

TESTAMENTO

DEL FU SIG. GASPARE DE RISO DEL 1760.

STITUISCO miei eredi universali , e particolari i signori
...stino de Riso mio dilettissimo fratello, e D. Giusep-
... mio dilettissimo nipote figlio secondogenito del
... D. Gennaro de Riso altro mio amatis-
... gliano beni, mobili, stabili,
... amaro dato a cambio,
... di debitori,

REPORT

ANALYSIS OF GASPARE DE RISO'S WILL 1760

March 2021

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REPORT OF RESEARCH

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Dear Bob,

Here is my analysis of the will of Mr. Gaspare De Riso according to the text that you sent me¹.

The date of the will is March 10th, 1760 but he amended it on the 14th of February 1763. This document is a commented analysis written in 1807.

The reason why his will was transcribed and is the object of this text is partially explained in the foreword:

The suit is about two issues. The first is to know if the Duchess of Capracotta Maria Angela De Riso, daughter of Mr. Giuseppe De Riso, was invited in the fideicommissum by his uncle Mr. Gaspare De Riso through the codicils.

The printed documents only refer to this issue. We added brief notes to highlight the main issues and we divided the will and codicils with numbers to make it easier to understand.

So, there was a legal suit where Maria Angela De Riso claimed to be recognized as heir of Gaspare while someone else (we will later discover who) complained about it. For this reason, the will was printed and analysed - far before me - to this purpose.

Before delving through it, a quick explanation about a fideicommissum. With a fideicommissum, the person writing the will forces the beneficiary of the inheritance to preserve the inherited goods or estate and to pass them on, at his death, to another beneficiary who is stated by the writer of the will himself.

So, Mr. Gaspare De Riso does not only want his goods and estates to be inherited by his heirs, but he also imposes to these heirs to pass them on to other family people that he specifies. The purpose behind this choice is to make sure that the wealth of the family is not given to people outside the family and it is not scattered into too small pieces, maintaining thus the original size and value.

Here is Gaspare De Riso's will (and his vision).

¹ The text is to be found at

<https://books.google.com/books?id=QjjuguKiKbIC&pg=PA2&dq=Maria+Angela+DeRiso&hl=it&sa=X&ved=2ahUKewiJgMHZwYftAhVgFjQJHWK4CaUQ6AEwAXoECAEQAg#v=onepage&q=Maria%20Angela%20DeRiso&f=false>

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UNIVERSAL AND SPECIFIC HEIRS ARE:

- don Agostino De Riso, Gaspare's brother
- don Giuseppe De Riso, Gaspare's nephew and second son of the late baron of Carpinone, Gennaro de Riso, Gaspare's brother

OBJECT OF THE INHERITANCE:

All goods, mobile goods, buildings, cash money, credits, money given for change, annual income, objects in gold and silver, debtors' names, money invested in the purchase of oil and everything else that Gaspare has and owns and that he will have and own, in whichever place, nothing excepted, but with the below mentioned fideicommissum about the below mentioned real estates and purchases to be done only.

ESTATE OWNED

- A large farm with trees and vineyard of 70 *moggia* with garden and palace house, a public chapel, another palace house with many flats and garden, other 12 flats at ground floor with other 4 used as inns, with another small garden, all situated in farmhouse San Sebastiano
- At Mr. Domenico de Sinno's, in Taranto, 7179 *salme* of olio that de Sinno bought on Gaspare's behalf and with his money, some of them already sold and some to sell, and credits, money change and others

GASPARE COMMANDS THAT

- All oil that will be still unsold at the time of his death, must be sold at the best occasion
- All credits must be cashed
- From this money, 100,000 *ducati* must be used to buy estates, or interests, or other obligations. But in buying these things it must be specified that they are bought with the money from the inheritance and that they are therefore subject to the perpetual fideicommissum bond.
- In case a proper purchase cannot be done soon, the money must be used for buying oil or for other business.

(In this paragraph, Gaspare calls the heirs as usufructuaries. This term make his vision clear: his heirs will not be the owners of the inheritance, but they can use it keeping in mind that they must leave it to the other people that Gaspare will mention later)

- The inheritance must therefore not be sold or reduced because this is the only way to keep the family in his richness and so, because the law permits it, the goods are subject to these restrictions.
- The estates in San Sebastiano will be subject to strict primogeniture rights

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- The purchases made with Gaspare's money will be subject to perpetual fideicommissum

(the note at the bottom of the page reminds that also the estates are subject to fideicommissum, as expressed above).

- The only things excluded from the fideicommissum are the other mobile goods in the S. Sebastiano palace as in his other house in Naples or in other places, which are given to his heirs without conditions.

- don Agostino (brother) alone must take benefit of the estate in San Sebastiano and of the purchases made with Gaspare's money

- don Giuseppe (nephew) must not take anything of the inheritance during Agostino's life

- after don Agostino's death, don Giuseppe must follow in the usufruct for everything: San Sebastiano, purchases done with Gaspare's money, or money exchange, or purchases of oil

- and after Giuseppe's death, his first male son, or his first male son had within the legitimate marriage must follow in the usufruct of the real estate. The legitimate marriage is a mandatory condition, and the woman must be honest and good. This condition must affect everyone who will benefit from this primogeniture right.

- the same rule must apply to all first sons forever, from first son to first son, excluding daughters, even if descendants of the last owner, or if they married within the family. Are excluded also the children who were legitimated after a subsequent marriage.

in case Gaspare's nephew don Giuseppe will not have sons, or if he will and they will die without having sons, or the male line will be over, in case he left one or more daughters, he (D. Giuseppe) may give 8,000 *ducati* to the daughter or daughters, whose money has to be taken from the profits had from the estate in S. Sebastiano and the purchases as above.

- in case Don Giuseppe dies without having the 8,000 *ducati* at disposal to give as inheritance to the daughter/daughters, she/they can take this money from the profits of the estate as explained above

- the same rule applies to the descendants, whereas the daughters of the last owner will have the same benefits of the daughters of Don Giuseppe.

According to the lawyer who commented this will, the above rule is very important for the Duchess of Capracotta.

- in all the above case of extinction of Don Giuseppe's male line, the usufruct of the real estate situated in San Sebastian can be enjoyed by the first son (born in legitimate marriage) of don Domenico de Riso baron of Carpinone, another nephew, son of the late baron don Gennaro (Gaspare's brother).

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- and after his death, this first son will succeed in the usufruct, and again from first son to first son forever with the same conditions: being born from a legitimate marriage with a good and honest woman, being a legitimate descendant of don Domenico born from his marriage with the late donna Laura Tresca, excluding the children he may have with another woman and excluding daughters.

(ok, I don't understand this: Gaspare mentions "Domenico's first son or the one who will be considered first son - meaning, legitimate." It looks like Domenico had not had children yet, but then Gaspare says his wife Laura Tresca is "fu", late, and he excludes eventual children born outside this marriage. So what? Did Domenico have children from Laura Tresca before she died, or not?)

- about the usufruct of the going-to-be purchases made with the money from the inheritance, the present calculation is *ducati* 100,999.84. The heirs must invest in estates, interests etc. the amount of *ducati* 100,000, the rest is to their benefit.

- in case the amount of *ducati* 100,000 will not be reached despite the sale of oil, then Gaspare's other goods must be sold to reach this sum. In case a debtor is insolvent, then the heirs can destinate to the going-to-be purchases the amount that remains even if it's not 100,000 *ducati*.

- At the death of Don Giuseppe, the usufructuaries of the going-to-be purchases will be his first, second, third, fourth sons etc. who will be, during their lives, only usufructuaries. After their deaths, the successors of the first son will be his first, third, fourth son etc. who will also be usufructuaries during their lives etc. always excluding women etc.

- In case of the extinction of D. Giuseppe's male line, also the usufruct of the going-to-be purchases will be enjoyed by the first son, or the one who will be declared first son of the above mentioned baron Don Domenico De Riso and the late D. Laura Tresca, as well as the other sons second, third, fourth etc., in the same amount

(again, Gaspare mentions sons of the late Laura Tresca but does not say their names, like they were not born already, which is nonsense... Or perhaps, he simply does not want to tell their names.)

- the same rule applies for their descendants forever: the first son will leave the usufruct to his first, second, third son etc.,

- The children of the second, third, fourth sons are excluded, as well as women etc.

- In case of extinction even of the male line descending from D. Domenico, the benefit of the usufruct of the estates in San Sebastiano and of the going-to-be purchases with my money will be enjoyed by the sons of the daughters of D. Giuseppe my nephew, in equal parts without first-son order but only with the restriction of perpetual fideicommissum, so that they are only usufructuaries during their lifetimes.

- After their lives, the successors must be their legitimate male sons, who again can be only usufructuaries

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- And in case any of these will die without a male line, his portion must be divided among the others who are enjoying this benefit.
- in case the daughters of Giuseppe do not have sons and the male line is extinct, the benefits of the usufruct will pass on to the sons of the daughters of Domenico following the same rules stated above
- in case even the male line from the daughters of Domenico are extinct, half of the usufruct of the estates and the going-to-be-purchases will pass on to the male sons of D. Giovanna de Riso, wife of baron from Mariglianella D. Mariano Avallane, my niece, daughter of my brother the late Gennaro; the other half will pass on to the sons of D. Maddalena de Riso, other niece and sister of Giovanna, widow of D. Carlo Forgione. The rules to apply are the same expressed above.
- whoever will be entitled as usufructuary of the estates and goods, will never be allowed to sell (here, Gaspare mentions half a page of synonyms of selling and/or losing rights)
- however, Gaspare gives his heirs the power to sell the palace house with the garden, close to the chapel, and to invest the money in other goods or interests which will be subject to the fideicommissum, and highlights very clearly that only the heirs have the rights to sell what stated above, he is begging the judges to make sure that no one else is taking their place, without exceptions and without quibbles.

Gaspare rebates a couple of times that all above mentioned goods and estate had been bought by himself, hinting at the fact that he may be the one who made the family as rich as it is in 1760.

- He is also leaving to his brother don Agostino the sum of 2000 ducati
- Worrying that the goods could hardly be sold if they are bound by a fideicommissum, Gaspare allows his heirs to renounce to the "benefit of advocacy". Sorry, I am not an expert in juridical matters and I am doubtful about the sense of it. Probably, a fideicommissum would reserve some rights (advocacy) to the heirs even after the goods were sold, and so Gaspare allows them to drop these rights in order to make the sale easier. A note says that this is exactly what the Duchess of Capracotta did using the fideicommissum: renouncing to the advocacy benefit.

We are at point 23 now (XXIII).

Gaspare mentions the public chapel of SS. Vergine del Loreto (Loreto's Holy Virgin), in his S. Sebastiano property, where a Mass is held daily and to which he gives a donation of 60 ducati per year.

He orders that also after his death, the same donation must be given to the priest and a Mass must be celebrated daily "*in perpetuum, et infinitum, et mundo durante*": perpetually, forever and for the duration of the world.

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Moreover, he wants that his heirs have another chapel built, where another daily mass will be held for his soul perpetually and *mundo durante* (for the duration of the world), and a yearly donation of 72 ducati will be given to the priests. He adds several other arrangements about the celebration of the masses and the priests.

The note at the bottom of the page says that the requests about these celebrations have been accomplished by the Duchess of Capracotta, and nobody ever claimed that it was someone else's task because of the fideicommissum.

At point 25 (XXV) as a sign of affection toward his nephew D. Giuseppe Gaudio, Gaspare commands that either his son D. Ramiro Gaudio or any other son, in case Ramiro will choose not to become priest, can be the one to celebrate the said masses, to be the head of the chapel and to cash the 72 ducati.

Rob, do you have any idea who this nephew Giuseppe Gaudio is? His son Ramiro is apparently already studying to become priest.

At last, Gaspare orders that his heirs must donate 10 ducati yearly for the holy furnitures of the S. Vergine del Loreto chapel in S. Sebastiano and after their deaths, this expense must be made by the temporary owner.

The note specifies the Duchess of Capracotta always took in charge this expense.

* * * * *

Codicils added by D. Gaspare De Riso in 1763

In the first codicil Gaspare summarizes the heirs and the strict conditions mentioned in his will, that he is going to change following two tragic circumstances:

- the death of his brother Agostino
- the death of his nephew Giuseppe's male son

Gaspare names therefore Giuseppe as his unique heir, repeating the rights and the obligations as expressed in the will, and specifying that no one else, and especially Giuseppe's brother Domenico, must interfere with it.

Gaspare specifies that only Giuseppe is worth his trust, for his well known honesty, integrity and punctuality.

The rules for the fideicommissum are then repeated in the bottom notes:

1st heir: Giuseppe

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Following: his male sons and descendants

Following: his brother Domenico's sons and descendant

So, in the case that Giuseppe did not have male sons, or if he did and they died at a young age - Gaspare repeats - and if only daughters remained, to each of them he had left the sum of 8000 *ducati*, to be paid with the income from the sale of the goods subject to the fideicommissum.

With this codicil, Gaspare deletes the above mentioned arrangement.

The new arrangement is: if Giuseppe dies without leaving a male descendant, but with only one or more daughters, he commands that this or these daughter(s) must be the heirs of the entire usufruct of his goods and credits: San Sebastiano and the going-to-be purchases, in equal parts, with the reciprocal substitution among them, during their lifetimes and not beyond.

We are at page 31 and you can see how long is the note, highlighting the fact that this is the key point to understand if Maria Angela Duchess of Capracotta was a beneficiary.

It is clear that Gaspare is treating all daughters of Giuseppe at the same level, as he always refers to the heirs as "one daughter or more daughters". The "equal parts" is also clear, but the "reciprocal substitution" is not, and not only for me! In fact, this is the piece of sentence analysed in the notes.

Unfortunately, the Latin + juridical text basing of laws of the 18th-19th century does not help the understanding, so I can't really catch the point expressed by whoever wrote the notes. Apparently, the juridical interpretation says Gaspare is contradicting himself and therefore it is left to some laws concerning wills to apply one condition or the other.

What is clear - and made clearer a couple of pages after - is that the usufruct rights, if given to the female descendants of Giuseppe for lack of a male descendant - is not passed on from these women to their children. After their deaths, the goods will be given to the male descendants of D. Domenico.

This condition is - surely - to protect the link between the property and the family surname.

Now, a very long note shades some light about the purpose of all this - I mean, the analysis made in 1807 of Gaspare's will. Apparently, it was don Domenico or his descendants who claimed their rights, trying to exclude Maria Angela from the inheritance. In a sentence, it looks like he/they are making a distinction between usufruct and property and trying to turn the situation in their favor telling that if Giuseppe's daughters had the usufruct, then Domenico's sons have the property, but the lawyer who is analysing rebates that this scission between usufruct and property is never to be found in the will.

The will and its codicils end at page 33.

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At page 34 it is stated that on the 15th of September 1790, the lawyer of Maria Angiola Rosa De Riso appears and explains how the will made by Maria Angiola's uncle Gaspare had named her father D. Giuseppe his heir, and how he had ordered a fideicommissum which Maria Angiola was invited to.

The note wants to highlight this last sentence about Maria Angiola being invited as heir of the fideicommissum, because this interpretation was written in 1790, in "not suspect time". Meaning, before any claim or complaint about Maria Angiola's inheritance.

The fideicommissum concerned estates situated in S. Sebastiano and 100,000 *ducati* to be converted in purchases by D. Giuseppe, who actually used 91640 *ducati*.

The 100,000 ducati were reduced to 98740 for the extension of a debt.

On the 22nd of September 1768, in the documents related to the marriage between Maria Angela De Riso and the Duke of Capracotta, stored by the notary Luigi Montanaro, the goods were described: estates in San Sebastiano and the purchases made by D. Giuseppe amounting to 91640 *ducati* taken from the fideicommissum, and that 9260 *ducati* were still to be invested for lack of safe purchases.

These goods and estates were kept as "outside dowry", whereas Maria Angela kept them for herself, leaving no rights upon them to either her husband the duke or their going-to-born children.

D. Giuseppe died leaving a will naming Maria Angiola his heir and confirming the fideicommissum with the estates and the 98740 ducati to be spent in purchases as ordered by Gaspare.

He also arranged 30 ducati to be taken from the income from the sale of oil and soap and to be given to the chaplain for the celebration of the masses as ordered by D. Gaspare

On the 9th of October 1806 the lawyer of Maria Rosa De Riso di Capracotta is appearing to state that being the Duchess the legitimate heir, she has the right to cash the credits from the goods and estates related to the fideicommissum (a credit against the municipality of Pozzuoli is mentioned).

The last part of this document, from page 37, summarises again the entire will and adds notes about the events following Gaspare's death.

The will was closed on the 10th of March 1760, the codicils were added on the 14th of February 1763 and the will was opened 4 days later, after Gaspare's death...!

So, Gaspare died between the 14th and the 18th of February and did it just in time to amend his original will, leaving to your ancestor Maria Angela the benefit of the estates and goods. If he had not been so timely, she would have received only 8000 ducati.

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In this summary, the “rival heir” is D. Nicola baron of Carpinone, who I assume being Domenico’s son.

Of all the events that Gaspare had imagined in great detail in the first part of his will, the one that actually happened is that Giuseppe died leaving only a daughter (Maria Angela Duchess of Capracotta, full name Vittoria Mariangiola Rosa De Riso), who is the beneficiary after the decree dated November 20th, 1779.

Now, a short note to tell you something that is given for self-understood at that time but you may not know in detail: in 1805 the Kingdom of Naples is conquered by Napoleon Bonaparte, who introduces a lot of new laws, inspired by the French situation. The adoption of civil records is one of these, so we must thank him if we have civil records dating from the beginning of the 19th century.

Another juridical change is, apparently, the abolishment of fideicommissum!

Following to this abolishment, the person who was enjoying the usufruct became the legal owner and must not leave the usufruct of goods and estates to others.

The purpose of the suit is therefore to confirm that the goods and estates received as fideicommissum by Maria Angela De Riso from her father Giuseppe, following the instructions given by the will maker Gaspare, must remain to Maria Angela free from the fideicommissum (because this was abolished).

Moreover, the Duchess of Capracotta found that abt 9000 ducati out of the original 100,000 ducati had not been used by the first heir, her father Giuseppe. Since she is the second “invited” to the fideicommissum, she will use them with her husband. From the 15th of May 1807, she requires that the money is set free from the fideicommissum bind.

Unfortunately, the text stops with a broken sentence: the following pages were not scanned and we cannot know more than this.

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It was all very intriguing, although a bit long to read and understand in its juridical details.

I understand that your final goal is to get as many details as possible about the family members, while the object and conditions of the inheritance are not so important.

Many info about the family were found, indeed, but I don't know if they were known to you, already.

I went a bit beyond: I tried to search online for a more complete version of this document, with pages over 40, and I found... something else.

The document at this link

<https://books.google.it/books?id=6R8W8IJcfecC&pg=PA45&dq=testamento+gaspare+de+riso&hl=it&sa=X&ved=2ahUKewiGpNLB6MPvAhWHyaQKHaiVAqMQ6AEwAXoECAEQAg#v=onepage&q=testamento%20gaspare%20de%20riso&f=false>

actually looks like the one just analysed, but it's a different one and contains other pieces of info.

It was printed in 1819 and by that time, the Duchess of Capracotta is already deceased. She died in 1815. This analysis of Gaspare's will is therefore the one made to check if the heirs of Maria Angela De Riso were eligible to inherit the goods and estates seen above. Nicola, the baron of Carpinone is actually filing an appeal to get the right to receive half of the heritage coming from Gaspare.

It is to be said that both documents were written to defend Maria Angela's right, and their point of view is always in her favor. The handwritten notes are like "titles" of the different paragraphs. They were written to find the needed paragraph easier.

I read it very quickly - knowing the story, it's now easy to pick up the needed info at a glance - and I am writing down only the parts which are interesting from a genealogical point of view, adding these pieces of info to the family tree.

At page 43, for example, it is reported that the Duchess of Capracotta only had one son from her late husband Carlo Capracotta: Antonio Capece Piscicelli, who is not yet married (in 1819).

At page 71, out of the blue, the following people are mentioned:

- Earl and countess Piromallo
- Capece Piscicelli and Denza
- D. Giuseppa Capece Piscicelli

But there is no explanation about who they are.

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Juridical info about Gaspare's will:

Stipulated on March 10, 1760 by notary Girolamo Gaetano Mazzei in Naples

Codicils stipulated on February 14th, 1763 by notary Girolamo Gaetano Mazzei in Naples

Will opened on February 18th, 1763

Juridical info about Giuseppe's will:

Stipulated on November 1st, 1779 by notary Francesco Spagnuolo, Naples

Opened on November 7th, 1779

In the end, Nicola lost the suit and Maria Angela's son Antonio Capece Piscicelli was confirmed as the heir.

The abolishment of the fideicommissum allowed the Duchess of Capracotta to become the owner - and not the usufructuary - of the estates and goods that had belonged to Gaspare, and so Nicola lost all his rights upon them.

Personally, I am not sure this was Gaspare's intention, as he expressly mentioned that Giuseppe's daughter(s) could not pass the rights on to their children, and the fideicommissum should pass on to Domenico's male descendance, but eventually history set its rules and a French general who was not yet born at the time of Gaspare's death, will make his wishes void.

It was a bit sad to see how his very-long-term vision collapsed in less than 2 generations, and I wonder what happened with the daily mass to be held "for the duration of the world" - I am pretty sure this habit stopped very long ago but I like to think he knew about that anyway, and included that point in the will to make God know he had arranged for the perpetual mass... then, it's someone else's fault if the arrangement is not respected!

Sad to think, also, that his very detailed will, dictated with extreme consciousness, and precise in the tiniest details, created so many doubts and interpretations and misinterpretations. Gaspare would surely shout with desperation, if he could see lawyers debating about it.

I think this is all, for now. I am attaching a family tree with all info I could get.

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I remain at your disposal for comments and brainstorming about it, if you need.

Best regards

Elena