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Bill of Complaint.

Filed Dec. 28, 1928.

In Chancery of New Jersey.

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

Complainant, shows unto your Honor, your oratrix, Rosalie Sabbarese of Yonkers, N. Y., and the State of New York. 10

1. That she is the lawful wedded wife of Nicola Sabbarese, and that she married her said husband at Madison, N. J.

2. After her said marriage, your oratrix and the defendant her said husband, resided at Madison, N. J., for a period of approximately three months to eight months, that they then moved to Morristown, N. J., and lived there for a period of four months. They then moved to Fort River, Mass. and resided there for a period of five years. They again moved to New Castle and resided there for a period of four years. They then moved to Baltimore, Md. and lived there for a period of three years. They then moved to Philadelphia, Pennsylvania, and resided there for a period of four years. The said defendant being a minister, left his wife by consent and lived in Chicago, Ill. for a period of approximately one year, while your oratrix resided with his relatives at Montclair, for a period of approximately one year. The said defendant then came back east, and lived with your oratrix for a period of three years, that is until May, 1928, at which time your 20 30

Bill of Complaint.

said oratrix was compelled to leave said defendant, her husband on account of his extreme cruelty.

3. There has been born to your oratrix and her said husband, as the fruit of their marriage, the following children. Italo Sabbarese, 24 years of age, Mary Brown, 22 years of age, and Flora Sab-
10 barese, 17 years of age. Italo Sabbarese is now attending school for the purpose of becoming a school-teacher and Flora Sabbarese is living with said defendant.

4. Defendant from the time of his marriage to your oratrix, until the present time gave a meager support to your oratrix.

5. From the time of your oratrix's marriage to
20 the said defendant, she has been mentally abused by him, in the following manner, to wit: The said defendant has continually accused your oratrix of being a prostitute, and of having sexual relations with other men. On or about the first day of April, 1927 the defendant attempted to shoot your said oratrix; prior to that time he also whipped her with his fists, and attempted to stab her with a knife, and their married life since the time of their marriage, has been one quarrel after another,
30 being caused by the jealous disposition of the said defendant, the husband of your said oratrix.

6. On or about April 1, 1928, your said oratrix not being able to continue living further with her said husband, the said defendant, left him and retained legal counsel who instituted suit for maintenance in the Court of the State of New York, after which time, and on June 4, 1927, through the advice of counsel for the petitioner and the said
40 defendant, a separation agreement was entered in-

Bill of Complaint.

to between them, a copy of which is hereto annexed.

7. In accordance to the terms of the said agreement the defendant was to pay your oratrix the sum of Twelve (\$12.) per week. Your oratrix has received nothing on account of support from the said defendant for a period of approximately twelve weeks. 10

8. On May 5, 1928 your oratrix communciated with the said defendant through her solicitor, and informed him that she expected him to continue making his payments in accordance to the agreement entered into between the defendant and your said oratrix.

Your oratrix is now dependent for support of herself upon her own exertion. 20

Your oratrix charges that the defendant is a minister by profession and that he earns approximately \$3,000. per year.

Petitioner therefore prays that an order be made requiring the defendant to pay her a proper allowance for her support and maintenance until the termination of this suit, and also to pay her forthwith a reasonable sum for the fees of counsel in prosecuting this cause for her and for such other relief as the circumstances of this case may render reasonable and proper. 30

And your petitioner will ever pray, etc.

EUGENE A. LIOTTA,
Solicitor of Petitioner.

Affidavit of Rosalie Sabbarese.

Filed Dec. 28, 1928.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIE SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Affidavit.
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20 State of New Jersey, }
 County of Union, } ss.:

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

1. That she is the complainant in the foregoing cause about to be commenced against her husband for maintenance of herself.
2. That she was compelled to leave said defendant, her husband on account of his extreme cruelty.
- 30 3. That on June 4, 1927, your said oratrix and the defendant entered into an agreement wherein the defendant was to pay her the sum of twelve (\$12.00) Dollars per week.
4. Defendant has not paid the petitioner any money toward support for a period of eight weeks.

Answer of Defendant.

The said defendant earns approximately \$3,000. per year.

ROSALIE SABBARESE.

Sworn and subscribed to before me
this 19th day of May, A. D. 1928.

Nicholas A. Tomasulo,
A Notary Public of New Jersey.

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Answer of Defendant.

Filed Aug. 28, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,
Complainant,

and

NICOLA SABBARESE,
Defendant.

On Bill, etc.

Answer of
Defendant.

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The answer of Nicola Sabbarese, defendant to the Bill of Complaint of Rosalia Sabbarese, complainant.

1. This defendant admits paragraph 1 and in addition thereto the defendant says that complainant and the defendant were lawfully joined in the bonds of matrimony on the 12th day of October, 1903 by a Minister of the Gospel, at Madison in the State of New Jersey.

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Answer of Defendant.

2. This defendant admits paragraph 2.

3. This defendant admits that three children were born of the marriage aforesaid, to wit: Italo, who is now 24 years of age, Mary who is now 22 years of age and married to Raymond Bryant and Flora, 17 years of age and unmarried.

10

4. This defendant denies paragraphs 4 and 5.

5. This defendant admits that a suit for maintenance was instituted by the complainant in the Courts of New York as alleged in paragraph 6 of the complaint and also admits that a separation agreement has been entered into, as is alleged in paragraph 6 of the complaint, but as to the remainder of said paragraph 6, this defendant denies each and every allegation thereof.

20

6. This defendant admits that he was to pay complainant the sum of \$12.00 per week as is alleged in paragraph 7 of the complaint, but denies the remainder of said paragraph.

7. This defendant denies paragraph 8.

8. This defendant has no knowledge or information sufficient to form a belief as to whether or not complainant is dependent for support of herself upon her own exertions as is alleged in paragraph—

30

9. This defendant denies that his yearly salary is \$3,000 but admits that he is by profession a Minister of the Gospel as is alleged in paragraph — of the complaint.

10. This defendant says that during the first ten years of their married life, this defendant and complainant lived happily, and during the year

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Answer of Defendant.

1914 a sudden change came over the complainant; she commenced to act indifferent towards this defendant; she gradually lost all affection and love for the defendant and her children; she gradually acquired a harsh and disagreeable temper and without provocation would become very angry with defendant, treat him mean, ignore him, act cruel towards him, refuse to cook wholesome food for him, refuse to prepare breakfast for him and the children; she neglected and refused to iron his clothes, make up the beds, sweep the rooms, wash the windows, and when this defendant prepared his meals and the meals of his children, complainant even refused to help him wash the dishes. She would leave the house for hours at a time, and when this defendant asked the complainant where she had been, she would fly into a violent rage and say that he suspected her of being unfaithful to him. She would go in the company of a Mr. Frank Carrieri constantly and on numerous occasions she has been seen in the company of men. This defendant saw the complainant on April 4th, 1927 in the company of Mr. Carrieri at the subway entrance of 18th Street and 7th Avenue, New York, and she did not return home on that day for a period of five hours thereafter. In 1922 the complainant told the defendant that she did not love him and refused to cohabit with him.

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11. This defendant prays to be hence dismissed with his reasonable costs and charges on that behalf most wrongfully sustained.

Dated: August 27, 1928.

N. A. SABBARESE,
Defendant.

LOUIS P. LONGOBARDI, 40
Of Counsel with Defendant.

Amended Bill for Separate Maintenance.

IN CHANCERY OF NEW JERSEY.

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

Complainant, shows unto your Honor, your oratrix, Rosalie Sabbarese of Yonkers, N. Y. and the
10 State of New York.

1. That she is the lawful wedded wife of Nicola Sabbarese, and that she married her said husband at Madsion, N. J.

2. After her said marriage, your oratrix and the defendant her said husband, resided at Madison, N. J. for a period of approximately three months to eight months, that they then moved to Morris-
20 town, N. J. and lived there for a period of four months. They then moved to Fort River, Mass., and resided there for a period of five years. They again moved to New Castle and resided there for a period of four years. They then moved to Baltimore, Md. and lived there for a period of three years. They then moved to Philadelphia, Pennsylvania, and resided there for a period of four years. The said defendant being a minster, left his wife by consent and lived in Chicago, Ill. for a period
30 of approximately one year, while your oratrix resided with his relatives at Montclair, for a period of approximately one year. The said defendant then came back east, and lived with your oratrix for a period of three years, that is until May, 1928, at which time your said oratrix was compelled to leave said defendant, her husband on account of his extreme cruelty.

3. There has been born to your oratrix and her
40 said husband, as the fruit of their marriage, the

Amended Bill for Separate Maintenance.

following children: Italo Sabbarese, 24 years of age, Mary Brown, 22 years of age, and Flora Sabbarese, 17 years of age. Italo Sabbarese is now attending school for the purpose of becoming a school-teacher and Flora Sabbarese is living with said defendant.

4. Defendant from the time of his marriage to your oratrix, until the present time gave a meagre support to your oratrix. 10

5. From the time of your oratrix's marriage to the said defendant, she has been mentally abused by him, in the following manner, to wit: The said defendant has continually accused your oratrix of being a prostitute, and of having sexual relations with other men. On or about the first day of April, 1927 the defendant attempted to shoot your said oratrix; prior to that time he also whipped her with his fists, and attempted to stab her with a knife, and their married life since the time of their marriage, has been one quarrel after another, being caused by the jealous disposition of the said defendant, the husband of your said oratrix. 20

6. On or about April 1, 1928, your said oratrix not being able to continue living further with her said husband, the said defendant, left him and retained legal counsel who instituted suit for maintenance in the Court of the State of New York, after which time, and on June 4, 1927, through the advice of counsel for the petitioner and the said defendant, a separation agreement was entered into between them, a copy of which is hereby annexed. 30

7. In accordance to the terms of the said agreement the defendant was to pay your oratrix the 40

Amended Bill for Separate Maintenance.

sum of Twelve (\$12.) per week. Your oratrix has received nothing on account of support from the said defendant for a period of approximately twelve weeks.

10 8. On May 5, 1928 your oratrix communicated with the said defendant through her solicitor, and informed him that she expected him to continue making his payments in accordance to the agreement entered into between the defendant and your said oratrix.

Your oratrix is now dependent for support of herself upon her own exertion.

Your oratrix charges that the defendant is a minister by profession and that he earns approximately \$3,000.00 per year.

20 In tender consideration whereof, and for as much as your oratrix can be relieved only in this court:

To the end, therefore, that said Nicola Sabbar-
ese may answer the premises; that he may be ordered and decreed to provide such suitable support and maintenance, to be paid and provided by him, or made out of his property, for your oratrix, and for such times as the nature of the case and the
30 circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory orders of this Honorable court, as provided by the statute; and in case the defendant cannot be found in this state, to be served with process, that his estate, property and effects in this State may be sequestered to
40 compel his appearance and performance of any de-

Amended Bill for Separate Maintenance.

cree as shall seem fit to your Honor; and that defendant may be required to pay your oratrix a proper amount for counsel fees, and that she may have such further equity as your Honor shall seem meet.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena issuing out of and under the seal of this Honorable court, to be directed to the said Nicola Sabbarese, commanding him by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable court then and there to answer all and singular the said premises, and to abide by and perform such order and decree therein as your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your oratrix, as in duty bound, will ever pray, etc.

EUGENE A. LIOTTA,
Solicitor of Petitioner.

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Affidavit of Rosalie Sabbarese.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIE SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	} On Bill, etc. Affidavit.
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State of New Jersey, }
 County of Union, } ss.:

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

1. That she is the complainant in the foregoing cause about to be commenced against her husband for maintenance of herself.

2. That she was compelled to leave said defendant, her husband on account of his extreme cruelty.

30 3. That on June 4, 1927, your said oratrix and the defendant entered into an agreement wherein the defendant was to pay her the sum of Twelve (\$12.00) Dollars per week.

4. Defendant has not paid the petitioner any money toward support for a period of eight weeks.

The said defendant earns approximately \$3,000.00 per year.

ROSALIE SABBARESE.

Sworn and subscribed to before me
 this 19th day of May, A. D. 1928.

40 Nicholas A. Tomasulo,
 A Notary Public of New Jersey.

**Answer of Defendant to Complainant's Amended
Bill of Complaint.**

Filed Dec. 18, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,
Complainant,

and

NICOLA SABBARESE,
Defendant.

10

On Bill, etc.
Answer of
Defendant to
Complainant's
Amended Bill
of Complaint.

The answer of Nicola Sabbarese, defendant, to the Amended Bill of Complaint of Rosalia Sabbarese, complainant.

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1. This defendant admits paragraph 1 and in addition thereto the defendant says that complainant and the defendant were lawfully joined in the bonds of matrimony on the 18th day of October, 1903 by a Minister of the Gospel, at Madison, in the State of New Jersey.

2. This defendant admits paragraph 2.

30

3. This defendant admits that three children were born of the marriage aforesaid, to wit: Italo, who is now 24 years of age, Mary who is now 22 years of age, and married to Raymond Bryant and Flora, 17 years of age and unmarried.

4. This defendant denies paragraphs 4 and 5.

5. This defendant admits that a suit for main-

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*Answer of Defendant to Complainant's Amended
Bill of Complaint.*

10 tenance was instituted by the complainant in the Courts of New York as is alleged in paragraph 6 of the amended complaint and also admits that a separation agreement has been entered into, as is alleged in paragraph 6 of the amended complaint, but as to the remainder of said paragraph 6, this defendant denies each and every allegation thereof.

6. This defendant admits that he was to pay complainant the sum of \$12.00 per week as is alleged in paragraph 7 of the amended complaint, but denies the remainder of said paragraph.

7. This defendant denies paragraph 8.

20 8. This defendant has no knowledge or information sufficient to form a belief as to whether or not complainant is dependent for support of herself upon her own exertions as is alleged in paragraphs — of the annexed bill of complaint.

9. This defendant denies that his yearly salary is \$3,000 but admits that he is by profession a Minister of the Gospel as is alleged in paragraphs — of the annexed complaint.

30 10. This defendant says that during the first ten years of their married life, this defendant and complainant lived happily, and during the year 1914 a sudden change came over the complainant; she commenced to act indifferent towards this defendant; she gradually lost all affection and love for the defendant and her children; she gradually acquired a harsh and disagreeable temper and without provocation would become very angry with defendant, treat him mean, ignore him, act cruel towards him, refuse to cook wholesome food for
40 him, refuse to prepare breakfast for him and the

*Answer of Defendant to Complainant's Amended
Bill of Complaint.*

children; she neglected and refused to iron his clothes, make up the beds, sweep the rooms, wash the windows, and when this defendant prepared his meals and the meals of his children, complainant even refused to help him wash the dishes. She would leave the house for hours at a time, and when this defendant asked the complainant where she had been, she would fly into a violent rage and say that he suspected her of being unfaithful to him. She would go in the company of a Mr. Frank Carrieri constantly and on numerous occasions she has been seen in the company of men. This defendant saw the complainant on April 4th, 1927 in the company of Mr. Carrieri at the subway entrance of 18th Street and 7th Avenue, New York, and she did not return home on that day for a period of five hours thereafter. In 1922 the complainant told the defendant that she did not love him and refused to cohabit with him.

11. This defendant prays to be hence dismissed with his reasonable costs and charges on that behalf most wrongfully sustained.

Dated: December 11, 1928.

NICOLA A. SABBARESE, 30
Defendant.

LOUIS P. LONGOBARDI,
Of Counsel with Defendant.

Affidavit of Rev. Nicola Sabbarese.

Filed Oct. 18, 1928.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIE SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Affidavit.
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20 State of New Jersey, }
 County of Union, } ss. :

Reverend Nicola Sabbarese, being duly sworn, according to law upon his oath deposes and says :

1. I am the Pastor of the Italian Methodist Church at the corner of Second Avenue and Amity Street, Elizabeth, New Jersey, and have been the Pastor of this church since August 1st, 1927, having been appointed July 1st, 1927.

30 2. I reside at No. 73 Grove Street, Elizabeth, New Jersey.

3. I was married to my present wife, Rosalie Sabbarese on October 12th, 1903 at Madison, New Jersey.

40 4. About fourteen years ago, the existing trouble with my wife began, having begun while I was away on pastoral work with my wife. My wife left me for the first time and left for New York in the company of a certain Mr. Frank Carrieri. I

Affidavit of Rev. Nicola Sabbarese.

went to New York with a Mr. Michael Jianetti of Montclair, New Jersey to take her back home with me, so that I might be able to eliminate scandal for ourselves and scandal for our children.

5. When I was transferred to Chicago, Illinois where I was engaged as Superintendent of the Italian language work, my wife who had gone along remained with me but a few weeks, and left for the Bronx section of New York City, where she rented an apartment. I forwarded her the rents and moneys necessary for the support of herself and children. My wife neglected the children and was subpoenaed to Court a few times because my eldest daughter Mary did not attend school regularly, and because she permitted the children to roam in the streets.

6. About one year later I moved with my family to Montclair, New Jersey in an apartment belonging to my brother-in-law, in order that both my sisters, who reside in Montclair, New Jersey, could keep a careful watch over my daughters. My wife left my children alone every Sunday and holiday.

7. On account of these conditions, I asked to be transferred from Chicago, Illinois, and was given charge of a Church in Yonkers, New York.

8. When I came back from Chicago in 1922, she told me that she did not love me and refused to have any sexual relations with me. My wife refused to take heed of the gossip of the people of my congregation relative to her conduct. Every Sunday during the summer she would leave for Rye Beach, New York in the company of Mr. and

Affidavit of Rev. Nicola Sabbarese.

Mrs. Umberto Liberatore. My wife was never present at the church services.

9. In the summer of 1925 my wife went out in the company of a certain Mr. Peter Contenti. My wife and Mr. Contenti went riding in an automobile evenings and every Sunday. I begged my
10 wife to be careful of her conduct as the people of my congregation were talking, but she told me to mind my own business.

10. On Christmas Day, 1926, my children were home on vacation from school. Dinner was prepared. My wife left home and went to the home of Mr. Contenti. My son Italo went to the home of Mr. Contenti to ask my wife, his mother, to come home, but she refused and did not return home until 11:30 P. M.
20

11. 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.

12. On April 4th, 1927 I saw my wife in company with Mr. Carrieri. My wife met him at the entrance of the subway station at 18th Street and
30 7th Avenue, New York, and she did not return that day until the elapse of five hours.

13. 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 1½ years prior to June 14th, 1927.

40 14. My wife never performed any of the home

Affidavit of Rev. Nicola Sabbarese.

duties for the family. I did all the washing and cooking and taking care of the family, with the assistance of my two daughters.

15. My wife had no reason to go out and seek employment, but did go to work simply to give the people the impression that I forced her to seek employment.

10

16. Prior to June 14th, 1927 she had money deposited in a bank in Montclair, New Jersey and in a bank in New York City.

17. On May 6th, 1927 she left me. We were then residing in Yonkers, New York. I begged her for five hours not to leave home. 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 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. I continued said payments up to and including March 1st, 1928, and discontinued them for several reasons. Firstly: Because my earning capacity amounting to \$166.66 monthly is not sufficient to take care of my son Italo's education and support, the support and education of my daughter Flora, who attends Drake's College and the support of my daughter Mary, her husband and child. Mary's husband has been sick for a long period of time.

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Affidavit of Rev. Nicola Sabbarese.

Secondly: On February 26th, 1928 my wife who had never visited me or my children while in Elizabeth, came to the front of my home on Grove Street and spoke in loud and disturbing tones, pacing the sidewalk outside, causing a disturbance, although she had agreed in consideration of my payments to her of \$12.00 per week, not to molest me in anywise whatsoever.

18. I never treated my wife cruelly and always amply provided for her and the children. I never abused my wife mentally or physically and never spoke unkind words to her, nor did I at any time attempt to shoot her or any time use any force or attempt to do her any bodily harm. It is true, however, that we quarreled. It always occurred when my wife began to claim that I did not give her sufficient moneys to spend.

19. My wife is employed by the New York Knitting Mills at Nos. 310-318 6th Avenue, New York City, earning an average of \$25.00 per week, and has money deposited at the present time in her name in the Westside Savings Bank, Inc. at the corner of 9th Street and 6th Avenue, New York City.

20. I always loved my wife and never wanted her to leave me, and do not yet know why she has left me.

21. I have a photograph in my possession of my wife taken in company of Mr. Peter Contenti, and in spite of said conditions being known to me, I had written my wife numerous times before she left me, not to leave for the sake of ourselves and the sake of our children.

Affidavit of Rev. Nicola Sabbarese.

22. I earn at the present time a salary of \$166.-66 per month, which amount is not sufficient to meet all the expenditures of maintenance for myself and children and for the education of my children, Italo and Flora.

NICOLA A. SABBARESE.

Sworn and subscribed to before me
this 31st day of May, 1928.

Miriam Kucker,
A Notary Public of N. J.

10

Replication.

Filed Oct. 18, 1928.

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IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,
Complainant,

and

NICOLA SABBARESE,
Defendant.

On Bill, &c.

Replication.

30

The complainant joins issue with the defendant in the above entitled cause.

EUGENE A. LIOTTA,
Solicitor of Complainant.

40

Order Denying Alimony Pendente Lite.

Filed July 3, 1928.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Order Denying Alimony Pendente Lite.
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20 This matter being opened to the Court by Eugene A. Liotta, Solicitor of complainant, and in the presence of Louis P. Longobardi, of counsel with defendant;

It is on this 26th day of June, 1928, ORDERED that the application for alimony pendente lite be denied;

30 And it is further ordered that the said Rosalia Sabborese do pay to said Nicola Sabbarese, defendant, or to his solicitor the costs of the application for alimony pendente lite.

E. R. WALKER,
C.

Respectfully advised:

M. L. BERRY,
Vice Chancellor.

Order of Reference.

Filed Jan. 18, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,
Complainant,

and

NICOLA SABBARESE,
Defendant.

On Bill, etc.

Order of
Reference.

10

This matter being opened to the court by Eugene A. Liotta, Solicitor of the complainant, and it appearing that Louis P. Longobardi, Solicitor of the defendant, has consented hereto;

20

It is, on this 18th day of January, Nineteen Hundred and Twenty-nine, ORDERED, that the above stated cause be referred to the Honorable M. G. Buchanan, one of the Vice Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

30

E. R. WALKER,

C.

I hereby consent to the entry of the above Order.

LOUIS P. LONGOBARDI,
Solicitor of the Defendant.

40

Designation.

Filed Feb. 1, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Designation.
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20 This matter being opened to the court by Eugene A. Liotta, Solicitor for and of Counsel with the Complainant, and it appearing that Louis P. Longobardi, Solicitor for and of Counsel with the defendant has consented hereto;

30 It is on this thirty-first day of January, Nineteen Hundred and Twenty-nine, ORDERED that the sixth day of June, Nineteen Hundred and Twenty-nine, at the hour of 10:30 o'clock in the forenoon of that day at the Chancery Chambers in the City of Elizabeth, be designated as the time and place for the hearing of the above entitled cause.

MALCOLM G. BUCHANAN,
V. C.

I hereby consent to the entry of the foregoing Order.

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

Order.

Filed June 18, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ROSALIA SABBARESE,
Complainant,

and

NICOLA SABBARESE,
Defendant.

On Bill, etc. 10
Order.

It appearing that Louis P. Longobardi, Solicitor for defendant in the above cause has requested leave to file an amended answer, and it further appearing that Eugene A. Liotta, Solicitor for complainant has consented thereto; 20

And the court being of the opinion that the opportunity should be afforded to defendant to file an amended answer;

It is thereupon on this 6th day of June, 1929, ORDERED that the defendant be permitted to file an amended answer, and that the complainant be permitted to file a replication to the amended answer of defendant. 30

E. R. WALKER,
C.

Respectfully advised:

MALCOLM G. BUCHANAN,
Vice Chancellor.

We hereby consent to the entry of the foregoing Order.

EUGENE A. LIOTTA,
Solicitor for Complainant. 40
LOUIS P. LONGOBARDI,
Solicitor for Defendant.

**Answer of Defendant to Complainant's Bill of
Complaint.**

Filed June 18, 1929.

IN CHANCERY OF NEW JERSEY.

70/573

10	Between <div style="text-align: center;"> ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant. </div>	} On Bill, etc. } Answer of } Defendant to } Complainant's } Amended Bill } of Complaint.
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20 The answer of Nicola Sabbarese, defendant, to the Amended Bill of Complaint of Rosalia Sabbarese, complainant, is as follows:

1. This defendant admits paragraph 1 and in addition thereto the defendant says that complainant and defendant were lawfully joined in the bonds of matrimony on the 12th day of October, 1903 by a Minister of the Gospel, at Madison, in the State of New Jersey.

30 2. This defendant admits paragraph 2, but denies that portion of the paragraph wherein it is alleged as follows: "The said defendant being a minister left his wife by consent and lived in Chicago, Ill. for a period of approximately one year, while your oratrix resided with his relatives at Montclair for a period of approximately one year. The said defendant then came back east and lived with your oratrix for a period of three years, that

40 is until May, 1928, at which time your said ora-

*Answer of Defendant to Complainant's Amended
Bill of Complaint.*

trix was compelled to leave said defendant, her husband, on account of his extreme cruelty," and this portion of the paragraph the defendant denies, and says that he did not leave his wife by consent, and went to Chicago for a period of approximately one year, but rather the defendant and complainant lived in Chicago for sixteen days and the complainant left defendant to reside in New York City, where she resided for a period of one year, and subsequently went to Montclair to reside with the relatives of the defendant.

10

3. This defendant admits that three children were born of the marriage aforesaid: Italo, who is now twenty-five years of age, Mary who is now twenty-three years of age and is married to Raymond Bryant, and Flora, who is now eighteen years of age and unmarried.

20

4. This defendant denies paragraphs 4 and 5.

5. This defendant admits that a suit for maintenance was instituted by the complainant in the Courts of New York, as is alleged in paragraph 6 of the amended complaint, and also admits that a separation agreement has been entered into, as is alleged in paragraph 6 of the amended complaint, but as to the remainder of said paragraph 6, this defendant denies each and every allegation thereof.

30

6. This defendant admits that he was to pay complainant the sum of \$12.00 per week, as is alleged in paragraph 7 of the amended complaint, but denies the remainder of said paragraph.

7. This defendant denies paragraph 8.

40

*Answer of Defendant to Complainant's Amended
Bill of Complaint.*

8. This defendant has no knowledge or information sufficient to form a belief as to whether or not complainant is dependant for support for herself upon her own exertions, as is alleged in paragraph—of the amended Bill of Complaint.

10 9. This defendant denies that his yearly salary is \$3,000, but admits that he is by profession a Minister of the Gospel, as is alleged in paragraph—of the Amended Bill of Complaint.

20 10. This defendant says that during the first ten years of their married life, this defendant and complainant lived happily, and during the year 1914 a sudden change came over the complainant; she commenced to act indifferent towards this defendant; she gradually lost all affection and love for the defendant and her children; she gradually acquired a harsh and disagreeable temper and without provocation would become very angry with defendant, treat him mean, ignore him, act cruel towards him, refuse to cook wholesome food for him, refuse to prepare breakfast for him and the children; she neglected and refused to iron his clothes, make up the beds, sweep the rooms, wash the windows, and when this defendant prepared his meals and the meals of his children, complainant even refused to help him wash the dishes. She would leave the house for hours at a time, and when this defendant asked the complainant where she had been, she would fly into a violent rage and say that he suspected her of being unfaithful to him.

30

40 11. The complainant, since her marriage to your petitioner, and in the month of July, in the year 1921 or 1922, at #531 East 157th Street,

*Answer of Defendant to Complainant's Amended
Bill of Complaint.*

Bronx, New York, committed adultery with a man known as Frank Carrieri. This fact of adultery was not known to the defendant at the time that the defendant entered into the separation agreement set forth in the Amended Bill of Complaint, and he never had any knowledge or information relative to the adultery committed by the complainant, until after the institution of this suit in the Court of Chancery of the State of New Jersey. 10

12. The defendant says that the execution of the agreement on the 14th day of June, 1927 was procured by fraud, in that the complainant concealed from the defendant the material fact of her adultery, constituting a fraud in the inducement of the contract. 20

This defendant prays to be hence dismissed with his reasonable costs and charges on that behalf most wrongfully sustained and prays for the cancellation of the agreement entered into between the defendant and complainant on the 14th day of June, 1927.

Dated: June 6, 1929.

NICOLA A. SABBARESE, 30
Defendant.

LOUIS P. LONGOBARDI,
Of Counsel with Defendant.

Conclusions.

70/573

Filed June 15, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	Conclusions.
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ON FINAL HEARING.

20 MR. EUGENE A. LIOTTA, for Complainant.
 MR. LOUIS P. LONGOBARDI, for Defendant.

BUCHANAN, V. C.

30 Complainant sues in the alternative, for main-
 tenance under the statute, or the enforcement of a
 covenant for the payment of \$12.00 per week under
 a separation agreement. Defendant answers, deny-
 ing any abandonment or non support and alleg-
 ing adultery in bar of maintenance; admitting the
 separation agreement and the cessation of his pay-
 ments thereunder, and alleging in justification
 thereof, first, a breach by the wife of the mutual
 covenant against molestation in the agreement, and
 second, that his execution of the agreement was
 procured by fraud; he also counterclaims for the
 cancellation of the agreement.

40 (The foregoing states the pleadings in accord-
 ance with the amendments ordered at the hearing:

Conclusions.

which amendments are of course to be made before decree.)

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 the 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. 10

In the early part of 1928 the wife breached her covenant not to molest the husband, and he stopped making the payments to her under the agreement. She therefore brought this suit. She had however made no effort or request to resume cohabitation, and hence was still not entitled to decree for maintenance. She would have been entitled, as the case stood then, to decree to enforce the payments under the agreement,— for the breach of the covenant against molestation is no defence to a suit to enforce payment under the agreement. The covenants are independent; and in legal contemplation the promise of payment is in substitution of the legal duty to support. *Thomas v. Thomas*, 66/252, not yet reported; affirmed May Term 1929. 20 30

After the filing of his answer in this suit, the husband learned for the first time of his wife's prior adultery. It is evident that he would not now take his wife back,—he said he would not have taken her back at the time of the execution of the agreement, if he had known then of the adultery.

The evidence satisfies the Court that the wife was in fact guilty of the adultery charged. There was no condonation thereof by the husband. 40

Conclusions.

10 It would certainly seem that the wife's adultery is a good defence to a suit for maintenance. It would be sufficient to entitle him to 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. See *Whittle v. Schlemm*, 94 N. J. L. 112, at 116. 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.

20 As to her right to enforce payment under the agreement,—it was held in *Whittle v. Schlemm*, *supra*, that adultery by the wife *subsequent* to the execution of such a separation agreement is no bar to her right to enforce the payments, unless the agreement conditions the payment upon her remaining chaste. The present agreement contains no such condition.

30 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.

40 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. 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

Conclusions.

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.

The evidence shows that he would not have executed the agreement if he had known of the prior adultery. 10

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.

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30

40

Decree.

70/573

Filed June 27, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Decree.
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20 This cause coming on to be heard in the presence of Eugene A. Liotta, of Counsel with the Complainant, and Louis P. Longobardi, of Counsel with the Defendant, on bill, answer and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor, that the complainant and defendant were lawfully joined in the bonds of matrimony on or about the 12th day of October, A. D.

30 One thousand nine hundred and Three, and it further appearing that the complainant is guilty of adultery and was guilty of adultery prior to the execution of the Separation Agreement dated the 14th day of June, 1927, and that the complainant concealed this material fact from the defendant, which constituted a fraud in the inducement of the contract;

40 And it further appearing to the Court that the

Decree.

complainant has not sustained the truth of the allegations of her Bill of Complaint and is not entitled to the relief therein prayed;

It is thereupon on this 20th day of June, nineteen hundred and twenty-nine ordered, Adjudged and Decreed that the complainant's bill be, and the same is hereby dismissed; 10

And it is further ordered that the Separation Agreement entered into between the complainant and defendant on June 14th, 1927 be and the same is hereby cancelled.

E. R. WALKER
C.

Respectfully advised:

MALCOLM G. BUCHANAN, 20
Vice Chancellor.

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Notice of Appeal.

Filed Aug. 26, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Notice of Appeal.
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20 Rosalia Sabbarese, the above named complainant, hereby appeals from the decree filed in this cause, and dated June 20th, 1929, and from every part thereof, to the Court of Errors and Appeals, the last resort in all causes.

Dated: August 12th, 1929.

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

30 I conceive that there is good cause for appeal in the above stated cause.

EUGENE A. LIOTTA.

Amended Notice of Appeal.

Filed Sept. 16, 1929.

IN CHANCERY OF NEW JERSEY.

Between ROSALIA SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Amended Notice of Appeal.	10
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Rosalia Sabbarese, the above named complainant, hereby appeals from the decree filed in this cause by the Honorable Malcolm G. Buchanan, Vice Chancellor, and dated June 20th, 1929, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: August 28, 1929.

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

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

EUGENE A. LIOTTA.

Petition of Appeal.

cree and from every part thereof on the ground that the same is erroneous, for the said Chancellor should have recited and adjudged that your petitioner was not guilty of adultery and that your petitioner did not perpetrate a fraud upon respondent; that there was sufficient proof submitted before the Court to entitle her to maintenance under the said separation agreement; that the separation agreement should not have been cancelled. 10

The proofs submitted to the court were that a separation agreement was entered into between the petitioner and her husband, Nicola Sabbarese. The reason why said agreement was entered into between the parties was on account of the cruelty of the defendant, Nicola Sabbarese.

The testimony of the petitioner was that at no time did she ever commit any act of adultery with anyone. That on account of the cruelty of the respondent, Nicola Sabbarese, she was compelled to leave him; that she sought advice of counsel, and that subsequent thereto a separation agreement was entered into between petitioner and the respondent, at which time each party was represented by counsel; that she received payment under said separation agreement until March 27, 1928. 20

The defense of the respondent was that unbeknown to him petitioner committed adultery in the year 1921, at 531 East 152nd Street, Bronx, New York; that he did not know of the alleged act of adultery until a maintenance suit had been started by this petitioner, and at the that time he saw an affidavit signed by his daughter, Flora, alleging that in the year 1921 she saw her mother in a compromising manner. 30

An answer had been filed by the respondent ad- 40

Petition of Appeal.

mitting the allegations of the complainant's bill, excepting that he did not earn as much as was alleged in the bill, and denied the acts of cruelty.

10 During the hearing before Vice Chancellor Buchanan, the respondent, after being told his answer did not set forth a legal defense, amended his answer, and in his amendment he alleged adultery on the part of the wife in the year 1921, and a concealment of that fact from him. No cross-bill was filed.

20 The proofs to show the acts of adultery by the petitioner was the sole testimony of the daughter of petitioner and respondent, Flora, who testified that in the year 1921, although she did not remember the month or the day, a certain Carrieri, the alleged paramour of the petitioner, called at the house of this petitioner in Yonkers, New York; that at that time she was eleven years old; that the alleged paramour gave the witness Flora some money with which to buy candy or ice cream; that the said Flora did go out to buy said candy or ice cream, and that she returned within a period of approximately fifteen or twenty minutes, at which time she tip-toed up the steps, and heard a moan on the part of her mother, with caresses on the part of the alleged paramour; she saw no acts of adultery, although she said that the bed, which was approximately twenty-five feet away from where said witness looked through the key-hole, was mussed up.

30 There was no other testimony connecting this petitioner with said acts of adultery, which she forcefully denied.

40 The proofs in the case further show that the said respondent was of a jealous disposition, and was

Petition of Appeal.

of such disposition from the date of their marriage to the date of the signing of the separation agreement; that he was suspicious of the alleged paramour, Carrieri, and that his jealousy was created by reason of said suspicions. Although this petitioner denied any acts of adultery, as a matter of equity and good conscience, even though petitioner did commit adultery with Carrieri, which this petitioner does firmly deny, there was no fraud or concealment of any material fact, because at the time that the said respondent did sign said separation agreement, he was jealous of his wife, the said petitioner; and at no time prior to the signing of the agreement did he solicit from his wife any information as to whether or not she at any time committed adultery. 10

The respondent further testified to the fact that he would, under no consideration, again live with his wife. 20

Your petitioner therefor prays that the said decree be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

EUGENE A. LIOTTA,
Solicitor of Petitioner.

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Answer to Petition of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	ROSALIA SABBARESE, Complainant-Appellant, vs. NICOLA SABBARESE, Defendant-Appellee.	} Answer to } Petition } of Appeal.
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20 The answer of Nicola Sabbarese, the above named Appellee, to the Petition of Appeal of Rosalia Sabbarese, the above named Appellant.

30 This Appellee not admitting the truth of all or any of the matters in the said Petition of Appeal contained, for answer thereto nevertheless admits that a decree was, on June 20th, 1929 made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purpose in said petition mentioned, and as therein set forth; but as to the substance and form of said decree, this Appellee begs leave to refer thereto when the same shall be produced.

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

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

Demand for Security for Costs.NEW JERSEY COURT OF ERRORS AND
APPEALS.

ROSALIA SABBARESE,
Complainant-Appellant,

vs.

NICOLA SABBARESE,
Defendant-Appellee.

Demand for
Security
for Costs.

10

To EUGENE A. LIOTTA,
Solicitor for and of Counsel
with Appellant,
207 Broad Street,
Elizabeth, New Jersey.

20

Dear Sir:

You are hereby notified that on Tuesday, the fifteenth day of October, Nineteen Hundred and Twenty-nine, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard at the Chambers of the Court of Errors and Appeals, in the State House, Trenton, New Jersey, I shall apply for an order compelling the Complainant-Appellant, to give security for costs pursuant to the statute, on the ground, that as stated in the Bill of Complaint filed in the Court of Chancery of the State of New Jersey, said Complainant-Appellant is a non-resident.

30

Dated: August 23rd, 1929.

Yours truly,

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

40

**Petition for Security for Costs from Non-resident
Complainant-Appellant.**

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p style="text-align: center;">ROSALIA SABBARESE, Complainant-Appellant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">NICOLA SABBARESE, Defendant-Appellee.</p>	<p style="font-size: 2em;">}</p> <p>On Appeal from the Court of Chancery.</p> <p style="font-size: 2em;">}</p> <p>Petition for Security for Costs from Non-resident Complainant- Appellant.</p>
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20 The Petition of Nicola Sabbarese, of the City of Elizabeth, in the County of Union and State of New Jersey respectfully shows that :

1. Your petitioner is the Appellee in the above entitled cause.
2. Notice of appeal has been filed with the Clerk of the Court of Errors and Appeals of the State of New Jersey and a copy of said notice of appeal has been served upon the solicitor of said Nicola Sabbarese.
- 30 3. The said Appellant, Rosalia Sabbarese, resides out of the State of New Jersey, to wit, in the State of New York, and has not filed with the Clerk of this Court a bond to this defendant for costs in said cause, pursuant to the statute in such case made and provided.

Your petitioner therefore prays that this appeal may be stayed until such bond be filed.

40 LOUIS P. LONGOBARDI,
Solicitor for Defendant-Appellee.

*Petition for Security for Costs from Non-resident
Complainant-Appellant.*

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

Louis P. Longobardi, of full age, being duly sworn, according to law, upon his oath deposes and says that he is the Solicitor for the above named Nicola Sabbarese, and that said Rosalia Sabbarese is a resident of the State of New York and has been a resident there for the past three years. 10

LOUIS P. LONGOBARDI.

Sworn and Subscribed to before me
this 23rd day of August, 1929.

Miriam Kueker,
A Notary Public of N. J.

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Order.NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	Between ROSALIA SABBARESE, Appellant, and NICOLA SABBARESE, Respondent,	}	On Appeal Order.
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20 This matter being opened to the Court by Eugene A. Liotta, of counsel with the appellant, in the presence of Louis P. Longobardi, of counsel with the respondent; now for good cause shown;

30 It is on this day of October, Nineteen hundred and twenty-nine on motion of Eugene A. Liotta, of counsel with the Appellant, ORDERED that the respondent, Nicola Sabbarese, do pay to Eugene A. Liotta, Solicitor of Rosalia Sabbarese, Appellant, the sum of Two Hundred (\$200.00) Dollars, to cover costs, counsel fees and printing of state of cause of appeal, and that no further sum is to be ordered paid by Nicola Sabbarese, to cover costs and counsel fee, unless the opinion of Malcolm G. Buchanan, Vice Chancellor of the Court of Chancery is reversed by this Honorable Court.

And it is further ordered, that the appellant be

Order.

relieved from making the deposit of one hundred dollars required by the twenty-first rule of this court.

On motion of

EUGENE A. LIOTTA,
Solicitor of Appellant.

Entered:

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Testimony.

70-673

IN CHANCERY OF NEW JERSEY.

10	Between ROSALIE SABBARESE, Complainant, and NICOLA SABBARESE, Defendant.	}	On Bill, etc. Testimony.
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20 Testimony taken in the above entitled cause, at
 the Union County Court House, Elizabeth, New
 Jersey, on Thursday, the sixth day of June, 1929,
 at eleven-thirty o'clock, A. M., (Daylight Saving
 Time)

Before—HON. MALCOLM G. BUCHANAN,
 Vice Chancellor.

APPEARANCES:

EUGENE A. LIOTTA, ESQ., for Complainant;
 LOUIS P. LONGOBARDI, ESQ., for Defendant.

30

ROSALIA SABBARESE, the above named com-
 plainant, being duly sworn in her own behalf, tes-
 tifies as follows:

Mr. Liotta: The answer of the defendant
 admits the extreme cruelty, and also the
 agreement mentioned in the bill of com-
 plaint.

40

Rosalia Sabbarese—Direct.

Mr. Longobardi: That is a typographical, error, your Honor, and we deny it through affidavits. I would like to amend.

The Court: I will permit you to amend your answer.

Mr. Longobardi: The amended bill of complaint has conflicting dates; they had better be straightened out, I think. 10

Mr. Liotta: The parties were separated on June 4th, 1927.

I offer in evidence the agreement, dated June 14th, 1927.

Said agreement is marked Exhibit C-1.

The Court: Is it admitted that the execution of it was on the date it bears?

Mr. Longobardi: Yes, sir. 20

Direct-examination by Mr. Liotta:

Q. Mrs. Sabbarese, where do you live? A. 605 West 147th Street, New York.

Q. Where does your husband live? A. When I left home?

Q. Where does he live now? A. Now he lives—

Q. Where does he live? A. In Elizabeth, N. J.

Q. How long has he lived in Elizabeth, N. J.? 30

A. I think two years, I think.

Q. You were married on the—What day were you married on? A. October twelfth.

Q. What year? A. 1903.

Q. October 12th? A. October 12th.

Q. When you were married where did you live?

A. Morristown, N. J.

Q. How long did you live in Morristown? A. One year, I think. 40

Rosalia Sabbarese—Direct.

Q. How did you get along with your husband while you were in Morristown? Did you ever have any quarrels in Morristown? A. Oh, yes, the first time.

10 Q. When was the first time you had a quarrel with your husband? A. The first time I married I had a quarrel with my husband.

Q. The first time you were married? A. Yes.

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?

20 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 fourteenth 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.

30 Q. In what way was he cruel? A. You know, he had a knife, and shot to me; have a revolver and the scissors, and everything he had with his hands.

Q. Did he ever call you any names? A. Son-of-a-bitch, and I can't say in English, and some bad word.

40 Q. Did he accuse you of going out with other men? A. Yes, no, yes, just some jealousy. I can't talk with any man, he accuse me of having something to do with the man.

Rosalia Sabbarese—Direct.

Q. Who was it? A. The first time he said Mr. Carrieri, then Mr. Contenti and Mr. Liberatore; every man I talked to he say I am bad; I can't talk to anybody.

Q. Where did your husband live at that time?
A. When he said this?

Q. Yes? A. Yonkers.

Q. What address? A. 32 Undercliff Street.

Q. What was your husband's profession? A. Minister.

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.

Q. When he made these accusations against you did you get a lawyer in New York? A. Yes. 20

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.

Q. After this suit was started did your husband hire a lawyer? A. What? 30

Q. Did your husband have a lawyer? A. Sure, he have a lawyer.

Q. Was that the time this agreement was entered into? A. Yes, sir.

Q. Was that the time you made the separation agreement? A. Yes.

Q. Your husband didn't support you? A. No support.

Rosalia Sabbarese—Direct.

Q. What do you mean? A. You see, the husband no support me, I can't stand no more the cruel, too much. I stayed too long with him.

Q. How long did you stay with him. A. Twenty-three years, more.

10 Q. And during those twenty-three years was it a continuous quarrel? A. All the time.

Q. Why did you quarrel all the time, was it because he was jealous, or what? A. I think he is jealous.

Q. Did you ever give him any occasion to be jealous? A. No; for what occasion? I have no occasion. I stay home and work and look after the children and look after the house and everything for myself.

20 Q. Who was this Mr. Contenti that your husband was jealous of? A. I don't know for what.

Q. Who is he? Do you know him? A. Yes.

Q. Who is he? A. A member of the church.

Q. A member of the church? A. A member of the church, yes.

Q. And a friend of your husband? A. A friend of my husband.

30 Q. Have you a picture showing you, Mr. Contenti, Mr. Contenti's wife and your husband together? A. What?

Q. Let me see your photographs? A. (Witness produces them.)

Q. Is this Mr. Contenti (indicating)? A. No, this is Mr. Liberatore.

Q. Was he jealous of Mr. Liberatore? A. Mr. Liberatore, too, yes.

Mr. Liotta: I offer this picture in evidence.

40 Said picture is marked Exhibit C-2.

Rosalia Sabbarese—Direct.

Q. Who is this man and woman? (Showing witness another picture). A. Mr. Liberatore and his wife and me and my husband.

Mr. Liotta: I offer that in evidence.

Said picture is marked Exhibit C-3.

Mr. Longobardi: Here are some more pictures (producing them). You may use these if you wish to. 10

Q. Who is this man with you (indicating)? A. Mr. Contenti. The same picture I showed you for

Q. Just a minute. When was this picture taken? A. 32 Undercliff Street.

Q. When was it taken? A. I think—Let me see—I think two years ago, I think, because it is 20

Mr. Liotta: I offer it in evidence.

Said picture is marked Exhibit C-4.

Q. I show you another picture. A. Yes, sir.

Q. And ask you if this was taken at the same time that the other picture was taken? A. Yes, sir, this is the same picture with Mr. Contenti.

Mr. Liotta: I offer that picture in evidence. 30

Said picture is marked Exhibit C-5.

Q. Who is that (indicating)? A. Some Chinaman, a member of the church.

Q. You say Mr. Contenti and this Chinaman were members of your husband's church? A. Yes.

Q. Were they taken at the same time? A. Yes.

Q. Whose camera was used? A. What? 40

Rosalia Sabbarese—Direct.

The Court: What pictures are you referring to?

Mr. Liotta: C-4 and C-5.

Q. Were Exhibits C-4 and C-5 taken at the same time? A. Yes.

10 Q. Whose camera was used? A. The Chinaman's.

Q. For how long was this Chinaman a member of your parish of the church you belonged to? A. I don't know how long, they like to go in the church.

Q. And where was this picture taken? A. 32 Undercliff, near my house.

Q. Near your own house? A. Yes.

20 Q. Which picture was taken first, you with Mr. Contenti or with the Chinaman? A. No, me, my daughter, ha! ha! (laughing), yes sir, this.

Mr. Liotta: I offer this picture in evidence.

Said picture is marked Exhibit C-6.

30 Q. Now, you say Exhibits C-4, 5 and 6 were taken together—these three pictures? A. Ha! Ha! (laughing), Yes, and one for my daughter, too. And this, too (indicating). This is all the same, see?

Mr. Liotta: I offer this picture in evidence.

Said picture is marked Exhibit C-7.

Q. Was there anybody else there besides you, this Chinaman, Mr. Contenti and your daughter? A. Don't say nothing for the Chinaman—

40 Q. Listen to my question. Was there anybody

Rosalia Sabbarese—Direct.

else there at that time when this picture was taken, besides you, your daughter and Mr. Contenti? A. Yes.

Q. Who was there besides those? A. Nobody.

Q. Nobody else? A. Yes, no, nobody.

Q. Whose picture is this, Mrs. Sabbarese (exhibiting picture)? A. Mr. Carrieri.

Q. Was he also a parishioner of your church? A. Yes, a church in Massachusetts.

Q. Where was this taken? A. I don't know. My husband have many pictures for Mr. Carrieri. I don't know.

Mr. Liotta: I offer that in evidence.

Said picture is marked Exhibit C-8.

Q. Did you at any time have any sexual relations with any man but your husband? A. I don't know —no. 20

Q. You did not? A. No.

Q. When did you leave your husband? A. In the house there?

Q. Yes. A. I think May 7.

Q. 1927? A. '27, that's all right.

Q. Was that before the agreement was signed between you and your husband? Was that before the contract was signed? A. No. 30

Q. Did you leave him first and then— A. No, I waited for my lawyer say to go out, and I go.

Q. When did you go out, before you had the contract signed or after? A. After.

Q. After? A. Yes, sir.

Q. Did your husband pay you \$12.00 a week?

A. My husband paid me \$12.00 a week, yes.

Q. When did he make the last payment? A. March 27. 40

Rosalia Sabbarese—Direct.

Q. Of this year? A. Yes.

Q. 1928? A. Now for fifteen months I had no money.

By the Court:

10 Q. You said you did not know whether you had had sexual intercourse with anybody but your husband— A. No.

Q. You mean 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.

Q. Do you understand what I am saying? A. I don't understand. This trouble—

20 Q. Were you still living with your husband when this contract was signed? A. Yes, I lived with my husband.

Q. This contract was signed in June, 1927? A. Yes.

Q. Where were you living then? A. I go to New York, you see. My lawyer say I can go.

Q. Where were you living when this contract was signed? A. In New York.

Q. You were not living with your husband then? A. No.

30 *By Mr. Liotta:*

Q. How much did your husband earn a year? A. Now I don't know; I don't know, I don't remember.

Mr. Longobardi: \$166.66 per month.

Q. Are you working? A. Sure.

40 Q. Where? A. In the knitting mills, for sweaters.

Rosalia Sabbarese—Cross.

Q. For what company? A. Oh, my! you want to know that?

Q. What is the name of the company? Yes. A. Because I can't remember everything.

Q. The New York Knitting Mills? A. Yes, 20th and 19th Street.

Q. How much do you make a week? A. Before 10
for \$15.00 a week.

Q. How much are you making now? A. Now?

Q. Yes, now. A. Twenty.

Q. \$20.00 a week? A. Yes.

Cross-examination by Mr. Longobardi:

Q. Mrs. Sabbarese, you say you continuously quarreled with your husband? A. What I continue? No, I no continue. 20

Q. Did you always fight with your husband? A. Sure, all the time we fight, I say.

Q. You were married 22 years? A. 23, more.

Q. And when these fights occurred who would be in the house? A. Nobody—me and my husband and the mother.

Q. Whose mother? A. The mother of my husband.

Q. She is dead now? A. Sure, she is dead. 30

Q. Who else? A. Nobody.

Q. The children? A. Yes; they was small.

Q. What are their names? A. Flora and Italo.

Q. They would be home? A. The first time we was married?

Q. No. A. Now?

Q. Whenever you fought with your husband? A. Well—

Q. Wait a minute. Whenever you fought with your husband would these children be home? A. 40

Rosalia Sabbarese—Cross.

Oh, they stayed all the time in college.

Q. Was Flora in college? A. Yes, my boy, he never stayed home.

Q. In the summer months would they come home? A. Yes.

10 Q. Would there be any fights in the summer months? A. Oh, sure.

Q. And the children there? A. Oh, yes, sure.

Q. Who sent the children to college? A. My husband.

Q. Who paid the expenses? A. My husband, not me.

Q. Who supported the family? A. My husband.

Q. And supported them well? A. All right, sure; I can't say no.

20 Q. You can't say he didn't support you? A. Yes.

Q. He supported you very well? A. No support for me; he supported the children.

Q. No support for you? A. Oh, no.

Q. Weren't you living in the same house? A. For what? I stayed one year for no support, I stayed home. You see—

30 Q. Wait. How much would your husband send you—Your husband lived with you all the time during these twenty-two years? A. Why certainly.

Q. Wouldn't he be sent to Chicago? A. Oh, yes.

Q. And you remained in New York. A. I remained in New York for my children.

Q. You wouldn't be in Chicago with your husband? A. No; I stayed sixteen days in Chicago.

Q. And your husband would go to Baltimore? A. Yes.

Rosalia Sabbarese—Cross.

Q. He was sent to different places? A. Yes, so many different places.

Q. You didn't always go with him? A. I go.

Q. You were not in Chicago with him? A. No. I go sixteen days in Chicago.

Q. Would he send you some money when he would be in these places? A. Oh, yes, just a few, because I go to work; I can't live on my money. 10

Q. You lived in Montclair, N. J. for two years? A. One year.

Q. Did he send you any support? A. My husband did.

Q. Did he send you support? A. Yes.

Q. In whose house were you living? A. The brother-in-law's and sister-in-law's.

Q. The house belonging to the Rev. Sabbarese's sister? A. Yes. 20

Q. Now, you didn't go out with any other men, 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? 30

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. 40

Rosalia Sabbarese—Cross.

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.

10 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—

By the Court:

Q. How many years? A. Ten, I think—twelve.

By Mr. Longobardi:

20 Q. Where did you meet Mr. Carrieri? A. Fall River, Mass., a member of the church.

Q. And then you went to Baltimore? A. Sure I go; because my husband go to Baltimore I go.

Q. Did Mr. Carrieri ever go to Baltimore? A. Sure.

Q. And then you went back to New York from Baltimore? A. Go back to New York.

30 Q. After you left Baltimore did you go to New York? A. I leave Baltimore from New York one week because my husband was cruel to me.

Q. Did Mr. Carrieri go to New York? A. I don't know; I don't see when I come out from Baltimore.

Q. After you left Baltimore did Mr. Carrieri ever come to visit New York? A. Rochester, N. Y., yes.

By the Court:

40 Q. After this agreement was signed did your husband pay you \$12.00 a week? A. What?

Rosalia Sabbarese—Cross.

Q. Did your husband pay you \$12,000 a week after the agreement was signed? A. Yes.

Q. How long did he pay it to you? A. One year.

Q. For one year? A. Yes, sir.

Q. And since that time he has not paid you the \$12.00 a week? A. Yes.

10

Q. Has he or hasn't he? A. I don't understand what he says.

Q. Do you know what \$12.00 a week is? A. Yes.

Q. Does your husband pay you that now? A. No pay, no.

Q. How long has it been since he did pay it? A. In March 27, March 1927.

Q. 1927? A. Yes.

Q. That can't be; the agreement wasn't made until June, 1927. A. '28.

20

The Court: Is that admitted?

Mr. Longobardi: Yes, sir. We say that if we had known that she had committed adultery we would never have entered into this contract.

The Court: You might have instituted a suit to set aside the contract.

Mr. Longobardi: Will your Honor permit me to amend the answer? 30

The Court: Just a minute. I understand that your defense, then, is that the contract was fraudulently obtained?

Mr. Longobardi: Yes, sir.

The Court: By reason of the wife having been guilty of adultery and the concealing of it from her husband. Does that constitute your defense? 40

40

Rosalia Sabbarese—Cross.

10 Mr. Longobardi: That is first. And secondly, they were not in any way to disturb one another. And Mrs. Sabbarese has been in his home and church many times. Around the church she didn't cause any disturbance, but around the home she did. And that is why he did not send her any check. And she has been in Elizabeth four or five other times since that time.

20 The Court: As I understand from counsel, the defenses in this suit, which amounts essentially to a suit for specific performance of the separation agreement, are two: one that the complainant has violated the covenant in that separation agreement, to refrain from annoying or molesting the defendant; secondly, that the agreement was obtained by fraud, in that the complainant had, prior to the execution of the agreement, been guilty of adultery, and that that was not known to the defendant at the time he executed the agreement, and that if it had been so known to him, he would not have executed the agreement?

30 Mr. Longobardi: Yes, sir.

40 The Court: The defendant may move to amend his answer in that behalf, and an order will be made denying leave to set up the breach of the agreement by molestation, for the reason that even if that be proven it would not be a sufficient answer for recovery under the agreement. The defendant's objection thereto may be noted if desired. The order will grant leave to set up the allegation of fraud by reason of the adultery, and

Rosalia Sabbarese—Cross.

of course there will be a replication denying the adultery. That means that that is to be the sole issue tried here today.

The adultery is alleged to have been when, where and with whom?

Mr. Longobardi: 1921, at No. 531 East 157th Street, Bronx, New York. And I 10
move to amend formally.

Mr. Liotta: We deny that.

The Court: Let the record show that the complainant consents to all this, and to the trial on that issue of adultery. It might not be a defense, but I will take the testimony on that point.

20

NICOLA SABBARESE, the above named defendant, being duly sworn in his own behalf, testifies as follows:

Direct-examination by Mr. Longobardi:

Q. Reverend, you have been in Elizabeth for two years? A. Yes, sir.

Q. And you always lived with your wife up to the time you entered into this agreement? A. 30
May 6th, 1927, when she left my home.

Q. May 6th she left your home? A. Yes, sir.

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. 40

Nicola Sabbarese—Direct.

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

Q. Did you know of any immoral act or any misconduct or any adultery of any kind committed by your wife at the time this was entered into?

Mr. Liotta: Objected to.

10 The Court: Objection overruled.

A. No.

Q. When was the first time that you found out that your wife had committed any immoral act, or any adultery, or anything that would lead you to believe she had committed any act of adultery?

Mr. Liotta: That is objected to. The question calls for a conclusion. There is no proof before this court to show she ever committed adultery.

20

The Court: The evidence cannot be all in at once, Mr. Liotta. The objection will be overruled.

A. June, 1928, when my daughter made that statement.

Q. June, 1928? A. Yes, sir.

Q. Where were you, in Elizabeth, at that time?

30 A. Elizabeth.

Q. Where did you find out at first? Where were you when you found it out? In whose office? A. Oh, in your office.

Q. Did I give you any paper to read? A. No.

Q. Did I read any paper to you? A. Yes, the affidavit.

Q. Whose affidavit did I read? A. Flora's.

40 Q. Is that the first time you found out that your wife had anything to do with anybody relative to immorality? Is that right? A. The first time.

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Q. And that was after this suit in the Court of Chancery was started? A. Yes, a year after.

Q. You didn't know anything about that until a year after the suit was started? A. No; a year after this contract was signed.

Q. But at the time your wife was suing you here in the State of New Jersey, did you know it? A. No. 10

Q. You have always supported your family? A. Always.

Q. And your wife left you how long ago? A. May 6, 1927.

Q. And you have taken the children with you? A. She left the children with me all the time; they are now with me.

Q. How many are there? A. There are two now. Of course, my married daughter had been living until a month ago in Elizabeth. My son is with me and my daughter Flora. 20

Q. Did you ever treat your wife cruelly at any time during your twenty-two years of married life? A. I never did.

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. 40

Nicola Sabbarese—Direct.

By the Court:

Q. You say you would not have signed the paper if you had known it at that time? A. No.

Q. Would you have taken your wife back to live with you? A. When?

10 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.

20 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.

By Mr. Longobardi:

30 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:

40 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 children or position.

Nicola Sabbarese—Direct.

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.

Q. You were away from home very often, Reverend? A. No, except in the case of conference or some other meeting, which occurred once or twice a year. 10

Q. You were away from New York City. Your bishop would send you to various cities? A. Yes, the Methodist preacher would obey the church and go.

Q. Would your wife go with you all the time? A. Yes, until Chicago, and she was there sixteen days and she left me when I went to preach on Sunday morning, and I went back home and she wasn't there. 20

Q. She was there for sixteen days? A. Yes. She went to New York.

Q. Where did she go? A. She went to live in the house of her brother-in-law and then she went to an apartment in the Bronx, and then when I saw my children all the time that they don't go to school, and she was called to court, and on account of that I took my children to my brother-in-law's at Montclair and asked them to protect my children until I come from Chicago. 30

Q. You took them to Montclair? A. Yes, sir.

Q. How long did you remain in Chicago? A. For two years.

Q. When was that? A. 1922 I left. Bishop Nicholson begged me to stay and I told him my children—

The Court: Just answer the questions. 40

Nicola Sabbarese—Direct.

Q. Your wife remained in New York State for that period of two years? A. One year in New York. She move to Montclair, N. J.

Q. The last year she was in Montclair? A. Yes.

10 Q. And did you come home frequently from Chicago? A. Yes, most every two months to see my children.

Q. Did you order your wife to leave the apartment? A. Yes.

Q. And you ordered her to reside in New Jersey at Montclair, did you? A. Yes.

Q. Did you find an apartment for her there? A. Yes, at my brother-in-law's.

20 Q. Was Italo, your son, home with your wife during the first year of your stay in Chicago? A. No, I sent Italo to Mercersburg Academy so as to let him stay in New York while I was away.

Q. Just the two girls were home? A. Yes, sir.

Q. Flora, your daughter, was home with her mother? A. Yes, sir.

Q. Did you ever see your wife with any man? A. Well, I saw her fifteen years ago when I was in Baltimore; I opened the door and I found her embracing this man Carrieri.

30 Q. Just embracing him? A. Yes, and she came crying and said he wasn't doing nothing; and then I found him the second time. I said, "What are you doing in my home?" He said "I came to say goodbye to Mrs. Sabbarese." And after—

Q. Did you order him out of the house? A. Yes, sir.

Q. Did he get out of the house? A. He got out of the house, of course. He remained in Baltimore.

40 Q. Did he come back again? A. I found him

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in the house again. I told him, "What are you doing in my home?"

Q. And after? A. He left and went to New York.

Q. After you ordered Carrieri out of the house, how long did your wife remain with you in Baltimore? A. She was about a week or ten days, and went to New York and left me with the two children and went to New York. 10

Q. Who did you send to your wife from Baltimore to speak to her? A. Rev. Salvatore Musso. I called on him to come right away in Baltimore; I was in distress, I needed a friend. He came right away and came to see me—

Q. The Reverend Musso is here? A. Yes, sir.

Q. Who else did you send to New York to see your wife? A. My brother-in-law, by telephone I called him and told him to go right to Pennsylvania Station and asked him to see my wife— 20

Mr. Liotta: All this is without the presence of Mrs. Sabbarese.

The Court: Yes. Just answer the questions.

Q. Your brother-in-law did go to New York? A. Yes, sir. 30

Q. And did see Mrs. Sabbarese? A. Yes.

Q. And your brother-in-law is here? A. Yes.

Q. What is his name? A. Giannetti.

Q. And he is the landlord of the premises, of the house, where your wife resided while you were in Chicago? A. Yes.

Q. Did Mr. Giannetti meet Mrs. Sabbarese? A. Yes sir, he went to the house.

Q. And did Mr. Giannetti see Mrs. Sabbarese 40

Nicola Sabbarese—Direct.

and come back and speak to you then? A. No, I came to Montclair from Baltimore and I begged him to take her back because my church people—

Mr. Liotta: That is objected to.

The Court: That is not hurting you.

10 Q. Did you go to Mrs. Sabbarese with your brother-in-law? A. Yes, sir.

Q. You went with your brother-in-law? A. Yes, we both were there.

Q. You saw Mrs. Sabbarese? A. Yes.

Q. Did you ask her to come back? A. I begged her to come back for the children and my position as a minister.

20 Q. When did you see your wife again with any other man, if you ever did? A. I saw her many times with Contenti late at night many times.

Q. Peter Contenti is the man standing alongside of your wife on the picture marked C-4? A. Yes, he is the man.

Q. You saw Mrs. Sabbarese with Mr. Contenti? A. Yes, sir.

Q. Automobile riding? A. Yes, sir.

30 Q. Would they take Flora sometimes? A. Well, Flora was there once when they took my mother to Montclair.

Q. On these rides? A. Yes, just that time. They never took Flora with them, no.

Cross-examination by Mr. Liotta:

Q. Mr. Sabbarese, how much do you earn a year?

A. I earn \$2,000.00 and the parsonage, \$166.66—

Q. Do you have a free house to live in, too? A. Yes, sir.

40 Q. You don't pay any rent? A. No.

Nicola Sabbarese—Cross.

Q. Does the congregation pay your living expenses also? A. No, sir. The congregation give me a donation until I have my children in school.

Q. Besides the \$2,000.00 a year and the free house, do you earn any other money? A. Only this donation given by the church.

Q. How much does that amount to a year? A. 10 They give according to what they have—three or four hundred dollars a year.

Q. You have received three or four hundred dollars extra this year? A. Yes.

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. 20 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."

Q. Practically every day you said—you would tell your wife she had committed adultery, didn't you? A. No. 30

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. 40

Nicola Sabbarese—Cross.

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.

10 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.

20 Q. "Every Sunday during the summer she would leave for Rye Beach, New York, in the company of Mr. and Mrs. Unberto Liberatore. 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.

30 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.

40 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.

Nicola Sabbarese—Cross.

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—

10

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.

20

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:

30

Q. That is what I understood you to say? A. Yes, sir.

By Mr. Liotta:

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.

40

Nicola Sabbarese—Cross.

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.

10 Q. Snre 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 you 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?

20 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?

30 Mr. Liotta: All right.

Q. Did you ever see your wife commit any adulterous act with anyone? A. No.

Recess until two o'clock.

Flora Lydia Sabbarese—Direct.

FLORA LYDIA SABBARESE, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct-examination by Mr. Longobardi:

- Q. You live with your father? A. Yes.
- Q. Here in Elizabeth? A. Yes. 10
- Q. How long is it since your father and mother have been separated? A. Two years or three; something like that.
- Q. Do you remember the day your mother left?
A. Well, I wasn't present, but I have heard about it.
- Q. That is, you were not at home at the time?
A. No.
- Q. Do you remember coming to my office after the institution of this suit against your father? A. Yes. 20
- Q. And you recall making an affidavit? A. Yes, sir.
- Q. Do you recall returning again and making an amended affidavit? A. Yes.
- Q. Do you recall when you were living up in the Bronx? A. Yes, sir.
- Q. Was your father living with you at that time?
A. No. 30
- 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. 40

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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.

10 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 Beldeli.

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?

20 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.

30 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.

40 Q. Did you return immediately? A. Well, as

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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. 10

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 Mercersburg, 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. 20

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 up stairs, and I went near the door and I listened. 30

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 at first; I was listening. 40

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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—
 10 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.

20 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.

30 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.

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

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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 bed room.

Q. When the door was opened where was your mother? A. Standing between the bedroom and the dining room, right behind the door. 10

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. 20

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. 30

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 40

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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.

10 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.

20 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?

30 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.

40

*Flora Lydia Sabbarese—Direct.**By Mr. Longobardi:*

Q. Did Carrieri embrace you? A. Oh, yes.

Q. Would your mother be there? A. Well she was there once when my aunt and my mother begged me to go with him in an amusement called the old mill, and it was in darkness, and I wouldn't go with him because I didn't like him, but they said he always paid for my amusements and I owed him a great deal and I should go with him. 10

Q. Who said that? A. My aunt and my mother.

Q. They wanted you to go? A. Yes.

Q. Did he kiss you? A. Yes, he did; he had more strength than I did and he did kiss me, but that's all he did.

Q. He did kiss you? A. Yes, sir.

Q. Did you try to get away from him? A. Naturally. 20

Q. How long have you known Mr. Carrieri? A. Well, I only met him through my aunts, when he came over to their house.

Q. Did you know him in Baltimore? A. No.

Q. Now, when you saw your mother act this way with Mr. Carrieri, and your father would come back after three months, would you tell your father? A. No.

Q. Why? A. Well, I didn't want to cause any quarrels, and I never liked to see my mother and father quarrel, and I knew they would quarrel if I told him, and I thought Mr. Carrieri would leave my mother alone after a while, but he kept on going with her. 30

Q. Would Mr. Carrieri call at the house when your father was home? A. Oh, no.

Q. He would not? A. No.

Q. Would your mother be glad to meet Mr. Car- 40

Flora Lydia Sabbarese—Direct.

rieri when he did come? A. Beg your pardon?

Q. Was your mother eager to meet Mr. Carrieri when he called? Was he happy to see her—Was she happy to see Mr. Carrieri? A. Well, she saw him so often that I don't know that she would be happy to see him. She didn't show anything.

10 Q. She didn't? A. No.

Q. He came so often? A. He came almost every Sunday.

Q. Now, do you remember when your father returned one day unexpectedly and you were looking out of the window? A. You mean when Mr. Carrieri was at our house?

Q. Yes. A. No, I don't remember that.

20 Q. Well, was Mr. Carrieri ever alone in—Was Mr. Carrieri and your mother ever alone in the house and your father came in unexpectedly? A. I don't know; I wasn't present if he did come; I don't know about that.

Q. Did you ever warn your mother that your father was approaching the house? A. Well, once he was waiting on the corner, and, of course, he was already there and he had gone out.

30 Q. Who? A. My father had already gone out, and my mother, and my mother sent me to the corner to tell him not to come that time.

By the Court:

Q. Who was at the corner? A. Mr. Carrieri; and my mother told me to go and tell Mr. Carrieri not to come up. I guess my father was there.

By Mr. Longobardi:

40 Q. Did your mother ever try to hide Mr. Carrieri? A. I think he came once—

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Mr. Liotta: Objected to.

Q. Do you recall. A. I recall it.

Q. Let us hear it? A. He saw my father coming up the street and she made him go up on the roof until my father had gone, and then he went down stairs.

Q. Who saw him coming? Did you see him first? A. Yes, sir. 10

Q. Did you tell your mother? A. Naturally; I didn't want any arguments or any quarrels.

Q. Did you ever tell your father anything relative to the conduct of Mr. Carrieri and your mother? A. No, sir.

Q. Did you tell him up to the time you were in my office? A. Well, he found out through my affidavit. 20

Q. You never told your father anything about it before? A. No, I never did.

Q. You never told me anything about it before? A. No.

Q. You rode in an automobile with Mr. Contenti and your mother one time? A. Yes, and my father's mother; we took my father's mother to Montclair.

Q. Your grandmother? A. My grandmother. 30

Q. Where were you sitting? A. In the back with my grandmother.

Q. And where was your mother and Mr. Contenti? A. In the front seat.

Q. They were in front? A. Yes, sir.

Q. Did you see them do anything? A. Not when we went there, but when we returned it was getting dark, and I thought I would pretend I was falling asleep, and I did do so, and I did see him put his arm around her. 40

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Q. Mr. Contenti? A. Yes.

Q. Do you know of any other man your mother went out with? A. Only those two.

Q. Well, would your mother go to the theaters very often with her sisters? A. Well, just lately, as far as has been told me; sister used to tell me that.

10

Q. Your mother's sisters? A. Yes.

Q. Would they go to the opera? A. I don't know about that. I heard—

Q. This incident you related to us, Flora, happened seven or eight years ago? A. About that time?

Q. How is it you recall it so vividly? A. Well, things like that would naturally stay in my mind.

20

Q. You might be mistaken about it? A. Oh, no; I am sure about that.

Q. I show you a photograph marked Exhibit C-4, and ask you who that is? A. Mr. Contenti.

Q. And who else? A. My mother.

Q. Did you take that picture? A. No.

Q. Who did? A. A Chinaman took that.

Q. Was your father there at the time this picture was taken, Flora? A. No.

30

Q. How long was it taken? A. About two years ago.

By the Court:

Q. Did you ever see your mother and Carrieri in the house alone at any other time? A. No.

Q. Or alone in any other house? A. No.

Q. When speaking of this incident in this room there, you said that you used your imagination, or your imagination helped you? What did you mean? A. Well, I didn't want to say it right out

40

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in court. I can't really explain it in words what I heard.

Q. You can't explain it in words what you heard?

A. Well, I don't know how to express it.

Q. Well, could you express it in Italian? You don't know the English words? A. I don't mean that. Well, it sounded as if they were having intercourse. 10

Q. It sounded so from their voices, do you mean?

A. The voices and the noise on the bed.

Q. You heard the noise of the bed, did you? A. Yes, sir.

Q. How old are you now? A. Eighteen.

Q. Are you married? A. No.

Q. Well, at that time you say you were eleven? A. About that.

Q. Did you know what intercourse was at that time, sexual intercourse? A. Yes, sir. 20

Q. And you were satisfied from what you heard and saw that they had been having sexual intercourse in there at that time? A. Yes, sir.

Q. Did you think that that was right of your mother, or wrong? A. Right for me to listen?

Q. No; right for your mother to do? A. Of course not.

Q. Did you ever say anything to her about it? A. No. 30

Q. Did you ever speak to your sister about it, or anybody else? A. No.

Q. How long did you continue to live with your mother? A. Do you mean in the Bronx?

Q. There or anywhere else? Did you live with her up to the time she left in 1927? A. Well, I wasn't present; I was at boarding school.

Q. Is there any ill feeling between yourself and your mother? A. No. 40

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Q. Did you ever quarrel with her? A. No quarrels; there was nothing to quarrel about.

By Mr. Longobardi:

Q. Your mother visited you here in Elizabeth, hasn't she? A. Yes.

10 Q. And you have visited your mother in New York, have you not? A. Well, the first house she lived in, yes, I visited her once.

Q. You visited her? A. Yes.

Q. You told your mother you were going to testify in this case, when you saw her last? A. No, I didn't.

Q. There has been no quarrel at all between you and your mother? A. No; of course, the mother scolds her child, or something like that.

20 Q. I mean exclusive of that? A. No.

Q. You have always been on speaking terms with your mother, have you? A. Yes, sir, until lately. I felt it best not to go to see her or even speak to her again.

Q. Well, how long lately? A. Well, I remember I spoke to her once when she came here to Elizabeth, and that was all. I walked as far as Broad Street with her, and that was the last time.

Q. That was the last? A. Yes, sir.

30 Q. You thought it best not to speak to her any more in view of the fact that the suit was pending in court? A. Yes, sir.

Cross-examination by Mr. Liotta:

Q. Your father was always jealous of your mother? A. Yes.

Q. Before the contract was signed? A. Yes.

40 Q. What would he say to her? A. They both

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called each other names; I can't recall the names now.

Q. Did your father accuse your mother of going out with other men? A. Of course he did; people talked about her and naturally he suspected her. I don't think he accused her.

Q. You say your father is of a jealous disposition? A. Yes, sir. 10

Q. Paragraph 15 of your affidavit says: "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"? A. Yes.

Q. What did your father say? A. Of course, he loved her, and he heard she had been going with other men. 20

Q. He accused her of going with other men? A. Accused her?

Q. He told her that, didn't he? A. No, he told her that other people were talking, and he told her to stop going with other men. He had heard other people were talking.

Q. Your father supports you? A. Yes.

Q. And sends you to school? A. Yes.

Q. And buys you all the clothes you need? A. 30
Yes, sir.

Q. As a matter of fact, during the last year he bought you more clothes than ever? A. No, not exactly; I needed clothes.

Q. He bought you better clothes than he ever bought you before? A. No. When I asked him for a dress he bought it for me.

Q. And he bought some expensive clothes? A. No; I paid \$10.00 to \$15.00 for my dresses. 40

Q. How many dresses has he bought you in the

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last year? A. Three or four or something like that.

Q. He didn't buy any more than that, did he?

A. I don't think so.

Q. You don't? A. No.

10 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 isiter at that time? A. She was five years older than I was.

Q. Five years? A. Yes, sir.

20 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.

Q. What month of the year did this happen, that you saw your mother come out red in the face? A. I think it was May or June; I'm not sure; I don't remember.

30 Q. You don't really remember? A. No, I don't.

Q. Now, you tell the court again what you noticed that day. Give us the time, approximately, and everything that happened that day between Mr. Carrieri and your mother, will you? A. The time? Well, it was about one or two o'clock.

Q. What day of the week was it? A. Sunday.

Q. On a Sunday? A. Yes.

40 Q. Go on? A. And Mr. Carrieri gave me money to go out and buy ice cream.

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Q. How much money, do you remember? A. I don't remember; he gave me just enough to buy what I wanted.

Q. What did you buy? A. I think it was ice cream, or something like that.

Q. Did you buy a quart of ice cream? A. Just for myself. 10

Q. A quart? A. No.

Q. How much ice cream did you buy that day? A. I guess I bought a cone, or something like that.

Q. No, you tell us positively what you bought. You are under oath now? A. A cone or some candy.

Q. How much money did he give you? A. Not much; it must have been less than a quarter, or something like that.

Q. Did he give you ten cents? 20

Mr. Longobardi: That is objected to; the witness said she doesn't remember.

The Court: Objection overruled.

Q. Did he give you ten cents? A. Ten or fifteen, or something like that.

Q. You say you got a cone? A. A cone, and I bought some candy.

Q. What kind of candy did you buy? A. I don't remember that part. 30

Q. You don't remember that part? A. No.

Q. Why not? A. I just don't remember.

Q. You are not guessing, are you? A. No.

Q. You didn't buy an ice cream sandwich? A. No, a cone.

Q. A cone? A. Yes, sir.

Q. What did you pay for the cone? A. Five cents. 40

Flora Lydia Sabbarese—Cross.

- Q. What kind of candy did you buy? A. Maybe some penny—
- Q. How much? A. About five cents' worth.
- Q. What else? A. That's all.
- Q. That's all you bought? A. Yes, sir.
- Q. All he gave you was ten cents? A. I could have kept some money, but I don't know.
- 10 Q. That you don't know? A. No.
- Q. You don't know just how much he did give you? A. No.
- Q. This happened about twelve o'clock? A. One or two; it was after lunch.
- Q. Sure? A. Yes.
- Q. Where did you go to buy your candy? A. There was a store about a block and a half away.
- Q. How many flights of steps did you go down in the floor that you lived on? What floor did you live on? A. Second.
- 20 Q. The second floor? A. Yes.
- Q. Did you run down to the candy store? A. I ran down there and I met a girl friend, and naturally I talked awhile while buying ice cream.
- Q. How long did you talk? A. I had finished my cone, and was almost through with my candy by the time I come up stairs.
- 30 Q. Was it fifteen or twenty minutes? A. Oh, not that long.
- Q. Oh, how long was it? A. I should say five minutes or so.
- Q. You went to buy your candy, talked to your friend and came back home in five minutes? A. About that time.
- Q. It wasn't ten minutes? A. I said about that time; I don't know.
- 40 Q. You don't know? A. No.
- Q. Then you tip-toed upstairs? A. Yes, sir.

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Q. What made you do that? A. Well, as I said before, I didn't like the man, and I was little; I didn't trust him. I came upstairs and I tip-toed and I heard some noises.

Q. What made you tip-toe upstairs? A. I didn't like the man.

Q. Was that the only reason why you tip-toed upstairs? A. Naturally. Then I had heard so much about what my sister and her girl friends talked about, and I probably felt they were doing something. 10

Q. You thought she was doing something wrong? A. Yes, and I went up and I did hear it.

Q. That is why you tip-toed? A. Yes.

Q. You put your ear to the door? A. Yes.

Q. You did that? A. Yes, sir.

Q. How long did you keep your ear to the door? A. About a minute or so. 20

Q. Then you heard what? A. Well, as I said, I heard my mother and Mr. Carrieri talking.

Q. What else did you hear them do besides talking? Let me ask you first, did this door have a Yale lock? A. Yes.

Q. That is, the door closed by itself? A. Yes.

Q. Is that why the door was locked? A. Yes.

Q. What did you hear him say to your mother? A. I say I didn't hear him say anything; it sounded— 30

Q. Didn't you hear any words at all? A. No.

Q. Did you hear Mr. Carrieri call your mother "dear" or anything? You heard that, didn't you? A. No.

Q. Well what did you hear? A. His tone of voice sounded as if he was comforting her. You can easily tell, you know, the way somebody talks, naturally, I heard noises. 40

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Q. What kind of noises? Did you hear your mother— A. I heard noises in bed.

Q. You heard noises in bed? A. Yes.

Q. How far away from this door was this bed? A. The rooms weren't very large.

Q. How large was this room? A. I couldn't say.

Q. Ten feet wide or fifteen feet wide? A. I'm not so sure about measurements. It was not very big.

Q. Was it the size of the average dining room today? A. Maybe a little bit smaller.

Q. A little smaller? A. Yes, sir.

Q. It wasn't as big as your dining room that you live in now? A. Now.

Q. Well, you heard the bed squeak? A. Yes, sir.

Q. You are sure? A. Oh, yes.

Q. How many times did you hear this bed squeak? A. I don't know; I didn't count.

Q. You are very aggravated because your mother took your father to court? A. Yes.

Q. You know it will cost your father some money? A. Yes.

Q. You are trying to save all you can? Don't look at your father.

Mr. Liotta: Objected to. And she wasn't looking at him.

The Court: No, she was not looking at her father.

Q. (Reporter repeats the question). A. Certainly, I didn't want him to go through the expense.

Q. You don't want your father to go through this

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expense, do you? A. Not only that; he is a minister, and it would only ruin his position.

Q. Is that why you are testifying today the way you are? A. My father is right; that is why I am testifying.

Q. Your father is right? A. Yes.

Q. What makes you say that? A. Well he did so much for her, and he loved her, and she never understood him, and he heard so many people talking about her, and he would never believe them. And she did wrong. 10

Q. Go on? A. I don't know, but I felt that I should come here and testify for my father.

Q. You felt that you should come here and testify for your father? A. Yes.

Q. If there was anything in favor of your mother would you say it? A. What do you mean? 20

Q. (Reporter repeats the question). A. If there was anything in favor of her, yes, certainly.

Q. Do you know anything in her favor, for instance, of your father ever calling her bad names?

A. They both did.

Q. Both of them? A. Yes.

Q. Did your father call her any bad names? A. Yes.

Q. How often? A. As often as they would quarrel. 30

Q. How often was that? A. Well, I don't know; I can't really say. He wasn't home all the time; he was busy with the church.

Q. With the church? A. With his church.

Q. Who took care of you while your mother was living home? Did your mother dress you and wash you and buy your clothes and everything? A. Of course, it was my father's money. 40

Flora Lydia Sabbarese—Cross.

Q. Did she take care of you? A. Yes.

Q. Did she send you to school? A. My father sent me.

Q. He did? A. Yes, sir.

Q. Now, you signed two affidavits? A. Yes, sir.

10 Q. You say you think—In response to a question asked by the Vice Chancellor, you said they were having intercourse, didn't you? A. I don't know whether I told him; but they were.

Q. You are sure they were having intercourse? A. Yes.

Q. What makes you say that? A. Well, I said I heard so many things said by my sister and those girl friends were talking so much, and they explained how everything was.

20 Q. They explained it? A. Yes, sir.

Q. You never had intercourse yourself? A. No, sir; no.

Q. You didn't have it when you were eleven, and these girls didn't? A. Some of her girl friends might have had it.

Q. Did you ever see anybody have intercourse? A. No.

30 Q. As a matter of fact, you don't know what it is? A. I never experienced it, or anything like that, but I know—

Q. Your father pays for your education at Drake's Business College? A. Yes.

Q. Doesn't he? A. Yes.

Q. How much does he give you? A. For three months he paid \$54.00.

Q. What are you doing now? A. Staying home minding the house; taking care of the house.

Q. You take care of it? A. Yes, sir.

40 Q. Your father's house? A. Yes, sir.

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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? 10

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. 20

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. 30

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. 40

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

Flora Lydia Sabbarese—Cross.

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.

10 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.

20 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.

30 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—

40 Q. Did your father, prior to that time, accuse

Flora Lydia Sabbarese—Cross.

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.

Q. Sure of that? A. Yes.

10

Q. Your father was jealous of her? A. He heard other people talking, and naturally he was jealous.

Q. Of whom? A. They talked about Liberato-ra and Carrieri and several people.

Q. Did they talk about the man you talked to? A. No.

Q. Didn't? A. No.

Q. Never talked about him? A. No.

20

ITALO AMERICO SABBARESE, is called as a witness on behalf of the defendant.

The Court: Is it stipulated that this affidavit of this man shall be considered as though it has been testified to?

Mr. Liotta: Yes, sir.

30

MICHAEL GIANNETTI, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct-examination by Mr. Longobardi:

Q. Where do you live, Mr. Giannetti? A. Montclair, N. J.

40

Michael Giannetti—Direct.

Q. You are a brother-in-law of the Reverend?

A. Yes.

Q. A brother-in-law of Mrs. Sabbarese? A. Yes, sir. Oh, yes, of course, because it is wife and husband.

10 Q. Just answer my questions, please. You married Rev. Sabbarese's sister? A. Sister.

Q. Did Mrs. Sabbarese live in your home at any time, in Montclair? A. Yes.

Q. On which floor? A. On the third floor.

Q. Do you own the building? A. I do.

Q. Was the Reverend residing there at that time? A. Yes, the family resided there.

Q. Listen. Was the Reverend living in that house at that time? A. How long he lived in that house, do you mean?

20 Q. No. Was Rev. Sabbarese living in that house with Mrs. Sabbarese at that time? A. Never after that time when he left my house.

Q. While Mrs. Sabbarese was at your house where was the Reverend? A. Chicago.

Q. And how long did Mrs. Sabbarese live with the children in your house? A. How long?

Q. Yes. A. I think it was more or less about a year and a half; something like that.

30 Q. Did you visit Mrs. Sabbarese upstairs? A. Upstairs.

Q. Did you visit her? A. In her room?

Q. Yes. A. Once in a while when she called me up.

Q. Did she have any company? A. Of course.

Q. She did? A. Yes.

Q. When would the company come? A. Pretty near every Sunday.

40 Q. And would Mrs. Sabbarese go out? A. Go out every day.

Michael Giannetti—Direct.

Q. And leave the children? A. And leave the children.

Q. Would she go out on a Sunday?

Mr. Liotta: I suggest that the witness tell what he knows and not have counsel suggesting it.

10

Q. Would she go out on Sunday? A. Yes.

Q. What would Mrs. Sabbarese go out on on Sunday with the company? A. Automobile.

Q. She would go out on Sundays? A. Sometimes.

Q. In automobiles? A. Automobiles.

Q. What kind of company was it? A. I can't tell you what kind of company, men and women, strange people what I don't know.

20

Q. Would she leave the children home? A. She would leave the children home most of the time.

Q. What time would she return? A. Sometimes late at night and sometimes a little earlier.

Q. You took care of the children? A. My wife watched them carefully.

Q. Who would take care of the children? A. The father—

Q. When Mrs. Sabbarese— A. The children were in the school.

30

Q. Where were they on Sunday? A. On Sunday Mr. Sabbarese's children were with my children.

Q. She would leave the children? A. She would leave the children all the time.

Q. Would the company stay sometimes on a Sunday? A. Oh, all day.

Q. And how late did they stay upstairs? A. Sometimes in the middle of the night, one o'clock. 40

Michael Giannetti—Direct.

Q. In the morning? A. In the morning.

Q. Did you go to Baltimore to see Mrs. Sabbarese? A. No, not Baltimore.

Q. You didn't? A. No.

Q. Did you go any place to see her? A. Oh, yes, in New York.

10 Q. And did you speak to Mrs. Sabbarese? A. Oh, many times.

Q. Did you ask her to return to the Reverend? A. Sure, I done my best to put them together.

Q. What would Mrs. Sabbarese say? A. She refused my good work.

Q. What did she call the Reverend? A. All kinds of words.

Q. Refer to them? A. She detested that man.

20 Q. What kind of words? A. They were words in Italian, but not one word; she used any word to him like a man right on the street.

Q. Let me hear some of those words in Italian? A. Farabutto.

Q. What else? A. Galeastro.

Q. What does that mean? A. Galeastro means a man that is in jail, come out of jail, it means.

Q. What else would she call the Reverend while you were there? A. Shifoleo.

30 Q. What does that mean? A. Nasty; that means nasty.

Q. What does Farabutto mean? A. Farabutto is cut-throat.

Q. You asked her to come back? A. Oh, yes.

Q. Did the Reverend come back from Chicago and come to Montclair where Mrs. Sabbarese was living? A. Yes.

40 Q. Do you know of any arguments or words that took place between the Mrs. and the Reverend? A. Which time?

Salvatore Musso—Direct.

Q. Do you know of any argument or arguments that took place between the Reverend and the Mrs.?

A. Exactly I can't say.

Q. Did you ever see the Reverend marked or marred? A. I saw him with a knock on the face.

Q. Did the Reverend always treat the Mrs. good as far as you know? A. Anyway, as far as I know he always treated her good. 10

Q. Always did? A. Yes, sir.

By the Court:

Q. This company that you say she had at your house in Montclair, was it one man at a time or one woman at a time? A. One man and one woman.

Q. Together? A. Yes.

Q. Never a man alone? A. No. 20

Q. Do you know who the man was? A. If I see him I know.

Q. You don't know his name? A. I don't know; I don't remember. It is pretty hard for me to remember the name.

Mr. Liotta: No questions.

30

SALVATORE MUSSO is called as a witness.

The Court: What is he to testify to.

Mr. Longobardi: He will testify that on his visit to Baltimore there was no suspicion whatsoever spoken of by the Reverend Sabbarese to this man; he had been delegated to Baltimore by the bishop.

Mr. Liotta: I am satisfied to have that go in as evidence. 40

Rosalia Sabbarese—Rebuttal—Direct.

Mr. Longobardi: And also as a representative of the bishop the Reverend Musso advised him to enter into this stipulation or agreement; otherwise he would have to resign his position under him.

10 Mr. Liotta: That would not be admissible anyway, but I am satisfied to have it go in evidence.

Defendant Rests.

ROSALIA SABBARESE, being recalled in rebuttal, testifies as follows:

Direct-examination by Mr. Liotta:

20 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.

30 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.

Cross-examination by Mr. Longobardi:

Q. How long is it since you have had sexual intercourse with your husband?

40 Mr. Liotta: That is objected to as not proper cross-examination.

Rosalia Sabbarese—Rebuttal—Cross.

The Court: Objection overruled.

A. What do you say?

Q. How long is it since you have had sexual intercourse with your husband? A. How long for my husband?

Q. Do you understand? A. No; I say no.

Q. I ask you that question. Do you want an interpreter? 10

Mr. Longobardi: I ask that the question be put by an interpreter.

By the Court:

Q. You know what sexual intercourse is, don't you? A. No, I don't.

Q. You don't know what sexual intercourse is? A. No. 20

Q. Do you know what intercourse between husband and wife is? A. I don't understand; I know it better in Italian.

Q. Don't tell me that. A. Yes, that is it.

Q. You are a married woman? A. Yes, sir.

Q. You have three children? A. Yes.

Q. Do you mean to tell me that you don't know what sexual intercourse is? A. Yes.

Q. You don't know what it is? A. No; what means intercourse I don't know. 30

Q. Did you ever sleep in bed with your husband? A. Sure, all the time; I never go out.

Q. Did you ever have sexual intercourse with him in bed? A. Yes.

Q. Then you do know what it means? A. I know.

Q. Of course you do. When was the last time you had sexual intercourse with your husband? 40

Rosalia Sabbarese—Rebuttal—Cross.

A. I think October, the twelfth of October, '27.

Q. 1927? A. Yes, 1927.

Q. October 12, 1927? A. October 12, 1927.

Q. That was four or five months after you left him? A. No, no four or five months. '26, I think, '26, yes.

10 *By Mr. Longobardi:*

Q. You always slept with your husband? A. Always. I never got out of my bed; my husband got out; we stayed in the same bed.

Q. Did you always sleep in the same bed? A. Yes.

Q. With your husband? A. When the trouble was I come in the other room and stayed in the other room.

20 Q. The trouble started a month after you were married? A. No, no, no, no. I stayed all the time till two years ago now. I don't remember now; two years I think.

Q. How long before you were in Judge Booth's office when you signed this paper did you sleep in the same bed with your husband? A. No.

Q. What? A. No, I no sleep then; two rooms, one here and another here.

30 Q. You would sleep in this room and your husband in this room how long before you went to Judge Booth's office? A. I think a year and a half, I think.

Q. Then you didn't have sexual intercourse with your husband in October, 1926? A. See, I don't remember. The twelfth of October; I don't know the date. I know the date, the twelfth of October, but no the year, '25 or '26, I don't remember now.

40 Q. You have not had intercourse with your hus-

Rosalia Sabbarese—Rebuttal—Cross.

band, with the Reverend for seven years. Isn't that so? A. No, sir; no, no, seven years.

Q. No? A. No.

Q. You know what sexual intercourse is? A. Yes.

Q. You know what it means? A. Yes.

Q. You said you didn't? A. I know. 10

Q. And you said in answer to Mr. Liotta that you had sexual intercourse with no one except your husband during the whole period of your married life?

life? A. I make the trouble all my life now. I know that so many years.

Q. You never went to bed with anybody but your husband? A. Certainly nobody; I tell the truth.

Q. Were you sleeping with Flora? A. Yes, sir.

Q. For how long did you sleep with Flora? A. 20
Just before they went in the court; when they separated my girl slept with me.

Q. Since you signed the paper? A. What paper?

Q. How long did you sleep with Flora? A. You know when they separation; you know when I stayed home; you know before, before the separation.

Q. How long before the separation? A. I think 30
two years.

Q. You know that Flora was at boarding school? A. Yes, I know.

Q. She was at boarding school two or three years before? A. Yes, but for the summer they come back.

Q. But before Flora went to boarding school three years ago you slept with Flora, too? A.

Nicola Sabbarese—Sur-rebuttal—Direct.

She goes to college; I can't sleep with Flora; no, no, no, I slept with my husband.

Complainant Rests.

10 NICOLA SABBARESE, being recalled in sur-rebuttal, testifies as follows:

Direct-examination by Mr. Longobardi:

Q. Reverend, how long is it since you have had intercourse with Mrs. Sabbarese? A. Possibly seven years.

Q. Seven? A. Yes.

20 Q. Altogether, up to the present time, how long is it? A. Up to now?

Q. Yes? A. Nine years now.

Q. Did she refuse? A. She refused.

Q. And has she constantly refused? A. After the operation—I had two operations—she refused to stay with me.

Q. What were the operations? A. For the bladder; I had two operations.

Q. When did those operations take place? A. In 1919.

30 Q. Where? A. In Philadelphia.

Q. Where did the Mrs. sleep? A. While in Philadelphia I often slept on the floor, and she slept in her room, of course.

Q. With Flora? A. No, Flora was in the other room with Mary, and Italo was in the other room on the floor.

Mr. Liotta: No questions.

40

Both Sides Rest.

Exhibit C-1.**SEPARATION AGREEMENT.**

Whereas, the undersigned Nicola Sabbarese, hereinafter called the party of the first part, and Rosalie Sabbarese, hereinafter called the party of the second part, both residing in the City of Yonkers, County of Westchester, and State of New York, are husband and wife; and 10

Whereas, many unhappy marital differences have arisen between them, and have for a long time past existed and still exist; and

Whereas, the party of the second part is about to commence an action in the Supreme Court of the State of New York for a legal separation against the party of the first part; and 20

Whereas, the parties aforesaid are desirous insofar as it is possible to adjust their differences amicably and out of Court; and

Whereas, there are two children of said marriage, the custody of whom is to be arranged as hereinafter provided, and whose names and ages are: Italo of the age of 23 years, and Flora of the age of 16 years; 30

Now Therefore, in consideration of the mutual covenants herein contained, and of the payment of One (\$1.00) Dollar by each of the parties to the other, receipt whereof is hereby acknowledged, and other good and valuable considerations, It Is Agreed: 40

First: That the said parties shall from the date hereof, live separate and apart, and that the aforesaid Nicola Sabbarese, and Rosalie Sabbarese, may go where he or she pleases, without hindrance, an-

Exhibit C-1.

noyance or molestation from the other, and that either party will not in any way or manner, hinder, annoy, or molest the other, and that each of the parties is at liberty to act and do as he or she may see fit.

- 10 Second: That said party of the first part will pay to the party of the second part for her support and maintenance, and during the term of this agreement, the sum of Twelve (\$12.00) Dollars per week beginning with the week commencing June 13th, 1927, not later than Friday of each and every week, subject to increase or reduction if income is increased or reduced.

- 20 Third: That the aforesaid party of the first part in addition to the allowance made for the support and maintenance of the party of the second part, will pay or cause to be paid such sum or sums of money as may be necessary for the support, maintenance, education, medical attention or other miscellaneous expenses of the children of the marriage herein, and will save the party of the second part harmless from any of the expenses so incurred, it being understood that said children are to reside with the party of the first part.

- 30 Fourth: That the payments heretofore mentioned are acceptable to the party of the second part as and for her support and maintenance, and for the support of the children.

- 40 Fifth: The party of the second part hereby covenants and agrees that so long as the party of the first part shall duly keep and perform the covenants, conditions and agreements to be kept and performed by him herein, she will not at any time hereafter contract any debts, charge or liability,

Exhibit C-1.

whatsoever, for which the party of the first part or his property or estate shall or maybe or become personally liable or answerable, and the said party of the second part does hereby covenant and agree that she will at all times keep the said party of the first part free, harmless and indemnified from any and all debts and liabilities heretofore or hereafter to be contracted or incurred by the said party of the second part, and from any and all actions, proceedings, claims and demands, damages and expenses in respect of said debts and liabilities, or any of them. 10

Sixth: It is provided, however, that these presents are upon the express understanding and agreement that if the parties hereto shall become or be reconciled at any future time and again cohabit together, or if their marriage shall be dissolved by order of Court, that then and in every such case this agreement and the provisions and conditions thereof shall become null and void, and of no effect, but without prejudice to any act or thing done or right accrued, or proceedings taken herein, on the part of any of the parties hereto. 20

In Witness Whereof, the parties hereto have set their hands and seals this 14th day of June, 1927. 30

NICOLA A. SABBARESE (L.S.)

ROSALIA SABBARESE (L.S.)

In the Presence of

M. L. Rosenson

as to N. A. S.

Frank A. Saporito

as to Rosalie Sabbarese

