. Yes, sir.

Q. Did you visit him in New York? A. Yes, sir, surely.

Q. Where did he live in New York? A. He lived for years at the Hotel Knickerbocker, and then in the Hotel Vanderbilt, the last year or two of his American appearances.

Q. You stated that you met him first in 1907? A. Yes.

Q. Was he living at New York at that time? A. He was in New York for his operatic season.

Q. He was in business in New York? A. He was singing here, yes, sir.

Q. How long each year was he in New York? A. Roughly speaking, from November to April or May.

Q. Of each year? A. Yes, sir.

Q. At least from 1907? A. Yes, sir.

Q. Was that true in 1919, the year Gloria was born? A. In 1919 he went to Italy in 1919, yes, as usual.

Q. Was he ever married before he married Mrs. Benjamin, do you know? A. Not that I know of.

Q. Did he have any legitimate children other than Gloria, that you know of? A. Not that I know of.

Q. Do you know the banks he used in Italy? A. No.

Q. Do you know who his business man in Italy was? A. He had some lands near Florence, and in connection with that he had an administrator; I don't know whether he was a Notary or not. He was called Vecchettini.

Q. What do you mean by administrator? A. We would call it an agent.

Q. Did you ever visit him in Italy? A. Yes, I was once for two days in Florence, and he was just stopping at his villa at Signa. I went out in the afternoon to have tea with him.

Q. What year was that? A. 1914.

Q. Was that where he lived in Italy? A. I don't think he spent ever more than a month of the year at that place.

Q. Where did he spend the rest of the time in Italy, do you know? A. He had two or three places, and he would travel around; he was a man of rather nomadic habits; he never stayed long in any one place.

Q. Where were the other places? A. One was near Florence, and another place out in the country near Tuscany; he had some real estate there.

Q. They were all in the same district or Province of Florence? A. I don't know. I think it is in the Tuscany area.

Q. Where did he keep his collection of jewels and other collections he had? A. Most of them he kept in New York and in the gallery of Canassa; others he kept in his rooms in the hotel in New York; and others he kept in Signa.

Q. That is the place you spoke of at which you visited him? A. Yes.

Q. That was near Florence? A. That was near Florence, yes, sir.

Q. Where did he have his home and his home articles, the articles which constituted his home in Italy? A. That I am not familiar with, because——

Q. Do you recall when Mrs. Caruso came back to New York after Mr. Caruso's death? A. It was in October, 1921; no, it must have been November, 1921.

Q. And did she live steadily in New York after that? A. Mrs. Caruso has traveled so much and

she has so often changed her residence, that I would hate to say where she had a residence at one particular time. I have, for instance, in the City of New York, for various years, made a tax report for her, and other years I made only a partial report for her; and other years I made no report at all. I couldn't tell.

Q. You can't tell? A. No. You speak of the first winter she came back?

Q. Yes. A. She took a furnished house around January, I should say, around 1922, in which she lived until about May, 1922; it was in East 54th Street.

Q. And did she have one each year after that, a rented apartment in New York? A. No.

Q. Or a home of some kind in New York? A. No.

Q. What year did she not have one? A. I am going to preface my testimony by saying that it must not be taken strictly——

The Court: I cannot permit a witness to make an observation of that kind. Strike it out.

A. As far as I remember, she had a home in East 72nd Street from in the fall of 1922 until somewhere in the spring of 1923. In 1923 she went abroad and stayed abroad in Italy, and lived in Italy, and she came back in the fall of 1923, with her second husband, Mr. Ingram, only to stay for a few months. She changed her mind back in the spring of 1923, and took an apartment on Park Avenue, in which she lived in the following year. During the year 1925 she went again abroad and stayed, if I remember right, for a year and a half abroad; and in the fall of 1926—no, in the winter of 1926, late in December, she returned and lived

in a hotel at the corner of Madison Avenue and 69th Street; then again in the following season she lived at an apartment in Park Avenue.

Q. Did her daughter Gloria live with her during all these periods of time at these various places? A. She did.

Q. Gloria lived with her? A. Yes, sir.

Q. Do you know where Caruso was in June and July, 1921; he died August 2, 1921? A. In and around Naples.

Q. Was he not in and around Serento? A. Well, that is around Naples; that is just an hour's automobile ride from Naples; those are the surroundings of Naples.

Q. Oh, it is part of the City of Naples, is it? A. No, I shouldn't say so, although I am not sure.

Q. Then you mean in June and July he was in Serento? A. Part of the time and part of the time in Naples.

Q. And where did he live? A. That I don't know; I am not familiar with that.

Q. Do you know where these doctors were that he was going to and consulting when he came back to Naples from Serento? A. I think they had telegraphed to a very famous doctor in Rome to come on to Naples and operate.

The Court: What is the object of this testimony?

Mr. Bergen: The purpose is, that a court in Naples has taken jurisdiction over this case, and that court cannot take jurisdiction over it unless Caruso was domiciled in Naples?

The Court: You want to prove his domicile elsewhere by hearsay testimony?

Mr. Bergen: I am trying to prove he was two days in Naples before he died, and was in Naples before that time.

The Court: Well, the other side has not objected, and I will not prevent you from putting it in.

Q. Have you with you a copy of the complaint which was filed by you as attorney for Mrs. Caruso in the case of *Ingram* v. *Bowers*? A. Yes, sir (producing it).

Q. You brought a suit on behalf of Mrs. Caruso against Bowers, the District Collector of the Internal Revenue of the Second District of New York, did you not? A. Well, I am counsel in the suit; I am not attorney of record—yes.

Q. You have a copy of the complaint in that cause here, have you not? A. I think I handed it to you.

Mr. Bergen: I offer in evidence that complaint.

Mr. Enright: I object to it as immaterial and irrelevant.

Mr. Bergen: And I want to call particular attention to a part of it.

Q. Did Mrs. Caruso swear to this? A. I can't tell.

The Court: Does it purport to be sworn to by her?

Mr. Bergen: Yes, sir.

Q. That was sworn to by Mrs. Caruso, was it not? A. The copy seems to indicate it.

Mr. Lane: I object to it on the ground that so far as her residence is concerned, it is immaterial; and so far as Caruso's domicile is concerned, her statement does not prove anything.

The Court: I will receive it.

Said complaint is marked "Exhibit GC-23".

Q. Have you a copy of the return made for the Caruso estate by Mrs. Caruso as administratrix? A. Yes, sir, I have a return, but that was made by me, I believe, as Caruso was not in America at the time.

By the Court:

Q. A return made by whom to whom? A. A Federal estate tax return of the Caruso estate, made in the name of Mrs. Caruso, but verified by me, I believe.

Mr. Bergen: I offer that in evidence.

Mr. Lane: The same objection.

The Court: It will be admitted subject to the objection.

Said Federal estate tax return is marked "Exhibit GC-24".

Q. Can you tell me the name of Mr. Ingram whom she married? A. Yes, sir, his name is Ernest Ingram.

Q. No middle letter? A. Not that I know of.

Q. Do you know the date of her marriage to Ingram? A. It was in the fall of 1923, I think October.

Q. The Italian decree was in December, 1923. Was that made before that marriage? A. I don't know, that I don't remember. No, the family council, I think, was made before the marriage, and I think the decree afterwards; I am not sure.

Q. Is she divorced from Mr. Ingram? A. Yes.

Q. Do you know when that occurred? A. She was divorced in Paris in the fall of '25, I believe.

Q. What year? A. The fall of 1924.
Q. 1924? A. Yes, sir.

Mr. Lane: No questions.

Mr. Enright: No questions.

Mr. Bergen: If your Honor pleases, I want to take some testimony in Italy.

Mr. Seligsberg: That is objected to.

The Court: I will not order any further commission to take testimony in this case. I make that ruling.

Mr. Seligsberg: I wish to put in a certified Italian copy of this very marriage certificate which Caruso deposited in the Italian Consulate of New York, and which were filed by the Italian authorities in Naples, which shows that Mrs. Caruso——

The Court: That is a record showing the certificate of the marriage of Mr. Caruso in Naples?

Mr. Seligsberg: It is authenticated in the proper way by the American Consul.

The Court: You mean that in Italy there was filed a certificate of his marriage in New York?

Mr. Seligsberg: Yes, sir.

The Court: I will admit it.

Said certified copy of marriage certificate is marked "Exhibit C 19".

Mr. Seligsberg: I now offer in evidence the certificate of the City of Naples of the Archives of the Civil Status showing registration of the birth certificate of Gloria Caruso; that is also properly authenticated. I will furnish the opposing side with proper copies afterwards.

The Court: It will be admitted.

Said certificate of registration of the birth of Gloria Caruso is marked "Exhibit C 20".

Mr. Bergen: If your Honor pleases, these are some proofs which I have been unable to get this far. One is of the application of Mrs. Caruso for naturalization, and proof of a record in New York where she swore in the Estate Tax Department of the State of New York—where she swore to the residence of Caruso. I would like to put those in evidence.

The Court: When do you propose to do it? It seems to me you have had time to get records from New York before this.

Mr. Bergen: When I can get them, and I also have the interrogatories of Giachetti, which are out; they have been taken, but are not here.

Mr. Enright: That is objected to.

Mr. Lane: I object, and I am ready to argue the case.

The Court: I will hear argument.

CASE CLOSED.

Exhibit C-1.

Supplemental Account of Administratrix from October 17, 1923, to June 10, 1926:

Shows balance in hands of Administratrix June 10, 1926, $546,895.68.

Exhibit C-2.

Administratrix's vouchers supporting Administratrix's Account.

Exhibit C-3.

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE
Form 792

CERTIFICATE RELEASING ESTATE TAX LIEN
Washington, D. C., , 19 .

MT-ET-NR-6758-JFH
Date of death—August 2, 1921.

Estate of Enrico Caruso, 2nd District, New York.

By direction of the Commissioner of Internal Revenue, and in accordance with section 409 of the Revenue Act of 1918, I do hereby certify that the following-described property formed a part of the gross estate of the above-named decedent, subject to the Federal estate tax:

Contract with Victor Talking Machine Company for royalties on Victor records.

And I do further certify that the estate tax with respect to this property has been fully discharged or duly provided for, wherefore and by reason whereof I do hereby issue this certificate releasing the lien of the United States on the aforesaid property, as provided by law.

R. M. ESTES.
R. M. ESTES,
Deputy Commissioner.

ACB

Exhibit C-4a.

CITY OF NAPLES

CIVIL STATUS

The extract of the Register of the death certificate of the year 1921 of the quarter S. Ferdinando. No. 329.

Enrico Caruso.

In the year 1921 this 24th day of August at 2.45 P. M. in the Communal House,

Before me, Attorney Duca Leonardo Tixon Di Vidaurris, Vice Mayor, assistant, and by delegation of the 6th of May of the current year, officer of the Civil Status of the Commune of Naples, S. Ferdinando, appeared Antonio Fedele, 40 years of age, employee, domiciled at Naples and Car. Enrico de Martino, 38 years, employee, domiciled in Naples, who declared that at 8:30 A. M. of today in the house situated in Via Partenope at number Hotel Vesuvio there died the Comm. Enrico Caruso, 48 years of age, lyric artist, residing in Naples, born in Naples, S. Carlo all Arcua, son of the late Marcellino domiciled in and of the late Anna Baldini domiciled in , husband of Dorothy Benjamin.

At this act were present as witnesses Pasquale Canetti, 32 years of age, employee, and Vincenza Placella, 40 years of age, employee, both residing in this Commune. This act read to all those who intervened and subscribed with me—Antonio Fedele, Enrico de Martino, Canetti Pasquale, Vincenza Placella, Leonardo Tixon.

The present copy conforms to the original.

Annotated in the Registery No. 268.

Naples 24 October, 1921.

The Officer of the Civil Status
Signature Illegible.

Exhibit C-4a.

Compared

Signature Illegible.

The Archivista

Signature Illegible.

Seen for legalization of the signature of

. Signature illegible.

25th of October, 1921.

The President of the Civil and Penal Tribunal
Pennasilico

Seen for legalization of the signature of Mr. Pennasilico, President of the Tribunal of Naples, which was signed by delegation of his Excellency, the Minister of Grace and Justice. Naples, October 25, 1921, The First President of the Court of Appeal—Rossi, Chancellor of the Court—Lucadanni.

Seen for legalization of the Comm. Rossi, President of the Court of Appeals of Naples, October, 25, 1921, by delegation of his Excellency, the Minister of the Foreign Affairs. The general procurator of the King. Granata—Tarantino.

Form No. 88a.

UNITED STATES CONSULATE

Naples, Italy, Oct. 25, 1921.

I, C. M. P. Cross, Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the King's Attony Genrl of Naples, Kingdom of Italy, on the paper

Exhibit C-4a.

hereunto annexed are true and genuine and as such entitled to full faith and credit.

In Witness Whereof: I have hereunto set my hand and affixed the seal of the Consulate at Naples, Italy, the day and year next above written.

C. M. P. Cross
Consul of the United States of America
Naples, Italy

[seal]

[stamp]

Exhibit C-5a.

Extract from its original in the Chancery of the Tribunal in Naples.

To the Hon. President and Judges of the Tribunal of Naples:

The undersigned, Dorothy Benjamin, widow of comm. Enrico Caruso, represented by the undersigned attorneys-at-law, wishing to proceed to the speedy settlement of the estate of her deceased husband, Enrico Caruso, before greedy desires may spring up and cause lengthy and costly litigations, requests Your Honors to appoint a special guardian pursuant to paragraph 224 of the Civil Code, in order to assist her own minor child Gloria only for those acts in which conflicting interests with her and her daughter may arise.

Naples, August 10th, 1921.

Signed: Dorothy Benjamin,
widow of Enrico Caruso.

Exhibit C-5a.

The above written is the true signature of Signora Dorothy Benjamin, widow of Enrico Caruso.

Signed: Vincenzo Sanseverino,
Notary Public.

Signed:
Gabriele Consolazio, Attorney-at-law.
Giovanni Porzio, Attorney-at-law.

Today, August 12th, 1921.—To be communicated to the District Attorney, and Judge Capozzi is delegated.

Signed: Raja, President.

The District Attorney observes: Whereas, the request in this petition is legal and its approval is of evident necessity, concludes for the acceptance of the petition. Naples, August 11th, 1921.

The Tribunal:

Read the above written petition and the conclusions of the District Attorney. Whereas, it is the purpose to appoint a special guardian for Gloria Caruso only for those acts in which conflicting interests with her mother's may arise. Whereas, this special guardian may be Mr. Amedeo Canessa, son of the deceased Girolamo, residing at Piazza dei Martiri, who was attached in intimate friendship with the father of the minor and enjoyed his trust. Read paragraph 224 of the Civil Code:

For These Reasons:

Appoints as special guardian to the minor Gloria Caruso, Mr. Amedeo Canessa, son of the deceased Girolamo, residing at Piazza dei Martiri, in order to assist her only in those acts in

which conflicting interests with her mother's may arise.

So it was decided today August 12th, 1921, in the Chamber of Council by the members of the College: Chev. Michele Raja, President; Chev. Domenico Candia and Chev. Carmine Capozzi, Judges, and signed today, August 12th, 1921, together with the Chancellor. The President: signed: Raja. The Chancellor: signed: Fedele. Seal.

Receipt n. 432 of August 16th, 1921. Paid Lire 11,60. The Registrar: signed: Dell'Aquila.

This is a true and genuine copy of its original released at the request of Gabriele Consolazio, Attorney-at-Law. Naples, November 24th, 1925, The First Chancellor: signed: G. R. Luiso.—Seen. —The signature of Chancellor G. R. Luiso is true and genuine. The President of the Civil and Penal Tribunal signed: Caseri—seal.

Kingdom of Italy—Province and City of Naples —Consulate General of the U. S. of America— S. S. Naples, November 24th, 1925. I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit. In Witness Whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written. Signed: W. W. Schott, Vice-Consul of the U. S. of America, Naples, Italy. Note fee $2.00. Seal.

Exhibit C-6a.

District Court of San Ferdinando

Naples

Act of the Family Council:

To day, the sixth of the month of August, 1921, in Naples.

Following the petition sent to this District Court in which it was informed that on August 2nd, 1921, at the Hotel Vesuve in Naples, Enrico Caruso died, leaving a son in his minority.

For the purpose of forming the Tutelage Council for the minor, named Enrico Caruso, born in Florence on Sept. 8th, 1904, son of the deceased Enrico and of unknown mother, natural, recognized child, resident in New York.

Before the Illustrious chev. Ferdinando di Lorenzo, District Judge, assisted by the Chancellor undersigned, here appeared at our request:

1. Caruso Giovanni, son of the deceased Marcellino, aged 45, born in Naples and residing at Vomero via Mattia Preti n. 4.—Uncle on father side.

2. Caruso Rodolfo, son of the deceased Enrico, aged 23, born in Milan and residing in Sesto Fiorentino, Brother.

3. Tizzani Manlio, son of the deceased Vincenzo, aged 44, born in Naples and residing at Parco Margherita 33, business man. Intimate friend.

4. Canessa Amedeo, son of the deceased Girolamo, aged 47, born in Naples and residing at Piazza dei Martiri, business man. Intimate friend.

Exhibit C-6a.

5. Scognamillo Enrico Mario, son of the deceased Gabriele, aged 50, born in Naples and residing at present at Hotel Excelsior. Business man. Intimate friend.

6. Dr. Niola Raffaele, son of the deceased Federico, aged 65, born in Naples and residing at Ventaglieri 20. Friend.

The minor, who is over 16 years old, is absent and is residing at present in New York, U. S. of America.

The Tutelage Council declares itself legally constituted as above because the interested parts are present as designated by paragraph 252 of the Civil Code. The District Judge is President. The Judge informs the members of the Council that the aim of this meeting is to appoint a guardian and a vice-guardian for this Council.

The Council unanimously—the vote of the President included and those of the interested parts excluded—appoints as guardian Mr. Tizzani Manlio and as vice-guardian Dr. Niola Raffaele. They both accept the appointment.

Then the Council, in view of the known honesty, probity and solvency of the above named guardian, unanimously—the Judge's vote included—exempts the same guardian from giving a Bond—as requested by the Law—and advises him to follow the instructions as in sections 6 and 7 of Book I, title 9, of paragraph 237, *et seq.*, of the Civil Code.

And we the Judge declare the Tutelage Council thus constituted, and explain that it was mutually understood by all members to exclude as guardian and vice-guardian the uncle and the brother of the minor, not for lack of confidence and esteem, but because some questions may arise on the settle-

ment and division of the estate of the father of the minor causing conflict of interests between the minor, the uncle and the brother.

This act is read and signed:

Signed: Giovanni Caruso—Rodolfo Caruso—dott. cav. Raffaele Niola—Amedeo Canessa—Manlio Tizzani—Enrico M. Scognamillo. The Pretor, signed: F. di Brenzo. The Chancellor, signed: V. de Santis.

Approved by the Tribunal of Naples with decree dated August 26th, 1921. The Chancellor, signed: V. de Santis.

This is a true copy of the original and it is released at the request of Gabriele Consolazio, Attorney-at-Law.

Naples, November 20th, 1925. Signed: De Mattia, First Chancellor.

Seen: The signature of Chancellor de Mattia is true and genuine. The President of the Civil and Penal Tribunal, signed: R. Caseri. Seal.

Kingdom of Italy—Province and City of Naples. Consulate General of the United States of America, ss.:

Naples, Italy, Nov. 24th, 1925. I, William W. Schott, Vice Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed, are true and genuine and as such entitled to full faith and credit. In Witness Whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written. Signed: W. W. Schott, Vice Consul of the United States of America, Naples, Italy. Seal. —Note Fee: N. 11946. $2.00.—

Exhibit C-7a.

Copy deposited. In the name of His Majesty, Victor Emanuel III, by the grace of God and Will of the Nation, King of Italy.

1925, 30th of March, Naples, in the office Via S. Giacomo 19.

Before us Comm. Enrico Talamo, certified Royal Notary, inscribed at the Notarial College of Naples, here residing with the office Via S. Giacomo 19, without intervention of witnesses, the party in question having dispensed with such witnesses with our consent.

There personally appeared Mr. Amedeo Canessa, son of the late Girolomo, in good health, born and domiciled in Naples, Via A Manzoni, his own villa, known to us, the notary, personally. Such Amedeo Canessa requested us to deposit in our acts an opinion of the late attorney, the Hon. Alessandro Guarracino, Deputy of the Parliament, requested in the interest of the minor Gloria Caruso, before proceeding to the division of the inheritance of Comm. Enrico Caruso.

We, the notary, in compliance with such demand, have drawn up these presents to which there is attached such opinion in order to give a copy thereof with all the force of the law. These presents are subscribed by the petitioner and by us, the notary, and consists of one leaf, the two pages of which are written by a person of our confidence, and we have read the same to the party in question, who has fully approved. Signed Amedeo Canessa—Notary, Enrico Talamo.

Legal Opinion

On behalf of the legitimate daughter of Enrico Caruso and her interests as against the heirs nominated by his Will:

Exhibit C-7a.

I read the will of the illustrious and lamented artist Enrico Caruso, dated January 4th, 1919, and executed in duplicate, one called by him "original" and kept first in the safe box at the Hudson Saving Deposit Co., Street and Broadway, New York City, and afterwards withdrawn and found in his suitcase; and the other called by him "copy" and entrusted to Dr. Giuseppe Vecchiettini on August 9th, 1919, in Florence. Both copies fully alike to another, after his death, occurring at Naples on August 2nd, 1921, were opened and deposited in the presence of the Pretore of Section San Ferdinando as per deed of Notary Public Lucio Guaglianone, dated August 8th, 1921.

I recite the text of the two testaments as follows:

"Today, fourth of January, 1919, here in New York, United States of North America, I, the undersigned, Enrico Caruso, son of the deceased Marcellino and the deceased Anna Baldini, mentally and physically sane, annul with this act any will previously made, and appoint with this act from today on, as my universal heirs, my two sons, Rodolfo and Enrico, and my brother Giovanni. To my wife, Dorothy, nee Benjamin, the part that the Italian law allows her. My universal heirs will keep adequately until her death my step-mother Maria Castaldi."

Whereas, on the basis of information furnished me and not contested: On the date of the will, January 4th, 1919, Mrs. Dorothy was not pregnant, and that on August 9th, 1919, when the second copy of the will was entrusted by Comm. Caruso to Dr. Giuseppe Vecchiettini, in Florence, the wife was pregnant 5 or 6 months, and later gave birth to a daughter, his only legitimate child.

Exhibit C-7a.

Whereas, there has arisen a discussion, at the opening of the succession, in regard to the rights as heirs OF THE TWO SONS, Rodolfo and Enrico, and of the brother, Giovanni Caruso, of the widow and of the only legitimate child—not mentioned in the testament—in order to avoid lengthy, annoying and serious litigations for a presumed or legal revocation of the will and other possible controversies, with the aid of authoritative persons an agreement has been reached by which there would be given to the legitimate child one-half of the estate, and the other half would be divided in four equal parts for the two sons, Rodolfo and Enrico, the brother of the testator, Giovanni, and the widow.

And, whereas, before asking the authorization of the Tribunal, making such an agreement definite, the special guardian of the only legitimate child has asked my opinion on the economic and judicial advisability of such division of the estate as it affects the interests of the minor represented by him.

In compliance with this commission I observe as follows:

The planned agreement is, in my opinion, advisable for the minor under the triple aspect: moral, economical and judicial, with modifications however, suggested below.

The cardinal question is to see in what condition the minor would find herself if she tried to obtain a revocation by right of the will left by her father according to paragraph 888 of the civil code with the mass of encumbrances and expenses of the estate located both in America and in Italy; and what would be the minor's condition under the terms of the intended agreement, giving her half of the estate ILLICO ET IMMEDIATA,

with no litigations, no controversies, no obstacles.

I state at the outset—considering the intense love that Caruso notably had for his two natural sons, whom HE HIMSELF spontaneously recognized, without revealing the identity of the mother, whom I, under the actual conditions, must regard as SIMPLY NATURAL SONS—considering his love for his brother Giovanni, so great as to equalize him in his will with his sons—considering respect for his wishes without dragging his memory before the Tribunals of Italy and America when there is assured to the legitimate child an estate of several millions, quadruple to that of those named as beneficiaries in her father's will, it is a moral duty which imposes itself over any economic or judicial consideration aiming to insure only greater wealth:

But as we have the case of a minor and of a guardian who represents her in the conflicting interests with the other interested parties, it is not only the moral side that should be considered, and therefore I am going to examine the entire matter as I stated above:

Legally, between the case in which the testament were to be revoked and that in which it were to be maintained there would be this difference of results: in the first case the inheritance would be divided *ab intestato:* in the second the legitimate daughter would have only the right to have the generosity reduced in order to save her reserve (half of the estate). Now what would be the amount of the surplus she could get in case of legitimate succession, as compared with the other case? In the succession *ab intestato* the brother of the deceased, Giovanni, would not be included because excluded by the legitimate child (paragraph 736 and following of the civil code) and even by his natural sons themselves (paragraph 747).

Exhibit C-7a.

Then the legitimate child would share with the two natural sons and the widow.

The natural sons would have the right to one-half of the share that they would get if they were legitimate (Par. 744). If they were legitimate they would get ⅓ of the inheritance each; the half corresponds to 1/6 each, that is to say ⅓ for the two together. The other ⅔ would go to the legitimate daughter. To the widow would go a share of the *usufruct* equal to that of each LEGITIMATE child and not in excess of ¼, computing the number of the children also the widow. (Par. 752).

Therefore, there being two natural sons, a legitimate daughter and the widow, the computation is made as follows: if there were four legitimate children, each would have ¼ of the usufruct, but the natural ones are entitled to the one-half, that is to say ⅛ each and ¼ for both of them. The other three-quarters of the usufruct would to: ¼ to the widow (who cannot exceed this limit) and 2/4 to the legitimate child. Therefore, reducing the estate in twenty-fourths (the common denominator) we would have definitely the following shares:

a) In fee

to both Rodolfo and Enrico together	8/24
to the legitimate child	16/24

b) In usufruct

to both Rodolfo and Enrico together	6/24
to the widow	6/24
to the legitimate child	12/24

If the testament were not to be revoked, on the other hand, the legitimate child would be entitled to the reserve share, that is to say the net, in fee and usufruct of 12/24. The difference to the

daughter, therefore, between the two cases would be this: that in the legitimate succession she would get the same share of usufruct as in the second case and 4/24 surplus in absolute fee. Which signifies that the economical interest for asking a legal revocation of the will would be reduced to 1/6 of the property in fee to be consolidated with the usufruct at the death of the usufructuary mother, who, by the way, is very young.

This difference, in my opinion, is not such as to justify a legal right against the natural brothers and the uncle Giovanni, and much less against her own mother. The former would fight *totis viribus* in order not to lose in part (the natural sons) or in the whole (the uncle) the benefits of the testament, and would maintain the non-revocability of the same because of the existence of the natural sons at the date of the will and because of the knowledge by Mr. Caruso of the pregnancy of his wife when, on August 9th, 1919, he entrusted to Mr. Giuseppe Vecchiettini the second copy of the will.

I am of the opinion that against this thesis the minor could defend herself for reasons which I believe founded on the text and on the spirit of the law and which it is superfluous to set forth here; but who can guarantee the result of a law-suit, especially when morality would be on the side of the beneficiaries of the testament? And in regard to Mrs. Benjamin would it be proper for the daughter to fight against her mother for the purpose of reducing the latter's rights to ¼ of the usufruct instead of ⅛ in fee. Evidently not, because the usufruct is consumed during the lifetime and the fee remains, and therefore the daughter can positively hope that she will get at her

mother's death—all or part of her property. Consequently the assignment to the mother of 1/8 in fee is rather an element in favor of the agreement.

I will not stop to examine an eventual action against the natural sons to have them declared unrecognizable and therefore incapable of receiving more than mere support because I started with the presupposition that their status as being MERE natural sons cannot be shaken.

At any rate aside from the obvious repulsiveness of such an action and aside from the admissibility or not of this action, AGAINST THE SONS (not in THEIR FAVOR) in consequence of the diversity of opinion which exists in the doctrine and in the jurisprudence, it is always necessary to bear in mind, in the case at bar, that even if we could speak of the adulterine status of the sons, on their mother's side, while she is legally unknown—there does not exist either a civil or penal judgment or a marriage declared null, which could constitute the proof of such character; and therefore it would be necessary that the maternity resulted from a written declaration by the parents—according to paragraphs 193 n. 3 of the Civil Code, declarations which, it seems, do not exist.

And then? The action clearly repulsive would be also impossible of success and one never should advise such action, to the minor, who besides, on account of the intransigibility of the act of state, never would be prejudiced by the agreement.

But I must foresee an objection—

Since in every event, the legitimate minor would be entitled to half of the estate of the father in full fee and absolutely undiminished by title of reserve, the proposed agreement, not insuring her any more than such a half amounts to a renunciation of all possible actions to which she may be entitled, without any special advantage.

Exhibit C-7a.

To eliminate such an objection and to better the agreement in the interest of the minor, I propose, to give her the following advantages:

1. To include in her half the buildings and the villa in Tuscany as representing the part destined to be kept and to remain in the family's tradition—this as a moral homage to the legitimacy.

2. To include in this share some COMPLETE art collection which remaining united and not divided, instead, among several heirs, would have a greater value than single objects and not to consider such large value in the balance of appraisal as if taking them as separate objects as you would in dividing them among various heirs.

3. To give to the daughter EXTRA QUOTA some very important and historically interesting object, as for instance the silver bust of Mr. Caruso or the grammophone with the golden disc.

4. To see that Mrs. Benjamin—who besides her share as an heir will enjoy the legal usufruct on the half belonging to the daughter as mother executing the parent's power—puts aside every year a part of the vast net income and deposits it in a bank at compound interest, making of it an insurance at a set date in favor of her daughter, so that the minor on becoming of age—would find accumulated a large capital which will amount, surely to several millions, and in this way she will be largely compensated, for any increase of share she is not actually getting under terms of the proposed agreement.

In this way the agreement would remain firm on its basis and the minor, at the same time, would noticeably profit morally and economically.

Naples, September 5th, 1921.

Signed: Alessandro Guarracino.

Exhibit C-7a.

Attached to the petition for confirmation of the 12th day of October, 1921, by the attorneys G. Consolazio and G. Porzio in the interest of the heirs of Caruso and communicated to the Judges of the First Section of the Tribunal—Naples, October 12, 1921, Chancellor signed Fedele—Seal of the Court.

The present copy conforms to the original signed as per law and published.

Registered Naples in the office of the Public Acts the 3rd of April, 1925; No. 10699, Fol. 324. Fol. 174, Lire $13.10, Naples, November 19, 1925.

Notary Talamo.

Kingdom of Italy
Province and City of Naples } ss.:
Consulate General of the
United States of America

November 24th, 1925, Naples, Italy.

I, William W. Schott, Vice Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the Chancellor Delegate of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In Witness Whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

W. W. Schott
William W. Schott
Vice-Consul of the United States of America
Naples, Italy

[SEAL]

[STAMP]

Exhibit C-8a.

Copy from the original filed in the Clerk's office of the Civil and Penal Tribunal of the City of Naples.

B. 6539

To the Honorable President and Associate Justices of the Tribunal of Naples:

On the 2nd day of August of the present year, in the City of Naples, at the Hotel Vesuve, Enrico Caruso, still in the prime of life and at the climax of his career died.

In a suit case of the deceased was found together with other papers and valuable articles, a sealed envelope on which the following was written, "MY LAST WISHES". In said envelope was found the following testamentary disposition clearly written by and with a firm hand by the deceased:

"This 4th, day of January, 1919, herein New York, United States of North America, I the undersigned Enrico Caruso, son of Marcellino Caruso and Anna Baldini, being of sound mind and body, do by this instrument annul any and all wills heretofore made by me, and do hereby appoint hereafter as my only heirs, my two sons Rodolfo and Enrico, and my brother Giovanni. My wife Dorothy nee' Benjamin, shall receive such distributive share in my estate as the Italian laws allow her. My sole heirs shall fittingly provide for and take care of my step-mother Maria Castaldi, until her death."

The aforesaid envelope had been kept in a bank vault, and Comm. Caruso as if by a mysterious presentment had withdrawn it from the vault and had placed it in his suit case when he understood

what was to be his last voyage to Sorrento in the hope that his native climate might effect his early recovery from his painful convalescence.

In Florence, there is also in the possession of Doctor Vecchiettini, the decedent's personal representative in charge of his property, another envelope which had been given to him by Comm. Caruso in the place of another one given years ago and which was on this occasion withdrawn.

The instrument containing the testamentary disposition found in the suit case, is dated January 4th, 1919; that is to say, before the birth of little Gloria. The other one was given to Dr. Vecchiettini on August the 9th, 1919, as indicated by Comm. Caruso's own handwriting on the said envelope—exactly at the time when he was residing in his villa Signa, near Florence, together with his wife, who at that time was in an advanced state of pregnancy.

When the latter envelope was opened, a copy of the above quoted testamentary disposition was therein found. Another true copy thereof had previously been given to Mr. Sperco in New York.

It is therefore evident that by reason of his little daughter Gloria's birth, which occurred eleven months after the date of the aforementioned testamentary instrument, and three months and one half after a copy of same had been given to the personal representative, Dr. Vecchiettini, the testamentary disposition mentioned above cannot have any force and effect. If the testamentary disposition hereinbefore indicated were to have any binding effect, it would inevitably lead to a multiplicity of suits between the daughter Gloria, the testamentary heirs, Comm. Caruso's brother, and the two sons, who as heirs of the deceased, would fight to uphold the validity of the aforesaid

testamentary disposition against the inevitable conclusions that they were of no force and effect.

Expensive and annoying litigations would ensue tending to do violence to the just and proper feelings of the interested parties themselves; would of consequence reduce the bulk of the estate. Such litigations would be indeed an offense to the beloved memory of the deceased, and a seeming insult and irreverence to his sentiments of love and affection during his lifetime.

Therefore, guided by such harmonious sentiments, with reverend thoughts to the memory of the unforgettable deceased; being confronted with the disposition of an estate which has been ascertained to amount in Italy alone to some twenty million lires without counting the valuables and moneys in New York because no inventory has yet been made of them, as well as the important yearly royalties due from the Victor Company; the parties hereto, rising above personal interest which would lead them to unnecessary judicial proceedings and expenses, with the resulting damage to the respect and memory of a name which has become glorious in the world's art; mindful of the love and affection which the beloved deceased entertained for them, and remembering his clear and distinct wishes, often declared, manifested and published in every manner and form during his lifetime. Guided by a mutual and reciprocal tender and profound attachment for little Gloria, and by a sense of respect and affection towards the intestate's widow, the two sons, and towards the brother, as well as towards the intestate's step-mother whom he always remembered for her love, devotion and encouraging kindliness and when he was studying. Now, therefore, the parties to this instrument considering the

effect and consequences of a judicial adjudication in respect to the matters hereinbefore stated, agree among themselves as follows:

They hereby covenant and agree that the decedent's daughter shall be entitled to one-half of the entire estate. Said share shall include the more important and valuable articles which belonged to her father; giving unto her in particular, the collections of gold boxes and watches, the gold disk which is at present in the custody of the Victor Company, and also Five Hundred Thousand Lires, the same to be deposited with the Banca Commerciale in Florence in the name of Gloria Caruso, the interest thereon to be accumulated and to be turned over to her when she reaches the age of majority.

The parties hereto further agree, that the remaining one-half of the estate shall be divided into four equal parts to be distributed respectively among the sons, Rodolfo and Enrico, the widow, Dorothy Benjamin, and the brother, Giovanni Caruso.

However, before proceeding with the distribution aforesaid, there shall be deducted from the bulk of the estate such sums of moneys:

1. As may be necessary for the proper support and maintenance of the decedent's step-mother in accordance with his expressed desires.

2. For the erection of a fitting chapel in Naples' Cemetery to receive and keep the mortal remains of the deceased Comm. Caruso, also in accordance with his desires.

3. For the payment of all taxes and expenses.

Therefore, the subscribers to this instrument do hereby pray that they may be authorized and permitted to definitely covenant and agree among themselves as follows:

Exhibit C-8a.

All the estate of Comm. Caruso situate either in Italy or abroad, ascertained and fixed according to law; after all the funeral expenses, mourning expenses, the expenses incurred by reason of decedent's last sickness, inheritance taxes, all legal expenses, all the expenses for the erection of a chapel in the Cemetery of Naples; all expenses for the proper support and maintenance of Mrs. Maria Castaldi, decedent's step-mother, shall have been paid and deducted; after setting aside the collections of gold boxes, watches, of the gold disk, and of the Five Hundred Thousand Lires heretofore given to Gloria Caruso; and moreover after deducting such sums of money as the heirs herein may desire to give to former employees of Comm. Caruso, of which employees he was fond of and generously attached to, the said estate after the deductions and allowances aforesaid, shall be divided into two equal parts, one of which shall be given and turned over unto the said infant Gloria Caruso, to be held in trust for her during her infancy; and the other half shall be divided into four equal parts which shall be paid to and entirely turned over one part to Rodolfo Caruso, one part to the infant Enrico Caruso to be held in trust for him during his minority, one part to Mrs. Dorothy Benjamin, widow of Caruso, and one part to Giovanni Caruso.

Moreover, any and all moneys due on insurance policies shall be paid to the beneficiaries thereof as indicated in said policies without delay or contest.

Finally we pray the Honourable Court that its Decree may also provide for and command that:

(a) an inventory may promptly be made of the goods, chattels and credits of Comm. Caruso, existing outside of Italy and more particularly in

New York, said inventory to be prepared by an attorney to be selected by the parties to this agreement.

(b) a formal request to the Fifth Avenue Bank of New York be made and served, to disburse and pay over from the funds therein deposited to the credit of Comm. Caruso, necessary expenses for the payments of all taxes and fees due and payable on the estate herein to the Federal Government of the United States and to the City of New York.

(c) it order the said Fifth Avenue Bank to pay to counselor Gabriele Consolazio, the sum of $10,000 from the moneys therein deposited to the credit of Comm. Caruso; said moneys to be used for the necessary expenses in the United States of America in the settlement of the estate, and that an account be rendered as to the expenditure thereof.

Dated, Naples, October 12th, 1921.

Signed:
Dorothy Benjamin, widow of Caruso,
Rodolfo Caruso, son of Enrico,
Giovanni Caruso, son of Marcellino,
Amedeo Canessa, Special Guardian for Gloria Caruso,
Manlio Tizzani, General Guardian for Enrico Caruso, son of Enrico,
Gabriele Consolazio, counselor-at-law.

In the presence of:
Vincenzo Sanseverino—Notary, Naples.

Signed:
Giovanni Porzio
Counselor-at-law

Exhibit C-8a.

October 19th, 1921.

Mr. Justice Masucci is hereby requested to communicate the above to the Attorney General.

Signed: MICHELE D'AQUINO,
Presiding Justice of the Tribunal.

The Attorney General, having read the proceedings had herein, is of the opinion that the application is properly made and recommends that the same be granted.

Dated, Naples, October 19th, 1921.

Signed: P. MARTINELLI.

BY THE COURT.

This court, after reading the annexed petition, and having heard the Attorney General herein, hereby renders the following decision:

The petition herein should be granted and approved because the relief therein prayed for represents the intent of the law as well as the desire of the testator.

In a matter of this kind, involving the disposition of such a conspicuous and large estate, it is well to have in mind the fact that whether the dispositions contained in the will of the testator were enforced or whether the distribution would take place as if in case of intestacy, the share of the estate going to the infant Gloria Caruso, would be about the same.

Having in mind the rules of our law according to which the proceedings for the distribution of Caruso's estate have been instituted, the distributive share of the heirs on the assumption of an intestacy would be as follows: in fee to both Rodolfo and Enrico 8/24, to the lawful and legiti-

mate daughter, Miss Gloria Caruso, 16/24. The shares from the income of the estate would be: To Rodolfo and Enrico Caruso 6/24 to the surviving widow 6/24, and to the lawful and legitimate daughter 12/24.

If on the other hand the will is not to be considered as revoked, then the lawful and legitimate daughter of the deceased would be entitled to one-half on the entire estate and to 12/24 of the income thereof.

Therefore the difference in Gloria's share, were she to inherit according to the laws of distribution would be that she would take the same portion of the income and an additional 4/24 in fee.

This small difference is not so great as to warrant the Court in rejecting the proposed agreement between the parties hereto, owing to the fact that to Gloria's above mentioned share will be added also the extra gifts.

We note that the natural filiation and recognition of the sons, Rodolfo and Enrico, by Comm. Caruso is not challenged by any of the parties herein, and

Therefore we deem it wise to approve the proposed agreement herein concerning the distributive share to be paid to the infant daughter, Gloria Caruso, and to the infant son, Enrico, as well as Giovanni Caruso.

We do not think that Miss Gloria Caruso, the infant daughter, would be likely to risk any legal proceedings tending to reduce her share of one-fourth interest in the income of the estate, instead of one-eighth in fee, for the reason that income is consumed during the lifetime, whereas the principal remains. The daughter, therefore, can expect to ultimately obtain her entire share in the inheritance.

Exhibit C-8a.

As to Giovanni Caruso's interest in the estate, it is clear that in a judicial proceeding he would contend that the decedent's will cannot be considered as revoked owing to the fact that the decedent's natural children were born before the making thereof, and also because Comm. Caruso knew at the time he gave the second original copy of the testamentary disposition heretofore cited, on August the 9th, 1919, to Dr. Vecchiettini, that his wife was then pregnant.

Considering therefore the uncertainties of a judicial contest, and approving the wishes of the petitioners tending to harmony and reciprocal respect, we deem it proper to confirm the proposed agreements contained in the petition herein, so that they might fully carry out the desire of Comm. Caruso, which desire we consider to be sacred to his widow and children.

For the above mentioned reasons this Tribunal hereby decrees as follows:

1. This Court hereby approves the proceedings heretofore had on August the 18th, 1921, and on October 17th, 1921, for the conservation of the interests of the minor Enrico Caruso.

2. This Court hereby authorizes the petitioners Dorothy Benjamin, widow of Caruso, Rodolfo Caruso, son of Enrico, Giovanni Caruso, son of Marcellino, Amedeo Canessa, as Special Guardian for Gloria Caruso, daughter of Enrico; Manlio Tizzani as General Guardian of the minor Enrico Caruso, son of Enrico, to take, turn over and give unto Miss Gloria Caruso the collections of gold cases and watches, the gold disk now in the custody of the Victor Company, and also Five Hundred Thousand Lire in cash, same to be de-

posited in Gloria Caruso's name in the Banca Commerciale of Florence, interest to be accumulated and to be turned over to said Gloria Caruso when she shall attain the age of majority.

Before distributing the estate herein, the parties above mentioned, are further authorized to set apart and withdraw such sums of money as may be necessary for:

a. The proper maintenance and support of the decedent's step-mother in accordance with his wishes.

b. The erection in Naples' Cemetery of a fitting chapel which shall receive and contain the mortal remains of the deceased Comm. Caruso.

c. For the payment of all the taxes and expenses.

3. This Court further orders and decrees that the Petitioners be authorized that; in the agreement to be entered into between themselves there shall be inserted the following fundamental provisions:

a. That the assets of Comm. Caruso situate either in Italy or abroad, after the same shall have been lawfully fixed and ascertained, and after deducting the funeral expenses, the mourning expenses, the expenses occasioned by the last sickness of the deceased, the inheritance taxes and fees; legal expenses, after deducting the amounts assigned to Miss Gloria Caruso and the chattels hereinbefore mentioned; moreover, deducting such sums of money as may be paid to the decedent's former employees as in the opin-

ion of the petitioners herein they may fix; then, the remainder shall be divided into two equal parts one of which shall be given and paid over to the infant Gloria Caruso, in trust for her during her infancy, which said one half shall include the most valuable portion of the estate. The other half shall be divided into four equal parts to be paid and turned over whole and free, one part to Rodolfo Caruso, one part to the infant Enrico Caruso, in trust for him during his minority, one part to Mrs. Dorothy Benjamin, widow of Caruso, and one part to Giovanni Caruso, son of Marcellino, brother of the deceased.

b. That all moneys and other things due on insurance policies be paid to the beneficiaries therein indicated as it was the desire of the deceased, without delay or contest, after an inventory shall have been made as heretofore provided.

4. And finally, it is further ordered:

a. That a speedy and lawful inventory be made of the goods, chattels and credits and things of value to Comm. Caruso belonging and situate abroad, more particularly in New York, through an attorney to be selected by the parties herein.

b. That the Fifth Avenue Bank pay and disburse from its moneys deposited to the credit of Comm. Caruso such sums of moneys as may be necessary to pay all the taxes on the estate herein that may be due to the Federal Government and to the City of New York; and said bank is hereby authorized to make such payments.

Exhibit C-8a.

c. That the said Fifth Avenue Bank pay unto Counsellor Gabriele Consolazio the sum of $10,000 from the moneys deposited with it as aforesaid; this money is to be used for the settlement of the estate and an account of its expenditure is to be rendered. This latter provision we deem expedient in order to prevent the attendant losses to the estate which a change from lires into dollars would produce.

So ordered by the Civil and Penal Tribunal of the City of Naples, Part 1 thereof.

Signed: Cav. Uff. Michele d'Aquino,
Presiding Justice.

Cav. Enea Silvio d'Giuseppe,
Cav. Filippo Masucci,
Associate Justices.

Dated October 21st, 1921.

Signed in the presence of the Clerk of the Court this 21st day of October, 1921.

Signed: Michele d'Aquino,
President Justice.

Gaetano Fedele,
Clerk of the Court.

Registered at Naples in the office of the Judicial Acts this 22nd day of October, 1921, at No. 2269 Mod. 3 Vo. 467.

Collected 31 lire and 25 centesimi—The Receiver signed Dell'Aquila.

Exhibit C-8a.

The present copy conforming to the original is released at the request of Attorney Mr. Consolazio, Naples, November 20, 1925.
The First Chancellor S. R. Luiso.

(Stamps)

Seen for legalization of the signature of the Chancellor, G. R. Luiso, Naples, 23rd of November, 1925, the President of the Civil and Penal Tribunal.

Caseri.

Kingdom of Italy
Province and City of Naples
Consulate General of the
United States of America
} ss.:

November 24th, 1925, Naples, Italy.

I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In Witness Whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

W. W. Schott,
Vice-Consul of the United States
of America,
Naples, Italy.

(Stamp)

Exhibit C-9a.

Extract from the Original existing in the Chancery of the Civil and Penal Tribunal of Naples.

Hon. President and Judges of the Tribunal of Naples.

The undersigned lawyers, following the analogous mandate received in the document of partition which is exhibited submit the following to Your Honors:

On August 2nd, 1921, there died in Naples, Comm. Enrico Caruso leaving him surviving, his wife Dorothy Benjamin, his two recognized, natural sons Rodolfo and Enrico, the latter still a minor, and a legitimate daughter, named Gloria, also a minor. He left, also, his near relatives: a brother Giovanni Caruso and a seventy year old step-mother, Maria Castaldi for whom he had so much tenderness as to remember them even in his will. In the personal valise of the deceased there was found his testament, drawn up the 4th of January, 1919, that is before his legitimate daughter was born.

According to his last wishes Comm. Enrico Caruso named as his universal heirs his two natural recognized sons, Rodolfo and Enrico, and his brother Giovanni. He awarded his wife Dorothy Benjamin all that would be her portion according to the Italian laws, and, lastly, he demanded from his universal heirs that they maintain in the proper manner his step mother Maria Castaldi, until her death.

After he made this will (which was officially filed by Notary Guaglianoni of Naples) his legitimate daughter Gloria was born.

In consequence of this, after the death of Comm. Enrico Caruso the above stated facts existed, in absolute conflict with the new judicial conditions that had come about, therefore, the heirs, in order to avoid costly litigations and expenses, came to a cordial understanding with each other, and these facts they submitted to the Tribunal, from which they received full ratification, by a deliberation of October 21st, 1921.

The Agreement was as follows:

(a) To set apart above all, from the whole estate of Comm. Enrico Caruso, for Gloria Caruso, the collection of gold boxes and watches, the gold record existing at the Victor Talking Machine Co. in New York and Five Hundred Thousand lire, cash, to be deposited at the Banca Commerciale in Florence in the name of said Gloria Caruso to be delivered to her, with accrued interests at her coming of age.

(b) To draw moreover all the necessary sums to produce an income, to last during her life, of 2000 lire monthly in favor of Maria Castaldi;

a sum necessary to erect in the Cemetery of Naples a Chapel worthy to receive with decorum the earthly remains of the deceased;

as much as necessary to pay all the expenses, fees, taxes, and to attest to all the persons who were in the service of Comm. Enrico Caruso his thoughtfulness, in that measure that the heirs deemed convenient.

(c) To divide the bulk of the remaining estate existing in Italy and in foreign lands, as ascertained by forms of laws, in two equal parts; one of which to be set aside with the pupillary restriction to the minor Gloria Caruso and the other half

to be divided into four equal parts and to be given into the complete ownership of each of the following: Dorothy Benjamin, widow of Enrico Caruso, Rodolfo Caruso, Enrico Caruso (with the pupillary restriction because he is a minor) and to Giovanni Caruso.

(d) To distribute, finally, the net amount received from the insurance policies to each intestate or beneficiary, who should become known during the inventory operations; according to the deceased will, however expressed, and without obligation of imputation or collocation.

In accordance with this agreement, the entire bulk of the estate of the regretted Comm. Enrico Caruso has been ascertained in Italy through the official report of the Chancellor of the First District of Naples, of the Chancellor of the District of Lastra a Signa di Sesto Fiorentino and of that of the Third District of Florence; for the part of the estate that lies in America, the Surrogates Court in the County of New York located in the Hall of Records Building in New York City was petitioned so that in accordance with the existing laws of the land it might nominate an administrator, in order to proceed to the drawing-up of the inventory.

And so the above mentioned court, by its decision of January 9th current year, named Mrs. Dorothy Benjamin administratrix of the property in America of Comm. Enrico Caruso, upon her depositing a bond of $210,000.—which was done and the inventory was also drawn by deeds of Notary Gaetano Zampariello residing in New York.

In the same time there has been drawn up a similar report for the real estate, which is hereunto annexed.

Exhibit C-9a.

Having ascertained, in this manner, the inheritance left by Comm. Enrico Caruso, all the coheirs, including Mr. Amedeo Canessa, as special guardian of the minor Gloria Caruso duly authorized by the guardianship Council nominated for this purpose, by deliberation of June 5th, 1922, have come to the final drawing up of the deed of divisions, by acts of Notary Sanseverino of Naples, bearing the date of June 7th, 1922.

This act has been drawn up in complete harmony with basic agreement already fixed by the deliberations of the Hon. Tribunal above stated.

Not being able to proceed naturally with the payments, which could only be done with the material handling of money, it was necessary to resort to putting aside Seven Millions, to be handed over to Mrs. Dorothy Benjamin, widow Caruso, she being already honored with the like duty by the New York Courts, so that she provide for the payment of the Registration Taxes, Succession Taxes in Italy, which amount to about five million lire; for the liquidation of the debt of about 1,400,000 lire (consisting of capital and interests) contracted with the Banca Commerciale Italiana with offices at Naples and Florence, in order to cover the rather heavy expenses undergone till then, and the maintenance of the whole family for the duration of one year on account of the serious fluctuation of values, caused by the differences in exchange with American money, and the payment of the Chapel being constructed at the Naples Cemetery; to the creation of a life-annuity for Mrs. Maria Castaldi, which should give her an income of 2000 lire monthly.

The heirs have moreover considered that the following are indivisible and cannot exactly be estimated by monetary value; the collection of

gold coins, antique and modern, existing in New York and at Lastra a Signa, nor a few other objects found at Lastra a Signa and at Sesto Fiorentino, and so they have come to the decision to offer them in a public sale and sell them at auction in New York and Naples, dividing the profit of said sales among all the co-heirs, in proportion to the inheritance quota assigned to each.

In the same way there have been set aside $461,000 existing in New York at the Fifth Avenue Bank and about 30,000 fcs. existing in Paris at the Credit Lyonnaise; and the Russian bonds and whatever deposited at the Deutsche Bank in Berlin; to divide everything and always according to the proportion of the inheritance quota due to each, as soon as the respective inheritance taxes, etc., are paid to the countries where such deposits are actually found.

Always conforming to the fixed inheritance proportions of the Sanseverino deed, it has been decided that the 10% on the sale of the Victor Talking Machine Company records made by Enrico Caruso and the exact yearly above mentioned percentage, must be paid by the Victor Company as follows: 1/8 to Mrs. Dorothy Caruso, 1/8 to Mr. Giovanni Caruso, 1/8 to Mr. Rodolfo Caruso, 1/8 to Mr. Enrico Caruso and 2/8 (with the pupillary restrictions) to Miss Gloria Caruso and as to the remaining 2/8 of the quota due to Gloria Caruso, they are to be paid to Mrs. Dorothy Benjamin-Caruso as the mother, guardian and administratrix of the property of her daughter Gloria.

For These Reasons:

The undersigned request that the Hon. Tribunal will:

Exhibit C-9a.

1. Confirm the deliberation of the Guardianship Council for the minor Enrico Caruso of June 5th, 1922.

2. Confirm the deed of June 7th, 1922, drawn by Notary Sanseverino of Naples.

3. Order the Banca Commerciale Italiana, with offices in Naples and Florence; the Banca d'Italia with offices in Florence, the Credit Lyonnaise with offices in Paris, the Deutsche Bank of Berlin to give without restriction to Mrs. Dorothy Benjamin, widow of Enrico Caruso the cash, titles, bonds, objects of value as well as all other things belonging to Comm. Enrico Caruso's estate and as much as was deposited in the name of the co-heirs at the Banca Commerciale Italiana of Naples and Florence, after the death of Enrico Caruso, without any responsibility on the part of such above mentioned institutions.

4. Authorize Mrs. Dorothy Benjamin, chosen for the purpose, as in the Sanseverino deed, by the agreement of the co-heirs, so that after she has drawn all the sums and values mentioned above she may put aside 7,000,000 lire in order to pay the taxes of succession in Italy, that of registration of the deeds exchanged among the heirs, all the legal expenses; fees, expenses for the building of the Chapel; land-taxes in arrears, other imposts and liquidate the debt of lire 1,400,000.00 incurred with the Banca Commerciale Italiana of Naples and Florence; and also notary fees, and whatever else results or is required in said act of division and to give in due time full accounts in the rightful and legal way.

5. Authorize moreover the same Mrs. Dorothy Benjamin to deliver to each co-heir that which is

due him in titles, cash, values and objects, always conforming to the quoted Sanseverino deed, and to consign the titles and cash due to the minor Gloria Caruso and to the minor Enrico Caruso, to the Banco di Napoli, to be deposited in their names with the Pupillary restriction and with the required legal guarantees.

6. Order the Banco di Napoli to receive the securities and cash belonging to the minors, Gloria and Enrico Caruso, and fulfill the duties entrusted to said Banco di Napoli as per deed of Notary Sanseverino, June 7th, 1922.

7. Authorize the Victor Talking Machine Co. to pay each year the 10% due to Comm. Caruso as follows: 1/8 to Mr. Rodolfo Caruso, 1/8 to Mr. Giovanni Caruso, 1/8 to Mrs. Dorothy Benjamin Caruso, 1/8 to Enrico Caruso, minor, and of the remaining 4/8 due to the minor, Gloria Caruso, to pay 2/8 without restriction to Mrs. Dorothy Benjamin Caruso as mother, tutor and legal administratrix of the property of her minor daughter, Gloria Caruso, until her coming of age, and to deposit the other 2/8 in the Banco di Napoli at its New York offices in the name of Gloria Caruso with the pupillary restrictions.

8. To exclude from the quota due to Miss Gloria Caruso the gold record, since it does not exist; and in fact has not been found during the making of the inventory.

9. Authorize Mrs. Dorothy Benjamin to collect all sums and loans due to Miss Gloria Caruso and to sign receipts, to clear mortgages and to deposit sums at the Banco di Napoli under the name of said Gloria Caruso with the pupillary restrictions.

Dated, Naples, June 10th, 1922.

Signed:
GABRIELE CONSOLAZIO-GIOVANNI PORZIO.

Exhibit C-9a.

Read: To be communicated to the Attorney General and Judge, Mr. D'Ambrosio is delegated. Naples. Signed, F. D'Aquino, President.

The Attorney General: Read the deeds. Since the requested provisions are reasonable, requests that the petition be accepted by the Tribunal, Naples, June 12th, 1922. Signed, R. Martinelli.

The Tribunal: Having read the petitions and the attached acts. Having heard the opinion of the Attorney General. Since the request can be acceded to, the interests of the minors resulting guarded, and since the division of the estate is based on the preceding deliberation of this same Tribunal, dated October 21st, 1921, while there is to be excluded from the quota of the minor, Gloria Caruso, the gold record of the Victor Talking Machine Co. because it was not found * * * For These Reasons * * * Deciding in the Council Chamber upon and after the relation submitted by the Delegate Judge:

1. Confirm the deliberation of the Guardianship Council for the minor Enrico Caruso dated June 5th, 1922.

2. Confirm the deed by Notary Sanseverino dated June 7th, 1922.

3. Order the Banca Commerciale Italiana with offices in Naples and Florence; the Banca d'Italia with offices in Florence, the Credit Lyonnaise with offices in Paris, the Deutsch Bank of Berlin to give without restriction to Mrs. Dorothy Benjamin widow of Enrico Caruso the cash, titles, bonds, objects of value as well as all other things belonging to Comm. Enrico Caruso's Estate and as much as was deposited in the name of the co-

heirs at the Banca Commerciale Italiana of Naples and Florence, after the death of Enrico Caruso without any responsibility on the part of such above mentioned institutions.

4. Authorize Mrs. Dorothy Benjamin, chosen for the purpose, as in the Sanseverino deed, by the agreement of the coheirs, so that after she has drawn all the sums and values mentioned in the preceding chapter, she proceed to the putting aside lire 7,000,000 in order to pay the taxes of succession in Italy; that of registration of the deeds exchanged among the heirs; all the legal expenses; fees, expenses for the work of the building of the chapel; land taxes in arrears, other imposts, and to liquidate the debt of lire 1,400,000 incurred with the Banca Commerciale Italiana of Naples and Florence; and also notary fees, and whatever else results or is required in said act of division and to give in due time full accounts in the rightful and legal way.

5. Delegate moreover the same Mrs. Dorothy Benjamin to deliver to each co-heir that which is due him in titles, cash, values and objects, always conforming to the above quoted Sanseverino deed and to consign the titles and cash due to the minor Gloria Caruso and to the minor Enrico Caruso to the Banco di Napoli to be deposited in their names with the pupillary restriction and with the demanded legal guarantees.

6. Order the Banco di Napoli to receive the securities and cash belonging to the minors Gloria and Enrico Caruso and fulfill the duties entrusted to said Banco di Napoli as per deed of Notary Sanseverino June 7th, 1922.

Exhibit C-9a.

7. Authorize the Victor Talking Machine Co. to pay each year the 10% due to Comm. Enrico Caruso as following: 1/8 to Mrs. Dorothy Benjamin-Caruso, 1/8 to Mr. Giovanni Caruso, 1/8 to Mr. Rodolfo Caruso, 1/8 to Mr. Enrico Caruso, minor, and of the remaining 4/8 due to the minor Gloria Caruso, to pay 2/8 without restriction to Mrs. Dorothy Benjamin-Caruso, as mother, tutor and legal administratrix of the property of her minor daughter Gloria Caruso, until her coming of age and to deposit the other 2/8 in the Banco di Napoli at its New York offices, in the name of Gloria Caruso with the pupillary restrictions.

8. To exclude from the quota due to Miss Gloria Caruso the gold record given to her as advance-portion, or out right.

9. Authorize Mrs. Dorothy Benjamin to collect all sums and loans due to Miss Gloria Caruso and to sign receipts, to clear mortgages and to deposit sums at the Banco di Napoli under the name of said Gloria Caruso with the pupillary restrictions.

This was decided today June 16, 1922, in the Council Chamber of the Section First of the Tribunal of Naples composed of: Comm. Michele d'Aquino, President, Chev. Di Giuseppe Enea Silvio, Chev. D'Ambrosia Guglielmo, Judges and undersigned today the 16th of June 1922 before me the Chancellor: Signed: M. C. 'Aquino, President, Fedele, Chancellor Registered in Naples-Branch of Legal Acts—today June 19th 1922. N. 8272. Folio 3. Vol. 470. Paid Lire 32.10. Signed: Dell 'Aquila, Cashier.

This copy is conformed to its original is given by request of Attorney Mr. Consolazzio. Naples,

Exhibit C-9a.

20th of November, 1925. Signed: Luiso, Chancellor. To certify the signature of Chancellor Luiso. Naples 23rd of November, 1925. Signed: Caseri, Chancellor. Seal.

Kingdom of Italy

Province and City of Naples S. S.

Consulate General of the United States of America

November 24th, 1925, Naples, Italy.

I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

IN WITNESS WHEREOF: I have hereunto set my hand and affixed the seal of the Consulate General of Naples, Italy, the day and year next above written.

W. W. SCHOTT
W. W. SCHOTT
Vice-Consul of the United States of America, Naples, Italy.

(STAMP) (SEAL)

Exhibit C-10a.

Extract from the original existing in the Chancery of the Civil and Penal Tribunal of Naples.

To the President and Judges of the Tribunal of Naples:

The undersigned, Gabriele Consolazio, as lawyer and attorney in fact of Signora Dorothy Benjamin, widow of the late Enrico Caruso, submits to Your Honors the following:

That in a deed by Notary Vincenzo Sanseverino of Naples, dated June 7th, 1922, and approved by Part I of this Hon. Tribunal on June 16th, 1922, it was decreed to proceed—among other things—to the sale of the art collections also belonging to the estate of Enrico Caruso and it was agreed that the receipts—after the expenses have been deducted—should be divided in the agreed proportions—that is to say: half to Gloria Caruso and the other half in four equal parts to the other four heirs—that the royalties of 10% from the gramophone records due to the heirs were also divided in the above proportions. But since it is impossible to decide justly whether said royalties are capital or income, and therefore whether they should go to the mother or be invested in the minor's name, under pupillary restrictions, it was—with the aforesaid deed—established that half of said royalties attributed to Gloria should be considered capital and therefore invested in her name for the property, and that the interest on it should go to the mother; while the other half is attributed absolutely to the mother as an income until the daughter comes of age.

That said 10% on the annual receipts of the sale of Mr. Caruso's records is given individually

to the heirs by the Victor Talking Machine Company directly.

Now, on these annual receipts, it is necessary to pay to the United States Government a tax, as if it were personal property, called "Income Tax", the sum of which is retained in a presumptive way by the Victor Company itself and afterward paid to the Government by the same Company. When computed definitely and ascertained by the Government's Bureau it is always found to be more than the estimated one. Then from the said half share attributed to Gloria—as part due to her of the estate—must be deducted the above mentioned Income Tax, and the balance is invested in Government Bonds which are deposited, together with other sums, in the Bank of Naples in the name of the minor, under pupillary restrictions, as per decision of the Tribunal above said and dated June 16th, 1922.

That in order to do all this it is necessary to give to the Bank of Naples the due instructions. Therefore the undersigned requests

That Your Honors authorize the Bank of Naples:

1. To receive all the sums which will be deposited on account of the minor, Gloria Caruso, at the Branch of said Bank in New York and for the reasons above set forth.

2. To invest the amount of such sums received in Bonds issued by the Federal Government of the United States or by the City of New York, as in each case will be indicated by the mother of the minor, Gloria Caruso, Mrs. Dorothy Benjamin.

3. To take in consignment also the Bonds which eventually were bought on account of the

same Gloria Caruso in substitution of sums previously matured for reasons specified in this petition.

4. To keep in deposit, with pupillary restrictions, the Bonds already acquired and those which will be eventually bought in the name and on account of the minor Gloria Caruso, and to pay to her mother, Mrs. Dorothy Benjamin, legal usufructuary during the period of minority of Gloria Caruso, all the income that such Bonds will produce and with authority to the Bank to send such Bonds either to Italy or keep them on deposit in America.

5. To pay annually on account of the minor, Gloria Caruso, the taxes due on such sums deposited in the Bank of Naples in the name of said minor and to obtain reimbursement from subsequent payments together with interest at 5% from the day of the payment of the taxes until the day of reimbursement. It is understood that the Bank is responsible only for the money which it actually receives without assuming any responsibility for the accuracy of sums which will be paid to the Bank or for the taxes ascertained against the minor, Gloria Caruso, because said responsibility lies only upon the legal representative of the minor, both for the sums received and toward the state for the taxes due. The Bank has the right to be reimbursed for all the expenses which it may incur in order to cash said sums and for the investment of the money and for the transmission of said Bonds and safe-keeping of them, and for whatsoever other expenses may occur in the transactions.

Of all the operations performed by the Bank of Naples the mother of the minor, Gloria Caruso,

should be informed at the end of each year and the approval of said mother, Mrs. Dorothy Benjamin, or of one of her general representatives, Hon. Giovanni Porzio or Gabriele Consolazio, shall be sufficient for the Bank. In case of contestations the same shall be determined by the Tribunal of Naples.

Naples, May 25th, 1924.

Signed: GABRIELE CONSOLAZIO,
Attorney at Law.

Seen: Communication to be given to the District Attorney and Judge Falcone is delegated. Naples, June 2nd, 1924. Signed: D'Ambrosio, President.

After reading all the acts there is no opposition to the acceptance of the foregoing petition. Naples, June 4th, 1924. Signed: R. Martinelli.

The Tribunal:

Read the petition and the conclusions of the District Attorney; heard the report of the delegated Judge.

Whereas the interests of the minor are safeguarded, authorizes the Bank of Naples:

1. To receive all the sums which will be deposited on account of the minor, Gloria Caruso, at the Branch of said Bank in New York and for the reasons above set forth.

2. To invest the amount of such sums received in Bonds issued by the Federal Government of the United States or by the City of New York, as in each case will be indicated by the mother of the minor, Gloria Caruso, Mrs. Dorothy Benjamin.

Exhibit C-10a.

3. To take in consignment also the Bonds which eventually were bought on account of the same Gloria Caruso in substitution of sums previously matured for reasons specified in this petition.

4. To keep in deposit, with pupillary restrictions the Bonds already acquired and those which will be eventually bought in the name and on account of the minor Gloria Caruso and to pay to her mother, Mrs. Dorothy Benjamin, legal usufructuary during the period of minority of Gloria Caruso all the income that such Bonds will produce and with authority to the Bank to send such bonds either to Italy or keep them on deposit in America.

5. To pay annually on account of the minor, Gloria Caruso, the taxes due on such sums deposited in the Bank of Naples, in the name of said minor, and to obtain reimbursement from subsequent payments together with interest at 5% from the day of the payment of the taxes until the day of reimbursement. It is understood that the Bank is responsible only for the money which it actually receives without assuming any responsibility for the accuracy of sums which will be paid to the Bank or for the taxes ascertained against the minor, Gloria Caruso, because said responsibility lies only upon the legal representative of the minor, both for the sums received and toward the state for the taxes due. The Bank has the right to be reimbursed for all the expenses which it may incur in order to cash said sums and for the investment of the money and for the transmission of said Bonds and safekeeping of them, and for whatsoever other expenses may occur in the transactions.

Exhibit C-10a.

Of all the operations performed by the Bank of Naples the mother of the minor, Gloria Caruso, should be informed at the end of each year and the approval of said mother, Mrs. Dorothy Benjamin, or of one of her general representatives, Hon. Giovanni Porzio or Gabriele Consolazio, shall be sufficient for the Bank. In case of contestations, the same shall be determined by the Tribunal of Naples.

So was decided today, June 13th, 1924, in the Council's Chamber of Part I of the Civil Section of the Tribunal of Naples, by Chev. Guglielmo d'Ambrosio; Chev. Rosario Miceli; Chev. Domenico Falconi, and signed by them today, June 18th, 1924.

Signed: D'Ambrosio, President. Fedele, Chancellor.

N. 10221—mod. 3 Vol. 480 of the Registry of Naples.

Bureau of the Judicial Acts to day, June 21st, 1924. Paid Lire 34.10. The Registrar.

This copy conforms to its original and it is released to Mr. Gabriele Consolazio, Attorney at Law, Naples, November 20th, 1925, The Chancellor. Signed G. R. Luiso.

Seen: The signature of the Chancellor, G. R. Luiso, is true and genuine. The President of the Tribunal, signed Caseri. Seal.

Kingdom of Italy—Province and City of Naples—Consulate General of the United States of America, ss.:

Naples, Italy, November 24, 1925. I, William W. Schott, Vice Consul of the United States of America at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto

annexed are true and genuine and as such entitled to full faith and credit.

In witness whereof, I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written. W. W. Schott, Vice Consul of the United States of America, Naples, Italy.

Note fee: 11947; $2.00. Seal.

Exhibit C-11a.

COPIED from the Original now in the files of the Chancery of the Tribunal in Naples.

To the President and Judges of the Tribunal

Naples

The undersigned Giovanni Porzio and Gabriele Consolazio, attorneys at law, with domicile at Corso Vittorio Emanuele n. 596 as special mandataries of Mrs. Dorothy Benjamin widow of Comm. Enrico Caruso as per power of attorney certified by the Italian Consul in Paris, in date of November 7th, 1923, submit to Your Honors:

Whereas, after deliberation, the Family Council held November 21st, 1923, before the Judge of the First District of Naples, unanimously agreed to maintain said Mrs. Dorothy Benjamin as administratrix of the estate of her daughter Gloria Caruso of the late Enrico, even if said widow contracts a second marriage, obligating her however to fix her domicile in Italy and to convoke annually the meeting of the family council composed of the immediate relatives and of the two most authoritative family friends, Prof. Guarracino and Comm. Ricciuti;

Exhibit C-11a.

And in view of the splendid qualities as mother and administratrix of said Mrs. Dorothy Benjamin, who, considering her youth, cannot remain always a widow; and

Whereas, the fact of her contracting a second marriage cannot affect the material and moral interests of the minor Gloria, in view of the splendid proofs given in the past as a mother, as was unanimously admitted by the members of the family council;

The undersigned on behalf of their client ask that the Tribunal approve said deliberation of the family council of November 22nd, 1923, held before the Judge of the First District of Naples.

Naples 23 Novembre 1923.

Signed: Giovanni Porzio,
Gabriele Consolazio,
Attorneys at Law.

Seen: Communication to be given to the District Attorney delegating Judge d'Ambrosio.

Naples December 5th, 1923. Signed: Azzariti —President. The District Attorney—Having read the foregoing decides for the granting of the petition. Naples December 7th, 1923. Signed: R. Martinelli.

The Tribunal: Having read the petition and attached deliberation of the family council; having heard the opinion of the District Attorney

And nothing appearing to be contrary to approving said deliberation,

Therefore, after deliberation in Chamber upon the report of the Delegate-Judge, the deliberation of the family council dated November 21st, 1923, retaining Mrs. Dorothy Benjamin in the administration of the estate of the minor daughter Gloria

New Jersey State Library

Exhibit C-11a.

Caruso of the late Enrico, even if she contracts a second marriage, is approved.

Decided on December 28th, 1923, by the First Section of the Civil Tribunal of Naples—Signed —Comm. Franceso Saverio Azzariti, President. Cav. Michele Carlizzi and Cav. Guglielmo d'Ambrosio. N. 26431 of the File—n. 14160—Signed: The Chancellor Fedele. Registered in Naples under the Judicial Deeds—January 12th, 1924. n. 3385. Paid Lire 12.10—Signed: Ricevitore Capo. This copy from the original is given at request of Mr. Becci, attorney at Law. Naples November 20th, 1925. Signed Luiso Chancellor. Seen for legalization the signature of Luiso. Signed Caseri, the President of the Tribunal. 23 November, 1925. Seal.

Kingdom of Italy
Province and City of Naples
Consulate General of the United States of America } ss.:

November 24th, 1925, Naples, Italy.

I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In witness whereof, I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

W. W. Schott
W. W. Schott
Vice Consul of the United States of America, Naples, Italy

(stamp) (seal)

Exhibit C-12a.

Extract from its Original Now in the Chancery of the Tribunal of Naples Annexed to the Sentence B4030—Benjamin, Dorothy.

SWORN OPINION

Victor Emanuel the III
By the Grace of God and the Will of the Nation
King of Italy

Today, the 2nd day of August, 1925, in Naples, in the Office of His Excellency the Senator Prof. Pasquale Grippo, located in Via Riveria di Chiaja n. 61.

Before us Comm. Errico Talemo, Royal Certified Notary, registered in the Notarial College of Naples, with offices in via San Giacomo n. 19 and in the presence of the undersigned witnesses to us known Silvio Dolli Ponti of the deceased Vincenzo, born and residing in Naples (Posillipo); and Giovanni Colella of the deceased Giovanni, born and residing in Naples in via S. Lorenzo da Brindisi n. 10. Personally appeared:

His Excellency the Chevalier of the Great Cross, Professor of Law at the Royal University, Attorney at Law, Senator of the Kingdom, Formerly Minister of Public Instruction, now President of the Council of the Order of the Bar of Naples; Pasquale Grippo of the deceased Gerardo, born in Potenza and residing in Naples, via Rivera di Chiaja n. 61, personally known to us, Notary and witnesses, who do hereby attest his identity.

The said H. E. Senator Grippo has set forth under the sanctity of oath the following opinion,

asked for in behalf and in the interest of the minor Gloria Caruso of the deceased Comm. Enrico, and faithfully conforming to the Italian Laws, now in vigor, and answering to the questions asked:

1 Question

Does an action lie in behalf of the minor Gloria Caruso or her representative to impugn the validity of the recognition of the natural sons Rodolfo and Enrico made by their deceased father Enrico Caruso in the certificate of birth?

Answer

The deceased Comm. Enrico Caruso being of Italian Nationality, every controversy regarding the status and the capacity of his children relating to succession or testamentary dispositions must be governed and decided by the rules dictated by the Civil Code Par. 6, 8, 9 of the preliminary dispositions to the Civil Code.

Consequently the minor Gloria Caruso, or her representative, is subject to the Italian Laws in regard to the admissibility of an action to impugn the status and capacity of the natural recognized sons as well as in regard to the act of division, dated June 7th, 1922, by Notary Vincenzo Sanseverino, in which she was represented, according to the Italian Laws, by a special guardian, which agreement of division was approved after deliberation by the First Section of the Tribunal of Naples, upon concurring opinion of the Procurator of the King.

In said agreement all parties admitted the quality of natural recognized sons as to Rodolfo Caruso and the minor Enrico and by way of settlement established their respective shares of the

estate, on the basis of the will of Comm. Caruso.

The competent Tribunal having considered everything; the request of the parties and the opinion of the authoritative jurist Prof. Guarracino, having weighed the advisability and usefulness of the settlement in the interest of the minor daughter, either if the will had been valid or if declared null or revoked by law on account of the birth of Gloria, approved the same.

Every eventual action of impugnation would run counter to the provisions of paragraph 1304 of the Italian Civil Code, which reads as follows:

"The acts completed in the manner ordained by the law in the interests of a minor, an incompetent or an incapacitated person have the force that they would have if they had been executed by a person of age in his full capacity." From this provision, it follows that even if the minor Gloria Caruso by reason of par. 188 of the civil code—could have impugned the recognition of the natural sons of Caruso, actually she cannot maintain such an action, because she is precluded by the fact that she has acknowledged their quality and the right to inherit by the force of the agreement of settlement and division above named.

2. Question.

Can such an impugnation be supported by researches of the maternity for the purpose of proving the adulterine birth of the recognized sons in order to impugn the division made by the above named instrument?

Answer.

Even if Gloria Caruso was not obliged to respect the recognition of the status and capacity

to inherit of the sons of her father, recognition made by her through her special guardian and with the authorization of the Tribunal as if she were of age, she could not demand or be admitted to institute researches as to the maternity of the same, for the purpose of having them declared adulterines. Art. 190 of the civ. code admits the researches of the maternity, but in favor of the child who claims his status of child and not in favor of others for the purpose of destroying such status. In fact said paragraph provides as follows:

"The child who CLAIMS his mother, must prove to be identically the same one to whom she gave birth to, but no proof is admitted through witnesses, if there is not already a beginning of a written proof or when the presumptions and the indications resulting from facts already ascertained, are of such gravity to determine the admission."

The Italian Law did not want to preclude the natural son from vindicating his real maternity, but while the law has granted only to him such a right, it has strictly limited the means of proof.

The benefit of the action granted to the child to establish the real maternity by way of instituting the investigations admitted by law in par. 190, cannot be turned against him by third persons owing to the principle dictated by the Roman Jurist; that regulations or laws, made to favor a person, cannot be turned against said person in order to damage his condition.

The Courts of Cassation and of Appeal have constantly applied these principles from the enactment of the civil code to this very day.

Exhibit C-12a.

3. Question.

Do legal proofs exist which contradict the recognition made by Comm. Caruso of the natural sons?

Answer.

The recognition of a natural child cannot be contradicted by any investigation or proof by witnesses. The prohibition is absolute. It would be erroneous invoking paragraph 193 because it opens the way to children to ask for support, but does not grant to third persons any action to contradict the prohibition of the investigations which the same paragraph confirms. Against the recognition there would be valid only a judgment rendered on the question of the status in a civil case or a criminal judgment which establishes the existence of the actual descent in consequence of a crime such as rape, carnal violence, adultery, bigamy or suppression or falsification of the status but always subject (in matters of property rights when the marriage has been declared null) to the application of Article 116 of the Italian Civil Code in favor of the consort in good faith and for the children.

Consequently, if in civil judgments which have for their object a decision on the question of status, or in criminal judgments, there are references as to filiation, which do not correspond to that resulting from a formal act of recognition, those references, remarks or considerations can not have any weight or efficacy as a judgment, in order to shake the judicial validity of the recognition.

The status of the persons in the modern, civil law has such an importance that its certainty and

stability must prevail over any other consideration and especially over considerations or interests of property rights.

A doubt has arisen that in the criminal action tried before the Tribunal of Milan against Ada Giachetti and others, there were sentences which contradict the recognition of the natural children made by comm. Caruso and establish their adulterin filiation. But that doubt has no foundation for the following reasons:

The order of the examining Justice dated January 17th 1911 dismissed on the ground of the statute of limitations the criminal action for falsehood in the declaration at the Bureau of Birth regarding the children. The suit was started on the complaint of Mrs. Giachetti. The dismissal of the criminal action on account of prescription excludes whatsoever investigation of facts and whatsoever declaration on the merits of the crime attributed to Caruso. In consequence the order of the Examining Justice is a document which can not be invoked because the declaration of prescription closes the way to any verification of the facts and therefore it is deprived of any efficacy and of any value of proof.

The judgment pronounced after the discussion by the Tribunal of Milan on October 29, 1912, against Giachetti and other co-defendants, had for its object the crimes of calumny, defamation and perjury. And said judgment—as the other rendered on appeal—did not have, nor could have any relation to the question of status regarding the children of Caruso. In the above named judgments there is but a transitory reference to the children, who are not even named, a reference purely occasional in the recital of the relations between comm. Caruso and Mrs. Giachetti. It

is therefore more than manifest that those remarks, those recitals,—as any other element figuring in the action—can not have any value either as matters adjudged or as proofs in order to shake the status of the persons, or the recognition, because they are absolutely extraneous to the subject of the charge and connection by said Giachetti.

The object of the action, in fact, was for defamation for having falsely attributed to comm. Caruso the theft of a document regarding a letter-contract for a theatrical engagement. And it is contrary to our law to give to those vague references the efficacy to destroy the judicial effects of the recognition made by the father, when he was not married, completed with solemnity in the birth certificate.

It cannot be admitted that those references, those recitals, those litigative elements can have any value as legal proofs so as to shake the recognition, because the Italian law and its constant interpretation throughout the jurisprudence and the doctrine, consider as legal proofs, valid to nullify the recognition, declarations resulting from the certificate of birth of the children, from which result without necessity of investigation—the adulterinity.

The declarations, which by express word of the law, must be spontaneous, written, subscribed and given to the children, can have a value in giving to them the right to support, but never to revoke their juridical status and still lose their recognition.

The legislator's idea—as well as the idea of its interpreters—is reasonably and absolutely opposed to causing irreparable damages to the condition of the children and to favor the claims of those, who by reason of contradictory affirmations

or simple, occasional declarations, due to passionate impulse, try to damage them. Different is the law, as different is the jurisprudence with reference to the claim of the children for their support, and different as to those who want, nothing less, than to impugn the status, and the recognition which had taken place. The recognition of a natural son made by the father or the mother is irrevocable, because it fixes the STATUS OF THE CHILD WHICH cannot depend from the changeable will of the parent. The Court of Cassation in Naples, on my plea, decided in the suit *Mennani* v. *Spagnuolo,* that the recognition of the natural daughter made by Mr. Mennuni with his will, could not be revoked by another later testament.

The testament should have its value with regard to the naming of heirs and legacies, but could not destroy the recognition previously made.

It is important to consider that in the case of Caruso, the spontaneous, free, written and subscribed declarations made by himself, consist—beside the solemn and irrevocable act of recognition—of transfer in their name made by himself to the children, Rodolfo and Enrico, in their quality of recognized sons, in matters as Government Bonds, Insurance policies and in his wills, even in his last one, deposited in care of Vacchiettini, little before the birth of his legitimate daughter, and never revoked.

4 QUESTION

Should the representative of the minor Gloria or her mother have raised—in the act of the division or in the proceedings for the approval of the same before the Judicial Authorities—the question of the nullity of the recognition of the natural children made by their father, in order of better-

ing the conditions of the share of the estate of the minor?

ANSWER

The representative of the minor, Gloria Caruso, and others who could have any interest, had no right nor obligation to denounce, in the act of the division, or its judicial approval, the illegality of the recognition of the natural sons of Comm. Caruso made by him with the certificate of birth and confirmed with his will. They would have acted illegally because no action enured to the minor pursuant to paragraph 190 as above mentioned, nor pursuant to par. 193 of the civil code. Only when the adulterine paternity or maternity results without necessity of investigation, from a judgment or from the certificate of birth, the law accepts such results, but forbids in the most absolute way any researches (as we have said before) so that questions highly injurious to good habits and the order of the family, should not be raised. The investigations are absolutely forbidden when it is desired to proceed in order to prove the adulterinity and therefore the incapacity of the son to inherit. On the other hand, the following circumstances militate in favor of the children of Caruso, Rodolfo and Enrico:

1st) The recognition made by the father, Comm. Caruso, when he was not married.

2nd) The possession of the status.

3rd) The dispositions made in the will.

4th) The lack of those proofs permitted by the law; that is to say: No judgment and no declaration made by the father at the act of birth which would have the force to impugn the recognition,

while there are, on the other hand, repeated expressions by Comm. Caruso of his desire to confirm the recognition.

Morally, furthermore, the representative of Gloria Caruso or others in impugning the recognition made by the father, when not married, would have brought an offence to the memory of the deceased parent disturbing the peace of the family and provoking a scandalous and useless law-suit, just such that the law absolutely forbids.

Besides, the Tribunal of Naples remarked—opportunely—in its judgment that Comm. Caruso left in care of a trusted friend—Mr. Vecchiettini—on August 9th, 1919, his testament, when he foresaw the birth of legitimate issue, his wife being in an advanced state of pregnancy from which fact it deduced the solidity of the recognition and of Caruso's wishes as to the distribution of his estate.

5 QUESTION.

Does the competency for any possible contestation on the merits belong to the Judicial Authority of Italy or that of America?

ANSWER.

I answer that beyond any doubt the Italian Magistrates have the competency to adjudge every question of status, of capacity and inheritance regarding an Italian citizen especially when—as in this present case of Comm. Caruso—administration proceedings were instituted in Italy (At Naples) where he died; par. 923 civil code; par. 6, 8 and 12 of the provisions which precede said Italian Code.

We arrive at the same conclusions when—excluding the applicability of the provisions of the

Exhibit C-12a.

Italian civil code—we follow the laws and the statutes and the jurisprudences in vigor in the State of New Jersey, and generally in America, in the matter of private international law. In fact, even excluding the principle of the Italian law, that the status of persons, the relations of the family and the rules of the inheritance, must be governed by the laws of the State to which the person belongs (principle of nationality) we must apply the law of the domicile of said person (*lex domicili*) for all the reasons above specified. This principle according to the rule of private international law in vigor in the European States, Italy excluded, is recognized by all the writers (See Savigny dr Romano, Bar, International private and strafreckt, Rocco, Laurent, Fiore, Dires, Wharton, Calvo, Blunte Les Louis Internationales codifies, etc.).

Consequently Comm. Caruso, being domiciled in Italy, it is always the Italian Law which must govern his inheritance and the agreements relating to his estate, concluded among his heirs in relation thereto. And this rule must be respected, especially in dealing with the allocation of real estate, shares of stock, capitals, credits, etc.

On the other hand, if there were a question as to real estate in America, the Laws and the Statutes governing there would prevail. It is our opinion, therefore, that the American Judicial Authority, in deference to the principles of the modern international Law, cannot refuse to follow the execution of the judgment rendered by the Italian Magistrate in the matter of inheritance and settlement of the estate of the deceased and could not, in deference to the above principles, examine the merits of the questions, without failing to respect the autonomy and the competency

of the Italian Judicial Authority to which all the heirs of Caruso are subjected, Gloria included, as they are Italian citizens, and because the administration has been instituted and, as we have said, regulated according to the Italian Laws.

CONCLUSIVE REMARKS.

Nothing therefore, can be made a valid and juridic foundation for the purpose of invalidating the Italian judgment. And it would be, on the contrary, in the interests of the minor Gloria Caruso, that her special guardian should obtain from the New Jersey Magistrate the execution of the agreement of settlement made with the mother, the sons and the brother of her father Caruso and of the judgment of the Tribunal of Naples which ratified such settlement. On the other hand, if the American Court refused to give execution (denying in other words the efficacy of that judgment and settlement) the mother and Messrs. Caruso could ask, in Italy, the recoupment of what they would lose on the proceeds derived from the records of the grammophone, share of proceeds which should go to them and instead would be entirely given to the minor Gloria. And such an action could be maintained by them by reason of the guaranty due to the co-heirs amongst each other (Art. 1035 civ. code). The Italian Law provides, beside, in case of eviction (total or partial loss) of an estate asset given to one of the co-heirs or co-tenants, that every co-heir is personally obliged to reimburse with his own share the other co-heir of the loss suffered by the latter by reason of said eviction. (Art. 1036 civ. code).

The same principle is applied when a co-heir demands for himself alone what was given—in a given proportion—to all the co-tenants.

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The special guardian of Gloria should consider that he would not help, but damage her if he impeded the execution in America of the judgment of the Tribunal of Naples and of the settlement agreed there, opening the road to a terrible confusion of lawsuits and other serious judicial contests which, with much prudence, were avoided with the settlement, approved by the Tribunal, from the legal point of view, as well as for reasons of advisability and morality.

Long, expensive law-suits were avoided, as avoided were also public, scandalous and unlawful disputes regarding matters of status, and law suits involving the validity and interpretation of the clause of the will, the subsequent birth of the legitimate daughter and the pre-existence of the recognized sons. And there were also avoided bitter questions of inheritance regarding the different shares, questions of support and the appraisal of the estate and the resulting, disastrous judicial administration and appraisals and counter-appraisals, the intervention of the Revenue Office in every and each of those appraisals, intervention that could, today, be revived and therefore larger claims made by the Italian Treasury Department, in case of judicial contest. All this has been eliminated by virtue of the settlement.

This act is subscribed by His Excellency Pasquale Grippo and the witnesses and me, the Notary according to the laws. It is composed of five sheets of which seventeen pages were written by a person of our confidence and I read it clearly and intelligently to His Exc. the Senator Grippo who has fully approved it in presence of the witnesses.

Signed: Pasquale Grippo, Silvio delli Ponti, Giovanni Colella, Notary, Errico Talamo. Registered in Naples-Hall of Records for public Acts on August 5th, 1925. N.1525-Vol. 328. Fol. 57. Paid Lire 13.10.

Exhibit C-12a.

This is a copy conform to its original and it is released today August 7th, 1925. Signed: Notary Errico Talamo. The present copy is conformed to the original and is released to Attorney Porzio.

Naples, November 18, 1925.

The First Chancellor signed Luiso.

The present copy is conformed to the other exhibited to me by Mr. Attorney Gabriele Consolazio to whom it is consigned together with the present one after having them carefully compared. Naples, November 19, 1925.

Notary-Talamo. Seal.

Seen for legalization of the signature of Notary Talamo, Naples, November 23, 1925. The President of the Tribunal, the Chancellor Delegate Chaviglia.

KINGDOM OF ITALY,
PROVINCE AND CITY OF NAPLES,
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA, SS.:

November 24th, 1925. Naples, Italy.

I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

W. W. SCHOTT,
WILLIAM W. SCHOTT,
Vice-Consul of the United States of America,
Naples, Italy.

(SEAL) (STAMP) (STAMP)

Exhibit C-13a.

Extract from its original existing in the Chancery of the Civil and Penal Tribunal of Naples.

To Messrs. the President and Judges of the Tribunal of Naples.

The undersigned as general representative of Mrs. Dorothy Benjamin, daughter of the late Park, widow of Enrico Caruso, in her name and as mother and administratrix of the estate of her minor daughter Gloria Caruso, submits to Your Honors the following:

After the death of Mr. Enrico Caruso, which occurred in Naples on August 2nd, 1921, the petitioner, instead of promoting or undergoing long and serious litigations against the natural recognized sons and the brother of the deceased with reference to the validity of the testament found in the suitcase of the deceased, and with reference to the shares of the natural children, deemed it opportune and advisable in the interest of every one concerned, and especially of her minor daughter Gloria, to come to an agreement on the shares of each one of the heirs and on the amount of each and every share of the estate, being careful to leave entire—as far as it was possible—the share that the law assigned to the minor Gloria as legitimate child. A special guardian for the minor was appointed by this Tribunal owing to the conflict of interests between the mother and her child, which guardian, Mr. Amedeo Canessa, before even submitting to the Tribunal a project of agreement, asked the opinion of the illustrious jurist Prof. Alessandro Guarracino, and having obtained a favorable opinion, submitted such opinion to the Hon. Tribunal when it examined the projected agreement of division and in a deci-

sion dated October 21, 1921, held the projected division advisable and equitable in the interests of every one.

This preliminary agreement contained the rule of division to be applied after the necessary inventories ascertained the amount of the estate. Such rule was to divide the entire estate into two equal parts, assigning one entire half to the minor Gloria, beside an extra share of lire 500,000 to be capitalized with the interests until she becomes of age and the collection of the valuable golden boxes and watches of an aggregate value of about one million lire. The other half was to be distributed in four equal parts to the two natural recognized sons, the widow and the brother of the deceased, the latter being mentioned in the will.

As soon as the inventory in Italy (Naples, Florence, Sesto Fiorentino and Lastra a Signa) was completed, the one in America was started. The law of the United States requires that every inheritance must be administered by a testamentary executor; when this person does not exist an administrator must be appointed, who, after having given the necessary guarantees, administers the inheritance, pays the taxes and the debts of the deceased, and divides the balance according to the shares accruing to each heir.

For this purpose the Chambers of the Court of Successions of the County of New York, by a decree dated January 9, 1922, appointed the petitioner Mrs. Caruso, as administratrix with the condition that she should give a bond, which was duly furnished. And while all the proceedings in the State of New York were expedited, it became necessary to cause the distributees as lawful heirs of Mr. Enrico Caruso to be recognized by the Vic-

tor Talking Machine Company, whose seat of business is in the State of New Jersey, in order that such company might pay to each heir directly his shares of the 10% of the right of the deceased in proceeds of the annual sale of the graphophone records sung by the Comm. Caruso.

And inasmuch as this corporation did not consider binding upon it—because residing in a different State—the judgment of the Tribunal of Naples, dated October 21, 1921, authorizing the division on the said basis nor the agreement of division dated June 7, 1921, nor the decision of the Tribunal approving said agreement—it was necessary to institute a suit before the Court of the State of New Jersey. In the meantime, this Tribunal, before deciding the merits of the question, appointed a guardian for the minor Gloria for the purpose of examining all the acts and documents pertaining to the division for reference to the Judges. The guardian, proceeding to the examination of the acts, prevented the petitioner from distributing to the heirs the income derived from the sale of the records because he feared that this would damage the interests of the minor Gloria. On the other hand, the co-heirs, Rodolfo, Enrico and Giovanni Caruso have intimated to the petitioner, as it appears in the attached enclosure—that in case, within the term of three months, they do not come into possession of their shares, be it on account of complications or for some arbitrary change which eventually might be made in the agreement already perfected and completed, they will proceed without delay against the property of the petitioner and her daughter Gloria, for the purpose of recovering the amount which for any reason, they may lose in the State of New York and for the eventual damages caused

by similar happenings. Now inasmuch as it is impossible to revive those litigations which opportunely were avoided, being groundless, and inasmuch as there are no valid or sufficient reasons or elements to change or modify rights and qualities of inheritance, it is not desirable to provoke delays and rouse hopes in litigations of not performing the aforesaid agreement. To this effect the petitioner has asked recently the opinion of the illustrious Senator Pasquale Grippo, attorney at law, who rendered the opinion which is hereto attached.

Aside from considerations of expediency which have always guided the co-heirs in avoiding those litigations which would have caused at the same time the squandering of the estate, the useless revival of sad and unfortunate happenings, which at least would have darkened the glorious memory of that fascinating artist, and disagreements among the heirs; there is no doubt that the act of division of June 7, 1921 is neither discussable nor impugnable because besides other reasons this act has the elements of a compromise with reference to the will left by Comm. Caruso and on the character and capacity of each and every heir to succeed to his share and on the heredity rights pertaining to each heir, and as the rights of the minors were safeguarded, in the ways required by the law, and under the guarantee and the control of the Tribunal, all the adults and minors must today continue in the performance of that agreement as they have obligated themselves. So much less, then, could there be successfully maintained, a suit to impugn the status of the natural sons, Rodolfo and Enrico Caruso, because they were recognized by Mr. Enrico Caruso when he was free, that is to say, when he was not married. Nor could the

judgment of the Tribunal of Milan avail to set aside such recognition because there is not one of those elements required by law, by the Doctrine or by the Jurisprudence to sustain the impugning of this status.

For the above reason the petitioner Requests:

The Tribunal to authorize Mrs. Dorothy Benjamin, widow of Enrico Caruso, without any responsibility, to pay to all the heirs of the deceased Enrico Caruso in proportion and according to the agreement of June 7, 1921, all the proceeds from the Victor Talking Machine Company, beside the other assets belonging to said estate, in the United States of America.

Naples, August 11, 1925. Enclosed printed briefs. Signed: Gabriele Consolazio, Attorney.

Seen: Referred to the Public Ministry. Judge Mr. Caliendo is delegated. Naples, August 11, 1925. The President of the Tribunal, signed: Assariti.

The Public Ministry does not oppose. Naples, August 13, 1925.

The Tribunal: Having read the petition of Mr. Consolazio, as general representative of Mrs. Dorothy Benjamin, daughter of the late Park, widow of Comm. Enrico Caruso in her own name and in her name as administratrix of the estate of her minor daughter Gloria Caruso, in which he asks this Tribunal to authorize his client without any responsibility to pay all heirs of the deceased Enrico Caruso in proportion and according to the agreement dated June 7, 1921, all the incomes from the Victor Talking Machine Company beside the other assets belonging to said estate now in the United States of America.

We recall that after the death of Enrico Caruso, which occurred in Naples on August 2nd,

1921, the widow, instead of promoting or undergoing long and serious litigations against the natural recognized sons and the brother of the deceased with reference to the validity of the testament found in his suitcase, and with reference to the shares of the natural children, deemed it opportune and convenient in the interest of every one concerned and especially of her minor daughter Gloria to come to an agreement on the rights of each one of the heirs and on the amount of each and every share of the estate, leaving entire the share that the law assigned to the minor Gloria as legitimate child. A special guardian to the minor was appointed on account of the conflict of interests between the mother and her child. The guardian proposed a scheme of agreement, which was approved by this Tribunal in a decree dated October 21st, 1921. The rule of division—after the necessary inventories ascertained the amount of the estate—consisted in dividing the entire estate in two equal parts, assigning one entire half to the minor Gloria beside an extra share of lire 500,000,00 to be capitalized with the interests until she becomes of age and the valuable collection of golden boxes and watches for the aggregate value of about one million lire. The other half was to be distributed in four equal parts to the two natural recognized sons, the widow, and the brother of the deceased mentioned in the will. After the inventories were completed, the instrument of division was drawn by Notary Sanseverino dated June 7, 1922, and having been submitted for examination, this Court by decision dated June 16, 1922, approved said instrument in all and every clause and authorized—among other things—in consequence of such approval, the Victor Talking Machine Company to pay every year

the 10% belonging to Mr. Enrico Caruso in fixed proportions to all the heirs.

The petition states that all the acts in the State of New York having been nearly completed, it was necessary to have the Victor Talking Machine Company—which has its seat in the State of New Jersey—recognize the rightful heirs to the estate of Mr. Enrico Caruso, for the purpose of making the payments directly to each heir of the share belonging to him, of the percentage of the interest of the deceased in the entire annual sale of the records sung by Mr. Caruso. The Victor Talking Machine Company not having, however, because of its situs in a different State—consented to recognize as fully binding the two decisions of this Tribunal and the agreement of the division, it became necessary to institute judicial proceedings before the Court of the State of New Jersey. This foreign Court, before deciding the merits of the question, appointed a guardian for the minor Gloria. The guardian, while proceeding with the examination of the acts, prevented the widow from distributing to the heirs the income from the sale of the records, fearing that this would damage the interests of the minor. On the other hand, the co-heirs, Enrico and Giovanni Caruso have intimated to the widow of Mr. Caruso that if within the term of three months they should not receive their shares, be it for the reason of complications, or for any other arbitrary change which eventually might be made in the already approved and executed agreement, they would proceed, without delay, against the property of her and her daughter, for the purpose of recovering what they may lose anywhere.

On these premises, The Tribunal asserts that the relief demanded by Mrs. Caruso to be author-

ized, also as representative of the minor child Gloria Caruso, to give to the different heirs in proportion and according to the agreement dated June 7, 1922, all the income accruing from the Victor Talking Machine Company on the proceeds of the sale of the records, is but a logical and inevitable consequence of the agreement made among all those having the right to the estate of the late Enrico Caruso; said agreement, as it concerned the rights of the minor child Gloria Caruso, was according to the Italian laws which regulate her status and capacity, preceded by a project of agreement approved by this Court and was thereafter submitted to and approved by this Court by a decree dated June 16, 1922.

This new proceeding now, might be called superfluous, if we consider the intrinsic and irrevocable efficacy of the agreement which complies with all the forms prescribed by our Law (the only one applicable) and regulated in a definite manner all the different interests in Mr. Caruso's inheritance, and settled furthermore all the shares due to each co-heir. Therefore there is only one rule which must regulate the division of the estate no matter where it may be situated, even in foreign lands, in order not to create disparity to the advantage of one and to the disadvantage of the other heirs which might give grounds to the latter to recoup themselves. On the other hand the preceding decision of the Court in accord with the agreements contained in the instrument of division which it ratified, authorized especially the Victor Talking Machine Company specifically to pay directly to the different co-heirs the amounts due on the percentage belonging to the deceased on the proceeds of the sale of the records.

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Nor could the efficacy of the agreement and the decisions of this Court be questioned on the ground that greater care should have been taken of the interests of the minor child, Gloria, in relation to those of the other co-heirs, and especially to the natural sons, recognized by the deceased, Rodolfo and Enrico. The inheritance of Caruso was opened in Italy; he himself was of Italian nationality; he had his domicile in Italy, therefore according to our law (Article 6 and 8 Preliminary Dispositions to the Civil Code) and the American law itself, the rights to inherit and the proportion of the rights to the inheritance must be governed solely by our law, and they were indeed regulated on such basis. The right to the inheritance of the natural sons is derived from the formal recognition made by the father, and Rodolfo and Enrico Caruso have for themselves the recognition made by their late father in the certificate of birth when he was not yet married. The impugning of such a recognition could not nor can it be made by means of an inquiry into the maternity for the purpose of establishing the adulterous origin of the recognized sons and the consequent invalidity of the division, agreed with the Act of June 7, 1922, by Notary Sanseverino, because Article 190 of the Civil Code admits the investigation of maternity only in favor of the child who claims his status of child, and not in favor of other persons in order to destroy his status of child.

Thus the prohibition inspired by considerations of public order for the good name and the tranquillity of families when the investigation for the paternity or for the maternity is aimed to establish the adulterous birth, is decisive and settled.

In this particular case, therefore, the recognition having been made by an unmarried parent, any search aimed to impugn the validity for the purpose of discovering the adulterous origin of the recognized children, would have found an insurmountable difficulty in the aforesaid prohibition. Our law—Article 193, adds, it is true: "Nevertheless the natural child will always have the right to alimony; 1st: if the paternity or maternity results indirectly from a civil or penal judgment; 2nd: if the paternity or maternity results from the marriage declared null; 3rd: if the paternity or maternity results from an explicitly written declaration by the parents." But both doctrine and jurisprudence consider in view of the evident precedents of the rule in question that it was intended to grant only an advantage to the child compelled to ask for alimony from the estate of his father or his mother and not to allow third parties to take advantage of indirect and ever contestable consequences or declarations, as those foreseen by said Article 193, in order to establish to the damage of the child an adulterous paternity or maternity.

Notwithstanding the prohibition, proof of the adulterous birth can be made, but both doctrine and jurisprudence agree in holding that this can occur only on the hypothesis that a judicial inquiry had been necessarily directed towards an investigation of such relation or had been made the subject of such investigation in order to ascertain the basis of a proposed action or an accusation made; because no declaration has any validity which must be proven by a civil judgment in cases where the paternity of a child born from the adulterous relation of a wife is denied and

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where the action is admitted and in case of an action on the status bases on a penal judgment in case of infanticide, rape, stupration, abortion, adultery. In such an instance when the legitimacy of the child is contested or his status is disputed or when one of the aforesaid crimes must be ascertained, then the Judge may be induced to establish the filial origin as a foundation or basis of his decision. In the case of the Caruso inheritance an order issued by the examining Judge dated January 17, 1911, passed in judgment, declared extinguished the penal action of falsifying the declaration of the civil status. The extinction of the penal action on account of prescription precluded any investigation and any adjudication on the facts charged; therefore nothing developed which could in the future make it possible to sustain or constitute any proof whatsoever of the adulterous origin of the two children, Rodolfo and Enrico, and the same must be said as to the judgment rendered by the Tribunal and the Court of Appeal of Milan against Giachetti and other defendants. The object of that trial was the defamation and the slandering of Caruso, Giachetti having attributed to him the stealing of a document containing a contract in the form of a letter for a thetrical engagement, and the robbery of some jewels.

The references to the children, aside from the indetermination and lack of precision contained in the judgment, are purely casual and not connected in any manner, not even indirectly, with the subject of the accusations and with the substance of the prosecution and of the defense upon which the Judge gave his judicial decision. Consequently it never could be maintained that either

one or the other of these judicial decisions, according to our law, constitutes an unexceptional proof of a different status than the one Rodolfo and Enrico had acquired on the basis of the valid recognition made by their father. In consequence the agreed settlement of the interest in the estate of Caruso is and remains integral and incontestable and the requested prayer is granted as one which aims to execute an agreement which regulates the status and the capacity of the heirs and the inheritance of Caruso as attained by the competent Italian judicial authorities, binding also the minor child Gloria, in the same manner as it binds the other co-heirs.

FOR THESE REASONS

The Tribunal, deciding in its Chamber of Council, upon the report of the delegated Justice and upon hearing the Public Ministry, authorizes Mrs. Dorothy Benjamin, widow of Mr. Enrico Caruso, without any responsibility on her part, to pay to all heirs of the deceased Enrico Caruso in proportion and according to the contract of June 7, 1922, all the proceeds due from the Victor Talking Machine Company and also the other assets belonging to said estate and existing in the United States of America.

This it was decided the 21st day of August, 1925, in the Chamber of Council of the Section I of the Tribunal of Naples by MM. Comm. Francesco Assariti, President, and Chev. Salvatore Ciotola and Leopoldo Caliendo, Justices. The decision was signed this 25th day of August, 1925. The President, signed: Assariti.

Receipt n. 1118—August 26th, 1925. Collected Lire 24,10. for special tax. The special attorney,

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signed: Villamena. This is an exact copy of the original and it has been released to Mr. Consolazio, attorney. Naples, November 20, 1925.

The First Chancellor, signed: Luiso.

Leaf attached to the deliberation of the matter of Mrs. Dorothy Benjamin, daughter of Park, widow of Enrico. Signed: Chancellor G. R. Luiso.

Seen for legalization of the signature of the Chancellor, G. R. Luiso, Naples, November 23, 1925, the President of the Civil and Penal Tribunal—Caseri. Seal.

KINGDOM OF ITALY
PROVINCE AND CITY OF NAPLES
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA S. S.

November 24th, 1925, Naples, Italy.

I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

IN WITNESS WHEREOF: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

W. W. SCHOTT
WILLIAM W. SCHOTT,
Vice Consul of the United States of America
Naples, Italy.

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Exhibit C-14a.

Division

Vittorio Emanuele Terzo

By the Grace of God and Will of the Nation

King of Italy

This year One thousand nine hundred and twenty-two, the seventh day of June in Naples, in one of the rooms of the Grand Hotel, situated in the Square "Principe Umberto". Before us, Vincenzo Sanseverino, Notary Royal Certificatore, there inscribed, resident with his office at Vico 2 S. Giacomo n.17; and before the underwritten witnesses, capable and known to us, Messrs.: Eduardo Casale, son of the late Louis, employee, born and domiciled in Naples, Vico Nocelle alla Salute n.48, and Eduardo De Maria, son of the late Eduardo, employee, born and domiciled in Naples, Via Bernini al Vomero n.18.

Have appeared in person.

1) Mrs. Dorothy Benjamin Di Park, widow of the late Comm. Enrico Caruso, born in New York and electively domiciled in the office of Hon. Giovanni Porzio, Lawyer in Naples, Corso Vittorio Emmanuele n.596, in her own name and as guardian and administratrix of the estate of her minor daughter Gloria, born from her late husband, Comm. Caruso.

2) Cavalier Amedeo Canessa, son of the late Girolamo, born in Naples, and domiciliated in Naples, Piazza dei Martiri, in his quality of special guardian of the minor, Gloria Caruso, daughter of the late Enrico, appointed by deliberation of

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the Tribunal of Naples sole civil work Section on August 12, 1921.

3) Giovanni Caruso, son of the late Marcello, born and domiciliated in Naples, Via Matteo Preti al Vomero n.4.

4) Rodolfo Caruso, of the late Comm. Enrico, born in Milan and actually resident in Naples in the Hotel S. Lucia.

5) Manlio Tizzani, son of the late Vincenzo, trader, born and domiciliated in Naples, Parco Margherita n.33, as representative and guardian of the minor, Enrico Caruso, son of the late Enrico, actually resident in Naples Hotel S. Lucia,— as per deliberation of the counsel of Guardianship, on August 6, 1921, assembled in the Pretura S. Ferdinando—

Of the personal identity of the parties in appearance we Notary and witnesses are personally sure and they possess the full Juridical capacity—

Recitals

The second day of August of last year died in Naples the Commander Enrico Caruso, son of the late Marcellino, leaving surviving, the legitimate wife, Mrs. Dorothy Benjamin, the legitimate daughter minor Gloria, two natural recognized sons, Rodolfo and Enrico, his brother Giovanni and the second wife of his late father Marcellino, Mrs. Maria Castaldi; after his decease there was discovered in his valise strictly personal, an envelope containing his last wishes, in his own handwriting, dated January 4, 1919, that is before his legitimate daughter Gloria was born.

This will and testament and the other genuine copy in possession of the administrator, Doctor

VECCHIETTINI, were published by deed of Notar GUAGLIANONE of Naples.

Its tenor is as follows:

"To-day fourth of January of the year one thousand nine hundred and nineteen (January 4, 1919), here in New York, United States of the North America. I, hereto undersigned ENRICO CARUSO, son of the late Marcellino and of the late Anna Baldini, sane of mind and body, annul by this act of mine whatever prior will made and I name by this act henceforth as my universal heirs my two sons RODOLFO and ENRICO, and my brother Giovanni. To my wife DOROTHY BENJAMIN what the Italian law concedes to her. My universal heirs shall maintain decorously until her death my step-mother MARIA CASTALDI."

It seems evident that these could never remain the last dispositions of Comm. Caruso to the end that they should regulate the distribution of his estate, after the birth of his legitimate daughter GLORIA.

And since the questions that could arise between her and the appointed testamentary heirs, specially about the revocability and efficacy of such last wishes, certainly would have produced long litigations, with the consequent waste of the estate of the deceased therefore the heirs, excluding in absolute manner the rigid application of any principle and juridical respect, arrived at an amicable settlement which met the full approval of the Tribunal of Naples, in its deliberation of October 21, 1921, first Section, whereof copy herewith attached. The bases of such amicable settlement are contained in the following paragraphs:

a) to deduct from the whole patrimony all the expenses for the obsequies, for the mourning of

the relatives, the taxes of register, succession, legal expenses, of inventories, fees, the sum necessary to build a monumental chapel in the cemetery of Naples, fit for a worthy burial of the deceased, and finally to deduct the necessary sum to constitute an annuity for life of monthly two thousand lire to Mrs. Maria Castaldi, step-mother of the dead person.

b) to deduct also from the whole patrimony five hundred thousand lire cash to be deposited in the Bank of Naples in name of Gloria Caruso, daughter of the late Comm. Caruso, with the pupillary restrictions, to accumulate the interest during her minority, to deduct moreover the collection of golden boxes and that of the watches, also given to the said Miss Gloria Caruso, the whole to be delivered to her at arriving at majority.

c) to divide the rest of the estate in two equal quotas, whereof one to be attributed to the minor Gloria Caruso under pupillary restrictions and the other one to be divided into four equal parts to be attributed in full property, one to Mrs. Dorothy Benjamin of Park, widow of Caruso, one to Mr. Rodolfo Caruso, one to Mr. Enrico Caruso, minor under pupillary restriction, and another to Mr. Giovanni Caruso.

In order to ascertain the whole patrimony of the Comm. Enrico Caruso, everywhere situated, have been already finished the proper inventories, in Naples, thanks to the deeds of the Chancellor of the First District; in Florence by the Chancellor of the Pretura of the Third District; in Lastra a Signa by the Chancellor of that District; in Sesto Fiorentino by the Chancellor of the same District too and in United States by the Notary

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Gaetano Zampariello of New York County with office in 64 Spring Street.

And since according to the laws of the United States is not allowed to make the inventory without nominating first a general administrator of the estate of the defunct, so upon request of all the heirs the Chamber of Counsel of the Surrogate's Court of New York County, Registry Building in the Borough of Manhattan of the City of New York, by decree of January 9, 1922, appointed the constituted Mrs. Dorothy Benjamin, Caruso's widow, general administratrix of hereditary estates of the regretted Comm. Caruso, with the obligation to give bond for $210,000, which was given.

After such complete and performed operations also sworn verification of the real estate of the patrimony, the entire patrimony has resulted of the following enumeration:

1)	Current account in the name of the Commander Enrico Caruso in the Banca Commerciale of Florence	Lire	6,530,823.00
2)	Current account Banca of Italy, branch of Florence	Lire	168,743.13
3)	Current account Banca Commerciale Italiana, branch of Naples	Lire	92,133.85
4)	Claim against Mr. Eugenio Giraldoni, instrument of November 16, 1916, per Notar Fabroni of Florence for	Lire	22,000.00
5)	Claim against Mr. Francesco Buti, instrument October 7, 1915, per Notar Fabroni of Florence for	Lire	150,000.00

Exhibit C-14a.

6) Claim against the heirs of Mr. Capanni, instrument per Notar Imperatore of Figline d'Arno ..... Lire 110,000.00

7) Claim against the firm E. C. Canessa, as per notes in the inventory of the estates of Naples of the Chancellor Pretura S. Ferdinando, of $33,000 par in Italian lires, at the present exchange ..... Lire 594,000.00

8) National Loan, nominal capital lire 405,000 at L. 75% in the Banca Commerciale of Florence ..... Lire 303,950.00

9) Italian Revenue 3.50% for lire 1,050,000 at 73% in Banca Commerciale of Florence are.....Lire 766,500.00

10) Funded debt 5%; 5,000,000 at lire 80% in Banca Commerciale of Florence, are..... Lire 4,000,000.00

11) One hundred and ten "Obbligazioni Ferroviarie Livornesi" 3% in Banca Commerciale of Florence at stock exchange price..Lire 33,936.00

12) Bonds of Denmark 4%, obligations of owners, in Banca Commerciale of Florence, capital crowns 64,800 par at Italian lire ..... Lire 119,252.00

13) Russian Revenue 5%, year 1906, capital Francs 100,000 in Banca Commerciale of Florence of no commercial actual value..... Lire

14) One hundred shares of "Societa Anonima Dini e Cellai" of Florence existing in Banca Commerciale of Florence of lire 150 each, nominal value..... Lire 18,000.00

Exhibit C-14a.

15)	Clothes, personal things and jewels in Naples	Lire	350,694.90
16)	Chattels in Lastra a Signa	Lire	410,658.90
17)	Chattels in Sesto Fiorentino	Lire	192,530.00
18)	Carpets existing in New York	Lire	64,495.00
19)	Automobiles in New York	Lire	50,000.00
20)	Pianole in New York	Lire	8,000.00
21)	Fur Coats in New York	Lire	4,000.00
22)	Objects contained in safe-box of the Hudson Bank of New York	Lire	39,050.00
23)	Francs in Paris to be divided in kind	Lire	
24)	Personal chattels and things in America	Lire	167,625.00
25)	Artistic Patrimony—Theatrical costumes in America	Lire	15,141.00
26)	Majolica wares and Persian miniatures	Lires	155,875.00
27)	Values in America net of debts of February 3, 1921, results in $461,305.05 par at lire 8,303,-490.00 at the actual exchange	Lire	
28)	Copyright of 10% upon the disks of Gramophone sung by Comm. Caruso and granted to the Victor Machine Company	Lire	14,367,406.88

List of Disks

(Here follows detailed list of 179 Victor Records.)

And others, whereof for the moment the titles are not remembered, and still others to be published by the respective Victor Talking Machine Co.

Exhibit C-14a.

DESCRIPTION OF REAL ESTATE BELONGING TO THIS INHERITANCE:—

26. Real Estate.

The property of Comm. Caruso contains landed properties and urban properties and it is situated in the city of Florence in the boroughs of Lastra A Signa, Carmignano and Sesto Fiorentino.

1) There are in Florence city:

a) House of civil habitation, located in Vittorio Emanuele Street, municipal number 143

b) House of civil habitation in the same street, municipal numbers 145-147

c) House of civil habitation in the same street, municipal numbers 149-151

d) House of civil habitation in the same street, municipal numbers 153-155

e) House of civil habitation located in Piazza D'Azeglio, municipal n.29

f) House of civil habitation, located in Giusti Street n.I

g) House of civil habitation, located at n.II Goito Street

2) There are in Lastra Assigna borough:

h) The farm-house of Bellosguardo

i) Rented houses, located in Provinciale Livornese or Lisca Street and marked by municipal numbers 182-184

l) Houses located in Barberino Street, marked by municipal numbers 15-II-9

Exhibit C-14a.

3) There are in Sesto Fiorentino borough:

m) the farm-house of Belvedere

n) the house of civil habitation, located in Sodo street and in Quarto street with municipal numbers 1-3-17-19

o) Rented houses in Delle Panche and Sodo streets, with municipal numbers 23-26-28-30-32-34-36-38

To the whole above described property is given the aggregate value of lire 6.013.203,67 as per attached detailed report of the engineer Mr. Consolazio.

DESCRIPTION OF THE ABOVE SPECIFIED PROPERTY AND REGARDING NOTICES FROM THE REGISTER OF LANDS.

(Here follows a detailed description of the real estate consisting of 37 parcels.)

Total value of the described hereditary real estate Italian lire 6.013.203,67.

After the death of Comm. Enrico Caruso, who was the absolute owner and disposer of the whole his estate, his heirs destitute of all means were obliged to provide for the payment of physicians, medicines and hotel, for the necessary and worthy obsequies in memory of him, for their mourning, for their daily maintenance in Italy and America, where, as is known, the cost of life is the quadruple than in Italy, for all the expenses, not excluding the supplies suspended, for a tangible appreciation to two valets who year after year had dedicated all their cares and their tried honesty to their master, to provide for the land-tax, the expenses of provisions, the purchase of a Chapel already in construction at the Cemetery of Naples,

the payment of an advance to the firm Chiurazzi for the continuation of that work, the rental readjustments and the necessary improvements to the property, and the expenses of inventories at Naples, Florence, Sesto Fiorentino, Lastra Assigna and New York.

And moreover it is still necessary to complete the payment of the funeral Chapel, the whole work of which is estimated lire 470,000 between purchase of the land and continuation of the work.

It is necessary to provide for the payment of the registration fees, for the notarial deeds among the heirs and specially for the tax of succession which on the above specified patrimony will reach the sum of nearly 5.000.000; to put aside a sum for certain supplements, for the increases of value; to provide for the legal expenses, for the fees, the appraisal, the insurance of patrimony, the present deed and for all the subsequent operations of material division and taking possession of the goods existing at Naples, Florence, Lastra, Assigna, Sesto Fiorentino, New York, for which the heirs in full accord have put aside the sum of lire 7.000.000., which will be intrusted, as hereinafter specified, to Mrs. Dorothy Caruso, in order that she may first satisfy the debt already contracted with the Banca Commerciale Italiana, branch of Naples and Florence amounting about lire 1.400.000 and to provide for the payment of all the obligations above cited. Such allegations made before we come to the present act of division and attribution already ratified by the Counsel of guardianship of the minor, Enrico Caruso, according to the deliberation, herewith enclosed:

Art. 1—The precedent recital is integral part and substantial part of the present act and must have the efficacy and force of an agreement.

Exhibit C-14a.

Art. 2—In virtue of the amicable settlement arrived at among the constituted heirs and ratified by the Tribunal of Naples, in its deliberation of October 21, 1921, First Section, which in its full contents is accepted by all the constituted parties and of which a copy is hereunto annexed, the patrimony of the defunct Commander Enrico Caruso, son of the late Marcellino, is distributed as follows:

One-half to the legitimate daughter Gloria, besides the special grant of the capital of lire 500.-000, as per recitals, and the collections; the other half, always in full property, one-fourth to Mrs. Dorothy Benjamin, Caruso's widow, another fourth to Mr. Rodolfo Caruso, another fourth to the minor, Enrico Caruso, and the last fourth part to Mr. Giovanni Caruso, son of the late Marcellino, defunct man's brother germain.

Art. 3—From the patrimony of the regretted Comm. Enrico Caruso, ascertained through the inventories mentioned in the recitals accepted by the heirs in their context, and as to all the declaration therein contained, ascertained also through the sworn appraisal hereto annexed, before proceeding to the formation and attribution of the quotas, are made, as said in the recitals, the following previous deductions to put aside:

1) The royalties corresponded with the grant of 10% by the respective Victor Talking Machine Company on the sale of the gramophone disks performed by Comm. Caruso, which royalties shall be in the future divided and attributed to all the heirs in proportion of their quotas.

2) $461,305.05 par to lire 8.303.490, calculating the exchange at lire 18, that shall be divided and

attributed as soon as will be paid the taxes owed to the Government of the United States.

3) About Francs 30.000 par to Italian lire about 51.000, that shall be divided and attributed as soon as will be paid the taxes owed to the Government of the France, for the said sum is deposited in Paris in the Credito Lyonnays.

4) Collections of bronze, collections of enamel, collections of antique glasses, collections of arms, some paintings existing in New York in the Canessa's Gallery, 410 golden antique coins existing at New York in the Hudson Bank; 34 overpieces of furniture existing at Lastra Assigna in the Villa Bellosguardo; 1,346 golden antique and modern coins; the collection of the antique glasses existing in the Villa Bellosguardo too, besides about other twenty things which may be chose in the Villas Bellosguardo and La Panche; which objects will be sold at Naples and at New York following the authorization of the Tribunal of Naples and with every guarantee of Law, and the profit shall be divided and attributed proportionally to the hereditary quota of each participant.

5) There shall be put aside lire 7.000.000 to be consigned to Mrs. Dorothy Benjamin-Caruso in order to pay the debt of about one million and four hundred thousand lire (1.400.000) in principal and interest, already contracted with the Banca Commerciale, Florence and Naples branches; to complete the payment of the Chapel in construction in memory of the regretted Commander Caruso in the Cemetery of Naples; to complete the payment of every funeral expense and others incurred after the decease; to provide for the payment of the tax of succession, of registry and others, for the payment of the expenses

and fees, of provisions and obligations incurred after the death of Commander Caruso, besides for the constitution of an annunity for life in favor of Mrs. Maria Castaldi for the payment to her of lire 2.000 monthly, and for whatever else obligations or expenses may arise. Whatever sum will remain from such one put aside Mrs. Benjamin Caruso shall divide among the heirs, herself included, taking in advances made to everyone.

6) Thereafter shall be deducted from the cash money existing in America in the hands of Mrs. Dorothy Benjamin Caruso lire 500.000, which are attributed to Miss Gloria Caruso, and which shall be deposited to her account under pupillary restrictions consigned to her at her full age together with the interests that shall be accumulated in increase of the principal sum.

7) To Miss Gloria Caruso are attributed the collection of golden boxes and of watches existing in New York and in the Villas of Bellosguardo, as results from the inventories of Notar Zamparelli of New York and of the Chancellor of Lastra Assigna, to be consigned to Mrs. Benjamin Caruso, as mother and administratrix of the estate of her minor daughter. These last collections of boxes and watches and all the collections and objects whereof at n. 4, which immediately precedes, have been already all subtracted and put aside from the personal estate of Commander Caruso, listed in the recitals in order to attribute a part of them to Miss Gloria in virtue of the precedent agreement confirmed by the tribunal, and the remaining part to be sold and to be distributed to all the heirs in proportion of the each distributive share. In consequence of such provisions and

previous deductions the hereditary patrimony to be divided actually amounts to lire 13.380.609.85, of which to Miss Gloria Caruso belong and are attributed lire 6.690.304,50; to Mrs. Dorothy Benjamin, Caruso's widow, lire 1.672.576,05; to Rodolfo Caruso lire 1.672.576,05; to Enrico Caruso the same amount and to Giovanni Caruso the same sum.

Art. 4—After thus obtaining the amount of the patrimony that may be divided immediately and in order to proceed to the division and attribution of each quota.

Miss Gloria Caruso is assigned of the following assets:

House in 143 Vittorio Emanuele Street in Florence	Lire	488.118,67
House in 145-147 of the same street	Lire	138.000,00
House in 149-151 of the same street	Lire	127.000,00
House in 143 and 155 of the same street	Lire	159.000,00
House in 1 Giusti Street	Lire	458.000,00
House in II Goito Street	Lire	40.000,00
House in "Via Livornese Lissa"	Lire	14.000,00
House in "Via del Barberino"	Lire	48.600,00
Renting Houses in Panche and Sodo Streets	Lire	37.200,00
Houses in "Via Sodo quarto" n.1-3-17-19	Lire	375.285,00
Claim against Canessa	Lire	594.000,00
Claim against Giraldoni	Lire	22.000,00
Claim against Ruti	Lire	150.000,00
Claim against Capanni	Lire	110.000,00
One-half of the theatrical clothes	Lire	7.570,50
Carpets existing in New York	Lire	64.495,00
Pianola in New York	Lire	8.000,00
A fur-coat existing in New York	Lire	2.000,00
Objects in the box of Hudson (bank) in New York	Lire	39.050,00
Furniture and things in New York	Lire	167.625,00
One-half of personal goods and precious goods in Naples with preference of choice	Lire	175.347,45
Obligations of Denmark	Lire	119.252,00
110 Obligations of Azioni Ferroviarie livornesi	Lire	33.936,00
Consolidate 5%	Lire	3.007.375,00
" Prestito Nazionale "	Lire	303.950,00
Total Lire		6.690.304.62

Exhibit C-14a.

Mrs. Dorothy Benjamin Caruso, widow, is assigned of the following assets:

House in 29 D'Azeglio Square in Florence, described, bordered and registered as in narration	Lire	528.000,00
Theatrical clothes	Lire	1.892,60
One-eighth of personal and precious goods in Naples	Lire	43.836,86
Majolica wares and Persian miniatures	Lire	155.875,00
Automobiles in New York	Lire	50.000,00
Rendita Italiana 3,50%	Lire	766.500,00
Consolidato	Lire	126.472,00
Total Lire		1.672.576,46

Mr. Rodolfo Caruso, son of the late Commender Enrico, is assigned of the following estates:

One-half of the real estate of Bellosguardo (Villa and farm)	Lire	1.200,000.00
Quota of theatrical clothes	Lire	1.892,60
One-half of the Dini's and Callai's shares in Florence	Lire	9.000,00
One-eighth of personal and precious goods in Naples	Lire	43.836,86
One-half of personal goods in Bellosguardo exclusive of the collection	Lire	205.508,66
Consolidato 5%	Lire	212.338,90
Total Lire		1.672.576,10

Mr. Giovanni Caruso, son of the late Marcellino in payment of his quota is assigned of the following goods:

One-half of the whole Villa and farm in Bellosguardo	Lire	1.200.000,00
Theatrical clothes	Lire	1,892,60
One-eighth of personal and precious goods in Naples	Lire	43.836,86
Fur-coat in America	Lire	2.000,00
One-half of personal goods in Bellosguardo exclusive of the collections	Lire	205.329,00
Consolidato 5%	Lire	219.519,00
Total Lire		1.672.576,00

Mr. Enrico Caruso is assigned of the following estates:

Farms Belvedere's Cercina's and Panche's	Lire	1,200,000.00
Quota of theatrical clothes	Lire	1,892,60
One-eighth of personal and precious goods	Lire	43,836,86
One-half of Dini's and Cellai's shares in Florence	Lire	9,000.00
Consolidato 5%	Lire	225,318.00
Personal goods in Sesto Fiorentino	Lire	192,530.00
Total Lire		1,672,576.00

Exhibit C-14a.

Art. 5—The right of the sale of the disks for gramophone of all the operas and songs sung by their "dante causa" and reserved from the Victor Talking Machine Company shall be divided and attributed, always according to the fixed proportions, as follows:

One-eighth to Mr. Rodolfo Caruso
One-eighth to Mr. Enrico Caruso
One-eighth to Mrs. Dorothy Caruso

And the remaining four-eighths are attributed to the minor Gloria, of which two-eighths will represent principal capital to be reinvested as follows and two-eighths shall be paid unrestricted to the mother Dorothy Benjamin Caruso as mother guardian and legitimate administratrix of the said minor. In consequence the Victor Talking Machine Company every first of February of each year, as per its obligation, shall pay on the said sum of 10%, one-eighth unrestricted to Mr. Giovanni Caruso; one-eighth to Mrs. Enrico Caruso's tutor during his minor age; three-eighths unrestricted to Mrs. Dorothy Caruso; and finally it shall pay the remaining two-eighths to the Bank of Naples, New York's branch, under pupillary restrictions for the account of Gloria Caruso. On these two-eights the said Banco di Napoli shall pay during the minority of Gloria the interests of all the sums paid from the said Victor Company to Mrs. Dorothy Benjamin Caruso's widow.

Art. 6—The sales of the collections of the objects of art, of bronze and other things shall take place in Naples through and under the responsibility of U. S. Notary and we may make use of experts and of premises fit for such a sale, and in New York under the supervision of Notary Zam-

pariello under the supervision of the "firm E. C. Canessa" if he will deem it convenient. The net amount of the sales shall be divided and attributed for one-eighth to Mrs. Dorothy Benjamin Caruso, for one-eighth to Mr. Rodolfo Caruso; for one-eighth to Mr. Enrico Caruso to be paid to the Banca di Napoli, under the pupillary restriction one-eighth to Giovanni Caruso and four-eighths to Gloria Caruso to be paid to the Banco di Napoli under the pupillary restrictions, and with the interests as by law in favor of her mother, during her minority.

Art. 7—The notable institute of Banco di Napoli shall thus retain all the sums attributed to the minor Gloria Caruso till her full age, paying to her mother Dorothy Benjamin-Caruso the interests that will accrue on the said sums; excepting, however , the interests produced by the L. 5000.000. attributed to Miss Gloria as aforesaid, which shall be accumulated in favor of the same and paid to her, with the principal at her majority.

Art. 8—As Mrs. Dorothy Benjamin, Caruso's widow, enjoys the full confidence of all the parties and she has been nominated legal administratrix of the goods in America, giving a bond of $210,000, so all the parties, constituted, agreed fully and formally authorize the Banca Commerciale Italiana, branches of Naples and Florence, the Banca D'Italia of Florence, to consign freely to the said Dorothy Benj. Caruso everything in their possession pertinent to the Caruso's inheritance whether standing in the name of the defunct Commender Enrico Caruso or deposited in the name of the heirs, giving the said Institutions valid and final receipt and discharge.

Exhibit C-14a.

Mrs. Dorothy Caruso shall take care to proceed to put aside lire 7.000.000 using first the cash money in current account and in the case the same were insufficient, for the difference, selling as many securities, after paying, as above, the quotas to those of age in securities titles at the price agreed upon, and taking care for the minors to deposit at the Banco di Napoli under pupillary restrictions and with the special conditions as above fixed.

In the remote case that the Banco di Napoli is not willing or cannot take upon itself the charges as above intrusted to it, there shall be substituted another Institute which enjoys the full confidence of Mrs. Dorothy Benjamin, Caruso's widow.

Art. 9—To everyone shall be attributed and paid unrestricted excluding minors, those securities and proceeds of insurance made by Commender Caruso when alive with the specific designation of the beneficiary.

The mentioned sums shall be free from imputation and collation. Those sums that for the mentioned reason belong to the minors shall be deposited in the Banco di Napoli for the beneficiary under the pupillary restrictions.

Art. 10—Mrs. Dorothy Caruso shall proceed to the actual division among the heirs, herself included, of the deposit in francs existing in Paris, free from the tax of succession, of the amount deposited in the Bank of Berlin, and of the Russian Rent as part of the said patrimony; also on such assets the quotas belonging to the minors shall be deposited to the Banco di Napoli under the pupillary restriction.

Exhibit C-14a.

Art. 11—Mrs. Dorothy Caruso as soon as will have completed all the payments due from the patrimony of Commender Caruso, shall divide among the heirs, herself included, the residue, if any, from the fund of 7.000.000 above mentioned, the interests and rents mortgaged on all the sums that she shall withdraw and till the day of said withdrawal.

Art. 12—To Mrs. Dorothy Caruso for herself and for her daughter shall be attributed one silver table service and some furniture existing in the Villa at Lastra Assigna among which one service of French plates, five eights of the liquors existing in the cellar of Gellosguardo, the French bed-room suit, all the books, the albums, newspapers, films, one Japanese picture, one small Napolean closet, the commemorative vases, the Enrico Caruso's silver bust, one large oil painted portrait of Enrico Caruso, likewise one in the "Juive", three tables, the trunks, the whole existing in the Villa Bellosguardo; one traveling necessaire, one service of gold glasses in the Villa "delle Panche" and besides the collection of small spoons outside of this division.

Art. 13—The sales of the collections and objects to be made in Naples and in New York must be completed without fail on May of one thousand nine hundred and twenty-three choosing the dates more appropriated for their execution according to the opinion of the experts chosen by the Notaries and the net amount of the sales aforesaid shall be paid by the Notary to the heirs according to their respective distributive shares, excepting the sums belonging to the minors which by care of the same Notars shall be deposited at the Banco di Napoli in favor of the same.

Exhibit C-14a.

Art. 14—All the constituted parties in their names delegate the lawyers Hon. Giovanni Porzio and Gabriele Consolazio to draw up and subscribe in their name and interest instance to the most Excellent Tribunal of Naples to obtain the conformation of this notarial deed, together with the minutes of Counsel of Guardianship of the minor Enrico Caruso, bringing and accepting all those modifications which it may be proper to propose or may be made by the Tribunal which do not change the substance of this instrument.

Art. 15—Mrs. Dorothy Benjamin-Caruso shall, not later than the end of the current year, apportion and divide to the heirs the residuary sums existing in America.

Art. 16—By a charge of Avvocato Consolazio, there shall be deposited with us, the Notary, all the instruments, deeds, inventories, the contracts of mortgage and the contract with the Victor Talking Company, with the understanding that there shall be consigned to each one of heirs all the acts pertaining to the assets to them assigned.

Art. 17—For any controversy that may arise all the parties constituted elect the jurisdiction of the Court of Naples.

Art. 18—All the expenses of the present act and consequentials are shared by the mass in proportion of the distributive rights of each heir to be taken from the sums allotted. The present act is signed by the constituted parties by the witnesses and by us the Notary according to law on the margin of each sheet and at the end.

Exhibit C-14a.

Whereof the present act has been drawn up in twenty-four sheets, of #95 pages, written by a trusted person in our confidence, less the date handwritten by us and we have read together with the enclosed documents and the notes to the constituted parties, which have fully approved the whole in the presence of the mentioned witnesses.

Signed: Dorothy Benjamin-Caruso—Amedeo Canessa—Giovanni Caruso—Manlio Tizzani—Rodolfo Caruso—Eduardo De Maria witness—Eduardo Casale witness—Notar Vincenzo Sanseverino, son of the late Notary Giuseppe in Naples.

(There follows body of the petition and decree of Tribunal, constituting Exhibit C-9a.)

This copy is conformed to its original and given by request of Attorney Mr. Gabrielle Consolazio, Naples, 19th of June, 1922, by Chancellor F to Russo.

The present copy is conformed to its original and by us signed in accordance with the law and released for registration today in Naples, the 23d of June one thousand nine hundred and twenty-two. The Royal Certificate. Naples Notary Vincenzo Sanseverino.

Royal Pretura of the Department of Naples. Seen for the legalization of the signature of the Notary Sanseverino Vincenzo, Naples, 23d of June, 1922. The Chancellor, the Pretore (both names illegible).

Seen for the legalization of the signature of Mirando, Judge Pretore of the 3d Division of Naples and hereto affixed by delegation of his Excellency the Minister of Justice, Naples, 21st of

Exhibit C-14a.

November, 1922. The First President of the Court of Appeals. (Signature illegible.) The Chancellor of the Court, (signature illegible).

Seen for the legalization of the signature of Mr. Miraglia, First President of the Court of Appeals of Naples, 21st day of November, 1922. By delegation of his Excellency, the Master of Foreign Affairs, the procurator General (signature illegible). The Secretary (signature illegible).

United States Consulate,
Naples, Italy, November 21, 1922.

I, A. T. Nester, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the King's Attorney General of Naples, Kingdom of Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate at Naples, Italy, the day and year next above written.

A. T. Nester,
Vice-Consul of the United States
of America,
Naples, Italy.

Exhibit C-15a.

City of Naples
Division 3A Section 3A
Register of Population

The Royal Commissioner, after examining the Register of Population, certifies that by immigration the 18th of June, 1921, from America, there results as residents in this community Caruso Enrico, son of the late Marcellino, and the late Baldini Anna, born in Naples the 27th of February, 1873, domiciled the Hotel of Vesuvius, deceased this 2nd day of August, 1921; to be used before the Court at Naples the 18th day of May 1926.

Royal Commissioner,
E. Scala

Chief of Division Bucarelli
Seal of the City of Naples.

The High Commission of the Province of Naples
Seen by delegation of the Minister of Foreign Affairs through the signature of the Royal Commissioner Mr. E. Scala, Naples the 22nd day of May, 1926.

The High Commission
(Signature illegible)

Exhibit C-15a.

KINGDOM OF ITALY
PROVINCE AND CITY OF NAPLES } ss.:
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA

I, Howard K. Travers, Consul of the United States of America at Naples, Italy, do hereby certify that the signature and seal of the High Commissioner of the Province of Naples, Italy, on the document hereunto annexed are true and genuine and as such are entitled to full faith and credit.

IN WITNESS WHEREOF, I have set my hand and the seal of this Consulate Generale this 25th day of May A. D. 1926.

HOWARD K. TRAVERS,
Consul of the United States
of America,
Naples, Italy.

Exhibit C-18.

C. C. P. Section 84. The Civil Tribunals recognize

1. In first instances all causes in civil matter where the value exceeds 1500 (5000) lire, except the dispositions of the Article 71, First Division, and Article 82, and all causes in the matter of taxes direct or indirect, no matter what their value may be.

2. On appeal all the actions in civil matter decided in first instance by the pretors or by arbitrators in limit of the jurisdiction of the pretors, and except the disposition of Article 28.

They take jurisdiction also with the distinction indicated in the two subdivisions preceding, of

causes in commercial matters when they act as tribunals of commerce.

Sec. 71. The pretors have jurisdiction of all actions, civil and commercial, where the value does not exceed 1500 (5000) lire, except the jurisdiction established in the preceding article.

Ar. 82. The pretors have jurisdiction, whatever the value of the cause may be, provided they have been instituted within a year of the fact which gives origin to them,

1. Actions for waste and damages done to urban or country real estate, hedges, enclosures, plants and fruit trees.

2. Possessory actions.

3. Causes for damage feared and denunciations of new works in conformity of articles 698, 699 of the Civil Code.

4. Actions directed to obtain the observation distinctions established by the law and regulations and local uses for the plantation of trees or hedges.

5. Actions of dispossess on account of end of lease, except disposition of Article 7.

C. C. P. Par. 187.

"An exception to incompetence for matter or for value may be raised at any state and grade of the proceeding. The judicial authority must pronounce it ex officio. In every other case the exception of incompetence must be proposed before every other step or defense nor can it be pronounced ex officio."

C. C. P. 778.

"There is treated in the Council Chamber (of the Tribunal): (1) Any matters of voluntary jur-

isdiction except where the law otherwise provides; (2) any other matters to be treated without opponents; (3) any other cases determined by the law."

Civil Code Section 251.

"The family council is composed of the pretor who convokes it and presides and four consultants.

In addition, the guardian, the vice guardian, and for an emancipated minor, the curator form part of the family council. The minor after reaching the age of sixteen years has the right to assist but without deliberative vote at the family council, of which there shall be notice served upon him."

Section 252.

"Consultants of right in the following order when they are not part of the family council in another capacity are: (1) the male ascendants of the minors; (2) brothers germane; (3) the uncles. In each class the nearest are preferred and when otherwise, the older."

Section 253.

"If there are no consultants indicated in the preceding articles or not being in sufficient number, the pretor must nominate to the same office other persons choosing them as far as possible and as convenient from the nearest relatives and collaterals of the minor. In default of relatives and collaterals, the pretor will proceed according to Article 261."

Article 296.

"The guardian without authorization of the family council cannot collect the principal of the

minor, make loans, take money on mortgages, give pledges or mortgages, alienate real or personal property except the interest and personal property subject to quick depreciation, assign or transfer credits or instruments of credit, purchase real or personal property except the objects necessary for the household or for the administration of the capital, make leases exceeding nine years, accept or repudiate inheritance gifts or legacies subject to burdens and conditions, *proceed to division* or provoke them in a judicial way. He can likewise not without said authorization *make compromises or settlements,* institute actions at law unless they are possessory actions or matters relative to the collection of income except in cases of urgency."

Article 301.

"All deliberations of the family council by which are authorized acts of alienation, pledges or mortgages of the minor, must be submitted to the confirmation of the tribunal. There must be likewise submitted to such confirmation of the tribunal the deliberations which authorize a guardian to borrow money and relative to *transactions to compromises and to division* in which the minor is interested."

Civil Code, Section 224.

"The father represents the children born and to be born in all civil acts and administers their fortune. However, he cannot alienate, hypothecate or pledge the fortune of the child, contract in the child's name mortgages or other obligations exceeding the limits of its simple administration, unless it is for reason of necessity or evidenced utility to the child or through or by order of the tribunal. If there are conflicts of interest between

the children subject to the paternal power, or between them and the father, there will be nominated a special guardian for the children. The nomination of the special guardian will be made by the ordinary judicial authority before whom the cause might appear, or in every other case by the civil tribunal."

Section 228.

"The father has the usufruct of the goods which the child receives by inheritance, donation or by any other lucrative way and retains it until the child may be emancipated or have attained his majority."

Section 230.

"There adhere to the legal usufruct the following charges: (1) the expenses of maintenance, education and instruction of the child; (2) the payment of annuities or interest upon the capitals which begin from the day in which the usufruct commences; (3) all the other obligations to which the holders of the usufruct are subjected."

Section 231.

"The dispositions of the foregoing articles apply to the mother when she exercises the paternal power. The legal usufruct passes to the mother even when the paternal power is exercised by the father, when the latter is excluded for reasons personal to him."

Civil Code 1304.

"The acts accomplished in the manner ordained by the law in the interest of a minor, an incompetent or incapacitated person have the force which they would have if they had been executed by a person of age in his full capacity."

Exhibit C-18.

Civil Code Section 477.

"The usufruct is the right to enjoy those things of which others have the property in a manner in which the proprietor would enjoy it but with the obligation to conserve the substance in the matter as well as in the form."

Section 232.

"The legal usufruct ceases with the death of the child and with the passage of the parent to a second marriage."

Section 237.

"The mother desiring to pass to a new marriage must first convoke a family council pursuant to Articles 252 and 253.

The council deliberates whether the administration of the goods shall be conserved to the mother and can establish conditions with regard to said administration and to the education of the children. The deliberations of the family council are subjected to the tribunal for its regulations pursuant to Article 235."

Section 925.

"The possession of the property of the deceased passes as a matter of right to the person of the heir without necessity of material seizin."

Exhibit C-19.

CITY OF NAPLES

ARCHIVES OF THE CIVIL STATUS

Extract from the Register of the Marriage Certificates of the year 1918. Kuartine District.
Act No. 45. P. II. S. B.

Caruso Enrico—Benjamin Dorothy Park

In the year 1918, this 23rd day of December, at 2 p. m. in the City Hall, I, Advocate Gerardo Guaranta, Communal counsel delegated by the Mayor the 27th of November in the current year, and official of the Civil Status of Naples, First Office, have received from the Procurator General of the King of Naples, the certificate which I herewith transcribe: Translation. New York, the 6th of November, 1918. Copy taken from the marriage certificates filed in the Department of Health, State of New York, No. 506, City of New York. Health Department, State of New York, Number of Certificate 22948, Certificate and Act of Matrimony of Enrico Caruso, husband, residence, New York, State of New York, age 45 years, color white, unmarried, profession artist, place of birth, Italy, son of Marcellino and Anna Baldini, and Dorothy Park Benjamin, wife, residence New York, State of New York, age 25 years, color white, unmarried, place of birth, Hastings, State of New York, daughter of Park and Ida E. Crane, No. of marriage of husband and wife—first marriage.

I certify that the above named husband and wife were united by me in marriage according to the laws of the State of New York in the Marble Collegiate Church situated in the Borough of

Exhibit C-19.

Manhattan, City of New York, this 20th of August, 1918.

Witnesses to the marriage, Campbell Keith and Bruno Zirato. Signature of the officer of the marriage, Oliver Paul Burnhill, Minister of the said church, residence 1 West 29th Street, New York. Date of registration of the certificate, the 22nd of August, 1918. True copy by Dr. Frank I. Monaghan, Secretary of the Department of Health of the City of New York. Dr. S. W. Wynne, Clerk.

(Seal)

There follows the legalization of such signature, certified by the Royal Consul General in New York with translation attached to the certificate in English language.

New York, the 8th of November, 1918, signature of the Royal Consul. Seals and legalization.

This document with my legalization is attached to this registry. Gerardo Guaranta.

Copy conform to the original

Naples the 13th of January, 1927 Year V.
The Archivist

Signature illegible. Officer of the Civil Status

Signature illegible.

Seen for legalization of the signature of the Officer of the Civil Status, Naples, the 14th of January, 1927 Year V. The delegated clerk

CAVEGLIA.

Exhibit C-19.

KINGDOM OF ITALY
PROVINCE AND CITY OF NAPLES
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA
} ss.:

I, Howard K. Travers, Consul of the United States of America at Naples, Italy, do hereby certify that the signature and seal of the Chancellor Delegate of the Tribunal of Naples, Italy on the document hereunto annexed are true and genuine and as such are entitled to full faith and credit.

IN WITNESS WHEREOF: I have set my hand and the seal of this Consulate Generale this 19th day of January, A. D. 1927.

(Signed) HOWARD K. TRAVERS
HOWARD K. TRAVERS
Consul of the United States
of America
Naples, Italy

(Seal)

Exhibit C-20.

BIRTH CERTIFICATE

CITY OF NAPLES

ARCHIVES OF THE CIVIL STATUS

Extract from the Registry of the year 1920.
Quartine District. Act No. 38. P. II. S. B.
CARUSO GLORIA

In the year 1920, this 16th day of March at 11 a. m. in the City Hall, I, Commander Alfonso La Via, head officer delegated by the Royal Com-

Exhibit C-20.

missioner, the 10th of October last, and officer of the Civil Status of Naples, first division, have received from the Department of the Royal Procurator of the King of Naples the act which I herewith transcribe.

Consulate General of Italy. Translation. New York, the 7th of January, 1920. Copy extract from an act which is preserved in the Department of Health in the City of New York, and of a Certificate No. 55657, Certificate of Birth of Gloria Graziana Caruso, female sex, white color, born December 18, 1919, at the Hotel Knickerbocker, 42nd Street and Broadway, daughter of Enrico Caruso, residing in Italy, born at Naples, Italy, 46 years old, artist, lyric tenor, and of Dorotea Benjamin, residing in Italy, born in Hastings, State of New York, 26 years old. Number of previous children—none. Now living—one. There follows the declaration of the person who assisted at the birth, and it concludes with the declaration of birth signed by Dr. Austin Flint, residing at 16 West 54th Street, New York City. Date of the declaration, 21st of December, 1919. There is certified that the foregoing is a true photographic copy of a certificate which is preserved in the office of the Civil Status, of the Health Department of the City of New York, signed by Dr. S. W. Wynne, Clerk. Seen at the Royal Consulate General of Italy, in New York, for the translation attached to the certificate of birth of Gloria Graziana Caruso, drawn in English language New York, the 12th of January, 1920. H. A. Vice Consul, signature illegible. Seals and legalization.

This document furnished and by me seen I attach to the Register. Alfonsa La Via.

Exhibit C-20.

Copy conformed with the original Naples. the 13th of January, 1927, Year V.
The Archivist.
Signature illegible.

The Officer of the Civil Status
Signature illegible.

Seal

Seen for the legalization of the signature of the officer of the Civil Status, Naples, the 14th of January, 1927. The delegated clerk

Caveglia.

Seal.

KINGDOM OF ITALY
PROVINCE AND CITY OF NAPLES
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA
ss.:

I, Howard K. Travers, Consul of the United States of America at Naples, Italy, do hereby certify that the signature and seal of the Chancellor Delegate of the Tribunal of Naples, Italy, on the document hereunto annexed are true and genuine and as such are entitled to full faith and credit.

IN WITNESS WHEREOF: I have set my hand and the seal of this Consulate Generale this 19th day of January A. D. 1927.

(Signed) Howard K. Travers
Howard K. Travers
Consul of the United States America
Naples, Italy

Seal

Exhibit G-C-1.

(Same as Ex. C-20 without record of Italian filing.)

Exhibit G-C-2.

(Same as Ex. C-19 without record of Italian filing.)

Exhibit G-C-3.

Original copy of the will of the late Enrico Caruso written in Italian.

Oggi Quattro Gennajo dell' Anno Mille Novecento Diciannove, qui a New York, Stati Uniti D'America Del Nord, io qui sottoscritto Enrico Caruso fu Marcellino e fu Anna Baldini, Sano Di Corpo e di mente, annullo con questo mio atto qualunque testamento fatto anteriormente, e nomino con questo atto da oggi in poi miei eredi universali i miei due figli Rodolfo Ed Enrico e mio fratello Giovanni. A mia moglie Dorothy Nata Benjamin la parte che la legge Italiana le accorda. I miei eredi universali manterranno decorosamente sino alla sua morte mia matrigna Maria Castaldi.

Firmato: Enrico Caruso.

Firmati:
Bruno Zirato
17 East 38th Street, New York

Salvatore Fucito
2025 Broadway, New York

State of New York, County of New York. The above Enrico Caruso, Bruno Zirato, E. Salvatore Fucito signed this before me this fourth day of January, 1919. Constant J. Sperco, Notary Public, N. Y. County 363.

Exhibit G-C-4.

(For Identification.)

(Green Book)

TRANSLATION.

(Pages 16-A to 29-A.)

STATEMENT.

(Page 16-A.)

To the Most Illustrious Inquiring Judge:

Defence statement of the defendant, Enrico Caruso.

In the year 1897 I met, in Leghorn, Mrs. Ada Giacchetti, married to a certain Gino Botti, and in the following year I moved, with her, to Milan and with her I lived in a marital way until 1907.

(Page 22.)

From the end of July, 1908, till the end of January, 1909, having gone back to America, I did not see any more Mrs. Giacchetti, who had remained in Italy. On December 12, 1908, I received a letter sent on November 27, 1908, from Milan, by Carlotta Carignani. This lady, who for many years had known me and Mrs. Giacchetti, was the owner of the "Pension Excelsior" of Milan, where Mrs. Giacchetti was boarding at that time. Being a noble hearted woman, she was deceived by the false sorrow shown by Mrs. Giacchetti, and in her aforementioned letter she interposed her good offices as an effectionate mother and spouse, in order that I would again—it would have been the fourth time—forget all the past sorrows and anxieties for the sake of the many years of life spent in common.

I answered this letter of Mrs. Carignani with a letter in which, while giving vent to all my sor-

rows, I showed how I was unable to forget that woman and how I still remembered her.

Undoubtedly to do good, Mrs. Carignani must have spoken to Giacchetti about my letter, and probably also shown it to her, and this latter being now assured that she had not as yet lost her charm on me, convinced all the good family Carignani so well of her repentment that Maestro Carlo Carignani decided to accompany her to New York in order to obtain a new pardon from me.

(Page 29.)

Respectfully,

(Signed) ENRICO CARUSO.

In the Pretura of the First Mandament of Milan, today, July 7, 1910,

Before the Pretore Atty. Montanary, assisted by the undersigned chancellor,

Has appeared Mr. Enrico Caruso who, upon submitting the foregoing statement with attached document dated July 29, 1908, requests that the same be made part of the proceeding's records, as per reservation expressly made by him in the transcription of his interrogatory and of his petition of complaint.

Signed: ENRICO CARUSO.

Read, confirmed and subscribed,
Signed: MONTANARI
Signed: COSCIA

Exhibit G-C-4.

Exhibit G. C. 4 (Green Book)

TRANSLATION.

(pages 39A to 44)

(page 39A)

Most Illustrious Mr. Pretore of the (1st) Mandament of Milan.

Statement of defence of Carlottina Carignani.

The undersigned takes the liberty of bringing to the knowledge of the Hon. Judge some of the facts relative to my connections with Comm. Caruso Enrico and with Mrs. Ada Giacchetti, in order to show that whatever was done by me to bring the two lovers together again—during the time Mrs. Giacchetti lived in my "Pension Excelsior"—was done simply for my desire of doing good and in compliance with the supplications of Mrs. Giacchetti, for whom, at the beginning, I took pity, as she affected to be the victim of a man whom she still loved, and as she was always stressing her pitiful position of a mother deprived of her children.

Mrs. Giacchetti's recompense for what I did was, as you, Mr. Pretore, know, the complaint filed against me, complaint that is truly damaging not only to my honorability, that is my most sacred possession, but also to my material interests. It is easy to realize how it is sufficient a simple accusation of suppression of correspondence, to damage an owner of a boarding house. And let us come to the facts.

Mrs. Ada Giacchetti came to live at my "Pension Excelsior" in October 1908. Her moral condition (at least the apparent one) was pitiful. She used to tell me that she had been abandoned by Tenor Caruso with whom she had lived for ten years in a matrimonial state; that she longed for her two children (which she had with Caruso)

that had remained with their father; and by moving me to pity her by appealing to my great weakness—the love of children—she induced me to write to Caruso,—whom I knew as a pupil of my husband, Maestro Carignani,—in order to persuade him to make peace with Mrs. Giacchetti and also to return her children to her.

This I did in November 1908. Caruso answered me on December 12 (I can produce the letter should you, Mr. Pretore, request me to do so) appreciating the step I had taken, but declaring useless any insistence on the subject of a reconciliation with Mrs. Giacchetti and begging me not to return again of the same subject.

.....

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(Page 42A)

Always to the orders of your Honor for any elucidation you might require, I remain,

Respectfully, Carlotta Del Chiaro Carignani.

List of witnesses:

.....

.....

(Page 43)

Milan, July 12, 1910. In the Pretura of the First Mandament, before the Vice Pretore Atty. Di Giuseppe assisted by the undersigned Vice Chancellor;

Appears Mrs. Del Chiaro Carlotta married Carignani who submits the foregoing statement with the request that the same be included in the proceeding's records.

Read confirmed and subscribed,
signed Carlotta Del Chiaro in Carignani.

.....

Exhibit G-C-4.

(Page 43)

Letter addressed to:

Mrs. Carlottina Carignani, Galleria DeCristoforis 66, Milan, Italy, Registered. On the back of the envelope: Enrico Caruso, Hotel Knickerbocker, New York, December 12, 1908.

Kind Mrs. Carlotta, I have your letter and I heartily appreciate the step you have taken. You must know that what you ask me to do has already been done by me twice entreating that woman, not for me, but for her children. But she was deaf to all my prayers and despairs. Please ask that one who to-day professes to be a mother if for nearly five months she has had any care for her little Enrico!

Nothing. She thought of nothing else but of her stallion (excuse the expression). Now it is too late to implore grace in the name of the children. These poor innocent souls do not know what mother's caresses are, so much so that they have already forgotten her.

Ask her also if my despair and the days I spent in Nice were sufficiently sincere to make her realize that I loved her! She has trodden on me, she has broken my heart, she has made my life unbearable, and if it were not for those two poor innocent souls wonder what folly I would have committed. Yes, my dear Madam, I have cried and I still cry with burning tears, but the offense was too great and I cannot retrocede of a single step from the decision already made. Didnt' she tell you, that calamitous woman, that she almost had a child with her lover? (his own words), while to me, poor unhappy man, who was here working and sending to her money in abundance, she made believe that she was in Milan because she had

hurt her foot. Humph what a foot! Didn't she tell you that their love making was going on for a year and a half and that if I had made a single remonstrance she would have me killed? Didn't she tell you the nastinesses she has committed since I have learned all the facts? Please, Madame, let her tell you the truth of what she has done and of what I have done to save her, and you will see that I have been more clement than I should. She cries for her children, but she does not cry for the grief she has caused to their father. She longed for the present situation, let her have it, let her mind her husband and the son she had with him, while I mind to educate my children and to make them know who was their mother. If I had listened to the gossipers I would not be now in the present condition, because when they would tell me what was going on I always said: It is impossible, Ada is too proud and she loves me too much. The devil what kind of love!

And so, my dear Madam, I end my letter begging of you again to excuse me if I ask you not to return on this subject because it hurts me too much and I must work and think for the future of my children.

Salutations to Carlo, a kiss to the boy, and many regards to you.

Believe me,

Enrico Caruso.

Exhibit G-C-4.

Exhibit G. C. 4 (Green Book)

TRANSLATION.

(pp. 67 A to 71 B)

(page 67 A)

ORDINANCE OF THE INQUIRING JUDGE.

Reg. N. 11291. In the Name of His Majesty Victor Emanuel III by the grace of God and by the will of the Nation King of Italy.

The year 1911, this 17th day of the month of January. The Inquiring Judge of the Civil and Penal Tribunal of Milan has pronounced the following ordinance in the penal proceedings against:

1) Del Chiaro Carlotta, married Carignani, daughter of the late Angelo, and of Marianna Giorgetti, born in Lucca in 1865, resident in Milan.

2) Caruso Enrico, son of Marcellino and of Anna Baldini, born on February 27, 1873, in Naples, domiciled in Sesto Fiorentino, singer.

3) Giacchetti Ada, daughter of Guido and of Guidalotti Giuseppina, born December 1st, 1874, in Florence, resident in Milan.

4) Loria Gaetano, son of Domenico, born in Agira (Catania) on July 22, 1876, resident of New York.

Accuseed

Del Chiaro Carignani—of the crime as per art. 160 par. Penal Code, for having in Milan in August or September 1909 unduly suppressed an epistolar correspondence that had been sent by Loria Gaetano to Giacchetti Ada resident in Milan in care of the first mentioned: for having by the

aforementioned suppression caused harm and damage to the said Giacchetti and precisely making her lose the opportunity of an artistic engagement in New York and with a specified person.

Caruso—of the same crime for having suppressed the aforesaid correspondence in complicity with the above named, art. 160 chapt. 63, Penal Code.

Giacchetti—of the crime as per art. 212 P. C. for having in Milan on May 14, 1910, with a complaint, that appears to have been filed on that day with the Judicial Authorities of Milan, accused the above named persons of the crime of suppression of correspondence, although being aware of their innocence.

Loria—of the crime as per art. 214 Penal Code, for having as witness before the judicial authority, and precisely before the Pretor of the First Mandament, falsely deposed that Caruso was in possession of the letter that he Loria had written to Giacchetti in August 1909 from New York;

Giacchetti—of the crime as per art. 363 par. Penal Code, for having in Milan, during the second half of the year 1910 communicated to many persons and caused to be published in the newspaper "Il Corriere della Sera", of July 18, 1910, an interview, granted by her to the scope of being made public, attributing to Caruso Enrico a defined act liable to expose him to the public odium and contempt for having suppressed a letter coming from America and causing to her, Giacchetti, the loss of an advantageous theatrical contract; as well as of having instigated and determined Mrs. Carlotta Carignani to committ the suppression, this latter being therefore the material per-

petrator and consequently also victim of defamation; of having Caruso, in Nice, appropriated himself of the jewels belonging to her, Giacchetti, and that besides the jewels he also took away from her the possibility of signing a contract of labor.

Caruso—of the crime as per art. 279 and 790 Penal Code for having in Milan, on July 4th, 1898, and in Sesto Fiorentino on September 11, 1904, falsely declared to the respective officials of the boards of Civil Status that the children Rodolfo and Enrico were born from an un-married woman and in the conditions for which there was no obstacle to their being recognized, while instead, he had procreated them with Giacchetti Ada who was united in marriage with Botti Paolo. Considering that, by a complaint dated May 14, 1910 addressed to the King's Attorney in Milan, Mrs. Ada Giacchetti did sue Mrs. Carignani Carlotta and Enrico Caruso both for having, according to her, in the autumn of the year 1909 unduly opened, taken possession and destroyed, a correspondence sent to her from New York by Gaetano Loria; and that the same Mrs. Giacchetti on November 3rd, 1910 denounced Enrico Caruso to the Pretore of the First Mandament of Milan as author of falsification of public records, for having on the occasion of the birth of the two children, procreated with her, Giacchetti, declared before the officials of the boards of the Civil Status of Milan and of Sesto Fiorentino that those children had been born from a single woman, while she, Giacchetti, was married.

(page 69 A)

Anyway, it has not been proven that Mrs. Carignani and Caruso, or either of them, did take possession of any letter whatsoever of Giacchetti.

Exhibit G-C-4.

(page 70 A)

And passing on to the examination of the denunciation of falsehood made by Giacchetti against Caruso, it is to be noted that for the combined provisions of articles 279 and 91, No. 4, of the Penal Code, a penal action for false deposition in a record of Civil Status remains in force during five years from the date of the consummation of the crime. However, as Caruso committed the acts of falsehood of which he is charged on July 4th, 1898 and on April 11, 1904, no action can be sustained against him, it being barred by the status of limitation, in so far that the denunciation of Giacchetti was made when the period of five years from the date of the crime had already lapsed.

(page 71)

For These Reasons

Orders that Mrs. Giacchetti Ada be held for judgment by the Tribunal of Milan, to answer of the crime of defamation to the damage of Enrico Caruso and of Carignani Carlotta, as above charged to her.

Declares *non pros* in the penal action against Caruso Enrico for the crime of falsehood lodged against him, the action being barred by the status of limitation.

Declares *non pros* for lack of evidence in the penal actions against Caruso Enrico, Giacchetti Ada, Loria Gaetano and Carignani Carlotta, for what regards the other crimes as above lodged against them, respectively.

Sentences Giacchetti Ada to the costs of the proceedings regarding and limited to the penal action

instituted by her for suppression of correspondence.

The Inquiring Judge, signed Cinque. signed Bignani.

Exhibit G. C. 4. (Green Book)

TRANSLATION.

(Pages 146 A to 153 A)
EXHIBITS FILED BY CARUSO AS
COMPLAINANT IN CIVIL ACTION.

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.....

.....

(page 152)

January 27, 1909.

Mr. Enrico Caruso.

I came to you not so that you would pardon me nor so that you would in a minute forget the offense caused to you, the one who was the cause for my abandoning my first family.

My coming to you had the scope of obtaining that you would allow me first of all to beg your pardon and then to clarify and prove to you so many things that you know only through others.

It is true that I do not deserve a good word from you, but nevertheless I deserve being heard, because the woman who talks to you has lived almost eleven years together with you and is the mother of your children, my children, whom I have never ceased to love and who, after your pardon, represent now the only sacred thing I

own in this world. In the two months that I have lived within the bosom of a good and honest family, I have realized all the wrong I have done to you.

I have cried so much that I have no more tears!

You have disapproved my taking refuge with strangers, but where else could I have gone when everybody had abandoned me? Those who could have lent me a hand to lift me up did not do it, and therefore I went to those who, if did not pardon me, did not close their door on me but tried to lift me up from where I had fallen and also helped me to atone for the wrongs done by making me promise to myself to return on the straight path.

By calmly speaking to you I could have told you that I place myself entirely at your disposal for my future, and that I would make no opposition to whatever you would impose on me. My happiness, my tranquillity, would be achieved by blindly obeying you.

With this life of retreat I might attain that, in seeing your Ada to be again the one of the past, you would allow your heart to open again to make a small room also for her.

But this morning, besides refusing to hear me, in the belief that I had come for a scandal, you had me dismissed and *threatened with arrest!*

I surely did not expect that you would have received me with open arms, but I never would have imagined that you could order others to dismiss the mother of your children. It seems to me a dream that you could have lowered yourself so much. *I am sorrow and ashamed for you.*

You believe in God, don't you? and you know that I too believe in Him because I have prayed Him so much for you. In these last two months

Exhibit G-C-4.

I have asked His pardon so many times that I believe that He has listened to me.

And you, Enrico, won't you let me hope in your pardon?

Listen to me with calm, I do not come to you with exacting demands, but with submission.

Therefore, grant me an interview and it will be the last favor I ask of you.

signed Ada.

(page 153 A)

(telegram) From London 897-73-6-10035.

For some time you are burning with the desire of doing things unpleasant to me. This one is the last. Were there no doctors in Nice? Your actions make me believe what I have refused to believe till now. It seems that you are tired of me and do not mind anything anymore. Notify me when you will return to Nice so that I could send to you someone to regulate position and take child. I had enough of all.

signed Caruso.

Exhibit G-C-4.

EXHIBIT G. C. 4 (Green Book)

TRANSLATION.

(pages 205 to 224)

(page 205)

In the Name of His Majesty Victor Emanuel III by the Grace of God and by the will of the Nation

King of Italy.

The Penal Tribunal of Milan, Section III, Ferial Session, composed of Messrs Attorneys:
Maestri Gustavo, President
Salvi Ettore, Judge,
Ravasio Giuseppe, Judge,
has pronounced the following

SENTENCE

in the penal suit against
ADA GIACCHETTI, daughter of Guido, 38 years old, separated from the husband Gino Botti, born in Florence, singer, lately resident in Milan, Senato St. 28, whose present address is unknown.

* * * * * *

(page 207)

The College (judges) remarks in fact and in right

as follows:

Mrs. Ada Giacchetti, married Botti, lyric artist, in 1897, leaving her husband, united herself with the tenor Mr. Caruso Enrico, and lived with him "more uxorio" until 1907. From their union four

Exhibit G-C-4.

children were born, two of which still living, to whom Caruso gave his own name stating, in denouncing their birth to the board of the Civil Status, that they were his natural children procreated with a woman free from marital bondage, doing that, notwithstanding the prohibition of the law, in order to deport himself in regard to Mrs. Giacchetti and to the children as if it were a family regularly constituted.

However, in 1907, while Caruso was abroad for professional reasons and she was in Florence for the education of the children, Mrs. Giacchetti, being seized by an insane passion of love for her own chauffeur, Cesare Romati, became his mistress and nothing sufficed to dissuade her from such a relation that necessarily was to cause the breaking of any connection with Caruso and her giving up a life of tranquillity and wealth that the splendid situation of the celebrated artist would have assured her until her death. It would be too long, if not entirely un-necessary for the scopes of the trial, to set forth the vicissitudes of the love of Giacchetti with Romati and to follow them to London, to Nice, to Milan, during the years 1907-1909. We will later point out some specific fact that has particular relation with some of the charges made. In the meantime it will be sufficient to put in evidence that Mrs. Giacchetti, to the solicitations and prayers of Caruso to return to him and to her children and abandon Romati, responded with false promises and new deceptions, having only in mind to pacify Caruso in order to get from him the financial assistance that would permit her to happily and sumptuously live with her lover. And so, finally, Caruso himself, disillusioned and indignant, de-

Exhibit G-C-4.

cided to abandon her to her destiny, constituting however, in her favor, a life income of Lire 500 per month, that she still enjoys without any burden for the care of the children, Caruso having placed them in some educational homes. This occurred in 1909, and soon after the final break of said relations, the facts that originated the present proceedings took place.

* * * * * *

(page 209-a)

The inquiring Judge, with ordinance dated January 17, 1911, upon the concurring request of the Prosecuting Attorney, held for trial only Mrs. Giacchetti, under the sole charge of defamation; declared that on account of the status of limitation no penal action could be sustained against Caruso for the crime contemplated by article 279; and discharged all the defendants from all other charges on account of lack of evidence.

* * * * * *

(page 223 A)

SENTENCES

Mrs. Giacchetti Ada to the penalty of one year of imprisonment and of a fine of Lire 1000. which penalty, in virtue of the amnesty, is reduced to nine months of imprisonment and to one hundred lire fine.

* * * * * *

(page 224 A)

So was decided in Milan on October 29, 1912.

sgd. Maestri, drafter of the sentence
signed Salvi —Ravasio.
signed Girelli, Chancellor.

For copy conform (to the original)
Milan January 7, 1913
signed. Botarelli, Chancellor.

Exhibit G-C-4.

Exhibit G. C. 4 (Green Book)

TRANSLATION.

(pages 322 A to 341)

(page 322 A)

The Court of Appeal of Milan,
Section III—Penal.

Composed of Messrs:

Tunesi Cav. Enrico President
Ambrosoli Atty. Cesare, Counsellor (Ass. Judge)
Caffini Cav. Alessandro, Counsellor (" ")

has pronounced the following

SENTENCE

in the case of the Public Prosecutor

AGAINST

1st. CESARE ROMATI, son of Romano, 33 years old, born and domiciled in Brescia and electively domiciled in Milan in the care of Atty. Rossi Crivello.

2nd. MICALIZZI TURCO VINCENZO son of Guiseppe, born and domiciled in Naples, Vico I Porta Piccolo Monte Calvario 14.

3rd. ADA GIACCHETTI daughter of Guido, 38 years old, separated from her husband Gino Botti, born in Florence, singer, whose present address is unknown;

4th. LORIA GAETANO son of Domenico, 35 years old, born in Agira (Catania) and now resident in Paris, Gaetano Combert St. No. 30.

All free.

Exhibit G-C-4.

ACCUSED

Mrs. GIACCHETTI: a) of the crime contemplated by article 212 Penal Code, committed in Milan on March 14, 1910, against Caruso Comm. Enrico and Del Chiaro Carlotta Carignani,

b) of the crime contemplated by article 303 Penal Code, committed in Milan in the second half of the year 1910 against the said Comm. Caruso.

* * * * * *

(Page 324 A)

The origin of the present case is to be found in the quarrels that ensued a ten years cohabitation as husband and wife of the singer Ada Giacchetti married Botti from whom she was separated "de facto", and the tenor Caruso.

The two lived together from 1897 to 1907 and had four children two of which are living.

* * * * * *

(page 326 A)

This first phase of the judiciary inquiry was closed with an ordinance of the inquiring Judge dated September 17, 1911 (page 156) by which while Mrs. Giacchetti was held for Court to answer for the crime of defamation, it was declared that no action could be sustained, on account of the status of limitation, against Caruso for the crime of falsehood that on the strength of article 279 Mrs. Giacchetti had lodged against him for his having declared that the two children born in 1898 and in 1904 had been born to him from an unmarried woman, while he actually had them with Ada Giacchetti, a married woman. The

ordinance declared also that on account of lack of evidence no action could be sustained against Caruso and Carignani for the crime of abstraction of correspondence; against Giacchetti for the crime of calumny; and against Loria—whom Caruso had also sued—for false testimony.

* * * * * *

(page 331 A)

That Mrs. Giacchetti was moved by rancor, is made evident not only by the constant importunities during all the proceedings, or by the bitterness of the statements written with a superabundance of bile and of vile words (see for instance the statement at page ..... Vol. ii), but especially by her denunciation of Caruso for the false attestation in the birth certificates of his children procreated with her, Giacchetti, who, in making such denunciation, even forgets that she is a mother.

* * * * * *

(page 341)

SENTENCES

ADA GIACCHETTI to the total penalty of one year and six months of imprisonment and Lire 1000 of fine, which penalty in virtue of the amnesty is reduced to one year and three months and 100 lire, and to the interdiction of holding public offices for three months.

* * * * * *

(same page 341)

Sentences the appellants, in solid, to the payment of the costs of this second trial and of the taxes of sentence, as well as the costs of represen-

tation of the plaintiff in Civil action which are liquidated in Lire 250.

Milan, December 10, 1913.

signed: Tunesi—Ambrosoli—Caraffini.

Bonetti, Chancellor.

Copy conform (to the original) for notification.

Milan January 29, 1914.

The Chancellor,

signed Lucadamo.

Exhibit G-C-5.

TRANSLATION

The Public Prosecutor, Having read the here present documents against:

Del Chiaro Carlotta married Carignani;
Caruso Enrico;
Giacchetti Ada;
Loria Gaetano resident in New York;
all of which are therein

Accused:

Del Chiaro Carignani of the crime as per art. 160 par. Penal Code, for having, sometime in August or September 1909, in Milan, unduly suppressed an epistolar correspondence that had been sent by Loria Gaetano to Giacchetti Ada, resident in Milan in care of the first mentioned party; for having by that undue suppression caused damage to the said Giacchetti and precisely having caused to her the loss of an artistic contract in New York and with a specified person;

Caruso for the same crime for having suppressed the afore-mentioned correspondence in

complicity with the above named, and art. 160 par. Penal Code;

Giacchetti of the crime as per art. 212 Penal Code, for having in Milan, on May 14, 1910, with a complaint appearing to have been filed on that day with the judiciary Authority of Milan, accused the afore named persons of the crime of suppression of correspondence, although being aware of their innocence;

Loria of the crime as per art. 214 Penal Code, for having as witness before the judiciary authority and precisely before the Pretor of the 1st. Mandament, falsely deposed that Caruso was in possession of the letter that he Loria had written to Giacchetti in August 1909 from New York;

Giacchetti of the crime as per art. 193 Par. Penal Code for having during the second half of the year 1910 in Milan, by communicating with many persons and by causing to be published in the newspaper "Il Corriere della Sera" of July 18, 1910, an interview granted by her to the scope of being made public, attributed to Caruso Enrico a defined act liable to expose him to the public odium and contempt for having abstracted a letter coming from America, and causing to her, Giacchetti, the loss of an advantageous theatrical contract, having instigated and determined the suppression being committed by Mrs. Carlotta Carignani who would therefore be the material perpetrator and consequently also victim of defamation; of having Caruso, in Nice appropriated himself of the jewels belonging to her Giacchetti, and that besides the jewels he also took away from her the possibility of signing a contract of labor;

Caruso of the crime as per art. 279 and 79 Penal Code, for having in Milan on July 4, 1898, and in

Exhibit G-C-5.

Sesto Fiorentino on September 11, 1904, falsely declared to the respective officials of the Boards of Civil Status that the children Rodolfo and Enrico were born from an un-married woman and in the conditions in which there was no obstacle to their being recognized, while, instead he had procreated them with Giacchetti Ada who was united in marriage with Botti Paolo.

Whereas, from the inquiry made it appears as constant that Loria Gaetano had written to Giacchetti a letter in which it was offered a certain artistic contract on the theatres of New York and through the impresario Hammerstein. Loria deposes to have sent the letter in August 1909 from New York to Giacchetti who was then in Milan at the boarding house of Del Chiaro. It appears also that the letter did not reach the addressee Giacchetti who at the time of the arrival of the letter was not any more in Milan, but had gone to the Baths of Porretta.

Carignani Del Chiaro denies having suppressed the letter, denies having given it to Caruso, who having formerly lived with Giacchetti was now in dispute with her. And Del Chiaro having at first explicitly denied the facts of the suppression, and then indicated the reception of this letter and her subsequent forwarding it to the residence of Giacchetti (page 13), subsequently (page 80) remembered with precision the arrival of a foreign letter and the consequent change of address. And the witness Navone, a maid in her employ, deposes precisely on such circumstance.

Now if this precising subsequent to the first interrogatory may leave some doubt on its sincerity and on the likelihood that a boarding house maid could remember at such a length of time such a trivial circumstance likely to be repeated often

for the various other persons boarding there, there is also no proof whatsoever that the letter was suppressed.

Loria does not remember if he had registered it and had he done so there would be a record in the post office; it is not unlikely that the letter might have never reached Milan from New York. It is not unlikely either that had it reached here, it might have been lost in the second travel on which it was sent to reach the addressee.

And therefore every ~~l~~element of proof in regard to the arrival of the letter in Milan is lacking, it being not impossible that ordinary letters go estray.

Another element of guilt that was brought out by the complainants in civil action against Del Chiaro and against Caruso as accomplice in the suppression (or better as accused of receiving the letter suppressed by Del Chiaro and afterwards given to the same Caruso who whould have received and kept it knowing its criminal origin) consists in the circumstances testified to by Loria Gaetano who however is denounced as false witness and accomplice in the slander.

It is necessary to note immediately that in regard to Loria it could not be called slander according to law, as he has not complained against or denounced anything, but only of false testimony and as follows.

The circumstance testified to by Loria is that a certain Vulmann had told to the brother of the same Loria Gaetano, another Loria by the name of Filippo and resident in New York (as also is the said Gaetano) that Caruso was in possession of the letter written by Gaetano Loria to Giacchetti, relative to the known contract.

Exhibit G-C-5.

Therefore, Loria Gaetano knows nothing of his own knowledge, but only by the mouth of his brother Filippo. Vulman would have made that statement to Filippo, in New York, in the presence of many persons, and amongst others is mentioned a certain Micalizzi Turco who precisely testified that he had heard Vulman say that Giacchetti would not come to America and that Caruso was in possession of the letter written by Loria Gaetano in regard to her projected contract with the Manhattan theatre (page 29).

But Vulman (page 48) positively denies having made similar statement and sustains such a denial also when confronted with said Micalizzi Turco on December 15, 1910.

The truth of the circumstance is therefore not ascertained, nor to this can concur the extrajudiciary deposition made by Filippo Loria before an American Notary Public, the same having no juridic value. And in regard to the appreciation of facts the following considerations are necessary, as the various circumstances must be interpreted by keeping in mind the quality, the character of the persons.

If it can be considered as ascertained that Giacchetti was the addressee of a letter containing offers of a contract from Loria Gaetano, it has been in no way ascertained that this letter did arrive in Italy and was suppressed by Del Chiaro and given to Caruso.

In this regard it does not seem unlikely that Caruso after having committed the crime, or causing to be committed, would reveal himself to others as the author, that is to Vulman; that Del Chiaro could imagine what was in the letter to Giacchetti and would suppress it; that Caruso could be interested in preventing that his late mistress would

find a way to earn a livelihood and therefore be less at his charge.

As it must not be forgotten that Giacchetti did live with Caruso, by whom she had some children, and that afterwards a clamorous breach occurred between the lovers because Giacchetti passed to have relations with Romati, Caruso's chauffeur, nor the circumstances testified to by Romati in regard to the existence of the letter could, even if they were precise, have positive value, it is evident how great is the animosity and that a particular resentment is borne especially by Giacchetti.

Without delving into the examination and valutation of the acts of Giacchetti towards Caruso and always from the financial point of view, her resentment reaches to the point of denouncing Caruso as guilty of the crime as per art. 279 Penal Code, and precisely of having declared to the officials of the boards of Civil Status the two children born to him from her, as children procreated with a single woman, while she, Giacchetti, was married.

In substance, Giacchetti, in order to hurt her old lover reaches the point of denouncing the father of her children because he tried to recognize them and give them a status of natural children, while he should have declared them as children of unknown parents, and so she exposes the children to the danger of having their birth certificate rectified in a way so unfavorable to them.

This resentment, monstrous in its reach and in its finality, that smothers in Giacchetti also the maternal instinct, the last to die out even in women who have reached the lowest steps of vice, shows what is the character of her resentment and makes one doubtful of the seriousness and serenity of the accusation.

Exhibit G-C-5.

In fact, in the complaint that opens the proceedings (page 1) and in its confirmation (page 12) it is affirmed that Caruso after having suppressed the correspondence, used it to make threats and pressures to the impresario Hammerstein in order that Giacchetti would not be engaged, and that circumstance is in no way, not even remotely, proven. At page 75, Giacchetti informs the Pretor that Vulman had tried to make Turco Micalizzi say things "contrary to the truth", and this after their deposition, while this circumstance is denied by Micalizzi himself (page 76).

And so also appeared inspired to strong animosity the petition in this suit, not forgetting what appears in regard to the conduct of Giacchetti who while living with Caruso, by whom she had children, is said to have given herself to others and precisely to the chauffeur Romati.

Now if one reflects on the complex of the evidence, to the enmity that must exist between the Lorias and Caruso, having the brother of Caruso struck Gaetano Loria (page ..... and exhibit b. attached to Giacchetti's petition) from one hand it must be noted as it does not appear that the letter was abstracted or suppressed by Carignani or by Caruso, and from the other that insufficient are the indications to consider false the deposition of Loria, slanderous the complaint of Giacchetti.

For what regards the denunciation made by Giacchetti against Caruso for the crime contemplated by art. 279, it is excepted that at the time of the denunciation the action had already expired on account of the limitation that per art. 91, 4, is of 5 years.

The two false declarations of Caruso are under the date of July 4, 1898 and of September 11,

1904, and not 1905 as erroneously declared by Giacchetti in her complaint to the Pretor, and it seems strange that a mother could err on the date of the birth of her children.

For what concerns the slander, this is proven by the deposition of the witnesses and by the communication made to the newspapers.

Pending a judicial proceeding it is certainly not juridic that a complainant who must wait the decision of the magistrate on the circumstance of the facts complained of, should go telling them right and left, and have them also published in the papers, it being evident how the granted interview was intended for publication. Now, in the communications made by Giacchetti the extremes of defamation are evident both from the precise indication of the facts and for the evident animus of defaming that is insitu in the act itself and in all the complex of the evidences emerging from the trial.

That the defamation is also evident in the regards of the alleged abstraction of the jewels, about which it appears useless to delve any further into proofs, save the examination of the actual evidences, were it necessary.

That, finally, it is to be considered the exception raised by Giacchetti in regard to the complaint for defamation, as she avers in her petition that said complaint cannot be admitted on account of lack of confirmation and for the provisions of articles 116 and 120 Code Penal Procedure.

It is to be noted that there is no reason whatsoever for invoking these two articles: evidently, art. 116 Code Penal Procedure, sets forth the duty of notifying her, and art. 120 furnishes the rules for a non-pros on account of lack of action from the private party when the proceedings have

reference to crimes that must be prosecuted at the instance of a private party.

But Giacchetti does not state why she considers that the confirmation is lacking, while, instead, it was actually made through Caruso's attorney, Mr. Ceola, under the date of Nov. 4, 1910.

And said complaint presented through a special attorney-in-fact is held to be fully valid according to articles 100 and 108 Code Penal Procedure, it being a complaint made through an attorney-in-fact and with the power of attorney issued in original and attached to the complaint. (art. 100 last. par. Code Penal Procedure and 108 Code Penal Procedure)

That although the power of attorney does not contain many specifications and has even some inaccuracies (for instance, in regard to Loria) it is nevertheless sufficient because it shows the intention of Caruso to prosecute for defamation.

That the College of the Court is competent.

Having read articles 250, 257, 251 Code Penal Procedure;

Requests that the inquiring Judge with his ordinance would declare:

1st. Ordinance of non-pros for non-existence of crime in favor of Del Chiaro Carignani and of Enrico Caruso for the crimes as per art. 160 Penal Code.

2nd. Ordinance of non-pros for insufficiency of proofs of slander and false deposition in favor of Giacchetti and Loria;

3rd. Ordinance of non pros, the action being expired on account of limitation, in favor of Caruso for the crime as per art. 279 P. C.

4th. Ordinance referring back to the tribunal Mrs. Giacchetti to answer the charge of slander;

Exhibit G-C-5.

Hold the succumbent parties complainants in a crime of private action (art. 574 Code Penal Procedure) to the payment of the costs of the proceedings.

Milan, December 19, 1910. signed Noseda.
Copied by Gallia, Callationed by Pasquarelli.

STATE ARCHIVES OF MILAN

General File No. 1173.

The present copy is conform to the original kept in these State Archives at the serial "Royal Civil and Penal Tribunal of Milan"

Trials, year 1912, file No. 2022, and is issued to attorney Massimo Della Porta following authorization granted by the Inquiring Counsellor. Man. . . . dated November 20, 1925.

Milan, December 19, 1925.

The Superintendent.
signed G. Villani.

(SEAL of the
State Archives
of Milan)

follows the legalization by the American Consul in Milan.

Exhibit G-C-6.

TRANSLATION.

Most Illustrious Mr. President of the Civil and Penal Tribunal of Milan.

The undersigned in the name and interest of Mrs. Giacchetti Vittoria Matilde Ada, here resident in Senato Street No. 28, states:

Exhibit G-C-6.

That having temporarily separated herself, in September 1897, from her husband Botti Gino, dealer in furniture, domiciled in Florence, with store in Indipendence Square, in order to follow the love of the celebrated tenor Caruso, Mrs. Giacchetti remained with this latter until a few months ago, and from their intimate relations were born two children, Rodolfo and Errico, recognized only by the tenor Caruso Comm. Enrico who has them with him.

In severing the long relation, Comm. Caruso assigned to Mrs. Giacchetti the yearly income of six thousand lire in two separates certificates of the Italian Public Debt, respectively issued, for their ownership, in the name of the aforementioned children of the tenor.

Now, Mrs. Giacchetti, a singing artist, who in order to follow the love of Caruso had severed her lyric theatrical carreer, has been obliged to take up again her art, to refurnish a home, to take again lessons, and to buy the wardrobe of lyric scenes, the dresses and costumes as well as the "toilettes" of the lyric repertoire in which she makes her reappearance.

To meet all these enormous expenses for settling down and to prepare for her work, as Caruso left her without a cent, or a dress or a piece of furniture whatsoever, Mrs. Giacchetti has found in the Anonymous Company "L'Urbaine" of Milan the loan of 25,000 lire upon the cession of her income on the two certificates of rent above mentioned.

The hostile position in which she is with her husband in consequence of what did happen with the Tenor Caruso, compels her to beg of the illustrious Tribunal to grant her the authorization to complete the aforesaid cession, according to

Exhibit G-C-6.

articles 134 and 136 of the Civil Code, previous subpoenaing her husband in Florence, where he resides for reasons of commerce.

Now, as on account of the great distance of the place where Botti resides, it would take too long for him to come to Milan for the scope desired by Mrs. Giacchetti, the deponent, in view of the urgency of the case respectfully prays your Honor that in fixing the date of the appearance of the husband and wife Botti-Giacchetti in the Chamber of Council—in order that Mrs. Giacchetti may be authorized to cede her income to the Anonymous Company "L'Urbaine" of Milan, and in general every act of administration of anything belonging to her—you would, in virtue of the provisions of art. 134 Civil Code, issue also a decree abbreviating the terms for the appearance in virtue of article 154, code of Civil Procedure, to one-half of that prescribed by No. 5 of art. 148 of the aforenamed code, in view of the urgent need of Mrs. Giacchetti to have the money necessary to her to re-enter her carreer with the necessary outfit above referred to in detail.

Milan, January 22, 1910

(signed) Atty. Giuseppe LoForte.

Decree.

Seen. Judge Beonio is delegated to relate in Chamber of Council. Milan, January 25, 1910.

The President (signed) Raimondi.

Decree.

Seen. It is ordered the appearance before this Tribunal, Section I, of the husband and wife Botti Gino and Giacchetti Vittoria to be heard in Cham-

ber of Council in regard to the foregoing petition, and to this scope is set the date of February 22nd, 1910 at 2 p. m., and also that a copy of the same petition and of the present decree be notified to Botti Gino at least ten days in advance.
Milan, January 27, 1910.

The President, (signed) Raimondi, (signed) Azzolino, Vice Chancellor.

Copied by: illegible. Collated by Galli.

ARCHIVES OF STATE IN MILAN

Gen. File No. 1366.

The present copy is conform to its original that is kept in these Royal State Archives, at Section; Civil and Penal Tribunal of Milan, Voluntary, file 164, of the year 1910.
Milan, November 26, 1926.

The Superintendent
(SEAL) signed Vittoni

(Follows the legalization of the American Consulate in Milan.)

Exhibit G-C-7.

TRANSLATION.

In the name of His Majesty Victor Emanuel III,
For the Grace of God and the will of the Nation,
King of Italy.

The Royal Civil and Penal Tribunal of Milan, Section I, assembled in Chamber of Council, in the persons of:

Messrs: Atty. Muggia Napoleon, acting as President;

Atty. Beoni Gabriele, Judge;
Atty. Di Cio' Giuseppe, Associated Judge.

has pronounced the following

Sentence

on the petition presented by Mrs. Giacchetti Vittoria Matilde Ada, of Milan, Senato Street 28, wife of Botti Gino resident in Florence, from whom she lives actually separated.
Having heard the Judge relator,

Whereas the petitioner sets forth that in September 1897, having abandoned her husband went to live with the singing artist Comm. Enrico Caruso from whom she had two children Rodolfo and Enrico, recognized by the father who keeps them with him; that in breaking some months ago their long relation, Comm. Enrico Caruso assigned to her, the petitioner, the yearly income of 6000 lire in two separate certificates of the Italian Public Debt respectively issued, for the ownership, in the name of the aforementioned two children; that to meet the necessities of life she is now compelled

Exhibit G-C-7.

to resume the lyric theatrical career she interrupted to follow the love of Caruso; that as on that account she must meet a great deal of expenses, she has agreed with the insurance company "L'Urbaine" of Milan that this would furnish her the sum of 25.000 lire upon the cession of her income on the two certificates of rent above referred to; and that the hostile position in which she is with her husband has compelled her to apply to this Tribunal to be authorized to complete the projected cession;

Whereas copy of this petition was notified in Florence to Mr. Gino Botti, husband of the petitioner through the act, dated the 10th of this month, of the judiciary officer Giannini, by which act he was also subpoenaed to appear before this Chamber of Council at 2 p. m. of the 22nd day of this month;

Whereas notwithstanding said subpoena Botti did not appear nor did justify any legitimate impediment, while the petitioner, his wife, did appear to declare, to better explain the facts set forth in the petition, that the sum of 25.000 lire would be given her upon the cession of only 4.000 lire yearly from her income and for the duration of ten years;

Whereas the reasons set forth by the petitioner to justify the agreement of the partial cession of her life income are worthy, and the conditions upon which the same cession will take place appear to be equitable;

Upon the concurring conclusions of the Public Prosecutor and the examination of articles 134, 136 of the Civil Code, and articles 799 and succeeding ones of the Code of Civil Procedure,

Exhibit G-C-7.

AUTHORIZES Mrs. Giacchetti Vittoria Matilde Ada, married Botti, to cede to the Insurance Company The Urbaine of Milan, for the duration of ten years and limited to 4.000—four thousand—lire the yearly life income deriving in her favor from the two certificates of the Italian Public Debt mentioned in the petition, and this upon the payment by the said Company of the capital sum of 25.000—twenty-five thousand—lire. Said sum may by Mrs. Giacchetti Botti be freely collected and expended for the scopes specified in the same petition.

Milan, from the Royal Tribunal, this twenty fifth day of February 1910. Signed: Muggia—G. Beonio—Di Cio'—Moroni Vice Chancellor.

On the margin of the first page: Vise', Tax exempt. Milan February 26, 1910. The Collector: signed: illegible.

Copied by ??

Collated by Gallia.

ARCHIVES OF STATE IN MILAN

Gen. File No. 1366

The present copy is conform to its original that is kept in these Royal Archives of State, at the Serial; Civil and Penal Tribunal of Milan—Voluntary—file 164, of the year 1910.
Milan, No. 26, 1926.

The Superintendent,
signed G. Vittaro

(SEAL)

(Follow the legalization of the American Consulate in Milan)

Exhibit G-C-10.

TRANSLATION.

COMMUNE OF MILAN.

No. 50302 Bureau of Certificates.

Milan, September 3, 1926

THE COMMISSIONER OF THE PREFECT

on the strength of the records of Anagraph

Certifies

that Caruso Enrico son of Marcellino and of Baldini Anna, 53 years old, born in Naples, appears to have been recorded here on December 12, 1897 and duly inscribed in the register of the permanent population on December 10, 1901, and then cancelled, on September 22, 1904 for (having removed to Sesto S Fiorentino.

for The Commissioner of the Prefect
by order:

The V. Secretary in charge of the Department.

(signed ??

(SEAL)

Exhibit G-C-11.

TRANSLATION.

COMMUNE OF SESTO FIORENTINO.

* * *

Copy of a document existing in the Communal Archives.

Sesto Fiorentino, Sept. 13, 1904.

Most Illustrious Mr. Mayor of Milan,

I hereby notify you that the family named in the back hereof has been inscribed in this register of population.

Please acknowledge receipt.

for The Mayor,
signed G. VECCHIONI, Assessor.

Situation of Family

1st. Caruso Comm. Enrico son of Marcellino and of the late Anna Baldini—Born in Naples on February 25 1873—Head of family—Single Singing Artist—Nationality: Italian.

2nd. Caruso Rodolfo son of Enrico and of unknown mother—born in Milan on July 2, 1898—Son—Single—Nationality: Italian.

3rd. Caruso Enrico son of Enrico and of unknown mother—born in Sesto Fiorentino on September 7 1904—Son—single—Nationality: Italian.

Exhibit G-C-11.

From Milan to Le Panche, Sodo Street 11.
Sesto Fiorentino, September 13, 1904.

The declarant
signed ENRICO CARUSO

For copy conform (to the original)

Sesto Fiorentino, November 12, 1926
The Secretary of the Commune.
signed ?

Visé: The Commissioner of the Prefect
signed G. GUIDOTTI.
(SEAL)

ROYAL OFFICE OF THE PREFECT OF FLORENCE

Visé for the legalization of the signature of Comm. G. Guidotti, Commissioner of the Prefect.
Nov. 15, 1926

for THE PREFECT
signed ?

(SEAL)

Exhibit G-C-12.

TRANSLATION

COMMUNE OF SESTO FIORENTINO

****

Copy of a document existing in the Communal Archives.

****

COMMUNE OF MILAN.

Certificate of change of residence No. 624.

Following the request dated September 13, this year, No. 1278, the undersigned makes of record that Mr. Caruso Enrico has declared to transfer his residence to your Commune, together with his family composed of the persons indicated in the enclosed prospectus, and, accordingly, the present certificate is issued to be used for the consequent inscription in the register of population.
Milan, September 22, 1904.

By the order of the Mayor,
for the Chief of the Bureau of Anagraph
signature illegible.

To the Hon. Mr. Mayor of
Sesto Fiorentino.

continues

Exhibit G-C-12.

Situation of Family.

1st. Caruso Enrico son of Marcellino and of Baldini Anna, singing artist—Born in Naples on February 27, 1873—Single—Head of Family.

2nd. Caruso Rodolfo son of Enrico and of unknown mother—born in Milan on July 2, 1898—Single—Natural son.

For copy conform (to the original)

Sesto Fiorentino, November 12, 1926
The Secretary of the Commune
signed ??

Visé The Commissioner of the Prefect,
signed G. Guidotti

(Seal of the Commune of
Sesto Fiorentino)

Royal Office of the Prefect of Florence

Visé for the legalization of the signature of Comm. G. Guidotti, Commissioner of the Prefect.
Nov. 15, 1926.

for The Prefect
signed ?

(Seal)

Exhibit G-C-13.

TRANSLATION.

COMMUNE OF SESTO FIORENTINO.

The Commissioner of the Prefect,

upon suitable researches made in the Communal Archives

certifies

that Caruso Comm. Enrico, son of the late Marcellino, appears as having been inscribed in the list of political electors of this Commune in the revision of the year 1913 and in the administrative (electoral) list in the revision of the year 1914, until the date of his death.

Sesto Fiorentino, Nov. 12, 1926.

The Commissioner of thePrefect
(SEAL) signed G. Guidotti

ROYAL OFFICE OF THE PREFECT OF FLORENCE

Vise' for the legalization of the signature of Comm. G. Guidotti, Commissioner of the Prefect.
November 15, 1926. for THE PREFECT

(SEAL) signed ?

Exhibit G-C-14.

TRANSLATION.

COMMUNE OF SESTO FIORENTINO.

The Commissioner of the Prefect,

upon the researches made in the Communal Archives,

Certifies

that Caruso Comm. Enrico, son of the late Marcellino appears as having been inscribed in the rolls of family taxation of this Commune for the years from 1917 to all of 1921.

Sesto Fiorentino, November 12, 1926

The Commissioner of the Prefect
(SEAL) (signed) G. Guidotti.

ROYAL OFFICE OF THE PREFECT OF FLORENCE

Vise' for the legalization of the signature of Comm. G. Guidotti, Commissioner of the Prefect.

Nov. 15, 1926 for THE PREFECT
(SEAL) signed ??

Exhibit G-C-15.

(Seal)

Translation.

Commune of Sesto Fiorentino.

****

Certificate

showing the result obtained in the (military) conscription of the (men) born 1904, by Enrico Caruso.

****

The undersigned Commissioner of the Prefect for the aforesaid Commune declares that from the lists of (military) conscription existing in the Communal archives it appears:

That Caruso Enrico son of the late Enrico and of unknown mother, born in Sesto Fiorentino on September 7 1904, was included in the (military) conscription of the (men) born during the year 1904.

Sesto Fiorentino, November 12, 1926

The Commissioner of the Prefect
signed G. Guidotti

(Seal)

Royal Office of the Prefect of Florence

Visé for the legalization of the signature of Comm. G. Guidotti, Commissioner of the Prefect.
Nov. 15, 1926

for The Prefect
signed ?

(Seal)

Exhibit G-C-16.

TRANSLATION.

COMMUNE OF SESTO FIORENTINO.

No. 2133
R.C.

Certificate of Residence.

The Commissioner of the Prefect for the Commune of Sesto Fiorentino certifies that

CARUSO ENRICO son of the late Marcellino and of the late Anna Baldini, born in Naples on February 27, 1873,—singing artist—was domiciled in this Commune, where he had his habitual residence, and that is to say from September 13, 1904, date in which he emigrated from Milan, till the 2nd. day of August 1921, date of his death which occurred in Naples.

SESTO FIORENTINO, October 14, 1926.

The Commissioner of the Prefect
signed G. Guidotti.

(Seal of the Commune
of Sesto Fiorentino)

OFFICE OF THE ROYAL PREFECT OF FLORENCE

Visé for the legalization of the signature of General Guido Guidotti, Commissioner of the Prefect, October 14, 1926.

for THE PREFECT
signed Breis

(SEAL)

Exhibit G-C-20.

EXTRACT from its original existing in the Chancery of the Tribunal of Naples. To Mr. President and Messrs. Judges of the Tribunal of Naples:

The undersigned, Gabriele Consolazio, Attorney at Law and General Representative of Mrs. Dorothy Benjamin widow of Caruso in her capacity as mother and legitimate administratrix of the estate of her minor daughter Gloria Caruso, submits to Your Honors the following:

In order to give a worthy burial place to the remains of the great tenor Enrico Caruso, his heirs thought to have a special Chapel built for him at the Cemetery of the Pianto. There they bought the proper ground—situated at the end of a lane—from a certain Vincenzo Berba, who had already begun the foundations for his own Chapel. The work of construction was given to the firm of Chiurazzi, established in Naples, and a first class establishment for such kind of work. Upon a plan by architect Cimmino, the building of the Chapel was arranged through a contract providing for a fixed total sum amounting to lire 260,000, including also the furnishing of a sarcophagus to be worked from a single block of marble to receive the remains of Caruso. But during the process of the construction the contracting firm renounced the contract on account of the insufficiency of the stipulated price as to the projected work, as well as to other items which the architect thought necessary to add and suspended the construction of the Chapel. The undersigned did his best to obtain the continuation of the construction in order to avoid that the body of the late Caruso should continue to remain without a worthy burial place, and in fact the Chapel was definitely completed. The

firm of Chiurazzi consigned the work more than a year ago, and since then has been waiting for the liquidation of the bill for the excess value of the work and for the additional work made in the Chapel, which made the total amount to about lire 500.000.

After long and difficult negotiations, the undersigned succeeded in settling the above specified demands of Chiurazzi for Lire 70.000, besides lire 3000 to be paid to the architect and lire 1000 to the chief-worker. Consequently the claim of said firm now amounts to lire 74.000, in addition to the price stipulated in the former contract of lire 260.000 which already has been paid to the contractors. The undersigned, however, before accepting the aforesaid settlement had the architect Gennaro Russo examine the work obtaining his opinion—appearing in the papers—which would warrant a settlement for a larger sum than the one agreed upon. In order to avoid a litigation on the merits, and in order to avoid a dispute with reference to the last resting place of Mr. Caruso the undersigned

ASKS

that Your Honors confirm—in the interest of the minor—the aforesaid settlement and direct that half of the amount of lire 74.000 be paid by the minor Gloria Caruso according to the agreement of division, and that this sum should be taken from the first income collected on her account.

Naples June 15th, 1926. Signed: Gabriele Consolazio.

Seen—To be communicated to the Public Ministry. Referred to Judge Caliendo. Naples June 16th, 1926. The President Signed: Azzariti. The

Exhibit G-C-20.

Public Ministry is not opposed. Naples June 18th, 1926. Signed: Albanese.

THE TRIBUNAL: After examination of the petition and the papers HELD that on account of the necessity to consummate the settlement with the contracting firm it might well be ordered that half of the total amount be paid by the minor from the first incomes to accrue from the estate existing in America, and that this authorization should be, however, subordinate to the obligation on the part of the widow to integrate this sum from future incomes.

For these reasons, sitting in Chambers, upon the report of the Judge delegated, THE TRIBUNAL approves—in the interest of the minor—the settlement above mentioned and directs that half of the sum to be paid of lire 74.000—be contributed by the minor Gloria Caruso—in accordance with the agreement of division—and that said sum should be drawn from the first incomes to be collected for her. However, Mrs. Dorothy Benjamin, widow of Caruso, is obligated to reintegrate this amount drawn from the incomes she will collect. So it was decided in the Chamber by the First Section of the Tribunal of Naples, today July 10th, 1926 by Comm. Azzariti Francesco Saverio, Presidente, Chev. Norelli Constantino and Chev. Leopoldo Caliendo, Judges and it was subscribed today July 12th, 1926, together with me Chancellor. Signed: Francesco Saverio Azzariti—The First Chancellor, Signed: Fedele. Stub Number 480. July 16th, 1926. Collected Lire 24.10 for special tax. The Superior Attorney: Signed: Villamena. This copy conforming to the original is given upon request of signor Becci. Attorney at Law. Naples.

October 19th, 1926. The Chancellor Signed Gallucci.

Seen for the legalization of the signature of Chancellor Gallucci. Naples October 22nd 1926. Signed: The President of the Civil and Penal Tribunal of Naples.

Kingdom of Italy—Province and City of Naples—Consulate General of the United States of America—S S—October 23rd, 1926.

I, Howard K. Travers Consul of the United States of America at Naples Italy—do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In Witness Whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written. Howard K. Travers, Consul of the United States of America—Naples, Italy. Fee Stamp $2.00.

Exhibit G-C-21.

Extract from its original existing in the Chancery of the Tribunal Civil and Penal of Naples.

To Messrs. the President and Judges of the Tribunal of Naples: Mrs. Dorothy Benjamin, daughter of Park, widow of Enrico Caruso, in her quality as mother and legitimate administratrix of the minor Gloria Caruso, daughter of deceased Enrico, through the undersigned, her general representative and attorney, Gabriele Consolazio, as per act dated August 12th, 1925, by Notary Vit-

torio Coen Giordana of Venice and there registered the same day at N.466. Paid Lire 13.10 for tax, in care of which representative she elects her domicile in Naples at via Giuseppe Fiorelli n.12 and submits to Your Honors the following:

With decision dated June 16th, 1922, this Tribunal, while confirming the agreement of division among the heirs of Enrico Caruso, dated June 7th, 1922, by Notary Sanseverino, authorized the widow of Mr. Caruso—Mrs. Dorothy Benjamin—to deposit voluntarily in the name of Miss Gloria Caruso, minor, under the paternal authority of her mother Mrs. Dorothy Benjamin the following bonds:

Bearer Bonds of the National Loan 5% for the nominal amount of Lire 405.000—Bearer bonds of the Consolidated Loan 5% for the nominal amount of lire 3.834.200—Livorno Railroad Bonds for the nominal amount of lire 56.000—Russian Bonds for Lire 50.000—Danish Bonds for Lire 64.800.—In a subsequent decision of June 13th-16th, 1924, the Hon. Tribunal authorized the transfer of the bearer bonds to the name of the minor Gloria Caruso constituting part of the voluntary deposit in care of the Branch of the Bank of Naples in Florence and especially the bonds of the National and the Consolidated Loans. The same decision authorized also the transfer of the deposit from the Florence's Branch to the Treasury of the Bank of Naples in Naples.

Following such a decision the transfer of the bonds from bearer to nominative ones has been executed and a certificate of Italian Consolidated Loans 5% bearing N.364317 was secured of an annual income of lire 191.710 corresponding to the nominal capital of Lire 3.834.200 and one nomina-

tive bond of National Loan bearing n.35974 for a nominal capital of Lire 405.000. The deposit was transferred from the Branch of the Bank of Naples in Florence to the Treasury of the Bank of Naples in Naples on December 30th, 1924.

Now on account of the patrimony taxes owing by the estate of the late Enrico Caruso, the Bureau of the Direct Taxes in Florence ascertained said estate to be over Lire 21.000.000 and imposed a tax of about lire 6.000.000.

After long negotiations and hard dealings, surpassing great difficulties, the heirs of Enrico Caruso succeeded to agree—on June 23rd, 1926,—with the competent department to a reduction of the assessment, fixing the annual patrimony tax in the amount of Lire 301.445 per the period of ten years from January 1st, 1920.

Said tax is to be divided according to the shares in the Estate—that is to say one half of it to be paid by Gloria Caruso and the other half among Mrs. Dorothy Benjamin, widow of Enrico Caruso, the two sons of the deceased Enrico Caruso, Messrs. Rodolfo and Enrico and the brother of Mr. Enrico Caruso, Mr. Giovanni Caruso, all according to the act of the division dated June 7th, 1922, by Notary Sanseverino confirmed by decision of this Tribunal—First Section—dated June 16th, 1922. And as the tax for the period of ten years would amount to Lire 3.014.450 and the half of it to be paid by Gloria Caruso is Lire 1.507.225, it would be useful and indispensable that said sum be paid in only one payment, not only for the sake of saving heavy amounts for collection commissions and to enjoy other benefits granted by the Law, but also because such a tax is part of the Estate. The other heirs of Comm. Caruso are ready to pay their shares in one payment.

Exhibit G-C-21.

Now in order to execute the payment of such an important sum on behalf of the minor Gloria, it is necessary to sell some of the capital, which as it is said above—is deposited under pupillary restriction with the Central Treasury of the Bank of Naples and precisely all the bonds of the National Loan and Consolidated Loan as to reach the necessary amount of Lire 1.507.225.

Now the current price of the National Loan is 83 and the bonds deposited in care of the Bank of Naples correspond to the nominal capital of Lire 405.000, the actual amount obtainable from the sale would be Lire 336.150 and therefore in order to reach the due tax amounting to Lire 1.507.225, it is necessary to sell as many Consolidated Loan Bonds 5% as to get the missing Lire 171.075. And as the medium price of the Consolidated Loan to pay is Lire 90, it will be necessary to sell as much Consolidated 5% to make up a nominal capital amount of L. 1.241.200. The necessity that the Tribunal accepts this petition is evident, otherwise the Government would proceed with legal acts to the damage of the minor.

For the above reasons the Tribunal in Justice is requested to issue the following orders:

1. To authorize the Central Treasury of the Bank of Naples in the person of its Director in charge on the day the request will be presented, to ask the General Director of the Public Debt for the transfer in bearer bonds of the nominative bond of National Loan 5% N. 35974 now in the name of Gloria Caruso and for the drawing from the nominative bond N. 364317 in the name of Gloria Caruso of the Italian Conosolidated Loan 5%, nominal value of lire 3.834.200, the nominal capital amount of Lire 1.241.200 and transfer said amount in bearer bonds.

Exhibit G-C-21.

2. To authorize the General Direction of the Public Debt to transfer to bearer bonds, the nominative bond of National Loan N. 35974 and to draw from the nominative bond of the Italian Consolidated Loan 5% N. 354315, an amount of lire 1.241.200 and to subsequently transfer same in bearer bonds and to deliver to the Central Treasury of the Bank of Naples, in the person of its Director in charge on the day such delivery will be executed all the bearer securities from the National 5% Loan for the nominal capital of lire 405,000 and of the 5% Consolidated for the nominal capital lire, 1.241.200 and deliver likewise to the Central Treasury of the Bank of Naples the remaining part of the Italian Consolidated Loan 5% amounting to lire 2.593.300, capital nominal, to be evidenced by the issue of a nominative bond in the name of Gloria Caruso of the deceased Enrico, under the paternal power of the mother, Mrs. Dorothy Benjamin, widow of Caruso.

3. To authorize said Central Treasury of the Bank of Naples to sell the above named bearer bonds of National Loan and Consolidated at the price of the Bourse.

4. To authorize the Central Treasury of the Bank of Naples that with the proceeds of such sale of both bonds of the National Loan 5% and Consolidated Loan 5% detached from the above named certificate and transferred into bearer bonds—to pay the patrimony tax due by the minor Gloria Caruso amounting to Lire 1.507.225 by paying to the Government Treasury in Florence her share of said tax that has not yet been paid for and to pay without restriction to the mother, Mrs. Dorothy

Benjamin all the remaining part of lire 1.508.225, for reimbursement of the amount she has already advanced and still will continue to advance in the interest of the minor for said tax, until the final payment of the above specified sums to be made by the Bank of Naples.

5. To authorize the Bank of Naples to invest any eventual surplus on the sale of said bonds (deducting said lire 1.507.225) in a certificate of Consolidated Loan 5% in the name of Gloria Caruso, daughter of the deceased Enrico, under the paternal power of her mother Mrs. Dorothy Benjamin and to keep such bond in deposit with the other securities. Naples, August 25th, 1926. Signed: Gabriele Consolazio, Attorney. The Public Ministry is not opposed. August 28th, 1926— Signed: Falciatore.

The Tribunal: The petition and the acts having been read: Observes that the redemption of the tax is useful in the interest of the minor because it frees her estate from a real guarantee also for the share of the tax due by the other heirs.

That in view that the incomes are not sufficient to pay the tax in one payment the entire debt it is necessary to authorize the payment of the remaining sum with the price of some of the bonds of the Public Debt now in the name of the minor and deposited in care of the Bank of Naples. But it is also necessary—in view of the amount of the said income—that this way of payment of the tax would not result in a definite diminution of the estate of the minor and therefore, the Tribunal is of opinion to decree that the income of the other bonds due every six months be kept by the Bank of Naples and employed in the buying of bonds

of the Consolidated Loan 5% until the capital employed to pay the tax will be re-integrated.

For these reasons: After hearing the reporting judge and in agreement with the Public Ministry;

1. Authorizes the Treasury of the Bank of Naples, in person of its Director of the Central Treasury in charge at the moment the petition will be presented, to ask the General Director of the Public Debt to transfer in bearer bonds of the nominal bond of the National Loan 5% now in the name of the minor Gloria Caruso bearing N.35974, and in drawing from the nominative bond of the Italian Consolidated Loan 5% N.364317, now in the name of Gloria Caruso, of as much a sum as it will be necessary—together with the receipt of the sale of the bond of the National Loan—in order to pay the remaining sum due by the minor for the redemption of the share of the patrimony tax.

2. Orders the said Treasury of the Bank of Naples to preliminarily ascertain how much has been paid on account of the patrimony tax by the estate formed by the inheritance of Mr. Caruso and how much it is still due for the redemption of such tax and to ask the drawing from the bond of the Consolidated Loan 5% of as much a sum as it will be necessary to pay the share due by the minor.

3. Authorizes the General Director of the Public Debt to execute, without responsibility, the transfer in bearer bonds of the nominative bond of the National Loan 5% N. 35974 and the drawing from the bond of the Consolidated Loan 5% N. 364317 of as much a sum as it will be necessary

to pay—together with the receipt of the sale of the bond of the National Loan—the share of tax due by the minor and to deliver to the Treasury of the Bank of Naples, in person of its Director then in charge, the remaining amount of the Consolidated Loan bond 5% evidenced by a bond, in the name of the minor Gloria Caruso of the deceased Enrico under the paternal power of her mother Dorothy Benjamin Caruso.

4. Authorizes said Central Treasury of the Bank of Naples to sell the bearer bonds of the National Loan and Consolidated Loan 5% according to the price of the Bourse.

5. Authorizes the same Central Treasury of the Bank of Naples to pay the remaining share, due by the minor for the redemption of the patrimony tax of the estate of Caruso, with the proceeds of the sale of the bonds of the National Loan 5% and of the Consolidated Loan 5% of which the transfer has been authorized.

6. Subordinate the above named authorizations to the agreement of Mrs. Dorothy Benjamin Caruso that she will reintegrate the deducted capital in the way put forth in the following paragraphs.

7. Orders the said Treasury of the Bank of Naples to hold from the income from the Consolidated Loan bond 5%, in the name of the minor, which will be obtained after having alienated as above ordered of part of the nominal capital, begining with the incomes due on July first, 1927, and invest said sum in Consolidated Loan 5% bonds until the nominal capital which has been used in order to pay the tax, will be reintegrated.

Only after said capital is reintegrated the above named Treasury will pay the income on all the bonds to whomsoever shall thereunto be entitled.

So decided to-day September 8th, 1926, in the Council Chamber of the First Civil Section of the Tribunal of Naples composed of Francesco Saverio Azzariti, President, Salvatore Ciotola and Domenico Falcione, Judges who signed their decision together with the Chancellor on September 17th, 1926, in Naples.

The President signed: Francesco Saverio Azzariti. The Chancellor signed Ludovico Scicolone.

This copy conforms to its original is delivered upon request of Salvatore Becci, attorney at Law, Naples October 15th, 1926.

The Chancellor signed: F. Galluccio.

Seen for the legalization of the signature of the Chancellor. F. Galluccio, Naples, October 22nd, 1926. The President of the Tribunal signed.....

Kingdom of Italy—Province of Naples—Consulate General of the U. S. of America, ss.:

I, Howard K. Travers, Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the president of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

Howard K. Travers,
Consul of the United States
of America, Naples, Italy.

(Stamp)

Exhibit G-C-22.

AN AGREEMENT made the first day of January, A. D. 1919, by and between VICTOR TALKING MACHINE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, United States of America, having its principal place of business in the City of Camden, County of Camden, State of New Jersey, hereinafter called the Victor Company, of the one part, and ENRICO CARUSO, now residing in New York City, in the State of New York, hereinafter called the Artist, of the other part.

In consideration of the several provisions hereinafter contained it is hereby agreed between the parties hereto as follows:

1. This agreement is made for a period from and including the day of the date hereof to and including the first day of January, A. D. 1934.

2. The Artist agrees that at mutually convenient times he will come to the Recording Laboratory of the Victor Company and, for the purposes of making complete, perfect and approved master records of his voice will there sing, and when requested repeat for the Victor Company forty (40) selections of solos and concerted numbers, the selections to be chosen by the Artist and an authorized representative of the Victor Company. No master record shall be considered satisfactory or complete and perfect until it has been approved not only by an authorized representative of the Victor Company but also by the Artist himself, and if an approved master record becomes defective or otherwise unsatisfactory the Artist will repeat the selection until a new approved master record thereof is made.

Exhibit G-C-22.

3. The Artist hereby grants to the Victor Company the right, at any and all times during the period of this agreement and thereafter, to manufacture, advertise and license or sell, and any or all these rights and powers, in all parts of the world, records of his voice in selections of which approved master records have been heretofore made or shall hereafter be so made and grants the further right to make use of his name and his photograph in connection with the manufacture, with the advertisement and with the license or sale of such records and likewise grants all rights in and to the matrices and records upon which have been or shall be reproduced the performances herein referred to.

4. During the life of the Artist, in the period of ten years' time from January 1, 1919, the Victor Company agrees to pay to the Artist the sum of One Hundred Thousand Dollars ($100,000.) each year, which sum is hereby guaranteed. An account is also to be kept of the number of records licensed or sold, in each year of the period of this agreement, of each selection of which an approved master record of the Artist's voice has been heretofore made or shall be hereafter made, and an allowance shall be made of a royalty, that is to say, 10 per cent. of the Victor list or catalog price of such records, whether they be solos, duets, trios, quartets or other concerted numbers. The right is reserved, however, to the Victor Company to change, from time to time, the Victor list or catalog price of any and all records and the method of marketing the same as the Victor Company shall deem proper. If at the end of any year covered by said minimum payment, the allowance for such year at the rate above indicated

shall exceed the sum of $100,000. the Victor Company further agrees to pay to the Artist whatever shall be the excess of such allowance over the sum of $100,000. For so much of the period of this agreement as shall remain after the minimum payments as above set forth shall cease, the Victor Company will pay to the Artist the percentage royalty appearing to be due for such remainder of the period by said account. Moreover, the Victor Company agrees that it will, after the period of this agreement, continue to pay to the Artist the percentage royalty above specified so long and only so long as he does not make or permit to be made, for any reason, party or concern other than the Victor Company, a record of his voice in any selection of which an approved master record has been or shall be made for the Victor Company. Payment of any amount due upon such percentage royalty shall be made annually, within thirty days after the first day of January, and the amount of royalty previously paid to the Artist on records returned, either as defective or on exchange propositions, may be deducted by the Victor Company from the first and only from the first annual statement rendered after such return.

5. The Artist further agrees that he will not at any time during the period of this agreement make or permit to be made a record of his voice for any person, party or concern other than the Victor Company, and also will not during the period of this agreement permit any person, party or concern other than the Victor Company, to make use of the Artist's name or photograph in connection with the making, advertising or marketing of any sound record or records. In case the Artist after the period of this agreement

makes or permits to be made for any person, party or concern other than the Victor Company a record of his voice in any selection of which an approved master record has at that time been made by the Victor Company, the Victor Company shall then be free from any and all further obligation to pay royalties to the Artist and the Victor Company shall thereafter have the right to manufacture, advertise and license or sell, and any or all these rights and powers, anywhere, and to use his name and photograph in connection therewith, records of the Artist's voice without payment or obligation of any kind to the Artist and all right of the Artist to any further accounting shall likewise thereupon forthwith cease.

6. In case the license or sale of records of the Artist's voice in any selection of which an approved master record has been heretofore made or shall hereafter be made, shall fall below an aggregate of sixty (60) in any three consecutive months after the first year of its being listed in the Catalog of the Victor Company, such selection shall be considered by the Artist and by the Victor Company not a good record selection and the Victor Company shall have the full right to withdraw from license and also from sale records of any such selection.

7. All agreements heretofore made between the parties hereto are terminated and superseded by this agreement. The covenants of and rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

Exhibit G-C-22.

In Witness Whereof the parties hereto have hereunto set their hands and seals, dated the day and year first above written.

Victor Talking Machine Company (Seal)
by
Ralph L. Freeman
Secretary

Enrico Caruso (Seal)

Witness:

C. G. Child.

Exhibit G-C-23.

Complaint in suit brought in District Court of the United States, Southern District of New York, entitled as follows:

DOROTHY CARUSO INGRAM, formerly Dorothy P. B. Caruso, ancillary administratrix of the Goods, Chattels and Credits of Enrico Caruso, deceased, Plaintiff,	AT LAW No.
against	
FRANK K. BOWERS, individually and as Collector of Internal Revenue for the Second District of New York, Defendant.	

(The portions of the complaint pertinent to the purpose for which the same was offered are as follows:)

The above named plaintiff, by Wise, Whitney & Parker, her attorneys, complaining of the above named defendant, alleges:—

1. That the plaintiff is, and at all the times hereinafter mentioned was, a citizen of the United States, and now resides in the Borough of Manhattan, City, County, State and Southern District of New York.

2. That the defendant is now and continuously since the 15th day of August, 1921, has been an

officer of the United States; to wit: the Collector of Internal Revenue for the Second District of New York.

3. That the causes of action herein stated arise under, and the plaintiff's claims thereon are founded upon, a certain Statute of the United States; to wit: the Act of Congress known as the Revenue Act of 1918 (40 Statutes at Large 1057, *et seq.*) as will hereafter more particularly appear, and that the questions to be determined herein involve the construction and application of said statute and its validity and operation, and that the amount involved herein exceeds the sum of $3,000, exclusive of interest and costs.

4. That during his lifetime Enrico Caruso was a subject of the King of Italy and during all of the times hereinafter mentioned was a resident of the City of Florence, in the Kingdom of Italy, and as such was a non-resident alien within the meaning of the aforesaid statute of the United States.

5. That heretofore and on or about the second day of August, 1921, said Enrico Caruso died at Florence, Italy, and thereafter and on or about January 10, 1922, this plaintiff was, by an order of the Surrogate's Court in and for the County of New York, duly and regularly appointed ancillary administratrix of the goods, chattels and credits of Enrico Caruso, deceased. That thereafter and on or about the 10th day of January, 1922, this plaintiff duly qualified as such ancillary administratrix and ever since said date, plaintiff has been and is now the duly appointed, qualified and acting ancillary administratrix of the goods, chattels and credits of Enrico Caruso, deceased.

Exhibit G-C-23.

Paragraph 6 alleges the receipt by Enrico Caruso, a non-resident alien, of income from sources within the United States and a tax return by him for 1918 in the Second District of New York.

Paragraphs 7 to 13, inclusive, allege a reaudit subsequent to the death of Caruso; the assessment and collection of an additional tax and the facts and allegations to support the claim for the recovery thereof.

Paragraphs 14 to 22, inclusive, make similar allegations respecting the assessment and payment of additional tax for year 1919.

Paragraphs 23 to 31, inclusive, make similar allegations respecting the assessment and payment of additional tax for year 1920.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DOROTHY CARUSO INGRAM, being duly sworn, deposes and says that she is the plaintiff in the within entitled action; that she has read the foregoing Complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

DOROTHY CARUSO INGRAM

Sworn to before me this 29th }
day of January, 1925 }

BEATRICE GOLDMAN
Notary Public, New York County.

Exhibit G-C-24.

This is a Federal Estate Tax return on Form 706, Revised November, 1919, entitled (cover):

RETURN FOR FEDERAL ESTATE TAX

AN ITEMIZED INVENTORY BY SCHEDULE OF THE GROSS ESTATE OF THE DECEDENT, WITH LEGAL DEDUCTIONS.

Decedent's name—Enrico Caruso. Date of death—August 2, 1921. Residence at time of death—Florence, Italy.

(Page 2):

Estate of Enrico Caruso . . . 2nd District of New York.

GENERAL INFORMATION SHEET.

The information called for on this page is necessary for purposes of record and verification. Fill out all blanks carefully.

The name of the decedent's legal heirs and next of kin are required whether the decedent left a will or not. If the will names more than ten, only the names of the ten principal beneficiaries are required.

State whether decedent died testate or intestate.—Testate. (Answer) Permanent residence at time of death—Florence, Italy. Actual place of death—Naples, Italy. Age at death—48. Business or employment—Operatic singer. Business address—Florence, Italy.

HEIRS AT LAW, LEGATEES, AND BENEFICIARIES.

Name	*Relationship*	*Address*
Dorothy P. B. Caruso	Widow	c/o Wise & Seligsberg 15 William Street New York City.
Gloria Caruso	Daughter	c/o Wise & Seligsberg 15 William Street New York City.
Rodolfo Caruso	Son	c/o Gabriele Consolazio Naples, Italy.
Enrico Caruso, Jr.	Son	c/o Gabriele Consolazio Naples, Italy.
Giovanni Caruso	Brother and beneficiary	c/o Gabriele Consolazio Naples, Italy.

(Following portion of return not printed)

Jurat for Executors and Administrators.

I, ALFRED F. SELIGSBERG, attorney for Dorothy P. B. Caruso, Ancillary Administratrix, do hereby solemnly swear—affirm that on the 10th day of January, 1922 the Surrogates court at New York County granted letters ancillary administration upon the estate of the foregoing named decedent to Dorothy P. B. Caruso; that she has made diligent search for property of every kind left by the decedent; that I have carefully read the instructions printed on this form; that hereon is listed all of the property, tangible and intangible, forming the gross estate of the decedent so far as it has come to her knowledge and information; that we have no knowledge of any transfers made or trusts created in contemplation of death or to take effect at or after death, except as stated on Schedule E; that to the best of our knowledge, information, and belief the value shown for each item of property listed hereon was the actual and full value of the same at the time of decedent's death; and that the debts, expenses, and charges entered hereon as deductions from the gross estate are correct and legally allowable. This affidavit is made by deponent and not by the Ancillary Administratrix for the reason that she is at present abroad and the time to file the return is about to expire.

Subscribed and sworn to before me, at New York City, N. Y. this 29th day of September 1922.

.....

Notary Public—Deputy Collector.

Attorney's name and address Wise & Seligsberg, 15 William Street, New York City.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO,
Complainant-Appellant,

and

RODOLFO CARUSO, *et als.*,
Defendants-Respondents.
ENRICO CARUSO, JR.,
Defendant-Appellant.
GLORIA CARUSO,
Defendant-Appellant.
VICTOR TALKING MACHINE CO.,
Defendant-Respondent.

ON APPEAL FROM CHANCERY OF GLORIA CARUSO.

ON BILL, &C.

BRIEF FOR GLORIA CARUSO, DEFENDANT-APPELLANT.

There is a State of Case and a Supplemental State of Case presented to this Court by the various parties to these appeals. The paging in the State of Case is from page 1 to 440. The paging in the Supplemental State of Case begins at page 501.

Throughout this brief the italics and underscoring are ours, unless the contrary is noted.

SPECIFICATIONS OF THE GROUNDS OF APPEAL.

The decree is alleged to be erroneous in that it orders:

1. That the amount remaining in the hands of Dorothy P. B. Caruso, ancillary administratrix of Enrico Caruso, deceased, after payment of the expenses of administration, shall be distributed a two-third part thereof to Gloria Caruso and a one-twelfth part thereof to each, Dorothy P. B. Caruso, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr., as in the decree ordered.

2. That subsequent payments to be made under the contract made between Enrico Caruso in his lifetime and the Victor Talking Machine Company, bearing date January 1, 1919, shall be distributed a two-third part thereof to Gloria Caruso and a one-twelfth part thereof to each, Dorothy P. B. Caruso, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr.

3. That this defendant, Gloria Caruso, is entitled to but a two-third part thereof.

On the following grounds:

1. That the same is erroneous in that it orders distribution of the assets in this State of the estate of Enrico Caruso, deceased, under the statutes of this State providing for the distribution of the estate of an intestate, under which statutes Gloria Caruso would receive a two-third part thereof.

2. That it did not order distribution of such assets, found in this State, under the law of Italy providing for the distribution of the estate of an intestate, under which Gloria Caruso would receive all thereof subject to the right of her mother, Dorothy P. B. Caruso, to receive, during her said mother's life, one-fourth of the income therefrom.

3. That it did not decree that the payments which have arisen and will in future arise from the said contract are principal, not income, and that Gloria Caruso therefore is entitled to all of said payments less one-fourth of the incomes arising from their investments.

4. That it accorded any effect whatsoever in New Jersey to the Neapolitan agreement and decrees.

5. That it treated the said Naples decrees as adjudications of the estate of the decedent.

6. That it refused to find that the said Tribunale Civile e Penale of Naples had no jurisdiction to render a decree binding in this State over the subject-matter in controversy.

7. That it refused to allow the issuance of commissions to establish the law and jurisprudence of

decedent's domicile controlling the devolution of his estate and the facts and circumstances in issue.

ABSTRACT STATEMENT OF THE CASE AND QUESTIONS INVOLVED.

C. domiciled in Italy, died having assets in New Jersey, which consisted of royalties payable to C. by the Victor Talking Machine Company. He left one legitimate child, a widow, two illegitimate sons and a brother. He had made a will, but the subsequent birth of his legitimate child concededly revoked its provisions. His illegitimate sons were adulterines and they and the brother would take nothing, so that his estate should have gone, all to his legitimate child less the widow's right for life to one-fourth the incomes from the estate. These parties entered into an agreement, which was approved by a Naples Court, by which the legitimate child, an infant, two years old, was given one-half of the estate and one-eighth to each of the others. The widow was also given as her own, during the minority of the child, one-half of the child's allotment of the Victor royalties and the incomes from the investment of the other one-half.

1. Is the property in New Jersey of a foreigner's estate to be distributed under the law of decedent's domicile under the facts in this case?

2. Will the New Jersey Court apply the agreement and foreign decrees offered by the complainant, notwithstanding that to give them effect would be against the public policy of the State of New Jersey?

3. Is the position of the agreement bettered when confirmed by decrees of a foreign Court, considering that:

The Court was without jurisdiction.

The minor was not before the Court.

The foreign Court cannot reciprocate in similar circumstances.

The decrees are consent decrees and make no adjudications.

The decrees are not final.

This is not a suit at law to enforce a foreign judgment but an equity proceeding between individuals.

The decrees operate to defraud the infant.

The decrees were made on waivers of infants' property rights.

The decrees and agreement operate to divide a child's property among her relatives.

ARGUMENT.

FACTS.

This matter comes before this Court on four separate appeals. Three of them, from the final decree (State of Case, p. 159) by Dorothy P. B. Caruso, ancillary administratrix of the estate of Enrico Caruso and individually; by Enrico Caruso, Jr., and by Gloria Caruso. There is also argued at this time an appeal taken on behalf of Gloria Caruso from an interlocutory decree of the Chancellor dated April 10, 1928 (State of Case, p. 142), ordering the payment of an allowance for the maintenance of Gloria Caruso. A separate brief is filed in that appeal by us.

Dorothy P. B. Caruso, the widow of Enrico

Caruso, deceased, filed a bill setting forth an agreement of division of this estate, which had been submitted to and approved by an Italian Court at Naples, and praying, *inter alia,* that her accounts as ancillary administratrix appointed by the Prerogative Court of New Jersey be settled and distribution be made; that it may be determined what portion of the moneys arising or to arise out of the aforesaid royalty contract is principal and what portion is income, and that the determination of the Italian Court with respect thereto be ratified and confirmed, and that it may be decreed that the moneys already received and all moneys hereafter payable under said royalty contract and all rights in said contract itself are the property of the parties, in the proportions above specified, and that the Victor Company be decreed to pay over same, from time to time, directly to said individuals without the intervention of the administratrix.

The defendants to this bill are Rodolfo Caruso, Enrico Caruso, Jr., Giovanni Caruso, Gloria Caruso, Maria Castaldi, Victor Talking Machine Company and Fidelity and Deposit Company of Maryland as surety on the bond of Dorothy P. B. Caruso as administratrix. The Chancellor appointed the Clerk of the Court of Chancery guardian *ad litem* for the minors, Enrico Caruso, Jr., and Gloria Caruso, and appointed Martin V. Bergen solicitor for the guardian *ad litem.* Answers were filed for the infants and for the Victor Talking Machine Company, which also filed a counter-claim, and later an amended answer was filed for Gloria Caruso. Enrico Caruso, Jr., has since become of age and has subsequently appeared by Merritt Lane, Esq., as his solicitor.

During his lifetime, on January 1, 1919, Enrico Caruso, the famous tenor, made a contract (State

of Case, p. 431) with the Victor Talking Machine Company, a New Jersey corporation, by which 10% of the catalogue price of gramaphone records which he agreed to sing and which recorded his voice, as sold, was to be paid to him and his representatives. The agreement continued after his death and the payments are still being made and this contract and these payments are the assets in this jurisdiction.

Enrico Caruso died August 2nd, 1921, domiciled in Sesto-Fiorentino, a suburb of Florence, Italy. He died in Naples in a hotel, traveling from Sorento for medical help (pp. 253 and 257). He was a business man and had business in New York, where he maintained a residence (p. 254). He never married until August 20, 1918, when he was married to Dorothy P. B. Caruso. He had one child of this marriage, Gloria, born December 18th, 1919, in New York, and who, therefore, is an American citizen, as well as a citizen of Italy. He had previously, from 1897 to 1907 (see G. C. 4, State of Case, p. 375), lived in a marital way with Ada Giachetti Botti, and by her had two children, who survived him (State of Case, p. 379), Rodolfo Caruso and Enrico Caruso, Jr. Ada Giachetti Botti was married to Gino Botti at the respective times when these children were conceived and born (State of Case, p. 379). At the times of the births of these two boys Caruso tried to give to them, by recognition, the rights accorded by Italian law to a person's natural children whom he had formally recognized, but Italian law expressly states that an adulterine child (born of parents one of whom is married to someone else at the time of the conception) cannot be recognized and given such rights.

On January 4, 1919, Enrico Caruso executed a will by which he gave to his widow that which Italian law gave to her and gave the remainder of his estate

to his brother, Giovanni Caruso, and to the two sons, Rodolfo Caruso and Enrico Caruso, Jr., with an interest to Maria Castaldi. The provisions of this will constituting his brother and his two sons his universal heirs were revoked by the subsequent birth of Gloria Caruso. It is noticeable that Enrico Caruso lived one year and seven and a half months after the birth of Gloria Caruso; if he had not desired her to take his estate he would have made another will.

Following Enrico Caruso's death a so-called family settlement was arrived at (Exhibit C14, State of Case, page 340) by which Gloria Caruso was allotted one-half of Enrico Caruso's estate, and the other one-half was divided equally among the widow, Dorothy P. B. Caruso; the brother, Giovanni Caruso, and the two sons, Rodolfo Caruso and Enrico Caruso, Jr.—one-eighth of the estate to each. It also provided, as to Gloria Caruso's allotted share of four-eighths of the Victor payments, that two-eighths should be capitalized for her and the other two-eighths should be paid unrestricted to Dorothy P. B. Caruso, together with the incomes from the other two-eighths (see translation, C14, at p. 355). In so providing, as part of an entire contract, it dealt with Gloria Caruso's estate and property in New Jersey, going entirely beyond the sphere of a family settlement of Enrico Caruso's estate.

This agreement was presented to a Court of Naples (which had no jurisdiction, Florence being the judicial district of Enrico Caruso's domicile), with the approval of an alleged guardian for Gloria, who was appointed by that Naples Court, and the agreement was first authorized and later approved by that Court.

The aim of this bill is to have re-enacted in New Jersey what took place in Naples and to have the

New Jersey Court order the Victor Company to distribute directly to the parties.

A general statement of the Italian law involved in this case as facts, the provisions of the various codes being set forth in the addenda, is as follows:

(1) Title to personalty of a decedent does not pass through an administrator as in New Jersey, but directly to those entitled.

(2) Italian law knows four classes of children: legitimate; legitimatized, which means those made so by subsequent marriage or by a special decree of the King; adopted and recognized. Recognized children are illegitimate children who have been recognized by the parent by some formal act; but an adulterine, that is an illegitimate child born of a mother or father who at the time of his conception was married to another than the other parent, cannot be recognized (Article 180).

(3) A widow has what is called a surviving spouse's usufruct in the incomes from her deceased husband's estate, both real and personal. This is equal to the share of a legitimate child but never greater than one-quarter of the incomes and cannot be taken from her by will (Article 753).

(4) Where there are legitimate children, only one-half of the estate can be disposed of by will as against them. They are entitled to one-half of their father's estate (called the legitima), which cannot be taken from them by will and goes to them clear of the widow's usufruct, which comes out of the disponable one-half (see recital of the Naples Court embodied in the decree of October 21, 1921, State of Case at p. 287, also Guarracino's opinion, Exhibit 7A, State of Case at p. 275).

(5) In case of intestacy, the widow receives her widow's usufruct and the balance goes to the children. If legitimate, in equal shares. If there are both legitimate and illegitimate recognized children, the legitimate receive twice the amount that the illegitimate receive (Article 744), but this provision is construed to mean that the total number of the children is taken, a share allotted to each and then one-half of the allotment to each illegitimate is given to the legitimates, so that if a father leaves one legitimate and two illegitimate recognized children, the legitimate child would receive one-third plus one-half of two-thirds or a total of four-sixths, and the two illegitimates would each receive one-sixth (see recital of the Naples Court embodied in the decree of October 21, 1921, State of Case at p. 286. See also Exhibit 7A, State of Case, p. 275).

(6) Where a will is made by a person who did not have a legitimate child at the time, it is revoked by the subsequent birth of a legitimate child (Article 888). (See petition to Naples Court, Exhibit C8A, State of Case at page 281.)

(7) The Court which has exclusive jurisdiction over the succession is that of the judicial district in which the decedent was domiciled.

(8) The property of a minor in given circumstances is controlled by a body called a Family Council. This is composed of a judicial officer known as the Pretore and the nearest relatives. It must be composed in the judicial district where the minor has most of her property and business affairs.

(9 Entirely distinct from the succession provisions of the code, are provisions relating to parental

authority. These provide that the surviving parent has the right, as her own, until the child becomes 21 years of age, to the incomes of an infant, without having to account for same when the child attains its majority. This right (called the parents' usufruct) can be enjoyed only by a parent exercising "parental authority" and is lost by a mother on remarriage, but even then the mother can be appointed administratrix for the infant (see heading "Parental Authority" in addenda).

QUESTIONS OF FACT.

There would seem to be but few disputes on questions of facts.

(a) Revocation of the testamentary provisions of the will by the birth of Gloria Caruso subsequently to the date of its execution.

This would seem to be conceded by all the parties by their petition to the Naples Court (State of Case, pp. 281, 282).

The language of the petition to the Naples Court, dated October 12, 1921, on which the decree of October 21, 1921, is founded, signed by all the parties, including the special guardians of Enrico Caruso, Jr., and Gloria Caruso, and by the Italian lawyers, Porzio and Consolazio, as their counselors-at-law, says (at State of Case, pp. 281 and 282):

> "It is therefore evident that by reason of his little Gloria's birth, which occurred eleven months after the date of the aforesaid mentioned testamentary instrument, and three months and one-half after a copy of same had been given to the personal representative, Dr. Viachiettini, the testamentary disposition men-

> tioned above cannot have any force and effect. If the testamentary disposition hereinbefore indicated were to have any binding effect it would inevitably lead to a multiplicity of suits between the daughter Gloria, the testamentary heirs, Com. Caruso's brother and the two sons, who as heirs of the deceased would fight to uphold the validity of the aforesaid testamentary dispositions against the inevitable conclusions that they were of no force and effect."

This means that Gloria Caruso was conceded by all these parties (the boys being treated as recognized) to be entitled to two-thirds of the principal and one-half of the income, yet the agreement gave her one-half of each.

The Italian Code provision, Article 888, providing for revocation, and the Italian authorities, are collated in the addenda.

(b) Formal acts recognizing Rodolfo and Enrico Caruso, Jr., by their father.

This is not disputed. It is, however, disputed that they were capable of recognition, and therefore the validity of the acts is denied.

(c) Jurisdiction to the Naples Court. This is denied by us.

The proofs are collected in a separate section on the jurisdiction of the Naples Tribunal.

(d) The adulterinity of Rodolfo Caruso and Enrico Caruso, Jr.

The fact that Ada Giacchetti Botti was their mother and that she was married at the respective times of their conceptions, to one other than Enrico Caruso, is not admitted but is not denied. The

right to raise the question and dispute their recognition is disputed.

This is argued subsequently in the brief.

The facts of the adulterinity of Rodolfo Caruso and Enrico Caruso, Jr., are proven before this Court.

The proofs are as follows:

Two formal signed statements made by Ada Giacchetti Botti making the express charges that Enrico Caruso had falsified the birth certificates, that she was the mother of Rodolfo Caruso and Enrico Caruso, Jr., and was married at the times of their respective conceptions to Cino Botti. On these statements criminal proceedings were brought against Enrico Caruso in the court at Milan, Italy (see Exhibit G.C.4, page 247, Supplemental State of Case, p. 545; G.C.4, pp. 241 to 245, Supplemental State of Case, p. 539).

A letter written to Enrico Caruso by Ada Giacchetti Botti dated January 27, 1909 (Exhibit G.C.4, pp. 146a to 153a, p. 152, State of Case, page 385).

A letter written by Enrico Caruso to Mrs. Carlotinna Carignani dated December 12, 1908, stating that Ada Giacchetti Botti was their mother (see Exhibit G.C.4, p. 43, State of Case, p. 379).

Caruso's formal signed memorabile of defense (see Ex. G.C.4, pp. 16a to 29a, State of Case, page 375), stating:

> "In the year 1897 I met, in Leghorn, Mrs. Ada Giacchetti, married to a certain Gino Botti, and in the following year I moved, with her, to Milan, and with her I lived in a marital way until 1907."

Rodolfo Caruso was born at Milan July 2, 1898, and Enrico Caruso, Jr., was born September, 1904

(see State of Case, p. 383), after they were living together.

Telegram from Enrico Caruso to Ada Giacchetti (no date shown) (see Ex. G.C.4, pp. 146a to 153a, see State of Case, p. 387).

The accusation of the public prosecutor in which he states as a fact that Rodolfo and Enrico Caruso, Jr., are the children of Enrico Caruso and Ada Giacchetti Botti while she was a married woman, but advises the dismissal of the charge against Enrico Caruso for falsifying the birth records as barred by the Statute of Limitations (Ex. G.C.5, pp. 2, 5, 6, 7, 8, State of Case, p. 394).

The penal judgments of the inquiring Judge (G.C.4, pp. 67a to 71a, State of Case, page 381) of the trial Court (G.C.4, pp. 205 to 224, State of Case, p. 388), and of the Court of Appeals (G.C.4, pp. 322a to 341, State of Case, p. 391), each stating as facts that Ada Giacchetti Botti was their mother and Caruso was their father and that she was married to Gino Botti at the times of their respective conceptions.

A petition (Ex. G.C.6, State of Case, p. 403) made on behalf of Ada Giacchetti Botti to the Milan Court asking that the incomes of a trust fund created by Enrico Caruso for her benefit for life, remainder to the two boys, be prepaid to her, in which the facts, that she was married to Botti and is the mother and Caruso the father of the boys, is stated, and the decree (Ex. G.C.7, State of Case, page 407) of that Court in that proceeding similarly stating these facts.

The signed memorabile of defense of Carlottino Carignini, stating as a fact (Ex. G.C.4, pp. 39a to 44, State of Case, p. 377).

Copy of abstract of the record of marriage of Ada Giacchetti and Gino Botti proved in the Milan

proceedings (Ex. G.C.4, pp. 247a, 248, 248a, Supp. State of Case, p. 547).

The proof of these facts is overwhelming and it is not denied although not admitted.

I.

LAW.

It is the general rule that the movables of a foreigner are to be distributed by the Courts of New Jersey according to the law of the country of the domicile of the decedent.

In *Ennis v. Smith,* 14 How. 400, at page 424, the Supreme Court says:

> "For several hundred years upon the continent, and in England from reported cases, for a hundred years, the rule has been that personal property, in cases of intestacy, is to be distributed by the law of the domicile of the intestate at the time of his death. It has been universal for so long a time that it may now be said to be a part of the *jus genium.*"

The decisions sustaining this point are legion, and are scattered throughout the world. We will not burden the Court with citations of them.

The New Jersey cases on the subject are the following:

N. J., 1862. *Banta v. Moore,* 15 N. J. Eq. 97-100;

N. J., 1865. *Normand's Administrator v. Grognard,* 17 N. J. Eq. 425;

N. J., 1883. *Harral v. Wallis,* 37 N. J. Eq. 458;

N. J., 1884. *Harral v. Harral,* 39 N. J. Eq. 279;

N. J., 1885. *Van Gieson v. Banta,* 40 N. J. Eq., page 14;

N. J., 1895. *Jenkins v. Guarantee Trust Co.*, 56 N. J. Eq. 194-202;
N. J., 1908. *Neilson v. Russel*, 71 Atlantic Reporter, 286;
N. J., 1911. *Grattan's Estate*, 78 N. J. Eq. 225;
N. J., 1916. *Griswold v. Kelly*, 94 N. J. Eq. 308.

But we contend that if the application of this general rule would result in the giving effect to a foreign law contrary to the public policy of New Jersey, such foreign law will not be enforced by New Jersey Courts, and equally, that contracts of settlement or domiciliary decrees, which give effect to or embody law contrary to our public policy, will not be enforced by New Jersey Courts.

Frey v. Neilson, 99 N. J. Eq. 135;
Thompson v. Taylor, 66 N. J. L. 253;
Hinkly v. Freick, 86 N. J. L. 281;
Wright v. Remington, 41 N. J. L. 48;
Lower v. Segal, 59 N. J. L. 66;
Dayton v. Adkisson, 45 N. J. Eq. 603;
Ross v. Ross, 129 Mass. 243;
Mahorner v. Hooe, 17 Miss. 247, 48 Am. Dec. 706;
Locke v. McPherson, 163 Mo. 493, 52 L. R. A. 420;
Est. of Lathrop, 165 Cal. 243, 131 Pac. Rep. 752;
In re Barton's Est., 238 Pac. 681 (Cal. 1925);
McDougal v. Lilienthal, 164 Pac. 387;
12 *C. J.* 439;
18 *C. J.* 810, 811, notes 39, 40;
Lee v. Belknap, 163 Ky. 418, 173 S. W. 1129;

Cole v. Taylor, 132 Tenn. 92;
Note to Brown v. Finley, 21 L. R. A. n. s. 678, p. 679;
Note to Anderson v. Freish, L. R. A. 1916 A, 666;
In re Petit, 49 La. Ann. 626; 21 So. Rep. 717;
Fried v. Fried, 99 N. J. Eq. 106;
Hollingshead v. Hollingshead, 91 N. J. Eq. 261.

In *Mahorner v. Hooe,* 17 Miss. (9, Smedes & Marshall) 247 (48 Am. Dec. 706), at page 274, the Court says:

> "It is undoubtedly true, that every State may regulate the transfer of property real and personal within its limits, either by last will, or *inter vivos,* because all property must be bound by its laws. The necessary result of sovereignty is a power to regulate and bind property according to prescribed rules, not inconsistent with the fundamental law of the State. This general proposition is not denied, but the argument pressed upon us is, that by comity the law of the domicile of the owner is the law of personal property wherever it may be, and that this law will prevail unless it be expressly excluded in terms. That is not changed by implication, merely because it is repugnant to the laws of the State in which the property is situated, and this position, it is said, is sustained by authority. Pressed to the extent to which the counsel would carry it, the bequest could be sustained; but this is inconsistent with the idea of mere comity, which is an act of courtesy. Nor do the authorities go to that length; on the contrary, they establish a limit much short of it.

In administering foreign laws, Courts act upon the presumption that they have been tacitly adopted, but this presumption is only to be indulged in the absence of any law restraining or denying their operation. And such restraint may result as effectually from the general scope and object of a State law, as from prohibitory language. The presumption must of necessity cease when the foreign law is in direct conflict with a positive prohibitory law of a State, regulating its policy. 'In the silence of any positive rule (says Judge Story), affirming, or denying, or restraining the operation of foregin laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy, or prejudicial to its interests' (Conflict of Laws, 37, Sec. 38). What, then, if a foreign law be contrary to the policy of a State? It is not to be presumed to have been adopted of course."

We also call attention to discussions of this point in

Ross v. Ross, 129 Mass. 243;
In re Petit, 49 La. Ann. 626; 21 So. Rep. 717;
Locke v. McPherson, 163 Mo. 493;
Est. of Lathrop, 165 Cal. 243 (131 Pac. Rep. 752);
Lee v. Belknap, 163 Ky. 418 (173 S. W. 1129);
Dayton v. Adkisson, 45 N. J. Eq. 603;
Frey v. Neilson, 99 N. J. Eq. 135;
Adams v. Adams (Mass.) (13 L. R. A. 275);
Brown v. Finley (Ala.), 47 So. Rep. 577, 21 L. R. A. N. S. 679;
Lingen v. Lingen, 45 Ala. 410.

It is on the ground of the Court's own limitations, not on the fact of *situs* of the *rem,* that prevents a Court from enforcing a foreign law which is contrary to its public policy.

Justice Garrison, in *Thompson v. Taylor,* 66 N. J. L. 253, says:

> "If we pass to the reason assigned in the advisory opinion we shall see that it rests upon the doctrine of our Courts; that a contract valid elsewhere will not be enforced if it is inconsistent with the public policy of the jurisdiction the aid of whose tribunals is envoked for the purpose of giving its effect."

See also *Corbin v. Houlehan* (Me.), 70 L. R. A. 568; *Hollingshead v. Hollingshead,* 91 N. J. Eq. 261.

2. In matters involving the distribution of estates, it is the whole jurisprudence of the domiciliary country which is involved in the matter of succession, which is given effect by the ancillary court.

See *Ross v. Ross, supra;*
Lee v. Belknap, supra.

3. For a discussion as to the public policy which will prevent courts from giving effect to a foreign statute; see *Thompson v. Taylor,* 66 N. J. L. 253, in which Justice Garrison, speaking for the Court of Errors, points out the distinction between a regulation and a public policy; see also *Corbin v. Houlehan* (Me.), 70 L. R. A. 568 and 12 C. J. 439.

In *Westlake on Private International Law,* 6th Edition, Sec. 208, page 272, it is stated that any stringent domestic policy controls and states that where the *Lex fori* excludes oral testimony of a contract under its desire to prevent perjury, which the *lex loci contractus* would permit, it is excluded as against public policy.

Contracts and legal proceedings in fraud of another, particularly, to prevent the probate of a will are against public policy, and will not be enforced.

Gugolz v. Gehrkins, 164 Cal. 596, 43 L. R. A. N. S. 575;

Cochran v. Zachery (Iowa), 115 N. W. 486, 16 L. R. A. N. S. 235, and notes;

Grochowski v. Grochowski (Neb.), 109 N. W. 742, 13 L. R. A. N. S. 484, and notes;

Hollingshead v. Hollingshead, 91 N. J. Eq. 261 p. 279.

But in the absence of a specific statute, the local statutes of distribution are not considered such a statement of public policy as to prevent the ancillary court from distributing under the rules of the domiciliary jurisprudence.

In *Lawrence v. Kitteridge,* 21 Conn. 576, the Court says:

> "It certainly is now a settled principal of international law that personal property shall be subject to that law which governs the person of the owner and that the distribution and succession to personal property, wherever situated, *is to be governed by the laws of that country where the owner or intestate had his domicile at the time of his death.* Sto. Conf. Laws 403 (in notes: 480, 465; 2 Kent's Com. Lect. 37; 2 Kaine's Prin. Eq. 312, 826; Potter v. Brown, 5 East 124; Balfour v. Scott, 6 Bro. Parl. Cas. 550 (Toml. Ed): Bempde v. Johnstone, 3 Ves. 198; Pepon v. Pepon, Amb. 25, 415; Gwier v. O'Daniel, 1 Binn 349, in notes: Harvey v. Richards, 1 Mason 381.
>
> It is not necessary that we should now examine the reasons, whether of public policy or legal propriety, which have led the tribunals of civ-

ilized nations to relax from antiquated notions on this subject: some of these are well considered by Judge Story in the case of Harvey v. Richards, 1 Mason 381, and by Chancellor Kent, in his Commentaries, Vol. 2, Lect. 37.

It is true, it is in the power of every sovereignty and within the constitutional powers of the States of this Union, to repudiate this salutary doctrine in its application to themselves, or to modify it, for what they may suppose to be the protection of their own citizens; but without some peculiar necessity, it cannot be supposed, that any well regulated government will do it. It was claimed in argument, in this case, that this had been done in this State, and by the provisions of the 49th section of our Statute for the settlement of estates (Stat. 357) by declaring that when there are no children, etc., of an intestate, his 'real and personal estate shall be set off equally to the brothers and sisters of the whole blood.' But it was not the purpose of this provision to disregard the universal and salutary doctrine of the law to which we have referred, but only to regulate the descent and distribution of the estates of our own citizens. This provision of our Statute is not peculiar to ourselves; a similar one, we presume, may be found in the codes of other States: at least, imperative enactments exist in every State, directing the distribution of estates: but none of them intended to repeal the law of the domicile, in its effect upon the personal estate of the owner. The controversy in the case of Holcomb v. Phelps, arose under the same section of our law as does the one now under consideration, and the result of that case must settle this question, if it be one."

4. But such decrees unless the parties are all in court so that the judgment becomes in *personam,* are only conclusive over assets within the State where rendered and an Ancillary Court has jurisdiction to determine the same questions as to personalty situate in its jurisdiction.

Freeman on Judgments, 5th Ed. Sec. 1408, 1409, 1410, etc., pp. 2903, 2905, 2907.

See note to *Baker v. Baker,* L. R. A. 1917 C. 171, p. 185 and see *Baker v. Baker,* 242 U. S. 394.

5. Judgments as between States is governed by the mandate of the Constitution requiring full faith and credit. But the enforcement of judgments of a foreign country is merely on the ground of comity.

Thompson v. Thompson, 89 N. J. Eq. 70.

6. The Chancellor in his two opinions, pp. 117 and 144, decides that distribution of the New Jersey assets of Enrico Caruso shall be made, as far as Gloria Caruso is concerned, under the New Jersey Statute of Distributions.

In this holding he goes against the almost universal rule as shown by many cases and authorities. These authorities had been called to his attention in the various arguments and briefs. It was therefore a deliberate action of his based on the specific facts of the case at bar.

There are other cases which have so held.

In *Mahorner v. Hooe,* 17 Miss. 247, quoted *supra,* a testator domiciled in Virginia directed in his will that his slaves in Virginia and in Mississippi be freed. In Mississippi there was a statute which provided that this could not be done by will. It was permissible in Virginia. The Mississippi Court in a most carefully considered opinion refused to carry out the provision of the will because it was against

its public policy and held that decedent died intestate as to the slaves in Mississippi, but testate as to other provisions applying to his Mississippi property.

In *re Petit,* 49 La. Ann. 626, 21 So. Rep. 717, an intestate domiciled in France left personal property in Louisiana. The property was claimed by his brother and sisters as against his natural recognized son, who under French law would take one-half of the estate. The Court refused to give a share to the son as against its own citizens on the ground that his title was contrary to the public policy of Louisiana and utterly repugnant to its system.

In *Lathrop's Estate,* 165 Cal. 243, 131 Pac. Rep. 752, a testator domiciled in New York left by will all his property to charity. A California statute provided that a non-resident's will should be given effect in California, but limited by Sect. 1313 of the California Civil Code, which provided that not more than one-third of an estate could be left to charity. Held that the will was in so far contrary to the public policy of California and that decedent died intestate as to 2/3 of his personalty in California.

In *Locke v. McPherson,* 163 Mo. 493, 52 L. R. A. 420, a St. Louis woman married a New York man. They expected to make their home in New York, but before she had gone there, she died, within a month of her marriage. She left personal property in Missouri which was claimed by her brothers and by her husband, who claimed under his common law right of administration which was in effect in New York. The husband's claim was refused because this right was held to be contrary to the Missouri married woman's statute and since there was no New York statute applicable to the distribution of the personalty of a wife who died without descendants, distribution was made under the Missouri statute.

Locke v. McPherson was commented on in the notes to 29 L. R. A. N. S. 782, where it is said, "Perhaps in view of the hardship of the case and the technical character of the New York domicile the Court might have regarded it as contrary to public policy to enforce the law of New York, as a matter of comity and in the absence of an express local statute like domiciliary statutes of distribution." But in *Lee v. Belknap,* 163 Ky. 418, on an exactly similar state of facts the Kentucky Court refused to follow *Locke v. McPherson* on the ground that the domiciliary law to be applied included all the laws involving succession to property whether statutory or of common law origin.

6. It is to be noted that Gloria Caruso is a native born citizen of the United States.

The 14th Amendment to the Constitution provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside, * * *."

In *Benny v. O'Brien,* 58 N. J. L. 36, it was held that the

> "Persons intended to be excepted are only those born in this country of foreign parents who are temporarily traveling here, and children born of parents resident here in the diplomatic service of foreign governments. Such children are, in theory, born within the allegiance of the sovereign power to which they belong or which their parents represent."

See also in *re Chin Kin,* 35 Fed. 354.

II.

We contend that by this agreement grave advantage was taken of the infant, Gloria Caruso, by her relatives and natural protectors, who are now in a position of trust as her Family Council; that this wrong cannot be purified because an Italian Court approved the agreement and that a New Jersey Court should not give effect to this wrong by enforcing this agreement. The provisions of the agreement are against our public policy, and should not be enforced. The agreement was not a family settlement by compromise but a seizure of Gloria's property by her relatives and natural protectors.

In considering this agreement it must be noted that the agreement deals with two distinct estates—the estate of Enrico Caruso, deceased, and the property of Gloria Caruso.

1. In entering into this agreement, property rights which Gloria Caruso had in the estate of her father, Enrico Caruso, and assets in her own estate were given to her relatives without any consideration coming to her. These were waived. Nothing of advantage was given to her. The agreement was not a compromise or family settlement but was a seizure of her property by her nearest relatives and natural protectors, who subsequently became a majority of her Family Council, and have since appeared in this Naples Court as representing her rights and therefore, are today actually her trustees.

If every possible contention, which the facts raised, had been decided against Gloria Caruso she would have received more than given her by this agreement.

There were three possible positions in distribution of Enrico Caruso's estate under Italian Law.

If the will were effective Gloria would have received her *legitima,* which is ½ of her father's estate without deductions for the widow's usufruct, or ½ of corpus and ½ of income. If the general provisions of the will had been revoked and distribution was to be made as if Enrico Caruso had died intestate and the sons had been recognizable and recognized, she would have received 2/3 and they 1/6 each, but with deduction of her proportion of the widow's usufruct, and therefore she would have received 2/3 of the corpus and ½ of the income (see Naples decree of October 21, 1921, State of Case, pp. 286 and 287; also Guarracino's opinion, p. 275).

As a matter of fact the general provisions of the will had been revoked and Enrico Caruso had died intestate, and the sons were adulterines and incapable of recognition and Gloria Caruso should have received all of the estate less the widow's usufruct of ¼ of the incomes.

By the agreement Gloria Caruso was given ½ of the principal and ½ of the income. Therefore, both of these positions which the facts and Italian Law raised in her favor were waived for this child.

No such waiver can be given for an infant in the practice of New Jersey and such a waiver is against the public policy of this State.

This was one of the grounds relied on by the Chancellor in deciding this case.

We would refer to

Schultz v. Sanders, 38 N. J. Eq. 154, 156; S. C. on appeal, 38 N. J. Eq. 293;

In *re Shreve,* 87 N. J. Eq. 7; S. C. on appeal, 87 N. J. Eq. 710;

Brengel v. O'Toole, 140 At. 28, 6 N. J. Adv. 173.

On the contrary New Jersey public policy as shown by our practice requires affirmative protection to be given to infants. (This is argued post.)

That such waiver of Gloria's rights was in the minds of her relatives who propounded this agreement is shown by what purports to be a legal opinion given by a lawyer named Guarranico to Canessa, who was appointed by the Naples Court as Gloria's guardian in reference to this agreement. This opinion is claimed to have been presented to the Naples Court with the petition on which the decree authorizing the agreement was based. It is discussed at length post. By his opinion (Exhibit C7, page 276), he says:

> "But I must foresee an objection. Since in every event, the legitimate minor would be entitled to half of the estate of the father in full fee and absolutely undiminished by title of reserve, the proposed agreement, not insuring her any more than such a half amounts to a renunciation of all possible actions to which she may be entitled, without any special advantage."

As we show subsequently none of the suggestions which he made to cure the admitted one-sidedness of the agreement were adopted.

2. The will was concededly revoked.

Article 888, Italian Civil Code provides that the provisions of a will are revoked by the subsequent birth of an only legitimate child. Enrico Caruso's will is dated January 4, 1919. Gloria Caruso, his sole legitimate child, was born December 18, 1919. The general provisions of the will were therefore revoked.

Article 888 provides as follows:

> "888. The (testamentary) provisions of uni-

versal or particular character, made by one who at the time of the will did not have, or was in ignorance of having, children or descendants, are revoked by law by the existence or the subsequent birth of a legitimate child or descendant of the testator, even if posthumous, or legitimated or adopted."

"The same thing takes place also when the child was conceived at the time of the will, and in the case of a legitimated natural child when this had already been recognized by the testator before the will and legitimated only afterwards."

"The revocation does not take place when the testator has made provisions for the case in which some children or their descendants might be existing or would consequently be born."

This fact of the revocation of Enrico Caruso's will was conceded by all of these parties themselves in their signed petition of October 12, 1921, to the Naples Court on which the decree of October 21, 1921, was made (State of Case, p. 280), in which they say (pages 281, 282):

"The instrument containing the testamentary disposition found in the suit case, is dated *January 4th, 1919;* that is to say, before the birth of little Gloria. The other one was given to Dr. Vecchiettini on *August the 9th, 1919,* as indicated by Comm. Caruso's own handwriting on the said envelope—exactly at the time when he was residing in his villa Signa, near Florence, *together with his wife,* who at that time was in an advanced state of pregnancy.

"When the latter envelope was opened, a copy of the above quoted testamentary disposition was therein found. Another true copy thereof

had previously been given to Mr. Sperco in New York.

"It is therefore evident that by reason of his little daughter, Gloria's birth, which occurred eleven months after the date of the aforementioned testamentary instrument, and *three and one-half* after a copy of same had been given to the personal representative, Dr. Vecchiettini, the testamentary disposition mentioned above *cannot have any force and effect.* If the testamentary disposition hereinbefore indicated were to have any binding effect, it would inevitably lead to a multiplicity of suits between the daughter Gloria, the testamentary heirs, Comm. Caruso's brother, and the two sons, who as heirs of the deceased, would fight to uphold the validity of the aforesaid testamentary dispositions against the *inevitable conclusions that they were of no force and effect.*"

The Italian authorities on this revocation are shown in the addenda.

Therefore this settlement agreement, which gave her one-half the principal and one-half the income, was admittedly made by all these parties and approved by this Naples Court with absolute and conceded knowledge that Gloria Caruso was undoubtedly entitled to two-thirds of the corpus and one-half of the income.

3. The revocation of the general provisions of the will, thus conceded by the parties including Giovanni Caruso, meant that Giovanni Caruso, who was a brother of Enrico Caruso, was entitled to no share of this estate. Nevertheless this agreement gave to him, who was Gloria Caruso's blood uncle, one-eighth of this estate. This was against the interest,

not only of Gloria Caruso, but also against the interest of Enrico Caruso, Jr., also then a minor, if he had any interest in the estate.

4. This agreement gave to each, Rodolfo Caruso and to Enrico Caruso, Jr., one-eighth of the estate of Enrico Caruso, deceased. Rodolfo Caruso and Enrico Caruso, Jr., were the children of Enrico Caruso and of Ada Giachetti Botti, who was married to another man at the respective times of their conceptions. The evidence to prove these facts existed and could have been produced, and is produced in the case at bar (set out *supra*). They were adulterines and under Article 180, Italian Civil Code could not be recognized, and under Article 752 Italian Civil Code had no right to a distributive share in Enrico Caruso's estate, all of which went to Gloria Caruso. Yet they were given each a one-eighth share of the estate.

Article 180 provides as follows:

> "However, there cannot be recognized:
>
> 1st. Children born to persons of whom even one at the time of conception was bound in marriage with another person.
>
> 2nd. Children born from persons between whom matrimony could not exist by ties of relationship or of affinity in straight infinite line or for ties of relationship in collateral line of the second degree."

Article 752 provides as follows:

> "The rights accorded by the preceding articles are not extended to children to whom the law does not give recognition.
>
> Such, however, in the case indicated by Article 193, have a right to support which shall be assigned to them in proportion to the property

> of the father and the mother and the condition of the legitimate heirs."

(The various code articles are given in the addenda.)

A discussion of the right of Gloria to attack the recognition of the two sons follows later in brief.

That this fact of the adulterinity of Rodolfo Caruso and of Enrico Caruso, Jr., and its legal effect on the succession to Enrico Caruso's estate was in the minds of all the parties and was presented to the Naples Court is shown in the opinion of Guarracino where he discusses it (State of Case, p. 277). This opinion of Guarracino is discussed by us subsequently in this brief.

The Naples Court in its recitals made part of its decree of October 21, 1921 (Exhibit C8, State of Case, at p. 287) says:

> "We note that the natural filiation and recognition of the sons, Rodolfo and Enrico, by Comm. Caruso, is not challenged by any of the parties herein."

Therefore, this Court, knowing of this fact of their adulterinity, simply gestures it aside, and approved the agreement which took from Gloria Caruso enough to give to each of them one-eighth of the estate of Enrico Caruso.

5. This agreement was not intended as a family settlement or compromise, but as a carrying out of that which these parties presented to the Court as the intention of Enrico Caruso, although there was no will.

This is shown by the petition on which the decree of October 21, 1921, was based (See Exhibit C8, p. 280), which says, p. 282:

"the parties hereto, rising above personal interest which would lead them to unnecessary judicial proceedings and expenses, with the resulting damage to the respect and memory of a name which has become glorious in the world's art; mindful of the love and affection which the beloved deceased entertained for them, and remembering his clear and distinct wishes, often declared, manifested and published in every manner and form during his lifetime. Guided by a mutual and reciprocal tender and profound attachment for little Gloria, and by a sense of respect and affection towards the intestate's widow, the two sons, and towards the brother, as well as towards the intestate's step-mother whom he always remembered for her love, devotion and encouraging kindliness and when he was studying. Now, therefore, the parties in this instrument, considering the effect and consequences of a judicial adjudication in respect to the matters hereinbefore stated, agree among themselves as follows:"

The decree of October 21, 1921 (Exhibit C8, p. 286, also Exhibit D attached to bill), says (p. 288):

"Considering therefore the uncertainties of a judicial contest, and approving the wishes of the petitioners tending to harmony and reciprocal respect, we deem it proper to confirm the proposed agreements contained in the petition herein, so that they might fully carry out the desire of Comm. Caruso, which desire we consider to be sacred to his widow and children.

"For the above mentioned reasons this Tribunal hereby decrees as follows:"

Therefore, this agreement and these decrees giving authority for same were neither a distribution of the estate of Enrico Caruso under Italian law nor a settlement of a contest over the succession to his estate, but were to give effect to a presumed intention of Enrico Caruso which was not embodied in any will. It created and distributed under a will which did not exist and where the real party in interest—Gloria Caruso—was a minor, who could not consent. It is without any known or conceivable basis of law or indeed of fact. It was simply a despoiling of Gloria Caruso without any legal right.

In considering the ethical side of this agreement it is well to remember that Gloria Caruso was Enrico Caruso's only legitimate child, that Enrico Caruso was familiar with law, as shown by this record; that he lived one year and seven and one-half months after Gloria Caruso's birth; that he was not incapacitated during that time from illness, but was traveling around, and that had he desired that Gloria Caruso should not inherit his estate or had not believed that he had made, during his lifetime, ample provision for his illegitimate sons and his brother he would have made a will in the interim. He had the facilities, the knowledge and the time to do so had he so desired. To say that this agreement carried out his wishes is without any foundation whatsoever, but to the contrary, we believe, against them.

The excerpts from the Italian authorities, Pacifici-Mazzoni and Losana, in the discussion on Article 888 in the addenda to this brief, shows how the birth of legitimate children affects the Latin mind.

This Court states its true reason in approving this settlement, but tries to excuse its action by saying (p. 287), in its decree of October 21, 1921, that Giovanni might have contended that the will was

not revoked (although his petition signed by himself and his attorneys admits that it was revoked) and by saying:

> "We note that the natural filiation and recognition of the sons, Rodolfo and Enrico, by Comm. Caruso is not challenged by any of the parties herein."

This last excuse shows that the thought of protection to Gloria never entered into the minds of the Judges.

The agreement is presented to this Court as a compromise agreement, but it was not so intended by the parties to it or by the Naples Court. It is in fact merely an agreement to distribute the property of Enrico Caruso in a manner not provided for by will or the Italian Intestate Law. It is therefore as much a part of the carrying out of a fraudulent scheme of division of Enrico Caruso's estate as if the parties had made the agreement as the result of a scheme to suppress or defeat the probate of a will and is against our public policy, and we submit that the New Jersey Court should not aid in its carrying out.

We call attention to the cases where agreements, made in a fraudulent scheme which defeated the probate of a will, have been refused enforcement:

Gugolz v. Gerkins, 164 Cal. 596; 43 L. R. A. N. S. 575;

Cochran v. Zachery (Iowa), 115 N. W. 486; 16 L. R. A. N. S. 235 and notes;

Grochowski v. Grochowski (Neb.), 109 N. W. 742; 13 L. R. A. N. S. 484 and notes;

See *Hollingshead v. Hollingshead,* 91 N. J. Eq. 263, p. 279.

6. We contend that Dorothy P. B. Caruso profited as against Gloria Caruso by this agreement.

Mrs. Caruso was given by this agreement, as her

share in the estate of Enrico Caruso, an eighth share of the principal and was given one-eighth of the Victor royalties.

In addition, Mrs. Caruso claims that she is entitled, as her own, during Gloria's minority, under this agreement, to one-half of the allotment of the Victor royalties which the agreement gave to Gloria Caruso and the incomes from the investments of the other one-half.

We contend that these claims of Dorothy P. B. Caruso are so unfair to Gloria Caruso as to amount to a seizure of her property without warrant of either Italian or New Jersey Law.

First. We will first consider this with reference to the giving to her of one-half of the allotment of Victor royalties made to Gloria Caruso and the incomes on the investments of the other one-half.

This agreement is an entire contract. If *bona fide,* it is based on considerations given by each party. Mrs. Caruso claims that it includes an obligation on Gloria Caruso and that Mrs. Caruso was to receive, unrestrictedly, as her own, during Gloria's minority, one-half of Gloria Caruso's allotment of the Victor payments (Exhibit C14, p. 355) and the incomes from the other one-half.

But the royalties allotted to Gloria Caruso after allotment were her property and belonged to her estate and not to the estate of Enrico Caruso, deceased. The agreement, therefore, confused the two estates, that of Enrico Caruso, deceased, and that of Gloria Caruso, and attempted to deal with the New Jersey assets of Gloria Caruso's estate.

Over these New Jersey assets of Gloria Caruso's estate the Italian Court certainly had no jurisdiction, and therefore in this respect the agreement should not be sustained and therefore in its entirety

should fall and the Italian decrees should fall with it, if this agreement provision giving one-half of Gloria Caruso's royalties and the incomes from the other one-half unrestrictedly to her mother as her own during Gloria's minority, does not meet with the approval of this Court.

(a) It might be possible to sustain it if it were a fact that the other provisions of the agreement gave Gloria Caruso such a large disproportioned share of her father's estate and took so much from Mrs. Caruso that in order to equalize their shares Gloria Caruso should pay to Mrs. Caruso a sum valued at one-half Gloria's royalties and the incomes from the other one-half so as to neutralize the respective advantage and disadvantage. But the reverse was true and Mrs. Caruso profited as against Gloria in the division of Enrico Caruso's estate and without considering this provision.

We are afforded peculiar proof on this point by the opinion given by Guarracino. (It is discussed at length post.) In this opinion (Exhibit C7, p. 276), in considering the proposed agreement, he says:

> "In regards to Mrs. Benjamin, would it be proper for the daughter to fight against her mother for the purpose of reducing the latter's right to one-fourth of the usufruct instead of one-eighth in fee. Evidently not, because the usufruct is consumed during the lifetime and the fee remains, and therefore the daughter can positively hope that she will get—at her mother's death—all or part of her property. Consequently the assignment to the mother of one-eighth in fee is rather an element in favor of the agreement."

And Guarracino's further statement, quoted *supra* in this brief, in which he states that Gloria was not receiving enough and that other things should be given to her, which suggestion was not adopted, shows that there was no equalization due by Gloria to her mother, but the reverse.

(b) But if this agreement contains anything violative of the public policy of New Jersey, a New Jersey Court will not aid in its enforcement.

We contend that this agreement is in many respects violative of New Jersey public policy and therefore should not be enforced.

This agreement, Exhibit C14, p. 355, provides:

> "And the remaining four-eighths are attributed to the minor, Gloria, of which two-eighths will represent principal capital to be re-invested as follows and two-eighths shall be paid unrestricted to the mother, Dorothy Benjamin Caruso, as mother guardian and legitimate administratrix of the said minor. In consequence the Victor Talking Machine Company every first of February of each year, as per its obligation, shall pay on the said sum of 10 per cent, one-eighth unrestricted to Mr. Giovanni Caruso; one-eighth to Mr. Enrico Caruso's tutor during his minor age; *three-eighths unrestricted to Mrs. Dorothy Caruso*; and finally it shall pay the remaining two-eighths to the Bank of Naples, New York's branch, under pupillary restrictions for the account of Gloria Caruso. On these two-eighths the said Banco di Napoli shall pay during the minority of Gloria the interests of all the sums paid from the said Victor Company to Mrs. Dorothy Benjamin, Caruso's widow."

The decree of June 16, 1922 (Exhibit C9, State of Case, p 294) orders:

> "2. Confirm the deed of June 7th, 1922, drawn by Notary Sanseverino of Naples." * * *
>
> "7. Authorize the Victor Talking Machine Co. to pay each year the 10 per cent due to Comm. Caruso as following: One-eighth to Mr. Rodolfo Caruso, one-eighth to Mr. Giovanni Caruso, one-eighth to Mrs. Dorothy Benjamin Caruso, one-eighth to Enrico Caruso, minor, and of the remaining four-eighths due to the minor Gloria Caruso, to pay two-eighths *without restrictions* to Mrs. Dorothy Benjamin Caruso as mother, tutor and legal administratrix of the property of her minor daughter Gloria Caruso until her coming of age, and to deposit the other two-eighths in the Banco di Napoli at its New York offices in the name of Gloria Caruso with the pupillary restrictions."

By this provision of this agreement Gloria Caruso's property in New Jersey is taken from her and given to her mother, Dorothy P. B. Caruso. This is against the public policy of New Jersey.

Perhaps there is no more inviolable policy of our law than that of security of property. The Bill of Rights, Article 1, Sections 1 and 16, of the Constitution of New Jersey, expresses this public policy of New Jersey.

This provision of the agreement is claimed to have been justified by the Italian law of *mother's* usufruct which gives to a widow as her own all the incomes of a child during the child's minority and until the mother's re-marriage, without accountability. We contend that this taking of Gloria Caruso's New Jersey royalties and the giving of

them to Dorothy P. B. Caruso cannot be thus justified.

The Italian Law provides that the title of Gloria Caruso's share in her father's personal property passed directly to her without the intervention of an administrator as real estate passes to the heirs in New Jersey.

The Italian Civil Code, Book 1, "Of Persons," Title VIII, "Of Parental Authority," Article 220 and following (see addenda), state the law of parental authority, domestic relations, the parents' interests in and management of a child's property, etc. These provisions are entirely and absolutely separate and distinct from the provisions of the Italian Law in reference to the succession to and distribution of a decedent's estate.

Art. 228. The father has the usufruct of the goods which the child receives by inheritance, donation or by any other lucrative way and retains it until the child may be emancipated or have attained his majority.

Art. 230. There adhere to the legal usufruct the following charges: (1) the expenses of maintenance, education and instruction of the child; (2) the payment of annuities or interest upon the capitals which begin from the day in which the usufruct commences; (3) all the other obligations to which the holders of the usufruct are subjected.

Art. 231. The dispositions of the foregoing articles apply to the mother when she exercises the paternal power. The legal usufruct passes to the mother even when the paternal power is exercised by the father, when the latter is excluded for reasons personal to him.

Art. 232. The legal usufruct ceases with the death of the child and with the passage of the parent to a second marriage.

> "233. If the parent abuses of the parental authority, violating or disregarding the duties, or ill administering the property of the child, the tribunal, at the request of any of the nearest relatives or even of the public prosecutor, may provide for the appointment of a guardian to the person of the child or of a curator of his property, deprive the parent of all or part of the usufruct, and make the further disposition he will deem convenient in the child's interest."
>
> "234. Having ceased the legal usufruct, if the parent has continued to enjoy the property of the child living with him without power of attorney, but without opposition, or even with power of attorney, but without condition of giving account of the proceeds, he and his heirs are held to surrender only the proceeds subsistent at the time of the request."

Art. 237. The mother desiring to pass to the new marriage must first convoke a Family Council pursuant to Articles 252 and 253.

The council deliberates whether the administration of the goods shall be conserved to the mother and can establish conditions with regard to said administration and to the education of the children. The deliberations of the Family Council are subjected to the Tribunal for its regulations pursuant to Article 235.

These provisions of parental authority therefore give the income of a child's estate to the mother (the father being deceased) until the child is emanci-

pated or becomes of age, Article 228; provide that if she abuses her parental authority or disregards her duties she may be deprived of all or part of this income, Article 233; that she loses it on re-marriage, Article 232; but that if she continues to enjoy it after having lost it, she and her heirs must surrender only the proceeds subsistent at the time of request, Article 234.

There is no such provision in New Jersey law or anything approaching it. It is simply a giving of the child's incomes to the parent without accountability. It is the parent's own to use as she pleases. Such a taking of the child's property is against the public policy of New Jersey and will not be enforced by New Jersey Courts. The application of the Italian law to New Jersey assets is against our public policy.

(c) The claim of Mrs. Caruso as presented to this Court is that she still has the right as her own to Gloria Caruso's incomes.

The bill so avers (State of Case, p 7):

> "14. Complainant is advised and states the fact to be that under the law of the Kingdom of Italy, she, as surviving parent, is the natural and general guardian of her daughter, Gloria Caruso, during the latter's minority and until she reaches the age of twenty-one years, and, as such entitled to receive from time to time *all incomes* belonging to said infant and to use, hold, or otherwise dispose of the same without accountability."

It was repeatedly so stated to the lower Court by her counsel.

And the petition of May 25, 1924, to the Naples Court (page 304) says, "It was—with the afore-

said deed—established that one-half of said royalties attributed to Gloria should be considered capital and therefore invested in her name for the property, and that the interest on it should go to the mother, while the other half is attributed absolutely to the mother as an income until the daughter comes of age."

Under Mrs. Caruso's claim, this agreement goes far beyond the provisions of the Italian Law. She claims that by this agreement one-half of the Victor payments allotted to Gloria Caruso were ordered to be paid without accountability to Mrs. Caruso as her own during Gloria's minority. She contends that the added words, "as mother, guardian and legitimate administratrix of said minor," have no meaning. She also claims that the agreement gave her this share even after her re-marriage.

She claims that this agreement put in contract form, on consideration, an agreement that Mrs. Caruso should receive as her own, without accountability, and until Gloria was of age, this one-half of these royalties of Gloria under any conditions, whether in the capacity of mother, guardian or administratrix of Gloria, and whether she abused or neglected Gloria, supported her, or re-married.

This is certainly the claim of Mrs. Caruso. The bill avers it and counsel repeatedly stated it in Court, and it is so stated in the petition to the Naples Court of May 25th, 1924 (quoted *supra*).

This claim is apparently admitted by the members of Gloria's family council, Giovanni Caruso, Rodolfo Caruso and Enrico Caruso, Jr. It certainly is not denied by them and they are parties to this action, yet they are trustees of Gloria Caruso.

But if by this agreement Mrs. Caruso is given as her mother's parental usufruct something beyond that which the Italian Law gave her as such, it cer-

tainly is void as against the public policy of Italy. If Italian Law for the protection of a child limited the parent to the child's incomes during the parent's proper care over the child, and considered the marriage of the parent as cause for requiring it to be given up, it certainly would not enforce an agreement which waived such protection for the child. This appears uncontestable from the following Italian statutory provisions.

All usufructs are stipulated in Italy by public law, and Article 8, heading 2, of the Code of Civil Procedure, provides that controversies can be compromised in one or more ways, but one cannot compromise questions of state, separation between spouses and other things which cannot be transacted.

And moreover the prohibition of Article 232 of the Civil Code, which makes the usufruct cease with the death of the child or the contracting by a parent of a second marriage, cannot be abrogated or annulled by private contracts between individuals because Article 12 of the dispositions on the publication, interpretation and application of the laws in general. Complainant's Exhibit C17, page 2, provides that, notwithstanding the provisions of the preceding article, in no case can the laws, the acts and the judgments of a foreign country and the private provisions and agreements derogate from the prohibitive laws of the kingdom which concern persons, goods or acts, nor the laws regarding in any way public order and good custom.

We propose to prove, if permitted to issue commissions to experts, that this Italian right of *mother's* usufruct which, it is claimed, justified this provision if the agreement relates to the former civil status in Italy of Mrs. Caruso as head of an Italian family. That when she removed from Italy

to America, losing her Italian citizenship, she lost her Italian civil status and her American civil status attached, as she was no longer head of an Italian family. This would seem to be October, 1921 (see her affidavit, Exhibit G.C.27, Supplemental State of Case, p. 612). She certainly lost her Italian status on her marriage on November 30, 1923, to Ernest A. Ingram, a British subject. On her divorce from Mr. Ingram she again renewed her American citizenship (Exhibit G.C.27, p. 627). Gloria Caruso was an American citizen by birth and has been domiciled and resided in New York during these same periods with her mother.

Such a statute is merely a regulation, local to the community which enacts it, and is not enforceable in a foreign country to which the parties have removed.

Gambier v. Gambier (1837), 7 Sim.Rep. 263.

But under Italian Law Mrs. Caruso has lost her mother's parental usufruct. This was lost to her on her marriage to Mr. Ingram. This is conclusively shown by the Naples decree of December 18, 1923 (Exhibit C11, p. 310), which appointed her administratrix of Gloria Caruso.

On her marriage to Mr. Ingram, her status, even under the Italian Law, had changed and her rights of mother's usufruct had ceased, and from then on she is administratrix (or guardian) of Gloria and as such, of course, has no right to Gloria's assets in New Jersey.

Vittorio Scialoja in his affidavit attached hereto as part of this brief (also see Supplemental State of Case, p. 516), says:

> "Signora Benjamin, moreover, making a second marriage, lost the legal usufruct of the goods of her daughter, according to Article 232,

> Italian Civil Code. Signora Benjamin instead caused a Family Council to be constituted for the daughter Gloria according to Article 237, Italian Civil Code and it authorized her to continue the administration of the goods of the daughter * * *."

However, a recognition of Italian Law by this Court has nothing to do with these Victor royalties which were allotted to Gloria. They were Gloria's property located in New Jersey, and New Jersey law alone applies to them. This agreement, therefore, in distributing Enrice Caruso's estate, attempted to fasten the condition on Gloria, that her mother should have one-half of her New Jersey royalties and the income from the other one-half. The two estates are distinct. Italian law may or may not apply to the distribution of Enrico Caruso's estate, but certainly has nothing to do with New Jersey assets owned by Gloria, which she received from him. New Jersey law alone applied to them.

It needs no citation of authorities that the authority of a guardian for a minor is limited to assets within the jurisdiction of the Court which appoints him.

However, as far as this discussion and case is concerned it is academic. Certainly this agreement and this Italian statutory right of *mother's* usufruct for some time at least did give Mrs. Caruso the right under Italian Law to Gloria's income as her own without accountability. We believe that she is trying to claim in this court more than she is entitled to, even if the agreement or Italian Law apply, but, however, cut down, there is something left and that residue is against our public policy and is not enforceable, and as the contract is an entire one it vitiates the whole contract. It certainly is a large

sum of money under any conditions for the royalties for the year of Caruso's death, 1921, were about $450,000 and for 1922 and 1923 about $135,000 and $130,000 respectively.

We contend that whatever right is given by the agreement to Mrs. Caruso to take as her own any part of Gloria Caruso's Victor royalties is a seizure without justification of Gloria's property in New Jersey; is against the public policy of this State and will not be enforced and, therefore, the whole agreement falls.

(d) We contend, however, that these royalties, whether principal or income in the estate of Enrico Caruso, can only be principal when in the estate of the infant, Gloria Caruso.

We argued this whole subject of whether the royalties are principal or income in our maintenance brief.

We will state this as we did on pages 46 and 47 of our maintenance brief:

(e) "But what are they after they are in Gloria Caruso's estate? We contend that whether principal or income in Enrico Caruso's estate, they must be principal in Gloria Caruso's estate. The intention found either of a will for the benefit of the life tenant or implied in the law for the benefit of the dower or curtesy tenant, would here have no application. Normally principal they were and normally principal they would remain when they came to Gloria Caruso.

The Chancellor holds that the royalties were income in Enrico Caruso's estate and would remain so in Gloria Caruso's estate, citing the cases which hold that the surplus remaining after a foreclosure of a mortgage, retains, for distribution, the nature of real estate.

We cannot agree with this position. We submit that even if income to Enrico Caruso, when distributed to Gloria Caruso as part of her inheritance, they could only be principal of her estate.

We would cite the common instance of where, at the death of a life tenant, the trustee apportions to his executors his share of the subsequently paid interests on bonds held in the trust. This would be income to the life tenant but it would be principal of his estate after his death. If he in turn created a trust, it would not go to the new life tenants as income, nor if he had a child would it be considered as income in the child's estate to be used as such for maintenance.

We therefore contend that these royalties are principal in Gloria Caruso's estate and that the income of Gloria Caruso, to which an order for her support should be limited, is the interest arising from the investment of these royalties.

The contract between Enrico Caruso and the Victor Company was a sale by Enrico Caruso of his labor, and the royalties are the instalment payments of the contract price which was agreed to be paid to him and his heirs, etc. They are normally principal and these deferred payments as they are paid to Gloria Caruso can only be principal in her estate. She was not left a bond from which income was derived. She was given a share of these instalment payments of the purchase price. There is no capital from which income is derived. These are themselves the principal. Even if they were all income, or partly income and partly principal, or all principal, when considered in a division of the estate of Enrico Caruso, how can they be anything but principal when paid to Gloria Caruso, and how can therefore any part of them go to Mrs. Caruso under any claim of mother's parental usufruct under

Italian Law? We therefore contend that this provision of this agreement giving Mrs. Caruso one-half of the royalties allotted to Gloria, is an absolutely unjustifiable seizure of Gloria Caruso's property even under Italian Law.

Second: Was the agreement in granting to Dorothy P. B. Caruso, as her share of the Enrico Caruso estate, one-eighth of the Victor royalties when Italian Law gave her one-fourth of the incomes of the estate of Enrico Caruso, so unfair to Gloria Caruso as to amount to a seizure of Gloria Caruso's property?

This Italian right of *mother's* usufruct which we have been discussing gives to the widowed mother all the incomes of her child during the child's minority, during her good conduct toward the child or until her re-marriage. The Italian law of succession to an intestate's estate divides the principal among the children (as previously shown) subject to the *widow's* usufruct or life estate in one-fourth of the incomes of the whole estate, real or personal, during the widow's life. The question then arises, what are these Victor royalties? Are they principal or income?

The Chancellor finds in his maintenance opinion (State of Case, p. 117), that in both instances the royalties are wholly income.

Vittorio Scialoja, in his affidavit (Supplemental State of Case, p. 520, also attached hereto as part of this brief), says that the royalties are wholly principal.

The proponents to this agreement admit (by the bill and the petition to the Naples Court quoted in the foregoing point) that when applied to mother's usufruct it was considered that the royalties are one-half principal and one-half income.

If the parties to the agreement and the Naples Court took this view of the royalties in considering the *mother's* usufruct it is difficult to understand why they did not take the same view of the royalties when they were considered from the viewpoint of the *widow's* usufruct. If the royalties were apportioned, one-half to principal and one-half to income in arriving at the amount to be given to her as her *mother's* usufruct why were they not so apportioned in arriving at the amount to be allowed in compromise of the widow's usufruct.

We must remember that the rules in Italy of arriving at the widow's usufruct in personalty must be of daily occurrence in Italian Courts and we cannot question that Vittorio Scialoja, in his positive statement that the royalties were all principal, is speaking of a common incident of practice and must be accurate.

But granting for argument the accuracy of the statement in the bill, and in the Naples petition (quoted *supra*) that the agreement in its division of the royalties apportioned them one-half to principal and one half to income, it shows the enormous advantage taken by Dorothy P. B. Caruso by this agreement. As we have shown, the parties all concede that the will was revoked, but whether revoked or not Dorothy P. B. Caruso was entitled to her *widow's* usufruct, no matter who would get the principal or one-fourth of the incomes for life. If the royalties were one-half principal and one-half income she would receive for life, incomes from the investments of one-eighth of the royalties, and one-eighth of the royalties but for life only. She was given one-eighth of the royalties absolutely.

Dorothy P. B. Caruso was 28 years of age at the time of Enrico Caruso's death. (See Exhibit G. C. 27.) As we calculate it out, our Carlisle tables would

have given her for turning her life estate into an absolute estate .0914369 of the annual royalties. She was given 12½%.

The Italian view is shown by Vittorio Scialoja who says of this, in his affidavit:

> "All that I have exposed up to now proves the most remarkable damage caused to her daughter Gloria by Signora Benjamin, also for her personal advantage."

And by Guarracino in his opinion, page 276:

> "In regards to Mrs. Benjamin would it be proper for the daughter to fight against her mother for the purpose of reducing the latter's rights to one-fourth of the usufruct instead of one-eighth in fee. Evidently not, because the usufruct is consumed during the lifetime and the fee remains, and, therefore, the daughter can positively hope that she will get at her mother's death—all or part of her property. Consequently, the assignment to the mother of one-eighth in fee is rather an element in favor of the agreement."

The question as to these royalties, whether principal or income is of greatest importance if these royalties are to be distributed under Italian Law. The question arose in the maintenance proceedings and was argued before the Chancellor and decided then by him. The appeal from that decree is being argued with these appeals and we have argued it in *extenso* in our separate brief in that appeal. We would refer to the argument there made.

We believe that these royalties are all principal. That in arriving at Dorothy P. B. Caruso's interest in the estate of Enrico Caruso's estate she was entitled either to one-fourth of the incomes from the

investments of the royalties as paid, or that this asset—the contract—should be treated as a wasting asset as was done in *Howe v. Darthmouth,* 7 Ves. 137. And in re *Elsner,* 210 App. Div. (N. Y.) 575; that a value should be fixed on it and that Mrs. Caruso's interest would have been interest on one-fourth of that amount. These questions were discussed at length in our brief in the maintenance appeal. In either case Dorothy P. B. Caruso, as all the others, by this agreement, which this Naples Court approved took an enormous advantage of Gloria Caruso.

We submit that such an agreement and such decrees approving it should not be tolerated in this court. It is a seizure of Gloria's property and is against our public policy.

7. The settlement of the estate of Caruso was instituted in the Court of Naples. These parties knew that the Florence district was the district of the jurisdiction of domicile and that the Naples Court did not have jurisdiction. This is discussed *supra.* We venture no opinion as to why this was done.

8. There was proved in the case at bar an opinion of Alassandro Guarracino (State of Case, p. 271), and claimed to have been prepared for Gloria's guardian, Canessa on September 5, 1921, and submitted with the petition to the Naples Court in October, 1921 (State of Case, p. 197).

This copy of this opinion was not obtained from the court records but from a notary's office (p. 197) with whom it was not filed until 1925 (p. 279). It is in no way actually connected up with the case in Italy. The opinion of the Court does not mention its submission to it. There is a statement attached to it by the clerk of the court that it was

submitted to the Court but it is not sworn to (page 279).

This opinion is therefore claimed by the proponents of this agreement to be the paper which presented to the Naples court Gloria Caruso's contention as to this agreement, and which in part moved the Court to make these decrees. That opinion is worth examining.

(a) Guarracino says (page 277):

"I will not stop to examine an eventual action against the natural sons to have them declared unrecognizable and therefore incapable of receiving more than mere support because I started with the presupposition that their status as being MERE natural sons cannot be shaken.

"At any rate, aside from the obvious repulsiveness of such an action and aside from the admissibility or not of this action, AGAINST THE SONS (not in THEIR FAVOR) in consequence of the diversity of opinion which exists in the doctrine and in the jurisprudence, it is always necessary to bear in mind, in the case at bar, that even if we could speak of the adulterine status of the sons, on their mother's side, while she is legally unknown—there does not exist either a civil or penal judgment—or a marriage declared nul, which could constitute the proof of such character; and therefore it would be necessary that the maternity resulted from a written declaration by the parents—according to paragraphs 193 n 3 of the Civil Code, declarations which, it seems, do not exist."

He therefore questions whether an action "*against the sons not in their favor*" was possible

under Italian law, by an attack on their recognition, on account of their adulterinity, "in consequence of the diversity of opinion which exists in the doctrine and in the jurisprudence."

The Court expressed its view of this language by clearly saying that such an attack could be made, saying in its decree of October 21, 1921 (Exhibit C8, page 287):

> "We note that the natural affiliation and recognition of the sons, Rodolfo and Enrico, by Comm. Caruso is not challenged by any of the parties herein."

Certainly such language would not have been used had there been doubt in the minds of the judges that the recognition could be attacked.

In the addenda is also printed a quotation from the book written by Professor Brugi which states clearly that this investigation could be made on behalf of Gloria Caruso.

And Vittorio Scialoja, in his affidavit attached hereto, says:

> "Therefore, at the death of the tenor, his estate must be considered opened *ab intestato* with these clear consequences; I.) No right of Giovanni Caruso upon the patrimony of the deceased brother. II.) No right of the natural sons recognized by the tenor, Rodolfo and Enrico, because adulterines; result in effect from irrefutable proof growing out of a penal decision that Rodolfo and Enrico Caruso are children of Enrico Caruso and a Signora Giacchetti, married at the time of their birth to Signor Botti, therefore we treat of children of whom the law does not admit recognition (Art. 180, Italian Civil Code) and who, as such, cannot have any right on the paternal patrimony

excepting alimony (Art. 752, Italian Civil Code). III.) A right of usufruct of one-fourth of the property to Signora Benjamin, surviving spouse of Enrico Caruso (Art. 753, Italian Civil Code)."

The code provisions would seem to our American minds absolutely clear. They are set out under the heading Book 1, Title IV., Chapter III. "Of Children Born Out of Wedlock" in the addenda to this brief.

"188. The recognition can be contested by the child and by anyone who has interest therein."

"189. The researches of the paternity (father) are not allowed, except in the case of carnal violence or of rape, when the time (of its occurrence) corresponds to that of the conception."

"190. The researches of the maternity are allowed.

The child who claims the mother must prove to be identically the same one who was born from her. It is not, however, admitted the proof by witnesses, unless there is already a beginning of proof in writing, or when the presumption and the clues resulting from already ascertained facts are sufficiently grave to determine their admission."

The distinction between an investigation as to paternity and as to maternity is obvious. Paternity is of necessity an inference and cannot be absolutely proved. Maternity is a provable fact. To permit investigations of paternity would open all kinds of fishing expeditions and unwarranted attacks, but to prove maternity is entirely different; it is suscep-

tible of positive proof. The Naples court at this stage of its procedure seems to have had no doubt on this.

(b) By this excerpt he also states, in discussing the kind of proof admissible to show adulterinity:

> "There does not exist either a civil or penal judgment—or a marriage declared null, which could constitute the proof of such character, and therefore it would be necessary that the maternity resulted from a written declaration by the parents—according to paragraph 193 n 3 of the Civil Code, declarations which it seems do not exist."

This article reads as follows:

> "193. In the cases in which the recognition is forbidden, the child is never allowed to make (legal) investigations neither on the paternity nor on the maternity. Nevertheless the natural child will always have (right of) action to obtain the necessities of life:
>
> 1st. If the paternity or the maternity is indirectly (shown or ascertained) from a civil or penal sentence.
>
> 2nd. If the paternity or maternity is dependent by a marriage declared null.
>
> 3rd. If the paternity or the maternity appears from an explicit written declaration of the parents.'

How this article and its requirement of proof has any application to an action by Gloria Caruso is beyond our minds to understand.

However, we believe that all of the requirements he speaks of existed and are proven in the case at

bar. They are collected and treated *supra* in this brief.

(c) Guarracino says in this excerpt *such proof did not exist.*

The proofs of this adulterinity is shown in the records of two cases in the Milan court.

The record of the first case was offered in the case at bar, in evidence—Exhibits G.C.4 and G.C.5. In this case the criminal charge was made directly, in a cloud of charges and counter charges, between Ada Giacchetti Botti and Enrico Caruso (with others), that Enrico Caruso had falsified the records when he executed the birth certificates of Rodolfo Caruso and Enrico Caruso in stating that the mother was an unknown woman, when she, Ada Giacchetti Botti, was their mother, and that she was married at the time. The record is a long one and only excerpts are printed in the present case. The other record, Exhibits G.C.6 and G.C.7, we call the Urbaine record. A statement of these excerpts is given *supra* in this brief.

Enrico Caruso for many years had been one of Italy's foremost men and the adulterinity and maternity of the two boys must have been known by every one in that court room and the saving clause in the decree of the Court shows that it must have had knowledge of the facts.

But of more importance, these petitions dated October 12, 1921, and June 10, 1922, to the Naples court, were signed by Giovanni Porzio as counselor-at-law for all the parties in interest, including Canessa, Gloria's special guardian, as also was the petition of Mrs. Caruso to the Naples court of August 10, 1921, on which Canessa was appointed special guardian of Gloria (Exhibit C5).

The Milan record, G.C.4, shows that this same

Giovanni Porzio represented Enrico Caruso in these Milan proceedings. The record, G.C.4, does not seem to show who was Enrico Caruso's attorney, but two papers at least which were filed in the case were signed by Porzio as attorney for Enrico Caruso (Exhibit G.C.4, Green Book, p. 120a, and G.C.4, Green Book, p. 131).

Guarracino apparently was a lawyer from whom merely an opinion was asked, the facts being submitted to him. He did not appear as counsel for Gloria and her guardian, Canessa. Porzio, with a lawyer named Consolazio, represented them in the whole proceedings.

It is apparent that Guarracino did not have knowledge of the Milan proceedings. He would have mentioned them if he had examined them. But it would seem inexcusable for this opinion to have been presented to the Court by Porzio without calling its attention to the Milan records, which apparently was not done until August, 1925.

As shown by the previously quoted excerpts from the affidavit of Vittorio Scialoja, he states that the Milan record is irrefutable proof that the two sons were adulterines.

(d) Guarracino admits (page 276) that Gloria could defend against the will; that it was revoked. Consolozio and Porzio both conceded that it was revoked and so stated in the petition of October 12, 1921. We have set out Italian authorities on this point in the addenda to this brief under the caption Revocation of Wills.

(e) Guarracino states (page 276):

> "And in regard to Mrs. Benjamin would it be proper for the daughter to fight against her mother for the purpose of reducing the latter's

rights to one-quarter of the usufruct instead of one-eighth in fee? Evidently not, because the usufruct is consumed during the lifetime and the fee remains, and therefore the daughter can positively hope that she will get—at her mother's death—all or part of her property. Consequently the assignment to the mother of one-eighth in fee is rather an element in favor of the agreement."

(The word "positively" should be translated "fondly.")

But did he consider the Victor royalties? They did not remain in fee but were consumed and exhausted during life. If he did not consider them then his opinion means that the royalties in Italian Law are principal and not income.

This argument of Guarracino, however, is not sound. Gloria Caruso's rights should have been protected and Mrs. Caruso should not have put Gloria in the position of a daughter fighting against her mother. It was the mother's act, not Gloria's, and certainly no New Jersey Court would have approved of an agreement with this statement made on behalf of the child before it.

(f) Guarracino's opinion further says (page 277):

"But I must foresee an objection—since in every event, the legitimate minor would be entitled to half of the estate of the father in full fee and absolutely undiminished by title of reserve, the proposed agreement, not insuring her any more than such a half, amounts to a renunciation of all possible actions to which she may be entitled, without any special advantage."

"To eliminate such an objection and to bet-

ter the agreement in the interest of the minor, I propose to give her the following advantages:''

1. To include in her half the villa in Tuscany, evidently the home ''as representing the part destined to be kept and to remain in the family's tradition—this as a moral homage to the legitimacy.''

2. To include in her share a complete art collection.

3. To give to Gloria as an extra quota some important object, as the silver bust of Mr. Caruso or the gold disk.

''4. To see that Mrs. Benjamin—who besides her share as an heir will enjoy the legal usufruct on the half belonging to the daughter as mother executing the parents' power—puts aside every year a part of the vast net income and deposits it in a bank at compound interest, making it an insurance at a set date in favor of her daughter, so that the minor on becoming of age—would find accumulated a large capital which will amount, surely, to several millions, and in this way she will be largely compensated, for any increase of share she is not actually getting under terms of the proposed agreement.

In this way the agreement would remain firm on its basis and the minor, at the same time, would noticeably profit morally and economically.''

It is interesting to see what was done with these suggestions.

The villas in Tuscany were given to Rodolfo

Caruso, Enrico Caruso, Jr., and Giovanni Caruso and not to Gloria Caruso.

The gold disk did not exist and no other specific object was set aside for her. The silver bust and numerous other objects were given to Mrs. Caruso (Exhibit C14, Article 12, p. 358).

Mrs. Caruso was not required to give up any of her mother's usufruct. The provision limiting her to one-half of Gloria's royalties is stated (page 7) by the bill and (page 304) by a petition to the Naples court to have been a division by the Naples court between principal and income, besides Mrs. Caruso was not entitled to mother's usufruct in these New Jersey royalties. And Guarracino plainly intimates his opinion that they are principal (see *supra*).

The other two suggestions of Guarracino were provided for by #6 and #7 of the agreement (Exhibit C14, p. 352).

The agreement, p. 352, provided that before the division certain deductions should be made:

> "6) Thereafter shall be deducted from the cash money existing in America, in the hands of Mrs. Dorothy Benjamin Caruso, Lire 500,000, which are attributed to Miss Gloria Caruso, and which shall be deposited to her account under pupillary restrictions consigned to her at her full age, together with the interests that shall be accumulated in increase of the principal sum."
>
> "7) To Miss Gloria Caruso are attributed the collection of golden boxes and of watches existing in New York and in the villas of Bellosguardo, as results from the inventories of Notar Zamparelli of New York and of the Chancellor of Lastra Assigna, to be consigned to Mrs. Benjamin Caruso, as mother and administratrix of the estate of her minor daughter."

This shows that Gloria got nothing over her one-half share because it was sworn to and repeatedly stated in the maintenance proceedings that there was nothing in the New York estate.

Exhibit C14, p. 346, appraises the New York assets net of debts (except art objects) at $461,305.35, but Mr. Seligsberg in his affidavit of March 15, 1927, says (affidavit 2, page 94):

> "Deponent wishes to call the Court's attention to the statement contained in the answer in paragraph '27' that the New York estate amounted to $461,305.35. This figure is *evidently based upon the assumption* that the amount collected on February 1, 1922, from the Victor Talking Machine Company for royalties, to wit: the sum of $422,891.56, and deposited in The Fifth Avenue Bank in the City of New York, was part of the New York estate. The Italian inventory made by Mr. Consolazio contained a statement of these collections and the figures in the Sanseverino deed quoted by the guardian in the said paragraph evidently include this amount as part of the New York assets."

And more than the balance was expended from the New York estate in debts.

Besides, a sum of 500,000 Lire at 4½ cents (approximately the exchange in 1921) is $22,500.00 and is a mere sop and we have never heard that it or the collection of watches, etc., have been set aside and conserved for Gloria.

Guarracino's statement therefore stands that the agreement was unfair in division to Gloria Caruso; that "it amounts to a renunciation of all possible actions to which she may be entitled, without any special advantage."

This shows conclusively to our minds that this so-called compromise was not such in fact but was a method of putting into effect a presumed will of Enrico Caruso, when none existed as a fact, and was simply a dividing up of Gloria Caruso's property among her relatives and family trustees under this guise.

It must not be forgotten also that these other parties to this agreement were the nearest relatives and natural protectors of Gloria, on whom she had to rely, and in addition were in a trustee capacity as constituting her Family Council.

Is it not a fair conclusion that even with the facts as presented this agreement was not founded on any compromise but was arrived at and approved by the Court without any other basis than prejudice and whim and an entire ignoring by this Italian Court and these parties and lawyers of all Italian jurisprudence and law?

III.

What effect is to be given, in this court, to these decrees of the Naples Court which approved this agreement? Do they add any force to the agreement?

1. We contend that these Naples decrees are nullities as to any effect in this New Jersey Court.

(a) Because the Naples Tribunale which entered them was without jurisdiction.

Apart from the agreement not being entitled to any effect in New Jersey the decrees of the Naples Tribunale are not entitled to be given any effect because the Court, that entered them, was without jurisdiction. Even if this were a suit to enforce a foreign judgment, these judgments would not have any weight.

Fairchild v. Fairchild, 53 N. J. Eq. 678;
Davis v. Headley, 22 N. J. Eq. 115;
Munday v. Vail, 34 N. J. L. 418;
Fried v. Fried, 99 N. J. Eq. 106.

It is the usual practice for courts to inquire into the validity of foreign judgments; in fact, such judgments are inquired into not only in consequence of answers filed, but also upon writs of prohibition.

In a recent case in Missouri, *State v. Summer,* 9 S. W. (2nd Ser.), 867 (1928) the Court states, p. 869:

> "We, therefore, hold the trial Court was not in error in considering the validity of the Wisconsin judgment and in holding said judgment void."

This case was on a writ of prohibition.

In *State, ex rel., v. Fisher,* 230 Mo., 325, 130 S. W. 35, the Supreme Court, without any question being raised, considered the effect of a foreign judgment.

In *Duyerea v. Duyerea,* 269 Pac. 987 (1928 in the Supreme Court of Idaho), it was held that before a foreign judgment need be accorded recognition in the Court of the forum, it must appear that the judgment was rendered by a court of competent jurisdiction. Questions of Comity and the respect to be accorded foreign judgments do not arise where it appears that the Court awarding judgment was without jurisdiction.

In *Milner v. Gatlin,* 139 Ga. 109, 76 S. E. 860, it was held that the judgment of another court without jurisdiction may be collaterally attacked, and it was held that the full faith and credit clause of the United States Constitution is not a hindrance to setting up want of jurisdiction of the subject-matter in a collateral attack on a foreign judgment.

In *Towns v. Springer,* 9 Ga. 130, on appeal. The Court in its opinion holds that if a court has no jurisdiction the judgment is a nullity and may be so held wherever and whenever and in whatever way it is sought to be used as a valid judgment, and says: "The assailability of a judgment of a court of competent jurisdiction for irregularity is one thing—of a judgment of a court not having jurisdiction, for the want of jurisdiction, is a very different thing. In the latter case, the judgment may be impeached whenever and wherever it is sought to be used as a valid judgment no matter in what way it is proposed to be used. To make a judgment, in *personam,* valid, the Court which renders it must have jurisdiction of the subject-matter and of the person against whom it is rendered."

In *Martin v. Angedahl* (1917), 247 U. S. 151, the Court says:

> "No doubt the order might be attacked collaterally by showing an absence of jurisdiction of persons or subject-matter. The cases of Thompson v. Witman, 18 Wall. 457, and National Exchange Bank v. Wiley, 195 U. S. 257, hold nothing more."

In *Thompson v. Witman,* 18 Wall. 457, the opinion states:

> "And as to a foreign judgment it is perfectly well settled that the inquiry is always open, whether the Court by which it was rendered had jurisdiction of the person or the thing. 'Upon principle' says Chief Justice Marshall, 'it would seem that the operation of every judgment must depend upon the power of the court to render that judgment, or, in other words, on its jurisdiction over the subject-matter, which it has determined.' "

And at page 468, Justice Bradley says:

> "It may be observed that no courts have more decidedly affirmed the doctrine that want of jurisdiction may be shown by proof to invalidate the judgments of the courts of other States, than have New Jersey. The subject was examined and the doctrine affirmed, after a careful review of the cases, in the case of Moulin v. Ins. Co., in 4 Zabriskie, 222, and again in the same case in 1 Dutcher 57, and in Price v. Ward, 1 Dutcher, 225, and as lately as Nov., 1870, in the case of Mackay v. Gordon, 34 New Jersey L. 286. The judgment of Chief Justice Beasley in the last case is an able exposition of the law."

Rose v. Himely, 4 Cranch, 269, goes into the jurisdiction of the first court and decides it had no jurisdiction.

In *Liverpool & London & Globe Ins. Co., v. Lummis Cotton Gin Sales Co.,* 6 S. W. 2nd Ser., 728 (Texas, 1928), the Court says:

> "The strict rule forbidding collateral attack on judgments for irregularities, rendering judgment voidable only does not apply to foreign judgments, and, even though invalidity of such a judgment is not apparent on the face of the record and though on face of record judgment is valid, person sought to be bound thereby may show that foreign court rendering judgment was without jurisdiction of the subject-matter or of the person, notwithstanding 'full faith and credit clause' of Constitution of U. S., Art. 4, Sec. 1."

Also on ground that citation was not properly addressed.

In *Cowans v. Ticonderoga Pulp and Paper Co.,* 219 N. Y. Supp. 284, 159 N. E. 669, the Court states that each sovereign power determines for itself the effect to be given to foreign judgments by statutes or decisions of its Courts.

In *Calvin v. Jones,* 161 N. W. 847 (1917 Cal.), the sovereignty of a State and the jurisdiction of its Courts relating to intestate succession do not extend to property without the State and have no extra territorial effect except as allowed by comity.

See also *McDougal v. Lilenthal,* 164 Pac. 387 (Cal. 1917).

To use the words of a very recent opinion a judgment which is entered by a Court without jurisdiction over the subject-matter is "*mere sound.*"

Murray v. Magnolium Petroleum Co. (1927), 23 Fed. 2nd Ser. 347.

> "It necessarily follows that, where a pleading under oath in the United States Court attacks the very vitals of a State Court judgment that is pleaded by the adversary the Court will not strike such pleading but will hear the evidence."

In *Rodenbeck v. Crews State Bank & Trust Co.* (1928, Indiana), 163 N. E. 616, defendant pleading want of jurisdiction as defense to suit on judgment of another State, has burden of proof. This was a judgment in Illinois on judgment notes. The opinion states:

> "This being a suit based upon a judgment of a sister State, *by a Court of competent jurisdiction,* such judgment is regular on its face was under Article 4 U. S. Constitution entitled to full faith and credit."

In *French Mutual v. U. S. Fidelity,* 203 Fed. 558 (1914), it was held that the jurisdiction of the original Court must be examined into.

In this case the defendant was summoned to answer a complaint based on a judgment obtained in France.

The declaration alleged that the plaintiff was a French corporation having its principal place of business in Paris. It recited a certain contract with the defendant in respect to re-insurance, etc., executed at Paris it made demands for payment due it under the contract, "which the defendant failed and refused to pay." Whereupon, or about July 30, 1909, suit was brought by the plaintiff against the defendant in the Tribunal of Commerce of the Department of the Seine, sitting at Paris, France,

upon said agreement of re-insurance or writing obligatory between the plaintiff and defendants; in which suit a final judgment was rendered and duly recorded by said Tribunal, on the 20th day of Sept., 1909, against the defendant in favor of the plaintiff. An execution was duly issued by said Court and a return of *nulla bona.*

The defendant filed an affidavit of defense.

The District Court decided the controversy upon the circumstances in issue, but in regard to the French judgment it said:

> "* * * Upon this French judgment this suit was originally brought in this Court. There was difficulty in settling the pleadings. There were several hearings thereon. In the end a stipulation was made that all errors of pleading should be waived and that the plaintiff should be entitled to recover, if at all, upon any cause of action it might have against the defendant without regard to pleadings, and that the defendant should be entitled to set up any defense it might have, without reference to forms of actions or pleas. A jury trial was waived by both parties and the cause came on to be heard before the Court sitting as a jury. At the close of the evidence, the defendant offered three prayers; the plaintiff none.
>
> "By the defendant's first prayer the Court was asked to rule as a matter of law that upon the uncontradicted evidence the French judgment was a nullity. I grant this prayer.
>
> "The uncontradicted testimony as to the French law proved that no proper service had ever been made upon the defendant in France.
>
> "The defendant's second prayer sets up the most important contention in the case * * *.
>
> "The difficulty is in determining how, under

the special circumstances of this case, the benefit of the exemption from which liability have at least 333,333 francs of any one embezzlement affects the obligation of successive re-insure. The contract is French. By its express terms it is to be governed by the usage of Paris in matters of re-insurance. It follows that the French Law controls, if there is any such applicable law, and if not it is regulated by the custom of Paris, if such custom exists. Experts in the French law and in the insurance practices of Paris have been examined. They do not in my judgment profess to state what the law of France or the usages of Paris on this matter are. The witnesses express their individual opinion as to what that law should be declared to whenever the Courts of France are called upon to make a declaration upon the subject or as to what should be the usage of Paris whenever any usage upon the subject shall be established.

"Sitting as a jury I find as a matter of fact that it is not proved that there is any applicable French law or custom. The learned and diligent counsel for the respective parties have not been able to find that the precise question now under consideration, or anyone having any marked analogy to it, has ever been passed upon in any reported case. My own researches and inquiries have had the same negative result * * *"

Verdict was entered in favor of the plaintiff on appeal by defendant the judgment was reversed and case remanded. But the element of the French judgment dropped out and no attempt was made to sustain it—of course, the agreement to have a decision on the merits made it absolutely unnecessary.

An Italian case very much in point appears in Beal's Cases, Vol. 1, page 283 (*Girard v. Tramontano,* Court of Appeals of Naples, 1883, Twelve Clunet 464,) in which the Naples Court of Appeals refused to recognize a French judgment in the light of Article 941 of the Italian Code of Civil Procedure:

Girard v. Tramontano, Court of Appeals of Naples, 1883. Twelve Clunet 464. Beal's cases, Vol. 1, page 283.

In accordance with the terms of Article 14, of the French Civil Code, Mr. Tramontano, an Italian subject, domiciled in Italy, was sued by Girard and Co., in the Tribunal of Commerce of the Seine, upon the balance of an account. Judgment for the plaintiff and application to the Court of Appeals of Naples for an exequatur.

The Court: When the execution of a foreign judgment is asked in Italy, the first duty of the Italian judges, by Article 941 of the Code of Civil Procedure, is to make sure that the judgment was rendered by a Court that had jurisdiction. It is unusually necessary, to be sure, in determining this point, to be governed by the law of the Country in which the judgment was rendered (Article 10 of the preliminary dispositions of the Civil Code), but the provisions of Article 14 of the French Civil Code are sufficient to confer jurisdiction on the Tribunal of Commerce of the Seine * * *.

This text, to be sure, provides, that even a foreigner non-resident in France may always be cited before a French Court upon obligations towards a Frenchman, though contracted aboard. But this unlimited given to a French creditor is manifestly to Article 12 of the Preliminary dispositions of the Civil Code. It is contrary to the provisions of Article 105, Number 2 of the Code of Civil Procedure submitting to Italian jurisdiction, suits rel-

ative to obligations preformably in Italy or resulting from contracts made or acts done in the Kingdom. It thus contains a usurpation of jurisdiction that belongs to the Italian Courts. It sets up an extravagant claim of jurisdiction, contrary to the law of nations, and, therefore, not to be recognized in any State whose municipal law it violates.

THE NAPLES COURT WAS WITHOUT JURISDICTION IN THE PREMISES.

The law of Italy provides that successions are regulated by the laws of a decedent's nationality. It is conceded that Caruso was an Italian citizen at the time of his death.

Article 8, of the disposition on the publication, interpretation and the application of the laws in general (Exhibit C17, p. 619), provides that legitimate and testamentary successions either in regard to the order of succeeding or the measure of successorial rights and the intrinsic value of the provisions are regulated by the national law of the person whose estate is being adjudicated of whatever is the nature of the property and in whatever country it is found.

Francesco Ricci, 10 Vol. Theoretical Practical Course of Civil Law, in commenting upon said Article 8 (Vol. 1, part 1, Section 126), states that the principle proclaimed by said article is applicable to all kinds of successions, testate or intestate, wherever opened and in whatever place the property constituting the heredity is located because the Legislature has not had regard for any of these circumstances, considering only the nationality of the decedent. Wherefore, if the succession of a Frenchman is opened in Italy where he had his last domi-

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cile but his property is situated in England, Italian Judges if called upon to pronounce on actions relating to the opening of the succession, would not apply either the Italian Law nor the English Law, but the French Law, which is the nationality of the decedent.

(For the Italian text from which the above is taken see Section "A" of addenda to this brief.)

But the circumstance that a decedent died an Italian citizen does not suffice to allow any or every court in Italy to take jurisdiction over the estate.

According to complainant's brief below, such a court as the Naples Tribunal *Civile e Penale* would have jurisdiction over such subject-matter as that of decedent's estates. This does not suffice, however, as the question is whether that particular court had any authority for exercising jurisdiction over the estate of Enrico Caruso, who was domiciled beyond its jurisdiction at his death.

In Italy, just as in America, a Court's jurisdiction in the matter of a decedent's estate is limited territorially. The Italian law clearly provides that the competent courts in all such matters as the instant one are those of *the place of a decedent's last domicile.* This point is beyond controversy, and explains complainant's anxiety to show domicile in Naples.

Cesare Losano, in his frequently cited work, Provisions Common to Legitimate and Testamentary Successions According to the Italian Civil Code, Turin, 1911, at page 9, Section 7, states that:

As, however, the opening of a succession can give rise to acts and judicial actions, and it was opportune and reasonable that these should be accomplished and exercised where there is the principal

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seat of the affairs of the interests of the deceased, that is, at his last domicile, the law, defining the *time,* assigns also the *place* of the opening of the succession fixing it precisely where the deceased kept his last domicile (Note 3).

Note 3, "Art. 16, Cod. Civ.—V. Verbale n. 5, Sec. v, della commissione coordinatrice del Cod Civ."

(For the Italian text from which the above is taken see Section "B," addenda to this brief.)

Likewise Pacifici-Mazzoni, in his elaborate commentaries on the laws of succession, Vol. I, page 65 (Sec. 32), states that the succession is opened and administered in the place of the last domicile of the person to whom it appertains, considering the intimate and immediate connection it had with that person. It is derived from that principle that when the domicile of the decedent is within the kingdom there must be administered before the tribunal of the circuit in which he had his domicile * * * . The author then recalls the provisions of the Code of Civil Procedure defining the various subjects in which the Courts have jurisdiction, which are tran-

scribed below.

(For the Italian text from which the above is taken see Section "C," addenda to this brief.)

The provisions of the Italian Civil Code respecting the *time* and *place* of the opening of the succession of a decedent are as follows:

Book 3, Heading 3, Provisions Common to Legitimate and Testamentary Successions. Section I, the opening of the succession and the continuance of the inheritance:

Art. 923. The succession is opened at the time

of the death in the *place* of the last domicile of the deceased (Art. 94, Code of Civil Procedure).

(For the Italian text from which the above is taken see Section "D," addenda to this brief.)

And the Code of Civil Procedure, Title II, Section 2, Competency by Territory, Article 94 (referred to by Pacifici-Mazzoni, above), specifies jurisdiction as follows:

There are proposed before the judicial authorities of the place of the opening of the succession (Civil Code, 923):

1st. The actions in petition or division of the inheritance and any other one between the heirs up to the division (882 s, Civil Code, 943 s).

2nd. The actions in rescission of the division already made (Civil Code, 1038 S), or in the guaranty of the quota assigned (Civil Code, 1034 X), provided they proposed within a biennial of a division.

3rd. The actions against testamentary executors (Civil Code, 903), provided that they are proposed before the division and if a division is not necessary within the biennial of the opening of the succession.

4th. The actions of the legatees and of the creditors of the inheritance who do not exercise real right upon real estate if they are proposed within the period indicated in the preceding number.

When the succession is opened outside of the kingdom there is administered before the judicial authority of the place where the greater part of the real estate and the personal property to be divided

is situate and in default before that of the place in which the decedent has domicile or residence.

(For the Italian text from which the above is taken see Section "E" of addenda of this brief.)

Therefore it is indispensable that *the place* of the decedent's last domicile at the time of his death be ascertained in order to determine which *Italian juridical authority may exercise jurisdiction* in respect to his estate.

There is no allegation of a domicile elsewhere than in Italy, and consequently it is beyond dispute that the actual *place* of his domicile in Italy is to be established by Italian law exclusively. Although a Tribunale at Naples approved the agreement now sued upon, it was not competent to do so as the decedent was not domiciled within the Province of Naples at the time of his death.

As a fact Enrico Caruso, at the time of his death, was domiciled in the Province of Florence, Tuscany, Italy. And, to particularize, in the Commune of Sesto-Fiorentino, a sub-division of the Province of Florence. In Italy one's domicile is provincial, just as in America. We have municipal domiciles; national domicile being equally unknown to either country.

The Italian Law controlling an abandonment of a domicile and the establishing of a new one, is quite different from the law in this country, and in Italy one's domicile must be a matter of public record in the Civil Status offices of the several Communes, in accordance with the explicit provisions of the Civil Code.

In Italy one's domicile is the place where one has located the principal seat of one's own affairs and interests. It is entirely distinct from the definition

of residence. And, in order to effect a change of domicile one must change the place of one's affairs and interests. Mere change of mind and of habitat are not sufficient to work a change of domicile.

A person's residence is in the place where he has his habitual abode.

In Italy a *change* of *domicile* involves a transference of the *residence* to another place with the *intention* to fix in such latter place such *principal seat of one's affairs and interests.*

Such *intention* is proven by a double declaration made at the Civil Status office of the Commune which is *being abandoned,* as well as at that of the Commune in which the new residence is being fixed; or by other facts which go to prove an *intention to transfer the principal place of one's affairs and interests.*

Thus, the center of one's business affairs is a controlling element in determining domicile under the Civil Code.

The pertinent provisions of the Italian Code are too clear to give rise to controversy in application.

Book I of Person, Title II, of Civil Domicile and Residence, Article 16:

The civil domicile of the person is in the place in which he has the *principal site of his own affairs and interests.*

Residence is in the place in which the person has his usual abode.

Article 17. Transference of the residence to another place with the intention to fix there the principal seat produces a change of domicile.

Such intention is proved by a double declaration made at the Civil Status office of the Commune which has been abandoned, and at that of the Commune in which the domicile is established; or by other facts that go to demonstrate it.

(The above articles in Italian appear in Exhibit C17. Translations appear in the addenda to this brief.)

Barbers' publication of the Italian Civil Code, edited by Bruno (9th edition), contains the following annotation to the said Article 16:

> "The *place,* which here is spoken of, has greater or less extension according to the nature of the right which it is desired to exercise and the law which refers to it. And therefore it extends to all the commune, to the *mandamento,* to the circuit or to the province, according to whether one is treating of matters relative to rights and duties which are exercised in the Commune or with the circuit of the jurisdiction of the Pretore or the Tribunal, or finally of matter reaching to the whole province (Court of Cessation, Rome, 31 July, 1882, *Public Minister v. Rubinacci, Traenza, et al.,* C. S. R. '82, 803).
>
> "One cannot have more than one domicile (Court of Appeals, Ancona, 13 Dec. 1875, *Fannucci v. Adminishogan, del fondo del Culto,* L. '76 I. 275)."

(For Italian text from which the above is taken see Section "F" of addenda to this brief.)

PROOF THAT ENRICO CARUSO WAS DOMICILED AT SESTO-FIORENTINO PROVINCE OF FLORENCE, TUSCANY, AT THE TIME OF HIS DEATH.

Enrico Caruso was born in the City of Naples, and if that place was his domicile of origin it was

abandoned very long before he established his domicile in the Province of Florence.

According to the public records he established himself in Milan (Province of Milan) as early as 1897, and after abandoning his domicile there he established one at Sesto-Fiorentino (Province of Florence), which he continued until his death.

Fortunately, there cannot be any dispute on these facts, as they are of public record in the competent governmental offices of Italy.

Guardian *ad litem's* Exhibit GC10 is a certificate issued by the Pretorial, Commissioner of the Commune of Milan, which makes it evident that:

1. Enrico Caruso was duly made known in the Commune of Milan upon 12 December, 1897.

2. He became regularly inscribed in the register of the stable population 12 October, 1901.

3. Afterwards, 22 September, 1904, this was cancelled for Sesto-Fiorentino.

(For translation of the certificates see State of Case, p. 410.)

Guardian *ad litem's* Exhibit GC11 is a certificate issued by the Prefectorial Commissioner of the Commune of Sesto-Fiorentino, which makes evident:

1. That the Communal Archives show that under date of 13 September, 1904, the Mayor of Sesto-Fiorentino notified the Mayor of Milan that the family indicated on the reverse of the notification

had been inscribed in the Register of Population of Sesto-Fiorentino.

2. The family thus referred to is described as:

(a) Caruso, Comm. Enrico, son of Marcellino and of Anna Baldini, deceased. Born at Naples, 25 February, 1873—head of family—single—singer—Italian nationality.

(b) Caruso, Rodolfo, son of Enrico and unknown woman. Born at Milan, 2 July, 1898, son—single—Italian nationality.

(c) Caruso, Enrico, son of Enrico and an unknown woman. Born at Sesto-Fiorentino, 17 September, 1904—son—single—Italian nationality.

(d) That they came from Milan to alle Panche—V. Sodo 11, Sesto-Fiorentino, 13 September, 1904.

(e) The declaration was signed personally by Enrico Caruso.

3. The Mayor of Milan was asked to acknowledge receipt of the said communication.

(For translation of the certificate see State of Case, p. 411.)

Guardian *ad litem's* Exhibit G.C.12 is a certificate issued by the Secretary of the Commune of Sesto-Fiorentino, which makes evident:

1. There is of record in the Communal Archives of Sesto-Fiorentino a certificate dated 22 September, 1904, to the Mayor of Sesto-Fiorentino from

the Chief of the Anagraf Office of the Commune of Milano under order of the mayor, stating that following the request of 13 September, 1904, the undersigned takes notice that Enrico Caruso had declared his wish to transfer his residence to Sesto-Fiorentino with his family consisting of the persons on the attached prospectus.

2. The said certificate was issued for inscription in the Register of Population.

The referred to prospectus states the family as:

(a) Caruso, Enrico, son of Marcellino and Anna Baldini. Song artist—born at Naples 27 February, 1873—single—head of family.

(b) Caruso, Rodolfo, son of Enrico and unknown woman—born at Milan 2 July, 1898—single—natural son.

(For translation of this certificate see State of Case, p. 413.)

Guardian *ad litem's* Exhibit G.C.16 (State of Case, p. 418), is a certificate issued by the Prefectorial Commissioner of the Commune of Sesto-Fiorentino, which makes evident:

1. Enrico Caruso was domiciled in that Commune, where he had his habitual residence, from 13 September, 1904, when he immigrated from Milan, up to the 2 day of August, 1921, the time of his decease, which took place at Naples.

Thus is afforded conclusive technical proof of Enrico Caruso's intention to establish his domicile in Sesto Fiorentino, Province of Florence, as well

as the absence of any intention to abandon that domicile thereafter, and also that said domicile continued until the date of his death.

Therefore we may pass to proof of the other element of Italian domicile, *i. e., the principal seat of one's interests and affairs.*

We find that the decedent exercised civil citizenship in that commune by being inscribed in the family tax rolls of Sesto-Fiorentino from 1917 to 1921, *inclusive* (guardian *ad litem's* Exhibit G.C.14, State of Case, p. 416).

And also that the decedent was duly enrolled in the political elective list of the Commune of Sesto-Fiorentino in the revision of 1913, and in the administrative list in the revision of 1914 up to the *date of his death* (guardian *ad litem's* Exhibit G.C.13, State of Case, p. 415).

In addition to this there is in the archives of Sesto-Fiorentino record of Enrico Caruso, Jr., having answered in that Commune the military levy of those born in 1904 (guardian *ad litem's* Exhibit G.C.15, State of Case, p. 417).

At the time of his death all of the belongings in Italy of Enrico Caruso, practically speaking, were in the Province of Florence, with the exception of the chattels which he had with him while traveling.

According to Complainant's Exhibit C14a, his entire patrimony was set forth in the Deed of Division.

This exhibit shows that at the time of his death he had on deposit in two different banks in *Florence,* in current acounts, Lr. 699,566.13

Also that he had securities in safekeeping at the Banco di Commerciale of *Florence,* consisting of Government bonds, railway bonds and stock certificates of a value of 5,241,638.

Also chattels in *Lastro-a Signa*	410,658.90
Also chattels in *Sesto-Fiorentino*	192,530.00
And also that his real estate in Italy, all of which was located in Tuscany, was valued at	6,013,203.67
And thus his total property in Tuscany was valued at	Lr. 12,558,608.70

And the guardian *ad litem's* Exhibit G.C.24 (State of Case, p. 439), a return for Federal Estate Tax made in New York after the decedent's death, by an affiant who was decedent's counsel during his lifetime, gives these particulars:

> "Schedule D x x Located in Italy:
>
> "Furniture, chattels, jewelry, goldware at Villa Bellosguardia in the Municipality of *Lastra e Signa.*
>
> "Chattels, merchandise, agricultural implements and animals for the cultivation of the various lands making up the Villa Bellosguardia in the municipalities of *Lastra e Signa* and *Carmignano.*
>
> Furniture at Villa alle Panche in *Sesto-Fiorentino.*
>
> Chattels, manure and seeds, agricultural implements and animals for the cultivation of the various lands making up the Belvedre Estate in *Sesto-Fiorentino.*
>
> Chattels, jewelry, wearing apparel, gold and silver articles, existing and inventoried at Naples.
>
> (Some of the above names are mispelled in the original and they are corrected herein.)

In addition to the above the decedent left a large amount of personal property in New York City, as

well as personal chattels and artistic property in this country.

But at Naples there is listed merely "personal things and chattels" and a current bank account of only lire 92,133.85. Evidently the chattels were what he was traveling with and it may be assumed that the deposit at the Naples Branch of the Banco Commerciale was there on account of the fact that immediately prior to his death he was sojourning in that part of Italy.

Every foot of his extensive real estate investments was entirely within the Province of Florence, Tuscany, with the exception of a small parcel at Marintime Rosignano, a suburb of Pisa, but Rosignano also is in Tuscany—far from Naples. Apart from the villas at Sesto Fiorentino and Lastra a Signa, the defendant had investments in several apartment houses in the City of Florence itself. These were managed by his administrator or manager, Dr. Vecchiettini, referred to in the bill as the person to whom the decedent gave a copy of his will, and also described as decedent's agent.

The public records in this country show that after the decedent's death his widow and his New York counsel (who had represented him ten years) made affidavits that the decedent's domicile was within the Province of Florence.

The widow detailed the domicile as at the villa in Lastra a Signa, and his counsel stated it as Florence. But such minor errors are not surprising, because Caruso was the owner of two villas, both of which are in the suburbs of the City of Florence. One is situated in the commune of Sesto Fiorentino, a short distance from that city, and the other is at the commune of Lastra a Signa, about an equal distance in another direction. Both of these communes, however, are within the territorial confines of the

Province of Florence. Evidently the decedent maintained both of the villas for living purposes, because at the time of his death, according to the beforementioned deed of division, he had chattels in one to the value of nearly 200,000 lire, and in the other to the value of over 400,000 lire. And, moreover, it is to be borne in mind that the annotation in Bruno's publication of the Civil Code that shows *domicile may be co-extensive with a whole province.* For present purposes, however, it suffices to demonstrate that *Naples was not* the place of domicile.

So far as jurisdiction over his estate is concerned, it is absolutely immaterial whether Enrico Caruso was domiciled at Lastra a Signa, Sesto Fiorentino or in the City of Florence itself, because it so happens that all three of these places are within the territorial jurisdiction of the Tribunal of Florence, there being no independent tribunals for either Lastra a Signa or Sesto Fiorentino, which latter are quite small communes.

The widow's affidavits were made upon the 18th day of July, 1924 (guardian *ad litem's* Exhibit G. C. 26, State of Case, p. 604), and the 29th of January, 1925 (guardian *ad litem's* Exhibit G. C. 23, State of Case, p. 436). The former is in the matter of the New York transfer tax upon the estate of the decedent, and she stated: "The decedent was a resident of Florence, Italy."

> "Decedent was an opera singer who had his permanent residence and place of domicile and all his social affiliations in Italy, and resided at Bellosguardo in the Municipality of Lastra a Signa, Italy. Decedent never voted in New York State, and had no permanent residence here, except temporarily staying at hotels for a few months each year while fulfilling his contract with the Metropolitan Opera Co. in New York.

> Decedent always paid non-resident income taxes both to New York State and Federal Governments."

The latter affidavit is to a complaint in the suit of Dorothy Caruso Ingram against the Collector of Internal Revenue, New York (paragraph 4 on p. 2):

> "That during his lifetime Enrico Caruso was a subject of the King of Italy and during all of the times hereinafter mentioned was a resident of the City of Florence, in the Kingdom of Italy, and as such was a non-resident alien within the meaning of the aforesaid statute of the United States."

And the referred to affidavit of decedent's counsel (guardian *ad litem's* Exhibit G. C. 24), states decedent's "residence at the time of his death at Florence, Italy," * * * "permanent residence at the time of his death, Florence, Italy." * * * "Business address, Florence, Italy."

What evidence is there to cause any doubt that Caruso was domiciled in Sesto Fiorentino?

Domicile being incontrovertibly established at Sesto Fiorentino, the burden of showing a change is upon him who asserts it.

In the face of the overwhelming proof afforded by the public records of Italy in the settlement of his estate, as well as by the public records in this country, that the decedent's affairs and interests at the time of his death were concentrated at his residence in the Province of Florence, Tuscany (with the exception of what was centered in New York and the transactions with the Victor Company), arguments that the decedent was domiciled at Naples cannot be taken seriously. Nevertheless, we recall

that the bill filed does not recite any domicile at all, and merely avers death in Italy.

And the omission to recite decedent's domicile in the deed of division of Naples may be regarded as peculiarly significant. Likewise, it is most remarkable that the Italian decrees do not describe any domicile at all. Yet, the guardian *ad litem* for Gloria in the Naples proceedings did not raise a question of jurisdiction.

The only evidence the complainant has offered in support of a theory that domicile may have been at Naples consist of certificates as follows: (1) a death certificate; (2) inscription in population registry of Naples; (3) that a copy of a New York marriage record and a copy of a New York birth record were received at the Naples registry office from the district attorney at Naples.

(1) The death certificate is not proof of the decedent's intention to *abandon* his domicile in Sesto Fiorentino and *transfer the principal place of his interest and affairs* as well as his residence to Naples. On the contrary, it might be regarded as negative proof that he was *not* domiciled in Naples because the official before whom the declaration was made, while particular to describe each of the declarants by domicile (as "domiciled in Naples"), noted the deceased merely as "*residing* in Naples, born in Naples." It was made, however, by two employees who are not shown to have had any relationship whatsoever to Caruso.

(2) Likewise, the population certificate is not to be regarded as evidence of Caruso's intention to *abandon his domicile at Sesto Fiorentino* or to establish a new one in Naples. And it is quite remarkable in its terminology because it states that the de-

ceased *became enrolled* in the population *on account of his emigration from America, June, 1921.*

Moreover, the information upon which it is based could not have come from Caruso, as it includes an announcement of his death! And whatever consolation the complainant might derive from the notation that the decedent had his *domicile* at the Hotel Vesuve is completely nullified by the fact that another, otherwise identical, copy of the same record furnished to the Guardian *ad litem,* states with equal force that the decedent had his *habitat* at the Hotel Vesuve. And as the certificate certifying "*habitat*" was issued about six months prior to the certificate certifying "domicile," surely it is to be preferred to the latter. The *habitat* certificate was issued in December, 1925, whereas the *domicile* certificate was issued May 18, 1926.

(3) As to the filing of the marriage and birth certificates at Naples instead of Sesto Fiorentino, there is absolutely nothing from which it can be concluded that the decedent was in any way responsible for this action. It is an obvious inference that the certificates were not sent to Naples by Enrico Caruso and that whoever sent them for him blundered in sending them to the *place of his birth* instead of *the place of his domicile,* because it is not reasonable to assume that one who constantly took great pains scrupulously to comply with the legal provisions respecting civil status in the establishing of domiciles would have erred in this element of the civil status of his wife and child. Nor is there a shred of evidence connecting the decedent with any depositing of these certificates at the Italian Consulate at New York *or anywhere else.* On their face they negative any such suggestion of depositing at the consulate, because nothing of the sort is endorsed thereon, and,

on the contrary, they show conclusively that the consular action was limited absolutely to *legalizing the signatures* of the health officials who issued the certificates, and to *attesting the correctness of the translation* from English into the Italian language annexed to the certificates. The statement by counsel in offering the certificates in evidence that the decedent deposited them at the Italian Consulate is no proof thereof, but counsel's statement does not even go so far as to state that they were deposited for transmission to Naples instead of Sesto Fiorentino. But even if the decedent did so deposit them, it is manifest that it is impossible for such a step to be construed as proof of a change to Naples of the situs of his domicile, which require a physical change of residence coupled with an intention to transfer the principal seat of his affairs and interests. And not one of these four papers in any way proves *an intention* upon the part of the decedent *to abandon* his residence in Sesto Fiorentino and establish a new one in the City of Naples and *transfer to it the main situs of his business affairs,* all of which is absolutely indispensable under Italian Law to work a change of domicile.

And each of these four documents is anterior in date to the three affidavits made in New York by his widow and his counsel clearly describing the decedent's domicile as within the Province of Florence. And it is to be noted that in each one of these three affidavits the question of domicile was a controlling one, as the main point was the actual domicile.

If what took place in Naples had been in conformity with the Italian law of inheritance, the guardian *ad litem* here would not have raised the defense of lack of jurisdiction by the Naples Tribunal. But is it because of the extent to which Gloria's in-

terests have suffered through the deed of division and what was done afterwards that they must be defended by invoking the conclusive defense of lack of jurisdiction? If a Court at the decedent's domicile in adjudicating his estate under Italian Law irrespective of the deed of division could have reached the same result as occurred at Naples, the guardian *ad litem* never would have pressed the absence of competency by the Naples Tribunal.

(b) We contend that the Naples decrees are nullities, as far as this Court is concerned, on the further ground, in addition to the lack of jurisdiction of that Court, that Gloria Caruso was not technically before the Court.

Technically Gloria was not even a party to the agreement. According to Mrs. Caruso's contention, she herself was the natural guardian of Gloria at the time of the alleged settlement, yet she elected not to act in that capacity and a special curator was selected to represent Gloria. It is difficult to understand how her mother was legally debarred from representing the daughter at the settlement.

Exhibit C5a, p. 266, cites Article 224 of the Italian Civil Code as the ground for the appointment of the guardian for Gloria. But this article, which we translate as follows:

> "Conflict of interest arising between children under the same parental authority or between them and the father a special curator shall be nominated for the children."

makes provision for the appointment of a special curator *when a conflict of interest arises between a parent and a child,* but in the present case no technical ground of "conflict" appears. Nor is it alleged that there was the slightest controversy as to the

share or estate which Mrs. Caruso was entitled to receive as a matter of law. Whether Caruso died testate or intestate did not in any degree whatsoever affect the share coming to the widow, because, in respect to her, the will expressly limits her *to what she is entitled to under the Italian Law;* and therefore the quantum of her inheritance is the same, whether it is measured by the intestate law being put into effect through the will, or whether the same law is put into effect through the decedent dying intestate.

On this basis the infant was not before the Tribunal at Naples, as there was not such a "conflict of interest" as the Civil Code contemplates and the mother had no excuse for avoiding her duty.

(c) We contend that the Naples decrees are not to be given any effect by this Court because Italy would not give effect to similar decrees of New Jersey.

Guyot v. Hilton, 159 U. S., 113, is authority for the proposition that lack of reciprocity, under similar circumstances, by the Courts of a country in which the original judgment was entered is a criterion in determining as a matter of comity whether or not any particular judgment ought to be recognized in a foreign jurisdiction.

Goodrich on *Conflict of Laws,* pp. 455, 456, says:

> "This doctrine received an important qualification by the Supreme Court of the United States in the leading case of Hilton v. Guyot. An action was brought in a Federal Court upon a judgment recovered against defendant in France. The Court in France had had jurisdiction, and the defendant had been served and had appeared and defended. The Supreme Court, in reversing a judgment given in the

Court below in favor of the judgment creditor, recognized the general rule as to the conclusiveness of a foreign judgment. It was said: ' * * * Where there has been opportunity for a full and fair trial abroad before a Court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and upon a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the Court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh. * * * '

The Court then went on to hold that 'the comity of our nation does not require us to give conclusive effect to the judgments of the Courts of France; and that ground is want of reciprocity, on the part of France, as to the effect to be given to the judgments of this and other foreign countries.' Because France does not take American and other foreign judgments as conclusive, French judgments are not to be taken as conclusive here."

With us there is no statutory law on the subject and in establishing what is the custom we are dependent upon jurisprudence. But in Italy conditions are different, as there the Courts are restricted by statute, and we find that Article 10, of the dispositions on the law in general (Exhibit C17), provides that judgments entered by foreign

authorities in respect to civil matters shall have effect in the kingdom when they have been declared executive in the forms established by the Code of Civil Procedure, barring the provisions of international conventions.

Article 941 of the Code of Civil Procedure (complainant's Exhibit C17) provides:

> Executive force of the decisions of foreign judicial authority is given by the Court of Appeals, in whose jurisdiction there must be commenced a proceeding for the provisional examination, in which the Court examines:
>
> 1. If the judgment has been pronounced by a competent judicial authority.
>
> 2. If it is recited that the parties have been regularly cited.
>
> 3. If the parties have been legally represented, or in legal contumacy.
>
> 4. If the decision contains provisions against the public order or the internal public law of the Kingdom.

Thus we find that the statutory enactments in Italy really restrict reciprocity much more than is done by *Guyot v. Hilton, supra.*

And it is clear that if decrees entered by foreign Courts without jurisdiction were recognized in this country, Italy would be unable to reciprocate such practice, because the first clause of Article 941 requires Italian Courts to ascertain whether a foreign judgment has been pronounced by a competent juridical authority. Equally so (third clause) where a minor has not been legally represented as in the present case (see our preceding argument), or (fourth clause) if the judgment contains anything against Italian public order or internal public law; this we term public policy.

Apart from this article of the Code of Civil Procedure there is the International Convention of the Hague under which the parties signatory are obliged to give effect to foreign judgments, but this does not affect the United States because America was not signatory to that convention and, therefore, as has been said, we are limited absolutely to jurisprudence.

2. Granting for argument that the Naples decrees are not nullities in this Court, what effect is to be given to them by this Court?

(a) The Naples decrees are consent decrees and this Court has the right to decline to treat them as binding on this Court, or even as persuasive over the subject-matter.

In *Hodgson v. Vroom,* 266 Fed. 267 (C. C. App. 2nd Circt. 1920), an injunction *pendente lite* against the production of Cyrano de Bergerac was refused. A consent decree in another case against other defendants perpetually enjoining the production of this play as an infringement of the copyright of plaintiff's play was set out in the bill. The Circuit Court of Appeals affirmed the Circuit Court, Circuit Judge Hough saying:

> "The question as to what the District Court should do (not what it could do) under circumstances like the present depends upon the inquiry whether the Chicago decree of 1902 was or was not a 'consent decree.'
>
> The nature of consent decrees and something of their history are learnedly set forth by Hammond, J., in Kelly v. Milan (C. C.), 21 Fed. 862, *et seq.* (the affirmance of this case in 127 U. S. 39, 8 Sup. Ct. 1101, 32 L. Ed. 97, does not

touch this point). The distinction between a decree in common form and a consent decree, is the difference between a consent to submit a case to the Court for decision and a consent as to what the decision shall be. When there is a consent as to what the decision shall be, the decree is a 'mere agreement of the parties under the sanction of the Court, and is to be interpreted as an agreement.'

A decree on consent is not appealable, in the sense that no errors will be considered which were in law waived by the consent given. United States v. Babbitt, 104 U. S. 767, 26 L. Ed. 921. Therefore non-appealability is not only an incident to a consent judgment, but one of the indicia of the nature of the decree entered.

Tested by these rules, the decree in Gross v. Mansfield was plainly a consent decree upon its face. The moving papers before us contain a good deal of information or suggestion as to why the Chicago litigation ended in an agreement of parties, after a rather lengthy and probably expensive proceeding before the master in chancery; but we need not consider these matters. The record—i. e., the decree as entered—speaks for itself.

It is quite true, as urged by appellant, that there is close analogy between actions under the patent laws and suits upon copyright (Scribner v. Straus (C. C.), 130 Fed. 389), and great stress is laid upon that long line of decisions holding that decrees in patent causes are entitled to great weight, when subsequent action is brought on the same patent against other alleged infringers. But this proper rule is one of comity, which may persuade, but cannot compel. Mast, etc. Co. v. Stover, etc. Co., 177 U. S.

485, 20 Sup. Ct. 708, 44 L. Ed. 856. There is great power of persuasion in a procession of consent decrees, as evidencing public acquiescence in the plaintiff's asserted right; but there is no legal compulsion in any consent decree, because the judicial action is no more than a registration of the will of the parties. National, etc. Co. v. New England, etc. Co. (C. C.) 123 Fed. 436. It follows that the lower Court was entirely justified in examining anew the interesting inquiry whether the Frenchman, Rostand, in or about 1896, pirated the literary work of Mr. Gross, of Chicago. On this literary question it is sufficient to say that we entirely agree with the District Court.

The order appealed from is affirmed, with costs."

In *Lawrence Mfg. Co. v. Janesville Mills,* 138 U. S. 552, 11 Sup. Ct. Rep. 402, a decree for an injunction against the use of a trade-mark had been made on consent. The decree did not in terms enjoin successors or assigns of the defendant and a new bill was filed by plaintiff against such parties in effect asking such relief. The Court held that this opened before it a consideration of the propriety of original decree, and went further and held that the Court had the right to decline to treat a consent decree as *res adjudicata,* Chief Justice Fuller saying, p. 405:

"Hence, even if it be assumed upon the evidence that the decree against the old corporation bound the new one, yet, this being in effect, in one of the two aspects, and, perhaps, the sole aspect, in which it is framed, a bill to carry the former consent decree into execution, the Circuit Court was not obliged to do so if it believed that decree erroneous; and that it was erron-

eous we have already decided. Inasmuch as plaintiff came into a court of equity to have the benefit of the former decree, the Court was at liberty to inquire whether circumstances justified the relief. Mitf. Eq. Pl. 96. Indeed, it would seem to have devolved upon it to show that the decree was a right decree. Such is the language of Lord Redesdale in Hamilton v. Houghton, 2 Bligh. 169, 193, and of Lord Chancellor Sugden in O'Connell v. McNamara, 3 Dru. & War. 411, 412. The same principle was announced as early as 1700 by the Lord Keeper in Johnson v. Northey, Finch, Prec. 134. See also, Lawrence v. Berney, 2 Rep. Ch. *127; Adams, Eq. *416; 2 Daniell, Ch. Pr. (4th Ed.) 1586. This rule was much considered and applied in Wadhams v. Gay, 73 Ill. 415, and approved by this Court in Gay v. Parpart, 106 U. S. 679, 1 Sup. Ct. Rep. 456. The prior decree was the consequence of the consent, and not the judgment of the Court, and, this being so, the Court had the right to decline to treat it as *res adjudicata.* Wadhams v. Gay, and Gay v. Parpart, *supra;* Jenkins v. Robertson, L. R. 1 H. L. Sc. 117; Brownsville v. Loague, 129 U. S. 493, 505, 9 Sup. Ct. Rep. 327; Texas, etc., Ry. Co. v. Southern Pac. Co., 137 U. S. 48, 56, ante, 10; Edgerton v. Muse, 2 Hill, Eq. 51; Lamb v. Gatlin, 2 Dev. & B. Eq. 37; Bean v. Smith, 2 Mason, 252. As, therefore, if the old company had defended the suit against it, it would have prevailed, the decree of the Circuit Court, being correct upon the merits, is also correct in that the Court refused to be constrained by the previous erroneous consent decree, to decree contrary to the right of the cause.

Affirmed."

In *Texas Ry. v. Southern Pac. Ry.*, 137 U. S. 48, 11 Sup. Ct. Rep. 10, Chief Justice Fuller says, p. 13:

> "By this decision was the validity or due effect of either of these decrees disallowed by the State court? We do not think so. The decrees were entered by consent, and in accordance with the agreement, the Courts merely exercising an administrative function in recording what has been agreed to between the parties; and it was open to the Supreme Court of Louisiana to determine, upon general principles of law, that the validity of Article 6 was not in controversy or passed upon in the causes in which the decree was rendered. In doing so, that Court did not refuse to give due effect to the final judgment of a court of the United States or of another State. The judgment is affirmed."

In *American Radium Co. v. Hipp. Co.*, 279 Fed. 601 (D. C. S. D. of N. Y. 1921), the Court refused to give effect to a consent decree, saying, p. 603:

> "In a new suit, it asks for an accounting, when the decree sought to be set up as *res adjudicata* failed to decree an accounting. Yet, even in contested cases, the right to an accounting is always determined independent of the questions of validity or infringement; and, of course, many decrees fail to award an accounting because, for instance, of laches.
>
> Consent decrees, as their name implies, are the result of an agreement, sometimes precedently expressed in formal stipulation, and sometimes, as here, solely in the decree itself. They are to be read within their four corners, and especially so because they represent the agreement of the parties, and not the independent examination of the subject-matter by the Court.

They are binding only to the extent to which they go. Neither Court nor party can write in them what is not there, and thus change what was agreed upon between the parties."

In *Gay v. Parpart,* 106 U. S. 679, 1 Sup. Ct. Rep. 456, the Supreme Court says, p. 473:

"We think it would be inequitable to make a decree now to do what was left undone in a former decree, and which seems to have been so left by the intention of the parties to it. We cannot better express ourselves than in the following language from the opinion of the Court in the case before referred to:

'We do not regard that it militates with the doctrine of the conclusive effect of what is *res judicata,* that where there is an incomplete decree, and it is ineffective for want of the provision of any means for its execution, and an application is made to a court of equity to supply the imperfection, so as to render the decree effective, then it is admissible to look at the real nature and character of the decree as it may appear in the light of surrounding circumstances, for the purpose of determining whether there is such an equitable ground for action as will move a court of equity to interpose. Equity will penetrate beyond the covering of form and look at the substance of a transaction, and treat it as it really and in essence is, however it may seem. In outward semblance this partition decree is a decision of Court upon the relative rights of Charles D. Flaglor and his children, under the will of Garrett. In essential character it is but the judicially recorded supposed agreement of Flaglor. And upon an appeal to equity by original bill to lend its assistance for

carrying it into execution, because of an omission in the decree in providing any means of its execution, it would seem reasonable that the same rule of the Court's action should obtain as in case of any solemn agreement under seal; and where there are manifest the elements of injustice, mistake, surprise, misapprehension, and want of consideration, to remain passive.' Wadhams v. Gay, 73 Ill. 414.

The decree of the Circuit Court must be affirmed, and it is so ordered."

The case of Kelly v. Milan, 21 Fed. 842 (C. C. W. D. Tenn. 1884), cited in *Hodgson v. Vroom, supra,* contains a most elaborate discussion of this point, beginning p. 862. This case was a suit brought against the Town of Milan for principal and interest on its bonds and by replication a decree in the State Chancery Court was pleaded by which that Court adjudged the bonds to be legal and valid. This decree was made on the consent of the municipal authorities. The question was the effect to be given to that decree. The Court says, p. 863:

"But, obviously, it does not follow from this binding force of the decree that it can be always pleaded as *res adjudicata.* That depends on other circumstances than its mere binding effect as a decree in the court where it is rendered. For example, a judgment of non-suit, or a bill dismissed by plaintiff, or for want of jurisdiction, cannot be pleaded as *res adjudicata,* because not a decision on the merits, while a judgment on demurrer, which is a decision of the Court on facts admitted, or a bill dismissed for want of equity, or upon determination of the Court in favor of defendant, can be so pleaded. Homer v. Brown, 16 How. 354; Man-

hattan L. Ins. Co. v. Broughton, 109 U. S. 121; S. C. 3 Sup. Ct. Rep. 99; Gould v. Evansville, 91 U. S. 526; Durant v. Essex Co., 7 Wall. 107; Badger v. Badger, 1 Cliff. 237; Mabry v. Churchwell, 1 Lea. 416; Bankhead v. Alloway, 1 Tenn. Ch. 207.

So, in a case like the one we are now trying, again using it as an example, it is plain that the parties have used the agreed statement of facts as a convenient mode of placing the Court in possession of the facts, without producing the evidence on which they would be otherwise ascertained; but they have left the decision of the rights of the parties growing out of those facts to the Court, and have not by consent of parties determined, by themselvese and for themselves, what those rights are. That which they have done is very like what they do when by a demurrer they admit the facts and the Court decides the case, or when by a retraxit they confess the facts and the Court directs a judgment. What they have not done is more like that which they do when they take a non-suit or voluntarily dismiss their bill.

In the language of the case of the Manhattan L. Ins. Co. v. Broughton, 109 U. S. 125, S. C. 3 Sup. Ct. Rep. 99, 'a trial upon which nothing was determined cannot support a plea of *res adjudicata* or have any weight as evidence at another trial' and, as decided in Russell v. Place, 94 U. S. 606, if it appear by the record or aliunde that the matter was not litigated and decided, there could be no estoppel. Now, does it not appear, by what the parties actually did in the State Chancery Court, that this matter was not litigated and not decided? And here lies a distinction that must not be overlooked in

cases like this between a consent to submit a case to the Court for its decision and a consent as to what the decision shall be. Again, there is a distinction between that estoppel which the parties put upon themselves by their agreement which may be pleaded and bind them as an estoppel in pais, and that which arises out of the adjudication as an estoppel of record. The agreement is none the less an estoppel because it takes the form of a judicial decree, but not necessarily does it operate as an estoppel of record. The pleas respectively setting them up would be essentially different. 2 Daniell, Ch. Pr. (1st Ed.) 175, 187; Id. (5th Ed.) 659, 666. In both, the record would be used as evidence; in one case conclusive in its effect to support the plea of *res adjudicata;* in the other it would not be conclusive, might be averred against, and would be overcome by countervailing proof of sufficient force.

The text writers agree that in England a consent decree cannot be pleaded as *res adjudicata,* and is effective when pleaded only so far as the estoppel arises out of the agreement itself. Bieglow, Estop. 17; Freem. Judgm. Sect. 331; Whart. Ev. Sect. 783. They say, however, that the decisions of the American states, generally, are against this doctrine Id.; Wells, Rep. Adj. Sects. 440-460. We have examined very carefully a great many of the cases cited in support of this supposed distinction between the American and English courts, and find that if critical attention is given to the distinctions to which we have already adverted between a case decided by the Court upon an admitted state of facts, and one decided by the parties themselves solely by their own consent, which the Court ad-

mits of record by registering the agreement, and between the estoppel of the agreement and that of the judgment, and to distinctions arising out of local statutes regulating the subject of judgments by confession and agreed cases, it may be doubtful if there be so much divergence between those courts on this subject."

And on page 867:

"In Massachusetts the rule seems to be that where issue is joined a decree by consent on that issue is a bar; but where no issue is joined, as where a plea in abatement has been sustained, after which there was a consent judgment, it is no bar. Powers v. Chelsea Bank, 129 Mass. 44; Jordan v. Siefert, 126 Mass. 25. Now, in the case we have in hand there was never any issue joined."

* * * * * * *

"All the authorities, as we have shown, agree that such a decree is not a bar unless it be a decision on the merits, and the inquiry is always to see whether it is such a dismissal or one otherwise procured. Here the bill was dismissed after a decision of the only issue in the case made by the demurrer, in favor of the plaintiff, then the bonds were void. Technically then, it seems the decree cannot be a bar except upon the theory of a purely consent arrangement to dismiss a bill, before answer filed, by an adjudication without issues, shown upon the face of it to be not the judgment of the Court, but the judgment of the parties as to their own rights."

And on page 869:

"We do not wish to be understood as ruling

that a record is not to be taken for all that it implies when pleaded as *res adjudicata,* or that the trial of that plea will require an inquiry into the extent of the litigiousness of the parties, or the quality and quantity of consideration given to the case by the Court rendering the decree, or whether its action was based on a formal or informal presentation of the facts and law, but only that the technical character of the judgment must be such that, necessarily, there was an adjudication of the merits by the Court, invoked or sustained, it may be, by consent of parties, but none the less an adjudication, and not simply a judicial registration of an agreement of the parties. And while a consent decree upon agreement as to the facts and, possibly, as to the law of the case, may, under some circumstances and as to some parties, have all the force, and as effectually estop the parties as would a decree in invitum, it is not, in our opinion, competent for the authorities of a town to agree that its void bonds shall be made valid by putting that agreement into the form of a judicial decree, which, on the face of it, shows that it is not the judgment of the Court upon the facts and law of a case actually litigated, but merely the record of an agreement of the parties that it shall have that effect; the authorities of the town assuming to act without legislative authority to ratify the bonds in that or any other manner."

We believe that the rule is settled by the United States Supreme Court cases, as in England, that a consent decree is not *res adjudicata.*

In *Hodgson v. Vroom,* 266 Fed. 267 (quoted *supra*), the consent decree was certainly approved

affirmatively by the Court because the decree recites the holding of the master that complainant was entitled to an injunction and that no objection had been filed to his report and yet it was not held binding in the new proceeding.

In *Hohenadel v. Steele,* 237 Ill. 229, 86 N. E. 717 (1908), the Court says, page 234:

> "The decree entered by agreement was not, in a strict legal sense, a judicial decree, but it was in the nature of a solemn contract between the parties entered by the Court. There has been no finding by the Court that Steele was not a fit or proper person or that Hohenadel was, or that the welfare of the child demanded that she should be left in the custody of Hohenadel, or that the other stipulations of the decree should be carried out."

This case was a contest as to the custody of a child. The matter had been referred to a master, who reported that upon the conclusion of the evidence, the parties, at his suggestion, reached an amicable agreement and agreed to the decree. The decree therefore was approvd affirmatively by the Court.

But is *Kelly v. Milan,* to be taken as meaning that inquiry is to be made as to whether the Court actually did decide the question?

It is to be noted that in the *Kelly v. Milan* case the Court answered that question by simply holding that the Court could not have so affirmatively decided the question because it could not have decided that the municipal authorities, by consent to a decree, could have given any validity to invalid bonds which they could not issue.

Similarly, in the case at bar, if, in New Jersey, such an inquiry will be made, we submit that it is

impossible to believe that the Naples Court affirmatively decided this question because it is impossible to believe that it could have approved this agreement if it had given it actual scrutiny.

We submit that the holding in *Davis v. Headley,* 22 N. J. Eq. 115 (quoted post), where Chancellor Zabriskie refused to give effect to a Kentucky decree on the ground that it must be fraudulent because as he said "on such a record" (the Kentucky record) "no judgment could be obtained without fraud or imposition on the Court" is equally applicable in considering the effect of the consent on these Naples decrees—on such a record no judgment could be obtained if it had been scrutinized and passed on by the Court.

(b) The present proceeding in this Court asks this equity Court to re-enact the results arrived at in Naples and give them effect over the New Jersey assets of both Enrico Caruso and of Gloria Caruso. This Court is asked affirmatively to give life to the effect of the Naples agreement and decrees and apply it to the New Jersey assets. It is not a suit on a foreign judgment. In such case this Court will inquire into the Naples agreement and decrees and will not do so "where there are manifest the elements of injustice, mistake, surprise, misrepresentation and want of consideration."

This is shown by the cases and quotations from them in the foregoing argument (2a).

But further, this bill in equity could be regarded as an appeal to the Chancellor to do what he considers fair and equitable in respect to the New Jersey property, although insistence is made by it that such a decision involves the carrying out of everything that has taken place in Italy.

There is no question of interpreting or carrying

out the will of a decedent, as the will itself was not even probated, and the complainant and all the defendants save Gloria are insistent that the foreign intestate law shall not be applied.

Therefore, by this proceeding, we submit, the equities of the whole matter, as far as the New Jersey assets are concerned, is submitted to the Court of Chancery. See *Fried v. Fried,* 99 N. J. Eq. 106.

(c) What is the limitation of the effect which this Court will give to these Naples decrees, if any, is given.

This was answered by District Judge Mayer in *American Radium v. Hipp Co.,* 279 Fed. 601, quoted *supra,* where he says:

> "Consent decrees, as their name implies, are the result of an agreement, sometimes precedently expressed in formal stipulation, and sometimes, as here, solely in the decree itself. They are to be read within their four corners, and especially so because they represent the agreement of the parties, and not the independent examination of the subject-matter of the court. They are binding only to the extent to which they go. Neither Court nor party can write in them what is not there, and thus change what was agreed upon between the parties."

It is clear that Gloria's guardian did not consent to the legal propositions that the will was not revoked, or that she could not set up the adulterinity of the sons, or that Giovanni Caruso had an interest, or that the Naples Court could distribute under a will which did not exist, or that the royalties were one-half principal and one-half income, or that it was a fair payment in gross of Dorothy P. B. Caruso's widow's usufruct to give her one-eighth

of the estate including one-eighth of the Victor royalties, or that Mrs. Caruso should be given one-half of Gloria's allotment of royalties and the incomes of her other one-half, during Gloria's minority (eliminating her remarriage or her possible neglect of Gloria), in compromise of her *mother's* usufruct, or that Mrs. Caruso had a right to any *mother's* usufruct in Gloria's New Jersey assets. It is equally clear that the Naples Court in its approving this agreement cannot be taken as having passed on the points of law involved in any of these specific legal questions.

We submit that if given any effect these decrees cannot be held as stating Italian law on any of these matters, even if the Court might have expressed any opinion on any of these points.

In *Davis v. Headley,* 22 N. J. Eq. 115, Chancellor Zabriskie said, p. 125:

> "The principles adopted by the Supreme Court of this State in Munday v. Vail, 5 Vroom, 418, in giving effect to the judgment of one of its own courts of record, that the validity of the judgment would only be recognized so far as the pleadings authorized it, would leave the judgments in Kentucky, as to the real estate, without effect."

The pleadings in the Naples court consisted of a petition asking the Court to approve the agreement.

(d) These decrees are not final. It is only a final foreign judgment which is given any effect.

It is beyond argument that if this was a suit on a foreign judgment, it would be necessary for the plaintiff to establish that the original judgment is a final one (34 *Corpus Juris,* 1170).

The best proof that the Naples decrees are not

to be regarded as final is afforded by the decrees subsequently entered in that court and which have been offered in evidence. These subsequent decrees are discussed in detail post.

3. These foreign decrees will not be enforced in New Jersey if against our public policy. They stand in no better position than the agreement which they approve.

(a) The Naples decrees are based on a waiver of rights by a guardian for the infant Gloria and this waiver was permitted by the Naples court.

It was conceded by the petition to the Naples court on which the first decree of October 21, 1921 (p. 281), was based, that the general provisions of the will were revoked and therefore that Gloria Caruso was entitled to two-thirds of the principal and one-half of the incomes. It is also known that Gloria had a right to claim that the adulterinity of the two sons barred them from any rights, and therefore that she could claim all of the estate less the widow's usufruct. It was admitted that the Victor royalties were at least one-half principal and one-half income, but we believe that they were wholly principal. Nevertheless Mrs. Caruso was allowed as a sum in gross one-eighth of them. Mrs. Caruso was allowed as her own, as her mother's usufruct in the Victor royalties (as is claimed by her and apparently admitted by Gloria's Family Council), Gloria's incomes during Gloria's minority although the Italian Code provision expressly limited her to enjoying them until remarriage and during proper conduct toward the child. Yet all these points were waived by the guardian of Gloria and the Naples court permitted these waivers and

approved this agreement. The opinion of Guarracino clearly shows this waiver where he says:

> "But I must foresee an objection ——
>
> Since in every event, the legitimate minor would be entitled to half of the estate of the father in full fee and absolutely undiminished by title of reserve, the proposed agreement, not insuring her any more than such a half amounts to a renunciation of all possible actions to which she may be entitled, without any special advantage.
>
> To eliminate such an objection and to better the agreement in the interest of the minor, I propose, to give her the following advantages: * * * "

Rights of an infant cannot be waived in a New Jersey court. An infant is protected by our courts. This is our public policy and these decrees which permitted such waivers cannot be given any effect in New Jersey.

Schultz v. Sanders, 38 N. J. Eq. 154, 156;
s. c. on Appeal, 38 N. J. Eq. 293;
In re Shreve, 87 N. J. Eq. 7;
s. c. on Appeal, 87 N. J. Eq. 710;
Brengel v. O'Toole, 140 At. 28, 6 N. J. Adv. R. 173;
Middleditch v. Williams, 47 N. J. Eq. 585.

(b) But New Jersey public policy requires its courts to protect infants in their property rights.

This is shown by our statutes in reference to the sale or mortgaging of infants' lands, the practice requirements as to suits by or against them, the rules of court requiring special references in foreclosure or partition against infant defendants and requiring the Special Master to report any special matter for the benefit of the infant, and the pro-

tection given their property and incomes when desired or used for their maintenance, and it is shown in many other provisions and ways. This protection is strictly enforced by our Courts.

It may be argued that on the face of these decrees appears the Italian practice for the protection of infants. The President Judge refers a petition to one of the Justices who communicates with the Public Ministry, where it is examined and recommendations made, and the Court *in banc* then considers the petition. A family council for the infant has already appointed a special guardian who has considered and approved the petition.

Nevertheless, with all these apparent safeguards cast around an infant and her property, this agreement despoiling Gloria Caruso of her property, in the interest of her trustees and natural protectors, was perpetrated.

She was given no protection whatever by the Naples court and the decree of October 21st, 1921, of this Court, itself shows that she received no protection.

This is against the public policy of New Jersey and this agreement and these decrees should not be enforced or recognized by this Court.

(c) The inclusion in these decrees of an approval that Mrs. Caruso should have as her own any of Gloria Caruso's New Jersey assets is against our public policy.

(d) This whole Naples performance was the perpetration of a scheme to seize unjustly Gloria Caruso's interest in her father's estate. Such a transaction is against our public policy and our courts will not give it effect and they will not give

any effect to decrees of a foreign court which enabled it to be done.

This Naples procedure was not an agreement to comprise disputed rights in Enrico Caruso's estate, but was a taking of Gloria Caruso's rights in same through the guise of a family settlement and a judicial proceeding. The parties to it were Gloria's relatives who became her trustees appointed by the Naples court as her Family Council to manage her affairs. It perpetrated a fraud. It was a fraudulent taking of Gloria's property. It was therefore against the public policy of New Jersey.

Contracts and legal proceedings in fraud of another, such as to prevent the probate of a will, are against public policy.

Gugolz v. Gehrkins, 164 Cal. 596, 43 L. R. A. N. S. 575;

Cochran v. Zachery (Iowa), 115 N. W. 486, 16 L. R. A. N. S. 235 and notes;

Grochowski v. Grochowski (Neb.), 109 N. W. 742, 13 L. R. A. N. S. 484, and notes;

Hollingshead v. Hollingshead, 91 N. J. Eq. 261, p. 279.

4. The effect of fraud on the enforceability in New Jersey of a foreign decree has been many times before the New Jersey courts.

Tompkins v. Tompkins, 11 N. J. Eq. 512;
Raimondi v. Branchi, 100 N. J. Eq. 238;
Davis v. Headley, 22 N. J. Eq. 115;
Doughty v. Doughty, 27 N. J. Eq. 315;
Nugent v. Hayes, 96 N. J. Eq. 485;
Royal Arc. v. Harley, 52 N. J. Eq. 642;
Floyd v. Floyd, 95 N. J. Eq. 661;
Thompson v. Thompson, 89 N. J. Eq. 70;
Fairchild v. Fairchild, 53 N. J. Eq. 678.

In *Davis v. Headley*, 22 N. J. Eq. 115, Chancellor Zabriskie in refusing to enforce a decree made by a Kentucky court, held that such a judgment would not be enforced where the record itself shows that no such judgment could have been obtained without fraud or imposition on the Court, saying, p. 123:

> "The Kentucky judgments must also be held void for fraud in obtaining them. That fraud will avoid a judgment of another State, is laid down by Story in the passage cited, and many other authorities. Courts of equity will set aside judgments of their own State, and of other States on this ground. Moore v. Gamble, 1 Stockt. 246; Tomkins v. Tomkins, 3 Ibid. 512; Glover v. Hedges, Saxt. 119; Powers' Ex'rs v. Butler's Adm'r., 3 Green's Ch. 465; Pearce v. Olney, 20 Conn. 544; Dodson v. Pearce, 2 Kern. (11 N. Y.), 156."
>
> * * * * * * *
>
> "But in a court of equity, this will make no difference; it will not lend its aid to enforce a judgment obtained by fraud when the fraud is shown. The complainant must come with clean hands in the matter on which relief is sought.
>
> "The publicists make a distinction as between foreign judgments when used in defence, to show that the matter sued for is *res adjudicata,* and when sought to be enforced by the courts of another sovereign. They hold that no Court is bound to enforce a judgment of another sovereignty when it is apparently unjust and against universally acknowledged principles of right. Story on Confl. of Laws, Sects. 593, 599, 618.
>
> "Besides the fraud in proceeding in this suit after the settlements, the record itself, which contains, as required by the Code of Kentucky,

the documents on which the suit is founded, shows that the cause of action on which the suit of Davis was based, was utterly without foundation in law or the principles of law and equity, as acknowledged in all countries and recognized as the *jus gentium.* This is so evident that it is impossible to avoid the conviction that these judgments in Kentucky must have been procured by fraud or misrepresenting the facts contained in the record when moving for judgment."

* * * * * * *

"On such a record, no judgment could be obtained without fraud or imposition on the Court. This fraud is a defence to the judgment. Had it been positively shown, by such proof as would overcome this presumption, that this error had been committed by the Court by mistake or perverseness, it might not have affected the judgment in this collateral way."

We submit that in the case at bar this agreement is so utterly unfair to Gloria in the principles of law and equity, as acknowledged in all countries and recognized as the *jus gentium,* that it is impossible to avoid the conviction that the decrees could only have been obtained by fraud or imposition on the Naples court.

IV.

In considering this agreement and these decrees of October 21, 1921, and June 16, 1922, the reaction of the proponents of this agreement and of this Naples Court, after the attack on these Naples proceedings was under way in this New Jersey case, is most interesting.

There are five decrees proven in this case, made by the Naples Court subsequently to the approval of this agreement:

December 28, 1923—Exhibit C11, page 310.
June 13, 1924—Exhibit C10, page 304.
August 21, 1925—Exhibit C13, page 327.
July 10, 1926—Exhibit G.C.20, page 419.
September 8, 1926—Exhibit G.C.21, page 422.

The decree of December 28, 1923 (Exhibit C11, page 310) continued Mrs. Caruso as administratrix of Gloria's estate on her marriage to Mr. Ingram. It was made before the Naples Court had knowledge of this New Jersey litigation. Mrs. Caruso still claims her unrestricted mother's usufruct in one-half of Gloria's allotment of Victor royalties, notwithstanding this decree, and the members of Gloria's family council, who are in this case, and Gloria's counsel in Italy (Mr. Consolazio) have in no way set up that she is not entitled to it.

In the petition for the decree of June 13, 1924 (Exhibit C11, page 304) is the following statement:

> "That in a deed by Notary Vincenzo Sanseverino of Naples, dated June 7th, 1922, and approved by Part I of this Hon. Tribunal on June 16th, 1922, it was decreed to proceed—among other things—to the sale of the art collections also belonging to the estate of Enrico Caruso and it was agreed that the receipts—after the

expenses have been deducted—should be divided in the agreed proportions—that is to say: half to Gloria Caruso and the other half in four equal parts to the other four heirs—that the royalties of 10% from the gramophone records due to the heirs were also divided in the above proportions. But since it is impossible to decide justly whether said royalties are capital or income, and therefore whether they should go to the mother or be invested in the minor's name, under pupillary restrictions, it was—with the aforesaid deed—established that half of said royalties attributed to Gloria should be considered capital and therefore invested in her name for the property, and that the interest on it should go to the mother; while the other half is attributed absolutely to the mother as an income until the daughter comes of age.

That said 10% on the annual receipts of the sale of Mr. Caruso's records is given individually to the heirs by the Victor Talking Machine Company directly."

It is to be noted that this petition was made after the marriage of Dorothy P. B. Caruso to Mr. Ingram by which she lost her *mother's* usufruct. Notwithstanding this, this statement shows that in the opinion of Mr. Consolazio the agreement provision was that "while the other half" (of Gloria's allotment) "is attached *absolutely* to the *mother* as an income until the daughter comes of age." In other words, was not lost on her re-marriage.

As we have argued, this is far beyond the Italian right of *mother's* usufruct which should have been lost on her re-marriage.

The decree of August 21, 1925 (Exhibit C13, p. 327) is most interesting.

It is made on the petition of Mrs. Caruso in her own name and as mother and administratrix of Gloria.

With this petition there was presented to the Court a sworn to opinion of one Professor Grippo (Exhibit C12, p. 313).

Grippo says, on page 315:

> "From this provision it follows, that even if the minor Gloria Caruso, by reason of par. 188 of the civil code, could have impugned the recognition of the natural sons of Caruso, actually she cannot maintain such an action, because she is precluded by the fact that she has acknowledged their quality and the right to inherit by the force of the agreement of settlement and division above named."

This needs no comment by us. Gloria cannot be estopped by any action of her agent.

Bunting v. Bunting, 87 N. J. Eq. 20;
Graves v. Graves, 94 N. J. Eq. 268;
Middleditch v. Williams, 47 N. J. Eq. 585;
Hollingshead v. Hollingshead, 91 N. J. Eq. 261, 265.

On page 320 he says:

> "The recognition of a natural son made by the father or the mother is irrevocable, because it fixes the STATUS OF THE CHILD WHICH cannot depend from the changeable will of the parent. The Court of Cassation in Naples, on my plea, decided in the suit *Mennani v. Spagnuolo,* that the recognition of the natural daughter made by Mr. Mennuni with his will, could not be revoked by another later testament.
>
> The testament should have its value with regard to the naming of heirs and legacies, but

could not destroy the recognition previously made.

It is important to consider that in the case of Caruso, the spontaneous, free, written and subscribed declarations made by himself, consist—beside the solemn and irrevocable act of recognition—of transfer in their name made by himself to the children, Rodolfo and Enrico, in their quality of recognized sons, in matters as Government Bonds, Insurance policies and in his wills, even in his last one, deposited in care of Vacchiettini, little before the birth of his legitimate daughter, and never revoked."

By this statement Grippo does not mean that the testamentary provisions of the will were not revoked, but he means that the recognition of the sons by this last will, and also by the general line of papers mentioned, was not revoked. This is an accurate statement.

Grippo further says that Gloria could not institute researches into the maternity of the sons for the purpose of having them declared adulterines because "Art 190 of the civ. code admits the researches of maternity, but in favor of the child who claims his status of child and not in favor of others for the purpose of destroying such status."

We have discussed this code provision *supra* in our discussion of Guarracino's opinion. Article 190 is there set forth, and all the articles are set out in the addenda to this brief. The language of the provision is so clear that we cannot conceive that the clause relied on by Grippo limits the first, except in cases of children claiming a certain motherhood. He certainly goes far beyond Guarracino's opinion. He cites no authorities. We believe he confuses cases involving an investigation of maternity with

those of paternity. Certainly the Naples Court in its decree of October 21, 1921, considered it open to research; and we have shown that Professor Brugi in his work and Vittorio Scialoja in his affidavit are positive on the question; and the code provision is clear.

In answering whether legal proofs exist which contradict the recognition of the sons.

Grippo agrees with us that Article 193 has no application, but denies that the Milan record, G.C.4, discloses judgments of adulterinity because the prosecution against Enrico Caruso for falsification of the birth certificates was non-prossed on account of the statute of limitations. But each of the Milan Courts and the prosecutor and the inquiring Judge states the facts which show that the boys are adulterines. And certainly these papers and the complaint of Ada Giachetti Botti, the letters of Enrico Caruso and the Urbaine petition and order are "a beginning of proof in writing or when the presumption and the clues resulting from already ascertained facts are sufficiently grave to determine their admission" (Article 190).

It seems to us that Grippo's whole discussion is a lawyer's brief to support the side of the proponents of the agreement.

From the angle of evidence in this case we do not see how the opinion of any of these, Scialoja, Guarracino or Grippo, is before this Court. It was the duty of the Administratrix in this probate proceedings transplanted into the Chancery Court to prove how these New Jersey assets should be distributed. They merely set up this agreement and we attack its enforcement or approval in New Jersey. Eliminating it, we have tried to prove how distribution should be made, and we asked below, and ask here, to submit depositions properly taken and admissible

to interpret these statutes, if they are not clear on their face.

Specifically Guarracino's *ex parte* opinion is not connected with the Naples proceeding. Grippo's *ex parte* opinion is connected up with an absolutely irrelevant, voluntary, irresponsible utterance by the Naples Court.

But we submit that Grippo's opinion is merely his own opinion of what the Italian Law ought to be in his opinion, not what it is in fact.

In *French Mutual v. United States Fidelity,* 203 Fed. 558 (1914), the Court said:

> "Experts in the French Law and in the insurance practices at Paris have been examined. They do not, in my judgment, profess to state what the Law of France or the usuages of Paris on this matter are. The individuals expressed their individual opinions as to what that law should be declared to be whenever the Courts of France are called upon to make a declaration on the subject or as to what should be the usuage of Paris whenever any usuage upon the subject shall be established. Sitting as a jury I find as a matter of fact that it is not proved that there is any applicable French Law or custom."

It is noticeable that Grippo goes beyond Guarracino, and the continual repeating of moral obligations on Gloria persuade us that neither believed all he said, and that these were partisan arguments rather than legal opinions.

This discussion of Grippo on this point seems academic and to have nothing to do with the case at bar, which is whether this agreement giving Gloria one-half of Enrico Caruso's estate and taking from her one-half of her allotment of Victor

royalties should be enforced in New Jersey, and if not, whether distribution of these royalties should be under Italian or New Jersey Law. Grippo's discussion is as to whether Gloria Caruso should have had, under Italian Law, all of the principal of Caruso's estate and three-fourths of the income, or a share of two-thirds the principal and one-half the income, which would have come to her if the sons had been recognizable and recognized. His discussion simply is as to the amount the agreement deprived her of, for he does not deny that the general provisions of the will were revoked. The real question, to justify the agreement, was whether or not the provisions of the will were revoked, and every one concedes that they were revoked, and therefore that Gloria was wronged by the agreement and decrees.

Grippo's opinion also states (page 324):

> "On the other hand, if the American Court refused to give execution (denying in other words the efficacy of that judgment and settlement) the mother and Messrs. Caruso could ask, in Italy, the recoupment of what they would lose on the proceeds derived from the records of the gramophone, share of proceeds which should go to them and instead would be entirely given to the minor Gloria. And such an action could be maintained by them by reason of the guaranty due to the co-heirs amongst each other (Art. 1035, civ. code). The Italian Law provides, beside, in case of eviction (total or partial loss) of an estate asset given to one of the co-heirs or co-tenants, that every co-heir is personally obliged to reimburse with his own share the other co-heir of the loss suffered by the latter by reason of said eviction. (Art. 1036, civ. code.)

On this petition the Naples Court in its opinion of August 21, 1925 (Exhibit C13, page 333) states (the translation uses the word "asserts") that it had authority under Italian Law to order distribution of the Victor royalties as in the agreement, and specifically those constituting Gloria's allotment; that the agreement was irrevocable and complied with all the forms of, and was regulated, on the basis of Italian Law and settled all the shares due each heir and regulated the division even in foreign lands "in order not to create disparity to the advantage of one and to the disadvantage of the other heirs which might give grounds to the latter to recoup themselves" (page 334).

By this last language the Court referred to and re-enforced the threat of Rodolfo Caruso, Enrico Caruso, Jr., and Giovanni Caruso that "they would proceed, without delay, against the property of her (Mrs. Caruso) and her daughter (Gloria) for the purpose of recovering what they would lose anywhere" as previously recited in the opinion (page 333).

In discussing whether greater care should have been taken of the interests of Gloria Caruso, the Court dismisses it as if the adulterinity of the boys was the sole question, and, of course, says that the maternity could not be attacked by Gloria, thus reversing its opinion of October 21, 1921, but whitewashing itself of neglect in this regard as to Gloria. But it does not even attempt to explain why Giovanni was given a share and why Gloria's share was reduced from two-thirds to one-half, when every one conceded that the testamentary provisions of the will were revoked and Gloria at the least was entitled to a two-third share of the principal.

An excerpt from this opinion reads as follows (at page 333):

"* * * The Victor Talking Machine Company not having, however, because of its situs in a different State, consented to recognize as fully binding the two decisions of this Tribunal and the agreement of the division, it became necessary to institute judicial proceedings before the Court of the State of New Jersey. This foreign Court, before deciding the merits of the question, appointed a guardian for the minor Gloria. The guardian, while proceeding with the examination of the Acts, prevented the widow from distributing to the heirs the income from the sale of the records, fearing that this would damage the interests of the minor. On the other hand, the co-heirs, Enrico and Giovanni Caruso, have intimated to the widow of Mr. Caruso that if within the term of three months they should not receive their shares, be it for the reason of complications, or for any other arbitrary change which eventually might be made in the already approved and executed agreement, they would proceed, without delay, against the property of her and her daughter, for the purpose of recovering what they may lose anywhere.

On these premises, the Tribunal asserts that the relief demanded by Mrs. Caruso to be authorized, also as representative of the minor child Gloria Caruso, to give to the different heirs in proportion and according to the agreement dated June 7, 1922, all the income accruing from the Victor Talking Machine Company on the proceeds of the sale of the records, is but a logical and inevitable consequence of the agreement made among all those having the right to the estate of the late Enrico Caruso; said agreement, as it *concerned the rights of the*

minor child, Gloria Caruso, was according to the Italian laws which regulate her status *and capacity,* preceded by a project of agreement approved by this Court and was thereafter submitted to and approved by this Court by a decree dated June 16, 1922.

This new proceeding now might be called superfluous, if we consider the intrinsic and irrevocable efficacy of the agreement which complies with all the forms prescribed by our law (the only one applicable) and regulated in a definite manner all the different interests in Mr. Caruso's inheritance and settled furthermore all the shares due to each co-heir. Therefore there is only one rule which must regulate the division of the estate, no matter where it may be situated, even in foreign lands, in order not to create disparity to the advantage of one and to the disadvantage of the other heirs which might give grounds to the latter to recoup themselves. On the other hand the preceding decision of the Court in accord with the agreements contained in the instrument of division which it ratified, authorized especially the Victor Talking Machine Company specifically to pay directly to the different co-heirs the amounts due on the percentage belonging to the deceased on the proceeds of the sale of the records."

We respectfully submit that this petition and supporting opinion of Grippo and this opinion of the Court and its decree were a move to permit this Naples Court, backed by an opinion of a lawyer, to attempt to sustain itself, that nothing was at issue before it and it has no place in the consideration of this case except as showing the bias of this Court, its unwillingness to rectify its wrong to Gloria and

its desire to intimidate the Court of New Jersey with threatened evils.

In the maintenance proceedings was proven a letter dated February 26th, 1926, (page 521) written by Consolazio, who as attorney presented this petition to the Naples Court of August 11, 1925, to Mr. Seligsberg and by him forwarded to us in which Consolazio, among other things, says (page 523):

> "When the heirs agreed on the division of the entire estate, as per the deed before the Notary Sanseverino, not only was everything regulated by the Italian Law, but between the parties the rights and shares were fixed solely as a settlement. The minor children were legally represented and, therefore, it is no longer possible to reopen this matter in order to modify said division. In that division, made according to the Italian Law, the minor Gloria —her legal representation having been established—figured as of age and therefore today—she cannot in any way modify the deed to her advantage. The law does not allow her to do this. She cannot today, through any person, take away what has been assigned to her mother, by the deed of the Notary Sanseverino. Neither could she do it, because as I told you before, the Italian Law does not permit to the daughter to take away from her mother what erroneously is believed to be given for her maintenance, while in fact it belongs to the mother as her own right, called usufruct.
>
> And there cannot be excluded the fact that Mrs. Caruso agreed to the transaction by Notary Sanseverino with the knowledge that such an income was due to her.
>
> The final consideration, then, is that the President of the Tribunal of Naples formally

promised to Mrs. Caruso that he would enter a judgment recognizing her right to recover—from the estate of her daughter in Italy—all what would be taken away in America."

The *decree of September 8, 1926,* of the Naples Court (Exhibit G.C.21, page 422), was on a petition presented by Mrs. Caruso as mother and legitimate administratrix of Gloria by her attorney, Consolazio. By this decree it was ordered that Gloria's one-half of a debt due by Enrico Caruso during his life, her share amounting to 1,508,225 lire should be paid by a sale of enough of Gloria's bonds to pay same, and then the decree ordered that this sum should be re-capitalized out of the incomes of the remaining portion of Gloria's bonds. This decree is treated at length in the maintenance brief.

Shortly following this decree came the petition of Mrs. Caruso in this New Jersey Court stating that by virtue of this decree she had no receipts from Gloria's Italian incomes and that she had to apply to the New Jersey Court for means with which to support Gloria. As we argued in our maintenance brief, we believe that the purpose of this Naples petition and decree was to get the moneys of Gloria out of New Jersey into Italy by this scheme of capitalizing her Italian incomes and asking the New Jersey Court to support Gloria from the New Jersey funds.

The cases are so many in which an ancillary foreign Court, having jurisdiction over certain personal property, debts, chose in action all under the name moveables as distinguished from immoveables of a decedent, has been compelled to make distribution that established rules have developed into established law governing such action. We venture the statement that in no other case has a distinct

and clear-cut attempt to intimidate an ancillary Court with threats of recoupment against its parties ever before been made by a domiciliary Court.

Further considering the Naples Decree of 1925.

After Mrs. Caruso had knowledge of the proposed contest in New Jersey on behalf of Gloria she petitioned the Tribunal of Naples with the object of obtaining reaffirmance of the effect of the agreement of 1921 and the consequent decrees.

Notwithstanding she had alleged that there was a "conflict" of interest between herself and her daughter when the family agreement was signed and the decrees of 1921 and 1922 were entered, she petitioned for the said re-affirmance by counsel, *in her own name and in her name as administratrix of her minor daughter, Gloria Caruso* (Exhibit C-13A, State of Case, p. 327).

Quite irrespective of any "conflict" between the interests of mother and daughter in 1921, the 1925 step indicates a *conflict* at that time because the affidavit annexed to the petition for reaffirmance states (p. 324):

> "On the other hand, if the American Court refused to give execution (denying in other words the efficacy of that judgment and settlement) the mother and Messrs. Caruso could ask, in Italy, the recoupment of what they would lose on the proceeds derived from the records of the gramophone, share of proceeds which should go to them and instead would be entirely given to the minor Gloria."

At the time of this step, the Chancellor had given no intimation that New Jersey law was to be ap-

plied to the distribution of the assets in controversy, so that it is quite clear that the said affidavit then presented to the Tribunale refers to a *recoupment* of what the mother *would lose* if the agreement were not carried out, but if on the other hand, the provisions of the will giving the mother what the Italian intestate laws accorded her, were carried out.

Yet notwithstanding this condition of affairs, Mrs. Caruso called in no special curator to look after her daughter's interest and elected to push her gains under the agreement of 1921.

Obviously complainant requested this further hearing for the purpose of having the original decree *modified by approval,* and she was successful in that direction. Thus it is self-evident that if the Court had the power to modify the decree by approving or confirming it, it likewise had the power to modify it by annulling or rescinding it, notwithstanding the petition alleged that "there is no doubt that the act of division of June 7, 1921 (1922) is neither discussable or impugnable." The Tribunale, however, did not encourage a theory that the agreement was not discussable as it went into a lengthy discussion, of some 2000 words, upon the subject in general.

While the 1925 decree was sought for the obvious purpose of influencing the decision of the New Jersey Chancellor, no notice of the intended step was given to the guardian *ad litem* in New Jersey, who was in ignorance of it until a copy of the decree was produced here, and not only was this done behind the back of the guardian *ad litem* in New Jersey but if the special curator appointed in 1922 is supposed to still function—it, likewise, was done behind his back, because the records show that Mrs. Caruso alone was before the Court.

The Tribunale in a lengthy opinion determined

that in view of its conclusions of law, the effects of the agreement and original decree should be approved. We disagree diametrically with the conclusions of law arrived at and propose to prove, if permitted to issue commissions to Italy, that the conclusions are erroneous.

This petition (State of Case, p. 327) on p. 329, among other things, alleged that:

> "The guardian (meaning the guardian *ad litem* in New Jersey) proceeding to the examination of the acts, prevented the petitioner from distributing to the heirs the income derived from the sale of the records, because he feared that this would damage the interests of the minor, Gloria."

And the petition concludes by requesting (p. 331):

> "The Tribunal to authorize Mrs. Dorothy Benjamin, widow of Enrico Caruso, without any responsibility, to pay to all the heirs of the deceased Enrico Caruso in proportion and according to the agreement of June 7, 1921, all the proceeds from the Victor Talking Machine Company, beside the other assets belonging to said estate, in the United States of America."

This petition was accompanied by a questionnaire submitted, *ex parte,* to a Naples lawyer, Grippo, who expatiates upon the law from his point of view and argues in support of the agreement and the decree of 1922 (the agreement was June 7, 1922). In fact, it seems a general discussion of the subject.

This action before the Naples Court, however, is very serviceable in the respect that it incontrovertibly shows that the decrees of 1921 and 1922 are not final ones, such as might be entitled to foreign recognition if it had been entered by a court of com-

petent jurisdiction. But it is difficult to see what other useful purpose is served by it.

The recitals of the decree of 1925 follow many of the points raised in the questionnaire, but the decree itself merely

> "authorizes Mrs. Dorothy Benjamin, widow of Mr. Enrico Caruso, without any responsibility on her part, to pay to all heirs of the deceased Enrico Caruso in proportion and according to the contract of June 7, 1922, all the proceeds due from the Victor Talking Machine Company and also the other assets belonging to said estate and existing in the United States of America."

But the decree of June 16, 1922, authorized the Victor Company to pay the royalties in the same manner and proportion as does the 1925 decree. While it is true that the latter one authorized Mrs. Caruso to make the distribution instead of the Victor Company, nevertheless the petition upon which the decree was entered clearly made it of record that the company had not paid to Mrs. Caruso, who has nothing to distribute (p. 329). And thus the decree very naively authorizes Mrs. Caruso to pay what she could not collect.

Therefore, it appears that the object of the petitioner was to bring before the Court circumstances and points of law, particularly the position taken by the New Jersey guardian *ad litem,* which would form a ground for a re-affirmance of the prior conclusion; but she took no chance of affording the guardian *ad litem* in New Jersey an opportunity to defend the ward's interest.

In this connection we state that we made formal application to the Chancellor, on behalf of the guardian *ad litem* of Gloria Caruso to secure his ap-

proval of taking steps in Italian Courts with the purpose of securing Gloria's rights in her New Jersey assets, but could not gain his approval. This application was made *ex parte* under the authority of *Middleditch v. Williams,* 47 N. J. Eq. 585; *Bunting v. Bunting,* 87 N. J. Eq. 20, and *Graves v. Graves,* 94 N. J. Eq. 268. These cases show the active protection given by the New Jersey Courts to an infant's rights.

We respectfully submit that these subsequent proceedings in the Naples Court show an absolutely unique attempt by this Naples Court to explain and bolster up its decrees and to favor the proponents of this agreement to the detriment of Gloria—an infant in its hands whose natural protectors are its own appointees as family council for her, and are combined against her.

V.

The question remains what should the New Jersey Court do in this matter?

We believe that the possible courses open are:

First. To refuse to enforce this agreement or recognize these decrees and itself determine the Italian Law and distribute under it.

We believe this is the course that should be pursued; Enrico Caruso died domiciled in Italy, and Italian Law should determine the distribution of, and the succession to, his estate; but we submit that this agreement and these Naples decrees are absolute nullities in this court and they do not tell us what the Italian Law of inheritance is, and therefore the New Jersey courts should themselves determine it and distribute under it. It is to be noted that there is no dispute as to what Italian Law is except as to the adulterinity of Rodolfo and Enrico Caruso.

At the hearing we asked the Chancellor to permit us to issue commissions to procure testimony as to the Italian Law. This he refused, notwithstanding interrogatories in point had been drafted and submitted to opposing counsel for their cross-interrogatories. It is to be noted that by his opinion in the maintenance proceeding (State of Case, p. 117), the Chancellor had intimated how he would decide the case on final hearing. Therefore we have no complaint to make that he refused to permit us to do so when its only effect would have been to allow us to prepare a case for this Appellate Court, of importance only if this Court should reverse him. The very great expense to both sides, involving expert witnesses, was such an item as would even warrant us in asking this Court to first consider the Chancellor's opinion before *requiring* us to undertake it.

But we respectfully submit that if this Court does not affirm the Chancellor, we should be given the opportunity to prove the Italian law as shown in the affidavit and opinion of Vittorio Scialoja, which we submit herewith as part of our brief, the affidavit having been filed in the maintenance proceedings.

Second. To refuse to enforce this agreement or recognize these decrees and distribute under New Jersey law.

This is the position the Chancellor intimated he would take in his opinion on the maintenance petition and took in the final decree.

This raises the question whether distribution should be made under Italian or New Jersey law, having regard to all the facts in this case and considering that the Naples agreement is not to be enforced or the Naples decrees recognized.

(a) We believe that this depends on the view the New Jersey Court takes of this Naples performance.

If it is looked at that these Naples consent decrees are the acts of the parties, made without scrutiny by the Court and do not represent the considered opinion of that Court; that they are the usual consent decrees common except where infants are involved, in our own courts; that the Naples Court merely wielded a rubber stamp at the request of the proponents of this agreement, without seriously viewing the case or the agreement presented to it or considering the rights of Gloria Caruso or applying Italian Law; or if it believes that the decrees are fraudulent as to Gloria Caruso or were part of a fraudulent scheme to deprive her of her property, then the decrees do not represent Italian Law. The fault is not with it and Italian Law should be enforced in this distribution.

But if the New Jersey Court considers that these decrees are serious pronouncements of Italian Law and jurisprudence by this Naples Court, then we believe that distribution must be under New Jersey law.

(b) It is true that the decrees are the approval of a so-called family settlement and therefore are not strictly statements of what Italian Law is, but nevertheless they are held out by proponents as being entitled to conclusive effect as evidence of what that Italian Law permits to be done and therefore what it is, and the agreement and decrees are stated by the Naples Court itself in its white-washing opinion of August 21, 1925, as being based on, regulated by, and in accordance with, Italian Law and as having settled the shares of each heir and being conclusive as regulating the division of the estate of Enrico Caruso.

A difficulty is that courts, as we in New Jersey know them, do not lend themselves as rubber stamps to carry out the wishes of the adult members of a family as against an infant sole distributee.

Another difficulty is that these decrees are not the work of a single jurist, made on a single occasion, but show the decisions of a number of judges at times far apart. In other words, the Naples Court itself acted as if it believed it was expounding Italian Law and so expressly states in its effusion of August 21, 1925.

The decrees of October 21, 1921, authorizing an agreement and the decree of June 16, 1922, approving this specific agreement were eight months apart.

The judges who signed the decrees are as follows:

Decree, October 21, 1921 (C8, p. 291), d'Aquino, P. J., and Judges Silvio and Masucci.

Decree, June 10, 1922 (C9, p. 302), d'Aquino, P. J., and Judges Silvio and d'Ambrosio.

Decree, December 18, 1923 (C11, p. 312), Azzariti, P. J., and Judges Carlizzi and d'Ambrosio.

Decree, August 21, 1925 (C13, p. 338), Azzariti, P. J., and Judges Ciotola and Caliendo.

Decree, July 10, 1926 (G.C.20, p. 421), Azzariti, P. J., and Judges Novelli and Caliendo.

Decree, September 8, 1926 (G.C.21, p. 430), Azzariti, P. J., and Judges Ciotola and Falciona.

It is a little difficult to argue that decrees so made are fraudulent, or entered into with prejudice, or are rubber stamping decrees, and if such averments cannot prevail against them, then it is not the Court and the decrees which are at fault, but the Italian Law itself or the customary application of it by its courts, which is the Italian jurisprudence which we are seeking, and it itself is at fault and our New Jersey courts then cannot recognize it and must distribute under New Jersey Law.

(c) In considering this it must not be lost sight of that in our opinion Italian Law is much to the advantage of Gloria Caruso over New Jersey Law.

Under Italian Law we believe Gloria Caruso is entitled to all of Enrico Caruso's estate less Mrs. Caruso's right for life to one-fourth of the incomes, and that the Victor royalties are principal and therefore that one-fourth of them should be invested during her life, the incomes being distributable to Mrs. Caruso or else that they should be apportioned by a valuation of the contract.

Under New Jersey Law, Gloria would receive two-thirds of these royalties only.

It would seem a hardship to Gloria that this Naples performance, although set aside, yet should result in loss to her.

(d) Are these decrees serious pronouncements of Italian Law?

That they are is the contention of the proponents of this agreement, but it is extremely difficult for us, as we will show, to believe that this position is sound.

Considering these decrees as serious pronouncements of Italian Law.

First. Is there, then, any law in Italy on this subject which is settled and established—a rule not an haphazard action, depending on the whim of a particular court. If there is none, then this distribution must be under New Jersey Law for there is no domiciliary Italian Law for the New Jersey Court to apply.

There is unquestionably a body of written laws called the various Codes but as the New Jersey ancillary court must enforce the whole Italian jurisprudence relating to the subject, the question arises

whether these codes are so uniformly interpreted and universally enforced as to make it a set of fixed rules.

Certainly the Naples decrees and performance in this case show that there is not.

If these decrees are to be taken seriously as information of what Italian law is then they tell us:

That under Italian Law an infant's nearest relatives, her natural protectors, recognized as standing in such a position to her as subsequently to be appointed by a court as her family council, can divide up her rights of succession to her deceased father's estate among themselves. That Italian Law allows it.

That Italian Law permits its courts to distribute the assets of a decedent without regard to the scheme of distribution provided for by the Italian Code, and according to its own whim, without any fixed rule.

That Italian Law permits its courts, contrary to its code provisions, to distribute a decedent's estate according to what it believes to be the wishes of a decedent although there is no will.

That Italian Law permits its courts to ignore its code provisions and to distribute a decedent's estate under a will although that will has been revoked.

That Italian Law gives no protection to an infant in her property rights.

That Italian Law permits property rights to be waived for an infant to her nearest relatives without any consideration.

That Italian Law permits its courts to consider that its law giving a mother usufruct in her daughter's incomes extends to assets of the minor in New Jersey, particularly where the mother and child are residents and citizens of New York, and gives its courts the right to enforce such right.

That Italian Law permits its courts to approve an agreement which allows a mother to agree with her minor child that the mother can take as her own, the child's income, during the child's minority, and irrespective of whether she supports the child or neglects her, or remarries, although the Italian Code expressly provides otherwise.

That Italian Law permits a mother to agree with her infant daughter that under the guise of mother's parental usufruct the mother can take as if income that which is principal of the daughter's estate.

That notwithstanding the code provision giving exclusive jurisdiction to the Court of domicile of a decedent, over the succession of his estate a Court of another jurisdiction can assume it and continue to exercise it after having knowledge of the domicile.

That Italian Law permits its courts which have arrived at a scheme of distribution of a decedent's estate to threaten a foreign court that if the foreign court does not apply its scheme to assets in the control of the foreign court it will reimburse the losses from the assets in its hands.

Second. If these decrees show a fixed settled and staple Italian jurisprudence then the jurisprudence which they show is so utterly at variance with and violative of New Jersey public policy as to be unenforceable by a New Jersey Court, and distribution must be under New Jersey Law.

And it must not be forgotten that this agreement and these decrees include, as one of the component parts of a single, entire scheme of distribution of Enrico Caruso's estate, a reaching into Gloria Caruso's estate and giving part of Gloria's New Jersey assets to her mother, Mrs. Caruso, without any consideration.

Third. But is it possible for the courts of one of the civilized countries to thus view Italian jurisprudence? Is it not certain that justice is administered in Italy under a code of laws with a practice and procedure which insures safety and protects property? That there is a staple and sound and certain Italian jurisprudence which does not rest on the whim of a court and the bias and fancy of a judge or set of judges?

Is it not almost preposterous for us to seriously regard an agreement and decrees and argument based on them, which would in themselves argue that we must look otherwise at Italian jurisprudence?

Suppose this performance had taken place in New York or Massachusetts, we believe that if it were presented to a New Jersey Court for enforcement by it, even against the constitutional mandate the New Jersey Court would refuse to countenance it, by enforcement. But in such instance would not our Court consider that the Massachusetts or New York Court could only have rendered the decree if imposed upon, no matter how clearly the foreign record showed the contrary, and would itself interpret the law of that foreign state and enforce that foreign law. It seems to us that that is exactly the force of Chancellor Zabriskie's decision in *Davis v. Headley,* 22 N. J. Eq. 115, quoted *supra.*

It must not be forgotten that this Italian performance was not an application of Italian Law, but merely an exercise of judicial discretion by the Naples Court. Suppose a motion were made for judgment notwithstanding an affidavit of merits, or for the dismissal of a bill in equity, or for decree notwithstanding an answer filed and the parties all agreed on a certain action of the Court, such action would be a consent decree and would not be looked upon as an adjudication of the law which was in-

volved in the litigation and why in examining this Italian matter, should we consider that we have to accept these Naples decrees as interpretation of Italian Law, when they are not so in fact.

Certainly it has never been in the minds of us, who sign this brief, that Italy's justice is on a plane with some uncivilized country where fixed rules do not exist and whose jurisprudence it is impossible to discover and therefore to enforce, or if discoverable would not be enforced by our courts because so adverse to our sense of fairness and right.

MARTIN V. BERGEN,
Solicitor and of Counsel with the Guardian ad Litem of Gloria Caruso.
MARCEL A. VITI,
DEWITT C. ROBINSON,
Of Counsel.

Translation of a letter of Professor Vittorio Scialoja dated Rome, Italy, June 9, 1927.

I have attentively examined the memorandum and all the other records and documents sent to me by Avv. Viti in the interest of Gloria Caruso: I observe first of all that the interests of Gloria Caruso undoubtedly have been damaged by the transaction of Naples, confirmed by the Tribunal of Naples and that, therefore, the guardian *ad litem* of the minor Gloria justly opposes recognition of the Naples agreement on the part of the Court of the State of New Jersey.

I premise that the will of Enrico Caruso of 1919, in favor of his brother Giovanni, the natural sons Rodolfo and Enrico, has been nullified, according to the provisions of art. 888, civ. code. after the birth of the daughter Gloria, and I premise therefore that the inheritance of Enrico Caruso must be considered opened *ad intestato,* and it is easy to point out that; by the agreement of Naples there has been assigned to the brother of Enrico Caruso, Giovanni, a one-eighth part of the patrimony of the deceased tenor, where as Giovanni Caruso did not have any right in the *ad intestato* succession of Enrico Caruso to which the legitimate daughter Gloria succeeded by law to all the patrimony. By the agreement of Naples there was furthermore given to the mother of Gloria, surviving spouse, a one-eighth in property of the inheritable goods, whilst Signora Park Benjamin had only a right of the usufruct of one-fourth of the estate left by the husband (art. 753, civ. code.). And the difference between the treatment which should have come to the surviving spouse and that really obtained with the agreement of Naples is enormous in the division of things,

especially given the existence in the patrimony of the rights growing out of the contract made by the tenor Caruso with the Victor Talking Machine Company. I observe also in regard to this last contract that I hold to be exact the thesis sustained by the defenders of Gloria Caruso, which is, that the contract in question puts in being a true and proper sale of the right to reproduce the voice of the tenor Caruso and that, consequently, the sums received, first by the tenor and now by the heirs, from the profits from the sales of the discs cannot be considered as income or interest but must be considered as part of the capital. It is not lawful therefore according to my view, for the Signora Park to use these preventi as fruits of the capital of the daughter's property. I note, however, that, in any case, according to art. 232, civ. code. a surviving spouse contracting a second marriage loses the legal usufruct from the estate of the minor child and must render account of the income received as soon as the said child shall have arrived at the age of majority. For what respects the natural children the damage coming to Gloria Caruso through the agreement of Naples seems to me, also, most evident. I declare first of all that from an examination of all the records and the documents sent to me, and especially from the examination of the penal decision between the deceased tenor and Signora Giachetti Botti, it seems to me that the maternity of the natural sons of the tenor Rodolfo and Enrico follows as evident. We find ourselves, therefore, in the sub-division of things foreseen and regulated by art. 193. n. 2, civ. code. which is, a case of adulterinity which results indirectly from a penal decision. It seems to me, therefore, that Rodolfo and Enrico Caruso, given their adulterine birth, cannot, because of the provisions

of art. 767 civ. code, receive any part of the paternal inheritance, and I observe, besides, *ad aboundatiam*, that in Italy doctrine and jurisprudence unanimously allow a research of maternity in case of art. 193. n. 2, civ. code. and this even to the damage of the adulterine children themselves and in favor of the legitimate children. The considerations then of the Tribunal of Naples for what regards the adulterinity of Rodolfo and Enrico Caruso have not according to me, any value, given that the said Tribunal did not have present the penal decision from which the adulterinity follows. In conclusion it is my opinion that the agreement of Naples assigning to the natural children of Caruso two-eighths of the patrimony has damaged Gloria Caruso because the natural children, being adulterines, would have a right only to alimony, and in the assignment of such alimony there would have had to be taken into account all that they had received from their father during his life. I have thus shown by (*somni capi*) the damage received by Gloria Caruso and the consequent interest that the guardian *ad litem* of the said minor has in nullifying the agreement of Naples in the relations with the Court of New Jersey; it seems to me that the said Court cannot give execution in the State of New Jersey to the agreement confirmed by the Tribunal of Naples.

The guardian *ad litem* of the minor Gloria Caruso could, indeed justly sustain the absolute nullity of the said agreement because it is confirmed by an incompetent court. According to Italian Law The Family Council which must assist a minor, must be nominated by the Pretore of the place where the minor has the greatest affairs (art. 249, civ. code.) and all the court approvals regarding acts done by the minor must be made always by the Tribunal of the place where the minor has the greatest affairs.

In the division of things it seems clear that the seat of the greatest affairs of the minor Gloria certainly was not Naples and, therefore, the approval of the agreement made by the Tribunal of Naples, as also the nomination of the special guardian made by said Tribunal, are certainly and absolutely nuli. Moreover, I observe that on the subject the competency is not prorogable, that is, cannot be entered by the relative provisions of a judge other than the one indicated by the law and that all acts coming from an incompetent judge are inefficacious.

It seems to me, therefore, that the Court of New Jersey, knowing the nullity that contaminates the agreement of Naples and the relative confirmation, knowing the nullity of the nomination of the special guardian Canessa, who was in conflict of interest with little Gloria and knowing the damage which the agreement of Naples brings to this latter, must declare that the said agreement and all the relative provisions of the Tribunal of Naples cannot bind it at all, because all the said provisions have come from a judge incompetent to issue them.

I regard it useful nevertheless that Gloria Caruso asks in Italy the annullment of the agreement of Naples, given, that the said agreement up to the time it is nullified, is binding upon the minor.

It is my opinion moreover that the Victor Company cannot give any sum to the mother of Gloria Caruso because the goods in Italy are more than sufficient to assure what is necessary for the maintenance and the education of the little child. Rome, 9, June, 1927.

Sgd.

Vittorio Scialoja.

Translation of Affidavit of Professor Vittorio Scialoja.

Avv. Prof. Vittorio Scialoja,
Senatore Del Regno.
Piazza Grazioli N. 5 (Palazzo Doria),
Rome.

August 2, 1921, Enrico Caruso, the tenor, died at Naples. In the personal valise of the deceased, there was found, amongst other things, the will by which the tenor constituted as heirs the two natural sons, Rodolfo and Enrico, and the brother Giovanni, and left to the wife, Dorothea Benjamin, "the share which Italian Law gives her." The will bore date of January 4, 1919, and that is to say prior to the birth of the sole legitimate daughter of the tenor, Gloria, and according to Article 888 Italian Civil Code must therefore be considered as revoked by law.

Successively, instead, there was reached between the natural sons of Caruso, the brother of the same, the wife and the daughter Gloria (for whom a special guardian had been named), the division of June 7, 1922, by virtue of which there was assigned to the legitimate daughter Gloria, one-half of the paternal patrimony, plus some objects and 500,000 lire in cash, and the other half of the patrimony was divided into four equal parts between the two natural sons, the wife, and the brother of the tenor.

Making use of this division, authorized by the Tribunal of Naples, with decree of October 21, 1921, the Signora Benjamin who had contracted a second marriage, conserving, however, the legal usufruct of the goods of the daughter, Gloria, asks the Court

of New Jersey in whose jurisdiction goods left by the tenor, Caruso, are situated, the power to deduct a part of the said goods to provide for the maintenance of the said daughter.

Asked as to the admissibility of this deduction on the part of Signora Benjamin I have examined attentively all the records and documents put at my disposal.

The Court of New Jersey cannot, according to my view, accord to Signora Benjamin the power to deduct any of the goods, left by the tenor, Caruso, and situated in the jurisdiction of said Court for the maintenance and education of the daughter Gloria.

It is necessary above all to note the behaviour of Signora Benjamin in confrontation with the daughter Gloria.

As I have already called to mind, the will of Enrico Caruso of 1919 could not have any value at his death in 1921, having been revoked by the subsequent birth of the legitimate daughter Gloria. Article 888 of the Italian Civil Code clearly provides in this respect that " the provisions by universal or particular title made by one who at the date of the will did not have or was in ignorance of having children or descendants, are revoked by law by the existence or the happening of a *child or legitimate descendant of the testator,* although posthumous, legitimatized or adopted. The same things take place even though the child was *perhaps conceived at the time of the will* * * *"

Therefore, at the death of the tenor, his estate must be considered opened *ad intestato* with these clear consequences; I). No right of Giovanni Caruso upon the patrimony of the deceased brother. II). No right of the natural sons recognized by the tenor, Rodolfo and Enrico, because adulterines; result in

effect from irrefutable proof growing out of a penal decision that Rodolfo and Enrico Caruso are children of Enrico Caruso and a Signora Giachetti, married at the time of their birth to Signor Botti, therefore we treat of children of whom the law does not admit recognition (Art. 180, Italian Civil Code) and who, as such, cannot have any right on the paternal patrimony excepting alimony. (Art. 752, Italian Civil Code) III.) A right of usufruct of one-fourth of the property to Signora Benjamin surviving spouse of Enrico Caruso. (Art. 753, Italian Civil Code.)

Instead, by the division made at Naples between the natural sons of Caruso, the brother Giovanni, the wife Signora Benjamin and the daughter, Gloria, represented by a guardian who, as appears from the same deed of division, was in conflict of interest with the minor, there was assigned three-eighths of the patrimony to the natural children and to the brother Giovanni, who did not have any right, and an eighth of property was assigned to Signora Benjamin who had only a right to one-quarter of the usufruct of the property.

The authorization then of this division, ruinous for the interests of Gloria Caruso, was requested, not by the Tribunal of Florence, where the major part of the goods of Caruso were and where, therefore was his domicile * * * (Art. 16, Italian Civil Code), but was requested from the Tribunal of Naples where certainly the deceased did not have his domicile, and was only transiently, so much as that he died in a hotel. This authorization not given by the competent Tribunal the place of the last domicile of the deceased (Art. 923, Italian Civil Code) brings according to Italian Law absolute nullity of the decree of authorization and the division

in confrontation with the minor Gloria Caruso and can, at any moment, be annulled.

Signora Benjamin, moreover, making a second marriage, lost the legal usufruct of the goods of her daughter, according to Article 232, Italian Civil Code. Signora Benjamin instead, caused a Family Council to be constituted for the daughter Gloria, according to Art. 237, Italian Civil Code, and it authorized her to conserve the administration of the goods of the daughter, but the Family Council was constituted at Naples, and not under the Pretore of Florence where there was the principal place of the affairs of Gloria, as Art. 249, Italian Civil Code prescribes, which brings nullity to each of its deliberations.

All that I have exposed up to now proves the most remarkable damage caused to her daughter Gloria by Signora Benjamin, also for her own personal advantage, and constitutes the strongest element according to my view, for denying Signora Benjamin any right of deduction from the goods existing in New Jersey.

But apart from that it is sufficient to examine the deed of division of Naples of the 7th of June, 1922, to see that to Gloria Caruso there were assigned goods in Italy of some ten millions, of which much was cash, now it is absolutely impossible that the income from this very great sum, of which Signora Benjamin has the administration, is not sufficient for the maintenance and the education of the little child. It must not be forgotten that it is the custom, prevalent in juridical authority of all countries to use for the maintenance and education of the minor, first of all the goods which are at his domicile and afterwards those more distant. There must first be destined for the education of Gloria

the goods which she has in Italy and precisely at Florence, and were these perhaps not sufficient, the goods in New Jersey.

It is needful in conclusion to observe that the goods left by Caruso in New Jersey are made up of a percentage which the Victor Talking Machine Company must answer for from the sums received from the sale of discs reproducing the voice of the deceased tenor. Now, this percentage does not constitute interest on a capital but part of the capital itself constituted from the right to reproduce the voice of Caruso belonging to the Victor Company and it is absurd to cut into, for the maintenance of little Gloria, inherited capital when there is an income on some ten millions of goods which is more than sufficient to the end.

I hold, therefore, that the Court of New Jersey will not accord to Signora Benjamin any deduction from the goods left by the tenor Caruso in New Jersey also to avoid the danger of distractions and dissipations of the said goods.

(Signed)
Vittorio Scialoja.

Kingdom of Italy, City of Rome, Consulate General of the United States of America.) SS. (

Subscribed to and sworn before me this sixth day of February, 1928.

(Signed) Leon Dominian
Consul of the United States of America at Rome, Italy.

ADDENDA.

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ADDENDA

Section "A."

(Francesco Ricci, 10 Vol., Theoretical Practical Course of Civil Law.)

126. Il principio proclamato dall'articolo 8 in esame e applicable, qualunque sia la specia di successione, testata cioe o intestata, ovumque essa si apra e in qualunque luogo si trovano i beni sostituenti il compendio ereditario, perche il legislatore non ha riguardo ad alcuna di queste circonstanze, guarda solo alla nazionalita del de cujus. Laonde, se la successione di un francese si apra in Italia, ove esso ebbe il suo ultimo domicilio, ed i beni si trova in Inghilterra, i nostri magistrati, ove siano chiamati a pronunciare su azioni relative all'aperta successione, non applicaranno ne le nostre legge ne quelle inglesi; ma la legge francese che e la legge nazionale del de cujus.

Questa stessa legge e applicable dai nostri magistrati, qualunque sia la legge vigente nel luogo in cui si trovano i beni ereditarii.

Section "B."

(Cesare Losano, Provisions Common to Legitimate and Testamentary Successions, page 9, Sec. 7.)

Secondoche vedemmo, l'apertura della successione e concetto puramente giuridico ed astratto, onde, a tutto rigore, non sarebbe possibile parlare di luogo ov'essa avvenga, che presuppone una cosa materiale. Siccome pero l'apertura della successione puo

dar origine ad atti e ad azioni giudiziarie, ed era opportuno e ragionevole che questi si compiessero e si esercitassero ove si trovava la sede principale degli affari e degli interessi del defunto, cioe al suo ultimo domicilio; la legge, definito il tempo, assegna pure il luogo dell'aparta successione, fissandolo precisamente ove il defunto teneva il suo ultimo domicilio.

Section "C."

(Pacifici-Mazzoni, Laws of Succession, Vol. 1, p. 65.)

La successione si apre e deferisce nel luogo dell-'ultimo domicilio della persona a cui appartione, attesa l'intima e immediata connessione che essa ha colla medesima persona * * *

Deriva da tale principio, che quando il domicilio del defunto si trova n nel Regno, debbano essere promosse avanti il tribunale del circondario in cui il domicilio si trova.

Section "D."

(Italian Civil Code.)

"Art. 923. La successione si apre al momento della morte nel luogo dell'ultimo domicilio del defunto."

Section "E."

(Italian Civil Code.)

Si propongono davanti l'autorita giudiziaria del luogo dell'aperta successione (c. civ. 923).

1. Le azioni in petizione o divisione dell'eredita e qualunque altra tra coeredi sino alla divisione (882 s.: c. civ. 984 s.).

2. Le azioni in rescissione della divisione gia fatta (c. civ. 1038 s.), o in garanzia delle quote assegnate (c. civ. 1034 s.) purche pro poste entro un biennio dalla divisione;

3. Le azioni contro l'esecutore testamentario (c. civ. 903 s.), purche proposte prima della divisione, c, se la divisione non sia necessaria, entro un biennio dall'aperta successione;

4. Le azioni dei legatari e dei creditori della credita che non esercitano diritto reale sopra un immobile, se siano proposte nei, termini indicati nel numero precedente.

Quando la successione siasi aperta fuori del regno si propongone davanti l'autorita giudiziaria del luogo in ciu e posta la maggior parte dei beni immobili o mobili da dividersi, e, in difetto, davanti quella del luogo in cui il convenuto ha domicilio o residenza.

Section "F."

(Barbers' Italian Civil Code, Bruno (9th Edition) Annotation to Article 16.)

Il *luogo,* di cui qui si parla, ha maggiore o minore estensione secondo la natura del diritto che si vuole esercitare e la legge cui esso si riferisce. E Pero' si estende a tutto il comune, al mandamento, al circondario o alla provincia, secondo che si tratti di materia relativa a diritti e doveri che si esercitano nel comune, o nell'ambito della qiurisdizione del pre-

tore o del tribunale, o finalmente di materia attinente alla provincia intiera (C. Roma, 31 luglio '82, pubblico Ministero c. Rubinacci, Traenza ed altri—C. S. R. '82, 803).

Non si puo' avere piu' un solo domicilio (A. Ancona, 13 dicembre '75, Fanucci c. Amministrazione del fondo del culto—L. '76, I, 274).

LAST WILL OF THE LATE MR. ENRICO CARUSO TRANSLATION FROM THE ITALIAN LANGUAGE.

To-day January the Fourth in the year Nineteen hundred nineteen here in New York United States of America of the North, I undersigned Enrico Caruso, son of the late Marcellino and the late Anna Baldini, sane of body and mind, annul with this my act whatever testament previously made and name with this act starting from to-day my universal heirs, my sons Rodolfo and Enrico and my brother Giovanni. To my wife Dorothy, born Benjamin, the part which the Italian law grants to her. My universal heirs will maintain with dignity until her death my step mother Maria Castaldi.

Signed: Enrico Caruso

Signed:
Bruno Zirato
17 East 38th Street
New York
Signed:
Salvatore Fucito
2025 Broadway,
New York

STATE OF NEW YORK COUNTY OF NEW YORK.

The above Enrico Caruso, Bruno Zirato and Salvatore Fucito signed this before me this Fourth day of January, 1919—Signed Constant J. Sperco, Notary Public, N. Y. County 363.—

TRANSLATION.

CIVIL CODE OF THE KINGDOM OF ITALY.

BOOK I.
OF PERSONS.

TITLE II.
OF CIVIL DOMICILE AND OF RESIDENCE.

Art. 16. The civil domicile of a person is in the locality in which he has the principal seat of his own affairs and interests.

The residence is in the locality in which the person has his habitual habitation (original text, p. 621).

Art. 17. The removal of the residence to another locality with the intention of establishing there the principal seat causes change of domicile.

Such intention is proven by the double declaration made at the Bureau of Civil Status of the commune that is being abandoned, and at that of the commune in which the domicile is established, or with other facts that are sufficient to demonstrate it (the intention) (original text follows).

Art. 17. Il transferimento della residenza in un altro luogo coll' intenzione di fissarvi la sede principale produce cangiamento di domicilio.

Tale intenzione si prova colla doppia dichiarazione fatta all' uffizio dello stato civile del comune che si abbandona e a quello del comune in cui si lissa il domicilio, o con altri fatti che valgano a dimostraria.

Art. 18. The wife who is not legally separated, has the domicile of the husband; becoming a widow she maintains it, while she has not acquired another one.

The un-emancipated minor has the domicile of the father or of the mother or of the guardian.

The interdicted person of age has the domicile of the guardian (original text follows).

Art. 18. La moglie che non sia legalmente separata, ha il domicilio del marito; divenendo vedova lo conserva, linche' non ne abbia acquistato un altro.

Il minore non emancipato ha il domicilio del padre o della madre o del tutore.

Il maggiore interdetto ha il domicilio del tutore.

Art. 19. One can elect a special domicile for particular affairs or actions.

This election must appear from written proof (original text follows).

Art. 19. Si puo eleggere domicilio speciale per certi affari od atti. Quest'elezione deve risultare da prova scritta.

Book I. of Persons, Title VI. of Filiation, Chapter III. of children born out of wedlock.

Art. 179. A natural child can be recognized by

the father and by the mother as well jointly as separately (original text, page 621).

Art. 180. There cannot be recognized, however:

1st. Children born to persons of whom even one at the time of conception was bound in marriage to another person.

2. Children born from persons between whom matrimony could not exist by ties of relationship, or of affinity in straight infinite line or for ties of relationship in collateral line of the second degree (original text, p. 622).

Art. 181. The recognition of a natural child is made in the birth record, or by an authentic record before or after birth (original text, p. 622).

Art. 182. The recognition has no effect except for what rgeards the parent by whom it was made, and it does not give to the recognized child any rights toward the other parent.

Art. 183. The natural child of one of the husband or wife born before the marriage and recognized during the marriage, cannot be brought in the marital home without the consent of the other spouse, unless the latter had already given his, or her, consent to the recognition.

Art. 184. The parent who recognized the natural child has his legal guardianship during the minority.

If the recognition was made by both the parents, the guardianship belongs preferably to the father.

To this guardianship are applicable the provisions of Article 221 to 227, inc., and 233 (original text, p. 622).

Art. 185. The natural child assumes the family name of the parent who has recognized him, or that of the father if he has been recognized by both parents.

Art. 186. The parent has the duty to support, educate, instruct and train for a profession or an art the recognized natural child, and to furnish also afterwards the necessities of life in case of need, if the child has no spouse or descendants in condition to furnish them to him. Similar duty has the parent towards the legitimate descendants of the predeceased natural child, when the mother or the maternal ascendants are not in condition to provide for it (original text, p. 622).

Art. 187. The natural child owes the necessities of life to the parent, when he has no legitimate ascendants or descendants who are in a condition to furnish them to him.

Art. 188. The recognition can be contested by the child and by anyone who has interest therein (original text, p. 622).

Art. 189. The researches of the paternity (father) are not allowed, except in a case of carnal violence or of rape, when the time of its occurrence corresponds to that of the conception (original text, p. 622).

Art. 190. The researches of the maternity are allowed.

The child who claims the mother must prove to be identically the same one who was born from her. It is not, however, admitted the proof by witnesses, unless there is already a

beginning of proof in writing, or when the presumption and the clues resulting from already ascertained facts are sufficiently grave to determine their admission (original text, p. 623).

Art. 191. The petition for declaring the paternity or the maternity can be contested by anyone who is interested therein.

Art. 192. The sentence declaring the natural filiation produces the same effects of the recognition.

Art. 193. In the cases in which the recognition is forbidden, the child is never allowed to make (legal) investigations neither on the paternity nor on the maternity. Nevertheless the natural child will always have right of action to obtain the necessities of life:

1st. If the paternity or the maternity is indirectly shown or ascertained from a civil or penal sentence;

2nd. If the paternity or maternity is dependent by a marriage declared null;

3rd. If the paternity or maternity appears from an explicit written declaration of the parents (original text, p. 623).

"Filiation and Adoption," by Bartholomeo Dusi, 2nd Ed., commenced by the author and finished by Prof. Biagio Brugi of the University of Pisa (Part II., p. 693, Section 150), affords a detailed discussion of the said Article 190, Italian Civil Code, and reprint and excerpt in the addenda hereof. But for convenience we state an English interpretation.

Mater sempre certa est, pater incertus: here is the elementary principle by which the legislator has

been inspired. Maternity is a fact; paternity is a presumption. Searches as to paternity as well as those as to maternity, can equally give rise to scandals and put the peace and tranquillity of a family in danger. But the first would not result in a certain outcome, etc., etc. And adds that in the latter cases they would establish with certainty the fact of maternity, a fact which in every case would be revealed with a manifest sign, visible and patent. This, then, is what is against the allowance of investigations in regard to paternity contained in Art. 189, we see ordained in Art. 190 for what concerns the maternity a principle completely contrary. Only the legislator not wishing to make it easy to besmirch the honor of a virtuous woman, and therefore, before allowing proof requires special guarantees as to its seriousness and conclusiveness.

Investigations on maternity are allowed. This precept also here is as absolute as the prohibition of the preceding article. Also, in this instance, the investigation can be by the interested proponents and authorized by the Judge, whether it be to the advantage or the damage of the child; the child or his descendants can institute them in order to make his status declared, or to obtain the rights arising out of them—right to a name, to aliments, to succession, to the *legitima;* on the other hand, third parties can take steps to impose upon the child those limitations and restrictions (for example, those of Art. 768) which by law are inherent upon the status of a natural child.

The said inquiries (as is evident) can be proposed as well in the way of action as by exception.

The Italian text from which this is culled follows:

Mater semper certa est, pater incertus: ecco il principio elementare a cui il legislatore si e' inspirato. La maternit a' e' un fatto, la paternita' e'

una presunzione. Tanto le indagini sulla paternita' che quelle sulla maternita' possono sollevare scandali e porre in pericolo la pace e la tranquilita' delle famiglie; ma, laddove le prime di regola non posseno riuscire a un risultato certo e sicuro per quel fitto velo onde natura ha avvolto il concorso dell'uomo nell'operadella procreazione, invece le seconde giugono a stabilire con certezza il fatto della maternita', fatto che in ogni caso si rivela con segni manifesti, visibili, patenti. Ecco adunque che di contro al divieto delle indagini sulla paternita' contenuto nell'articolo 189 vediamo consacrato nell'art. 190, per quanto concerna la maternita', il principio perfettamente contrario. Soltanto il legislatore vuole che non venga facilimente manomesso l'onore dell prova esige speciali guarentigie per assicurarsi della sua serieta' e concludenza.

Le indagini sulla maternita' sono ammesse. Il precetto anche qui e' assoluto, come il divieto dell'articolo precedente. Anche qui le indagini possono essere dagli interessati proposte e dal guidice autorizzate, sia a vantaggio che a danno del figlio; il figlio o i suoi discendenti le possono istituire per far dichiarare lo stato di lui, e per far valere tutti i diritti che ne provengono: diritto al nome, agli alimenti, alla successione, alla legittima; i terzi invece possono agire per imporre al figlio quelle limitazioni e restrizioni (ad esempio quelle dell'art. 768) che sono per legge inerenti allo stato di figlio naturale. Le indagini medesime (e cio' e' quanto mai evidente) possono poi essere proposte tanto in via di azione quanto in via di eccezione.

TRANSLATION.

CIVIL CODE OF THE KINGDOM OF ITALY.

BOOK I.—OF PERSONS.

TITLE VIII.—OF PARENTAL AUTHORITY.

Art. 220. The child, whatever his age, must honor and respect his parents.

He is subjected to the parental authority until he becomes of age or emancipated.

During a marriage such authority is exercised by the father, and, if he cannot exercise it, by the mother.

At the dissolution of a marriage, the parental authority is exercised by the surviving parent (original text, p. 623).

Art. 221. A child cannot abandon the parental home or the one that the father has designated for him, without his permission, excepting on account of voluntary enrollment in the national army. Should he abandon it without permission, the father has the right to recall him there, having recourse, if necessary, to the president of the Civil Tribunal.

Should good reasons render necessary the removal of the child from the parental home, the president, at the instance of the parents or even of the public prosecutor, upon inquiring without judicial formalities, disposes in the most convenient without setting forth in the decree any motive.

When a delay might be injurious, the pretor will dispose referring immediately to the president, who

will confirm, revoke or modify the disposition made (original text, p. 623).

Art. 222. The father who is unable to control the transgressions of the child, can remove him from the family, assigning to him, according to his means, the strictly necessary aliments, and place him, having recourse be it necessary to the president of the Tribunal, in the home or educational or correctional institution that he deem most convenient to correct or improve him.

The authorization may be requested even ver- of records and without setting forth the motives of bally, and the president will act without formality his decree (original text, p. 624).

Art. 223. In the cases indicated in the previous two articles, against the decrees of the president of the Tribunal, it is permitted to appeal to the president of the Court of Appeals and the public prosecutor will always be heard. (Original text, p. 624.)

Art. 224. The father represents the children born and to be born in all civil acts and administers their fortune. However, he cannot alienate, hypothecate or pledge the fortune of the child, contract in the child's name mortgages or other obligations exceeding the limits of its simple administration, unless it is for reason of necessity or evidenced utility to the child or through or by order of the Tribunal. If there are conflicts of interest between the children subject to the paternal power, or between them and the father, there will be nominated a special guardian for the children. The nomination of the special guardian will be made by the ordinary judicial authority before whom the cause might appear, or

in every other case by the Civil Tribunal. (Original text, p. 624.)

(This translation is re-printed from page 366 of State of Case, but we believe that it should read "parental authority" rather than "paternal power," as the latter does not convey a complete idea of what is meant by the Italian term "patria podesta." This term describes a father or mother who is actually exercising the powers and duties of a head of a family over his or her children, and it is applicable to either parent so in authority.)

Art. 225. For the collection of capital or for the sale of movable effects liable to deteriorate it will be sufficient the authorization of the pretore on condition of re-investment, the safety of which is recognized by the pretor himself.

Art. 226. The inheritances devolved to children subject to parental authority will be accepted by the father with the benefit of inventory.

If the father will not or cannot accept them, the Tribunal, at the request of the child or any of the relatives, or also at the instance made ex-officio by the King's proctor, may authorize their acceptance, premised the appointment of a special guardian and hearing the father.

Art. 227. The nullity of the Acts made in contravention of the preceding articles cannot be opposed but by the father, or by the child, or by his heirs or others having interest.

Art. 228. The father has the usufruct of the goods which the child receives by inheritance, donation or by any other lucrative way and retains it

until the child may be emancipated or have attained his majority. (Original text, p. 624.)

Art. 229. Not subjected to the legal usufruct are:

1st. Property left or given on condition that the father should not receive the usufruct thereof, which condition is, however, without effect when it regards the property reserved to the child as the legitime;

2nd. Property left or given to the child to undertake a career, an art or a profession;

3rd. Property coming to the child by inheritance, legacy or donation (that was) accepted in the interest of the child against the consent of the father;

4th. Property acquired by the child on account of or for the exercise of militia, offices, employments, professions or arts or otherwise by his own work, by his own separate industry. (Original text, p. 625.)

Art. 230. There adhere to the legal usufruct the following charges: (1) the expenses of maintenance, education and instruction of the child; (2) the payment of annuities or interest upon the capitals which begin from the day in which the usufruct commences; (3) all the other obligations to which the holders of the usufruct are subjected. (Original text, p. 625.)

Art. 231. The dispositions of the foregoing articles apply to the mother when she exercises the paternal power. The legal usufruct passes to the mother even when the paternal power is exercised

by the father, when the latter is excluded for reasons personal to him. (Original text, p. 625.)

(The comment noted above, as to Art. 224, in respect to the term "paternal power," likewise applies to this article.)

Art. 232. The legal usufruct ceases with the death of the child and with the passage of the parent to a second marriage. (Original text, p. 625.)

Art. 233. If the parent abuses of the parental authority, violating or disregarding the duties, or ill administering the property of the child, the Tribunal, at the request of any of the nearest relatives or even of the public prosecutor, may provide for the appointment of a guardian to the person of the child or of a curator of his property, deprive the parent of all or part of the usufruct, and make the further dispositions he will deem convenient in the child's interest. (Original text, p. 625.)

Art. 234. Having ceased the legal usufruct, if the parent has continued to enjoy the property of the child living with him without power of attorney, but without opposition, or even with power of attorney but without condition of giving account of the proceeds, he and his heirs are held to surrender only the proceeds subsistent at the time of the request. (Original text, p. 626.)

Art. 235. The father may by will or by authentic act establish conditions to the surviving mother for the education of the children and for the administration of the property.

The mother who is unwilling to comply with the conditions established may request to be dispensed

(of complying with the conditions) by having the pretor convoke a council of family composed according to Articles 252 and 253, in order to deliberate on the requested dispensation.

The deliberation of the council of family will be submitted for the omologation of the Tribunal which will act upon hearing the public prosecutor. (Original text, p. 626.)

Art. 236. If at the death of the husband the wife is pregnant, the Tribunal, at the requests of an interested persons, may appoint a guardian to the womb. (Original text, p. 626.)

Art. 237. The mother desiring to pass to a new marriage must first convoke a family council pursuant to Articles 252 and 253.

The council deliberates whether the administration of the goods shall be conserved to the mother and can establish conditions with regard to said administration and to the education of the children. The deliberations of the family council are subjected to the Tribunal for its regulations pursuant to Article 235. (Original text, p. 626.)

Art. 238. In absence of the convocation requested by the preceding article, the mother will lose the right of administration and her husband will be solidly responsible for that exercised in the past and (that) unduly kept further.

The pretor at the instance of the public prosecutor or of any of the persons indicated in Articles 252 and 253, or even ex-officio, must convoke the council of family to deliberate on the conditions to be established for the education of the children and on the appointment of a curator to their property.

The council of family may re-admit the mother to the administration of the property.

To the deliberations of the council of family are applicable the provisions of the second paragraph of Article 237. (Original text, p. 626.)

Art. 239. When the mother is maintained in the administration of the property, or was re-admitted in it, her husband is understood always associated with her in the administration and becomes therefore solidly responsible. (Original text, p. 627.)

PROVISIONS OF THE ITALIAN CIVIL CODE RELATING TO THE DISTRIBUTION OF ESTATES. BOOK III, Manner of Acquiring Property. TITLE II, Of Inheritances.

Art. 721. The law devolves the succession to the legitimate descendants, to ascendants, to collaterals, to natural children and to spouses in the order and following the rules established regarding them, and they not existing, to the patrimony of the State. (Original text, p. 630.)

Art. 736. The legitimate children and their descendants without distinction between them or whether born from different marriages succeed their father, mother and every other ascendant.

They succeed *per capita* when they are all in the first degree; *per stirpes* when all or some of them succeed by representation.

Art. 737. Under the name of legitimate children is understood also legitimatized children, adopted ones and their descendants.

However, adopted children and their descendants

succeed to the adopter in competition also with the legitimate children, but they are extraneous to the succession of all the relatives of the adopter.

Art. 743. Natural children have no right to the succession of their parents, when their filiation is not legally recognized or declared. (Original text, p. 631.)

Art. 744. The filiation being recognized or declared in case the natural children compete with legitimate children or their descendants, they have a right to one-half of the share which would be their expectancy if perhaps they were legitimate. (Art. 768.)

The legitimate children and their descendants have the faculty of paying the share coming to natural children in money or in inherited real estate at correct value. (Original text, p. 631.)

(We would call attention to the practice in division between recognized illegitimate and legitimate children. The whole number is taken, theoretical allotment made to each proportionately and then one-half of the allotments to the illegitimates is given to the legitimates. A dies having two recognized illegitimates and one legitimate. Theoretical allotment is made, one-third to each of them, one-half of those to the illegitimates is given to the legitimate so that each of the illegitimates receives one-sixth and the legitimate receives four-sixths. The decree of October 21st, 1921, shows this method. This memo made by Mr. Bergen.)

Art. 752. The rights accorded by the preceding articles are not extended to children to whom the law does not give recognition. Such, however, in

the case indicated by Article 193, have a right to support which shall be assigned to them in proportion to the property of the father and the mother and the condition of the legitimate heirs.

Original text follows:

Art. 752. I diritti accordati dagli articoli precedenti non si estendono ai figli, di cui la legge non ammette il riconoscimento.

Questi pero, nei casi indicati nell'articolo 193, hanno diritto agli alimenti, i quali saranno loro assegnati in proporzione delle sostanze del padre o della madre, e del numero e della qualita degli eredi legittimi.

Art. 753. When there are surviving legitimate children of a deceased spouse, the other spouse has in the estate of the other the usufruct of a share of inheritance equal to that of each child, including in the number of children the spouse also.

Natural children competing with legitimate ones the usufruct of the spouse is a share equal to that going to each legitimate child. Such usufruct share can never be greater than a quarter of the estate, and can be satisfied in the way established by Art. 819. (Original text, p. 631.)

Art. 812. The spouse against whom a juridical decree of personal separation does not exist has a right in the inheritance of the other spouse in a case where the latter leaves legitimate children or their descendants to the usufruct of a portion equal to that which comes to each child by title of legitimacy, including in the number of children also the *spouse*. (Original text, p. 632.)

DISCUSSION OF ARTICLE 888 AND REVOCATION OF A WILL BY SUBSEQUENT BIRTH OF CHILD.

CIVIL CODE KINGDOM OF ITALY.

BOOK III, MANNER OF ACQUIRING PROPERTY. TITLE II, OF INHERITANCES.

Art. 888. The (testamentary) provisions of universal or particular character, made by one who at the time of the will did not have or was in ignorance of having children or decedents, are revoked by law by the existence or the subsequent birth of a legitimate child or descendant of the testator, even if posthumous or legitimated or adopted.

The same thing takes place also when the child was conceived at the time of the will, and in the case of a legitimated natural child when this had already been recognized by the testator before the will and legitimated only afterwards.

The revocation does not take place when the testator has made provisions for the case in which some children or their decedents might be existing or would consequently be born. (Original text, p. 633.)

Pacifici-Mazzoni in his frequently cited exhaustive work in fifteen volumes, as Commentator of the Italian Code, states the following:

Volume 4, pages 420, *et seq*:

The provisions of our Code are the following: Provisions of universal or particular title made by one who at the time of the will did not have or was in ignorance of having children or decedents are revoked by law through the existence of the after-happening of a child or a legitimate decedent of the tes-

tator, although posthumous, legitimatized or adopted. Likewise the same thing occurs when perhaps the child was conceived at the time of the will, and, treating of natural legitimatized children, likewise, if perhaps they were already recognized by the testator before the will and legitimatized only afterwards. Revocation does not occur where the testator has foreseen a case which existed, or the after-happening of children or their descendants. If the after-born children or descendants predecease the testator the provision has no effect. (Arts. 888, 889.)

The reason for the revocation, without doubt is the presumption which the law deduces from the sentiment and the duty of a testator towards his children and descendants. It holds that a testator would not have disposed of his goods in favor of others if he was aware of having children or descendants, or had foreseen that they would come afterwards; and such is held because sentiment and duty induce, nay, almost force parents and other ascendants to leave their goods to their own children and descendants. Everywhere public opinion nearly always, reproves those parents or ascendants who in giving away their goods, prefer strangers, or less closely related relatives, to their children or descendants, since such act of theirs contradicts the strongest and most sacred affection of the human heart, and proclaims that a testator would disregard his moral duties toward his family, or worse in that he had an idea of not following it perfectly.

153. For such revocation to take place it is a necessary condition that the testator, at the time he testated, did not have children or descendants or was in ignorance of having them. It is necessary that at the time he did not have either *legitimate,*

legitimatized or adopted children. And it is necessary also that he did not have any legitimate or legitimatized descendants. Because revocation is a law to make the inheritance pass by intestacy to the children and descendants forming part of the legitimate or civil (by adoption) family of the deceased, as legitimate heirs of the deceased; as is manifested by the text of Art. 888. Since the revocation is not pronounced excepting in favor of those children and descendants who amongst legitimate relatives, succeed the deceased in intestacy.

If at the time of the making of the will the wife of the testator or his daughter-in-law (already the widow of his son) had conceived, the condition of the absence of children or descendants would be verified: In fact on one hand the definition *conceptus pro nato habetur* does not find a place here, because his interest requires instead that he shall be considered what he is, *i. e.,* not born and not existing in the personal autonomy, on the other hand, the law explicitly causes a revocation even in that case. (Art. Cit. Capo I.) *It matters nothing whether the testator knew or was in ignorance of the coming conception since the law does not distinguish.* The existence of a natural child at the time of the making of the will, likewise does not make this condition lacking since primarily affection and duty, the basis of the presumption, put a legitimate child before a natural one and the presumption, therefore, must take place. In the second place the law pronounces the revocation in favor of a natural child who becomes legitimatized after the making of the will. (Art. 888, Capo I and treating * * *.) *Also when at the making of the will the natural child perhaps was recognized it is true,* either through argument furnished by the said article or because recognition does not equalize a natural child with

a legitimate one. Finally such is true also when provision in favor of the natural child has been made, because the law is establishing the revocation, has no regard for the equality of the person for whom the provision has been made, on the other hand whoever the person may be must remain subordinate to the children and legitimate descendants who come to the testator afterwards. * * *

155 * * *The legitimazation of a natural child made by the deceased or by subsequent matrimony or by Royal decree after the will likewise revokes the provisions. Nothing is signified by the fact that anteriorly, perhaps it was recognized or declared. (Art. 888.) The same decision we hold applicable to a case where the legitimazation takes place after the death of the testator in the sense of Art. 199. Nevertheless, such a view arising it must be compared with a posthumous one.

Finally, the adoption of a person made by the testator after he had made his will likewise revokes the provision.

The revocation instead does not take place through the evident existence or the after-happening of natural children although they become recognized or declared.

157. By the evident existence or by the after-happening of children or descendants *all the testamentary dispositions,* universal as well as particular are revoked. (Art. 888, princ.) Therefore, restricting ourselves to speaking of the first they are revoked by the institution as well as by the substitution of heirs. Neither must we consider in whose favor they are made. Therefore, they are revoked even though made in favor of the spouse, parents or other legitimate ascendants or *natural children,*

recognized or declared by the deceased. Because the law in pronouncing a revocation has no regard for the person in whose favor the provision is made, and, on the other hand, the affection of the father and legitimate ascendants and the moral duty towards legitimate issue must come before everything. Therefore, the law that also in such cases allows revocation goes to assist the force and affection and conscience of the testator.

Revocation takes place by operation of law (Art. 888) which means that it takes place independent of any demand of those in interest and without the necessity of any declaration by the Judge. Instead, those in interest enjoy all the rights of legitimate successors as if the provisions had never been made. Therefore, possession passes to them by operation of law and without the need of material taking.

Equally, they can attempt the petition or division of the inheritance without any regard to those favored by the will.

158. Revocation of testamentary provisions makes the inheritance intestate as if the provisions had not been made. Therefore, the children and descendants whose existence is evident or whose after-happening gives place to a revocation, themselves will divide it *per capita* or *per stirpes* according to the general principles of law. But it will equally have effect for the spouse and natural child in that they will compete with children and legitimate descendants in the intestate succession.

Avvocato Cesare *Losana,* in his volume entitled "Della Successione Testamentarie," Torino 1896, states as follows:

Section 57, Article 1, Revocation by after-happening of issue, pages 350, *et seq.*

923. Paternal love is a sentiment so sacred and strong that by excellence and intensity it surmounts in the heart of man every other affection. Therefore, it is the supposition that one being or reputedly without children, makes gratuitous gifts of his property to the benefit of strangers is reasonable and such happens precisely in view of the absence of issue and with a tacit condition that can be absolved through his liberality, whenever he is or turns to be consoled by children. Wherefore, our law as it permits a testator to whom children happen, afterwards to revoke the liberality already made thus rendering itself the interpreter of the wish of the testator revokes without fail the provisions which he, deprived or in ignorance of children, has given to the benefit of strangers.

924. The children whose after-happening or evidence of existence operates to revoke the testamentary provisions made by the parent are: the legitimate children (or ulterior descendants) and adopted ones, *not simply natural children although formerly recognized, because affection towards this issue neither merits or is to be put on a par with that which a legitimate descendant excites and beseeches.*

But natural legitimatized children being by law equalled to legitimate ones revocation by good law, also operates in their favor.

The way in which the legitimization has taken place does not matter, if either by subsequent matrimony or by Royal Decree, provided that in this second case the legitimization has taken place during the life time of the testator since it produces effect only from the day when the decree is entered. The legitimatized one could no longer venture to rights

already acquired by the testamentary successors of his parent at the moment of his decease.

925. *The circumstances that perhaps the child was already conceived at the time of the will* does not hinder and the law expressly declares the revocation of the will, because those conceived are held as born only when we treat of their advantage, while in this case it would be damage and not of advantage to the conceived one to presume him already born, and besides the conception could also be unknown to the testator.

926. Finally: to the end that a revocation shall take place it is not necessary that the children happen afterward or that their existence is not discovered *while the testator is alive* therefore also posthumous issue, or that of whom notice is had after the death of the testator induces the revocation of the manifested wish.

927. If the testator, at the time of the making of the provision, already had children and was aware of having them, the after-happening of other children would not be cause for revoking the said provisions. Wherefore it results sufficiently clear for the tenor of the law that revoking the provisions made by one who at the time of the will *did not have or was in ignorance of having children or descendants* is a result of the spirit of the said law.

The existence of children when the will was made would not in only one case prevent the revoking of the will by the after-happening of other issue: And that is when children, already existing were perhaps rendered incapable as unworthy to succeed. Therefor in the system of our law, to successorial rights it amounts to as much not to have children as to

have incapacitated ones or in other words incapacitated ones are considered in such effect as already dead.

929. The after-happening of children occasions the revocation of all testamentary provisions, whatever may be their title, the amount, the motives, or the merits of the beneficiary. Because, on one hand, one could not introduce distinctions liberality between and liberality without being arbitrary; and on the other hand before paternal affection every other sentiment (no matter how good and praiseworthy) which could have inspired the provisions pales and yields. Therefore the children take the inheritance entirely free from any bond or impost which the testator had imposed upon his successors.

930. On the other hand it is not to be forgotten that the after-happening of children revokes the testamentary dispositions but does not *annul* the testament. Therefore, as in every other case of revocation there will be efficaciously conserved those declarations and recognitions contained in the will which do not constitute real testamentary dispositions (as would be for example *the recognition of a natural son*).

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Abstract Statement of the Case and Questions Involved.

An infant enjoying citizenship in Italy and in the United States, and a resident formerly of Italy and now of New York City, with assets in each jurisdiction, also has assets in New Jersey. Her mother as Special Guardian petitions for an allowance from her New Jersey assets for her support.

1. Is a widow bound to support her minor child, out of her own property, if the minor child has means of her own?

2. Are the child's assets in New Jersey, which consist of her share of royalties payable under a contract made by her deceased father with a phonograph company principal or income, when considered in making an allowance for her support?

3. Are such royalties in the deceased intestate father's estate principal or income or are they to be apportioned between them when considered in giving to the widow her widow's usufruct of one-fourth of the incomes of his estate, realty and personalty, allowed by the law of Italy in which country he was domiciled at the time of his death?

4. In view of certain decrees of the Italian Court (considered as the domiciliary court for this motion) should an ancillary court make an allowance for support?

5. Where a minor has an estate in New Jersey and estates in New York and in Italy, has the New Jersey Court, which is an ancillary court, the power to make an allowance out of New Jersey incomes,

where there are sufficient incomes in the domiciliary jurisdiction to provide for her maintenance?

6. Can an ancillary court make provision for the maintenance of a minor out of her incomes in its jurisdiction where the domiciliary court has by its decrees considered and diminished the allowance from the incomes in its jurisdiction?

7. Has sufficient proof been presented to the ancillary court of the lack of ample incomes from the child's estate in the domiciliary jurisdiction and of ample incomes of the mother's estate everywhere for the child's maintenance to prove that there is necessity which would warrant the ancillary court in making an allowance out of the incomes in the ancillary jurisdiction?

Specifications of the Grounds of Appeal.

The decree is alleged to be erroneous in that it orders that $1,000. per month be allowed to the Special Guardian for the support, maintenance and education of a minor daughter, Gloria Caruso, on the following grounds:

1. It is the duty of Dorothy P. B. Caruso to support her daughter, Gloria Caruso, from her own funds, without recourse to Gloria Caruso's estate.

2. The Court of Chancery has jurisdiction over an ancillary estate of Gloria Caruso, and should not make an allowance for her maintenance out of the New Jersey estate, if she has funds in her places of domicile, Italy or New York, available and sufficient for the purpose.

Specifications of the Grounds of Appeal.

3. An Italian Court (concededly for this purpose only the domiciliary Italian Court) has considered and made provision for Gloria Caruso's maintenance and this ancillary court should not make another order allowing an additional amount for that purpose.

4. This decree for maintenance, if necessary for that purpose, is rendered so by a scheme carried out in Italy to withdraw Gloria Caruso incomes and assets from this New Jersey jurisdiction into Italy, by compelling the use, for her support, of her New Jersey incomes, which otherwise would be capitalized, and capitalizing her incomes in Italy which should be used for her support.

5. No proof was submitted that there are not sufficient incomes arising from the Italian and New York assets of Gloria Caruso, for her maintenance and support, without recourse to her ancillary New Jersey assets. There is not sufficient proof before the Court.

6. The payments from the Victor Talking Machine Company are principal and are not income, both of Enrico Caruso's Estate and of Gloria Caruso's Estate.

7. The amount allowed is based on a finding that distribution of the Estate of Enrico Caruso should be made under the New Jersey statute of distributions, as far as Gloria Caruso is concerned, under which Gloria Caruso would receive 2/3 of these royalties, whereas distribution of his estate should be made as provided for by the Italian law in case of intestacy.

Argument.

This is an appeal from the decree of the Chancellor of April 10th, 1928, ordering that $1,000.00 per month be allowed to Dorothy P. B. Caruso as Special Guardian, for the support, maintenance and education of Gloria Caruso, who was born December 18th, 1919. The petition was by Mrs. Caruso individually. The Chancellor by his opinion filed December 15th, 1927 (State of Case p. 100; 101 N. J. Eq. 350) held that the petition should have been made by a Special Guardian for Gloria Caruso. Mrs. Caruso thereupon petitioned the Prerogative Court and was appointed Special Guardian and amended her petition accordingly (State of Case p. 115).

The affidavits against this petition are made by Martin V. Bergen, of counsel for the Clerk of the Chancery Court, Guardian *ad litem* of Gloria Caruso. We appreciate the objectionableness of such practice but we have no client other than a child now nine years old and are contesting for her in opposition to her entire family. No friend has come forth in her behalf and there is no other person who could swear to the facts.

In the confusion of the size of the record (the appeal from this decree being argued by agreement with the appeals from the final decree) the papers involved in this appeal will here be listed with their paging in the State of Case and Supplemental State of Case (the paging of the Supplemental State of Case begins at page 500).

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Argument.

FACTS.

This appeal is argued at the same time as the appeals from the final decree. The facts applicable to this appeal briefly stated are as follows:

Enrico Caruso, the famous tenor, died on August 2, 1921. He was domiciled in Italy, but for many years he maintained a residence in New York City, where he lived through the winter months, and his daughter, Gloria, was born there on December 18th, 1919. After Enrico Caruso's death Mrs. Caruso married an Englishman, Ernest A. Ingram, from whom she is divorced. She has resumed her American citizenship and she and Gloria reside in New York City.

On January 1, 1919 Enrico Caruso entered into a contract with the Victor Talking Machine Company (a New Jersey corporation) by which he created by singing certain phonograph records for that Company and he and his representatives were to receive 10 per cent. of the returns from same. (See agreement p. 431.) Since his death the royalties paid on this agreement have been as follows:

Feb. 1, 1922.....	$422,891.56
Feb. 1, 1923.....	125,117.66
Feb. 1, 1924.....	105,922.59
Feb. 1, 1925.....	114,750.82
Feb. 1, 1926.....	71,194.22
Feb. 1, 1927.....	74,210.20
Feb. 1, 1928.....	74,762.75

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(The dates in the Answer are in Error.)

These royalties or payments constitute his estate in New Jersey.

After Enrico Caruso's death an agreement of division of his estate was arrived at between his widow, Dorothy P. B. Caruso, his brother, Giovanni Caruso and his illegitimate son, Rodolfo Caruso,

which was consented to by guardians for his minor illegitimate son, Enrico Caruso, Jr., and for his minor and only legitimate child, Gloria Caruso.

This agreement was presented to and approved by a Naples Court and distribution was made under it of the Italian assets.

This settlement agreement (Exhibit C 14, p. 340) is presented to the Courts of this State. Its approval and its application to the distribution of the royalties coming from the Victor contract is contested on behalf of Gloria Caruso, and is the subject of the main case.

Mrs. Caruso claims that under this agreement she is given ⅛ and Gloria Caruso is given ½ of all of Enrico Caruso's estate; that under an Italian law which she claims gives to a mother as her own all the incomes of a minor child, without accountability when the child becomes of age, she is entitled to all of the incomes of Gloria Caruso's share. The agreement, however, expressly gives to and limits her to take as her own ½ of Gloria's share of the ½ of the Victor royalties. As distribution of the Italian estate has been made and as no contest has been made as to the distribution of the assets in New York, it is conceded by her that she is in the enjoyment of all of Gloria Caruso's incomes from her Italian share (this must be modified as shown by two decrees of the Naples Court which will be subsequently discussed) and of Gloria's share in the New York assets, as well as in the enjoyment of her own ⅛ share of same.

Mrs. Caruso claims, however, that she is receiving nothing either from Gloria Caruso's share or from her own share from the assets in Italy or in New York, and the Chancellor enjoined her as Ancillary Administratrix of the Estate of Enrico Caruso, from making any distribution of his estate

in New Jersey, which consists solely of the Victor royalties. She claims that she is receiving an income of about $9,000.00 from her own assets; that the expenses of her home for herself, Gloria Caruso and her daughter, Jacqueline Ingram, and for the maintenance of Gloria Caruso is $30,500. and she presented the petition at bar asking that an order be made for an allowance from Gloria Caruso's share of the royalties for Gloria Caruso's support.

Discussion.

I.

The application is by petition, and therefore the matter comes before this Court on affidavits. In an estate of this size the proper practice should have been by bill with its accompanying testimony in open court. *In re* Berry, 61 N. J. Eq. 135, where Vice Chancellor Emery states that if he acted on the petition presented by the mother, his order should be a reference to a master to inquire into the facts and circumstances of the application, including the mother's capacity and ability to support her child without recourse to the child's own income.

The application is to an ancillary court, not to the domiciliary court. Fundamentally such a court has no jurisdiction over such matters. Pesano *v.* Shanley Co., 66 N. J. L. 1, p. 6; Swetland *v.* Swetland, 100 N. J. Eq. 196; Decker *v.* Vreeland, 220 N. Y. 326; *in re* Dwyer, 115 Pac. 242 (Cal. 1911); Norman *v.* Grognard, 17 N. J. Eq. 425; *in re* Post, 89 N. J. Eq. 526. 24 *Corpus Juris* 1126. *In re* Caruso, 101 N. J. Eq. 215.

We have no desire, however, to stand on such technicalities in this matter. Take the hypothetical case that a mother was absolutely without funds

and her daughter was the recipient of a large income in an ancillary jurisdiction, certainly that fund should be used for her support, especially where it is the intention of the counsel for the guardian *ad litem* to oppose the turning over of that fund to the domiciliary guardian for the child, as it is in this case.

But the burden of proof is on the petitioner, and with greater weight, in this informal proceeding, where we have not the ability to cross examine Mrs. Caruso as to her own means and her methods of living and the necessity of such an extensive scale of living, which causes her to ask for this very large annual sum, and why Gloria Caruso should be asked to pay such a large proportion which will enure to the luxurious living of Mrs. Caruso, of her child by her second husband, as well as Gloria Caruso.

II.

The obligation is on Mrs. Caruso to support Gloria Caruso without recourse to Gloria Caruso's Estate.

In Pyatt *v.* Pyatt, 46 N. J. Eq. 285 (Ct. of Errors and Appeals) this Court says:

> "As a general rule, a widow is not bound to "support her minor children out of her own prop- "erty, if they have means of their own (2 Kent "190) and she is entitled to a complete indemnity "out of their estate for the money expended by "her on their maintenance within proper limits."

See also Osborn *v.* Allen, 26 N. J. L. 388.

In re Vieweger, 93 N. J. Eq. 527.

In Alling *v.* Alling, 52 N. J. Eq. 92, a mother brought suit against her daughter to recover for compensation for support previously furnished by the mother and for an allowance for future support. Vice Chancellor Pitney rendered an elaborate decision, saying, page 97,

"Upon general principles, I am unable to per-
"ceive any difference between the parents as to
"their duty of support of their child. Each is
"equally responsible for the existence of the child,
"and each by natural instinct feels the duty, as
"well as the desire, to protect and nourish their
"common offspring."

And on page 102:

"Chancellor Kent (2 Com. 191) says: 'The
" 'father is bound to support his minor children,
" 'if he be of ability * * * but this obliga-
" 'tion in such a case, does not extend to the
" 'mother, and the rule, as to the father, has
" 'become relaxed.' Here it is plain that he is
"dealing with the liability of the mother while
"the father is alive, for further on, as above
"quoted (at p. 192), he says: 'When the wife, by
" 'her marriage, parts with her ability to main-
" 'tain her children, she ceases to be liable.
" '* * * If, however, the wife has separate
" 'property, the court of chancery would un-
" 'doubtedly, in a proper case, make an order
" 'charging that property with the necessary sup-
" 'port of her children and parents.' "

"I have already shown that the court has no
"such power, and I quote this last passage to
"throw light on the previous one, which has often
"been cited as authority for what I deem an
"erroneous position, viz, that a widow with a
"fortune is under no obligation to support her
"infant children. I think the last clause, though
"erroneous, as written, contains the germ of the
"true rule, namely, that where a widow asks for
"an allowance out of the infant's child fortune
"for its support, the court will take into con-
"sideration her own ability to furnish such sup-
"port. Moreover, the authorities cited by Chan-
"cellor Kent seem to me not to support his text,
"unless construed to apply only to mothers with
"living husbands."

And on page 108:

"For these reasons I must decline to consider
"Pyatt *v.* Pyatt as binding authority for the

"position that a widowed mother is entitled, "without regard to her own ability, to full com- "pensation and indemnity from her child's estate "for support and maintenance rendered to it "during infancy. Such a rule seems to me not "to be warranted by the ancient authorities, in- "fluenced, as they were, by the general disability "of the wife resulting from coverture; much less "does it seem in step with the modern status "of woman under the law and her general eman- "cipation from the artificial restraints of her "previous condition and her ability to enter upon "many pursuits once closed to her. On the con- "trary, I think that, in determining how much "the widowed mother is to be allowed, we must "take into consideration, as in all cases, all the "circumstances—the mother's capacity and ability "and the child's fortune."

In re Barry, 61 N. J. Eq. 135, Vice Chancellor Emery on page 136 says:

"That the mother, as well as the father, is under "obligation to support her infant children to the "extent of her ability, was the conclusion reached "by Vice Chancellor Pitney in Alling *v.* Alling, "7 Dick. Ch. Rep. 92 (1893), after an exhaustive "examination of the cases, and his decision on "this point will be followed as establishing the "proper rule."

In 46 *Corpus Juris* 1261 (but see page 1276) it is stated that by the weight of authority a mother is not liable for the support of the children where their own property is sufficient for the purpose. This statement is not to be wondered at, in view of Chancellor Kent's weight and authority, which Vice Chancellor Pitney shows prevailed on our own Court of Errors and Appeals, to use the language of Pyatt *v.* Pyatt.

III.

The Court will only grant support of a child from the principal of her estate in unusual cases and very sparingly.

In re Lucey, 98 N. J. Eq. 314.
Smith *v.* Robinson, 83 N. J. Eq. 384.

This is certainly not a case where the principal should be used for Gloria's support and the question thus arises, what is the income of this estate in New Jersey? What are these royalties; are they principal or are they income?

IV.

Are the royalties from the Victor contract principal or income?

The question arises in this way.

1. Mrs. Caruso asks that a part of Gloria Caruso's share of these royalties be paid to her for Gloria Caruso's maintenance and support.

This case is not one where Gloria Caruso's principal should be used for that purpose.

And therefore, if any allowance is to be made it must be determined what Gloria Caruso's New Jersey income is. In other words, what are these royalties as between capital and income, and an allowance for support if made, must be measured and limited by what is her income.

If the final decree, as made by the Chancellor and now before the Court, is given effect, Gloria Caruso receives 2/3 of these royalties. If the agreement of division is enforced she is entitled to ½ of them, but ½ of this ½ goes to the mother without accountability. If neither is applied in New Jersey to the distribution of this estate, we claim that Gloria Caruso is entitled to all of the royalties, less

Mrs. Caruso's ¼ life interest in the incomes of the estate of Enrico Caruso, given to her as widow, in case of intestacy, by Italian law.

In each instance, if any allowance is to be made for the child's support, it is necessary to determine whether the royalties are principal or income in order to arrive at the amount of the allowance, keeping in mind the difference the cases make in amount of allowance from a child's principal and from a child's income.

Further, if it is eventually determined that distribution is to be made under Italian law and that Gloria Caruso is to get all the royalties less the widow's right to one-fourth of the income, then also the question comes up, whether these royalties are principal or income.

If distribution is made under Italian law, whether the royalties are principal or income would have to be determined—while of Enrico Caruso's estate, by Italian rules. But after they became of Gloria's estate then by our rules.

It by no means follows that even if income for the purposes of distribution of Enrico Caruso's estate, they would be income of Gloria Caruso, when examined for the purpose of making an order for allowance.

We contend that whether principal or income of Enrico Caruso, they must be principal when distributed to Gloria Caruso.

2. Under Italian Jurisprudence we contend that royalties are principal and not income.

The question could come up in Italy in two ways.

In determining the succession to an intestate's estate. Under Italian law the assets go to the children, but the widow receives one-fourth of the incomes from all the assets, realty and personalty, as her share, called the widow's usufruct.

Argument.

In considering the right given by Italian Law to a mother, the father being dead, to take the incomes of the child's property during the child's minority (this is discussed at length in our main brief). It is called the mother's usufruct. It has nothing to do with the succession to a decedent's estate, but is an entirely distinct and separate right.

The bill says, page 7 in the main state of case as follows:

"14. Complainant is advised and states the "fact to be that under the law of the Kingdom "of Italy, she, as surviving parent, is the natural "and general guardian of her daughter, Gloria "Caruso, during the latter's minority and until "she reaches the age of twenty-one years, and, "as such, entitled to receive from time to time "all income belonging to said infant and to use, "hold, or otherwise dispose of the same without "accountability.

"15. Thereafter it was ascertained that said "royalties were likely to decrease in amount with "the lapse of time and the consequent public "forgetfulness of the fame of Enrico Caruso, and "that said royalties should be considered partly "as the exhaustion of the corpus of the estate as "represented by said contract and part only as "income therefrom, and such proceedings were "thereafter had in the Consull Chamber of the "First Section of the Civil and Penal Tribunal of "Naples, the same being a court of competent "jurisdiction in the premises, as resulted in its "order or decree dated June 16, 1922, among "other things providing, as translated:

" '7. Authorize the Victor Talking Machine " 'Co. to pay each year the 10% due to Comm. " 'Caruso as following: 1/8 to Mr. Rodolfo " 'Caruso, 1/8 to Mr. Giovanni Caruso, 1/8 to " 'Mrs. Dorothy Benjamin Caruso, 1/8 to Enrico " 'Caruso, minor, and of the remaining 4/8 due " 'to the minor Gloria Caruso, to pay 2/8 with- " 'out restrictions to Mrs. Dorothy Benjamin " 'Caruso as mother, tutor and legal adminis-

" 'tratrix of the property of her minor daughter
" 'Gloria Caruso until her coming of age, and
" 'to deposit the other 2/8 in the Banco di
" 'Napoli at its New York offices in the name of
" 'Gloria Caruso with the pupillary restric-
" 'tions.' "

The division agreement is Exhibit C-14 in the main state of case (Exhibit I attached to the second affidavit of Martin V. Bergen). It is printed page 340. It provides page 355 as follows:

"Art. 5—The right of the sale of the disks for "Gramophone of all the operas and songs sung by "their "dante causa" and reserved from the "Victor Talking Machine Company shall be "divided and attributed, always according to the "fixed proportions, as follows:

"One-eighth to Mr. Rodolfo Caruso
"One-eighth to Mr. Enrico Caruso
"One-eighth to Mrs. Dorothy Caruso.

"And the remaining four-eighths are attributed "to the minor Gloria, of which two-eighths will "represent principal capital to be reinvested as "follows and two-eighths shall be paid unrestricted "to the mother Dorothy Benjamin Caruso as "mother guardian and legitimate administratrix "of the said minor. In consequence the Victor "Talking Machine Company every first of Feb- "ruary of each year, as per its obligation, shall "pay on the said sum of 10%, one-eighth unre- "stricted to Mr. Giovanni Caruso; one-eighth to "Mrs. Enrico Caruso's tutor during his minor "age; three-eighths unrestricted to Mrs. Dorothy "Caruso; and finally it shall pay the remaining "two-eighths to the Bank of Naples, New York's "branch, under pupillary restrictions for the ac- "count of Gloria Caruso. On these two-eighths "the said Banco di Napoli shall pay during the "minority of Gloria the interests of all the sums "paid from the said Victor Company to Mrs. "Dorothy Benjamin Caruso, widow."

Attached to the affidavit of Martin V. Bergen as Exhibit B and filed therewith is an affidavit of Vittorio Scialoja of the Italian bar. It is printed in the Supplemental State of Case, page 516. It is also made part of our brief in the main case, as is also a letter written by him. Vittorio Scialoja is one of Italy's foremost men and lawyers. He is Professor of Civil Law at the Royal University of Rome, is a present Senator, former Minister of Foreign Affairs and is the present premier representative of Italy on the League of Nations. His affidavit states the Italian law on the various points involved in this litigation and motion.

Vittorio Scialoja says:

"It is needful in conclusion to observe that the "goods left by Caruso in New Jersey are made "up of a percentage which the Victor Talking "Machine Company must answer for from the "sums received from the sale of discs reproducing "the voice of the deceased tenor. Now this per- "centage does not constitute interest on a capital "but part of the capital itself constituted from "the right to reproduce the voice of Caruso be- "longing to the Victor Company and it is absurd "to cut into, for the maintenance of little Gloria, "inherited capital when there is an income on "some ten millions of goods which is more than "sufficient to the end."

We also call attention to Vittorio Scialoja's letter attached to and made part of our brief in the main case, where he says:

"By the agreement of Naples there was further- "more given to the mother of Gloria, surviving "spouse, a one-eighth in property of the in- "heritable goods, whilst Signora Park Benjamin "had only a right of the usufruct of one-fourth "of the estate left by the husband (Art. 753, civ. "code). And the difference between the treat-

"ment which should have come to the surviving "spouse and that really obtained with the agree- "ment of Naples is enormous in the division of "things, especially given the existence in the pat- "rimony of the rights growing out of the contract "made by the tenor Caruso with the Victor "Talking Machine Company. I observe also in "regard to this last contract that I hold to be exact "the thesis sustained by the defenders of Gloria "Caruso, which is, that the contract in question "puts in being a true and proper sale of the right "to reproduce the voice of the tenor Caruso and "that, consequently, the sums received, first by "the tenor and now by the heirs, from the profits "from the sales of the discs cannot be considered "as income or interest but must be considered as "part of the capital. It is not lawful therefore, "according to my view, for the Signora Park to "use these preventi as fruits of the capital of the "daughter's property."

The bill therefore shows that the parties, in preparing the agreement of division, which was approved on consent, by the Naples Court, considered either that the royalties, when in Gloria Caruso's Estate were one-half principal and one-half income, or on the principle of a wasting asset, amortized the disappearing capital as represented by the contract by replacements from the income. See also Naples petition, page 304.

Vittoria Scialoja holds in his affidavit and in his letter that whether in Enrico Caruso's Estate or in Gloria Caruso's estate the royalties are wholly principal.

The Chancellor holds that in either estate, the royalties are wholly income, under New Jersey law. He does not interpret Italian law.

3. Under the Jurisprudence of New Jersey, are the royalties principal or income? The Chancellor holds that they are entirely income.

Argument.

a. Our contention is that the so called royalties are in fact payments in instalments of the consideration for which Enrico Caruso by singing these songs created these records. That his agreement with the Victor Company (State of Case, page 431) was not a lease or any other such agreement whereby he retained title, but was an outright sale by him of all his interest therein and the returns coming from that sale are payments of the consideration. The fact that the consideration is to be measured by a proportion of the number of copies of the records sold by the Victor Company does not change the agreement from being a sale. Therefore, these payments or royalties are the selling price and therefore are principal of his estate.

If Caruso had sold or had agreed to sell, absolutely, any asset he had, and had died before the consideration was paid, the payments subsequently to be made would be principal of his estate and not income. If he had sold absolutely, the consideration to be paid in instalments, and had died while some of the instalments still remained unpaid, such unpaid instalments would be principal of his estate. And there can be no difference because those instalments were not definitely fixed in amount, but were to be measured by a proportion of the amount or number of or amount received from the reproductions sold by the Victor Company.

It depends on the construction of the agreement—is it or is it not a sale of all of the vendor's interest in the object sold? If it is an absolute sale, the future payments due after the vendor's death can be nothing else than principal. They are the actual consideration for which the vendor, during his life, sold his asset.

In Robinson *v.* Pierce, 278 Pa. 372, the decedent, during his lifetime "leased, demised and granted" * * * the right to mine and remove all coal

lying thereunder. The removal of all the mineral was allowed without limit as to time, the grantee to "pay $900., or more, each year until all the coal hereby leased at the rate of $300. per acre is paid for," with a provision for forfeiture in case of default. The decedent left a will which did not dispose of real estate. The assignee of the grantee abandoned to the executor, who made a subsequent grant of the coal. The heirs at law brought ejectment against the new grantees. The Court in entering judgment for defendants said, page 375:

"In passing upon the conclusion reached, the "effect of the agreement made by Robinson in "his lifetime must first be considered. Was it a "sale of coal in place, or merely a lease providing "for the payment of rentals? The former posi- "tion seems to be conceded as correct by all the "parties, and the trial judge, as stated in the oral "charge. This construction of the language used "was recognized by this court as proper in a prior "proceeding, involving the same conveyance: "McKeever *v.* Westmoreland Coal Company, "219 Pa. 234. It will be noted that the grant was "of all the coal remaining on the land, without "fixing the maximum time of taking, though it "was provided that a certain amount should be "removed, or paid for, each year. Even had a "limitation of the term appeared, it would not "have been effective to change the character of "the transaction, though to be considered in "determining the intent of the parties: Hope's "Appeals, 29 W. N. C. 365; Montooth *v.* Gamble, "123 Pa. 240; Kingsley *v.* Hillside Coal & Iron "Co., 144 Pa. 613. The construction applied is "not altered by the use of the word 'lease' in the "agreement (Dorr *v.* Reynolds, 26 Pa. Superior "Ct. 139; Millard *v.* Delaware, Lackawanna & "Western R. R. Co., 240 Pa. 234; Turner *v.* "Coal Co., 34 Pa. Superior Ct. 101), or the limita- "tion of the right to take only 'merchantable "coal' (Lillibridge *v.* Lackawanna & Western "R. R. Co., supra), or the designation of the

"sums to be paid as rentals (Lazarus' Est., 145 "Pa. 1); nor does the insertion of a forfeiture "clause affect the conclusion reached: Sanderson "*v.* Scranton, 105 Pa. 469; Delaware, Lackawanna "& Western R. R. Co. *v.* Sanderson, 109 Pa. 583.

"If the transfer by Robinson constituted a sale "in place, and we so hold, the payments of royal- "ties or rents are to be treated as purchase money, "and for the purpose of distribution considered "as personalty: Hosack *v.* Crill, 18 Pa. Superior "Ct. 90, affirmed, 204 Pa. 97; Dorr *v.* Reynolds, "26 Pa. Superior Ct. 139; Hope's Appeals, 29 "W. N. C. 365; Fairchild *v.* Fairchild, 9 Atl. 255; "Murray's Est., 216 Pa. 270. The same rule is "invoked as in the case of conveyances of, or "agreements to convey, real property, executed "during the lifetime of the decedent, the payments "stipulated being payable thereafter to the execu- "tor or administrator: 13 C. J. 855; 11 R. C. L. "108; Helsel's Est., 255 Pa. 612; Render *v.* "Luckenbach, 162 Pa. 18; Drenkle's Est., 3 Pa. "377."

In Smith's Est., 69 Pa. Superior Ct. 376, it was held that a coal lease where all the coal to exhaustion was granted, without limit of time, was a sale and the royalties went as personalty to the executor so that the husband of a subsequently deceased daughter would receive all of her share in the royalties and not a life interest in them.

In Lazarus Estate, 145 Pa. 1, an intestate in his lifetime had executed a coal lease. It was held that rents paid under same, went to his administrators as personalty and not to his heirs as rents. That the lease was a sale. The case arose in this way. Before 1917 in Pennsylvania a widow was entitled, in case of intestacy, to dower in one-third of the real estate for life and to one-third of the personalty absolutely. Intestate died in 1888 leaving a widow and five children. The widow died in 1889 leaving her property to two of her five

children, and the contest was as to royalties paid after her death. The Court says, page 7:

"The conveyance made by Thomas Lazarus is "not distinguishable either in form or in purpose "from that which was the subject of construction "in Hope's App., 33 Pittsb. L. J. 320; and "which was held to constitute a sale of the coal. "They are both in form leases for a term of "ninety-nine years; both give the grantees an "absolute and exclusive right to take out all the "available coal in the tracts described; and both "exact the payment of a stipulated sum, without "regard to whether coal shall be taken out or "not within that period. It is obviously imma- "terial that in Hope's Appeal the consideration "is payable *in solido*, while here the considera- "tion, beyond the stipulated sum payable in "any event, is regulated according to the rate "per ton for the coal which may be mined; for "this is simply a difference in the mode of pay- "ment of such consideration. Nor is it material "that no coal has been nor may be mined within "the term specified. The grantee has the abso- "lute and exclusive right, under the conveyance, "to mine all the available coal contained in the "tract described, and it rests with him alone "whether or not there shall be a reversion. If "he should exercise his right within the term, "the coal will by severance have become abso- "lutely his, and his grantor will have received "its equivalent in cash as in the case of an "ordinary sale; if not, his inaction will simply "amount to a voluntary forfeiture of such rights. "As was said in Hope's App., 'The grant of a "'right to mine coal in the lands of the lessor "'and remove it therefrom, although the instru- "'ment may be called a lease, is a grant of an "'interest in the land itself, and not a mere "'license to take the coal.' The transaction "here constituted a sale of the coal conditioned "upon its being removed within the period "specified; and the court below was therefore "in error. See Kingsley *v.* Coal & I. Co., 144 "Pa. 613."

In Hosack *v.* Crill, 18 Pa. Superior Ct. 90, same case 204 Pa. 97, the decedent during his life made a coal lease. By his will he devised the land to his daughter. Held that the coal lease was a sale of the mineral and that the royalties after his death went to his executors and not under the devise to his daughter.

In Blakley *v.* Marshall, 174 Pa. 425, an oil lease was held to be a sale and the royalties to go as principal into the trust and not to the life tenants.

In a note 4 L. R. A. N. S. 207 is a discussion of the language of various coal leases which have been construed in numerous cases. The note is to the case of Coolbaugh *v.* Coal Co., 213 Pa. 207, which case was explained in Smith's Est., 69 Pa. Superior Ct. 376 (cited *supra*).

In re Richards L. R. (1907) 2 K. B. 33, the author sold his entire copyright in a work to a publisher on royalties. The publisher failed and his trustee in bankruptcy continued the business until its sale. Held that "the agreement was for sale of goods. The author had sold his entire copyright in the works to the publisher at a price and the price was to be paid in royalties; that however did not entitle him on the bankruptcy of the publisher to be paid in full the royalties that accrued whilst the trustee was carrying on the business. He was only entitled to prove in the bankruptcy for the amount of the royalties by way of damages for the breach of the agreement."

b. Those cases which give to a life tenant under a trust created by a will the royalties arising from a coal lease or copyright made by a testator during his life are not in point. Those are cases where the intention of the testator so to do, is shown by his will. They depend on the ascertainment of his intention and, of course, if his intention was that

the life tenant should have these royalties, even though conceded, as these cases do concede, that they are primarily principal, the courts would so decree.

In Eley's Appeal, 103 Pa. 300, p. 306, the Court says:

"In seeking for the testator's intention, we de- "rive little or no assistance from that class of "cases in which it has been properly held that a "lease of the exclusive right to mine and remove "coal or other minerals, without limitation as to "quantity or time, is practically a sale of the coal "or other mineral in place, and consequently a "sale of a portion of the land itself. The word "income means the gain which accrues from prop- "erty, labor or business. In its ordinary and popu- "lar meaning, it is strictly applicable to the "periodical payments, in the nature of rent, which "are usually made under coal and other mineral "leases, and we have no doubt it was used in "that sense by the testator. In the absence of "any provision, express or implied, that the pay- "ments in the nature of rent shall be accumulated "for the ultimate benefit of those in remainder, "it would be a strained and unnatural construction "of the will to hold that he intended to give "appellants only the annual interest on the install- "ments of rent. The fact that they are tenants "for life by virtue of the will of the owner, and "not merely by operation of law, as in the case "of tenant by the courtesy, &c., must not be lost "sight of. In the latter case, the right of the "life-tenant is absolutely fixed and determined "by law, while in the former, the extent of the "rights appurtenant to the life estate, must be "determined by the will construed in accordance "with the intention of the testator."

See also Blodgett's Estate, 224 Pa. 210.
Mulford *v.* Mulford, 42 N. J. Eq. 68, p. 74.

In Davidson *v.* Ogilvie, 1910 S. C. 294 (Scotch Ct. of Session), an author died leaving the rent, use and

enjoyment of his residue and free annual income to his niece for life. Some of his books had been published and were paying royalties. Some were first published by his trustees. The Court citing the analogy to mine cases, held that as to those published by him during his lifetime the royalties were to be paid to the life tenant. He had so enjoyed them and evidently so intended. As to the others the royalties were principal and only the returns from the investments should be paid to her.

But in Eley's Appeal, 103 Pa. 300, it was held that the intention of the testator was that the royalties themselves on subsequently leased mines went to the life tenants.

Where an annuity forms part of the residue bequeathed in trust and cannot be sold, the instalments of it, until sale, form part of the capital of the trust, and must be invested, the interest of the investments being payable to the life tenant.

Crawley *v.* Crawley, 7 Sim. 427.
28 Hapsbury's Laws of Eng. 34.

In Cairns *v.* Shaubert, 9 Paige, 160, testator after the date of his will constructed a toll bridge on leased property. The Court held that the incomes did not pass under the residuary clause to the life tenant. It applied to this case, the rule of Howe *v.* Dartmouth (discussed post).

c. In the case of *In re* Elsner, 210 App. Div. (N. Y.) 575, 206 N. Y. Supp. 765, the testator, a physician, Dr. Elsner, during his life, entered into a contract with a publisher, Appleton and Co., to write a book which he assigned with the rights to publish to the publisher, he to receive royalties on the books sold. By his will he created trust estates and directed that the incomes be paid to certain beneficiaries, and the question was whether

these royalties went to the life tenants as income or were corpus of the estate. It was therefore, a question of the ascertainment of the intention of the testator.

The Court says:

"The will and codicil make no mention of the "book or of anticipated royalties, so that we have "no definite information as to the testator's in- "tent concerning them. We must therefore con- "clude that in his mind the status of this property "was the same as that of his other assets.

"It is claimed by appellant that the sums paid "under the contract are entirely income. The "remaindermen assert that such sums constitute "exclusively principal or capital.

"The question presents many difficulties. Such "funds partake of the nature both of principal "and income, the original principal or capital "was the book itself, a creation of the skill, "experience, and learning of the author. The "book might have been sold directly to the pub- "lisher either for a definite sum payable immedi- "ately, or by installments for a term of years. "In either case, the principal would then be the "sum of money thus received, substituted in "place of the original capital, the book. This sum, "if invested, would produce income. But the "author preferred to take a speculative contract "in effect a sale (*In re* Grant Richards, 2 K. B. "(1907) 33), whereby he received a percentage "of profits to continue as long as the book met "with profitable sale. The principal is, under "these circumstances, the beneficial interest the "author had in this contract—its present value "as a producer of income. It would be a simple "question if the principal remained unimpaired "in value. Its earnings would be income. But "it is common knowledge that professional works "are books of a period and their profitable life "limited in time. Progress in the particular "science concerning which they treat opens new "and interesting fields of research and discovery.

"Almost invariably later books by other authors "containing the new learning thus acquired super- "sede the older books. Their sale declines and "vanishes. This is obviously the experience of "this book which produced royalties of nearly "$4,000. in 1916, and but $13.50 from July 1, "1922 to December 31, 1923.

"Where then, is the principal now? Does it "still nominally exist in the contract which has "become unproductive, or has it entered into the "royalty payments in part, as though sold with "payments to be made by installments over an "indefinite number of years?

"On the other hand, if all the royalties were "installments of principal, where was the income "during the life of the contract? It is no sufficient "answer to say that the royalties when invested "will produce income; any income reinvested "will do that. Such a book, published under a "beneficial contract of this kind, produces an "income both for the purpose of taxation and as "the term is commonly understood; and income "is not derived alone from profitable investment "of capital, but may arise also in earnings from "labor, skill, or a calling or profession, or a com- "bination of any of these factors. Stratton's "Independence *v.* Howbert, 231 U. S. 399, 34 "S. Ct. 136, 58 L. Ed. 285; United States *v.* "Oregon-Washington R. & Nav. Co., 251 F. 211, "163 C. C. A. 367.

"Where a decedent's estate consists of income- "producing capital, it may be a kind that retains "a permanent value; or it may be of a kind that "depreciates in value when held by the executors "in trust or by life tenants. This depreciation "may occur through necessity for repairs, and in "that case the trust estate or life tenant must "assume the obligation of preventing waste. Or "it may consist of property known as 'wasting' "securities (Frankel *v.* Farmers' Loan & Trust "Co., 152 App. Div. 58, 136 N. Y. S. 703), or "'property consumed in the using' (Cains *v.* "Chaubert, 9 Paige, 160, 163; Spear *v.* Tinkham, "2 Barb. Chan. 211, 214).

"Where such property not specifically be-
"queathed comes into the hands of the executors,
"trustees, or life tenant of an estate, if it is retained
"the rule has long been established that the person
"given the use of income is entitled to receive only
"the income on the value of the property at the
"death of the testator (Cairns *v.* Chaubert, *supra*),
"with a duty to account for the principal to the
"remainderman (Covenhoven *v.* Shuler, 2 Paige,
"122, 21 Am. Dec. 73). Ordinarily, it is regarded
"the duty of the executors or trustees to convert
"such property into money and invest it in
"permanent securities, paying the income over
"to the person entitled thereto for life, or a term
"of years, retaining in their hands the principal
"sum for the benefit of the remainderman.
"Spear *v.* Tinkham, *supra;* Howe *v.* Earl of
"Darthmouth, 7 Ves. 56. If such property is
"retained by the executors, then there should
"be an apportionment of value between the
"principal and the income. For a long period
"this rule has been applied in this state. A
"statutory rule long existing and generally appli-
"cable is now found in section 204 of the Surro-
"gate's Court Act (Laws 1920, c 928). It pro-
"vides that not only rents, annuities, and
"dividends, but 'other payments of every descrip-
"'tion made payable or becoming due at fixed
"'periods under any instrument * * * or,
"'being a last will and testament, * * * shall
"'be apportioned so that on the death of any
"'person interested in * * * such payments
"' * * * or on the determination by any
"'other means of the interest of any such person,
"'he * * * shall be entitled to a proportion
"'of such * * * dividends and other pay-
"'ments. * * *'

"We think the property represented by the con-
"tract and the royalties can and should be appor-
"tioned between capital and income. Not only
"does the statute justify such a solution, but the
"practice has long been recognized and adopted
"in analogous cases, both in this and other
"jurisdictions. Matter of Kendall, 4 Dem. Sur.

"133; Matter of Houseman, 4 Dem. Sur. 404; "Sacandaga Realty Corporation *v.* Henes, 173 "App. Div. 785, 160 N. Y. S. 58; Cairns *v.* "Chaubert, *supra;* Deffenbaugh *v.* Hess, 225 Pa. "638, 74 A. 608, 36 L. R. A. (N. S.) 1099; *In re* "Earl of Chesterfield's Trusts, 24 Law Rep. "Chan. Div. 643; 28 Halsbury's Laws of Eng- "land, 32 *et seq.;* *In re* Hobson, 55 L. J. Ch. 422. "See also, Frankel *v.* Farmers' Loan & Trust Co. "*supra,* page 61 (136 N. Y. S. 703); Matter of "Martens, 16 Misc. Rep. 245, 39 N. Y. 189.

"Very likely it would have been better had the "executors sold and assigned their interest in the "contract, as they had a right to do, shortly fol- "lowing the testator's death, and thus obtained a "definite sum which they could have invested "paying the income to the beneficiaries and "retaining the principal sum for the remainder- "men. This controversy would then have been "avoided. A contract of this nature is capable "of having its present value as principal assessed "as of the date of testator's death. Experienced "publishers could make as fair an estimate of "that value as could expert appraisers of real "estate and personal property. But with the "history of publication and sale we now have, "it amounts to little more than a mathematical "calculation. See People *ex rel.* Cornell *v.* Daven- "port, 30 Hun. 177.

"To hold that the entire proceeds are principal "would be to deny that the capital earns any "income; to hold that the royalties are entirely "income leads to the result that a capital sum "must become eventually unproductive and value- "less. Either theory results in injustice, and we "are not inclined to adopt either the one or the "other.

"For the reasons stated, we take the view that "there must be an apportionment of the royalties "between principal and income; and that the "decree should therefore be reversed on the law "and the matter remitted to the Surrogate's "Court for the parties to take such further action "therein as they may be advised, without costs."

In re Elsner was decided on November 12, 1924. It has been followed in several New York cases and would appear to have established a new practice in New York which we desire to present to this Court.

It is evident that a trustee must be impartial as between a life tenant and a remainderman. If there is in the trust a security which is a wasting asset, such as a leasehold for a term of years, or a contract for publishing a book payable in royalties, which will gradually go out of the market, or horses or cattle which will die, or a coal lease where the mine is steadily being depleted, he should sell that asset and invest the proceeds. That will protect both the life tenant and the remainderman. And similarly, if the asset is unproductive as real estate, it should also be sold. In the first class it is for the interest of the life tenant, as against the remainderman, for the trustee to hold the asset and distribute to him the returns. In the latter the interests are reversed. In Howe *v.* Earl of Dartmouth, 7 Ves. 137, Lord Eldon met the equities arising from the failure of the trustee to sell, by holding:

That since it was the duty of trustees to reduce all assets by sale into certain kinds of securities or assets and as the Court would consider that done which should have been done, as between a remainderman and life tenant, where an asset which was not of the investing kind, was retained by the trustee, it would ascertain the value of the asset as at the time of death and allow the life tenant 3% of the value as income, hence where the asset was bank stock which brought in a larger income, all of which had been paid as income to the life tenant, the executors of the life tenant were ordered to return the excess.

This case has frequently been approved in New Jersey and its rule was applied in Helme *v.* Stocker, 52 N. J. Eq. 591.

The rule has frequently been applied to testamentary trusts, where the asset was later sold by the trustees, the selling price being divided between the life tenant and remainderman, by finding a principal sum, which with interest at a rate which it might earn being less than 6 per cent., see Edwards *v.* Edwards, 183 Mass. 581, and Loring *v.* Thompson, 184 Mass. 103, compounded annually if none had been paid, would equal the selling price, that principal sum going to the remainderman and the balance to the life tenant. It has been applied to non-productive assets, but has never been applied to any other than a testamentary trust and is now stated to be limited to such, on the theory that it was applied in carrying out the testator's intention. Lewin on Trusts, 12th Edit. Chap. 14, Sect. 3, p. 342. *In re* Van Stauberger 1901 2 Ch. 779; In *re* Brand (1899) 2 Ch. 336; *In re* Bates (1907) 1 Ch. 22, Crawley *v.* Crawley 7 Sim. 427.

In the other cases cited in this brief on this point, the Court ascertained that it was the intention of the testator that the life tenant should receive the whole of the payments as income invested as the decedent had invested them. In *In re* Elsner the Court held that there was nothing in the will to show testators intention and decided that the royalties, since the contract had not been sold and was a wasting asset, should be apportioned between principal and income by arriving at the value of the contract and that the life tenant should receive of the royalties, an amount representing interest on such sum.

The case at bar also differs from the other cases cited and closely approaches *In re* Elsner, because here there is nothing to show the intention—there is no will—but the right to the income comes from the Italian widow's usufruct.

Applying *In re* Elsner to the case at bar, and

supposing that this Court reverse the Chancellor, and shall distribute under Italian law, and give to Dorothy P. B. Caruso, her widow's usufruct of one-fourth of the incomes. If these royalties were held to be wholly income in Enrico Caruso's Estate, as the Chancellor does, then there would have to be a trust to preserve her life estate and the trustee should sell the Victor contract which is a wasting asset. It would be manifestly unfair to Gloria Caruso otherwise. Equally it seems to us, if the Court were to hold that the royalties were all prinpal, the contract would then be in the nature of an unproductive asset and should be sold, so that the life tenant could receive returns on the principal. It would be manifestly unfair to Dorothy P. B. Caruso otherwise.

But suppose no suitable offer could be gotten, then the rule of *In re* Elsner and of Howe *v.* Dartmouth should be applied and a value should be found for the contract and Mrs. Caruso should receive of the royalties, a sum representing one-fourth the income on the value. But *In re* Elsner (if applicable) would immediately divide the royalties between principal and income in these proportions.

In Guaranty Trust *v.* Halsted, 245 N. Y. 447, the facts and holdings are not of assistance in the case at bar, but the testamentary trustee argued that as the right to take the surplus, consisting of excess income in a trust, was a wasting right because the right to take was to cease at the death of a named person, sums should be taken from the surplus to make good the annual loss. The Court says, p. 464:

> "Where an asset of an estate is of a wasting "character, an asset 'which may be consumed in "'the using,' such a method of amortization, in "the absence of a testator's direction to the con-"trary, is ordinarily employed (Howe *v.* Dart-

"mouth, 7 Ves. Ch. 137. Cairns *v.* Chaubert, 9 "Paige Ch. 160. Matter of Elsner, 210 App. "Div. 575."

In re Hopson, 213 App. Div. 395, testator left his estate in trust, income to his widow until his youngest child became 21 years of age, then distribution. Held:

"That part of the personal property consisted "of live stock and farm implements was property "known as 'wasting assets' or 'property which "'may be consumed in the using.' It was "therefore, the duty of the Executor before "turning the same over to the trustee to cause "it to be appraised so that the value should be "known and accounted for to the remaindermen "legatees. (*In re* Elsner, 210 App. Div. 575, "579). This seems to have been done."

In the matter of Golding, 216 N. Y. Supp. 593, 127 Misc. Rep. 821, p. 824, the Surrogate says:

"There is another question to be determined "in this proceeding. At the time of the making "of his will, testator was the owner of the lease- "hold of premises No. 545 Fifth Avenue, Man- "hattan, New York City. This leasehold expires "on December 14, 1924, and, at the time of his "death, had five years and four months to run. "It was appraised at $60,919.88. This leasehold "forms part of the corpus of the trusts created "under testator's will. The executor and trustee "has collected and accumulated the net rents of "said leasehold in order to amortize same. The "total sum thus far collected is $33,767.30. This "leasehold was the only rent-producing property "that the testator owned. He owned no real "property. The question to be determined is "whether the leasehold should have been sold by "the executor and trustee and the proceeds "invested in interest-bearing securities, or the "rents accumulated for the purpose of amortiza- "tion. The life beneficiaries claim to be entitled "to the net rents of the leasehold up to the time

"of its expiration. This position is untenable. "The general rule is that where trustees or "executors find a portion of the estate invested "in what are termed 'wasting' securities, they "should pay to the life beneficiary only so much "of the income as represents a fair return upon "the capital value, accumulating and retaining "the residue for the benefit of the remainderman, "unless a contrary intention is evidenced from "the will itself, read in the light of the surrounding "circumstances. (Frankel *v.* Farmers' Loan & "Trust Co., 152 App. Div. 58; Matter of James, "146 N. Y. 78.)

* * * * * * * *

"There can be gathered from the will no "expression of intention that the rents from the "leasehold are to be enjoyed by his children in "specie. The leasehold was bequeathed in trust. "The life beneficiaries are, therefore, not entitled "to the net rents collected from said leasehold. "The same should be accumulated for purposes "of amortization. The life beneficiaries, however, "should receive five per cent. per annum (the "average rate of interest paid on trust funds) "on the fair appraised value of the leasehold at "the time of testator's death (Cairns *v.* Chaubert, "9 Paige, 160), based upon the actual rent so "far collected, it being conceded that the present "appraised value of the leasehold is excessive."

In re Katherine L. Hall's Estate, 130 Misc. Rep. 313, 224 N. Y. Supp. 376, leaseholds had been left in trust and there was an accumulation of the rents in the hands of the executors. On an accounting the question was raised before the Surrogate as to the distribution of this surplus, whether it should go to the life tenant or "should be governed by the general rule that where the assets of an estate of a decedent are invested in what are termed 'wasting securities,' as were the leaseholds here, the life tenant should receive only so much of the income

as represents a fair return on the capital value, the balance accumulated and retained as principal for the benefit of the remaindermen."

The Surrogate says, page 381:

"In the ordinary case where the assets of the "estate consist of so-called wasting securities the "general rule is that executors or trustees should "pay to the life tenant only so much of the income "as represents a fair return upon the capital "value, accumulating and retaining the residue "for the remaindermen. Frankel *v.* Farmers' "Loan & Trust Co. 152 App. Div. 58, 136 N. Y. S. "703, affirmed 209 N. Y. 553, 103 N. E. 1124; "Matter of Golding's Estate, 127 Misc. Rep. "821, 216 N. Y. S. 593. Only where it clearly "appears from the will that the testator is not "concerned as to whether or not there is anything "left for the remainderman will the life beneficiary "be entitled to receive the entire income of a "'wasting' security. Frankel *v.* Farmers' Loan "& Trust Co., *supra;* Matter of Hall's Estate, "127 Misc. Rep. 238, 216 N. Y. S. 598; Matter "of Schumann. N. Y. Law J. Dec. 14, 1926. "In the cases just cited the life tenants were "adjudged entitled to receive the whole of the "net rents of the leaseholds involved because of "the particular language of each will. In the "Frankel and the Hall cases there were provi- "sions which permitted the invasion of the corpus "of the estate for the benefit of the life beneficiary. "In the Schumann case the life tenant was "entitled to the income of the principal until "1941, with power to invade the principal, at "the end of which time the corpus of the trust "vested absolutely in such beneficiary. Here no "such intention is manifest, nor is there in the "will any other provision which takes this case "out of the general rule governing 'wasting "'securities.' On the contrary, the executors "and trustees are charged with the duty, as shown "by paragraph 'fifth,' 'to care for and preserve "'and invest' the residuary estate."

In the Matter of Thomas R. A. Hall's Estate, 127 Msc. Rep. 238, where leaseholds were left in trust and on an accounting it was sought to have set aside an amount out of the income as principal to amortize the value of the leaseholds, the Surrogate refused to allow the deductions, saying page 243:

"The basis for my conclusion is found in the "intention of the testator manifested in several "clear and unmistakable expressions in his will. "Were there not embodied in the will these mani- "festations of the mind of the testator, the gen- "eral rule, of necessity, would hold because of the "character of the properties involved. (Matter "of Golding, N. Y. L. J. June 20, 1924.) As "pointed out in Frankel *v.* Farmers' Loan & Trust "Co. (152 App. Div. 58; affd. 209 N. Y. 553): "It is no doubt a general rule that where trustees "or executors find a portion of the estate invested "in what are termed 'wasting' securities, they "should pay to the life tenant only so much of the "income as represents a fair return upon the "capital value, accumulating and retaining the "residue for the benefit of the remaindermen. "(Howe *v.* Earl of Dartmouth, 7 Ves. 137; Cairns "*v.* Chaubert, 9 Paige, 160; Kinmonth *v.* Brig- "ham, 5 Allen (Mass.) 270). This rule is not "rigid, however, and yields readily when it can "been seen from the will itself, read in the light "of the surrounding circumstances, that the testa- "tor entertained a different intention (2 Jarman "Wills, 6th Ed. 1245; Perry Trusts, 6th Ed. "Sec. 450); for as was observed by the latter "author: 'If the testator conferred upon the "'remaindermen only the possible chance of tak- "'ing what might be left by the tenant for life "'unexhausted, the remainderman will receive all "'that was intended for him and has no right to "'complaint.'"

But we submit that *In re* Elsner is not to be taken as authority for holding that the royalties in the estate of Enrico Caruso are partly principal and partly income.

Argument.

The Court admits that the agreement was in effect a sale, but, evidently in trying to ascertain the use by the testator of the word "income" points out that it is an elastic term and applying the rule of Howe *v.* Dartmouth and the order as to wasting assets apportioned the royalties between capital and income.

We respectfully submit that there is no such elasticity in the use of the word "income" when applied to the rights arising in case of intestacy. In interpreting a will, of course, its meaning is not exact.

In re Elsner cites the tax cases to show this elasticity. The language used by the United States Supreme Court in Von Baumbach *v.* Sargent, 242 U. S. 503; 61 L. Ed. 460, plainly shows the use of the word (when applied to taxation) made in such cases. The Court said (61 L. Ed. p. 470):

> "The Court held" (citing Stratton's Independ-
> "ence *v.* Howbert, 251 U. S. 399) "that it was
> "not correct to say that a mining corporation
> "was not engaged in business, but was merely
> "occupied in converting its capital assets from
> "one form to another, and that while a sale out-
> "right of a mining property might be fairly de-
> "scribed as a conversion of the capital from land
> "into money, the process of mining is, in a sense,
> "equivalent to a manufacturing process and how-
> "ever the operation shall be described, the trans-
> "action is indubitably 'business' within the mean-
> "ing of the Act of 1909, and the gains derived
> "from it are properly the income from business,
> "derived from capital, from labor or from both
> "combined * * *."

a. Similarly the cases are not in point which give to a tenant by dower or courtesy the right to royalties from mines where the mine has been opened or used during the lifetime of decedent, but not in unopened mines. These cases are based

on the right of enjoyment by the tenant in dower or courtesy of the property as it was used by the deceased, subject, however, that that use shall be limited by the application of the rules of waste.

Reed *v.* Reed, 16 N. J. Eq. 248.
Gaines *v.* Green Pond, 32 N. J. Eq. 86.
s. c. on app. 33 N. J. Eq. 603.
Rockwell *v.* Morgan, 13 N. J. Eq. 384.
Note to Mulford *v.* Mulford, 42 N. J. Eq. 68.
Sayres *v.* Hopkinson, 110 Pa. 473.

In Rockwell *v.* Morgan, 13 N. J. Eq. 384, p. 389, Chancellor Green says:

"The widow is entitled to dower in the clay "banks, as well as in any other part of the inherit- "ance. Dower is assignable in mines, quarries, "and in whatever is part of or appurtenant to "the land of which a widow hath dower, and "that whether it is assignable by metes and "bounds or not. Stoughton *v.* Leigh, 1 Taunt, "402; 9 Viner's Ab. 212, 'Dower' D. Park on "Dower, 115."

In Gaines *v.* Green Pond, 32 N. J. Eq. 86, Chancellor Runyon says, p. 100:

"A tenant for life has the right to work and "use open mines (Reed *v.* Reed, 1 C. E. Gr. 248) "for they have thus been made part of the profits "of the land, but he has no right to take the sub- "stance of the estate by opening mines."

And on p. 101:

"The law gives to the life tenant the right to "pursue by mining, the same means of deriving "profit from the land which were taken by the "former owner, though it be destructive of the "substance of the estate. Rockwell *v.* Morgan, "2 Beas. 384."

In 17 R. C. L. 635 it is stated that the rule is based on the theory that in such cases mining is a mere mode of the use and enjoyment and to take

the minerals out of an open mine is but to take the accruing profits of the land.

In Eley's Appeal, 103 Pa. 300, at page 306, (quoted *supra*) this distinction is stated.

As to mines not opened during the life of the decedent but subsequently opened by the executors or remaindermen, the tenant by courtesy is entitled to the interest on the royalties only.

See note to Mulford *v.* Mulford, 42 N. J. Eq. 68.
And see the Gaines *v.* Green Pond cases (*supra*).
And the careful discussion in Deffenbaugh *v.* Hess, 225 Pa. 638.

e. The contract between Caruso and the Victor Company is printed. (State of cases, page 341.)

By it the parties agree:

1. That it is for a period from its date, January 1, 1919, to and including January 1, 1934.

2. The artist agrees "that he will come to the Recording Laboratory "* * *" and, for the purpose of making complete, perfect and approved master records of his voice, will there sing * * * forty selections."

3. "The artist hereby grants to the Victor Company the right, at any and all times during the period of this agreement and thereafter, to manufacture, advertise and license or sell, and any or all these rights and powers, in all parts of the world, records of his voice in selections of which approved master records have been heretofore made or shall hereafter be so made and grants the further right to make use of his name and his photograph in connection with the manufacture, with the advertisement and with the license or sale of such records and

likewise grants all rights in and to the matrices and records upon which have been or shall be reproduced the performances herein referred to."

4. During the life of the artist, in the period of ten years' time from January 1, 1919, the Victor Company agrees to pay to the artist the sum of $100,000. each year, as a minimum, to allow him as a royalty 10% of the list or catalogue price of such records and at the end of any year covered by the minimum payment to pay him whatever shall be the excess of such allowance over the $100,000. For so much of the period of the agreement as shall remain after the minimum payments to pay him the percentage royalty and moreover after the period of the agreement, to continue to pay him the percentage royalty so long and only so long as he does not make for any other person a record of his voice in any selection of which an approved master record has been or shall be made by the Victor Company.

5. The Artist agrees that during the period of the agreement he will not make any record of his voice for any other person or permit any other person to make use of his name or photograph in connection with the making, advertising or marketing of any sound records. In case, after the period of this agreement he makes for any other person, a record of his voice in any selection of which an approved master record has at that time been made by the Victor Company "the Victor Company shall then be free from any and all further obligation to pay royalties to the Artist and the Victor Company shall thereafter have the right to manufacture, advertise and license or sell, and any or all these rights and powers, anywhere, and to use his name and photograph in connection therewith, records of the Artist's voice without payment or obligation

of any kind to the Artist and all right of the Artist to any further accounting shall likewise thereupon forthwith cease."

6. * * *

7. "All agreements heretofore made between the parties hereto are terminated and superseded by this agreement. The covenants of and rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto."

The creations which Caruso made were the master records. These he granted absolutely to the Victor Company together with the right to manufacture, advertise and license or sell records made from these master records, in all parts of the world and without any limit of time. This is an absolute sale. He gave up everything he had, the ownership of and the dominion over the thing itself and the possession of it and gave the right to make and sell productions from it.

It is exactly analogous to an engraver or etcher who granted and sold the steel or copper plate on which his picture had been engraved or etched, with the right to make prints from it. There would be no question that such would be a sale. It could not be considered a lease for the artist did not retain ownership. He has parted with everything, and for doing so is to receive his price. It would be an absolute sale.

The fact that Caruso's price is to be paid in instalments rather than in a lump sum can make no difference in the transaction. It cannot change it from a sale.

f. The language of the contract is that of a sale. But suppose it had been silent as to the ownership of the thing produced, to whom then would the

master records and rights belong? Caruso was not in the general employ of the Victor Company, but was specially employed to create these records. Certainly it could not have been the intention of the parties to the contract, that the Victor Company would employ him and pay him to make these records and that they should belong to him after the making of them. If one specially employs and pays a person to make a specific thing certainly it is the understanding that that article, when made, belongs to the employer, even though it is not expressly so stated in the agreement.

This point has been before the Courts.

In Dielman *v.* White, 102 Fed. 892, where an artist was employed by the United States to paint and furnish a Mosaic panel for the Congressional Library, although the contract was silent on the subject, it was held that the right to make pictures of it belonged to the Government and not to the artist, the Court saying, p. 894:

> "In general, when an artist is commissioned to "execute a work of art not in existence at the "time the commission is given, the burden of "proving that he retains a copyright in the work "executed, sold and delivered under the commis- "sion rests heavily upon the artist himself. If a "patron gives a commission to an artist, there "appears to me a very strong implication that "the work of art commissioned is to belong un- "reservedly and without limitation to the patron."

In Peck *v.* Standard Parts Co., 295 Fed. 740, complainant was specially employed to devote his time to the development of a process and machinery for the production of a front spring used by the Ford Motor Company. He was to receive $300. a month for his services and a bonus of $10. for each per cent. of labor reduction. He was not generally in the employ of the Company. He created a

patentable device developed in performing this contract. He claimed that he owned the patent, admitting that his employer had a shop right or license to use it, but that the employer could not assign it to defendant and that defendant therefore infringed his patent. It was conceded as well settled that had he been generally in the employ, his contention was correct, but it was claimed that as he was especially to develop this specific thing, it belonged to the employer. The District Court N. D. Ohio E. D. (1920) found that the invention belonged to to the employer, saying, page 745:

> "In this case plaintiff was employed for a "specific purpose. He had no general employ- "ment, and performed no services, except in that "one capacity. The entire consideration re- "ceived by him was paid in developing the pro- "cess and machinery which has eventuated in a "patentable invention. He was not employed "generally in a certain line of work, and devised "merely an improved method or instrument for "doing that work. He was employed and paid "to develop a process or machinery or means of "accomplishing a prescribed result. The patent- "able invention is the result solely of that which "he was employed and paid to accomplish. The "results thus accomplished, even if of a patentable "nature, should accrue wholly to the employer; "otherwise, the employer is deprived of a part of "that for which he has paid. No invention ever "would have been made, except for this contract "of employment and expenditure of the employer. "The employe, it seems to me, has sold in advance "whatever rights as an individual he may have "had in and to his inventive powers, so far as "they relate to the work he was to do or the "results which he accomplished. In this respect "the situation differs not at all from that of an "artist who is employed to paint a picture, in "which situation the rule is that, when delivered "and paid for, the picture, as well as all copyrights

"or rights of reproduction, belong exclusively to "the patron. See Dielman *v.* White (C. C.) 102 "Fed. 892."

This decree was reversed (282 Fed. 443) by the Circuit Court of Appeals, 6th Circuit, which was in turn reversed by the United States Supreme Court, Standard Parts *v.* Peck, 264 U. S. 52; 68 L. E. 560; 44 S. C. 239, Justice McKenna saying:

"It cannot be contended that the invention of "a specific thing cannot be made the subject of a "bargain and pass in execution of it. And such, "we think, was the object and effect of Peck's "contract with the Hess-Pontiac Spring & Axle "Company. That company had a want in its "business, a 'problem,' is Peck's word, and he "testified that 'Mr. Hess thought probably' that "he, Peck, 'could be of some assistance to him "'(Hess) in working out' the 'problem,' and the "'thought' was natural. Hess had previous "acquaintance with Peck,—his inventive and "other ability,—and approached him, the result "being the contract of August 23, 1915, the "material parts of which are as follows: 'This "'agreement witnesseth, that second party is "'to devote his time to the development of a "'process and machinery for the production of "'the front spring now used on the product of "'the Ford Motor Company. First party is to "'pay second party for such services the sum of "'$300. per month. That should said process "'and machinery be finished at or before the "'expiration of four months from August 11, 1915, "'second party is to receive a bonus of $100. a "'month. That, when finished, second party "'is to receive a bonus of $10. for each per cent. "'of reduction from present direct labor, as dis- "'closed by the books of the first party.'

"By the contract Peck engaged to 'devote his "'time to the development of a process and "'machinery,' and was to receive therefore a "stated compensation. Whose property was the "'process and machinery' to be when developed?

"The answer would seem to be inevitable and "resistless,—of him who engaged the services and "paid for them, they being his inducement and "compensation, they (60) being not for temporary "use but perpetual use, a provision for a business, "a facility in it and an asset of it, therefore, con- "tributing to it, whether retained or sold; the "vendee (in this case the Standard Company) "paying for it and getting the rights the vendee "had (in this case, the Axle Company).

"Other meaning to the contract would confuse "the relation of the parties to it,—take from the "Axle Company the inducement the company "had to make it,—take from the company the "advantage of its exclusive use, and subject the "company to the rivalry of competitors. And "yet, such, we think, is the contention of Peck. "He seems somewhat absorbing in his assertion "of rights. He yields to the Axle Company a "shop right only, free from the payment of royalty, "but personal and temporary,—not one that "could be assigned or transferred. Peck there- "fore, virtually asserts, though stimulated to "services by the Hess Company and paid for "them,—doing nothing more than he was engaged "to do and paid for doing,—that the product of "the services was so entirely his property that he "might give as great a right to any member of the "mechanical world as to the one who engaged "him and paid him,—a right to be used in compe- "tition with the one who engaged him and paid "him.

"We cannot assent to this nor even to the limi- "tation the Court of Appeals put upon Peck's "contention. We concur with the District Court, "and therefore reverse the decree of the Circuit "Court of Appeals.

"Reversed."

g. These recorded renditions constitute literary and artistic property. But even if they did not, it would make no difference in this case. Whatever it might have been that Caruso had to sell the Victor Company bought and agreed to pay for it, and the

dispute in this case is not raised by the Victor Company, or by third parties, but by Caruso's next of kin in claiming parts of the price paid and to be paid to him and to his administrators.

In Haskins *v.* Ryan, 75 N. J. Eq. 330, Vice Chancellor Stevens, on page 332, says:

> "Undoubtedly ideas, if valuable or even if "thought to be valuable (supposing them to be "such as the law approves of), may be the subject "of bargain and sale. They may be the subject "of contract, but they must be protected by con- "tract. Their originator cannot give them out "and then sue for an indefinite share of profits "which some one else may make out of a venture "in which he seeks to embody or utilize them."

This language was carefully used by him to explain an expression previously made by him in the same case, Haskins *v.* Ryan, 71 N. J. Eq. 575, at page 580 (affirmed per curiam 75 N. J. Eq. 630).

In the cases of Aronson *v.* Baker, 43 N. J. Eq. 365, and New Jersey State Dental Society *v.* Dentacura Co., 57 N. J. Eq. 593, it is noticeable that although the rights of the author, as against third parties, were disputed, there was no dispute that the assignee had whatever rights he had.

h. The foregoing cases are applicable in ascertaining whether the royalties are principal or income in Enrico Caruso's estate.

The royalties certainly are normally principal to Enrico Caruso during his lifetime. They are the sale price being received in instalments by him. It is only by a far stretch that they are held by the courts to go to a life tenant or tenant by courtesy or dower.

The New York cases cited in the discussion of *In re* Elsner *supra* show that there is a wasting

asset it is only where a clear intention is shown by the testator, that the life tenant receives all the incomes from such an asset.

Therefore these cases are direct authority for the position that these royalties in Enrico Caruso's estate cannot be all income, if the question is one of New Jersey law.

But where there is no will, but the right of a life tenant to incomes from the assets comes from such a statue as in Italy, we submit the normal status of these royalties as principal is not changed and that they are principal of Enrico Caruso's estate and the widow's usufruct would extend to but the incomes from their investment.

Quite irrespective of how Enrico Caruso himself regarded the Victor payments, he clearly expressed his intention that his widow was not to receive one Lire of principal. This is established by the fact that he limited her to the Italian law in favor of surviving spouses under which she is not entitled to any principal, and there is no room for interpretations of a decedent's meaning of the word income, it is the fixed statutory income and no principal he wants her to get. Moreover, while heirs in Italy may discharge the widow's usufruct (Art. 819 Italian Civil Code, p. 633), we find no corresponding right in favor of a widow.

i. But what are they after they are in Gloria Caruso's estate? We contend that whether principal or income in Enrico Caruso's Estate, they must be principal in Gloria Caruso's estate. The intention found either of a will for the benefit of the life tenant or implied in the law for the benefit of the dower or curtesy tenant, would here have no application. Normally principal they were and normally principal they would remain when they came to Gloria Caruso.

The Chancellor holds that the royalties were income in Enrico Caruso's estate and would remain so in Gloria Caruso's estate, citing the cases which hold that the surplus remaining after a foreclosure of a mortgage, retains, for distribution, the nature of real estate.

We cannot agree with this position. We submit that even if income to Enrico Caruso, when distributed to Gloria Caruso as part of her inheritance, they could only be principal of her estate.

We would cite the common instance of where, at the death of a life tenant, the trustee apportions to his executors his share of the subsequently paid interests on bonds held in the trust. This would be income to the life tenant but it would be principal of his estate after his death. If he in turn created a trust, it would not go to the new life tenants as income, nor if he had a child would it be considered as income in the child's estate to be used as such for maintenance.

We therefore contend that these royalties are principal in Gloria Caruso's Estate and that the income of Gloria Caruso, to which an order for her support should be limited, is the interest arising from the investment of these royalties.

V.

This is an application for an allowance for the support of an infant made to an ancillary court, when there are funds of the child in two (because of the removal of Gloria Caruso from one to the other) domiciliary jurisdiction.

Such an application is far beyond the real sphere of an ancillary administration (see cases *supra*).

As we stated *supra* we can conceive of a case where such an application would be proper, but such a matter essentially belongs to the domiciliary court,

not here. The only reason which could possibly excuse the bringing of such a question in this ancillary court is absolute necessity.

We believe therefore that two positions follow:

That if the domiciliary court has passed on the question the ancillary court should not controvert their decision; and that an allowance should only be granted by this Court in case of absolute necessity and that this should be clearly and unquestionably shown.

1. The question then arises as to what the domiciliary court has done as to an allowance for maintenance. (For the purpose of this argument we must take the Naples Court as the domiciliary court.)

We refer to the Naples Court as the domiciliary Court of the estate of Gloria Caruso. We deny positively that it ever was or is but these parties petitioned it and it acted as though it was and it is argued by Dorothy P. B. Caruso that it was and is and therefore for the purpose of this argument it must be treated as such.

The facts are shown by the Exhibits in the affidavits filed for Gloria herewith (Supplemental State of Case, pp. 511, 516, 521).

Exhibit "E" attached thereto (Exhibit C 13 a State of Case, p. 327) is a translation of the decree of the Naples Court dated August 21, 1925, and petition for same. That decree recites the New Jersey litigation and tie up of the New Jersey incomes and states that the Italian distributees have threatened reprisal against Mrs. Caruso and Gloria Caruso for any losses they may suffer by refusal of the New Jersey Court to give effect to the Italian agreement.

Exhibit "F" (See Supplemental State of Case, p. 521) is a letter written on February 26th, 1926, to Mr. Seligsberg (Dorothy P. B. Caruso's Counsel in New York and of Counsel in this case), by Mr. Consolazio (Naples Counsel for Mrs. Caruso and for the estate) making the same threat and stating: "The final consideration then is that the President of the Tribunal of Naples formally promised to Mrs. Caruso that he would enter a judgment recognizing her right to recover—from the estate of her daughter in Italy—all that would be taken away in America."

Exhibits "G" (State of Case, p. 419) and "H" (State of Case, p. 422) are translations of the two decrees of July 10, 1926, and September 8th, 1926, with the petitions for same. The results which came from these decrees appear to be the causes of this petition to the court below. Each was made on petition by Gabriele Consolazio, Attorney and General Representative of Dorothy P. B. Caruso as mother and administratrix of Gloria Caruso.

The decree of July 10, 1926 (p. 419) ordered that a sum of 37,000 lire (½ of a total sum due of 74,000 lire) balance due for finishing the mausoleum built for Enrico Caruso on his order and therefore a debt due by his estate, be paid out of Gloria Caruso's capital but ordered Dorothy P. B. Caruso to replace this amount "from the incomes she will collect." The decree contains this curious language: "it might well be ordered that half of the total amount be paid by the minor from the first incomes to accrue from the estate existing in America."

The decree of September 8, 1926 (State of Case p. 422) was made on application of Dorothy P. B. Caruso (see page 422) setting forth that under the

division agreement there had been deposited for Gloria Caruso the following bonds:

National Loan 5%	405,000.
Consolidated Loan 5%	3,834,200.
Livorno Railroad Bonds	56,000.
Russian Bonds	50,000.
Danish Bonds	64,800.

That the Bureau of Direct Taxes of Florence had ascertained that the Estate of Enrico Caruso was over Lire 21,000,000 and imposed a Patrimony tax of Lire 6,000,000, which had been reduced by compromise to an annual payment of Lire 301,445 for ten years; that because each interest was responsible for the others and the tax was part of the estate, it was advisable to pay the total at once. It prayed that all the National bonds and sufficient of the Consolidated bonds of Gloria Caruso be sold to pay her one-half amounting to Lire 1,507,225, by paying to the General Treasury in Florence her share which had not yet been paid for and to pay without restriction to the mother, Dorothy P. B. Caruso, all the remaining part of said sum for reimbursement to her of the amount she had advanced.

The Court recited that the redemption of the tax was in the interest of Gloria Caruso because it freed her estate from the guarantee for the other shares and that as the incomes were not sufficient to pay the tax in one payment it was necessary to authorize the payment of the remaining sum due by sale of sufficient bonds, and decreed that all the National Loan bonds and enough of the Consolidated Loan bonds be sold to pay the remaining sum due and further ordered that all the income on the balance of the Consolidated Loan bonds be used to purchase new Consolidated Loan bonds until the "nominal capital which has been used in order to

pay the tax, will be reintegrated. Only after said capital is reintegrated the above Treasury will pay the income on all the bonds to whomsoever shall thereupon be entitled."

The incomes on these bonds which were thus removed from payment to Dorothy P. B. Caruso was on National bonds Lire 405,000 at 5% Lire 20,250, on Consolidated bonds Lire 3,834,200 at 5% Lire 191,710, a total of Lire 211,960. (Before the War a Lire was worth a little over 19 cents. It is now worth about 5 cents, so that this income was worth approximately $10,598.)

We do not quite understand what the patrimony tax is. Mr. Seligsberg stated in argument below that it was a debt due by Enrico Caruso's Estate. The decree seems to state that it corresponds to our Inheritance Tax. Whichever it is, it would seem to have been a capital debt due from Gloria Caruso's principal rather than from her income, but certainly this was an adjudication by the domiciliary court reducing the allowance which Dorothy P. B. Caruso was receiving from Gloria Caruso's income for her maintenance by $10,598. and was made by that court with full knowledge of the New Jersey situation.

We suggest two explanations of these decrees, and the correct explanation must seem to be one or the other.

First. These decrees were made with the actual knowledge by the Naples Court and by Mrs. Caruso's attorney that the New Jersey incomes were not available for Gloria Caruso's support. Therefore the domiciliary court has actually considered the amount of income actually coming to Mrs. Caruso from Gloria Caruso's estate and has decided that it is sufficient without New Jersey incomes for Gloria Caruso's maintenance. Therefore, no necessity

exists for this Ancillary Court to inject itself into the matter. This petition really asks this Court to add to the allowance made by the Domiciliary Court when it had other incomes in its own control which it could have allowed.

Second. If that is not the true explanation, then the purpose of securing these decrees was, by this method to withdraw Gloria Caruso's New Jersey incomes and funds from this New Jersey jurisdiction into Italy through the scheme of forcing their use for her support, and requiring that her Italian incomes, instead of being used for her support, should be turned into capital.

The language used by the Italian Court in its decree of August 21, 1925 (p. 327), and in its decree of July 10, 1926 (p. 419), and the promise of its President Judge to Mrs. Caruso as stated in Mr. Consolazio's letter of February 26, 1926 (p. 521), would make us believe that this is the purpose of these decrees, if they were not adjudications that Mrs. Caruso had ample to support Gloria from Gloria's income, without using these segregated incomes. This Court knew when it made these decrees that the New Jersey incomes were tied up.

We have always been of the opinion that this whole Italian performance has been a gigantic fraud on Gloria Caruso and against her property, and we believe that these decrees are either adjudications by this Italian Court that Mrs. Caruso is receiving enough income from Gloria Caruso's estate, or are but another step in this scheme. In either case this petition should have been dismissed.

2. We contend that there is no necessity in this matter which would warrant an ancillary court in making an allowance, and that Dorothy P. B. Caruso has not shown that any such necessity exists.

The burden of proof is upon the petitioner and with greater weight in this informal proceeding, upon affidavits, where we have no power to cross-examine Mrs. Caruso.

Enrico Caruso left a large estate.

By the settlement agreement (State of Case, p. 340 and at p. 344) it is shown that Enrico Caruso died leaving an estate as follows (using the appraisements of the agreement):

In Italy:

Real Estate	Lire	6,013,203.67
Personalty (not including New York inventory appraisement at $461,305.05 and Victor contract)	"	14,367,406.88
	"	20,380,610.55
Various personalty distributed under the Agreement, not valued.		
Art Collections to be sold in New York and Naples (the collections sold in New York brought) (See Account C) but part are of the New York estate		$106,056.74
Estate in New York		461,305.35
Life Insurance (See Account B)		25,778.42
		$593,140.51
French Francs		30,000.00

A total:

Lire 20,380,610.55 @ 5¢	$1,019,030.53
	593,140.51
Francs 30,000 @ 5¢	1,500.00
	$1,613,671.04

Also Victor contract (not valued).

And on page 353 the settlement agreement states that the hereditary patrimony to be divided actually amounted to Lire 13,380,609.85. This figure evidently was the net estate.

This appraisement undoubtedly was at minimum values. And this agreement shows (State of Case pp. 353, 354) that the division of the assets in Italy was made and at these valuations there was assigned:

to Mrs. Caruso.....Lire 1,672,576.46
" Gloria Caruso..... " 6,690,304.62

The taxing authorities valued the total Estate of Enrico Caruso at over Lire 21,000,000. (petition of Dorothy P. B. Caruso on which the decree of September 8, 1926, was made, State of Case at p. 424). This valuation would be after the payment of debts so that, at this valuation Gloria Caruso would have received Lire 10,500,000. and Dorothy P. B. Caruso would have received Lire 2,625,000. If their shares of the patrimony tax should be deducted (See discussion *supra*) the net estate coming to them would have been, at the valuation of the taxing authorities and this would probably not include assets in New York or New Jersey.

To Gloria Caruso.....Lire 8,992,775.
" Dorothy P. B. Caruso..... " 2,296,387.

Throughout this whole case it has been claimed by Mrs. Caruso and not denied by any of the other parties, that Mrs. Caruso is entitled to receive all of the incomes from Gloria Caruso's Italian share and also from her own share. (This statement must, however, be modified by the limitations made by the Naples decrees of July 10, 1926, and September 8, 1926, discussed by us *supra*.)

In Vittorio Scialoja's affidavit he says:

"All that I have exposed up to now proves the "most remarkable damage caused to her daughter "Gloria by Signora Benjamin, also for her own "personal advantage, and constitutes the strongest "element according to my view, for denying "Signora Benjamin any right of deduction from "the goods existing in New Jersey.

"But apart from that it is sufficient to examine "the deed of division of Naples of the 7th of "June, 1922, to see that to Gloria Caruso there "were assigned goods in Italy of some ten mil-"lions, of which much was cash, now it is abso-"lutely impossible that the income from this very "great sum, of which Signora Benjamin has the "administration, is not sufficient for the main-"tenance and the education of the little child. "It must not be forgotten that it is the custom, "prevalent in juridical authority of all countries, "to use for the maintenance and education of a "minor, first of all, the goods which are at his "domicile and afterwards those more distant. "There must first be destined for the education "of Gloria the goods which she has in Italy and "precisely at Florence, and were these perhaps not "sufficient, the goods in New Jersey."

To this are to be added the shares in the New York assets totaling $593,140.51. As to what has become of these assets in the jurisdiction of Gloria Caruso's present domicile, nothing is shown.

The information as to the incomes coming to Mrs. Caruso from her own and Gloria Caruso's shares in Italy is most meagre.

In Mrs. Caruso's affidavit she says:

"Deponent further says that she has received "but very little income from Gloria's Italian "estate as usufructarian, owing to the fact that "the rents of Gloria's real estate were unfor-"tunately low and the real estate and other taxes "which were to be paid out of Gloria's income,

"were disproportionately high. That her attorney, "Mr. Consolazio, has at various times informed "deponent that the charges she had to meet out "of Gloria's income, have been thus far, in excess "of Gloria's actual income and the said Con- "solazio has further informed her at various times "that for many years to come she can expect but "very little income from Gloria's estate as the "decree of the Court of Naples impounding "Gloria's income until her capital, on account of "the payment of the patrimony tax, was recon- "stituted, would practically result in deponent's "receiving no appreciable income from Gloria's "estate for many years."

Mr. Seligsberg says in his affidavit (State of Case, p. 80) that the Italian attorneys have repeatedly assured him "that the incomes produced by Gloria's Italian estate are smaller than the amounts which Mrs. Caruso has been paying for the administration, upkeep and taxes and other expenses connected with Gloria's Italian estate."

Mr. Seligsberg in his affidavit (p. 82) summarizes the situation of Mrs. Caruso as follows:

"To summarize: As to the financial condition "of Mrs. Caruso, deponent affirmatively states "that Mrs. Caruso's income from her American "Estate does not exceed the sum of $9,000; that "the income from the Canessa fund is about the "sum of $1,525, but has not been received by "Mrs. Caruso for the reasons as above stated; "that as to the income of Gloria's estate from "Italy, to which Mrs. Caruso is entitled as mother, "deponent has been informed by the Italian "counsel, whose word he has no reason to dis- "believe, that for many years to come Mrs. Caruso "will not receive any income whatsoever there- "from; that as to Mrs. Caruso's Italian Estate, "deponent is sufficiently familiar with the facts "to know that her income therefrom will be very "negligible."

In his second affidavit Mr. Seligsberg states (p. 94) however that Mrs. Caruso will receive from her own and Gloria's Estate in Italy about 50,000 Lire annually.

No accounts are shown of what these incomes in Italy amount to. The affidavit of Mr. Seligsberg is based on unsworn to statements by the Italian lawyers of Mrs. Caruso to him.

It is beyond our comprehension that Italy by its taxes so depletes the incomes of an inheritance that nothing comes to the owners, a mother or child.

It is to be noted that Gloria Caruso's share included 3,464,543 Lire in bonds (p. 353), in debts due to the Estate 876,000 Lire of which we know that the Canessa debt of 594,000 Lire has been paid and is in New York and that the real estate given to her did not include the two homes of Enrico Caruso, but consisted of rentable properties (p. 347). That Mrs. Caruso's share included (p. 354) 892,972 Lire of bonds.

The measure of Mrs. Caruso's style of living must not be as in the lifetime of Enrico Caruso, who had great earning capacity, but according to the amount of his savings. That is the cloth from which her living must be measured. It may be that temporarily, following the war, this living must be curtailed. But if there are no incomes coming from Italy or being held there for her, she should not live as she evidently wants to.

We submit that Mrs. Caruso has not shown or gives any proof of a necessity for any allowance to be made by the Ancillary Court out of assets in New Jersey.

MARTIN V. BERGEN,
Solicitor for and of Counsel with the Guardian ad litem of Gloria Caruso.

MARCEL A. VITI,
of Counsel.

New Jersey Court of Errors and Appeals

Between DOROTHY P. B. CARUSO, *Complainant-Respondent,* *and* RODOLFO CARUSO, *et als.*, *Defendants,* GLORIA CARUSO, *Defendant-Appellant.*	In Equity On Appeal From Chancery Sat Below: Walker, C.

BRIEF OF COMPLAINANT-APPELLANT.

The scope of this brief is limited to consideration of the position of Appellant as a party individually interested in distribution of the estate. A full statement of the facts and exhaustive discussion of the law appears in the main brief filed on behalf of Appellant. For the Court's convenience, however, we shall here summarize the facts and legal propositions in the briefest possible compass.

Facts.

Enrico Caruso, testator, Italian subject, died domiciled in Italy in 1921. His Will, deposited in Italy, provided for division of his estate between the widow, a brother and two illegitimate

recognized sons. There was no provision for an infant daughter, Gloria, born shortly after the making of the will. Serious questions arose as to the effect of her birth upon the respective rights of the heirs. In order to avoid litigation the testamentary heirs and the infant, Gloria, represented by a special guardian, reached an agreement for distribution of the estate. The terms of the proposed agreement were approved by the Public Ministry acting on behalf of the infant and approved by the Italian Court (Case, Exhibit C-8a). A decree was thereupon made directing parties to prepare and execute an instrument to carry into effect the terms of the proposed agreement. Thereafter an appropriate document was prepared by a notary which was expressly subject to judicial approval. Accordingly it was submitted to the Court. A decree was subsequently made approving the terms of the instrument and directing distribution of the estate in accordance therewith. The operative part of the final decree is in part as follows:

> "2. Confirm the Deed by notary Sanseverino, dated June 7, 1922. * * *
>
> 5. Delegate, moreover, the same Mrs. Dorothy Benjamin to deliver to each co-heir that which is due him in titles, cash values and objects, always conforming to the above Sanseverino Deed and to consign the titles and cash due to the minor, Gloria Caruso, and to the minor, Enrico Caruso, to the Banca di Napoli, to be deposited in their names with the pupillary restriction and with the demanded legal guarantees.
>
> 7. Authorize the Victor Talking Machine Company to pay each year the 10% due to Comm. Enrico Caruso as follows:

one-eighth to Mrs. Dorothy Benjamin Caruso

one-eighth to Mr. Giovanni Caruso

one-eighth to Mr. Rodolfo Caruso

one-eighth to Mr. Enrico Caruso, minor,

and of the remaining four-eighths due to the minor, Gloria Caruso, to pay two-eighths without restriction to Mrs. Dorothy Benjamin Caruso as mother, tutor and legal administratrix of the property of her minor daughter, Gloria Caruso, until her coming of age, and to deposit the other two-eighths in the Banca di Napoli at its New York offices in the name of Gloria Caruso with the pupillary restrictions."

SUMMARY OF ARGUMENT.

Subsequent to entry of the final decree the widow undertook to complete collection of the assets of the estate and to effect distribution as directed. An ancillary administration was opened in this jurisdiction. A petition was filed praying that distribution of the New Jersey assets be ordered in accordance with the Italian decree. This was denied on the ground that it would violate "public policy to recognize the foreign decree insofar as it sought to establish the infant's distributive share of the New Jersey property". Accordingly the Chancellor ordered that the infant should receive two-thirds of the New Jersey assets and that the remainder should be divided in the proportions specified by the Italian decree between the other parties.

The anomalous decision of the Chancellor has created a startling situation. A competent court of a civilized foreign state by final decree has purported to completely dispose of the entire estate wheresoever situate of an Italian decedent having an Italian domicile. The Italian judgment is not impeached upon the ground of fraud or lack of jurisdiction. The parties before it were Italian subjects present in Italy at the time of the proceedings which resulted in the decrees relied upon. Yet, notwithstanding, the Chancellor has chosen to decline to recognize the provisions of such final judgment with respect to personal property situate in New Jersey upon the quixotic and unprecedented ground that a non-resident infant will receive a lesser proportion thereof than she would have been entitled to receive had her father died domiciled in New Jersey and intestate. This is to repudiate all precedent for the disposition of the assets of a foreign estate. It is a denial of the very existence of universal principles of private international law and has caused the hardship and delay which such principles are designed to prevent. If the New Jersey Statute of Distributions is to govern the disposition of New Jersey property under any and all conditions; if New Jersey courts are to decline recognition of foreign judgments and foreign contracts valid where made upon such grounds as this; in short if the decree below is affirmed, then, indeed, ancient and essential principles of law will have disappeared from the jurisprudence of this great State.

The distribution of the estate is provided for not only by a final foreign judgment, but also by a contract between the parties hereto executed in Italy at a time when all the parties were pres-

ent and in all respects valid and binding upon the parties under Italian law. That the interests of the infant were properly safeguarded is clear. She was represented by a special guardian and the Public Ministry charged with such matters expressly approved the terms of the agreement. Subsequently the proper court likewise approved.

Affirmance of the decree below will operate grave injustice and severe hardship upon the widow. She has already made a substantial pecuniary sacrifice in order to facilitate settlement as more fully appears hereinafter. The decree below seeks in effect to rewrite the settlement almost entirely at her expense.

Appellant relies upon the following propositions:

I. Appellant is individually entitled to receive one-eighth of Victor royalties accrued and prospective, and an additional two-eighths of royalties accrued and to accrue during Gloria's minority.

II. Succession to personal property is governed by the law of decedent's last domicile. The declaration of the Court of decedent's last domicile as to distribution of the estate is regarded as the conclusive expression of the domiciliary law and in the absence of fraud and defect of jurisdiction should receive full recognition.

III. The contract of the parties is valid in accordance with the general rule that the validity of a contract is determined by the law of the place of contracting and should be recognized in order to effectuate the intent of the parties and prevent injustice.

ARGUMENT.

I.

Appellant is individually entitled to receive one-eighth of Victor royalties accrued and prospective, and an additional two-eighths of royalties accrued and to accrue during Gloria's minority.

The final decree of the Italian court, dated June 16, 1922 (Case, pp. 293-299) provides as follows:

> "Authorize the Victor Talking Machine Company to pay each year the 10% due to Comm. Enrico Caruso as follows:
>
> one-eighth to Mrs. Dorothy Benjamin Caruso
>
> one-eighth to Mr. Giovanni Caruso
>
> one-eighth to Mr. Rodolfo Caruso
>
> one-eighth to Mr. Enrico Caruso, minor,
>
> and of the remaining four-eighths due to the minor, Gloria Caruso, to pay two-eighths without restriction to Mrs. Dorothy Benjamin Caruso as mother, tutor and legal administratix of the property of her minor daughter, Gloria Caruso, until her coming of age, and to deposit the other two-eighths in the Banca di Napoli at its New York offices in the name of Gloria Caruso with the pupillary restrictions."

This provision of the decree follows the corresponding provision of the Deed of Partition executed by the parties pursuant to the family settlement theretofore authorized by the Court. (Case, Exhibit C-14a, p. 340 at 355)

The original decree following submission to the Court of the terms of the proposed family settle-

ment, dated October 19, 1921, (Case, Exhibit C-8a, p. 286 at p. 289 and 290), ordered that

> "in the agreement to be entered into between themselves there shall be inserted the following fundamental provisions:
>
> "(a) * * * then, the remaining shall be divided into two equal parts one of which shall be given and paid over to the infant, Gloria Caruso, in trust for her during her infancy, which said one-half shall include the most valuable portion of the estate. The other half shall be divided into four equal parts to be paid and turned over wholly and free, one part to Rodolfo, etc. * * *."

The original decree did not purport *per se* to effect a division of the estate nor to provide for the details of such division. The obvious reason for this was the fact that the estate had not yet been completely inventoried and that until this was done it would be quite impossible to proceed to distribution.

Under Italian law the surviving parent enjoys the usufruct of the child during minority. This is governed by §224, §228, §230 and §231, of the Italian Code, which appeared in the Case, Exhibit C-18, p. 366. Appellant was, therefore, entitled to the entire income of the infant Gloria's inheritance during minority, subject to a provision of the settlement in derogation of this right by which a special fund was set apart for the infant the income from which was to be accumulated during minority. The only other provision of the Italian decree either expressly or by implication further limiting this right is that whereby the mother's right to receive the share of the Victor royalties assigned to the infant is reduced from four-eighths to two-eighths. It is the duty of the sur-

viving parent receiving the usufruct to pay the expenses of maintenance, education and instruction of the child, etc.

Under the original decree of October 1921, the mother became entitled to receive such part of Gloria's share of the Victor royalties during her minority as constituted income. This is by virtue of operation of the foregoing provisions of Italian law. In consummating the final settlement and distribution of the estate it became necessary to determine what parts thereof constituted income and principal, respectively. By the terms of the agreement of June, 1922, it was finally determined that one-half of the Victor royalties were to be treated as income and one-half thereof as principal. Consequently it followed and was ordered that one-half of Gloria's share of the Victor royalties should be paid to the mother by virtue of her right of usufruct.

The guardian ad litem has suggested that the Victor royalties constituted principal only and that therefore Appellant as mother and natural guardian of the infant is not entitled to any part thereof. The provisions of the agreement and the final decree seem to us sufficient to dispose completely of this suggestion. The decrees of October, 1921, and June, 1922, are integral parts of the same proceeding and must be considered together in determining the terms of the Italian judgment. Had both decrees been silent as to the share of the Victor royalties to which the mother was entitled by virtue of her usufruct, it would have been necessary for this court to determine this question of Italian law independently. That this is a question of Italian law only cannot be seriously questioned. This is an Italian estate and to be distributed in accordance with the domiciliary law. Under that law the

surviving parent is entitled to receive the child's income during minority. Certainly an essential element in determining that question is the nature and extent of the income. Fortunately, however, the domiciliary court has spoken. Its expression must be regarded as conclusive of the question.

While we are satisfied that the question must be decided in accordance with Italian law, we do not hesitate to meet guardian ad litem upon his own ground. He vigorously argues that under the law of the forum the royalties derived from the sale of records of the Victor Talking Machine Company made by decedent in his lifetime represent capital only. It is submitted, on the other hand, that the contrary is more nearly in accord with New Jersey law and that such royalties represent income subject at most to some allowance for depletion.

On Jan. 1, 1919, Enrico Caruso the decedent made a contract with the Victor Talking Machine Company of New Jersey containing the following provisions:

The period of said agreement was from January 1, 1919 to January 1, 1934.

The Artist agreed to make a certain number of "Master Records" for the Victor Company under the conditions therein stated.

He gave the Victor Company the right to manufacture, sell, etc. said records and gave them all rights in and to the Matrices and records. He agreed not to make or permit any record of his voice to be made by any other person or concern during the term of the agreement.

The Victor Company agreed and guaranteed to pay the Artist the sum of $100,000. in each year during his life and during the period of ten years from January 1, 1919.

The Victor Company further agreed to keep an account of the number of records licensed or sold in each year of the agreement and to allow a royalty of 10% of the list price of such records.

"If at the end of any year covered by said minimum payment the allowance for such year at the rate above indicated shall exceed the sum of $100,000. the Victor Company further agrees to pay to the Artist whatever shall be the excess of such allowance over the sum of $100,000."

Upon the death of Mr. Caruso in August 1921 the provision for the making of new records necessarily came to an end; the provision for the minimum payment of $100,000. per annum also terminated.

The Company remains obligated to pay annually 10% of the amount of the list price of records sold or licensed.

It is the nature of these payments made subsequent to the date of death of Mr. Caruso which is now in question.

There are a number of cases which have been decided in the Courts of Pennsylvania and other states in which the question has been litigated whether proceeds of royalties upon coal taken from a mine are to be regarded as principal or income.

In *Eley's Appeal,* 103 Pa. 306, when the word "income" was used in a Will creating a Trust the Court quotes the Master of the Rolls in the English case of *Daley* vs. *Beckett,* 24 Beaven 114 as follows:

> "As to how the produce of the mine is to be considered I must treat * * * as if this was an ordinary power to lease the mines and minerals, in which case all the authorities establish this, that the produce of the mine is made part of the annual profits of the estate,

> and that whether in royalties or in whatever other way produced, it forms part of those profits and it was accordingly held that the royalty reserved by the lease was in the nature of rent and was payable to the tenant for life and did not form the corpus * * *."

and further says:—

> "In seeking for the testator's intention, we derive little or no assistance from that class of cases in which it has been properly held that a lease of the exclusive right to mine and remove coal or other mineral, without limitation as to the quantity or time, is practically a sale of coal or other mineral in place of the land itself. The word 'income' means the gain or profit which accrues from the property, labor or business. In its ordinary and popular meaning, it is strictly applicable to the periodical payments in the nature of rent, which are usually made under coal and other mineral leases, and we have no doubt it was used so by the testator. In the absence of any provision, expressed or implied, that the payments in the nature of rents shall be accumulated for the ultimate benefit of those in remainder, it would be a strained and unnatural construction to hold that he intended to give appellants only the annual interest in the installments of rents."

See also *Reynolds* vs. *Hanna et al,* 55 Fed. 783-799.

In this case the Executor of a Will under which the income of the estate was directed to be paid to certain beneficiaries made an agreement with a Coal Company whereby the Company was authorized to mine and remove all the coal on the land at the rate of not less than 50,000 tons per annum, royalties payable at 10 cents per ton, but

not less than $416.67 per month, any excess on monthly payment to be charged on tonnage subsequently mined.

It was held that the contract was clearly a lease and the monthly payment of $416.67 although called a royalty was a rental to be paid by the Lessee and the sums so received were income in the hands of the Executor.

Reference is made in this case to *Hyatt* vs. *Vincennes National Bank,* 113 U. S. 408 in which case it is pointed out that the conveyance of all the coal in the land for a term of 50 years was treated as a lease.

Various other Pennsylvania cases and cases from other States turn on the legal right of a tenant by curtesy or a widow having a dower right to enjoy the proper share of the proceeds of the sale or lease of a mine where same was not opened by decedent but by his heirs after his death. Such a case was *Deffendaugh* vs. *Hess,* 225 Pa. 638.

Reference is made in the opinion in that case to cases decided in certain other States, viz., *Sieger* vs. *McCabe,* 92 Mich. 186 and *Decker* vs. *Hamer,* 1 Drew and S 284, and it would appear from the citation that in the last mentioned cases the widow was held to be entitled to her share of dower, that is to say one third of the royalties paid.

In the matter of the *Estate of Samuel Woodburn,* 138 Pa. 106, the Court held that when the Testator who has made a lease of his land for oil purposes, stipulating as part of the consideration thereof for the delivery to him of a definite part of oil produced bequeathes the income of his estate to life tenants such part of the oil produced after his death is income to which the life tenant is entitled absolutely.

See also *Appeal of Bedford*—Supreme Court of Penn. April 29, 1889 (reported in Atlantic Reporter, Vol. 17, p. 538).

This was a case of a Trust Deed made by a woman reserving the net income to herself and agreeing to support and educate her children therefrom during their minority. The Trustees with her consent leased a coal mine for ten years and it was held that the royalty derived from the lease was net income within the meaning of the Deed and payable to the grantor and that this construction is unaffected by the possibility that the coal might be exhausted before the children of the grantor should attain their majorities.

Reference might further be made to cases in the Courts of England (in addition to *Daley v. Beckett* already cited) and particularly to:

In re *Vachell* v. *Morgan,* Law Journal Reports, Vol. 83, U. S., p. 573, decided Feb. 20, 1914.

Testator in this case owned valuable mining property part of which had been leased by him in his lifetime and part of which was leased after his death by the Trustee. Held that the tenant for life was entitled to the rents and royalties under all the leases.

The case of the *Estate of Thomas Lazarus,* 105 Pa. 1, is distinguishable from the above cases in that the agreement in that case was regarded as a sale of coal rather than a lease of mining rights and the sums received were therefore considered as forming part of principal.

The decision in *Blakely* v. *Marshall,* 174 Pa. 425, is to the same effect and based on similar grounds.

Reference to this series of cases will show that so called royalties derived from the percentage of the amount of coal mined are treated as income, unless in the nature of the transaction it appears that it was in fact a sale under the form of periodical payments or instalments.

These cases are applicable to the question involved in the present case by analogy only. So far as applicable they are in favor of regarding the proceeds of the records as income.

In most cases the point at issue depended on the rights of remaindermen as against those of life tenants or beneficiaries of Trust income.

It is submitted that the question of testacy as against intestacy, or creation of a specified Trust, is immaterial to the point here at issue. That point is whether as regards the particular beneficiary of the estate (who in this case is entitled ultimately to principal and income indistinguishably) the sums periodically received on account of these royalties are to be regarded as income applicable to current expenses, or as capital to be set aside and invested for her future use.

For purposes of taxation the sums so received are regarded as income and taxed as such.

See

New Creek Co. v. *Lederer,* 295 Fed. 433.
Von Baumbach vs. *Sargent Co.,* 242 U. S. 503.
Straton's Independence vs. *Howbert,* 231 U. S. 399.

These cases would seem to indicate that, for the purpose of taxation, the proceeds of the sums received by way of royalty on coal extracted are considered primarily as income and the allowance, if any, for depletion depends solely on the statutory provisions in force.

In fact it was held that the act of 1909 made no provision for exhaustion or depletion. The income tax laws however did make specific provision and this provision has been extended to cases of leaseholds, contracts, copyrights, etc. possessing an ascertainable value at the initial date and subject to gradual extinction.

See *Henrici* v. *Reinecke,* 3 Fed. Rep. 2nd 34; *Kentucky Tob. Products Co.* v. *Lucas,* 5 Fed. 2nd 723; *Kaufman Straus Co.* v. *Lucas.*

Also decision of Board of Tax Appeals, *Matter of H. B. Hill,* Docket 1689, 3 B. T. A. 761.

The method of calculation employed in this group of cases was to ascertain the present value of the contract or lease at the initial date and having done so to divide the amount by the number of years it had to run. The sum so ascertained was deducted as depletion from the income received in each several year.

If the analogy of the distinction of lease and sale applied in some of the coal cases be applied in the present case it is submitted that the contract partook in fact of the nature of both.

The minimum of $100,000 under the contract may be considered as compensation for the execution of the songs by the Artist and the royalties reserved as rent or duty paid by the Victory Company for use of matrice for re-producing the song, the right to use the portrait of the Artist for advertisement. In this view the royalties should be regarded as income.

It is thought however that the analogy of the cases cited above is imperfect. The coal taken from the mine is destroyed by use and the capital represented by the mine is so much reduced. The present case raises a much stronger presumption in favor of income.

It is submitted that the cases decided in the Courts relating to stock dividends are not in point. A stock dividend may represent a mere distribution of capital value of the stock, or it may represent a distribution of income which has accumulated over a series of years, or it may represent an increase in the capital value of the property represented by the stock, which has nothing to do with the regular earnings.

None of these cases is closely analogous to the present one.

In the case of *Elsner's Will,* 266 New York Supplement 765 (N. Y. App. Div. Nov. 12, 1924). It appeared that among the assets of decedent's estate there was a medical work of which he was author and from which he was receiving royalties. The value of these royalties was subject to somewhat rapid decline or depletion due to the nature of the work and the declining demand.

The life tenant claimed that the sums paid under the contract were all income, and the remaindermen that they were entirely capital. In the Lower Court they were held to be capital. This decision was reversed by the Appellate Court and the matter was remitted to the Surrogate to ascertain the actual elements of capital and income entering into the receipts from this source, it being held that they were partly principal and partly income and could not be regarded as wholly either, and that the "property represented by the contract and the royalties, could and should be apportioned between capital and income."

It is submitted that the royalties received from the sale of the Victor records and particularly the amount of about $78,000. received in the year 1927 are income to the estate and that the share in same belonging to the infant is receivable by her estate as income.

Furthermore, that in case it should be maintained that part of these receipts represents principal and part income, the rule adopted and applied by the Italian Court although arbitrary is substantially just, i. e., to treat one-half as applicable to the purpose of income and to set aside the other half to be held and invested as capital for the infant.

Again in case this rule should appear to be too arbitrary that a reasonable rate of depletion or depreciation should be ascertained on the basis of royalties actually received, and that such depletion should be carried to the capital account and the balance considered as income.

Regarding the ascertainment of such a depreciation rate, reference is made to the Income Tax Regulations under the 1926 Act (Reg. 69, Article 167). It is there provided that "in computing a Depreciation allowance in the case of a patent "or copyright the capital sum to be replaced is "the cost or other basis of the patent or copy-"right. The allowance should be computed by "an apportionment of the cost or other basis of "the patent or copyright over the life of the "patent or copyright since its grant or since its "acquisition by the taxpayer."

See also *Montgomery on Income Tax Procedure,* Vol. 1, page 578 and 582 and cases cited.

The value of the rights under the Victor Contract was estimated in the Federal Tax proceeding in the Estate at $350,000.

Taking this sum as a basis, inasmuch as about $928,663 (or after deduction of tax withheld at the source $839,936) had been received from this source previous to February of the present year, it seems that the capital value as estimated has been recovered in full and that the excess represents accumulating income; and for the same reason the sum of $78,116. received in February 1927 consists entirely of income.

Even adopting the method of allocating each item of royalties as received, partly to principal and partly to income, the method apparently favored in various cases relating to income tax (see Corporation Tax Service 1927 B. T. A., p. 250, Dec. 1689 3 B. T. A. 761) it will appear that

the rule adopted by the Italian Courts of placing one-half in capital account, errs on the side of over caution.

Any depletion calculation would allot more and not less to the account of income. Thus the contract was appraised in the Federal Estate Tax proceeding at $350,000. The productive term under the contract may be fairly estimated at 15 years from the date of death and on this basis the annual depreciation allowance would be $23,350. Gloria's share of such charge would be $11,675. It thus appears quite clearly that the Italian Court erred, if at all, in her favor.

II.

Succession to personal property is governed by the law of decedent's last domicile. The declaration of the Court of decedent's domicile as to distribution of the estate is regarded as the conclusive expression of the domiciliary law and in the absence of fraud and defect of jurisdiction should receive full recognition.

This somewhat lengthy discussion of the question whether the Victor royalties are income or principal may seem superfluous. We desire, however, to point out how eminently generous and fair the Italian settlement and decree has been in setting aside to the capital account of Gloria a much larger proportion than any fair accounting method would have so allocated.

This merely states a universal accepted principle. The lower courts sought to evade it by a wholly unprecedented application of the doctrine of public policy. It is difficult to see what

can be the interest of the State of New Jersey in an infant who is neither a citizen nor resident of the State and the great bulk of whose property is under the jurisdiction of the domiciliary court. It would seem that the public policy of New Jersey is alone concerned in the protection of the only New Jersey citizen party hereto, to wit, The Victor Company.

> "Foreign contracts or dispositions of property which if carried out would endanger the public morals or the public safety or undermine the political or social fabric or subvert the administration of justice or have other evil tendencies are not within the rule as the right of self-preservation is higher and stronger in every community than any obligation founded in comity."

Thus does the New York Court of Appeals define "public policy" (*Dammert* v. *Osborne,* 140 N. Y. 30). It is submitted that this constitutes a fair statement of the scope of the doctrine of public policy and that the present case clearly does not fall within it.

III.

The contract of the parties is valid in accordance with the general rule that the validity of a contract is determined by the law of the place of contracting and should be recognized in order to effectuate the intent of the parties and prevent injustice.

Under the Italian law the infant had capacity to enter into the contract which is valid under the law of Italy and therefore binding upon the parties everywhere.

This is established by the Italian judgments expressly approving the contract and incorporating its terms in a final judgment.

It would be most unjust to the mother if the Italian agreement for distributing the principal and income of the estate of the deceased Enrico Caruso were not carried out in toto. The mother, as widow, was by Italian law entitled for life to a one-quarter interest in the income of the entire estate as her widow's usufruct. In waiving the usufruct, and in accepting instead a one-eighth interest in the fee of the estate, she made a substantial pecuniary sacrifice, considering her youth. A healthy woman of twenty-five could certainly expect to gain more by accepting one-quarter of the income for life than by taking one-eighth in fee.

When the mother made this sacrifice in order to make possible a settlement, and in order to avoid a long litigation which would have tied up the entire estate and beggared for the time being, if not forever, the entire family, including her daughter Gloria, she did so in reliance upon the provisions of the Italian law, which gave her, as mother, the entire income of her daughter Gloria's estate during the child's minority. To put this in clear terms, she gave up one-quarter of the estate's income relying on the fact that she would receive one-eighth of such income as owner in fee, or one-eighth of the estate, and in addition four-eighths of such income as usufructarian of Gloria's one-half of the estate. The widow, when making the settlement in October, 1921, therefore had the right to expect during Gloria's minority five-eighths of the estate's income, and after Gloria's reaching majority one-eighth.

This was Mrs. Caruso's expectancy when she approached the making of the partition deed (Case, C 14a). By this deed Gloria's interest

in the estate was set apart and thereafter placed in the safekeeping of one of the great banks of Italy, the Bank of Naples, to be administered under the severe restrictions of the Italian law, which preserve intact the principal of the minor's fortune during minority. The question arose in the drafting of this deed as to how to treat the Victor royalties. Again by agreement a division in halves was established in order to avoid costly and lengthy litigation. Mrs. Caruso again made a great sacrifice, as perhaps every mother would if confronted with the interests of her child. This does not detract, however, from the fact that Mrs. Caruso did make a distinct sacrifice. She might have successfully claimed the entire Victor royalties as income of Gloria. She permitted a disproportionately large amount, to wit, one-half of the royalties, to be allocated to Gloria as capital. She therefore cut down during Gloria's minority the five-eighths of the royalties to which she as widow and mother was primarily entitled, to three-eighths of the royalties as specified in the deed, and in the decree confirming the same.

It seems rather cruel and unjust on the part of the guardian ad litem to speak of fraud and discrimination against Gloria, when an examination of the facts clearly demonstrates that Mrs. Caruso at every step made sacrifices to insure family peace, to guard the estate against losses by reason of long-drawn out litigation, and to safeguard her daughter Gloria's fortune and position. The guardian ad litem seeks to establish a separate estate for Gloria in New Jersey to be held and administered in a manner different from the dispositions made by the Italian decrees. Gloria is not a resident of New Jersey. Nearly her entire fortune outside of the fund accumu-

lated in this State is under the jurisdiction of the Italian court and in the hands of its depositary. The Italian laws as to the administration of minors' estates are severe. There is no reason, no valid ground, why Gloria's fortune should not be administered by her domiciliary guardian; on the contrary every reason is in favor of a uniform administration of Gloria's capital and income by the domiciliary guardian, where her needs can be uniformly looked out for and her interests uniformly protected by such guardian. The courts have again and again held that whenever no reason appears to the contrary, the domiciliary guardian should administer the minor's estate, in order to insure such uniformity in protection of the child's interests. In this instance the Italian decrees insure such uniformity of administration, and therefore should be followed in toto. To alter these decrees in any way would harm Gloria's interests by having her fortune held and administered in different countries subject to different jurisprudence and different courts, and having divergent rulings deleteriously affect her true interests financially and otherwise.

The guardian ad litem in appealing from the Chancellor's decree granting an allowance to Mrs. Caruso for Gloria's support, furnishes by his very tactics in that appeal a most convincing argument that Gloria's interest should be placed in the hands of one guardian, to insure uniformity. The Italian court, to make up a large payment of taxes from Gloria's capital, has ordered the income from her government securities to be accumulated until her entire former capital has been reconstituted. The guardian argues that this was a scheme concocted in Italy to force the payment of moneys for Gloria's support from New Jersey

funds in order to deplete the New Jersey funds and enrich Gloria's Italian assets. It is needless to say that this is a mere emanation of counsel's imagination. By the very argument it is shown that Gloria's real needs are lost sight of and that an attempt is made to play battledore and shuttlecock between the Italian and the American jurisdictions, and to align one court against the other. Whoever may be the gainer by such a scheme, it is certain that Gloria will be the loser.

A second reason why the decrees should be enforced in toto is the fact that Mrs. Caruso would be greatly prejudiced and damaged if the scheme of distribution was not carried through in its entirety. We have pointed out the financial sacrifice which Mrs. Caruso made to insure the peace and safety of the settlement. The interests of the estate, the interests of the different distributees, the interests of Mrs. Caruso as usufructarian by her right as widow, her interests as distributee of one-eighth in fee, and her interests as usufructarian by her right as Gloria's mother, Gloria's interests as distributee of one-half of the estate, Gloria's interests as remainderman of her share subject to her mother's usufruct, the allocation of principal and income of the Victor royalties, are such interwoven and complicated considerations and questions, that the slightest variance from the decrees can only spell disaster, injury and loss to some, if not to all, of the parties.

The Italian court, in a harmonious way, considered and disposed of all these conflicting and involved interests in question, and created a harmonious scheme which we submit should be adopted in its entirety. If, however, the decree below is affirmed, then the New Jersey law should be applied to the entire New Jersey estate, and one-third distributed to the widow.

New Jersey State Library

Conclusion.

It is submitted that the Court should reverse the decree below and direct the entry of a decree ordering payment of the Victor royalties in conformity with the provisions of the Italian decree. In the alternative it should be ordered that the royalties should be remitted to the Italian Court for final disposition. That this Court is empowered either to administer the ancillary estate or to remit it to the domiciliary court is undoubted and clearly established by the cases cited under Point I of the Appellant's main brief (note especially *Norman's Administrators,* 17 N. J. Eq. 425).

If it should be decided, however, to affirm the decree below, it is submitted that the entire New Jersey estate should be distributed by this Court in accordance with the New Jersey law of distributions.

Respectfully submitted,

TREACY & TREACY.

JOHN J. TREACY,
FREDERIC R. COUDERT,
of the New York Bar,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between

DOROTHY P. B. CARUSO,
Complainant-Respondent,

and

RODOLFO CARUSO, *et als.,*
Defendants,

GLORIA CARUSO,
Defendant-Appellant.

On Appeal,
On Bill, Etc.
On Petition
For Allowance.

BRIEF OF PETITIONER-APPELLEE.

This is an appeal from an order granting an allowance to Appellee, mother of the infant Gloria, and special guardian, for the latter's maintenance and support out of funds of the Caruso estate in the custody of the former as ancillary administratrix.

The facts relevant to the present inquiry are fully set out in Appellee's petition (Case, p. 43), and supporting affidavits (Case, pp. 73 to 95). These are here briefly recapitulated.

Enrico Caruso died on August 2, 1921. He was a citizen of and domiciled in Italy. The assets of his estate are located principally in Italy, New York and New Jersey. In accordance with the universally accepted principle of private international law, the administration of his estate has been undertaken by the domiciliary court in Italy.

He left a will providing for the distribution of his estate between his widow, a brother and two illegitimate recognized sons. The Will was executed before the birth of his daughter Gloria. Serious questions arose as to the effect of her birth subsequent to the making of the Will upon the rights of the other beneficiaries thereunder. In order to avoid costly and protracted litigation a family settlement was agreed upon and submitted to the Italian court for approval. The proposed settlement was thereupon approved, a Deed of Partition executed and subsequently submitted to and approved by a further decree of the Italian court. (Case, Exh. C 8a, p. 280; Exh. C 9a, p. 293, C 14a, p. 340).

Appellee was thereafter appointed ancillary administratrix of the estate of decedent in New Jersey and as such administratrix in New Jersey has collected considerable funds.

Appellee's personal resources, apart from her interest in her husband's estate, consist of securities in New York from which she derives a net income of about $9,000 per annum. Her share of the Italian estate has not heretofore and does not now yield any appreciable income. The infant Gloria's share of the Italian estate has likewise failed to yield any appreciable income. Moreover, it is most improbable that any income will be received from that source for some years. As a result she has been compelled to supplement her own wholly inadequate income by resort to her personal capital in order to maintain a scale of living appropriate to the position to which her daughter Gloria is entitled by virtue of the situation and fortune of her father and the estate to which she is entitled.

The Italian assets allocated to the infant under the Italian decrees are valued at about 6,225,500 lire. Her share of the accumulated New Jersey

assets under the Italian decrees will amount to well over $400,000. If the decree below be sustained, her share of the New Jersey assets will be substantially in excess of this amount.

The establishment maintained by Appellee in New York City for her daughter Gloria, another minor child and herself, together with the expenses incident to annual sojourns in Italy is shown to cost approximately $30,500. (Case, p. 49). To any one familiar with living conditions in New York it is obvious that this is not excessive for persons situate as are Mrs. Caruso and her daughter Gloria. This was evidently the Chancellor's view, as he ordered an allowance of $1,000 per month.

Propositions.

Appellee relies upon the following propositions:

I. The infant Gloria is entitled to an allowance for her maintenance and support out of the New Jersey assets of the estate if necessary to maintain her in a position commensurate with the condition of life which she may be expected to occupy and the fortune to which she is entitled.

II. The amount of her share of the New Jersey assets is entirely ample for the allowance ordered and alone is presently available therefor.

III. The amount of the estate of Appellee and of the income available to her for the support of herself and her family is entirely inadequate for the maintenance of an establishment commensurate with the position and fortune of the infant Gloria and the allowance is therefore proper.

IV. Appellant's objections are not well taken.

ARGUMENT.

I.

The infant Gloria is entitled to an allowance for her maintenance and support out of the New Jersey assets of the estate if necessary to maintain her in a position commensurate with the condition of life which she may be expected to occupy and the fortune to which she is entitled.

It seems unnecessary to cite authorities for the proposition that the Court will consider paramount the interests of the infant and will not be diverted by considerations of a purely technical nature. If it be necessary to apply some part of the New Jersey assets to her maintenance, this should be done regardless of the nature or status of her assets elsewhere.

It is established by the petition and affidavits that the infant's foreign assets yield no appreciable income and are not expected to for some years to come. Thus she is in the rather anomalous position of being without funds for her support although owning capital assets of substantial value which are completely tied up during her minority. Thus the Court is faced with facts and not theory. Either the infant must be compelled to rely temporarily upon her mother's meagre income with resultant temporary hardship, or an allowance must be made from her only presently available assets.

It should be borne in mind that her mother is likewise responsible for the maintenance of another child who is equally entitled to support from her mother. It is inconceivable that under the circumstances she should not receive some temporary relief from the large estate in the jurisdiction of

this Court and that she should be embarrassed in her education and upbringing at the most critical period of her life because of the technical objections suggested by astute counsel for the guardian ad litem.

Counsel solemnly states that it is the duty of a mother to support her daughter. No one will quarrel with this statement of a fundamental moral obligation. In this particular instance, however, it is a double-edged sword. The obligation accrues equally in favor of Mrs. Caruso's other daughter. Surely it is not to be expected that anything less than a miracle can so expand the mother's $9,000 income as to properly support and maintain both children when it is clearly shown that $10,300 of her annual expenses are directly incurred in behalf of the infant Gloria. (Case, p. 49). The logical conclusion of this argument is that if the mother's resources are inadequate for proper maintenance of her daughter Gloria, then the latter must suffer while courts and lawyers busy themselves with problems of jurisprudence.

That a mother is entitled to have recourse to her child's estate for support is clearly established by Appellant's own cases.

> "A widow is not bound to support her minor children out of her own property if they have means of their own." *Pyatt* v. *Pyatt,* 46 N. J. Eq. 285.

In commenting upon this case Vice-Chancellor Pitney remarked:

> "On the contrary I think that in determining how much the widowed mother is to be allowed we must take into consideration as in all cases all the circumstances—the mother's capacity and ability and the child's fortune." *Alling* v. *Alling,* 52 N. J. Eq. 92 at 97.

Counsel would deprive the infant of necessary relief upon the highly technical ground that the Victor royalties are wholly principal and therefore not available for such purpose. This point evidently constitutes his principal objection to the allowance if one may judge from the space devoted thereto in his brief.

In the first place, it is submitted that this question is not decisive of the issue. Surely the future of an infant entitled to receive a substantial fortune is not to be jeopardized by a mere logomachy involving not profound questions of jurisprudence or public policy, but merely of accounting practice. However, it is entirely unnecessary for the purposes of this appeal for the Court to consider the question.

Evidently counsel has lost sight of the fact that the infant's share of the annual income from royalties accumulated in the hands of administratrix prior to the application for allowance is more than sufficient to cover the modest payments provided. At the beginning of 1927 the balance of royalties on deposit in banks was about $560,000, drawing interest at 4%, i. e. about $22,400 per annum. Of this amount the infant is entitled under the Italian decrees to one-half, to wit: $11,000; under the decree below, to two-thirds, or about $14,932.

Since that time the accumulation of royalties has risen to approximately $800,000, the interest upon which at 4% is about $32,000. Of this the infant is entitled under the Italian decrees to $16,000; under the decree below to about $21,332.

It is submitted, therefore, that the funds which unquestionably constitute income are more than sufficient to meet the requirements of the allowance.

Moreover, it is our view that the royalties derived from the sale of the Victor records made by decedent in his lifetime represent income and not capital, subject at most to some allowance for depletion. This point is fully dealt with in our supplementary brief in the main case.

II.

The amount of her share of the New Jersey assets is entirely ample for the allowance ordered and alone is presently available therefor.

The assets of the Caruso estate are situate principally in Italy, New York and New Jersey. For reasons which fully appear in petition and affidavits, the Italian and New York assets are wholly unavailable. (Case, pp. 43, 73, 76, 93).

The New York assets have been applied to the payment of the liabilities of the estate and taxes, with the exception of certain sums paid to the beneficiaries in accordance with the Italian decree.

The Italian assets are largely unproductive at the present time and such income as does accrue therefrom is almost wholly absorbed by payment of taxes and other charges.

> "Deponent has not been in charge of the administration of the Italian estate but he has been repeatedly assured by the Italian attorneys that *the income produced by Gloria's Italian estate is smaller than the amounts which Mrs. Caruso has been paying for the administration, upkeep and taxes and other expenses connected with Gloria's Italian estate.*"
>
> "Any income which Mrs. Caruso may get from Gloria's estate in Italy is subject to certain charges for taxes and other expenses,

> and deponent has been informed and verily believes that *at no time since the distribution of the estate has Mrs. Caruso ever received any appreciable amount as income from Gloria's Italian estate.*'' (Affidavit of Seligsberg, p. 79, fol. 40; p. 81, fol. 10.)

The infant's Italian real estate, which constitutes a considerable proportion of the estate, is not productive of net income of substantial amount.

Her personal estate in Italy, consisting of securities and various miscellaneous items such as furniture, art objects, etc., is likewise comparatively unproductive. A large proportion of the securities were ordered to be sold for the purpose of paying the infant's share of a tax due and not paid by the decedent in his life time known as the ''patrimony'' tax. It was at the same time ordered that the future income from the remaining securities should be impounded and employed in the repurchase of bonds until the original amount of capital should be restored. As this operation will take about six or seven years, there will be no income available from that source.

The sum of 500,000 lire directed to be set aside for the infant is subject to a provision whereby the income is to be accumulated during her minority and is not available for her support.

It is quite obvious that the foregoing provisions, restrictive of the application of the infant's Italian income, were predicated upon the belief and understanding that a large free and liquid estate in this jurisdiction would be immediately available for the support of the infant. It would be most unfair to penalize the infant because of the restrictive provisions, or to require the mother to exhaust her own capital.

Counsel for the guardian ad litem denies that the Italian and New York income is insufficient to provide a proper allowance for the maintenance and support of Gloria. He meets the sworn statements of Mrs. Caruso and Mr. Seligsberg with conjecture rather than proof.

> "It is beyond our comprehension that Italy by its taxes so depletes the income of an inheritance that nothing comes to the owners—a mother or child." (Appellant's brief, p. 57.)

This may be beyond the broad comprehension of distinguished counsel, but it is the fact none the less and clearly demonstrated by the proof. Doubtless the Court will be more interested in the latter than in the extent of counsel's comprehension.

III.

The amount of the estate of Appellee and of the income available to her for the support of herself and her family is entirely inadequate for the maintenance of an establishment commensurate with the position and fortune of the infant Gloria and the allowance is therefore proper.

It is established by the proof that the present income of Appellee does not exceed $9,000. Her present establishment together with the expense of periodic visits to Italy approximates $30,500. This represents a standard far inferior to that maintained by Caruso in his lifetime. It is, however, the minimum standard consistent with the bringing up of the infant Gloria in a manner conducive to maintenance of her position in life.

Moreover, to anyone familiar with conditions of living in New York, it is not excessive. In the words of Mr. Seligsberg (Case, p. 42):

> *"To summarize: As to the financial condition of Mrs. Caruso, deponent affirmatively states that Mrs. Caruso's income from her American estate does not exceed the sum of $9000; that the income from the Canessa Fund is about the sum of $1525, but has not been received by Mrs. Caruso for the reasons as above stated; that as to the income of Gloria's estate from Italy to which Mrs. Caruso is entitled as mother, deponent has been informed by the Italian counsel, whose word he has no reason to disbelieve, that for many years to come Mrs. Caruso will not receive any income whatsoever therefrom; that as to Mrs. Caruso's Italian estate, deponent is sufficiently familiar with the facts to know that her income therefrom will be very negligible."*

Because of the wholly unexpected situation resulting from failure to speedily liquidate the New Jersey assets, Appellee has been obliged to expend a considerable part of her capital for the maintenance of herself and her minor child since her husband's death. Not only has this been a great burden to her and most unfair, but it cannot continue indefinitely. It is for this reason that it became necessary to either obtain an allowance from the only available funds for the maintenance of the infant Gloria or to drastically reduce the standard of living to a point seriously detrimental to the infant's future.

IV.

Appellant's objections are not well taken.

Counsel for guardian ad litem interposes certain technical objections to granting of the allowance, all of which are without foundation.

His first two points have been heretofore disposed of. It may be the duty of the mother under certain circumstances to support her daughter, but she is unquestionably entitled to have recourse to the daughter's estate if her own resources are inadequate.

That an allowance should not be made out of the New Jersey estate if there are funds available in Italy and New York may well be conceded, arguendo. The record fully explains to what extent and why Italian and New York assets are not presently available.

Appellant's third point is simply without foundation. No provision whatever was made by the Italian court for Gloria's maintenance. On the contrary, predicated upon the existence of the funds constantly accruing in New Jersey and readily available, the Court directed its attention primarily to protecting Gloria's Italian property from dissipation before majority.

The fourth point by implication contradicts the third point. If her Italian income is to be "capitalized" by order of the Court, it cannot likewise be construed as "provision for Gloria Caruso's maintenance". Both of these points, therefore, fall to the ground of their own weight.

The fifth point relates to proof. The only evidence in the proceeding for allowance were the sworn statements of Appellee, Mrs. Caruso, and Mr. Seligsberg, who has been in charge of the administration of the estate from its inception.

Reference to the Italian decrees is sufficient to fully corroborate their statements. It is difficult to see what further proof could be expected or required.

CONCLUSION.

It is submitted that the decree of the Chancellor authorizing the allowance should be confirmed. The infant's interest in the New Jersey assets is a very substantial one however distribution may be made. The mother's income is clearly insufficient for the support of the infant defendant in the manner which she has hitherto enjoyed. To limit the infant defendant to the scale of living which would be hers if dependent upon her mother's income alone would be a hardship. It is earnestly hoped and believed that this relief is only a temporary measure and that within a short time the New Jersey assets will have been distributed or at least remitted to the courts of the decedent's domicile which will provide for the infant in a manner and amount consistent with such laws.

Respectfully submitted,

TREACY & TREACY.

JOHN J. TREACY,
FREDERIC R. COUDERT,
of the New York Bar,
Of Counsel.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

DOROTHY P. B. CARUSO,
Complainant-Appellee,
v.
RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY and FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Defendants-Appellees,
and
GLORIA CARUSO,
Defendant-Appellant.

ON APPEAL.

ON BILL, ETC.

ON PETITION FOR ALLOWANCE.

BRIEF FOR VICTOR TALKING MACHINE COMPANY, DEFENDANT-APPELLEE.

(Throughout this brief the italics are ours.)

STATEMENT.

Pending the determination of the main controversy in this cause, Dorothy P. B. Caruso, as special guardian for Gloria Caruso, filed two petitions (S. of C., pp. 43, 115) for an allowance out of the income of the estate of Enrico Caruso in the State of New Jersey (which estate consisted of royalties under the Victor-Caruso contract) for the support, maintenance and education of the said Gloria Caruso. The Victor Talking Machine Company was made a party defendant in this proceeding on petition and duly filed answer thereto (S. of C., p. 96).

The guardian *ad litem* of Gloria Caruso opposed the petition, contending *inter alia* that the royalties were not income but principal and hence not the proper subject of an allowance.

The Chancellor by an interlocutory decree (S. of C., p. 142) granted an allowance to the special guardian, holding (S. of C., pp. 117, 137) that the royalties were all income, and further that the Victor Company's interest did not extend beyond payment to the proper person (or persons), and that it was merely a nominal party.

It is true that the Victor Company is not interested in the granting or withholding of the allowance sought or in what disposition is made of the funds after it has paid the same to the proper person or persons.

But the question before the Chancellor and before this Court on the appeal from the interlocutory decree, as to whether the payments by the Victor Company under its contract with the late Enrico Caruso, are principal or income, depends on a proper con-

struction of the Victor-Caruso contract—as appears from the Chancellor's opinion and from the contentions in the brief for defendant-appellant, Gloria Caruso, on this appeal. In this underlying question, the Victor Company has a large interest since it involves a determination of the Victor Company's rights under the contract in question—which is typical, in the main, of its contracts with its large number of great artists.

The Victor Company therefore presents the following brief in the hope that it will be of assistance to the Court in dealing with the technical copyright questions involved in the proper construction of the Victor-Caruso contract, which, in the opinion of counsel, involves the following propositions:

I. The renditions by Caruso, when recorded, constituted literary or artistic property;

II. Whatever rights Caruso had in and to this literary or artistic property were granted, assigned and sold to the Victor Talking Machine Company; and

III. Such grant, assignment and sale is not reduced to a mere license by the reservation of royalties on the records sold, and the royalties are, wholly or in part, installments of purchase price.

The law as to each of these three propositions will be briefly discussed.

I.

The Renditions By Caruso, When Recorded, Constitute Literary or Artistic Property.

The general rule concerning literary property was carefully considered in New Jersey in the case of *Aronson v. Baker,* 43 N. J. Eq. 365; 12 A. 177, which has become a leading case on the subject. There, Vice-Chancellor Van Fleet, held:

> "The right of literary property is just as sacred and just as much entitled to the protection of the law as the right to any other kind of personal property. * * *
>
> The established rule defining the rights of the owner of such property may be stated as follows: *Every new and innocent product of mental labor which has been embodied in writing or some other material form, while it remains unpublished, is the exclusive property of its author* and entitled to the same protection which the law throws around the possession and enjoyment of other kinds of property" (p. 367).

This statement of the law was quoted with approval and followed by Vice-Chancellor Stevens in his opinion in the case of *New Jersey State Dental Society v. Dentacura Co.,* 57 N. J. Eq. 593, 595; 41 A. 672, 673, which was affirmed by this Court in *Dentacura Co. v. New Jersey State Dental Society,* 58 N. J. Eq. 582, 43 A. 1098, in a memorandum decision based upon the opinion of the Court below.

Hence the rule of *Aronson v. Baker,* is settled law in this State. As a leading case it has been widely cited and followed in other jurisdictions.

This incorporeal property right in literary or artistic works had its origin many centuries ago and is firmly established in jurisprudence. As stated by Judge Townsend in *Werckmeister v. American Lithographic Co.,* 134 Fed. 321, 324 (2 C. C. A. 1904):

> "The recognition of the doctrine of a distinctive literary property has existed from very early times. 2 Lewis' Blackstone, 407. The Senate of the Republic of Venice in 1469 granted to one John of Spira the exclusive privilege for five years of printing the letters of Cicero and Pliny. Two Centuries Growth of American Law, 422. Blackstone considers this exclusive right of property as grounded on labor and invention and reducible to the head of occupancy. 2 Lewis' Blackstone, 405. The protection of the result may be considered as due to original acquisition. The conceptions which it represents are as free as the birds of the air or the wild beasts of the forest, but they belong to him who first reduces them to captivity. The Greeks reasoned that the perfect statue already existed in the block of marble, and that it required only the genius of the sculptor to develop its proportions. Copyright protects the captor of the idea, the genius of the sculptor, by giving him the exclusive property in his acquisition or creation."

The existence in the United States of such property as a common law right has been repeatedly recognized and enforced. See, for instance, *Ferris v. Frohman,* 223 U. S. 424; 56 L. Ed. 492; *Palmer v. DeWitt,* 47 N. Y. 532; *Weil on Copyright Law,* Sec. 256; 13 *C. J.,* p. 947.

As to particular subject matter of literary or artistic property *Aronson v. Baker, supra,* held that:

> "Whether the product of such labor consists of literary, dramatic or musical compositions, or designs for works of ornament or utility, planned by the mind of an artist, they are equally inviolable * * *" (p. 367).

There is no doubt that the various products of the intellect, such as literature, painting and music, all possess the incidents of property. And just as the intellectual conception of the composer is literary or artistic property when put in material form through a suitable system of notation, and the intellectual creation of the photographer in the artistic posing of his subject, arranging and disposing the light and shade, etc., is literary or artistic property when embodied in material form on the photographic plate or film, and the intellectual conception of the actor in the artistic interpretation of his part is literary or artistic property when reduced to material form on a motion picture film, *so the intellectual conception of the singer in the artistic rendering of his song is literary or artistic property when captured and reduced to material form on the masters, matrices or commercial talking machine records.*

That there is literary or artistic property:

(a) In musical compositions, see, for instance:
Stern v. Carle Laemmle Music Co., 133 N. Y. S. 1082, 74 Misc. Rep. 262; affirmed 139 N. Y. S. 1146, 155 App. Div. 895.

(b) In photographs, see, for instance:
Bowden v. Amalgamated Pictorials, 1911, 1 Ch. 386, 392.

(c) In motion pictures, see, for instance, *Universal Film Mfg. Co. v. Copperman,* 218 Fed. 577 (2 C. C. A. 1914), in which the Court stated, at page 579:

> "The title of the Nordisk Company in England was its common law right of property in the intellectual conception of the scenario of the play expressed in words and *in the intellectual conception of the photoplay expressed in actions.*"

And further, on page 580, the Court expressly recognized the existence of common law property in the United States in works of that character, by holding that:

> "The Nordisk Company abandoned its common law property in the United States * * *."

In this last mentioned case the United States Supreme Court denied petition for certiorari in 235 U. S. 704; 59 L. Ed. 433.

By clear analogy to these cases the same property right exists in the recorded renditions by a vocal or instrumental artist.

The analogy is, in fact, striking between the two mechanical agencies for the reproduction of human expression in motion and in sound. It is most vividly realized when one recalls that these two agencies, the motion picture film and the talking machine record, together are capable of reproducing *in its entirety,* a dramatic or dramatico-musical performance. When an artist like Caruso interprets a character in an opera, he employs two methods of expression, one, dramatic action, addressed to the eye, and the other, artistic vocal expression, addressed to the ear. Each by itself when recorded represents

a distinct artistic property; the two together represent the *complete* Caruso as he plays his part upon the opera stage, exercising his genius through both forms of expression.

Aside from the analogy of the foregoing cases, it is manifest that the renditions by Caruso constitute, as soon as recorded, literary or artistic property within the express terms of the general rule laid down in *Aronson v. Baker, supra.* It cannot be gainsaid that they were *innocent,* that they were *products of mental labor,* and that they had been *embodied in material form.* Furthermore, they were *new,* that is, were original with the author, by which is meant nothing more than that they represented independent mental labor on his part. 13 *C. J.,* 952; *Drone on Copyright,* pp. 110, 198; *Weil on Copyright,* p. 159. That the recorded renditions by Caruso were independent works of authorship displaying a high degree of creative effort and artistic skill and talent is too plain to require argument.

It is, of course, true that these renditions were not entirely original in so far as the musical compositions rendered by Caruso were composed by others. But entire originality is not required. This is recognized in *Aronson v. Baker, supra,* in which the Court overruled the defense that the operetta "Erminie" was not an original work to a sufficient extent to make it the subject of private ownership, and held as follows:

> "'It is not necessary that a work of this kind should be entirely original or original in anything except its arrangement or construction to be private property. A play or other dramatic work which is composed wholly of selections from literary or dramatic compositions which are public property may possess originality in

its construction, or be so unique in its dramatic effect as to display a very high order of dramatic skill and talent. Such a work would be the proper subject of a private ownership simply by virtue of its originality in construction'' (pp. 370-1).

Drone, one of the foremost authorities on this subject, in his work on ''Copyrights,'' after pointing out that ''with respect to originality the principle seems to be the same, whether statutory or common law protection is claimed'' (p. 110), expresses the rule as to originality as follows:

> ''The rule has been laid down and universally recognized, that originality is an essential attribute of copyright in a literary composition. The words 'original' and 'originality,' as used in the law of copyright, have a most comprehensive meaning. Very few, if any, intellectual productions are original in the strict sense that the author is the creator of all that is expressed in his composition. Knowingly or unknowingly, one writer borrows from another; and in the most original works of modern genius are found thoughts and sentiments as old as language itself. The object of the law of copyright is to promote learning and useful knowledge by protecting the fruits of intellectual activity. Almost every product of independent literary labor is a proper subject of copyright; and, to be entitled to protection, the author has simply to show something material and valuable produced by himself * * *'' (p. 198).

In this connection the holding of the United States Supreme Court in the case of *Bleistein v. Donaldson*

Lithographing Co., 188 U. S. 239, 249; 47 L. Ed. 460, 461, with respect to originality, while made with respect to statutory copyright, is equally applicable to common law copyright, and the following language is especially appropriate in the present instance:

> "It is obvious also that the plaintiff's case is not affected by the fact, if it be one, that the pictures represent actual groups—visible things. They seem from the testimony to have been composed from hints or description, not from sight of a performance. But even if they had been drawn from the life, that fact would not deprive them of protection. The opposite proposition would mean that a portrait by Velasquez or Whistler was common property because others might try their hand on the same face. Others are free to copy the original. They are not free to copy the copy. *Blunt v. Patten,* 2 Paine 397, 400, Fed. Cas. No. 1,580. See *Kelly v. Morris,* L. R., 1 Eq. 697; *Morris v. Wright,* L. R., 5 Ch. 279. The copy is the personal reaction of an individual upon nature. *Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible, which is one man's alone.* That something he may copyright * * *."

In each of these recorded renditions recorded by the respondent company, Caruso has expressed his unique personality and artistic genius as freely as Velasquez or Whistler expressed theirs in the portrait of a given subject. Others are free to make recorded renditions of the same compositions and even to sing them as nearly as they can like Caruso,

but none has the right to copy the original works of Caruso as embodied in his recorded renditions, since such works constitute literary or artistic property and are entitled to the same protection which the law throws around the possession and enjoyment of other kinds of property.

Among the many cases recognizing originality in works comprising or founded upon other works, reference is made, by way of further illustration, to the following:

Universal Film Co. v. Copperman, supra, holding the motion picture or photoplay to be a separate subject of literary property from the scenario on which it was based.

Wood v. Boosey, 2 L. R., Q. B., 340, affirmed 3 Id. 223, in which there was an adaptation and arrangement of an independent musical work; and

Fleron v. Lakaye, 14 N. Y. S. 292, 293, which involved the translation and dramatization of a novel written by another author.

As stated in *Weil on Copyrights*:

> "So in the case of a dramatization, or arrangement, or adaptation, of a work, the author would not be the author of the original work, but the person whose thought was the predominating cause in the effect which we, in such cases, call dramatization, or arrangement, or adaptation. This seems correct, as he is the one who exercised new thought in their arrangement and compilation" (p. 163).

It is unnecessary for the present analysis of the nature of the transaction between Caruso and the Victor Company to discuss the question whether the common law property rights in these renditions by Caruso have continued and are continuing at the

present time. It might be noted, however, for the information of the Court, that under the authority of *Universal Film Co. v. Copperman, supra,* there has been no publication through the sale of commercial talking machine records of such renditions. No question of subsequent statutory copyright on these renditons by Caruso is involved so far as the United States is concerned, since the language of the Copyright Act of 1909, the report of the Patent Committee of the House of Representatives (Report No. 2222) which accompanied the Act, and the Amendatory Act of 1912, clearly show that it was not the intention of Congress to include talking machine records within the subjects of statutory copyright dealt with in the Act. However, the Act does not annul or limit common law rights. See Sec. 2.

The common law right in literary or artistic property "is presumed to be the law 'of all civilized countries so far as not derogated from by the municipal law of any particular country.'" *Weil on Copyrights,* p. 112. According to this presumption, renditions when recorded on talking machine records are *prima facie* literary or artistic property in the various civilized countries of the world. Moreover, such recorded renditions are also extended protection under the copyright statutes in a number of other countries, including Great Britain, Canada, Germany and Italy.

In Italy there was a decision on February 19, 1912, by the Court of Original Jurisdiction, sitting at Milan, in the case entitled *Gramophone Company and Tetrazzini v. The Treasury,* which is much in point. A report of this case is found in *Monitore dei Tribunali*—1912—Vol. 53 (old series)—Second Series, Vol. 15, p. 177. Quoting from an English translation thereof, the Court held:

"Singing, as the manifestation of the artistic personality of the singer, is to be included among the intellectual works capable of being copyrighted pursuant to the provisions of Section 437 of the Civil Code and of the law of September 19, 1882. As a matter of fact singing is the product not only of a natural disposition which may be perfected and enhanced by practicing, but also of a special artistic attitude partly congenital and partly acquired through a long practice and a careful study, because it is only through these attitudes that the singer as well as the player is enabled to express with the necessary accuracy and with the necessary clearness the ideas contained in the selection sung or played, to give an accurate and original interpretation of the intentions and ideas of the author, to call forth in the mind of the hearer, the most diversified feelings, to produce that intellectual enjoyment which is the primary purpose of a work of art. * * *

"The contention appearing in Tetrazzini's pleading that the record is subject to the copyright of the author of the music incorporated in such record is certainly correct—but the coexistence of this right with the right of the performer appears to be possible and even very reasonable if it is considered that as a matter of fact the music printed on the record and by means of the record reproduced, is not the music written by the author, as it is the case with printed editions, but is the music as it has been rendered by the artist in front of the receiving apparatus: and that the performance may be such (as it has been pointed out above) as to reach the level of a real and actual work of art

deserving protection at the hands of the law. A musical selection played on the violin by Kubelik or on the piano by Paderewsky or sung by the thundering voice of Tamagno or sung by the thrilling voice of Barientos or of Bori is not the same thing as the same selection sung or played by anybody else. The artistic personality of the performer is reflected in the performance which becomes a distinct product having a special value not only artistic but also pecuniary: so that the record incorporating this performance necessarily belongs to the performer who has created it."

II.

Whatever Rights Caruso Had in and to This Literary or Artistic Property Were Granted, Assigned and Sold to the Victor Talking Machine Company.

The Chancellor so held, stating (S. of C., p. 140):

"In *Aronson v. Baker,* 43 N. J. Eq. 365, 367, 12 A. 177, Vice-Chancellor Van Fleet said that the acquisition and succession to literary property (consisting of literary, dramatic, or musical composition, or design for work of ornament or utility planned by the mind of an artist) are governed by the same legal rules which control the acquisition and succession of other property of the same general class.

There can be no doubt but that Mr. Caruso, under the terms of the above-mentioned agreement sold all of the products of his remarkable tenor voice, which were recorded, as stated, by

*the Victor Company, outright and exclusively to that company for the period named * * *.*"

In the sentence last-above quoted the words "for the period named" must have been intended to refer to the sale as including all renditions of which approved master records were made during the period named, i. e., the period of the agreement, as in *T. B. Harms, et al. v. Stern,* 231 F. 645, see infra, p. 24.

It is well established that the common law right of an author in his intellectual productions is like any other personal property right, assignable, and he may sell and transfer his entire property to another; or he may assign and transfer a limited interest therein less than the whole property right. The transfer of the whole property right is an assignment, a transfer of any particular right or privilege less than the whole property right or of the entire right for only a prescribed territory is a license. 13 *C. J.*, 966, and cases there cited.

The rule on this point was elaborated upon in the opinion of the United States Circuit Court of Appeals for the Second Circuit in *Maurel v. Smith,* 271 Fed. 211, and formulated as follows:

> "The rights of property which the appellee had were transferable by sale and delivery and there is no distinction, independent of the statute, between literary property and property of any other description. The right to sell and transfer personal property is an inseparable incident of the property. An author or proprietor of a literary work or manuscript possesses such a right of sale as fully and to the same extent as does the owner of any other piece of personal property. It is an incident of ownership. Therefore, sales may be absolute or conditional, and

> they may be with or without qualifications or restrictions, and the law relating to personal property is applied in determining the character of a sale of literary property" (p. 214).

Applying this rule in the present case, how did Caruso deal with his rights in and to these recorded renditions? In this connection, it is unnecessary to discuss whether others enjoyed the right of joint authorship with him, although it is clear that they did as to concerted numbers. In each instance, whether of sole or joint authorship, whatever rights Caruso had in and to the recorded renditions came within the express terms of the contract of January 1, 1919, which he had with the Victor Talking Machine Company, and in Clause 3 of which it is stated:

> "3. The artist hereby grants to the Victor Company the right, at any and all times during the period of this agreement and thereafter, to manufacture, advertise and license or sell, and any and all these rights and powers, in all parts of the world, records of his voice in selections of which approved master records have been heretofore made or shall hereafter be so made and grants the further right to make use of his name and his photograph in connection with the manufacture, with the advertisement and with the license or sale of such records and likewise grants all rights in and to the matrices and records upon which have been or shall be reproduced the performances herein referred to" (S. of C., p. 432).

It seems too clear to require argument that Caruso intended to and in fact did grant, assign and sell whatever literary or artistic property he had in and

to the respective recorded renditions, to the respondent, Victor Talking Machine Company, who became and is the absolute owner thereof.

This conclusion follows not only from the express grant of the rights in respect to the recorded renditions but also from the express grant of the rights in and to the matrices and records embodying these renditions, without any reservation in the contract of the literary or artistic property in such renditions, as distinct from the tangible property in the matrices and records. Under such circumstances the absolute ownership of the tangible property, i. e., the records and matrices, carried with it, by implication of law, the intangible property, i. e., the literary or artistic property rights.

An early recognition and application of this latter rule is found in the opinion by Mr. Justice Clifford in *Parton v. Prang* (C. C. D., Mass. 1872), Fed. Cas. No. 10784; 18 Fed. Cas. 1273, 1278, in which the Court said:

> "If the sale was an absolute and unconditional one and the article was absolutely and unconditionally delivered to the purchaser, the whole property in the manuscript or picture passes to the purchaser, including the right of publication * * *."

In *Dielman v. White, et al.,* 102 Fed. 892 (C. C. D. Mass. 1900), the Court said:

> "Taken by itself, the contract seems to me plainly inconsistent with any reservation of copyright on the part of the artist. *In general, when an artist is commissioned to execute a work of art not in existence at the time the commission is given, the burden of proving that he retains a copyright in the work of art executed*

sold and delivered under the commission rests heavily upon the artist himself. If a patron gives a commission to an artist there appears to me a very strong implication that the work of art commissioned is to belong unreservedly and without limitation to the patron. It is not necessary to decide if the artist retains the right to make for another a replica. Reproduction by the artist may be a question of artistic ethics rather than of law; but that the patron has a right to make and permit, to any extent, reproductions of the work of art sold to him, appears to me plain, unless the contrary is plainly set out in the contract" (p. 894).

And further:

"If, on the other hand, as I believe, the commission to produce a work of art imports unrestricted right of reproduction in the patron, then this contract made between the complainant and the government, in and of itself, imported a denial of the complainant's copyright. See *Parton v. Prang,* 3 Cliff. 537, Fed. Cas. No. 10,784" (p. 895).

The rule is expressed in *Weil on Copyrights,* at page 116, as follows:

"*Prima facie,* a transfer of the manuscript or work of art will be deemed to be intended to carry the common law copyright with it, unless a contrary intention be manifest."

There can be no doubt that by the terms, above quoted, of the contract between Caruso and the Victor Company, Caruso confirmed the grant, assignment and sale to the Victor Company of both the

tangible and intangible property rights in the recorded renditions by him which had theretofore been made. Under the executory obligations of the contract Caruso not only agreed to sing certain selections for the Victor Company for the purpose of making records of his voice, but also granted, assigned and sold to the Victor Company both the tangible and intangible property rights in all recorded renditions so made. As to the latter executory obligation, the grant, assignment and sale became effective to pass title when each recorded rendition came into existence and was delivered to the Victor Company (which delivery occurred, constructively at least, either upon the completion of the recording of the master records, or else when the same were approved as satisfactory, complete and perfect by both Caruso and an authorized representative of the Victor Company, pursuant to paragraph 2 of the said agreement).

Lawrence v. Dana, 4 Cliff. 1, 15 Fed. Cas. 26, 51;

American Law Book Co. v. Chamberlayne, 165 Fed. 313, 317 (2 C. C. A. 1908);

T. B. Harms and Francis, Day & Hunter v. Stern, 229 Fed. 42; 231 Fed. 645, 647 (2 C. C. A. 1916);

Edward Thompson Co. v. Clark, 109 N. Y. Supp. 700.

Whether there is an assignment, express or implied, of literary or artistic property rights in the recorded renditions of an artist's voice, from the artist to the company engaging her for the purpose of making such records, was considered by the Court in the case of *Gramophone Company and Tetrazzini v. The Treasury,* above referred to. It was neces-

sary to determine in that case whether there was a mere contract for services or a real transfer and assignment of incorporeal chattels, in order to ascertain what registry rate was applicable to the transaction under Italian law. However, the decision was not based on a technical interpretation of Italian tax law, but on general principles applicable to literary or artistic property. The Court stated:

> "It is no longer possible to deny to singing and playing which have thus been materialized, the protection accorded by the law to all intellectual productions in general and it is necessary to recognize that the artist has an assignable right on the record he has created. * * *
>
> It is true that the artist lends his services to the company for the performance of those selections for remuneration; but the final purpose of the contract does not consist in this performance but rather in the reproduction of such performances by means of the records obtained from the original master records. And the remuneration is given or promised not only in contemplation of the performance but also in contemplation of the possibility of reproducing such performance by means of records. It is true that in the very fact of the artist that agrees to sing or to play for purposes of phonographic reproduction there is necessarily inherent the assignment of any right that may belong to him on the records thus created so that the clause appearing in the contract in this connection may appear needless and superfluous; but this incorporation of two different transactions in the same contract * * * makes it likewise impossible to consider the contract in question as a mere contract of services because the object

of the contract is not the mere singing of the Tetrazzini who is paid by the Gramophone for this purpose, in front of the phonographic apparatus but covers also the conveyance from Tetrazzini to the Gramophone of the right of reproducing such singing by means of records, which conveyance is necessary in order to enable the contract to operate as intended by the parties."

III.

Such Grant, Assignment and Sale is not Reduced to a Mere License by the Reservation of Royalties on the Records Sold, and the Royalties are, Wholly or in Part, Installments of Purchase Price.

In consideration for the rights above referred to, granted by Caruso to the Victor Company, it was provided, in effect, in paragraph 4 of said agreement, that the company would pay for an indefinite time a royalty of ten per cent of the Victor Company's list or catalogue price of all such Caruso records sold, and would further guarantee that the royalty payments would amount to not less than $100,000 a year during the life of the artist during a period of ten years from January 1, 1919, the date of the contract. The reservation of these royalties to Caruso did not reduce the grant, assignment and sale by Caruso to a mere license.

A similar question arose in reference to the sale of a patent right in the case of *Littlefield v. Perry*, 88 U. S. 205; 22 L. Ed. 577, in which it appeared that the consideration for the assignment was an agree-

ment by the assignees to pay a royalty on all patented articles sold, and it was contended, among other things, that by reason of this reservation the title of the assignees under the grant had been reduced to that of mere licensees. In the opinion of Mr. Chief Justice Waite it was stated:

> "Neither the agreement to account and pay the royalty nor the clause of forfeiture for nonperformance contained in that instrument reduced them to the position of licensees" (p. 220).

This rule is well established with reference to the sale of patent rights. See, for instance, the case of *D. M. Sechler Carriage Co. v. Deere & Mansur Co.*, 113 Fed. 285 (7 C. C. A. 1902), in which the Court held that the contract involved was not merely an exclusive license but constituted an assignment, granting all of the patentee's right, and reached this conclusion notwithstanding the fact that "the consideration to Dooley (the patentee) for the conveyance was the amount to be received by him upon the planters made and shipped by the company, and in the contract denominated a 'license fee'" (p. 288).

Not only is this same rule clearly applicable by analogy to the sale of literary property and copyrights, but its application in such fields has been expressly recognized.

In the case of *In re Grant Richards,* L. R. 1907, 2 K. B. 33, a certain publisher entered into an agreement with an author by which he agreed to purchase the author's entire copyright, without any reserve, in the United Kingdom and all other parts of the world of a work entitled, "Uther and Iqraine," the completed manuscript of which, executed in a proper

manner, the author had delivered to the debtor (publisher), and all future editions thereof, in consideration of the payment of certain varying royalties on the sales of the work.

In its opinion the Court held:

> "'Mr. Deeping wrote a book, and he was entitled to the copyright of that book; that was all the property that he possessed. He then desired to sell it, and he sold the copyright to Mr. Grant Richards, who was a publisher, by the agreement of April 23, 1903. * * * I think Mr. Deeping divested himself of the only property he had in the book, namely, the entire copyright. He stipulated for a price to be paid for that which he was selling, just as a man who is selling goods would stipulate for the price to be paid for his goods. The price was to depend upon certain events, and was to vary according to those events. * * * For the purposes of this case I regard the transaction as analogous to a sale of goods upon the terms that they are to be paid for according to different scales in different events'' (p. 35).

In the case of *Elsner's Will,* 206 N. Y. Supp. 765; N. Y. App. Div. 1924, the Court held, concerning a contract entered into by the testator as to a medical work to be written by him:

> "In this contract he assigned the work and certain rights therein to the publisher, who was given the exclusive right to take out and hold copyrights and their renewals, and to publish the work. * * * On his part he was to receive from the amounts obtained on sales after payment of the cost of manufacture a certain per-

centage on the retail price of books sold at a profit, called a 'royalty' " (p. 766).

And further:

"The book might have been sold directly to the publisher either for a definite sum payable immediately, or by installments for a term of years. * * * But the author preferred to take a speculative contract, in effect a sale (*Matter of Richards,* L. R. (1907), 2 K. B. 33), whereby he received a percentage of profits to continue as long as the book met with profitable sale" (p. 767).

In the case of *T. B. Harms and Francis, Day & Hunter v. Stern,* 231 Fed. 645 (2 C. C. A. 1916), the Court stated:

"Romberg agreed with the present defendants that he would 'sell, assign, transfer and set over and vest' in them the right to print, publish and sell all compositions which he might write during a period of five years from the date of the agreement. Romberg expressly agreed in the contract that he transferred to Stern & Co., defendants herein, the sole and exclusive publishing right (copyright) of all the compositions 'which he is going to write during the next five years.' The contract also stated that 'in compensation for this transfer of copyright Stern & Co., will have to pay to Mr. Romberg a share of profits on each copy of each composition, as follows.' Then followed a detailed statement as to the royalties to be paid, which it is not important to set forth herein. For reasons stated in our former opinion, and which we do not now find it necessary to

enlarge upon, this agreement constituted a valid and binding contract supported by a valuable consideration. The contract was a valid executory agreement to *sell* * * * " (p. 647).

In view of the nature of the transaction between Caruso and Victor Talking Machine Company, as hereinabove analyzed and discussed, and in the light of authorities cited, it is submitted that the transaction "was in fact a sale under the form of periodical payments or installments" and hence that the payments of royalties accruing from time to time under said contract of January 1, 1919, to the estate of Caruso are installments of purchase price, and hence cannot be regarded as wholly income, as held by the Chancellor.

As stated by the Court in *Elsner's Will, supra*:

> "Neither 'royalty' nor 'income' admit of precise legal definition. In certain cases dealing with mineral products, the term 'royalty' is deemed an appropriate word to apply to rental based upon the quantity taken from the mine (*Reynolds v. Hanna,* 55 Fed. Rep. 783), or to the share of the product or profit reserved to the owner for permitting another to use the property or remove the mineral (*Indiana Natural Gas & Oil Co. v. Stewart,* 45 Ind. App. 554; *Kissick v. Bolton,* 134 Iowa 650; *Higgins Oil & Fuel Co. v. Snow,* 113 Fed. Rep. 433) and, therefore, royalties are often treated as income. (*Matter of Woodburn,* 138 Penn. St. 606.) The same rule is adopted with limitations in treating such royalties as income for purposes of taxation. (*New Creek Co. v. Lederer,* 295 Fed. Rep. 433, 435; *Von Baumbach v. Sargent Land Co.,* 242 U. S. 503.) These definitions, however,

are scarcely appropriate to the royalty or percentage paid to the author by the publisher of a book.

Here the property, intangible in character, is the creation of the mind and skill. With the protection given by the law, publication has been united with profit. (*Silverman v. Sunrise Picture Corp.*, 273 Fed. Rep. 909.) *In the case of copyrights and patents, the term 'royalty' is commonly used to designate the share of the proceeds of property, paid to a person having some proprietary or creative interest therein, by another who has obtained from the payee an absolute or qualified ownership of such property''* (p. 768).

It is to be noted that in practically all of the cases in which the question has arisen whether or not royalties are income, there has also been present the element of a testator's intent and that has been a determining factor in the decisions rendered in such instances. This is another reason why many of the authorities, including the so-called coal cases, are not applicable in the present instance where the element of testator's intent is entirely absent.

The great difference in the treatment of royalties when the element of testator's intent is and is not present, is well illustrated in the case of *Davidson v. Ogilvie,* 1910 Sc. Sess. Cas. 294, which was a suit by the remaindermen against the life tenant named in the will of a deceased physician. The deceased had published certain medical works in his lifetime taking an agreement from the publishers for the payment of royalties on the sales. At his death his executors found an unpublished manuscript which they turned over to a publisher on similar royalty

terms. The Court was asked to determine whether the royalties received by the executors on the two classes of publications were income or principal.

The contention of the remaindermen was thus stated:

> "The first parties maintained that all royalties and returns from Professor Davidson's works fall to be treated as capital and to be held and invested from time to time and the income thereon paid to the liferentrix. The first parties contend that although Professor Davidson agreed to take deferred payment for his work in the form of royalties upon the sales, or a share of profits, the price was not by such agreement converted from capital to income. Similarily in cases where the first parties, following the deceased's practice, published his works receiving a royalty or share of profits the first parties contend that the returns, whether by way of royalties or share of profits, are capital * * * ".

The Court held that the royalties from the works published in the lifetime of the decedent were income because the testator must have so regarded them, but that the royalties received on the work published after the death of the decedent were capital. The Court through Lord Ardwall said:

> "I cannot doubt that as a matter of intention we must hold that the free annual income of the estate means the free annual income of the estate as it existed at his death, of which those profits or royalties form a part. It seems that there is no case exactly on all fours with the present, but I think we derive assistance from and find very valuable analogy in the cases

which have been decided regarding rentals and in which a distinction has been taken between minerals, the proceeds of which form income before the testator's death and minerals which had not begun to be worked at the death of the testator. These decisions must be held to proceed on the principle of intention; and likewise in this case I hold we must have regard to the intention of the testator in deciding the question as to the proceeds of royalties on works published by himself before his death. Accordingly with regard to such royalties and profits I hold that they still form income.

But with regard to the other works which have been published by the trustees since his death, I think that these are in a totally different postion. * * * At the testator's death they represented part of the capital of the estate. I do not think that these unpublished manuscripts and the copyright which they bore with them were anything else than capital * * * whether they were paid by a sum down or by installments or partly by a sum down and partly by installments, the proceeds were a *surrogatum* for the assets left by the testator at the time of his death in the form of literary property. I think that they must be treated accordingly as capital and as nothing else, the proceeds being invested as they accrue and the interest of that capital so invested being paid to the life-rentrix."

On the other hand, in the case of *Elsner's Will, supra,* where the element of testator's intent was also absent, the Court held that:

"There must be an apportionment of the royalties between principal and income" (p. 770).

On the theory that:

"to hold that the entire proceeds are principal would be to deny that the capital earns any income."

Whether royalties in a given case are to be treated as capital or as income is a question of undoubted difficulty and must be determined from the nature of the transaction. In the present instance the Victor Company is not interested as to whether this Court holds the royalties to be all capital, following the rule laid down in *Davidson v. Ogilvie, supra,* or to be partly capital and partly income, following the rule laid down in *Elsner's Will, supra.* It has, however, a very large interest in the determination of the nature of its transaction with Caruso. This transaction has, therefore, been considered and analyzed, and in view thereof, it is submitted that the royalties are installments of purchase price; and hence wholly, or at least in large part, capital, and that in any event they cannot be treated as wholly income.

Respectfully submitted,

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PART II.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

DOROTHY P. B. CARUSO, administratrix of ENRICO CARUSO, deceased,
Complainant-Appellant,
and
RODOLFO CARUSO, *et als.,*
Defendants-Respondents.

ON APPEAL.

ON BILL, &c.

BRIEF FOR VICTOR TALKING MACHINE COMPANY, DEFENDANT-RESPONDENT.

(Throughout this brief the italics are ours.)

STATE OF THE CASE.

This cause comes before this Court on four appeals, three from the final decree entered by the

Chancellor on the final hearing herein, and one from the interlocutory decree entered by the Chancellor on the petition by Dorothy P. B. Caruso for an allowance for the maintenance of the infant defendant, Gloria Caruso.

This litigation grows out of the refusal of the defendant Victor Talking Machine Company to recognize a certain family agreement of settlement and certain Italian decrees based thereon relating to the estate of Enrico Caruso, deceased.

By virtue of such agreement of settlement, and Italian decrees, it was sought to have the Victor Company pay the royalties thereafter becoming due and payable under its contract with the late Enrico Caruso, directly to the various claimants to the Caruso estate referred to in the settlement agreement and the Italian decrees, in the proportions therein specified.

The Victor Company did not dispute—and it has not at any time disputed—its obligation to continue to pay royalties under its contract with Caruso, after the latter's death, and for an indefinite period in the future. The Victor Company is, however, vitally concerned with the question as to the parties to whom it can pay these royalties over the indefinite period of the contract, and receive full acquittances and discharges therefor. This question was not, in the opinion of counsel for the Victor Company, conclusively determined by either the family agreement of settlement or the Italian decrees based thereon, nor was there any adjudication prior to the decree by the Chancellor herein, satisfactorily settling the question. The Victor Company, therefore, refused to pay in the manner demanded and forced the raising of ancillary administration in this

State, with a view to protecting the rights of all parties in interest.

Thereafter, the complainant, as ancillary administratrix, brought the present suit, praying, among other things, that her accounts be settled, that she be discharged, that it be decreed that all moneys thereafter payable under said contract and all rights in the contract itself are the property of the claimants named in the settlement agreement and the Italian decrees, and that the Victor Company be decreed to pay over the royalties from time to time accruing under said royalty agreement to said individuals, or their lawful representatives, directly and without further intervention of complainant as administratrix.

The defendant Victor Talking Machine Company duly filed its answer in this suit, and opposed the relief sought by the bill, since it could not safely recognize the settlement agreement and the Italian decrees and pay the royalties in accordance therewith until there had been duly adjudicated in a court of competent jurisdiction such questions, among others, as:

What jurisdiction had the Italian Court to make such decrees?

Did it acquire any jurisdiction over the Victor Company or the *res* represented by the Victor-Caruso contract, so as to render its decrees enforceable, as such, in this State against the Victor Company?

Are such decrees, being consent decrees, enforceable in this State against the Victor Company, a stranger to those proceedings?

Are the Italian decrees adjudications of the distribution of decedent's personalty according to the law properly applicable thereto?

Is the family agreement of settlement enforceable in this State so far as it affects the *res* represented by the Victor-Caruso contract, when the guardians appointed by the Italian Court and entering into such agreement on behalf of their wards were dealing with personalty outside the jurisdiction of the Court appointing them?

In the face of these and other vexed questions of law and fact, the Victor Company felt itself in duty bound to refuse payment as demanded and to oppose the prayers of the bill in order to obtain a full adjudication in this cause of the issues raised. It sought, and is clearly entitled to, the protection of a decree in this cause to safeguard it against possible double liability. "It ought to be and is the object of the Courts to prevent the payment of any debt twice over." (*Harris v. Balk,* 198 U. S. 215, 49 L. Ed. 1023).

After making its answer, this defendant filed its counter-claim for affirmative relief, praying, among other things: that ancillary administration of so much of the estate of said Enrico Caruso in this State as consisted of the agreement between this defendant and said Enrico Caruso may be continued indefinitely or, in the alternative, upon the discharge of such administration, that a receiver be appointed to receive from this defendant, as the same accrue, the royalties rendered by the sale of records under the said agreement, and give this defendant good and sufficient acquittances and discharges therefor, and pay and distribute the said royalties to the parties lawfully entitled thereto, and to account periodically to this Court.

Pending the determination of this cause, the defendant Victor Company has paid all royalties due

under its contract with Caruso, since his death in 1921 (amounting to approximately $1,000,000), to the complainant as ancillary administratrix. Upon the entry herein of the final decree (S. of C. p. 159) by the Chancellor, it was provided that all subsequent payments be deposited in a designated trust company to be distributed under order of the Court, and this has been done.

In the final decree, it was determined that the Italian decrees are not enforceable in this State as against the infant defendant, Gloria Caruso, but are enforceable and binding upon the other parties thereto, and further—that upon the filing and approval of complainant's account she may be discharged as ancillary administratrix. The Chancellor also recognized the necessity for affirmative relief to the defendant Victor Company, held that a trust exists under the Victor-Caruso contract, and appointed the Victor Company "as trustee for each of the distributees according to their rights and interests under said contract, and this decree *pro tanto,*" retaining jurisdiction over the cause for the purpose of giving further relief and direction herein as occasion may require.

The questions raised on the appeals from the final decree relate to the relief sought by the complainant in her bill and to the affirmative relief sought by the defendant Victor Company through its counterclaim, and these questions are dealt with respectively in Parts I and II of the present brief.

PART I.

The questions relating to the relief prayed for in the bill, involve a legal determination of the parties who are entitled to receive the royalties which have accrued under the Victor-Caruso contract and may hereafter accrue over the indefinite term thereof. The defendant Victor Company has no interest whatever as between the various rival claimants, as to what parties are ultimately held to be so entitled, but it has a very great interest in having this matter, and the underlying legal issues, conclusively settled, in order that it may receive full protection in the carrying out of its agreement and avoid the jeopardy of double liability. It has, therefore, raised issues in this cause, not from a partisan standpoint as between the various claimants, but in order that such issues may be before the Court, and in an endeavor to assist the Court on points which the Victor Company seeks to have decided, so that the decision rendered herein may comprehensively dispose of such issues and better protect the defendant Victor Company, a citizen of New Jersey, if similar questions should be raised in other jurisdictions, or the decision in this case attacked through reprisals in other States or foreign countries (if the Italian decrees are not here recognized) as has been suggested in the most recent decree of the Neapolitan Court (S. of C. pp. 331-338) and threatened by counsel for one of the parties herein.

The relief prayed for in the bill and sought by the complainant-appellant Dorothy P. B. Caruso

and the defendant-appellant Enrico Caruso, Jr., is based largely upon the decrees of the Neapolitan Court, and in part upon the family settlement agreement upon which such decrees are predicated.

The enforceability of the settlement agreement is dealt with separately (*infra,* p. 26) and the enforceability of the Italian decrees, as such, is now considered.

I. Are the Italian Decrees, as Such, Enforceable Against the Victor Company?

At the outset we are confronted with the question whether the Italian Court had jurisdiction to enter the decrees in question.

In every case in which a foreign decree or judgment is sought to be enforced in this country, such decree or judgment is open to attack for want of jurisdiction on the part of the foreign Court over the subject matter, parties or *res* involved in the proceeding in which such decree was made, the enforcement of such foreign decrees resting solely on the grounds of comity.

See, for instance, *Rose v. Himely,* 4 Cranch 241, 2 L. Ed. 608, which is an early leading case recognizing the right to attack a foreign decree for want of jurisdiction, and which has been widely followed, so that the principle is firmly established in the jurisprudence of this country.

In *Thompson v. Whitman,* 85 U. S. 457, 21 L. Ed. 897, the Court held that a judgment of this State was not enforceable in New York for want of jurisdiction in the Court here. Mr. Justice Bradley, in

delivering the opinion for the Supreme Court, states:

> "It may be observed that no Courts have more decidedly affirmed the doctrine that want of jurisdiction may be shown by proof to invalidate the judgments of the Courts of other States, than have the Courts of New Jersey." (Page 468.)

On this point he cites the following decisions in this State:

> *Moulin v. Ins. Co.*, 4 Zab. 222, 1 Dutch. 57;
> *Price v. Ward*, 1 Dutch. 225;
> *Mackay v. Gordon*, 34 N. J. L. 286;

and from the opinion in the last cited case quotes with approval the following language of Chief Justice Beasley:

> "Every independent government is at liberty to prescribe its own methods of judicial process, and to declare by what forms parties shall be brought before its tribunals. But, in the exercise of this power, no government, if it desires extraterritorial recognition of its Acts, can violate those rights which are universally esteemed fundamental and essential to society. Thus a judgment by the Court of a State against a citizen of such State, in his absence, and without any notice, express or implied, would, it is presumed, be regarded in every external jurisdiction as absolutely void and unenforceable. Such would certainly be the case if such judgment was so rendered against the citizen of a foreign State." (Page 469.)

The same fundamental question was also involved in the case of *Reynolds v. Stockton,* 140 U. S. 254, 35 L. Ed. 464 (affirming the opinion of this Court in 43 N. J. Eq. 211), Mr. Justice Brewer of the Supreme Court stating:

> "It has been adjudged that the constitutional provision does not make a judgment rendered in one State a judgment in another State upon which execution or other process may issue; that it does not forbid inquiry in the Courts of the State to which the judgment is presented, as to the jurisdiction of the Court in which it was rendered over the person, or in respect to the subject matter, or, if rendered in a proceeding *in rem,* its jurisdiction of the *res.*" (Pages 264-5.)

For other New Jersey cases, see—

Elizabethtown, etc., v. Gerber (E. & A., 1882), 35 N. J. Eq. 153;

Walter v. Keuthe, 98 N. J. L. 823, 121 A. 624.

See also

Freeman on Judgments, Sections 1483-1484,

in which it is stated, in the latter section (at page 3048), that

> "With respect to questions of jurisdiction, judgments of Courts of foreign nations are governed substantially by the same rules which are applicable to the judgments of the Courts of our sister States."

Minor on Conflict of Laws, pages 184-187;

Story on Conflict of Laws, Sections 598, *et seq.;*

34 *C. J.,* 1168.

A. Had the Italian Court any Jurisdiction to Make a Decree Binding Upon the Victor Company in Personam?

The Italian decree of October 21, 1921, makes no reference whatever to the Victor Company, but the Italian decree of June 16, 1922, does, and according to the translation thereof (Exhibit C9a, S. of C., pp. 293-303), put in evidence by complainant, paragraph 7 of such decree reads:

> "Authorize the Victor Talking Machine Company to pay each year * * *"

the royalties due to the various claimants in the proportions specified.

In the original decree, in the Italian language, the word "authorizza" is used, and if it is properly rendered in the translation in evidence as "authorize," it would appear that the Italian Court very properly recognized that the Victor Company, not being a party to the proceedings in that Court, was not subject to its order; for "to authorize" is not "to order" or "to require," but is merely to grant permission or authority. The complainant, while so translating the word "authorizza" on the one hand, is, on the other hand, proceeding in the present case as if the word so used in such Italian decree was properly translated as "order" or "require," since the effect which complainant seeks to obtain through the enforcement in this State of the Italian decree as *binding* upon the Victor Company is the same as if such decree had been rendered *in personam* against the Victor Company.

Even if the Italian Court had attempted to make its decree of June 16, 1922, or its previous decree of October 21, 1921, binding upon the Victor Company *in personam*—which it appears it did not do—it is obvious that that Court had no jurisdiction to do so, as the Victor Company was not and could not have been personally served in Italy, and did not appear voluntarily in the Italian proceedings and was not a party thereto.

That under such circumstances the Court was without jurisdiction to make a binding decree *in personam* against it, see:

Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565;
Hilton v. Guyot, 159 U. S. 113, 40 L. Ed. 95;
New York Life v. Dunlevy, 241 U. S. 518, 60 L. Ed. 1140;
Wilson v. Am. Palace Car Co., 65 N. J. Eq. 730, 55 A. 997.

Nor is there any presumption that the foreign court had jurisdiction over the Victor Company; and the party asserting the judgment must prove the existence of the facts necessary to establish such jurisdiction.

See *Traders Trust Co. v. Davidson*, 146 Minn. 224, 178 N. W. 735.

B. Had the Italian Court any Jurisdiction to Adjudicate in Rem or Quasi in Rem Upon the Title to the Victor-Caruso Contract and the Royalties Payable Thereunder?

It is fundamental, in order to adjudicate *in rem* or *quasi in rem*, that the *res* must be within the territorial jurisdiction of the Court and must be brought within the direct control of the Court, and that, in addition, actual or constructive notice reasonably calculated to inform the parties interested, shall be given.

Rose v. Himely, supra;
Thompson v. Whitman, supra;
Pennoyer v. Neff, supra;
Freeman v. Alderson, 119 U. S. 185, 30 L. Ed. 372;
Reynolds v. Stockton, supra;
Johnson v. Powers, 139 U. S. 156, 35 L. Ed. 112;
Amparo Mining Co. v. Fidelity Trust Co., 74 N. J. Eq. 197, 71 A. 605, aff'd 75 N. J. Eq. 555, 73 A. 249;
Elmendorf v. American Combustion Co., 80 N. J. Eq. 461, 85 A. 199;
Freeman on Judgments, Section 347, page 705;
Black on Judgments (2nd Ed.), Sec. 818;
Minor on Conflict of Laws, pages 184-187.

1. The *res* represented by the Victor-Caruso contract was not within the jurisdiction of the Italian Court.

The rule of situs is generally applied in determin-

ing the jurisdiction of a Court over a *res*. But it is the *actual* not the legal, situs of property that gives a Court jurisdiction to pronounce a judgment or decree concerning it. Hence, in the case of tangible chattels, the *actual* situs thereof will always be looked to, where the question is one of jurisdiction of a Court over a *res* (*Minor on Conflict of Laws*, p. 274), and the actual situs of such property can of course be readily determined.

However, in the case of intangible chattels, including debts of all sorts, the question of situs is fraught with more difficulty. Such intangible rights can, of course, have no real situs since they exist only in the mind's eye, but it frequently becomes necessary to assign them a situs somewhere, in order to ascertain the law properly applicable to them. (*Minor*, pp. 274-5.) Therefore, their actual, as well as their legal, situs is necessarily largely a matter of legal fiction, and differs in different classes of cases according to the purpose for which the situs of intangible property must be fixed.

The general rule as to debts is set forth in *Minor* as follows:

> "While the situs of the creditor's right (chose in action) follows the creditor and corresponds to the *legal* situs of tangible chattels, the situs of the debtor's obligation follows the actual situs of the debtor, or of his property (in case of a proceeding in *rem* to enforce it), and corresponds to the *actual* situs of tangible chattels.
>
> "* * * The *actual* situs of the debt will be looked to also, as in the case of chattels, when the debt is the *res* in a proceeding *in rem*, the question being whether or not the Court has jurisdiction of the *res*." (pp. 276-277.)

In the case of *Amparo Mining Co. v. Fidelity Trust Co.*, 75 N. J. Eq. 555, 73 A. 249, this Court considered and applied the general rule, holding that for purposes of jurisdiction stock in a New Jersey corporation belonging to a resident of another State had its situs in New Jersey notwithstanding the fact that the certificates of stock were not within the State. In discussing the general rule as to situs, the Court states:

> "The fact is that the property right of a stockholder in a corporation is an intangible thing, which may well be called a 'chose in action,' and has no actual situs anywhere in the sense that real estate or tangible chattels have. The principle which should guide in such a case is said, by Professor Dicey in his book on Conflict of Laws, to be that choses in action should be held to be situate at the place where they can be effectively dealt with, from which it follows that *debts*, choses in action, and claims of any kind must be held situate where the debtor or other person against whom a claim exists resides; or, in other words, *debts* or choses in action are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced." (page 558.)

It is, of course, true that there is some confusion in the cases on the question whether intangible property can have an actual situs. Thus, in some cases, Courts have declined to apply the doctrine of situs in determining jurisdiction over such property, and have held that the basis of a Court's jurisdiction over a debt, for instance, is its acquiring

jurisdiction over the debtor by personal service upon him within the territorial jurisdiction of the Court or by proceeding against his property within such territorial jurisdiction. While these cases, therefore, proceed upon a somewhat different theory from that of situs, they do not extend jurisdiction over that supported by the situs doctrine.

A recent case in this State proceeding upon this latter theory is *Redzina v. Provident Inst.*, 96 N. J. Eq. 346, 125 A. 133, in which this Court, after stating that a debt "is a mere forced relation between parties and is incapable of location or actual situs," held that the debt there involved (the obligation of a savings bank to joint depositors in a savings account) was, for purposes of jurisdiction, not merely where there was jurisdiction over the debtor, *i. e.*, where it could be enforced against him, but depended upon jurisdiction over *both*, and not one, of the parties to the debt, and that the Court being without jurisdiction over a co-creditor was without jurisdiction over the *res*.

See also the following cases involving the jurisdiction of Courts over debts proceeded against by foreign attachment, in which it was held that debts had no *locus* or situs and that jurisdiction depended upon process or "notice" or "warning" personally served upon the debtor within the territorial jurisdiction of the Court:

Chicago, etc., Railway Co. v. Sturm, 174 U. S. 710, 43 L. Ed. 1144;

Harris v. Balk, 198 U. S. 215, 49 L. Ed. 1023;

Nat'l Fire Ins. Co. v. Chambers, 53 N. J. Eq. 468, 32 A. 663.

In *Chicago, etc., Railway Co. v. Sturm, supra,* the Court states, in discussing jurisdiction over the debt:

> "Consideration of situs is somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He, and he only, has something in his hands. That something is the *res* and gives character to the action as one in the nature of a proceeding *in rem.*" (p. 716.)

Under all these authorities it is clear that the *res* represented by the Victor-Caruso contract did not have its situs, for purposes of jurisdiction, in Italy, if the situs rule is applied, nor was the Victor Company, the debtor, within the jurisdiction of the Italian Court and personally served there with process, "notice" or "warning." Hence, under any theory, the Italian Court was without jurisdiction over the *res.*

The same conclusion would seem to follow if the situs of the contract be considered for the purpose of administration of the Caruso estate—although it is doubtful whether the proceedings in the Italian Court can properly be considered as an administration.

As stated by the United States Supreme Court in *Wyman v. Halstead* (*Wyman v. United States*), 109 U. S. 654, 27 L. Ed. 1068:

> "The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor * * *." (page 656.)

Application of this rule in a case involving

royalties is found in *Wall v. Atlantic Smelting Co.*, 91 N. J. Eq. 131, 108 A. 235, in which this Court held:

> "To this royalty the estate is entitled. This constitutes assets in New Jersey within the rule stated by this Court in Amparo Mining Co. v. Fidelity Trust Co., 75 N. J. Eq. 555, 73 A. 249, that the chose in action is in the jurisdiction where you would have to go to enforce it, * * *" (page 134).

See also:

> *Banta v. Moore*, 15 N. J. Eq. 97;
> *Dicey on Conflict of Laws*, page 344;
> *Wharton on Conflict of Laws*, page 1363;
> *Schouler on Wills, Executors and Administrators* (1926 Supplement), page 254;
> 23 *C. J.*, 1016.

Minor also refers to the fact that:

> "The ascertainment of the situs of a debt for these (administration) purposes has given the Courts some trouble which has arisen in a large measure from the failure to observe the distinction between the *legal* and *actual* situs of debts already adverted to." (page 283.)

It is true that Minor, in discussing the situs of a debt for the purposes of administration, suggests:

> "If there are no creditors of the deceased, or the administration has been completed, the creditors paid off, and the only thing remaining is to distribute the *residuum*, the actual situs of the debt ceases to furnish the applica-

tory law, and its *legal* situs (in this case the legal situs, or domicile, of the creditor) resumes its sway." (page 285.)

However, it does not appear that this exception clearly contemplates the disregard of the actual situs of the debt as controlling for purposes of jurisdiction, under the circumstances stated by Minor—even if they are applicable here. Minor apparently relies on cases involving the question whether the validity of an assignment of a debt by a domiciliary executor or administrator will be governed by the law of the legal or of the actual situs of the debt. The situs for such a purpose of voluntary transfer is manifestly a different matter than the situs of a debt for purposes of jurisdiction over it by a Court.

In connection with the point mentioned above, that the situs of a debt may vary for different purposes, it is to be noted that the Courts recognize a different rule in determining the situs of a debt for purposes of taxation. This distinction is pointed out, for instance, by this Court in *Amparo Mining Co. v. Fidelity Trust Co., supra,* as follows:

> "The cases which hold that stock has a situs in the State of the domicile of the owner for purposes of taxation are rested upon a different ground which is recognized by the cases as peculiar to the question of taxation, and rests upon the legal fiction '*mobilia personam sequuntus*'—a fiction which is not to be unnecessarily extended." 75 N. J. Eq. 559.

See also *Minor,* pages 281-283.

Hence decisions in tax cases are not properly ap-

plicable in determining whether or not the *res* represented by the Victor-Caruso contract had its situs in Italy for purposes of jurisdiction and was a *res* within the jurisdiction of the Italian Court, upon which its decrees could operate *in rem* or *quasi in rem* in the proceedings had there.

2. Even if property is within the jurisdiction of a Court, it must be subjected to the control of the Court as a prerequisite of jurisdiction *in rem* or *quasi in rem*, and this was not (and could not have been) done in Italy in the present instance.

The general rule is given in *Cooper v. Reynolds' Lessee*, 77 U. S. 308, 19 L. Ed. 931, as follows:

> "The jurisdiction of the *res* is obtained by a seizure under process of the Court whereby it is held to abide such order as the Court may make concerning it. * * * While the general rule with regard to jurisdiction *in rem* requires the actual seizure and possession of the *res* by the officer of the Court, such jurisdiction may be acquired by acts which are of equivalent import and would stand for and represent the dominion of the Court over the thing and, in effect, subject it to the control of the Court." (page 317.)

See also:

Pennoyer v. Neff, supra;
Freeman v. Alderson, 119 U. S. 185, 30 L. Ed. 372;
Nat'l Fire Ins. Co. v. Chambers, supra;
Amparo Mining Co. v. Fidelity Trust Co.,

74 N. J. Eq. 197, 71 A. 605 (Aff'd. 75 N. J. Eq. 555, 73 A. 249);
34 *C. J.*, 1171;
34 *C. J.*, 1175;
15 *C. J.*, 801.

In the two New Jersey cases just above cited the question of the Court's acquiring jurisdiction over intangible property was involved. In the first of these cases, *National Fire Insurance Co. v. Chambers,* the question of the necessity for bringing the *res* within the control of the Court was considered in connection with a garnishment proceeding and the Court pointed out that:

> "The debt is incapable of actual seizure and hence none is necessary,"

and held that for the purpose of jurisdiction over choses in action in cases of attachment, *service within the jurisdiction of warning upon the debtor is sufficient.*

In the other New Jersey case cited, *Amparo Mining Co. v. Fidelity Trust Co.,* it was held:

> "It is not the actual seizure of the *res* which is the essential element of an action *quasi in rem* but the power to seize the *res* and to seize it in the action. * * * So long as the *res* is situate within the jurisdiction of the Court *and the custodian of the res is made a party to the suit,* the requirement of an action *quasi in rem,* under consideration, seems to be complied with." 74 N. J. Eq. 210-211.

In the present case it is clear that not only was the *res* not brought directly within the control of the Italian Court by seizure—and obviously it could

not have been—but no steps of equivalent import were taken which would, in effect, bring it within the control of that Court, such as, for instance, service of notice upon the Victor Company, the debtor, within the jurisdiction, or making the Victor Company, as custodian of the *res*, a party to the suit. Of course, none of such steps could have been taken under the circumstances.

C. Even if the Italian Court had Jurisdiction to Adjudicate Quasi In Rem, Would Not its Decree in Such Proceeding Be Binding Upon the Parties Thereto, and Not on the Victor Company, a Stranger to Such Proceeding?

The distinction in this respect between actions *in rem* and *quasi in rem* is pointed out in the opinion of the United States Supreme Court in *Freeman v. Alderson, supra.* In referring to actions *quasi in rem*, the Court says:

> "But they differ, among other things, from actions which are strictly *in rem* in that the interest of the defendant is alone sought to be affected, that citation to him is required and that judgment therein is *only conclusive between the parties.*" (Pp. 187-188.)

That judgments *quasi in rem* are not conclusive as to those who are not parties to the action, see also—

Allred v. Smith, 47 S. E. 597; 135 N. C. 443;
First National Bank v. Peoria Watch Co., 60 N. E. 859, 191 Ill. 128, affirming 93 Ill. App. 502;
Flint v. Koplin, 207 Pac. 468 (Ore.);
34 *C. J.*, 1175.

D. Are the Decrees of the Italian Court, Being Consent Decrees, Enforceable in New Jersey Against the Victor Company, a Stranger to the Italian Proceedings?

The complainant is seeking in this Court the enforcement of the decrees entered in Italy. But it must be borne in mind that these decrees were not entered as a result of litigation between the parties, or as a result of any proceedings in which there were adverse parties and an adjudication upon the merits. From an examination of the proceedings it does not appear that the Court in Italy was called upon to decide anything. The Court's function seems to have been merely ministerial in entering the decrees in accordance with the family agreement of settlement. It is true that before entering the decrees the Court inquired whether the agreement was for the interest of the infants involved. But there was no controversy upon this point, and the Court merely passed upon the agreement on behalf of the infants—as required by the Italian code in respect to agreements by guardians for their wards. Although the agreement was thus approved by the Italian Court, the decrees which were entered in such proceedings were based not upon the deliberate judgment of the Court in a *real* controversy *really* litigated, but upon the consent, found in such agreement, of all the parties as to what the decision or decree should be, and hence were clearly *consent* decrees.

Consent decrees have been held not to be judicial decisions by the Court entering such decrees, but

are merely "the judicially recorded supposed agreement" of the parties.

Gay v. Parpart, 106 U. S. 292, 27 L. Ed. 256;

Texas, etc., R. Co. v. Southern Pac. R. Co., 137 U. S. 48, 34 L. Ed. 614.

And in the case of *Hohendel v. Steele,* 86 N. E. 717 (Ill.), the Court, in discussing a consent decree, stated that a decree entered by agreement and not as a result of finding by the Court is not, in a strict legal sense, a "judicial decree," but is in the nature of a solemn contract between the parties entered by the Court.

As to the enforcement of these Italian decrees against the Victor Company, it is to be noted that the Victor Company was not a party, either actually or constructively, to any of the proceedings in Italy resulting in such consent decrees. The rule is that a consent decree binds only the consenting parties.

Mylias v. Smith, 44 S. E. 542 (W. Va.);

Dibrell v. Carlisle, 51 Miss. 785.

The cases have uniformly held that consent decrees are not *res adjudicata.* See

Kelly v. Town of Milan, 21 Fed. 842 (with a very full and able discussion by the Court), aff'd 127 U. S. 139, 32 L. Ed. 77;

Lawrence Mfg. Co. v. Janesville Cotton Mills, 138 U. S. 552, 34 L. Ed. 1005;

Hodgson v. Vroom, 266 Fed. 267;

American Radium Co. v. Hipp. Didisheim, 279 Fed. 601.

And any effect given such decrees rests upon an *estoppel in pais,* and not an estoppel of record.

Kelly v. Town of Milan, supra.

The case of *Lawrence Mfg. Co. v. Janesville Cotton Mills, supra,* is authority for the proposition that where a party returns to a Court of Chancery to obtain its aid in executing a former consent decree of that Court, the Court may open up such decree in order to determine whether the circumstances justify the relief granted by it.

A fortiori, this follows in a case where the consent decree sought to be enforced is that of a foreign court, any recognition and enforcement of which stands solely upon the ground of comity.

The Victor Company being a stranger to the Italian proceedings, is therefore not bound thereby, irrespective of their nature, and is entitled to have this Court pass upon and judicially determine the question discussed but not adjudicated in the decrees in such proceedings, namely, who own the Victor-Caruso contract and are entitled to the royalties due under it.

II. Are the Italian Decrees Evidence of the Proper Distribution of Decedent's Personalty According to the Italian Law?

Under the general rule that the succession to all movables is to be determined by the law of the decedent's domicile, the Italian decrees here sought to be enforced do not assist this Court. As stated, they are consent decrees and do not purport to adjudicate anything; in fact, the very language of these decrees makes it clear that they do not attempt to distribute according to the Italian law governing decedents' estates, but rest solely upon the agreement between the parties. They are merely judi-

cially recorded agreements, and cannot be given effect in this State as embodying, for the purposes of this case, the law of decedent's domicile.

If the Italian decrees had adjudicated the question of the relationship of the parties to the decedent, or had made an adjudication distributing the decedent's personalty, they would be considered evidence of the facts so adjudicated and would probably be followed by a court of a foreign jurisdiction, under the rule of *Ennis v. Smith,* 55 U. S. 400, 14 L. Ed. 472, and *Suarez v. New York,* 2 Sanf. Ch. (N. Y.) 1723. But since the Italian decrees are consent decrees and do not adjudicate the question of the proper distribution of decedent's personalty according to the law of his domicile, they are clearly not evidence thereof. That consent decrees have no weight as evidence, see *Kelly v. Town of Milan,* 21 Fed. 842, in which the Court, in discussing consent decrees, says:

> "In the language of the case of *Manhattan L. Ins. Co. v. Broughton,* 109 U. S. 125, S. C. 3 Sup. Ct. Rep. 99, 'a trial upon which nothing was determined cannot support a plea of *res adjudicata* or have any weight as evidence at another trial' * * *" (page 863).

If this Court concludes that the Italian law governing decedents' estates is applicable in fixing the rights of the claimants in and to the Victor-Caruso contract and the royalties growing out of it, we submit that the New Jersey Courts must apply Italian law as they determine it to be according to the evidence thereof herein adduced and regardless of the Italian decrees in question.

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III. Is the Italian Agreement of Settlement, as Distinct from the Decrees Based Upon it, Enforceable in New Jersey?

The guardians appointed by the Italian Court in entering into the family agreement of settlement, purported to deal with and dispose of the rights of their wards in and to the Victor-Caruso contract and the future royalties thereunder—notwithstanding such property of their wards was outside the territorial jurisdiction of the Italian Court.

The Chancellor held the guardian in Italy had no authority to do so, stating:

> "Mr. Justice Story's opinion supports the proposition that the rights and powers of guardians are considered as strictly *local* and as not entitling them to exercise any authority over the person or personal property of their wards in other States, upon the same general reasoning and policy which have circumscribed the rights and authorities of executors and administrators. Story, Confl. L. Sec. 499" (S. of C., p. 114).

The general rule thus enunciated by the Chancellor is stated by Minor, as follows:

> "It is generally admitted that the appointment of a guardian, whether in the ward's dommicile or elsewhere, gives him no extraterritorial authority over the ward's personal property" (page 261).

The only basis for recognition of the authority and power of foreign guardians is that of comity. In

the case of *Hoyt v. Sprague,* 103 U. S. 613, 26 L. Ed. 585, the Court discusses the comity rule in this connection and the extent to which it is applied in the United States:

> "One of the ordinary rules of comity exercised by some European States is, to acknowledge the authority and power of foreign guardians, that is, guardians of minors and others appointed under the laws of their domicile in other States. But this rule of comity does not prevail to the same extent in England and the United States. In regard to real estate it is entirely disallowed; and is rarely admitted in regard to personal property. Justice Story, speaking of a decision which favored the exterritorial power of a guardian in reference to personal property, says: 'It has certainly not received any sanction in America, in the States acting under the jurisprudence of the common law. The rights and powers of guardians are considered as strictly local; and not as entitling them to exercise any authority over the person or personal property of their wards in other States, upon the same general reasoning and policy which have circumscribed the rights and authorities of executors and administrators.' Story, Confl. L., Secs. 499, 504, 504a; and see Whart. Confl. L., Secs. 259-268, 2nd Ed.; 3 Burge, Colon. and For. L., 1011. And some of those foreign jurists who contend most strongly for the general application of the ward's *lex domicilii,* admit that when it comes to the alienation of foreign assets, an exception is to be made in favor of the jurisdiction within which the property is situate, for the reason that this

concerns the ward's property, and not his person. Whart., Secs. 267, 268" (page 631).

To the same effect, see:

Devine v. American Posting Service, 174 Ill. App. 423;
28 *C. J.,* 1272.

In the case of *Lamar v. Micou,* 112 U. S. 452, 28 L. Ed. 751, the Supreme Court reiterated the general rule as to foreign guardians, at the same time referring to the modern tendency, as follows:

> "By the law of England and of this country, a guardian appointed by the courts of one State has no authority over the ward's person or property in another State, except so far as allowed by the comity of that State, as expressed through its Legislature or its courts; but the tendency of modern statutes and decisions is to defer to the law of the domicile and to support the authority of the guardian appointed there. *Hoyt v. Sprague,* 103 U. S. 613, 631 (XXVI, 585, 592), and authorities cited; *Morrell v. Dickey,* 1 Johns. Ch. 153; *Woodworth v. Spring,* 4 Allen 321; *Milliken v. Pratt,* 125 Mass. 374, 377, 378; *Leonard v. Putnam,* 51 N. H. 247; *Commonwealth v. Rhoads,* 37 Pa. St. 60; *Sims v. Renwick,* 25 Ga. 58; *Dicey, Domicile,* 172-176; *Westlake, Private Inter. L.,* 2nd Ed., 48-50; *Whart. Confl. L.,* 2nd Ed., Secs. 259-268" (page 470).

In the later case of *Morgan v. Potter,* 157 U. S. 195, 39 L. Ed. 670, the Supreme Court refers with approval to the general rule and cites in support

of it *Lamar v. Micou, supra,* as well as *Hoyt v. Sprague, supra,* without, however, making any reference to the modern tendency, above referred to.

We have been unable to find either statutes or decisions in New Jersey allowing, by comity, foreign guardians (not duly qualified here) extraterritorial authority over property of their wards in this State.

Applying, therefore, the general rule that foreign guardians have no such extraterritorial authority, it would seem that the acts in question of the guardians in Italy can not be given any force and effect in New Jersey, and hence that the family agreement of settlement is unenforceable here in so far as it relates to the Victor-Caruso contract.

PART II.

In this part of the brief, we discuss the defendant Victor Company's right to affirmative relief under its counter-claim.

The Chancellor in his final decree held the Victor Company entitled to such relief and extended the same in the form of a trusteeship. The paragraphs of the final decree relating thereto read as follows:

> "4. That a trust exists under the contract made between Enrico Caruso, in his lifetime, and the Victor Talking Machine Company, bearing date January 1st, 1919. That no trustee will now be appointed in substitution for said Victor Talking Machine Company, but that all subsequent payments to be made under said contract shall be paid by the said Victor Talking Machine Company directly as follows: Two-thirds to Gloria Caruso, as shall be subsequently

ordered; one-twelfth to Dorothy P. B. Caruso, her executors, administrators or assigns; one-twelfth to Giovanni Caruso, his executors, administrators or assigns; one-twelfth to Rodolfo Caruso, his executors, administrators or assigns; one-twelfth to Enrico Caruso, Jr., his executors, administrators or assigns; but that the Victor Talking Machine Company shall make no payments to any of them until further order of this Court, but until such time shall deposit all payments in the Camden Safe Deposit & Trust Company, as depository, to be distributed under order of this Court; said Victor Talking Machine Company being hereby appointed as trustee for each of said distributees according to their rights and interests under said contract, and this decree, *pro tanto;* allowance of compensation to said trustee, in the event that it be entitled thereto, to abide the further order of this Court.

5. That this bill be retained for the purpose of further accounting by said administratrix and by the Victor Talking Machine Company with respect to the payments hereby directed to be made, with leave to any party in interest to apply to this Court for further directions herein as occasion may require'' (S. of C., p. 164).

The Chancellor's decree in this respect should be affirmed.

Without affirmative relief, the position of the Victor Company, *the only New Jersey citizen involved,* would be one of extreme hardship should it be ordered to pay the royalties accruing over the *indefinite* period of the Victor-Caruso contract, *direct*

to the numerous *present* claimants. There would be no person in New Jersey to whom it could pay the moneys due and receive any assurance of proper discharge. Neither the persons who may later become entitled to share in the royalties over the indefinite period, nor their respective rights, would be fixed. Furthermore, the rights of the present and future claimants to the estate may be highly complicated by death, marriage or assignment, voluntary or involuntary.

Under these circumstances, any decree requiring the Victor Company to pay the royalties *accruing over an indefinite period in the future, directly* to numerous *present* claimants, "or their lawful representatives," in shares, would shift the burden of administering these royalties from a fiduciary acting under the direction of the Court of Chancery—where it properly belongs—to the Victor Company acting alone.

The present claimants are all non-residents of this State and most of them are aliens. As their status and beneficial interests change—as they are bound to do as time goes on—the questions involved in such changes will undoubtedly have to be determined by the application of foreign laws and decrees, and reference to states of facts which could not be readily investigated. Many of those coming forward in the future and claiming, through the present claimants, a share in the future royalties, can also reasonably be expected to be aliens and to provoke similarly vexed questions.

The Victor Company cannot be expected to resolve these questions and, *based solely upon its own conclusions,* to make large royalty payments (which up to the present time approximate one million dol-

lars) direct to the various claimants who may appear to be entitled thereto from time to time. To do so would be to make such payments at its peril, without judicial protection, and to subject it to possible double liability.

To act prudently it would be forced to withhold future payments whenever it had notice of any change in status or interest resulting from the death of a claimant, until the alleged new rights could be judicially established in a court of competent jurisdiction, affording the Victor Company the protection of its decree. Thus the same situation as is disclosed in the case at bar might be repeated indefinitely.

And, in any litigation or threatened litigation against the Victor Company in New Jersey involving the subject-matter of conflicting claims, the company could not interplead and free itself from responsibility where any of the claimants were nonresidents or could not be personally served with process within this State, unless such claimants would appear voluntarily in the proceeding, which is unlikely (note that certain of the claimants who are defendants in this cause have refused to appear herein).

McBride v. Garland, 89 N. J. Eq. 314, 104 A. 435;
Hills v. Aetna Life Ins. Co., N. J. L. 132.

On the other hand, even assuming that all of the claimants appeared or could be served within the jurisdiction—which is improbable—as the respective royalty sums became due and payable from time to time in the future, this defendant would probably be faced with the necessity of instituting *suc-*

cessive interpleader proceedings in paying these royalties over the indefinite period of the contract.

Manifestly, the respective rights and equities of all present and future claimants throughout the indefinite royalty period, cannot be settled by any single decree—either in the present or any other case or in any one interpleader proceeding.

A decree of the New Jersey Court, ordering payment direct to such claimants would thus be bound, under the present circumstances, to work a serious hardship upon the Victor Company, and, moreover, without any attendant advantages to the estate.

No such burden, we submit, was assumed by the Victor Company under its contract with the decedent. While it is true that paragraph 7 of that contract provides that "The covenants of and rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto," that clause merely means, in this connection, that the obligation to pay royalties is to continue indefinitely for the benefit of Caruso's estate, and cannot by any reasonable construction be held to impose a greater obligation upon the Victor Company.

The contract clearly contemplates the payment by the Victor Company of each royalty sum due, *as an entirety,* and not that the royalties are divisible or apportionable or susceptible of being split up so as to place upon the Victor Company the burden of their proper, periodical distribution.

Nor was any such burden assumed under general principles of law relating to assignments of debts.

It is well settled that, *at law,* a debt cannot be

split up by partial assignments so as to subject the debtor to separate actions without his consent, because a debtor has the right to pay his indebtedness as an *entirety,* according to his contract. As stated by Mr. Justice Story in *Mandeville v. Welch,* 5 Wheat. 277; 5 L. Ed. 87:

> "The reason for this principle is plain. A creditor shall not be permitted to split up a single cause of action into many actions without the assent of his debtor since it may subject him to many embarrassments and responsibilities not contemplated in his original contract. He has a right to stand upon the singleness of his original contract and to decline any legal or equitable assignments by which it may be broken into fragments. When he undertakes to pay an integral sum to his creditor it is no part of his contract that he shall be obliged to pay in fractions to any other persons." (page 286.)

It is, of course, true that this rule does not apply *unqualifiedly* in equity, and that Courts of Chancery have under certain circumstances recognized an assignment of a part of a claim as valid in equity.

Superintendent Trenton Public Schools v. Heath, 15 N. J. Eq. 22;
Bower v. Blue Stone Co., 30 N. J. Eq. 171;
Shannon v. Hoboken, 37 N. J. Eq. 123;
Kirtland v. Moore, 40 N. J. Eq. 106, 2 A. 269;
Lanigan v. Bradley, etc., Co., 50 N. J. Eq. 201, 24 A. 505.

> "Courts of equity, however, have always recognized partial assignments of choses in action for many purposes and will protect the assignees under such partial assignments *whenever they can do so without working a hardship* upon the debtor."
>
> 5 *C. J.*, 895.

The reason for recognizing, in equity, partial assignments is given in *Otis v. Adams,* 56 N. J. L. 38, 27 A. 1092, as follows:

> "In courts of equity, *where all interested must be included in one action,* and their respective rights and equities *settled by one decree,* rights growing out of a partial assignment of a chose in action, contract, etc., may be recognized and enforced *without injury to the other* contracting party." (Page 40.)

This reason is similarly expressed throughout the authorities. See, for instance, *Rivers v. Wright,* 117 Ga. 81, 84; 43 S. E. 499, in which the Court says:

> "While equity usually follows the law, it is said that the reason for not enforcing a partial assignment at law does not exist in equity, as *all parties at interest can be brought before the Court,* and their rights under the original contract and the assignments can be *settled in one action and by one decree.*"

Also see *Pomeroy,* Sec. 1280, pp. 3081-2.

The recognition and enforcement in equity of partial assignments are, it appears, based upon such essential requirements as (1) that all parties

in interest be brought before the Court, (2) that their respective rights and equities be settled in one action and by one decree, and (3) that there be no injury or hardship upon or detriment to the debtor.

The rule, in equity as to partial assignments is well set forth in the leading case of *Exchange Bank v. McLoon,* 73 Maine 498, as follows:

> "In a court of equity the objections to a partial assignment of a demand, which are formidable in a court of law, disappear. In equity the interests of all parties can be determined in a single suit. The debtor can bring the entire fund into court and run no risks as to its proper distribution * * * We think, upon reason and principle, partial assignments should be sustained in a Court of Chancery *in all cases where it can be done without detriment to the debtor or stake-holder, whenever equitable and just results may be accomplished by it.*"

The theory that, in equity, the interests of all parties can be determined in a single suit, is based upon the premise that the debtor, if he is in any doubt of the right of any claimant, can interplead, as expressed by the Court of Chancery in the case of *Todd v. Meding,* 56 N. J. Eq. 83, 92; 38 A. 349 (Reversed on other grounds 56 N. J. Eq. 820; 41 A. 222), where the Court stated (Pitney, V. C.):

> "If the debtor is in any doubt as to the right of the person claiming to be an assignee, as against the assignor, he has an easy remedy. He can inquire of the original creditor and

alleged assignor, and if he denies the assignment, the debtor may file his bill of interpleader."

For a similar statement of this theory, see the leading case of *James v. Newton,* 143 Mass. 366, 371; 8 N. E. 122; 56 Am. R. 692, the Court there saying:

> "It has been held by courts of equity, which have hesitated to enforce partial assignments against a debtor, that if he brings a bill of interpleader against all the persons claiming the debt or fund, or parts of it, the rights of the defendants will be determined and enforced because the debtor, although he has not expressly promised to pay the assignees, yet asks that the fund be distributed or the debt paid to the different defendants according to their rights as between themselves; and the rule against partial assignments was established for the benefit of the debtor."

In all the cases of enforcement of partial assignments which counsel have been able to find, there was but a single demand or fund due. Further, it appears (although this cannot be stated as an absolute fact) that all parties, claiming or interested in the fund, were within the jurisdiction of the court. In such cases, the reasons which gave rise to the recognition of partial assignments in equity, namely, that if the debtor is in any doubt as to the right of a partial assignee, he could have the interests of all parties determined in a single suit and could interplead, were clearly applicable.

In the case at bar, however, there is not merely

a single fund involved, but a succession of funds representing the continuing royalties. Furthermore, since all the present claimants are non-residents, the debtor, the Victor Company, could not at any one time have the interests of all the partial assignees determined in one suit. Under the rule laid down in *McBride v. Garland, supra,* the Victor Company could not interplead the parties since they would not be all in the same jurisdiction. Moreover, under the rule laid down in the case of *Redzina v. Provident Inst. for Savings,* 96 N. J. Eq. 346, 125 A. 133, it is doubtful whether this Court could determine the rights to a fund where all parties claiming it have not appeared voluntarily or been personally served. Then, too, if the Court should hold that *all* claimants to the fund must be made parties, the refusal of a non-resident claimant to appear voluntarily, might prejudice the rights of the remaining claimants.

We submit that the peculiar facts of this case do not bring it within the rule recognizing and enforcing partial assignments in equity. Partial assignments are sustained in equity when it can be done "without injury to the debtor" (*Todd v. Meding, supra*), "without hardship upon the debtor" (5 *C. J.,* 895), or "without detriment to the debtor or stakeholder, whenever equitable and just results may be accomplished by it" (*Bank v. McLoon, supra*).

If this Court sanctions the splitting up of the successive royalty payments, it would subject the Victor Company to many embarrassments and responsibilities not contemplated in its original contract. A recognition of partial assignments in this case could not be accomplished without injury, hard-

ship and detriment to the debtor, and we submit that inequitable, harsh and unjust results to the Victor Company would necessarily follow as a result thereof.

The Chancellor in his decree recognized that there was a pressing need for affirmative relief to the Victor Company.

While such relief is necessary in view of the circumstances above outlined, it becomes of the greatest importance to the Victor Company in view of the threat, which has been injected into this case, of reprisals if the New Jersey Courts do not recognize and enforce the Italian decrees in toto, in this cause.

In his opinion (S. of C. p. 149), the Chancellor took specific notice of the language of the Italian decree (S. of C. pp. 331-338), in which there is a broad suggestion of reprisals (in the event this Court does not follow the plan of distribution agreed upon in the family settlement agreement and approved by the Italian decrees) against both the Victor Company, a citizen of New Jersey, and the infant Gloria, who are seeking the protection of the New Jersey Courts. This suggestion is repeated by counsel for Enrico Caruso, Jr., in his brief before this Court (pp. 4-5, 7, 51, 58).

Should the ancillary administratrix be discharged, and the Victor Company be ordered to pay the royalties direct to the claimants, there will be no jurisdiction remaining in any court of New Jersey over the future payments under the Victor-Caruso contract. None of the claimants are citizens of New Jersey and none of them will be within the control of its process, and the threat of reprisals could then be executed with impunity insofar as any action

by any Court of New Jersey is concerned. However, under a trust as established by the Chancellor, the Court of Chancery retains control of the continuing royalties and will always be in a position to see that its decree is carried out and that no action taken in any other jurisdiction shall nullify the deliberate judgment of this Court. The threat or suggestion of reprisals then becomes harmless. The trusteeship thus gives the protection to the Victor Company, a citizen of New Jersey, and to the infant Gloria, which both so urgently need in this situation.

A trusteeship, under the circumstances, is proper.

The Chancellor defines a trustee to be "one in whom some estate, interest or power in or affecting property is vested for the benefit of another" (S. of C. p. 156). *Godefroi* in his Treatise on Trusts, 5th Ed., states that the definition "most applicable to trusts at the present day is that given by *Story,* who says: 'A trust in the most enlarged sense in which the term is used in English jurisprudence may be defined to be an equitable right, title or interest in property, real or personal, distinct from the legal ownership thereof.' Eq. Jur. 964, and the same learned author in another place says: 'A trustee is a person holding the legal title to property under an expressed or implied agreement to apply it, and the income arising from it, to the use and for the benefit of another person. Trusts are, therefore, equitable interests in property based on confidence, over which courts of equity alone have jurisdiction'" (pp. 1-2). *Godefroi* also quotes *Lindley, M. R.,* who defines trusts as "Equitable obligations to deal with property in a particular manner. * * * A trust is really nothing except a confidence imposed by one person in another and enforceable in a court of equity" (p. 2).

The relation between the Victor Company on the one hand and Caruso on the other, so far as it pertains to the payment of royalties to his heirs or next of kin after his death, was really based on trust and confidence. "A person is said to stand in a fiduciary relation to another when he has rights and duties which he is bound to exercise for the benefit of the other person" (26 R. C. L. 1248).

The rule has also been laid down that a transfer of legal title by the owner to one for the benefit of another, or a retention by the owner under circumstances which clearly and unequivocally disclose an intention to hold for the use of another, creates a trust relation (39 *Cyc.* 35).

There is no particular formality required or necessary in the creation of a trust. All that is required is written evidence supplying every essential detail of the trust (*Perry on Trusts,* 6th Ed., p. 12). Where a transaction is such that the law will imply from it a trust, a declaration in a written instrument creating the trust is unnecessary. *Frankenstein v. North,* 79 Ill. App. 669.

The continuing character of the Victor-Caruso contract which provides for the payment of royalties for an indefinite time, must be borne in mind. The royalties following Caruso's death are payable to and become the property of his heirs (which word the Chancellor has interpreted to mean next of kin because the property dealt with is personal property) (S. of C. p. 157). The agreement implies some agency or fiduciary, acting under direction of a court, to disburse the royalties so becoming due, to the parties properly entitled thereto. Whether it be the Victor Company as trustee, or an independent trustee or receiver (such as a trust company

having perpetual corporate existence), or the indefinite continuance of the ancillary administration, it is evident that there must be some such agency constituted under the direction and control of a court of equity.

The Victor Company as trustee will be in a position to make the payments under the direction and control of the Court of Chancery, and there will be the added advantage to the beneficiaries of having accounts of the distribution of these royalties approved in the proper court. This will accomplish the desired end of protection to the beneficiaries and to the Victor Talking Machine Company, a citizen of the State of New Jersey.

The Victor Company as trustee can readily apply, as occasion may require, to the Court for direction and thus in one forum have determined the rights of conflicting claimants to such fund or any part thereof. (The improbability of being able technically to pay the moneys into court or to interplead, because of the fact that all the present claimants are, and at least some of the future claimants will probably be, non-residents, has already been noted above.)

We believe that counsel for complainant-appellant misconceive the situation created by the contract and the circumstances in this case. On page 94 of their brief, the contention is made that the words used in the provision of the contract: "The covenants of the rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto," were mere words of limitation. The cases cited by counsel relate, with one exception, to lapsed devises or bequests, by

reason of the death of the person named in such devise or bequest, in the lifetime of the testator. The facts of these cases are entirely different from those found in the present case, where part of the property *will not arise* until after the death of the donor or settlor, and the provision above referred to, is a designation of the persons to whom such succession of funds, *when they arise,* shall be payable. They become the *cestuis que trustent* who are entitled in equity to the benefit of the property transferred by Caruso in his lifetime. This was undoubtedly the construction placed upon the agreement by the Chancellor (S. of C. p. 155).

In the other cited case the question involved was merely the right of an executrix to bring, on behalf of the next of kin, a suit for an accounting for royalties accrued and accruing.

> "Express trusts are created whenever the legal estate in property of any description is conveyed to one competent to take as trustee to be held for the benefit of one capable of taking as *cestui que trust.* Hence any instrument in writing making a legal disposition of property, which contains a direction or makes a declaration that a party holding the same shall do it for the benefit of another, charges the conscience of the donee and compels the legal estate to subserve certain uses and benefits in favor of the beneficiary."
>
> *Tiffany & Bullard on Trusts,* p. 11.

In the case of *Amparo Mining Co. v. Fidelity Trust Co.,* 75 N. J. Eq. 555, this Court affirmed an order establishing a trust in shares of stock of a New Jersey corporation, although the holder of the

stock was not in the jurisdiction and the certificates of stock were not before the Court. Similarly, under the facts of the present case and the correct intrepretation of the agreement between the Victor Company and Caruso, the Court of Chancery undoubtedly had jurisdiction to establish a trust in the royalties which are to become due and will have to be distributed, so that such distribution will be under the direction and control of the Court.

Even though, under the trust so established, it be inferred that Caruso reserved the power of revocation, *i. e.,* the power of taking from his heirs their beneficial interest in the trust property, the trust would still be good and effectual as if irrevocable, since the power was not exercised.

See *Jones v. Clifton,* 101 U. S. 225, 25 L. Ed. 908;
Lines v. Lines, 142 Pa. St. 149, 21 A. 809.

The language of Judge Grosscup in the case of *Natl. Wire Bound Box Co. v. Healy,* 189 Fed. 49 (7 C. C. A. 1911), in discussing a trust relationship there involved, is distinctly applicable to the present case. He said (p. 54):

> "The question is, whatever the relationship, do the equitable principles covering the cases already decided apply to this relationship, for equity in seeking justice between man and man not obtainable at law, does not stop precisely where the cases already decided have stopped. The Chancellor has now, as had the Chancellor in the past, the power and duty of applying old principles to new cases involving new relationships."

While the defendant, Victor Company, submits that a trusteeship under the circumstances is proper, its chief concern is in securing affirmative relief, regardless of the form in which it is extended.

We, therefore, note that affirmative relief could also be granted through the appointment of a receiver under the inherent power of a court of equity to do so in the exercise of its sound discretion. We briefly set forth below authorities which would support such a course.

Newfoundland R. Construction Co. v. Schack, 40 N. J. Eq. 222, 1 At. 23;
Nichols v. Perry Patent Arm. Co., 11 N. J. Eq. 125;
Rawnsley v. Trenton Mutual Life, Etc., Ins. Co., 9 N. J. Eq. 347.

"Appointment of a receiver is, as a general rule, discretionary. The discretion is not arbitrary or absolute; it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of promoting the ends of justice and of promoting the rights of *all* the parties interested in the controversy and the subject-matter, and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceedings." (Italics were underscored in text.)

Pomeroy Eq. Jur. (4th Ed.), Sec. 1331;
See *Ibid,* Sec. 1484;
See also *Bispham on Equity,* Sec. 577;
Story on Equity Jurisprudence, Sec. 831.

"The jurisdiction of a Court of Chancery to appoint a receiver was assumed for the advance-

ment of justice and was founded on the inadequacy of the remedies to be obtained in the courts of ordinary jurisdiction. Where the remedy afforded by the courts of ordinary jurisdiction was inadequate for the purposes of justice, the Court of Chancery would *ex debito justitiae,* on a proper case being made out, appoint a receiver."

Kerr on Receivers, page 1, citing *Hopkis v. Worcester,* L. R. 6, Equity 447.

This form of relief is predicated upon the following well-established and basic principles of equitable jurisprudence:

(a) The appointment of a receiver is justified to enable a court to give complete relief to all parties.

It is a familiar maxim of equitable jurisprudence that a court of equity, having assumed jurisdiction, will retain jurisdiction until full relief has been given to all the parties before it. This maxim expresses the aim of equity to grant such relief as will protect the parties against future litigation growing out of the pending proceedings.

Williams v. Winans, 22 N. J. Eq. 573;
Decker v. Caskey, 1 N. J. Eq. 427;
Pomeroy, Sec. 231.

(b) The appointment of a receiver would prevent a multiplicity of suits.

This ground of equitable jurisdiction is also fundamental.

Christian Feigenspan v. Nizolek, 71 N. J. Eq. 382, 65 A. 703;

American Century Ins. Co. v. Landau, 62 N. J. Eq. 573, 49 A. 438;
Shimer v. Morris Canal, Etc., Co., 27 N. J. Eq. 364;
Wiedemann v. Sann, 31 A. 211 (N. J. Ch. 1895);
Black v. Shreeve, N. J. Eq. 440.

In *Hopper v. Morgan,* 42 A. 171 (N. J. Ch. 1898), where a fund was claimed by various parties claiming under the same right, the Court (Grey, V. C.) stated that a receiver might be appointed to collect the fund, in order to prevent a multiplicity of suits.

Even though no direct precedent has been found for granting affirmative relief on either theory, under circumstances similar to those involved in the present cases, well-established, general principles of equity jurisprudence are sufficient to warrant this Court in upholding the affirmative relief granted.

> "It is important to recall that the creative capacity of equity jurisdiction has not only given birth to the principles which compose it, but that creative faculty still continues to be energetic and productive and is in modern times constantly modifying old doctrines and inventing new ones. The progressive capacity of this great branch of the law should always be borne in mind by every student and by every practitioner." *Bispham on Equity* (10th Ed.), page 872.

Respectfully submitted,
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Solicitor for and of Counsel with Defendant-Respondent, Victor Talking Machine Company.

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Petition for Allowance by Dorothy P. B. Caruso.
(Filed February 25, 1927.)

This petition is printed in the main state of case, page 43.

Opinion Allowing Amendment.
(Filed December 15, 1927.)

This is printed in main state of case, page 100.

Amendment to Petition for Allowance.
(Filed February 6, 1928.)

This is printed in main state of case, page 115.

Answers to the Petition for Allowance.

The answers are printed in the main state of case:

Of Gloria Caruso (filed February 25, 1927), page 53.

Of Victor Talking Machine Co. (filed March 3, 1927), page 96.

Affidavits in Support of Petition for Allowance.

Three affidavits were filed in support of the petition for allowance. They are printed in the main state of case:

Of Dorothy P. B. Caruso (filed February 25, 1927), page 73.

Of Alfred F. Selisberg (filed March 16, 1927), page 76.

With Exhibits attached thereto:

Exhibit A, page 83.

Exhibit B, page 84.

Exhibit C, page 86.

Exhibit D, page 88.

Exhibit E, page 89.

Affidavit of Alfred F. Selisberg (filed March 16, 1927), page 93.

Affidavit Against Petition for Allowance of Martin V. Bergen.

(Filed March 6, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
DOROTHY P. B. CARUSO,
Complainant,
and
RODOLFO CARUSO, *et als.*,
Defendants.

54-620.

On Petition for Allowance.
AFFIDAVIT.

STATE OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

Martin V. Bergen, being duly sworn on his oath saith that he is the solicitor of Jesse R. Salmon, guardian *ad litem* of Gloria in the above cause. That Gloria Caruso, the minor, was born on December 18, 1919, and therefore is eight years of age.

Deponent further says that the New Jersey estate of Enrico Caruso, consists exclusively of payments made by the Victor Talking Machine Company of ten per cent of the selling price of records of Caruso's voice under a contract made between that Company and Enrico Caruso during his lifetime, a copy of which, as set forth in the bill of complaint in this cause, is hereto attached and marked Exhibit "A."

Deponent further says that he is advised by Italian counsel and believes that the payments coming from the Victor Talking Machine Company, so far as the Estate of Enrico Caruso is

concerned, under Italian law, are principal and not income. As expressed by Italian counsel:

> "The contract in question puts in being a true and proper sale of the rights to reproduce the voice of Caruso and, that, consequently, the sums received first by the tenor and now by his heirs from profits of the sales of the disks cannot be considered as income or interest but must be considered as part of the capital."

Deponent further says that the bill filed in the above stated cause was for the purpose of securing distribution of the assets of this estate in New Jersey, praying distribution in accordance with an agreement and decree by an Italian Court approving same, under which the principal of the estate of Enrico Caruso, deceased, was to be distributed, *inter alia,* one-eighth to petitioner, who is the widow of said Enrico Caruso, and one-half to the minor, Gloria Caruso; that the fairness of this agreement is attacked and the decree is alleged to be a nullity by the answer filed in said cause, which avers that distribution under Italian law, should be made as if said Enrico Caruso had died intestate, and it further avers that the said decree was entered by an incompetent court. Deponent says that he is informed by Italian counsel and believes that under the intestate law of Italy all the assets of the decedent, Enrico Caruso, would go to the minor, Gloria Caruso, subject to the petitioner's right as widow of one-fourth of the income.

Deponent further says that before the decrees of July 10, 1926, and of September 8, 1926, were made by the Naples Court, which decrees tied up

Affidavit Against Petition for Allowance of Martin V. Bergen.

Italian incomes of Gloria (see Mr. Seligsberg's affidavit, page 5) that Court had made, on August 26, 1925, a decree which, *inter alia,* states:

> "This foreign Court (the Court of Chancery of New Jersey) before deciding the merits of the questions appointed a guardian for the minor Gloria. The guardian, while proceeding with the examination of the acts, prevented the widow from distributing to the heirs the income from the sale of the records, fearing that this would damage the interests of the minor."

This decree of August 26, 1925, was offered in evidence by complainant and is Exhibit C-13 in this case on the bill.

Sworn to and subscribed this 31st day of January, A.D. 1928, before me,

MARTIN V. BERGEN

MARGARET J. SCOTT
A Foreign Commissioner of Deeds for New Jersey.

Exhibit A, Annexed to Affidavit of Martin V. Bergen.

This is printed in the main state of case, page 431.

Affidavit Against Petition for Allowance of Martin V. Bergen.

(Filed March 6, 1928.)

IN CHANCERY OF NEW JERSEY.

Between DOROTHY P. B. CARUSO, Complainant, *and* RODOLFO CARUSO, *et als.*, Defendants.	54-620. On Petition for Allowance. AFFIDAVIT.

STATE OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

Martin V. Bergen, being duly sworn according to law, deposes and says that he is the Solicitor of Thomas Barber, present Clerk of the Court of Chancery, and now guardian *ad litem* of Gloria Caruso in the above stated cause; that he is compelled to make affidavit in this matter because there is no other person available to make same.

Deponent further says that attached hereto, and made part hereof, is an affidavit made by Vittorio Scialoja, a lawyer of Rome, Italy, marked Exhibit "B," and a translation thereof marked Exhibit "C." Deponent says that Prof. Scialoja is a man of great prominence in Italy and among other positions holds or has held in the past the following: Professor of Law at the University of Rome; member of the Bars of all the Courts of Italy; President of the Superior Forensic Council; Senator of the Kingdom; Minister of State; Ex-Minister of Justice (1909-1910); Ex-Minister of Foreign Affairs (1919-1920); Ex-Minister Without

Portfolio (1916-1917); President of the Royal Academy of Lincei and Premier Italian Delegate to the League of Nations.

Deponent further says that the payments made by the Victor Talking Machine Company to Dorothy P. B. Caruso, Ancillary Administratrix of Enrico Caruso, since his death, are as follows:

For the year 1921,	$422,891.56
For the year 1922,	125,177.66
For the year 1923,	105,922.59
For the year 1924,	122,475.34
For the year 1925,	71,194.22
For the year 1926,	74,210.20
For the year 1927,	74,762.75

In these payments the Victor Company deducted a certain percentage from the amount due under the agreement, as a withholding at source on account of Income Tax.

Deponent states that large sums were for a time disbursed and distributed by the Ancillary Administratrix out of these New Jersey assets, but the sums as received during the last few years are deposited under order of this Court in a depository named by it and payments out of same is restricted. Deponent avers that the total sum now on deposit as the whole balance of these Victor payments is, as of February 15, 1928, $741,449.20, and that these sums are deposited under an agreement by which they draw 4 per cent interest.

Deponent further says that after the death of Enrico Caruso, in about 1923 his widow, Dorothy Park Benjamin, married one Ingram, and that prior thereto a decree was made by the Naples Court dated December 28, 1923 approving the

judgment of the Naples Family Council, retaining her as guardian of Gloria. Attached hereto and making part hereof is a translation of this decree of the Naples Court, dated December 28, 1923, and of the petition therein referred to. A copy of these papers in Italian and of the translation were given by Mr. Seligsberg to deponent, marked Exhibit "D."

Deponent further says that attached hereto and made part hereof is a translation of a decree made on August 21, 1925, by the Naples Court and of the petition referred to therein. Copies of these papers in Italian and these translations were given by Mr. Seligsberg to deponent. Same is marked Exhibit "E."

Deponent calls particular attention to the following language used by the Court in this decree:

> "The petition states that all the acts in the State of New York having been nearly completed, it was necessary to have the Victor Talking Machine Company—which has its seat in the State of New Jersey—recognize the rightful heirs to the estate of Mr. Enrico Caruso, for the purpose of making the payments directly to each heir of the share belonging to him, of the percentage of the interest of the deceased in the entire annual sale of the records sung by Mr. Caruso. The Victor Talking Machine Company not having, however, because of its situs in a different State—consented to recognize as fully binding the two decisions of this Tribunal and the agreement of the division, it became necessary to institute judicial proceedings before the Court of the State of New Jersey. This foreign Court, before deciding the merits of the question, appointed a guardian for the minor Gloria. The guardian, while proceed-

ing with the examination of the acts, prevented the widow from distributing to the heirs the income from the sale of the records, fearing that this would damage the interests of the minor. On the other hand, the co-heirs, Enrico and Giovanni Caruso have intimated to the widow of Mr. Caruso that if within the term of three months they should not receive their shares, be it for the reason of complications, or for any other arbitrary change which eventually might be made in the already approved and executed agreement, they would proceed, without delay, against the property of her and her daughter, for the purpose of recovering what they may lose anywhere."

Deponent further says that attached hereto and making part hereof is a translation of a letter from Gabriele Consolazio, the Italian Counsel for the Italian estate as at present constituted, to Mr. Seligsberg, bearing date February 26, 1926. A copy in Italian of this letter, and this translation, were given by Mr. Seligsberg to deponent. This translation is marked Exhibit "F." Deponent calls attention to the following excerpt from this letter:

"When the heirs agreed on the division of the entire estate, as per the deed before the Notary Sanseverino, not only was everything regulated by the Italian Law, but between the parties the rights and shares were fixed solely as a settlement. The minor children were legally represented and therefore, it is no longer possible to reopen this matter in order to modify said division. In that division, made according to the Italian law, the minor Gloria—her legal representation having been established—figured as of age and therefore today—she cannot in any way modify the deed to her advantage. The law does

not allow her to do this. She cannot today, through any person, take away what has been assigned to her mother, by the deed of the Notary Sanseverino. Neither could she do it, because as I told you before, the Italian law does not permit to the daughter to take away from her mother what erroneously is believed to be given for her maintenance, while in fact it belongs to the mother as her own right, called usufruct.

"And there cannot be excluded the fact that Mrs. Caruso agreed to the transaction by Notary Sanseverino with the knowledge that such an income was due to her.

"The final consideration then, is that the President of the Tribunal of Naples formally promised to Mrs. Caruso that he would enter a judgment recognizing her right to recover —from the estate of her daughter in Italy— all what would be taken away in America."

Deponent further says that attached hereto are translations of the two decrees made by the Naples Court bearing date July 10, 1926, and September 8, 1926, respectively, and of the petitions referred to in each. Copies of these papers in Italian and these translations were given by Mr. Seligsberg to deponent. They are marked Exhibits "G" and "H" respectively.

Deponent further says that attached hereto and making a part hereof is a translation of the agreement by virtue of which distribution of the estate of Enrico Caruso was made by the various parties thereto and known as the Sanseverino Agreement. This translation was furnished by Mr. Seligsberg to deponent. It is marked Exhibit "I."

Deponent states that under the appraisement values given in this agreement, there was therefore received in distribution by Gloria in Italy:

Affidavit Against Petition for Allowance of Martin V. Bergen.

Numerous houses appraised at	Lire	1,884,603.67
Debts due the estate (of which the $33,000 equaling 594,000 Lire has been paid in New York)	Lire	876,000.00
Denmark Bonds 4%	Lire	119,252.00
110 Livorno R. R. 3% Bonds (par 56,000)	Lire	33,936.00
Italian Consolidation 5% Bonds (par 3,759,219)	Lire	3,007,375.00
Italian National Bonds 5% (par 405,000)	Lire	303,950.00
Miscellaneous	Lire	465,187.95
Total	Lire	6,690,304.62
Special allowance, cash	Lire	500,000.00
Special allowance, gold boxes and watches (stated in petition to decree of August 21, 1925, Exhibit "E") as worth	Lire	1,000,000.00
French Francs 31,000 par 51,000 Lire ½	Lire	25,500.00
Total	Lire	8,215,804.62

The decree of September 8, 1926 (Exhibit "H" hereto) shows the bonds in Gloria's share to be:

Danish Bonds	Lire	64,800.00
Livorno R. R. Bonds	Lire	56,000.00
Consolidated Bonds 5%	Lire	3,834,200.00
National Loan 5%	Lire	405,000.00
	Lire	4,360,000.00
An increase of	Lire	895,487.00
Total in Italy	Lire	9,111,291.62

The Sanseverino Agreement on page 6 states that the assets in New York belonging to Enrico Caruso were appraised at $461,305.05. Gloria should receive one-half of these.

By Mrs. Caruso in Italy:

House appraised at	Lire	528,000.00
Miscellaneous appraised at	Lire	251,604.20
Rendita Italiana 3½%—766,500.00 @ 73	Lire	1,050,000.00
Consolidated Bonds 5%—126,472.00 @ 80	Lire	158,090.00
Total	Lire	1,987,694.20

This decree of September 8, 1926 (Exhibit "H" hereto) shows that the Bureau of Direct Taxes of Florence appraised Enrico Caruso's estate to be over 21,000,000 Lire.

Deponent further says that he was informed by Mr. Seligsberg at one of the arguments on this mo-

tion, and believes that this patrimony tax was a debt due by Enrico Caruso at the time of his death, that the patrimony tax is a tax either against income or principal due annually and that this tax was thus assessed because the Italian Government claimed that from the information derived on settling his estate he had not fully paid this tax during his lifetime, this patrimony tax being to make up such deficits.

Exhibit "A" is a copy of the contract between Enrico Caruso and the Victor Talking Machine Company. It was attached to an affidavit previously filed in this motion.

Sworn to and subscribed this 2nd day of March, A.D. before me, } MARTIN V. BERGEN

MARGARET J. SCOTT
A Foreign Commissioner of Deeds
for New Jersey.

Exhibit B, Annexed to Affidavit of Martin V. Bergen.

AVV. PROF. VITTORIO SCIALOJA
SENATORE DEL REGNO

Piazza Grazioli N. 5 (Palazzo Doria)
ROMA

Il 2 agosto 1921 moriva in Napoli il tenore Enrico Caruso. Nella valigia personale dell'estinto fu rinvenuta tra l'altro una busta contenente il testamento, col quale il tenore istituiva eredi i due figli naturali Rodolfo ed

Exhibit B, Annexed to Affidavit of Martin V. Bergen.

Enrico e il fratello Giovanni e lasciava alla moglie Dorotea Benjamin "la parte che la legge italiana le accorda." Il testamento portava la data del 4 gennaio 1919 e cioè anteriore alla nascita dell'unica figlia legittima del tenore: Gloria, e, giusta l'art. 888 cod. civ. it. doveva perciò considerarsi rivocato di diritto.

Successivamente invece si addivenne tra i figli naturali di Caruso, il fratello dello stesso, la moglie e la figlia Gloria, alla quale era stato nominato un curatore speciale, ad una divisione del 7 giugno 1922, in virtù della quale veniva assegnato alla figlia legittima Gloria la metà di tutto l'asse ereditario paterno più alcuni oggetti e cinquecentomila lire in contanti, e l'altra metà dell'asse ereditario fu divisa in quattro parti uguali tra i due figli naturali, la moglie e il fratello del tenore.

Servendosi di questa divisione, autorizzata dal Tribunale di Napoli con decreto del 21 ottobre 1921, la signora Benjamin, che è passata a seconde nozze conservando tuttavia l'usufrutto legale sui beni della figlia Gloria, chiede alla Corte di New Jersey, nella cui giurisdizione si trovano dei beni relitti dal tenore Caruso, la facoltà di prelevare una parte dei beni stessi per provvedere al mantenimento della figlia stessa.

Richiesto sulla ammissibilità di questo prelevamento da parte della signora Benjamin ho esaminato attentamente tutti gli atti e documenti messi a mia disposizione.

La Corte di New Jersey non può, secondo me, accordare alla signora Benjamin la facoltà di prelevare alcun che sui beni relitti dal tenore Caruso ed esistenti nella giurisdizione della Corte stessa, per il mantenimento e l'educazione della figlia Gloria.

Occorre innanzi tutto notare il comportamento della signora Benjamin nei confronti della figlia Gloria.

Come ho già ricordato il testamento di Enrico Caruso del 1919 non poteva più avere alcun valore alla sua morte nel 1921, essendo stato rivocato dalla posteriore nascita della figlia legittima Gloria. Dispone chiaramente l'art. 888 cod. civ. it. in proposito che: "Le disposizioni a titolo

universale o particolare fatte da chi al tempo del testamento non aveva o ignorava di avere figli o discende sono rivocate di diritto per l'esistenza o sopravvenga nza di *un figlio o discendente legittimo del testatore,* benchè postumo o legittimato, o adottivo. Lo stesso ha luogo ancorchè il figlio *fosse concepito al tempo del testamento* ..."

Si doveva perciò alla morte del tenore, considerare la sua eredità aperta ab intestato con queste chiare conseguenze; I) Nessun diritto di Giovanni Caruso sul patrimonio del defunto fratello, II) nessun diritto dei figli naturali riconosciuti del tenore Rodolfo ed Enrico perchè adulterini: risulta infatti da prove inconfutabili nascenti da sentenze penali che Rodolfo ed Enrico Caruso sono figli di Enrico Caruso e di una signora Giachetti, maritata al tempo della loro nascita col signor Botti, si tratta perciò di figli di cui la legge non ammette il riconoscimento (art. 180 cod. civ. it.) e che, come tali, non potevano avere alcun diritto sull'asse ereditario paterno, salvo gli alimenti (art. 752 cod. civ. it.), III) un diritto di usufrutto sul quarto della proprietà alla signora Benjamin, coniuge superstite di Enrico Caruso (art. 753 cod. civ. it.)

Invece con la divisione fatta a Napoli tra i figli naturali di Caruso, il fratello Giovanni, la moglie signora Benjamin e la figlia Gloria, rappresentata da un curatore che, come risulta dallo stesso atto di divisione, era in conflitto di interessi con la minore, vennero assegnati tre ottavi dell'asse ereditario ai figli naturali e al fratello Giovanni, che non avevano alcun diritto e venne assegnato un ottavo di proprietà alla signora Benjamin che aveva solto diritto ad un quarto dell'usufrutto.

L'autorizzazione poi a questa divisione, rovinosa per gli interessi di Gloria Caruso, fu chiesta non al Tribunale di Firenze, dove vi era la maggior, parte dei beni di Caruso e dove perciò vi era il suo domicilio (art. 16 cod. civ. it.) ma fu chiesta al Tribunale di Napoli dove il defunto non aveva sicuramente domicilio ed era soltanto

di passaggio, tanto che morì in Albergo. Questa autorizzazione, non data dal Tribunale competente il luogo dell'ultimo domicilio del defunto (art. 923 cod. civ. it.) porta, secondo le leggi italiane, alla nullità assoluto del decreto di autorizzazione e della divisione, nei confronti della minore Gloria Caruso, e può in qualunque momento essere annullata.

La signora Benjamin inoltre, passata a seconde nozze, perdeva l'usufrutto legale dei beni della figlia, giusta l'articolo 232 cod. civ. it. La signora Benjamin fece invece costituire un consiglio di famiglia alla figlia Gloria, giusta l'art. 237 cod. civ. it., e si fece autorizzare a conservare l'Amministrazione dei beni della figlia stessa; ma il consiglio di famiglia fu costituito a Napoli e non presso il Pretore di Firenze, dove era la sede principale degli affari della minore Gloria, come prescrive l'art. 249 cod. civ. it. e ciò porta alla nullità di ogni sua deliberazione.

Tutto quello che ho fin quì esposto prova il danno notevolissimopprodotto dalla Signora Benjamin alla figlia Gloria, anche per il proprio vantaggio personale, e costituisce un elemento fortissimo, secondo me, per farnegare alla signora Benjamin ogni facoltà di prelevamento sui beni esistenti in New Jersey.

Ma oltre a ciò, basta esaminare l'atto di divisione di Napoli del 7 giugno 1922 per vedere che a Gloria Caruso furono assegnati dei beni in Italia per una decina di milioni, di cui molti in contanti; ora è assolutamente impossibile che la rendita di questa ingente sostanza, della quale la signora Benjamin ha l'amministrazione, non sia sufficiente al mantenimento e all'educazione di una bambina. Nè bisogna dimenticare che è consuetudine, invalsa presso lo autorità giudiziarie di tutti i paesi, di far destinare per il mantenimento e l'educazione del minore innanzitutto i beni che si trovano nel suo domicilio e poi quelli più lontani: bisogna che siano destinati prima all'educazione di Gloria i beni che ha in Italia e precisamente in Firenze, e, ove questi non fossero sufficienti, i boni in New Jersey.

Exhibit B, Annexed to Affidavit of Martin V. Bergen.

Occorre infine osservare che i beni relitti da Caruso in New Jersey sono costituiti da una percentuale che la Victory Taking Company deve corrispondere sulle somme ricavate dalla vendita dei dischi, riproducenti la voce del defunto tenore. Ora questa percentuale non costituisce interesse su un capitale ma parte del capitale medesimo, costituito dal diritto di riprodurre la voce di Caruso spettante alla Victory Company: ed è assurdo intaccare per il mantenimento della piccola Gloria, i capitali ereditari quando vi sono le rendite di una decine di milioni di beni, che sono più che sufficiente allo scopo.

Ritengo quindi che la Corte di New Jersey non accorderà alla signora Benjamin alcun prelievo sui beni relitti dal tenore Caruso in New Jersey anche per evitare il pericolo, di distrazioni e sperperi dei beni stessi.

Vittorio Scialoja

(SEAL)

Kingdom of Italy
City of Rome
Consulate General
of the United States
of America
} ss.

Subscribed to and sworn before me this sixth day of February 1928.

(STAMP)

LEON DOMINIAN
Consul of the United States of America
at Rome, Italy.

Exhibit C, Annexed to Affidavit of Martin V. Bergen.

AVV. PROF. VITTORIO SCIALOJA

SENATORE DEL REGNO

Piazza Grazioli N. 5 (Palazzo Doria)

ROMA

August 2, 1921, Enrico Caruso, the tenor, died at Naples. In the personal valise of the deceased, there was found, amongst other things, the will by which the tenor constituted as heirs the two natural sons, Rodolfo and Enrico, and the Brother Giovanni, and left to the wife, Dorothea Benjamin, "the share which Italian law gives her." The will bore date of January 4, 1919, and that is to say prior to the birth of the sole legitimate daughter of the tenor, Gloria, and according to article 888 Italian Civil Code must therefore be considered as revoked by law.

Successively, instead, there was reached between the natural sons of Caruso, the brother of the same, the wife and the daughter Gloria (for whom a special guardian had been named), the division of June 7, 1922, by virtue of which there was assigned to the legitimate daughter Gloria one-half of the paternal patrimony, plus some objects and 500,000 Lire in cash, and the other half of the patrimony was divided into four equal parts between the two natural sons, the wife and the brother of the tenor.

Making use of this division, authorized by the tribunal of Naples, with decree of October 21, 1921, the Signora Benjamin who had contracted a

second marriage, conserving however the legal usufruct of the goods of the daughter, Gloria, asks the Court of New Jersey in whose jurisdiction goods left by the tenor Caruso are situated, the power to deduct a part of the said goods to provide for the maintenance of the said daughter.

Asked as to the admissibility of this deduction on the part of Signora Benjamin I have examined attentively all the records and documents put at my disposal.

The Court of New Jersey cannot, according to my view, accord to Signora Benjamin the power to deduct any of the goods, left by the tenor Caruso and situated in the jurisdiction of said Court for the maintenance and education of the daughter Gloria.

It is necessary above all to note the behaviour of Signora Benjamin in confrontation with the daughter Gloria.

As I have already called to mind the will of Enrico Caruso of 1919 could not have any value at his death in 1921 having been revoked by the subsequent birth of the legitimate daughter Gloria. Article 888 of the Italian Civil Code clearly provides in this respect that "the provisions by universal or particular title made by one who at the date of the will did not have or was in ignorance of having children or descendants, are revoked by law by the existence or the happening of a *child or legitimate descendant of the testator,* although posthumous, legitimatized or adopted. The same thing takes place even though the child was *perhaps conceived at the time of the will. . . .*"

Therefore, at the death of the tenor, his estate must be considered opened *ab intestato* with these

Exhibit C, Annexed to Affidavit of Martin V. Bergen.

clear consequent; I. No right of Giovanni Caruso upon the patrimony of the deceased brother. II. No right of the natural sons recognized by the tenor, Rodolfo and Enrico, because adulterines; result in effect from irrefutable proof growing out of a penal decision that Rodolfo and Enrico Caruso are children of Enrico Caruso and a Signora Giachetti, married at the time of their birth to Signor Botti, therefore we treat of children of whom the law does not admit recognition (Art. 180 Italian Civil Code) and who, as such, cannot have any right on the paternal patrimony excepting alimony. (Art. 752, Italian Civil Code.) III. A right of usufruct of one-fourth of the property to Signora Benjamin surviving spouse of Enrico Caruso (Art. 753, Italian Civil Code).

Instead, by the division made at Naples between the natural sons of Caruso, the brother Giovanni, the wife Signora Benjamin and the daughter Gloria, represented by a Guardian who, as appears from the same deed of division, was in conflict of interest with the minor, there was assigned three-eighths of the patrimony to the natural children and to the brother Giovanni, who did not have any right, and an eighth of property was assigned to Signora Benjamin who had only a right to one-quarter of the usufruct of the property.

The authorization then of this division, ruinous for the interests of Gloria Caruso, was requested, not by the Tribunal of Florence, where the Major part of the goods of Caruso were and where, therefore, was his domicile (Art. 16, Italian Civil Code), but was requested from the Tribunal of Naples where certainly the deceased did not have his domicile, and was only transiently, so

much so that he died in a hotel. This authorization not given by the competent Tribunal the place of the last domicile of the deceased (Art. 923, Italian Civil Code) brings according to Italian law absolute nullity of the decree of authorization and of the division in confrontation with the minor Gloria Caruso and can, at any moment, be annulled.

Signora Benjamin, moreover, making a second marriage, lost the legal usufruct of the goods of her daughter, according to Article 232, Italian Civil Code. Signora Benjamin instead, caused a Family Council to be constituted for the daughter Gloria, according to Art. 237, Italian Civil Code, and it authorized her to conserve the administration of the goods of the Daughter, but the family council was constituted at Naples, and not under the Pretore of Florence where there was the principal place of the affairs of Gloria, as Art. 249, Italian Civil Code prescribes, which brings nullity to each of its deliberations.

All that I have exposed up to now proves the most remarkable damage caused to her daughter Gloria by Signora Benjamin, also for her own personal advantage, and constitutes the strongest element according to my view, for denying Signora Benjamin any right of deduction from the goods existing in New Jersey.

But apart from that it is sufficient to examine the deed of division of Naples of the 7th of June, 1922, to see that to Gloria Caruso there were assigned goods in Italy of some ten millions, of which much was cash, now it is absolutely impossible that the income from this very great sum, of which Signora Benjamin has the ad-

ministration, is not sufficient for the maintenance and the education of the little child. It must not be forgotten that it is the custom, prevalent in juridical authority of all countries, to use for the maintenance and education of the minor, first of all, the goods which are at his domicile and afterwards those more distant. There must first be destined for the education of Gloria the goods which she has in Italy and precisely at Florence, and were these perhaps not sufficient, the goods in New Jersey.

It is needful in conclusion to observe that the goods left by Caruso in New Jersey are made up of a percentage which the Victor Talking Machine Company must answer for from the sums received from the sale of discs reproducing the voice of the deceased tenor. Now this percentage does not constitute interest on a capital but part of the capital itself constituted from the right to reproduce the voice of Caruso belonging to the Victor Company and it is absurd to cut into, for the maintenance of little Gloria, inherited capital when there is an income on some ten millions of goods which is more than sufficient to the end.

I hold therefore that the Court of New Jersey will not accord to Signora Benjamin any deduction from the goods left by the tenor Caruso in New Jersey also to avoid the danger of distractions and dissipations of the said goods.

(signed)

VITTORIO SCIALOJA

Exhibit C, Annexed to Affidavit of Martin V. Bergen.

Kingdom of Italy
City of Rome
Consulate General
of the United States
of America } ss.:

Subscribed to and sworn before me this sixth day of February, 1928.

(Signed) LEON DOMINIAN,
Consul of the United States of America at Rome, Italy.

Exhibit D, Annexed to Affidavit of Martin V. Bergen.

This is printed in main state of case, page 310.

Exhibit E, Annexed to Affidavit of Martin V. Bergen.

This is printed in the main state of case, page 327.

Exhibit F, Annexed to Affidavit of Martin V. Bergen.

AVV. GABRIELE CONSOLAZIO
VIA GIUSEPPE FIORELLI, 12
Napoli

February 26, 1926.

MR. ALFRED SELIGSBERG,
15 William Street,
New York.

MY DEAR COLLEAGUE,

In answer to your cable asking me for explanations of the cable from Mrs. Caruso, I give you in

full the reasons she submitted to the President of the Tribunal of Naples—who by the way found them just—when she visited the First President of said Tribunal in order to settle the question of the Chapel at the Cemetery and the share for it of the minor Gloria.

Madame exposed that the guardian of Gloria, Mr. Bergen, eventually might ask the New Jersey's Tribunal to reduce the share given to the mother from the daughter's portion of the Victor income. This never could be done because the income of Gloria's estate either in Italy or in America, belongs to the mother not as a maintenance of her child, but as her own right. The Italian Code attributes such an income to the parent not only because such an income is necessary for the support of said child, but principally on account of the relationship existing between parent and child and more specifically in virtue of the right of parental authority belonging to the parent.

In several instances our Civil Code confirms such principle and properly:

1—in paragraph 228 where it says: "The father has the legal usufruct of the estate that belongs to the child through inheritance, gifts or other lucrative sources whatsoever."

2—in paragraph 497: "The parent who has the legal usufruct of the estate of the children is not obliged to furnish security."

3—in paragraph 728: where the opposite case is provided for: "The parent has not the legal usufruct of the estate of the child when such an estate comes from an inheritance from which he—the parent—has been excluded, because unworthy of it."

Exhibit F, Annexed to Affidavit of Martin V. Bergen.

4—in paragraph 1967 n. 2: "The legal usufruct belonging to the parents is considered by law incapable of mortgage."

As you see, therefore, the income belonging to Mrs. Caruso from the estate of her minor daughter is not for the support of the latter but is given to the mother by virtue of her own right and it belongs to her because it is attributed to her by law and for this reason it is called LEGAL. It is thus named USUFRUCT, which means—according to our law, absolute right to enjoy the income without limitations or restrictions whatsoever, as though coming from an estate of exclusive property of the person who enjoys the income, and without any specification as to the use of such income. In other words usufruct means absolute right of the enjoyment of the income and freedom —equally absolute—to spend it in the way as the person having the usufruct believes it best. Therefore the law did not impose any limitation of any kind, nor has the law desired to impose any security or guarantee whatsoever.

When the heirs agreed on the division of the entire estate, as per the deed before the Notary Sanseverino, not only was everything regulated by the Italian Law, but between the parties the rights and shares were fixed solely as a settlement. The minor children were legally represented and therefore, it is no longer possible to reopen this matter in order to modify said division. In that division, made according to the Italian law, the minor Gloria—her legal representation having been established—figured as of age and therefore today —she cannot in any way modify the deed to her advantage. The law does not allow her to do this.

Exhibit F, Annexed to Affidavit of Martin V. Bergen.

She cannot today, through any person, take away what has been assigned to her mother, by the deed of the Notary Sanseverino. Neither could she do it, because as I told you before, the Italian law does not permit the daughter to take away from her mother what erroneously is believed to be given for her maintenance, while in fact it belongs to the mother as her own right, called usufruct.

And there cannot be excluded the fact that Mrs. Caruso agreed to the transaction by Notary Sanseverino with the knowledge that such an income was due to her.

The final consideration then, is that the President of the Tribunal of Naples formally promised to Mrs. Caruso that he would enter a judgment recognizing her right to recover—from the estate of her daughter in Italy—all what would be taken away in America.

It is useless to repeat to you all over again other considerations as for instance that the inheritance was opened in Italy and therefore, the Italian law must be recognized, that all the parties accepted the settlement and of all the rest that is in your knowledge.

In case the above mentioned judgment is deemed necessary, please send me a cable and—in a few days—I can have it issued and send it to you.

In regard to the other matters, I will write you separately.

With my cordial greetings, believe me

Yours,

G. Consolazio.

Exhibit G, Annexed to Affidavit of Martin V. Bergen.

This is printed in main state of case, page 419.

Exhibit H, Annexed to Affidavit of Martin V. Bergen.

This is printed in main state of case, page 422.

Exhibit I, Annexed to Affidavit of Martin V. Bergen.

This is printed in main state of case, page 340.

Opinion on Petition for Allowance.

(Filed March 14, 1928.)

This is printed in main state of case, page 117.

Decree on Petition for Allowance.

(Filed April 16, 1928.)

This is printed in main state of case, page 142.

Notice of Appeal from Allowance by Gloria Caruso.

This is printed in main state of case, page 165.

Petition of Appeal from Allowance by Gloria Caruso.

This is printed in main state of case, page 166.

Answer of Dorothy P. B. Caruso, Ancillary Administratrix to Appeal from Allowance.

This is printed in main state of case, page 169.

Answer of Victor Talking Machine Company to Appeal of Enrico Caruso, Jr.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

DOROTHY P. B. CARUSO,
Complainant-Appellant,
and
ENRICO CARUSO, JR.,
Defendant-Appellant,
and
RODOLFO CARUSO, *et als.*,
Defendants-Respondents.

Answer of Victor Talking Machine Company, Defendant-Respondent, to Petition of Appeal of Enrico Caruso, Jr.

The answer of Victor Talking Machine Company, the above named defendant-respondent, to the petition of appeal of Enrico Caruso, Jr., the above named Defendant-Appellant;

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto admits that a final decree was on January 4, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes and therefore avers that the said decree is agreeable to equity and it prays that the same may be affirmed with costs to be taxed in favor of this respondent.

LOUIS B. LEDUC
Solicitor for and of Counsel with Victor Talking Machine Company, Defendant-Respondent.

Notice of Appeal from Final Decree by Gloria Caruso.

(Filed April 9, 1929.)

This is printed in main state of case, page 188.

Petition of Appeal from Final Decree by Gloria Caruso.

This is printed in main state of case, page 190.

Answer of Dorothy P. B. Caruso, as Ancillary Administratrix, to Petition of Appeal of Gloria Caruso.

NEW JERSEY COURT OF ERRORS AND APPEALS

DOROTHY P. B. CARUSO,
Complainant-Appellee,
vs.
RODOLFO CARUSO, *et als.*,
Defendants-Appellees,
and
GLORIA CARUSO,
Defendant-Appellant.

On Appeal from Chancery. Answer to Petition of Appeal.

Dorothy P. B. Caruso as ancillary administratrix of Enrico Caruso, deceased, joins issue upon the petition of appeal of the infant Gloria Caruso by guardian *ad litem* in the above entitled cause.

McDERMOTT, ENRIGHT & CARPENTER,
Solicitors for Complainant-Appellee.

Answer of Dorothy P. B. Caruso to Petition of Appeal of Gloria Caruso.

NEW JERSEY COURT OF ERRORS AND APPEALS.

DOROTHY P. B. CARUSO,
Complainant-Appellee,
vs.
RODOLFO CARUSO, ENRICO CARUSO, JR., GIOVANNI CARUSO, MARIA CASTALDI, VICTOR TALKING MACHINE COMPANY AND FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Defendants-Appellees,
and
GLORIA CARUSO,
Defendant-Appellant.

Answer to Petition of Appeal from Court of Chancery.

The answer of Dorothy P. B. Caruso, to the petition of appeal of Gloria Caruso, by her guardian *ad litem,* Thomas Barber.

This appellee not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the 10th day of April, 1928, made and entered in the Court of Chancery of New Jersey, in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the

said decree is agreeable to equity; and she prays that the same may be affirmed.

TREACY & TREACY
Solicitor of DOROTHY P. B. CARUSO
BENJAMIN TREACY
of Counsel.

Answer of Enrico Caruso, Jr., to Petition of Appeal of Gloria Caruso.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between DOROTHY P. B. CARUSO, Complainant-Appellant, *and* RODOLFO CARUSO, *et als.*, Defendants-Respondents.	On Appeal from Chancery. Answer of Enrico Caruso, Jr., to Petition of Appeal of Gloria Caruso.

The answer of the respondent Enrico Caruso, Jr., to the petition of appeal of the appellant Gloria Caruso.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 4th day of January, 1929, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent

says that he has taken an appeal in the above entitled cause and has filed a petition of appeal, and he says that, except insofar as said decree is challenged by his said petition of appeal, and especially insofar as said decree, presupposing that it is correct as to the force and effect of the proceedings in the Courts of the Kingdom of Italy and of the contract of settlement made in Italy, directs that the complainant, Gloria Caruso shall have no interest in one-third of the proceeds of the contract between Enrico Caruso and the Victor Talking Machine Company, and that said one-third should be distributed as in said decree provided, is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

MERRITT LANE
Solicitor for and of counsel with
Respondent Enrico Caruso, Jr.

Answer of Victor Talking Machine Company to Petition of Appeal of Gloria Caruso.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
DOROTHY P. B. CARUSO,
Complainant-Appellant,
and
ENRICO CARUSO, JR.,
Defendant-Appellant,
and
RODOLFO CARUSO, *et als.*,
Defendants-Respondents,

Answer of Victor Talking Machine Company, Defendant-Respondent, to Petition of Appeal of Gloria Caruso.

The answer of Victor Talking Machine Company, the above named defendant-respondent, to the petition of appeal of Gloria Caruso, the above named defendant-appellant;

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal, contained, for answer thereto admits that a final decree was on January 4, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes and therefore avers that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this respondent.

LOUIS B. LEDUC
Solicitor for and of Counsel with Victor Talking Machine Company, Defendant-Respondent.

Pleadings, Proofs, etc.

The Pleadings, proofs, decrees, and reasons given in the Court below, and other documents (except as herein printed) are printed in the main state of case, and not re-printed here.

(The hearing of July 10, 1928, is not printed in the main state of case.)

54-620

IN CHANCERY OF NEW JERSEY.

Between
DOROTHY P. B. CARUSO,
Complainant,
and
RODOLFO CARUSO, *et al.*,
Defendants.

On Bills, &c. Proceedings.

Proceedings had in the above entitled cause, at the State House, Trenton, New Jersey, on Tuesday, the tenth day of July, 1928, at ten-thirty, A. M., (Daylight Saving Time),

Before HON. EDWIN ROBERT WALKER, Chancellor.

APPEARANCES, as heretofore noted.

MR. BERGEN: I offer in evidence a Certificate of population issued by the Naples Municipal authorities.

Said certificate is marked Exhibit G-C-25.

MR. BERGEN: I also offer in evidence an Exemplified copy of an Affidavit of Mrs. Caruso, filed in the Surrogate's Court of New York.

Said certified copy of Affidavit in the matter of the Transfer Tax of Enrico Caruso, deceased, made by Dorothy P. B. Caruso, Ancillary Administratrix, is marked Exhibit G-C-26.

MR. BERGEN: I also desire to offer in evidence certified copies of applications of Mrs. Caruso for passports, filed in the Department of State, Washington.

Said copies (Photostatic) of documents constituting application of Dorothy Caruso for passport No. 380606, certified to by the Secretary of State of the United States, on June 7, 1928, is marked Exhibit G-C-27.

CASE CLOSED

EXHIBITS OF GLORIA CARUSO.

Exhibit G-C-1.

(On page 374 of the main state of case, it is stated that this is the same as Exhibit C-20 without record of Italian filing.)

It is here printed.

STATE OF NEW YORK

CERTIFICATE AND RECORD OF BIRTH

No. of Certificate 55657

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH

Name of Child, Gloria Graziana Caruso; sex, female; color, white; date of birth, December 18, 1919; Place of Birth, Street and Number, Hotel Knickerbocker, 42nd Street and Broadway; Father's Name, Enrico Caruso; Father's Residence, Italy; Father's Birthplace, Naples, Italy; Father's Age, 46; Father's Occupation, Lyric Artist (Tenor); Mother's Name, Dorothy; Mother's Name before Marriage, Benjamin; Mother's Residence, Italy; Mother's Birthplace, Hastings, N. Y.; Mother's Age, 26; Number of Previous Children, None; How Many now living

Exhibits of Gloria Caruso.
Exhibit G-C-1.

(in all) One. The Certificate concludes with the declaration of birth signed by Dr. Austin Flint, residing at 16 West 54th Street, New York City. Date of the declaration, 21st of December, 1919. There is certified that the foregoing is a true photographic copy of a certificate on file in the Bureau of Records, Department of Health, City of New York and is signed John T. Walsh, M.D.

DEPARTMENT OF HEALTH
CITY OF NEW YORK

I, William Rosenblum, an Assistant Chief Clerk of the Department of Health of The City of New York, do hereby certify that the foregoing transcript of certificate and record of Gloria Graziana Caruso is a true copy of an original certificate and record of Birth of said person now on file in the Department of Health of The City of New York, the said Department of Health being a Department of the Municipal Corporation known as The City of New York; that I have compared the said transcript with the original record on file in this Department and that the same is a correct transcript of the said original record, and of the whole thereof; that the seal thereon impressed is the official seal of the Board of Health of the Department of Health of The City of New York; and I further hereby certify that I am the Assistant Chief Clerk in the said Department of Health in the Borough of Manhattan in The City of New York, where the said certificate and record of Birth is on file, and that I am authorized to certify the said record in accordance with Section 1182 of Chapter 466 of the Laws of 1901, being the Greater New York Charter.

Exhibits of Gloria Caruso.
Exhibit G-C-1.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Board of Health of the Department of Health of The City of New York to be affixed this 18th day of May, in the year 1928.

WILLIAM ROSENBLUM
Assistant Chief Clerk of the Department of Health of The City of New York

Form 10.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.: No. 5347

I, William T. Collins, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, being a Court of Record, DO HEREBY CERTIFY, That William Rosenblum before or by whom the annexed document was signed was at the date thereof Assistant Chief Clerk of the Department of Health, City of New York, in and for the County of New York, dwelling in said County, duly appointed and sworn, and that full faith and credit are due to all of his official acts as such Assistant Chief Clerk. And further, that I am well acquainted with the handwriting of such Assistant Chief Clerk and verily believe that the signature to the annexed document is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County the 19th day of May, 1928.

WILLIAM T. COLLINS, *Clerk.*

(SEAL)

Exhibit G-C-2.

(On page 374, in main state of case, it is stated that this is the same as Exhibit C-19 without record of Italian filing.)

It is here printed.

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH

Certificate No. 22948

STATE OF NEW YORK

CERTIFICATE AND RECORD OF MARRIAGE

of

(Groom)
ENRICO CARUSO

and

(Bride)
DOROTHY PARK BENJAMIN

Groom's Residence, New York, N. Y.; Age, 45; Color, White; Single, Widowed or Divorced, Single; Occupation, Artist; Birthplace, Italy; Father's Name, Marcellino; Mother's Maiden Name, Anna Baldini; Number of Groom's Marriage, First.

Bride's Residence, New York, N. Y.; Age, 25; Color, White; Single, Widowed or Divorced, Single; Maiden Name If a Widow, space left blank; Birthplace, Hastings, N. Y.; Father's Name, Park; Mother's Maiden Name, Ida E. Crane; Number of Bride's Marriage, First.

I hereby certify that the above-named groom and bride were joined in marriage by me, in accordance with the laws of the State of New York, at the Marble Collegiate Church in the Borough of Manhattan, City of New York, this 20th of August, 1918.

Exhibits of Gloria Caruso.
Exhibit G-C-2.

Witnesses to the marriage, Fay Campbell Keith and Bruno Zirato. Signature of person performing ceremony, Oliver Paul Burnhill; Official Station, Minister; Residence, 1 W. 29th Street, New York City.

There is appended a certification that the foregoing is a true photographic copy of a record on file in the Bureau of Records, Department of Health, City of New York, and is signed John T. Walsh, M.D., Assistant Registrar of Records.

DEPARTMENT OF HEALTH
THE CITY OF NEW YORK

I, William Rosenblum, an Assistant Chief Clerk of the Department of Health of The City of New York, do hereby certify that the foregoing transcript of certificate and record of Enrico Caruso to Dorothy Park Benjamin is a true copy of an original certificate and record of marriage of said person now on file in the Department of Health of The City of New York, the said Department of Health being a Department of the Municipal Corporation known as The City of New York; that I have compared the said transcript with the original record on file in this Department and that the same is a correct transcript of the said original record, and of the whole thereof; that the seal thereon impressed is the official seal of the Board of Health of the Department of Health of The City of New York; and I further hereby certify that I am the Assistant Chief Clerk in the said Department of Health in the Borough of Manhattan in The City of New York, where the said certificate and record of Marriage is on file, and that I am authorized to certify the said

record in accordance with Section 1182 of Chapter 466 of the Laws of 1901, being the Greater New York Charter.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Board of Health of the Department of Health of The City of New York to be affixed this 18th day of May in the year 1928.

WILLIAM ROSENBLUM
Assistant Chief Clerk of the Department of Health of The City of New York

Form 10.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.: No. 5348

I, William T. Collins, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, being a Court of Record, DO HEREBY CERTIFY, That William Rosenblum before or by whom the annexed document signed was at the date thereof Assistant Chief Clerk of the Department of Health, City of New York, in and for the County of New York, dwelling in said County, duly appointed and sworn, and that full faith and credit are due to all of his official acts as such Assistant Chief Clerk. And further, that I am well acquainted with the handwriting of such Assistant Chief Clerk and verily believe that the signature to the annexed document is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court and County the 19th day of May, 1928.

WILLIAM T. COLLINS, *Clerk.*

(SEAL)

Exhibit G-C-3.

This is printed on page 374 in main state of case.

Exhibit G-C-4 (Green Book).

Translations of some excerpts from this Exhibit are printed in the main state of case, as shown below. Translations of other excerpts are here printed.

The original text of all excerts are printed here.

Pages 16a to 29a, on page 375.
Pages 39a to 44a, on page 377.
Page 43, on page 379.
Pages 67a to 71a, on page 381.
Pages 146a to 153a, on page 385.
Pages 205 to 224a, on page 388.
Pages 241 to 245, printed here.
Pages 246a to 247a, printed here.
Pages 247a to 248a, printed here.
Pages 322a to 341, on page 391.

Exhibit G-C-4 (Green Book).

TRANSLATION—PAGE 241 TO 245.

Most Illustrous Sir The Pretor of the First Mandament of Milan.

Breaking the reservations made in my interrogatory in answer to the complaint filed against me by Mr. Enrico Caruso and Mrs. Carlotta Carignani, complaint that I except of invalidity for the provisions of articles 116 and 120 of the Code of Penal Procedure, I will set forth very short consideration.

I say considerations and not justifications in as much as the motivation of the defamatory facts

attributed to me is so stupid that it does not deserve even the need of putting forth excuses. I would in fact excuse myself if I had affirmed them, whilst, instead: First, the fact of the abstraction of correspondence is the subject of my complaint against Caruso and Carignani and is still pending, for the inquest, before you; Second, the fact of the abstraction of my jewels on the part of Caruso, while being the truth, was never communicated to any person by me, but everybody learned it through the city newspapers.

Therefore, the considerations that I want to set forth to you are very short as well as exhaustive.

The complaint of Carignani and Caruso that I had defamed them by propalating the accusation of abstraction of correspondence, is stupid in as much as they had already filed a complaint for calumny, constituting themselves also complainants in civil action, and if there was a crime, it should be a crime of calumny. But Carignani forgets that a terrible and great witness has revealed and disclosed why she, and no one but she, could have abstracted the famous letter. This witness is a Mr. Rosnati Cesare who could depose before you the following strange history:

In 1908 Maestro Carignani went to see Mrs. Giacchetti Ada at the home of Mr. Rosnati, in Lamarmora St., 26, Turin. Having subsequently moved to Milan, Mr. Rosnati used to escort Mrs. Giacchetti to and from the house of Maestro Carignani, where he met Mrs. Carlotta Carignani of whom he became an intimate friend.

In fact, Mrs. Carignani, with her child and with Mrs. Giacchetti, called many times at Rosnati's

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

home in Canova St., dining there repeatedly, during the time in which Mrs. Giacchetti was boarding at Carignani's while Caruso was in Milan.

When Mr. Rosnati moved his home to Spontini Street, Mrs. Carignani with her husband and children went to dinner there, and when Mrs. Giacchetti went to New York with the Maestro, Mrs. Carignani used to receive Mr. Rosnati who would give her news of the voyage of her husband with Mrs. Giacchetti.

After being ill with influenza, Mrs. Carignani went for the convalescence to Sesto Calende, on Lake Major, staying for eight days at the Inn of the "Civogna" with Mrs. Giacchetti, Rosnati and her child. When Mr. Rosnati wished to dine at the boarding house with Mrs. Giacchetti, Mrs. Carignani served the dinner in her private parlor bringing herself the meals so that none of the maids could report to Caruso. When Mr. Rosnati had no news of Mrs. Giacchetti, the same Mrs. Carignani would come down to the street (door) to tranquilize him. Therefore, Mrs. Carignani lies when she states that she does not know Mr. Rosnati, in whose house, on Spontini Street, one evening, while at dinner, the same Mrs. Carignani stated to Mr. Rosnati that a letter from New York had arrived for Mrs. Giacchetti and that it must have had relation to affairs, it being very bulky, and that it had surely been sent by Loria (whom she knew to be Giacchetti's agent in New York) *and that she herself had mailed it, together with a postal card addressed to the Maestro, to Lucca's Baths, registered.*

The undersigned, therefore, petitions you to question again the witness Mr. Rosnati on the

curious history above related by me, from which three things are learned:

(1) That Mrs. Carignani was playing a double play with Caruso and Giacchetti on one side, and with Rosnati and Giacchetti on the other;

(2) That Rosnati and Mrs. Carignani and Mrs. Giacchetti were in a high degree of intimacy;

(3) That the aforesaid intimacy justified Mrs. Carignani in knowing the affairs of Mrs. Giacchetti, knowing her correspondence and taking care of its mailing.

Moreover, that Mrs. Carignani knew with exactness and preciseness that Loria was the New York agent of the undersigned, is deduced also from the deposition of the Tenor Azzarri Renato, residing in Felice Cavallotti Street, No. 10, who was present in the dining room of the "Pension Excelsior" when the undersigned asked him if Loria was a person responsible enough to entrust as representative for her artistic contracts in New York. The Tenor Azzarri answered affirmatively because for ten years he himself had given to Loria the engagement of contracts in New York, and was very satisfied. Tenor Azzarri gave the fountain pen to the undersigned in order to put her signature on the photograph to be given to Loria. The witness Azzarri says that Mrs. Carignani Carlotta was present during all this discussion, proposals and answers.

I make therefore formal request that the testimony of this very important witness be also heard by you.

These two testimonies are, therefore, the best answer that could be given to the unfounded com-

plaint of defamation regarding the abstraction of correspondence.

Furthermore, for what regards the complaint of Caruso for my having propalated the defamatory fact that he had taken away all my jewels, it will be sufficient for me to produce, as I do produce, the exact list of all the jewels I owned during the eleven years of my cohabitation with the very great tenor, and compare it with the exact list of the very few jewels that he returned to me, in order to deduce the historical truth of that for which he accuses me of being the baseless divulger.

Caruso grants me the right of proving the facts, that is to prove that he took away from me all that he had given to me during so many years, in order to return to me a ridiculous part of it, and I submit the list as a proof of the truth, and I submit it to you not to show that I have propalated to anybody its content, which is not true, but simply because you would have an idea of the boldness of this very great tenor, who after having filed an unfounded complaint of calumny against the principal witness of my complaint (Mr. Loria) and a second complaint of calumny, still more stupid (because immature) against me because I complained against him, he has now still the daring of creating a new penal action for defamation, based on the ugliest page that not a very great tenor at 12 thousand francs per evening, but not even a lowly clerk at 90 francs per month, could have written on his life.

And in fact here is the history: after tearing me away from the honest life of wife and mother, taking me away from my art by which I earned my livelihood, rendering me mother of two chil-

dren that he has illegally recognized (while they cannot be recognized because they are adulterine children, and of which I make herewith formal denunciation to you according to art. 279 of the Penal Code), when he was satiated of my caresses, he stole also those of my sister and fell in such a repugnance that obliged me to separate myself from him. I had known him a poor man, and I left him a millionaire! I was not, therefore, an egotist! ! But the monkey trial is only a ray of public light on the scandalous life of this degenerate!

And when I, disgusted with his private life, wanted to go away, he calumniated me of having run away with a chauffeur, and with hundreds of thousands of lire in cash, jewels, furs!

You must think that I remained in Nice with only the dresses I had on, and he took the valise in which together with my splendid jewels I had also 80 thousand lire of savings that I had accumulated during eleven years of cohabitation with him!

And a very great tenor who earns 12 thousand francs per evening and per concert, had no repugnance to lower himself below the level of the last cheap student, knave and ruffian, who in quitting his mistress takes away from her the little chain and the bracelet he had donated to her in the moments of love.

One must really be an idiot, besides being a ruffian, to have the courage of suing me after having robbed me.

Be it welcome the light of the public trial for defamation; the world will finally know the truth on this fact and on all. Everybody will learn how the great tenor has recompensated the companion

of his life during 11 years, the faithful companion of his first steps, the disinterested companion in his poverty and riches, she who in the beginning of their relations pawned the jewels she owned to send him money to still his hunger, she who in Russia to cure him of a cold and to go to get him a medicine caught a pleurisy that kept her abed for a month, between life and death.

Everybody will learn how the great tenor has assigned to the mother of his two children those 500 lire monthly representing the interest of the 80 thousand lire in bonds he had stolen from her together with the hundreds of thousands lire in jewels. And everybody will applaud this graceful banking operation executed by him with so much effrontery.

Everybody will finally know that the undersigned did not run away with money and jewels because kidnapped by a chauffeur, but, instead, that she was cowardly abandoned and robbed of everything by the one who today has also the audacity of filing complaints against her, while he should beg her pardon for all the harm done to her.

(Signed) Ada Giacchetti.

Exhibit G-C-4 (Green Book).

Translation—Pages 246a to 247a.

EXPLANATORY EXAMINATION OF DEFENDANT

The year 1910, the 10th day of November, in the 1st. Pretura of Milan. Before us Atty. N. Ricci, Vice Pretor, assisted by the undersigned Chancel-

lor, Has appeared Mrs. Giacchetti Ada, who being questioned about her personal identity and requested to furnish explanations on the crime of defamation of which she is accused, as per record, answers:

I am Giacchetti Ada, daughter of Guido and of Giuseppina Guidolotto, born in Florence on December 1, 1874, here resident in Senato Street No. 28, singer, married with Botti Gino, actually separated (from him) with a son, studies made: private, uncensured.

Breaking the reservations made, I submit in my defense a petition with attached list of the objects that Caruso abstracted from me. In said petition I set forth my defense. And while confirming in every its particular the exposition of facts contained in said petition I do denounce Caruso of falsehood in public records having on the occasion of the birth of two children born from me, Rodolfo born here in Milan on July 2, 1898, and Enrico born in Sesto Fiorentino on September 7, 1905, declared before the respective officials of Civil Status that he could recognize the said newly born children as his natural children in as much as they were born from a union with a woman not married whilst he knew I was actually separated from Botti Gino my legitimate husband.

Read, confirmed and subscribed

Signed: Ada Giacchetta,
Signed: Atty. Ricci.

Exhibit G-C-4 (Green Book).

TRANSLATION—PAGES 247A TO 248A.

Commune of Florence. Bureau of Civil Status. Abstract from the record of marriage certificates of the year 1894, Part I, Vol. II, No. 422.

The year 1894, on the twenty-eighth day of April, at nine-thirty p. m., in the City Hall of Florence, in a hall open to the public. Before me Cav. Avv. Prof. Augusto Banchetti, appointed by the Mayor's act of October 24, 1892, Official of Civil Status, officially vested, have personally appeared:

1. Gino Affortunato Paolo Botti, single, 22 years old, merchant, born and resident in Florence, son of the late Giovanni, late resident of Florence, and of Parisina Cavalensi, resident in Florence;

2. Vittoria Matilde Ada Giacchetti, single, 19 years old, capable of housekeeping, born and resident in Florence, daughter of Guido, resident in Florence, and of Giuseppa Guidotti, resident in Florence,

who have requested me to unite them in marriage.

To this effect they have produced the hereafter described document, and as from the examination of the same as well as of those already produced at the time of the request for the publication of the bands, all of which documents countersigned with my visé I include in the volume of the exhibits pertaining to this record, it does not appear to me that there is any obstacle to the celebration of their marriage, I have read to the bride and groom the articles 130, 131, 132 of the Civil Code, and I have then asked of the groom if he intends to take as his wife the here present Ada Giacchetti, and of this latter if she intends to take as her husband the here present Gino Botti, and each

of them having answered affirmatively to the full understanding of the witnesses hereafter indicated, I have declared in the name of the law that they are united in marriage.

To this act were present: Carlo Tincolini, 49 years old, clerk, and Enrico Ristori, 33 years old, engineer, both residents of this Commune. The document produced is the certificate of the publication of the bands executed by me under the dates of March 18 and 25 ulto.

To this marriage have respectively given their consent: the mother of the groom and the parents of the bride, as it appears from the register of publications at No. 241. The present act having been read to the intervened parties they undersigned it with me.

Signed: Gino Botti—Ada Giacchetti.

Signed: Carlo Tincolini—Enrico Ristori—Augusto Franchetti.

For copy conform (to the original) save etc.

It is issued gratis on un-taxed paper for penal use and at the request of the Pretor of the First Mandament of Milan.

Florence, from the City Hall, Nov. 14, 1910.

Signature: illegible.

The Official of Civil Status. Signature: illegible.

Exhibit G-C-4 (Green Book).
Pages 16a to 29a.

MEMORIA

All'ill. sig. Giudice istruttore;

Memoria difensionale dell'imputato Enrico Caruso. Conobbi nell'anno 1897 a Livorno la sig. Ada Giachetti mar. a certo Gino Botti e nell'anno successivo, mi tras-

ferii a Milano con lei, e con lei vissi marital mente sino al 1907.

Dalla fine luglio 1908 alla fine gennaio 1909 io, che ritornai in America, non rividi più la signora che rimase in Italia. In data 27/11/1908 si perviene spedita da Milano una lettera che io ricevo il 10/12/1908 firmata da Carlotta Carignani. Questa signora che conosceva da vari anni me, e la signora Giachetti era proprietaria della pensione Exelsior di Milano ove a quell'epoca aveva preso alloggio la Giachetti. Donna di nobilissimo cuore, fu illusa dal finto dolo re dimostratole dalla signora e nella lettera Menzionata interponeva i suoi buoni uffici quale madre e sposa affettuosa, perchè io una volta ancora (sarebbe stata la quarta) in nome dei ricordi di tanti anni di vita comune avessi ancora dimenticati tutti i dolori e le ansie sofferte. Risposi a questa lettera della Carignani una lettera ove sfogavo tutto il mio dolo re, dimostrando come non sapessi dimenticara quella donna, e quanto ancora io la ricordassi. Certamente a fine di bene la sig. Carignani dovette parlare alla Giachetti della mia lettera e rose anche gliela mostrò, e questa sicura ormai di non aver perduto il fascino sopra di me, seppe così bene convincere del suo pentimento tutta la buona famiglia Carignani, da persuadere il maestro Carlo Carignani, ad accompagnarla a New York per ottenere da me un nuovo perdono.

Con ossequi f° Enrico Caruso.

Alla Pretura del mand. I di Milano oggi 7/7/1910 avanti il Pretore Avv. Montanari assistito dal sotto scritto cancelliere—Si presentò il sig. Enrico Caruso il quale esibendo il memoriale che precede con l'allegato documento 29/7/1908 chiede venga unito gli atti processuali come da riserva espressamente fatta nel verbale del proprio interrogatorio e di sua dichiarazione di denuncia. Letto, conf; sottos.

f° Enrico Caruso
f° Montanari, f° Coscia

Exhibit G-C-4 (Green Book).
Pages 39a to 44a.

Ill. sig. Pretore del mand. di Milano
Memoria defensionale di Carlottina Carignani.

Io sottoscritta mi permetto di far conoscere all' ill-
10 sig. Giudice alcuni dati di fatto relativi ai mi rapporti col comm. Enrico Caruso e colla sig. Ada Giachetti tendente a stabilire che quello che fatto durante il tempo in cui la Giachetti avitò alla mia pensione Exelsior per riavvicinare i due amanti fu al solo scopo di far del bene e cedendo alle suppliche della Giachetti che mi faceva nei primi tempi compassione atteggiandosi a vittima d'un uomo che ancora amava e mettendo in rilievo la sua triste condizione di madre orbata dei suoi figlioli.

La ricompensa della Giachetti per quanto ho fatto per lei il sig. Pretore lo sa fu la querela che mi venne sporta
20 e che è veralmente lesiva non solo della mia onorabilità, alla quale tengo sopra ogni cosa, ma anche di miei interessi materiali e si comprende come basti il fatto di una imputazione di soppressione di corrispondenza a danneggiare chi è proprietario di una pensione. E veniamo ai fatti.

La sig. Ada Giachetti venne ad abitare nella mia pension Excelsior nell'ottobre 1908. Il suo stato (akmeno quello apparente) era pittoso—mi narrava dèsser stata abbandonata dal tenore Caruso col quale aveva vissuto matrimonialmente 10 anni, lamentava la mancanza dei
30 suoi 2 figlioletti (avuti da Caruso) e che erano, rimasti presso il padre e movendomi a compassione e sopratutto toccandomi nel lato debole, l'amore pei figli, che io sento p ofondamente, mi indusse a scrivere a Caruso che era mio buon conoscente essendo stato allievo di mio marito il maestro Carignani, per indurlo a far la pace colla Giachetti restituendola anche i suoi figlioli. Ciò feci nel novembre 1908. Caruso mi rispose il 12/12 (posso allegare la lettera ove il sig. Pretore lo richieda) apprezzando il passo che avevo fatto ma dichiarando inutile l'insistere sul soggetto di un riavvicinamento colla Gia-
40 chetti e pregandomi di non tornare sul tema.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

Sempre agli ordini della S. V. Ill. per qualsiasi schiarimento le possa occorrere mi rassegno devon:
Carlotta Del Chiaro Carignani
Lista dei testimoni;

Milano 12/7/1910 nella Pretura I avanti il vice pretore avv. Di Giuseppe assistito dal sottosc. V. Cancell. Si presenta la si. Del Chiaro Carlotta in Carignani la quale esibisce il memoriale che precede e chiede venga allegato agli atti processuali.
Letto, conf. sottos.—f° Carlotta Del Chiaro in Carignani.
Lettera diretta a:

Sig. Carlottina Carignani Galleria de Cristoforis 66 Milano (Italy) registered
A tergo della busta; Enrico Caruso—Hotel Knickerloker—New York—12/12/1908.

Gent. sig. Carlotta—Possessore della V/pregiata lette ra apprezzo di vero cuore il passo che avete fatto. Sappiate che quanto mi dite di fare io lo feci per ben due volte scongiurando quella donna, non per me ma per i suoi due figli, ma essa fu insensibile a tutte le mie preci e disperazioni. Domandate un po'a quello che oggi si professa madre se per quasi 5 mesi ha avuto cura del suo piccolo Enrico!

Nulla, ella non pensava ad altro che al suo stallone (scusate l'espressione). Oggi è troppo tardi ad implorare grazia a nome dei figli. Queste povere anime innocenti non sanno che cosa significano larezze di madrè tanto vero che l'hanno bella e dimenticata. Domandate ancora la mia disperazione e i giorni che ho passati a Nizza se erano abbattanza sinceri per farle comprendere che io l'amavo! Essa mi ha calpestato, ma ha spezzato il cuore, mi ha reso la vita insopportabile, che se non fosse per quelle due povere anime innocenti chi sa quale follia avrei già fatto. Si o signora ho pianto e piango ancora a calde lagrime, l' l'offesa è stata troppo forte ed io non

posso retrocedere di un passo ai miei propositi già fatti. Non vi ha detto quella sciagurata che ha avuto quasi un figlio col suo amante? (parole del suddetto) mentre a me povero disgraziato che stavo qui a lavorare e mandargli denaro a iosa dava ad intendere che stava a Milano perchè si era fatta male ad un piede. Altro che piede! Non vi ha detto che era un'anno e mezzo che continuava la tresca e che se io avessi fatto una semplice rimostranza mi avrebbe fatto ammazzare? Non vi ha detto le porcherie che ha commesso dopo che io ho saputo tutti i fatti? Ebbene signora fatevi dire la verità di quanto essa ha commesso, di quanto io ho fatto per salvarla e voi vedrete che io sono stato più clemente di quanto dovevo essere.

Essa piange pei suoi, figlioli, ma non piange per il dolore che ha arrecato al padre dei sudetti.

Essa ha voluto la posizione attuale, che se la tenga pensi piuttisto al marito e al figlio che ha con co stui mentre io penso ad educare i miei e a farli sa pere chi era la loro madre. Se avessi voluto dar retta ai cattivi non mi sarei trovato nella posizione attuale, perchè quando mi si parlava di quello che succedeva io dicevo sempre è impossibile; l'Ada è troppo fiera e mi vuol troppo beneò Accidenti che razza di bene! Con questo signora mia finisco e vi prego scu sarmi si vi dico di non ritornare sullo stesso soggetto perchè mi fa troppo male dovendo io lavorare e pensare all' avvenire dei miei figli.

Salutatemi Carlo, un bacio al bimbo ed a voi mille ossequi. Credetemi Enrico Caruso.

Exhibit G-C-4 (Green Book).
Pages 67a to 71a.

Ordinanza del giudice Istruttore—N. Reg. 11291

In Nome di S. M. Vittorio Emanuele III per grazia di Dio e per volontò della Nazione

Re d' Italia

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

L'anno 1911 e questo dì 17 del mese di gennaio Il giudice istruttore presso il Tribunale C. P. di Milano ha pronunciato la seguente ordinanza nel procedimento penale contro

1) Del Chiaro Carlotta mar. Carignani, fu Angelo e di Marianna Giorgetti, nata a Lucca nel 1865 res. a Milano.

2) Caruso Enrico di Marcellino e Anna Baldini, nato il 27/2/1873 a Napoli, dom. a Sesto Fiorentino—artista di canto.

3) Giachetti Ada di Guido e di Guidalotti Giuseppina, nata l' 1/12/1874 a Firenze, res. a Milano.

4) Loria Gaetano di Domenico nato ad Agira (Catania) il 22/7/1876 res. a New York.

Imputati

La Del Chiaro Carignani—del delitto di cui all'art. 180 cap. C. P. per avere in Milano nell'agosto, settembre 1909 indebtamente soppressa una corrispondenza epistolare che era stata diretta da Loria Gaetano a Giachetti Ada, residente in Milano presso essa pervenuta, avendo colla suddetta soppressione cagione nocumento e danno alla Giachetti e precisamente avendole fatto perdere l'occasione di una scrittura artista in New York, e presso determinata persona.

Caruso; di eguale reato, per avere soppresso la corrispondenza di cui sopra in correità dolla preindicata art/160 cap. 63 C. P.

Giachetti—del delitto di cui all'art. 212 C. P. per avere in Milano nel 14/5/1910 con querela che risulta presentata in tale giorno alla autorità giudiziaria di Milano incolpato i sopranominati del reato di soppressione di corrispondenza, mentre ne sapeva la innocenza Loria—del delitto di cui all'art. 214 C. P. per avere quale teste inmanzi l'autorità guidiziaria e precisamente innanzi al sig. Pretore I mand. deposto falsamente che Caruso era in possesso della lettera che esso Loria aveva scritto alla Giachetti nell'agosto 1909 da New York.

Giachetti—di cui all' art. 363 cap. C. P. per avere in

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

Milano nella seconda metà dell'anno 1910 comunicato con più persone, e fando pubblicare sul giornale il Corriere della Sera del 18/7/1910 una di lei intervista, concessa allo scopo di renderla pubblica, attribui to a Caruso Enrico il fatto determinato e tale da esporre all' odio e disprezzo pubblico di avere sottratto una lettera proveniente dall' america facendo per dere ad essa Giachetti una vantaggiosa scrittura teatrale, di avere istigata a decisa Carignani Carlotta a compiere la sottrazione, la quale ne sarebbe pertanto l'autrice materiale, e quindi pure vittima di diffamazione; di essersi il Caruso appropriato dei gioielli di proprietà di essa Giachetti e ciò in Nizza e che le aveva tolto oltre i gioielli, anche la possibilità di firmare un contratto di lavoro.

Caruso-del delitto di cui all'art. 279 e 790 C. P. per avere in Milano nel 4/7/1898 ed in Sesto Fiorentino nell' 11/9/1904 falsamente dichiarato ai rispettivi ufficiali di stato civile che i bambini Rodolfo ed Enrico erano nati da donna nubile nei casi nei quali nonostava il riconoscimento, mentre invece li aveva procreati colla Giachetti Ada la quale era unita in matrimonio con Botti Paolo.

Ritenuto che con esposto del 14/5/1910 indirizzato al proc. del Re di Milano, Giachetti Ada sporgeva querela contro Carignani Carlotta e Caruso Enrico perchè questi a suo dire, nell'autunno dell'anno 1909 aveva aperto indebitamente una sua corrispondenza diretta le da New York da Gaetano Loria, della quale si erano impossessati distruggendola e il 30/11/1910 la stessa Giachetti denunciava avanti al Pretore del I mand. di Milano, Caruso Enrico, quale autoredi falso, in atto pubblico, avendo questi, in occasione della nascita di due bambini, procreati con essa Giachetti dichiarato avanti all'ufficiale di Stato civile di Milano e Sesto Fiorentino che quei bambini erano nati da donna nubile, mentre essa Giachetti era maritata.

Comunque sia però non è assodato che la Carignani ed il Caruso, ovvero di uno di loro si siano impossessati di uno qualsiasi lettera della Giachetti.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

E passando all'esame della denuncio di falco a carico del Caruso sporta dalla Giachetti, va rilevato che pel combinato disposto degli art. 279 e 91 N. 4 C. P. l'azione penale per la falsa attestazione in un atto dello stato civile dura per 5 anni dalla consumazione del delitto. Ora avendo il Caruso commesso il delitto di falso imputatogli il 4/7/1898 l' 11/4/1904 non può procedersi a suo carico per essersi estinta l'azione penale in forza della prescrizione, essendo stata presentata la denuncia Giachetti oltre il termine di 5 anni dalla consumazione del reato.

P. Q. M.

Ordina il rinvio di Giachetti Ada al giudizio del Tribunale di Milano, perchè risponda del delitto di diffamazione in danno di Caruso Enrico e Carignani Carlotta ascrittole come in rubrica.

Dichiara non luogo a procedimento penale a carico di Caruso Enrico pel delitto di falso addebitatogli per essere estinta l'azione penale in forza di prescrizione. Dichiara non luogo a procedimento penale per insufficienza di indizii e carico di Caruso Enrico, Giachetti Ada; Loria Gaetano e Carignani Carlotta in ordine agli altri delitti, loro ascritti rispettivamente in rubrica. Condanna Giachetti Ada alle spese del procedimento, relativamente e limitatamente all'azione penale da essa promossa per sottrazione di corrispondenza.

Il giudice istruttore f° Cinque f° Bigmam.

Exhibit G-C-4 (Green Book).
Pages 146a to 153a.

Signor Enrico Caruso, 27/1/1909

Ero venuta a te non perchè tu mi perdonassi, non perchè tupotessi in un istante dimenticare la offesa fattati, a te che sei stato la causa dell'abbandono della mia prima famiglia.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

Lo scopo della mia venuta presso di te era che tu mi lasciassi prima di ogni cosa chiederti perdono chiarirti e provarti tante cose che tu non sai che per bocca di altri.

E' veri che io non merito una tua parola buona ma bensì merito di essere ascoltata perchè la donna che ti parla ha vissuto circa undici anni insieme a te è la madre dei tuoi figli. I miei figli che mai ho cessato di amare e che ora dopo il tuo perdono, sono la sola cosa che ho di sacro in questo mondo. Nei due mesi che ho vissuto nel seno di una famiglia onesta e buona ho compreso tutto il male che ti ho fatto.

Ho pianto tanto che non ho più lacrime!.

Tu hai disapprovato perchè mi sono rifugiata presso persone estranee ma da chi doveva andare se tutti mi avevano abbandonata?. a chi toccava darmi una mano per rialzarmi non lo hanno fatto, però io mi sono rifugiata con persone se se non mi hanno personata, non mi hanno chiusa la loro porta, e anzi hanno cercato di rialzarmi; da dove ero caduta e insiememi hanno aiutata a riparare il mal fatto col girrare a me stesse di ricondurmi sulla retta via. Parlandoti serenamente avrei voluto diri che io mi mettevo a tua disposizione pel mio avvenire, che a niente mi sarei oppsta e quanto mi avresti obbligata di fare. La mia felicita, la mia quiete sarebbero state ottenute ubbidendo ciecamente a te. Da questa vita di ritiro avrei potuto farsi che tu vedendo la tua Ada ritornata quella di una volta il tuo cuore si sarebbe riaperto per un piccolo posticino anche per Lei.

Tu stamattina oltre a non avermi voluto ascoltare credendo che io fossi venuta per far scandalo, mi hai fatto scacciare *e minacciata di farmi arrestare!* Certo non immaginavo che tu mi avresti ricevuta a braccia aperte ma far scacciare da terze persone la madre dei tuoi figli non l'avrei mai pensato ed an cora mi sembra un sogno che tu sia potuto discendere così in basso. *Ho dolore e vergogna per te!*

Tu credi in Dio vero?. e sai che io pure ci credo perchè l'ho pregato tanto tanto per te.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

In questi due ultimi mesi gli ho domandato tante volte perdono che son certa che egli mi ha ascoltata.

E tu Enrico non vuoi farmi sperare nel tuo perdono. Ascoltami quietaùente io non vengo a te colle esigenze, ma con la sottomissione.

Dunque accordami un colloquio e sarà l'ultimo favore che ti chiedo.

fto: Ada.

De London 897 73 6 10035

Da tempo in qua ti stai struggendo nel farmi cose spiacevoli. Questa poi e la fine non erano i medici a Nizza?. Il tuo agire mi fa credere quello che io non ho voluto credere fin ora. Vedesi che sei secca ta di me non curandoti di nulla più. Avisami quando ritorni a Nizza onde poterti mandare persona per regolare posizione e prendere bimbo ne ho abbastanza di tutto Fto: Caruso.

Exhibit G-C-4 (Green Book).
Pages 205 to 224a.

In Nome di S. M. Vittorio Emanuele III per grazio di Dio e per volontà della Nazione

Re d'Italia

Il Tribunale Penale di Milano sez. III ferie composto dei sigg. avv.

Maestri Gustavo	Presidente
Salvi Ettore	giudice
Ravasio Giuseppe	giudice

ha pronunciato la seguente

SENTENZA

nella causa penale contro

ADA GIACHETTI di Guido, di anni 38 separata dal marito Gino Botti, nata a Firenze, artista di canto, già res. a Milano, via Senato 28, ora d'ignota dimora.

Il Collegio osserva in fatto e in diritto quanto appresso;

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

La sig. Ada Giachetti mar. Botti, artista lirica, nel 1897 separatasi dal marito, si unì al tenore sig. Caruso Enrico, e con lui convisse more uxorio, fino al 1907 avendone 4 figli, due dei quali tuttora viventi, a cui il Caruso diede il proprio nome, denunciando la loro nascita all'ufficio di stato civile come figli naturali, aventi da donna libera da vincolo matrimoniale, ad onta del divieto di legge, all'intento di comportarsi a riguardo della Giachetti e dei figli di lei, come se si trattasse di una famiglia regolarmente costituita;

Se non che nel 1907 la Giachetti mentre il Caruso era all'estero per ragioni professionali ed essa trovavasi a Firenze per l'educazione dei figli, presa da folle passione amorosa per il proprio chaffeur Cesare Romati, ne divenne l'amante e nulla valse a distoglierla da tale relazione che doveva necessariamente portare alla rottura di ogni rapporto col Caruso e alla rinuncia a quella vita di tranquillità e di ricchezza che la splendida posizione del celebre artista le avrebbe garantito fino al termine della sua esistenza. Troppo lungo sarebbe, e non del tutto necessario per i fini della causa, l'esporre le vicende degli amori della Giachetti col Romati e seguirli nelle loro peregrinazioni a Londra, a Nizza a , a Milano gli anni 1907-1909.

Di qualche fattospacifico che particolarmente vi connette a taluna della rubricate imputazioni si faràc enno a suo tempo; basterà intanto il rilevare come alle sollecitazioni e alle preghiere del Caruso perchè la Giachetti tornasse a lui e ai suoi figli, e abbandonasse il Romati, costei corrisponde con false promesse e nuovi inganni, mirando soltanto ad acquistare il Caruso per ottenere da lui quegli aiuti pecuniari che le permettessero di vivere allegramente e lautamente col suo amante; cosicchè il Caruso medesimo, alla fine disilluso e indignato, decise di abbandonarla al suo destino, costituendole però una rendita vitalizia di £500 mensili che essa gode tuttora, senza il carico di provvedere ai figli che il Caruso ha collocato in istituti di educazione.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

Ciò avvenne nel 1909; e a breve distanza di tempo dalla rottura definitiva dei detti rapporti seguitono i fatti che diedero origine al presente procedimento.

Il giudice Istruttore con, ordinanza 17/1/1911 su conformi richieste del P. M. rinviò a giudizio la sola Giachetti per il solo titolo di diffamazione, dichiarando estinta l'azione penale contro il Caruso per il reato di cui all'art. 279 per avvenuta prescrizione e prosciogliendo gli imputati dagli altri addebiti per insufficienza di indizii.

condanna

La Giachetti Ada alla pena della reclusione per un anno e della multa in £1000 ridotta in virtù dell' indulto a mesi 9 di reclusione cento lire di multa.

Così deciso in Milano il 29/10/1912

f° Maestri estensore

f° Salvi, Ravasio

f° Girelli cancelliere

Per copia conformo

Milano 7/1/1913—f° Botarelli canc.

Exhibit G-C-4 (Green Book).

Pages 241 to 245.

Ill. mo. Signor Pretore del I Mand. di

MILANO

Sciogliendo la riserva fatta nel mio interrogatorio di risposta alla querela sporta contro di me dai Sigg. Enrico Caruso e Carlotta Carignani, querela che nei rapporti del Caruso eccepisco di invalidità per la mancata conferma egli effetti degli art. 116 e 120 Cod. Proc. Pen. esporrò brevissime considerazioni.

Dico considerazioni e non giustificazioni in quanto che é così stupida la motivazione dei fatti diffamatori che mi si attribuiscono da non meritare nemmeno il bisogno di scusarsene. Me ne scuserei infatti se io gli avessi

affermati, mentre che invece primo il fatto della sottrazione di corrispondenza forma oggetto della querela da me sporta contro Caruso e la Carignani e pendente in istruttoria avanti la S.V.Ill.ma. Secondo il fatto della sottrazione dei miei gioielli da parte di Caruso; mentre é il frutto della verità delle cose, non fu mai da me comunicato al alcuna persona ma tutti lo appresero dai giornali cittadini.

Le considerazioni quindi che io voglio esporre alla S. V. Ill. ma. sono brevissime quanto esaurienti. La querela della Carignani e del Caruso perché io li avessi diffamati propalando l'accusa di sottrazione di corrispondenza, é stupida perché già essi presentarono una querela di calunnia, costituendosi anche parte civile, e se reato ci fosse, sarebbe reato di calunnia. Ma la Carignani dimentica che un terribile e grande testimonio ha rivelato e svelato il perché essa, e non altri che essa, ha potuto sottrarre la famosa lettera.

Questo testomonio che é il signor Rosnati Cesare potrà deporre alla S. V. Ill.ma. la seguente curiosa istoria:

Nel 1908 il Maestro Carignani andò a trovare la signora Giacchetti Ada in casa del signor Rosnati a Torino in Via Lamarmora 26. Stabilitosi a Milano susseguentemente il signor Rosnati andava ad accompagnare e riprendere la signora Giacchetti in casa del Maestro Carignani incontrandovi la signora Carlotta Carignani di cui divenne intimo amico.

Infatti la Carignani si recò diverse volte col suo bambino e colla signora Giacchetti in casa Rosnati in Via Canova e pranò repetutamente all'epoca in cui la signora Giacchetti stava a pensione dalla Carignani mentre Caruso era a Milano.

Quando il signor Rosnati mise casa in Via Spontini, la Carignani andò a pranzo col marito ed i figli da lui, e durante il tempo in cui la signora Giacchetti si recò col maestro a New York la signora Carignani riceveva il signor Rosnati e lui aveva notizie del viaggio del marito suo con la signora Giacchetti.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

Ammalatasi la signora Carignani d'influenza volle poi passare la convalescenza sul Lago Maggiore a Sesto Calende dove all'Albergo della Cicogna rimase otto giorni con la Giacchetti il Rosnati ed un suo bambino. Quando il signor Rosnati volle pranzare assieme alla signora Giacchetti alla pensione, la Carignani gli servò il pranzo in un salottò suo in timo, portandole essa stessa le pietanze perché le cameriere non facessero la spia al Caruso. Quando il signor Rosnati non aveva notizie della signora Giacchetti la stessa Carignani scendeva in istrada a tranquillizzarlo. Mentisce dunque la Carignani quando dice di non conoscere il signor Rosnati nella di cui casa in Via Spontini pranzando una sera la stessa Carignani dichiarò al signor Rosnati che era ar rivata una lettera da New York per la signora Giacchetti e che doveva trattare di affari perché era molto voluminosa, e che l'aveva certo spedita il Loria (che essa sapeva essere l'agente della Giacchetti a New York) *e che essa stessa l'aveva impostate insieme ad una cartolina indirizzata al Maestro ai bagni di Lucca in porto raccomandato.* La sottoscritta quindi fa istanza perché la S. V. Ill.ma. assuma nuovamente la testimoniznaa del sig. Rosnati su tutta la curiosa istoria da me sopra narrata e della quale si imparono tre cose:

1. Che la Carignani giocava il doppio gioco con Caruso e Giacchetti da un lato, e Rosnati e Giacchetti dall'altra.
2. Che Rosnati e la Carignani e la Giacchetti erano in un grado alto di intimità.
3. Che la intimità suddetta autorizzava la Carignani a sapere gli interessi della Giacchetti e conoscerne la corrispondenza e provvederne all'impostazione.

Del resto che la Carignani sapesse con esattezza e precisione che il Loria era l'agente della sottoscritta a New York lo si desume anche dalla deposizione del signor tenore Azzarri Renato abitante in Via Felice Cavallotti 10 il quale era presente hella sala da pranzo della pensione Exelsior quando la sotsotscritta chiese a lui se il Loria era persona seria a cui affidare la rap-

presentanza delle proprie scritture a New York. Il Tenore Azzarri rispose di si perché egli pure aveva affidato al Loria per 10 anni per l'ingaggio delle scritture a New York e ne era contentissimo.

Il tenore Azzarri diede la penna stilografica alla sottoscritta per firmare la fotografia da consegnar si al Loria. A tutto questo discorso e proposte e risposte il teste Azzarri dice che c'era presente la Carignani Carlotta.

Faccio quindi formale istanza perché V.S.Ill.ma. assuma la testimonianza anche di questo testimonio importantissimo.

Queste due testimonianze sono perciò la più bella risposta che si possa dare alla infondata querela di diffamazione circa il fatto della sottrazione di corrispondenza.

Circa poi la querela del Caruso per avere io pro palato il fatto diffamatorio che egli mi avesse sottratti i miei gioielli basterà che io presenti come presento la nota esatta di tutti i gioielli che io possedevo negli undici anni di convivena col grandissimo tenore e confrontarla con la nota esatta dei pochissimi gioielli che gli mi ha restituiti, per desumerne la verità storica di ciò di cui egli mi vuole infondatamente propalatrice.

Caruso mi accorda la prova del fatto, cioé di provare che mi tolse tutto quanto mi aveva regalato in tanti anni per restituirmene una ridicola porzione ed io dimetto la lista a prova della verità e la dimetto a V. S. Ill.ma. non per dimostrare che io ne ho propalato a chichessia il contenuto, ciò che non é vero ma semplicemente perché V. S. Ill.ma. si faccia un concetto della sfacciataggine di questo grandissimo tenore, il quale dopo aver sporta una infondata querela di calunnia contro il testimonio principale della mia querela (il signor Loria) ed una seconda querela di calunnia ancor più stupida (perché immatura) contro di me perché l'ho querelato, ha oggi ancora l'ardire di voler dar vita ad una nuova azione penale per diffamazione basa sulla pagina più brutta che non un grandissimo tenore a 12 mila franchi per sera, ma

nemmeno l'ultimo impiegatuccio a 90 franchi al mese avrebbe potuto servivere nella vita.

E infatti valga la storia: strappatami dalla vita onesta di moglie e di madre, toltami dall'arte dei cui guadagni vivevo, resami padre di due bambini che egli illegalmente ha riconosciuti (mentre sono irriconoscibili perché adulterini, e di ciò ne faccio formale denuncia a V. S. ill.ma. a sensi dell'art. 279 del Cod. Pen.) quando fu sazio del le mie carezze, rubò anche quella di mia sorella e cadde in tale ripugnanza che mi obbligò a dividermi. L'avevo conosciuto povero e lo lasciai milionario! Non fui dunque egoista! ma il processo delle scimmie é solo una sprazzo di luce pubblica sulla vita scandalosa di questo degenarato!

E quando io disgustata della sua vita privata, volli andarmene, egli mi calunniò di essere fuggita con uno chaffeur, e con centinaia di migliaia di lire in denaro, gioielli, pelliccie!

Pensì la S. V. Ill.ma. che rimasi a Nizza con gli abiti soli che mi coprivano, ed egli si prese la valigia ove coi miei splendidi gioielli avevo anche 80 mila lire di risparmio, accumulati in undici anni di convivenza con lui! E un grandis simo tenore che guadagna 12 mila franchi per sera e per concerto, non ébbe schifo di abbassarsi sotto al livello dell'ultimo studentello farabatto e mascalzone, che, dividendosi dall'amante, le toglie la catenella ed il braccialetto regalatale nei momenti d'amore.

Bisogna essere proprio cretini oltre che mascalsoni per avere il coraggio anche di querelarmi do po avermi derubata!

Ben venga la luce del processo pubblico di diffamazione, sopra questo fatto e tutto il mondo saprà finalmente la verità. Tutti potranno apprendere come ha ricompensato il grande tenore la compagna della sua vita per undici anni, la fedele compagna dei suoi primi passi, la disinteressata compagna della miseria e dell'opulenza. Colei che nei primi tempi della loro relazione impegnò i gioielli che possedeva per mandargli il denaro onde sfamarsi,

colei che in Russia per curarlo di un raffeddore e andargli a prendere una medicina prese una pleurite che la tenne a letto un mese tra la vita e la morte.

Tutti potranno apprendere come il grande tenore ha assegnato alla madre dei suoi due figli quelle 500 lire mensili che rappresentano l'interesse delle 80 mila di titoli che le aveva rubati assieme alle centinaia di migliaia di lire di gioielli. E tutti applaudiranno a questa disinvolta operazione bancaria da lui eseguita con tanta sfrontatezza.

Tutti infine sapranno che la sottoscritta non é fugggita con denaro e gioielli perché rapita da uno chaffeur ma che venne invece vigliaccamente abbandonata e spogliata tutto da colui che oggi ha anche l'audacia di farle delle querele, mentre dovrebbe domandarle perdono di tutto il male arrecatole.

fto. Ada Giacchetti

Exhibit G-C-4 (Green Book).

Pages 246a to 247a.

ESAME D'IMPUTATO A SCHIARIMENTO

L'anno 1910 il giorno 10 del mese di novembre nella Pretura I di Milano—Avanti di noi avv. N. Ricci V. Pretore—Assistiti dal Cancelliere sottoscritto.

E' comparsa la signora Giacchetti Ada la quale interrogata sulle generalità ed invitata a dare schiarimenti sul reato di diffamazione ad essa imputata come in atti rispond:

Sono Giacchetti Ada di Guido e di Giuseppina Guidolotto nata a Firenze nel 1/12/74 quì resid. Via Senato 28—Artista di canto. Coniugata con Botti Gino—Separata di fatto con un figlio—studi privati—Incensurata.

Sciogliendo le riserve fatte, in mia difesa dimetto in memoriale con allegato elenco degli oggetti sottratemi dal Caruso. In detto memoriale espongo le mie difese.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

E confermando in ogni sua parte l'spositiva di fatto di cui il memoriale medesimo dichiaro di denunciareb il Caruso per falso in atto pubblico avendo in occasione della nascita di due bambini da me partoriti, Rodolfo nato quì in Milano 2/7/98, ed Enrico nato in Sesto Fiorentino il 7/9/1905, dichiarati avanti i rispettivi Uffici di Stato Civile che tali neonati poteva riconoscere per suoi figli naturali in quanto nati dall'unione con una donna non naritata mentre sapeva che io ero separata di fatto da Botti Gino mio legittimo consorte.

Letto confermato sottoscritto.

Fto: Ada Giachetti. Fto: avv. Ricci

Exhibit G-C-4 (Green Book).

Pages 247a to 248a.

Comune di Firenze Ufficio dello Stato Civile. Estratto dal Registro atti di matrimonio dell'anno 1894 parte I—vol. II—N. 422.

L'anno 1894 addi ventotto di appile a ore pomeridiane nove e mintti trenta nella Casa Comunale di Firenze in una sala aperta al pubblico. Avanti a me Cav. Avv. Prof. Augusto Ranchetti assessore supplente delegato dal Sindaco con atto 24 ottobre 1892. Ufficiale dello Stato Civile vestito in forma ufficiale sono personalmenti comparsi:

1—Gino Affortunato Paolo Botti celibe di anni 22 negoziante nato eresidente in Firenze figlio del fu Giovanni già residente in Firenze e di Parisina Cavalensi residente in Firenze

2—Vittoria Matilde Ada Giachetti nubile di anni 19 atta a casa nata e residente in Firenze figlia di Guido residente in Firenze ed èi Giuseppe Guidotti residente in Firenze i quali mi hanno richiesto di unirli in matrimonio.

A questo effetto mi hanno presentato il documento sotto descritto; e dall'esame di questo nonchè di quelli già prodotti all'atto della richiesta delle pubblicazioni i

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

quali tutti muniti del mio visto inserisco nel volume degli allegati a questo registro risultandomi nulla ostare alla celebrazione del loro matrimonio ho letto agli sposi gli art. 130 131 132 del Codice Civile, e quindi ho domandato allo sposo se intende di prendere in moglie, la quì presente Ada Giachetti e a questa se intende di prendere in marito il quì presente Gino Botti ed avendomi ciascuno risposto affermativamente a piena intelligenza anche dei testimoni sotto indicati ho pronunciato in nome della Legge che i medesimi sono uniti in matrimonio. A questo atto sono stati presenti:

Carlo Tincolini di anni 49 impiegato e Enrico Ristori di anni 33 Vingegnere entrambi residenti in questo Comune. Il documento presentato è il certificato delle pubblicazioni da me eseguite nei dì 18 e 25 marzo decorso. Aquesto matrimonio hanno rispettivamente prestato il consenso la madre dello sposo ed i genitori della sposa come dal registro pubblicazioni al N. 241. Letto il presente atto agli intervenuti si sono essi meco sottoscritti.

Fti: Gino Botti—Ada Giachetti.

Fti: Carlo Tincolini—Enrico Rustori—Augusto Franchetti—

Per copia conforme salvo ecc.

Si rilascia gratis ed in carta libera per uso penale ed a richiesta del Pretore del primo mandamento di Milano.

Firenze dal Palazzo Comunale il 14/11/1910

Firma illegibile.

L'ufficiale dello Stato Civile firma illegibile.

Exhibit G-C-4 (Green Book).

Pages 322a to 341.

La Corte di Appello di Milano
Sezione III penale.
Composta dagli Ill.mi signoril
Tunesi Cav. Enrico f. f. Presidente
Ambrosoli avv. Cesare Consigliere
Caffini Cav. Alessandro Consigliere
ha pronunciato la seguente

SENTENZA

Nella causa del P. Ministero.

CONTRO

1. CESARE ROMATI di Romano di anni 33 nato e domiciliato a Brescia ed elettivamente in Milano presso l' avv. Rossi—Crivelli.

2. MICALIZZI TURCO VINCENZO di Giuseppe nato e domiciliato a Napoli—Vico I porta Piccola Monte Calvario 14.

3. ADA GIACHETTI di Guido di anni 38 separata dal marito Gino Botti nata a Firenze artista di canto ora di ignota dimora.

4. LORIA GAETANO di Domenico di anni 35 nato ad Agira (Catania) e residente a Parigi via Gaetano Combert. 30

Tutti liberi.

IMPUTATI

LA GIACHETTI a) del reato di cui l'art. 212 C. P. commesso in Milano il 14 marzo del 1910 a danno di Caruso comm. Enrico e Del Chiaro Carlotta Carignani.

b) del reato di cui l'art. 303 C. P. commesso in Milano nella seconda metà del 1910 a danno del detto comm. Caruso.

L'origine della presente causa si deve ricercare nei dissidi che dopo un decennio di convivenza maritale,

intervennero fra l'artista di canto Ada Giachetti maritata Botti da essa separata di fatto ed il tenore Caruso.

Dal 1897 al 1907 convissero i due ed ebbero quattro figli due dei quali conviventi.

Questa prima fase di istruttoria fu chiusa con Ordinanza del Giudice istruttore 17 settembre 1911 (fog. 156) colla quale si inviava a giudizio la Giachetti per rispondere del reato di diffamazione, si dichiarava non luogo per prescrizione in confronto a Caruso, pel reato di falso che a termine dell'art. 279 aveva la Giachetti denunciato contro di lui per avere egli dichiarato che i due figli nati nel 1898 e 1904 li aveva avuti da donna libera mentre li aveva affettivamente avuti da Ada Giachetti, maritata, si dichiarava parimenti non luogo per insufficenza di prove in confronto di Caruso e Carignani, per il reato di sottrazione di corrispondehza, in confronto della Giachetti per il reato di calunnia ed in confronto del Loria querelato pure dal Caruso per falsa testimonianza.

Che la Giacchetti fosse mossa da livore oltreche dalla incessante sollecitazione durante le mole giudiziarie, dalle acri memorie scritte col ribocco di fiele e di mala parole (veggasi ad esempi l'sposto al foglio vol. II) è fatta palese dalla di lei denuncia contro Caruso per la falsaattestazione cira l'atto di nasci ta dei lui figlia avuti con essa Giachetti colla quale denuncia essa dimentica perfino di essere madre.

CONDANNA

ADA GIACHETTI alla pena complessiva di anni I mesi 6 di reclusione lire 1000 di multa ridotto per indulto ad anni I e mesi 3 e lire 100 dell'interdizione dei pubblici uffici per mesi 3.

Condanna gli appellanti in solido al pagamento delle spese di questo secondo giudizio, e tasse la Sentenza nonchè alle spese di rappresentanza di parte civile che si liquidano in L. 250 (duecentocinquanta.)

Milano 10 dicembre 1913.

firmati Tunesi—Ambrosoli—Caraffini.

Exhibits of Gloria Caruso.
Exhibit G-C-4 (Green Book).

Bonetti Cancelliere.
Per copia conforme da notificarsi.
Milano 29 gennaio 1914 il Cancelliere fto: Lucadamo.

Exhibit G-C-5.

The translation is printed in the main state of case, page 394.

The original text is printed here.

IL PUBBLICO MINISTERO

Letti i presenti atti contro
Del Chiaro Carlotta maritata *Carignani; Caruso Enrico; Giacchetti Ada; Loria Gaetano* residente a New York; tutti come entro

IMPUTATI

la Del Chiaro Carignani del delitto di cui all'art. 160 cap. C. P. per avere in Milano nello agosto e settembre 1909 indebitamente soppressa una corrispondenza epistolare che era stata diretta da Loria Gaetano a Giacchetti Ada residente in Milano presso essa pervenuta, avendo colla indebita soppressione cagionato nocumento alla detta Giacchetti e precisamente avendole fatta perdere occasione di una scrittura artistica in New York e presso determinata persona;

Caruso di uguale reato per avere soppresso la corrispondenza di cui sopra in correità colla preindicata, l'art. 160 capoverso C. P.;

Giacchetti del delitto di cui all'art. 212 C. P. per avere in Milano nel 14 maggio 1910 con querela che risulta presentata in tale giorno all'autorità giudiziaria di Milano incolpati i sopranominati del reato di cui soppressione di corrispondenza mentre ne sapeva l'innocenza;

Loria del delitto di cui all'art. 214 C. P. per avere quale teste innanzi l'autorità giudiziaria e precisa-

mente innanzi al sig. Pretore 1.o Mand'to deposto falsamente che Caruso era in possesso della lettera che esso Loria aveva scritto alla Giacchetti nello agosto 909 da New York.

Giacchetti del delitto di cui all'art. 193 cap. C. P. per avere in Milano nella seconda metà dell'anno 1910, comunicando con più persone e facendo pubblicare nel giornale il Corriere della Sera del 18 luglio 1910 una di lei intervista concessa alla scopo di renderla pubblica, attribuito a Caruso Enrico il fatto determinato e tale da esporre all'odio e disprezzo pubblico di avere sottratto una lettera proveniente dall'America facendo perdere ad essa Giacchetti una vantaggiosa scrittura teatrale, di avere istigata e decisa Carignani Carlotta a compiere la sottrazione, la quale ne sarebbe pertanto l'autrice materiale, e quindi pure vittima di diffamazione; di essersi il Caruso appropriato dei gioielli di proprietà di essa Giacchetti e ciò in Nizza, e che le aveva tolto oltre i gioielli anche la possibilità di firmare un contratto di lavoro;

Caruso del delitto di cui all'art. 279 e 79 C. P. per avere in Milano nel 4 luglio 1898 ed in Sesto Fiorentino nell'11 settembre 1904 falsamente dichiarato ai rispettivi ufficiali di Stato Civile che i bambini Rodolfo ed Enrico erano nati da donna nubile e nei casi nei quali non ostava il riconoscimento, mentre invece li aveva procreati colla Giacchetti Ada la quale era unita in matrimonio con Botti Paolo.

Poichè dalla esperita istruttoria emerge come consti che venisse scritta dal Loria Gaetano una lettera alla Giacchetti nella quale si offriva certa scrittura artistica nei teatri di New York e per mezzo dello impresario Hammerstein.

Il Loria depone di avere spedito la lettera nello agosto 1909 da New York alla Giacchetti che in allora era a Milano presso la pensione della Del Chia-

ro. E' pure constante in fatto che la lettera non pervenne alla Giacchetti destinataria la quale all'epoca del ricevimento non trovavasi più a Milano, ma erasi recata ai bagni della Porretta.

Nega la Carignano Del Chiaro di avere soppresso la lettera, nega di averla data al Caruso, che già convivente colla Giacchetti, trovasi ora in questione colla stessa. E la Del Chiaro mentre dapprima negò esplicitamente il fatto della soppressione, e poi accennò al ricevimento di questa lettera e successivo suo inoltro alla residenza della Giacchetti (f. 13), successivamente, (f. 80) ricordò con precisione l'arrivo di una lettera dall'estero e la conseguente rettifica di indirizzo. E la teste Navone, cameriera al di lei servizio, depose precisamente su tale circostanza,

Ora se questa precisazione successiva al primo interrogatorio può lasciare qualche dubbio sulla sua sincerità e sulla verisimiglianza che una cameriera di pensione ricordi a tanta distanza di tempo una circostanza così indifferente e facile a ripetersi per varie persone ivi alloggiate, pure non evvi prova alcuna che la lettera sia stata soppressa.

Il Loria non ricorda averla raccomandata, e se lo avesse fatto ve ne sarebbe traccia nei registri postali; non è escluso che la lettera non sia giunta a Milano da New York. Non è escluso che se, qui giunta, possa essere andata smarrita nel secondo viaggio che le si fece fare perchè raggiungesse la destinataria. E quindi fa difetto ogni elemento di prova al riguardo dello arrivo della lettera a Milano, non essendo impossibile che le lettere ordinarie vadano smarrite.

Altro elemento di reità, che fu portato dalla Parte Civile contro la Del Chiaro e contro Caruso quale correo nella soppressione (o meglio quale imputato di ricettazione della lettera soppressa dalla Del Chiaro e passata poi allo stesso Caruso il quale l'avrebbe ricevuta e l'avrebbe tenuta conoscendone

la delittuosa provenienza) consiste nelle circostanze deposte dal Loria Gaetano, il quale però è detenuto quale falso testimonio e correo nella calunnia.

E' necessario tosto rilevare come nei riguardi del Loria Gaetano non si possa parlare di calunnia ai sensi di legge, nulla avendo querelato o denunziato, ma solo di falsa testimonianza e come in appresso.

La circostanza deposta dal Loria è che certo Vulman avrebbe detto al fratello di esso Loria Gaetano, altro Loria di nome Filippo e residente a New York (come esso Gaetano) che il Caruso possedeva la lettera scritta dal Gaetano Loria alla Giacchetti e riguardante il noto contratto.

Pertanto il Loria Gaetano nulla fa di scienza propria, ma solo per bocca del fratello suo Filippo.

Il racconto del Vulman a detto Filippo sarebbe stato fatto a New York presenti varie persone e fra queste è indicato certo Micalizzi Turco che depone precisamente come abbia sentito il Vulman dire che la Giacchetti non sarebbe venuta in America e che Caruso era in possesso della lettera scritta da Loria Gaetano relativamente al di costei progetto di contratto presso il teatro Manhattan (f. 29).

Ma il Vulman (f. 48) recisamente nega di avere fatto discorso consimile e sostiene ciò anche nel ocnfronto stato fatto con detto Micalizzi Turco nel 15-12-1910.

Non è pertanto assodata la realtà della circostanza, nè a ciò può concorrere la deposizione stragiudiziale del Filippo Loria nel 26 settembre innanzi a notaio americano perchè sfornita di valore giuridico. Ed al riguardo dello apprezzamento di fatto impongonsi le seguenti considerazioni, dovendosi le varie circostanze interpretare col tenere presente la qualità, l'indole delle persone.

Se può ritenersi constante che la Giacchetti sia stata destinataria di una lettera contenente profferte di contratto da parte di Loria Gaetano, non è per

nulla assodato che questa lettera sia pervenuta in Italia, e che sia stata sottratto dalla Del Chiaro e passata a Caruso.

Al riguardo non appare inverosimile che Caruso dopo avere commesso o fatto commettere il reato se ne palesasse autore con altri, e cioè col Vulman; che la Del Chiaro potesse immaginare cosa stava nella lettera diretta alla Giacchetti e la sopprimesse: che il Caruso avesse interesse ad impedire che la già di lui amante trovasse modo di guadagnare da vivere e così le potesse essere a minore carico.

Perchè non è dimenticare come la Giacchetti già convivesse col Caruso e ne avesse figli e che poi avvenne clamorosa rottura fra gli amanti perchè la Giacchetti passò ad avere relazione col Romati lo chaffeur di Caruso. Nè le circostanze deposte dal Romati circa l'esistenza della lettera possono, anche ove fossero precise, avere positivo valore. E' evidente come gli animi siano accesi, e particolare risentimento si porti specialmente dalla Giacchetti.

Senza divagare nello esame e nella valutazione dell'operato della Giacchetti nei confronti del Caruso e sempre dal punto di vista finanziario il risentimento di questa arriva al punto di denunciare il Caruso quale colpevole del delitto di cui all'art. 279 C. P. e precisamente per avere dichiarato all'ufficiale di Stato Civile i due figli avuti da essa Giacchetti come figli avuti con donna nubile, mentre essa Giacchetti è maritata.

In sostanza la Giacchetti per fare danno all'amante antico arriva al punto di denunziare il padre dei suoi figli perchè cercò di riconoscerli e dare loro uno stato di figli naturali, mentre avrebbe dovuto dichiararli figli di ignoti, ed espone i figli stessi al pericolo di una rettifica dell'atto di nascita così ad essi favorevole.

Questo risentimento enorme nella sua portata e nelle sue finalità, che soffoca nella Giacchetti fin l'i-

stinto materno ultimo a spegnersi anche nelle donne scese agli ultimi scalini del vizio, mostra quale sia l'indole del risentimento e fa restare dubbiosi sulla serietà e serenità dell'accusa.

Infatti nella querela che apre il procedimento f. 1 retto e relativa conferma f. 12 si afferma che il Caruso dopo avere soppressa la corrispondenza se ne valse per fare minaccie e pressioni all'impresario Hammerstein acciocchè non scritturasse la Giacchetti e la circostanza non è per nulla provata nemmeno lontanamente. A foglio 75 la Giacchetti notizia il sig. Pretore come Vulman avesse tentato di far dire cose "contrarie a verità" al Turco Micalizzi, e ciò dopo il loro deposto, e la circostanza è smentita dallo stesso Micalizzi (f. 76).

E così pure appariscono ispirate a forte risentimento di animo i memoriali in causa, non dimenticandosi quanto emerge sulla condotta della Giacchetti che convivente col Caruso dal quale ebbe figli, viene indicata come datasi ad altri e precisamente allo chauffeur Romati.

Ora se si riflette al complesso delle risultanze, all'inimicizia che deve esistere fra i Loria ed i Caruso, avendo il fratello di Caruso percosso il Gaetano Loria (f... e documento *b* annesso al memoriale Giacchetti), da una parte imponesi l'osservazione che non consta che la lettera sia stata sottratta o soppressa dalla Carignani e dal Caruso, dall'altra che non sufficienti sono gli indizi per ritenere falsa la deposizione del Loria, calunniosa la querela della Giacchetti. Poichè nei riguardi della denuncia fatta dalla Giacchetti. contro il Caruso per l'art. 279 e come meglio nel capo di imputazione e precedentemente imponesi l'eccezione di prescrizione che è per l'art. 91, 4 d'anni 5.

Le due false dichiarazioni di Caruso sono in data 4 luglio 1898 ed 11 settembre 1904 e non 1905 come erroneamente dichiarò la Giacchetti nella sua de-

Exhibits of Gloria Caruso.
Exhibit G-C-5.

nunzia al sig. Pretore, apparendo strano che una madre si sbagli nella data di nascita dei figli.

Per quanto riflette la diffamazione questa è constante pel deposto dei testi e per la comunicazione fatta ai giornali.

Pendente un procedimento penale non è certamente giuridico che la querelante la quale deve attendere la pronuncia del magistrato sulla circostanza dei fatti querelati, vada raccontandoli a destra e sinistra, e li faccia anche divulgare dalla stampa, essendo evidente come la intervista concessa fosse destinata alla pubblicità. Ora nelle comunicazioni fatte dalla Giacchetti evvi estremo di diffamazione e per la precisazione dei fatti, e per l'evidente animo di diffamare che è insito nel fatto medesimo ed in tutto il complesso delle emergenze processuali.

Che la diffamazione è pure esistente per quanto concerne la sottrazione asserita dei gioielli, nel che non appare opportuno sfogare ulteriore prova e salvo l'esperimento della prova dei fatti, ove del caso.

Che infine è a portare esame sull'eccezione sollevata dalla Giacchetti circa la querela per diffamazione asserendo essa nel memoriale come la querela sia invalida per la mancata conferma ed agli effetti degli art. 116 e 120 C. P. P.

Osservasi che i due articoli indicati non hanno ragione di essere citati; evidentemente l'art. 116 C. P. P. richiama l'obbligo di avvisare la querelante, e l'art. 120 da le norme per l'improcedibilità nel caso della mancanza d'istanza della parte privata quando si tratta di un reato che trovasi fra quelli perseguibili dietro l'istanza privata.

Ma la Giacchetti non dice perchè ritiene che manchi la conferma che invece evvi realmente a mezzo dell'avv. Ceola mandatario del Caruso e in data 4 novembre 1910.

E sostiene che detta querela presentata per mezzo di procuratore speciale sia pienamente procedi-

bile ai sensi dell'art. 100 e 108 C. P. P. trattandosi di querela fatta a mezzo di procuratore e di procura spedita in brevetto ed allegata alla querela (art. 100 ult. cap. C. P. P. e 108 C. P. P.).

Che se la procura non contiene molte precisazioni ed anche qualche inesattezza (p. e. riguardante al Loria) pure è sufficiente perchè consta della volontà del Caruso di volere che si proceda per diffamazione.

Che ha luogo la competenza del Colleggio;

Letti gli art. 250, 257, 251, C. P. P.;

Chiede che il sig. Giudice Istruttore con sua ordinanza dichiari:

1. — Ordinanza di non luogo per inesistenza di reato a favore Del Chiaro Carignani e Caruso Enrico pei reati di cui all'art. 160 C. P.;

2. — Ordinanza di non luogo per insufficienza di indizii a favore di Giacchetti e Loria per calunnia e falsa testimonianza;

3. — Ordinanza di non luogo per essere estinta l'azione a causa di prescrizione a favore Caruso pel reato di cui all'art. 279 C. P.;

4. — Ordinanza di rinvio al Tribunale della Giacchetti per rispondere della diffamazione.

Tenute le parti querelanti per reato d'azione privata e soccombenti (art. 574 C. P. P.) al pagamento delle spece processuali.

Milano, 19-12-910.

(f.to) NOSEDA

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ARCHIVIO DI STATO IN MILANO

Prot. Gen. N. 1173

La presente copia è conforme all'originale che si conserva in questo R. Archivio di Stato alla serie: R. Tribunale Civ. e Pen. di Milano, Processi, a. 1912,

pr.lo n. 2022, e si rilascia all'avv. Massimo Della Porta in seguito ad autorizzazione concessa dal Consigliere Istruttore Montanari il 20 novembre 1925.

Milano, 19 dicembre 1925

(Sigillo)

Il Sopraintendente,
G. Vittani.

Kingdom of Italy,
City of Milan
Consulate of the United States } ss.
of America.

I C. CARRIGAN

Consul Gen. of the United States of America at Milan, Italy, do hereby certify that the signature and seal of G. Vittani of the Archivio di Stato of Milan, Italy to the foregoing document are true genuine, and as such, entitled to full faith and credit.

In witness whereof I have here set my hand and affixed the seal of Consulate this 15th day of November, 1926.

(Seal)

CONSUL
The United States of America
C. Carrigan

(Stamp)
Fee No. 2672
Tariff No. 33

Exhibit G-C-6.

The translation is printed in the main state of case, page 403.

The original text is printed here.

Ill.mo Signor Presidente
del Tribunale Civile e Penale
di Milano.

Il sottoscritto a nome e nell'interesse della Signora Giacchetti Vittoria Matilde Ada qui abitante Via Senato 28, espone:

Che separatasi, provvisoriamente, nel Settembre 1897 dal marito Botti Gino, negoziante di mobili, domiciliato in Firenze con negozio in Piazza Indipendenza, onde seguire l'amore del celebre tenore Caruso, la Signora Giacchetti rimase con questi fino a pochi mesi fa e dalla intima loro relazione nacquero due figli Rodolfo ed Enrico riconosciuti dal solo tenore Caruso comm. Enrico che li ha presso di sè.

Nel troncare la lunga relazione il Comm. Caruso assegnava alla Signora Giacchetti l'annua rendita di L. 6000 in due distinti certificati l'annua rendita blico Italiano rispettivamente intestati per la proprietà ai figli del tenore sunnominati.

Ora la Signora Giacchetti artista cantante che per seguire l'amore di Caruso aveva troncato la carriera teatrale lirica ha dovuto riprendere la sua arte, rifare casa, riassumere lezioni e spendere nello acquisto del guardaroba di scena lirica per tutti i vestiari e costumi nonchè le *toilettes* del suo lirico repertorio nel quale fa la sua *rentrèe*.

Per sopperire a tutte queste enormi spese d'impianto e di esercizio avendola il Caruso lasciata senza un quattrino e neppure un abito o un mobile qualunque, la Signora Giacchetti ha ritrovato nella Compagnia Anonima "L'Urbaine" di Milano la sovvenzione di lire 25.000 dietro cessione del suo usufrutto sulle due cartelle di rendita suaccennate.

La posizione ostile in cui trovasi col marito, dopo

quanto avvenne col tenore Caruso, la costringe a chiedere al Tribunale Illustrissimo l'autorizzazione a compiere la suddetta cessione ai sensi degli art. 134 e 136 Cod. Civ. previa citazione del marito stesso in Firenze, ove trovasi residente per ragione di commercio.

Or poichè per la enorme distanza del luogo ove trovasi il Botta occorrerebbe assai tempo perchè questi si rechi in Milano allo scopo desiderato dalla Giacchetti, lo esponente in vista dell'urgenza fa riverente istanza all'Illustrissima Signoria Vostra perchè colla fissazione del giorno della comparizione dei coniugi Botti-Giacchetti in Camera di Consiglio perchè la Giacchetti sia autorizzata a cedere il suo usufrutto alla Compagnia Anonima "L'Urbaine" di Milano ed in genere ogni atto d'amministrazione di ciò ch'è di lei pertinenza, secondo il disposto dell'art. 134 Cod. Civ. sia emanato decreto di abbreviazione dei termini a comparire ai sensi dell'art. 154 Cod. Proc. Civ. fino alla metà di quello stabilito dal numero 5 dell'art. 148 del Codice invocato, dato il bisogno urgente della Signora Giacchetti di avere le somme che le necessitano per rientrare nella carriera con i mezzi necessari di cui sopra è dettaglio.

Milano 22 gennaio 1910. (f.to) avv. Giuseppe Lo Forte.

DECRETO

Visto. Si delega per riferire in Camera di Consiglio il Sig. Giudice Beonio. Milano 25 gennaio 1910.

Il Presidente (f.to) Raimondi.

DECRETO

Visto. Si ordina la comparizione avanti questo Tribunale, Sez. I, dei coniugi Boni (sic) Gino e Giacchetti Vittoria per essere sentiti in Camera di Consiglio in merito al suesteso ricorso ed all'uopo si fissa il giorno 22 febbraio 1910 ore 14 con che la

copia del ricorso stesso e del presente decreto sia notificato al Boni almeno dieci giorni prima.

Milano 27 gennaio 1910. Il Presidente (f.to) Raimondi. (f.to) Azzolina, Vice Cancelliere.

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ARCHIVIO DI STATO IN MILANO

Prot. Gen. N. 1366

La presente copia è conforme al suo originale che si conserva in questo R. Archivio di Stato alla Serie Trib. Civ. e Pen. di Milano.

Volontaria — fasc. 164 dell'anno 1910.

Milano 26 novembre 1926.

(Sigillo)

Il Sopraintendente,
G. Vittani.

Kingdom of Italy,
City of Milan
Consulate of the United States of America. } ss.

I C. CARRIGAN

Consul Gen. of the United States of America at Milan, Italy, do hereby certify that the signature and seal of Giovanni Vittani of the Archivio di Stato in Milan to the foregoing document are true and genuine, and as such, entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate this 29th day of November 1926.

CONSUL
of The United States of America
C. Carrigan.

(Seal)
(Stamp)
Fee No. 2781
Tariff No. 33

Exhibit G-C-7.

The translation is printed in main state of case, page 407.

The original text is printed here.

In nome di S. M. Vittorio Emanuele III
per grazia di Dio e per volontà della Nazione
Re d'Italia.

Il R. Tribunale Civile e Penale di Milano, Sez. I, riunito in Camera di Consiglio nelle persone dei Sigg.:
Muggia avv. Napoleone ff. da Presidente
Beonio avv. Gabriele, Giudice
Di Ciò avv. Giuseppe, Giudice aggiunto
ha pronunziato la seguente:

SENTENZA

sul ricorso prodotto dalla Sig.ra Giacchetti Vittoria Matilde Ada di Milano, via Senato 28, moglie di Botti Gino residente a Firenze dal quale vive di fatto separata.

Sentito il Giudice relatore

Ritenuto che la ricorrente espone: che nel settembre 1897, abbandonato il marito, passò a convivere con l'artista di canto comm. Enrico Caruso dal quale ebbe due figli Rodolfo ed Errico riconosciuti dal padre che li tiene presso di sè; che troncando alcuni mesi or sono la lunga relazione il comm. Caruso assegnò ad essa ricorrente l'annua rendita di L.6000 in due distinti certificati del Debito Pubblico Italiano rispettivamente intestati per la proprietà ai sunnominati due figli; che essa trovasi nella necessità per sopperire ai bisogni della vita di riprendere la carriera tetrale lirica troncata per seguire l'amore di Caruso; che a tale effetto dovendo sostenere ingenti spese convenne con la Compagnia Assicuratrice l'Urbaine di Milano che questa le sovvenisse il capitale di L.25.000 dietro cessione del suo usufrutto sulle due cartelle di rendita suaccennate; che la posizione ostile in cui trovasi col marito la co-

Exhibits of Gloria Caruso.
Exhibit G-C-7.

stringeva a rivolgersi a questo Tribunale per essere autorizzata a compiere la progettata cessione;

Ritenuto che copia di questo ricorso venne notificata in Firenze al Sig. Gino Botti, marito della ricorrente, mercè atto 10 corr. mese dell'Uff. Giud. Giannini, col quale veniva anche citato a comparire avanti questa Camera di Consiglio per le ore 14 del successivo giorno 22;

Ritenuto che, malgrado tal citazione, il Botti non comparve, nè giustificò alcun legittimo impedimento, mentre la ricorrente di lui moglie presentavasi per dichiarare, a miglior chiarimento delle cose esposte in ricorso, che il capitale di L. 25.000 le sarebbe dall'Urbaine corrisposto dietro cessione di sole L.4000 annue della sua rendita per la durata di anni dieci.

Ritenuto che attendibili sono le ragioni addotte dalla ricorrente a giustificare la concordata parziale cessione della sua rendita vitalizia ed eque si presentano le condizioni alle quali la cessione medesima dovrà seguire;

Sulle conformi conclusioni del P. M. e visti gli art. 134, 136 Cod. Civ. 799 e seg.ti Cod. Proc. Civ.;

AUTORIZZA la Sig.ra Giacchetti Vittoria Matilde Ada maritata Botti a cedere alla Società assicuratrice l'Urbaine di Milano per la durata di anni dieci e sino al limite di L.4000 (quattromila) l'annua rendita vitalizia portata a suo favore dai due certificati del debito pubblico italiano di cui al ricorso, e ciò dietro corresponsione da parte della detta Società della capital somma di L.25.000 (venticinquemila). Tale somma potrà essere dalla Sig.ra Giacchetti-Botti liberamente esatta ed erogata ai fini specificati nel ricorso medesimo.

Milano, dal R. Tribunale, questo giorno venticinque febbraio 1910.

(f.ti) N. Muggia - G. Beonio - Di Ciò - Moroni, Vice-Cancelliere.

A margine della prima facciata: Visto - in esen-

zione di tasse. Milano 26 febbr. 1901. — Il Ricevitore (f.to) firma illegibile.

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ARCHIVIO DI STATO IN MILANO

Prot. Gen. N. 1366

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Milano 26 novembre 1926.

(Sigillo)

Il Sopraintendente,
G. Vittani.

Kingdom of Italy,
City of Milan
Consulate of the United States of America. } ss.

I C. CARRIGAN

Consul Gen. of the United States of America at Milan, Italy, do hereby certify that the signature and seal of G. Vittani of the Archivio di Stato in Milan, Italy, to the foregoing document are true and genuine, and as such, entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate this 29th day of November 1926.

(Seal)

CONSUL
of The United States of America
C. Carrigan

(Stamp)
Fee No. 2782
Tariff No. 33

Exhibits G-C-8 and G-C-9.

There are no such exhibits.

Exhibit G-C-10.

The translation is printed in main state of case, page 410.

The original text is printed here.

COMUNE DI MILANO

N. 50302 *Ufficio Certificati* Milano 3 set. 1926

IL COMMISSARIO PREFETTIZIO

in base alle risultanze d'anagrafe

CERTIFICA

che Caruso Enrico
figlio di fu Marcellino
e di Baldini Anna
d'anni 53 nato a Napoli
risulta qui notificato il 12-12-1897 e regolarmente inscritto nel registro di popolazione stabile, il 12-10-1901 indi depennato per Sesto S. Fiorentino il 22-9-1904.
(Sigillo)

p. Il Commisario Prefettizio
d'ordine
Il V. Segretario Capo Riparto
(f.to) firma illegibile

Exhibit G-C-11.

The translation is printed in main state of case, page 411.

The original text is printed here.

COMUNE DI SESTO FIORENTINO

Copia di atto esistente nell'Archivio Comunale

Sesto Fiorentino, 13 Settembre 1904.

ILLmo Sig. Sindaco di Milano,

Partecipo alla S. V. ILLma che la famiglia indicata a tergo della presente è stata iscritta su questo Registro di Popolazione.

Attendo un cenno di riscontro

p. IL Sindaco
Firmato G. VECCHIONI, Ass:

Situazione di Famiglia

1° Caruso Comm: Enrico di Marcellino e di fu Anna Baldini—Nato a Napoli il 25 Febbraio 1873—Capo di famiglia—Celibe—Artista di Canto—Nazionalità Italiana.

2° Caruso Rodolfo di Enrico e di ignota—nato a Milano il 2-7-1898—Figlio—Celibe—Nazionalità Italiana.

3° Caruso Enrico di Enrico e di ignota—nato a Sesto Fiorentino il 7 Settembre 1904—Figlio—Celibe—Nazionalità Italiana.

Da Milano alle Panche—V. Sodo 11.
Sesto Fiorentino, 13 Settembre 1904.
IL Dichiarante
Firmato ENRICO CARUSO

Per copia conforme

Sesto Fiorentino, 12 Novembre 1926
IL Segretario del Comune.
Name Illegible.

Exhibits of Gloria Caruso.
Exhibit G-C-11.

Visto: IL Commissario Prefettizio
G. Guidotti.

(Seal)

R. Prefettura di Firenze

Visto per la legalizzazione della firma del Sig. Comm. G. Guidotti, Commissario Prefettizio.
15 Nov. 1926

IL Prefetto
Name Illegible.

(stamp)
(seal)

Exhibit G-C-12.

The translation is printed in main state of case, page 413.

The original text is printed here.

Comune di Sesto Fiorentino

Copia di atto esistente nell'Archivio Comunale

Comune di Milano

Certificato di cambiamento di residenza N° 624.

In seguito a richiesta in data 13 Settembre c. N° 1278 il sottoscritto prende atto che il Sig. Caruso Enrico ha dichiarato di voler trasferire la sua residenza in codesto Comune, colla sua famiglia, composta delle persone indicate nell'unito prospetto, e rilascia di conformità il presente certificato da servire alla conseguente inscrizione nel registro di popolazione.

Milano, il 22-9-1904.

D'Ordine del Sindaco
p. IL Capo dell'Ufficio Anagrafe
Firma Illeggibile.

All'On. Sig. Sindaco di
Sesto Fiorentino.

Segue

Exhibits of Gloria Caruso.
Exhibit G-C-12.

Situazione di Famiglia

1° Caruso Enrico di Marcellino e di Baldini Anna Artista di Canto—Nato a Napoli il 27-2-1873—Celibe —Capo F.

2° Caruso Rodolfo di Enrico e di ignota—nato a Milano il 2-7-1898—Celibe—Figlio naturale.

Per copia conforme

Sesto Fiorentino, 12 Novembre 1926

IL Segretario del Comune.

Name Illegible.

Visto: IL Commissario Prefettizio

G. Guidotti.

(SEAL)

R. Prefettura di Firenze

Visto per la legalizzazione della firma del Sig. Comm. G. Guidotti, Commissario Prefettizio.

15 Nov. 1926

IL Prefetto

Name Illegible.

(STAMP)

(SEAL)

Exhibit G-C-13.

The translation is printed in main state of case, page 415.

The original text is printed here.

Comune di Sesto Fiorentino

IL Commissario Prefettizio

in seguito ad opportuni riscontri eseguiti nell'Archivio Comunale

Certifica

che Caruso Comm: Enrico del fu Marcellino resulta essere stato iscritto nella lista elettorale politica di questo

Exhibits of Gloria Caruso.
Exhibit G-C-13.

Comune nella revisione dell'anno 1913 e nella lista amministrativa nella revisione dell'anno 1914, fino alla data della morte.

Sesto Fiorentino, 12 Novembre 1926

IL Commissario Prefettizio
G. Guidotti

(SEAL)

R. PREFETTURA DI FIRENZE

Visto per la legalizzazione della firma del Sig. Comm. G. Guidotti, Commissario Prefettizio.
15 Nov. 1926

IL PREFETTO
Name Illegible.

(STAMP)
(SEAL)

Exhibit G-C-14.

The translation is printed in main state of case, page 416.

The original text is printed here.

COMUNE DI SESTO FIORENTINO

IL Commissario Prefettizio
in seguito a riscontri eseguiti nell'Archivio Comunale

Certifica

che Caruso Comm: Enrico fu Marcellino resulta essere stato iscritto nei ruoli della tassa di famiglia di questo Comune per gli anni dal 1917 a tutto il 1921.

Sesto Fiorentino 12 Novembre 1926

IL Commissario Prefettizio
G. Guidotti.

(SEAL)

Exhibits of Gloria Caruso.
Exhibit G-C-14.

R. Prefettura di Firenze

Visto per la legalizzazione della firma del Sig. Comm. G. Guidotti, Commissario Prefettizio.
15 Nov. 1926

IL Prefetto
Name Illegible.

(STAMP)
(SEAL)

Exhibit G-C-15.

The translation is printed in main state of case, page 417.

The original text is printed here.

Comune di Sesto Fiorentino

Certificato

comprovante l'esito avuto nella leva sui nati nel 1904 da Caruso Enrico.

IL sottoscritto Commissario Prefettizio del suddetto Comunale dichiara che dalle liste di leva esistenti negli archivi comunali resulta:

Che Caruso Enrico figlio del fu Enrico e di ignota nato a Sesto Fiorentino il 7 Settembre 1904 ha fatto parte della leva sui nati nell'anno 1904.

Sesto Fiorentino, 12 Novembre 1926

IL Commissario Prefettizio
(SEAL) G. Guidotti.

R. Prefettura di Firenze

Visto per la legalizzazione della firma del Sig. Comm. G. Guidotti, Commissario Prefettizio.
15 Nov. 1926

IL Prefetto
Name Illegible.

(STAMP)
(SEAL)

Exhibit G-C-16.

The translation is printed in main state of case, page 418.

The original text is printed here.

COMUNE DI SESTO FIORENTINO

No. 2133 R. C.

CERTIFICATO DI RESIDENZA

Il Commissario Prefettizio del Comune di Sesto Fiorentino certifica che Caruso Enrico del fu Marcellino e della fu Anna Baldini, nato a Napoli il 27 febbraio 1873, artista di canto, era domiciliato in questo Comune, ove aveva abituale residenza, e cioè dal 13 Settembre 1904, in cui immigrò da Milano, sino al giorno 2 Agosto 1921, epoca del suo decesso, avvenuto a Napoli.

Sesto Fiorentino, 14 ott. 1926.

(Sigillo)

(Bollo)

Il Commissario,
G. Guidotti.

R. PREFETTURA DI FIRENZE

Visto per la legalizzazione della firma del Sig. Generale Guido Guidotti, Commissario Prefettizio, 14 ott. 1926.

p. Il Prefetto,
G. Broisè.

(Guido Broisè, Vice Segretario della Prefettura di Firenze)

(Sigillo)

(Bollo)

Kingdom of Italy
Province and City of Florence
Consulate of the United States

I hereby certify that Signor Guido Broisè before or by whom the annexed Residence Certificate was legalized was at the date thereof a Vice Secretary at the Pre-

fecture in and for the Province of Florence, Italy dwelling at Florence, Italy and that full faith and credit are due to all his official acts. And further, that the signature and seal of such Vice Secretary at the Prefecture to the annexed document are genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate at Florence, Italy, this 15th day of October 1926.

(Seal)
(Stamp)

Alan T. Hurd
Vice Consul of the United States of America

Fee No. 7302

Exhibits G-C-17-18-19.

There are no such Exhibits.

Exhibit G-C-20.

The translation is printed in main state of case, page 419.

The original text is printed here.

ESTRATTO dal suo originale esistente nella Cancelleria del Tribunale di Napoli. Ill:mi signori Presidente e signori Giudici del Tribunale di Napoli. Il sottoscritto avvocato Gabriele Consolazio, Vicario Generale della Signora Dorothy Benjamin, vedova Caruso, nella qualita' di madre e legittima amministratrice dei beni della figliuola minore Gloria Caruso fu Enrico espone alle SS VV Ill:me quanto segue:

Per dare degna sepoltura ai resti mortali del grande

Exhibits of Gloria Caruso.
Exhibit G-C-20.

tenore Enrico Caruso gli eredi pensarono di fare costruire per lui un'apposita cappella al Cimitero del Pianto. Ivi acquistarono un adatto suolo, allo sfondo di un viale, da un tale Vincenzo Berba, il quale aveva gia' iniziato le fondazioni di una Cappella per proprio conto, indi la esecuzione dell'opera venne affidata alla Societa' Chiurazzi, primaria Ditta di Napoli per l'esecuzione di opere consimili. In base ad analogo progetto dell'Illustre Ing. Cimmino ne fu convenuta l'esecuzione con la ditta Chiurazzi merce' contratto-forfait per una cifra complessiva di lire 260.000 compreso un sarcofago da ricavarsi da un solo blocco di marmo, per raccogliere la salma del Caruso. Senonche' durante l'esecuzione dell'opera la ditta assuntrice denunzio' il contratto per la insufficienza del prezzo stabilito sia in rapporto ai lavori convenuti e sia per altri lavori che l'architetto credette necesuario aggiungere, e sospese la costruzione della cappella. Il sottoscritto per evitare che la salma del Caruso continuasse a restare senza degna sepoltura, interpose i suoi buoni uffici per la continuazione dell'opera, che invero fu poi definitivamente compiuta. La ditta Chiurazzi da oltre un anno ha consegnato la Cappella ed ha atteso una liquidazione honaria sia in ordine al plus-valore, che alle ulteriori opere eseguite nella Cappella medesima, il cui importo complessivo la ditta faceva ascendere a circa lire 500.000.

Dope lunghe e laboriose trattative il sottoscritto e' riuscito a transigere le suddette richieste della ditta Chiurazzi per lire 70.000, oltre lire 3000 all'architetto e L. 100 al capo d'arte. In conseguenza il maggiore credito adesso vantato dalla detta Societa' costruttrice ammonta appunto a lire 74.000 oltre il prezzo convenuto nel precedente contratto di lire 260.000, le quali sono state gia' pagate all'impresa. All'uopo l'esponente prima di procedere all'accennata transazione fece esaminare l'opera dello ing. Gennaro Russo, dal quale ottenue il parere che in atti si legge, inducente appunto ad una transazione per cifra ben maggiore di quella concordata. Ad evitare quindi che una lite possa sorgere in merito e

ad evitare, che si discuta proprio dell'ultima dimora del comm. Enrico Caruso l'esponente.

Chiede

che le SS VV Ill:me vogliano omologare nell'interesse della minore la transazione su esposta e disporre che la meta' della somma da pagarsi di lire 74.000 venga corrisposta dalla minore Gloria Caruso a norma del contratto di divisione prelevandosi dai primi incassi che per conto di lei si dovranno fare. Napoli 15 giugno 1926. F:to Avv. Gabriele Consolazio. Visto: Si communichi al P. M. —Si delega il giudice signor Caliendo. Napoli 16 giugno 1926. Il Presidente, firmato: Azzariti.

11 P. M. Visto. Non si oppone. Napoli 18 giugno 1926. Firmato: Albanese. Il Tribunale: Letto il ricorso e gli atti. Ritenuto che per la seguente necessita' di definire la transazione con la ditta costruttrice possa ben disporsi che meta' della somma a versarsi sia prelevata dai primi incassi attesi dalla ricorrente da cespiti eredifarii esistenti in America, che pero' tale autorizzazione va subordinata all'obbligo della vedova di risostituire la somma con le rendite delle quali fornizce. Per tali motivi: Deliberando in Camera di Consiglio sulla relazione del giudice delegato omologa nell'interesse della minore la transazione di cui nel ricorso e dispone che meta' della somma da pagarsi di Lire Settanta quattro mila venga corrisposte dalla minore Gloria Caruso a norma del contratto di divisione dei primi incorso che per conto di lei si dovranno fare. Benvero fa obbligo alla signora Dorothy Benjamin vedova Caruso di ricostruire la somma prelevata con le rendite che verra' a riscuotere.

Cosi deciso in Camera di Consiglio della 1 Sezione del Tribunale di Napoli oggi 10 luglio 1926 dai signori Azzariti Francesco Saverio Presidente. Cav. Norelli Costantino ecav. Leopoldo Caliendo, Giudici e sottoscritto oggi li 12 luglio 1926 assieme a me Cancelliere. Firmati: Francesco Saverio Azzariti—Il Primo Cancelliere: Fedele. Bolletta n. 480 del di 16 luglio 1926. Esatte lire

24.10 per tassa speciale di bollo. Il Procuratore Superiore F: Villamena. La presente copia conforme al suo originale si rilascia a richiesta dell'avv. signor Becci.

Napoli 19 ottobre 1926. Il Cancelliere Firmato F. Gallucci. Visto per la legalizzazione della firmaddel Cancelliere Gallucci—Napoli 22 ottobre 1926—Firmato. Il Presidente del Tribunale Civile e Penale.

Kingdom of Italy
Province and City of Naples
Consulate General of the United States of America S S
October 23rd, 1926

I, Howard K. Travers, Consul of the United States of America at Naples—Italy—do hereby certify that the signature and seal of the President of the Tribunal of Naples, Italy, on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In Witness whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written. Howard K. Travers, Consul of the United States of America, Naples, Italy. Fee Stamp, $2.00.

Exhibit G-C-21.

The translation is printed in main state of case, page 422.

The original text is printed here.

ESTRATTO dal suo originale esistente nella Cancelleria del Tribunale Civile e Penale di Napoli.

Ill. mi Signori Presidente e Giudici del Tribunale di Napoli. La signora Dorothy Benjamin di Park, vedova de comm. Enrico Caruso, quale madre e legittima amministratrice della minorenne Gloria Caruso fu Enrico, a mezzo del sottoscritto suo procuratore e vicario generale avvocato Gabriele Consolazio, giusta atto del 12 agosto 1925 per notar Vittorio Coen Giordana di Venezia ivi registrato lo stesso giorno n. 466 con lire 13.10 presso il

Exhibits of Gloria Caruso.
Exhibit G-C-21.

quale procuratore elettivamente domicilia in Napoli alla via Giuseppe Fiorelli 12, espone alle SS VV Ill: me quanto segue:

Con deliberazione del 16 giugno 1922 cotesto On.le Tribunale nell'omologare l'istrumento di divisione 7 giugno 1922, per Notar Sanseverino, interceduto tra gli eredi del comm. Enrico Caruso, autorizzava la vedova del comm. Caruso, Signora Dorothy Benjamin, ad eseguire presso la Sede del Banco di Napoli in Firenze un deposito volontario, al nome della signorina Gloria Caruso, minorenne, sotto la patria potesta' della madre signora Dorothy Benjamin, i seguenti titoli:

Cartelle al portatore del Prestito Nazionale 5% del capitale nominale di L.405.000—Titoli al portatore di consolidato 5% del capitale nominale di L.3.834.200—Obbligazioni Ferrovie Livornesi del capitale nominale di L.56.000—Rendita russa L.50.000—Obbligazioni danesi L.64.800—Con successiva deliberazione del 13-16 giugno 1924 cotesto On.le Tribunale autorizzava il tramutamento in titoli intestati alla minorenne Gloria Caruso dei titoli al latore, costituenti parte del cennato deposito volontario presso la Sede del Banco di Napoli in Firenze, a precisamente delle cartelle del Prestito Nazionale e del consolidato. Con la stessa deliberazione si autorizzava il trasferimento del deposito dalla Sede di Firenze al Tesoro del Banco di Napoli in Napoli.

In esecuzione di tale deliberazione venne operato il tramutamento in titoli intestati delle cartelle al portatore, ottenendosi un certificato nominativo di consolidato Italiano 5% n.364317 dell'annua rendita di Lire 191.710, corrispondente al capitale nominale di L.3.834.000 ed una cartella nominativa di prestito nazionale n.35974 del capitale nominale di Lire 405.000. Il deposito venne poi trasferito dalla Sede di Firenze al Tesoro Centrale del Banco di Napoli in data 30 dicembre 1924.

Intanto per la tassa sul patrimonio dovuto dalla eredita' del fu Comm. Enrico Caruso l'ufficio delle Imposte Dirette di Firenze accertava il detto patrimonio

in oltre 21 milioni imponendovi la tassa di circa 6.000.000.

Dopo, lunghissime trattative e laboriose pratiche, sorpassando gravi difficolta', gli eredi del detto comm. Caruso riuscivano a concordare addi 28 giugno 1926, al competente Ufficio la riduzione dello accertamento, stabilendosi l'annua imposta patrimoniale nella somma di Lire 301.445 per la durata di un decennio a decorrere dal 1 gennajo 1920.

Detta imposta va divisa a seconda delle spettanze ereditarie e cioe' una meta' a carico della minorenne Gloria Caruso, e l'altra meta' a carico della signora Dorothy Benjamin vedova Caruso, dei due figli maggiorenni del defunto comm. Caruso, Rodolfo ed Enrico e del fratello germano Giovanni Caruso, il tutto in conformita' dell'istrumento di divisione del 7 giugno 1922 per notar Vincenso Sanseverino, omologato con deliberazione di questo Tribunale del 16 giugno detto 1ma sezione.

Èpoiche' la imposta per i dieci anni e' di L.3.014.450, la meta' a carico della minorenne Gloria e' di Lire 1.507.225 ed e' utile ed indispensabile che si paghi in unica soluzione sia per risparmiare i forti aggi esattoriali e godere degli altri benefici concessi dalla legge, sia perche' tale imposta e' avocazione di parte del capitale patrimoniale.

Ed in un'unica soluzione sono pronti a pagare gli altri coeredi del detto comm. Caruso per la loro spettanza.

Ora per provvedere al pagamento di una somma tanto importante da parte della minorenne Gloria, e' necessario alienare parte dei capitali, che, come innanzi e' detto trovansi depositati col vincolo pupillare presso il Tesoro Centrale del Banco di Napoli e precisamente tutti i titoli del Prestito Nazionale e tanto consolidato per raggiungere la somma necessaria di lire 1.507.225.

Or poiche' il prezzo corrente del Prestito Nazionale e' di 83 e quello depositato presso il Banco di Napoli corrisponde ad un capitale nominale di Lire 405.000, il prezzo effettivo che si ricavera' dalla vendita sara' di

lire 336.150, e quindi per raggiungere la imposta dovuta in lire 1.507.225, bisognera' vendere tanto consolidato 5% per ottenere le mancanti lire 171.075, e poiche' attualmente il corso medio del consolidato 5% e' di Lire 90, cosi occorrera' vendere tanta parte del consolidato 5% per un ammontare capitale nominale di L.1.241.200.

La necessita' che il Tribunale accolga la presente istanza e' evidente giacche' diversamente l'Erario inizierebbe gli atti coattivi a danno della Minore.

Per le esposte ragioni si prega la gustizia del Tribunale volere emettere i seguenti provvedimenti:

1. Autorizzare il Tesoro Centrale del Banco di Napoli e per esso il Direttore del detto Tesoro Centrale in cafica alla data in cui la domanda sara' presentata, a presentare domanda alla Direzione Generale del Debito Pubblico sia per il tramutamento in titoli al latore del certificato nominativo di Prestito Nazionale 5% intestato alla minorenne Gloria Caruso n.35974, sia per il distacco dal certificato nominativo n.364317 in testa a Gloria Caruso del consolidato italiano 5% del valore nominale di lire 3.834.200, di un capitale nominale di lire 1.241.200 e tramutamento di titoli e latore.

2. Autorizzare la Direzione Generale del Debito Pubblico ad eseguire sia il tramutamento in titoli al latore del certificato nominativo di Prestito Nazionale N.35974, sia il distacco dal certificato nominativo di Consolidato 5% n.364317 di un ammontare di lre 1.241.200 e relativo tramutamento in titoli a latore nonche' a consegnare al Tesoro Centrale del Banco di Napoli, e per esso al Direttore di detto Tesoro Centrale in carica alla data in cui dovra' affettuarsi la detta consegna, tutti i titoli al latore, sia di Prestito Nazionale 5% per il capitale nominale di lire 405.000, sia di Consolidato 5% pel capitale nominale di lire L.241.200 e consegnare parimenti al Tesoro Centrale del Banco di Napoli e per esso al Direttore in carica, la residua parte del Consolidato 5% ammontate a L.2.593.300 di capitale nominale, del quale dovra' formarsi un certificato nominativo in testa

alla minorenne Gloria Caruso fu Enrico, sotto la patria potesta' della madre signora Dorothy Benjamin vedova Caruso.

3. Autorizzare il detto Tesoro Centrale del Banco di Napoli a vendere i suddetti titoli al latore di Prestito Nazionale e di Consolidato al corso di Borsa.

4. Autorizzare il Tesoro Centrale del Banco di Napoli col ricavato della vendita sia dei titoli Prestito Nazionale 5%, sia dei titoli consolidato 5% che saranno stati distaccati dal certificato come sopra a tramutarli al latore, a pagare la imposta sul patrimonio dovuta dalla minorenne Gloria Caruso in lire 1.507.225 versando allo Tesoreria dello Stato in Firenze la quota di detta imposta sul patrimonio, che finora non e' stata soddisfatta e versando liberamente alla madre signora Dorothy Benjamin tutta la residuale parte delle lire 1.508.225, in rimborso di quanto la stessa ha anticipato ed ancora continuera' ad anticipare nello interesse della minore per detta tassa, fino al completo pagemento delle dette somme, che fara' il Banco di Napoli.

5. Autorizzare il Banco di Napoli ad investire ogni eventuale supero sul ricavato della vendita dei titoli, di cui innanzi e' parola, dedotte le lire 1.507.225 innanzi menzionate in un certificato di consolidato 5% intestato allo minorenne Gloria Caruso fu Enrico, sotto la patria potesta della madre signora Dorothy Benjamin a tenerlo in deposito con gli altri titoli. Napoli, 25 agosto 1926. Avv. Gabriele Consolazio.—

11 P. M.—non si oppone—28/8/26—Firmato: Falciatore.

Il T r i b u n a l e

Letto il ricorso e gli atti.

Ritenuto che il riscatto della imposta sul patrimonio e' utile per la minore, in quanto libera i beni di lei da una garanzia reale anche per la quota di imposta dovuta dai coeredi.

Che le rendite non essendo sufficienti a pagare in unica soluzione l'intero debito, si deve autorizzare il pagamento della residua somma dovuta con il prezzo di parte dei

titoli del debito pubblico intestati alla minore e depositati presso il Banco di Napoli. Ma e' pur necessario, data l'entita' delle rendite stesse, che questo modo di pagamento della tassa non importi definitiva diminuzione del patrimonio della minore, e percio' ritiene il Collegio di disporre che la rendita degli altri titoli sia semestralmente ritenuta dal Banco di Napoli ed impiegata nell'acquisto di titoli del consolidato 5% fino alla ricostituzione del capitale nominale che sara' impiegato per il pagamento della tassa.

PER QUESTI MOTIVI

Udito il relatore—In conformita' del P. M.

1. Autorizza il Tesoro del Banco di Napoli e per esso il Direttore del detto Tesoro Centrale in carica alla data in cui la domanda sara' presentata, a chiedere alla Direzione Generale del Debito Pubblico il tramutamento in titoli a latore del certificato niminale del prestito nazionale 5% intestato alla minorenne Gloria Caruso n.35974, sia il distacco dal certificato nominativo consolidato italiano 5% n.364317 intestato a Gloria Caruso di tanta parte del capitale nominale per quanto e' necessario insieme al ricavato della vendita del certificato del prestito nazionale per il pagamento della residua somma dovutadalla minore per il riscatto della quota di tassa sul patrimonio.

2. Ordina al predetto Tesoro del Banco di Napoli di accertare preliminarmente quanto sia stato pagato per imposta sul patrimonio della eredita' Caruso a quanto sia ancora dovuto per il riscatto della imposta stessa e di richiedere il distacco dal titolo del consolidato 5% di tanto capitale nominale per quanto e' necessario per il pagamento della quota dovuta alla minore.

3. Autorizza la Direzione Generale del Debito Pubblico ad eseguire senza sua responsabilita', sia il tramutamento in titoli a latore del certificato nominativo del Prestito Nazionale n.35974, sia il distacco dal certificato nominativo consolidato 5% n.364317 dell'ammonatre nominale

necessario a pagare insieme al ricavato del prestito nazionale la quota di imposta dovuta dalla minore, e di consegnare al Tesoro del Banco di Napoli e per esso al Direttore in carica la residuea parte del consolidato 5% dopo averne formato un titolo in testa alla minore Gloria Caruso fu Enrico sotto la patria potesta' della madre Dorothy Benjamin vedova Caruso.

4. Autorizza il detto Tesoro Centrale del Banco di Napoli a vendere i titoli a latore del prestito nazionale e del consolidato 5% secondo il prezzo di borsa.

5. Autorizza lo stesso Tesoro Centrale del Banco di Napoli a pagare la quota residua dovuta dalla minore per il riscatto dell'imposta sul patrimonio dell'eradita' Caruso con il prezzo ricavato dalla vendita dei titoli del prestito nazionale 5% e del consolidato 5% di cui e' stato autorizzato il tramutamento.

6. Subordina le predette autorizzazioni al consenso da prestare dalla signora Dorothy Benjamin vedova Caruso, alla ricostituzione del capitale prelevato nel modo di cui al numero seguente.

7. Ordina al predetto Tesoro del Banco di Napoli di ritenere dalle rendite del certificato del consolidato 5% intestato alla minore, che sara' formato a seguito dell' ordinate distacco di parte del capitale nominale a cominciare da quelle che andranno a scadere dal primo luglio 1927 ed investirle nell'acquisto di titoli del consolidato 5% fino alla ricostituzione del capitale nominale prelevato per il pagamento dell'imposta sul patrimonio.

Solo dopo ricostituito l'attuale capitale nominale il detto Tesoro paghera' a chi di diritto le rendite su tutti i titoli.

Cosi deciso addi 8 settembre 1926 nella Camera di Consiglio della Sezione Civile feriale del Tribunale di Napoli dai signori Azzariti comm. Francesco Saverio; Ciotola cav. Salvatore e Falcone cav. Domenico, giudici e sottoscritti insieme al Cancelliere—oggi 17 settembre 1926 in Napoli.

Exhibits of Gloria Caruso.
Exhibit G-C-21.

Il Presidente firmato Francesco Saverio Azzariti. Il Cancelliere firmato Ludovico Scicolone.

Registrato in Napoli. Uff. Atti Giudiziarii. Bolletta n.2242 del 29 settembre 1926. Esatte lire 24.10—per tassa speciale di bollo. Il procuratore Superiore firmato.

La presente copia conforme al suo originale, si rilascia a richiesta dal signor avv. Salvatore Becci. Napoli 15 ottobre 1926. Il Cancelliere firmato F. Galluccio.

Visto per la legalizzazione della firma del Cancelliere F. Galluccio Napoli 22 ottobre 1926. Il presidente del Tribunale. Firmato.

Kingdom of Italy—Province and City of Naples—Consulate General of the United States of America S S

I Howard K. Travers Consul of the United States of America at Naples, Italy do hereby certify that the signature and seal of the Presidente of the Tribunal of Naples, Italy on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In witness whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written. Howard K. Travers, Consul of the United States of America, Naples, Italy. October 5th, 1926. Fee Stamp: $2.00.

Exhibit G-C-22.

This is printed in main state of case, page 431.

Exhibit G-C-23.

This is printed in main state of case, page 436.

Exhibit G-C-24.

Part of this is printed in main state of case, page 439.

Page 9 of this Exhibit is printed here.

Exhibits of Gloria Caruso.
Exhibit G-C-24.

Estate of Enrico Caruso.

SCHEDULE D

OTHER MISCELLANEOUS PROPERTY

Did the decedent, at the time of his death, own any interest in a co-partnership or unincorporated business? No.

Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? Yes.

Located in Italy:

Furniture, chattels, jewelry, goldware, at Villa Bellosguardo in the Municipality of Lesira at Signa, Lire 307,054, @4.25	$13,049.79
Chattels, merchandise, agricultural implements and animals for the cultivation of the various lands making up the Bellosguardo estate in the Municipalities of Lastra at Signa and Carmigano, Lire 193,042, @4.25	8,204.28
Furniture at Villa Alle Panche in Seato Fiorentino, Lire 192,530, @4.25	8,182.52
Chattels, manure and seeds, agricultural implements and animals for the cultivation of the various lands making up the Belvedere Estate in Seato, Fiorentino, Lire 101,676, @4.25	4,321.23
Chattels, jewelry, wearing apparel, gold and silver articles, existing and inventoried at Naples, Lire 89,818, @4.25	3,817.26
(See Italian Inventory hereto annexed).	
Total	$37,575.08

Exhibit G-C-25.

Kingdom of Italy
Province and City of Naples
Consulate General of the
United States of America
} ss.

December 23rd. 1925.

I, William W. Schott, Vice-Consul of the United States of America, at Naples, Italy, do hereby certify that the signature and seal of the Alto Commissariato of the Province of Naples, Italy on the paper hereunto annexed are true and genuine and as such entitled to full faith and credit.

In witness whereof: I have hereunto set my hand and affixed the seal of the Consulate General at Naples, Italy, the day and year next above written.

William W. Schott
Vice-Consul of the United States of America,
Naples, Italy.

(Seal)
(Stamp)

MUNICIPIO DI NAPOLI
3.a Divisione 3.a Sezione

ANAGRAFE

———————

Il R. Commissario

Riscontrato il registro di popolazione

CERTIFICA

Che per effetto d'Immigrazione da America del Nord, (1) risultava residente in questo Comune: Caruso Enrico fu Marcellino e fu Baldini Anna, nato in Napoli, il 27 febbraio, 1873, con abitazione, Via

Exhibits of Gloria Caruso.
Exhibit G-C-25.

Partenope, Hotel du Vesuve, coniugato con Benjamin Dorothy, deceduto in Napoli il 2 agosto 1921. (1) il 18. 6. 921.

Valga per uso legale.

Napoli, 21 dicembre 1925.
p. Il R. Commissario
F. Chiapparo.

(Sigillo)
(Bollo)

p. il Capo Divisione
F. Bucarelli.

ALTO COMMISSARIATO
Della
R. PREFETTURA DI NAPOLI

Visto per delegazione del Ministero Affari Esteri per la firma del ff. R. Commissario Sig. Chiapparo.
Napoli, 22 dic. 1925.

L'Alto Commissiario
(f.to) firma illegibile.

Exhibit G-C-26.

THE PEOPLE OF THE STATE OF NEW YORK

By the Grace of God Free and Independent

To all to whom these presents shall come or may concern, Greeting:

Know Ye, That we having examined the records and files in the office of the Surrogate of the County of New York, do find there remaining, a certain record of AFFIDAVIT in the matter of

the Transfer Tax upon the estate of ENRICO CARUSO, deceased.
in the words and figures following, to wit:

(SEAL)

SURROGATE'S COURT
County of New York.

In the Matter of the Appraisal under the Transfer Tax Law of the Estate of ENRICO CARUSO (a non-resident), Deceased.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

Dorothy P. B. Caruso, Ancillary Administratrix of the estate of the above-named decedent being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the assets of the said estate under the Law in Relation to Taxable Transfers of Property, deposes and says that as such administrator *executor* deponent is personally familiar with affairs of the said estate, the property constituting the assets thereof, their fair market value, and the debts, expenses and charges properly allowable as deductions therefrom, and makes the following return:
General Information

1. Date of death, August 2, 1921.

2. Did the decedent leave a will? (Answer "yes" or "no.") Yes, but same was never probated in any jurisdiction.

3. Decedent was a resident of Florence, Italy.

4. Letters of ancillary administration were issued on January 10, 1922, by the Surrogate's

Court of New York County, in the State of New York.

5. The names and post office addresses of the ancillary administratrix is:

Dorothy P. B. Caruso, 1155 Park Avenue, New York City, now Dorothy Ingram.

Residence

6. The facts showing the decedent to be a resident of such state are as follows:

Decedent was an opera singer who had his permanent residence and place of domicile and all his social affiliations in Italy, and resided at Bellosguardo, in the Municipality of Lestra at Signa, Italy. Decedent never voted in New York State, and had no permanent residence here, except temporarily staying at hotels for a few months each year while fulfilling his contract with the Metropolitan Opera Co. in New York. Decedent always paid non-resident income taxes both to New York State and Federal Governments.

PROPERTY OWNED BY THE DECEDENT TAXABLE IN NEW YORK

Schedule A—Real Estate

7. Did the decedent at the time of death own any interest in real estate located within the State of New York, individually or jointly? (Answer "yes" or "no.") No.

Schedule B—Corporate Stocks

8 (a). Did the decedent at the time of death own any stocks or rights to subscribe thereto in corporations or joint stock companies or associations incorporated or organized under the laws of the

State of New York or national banks located in the State of New York? (Answer "yes" or "no.") No.

8 (b). Did the decedent at the time of death, own any shares of stock of a foreign corporation, joint stock company or association (other than a corporation, joint stock company or association which is or is in the nature of a moneyed corporation, a railroad or transportation corporation, a public service or a manufacturing corporation) owning real property located wholly or partly within this state? (Answer "yes" or "no.") No.

8 (c). Did the decedent at the time of death own any bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized (other than a corporation, joint stock company or association which is or is in the nature of a moneyed corporation, a railroad or transportation corporation, a public service or a manufacturing corporation) where the property represented by such bonds, notes, mortgages or other evidences of interest consists of real property located wholly or partly within this state? (Answer "yes" or "no.") No.

Schedule C—Personal Effects

9. Did the decedent at the time of death own any wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses or other live stock, carriages, automobiles, boats, or any other personal chattels of whatever kind or nature, including leases on real estate, located in the State of New York? (Answer "yes" or "no.") Yes.

Exhibits of Gloria Caruso.
Exhibit G-C-26.

Schedule D—Partnership or Business Interests

10. Did the decedent at the time of death own any interest in a partnership or unincorporated business carried on wholly or partly within the State of New York? (Answer "yes" or "no.") No.

Schedule E—Gifts and Transfers of Property Taxable in New York

11. (a) Did the decedent, during the period within two years prior to death, make any transfer of any of the foregoing classes of property by way of gift or without a fair consideration in money or money's worth? (Answer "yes" or "no.") Yes.

(b) Did the decedent at any time prior to two years before death and without consideration, make any transfer or create any trust in contemplation of or intended to take effect at or after death, in which a life interest was reserved to the decedent? (Answer "yes" or "no.") No.

(c) Were any trusts created by the decedent, in existence at the time of death? (Answer "yes" or "no.") No.

(d) Did the decedent create any trust company to which there was the power of revocation? (Answer "yes" or "no.") No.

Schedule F—Powers of Appointment

12. Did the decedent have any power of appointment over property in any other estate? (Answer "yes" or "no.") No.

Schedule G—Interest in Other Estates

13. (a) Did the decedent at the time of death,

own any interest in any other estate? (Answer "yes" or "no.") No.

(b) Did any remainder or reversion fall in or vest in possession or enjoyment by reason of the decedent's death? (Answer "yes" or "no.") No.

PROPERTY OWNED BY THE DECEDENT NOT TAXABLE IN NEW YORK

All the property of the decedent not included in the foregoing schedules must be listed below.

Schedule H—Cash

14. Did the decedent at the time of death own any cash or have any money on deposit individually or jointly? (Answer "yes" or "no.") Yes.

Schedule I—Stocks of Foreign Companies and all Corporate Bonds

15. Did the decedent at the time of death own any stocks of companies not organized under the laws of the State of New York or bonds of any corporation? (Answer "yes" or "no.") Yes.

Schedule J—All Other Property

16. Did the decedent at the time of death own any property not included under any other schedule? (Answer "yes" or "no.") Yes.

DEDUCTIONS

Schedule K—Funeral and Administration Expenses and Debts

17. Itemize the funeral expenses and administration expenses and give the total of all debts, following the instructions for Schedule K.

Exhibits of Gloria Caruso.
Exhibit G-C-26.

Schedule L—Beneficiaries

18. Give in Schedule L the statement of the names, ages and addresses of all persons beneficially interested in the estate, the nature of their respective interests, etc., following the instructions for that schedule.

General Affidavit

19. Deponent states that she has made a due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules accompanying this return and that no information of any other property of the decedent has come to the deponent's knowledge, and that the deponent verily believes the decedent left no property except as herein set forth; THAT THE DEPONENT HAS CAREFULLY READ THE INSTRUCTIONS PRINTED ON THIS FORM AND THAT ALL THE ANSWERS CONTAINED THEREIN ARE IN ACCORDANCE WITH SUCH INSTRUCTIONS; that to the best of deponent's knowledge and belief, the value shown for each item of property listed herein is the actual and full value at the time of decedent's death, and that the debts, expenses and charges entered herein, as deductions from the gross estate, are correct and legally allowable, and are not contested by the estate except as stated in the schedules.

20. The deponent further states that wherever in any part of this return or in any schedule the words "none" or "no" have been written, or wherever such schedule or any query has been left blank, such word or omission is to be taken as

equivalent to an affirmative allegation by deponent that the decedent left no property of any kind to which the schedule relates.

DOROTHY P. B. CARUSO now DOROTHY INGRAM
Ancillary Administratrix

Sworn to before me this 18th day
of July, 1924.

BEATRICE GOLDMAN
Notary Public

Notary Public, New York County, County Clerk's Nos. New York 136, Kings 126, Bronx 24. Register's Nos. New York 6055, Kings 6161, Bronx 2668. Commission Expires March 30, 1926.

All which we have caused by these presents to be exemplified, and the seal of our said Surrogate's Court to be hereunto affixed.

WITNESS HONORABLE JOHN P. O'BRIEN, a Surrogate of the County of New York, at the City of New York, the eighteenth day of June, in the year of our Lord one thousand nine hundred and twenty-eight, and of our independence the one hundred and fifty-second.

MARTIN G. MCCUE
Clerk of the Surrogate's Court.

(SEAL)

I, JOHN P. O'BRIEN a Surrogate of said county and presiding Magistrate of the Surrogate's Court do hereby certify that MARTIN G. MCCUE, whose name is subscribed to the preceding exemplification, is the clerk of said Surrogate's Court of the County of New York, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of

our said Surrogate's Court, and that the attestation thereof is in due form, and according to the form of attestation used in this state.

Dated, New York, June 18, 1928.

JOHN P. O'BRIEN
Surrogate.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

I, MARTIN G. MCCUE, clerk of the Surrogate's Court of the County of New York, do hereby certify that HONORABLE JOHN P. O'BRIEN whose name is subscribed to the preceding certificate, is the presiding Magistrate of the Surrogate's Court of the County of New York, duly elected, sworn and qualified, and that the signature of said Magistrate to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of the said court, this 18th day of June, 1928.

MARTIN G. MCCUE
Clerk of the Surrogate's Court.

(SEAL)

Exhibit G-C-27.

No. 8136

UNITED STATES OF AMERICA
SEAL

DEPARTMENT OF STATE

To all whom these presents shall come, Greeting:

I Certify that the document hereunto annexed is a true copy of the application upon which a passport, No. 380606, was issued by the Depart-

ment of State, May 9, 1927, to Dorothy Caruso, as a citizen of the United States.

(SEAL)

In testimony whereof I, Frank B. Kellogg, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this seventh day of June, 1928.

FRANK B. KELLOGG,
Secretary of State.
BY E. J. AYERS,
Chief Clerk.

380606

FORM FOR NATIVE CITIZEN

UNITED STATES OF AMERICA
STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK

I, Dorothy Caruso a Native citizen of the United States, hereby apply to the Department of State, at Washington, for a passport. I solemnly swear that I was born at Hastings-on-Hudson, New York, on August 6, 1893; that I was married November 30, 1923, and that my husband, Ernest A. Ingram, was born in Coventry, England and is now residing at England (Divorced January, 1926, in Paris) not a citizen of the United States.

I have resided outside of the United States at the following places for the following periods:

France and Italy, from May 1, 1925, to December 21, 1926, and that I am domiciled in the

Exhibits of Gloria Caruso.
Exhibit G-C-27.

United States, my permanent residence being at 1155 Park Avenue, in the City of New York, State of New York.

My last passport was obtained from Washington, D. C., on February 16, 1925, and was cancelled retained. I am about to go abroad temporarily and intend to return to the United States within six months and with the purpose of residing and performing the duties of citizenship therein. I desire a passport for use in visiting the countries hereinafter named for the following purpose—France and Italy to travel.

I request that my passport include my children as follow:

Gloria Caruso born at New York City, N. Y., on December 18, 1919.

Jacqueline Caruso Ingram (known as Jacqueline Caruso) born at New York City, N. Y., September 18, 1924.

OATH OF ALLEGIANCE

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Signature
DOROTHY CARUSO
(Divorced wife of Ernest Ingram)

Sworn to before me this 5th day of May, 1927.
Signature illegible
Agent of the Department of State

Exhibits of Gloria Caruso.
Exhibit G-C-27.

DESCRIPTION OF APPLICANT

Height, 5 feet 8 inches; Age, 33 years; Hair, brown; Eyes, gray; Distinguishing marks or features, blank; Place of birth, Hastings-on-Hudson, New York; Date of birth, August 6, 1893; Occupation, writer.

I intend to leave the United States from the port of New York sailing on board the Paris on May 14, 1927.

ADDRESS

I request that my passport be mailed to the following address: Name, Dorothy Caruso; No. and Street, 15 East 69th Street; City and State, New York City, N. Y.

Photograph of Woman and two children

514255

FORM FOR NATIVE CITIZEN.

UNITED STATES OF AMERICA

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

I, Dorothy Caruso Ingram, a Native and Loyal Citizen of the United States, hereby apply to the Department of State, at Washington, for a passport. I will be accompanied by my minor children as follows:

Gloria Caruso born at New York City, on December 18, 1919; Jacqueline Ingram born at New York City, on September 18, 1924.

I solemnly swear that I was born at Hastings-on-Hudson, in the State of New York, on or about the 6th day of August, 1893, that I am domiciled

in the United States, my permanent residence being at 1155 Park Avenue, New York City, in the State of New York.

I am about to go abroad temporarily; and I intend to return to the United States within 1 year with the purpose of residing and performing the duties of citizenship therein; and I desire a passport for use in visiting the countries hereinafter named for the following purpose:

Mexico—Switzerland, travel, pleasure.

Italy—Holland, travel, pleasure.

France—Belgium, travel, pleasure.

I intend to leave the United States from the port of New York sailing on board the Duilio on February 14, 1925.

OATH OF ALLEGIANCE

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Signature
DOROTHY CARUSO INGRAM

Sworn to before me this 3rd
day of February, 1925.

BEATRICE GOLDMAN

Sworn to before me this
16th day of February, 1925

JOHN J. SCANLON
Agent of the Department of State

Exhibits of Gloria Caruso.
Exhibit G-C-27.

DESCRIPTION OF APPLICANT

Age, 32 years; Stature, 5 feet 8 inches, Eng.; Forehead, Medium; Eyes, Gray; Nose, Medium; Mouth, Medium; Chin, round; Hair, brown; Complexion, light; Face, round; Distinguishing mark —left blank.

IDENTIFICATION

Feb. 3, 1925.

I, Alfer (signature illegible), solemnly swear that I am a native citizen of the United States; that I reside at 30 West 70th Street, New York City, that I have known the above-named Dorothy Caruso Ingram personally for six years and know her to be a native citizen of the United States; and that the facts stated in her affidavit are true to the best of my knowledge and belief.

Signature illegible

Occupation—Lawyer

Address—30 West 70th St., New York City.

Sworn to before me this 3rd
day of February, 1925.

BEATRICE GOLDMAN

Applicant desires passport to be sent to the following address:

Will call.

RR

J. J. S.

Photograph of woman and two children

Exhibit C-15.

MUNICIPIO DI NAPOLI

3.a Divisione 3.a Sezione

ANAGRAFE

Il R. Commissario

Riscontrato il registro di popolazione

CERTIFICA

Che per effetto d'Immigrazione 18-6-921 dall'America, risultava residente in questo Comune: Caruso Errico fu Marcellino e fu Baldini Anna, nato a Napoli 27-2-73 - domiciliato: Hotel du Vesuve, deceduto il 2 agosto 1921.

valga per giudizio
Napoli, 18 maggio 926
p. Il R. Commissario,
E. Scala.

(Sigillo)
(Bollo)
(illegibile)
(illegibile)
p. Il Capo Divisione
F. Bucarelli
(Stamp)

ALTO COMMISSARIO

Della

PROVINCIA DI NAPOLI

Visto per delegazione del Ministero Affari Esteri per la firma ff. del R. Commissiario Sig. E. Scala.
Napoli 22 Mag. 1926.
p. l'Alto Commissario,
(f.to) firma illegibile

(Sigillo)
(Bollo)

Exhibit C-17.

The following excerpts are printed here.

DISPOSITIONS ON THE PUBLICATION, INTERPRETATION AND APPLICATION OF LAWS IN GENERAL.

3. Nell'applicare la legge non si può attribuirle altro senso che quello fatto palese dal proprio significato delle parole secondo la connessione di esse, e dalla intenzione del legislatore.

Qualora una controversia non si possa decidere con una precisa disposizione di legge, si avrà riguardo alle disposizioni che regolano casi simili o materie analoghe: ove il caso rimanga tuttavia dubbio, si deciderà secondo i principii generali di diritto.

5. Le leggi non sono abrogate che da leggi posteriori per dichiarazione espressa del legislatore, o per incompatibilità delle nuove disposizioni con le precedenti, o perchè la nuova legge regola l'intera materia già regolata dalla materia anteriore.

6. Lo stato e la capacità delle persone ed i rapporti di famiglia sono regolati dalla legge della nazione a cui esse appartengono.

7. I beni mobili sono soggetti alla legge della nazione del proprietario, salve le contrarie disposizioni della legge del paese nel quale si trovano.

I beni immobili sono soggetti alle leggi del luogo dove sono situati.

8. Le successioni legittime e testamentarie però, sia quanto all'ordine di succedere, sia circa la misura dei diritti successorii, e la intrinseca validità delle disposizioni, sono regolate dalla legge nazionale della persona, della cui eredità si tratta, di qualunque natura siano i beni ed in qualunque paese si trovino.

9. Le forme estrinseche degli atti tra vivi e di ultima volontà sono determinate dalla legge del luogo in cui sono fatti. E però in facoltà de' disponenti o contraenti di seguire le forme della loro legge nazionale, purchè questa sia comune a tutte le parti.

Exhibits of Gloria Caruso.
Exhibit C-17.

La sostanza e gli effetti delle donazioni e delle disposizioni di ultima volontà si reputano regolati dalla legge nazionale dei disponenti. La sostanza e gli effetti delle obbligazioni si reputano regolàti dalla legge del luogo in cui gli atti furono fatti, e, se i contraenti stranieri appartengono ad una stessa nazione, dalla loro legge nazionale. È salva in ogni caso la dimostrazione di una diversa volontà (1).

10. La competenza e le forme dei procedimenti sono regolate dalla legge del luogo in cui segue il giudizio.

I mezzi di prova delle obbligazioni sono determinati dalle leggi del luogo in cui l'atto fu fatto.

Le sentenze pronunziate da autorità straniere nelle materie civili avranno esecuzione nel regno, quando siano dichiarate esecutive nelle forme stabilite dal codice di procedura civile, salve le disposizioni delle convenzioni internazionali.

I modi di esecuzione degli atti e delle sentenze sono regolati dalla legge del luogo in cui si procede all'esecuzione (2).

THE CIVIL CODE.

10. La cittadinanza si acquista dallo straniero anche colla naturalità concessa per legge o per decreto reale.

Il decreto reale non produrrà effetto se non sarà registrato dall'uffiziale dello stato civile del luogo dove lo straniero intende fissare od ha fissato il suo domicilio, e se non sarà da lui prestato giuramento davanti lo stesso uffiziale di essere fedele al re e di osservare lo statuto e le leggi del regno.

La registrazione deve essere fatta sotto pena di decadenza entro sei mesi dalla data del decreto.

La moglie e i figli minori dello straniero che ha ottenuto la cittadinanza, divengono cittadini, semprechè abbiano anch' essi fissato la residenza nel regno; ma i figli possono scegliere la qualità di straniero, facendone dichiarazione a norma dell'articolo 5.

Exhibits of Gloria Caruso.
Exhibit C-17.

11. La cittadinanza si perde:

1° da colui che vi rinunzia con dichiarazione davanti l'uffiziale dello stato civile del proprio domicilio, e trasferisce in paese estero la sua residenza;

2° da colui che abbia ottenuto a cittadinanza in paese estero;

3° da colui che, senza permissione del governo, abbia accettato impiego da un governo estero, o sia entrato al servizio militare di potenza estera.

La moglie ed i figli minori di colui che ha perduto la cittadinanza, divengono stranieri, salvo che abbiano continuato a tenere la loro residenza nel regno.

Nondimeno possono riacquistare la cittadinanza nei casi e modi espressi nel capoverso dell'art. 14, quanto alla moglie, e nei due capoversi dell'art. 6 quanto ai figli.

12. La perdita della cittadinanza nei casi espressi nell'articolo precedente non esime dagli obblighi del servizio militare, nè dalle pene inflitte a chi porti le armi contro la patria.

16. Il domicilio civile di una persona è nel luogo in cui essa ha la sede principale dei propri affari ed interessi.

La residenza è nel luogo in cui la persona ha la dimora abituale.

138. Il matrimonio impone ad ambidue i coniugi l'obbligazione di mantenere, educare ed istruire la prole.

Questa obbligazione spetta al padre ed alla madre, in proporzione delle loro sostanze, computati nel contributo della madre i frutti della dote.

Quando essi non abbiano mezzi sufficienti, tale obbligazione spetterà agli altri ascendenti in ordine di prossimità.

143. Gli alimenti debbono essere assegnati in proporzione del bisogno di chi li domanda e delle sostanze di chi deve somministrarli.

179. Il figlio naturale può essere riconosciuto dal padre

e dalla madre tanto congiuntamente, quanto separatamente (1).

180. Non possono però essere riconosciuti:

1° i figli nati da persone, di cui anche una soltanto fosse al tempo del concepimento legata in matrimonio con altra persona;

2° i figli nati da persone fra le quali non poteva sussistere matrimonio per vincolo di parentela, o di affinità in linea retta in infinito, o per vincolo di parentela in lena collaterale nel secondo grado.

181. Il riconoscimento di un figlio naturale si farà nell'atto di nascita, o con un atto autentico anteriore o posteriore alla nascita (2).

184. Il genitore che riconobbe il figlio naturale, ne ha la tutela legale durante la minore età.

Se il riconoscimento fu fatto da ambidue i genitori, la tutela compete di preferenza al padre.

Sono applicabili a questa tutela le disposizioni degli art. 221, 222, 223, 224, 225, 226, 227 e 233 (3).

186. Il genitore è tenuto a mantenere, educare, istruire ed avviare ad una professione o ad un'arte il figlio naturale riconosciuto, ed a somministrargli anche successivamente gli alimenti in caso di bisogno, se il figlio non ha coniuge o discendenti in condizione di somministrarglieli.

Eguale obbligazione ha il genitore verso i discendenti legittimi del figlio naturale premorto, quando la loro madre o gli ascendenti materni non siano in grado di provvedervi.

188. Il riconoscimento può essere impugnato dal figlio e da chiunque vi abbia interesse.

189. Le indagini sulla paternità non sono ammesse, fuorchè nei casi di ratto o di stupro violento, quando il tempo di essi risponda a quello del concepimento (5).

Exhibits of Gloria Caruso.
Exhibit C-17.

190. Le indagini sulla maternità sono ammesse.

Il figlio che reclama la madre deve provare d'essere identicamente quel medesimo che fu da lei partorito. Non è però ammessa la prova per testimoni, se non quando vi sia già un principio di prova per iscritto, o quando le presunzioni e gli indizi risultanti da fatti già certi siano abbastanza gravi per determinarne l'ammissione (1).

193. Nei casi in cui il riconoscimento è vietato, il figlio non è mai ammesso a fare indagini nè sulla paternità nè sulla maternità.

Tuttavia il figlio maturale avrà sempre azione per ottenere gli alimenti:

1° se lapaternità o maternità risulti indirettamente da sentenza civile o penale;

2° se la paternità o maternità dipenda da un matrimonio dichiarato nullo;

3° se la paternità o maternità risulti da esplicita dichiarazione per iscritto dei genitori (2).

220. Il figlio, qualunque sia la sua età, deve onorare e rispettare i genitori.

Egli è soggetto alla podestà dei genitori sino all'età maggiore od all'emancipazione.

Durante il matrimonio tale podestà è esercitata dal padre, e, se egli non possa esercitarla, dalla madre.

Sciolto il matrimonio, la patria podestà viene esercitata dal genitore superstite.

221. Il figlio non può abbandonare la casa paterna o quella che il padre gli abbia destinata, senza permissione del medesimo, salvo per causa di volontario arruolamento nell'esercito nazionale. Ove se ne allontani senza permissione, il padre ha diritto di richiamarvelo, ricorrendo, ove sia duopo, al presidente del tribunale civile.

Qualora giuste cause rendessero necessario l'allontanamento del figlio dalla casa paterna, il presidente, sull'istanza dei parenti od anche del pubblico ministero, prese informazioni senza formalità giudiziali, provvede nel

modo più conveniente senza esprimere nel decreto alcun motivo.

Se vi sia pericolo nel ritardo, provvede il pretore, riferendone immediatamente al presidente, il quale conferma, revoca, o modifica il dato provvedimento.

222. Il padre che non riesca a frenare i traviamenti del figlio, può allontanarlo dalla famiglia, assegnandogli secondo i proprii mezzi gli alimenti strettamente necessari; e ricorrendo, ove sia d'uopo, al presidente del tribunale, collocarlo in quella casa, o in quell'istituto di educazione o di correzione, che reputi più conveniente a correggerlo e migliorarlo.

L'autorizzazione può essere chiesta anche verbalmente, ed il presidente provvederà senza formalità di atti e senza esprimere i motivi del suo decreto.

223. Nei casi indicati nei due articoli precedenti contro i decreti del presidente del tribunale è ammesso il ricorso al presidente della corte di appelo, e sarà sempre sentito il pubblico ministero.

224. Il padre rappresenta i figli nati e i nascituri in tutti gli atti civili, e ne amministra i beni.

Egli però non puô alienare, ipotecare, dare a pegno i beni del figlio, contrarre a nome di lui mutui od altre obbligazioni eccedente i limiti della semplice amministrazione, se non per cause di necessità o di utilità evidente del figlio stesso, e mediante l'autorizzazione del tribunale civile.

Nascendo conflitto d'interessi tra i figli soggetti alla stessa patria podestà o tra essi ed il padre, sarà nominato ai figli un curatore speciale.

La nomina del curatore sarà fatta dall'autorità giudiziaria ordinaria davanti alla quale fosse vertente il giudizio, ed in ogni altro caso dal tribunale civile (1).

228. Il padre ha l'usufrutto dei beni che provengono al figlio da successione, donazione o da qualunque altro

titolo lucrativo, e lo conserva sino a che il figlio sia emancipato od abbia raggiunto l'età maggiore (3).

229. Non sono soggetti all'usufrutto legale:

1° i beni lasciati o donati colla condizione che il padre non ne abbia l'usufrutto, la quale condizione però sarà senza effetto riguardo ai beni riservati al figlio a titolo di legittima;

2° i beni lasciati o donati al figlio per imprendere una carriera, un'arte o una professione;

3° i beni perventi al figlio per eredità, legato o donazione accettata nell'interesse del figlio contro il consenso del padre;

4° i beni acquistati dal figlio in occasione o per esercizio di milizia, uffizi, impieghi, professioni ed arti, o altrimenti col proprio lavoro e colla propria industria separata.

230. Sono inerenti all'usufrutto legale i seguenti pesi:

1° le spese di mantenimento, educazione ed istruzione del figlio;

2° il pagamento delle annualità o degli interessi dei capitali che decorrono dal giorno in cui si apre l'usufrutto;

3° tutti gli altri obblighi ai quali sono soggetti gli usufruttuari (1).

231. Le disposizioni dei precedenti articoli sono applicabili alla madre che esercita la patria podestà.

L'usufrutto legale passa alla madre anche quando la patria podestà è esercitata dal padre, ove questo ne sia escluso per cause a lui personali.

232. L'usufrutto legale cessa colla morte del figlio e col passaggio del genitore ad altre nozze.

233. Se il genitore abusa della patria podestà, violandone o trascurandone i doveri, o male amministrando le sostanze del figlio, il tribunale, sull'istanza di alcuno dei parenti più vicini od anche del pubblico ministero, potrà provvedere per la nomina di un tutore alla persona del

figlio o di un curatore ai beni di lui, privare il genitore dell'usufrutto in tutto od in parte, e dare quegli altri provvedimenti che stimerà convenienti nell'interesse del figlio.

234. Cessato l'usufrutto legale, se il genitore ha continuato a godere i beni del figlio abitante con esso senza procura ma senza opposizione, od anche con procura ma senza condizione di rendere conto dei frutti, egli ed i suoi eredi non sono tenuti che a consegnare i frutti sussistenti al tempo della domanda.

235. Il padre può per testamento o per atto autentico stabilire condizioni alla madre superstite per l'educazione dei figli e per l'amministrazione dei beni.

La madre che non voglia accettare le stabilite condizioni, può chiedere di esserne dispensata facendo convocare dal pretore un consiglio di famiglia composto a norma degli articoli 252 e 253, affinchè deliberi sulla chiesta dispensa.

La deliberazione del consiglio di famiglia sarà sottoposta all'omologa zione del tribunale il quale provvederà, sentito il pubblico ministero.

236. Se alla morte del marito la moglie si trova incinta, il tribunale, sull'istanza di persona interessata, può nominare un curatore al ventre (2).

237. La madre, volendo passare a nuovo matrimonio, deve prima far convocare un consiglio di famiglia a norma degli art. 252 e 253.

Il consiglio delibererà se l'amministrazione dei beni debba essere conservata alla madre, e la potrà stabilire condizioni riguardo alla stessa amministrazione e all'educazione dei figli.

Le deliberazioni del consiglio di famiglia saranno sottoposte al tribunale per i suoi provvedimenti a norma dell'articolo 235.

238. In mancanza della convocazione richiesta dall'-

articolo precedente, la madre perderà di diritto la amministrazione, e suo marito sarà risponsabile in solido di quella esercitata per lo passato ed in appresso indebitamente conservata.

Il pretore, sull'istanza del pubblico ministero o di alcuna delle persone indicate negli articoli 252 e 253, od anche d'uffizio, deve convocare il consiglio di famiglia per deliberare sulle condizioni da stabilirsi per l'educazione dei figli e sulla nomina di un curatore ai loro beni.

Il consiglio di famiglia può riammettere la madre all'amministrazione dei beni.

Alle deliberazioni del consiglio di famiglia sono applicabili le disposizioni del secondo capoverso dell'articolo 237.

239. Quando la madre è mantenuta nell'amministrazione dei beni o vi fu riammessa, suo marito si intende sempre associato alla medesima nell'amministrazione, e ne diviene risponsabile in solido.

240. È minore la persona che non ha ancora compito gli anni ventuno.

249. Verificandosi l'apertura della tutela, è costituito un consiglio di famiglia permanente per tutto il tempo della medesima presso il pretore del mandamento dove si trova la sede principale degli affari del minore.

Tuttavia, se il tutore fosse domiciliato o trasferisse il domicilio in altro mandamento, potrà per decreto del tribunale civile esservi trasferita la sede del consiglio (1).

250. L'uffiziale dello stato civile, che riceve la dichiarazione di morte di una persona che abbia lasciato figli in minore età, o davanti il quale una vedova abbia contratto matrimonio, deve informarne prontamente il pretore.

Il tutore nominato dal genitore, il tutore legittimo e quei parenti che per legge sono membri del consiglio di famiglia debbono, sotto pena dei danni in solido, denunziare al pretore il fatto che dà luogo alla tutela.

Il pretore, assunte all'uopo le opportune informazioni,

convocherà nel più breve termine il consiglio di famiglia per dare i provvedimenti che occorrono nell'interesse dei minori (2).

251. Il consiglio di famiglia si compone del pretore, il quale lo convoca e lo presiede, e di quattro consulenti.

Faranno altresì parte del consiglio di famiglia il tutore, il protutore e pel minore emancipato il curatore.

Il minore, dopo compiuti i sedici anni, avrà diritto di assistere, ma senza voto deliberativo, al consiglio di famiglia, di cui gli sarà perciò notificata la riunione.

271. Le domande cui possono dar luogo le disposizioni dei due precedenti articoli, saranno proposte dinanzi al consiglio di famiglia, salvo il diritto di richiamo davanti al tribunale.

Tale richiamo potrà anche farsi dal pubblico ministero.

Quando si tratti di escludere o rimuovere il tutore o protutore, il consiglio di famiglia non potrà deliberare, se non sentiti o debitamente citati i medesimi (1).

272. Sono dispensati dagli uffizi di tutore e protutore:

1° i principi della famiglia reale, salvochè si tratti di tutela dialtri principi della stessa famiglia;

2° i presidenti delle camere legislative;

3° i ministri segretari di Stato;

4° i presidenti del consiglio di Stato, della corte dei conti, delle corti giudiziare ed i capi del pubblico ministero presso le corti medesime;

5° i segretari e direttori generali delle amministrazioni centrali del regno ed i capi delle amministrazioni provinciali.

273. Hanno diritto di essere dispensati dall'assumere o dal continuare l'esercizio della tutela e dall'uffizio di protutore:

1° Le donne che possono essere tutrici.

2° Coloro che abbiano l'età di sessantacinque anni compiuti.

3° Quelli che siano affetti da grave e permanente infermità.

4° Il padre di cinque figli viventi. I figli morti in attività di servizio nell'esercito nazionale di terra o di mare saranno computati per far luogo alla dispensa.

5° Chi sia già incaricato di una tutela.

6° I militari in attività di servizio.

7° Coloro che abbiano missione dal governo fuori del regno, o che per ragione di pubblico servizio risiedono fuori del territorio del tribunale in cui si è costituita la tutela (2).

444. I frutti naturali e i frutti civili appartengono per diritto di accessione al proprietario della cosa che li produce.

Sono frutti naturali quelli che provengono direttamente dalla cosa, vi concorra o non vi concorra l'industria dell'uomo, come le biade, il fieno, la legna, i parti degli animali e i prodotti delle miniere, cave e torbiere.

Sono frutti civili quelli che si ottengono per occasione dalla cosa, come gli interessi dei capitali, i proventi delle enfiteusi, dei censi, dei vitalizi ed ogni altra rendita.

I fitti e le pigioni dei fondi appartengono alla classe dei frutti civili.

476. I diritti di *usufrutto, uso* ed *abitazione* sono regolati dal titolo da cui derivano; la legge non supplisce che a quanto non provvede il titolo, salvo che essa disponga altrimenti (2).

477. L'usufrutto è il diritto di godere delle cose, di cui altri ha la proprietà, nel modo che ne godrebbe il proprietario, ma coll'obbligo di conservarne la sostanza tanto nella materia quanto nella forma (3).

478. L'usufrutto è stabilito dalla legge o dalla volontà dell'uomo.

Può essere stabilito con determinazione di tempo o sotto

condizione, e sopra qualunque specie di beni mobili od immobili (4).

479. Spetta all'usufruttuario ogni frutto naturale o civile che può produrre la cosa di cui ha l'usufrutto.

480. I frutti naturali, che al cominciare dell'usufrutto non sono ancora separati dalla cosa che li produce, appartengono all'usufruttuario; quelli che non sono ancora separati quando l'usufrutto finisce, appartengono al proprietario, senza compenso nell'uno e nell'altro caso dei lavori e delle sementi, na senza pregiudizio della porzione dei frutti, che potesse spettare al mezzaiuolo che vi era al tempo in cui cominciò o finì l'usufrutto (5).

481. I frutti civili s'intendono acquistati giorno per giorno, ed appartengono all'usufruttuario in proporzione della durata dell'usufrutto (6).

494. L'usufruttuario gode dei diritti di servitù inerenti al fondo di cui ha l'usufrutto, e generalmente di tutti quelli di cui potrebbe godere il proprietario.

Gode pure delle miniere, delle cave e delle torbiere, che sono aperte ed in esercizio al tempo in cui comincia l'usufrutto.

Non ha però diritto sulle miniere, cave o torbiere non ancora aperte, nè sul tesoro che si scoprisse durante l'usufrutto, salve le ragioni che gli potessero competere come ritrovatore (1).

721. La legge devolve la successione ai discendenti legittimi, agli ascendenti, ai collaterali, ai figli naturalied al coniuge, nell'ordine e secondo le regole in appresso stabilite, ed in loro mancanza al patrimonio dello Stato (1).

722. La legge nel regolare la successione considera la prossimità della parentela, e non la prerogativa della linea, nè la origine dei beni, se non nei casi e nei modi dalla legge stessa espressamente stabiliti (2).

Exhibits of Gloria Caruso.
Exhibit C-17.

723. Tutti sono capaci di succedere, salve le eccezioni determinate dalla legge.

724. Sono incapaci di succedere:
1° coloro che al tempo della apertura della successione non siano ancora concepiti;
2° coloro che non sono nati vitali.
Nel dubbio si presumono vitali quelli di cui consta sono nati vivi.

743. I figli naturali non hanno diritto alla successione dei genitori, quando la loro filiazione non sia legalmente riconosciuta o dichiarata (2).

744. Riconosciuta o dichiarata la filiazione, se i figli naturali concorrono coi figli legittimi o loro discendenti, hanno diritto alla metà della quota che sarebbe loro spettata se fossero legittimi.
I figli legittimi o loro discendenti hanno facoltà di pagare la quota spettante ai figli naturali in danaro o in beni immobili ereditari a giusta stima.

753. Quando al coniuge defunto siano superstiti figli legittimi, l'altro coniuge ha sull'eredità di lui l'usufrutto di una porzione ereditaria eguale a quella di ciascun figlio, comprese nel numero dei figli anche il coniuge (1).
Concorrendo figli naturali con legittimi, l'usufrutto del coniuge è di una porzione eguale a quella che tocca a ciascun figlio legittimo.
Tale porzione di usufrutto non può mai essere maggiore del quarto dell'eredità, e può essere soddisfatta nel modo stabilito dall'articolo 819.

762. Possono disporre per testamento tutti coloro che non sono dichiarati incapaci dalla legge (3).

764. Sono incapaci di ricevere per testamento coloro che sono incapaci di succedere per legge (1).
Possono però ricevere per testamento i figli immediati di una determinata persona vivente al tempo della morte del testatore, quantunque non siano ancora concepiti.

Exhibits of Gloria Caruso.
Exhibit C-17.

766. Sono applicabili all'indegno di ricevere per testamento le disposizioni degli articoli 726, 727, e del capoverso dell'articolo 728.

768. I figli naturali non legittimati, se vi sono discendenti o ascendenti legittimi del testatore, sono incapaci di ricevere per testamento più di quanto la legge attribuisce loro per successione intestata (3).

774. La legge riconosce due forme ordinarie di testamento: il testamento olografo e il testamento per atto di notaio (7).

775. Il testamento olografo deve essere scritto per intiero, datato e sottoscritto di mano del testatore.

La data del testamento deve indicare il giorno, il mese e l'anno.

La sottoscrizione deve essere posta alla fine delle disposizioni (8).

805. Le liberalità per testamento non possono oltrepassare la metà dei beni del testatore, se questi morendo lascia figli, qualunque sia il numero dei medesimi.

L'altra metà è riservata a vantaggio dei figli e forma la loro porzione legittima (2).

806. Sotto nome di figli sono compresi nell'articolo precedente i figli legittimi, i legittimati, gli adottivi e i loro discendenti.

I discendenti però non si contano che per quel figlio che rappresentano (3).

812. Il coniuge contro cui non sussista sentenza di separazione personale passata in giudicato, ha diritto sulla eredità dell'altro coniuge, nel caso che questo lasci figli legittimi o loro discendenti, all'usufrutto di una porzione uguale a quella che spetterebbe a ciascun figlio a titolo di legittima, comprendendo nel numero dei figli anche il coniuge (1).

814. La quota di usufrutto del coniuge è il terzo,

quando il testatore non lascia nè discendenti nè ascendenti aventi diritto a legittima.

815. Quando il testatore lascia figli o ascendenti legittimi e figli naturali legalmente riconosciuti, questi ultimi hanno diritto alla metà della quota che loro sarebbe spettata se fossero legittimi.

Per il calcolo della porzione dovuta ai figli naturali fanno numero anche i figli legittimi, con facoltà a questi di soddisfarla nei modi stabiliti dall'art. 744.

818. La porzione dovuta al coniuge ed ai figli naturali non porta diminuzione della legittima spettante ai discendenti legittimi od agli ascendenti, e forma così una detrazione della parte disponibile.

819. È in facoltà degli eredi di soddisfare alle ragioni del coniuge o mediante l'assicurazione di una rendita vitalizia, o mediante l'assegno dei frutti di beni immobili o capitali ereditari da determinarsi d'accordo, e altrimenti dall'autorità giudiziaria, avuto riguardo alle circostanze del caso.

Sino a che il coniuge non sia soddisfatto delle sue ragioni, conserva i suoi diritti di usufrutto su tutti i beni ereditari.

888. Le disposizioni titolo universale o particolare fatte da chi al tempo del testamento non aveva od ignorava di avere figli o discendenti, sono rivocate di diritto per l'esistenza o la sopravvegnenza di un figlio o discendente legittimo del testatore, benchè postumo o legittimato o adottivo.

Lo stesso ha luogo ancorchè il figlio fosse concepito al tempo del testamento, e trattandosi di figlio naturale legittimato, ancorchè fosse già stato riconosciuto dal testatore prima del testamento e soltanto legittimato dopo.

La rivocazione non ha luogo qualora il testatore abbia provveduto al caso che esistessero o sopravvenissero figli o discendenti da essi (2).

Exhibits of Gloria Caruso.
Exhibit C-17.

923. La successione si a pre al momento della morte, nel luogo dell'ultimo domicilio del defunto.

925. Il possesso dei beni del defunto passa di diritto nella persona dell'erede, senza bisogno di materiale apprensione (1).

927. I figli naturali, che hanno diritto ad una parte dell'eredità in concorso col figli legittimi, debbono chiederne a questi il possesso (3).

1053. Non possono ricevere per donazione, neppure sotto il nome di interposte persone, gl'incapaci di ricevere per testamento nei casi e nei modi stabiliti nel capo: *Delle successioni testamentarie* (3).

1172. Il termine apposto alle obbligazioni differisce dalla condizione in questo che non sospende l'obbligazione, ma ne ritarda soltanto l'esecuzione (1).

CODE OF CIVIL PROCEDURE.

2. La conciliazione può aver luogo quando le parti abbiano la capacità di disporre degli oggetti, su cui cade la controversia e non si tratti di materia, nella quale siano vietate le transazioni (2).

La conciliazione, fatta da un tutore, o altro amministratore, o da chi non possa liberamente disporre degli oggetti, su cui cade la controversia, ha soltanto effetto, quando sia approvata nei modi stabiliti per la transazione (3).

Le conciliazioni sul falso proposto in via civile non hanno effetto, se non siano omologate dall'autorità giudiziaria, sentito il ministero pubblico (4).

8. Le controversie si possono compromettere in uno, o più arbitri in numero dispari.

Non si possono compromettere le quistioni di stato, di separazione tra coniugi, e le altre che non possono essere transatte (1).

Exhibits of Gloria Caruso.
Exhibit C-17.

94. Si propongono davanti l'autorità giudiziaria del luogo dell'aperta successione:

1° le azioni in petizione, o divisione dell'eredità e qualunque altra tra coeredi sino alla divisione;

2° le azioni in rescissione della divisione già fatta o in garanzia delle quote assegnate purchè proposte entro un biennio dalla divisione;

3° le azioni contro l'esecutore testamentario, purchè proposte prima della divisione; e, se la divisione non sia necessaria, entro un biennio dall'aperta successione;

4° le azioni dei legatari e dei creditori della eredità che non esercitano diritto reale sopra un immobile, se siano proposte nei termini indicati nel numero precedente.

Quando la successione siasi aperta fuori del regno si propongono davanti l'autorità giudiziaria del luogo, in cui è posta la maggior parte dei beni immobili o mobili da dividersi, e, in difetto, davanti quella del luogo, in cui il convenuto ha domicilio, o residenza.

941. La forza esecutiva alle sentenze delle autorità giudiziarie straniere è data dalla corte d'appello, nella cui giurisdizione debbono esser eseguite, premesso un giudizio di delibazione in cui la corte esamina:

1° se la sentenza sia stata pronunziata da un'autorità giudiziaria competente:

2° se sia stata pronunziata, citate regolarmente le parti;

3° se le parti siano state legalmente rappresentate o legalmente contumaci:

4° se la sentenza contenga disposizioni contrarie all'ordine pubblico od al diritto pubblico interno del regno (1).

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New Jersey Court of Errors and Appeals

Between

DOROTHY P. B. CARUSO, Administratrix of ENRICO CARUSO, Deceased,
Complainant-Appellant,

and

RODOLFO CARUSO, *et als.*,
Defendants-Respondents.

In Equity.
On Bill, &c.

BRIEF FOR DOROTHY P. B. CARUSO, ADMINISTRATRIX, COMPLAINANT-APPELLANT.

General Statement.

This cause involves the distribution of certain personal property found in New Jersey belonging to the tenor Enrico Caruso, a citizen and resident of the Kingdom of Italy, at the time of his death, and the subsequent income therefrom.

The property in question consists of the rights arising under a contract (Ex. GC-22, p. 431) made by Victor Talking Machine Company with decedent dated January 1, 1919, under which Caruso agreed to sing at the Recording Laboratory of the Victor Company for the purpose of making master records of his voice, and the Victor Company, among other things, agreed to pay annually a royalty of ten per cent. of the price of the records of such songs sold by it.

Complainant was appointed ancillary administratrix by the Prerogative Court for the purpose of collecting the royalties accruing under this contract and now holds from such source a fund amounting to approximately $800,000., including accumulations pending this suit.

These royalties reached their greatest volume shortly following the tenor's death but are still continuing at the rate of about $55,000. per year.

Caruso was a native citizen of the Kingdom of Italy and legally domiciled in the Kingdom of Italy at the time of his death. He was born in the City of Naples and died in the City of Naples, August 2, 1921, and his body lies entombed in the City of Naples.

A question was raised in the Court below as to the particular city of Italy in which he had his legal domicile.

The Civil and Penal Tribunal of Naples, a Court of general jurisdiction, took jurisdiction over the guardianship of his minor children and the settlement of his estate, and made certain decrees providing for the complete administration and distribution of decedent's estate wherever situate, including the Victor contract, and the proceeds therefrom.

This case involves the validity and extraterritorial effect of these Italian decrees.

The following is a condensed statement of the Italian proceedings, which will be later discussed in further detail.

Caruso left him surviving a lawful wife, the complainant Dorothy P. B. Caruso; a legitimate infant daughter of said marriage, Gloria Caruso; and two natural recognized sons, Rodolfo Caruso and Enrico Caruso, Jr., born out of wedlock of a mother other than the complainant; also a brother Giovanni Caruso, and a step-mother Maria Castaldi.

The son Enrico Caruso, Jr., was a minor at the time of the filing of the bill herein and was originally represented by the Clerk in Chancery as guardian *ad litem*. He has since attained majority and is now represented in this suit by counsel.

The legitimate daughter Gloria is a minor and is represented in this suit by the Clerk in Chancery as guardian *ad litem,* who is represented by counsel designated by the Court.

Decedent left a holographic Will in the Italian language which appears in the translation of the record of the Italian Court, Ex. C-8a, page 280.

This Will is dated January 14, 1919, prior to the birth of Gloria, and appoints as heirs "my two sons Rodolfo and Enrico, and my brother Giovanni. My wife Dorothy née Benjamin, shall receive such distributive share in my estate as the Italian laws allow her. My sole heirs shall fittingly provide for and take care of my stepmother Maria Castaldi, until her death."

A duplicate original of this Will was lodged by Caruso with his agent at Florence, Italy, on August 9, 1919, three and a half months before the expected birth of his daughter.

The original was retained by Caruso and was found in his suitcase at Naples following his death.

The original and duplicate, after the death of Caruso, were deposited with Lucio Guaglianoni, a Notary Public at Naples, in the presence of the Pretor, August 8, 1921.

Questions arose respecting the validity and effect of the Will and the rights of the beneficiaries thereunder, and of the widow and the infant Gloria.

Under date of August 10, 1921, the widow petitioned the Civil and Penal Tribunal of Naples to appoint a special guardian for the infant Gloria, pursuant to paragraph 224 of the Italian Civil Code.

The Tribunal thereupon on August 12, 1921, acting under paragraph 224 of the Civil Code, "appoints as special guardian to the minor Gloria Caruso, Mr. Amedeo Canessa, son of the deceased

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Girolamo, residing at Piazza dei Martiri, in order to assist her only in those acts in which conflicting interests with her mother may arise."

The proceeding appointing the special guardian for Gloria appears in Exhibit C-5a, p. 265.

Inasmuch as the minor son Enrico, Jr., had no parent with whom a conflicting interest could arise, a different provision of Italian law applied and a Family Council was constituted pursuant to paragraph 252 of the Civil Code, presided over by the District Judge.

This Family Council appointed Tizzani Manlio as guardian of the minor Enrico, and the proceedings of the Family Council were approved by the Civil and Penal Tribunal of Naples by decree dated August 26, 1921.

The proceeding of the Family Council and the approval thereof by the Tribunal appear in Exhibit C-6a, p. 268.

The adult parties in interest and the guardians of the two infants thereupon proceeded to negotiate a family agreement for the settlement of the estate wherever situate, to be submitted to the Tribunal for approval.

This proposed settlement agreement was first submitted by the guardian for Gloria to one Alessandro Guarracino, as special counsel, for advice.

Guarracino rendered to the guardian a formal written opinion entitled "Legal opinion on behalf of the legitimate daughter of Enrico Caruso and her interests as against the heirs nominated by his Will" (Ex. C-7a, p. 271).

This opinion shows a consideration of the various claims advanced and the law with respect thereto, including a consideration of a possible action to nullify the recognition by Caruso of his two natural sons on the ground of their alleged adulterine origin (which is the chief question raised by Gloria's counsel in New Jersey).

It appears from the context of this opinion that the proposed agreement as submitted to Guarracino provided for the division of the estate one-half to the legitimate daughter Gloria and one-eighth each to the widow, the brother Giovanni, the two recognized natural children Enrico and Rodolfo, with a provision for support of the stepmother Maria Castaldi.

Guarracino advised that something more should be allowed to Gloria.

This opinion is dated September 5, 1921.

Subsequently a settlement agreement was submitted to the Tribunal by all parties in interest, viz.: Dorothy Benjamin, widow of Caruso; Rodolfo Caruso, son of Enrico; Giovanni Caruso, son of Marcellino; Amedeo Canessa, special guardian for Gloria Caruso; Manlio Tizzani, general guardian for Enrico Caruso, son of Enrico.

This proposed agreement was submitted to the Court on October 19, 1921, and embodies the changes and the increased provisions for Gloria advised by Guarracino in his opinion of September 5, 1921.

The petition was referred by the Tribunal to the Attorney General (Public Ministry) and the latter examined the proceedings and certified to the Court "that the application is properly made and recommends that the same be granted" (p. 286, fol. 10).

The Tribunal thereupon made its decree dated October 21, 1921, among other things, stating:

> "This court, after reading the annexed petition, and having heard the Attorney General herein, hereby renders the following decision:
>
> "The petition herein should be granted and approved because the relief therein prayed for represents the intent of the law as well as the desire of the testator" (p. 286, fol. 20).

The Court then proceeds to discuss, in detail, the contentions of the various parties:

> "Therefore we deem it wise to approve the proposed agreement herein concerning the distributive share to be paid to the infant daughter, Gloria Caruso, and to the infant son, Enrico, as well as Giovanni Caruso" (p. 287, fol. 30). . . .
>
> "Considering therefore the uncertainties of a judicial contest, and approving the wishes of the petitioners tending to harmony and reciprocal respect, we deem it proper to confirm the proposed agreements contained in the petition herein, so that they might fully carry out the desire of Comm. Caruso, which desire we consider to be sacred to his widow and children" (p. 288, l. 15).

The decree then proceeds to define the manner of distribution of the estate, and, among other things, provides:

> "This Court further orders and decrees that the petitioners be authorized that; in the agreement to be entered into between themselves there shall be inserted the following fundamental provisions:
>
> "a. That the assets of Comm. Caruso situate either in Italy or abroad, after the same shall have been lawfully fixed and ascertained, and after deducting the funeral expenses, the mourning expenses, the expenses occasioned by the last sickness of the deceased, the inheritance taxes and fees; legal expenses, after deducting the amounts assigned to Miss Gloria Caruso and the chattels hereinbefore mentioned; moreover, deducting such sums of money as may be paid to the decedent's former employees as in the opinion of the petitioners herein they may fix; then, the remainder shall be divided into two equal parts one of which shall be given and paid over to the infant Gloria Caruso, in trust for her during her infancy, which said one-half shall include the most valuable portion of the

> estate. The other half shall be divided into four equal parts to be paid and turned over whole and free, one part to Rodolfo Caruso, one part to the infant Enrico Caruso, in trust for him during his minority, one part to Mrs. Dorothy Benjamin, widow of Caruso, and one part to Giovanni Caruso, son of Marcellino, brother of the deceased'' (pp. 289, 290).

The petition to the Court and the proceedings and decree thereon are set forth in Ex. C-8a, p. 280.

The Guarracino opinion (Ex. C-7a) shows by the endorsement thereon that it was attached to the petition for confirmation and communicated to the Judges of the Tribunal (p. 279, l. 10).

Thereafter under date of June 7, 1922, all parties in interest proceeded to make division of the entire estate, including the Victor contract, in performance of the settlement decree of October 21, 1921, by formal notarial act executed before the Notary Vincenzo Sanseverino, authorized and confirmed by the Civil and Penal Tribunal of Naples.

The notarial act of division is Ex. C-14a, p. 340.

The parties appearing were the widow in her own name and as guardian and administratrix of the minor Gloria; Amedeo Canessa, domiciled in Naples, as special guardian of the minor Gloria, appointed by the Tribunal of Naples; Giovanni Caruso, domiciled in Naples; Rodolfo Caruso, resident in Naples; Manlio Tizzani, domiciled in Naples, guardian of the minor Enrico Caruso, per deliberation of the Council of Guardianship.

The document recites the settlement decree of the Tribunal of October 21, 1921, and attaches a copy thereto; recites the taking of inventories ''to ascertain the whole patrimony of the Comm. Enrico Caruso, everywhere situated'', including

the United States, and sets over to each of the beneficiaries under the settlement decree specific property, real and personal, including to Gloria seventeen parcels of real estate in Italy, and various parcels of personal property and Italian bonds, Gloria's share in all amounting to the appraised value of 6,690,304.62 lire, exclusive of interest in the Victor contract, and the special fund of 500,000 lire; also reserving certain valuable collections of art objects to be thereafter sold and the proceeds divided (p. 353).

The proceeds from the Victor Company contract:

> "shall be divided and attributed, always according to the fixed proportions, as follows:
> One-eighth to Mr. Rodolfo Caruso;
> One-eighth to Mr. Enrico Caruso;
> One-eighth to Mrs. Dorothy Caruso.
> And the remaining four-eighths are attributed to the minor Gloria, of which two-eighths will represent principal capital to be reinvested as follows and two-eighths shall be paid unrestricted to the mother Dorothy Benjamin Caruso as mother, guardian and legitimate administratrix of the said minor. In consequence the Victor Talking Machine Company every first of February of each year, as per its obligation, shall pay on the said sum of 10%, one-eighth unrestricted to Mr. Giovanni Caruso; one-eighth to Mr. Enrico Caruso's tutor during his minor age: three-eighths unrestricted to Mrs. Dorothy Caruso; and finally it shall pay the remaining two-eighths to the Bank of Naples, New York's branch, under pupillary restrictions for the account of Gloria Caruso. On these two-eighths the said Banco di Napoli shall pay during the minority of Gloria the interests of all the sums paid from the said Victor Company to Mrs. Dorothy Benjamin Caruso's widow" (p. 355).

There is also provision for first deducting from the cash money in America 500,000 lire which are attributed to Gloria, and which shall be deposited to her account under pupillary restrictions consigned to her at her full age, together with the interest that shall be accumulated in increase of the principal sum (p. 352, l. 20).

The Banco di Napoli is directed to retain all sums attributed to the minor Gloria until her full age, paying to her mother the interest that will accrue on the said sums, excepting, however, the interest produced by the fund of 500,000 lire, which shall be accumulated and paid with the principal at majority.

The document further provides that it shall be submitted to the Tribunal of Naples for approval (p. 359, l. 10).

This notarial division was submitted to the Naples Tribunal by petition dated June 10, 1922. The President Judge communicated the petition to the Attorney General, who approved the same (p. 300).

The Tribunal, by decree dated June 16, 1922, approved the division, the decree, among other things, stating:

> "Having read the petitions and the attached acts. Having heard the opinion of the Attorney General. Since the request can be acceded to, the interests of the minors resulting guarded, and since the division of the estate is based on the preceding deliberation of this same Tribunal, dated October 21st, 1921, while there is to be excluded from the quota of the minor, Gloria Caruso, the gold record of the Victor Talking Machine Co. because it was not found. . . . For These Reasons—Deciding in the Counsel Chamber upon and after the relation submitted by the Delegate Judge: . . .
>
> 2. Confirm the deed by Notary Sanseverino dated June 7th, 1922. . . .

5. Delegate moreover the same Mrs. Dorothy Benjamin to deliver to each co-heir that which is due him in titles, cash, values and objects, always conforming to the above quoted Sanseverino deed and to consign the titles and cash due to the minor Gloria Caruso and to the minor Enrico Caruso to the Banco di Napoli to be deposited in their names with the pupillary restriction and with the demanded legal guarantees. . . .

7. Authorize the Victor Talking Machine Company to pay each year the 10% due to Comm. Enrico Caruso as following: 1/8 to Mrs. Dorothy Benjamin Caruso, 1/8 to Mr. Giovanni Caruso, 1/8 to Mr. Rodolfo Caruso, 1/8 to Mr. Enrico Caruso, minor, and of the remaining 4/8 due to the minor Gloria Caruso, to pay 2/8 without restriction to Mrs. Dorothy Benjamin Caruso, as mother, tutor and legal administratrix of the property of her minor daughter Gloria Caruso, until her coming of age and to deposit the other 2/8 in the Banco di Napoli at its New York offices, in the name of Gloria Caruso with the pupillary restrictions'' (p. 302).

A copy of the last mentioned petition and decree is attached to the Sanseverino deed as the same is deposited in the archives of the Notary (p. 360).

The Prerogative Court of the State of New Jersey, on January 26, 1922, granted ancillary administration to the widow, and made the usual order limiting creditors.

No claims have been proved and the Prerogative Court has made its order barring creditors.

After the Italian decree confirming the Sanseverino deed, complainant, as ancillary administratrix in New Jersey, filed the present bill setting forth the Italian proceedings and tendering her account, and praying that the moneys in her hands be distributed in accordance with the Italian decree, and that the Victor Talking Machine Com-

pany be decreed to likewise pay over the royalties from time to time accruing in accordance with such decree.

The amended answer filed for the infant Gloria admits that Caruso was a resident and citizen of the Kingdom of Italy at the time of his death, but avers that he was domiciled in Sesto Fiorentino and not in Naples; admits that Rodolfo Caruso and Enrico Caruso, Jr., are the natural sons of Enrico Caruso, but denies that they were recognized by decedent as his children during his lifetime; avers that the Italian law provides for the recognition of natural children by a parent and that such recognized natural children have a legal status, but avers that such recognition and status cannot be conferred upon adulterine children; avers that the testamentary document set forth in the complaint was revoked under the Italian law by the subsequent birth of Gloria; denies that questions arose after decedent's death concerning the rights of Gloria in her father's estate, and avers that no such questions could arise as to these rights, and that decedent died intestate; denies that the Civil and Penal Tribunal of Naples had any jurisdiction in the premises, alleging that the decedent was not domiciled at Naples at the time of his death, but in another judicial district of the Kingdom of Italy; denies the making of the agreement of family settlement and the authorization thereof by the Civil and Penal Tribunal of Naples, and avers that such agreement, if made, was fraudulent and is null and void as to the infant Gloria, and that the decree of said Court in authorizing the same is of no effect elsewhere; admits that there are no creditors of decedent's estate residing in the State of New Jersey, and admits that none of the heirs or next of kin of decedent, nor any of the persons named in testator's Will, nor any of the beneficiaries under

the settlement agreement, are resident in the State of New Jersey.

This amended answer was not filed until the first day of final hearing, but the defenses set forth therein had been raised informally on preliminary appearances in court, and in consequence thereof the Italian lawyers for Mrs. Caruso submitted the questions raised in the New Jersey suit to an eminent Italian lawyer, Pasquale Grippo, for his opinion. This opinion was rendered in writing, and sworn to, and the Italian lawyers then filed a petition for Mrs. Caruso with the Naples Tribunal, praying instructions in view of the questions raised in New Jersey concerning the validity of the Italian decrees.

The Tribunal referred the petition to the Attorney General (Public Ministry), who reported thereon that he did not oppose, and the Tribunal thereupon made its further decree dated August 21, 1925 (Ex. C-13a, p. 327).

This decree contains a full review of the Italian proceedings, with particular reference to the questions raised in New Jersey and reconsiders the questions involved and the adequacy of the settlement, and confirms the prior decrees, concluding:

> "For these reasons
>
> "The Tribunal, deciding in its Chamber of Council, upon the report of the delegated Justice and upon hearing the Public Ministry, authorizes Mrs. Dorothy Benjamin, widow of Mr. Enrico Caruso, without any responsibility on her part, to pay to all heirs of the deceased Enrico Caruso in proportion and according to the contract of June 7, 1922, all the proceeds due from the Victor Talking Machine Company and also the other assets belonging to said estate and existing in the United States of America."

The sworn opinion of Professor Grippo contains a full statement and discussion of the questions before the Court.

It appears from the caption of the certified copy of this opinion that the same was filed in the Chancery of the Tribunal of Naples annexed to the sentence or decree (Ex. C.-12a, p. 313).

In the course of the New Jersey litigation, Mrs. Caruso petitioned the Chancellor for an allowance out of the fund in Court for the maintenance, education and household expenses of her daughter Gloria, and the Chancellor filed an opinion thereon December 15, 1927, concluding (p. 100) that the petitioner did not have the technical capacity to apply for the desired relief but that a guardian might be appointed for the infant to apply for the allowance, expressly reserving considerations as to the validity, by comity, of the Italian decree; the amount, if any, to be awarded for Gloria according to her station in life; and what is principal and what income under the Victor contract (p. 114).

Pursuant to this conclusion, Mrs. Caruso was therafter appointed by the Prerogative Court as special guardian of the estate in New Jersey of Gloria Caruso for the purpose of applying for and receiving such allowance out of the estate (p. 115), and thereafter renewed her application for allowance in such capacity.

The Chancellor thereupon filed an opinion March 14, 1928 (p. 117) concluding that Mrs. Caruso as guardian was entitled to an allowance out of the estate for the infant's maintenance and fixing the amount thereof.

This opinion was filed before the conclusion of the final hearing and before the reception of complainant's evidence respecting the Italian law, but, nevertheless, contains a discussion of the Italian decrees and expresses the conclusion that the Ital-

ian decrees are not binding upon the infant Gloria in that they award her a less interest in the Victor fund than she would be entitled to receive under the intestate laws of the State of New Jersey.

A decretal order was entered pursuant to this opinion dated April 16, 1928 (p. 142), awarding an allowance for maintenance, from which Gloria's guardian has appealed.

Thereafter the cause proceeded to final hearing, resulting in the opinion of the Chancellor filed December 4, 1928 (p. 144).

This opinion follows the opinion on the maintenance petition filed March 14, 1928, and refers thereto, holding that the Italian decrees will not be given validity in New Jersey for the purpose of varying our positive law of distribution founded on public policy (p. 153, line 10), and concluding that the New Jersey estate be distributed under the New Jersey intestate law, two-thirds to Gloria and one-third to the widow, but that the widow's third shall be divided among the parties to the Italian decree other than Gloria, because of their consent thereto.

From the final decree entered thereon (p. 159) all litigating parties appeal, except Victor Talking Machine Company.

The guardian for Gloria, however, first joined issue on the petition of appeal of the complainant, averring that the decree is agreeable to equity and prays that the same may be affirmed (p. 178). However, the guardian for Gloria has since filed a separate petition of appeal from the final decree (p. 190).

The entire Italian Code in the Italian language was admitted in evidence, Ex. C-17, p. 233, and translations of certain articles thereof were specifically offered and appear in the record. Both parties, however, were given leave to submit, with their briefs, translations of such other parts of the

Code as they should deem relevant, after submission to the opposing party for accuracy of translation. This brief uses the translations appearing in the evidence, and, also, additional translations from Ex. C-17 used before the Chancellor under this arrangement.

Italics appearing in the following pages are ours.

POINT I.

The succession to personal property of the decedent, wherever found, under the principles of international law, is governed by the law of decedent's domicile at the time of his death—in this case by the law of Italy.

This principle is uniformly supported by the text writers and by the decisions of the United States Supreme Court and the courts of England, New Jersey and other States.

Dicey, Conflict of Laws, 3rd Ed., 1921, says, Rule 193, p. 716:

> "Succession to the movables of an intestate is governed by the law of his domicile at the time of his death without any reference to the law of the country where (1) he was born, or (2) he died, or (3) he had his domicile of origin, or (4) the movables are in fact situate at the time of his death."

The commentary under the statement of this rule is as follows:

> "The universal doctrine now recognized by common law, although formerly much contested, is, that the succession to personal property is governed exclusively by the law of the actual domicile of the intestate at the time of his death. . . . It is of no significance what is the country of the birth of the intes-

tate or of his former domicile, or what is the actual situs of the personal property at the time of his death; *it devolves upon those who are entitled to take it as heirs or distributees, according to the law of his actual domicile at the time of his death.*"

Rule 194, p. 719:

"Any will of movables which is valid according to the law of the testator's domicile at the time of his death is valid."

The commentary under this rule is:

"The general principle which governs testamentary no less than intestate succession is, that the law of the country in which the deceased was domiciled at the time of his death governs distribution of and the succession to his movables, and therefore decides what constitutes his last will, and whether and how far it is valid; and this without regard to the place either of his birth or of his death, or to the situation of the movables at the time of his death. . . . The object of our courts is to deal with such a will exactly as the courts of the domicile would deal with it at the time of the testator's death. . . . When once the rights of the parties, under the will of a testator who died domiciled in a foreign country, are determined by the courts of that country, English tribunals, as elsewhere pointed out, are bound by and follow the decision of the foreign court."

Schouler on Wills, Executors and Administrators, 6th Ed., 1923, Vol. 4, par. 3516, states the rule as follows:

"As an international as well as interstate doctrine, it is usually conceded that the law of the domicil of the owner of personal property governs regarding the right of succession thereto, whether such owner die testate or intestate, or to cite the broader fundamental maxim, *mobilia sequuntur personam.*"

Par. 3517:

"As between testacy and intestacy, it is held that the courts of the last domicil must determine; and that, so far as personalty is concerned, a will must be executed according to the law of the country where the testator was domiciled at the time of his death. An English court of probate jurisdiction may, doubtless, ascertain what was in fact the last domicil of the party whose will has been presented for probate; but if probate be judicially granted, the conclusive inference is, that the will must have been executed according to the law of testator's last domicil. We here refer to wills of personalty, in strictness; for, with respect to real property, the descent, devise, or conveyance thereof, and other general incidents affecting its title and transfer, the law of local situation appears to have constantly prevailed in English law."

Par. 3519:

"In England, the last domicil of the deceased is firmly respected, in all matters of administration as to personalty. 'All questions of testacy or intestacy,' observes Lord Chancellor Cranworth, in a modern case, 'belong to the judge of the domicil. It is the right and duty of that judge to constitute the personal representative of the deceased. To the court of the domicil belong the interpretation and construction of the will of the testor. To determine who are the next of kin or heirs of the personal estate of the testator, is the prerogative of the judge of the domicil. In short, the court of domicil is the *forum concursus* to which the legatees, under the will of the testator, or the parties entitled to the distribution of the estate of an intestate, are required to resort'."

Schouler, Vol. 2, par. 839:

"A will of personalty (or of movables, rather) is, on the other hand, governed in construction by the law of the testator's last

> domicile; and here again the principle is a broad one, embracing questions of validity as well as interpretation. Whether one shall take under the will as legatee, or aside from it by right of distribution, whether the decedent was himself capable and left a properly executed will, these and all kindred questions depend, like the general settlement of the estates of the dead, upon the law of the decedent's last domicile. A testamentary disposition of personal property valid at the testator's last domicile, will, moreover, be respected by tribunals elsewhere as valid, and allowed to take effect, where the law is different, if neither a local statute nor fundamental public policy positively forbids'' (citing cases).

In *Wharton ''Conflict of Laws''*, 3rd Ed., Vol. 2, 1292, the author says:

> ''No principle of private international law is better settled by the English and American authorities than that which applies the law of the intestate's domicile at the time of his death to the succession to personal property.''

Ennis vs. *Smith,* 14 Howard (U. S.) 401, 14 L. Ed. 472, is very much in point.

General Kosciusko, on leaving the United States after the Revolutionary War, deposited a Will with George Washington, disposing of a considerable fund in the United States. He was a native of Poland, but, after leaving the United States, established his domicile in France and was actually resident in Switzerland at the time of death.

He made three Wills subsequent to the American Will and the question arose concerning the disposition of the American estate.

The Court says, p. 424 (483 L. Ed.):

> ''For several hundred years upon the continent, and in England, from reported cases, for a hundred years, the rule has been, that

personal property, in cases of intestacy, is to be distributed by the law of the domicil of the intestate at the time of his death. It has been universal for so long that it may now be said to be a part of the *jus gentium.* * * *

"The earliest case reported in the English books, is that of *Pipon* vs. *Pipon,* Am. 6, 27. Lord Hardwicke recognized in it the rule that the personal estate, in cases of intestacy, followed the person, and becomes distributable according to the law or custom of the place where the intestate lived. . . . Many cases followed in the English courts, and the only question since has been what was the domicil of the intestate at the time of his death? In the United States the rule has been fully recognized. (14 Martin, N. S., La. 99; 3 Paige, 182; 2 Gill & Johns., 193, 224, 228.)

"The rule prevails, also, in the ascertainment of the person who is entitled to take as heir or distributee. It decides whether primogeniture gives a right of preference, or an exclusive right to take the succession; whether a person is legitimate or not to take the succession; whether the person shall take *per stirpes* or *per capita,* and the nature and extent of the right of representation."

In *Banta* vs. *Moore,* 15 N. J. Eq. 97, Chancellor Green says, p. 100:

"The right of succession to the personal estate is to be regulated by the law of the domicile."

In *Normand's Administrator* vs. *Grognard,* 17 N. J. Eq. 425, decedent was domiciled in New Jersey and left personal property both in New Jersey and Pennsylvania, and administration was granted in both States.

Green, Ordinary, says (p. 428):

"The distribution of the fund must be regulated by the law of the domicil of the intestate.

> But whether that distribution shall be made by the tribunals of the several states by which the letters are granted, or whether the balance for distribution shall be transmitted by the foreign administrator to the place of the domicil, to be there distributed, depends upon circumstances, and rests in the sound discretion of the tribunal before which the account of the foreign administrator is brought for settlement.'' . . .

Page 429:

> ''And there seems to be no peculiar reason why the distribution should be made by one state rather than the other, except the fact that the distribution must be made according to the laws of this state'' (domicile).

In *Harral* vs. *Harral,* 39 N. J. Eq. 279, E. & A., decedent was an American citizen, who, while domiciled in the United States, made a Will appointing a resident of New Jersey executor, and delivered certain personal property into his hands. He thereafter took up his residence in France, married a French woman, and, without becoming a French citizen, established what the French law recognizes as a conjugal domicile in France.

Under the French law such marriage gave the wife a community interest in one-half of her husband's property.

(Subsequently Harral became a lunatic and was brought back to the United States and died in that condition, so that no change in the domicile was effected.)

On a bill filed by the French wife to establish her community interest in the personal property of the estate in the custody of the New Jersey executor, it was held that the community law of France, the place of domicile, applied, and that the wife was entitled to receive the community

interest secured to her by the French law, notwithstanding the terms of the Will.

In *Jenkins* vs. *Guarantee Trust & Safe Deposit Co.*, 53 N. J. Eq. 194, E. & A., Gummere, J., a testatrix domiciled in Pennsylvania, was the beneficiary of lands situate in New Jersey, under a deed of trust with power of appointment by Will. Her Will exercised the power of appointment and directed that her estate, including the proceeds of the New Jersey land, be applied to the payment of certain legacies, including a legacy to a Pennsylvania charity.

The latter bequest was void under the Pennsylvania law because the Will was made within a prohibited time before death.

The New Jersey trustee was called upon to sell the land in order to provide the funds to pay the legacy, and sought instructions.

Under the New Jersey law the bequest was not unlawful, and V. C. Pitney held that the New Jersey law applied because the question was one affecting the title to New Jersey land, and directed the sale. This was reversed, this Court holding (p. 202):

> "The law of the situs of this land merely regulates its sale, when that shall take place as provided in the will, and the passage thereof to the purchaser. That is all. It has nothing to do with the distribution of the proceeds of such sale among the creditors and legatees of the decedent. That distribution is regulated by the law of the testatrix's domicile, which, at the time of the making of her will and of her death, was Pennsylvania" (citing cases, including *Ennis* vs. *Smith*, 14 How. (U. S.) 400; *Banta* vs. *Moore*, 15 N. J. Eq. 97; *Harral* vs. *Harral*, 39 N. J. Eq. 279).

In *Neilson* vs. *Russell*, 76 N. J. Law 655, E.& A., a non-resident decedent domiciled in England left corporate stock in a New Jersey corporation.

In considering the application of an inheritance tax law, the Court said (p. 657):

> "This succession is a succession under English law, by which the validity and amount of the bequest must be determined. *Jenkins* vs. *Guarantee Trust & Safe Deposit Co.*, 8 Dick. 194."

At page 659:

> "After administration here, the balance of the estate would properly be transferred to the English executors for distribution in accordance with the laws of the domicile of the testator. Our view in this respect is supported by the authorities."

In *Grattan's Estate*, 78 N. J. Eq. 225, a question arose respecting the devolution of a chose in action owned by an intestate decedent domiciled in Pennsylvania.

Pitney, Ordinary, says at p. 232:

> "Mrs. Grattan having been domiciled in Pennsylvania, her personal property was distributable according to the laws of that State" (citing many cases).

In *Chadwick's* case, 80 N. J. Eq. 471, E. & A., testatrix was domiciled in New York but left personal property located in New Jersey and the Will was offered for original probate in New Jersey in order to administer such property.

Held that the Ordinary was without jurisdiction to probate the Will, the Court saying (p. 475):

> "The comity which should be observed between states would seem to require that the courts of the state of the domicile of a testator should be first permitted to pass upon the question whether its citizen has made a will according to the law of his domicile."

In *Griswold* vs. *Kelly-Springfield Tire Co.*, 94 N. J. Eq. 308, V. C. Backes said (p. 316):

> "The law is well settled that in case of intestacy, personal property in a foreign jurisdiction will devolve according to the laws of the domicile; and it is to be taken for granted that if the Surrogate's Court" (New York) "should declare that Mr. Bryant died without leaving a will, it will, after satisfying debts, distribute the estate according to the laws of Ohio" (the domicile) "or transmit it to the home representative. Whether it will do the one or the other is a matter not of jurisdiction, but of judicial discretion, depending upon the particular circumstances of each case" (citing cases).

In *Dammert* vs. *Osborn,* 140 N. Y. 30, 35 N. E. 407; reargument denied 141 N. Y. 564, 35 N. E. 1088, O'Brien, J., testator was a citizen of the State of New York, domiciled in the Republic of Peru at the time of his death. He left assets in Peru and also a large amount of personal property located in the State of New York.

The Will made a large bequest for the foundation of a charitable institution in the City of New York. This charitable bequest was void under the New York law because of violation of the New York statute against perpetuities and indefinite trusts. The provision, however, was valid under the Peruvian law.

The Court says:

> "The general principle that a disposition of personal property, valid at the domicile of the owner, is valid everywhere, is of universal application. It had its origin in that international comity which was one of the first fruits of civilization; and in this age, when business intercourse and the process of

accumulating property take but little notice of boundary lines, the practical wisdom and justice of the rule is more apparent than ever. It would be contrary to the principles of common justice and right upon which the rule is founded to permit a testamentary disposition of personal property, valid by the law of the domicile, to be annulled or questioned in every other country where jurisdiction was obtained over the property disposed of, or the parties claiming it, except for the gravest reasons. There are, no doubt, some exceptions to the rule, founded upon considerations of public policy and necessity. Foreign contracts or dispositions of property, which, if carried out, would endanger the public morals or the public safety, or undermine the political or social fabric, or subvert the administration of justice, or have other evil tendencies, are not within the rule, as the right and duty of self-preservation is higher and stronger in every community than any obligation founded in comity. . . . None of the parties in this case have acquired any title to the fund in question that they are not given by the law of Peru. Our courts may, in certain cases, decline to administer the gift, and remit the property to the principal seat of administration; *but they cannot divest the title of one, or transfer it to another, contrary to the law of the domicile.* That law is part of the disposition, and the foundation of all title under it, and it cannot be disregarded, to the prejudice of one and the benefit of another, any more than the other parts of the instrument."

At page 412 (referring to the claim of the residuary legatee to the fund):

"The claim to the fund is founded upon the will, and that alone. The meaning of the language which the testator employed, and its legal effect and construction must be deter-

mined by the law of the domicile; and it is not alleged or claimed that, when thus construed, any title or interest in the fund in question is vested or can vest in this defendant, but the contrary is clearly involved in the admission that the bequest to found the home is valid under the foreign law. . . . *Our courts cannot confer title to personal property under a foreign will, upon a claimant here, otherwise than in accordance with the law of the country where the owner was domiciled when he made the will.* That law must first determine where the title goes. We may adopt our own methods for ascertaining by proof or otherwise what the foreign law is, as a question of fact, but, once ascertained, it must be applied, in determining the rights of parties who have invoked the jurisdiction of our courts for the settlement of their claims to the property. When the exercise of this jurisdiction involves the violation of some rule or principle of public policy, the courts may decline to proceed any further, *and remit the property or its proceeds to the home tribunals. Despard* vs. *Churchill,* 53 N. Y. 198."

On the motion for reargument, the Court said (35 N. E. 1089):

"We think that none of the cases referred to hold that a valid disposition of property at the domicile of the owner may be declared void by the tribunals of another country, where the law is different, and the title adjudged to be in another. The contrary was held in the case of *Cross* vs. *Trust Co.,* 131 N. Y. 342, 30 N. E. 125. . . . The fundamental rule that pervades all the reasoning of the learned counsel on this subject is to be found in the assumption that the courts of this state can annul a disposition of personal property in a foreign will, valid by the law of the domicile, and distribute the property to claimants here, contrary to the terms of such disposition, as interpreted by the law under which

> it was made. No controlling authority can be found in support of such a proposition. When our courts cannot give effect to testamentary dispositions of property in foreign wills without violating our laws or public policy, *the property should be remitted to the jurisdiction of the domicile, to the end that it may administer its own laws.* But if there is no law or public policy here that forbids the execution of the purpose that the testator had in view, then our courts will give effect to the disposition according to the law under which it was made."

In re Bertin's Estate, 91 Atl. Rep. 669 (Pa. Sup. Ct.), testatrix, an American citizen, became domiciled in France through marriage to a Frenchman. Her Will made a bequest to an American legatee, with certain conditions.

Testatrix left personal property in Pennsylvania, where there was ancillary administration, and the legatee claimed payment of her legacy out of the Pennsylvania assets. The validity of the legacy was disputed by the French beneficiaries.

The Court declined to adjudicate the controversy, remitting claimant to the French Court, but retaining sufficient of the Pennsylvania assets to pay the legacy if validated by the French Courts.

In affirming the decree, the Court says:

> "The question involved is not one of jurisdiction, but of the proper exercise of the discretionary power of the court to require the claimant, under the facts, to establish the validity of her legacy in the domiciliary jurisdiction before the ancillary jurisdiction will direct its payment out of the fund for distribution in this proceeding. . . . The law of the domicile governs the distribution of a decedent's personal estate, and the validity of the appellant's legacy must therefore be determined under the law of France. . . . The decree entered by the Orphans' Court

does not offend the act of March 31, 1905 (P. L. 91). It retains a fund sufficient to meet the appellant's legacy in the hands of the accountant to await the decision of the French court. When a decision has been made, the court of ancillary jurisdiction will distribute the fund to the party legally entitled thereto. The act provides that the personal representative 'shall not be required to deliver to any foreign executor or administrator any fund. . . . But such fund shall be distributed under the direction of the Orphans' Court.' This was the practice in the Orphans' Court at the date of the enactment, and hence the act was simply declaratory of the existing law. . . . The Legislature intended by this enactment to protect citizens of the state by requiring our courts to make distribution of the fund in the hands of the ancillary administration, but it did not intend to compel the court to distribute the fund to a legatee *until the validity of the legacy under the law of the domicile was duly established.*''

In *Mann* vs. *Carter,* 74 N. H. 345, 68 Atl. Rep. 130, the Court says:

'' 'When an individual dies possessed of estate in different governments, it seems to be settled as a general rule that his personal property, or movable estate, is to be distributed among his heirs or legatees according to the law of the place in which he had his domicile at the time of his decease.' *Goodall* vs. *Marshall,* 11 N. H. 88, 89, 35 Am. Dec. 472. . . . 'And the succession to personal property is governed exclusively by the law of the actual domicile of the intestate at the time of his death' (citing cases). In *Frothingham* vs. *Shaw, supra,* it is said (page 62 of 175 Mass., page 625 of 55 N. E. . . .): 'If there are movables in a foreign country, the law of the domicile is given an extraterritorial effect by the courts of that country, and in a just and proper sense the succession is said to take place by force of and to be governed by the law of the domicile.''

POINT II.

International law is a part of the law of the State of New Jersey except where there is some positive prohibition under the statutes of this State.

The law of nations is a part of the law of every state of the United States.

33 Corpus Juris, p. 387.

In the *Paquette Habana,* 175 U. S. 677; 44 L. E. 320, at p. 700 (L. E., p. 328), the Court says:

> "International law is a part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination."

In *Hilton* vs. *Guyot,* 159 U. S., 113; 44 L. Ed. 95, in considering the effect of a foreign judgment *in personam* under so-called private international law, the Court says (p. 163, L. E., p. 108):

> "International law in its widest and most comprehensive sense—including not only questions of right between nations, governed by what has been appropriately called the law of nations; but also questions arising under what is usually called private international law, or the conflict of laws, and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominions of another nation—*is part of our law,* and must be ascertained and administered by the courts of justice, as often as such questions are presented in litigation between man and man, duly submitted to their determination."

POINT III.

The statutes of this State providing for the distribution of personal property of a resident intestate, do not expressly include non-residents, nor do they declare a public policy prohibiting a different distribution of personal property of a non-resident decedent in accordance with the law of his domicile.

The statute in question is *Section 168 of the Orphans' Court Act, Vol. 2, Supp. Compiled Statutes,* p. 2628.

In *Dammert* vs. *Osborn, supra,* 140 N. Y. 30, 35 N. E. 1088, the Court considered the question of public policy, saying:

> "There are, no doubt, some exceptions to the rule, founded upon considerations of public policy and necessity. Foreign contracts or dispositions of property, which, if carried out, *would endanger the public morals or the public safety, or undermine the political or social fabric, or subvert the administration of justice, or have other evil tendencies, are not within the rule, as the right and duty of self-preservation is higher and stronger in every community than any obligation founded in comity.* . . . There is no law that forbids gifts to charity here by testators in other countries, or that requires us to reject the gift unless it is made, in all respects, in conformity with our local law. There is no public policy on that subject, except what is to be found in the language of the statute, and that provides that 'the absolute ownership of personal property shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance and until the termination of not more than two lives in being'" etc. . . . "*But these restraints applied to members of the political community from which the law emanated, and not to per-*

> *sons in other countries, where no such restrictions existed, and who desired to give according to their own laws.* Bequests by such persons to those corporations, without regarding the statutes referred to, would be good, if valid at the domicile of the testator. *Hollis* vs. *Seminary*, 95 N. Y. 171."

In *Thompson* vs. *Taylor*, 66 N. J. Law, 253, E. & A., a married woman, resident in New Jersey, made an accommodation note payable to her husband and delivered it to him in New Jersey. The husband thereupon went to New York where he negotiated the note.

Under the New York law, the note was a valid obligation of the wife.

Suit was brought thereon in New Jersey and it was contended that inasmuch as the note was void under the New Jersey Married Women's Act, the enforcement thereof, although negotiated in New York, was against the Public Policy of this State.

Justice Garrison says (p. 258):

> "The distinction between regulative legislation and the adoption of a principle of public law is too important to be lost sight of. To declare, as the common law did, that the welfare of society required that wives be incapable of making contracts, is an illustration of the adoption of a principle which, so long as it was adhered to, constituted a rule of public policy. When, however, civilized states became satisfied that the welfare of society was not best served by the maintenance of this principle, it was abandoned, by the recognition of its opposite, viz., that married women possessed capacity to contract. The questions that then arose, viz., what contracts might they make, and what might they not, while calling for the exercise of legislative discretion, based upon considerations that affected a large class of individuals, did not, either in theory or in fact, involve any principle upon which the general welfare of the body of citi-

zens of the state was assumed to rest. With the abandonment of the political principle, the matter was broken up into discretionary exercises of legislative regulation, in the course of which different bodies, or the same legislative body, at different periods, might lay down varying rules without destroying that comity that is so essential to commercial confidence and intercourse. Thus in the case certified it appears that the State of New York, having abandoned the principles of the common law, as we ourselves have done, has gone further in its enabling legislation, or what is the same thing, has retained less of what the common law rule compelled, but equally and in either case the only *principle* involved has been abandoned. The respective regulations of the subject equally rest upon the common ground that women have a capacity to make contracts, subject to legislative control. If this be so, comity requires that we mutually give effect to these discretionary acts by recognizing the validity of the resulting contracts and enforcing them in our courts, even when they are in opposition to our own declared discretion upon the subject."

The opinion then quotes with approval as a correct statement of the law from the opinion of Justice Reed in *Wright* vs. *Remington,* 12 Vroom, 48, in a suit brought in New Jersey against a married woman upon accommodation notes made in another State, as follows:

" 'There can be no question but that the contract was valid by the law of Illinois. It is, therefore, the duty of the courts of this state to recognize and enforce it, unless it appears injurious to the interests of the state or of our citizens. But nothing approaching this result can be deduced solely from the fact that the foreign state confers upon married women the power to make a contract of suretyship. . . . Whatever may be our opinion of the policy of legislation beyond our state, we are bound by the principles of comity to

> recognize its validity, unless it clearly contravenes the principles of public morality, or attacks the interests of the body of the citizens of our state.' "

If, in the present case, it were the law of this State that all property within its jurisdiction, upon the death of the owner, should escheat to the State, a question of public policy in recognizing the law of the domicile of the foreign owner might be presented.

But, on the contrary, it is the policy of our law to allow a resident to dispose of his entire estate by Will, to such persons and in such proportions as he sees fit, subject only to the widow's dower and the husband's curtesy in land and to certain limitations on the restriction of alienation.

Caruso, if a New Jersey resident, might have made a valid Will disposing of his property in precisely the manner fixed by the Italian decrees.

There is no declaration of public policy affecting even a resident that the child or children of a decedent shall receive two-thirds and the surviving widow one-third of his personal property, for decedent may by his Will lawfully make a different disposition or cut off his widow and children altogether.

Our statute of distribution is merely a formula controlling the devolution of personal property in case decedent does not otherwise direct by Will.

The statutory distribution is the disposition which the decedent is presumed to intend as his Will by failure to make a testamentary disposition to the contrary.

> *Ennis* v. *Smith, supra,* 14 How. 401, 14 L. E. 472, 483.

In *Skellenger* vs. *Skellinger,* 32 N. J. Eq. 659, Van Fleet, V. C., quotes with approval Justice

Shaw in *Nickerson* vs. *Bowly,* 8 Metcalf (Mass.), 430, as saying:

> " 'If it were thought important to inquire into the intent of the deceased, when he has made a will, but left property undisposed of, either in terms or by implication, as every man is presumed to know the law, it may reasonably be inferred as his intention that the residue should be disposed of according to law.' "

We submit that the only question of public policy involved in this case is the public policy of recognition of the law of the domicile of a foreign decedent as controlling the disposition of his personal property within the jurisdiction of the New Jersey courts, under the principles of international law, where no rights of resident creditors or claimants are involved.

Finally, if it be deemed that the public policy of this State would be violated by the entry of a decree for the distribution of the fund in accordance with the Italian decree, then, we submit, the Court of Chancery could not on any principle of law decree distribution upon any other basis, but must remit the fund to the domicile.

Suarez vs. *New York,* 2 Sandford's Chancery (N. Y.) 173;
Dammert vs. *Osborn, supra,* 141 N. Y. 564; 35 N. E. 1088, at page 1089;
Griswold vs. *Kelly-Springfield Tire Co.,* 94 N. J. Eq. 308-316.

POINT IV.

The three decrees of the Italian Tribunal, apart from their quality of binding decrees upon the parties thereto, must be accepted in this State as a correct exposition of the law of Italy as applied to the facts of this case.

We shall hereafter discuss in some detail the Italian proceedings and the provisions of the decrees and their binding effect upon all parties, including the infant, as *res adjudicata.*

Under this head, we shall merely consider the decrees as a binding exposition of the foreign law embodied therein as distinguished from their value as *res adjudicata.*

We have cited authorities supporting the rule that the personal property of a decedent, wherever situate, passes pursuant to the law of his domicile, and, where found abroad, may be distributed directly to those entitled under the laws of the domicile or remitted to the domicile.

In the former case, it becomes necessary to ascertain the law of the domicile as a fact.

We think the authorities uniformly hold that the decisions and opinions of the Courts of the domicile are to be accepted abroad as the conclusive evidence of its law.

In the present case, there are three decrees of the Tribunal of Naples, each of which contains full discussions of the Italian law affecting the status of the parties in interest in this litigation, and the Italian law bearing upon their respective claims and rights.

The following bears upon the value of such judicial pronouncements as evidence of what the foreign law is.

Dicey, Conflict of Laws, 3rd Ed., 1921, p. 719:

> "When once the rights of the parties, under the will of a testator who died domiciled in a foreign country, are determined by the courts of that country, English tribunals, as elsewhere pointed out, are bound by and follow the decision of the foreign court."

In *re Hollins,* 139 N. Y. Supp. 713; affirmed on the opinion of Surrogate Fowler, 144 N. Y. Supp. 1121; affirmed, without opinion, 212 N. Y. 567, 106 N. E. 1034, the Duchess of Manchester was domiciled in England and made a Will disposing of assets both in England and the United States, appointing a separate executor for the American estate.

A question arose respecting the liability for English taxes of a legacy payable out of the American assets to an Austrian subject.

An English judge, having a connection with the case which does not appear, in the course of proceedings there, had expressed an opinion or intimation respecting the English law on the subject.

Surrogate Fowler says (p. 717):

> "I do not quite see how the American executors can be expected to ignore the state of the law of the country of their testatrix, unless compelled so to do by the *lex fori.*
>
> "From the papers submitted to the Surrogate on the hearing, it would appear that Mr. Justice Swenfin Eady, a judge of the English 'High Court of Justice', has decided, or authoritively intimated in substance that any property sent by the American executors or trustees to Great Britain for any purpose may be intercepted and appropriated by the Crown in satisfaction of any unpaid legacy duty on legacies given by the late Dowager Duchess to her foreign legatees. It is not for this court to reconcile the decision of this English judge with the decisions cited by the learned counsel for the Countess Zichy.

> "It is sufficient here that the decision in question was rendered by a foreign court of competent jurisdiction. The decision or intimation should be recognized by the Surrogate in his consideration of the duty and liability of the American executors of the late Dowager Duchess."

In *Laing* vs. *Rigney,* 160 U. S. 531, 40 L. Ed. 525, Justice Shiras says:

> "In the absence of any statutory direction on the subject, and of any reported decision of the Supreme Court of that State, we are justified in finding the law to be as declared in the very case in hand, where the Chancellor of the Chancery Court of New Jersey has entered a final decree based upon the original bill," etc. ". . . So long as this decree stands, it must be deemed to express the law of the State."

In *Elmendorf* vs. *Taylor,* 10 Wheat. (U. S.) 152, 6 L. Ed. 289, Chief Justice Marshall says at p. 159 (292):

> "This Court has uniformly professed its disposition, in cases depending on the laws of a particular state, to adopt the construction which the courts of the state have given to those laws. This course is founded on the principle, supposed to be universally recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus, no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty, to depart from that construction than to depart from the words of the statute."

In *Dent* vs. *Smith,* L. R. 4 Q. B. 446, Cockburn, C. J., said of a Russian judgment:

> "Then it is said that they applied the law erroneously. Again, I think we have not to deal with that. We are not to sit here as a court of appeal against any judgment pronounced by a court which must be taken to be one of competent jurisdiction in the administration of the Russian law, and, whatever was substituted, became for the time Russian law in respect of matters of maritime law. The proper tribunal to appeal to, if there was any ground for appeal, was to the court of St. Petersburg."

In the same case Justice Hayes said:

> "One would think that the exposition of a court is about the best evidence you can have of the law of a country."

In *Carr* vs. *Francis Times & Co.,* 1892, A. C. 180, the House of Lords said of a decision of the Sultan of Muscat:

> "He has authorized it and declared authoritatively that it was a perfectly lawful act according to the law of Muscat, and I am of the opinion that no English tribunal is capable of going behind that declaration and saying that the Sultan of Muscat was wrong in his exposition of his own law."

Lord Lindley in the same case says:

> "The Court of Appeal, from whose judgment I feel compelled to dissent, appear to have thought that, as at the time of seizure the destination of the cargo seized was Muscat, the seizure was unlawful under the law of Muscat, and that the defendants had failed to prove that the seizure had been subsequently legalized. This view of the finding of the Muscat court, and its approval by the Sultan, *ignores its value as evidence of the*

> *law of Muscat.* I agree with the Court of Appeal that there was no judgment in our sense of the word either *inter partes* or *in rem.*"

In *Doglioni* vs. *Crispin,* L. R. 1 H. L. 314, it is said:

> "It does not always happen, as is the case here, that the claim of the party litigating in our courts has been actually raised and decided in the courts of the country of the domicile. It is, therefore, often matters of necessity that our courts should receive evidence from learned foreigners as to what the law of the domicile is. Such evidence is in general far from satisfactory, but it often happens that no better evidence can be obtained, and then the courts here must ascertain from conflicting testimony, as well as they can, what the law is on which they must act. But here we are left in no doubt. The title of the respondent has been fully adjudicated upon by the courts of his domicile after long and careful consideration, and by their decision we are bound."

In distinguishing between the value of the judgment as *res adjudicata* and as evidence, of the law the Court further said:

> "The respondent is not insisting here on the Portuguese decision as a bar to the appellant's demand on the mere ground that it is *res adjudicata,* but on the ground that it is the decision of a court of exclusive jurisdiction—a decision which are are bound to receive without inquiry as to its conformity or nonconformity with the laws of the country where it was pronounced."

See, also, for a general discussion of the cases *Kessler* vs. *Armstrong Cork Co.,* 158 Fed. Rep. 744.

POINT V.

Provisions of the Italian law defining the jurisdiction of the Civil and Penal Tribunal.

Italy is a monarchy and the fundamental source of authority is the Crown.

The fundamental authority of the courts is the Royal Judicial Ordinance of 1865 (p. 229).

Pertinent provisions are:

> *Title 1, Chapter 1, Article 1*: "Justice in civil and penal matters is administered by conciliators, pretors, civil and penal tribunals, courts of appeal, courts of assize and the Court of Cassation" (p. 243, l. 30).
>
> *Article 2*: "Together with the Court of Civil and Penal Tribunal, is established an office of Public Ministry. The functions of the Public Ministry in relation to the pretors are exercised in the manner and in the cases determined by law."
>
> *Chapter 3, Article 41*: "There is a Civil and Penal Tribunal in each of the districts designated in the lists" (p. 244).

The list of judicial districts attached to the Ordinance specifies Naples as one of the districts (p. 244, l. 20).

> *Article 42*: "To the Civil and Penal Tribunals there belongs first, to judge any civil and commercial matters in first instance and in appeal of all the cases referred to them by the law. Second, to exercise the functions of the tribunal of commerce where such does not exist. Third, to judge any penal matter in first instance and in appeal of accused submitted to them by the law. Fourth, to exercise all other powers which, by the law, are assigned to them" (p. 244).

(The word "law" as used in the translations of the Ordinance and elsewhere is to be understood as designating the Code.)

The following are provisions of the Codes relating to the jurisdiction of the Tribunals:

Code of Civil Procedure, Section 84 (Ex. C-18):

> "1. In first instances all causes in civil matter where the value exceeds 1,500 (now 5,000) lire" with certain exceptions not pertinent.
>
> "2. On appeal all the actions in civil matters decided in first instance by the pretors or by arbitrators in limit of the jurisdiction of the pretors, and except the disposition of Article 28" (Case, p. 363).

From the foregoing it is apparent that the Civil and Penal Tribunals of the several judicial districts are courts of general jurisdiction in civil and penal matters.

By the Royal Judicial Ordinance the Tribunals are given original and appellate jurisdiction of all civil, commercial and penal causes prescribed by the law or Code, and, further, are vested without limit with "all other powers which by the law are assigned to them".

The Code (Article 84) expressly gives original jurisdiction in first instance of all causes in civil matters where the value exceeds a certain minimum amount reserved for the inferior authority, and appellate jurisdiction over the pretors.

POINT VI.

Provisions of Italian law constituting and defining the powers of the office of Public Ministry.

Under the Italian system, this is evidently a highly important office.

Its fundamental authority is the Judicial Ordinance which provides:

Title 3, Chapter 1, Article 129:

"The Public Minister is the representative of the executive power in connection with the judicial authority and is subjected to the direction of the Minister of Justice."

Article 130:

"The function of the Public Minister with the Court of Cassation and with the Courts of Appeals is exercised by general procurators, and with the Civil and Penal Tribunals, by procurators of the king."

Chapter 2, Article 139:

"The Public Minister carries out the observance of the laws; prompt and regular administration of justice, conservation of rights of the state, of the moral bodies, and of the persons who have not full judicial capacity, using for such purpose in case of urgency all conservating provisions which may be necessary."

Article 140:

"In civil matters the Public Ministry gives its advice and proceeds also by action in the cases respectively determined by law" (Case, pages 244, 245).

Article 2 of Chapter 1, Title 1, of the Judicial Ordinance provides specifically for the functioning of the Public Ministry in conjunction with the Tribunals, as follows:

"Together with the Court of Civil and Penal Tribunal, is established an office of Public Ministry" (Case, p. 244).

The above provisions of the Judicial Ordinance creating the Public Ministry are supplemented by provisions of the law or Code as authorized by Article 140, *supra.*

Code of Civil Procedure, Section 346 (Case, p. 245):

"The Public Minister functions in the cases indicated by the law, and all the cases which regard, first, the state; second, donations, and legacies made for the benefit of the poor; third, *the status of persons and guardianships;* fourth, matrimony and separation of spouses; fifth, *minors,* interdicted, disabled, declared absent, and *generally, all those which are represented or assisted by a guardian or administrator delegated by public authority; sixth, jurisdiction* on account of matter, of value and conflicts of jurisdiction; seventh, objections to the judge or to the officers of the Public Ministry or a civil action against them; eighth, those who are for public reasons beyond the realm and are not represented in the action. The Public Ministry can command the communication of acts in all matters in which it believes it necessary for the observance of the law and the judicial authority, on its own initiative may so order it."

The Italian governmental scheme thus contemplates that the direct representative of the supreme power shall function in conjunction with the judicial power and that the King's representative shall attend in his courts with certain supervisory powers and functions.

The office of Public Ministry is distinct from and entirely independent of the judicial power, being the direct representative of the executive power (the King) in connection with the judicial authority, and is under the direction of the Minister of Justice.

Among the express functions which are of interest in this case, it is noted that the office functions in matters involving jurisdiction of the courts with respect to subject matter, value and conflicts of jurisdiction, and, also, matters involving the status of persons and of guardianships, minors, and all those who are represented or assisted by guardians or administrators.

It is further to be observed that the Public Ministry in the matters within its jurisdiction may act upon its own initiative and may command the courts to communicate to it all matters in which it believes it necessary for the observance of the law.

The judicial authority also, on its own initiative, may refer such matters to the Public Ministry.

POINT VII.

Jurisdiction of the Tribunal over the guardianship and property of infants, and divisions and compromises affecting the rights of infants.

Under a subsequent head we shall discuss more in detail the Italian law respecting the rights of parent and child, including the rights of infants, but under this head point to provisions of the Code specifying certain powers of the Tribunal with relation thereto.

Section 224 Civil Code (Case, p. 366) specifies that the parent represents the minor child and administers its fortune, with the limitation that the parent may not charge the child's inheritance or contract obligations exceeding the limits of simple administration, unless in case of necessity or evidenced utility "or through or by order of the Tribunal."

This section further provides that where there is any conflict of interest between the parent and child, "there will be nominated a special guardian for the children. The nomination of the special guardian will be made by the ordinary judicial authority before whom the cause might appear, *or in every other case by the Civil Tribunal*".

The Tribunal expressly acted under this section in appointing the special guardian for Gloria Caruso.

Where there is no surviving parent, the affairs of the infant are administered by a guardian appointed by the Family Council, with the approval of the Tribunal.

The Civil Code, Sections 251, 252 and 253 (Case, p. 365), provide for the convoking and the membership of the Family Council.

Civil Code Section 296 (Case, p. 365) limits the authority of the guardian, without authorization of the Family Council, to do certain things, including "proceed to division or provoke them in a judicial way. He can likewise not without said authorization make compromises or settlements, institute actions at law unless they are possessory actions or matters relative to the collection of income except in cases of urgency" (p. 366).

Article 301 of the Civil Code (p. 366) provides that all deliberations of the Family Council "by which are authorized acts of alienation, pledges or mortgages of the minor, must be submitted to the confirmation of the Tribunal. There must be likewise submitted to such confirmation of the Tribunal the deliberations which authorize a guardian to borrow money *and relative to transactions to compromises and to division in which the minor is interested.*"

Section 303 of the Civil Code provides:

> "The tutor cannot borrow for the minor, purchase for him immovables *or compromise respecting his rights,* without an authority from the judge, granted on the advice of a family meeting."

(This particular Code provision is not translated in the evidence but the entire Italian Code was offered with leave to either party to use translations of any section not translated in the evidence.)

The above provisions, in substance, recognize the surviving parent as the guardian of the property of the minor child, with provision for control by the Family Council where there is no such parent, subject to the approval of the Tribunal, and direct appointment of a special guardian by the Tribunal where there is a conflict of interest between the surviving parent and the child, and, further, by prohibiting certain acts affecting the infant's property, without approval by the Tribunal, necessarily recognize the power of the Tribunal to authorize such acts.

Among the acts so authorized are "to proceed to division or provoke them in a judicial way" (which would include the division or judicial proceedings for the division of the child's inheritance), and, generally, "make compromises or settlements" (Section 296), and matters "relative to transactions to compromises and to division in which the minor is interested" (Section 301), and to "compromise respecting his rights" (Section 303).

POINT VIII.

The Italian law respecting the right of a decedent to dispose of his property by will and the effect of the subsequent birth of a child, and the questions raised thereunder by this case.

The power of a testator to dispose of his property by will; the effect upon such will of the subsequent birth of a child; the rights of succession in cases of intestacy; and the rights of illegitimate children, under the Italian law, are discussed in the decrees of the Italian Court, Exhibit C8A at page 286; the legal opinion of Guarracino, Exhibit C7A at page 271, the confirmatory decree of

August 21, 1925, Exhibit C13A at page 331 &c. and the sworn opinion of Prof. Grippo, C12A at page 313.

It may be stated generally that a testator may not dispose by will of his *entire* estate if he leaves a wife and/or legitimate children.

He may not deprive his widow of her usufruct which the law gives her.

This usufruct may not exceed one-fourth of the usufruct of the entire estate.

Likewise he may not deprive his legitimate children of a certain minimum interest which the law gives them in the estate. This is sometimes designated as the "legitima" and in the translations involved in this case is generally referred to as the "reserved portion" in the present case amounting to one-half of the estate.

After reserving the legitima the testator may make testamentary disposition of the remainder of his estate, subject to the widow's usufruct.

A will made at a time when the testator did not have any knowledge that he had a child is revoked by the subsequent birth of a legitimate child if the will makes no provision therefor.

If, however, the testator knew that he had a child or makes provision for the subsequent birth, the latter event simply operates to let the child in for the legitima which the law gives him and the will is otherwise operative.

A natural or illegitimate child may be "recognized" by the parent and thereby acquire a civil status which entitles him in case of intestacy to one-half of the portion of a legitimate child.

If, however, one of the parents of an illegitimate child is at the time of conception married to another person, such adulterine child may not be "recognized".

However, if the fact of adulterine origin does not appear upon the face of the act of recognition

the Code prohibits judicial inquiry or research to establish such fact, except in a very limited class of cases.

Section 888 of the Civil Code defines the effect of subsequent birth (this is one of the Code sections where the translation is not in the record, although the section is contained in the text of the Italian Code admitted in evidence).

The translation is as follows:

> "888. The (testamentary) provisions of universal or particular character, made by one who at the time of the will did not have or was in ignorance of having children or descendants, are revoked by law by the existence or subsequent birth of a legitimate child or descendant of the testator, even if posthumous, or legitimated or adopted".

It is to be borne in mind that there is a distinction under the Italian law between a recognized natural child and a legitimated or adopted child.

Legitimated or adopted children are by the above statute put in the same class as legitimate children.

Recognized natural children have a legal status which in case of intestacy entitles them to half of the portion which they would take if legitimate.

It may be noted that the total voiding of the will takes place only in the event that the testator did not have or did not know that he had children or descendants, without distinguishing between recognized natural children and legitimated or adopted children.

In the present case it further appears from the record of the Italian proceedings that it was contended that Caruso had republished his will at a time shortly before Gloria's birth, when he was aware of her existence, *en ventre sa mere.*

Both of these questions are referred to as open questions by the Tribunal in its decree of October

21, 1921, Exhibit C8A, as appears from the following quotation at page 288:

> "As to Giovanni Caruso's interest in the estate, it is clear that in a judicial proceeding he would contend that the decedent's will cannot be considered as revoked owing to the fact that the decedent's natural children were born before the making thereof, and also because Comm. Caruso knew at the time he gave the second original copy of the testamentary disposition heretofore cited, on August the 9th, 1919, to Dr. Vecchiettini, that his wife was then pregnant."

POINT IX.

Under Italian law the surviving parent enjoys the usufruct of property of the child during minority.

The following provisions of the Code apply (Ex. C-18, p. 366):

Civil Code, Section 224:

> "The father represents the children . . . in all civil acts and administers their fortune. However, he cannot alienate, hypothecate or pledge the fortune of the child, contract in the child's name mortgages or other obligations exceeding the limits of its simple administration, unless it is for reason of necessity or evidenced utility to the child or through or by order of the Tribunal. If there are conflicts of interest between the children subject to the paternal power, or between them and the father, there will be nominated a special guardian for the children."

Civil Code, Section 228:

> "The father has the usufruct of the goods which the child receives by inheritance, donation or by any other lucrative way and retains it until the child may be emancipated or have attained his majority."

Civil Code, Section 230 provides that the parent receiving the usufruct shall pay the expenses of maintenance, education and instruction of the child, annuities or interest upon the capital etc.

Civil Code, Section 231:

> "The disposition of the foregoing articles apply to the mother when she exercises the paternal power" etc.

Under this law, the mother became entitled to the entire usufruct of her daughter's inheritance during minority. The settlement, however, in derogation of this right set apart for Gloria a special fund of 500,000 lire to be invested by the Bank of Naples and the income accumulated during minority.

It was suggested below that Mrs. Caruso lost the usufruct from the property of the minor through her second marriage, under Section 232 of the Civil Code (p. 368):

Civil Code, Section 232:

> "The legal usufruct ceases with the death of the child and with the passage of the parent to a second marriage."

However, Section 237 of the Code provides that the mother desiring to pass to a new marriage must convoke the Family Council, whose deliberations are subject to the Tribunal.

Ex. C-11a, p. 310, shows that the Family Council approved the second marriage of Mrs. Caruso and that the action of the Family Council in continuing the mother's administration, was approved by the Tribunal after the same was first submitted to and approved by the Public Ministry (decree entered December 28, 1923).

Furthermore, the confirmatory decree of the Tribunal directing that the original settlement decree be followed out (Ex. C-13a p. 327) was

entered subsequent to the second marriage and establishes that the Tribunal did not consider that the second marriage of Mrs. Caruso affected the provisions of the earlier decrees.

POINT X.

The Tribunal of Naples had territorial jurisdiction to pronounce the decrees in question.

We have above shown that the Tribunals of the several judicial districts within the Kingdom of Italy, under the Judicial Ordinance and the Code, are courts of general jurisdiction and that such jurisdiction includes the supervision of the property rights of infants; the distribution or "division" of the estates of decedents; and the compromise of infants' rights.

The jurisdiction assumed by the Tribunal of Naples was of a two-fold character. It began with the assumption of control over the property rights of the two infants involved, by the appointment of a special guardian for Gloria to represent her in conflicts of interest with her mother, and with assumption of control over the proceedings of the Family Council convened in Naples by the pretor, controlling the property of the infant Enrico, Jr.

Some months later, the Naples' Tribunal took jurisdiction of the entire settlement of decedent's estate, on application of all parties, including the guardians of the two infants appointed by or subject to the approval of the Naples Court.

It was contended by Gloria's New Jersey guardian in the Court of Chancery that decedent was domiciled in the Commune of Sesto Fiorentino in the Province of Tuscany, and not at Naples, at the time of his death, and that the Tribunal of Naples

lacked territorial jurisdiction by reason of the provision of Article 94 of the Code of Civil Procedure, which provides: "The succession is opened at the time of the death in the place of the last domicile of the deceased."

It is apparently conceded that under the Italian Constitution, the Tribunal of the judicial district in which decedent had his last domicile, had jurisdiction to make the decrees, but the fact of domicile is disputed.

Without considering the possibly conflicting evidence on this point, it seems sufficient to observe that under the Italian law it is the function of the Public Ministry to determine "jurisdiction on account of matter, of value and conflicts of jurisdiction" (Section 346 Code of Civil Procedure), and the Italian record shows that the petition for each order or decree involved in this case was first referred by the Court to the Public Ministry, and the proceedings in each instance were approved.

Any possible question of jurisdiction must be regarded as conclusively settled as against any collateral attack by the approval of the Public Ministry, which, under the Royal Ordinance, is the direct representative of the supreme power, the King.

We think the Chancellor undoubtedly stated the correct rule on this point in his opinion (p. 153):

> "I should not assume, directly or indirectly, any appellate jurisdiction over the Italian courts, and on this subject I deem it to be my duty to leave it where the Italian court leaves it, that is, assume the jurisdiction of the court of Naples to approve the family settlement, and, for that matter, order a distribution of the estate according to its decision."

But, if the question of territorial jurisdiction were open for reconsideration here, we maintain that the jurisdiction was properly assumed.

The Naples' Court first assumed jurisdiction over the guardianship of the infant Gloria under Section 224 of the Civil Code, which authorizes the appointment of a special guardian in case of conflicting interests between the infant and parent.

In such case, the special guardian is to be appointed "by the ordinary judicial authority before whom the cause might appear" (i. e., the conflict of interest) "or in every other case by the Civil Tribunal".

The appointment in the Caruso case comes under the latter classification, since there was then no pending proceeding of any kind.

This section does not, however, specify the particular Tribunal, and Section 90 of the Civil Code of Procedure, entitled "Competence for Territory", applies.

Section 90, Civil Code, translates as follows:

> "The personal action and the real action regarding movables are filed before the judicial authority of the place where the defendant has domicile or *residence.* If the defendant does not have domicile or known residence" (the action) "is filed before the judicial authority of the place where he is dwelling."

The guardianship proceedings may, therefore, be had before the Court either of the domicile or residence.

In the present case there is no room for doubt that Gloria had actual residence at Naples with her mother at the time of the application, regardless of any question of technical domicile.

The precise point seems to have been decided by the Tribunal of Turin, December 16, 1904, in the case of *Benech Succi* vs. *Benech De Stefani, et als.,* affirmed by the Court of Appeals of Turin, June 30, 1905, between the same parties, reported in *Giurisprudenza Torinese,* 1906, p. 207.

The following is a translation of the citation of this report contained in the Annotated Italian Code in the library of the New York Bar Association:

> "In the case of conflicts of interests between the children subject to the same paternal power and the father in relation to inheritance therein" (wherein) "all are interested, the Tribunal competent to nominate a special guardian to the minors and authorize the same to accept or ratify in the name and interest of the minors, a contract executed for the settlement of the said inheritance, is not that of the place where the succession is open, but that of the place of father's residence or domicile, and the nomination shall be made by voluntary jurisdiction according to the provisions of the Article 778 Code of Civil Procedure."

The propriety of the decree of the Tribunal of Naples appointing the special guardan for Gloria, is not only apparent because of the undoubted residence of the surviving parent as well as of the infant at Naples at the time of the application, but is conclusively settled by the approval of the order by the Public Ministry under the authority above stated.

But, if the jurisdiction of the Court depends upon the domicile of decedent in Naples, proof of such fact is not lacking.

Caruso was born in Naples of Neapolitan parents, and his death is recorded in the record of the Civil Status of the Commune of Naples, from which it appears that Enrico Caruso, residing in Naples, born in Naples, died in Naples (Ex. C-4a, p. 263).

Exhibit C-15a is a certificate by the Royal Commissioner of the City of Naples, which certificate states that it is "to be used before the Court at

Naples", and certifies that the Register of Population shows that Enrico Caruso, born in Naples February 27, 1873, domiciled at the Hotel Vesuvius, became a resident in the community by immigration from America June 18, 1921, and died August 2, 1921.

Exhibit C-19 is a copy of the marriage record of Enrico Caruso to Dorothy Park Benjamin, certified by the Italian Consul General in New York and filed in the archives of the Civil Status of the City of Naples in 1918.

Exhibit C-20 is a copy of the record of the birth of Gloria, certified by the Italian Consul General at New York and filed in the archives of the Civil Status of the City of Naples for the year 1920.

The significance of the last two documents is apparent upon consideration of Sections 367 and 368 of the Italian Civil Code, which provide for the registration of acts affecting the civil status of Italian subjects, occurring abroad, by filing certified copies thereof from the foreign jurisdiction, with the officer of the Civil Status in the place of domicile in Italy.

The translation of Section 367 is as follows:

> "The acts of the certificates of civil status executed in foreign countries are entitled to credit when they are executed according to the forms established by the laws of such place.
>
> "It is the duty of the citizen who had such certificate made to send a copy of the same within three months to the Royal diplomatic or consular agent residing nearest, unless he prefers to transmit it directly to the office of the Civil Status indicated in the following article."

The translation of Section 368 is as follows:

> "Citizens who are beyond the realm shall have the right to have the acts of birth, mar-

riage or death deposited with the diplomatic or consular Royal agents so that the forms established by the Code be followed.

"The diplomatic and consular Royal agents and the officials who take their place, must within three months transmit a copy of said acts given to them and by them received, to the Ministry of Foreign Affairs, by whose office they shall be forwarded as follows:

"The act of the birth certificates to the office of the Civil Status of the domicile of the father of the child, or of the mother if the father is not known.

"The act of the marriage certificates to the office of the Civil Status of the communes of the last domicile of the spouses.

"The act of the death certificates to the office of the Civil Status of the commune of the last domicile of the deceased."

The Italian lawyer called as a witness before the Chancellor testified that the death certificates from the record of the Civil Status of Naples (Ex. C-4a and C-15a), under the Italian law, must be recognized as evidence by the Italian Courts as a public certificate (p. 238).

Certain Code provisions respecting the records of death are as follows:

Section 352: "The certificates relative to the civil status must set forth the commune, the house, the year, the day, the hour, in which they have taken place; the name and the family name, and the character of the official before whom they are made; the name, the family name, the age, the profession, the domicile or the residence of the persons therein indicated, in character, as declarants, and of the witnesses, and the documents presented by the parties. The official of the Civil Status will read these certificates and will mention therein the fulfillment of this formality."

Section 386:

> "The certificate of death shall be written by the official of the Civil Status after the declaration of two witnesses who know about it."

Section 387:

> "The certificates of death shall set forth the place, the day, the hour, of the death; the name, the family name, the age, the profession, the domicile or the residence of the deceased; the name, the family name of the surviving spouse, if the deceased was married, or of the predeceased spouse if he or she were a widow or widower; the name, the family name, the age, the profession and the domicile of the declarants. The same act shall set forth besides, as far as they know, the name, the family name, the profession, the domicile of the father and the mother of the deceased, and the place of his birth" (Case, pp. 236-237).

There is a presumption that the domicile of origin continues.

> "Kosciusko's domicile of origin was Lithuania, in Poland. The presumption of law is that it was retained, unless the change is proved, and the burden of proving it is upon him who alleges the changes" (citations). *Ennis* vs. *Smith,* 14 U. S. 400 at 422 L. E. 482.

The oral evidence is that Caruso for a number of years preceding his death lived in a hotel in New York City during his operatic season, remaining from about November to April of each year, and at the close of each season went to Italy, where he owned several places.

> "He had two or three places, and he would travel around; he was a man of rather nomadic habits; he never stayed long in any one place" (p. 255).

In the season of 1921 he went to Naples and was there or at Sorento in the vicinity of Naples until he died.

Gloria's guardian produces a certificate from the Prefect of Milan, certifying that Enrico Caruso "appears to have been recorded here on December 12, 1897, and duly inscribed in the register of the permanent population on December 10, 1901, and then cancelled, on September 22, 1904, for having removed to Sesto S Fiorentino" (Ex. GC-10, p. 410).

Also a certificate from the Mayor of Sesto Fiorentino, dated September 13, 1904, "that the family named in the back hereof has been inscribed in this register of population".

Attached are the names of Enrico Caruso, born in Naples, head of family; Rodolfo Caruso, son of Enrico and of unknown mother, born in Milan; Enrico Caruso, son of Enrico and of unknown mother, born in Sesto Fiorentino" (GC-11, p. 411).

Ex. GC-12 (p. 413) the Mayor of Milan certified to the Mayor of Sesto Fiorentino "change of residence", certifying that "Mr. Caruso Enrico has declared to transfer his residence to your commune, together with his family" etc., "and accordingly, the present certificate is issued to be used for the consequent inscription in the Register of Population."

Ex. GC-13 (p. 415) is a certificate of the Prefect of Sesto Fiorentino that Enrico Caruso "appears to have been inscribed in the list of political electors of this commune in the revision of the year 1913 and in the administrative (electoral) list in the revision of the year 1914, until the date of his death."

Ex. GC-14 (p. 416) is a certificate of the Prefect of Sesto Fiorentino that Caruso "appears as having been inscribed in the rolls of family taxa-

tion of this commune for the years from 1917 to all of 1921."

Ex. GC-16 (p. 418) is a certificate of the Prefect of Sesto Fiorentino, entitled "Certificate of Residence", certifying that Caruso, born in Naples, "was domiciled in this commune, where he had his habitual residence, and that is to say from September 13, 1904, date in which he emigrated from Milan, till the 2nd day of August, 1921, date of his death which occurred in Naples."

This certificate is dated October 14, 1926, and was obtained obviously for use as evidence in this cause. The reference to the death in Naples indicates that the certificate in that respect at least is not based on any record in Sesto Fiorentino, since the record of death is proved to be in Naples. Nor does the certificate purport to be the copy of any record nor taken therefrom.

It appears to be merely the conclusion of the Prefect based upon the record of change of residence which appears to be the only matter covered by the actual record (Ex. GC-10, GC-11, GC-12). "Residence" and "domicile" are not synonymous under the Italian law.

There is nothing to show the particular significance of the record of family taxation or the inscription in the list of political electors or in the administrative list, nor the qualification for such inscription, or whether Caruso ever exercised any electoral franchise at Sesto Fiorentino after 1914.

These records show nothing more than that Caruso had a "residence" with his illegitimate family at Milan in 1904 and then changed such residence to Sesto Fiorentino.

Some fourteen years later he married and caused the record of his marriage to be filed in the archives of the Civil Status at Naples under a statute which provided for such filing in the place of domicile.

Thereafter, about a year prior to his death, on March 16, 1920, he caused to be filed in the archives of the Civil Status at Naples, through the department of the Royal procurator, a certified copy of the birth of his only lawful child, which certificate was filed under a statute requiring that it be filed in the place of the domicile of the parent.

The filing of the marriage certificate and the birth certificate in Naples, under this statute, is necessarily a declaration, in each instance, by Caruso, of Naples as his place of legal domicile.

There is nothing to show that the "domicile" of origin at Naples was ever changed, although undoubtedly Caruso had a "residence" at Milan and Sesto Fiorentino with his irregular family.

Years later when he settled down to lawful marriage and paternity, he declared the civil status of his lawful wife and child in the archives of the Civil Status at Naples as his place of domicile.

Certainly under these proofs no Court in a foreign country, in a collateral proceeding, is justified in holding that the Tribunal of Naples, demonstrated to be of general jurisdiction, was without the territorial jurisdiction which it assumed and which was approved by the representative of the Italian King charged with the duty of determining the jurisdiction of his several Courts.

And especially should this be so in consideration of the fact that the Italian estate has been completely administered and the assets divided under the decrees of this Court and the infant is now in enjoyment of properties of large value in Italy by virtues of these decrees.

POINT XI.

The contention that the Italian decrees are the result of fraud is not sustained.

The contention chiefly urged by the guardian in this suit is that under the Italian law, Caruso's Will was voided by the subsequent birth of Gloria and that the estate could only be distributed as an intestate estate; that Caruso's recognition of his sons born out of wedlock, was unlawful, because their mother was at the time married to another man, and that as adulterine children they were incapable of taking under the Will of their father, nor were they entitled to the status of recognized natural children, and, as such, entitled to the reduced portion of recognized natural children, in case of intestacy.

It is argued, without proof, that the fact of adulterine origin of the sons was concealed from the Court and that the decrees must have been the result of fraud practiced upon the Court, and should, therefore, be treated as void in this collateral proceeding.

It is apparently not controverted that if there were an honest dispute between these parties respecting their several claims, the Tribunal of the proper district in a proceeding where all parties were properly represented had power to approve and decree a family settlement or compromise of the conflicting claims and distribute the estate otherwise than in the manner declared either by the Will or by the intestate laws of Italy.

We have heretofore considered the Will as affected by the subsequent birth of Gloria.

Respecting the status of the sons, there can be no possible doubt that they were recognized by Caruso in every way that it was possible to do so.

The civil status of the sons is derived originally from the birth certificates filed by their father (p. 335, line 20).

The sons were inscribed in the Register of Population (Ex. GC-11, p. 411) as "the sons of Enrico and of unknown mother".

In his Will, Caruso says (p. 280): I "do hereby appoint hereafter as my only heirs, my two *sons* Rodolfo and Enrico, and my brother Giovanni".

In case of intestacy, if there are both legitimate and recognized illegitimate children, the illegitimate children receive one-half of the amount which they would receive if legitimate.

Adulterine children may not be recognized (Civil Code, Section 180).

If, however, the natural child has been recognized, such recognition cannot be contradicted by any research or proof by witnesses against his interest.

Article 190 of the Civil Code admits research but only in favor of the child who claims his status of child and not in case of others for the purpose of destroying such status, and, in any event, the research is prohibited against the recognition except where there is already a judgment rendered on the status in a civil case, or a criminal judgment establishing the fact of the adulterous parentage.

It is contended by the guardian that in certain legal proceedings in Milan involving Caruso and Ada Giacchetti, there was such a determination of the adulterine origin of the sons as to have warranted an action in Italy to avoid the status given to them by the recognition, and that such adulterine origin was concealed from the Naples Tribunal by fraud. This Milan record was offered on the trial and under objections marked for identification only as G. C. 4, p. 250.

The charge is, in substance, that the brother and adult son, the guardian of the minor son, the guardian of the infant Gloria, and Gloria's own mother, conspired to give to the brother and natural sons an interest in the estate to which they could by no possibility be entitled, and that Mrs. Caruso was induced to become a party to this fraud upon her own child by giving to her a larger interest than she would otherwise be entitled to receive.

The fraud, if any, was necessarily participated in by the Italian lawyers, Gabriele Consolazio and Giovanni Porzio, who, so far as appears, are reputable practicing lawyers of the City of Naples, and by the distinguished counsellor Alessandro Guarracino, then a Deputy in Parliament, who was called in as special counsel by Gloria's guardian to advise him with respect to the proposed settlement.

Aside from other considerations, it is difficult to see how Mrs. Caruso could benefit from the arrangement. In case of intestacy and avoidance of the recognition, her daughter, then less than two years old, would have taken the entire estate, subject to her widow's usufruct of one-fourth during her lifetime, and, under the Italian law, the mother would have been entitled to the remaining three-fourths of the usufruct during her daughter's minority.

Under the settlement, Mrs. Caruso gets one-eighth of the whole estate in fee in lieu of her widow's usufruct, and the usufruct receivable from her daughter's estate during her minority was cut down from three-fourths to one-half of the entire usufruct. The widow was then less than thirty years of age, apparently in robust health, so that, upon a proper capitalizing of the usufruct, we think the settlement was less to her advantage than would have been a distribution according to the guardian's present contention.

However, an examination of the Italian record will show that there is absolutely no foundation for the charge of suppression.

The opinion of Guarracino, which was part of the record on the original application to the Tribunal, first discusses the question whether or not the Will was revoked by Gloria's birth and the results in the event of complete or partial revocation. The legal effect of the republication of the Will at the time when Gloria's birth was expected is discussed (p. 276), and he gives his opinion that the result is doubtful. As to the status of the sons, he says:

> "I will not stop to examine an eventual action against the natural sons to have them declared unrecognizable and therefore incapable of receiving more than mere support, because I started with the presupposition that their status as being mere natural sons cannot be shaken.
>
> "At any rate aside from the obvious repulsiveness of such an action and aside from the admissibility or not of this action, *against the sons* (not in their favor) in consequence of the diversity of opinion which exists in the doctrine and in the jurisprudence, it is always necessary to bear in mind, in the case at bar, that even if we could speak of the adulterine status of the sons, on their mother's side, while she is legally unknown—there does not exist either a civil or penal judgment or a marriage declared null, which could constitute the proof of such character; and therefore it would be necessary that the maternity resulted from a written declaration by the parents—according to paragraphs 193 n. 3 of the Civil Code, declarations which, it seems, do not exist" (p. 277).

He concludes that such an action would be impossible of success (p. 277).

The petition to the Tribunal of which this opinion was part, was referred to the Public Minister

(Attorney General), whose function it was to examine for jurisdiction and for the protection of the rights of infants, and approved by him.

The opinion of the Court discusses the question whether the Will is revoked and comments that the natural filiation and recognition of the sons is not challenged. This doubtless refers to the situation discussed by Guarracino. The Court makes its decree in consideration of "the uncertainties of a judicial contest", and approving the "wishes of the petitioners tending to harmony and reciprocal respect" (p. 288).

This decree, after the written approval of the Attorney General, is signed by the Presiding Justice, D'Aquino, and D'Giuseppe and Masucci, Associate Justices.

About nine months afterward, when the case came before the Tribunal to approve actual distribution in pursuance of the earlier decree, the proceedings were again referred to the Public Minister and the Attorney General approved.

The Court which made this decree included a new Judge, being composed of D'Aquino, President, and D'Giuseppe and D'Ambrosio, Associate Judges.

After the raising of the issues in New Jersey, a petition for further instructions was presented, with a sworn opinion from Professor Grippo, in which he considers specifically the questions:

1. "Does an action lie in behalf of the minor Gloria Caruso or her representative to impugn the validity of the recognition of the natural sons Rodolfo and Enrico made by their deceased father Enrico Caruso in the certificate of birth" (p. 314)?

2. "Can such an impugnation be supported by researches of the maternity for the purpose of proving the adulterine birth of the recognized sons in order to impugn the division made by the above named instrument" (p. 315)?

3. "Do legal proofs exist which contradict the recognition made by Comm. Caruso of the natural sons" (p. 317)?

Under the latter head, he considers the character of the proofs required and specifically considers whether in the criminal action tried before the Tribunal in Milan against Ada Giacchetti and others "there were sentences which contradict the recognition of the natural children made by Comm. Caruso and establish their adulterine filiation" (p. 318).

He concludes there is nothing in the Milan proceedings which will be the basis for avoiding the recognition, and says (p. 320):

> "Different is the law, as different is the jurisprudence with reference to the claim of the children for their support, and different as to those who want, nothing less, than to impugn the status, and the recognition which had taken place. The recognition of a natural son made by the father or the mother is irrevocable, because it fixes the status of the child which cannot depend from the changeable will of the parent."

His fourth question considered is:

> "Should the representative of the minor Gloria or her mother have raised—in the act of the division or in the proceedings for the approval of the same before the Judicial Authorities—the question of the nullity of the recognition of the natural children made by their father, in order of bettering the conditions of the share of the estate of the minor?"

He concludes that they should not have done so for reasons stated at p. 321, concluding:

> "The investigations are absolutely forbidden when it is desired to proceed in order to prove the adulterinity and therefore the incapacity of the son to inherit."

The Tribunal again referred the application to which this opinion was attached, to the Public Minister, who approved, and the Court thereupon confirmed its prior decrees, saying of the prior settlement (p. 334):

> "* * * said agreement, as it concerned the rights of the minor child Gloria Caruso, was according to the Italian laws which regulate her status and capacity, preceded by a project of agreement approved by this Court and was thereafter submitted to and approved by this Court by a decree dated June 16, 1922.
>
> "This new proceeding now, might be called superfluous, if we consider the intrinsic and irrevocable efficacy of the agreement which complies with all the forms prescribed by our law (the only one applicable) and regulated in a definite manner all the different interests in Mr. Caruso's inheritance, and settled furthermore all the shares due to each coheir" (p. 334).

In considering above questions raised the Court says (p. 335):

> "The right to the inheritance of the natural sons is derived from the formal recognition made by the father, and Rodolfo and Enrico Caruso have for themselves the recognition made by their late father in the certificate of birth when he was not yet married. The impugning of such a recognition could not nor can it be made by means of an inquiry into the maternity for the purpose of establishing the adulterous origin of the recognized sons and the consequent invalidity of the division, agreed with the Act of June 7, 1922, by Notary Sanseverino, because Article 190 of the Civil Code admits the investigation of maternity only in favor of the child who claims his status of child, and not in favor of other persons in order to destroy his status of child.
>
> "Thus the prohibition inspired by considerations of public order for the good name

> and the tranquillity of families when the investigation for the paternity or for the maternity is aimed to establish the adulterous birth, is decisive and settled'' (p. 335).

The Court then proceeds to consider whether the proceedings in Milan are sufficient to let in the proof and concludes that they are not, saying:

> ''The references to the children, aside from the indetermination and lack of precision contained in the judgment, are purely casual and not connected in any manner, not even indirectly, with the subject of the accusations and with the substance of the prosecution and of the defense upon which the Judge gave his judicial decision. Consequently it never could be maintained that either one or the other of these judicial decisions, according to our law, constitutes an unexceptional proof of a different status than the one Rodolfo and Enrico had acquired on the basis of the valid recognition made by their father. In consequence the agreed settlement of the interest in the estate of Caruso is and remains integral and incontestable and the requested prayer is granted as one which aims to execute an agreement which regulates the status and the capacity of the heirs and the inheritance of Caruso as attained by the competent Italian judicial authorities, binding also the minor child Gloria, in the same maner as it binds the other co-heirs'' (p. 338).

The composition of the Court at the time of the last decree, August 25, 1925, had entirely changed, being composed of Assariti, President, and Ciotola and Caliendo, Associate Justices (p. 338).

Aside from its quality as a judgment, this decision must be accepted under the authorities elsewhere cited, as the authoritative evidence of the Italian law.

It is, therefore, clear that the contentions now raised were actually suggested to the Tribunal at

the time of the first or settlement decree and were again presented and received full consideration in the confirmatory decree of August 25, 1925.

The charge of fraudulent concealment is therefore affirmatively disproved.

POINT XII.

The decrees of the Italian Tribunal even in actions *in personam* should be respected by the New Jersey Courts as binding upon all parties who were duly represented therein—*a fortiori* in actions *in rem*.

Under other heads we have considered authorities dealing with the doctrine that the law of the domicile controls the devolution of personal property everywhere and that the decisions of the Courts of a foreign country are the best evidence of the law of such country, particularly when such judgments apply the law to the particular case requiring consideration elsewhere.

Under this head we will consider the decisions dealing generally with the effect of foreign judgments when actions are brought in this country to enforce the same.

There are two somewhat conflicting doctrines running through the American cases dealing with foreign judgments in *personam*: one, the rule of reciprocity prevailing in the Federal Courts following *Hilton* vs. *Guyot*, 159 U. S. 113, 40 L. E. 95 to the effect that the judgments of a foreign country will be recognized as conclusive in the Courts of the United States if like judgments of the Courts of the United States would be given the same effect in such foreign country; the other being the doctrine illustrated by *Johnston* vs. *Campagne Generale Transatlantique*, 242 N. Y. 381; 152 N. E. 121, (1926), holding that the judg-

ment of a Court of a foreign country having jurisdiction, upon the merits, is conclusive upon the parties regardless of the effect which the laws or Courts of such foreign country would give to our judgments in a reverse situation.

The variance between these two lines of decisions does not, however, affect the Caruso case, for the reason that the Italian Code provides for the recognition and enforcement of judgments rendered in foreign countries, thereby bringing the Italian judgments within the reciprocity rule of the Hilton case.

It is further to be observed that under the Hilton case, the objection that the foreign country does not give reciprocal value to our judgments is a matter of defense, and in each instance must be proved.

In the present case there is no proof nor contention that the Italian law does not recognize the judgments of our Courts.

On the other hand the complainant, although the burden is the other way, has affirmatively proved by the provisions of the Code hereafter referred to that the Italian Courts are required by the Italian law to give effect to our decisions.

In *Hilton* vs. *Guyot,* 159 U. S. 113, 40 L. E. 95, it appeared that a suit was brought in a French Court by a firm of French merchants against a firm of American citizens who maintained a branch office in France, for the recovery of an indebtedness growing out of the sale of merchandise. Personal service was not made, but defendants appeared by attorneys inasmuch as they had property in France which might be affected by the judgment.

The case was litigated and resulted in a judgment against the American defendants. Pending the litigation defendants disposed of their property in France and the French plaintiffs there-

upon brought a suit at law in a Circuit Court of the United States for the recovery of the amount decreed by the French judgment.

The defense was interposed that the defendants were American citizens and were not personally within the French jurisdiction and appeared by attorneys simply for the purpose of protecting their property situate in France and that the judgment was obtained by the fraudulent conduct of the plaintiffs, and that the defendants did not have an opportunity to examine plaintiff's accounts or cross-examine their witnesses; that the trial was not conducted according to the usage and practice of the common law and that the proofs of the plaintiffs upon which the judgment was founded would not have been competent or admissible in any Court or tribunal of the United States in any suit between the same parties involving the same subject matters, and that it was contrary to natural justice and public policy that said judgment should be enforced against citizens of the United States.

The American defendants also filed a bill in equity to restrain the French plaintiffs from proceeding with their action at law.

On the trial of the consolidated action defendants offered to prove a French law that in cases of judgments rendered in foreign countries against French citizens "notwithstanding such judgments our subjects against whom they have been rendered may contest their rights anew before our own Judges".

The trial Court excluded this proof and gave judgment for the plaintiffs upon the French judgment. The Supreme Court reversed because of the exclusion of this evidence.

The following is quoted from the majority opinion of Judge Gray (109 L. E.):

"In order to appreciate the weight of the various authorities cited at the bar, it is important to distinguish different kinds of judgments. * * * A judgment *in rem,* adjudicating the title to a ship or other movable property within the custody of the court, is treated as valid everywhere. As said by Chief Justice Marshall: 'The sentence of a competent court, proceeding *in rem,* is conclusive with respect to the thing itself, and operates as an absolute change of the property. By such sentence, the right of the former owner is lost, and a complete title given to the person who claims under the decree. No court of coordinate jurisdiction can examine the sentence. The question, therefore, respecting its conformity to general or municipal law can never arise, for no coordinate tribunal is capable of making the inquiry.' *Williams* v. *Armroyd,* 11 U. S. 7 Cranch, 423, 432, (3 L. E. 392, 395). The most common illustrations of this are decrees of courts of admiralty and prize, which proceed upon principles of international law" (citations). "But the same rule applies to judgments *in rem* under municipal law.

"A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law" (citations).

"It was of a foreign sentence of divorce that Lord Chancellor Nottingham, in the House of Lords, in 1688, in *re Cottington's Case,* above cited, said: 'It is against the law of nations not to give credit to the judgments and sentences of foreign countries, till they be reversed by the law, and according to the form, of those countries wherein they were given.' "

At page 111 L. E.:

"The extraterritorial effect of judgments *in personam,* at law or in equity, may differ according to the parties to the cause. A

judgment of that kind between two citizens or residents of the country, and thereby subject to the jurisdiction in which it is rendered, may be held conclusive as between them everywhere. So, if a foreigner invokes the jurisdiction by bringing an action against a citizen, both may be held bound by a judgment in favor of either. And if a citizen sues a foreigner, and judgment is rendered in favor of the latter, both may be held equally bound'' (citations).

''The effect to which a judgment purely executory, rendered in favor of a citizen or resident of the country, in a suit there brought by him against a foreigner, may be entitled in an action thereon against the latter in his own country—as is the case now before us—presents a more difficult question, upon which there has been some diversity of opinion.''

* * *

At page 113 L. E.:

''And the distinction between the effect of a foreign judgment which vests title, and one which only declares that a certain sum of money is due, was clearly stated by Chief Justice Eyre, as follows: (*Phillips* v. *Hunter*, 1795, House of Lords.) 'This judgment against the garnishee in the court of Pennsylvania was recovered properly or improperly. If, notwithstanding the bankruptcy, the debt remained liable to an attachment according to the laws of that country, the judgment was proper; if, according to the laws of that country, the property in the debt was devested out of the bankrupt debtor, and vested in his assignees, the judgment was improper. But this was a question to be decided, in the cause instituted in Pennsylvania, by the courts of that country, and not by us. We cannot examine their judgment, and if we could, we have not the means of doing it in this case. It is not stated upon this record, nor can we take notice, what the law of Pennsylvania is upon this subject. If we had the

means, we could not examine a judgment of a court in a foreign state, brought before us in this manner.' "

At page 122 L. E.:

"In view of all the authorities upon the subject, and of the trend of judicial opinion in this country and in England following the lead of Kent and Story, we are satisfied that where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reasons why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal upon the mere assertion of the party that the judgment was erroneous in law or in fact. *The defendants therefore cannot be permitted upon the general ground to contest the validity or the effect of the judgment sued on.*"

The Court held, however, that the rule does not apply when the foreign nation or Court pronouncing the judgment does not give reciprocal value to our judgments.

The New York rule gives conclusive effect to the foreign judgment regardless of reciprocity.

In *Johnston* v. *Campagnie Generale Transatlantique,* 242 N. Y. 381, 152 N. E. 121 (1926), the Court reconsidered the subject in view of the *Hilton* case, but adhered to the former decisions of that Court that the foreign judgment is bind-

ing even though the foreign country does not reciprocate.

The action was on a bill of lading for the value of goods which the defendant had wrongfully delivered abroad. The French Court had given its judgment for the defendant. Suit was brought in New York and the lower Courts refused to give effect to the French judgment on the authority of the *Hilton* case and tried the case on the merits and on such trial held that the French judgment was contrary to the principles of the New York law and should be disregarded, and gave judgment for the plaintiff. The Court of Appeals reversed, saying:

> "The New York rule was stated in *Dunstan* v. *Higgins,* 138 N. Y. 70, 33 N. E. 729, 20 L. R. A. 668, 34 Am. St. Rep. 431, decided in 1893, as follows: 'It is the settled law of this state that a foreign judgment is conclusive upon the merits. It can be impeached only by proof that the court in which it was rendered had not jurisdiction of the subject matter of the action or of the person of the defendant, or that it was procured by means of fraud. * * * The judgments of the courts of a sister state are entitled to full faith and credit in the courts of the other states under the Constitution of the United States, but effect is given to the judgments of the courts of foreign countries by the comity of nations which is part of our municipal law. The refusal of the foreign court to allow a commission to examine witnesses here does not affect the conclusive character of the judgment. Such applications are generally within the discretion of the court to which they are addressed and then a refusal to grant them does not constitute even a legal error subject to review. But even if it appeared in this case, as it does not, that some legal right of the defendant was denied in refusing the application that would not affect the validity or conclusive nature of the judgment, so long

as it stood unreversed and not set aside. Legal errors committed upon the trial or during the progress of the cause may be corrected by appeal or motion to the proper court, but they furnish no defense to an action upon the judgment itself. Where a party is sued in a foreign country, upon a contract made there, he is subject to the procedure of the court in which the action is pending, and must resort to it for the purpose of his defense, if he has any, and any error committed must be reviewed or corrected in the usual way. So long as he has the benefit of such rules and regulations as have been adopted or are in use for the ordinary administration of justice among the citizens or subjects of the country he cannot complain, and justice is not denied to him. The presumption is that the rights and liability of the defendant have been determined according to the law and procedure of the country where the judgment was rendered.'

"This is the modern English doctrine and the doctrine of some, at least, of our state courts" (citations), "and has the approval of recent text book writers (3 *Freeman on Judgments* 3069)."

After further discussion Justice Pound says:

"I reach the conclusion that this court is not bound to follow the *Hilton* case and reverse its previous rulings. * * * The law of the state of New York remains unchanged, and the French judgment should be given full faith and credit."

A motion was thereafter made for re-argument and denied, without opinion, 152 N. E. 597.

The Italian law, however, has no provision analagous to the French law that foreign judgments may be re-examined upon the merits, but provides to the contrary.

(The following provisions were introduced in evidence in the Italian language, Exhibit C-17, and

translations afterwards supplied after submission to counsel.)

Article 10 of the preliminary disposition of the publication, interpretation and application of the laws provides:

> "The competency and the force of proceedings are regulated by the laws of the place in which the action proceeds. The means of proof of obligations are determined by the laws of the place in which the act took place. The judgments pronounced by foreign authority in civil matters will have execution in the Kingdom when declared executive in the forms established by the Code of Civil Procedure excepting dispositions of international conventions.
>
> The manner of execution of acts and of judgments are regulated by the laws of the place in which the execution proceeds."

(The translation of the Italian text of the Code providing for the enforcement of foreign judgments is printed as an annex to this brief).

In *Hilton* vs. *Guyot, supra,* Justice Gray, in summarizing the law of foreign countries on the subject, says: page 224; L. E. 129:

> "In the Kingdom of Italy, by the Code of Procedure of 1865, 'executory force is given to the judgments of foreign judicial authorities by the court of appeal in whose jurisdiction they are to be executed, by obtaining a judgment on an exequator in which the court examines (a) if the judgment has been pronounced by a competent judicial authority; (b) if it has been pronounced, the parties being regularly cited; (c) if the parties have been legally represented or legally defaulted; (d) if the judgment contains dispositions contrary to public order or to the internal public law of the realm'."

POINT XIII.

The Italian decrees are in the nature of decrees *in rem*, and title vested thereunder.

In *Neilson* vs. *Russell*, 76 N. J. Law, 655-657, *supra*, this Court said of personal property in New Jersey left by a decedent of English domicile:

> "This succession is a succession under English law, by which the validity and amount of the bequest must be determined. . . . By that law, as well as by our own, the title to a legacy is not complete and perfect until the executor has assented, and he ought not to assent until creditors are satisfied. This assent must of necessity be the assent of the executors of the domicile. They alone can ascertain whether the estate is solvent or insolvent, and it is only upon a settlement of their accounts that it can be determined whether the legatee will actually receive anything or not; and if he is to receive only a portion of the legacy, the amount in which it shall abate can be decided by the courts of the domicile only. The succession to the legacy is complete only in a foreign jurisdiction, and it would certainly be anomalous to tax that succession here."

Dammert vs. *Osborn*, *supra*, 140 N. Y. 30:

> "Our courts cannot confer title to personal property under a foreign will, upon a claimant here, otherwise than in accordance with the law of the country where the owner was domiciled when he made the will. That law must first determine where the title goes."

Morton vs. *Hatch*, 54 Mo. 408. (See full extract therefrom, page 52 of Mr. Lane's brief.)

Trecothick vs. *Austin*, 4 Mason's C. C. 16, Story, Jr.:

"Whenever the title to a thing passes by the *lex loci,* that title may, nay, must be made out by such law, and that is all that is necessary."

(See full extract, page 54 Mr. Lane's brief.)

In *Suarez* vs. *New York,* 2 Sandford's Chancery, 173, 7 N. Y. Chancery Rep. 554, intestate decedent domiciled in Cartagena, Colombia, left property in that place; also certificates of deposit in New York Trust Company. He was survived by a grandmother and illegitimate minor children. The Courts of Colombia determined the succession, adjudicating that the children were entitled to one-fifth and the grandmother to four-fifths of the estate, and approved a division under which the children took their entire share out of the assets in Colombia and the entire assets in New York were given to the grandmother. The grandmother then sued in New York for the entire New York assets.

Held that title vested thereto under the Colombia decree.

"The decree in the suit relative to the succession, carried on at the place of his domicil, against the primary administrators of his estate, appears to have been conducted in due form, and between proper parties. It not only settled the right of Juana Mendez to four-fifths of Brid's estate, but in execution of the decree, *the identical fund in the defendant's hands was awarded to her representatives, and symbolically delivered to them by the court.*

"This decree and act of delivery are, in my opinion, conclusive upon the subsidiary administrators appointed here upon the estate of Brid, and entitle the complainant as the legal representative of Mrs. Mendez, to receive the fund collected by the public administrator. . . . The fund in the defendant's hands" (i. e. New York fund) "was thus allotted and delivered by the principal admin-

istration at the domicile of the intestate, and in the absence of creditors, became a part of the estate of Mrs. Mendez."

We think the universal rule is that the right of succession to personal property wherever situate is the creature of the law of the domicile.

We think it follows as a necessary corollary that a proceeding in the Court of domicile to establish or administer the succession is in the nature of a proceeding in rem, affecting not only the personal property within the jurisdiction of the domiciliary Court, but movables having some sort of a situs abroad, for there can be but one succession and but one law of succession.

In the present case the chose in action belonging to Caruso under the Victor contract, had no physical situs. Its ownership went with him wherever he was and was with him in Italy when he died. As pointed out in *Neilson* vs. *Russell, supra,* the change in ownership, upon his death, was not the result of administration in New Jersey, but of administration in the place of domicile, and good title could be transferred by the domiciliary executor although ancillary administration might be required in this State in order to reduce the chose in action to possession.

Judgments *in rem* are recognized as binding upon the *res* everywhere, even by Courts which do not give the same effect to foreign judgments *in personam.*

Hilton vs. *Guyot,* 159 U. S. 113, *supra.*

POINT XIV.

The Italian decrees are binding upon the infant.

The Chancellor held that the rights of the infant Gloria were not concluded by the Italian decrees because of her infancy (Case, p. 129, line 20), and that the infant was entitled to distribution under the New Jersey law as in case of intestacy because that was more favorable to her, although the adult parties were bound by the Italian decrees because of their assent thereto (p. 148).

We think the application of the rule in *re Shreve,* 87 N. J. Eq. 7, affirmed at p. 710, by this Court, leads to a contrary result.

In that case an order was made for the sale of infants' lands at public or private sale for not less than a minimum amount. Thereafter the parties in interest, including the guardian of the infants, made a contract for sale, and about two years later the vendee applied to the Court to confirm the sale and authorize the Master to execute a deed of conveyance. This was resisted upon the ground that the property in the meantime had greatly enhanced in value and that it was against the interest of the infants to do so.

The Court says (p. 11):

> "There can be no doubt that if we were dealing with adults alone in this case, the sale ought to be confirmed, and the mere presence of infants ought not to defeat it. * * * Those who are *sui juris* have rights against infants; in fact, I do not understand that infants' rights are superior to those of adults, only that the rights of infants must be protected by the courts, while those of adults must be looked after by themselves. It is for this reason that whenever infants are

present a guardian is appointed for them, which was done in this case, and these infants have had their day in court."

Page 12:

"I do not understand that the Company's equities are to be defeated because the adversary parties are infants."

The record shows that the Italian law provides even greater safeguards for the rights of infants than the laws of this State, and that in this case the Italian law was fully complied with.

That law does not leave the protection of infants' rights to the Courts alone. The King, through his department of Public Ministry, sits with the Court in all matters affecting infants' rights.

In this case the application for every order or decree was first referred to the Public Ministry and the Court did not act until the Public Ministry had first examined the matter and given its approval.

The first step was the appointment of the guardian.

This was referred by the Court to the Public Ministry for approval, and, after such approval, the Court appointed Canessa, a trusted friend of the father, as special guardian (Ex. C-5a, p. 265).

Before approving the proposed settlement, this guardian sought independent advice from special counsel not identified with the proceedings, and in his subsequent petition to the Court for approval of the settlement, attached the written opinion of such counsel (Guarracino) to the moving papers.

The Tribunal referred the matter to the Public Ministry which examined and approved the application and the Court made its decision and de-

cree of October 21, 1921, after "having heard the Attorney General herein" (Ex. C-8a, p. 286).

The decision of the Court shows on its face that it was not a *pro forma* decision, but was made after careful consideration of the questions involved.

The subsequent act of division before the Notary which carried into effect the settlement decree, while in the form of an agreement between the parties, provided that it should be submitted to the Tribunal for approval (Ex. C-14a, Art. 14, at p. 359).

The Tribunal again referred the application to the Public Ministry, which examined the same and certified that the provisions were reasonable and requested that the petition be accepted by the Tribunal.

The Tribunal then made its decree, after reciting: "Having read the petitions and the attached acts. Having heard the opinion of the Attorney General. Since the request can be acceded to, the interests of the minors resulting guarded" etc. (Ex. C-9a, at p. 300).

We submit that the procedure of the Courts in this State for the protection of infants' rights in litigation, is no more efficient than the procedure under the Italian Code, which resulted in the decrees in question in this case.

Even consent decrees (which this is not) are binding upon an infant lawfully represented.

In *Thompson* vs. *Maxwell Land Co.*, 168 U. S. 451, 42 L. Ed. 539, the Court says:

> "That infants are bound by a consent decree is affirmed by the authorities, and this notwithstanding that it does not appear that a prior inquiry was made by the court as to whether it was for their benefit. In 1 Dan. Ch. Pl. & Pr. 163, it is said: 'Although the court does not usually, where infants are concerned, make a decree by consent, without an

inquiry whether it is for their benefit, yet when once a decree has been pronounced without that previous step, it is considered as of the same authority as if such an inquiry had been directed, and a certificate thereupon made that it would be for their benefit; and in the same manner an order for maintenance, though usually made after an inquiry, if made without, would be equally binding.' (In support of these propositions many authorities are cited in a note.) 'An infant defendant is as much bound by a decree in equity as a person of full age; therefore, if there be an absolute decree made against a defendant who is under age, he will not be permitted to dispute it, unless upon the same grounds as an adult might have disputed it; such as fraud, collusion, or error.' "

See, also:

Dickson vs. *Neal,* 2 Fed. (2nd), p. 533, C. C. A., 8th Cir.;
Rawlz vs. *Mayo,* 163 No. Car. 177, 193; 79 S. E. 298;
Matthews vs. *Doner,* 292 Ill. 592; 127 N. E. 137;
Harrison vs. *Wallton,* 95 Va. 721; 30 S. E. 372;
Ivey vs. *Harrell,* 20 S. W. 775 (Texas).

POINT XV.

The settlement is binding upon the infant as a contract.

If the Italian settlement is to be considered as a contract, it then follows that its validity must be determined under the Italian law.

Williston on Contracts, Vol. 1, par. 222:

"Whether a party has capacity to contract is determined by the law of the place of the

contract, in accordance with the general rule that the validity of a contract and its construction are determined by that law."

Vol. 3, par. 1792:

"The legality of a contract depends upon the law of the place where it is made. If the contract was illegal (as distinguished from merely unenforceable) where made it is invalid everywhere and if valid where made it is generally enforceable everywhere. The latter rule, however, is qualified by the doctrine that no State will enforce a contract though valid where made, if its enforcement is contrary to the policy of the forum" (citing cases).

The same rule is recognized in New Jersey and elsewhere in cases growing out of the disability of a married woman to contract as an accommodation maker, endorser or surety.

Thompson v. *Taylor,* 66 N. J. Law 253;
Union Trust Co. v. *Knabe,* 122 Md. 584, 89 Atl. 1106.

See, also, *Receiver State Bank* v. *First National Bank,* 34 N. J. Eq. 450, 454.

The Italian Civil Code provides:

Civil Code 1304:
"The acts accomplished in the manner ordained by the law in the interests of a minor, an incompetent or incapacitated person, have the force which they would have if they had been executed by a person of age in his full capacity."

The Italian Court by its decree has expressly declared the settlement to be in accordance with the Italian law, saying (Ex. C-13a, p. 334):

". . . said agreement, as it concerned the rights of the minor child Gloria Caruso, was

according to the Italian laws which regulate her status and capacity, preceded by a project of agreement approved by this Court and was thereafter submitted to and approved by this Court by a decree dated June 16, 1922.

"This new proceeding now, might be called superfluous, if we consider the intrinsic and irrevocable efficacy of the agreement which complies with all the forms prescribed by our law (the only one applicable) and regulated in a definite manner all the different interests in Mr. Caruso's inheritance, and settled furthermore all the shares due to each co-heir."

Likewise, outside of Italy the rule is that infants may be bound by contracts on their behalf made by duly constituted authority.

In *Ordinary* vs. *Dean,* 44 N. J. Law, 64, the Court said:

"That the second guardian had a legal right, in good faith, and exercising a fair discretion for the benefit of his ward's estate, to present a claim for this balance due him, and accept it from the assignee, can hardly be doubted. He stands in the same position as any other trustee who may, generally, acting in good faith, compound or release a debt due the trust estate. Such composition or release, for a valuable consideration, is prima facie valid and effectual, and if the ward, after becoming of age, seeks to impeach it, the burden is upon him to show that it was not made in good faith, but in fraud of his rights" (citing cases). "It is right, as the infant cannot act for himself, that some one should be authorized in his behalf to compound and settle with his debtor a claim made on account of his estate."

In *Maclay* vs. *Equitable Life Assurance Society,* 152 U. S., 499, 38 L. Ed. 528, at 531, the Court says:

"A guardian, unless his powers in this respect are restricted by statute, is authorized,

> by virtue of his office, and without any order of court, to sell his ward's personal property and reinvest the proceeds, and to collect or compromise and release debts due to the ward, subject to the liability to be called to account in the proper court if he has acted without due regard to the ward's interest."

In *Grievance Committee* vs. *Ennis,* Sup. Ct. of Errors, Conn., 80 Atl. Rep. 767, 771, the authority of a guardian to settle a personal injury case without court authority was involved. The Court states as the general rule:

> "Unless restricted by statute a guardian has the power, while acting in good faith, and not contrary to the order of the Probate Court, to make such a compromise."

The general rule is laid down in *28 Corpus Juris,* with copious citation of authorities, p. 1123:

> "In the absence of any statutory restriction, a guardian has authority to compromise a claim existing in favor of his ward, provided he acts in good faith; but the ward is not bound by a compromise which is unfair or fraudulent or is not made in good faith.
>
> "A claim against the ward's estate may be compromised by the guardian in the interest of the ward.
>
> "POWER OF COURT. Under some statutes, the power to authorize compromises is vested in the courts, and an order, authorizing a proposed compromise must be obtained before the compromise is entered into."

Page 1125, par. 207:

> "Unless he has an interest adverse to that of the ward, a guardian has a general authority to submit to arbitration questions and controversies respecting the property and interests of his ward."

The above citations apply to a general guardian as distinguished from a guardian *ad litem.*

The power of the latter with respect to the matter in litigation is subject to the approval of the court.

In *Rubin* vs. *Trowbridge Sign Co.*, 99 N. J. Law, 216, E. & A., KALISCH, J., says:

> " 'A guardian *ad litem,* or next friend, has no authority to compromise or settle the suit, except by leave of the court.' 22 Cyc. 663, and cases there cited."

31 Corpus Juris, p. 1142, par. 302, citing authorities, states the rule:

> "Ordinarily, a guardian *ad litem* or next friend may with the consent of the court agree to a settlement or compromise beneficial to the infant and the court has power to author ize it."

In *Naeglin* vs. *DeCordoba,* 171 U. S. 638, 43 L. Ed., 315, Justice Brewer says:

> " . . . we remark that a natural guardian has no power to release the claim of a ward to an inheritance without the sanction of some tribunal. *Woerner's American Law of Guardianship,* page 185, and following."

In *American Mutual Liability Insurance Co* vs. *Volpe,* 284 Fed. Rep., 75, C. C. A., 3rd Cir., the Court, in an opinion citing many authorities, says:

> Page 79—"He" (the natural guardian) "cannot release or compromise a suit prosecuted on behalf of the minor. In order to compromise a claim of his minor child, he must have the sanction of some tribunal, since he has control of the minor's person only."

In *Dickson* vs. *Neal, supra,* 2 Fed. (2nd), p. 533, the Court citing numerous English authorities, says:

> "And a compromise, appearing to the court to be for the benefit of an infant, will be confirmed without a reference to a Master; and, if sanctioned by the court, cannot be afterwards set aside except for fraud."

In *Matthews* vs. *Doner, supra,* 292 Ill. 592, it is said:

> "It is the rule likewise that a court of equity may authorize a compromise of a minor's litigation where the evidence shows the case is a proper one for such compromise."

Because of the close analogy between the Louisiana Code and the Code Napoleon, the Louisiana decisions are of particular interest in the present case.

Article 353 of the Louisiana Civil Code provides:

> "The tutor cannot borrow for the minor, purchase for him immovables or compromise respecting his rights, without an authority from the judge, granted on the advice of a family meeting."

It is there held that the guardian may compromise the infant's rights when approved by the family meeting and an order of the Court.

> *Chesneau* vs. *Sadler,* 10 Mart. (La.) 726;
> *Graham* vs. *Hester,* 15 La. Ann. 148;
> *Mahle* vs. *Elder,* 26 La. Ann. 681;
> *Holliday* vs. *Hammond State Bank,* 118 La. 1000; 43 So. 656.

In the present case, Canessa is to be regarded as a general guardian in all matters involving conflicting interests with the mother, and not as a guardian *ad litem,* but, under the rule prevailing in New Jersey and elsewhere, even a guardian *ad litem* may bind the infant with the approval of

the Court, and, in this case, the Court fully authorized every act performed in the infant's behalf.

The New Jersey Courts fully recognize the compromise of a disputed claim as a sufficient consideration for a contract.

Grandin vs. *Grandin,* 49 N. J. Law, 508, 514, Depue, J.

> "The compromise of a disputed claim made bona fide is a good consideration for a promise whether the claim be in suit, or litigation has not been actually commenced, even though it should ultimately appear that the claim was wholly unfounded— . . . The only elements necessary to a valid agreement of compromise are the reality of the claim made and the bona fides of the compromise" (citing cases).
>
> "The court will not inquire into the adequacy or inadequacy of the consideration of a compromise fairly and deliberately made" (citing cases).

Bowers Dredging Co. vs. *Hess,* 71 N. J. Law, 327-330, E. & A., 1904:

> "An agreement to so settle without litigation a disputed claim of infringement made in good faith furnishes a good consideration to support a contract even though it should appear that such claim was in fact wholly unfounded. The court will not inquire into the adequacy or inadequacy of the consideration of a compromise fairly and deliberately made" (citing cases).

POINT XVI.

Courts of equity look with favorable eye upon agreements made to preserve and maintain the peace of families.

The above caption is taken from the opinion of the Special Master in *Hewitt* v. *Crane,* 6 N. J. Eq. 159, 171. He, nevertheless, advised against the settlement because of concealment and misrepresentation. This was reversed by the Court of Appeals without opinion other than the headnote, which reads (6 N. J. Eq. 631):

> "A father devised his estate to a son and two daughters; the son made an agreement with the daughters for a different settlement and disposition of the estate among them, without apprising them of the value of the estate which was known to him but not to them; the agreement was notwithstanding sustained as a family settlement."

In *Johnson* v. *Hubbell,* 10 N. J. Eq. 332, 340, Williamson, Chancellor, says:

> "An agreement or family arrangement like this is favored in a court of equity. Marriage settlements and agreements for family arrangements with respect to property are viewed with favor by this court. They ought to be respected and scrupulously carried out by the parties to them, and if they are not, a court of equity ought to enforce their execution."

In *Clawson* v. *Brewer,* 67 N. J. Eq. 201-206, V. C. Emery says:

> "Such family arrangements changing the legal rights of the parties interested in the estate of a decedent, founded on sufficient consideration and afterward acted on in good

faith and partially performed, will be enforced, although made by parol and in the absence of a formal contract" (citing cases). "This equitable policy of enforcing the performance of contracts to devise property, which are entered into on the basis of family arrangements and carried out upon one side, is recognized in the leading case of *Johnson* v. *Hubbell.*"

In *Bell* v. *White,* 76 N. J. Eq. 49, 51, Stevens, V. C., dealing with a famliy settlement, says:

"In this situation the remarks of Sir John Leach in *Naylor* v. *Winch,* 1 Sim. & S. 565, appear to be exactly in point. Speaking of a similar situation, viz., that of a will construed by a subsequent agreement, he says: 'Where a compromise of a doubtful claim is entered into fairly and with due deliberation and upon consideration, a court of justice cannot inquire into the supposed adequacy or inadequacy of the consideration. Where is it to find a scale for determining the true measure of adequacy? If a court is in such a case to be governed by its judicial opinion upon the rights of the parties, then to him who by that opinion is held to be entitled to the whole property no consideration can be really adequate which is less than the whole and no compromise can ever bind the successful claimant. It is for this reason and because I consider it to be wholly immaterial for the purpose of deciding upon the validity of the deed of compromise that I do not give any opinion upon the arguments by which the counsel for the plaintiff assert her claim. * * * It is enough to support this deed that there was a doubtful question and a compromise fairly and deliberately made upon consideration, and the actual rights of the parties (*i.e.,* under the will), whatever they might be, cannot affect the question.' "

V. C. Stevens continues:

> "Family settlements, fairly obtained, are always regarded with favor. *Stapilton* v. *Stapilton,* 2 Lead. Cas. Eq. star page 920; *Hewitt* v. *Crane,* 2 Halst. Ch. 171."

In *Shubert* v. *Baker,* 94 N. J. Eq. 50, a doubt was raised concerning the validity of a will and the parties compromised their rights by mutual conveyances. Held binding.

In *Goodrich* v. *Webster, Sup. Ct., New Hampshire,* 69 Atl. Rep. 719, a question arose on the death of a life tenant whether the estate descended to his children absolutely or whether the widow had a dower and homestead interest therein. In order to avoid litigation, the heirs and widow joined in an agreement for the sale of the property and division of the proceeds one-third to the widow and the remainder to the heirs. One of the children was a minor represented by guardian. The heirs endeavored to repudiate the agreement, alleging that the widow had no interest and the guardian had no right to bind the infant. The Court says:

> "It was a compromise of their several adverse claims to the land, and was entered into in consideration of the waiver of their hostile claims of title and to avoid litigation. The consideration was a valuable one, and the contract became binding in law, in the absence of any suggestion of fraud or mistake. . . . In *Leach* vs. *Forbes,* 11 Gray (Mass.) 506, 71 Am. Dec. 732, it was held that specific performance of an agreement of compromise, made upon a controversy concerning the validity of a Will, will be decreed in equity, without inquiring into the adequacy of the consideration. The Court remarked that such an agreement 'is of a nature which is entitled to the highest favor at the hands of a court of equity.' . . . The fact that one of the heirs

is a minor, whose guardian signed the agreement for her, may present no difficulty in the final adjustment of the parties' rights'' (citations).

In *Stevens* vs. *Meserve,* 73 New Hampshire, 293, 61 Atl. Rep., 420, referred to in *Goodrich* vs. *Webster, supra,* the Court held that under the New Hampshire statute the guardian of an infant had power to compromise doubtful claims.

POINT XVII.

The family settlement embodied in the decrees of the Italian Tribunal is an entirety, of which the apportionment of rights under the Victor contract is an essential part, and must be accepted or avoided as an entirety.

The decree below withdraws the Victor contract from the operation of the Italian decree in order to award to Gloria the distributive share which she would have if next of kin of an intestate resident decedent.

The decree of the Chancellor, however, recognizes the Italian decree and settlement as binding upon the remaining share which would belong to the widow under the intestate laws of New Jersey, excluding, however, Gloria from interest therein under the Italian decree.

The Chancellor's decree does not, however, require Gloria as a further condition to relinquish her benefit under the Italian settlement in assets outside of the State of New Jersey, and Gloria has actually received under the settlement valuable property in Italy which she retains.

An examination of the settlement agreement and the division as set forth in the Italian record shows, we think, without argument, that the settlement must stand or fall as an entirety.

POINT XVIII.

The Victor contract did not create a trust.

The Chancellor held that the provisions of the contract that: "The covenants of and rights granted by this agreement shall apply to, bind and be for the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto" (Case, p. 434), operated as a declaration of trust by Caruso in favor of his next of kin.

This contract in part provided for the personal service of Caruso, and, also, called for royalty payments to Caruso and privileges of publication to the Victor Company which were not limited by time.

The obvious purpose of this concluding clause of the agreement was to negative the construction that the contract was personal in any other particular than that which called for personal service, and provide that the rights thereunder should survive.

The inclusion of the words "executors", "administrators" and "assigns", indicates that those rights, so far as Caruso was concerned, were to pass either by Will or by intestate laws, or to his assigns, whichever he should elect.

If the word "heirs" is to be construed as meaning "next of kin", such would be apt in case of intestacy but inapt in case of testacy, unless the word is to be construed as equivalent to "next of kin" in one case and "legatees" in another.

In either case the use of the word "assigns" reserves full control thereover in Caruso and negatives the idea of a declaration of trust.

As applied to a Will, the words "heirs and assigns" together are held to be words of limita-

tion and not as intended to create an estate in any other person.

Jackson vs. *Alsop,* Ct. of Errors of Conn., 34 Atl. Rep. p. 1106-1108.

In *Keniston* vs. *Adams,* Sup. Ct. Me., 14 Atl. Rep. 203, in construing a Will, the Court says:

> "Secondly, the language here is to assigns as well as to heirs, and the power of assigning implies an absolute title. 1 Jarm. Wills (Bigelow's Ed.) star page 517, and cases in note. Even where the gift is to specified persons, 'or their assigns', it is clear that the words are words of limitation only. No cases are found which maintain a different doctrine."

In *McKiernan* vs. *Beardslee,* 72 N. J. Eq., 283, it is said a bequest "to him and his heirs forever" lapses upon the death of the person named in the lifetime of testator, the words "heirs forever" being words of limitation and not of substitution.

In *Richmond Railway* vs. *Railway Register Mfg. Co.,* 12 N. Y. Supp. 358, a contract for royalty payments provided that they should be for the benefit of the heirs and assigns.

In construing this contract the Court says that the word "heirs" was evidently used to include the next of kin or the persons entitled to the personal estate and to enable such persons to enjoy the benefit of the business, and that the right to the benefits of the business acquired at the time of death vested in the personal representatives, and, therefore, that the action to recover the royalties was properly brought by the executrix.

POINT XIX.

Conclusion.

In this case a complete family settlement of the entire estate has been worked out under the law and judicial procedure of Italy.

The partition of the Victor contract and its proceeds is an inseparable part of this plan of settlement.

If the Italian plan of settlement with respect to the Victor contract is to be ignored, or ignored as to two-thirds and enforced as to one-third, the entire settlement and administration in Italy will be necessarily thrown into a confusion, the ultimate result of which it is impossible to foresee, and, therefore, probably idle to predict.

The administration in Italy has been largely concluded and the many parcels of land involved in the Italian estate have been actually partitioned upon the basis and assumption of the Victor contract and royalties.

The confusion which would be inevitable in this case gives point to the statement for the reason of the rule by Judge Story in *Harvey* vs. *Richards*, 11 Fed. Cases, No. 6184, 1 Mason, 381, 410, cited in Vol. 12 Corpus Juris, p. 476:

> "The rule, that distribution shall be according to the law of the domicile of the deceased, is not founded merely upon the notion, that moveables have no situs, and therefore follow the person of the proprietor; even interpreting that maxim in its true sense, that personal property is subject to that law, which governs the person of the owner. Nor is it, perhaps, founded upon the presumed intention of the deceased, that all his property should be distributed according to the law of the place of his domicile, with which he is supposed to be best acquainted and satisfied; for the rule will prevail even against the express

> intention of the deceased, unless the mode in which that intention is expressed, would give it legal validity as a will. It seems, indeed, to have had its origin in a more enlarged policy, founded upon the general convenience and necessities of mankind; and in this view the maxim above stated flows from, rather than guides, the application of that policy. The only reason why any nation gives effect to foreign laws within its own territory, is the endless embarrassment, which would otherwise be introduced in its own intercourse with foreign nations. The rights of its own citizens would be materially impaired, and, in many instances, totally extinguished by a refusal to recognize and sustain the doctrines of foreign law. . . . The common and spontaneous consent of nations, therefore, established this rule from the noblest policy, the promotion of general convenience and happiness, and the avoiding of distressing difficulties, equally subversive of the public safety and private enterprise of all. It flowed from the same spirit, that dictated judicial obedience to the foreign commissions of the Admiralty."

We submit that the decree of the Chancellor should be reversed and a decree entered directing the administratrix to account and to pay over the fund in her hands in accordance with the Italian decrees, and directing the Victor Company to, likewise, pay over all royalties accruing under its contract in accordance with the Italian decrees.

McDermott, Enright & Carpenter,
Solicitors for Dorothy P. B. Caruso, Administratrix, Complainant-Appellant.

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Annex.

ITALIAN LAW—Article 10, preliminary disposition of the publication, interpretation and applications of laws in general:

> "The competency and the force of proceedings are regulated by the laws of the place in which the action proceeds. The means of proof of obligations are determined by the laws of the place in which the act took place. The judgments pronounced by foreign authority in civil matters will have execution in the Kingdom when declared executive in the forms established by the Code of Civil Procedure excepting dispositions of international conventions.
>
> The manner of execution of acts and of judgments are regulated by the laws of the place in which the execution proceeds."

Article 941, Subdivision I, C. C. P.:

> "The executive force of judgments of judicial authority of any foreign state is given to the Court of Appeals of the Kingdom and colonies in which jurisdiction must be exercised, after the Court by a proceeding of deliberation has recognized:
>
> (1) That the judgment has been pronounced by a judicial authority competent to take cognizance of the controversy according to general principles of international law with particular regard to the dispositions of the preliminary title of the civil code when there is involved a judgment pronounced against an Italian citizen.
>
> (2) That the judicial authority was competent to decide the controversy according to the legislation of the place in which the judgment was pronounced.
>
> (3) That the citation was made in conformity of the law of the place where the action

proceeded and had been served in time to appear sufficient in proportion to the distance and other special circumstances.

(4) That the parties were represented in the action according to the law of the place or that the default of non-appearance has been ascertained and declared valid in conformity to the same law.

(5) That the judgment has become irrevocable and actually has full executive force in accordance with the legislation of the place in which it has been pronounced.

(6) That it be not contrary to another judgment pronounced by an Italian judicial authority.

(7) That there be not pending before an Italian judicial authority an action for the same object and among the same parties at the time in which the demand for execution was made."

Subdivision 2:

"At the instance of the party cited the Court of Appeals proceeds to a re-examination in merit of the controversy when the judgment had been pronounced in default of such party and when such party claims the benefit of one of the reasons indicated in number 1 to 4 of Article 494. In such case the court pursuant to the results of the instruction and discussion decides on the merits or concedes the executive force of the foreign judgment."

Subdivision 3:

"If the defendant already in default before the foreign judicial authority does not appear before the Court of Appeals and the summons has not been given to him in person, the executive force of the judgment cannot be conceded. There cannot be given executive force to a foreign judgment which

contains dispositions contrary to the public order or to the internal public law of the Kingdom''.

Subdivision 4:

''The preceding dispositions are applicable to judgments pronounced by arbitrators in foreign countries between foreigners and a citizen on the condition that such judgments have according to the law of the place the value and the effect of judgments of the judicial authority and be shown to have the requisites established for such judgment in paragraph I, No. 5.''

Section 494, Code of Civil Procedure:

''Judgments pronounced in a contested matter by the judicial authorities in appeal can be revoked on the instance of a party:

(1) If the judgment be the result of a fraud of one of the parties to the damage of the other.

(2) If it had been based upon documents recognized or declared false after the judgment or that the losing party ignored that they were recognized or declared false before such judgment.

(3) If after the judgment there had been found a decisive document which could not have been produced before for some reason of the contrary party.

(4) If the judgment be the result of an error of fact which results from the acts and documents of the case.

There is an error of fact when the decision is founded on a supposition of a fact the truth of which is incontestably excluded, or when there was supposed the non-existence of a fact the truth of which is positively established and as much in one case as another, if the fact is not a point of controversy on which the judgment has been pronounced.

(5) If the judgment be contrary to another proceeding judgment already *res adjudicata* between the same parties on the same subject provided it has not pronounced also on the exception of the decided subject.''

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New Jersey Court of Errors and Appeals

Between

Dorothy B. P. Caruso, Administratrix, etc.,
Complainant-Appellant,

and

Rodolfo Caruso, *et als.*,
Defendants-Respondents,

and

Enrico Caruso, Jr.,
Defendant-Appellant,

and

Gloria Caruso,
Defendant-Appellant.

On Appeal from Chancery.

Sat Below: Walker, C.

On Appeal of Enrico Caruso, Jr.

(Italics, etc., ours except where otherwise noted.)

BRIEF FOR ENRICO CARUSO, JR.

Statement.

This brief is filed for Enrico Caruso, Jr., on his appeal (Petition of Appeal, p. 183) from certain portions of the decree of the Chancellor (p. 159), entered on the opinion (p. 144).

The complainant, the mother of Gloria Caruso, also appeals (Petition of Appeal, p. 170), and Gloria Caruso, by her guardian *ad litem,* likewise appeals (Petition of Appeal, p. 166).

The substantial differences between the parties as to the decree below are these:

1. Gloria Caruso asserts that the Court should have given no effect whatever to the Italian decree or to the agreement of settlement as a contract, but that the proceeds of the contract between Caruso and the Victor Talking Machine Company should be distributed in accordance with Italian law which she says is not properly expressed by the Italian decrees.

2. Dorothy B. P. Caruso, her mother, asserts that the Italian decree and the contract of settlement should be given full force and effect and the proceeds of the Victor Talking Machine contract distributed in accordance therewith, but that, if they are not given *full* effect, they should be given no effect whatever.

3. Enrico Caruso, Jr., asserts that the Italian decree and the contract of settlement should be given full effect but that, if they are not given full effect, then that the decree below, to the extent that it does give effect to them, is correct.

If the decree of the Italian court, the contract of settlement and the Italian law are not given any effect, the defendants, Enrico Caruso, Jr., Rodolfo Caruso and Giovanni Caruso receive nothing of the proceeds of the Victor Talking Machine Company contract. If they are given full effect, each receives 1/8 of the proceeds. If they are given the effect which the Chancellor gave them, each receives 1/12 of the proceeds.

At the initiation of the litigation, Enrico Caruso, Jr., was an infant. He was brought in by publication, and the Clerk in Chancery was appointed guardian *ad litem,* and, through counsel, filed an answer (p. 14). He subsequently became of full age and, prior to the final decree, appeared by counsel. Rodolfo Caruso, his brother, and Giovanni Caruso, the brother of the deceased, were

brought in only by publication and have never appeared.

The facts will be sufficiently stated in the brief filed by complainant, Dorothy B. P. Caruso, and to repeat them would be useless. Most of the cases bearing upon the various phases of this matter will also be referred to in that brief, and we shall attempt not to repeat too much.

There is printed in the book an opinion of the Chancellor of December 15, 1927 (p. 117), which resulted in an order of April 16, 1928, erroneously termed a "decree" (p. 142), upon a petition of complainant, Dorothy B. P. Caruso (p. 43) asking for temporary allowances out of the proceeds of the Victor Talking Machine Company contract for the "maintenance, education and household expenses", of the infant Gloria Caruso. No one was made a party to that petition except the infant Gloria. Neither Enrico Jr., Rodolfo Caruso nor Givianni were made parties nor did either of them appear. They are not, therefore, bound by any of the proceedings upon this petition.

We shall try to confine our discussion to pointing out wherein we think the Chancellor erred.

The Opinion Below.

The Chancellor in his opinion, which led to the final decree (p. 144), at p. 149 expressed resentment or astonishment that; after a party to the Italian proceeding which resulted in the Italian decree, i. e., the infant, Gloria, who was, at the time of the Italian proceeding an Italian subject, personally present in Italy and before the Italian court, represented by guardian, and who never was and is not now a citizen or resident of the State of New Jersey, had, through guardian *ad litem,* appointed by the Court of Chancery, at-

tacked the Italian decree and insisted that that decree, dealing with the distribution of the estate of an Italian subject, among Italian subjects, personally present before the Court, should be given no force or effect as to the distribution of royalties accruing upon a contract specifically dealt with by the Italian decree and the situs of which cause of action, under the universally recognized law was, at the time of the making of the Italian decree and of the contract of settlement, in Italy. (*Blodgett* v. *Silverman,* Supreme Court of the United States, 277 U. S. 1, 72 L. Ed. at p. 749), the suit being brought here merely because the Victor Talking Machine Company had its plant here, none of the parties being resident or citizens of this State; the Italian court had, its attention being brought to these facts, by its supplemental decree of August 25, 1925 (Ex. C 13a, pp. 331 to 338), carefully reviewed its proceedings, and in effect, at least, asserted that if, by reason of the act of the infant Gloria in New Jersey, the Italian decree and the contract of settlement approved by the Italian court, were not given full force and effect, it, the Italian court, would see to it that, to the extent that it might be possible, reparation would be made to those who might be injured by the act of Gloria out of property unquestionably subject to the control of the Italian courts and the Chancellor directed particular attention to a statement contained in the brief of Enrico Caruso, Jr. (p. 149) referring to this Italian decree of August 25, 1925, and by inference, at least (p. 150) criticised counsel for Enrico Caruso, Jr. for making the reference, and the further statement—"let us also say that no Italian court will recognize the decree of this Court directing the distribution of any monies in the control of this Court or directing the Victor Talking Machine Company to pay otherwise than in accordance with the Italian de-

cree as protecting the Victor Talking Machine Company. Nor do we believe that the courts of any other jurisdiction, outside of the United States, will recognize the decree of this Court as protecting the Victor Talking Machine Company."

The reference to the Italian decree and the statement of what counsel for Enrico Caruso, Jr., conceived and still conceive to be the law were made under the point urged to the Chancellor as follows:

> "Assuming that this court (Court of Chancery) may examine into the merits of the case it is clear, we submit, that due regard for the interest of the infant and likewise due regard for the Victor Talking Machine Company, a citizen of this State, requires that the property be divided in accordance with the settlement made in Italy and the terms of the Italian decree."
>
> "Gloria will be injured by refusal of this Court to carry out the contract because of reprisals."
>
> "The Victor Talking Machine Company will be injured by refusal of this court to recognize the contract because it will be subject to suits in other jurisdictions and the decrees of this Court will not be recognized as in any wise protecting it."
>
> * * * * * *
>
> "The Victor Talking Machine Company cannot interplead and so secure immunity if service were acquired by publication (as it was, and two of those published against, *i. e.*, Rodolfo Caruso and Giovanni Caruso, who stand in the same position as Enrico Caruso, Jr. and who did not appear) and no decrees of this court which shall refuse to recognize the binding effect of the Italian decrees can give the Victor Talking Machine Company immunity."

We submit that, when the Chancellor is exercising his function as *parens patriae*—a function

which he was called upon to exercise in this case because it was within his power, assuming that the Italian decree and the contract were not legally binding upon the infant Gloria, to approve the settlement—all of the facts and circumstances which may have any effect upon the wisdom of such an approval should be taken into consideration, and certainly, from the standpoint of the infant, one of the most important items of consideration is as to what will happen if the contract be not approved.

We submit that the statement contained in the brief for Enrico Caruso, Jr., might have been made stronger. It was conceded, perhaps, that the decree of the Court of Chancery would be recognized in States of the United States. We do not believe that that is so, at least so far as Rodolfo Caruso and Giovanni Caruso, who have not appeared in these proceedings, are concerned.

The Chancellor, by inference at least, suggests (p. 151) that the Court of Chancery can make its decree effective to prevent reprisals because of its power "to restrain its own citizens or other persons within the control of its process from the prosecution of suits in foreign countries". The Court of Chancery cannot restrain Rodolfo Caruso or Giovanni Caruso. It may issue an order restraining Enrico Caruso, Jr., for he has appeared, but he is not a resident or inhabitant of this State, and the Court of Chancery is powerless to enforce its restraint so long as he keeps without the jurisdiction.

The effect of the Italian decree of August 25, 1925, was to restrain Gloria Caruso, who was a party to the first Italian decree, from taking the position she takes here. If the Court of Chancery will not recognize *that* decree, can it expect the Italian Court to recognize *any* decree it may make

to prevent anyone from questioning the decree brought up?

It may restrain the Victor Talking Machine Company from obeying the orders of any other tribunal, but the Victor Talking Machine Company does business throughout the world and, if its assets can be caught in any other jurisdiction, the tribunals of that jurisdiction may take those assets notwithstanding the restraint of the Court of Chancery.

A court in a foreign jurisdiction, in any suit involving the subject matter, will be confronted with decrees of two different sovereignties.

1. Decrees of an Italian court ordering the distribution of property of an Italian subject, deceased in Italy, among Italian subjects, personally present in Italy at the time of the making of the decrees and parties to the proceedings.

2. The decree of the Court of Chancery of New Jersey refusing to give force and effect to the decrees above mentioned of the Italian tribunals with respect to the distribution of the proceeds of a cause of action, which, under international law, had its situs in Italy at the time of the making of the Italian decrees, entered in a proceeding instituted in New Jersey, merely because the Victor Talking Machine Company, the debtor, had its main plant in New Jersey, and directing distribution of the proceeds of that cause of action, insofar as one of the parties to the Italian proceeding is concerned, in accordance with the statute of distribution of the State of New Jersey ignoring, as we submit, two fundamental principles of international law (a) the distribution of personal assets of a decedent is governed by the law of the domicile, and (b) the validity (including the capacity of the parties to contract and the method of contracting), force and effect of a con-

tract is determined by the law of the place where made, and the contract of settlement was made in Italy and approved in Italy.

We submit that, confronted with these decrees, a Court of a jurisdiction other than New Jersey will undoubtedly give force and effect to the Italian decrees and the contract of settlement approved by the Italian decree, and ignore the decree of the Chancellor, resting as it does upon what the Chancellor finds to be the public policy of the State of New Jersey.

But however that may be, there is no question but that at least there is grave doubt as to what a court of a foreign jurisdiction will do, and there is *no* doubt as to what the Italian court, supported by its government, will attempt to do, and that it was perfectly legitimate for counsel for Enrico Caruso, Jr., to urge these considerations upon the Chancellor as reasons why the interest of the infant Gloria requires that the contract of settlement which was made in Italy, approved by the Italian court, should be carried out, and that, treating the matter as one subject to control by the Chancellor, the contract of the infant should have been approved, the Chancellor having absolute power.

> *Reading* v. *Wilson,* 38 N. J. E. 446;
> *Brengel* v. *O'Toole,* 6 N. J. Advance Reports 173.

The Chancellor, at p. 150, refers to the language of Chancellor Pitney in *Bigelow* v. *Old Dominion Copper Co.,* 74 N. J. E. 457, at p. 473, and says: "The rule enunciated by the learned Chancellor, and above quoted, is, of course, one of reciprocity, and is, or ought to be, recognized by the courts of all countries."

But we submit that reciprocity does not mean that the Courts of New Jersey, because of a pub-

lic policy said to arise because our statute of distribution happens to be, to some extent, different from the statute of distribution of Italy, may disregard the decrees of an Italian court, and, at the same time, expect the Italian court and the courts of other jurisdictions to give full force and effect to the decrees of the Court of Chancery. If the Court of Chancery of this State has the power it asserts to enjoin persons from disregarding its decree, ignoring the Italian decree to a partial extent, why is it astonishing that the Italian court, if its decree of August 25, 1925, bears that interpretation, should threaten to make such reimbursement out of property within its control, to which the infant Gloria would be entitled under its decree, as may be necessary to make up to the other parties that which they may be deprived of by the decree of the Court of Chancery?

The Court of Italy first spoke. The Court of Chancery of this State spoke later. *The obligation of reciprocity rested upon the Court of Chancery of this State, not upon the Italian Court,* under the circumstances of this case, and we submit that there is no public policy of a higher grade than that expressed by Mr. Justice Story in *Bradstreet* v. *Neptune Ins. Co.,* 3 Sumn. 600, 608, 609, Circuit Court of the United States for the District of Massachusetts, his remarks being quoted in *Hilton* v. *Guyot,* 159 U. S., at p. 191, 40 L. Ed., p. 118:

> "If a civilized nation seeks to have the sentence of its own courts held of any validity elsewhere, they ought to have a just regard to the rights and usages of other civilized nations, and the principles of public and national law in the administration of justice."

The attitude of the Italian court, as expressed in its decree of August 25, 1925, is not to be wondered at, bearing in mind that Gloria, who was

a party to the Italian proceedings, represented by guardian, protected by the Public Ministry, a branch of the Italian Government charged with the duty of protecting the rights of infants, attempted to induce the Court of Chancery of this State to ignore the Italian proceedings upon the ground, among others, that they were fraudulent, which meant that the Italian lawyers, two Italian Benches and the Public Minister were parties to a fraud, and that the Italian court not only mistook the facts but also mistook and mis-stated the Italian law.

It would be unnatural if there had not been resentment.

There was not a scintilla of evidence speaking to fraud nor to any mistake on the part of the Italian authorities as to the facts and the Chancellor, as we submit he was bound to do upon the facts and the law, recognized the Italian decrees as binding and effective and as conclusive evidence of the Italian law. In so doing, he but followed a long line of unbroken authority.

In re Grattan's Estate, 78 N. J. E. 225;
Dammert et al. v. *Osborn,* 140 N. Y. 30 (1893), 35 N. E. 407;
Hilton v. *Guyot,* 159 U. S. 113, 40 L. Ed. 95;
Johnston v. *Campagnie Generale Translantique,* 242 N. Y. 381, 152 N. E. 121;
Freeman on Judgments, 5th Ed. sec. 1507, p. 3089;
Suarez v. *Mayor, etc. of the City of New York,* 2 Sandf. Ch. 173, 7 N. Y. Chancery Reports 554;
Doglioni v. *Crispin,* 35 L. J. New Series 129, Eng. P. C. 1866.

Elmendorf v. *Taylor,* 23 U. S., 10 Wheat 152, 159, 160, 6 L. Ed. 289, 292, in which case Chief Justice Marshall said:

"Thus, no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain or of France, or of any other nation, has misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty, to depart from that construction than to depart from the words of the statute."

In *Doglioni* v. *Crispin,* 35 L. J., New Series, 129 Eng., P. C. 1866, the Court said:

"Of the propriety of that decree I entertain no doubt whatever. *No principle can be better established than that the administration of the personal estate of a deceased person belongs exclusively to the country in which he is domiciled at his death.* The courts of that country must decide who is entitled, and from that decision there can be no appeal. It does not always happen, as is the case here, that the claim of the party litigating in our Courts has been actually raised and decided in the Courts of the country of the domicil. It is, therefore, often matter of necessity that our Courts should receive evidence from learned foreigners as to what the law of the domicil is. Such evidence is in general far from satisfactory, but it often happens that no better evidence can be obtained, and then the Courts here must ascertain from conflicting testimony, as well as they can, what the law is on which they must act. *But here we are left in no doubt. The title of the respondent has been fully adjudicated upon by the Courts of his domicil, after a long and careful consideration, and by their decision we are bound.*"

Chancellor Pitney said in re Grattan's Estate, 78 N. J. E. at p. 234:

"such decree (a decree of a foreign court settling the distribution) being in effect an

> adjudication against certain claimants of distributive shares, and not involving the claims of creditors. For, as already remarked, distribution is to be settled by the law of the domicile."

The Chancellor then however refused to give force and effect to the decree of the Italian courts and the contract of settlement as against the infant for the reason, and *solely* for the reason, that our statute of distribution gives to the infant Gloria more than she is entitled to under the Italian decree which expresses the Italian law, or the contract of settlement, which was approved by the Italian court, holding that *our statute of distribution is founded upon public policy.*

In other words, although the settled rule is that the distribution of a decedent's estate is to be governed by the law of the domicile of the deceased, the law of this state giving to Gloria more than she is entitled to under the law of the domicile as settled by the Italian decree, the law of the domicile is to be ignored, because our rule of distribution indicates a public policy, which means that all of the learning contained in the books on the "conflict of law" is so much waste because, while the law of the domicile is to be applied, it is *not* to be applied if the law of the forum is different, or, in other words, it is to be applied, if it is the same. Of course, thereupon all conflict disappears. This is really a statement that the law of the forum, not the law of the domicile, is to be applied and a reversal of the settled rule.

It is true that the Chancellor, in *this* case, applies the rule of public policy founded upon our statute of distribution, *only* with respect to the *infant* but he does not, as we conceive it, give force and effect to the Italian decrees *as such* as to the adults, for it does not appear how, upon the issue of public policy as to distribution of a decedent's

estate, an infant is entitled to any more protection than an adult. Their rights under the law are equal.

The Chancellor so stated in his opinion of March 14, 1928 (p. 117) at p. 129 citing *in re Shreve,* 87 N. J. E. 7, 103 A. 683, and using his language:

> "the difference between the two classes of persons is that the rights of infants must be protected by the court, while adults must protect their own."

He gives force and effect to the Italian proceedings *as a contract* by which the adults are bound and by which he says the infant is not bound, although she was a party to that contract through a guardian, was present in Italy and subject to the jurisdiction of the Italian court, was present through her guardian duly appointed by the Italian court in the Italian proceedings, was also under the protection of the Public Ministry to which there is delegated the duty, under section 346 of the Italian Code of Civil Procedure of representing and taking care of the interests "of minors, interdicted, disabled, declared absent, and generally all those which are represented or assisted by a guardian or administrator delegated by public authority", and the contract of compromise to which she was a party, was approved, and although section 1304 of the Italian Code of Civil Procedure provides: "*The acts accomplished in the manner ordained by the law in the interest of a minor, an incompetent or incapacitated person have the force which they would have if they had been executed by a person of age in his full capacity.*"

Argument.

The argument, substantially, has already been made in the discussion of the opinion, and what will hereafter be said is but an elaboration with reference to the cases.

In this brief we shall not consider, further than we have already done so, the law with respect to the binding force and effect of the Italian decree, nor the general rules with respect to the Conflict of Laws. From the portion of the decree confining her interest to that which she is entitled to under our statute of distribution Gloria Caruso has appealed, insisting that, *under Italian law as she claims it to be,* she is entitled to more, and we will reserve that matter for a reply to any brief which may be filed by her. We have not yet received her brief. We also understand that the complainant, Dorothy P. B. Caruso, intends to cover the general subject fully in her brief. We will, therefore, confine ourselves to matters which have particular reference to the binding force and effect of the decrees and of the contract of compromise upon the infant Gloria Caruso, including the matter of public policy upon which the Chancellor decided the case.

POINT I.

There is nothing in the public policy of New Jersey which forbids either (1) applying the provisions of the Italian law to the distribution of the royalties arising from the Victor Talking Machine contract or, (2) recognizing the binding effect of the Italian decree, or (3) recognizing the agreement of compromise made and approved in Italy as binding upon Gloria.

Preliminary.

The Chancellor cites the case of *Black et al.* v. *Zacharie & Co.*, 3 Howard 3, 11 L. Ed. 690, at p. 704. In that case the Supreme Court of the United States said:

> "There is another ground, auxiliary to the last view, which is entitled to great consideration. *It is well settled as a doctrine of international jurisprudence, that personal property has no locality, and that the law of the owner's domicile is to determine the validity of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found to the contrary.* This doctrine has in the very late case of The United States *v.* The United States Bank (in June 1844) been fully and directly recognized and affirmed by the Supreme Court of Louisiana, as a part of its own international jurisprudence; and it was applied in that very case to support an assignment made in Pennsylvania, by the Bank of the United States, to certain assignees, who were intervenors of goods, debts, credits and effects, in Louisiana. The court held that the assignment, being proved to be valid and effectual by the law of Pennsylvania, was to be deemed equally valid and effectual to pass the goods, debts, credits, and effects, of the bank, to the assignees in Louisiana,

> against the attaching creditors, who had notice of the assignment at the time of their attachment. The decision turned upon the very doctrine of international jurisprudence just referred to. *So that here we have the high authority of the State court in this very matter, that there is nothing in the jurisprudence of Louisiana, which forbids giving full effect and validity to an assignment of debts, credits, and equities, situate in that State, where the assignment is valid and effectual by the law of the State where it is made, so as to oust the rights of attaching creditors who have due notice thereof.*"

The Court, we submit, did *not* mean, when it used the expression, *i. e.,* that the law of the place of domicile would be given effect *unless there is some positive or customary law of the country where it is found to the contrary,* to imply that, merely because the law of the country in which the property is found is different from the law of the place of domicile, the law of the place of the domicile will not be applied, for that would be to wholly overturn the principle, for, if the laws were alike, there would be no necessity for following the foreign law, for the domestic law would be the same as the foreign law, and, if the law were, in any respect, different, then the domestic law would be followed. In no case which we have been able to find has any such rule as to what is meant by "public policy" been applied, whereas there are many cases applying the law of the domicile with respect to the distribution of personal property found in the state of the forum. No question of conflict of law arises unless there *is a conflict.* What is meant by "public policy" which will defeat the application of the law of the domicile is well illustrated by what Mr. Justice Garrison said in delivering the opinion of this Court in *Thompson* v. *Taylor,* 66 N. J. L. 253, at p. 256:

"The decisive portion of the opinion of Mr. Justice Gummere is in these words: 'When the legislature has declared the policy of the state in relation to a given subject-matter, it is the duty of the courts to give effect, so far as possible, to that policy,' citing Felt *v.* Felt, 14 Dick. Ch. Rep. 606, and Union Locomotive Co. *v.* Erie Railway Co., 8 Vroom 23.

"There can be no doubt as to the duty of our courts under the condition thus predicated. *The question in the case is whether the legislation referred to in the opinion is a declaration of public policy.* Briefly summarized, that legislation confers upon married women rights to contract as if unmarried, save as to contracts of suretyship from which no benefit is obtained from their separate use. Gen. Stat., p. 2017, sec. 26."

"In my judgment this and kindred acts of legislation, constituting together our Married Women's Act, and passed under the titles of 'An act for the better securing of the property of married women' and 'An act to amend the law relating to the property of married women', are to be regarded as *regulations* rendered necessary by the abrogation of the principles of the common law concerning coverture; and that what is indicated by this legislation, as a whole *is the abandonment of a public policy upon the subject and the future regulation of it by acts of legislative discretion.*"

"*The distinction between regulative legislation and the adoption of a principle of public law is too important to be lost sight of.* To declare, as the common law did, that the welfare of society required that wives be incapable of making contracts is an illustration of the adoption of a principle which, so long as it was adhered to, constituted a rule of public policy. When, however, civilized states became satisfied that the welfare of society was not best served by the maintenance of this principle, it was abandoned, by the recognition of its opposite, viz, that married women possessed capacity to contract. The question that then arose, viz., what

contracts might they make, and what might they not, while calling for the exercise of legislative discretion, based upon considerations that affected a large class of individuals, did not, either in theory or in fact, involve any principle upon which the general welfare of the body of citizens of the state was assumed to rest. *With the abandonment of the political principle, the matter was broken up into discretionary exercises of legislative regulation, in the course of which different bodies, or the same legislative body, at different periods, might lay down varying rules without destroying that comity that is so essential to commercial confidence and intercourse.* Thus in the case certified it appears that the State of New York, having abandoned the principles of the common law, as we ourselves have done, has gone further in its enabling legislation, or what is the same thing, has retained less of what the common law rule compelled, but equally and in either case *the only principle involved has been abandoned.* The respective regulations of the subject equally rest upon the common ground that women have a capacity to make contracts, subject to legislative control. *If this be so, comity requires that we mutually give effect to these discretionary acts by recognizing the validity of the resulting contracts and enforcing them in our courts, even when they are in opposition to our own declared discretion upon the subject.* This, as I read the case of Wright *v.* Remington, 12 Vroom 48, has been categorically decided in our Supreme Court. In that case a wife signed two notes as surety for her husband in Illinois, where the common law had been abrogated to that extent. Suit was brought in our Circuit Court to enforce these contracts against the wife. Upon a case certified the Supreme Court held that comity required the enforcement of the notes in question.''

''In delivering the opinion of the court Mr. Justice Reed said: 'There can be no question but that the contract was valid by the

law of Illinois. It is, therefore, the duty of the courts of this state to recognize and enforce it, unless it appears injurious to the interests of the state or of our citizens. But nothing approaching this result can be deduced solely from the fact that the foreign state confers upon married women the power to make a contract of suretyship. * * * Whatever may be our opinion of the policy of legislation beyond our state, we are bound by the principles of comity to recognize its validity, unless it *clearly contravenes the principles of public morality, or attacks the interests of the body* of the citizens of our state.'

"Objection upon this point was apparently not renewed upon the writ of error in this court, for the judgment was here affirmed without again referring to it. Remington *v.* Wright, 14 Vroom 451."

A. There is nothing in the Public policy of New Jersey which forbids the application of the Italian law with respect to distribution in case of intestacy nor forbids the division of the property in accordance with the Italian decrees.

It is quite true that the interests of the widow and of the child Gloria in the personal estate of Caruso are different under our law and the Italian law and the Italian decrees, and it is quite true that, under our law, the natural children recognized by Caruso in a manner prescribed by Italian law would not, if the act of Caruso had been performed in New Jersey, be entitled to any share in his personal estate under our statute of distribution, and it is quite true that the universal heir, Giovanni Caruso, would not, under our statute of distribution, in case of intestacy, be entitled to any interest.

Our law, however, recognizes that a man has the right to dispose of his personal property by will; that, if he does not dispose of it by will,

those who are his relatives are entitled to take—among others, the widow and his legitimate children. The Italian law is based upon precisely the same general principle. It recognizes, as does our law, that the widow and legitimate children are entitled to take certain portions of the estate and it also recognizes that certain relatives, not recognized by our law, are entitled to share.

But this is no more or less than saying that the statute of distribution of this state is different from the statute of distribution of Italy.

There is no well-defined public policy in this state which requires that any specific portion of a decedent's estate should go to his natural legitimate children.

In the first place, he may make a will disinheriting everyone. In the second place, he may adopt a child, in which event the child becomes "invested with every legal right, privilege, obligation and relation in respect to education, maintenance and the rights of inheritance of real estate, or to the distribution of personal estate on the death of such adopting parent or parents, *as if born to them in lawful wedlock*".

1 Cum. Sup. C. S. of N. J., 1911-1924, Sec. 97-16.

The Public policy of this State has also been changed with respect to illegitimates. By Arbitrary Section 169a, title "Orphans' Court," 3 Comp. Stat. of N. J., p. 3876, it was provided that only in case a father and mother of an illegitimate child who afterwards married and cohabited and the children were recognized as legitimate, should die *without legitimate issue*, that the *personal* estate should pass to the illegitimates.

But the statute was changed, secs. 146-169, 2 Cumm. Supp. to Comp. Stat. of N. J., p. 2629, and it now provides:

> "That in any * * * case where the father and mother of a child, * * * born out of lawful wedlock, * * * has entered or shall hereafter enter into the bonds of lawful wedlock and shall have cohabited * * * and such child * * * shall have resided with, been treated and recognized * * * as their child, * * * then * * * such child or children shall be entitled to share in the estate of the father and mother equally with the legitimate child or children of said intestate."

And, by P. L. 1915, Chapter 173, 1 Cumm. Supp. of N. J., secs. 18-35, title "Bastards" it is provided:

> "That any child heretofore or hereafter born out of the bonds of matrimony, shall become legitimated whenever the natural parents of said child shall have married the one with the other, or shall hereafter so marry each other, and such child shall have been, or shall be, recognized and treated by such parents as their child."

And, by secs. 18-36, such children are given the same rights and status as a child born in lawful wedlock. The statute was referred to by Vice Chancellor Fielder in *Jackson* v. *Jackson*, 94 N. J. E. 233, 113 Atl. 495, and it was held that a *common law marriage* legitimized children born at a time when the relationship was illicit.

In 1924 the legislature passed an act, 1 Cumm. Supp. of N. J., 18-37, 18-38, which provides that "any child heretofore or hereafter born of a ceremonial marriage," shall be the legitimate child of both parents even though the marriage be "thereafter annulled or declared void."

The principles of the conflict of laws applicable to the matter of legitimacy are well settled.

The status of legitimacy is created *by the law of the state of domicile of the parent.* Section 140 of the proposed re-statement #3, Conflict of Law, American Law Institute, p. 20:

"Section 142. An act of a parent after the birth of a child may make the child born illegitimate, the legitimate child from birth of either parent, if the law of the state of domicile of that parent at the time of the child's birth so provides."

"Subdivision C. The law may give to another act than marriage the effect of legitimizing from birth: for instance, the recognition of the child. If the law of the state of domicile of either parent at the birth of the child provides for legitimizing the child from birth by recognition of paternity after birth, the child becomes the legitimate child of that parent from birth if he subsequently recognizes the child."

"(F) Though under the proper law it is impossible for a child to become legitimized from birth, he may be legitimized from the date of an act of legitimation."

"Section 143. An act done after the birth of an illegitimate child will legitimize the child from the time of the act done as to a parent if the law of the state of domicile of that parent at the time the act is done so provides."

"Section 144. The status of legitimacy, created by the law of a state having jurisdiction so to do, will be given the same effect in another state as is given by the latter state to the status when created by its own law."

Applying the last rule to the instant case, we find that the laws of the State of New Jersey gives to a legitimized child the same rights as to a child born in lawful wedlock.

"Section 326, (p. 174). If the determination of persons entitled to take by distribution depends upon the legitimacy of such persons, that legitimacy is determined *by the law which according to the principles of the Conflict of Laws governs their legitimacy.*

(a) *If a bastard is legitimized by the proper law (see section 140) he may succeed*

though he would not be legitimate by the law of the state of situs of the property to be distributed.

(b) If a child is not legitimate by the proper law he may not inherit, though he would be legitimate by the law of the state of situs of the property to be distributed.

(c) The law of the state of the decedent's domicile determines whether a bastard legitimized by the proper law can inherit either directly or collaterally."

The law of Italy recognizes a status of a child born out of lawful wedlock who is acknowledged by his father, as in Caruso's case, as being entitled, in case of intestacy, to one-half of the right of a legitimate child. There is nothing in the public policy of our law which forbids this thing. We differ merely as to matter of detail. Nor is there anything in our law, *as a matter of public policy,* which would forbid a brother being given a share in a decedent's estate, even if there are legitimate children and a widow, nor anything which would prohibit a universal heir.

It is generally recognized that the mere fact that the law of the state of the forum does not permit illegitimates to share in an intestate's estate does not indicate such a public policy as that the laws of a foreign country, in which a decedent is domiciled at his death, will not be enforced with respect to the distribution of personal property.

In *Suarez* v. *Mayor, etc., of the City of New York,* 2 Sandf. Ch. 173, 7 N. Y. Chancery Reports 554; one Brid, domiciled in Carthagena, Colombia, died leaving no legitimate descendents or ascendents except Mrs. Mendez, a grandmother. He left two illegitimate children. He had a large amount of personalty deposited with the New York Life Insurance and Trust Company, which, after administration by the public administrator in New

York, was paid into the City treasury. The plaintiff claimed this amount for Mrs. Mendez. In a suit in a superior court in Carthagena to settle conflicting claims to the Estate of Brid, it had been decreed that, under the laws of Carthagena, the two illegitimate children of Brid were entitled to one-fifth (1/5) of Brid's estate and that Mrs. Mendez was entitled to the rest. In pursuance of this decree, duplicate certificates of the original deposit made in the New York Life Insurance and Trust Company were delivered to the executors of Mrs. Mendez in Carthagena, the original certificates resting with mercantile houses in New York, and the amount of the certificates being in the treasury in New York City. It was held that the fund be paid directly to the plaintiff without remitting it to the decedent's domicile. The Court stated:

> "It is an *universal* principle of jurisprudence at this day, in civilized countries, that the succession of personal or movable property, wherever situated, *is governed exclusively by the law of the country where the decedent was domiciled at the time of his death.* (Story's Confl. of Laws, 403, 405, Sec. 480 to 482 a; 2 Kent's Comm. 428 to 430 2nd ed.; Schultz *v.* Fulver, 3 Paige's R. 182, per Walworth, Chancellor; S. C. 11 Wend. 363, per Nelson, Justice.) The estate of Brid, which is in question here, was therefore distributable according to the laws which were in force at Carthagena when he died.
>
> The decree in the suit relative to the succession, carried on at the place of his domicile, against the primary administrators of his estate, appears to have been conducted in due form, and between proper parties. It not only settled the right of Juana Mendez to four-fifths of Brid's estate, but in execution of the decree, *the identical fund in the defendants' hands was awarded to her representatives, and symbolically delivered to them by the court.*" (As in the case at bar.)

"The decree and act of delivery are, in my opinion, conclusive upon the subsidiary administrators appointed here upon the estate of Brid, and entitled the complainant as legal representative of Mrs. Mendez, to receive the fund collected by the public administrator.

Irrespective of the judicial proceedings establishing the right of the representatives of Mrs. Mendez to the fund in question, it is made out by the evidence in the case.

Thus it is shown that Brid was domiciled at Carthagena. *He died there, leaving no legitimate descendant, nor any legitimate ascendant surviving except Mrs. Mendez. He left natural children.*

By the law of his domicile, Mrs. Mendez became entitled to four-fifths, and the two children to one-fifth, of his property. The administrators appointed by the proper tribunal at his domicile administered his estate, delivered to the two children, or their legal representative, the one-fifth, and to the attorney of Mrs. Mendez's executors four-fifths of such estate. The fund in question was a part of the latter four-fifths, and was actually transferred, so far as they could transfer it, to Juana Mendez, as Brid's next of kin.

All this appears to have been done in good faith on the part of the administrators of Brid, and with the sanction of a judge of the Court of First Instance at Carthagena.

The fund in the defendant's hands *was thus allotted and delivered by the principal administration at the domicile of the intestate, and in the absence of creditors, became a part of the estate of Mrs. Mendez.*" (As in the case at bar.)

In *Doglioni* v. *Crispin,* 35 L. J. New Series 129, Eng. P. C. 1866, *C* died in Portugal where he had been domiciled. By Portuguese law, an illegitimate child of one dying intestate was entitled to take as though legitimate. *A* claimed to be a natural son of *C* and started an action in Portugal to get his share of the estate, *B,* the sister of *C,*

Doglioni v. Crispin is difficult to find. The quotation is from the opinion of the House of Lords which I have been unable to find except in 35 Law Journal (1866) being cases argued and determ ined in the Court of Probate and in the Court for Matrimonial Causes, and in the House of Lords on appeal from those courts, p. 129, in the House of Lords July 16, 17, 31, affirming the same cause 3 Swabey and Tristram's Probate Reports 96, 164 English Reprint

was made a party to the suit. She contested the action and put in evidence an alleged will of *C*. The Portuguese Court decreed that *A* was entitled to the entire property and rejected the alleged will. *A* later applied for letters of administration of his father's estate in England. *B* put in a caveat against the grant of such letters on the ground that *C* had left a will. It was held that the foreign decree was entitled to recognition in its entirety and it was ordered that *B* was entitled to letters of administration. The Court stated:

> "Of the propriety of that decree I entertain no doubt whatever. *No principle can be better established than that the administration of the personal estate of a deceased person belongs exclusively to the country in which he is domiciled at his death.* The courts of that country must decide who is entitled, and from that decision there can be no appeal. It does not always happen, as is the case here, that the claim of the party litigating in our Courts has been actually raised and decided in the Courts of the country of the domicil. It is, therefore, often matter of necessity that our Courts should receive evidence from learned foreigners as to what the law of the domicil is. Such evidence is in general far from satisfactory, but it often happens that no better evidence can be obtained, and then the Courts here must ascertain from conflicting testimony, as well as they can, what the law is on which they must act. But here we are left in no doubt. The title of the respondent has been fully adjudicated upon by the Courts of his domicil, after a long and careful consideration, and by their decision we are bound."

B. There is no public policy of this State opposed to agreements among those who assert interests in a decedent's estate making such arrangements as to the devolution of the Estate as they see fit.

These agreements are family settlements and are favored by the courts. The general rule is stated in 12 Corpus Juris, title Compromise and Settlement, Sec. 16, p. 322:

> "Compromises having for their object the settlement of family difficulties or controversies are favored at law and in equity *if at all reasonable.* The termination of such controversies is considered a valid and sufficient consideration for the agreement, and the court will go further to sustain it than it would under ordinary circumstances. *Accordingly, it has been laid down as a general rule that a family agreement entered into on the supposition of a right, or of a doubtful right, although it afterward turns out that the right was on the other side, is binding, and the right cannot prevail against the agreement of the parties.* The principle has been held to extend not merely to cases in which arrangements are made between members of a family for the preservation of its peace, but to cases in which arrangements are made between them for the preservation of its property. * * * Applications of the foregoing rules have frequently been made in the case of settlements as to the distribution of the property of a decedent, and to agreements not to contest a will, or to withdraw a will contest."

Judge Sanborn, speaking for the Circuit Court of Appeals for the 8th Circuit, in *Burnes* v. *Burnes,* said, 137 Fed., p. 781, at p. 801:

> "For *obvious* reasons of public policy, compromises of conflicting claims by family set-

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> tlements *are encouraged by the courts,* and they may not be avoided or disregarded for mere inadequacy of consideration, *or except upon clear and convincing proof of grave fraud or mistake.* Stapilton *v.* Stapilton, 1 Atk. 2, 2 White & Tudor's Lead. Cas. in Equity, pt. 2, p. 920; Supreme Assembly *v.* Campbell, 17 R. I. 402, 22 Atl. 307, 13 L. R. A. 601; *In re* Palethorp's Estate, 168 Pa. 101, 31 Atl. 885."

Certiorari to the Supreme Court of the United States denied 199 U. S. 605, 50 L. Ed. 330.

And Vice-Chancellor Emery recognized the rule in *Clawson* v. *Brewer,* 67 N. J. Eq. 201.

There being no public policy of this State against family settlements, the mere fact, if it be a fact, that a family settlement would not be permitted to be made and to be enforced by the Courts of this State under such circumstances as the courts of Italy would permit such a settlement and its enforcement, will not prevent the courts of this State from giving effect to a family settlement *made in Italy* not only valid under the law of Italy as such but determined by a proper Court of Italy to be valid as expressed in its decrees, when the settlement is of the estate of a decedent domiciled in Italy at the time of his death and involves personal property, for the rule is, as will be stated hereafter, that an *ordinary* contract is to be governed, both as to its validity and as to the capacity of the persons to contract, by the law of the place in which the contract is made.

And the rule is stronger where the contract involves the devolution of personal property of a decedent which is to be governed by the law of the place of the domicil, the law of this State not only permitting but favoring such settlements.

Under the rule as stated by Mr. Justice Garrison in *Thompson* v. *Taylor,* 66 N. J. L. 253, the

difference in the requirements of the two states as to the requisites, either as to consideration or otherwise, of such an agreement is not sufficient to permit the courts of this State to disregard such an agreement upon any rule of public policy.

C. The fact that there was an infant involved in the compromise is not sufficient to permit the Court to disregard either the agreement as such or the decrees of the Italian Court determining the rights of the parties in the personal estate of Caruso.

Before arguing this, we will refer to certain well settled principles of the conflict of law with respect to the validity of contracts and also settled principles as to the capacity of infants, etc., to contract and the age at which they reach their majority.

1. The principles of the conflict of law as to the validity of contracts and the capacity to contract are well settled.

They are stated in the proposed Restatement No. 4 on the Conflict of Laws, of the American Law Institute, as follows, Sec. 353:

> "The law of the place of contracting determines the binding effect of a promise with respect to
>
> (a) The capacity to make the promise;
>
> (b) The necessary form, if any, in which the promise must be made;
>
> (c) The legal requirements for making a promise binding, such as consideration, seal, etc.;
>
> (d) The circumstances which make a promise ineffective or a contract voidable;
>
> (e) The nature of the act to which a party becomes bound;

(f) The time when and the place where the promise is by its terms to be performed;

(g) The absolute or conditional character of the promise.

Section 354. The law of the place of contracting determines the capacity to enter into a contract."

New Jersey recognizes these rules as indicated by *Thompson* v. *Taylor,* 66 N. J. L., p. 253, at p. 256, where the question involved was the capacity of a married woman to contract and the matter of public policy was considered by Mr. Justice Garrison, and from which case we have heretofore quoted.

What this Court said in *Mayer* v. *Roche,* 77 N. J. L. 681, and in *Commercial Credit Corporation* v. *Boyko,* 5 N. J. Adv. Rep. 1034, to the effect that the law of a contract is the law or laws by which the parties to a contract intended, or may fairly be presumed to have intended, that the contract be governed, has no effect in this case for, in the absence of evidence to the contrary, it is presumed that the parties intended the contract to be governed by the laws of the place in which the contract was made. And, in the case at bar, all of the parties involved were subjects of the Kingdom of Italy, domiciled in Italy, and they were dealing with the estate of a deceased Italian subject who had died domiciled in Italy.

2. The general rules are well settled with respect to the age at which infants reach majority, and when they may be bound by contract. 31 C. J., title "Infants", Sec. 26, states the rule (p. 1001):

"As a general rule the status of a person, as to minority or majority, is determined by

> the law of his domicile, * * *. As to acts done or contracts made in the place of domicil, it is generally held that the law of the domicil as to the capacity or incapacity of the person, governs. Where the place of domicil and of the act or contract are not the same, although there may be authority inclined to the contrary, the general rule is that, in case of a conflict between the lex domicilii and lex loci contractus aut actus, the latter will prevail."

In *Banca De Sonora* v. *Bankers' etc. Co., Iowa,* 124 Iowa, 576, 100 N. W. 532, 104 Amer. State Reports 367, the Iowa Court said:

> " 'The matters bearing upon the execution, the interpretation, and validity of a contract are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance. * * *' "

And the Court then considered as to whether a person was of such an age under the law of Mexico, as that he could be held upon contracts, etc.

The matter as to when a person becomes of age is one purely of custom or statute law. The common law rule is, both for males and females, twenty-one years, but the matter is wholly within legislative control. 31 C. J., Title "Infants", sec. 3. In some States of the United States a distinction is made between males and females, males becoming of age at twenty-one and females at eighteen. Under the civil law, the age for both males and females is fourteen.

In *Young* v. *Sterling Leather Works,* 91 N. J. L. 289, this Court, in holding constitutional the Workmen's Compensation Act, which permitted the application of the Act to infants, said, p. 293:

> "The fallacy of this argument consists in the assumption that the disability of an in-

fant to enter into a binding contract is a property right, and, hence, such disability cannot constitutionally be interfered with by legislation. This assumption is, obviously, unwarranted. Infancy is a personal privilege. Bordentown *v.* Wallace, 50 N. J. L. 13.

An infant has no vested right in the disability, which the common law has erected as a barrier against his making binding contracts, during his infancy, to the extent that the legislature may not constitutionally remove such disability as to future contracts entered into by him.

An infant at common law never possessed the power to exercise the same legal rights as an adult. To protect the infant against being bound by contracts which were not for his benefit and against imposition, the law required that *until he reached the age of twenty-one years his contractual acts, in order to be binding upon him, must have the consent of parent or guardian. So, at common law, the infant could only enter into a contractual relation binding upon him, by his parent or guardian. And this legal rule still prevails.*"

And, again, at p. 294:

"So, it appears that at common law an infant *could only legally bind himself by a contract which was for his benefit;* and that obligations imposed by statute upon an infant were binding.

But even if this were otherwise, there is no constitutional provision in the way of the legislature to deal with the disabilities of infancy, as it, in its legislative wisdom or judgment, may see fit.

Accordingly, the legislature has the power to change the age at which a minor is privileged to exercise legal rights which shall be binding upon him. It may give him legal power to act when he is sixteen or it may raise the age of majority, when he shall be entitled to perform certain legal acts. As has already been pointed out, a minor at com-

> mon law never had the same legal privileges as those of an adult, *and could only legally act by his parent or guardian.* The parent is still entitled to the minor's services and wages until the latter attains the age of twenty-one, unless he is sooner emancipated."

It thus appears that there is no settled public policy in this State against changing the age at which persons may be permitted to contract, or against giving effect to contracts of those under a certain age made in jurisdictions permitting binding contracts to be made by such persons.

D. Infants properly represented in accordance with the law of the decedent's domicile will be bound by a decree even if that decree be by consent.

But the decree involved here was *not* by consent in the ordinary sense of that term, for the rights of the infant were looked after, first by the special guardian who consented after the agreement had been modified at his suggestion and Gloria given certain rights, then by the Public Ministry, which examined into the matter of the infant's interest and then by the Tribunal which was by the law charged with the duty of protecting infants.

Freeman on Judgments, 5th Ed., 1925, Sec. 1347, p. 2769, states the general rule with respect to the effect of a judgment entered against an infant by consent of the guardian. He says:

> "An infant being without the power to contract cannot consent to a judgment. And ordinarily a court before entering a judgment or decree by consent will inquire whether it is for the benefit of an infant party to it. It ought in all instances to make the inquiry *and because it is its duty to do so, the presumption in the absence of any showing to*

the contrary is that it has performed its duty. But while a consent judgment against an infant is not collaterally impeachable, if it is entered *without previous judicial sanction or investigation it may undoubtedly be set aside upon a sufficient showing in proper proceedings for that purpose, if the rights of third persons acquired under it are not thereby prejudicially affected.*"

And see the Note in Annotated Cases, 1917 B, 922. The author in his summary of the law says:

"The question considered in this note is whether there is a peculiar infirmity in an infant which exempts him from the obligatory character of a judgment affecting him, in spite of his representation in the action by a guardian. In other words, the question is whether the law in its conception of infancy recognizes some inability or disadvantage incident to the peculiarly inexperienced condition of infancy, even though legally represented, which privileges an infant to vacate a judgment acquired affecting him or permits such judgment to be set aside on slighter grounds than those required to upset a judgment against an adult. In all cases wherein the question has been raised the courts have held uniformly *that an infant is as much bound by a judgment rendered in an action wherein he has been duly represented as an adult,* and that the only grounds for vacating such a judgment are fraud, collusion, mistake or other grounds which will vacate a judgment affecting a person of full age."

In *Dickson* v. *Neal* (2 Fed., 2nd), Circuit Court of Appeals for the 8th Circuit, p. 533, a suit was brought to recover certain parcels of land situate in Arkansas. One of the defenses set up by the defendant was that there had been a prior judgment recovered against the plaintiffs in a case involving the same issue. It appeared that in 1896 the plaintiffs, then infants, brought suit

by their next friend against persons through whom defendants claims title, the object of the suit being to obtain a decree adjudging that the plaintiffs were entitled to the land.

The Court said:

"'An infant is ordinarily bound by acts done in good faith by his solicitor or counsel in the course of the suit, to the same extent as a person of full age. Tillotson *v.* Hargrave, 3 Madd. 494; Levy *v.* Levy, 3 Madd. 245, 56 English Reprint 499. *And a compromise, appearing to the court to be for the benefit of an infant, will be confirmed without a reference to a master; and, if sanctioned by the court, cannot be afterwards set aside except for fraud.* Lippiat *v.* Holley, 1 Beav. 423, 48 English Reprint 1004; Brooke *v.* Mostyn, 33 Beav. 457, 55 English Reprint 445, and 2 De G. J. & S. 373, 46 English Reprint 419. 'If the court does pronounce a decree against an infant by consent, *and without inquiry whether it will be for his benefit, he is as much bound by the decree as if there had been a reference to a master and a report by him that it was for the benefit of the infant.* Wall *v.* Bushby, 1 Bro. Ch. 484, 28 English Reprint 1254; 1 Dan. Chan. Prac. 164. The case falls within the general rule, that a decree made by consent of counsel, without fraud or collusion, cannot be set aside by rehearing, appeal or review. Webb *v.* Webb, 3 Swanst. 658, 36 English Reprint 1011; Harrison *v.* Rumsey, 2 Ves. Sen. 488, 28 English Reprint 312; Bradish *v.* Gee, Ambl. 229, 27 English Reprint 152; S. C. 1 Keny. 73; Downing *v.* Cage, 1 Eq. Cas. Ab. 165, 21 English Reprint 961; Toder *v.* Samsam, 1 Bro. P. C. (2d Ed.) 468; French *v.* Shotwell, 5 Johns Ch. 555.''

"'*Ordinarily* indeed a court before entering a consent decree will inquire whether the terms of it are for the interest of the infants. It ought in all such cases to make the inquiry,

> and because it is its duty so to do it will be presumed, in the absence of any showing to the contrary, that it has performed its duty. In this case, while the decree fails to recite the making of such an inquiry, there is nothing to indicate that it was not made; the circumstances tend strongly to show that it was in fact made, and the finding is that the conclusion reached by the chancellor as to the advisability of the settlement was a sound exercise of his discretion.' ''

It will be noted that, in this case, the Circuit Court of Appeals for the 8th Circuit depends almost exclusively upon English cases, and our law, with respect to the protection afforded to infants by the Court of Chancery and the effect of judgments against infants and the manner by which infants shall be protected, is taken exclusively from the English law. Most of the language used by the Circuit Court of Appeals above quoted is taken bodily from the opinion of the Supreme Court of the United States delivered by Mr. Justice Brewer in *Thompson* v. *Maxwell Land Grant & R. Co.,* 168 U. S. 451, 42 L. Ed. 539, at p. 544.

In *Matthews* v. *Doner,* 292 Ill. 592, 1920, 127 N. E. 137 the plaintiff had brought suit to have certain land partitioned alleging that she was entitled to an interest in the realty by virtue of an Illinois decree on a certain bill filed by her to contest the will of her father. The bill for partition set out the proceedings in the will contest, avering that a compromise had been effected between the adult parties therein and a minor, the defendant in the then present action. By virtue of this compromise, the plaintiff took title to the realty. The infant's guardian *ad litem* sought to attack this prior decree on the ground that the compromise was not for the best interests of the plaintiff. The defendant excepted to the matter's report recommending that the land be partitioned. It was held for the plaintiff, Stone, J., saying:

> "No principle of law is better settled than that where the court has jurisdiction of the subject matter and of the persons of the parties, its judgment or decree, when questioned collaterally, will be held valid; and this is true even though the judgment is erroneous and subject to being nullified on appeal or error. Such judgment or decree is binding until it is reversed and is not subject to collateral attack. *It is the rule likewise that a court of equity may authorize a compromise of a minor's litigation where the evidence shows the case is a proper one for such compromise.*"

In *Rawlz* v. *Mayo,* 163 North Car. 177, 193, 79 S. E. 298, the facts were substantially these—one, L. R. Mayo, entered into an agreement for the sale of a plot of ground with J. Mayo, his son. After the death of the father, L. R. Mayo, an action was commenced by J. Mayo against the former's personal representatives, heirs at law and devisees for specific performance of this contract. A consent decree was entered providing that K. Mayo was to receive title to the land and that the proceeds of the sale were to be treated as real assets. The plaintiffs in the then present action were infants at the date of the former suit, properly represented by guardians *ad litem.* This action was brought to collect the money from J. Mayo and to pay out the same sums to them as the beneficiaries of L. R. Mayo. It was conceded that the plaintiffs were not entitled to recover if the purchase price from J. Mayo was not personalty. The plaintiffs were non-suited and appealed. Judgment affirmed. The Court stated, page 299:

> "If this adjudication was wrong, it is because it was based on the erroneous application of legal principles, and the remedy to correct the error was by appeal. . . . Nor can the fact that the plaintiffs were infants at the time of the adjudication, and that the

judgment was by consent, benefit the plaintiff if it be conceded that the part adjudging the purchase money to be real estate was by consent, which is not beyond dispute, because if treated as the contracts of infants, which is the most favorable view for the plaintiffs, it would be voidable and not void (Millsaps *v.* Estes, 137 N. C. 535) and cannot be attacked collaterally. Earp *v.* Minton, 138 N. C. 204. The plaintiffs have not sought to impeach the judgment by motion or action, but treat it as void, which we have seen, is not a correct view to take of it, and we must hold that it precludes a recovery."

In *Harrison* v. *Wallton,* 95 Va. 721, 30 S. E. 372 the Court stated:

". . . a judgment or decree is conclusive upon the parties to it until reversed upon appeal, or until set aside or annulled by some proceeding instituted for that purpose. *And it is well settled with us that an infant, as a general rule is as much bound by a decree against him as a person of full age.* The law recognizes no distinction between a decree against an infant and a decree against an adult. *And therefore it is that an infant can impeach only upon the grounds which would invalidate it in the case of another person, such as fraud, collusion or error.*"

In *Ivey* v. *Harrell,* 20 S. W. 775 (Tex. Ev. App., 1892), the Court states:

"*The fact that the judgment was rendered on the agreement of the guardian does not render it void.* The guardian acted under the supervision of the court, and in a collateral proceeding it must be presumed that the court ascertained the facts upon which the agreement was based and allowed no wrong done to the minor. It might be erroneous for a court to base its judgment upon an agreement of the guardian but this would not render its action void. It is the judgment which

binds and not the agreement. Hollis *v.* Dashiell, 52 Tex. 187."

In *Sites* vs. *Eldredge,* 45 N. J. Eq. 632, a bill was brought for specific performance. One, Jewett, died intestate leaving three infant children and a widow. The eldest daughter, upon attaining her majority, brought a suit to have land to which her father had the fee simple title partitioned. The children were represented by guardians *ad litem.* Under these proceedings, the land was sold and the proceeds divided among the widow and the three children. It was objected to the plaintiff's title that the infant children were not bound by the partition proceedings. As to this objection, Pitney V. C. stated:

". . . here it seems to me that the two children were as much bound by the partition proceedings as if they had been adults."

E. The public policy of New Jersey is not offended by giving force and effect, as against the infant Gloria, to the Italian decree as such or to the compromise as a contract.

The Chancellor, in his opinion of March 14, 1928, (p. 117) said:

"And it has been held in this state that while the rights of infants are not superior to those of adults, the difference between the two classes of persons is, *that the rights of infants must be protected by the court, while adults must protect their own.* In re Shreve 87 N. J. Eq. 7; affirmed, *Ibid.* 710, for the reasons given by the Chancellor. And this court held in Caruso *v.* Caruso, supra, (5 N. J. Adv. R. 1805), that nothing can be taken as admitted against an infant, either by his default or on the answer of his guardian; and that it is the rule, that a next friend or guardian, cannot, by admission or stipulations, surrender

> the rights of an infant. And this court held that minors cannot make an election themselves, and a guardian is without authority to make it for them. Brengel *v.* O'Toole, 6 N. J. Adv. R. 173.
>
> It therefore appears that the rights of the infant Gloria were not concluded by the Italian decree and this application of her guardian lies in her behalf."

It is true that, under the laws of this State, it has been held that a next friend or guardian cannot, by admission or stipulation, surrender the rights of an infant and that the rights of infants *must* be protected by the Court, but it is likewise true that the rights of infants *may be surrendered* under the law of this state if the surrender be approved by the Court, and their rights may be *compromised* upon approval of the Court.

In the case cited by the Chancellor, *Brengel* v. *O'Toole,* 6 N. J. Adv. R. 173, Vice Chancellor Fielder said: "The minor cannot make the election themselves and a general guardian is without authority to elect for them", citing *Fluke* v. *Fluke,* 16 N. J. Eq. 478, *Condict* v. *Condict,* 73 N. J. Eq. 301; *Cranstoun* v. *Westendorf,* 91 N. J. Eq. 34: and

> "*Should it appear that it would be to the advantage of the minors, this court might make the election for them,* but there is nothing in the pleadings from which the court can determine that such an election would be for their benefit.

We have already cited and quoted from *Dickson* v. *Neal* (2 F. 2d) Circuit Court of Appeals for the 8th Circuit, 533, in which the Court held that a compromise of an infant's rights, which had been approved by the Court, was binding, relying upon the common law, and we repeat what the Court there said, in part:

"'An infant is ordinarily bound by acts done in good faith by his solicitor or counsel in the course of the suit, to the same extent as a person of full age. Tillotson *v.* Hargrave, 3 Madd. 494; Levy *v.* Levy, 3 Madd. 245. *And a compromise, appearing to the court to be for the benefit of an infant, will be confirmed without a reference to a master; and, if sanctioned by the court, cannot be afterwards set aside except for fraud.* Lippiat *v.* Holley, 1 Beav. 423; Brooke *v.* Mostyn, 33 Beav. 457, and 2 De G., J. & S. 373.

If the court *does* pronounce a decree against an infant by consent, *and without inquiry whether it will be for his benefit, he is as much bound by the decree as if there had been a reference to a master and a report by him that it was for the benefit of the infant.* Wall *v.* Bushby, 1 Bro. Ch. 484; 1 Dan. Ch. Prac. 164.'"

We will not quote from the English cases, except *Brooke* v. *Mostyn,* 33 Beav. 457, 55 Full Eng. Reprint, p. 445, in which case the Master of the Rolls, Sir John Romilly, said:

"If, in the course of a suit or any other proceeding in this Court, a compromise is proposed between one or more adult persons and one or more infants, the court takes steps to ascertain whether it will be for the benefit of the infant or infants that the proposed compromise should be accepted. Formerly this was done by a reference to the Master to ascertain that fact, at present it is done sometimes by a reference into Chambers, and sometimes without adopting that course, if the Judge, after considering the evidence presented to the Court, is of opinion that, without further investigation, it is sufficient to enable him to decide on the matter. In dealing with such a question, it is the duty of a Judge (and, as I believe, a duty always performed by him) to consider carefully the facts, and to determine, upon such consideration, which is best to be done for the infant,

> in like manner as a father would act for a son under similar circumstances. No doubt in such cases, especially when the result of this evidence is doubtful, the Court is much influenced by the opinion of the nearest relatives and guardians of the infant, who have no interest in the matter except to promote the advantage of the child. *When this has been done, and the Court has decided in favor of the arrangement, and the arrangement has been thereupon carried into execution, the whole thing is concluded. If it should afterwards turn out that the Court was mistaken, the infant has no redress;* it was an error of judgment for which there is no remedy and which cannot now be altered."

All of the cases are in accord. It is familiar practice in this State to authorize compromises of the rights of infants, and it has never been doubted but that those compromises, when authorized, are conclusive as to the infants, except only in the case where there is fraud, the transaction, when concluded, being as binding upon an infant as it would be upon an adult, for, under such circumstances, the language of the Chancellor, in his opinion of March 14, 1928, page 117, to the effect that the rights of infants are not superior to those of adults, the only difference between the two classes being that the rights of infants must be protected by the Court, is applicable, as well as that of Vice-Chancellor Pitney in *Sites* v. *Eldredge,* 45 N. J. Eq. 632, to the effect:

> "* * * here it seems to me that the two infant children are as much bound by the partition proceedings as if they had been adults."

F. There is no rule in this State nor in England that the rights of infants must be determined by adverse litigation and that their rights can never be compromised.

A striking illustration of the compromise of infants' rights will be found in the George Gould Estate in the Court of Chancery, Docket ....., page ....., in which case the Court, Backes, V. C., approved a compromise by which a trust fund, set up by the will of George Gould of some $4,000,000 and in which trust fund infants had remainders, was reduced to some $2,000,000 and there are any number of other cases of similar nature.

G. The public policy of Italy as to the protection of infants is the same as that of New Jersey.

If there is any matter of public policy with regard to infants in this State, it is *not* that infants' rights cannot, under any circumstances, be surrendered, but that the infants' rights should be protected by the Court *and that is the law of Italy.* The law of Italy goes to a greater extent in protecting the rights of infants than does the law of this State for, under the practice in this State, an infant's rights may be surrendered upon the approval of the Court, without investigation except by itself, the infant being represented by a Guardian *ad litem* who is not obliged to oppose a settlement but may recommend it, whereas, under the law of Italy, not only must there be a Guardian *ad litem* who may either recommend or disapprove a compromise, but the infant is also represented by a department of the State, the Public Ministry, and the Court only acts after investigation by the Public Ministry, and then, the investigation having been made and the matter being before the Court, the Court may, just as in a case

in this State, approve or disapprove the settlement and compromise.

Even if the procedure were different in Italy and if the infants' rights were not looked after to the same extent as the rights of infants in this State, still the Courts of this State, we submit, would not be justified in holding that an act, binding under the law of Italy, did not bind the infant here with respect to the personal property of a decedent domiciled in Italy, when the infant was actually physically present in Italy at the time of the act, for again the language of Mr. Justice Garrison in *Thompson* v. *Taylor,* 66 N. J. L., p. 253, would be applicable. The law of this State permitting compromises and permitting the surrender of rights of infants with *some* supervision by *some* court, the matter of the amount of the supervision is one, not of public policy, but of detail in administration.

The matter is not of importance here, however, for the law of Italy throws around the infant greater safeguards than does the law of this State.

The procedure by which an infant is brought into court in Italy and the procedure by which it is brought into court in this State is of no importance, for that is a matter of pure technique. It has been sometimes said in this State that infants must be proceeded against *in invitum* that is, process must be served upon them to bring them into court, but that is not always so, for any next friend may file a bill in the Court of Chancery on behalf of an infant and, if the infant's rights are passed upon on such a bill by the Court, the determination of the Court is conclusive upon the infant.

The substantial thing, as the Chancellor pointed out, in his opinion of March 14, 1928, at p. 129, is that, "The rights of infants must be protected by the court", the method of securing jurisdiction of the infants being one of pure detail.

POINT II.

The agreement for settlement and the deed of partition are contracts made in Italy and their validity and the capacity of the parties to make them is to be determined by the Italian law inasmuch as all of the parties were in Italy at the time of the making of the contracts and the contracts had reference to an Italian estate and this wholly irrespective of any consideration of the Italian court proceedings as judicial in their nature or any consideration with respect to the effect of the decrees of the Italian court as judgments.

We have already pointed out that under the principles of the conflict of laws, the law of the place where a contract is made determines the binding force and effect of a promise with respect to the capacity to make the promise; the circumstances which make the promise ineffective or a contract voidable; the nature of the act to which a party becomes bound; the necessary form, if any, in which the promise must be made, etc., and we have pointed out that these rules are recognized in New Jersey.

We have likewise pointed out that the rule with respect to whether an infant may be bound by contract and in what manner, and as to when a person becomes of full age, etc., is to be determined by the law of the place where the infant is domiciled at the time or the law of the place of the contract.

All of the parties involved in the making of this contract of settlement were resident and domiciled in the Kingdom of Italy at the time the contract was made, and the contract involved the property of a deceased Italian subject, including property in Italy, and, as we insist, the right to the proceeds of the Victor Talking Machine Company

contract must, under the general rule as expressed in *Blodgett* v. *Silberman,* United States Supreme Court Advance Reports May 1, 1928, 72 L. Ed. 749, be considered to be property of the decedent at the place of his domicile, to wit, in the Kingdom of Italy.

It would make no difference in the application of the rule if the property be considered to be property situate in this State, for, again, under the principles of the conflict of laws an assignment of personal property is good if valid under the law of the place where made.

Treated, therefore, solely as a contract, laying aside altogether the effect of the Italian judgments as such, the agreement made in Italy with respect to the division of the estate of Caruso and the deed of partition are valid and are binding upon the infant.

Under the Civil Code of Italy it is provided, sec. 1304:

> *"The acts accomplished in the manner ordained by the law in the interest of a minor, an incompetent or incapacitated person have the force which they would have if they had been executed by a person of age in his full capacity."*

There is no doubt but that the proofs show that the act of the infant Gloria in agreeing to the settlement and to the deed of partition, was accomplished in the manner ordained by the Italian law, and, that being so, the agreement is as binding upon her as if she were of full age.

And there is nothing in the public policy of New Jersey which forbids the courts of this State giving effect to these principles of the conflict of law and from holding this contract valid as a contract of the infant, wholly aside from the question of the force and effect which is to be given to

the decrees of the Civil Tribunal of Naples as judgments.

If we regard the proceedings of the Civil Tribunal of Naples merely as administrative proceedings required by Italian law to make effective a contract made by an infant, still the agreement is binding here under the principles of the conflict of laws with respect to the validity and effect of a contract and the capacity of a party to contract.

And, here, again we repeat that there is nothing in the public policy of New Jersey which forbids the holding of an infant to such a contract, so accomplished, for New Jersey does *not* forbid the making of *any* contracts by infants, even without the intervention of the Court, for it *permits an infant to make a valid contract for necessaries.*

Reading v. *Wilson,* 38 N. J. E. 446.

And it permits the making of *any* contract for and on behalf of an infant including compromises of claims, etc., with the approval of the Court, and it permits guardians to make contracts for infants with the approval of the Court.

In *Reading* v. *Wilson,* 38 N. J. E. 446 the Court said:

> "A guardian is without the least capacity or authority to impose contract obligations on his ward. *He may do so under the direction of a court of competent jurisdiction,* but he does not exercise, in such cases, a power belonging to his office, but an extraordinary power conferred for a special purpose."

Brengal v. *O'Toole,* 6 N. J. Adv. Rep. 173.

New Jersey not forbidding contracts by infants under *all* circumstances, upon the question of public policy the remarks of Mr. Justice Garrison in *Thompson* v. *Taylor,* 66 N. J. L. 253 are applicable.

So, that, even if the law of Italy permitted infants to make contracts under entirely different circumstances than the State of New Jersey would permit them to be made, still the contracts, if made in Italy by persons domiciled in Italy at the time, would be valid and binding in this State but Italy requires as much protection for the rights of the infants in making contracts, if not more, than does this State. It will be observed that Mr. Justice Garrison states these rules in a case which involved a *citizen of this State, domiciled in this State,* whereas, in the case at bar, *we are not dealing with a citizen of this State domiciled in this State.* Whether Gloria be a citizen of the United States or a subject of the Kingdom of Italy at *this* time, there is no question but that *she is not and never was a citizen of the State of New Jersey nor domiciled within the State of New Jersey.* The Court of Chancery was not asked to protect the rights of a citizen of this State, domiciled in this State. We have already pointed out that a contract of an infant made in a State, where that infant is of age under the law of that State, will be enforced in another State where the infant is not of age.

The rule is generally recognized in 31 Corpus Juris title "Infants", sec. 26, *Banco De Sonora* v. *Bankers' etc. Co., Iowa,* 124 Iowa, 576, 100 N. W. 532, 104 American State Reports 367.

POINT III.

Assuming that the Court of Chancery might examine into the merits of the case, we submit that due regard for the interest of the infant and likewise due regard for the Victor Talking Machine Company, a citizen of this State, required that the property be divided in accordance with the settlement made in Italy and the terms of the Italian decree.

The power of the Court of Chancery to approve a settlement involving infant's rights, notwithstanding the position taken by the special guardian appointed here, is unquestioned. The settlement was approved by all of those interested in the estate, including the natural guardian of the infant. The rights of the infant and the effect upon the infant of the refusal of the Court of Chancery to carry into effect the Italian decree must be considered as the situation *now* stands, not as it would have stood had application first been made to the Court of Chancery. It was a condition and not a theory which confronted the Court below.

Caruso's estate has property in Italy and the Italian court has, since a question was raised as to the propriety of the Italian decree, spoken most emphatically and has, in effect, stated, in the judgment which it rendered on August 25, 1925, Exhibit C. 13-A, p. 327, that it considered the agreement binding upon the infant, Gloria, both in Italy and in any other country, and that, if the agreement was not carried into effect in this country and Gloria got a larger portion of the estate here than she would be entitled to under the agreement, the Italian Tribunal would do everything in its power to make reparation to the Italian heirs.

This means that, if the decree of the Italian court is not carried into effect here, there will be a long and expensive litigation in Italy with the inevitable result that, to the extent it lies within the power of the Italian authorities, there will be taken from Gloria sufficient to make up the difference to the Italian heirs. *Is it wise and most for the benefit of the infant that she should be plunged into this litigation?* Is the difference in her rights under the agreement and under the Italian law of intestacy or under our own law (which in no case can be applied) so great as to make it most for her interest that this litigation should be invited? We submit not. And we submit that the reasons which are set forth in the Italian decrees and in the opinions of the lawyers submitted to the Italian courts on the application for the original approval of the agreement, are reasons which should have moved the Court of Chancery to approve the agreement upon its merits. The difference between what Gloria is to receive under the agreement and what she would receive under the intestate law of Italy was fully taken into account in the Italian proceedings.

See the opinion of Guaracino, which was requested by the special guardian appointed in Italy and which was before the Italian court at the time it made its first approval of the agreement, Exhibit C-7-A, p. 271. He proposed in that opinion, acting for the infant, that the infant should be given certain advantages, and the Court approved the giving of these advantages to Gloria and the Italian court acted with the facts before it and with full realization of what Gloria would be entitled to under the Italian intestate laws, when it made its decree of October 19, 1921, Exhibit C-8-A, p. 286, in which decree, among other things, it said:

> "This small difference is not so great as to warrant the Court in rejecting the proposed

> agreement between the parties hereto, owing to the fact that to Gloria's above mentioned share will be added also the extra gifts."

Again this difference was recognized in the proceedings of 1925, Exhibit C-13-A, p. 327. The opinion of Grippo, Exhibit C-12-A, p. 313, was before the Court. The fact that it was charged that the special guardian had not taken all these matters into consideration was likewise before the Court, including among other things, the attack upon the right of Enrico Caruso, Jr., and Rodolfo Caruso to share, and with all these facts before it, the Italian court, by its decree of August 25, 1925, Exhibit C-13-A, p. 338, reiterated its approval of the settlement.

But the Court of Chancery having declined to recognize the binding force and effect of the Italian decrees, and not approving the settlement —what is the position of the Victor Talking Machine Company? which is a citizen of this State, entitled to the protection of the courts of this State. No decree of the courts of this State refusing to carry out the provisions of the Italian settlement and to recognize the Italian decree will, we submit, be recognized for one moment in Italy nor will it be recognized in any Latin country on the globe and we doubt if it will be recognized by the courts of Great Britain. The Victor Talking Machine Company may pay in accordance with the decree of the Chancellor but if it does, *it secures no protection outside of the confines of this State.* The decree may, perhaps, be recognized in other States, of this country, as to *parties actually appearing* but *not* as to those brought in by publication, which latter class includes Rodolfo and Giovanni, but that is immaterial because the Victor Talking Machine Company does business throughout the world and may be attacked by the Italian heirs of this estate in almost any place in the world.

Under the law of Italy personal property of a decedent devolves immediately upon those entitled thereto without the intervention of an executor or administrator, and, so far as Italy, and generally the civil law, is concerned, *those who are entitled under the Italian settlement and decree to interests in the proceeds of the Victor Talking Machine Company contract have those interests in their own right.*

Where title to personalty has been derived by a beneficiary by virtue of *lex loci domicilii*, such title is good everywhere and the beneficiary may sue within the forum directly to collect such personalty.

In *Morton* v. *Hatch,* 54 Mo. 408, 1873, an action for money had and received was brought. The plaintiff's petition stated that the defendant owed one David Morton certain sums of money; that David Morton domiciled in Kentucky, died there leaving all his property to the plaintiff; that letters testamentary were issued to the plaintiff, in the State of Kentucky and that the plaintiff as executor, fully discharged his duties as such and that there was a final settlement in the estate; that no debts or liabilities were due or owing from such testator to any person in Missouri; that though demand had been made upon defendant for said sum, same had not been paid. The defendant demurred to the complaint. From a judgment for the defendant, the plaintiff appealed. On appeal, it was reversed, the Court stating:

> "The principle point discussed in this court is as to the right of the plaintiff to sue in the courts of this State to recover a debt due to a person who resided and died in the State of Kentucky, where his estate had been fully administered, and who by his last will which had been duly probated, in Kentucky, bequeathed all his property to the plaintiff, and

was not in any manner indebted in the State of Missouri. These facts are all stated in the petition and admitted by the demurrer.

"If this suit had been brought by the plaintiff in her representative capacity as executrix of the estate of David T. Morton, it is clear that she must fail, as her appointment and qualification as executrix in the State of Kentucky would give her no authority to sue, as such, in this State. This is too well settled to admit of controversy, and, in fact, it is averred in the petition that the estate of said Morton had been fully settled in the State of Kentucky, and the plaintiff finally discharged from her duties as the executrix of said estate, so that no suit could now be brought by her, in the State of Kentucky, in her capacity of executrix.

In this case, however, the plaintiff does not pretend to sue in a representative character, she sues in her own right, claiming to be the owner of the debt or claim against the defendant for the money placed in his hands and the question is, is she the owner of the demand in such sense as will enable her to maintain an action in this state for its recovery . . . in the case under consideration the plaintiff looks to no administrator or other person acting in a representative capacity for her right or title to the property, but she claims by virtue of the will of her husband who died in Kentucky, and whose will was duly probated there. *If the title to the claim sued on vested in the plaintiff by virtue of the laws of Kentucky where the will was probated, it is difficult to see why she could not enforce her rights in or to the property, or to the demand, wherever the debtor or the property should be found;* so that it will be seen that the material question to be settled is, did the bequest in the will of Morton, made and probated in the State of Kentucky, after his estate had been fully administered and settled, have the effect to vest title to the demand in the plaintiff?

> It is, of course, admitted that *if Morton was indebted in this State, the courts here would see that the creditors were first* paid out of the property here and the rights of plaintiff would be subservient to the rights of the creditors here; but it is averred in the petition in this case and admitted by the demurrer that there are no debts against the testator in this State. This being admitted it would seem that there is no good reason why the plaintiff's title to the demand is not perfect, or why she could not recover the same in the courts of this State. . . .
>
> The property is personal property. It was bequeathed to the plaintiff by a will made in Kentucky. The will was probated under the laws of that State, which was his domicile. The statute provides that if administration had been taken here after the payment of the testator's debts, his personal estate shall be disposed of according to his last will. The petition avers that there are no debts in this State, and, of course, no administration is necessary to vest the personal property in the devisee, and our statute provides that the suit must be brought in the name of the real party in interest."

In *Trecothick* v. *Austin,* 4 Mason's C. C. 16, the question presented was whether a person who was both a *cestui* under the will of Trecothick and assignee of the representatives of one Tomlinson could sue in the Federal Circuit Court of Massachusetts to recover local assets belonging to Trecothick and Tomlinson, both of whom had been domiciled in Great Britain prior to their deaths. Story, J., stated:

> "The true answer, however, to this objection, so far as it applies to the plaintiff is, that *he does not sue in any representative character whatever.* The right he claims is a personal and private right belonging to himself and in no sense to another. He may not be able to establish such a right; he may not

be able to trace a sufficient title to sustain him; but he claims nothing as the representative of Trecothick; he claims simply as a *cestui que trust* under his will, and as an assignee under that of the representatives of the Tomlinson's. It is certainly not necessary to prove a foreign will in our courts, where such will constitutes but one step in the title of a party. *If Trecothick had bequeathed a coach or other specific chattel to the plaintiff, and the executor had assented to the bequest and afterward it became necessary to sue for the same or to establish the right to the same in our courts, I do not understand that a probate and administration here would be necessary to establish the title.* If a bill were brought in this court for a specific performance of a contract for the purchase of land lying in another State and sold by the devisee thereof under a will there made and proved, I do not understand that probate of the will is necessary before he can maintain such suit."

"Whenever the title to a thing passes by the *lex loci,* that title may, nay, *must be made out by such law, and that is all that is necessary.* The reason why an administrator cannot sue in his own name for property here, is that the administration is local and confers such right only as to property within the jurisdiction. It is a limited right of representation of the deceased."

"*But suppose a foreign administrator sells goods of the deceased in a foreign country, and they are brought here and the right to them is here contested in a suit, may not the party assert his title to them under the foreign will and administration without a probate here?* A will bequeathing personal estate conveys that property wherever it may be situated, if the will is made according to the laws of the place of the testator's domicile. And it has never been supposed that it was indispensable to the assertion of a title derived under such will, (that there should be a probate in every place where such property

was situated. It is only necessary where a party sues for it, not in his own right, but as the personal representative of the deceased."

Again in *Suarez* v. *Mayor,* 2 Sandf. Ch. 173, 7 N. Y. Chancery R. 554, referred to *supra,* it was similarly held that a representative of a beneficiary under a will of a decedent domiciled in a foreign country could sue directly within a forum to collect liquid assets without taking out ancilliary papers of administration.

We have already adverted to the fact that, under the rules of the Conflict of Laws, the rights of Caruso under the contract with the Victor Talking Machine Company were situate in Italy.

> *Blodgett* v. *Silberman,* United States Supreme Court Advance Opinions, May 1, 1928, 72 L. Ed. 749.

It is true that that was a tax case but the Supreme Court of the United States dealt with it in the view of the general law.

It said, at p. 757:

> "*At common law* the maxim '*mobilia sequuntor personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but *it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicil or elsewhere, and is so fully sustained by cases in this and other courts that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.*"

The right of Caruso in the contract of the Victor Talking Machine Company was an in-

tangible right, a chose in action. It was, therefore, *present in Italy* and the effect of the agreement in Italy was to transfer to those who were beneficiaries under the Italian settlement definite interests in that intangible cause of action. This suit was brought in this state not because the property is here situate, for it is not, except as it may be brought here by those who are beneficiaries and who have rights in it coming here. The suit is brought here because the Victor Talking Machine Company happens to be here and it is the most convenient place to sue it. There are no New Jersey creditors nor are there any New Jersey citizens to be protected, except only the Victor Talking Machine Company. There are no New Jersey citizens involved in this estate.

The administratrix, who is pursuing the Victor Talking Machine Company, *is in reality, pursuing that company not as administratrix but as agent for those who have vested interests, by virtue of the Italian agreement, in the cause of action.*

That the beneficiaries under the agreement have vested personal interests in the cause of action is recognized in Italy and will be recognized in every Latin country where the civil law is applied, and will likewise be recognized where the common law is applied, for it is a principle of the common law that, where rights are created in intangible personal property at the State of the domicile, those rights will be recognized in the State of the forum.

How, then, can the decree brought up directing the Victor Talking Machine Company to pay in, in a manner other than that recognized by the Italian court, save the Victor Talking Machine Company?

The Victor Talking Machine Company could not interplead and so secure immunity if service were acquired by publication.

Hills v. *Aetna Life Ins. Co.*, 39 N. J. L. J., 132.

It would be quite immaterial even if the Italian heirs appeared, and, although Enrico Caruso, Jr., *has* appeared, he will not be bound by the decree in any jurisdiction which will recognize the efficacy of the Italian decree, because such jurisdiction will have before it the choice either of following the Italian decree or of following and giving effect to the decree of the Court of Chancery which evidences, in the view of that jurisdiction, a disregard of the rules of private international law.

The result of the decree brought up can, therefore, only be to subject the infant Gloria to reprisals in Italy, and the Victor Talking Machine Company, a citizen of this State, to jeopardy wherever it may be doing business. Under the circumstances, we submit, the interests of the infant Gloria and the interests of the only citizen of this State involved (and the public policy of this State requires the protection of the citizens of this State), required that the Court of Chancery, in the exercise of its judicial discretion approve the settlement which has already been approved by the Italian courts.

Conclusion.

A word of explanation is required for the quotation in this brief at several points of extracts from what are called proposed restatements of the law by the American Law Institute. The American Law Institute is an organization formed five or six years ago of lawyers, judges, law school professors, etc., which has been working upon proposed re-statements of the common law. The work is done by reporters, with assistants, and then the tentative drafts are submitted each year for discussion to the whole body which meets annually in Washington, and the various sections of the drafts are criticized, sent back for further con-

sideration, etc. The reporter on the Conflict of Laws is Joseph H. Beale. Among his associates working on these drafts are Fred F. Fabille, of the Supreme Court of Iowa, William H. Page of the University of Wisconsin Law School and Austin W. Scott of the Harvard University Law School, and six or seven others.

We have quoted from these proposed re-statements as if from text books written by Professor Beale with his assistants. We quoted from them in the court below and there was no criticism from counsel as to the accuracy of the statements of law.

We submit that the decree brought up is not in accord with that principle of international law referred to by Mr. Justice Story speaking in *Bradstreet* v. *Neptune Ins. Co.*, 3 Sumn. 600, 608, 609, in the Circuit Court of the United States for the district of Massachusetts:

> "If a civilized nation seeks to have the sentence of its own courts held of any validity elsewhere, they ought to have a just regard to the rights and usages of other civilized nations, and the principles of public and national law in the administration of justice."

and that there is no overpowering rule of public policy of this State which required the Court of Chancery to ignore the decrees of the Italian courts and the rule of reciprocity.

We respectfully submit that the decree should be reversed and the record remitted to the Court of Chancery with directions to enter a decree upon the bill directing the distribution of the proceeds of the royalties of the Victor Talking Machine Company contract in accordance with the terms of the Italian decrees and of the deed of partition approved by the Italian courts.

Respectfully submitted,

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