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Amended Bill of Complaint

AMENDED BILL OF COMPLAINT

Filed September 17, 1920

In Chancery of New Jersey 10

TO HIS HONOR EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF NEW
JERSEY.

Complainant, Margaret Patterson, residing in the City of Plainfield, County of Union and State of New Jersey, respectfully shows:—

1. On the 3rd day of February, 1920, complainant and J. D. Loizeaux Lumber Co., a corporation, entered into an agreement for the purchase and sale of certain real estate (a copy of which agreement is hereto annexed) situated in the City of Plainfield, County of Union and State of New Jersey, bounded and described as follows:— 20

BEGINNING at a point in the southwesterly side line of Emerson Avenue distant along said side line of Emerson Avenue in a northwesterly direction sixty and twenty-four one hundredths (60.24) feet from the northwesterly side line of Midway; thence north forty-five degrees and thirty-seven minutes west ($45^{\circ} 37'$) along said side line of Emerson Avenue a distance of fifty (50) feet; thence south forty-four degrees and twenty-three minutes west ($44^{\circ} 23'$) and along the southeasterly side line of lot number twelve on lot hereinafter mentioned, 30 40

Amended Bill of Complaint

10 one hundred and twenty-five feet (125); thence south forty-five degrees and thirty-seven minutes east ($45^{\circ} 37'$) along the rear line of lots twenty (20) and nineteen (19) fifty-five and eighty-seven one hundredths (55.87) feet thence north forty-four degrees and twenty-three minutes east ($44^{\circ} 23' E.$) one hundred and twenty-five (125) feet to the beginning.

20 Being known as lots number thirteen (13) and fourteen (14) in Block H on Map entitled, "Map of Highland Park, Plainfield, N. J., April 24, 1904, H. C. Van Emburgh, C. E." and being the same premises conveyed to the said J. D. Loizeaux Lumber Company by deed of conveyance from Board of Trustees Seventh Day Baptist Memorial Fund dated May 24, 1920, and recorded in the Union County Register's office in Book 801 of Deeds, for Union County, on pages 364, &c.

30 2. On the 3rd day of February, 1920, complainant entered into possession of said premises under and by virtue of said agreement.

40 3. During the month of July, 1920, the defendant, J. D. Loizeaux Lumber Co., informed complainant that it was able, ready and willing to deliver the deed to said property according to the terms of the said contract which is hereunto annexed and thereafter and within a reasonable time the complainant tendered the J. D. Loizeaux Lumber Co., the consideration money mentioned in said contract and did and performed all things necessary

Amended Bill of Complaint

to be done and performed by her in and about the completion of said contract.

4. Thereafter complainant was informed by the defendant, J. D. Loizeaux Lumber Co., that it had entered into a contract for the sale of said property with one Joseph Nathanson and that it would not and could not perform its contract with complainant.

10

5. Complainant is informed and believes that thereafter and during the month of September, 1920, the defendant J. D. Loizeaux Lumber Co., conveyed said premises to the Plainfield Realty Wallpaper Supply Company, a corporation, of which the defendant, Joseph Nathanson, is or was the agent and a stockholder thereof.

20

6. Complainant says that since the 3rd day of February, 1920, she has been in actual peaceable and notorious possession of said premises under and by virtue of her agreement for the purchase of the same herein set forth and that the said Joseph Nathanson and the Plainfield Realty Wallpaper Supply Company took title to the same with full knowledge of the rights of the complainant and subject thereto.

30

7. Complainant further says that she has always been and still is, ready and willing in all things to comply with the stipulations and conditions of the said agreement on her part to be done and performed.

40

Amended Bill of Complaint

Complainant is without adequate remedy in the courts of law and therefore prays :

10 1. That J. D. Loizeaux Lumber Co., a corporation, Joseph Nathanson and Plainfield Realty Wallpaper Supply Company, a corporation, who are the defendants to this suit, may answer this amended bill of complaint without oath and each statement therein contained.

20 2. That the defendant, J. D. Loizeaux Lumber Co., may be decreed to specifically perform its contract with the complainant and that it may be decreed to make, execute and acknowledge in due form of law and to deliver to the complainant a good and sufficient warranty deed for said premises in accordance with the terms and conditions of said agreement.

30 3. That the said contract of the defendant, Joseph Nathanson, and the deed to the said premises of the Plainfield Realty Wallpaper Supply Company, be decreed to be subsequent to the rights of the complainant in the premises and that the same be cancelled of record and be no longer a lien upon said premises or a cloud upon the title therein described against the said complainant, or any person or persons claiming by, from or under him or it.

40 4. That a writ of subpoena may issue commanding the said defendants to answer this bill of

Amended Bill of Complaint

complaint and to abide by such decree as this court shall make in the premises.

ROBERT NEWTON CRANE

Solicitor of Complainant 10

“Plainfield, N. J., Feb. 4, 1920.

Mrs. David Patterson,
228 Emerson Avenue,
Plainfield, N. J.

Dear Madam:—

20

We acknowledge having received \$130 from you on February 3rd, to apply as follows: \$30 being the rent on the house for the month of February, and \$100 being a payment on account of the principal of \$3800 for the house and lot known as No. 228 Emerson Ave.

Our understanding is this,—that you will pay \$30 each month until we are able to give you a free and clear title, the result of the foreclosure which we are now proceeding with. So soon as we are able to do this, you agree to pay us \$3700 in the manner following; \$3000 by raising this amount by mortgage on the above mentioned property, and \$700 in cash, which we understand you are to raise by second mortgage, and the above when carried out is satisfactory to us, but if for any reason you are unable to carry out the above provisions, you

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Amended Bill of Complaint

agree, upon being requested, to vacate the property, leaving it in first class condition, and all that you have paid in to be counted as liquidation of any damages we might sustain.

10 If in any of the above you do not fully concur, please advise at once, so that there can be no misunderstanding.

Very respectfully yours,

J. D. Loizeaux Lumber Co.,

(Sig.) J. D. Loizeaux,

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By Treasurer.”

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Answer of the Defendant, J. D. Loizeaux Lumber Co.

10 said property, according to the terms of the said contract, but denies that at that time or any time thereafter the complainant tendered the J. D. Loizeaux Lumber Company the consideration of money mentioned in the said contract, or did perform all things necessary to be done and performed by her in and about the completion of the said contract.

4. The defendant denies that it informed the complainant that it had entered into a contract for the sale of said property to one, Joseph Nathanson, but admits that after repeated demands for the complainant to fulfill the terms of the agreement from 20 the 24th day of May, 1920 until the 10th day of August, 1920, it entered into a contract with J. Nathanson & Son for the sale of the premises in question.

5. Defendant admits that in the latter portion of the month of August it conveyed the premises in question to the Plainfield Realty Wall Paper Supply Co., a corporation; that the said Joseph Nathanson is an officer of the said corporation. 30

6. Defendant denies the allegations contained in the 6th and 7th paragraphs, except it admits that the complainant has been in actual and peaceful possession of the premises in question, but not under the terms of the said agreement, but as a tenant of the defendant, the J. D. Loizeaux Lumber Co., paying the rent of \$30.00 for each and every month from date of her taking possession of the 40 premises, to wit, February 3, the last rent being

Answer of the Defendant, J. D. Loizeaux Lumber Co.

paid upon the 25th day of August, 1920 to the defendant being the sum of \$30.00 for the month of August.

7. The defendant further answering says that prior to the alleged agreement, in the letter of February 4th, 1920 from the defendant, the J. D. Loizeaux Lumber Co., to the complainant, the defendant has been the owner and possessor of the premises in question and during the month of November, 1919, the complainant, who had been previously employed by the wife of Joshua D. Loizeaux, President of the defendant corporation, made inquiries in regard to the purchase of the premises in question. Negotiations ensued as a result thereof, which were consummated in the terms embodied in the letter of the defendant attached to and made part of Bill of Complaint in this cause; that the defendant, by reason of a flaw in the title, of which the complainant had notice, could not give a good and valid deed for the aforesaid premises, and by reason thereof had made arrangements with the mortgagee, the Trustees of the Seventh Day Baptist Memorial Fund to foreclose the mortgage in order to remove the cloud from the title; that a bill of complaint was filed and proceedings had thereunder, and on the 24th day of May, 1920, the said premises were sold under a F. Fa. issued out of the Court of Chancery unto the said J. D. Loizeaux Lumber Co., they being the highest bidder therefor, which sale was confirmed and a deed delivered to the J. D. Loizeaux Lumber Co., the defendant; that thereupon on divers dates from the 21st day of May until the 10th day of August, the defendant, by its officers and person

Answer of the Defendant, J. D. Loizeaux Lumber Co.

and by communications endeavored to induce the complainant to carry out the terms of the agreement entered into between them and pay the remainder of the purchase money due under the said agreement, and were ready and willing at all times until the date aforesaid to deliver a good and valid deed for the premises in question, without any result, the complainant repeatedly reiterating that she had been unable to make arrangements for the second mortgage, whereupon on the 29th day of July, 1920, the defendant advised the complainant that by reason of her failure to perform and carry out the terms of the agreement, the property would be placed in the market for sale; and the defendant, notwithstanding that the deposit of the sum of \$100.00 was to be forfeited in case the complainant did not fulfill and carry out the terms of the agreement, was ready and willing to refund the same to the complainant upon her delivering possession of the premises upon the 1st day of August, 1920, which offer was not accepted by the complainant.

8. Defendant further says that from the time that they could give a good and valid title to the aforesaid premises, they were willing and ready at all times to convey to the complainant the premises in question, and that the complainant at no time, from the time of the making of the said agreement, up to the present time have offered to perform and carry out the terms of the said agreement.

Answer of the Defendant, J. D. Loizeaux Lumber Co.

9. Defendant therefor prays that the said bill may be dismissed with its costs in its behalf expended.

WILLIAM NEWCORN,

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Solicitor of the Defendant,
The J. D. Loizeaux Lumber Co.

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Answer of Defendants, Joseph Nathanson and Plainfield Realty Wall Paper Supply Company

ANSWER OF DEFENDANTS, JOSEPH NATHANSON AND PLAINFIELD REALTY WALL PAPER SUPPLY COMPANY

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Filed September 21, 1920

In Chancery of New Jersey

On Bill, etc.

Between
MARGARET PATTERSON
Complainant
—and—
J. D. LOIZEAUX LUMBER
CO., A Corporation, et als.,
Defendants

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ANSWER OF
DEFENDANTS,
JOSEPH NATHANSON and
PLAINFIELD
REALTY WALL
PAPER SUPPLY
COMPANY

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The defendants, Joseph Nathanson and the Plainfield Realty Wall Paper Supply Co., a corporation, organized under the laws of the State of New Jersey, answering the bill of complaint of the complainant, jointly and severally say that:

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1. The defendants have no knowledge of any of the facts set forth in paragraphs 1 to 7 inclusive in the said bill of complaint, except that they have knowledge that the J. D. Loizeaux Lumber Co., were the owners of the premises in question, and that on the 10th day of August, 1920, Joseph Nathanson & Son entered into an agreement for the purchase of

Answer of Defendants, Joseph Nathanson and Plainfield Realty Wall Paper Supply Company

the said property, and on the 25th day of August, 1920, the Plainfield Realty Wall Paper Supply Co., took title to the premises, paying the consideration therefor, in accordance with the terms of the agreement between Joseph Nathanson & Son and the J. D. Loizeaux Lumber Co., and are now the true owners thereof. 10

2. The defendants further answering deny that they have no knowledge whatsoever of the existence of the agreement between Margaret Patterson, the complainant, and the J. D. Loizeaux Lumber Co., that on the contrary they were advised that the premises were occupied by Margaret Patterson as a tenant and that the rental paid by the said complainant was the sum of \$30.00 for each and every month, and on the 1st day of September, Joseph Nathanson, an officer of the Plainfield Realty Wall Paper Supply Co., called at the premises, 228 Emerson Avenue, for the purpose of collecting the September rent and the said complainant directed the said Joseph Nathanson to call at the office of her attorney, Robert Newton Crane, for the purpose of obtaining the rent; that the first intimation that the said Joseph Nathanson had of the existence of any agreement was a statement made by the complainant that she had originally agreed to purchase the property, but had been unable to secure the moneys for the second mortgage, and that therefor she had been unable to purchase the same and had decided to cancel the contract. 20 30

3. These defendants therefor pray that the 40

*Answer of Defendants, Joseph Nathanson and Plain-
field Realty Wall Paper Supply Company*

said action be dismissed as against them and that
it may be decreed that they recover the costs of this
suit expended by them.

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WILLIAM NEWCORN,

Solicitor of the defendants, Joseph
Nathanson and Plainfield Realty
Wall Paper Supply Co.

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Designation

We consent to the making and entering of the
above order.

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ROBERT NEWTON CRANE
Solicitor of Complainant

WILLIAM NEWCORN
Solicitor of Defendant

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Designation

We hereby consent to the making of the above
Order.

ROBERT NEWTON CRANE

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Solicitor of Complainant

WILLIAM NEWCORN

Solicitor of Defendants

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Conclusions of Vice Chancellor

48/582

CONCLUSIONS OF VICE-CHANCELLOR

Filed April 23, 1921

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In Chancery of New Jersey

Between	} CONCLUSIONS	} (Not for print)	} 20
MARGARET PATTERSON			
Complainant			
—and—			
J. D. LOIZEAUX LUMBER CO., A Corporation, et als., Defendants			

ON FINAL HEARING

 MR. ROBERT NEWTON CRANE, for Complainant

 MR. WILLIAM NEWCORN, for Defendants

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 BUCHANAN, V. C.

Complainant's suit is as vendee for specific enforcement of a contract of sale of a house and lot known as No. 228 Emerson Avenue, situate in Plainfield, New Jersey. In addition to the vendor J. D. Loizeaux Lumber Co., there are two other defendants,—Joseph Nathanson, to whom vendor made a

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Conclusions of Vice Chancellor

10 subsequent contract to sell the premises in question, and Plainfield Realty Wall Paper Supply Company, a corporation in which Nathanson was interested and to which, in consummation of the second contract of sale, conveyance of the property was made before bill filed.

The terms of the contract sued on are evidenced by a letter of February 4th, 1920 from vendor to vendee, which reads as follows:

Plainfield, N. J. Feb. 4, 1920.

20 Mrs. David Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

30 We acknowledge having received \$130 from you on February 3d, to apply as follows: being the rent on the house for the month of February, and \$100 being a payment on account of the principal of \$3800 for the house and lot known as No. 228 Emerson Ave.

40 Our understanding is this,—that you will pay \$30 each month until we are able to give you a free and clear title, the result of the foreclosure which we are now proceeding with. So soon as we are able to do this, you agree to pay us \$3700 in the manner following: \$3000 by raising this amount by mortgage on the above mentioned property, and \$700 in cash, which we understand you are to raise by second mort-

Conclusions of Vice Chancellor

gage, and the above when carried out is satisfactory to us, but if for any reason you are unable to carry out the above provisions, you agree, upon being requested, to vacate the property, leaving it in first class condition, and all that you have paid in to be counted as liquidation of any damages we might sustain. 10

If any of the above you do not fully concur, please advise at once, so that there can be no misunderstanding.

Very respectfully yours,

J. D. LOIZEAUX LUMBER CO., 20
 (signed) J. D. Loizeaux,
 By Treasurer."

JDL/DC

By the terms of this contract, the date of consummation,—that is to say the date when the vendor should convey and when the vendee should pay,—was to be as soon as vendor obtained and could convey a free and clear title, as the result of a foreclosure suit then being carried on by vendor. That date in itself was indefinite and uncertain. Being within the control of the vendor, it was obligated to proceed in its foreclosure suit with reasonable diligence and dispatch. In other words, the time for performance by **both** parties was fixed as a reasonable time after the contract. Time was obviously not of the essence as to this. The vendee had been put in possession—(she desiring the place as a home),—and vendor was receiving, and was to 40

Conclusions of Vice Chancellor

10 continue to receive, adequate and satisfactory rent at a rate fixed by itself, during whatever time should elapse before the clearing up of the title. Apparently vendor had title, but there was an encumbrance thereon to be cleared away by the foreclosure. (See Exhibit D-2). The exchange of deed and purchase price was postponed, upon terms equitable to both parties, until that should have taken place.

20 It may be noted here that it appears by the entire correspondence that the negotiations were begun November 13th, 1919, and indeed the arrangement for the sale and purchase agreed to about December, 1919. The vendee enquired the price of the house and accepted the price fixed, without haggling. The vendor prior to fixing the price at \$3800, said (Ex. D-2) it had been "practically" offered \$3800, for the house, and thought it should get \$4000. Obviously, therefore, the price of \$3800 was a fair price, and the element of friendship which undoubtedly existed in the case did not,—as indeed it could not properly, in a corporation's affairs,—
30 figure in a financial way to any appreciable extent. It further appears from the correspondence that the first idea of the vendor was that the vendee should pay down the \$800, take possession, and pay the \$3000 balance (to be raised on mortgage loan) after the clearing up of the title. The vendee's letters show that she apparently was, or could have been, ready to pay the \$800 about January 1, 1920. The arrangement was later changed to a down payment of \$100 on taking possession and the payment of \$30
40 a month rent while waiting for the freeing of title.

Conclusions of Vice Chancellor

Why this change was made does not appear, but it certainly was more beneficial to vendor than the earlier plan,—although perfectly equitable to the vendee.

The precise time that the vendor acquired its cleared title, and thereby fixed the time for performance, is a little uncertain. It could not have been until after May 24th, (the date of the deed to vendor). From the testimony of Mr. J. D. Loizeaux and of complainant, and the letter D-13, I fix June 1st as the approximate date when notice was given to or acquired by complainant that the vendor was now able to convey. There had thus been a lapse of about six months from the time of the original oral agreement,—and of four months from the letter which was the written evidence of the modified agreement, (prior to the writing of which the foreclosure had been commenced). Reference to the record and proceedings of that foreclosure suit on file in this court shows that the bill was filed December 26th, 1919, and that no unusual speed was exercised by vendor's agent, the solicitor for complainant therein. For instance, there was a lapse of six weeks between the decree pro confesso and the filing of the master's report.

June 1st, then, became and was the date for the consummation of the sale by conveyance and payment. But here again time was not made the essence of the contract by provision in the contract,—nor by force of the circumstances. Hence, even if the date had been fixed and certain in advance, and the vendor had attended and made tender of

Conclusions of Vice Chancellor

10 deed, the vendee in equity, if payment were made or tendered within a reasonable time thereafter, would have been entitled to conveyance. **Saldutti v. Flynn, 72 N. J. Eq., 157.** But the vendor did not make such tender, nor attempt to hold the vendee to a strict performance as to time. The correspondence and dealings which ensued between the parties are further evidence (though none is necessary) that time was not of the essence in the transaction. True it is that the vendor repeatedly sought to speed performance by the vendee,—but the actuating reasons therefore, appear from the evidence to have been simply the desire of businessmen to complete an unfinished transaction, and the
20 desire, or at least the hope, of getting rid of the Patterson contract so as to enable greater profit to be realized from a sale to other parties who were willing to pay more money.

The latter motive is, of course, one which in no wise appeals to a court of equity. In equity the vendor is considered a trustee of the property for the vendee, from the time of the making of the contract. **Saldutti v. Flynn, supra; King v. Ruckman, 21 N. J. Eq. 599; Haughwout v. Murphy, 22**
30 **N. J. Eq. 531.**

From the evidence I find the fact to be (as explained more in detail hereafter) that the vendee was ready to perform on July 30th. I further find that this delay of two months was not an unreasonable delay under all the circumstances. Admittedly, all but the last two or three days of this delay was
40 acquiesced in or waived by the vendor. This time

Conclusions of Vice Chancellor

was being spent by the vendee in actual endeavors to raise the \$700 balance to pay to vendor (which in the meantime, as Mr. Loizeaux testifies, had agreed to take the \$3000.00 first mortgage itself, as part of the purchase price),—having been disappointed in the arrangements which she had originally made in that behalf. 10

The facts in the case at bar are in the majority of particulars remarkably similar to those in the case of **Cranwell v. Clinton Realty Co. 67 N. J. Eq. 540**,—so much so that the opinion of Vice Chancellor Garrison in the latter case might serve almost equally well for the present issues. Here, as there, there was no unreasonable delay; no effort by vendee to obtain undue advantage, or to speculate upon the property; no disposition by vendee to abandon the contract, but on the contrary continuous effort to perform; vendee having gone into possession of the property and expended some money and labor thereon; no tender at any time of deed by vendor; no return or tender by vendor of the part payment of purchase price which had been made by vendee. This case is a little stronger in vendee's favor than the Cranwell case, because here vendee was keeping vendor free from any loss by payment of adequate rent during the interim,—and because here the vendor was, to a certain extent, endeavoring, for its own advantage, to get rid of the contract. As to the \$100 part payment, it does appear that vendor in its letter of July 27th spoke of returning this, on certain conditions, but no tender was ever made. Its right, under the original contract, to this \$100.00, or any part thereof, was only 40

Conclusions of Vice Chancellor

10 as to damages vendor should sustain by a breach. Here, if the contract were breached by vendee, it would sustain no damage, for it contemplated sale to the subsequent purchaser for a much higher price; and if it desired a rescission instead of a claim of breach, it was of course incumbent upon it to return the purchase money.

Here, also, as in the Cranwell case, there was an attempt by vendor to rescind or terminate the contract, and a question arises as to the effect of that which was done in that behalf. On July 27th, vendor, through Mr. J. D. Loizeaux, wrote to vendee as follows:

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“Plainfield, N. J., July 27, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

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According to the writer's call on you last Friday evening, you will remember you agreed that Tuesday morning, the 27th, you would call at our office to make payment of the balance of the \$800.00 or at that time the property would be given up by you.

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No doubt your party has disappointed you, for which we are indeed sorry, as we expected you were going to take this property over and make it a home, but as we have been waiting for you for many months, we are sure you can-

Conclusions of Vice Chancellor

not find fault with us, as the previous correspondence shows how the matter stands. Although we told you formerly that if you did not pay the balance, the \$100.00 you paid would be forfeited, yet we do not want to take advantage of this and if you can give possession on the first of August, we will return you the \$100.00 you have deposited, less however the unpaid rent, but if you cannot give possession the first of August, it will be satisfactory for you to live there until the first of September, at which time we can make the adjustment on your deposit.

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Very respectfully yours,

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J. D. LOIZEAUX LUMBER CO.
Treasurer, J. D. Loizeaux."

JDL/H

It will be noted that the first paragraph of this letter speaks of an agreement between vendor and vendee that the latter would pay the \$700.00 on the morning of the 27th, or that at that time the property would be "given up" by vendee. There is no other evidence in the case of any such agreement,— Mr. Loizeaux did not testify as to any such agreement. This letter, in itself, is of course no evidence in that behalf, but the fact that Mrs. Patterson in her reply made no denial or contradiction of the statement in Mr. Loizeaux's letter, might be evidence from which the making of such an agreement could be found as a fact. However I find myself unable to give any such effect to this letter and

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Conclusions of Vice Chancellor

Loizeaux on or around Saturday, kindly grant us just that much longer.

Gratefully yours,

Margt. Patterson”

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“P. S. Enclosed you will find \$30.00 rent for July.”

In the first place, the finding of such a fact, as already noted, can only be reached by an inference from Mrs. Patterson's failure to contradict. Such an inference is not by any means a necessary or conclusive inference,—and in the present case it is rebutted. For one thing it is perfectly obvious from Mrs. Patterson's reply, that she did not consider the contract terminated—she was “carrying on” and expected to get the money by Saturday (the 31st). The relationship of practically employer and employee which had existed between Mr. or Mrs. Loizeaux and Mrs. Patterson, and the other circumstances would naturally lead her to couch her reply as she did,—rather than to make a contradiction. It is very significant in this behalf that she did not contradict his statement that “we have been waiting for you for many months,”—a statement that was clearly untrue, for they had been waiting for Mrs. Patterson only a scant two months at most. It may further be noted that Mr. Loizeaux in his testimony says that he “during May to July” told vendee that vendor had contracted to sell to an Elizabeth party for more money,—statements which

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Conclusions of Vice Chancellor

were obviously not true, since the other contract was not made till August 10th.

10 Again, even if it should be assumed that the agreement mentioned in Mr. Loizeaux's letter, had been made, the agreement by Mrs. Patterson, as stated, was, "I will pay the balance of the \$800 on Tuesday morning, the 27th, or I will, at that time, give up the property." It does not appear that there was any consideration for the promise,—and certainly she did not "give up the property". If it be regarded as a notice from vendor to vendee, then the answer is as pointed out in **Cranwell v. Clinton Realty Co.**, at P. 549, (citing **Hubbell v. Von**
20 **Schoening**, 49 N. Y. 327, and the opinion in the Court of Errors and Appeals in **McTague v. Sea Isle &c. Ass'n**, 57 N. J. L. 428) that neither rescission nor termination was accomplished because there was neither return of the part payment, nor tender of the deed.

30 It will further be noticed from a careful reading of vendor's letter of the 27th that it by no means constitutes a statement or notice that vendor considers the contract terminated or rescinded,—much less, that it is going to act upon that assumption. There is nothing in the letter which concludes anything—the letter still leaves it open, for anything to the contrary therein, for the vendee still to pay at once and get the deed. There had been prior "ultimatums" (see the letters of June 22d and of July 9th,) which had not been enforced, nor attempted so to be. And Mr. Loizeaux in his testi-
40 mony, says, speaking of July 30th, that if the \$700

Conclusions of Vice Chancellor

had been offered "at any time" the Company would have accepted it. In Mr. Loizeaux's letter of July 29th, he refers to Mrs. Patterson's promises "to be in on the 25th", but makes no claim that she had agreed to rescind or terminate.

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Still further, and of perhaps even greater significance,—not only was no claim made by Mr. Loizeaux in his testimony, that a rescission or termination had been made by agreement, nor any such claim made in the vendor's pleadings, or by its counsel in oral argument or brief,—(the point was not adverted to by either counsel),—but on the contrary the vendor, in its answer, specifically says that it made repeated demands on the vendee for her to fulfill the contract, from May 24th, 1920, to **August 10th, 1920.**

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From all of these considerations therefore, it is clear to me that there was in fact no agreement to terminate or rescind, and that there was no termination nor rescission prior to July 30th.

The letter from vendor to vendee of July 29th, mailed late that night and not received until the afternoon of the 30th, seems of no great materiality, since it was not received until after the conversation between Mr. Patterson and Mr. Loizeaux on the morning of July 30th. On that morning, Mr. Patterson testifies, he went to Mr. Loizeaux at the company's office, with the \$700 (which was in the form of a treasurer's check of the State Trust Company to Mr. Patterson's order), in order to make the payment for the house; that he told Mr. Loizeaux he

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Conclusions of Vice Chancellor

10 had come with the money to fix up on the house and
 “for my deeds right away”; that Loizeaux said
 “Patterson, I am sorry, the house is sold to another
 party in Elizabeth for more cash; can you move out
 before the first of September?” that he replied “I
 have nothing to do with the people in Elizabeth, I
 have the money to pay you for the house;”—but
 Loizeaux did not give the deed, nor take the \$700.

20 Mr. Patterson made a favorable impression as
 a witness; his credibility was not attacked, nor is it
 impeached by anything in the case. He has an in-
 terest in the suit, it is true,—but his testimony is
 corroborated by a disinterested witness, Mr. Smith,
 who on July 29th obtained Mr. Tebbs signature to
 the note (from the discount of which the \$700 was
 obtained), and who was with Patterson at the bank
 early in the morning of the 30th, saw him get the
 check, and immediately drove him to the Loizeaux
 office, and saw him talking to Loizeaux, although
 he did not hear the conversation. The check and
 the note were produced in evidence. Mr. Loizeaux
 admits that he was at the Loizeaux’s Company’s
 30 place that day,—he cannot deny that he saw Pat-
 terson there that morning, or that he told Patterson
 that the house had been sold to another party for
 more cash. He does deny,—and this is the extent of
 his denial,—that if he saw Patterson at that time,
 Patterson offered to pay the \$700. He says if Pat-
 terson had made such an offer “I would have ac-
 cepted it in a minute.”

40 From all this evidence it is impossible to con-
 clude otherwise than that Patterson did go there

Conclusions of Vice Chancellor

on that morning with the \$700 check to pay to vendor, and talked with Loizeaux. I also find in fact that Loizeaux told him at that time that the house had been sold to the Elizabeth party for more money, and refused to perform the Patterson contract. Mr. Loizeaux's failure to deny this, coupled with his letter to Mrs. Patterson of July 29th, make this practically certain, to my mind. As to just what Mr. Patterson did by way of tender is less clear. There is no testimony that Patterson physically tendered the check, or that he even showed it to Loizeaux. Patterson says he told Loizeaux "I have come with the money to fix up on the house," and "I have the money to pay you for the house". It may well be that Patterson did not make clear to Loizeaux that he then and there had the money with him; it may be that Loizeaux did not understand Patterson's statement that he had the money, or that Loizeaux did not give Patterson a chance to make it clear. I am satisfied, as I said, that Patterson had the money, and intended then and there to make the payment. Having gotten the money as he did, and gone with it to Loizeaux for the purpose of paying, it is incredible but that one of two things necessarily happened; either he offered it to Loizeaux, or if he did not, such failure was occasioned by Loizeaux's refusal and statement that the house was sold to the other party. Whichever of these be the fact, it seems to me makes no particular difference. Loizeaux's refusal was not the result of any misrepresentation or misstatement by the Pattersons, but it was a definite refusal by vendor to perform, and it was an actual misstatement of fact by Loizeaux to Patterson, inasmuch as the sale

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Conclusions of Vice Chancellor

to the other party was not made until August 10th.

The next question that arises is as to the effect of the letter of July 31st, from Mrs. Patterson to Mr. Loizeaux, which reads as follows:—

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“July 31st, 1920.

228 Emerson Ave.,
Plainfield, N. J.
Saturday morning.

Dear Mr. Loizeaux:—

Mr. Patterson called into the office yesterday afternoon, but did not find you there.

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Should your buyer wish to rent to us I feel that \$35 a month should be plenty, in the event of his not renting, how could it have been possible for us to give possession on August 1st even September is only a 30 day notice, and you will remember how fair I wished to be with Mrs. Henry, surely I deserve what I gave.

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I am grateful to you, and thankful that you wish to return me the \$100.00 deposit, it is quite an item to me, and of course of little account to you.

But I would add Mr. Loizeaux that we have done numerous little things around here and the property has not deteriorated any since we came into it.

I am,

Respectfully,

Margaret Patterson.’

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Conclusions of Vice Chancellor

It is now contended by the vendor's counsel that complainants by their conduct "after receiving notice of the rescission, have estopped themselves from equitable relief at the hands of this court." The first sentence of the letter refers to a call by Mr. Patterson at the Loizeaux office on the **afternoon** of the 30th. This obviously is not the call of the morning of the 30th. What the purpose of the afternoon call was, does not appear; it may have been to make a further attempt to conclude the purchase, or it may have been to the same purport and effect as Mrs. Patterson's letter of the 31st. The testimony is that on the return of Mr. Patterson from the morning's call on Mr. Loizeaux, he told his wife of the circumstances of that call, and of Loizeaux's refusal and statement that the property had actually been sold to another. This letter is obviously based on that information, accepting that statement as true. If that statement had been true, the letter might be deemed an acquiescence and waiver of vendee's rights. If there had been no misstatement of fact by the vendor and the vendor had acted on the faith of that letter, interpreting it as an acquiescence and waiver, vendee might well be estopped. But the statement was not true, and the letter based upon a belief in the truth of that untrue statement by no means justifies the inference of a waiver and acquiescence if she had known the truth, and I do not see how it can be so construed. Neither can I see any justification for any argument of estoppel,—not only because of the fact that the letter was predicated upon vendor's misrepresentation (and in this connection it would be no answer to say that vendee's rights were not legally cut off

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Conclusions of Vice Chancellor

by a sale to a third party: if she knew that as matter of law, she might nevertheless have preferred to waive her rights rather than to insist upon them, if there had actually been a sale to a third person) but also because there is no evidence whatever that the sale which was thereafter made to a third party was the result of the alleged waiver and acquiescence of vendee. On the contrary, it appears clearly from the evidence that the sale had been previously determined upon by the vendor, and was not in anywise the result of Mrs Patterson's letter. Mr. Loizeaux says the negotiations by his company for this other sale had been commenced while he was in Canada,—the middle of June,—only two or three weeks after the company had acquired title.

Neither can it be said that vendee's waiting to file her bill of complaint until August 26th, amounts to waiver, acquiescence, estoppel or laches. The effect of vendor's misstatement of fact would continue in this behalf until vendee was informed or learned of its falsity. Vendor does not show when that occurred—nor does it appear from anything in the case, although it may be argued that it occurred at Nathanson's call about August 10th. There is no evidence whatever that vendor relied upon vendee's failure to sue in concluding the contract and subsequently consummating the sale. And even if it had so relied, it could not avail itself thereby,—for it could not equitably rely upon or take advantage of conduct resulting from its misrepresentations.

I conclude, therefore, that as between the vendor and vendee, vendee is entitled to a decree for

Conclusions of Vice Chancellor

specific performance. Now as to the rights and liabilities of the other defendants,—Nathanson and the Plainfield Realty Wall Paper Supply Company? For the purposes of this suit these two defendants may be deemed identical,—Nathanson being the agent of the Plainfield Company, and negotiating the contract for its benefit. 10

Quoting from **Cranwell v. Clinton Realty Co.** *supra*, at p. 550:—

“The rule is well established that a purchaser with notice of a prior equity, superior to the rights of his grantor, takes the place of the grantor and is bound to do that which he was bound in equity to do. Such a purchaser can be compelled specifically to perform the agreement by conveying the land in the same manner and to the same extent as the grantor would have been compelled to do had he retained the legal title. **Young v. Young**, 45 N. J. Eq. (18 Srew.) 40, 41 (Chancellor McGill, 1889); **Haughwout v. Murphy**, 22 N. J. Eq. (7 C. E. Gr.) 547 (Justice Depue, Court of Errors and Appeals, 1871); **Brinton v. Scull**, 55 N. J. Eq. (10 Dick.) 747 (Vice Chancellor Grey, 1897.) 20 30

“And to be a bona fide purchaser without notice, the defendant must not only have agreed to purchase without notice of the complainant’s previous agreement, but he must also have actually paid the purchase-money and taken his deed without such notice.” **Dean v. Anderson**, 40

Conclusions of Vice Chancellor

34 N. J. Eq. (7 Stew) 503 (Chancellor Bloomfield, about 1810); *Brinton v. Scull*, supra."

10 The subsequent purchasers by their answer deny that they had any knowledge of the Patterson contract. But at the time of the Nathanson contract August 10th, and at the time of the deed, August 24th,—and indeed at all times, the vendee was in actual possession and occupancy of the premises. It is well settled therefore that Nathanson and the Plainfield Company are chargeable with notice of the legal or equitable interest which the Pattersons claimed in the premises,—with
20 notice of every fact and circumstance which they might have learned by making inquiry of the persons in possession. *Losey v. Simpson*, 11 N. J. Eq. 246, at 255; *Wanner v. Sisson*, 28 N. J. Eq. 141, at 150; *Wood v. Price*, 79 N. J. Eq. 620.

30 The testimony shows that in the forepart of August, just prior to the execution of the second contract on August 10th, Nathanson came to the house with Kenyon, an employee of the Loizeaux Company, told her that Nathanson was going to buy the house and wanted to see it, went through and looked at the downstairs part, and went out, and as they went out Nathanson said to her "your rent will be \$45.00 a month", but did not stop for any reply from her. This is Mrs. Patterson's testimony. Nathanson testifies to some additional conversation with Mrs. Patterson, which might be contended to be sufficient inquiry as to her rights or claims, or an estoppel. But I am satisfied that this
40 alleged conversation did not take place. Mrs. Pat-

Conclusions of Vice Chancellor

terson denies it; Kenyon called as a witness by Nathanson did not corroborate it; and Nathanson did not make a favorable impression on me as a witness,—he was evasive and in several instances made replies to questions which proved on further pressing, to be untrue. 10

Nathanson called later on with McIntyre. It is not clear whether this was after the deed had passed or not,—but even assuming it to have been prior to the deed, I find that nothing occurred to raise an estoppel against Mrs. Patterson. She denies the conversation as related by Nathanson and McIntyre, and I believe her. Nathanson I have already commented upon; McIntyre was a close associate of Nathanson's and both he and Nathanson say that on this occasion Mrs. Patterson said she could have bought the property but "couldn't raise the money". This is impossible for me to believe. It is absolutely certain from the evidence that she not only could, but did raise the money. That being so, she certainly would not have made the alleged statement. The probability is that Nathanson believed she couldn't raise the money, and believed that she had no rights except as a monthly tenant,—but that that information came from the Loizeaux people. 20 30

I cannot find any waiver by vendee. It is elemental that waiver means an intentional relinquishment of rights, and this necessarily involves a knowledge of the rights which it is alleged were intentionally abandoned. The Patterson testimony is that they did not know their rights until they con- 40

Conclusions of Vice Chancellor

10 sulted a lawyer,—which was at the time the deed passed. There is no reason to doubt this,—observation of them and consideration of all the evidence makes it certain. Furthermore, until the call of Nathanson about August 10th, she had no know-
 10 ledge of the fact that the Loizeaux Company had not already sold to Nathanson or another. Vendor's refusal was on July 30th, and the bill was filed August 26th.

20 Estoppel *in pais* is of course different from waiver, and might arise even in the absence of a knowledge of rights. But I do not see how any such arises here from Mrs. Patterson's failure to consult counsel or to bring suit, or to notify Nathanson of her claim, between August 10th and August 24th. It was incumbent upon Nathanson to inquire of her as to her rights or claim,—and this he did not do. Furthermore there has been no damage occasioned to Nathanson,—he has made no improvements or alterations in the property; he can be restored completely to the *statu quo ante* by the returning to him from the Loizeaux Company of his money with interest. Neither is the latter damaged,
 30 —it has had the use of Nathanson's money. The only result of a specific enforcement of the Patterson contract is that the Loizeaux Company and Nathanson are prevented from acquiring profits out of this house which in equity belongs to Mrs. Patterson,—which equity I find she has not waived, nor lost by estoppel.

I will therefore advise such decree.

40 The contract does not specify the term or in-

Conclusions of Vice Chancellor

terest rate of the \$3000.00 bond and mortgage to be given, nor that payment shall be postponed. It will therefore be payable on demand and with legal or 6% interest. **Green v. Richards**, 23 N.J. Eq. 32:536.

Complainant is a married woman, and a conveyance by her is not valid without her acknowledgment;—**Chassman v. Wiese**, 90 N.J. Eq. 108; nor without her husband joining in the same;—**Corby v. Drew**, 55 N. J. Eq. 387. In the present case the husband is not a party to the suit, nor did he sign the contract, nor is there any contract acknowledged by the wife,—cf. **Goldstein v. Curtis**, 63 N. J. Eq. 454. Specific performance will not be decreed where, at the time of the decree, both parties are not bound,—where complainant could not be compelled to perform the obligation on her part. **Richards v. Green**, 23 N. J. Eq. 32 aff'd, Id. 536; **Woodruff v. Woodruff**, 44 N. J. Eq. 349; **Ten Eyck v. Manning**, 52 N. J. Eq. 47. There is of course no difficulty on this score as far as payment of money by the vendee is concerned. **Moore v. Baker**, 65 N. J. Eq. 104. The evidence shows that she agreed to buy and pay the agreed price. There may be no written memorandum of this signed by her, but if that were necessary it was supplied by the filing of her bill, under the principles mentioned in the cases last cited. Is there any difficulty by reason of the fact that her obligation is not merely to pay money, but is to pay part in money and execute a purchase money bond and mortgage for the other part? I see no obstacle on that score. The contract is one for the benefit of the wife's separate estate, and under such circumstance, if a bond and mortgage be given by a married woman, invalid because of non-joinder

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Conclusions of Vice Chancellor

of the husband, or lack of acknowledgement by the wife, although the invalid mortgage creates no lien, yet the court will decree a lien from the circumstances, and a lien thereupon arises from and by the decree. *Ins. Co., v. Marshall*, 32 N. J. Eq. 103 *Armstrong v. Ross*, 20 N. J. Eq. 109; *Perrine v. Newell*, 49 N. J. Eq. 57; cf. also *Wilson v. Brown*, 13 N. J. 277. And where a married woman holds the property as trustee, equity will decree that she convey; the decree is self-executing and the questions of joinder by husband or acknowledgement by her raise no obstacles. *Fee v. Sharkey*, 59 N. J. Eq. 284, *aff'd Id.* 446; *Goldstein v. Curtis*, 63 N. J. Eq., at 461.

20 So, in the present case, the mortgage is to be security for the unpaid part of the purchase price; the vendor has a lien for that in any event,—and a lien which is prior to any interest which the husband could take in the property. It might be said that under the agreement, the complainant on receipt of the deed would immediately hold the property as trustee in favor of the vendor to the extent of the mortgage promised, and a self executing decree that she execute and deliver such mortgage might
30 be made against her; at any rate a decree establishing the vendor's lien could be made, which would have the same effect.

I think that under the circumstances of the case it is only equitable that the vendee should pay the interim 'rent' up to the time of performance specified in the decree (which may be ten days after the date of the decree). It does not appear clearly from the evidence whether those payments have been
40 kept up or not, but inferentially they have not. If

Conclusions of Vice Chancellor

the parties cannot agree on the amount (if any) due in this respect, I will hear testimony on any motion day, on five days' notice.

The decree should provide for the complete adjustment of the matter among all the parties. **Cf. Saldutti v. Flynn, supra.** In addition to providing for the conveyance by the defendant Realty Company to complainant, and the payment of the purchase price, plus unpaid rent, by complainant as above mentioned, it should also provide for the return by the Loizeaux Company to the Realty Company, of all moneys paid by the latter on account of purchase price, together with interest thereon at 6% from dates of such payments; also such taxes as have been paid by the Realty Company, with interest. The Loizeaux Company is paid for these taxes out of the "rent" from complainant. Allowance is also to be made by the Loizeaux Company to complainant on account of taxes for the current year. **Cf. P. L. 1918, p. 847, Section 514.** It would appear from the second agreement of sale (D-29) that there is a mortgage of \$2400.00 on the property held by outside parties. This, if still outstanding, must be satisfied and cancellation procured by the Loizeaux Company, unless the parties are willing that complainant assume payment in lieu **pro tanto** of the \$3000.00 mortgage to be given by her under the contract.

The form of the decree can be settled on notice. Complainant is entitled to costs.

*Notice***NOTICE**

Filed May 21, 1921

10 **In Chancery of New Jersey**

Between

MARGARET PATTERSON

Complainant

—and—

J. D. LOIZEAUX LUMBER
CO., A Corporation, et als.,

Defendants

On Bill, &C.

NOTICE

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SIR:—

TAKE NOTICE that on Tuesday, the 24th day of May, 1921, at the State House, in the City of Trenton, at 10:30 o'clock in the forenoon (daylight saving time) I shall apply to Vice-Chancellor Malcolm G. Buchanan for a settlement of the final decree in this case and also for a reasonable allowance for counsel fees.

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Annexed hereto and served upon you herewith is a draft of the proposed final decree.

Dated May 19, 1921.

ROBERT NEWTON CRANE

Sol'r of Complainant.

To William Newcorn, Esq.,

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Sol'r for Defendants.

Final Decree

48/582

FINAL DECREE

Filed June 8, 1921

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In Chancery of New Jersey

Between

MARGARET PATTERSON

Complainant

—and—

J. D. LOIZEAUX LUMBER

CO., A Corporation, et als.,

Defendants

On Bill, etc.

FINAL DECREE

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This cause duly coming on to be heard upon bill, answer, replication and proofs, in the presence of Robert Newton Crane, solicitor for and of counsel with the complainant, and William Newcorn, solicitor for and of counsel with the defendants, and the pleadings have been read, and testimony taken in open court, and the arguments of counsel having been considered, and it satisfactorily appearing to the court that by virtue of an agreement in writing duly made and executed by the defendant, J. D. Loizeaux Lumber Co., a corporation, on the fourth day of February, Nineteen Hundred and Twenty, the said defendant, J. D. Loizeaux Lumber Co., agreed to sell and convey to the complainant a certain tract of land in the bill mentioned and described as follows:—

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Final Decree

Situated in the City of Plainfield, County of Union and State of New Jersey, bounded and described as follows:—

10 BEGINNING at a point in the southwesterly side line of Emerson Ave., distant along said side line of Emerson Avenue in a northwesterly direction sixty and twenty-four one hundredths (60.24) feet from the northwesterly side line of Midway; thence north forty-five degrees and thirty-seven minutes west ($45^{\circ} 37' W$) along said side line of Emerson Avenue a distance of fifty feet (50) feet; thence south forty-four degrees and twenty-three minutes west and
20 along the southeasterly side line of lot number twelve on lot hereinafter mentioned, one hundred and twenty-five feet (125); thence south forty-five degrees and thirty-seven minutes east ($45^{\circ} 37'$) along the rear line of lots twenty (20) and nineteen (19) fifty-five and eighty-seven one hundredths (55.87) feet thence north forty-four degrees and twenty-three minutes east ($44^{\circ} 23' E.$) one hundred and twenty-five (125) feet to the BEGINNING.

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Being known as lots number thirteen (13) and fourteen (14) in Block H. on map entitled "Map of Highland Park, Plainfield N. J. April 24, 1904, H. C. VanEmburch, C. E." and being the same premises conveyed to the said J. D. Loizeaux Lumber Company by deed of conveyance from Board of Trustees Seventh Day Baptist Memorial Fund dated May 24, 1920, and recorded in the Union County Register's office in
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Final Decree

Book 801 of Deeds, for Union County, on pages 364 &c.,—————

and the complainant to pay to the said defendant, J. D. Loizeaux Lumber Co., the sum of Three Thousand and Eight Hundred Dollars, in the manner following, that is to say; one hundred dollars on the making of the agreement as aforesaid and a further sum of Seven Hundred Dollars in cash as soon as said defendant, J. D. Loizeaux Lumber Company should be able to give a free and clear title to said premises, as a result of a foreclosure suit, which it was then proceeding with, and the further sum of Three Thousand Dollars by execution and delivery by complainant to defendant of bond for said last mentioned sum and purchase money mortgage upon said premises securing payment of said bond; at the same time last mentioned, the said defendant, J. D. Loizeaux Lumber Company, to make, execute and deliver to the complainant, her heirs and assigns, a good and sufficient deed for said premises; and the defendant J. D. Loizeaux Lumber Company to give possession of said premises to the complainant from the time of the making of the said agreement, and complainant to pay defendant the sum of Thirty Dollars per month as rent until such time as the deed should be delivered as aforesaid.

And it further appearing that the said complainant paid to the said defendant, J. D. Loizeaux Lumber Co., the said sum of One Hundred Dollars, parcel of said purchase price and that the said defendant, J. D. Loizeaux Lumber Co., did give possession of said premises to the complainant at the time of the

Final Decree

making of said agreement, and that complainant paid to defendant the said rent of Thirty Dollars per month, all pursuant to said agreement, and that thereafter, to wit, shortly before the first day of June, 10 Nineteen Hundred and Twenty, the defendant, J. D. Loizeaux Lumber Co., did obtain title to said property and on or about June first, 1920, notified complainant thereof, and that within a reasonable time thereafter the complainant was ready and willing and attempted to pay the defendant, J. D. Loizeaux Lumber Co., the said sum of Seven Hundred Dollars, and was ready and willing to execute and deliver said bond and mortgage for Three Thousand Dollars 20 but was excused and prevented from making such payment and delivery or actual tender thereof by the acts of the defendant and that the said defendant, J. D. Loizeaux Lumber Co., refused to perform its contract aforesaid and deliver a deed in accordance therewith.

And it further appearing that in and by said contract of sale, no period of maturity nor interest 30 rate was specified or agreed upon as to said Three Thousand Dollar bond and mortgage, and complainant.

And it further appearing that thereafter, to wit: on the tenth day of September, Nineteen Hundred and Twenty the defendant, J. D. Loizeaux Lumber Co., conveyed said premises to the defendant, Plainfield Realty Wall Paper Supply Co., a corporation, said last named defendant having notice of the 40 rights of the complainant in the premises.

Final Decree

And it further appearing that said complainant has always been and still is ready and willing, in all things, to comply with the stipulations of said agreement on her part, and has prayed an order or decree of this court directing the defendant to comply with and fulfill same in all things on its part and the Chancellor being of the opinion that the complainant is entitled to specific performance of said agreement. 10

And it further appearing that the defendant, Plainfield Realty Wall Paper Supply Co., has paid the defendant, J. D. Loizeaux Lumber Co., the price which the said defendant, Plainfield Realty Wall Paper Supply Co., agreed to pay to defendant, J. D. Loizeaux Lumber Co., for said property, which said purchase price so paid by the defendant, Plainfield Realty Wall Paper Supply Co., to the defendant, J. D. Loizeaux Lumber Co., as aforesaid, should be repaid to the said Plainfield Realty Wall Paper Supply Co., by the said J. D. Loizeaux Lumber Co., with interest at the rate of six per cent per annum from the date or dates of the said payment. 20

And it also further appearing that the defendant, J. D. Loizeaux Lumber Co., pursuant to the statute should make allowance to the complainant for taxes for the current year to the time of the passing of the title as hereinafter provided. 30

And it further appearing that the said defendant J. D. Loizeaux Lumber Co., since the making of the said agreement with complainant, has caused the said premises to become, or permitted them to re- 40

Final Decree

main encumbered with a mortgage of twenty-four hundred dollars, and that the holder of the said mortgage is not a party to this suit; and complainant, by her counsel, announcing her willingness to assume the payment of the said mortgage as a part
10 of the purchase price to be paid by her and to pay in cash the balance of the said purchase price agreed to be paid by her.

And it further appearing that the complainant should pay to the defendant, J. D. Loizeaux Lumber Co., rent for said property at the rate of Thirty Dollars per month from the first day of September, 1920, to the date of delivery of the deed.

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And it appearing that the defendant, Plainfield Realty Wall Paper Supply Co., should convey said property to the complainant by a good and sufficient deed in law free and clear from all encumbrances, excepting mortgage of Two Thousand Four Hundred Dollars:

It is thereupon on this sixth day of June, A. D.,
30 nineteen hundred and twenty-one, by his Honor, EDWIN ROBERT WALER, CHANCELLOR OF THE STATE OF NEW JERSEY, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this court, and the acts of the Legislature in such case made and provided, doth hereby, ORDER, ADJUDGE and DECREE that the said articles of agreement be in all things, except as herein otherwise provided, specifically performed by the defendant J. D. Loizeaux
40 Lumber Co., and that the defendant, Plainfield

Final Decree

Realty Wall Paper Supply Co., do in ten days from the date of this decree, make, execute, acknowledge in due form of law, and deliver to complainant a good and sufficient deed for said property, free and clear from all encumbrances, except a certain mortgage now thereon of Two Thousand Dollars, and which said deed shall provide for the assumption by complainant of the payment of the principal and interest secured by said mortgage and that thereupon the complainant do pay or cause to be paid to the defendant, J. D. Loizeaux Lumber Co., one thousand three hundred dollars, less the proportionate amount of taxes for the current year, from January 1, 1921, to the time of the delivery of the deed and less the amount of interest accrued upon said Two Thousand and Four Hundred Dollar mortgage. -

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And it is further ORDERED, ADJUDGED and DECREED, that the rent for said property at the rate of Thirty Dollars per month be paid by the complainant to the defendant, J. D. Loizeaux Lumber Co., from the first day of September Nineteer Hundred and Twenty to the time of the delivery of said deed.

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And it is further ORDERED, ADJUDGED and DECREED, that the defendant, J. D. Loizeaux Lumber Co., do repay to the defendant, Plainfield Realty Wall Paper Supply Co., the consideration paid by the defendant, Plainfield Realty Wall Paper Supply Co., to the defendant, J. D. Loizeaux Lumber Co., for said property, together with all taxes, interest, water rent and insurance premiums paid by the defendant, Plainfield Realty Wall Paper Supply Co.,

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Final Decree

for and in relation to said property with interest thereon at six per cent per annum from the dates of the said several payments.

10 And it is further ORDERED, ADJUDGED
and DECREED, that the said defendants, J. D. Loizeaux Lumber Co., and Plainfield Realty Wall Paper Supply Co., do pay, to complainant or her solicitor, her costs of this suit to be taxed, in which shall be included a counsel fee of one hundred dollars hereby allowed as a reasonable and proper sum in that be half.

20 It is further ordered that any party have leave
to apply to this court for further directions or relief in the premises if occasion shall require.

Respectfully advised

MALCOLM G. BUCHANAN
V. C.

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*Notice of Appeal***NOTICE OF APPEAL**

Filed June 14, 1921

In Chancery of New Jersey 10

Between

MARGARET PATTERSON

Complainant

—and—

J. D. LOIZEAUX LUMBER

CO., A Corporation, et als.,

Defendants

NOTICE
OF APPEAL

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J. D. Loizeaux Lumber Co. (a corporation),
Plainfield Realty Wall Paper Supply Co. (a corpora-
tion) and Joseph Nathanson, defendants herein,
hereby appeal from the whole and every part of the
final decree made in the above entitled cause.

Dated June 11, 1921.

WILLIAM NEWCORN,

Solicitor of Defendants 30

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

WILLIAM NEWCORN,

Of Counsel with Defendants.

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*Petition of Appeal***PETITION OF APPEAL**

Filed June 16, 1921

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New Jersey Court of Errors and Appeals

	Between MARGARET PATTERSON Complainant-Respondent, —and— J. D. LOIZEAUX LUMBER 20 CO., JOSEPH NATHANSON, AND PLAINFIELD REALTY WALL PAPER SUPPLY COMPANY. Defendants-Appellants.	On Bill for Specific Performance. On Appeal of Defendant. PETITION OF APPEAL.
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To The Honorable the Court of Errors and Appeals
in the last resort in all causes:

30 The petition of the J. D. Loizeaux Lumber
Company, a corporation, Joseph Nathanson, and the
Plainfield Realty Wall Paper Supply Company, a
corporation, the appellants in the above-stated
cause, respectfully show that your petitioners find
themselves aggrieved by a final decree made in the
Court of Chancery by his Honor, Edwin Robert
Walker, Chancellor of New Jersey, bearing date the
Sixth day of June, nineteen hundred and twenty-
40 one, wherein the said Margaret Patterson was com-
plainant and the said J. D. Loizeaux Lumber Com-

Petition of Appeal

pany, a corporation, Joseph Nathanson, and Plainfield Realty Wall Paper Supply Company, a corporation, were defendants, in this respect, to wit. That the said decree adjudges that "the said articles of agreement be in all things, except as herein otherwise provided, specifically performed by the defendant, J. D. Loizeaux Lumber Company, and that the defendant, Plainfield Realty Wall Paper Supply Company, do in ten days from the date of this decree make, execute, acknowledge in due form of law, and deliver to complainant a good and sufficient deed for the said property, free and clear from all encumbrances, except a certain mortgage now thereon of \$2,000.00, and which said deed shall provide for the assumption by complainant of the payment of the principal and interest secured by said mortgage and that thereupon the complainant do pay or cause to be paid to the defendant, J. D. Loizeaux Lumber Company \$1,300.00, less the proportionate amount of taxes for the current year, from January 1, 1921, to the time of the delivery of the deed and less the amount of interest accrued upon said \$2400.00 mortgage." And that "the defendant, J. D. Loizeaux Lumber Company do re-pay to the defendant, Plainfield Realty Wall Paper Supply Company, the consideration paid by the defendant, Plainfield Realty Wall Paper Supply Company to the defendant J. D. Loizeaux Lumber Company for said property, together with all taxes, interest, water rent and insurance premiums paid by the defendant, Plainfield Realty Wall Paper Supply Company for and in relation to said property with interest thereon at six per cent per annum from the dates of the said several payments." And that "the said defendants, J. D. Loizeaux Lumber Company and

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Petition of Appeal

Plainfield Realty Wall Paper Supply Company do pay to complainant or her solicitor, her costs of this suit to be taxed, in which shall be included a counsel fee of One Hundred and Fifty Dollars hereby allowed as a reasonable and proper sum in that behalf.”

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And your petitioners humbly appeal from the said decree of the Chancellor, which decrees adversely to the defendants as aforesaid upon the ground that the same is erroneous for that the said complainant was not ready and willing and attempted to perform the said contract, and did not offer to execute the said bond and mortgage provided in said agreement, specific performance of which was sought in and by the said bill of complaint; and for that, that the complainant did not within a reasonable time offer or attempt to perform the agreement, the specific performance of which was sought in and by the said bill of complaint; and for that, that the Plainfield Realty Wall Paper Supply Company, defendant, had no notice of the rights of the complainant in the premises and for that the relief granted does said complainant in and by said decree does not conform to the said agreement; and for that the agreement, specific performance of which was sought in and by the said bill of complaint, is a unilateral agreement and was non-enforceable against the complainant; and for that, that the agreement, specific performance of which was sought in and by the said bill of complaint, was non-enforceable against the complainant by reason of the complainant's failure to accept the said agreement in accordance with the statute made and provided; and for that costs should not have been awarded to the complainant, and for that coun-

Petition of Appeal

sel fees should not have been extended to complainant's solicitor, and for that the said bill of complaint filed by the said complainant should have been dismissed and the relief therein prayed by the said complainant should have been denied and the decree in this case should have been made accordingly. 10

Your petitioners therefor pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

WILLIAM NEWCORN, 20
Solicitor of Defendants—Appellants.

WILLIAM NEWCORN,
Of Counsel with Defendants—Appellants.

NO ANSWER FILED.

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Margaret Patterson, direct

DIRECT EXAMINATION BY MR. CRANE:

Q. Mrs. Patterson, whereabouts do you live?

A. 228 Emerson Avenue, Plainfield.

Q. On January 4th, did you receive this letter from Mr. Loizeaux (handing witness a paper)? 10

A. Yes, sir.

MR. CRANE: I offer that letter in evidence. Said letter is marked "Exhibit C 1."

Q. Mrs. Patterson, when did you go into possession of the property at 228 Emerson Avenue?

A. On the 30th day of January, 1920. 20

Q. Before that time, had you talked with Mr. Loizeaux about buying the property that you moved into in the latter part of January?

A. Yes, sir.

Q. I show you a letter of January 5, 1919, and ask you if you received that letter from Mr. Loizeaux?

A. Yes, sir.

MR. CRANE: I offer that letter in evidence. Said letter is marked "Exhibit C 2." 30

MR. CRANE: If your Honor please, I will read "Exhibit C 1."

"Plainfield, N. J., Feb. 4, 1920.

Mrs. Margaret Patterson,
228 Emerson Avenue,
Plainfield, N. J.

Dear Madam:—

We acknowledge having received \$130.00 40

Margaret Patterson, direct

from you on February 3rd, to apply as follows: \$30.00 being the rent on the house for the month of February, and \$100.00 being a payment on account of the principal of \$3800.00 for the house and lot known as No. 228 Emerson Avenue.

10

Our understanding is this: That you will pay \$30.00 each month until we are able to give you a free and clear title, the result of the foreclosure which we are now proceeding with. So soon as we are able to do this, you agree to pay us \$3700.00 in the manner following: \$3,000 by raising this amount by mortgage on the above-mentioned property, and \$700.00 in cash, which we understand you are to raise by second mortgage, and the above when carried out is satisfactory to us, but if for any reason you are unable to carry out the above provisions, you agree, upon being requested, to vacate the property, leaving it in first class condition, and all that you have paid in to be counted as liquidation of any damages we might sustain.

20

If in any of the above you do not fully concur, please advise at once, so that there can be no misunderstanding.

30

Very respectfully yours,

J. D. Loizeaux Lumber Co.,
(Signed) J. D. Loizeaux,
By Treasurer."

Q. Under that agreement did you continue in possession of the property during the months of February, March, April, May, June and July?

40

Margaret Patterson, direct

A. Yes, sir.

Q. Did you make an application to a building loan for a loan on th's property?

A. Mr. Loizeaux was to make that application for me.

Q. Did he make the application? 10

A. No.

Q. Did you, in the spring of the year, did you go down and see a lawyer in Plainfield by the name of Stillman about a building and loan mortgage on the property?

A. Yes.

Q. As a result of what he told you, d'ed you go to see Mr. J. D. Loizeaux at the lumber yard?

A. Yes. 20

Q. What did you say?

A. I didn't see Mr. Loizeaux at that time; I saw Mr. Vanderveer.

Q. His assistant?

A. Yes.

Q. What was said?

A. Mr. Vanderveer said nothing could be done as Mr. Loizeaux was away.

Q. Did you see Mr. Loizeaux after that? 30

A. When he came home from Canada.

Q. Did you talk about a mortgage?

A. Yes, we talked about a mortgage.

Q. What did Mr. Loizeaux say?

A. I hardly recall; at that time he said he would carry the first mortgage for me; that's right.

BY THE COURT:

Q. When was this that he told you that? 40

Margaret Patterson, direct

A. I think that was about the last of June.

Q. The last of what?

A. The last of July; I don't recall the date.

10 Q. Do you remember about when it was that Mr. Loizeaux notified you that the title to the property had been effected so he could deliver a deed to you?

A. As near as I can remember, I think it was about the first of June.

Q. Immediately after that, did you immediately start to raise \$700.00 on the second mortgage?

A. Yes.

20 Q. What did you do with regard to that?

A. I tried to get the second mortgage from Mr. Tebbs, and Mr. Tebbs agreed to get me the mortgage.

Q. Was he successful?

BY THE COURT:

Q. When was that?

A. I just couldn't recollect that date.

30 Q. Approximately, how long after Mr. Loizeaux told you he would carry the first mortgage for you?

A. It seems to me that was before that, about a week before that.

40 Q. I call your attention to this letter of July 15th from Mr. Loizeaux to you, and ask you if that refreshes your recollection as to the date when Mr. Tebbs was to get you the mortgage?

Margaret Patterson, direct

A. Yes, sir, that is correct, when Mr. Tebbs was to get the mortgage.

Q. When was it, about when, about the date of the letter?

A. I think about the date of the letter; I think about the 13th. 10

Q. The 13th of what?

A. Of July.

MR. CRANE: I offer that in evidence.
Said letter is marked "Exhibit C 3."

MR. CRANE: Have you a letter of July 29th from Mrs. Patterson? 20

(Mr. Newcorn produces letter).

Q. In the meantime, had you kept in touch with the Loizeaux Lumber Company about this matter?

A. Yes, sir.

Q. Did you tell them you were working through Mr. Tebbs to get this money? 30

A. Yes, sir.

Q. I show you a letter dated July 27th, and ask you if you received that letter?

A. Yes, sir.

MR. CRANE: I offer that letter in evidence.
Marked "Exhibit C 4."

MR. CRANE: I will read these two letters. 40

Margaret Patterson, direct

“Plainfield, N. J., July 15, 1920.

Mrs. Margaret Patterson,
228 Emerson Avenue,
Plainfield, N. J.

My dear Mrs. Patterson:—

10

Your letter of July 13th, addressed to the writer, received and noted. As per your letter, I understand that the necessary amount for the purchase of this property will be given to Mr. Patterson by Mr. Tebbs Thursday afternoon, at which time he will immediately call at the office. Same is satisfactory.

Respectfully yours,

J. D. Loizeaux Lumber Company,
C. E. Loizeaux, R.

20

By C. E. Loizeaux.”

“Plainfield, N. J., July 27, 1920.

Mrs. Margaret Patterson,
228 Emerson Avenue,
Plainfield, N. J.,

Dear Madam:—

30

According to the writer's call on you last Friday evening, you will remember you agreed that Tuesday morning, the 27th, you would call at our office to make payment of the balance of the \$800.00, or at that time the property would be given up by you.

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No doubt your party has disappointed you, for which we are indeed sorry, as we expected you were going to take this property over and make it a home, but as we have been waiting for you for many months, we are sure you cannot find fault with us, as the previous cor-

Margaret Patterson, direct

response shows how the matter stands. Although we told you formerly that if you did not pay the balance, the \$100.00 you paid, would be forfeited, yet we do not want to take advantage of this, and if you can give possession on the 1st of August, we will return the \$100.00 you have deposited, less, however, the unpaid rent, but if you cannot give possession the first of August, it will be satisfactory for you to live there until the first of September, at which time we can make the adjustment on on your deposit. 10

Very respectfully yours,
J. D. Loizeaux Lumber Company,
Treasurer, J. D. Loizeaux." 20

Q. I show you this letter (handing witness paper) and ask you if that is your signature and if you sent it to Mr. Loizeaux?

A. Yes.

MR. CRANE: I offer that letter, July 29th. Said letter is marked "Exhibit C 5."

MR. CRANE: The letter is as follows: 30

"228 Emerson Avenue,
Plainfield, N. J., July, 29th, 1920.

Dear Mr. Loizeaux:—

Your note I received yesterday afternoon, which was characterized as all your treatment toward us has been, namely with great fairness.

Mr. Loizeaux, that has been mainly why I 40

Margaret Patterson, direct

have wanted this house so much, to make a home (using your own phrase).

10 Mr. Charles Schwab has not paid Mr. Tebbs as yet (he is having a big summer home built for himself and is very busy). However, Mr. Patterson called on Mr. Fieckert, of the State Trust Company, and he will advance the amount for us, by Mr. Tebbs signing for it to be paid at a stated time, which Mr. Tebbs is willing to do for us.

I know this has all been a great source of annoyance to you, Mr. Loizeaux, and I am just miserable over it all, but the before stated reason has made me anxious to carry on.

20 Mr. Patterson will call into the office, Mr. Loizeaux, on or around Saturday. Kindly grant us that much longer.

Gratefully yours,

Margaret Patterson.

Enclosed you will find \$30.00 rent for July."

30 Q. Do you recall what, day the 29th of July was Mrs. Patterson?

THE COURT: You may state that on the record. The court will take judicial notice of it.

MR. CRANE: The 29th was on Thursday.

Q. Do you know whether or not Mr. Patterson, your husband, did call on Mr. Loizeaux on Friday, the 30th?

40 A. He did call, yes.

Margaret Patterson, direct

Q. You didn't go with h'im?

A. No, I didn't go with him.

Q. Did somone call at the house for Mr. Patterson before he went to Mr. Loizeaux's?

A. Yes, sir, Mr. Smith called to take him down to the Trust Company. 10

Q. Now, then, as a result of what your husband told you when he got home, you knew that Mr. Loizeaux would not complete his contract, didn't you?

A. Yes, sir.

Q. Later, and on or about the 10th of August, 1920, did a man by the name of Nathanson call at the house? 20

A. Yes, s'r.

Q. What did Nathanson say to you?

A. He called in company with a man from Mr. Loizeaux's office, I think.

Q. What did he say to you?

A. He wanted to come in and see the house.

Q. What did you say to him?

A. As near as I can recall, I told him there was no need to see the house, as I had a contract on the house. 30

Q. Now, then, did the same man, Nathanson, call on or about the first of September, 1920, to collect some rent from you?

A. Yes, sir.

Q. And what did you tell Nathanson then?

A. I told him he would have to see my lawyer about the collection of rent, and any other business in connection with the house, that it was out of my hands. 40

Margaret Patterson, cross

CROSS-EXAMINATION
BY MR. NEWCORN:

10 Q. You negotiated sometime during the month of
November, 1919, for the purchase of this
house?

A. I can't hear you.

Q. You negotiated the purchase of this house some-
time during the month of November, 1919?

A. As near as I can recall, I think the first talk of
it was about the first of December.

Q. And you had been employed at Mr. Loizeaux's
on and off prior to that time, and his feeling
was rather friendly to you?

20 A. Yes, we were very friendly, Mr. Loizeaux's
people and I.

Q. And finally, about the——

A. Oh, pardon me. I wasn't employed at his house.

Q. You used to work there for Mrs. Loizeaux?

A. I have sewed for her; I sew at my own home.

30 Q. And finally, on the 13th day of November, you
wrote a letter to Mr. Loizeaux, which I, pre-
sume—this is your signature (handing wit-
ness paper)?

A. Yes, that is my signature.

Q. And in this letter you ask him if he is still
the owner of the house?

A. Yes.

Q. And what it could be purchased for?

A. Yes, sir.

40 MR. NEWCORN: I offer the letter for iden-
tification.

Margaret Patterson, cross

MR. CRANE: There is no objection to offering it in evidence.

THE COURT: It will be admitted.

Said letter, dated 11/12/19, from Mrs. Patterson to Mr. Loizeaux, is marked "Exhibit D 1." 10

THE COURT: If there is no dispute between counsel as to the receipt of all these letters, why not offer them all at once? You can offer all that you have, if you so desire; and let Mr. Crane offer all that he has; then you will not need to ask the witness about them. 20

MR. NEWCORN: All right.

Q. You received this reply of November 15, 1919, from Mr. Loizeaux?

A. Yes, sir.

Q. And in this letter Mr. Loizeaux gives you the terms under which they would sell you the property, in which he says that "we have been practically offered \$3800.00 for the property, and think we should have \$4,000, but if you like it, and see your way to purchase, we would try and do the best we could for you?" 30

A. Yes.

Q. You replied to that communication under the date of November 20, 1919; is that your signature (handing witness paper)?

A. That is my signature. 40

Margaret Patterson, cross

MR. NEWCORN: I offer in evidence the letter of November 15, the Lumber Company to Mrs. Patterson.

Said letter is marked "Exhibit D 2."

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MR. NEWCORN: I also offer Mrs. Patterson's letter to Mr. Loizeaux.

Said letter dated November 20, 1919, is marked "Exhibit D 3."

Q. I show you a letter dated the 3rd day of December, 1919, and ask you whether that is your letter?

20 A. Yes, sir.

MR. NEWCORN: I offer that letter in evidence.

Said letter is marked "Exhibit D 4."

Q. And you received a reply to that letter under date of December 5, 1919?

A. That is correct, yes.

30

MR. NEWCORN: I offer that letter in evidence.

Said letter, being a copy of a letter from Mr. Loizeaux to Mrs. Patterson, is marked "Exhibit D 5."

Q. And on December 10th you again wrote to the J. D. Loizeaux Lumber Company? (Show-witness letter).

40 A. Yes, sir.

Margaret Patterson, cross

MR. NEWCORN: I offer that letter in evidence.

Said letter is marked "Exhibit D 6."

Q. And on the 2nd day of January, 1920, you addressed this communication to Mr. Loizeaux? 10
(Showing witness letter).

A. Yes, sir.

MR. NEWCORN: I offer that letter in evidence.

Said letter is marked "Exhibit D 7."

Q. You received on January 5, 1920, a letter which is in evidence marked "C 1?" 20

A. Yes, sir.

Q. And upon receipt of that communication, you wrote on the 10th this letter? (Handing witness letter).

A. Yes, sir.

MR. NEWCORN: I offer that in evidence.

Said letter is marked "Exhibit D 8."

Q. Subsequently followed by your communication of January 19th? (Handing witness letter).

A. Yes, sir, that is right. 30

Letter of January 19th, is marked "Exhibit D 9."

Q. This is the letter of January 23, 1920? (Showing witness paper).

A. Yes, sir.

MR. NEWCORN: I offer that in evidence.

Said letter is marked "Exhibit D 10."

Q. Letter of January 28, 1920? (Handing witness letter). 40

Margaret Patterson, cross

A. Yes, sir.

MR. NEWCORN: I offer that in evidence.
Said letter is marked "Exhibit D 11."

10 THE COURT: These letters are from complainant to defendant?

MR. NEWCORN: Yes, sir.

20 Q. In answer to the last communication, under date of January 28th, written by you, you received the communication dated February 4th from the J. D. Loizeaux Lumber Company, marked "C 2;" that is the one acknowledging the receipt of the first month's rent of \$30.00, and the deposit of \$100.00, the initial payment on the property; is that correct?

A. That is correct.

30 Q. You knew at the time you received the acknowledgment of the deposit, that there was a defect in the title of the property, which would necessitate the foreclosing of the mortgage held by the Board of Trustees of the Seventh Day Baptist Memorial Fund of New Jersey, in order to clear up the title?

A. Yes.

Q. And your understanding with Mr. Loizeaux was, that as soon as the property had been sold under the foreclosure sale, and title had been obtained by them, that you were to take over the property?

A. That I was to take over the property?

Q. Yes.

40 A. Yes, sir.

Margaret Patterson, cross

- Q. Mr. Loizeaux, if I understood you correctly, had said that he would obtain a first mortgage for you?
- A. Yes, sir.
- Q. And the understanding was in the beginning that you were to deposit, instead of the \$100.-00, the \$800.00 which was due, the cash payment which you were to make upon the property? 10
- A. That probably was so, but when I called at the office, Mr. Vanderveer told me that I would never raise a second mortgage on a property that was being foreclosed upon; consequently, I didn't try to do it.
- Q. I don't know whether you understood my question. 20

THE COURT: Whatever may have been the prior understanding, it was swallowed up in the subsequent conduct, was it not?

- Q. After title was obtained by the J. D. Loizeaux Lumber Company, were you or not advised that the title had been delivered to the J. D. Loizeaux Lumber Company, and that they were ready to close the transaction? 30
- A. Yes, Mr. Loizeaux called on me and told me so about the first of June, that the title was clear now, and that I should go ahead.
- Q. And was that the first intimation you had that the title had been acquired by the J. D. Loizeaux Lumber Company?
- A. Yes, sir.
- Q. And when he called upon you, did you promise to call in and fix the matter up? 40

Margaret Patterson, cross

A. I don't recall I said I would fix the matter up; I said I would do the best I could, but I would write and let them know whether I could fix it up in the time he allowed me.

10 Q. You wrote this communication of June 4th after he called upon you?

A. Yes.

MR. NEWCORN: I offer that in evidence.
Said letter is marked "Exhibit D 12."

Q. And on June 5th you received this letter from the J. D. Loizeaux Lumber Company?

A. Yes.

20

MR. NEWCORN: I offer that letter in evidence.
Said letter is marked "Exhibit D 13."

Q. You wrote this communication?

A. Yes, sir.

Q. In reference to Mr. Wright?

A. Yes.

30 Q. And that was written—there is no date upon that, is there?

A. I don't think there is, no.

MR. NEWCORN: I offer the letter in evidence.

Said letter from Mrs. Patterson to Mr. Loizeaux is marked "Exhibit D 14."

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MR. NEWCORN: Have you the letter of June 15th there?

Margaret Patterson, cross

MR. CRANE: No.

Q. June 15 you received a letter?

A. Yes, sir.

MR. NEWCORN: I offer a copy of the letter
of June 15 in evidence.

10

Said letter is marked "Exhibit D 16."

Q. Do you know when this letter was written
(handing witness a paper)?

A. I don't recollect, but I should think about the
last week of July.

MR. NEWCORN: I offer the letter in
evidence.

20

Said letter from Mrs. Patterson to Mr. Loizeaux, dated Thursday evening, is marked "Exhibit D 17."

Q. You received a letter on June 22nd from J. D. Loizeaux Lumber Company, of which this is a copy, did you not, from Mr. Vanderveer? (Handing witness a paper).

A. Yes, sir.

30

MR. NEWCORN: I offer this letter.

Said letter is marked "Exhibit D 18."

Q. And on June 27th, you wrote direct to Mr. Loizeaux in reference to the letter?

A. Yes, sir.

MR. NEWCORN: I offer a letter dated June
27, 1920.

40

Margaret Patterson, cross

Said letter is marked "Exhibit D 19."

10 Q. In that letter, you include a memorandum taken from the letter of Mr. Vanderveer to you under date of June 22?

A. Yes.

Q. Did you receive a reply to that letter—on July 2nd, you again wrote to Mr. Loiezaux?

A. That is right.

MR. NEWCORN: I offer the letter dated July 2, 1920.

Said letter is marked "Exhibit D 20."

20 Q. And in this letter—you received this letter of July 9, 1920, acknowledging receipt, of your letter?

A. Yes, sir.

MR. NEWCORN: I offer that letter in evidence.

Said letter from Mr. Vanderveer to Mrs. Patterson, dated July 9, 1920, is marked

30 "Exhibit D 21."

Q. And on the 13th of July, 1920, you wrote this letter? (Handing witness a paper)?

A. Yes, sir.

Said letter is marked "Exhibit D 22."

Q. And you received a communication under the date of July 15, acknowledging receipt of your letter of July 13th?

40 A. Yes, sir.

Margaret Patterson, re-direct—re-cross

MR. NEWCORN: I offer that in evidence.

Said letter from J. D. Loizeaux Lumber Company to Mrs. Patterson, dated July 15, 1920, is marked "Exhibit D 23."

Q. In answer to that letter you received a letter of July 23, which is, in evidence marked "C 3;" that is the original of this? 10

A. Yes, sir, that's right.

RE-DIRECT EXAMINATION

BY MR. CRANE:

Q. Mrs. Patterson I show you a letter and envelope marked or dated July 29, 1920, the envelope, being stamped at the post office, "Plainfield, July 29, 9 P. M., 1920," and ask you if you received that letter, and if so, what time of the day on the 30th did you receive it? 20

A. We received that in the afternoon.

Q. The afternoon of the 30th?

A. The afternoon of the 30th.

MR. NEWCORN: I offer that letter and envelope. 30

Said letter from J. D. Loizeaux to Mrs. Patterson, dated July 29, 1920, and the said envelope, are marked "Exhibit D 24."

RE-CROSS EXAMINATION

BY MR. NEWCORN:

Q. On July 31, you wrote this letter to Mr. Loizeaux? (Handing witness letter).

A. Yes, sir. 40

Margaret Patterson, re-cross

MR. NEWCORN: I offer that in evidence.
Said letter is marked "Exhibit D 25."

10 THE COURT: It is admitted that these letters
were sent and received. Why don't you
offer the letters in evidence?

MR. NEWCORN: Under date of August 25th,
1920, a letter of J. D. Loizeaux Lumber
Company to Margaret Patterson, I offer
that in evidence.
Said letter is marked "Exhibit D 26."

20 MR. NEWCORN: Letter of J. D. Loizeaux
Lumber Company to Mrs. Patterson,
dated October 31, 1920. I offer that.
Said letter is marked "Exhibit D 27."

Q. Now, Mrs. Patterson, you received several no-
tices sent from the 24th day of May until the
10th day of August, requesting you to make
the final payment, on this property, did you
not?

A. Yes, sir.

30 Q. And you were unable to make the said pay-
ments?

A. Yes, sir.

Q. And you finally, under date of July 21, received
a communication in which he advised you,
under the notice that had been served upon
you, that he was about to offer the property
for sale, as you didn't fulfill the obligations
of making the final payment of \$700.00?

A. That was from Mr. Vanderveer.

40 Q. And subsequently, you were advised that the J.

Margaret Patterson, re-cross

- D. Loizeaux Lumber Company had a prospective purchaser for this property and you wrote your communication of July 31, in which you asked them to make arrangements with the buyer to permit you to remain in the premises as a tenant? 10
- A. I wrote a letter on the day following when Mr. Loizeaux told Mr. Patterson that the house had been sold to another party in Elizabeth.
- Q. You say, when Mr. Loizeaux called to see you was about the 10th day of August?
- A. As near as I can recollect.
- Q. And he was accompanied by an employee of the J. D. Loizeaux Lumber Company?
- A. I think so; I think he said he came from Mr. Loizeaux's office. 20
- Q. And he told you he wanted to show Mr. Nathanson through the house?
- A. Yes.
- Q. And didn't you show Mr. Natanson the downstairs part of the building?
- A. I didn't show him, but I stood right there and he passed right through the house.
- Q. You let them go through?
- A. He passed right through himself. 30
- Q. Did they go upstairs that day?
- A. No, they didn't.
- Q. And you objected to their going upstairs to look at the upstairs part?
- A. They didn't request to go upstairs.
- Q. They didn't go upstairs?
- A. They didn't go upstairs; they simply went through the first floor and went out.
- Q. But they examined the downstairs part?
- A. They went through the three rooms downstairs; 40

Margaret Patterson, re-cross

that was about all.

Q. Didn't you have a conversation with Mr. Nathanson that morning?

A. No, no conversation.

10 Q. Didn't you say to Mr. Nathanson that you originally had a contract to buy this property from Mr. Loizeaux, but that you had been unable to raise the necessary money to buy it, and that you would like to make arrangements with him for the payment of the same rent that you were paying the J. D. Loizeaux Lumber Company?

20 A. No, sir, I didn't. Mr. Nathanson went through the house, and as he came through the kitchen into the reception hall, all he said was, "Your rent will be \$45.00."

Q. Then there was some talk?

A. Nothing. Then he just looked up at me and said, "Your rent will be forty-five."

Q. At that time he had not taken title to the property?

A. He couldn't have.

Q. And he told you that the rent would be \$45.00?

A. Yes, sir.

30 Q. Did he tell you he was going to buy the place?

A. That's what he said.

Q. Did he ask you whether you wanted to stay as a tenant?

A. He said nothing about it; he said he was going to buy it as he came in, and as he went out he said the rent would be \$45.00.

Q. Why should he say the rent would be \$45.00, if there had been no discussion upon the question of rents?

40 A. There was no discussion whatever; that was all

Margaret Patterson, re-cross

he said; he said the rent would be \$45.00 as he came into the reception hall from the kitchen.

- Q. Did you tell him then that you had a contract to buy the house? 10
- A. I said nothing at all; I didn't have time, they went right out after he said that.
- Q. You were there the first day of September when Mr. Nathanson called to collect the rent?
- A. Yes.
- Q. Whom did he have with him when he called then?
- A. I think, if I mistake not, there was an old gentleman with him. 20
- Q. Is that the gentleman (indicating John F. McIntyre)?
- A. Yes, I think that's the gentleman.
- Q. What was their object in calling September 1st;
- A. They told me they had bought the house, that Mr. Nathanson had bought the house, and they wanted to collect the rent.
- Q. He asked you for the rent?
- A. Yes, he asked me for the rent.
- Q. What did you tell him then? 30
- A. I would have to have a notice from Mr. Loizeaux.
- Q. For what?
- A. I guess I shouldn't pay any rent to him. I didn't know my position in this affair all this time, really.
- Q. You had received on the first day of September, this communication "D 27" sent to you by the J. D. Loizeaux Lumber Company, advising you to pay the rent to Joseph Nathanson; 40

Margaret Patterson, re-cross

that they had disposed of the property and to pay the rent to Joseph Nathanson?

A. I had been advised not to pay the rent before that.

10 Q. The question is, you had received this letter of August 21st, notifying you to pay the rent to Mr. Nathanson, and that they had sold the property; is that correct?

A. That is correct, yes, sir.

Q. Then you did know and did have authority from the J. D. Loizeaux Lumber Company to pay the rent to Mr. Nathanson?

A. Yes, sir.

20 Q. Now, at that time, when Mr. Nathanson came for the rent, didn't you tell him that you would like to make arrangements to stay in there for a few months longer?

A. No, sir.

Q. Didn't he tell you that he was perfectly willing you should stay in, that he had bought the house for the purpose of selling again, and that if he sold the property he would give you sixty days' notice to move out, but that your rent would be \$40.00 a month?

30 A. No, sir.

Q. No such conversation at all?

A. No such conversation.

Q. You didn't then again tell him, in the presence of Mr. McIntyre, that when he asked whether you didn't want to buy the house from him, that you had been unable to purchase it from J. D. Loizeaux when you could have made better terms, and that you couldn't afford to buy it from him?

40 A. I said to him when he asked me if I wouldn't

Margaret Patterson, re-cross

- buy the property from him, because I didn't understand our own position at that time, that I never could buy a property from him.
- Q. Then you did have some talk about buying the property from him? 10
- A. After Mr. Nathanson said he had bought the property, he said, "Why don't you buy it from me?"
- Q. What was your reply to that?
- A. Just what I said right now.
- Q. That you didn't know your rights: is that what you mean?
- A. Yes, I didn't know my rights in regard to that, and I wouldn't purchase the property until I knew my rights; I had consulted a lawyer then. 20
- Q. That is what you told Mr. Nathanson?
- A. No, I didn't tell him I had consulted a lawyer.
- Q. Didn't you tell Mr. Nathanson, in the presence of Mr. McIntyre, that there was no use talking about selling the house to you, because you didn't have the money, nor were you able to raise the money to carry out the original agreement wherein you could have bought the property before he bought it for less money? 30
- A. No, sir, I did not.
- Q. You are still occupying the house as a tenant?
- A. We still stay there.

BY THE COURT.

- Q. Are you a married woman?
- A. Yes, sir.
- Q. Your husband still living?
- A. Yes, sir. 40

S. Frederick Smith, direct

S. FREDERICK SMITH, a witness produced on behalf of the complainant, being duly sworn testified as follows:

DIRECT EXAMINATION

10 BY MR. CRANE:

Q. Where do you live?

A. Plainfield.

Q. Do you know Mr. Patterson?

A. Yes, sir.

Q. And Mrs. Patterson?

A. And Mrs. Patterson.

Q. Do you know Mr. Robert W. Tebbs?

20 A. Yes.

Q. I show you a promissory note dated July 30, 1920, and ask you if you have seen that paper before?

A. Yes.

Q. When did you first see it?

A. On Thursday of that week.

Q. Thursday of that week; what did you do with the paper?

30 A. I took the paper into New York and handed it to Mr. Tebbs and asked him if he would endorse it.

Q. And he did?

A. He endorsed it.

Q. Then what?

A. I brought it back to Plainfield that night, and on Friday morning I took this note to Mr. Patterson at his house, and took Mr. Patterson from his house to the bank.

Q. The State Trust Company?

40 A. The State Trust Company of Plainfield, where

S. Frederick Smith, cross

Mr. Feickert gave Mr. Patterson a check on the strength of this note; then I took Mr. Patterson from there to Mr. Loizeaux's lumber yard, and waited there for some ten or fifteen minutes, while he had a conversation with Mr. Loizeaux at the gate. 10

Q. After you had taken Mr. Patterson from the bank to Mr. Loizeaux's office and waited there for him, then where did you take Mr. Patterson?

A. Back to the bank.

MR. CRANE: I offer the note in evidence.
Said note is marked "Exhibit C 6."

CROSS-EXAMINATION
BY MR. NEWCORN:

20

Q. What did you have when you went to the J. D. Loizeaux Lumber Company?

A. Either the note or a check, a payment for Mr. Loizeaux I understood from Mr. Patterson.

Q. You understood from Mr. Patterson?

A. Yes.

Q. What connection have you with the State Trust Company? 30

A. Well, I had an account there at the time, and Mr. Feickert, the President, is a friend of mine.

Q. Just a friendly transaction?

A. Yes, sir.

Q. Your name does not appear on the note?

A. No, I did it for accommodation for Mr. Patterson, whom I have known for a number of years. 40

S. Frederick Smith, cross

- Q. You say it was taken to the bank and Mr. Feickert drew a check for the sum of \$800.00—you said Mr. Feickert drew a check.
- A. Yes.
- 10 Q. What was the amount of the check Mr. Feickert drew?
- A. I couldn't positively say.
- Q. To whose order was the check made?
- A. I didn't transact the business; I don't remember; I simply remember seeing Mr. Patterson come from the bank with what he wanted.
- Q. How do you know what he wanted?
- A. I saw Mr. Tebbs sign the note and Mr. Tebbs gave it to me to bring back to Mr. Patterson.
- 20 Q. And did you go to the bank with him?
- A. I took Mr. Patterson to the bank with the note.
- Q. And introduced him to Mr. Feickert?
- A. I don't know that that was necessary to do; Mr. Feickert knew Mr. Patterson very well.
- Q. How do you know he got a check?
- A. Well, I know Mr. Patterson asked me to take him from the bank, and Mr. Feickert had agreed—
- Q. What had Mr. Feickert agreed?
- 30 A. I don't remember; I don't want to say anything I am not sure of, but I know I took Mr. Patterson from the bank up to the lumber yard; I turned my car around and waited ten or fifteen minutes—
- Q. In your car?
- A. In my car; I didn't leave my car; Mr. Patterson and Mr. Loiezaux talked out near the gate, within ten yards of me.
- O. And you then went from J. D. Leixaux's place
- 40 back to the bank?

S. Frederick Smith, re-direct

A. Back to the bank.

Q. Did you go in the bank?

A. No.

Q. Then you didn't know what Mr. Patterson did
in the bank?

A. No. 10

Q. And you don't know what day it was you were
there?

A. Yes.

Q. What day was it?

A. That was Friday; may I look at my book?

THE COURT: If you have a memorandum,
you may refresh your recollection, if it
was made at the time. 20

A. My impression is, it was July 30, the day be-
fore, because I have a notice on the next day
of going away to camp with the Grace Church
choir boys.

RE-DIRECT EXAMINATION
BY MR. CRANE:

Q. What time in the morning was this when you
took Mr. Patterson over to the lumber yard? 30

A. I don't remember; it was soon after breakfast; I
was on my vacation at that time; I had a late
breakfast.

BY THE COURT:

Q. Did you hear the conversation between
Mr. Patterson and Mr. Loizeaux?

A. I did not; I sat in the car, and they
were some ten yards away from me; I 40

David C. Patterson, direct

simply know what he told me about it afterward.

Q. You saw Mr. Loizeaux there?

A. I saw them in conversation for some fifteen or twenty minutes at the gate.

10

DAVID C. PATTERSON, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CRANE:

Q. You are the husband of Mrs. Patterson?

20 A. I am.

Q. Do you recall going over with her the question of purchasing the property at 228 Emerson avenue, Plainfield?

A. I do.

Q. And you remember the letter written by Mr. Loizeaux to you on February 4, wherein he agrees to sell you the property for \$3800.00?

A. \$3800.00.

30 Q. After you were notified on or about June 1st that the Loizeaux Lumber Company had title to the property to deliver to you, did you then start out to borrow the \$700 that needed to be paid as the balance of the purchase money?

A. I did.

Q. With whom did you take this up?

A. Mr. Tebbs.

Q. Who is Mr. Tebbs?

A. He's a friend of mine.

Q. What is his business?

40 A. A photographer in New York.

David C. Patterson, direct

- Q. And did you have a talk with anyone connected with the Lumber Company about the balance—about the payments on the balance due under these arrangements; in other words, did anybody connected with the Lumber Company say they would take the \$3,000 mortgage? 10
- A. Mr. Loizeaux.
- Q. Now, did you ask Mr. Smith to take this note to New York on the 29th of July, 1920, and ask him to get Mr. Tebbs to endorse the note for you?
- A. Yes.
- Q. Did Mr. Tebbs tell you he could negotiate this loan through the State Trust Company? 20
- A. He did.
- Q. On the Friday morning, did Mr. Smith call at your house in his automobile?
- A. Yes.
- Q. And he had this note with him at the time?
- A. He had this note with him at the time, all signed.
- Q. From your house where did you go?
- A. Down to the Trust Company. 30
- Q. Whom did you see?
- A. Mr. Feickert.
- Q. And did you tell him who you were?
- A. Yes, he knew who I was, because I went for this on the Thursday.
- Q. You got the note from the bank on Thursday?
- A. On Thursday.
- Q. Who drew the note?
- A. I did.
- Q. The body of the note is in your handwriting. 40

David C. Patterson, direct

Look at it; who drew it, if you know. That is your signature? Who drew the note?

- A. Mr. Feickert.
- 10 Q. When you took the note in there on Friday morning and handed it to him, what did he do?
- A. He called one of the bank officials there in the bank and told him to make a check out to me for \$700.00.
- Q. When you got the treasurer's check for \$700.00 drawn to your order, where did you go with it?
- A. Mr. Smith drove me to Mr. Loizeaux's office.
- Q. When you got there did you see Mr. Loizeaux?
- 20 A. I saw him at the driveway, measuring something at the gate.
- Q. What did you say?
- A. I told him I had come up with the money for to fix up on the house on Emerson Avenue, and for my deeds right away.
- Q. What did he say?
- A. He said, "Patterson, I am sorry, the house is sold to another party in Elizabeth for more cash; can you move out before the first of
- 30 September?"
- Q. And what did you say?
- A. I said, "I have nothing to do with the people in Elizabeth, I have the money to pay you for the house."
- Q. Did you get the deed?
- A. No, sir.
- Q. After his refusing to take the \$700, where did you go?
- A. I went home.
- 40 Q. And then were did you go; didn't you tell me

David C. Patterson, direct

you went back to the bank?

A. Yes, I went with Mr. Smith down to the bank.

Q. Did you explain to Mr. Feickert?

A. Yes, and he said, "Patterson, I am sorry, but the only way you can do is to return the money in, and any time you can have it." 10

Q. Then he returned this note?

A. He said, "There's no use carrying the money around with you."

Q. Did Loizeaux say to whom he had sold this property for more cash and more money?

A. No, he said a party in Elizabeth.

Q. Were you present in the house when anyone named Nathanson came there? 20

A. I was on the porch when he came up.

Q. When was that, about?

A. Around the 12 or 13th.

Q. Of what?

A. August.

Q. Did you talk with him?

A. Yes, I did, I had to.

Q. What did he say to you?

A. I didn't know who the man was; he came out in the automobile, and I looked at him and I said, "What is it?" He said, "I come for the rent." I said, "What rent?" he said, "My father sent me up for the rent, he said \$45.00." "My father is Mr. Nathanson." I said, "who did he buy the house off?" he said "Mr. Loizeaux;" I said, "He didn't own the house; I got a contract." He said, "If you can't pay the rent, I will have to put this sign up;" I said, "You put a nail in there, and you'll find out who owns the place;" he said "All right," 40

David C. Patterson, cross

he would'nt do it; he said I could take it down again after he put it up if I wanted to.

CROSS-EXAMINATION

BY MR. NEWCORN:

10

Q. You are familiar with the terms under which this property was to be sold to your wife?

A. I am.

Q. And you understood that under the agreement as evidenced by the receipt or acknowledgment of February 4, 1920, there was to be a mortgage of \$2400.00, and the balance of \$1400.00 was to be paid in cash?

20

A. \$1400.00, no.

Q. Mr. Loizeaux was to make application for a building loan mortgage of \$3,000, and the other \$800.00 was to be cash, which you were to put up before the foreclosure; is that right?

MR. CRANE: That isn't the fact at all, according to that letter.

30

THE COURT: The terms were not so provided for, either in the letter or so far as any testimony has been given to this point.

MR. NEWCORN: Calling their attention that the \$800. had not been paid, which follows the letters,—preceeding the letter of February 4th, and following the letter of February 4th.

40

THE COURT: The contract is the one set

David C. Patterson, cross

forth by that letter of February 4th, which provided there should be \$3,000 first mortgage and \$700.00 cash additional paid, the \$100.00 was taken as the first down payment.

10

Q. You knew that the title was to be taken as soon as the J. D. Loizeaux Lumber Company were in a position to give a clear title?

A. Yes, sir.

Q. And you were familiar with the correspondence between June 4th and August 25th, between your wife and Mr. Loizeaux and the J. D. Loizeaux Lumber Company?

A. June 4th, yes.

20

Q. You also were present a number of times when Mr. Loizeaux called at your home to talk the matter over, and urged you to raise money to carry out the contract?

A. Only one night when Mr. Loizeaux was there.

Q. Now, when you went to the State Trust Company to get this note discounted, Mrs. Patterson had already been there with a notice of the J. D. Loizeaux Lumber Company that they would not wait any longer, having relied upon your promise or Mrs. Patterson's promise, and that they were going to put the property on sale at the open market?

30

MR. CRANE: I don't know of any such notice—the Vanderveer letter of July 23rd—

MR. NEWCORN: "D 18."

40

David C. Patterson, cross

- Q. When you discounted that note, what did you take with you?
- A. What did I do?
- 10 Q. What did you have in your possession when you left the bank to go to the J. D. Loizeaux Lumber Company?
- A. I had the money.
- Q. Cash?
- A. A check.
- Q. Made out to whom?
- A. To J. D. Loizeaux.
- Q. By whom?
- A. By Mr. Feickert, whatever is on there.
- 20 Q. You say that this note, which was discounted for the benefit of Mr. Tebbs and credited to his account—

MR. CRANE: That is objected to; he didn't say that.

THE COURT: The testimony is, that that note was taken to the bank, and in exchange for it was given a check for \$700.00; that is the effect of the testimony.

30

MR. NEWCORN: I am asking to whom that check was made.

THE COURT: The witness said it was made to J. D. Loizeaux.

40

MR. NEWCORN: In order to test his credibility, I was going to ask to whose credit this note was discounted. He says it was a treasurer's check, not his check; they

David C. Patterson, cross

are always drawn directly to the man for whom the note is discounted.

THE COURT: That may be true as a general proposition, but this was a special deal.

10

Continued to February 25, 1921, at Trenton.

20

30

40

David C. Patterson, re-direct

Company at Plainfield, and you replied you had received a treasurer's check of some sort, a bank check, and had taken that check to Mr. Loizeaux. I show you a check drawn to your order, dated July 30, 1920, for \$700.00, and ask you if that is the check? 10

A. That is.

MR. CRANE: I offer it in evidence.

Said check is marked "Exhibit C 7."

Q. Where was it you offered Mr. Loizeaux that check?

A. Alongside of his office at the driveway.

Q. In Plainfield? 20

A. In Plainfield.

Q. What did he say to you?

A. It was too late, the house had been sold to some people in Elizabeth for more money, in cash.

Q. What did you say?

A. I told him I had nothing to do with that; I made a contract and wanted the deeds.

Q. What did he say?

A. He couldn't break his contract with the people in Elizabeth. 30

Q. Then you took the check back to the bank?

A. Then I took the check back to the bank.

Q. Sometime after that, you were at your home when somebody came to put a sign on the house?

A. I was.

Q. Do you know who it was that came?

A. He told me it was Mr. Nathanson's son.

Q. What sort of a sign? 40

David C. Patterson, re-cross

- A. Sign "For sale," I suppose; one of those big metal signs.
- Q. What did you tell him?
- A. I told him the house was mine; he said he was going to put it up, he was going to put it up; 10 I said, "If you put a nail in the property, you will find who owns it;" he said, "The only thing I can do is to give you a dispossession; he said I could take it down.
- Q. During the time you were in the occupancy of this property, between February 24, 1920, and July 20, 1920, did you make any improvements around the house?
- A. I fixed up all the fences; the fence was broke down, and the back porch was falling apart, and I put in part of the floor there and different little things I fixed up. 20
- Q. At my direction, on the 25th of August, did you send Mr. Loizeaux a check for the agreed rent?
- A. I did, \$30.00, yes.

RE-CROSS EXAMINATION

BY MR. NEWCORN:

- 30 Q. When you tendered that check to Mr. Loizeaux, did you come home and tell your wife what you had done?
- A. I put the check right back in the bank first.
- Q. You told your wife you saw Mr. Loizeaux?
- A. I did.
- Q. That you tried to hand him the check and that he refused to accept it?
- A. Yes.
- 40 Q. There is no doubt at all about that?

Aaron A. Vanderveer, direct

- A. No, I told my wife he would not accept the money; that the house was sold to another party.
- Q. That was on the same day the check was drawn?
- A. Yes.
- Q. When was it that Mr. Nathanson's son came there for the purpose of putting up this sign? 10
- A. About two weeks afterward.
- Q. Sometime towards the middle of August?
- A. The middle of August.

COMPLAINANT RESTS.

AARON A. VANDERVEER, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

20

DIRECT EXAMINATION BY MR. NEWCORN:

- Q. Mr. Vanderveer, what position do you occupy in the J. D. Loizeaux Lumber Company?
- A. Assistant treasurer.
- Q. Are you familiar with the transaction of the sale of the property to Mrs. Patterson?
- A. I believe so. 30
- Q. And when was the question of the sale taken up with Mrs. Patterson?
- A. I believe Mr. Loizeaux took it up a little previous to the first of January, 1920, but the first knowledge I had of it was around the first of the year.
- Q. In January?
- A. In January.
- Q. At the request of Mr. Loizeaux, did you go to see Mrs. Patterson? 40

Aaron A. Vanderveer, direct

A. She came to the office in January.

Q. What was the object of her call?

10 MR. CRANE: The contract is dated February 4; I think anything that took place before that is immaterial.

MR. NEWCORN: This is only a letter.

MR. CRANE: That is the contract sued on.

THE COURT: What is the purpose?

20 A. To show the transaction between the parties, and that the money was paid prior to the time it was made and modified.

THE COURT: I can't see now that it is competent, but I will admit it.

Q. What was the arrangement for the sale of the property?

30 A. The instructions I had from Mr. Loizeaux, who was sick at the time, was that Mrs. Patterson, would be in and pay \$800.00 on the purchase of this property, and he had already dictated a letter as a receipt for the \$800.00, and the title was not to have been given to her until we had received the title by foreclosure. The Seventh Day Memorial Fund was foreclosing the property on account of the question of title at that time, but the amount of \$800.00 was to be paid at once.

Q. Did the J. D. Loizeaux Lumber Company have title to the property at this time?

40 A. Yes.

Aaron A. Vanderveer, direct

- Q. They had acquired it from a man by the name of Berry?
- A. Berry, I think.
- Q. And Berry's wife was in the asylum, the foreclosure was pending at that time?
- A. Yes. 10
- Q. Did Mrs. Patterson at that time pay you the \$800.00?
- A. No, she did not.
- Q. Was any reason assigned why she did not?
- A. She had not been able to secure the money as I—
- Q. And subsequent to that time she forwarded under date of February 4th—at that time under date of February 4, Mrs. Patterson was not residing in the house, was she? 20
- A. I am not positive about that; I thought the intention was to take possession about the first of February; just whether they were in or not, I am not certain.
- Q. Under date of February 4, you acknowledged receipt of the sum of \$30.00 for rent for the month of February, and \$100.00 deposit?
- A. Yes.
- Q. And this is the acknowledgment of the money which was received and turned over to you? 30
- A. Yes, sir.
- Q. Do you know when the foreclosure suit was finished?
- A. The sale took place, I think, on May 12th.

MR. CRANE: I don't think any question is material as to when the title was acquired, or from whom; it is admitted it was acquired at some time, and were called upon to perform. 40

Aaron A. Vanderveer, direct

10 Q. I show you deed of the Board of Trustees of the Seventh Day Baptist Memorial Fund, a New Jersey corporation, to J. D. Loizeaux Lumber Company, a New Jersey corporation, dated May 24, 1920, and ask you whether that is the deed for the Patterson property?

A. I believe so.

Q. Well, look at it and see; look at the beginning of it.

MR. CRANE: Do you know it is?

MR. NEWCORN: Yes, it is.

20 MR. CRANE: Then I will admit it is.

30 MR. NEWCORN: I offer in evidence a deed from the Board of Trustees of the Seventh Day Baptist Memorial Fund, a New Jersey corporation, to J. D. Loizeaux Lumber Company, a New Jersey corporation, dated May 24, 1920, conveying land on Emerson Avenue, Plainfield, and recorded in Book 801 of Deeds, page 364, &c., the addendum to the deed having the recital: "Being the same premises this day conveyed to the said party of the first part by James E. Warner, Sheriff of Union County," and being the same premises mentioned in the bill of complaint.

Said deed is marked "Exhibit D 28."

Q. Upon the receipt of the deed was Mrs. Patterson notified that title had been taken over?

40 A. I believe so; I am not positive of it; and more

Aaron A. Vanderveer, direct

than that, as I remember it, the papers were ready to be prepared directly to Mrs. Patterson; that was the understanding with them, that they were to take title direct from the Seventh Day instead of having the title come through our company. I believe the papers were prepared; likewise a mortgage prepared; Mr. Loizeaux had that in hand.

10

MR. CRANE: I move that the last part be struck out.

THE COURT: Strike the entire answer out.

Q. I want you to testify what you know of the transaction, and the efforts you made to have Mrs. Patterson fulfill the agreement by paying the additional \$1000.00?

20

A. The only communication I had was by letter. If there's a letter there, I might refer to that letter.

Q. I show you a letter under date of June 22, 1920, "D 18," and ask you whether that letter was sent by you to Mrs. Patterson?

A. Yes, sir.

Q. This letter was written under whose instructions, at whose request?

30

A. Well, my own; I dictated the letter myself, and I think at the time Mr. Loizeaux was absent, and I had full charge of those details, and I took it upon myself to write the letter.

Q. In that letter, you called Mrs. Patterson's attention to the fact that unless she paid the sum of \$700.00 on or before Friday, the 25th, you will consider the matter closed and will await her advice for the disposition of the \$100.00,

40

Aaron A. Vanderveer, direct

or suggest she can call on Friday and receive the same; did she call at the office in answer to that letter?

A. No, not to my knowledge.

Q. Well, did you go and see her?

10 A. I didn't myself, no; I think I sent someone up to see her, though, shortly after that.

Q. Whom did you send to see her?

A. Mr. Hugh Sweeney.

Q. Did you see her at the office at all from May 24th to July 30th?

A. I don't recall having seen her during that time.

Q. Nor have any conversation with her or her husband?

20 A. No.

Q. There was no tender of the check which is in evidence today, "C 7," made to you?

A. No, sir.

Q. Nor at any time?

A. No.

Q. You wrote the letter under date of July 13, in which you terminated the contract; is that correct? ?

A. Yes, sir.

30 Q. And did Mrs. Patterson call to see you in reference to the same after that?

A. No.

Q. After the 13th day of July until the sale of the property to Nathanson, did Mrs. Patterson call at the office to protest against any sale when you advised her that you had another customer?

A. No, not to my knowledge.

Q. You subsequently sold the property?

40 A. Yes, sir.

Aaron A. Vanderveer, direct

Q. And there was a contract entered into on the 10th day of August, 1920, between J. D. Loizeaux Lumber Company and J. Nathanson and Son?

A. Yes.

10

Q. Is this the contract (showing witness a paper)?

A. Yes, sir.

MR. NEWCORN: I offer in evidence a contract entered into between J. D. Loizeaux Lumber Company and J. Nathanson and Son, on August 10th, 1920, for the sale of the premises described in the bill of complaint.

20

Said contract is marked "Exhibit D 29."

Q. And as a result of that agreement, this deed was executed by J. D. Loizeaux Lumber Company to the Plainfield Realty Wall Paper Supply Company, a New Jersey corporation (showing witness deed)?

A. Yes, sir.

MR. NEWCORN: I offer in evidence a deed of the J. D. Loizeaux Lumber Company, a New Jersey corporation, to the Plainfield Realty Wall Paper Supply Company, dated August 30, 1920, and recorded in Book 808 of Deeds of Union County, on page 52, &c., conveying the lands mentioned in the bill of complaint.

30

MR. CRANE: No objection.

Said paper is marked "Exhibit D 30."

40

Aaron A. Vanderveer, cross

Q. The Plainfield Realty Wall Paper Supply Company is one of Mr. Nathanson's corporation's?

A. Yes, sir.

10 Q. From the first day of August until the filing of this bill of complaint, have you received any protest, either from Mr. or Mrs. Patterson, or any communication against making any conveyance to anyone else?

A. No, not to my knowledge.

Q. What office did you say you occupied there?

A. Assistant treasurer.

Q. And who is the Secretary of the company?

A. Mr. F. Parker Loizeaux.

20 CROSS-EXAMINATION

BY MR. CRANE:

30 Q. Mr. Vanderveer, I show you a letter marked "D 18," dated June 22nd, which says, "In reference to your purchasing property in which you now live, unless your payment of \$700.00 is made on or before Friday, 25th inst., we will consider the matter closed, and will await your advice as to the disposition of the \$100.00 deposit." You remember writing that letter?

A. Yes, sir.

Q. So that there was no question that on June 22nd, 1920, the terms of the agreement were, that the Pattersons were to pay you an additional \$700.00 to complete that transaction?

A. I would say that that \$700.00 was a balance that had been arranged for and had never been taken care of.

40 Q. I say, on June 22nd, if the Pattersons paid you

Aaron A. Vanderveer, cross

\$700.00 in cash, that would have completed their end of the transaction?

A. I believe so.

Q. Don't you know so?

A. Yes, I would say so.

Q. Isn't it a fact, here is a copy of your letter; look at it and see if that was not the situation? 10

A. Yes.

Q. You said, in answer to one of Judge Newcorn's questions, that on July 13th, you wrote a letter terminating the contract; did you mean that?

A. Yes, sir.

MR. NEWCORN: I may have been mistaken in the date. 20

Q. You are familiar with the files in this matter, aren't you? I show you exhibit marked "D 23" under date of July 15, and ask you to read that.

A. (After reading). Yes, sir.

Q. Now, after reading that letter, I ask you whether or not the contract had been terminated on July 13th? 30

A. I would say "Yes."

Q. Let me read you the letter; it says: "Your letter of July 13th, addressed to the writer, received and noted. As per your letter, I understand that the necessary amount for the purchase of this property will be given to Mr. Patterson by Mr. Tebbs Thursday afternoon, at which time he will immediately call at the office." In view of that letter, do you still say you terminated the contract on July 13th? 40

Aaron A. Vanderveer, cross

A. Yes.

10 Q. Now, I show you "Exhibit D 24," signed by J. D. Loizeaux, in which he says: "Would say that as you did not come in Tuesday morning, the day you were to be in, we offered the house to another party, and we believe it is sold—dated July 29, 1920. Do you still say you terminated the contract on July 13th?"

A. Yes.

Q. On July 30, when Mr. Patterson called with this check, which is marked "C 7," the property in fact had not been sold, had it?

20 A. Not by contract, I should say written contract; it might have been a verbal contract; I don't know.

Q. But the formal contract for the sale of this property was, in fact, entered into on August 10th?

A. August 10th.

Q. And under the terms of this contract the Loizeaux Lumber Company received more money, didn't they, than they were to get from the Pattersons?

30 A. Some more.

Q. How much more?

MR. NEWCORN: The contract speaks for itself.

A. \$800.00.

Q. \$800.00 more than the Pattersons were to give?

A. Yes, sir.

40 Q. And instead of the property being sold subject to a \$3,000 mortgage, the property was, in

Aaron A. Vanderveer, cross

fact, sold subject to a \$2400.00 mortgage, wasn't it?

A. Yes.

Q. How many people are there employed in the executive offices of the J. D. Loizeaux Lumber Company? 10

A. Officers?

Q. Officers and clerks, and so forth, people that speak for Mr. Loizeaux and you, the company?

A. There are three officers active, there are about one dozen more clerks and managers of different departments.

Q. Do you remember having received a telephone call at the office of your company on July 28th, from Mr. Tebbs in New York? 20

A. No, not myself, no.

Q. Did you receive from anyone in the office, information that a telephone call had been received?

A. No.

Q. And that he said the money would be turned over to you in the next day or two? 30

A. I don't recall.

Q. The telephone call might have been received and yet not brought to your attention, of course?

A. It might have.

J. D. LOIZEAUX, a witness produced on behalf of the defendant, being duly sworn, testified as follows: 40

J. D. Loizeaux, direct

DIRECT EXAMINATION
BY MR. NEWCORN:

- 10 Q. You know Mrs. Patterson?
A. Yes.
Q. How long have you known her?
A. I think about 15 years.
Q. The original negotiations in behalf of your corporation for the sale of the property on Emerson Avenue, was conducted by whom?
A. By myself largely.
Q. There were prior negotiations to February 4th, 1920, for the sale of the property?
A. Yes, sir.
20 Q. Who was it that fixed the consideration for the property?

THE COURT: I can't see that that is competent in view of the terms of the written contract.

- Q. You received the deposit of \$100.00 from Mrs. Patterson?
A. It was received in my office.
30 Q. You acknowledged the receipt of it?
A. Yes, after I heard it had been received.
Q. And you therein, on February 4th, stated the terms under which the conveyance was to be made?
A. I believe so.
Q. Don't you know?
A. Under what date I am not sure. If that is the date on the letter, I am sure.
Q. That is the date of the letter?
40 A. Yes.

J. D. Loizeaux, direct

- Q. After the Loizeaux Lumber Company acquired title to the property, did you see Mr. or Mrs. Patterson?
- A. I think several times, yes.
- Q. Did you or did you not, advise them that you had become the owner of the property? 10
- A. Yes, sir.
- Q. How soon after the deed was drawn up?
- A. How soon after we had received title?
- Q. Yes.
- A. I should say almost immediately.
- Q. What do you mean?
- A. Maybe a day or two, or three days, as soon as convenient. I am not in the office always; I think as soon as it was possible for me to do it. 20
- Q. Did you do it in person or by letter?
- A. Both ways; but I believe they were notified by letter.
- Q. Did you see Mrs. Patterson and have a talk with her to find out when they would close and take title to the property?
- A. Several times.
- Q. How soon after the 24th was the first time you saw them? 30
- A. I can't state.
- Q. I show you letter under date, of June 5, in which you write to Mrs. Patterson, replying to her communication of the 4th, calling her attention that the matter must be got out of the way not later than Tuesday, the 8th, and that if it is impossible for her to do so by the 8th day of June, you will carry the account for her until Tuesday, the 15th, and I ask you whether, prior to writing that letter, 40

J. D. Loizeaux, direct

you had seen her between May 24th and June 5th?

A. I can't be sure; I am sure that is my signature.

10 Q. What was it that caused you to write to her, limiting the time to June 8th, under date of June 5th, if you had not seen her before?

A. Because Mr. Stillman, who had foreclosed the property, stated to us—

MR. CRANE: I object to this.

THE COURT: I don't see how it is competent.

20 Q. How was Mrs. Patterson to take title, direct from the Seventh Day Baptist Memorial Fund, or from you?

A. From us.

Q. From you. And who was handling the legal affairs of the company in this transaction?

A. Mr. Stillman.

Q. Do you know whether or not he had communicated with Mrs. Patterson?

30 MR. CRANE: That is objected to; how can he know?

THE COURT: He may answer.

A. I don't know.

Q. After you wrote this letter of June 5, did you have any conversation with Mrs. Patterson?

A. Yes.

Q. Did you receive the letters which are in evidence here from her?

40 A. Yes, sir.

J. D. Loizeaux, direct

- Q. And what was the conversation you had with her?
- A. Each time a promise that within 24 hours, one day, two days, three days, the matter would be settled; the amount of money would be paid over so as to make it possible for us to pass title. 10
- Q. Did you instruct Mr. Vanderveer to send the letter of the date of June 22, in which he called Mrs. Patterson's attention, that unless the payment was made on or before Friday, the 25th of June, that he would consider the matter closed?
- A. Did I order it?
- Q. Yes. 20
- A. No, sir, I was in Canada.
- Q. You were in Canada at the time?
- A. Yes.
- Q. You received a communication from Mrs. Patterson?
- A. Upon my return.
- Q. Enclosing a copy of this letter of Mr. Vanderveer?
- A. I think so, yes.
- Q. I show you the letter in question and ask you whether you received that as a copy of Mr. Vanderveer's letter enclosed? 30
- A. Yes, sir.
- Q. Did you see Mrs. Patterson after that?
- A. Yes, several times.
- Q. After you received this letter, what did you do?
- A. Asking me to defer it. I went to her and I am inclined to believe the very same day upon receiving it.
- Q. And did you defer it? 40

J. D. Loizeaux, direct

A. I can't tell you I deferred it, although I think a promise was made to me to be settled the next day.

Q. Did you make any efforts after that to secure the money to close the transaction?

10

A. Did I?

Q. Yes, if your memory is hazy, you may refer to the correspondence.

A. I made every effort—(looking at paper). Yes, on July 9, on July 15, she was written to; I was away at the time; July 28th I wrote her.

Q. And what did you say in your letter?

THE COURT: What is the use of taking the time?

20

Q. In between June 22nd and July 29, how many times did you see Mrs. Patterson to ask her, in addition to the letters you wrote, to ask her to fulfill the terms of the agreement?

A. I can't be sure; I would say two or three times.

Q. Mr. Patterson says, that upon the 30th day of July he called at your place of business and met you outside by the driveway and offered you a check made out by the State Trust Company, a treasurer's check, to settle the matter and close the transaction; is that true or not?

30

A. He did not.

Q. Did you see Mr. Patterson on that day?

A. I couldn't answer; I saw him a number of times, as I did Mrs. Patterson; but on certain dates, I can't give them unless they are seconded by letters.

40 Q. Did Mr. Patterson, or anyone else in his behalf,

J. D. Loizeaux, direct

at any time, offer you the \$700.00 balance of purchase price?

A. No, sir, I would have accepted it in a minute if they had.

Q. Was there any desire on the part of the corporation to evade carrying out the terms of the agreement? 10

A. None whatever; we tried to have it fulfilled for all those months, and endeavored to put the property in Mrs. Patterson's possession.

Q. I show you a letter, dated July 31, "D 25," and ask you whether that is the letter which you received from Mrs. Patterson?

A. It is signed by her.

MR. NEWCORN: I desire to read this into the record. 20

"Dear Mr. Loizeaux: Mr. Patterson called into the office yesterday afternoon, but did not find you there.

Should your buyer wish to rent to us, I feel that \$35.00 a month should be plenty, in the event of his not renting, how could it have been possible for us to give possession on August 1st, even September is only a 30 day notice; and you will remember how fair I wish to be with Mr. Henry, surely I deserve what I gave. 30

I am grateful to you, and thankful that you wish to return me the \$100.00 deposit, it is quite an item to me, and, of course, of little account to you.

But I would add, Mr. Loizeaux, that we have done numerous little things 40

J. D. Loizeaux, direct

around here, and the property has not
deteriorated any since we came into it.
I am,

Respectfully,

Margaret Patterson."

10

Q. What was the value of that property, Mr. Loizeaux, at the time the contract was made?

MR. CRANE: That is objected to.

THE COURT: What is your theory?

20

MR. NEWCORN: To show that while the Lumber Company was willing to sell the property for \$3800.00 on account of the friendship between Mrs. Patterson and and Mr. Loizeaux and family, that the true value of the property was what they actually did sell for—simply to show that they didn't sell it to someone else simply for getting the advanced price of the property.

30

THE COURT: I will allow it.

Q. (Stenographer repeats the question).

A. At the time the contract was made, I viewed the property as worth about \$4500.00.

Q. Can you tell me why the consideration was made for \$3800.00 to Mrs. Patterson?

A. Because it was just the exact cost to us, and we were perfectly satisfied to turn it over to her for that cost.

40

J. D. Loizeaux, cross

Q. What were the relations between Mrs. Patterson and your wife and yourself?

A. There was a kindly feeling between Mrs. Patterson and my wife for all those years. She had helped Mrs. Loizeaux in some little ways, and in the family, and I think Mrs. Loizeaux had reciprocated with her in little ways; there was a kindly feeling; we knew they were not rich people, and we were glad to turn over to them what would be a nice home at the cost to us.

10

CROSS-EXAMINATION
BY MR. CRANE:

Q. Mr. Loizeaux, I read from a letter dated June 22nd, 1920, marked "D-18" from your company to Mrs. Patterson, in which you say that "in reference to your purchasing property in which you now live, unless your payment of \$700.00 is made on or before Friday, 25th inst., we will consider the matter closed, and will await your advice as to the disposition of the \$100.00 deposit, or you can call at our office Friday, and we will refund it to you." On June 22nd all that remained for the Pattersons to do to complete their contract with you, was to pay \$700.00?

20

30

A. Yes.

Q. Did you receive a telephone call from New York from Mr. Tebbs on or about the 28th of July, stating that he was arranging to get the \$700.00 which was due to you under your contract, on his endorsement at the State Trust Company at Plainfield, and that the

40

J. D. Loizeaux, cross

same would be turned over to you in a day or two?

A. I did not.

10 Q. Do you know Mr. S. Frederick Smith, a witness who testified in Elizabeth, that he, in his automobile, had taken Mr. Patterson to the bank in Plainfield, and then to your office and saw him talk to you in the driveway on the morning of the 30th?

A. I didn't know who he was until the trial in Elizabeth.

Q. Didn't you know he was the church organist in Elizabeth?

A. I did not.

20 Q. You had allowed this matter to remain in abeyance until your letter of July 29, 1920. I just show you a letter. Read it, and that will refresh your recollection.

A. (After reading letter). You say we had kept it in abeyance?

A. Yes; I mean you had been waiting on the Pattersons up to that time?

A. Yes, we had.

30 Q. Do you remember receiving this letter dated July 29, from Mrs. Patterson, "C 13" I think?

A. No doubt that is a copy of the letter.

Q. Do you remember receiving it?

A. I have a recollection of such a letter; as far as I know, it is perfectly all right.

40 Q. Let me read to you the third paragraph of this letter: "Mr. Charles Schwab has not yet paid the money to Mr. Tebbs, but Mr. Patterson saw Mr. Feickert of the State Trust Company, and will get the amount necessary from him by Mr. Tebbs signing for it to be paid at a

J. D. Loizeaux, cross

certain date, and which Mr. Tebbs is willing to do for us." That is in her letter to you of July 29th; where were you on July 30th?

- A. I think I was in Plainfield.
- Q. And when you are in Plainfield you are in and out of the office all day? 10
- A. Usually in and out.
- Q. You didn't tell Mr. Patterson that you had made a contract to sell this property to a man in Elizabeth for more money and more cash, did you?
- A. I couldn't tell you. Many times in my interview with Mr. or Mrs. Patterson, I went over the matters with them; I don't know what I said verbally, except to press them to try to bring it to an issue. 20
- Q. Did you ever say that, in substance, to Mr. or Mrs. Patterson?
- A. I rather think so.
- Q. When?
- A. During May to July.
- Q. If you did say so, it was untrue, wasn't it?
- A. I don't think it was; I think we had a party we were selling it to, that we thought was coming from Elizabeth, but, in fact, it turned out to be another party. 30
- Q. But you did not sell the property until August 10th; that is a fact?
- A. That is a fact.
- Q. And the fact is, you did sell it for more cash and more money?
- A. Yes, sir.
- Q. Did you receive or get a report, or receive a telephone call from Mr. Tebbs in New York on the 28th or 29th of July, notifying you 40

Aaron A. Vanderveer, cross

he was arranging this loan for Mr. Patterson at the bank?

A. I did not.

Q. No such call was reported to you?

A. None; I never heard of it.

10 Q. Who took up the question of buying this property for the Wall Paper Supply Company?

A. I believe that it wasn't through me; I believe the transactions were started while I was away; I think while I was in Canada.

Q. Well, did you ever inform—did you have anything to do with it at all, or don't you remember the making of this contract?

A. No, I don't.

20 AARON A. VANDERVEER, being recalled for further cross-examination, testified as follows:

FURTHER CROSS-EXAMINATION
BY MR. CRANE:

Q. Mr. Vanderveer, did you take up the preliminary negotiations for the making of the contract between the Lumber Company and J. Nathanson and Son?

30 A. Not the preliminaries, I drew the contract.

Q. You didn't have anything to do with it at all, did you?

A. Yes, I had something to do with it.

Q. And did you talk to Mr. Nathanson about it?

A. No.

Q. Did you show him the correspondence that had transpired between you and the Pattersons with reference to the purchase of the property by them?

40

Aaron A. Vanderveer, re-direct—re-cross

- A. No.
- Q. Did he ask you about it?
- A. No.
- Q. He knew they were in possession of the property?
- A. Yes, sir. 10

FURTHER RE-DIRECT EXAMINATION
BY MR. NEWCORN:

- Q. He knew before signing the agreement they were paying \$30.00 a month rent?
- A. Yes.
- Q. And at Mrs. Patterson's request, did you take up with him how much the rent should be after he bought the place? 20
- A. Yes, sir.
- Q. And did he mention what rent it should be?
- A. I believe so—
- Q. There are some references there in Mrs. Patterson's letters in regard to what the rent ought to be, to be fixed by the new purchaser?
- A. I think the matter was mentioned; whether any definite amount was set, I don't know.
- Q. You don't know of your knowledge? 30
- A. No.

RE-CROSS EXAMINATION
BY MR. CRANE:

- Q. When did you take up the question of rent with Mrs. Patterson?
- A. I beg your pardon. I didn't take up the matter with Mrs. Patterson.
- Q. You said you did? 40

Joseph Nathanson, direct

- A. I said Mr. Nathanson.
- Q. You said on behalf of Nathanson you took up the amount of rent Mrs. Patterson was to pay?
- A. It was the other way.
- 10 Q. When did Mrs. Patterson request you to take up the question of rent with Mr. Nathanson?
- A. I am not familiar with it, without referring to the correspondence.

JOSEPH NATHANSON, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

20 DIRECT EXAMINATION
BY MR. NEWCORN:

- Q. You reside in the City of Plainfield?
- A. Yes.
- Q. And are president of the Plainfield Realty and Wall Paper Supply Company?
- A. Yes.
- Q. A corporation?
- A. Yes.
- 30 Q. And owner of the property on Emerson Avenue, still occupied by Mrs. Patterson?
- A. Yes.
- Q. When did you first hear that this property was in the market for sale?
- A. Between the first and fifth of August.
- Q. And did you go to inspect the property?
- A. Yes, sir.
- Q. With whom?
- A. Mr. Kenyon.
- 40 Q. Who is Mr. Kenyon?

Joseph Nathanson, direct

- A. He works for the Loizeaux Company.
- Q. Was this after you had spoken to J. D. Loizeaux Lumber Company about the terms of the property?
- A. No, that was before. 10
- Q. You went to see it before?
- A. Yes, to see the property.
- Q. Had you or not, been to the J. D. Loizeaux Lumber Company to see them about the property?
- A. No.
- Q. How did Mr. Kenyon come to go with you?
- A. He came to the office and told me he got a piece of property belonging to Loizeaux Company, and he would like me to look at it for me to buy it. 20
- Q. What did you say?
- A. I said, "Yes, I'll go down with you."
- Q. Did you go through?
- A. I went down with Mr. Kenyon.
- Q. Whom did you see?
- A. Mrs. Patterson.
- Q. What did you say to her and she to you?
- A. Mr. Kenyon said he was sent by Mr. Loizeaux to show me that property, and she opened the door and let us in and showed me all through the house except upstairs; she said "Upstairs isn't in order, because it is too early;" it was nine or ten o'clock; I said, "No, never mind; I know how it is upstairs; I know that." 30
- Q. You knew the building?
- A. Yes.
- Q. You were familiar with the property when it was started? 40

Joseph Nathanson, direct

A. Yes.

Q. Was there anything said by Mrs. Patterson in regard to the ownership of the property at that time?

10 A. Well, she asked me if I would buy the property if I wouldn't let her stay there: I said, "I will let you stay in only with one condition;" first, I ask her she pays rent. She said \$30.00. Then she asked me if I wouldn't let her stay there, because I understood that is a monthly tenant, or I wouldn't buy it. I said, "Yes, on one condition;" she said, "How much?" I said, "\$45.00." She didn't say she will pay that. I said I will give her 30 day's notice to vacate.

20 Q. After you were there that day and had this conversation with her, did you go there again?

A. Yes.

Q. With whom?

A. Mr. McIntyre.

Q. John F. McIntyre?

A. Yes.

30 Q. Did you find Mrs. Patterson there.

A. Yes, sir.

Q. Did you tell her what you came for?

A. I said I came to tell her I bought that property and I would like Mr. McIntyre to look through; she wouldn't let me go upstairs; she said it isn't in order to go upstairs.

Q. Had you at that time entered into the agreement?

A. Oh, yes.

40 Q. And did Mrs. Patterson say anything to you

Joseph Nathanson, direct

at that time in regard to the ownership of the property?

- A. I told her, I said, "Now, I think the best way for you is to buy that property;" and she said "I could bought that property cheaper than you could bought it; what is the use of me buying it from you?" I said, "Why didn't you buy it then?" She said she couldn't raise the money; she told Mr. Loizeaux she couldn't raise the money; she had to give it up. 10
- Q. Did you go there again after that?
- A. Yes, again.
- Q. Whom did you have with you?
- A. Mrs. Waters. 20
- Q. Did you meet Mrs. Patterson?
- A. Yes, sir.
- Q. Did you tell her what you came for?
- A. Yes, I said I came down to show this lady the house with her husband.
- Q. Did you tell her why you wanted to show the house?
- A. She knowed very well.
- Q. I asked you whether you told her why?
- A. Yes, but she knowed, because I wanted to sell it to her. 30
- A. Did she raise any objection?
- A. No, sir.
- Q. What did she do?
- A. She took Mrs. Waters and showed her the first floor, and then took her upstairs and showed her upstairs.
- Q. You got the deed for the premises?
- A. Yes.
- Q. And paid the consideration? 40

Joseph Nathanson, cross

A. Yes.

Q. Did you know before you entered into your negotiations, or before you signed that agreement, that Mrs. Patterson claimed any interest in that property?

10

A. No, sir.

CROSS-EXAMINATION

BY MR. CRANE:

Q. Isn't it a fact, Mr. Nathanson, when you went to Mrs. Patterson she told you to come to my office?

A. No, sir.

20

Q. She never told you that?

A. No, sir.

Q. She never told you that?

A. She told me that I will tell you when, after I had the deed, when I come for the rent; I sent my son for the rent, and she said she would pay the next day and the day after, and the day after, and I went over myself, and I asked her, and she said she sent the check to Mr. Loizeaux, and I should see Mr. Crane.

30

Q. Do you remember a telephone conversation you and I had together between the first and fifth of August, with reference to this property?

A. Not between the first and fifth.

Q. Do you remember having a telephone conversation with me in reference to this property?

A. No, not on the property.

40

Q. Didn't I call you up, Mr. Nathanson, with reference to this property, and ask you whether or

Joseph Nathanson, cross

not you had yet made your contract, and you said "No?"

A. You asked me that after you sued Mr. Loizeaux; and what I paid for that property.

Q. That is the first time I asked you, eh? 10

A. That is the first time.

Q. Is Mr. McIntyre an officer of the Wall Paper Company?

A. No, sir.

Q. Is he connected with you in business?

A. He has got a little office in the back of it.

Q. Did you talk to him about buying this property?

A. I took him down to give me any advice. 20

Q. You knew he was a good real estate man and wanted his advice?

A. Yes, he done business.

Q. When you spoke to Mrs. Patterson about what was the best thing for her to do, saying that it was to buy the house from you, she said she could have bought it cheaper from Mr. Loizeaux, but she couldn't raise the money?

A. I says to her—she kicked about \$45.00 rent to pay. I said, "Why don't you buy that property?" She said, "I could bought it from Mr. Loizeaux cheaper than you bought it," and then she says "I"—I said, "Why didn't you buy it?" and she said, "I couldn't raise the money." 30

HARRY E. KENYON, a witness produced on behalf of the defendant, being duly sworn, testified as follows: 40

Harry E. Kenyon, direct

DIRECT EXAMINATION
BY MR. NEWCORN:

Q. Mr. Kenyon, you are an employee of the J. D. Loizeaux Lumber Company?

10 A. I am.

Q. Do you recollect taking Mr. Nathanson to the Patterson property?

A. I do.

Q. When you arrived at the place, what did you tell Mrs. Patterson?

A. I introduced myself as an employee of the Loizeaux Lumber Company, and told her I wished to show the premises to Mr. Nathanson.
20

Q. Did you tell her why?

A. Yes, for sale.

Q. And can you fix the time as near as possible when you did that?

A. You mean the date, the time of day?

Q. The date.

A. It was around the first of August; I couldn't specify the date.

30 Q. What did Mrs. Patterson say when you told her that?

A. She let us in the reception hall, and took Mr. Nathanson through the lower part of the house, and said the upstairs was not in order.

MR. CRANE: No questions.

JOHN F. McINTYRE, a witness produced on behalf of the defendant, being duly sworn, testified
40 as follows:

John F. McIntyre, direct

DIRECT EXAMINATION
BY MR. NEWCORN:

- Q. Mr. McIntyre, you reside in the City of Plainfield?
A. I do. 10
- Q. You were formerly engaged in the real estate business?
A. Yes.
- Q. Do you recollect accompanying Mr. Nathanson to the home occupied by Mrs. Patterson?
A. I do.
- Q. Can you tell us as near as possible when that was?
A. I think about the latter part of August or the first of September, somewhere along there; I have no way of fixing the date. 20
- Q. When you went there the latter part of August or the first of September—suppose we try and refresh your memory; was it before or after the property was bought?
A. I think it was before it was bought, I think.
- Q. Whom did you find home when you came there?
A. I found Mrs. Patterson; she was there.
- Q. Anyone else? 30
A. Not to my knowledge, except Mr. Nathanson.
- Q. Did you hear the conversation between Mrs. Patterson and Mr. Nathanson?
A. I did.
- Q. What was the conversation?
A. Mrs. Patterson said that she had made arrangements with the J. D. Loizeaux Lumber Company to purchase the property, but inasmuch as she couldn't raise the money, she had to give it up. 40

John F. McIntyre, cross

Q. When Mr. Nathanson first came there, did he state what was his object in calling?

A. Yes.

Q. What did he say to her?

10 A. Well, he told her that he had bought this property, and the question of rent was raised, and about the tenancy, said she would have to become a monthly tenant, and would have to pay an increase in rent.

BY THE COURT:

Q. He told her he had bought the property?

A. Yes.

20 Q. And yet you testified a few moments ago, that on this occasion he had not yet bought the property.

A. I think he had bought it, or was about buying it; I didn't pay any attention to that part of it; I don't know whether the deed was passed or not at that time; the contract may have been signed.

30 CROSS-EXAMINATION
BY MR. CRANE:

Q. You and Mr. Nathanson are both real estate men in the City of Plainfield, and have your offices together?

A. Yes, sir.

Q. And Mr. Nathanson values your opinion of real estate values pretty highly, I know, doesn't he?

40 A. I don't know about that.

Charlotte Waters, direct

- Q. On this particular occasion he took you there so you could give him your opinion of its value?
- A. I went with him.
- Q. And that was his object? 10
- A. I don't know, I suppose probably it was.
- Q. And you gave him your idea of the value, didn't you?
- A. I did.
- Q. And at that time Mr. Nathanson told Mrs. Patterson he had bought the property?
- A. I think so.
- Q. And she said she had been trying to buy the property from Mr. Loizeaux, but had been unable to raise the money to complete the contract? 20
- A. That is right.

CHARLOTTE WATERS, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. NEWCORN:

- 30
- Q. Mrs. Waters, you reside in the City of Plainfield?
- A. Yes, sir.
- Q. Did you accompany Mr. Nathanson to the home occupied by Mrs. Patterson on Emerson Avenue in the City of Plainfield?
- A. I did.
- Q. When?
- A. The latter part of August.
- Q. What was your object in going there? 40

Charlotte Waters, direct

A. My object in going there was to see the premises for the purpose of buying it.

Q. From whom?

A. From Mr. Nathanson.

Q. Whom did you find when you arrived there?

10 A. Mrs. Patterson was there, and a lady I suppose was a visitor, and her husband.

BY THE COURT:

Q. Whose husband?

A. I don't mean husband; there was a man in the house; I didn't know Mr. Patterson at all.

20 Q. Was this the gentleman that was there, if you know? (Referring to Mr. Patterson).

A. Well, I only glanced at him; I couldn't swear that was the man in the house.

Q. Did you tell Mrs. Patterson why you came there?

A. To buy the house.

Q. Was any request made of her after she was advised that you were there to buy the house, what was she to do?

A. She was to show me through the house.

30 Q. Did she do so?

A. Yes, she did.

Q. What part of the house did she show you?

A. The entire house but the attic and cellar.

Q. Did Mrs. Patterson raise any objections to showing you the house?

A. None at all.

Q. You say you went through for the purpose of buying the house; did anyone advise her to that effect?

40 A. Mrs. Patterson?

Charlotte Waters, cross—John F. McIntyre, cross

Q. Yes.

A. Mr. Nathanson, before I was allowed to go in at the door.

CROSS-EXAMINATION

BY MR. CRANE:

10

Q. When was this, Mrs. Waters?

A. The exact date I don't know; the latter part of August.

Q. You are Mr. McIntyre's daughter?

A. I am.

Q. And did you intend to buy the house?

A. I did.

Q. And Mr. Patterson didn't say anything to you?

20

A. Mr. Patterson, no.

JOHN F. McINTYRE, being recalled for further cross-examination, testified as follows:

FURTHER CROSS-EXAMINATION

BY MR. CRANE:

Q. Mr. McIntyre, do you remember meeting me, Mr. Crane, on North Avenue during the first week in August, and asking me whether or not it was a fact that the Pattersons had a contract to buy Loizeaux's property?

30

A. I don't recall that.

Q. You don't recall your asking me that?

A. No, I don't.

Q. Do you recall ever having a talk with me about this matter?

A. Only coming down in the car, I think you told me the other day that you were going to win

40

David C. Patterson, direct

the case. I didn't let on to you I was interested one way or the other in the case.

Q. Your memory is good, isn't it?

A. Yes, better than my eyesight.

10 Q. Don't you recall meeting me on North Avenue in Plainfield, during the first week in August, and asking me whether or not it was a fact that the Pattersons had a contract to buy this property?

A. No, sir, I have no memory in regards to that, because I knew you were the attorney for them.

Q. How did you know that in the early part of August?

20 A. I heard so in the early part of August.

Q. Well, do you remember—

A. I never remember asking you any such question. I have no memory about it at all,—not the faintest idea.

DEFENDANT RESTS.

30 DAVID C. PATTERSON, being recalled, testifies, in rebuttal, as follows:

DIRECT EXAMINATION
BY MR. CRANE:

Q. Were you at home at the time Mrs. Waters was there?

A. Yes, this lady, yes.

Q. And that was in the early part of what month?

40 A. August.

David C. Patterson, direct

Q. What conversation took place between you and Mr. Nathanson?

A. Well, while the parties were up stairs looking at the rooms up stairs, Mr. Nathanson was standing down in the hall way with me, and he said, "The place is in bad shape; it needs paper." He said, "I bought the house." I said, "The house is mine; I have a contract for the house."

10

Q. Is that the time you told him to see me?

A. No, it must have been a week or so afterwards. It was the wife that told him to go and see you. That's when he came for the rent.

BY THE COURT:

20

Q. You say that was the early part of August?

A. No, that must have been the latter part of August.

Q. Why was it you let these people in the house?

A. Mr. Nathanson come up several times and my wife told him she had a contract on the house. He says, "It doesn't matter, I just got to see through the place." He says, "It doesn't harm you to let anybody through the place." After that he brought people from New York to see the place, and sent agents from Plainfield to bother us, after he knew we bought the house.

30

Q. Why did you let them in?

A. We stopped them—

Q. Why did you let them in?

A. In a friendly way. He said it

40

David C. Patterson, cross

wouldn't hurt to see the house, and I wasn't home. It was Mrs. Patterson; she has been a wreck,—a nervous wreck,—through this thing. She didn't know what to make of it.

10

CROSS EXAMINATION
BY MR. NEWCORN:

Q. You say that you had a conversation with Mr. Nathanson?

A. I do.

Q. And that was the last of August?

A. The time this lady and her husband were up to see the house.

20

Q. But you had been advised in the early part of August that Mr. Nathanson was going to buy the house?

A. Mr. Nathanson said he had bought the house, and it was to be \$45.00 a month—

Q. Were you home?

A. No, my wife was home.

Q. Then you were not there?

30

A. No.

Q. Did you make any effort, or serve any notice, on the J. D. Loizeaux Lumber Company, through any person, or through your attorney?

A. No.

Q. Was it not until after Mr. Nathanson, in the month of September, came up to your place for the rent,—the second or third day of September, when he called for the rent,—that you first—that he told you then that he

40

David C. Patterson, cross

had the deed for the property and wanted the rent?

A. It was in August month that he came for the rent,—the second week in August.

Q. He tried to collect rent in August?

A. Yes, the rent was going to be \$45.00 a month, and his son came up after the rent.

Q. Mr. Patterson, will you say he came there in August and asked you for the rent?

A. Yes, sir.

Q. Isn't it a fact—I show you a letter dated August 24th, 1920, and ask you if that is in the handwriting of your wife?

A. Yes.

Q. And this letter reads: "Dear Mr. Loizeaux,— Enclosed please find \$30.00 being rent for month of August. Will you kindly have receipt for same sent on. Respectfully, Margaret Patterson, 228 Emerson Avenue." Why, if you knew Mr. Nathanson had bought the house and was demanding the rent in the early portion of August, did you send that rent to Mr. Loizeaux?

A. Well, I knew I had a contract. I didn't know whether Mr. Nathanson owned the house or not, and I went under the directions of my lawyer. He said, "You send your rent down to Mr. Loizeaux as usual."

Q. Had you consulted a lawyer on August 24th?

A. Mr. Crane.

Q. You had advised Mr. Crane on August 24, what the situation was?

A. It must have been the 24th.

Q. Before you sent that rent you had consulted counsel?

Robert Newton Crane, direct

A. Yes, sir.

Q. And under his direction you sent the rent to J. D. Loizeaux?

A. Yes.

10 Q. Between the time you had consulted him until the filing of the bill, neither you nor your counsel did anything to notify Mr. Nathanson or the J. D. Loizeaux Lumber Company that you still insisted upon standing on your rights under the original agreement?

A. I left everything to the lawyer.

ROBERT N. CRANE, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

20

DIRECT TESTIMONY:

I was retained in this case the day after Mr. Nathanson first called at the house of Mrs. Patterson. I then called Mr. Nathan on the 'phone, and had a conversation with him, and explained in a general way the situation.

30

During the first week, as I now recall it, in August,—during the early part of August,—I met Mr. McIntyre across from his house. He said, "Is it a fact that the Pattersons have a contract on the Emerson Avenue house?" I said, "They have a contract." He said, "Is it recorded?" I said, "No, it is composed of correspondence."

MR. NEWCORN: No questions.

40

BOTH SIDES REST.

Complainant's Exhibits

EXHIBITS

EXHIBIT C. 1.

Plainfield, N. J., Feb. 4, 1920.

10

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

We acknowledge having received \$130 from you on February 3rd, to apply as follows: \$30 being the rent on the house for the month of February, and \$100 being a payment on account of the principal of \$3800 for the house and lot known as No. 228 Emerson Ave.

20

Our understanding is this,—that you will pay \$30 each month until we are able to give you a free and clear title, the result of the foreclosure which we are now proceeding with. So soon as we are able to do this, you agree to pay us \$3700 in the manner following: \$3000 by raising this amount by mortgage on the above mentioned property, and \$700 in cash, which we understand you are to raise by second mortgage, and the above when carried out is satisfactory to us, but if for any reason you are unable to carry out the above provisions, you agree, upon being requested, to vacate the property, leaving it in first class condition, and all that you have paid in to be counted as liquidation of any damages we might sustain.

30

If in any of the above you do not fully concur,

40

Complainant's Exhibits

please advise at once, so that there can be no misunderstanding.

Very respectfully yours,

10

JDL/DC

J. D. LOIZEAUX LUMBER CO.,

J. D. Loizeaux.

By Treasurer.

EXHIBIT C. 2.

Plainfield, N. J., January 5, 1919.

20

Mrs. Margaret Patterson,
Silver Birch Farm,
Plainfield, N. J., R.F.D. No. 1.

Dear Mrs. Patterson:

I have your favor of the 2nd, and note that you will call in the office about Wednesday to make the initial payment of \$800 on the Enerson Ave. house, which is entirely satisfactory.

30

I am indeed sorry that I have not your written application for the Building & Loan to pass on this evening, but I will try and get it through even without your application. Many other things having crowded in, I had completely forgotten, but when you come in Wednesday I will have your application here at the office, ready for signature.

Very respectfully yours,

JDL/DC

J. D. Loizeaux.

40

*Complainant's Exhibits***EXHIBIT C. 3.**

Plainfield, N. J., July 15, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J. 10

My Dear Mrs. Patterson:

Your letter of July 13th, addressed to the writer
received and noted.

As per your letter, I understand that the neces-
sary amount for the purchase of this property will be
given to Mr. Patterson by Mr. Tebbs Thursday after-
noon, at which time he will immediately call at the 20
office.

Same is satisfactory.

Respectfully yours,

J. D. LOIZEAUX LUMBER COMPANY.
CEL/H By C. E. Loizeaux.

EXHIBIT C. 4. 30

Plainfield, N. J., July 27, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

According to the writer's call on you last Friday
evening, you will remember you agreed that Tuesday 40

Complainant's Exhibits

morning, the 27th, you would call at our office to make payment of the balance of the \$800.00 or at that time the property would be given up by you.

10 No doubt your party has disappointed you, for which we are indeed sorry, as we expected you were going to take this property over and make it a home, but as we have been waiting for you for many months, we are sure you cannot find fault with us, as the previous correspondence shows how the matter stands. Although we told you formerly that if you did not pay the balance, the \$100.00 you paid would be forfeited, yet we do not want to take advantage of this and if you can give possession on the 1st of August, 20 we will return you the \$100.00 you have deposited, less however the unpaid rent, but if you cannot give possession the 1st of August, it will be satisfactory for you to live there until the 1st of September, at which time we can make the adjustment on your deposit.

Very respectfully yours,

J. D. LOIZEAUX LUMBER COMPANY.
JDL/H Treasurer. J. D. Loizeaux.

30

EXHIBIT C. 5.

228 Emerson Ave.
Plainfield, N. J.
July 29th, 1920.

Dear Mr. Loizeaux:

40 Your note I received yesterday afternoon, which was characterized as all your treatment towards us has been, namely, with great fairness.

Complainant's Exhibits

Mr. Loizeaux that has been mainly why I have wanted this house so much to make a home, (using your own phrase).

Mr. Chas. Schwab has not paid Mr. Tebbs as yet (he is having a big summer home built for himself and is very busy). However, Mr. Patterson called on Mr. Fieckert of the State Trust Co., and he will advance the amount for us, by Mr. Tebbs signing for it to be paid at a stated time, which Mr. Tebbs is willing to do for us. 10

I know this has all been a great source of annoyance to you Mr. Loizeaux, and I am just miserable over it all, but the before stated reason has made me anxious to carry on. 20

Mr. Patterson will call into the office Mr. Loizeaux on or around Saturday, kindly grant us just that much longer.

Gratefully yours,

Margt. Patterson.

P. S. Enclosed you will find \$30.00 rent for July. 30

*Complainant's Exhibits***EXHIBIT C. 6.**

	7.23
	\$700.00
	<hr/>
10	707.23

Plainfield, New Jersey, July 30, 1920.

Two months after date I promise to pay to the order of The State Trust Co. seven hundred dollars. At the State Trust Company, Plainfield, N. J. Value Received with int. Due Sept. 30, 1920.

DAVID C. PATTERSON.

20 Endorsed on reverse side

For value received I guarantee the payment of the within note and waive any defenses to the same.

ROBERT W. TEBBS.

Fourteen cents revenue stamps, cancelled "The State Trust Company at Plainfield, N. J."

30

EXHIBIT C. 7.

No. 13173
Treasurer's Check

Plainfield, New Jersey, July 30, 1920.

The State Trust Company at Plainfield, N. J.
Pay to the order of David C. Patterson \$700.00.

F. T. JACOBS,
Treasurer

40 . No endorsement.

*Defendants' Exhibits***EXHIBIT D. 1.**

11. 13. 19.

My Dear Mr. Loizeaux :

Do you still own the house situated at 228 Emerson Ave., and if so do you care to sell it, and what could it be purchased for. 10

Presently I am renting at 269 Leland Ave., the house changed owners a fortnight ago, with the result that the rental has been raised from \$35.00 to \$50.00.

I find it very nearly impossible to rent, because of my children; so many childless couples are looking for houses, that such families as mine are immediately turned down when applying for same. 20

If you can sell, Mr. Loizeaux, and your figure is not beyond me, it would probably be February or March before I could be prepared to purchase.

May I mix pleasure with business by sending kind remembrances to you and Mrs. Loizeaux and family from an "Auld Acquaintance."

Mrs. David Patterson,
269 Leland Ave. 30

EXHIBIT D. 2.

Nov. 15, 1919.

Mrs. David Patterson,
269 Leland Ave.,
Plainfield, N. J.

My dear Madam :

I am indeed pleased to receive your favor of the 40

Defendants' Exhibits

13th, and I am sure Mrs. Loizeaux would be very glad to see you. Some of these days, I think I will bring her around and spend an hour with you as she has many times spoken of you.

10 As to houses, No. 228 Emerson Ave. is still owned by us, but on account of one of the former owners being incapacitated mentally, we have to put the property through foreclosure before we can give a perfect title, and this we are going to do immediately, after which the title will be perfect.

20 We have been practically offered \$3800 for the property, and think we should have \$4000, but if you like it, and see your way to purchase, we would try and do the best we could for you.

As I remember it, we could get possession in about sixty days, after giving the present tenant notice. We would want to treat them right, however, and in the event that you should wish to buy, we would want to confer with them to know if sixty, or thirty, or ninety days would be the convenient time for them to move.

30 Would be glad to hear what you may decide upon, and remain,

Very respectfully yours,

JDL/DC.

EXHIBIT D. 3.

11. 20. 19.

My Dear Mr. Loizeaux:

40 I was more than gratified to have your early

Defendants' Exhibits

reply to my letter, and thank you for kindness thereby extended.

Needless to say I shall look ahead very happily to that call from Mrs. Loizeaux, and pleased indeed am I to learn she had not forgotten me. 10

Mr. Patterson and I feel satisfied your value put on the house in view, is a just one, and know full well that in dealing with you we would have a guarantee of a *square deal*.

I would not wish to be unfair to the present occupant of the house, and like you Mr. Loizeaux I feel they should have ample time to secure a place for themselves. 20

Thanking you and awaiting to hear from you further.

Very cordially,

Margaret Patterson,
269 Leland Ave.

EXHIBIT D. 4.

12. 3. 19 30
269 Leland Ave.
Plainfield, N. J.

My Dear Mr. Loizeaux:

During the past week I have been from home quite often (keeping dentist's appointments) and am wondering if by chance you may have called here during one of my trips down town.

I am a trifle anxious to know just when I may 40

Defendants' Exhibits

get possession of the house, so as to make plans for rooming or boarding until then.

I shall be able to make the cash payment of \$800, which you thought would be necessary for me to have
 10 Mr. Loizeaux, on or around January 1st.

I would have called into your office to make the above inquiry, but do not care to take up any of your limited time.

Cordially,

Margaret Patterson.

20

EXHIBIT D. 5.

Dec. 5, 1919.

Mrs. Margaret Patterson,
 269 Leland Ave.,
 Plainfield, N. J.

My dear Madam:

I have your favor, stating that you are prepared to make payment of \$800 about the first of January, and that you desire to occupy the premises as soon
 30 as possible. Would say, we believe that you will be able to get the premises about the first of February, although we will not bind ourselves to that absolutely.

It would be the writer's idea that when you are ready to make this payment of \$800 we shall give you a contract of sale, selling you this property for \$3800, \$800 in cash, and \$3000 to be raised by mortgage, which you would apply for in the Building & Loan
 40 to be paid over to you as soon as the foreclosure is

Defendants' Exhibits

made by us, which will give a free and clear title, with no cloud upon it of any kind, at which time we would deliver you a warranty deed. Please acknowledge that this meets with your approval, and we will continue to press for vacating this property at the earliest possible date.

10

Very respectfully yours,

JDL/DC.

EXHIBIT D. 6.

December 10th, 1919.

20

Mr Dear Mr. Loizeaux :

In reply to your note of the 5th, would say that February the first will suit me very well to get the premises in view.

Might I ask a little advice about making application for the \$3000 from the Building and Loan, is January the best month to do so and when I do make application, do I pay in the first payment of \$30.00 (thirty dollars) and is there any other expense to be met then. I wish to know Mr. Loizeaux so as to be prepared.

30

Also shall I make application at the regular meeting.

I shall be away from this place before the 15th, my time expires then, and should you need to send me any notice between now and time for to meet the Building and Loan, my address will be R. F. D. No. 1.

40

Defendants' Exhibits

We are going with a friend of ours on a farm, for a few weeks.

Thanking you, and begging to be excused for any encroachment on your time Mr. Loizeaux,

10

I am

Very Respectfully Yours,

Margaret Patterson.

EXHIBIT D. 7.

1. 2. 20

20

Silver Birch Farm
Plainfield, N. J.
R. F. D. No. 1.

Dear Mr. Loizeaux:

I shall be able to make that required payment of \$900 about Wednesday, and I am wondering whether I shall call into your office to do so.

Will you kindly advise me Mr. Loizeaux?

30

Have you heard just when I may have possession of the house, while I do not wish to cause the family any inconvenience, should be glad to get in just as soon as they can arrange it.

We are boarding here with a friend of ours, and while suffering a little inconvenience, are withal very happily placed.

Kind wishes to Mrs. Loizeaux, family and you, for all good during the year we have greeted.

Cordially,

40

Margaret Patterson.

*Defendants' Exhibits***EXHIBIT D. 8.**

January 10th, 1920
Silver Birch Farm,
Plainfield, N. J.

My Dear Mr. Loizeaux:

10

Your letter of the 5th did not reach me until yesterday, hence my delay in replying, and also my reason for not calling into the office on Wednesday.

However I shall be in the latter part of the coming week, in all probability Friday.

Thank you for your effort in my behalf Mr. Loizeaux, anent the application to the Building and Loan.

Very Cordially,

20

Margaret Patterson.

EXHIBIT D. 9.

Jan. 19th, 1920
Silver Birch Farm,
Plainfield, N. J.

Mr Dear Mr. Loizeaux:

30

I called into the office this afternoon, but unfortunately missed you.

I shall be in Plainfield again on Thursday, and shall call in about 9.15 a. m. and hope to see you then.

Respectfully,

Margaret Patterson,
R. F. D. No. 1. Box 67a,
Plainfield, N. J.

40

*Defendants' Exhibits***EXHIBIT D. 10.**

1. 23. 20. Silver Birch Farm
R. F. D. No. 1.

10 My Dear Mr. Loizeaux:

Very sorry I was to learn of your being indisposed, but trust it may be for a very brief period.

Thank you for your efforts on my behalf Mr. Loizeaux while being unable to be in your regular business capacity at the office.

Trust Mrs. Loizeaux and family are all enjoying the choicest gift, and that you may be quite recovered ere now.

20 Cordially,

Margaret Patterson.

EXHIBIT D. 11.

1. 28. 20.
Silver Birch Farm,
Plainfield, N. J.

30 My Dear Mr. Loizeaux:

I shall be in Plainfield on Saturday, and shall call into the office.

I trust you have quite recovered, otherwise shall be pleased to see Mr. Vanderveer, if it can be so arranged.

Very Cordially,

Margaret Patterson.

40

*Defendants' Exhibits***EXHIBIT D. 12.**

NO COPY

EXHIBIT D. 13.

10

Plainfield, N. J., June 5, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

Replying to your letter of the 4th, we would like
very much to have had this matter out of the way not 20
later than Tuesday, the 8th, but if it is impossible for
you to do this, we will have to carry the account for
you until Tuesday, the 15th, at this office, between ten
and twelve A. M.

Very respectfully yours,

J. D. LOIZEAUX LUMBER CO.,
J. D. Loizeaux,

JDL/DC.

Treasurer.

30

Please call here Monday and advise name in
which deed should be made.

J. D. L.

40

*Defendants' Exhibits***EXHIBIT D. 14.**

Tuesday Evening.
228 Emerson Ave.
Plainfield, N. J.

10 Dear Mr. Loizeaux:

I can see now that I, in my haste, made a mistake in sending that letter of Mr. "Will" Tallamay's to you.

The letter was such an absurd one that I was deeply disappointed and surprised that a man of Mr. Tallamay's ability could offer such suggestions after offering us the loan and not being in a position to accomplish it.

20 Mr. Loizeaux you have done so much for me, and we have been so happy looking forward to making this place a real home for ourselves and family, and I know I can yet succeed.

Please extend still a little more kindness Mr. Loizeaux and if possible get Mr. Stillman to put off until Friday morning.

I shall see another friend tomorrow morning (Wednesday) who I am sure will help me out, but
30 he might not be able to have the money for a few hours.

As to Dr. Wright taking the mortgage Mr. Loizeaux that was out of the question—he requested me to give him the warranty deed which I would get; and I felt, and was advised not to do so.

Thanking you,

I am

Respectfully

Margt. Patterson.

*Defendants' Exhibits***EXHIBIT D. 16.**

June 15, 1920

Mrs. Margaret Patterson,
Emerson Ave.,
Plainfield, N. J.

10

My dear Mrs. Patterson:

I re-enclose to you a letter which you sent me, signed "Will," and I am exceedingly surprised that you did not have this matter better arranged than you seem to have had.

You told me Dr. Wright of Westfield was taking the loan, and I supposed there would be no mistake when the time came. Mr. Stillman has the papers all ready for tomorrow morning, and I do not believe that there is any way out of it than for us to take the property if you have no way of handling it.

20

We are certainly greatly surprised and disappointed as to anyone raising the first mortgage for the full amount. You know this is entirely ridiculous, as no one makes a loan of all the property is worth, or else they take the title to it. Therefore, you will see it is absolutely necessary for you to furnish the difference in this loan at once, or else give up the property.

30

Kindly advise us tomorrow morning before ten o'clock.

Very respectfully yours,

J. D. LOIZEAUX LUMBER CO.,

JDL/DC.

Treasurer.

40

*Defendants' Exhibits***EXHIBIT D. 17.**

Thursday Evening.
228 Emerson Ave.
Plainfield, N. J.

10 Dear Mr. Loizeaux:

Mr. Patterson called over to see Mr. Tebbs after you left, and has just returned.

Mr. Tebbs had accompanied Mrs. Tebbs to Manasquan this morning and had not returned yet when Mr. Patterson called. However, Mr. Patterson will see Mr. Tebbs at choir rehearsal tomorrow night and I shall let you know early Saturday morn.

20

Hastily,

Margt. Patterson.

EXHIBIT D. 18.

June 22, 1920.

30 Mrs. Patterson,
228 Emerson Avenue,
Plainfield, N. J.

Dear Madam:

In reference to your purchasing property in which you now live, unless your payment of \$700 is made, on or before Friday 25 inst., we will consider the matter closed, and will await your advice as to the disposition of the \$100 deposit or you can call at
40 our office Friday, and we will refund it to you.

Defendants' Exhibits

Kindly acknowledge receipt of this letter and oblige,

Yours very truly,

J. D. LOIZEAUX LUMBER COMPANY
AVV/DK Asst. Treas.

10

EXHIBIT D. 19.

228 Emerson Ave
Plainfield, N. J.
June 27th, 1920.

My Dear Mr. Loizeaux:

20

I am enclosing copy of a notice I received from Mr. Vander Veer during your absence in Canada.

I understand Mr. Stillman's client has been anxious to have it settled, and undoubtedly were urgent in pressing for settlement, and I presume Mr. Vander Veer had to attend to that while you were gone. However, Mr. Loizeaux, I know you well enough to feel confident you will wait for us to get the necessary \$700 from Mr. Tebbs.

30

The Choral Society of New York (of which Mr. Tebbs is secretary) had their business meeting on Thursday the 24th, and voted to pay Mr. Tebbs ahead of any other bill (any where from the 10th to the 20th) and which date we shall have it.

By the way Mr. Loizeaux I did not send rent for month of June, but will do so about the 1st, or 2nd; (fancying I would be my own landlady by now.)

40

Defendants' Exhibits

I did not reply to Mr. Vander Veer's letter, being from home for a couple of days then.

Very Respectfully,

Margt. Patterson.

10

(Enclosure)

In reference to your purchasing property in which you live, unless payment of \$700 is paid on or before Friday 25th. we will consider the matter closed, and will await your advice as to disposition of \$100 deposit or you can call at our office Friday and we will refund it to you.

20

EXHIBIT D. 20.

July 2nd, 1920.
228 Emerson Ave.
Plainfield, N. J.

Dear Mr. Loizeaux:

Enclosed you will find \$30.00 which I promised to send on today for rent of house.

30

Mr. Patterson and I will call on Mr. Tebbs this afternoon and arrange with him to give you a note Mr. Loizeaux (Mr. Patterson didn't see him tonight, owing to Mr. Bacon, the choir master calling off the rehearsal for tonight.)

Trusting this little delay can be passed over without a great deal of trouble,

Respectfully,

40

Margt. Patterson.

*Defendants' Exhibits***EXHIBIT D. 21.**

Plainfield, N. J., July 9, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

10

Dear Madam:

We acknowledge receipt of your special delivery letter received last Saturday afternoon, enclosing \$30.00 for the June rent. We would like to have the July rent paid at once.

As no arrangements have been made to date about the property, we are now offering the property for sale, as you have not completed your arrangements as you had expected.

20

We would like to know when we can get possession.

Respectfully yours,

J. D. LOIZEAUX LUMBER COMPANY.

A. A. Vanderveer

AAV/H

By,— A. A. Vander Veer.

30

EXHIBIT D. 22.

228 Emerson Ave.,
Plainfield, N. J.
July 13th, 1920.

Dear Mr. Loizeaux:

I had a call from Mr. Sweeney yesterday eve inquiring for you the particulars anent the purchasing of this house.

40

Defendants' Exhibits

10 I explained to him that it could hardly be termed a purely business matter—the purchase price verifies that, you know your father could have got a very much larger amount for this property than he is selling it to me for.

Not only that, but he has been unusually kind in numerous ways, and patient when I unfortunately struck two rather unscrupulous second mortgage holders (one demanding the warranty deed I would secure, the other demanding ten per cent interest on his money.)

20 Even then your father gave me time to find some other one to take it for me, who I secured in Mr. Robert Tebbs, of 718 Leland Ave.

Mr. Patterson called on Mr. Tebbs yesterday eve; and learned that he will have the necessary amount for him on Thursday night, and I shall immediately call into the office with it.

30 Allow me to thank you Mr. Loizeaux for your kindness in this matter, you could have acted differently you know, and with profit too, but I know the Loizeauxs to be more than business men.

Again thanking you for your kindly interest, and trusting you can arrange to wait until Mr. Patterson can secure the amount from Mr. Tebbs on Thursday eve,

I am

Most Respectfully,

Margt. Patterson.

*Defendants' Exhibits***EXHIBIT D. 23.**

July 15, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

10

My dear Mrs. Patterson:

Your letter of July 13th, addressed to the writer
received and noted.

As per your letter, I understand that the neces-
sary amount for the purchase of this property will
be given to Mr. Patterson by Mr. Tebbs Thursday
afternoon, at which time he will immediately call at
the office.

20

Same is satisfactory.

Respectfully yours,

J. D. LOIZEAUX LUMBER COMPANY.
CEL/H By — C. E. Loizeaux.

EXHIBIT D. 24.

30

(Letter)

Plainfield, N. J., July 29, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Mrs. Patterson:

I have yours of this date and note contents.

Would say that as you did not come in Tuesday 40

Defendants' Exhibits

morning, the day you were to be in, we offered the house to another party and we believe it is sold. In other words, if he takes it, we cannot go back on our offer.

10 I am sure that you could not blame us for this, as you know that after you told this office that you would be in two weeks before I called on you and did not come in, that I went to see you last Friday evening, at which time you promised me that Tuesday morning you would surely be in—but as you did not come in and another party asked us about it, we made him an offer, which I understand he has accepted and, therefore, you had better make no other arrangements, as we could not go back on our offer to this
20 party.

Very sorry indeed if you are disappointed, but you will bear me witness that we did everything that we could to throw it your way.

Very respectfully yours,

JDL/H

J. D. Loizeaux.

30

40

Defendants' Exhibits

(Envelope)

J. D. LOIZEAUX LUMBER CO.

Phone 1776

Building Materials

"Cellar to Chimney"

Plainfield, N. J.

10

(Post Mark)

Plainfield, N. J.

Jul 29

9-PM

1920

(Address:)

Mrs. Margaret Patterson,

228 Emerson Ave.,

Plainfield, N. J.

20

EXHIBIT D. 25.

July 31st, 1920.

228 Emerson Ave.

Plainfield, N. J.

Saturday Morning.

30

Dear Mr. Loizeaux:

Mr. Patterson called into the office yesterday afternoon, but did not find you there.

Should your buyer wish to rent to us, I feel that \$35 a month should be plenty, in the event of his not renting, how could it have been possible for us to give possession on August 1st, even September is only a 30 day notice, and you will remember how fair I wished to be with Mrs. Henry. Surely I deserve what I gave.

40

Defendants' Exhibits

I am grateful to you, and thankful that you wish to return me the \$100.00 deposit, it is quite an item to me, and of course of little account to you.

10 But I would add Mr. Loizeaux that we have done numerous little things around here and the property has not deteriorated any since we came into it.

I am,

Respectfully,

Margaret Patterson.

August 21st, 1920.

Dear Mr. Loizeaux:

20 Enclosed please find \$30.00 being rent for month of August.

Will you kindly have receipt for same sent on.

Respt.,

Margt. Patterson,

228 Emerson Ave.

30

EXHIBIT D. 26.

August 25, 1920.

Mrs. Margaret Patterson
228 Emerson Avenue
Plainfield, N. J.

Dear Madam:

40 We acknowledge with thanks receipt of \$30.00 rent for the month of August.

Defendants' Exhibits

The property has been sold and we expect to close the title in a few days.

Very truly yours,

J. D. Loizeaux Lumber Company.

A. W. Vander Veer.

JHS

Asst. Treas.

10

EXHIBIT D. 27.

August 31, 1920 .

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

20

Kindly be advised that you are hereby authorized to pay the rent for the month of September and thereafter to Mr. Joseph Nathanson, who is the president of the Plainfield Realty Wall Paper Supply Company, as we have sold the premises occupied by you to these people.

Thanking you, we are

Respectfully yours,

30

J. D. LOIZEAUX LUMBER COMPANY.

A. W. Vander Veer.

H.

Assistant Treasurer.

40

Defendants' Exhibits

EXHIBIT D. 28.

17668

157—Warrantee—From a Corporation
10 Compared M. F.

DEED.

The Board of trustees of the Seventh Day Baptist
Memorial Fund a N. J. Corporation

TO

J. D. Loizeaux Lumber Company, a New Jersey
Corporation,

Dated May 24, 1920

20 Received in the Registers office of the County
of Union, N. J., on the 10 day of July A. D., 1920,
at 9.03 o'clock in the forenoon, and Recorded in
Book 801 of DEEDS for said County, on pages
364 &c.

Edward Bauer, Register.
record a/c W. M. Stillman

THIS INDENTURE,

30 MADE the twenty fourth day of May, in the year
of our Lord One Thousand Nine Hundred and twenty
BETWEEN

The Board of Trustees of the Seventh Day Baptist
Memorial Fund,

a corporation of the State of New Jersey, having its
business office in the city of Plainfield, in the county
of Union, in said State of New Jersey, party of the
First Part;

AND

40 J. D. Loizeaux Lumber Company, a New Jersey
Corporation having its principal office in the city

Defendants' Exhibits

of Plainfield, in the County of Union and State of New Jersey, party of the Second Part:

WITNESSETH, That the said party of the First Part, for and in consideration of

One dollar

10

lawful money of the United States of America, to the Corporation aforesaid well and truly paid by the said party of the Second Part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the First Part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, remise, release, enfeoff, convey and confirm to the said party of the Second Part, and its successors and assigns, forever,

20

ALL that certain tract or parcel of land and premises, hereafter particularly described, situate, lying and being in the city of Plainfield in the County of Union and State of New Jersey.

Beginning at a point in the southwesterly side line of Emerson Avenue distant along said side line of Emerson Avenue, in a northwesterly direction, sixty and twenty four one hundredths (60.24) feet from the northwesterly side line of Midway: thence north forty five degrees and thirty seven minutes west along said side line of Emerson Avenue, a distance of fifty (50) feet: thence south forty four degrees and twenty three minutes west and along the southeasterly side line of Lot Number (12) twelve on map hereinafter mentioned, one hundred and twenty five (125)

30

40

Defendants' Exhibits

10 feet: thence south forty five degrees and thirty seven minutes east along the rear line of lots twenty (20) and nineteen (19) on said map, fifty five and eighty seven one hundredths (55.87) feet: thence north forty four degrees and twenty three minutes east, one hundred and twenty five (125) feet to the beginning, Being Lots Number thirteen (13) and fourteen (14) in block "H" on map entitled "Map of Highland Park Realty Company, dated November 19, 1909, H. C. Van Emburgh C. E." and being same premises this day conveyed to said party of the first part by James E. Warner, sheriff of Union County

20 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

30 AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances unto the said party of the Second Part, their successors, heirs and assigns, to their own proper use, benefit and behoof forever.

40 AND the said party of the first part for itself, its successors or assigns does covenant, grant and agree, to and with the said party of the Second Part, their successors, heirs and assigns, that the said party

Defendants' Exhibits

of the first part at the time of the sealing and delivery of these presents, was lawfully seized in its own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. 10

AND that the said party of the Second Part, their successors and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the First Part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same. 20

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever.

AND ALSO, that the said party of the First Part, and its successors or assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the Second Part, their successors and assigns, make, do and execute, or cause or procure to be made, done or executed, all and every 30 40

Defendants' Exhibits

10 such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the Second Part, its successors, heirs and assigns forever, as by the said party of the Second Part, their successors or assigns, or their counsel learned in the law, shall be reasonably advised or required.

20 AND the said The Board of Trustees of the Seventh Day Baptist Memorial Fund for itself, its successors or assigns, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the Second Part, its successors, heirs and assigns, against the said party of the First Part, and its successors or assigns, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, SHALL AND WILL WARRANT and by these presents FOREVER DEFEND.

30 IN WITNESS WHEREOF, the said party of the First Part hath caused its Corporate Seal to be hereto affixed and attested by its Secretary, and these presents to be signed by its President, the day and year first above written.

Signed, Sealed and Delivered
in the presence of
William C. Hubbard.
Secretary.

40 (L. S.)—Board of Trustees of the Seventh Day Baptist Memorial Fund, Plainfield, N. J. 1673—Incorporated 1873.

Defendants' Exhibits

The Board of Trustees of the Seventh Day
Baptist Memorial Fund, by

H. M. Maxson,
President.

Three One Dollar Revenue Stamps 10
Cancelled H. M. M. 7-7-20

State of New Jersey, County of Union, ss.

BE IT REMEMBERED, That on this twenty-fourth day of May, in the year of our Lord One Thousand Nine Hundred and Twenty, personally appeared before me the subscriber, a master in Chancery for said William C. Hubbard, who being by me duly sworn doth depose and make proof to my satisfaction that he is the Secretary of, and well knows the Corporate Seal of The Board of Trustees of the Seventh Day Baptist Memorial Fund, the Grantor named in the foregoing Deed, that the seal thereto affixed is the proper Corporate Seal of the said Corporation, and that the same was so affixed thereto, and the said Deed signed and delivered by Henry M. Maxson, who was at the date and execution thereof, President of said Corporation, in the presence of said Deponent, as the voluntary act and deed of the said Corporation, and that the said Deponent thereupon signed the same as subscribing witness. 20

William C. Hubbard.

Sworn and subscribed to before me this

24th day of May, 1920.

Wm. M. Stillman,

M. C. C. of N. J.

Received—Union County Register's Office, July 10,
9.03 A. M., 1920—Elizabeth, N. J.—Edward
Baer, Register. 40

*Defendants' Exhibits***EXHIBIT D. 29.**

AGREEMENT made and dated August 10, 1920.
between the

10 J. D. LOIZEAUX LUMBER COMPANY,
hereinafter described as the seller, and
J. NATHANSON & SON,
hereinafter described as the purchasers.

WITNESSETH: that the seller agrees to sell
and the purchasers agree to purchase all those certain
lots or parcels of land with the buildings and im-
provements thereon, situate, lying, and being in the
city of Plainfield, County of Union and State of New
20 Jersey, known and designated by street No. 228
Emerson Avenue and more particularly described in
a deed to the seller by the Sheriff of Union County,
dated ———

Property sold subject to all existing restrictions
and subject to such conditions as an accurate survey
may show, and also subject to monthly tenants.

PRICE is Forty-six Hundred (4600) Dollars to
be paid as follows:

30 Two Hundred Fifty (\$250) Dollars on the sign-
ing of this contract, the receipt of which is hereby
acknowledged.

Seven Hundred Fifty (\$750) Dollars in cash
and note for Twelve Hundred (\$1200) Dollars made
by purchasers to the seller and endorsed by George
Cole, payable two months after date, to be reduced
\$100 every renewal.

40 Twenty-four Hundred (\$2400) Dollars by
taking said premises subject to a mortgage now there-
on, which the purchasers assume and agree to pay.

Defendants' Exhibits

Deed shall be delivered upon receipt of said payments at the office of J. D. Loizeaux Lumber Company, 861 South Avenue, Plainfield, N. J., on the fifteenth day of September, 1920, between the hours of 11:00 A. M. and 2:00 P. M.

The deed shall be in proper form for record, shall contain the usual full covenants and warranty and shall be duly executed by the seller at its expense so as to convey to the purchasers the fee simple of said premises free from all encumbrances, except such as herein stated.

All adjustments of rents, interest on mortgages, insurance, and taxes, if any are to be apportioned as of August 1st, 1920, irrespective of adjournments of the closing, if any.

This sale covers all right, title, and interest of the seller in and to any land on said Emerson Avenue in front of said premises to the center line thereof. All personal property appurtenant to and used in the operation of said premises is represented to be owned by the seller and is included in this sale.

The stipulations herein contained are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the year above written.

J. D. LOIZEAUX LUMBER COMPANY.

(L. S.)

By A. W. Vanderveer,

Asst. Treas.

(L. S.)

J. NATHANSON & SON.

H. E. KENYON.

10

20

30

40

*Defendants' Exhibits***EXHIBIT D. 30.**

19215

DEED

10 Compared—M. F.

J. D. Loizeaux Lumber Co., a New Jersey Corporation,

TO

Plainfield Realty Wall Paper Supply Co., a N. J. Corporation.

Dated Aug. 30, 1920.

20 Received in the Register's Office of the County of Union on the 31st day of Aug A. D., 1920, at 9:01 o'clock, in the forenoon, and Recorded in Book 808 of DEEDS for said County, on page 52, &c.

Edward Bauer,
Register.

Recd. and ret. to
IRVING KUNZMAN
Counselor at Law
State Trust Building
Plainfield, N. J.

30 Two dollars and fifty cents in revenue stamps cancelled J K—8-30-20

THIS INDENTURE,

Made the thirtieth day of August in the year of our Lord One Thousand Nine Hundred and Twenty
BETWEEN

J. D. Loizeaux Lumber Co., a New Jersey corporation, of the first part;

40 **AND**

Defendants' Exhibits

Plainfield Realty Wall Paper Supply Co., a
New Jersey corporation
of the City of Plainfield, in the County of Union and
State of New Jersey, of the second part;

WITNESSETH, That the said party of the first 10
part, for and in consideration of One dollar and
other good and valuable considerations lawful money
of the United States of America, to the Corporation
aforesaid well and truly paid by the said party of
the second part, at or before the sealing and delivery
of these presents, the receipt whereof is hereby
acknowledged, and the said party of the first part
being therewith fully satisfied, contented and paid,
has given, granted, bargained, sold, aliened, remised, 20
released, enfeoffed, conveyed and confirmed, and by
these presents does give, grant, bargain, sell, alien,
remise, release, enfeoff, convey and confirm to the
said party of the second part, and to its successors
and assigns, forever, ALL that certain tract or parcel
of land and premises, hereinafter particularly de-
scribed, situate, lying and being in the City of Plain-
field, County of Union and State of New Jersey,

Beginning at a point in the southwesterly side 30
line of Emerson Avenue distant along said side line
of Emerson Avenue distant in a northwesterly direc-
tion sixty and twenty four one hundredths feet from
the northwesterly side line of Midway; thence north
forty five degrees and thirty seven minutes west
along said side line of Emerson Avenue a distance
of fifty feet; thence south forty four degrees and
twenty three minutes west and along the southeasterly
side line of lot number twelve on map hereinafter
mentioned, one hundred and twenty five feet; thence 40

Defendants' Exhibits

10 south forty five degrees and thirty seven minutes east along the rear line of lots twenty and nineteen fifty five and eighty seven one-hundredths feet; thence north forty four degrees and twenty three minutes east one hundred and twenty five feet to the beginning.

20 Being known as lots numbers thirteen and fourteen in Block H, on map entitled, "Map of Highland Park, Plainfield, N. J., April 24, 1904, H. C. Van Emburgh, C. E." and being the same premises conveyed to the said J. D. Loizeaux Lumber Company by deed of conveyance from the Board of Trustees of the Seventh Day Baptist Memorial Fund dated May 24, 1920, and recorded in the Union County Register's Office in Book 801 of deeds for said county on pages 364

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

30 AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

40 TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, to its own proper use, benefit and behoof forever.

Defendants' Exhibits

AND the said J. D. Loizeaux Lumber Co. for itself, its successors in office or assigns does covenant, grant and agree, to and with the said party of the second part, its successors and assigns, that the said J. D. Loizeaux Lumber Co. at the time of the sealing and delivery of these presents, was lawfully seized in its own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular and the above granted, bargained and described premises, with the appurtenances and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

10

AND that the said party of the second part, its successors and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, its successors in office or assigns, or of any other person or persons lawfully claiming or to claim the same.

20

30

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever, except as aforesaid.

AND ALSO, that the said party of the first part, and its successors in office or assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or in-

40

Defendants' Exhibits

terest, of, in or to the hereinbefore granted premises,
 by, from, under or in trust for it or them, shall and
 will at any time or times hereafter, upon the reason-
 able request, and at the proper costs and charges in
 10 the law, of the said party of the second part, its suc-
 cessors and assigns, make, do and execute, or cause
 procure to be made, done or executed, all and
 every such further and other lawful and reasonable
 acts, conveyances and assurances in the law for the
 better and more effectually vesting and confirming
 the premises hereby intended to be granted, in and
 to the said party of the second part, its successors
 and assigns forever, as by the said party of the second
 part, its successors or assigns, or its counsel learned
 20 in the law, shall be reasonably advised or required.

AND the said J. D. Loizeaux Lumber Co., its
 successors in office or assigns, the above described and
 hereby granted and released premises, and every part
 and parcel thereof, with the appurtenances, unto the
 said party of the second part, its successors and
 assigns, against the said party of the first part, and
 its successors in office or assigns, and against all and
 30 every person or persons whomsoever, lawfully claim-
 ing or to claim the same, SHALL AND WILL
 WARRANT and by these presents FOREVER
 DEFEND.

IN WITNESS WHEREOF, the said party of
 the first part hath caused its corporate Seal to be
 hereto affixed and attested by its Secretary, and these
 presents to be signed by its President, the day and
 40 year first above written.

Defendants' Exhibits

Signed, sealed and delivered in the present of

J. D. LOIZEAUX LUMBER CO.

By F. C. Jennings,

President.

(L. s.)—J. D. Loizeaux Lumber Company, Incorporated 1903, New Jersey.

10

Attest:

F. Parker Loizeaux,
Secretary.

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

BE IT REMEMBERED, That on this thirtieth day of August, in the year of our Lord One Thousand Nine Hundred and Twenty, before me the subscriber, a Notary Public of New Jersey, personally appeared F. Parker Loizeaux, who being by me duly sworn on his oath, says that he is the secretary of the J. D. Loizeaux Lumber Company, the grantor named in the within Deed, that F. C. Jennings is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Deed is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

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F. Parker Loizeaux.

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Defendants' Exhibits

Sworn and subscribed before me, at
Plainfield, N. J., the date aforesaid.
William S. Zimmerman.

10 (L. s.)—William S. Zimmerman, Notary Public,
Plainfield, New Jersey. Notary Public in
and for State of New Jersey.

Received
Union County
Register's Office
Aug. 31, 9.01 A. M., 1920
Elizabeth, N. J.
Edward Bauer, Register.

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Plainfield, N. J.

February 4th, 1920.

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam,

We acknowledge having received \$130 from you on February 3rd, to apply as follows: \$30 being the rent on the house for the month of February, and \$100 being a payment on account of the principal of \$3800 for the house and lot known as No. 228 Emerson Avenue.

Our understanding is this,—that you will pay \$30 each month until we are able to give you a free and clear title, the result of the foreclosure which we are now proceeding with. So soon as we are able to do this, you agree to pay us \$3700 in the manner following: \$3000 by raising this amount by mortgage on the above mentioned property, and \$700 in cash, which we understand you are to raise by second mortgage, and the above when carried out is satisfactory to us, but if for any reason you are unable to carry out the above provisions, you agree, upon being requested, to vacate the premises, leaving it in first class condition, and all that you have paid in to be counted as liquidation of any damages we might sustain.

If any of the above you do not fully concur, please advise us at once, so that there can be no misunderstanding.

Very respectfully yours,

J. D. LOIZEAUX LUMBER COMPANY.,

J. D. Loizeaux

By Treasurer

JDL/DC

(Case, page 139).

On June the 22nd the terms of the contract above set forth were altered by mutual consent of the parties so that Mrs. Patterson was to pay \$700 in cash and J. D. Loizeaux Lumber Company was to take back a purchase money mortgage of \$3000. (Case page 117, lines 20 to 33).

On July 30th, 1920, Mrs. Patterson's husband went to the place of business of J. D. Loizeaux Lumber Co. with \$700 in the form of a treasurer's (bank) check and tendered the same to Mr. Loizeaux. Mr. Loizeaux told Mr. Patterson at that time "Patterson, I am sorry, the house is sold to another party in Elizabeth for more cash; can you move out before the 1st of September." (Case, page 90, lines 12 to 40).

The Vice-Chancellor found that the tender of the purchase price on the above date was made within a reasonable time under all of the circumstances and that the property was not sold to any other person at that time.

On August 10th, 1920, J. D. Loizeaux Lumber Company entered into a contract for the sale of the property to J. Nathanson & Son for \$4600. (Case page 172).

The Vice-Chancellor found as a fact from the evidence that this contract was made with notice to J. Nathanson & Son of the rights of Mrs. Patterson to the property under her contract and that any rights acquired by J. Nathanson & Son were subject to Mrs. Patterson's rights

On the 30th day of August, 1920, as a result of the Nathanson contract J. D. Loizeaux Lumber Company conveyed the premises to the defendant, the Plainfield Realty Wall Paper Supply Co., a New Jersey corporation, which conveyance, the Vice-

Chancellor found as a fact from the evidence, was with notice of Mrs. Patterson's rights in the premises and subject thereto.

The Vice-Chancellor decreed that the defendant, Plainfield Realty Wall Paper Supply Co. convey the premises in question to Mrs. Patterson subject to a \$2400 mortgage placed thereon by it, and that she pay to J. D. Loizeaux Lumber Co. \$1300 in cash. The decree also provided for a complete adjustment of all of the matters arising out of said suit among the parties. This was advised and the decree entered in accordance therewith the principles laid down in **Saldutti vs Flynn, 72 N. J. Eq. 157.**

None of the points raised by the appellant are required to be answered by the brief of the appellee. The learned Vice-Chancellor wrote a very exhaustive opinion (**Case, page 19 to 43**) covering every phase of the law and the facts presented by this case in that opinion, which without doubt will be adopted by this Court as the law of the case.

It is respectfully urged by the appellee that the case is largely a question of fact and that the facts as found by the Vice-Chancellor were entirely justified from the evidence before him.

THE DECREE OF THE COURT OF CHANCERY SHOULD BE SUSTAINED.

Respectfully submitted,

ROBERT NEWTON CRANE,

Solicitor of and of Counsel for

Complainant-Appellee.

Plainfield, N. J.

December 5, 1921.

New Jersey Court of Errors and Appeals

Between MARGARET PATTERSON Complainant-Appellee —and— J. D. LOIZEAUX LUMBER CO., A Corporation, et als, Defendants-Appellants	}	On Bill for Specific Performance On Appeal from Chancery. BRIEF OF DEFENDANTS- APPELLANTS
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Brief of Defendants-Appellants

STATEMENT OF FACTS

This is an appeal from the Court of Chancery, upon a decree advised by Vice Chancellor Buchanan for the Chancellor, in a suit instituted by Margaret Patterson, Complainant-Appellee, against the J. D. Loizeaux Lumber Co., Joseph Nathanson and the Plainfield Wall Paper Supply Co., Defendants-Appellants, directing the defendant J. D. Loizeaux Lumber Co. to specifically perform a contract for the sale of premises occupied by the appellee, and deliver a deed for the same.

The facts in the case briefly stated are covered by the correspondence between the parties, as disclosed in Exhibits C. 1. to 7 inclusive, and D. 1. to 27 inclusive, found on pages 139 to pages 165 inclusive, of the State of the Case.

A brief resume of the facts as disclosed by the correspondence and the evidence, shows that the J. D. Loizeaux Lumber Co. were the owners of a dwelling house situated on Emerson Avenue in the City of Plainfield, and that prior to February 4, 1920 there were verbal negotiations between Mrs. Patterson and J. D. Loizeaux, President of the corporation, in regard to the sale of the property, and that subsequently on the 4th day of Feb. 1920, Mrs. Patterson forwarded to the J. D. Loizeaux Lumber Co. the sum of One Hundred and thirty (\$130.00) dollars, the receipt of which was acknowledged by J. D. Loizeaux for the Lumber Company, and marked Exhibit C. 1 page 139, State of the Case, and in view of the fact that this is the only contract between the parties is set out here at length:

Plainfield, N. J., Feb. 4, 1920

Mrs. Margaret Patterson,
228 Emerson Ave.,
Plainfield, N. J.

Dear Madam:

We acknowledge having received \$130 from you on February 3rd, to apply as follows: \$30 being the rent on the house for the month of February, and \$100 being a payment on account of the principal of \$3800 for the house and lot known as No. 228 Emerson Avenue.

Our understanding is this,—that you will pay \$30 each month until we are able to give you a free and clear title, the result of the foreclosure which we are now proceeding with. So soon as we are able to do this, you agree to pay us \$3700 in the manner following: \$3000 by raising this amount by mortgage on the above mentioned property, and \$700 in cash, which we understand you are to raise by second mortgage, and the above when carried out is satisfactory to us, but if for any reason you are unable to carry out the above provisions, you agree, upon being requested, to vacate the property, leaving it in first class condition, and all that you have paid in to be counted as liquidation of any damages we might sustain.

If in any of the above you do not fully concur, please advise at once, so that there can be no misunderstanding.

Very respectfully yours

J. D. LOIZEAUX LUMBER CO.,

JDL/DC

J. D. Loizeaux
By Treasurer

It further appears from the evidence that there was a defect in the title of the property, of which the appellee had notice, and which necessitated the foreclosure of the mortgage then upon the premises, in order to clear the title; that foreclosure was commenced and finally the premises were bought in by the mortgagee, the Seventh Day Baptist Memorial Fund, and a deed executed by it to the J. D. Loizeaux Lumber Co. which deed was dated May 24, 1920 (Case Page 102, Exhibit D. 28 Pg 166), and thereupon immediate notice was given to the

appellee that the title to the premises was clear and that the appellant was ready to deliver its deed to the appellee for the premises in question, (Case Pg 73) and upon her failure to attempt to carry out the terms of the agreement a communication was forwarded to the appellee extending the time to the fifteenth day of June to close the transaction. (D. 13 Pg 153). Correspondence was interchanged between the parties, the appellant urging the appellee to complete the transaction, but the appellant was continually put off by the excuse that the appellee was unable to raise the additional cash of \$700.00 over and above the first motrgage of \$3,000.00, until finally upon the 22nd day of June the appellee was notified that the transaction would be cancelled unless comsumated by the 25th day of the month, and the deposit returned. (Exhibit D 18, Pg 156). After this date further efforts were made by the defendant corporation up to the 29th day of July, to close this transaction, without any result, and upon that date the defendant corporation notified the appellee that the property had been offered to another party, and that the transaction was terminated. (Exhibit D 24, Pg 161.)

The evidence upon the part of the defendant's witnesses discloses that at no time from the beginning of the negotiations up to the time of the termination of the agreement, had any tender ever been made of the balance of the purchase price of \$700.00, and the mortgage of \$3,000, called for in the understanding of the agreement, as expressed in Exhibit C. 1. although the husband of the appellee testifies that finally on the 31st day of July he went to the office of the defendant corporation and there offered a check for \$700 which was obtained upon a discount of a note, and which was refused. This is

denied by the President of the defendant corporation, its secretary and treasurer, the president of the corporation testifying that he was not at his place of business that day, which denial is supported by the communication received under date of July 31st by J. D. Loizeaux, the president of the defendant corporation, in which the appellee states "Mr. Patterson called into the office yesterday afternoon and **did not find you there,**" (D. 25, Pg 163), and which is of sufficient importance bearing upon the subject, as to whether or not the termination of the agreement was acquiesced in by both parties, to be set forth at length herein:

"July 31st, 1920.

228 Emerson Ave.
Plainfield, N. J.
Saturday Morning.

Dear Mr. Loizeaux:

Mr. Patterson called into the office yesterday afternoon, but did not find you there.

Should your buyer wish to rent to us, I feel that \$35 a month should be plenty, in the event of his not renting, how could it have been possible for us to give possession on August 1st, even September is only a 30 day notice, and you will remember how fair I wished to be with Mrs. Henry. Surely I deserve what I gave.

But I would add Mr. Loizeaux that we have done numerous little things around here and the property has not deteriorated any since we came into it.

I am,

Respectfully,

MARGARET PATTERSON"

The importance of this communication is that it shows an acceptance of the rescission of the contract; it contains an admission that the husband of the complainant had called at the office and had been unable to find the President of the defendant corporation, which is corroborative of the testimony of both the president and the secretary to the same point, to wit, that Mr. Patterson did not tender the \$700.00 balance on the purchase price, and which testimony, together with the letter refutes the statement made by Mr. Patterson that he had a conversation with Mr. Loizeaux on that day.

At no time in the case does it appear that a tender was made of the money, or that the complainant had arranged to raise a mortgage for the sum of \$3,000.00 on the property and pay the balance of \$700.00 in cash, as called for in the communication of February 4, 1920, which purports to contain the agreement directed to be specifically performed by the learned Vice Chancellor.

The defendants, Joseph Nathanson and the Plainfield Realty Wall Paper Supply Co., at the final hearing, claimed to be innocent purchasers for value; that they had no notice that there was an existing contract between the complainant and the defendant, J. D. Loizeaux Lumber Co., and that by the conduct and admissions of the complainant, they had every reason to believe that the contract had been terminated mutually between the parties, in fact the complainant had knowledge of the negotiations for the sale of the property by the J. D. Loizeaux Lumber Company to the defendant, Plainfield Realty Wall Paper Supply Co., and permitted the sale of the premises before seeking the relief of this Court.

The evidence of Joseph Nathanson, defendant, and president of the Plainfield Realty Wall Paper Supply Co., found on pages 123, 124 and 125, discloses that the witness called at the place and was shown through the property by the defendant, and that there was some conversation between them in regards to the renting of the place to the complainant. The complainant there admitted that she could have bought the property, but had to advise Mr. Loizeaux that she could not raise the money, and she had to give it up; that at no time did she advise him that the contract was still in existence or that she expected to enforce the same. This testimony is corroborated both by Mr. McIntyre (Case, p. 128) and Charlotte Waters (Case p. 131), who were present at the several interviews had with the complainant, in which they were shown through the property by Mrs. Patterson before the defendant, the Plainfield Realty Wall Paper Supply Co. took title to the property, and notwithstanding this knowledge, the complainants permitted the defendant, the Plainfield Realty Wall Paper Supply Co. to take deed to the property, without any notice to them, and without any protest to the J. D. Loizeaux Lumber Company.

The appellants contend that the court below erred in decreeing,

(a) "that the said articles of agreement be in all things, except as herein otherwise provided, specifically performed by the defendant, J. D. Loizeaux Lumber Company, and that the defendant Plainfield Realty Wall Paper Supply Co. do, in ten days from the date of this decree, make, execute, acknowledge in due form of law, and deliver to complainant, a good and sufficient deed for the said property, free and

clear from all encumbrances, except a certain mortgage now thereon of \$2,000.00, and which said deed shall provide for the assumption by complainant of the principal and interest secured by said mortgage, and that thereupon the complainant do pay or cause to be paid to the defendant, J. D. Loizeaux Lumber Co., \$1300.00, less the proportionate amount of taxes for the current year from January 1, 1921, to the time of the delivery of the deed, and less the amount of interest accrued upon said \$2400.00 mortgage," because the said decree in this respect is not the agreement sought to be specifically enforced by the complainant;

(b) that the court erred in decreeing that "the J. D. Loizeaux Lumber Company do repay to the defendant, Plainfield Realty Wall Paper Supply Co. the consideration paid by the defendant, Plainfield Realty Wall Paper Supply Co. to the defendant, J. D. Loizeaux Lumber Co., for said property, together with all taxes, interest, water rent and insurance premiums paid by the defendant, Plainfield Realty Wall Paper Supply Co. for and in relation to said property, with interest thereon at six per cent. per annum from the dates of the said several payments," because the Plainfield Realty Wall Paper Supply Co. was the purchaser for value, and without notice of the existence of the contract sought to be specifically performed by the complainant;

(c) because the court decreed that the J. D. Loizeaux Lumber Co. and Plainfield Realty Wall Paper Supply Co. do pay to the complainant and her solicitor her costs of this suit to be

taxed, in which shall be included a counsel fee of \$150.00", because the complainant was not entitled to any costs or the allowance of counsel fee;

(d) for the court erred in decreeing adversely to the defendants as above stated in that, "the said complainant was not ready and willing and attempted to perform the said contract and did not offer to execute the said bond and mortgage provided in said agreement, specific performance of which was sought in and by the said bill of complaint;

(e) for the court erred in not finding that the complainant did not within a reasonable time offer or attempt to perform the agreement;

(f) for the court erred in not finding that the Plainfield Realty Wall Paper Supply Co., defendant, had no knowledge of the rights of the complainant in the premises;

(g) that the court erred in not finding that the agreement, specified performance of which was sought in the said bill of complainant, is a unilateral agreement and was non-enforceable against the complainant;

(h) and for that the court erred in not finding that the agreement, specific performance of which was sought in and by the said bill of complaint, was non-enforceable against the complainant by reason of the complainant's failure to accept the said agreement in accordance with the statute made and provided;

(i) for the court erred in not dismissing the bill of complaint filed by the complainant and awarding costs to the defendants.

BRIEF OF ARGUMENT

I.

THE DECREE OF THE COURT BELOW DOES NOT CONFORM TO THE AGREEMENT.

The final decree is found on pages 45 to 51 inclusive. By the terms of the decree the said articles of agreement are ordered, except as herein otherwise provided, specifically performed by the defendant, the J. D. Loizeaux Lumber Co., and the defendant, Plainfield Realty Wall Paper Supply Co., is directed in ten days from the date of the decree to make, execute, acknowledge in due form of law, and deliver to the complainant, a good and sufficient deed for said property, free and clear from all encumbrances, except a certain mortgage now thereon of \$2,000.00, and which said deed shall provide for the assumption by complainant of the payment of the principal and interest secured by said mortgage, and that the complainant pay, or cause to be paid, to the J. D. Loizeaux Lumber Co., \$1300.00 less the proportionate amount of taxes for the current year from January 1, 1921, to the time of the delivery of the deed, and less the amount of interest accrued on said \$2400.00 mortgage.

The agreement sought to be enforced is contained in the letter (C. 1 p. 139 of State of Case) from J. D. Loizeaux Lumber Co. to the complainant, and provides for the payment of \$30.00 per month for rent, the acknowledgement of \$100.00 deposit on

the purchase, and when the complainant was in a position to pay the remainder of the purchase price, there should be paid \$3,000.00 by raising this amount on a mortgage on the property and the sum of \$700.00 in cash. The evidence shows that after the foreclosure sale, a mortgage was placed upon the property for the sum of \$2400.00 by the J. D. Loizeaux Lumber Co., and that therefore, the final decree as entered, instead of directing the specific performance of the agreement entered into between the parties, directs the enforcement of a new agreement. Under this communication the burden was thrown upon the complainant to execute a mortgage for \$3,000.00 if a decree of specific performance should be made. When the said mortgage was to be paid, is not set forth, neither the rate of interest of the same, thus creating an uncertainty in the contract, which would not justify a decree for specific performance.

The learned Vice Chancellor throughout his conclusions (Case, pgs. 19 to 42 inc.) lays great stress upon the case of **Cranwell vs. Clinton Realty Co., et als.**, 67 N. J. E. p. 540, holding (p. 25) "that the facts in the case at bar are in the majority of particulars remarkably similar to those in that case." It is respectfully submitted, however, that the case is not analogous to the one in question. In the Cranwell case the defendant corporation had contracted to sell land to the plaintiff, the price to be paid on a certain date; extensions of time were made from time to time, and finally further extension of six months in consideration of plaintiff paying interest and taxes. A few days after this agreement was made, the plaintiff agreed, to make the payment, and four days later sent a check for the interest, which was never received. After the check was sent, defendant notified plaintiff that the contract

would be cancelled if the payment of interest and taxes was not made immediately, but before receipt of this notice told plaintiff that if he had sent the check, he need pay no attention to the notice. At various times plaintiff expressed his desire to take the property, and about ten days after notice was sent him that defendant was going to sell the property to someone else, went to defendant's office and stated that he would take the title seven days later. Defendant stated that plaintiff was too late, and the next day sold the land to another. The court properly held in that case that the defendant had no right to rescind the contract, as it did, and that it was its duty to wait the seven days or tender a deed and demand performance at once.

In the case at bar, from the 24th day of May, 1920, when the property was acquired by the defendant from the Seventh Day Baptist Memorial Fund, the mortgagor who had foreclosed their mortgage in order to clear the title for the defendant, repeated efforts were made to have the complainant fulfill the contract that they had entered into, until the time of its termination in the latter portion of July, 1920. The contract expressly provided that the title was to be given upon the consummation of the foreclosure proceedings, (C. 1) providing that as soon as the defendant was able to give free and clear title, the balance of the purchase price was to be paid by raising a mortgage for \$3,000.00 and \$700.00 in cash, and upon failure to carry out the above provisions the complainant agreed to vacate the property, leaving it in first class condition.

II.

**THE CONTRACT SOUGHT TO BE ENFORCED IS
A UNILATERAL ONE AND WILL NOT BE
ENFORCED IN EQUITY UNLESS AT THE
TIME OF THE DECREE BOTH PARTIES
CAN BE BOUND BY IT.**

The contract sought to be enforced is only signed by one of the contracting parties, to wit, the defendant; it is not signed by the complainant, nor acknowledged by her, as required by Chapter 37 of the Laws of 1918, which provides that: "no estate or interest of a feme covert in any lands, tenements, or hereditaments, lying and being in this State, shall hereafter pass by deed or conveyance, without a previous acknowledgment made by her before one of the officers mentioned in the 22nd, 23rd and 24th sections of the Act, as the case may be, that she signed, sealed and delivered the same as her voluntary act and deed, etc." The agreement in question provided for the execution of a mortgage as part of the purchase price in the sum of \$3,000.00. Equity could not compel the complainant under said agreement to execute said mortgage unless the obligation was signed by the feme covert and acknowledged by her. Therefore, the contract sought to be enforced by the complainant was one irrespective of the facts that would not justify equitable relief.

The general principal stated by Fry's Spec. Pref. 3rd Ed., par. 440, has been frequently approved by the Courts, to wit: "Whenever, therefor whether from personal incapacity to contract, or the nature of the contract or any other cause, the contract is incapable of being enforced against one party, that party is equally incapable of enforcing it against

the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former."

Chief Justice Beasely, in the case of **Richards, Appellant, vs. Green, Respondent**, 23 N. J. E., 536, speaking for the Court of Errors and Appeals said, "it seems to me that the rule is universal to this extent, that equity will not direct a performance of the terms of an agreement by the one party when, at the time of such order, the other party is at liberty to reject the obligations of such agreement. In the present instance, if we look upon the female complainant as incapable of incurring the obligations of this contract, she would be at liberty to reject any performance on the part of the defendant that might be decreed in her favor, and there would be no method by which she could be compelled to hold to the terms of the contract on her side. Such a posture of parties does not seem to me equitable. I find no case which warrants such a result." In the same case the court likewise held "that a feme covert could not obtain a decree for a specific performance of a contract which is not binding upon her." The court citing as an illustration the case of **Flight vs. Boland**, 4 K. U. S. S. 298, which was a suit for a specific performance of a contract by an infant, and the bill was dismissed with costs on the ground that he was neither originally bound by the contract, nor by the filing of the bill by his next friend.

In the case at bar, the contract could not be enforced against the complainant from the beginning she neither having complied with the Statute of Frauds and Perjury in reducing her assent to writing and acknowledging the same in accordance with Chapter 37 of the Laws of 1918.

In the case of **Ten Eyck vs. Manning**, 52, N. J. E., 47, Vice Chancellor Van Fleet said, "the remedy by specific performance is not a matter of strict right, but of sound judicial discretion and will be granted or denied as the justice and right of the particular case shall seem to the court on full consideration of the rights and equities of the party to require. The enforcement or denial of this remedy is regulated by certain well established principals, one of which is that it will not be granted as a general rule in cases where mutuality of the obligation and remedy does not exist; or, stated in another from, mutuality of remedy is essential to the maintenance of a suit for specific performance."

In the case of **Van Doren vs. Robinson**, 1 C. E. Green, 256, Chancellor Green said, "The general principal is that where the contract is incapable of being enforced against one party that part is equally incapable of enforcing it against another."

In the case of **Pinner vs. Sharp**, 23 N. J. E., 274, the court, in view of the extraordinary circumstances under which the contract sought to be enforced was made, and which was purely unilateral in character, in the exercise of its discretion left the complainant to his action at law and refused specific performance.

In the case of **Young vs. Paul**, 10 N. J. E., 401, Chancellor Williamson, writing the opinion for the Court of Errors and Appeals, said: "it is objected that the wife is not a party to the bill and that no decree can be made against her to execute the deed, as she is not a party to the suit. No decree could be made against her if she were a party. If she had actually signed the agreement with her husband, it

would have been absolutely void as to her and no suit at law or equity could be maintained against her upon such an agreement.

III.

THE DEFENDANT WAS WITHIN ITS RIGHTS IN RESCINDING THE CONTRACT UPON THE FAILURE OF THE COMPLAINANT TO PERFORM.

The agreement fixes the time for closing, to wit, the completion of the foreclosure suit, of which the complainant had notice. The evidence and correspondence discloses the efforts made by the defendant to cause the complainant to perform, without result, after a period of over two months, the contingent definite time being fixed. The defendant was only compelled to wait a reasonable time before it exercised its right to rescind. "Reasonable time" has been construed to be "so much time as is necessary under the circumstances to do conveniently what the contract or duty requires should be done in a particular case. A reasonable time, when no time is specified, is a question of law and depends on the subject matter and the situation of the parties." 7 Words & Phrases, pg. 5977. This implies that there is sufficient promptitude as the situation of the parties and the circumstances of the case will allow. It never means an indulgence of unnecessary delay or in a delay occasioned by a vain and fruitless effort to do the act required. **Frecj vs. Lewas**, 67 Atl. 45; 11 L. R. A. N. S. 948.

The complainants knew that it would be necessary for them to raise a mortgage for the sum of \$3,000.00 and to make arrangements for the payment

of \$700.00 cash as soon as the foreclosure proceeding was completed, and had this knowledge from the Fourth day of February, 1920 up to the 24th day of May, 1920, at which time they received notice that the defendants were able, ready and willing to convey, and from May 24th, 1920 until August 30th, 1920, when the conveyance was made to the Plainfield Realty Wall Paper Supply Co., no effort was made by the complainant to assert her right or claim to the property. Promises only were made as to when the matter would be closed, but at no time was the money paid, although repeated appointments were made for the fulfillment of the contract. The complainants, with knowledge of other negotiations, after the termination of the contract, permitted the defendant, without protest, to proceed and consummate the sale with the Plainfield Realty Wall Paper Supply Co., and after the conveyance to the latter defendant, first filed their bill invoking the aid of this court.

Vice Chancellor Howell in the case of **St. John the Baptist Greek Catholic Church vs. Barron, et. als.**, 73 Atl., 422, said: "there is no proceeding, no jurisdiction, no form of remedy that is administered by a court of equity that is so much within the judicially, sound, equitable discretion of the court as is the action of specific performance of contracts. I do not mean to say that it rests in the capricious discretion of the court, but in the sound, judicial discretion of the court, whether in any case the decree of specific performance will be awarded or not. It is a purely equitable jurisdiction—it will not be used for the purpose of inflicting hardship upon either party of the suit."

The rule is well settled that one who desires to

rescind a contract, must act within reasonable time. **Dennis vs. Jones, 17 Stew. Eq., 513.** What is reasonable time necessarily depends upon the circumstances of each particular case. It is well that unless the situation of the other party has changed to his detriment, the contract continues until the party elects to avoid it.

It has been well settled in our court that in a suit to enforce specific performance of a contract to convey land, the court will not allow an unreasonable delay in paying the price, nor aid the vendee to obtain an unfair advantage after the property has increased in value, or after it has been sold. **Cranwell vs. Clinton Realty Co., 67 N. J. E., 540.**

Complainants, however, contend that they made a tender of the money to the defendant, J. D. Loizeaux Lumber Co., which is not borne out by the evidence, except the discount of a note and the production of a check to David C. Patterson, under date of July 30, 1920, seventeen days after the rescission of the contract and the knowledge that negotiations were being made to someone else. This check was never endorsed to the J. D. Loizeaux Lumber Co. or ever used or converted into cash for the purpose of making legal tender, nor is there any evidence of the tender of a mortgage, as required in the agreement. On the contrary D. 25 (p. 163) bears out the defendants contention that no tender of the said money was ever made, and an acceptance of the rescission by asking for further time to stay in possession of the premises which they were to vacate under the terms of the agreement, and thanking the defendant for the offer to return the deposit of \$100.00 which was to have been forfeited under the agreement.

IV.

SPECIFIC PERFORMANCE WILL NOT BE DECREED IF A DEGREE OF PERFORMANCE INVADES THE RIGHTS OF INNOCENT PARTIES.

The defendant, the Plainfield Realty Wall Paper Supply Co., and Joseph Nathanson, as disclosed by the evidence, were innocent parties to the transaction between the defendant, J. D. Loizeaux Lumber Co., and the complainants. If they had any knowledge at all of any contract between the complainants and the J. D. Loizeaux Lumber Co., it was only the knowledge that the contract had been terminated between the parties from the mouth of the complainant. It paid its money in good faith and received the consideration therefor, and this court cannot divest it of its title without inflicting an injury upon the innocent party. Pertinent to this phase of the question is the testimony of Mr. Joseph Nathanson, upon the occasion of his first visit at the home of Mrs. Patterson, between the first and fifth day of August, 1920, where the witness testifies to the fact that he called for the purpose of inspecting the property before signing the agreement, accompanied by Mr. Kenyon, an employee of the J. D. Loizeaux Lumber Co.. found on pages 122, 124 and 125, amongst which testimony is the following: (p. 123, Case):

Q. Whom did you see?

A. Mrs. Patterson.

Q. What did you say to her and she to you?

A. Mr. Kenyon said he was sent by Mr. Loizeaux to show me that property, and she opened

the door and let us in and showed me all through the house, except upstairs; she said, "Upstairs isn't in order, because it is too early;" it was nine or ten o'clock; I said, "No, never mind; I know how it is upstairs; I know that."

Q. You knew the building?

A. Yes.

Q. You were familiar with the property when it was started?

A. Yes.

Q. Was there anything said by Mrs. Patterson in regard to the ownership of the property at that time?

A. Well, she asked me if I would buy the property if I wouldn't let her stay there: I said, "I will, let you stay in only with one condition;" first, I ask her she pays rent. She said \$30.00. Then she asked me if I wouldn't let her stay there, because I understood that is a monthly tenant, or I wouldn't buy it. I said, "Yes, on one condition;" she said, "How much?" I said, "\$45.00." She didn't say she will pay that. I said I will give her 30 days' notice to vacate.

Upon the second visit, accompanied by Mr. McIntyre, the witness again testifies to another conversation with the complainant, after the signing of the agreement, which conversation was as follows: (p. 124, Case 1. 40):

Q. And did Mrs. Patterson say anything to you at that time in regard to the ownership of the property?

A. I told her, I said, "Now, I think the best way for you is to buy that property;" and she said "I could bought that property cheaper than you could bought it; what is the use of me buying it from you?" I said, "Why didn't you buy it then?" She said she couldn't raise the money; she told Mr. Loizeaux she couldn't raise the money; she had to give it up.

This testimony was corroborated by Mr. Kenyon, who accompanied him on the first visit; Mr. McIntyre who accompanied him on the second visit, and Mrs. Waters, who accompanied him on the third visit, and upon each occasion the complainant showed Mr. Nathanson through the property. At no time, either in the direct or re-direct testimony is there a denial of this conversation by the complainant. The rule has been well settled in this court that even though a party has a right to the protection of the court, if that protection cannot be given without invading the rights of innocent parties, its aid will be refused.

Johnson vs. Hubbell, 10 N. J. E., 332.

The complainant, by her conduct and actions, permitted the property to be sold without any protest, and this is one of the cases when the application of the maxim that "he who seeks equity must do equity" should be applied in order to promote justice. **Mutual Benefit Life Insurance Co. vs. Brown, 30 N. J. E. 193.** The Court of Chancery erred in extending summary relief to a suitor whose conduct before she asked for relief, has been such as to prevent equity being done. **Rabe vs. Dunlap, 51 N. J. E. 40.**

V.

**THE DECREE OF THE COURT OF CHANCERY
SHOULD BE REVERSED.**

Respectfully submitted,

WILLIAM NEWCORN,
Solicitor for Appellant,

WILLIAM NEWCORN,
Of Counsel.

