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**Affidavit of Mary L. Bryant.**

Filed June 19, 1928.

**In Chancery of New Jersey.**

Between

ROSALIE SABBARESE,  
Complainant,

and

NICOLA SABBARESE,  
Defendant.

10

On Bill, etc.

Affidavit.

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

20

Mary L. Bryant, being duly sworn, according to law, upon her oath deposes and says:

1. I am the daughter of Rosalie Sabbarese and Nicola Sabbarese.

2. I was married to Raymond Bryant on February 27, 1926, and am at the present time residing with my father, Reverend Nicola Sabbarese at #73 Grove Street, Elizabeth, New Jersey.

3. I have one child who is seventeen months old.

30

4. I have been residing at the above address since August 1st, 1927, since the time that my father came to the City of Elizabeth.

5. My mother, Rosalie Sabbarese, resided, after leaving my father, Nicola Sabbarese, at #41 Greenwich Avenue, New York City, and is at the present time residing at #605 West 147th Street, New York City.

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*Affidavit of Mary L. Bryant.*

6. I know that she is employed at the New York Knitting Mills, located at #310-318 6th Avenue New York City.

7. I know that she has money deposited in a bank, for on December 25th last she informed me of that fact.

10 8. On February 26th, 1928 my mother, Rosalie Sabbarese, who had never been in the City of Elizabeth before, and who never molested my father while he was in the City of Elizabeth, came in the vicinity of our home at #73 Grove Street, Elizabeth, New Jersey and talked in loud tones, paced the sidewalk in front of our premises, causing a disturbance and also causing my father to be late in attending a particular meeting held that Sunday afternoon at the Italian Methodist Church at  
20 the corner of Second Avenue and Amity Street, Elizabeth, New Jersey.

9. I know that my father had paid support to her up to and including March 1st, 1928, for I saw a check to my mother's order in the sum of \$12.00 already perforated, meaning that my mother had received payment for said check, and said check was shown to me by the Solicitor for my father.

30 10. I know that my father has been prompt in his payments to my mother and do not feel that she is entitled to any support whatsoever, in view of the fact that the salary received by him, amounting to \$166.66 per month is insufficient for the support, maintenance and education of himself, my brother Italo and my sister Flora, who are living at home, or receiving their support from my father.

40 11. My brother Italo, who is at the present time a student at the University of Syracuse, has written my father on two occasions last month for funds, and I know that my father had forwarded

*Affidavit of Mary L. Bryant.*

him in the month of February 1928 the sum of \$105.00 for his education and maintenance.

12. I know from my personal knowledge that it has cost my father an average of \$75.00 per month for the support of my brother Italo when he was not able to earn anything for his own accord, and that when he was able to earn some funds, that it was necessary for my father to advance about \$50.00 per month. 10

13. I know that my father advances for the education of my sister Flora, at Drake's College the sum of \$54.00 every three months, besides her support.

14. I know that from the time of my understanding to the time that my mother left the domicile of my father while we were residing in Yonkers, that the support which was given to myself, my sister and brother and my mother was not a meager support, but rather substantial, and that my father has never mentally abused my mother in any manner. I never heard my father call my mother a prostitute. I did hear my father call my mother various vulgar names and heard my mother call my father vulgar names. These verbal encounters occurred very often. 20

15. I never saw my father attempt to shoot, whip or attempt to stab my mother at any time, but I did see and hear of quarrels, which quarrels were caused by my mother, who always sought to receive more funds than my father could afford. 30

16. My father is of a jealous disposition and the quarrels which occurred during the last year of the period in which my father and mother lived together, although they were not on speaking terms, were caused on account of said disposition. 40

*Affidavit of Mary L. Bryant.*

17. My father at no time during my life or during the time that I can remember ever struck my mother. He never ordered her out of the house, nor did he give her any cause to leave our home.

18. On or about June 14, 1927 my father and I were in the house at #32 Undercliff Street, Yonkers, New York when my mother informed my father that she was leaving for good, and I saw my father on his bended knees begging her not to go, but she insisted upon going, and took with her various pieces of furniture, her clothes and her trunk. I also pleaded with my mother not to go. I know that my father has written my mother on numerous occasions, asking her not to leave the homestead, always requesting that even if they could not get along, that the children should be considered. The last of these letters being written on May 1st, 1927, a copy of which letter is in the possession of the Solicitor for my father.

19. I know of the existence of a separation agreement which was signed by my father on or about the 14th day of June, 1927, and I am acquainted with the terms thereof. The only reason that my father entered into such an agreement with my mother and consented to permit her to live apart and consented to pay her a maintenance of \$12.00 per week was not due to his position as a Minister of the Gospel, but rather because we requested him to avoid publicity and to spare the humiliation which would be cast upon my brother at the University of Syracuse, together with the humiliation cast upon my sister, Flora, who was at that time also attending school.

20. I know that my father wanted to contest the matter, but on account of my pleadings and the

*Affidavit of Mary L. Bryant.*

pleadings of my brother, he consented to enter into the hereinabove mentioned agreement with my mother.

MRS. MARY L. BRYANT.

Sworn and subscribed to before me  
this 29th day of May, 1929.

Miriam Kucker,  
A Notary Public of N. J.

10

**Affidavit of Flora Sabbarese.**

Filed June 19, 1928.

IN CHANCERY OF NEW JERSEY.

20

Between

ROSALIA SABBARESE,  
Complainant,

and

NICOLA SABBARESE,  
Defendant.

On Bill, etc.

Affidavit.

30

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

Flora Sabbarese, being duly sworn, according to law upon her oath deposes and says.

1. I am the daughter of Rosalia Sabbarese and Nicola Sabbarese.

2. I am at the present time residing with my

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*Affidavit of Flora Sabbarese.*

father, Reverend Nicola Sabbarese at #73 Grove Street, Elizabeth, New Jersey.

3. I have been residing at the above address since August 1st, 1927, since the time that my father came to the City of Elizabeth.

10 4. My mother, Rosalia Sabbarese, residing, after leaving my father, Nicola Sabbarese, at #41 Greenwich Avenue, New York City, and is at the present time residing at #605 West 147 Street, New York City.

5. I know that she is employed at the New York Knitting Mills, located at #310-318 Sixth Avenue, New York City.

6. I know that she has money deposited in a bank for in the past she informed me of that fact.

20 7. On February 26th, 1928 my mother, Rosalia Sabbarese, who had never been in the City of Elizabeth before, and who never molested my father while he was in the City of Elizabeth, came in the vicinity of our home at #73 Grove Street, Elizabeth, New Jersey and talked in loud tones, paced the sidewalk in front of our premises, causing a disturbance and also causing my father to be late in attending a particular meeting held that Sunday afternoon at the Italian Methodist Church at  
30 the corner of Second Avenue and Amity Street, Elizabeth, New Jersey.

8. I know that my father had paid support to my mother up to and including March 1st, 1928, for I saw a check to my mother's order in the sum of \$12.00 already perforated, meaning that my mother had received payment for said check, and said check was shown to me by the Solicitor for my father.

40 9. I know that my father has been prompt in

*Affidavit of Flora Sabbarese.*

his payments to my mother and do not feel that she is entitled to any support whatsoever, in view of the fact that the salary received by him, amounting to \$166.66 per month is insufficient for the support, maintenance and education of himself, my brother Italo and myself. We are living at home with our father and receiving our support from him. 10

10. My brother Italo, who is at the present time a student at the University of Syracuse, has written my father on two occasions last month for funds, and I know that my father has forwarded him in the month of February 1928 the sum of \$105.00 for his education and maintenance.

11. I know from my personal knowledge that it has cost my father an average of \$75.00 per month for the support of my brother Italo when he was not able to earn some funds, that it was necessary for my father to advance about \$50.00 per month. 20

12. I know that my father advances for my education at Drake's College the sum of \$54.00 every three months, besides my support.

13. I know that from the time of my understanding to the time that my mother left the domicile of my father while we were residing in Yonkers, that the support which was given to myself, my sister and brother and my mother was not a meager support, but rather substantial, and that my father has never mentally abused my mother in any manner. I never heard my father call my mother a prostitute. I did hear my father call my mother various names and heard my mother call my father various names. These verbal encounters occurred very often. 30

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*Affidavit of Flora Sabbarese.*

14. I never saw my father attempt to shoot, whip or attempt to stab my mother at any time, but I did see and hear of quarrels, which quarrels were caused by my mother, who always sought to receive more funds than my father could afford.

10 15. My father is of a jealous disposition and the quarrels which occurred during the last year of the period in which my father and mother lived together, were caused on account of said disposition.

16. My father at no time during my life or during the time that I can remember ever struck my mother. He never ordered her out of the house, nor did he give her any cause to leave our home.

20 17. On or about June 14th, 1927 my father and my sister were in the house at #32 Undercliff Street, Yonkers, New York when my mother informed my father that she was leaving for good, and I saw my father on his bended knees begging her not to go, but she insisted upon going and took with her various pieces of furniture, her clothes and her trunk. I also pleaded with my mother not to go. I know that my father has written my mother on numerous occasions, asking her not to leave the homestead, always requesting that even  
30 if they could not get along, that the children should be considered. The last of these letters being written on May 1st, 1927, a copy of which letter is in the possession of the Solicitor for my father.

40 18. I know of the existence of a separation agreement which was filed and signed by my father on or about the 14th day of June, 1927, and I am acquainted with the terms thereof. The only reason that my father entered into such an agreement with my mother and consented to permit her to

*Affidavit of Flora Sabbarese.*

live apart and consented to pay her a maintenance of \$12.00 per week was because we requested him to avoid publicity and to spare the humiliation which would be cast upon my brother at the University of Syracuse, together with the humiliation cast upon me while attending Drake College.

19. I know that my father wanted to contest the matter, but on account of my pleadings and the pleadings of my brother, he consented to enter into the hereinabove mentioned agreement. 10

20. I have seen my mother embrace a man called Peter Contenti while I was pretending to be asleep while riding in an automobile belonging to Mr. Contenti and would have kissed Mr. Contenti had I not been in the rear seat.

FLORA L. SABBARESE. 20

Sworn and subscribed to before me  
this 29th day of May, 1928.

Miriam Kucker,  
Notary Public of  
New Jersey.

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40

## Affidavit of Flora Sabbarese.

Filed June 19th, 1928.

## IN CHANCERY OF NEW JERSEY.

10	Between ROSALIA SABBARESE, Complainant,  and  NICOLA SABBARESE, Defendant.	}	On Bill, &c.  Amended Affidavit.
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State of New Jersey, }  
 County of Union,    } ss.;

20    Flora Sabbarese, being duly sworn, according to law upon her oath deposes and says:

1.    When my mother returned from Chicago, where my father was engaged in attending to his duties, we went to reside at #57 Morton Street, New York City. This home was the home of my uncle Louis Ragazini and my aunt Angelina, a sister of my mother. We occupied this home a short time, during which time my aunt was away at Midland Beach, Staten Island.

30    2.    Leaving the above address after a short while, we moved to #531 East 157th Street, Bronx, New York, where Mr. Carrieri would constantly visit us.

40    3.    I recall that at one time, when I was about eleven years of age, Mr. Carrieri called at our home. We occupied an apartment on the second floor, consisting of six rooms. Mr. Carrieri induced me to leave the apartment, by giving me some

*Affidavit of Flora Sabbarese.*

money to purchase some refreshments for myself. I did go down stairs, and then tip-toed back to the door of our apartment and listened at the door. The first room after entering our apartment from the front door was the dining room. I heard no noises or sounds from the dining room but I did hear noises, sounds and voices coming from, which I believed, the bedroom. I listened for about five minutes or so, heard whispering words of endearments by Mr. Carrieri. I heard my mother sort of moaning and speaking, although I cannot recall what words were used by her. 10

4. No one else was in our apartment at that time except my mother and Mr. Carrieri. I then rang the bell and after a wait of about one minute, Mr. Carrieri opened the door and I saw my mother standing between the bedroom and the dining room with her garments misarranged and her hair out of order. I looked at the bed and noticed that the bed had been mussed. Both my mother and Mr. Carrieri were embarrassed and became reddened in the face. 20

5. On other occasions at Midland Beach Mr. Carrieri would embrace and kiss my mother. My father was never with us at these times, but would be at Church. 30

6. I never told my father about these incidents, because I thought it would not last very long, in fact, I did not know what to do. I did not tell my father because there might be a quarrel, and I thought that my mother would eventually give Mr. Carrieri up. I thought that probably when my father would return she would not continue her friendship with Mr. Carrieri.

7. My mother always liked to go out for a good 40

*Affidavit of Flora Sabbarese.*

time with her two sisters, Angelina Ragazini and Julia Baldelli. They would go to the Italian Theater and after the show would meet the actors.

8. Mr. Carrieri never came to our home when my father was home. He made it his business to be there when my father was not home and my mother was happy to see Mr. Carrieri.

10 9. On a few occasions while at Midland Beach where Mr. Carrieri had rooms in a hotel along the boardwalk and where my mother and I had a small bungalow, my mother would meet Carrieri often and I would be given money to go to places of amusement, but I would watch the actions of my mother and Carrieri and would see their faces close and would see them kiss.

20 FLORA L. SABBARESE.

Sworn and subscribed to before me  
this 14th day of June, 1928.

Miriam Kucker,  
A Notary Public of  
New Jersey.

30

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**Affidavit of Italo Sabbarese.**

Filed June 19th, 1928.

## IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,  
Complainant,

and

NICOLA SABBARESE,  
Defendant.

On Bill, etc.

Affidavit.

10

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

20

Italo Sabbarese, of full age, being duly sworn, according to law upon his oath deposes and says:

1. I am the son of Rosalia Sabbarese and Nicola Sabbarese.

2. I am at the present time residing at #73 Grove Street, Elizabeth, New Jersey with my father and have resided there since the 15th of June, 1928. Prior to that time I was a student at the University of Syracuse and lived there.

3. I know that my father has paid support to my mother up to and including March 1st, 1928.

30

4. During my attendance at the University of Syracuse my father contributed to the fees necessary for my course and to my support. While I was engaged in some occupation in college it was necessary for my father to advance at least the sum of \$50.00 per month, but when I was not engaged my father forwarded me the average of about \$75.00 per month. I know that my father

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*Affidavit of Flora Sabbarese.*

forwarded me in the month of February of this year the sum of \$105.00, which moneys were used for my maintenance and education.

10 5. I know that my father advances for the education of my sister Flora at Drake's College the sum of \$54.00 every three months and that Flora is wholly maintained and supported by my father.

20 6. I know that from the time of my understanding to the time that my mother left the domicile of my father, which occurred while we were living in Yonkers, New York that the support given to myself, my sisters and my mother was not a meagre support, but rather substantial, and that my father at no time mentally abused my mother in any way, but rather my father was caused mental anguish on account of the conduct of my mother.

7. I never saw my father at any time attempt to do any bodily harm whatsoever to my mother, or threaten to do any bodily harm, although I did hear of quarrels, which quarrels were always caused by my mother.

30 8. I know of the existence of a separation agreement which was signed by my father, which agreement was relative to the marital status of my father and mother. This agreement was signed on or about the 14th day of June, 1927. The contents of said agreement are known to me. The only reason that my father entered into such an agreement with my mother and consented to permit her to live apart and consented therein to pay her a maintenance of \$12.00 per week was due on my and my sister Flora's account. We requested our father to avoid publicity and to spare the humiliation which would be cast upon us. My father

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*Affidavit of Italo Sabbarese.*

wanted to contest the matter, believing at that time that she was not entitled to abandon our family, but only on account of our pleadings relative to the embarrassment which such action would cause, that he consented to enter into an agreement with my mother.

9. My mother always received from my father everything she needed; whenever any disturbance was caused at the house, it was always caused by my mother. Anything that my father would do, even if it was to walk into the kitchen, was done against the wishes of my mother. She always said that she was the happiest when my father was out of her sight. I know that she told him on numerous occasions that she did not love him. 10

10. If I had been in my father's position I would have left my mother a long time ago. Not only would she refuse to help my father in his work at the Church, but she jeopardized his position by doing things which would hurt him before his congregation. She did not even go to Church. 20

11. I recall when I was about 21 years of age, Christmas Day, 1925 I was home on vacation from school. Dinner was prepared. My mother left home and went to the home of Mr. Contenti. I went to the home of Mr. Contenti to ask my mother to come home, but she refused. 30

12. Mrs. Contenti's brother was present, and after finding out who I was he said that if he had a gun I would have been shot while coming into the house. After a little conversation I again asked my mother to return and upon her refusal I left. She returned about midnight.

13. My father has been good to all of us children and to my mother and the cause of all the un- 40

*Affidavit of Italo Sabbarese.*

happy indifferences between my father and mother are only due to my mother's disposition and methods.

ITALO A. SABBARESE.

Sworn and subscribed to before me  
this 23rd day of June, 1928.

10

Miriam Kucker,  
A Notary Public of  
New Jersey.

**Affidavit of Translation.**

Filed June 19th, 1928.

20

IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,  
Complainant,

and

NICOLA SABBARESE,  
Defendant.

On Bill, etc.

Affidavit of  
Translation.

30

State of New Jersey, }  
County of Union, } ss.;

Louis P. Longobardi, being duly sworn, according to law, upon his oath deposes and says:

That he is a practicing attorney of the State of New Jersey, and that he has personally translated  
40 the following letters; the first letter dated July

*Affidavit of Translation.*

29th, 1920 from Rosalia Sabbarese to her husband, Nicola Sabbarese; the second letter dated September 2nd, 1920 from Rosalia Sabbarese to her husband, Nicola Sabbarese; the third letter dated December 10th, 1925 from Nicola Sabbarese to his wife, Rosalia Sabbarese, and the fourth letter dated May 1st, 1927 from Nicola Sabbarese to his wife, Rosalia Sabbarese, and that said letters written in Italian are hereto attached and the following are the translation of said letters: 10

Thursday, July 29, 1920.

Dear Nicola:

Just this moment I received your letter, I immediately answer.

Italo came yesterday from Philadelphia. He told me that the furniture is all in order. The trunks he had not yet sent, therefore they are still there, and he said that whenever you want the furniture and the trunks just send a post card, and they will forward the furniture, and he said that he has sent you the bill to Chicago. 20

Italo desires to go to Rosalina, Maria and Flora are staying with me in New York. In New York the flats are very costly. They want \$75.00, but I am seeking some flat and I have also spoken to Amelia to seek a flat in Montclair, because I could just as well go back and forth to work. At present there is no work. Probably the next month I will find some work, and my work pays very well. 30

Relative to my returning to you, I do not want to return. I believe that I told you this before I left, otherwise I would not have spent the money at all. In fact, you told me if I had to go away later it would be better now, otherwise there would be no excuse later on. 40

*Affidavit of Translation.*

Relative to your work in Church I do not desire to do it. I do believe in God, but not too much in Churches, because I do not desire to continue this life, better to work than too much church.

10 Remember that you told me about no Sunday school, no prayer meetings, except on Sunday. You would be free and you would take off every day, but I did not find this. You said that you did not know it, but now you do know it. I must say that I do not want the work of the church, especially two churches, because I repeat that I do not care for Saints, and if you like to work for the church, work for me, because I do not want to do it. And haven't you told everybody that I do not want to come?

20 Why did you say that we wanted to see our parents? Especially two weeks? That there was no need to see the parents. You had us taken for fools. Even Mary does not want us to come, the same as to Italo.

30 You must know that good intentions do not come. They are always the same. And then you are sorry if I embarrass you. Therefore it is better to withdraw from the apartment. It would be very nice indeed, and then it would be necessary for us to walk in the air without making any noise and to immediately release the apartment.

I let you know that Julia has lent me \$100.00 because she had very little money. I had to give Italo \$5.50 when he went to Philadelphia.

Is that how we are to do with Italo? Do you want to send him to school? Do not have any hope with Gino. Gino is looking for work. I do not believe that he will go to Colorado.

40 If I can find rooms I will take them, otherwise

*Affidavit of Translation.*

I will go to search for rooms in the Bronx if I can find them there.

Send me the address of Stasio. Not to see him, but to see for some fiat around there.

I have found out that you have written to Michael. Michael has said that he does not want to disturb himself whatsoever in doing what you desire, because they are things pertaining to yourself and myself. 10

In the letter you said that I should go to the Minister and he would help me, but not for two churches and I have said only Sundays and only 1 prayer meeting and not 2. In fact, you told me I would not have to do anything, except I had to come on Sunday. Do you remember? You know that you cannot keep up this life yourself. However, you find yourself in such a position. Stay until you can resist no longer and then if you find that you desire to return, then I am O. K. where I find myself now, especially if I find a home. 20

The children are alright and do not think of them.

Do not think that I am enjoying myself all the time because I am seeking a home and work.

Mary would have found work in these large stores, but did not have the paper from school. Therefore I cannot go because here it is very easy to find work. Put your soul, in peace, for no one desires to come to Chicago, because it will come with good intentions. 30

Maria and Flora send you kisses, and kisses from your affectionate wife.

ROSALIA.

(If I have not written you because you had said that you did not want to know everything, whether 40

*Affidavit of Translation.*

I found myself in good or bad circumstances, for that reason I have not written you.)

---

September 2nd, 1920.

Dear Nicola:

10

I have received your letter, immediately I answered you.

In your letter you tell me many things, that I have never done anything for you. And you cannot say that I was like a \_\_\_\_\_, and that I have spoken many words to you which could not be cast not even to the worse assassin— Do not venture so many things because you are a liar. You do these things to have yourself believe, but I have no need to have myself believed by anyone. You say that I have no religion; perhaps I have more than you.

20

I had promised you that I would come Sunday to a prayer meeting, but you did not want me there. You desired that I also come to the school every Sunday, and then to the other meeting which you had at night, and then I told you I would not attend, that it was too much, especially in two churches. In fact I had told you that one meeting was alright, but two churches I was tired to hear speaking in two churches. Therefore my life was only for churches.

30

As far as I am concerned, you may continue to be a minister until you die, but I do not want to be in it until I die. I would sooner work until I die, at least, I will be free.

40

In my letter you have not understood me at all. I did not ask you for the money for the furniture to be transported from Philadelphia to New York,

*Affidavit of Translation.*

because I would pay for this when I went to work, because Julia gave me this money. Only I would not have the baggage transported unless the bill of the storage house in Philadelphia was paid. This bill I have not forwarded you because I do not desire that you present it to the committee, except I did say if you could pay the rent amounting to \$60.00, and if it was too much, at least \$40.00, and I believe it is not too much, but for less I could not find any. 10

I have sent Mary to leave with the storage house only your books and other little things which I did not need, but the other things I do need; the organ I will bring with me, because there is somebody who wants it. The spring from the big bed, Angelina will purchase it. As to the other things, I will send to Montclair as you have promised. 20

As to Italo I cannot purchase anything, not even the necessary, because I have not even sufficient moneys to purchase food until the first of October, and it will be necessary to incur another debt, and if Italo cannot go we will not send him the \$125.00 which we would have given him. You can send it to me. He will to go school, otherwise he will come to school at College in Chicago.

You must know that I had the shoes for myself, Flora, Mary and Italo repaired, for our shoes were worn out. And with what money? Always with money of Julia. You always think of the \$100.00 that you have sent me. How many times must I tell you that \$60.00 I have paid for rent and the balance I have finished. 30

Haven't you looked at the expense list that I have? We are four people and you are alone, and you say, how am I going to do for my food; and I, what can I do with four people? 40

*Affidavit of Translation.*

Therefore I tell you do not ask money of the committee relative to the \$60.00 for the furniture nor for the transportation of the furniture from Philadelphia to New York. I will pay these expenses little by little, but see what you can do for the next month. Surely I cannot pay for two homes.

10

When I told you to leave the apartment, you told me that you had left it, instead it is not true. Always with the hope that I would come, but I have always told you that I did not want to come, and this is the last time that I will repeat it, and if you will write to me about it again, I will not answer.

20

Relative to work, have no fear, for anyone who wants to do bad can do it. In spite of all the temptation that there might be. You immediately think of badness, but better take care of yourself, for he who says it does it, for you are such an honest person.

30

With relation to the ministers and the American signores, they can say what they feel like saying. It is enough that I do not do what's wrong. In fact, you may tell it that my wife goes to work. She prefers going to work than to serve the church and if I get a hold of one of these signores I am not ashamed to tell him.

I have given to Mary all the information as to how she is to do it. I have already a man to take the stuff. It is not necessary that Mr. Wilcox send it, because I have already spoken to this man. He is a gallant man and he had already in hand \$30.00 to send the stuff.

40

Last night I received your telegram, in which you tell me you have the money for Mary, and then I can send the man. Therefore do not tell Mr.

*Affidavit of Translation.*

Wilcox to send the furniture because Sunday night a man with a wagon leaves New York and will be at seven o'clock, Monday morning at the storage house. Therefore I have written Mary to be there. I hope that you have surely sent the money, otherwise they will not release the furniture.

I have asked you only for \$50.00 to purchase the things most necessary for Italo. His suit and some other things. I would have incurred another debt at the store here and I would pay so much every month, but they do not trust relative to bed-clothes. You must know that for Italo it will be necessary to purchase a suit, shoes, shirt, socks, sheets, bed covers and other things that you have spoken of, also things that are necessary for them to bring along.

I would say if Italo cannot go to school, it would be better that he finishes the school here, because we cannot give him so much and then during the summer he can go to work and earn something. Then if you have money, then you can sent him, because I haven't go money to give him.

Therefore if you desire to write to me, do not repeat any more the customary words, otherwise I will not write to you any more and will not let you know anything further, whether I find myself in good or bad condition. Whenever you want to come, I am here. Do you understand? Salutes.

ROSALIA.

Let me know if you have sent the trunk, because I have to advise those of the flat.

*Affidavit of Translation.*

Yonkers, N. Y., December 10, 1925.

Dear Rosalia :

10 I am writing you this letter on the typewriter, and sent it to you by mail for two reasons: First of all I desire that the words that I am about to say will be clear and precise, and that they will not be equivocal, as they were always rendered in our conversations. The second reason is that in mailing this letter, I will not have to submit myself in pain in seeing myself cast aside as would be done if I said it to you personally.

20 You will probably tell me that instead of writing this letter I could have spoken these words. However you know very well how many times I, on my bended knees, have offered you my honor, the peace and all I could offer.

30 Now you know that I have always done my duty as a husband and father. I have given you my money and protection. I have encirculated you always with care, with affection, in one work, have given you all that I possess. To my children I have given and consecrated all my life and you know very well what I have done for them and their education, and their instructions are the proof. For them and for you I always had a home in which there never was anything missing, and where no one has suffered. To them and to you I have consecrated all myself.

40 Our last pains were to me, to you and our children a great affliction, and all of us have suffered and we will suffer still. We will suffer new love, new pains and displeasures unless I and you do not arm ourselves with a good desire of submission to God and to ask Him the health and the guide of His Holy Spirit, so that peace will re-

*Affidavit of Translation.*

turn to our household; concord and love for the benefit of our children and ourselves.

On my part, I am ready to forget the past; to submit myself to everything which will be for our best interest. I am again ready to be a good husband and father as I always was and I desire that above all our personal caprices, our children be protected by both you and me. They are in need of a home, which you and I must give them, in order to conserve the union and with it peace, love and concord. 10

This separation which you desire, will not be the separation between you and me, but rather it will be the separation of our children and themselves, rather than ourselves, and some day they will speak bad of us and cause us to weep. 20

Forget the advise of your lawyer. He does not care for your good but for your badness, because he does not take part in our family and little does he care about our children, if they have a home or not. I tell you, for your and my benefit and in the name of Italo, Maria and Lora, I beg you Rosalia, let us forget all our differences, all our pains and displeasures and return to the love of good parents, of good fathers and mothers, so that our children will be happy, because they deserve more than we do. They deserve peace and happiness. 30

Listen, Christmas is now near and the songs and the salutes of the angels will be an invitation to our renearing. "Glory to God in the highest place, Peace on earth and benevolence."

Next week Italo and Flora will be home for the Christmas holidays. Do you not desire to do your part and to return to find our home transported in an island of love and peace, and you will see 40

*Affidavit of Translation.*

how they will bless us and will be joyful on account of our union and concord.

10 Rosalia, waiting a word, your reply, I will promise you that I am disposed to do my utmost to have peace. Return to our family, I ask you again in the name of our children, and on behalf of their future.

Awaiting a word, with an affectionate embrace and kiss, believe me always, your affectionate,  
NICOLA.

Yonkers, N. Y.,  
May 1st, 1927.

Dear Rosalia:

20 For the last time I beg you in the name of our children to return to me, now that we are still in time, tomorrow may be, it will be too late.

I have thought and meditated during these days relative to the terrible consequence that our separation would cause, therefore before it is too late, that reparation will be impossible.

30 I have never ceased to love you, in fact I love you more today than yesterday, and you must convince yourself that we were tricked by people who are our enemies today and I am sure that they did not do it for our benefit. We have believed, and that was our ruin. The friends of yesterday are the enemies of today and you yourself can be convinced.

40 I promise you that from today on you will be the master and the queen of my household and I will give you all my salary, and you will be the one to administer all my money, as I always did until last year when we were in Philadelphia.

*Affidavit of Translation.*

Let us give a good example to the church and to those who know us. Let us make this peace and after us we will make peace with those of the church, and we will return as we were at first, and I am sure than the Liberatore family, Contenti and others will be joyed, and I am disposed to do all that is necessary because this truce is a conceded fact.

10

Let us enter this truce even for Mary's sake, who is unfortunate. She now has to go to work, and I doubt as to her health. She has no need to go to work and we can bring up the baby, who will be our joy and our small child.

We will go to Yonkers, or if you wish, I have a good place here in New York where I am sure we will be tranquil.

It is necessary to tell you many things and if you so desire we can discuss them together and place ourselves in accord.

20

I am not telling you this because I have any fear of going to Court. No, but only to evade painful consequences which later we will not be able to repair, but today, it is easy without the necessity of our lawyers.

Then, reflect and meditate seriously, and I am at your disposition to do all which you desire. Our truce will sign also the truce of others to whom I am disposed to offer at any cost.

30

With love and with affection, believe me.

Your Nicola.

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LOUIS P. LONGOBARDI.

Sworn and subscribed to before me  
this 15th day of June, 1928.

Miriam Kucker,

A Notary Public of N. J.

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**Affidavit of Rosalia Sabbarese.**

Filed Aug. 26th, 1929.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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10	Between	}	On Appeal. Affidavit.
	ROSALIE SABBARESE,		
	Appellant,		
	and		
	NICOLA SABBARESE,		
	Respondent.		

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

Rosalia Sabbarese being duly sworn according to law upon her oath deposes and says:

1. I am the appellant in the above entitled cause; suit was started against my husband, the respondent on the 28th day of December 1928 for divorce a mensa et thoro by reason of the cruelty of my husband, the respondent; that on the Sixth day of June, 1929, trial was on the issue and the court concluded that I was not entitled to alimony and counsel fees.

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2. I believe I have good grounds for appeal and am taking this appeal in good faith because I think that the Court of Chancery erred in not allowing me counsel fees and alimony; I am employed by the New York Knitting Mills, and earn \$20.00 per week, which said sum is a meagre sum of money, and out of which I have been compelled to pay for rent and food, which has been a necessity, and for

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*Affidavit of Rosalia Sabbarese.*

my clothing. I have no money with which to prosecute this appeal, nor have I any money to deposit with this court, as required by Rule 21 of the Court of Errors and Appeals.

3. My husband, the respondent, is a minister by profession, and earns, by his own admission, the sum of \$2000.00 per year, and a parsonage, paying no rent for the house that he now lives in. 10

4. As above stated, this appeal is taken in good faith, and I believe I have meritorious grounds for reversal.

5. The respondent is well above to furnish the printed State of the Case, as I have no money with which to pay my counsel fees or for the printed state of the case.

I beg of this court that the respondent pay my counsel fee and for the printed state of the case, and that I be relieved of making deposit, as required by Rule 21 of this Honorable Court. 20

ROSALIA SABBARESE.

Sworn and subscribed to before me  
 this 24th day of August, A. D. 1929.  
 Vincenzo Lanza,  
 Notary Public N. Y. C. 25.

30

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200.1.1.1.1.1

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13 MAY. 7. 1930

## New Jersey Court of Errors and Appeals

Between

ROSALIA SABBARESE,  
Complainant-Appellant,

vs.

NICOLA SABBARESE,  
Defendant-Respondent.

On Bill, etc.

On Appeal  
from Court  
of Chancery.

### BRIEF OF COMPLAINANT-APPELLANT.

This is an appeal taken from a decree made by the Honorable Malcolm G. Buchanan, Vice Chancellor, on the 20th day of June, 1929. The grounds of appeal are:

1. There was sufficient proof submitted to the court to entitle complainant-appellant to a decree for maintenance under said separation agreement.
2. That the separation agreement should not have been cancelled.
3. There is not sufficient testimony before the court to adjudicate complainant-appellant guilty of adultery.

As to the first and second point that there was sufficient proof submitted to the court to entitle complainant-appellant to a decree for maintenance under said separation agreement, and that the separation agreement should not have been cancelled: A brief history of the case shows that on the 14th day of June, 1927, complainant-appellant and defendant-respondent entered into a sep-

aration agreement wherein the defendant-respondent was to pay the complainant-appellant the sum of \$12.00 weekly, which agreement was marked C-1 on the part of complainant (C. p. 107). That at the time the agreement was entered into between the parties, the defendant-respondent was represented by counsel (C. p. 63, l. 33 to p. 64, l. 4) :

Q. And you went to some lawyer's office?

A. Yes, sir, my lawyer's office.

Q. You had a lawyer?

A. Yes.

Q. Whose office did you go to?

A. I had for the time Mr.—

Q. Whose office did you go to to have this paper written?

A. That was in the office of Judge Booth in Yonkers.

Q. At the time you signed this agreement your wife was there?

A. Yes.

The complainant-appellant was also represented by counsel (C. p. 51, ll. 20-29) :

Q. When he made these accusations against you did you get a lawyer in New York?

A. Yes.

Q. What is the name of the lawyer in New York?

A. In New York? Mr.—I don't know.

Q. Your lawyer? Who was your lawyer? Was it Mr. Subereto?

A. Yes, sir.

Q. Did Mr. Subereto start any action in New York against your husband?

A. No.

Q. Did he start a suit for maintenance and support for you?

A. Yes, he give me support.

The defendant-respondent's defense was that prior to the making of the agreement, his wife,

complainant-appellant, committed adultery, naming a certain Mr. Carreiri as co-respondent, and his further defense was that the agreement was procured by fraud in that the complainant-appellant concealed from the defendant-respondent the material fact that her adultery prior to the making of the agreement constituted a fraud in the inducement of the contract. The testimony of the defendant-respondent was that he did not discover his wife had committed adultery until after suit for separate maintenance was started, and that is on or about June 1928 when his daughter advised him so (C. p. 64, l. 25). The testimony of the defendant-respondent in response to the following questions which were asked by the Court was (C. p. 66, ll. 9-24) :

Q. If on the day this agreement was signed you had known what you know now about this alleged adultery, and instead of asking you to sign this agreement she had come back and asked you if she could live with you in your home as a wife again, would you have taken her back?

A. Certainly.

Q. Notwithstanding that you had then known, you would have taken her back notwithstanding the adultery.

A. I was for five hours on my knees begging her in the name of the children—

Q. If you had known of the adultery you would not have signed the agreement, but you would have taken her back as your wife?

A. Yes; she refused.

However, on subsequent examination he corrected himself, as stated by him, and said that he would not have taken her back if he had known of the adultery. On cross-examination (C. p. 71, l. 15 to p. 74, l. 33 inc.) respondent's testimony was as follows:

Q. You say you never suspected your wife before June, 1928?

A. Of course, I saw her going around, but I never thought anything until people wrote me in Chicago, and other ministers come around, "We see your wife around."

Q. You never suspected your wife of any misconduct before the time this suit was started?

A. Yes, but I had no proof.

Q. And you continuously charged your wife with committing adultery with other people, did you not?

A. Yes, but I had no proof.

Q. And you continuously charged your wife with committing adultery with other people, did you not?

A. No. I advised her not to go around, because the church people talked about it, and I said, "Be careful."

Mr. Longobardi: Objected to. It has already been answered.

The Court: Objection sustained.

Q. You say you never suspected your wife of having illicit relations with any other man until the time your daughter signed this affidavit?

A. Yes, sir.

Q. Do you remember signing an affidavit at the office of Mr. Longobardi on May 31, 1928?

A. Yes, sir.

Q. Did you say to Mr. Longobardi, paragraph 8 of the affidavit, "When I came back from Chicago in 1922?"

A. Yes.

Q. "She told me that she didn't love me"?

A. Yes.

Q. "And refused to have any sexual relations with me"?

A. Yes.

Q. "My wife refused to take heed of the gossip of the people of my congregation relative to her conduct"?

A. Yes, sir.

Q. Every Sunday during the summer she would leave for Rye Beach, New York in the company of Mr. and Mrs. Umberto Liberatoro. My wife was never present at the church services"?

A. Yes, sir.

Q. What did you mean by people talking about your wife? What would they say?

A. They say why she doesn't come to church, why she goes to Rye Beach on a Sunday and embarrasses me asking people to observe the Lord's day, and she was not there.

Q. When was the first time you knew Mr. Contenti to go out with your wife?

A. As soon as he purchased an automobile he said, "I come to take Mrs. Sabbarese for a ride."

Q. When was that?

A. '27, or the last year I was in Yonkers, 1926 or '27.

Q. 1926 or '27 was the first time you met Mr. Contenti?

A. No, I met him before; he was a church member.

Q. Now, do you remember saying this in your affidavit: "In the summer of 1925 my wife went out in the company of a certain Peter Contenti. My wife and Mr. Contenti went riding in an automobile evenings and every Sunday. I begged my wife to be careful of her conduct as the people of my congregation were talking, but she told me to mind my own business"?

A. Yes, sir.

Q. What were people saying then?

A. Why people saw—

The Court: What difference does it make?

Mr. Liotta: Because he says if he had known of the conduct of his wife he would not have signed the separation agreement.

A. I mean if I knew about the adultery, about the intimate relations.

Q. In other words, you knew your wife was intimate with Mr. Contenti?

A. No.

Mr. Longobardi: That is objected to. The defendant has not said that.

Q. You knew that your wife went out continuously with Mr. Contenti, did you not?

A. Yes.

The Court: He has said, substantially, that he suspected his wife was unfaithful, but he had no proof of it.

By the Court:

Q. This is what I understood you to say?

A. Yes, sir.

Q. When was the first time that your daughter told you that your wife committed this act?

A. My daughter never told me anything.

Q. When did you find out?

A. In the office of Mr. Longobardi from an affidavit she signed.

Q. What date was that?

A. In May 1928, last year. She never told me anything—

Q. May, 1928?

A. Yes, sir.

Q. Did you sign your affidavit first or your daughter hers first?

A. I think I signed mine first.

Q. Sure of that?

A. Sure of that.

Q. Positive? Did your daughter tell you before that time that your wife was embraced and kissed by Mr. Contenti? I refer to paragraph 11 of your affidavit. In that affidavit you say: "My wife was seen often in company with Mr. Contenti in an automobile, and at one time while riding with Mr. Contenti and my daughter Flora, Mr. Contenti and my wife embraced and kissed."

A. Well, that means that I know before?

Q. Yes.

A. I don't know that.

Q. Now you say you would not have signed this agreement if you had known that your wife had committed certain acts with other men?

A. No.

Q. Now, in 1921 you became suspicious of your wife when you saw her embrace and Kiss Mr. Carrieri?

A. Yes, sir.

The Court: You have that on the record. What more do you want?

Mr. Liotta: All right.

Q. Did you ever see your wife commit any adulterous act with anyone?

A. No.

*At no time was there any testimony induced on the part of the defendant-respondent to the effect that he questioned his wife as to whether or not she ever committed adultery.*

### Law.

The complainant-appellant feels that the court below erred in holding that there was a concealment of a material fact by the wife, which constituted fraud in the inducement of the contract, and that the wife was not entitled to a decree under the agreement. It was held in *re Whittle vs. Schlemm*, 94 N. J. L. p. 112, at p. 116, in an opinion written by Chancellor Walker:

"It may well be that the adultery of the wife is a good defense in a proceeding brought under this section, because, if a wife commits adultery her husband is justified in separating from her and bringing suit for divorce. So, even if adultery of the wife be a good defense by the husband when he is sued by her for maintenance under section

26 of the Divorce Act, that does not alter the rule which obtains in reference to a suit by a wife to enforce the terms of an agreement for maintenance while the parties are living in a state of separation.

“The learned Vice Chancellor who wrote the opinion in *Devine v. Devine* concedes that in England the adjudications from an early date have been to the effect that the adultery of the wife, committed after the execution of a separation agreement, would not deny to her the right of recovery of the stipulated payments falling due after the fact, unless the agreement expressly provided that they should be made only so long as she remained chaste, and that no such covenant would be imported into the agreement by implication; and he adds that those adjudications cannot be appropriately disregarded unless conditions exist in our state which deny to them the force they would otherwise possess. The difference between our law and that of England laid hold of by the Vice Chancellor as making a different rule here than that in England is, that a contract between husband and wife to live apart is not there restricted to the period of their mutual assent, and that such contract for separation may there be specifically enforced; while in New Jersey an agreement for separation cannot confer on either party the right to live away from the other against the other's will. He deduces from this that it is the policy of the law that the period for which persons in this jurisdiction may contract touching their separation is limited to the period of their future mutual assent, and that, accordingly, in the absence of wrong-doing on the husband's part, he may require his wife's return to his bed and board, and her refusal will not only constitute her an obstinate deserter, but will operate to deny her any right to support from him, notwithstanding the existence of an

agreement; and that the wife's act of adultery while thus living separate from her husband, pursuant to the terms of a separation agreement, operates to deny to her husband the right to require her return to him unless he condones the act; and that therefore the legal obligation of the husband to support his wife exists only so long as she shall remain chaste.

"We are unable to concur in the reason of the learned Vice Chancellor, or to agree, that there is any different rule in New Jersey from that which obtains in England with reference to the right of the wife, while living separate and apart from her husband, to secure the funds provided for her support in a separation agreement even after the commission of an act of adultery by her, because, in our opinion, the husband's liability persists unless there is an express stipulation and limitation in the separation agreement that payment shall cease in the event of her becoming unchaste, for, without such provision, the common law obligation of a husband to support his wife continues—unless and until he procures a divorce from her. The question is one of construction of the agreement, and where husband and wife are living apart under separation articles, there is nothing in the situation which calls for the importation into their contract of a *dum casta* clause, as it is called; on the contrary, the situation, namely, the wife's dependence and the husband's liability for her support while she continues to be his wife, repels such a construction."

I have not been able to find a decision in the State of New Jersey in reference to a fraud of the kind hereinabove mentioned, but it has been held *30 Corpus Juris*, p. 1059:

"In order that a separation agreement between husband and wife may be upheld as

valid and enforceable, it must be entered into freely, fairly, voluntarily, and understandingly and not as the result of fraud, duress, coercion, intimidation, imposition or undue influence. In order that the agreement may be set aside or rescinded on the ground of misrepresentations it must appear that such misrepresentations were of existing facts and were relied upon. Representations which are technically false but which are in effect true and which result in no damage do not give a right of rescission. Threats to exercise a legal right are not deemed to be duress or coercion invalidating the agreement. But even though no actual or express fraud or duress is practiced, or even though no direct threats or importunities are made, yet the assent of the wife may be obtained under such circumstances of deception, ill treatment, or lack of freedom of action as to require that the contract be set aside. Ordinarily the agreement must be procured without a violation of the general rules which control the actions of persons occupying confidential relations with each other; *but these rules do not apply where the confidential relation between husband and wife has been already severed and the parties are dealing with each other at arm's length, as through agents or attorneys.*"

*Hensley v. Hensley* (Cal. 183 p. 445;

*Parsons v. Parsons*, 62 S. W. 719;

*Minor v. Parker*, 72 N. Y. Sup. p. 549.

It was further held in *re Dixon v. Dixon*, 24 N. J. Eq. p. 133, in an opinion written by the Vice Chancellor:

"Whether adulterous acts, committed by a wife prior to the execution of a deed of settlement by her husband, in her favor, but which were concealed from him, and were unknown and unsuspected by him when the deed was

made, would avail to set the deed aside. Quere."

It also has been held, *30 Corpus Juris* 663, *Chapt. 231*:

"Past or subsequent misconduct on the part of the wife does not ordinarily operate to entitle the husband to have a marriage settlement cancelled or set aside."

*Appleby v. Appleby*, 100 Minn. 408;  
*Am S. R.* 709, *10 Lrans* 590.

As to the fact that the wife had made no effort or request to resume cohabitation, your Honorable Court has held from time to time that a charge of adultery is extreme cruelty, and the wife is justified in leaving her husband in case such charge has been made against her.

*Doty vs. Doty*, 92 N. J. Eq. 660;  
*Alt vs. Alt*, 95 N. J. Eq. 90.

### **As to the Third Point.**

The complainant-appellant feels that the court erred in finding her guilty of adultery for the following reasons, to wit:

The only testimony in the entire case charging the complainant-appellant with any act of adultery is the testimony of Flora Sabbarese, the daughter of the parties, and her testimony shows that she saw the acts of adultery of the mother at the time that she was eleven years of age (at the time of the hearing she was eighteen). Now, if your Honors will look at her testimony (C. p. 75 and ending C. p. 97) her testimony in my mind appears without merit because, not only does she testify as to the fact that she knew at the age of eleven

as much about carnal affairs as a woman of mature age, but she also appears to have, if her testimony is to be believed, the qualities of an expert detective, wherein she says that when she saw the alleged paramour come to the mother's house at the time she was eleven years of age, she suspected him of misconduct, and that after being given some money for candy, which fact is denied in the testimony of the complainant-appellant (C. p. 102, ll. 26-30 inc.), she immediately ran to the candy store, talked to a friend, and came back within five or ten minutes from the time of the purchase of her candy, and that when she reached the bottom of the stairway in the home where she lived, she tip-toed upstairs and when she got to the entrance of the apartment, she looked into the key-hole and heard someone moaning; she knocked on the door and that after the door was opened she immediately went to the bedroom and saw the bed mussed up.

The testimony of the complainant-appellant, however, firmly denies any acts of adultery (C. p. 102, ll. 20-32) :

Q. Mrs. Sabbarese, did you ever have sexual intercourse with Mr. Carrieri?

A. What?

Q. Did you ever have anything to do with Mr. Carrieri, anything wrong?

A. No.

Q. Did you ever have any sexual intercourse with any other man outside of your husband?

A. No.

Q. When your child was eleven years old did Mr. Carrieri send her down stairs on Sunday afternoon about the month of June?

A. No.

Q. With some money to buy candy?

A. No.

Q. He did not?

A. No.

Q. Did you ever tell her to kiss Mr. Carrieri?

A. I never did, never say that.

Also (C. p. 56, ll. 7-15) :

By the Court :

Q. You said you did not know whether you had had sexual intercourse with anybody but your husband—

A. No.

Q. You meant you didn't have?

A. Yes, sir.

Q. You say you were still living with your husband in your husband's house when the contract was signed?

A. I stayed there, yes.

*In reading over the testimony, this Honorable Court will also find that prior to the hearing of the case, the defendant-respondent bought his daughter clothes (C. p. 87, l. 32 to p. 88, l. 4).*

### Law.

In an opinion rendered by Vice Chancellor Leaming, 88 N. J. Eq. 103, the court held :

“The charge made by the complainant, if true, is known to our law as a crime; consequently this prosecution partakes strongly of the nature of a criminal proceeding, so much so as to place the complainant under the necessity, not only of placing a decided preponderance of testimony in favor of the charge, but of proving it to the satisfaction of this court beyond a reasonable doubt. I do not mean to say that it must be done by such an amount of overwhelming and unmistakable evidence as to render it impossible to be otherwise, but the evidence must be

such as to satisfy the human mind, and leave the careful and guarded judgment of the court, free from any conscientious and perplexing doubts as to whether the charge be proved or not. If, after a careful examination of all the competent testimony, such doubts remain immovable, it is clearly our duty to give the defendant the benefit of such doubts, and to refuse the prayer of the complainant." *Berckmans v. Berckmans*, 17 N. J. Eq. 453.

The above decision follows the case of *Culver v. Culver*, 38 Eq. 163, at p. 165, which says:

"The circumstances must be such as will lead the guarded discretion of a reasonable and just mind to the conviction that the crime has been committed.' That requirement, expressed in almost the exact words last above quoted, appears to have been first adopted by the English ecclesiastical courts—*Loveden v. Loveden*, 2 Hagg. Cons. 1 (at p. 3)—and to have since received sanction in repeated decisions in this and other states."

As to the validity of the testimony of children, I have not been able to find any New Jersey cases, but the consensus of opinion is, in courts of other states, 19 *Corpus Juris*, 132 and 133:

"The children of the parties are not necessarily excluded as witnesses, but their evidence should be carefully considered and be supported by corroborating circumstances; especially as to facts witnessed by them *at an age when they were probably unable to understand the significance of such facts, as, for instance, the adulterous conduct of their mother.*"

*Crowner v. Crowner*, 6 N. W. 198;  
*Kneale v. Kneale*, 28 Mich. 344;  
*Draper v. Draper*, 68 Ill. p. 17.

**Conclusions.**

In conclusion, it is therefor apparent that the wife never committed adultery any time prior to, or subsequent to the making of the separation agreement, and that as hereinbefore stated, conceding for the sake of argument that adultery had been committed, she would still be entitled to maintenance.

**Complainant-appellant therefore respectfully prays that the judgment of the lower court be reversed.**

Respectfully submitted,

EUGENE A. LIOTTA,  
Solicitor for and of Counsel  
with Complainant-Appellant.

STILLMAN

## New Jersey Court of Errors and Appeals

ROSALIA SABBARESE, <i>Complainant-Appellant,</i>  <i>vs.</i>  NICOLA SABBARESE, <i>Defendant-Appellee.</i>	}	<i>On Bill, etc.</i>  <i>On Appeal          from Court of          Chancery.</i>
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### BRIEF ON BEHALF OF DEFENDANT-APPELLEE.

#### Facts.

The complainant-appellant, Rosalia Sabbarese, and the defendant-appellee, Nicola Sabbarese, were lawfully married on the 12th day of October, 1903 at Madison, New Jersey, by Henry A. Buttz, a Minister of the Gospel.

The defendant-appellee, who is a Minister of the Gospel, was ordered by his superiors to go from place to place.

From 1916 to 1920 his duties brought him to Philadelphia, Pennsylvania, where he resided together with his family. In 1920 he was transferred to Chicago, Illinois, where the complainant-appellant resided with the defendant-appellee for a short period and deserted the defendant-appellee, taking her children with her to New York City, New York.

The defendant-appellee resided in Chicago, Illinois, for a period of about two years, where he attended to his pastoral duties, and from where he would forward sufficient funds for the support and maintenance of his wife and children. There were three children born of the marriage, namely: Italo, Mary and Flora. While

defendant-appellee was attending to his duties in Chicago, Illinois, he would visit his wife and children from time to time.

During the time that the defendant-appellee resided in Chicago, Illinois, to wit, in the months of February, March, April or May, 1921, the complainant-appellant committed adultery with one Frank Carrieri at No. 531 East 157th street, New York City, New York. This act of adultery was unknown to the defendant-appellee until June 14, 1928.

In 1922 the defendant-appellee was transferred to Yonkers, New York, where he lived, together with his family until May 6, 1927, when the complainant-appellant again left the defendant-appellee. In August, 1927 the defendant-appellee was transferred to Elizabeth, New Jersey, where he and his children went to reside, ever since which time, the defendant-appellee has continued to live at No. 73 Grove street, in said City of Elizabeth, and the complainant-appellant at present resides at No. 605 West 147th street in the City of New York.

The ages of the three children of this marriage are as follows: Italo aged twenty-five (25) years; Mary L. Bryant, aged twenty-three (23) years, and Flora, aged eighteen (18) years. All of these children were at the time of the hearing, residing with the defendant-appellee.

One June 14, 1927 the complainant-appellant and defendant-appellee entered into a separation agreement, whereby the defendant-appellee covenanted to pay to the complainant-appellant \$12.00 per week. The defendant-appellee continued payments under this agreement until March 1, 1928 and ceased making payments under the separation agreement, because, first, the wife

had breached the mutual covenant contained in the separation agreement not to molest, and second, that his execution of the agreement was procured by fraud and claimed that the agreement ought to be cancelled.

On or about the 19th day of May, 1928 the complainant-appellant instituted a suit in the alternative for maintenance under our statute, on the enforcement of the covenant for the payment of \$12.00 per week under the agreement.

The matter was heard before Vice-Chancellor Backes on a motion for temporary maintenance, and on June 26, 1928 Vice-Chancellor Backes denied any alimony *pendente lite*, and ordered the complainant-appellant to pay the costs for the application for alimony *pendente lite* which costs amounted to \$28.51.

Subsequently on June 6, 1929 the matter came up on final hearing before Vice-Chancellor Buchanan, and after hearing all the evidence, entered a decree on June 20, 1929 dismissing the bill of complaint of the complainant-appellant and disallowing any counsel fee.

In the conclusion filed by Vice-Chancellor Buchanan, he stated:

“The evidence satisfied the Court that the wife was in fact guilty of the adultery charged and that there was no condonation thereof by the husband.

It would certainly seem that the wife's adultery is a good defense to a suit for maintenance. It would be sufficient to entitle him to a divorce, which would terminate the legal duty to support, and no reason comes to mind which would require the husband to divorce his adulterous wife, in order to free himself from the duty to support her, if he preferred

not to sue for divorce, but simply to defend himself against a suit for maintenance. For that reason, as well as for the reason that the wife has made no effort or request to terminate the mutual separation and to resume cohabitation, it is concluded that the wife is not entitled to decree for maintenance."

Further the Vice-Chancellor says that it is evident from considerations of other cases in point that the concealing of the wife's adultery from the husband was a concealment of a material fact. Since adultery is a bar to a suit for maintenance, but is not a bar to a suit to enforce payment under a separation agreement containing no *dum casta* clause, it follows that the husband, by executing this agreement, placed himself under a greater burden or liability than would have existed without the agreement; he bound himself, in effect, to support his wife, even though she should commit adultery, until and unless he should thereafter sue for and obtain decree of divorce from her.

Vice-Chancellor Buchanan further said:

"The evidence shows that he would not have executed the agreement, if he had known of the prior adultery.

It is concluded, therefore that this concealment of a material fact by the wife, constituted fraud in the inducement of the contract, and that the wife is not entitled to decree under the agreement, but that the husband is entitled to decree for cancellation thereof."

On or about August 12, 1929 the complainant-appellant filed a notice of appeal to the Court of Errors and Appeals of New Jersey.

**ARGUMENT.**

There was not sufficient proof submitted to the Court to entitle complainant-appellant to a decree for maintenance under our statute or under said separation agreement. The separation agreement was rightfully cancelled by the Court.

There was an abundance of testimony before the Court to adjudicate complainant-appellant guilty of adultery.

The affidavit of Nicola Sabbarese, which was admitted into evidence (pp. 16 to 21, inclusive in the State of the Case, par. 8) shows the following:

“8. When I came back from Chicago, in 1922 (after the act of adultery), she told me that she did not love me and refused to have sexual relations with me.

My wife refused to take heed of the gossip of the people of my congregation relative to her conduct.”

Paragraph 13, line 33, page 18 of said affidavit in the State of Case sets forth the following:

“I have not had sexual relations with my wife for the past seven years. She has refused constantly and has refused to sleep with me or in the same room. She refused to sleep in the same room for a period of one and a half years prior to June 14, 1927.”

Paragraph 14, line 40, page 18 of the State of the Case sets forth the following:

“My wife never performed any of the home duties for the family. I did all the washing and cooking and taking care of the family, with the assistance of my two daughters.”

Page 19, line 14, paragraph 17 of the defendant-appellee's affidavit sets forth the following:

"17. On May 6, 1927, she left me. We were then residing in Yonkers, New York. I begged her for five hours not to leave me. My daughter Mary also was present at the time and she also pleaded with my wife not to go. My wife took with her at that time her belongings, various articles and left. I received some sort of notification of a court action while in New York and was about to contest it, but was advised by my son Italo, who was and still is a student at Syracuse University, not to contest the matter, otherwise he would abandon his education, on account of the humiliation, so rather than contest the matter I satisfied my children and consented to sign a separation agreement to pay my wife \$12.00 per week."

Considering the entire affidavit of Nicola Sabbarese and the affidavits of Mary L. Bryant, the daughter, Flora Sabbarese, the daughter, and Italo Sabbarese, the son, set forth in full in the addition to State of Case from pages 111 to 126, inclusive, there was not sufficient proof submitted to the Court on behalf of the complainant-appellant to entitle her to a decree for maintenance under said separation agreement, and that the separation agreement should have been and is rightly cancelled.

There was no doubt in the mind of the Court as to the truthfulness of the defense set up by the defendant-appellee in that prior to the making of the agreement, his wife, complainant-appellant, committed adultery, naming a certain Mr. Carrieri as co-respondent, and the further defense that the agreement was procured by fraud in that the complainant-appellant concealed from

the defendant-appellee the material fact that her adultery prior to the making of the agreement constituted a fraud in the inducement of the contract.

It is conceded from the testimony of the defendant-appellee that he did not discover his wife had committed adultery until after suit for separate maintenance was started, and that was on or about the 14th day of June, 1928 when his daughter advised him so (see p. 95, l. 1).

Q Now, you tell me what your father said to you and what you said to your father immediately after the suit was started? A You mean after I signed the affidavits?

Q No; after your mother started suit, what did you say to each other? A After the contract was made, do you mean?

Q No, in June, 1928 just before you signed the affidavits, the first affidavit, and just before you signed the second affidavit, what did you say to your father; what did you say to him?

Mr. Longobardi: Objected to. I object to that. Relative to what?

Q In reference to your mother? A He never said anything about my mother.

Q He told you he was going to take you to a lawyer's office, didn't he? A No; he didn't tell me anything about that. I later—

Q What did he tell you? A After he had written, I think, his affidavit he asked me if I would go to Longobardi's office and write an affidavit, too.

Q After he had written his? A I think so.

Q What else? A He asked me if I wanted to go. He didn't force me.

Q What did you say? A I said I would go.

Q And you did? A Yes, sir.

Q What did you do when you went to Longobardi's office? A I signed the first affidavit without telling him anything about my mother.

Q Then you went home with your father? A Yes.

Q What did your father say to you then? A He didn't say anything.

Q Didn't tell you a thing? A No.

Q Did he tell you you didn't say enough in the affidavit? A He asked me if I had told everything.

Q What did you say? A Of course, I knew I hadn't said all, and he saw I didn't answer right away, so he thought I had more to say.

Q Then what happened? A I told him I would go to Longobardi's office and say the rest.

Q What did you say it was? A I didn't tell him what I was going to say, but I went straight to Longobardi's office and wrote my second affidavit.

Q Did your father tell you what to say? A No.

Q You went voluntarily without your father, and told the rest? A Yes.

Q Why didn't you tell him the first time? A Well, I told him about—I think that was the time I said about—that was the one I hadn't said anything about men, or that she had any relations with any men. I said he was supporting me and giving me my clothes and where I was living and so forth.

Q Now, you say that you knew your father wanted to contest the matter of the

original contract, and that because you pleaded with your father he didn't contest the matter? A Yes.

Q What happened that day? A Well, we went to a room next to the court in Judge Booth's office, and Dr. Stoddard, one of his bosses, came over to my father and said if he would go into court he would lose his position.

Q What else? A So, naturally, my father didn't want to lose his position and he—

Q Did your father, prior to that time, accuse your mother of going out with Mr. Carrieri? A Mr. Carrieri?

Q Yes. Did he accuse her prior to that time or didn't he? Did he tell her she had better stop going out with this man? A No.

Q Never mentioned Mr. Carrieri's name before that time? A No.

The testimony of the defendant-appellee in response to a question by the Court relative to whether or not he would have signed the separation agreement in Judge Booth's office if he had known that his wife had committed any immoral acts shows as follows (see p. 65, l. 24, in the State of the Case):

Q Would you have signed this agreement in Judge Booth's office if you had known what you know now relative to your wife's immorality? A No; when I was called to sign this contract I was ready to go to court, and Judge Booth told to her lawyer, "she has no chance to win; we are going in court." And my children entreated me not to go back to school, and they say, "if the name is on the paper we are not going back to school; we will be ashamed." And then I was entreated by Dr. Stoddard

if I went in court I would resign as a minister. *And I didn't know what I know, otherwise I wouldn't care for my children or my parish or my church, I would not have signed the paper.*

And on subsequent examination the defendant-appellee said that he would not have taken her back if he had known of the adultery. On cross examination, page 66, line 25, in the State of the Case, is the following: -

Q Suppose on the day that you were in Judge Booth's office you knew at that time that your wife had committed adultery, an adulterous act, with some other man, and if you had known it in his office, and your wife had said, "I want to come back to your home to live with you," would you have taken her back? A After I knew?

Q Yes. A No, not after I knew.

*By the Court.*

Q That is what I asked you. A Oh, no; I would not have taken her back, of course, for my own honor, not for the children or position.

*By Mr. Longobardi.*

Q I want you to be sure you understand the question before you answer the question. A No; I misunderstand. I take that back, of course.

Throughout the examination of the complainant-appellant, she was not sure as to what occurred (p. 50, l. 12, State of Case).

Q How soon after you were married did you have your first quarrel with your husband? A How soon?

Q One month after or two weeks after, or what? A I *think* for one month; just for one month.

Q Why did you have a quarrel with your husband then? A Now?

Q Why did you have an argument with your husband? A *I don't know what the trouble is, so.*

Q What did he say? A All the time say some bad word to me; all the time this way.

Q Do you remember the 14th day of June, 1927? That is the time you had the separation agreement signed? A Yes, sir, the separation.

Q Why did you have that signed? A No support and the cruelty.

Referring to the affidavits of Italo, Mary and Flora which affidavits are found in the Addition to the State of the Case from pages 111 to 123 inclusive, it is clearly stated in each affidavit that the defendant-appellee always supplied the necessaries of the household. (P. 113, l. 17, par. 14, Addition to State of Case.)

“14. I know that from the time of my understanding to the time that my *mother left* the domicile of my father while we were residing in Yonkers, that the support which was given to myself, my sister and brother and my mother was not a meager support, but rather substantial, and that my father has *never* mentally abused my mother in any manner. I never heard my father call my mother a prostitute.”

(See p. 117, l. 27, par. 13, affidavit of Flora Sabbarese, in Addition of State of Case, and p. 125, l. 39, par. 13, affidavit of Italo Sabbarese in Addition of State of Case.)

“13. My father has been good to all of us children and to my mother and the cause of all the unhappy indifferences between my

father and mother are only due to my mother's disposition and methods."

Was the complainant-appellant pretending she did not understand when the following questions were asked her by her counsel? (P. 51, l. 13, State of Case.)

Q Did you ever commit any immoral act with any of these men? A What do you mean?

Q Did you ever have intercourse with any man outside of your husband? A Any man I talked he say that.

(P. 59, l. 21, State of Case.)

Q Now, you didn't go out with any other man, did you? A No.

Q Before this agreement? A What?

Q Before the contract that you signed in New York? A No, I don't go.

Q You never went out with any other man? A No, I don't go out with any man.

Q Did you ever entertain Mr. Carrieri in your home? A When?

Q Any time? A In the house?

Q In your home? A Oh, they come sometimes, *my husband in Chicago*. They come to see—I am not alone, my sister and my children, too.

Q Did Mr. Carrieri ever visit you alone while your husband was in Chicago? A My children come, yes, come Sunday sometimes—

Q Listen to my question. Did Mr. Carrieri ever visit you in your home? A Yes.

Q When your husband was not at home? A They come on a Sunday, because my sister told them, come altogether, my sister and my children home.

Q Was Mr. Carrieri in your home alone with you? A No, never.

Q Never? A No.

Q How long have you known Mr. Carrieri? A So many years in Massachusetts.

Q How long have you known Mr. Carrieri? A So many years—

The evidence satisfied the Court that the complainant-appellant was in fact guilty of the adultery charged from the testimony of Flora Lydia Sabbarese, the daughter, given in court, and also from the affidavit signed by her. (See pp. 120 and 121, pars. 3, 4 and 5, ll. 30 to 40 on p. 120 and ll. 1 to 30 on p. 121 of Addition to State of Case.)

“3. I recall that at one time, when I was about eleven years of age, Mr. Carrieri called at our home. We occupied an apartment on the second floor, consisting of six rooms. Mr. Carrieri induced me to leave the apartment, by giving me some money to purchase some refreshments for myself. I did go downstairs, and then tip-toed back to the door of our apartment and listened at the door. The first room after entering our apartment from the front door was the dining room. I heard no noises or sounds from the dining room but I did hear noises, sounds and voices coming from, which I believed, the bedroom. I listened for about five minutes or so, heard whispering words of endearments by Mr. Carrieri. I heard my mother sort of moaning and speaking, although I cannot recall what words were used by her.

“4. No one else was in our apartment at that time except my mother and Mr. Carrieri. I then rang the bell and after a wait of about one minute, Mr. Carrieri

opened the door and I saw my mother standing between the bedroom and the dining room with her garments misarranged and her hair out of order. I looked at the bed and noticed that the bed had been mussed. Both my mother and Mr. Carrieri were embarrassed and became reddened in the face.

“5. On other occasions at Midland Beach Mr. Carrieri would embrace and kiss my mother. My father was never with us at these times, but would be at church.”

The evidence as presented to the Court is as follows: (P. 75, l. 30, State of Case.)

Q Where was your father when you were living in the Bronx section of New York?

A In Chicago.

Q Do you remember the address where you resided? A Well, I don't remember; really, I couldn't say exactly. I think it was East 157th street.

Q You don't remember the number of the house? A No, I don't.

Q How often would your father come back from Chicago to visit the family? A Well, I guess once every two or three months or so.

Q How old were you then, Flora? A About eleven, ten or eleven.

Q And who else was living at this address at 157th street? A My mother, my sister and my aunt was living with us for a while.

Q Which aunt is that? A Miss Bel-deli.

Q The sister of your mother? A Yes, sir.

Q Did your mother have visitors at the house? A Yes, sir.

Q Do you know of anyone who visited the house while your father was away, anyone in particular? A Do you mean men?

Q Yes. A Mr. Carrieri.

Q Would he visit often? A Quite often.

Q He would visit when you were home?

A Well, as far as I know, yes.

Q Do you know whether he would visit when you were not home? A I don't know.

Q Do you remember any particular incident or any time that he came there and you were sent out to purchase something?

A Yes.

Q Who sent you out? A Mr. Carrieri.

Q Sent you out for what? A He gave me some money to buy ice cream or anything that I desired.

Q Who was in the house at that time?

A Just my mother.

Q And yourself? A No, I went out to the store.

Q Before he sent you out? A Yes, just my mother and I and him.

Q You went out? A Yes.

Q Did you return immediately? A Well, as long as it would take one to go to the store and back again.

*By the Court.*

Q How long was that? A I should say about five minutes or so. I really couldn't say.

Q How far away was the store? A About a block and a half.

Q Were you to get this ice cream for yourself or for them? A No, for myself.

Q Where were your sister and your brother? A My brother was in Mercers-

burg, I think, and my sister had gone out with some friends.

Q For the afternoon? A I don't know. I know she always used to go out.

Q What time of the day was this? A Well, it was on a Sunday, I suppose about one or two o'clock; something like that.

Q Where was your aunt? A Oh, she was away. You see, she had a friend of her own. She was keeping company with a man and she was often out on Sundays, sir.

*By Mr. Longobardi.*

Q And when you returned did you enter the door without knocking, or did you knock, or what did you do? A No, I really tip-toed upstairs, and I went near the door and I listened.

Q Why did you tip-toe? A I didn't like the man and I sort of suspected something, so I tip-toed up the stairs.

Q Did you open the door? A Oh, no, the door was locked. It had one of those locks that when you close the door the door locks by itself.

Q Did you knock? A Not on first; I was listening.

Q What did you hear while you were listening? A Well, I heard some sounds.

Q What kind of sounds did you hear? You must tell us, Flora. You have stated it in your affidavit? A Well, I heard my mother sort of—I don't know what you would say—moan, or something like that, and I heard him talking to her. I couldn't hear very plainly, and I could use a little bit of imagination.

Q Did he use any endearing terms?

Mr. Liotta: Objected to.

*By the Court.*

Q What did you hear him say to your mother? A It would be hard for me to say.

Q Why? A I don't like to say the things out.

Q Well, but you must. A I suppose he was trying to comfort her, or something.

Q No. What did he say? A I really didn't hear what he said. The tone of voice sounded like he was trying to comfort her, or something like that.

Q These were the only sounds you heard? A Well, it sounded as if she were—I don't know whether you would say moaning, or something like that.

Q How long did you stay there and listen? A About a minute or so.

Q Then what did you do? A Then I knocked on the door.

Q What happened? A I had to wait about a minute and then Mr. Carrieri opened the door.

Q In what room was this? A Well, the door opened into the dining room, and the room next to that was the bedroom.

Q The door you knocked on was the dining room door? A Yes, sir.

Q And when you were listening where were your mother and Mr. Carrieri? A It sounded as if it came from the bedroom.

Q When the door was opened where was your mother? A Standing between the bedroom and the dining room, right behind the door.

*By Mr. Longobardi.*

Q Did you look at your mother when you came into the room there? A Naturally.

Q Did you see anything the matter with her? A Well, her hair was disarranged and her dress was all mussed up.

Q You saw that? A I did.

Q And did you go into the bedroom? A Not at first, not to cause any suspicion. I went in and saw the bed all mussed up.

Q Had it been mussed up before you went in? A Oh, no.

Q Had anybody else gone in there after you came into the room? A No, there was nobody in the house but my mother and I.

Q And it was mussed up? A Yes.

Q The bed? A Yes, sir.

Q Did you see anything about them— A No.

Q Did you notice the expression on their faces? A Well, I guess they blushed a little bit.

Q Not what you guess. A Well, reddened.

*By the Court.*

Q Was Mr. Carrieri dressed when he let you into the room? A I noticed this much: before I went out he had his jacket buttoned, and when I came back it was unbuttoned and open. That's all I noticed.

*By Mr. Longobardi.*

Q Did you ever on any other occasion see your mother and Mr. Carrieri together? A Yes, sir.

Q You did? A Yes.

Q Where? A Well, we used to go quite often during the summer to Middle Beach, where my aunt had a bungalow, and we had a little bungalow next to my aunt's, and at night we would all go on the boardwalk and to some amusements, and my aunt would

come home and my mother and I would stay with Mr. Carrieri, and they used to sit on like some steps, and he used to give me money to go into some amusement, and I used to go, but I always looked back, because I really didn't trust them. I was watching them.

Q You didn't trust them? A No.

Q Did you see Mr. Carrieri do anything to your mother? A Well, put his arm around her.

Q You saw that? A Yes, sir.

Q Did you see that? A Yes, sir.

Q Do you mean he embraced her? A Yes, sir.

Q Did he kiss your mother?

Mr. Liotta: I don't think he ought to lead the witness.

The Court: I will allow it.

Q Did you ever see them kiss? A No, I don't believe I did.

*By the Court.*

Q When he embraced her did she make any objection? A No.

This testimony shows that the witness is to be credited with what she says, because it is to be borne in mind that she is a daughter of the complainant-appellant. Although she was eleven years old at that time, a condition as is recited hereinabove affecting her own mother, would impress her to such an extent that it would remain vivid in her mind for a considerable length of time.

In the cross examination by counsel for the complainant-appellant, the counsel attempted to show that Flora Sabbarese, the daughter, could not have known what intercourse was then, but

Flora Sabbarese, the witness, answers as follows (p. 88, l. 8, State of the Case):

Q You say you were eleven years old when this happened, do you? A Yes, sir.

Q And you knew what intercourse was then? A Yes.

Q How did you know? A I used to hear things while going around with girls and associating with them, and I used to hear my sister, and she knew everything about it.

Q How old was your sister at that time? A She was five years older than I was.

Q Five years? A Yes, sir.

Q Was she married? A Yes, sir.

Q And she told you? A She talked with girl friends and naturally I was nearby and I heard it.

Q And you liked to hear that? A Well, naturally a girl is inquisitive and all like that.

The attitude of the complainant-appellant towards the defendant-appellee was noticeable as far back as July 29, 1920 and continued to date. Her letter dated Thursday, July 29, 1920 which was written in Italian and translated by Mr. Louis P. Longobardi, counsel of defendant-appellee, shows her entire attitude (p. 127, l. 14, Addition to State of Case).

Also her letter under date of September 2, 1920 (p. 130, l. 8, Addition to State of Case), and translated, shows her attitude.

The calm attitude of the defendant-appellee and the kind treatment towards the complainant-appellant is shown in his letter dated December 10, 1925 (p. 134, l. 1, Addition to State of Case, and p. 136, l. 18, Addition to State of Case).

## LAW.

The circumstances as disclosed by the proofs indicate that at the time of the execution of the agreement the wife would not have been entitled to decree for maintenance. She had left her husband without justification, and the separation agreement was entered into at her instance and solicitation. This was in June, 1927; at that time the husband did not know that his wife had previously been guilty of adultery.

The wife made no effort on request to resume cohabitation and hence was still not entitled to decree for maintenance.

It would certainly seem that the wife's adultery is a good defense to a suit for maintenance. It would be sufficient to entitle him to a divorce, which would terminate the legal duty to support; and there is no reason which would require the husband to divorce his adulterous wife, in order to free himself from the duty to support her, if he preferred not to sue for divorce, but simply to defend himself against a suit for maintenance.

The case of *Whittle v. Schlemm*, 94 N. J. Law 112, at page 116, 109 A. 305, 8 A. L. R. 1447, recites the following:

In the Devine case the Vice-Chancellor, at page 55 of 89 N. J. Eq. at page 371 of 104 Atl., observed that the legal obligation of a husband to support his wife exists only as long as she shall remain chaste, citing *Bradbury v. Bradbury*, 74 Atl. 150. He goes on to say that this is so unless it shall be held that the burden of the agreement for support contained in a separation agreement survives that period, namely, the period of chastity. It was observed by the Vice-Chancellor in the *Bradbury* case that adultery, if pleaded and proved, is a good defense to a

bill for maintenance without a divorce being procured, citing *Maas v. Maas*, 34 N. J. Eq. 113, *Perkins v. Perkins*, 59 N. J. Eq. 515, 64 Atl. 173. The assertion was dictum; and each of the cases cited was a suit for maintenance, and in each the defense of adultery was set up, but *failed of proof*. (In the case at bar the proof of adultery which was set up as a defense did not fail.) In neither was there an adjudication in terms that adultery was a good defense in such suits, although it was treated as valid.

It may well be that the adultery of the wife is a good defense in a proceeding brought under this section, because if a wife commits adultery her husband is justified in separating from her and bringing suit for divorce.

In the same case the Court of Errors and Appeals have said that the legal obligation of the husband to support his wife exists only so long as she shall remain chaste.

The present case differs, however, from *Whittle v. Schlemm*, in that in this case the wife had been guilty of adultery prior to the execution of the agreement. The husband did not know of this and the wife concealed it from him.

It is evident, from a consideration of the effect of the determination in *Whittle v. Schlemm* that this was a concealment of a material fact.

The evidence shows that the husband would not have executed the agreement, if he had known of the prior adultery.

I respectfully submit that this concealment of a material fact by the wife constituted fraud in the inducement of the contract, and that the wife is not entitled to decree under the agreement,

but that the husband is entitled to decree for the cancellation of said agreement.

Defendant-appellee therefore respectfully prays that the judgment of the lower court be affirmed.

Respectfully submitted,

LOUIS P. LONGOBARDI,  
Solicitor for and of Counsel  
with Defendant-Appellee.





