

New Jersey Court of Errors and Appeals

Between

Elizabeth C. Norton,
Complainant-Appellant,

and

Samuel Nathanson, et al.,
Defendants-Respondents.

Between

Samuel Nathanson,
Complainant-Appellee,

and

Elizabeth C. Norton,
Defendant-Appellant.

Brief of
Aaron V. Dawes
For
Appellant.

Between

Samuel Nathanson,
Complainant-Appellee,

and

Elizabeth C. Norton,
Defendant-Appellant.

These three suits grow out of the same transactions. Elizabeth C. Norton, the complainant, in the month of December or January, 1913, applied to Samuel Nathanson, the defendant, through her husband, Richard D. Norton, as her agent, to loan her \$5,000 to pay on the Edwards Tract at Long Branch, New Jersey, which property she was about to purchase. This Nathanson promised he would do. He afterwards agreed to make a loan to her of \$5,200, provided Mr. Norton would take a deed for the Castle Garden property for \$6,800, and secure him for the \$12,000 by assigning a mortgage which Mrs. Norton held on the property known as the Cooper Avenue property for \$5,000, and by executing a mortgage for \$4,000 on the Edwards Tract,

which she was about to buy, and secure the balance, \$3,000, on the Castle Garden property.

The complainant charges that the Castle Garden property was not worth \$6,800; that it was oppressive and usurious to condition the loan of the money upon Mrs. Norton's taking Castle Garden at an exorbitant price, and she prays that she should be relieved from the purchase thereof upon her paying the amount loaned to her with interest, and re-transferring the Castle Garden property to Nathanson, and his conveying to her the Cooper Avenue property, which he afterwards purchased in foreclosure proceedings on the \$5,000 mortgage on Cooper Avenue. The bills filed by Nathanson are foreclosure bills on the two other mortgages given by Mrs. Norton on the Edwards Tract and the Castle Garden property aforesaid.

The history of the Castle Garden transaction makes clear the equity of Mrs. Norton. In 1908 the said Castle Garden property was mortgaged for \$4,000, and the holder of the mortgage was about to foreclose it when the owner, David Lerner, who was in partnership with Richard D. Norton in the property, applied to Nathanson to buy the mortgage. This Nathanson would not do unless he would pay him \$500. This sum was paid to Nathanson, and the mortgage was thereupon assigned to him. Interest was paid for some time on this mortgage, and on December 30, 1911, Nathanson foreclosed this mortgage and obtained a decree for \$4,977.33 on July 27, 1912. In his testimony before the Master, he deposed that the principal of \$4,000 and interest during his entire ownership of the mortgage, was due and owing to him. He admits that he received the \$500 and some interest. The property was sold at Sheriff's sale, and it was struck off to Nathanson. The defendants filed objections to the confirmation of the sale, alleging that the defendants had been prevented and deprived of the right of redeeming the premises because the decree was greatly in excess of the amount really and honestly due on the said mortgage, that Nathanson's action in forcing the sale and misrepresenting the amount of the decree, were unconscionable, and praying that the sale be not confirmed. (See page 62 of the State of the Case).

While the sale of the Castle Garden property was unconfirmed, Mr. Norton, as the agent for his wife, applied for the loan of \$5,000 in order to complete the purchase of the Edwards Tract which his wife had bought in the latter part of November, 1912. She had made application to other parties for the loan of money, but had been unable to secure it, and Nathanson was fully aware of her need for this money.

Mrs. Norton, claims that Nathanson took an undue advantage of his position as mortgagee of the Castle Garden property in extorting from her the assignment of her mortgage on the Cooper Avenue property and the giving of a mortgage upon the Edwards Tract, which belonged to her, to secure not only the amount which was then due to Nathanson upon the Castle Garden property, but, in addition, a large bonus which was the difference between the amount honestly due to him on the Castle Garden property and the price he pretended to sell it to her for. The complainant's position is that Nathanson's action was inequitable and oppressive in making his willingness to loan \$5,200 conditioned upon her taking the Castle Garden property.

The Vice Chancellor decided, first, that there was no oppression on the part of Nathanson; second, that Norton and Nathanson dealt at "arm's lengths;" third, that Nathanson, by reason of being the buyer at the Sheriff's sale of the Castle Garden property, although the sale had not been confirmed, occupied the status of owner; that in the contemplation of Norton and Nathanson, the Castle Garden property was worth \$7,000. The complainant claims that the evidence establishes oppression, usury and an unconscionable advantage taken of her by Nathanson in respect to the Castle Garden property.

FIRST: The basis for Mrs. Norton's transaction with Nathanson was a loan of money to her. Mrs. Norton is a truthful witness, and the court can rely upon her testimony. She testified (at p. 87) that she needed \$5,000 to complete the purchase of the Edwards Tract, and that Mr. Norton saw Mr. Nathanson, and he said he would lend \$5,000; that Mr. Norton was her agent in this matter; that she desired to purchase only the Edwards Tract; that she first

heard of the Castle Garden proposition through her husband, who stated (p. 88) that Mr. Nathanson would not loan her the \$5,000 unless "we let him deed that to us, and we give him \$12,000 in mortgages on different properties;" that she did not desire to become the owner of the Castle Garden property. (p. 88). She further testified (at p. 90) as follows:

"Q. What was your idea as to the value of the property at the time you got this loan from Nathanson?"

"A. \$3,500."

"Q. Would you have taken this Castle Garden property for \$6,800 except to get a loan of \$5,000?"

"A. No, only to get the loan because we needed it."

Further (at p. 89) that she was in no way interested in the Castle Garden property prior to its conveyance to her; that she had \$2,000 of her own money in the bank to complete the purchase of the Edwards Tract; (p. 90) that she would not have taken this Castle Garden property except to get a loan of \$5,000; (p. 92) that "we tried several people to get the money, but they didn't have it;" that she left everything to her husband, and didn't know so much about these transactions.

Mr. Nathanson testified (at p. 109 and 126) that Mr. Norton in January, 1913, applied for \$5,200 to buy the Edwards Tract.

ON PP. 126 AND 127

"Q. And when with reference to that time were the negotiations completed for the purchase by him of the Castle Garden property?"

"A. At the time of this \$5,200 loan."

"Q. When was it with reference to the time he asked you for the loan of \$5,000 wherewith to buy the Edwards Tract?"

"A. In January he applied for this loan."

"Q. How soon after that did he agree to buy the Castle Garden property?"

"A. They were together."

"Q. At the same time?"

"A. At the same time I was anxious to have the other thing straightened out."

"Q. Did you at that time say to him in substance that unless he straightened out the Castle Garden property, you would not let him have the \$5,000?"

"A. No, not that way."

"Q. How did you say it?"

"A. That's what I said—if he would straighten this matter out, I would let him have the money."

"Q. Prior to that time you had not agreed to let him have the \$5,000?"

"A. No, sir."

(At p. 115) The deal was a \$12,000 deal.

"Q. When did they first talk to you about the \$12,000 deal?"

"A. This was in January."

"Q. Who did you regard as the borrower of this money, Mr. Norton or Mrs. Norton?"

"A. Mr. Norton."

"Q. Mr. Richard Norton?"

"A. Mr. Richard Norton. I was doing business with Mr. Norton all the time."

"Q. Entirely with him?"

"A. Yes, sir."

"Q. And you didn't know Mrs. Norton in the transactions?"

"A. No, sir."

(At p. 116).

"Q. Then, the fact is that you sold the Castle Garden property to Richard Norton, did you not?"

"A. Yes, sir."

"Q. And not to Mrs. Norton?"

"A. Yes, sir, that is right. Mr. Norton has made the deal with me—yes, sir."

Lerner testified (at p. 65) that Mr. Norton said to Nathanson that Mrs. Norton was going to buy the Edwards Tract, and wanted to find out whether he could borrow \$5,000, and Mr. Nathanson said yes, he would, provided he could straightened up the Castle Garden matter—if he

would take back the Castle Garden. Mr. Norton said at that time to Nathanson that his figure was "awful high."

Lerner further testified (p. 67, line 30)—

"I remember he asked Mr. Nathanson for a loan, and Nathanson said he would not do that only if this Castle Garden is taken into consideration."

And (on p. 68) "Norton said to Nathanson he was to buy the Edwards property, and he would not have money enough for Mrs. Norton, and if he could be sure of getting a loan of \$5,000 he would buy it, otherwise he would not buy it, and Nathanson said he would give him \$5,000 on a mortgage, provided he takes the Castle Garden back."

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"Q. Did he say at that time why he wanted \$6,800 for the property?"

"A. Well, he said he had a lot of trouble in getting that money for us, and that was what he asked for it."

Mr. Richard Norton testified (at p. 10) that Mrs. Norton never requested him to purchase the Castle Garden property, and that she didn't have any interest in the Castle Garden property prior to the negotiation for the loan. On page 2, Mr. Norton testified that Nathanson first promised to let him have \$5,000, and that he subsequently told him that he had been disappointed about getting the money, and that he didn't want to lend the money at all. And that he (Nathanson) finally said—"I will let you have that property back at \$6,800, and will let you have \$5,200, and you give me \$12,000 in mortgages." (p. 3) I said, "Great Heavens, do you want \$6,800 for that property? In the first place, you only paid \$3,500 on it, and you had the interest on \$4,000 all these years, and you have your claim too." Nathanson said, "You can go and tell Mrs. Norton about it, and if you don't want to do that, you can go about your business." Norton told him that Mrs. Norton was the buyer of the Edwards Tract; that he talked with Mrs. Norton, and she thought the price was high.

SECONDLY: Mrs. Norton's motive in purchasing this property is important. What created the motive to pur-

chase? Does not the testimony abundantly show that Mrs. Norton did not have any idea of purchasing the Castle Garden property until Nathanson made it a condition of the loan of \$5,200? Did not he preclude all discussion as to the value of the property by saying that that was the only figure he would consider? Mrs. Norton's mind was dominated by her husband. She so stated, and the Vice Chancellor believes that she was depending upon her husband. The price was fixed by Nathanson and forced upon Mrs. Norton. She gave up her securities not because she thought it was a good investment, but simply because her husband told her to.

AT P. 91.

"Q. You thought it was wise to give \$3,300 to get \$5,000?"

"A. We did because we thought the property we were buying—we had to get the money somewhere."

"Q. Did you think the Edwards Tract was going to increase in value enough to compensate you on that?"

"A. Yes."

Mrs. Norton was so situated as to be dominated by her husband, and he was practically controlled by Nathanson. In *Adams v. Irving National Bank*, 116 N. Y. 606, (at p. 613) the principle which appears to underlie all this class of cases is that whenever a party is so situated as to exercise a controlling influence over the will, conduct and interest of another, contracts thus made will be set aside.

Mr. Justice Holmes, in *Silsbee v. Webber*, 171 Mass. 378-380, says—

"If a party obtains a contract by creating a motive from which the other party ought to be free, and which in fact is, and is known to be, sufficient to produce the result, it does not matter that the motive would not have prevailed with a differently constituted person."

In the case of *Ball v. Ward*, 6 Buchanan 8, the principle is that whatever destroys the free agency of a party, or produces an unjust pressure so as to induce action upon the part of another to the knowledge of the party obtaining any advantage, such transaction in equity cannot be sustained.

In *Brown v. McIntosh*, 10 Vroom 22, quoting Lord Mansfield, it is said—

“These statutes were made to protect needy and necessitous persons from the oppression of usurers and monied men *who are eager to take advantage of the distress of others*, whilst they, on the other hand, from the pressure of their distress, are ready to come into any terms, and with their eyes open not only break the law, but complete their ruin.”

THIRD: It is admitted by Nathanson that he was dealing entirely with Norton concerning a matter in which Norton was peculiarly and personally interested, and in which Mrs. Norton had no interest whatsoever. Her position is that of surety, assuming liability upon the obligations of her husband, or her husband's company.

It was said in the House of Lords in the case of *Williams v. Bayley*, 1866 L. R. 1 H. L. p. 200, that—

“A contract to give security for the debt of another, which is a contract without consideration, is a contract that should above all things be based upon the free and voluntary agency of the individual who enters into it.”

The court in that case criticises the taking of security from a defenseless old man without outside advice and independent counsel. Mrs. Norton was entirely dependent upon her husband, naturally from the relationship of husband and wife.

The criticism of Mrs. Norton that she was guilty of laches, or that she completed the bargain in August when she might have withdrawn from it, is unjust. The evidence shows that in February, Nathanson got her mortgage on the Edwards Tract for \$4,000, and one on the Cooper Avenue property for \$5,000, and the objections to the sale of Castle Garden in February were withdrawn, when he had only loaned her \$5,200; but she paid interest, nevertheless, on the \$12,000 loan from the time she received the \$5,200; that in August the Castle Garden property was transferred to her, and the mortgage was given on that property. The answer to that criticism is that there is absolutely no evidence that Mrs. Norton was ever advised of her rights, or had the slightest knowledge of business affairs. She said in the testimony above quoted that she left everything to her husband, and that she “only knows about these transactions as they

are explained to me." (At p. 92, lines 32, &c., in answer to a question put by the Vice-Chancellor).

In *Hall v. Otterson*, 7 Dick. Chan. 522 (at pp. 534-535,) it is held on the authority of numerous cases quoted, that a party must have knowledge of his rights before laches or acquiescence can be imputed to him, and especially is this doctrine applicable to a married woman who was depending, in fact as this woman was, upon her husband's sagacity.

It is respectfully submitted on this branch of the case that the powerful motive which operated upon Mrs. Norton was her need of money and the dominance of her husband.

The relationship of Norton with Nathanson is important in this matter. Nathanson was a mortgagee of the Castle Garden property. It is well settled that his dealings with the mortgagor will be carefully scrutinized to see that he, by reason of his position, has not taken an undue advantage of the mortgagor. He was better equipped to obtain undue advantages from Mr. Norton by reason of the Sheriff's sale, and his bidding in the property. He had obtained an unjust decree in this matter, and he was in a position to say that he could hold the Castle Garden property. According to the testimony of Mr. Norton and Mr. Lerner, the \$6,800 for the Castle Garden property was not mentioned until after the application for a loan. Assuming that the property was worth \$7,500, as claimed by Nathanson, his attempt to extort that amount through the needs of Mrs. Norton was conspicuously dishonest. As mortgagee under the circumstances mentioned, he was entitled to no more than what was honestly due him on his mortgage. The complainant claims that it was \$3,500 plus interest. The mortgage was assigned to Nathanson on December 16, 1908. The decree was made July 27, 1912.

Interest on \$3,500 for 3 years and 7 months..	\$ 752.50
Insurance premiums paid.....	120.00
Principal	3,500.00

Making a total due on July 27, 1912, the date
of the decree, instead of \$4,977.33.....\$4,372.50

Less interest of \$120 paid in 1910. (See p. 118 line 8).

If Nathanson's decree in foreclosure is right, he could not be entitled to more than the amount of his decree, which was \$5,400, including interest and costs.

In *Scott v. Childs*, 64 N. H. 566, it is held that the acceptance by a mortgagee of money to be applied on the mortgage debt after a foreclosure, amounts to a waiver of the foreclosure and restores the mortgage; that an agreement between the mortgagor and mortgagee that after a formal foreclosure the mortgagor shall remain in possession, paying interest on the debt as rent entitles the mortgagor to have a re-conveyance by paying the amount of the debt, and is in effect a waiver of the foreclosure.

In *Lounsbury v. Norton*, 59 Conn. 170, it is held that any agreement of the parties tending to alter in any subsequent event the original nature of the mortgage, and preventing its redemption, is void. A savings bank foreclosed the mortgage given by Lounsbury, and afterwards continued to receive interest from him on the debt, and treated the mortgage as outstanding, it was held to open the foreclosure and give Lounsbury as complete a right of redemption as if the foreclosure had never been had.

The same principle underlies several decisions in New Jersey.

Dealings between mortgagor and mortgagee will be carefully scrutinized by the courts to prevent fraud and oppression.

In *Wagner v. Phillips*, 78 N. J. Eq. 33, Vice-Chancellor Emery held that the transfer of the equity of redemption by a mortgagor to a mortgagee may be valid, but when properly questioned it will be carefully scrutinized to prevent fraud and oppression.

In *Odell v. Mount Rose*, 68 N. Y. 499, it was held that—

“An agreement between the mortgagor and mortgagee for the purchase by the latter of the right of redemption, is looked upon with jealousy by courts of equity, and will be sustained only when in all respects fair and for an adequate consideration, and will be avoided for fraud—actual or constructive—or for any unconscionable advantage taken by the mortgagee in obtaining it.”

And in *Goree v. Clement*, 94 Ala. 337, is the well recogn-

ized rule that a mortgagor may by subsequent contract make a valid sale of the equity of redemption to the mortgagee, and that such sale may be maintained in equity *if shown to be free from fraud, oppression and undue advantage*, and supported by a sufficient consideration; that courts will carefully scrutinize such transactions, and when the circumstances are merely suspicious, casting a shadow over the fairness, they will set aside the resale if the consideration is unreasonable.

In *Ford v. Olden*, 3 L. R. 3 Eq. 461 (at p. 463), it was stated that—

“The mortgagor was at the date of the transaction insolvent. The court views transactions between a mortgagor and mortgagee with considerable jealousy, and will set aside sales of the equity of redemption where by the influence of the mortgagee’s position the mortgagee has purchased for less than others would have given, and where there are circumstances of misconduct in obtaining the purchase. The principle upon which the court acts is not that the mortgagor is unable to enter into a contract of this kind, but that the transaction ought to be looked upon with jealousy, especially when the mortgagor is a needy man and where there is oppression and inequality of position.”

Our courts scrutinize carefully sales of the equity of redemption in foreclosure proceedings where the mortgagee rather than a stranger is the purchaser.

Strong v. Smith, 68 N. J. Eq. 653, approves Chancellor Williamson, that where the mortgagee is the purchaser, and the party after the deed has been delivered applies to open the sale by offering to pay all the money due upon the security, and there has been really a mistake upon the part of the owner of the equity of redemption, owing to which the property has been sacrificed, the court regards an application for resale with more indulgence than when a stranger is the purchaser, (citing *Campbell v. Gardner*, 3 Stock. 423). This latter case holds—

“That where the buyer is the holder of the mortgage, he must surely be content if his debt is paid. He has commonly an entire control over the proceedings and sale, and has no right to use it for any purpose of advantage beyond securing

himself. Nor does the holder stand upon the same footing of public policy with other buyers. He seldom purchases for investment or use. He bids to secure himself, and when he buys in, he takes the property in payment of so much debt."

See also *Rowan v. Congdon*, 53 N. J. Eq. 385. In that case, Mr. Justice Garrison applied the rule of allowing the mortgagor to redeem where the mortgagee is the purchaser.

FOURTH: The Castle Garden transfer was a mere cover for usury. Mrs. Norton applied for a loan. She did not wish to buy the Castle Garden property.

Lord Ellenborough, in *Davis v. Hardacre*, 2 Camp. 375, declared that—

"When a man goes to get a bill discounted, his object is to procure cash, not to encumber himself with goods. Therefore, if goods are forced upon him, I must have proof that they were estimated at a sum for which he could render them available upon a resale, not at what might possibly be a fair price to charge to a purchaser who stood in need of them."

In the leading case of *Dry Dock Bank v. American Life Insurance & Trust Co.*, 3 N. Y. 344 (at p. 358), the Court of Errors said—

"Where, however, the object of the parties is a loan of money, and something else under the form of an exchange or sale is substituted for it, the principle of the loan and consequently of the debt contracted by the nominal vendee, will be the value in money of the substitute received by him; and any consideration paid or secured to the vendor beyond that will in general be considered as interest for its forbearance."

AS TO THE VALUE OF THE PROPERTY

The value of the Castle Garden property. If the buyer is in need of a loan, and takes property to secure the loan which he could not secure without buying the property, its value is what it will net converted into cash. Nathanson would not take a mortgage for \$4,000 upon the property in 1908. He exacted a bonus. He does not give his opinion as to the value of the property, nor how he arrived at the value

of \$7,000. The testimony strongly preponderates against \$6,800 as its market value, and of course much less than that on a cash sale.

Of the defendant's witnesses on value, Green testified (pp. 94, 95)—"I think the land was worth \$2,000 and the building about \$4,500, or perhaps \$4,000. It was between \$4,000 and \$4,500." William H. Brehm testified (p. 98) that the market value would be about \$7,000; that he based his opinion upon an income of the property of \$100 a month; that (at p. 99) his opinion of its value would have to be cut if the income was less. According to the testimony, \$50 to \$60 a month was the income of the property in February, 1913.

Richard Norton stated that the property was worth \$3,500; David Lerner testified (at p. 76) that \$3,500 to \$4,000 would have been a fair price for it. Cora M. Throckmorton said (pp. 149, 150) that in 1912, on application to Benjamin L. Morris for a loan, the loan was refused because this property had been condemned by the State Board of Health. The loan asked was between \$4,000 and \$5,000.

It is not probable that on a fair sale between the party who wanted to buy and is not compelled to submit to oppressive terms, and the seller who wanted to sell, that \$6,800 could be obtained for the property. I submit that Jarsky's testimony is not entitled to weight, he having served a term in the State Prison.

The Vice-Chancellor's statement in his conclusions that the rent was less than \$100 by one-half, is borne out by the testimony of Mr. Norton and Mr. Lerner. Holtson (at p. 38) places the value of the property at \$3,500; and Mr. Chandler (at p. 55) at \$5,000. The Vice-Chancellor says that these various opinions standing alone are of very little value.

THE EVIDENCE CLEARLY SUPPORTS THE COMPLAINANT'S CONTENTION THAT THE PROPERTY WAS WORTH LESS THAN \$6,800.

If so, the contract is usurious as to Mrs. Norton. The remedy provided by statute in favor of a victim of usury is

rescission and annulment of the contract except for the actual loan. The 4th Section of the Usury Act, Comp. Stat. 5705, provides—

“That any borrower of money, wares, merchandise, goods or chattels, may exhibit a bill against the lender and compel him to discover, upon oath or affirmation * * * all agreements, devices, shifts, bargains, contracts and conveyances which shall have passed between them relative to such loan, or the repayment thereof, and the interest or consideration for the same, and if thereupon it shall appear that more than lawful interest was taken or reserved, the lender shall be obliged to accept his principal money, or the wares, merchandise, goods or chattels, or the value thereof, without any interest or other consideration, and to pay costs.”

A USURIOUS CONTRACT IS ILLEGAL.

In *Brown v. McIntosh*, supra, (at p. 23), Mr. Justice Reed says, that Lord Chancellor Talbot announced generally the doctrine that in any case of oppression, the party oppressed was not *particeps criminis*, and he placed the payer of usurious interest in that class. And the grounds upon which courts of equity have ever since afforded relief to parties who have paid money or pledged goods, against the provisions of the statute of usury, is that the parties are not *in pari delicto*. Story's Eq. Jur. Sec. 302. It was further said that where the law that creates the illegality in the transaction was designed for the coercion of one party and the protection of the other, or where one party is the principal offender, and the other only criminal, from a constrained acquiescence in such illegal conduct in these cases, there is no parity of *delictum* at all between the parties. And (at p. 26)—

“It is urged that the statute of Anne and the statute of this state, which, previous to 1864, was substantially a copy of the English act, made all notes, agreements, &c., tainted with usury, void; that the present act contains no similar provisions. I am unable to understand how this affects this case. Within the meaning of the rule we have been considering, any payment made in contravention of the provisions of

a statute is illegal. When the courts have used the term 'void,' they have meant that and no more. The supplement of 1864 only affects the securities taken for principal, interest and usury, and saves the securities to the value of the principal. That the design of the act is now, as ever, to protect the borrowers."

But Justice Reed holds that the statute "gave him an action upon the contract, which before had been void, and a right of recovery to the amount that it represented money actually loaned."

See also Pom. Eq. Jur., Sec. 930, as to relief against illegal contracts, including usury. In Section 948 of Pomeroy's it is said—

"Persons *in vinculis* analogous to the condition of personal weakness is that of pecuniary or other necessity and distress. Whenever one person is in the power of another so that a free exercise of his judgment and will would be impossible, or even difficult, and whenever a person is in pecuniary necessity and distress, so that he would be likely to make any undue sacrifice, and advantage is taken of such condition to obtain from him a conveyance or contract which is unfair, made upon inadequate consideration and the like, even though there be no actual duress or threats, equity may relieve defensively or affirmatively."

In *Fishell v. Gray, Receiver*, 60 N. J. L. 5, it is held that when there are several considerations, and one of them is an illegal promise, the presence of such illegal stipulation or element may not illegalize the entire contract.

The question is dealt with in *Pullman Car Co. v. Transportation Co.*, 171 U. S. 138 (at p. 150). Mr. Justice Peckham said—

"Courts while refusing to maintain any action upon unlawful contracts, have always striven to do justice between the parties so far as could be done consistently with adherence to law, by permitting property or money parted with on the faith of the unlawful contract to be recovered back, or compensation made for it."

See also case of *Wright v. Wright*, affirmatively, 6 Dick. Chan. 475, where recovery was allowed upon an illegal con-

tract where one party merely acquiesced, against the party who was the brains of the illegal devices.

Chief Justice Gummere, in *State v. Martin*, 77 N. J. L. 652 (at p. 653) says—

“It is contended that the taking of usury is not made unlawful by the statute of this State. The title of our statute is ‘An Act against usury.’ The provision of its first section is that no person or corporation shall, upon contract, take directly or indirectly, for loan of any money, wares, merchandise, goods and chattels, above the value of six dollars for the forbearance of one hundred dollars. The object disclosed in the title of the act is the prevention of usury; the method by which the legislature provides for the carrying of that object into effect is by enacting an express prohibition against taking it. Counsel argues that a violation of this mandate of the statute by a person loaning money does not constitute an unlawful act, for the reason that the statute imposes no penalty upon him for so doing * * * The statement that the statute does not impose any penalty upon a person who takes usury is not accurate, for the second section of the act deprives him of the power to enforce the payment of any interest on his loan, and entitles the borrower to have the amount of the usury deducted from the principal of the loan in case usury has been paid. In this respect our usury act is quite similar to our act to prevent gaming, the penalty imposed by which upon the successful better is the return of the stake if it has been paid to him. Each statute prevents the person who is benefited by the violation of its provision from enjoying that benefit, and nothing more. We conclude, therefore, that the fact that the statute imposes no penalty, except the deprivation of the money which the statute prohibits the lender from taking, affords no ground for holding that the taking of usury is not unlawful.”

Mrs. Norton was seeking a loan, not property, and the property was not worth in her hands for immediate exchange for money, \$6,800.

In *Lowe v. Waller*, 1 Doug. 736, the defendant applied for payment to Harris & Stratton to obtain the discount of a bill for £200, who had replied that they could not advance money but only goods. Subsequently, the defendant agreed

to take certain quantities of goods which were delivered to him, and the bill of exchange delivered to Harris & Stratton, together with collateral security for its payment. The goods were disposed of by the defendant to an auctioneer for £120. In an action upon the bill, the defense of usury was interposed, and Lord Mansfield directed the jury that they were to consider whether the transaction was not in truth a loan of money, and the sale of goods a mere contrivance and evasion.

In *Barker v. Vansommer*, 1 Brown's Ch. Cases, p. 149, the complainant had given a promissory note to the defendants for £2000 upon receiving from them silks valued by the parties at that amount, but which were sold for £700. This bill was brought by the complainant to have the notes surrendered. Lord Thurlow said that the court was to inquire whether, under the mask of trading, this was not a method of lending money at an extraordinary rate of interest, and that he had not a doubt that the transaction was for the purpose of raising money. A decree for relief was made.

In *Doe v. Barnard*, 1 Esq. 11, there was an action upon a mortgage, and the defendant proved that the mortgage debt was the delivery to the defendant of stock at 75 per cent. of its value, which he was compelled to sell at 73 per cent., the market price at that time. Lord Kenyon held that the transaction was clearly usurious. The proposition is stated that where upon negotiations for a loan, and that was all Mrs. Norton, the complainant, was negotiating for, the borrower is compelled to receive property of any kind of less value than the nominal amount of the loan, such transaction is usurious.

And in *Floyer v. Edwards*, Cowp. 112, Lord Mansfield again said:

"We must get at the nature and substance of the transaction; the views of the parties must be ascertained to satisfy the court that there is a loan and borrowing; and that the substance was to borrow on the one part and to lend on the other, and where the real truth is a loan of money, the wit of man cannot find a shift to take it out of the statute. Where a party is compelled to take goods, I think the presumption arises that the transaction is usurious. To rebut

the presumption, evidence should be given of the value of the goods by the person who owes on the bill."

In *Earnest, Admr., v. Hoskins*, 100 Pa. St. 551, it is held that where one purchases land from another at an exorbitant price for the purpose of obtaining a loan, the seller making the loan to induce the purchase, the transaction is usurious, and the difference between the value of the land and what it was sold for, may be deducted from the debt.

In *Heintze v. Bentley*, 34 N. J. Eq. 562, the property was bought in the name of the wife nominally, but really by the husband. A bill was filed to vacate a foreclosure sale, upon the grounds that the mortgage was given for more than was honestly due, and hence the decree was larger than it should have been, to the disadvantage of subsequent creditors. The wife secured part of the purchase money by her bond. Mr. Justice Dixon said:

"It is urged on behalf of Heintze (the husband) that he was not the buyer, but it is clear that Heintze would not have allowed the property to be sold to Hirsche unless there had been an understanding that it should have been bought for Heintze. Subsequently, in pursuance of the agreement, Heintze conveyed to Mrs. Wanner, and received from her a bond and mortgage for \$4,000. This transfer cannot stand as any hindrance to the relief which the complainant seeks. Mrs. Wanner has not parted with anything of value which the decree of the court will not wholly restore to her. When the deed falls, the bond and mortgage given therefor will go with it."

So here, if this mortgage is annuled, it is perfectly clear that Nathanson will have property sufficient out of which to realize what is honestly due upon his so-called \$4,000 mortgage, upon which the \$500 *douceur* was paid. This is all he is equitably entitled to.

In *Clark v. Day*, 72 N. J. Eq. 75, it is said—

"Every agreement which is entered into as part of a transaction, wherein the lender takes usurious interest, is invalidated by the statute which forbids such taking."

The conclusion that these cases lead to is that a usurious

contract is only legal to the amount of money loaned, and that any conveyance made to cover usury is illegal and may be annulled upon equitable terms, and is null and void at law.

THE DEED FOR CASTLE GARDEN SHOULD BE CANCELLED.

In Sec. 942 of Pomeroy's Eq. Jur., it is stated—

“When a contract is illegal, so that both parties are to some extent involved in the illegality, but are not *in pari delicto*, that is, both have not, with the same knowledge, willingness, and wrongful intent, engaged in the transaction, or the undertakings of each are not equally blameworthy, a court of equity may, in furtherance of justice and of a sound public policy, aid the one who is comparatively the more innocent, and may grant him full affirmative relief, by cancelling an executory contract, by setting aside an executed contract, conveyance or transfer, by recovering back money paid or property delivered, as the circumstances of the case shall require * * * Such an inequality of condition exists so that relief may be given to the more innocent party, in two distinct classes of cases: 1. It exists where the contract is intrinsically illegal * * * but there are collateral and incidental circumstances attending the transaction, and affecting the relations of the two parties, which render one of them comparatively free from fault. Such circumstances are imposition, oppression, duress, threats, undue influence, taking advantage of necessities or of weakness, and the like, as a means of inducing the party to enter into the agreement, or of procuring him to execute and perform it after it had been voluntarily entered into.”

And at Sec. 937, among the cases of illegal contracts where equity grants relief, is mentioned usurious contracts, whether executory or executed, since, from considerations of public policy, the two parties are not regarded as standing *in pari delicto*.

And in Story's Eq. Jur., Sec. 332 et seq., is mentioned a number of persons who are peculiarly victims of oppression and undue influence, and among them is mentioned the victims of usurers. And, (at Sec. 331), that the proper juris-

diction of courts of equity is to take everyone's act according to conscience, and not to suffer undue advantage to be taken of the strict forms of law, or of positive rules. "Hence it is, that, even if there be no proof of fraud or imposition, yet, if upon the whole circumstances, the contract appears to be grossly against conscience, or grossly unreasonable and oppressive, courts of equity will sometimes interfere and grant relief. And indeed, it will be found that there are very few cases not infected with actual fraud, in which they do interfere, except where the parties stand under the protection of the law, from age, or character or relationship. Such are the fundamental conditions under which courts grant relief in cases of oppression, over-reaching and hardship." That the contract was usurious, seems to me to be established by the evidence as above set forth. If it was usurious, then it is an illegal contract. See also Sec. 302.

It is submitted, in conclusion, that the decree below should be reversed, and that a decree should be made canceling the mortgage upon the Edwards Tract and allowing Mrs. Norton to redeem the Cooper Avenue property upon the payment of the amount actually loaned, with interest, and directing an account for the rents and profits of the Castle Garden property, and her to re-convey the Castle Garden property to Nathanson. It is further submitted, that the decree below is erroneous in that, under the pleadings, Mrs. Norton is entitled to redeem the Cooper Avenue property, she having paid the costs, and Nathanson having promised to hold the property for her.

A. V. DAWES,
Solicitor of Complainant and Appellant.

NEW JERSEY
Court of Errors and Appeals.

BETWEEN

ELIZABETH C. NORTON,
Complainant-Appellant,

AND

SAMUEL NATHANSON,
Defendant-Respondent.

Reply Brief.

Mr. McDermott argues under the title, "Mrs. Norton was not the victim of oppression," that she could not have been in such dire necessity as to submit to extortion. She (on p. 92) and Mr. Norton (p. 92) testified about their futile efforts to borrow this money elsewhere. The convincing fact is, that in 1906 Mr. Norton submitted to Nathanson's oppressive demand for \$500 to save the Castle Garden property when the foreclosure proceedings were threatened. If the Castle Garden property in 1913 was worth \$6,800, is not the evidence overwhelming that it was ample security in 1908 for \$4,000; that Norton could not at that time get anyone else apparently to loan him that much money upon this property? These circumstances show how weak the Nortons were financially.

This \$500 transaction shows further that Nathanson was not averse to taking any unconscionable advantage of Mr. Norton when he was in financial need. It gives us, further, an idea of Mr. Norton's weakness and inefficiency in promoting his projects, and how easily he yielded to extortion at Nathanson's hands.

It does not matter that a person differently constituted from Mr. Norton would not have submitted to this exaction. *Silsbee v. Webber*, 171 Mass. 378, 380, quoted in the main brief.

The further argument that Mrs. Norton did not receive title to the Castle Garden property until August, 1913, is overcome by the fact that in February, 1913, she handed over to Nathanson the two mortgages on the Cooper Avenue property and the Edwards Tract, and Mr. Norton consented contemporaneously to the withdrawal of the objections to the foreclosure sale. (See pages 101, 102, and also exhibits of the withdrawal of the objections.)

Mr. McDermott argues that there is nothing that smacks of oppression in this transaction. Lerner's testimony (pp. 146, 147), while being cross-examined, stated that *at the time of the sale he was negotiating to borrow money to buy this property at the Sheriff's sale.*

"Q. Immediately after the Sheriff's sale, how much did Nathanson agree to sell it to you for?"

"A. For his money.

"Q. How much?"

"A. Whatever it was at the time, but didn't want to make a profit upon it.

"Q. When first did he say he wanted to make a profit on it?"

"A. When the Edwards lumber property was bought, but I think we had about \$1,400 deposited at the receiver's sale, and in the time we had to take title I saw Mr. Nathanson, and he said he would let us have the money provided

we would take the Castle Garden property for \$6,800.

"Q. This is the first time, so far as you know, that Norton spoke to Nathanson about borrowing \$5,000?"

"A. I don't know anything about Norton.

"Q. So far as you know?"

"A. So far as I know, yes."

Norton testified (on p. 4, line 18) that Nathanson in 1913 refused to take \$4,000 on Castle Garden, and that he would not take over \$3,000 on it, and wanted a \$4,000 mortgage on the Edwards Tract. This certainly shows that Nathanson did not regard Castle Garden as security for more than \$3,000.

Norton further says (on p. 20, lines 39, 40) that he had no conversation, so far as he could recall, with Nathanson concerning Castle Garden until the negotiations for the loan occurred.

Nathanson says (pp. 126, 127) that the agreement to buy Castle Garden was contemporaneous with his (Nathanson's) agreement to loan \$5,200. This testimony establishes that the loan of \$5,200 was the motive for Mrs. Norton's taking the Castle Garden property. And if so, I think the case of *Dowdall v Lenox*, 2 *Edwards Chan.* 267, relied upon Mr. McDermott, and cited in the opinion of Vice-Chancellor Backes, strongly supports Mrs. Norton's contention. The Lenox case was one in which one Nichols owed Lenox on an old debt, \$4,500, and afterwards he and Dowdall entered into an indenture to purchase a certain cargo in Canton, and needed a loan of \$60,000 to finance their project. Nichols applied to Lenox, who agreed to loan the money, provided security was given for this old debt. There was no evidence of the insolvency of Nichols, and the consideration of the suretyship was Nichols' liability to Dowdall if Dowdall had to pay the debt. The Vice-Chancellor said (p. 278) that—

"If Lenox and Nichols had combined to induce Dowdall's consent by means of the loan and as one of the conditions upon which the loan was to be advanced, without any consideration moving from Nichols upon that part of the agreement, then indeed there might be a sufficient ground for adjudging the contract is void."

The Vice-Chancellor further concluded that the bill was based entirely upon usury, without any allegation of circumstances constituting oppression, which, if they existed, might well entitle the complainant to relief.

In *Clark v. Sheehan*, 47 N. Y. 188, 193, Judge Rappallo said:

"The referee finds the execution of this instrument moved the plaintiff to make a loan which he otherwise would not have done. But he does not find that the loan of the money moved the defendant to execute the agreement, or that, if no loan had been made, he would not have executed it. This was the essential element."

The evidence establishes that the loan of this money to Mrs. Norton moved her to deliver to Nathanson the two mortgages on the Cooper Avenue and the Edwards Tracts, amounting to \$9,000, upon which she had received at the same time a loan of \$5,200. Nathanson wanted, immediately after the Sheriff's sale, and before the Nortons negotiated for the Edwards Tract, the money which he had invested in the Castle Garden property. His rapacity would have been then satisfied by the profit of \$500, but when the purchase of the Edwards Tract was bruited he saw that the tide which Norton's affairs were taking would lead to fortune, and he omitted not to take the venture.

Nathanson's contract is essentially oppressive. Mrs. Norton was without any interest in the Castle Garden property. Norton had filed objections to the Sheriff's sale, which set up a valid claim to relief against the

decree in that cause. It is no argument to say that the objections to the Sheriff's sale were based upon the inadequacy of the price the property brought, for the objections explicitly stated the grounds upon which they were based. Nathanson also required Norton to have withdrawn those objections. (See the withdrawal of the objections and the exhibits.) The effect of this allowed Nathanson to retain the \$500; to withdraw an honest credit in favor of the subsequent encumbrances of the difference between Nathanson's bid of \$5,400 and \$4,252, which amounts to \$1,148 at least, or, in another view, if the Castle Garden property was worth \$6,800 in 1913, then the differences between \$4,252 and \$6,800, which is \$2,548.

In *James v. Kerr*, 40 *Chan. Div.* (at p. 460) it is held that—

“A mortgagee should not be allowed to stipulate for any collateral advantage beyond his principal and interest. Considering how completely the mortgagor is in the power of the mortgagee, and the great facilities that courts of equity have always had for the recovery of the loan and the realization of the security, the amount recoverable should be the amount actually loaned.”

The Court also held that the position of necessity put him practically at the mercy of the lender, and that in view of the oppressive exactions of the mortgagee, the mortgagee should be satisfied with the recovery of the money actually loaned plus interest.

Second: The second proposition in Mr. McDermott's brief that “The Castle Garden property was sold,” is answered that when dealing with the Nortons, Nathanson had the status not of the owner but simply of mortgagee. Lerner's testimony that they were trying to raise the money at the Sheriff's sale, above quoted, and the decree being wrong as to amount, continued the relationship of mortgagor and mortgagee. The error in the decree was due to Nathanson's false testi-

mony in the foreclosure proceedings. That he received interest on the \$4,000 for some time after he took over the mortgage, he admits in his cross-examination. Up to the confirmation of the sale, where the mortgagee is the purchaser, the cases cited abundantly sustain the proposition of the rights of Norton to redeem the property. The right of a mortgagee to sue for deficiency on the bond, and thereby open the sale to the extent of allowing a redemption, argues in favor of the right of redemption surviving the sale in the juncture above supposed. Nathanson recognized that right, according to Lerner's testimony, when he stated he did not want a profit. That evidence being undenied, and having so much of probability about it, evinces clearly Nathanson's attempt to evade the statute of usury. By holding Nathanson as a mortgagee under the circumstances of this case, a decree can be made which would give Nathanson what is honestly due him beyond controversy, that is, \$3,500 principal, and his interest, less payments made for interest to Nathanson.

Third: As to the value of the property. The defendant's first witness, Green, places the value (pp. 94, 95) at \$2,000 for the land, and the building at between \$4,000 and \$4,500, perhaps \$4,000 he says, making, in his opinion, this property worth \$6,000. Brehm testified that \$7,000 was a fair price for it, and that the land was worth \$2,000. His opinion is based upon having sold two or three properties in the last three or four years, and upon the income of the property. He stated that if the income were less than \$100 a month, he would have "to cut" his estimate of the value of the property. Neither of these witnesses, therefore, sustains the view that the property was worth \$6,800. Jarsky places the value at \$8,000. He claimed to have had an offer of \$7,500 from one Brehm. Brehm testified (p. 144) that he did not make the offer to Jarsky in good faith for that figure. Jarsky testifies that he based his opinion on the income, and the evidence shows that

Norton's estimate of the income of this property was far below what Jarsky supposed it was. His opinion is not persuasive. Furthermore, Jarsky had served a term in prison. Krug testified that the property had been in a bad condition for a good while. His testimony refutes largely the idea that this property had deteriorated in the last two years, but sustains the theory that it was a general and gradual deterioration running over several years. Miss Throckmorton testified that in 1912, when a loan was asked on this property of Benjamin Morris, the reason for refusal was that it had been condemned by the State Board of Health. I construe that to mean that at that time the building was generally out of repair, supporting the testimony of Krug that its deterioration had been gradual.

I submit that there is no reliable testimony that the fair market value of that property on the day in 1913 when transferred to Mrs. Norton was \$6,800, but that a fair conclusion is that the property was worth considerably less than that.

The relief which Nathanson is entitled to in this case, I submit, should be the money actually loaned. The contract concerning the Castle Garden property was usurious and oppressive. The complainants amended bill, in paragraphs 7 and 8, alleged both grounds. If the contract was usurious, it was an illegal contract, and under the cases above cited, Nathanson is only entitled to the money which he actually loaned, which would be \$5,200 with interest, plus any profits arising from the rental of Castle Garden. Or, in the alternative, that he accept \$3,500 with interest, less payments received by him.

A. V. DAWES.

19, 20

New Jersey Court of Errors and Appeals

Between

ELIZABETH C. NORTON,
Complainant-Appellant,
and

SAMUEL NATHANSON, et al.,
Defendants-Respondents

On Appeal
from Chan-
cery. June
T., 1916.
No. 19.

10

Between

SAMUEL NATHANSON,
Complainant-Respondent,
and

ELIZABETH C. NORTON,
Defendant-Appellant.

On Appeal
from Chan-
cery. June
T., 1916.
No. 20.

20

(Foreclosure case No. 1, 39-533.)

Between

SAMUEL NATHANSON,
Complainant-Respondent,
and

ELIZABETH C. NORTON,
Defendant-Appellant.

On Appeal
from Chan-
cery. June
T., 1916.
No. 21.

30

(Foreclosure case No. 2, 39-534.)

BRIEF ON BEHALF OF RESPON- DENT SAMUEL NATHANSON.

Above appeals are from three causes heard together by Vice Chancellor Backes. In the first a decree was made dismissing the bill. (State of

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Case, page 51.) In each of the other cases a final decree was made for the full amount of principal and interest claimed by the mortgagee, Mr. Nathanson.

The original bill filed by Mrs. Elizabeth C. Norton in the first cause set forth that Samuel Nathanson held a mortgage for \$5,000 on two parcels of land, described in paragraphs 1 and 2, which have been referred to in the proceedings in
 10 Chancery as the HUTCHINSON or COOPER AVENUE property.

These parcels were in October, 1913, conveyed to Mrs. Norton by W. Redmond Hutchinson. She had, not long before, in July, 1912, conveyed them to him; he gave back a purchase money mortgage for \$5,000, which was assigned to Nathanson February 18, 1913. Mrs. Norton held a second mortgage on one of the parcels for \$3,000, which was assigned to Max M. Friedman December 3,
 20 1913. (Exhibit D-9, State of Case, p. 66.)

Mr. Nathanson foreclosed the \$5,000 mortgage held by him and the Sheriff of Monmouth County conveyed the two parcels to him by deed recorded October 16, 1914. (Exhibit D-6, State of Case, p. 62.)

The final decree in this foreclosure proceeding (*Nathanson vs. Sullivan, et al.*, 37-557), found the complainant entitled to \$5,417.50, with interest from June 6, 1914, besides costs, which were
 30 taxed at \$151.52.

Another property referred to in her amended bill of complaint is called the CASTLE GARDEN property. This was conveyed to Samuel Nathanson by the Sheriff of Monmouth County by deed dated March 10th, 1913, in which the expressed consideration is \$5,400.90. (Exhibit D-8, State of Case, p. 66.) This deed recites an execution issued out of Chancery on August 7, 1912, in a cause wherein Samuel Nathanson was complainant, and
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The Lerner, Block, Norton Company, body corporate, William Kirby, Richard D. Norton, Stewart J. Rogers and Joseph I. Bluestone defendants. The execution directs a sale to pay in the first place to Nathanson \$4,977.33 with interest, and costs, \$189.24, and in the second place to Joseph I. Bluestone \$6,770 with interest, and costs, \$12.16. This CASTLE GARDEN property was conveyed by Nathanson to Mrs. Norton on August 30th, 1913, and she (with her husband) thereupon executed a mortgage to Nathanson for \$3,000, now under foreclosure in the second cause above mentioned (39-533). 10

Mrs. Norton's amended bill of complaint referred also to the EDWARDS TRACT. This consists of two parcels conveyed to Mrs. Norton by the Receiver of the Edwards Lumber & Coal Company, by deed dated January 24, 1913 (Exhibit C-8, Testimony p. 140). These two parcels are embraced in the mortgage executed by the Nortons to Nathanson to secure \$4,000, dated February 13th, 1913, now under foreclosure in the third cause above mentioned (39-534). 20

In her original bill of complaint Mrs. Norton alleged (par. 4, State of Case, p. 6) that on the day the Sheriff of Monmouth County sold the HUTCHINSON or COOPER AVENUE property Nathanson agreed that he would purchase it and hold the title for her until such time as she could redeem same by paying what was due and owing on his claim, when he would convey to her, she also then and there agreeing to pay the costs, amounting to \$267.00, which sum was then paid. 30

Mr. Nathanson's decree in this instance was based on the mortgage of \$5,000 executed by Hutchinson to Mrs. Norton and assigned and guaranteed by her to him. (Exhibits C-3 and C-4, State of Case, p. 52.) No question has ever been raised as to the amount due on this mortgage. 40

Mr. Nathanson received a Sheriff's deed in October, 1914 (Exhibit D-6), has never taken possession, and has been ready at all times to keep his engagement and convey the title to her.

In paragraph 7 (State of Case, p. 8) the allegation is made that Nathanson acquired mortgages aggregating \$12,000 and actually advanced \$8,700. The prayer of the bill is that Nathanson may set forth the amount of money that he actually loaned
 10 on the mortgages recited in the bill, and the amount owing to him from Mrs. Norton on the several mortgages, and that an account may be taken of the dealings between her and Nathanson, and that she may be permitted to reclaim the properties upon paying the amount justly due and owing to Nathanson thereon.

In the amended bill (par. 7, State of Case, p. 25) Mrs. Norton set forth that the mortgage for \$5,000 on the COOPER AVENUE tract was assigned
 20 by her on February 18, 1913, under the circumstances there detailed. The gist of the statement is that Nathanson compelled her, in order to secure the loan of \$5,000 she needed, to purchase the Castle Garden property for \$6,800, although he well knew that the Castle Garden property was not worth more than \$3,500. "Nevertheless in her condition of distress and financial worry, and fearing that she would forfeit what she had already paid on the EDWARDS tract, she made the
 30 agreement to purchase the same for Sixty-eight hundred dollars (\$6800) and to allow him the difference between Thirty-five hundred dollars (\$3500) and Sixty-eight hundred dollars (\$6800) as a bonus, and she executed to him the assignment of the mortgage aforesaid and the two mortgages, one for Three thousand dollars (\$3,000) and one for Four thousand dollars (\$4,000) as aforesaid, including therein the Thirty-three hundred dollar bonus, and *thereupon* assigned the
 40 mortgage."

In paragraph 8 (State of Case, p. 27) she refers

to the oppressive bargain and sale of the Castle Garden property for \$6,800, and states that the transactions referred to in her bill are usurious and illegal, oppressive and unconscionable. The bill prays that the defendants Nathanson and wife "may set forth the amount of money which was actually loaned to your oratrix on the mortgages above set forth; that an account may be taken of the dealings between your oratrix and the said Samuel Nathanson, with respect to the matters herein mentioned, and that your oratrix may be permitted upon paying the sum of money, with interest and costs, which he actually loaned to her, to have Samuel Nathanson decreed to transfer to her the tracts mentioned in paragraphs one and two of this bill" (the COOPER AVENUE tracts), "and to assign to her the mortgage on the EDWARDS tract, upon this complainant conveying to him the CASTLE GARDEN property, and that your oratrix may have such further and other relief as may be just and equitable."

Mr. Nathanson has never had possession of the CASTLE GARDEN property. The lot is valuable, but the building, outside of the stores on the first floor, is given over to cheap tenements and has been permitted within the past two or three years to become dilapidated and greatly in need of repair. According to the testimony its value is much less than in the early part of 1913. In view of its changed condition it is impossible to restore Mr. Nathanson to his rights by a reconveyance to him.

Some admitted facts and pertinent dates.

Some facts necessary to the discussion of this controversy are fixed beyond peradventure and are not subject to any infirmity of memory on the part of witnesses.

CASTLE GARDEN property was sold by the Sheriff to Nathanson on October 15, 1912, the amount paid being \$5400.90. The deed is dated

March 10, 1913, and recorded April 7, 1913. (See Exhibit D-8, Testimony p. 104.)

The auction sale made by the receiver of Edwards Lumber & Coal Company took place on Tuesday, November 19, 1912, at 2 o'clock P. M. The bids for the several parcels were held in suspense by the receiver and "thereupon Elizabeth C. Norton did offer her private bid for the said second tract and third tract in the sum of \$7000
 10 and the taxes assessed against the said second tract and third tract in the year 1912". (See Exhibit C-8, p. 140.)

The check given by Mrs. Norton for \$200. to Mr. Bailey, receiver, on account of the Edwards property, is dated November 20, 1912. (See Exhibit C-7 p. 139.)

The deed from Theodore F. Bailey, Receiver, to Elizabeth C. Norton, is dated January 24, 1913, acknowledged the same day and recorded March
 20 3, 1913. (Exhibit C-8, p. 140.) Set out in full in State of case p. 54 &c.

The check given by Nathanson to Parker & Van Gelder, Attorneys, for \$5200. (Exhibit C-5, p. 7) is dated February 25, 1913. This check was endorsed to Theodore F. Bailey, Receiver.

The mortgage on the Edwards tract for \$4000 (Exhibit D-2 p. 101) bears date February 13, 1913, acknowledged February 15, 1913, and recorded
 30 March 3, 1913.

The deed for the Castle Garden property (Exhibit C-1 p. 5) made by Nathanson and wife to Elizabeth C. Norton, is dated August 30, 1913, acknowledged same day, recorded October 21, 1913.

The mortgage on the Castle Garden property for \$3000 (Exhibit D-4 p. 102) made by the Nortons to Samuel Nathanson, is dated August
 40 30, 1913, acknowledged same date before Charles E. Stultz, Commissioner of Deeds, (At Hightstown, we believe) and recorded October 14, 1913.

FIRST.**Mrs. Norton was not the victim of oppression.**

The transactions of which Mrs. Norton gives her version in paragraphs 7 and 8 of her amended bill took place, in large part, between November 19, 1912, the date of the Edwards sale, and February 25, 1913, the date of Nathanson's check for \$5200. Mrs. Norton held the mortgage for \$5,000 covering the HUTCHINSON or COOPER AVENUE properties, and a second mortgage thereon for \$3000; she had an agreement to purchase at \$7000 and 1912 taxes the EDWARDS tract, upon which she subsequently placed the Nathanson mortgage of \$4000; she had paid \$200 on account (Ex. C-7, p. 139), she had \$2000 more in bank (Testimony p. 89), and she needed \$5000 to make up the price of \$7000 and taxes, and complete her purchase. She had therefore under her control a borrowing capacity of \$9000 and over with which to meet her necessity for \$5000. (p. 91.) The mortgage of \$5000 on the Hutchinson property was a desirable investment. The Edwards tract was worth over \$7000 and a loan of \$4000, perhaps \$4500 to \$5000, was readily obtainable. With these resources at command, and with only \$200 to lose, it is hard to understand how Mrs. Norton was in such dire extremity as to submit to such extortion as she depicts in her complaining bills to secure the loan of so small a sum as \$5,000. But, whatever was her financial difficulty in the early part of 1913, let us observe her future conduct. We find that Mr. Nathanson's certified check for \$5200, dated February 25, 1913, was passed to the receiver who sold her the Edwards property which was conveyed about that time to her, and upon which she executed a mortgage acknowledged February 15, and recorded March 3, 1913. What-

ever profit or advantage to accrue to her in the purchase of the Edwards property was thus secured and she was a free agent to deal with Mr. Nathanson, expose his alleged extortion and prevent the consummation of the bargain made with him. Instead of doing this, however, she held and treated the Castle Garden property as her own; the rents have been collected for her by David Lerner; the interest due August 13, 1913, on the mortgage given by her was paid by her check of September 3, 1913, (p. 8) and interest thereon paid afterwards by her to August 13, 1914, (p. 10); she paid the taxes for 1913; and on August 30, 1913, eight or nine months after the conveyance of the Edwards tract to her, she and her husband executed the mortgage on the Castle Garden property to Nathanson, and shortly after accepted his deed, dated also August 30, 1913; the deed and mortgage were recorded in October, and presumably delivered about that time.

On full examination of the facts there is nothing that smacks of oppression in the transaction. It is true that Mr. Norton in the first few pages of his testimony refers to what he means to be taken as his first call on Mr. Nathanson and says:

“I saw Mr. Nathanson and told him I was figuring on buying the Edwards lumber tract and would want to borrow \$5000 and wanted to know if he could accommodate me; and that I had also \$5000 mortgage on the two Cooper avenue properties, and he told me yes he guessed that would be all right, and later on I went on and closed the deal on the Edwards lumber tract and made some payments onto to, and again saw Mr. Nathanson and at that time he told me that he had been disappointed about getting money and money was very scarce and so forth” (p. 2 and 3).

But Mr. Lerner, complainant's witness, referring to the first conversation between Norton and Nathanson (p. 68), says:

"Well, Mr. Norton said to Mr. Nathanson he was to buy this Edwards property and he would not have money enough for Mrs. Norton and if he could be sure of getting a loan of \$5000 he would buy it, otherwise he could not buy it, and Mr. Nathanson said he would give him \$5000 on mortgage provided he takes the Castle Garden back and Mr. Nathanson holds title at that time to the Castle Garden." 10

We learn from the Edward deed (Ex C-8, State of Case 54) that the auction sale by the Receiver took place on November 19, 1912. Mr. Norton states (p. 139 between lines 20 and 30), that his negotiations for the Edwards property were begun after the auction sale. The check (Exhibit C-7 p. 139), is dated November 20, 1912, and states that he negotiated with Mr. Nathanson before giving the check to the receiver (p. 140): 20

"It might have been in the morning: I gave the check in the afternoon, but I had the promise of the \$5000 before I closed the deal out: I think it was the same day".

He had previously said (p. 137) when the check for \$200 was shown him and before his attention was called to the auction sale, that he had seen Mr. Nathanson about a week prior to the giving of the check for \$200; on page 138 he stated that he thought he begun negotiations for the purchase of the Edwards tract in October. 30

It appears that the only possible time within which Mr. Norton could have seen Mr. Nathanson before giving the check was between the time he heard of the public sale, which took place in the afternoon of November 19, and the giving

of the check to the receiver on November 20. He fixes it a week before, in October, a month before, and finally on the morning of the day he gave the check. If this is a fault of his memory it is enough to condemn his memory. It may be something else.

Aside from any possible question as to the time Mr. Lerner makes it clear that on the very first occasion when the \$5000 was mentioned that
 10 Mr. Nathanson assented to make the loan provided he could get the Castle Garden matter straightened out (p. 65). He says further that Mr. Norton told Nathanson he thought his figure was awful high (p. 66), although six lines further on (p. 66) he testified that he did not think there was any price made at that time.

Mr. Nathanson's testimony is that Mr. Norton came to him in December or November and that they dickered about the price of the Castle Garden
 20 property until it was finally fixed at \$6800: that Mr. Lerner had seen him on a number of occasions about it and that the application for a loan was made later.

Most convincing of all is the allegation in paragraph 7 of amended bill that complainant fearing she would forfeit what she had already paid (\$200 or \$225) she agreed to pay a bonus of \$33,000.

It is quite clear that the loan in this case was
 30 desired and obtained in order to enable complainant to enter into a speculation. She advanced \$200 or \$225 and looked upon the purchase of the Edwards Tract as an opportunity to make money. Mr. Norton on page 25 was asked:

“Did you want the \$5000 in order to save the \$225 which she had advanced or did you want it to complete the sale and make money out of the purchase?” His answer was, ‘Both’. On p. 4, he stated, ‘We thought the

Edwards property a pretty good buy, and we thought we could make some money that way.' ”

The incentive of Mrs. Norton was much like that of Dowdall in *Dowdall v. Lenox*, 2 Edwards Chan., 267, and the remarks of Vice Chancellor McCoun on page 278 may well be applied here:

“There is no evidence showing that Dowdall was in such a state of distress or embarrassment as would probably induce a man to agree to hard and oppressive terms of a proffered loan in order to relieve his wants. His condition was not that of a debtor pressed by his creditors and his property about to be sacrificed by forced sales or his person imprisoned, and whose anxiety or eagerness to obtain the means of relief would, in some measure, deprive him of the faculty of acting and judging with the coolness and deliberation which belongs to a free agent. His incentive was of another kind; not one arising from distress and pecuniary embarrassment, but from a desire to engage in a profitable enterprise with the confident hope of large gains. There was time for calculation and reflection; and if he found the terms of a loan and the responsibilities he must assume to obtain it greater than his anticipated profits would warrant, he had only to reject the terms and abandon the undertaking. A person in this situation taking up a loan for such purposes and upon terms which may appear to be exorbitant, yet founded upon calculation and the free exercise of his own judgment, however the statute against usury may be violated, cannot be said to be imposed upon by the lender or to have had an advantage taken of his necessities. It is not the case of distress on one side which the law can notice and of undue influence and oppression on the other (*Ramsbottom v. Parker*, 6 Madd. Ch. 5; and in this respect I think it is clearly distinguishable from *Browne v. O’Dea*, 1 Sch. & Lef. 115; *Drew v. Power*, Id.

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182; and *Molloy v. Irvin*, Id. 31v; and others of this class which are reviewed in *Moore v. M'Kay*, where the able judge who then presided in the Chancery of Ireland concludes by saying "That he considered himself as duly applying the protective policy of the court and as acting in consistency with all preceding judgments, when he decides that, to induce the interference of the court, there must be some evidence or legal presumption of the loan being used as a means of restraint or undue influence to obtain an unjust profit.'"

SECOND.

The Castle Garden property was sold.

We insist that the Castle Garden transaction was in all essentials a sale. Mr. Norton says he applied for a loan before he negotiated for the Edwards property and before he attempted to purchase Castle Garden, but his testimony, as analyzed above, is open to great doubt. He is evidently not clear about it; on page 21 he was asked:

"Q. When did you first see Nathanson in relation to that property after you filed the objections? A. I had no conversation *that I recall* at all with Mr. Nathanson concerning that property until negotiations for this loan occurred."

30 The statement he attributes to Mr. Nathanson on page 2, in response to his application for a loan, "He told me yes, he guessed that would be all right" is far from an agreement or assurance on which to predicate a purchase of real estate.

Mr. Norton acted like a purchaser in a sale. He complained of the price asked (p. 3) and did not come to an agreement at the time; took it under consideration, talked it over with Mrs. Norton; thought they could make some money

out of the Edwards property (pp. 3, 4) later saw Nathanson again, agreed to the proposition and carried it out (p. 4).

Mr. Nathanson says they were dickering—Lerner first and then Norton, for the property. (p. 106 et seq.) These two were practically the owners of Castle Garden, which stood in the name of a corporation. Various figures were mentioned and \$6,800 agreed upon. Later Norton sought a loan of \$5,200. 10

Mr. Lerner's testimony is corroborative of Nathanson.

“Q. Did you see Mr. Nathanson about buying the property back? A. Yes, I spoke several times to Mr. Nathanson.

“Q. And you knew there were some people wanted the property? A. Yes, sir.

“Q. At that time? A. Yes, sir.

“Q. And did you know the price at which they wanted it? A. Well, different prices at that time” (pp. 71, 72). 20

At page 72:

“Q. How many times did you see him before you saw him with Mr. Norton? A. Oh, several times.

“Q. And it was with the idea of getting it straightened out and getting the title in somebody else? A. Trying to sell it and get out of it the best we could.

“Q. You wanted to get a higher price so that you could pay off this mortgage? A. Or we take the title back, we had the other mortgages to arrange for.” 30

These negotiations seem entirely natural. Mr. Nathanson states that Mr. Lerner said they were anxious to have the property foreclosed, (p. 130) and this is probable, from the number of mortgages which covered it. Following the Sheriff's sale on October 15, 1912, where Mr. Nathanson was a purchaser at \$5,400.90 objections were filed 40

on Mr. Norton's affidavit made October 24, 1912, because of Nathanson's oppressive action in forcing on the sale. How can his action be called oppressive unless the sale was at too low a figure? Certainly no objection could have been made to a sale at \$5,400.90, if the property was worth what Mr. Norton now swears it was \$3,500. The reasons for the objections are stated by Mr. Norton. On page 20, he was asked:

10 “Q. Well, you filed objections because you wanted to get the profit? A. I wanted the mortgagees to have what was coming to them.”

On page 30,

 “Q. Now, what was your object in filing exceptions to the confirmation of that sale? A. I didn't want Mr. Nathanson to get away with the property without paying the different ones that had claims against it what was their dues.”

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About the time the decree for sale was made, in the summer of 1912, Lerner and Norton applied to Benjamin P. Morris for a loan and place the value of the property at \$8,000, “at a low valuation” (pp. 149, 150).

30 The foreclosure and Sheriff's sale cut off the subsequent mortgages and the objections precluded the making of a deed to Nathanson. Lerner and Norton's corporation collected the rents. The next natural step was to arrange for the disposition of the property, either to the nominee of Norton and Lerner or to some outside purchaser. The dickering began shortly after and it is apparent from Lerner's and Nathanson's testimony that various figures were discussed, (pp. 71, 72, 107, 108).

40 It is a reasonable inference that \$6800 was not the first figure mentioned. Mr. Norton applied for a loan of \$5,000 and actually received

\$5,200. An arbitrary deal would have made the figures \$5,000 and \$7,000. Following the dicker-
ing an agreement to purchase was reached and
later an application for a loan was made. Mr.
Nathanson's statement to the Vice Chancellor
(pp. 126, 127) that he did not think he would
have let Mr. Norton have the \$5,000 unless he
straightened out the Castle Garden property, is
a business man's admission. No sensible man
dependent on income from mortgages would have
made another loan to one of the owners of this prop-
erty; under such circumstances, without having
something done with Castle Garden. Mr. Norton
agreed to clear up the situation by buying the
property at \$6,800. Mr. Nathanson kept his
agreement and advanced \$5,200 on February 25,
1913. Possession of Castle Garden was turned
over to Mrs. Norton (p. 23) or retained by Norton
and Lerner, and on August 30, 1913, was conveyed
to Mrs. Norton and her bond and mortgage for
\$3,000 given to Nathanson. Still later, May 26th,
1914, (p. 35) Mr. Norton or his wife contracted
to sell this property to one Dantowitz (pp. 4, 5,
21), who was to assume the \$3,000 mortgage to
Nathanson. Dantowitz paid \$25 on account, a
contract was signed (p. 36), but the sale was not
consummated on the date fixed, July 21, 1914.
This incident was introduced to depress the value
of the property indirectly, but it demonstrates
that Mrs. Norton treated the property as her own
and tied it up for months, at least, by an agree-
ment to sell. She paid taxes on it in 1913, and in-
terest on the mortgage until August, 1914. Lerner
collected the rents for her (p. 23). There
is no pretense that until her amended bill was
filed in May last that complainant made any
claim that the sale should be rescinded. If this
Castle Garden transaction was a sale, the auth-
orities are uniform that it was not usurious.

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THIRD.**Value of Castle Garden when sold, and now.**

The testimony as to the condition and value of the Castle Garden property is difficult to reconcile. There is only one witness, however, Mr. Morton, who does not testify that it is now in
 10 worse condition than in the early part of 1913, although Mr. Lerner, who has had charge of it for Mrs. Morton, states it rather mildly.

“Q. Do you recall the condition of this property in 1913? A. Yes.

“Q. What was its condition? A. Well, it was pretty near as bad as it is now. You could not say exactly the same, but it was not in first class condition, that I recall it, about the same condition as it is today; maybe now a little worse.” (Testimony p. 76.)

20 Montillion Krug, while not able to state the condition of the property in 1913, except the grocery store, gives a picture of its present condition showing the indisputable results of neglect during recent years. Its present condition, from his testimony, is very bad, and the details he gives as to the windows, gutters, roof, floor, etc., are convincing.

30 Mr. Holston (page 38), imagined the condition of the property “would be about the same. I cannot see very much difference.”

Mr. Hughes (page 46) says “the building is in a somewhat dilapidated condition at the present time.” On page 68: “I looked in the doors, yes, the doors are open and the windows.” On page 49, “Q. You say you found the building in bad shape yesterday? A. From the exterior, yes; it looked pretty bad.” At page 50, “Well, from my recollection the building was practically the same
 40 two years ago as it is at present. It is probably

run down a little bit more now than it was two years ago by being neglected and not being taken care of."

Mr. Chandler, on page 52, says:

"Q. What is your opinion of that building today? A. Rather bad.

"Q. What was the condition of it two years ago. A. Not any better. Property always depreciates when it is not cared for and that has not been cared for for the last two or three years." 10

Evidently the expression "Not any better" was used under a misapprehension, as the latter part of the answer shows:

At page 55:

"It was worth more in 1913 than it is today, for several reasons. People that have located near there have depreciated the value."

Again on the same page:

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"I say 1913, I am not speaking of it now, I am speaking of 1913, it was in better condition then than it is today,"

and again on same page and on following page:

"Q. What is the difference that you notice between 1913 and today? A. The property has depreciated in its value because it has been neglected and also all property in that neighborhood has depreciated 25 per cent in the last three years.

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"Q. You spoke of 1913, do you mean that the property today is in a poorer condition as to repair than it was two years ago? A. Worse condition; certainly, sir.

"Q. This particular property, this Castle Garden property? A. Yes, sir.

"Q. Don't you know that it has been painted and some repair has been made on it since 1913? A. I do not know it, sir.

"Q. Do you know it is not so? A. I do not."

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All the witnesses mentioned in above summaries, except Mr. Krug, were produced by the complainant.

Mr. Green, called by the defendant, referred to the property as being in bad shape, and as compared with 1913, says:

10 "Well, it always looked pretty seedy, but it was not so bad as it is now. At the present time window glasses are broken out and even the sash are broken out upstairs. It has a general unkept appearance."

Mr. Brehm, at page 99, says:

"This property is run down; it could be taken care of and made to pay a good income. They let it go right down to nothing."

Mr. Morton described the Castle Garden property on page 17, and continued:

20 "It was possible some years ago to rent it as residence for cheap rents, to different families. They did at one time have it pretty well filled with renters, but for the last four or five years we have not been able to keep renters into it."

He states that its value in 1912 and 1913 was about \$3500, but he must certainly be mistaken in this, as well as in his statement on page 23, in which he says, referring to the condition of the property:

30 "Not as bad as it was two years ago; it is not as bad now as it was then."

Even Mr. Lerner thought the property worth \$4000 today (page 81), and before the Sheriff's sale said he asked \$5000 for it. He bought the property in 1907 for \$4750, spent \$1000 or \$1500 to remodel it outside of his own work, which he intimates was not considerable (page 82).

At the Sheriff's sale on October 15th, 1912, Nathanson bid up the amount due him under his

decree with costs and Sheriff's fees, \$5400.90. This included interest to November 15, 1912, as appears by the statement of the Sheriff. No effort was made to open the decree, but objections were filed (see p. 31 and bottom of p. 32 where the word "oppressive" is omitted). The principal parties interested in the Castle Garden property at this time and in the sale were Richard D. Norton and David Lerner. Mr. Lerner appears to have known nothing of the objections to the sale (pp. 70, 71); Mr. Norton made the affidavit attached to the objection on October 24th, 1912. He was asked by Mrs. Norton's counsel (p. 30) to state his object in filing exceptions (objections) to the confirmation of the sale, and replied "I did not want Mr. Nathanson to get away with the property without paying the different ones that had claims against it what was their dues." While it is true that the objections do not in terms assert that the property brought an inadequate price, it may be inferred that this was the theory of Mr. Norton from the fact that the only objection which could be considered was the oppressive action of Nathanson in forcing on the sale. The sale was thus held up until the transaction with Mrs. Norton in the early part of 1913.

The witness Holston places a value of \$50 per front foot on the land, making it, outside the building, worth \$2500. The building was insured by him at \$3000 (pp. 38, 41). At an earlier period the buildings were insured for \$4000 (pp. 85, 86).

Mr. Holston made several inspections of the property, as testified by him, and placed the insurance amounting to \$3000.

A first mortgage of \$4000 was on the property when Mr. Lerner purchased it, and continued thereon until the Sheriff's sale in October, 1912.

In addition many other mortgages were placed on the property, as appears by the testimony of Mr. Lerner and Mr. Norton (pp. 83, 18).

Harry W. Green placed the value of the building in the latter part of 1912 or early part of 1913 as between \$4000 and \$4500. He placed the value of the land at \$2000 (pp. 94, 95). Mr. Holston estimated the value of the land at \$2500 (p. 38), and Mr. Chandler judged it worth \$50
10 per front foot, or \$2500, and said it was a very valuable corner (pp. 57, 58).

William H. Brehm placed the value in 1912 at \$7000 and at present at \$5500, attributing the difference to the decline or depreciation of the property (pp. 98, 99). Miss Throckmorton, who is absolutely unassailed, testified that Mr. Lerner and Mr. Norton in summer of 1912 stated on an application for a loan that the Castle Garden property was worth \$8000, at a low valuation, that
20 it brought an income on \$10,000, bringing in about \$1000 a year rental (pp. 149, 150).

The Vice Chancellor found the building had a renting capacity of approximately \$100 a month; the yield being less by at least one half, "due very much to lack of care and proper management" (State of Case, p. 45).

The testimony as to rents was obviously incomplete. Mr. Lerner, who collected the rents and who gave protracted evidence for Mrs. Norton,
30 had a book showing the amount of rents, but failed to produce it (Testimony, p. 78), although brought by appellant as a witness on a subsequent day.

FOURTH.

The Old Castle Garden Foreclosure.

Castle Garden was owned by the Lerner, Block Norton Company and Mr. Nathanson held a mortgage against it for \$4000. This mortgage he bought from a former holder and he admits it cost him \$3500.

He began foreclosure proceedings in 1912 **10** claiming in his bill the full amount of principal, \$4000, interest from December 16, 1908, and insurance premiums (Exhibit D-7, p. 63 of State of Case). There were several defendants, including Richard D. Norton, but no one contested the mortgagee's claim. A reference was made to John W. Slocum and on his report a final decree was made for Mr. Nathanson's claim (\$4977.33) with interest and costs and the claim of defendant Bluestone (\$6770) with interest and costs. **20** No attempt was made to open the decree. Mr. Nathanson showed how the amount due him was reached and gave his experience with Mr. Norton and David Lerner, his real estate associate. He was shown checks claimed by Mrs. Norton's counsel to have been paid on account of interest on the mortgage. He explained that they were, later, at the request of Lerner or Norton, applied to a protested note or notes and the whole amount of the mortgage and interest left intact (Testimony, **30** pp. 129, 130, 131).

Lerner was on the stand after Nathanson and did not deny this: Norton was present and did not deny it.

Lerner and Norton wanted the property foreclosed to cut off subsequent mortgages (pp. 130, 131). Nathanson foreclosed, bought the property at Sheriff's sale for \$5400.90 and then objections were filed (pp. 32, 33).

The mortgages subsequent to Nathanson's being **40**

cut off by the foreclosure, and the objections to the sale enabling Norton and Lerner to retain possession of the property and collect the rents, they remained quiet for a while and then opened up the negotiations for the purchase of the property. Mr. Lerner and Mr. Norton met Nathanson on the street and endeavored to obtain a low price for the property; Lerner offered \$6500 for it and Nathanson offered to sell at \$7500 and later at \$7000 (pp. 106, 107, 108). Nathanson put it in the hands of agents for sale and was ready to sell to anybody when the bargain with Mrs. Norton was made through her husband.

The objections filed to this sale did not in anywise affect the title of Nathanson, although they prevented his obtaining the deed. After the agreement to purchase by Mrs. Norton was made, but long before the conveyance to her, a consent to withdraw all objections to confirmation of sale, dated February 1, 1913, was signed by the solicitor of the objectors, and filed (State of Case, p. 65).

It is familiar law "that the only office of a written objection to the confirmation of a Sheriff's sale in foreclosure under the Act of March 12th, 1880, and rule 205 of this Court is to urge the overthrow of a sale upon the sole ground that the property did not bring the highest and best price that could be obtained for it in cash, and that an attack upon the sale on any other ground must be made the basis of an independent action, either by bill or petition."

Oakley v. Shaw, 69 Atl. Rep., 462, where many cases are cited.

Knickerbocker Trust Co. v. Cartaret Steel Co., 81 N. J. Eq., 130, 518.

In *Cropper v. Brown*, 76 N. J. Eq., 406, Vice-Chancellor Garrison reviews the authorities, quoting on page 412 from Chief Justice Beasley:

"A purchaser at an official sale becomes invested with a fixed and definite legal right which is recognized and enforced by the law, and of which he cannot be deprived except upon some legal or equitable ground."

He says in his own language (p. 112) :

"This right of the purchaser in those cases in which confirmation is required, is fixed though defeasible, and is subject to be defeated if the court refuses to confirm the sale, nevertheless the right of the purchaser and the correlative rights of the judicial officer are established at the time of the sale and by the contract then made." 10

The Sheriff's deed at an official sale relates back to the contract of purchase entered into by the purchaser, on the officer striking off the property to him on a public sale.

Several of the cases cited by counsel of appellant under the third point relate to purchases of the equity of redemption from the mortgagor by the mortgagee and clearly indicate that a court of equity will extend its protection to a mortgagor acting in such cases under oppression. These authorities do not seem applicable to the present situation. 20

Nor do the cited cases of *Campbell v. Gardner*, 11 N. J. Eq., 423, and *Strong v. Smith*, 68 N. J. Eq., 653, appear to be in point. In the older case the property of an aged woman was purchased at a low price by the mortgagee and the Chancellor came to her rescue. 30

In the *Smith* case a re-sale was sought on the ground that the sale produced some \$12,000 less than the property was worth, and Vice-Chancellor Bergen advised an order setting aside the sale on condition that a bond for \$82,000 be given by the applicants for a re-sale.

In the present case there was no effort to obtain a re-sale and the parties filing objections 40

did not desire a re-sale. In the first place they say the property sold for more than it was worth and in the second place a re-sale would have served only to pay subsequent lienors, the principal of whom (Mr. Bluestone) did not sign the objections.

Mr. Nathanson became the purchaser and invested with the title, made a sale and conveyed the same to Mrs. Norton, who was not a party
 10 to the foreclosure, but who permitted Lerner and her husband to continue in possession of the property practically as before.

FIFTH.

Complainant-Appellant's right to relief.

This is, to an unusual degree, a fact case. The Vice Chancellor observed the conduct of the
 20 parties and witnesses and his comment on them is pointed and persuasive. We deny that the sale of CASTLE GARDEN was employed as a device to cover usury; We deny that there was any oppression or coercion exercised to compel the purchase of this property. But if the theory of the appellant that the sale was made at a price in excess of the value of the property and was used as a scheme to cover usury could be
 30 accepted we submit that she is not entitled to the relief sought in the bill of complaint.

The following principles are applicable:

(a) He who seeks equity must do equity.

(b) The borrower, seeking in equity any kind of relief, against usury, must proceed with due diligence or his right will be lost by laches.

(c) On a colorable sale connected with a loan the lender is entitled to recover as the principal debt the amount of the loan plus the fair
 40 value of the property at the time of its receipt by the buyer.

A.

The maxim "He who seeks equity must do equity" is an ancient one and has been applied for many years to actions brought by borrowers for relief against mortgages and other obligations. The application was common at a time when the statutes against usury made void all usurious debts and obligations.

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"Under statutes against usury which make void all usurious debts and obligations the debtor may maintain a suit in equity for the purpose of procuring the usurious bond or other security to be surrendered up and cancelled; but this relief will only be granted upon the condition that the plaintiff does equity by repaying to his creditor the amount which was actually loaned upon the security." (1 Pomeroy's Equity Jur. 3rd Edit. Note on p. 641.)

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Under the Usury Act now in force this does not impose any great burden upon the borrower, but the principle may be extended to a case like the present, where the appellant seeks to turn back to the lender a property, which has been permitted to become dilapidated, subject to tax liens and greatly depreciated in value.

B.

The complainant has not exercised due diligence. 30

We have referred in another part of this brief to the ratification of the sale by the acceptance of the deed and the execution of the mortgage on the Castle Garden property seven months after the making of the loan, but beyond this no effort was made until the early part of 1915 to require the lender to take back the property conveyed by him.

In *Lake v. Brown*, 116 Ill. 83, it was held 40 (we quote from the syllabus).

“A claim in equity for relief against usury in a loan secured by a trust deed containing a power of sale in case of default, which claim is not made until after a sale under the power has been made by the trustee, without objection from the borrower, is too late. The relief, if any, to which such complainant is entitled, is lost by laches.”

The bill to redeem in that case was filed while the lender was still the owner of the property.

10 In *Galliher v. Caldwell*, 145 U. S. 368, Mr. Justice Brewer deals with the question of laches in relation to a parcel of land which had then become an addition to the city of Tacoma. He refers to the rapid increase in population of that City, and its effect upon the value of the property involved, and proceeds:

20 “And the question of laches turns not simply upon the number of years which have elapsed between the accruing of her rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the changes in value, and other circumstances occurring during that lapse of years.”

Later in the opinion he refers to a number of cases in the United States Supreme Court reports, a portion of his reference being as follows:

30 “In *Haywood v. Eliot Nat. Bank*, 96 U. S. 611 (24:855) a party who had borrowed money of a bank and deposited with it as collateral security certain mining stocks, which were sold by the bank upon his failure to repay the loan, was held barred by his laches in a bill to redeem, filed four years thereafter, the stocks in the meantime having greatly increased in value. In *Holgate v. Eaton*, 116 U. S. 33 (29:538) a married woman who, on being informed of a contract made by her husband for the sale of an equitable interest in real estate held by her in her own right, repudiated it and refused

for two years to perform it, was not permitted thereafter to maintain a bill for specific performance of the contract, the value of the property having depreciated. In *Davison v. Davis*, 125 U. S. 90 (31:635), a bill to compel the specific performance of a contract to sell personal property upon the payment of a promissory note, payable at a date after the making of the contract, was dismissed on the ground of the laches of the complainant in waiting five years after the maturity of the note before filing his bill, the property in the meantime having increased in value. In *Societe Fonciere v. Milliken*, 135 U. S. 304 (34:208) a delay of two years in the commencement of proceedings to set aside a judgment for usury was adjudged fatal, the amount of the usury being small, and the judgment having been enforced in the meantime by the sale of the real estate." 10

In *Penn Mutual Life Insurance Company v. Austin*, 168 U. S. 685, p. 697, Mr. Justice White refers to *Galliher v. Caldwell*, cited supra, and other cases says: 20

"The reason and upon which the rule is based is not alone the lapse of the time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third parties may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect." 30

In *Ward v. Sherman*, 192 U. S. 168, Mr. Justice Brewer again deals with the question of laches, in an action brought to rescind a contract. At p. 177:

"The property was turned over on a contract of sale. Ward was left in possession 40

for over three years and a half, without a suggestion of any claim that he was only a mortgagee in possession. He had a right to believe that he was the owner. If the contract had not been made he could have foreclosed his mortgage and acquired title by a sale under foreclosure proceedings. He dealt with the property as his own. He gave his time, skill and labor to the work of caring for it. It is impossible to replace the parties in the situation they were at the time the contract was made. It would be grossly inequitable to deprive him of the benefit of his time, skill and labor and give it to the mortgagor, who all these years did nothing and gave no notice of any question of the completeness of Ward's title. It seems to us that the doctrine of laches applies with force, and that upon the pleadings the Court should have adjudged the defendant not entitled either to a rescission of the contract or to hold the vendee as a mortgagee in possession."

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C.

On a colorable sale connected with a loan the lender is entitled to recover as the principal debt the amount of the loan plus the fair value of the property at the time of its receipt by the buyer.

In 39 Cyc. 929, we find this statement of the principle:

30 "When the lender corruptly requires of the borrower as a condition of securing a loan the purchase of the lender's property at an exorbitant price, to be taken out of the loan or payable at a subsequent date, and takes the borrower's obligation for the sum loaned or for both the loan and purchase price, such obligation is usurious, although on its face it bears no more than lawful interest. The same principles apply in respect of sales by the lender to the borrower at an exorbitant price as a condition of extending time in which to pay a debt. In such case the

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principal debt is the amount of the loan, plus the fair value of the property at the time of its receipt by the buyer. All in excess of that sum is usury. But if the evidence does not disclose a guilty intent, such a contract will be upheld even though the collateral sale is made at a price higher than the market value of the property sold."

In the opinion of Gardiner, J., in the *Dry Dock Bank v. American Life Insurance and Trust Co.*, et al., 3 N. Y. (3 Comstock), 344, at page 358, **10**
etc., we find a discussion of the principles involved, part of which we quote:

"In a word, neither sales of credit nor loans or sales of property, other than money, are touched by the statute. It is not enough that the vendee wants money, and that this is known to the opposite party. Neither the necessities of the vendee nor the use he contemplates making of his purchase, will deprive the vendor of his right to determine for himself the terms upon which he will part with his property. His conduct may be oppressive; but all extortion is not usury. **20**
* * * It follows that in every instance where the contract in form is one of sale, or exchange (and the principle applies to loans of chattels) if the Court in looking at the whole transaction can say that the value secured to the vendor was in good faith the price of the goods sold or exchanged by him, there can be no usury, whatever the price may be or the mode in which it may be reserved (citing cases). **30** Where, however, the object of the parties is loan of money and something else under the form of an exchange or sale is substituted for it, the principal of the loan, and consequently all the debt contracted by the nominal vendee, will be the value in money of the substitute received by him; and any consideration paid or secured to the vendor beyond that will in general be considered interest for its forbearance."

In Tyler on Usury, Edition of 1873, page 367, **40**
we find a generous quotation from the above opinion, which is apparently adopted by the author.

SIXTH.**Burden of proof is upon party setting up usury.**

There are many cases holding that the burden of proof is upon the party setting up usury.

10 "The facts necessary to constitute it must be clearly established, beyond reasonable doubt, by the decided preponderance of evidence. It is not enough that the circumstances proved render it highly probable that there was a corrupt bargain, such a bargain must be proved, and not left to conjecture."

Berdan v. Trustees of School District, 47 N. J. Eq., 8-10:

"The Courts will never infer usury if the opposite conclusion can reasonably and fairly be arrived at."

20 27 *Amer. & Eng. Ency. of Law* (1st Ed.) 1046:

"There must be clear and unmistakable preponderance of evidence in support of the plea." *Idem.*

Gillette v. Ballard, 25 N. J. Eq., 491-495:

30 "When a contract on its face discloses no appearance of usury, it is presumed to have been made in good faith. And it is for the party who alleges that a corrupt and usurious intent lurks behind such a contract to prove the truth of his allegation. This rule applies whatever be the form which the apparently honest transaction assumes, such as a sale of property, commissions or gratuities received, exchange taken, or judgment by confession suffered."

39 *Cyc.* 1052.

SEVENTH.**Mrs. Norton was a free agent.**

The most surprising suggestion in appellant's brief is that she was in a helpless condition, under the domination of her husband and acting without independent advice. This seems immaterial unless it be shown that Norton and Nathanson were acting in collusion. But the fact is that Mrs. Norton conducted her real estate operations through one of the shrewdest of husbands, or as the Vice Chancellor was inclined to believe, he negotiated his business affairs under her name. Throughout the testimony of both it was freely stated that Mr. Norton acted for his wife (pp. 2, 3, 87, 90). Mrs. Norton acknowledged the various instruments required to be executed by her as her voluntary act and deed, she exhibited throughout the trial the most supreme confidence in her husband, and nowhere in the pleadings or evidence does she make any charge that she was dominated by him. Mrs. Norton thought that she was speculating for profit in Long Branch property, she knew little or nothing of values, she relied on her clever husband, and in her original bill of complaint she based her principal claim for relief on the agreement which her husband was able to secure from Nathanson for the redemption of the Cooper Avenue properties on payment of the amount due, which amount, by the way, has never been tendered or paid.

And as for independent advice, where among the business men of any community could Mrs. Norton have found a man of richer experience in real estate matters to look after her interests than her husband. It will be remembered that the transactions in the early months of 1913 were ratified by her eight months later in

August, when she accepted the deed for Castle Garden and executed a bond and mortgage to secure part of the purchase price. And we may assume that she had further independent advice of the highest character, as we find that the solicitor of the parties filing objections to the Castle Garden sale, who is her chosen counsel in these proceedings, filed a consent to the withdrawal of the objections after the agreement by
10 Mrs. Norton to purchase Castle Garden for \$6800.

Indicative of the quality of the advice appellant has received, or of her innate business sense, and indicative also of the hardship under which it is claimed she has labored, is the fact that she has held fast to the *Cooper Avenue* properties, although title is in Nathanson, during past two years, on a payment of \$267 on making agreement to redeem, paying no interest, taxes or insurance, and has held fast to *Castle Garden* and
20 *Edwards* properties, paying no taxes since 1913, no interest since August, 1914, and no insurance premiums for years.

We respectfully submit that the decree of the Chancellor should be affirmed.

WILLIAM A. STEVENS,
 McDERMOTT & ENRIGHT,
 of Counsel for Respondent.

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1891

Filed Jan. 20, 1916.

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In Chancery of New Jersey

Between

Elizabeth C. Norton,

Complainant,

and

Samuel Nathanson, et ux.,

Defendants.

} Notice of Appeal.

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The complainant hereby appeals from the final decree made in the above stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, January 20, 1916.

A. V. DAWES,
Solicitor of the Complainant.

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A. V. DAWES,
of Counsel.

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

A. V. DAWES,
of Counsel.

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Petition of Appeal.

Filed Feb. 7, 1916.

NEW JERSEY COURT OF ERRORS
AND APPEALS

	<i>Between</i>		} On Appeal, &c., Petition of Appeal.
10	Elizabeth C. Norton,	<i>Appellant,</i>	
	<i>and</i>		
	Samuel Nathanson, et ux.,	<i>Respondents.</i>	

*To the Honorable, the Court of Errors and Appeals
in the last resort in all causes:*

20 The petition of Elizabeth C. Norton, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the eighteenth day of January, 1916, wherein the said Elizabeth C. Norton is complainant and the said Samuel Nathanson and Ida Nathanson were defendants, in this respect: That the said decree charges that the complainant's bill should be dismissed, whereas upon the evidence and the law, the said decree should have adjudged that the complainant, Elizabeth C. Norton, was entitled to have the mortgages on the

30 Cooper Avenue property reassigned to her by the defendant Samuel Nathanson, and the mortgage upon the Edwards Tract mentioned in the pleadings and given by her to the defendant, Samuel Nathanson, cancelled of record, upon her repaying to the said Samuel Nathanson the sum of \$5,200 and conveying to the said Samuel Nathanson the Castle Garden property. And your petitioner humbly appeals from the said final decree for the error aforesaid.

Your petitioner, therefore, prays that the said decree by

Petition of Appeal.

the Chancellor may be wholly set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

A. V. DAWES,
Solicitor for and of Counsel with Appellant.

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Answer to Petition of Appeal.

Filed Feb. 11, 1916.

NEW JERSEY COURT OF ERRORS
AND APPEALS

10	<i>Between</i> Elizabeth C. Norton, <i>Complainant-Appellant,</i> <i>and</i> Samuel Nathanson, et ux., <i>Defendants-Respondents.</i>	}	On Appeal from Chancery. Answer to Petition of Appeal.
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The answer of the above named defendants-respondents to the petition of appeal of the above named complainant-appellant.

20 These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was on the eighteenth day of January, nineteen hundred and sixteen, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as is therein stated, but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced.

30 And these respondents are advised and believed that the said decree is agreeable to equity and pray that the same may be affirmed with costs to be adjudged to these respondents.

McDERMOTT & ENRIGHT
Solicitors for and of Counsel with
Defendants-Respondents.

Filed Jan. 14, 1915.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY

*To His Honor, Edwin Robert Walker,
Chancellor of the State of New Jersey.*

Humbly complaining, shows unto your Honor, your oratrix, Elizabeth C. Norton, of the Borough of Hightstown, county of Mercer and state of New Jersey: 10

1. That your oratrix held a mortgage for three thousand dollars (\$3,000) upon the following described property, situate in the city of Long Branch, county of Monmouth and state of New Jersey:

BEGINNING at a point in the easterly line of the Long Branch and Sea Shore Railroad Company's land and at the most northwesterly corner of the lot of land purchased by Lizzie Lerner and described in a deed from the Sheriff of Monmouth County, recorded in Book 920, page 183, and from thence running (1) south seventy-eight degrees and forty-two minutes east along the northerly line of the premises described in said Sheriff's deed, ninety-nine feet and two inches to a point; thence (2) north ten degrees and forty-five minutes east fifty feet; thence (3) north seventy-nine degrees and fifteen minutes west ninety-four feet and four inches to the easterly side of the Long Branch and Sea Shore Railroad Company's land; thence (4) south fifteen degrees and thirty minutes west along said Railroad Company's land, forty-nine feet and three inches to the point or place of BEGINNING. 20 30

Being a part of the same premises conveyed to the said Elizabeth C. Norton by deed from W. Redmond Hutchinson, which deed was recorded in the Monmouth County Clerk's office October 8, 1913.

2. That one Samuel Nathanson held a mortgage for five thousand dollars (\$5,000), covering the tract of land above described, and also upon the following described tract, situate 40

Bill of Complaint.

in the city of Long Branch, county of Monmouth, state of New Jersey:

10 BEGINNING at a point in the easterly side of the right of way of the Long Branch and Sea Shore Railroad Company's land, where the same is intersected by the southerly side of Cooper Avenue, and from thence running (1) south fifteen degrees and thirty minutes west and along the easterly side of the Long Branch and Sea Shore Railroad Company's land, one hundred and eighty-one feet and one inch to other lands of the party of the first part hereto; thence (2) south seventy-nine degrees and fifteen minutes east eighty-six feet to a point; thence (3) north ten degrees and forty-five minutes east one hundred and eighty feet and six inches to the southerly side of Cooper Avenue; thence (4) westerly and along the southerly side of Cooper Avenue seventy-one feet to the point or place of BEGINNING.

20 Being a part of the same premises conveyed to the said Elizabeth C. Norton by deed from W. Redman Hutchinson, which deed was recorded in the Monmouth County Clerk' office October 8, 1913.

which said mortgage was prior to the mortgage held by your oratrix.

30 3. That the said Samuel Nathanson filed his bill in this Honorable Court to foreclose his said mortgage, and such proceedings were had thereon that a final decree was made that the above tracts of land be sold to raise and pay to the complainant the said sum of five thousand dollars (\$5,000), with interest, and that a writ of execution should issue directed to the Sheriff of the county of Monmouth, to make sale according to the final decree.

4. Your oratrix further shows that prior to the day when the property was to be sold, and on the day of the said sale, the said Samuel Nathanson promised and agreed with your oratrix that he would purchase the property for your oratrix and hold the title for her, until such time as she could redeem

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Bill of Complaint.

the properties by paying what was due and owing on his claim, when he would convey to her the title to the said tracts of land; she also then and there agreeing that she would pay the costs of the said proceedings, amounting to the sum of two hundred and sixty-seven dollars (\$267), which sum your oratrix then and there paid to the said Samuel Nathanson.

5. That in pursuance of said understanding, said Samuel Nathanson bid on the properties five thousand (\$5,000) and the same were then and there struck off to him and the same have been conveyed by the Sheriff of the county of Monmouth to him, who claims now to hold the said properties. That the said Samuel Nathanson has not been in the possession of the said premises, but your oratrix has remained in possession thereof, without molestation from the said Samuel Nathanson.

6. That on December twenty-fifth, nineteen hundred and fourteen, the said Samuel Nathanson wrote to your oratrix's husband the following letter:

"Dec. 25, 1914.

Mr. R. D. Norton,

Dear Sir:

If you intend to take title to property purchased by me Sept. last at Sheriff's sale you will have to do so by Jan. 1st, 1915. Should you fail to do so, I'll be compelled to sell them for whatever I can get and hold you for any deficiency. Furthermore, should you decide to take title, the mortgage will have to be cut down to \$3500 on the two properties for one year on date as they are in very bad condition. Also all taxes, insurance, interest and costs will have to be cleaned up to date.

Hoping you will give this your immediate attention,

Yours respectfully,

S. NATHANSON."

whereupon your oratrix's said husband, for your oratrix, wrote to the said Samuel Nathanson the following letter:

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Bill of Complaint.

"Hightstown, N. J.,
Dec. 28th, 1914.

Mr. Samuel Nathanson,
Long Branch, N. J.

Dear Sir:

10 Your letter of the 25th received. Will you please advise me how much your claims on the two properties amount to?

Please do this soon as you can figure it up, and write me.

Respectfully,
R. D. NORTON, L."

to which the said Samuel Nathanson replied as follows:

"Dear Sir:

20 In reply to this letter would say that the claims on the two properties to date amount to \$5700 dollars.

Respectfully,
S. NATHANSON."

30 7. That there is not due to the said Samuel Nathanson the said sum of fifty-seven hundred dollars (\$5700), for the reason that the only debt which formed the consideration of the said mortgage was as follows: That on the day the mortgage was given by your oratrix to the said Samuel Nathanson, he agreed to loan to her fifty-two hundred dollars (\$5200) in cash, and demanded that in consideration of loaning to her said fifty-two hundred dollars (\$5200) she must give him mortgages upon other properties amounting to the sum of twelve thousand dollars (\$12,000), and that the amount of money which the said Nathanson had advanced on the other mortgages was thirty-five hundred dollars (\$3500), and that the amount actually advanced by the said Samuel Nathanson on the said twelve thousand dollar mortgages was eighty-seven hundred dollars (\$8700), and that

Bill of Complaint.

all over and above that amount was magnified, so that he might receive the difference as a bonus or usury for the said sum of eighty-seven hundred dollars (\$8700), which he had actually loaned. That since the giving of the said mortgages, your oratrix has paid interest on the sum of twelve thousand dollars (\$12,000).

8. That the said Samuel Nathanson is a married man, and his wife's name is _____ and she may claim an inchoate right of dower in the said properties. 10

9. That the properties which the said Nathanson took title to at the Sheriff's sale, were really worth on the day of sale eight thousand dollars (\$8,000). That since the receiving of the letter above mentioned from the defendant Nathanson, dated December 25th, and before January first, your oratrix has found a customer who was willing to take one of the properties for forty-five hundred dollars (\$4500), but the said Nathanson, finding out that this customer was willing to pay this money for the property to your oratrix, went to the said customer and informed him that your oratrix was without any rights in the said property and that the said customer must buy from him. 20

10. That your oratrix, relying implicitly upon the promises and undertakings of the said Nathanson, that the said properties would be held for her, allowing her ample time to redeem, did not therefore bid the properties up to the amount which they were really worth to her, or make further effort to procure the money from the parties, but had the said Nathanson at any time been willing to deal conscientiously with your oratrix and not oppress her by demanding mortgages so greatly in excess of the amount he actually loaned her, she would have been in a position to have held the properties or have found others willing to loan her on the lawful basis of six per cent. on the amount loaned. 30

11. That all the transactions and acts of the said Nathan-

Bill of Complaint.

son in respect to the matters above set forth, were oppressive, illegal and unconscionable.

10 Your oratrix therefore prays that the said Nathanson may answer the premises without oath, and may set forth the amount of money that he actually loaned to your oratrix on the mortgages above set forth, and what your oratrix owes him on the several mortgages above stated, and that an account may be taken of the dealings between your oratrix and the said Samuel Nathanson in respect to the matters, and that your oratrix may be permitted to re-claim the said properties, upon paying the amount of money which is justly due and owing to the said Samuel Nathanson thereon.

And that your oratrix may have such further and other relief as may be agreeable to equity and good conscience.

20 May it please your Honor, the premises considered, to grant unto your orator, the State's writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said Samuel Nathanson and Mrs. Samuel Nathanson, commanding them on a certain day therein named, to be and appear before this Honorable court and then and there to stand to, abide by and perform such decree as your Honor shall make, and as shall be agreeable to equity and good conscience.

And your orator will ever pray.

A. V. DAWES,

Solicitor for and of Counsel with Complainant.

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Order to Amend.

Filed Feb. 17, 1915.

IN CHANCERY OF NEW JERSEY

<p><i>Between</i> Elizabeth C. Norton, <i>and</i> Samuel Nathanson, et ux., <i>Defendants.</i></p>	}	<p>Complainant, Order Defendants.</p>	<p>On Bill, &c., Order</p>	<p>10</p>
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Application being made to the complainant for leave to amend her bill by adding thereto a prayer for process and the affidavit that the complainant has been unable to ascertain the christian name of the defendant's wife:

It is hereby on this sixteenth day of February, nineteen hundred and fifteen, ORDERED that the complainant have leave to amend in particular as aforesaid.

E. R. WALKER, C.

Respectfully advised:
 JOHN H. BACKES,
 V. C.

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Answer.

Filed Feb. 18, 1915.

IN CHANCERY OF NEW JERSEY

	<i>Between</i>		
	Elizabeth C. Norton,	}	On Bill, &c.
	<i>Complainant,</i>		
10	<i>and</i>		Answer.
	Samuel Nathanson,	}	
	<i>Defendant.</i>		

The answer of the defendant Samuel Nathanson to the bill of complaint of Elizabeth C. Norton, complainant.

This defendant for answer unto the said bill of complaint or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering says:

20 (1) That he believes it to be true that the complainant at one time held a mortgage for Three thousand dollars upon the premises described in the first paragraph of said bill of complaint, but denies that she held said mortgage at the time of the filing of said bill of complaint, or at the time when this defendant foreclosed his mortgage for Five thousand dollars referred to in said bill of complaint, or at the time of the sale of the mortgaged premises referred to in said bill, or at any time thereafter; that it appears by the records of the Clerk's Office of the County of Monmouth that the said mortgage of Three thousand dollars was assigned by the complainant to one Max. M. Friedman on the 30 third day of December, Nineteen hundred and thirteen, the deed of assignment being recorded in said office in Book 67 of Assignment of Mortgages, page 221 etc.; that the said Max M. Friedman was made a party defendant in the suit brought by this defendant to foreclose his said mortgage because of the state of the record as above indicated.

(2) This defendant admits the facts set forth in paragraph two of said.

Answer.

(3) This defendant admits the facts set forth in paragraph three of said bill.

(4) This defendant denies the allegations of paragraph four of said bill as therein set forth, but admits that Richard D. Norton, the husband of complainant, paid to this defendant on the fourteenth day of September, Nineteen hundred and fourteen, the day on which the Sheriff of Monmouth County advertised to sell and did sell the premises referred to in said paragraph four, the sum of Two hundred and sixty-seven dollars, under the following circumstances: The said Richard D. Norton appeared at the Sheriff's office at the time fixed for the sale of said premises and requested that the sale be postponed, representing that if it were laid over for two weeks he would bid a sum sufficient to cover the full amount of this defendant's decree and costs with the fees of the Sheriff. This defendant then agreed with the said Norton that the sale proceed and if the mortgaged premises were struck off to him he would convey the same to the said Richard D. Norton or to his wife, the complainant herein, if within thirty days thereafter they would pay the amount due him for principal, interest, costs and Sheriff's fees. The amount so due with interest calculated to the fourteenth day of October, Nineteen hundred and fourteen, the date fixed by the Sheriff for the delivery of his deed, was Five thousand seven hundred and eighty-six dollars and eighty-eight cents. The Sheriff thereupon struck off the property to this defendant, who then paid the Sheriff's fees as calculated by him. The said Richard D. Norton then delivered to this defendant a check for Two hundred and sixty-seven dollars, which was accepted upon the understanding that the said Richard D. Norton or the complainant could have an assignment of this defendant's bid and obtain a deed from the Sheriff if within thirty days thereafter payment of the balance due this defendant under his execution should be made to this defendant or to the said Sheriff.

(5) This defendant admits that the said mortgaged

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Answer.

premises were struck off to him at the sum of Five thousand dollars, this being the only bid made for same, but states that the full amount of his decree with taxed costs and Sheriff's fees was as stated in paragraph four of this answer. He further admits that the said lands and premises were conveyed to him by the Sheriff of the County of Monmouth and that he now holds title to the same. Except insofar
 10 as the same have been admitted herein this defendant denies each and every allegation of paragraph five of said bill.

(6) This defendant admits that he wrote to the said Richard D. Norton a letter of the general tenor and purport set forth in paragraph six of the said bill, but for greater certainty refers to the said letter: He admits receiving a letter from the said Richard D. Norton bearing date the twenty-eighth day of December, Nineteen hundred and four-
 20 teen, which appears to be correctly set forth in paragraph six with the exception of the signature to said letter; to this letter defendant replied promptly stating in round figures that there was owing to him about the sum of Five thousand seven hundred dollars, if the transaction were completed at that time.

(7) This defendant denies the allegations of paragraph seven of the bill of complaint.

(8) This defendant admits the allegations of paragraph eight of the said bill.

(9) This defendant denies the allegations of paragraph nine of the said bill.

30 (10) This defendant denies the allegations of paragraph ten of the said bill.

(11) This defendant denies the allegations of paragraph eleven of the said bill.

(12) This defendant further answering the said bill of complaint says, that he has been ready at all times since the said Sheriff's sale, held on the fourteenth day of September, nineteen hundred and fourteen, to convey the said lands and premises purchased by him at said Sheriff's sale to the said

Answer.

Richard D. Norton or to the complainant upon the payment of the amount actually due him for principal, interest, costs and Sheriff's fees, after deducting the sum of Two hundred and sixty-seven dollars paid at the time of said sale, but this defendant states the fact to be that the buildings on said premises are in bad condition and greatly in need of repairs which should be promptly made, and that inasmuch as the time within which the premises were to be paid for by the said Richard D. Norton, or his wife, the complainant, has long since expired, that this defendant should not be required further to hold the said premises awaiting such payment. This defendant now tenders himself ready and willing to convey said premises upon the payment of the amount due to him as aforesaid, but submits that if such payment be not made within fifteen days after the filing of this answer and service thereof upon the solicitors of the complainant that he should not be required further to retain the said premises subject to the demand of the said complainant or the said Richard D. Norton.

(13) This defendant further answering says that the mortgage to secure the sum of Five thousand dollars referred to in paragraph two of the bill of complaint was originally given by W. Redman Hutchinson to the complainant; it bears date the sixteenth day of July, Nineteen hundred and twelve, was acknowledged the fifteenth day of November, Nineteen hundred and twelve, and recorded on the twenty-ninth day of November, Nineteen hundred and twelve in the Clerk's Office of the County of Monmouth in Book 447 of Mortgages, page 151, &c. Said mortgage and accompanying bond were assigned to this defendant by the said complainant on or about the eighteenth day of February, Nineteen hundred and thirteen by a deed of assignment duly executed in which the said complainant covenanted that there was then due upon said bond and mortgage the principal sum of Five thousand dollars, and interest, and guaranteed the punctual payment of the principal and interest

Answer.

- of said mortgage waiving notice of default by the mortgagor, his executors, administrators, heirs and assigns. Said bond and mortgage were sold and assigned to this defendant for the full amount of the principal thereof and the transaction was absolutely free from usury of any character or description. In said month of February, Nineteen hundred and thirteen, the said complainant acting through the said Richard D. Norton, purchased from this defendant a parcel of land in the City of Long Branch, known as the "Castle Garden Property," for the sum of Six thousand eight hundred dollars and purchased from other parties in the City of Long Branch another parcel of land in which transaction she required Five thousand Two hundred dollars in cash to complete the purchase: This defendant advanced to said complainant the said sum of Five thousand and two hundred dollars required by her; to secure said last mentioned sum and to pay said price of Six thousand eight hundred dollars for the Castle Garden Property a purchase money mortgage of Three thousand dollars on the Castle Garden Property, a purchase money mortgage of Four thousand dollars on the other real estate purchased by complainant in Long Branch, and an assignment of the above mentioned bond and mortgage for Five thousand dollars made by said W. Redman Hutchinson to complainant were turned over to this defendant by complainant. In this transaction or group of transactions no usury or bonus was exacted by this defendant, or paid by said complainant, or anyone for her to this defendant, nor was any money retained or withheld by this defendant as usury or bonus.

(14) And this defendant submits to this Honorable Court that the complainant has not in and by her said bill made or stated such a case as entitles her in this honorable court to any discovery from this defendant or to any relief against him as to the matters contained in the said bill or any of such matters; and this defendant hopes he shall have and

Answer.

prays that he may have the same benefit of this defense as if he had demurred to the said bill of complaint.

And this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

McDERMOTT & ENRIGHT,
Solicitors for and of Counsel with Defendant.

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Answer.

Filed March 18, 1915.

IN CHANCERY OF NEW JERSEY

	<i>Between</i>		}	On Bill, &c.
	Elizabeth C. Norton,	<i>Complainant,</i>		
10	<i>and</i>	Samuel Nathanson, et ux.,	}	Answer.
		<i>Defendants.</i>		

The answer of the defendant Ida Nathanson, wife of Samuel Nathanson, to the bill of complaint of Elizabeth C. Norton, complainant.

This defendant for answer unto the said bill of complaint or unto so much thereof as she is advised it is material or necessary for her to make answer unto answering says:

20 (1) This defendant admits the facts set forth in paragraphs two, three and eight of said bill of complaint.

(2) This defendant denies the allegations of paragraphs four, seven, nine, ten and eleven of said bill of complaint.

(3) This defendant has no knowledge or information in relation to the allegations set forth in paragraphs one, five and six of said bill of complaint, other than that derived from the said bill and the answer of her husband, Samuel Nathanson, thereto, and is unable to admit or deny the said allegations.

30 (4) This defendant submits to this honorable Court that the complainant has not in and by her said bill made or stated such a case as entitles her in this honorable Court to any discovery from this defendant, or to any relief against her as to the matters contained in the said bill or any of such matters; and this defendant hopes she shall have and prays that she may have the same benefit of this defense as if she had demurred to the said bill of complaint.

Answer.

And this defendant prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

McDERMOTT & ENRIGHT,
Solicitors of Defendant.

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Order of Reference.

Filed March 26, 1915.

IN CHANCERY OF NEW JERSEY

	<i>Between</i>		} On Bill, &c. Order of Reference.
	Elizabeth C. Norton,	<i>Complainant,</i>	
10	<i>and</i>		
	Samuel Nathanson,	<i>Defendant.</i>	

Upon motion of McDermott & Enright, solicitors of defendant, the solicitor of the complainant consenting hereto, IT IS on this 24th day of March, Nineteen hundred and fifteen,

20 ORDERED that the above entitled cause be referred to Hon. John H. Backes, one of the Vice Chancellors of this Court to hear the same for the Chancellor and to advise what order or decree should be made therein.

E. R. WALKER.

I consent to the making of the foregoing order of reference.

A. V. DAWES,
Solicitor of Complainant.

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Order

Filed May 18, 1915.

IN CHANCERY OF NEW JERSEY

<i>Between</i>	}	On Bill, &c., Order.	10
Elizabeth C. Norton, <i>Complainant,</i>			
<i>and</i>			
Samuel Nathanson, et ux., <i>Defendants.</i>			

The complainant having applied for leave to amend her bill of complaint, and the same coming on to be heard in the presence of Aaron V. Dawes of counsel with the complainant and Frank P. McDermott, Esq., of counsel with the defendant Samuel Nathanson, and the complainant having presented to the court an amended bill; It is hereby

ORDERED that the said amended bill be filed and a copy thereof be served upon the defendant's solicitor within three days from the date hereof, and that the defendants plead, answer or demur to the same within the time required by the rules and the practice of this court.

E. R. WALKER, C.

Respectfully advised:

JOHN H. BACKES, V. C.

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Amended Bill of Complaint.

Filed May 18, 1915.

IN CHANCERY OF NEW JERSEY.

*To His Honor, Edwin Robert Walker,
Chancellor of the State of New Jersey.*

10 Humbly complaining shows unto your Honor, your oratrix, Elizabeth C. Norton, of the Borough of Hightstown, County of Mercer and State of New Jersey:

1. That your oratrix holds a mortgage for three thousand dollars (\$3,000) upon the following described property, situate in the city of Long Branch, County of Monmouth and State of New Jersey:

20 BEGINNING at a point in the easterly line of the Long Branch and Sea shore Railroad Company's land and at the most northwesterly corner of the lot of land purchased by Lizzie Lerner and described in a deed from the Sheriff of Monmouth County, recorded in Book 920, page 183, and from thence running (1) south seventy-eight degrees and forty-two minutes east along the northerly line of the premises described in said Sheriff's deed, ninety-nine feet and two inches to a point; thence (2) north ten degrees and forty-five minutes east fifty feet; thence (3) north seventy-nine degrees and fifteen minutes west ninety-four feet and four inches to the easterly side of the Long Branch and Sea Shore Railroad Company's land; thence

30 (4) south fifteen degrees and thirty minutes west along said Railroad Company's land, forty-nine feet and three inches to the point or place of BEGINNING.

Being a part of the same premises conveyed to the said Elizabeth C. Norton by deed from W. Redmond Hutchinson, which deed was recorded in the Monmouth County Clerk's office October 8, 1913.

2. That Samuel Nathanson held a mortgage for five thousand dollars (\$5,000), covering the tract of land de-

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Amended Bill of Complaint.

scribed in paragraph one, and also upon another tract situate in the city of Long Branch, County of Monmouth and State of New Jersey, and described as follows:

BEGINNING at a point in the easterly side of the right of way of the Long Branch and Sea Shore Railroad Company's land, where the same is intersected by the southerly side of Cooper Avenue, and from thence running (1) south fifteen degrees and thirty minutes west and along the easterly side of the Long Branch and Sea Shore Railroad Company's land, one hundred and eighty-one feet and one inch to other lands of the party of the first part hereto; thence (2) south seventy-nine degrees and fifteen minutes east eighty-six feet to a point; thence (3) north ten degrees and forty-five minutes east one hundred and eighty feet and six inches to the southerly side of Cooper Avenue; thence (4) westerly and along the southerly side of Cooper Avenue seventy-one feet to the point or place of BEGINNING.

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Being a part of the same premises conveyed to the said Elizabeth C. Norton by deed from W. Redman Hutchinson, which deed was recorded in the Monmouth County Clerk's office October 8, 1913.

which said mortgage was prior to the mortgage held by your oratrix, mentioned in paragraph one.

3. That the said Samuel Nathanson filed his bill of complaint to foreclose the mortgage mentioned in the second paragraph of this bill, and that such proceedings were thereon had that a final decree was made that the above tracts of land be sold to raise and pay to the complainant the said sum of five thousand dollars (\$5,000), with interest and costs, and that a writ of execution should issue directed to the sheriff of the County of Monmouth, to make sale according to the final decree.

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4. Your oratrix further shows that prior to the day when the property was to be sold, and on the day of the said sale, the said Samuel Nathanson promised and agreed with your

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Amended Bill of Complaint.

10 oratrix that he would purchase the property for your oratrix and hold the title for her, until such time as she could redeem the properties by paying what was due and owing on his claim, when he would convey to her the title to the said tracts of land; she also then and there agreeing that she would pay the costs of the said proceedings, amounting to the sum of two hundred and sixty-seven dollars (\$267), which sum your oratrix then and there paid to the said Samuel Nathanson.

20 5. That in pursuance of said understanding, said Samuel Nathanson bid on the properties five thousand dollars (\$5,000) and the same were then and there struck off to him and the same have been conveyed by the Sheriff of the County of Monmouth to him, who claims now to hold the said properties. That the said Samuel Nathanson has not been in the possession of the said premises, but your oratrix has remained in possession thereof, without molestation from the said Samuel Nathanson.

6. That on December twenty-fifth, nineteen hundred and fourteen, the said Samuel Nathanson wrote to your oratrix's husband the following letter:

"Dec. 25, 1914.

Mr. R. D. NORTON,

Dear Sir:

30 If you intend to take title to property purchased by me Sept. last at Sheriff's sale you will have to do so by Jan. 1st, 1915. Should you fail to do so, I'll be compelled to sell them for whatever I can get and hold you for any deficiency. Furthermore, should you decide to take title, the mortgage will have to be cut down to \$3,500 on the two properties for one year on date as they are in very bad condition. Also all taxes, insurance, interest and costs will have to be cleaned up to date.

Hoping you will give this your immediate attention,

Yours respectfully,

S. NATHANSON."

Amended Bill of Complaint.

whereupon your oratrix's said husband, for your oratrix, wrote to the said Samuel Nathanson the following letter:

"Hightstown, N. J.,
December 28th, 1914.

Mr. Samuel Nathanson,
Long Branch, N. J.

Dear Sir:

Your letter of the 25th received. Will you please advise me how much your claims on the two properties amount to?

Please do this soon as you can figure it up, and write me.

Respectfully,
R. D. NORTON, L."

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to which the said Samuel Nathanson replied as follows:

"Dear Sir:

In reply to this letter would say that the claims on the two properties to date amount to \$5,700 dollars.

Respectfully,
S. NATHANSON."

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7. The complainant says that the mortgage which the defendant holds for five thousand dollars (\$5,000) was originally assigned by her to him on the eighteenth day of February, nineteen hundred and thirteen, under the following circumstances: That this complainant was greatly in need of the sum of five thousand dollars (\$5,000) to complete the purchase price of a certain tract of land in Long Branch, known as the Edward's Tract, and which sum of money the defendant Nathanson promised to let her have upon this condition and under these circumstances: That the said Nathanson had already agreed to loan her five thousand dollars (\$5,000) to complete the purchase of the Ed-

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Amended Bill of Complaint.

wards Tract, when, after the bargain was entered into for the said purchase, he stated to her that he would not let her have the money unless she would purchase of him Castle Garden tract for sixty-eight hundred dollars (\$6800), which price was greatly in excess of its value, as he well knew, and which was put in at that price as a cover for usury and bonus, and that he compelled her in order to secure the loan of fifty-two hundred dollars (\$5200), to execute to him three mortgages as follows: To assign the mortgage mentioned in paragraph two of the bill; to execute a mortgage for four thousand dollars (\$4,000) upon the Edwards Tract which she was about to purchase; and another mortgage for three thousand dollars (\$3,000) upon the Castle Garden property, which he was to convey to her in pursuance of the corrupt, usurious and oppressive bargain, in all amounting to the sum of Twelve thousand dollars (\$12,000). That the defendant well knew that the Castle Garden property was not worth more than thirty-five hundred (\$3500), and that all he had advanced upon the property was thirty-five hundred dollars (\$3500). Nevertheless, in her condition of distress and financial worry, and fearing that she would forfeit what she had already paid on the Edwards Tract, she made the agreement to purchase the same for sixty-eight hundred dollars (\$6800), and to allow him the difference between thirty-five hundred dollars (\$3500) and sixty-eight hundred dollars (\$6800) as a bonus, and she executed to him the assignment of the mortgage aforesaid and the two mortgages, one for three thousand dollars (\$3,000) and one for four thousand dollars (\$4,000) as aforesaid, including therein the thirty-three hundred dollar bonus, and thereupon assigned the mortgage.

(Amendment allowed in open court at the trial with permission to annex to bill of complaint. J. H. B.)

7½. And your oratrix further shows, that at the time that she applied to the said Samuel Nathanson for the loan aforesaid of \$5,000, the said Samuel Nathanson held a

Amended Bill of Complaint.

mortgage upon the "Castle Garden" property, and that at that time a decree in a foreclosure suit instituted in the Court of Chancery of this State by Samuel Nathanson, as complainant, and against Richard D. Norton and others, as defendants, had been made for the sale of the said premises; that said sale had been made by the sheriff of the County of Monmouth in October, 1912, and Samuel Nathanson at such sale purchased the said property for the sum of \$5,400.90; that the said Richard D. Norton had, immediately after the said sale and within a period of ten days from the sale filed objections to the confirmation of the said sale, upon the grounds that the decree for the complainant in the said foreclosure suit had been obtained fraudulently for an amount greater than was justly and honestly due the said Nathanson on his said mortgage, and that while said objections were pending, and after the said Nathanson had promised to loan to your oratrix the money aforesaid, the said Nathanson said to the said Richard D. Norton, who was the husband and agent of your oratrix, and conducted all this negotiation for the loans with Nathanson, that he would not loan any money to your oratrix unless they paid him the sum of \$6,800.00, either in cash or in securities of your oratrix, for his transfer of the title to "Castle Garden" property; that the said Samuel Nathanson, then and there taking advantage of the necessities of your oratrix, compelled your oratrix to give the mortgages as aforesaid, upon the Edward's tract and the Cooper Avenue properties, to secure the purchase price of the "Castle Garden" property, and that the sum of \$6,800.00, which the said Nathanson compelled your oratrix to pay therefore, was in excess of the amount due him on his said fraudulent decree, as aforesaid, and was in excess of the amount of this decree, and that your oratrix agreed thereto because of her necessities and the hardship of her condition at that time.

8. This complainant alleges that by reason of the defendant loaning to her fifty-two hundred dollars (\$5200),

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Amended Bill of Complaint.

which was the only money advanced, and the oppressive bargain and sale of the Castle Garden property for the sum of sixty-eight hundred dollars (\$6800), the said loan of fifty-two hundred dollars (\$5200) was given in pursuance of a usurious contract with a corrupt intent to violate and evade the statute against usury, and that this complainant is advised that inasmuch as the said defendant exacted and required of her to agree to pay upon the loan or forbearance of one hundred dollars a higher rate per year than the value of six dollars, and that the difference between fifty-two hundred dollars (\$5200) and the twelve thousand dollars (\$12,000) exceeds the rate of six dollars for the forbearance of one hundred dollars per year, as well as the difference between the interest on the said sum exceeds the rate of six dollars for the forbearance of one hundred dollars per year, the said transactions are usurious and illegal, oppressive and unconscionable, and that your oratrix is ready and willing to pay to him, the said Samuel Nathanson, interest on the said sum of fifty-two hundred dollars (\$5200), and to transfer to him the Castle Garden property upon his assigning to her the mortgage on the Edwards Tract for four thousand dollars (\$4,000), and the deeding to her the property which he purchased at the sheriff's sale, mentioned in paragraph two of this bill.

Your oratrix, therefore, prays that the defendant Samuel Nathanson and his wife Ida Nathanson, may answer without oath the bill of complaint as fully and entirely as if the same were here repeated and set forth, and that they may set forth the amount of money which was actually loaned to your oratrix on the mortgages above set forth; that an account may be taken of the dealings between your oratrix and the said Samuel Nathanson, with respect to the matters herein mentioned, and that your oratrix may be permitted, upon paying the sum of money, with interest and costs, which he actually loaned to her, to have Samuel Nathanson decreed to transfer to her the tracts mentioned in paragraphs

Amended Bill of Complaint.

one and two of this bill, to assign to her the mortgage on the Edwards Tract, upon this complaint conveying to him the Castle Garden property; and that your oratrix may have such further and other relief as may be just and equitable.

May it please your Honor, the premises considered, to grant unto your oratrix, the State's writs of subpoena issuing out of and under the seal of this Honorable court, directed to the said Samuel Nathanson and Ida Nathanson, his wife, commanding them on a certain day therein named, to be and appear before this Honorable court and then and there to stand to, abide by and perform such decree as your Honor shall make, and as shall be agreeable to equity and good conscience. 10

And your orator will ever pray.

A. V. DAWES,
Solicitor for and of Counsel with Complainant 20

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Answer to Amended Bill.

Filed May 21, 1915.

IN CHANCERY OF NEW JERSEY

	<i>Between</i>	}	On Bill; &c.
	Elizabeth C. Norton,		
10	<i>and</i>	}	Answer to Amended Bill.
	Samuel Nathanson, et ux.,		
	<i>Defendants.</i>		

The answer of the defendant Ida Nathanson, wife of Samuel Nathanson, to the amended bill of complaint of Elizabeth C. Norton, complainant.

20 This defendant for answer unto the said amended bill of complaint or unto so much thereof as she is advised it is material or necessary for her to make answer unto, answering says:

(1) This defendant admits the facts set forth in paragraphs two and three of said amended bill of complaint.

(2) This defendant denies the allegations of paragraphs one, four, seven and eight of said amended bill of complaint.

30 (3) This defendant has no knowledge or information in relation to the allegations set forth in paragraphs five and six of said amended bill, other than that derived from the said amended bill and the answer of her husband, Samuel Nathanson, thereto, and is unable to admit or deny the said allegations.

(4) This defendant submits to this honorable court that the complainant has not in and by her said amended bill made or stated such a case as entitles her in this honorable Court to any discovery from this defendant, or to any relief against her as to the matters contained in the said amended bill or any of such matters; and this defendant hopes she shall have and prays that she may have the same

Answer to Amended Bill.

benefit of this defense as if she had demurred to the said amended bill of complaint.

And this defendant prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

McDERMOTT & ENRIGHT,
Solicitors of Defendant.

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Answer to Amended Bill of Complaint.

Filed May 21, 1915.

IN CHANCERY OF NEW JERSEY

Between

Elizabeth C. Norton,

*Complainant,**and*

Samuel Nathanson,

Defendant.

On Bill &c.

Answer to Amended
Bill of Complaint.

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The answer of the defendant Samuel Nathanson to the amended bill of complaint of Elizabeth C. Norton, complainant.

This defendant for answer unto the said amended bill of complaint or unto so much thereof as is advised it is material or necessary for him to make answer unto, answering says:

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(1) That he denies that said complainant holds the mortgage set forth in paragraph one of the bill of complaint.

(2) This defendant admits the facts set forth in paragraph two of said amended bill.

(3) This defendant admits the facts set forth in paragraph three of said amended bill.

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(4) This defendant denies the allegations of paragraph four of said amended bill as therein set forth, but admits that Richard D. Norton, the husband of complainant, paid to this defendant on the fourteenth day of September, Nineteen hundred and fourteen, the day on which the Sheriff of Monmouth County advertised to sell and did sell the premises referred to in said paragraph four, the sum of Two hundred and sixty-seven dollars, under the following circumstances: The said Richard D. Norton appeared at the Sheriff's Office at the time fixed for the sale of said premises and requested that the sale be postponed, representing that if

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Answer to Amended Bill of Complaint.

it were laid over for two weeks he would bid a sum sufficient to cover the full amount of this defendant's decree and costs with the fees of the Sheriff. This defendant then agreed with the said Norton that the sale proceed and if the mortgaged premises were struck off to him he would convey the same to the said Richard D. Norton or to his wife, the complainant herein, if within thirty days thereafter they would pay the amount due him for principal, interest, costs and Sheriff's fees. The amount so due with interest calculated to the fourteenth day of October, Nineteen hundred and fourteen, the date fixed by the Sheriff for the delivery of his deed, was Five thousand seven hundred and eighty-six dollars and eighty-eight cents. The Sheriff thereupon struck off the property to this defendant, who then paid the Sheriff's fees as calculated by him. The said Richard D. Norton then delivered to this defendant a check for Two hundred and sixty-seven dollars, which was accepted upon the understanding that the said Richard D. Norton or the complainant could have assignment of this defendant's bid and obtain a deed from the Sheriff if within thirty days thereafter payment of the balance due this defendant under his execution should be made to this defendant or to the said Sheriff.

(5) This defendant admits that he bid on the said mortgaged premises and same were struck off to him at the sum of Five thousand dollars, this being the only bid made for same, but states that the full amount of his decree with taxed posts and Sheriff's fees was as stated in paragraph four of this answer. He further admits that the said lands and premises were conveyed to him by the Sheriff of the County of Monmouth and that he now holds title to the same. Except insofar as the same have been admitted herein this defendant denies each and every allegation of paragraph five of said bill.

(6) This defendant admits that he wrote to the said Richard D. Norton a letter of the general tenor and pur-

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Answer to Amended Bill of Complaint.

port first set forth in paragraph six of the said amended bill, but for greater certainty refers to the said letter. He admits receiving a letter from the said Richard D. Norton bearing date the twenty-eighth day of December, Nineteen hundred and fourteen, which appears to be correctly set forth in paragraph six; to this letter defendant replied promptly stating in round figures that the claims on the two properties amounted to about the sum of Five thousand seven hundred dollars.

10 (7) This defendant denies the allegations of paragraph seven of the bill of complaint.

(8) This defendant denies the allegations of paragraph eight of the said bill.

(9) This defendant further answering the said bill of complaint says, that he has been ready at all times since the said Sheriff's sale, held on the fourteenth day of September, Nineteen hundred and fourteen, to convey the said lands and premises purchased by him at said Sheriff's sale to the said Richard D. Norton or to the complainant upon the payment of the amount actually due him for principal, interest, costs and Sheriff's fees, after deducting the sum of Two hundred and sixty-seven dollars paid at the time of said sale, but this defendant states the fact to be that the buildings on said premises are in bad condition and greatly in need of repairs which should be promptly made, and that inasmuch as the time within which the premises were to be paid for by the said Richard D. Norton, or his wife, the complainant, has long since expired, that this defendant should not be required further to hold the said premises awaiting such payment. This defendant now tenders himself ready and willing to convey said premises upon the payment of the amount due to him as aforesaid, but submits that if such payment be not promptly made he should not be required further to retain the said premises subject to the demand of the said complainant.

30 (10) This defendant further answering says that the

Answer to Amended Bill of Complaint.

mortgage to secure the sum of Five thousand dollars referred to in paragraph two of the amended bill of complaint was originally given by W. Redman Hutchinson to the complainant; it bears date the sixteenth day of July, Nineteen hundred and twelve, was acknowledged the fifteenth day of November, Nineteen hundred and twelve, and recorded on the twenty-ninth day of November, Nineteen hundred and twelve in the Clerk's Office of the County of Monmouth in Book 447 of Mortgages, page 151, &c. Said mortgage and accompanying bond were assigned to this defendant by the said complainant on or about the eighteenth day of February, Nineteen hundred and thirteen by a deed of assignment duly executed in which the said complainant covenanted that there was then due upon said bond and mortgage the principal sum of Five thousand dollars, and interest, and guaranteed the punctual payment of the principal and interest of the said mortgage waiving notice of default by the mortgagor, his executors, administrators, heirs and assigns. Said bond and mortgage were sold and assigned to this defendant for the full amount of the principal thereof and the transaction was absolutely free from usury of any character or description. In said month of February, Nineteen hundred and thirteen, the said complainant without pressure by this defendant, acting through the said Richard D. Norton, her husband, purchased from this defendant a parcel of land in the City of Long Branch, known as the "Castle Garden Property," for the sum of Six thousand eight hundred dollars which was a fair price therefor, and purchased from other parties in the City of Long Branch another parcel of land in which transaction she needed Five thousand two hundred dollars in cash to complete the purchase. This defendant advanced to said complainant the said sum of Five thousand two hundred dollars; to secure said last mentioned sum and to pay said price of Six thousand eight hundred dollars for the Castle Garden property, an aggregate of Twelve thousand dol-

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Answer to Amended Bill of Complaint.

lars, a purchase money mortgage of Three thousand dollars on the Castle Garden property, a purchase money mortgage of Four thousand dollars on the other real estate purchased by complainant in Long Branch, and an assignment of the above mentioned bond and mortgage for Five thousand dollars made by said W. Redman Hutchinson to complainant were turned over to this defendant by complainant. In
10 this transaction or group of transactions no compulsion or oppression was attempted or exerted by this defendant, no usury or bonus was exacted by him, or paid by said complainant, or anyone for her to this defendant, nor was any money retained or withheld by this defendant as usury or bonus.

(11) And this defendant submits to this Honorable Court that the complainant has not in and by her said amended bill made or stated such a case as entitled her in this honorable court to any discovery from this defendant or to any
20 relief against him as to the matters contained in the said bill or any of such matters; and this defendant hopes he shall have and prays that he may have the same benefit of this defense as if he had demurred to the said bill of complaint.

And this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

McDERMOTT & ENRIGHT
Solicitors for and of Counsel with Defendant.

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Replication.

Filed June 7, 1915.

IN CHANCERY OF NEW JERSEY

<i>Between</i>	}	Replication.	10
Elizabeth C. Norton, <i>Complainant,</i>			
<i>and</i>			
Samuel Nathanson, et ux., <i>Defendants.</i>			

The plaintiff joins issue, on the answer of the defendants, to her amended bill of complaint filed in this cause.

A. V. DAWES,
Solicitor of Complainant.

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Conclusions.

IN CHANCERY OF NEW JERSEY

Filed Jan. 11, 1916.

Submitted, November 4, 1915. Decided, January 8, 1916

10 *Between*
 Elizabeth C. Norton,
 Complainant,
 and
 Samuel Nathanson, et ux.,
 Defendants. } Conclusions.

20 1. When a party is compelled to take goods at more than the market price in order to obtain a loan, the transaction is usurious. No contract, however framed, is good if the ultimate effect would be to secure more than the legal rate of interest.

 2. Where one man purchased land from another, at an exorbitant price, for the purpose of obtaining a loan, the seller making the loan to induce the purchase, the transaction was usurious, and the difference between the value of the land and what it was sold for, may be deducted from the debt.

30 3. The inquiry is not merely whether lands, goods or securities were sold for more than their market value, but whether the property was sold and bought above its market price, as part of the bargain for the loan of money.

 4. The burden of proving usury is upon the parties setting it up. The facts necessary to constitute it must be clearly established beyond reasonable doubt by the decided preponderance of evidence. It is not enough that the circumstances proved render it highly probable that there was a corrupt bargain; such a bargain must be proved and not left to conjecture.

40 5. Parties to a usurious contract can do nothing which will have the effect to validate it so as to deprive the debtor

Conclusions.

of his right to defend on the ground of usury, except by expunging its usurious element.

6. The defendant loaned the complainant \$5200 and sold her lands for \$6800, taking as security three mortgages aggregating \$12,000. Upon bill filed to set aside the transaction, evidences examined and HELD that the complainant's claim that the land was sold at an exorbitant figure and that the loan was made to induce the purchase, was not established by the evidence.

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ON FINAL HEARING

* * *

For the Complainant: Mr. Aaron V. Dawes.
For the Defendants: Messrs. McDermott & Enright;
Mr. William A. Stevens.

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BACKES, V. C.

The object of this bill is to set aside a transaction on the ground of usury. The defendant conveyed to the complainant a property called Castle Garden for \$6800, and loaned her \$5200. In acknowledgment, she assigned to him a mortgage of \$5,000 on two houses and lots on Cooper Avenue; executed a mortgage for \$4,000 on lands known as the Edwards Tract, and one for \$3,000 on Castle Garden. All of the property is located at Long Branch. The defendant foreclosed the \$5,000 mortgage, and took title under a Sheriff's deed. The other two mortgages are being foreclosed. The complaint is that at the time of the deal, Castle Garden was not worth more than \$3500, and that the complainant was compelled to take it at \$6800 to obtain the

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Conclusions.

loan; in short, that a bonus of \$3300 was exacted for the \$5,000 loan. The relief sought is that upon payment of the loan and a reconveyance of Castle Garden, the defendant be decreed to hand back the securities. The defense of usury is set up in the two pending foreclosure suits, and the three cases were tried as one.

10 The decision of the case turns upon the question whether the loan was made to induce the purchase of Castle Garden at an exorbitant price, for, if it were, then the contract to pay the excess was a violation of the statute which forbids the taking, directly or indirectly, for loan of any money, above the value of six dollars, for the forbearance of one hundred dollars for a year. C. S. 5704. In the construction of the statute against usury the courts have held with undeviating uniformity that where the real transaction was a loan of money, no shift could evade the statute. No matter under what guise the loan was concealed, whether by

20 sale of goods, transfer of stock, taking bond for larger amount than loaned, passing off depreciated paper, or by any other expedient, the court will strip off guise, and ascertain the true nature of the transaction. When the real transaction is a loan of money, and the lender attempts to receive from the borrower more than the amount actually advanced with lawful interest, no matter under what pretext, it contravenes the policy of the statute, and incurs its penalty. Both the English and American authorities in support of this principle are very numerous. *Campion v. Kille*, 14 N. J. Eq., 229. Lord Mansfield, in *Floyer v. Edwards*, 1 Cowp. 112 (98 Eng. Reprint, 995), says that "If the substance is a loan of money, nothing will protect the taking more than 5 per cent.; and though the statute mentions only 'for loan of moneys, wares, merchandise, or other 'commodities'; yet any other contrivance, if the substance of it be a loan, will come under the word 'indirectly'." The inquiry is not merely whether lands, goods or securities were sold for more than their market value, but whether the prop-

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Conclusions.

erty was sold and bought above its market price, as part of the bargain for the loan of money. Where one man purchases land from another, at an exorbitant price, for the purpose of obtaining a loan, the seller making the loan to induce the purchase, the transaction was usurious, and the difference between the value of the land and what it was sold for, may be deducted from the debt. *Earnest Adm. v. Hoskins*, 100 Pa. St. 551; 39 Cyc. 929.

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We must then inquire into what the value of Castle Garden was within the reasonable conception of the parties, and was it taken over at a higher figure, as a part of the bargain for the loan of the money. It rests on the complainant to show the value. *Grosvenor v. Flax and Hemp Co.*, 2 N. J. Eq., 453. The complainant's contention is that on November 20, 1912, she agreed to buy the Edwards Tract for \$7,000, plus taxes, and before doing so, her husband obtained the defendant's assurance that he would lend her \$5,000 towards the purchase-money; that later on he declined to advance the money unless the complainant would buy Castle Garden at the figure named, and give the securities above stated and that being unable to get the money elsewhere to pay for the Edwards Tract, she, under pressure of the circumstances, after some show of resistance, submitted to the imposition. This, in substance, is the testimony of Mr. Norton, the complainant's husband, who dealt for her, or rather, as I am inclined to believe, negotiated his business affairs in her name. In all of the transactions disclosed by the record, she was negligible. The defendant's version is: He held a mortgage of \$4,000 on Castle Garden that had been foreclosed, and at the sale of which, in October, 1912, he was the purchaser at \$5400.90, the principal and accumulated interest of his debt and the costs of the suit. Objections were filed to the confirmation of the sale by Norton, who was a subsequent encumbrancer, and by the Lerner Block Norton Company, a creature of Norton's, which held the fee, on the ground that the defendant's decree was ex-

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Conclusions.

cessive, in that there had been paid \$500 on account of the principal and also some interest, for which credit had not been given. While the objections were pending, the defendant says Norton and Mr. Lerner, of Norton's company, dickered with him from time to time for the property, for which he asked \$7500, and finally, in December, agreed to \$6800 as his lowest figure. The matter then hung fire, he relates, until January following, when Norton applied for a loan of \$5000, which he promised to make, Norton agreeing at that time to take Castle Garden at \$6800. He admits he "did not think he would have let Norton have the loan unless he straightened out the Castle Garden matter; that he didn't say he wouldn't; he was willing to, and said to him that if he would straighten it out, he would let him have the money." The defendant allows he was anxious to clear up the affair, and explains that with the objections hanging he couldn't do anything with the property, adding that if it had not been for the objections he would not have been so anxious.

The sale and the loan were associated and regarded by both parties as a \$12,000 transaction, and the issue of fact calling for settlement is, was the price of Castle Garden the result of a deliberate bargain, and as such simply an element of the debt of \$12,000; or, was it coerced to augment the debt to that sum? I do not intend to imply that to establish usury, oppression must be proved, for oppression is presumed in law when usury is a settled fact, however it may have been obtained. The burden of proving usury is upon the party setting it up, and the facts necessary to constitute it must be clearly established beyond reasonable doubt by the decided preponderance of evidence. It is not enough that the circumstances proved render it highly probable that there was a corrupt bargain; such a bargain must be proved and not left to conjecture. *Berdan v. Trustees &c.*, 47 N. J. Eq., 8; aff; 48 N. J. Eq., 309. I take little stock in Norton's story that the defendant had promised the money and that he was

Conclusions.

pinched into the arrangement by the dilemma of its refusal. Norton says that the promise was made before he agreed, on November 20th, to buy the Edwards Tract, and that Castle Garden was injected afterwards. He puts it as much as a week before that time, (although later he said it might have been on the same day; when the impossibility was pointed out), but in this he must be mistaken, because it appears that the Edwards Tract was offered at public auction by the receiver of the Edwards Company on the afternoon of November 19th, and struck off to a purchaser who failed to comply with the terms of the sale. Norton admits that he did not attend the auction and knew nothing of it until afterwards, yet, on the following day, he made a private bargain for the property and gave his check for \$200 as a forfeit. The events are not in dispute and they shake confidence in the correctness of the claim that he had a promise of the money so far in advance. And, further, Norton's concern was at the time in default to the defendant, and Norton was in actual hostile litigation with him over his asserted rights. Now, is it likely in these circumstances that he would seek the defendant's help in a new speculation and that the defendant would promise his aid with so large a sum, without first having adjusted their differences? It is also asking much of the court to accept Norton's view-point, that relying upon the defendant's promise, the refusal of the money at the last minute placed him in a situation where he was compelled to submit to the extortion. It appears that Norton's wife at that time held the \$5,000 mortgage, well secured on the Cooper Avenue property, and the Edwards Tract, (cheap at \$7,000,) was about to be conveyed to her, to pay on which she had \$2,000. It is incredible that upon these properties less than fifty per cent. of their clear value could not have been raised at any money institution and at six per cent., the rate promised to the defendant. Such securities are rare and for them money is a ready commodity. I appreciate that Norton and his wife testified that they tried

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Conclusions.

10 to raise the money elsewhere and couldn't, but of this I have misgivings. They were seemingly not pressed for time in which to get it. It does not appear what the condition of the Edwards sale was, as to when it was to be closed, but the record does show that the receiver's deed bears date January 24, 1913, which may be assumed to be the agreed date for its delivery, and it is also shown that the defendant's check for \$5200 is dated February 25th following, and that the deed was not recorded until March 3rd. Thus it appears that at least a month elapsed between the time as the Nortons say, pressure was brought to bear upon them and when they succumbed. In the meantime there was small danger of losing the prize of the Edwards Tract, and much time in which to turn themselves.

20 The Nortons further advance that they submitted to this unconscionable exaction of \$3300 to save a forfeiture of the \$200 earnest money paid on the Edwards Tract, and also that the prospective profit of that purchase was a persuasive factor, from which they hoped to recoup. The first borders on the absurd, and the second is disingenuous. Norton is a sharp, shrewd, trader and a man of affairs, far superior in intelligence, in the financial and commercial sense, to the defendant, and it is highly improbable that he was lured to the imposition by the glowing prospects of the Edwards purchase, especially when he had abundance of opportunity to escape. It seems to me that his reason for paying what he now declares to be excessive value, may fairly be attributed to another and more covetous motive.

30 That Norton and the defendant negotiated at arms length for the sale of Castle Garden, and long before the loan was made, is shown pretty clearly by the proofs. Castle Garden is a large two-story frame structure, covering the whole of an irregular shaped lot at the corner of North Broadway and Long Branch Avenue, running fifty feet on North Broadway and ninety-two feet on Long Branch Avenue. The other lines are 47x74 feet. It is on the most prominent business

Conclusions.

street of Long Branch, though perhaps not in the more desirable locality. The first floor is taken up by three small stores, and the rest is cut up into twenty-four rooms used for tenements. It was a wheelwright and blacksmith shop, remodeled and added to. It has a dilapidated appearance and is sadly in need of repairs, due to neglect during the past few years. It was in better shape when the defendant sold it to the Nortons three years ago. Groups of three rooms rent for \$7 and \$8 a month; one store for \$20, and the other two for \$10 each, a renting capacity of approximately \$100 a month. The yield, however, is less by at least one-half, due very much to lack of care and proper management. Norton says it was worth about \$3500. His partner Lerner's opinion is that \$3500 to \$4,000 would be a fair price. Holtson, a real estate and insurance agent, says \$3500 or \$3600. Mr. Chandler, another of the complainant's witnesses, estimates its value at \$5,000. The defendant's witness Green, a real estate dealer, values the land at \$2,000 and the building between \$4,000 and \$4500. William H. Brehm, an owner of and dealer in property in the immediate locality, thought \$7,000 a fair price. His judgment is based largely upon an income capacity of \$100 a month, which he says, with care, it could be made to produce. The defendant says he valued it at and his asking price was \$7500. Jarsky, another witness in his behalf, a real estate dealer, puts the value at \$8,000. These opinions, standing alone, are of very little help, but the circumstantial testimony in the case, much of which is not disputed, fairly indicates what the contracting parties thought and regarded the property to be reasonably worth. The evidence of the complainant of estimates approximately of \$3500, is inadmissible. Holsten considers the land worth \$2500 and the building \$1,000, although for the past seven years he carried fire insurance on it for \$3,000 and this, after inspection and appraisal. The insurance at one time during this period was \$4,000. When Lerner bought the property in 1907 he paid \$4750, and afterwards improved

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Conclusions.

it, spending \$1,000 to \$1500 in remodeling and repairs. In addition to the defendant's \$4,000 mortgage lien, Norton and his associate placed two or three blanket mortgages on it, aggregating upwards of \$10,000. This, to my mind, indicates that they considered their equity of some, if not considerable, value. They wanted the defendant's mortgage foreclosed, possibly to wipe out the subsequent liens, and when they found that the defendant and not they were to gain the benefit of the sale, they objected to its confirmation. While the grounds of the objection do not assail the bid of \$5400 as inadequate, it seems to me that inasmuch as the objection could not be sustained, except on this ground (*Cropper v. Brown*, 76 N. J. Eq., 406) it is to be presumed to have been within their contemplation; and suggestive in Norton's reason for filing them, that he "did not want Mr. Nathanson to get away with the property without paying the different ones that had claims against it what was their dues." I think it is a fair inference that they regarded the defendant's bid of \$5400 as inadequate, under the peculiar and disadvantageous circumstances in which they found themselves. Jarsky, the real estate agent already mentioned, testified that in the fall of 1912 Norton asked him to sell the property and when asked how much he wanted, said that he had paid \$10,000 for it. That one Chris Brehm offered him (Jarsky) \$7500 for it, which he submitted to Lerner, who replied that he would take no less than \$9,000, his bottom price; and that later he saw Norton, who turned down the offer. Norton denies this, and Lerner says he don't remember. Brehm, to some extent, corroborates Jarsky in that he says Jarsky showed him the property and asked \$9,000 for it, and that while he did not make an offer of \$7500 in cash, he did say he did not think he would pay over \$7500 for it. And, we have this undisputed evidence given by a disinterested and believable witness: Miss Throckmorton, a stenographer in the law office of Mr. Benjamin Morris, says that in the summer of 1912 Lerner and Norton applied to Mr. Morris for

Conclusions.

a loan on Castle Garden, of between \$4,000 and \$5,000, and that "they stated the property was worth at a low valuation \$8,000; but that it brought an income (on) \$10,000, bringing in about \$1,000 a year rental." While these facts may not prove Castle Garden to have been worth \$6800 at the time of the sale, they tend to show the mood in which the parties approached the negotiation, and shed light upon whether it was a sale or a hold-up.

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There is little room to doubt that after the defendant purchased Castle Garden at sheriff's sale, the Norton-Lerner combination (and I speak of them as such because it is patent that the complainant, Mrs. Norton, was a mere cipher and that her husband and Lerner were the real parties in interest in the Edwards purchase and in Castle Garden) was keen to get it back and at the lowest price it could be had. Lerner's testimony evinces this. He admits he tried several times before the loan was spoken of. They wanted to buy and the defendant was ready to sell, but for no less than \$6800—the odd figure of \$6800 indicates that they haggled—and in this situation, the agreement was reached and it does not appear to have been otherwise than upon the basis of what Norton and Lerner at that time regarded the property to be worth to them. Now, in this state of affairs, how can it be said that the agreement of the defendant to make the loan, if they would buy at his figure, was unlawful. The question is not whether the purchase-price was in fact in excess of the fair market value, but the decisive point is, was it mutually recognized as such and was the sale induced exclusively by the promise of the loan? I do not find this established.

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On the whole case, I feel that the complainant is much in the same position that Dowdall was, in *Dowdall v. Lenox*, 2 Edwards Chan., 267, which Vice-Chancellor McCoun discusses in a manner fitting to the present situation. He says:

"There is no evidence showing that Dowdall was in such a state of distress or embarrassment as would probably induce a man to agree to hard and oppressive terms

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Conclusions.

of a proffered loan in order to relieve his wants. His condition was not that of a debtor pressed by his creditors and his property about to be sacrificed by forced sales or his person imprisoned and whose anxiety or eagerness to obtain the means of relief would, in some measure, deprive him of the faculty of acting and judging with the coolness and deliberation which belongs to a free agent. His incentive was of another kind; not one arising from distress and pecuniary embarrassment, but from a desire to engage in a profitable enterprise with the confident hope of large gains. There was time for calculation and reflection; and if he found the terms of a loan and the responsibilities he must assume to obtain it greater than his anticipated profits would warrant, he had only to reject the terms and abandon the undertaking. A person in this situation taking up a loan for such purposes and upon terms which may appear to be exorbitant yet founded upon calculation and the free exercise of his own judgment, however the statute against usury may be violated, cannot be said to be imposed upon by the lender or to have had an advantage taken of his necessities. It is not the case of distress on one side which the law can notice and of undue influence and oppression on the other: *Ramsbottom v. Parker*, 6 Mad. C. R. 5; and in this respect I think it is clearly distinguishable from *Browne v. O'Dea*, 1 Sch. & Lef. 115; *Drew v. Power*, *Ib.* 182; and *Molloy v. Irvin*, *Ib.* 310; and others of this class which are reviewed in *Moore v. M'Kay*, where the able judges who then presided in the Chancery of Ireland concludes by saying 'that he considered himself as duly applying the protective policy of the court and as acting in consistency with all preceding judgments, when he declares that to induce the interference of the court, there must be some evidence or legal presumption of the loan being used as a means of restraint or undue influence to obtain an unjust profit.'"

Moreover, the conduct of the Nortons after the loan and

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until this suit was brought, is significant. While parties to a usurious contract can do nothing which will have the effect to validate it, so as to deprive the debtor of his right to defend on the ground of usury, except by expunging its usurious element (*Trusdell v. Dowden*, 47 N. J. Eq., 396), yet their action may be looked to as reflecting correctly their previous attitude. The defendant advanced the \$5200 in February of 1913, but the title to Castle Garden was not taken by the complainant until the following August, and then without complaint or protest. The Lerner-Nortons have at all times been in possession, collected the rents, and with regularity paid the interest and taxes, and when the defendant foreclosed the \$5,000 Cooper Avenue mortgage and bought it in at sheriff's sale, Norton entered into an agreement with him that he should purchase it for, and convey it to, the complainant upon the payment of the amount of the decree and costs; and to secure this he paid the defendant the costs of the litigation, amounting to \$267. In fact, there was no claim made at any time that usury played a part in the transaction, until after the complainant defaulted on that agreement, and the defendant attempted to collect his dues. The filing of this bill gave the first intimation of the Nortons dissatisfaction with their bargain. Courts are prone to denounce usury and equity is ever ready to relieve the oppressed: but when its aid is sought on this ground it will not only carefully scrutinize the transaction to discover whether the offence has been committed, but will be as watchful to observe that the plea is not the guise of a disappointed dealer in which he seeks to escape liability.

If the defendant had realized \$5400, it would have made him whole so far as his lien on Castle Garden was concerned, and the taking of the difference between that sum and \$6800 is pointed to as plenary proof of usury. This cannot be affirmed, because the defendant had changed his status from lien-holder to owner; *Cropper v. Brown*, *supra*; *Knickerbocker Tr. Co. v. Carteret Steel Co.*, 81 N. J. Eq., 130, 518;

Conclusions.

and it was his privilege to bargain for the best price, and the assumption of illegality is not permissible if that price, though profitable, was agreed upon by the parties, influenced by their impressions of the value of the property.

10 It is also contended that the defendant's admission on the stand that he would not have let Norton have the loan unless he straightened out the Castle Garden matter, proves that the purchase was made under pressure. I do not so interpret his language or sentiment. His explanation, as already referred to, shows the fix he was in and why he acted. His rights as a purchaser under the sheriff's sale of Castle Garden were then being held up by Norton, et al, and his disinclination to further accomodate may properly be ascribed to his resentment of this interference. Further dealings were out of the question, so far as they were concerned, until the objections to the sale were withdrawn, and the matter cleared up. The settlement of the litigation may have 20 comprehended the purchase of the property, but the purchase was not necessarily an element of the adjustment. Indeed it is not a remote supposition that these real estate operators availed themselves of the objections to depress the defendant's price.

The complainant has failed to establish usury, and her bill will be dismissed with costs. The defendant is entitled to a decree in his two foreclosure suits, with costs.

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Final Decree

Filed Jan. 20, 1916.

IN CHANCERY OF NEW JERSEY

Between

Elizabeth C. Norton,

Complainant,

and

Samuel Nathanson and Ida

Nathanson, his wife,

Defendants..)

On Bill, &c.
Final Decree.

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This cause coming on to be heard in the presence of Aaron V. Dawes, of counsel with the complainant, and McDermott & Enright and William A. Stevens, of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by her in her bill of complaint,

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IT IS on this 18th day of January, 1916, on motion of McDermott & Enright, solicitors of defendants, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED, that the complainant's bill be and the same is hereby dismissed, with costs.

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E. R. WALKER, C.

Respectfully advised:

JOHN H. BACKES,

V. C.

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Complainants' Exhibits.

COMPLAINANTS' EXHIBITS.

- 10 C-1 (page 5 of testimony) Certified copy of deed made by Samuel Nathanson and wife to Elizabeth C. Norton, bearing date August 30, 1913, conveying premises known as Castle Garden property situate in the City of Long Branch, Monmouth County, New Jersey, on the northeast corner of the Eatontown and Seashore Turnpike or Broadway, and Long Branch Avenue.
- C-2 (page 7) Bond, made by W. Redman Hutchinson to Elizabeth C. Norton, dated July 16, 1912, to secure the sum of \$5,000 on July 16, 1915, with interest.
- 20 C-3 (page 7) Mortgage, dated July 16, 1912, made by W. Redman Hutchinson to Elizabeth C. Norton, to secure the sum of \$5,000 on July 16, 1915, with interest at 6 per cent., recorded Monmouth County Clerk's Office November 29, 1912, in Book 447 of Mortgages page 151 &c. covering two parcels of land described as first tract and second tract, and known as the Hutchinson or Cooper Avenue properties.
- 30 C-4 (page 7) Assignment of mortgage made by Elizabeth C. Norton to Samuel Nathanson dated February 18, 1913, recorded March 3, 1913, assigning and transferring the bond and mortgage exhibits C2 and C3. This assignment contains a guarantee in the following language: "I hereby guarantee the punctual payment of the principal and interest of said mortgage, waiving notice of default by the mortgagor, his executors, administrators, heirs and assigns."
- 40 C-5 (page 7) Check, dated Long Branch, N. J., Febru-

Complainants' Exhibits.

ary 25, 1913, drawn by Samuel Nathanson on First National Bank, to the order of Parker & VanGelder, Attorneys, for the sum of \$5200, endorsed "Pay to the order of Theodore F. Bailey, receiver Edwards Lumber & Coal Company, Parker & VanGelder, Attys; For Deposit, Theo. F. Bailey, Recr. of The Edwards Lumber & Coal Company, per W. R. Edwards."

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C-6 (Page 30) Letter. (See original bill).

C-7 (Page 30) Letter. (See original bill).

C-7 (Page 139) Check, dated November 20, 1912, for \$200.

No..... 55-404

Hightstown, N. J., Nov. 20, 1912

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FIRST NATIONAL BANK OF HIGHTSTOWN

Pay to the order of Theo. F. Bailey

Two Hundred.....Dollars

\$200.00

L. C. NORTON.

Pay to the order of
The Long Branch Banking Co.,
Long Branch, N. J.
Theodore F. Bailey, Receiver.

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Pay to the order of
Any Bank, Banker, Banking or Trust Co.
(All previous restrictive endorsements guaranteed)
Long Branch Banking Company
55-223 Long Branch, N. J. 55-223
Henry Joline, Cashier.

C-8 (Page 140) Deed, made by Theodore F. Bailey, re-

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Complainants' Exhibits.

ceiver of Edwards Lumber & Coal Company to Elizabeth C. Norton, dated January 24, 1913, acknowledged January 24, 1913, and recorded in Monmouth County Clerk's Office.....1913, in Book..... of Deeds page.....

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THIS INDENTURE made this twenty-fourth day of January, A. D. Nineteen hundred and thirteen by and between THEODORE F. BAILEY, a Receiver appointed by the Chancellor of the State of New Jersey, party of the first part;

AND ELIZABETH C. NORTON of the Borough of Hightstown, in the County of Mercer and State of New Jersey party of the second part, WITNESSETH:

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THAT WHEREAS in and by an order of the said Court made on the seventeenth day of January, A. D. Nineteen hundred and ten, in a certain cause in said Court pending, in which Thelbert Edwards is complainant, and Edwards Lumber and Coal Company, a corporation heretofore organized and doing business under the laws of the State of New Jersey, is defendant, it was ordered among other things that the said Theodore F. Bailey be appointed Receiver of the said Edwards Lumber and Coal Company with the usual powers of Receivers in equity, upon his taking the oath required by law and giving bond in the penal sum of Twenty-five thousand dollars with sufficient sureties to be approved by a Special Master of this Court, and that upon approval and filing of such bond, the said Theodore F. Bailey should be vested with all his rights, and powers as such Receiver.

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AND WHEREAS on the twenty-fifth day of January, A. D. Nineteen hundred and ten, said Receiver duly qualified as such in accordance with said order.

And whereas the said Receiver did advertise cer-

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Complainants' Exhibits.

tain lands, of which the hereinafter described lands are a part, for sale at public vendue to the highest bidder, on Tuesday, the nineteenth day of November, A. D. Nineteen hundred and twelve, between the hours of twelve and five o'clock (at two o'clock) on said day, on the premises known as Edwards Mill on Broadway, in Long Branch, New Jersey, adjoining the New York and Long Branch Railroad Company, did expose the property called the Second Tract, known as the Hardware Store and which is more particularly hereinafter described, to sale at public vendue to the highest bidder, subject to the confirmation of the sale by the Court, and ABRAHAM SHAPSCHNICK bidding therefore the sum of Two thousand three hundred and fifty dollars, which was the highest bid offered, the Receiver held the said bid in suspense; and at the same time and place the said Receiver did expose the Third Tract on the south side of Broadway, known as the Coal and Wood Yard as hereinafter particularly described, to sale at public vendue to the highest bidder and HARRIS SHAPIRO bidding therefore the sum of Three thousand dollars and he being the highest bidder therefor, the said Receiver held the said bid in suspense; and also at the same time and place the said Receiver did expose the said Second Tract and Third Tract as hereinafter particularly described, to sale at public vendue to the highest bidder and according to the conditions of sale, and no further or other bid at public vendue being made to the said Receiver, he held the said two bids in suspense according to the said conditions of sale as advertised, and that thereupon Elizabeth C. Norton did offer her private bid for the said Second Tract and Third Tract of the sum of Seven thousand dollars and the taxes assessed against the said Second Tract and Third Tract in

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Complainants' Exhibits.

10 the year Nineteen hundred and twelve, and the said Receiver having elected to accept the private bid of Elizabeth C. Norton for the said Second Tract and Third Tract as above described according to his acceptance in writing, bearing date the thirty-first day of December, A. D. Nineteen hundred and twelve, and thereupon did contract with the said Elizabeth C. Norton to sell the said Second Tract and Third Tract to her, upon her said bid for the same of Seven thousand dollars, and the said Receiver did make his report as aforesaid to the court, which said report of sale of the said Second Tract and Third Tract for the sum of Seven thousand dollars and taxes assessed in the year 1912 against said two tracts, was approved by the oath of the said Receiver, and that the said sale was shown by the proof of two dis-interested real estate agents who were familiar with the value of the premises that the sale was made for full value of the said lots and premises, and that the said sale for the said price was not detrimental to the interest of the various parties.

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30 AND WHEREAS the said party of the second part has bid at private sale for the said real estate, being the premises hereinafter particularly described as Second Tract and Third Tract, the sum of Seven thousand dollars and the taxes assessed in the year Nineteen hundred and twelve, which is the highest and best bid or offer received therefor.

40 AND WHEREAS by another order of the said Court made and entered in the cause aforesaid, on the fourteenth day of January, A. D. Nineteen hundred and-thirteen, filed on the twenty-first day of January, A. D. Nineteen hundred and thirteen, it was ordered that the said bid or offer at private sale be approved and accepted and the said sale be confirmed, and that the said Receiver should sell the same, transfer

Complainants' Exhibits.

and set over unto said party of the second part the said Second Tract and Third Tract of real estate, being the premises hereinafter particularly described for the said sum of Seven thousand dollars, being the amount offered therefor by the said party of the second part as aforesaid.

NOW THEREFORE, in consideration of the premises and in obedience to the last mentioned order and for the purpose of giving effect to the same, and in consideration of the sum of Seven thousand dollars and the taxes assessed in the year 1912 against said two tracks in hand paid by the said party of the second part to the said party of the first part, has granted, bargained and sold and by these presents does grant, bargain, sell and convey unto the said party of the second part, her heirs and assigns forever, all those certain lots, pieces or parcels of land, situate, lying and being in the City of Long Branch, in the County of Monmouth and State of New Jersey and known and designated as follows, as Second Tract and Third Tract, to wit:

SECOND TRACT: On the south side of Broadway, known as the Hardware Store.

BEGINNING at a point on the south side of Broadway, where the same is intersected by the east line of the right of way of the New York and Long Branch Railroad; thence (1) along the south side of Broadway and in an easterly direction sixty-one feet and three inches to the centre of the Brook; thence (2) along the centre thereof, and in a southerly direction one hundred and sixty-nine feet, more or less, to the east line of the right of way of the New York and Long Branch Railroad; thence (3) along the east line thereof north forty-seven degrees and fifty-one minutes west one hundred and seventy-seven feet,

Complainants' Exhibits.

more or less, to the south side of Broadway and the place of beginning.

THIRD TRACT: On the south side of Broadway, known as the Coal and Wood Yard.

10 BEGINNING at a point on the south side of Broadway, where the same is intersected by the west line of the right of way of the New York and Long Branch Railroad; thence (1) along the south line of Broadway south forty-seven degrees and seven minutes west, forty-four feet to the northeast corner of property of Mary D. Seymour; thence (2) along the east line thereof south thirty-five degrees and thirty-three minutes east, two hundred and thirteen feet and nine inches, to the southeast corner of the said Seymour lot; thence (3) along the south line thereof, south fifty-four degrees and seventeen minutes west eighty-nine feet and six inches to the east line of property belonging to one Brinley; thence (4) 20 along the east line thereof south twenty-five degrees and three minutes east three hundred and forty-eight feet; thence (5) north fifty-nine degrees and thirty-two minutes east, seventy-five feet; thence (6) north three degrees and one minute west three hundred and thirty-one feet and six inches to the west line of the right of way of the New York and Long Branch Railroad; thence (7) along the west line thereof 30 north forty-seven degrees and fifty-one minutes west three hundred and one feet and six inches to the south side of Broadway and the place of beginning, with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all reversions, remainders, rents, issues and profits thereof, and all estate, right, title interest, claim and demand whatsoever, either in law or in equity of the party of the first part as such Receiver aforesaid, or of the said Edwards Lumber and Coal 40

Complainants' Exhibits.

Company, body corporate, of, in and to the above described premises with the hereditaments and appurtenances; to have and to hold the same unto the said party of the second part, her heirs and assigns to her and their only proper use and benefit forever.

IN WITNESS WHEREOF, the party of the first part as such Receiver as aforesaid, has hereunto set his hand and seal the day and year first above written. 10

THEO. F. BAILEY, *Receiver.*

Signed, sealed and delivered:

In the presence of
W. S. B. PARKER.

STATE OF NEW JERSEY. }
COUNTY OF MONMOUTH. } ss.

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BE IT REMEMBERED, that on this Twenty-fourth day of January, in the year of Our Lord One thousand nine hundred and thirteen, before me, a Master in Chancery of New Jersey, personally appeared THEODORE F. BAILEY, Receiver of the Edwards Lumber and Coal Company, body corporate, who, I am satisfied is the grantor mentioned in the within indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 30

W. S. B. PARKER,
M. C. C. of N. J.

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Defendant's Exhibits.

DEFENDANT'S EXHIBITS.

- 10 D-1 (Page 101) Bond, made by Elizabeth Norton and Richard D. Norton, her husband, to Samuel Nathanson, in the penal sum of \$8000, dated February 13, 1913, to secure the sum of \$4000 on the 13th day of February, 1916, with interest at 6 per cent., payable semi-annually, containing a default clause under which the principal is to become due at the option of the mortgagee if interest remains unpaid for thirty days or any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien shall remain unpaid and in arrear for the space of thirty days.
- 20 D-2 (Page 101) Mortgage, dated February 13, 1913, made by Elizabeth Norton and Richard D. Norton, her husband, to Samuel Nathanson, to secure the sum of \$4000, according to the conditions of bond Exhibit D-1, with a similar default clause and a clause providing for insurance of not less than \$4000, covering premises known as the Edwards property, conveyed to Elizabeth Norton by Theodore F. Bailey, receiver of Edwards Lumber & Coal Company by deed dated January 24, 1913, "This mortgage being given to secure part of the purchase money paid for said conveyance." Acknowledged February 15, 1913, and recorded March 3, 1913, in the Clerk's Office of Monmouth County in Book 451 of Mortgages page 408 &c.
- 30 D-3 (Page 102) Bond, made by Elizabeth C. Norton and Richard D. Norton to Samuel Nathanson, in the penal sum of \$6000, dated August 30, 1913, to secure the sum of \$3000 in three years from date, with interest at 6 per cent., payable semi-annually, with

Defendant's Exhibits.

default clause providing that if any default be made in the payment of interest and same shall remain unpaid and in arrear for thirty days the principal sum with all arrearage of interest thereon shall, at the option of the obligee, become due and payable.

- D-4 (Page 102) Mortgage, dated August 30, 1913, made by Elizabeth C. Norton and Richard D. Norton, her husband, to Samuel Nathanson, to secure the sum of \$3000 in three years from date, with interest at 6 per cent. per annum, payable semi-annually, according to the conditions of above recited bond, Exhibit D-3. With a clause providing for insurance to an amount not less than \$3000, and an additional clause in the following language:

“An it is hereby expressly agreed, that should any default be made in the payment of the said interest, or any part thereof, on any day whereon the same is made payable, as hereinbefore expressed, and should the same remain unpaid and in arrear for the space of thirty days, that, then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of money, with all arrearage of interest thereon, shall at the option of the said party of the second part, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the time limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding, as by said bond or obligation and the conditions thereof, reference being thereunto had may more fully appear.

And it is also agreed by and between the parties to these presents, that the said party of the first part shall

Defendant's Exhibits.

10 and will pay in full, on or before the twentieth day of December in each year while this Mortgage remains in force, all taxes levied or to be levied upon the said mortgaged premises; and will not claim any credit upon, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part."

20 This mortgage covers the Castle Garden property situate in Long Branch on the northeast corner of the Eatontown and Seashore Turnpike (or Broadway) and Long Branch Avenue. This mortgage is a purchase money mortgage "and is given to secure a part of the purchase price for the lands above described." Acknowledged August 30, 1913, before Charles E. Stults, a Commissioner of Deeds, and recorded October 14, 1913, in the Clerk's Office of the County of Monmouth in Book 463 of Mortgages page 361 &c.

30 D-5 (Page 103) Original record as it remains in the Clerk's Office of the Court of Chancery of a cause wherein Samuel Nathanson was complainant and Jack Sullivan, Joseph I. Bluestone and Max M. Friedman were defendants (Docket No. 37-557), foreclosing a mortgage upon the Hutchinson or Cooper Avenue properties.

40 D-6 (Page 104) Deed, dated October 12, 1914, made by Wilbert A. Becroft, Sheriff of the County of Monmouth, to Samuel Nathanson, setting forth at length a writ of execution issued out of the Court of Chancery of New Jersey tested July 25, 1914, in

Defendant's Exhibits.

which is recited the final decree in above cause wherein Samuel Nathanson was complainant and Jack Sullivan and others defendants, dated June 9, 1914, in which it was ordered that the premises therein described, being the Hutchinson or Cooper Avenue property, be sold to pay and satisfy unto the complainant, Samuel Nathanson, the sum of \$5417.50, the principal and interest secured by a certain mortgage given by W. Redman Hutchinson to Elizabeth C. Norton and assigned to complainant, bearing date July 16, 1912. (See complainant's Exhibits 2, 3 and 4), with lawful interest thereon from June 6, 1914, with taxed costs of complainant, which amounted to \$151.52. This Sheriff's deed sets forth a sale under said execution, taking place on September 14, 1914, at which sale complainant Samuel Nathanson bid the sum of \$5000 (\$4000 for the first tract and \$1000 for the second tract) for said tracts, and conveys said premises to said Nathanson for the consideration of \$5000. Acknowledged October 12, 1914, and recorded October 16, 1914, in Monmouth County Clerk's Office in Book 983 of Deeds page 438.

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- D-7 (Page 103-104) Original record as it remains in the Clerk's Office of the Court of Chancery in a cause wherein Samuel Nathanson was complainant and The Lerner, Block, Norton Company, body corporate, William Kirby, Richard D. Norton, Stewart J. Rogers and Joseph I. Bluestone were defendants, a proceeding brought to foreclose a former mortgage on the Castle Garden property. (Docket No. 34-368). The final decree in this cause directs that the mortgage premises be sold to pay and satisfy in the first place unto the said complainant Samuel Nathanson the sum of \$4977.33, with interest from July 19, 1912, and in the second place unto the said defendant

30

40

Defendant's Exhibits.

Joseph I. Bluestone the sum of \$6770 together with lawful interest thereon from July 19, 1912, with costs of complainant which were taxed at \$189.24, and costs of the defendant Joseph I. Bluestone, which were taxed at \$12.16. The following schedule is attached to the Master's Report in the last mentioned case:

10

SCHEDULE No. 1.

BOND bearing date the Twelfth day of September A. D. 1906, in the penal sum of \$8000 conditioned for the payment of \$4000 in two years from date hereof, with interest at the rate of 6 per cent. per annum, payable semi-annually, secured by mortgage in complainant's bill mentioned,.....\$4000.00
 INTEREST from December 16, 1908 to date.... 857.33
 20 INSURANCE premiums paid by the complainant under the terms of the mortgage,..... 120.00
 AMOUNT due the complainant this twelfth day of July A. D. Nineteen hundred and Twelve\$4977.33

JOHN W. SLOCUM,
 M. C. C. of N. J.

30

40

Defendant's Exhibits.

Filed Feb. 18, 1913.

IN CHANCERY OF NEW JERSEY

*Between*Samuel Nathanson,
*Complainant,**and*The Lerner, Block, Norton Com-
pany, (body corporate) et als,
*Defendants.*On Bill for
Foreclosure of
Mortgage.
Consent to Withdraw
all Objections to
Confirmation of Sale

10

The defendants, Richard D. Norton, William Kirby, and The Lerner, Block, Norton Company, body corporate, having heretofore, to wit, on the twenty-fourth day of October, A. D. Nineteen hundred and twelve, filed objections to the confirmation of the sale of the mortgaged premises described in the bill of complaint in the above entitled cause, and the said defendants now being willing that the said sale should be confirmed; the said defendants, Richard D. Norton, William Kirby, and The Lerner, Block, Norton Company, respectively withdraw said objection to the end that said sale may be confirmed.

20

Dated Feb. 1, 1913.

RICHARD D. NORTON,
WILLIAM KIRBY,
THE LERNER, BLOCK, NORTON
COMPANY, body corporate.

30

By

A. V. DAWES,

Their Solicitors.

40

Defendant's Exhibits.

- 10 D-8 (Page 104) Deed, dated March 10, 1913, made by Wilbert A. Beecroft, Sheriff of the County of Monmouth, to Samuel Nathanson, setting forth an execution issued out of the Court of Chancery tested August 7, 1912, in which is recited a final decree in the proceedings Exhibit D-7 above referred to. Under this execution the Sheriff of Monmouth County sold the premises known as the Castle Garden property to Samuel Nathanson on October 15, 1912, the sale having been adjourned by weekly adjournments from September 24, 1912, for the consideration of \$5400.90. This Sheriff's deed was acknowledged March 10, 1913, and recorded April 7, 1913, in Monmouth County Clerk's Office in Book 948 of Deeds page 438 &c.
- 20 D-9 (Page 104) Certified copy of assignment of mortgage dated December 3, 1913, made by Elizabeth C. Norton to Max M. Friedman assigning and transferring a certain indenture of mortgage bearing date October 28, 1913, made by Jack Sullivan to secure payment of \$3000 recorded in Book 466 of Mortgages pages 63 &c., and covering the Hutchinson or Cooper Avenue property. Said assignment of mortgage being recorded in said Clerk's Office December 4, 1913, in Book 67 of Assignments of Mortgages page 261.
- 30 D-10 (Page 104) Certified copy of deed dated October 28, 1913, made by Elizabeth C. Norton and husband to Jack Sullivan, conveying the first tract of the Hutchinson or Cooper Avenue property. Acknowledged October 28, 1913, and recorded October 29, 1913, in Monmouth County Clerk's Office in Book 962 of Deeds page 318.

Defendant's Exhibits.

D-11 (Page 104) Certified copy of deed made by Elizabeth C. Norton and husband to Jack Sullivan, dated October 28, 1913, conveying the second tract of the Hutchinson or Cooper Avenue property. Acknowledged October 28, 1913, and recorded October 29, 1913, in the Monmouth County Clerk's Office in Book 962 of Deeds page 320.

10

20

30

40

Deception

D-11 (Page 104) - Continued copy of word made by Eliza-
 beth T. Tupper and herself to Jack Sullivan dated
 October 22, 1911. The copy is the second copy of the
 original copy made by Eliza-
 beth T. Tupper. As
 the original copy of the letter was made by Eliza-
 beth T. Tupper and herself. The original copy is
 in the possession of the United States Court in
 New York City.

82

83

84

STATE OF CASE. PAGE 68.

IN CHANCERY OF NEW JERSEY.

SAMUEL NATHANSON,

*Complainant,**vs.*

ELIZABETH C. NORTON ET AL.,

Defendants.

On Bill to Foreclose.

Foreclosure Case

No. I. 39-533.

Bill, filed March 30, 1915, to foreclose mortgage made by Elizabeth C. Norton and husband, to Samuel Nathanson, *Exhibit D-4*, set forth on page 61 of State of Case. In usual form, claiming principal, \$3,000 and interest (as per amendment page 103 of testimony) from August 30, 1914.

Answer of Elizabeth C. Norton, setting forth substantially same statement of facts as recited by her in her amended bill of complaint, page 32 of State of Case.

Final decree, dated January 18, 1916, in favor of complainant, Samuel Nathanson, for full amount due, with interest and costs, to be made out of the mortgaged premises, in form usually employed in foreclosure cases, based on opinion of Vice-Chancellor, page 38 of State of Case.

IN CHANCERY OF NEW JERSEY.

SAMUEL NATHANSON, <i>Complainant,</i> <i>vs.</i> ELIZABETH C. NORTON ET AL., <i>Defendants.</i>	}	On Bill to Foreclose. Foreclosure Suit No. 2. 39-534.
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Bill, filed March 30, 1915, to foreclose mortgage executed by Elizabeth Norton and husband to Samuel Nathanson, to secure the sum of \$4,000, *Exhibit D-1*, set forth on page 60 of State of Case. In usual form, claiming full amount of principal and interest (as amended page 102 of testimony) from August 13, 1914.

Answer of Elizabeth C. Norton, setting forth substantially same statement of facts as recited by her in her amended bill of complaint, page 32 of State of Case.

Final decree, dated January 18, 1916, in favor of complainant, Samuel Nathanson, for full amount due, with interest and costs, to be made out of the mortgaged premises, in form usually employed in foreclosure cases, based on opinion of Vice-Chancellor, page 38 of State of Case.

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Chancery of New Jersey.

Between

ELIZABETH C. NORTON,
Complainant,

AND

SAMUEL NATHANSON, *et ux*,
Defendants.

10

On bill, etc.

TRANSCRIPT of shorthand notes of testimony, etc., 20
taken in the above stated matter before Honorable John H. Backes, Vice-Chancellor, at the Chancery Chambers, State House, Trenton, New Jersey, on Thursday, June 17th, 1915, at 10:30 o'clock in the forenoon.

APPEARANCES:

AARON V. DAWES, ESQ., for the Complainant.

WILLIAM A. STEVENS, ESQ., and FRANK P.

McDERMOTT, ESQ. (McDERMOTT & ENRIGHT), 30
for the Defendants.

Mr. McDermott: I would like to call the subscribing witness to this—

The Vice Chancellor: The execution of these documents is admitted. The ascertainment of the amount is the subject of a reference to a Master, or I may fix it myself.

Mr. McDermott: Yes, sir. Then I will not keep the subscribing witness here.

40

Richard D. Norton—Direct.

Mr. Dawes: Does your Honor desire an opening in the case.

The Vice Chancellor: An opening on the facts and not the pleadings.

(Counsel opened.)

RICHARD D. NORTON, sworn for the complainant.

10 DIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Norton, you live where?

A. Hightstown.

Q. What relation are you to the complainant in this case?

A. I am her husband.

Q. Do you recall any transactions with Samuel Nathanson in the latter part of 1912 respecting any loan of money to Mrs. Norton?

A. Yes sir.

20 Q. Just state what occurred at that time between you and Nathanson.

A. I saw Mr. Nathanson, and told him I was figuring on buying the Edwards Lumber Tract and would want to borrow five thousand dollars, and wanted to know if he could accommodate me; and that I had also a five thousand dollar mortgage on the two Cooper Avenue properties, and he told me yes, he guessed that would be all right, and later on I went on and closed the deal on the Edwards
30 Lumber Tract, and made some payments on to it, and again saw Mr. Nathanson, and at that time he told me that he had been disappointed about getting money, and money was very scarce; it was very valuable; he actually did not want to lend me the money at all. I told him it was putting me in pretty bad shape and that I had already contracted on that property, and I did not know how to turn myself, and he says "Well, you and Lerner has never
40 done anything; you got me in court, and so on, about that Castle Garden property." I said "We

Richard D. Norton—Direct.

are getting that pretty well straightened out; we have got practically all the claims paid that now exist, except yours." And I said "What do you want to do on that?" "Well," he says, "I will let you have that property back at sixty-eight hundred dollars, and I will let you have fifty-two hundred dollars, and you give me twelve thousand dollars in mortgages." I said "Great heavens! 10 What do you want sixty-eight hundred for that property for? In the first place you only paid thirty-five hundred on it, and you have had the interest on four thousand all these years, and you have your claim too." And he says "There is no use having any argument about it. I don't want to let you have the money any how. You can go and tell Mrs. Norton about it, and if you don't want to do that, you can go on about your business." 20

Q. Who did you tell him was the buyer of the Edwards Tract?

A. Mrs. Norton.

Q. For whom were you acting at that time?

A. Mrs. Norton.

Q. Who did purchase the Edwards tract?

A. Mrs. Norton.

Q. For what price had that Edwards tract been purchased?

A. Between seven and eight thousand dollars. 30

Q. Had any deposit been made?

A. Yes sir.

Q. On that tract?

A. Yes sir.

Q. What did you do at that time by way of agreeing on behalf of Mrs. Norton concerning the Castle Garden property?

A. Well, we didn't come to any agreement at that time. I rather took the matter under consideration. 40

Richard D. Norton—Direct.

Mr McDermott: That is, you took it under consideration.

Q. Did you discuss it afterwards with any one?

A. Well, I talked it over with Mrs. Norton, and she thought it was a pretty high price, and I told her it was, but we thought the Edwards property was a pretty good buy, and we thought we could make some money that way. I don't know any-
 10 body I could get the money of, anyway.

Q. What did Nathanson say, if anything about the value of this Castle Garden tract?

A. Well, he intimated to me—he did not exactly set a price on it, but he told me he did not consider this very valuable property. I asked him why not take a mortgage back on that for four thousand dol-
 lars, and make the Edwards tract a little bit nearer to clear. “Oh, no”, he says, “I wouldn't take any
 20 four thousand dollars back on that property now.”

Q. What discussion was there between you and him as to what security should be given him for this money? He agreed to loan you fifty-two hundred dollars, you said.

The Vice Chancellor: He offered to.

Q. Yes. What securities did he say he wanted, to secure that loan, if any?

A. He told me he would take this five thousand dollar mortgage and he would take three thousand
 30 dollars on the Castle Garden and four thousand dol- lars on the Edwards tract.

Q. Did you afterwards see him again?

A. I afterwards saw him again, and we agreed to that proposition and carried it out.

Q. To whom was the deed made for the Castle Garden property?

A. Mrs. Norton.

Q. Have you got the deed here?

A. Yes sir.

40 Q. I show you a paper——

Richard D. Norton—Direct.

The Vice Chancellor: What is the stated consideration?

Mr. Dawes: One dollar.

Q. And ask you if—

Mr. McDermott: What is that paper?

Mr. Dawes: That is a certified copy.

The Vice Chancellor: The witness can tell what it is.

10

A. It is a certified copy of the deed to the Castle Garden property, to Mrs. Norton, from Nathanson.

Q. Where is the original deed?

A. I thought I left it in my attorney's office, Mr. Lester Freeman, over in New York, who represented the client that I sold the Castle Garden to a year ago, and I thought I took the deed over to him to make a new deed, and when this matter came up I wrote to him about it and he wrote me back he couldn't find it.

20

Objected to.

Q. Well, you haven't the deed?

A. I have not.

The Vice Chancellor: Did the witness say he sold the Castle Garden property?

Q. Was the Castle Garden property sold?

A. Yes.

Q. Who owns it now? Has it been conveyed? 30

A. No, sir. The party I made the contract with paid twenty-five dollars down on the contract, or signed the contract, and afterward backed out.

Q. What was the contract you made with that party?

A. Forty-two hundred dollars.

Mr. Dawes: Now I will have this deed marked.

(Marked Exhibit C-1.)

40

Richard D. Norton—Direct.

The Vice Chancellor: The last question and answer went in without objection, Gentlemen. Proceed.

Q. Do you recall the time of the year when these properties were conveyed to Mrs. Norton? I mean the Edwards tract?

10 The Vice Chancellor: The deed is the best evidence, or the acknowledgment annexed to the deed, I suppose—I don't know—it is not the best evidence. It would simply raise a presumption as to the time of delivery.

Q. (Showing witness papers.) Which one of these is for the Edwards tract?

20 The Vice Chancellor: You are entitled to your question as to when it was. It may bear one date and be delivered a year afterward.

A. (Producing paper.) This is the tract on which Mr. Nathanson has the mortgage.

By the Vice Chancellor:

Q. Cooper Avenue?

A. No; this is the Edwards tract. January 24, 1913, the deed is dated. The deals were already consummated sometime before that.

30 Mr. Dawes: We call upon the other side to produce the bond and mortgage.

Mr. McDermott: Which one?

Mr. Dawes: For the Cooper Avenue.

Mr. McDermott: That is the Hutchinson property?

Mr. Dawes: Yes, I offer in evidence bond and mortgage—

The Vice Chancellor: What amount mortgage?

40 Mr. Dawes: Five thousand dollars—made by

Richard D. Norton—Direct.

W. Redman Hutchinson to Elizabeth C. Norton for five thousand dollars dated July 16, 1912, and the assignment thereof bearing date the eighteenth day of February in the year 1913.

(Bond, mortgage and assignment marked respectively Exhibit C-2, C-3 and C-4.)

By Mr. Dawes:

10

Q. How much money did Mr. Nathanson advance?

A. Fifty-two hundred dollars.

Q. How was it advanced, by check or in money?

A. I think it was handed over right directly to the receiver of the—

Q. (Showing witness paper.) Is that the check?

A. Yes sir.

Q. And is that check about the date when the 20 Edwards tract was conveyed to Mrs. Norton?

A. Yes sir.

The Vice Chancellor: What date is that?

The Witness: February 25, 1913.

The Vice Chancellor: The Norton deed, Mr. Dawes, is dated January 24, of the same year. Won't you look at that acknowledgment and see when that bears date? I do not know that these dates are going to play any important part, are they? Do you regard them as playing any important part in the case? ³⁰

Mr. Dawes: Yes, I think so. They are dated and acknowledged the twenty-fourth day of January.

I offer in evidence the check of Samuel Nathanson, and Parker & Van Gelder, attorneys, fifty-two hundred dollars, dated February 25th, 1913.

(Marked Exhibit C-5.)

40

Richard D. Norton—Direct.

Q. After you received this check from Mr. Nathanson, what did you do with it?

A. Well, it was handled through the attorneys. I never really did receive it.

Q. Did you get the deed for the Edwards tract?

A. Yes sir.

Q. And that check was turned over?

10 A. I never knew just when that check was turned over, to tell the truth.

The Vice Chancellor: There are no deposit dates on this. There are no deposit dates endorsed on it.

Q. You say you received fifty-two hundred dollars, and who paid the balance of the purchase price, Mr. Norton?

A. Mrs. Norton.

20 Q. With whose money?

A. Her own money.

Q. Now, then, after that did you make any payments on account of these mortgages, in the shape of interest, insurance, or otherwise?

A. Yes sir.

Q. Have you got the amounts with you?

A. Yes sir.

Mr. Dawes: I don't know whether your Honor cares to go into this or not, the payments.

30 Q. The first check there is whose check, Mr. Norton?

A. The first check is Elizabeth C. Norton. She signs her name, "L. C. Norton," in the Bank; September 13, 1913.

Q. Who is that payable to?

A. Samuel Nathanson.

Q. What was that paid for?

40 A. Two hundred and ten dollars, and marked on the check at the time "Interest on mortgages, Ed-

Richard D. Norton—Direct.

wards Lumber Yard and Castle Garden to August 13, 1913, L. C. Norton.”

By the Vice Chancellor:

Q. How much was that?

A. Two hundred and ten dollars.

Q. Six per cent.?

A. Yes.

10

By Mr. Dawes:

Q. What was the next?

A. The next is three checks together, two of sixty dollars each, to Samuel Nathanson, and one check of ninety dollars.

Q. What were they payments for?

A. They were all interest on the same mortgages.

Q. Any others?

20

A. September 10, 1914, check for two hundred and ten dollars, marked “Interest to August 13th, Castle Garden, Coal Yard and Store Property.” That is the Edwards property.

By the Vice Chancellor:

Q. You paid three iustallments, then?

A. Yes.

Q. That carries it up to what time?

A. Up to February this year.

30

By Mr. Dawes:

Q. Who held the title to the Cooper Avenue property?

The Vice Chancellor: Were the mortgages drawn for a year, Mr. Dawes?

Mr. Dawes: I have not seen the mortgages.

The Witness: Three years.

40

Richard D. Norton—Direct.

Q. Who held the mortgage to the Cooper Avenue property, Mr. Norton?

Mr. McDermott: May I ask a question to straighten out this interest matter, Mr. Dawes?

Mr. Dawes: Yes.

By Mr. McDermott:

10 Q. Mr. Norton, the first check of two hundred and ten dollars paid to August 13th, 1913?

A. Yes sir.

Q. Then the three checks, two of sixty dollars and one of ninety dollars, making two hundred and ten dollars, paid to February, 1914.

A. Yes.

Q. Now, the next \$210.00 paid to August 1914. Is not that so? You stated that it paid to February of this year, but that would not be so, according to
20 your figures.

A. No. I guess you are right about that.

Q. To August 1914?

A. Yes. The last \$210.00 check paid to August.

Q. 1914?

A. Yes sir.

The Vice Chancellor: August what?

The Witness: August 13th.

Q. And that is the last payment of interest?

30 A. That is the last payment, yes.

By Mr. Dawes:

Q. Did Mrs. Norton ever request you to purchase the Castle Garden property?

A. No sir.

Q. Did Mrs. Norton have any interest in the Castle Garden property prior to the negotiations for this loan of \$5,200.00?

A. None whatever.

40 Q. You have stated that Mr. Nathanson said to

Richard D. Norton—Direct.

you he wanted a settlement of this Castle Garden matter?

A. Yes sir.

Q. What was the Castle Garden matter which was in controversy?

A. Well, it was property that originally belonged to D. Lerner & Company. I was a member of that firm, and later it was turned over to the Lerner, Block, Norton Company. I was a member of that firm, and the mortgage was foreclosed while they owned it. ¹⁰

Q. Did Mr. Nathanson have a mortgage on that property?

A. Yes, sir.

Q. What amount did he have a mortgage for?

Q. \$4,000.00.

Q. What were the circumstances under which he got that \$4,000.00 mortgage?

20

Mr. McDermott: I object. That mortgage was foreclosed, there was a final decree, and it was all closed out. I submit there has been nothing in the pleadings here about it, and it has no bearing on this case.

The Vice Chancellor: How do you expect to make it relevant?

Mr. Dawes: I want to show there was a controversy, between the Lerner, Block, Norton Company, and—

30

The Vice Chancellor: I will let you go into it, but do not go far afield. Go on.

Q. How did Mr. Nathanson have a mortgage upon the Castle Garden property?

Mr. McDermott: Unless this witness knows something about it, I submit—We haven't the mortgage.

The Vice Chancellor: I do not know whether he knows anything about it until he opens his 40

Richard D. Norton—Direct.

mouth. We can then tell whether he knows something about it.

Mr. McDermott: I thought we might suggest that that be ascertained.

The Vice Chancellor: I do not see how it is at all relevant.

10 Mr. Dawes: It is relevant in this respect; this man Nathanson, at the time he put the mortgage on this property—

The Vice Chancellor: If you say it is relevant, I will rely upon it, and if I find afterward it is not, I will strike it out.

Mr. Dawes: Briefly I would like a ruling on it before it goes in. We expect to show by witnesses who will be produced here that this Castle Garden property, although there was a decree for \$5,500.00 or something like that, the amount that was actually due upon that—

20 The Vice Chancellor: Was about \$3,500.00.

Mr. Dawes: About \$3,500.00. That is what we propose to show.

Mr. McDermott: I renew my objection.

The Vice Chancellor: I do not see its relevancy, Mr. Dawes.

Mr. Dawes: It is only relevant to show that we have no such interest in it, and when we file exceptions to the confirmation of that sale which was between the Lerner, Norton, Block Company and Nathanson, he did nothing by way of having those exceptions overruled, and when Mrs. Norton goes to him through her agent and borrows \$5,000.00 he compels her to take in only this fictitious value, and he adds on his own claim over \$1,200.00.

30 The Vice Chancellor: You are really anticipating what they are going to set up?

Mr. Dawes: Possibly. I will accept your Honor's suggestion as a correct one. I was a

40

Richard D. Norton—Direct.

little fearful I would be precluded from showing on rebuttal the correct situation.

The Vice Chancellor: No, I won't exclude you. We are not trying a case before a jury here. I think you are anticipating it, Mr. Dawes. I will not preclude you on rebuttal if it is then relevant.

Q. Mr. Norton, you have already stated, have you 10 not, that Mrs. Norton had no interest whatever, in the Lerner, Norton, Block Company?

A. I did, yes sir.

Q. Who held mortgages on the Cooper Avenue property?

The Vice Chancellor: It is admitted in the pleadings, is it not, that Mrs. Norton held a \$3,000.00 one, and the \$5,000.00 also was held by Mr. Nathanson. Isn't that on the record?

Mr. Dawes: Yes.

20

Q. Are you acquainted with the values of properties in Long Branch?

A. Yes sir.

Q. How have you derived your knowledge?

A. I have been dealing in Long Branch property for some twenty years.

Q. How long have you known Castle Garden?

A. Twenty years,—Probably about fifteen years, I would say, Castle Garden.

30

Q. Do you know the market value of properties on Broadway?

A. Well, they vary considerably. I know several.

Q. You have bought and sold properties there?

A. Yes sir.

Q. In your opinion what is the fair value of the Castle Garden property?

Mr. McDermott: I object to the question on the ground he is not qualified.

40

Richard D. Norton—Direct.

Q. In the month of February, 1915?

The Vice Chancellor: The objection, I think, Mr. Dawes, should be sustained at the present time.

Mr. Dawes: On the ground—

The Vice Chancellor: Where is this property located, the Castle Garden property?

10 Mr. Dawes: On Broadway, Long Branch.

The Vice Chancellor: Well, as I recall it, it is about two miles long, isn't it? It runs from the ocean way back into the town.

Q. Are you acquainted with the values of properties in the vicinity of the Castle Garden property?

A. Yes.

Q. With the market values of properties there?

A. Yes sir.

20 Q. How long have you been acquainted with it?

A. Well, I have been interested right there in properties since about 1904.

Q. And during that period of time have properties been bought and sold in that vicinity?

A. Yes sir.

Q. What in your opinion is the fair market value of the Castle Garden property, in the month of February, 1913?

30 Mr. McDermott: I object to the question.

The Vice Chancellor: Do you want to cross examine?

Mr. McDermott: Yes.

The Vice Chancellor: I am going to let it in. You may disqualify him if you can. Go on.

By Mr. McDermott:

Q. Mr. Norton, you said you had known the Castle Garden property fifteen or twenty years?

40 A. Some fifteen years, yes sir.

Richard D. Norton—Direct.

The Vice Chancellor: Will you tell me, Gentlemen, what "Castle Garden" means, or is?

Mr. McDermott: It is a large building, fifty by a hundred. The property covers it all. It is down on lower Broadway and has several stores, three stores on the first floor, and a large number of apartments above, thirty-four rooms above. It is a large rented property.

The Vice Chancellor: It is not a garden at all, but a building? 10

Mr. McDermott: That is a misnomer. I do not know why they named it that, but that is the character of the property.

Q. I understood you to say you resided in Hightstown?

A. Yes.

Q. And your business has been there a number of years? 20

A. Yes, I have had business in Hightstown.

Q. Did you ever live at Long Branch?

A. Well, I have been there several months at a time.

Q. Yes, but I mean to take up your residence there?

A. No sir.

Q. What property did you ever own on Broadway?

A. I owned the property next door to this, and 30 this property. I owned the property next door, and we skipped four or five properties, and we had four or five other properties again on toward the ocean.

Q. Do you mean to say you bought and sold those?

A. Yes—D. Lerner Company.

Q. And you negotiated mortgages on them?

A. Yes.

Q. That is next door to this property?

A. That property was sold under foreclosure a 40

Richard D. Norton—Direct.

year or so ago; the New Jersey Mortgage Company bought it in and sold it to a Jew there, I can't recall his name, I know him very well.

Q. These are properties in which you were personally interested?

A. Yes sir.

Q. Outside of those, what sales have you observed on that Avenue?

10 A. Well, there has not been very many actual sales made right close there for quite a while. I don't just recall a sale close by excepting these that I have been more or less interested in.

Q. And your knowledge is gathered altogether from those you had some interest in?

A. Some interest, besides taking an interest in the sale of property or the value of property, as near as I could gather it from other properties.

20 Q. Outside of the properties you had some interest in yourself, you made no investigation of sales there?

A. When a property was sold I always would investigate it.

Q. Can you recall an instance of that kind?

A. I don't recall an instance of property that was sold there excepting after I had parted with them and they were resold again.

Q. Since 1913?

30 A. Well, 1912.

By the Vice Chancellor:

Q. Have prices in that immediate neighborhood varied for the last five or ten years?

A. Yes. Well, the properties have been reducing some in value, as I have seen them, in the last ten years.

Q. Do you mean in market values or physical values?

40 A. Market values.

Richard D. Norton—Direct.

Q. What is the business of the two firms that you were interested in?

A. Well, we were dealing in real estate.

Q. Real estate dealers?

A. Yes, sir.

Mr. McDermott: I submit he is not qualified.

The Vice Chancellor: You better put your objection, Mr. McDermott.

The objection is over-ruled. Proceed.

10

By Mr. Dawes:

Q. What was the fair market value—

The Vice Chancellor: The question is in. You know what it is.

A. I would say the value of it in 1912 and 1913 was about \$3,500.00.

Q. Describe Castle Garden property.

20

A. The lot is 50 feet on North Broadway; it is 90 feet deep on Long Branch Avenue; it is 47 feet wide at the rear, and it is 74 feet on the other line to Broadway. So there is one line in depth 74 feet and the other line is 92 feet.

Q. Describe the building.

A. The building is a rather dilapidated looking affair with three little stores on Broadway. The ceilings are very low, and it is an irregular shaped affair. Part of it is one story high and part of it is two stories. The building has been cut up into rooms, sub-divided around so. It was possible some years ago to rent it as residences for cheap rents, to different families. They did at one time have it pretty well filled with renters, but for the last four or five years we have not been able to keep renters into it. The insurance and sewerage and water rates are so exorbitant there that they have been eating up the income before we could get to pay the interest for the last four or five years.

40

Richard D. Norton—Cross.

Q. What is the building built of?

A. It is a wood building, a frame building.

Q. Do you know who built that?

A. Well, no. I do not know who built the original building. D. Lerner & Company remodeled the inside a good deal and put rooms in it and so on. It was originally an old blacksmith and wheelwright shop.

10 Q. Converted into a dwelling?

A. Yes sir.

Q. Has it been rented for the last two years?

A. Parts of it only.

Q. Who had possession of it at the time this loan was negotiated? In whose possession was it?

A. It was in the possession of the Lerner, Block, Norton Company.

Q. What is the assessed value of this property?

20 Mr. McDermott: Objected to as immaterial and irrelevant.

The Vice Chancellor: The objection is sustained.

Q. Is there any insurance upon the house?

A. Yes sir; there has been right along; \$3,000.00.

CROSS-EXAMINATION BY MR. McDERMOTT:

Q. Has the insurance at any time been higher than that?

30 A. Not that I recall.

Q. It is \$3,000.00 isn't it?

A. No, it isn't anything now.

Q. Well, the last time you knew about it, it was insured for \$3,000.00?

A. Yes sir.

40 Q. And that property, Mr. Norton, had a mortgage on it before the foreclosure, or at the time the Lerner, Block, Norton Company held it, it had this mortgage of Mr. Nathanson's of \$4,000.00 which was a first mortgage?

Richard D. Norton—Cross.

A. Yes, sir.

Q. And you held the second mortgage for \$3,000.00?

A. My mortgage covered other things.

Q. And Mr. Kirby held a third mortgage for twenty-eight hundred dollars?

Mr. Dawes: That covered other properties.

Q. Did the Kirby mortgage cover other properties?

A. Yes.

Q. Then you held a fourth mortgage for \$6,000.00? 10

A. Yes; it was a blanket mortgage.

Q. And Mr. Bluestone held a mortgage for how much?

A. \$4,000.00.

Q. And in that condition of the mortgage there was a foreclosure by Mr. Nathanson?

A. Yes.

Q. You were a party to that suit?

A. Yes.

Q. You filed no objection— 20

Mr. Dawes: I object. This is a suit between Elizabeth C. Norton and Mr. Nathanson.

The Vice Chancellor: The objection is overruled.

Q. But you filed no objection to that suit?

A. We filed objections to the confirmation of the sale.

Q. But before that it went through to a decree 30 made against everybody as far as you know?

A. Yes.

Q. A decree in favor of Mr. Blueston, or don't you know about that?

A. No sir. We took care of Mr. Blueston otherwise.

Q. And after the decree and execution there was a sale down in Monmouth County, at Freehold, a Sheriff's sale?

A. Yes. 40

Richard D. Norton—Cross.

Q. Did you attend that Sheriff's sale?

A. No sir, I did not.

Q. It was sold at \$5,400.90?

A. Yes, I think that was the price.

Q. After that sale was made you heard of it, of course?

A. Yes.

Q. And then you and Mr. Kirby and the D. Lerner Block Company did file objections to that sale?

A. Yes.

Q. And those objections, I understood you to say, were never heard?

A. Well, the reason they were not heard—

Q. I say they were not heard. That is all I ask you now.

A. No. Suit was—

Q. Well, you filed objections because you wanted to get the profit?

A. I wanted the mortgagees to have what was coming to them.

Q. You mean yourself and Mr. Blueston and Kirby? The Mortgagees, you wanted them to have it?

A. Yes.

Q. And you objected to the sale?

A. Yes.

Q. And that sale was held up a long time, wasn't that a fact?

30 A. Yes—not on our account. We were ready to try it all the time, but Mr. Nathanson, did not come forward with his reasons.

Q. He didn't want to expose him at it. I understood you to say that your foreclosure sale cut off the other mortgages.

A. Yes, sir, cut off all the mortgages, but those mortgages were all taken care of by Mr. Lerner and myself.

Q. After that did you see Mr. Nathanson about getting the property, after you filed your objections?

40

Richard D. Norton—Cross.

A. No, sir.

Q. Who was Mr. Lerner?

A. Mr. Lerner was my partner. He is not any more; he has not been for several years.

Q. He is the Lerner whose name is in this Lerner, Block, Horton Company?

A. Yes.

Q. And an officer of the company, was he?

A. The company is dissolved.

10

The Vice Chancellor: Was he an officer of the company?

The Witness: Yes sir.

Q. At that time?

A. Yes sir.

Q. When did you first see Mr. Nathanson in relation to that property after you filed the objections?

A. I had no conversation that I recall at all with Mr. Nathanson, concerning that property until negotiations for this loan occurred.

Q. You spoke of the contract which you made, of sale—that is, Mrs. Norton made a contract to sell the Castle Garden property?

A. Yes.

Q. With whom?

A. Well, it is a Jewish name. I can't recall it. I have the contract there.

Q. You have the contract here?

A. Yes sir.

Q. Can you give me the name of the party?

30

A. Benjamin Dantowitz.

Q. Where does he live?

A. He is a New York party.

Q. And you met him at Mr. Freeman's office?

A. Yes sir, Mr. Lester Freeman's office.

Q. At the time you made the contract with him there was a mortgage on the property of \$3,000.00?

A. Yes sir.

Q. Was he to assume that?

40

Richard D. Norton—Cross.

A. Yes sir.

Q. This Castle Garden property was really a livery stable, wasn't it.

A. I do not think there was any livery ever carried on there.

Q. Remodeled by Mr. McKenna, wasn't it, first?

A. Mr. McKenna owned it and there was very little remodeling. As I first remember it, it was a
10 blacksmith and wheelwright shop.

Q. You remember Mr. McKenna remodeled it or changed it?

A. He done very little then.

Q. And after a time your corporation bought it?

A. Yes.

Q. Have you any list of the rentals in the latter part of 1912 and the early part of 1913?

A. No; I never attended to that part of it very closely. Mr. Lerner always did that. We have not
20 had very many tenants for the last four or five years.

Q. You cannot state what the rentals were in the latter part 1912 or early in 1913?

A. No.

Q. There were three stores underneath, in the lower part?

A. Yes.

Q. Do you remember what those rented for?

A. Not exactly. One of them rented for \$18.00,
30 and the other one, I think the other two, were about \$10.00 a piece.

Q. Do you know what they rent for now?

A. One of them rents for \$20.00 and the other one is not rented at all, and the other fellow has been there eighteen months without paying anything.

The Vice Chancellor: How much did he agree to pay?

40

The Witness: \$8.00.

Richard D. Norton—Cross.

Q. Who has been collecting the rents, Mr. Norton?

A. Mr. Lerner.

Q. Mr. Nathanson has not gotten anything out of it at any time?

A. No sir.

Q. You or some one for you or the corporation has collected rents all the time?

A. Yes.

Q. And since Mrs. Norton took the deed in 1913 she has collected it, has she? 10

A. No, Mr. Lerner has collected and paid on the expense account of the building, as far as it went, and we have paid the balance.

Q. When did you see the property last?

A. Yesterday.

Q. It is in bad condition, isn't it?

A. It is in a little better condition than it was a year or so ago.

Q. Do you mean to state that as a fact? 20

A. Certainly I do.

Q. Is it not in a most dilapidated condition now, with the windows out and showing other neglect?

A. Not as bad as it was two years ago; it is not as bad now as it was then.

Q. You had possession of it, or your company, and you let it get into that condition?

A. Yes.

Q. And all you did was to keep putting mortgages 30 on it?

A. Well, the mortgage was on it before it got going bad.

Q. After you got the mortgage on it you let it go bad?

A. Well, we couldn't help ourselves.

Q. Well, there is no doubt about its dilapidated condition to-day, is there?

A. Well, it is in better condition to-day—

Q. I didn't ask you that. 40

Richard D. Norton—Cross.

Mr. McDermott: We ask to strike out the answer.

The Vice Chancellor: He has already said it was in a dilapidated condition. Go on.

Q. Do you know who the present tenants are, or anything about them?

A. Well, I know some of them, yes.

10 Q. Is the man in one of the stores paying twenty dollars a month?

A. Yes.

Q. And another store paying \$10.00 a month?

A. No sir.

Q. What is he paying?

A. He isn't paying anything.

Q. I mean, is he renting it for \$10.00?

A. No; he agreed to pay \$8.00 but he don't pay it.

Q. Mr. Lerner occupies part of it himself, doesn't
20 he?

A. Yes.

Q. How much does he occupy?

A. He has three or four rooms.

Q. Is there anybody here who can tell us the rents of that property to-day?

A. Yes sir.

Q. You have somebody who can tell, eh?

A. Yes sir.

Q. The Edwards property which you placed a
30 \$4,000.00 mortgage on, which was that, the store or the lumber yard?

A. It was the store and the coal yard.

Q. The coal yard and the store?

A. Yes.

Q. And do you recollect how much the purchase price of that was?

A. Between \$7,000.00 and \$8,000.00.

Q. Wasn't it seven even?

A. Well, there were some clearances, and so forth,
40 on top of that.

Richard D. Norton—Cross.

Q. Substantially \$7,000.00?

A. Well, \$200.00 or \$300.00 on top.

Q. Did you say Mrs. Norton had paid something on account?

A. Yes.

Q. And wasn't the \$5,200.00 to pay on account?

A. Yes.

Q. Do you remember how much she had paid on 10 account of that property? You did the business for her, didn't you?

A. Yes. I don't just recall. I think there was \$225.00 that had been paid down at the time.

Q. And that is the property which you needed the money for?

A. Yes sir.

Q. And you wanted to save that advance which she had made?

A. Well, we contracted—

20

Q. I understand, but you wanted to save the money she had put into the property?

A. Yes, I wanted to complete the sale as I agreed to.

Q. Is that the reason you wanted the money, or did you buy it with the idea of wanting to make money out of it?

A. I do not understand that question exactly.

Q. Did you want the \$5,000.00 in order to save the \$225.00 which she had advanced, or did you 30 want it to complete the sale and make money out of the purchase?

A. Both.

Q. Mr. Norton, speaking of the condition of the Castle Garden property at the present time has Mrs. Norton paid any taxes on it since she got it?

A. Yes.

Q. Up to what time?

A. She has paid the taxes up to the present time. There is no tax—that is to say, the taxes that are 40

Richard D. Norton—Cross.

due are not at the limit of time yet. The taxes of 1913,—the 1914 taxes have not been paid yet.

Q. What do you say about 1913?

A. We have paid them and have a receipt for them.

Q. The 1914 taxes have not been paid?

A. No.

Q. What did you mean by saying the taxes were all paid?

10 A. I mean up to the 1914 taxes.

Q. And I understood you to say you had no insurance on the property?

A. There is no insurance at the present time, no sir.

Q. Did I understand you to say that Mrs. Norton had no interest in the Lerner, Block, Norton Company?

A. Yes sir.

Q. She had no interest at all?

20 A. None whatever.

Q. She was never a stock-holder?

A. She never had a cent.

Q. That was your company and Mr. Lerner's?

A. Yes sir.

Q. Mr. Norton, without turning to the stenographer's notes, what did you say was the fair valuation of this property in the latter part of 1912, the Castle Garden property?

A. \$3,500.00.

30 Q. \$3,500.00?

A. Yes sir.

Q. And I understand you to say it has not improved any since?

A. Yes sir, it has been.

Q. Oh, it has?

A. Yes.

By the Vice Chancellor:

Q. Who was the owner of the Castle Garden
40 property at the time of the foreclosure?

Richard D. Norton—Redirect.

A. It was in the name of the Lerner, Block, Norton Company, and Mr. Lerner and I were the only ones,——

Q. Wait. I did not ask you that. And you continued in possession after Mr. Nathanson got his deed at the sheriff's sale?

A. Yes, Mr. Lerner has always been in possession of it. 10

Q. Were the objections to the sale disposed of in some manner before you made the bargain with Mr. Nathanson to buy the Castle Garden?

A. No sir.

Q. It was after you made this bargain that Mr. Nathanson got his deed?

A. Yes sir.

REDIRECT-EXAMINATION by Mr. Dawes:

Q. Mr. Norton, I omitted to ask you on your direct examination whether you had sold either one of the Cooper Avenue properties since the Sheriff's sale? 20

A. Yes sir.

Q. To whom and which had you sold?

A. Sold what we call the big boarding house.

Mr. McDermott: Of course, he had no title. The title was in Mr. Nathanson.

The Vice Chancellor: On the Cooper Avenue 30 property, Mrs. Norton, I understand, had two mortgages, one of \$5,000.00 and one of \$3,000.00.

Mr. Dawes: She had also had the agreement of Nathanson to turn them over to her, and we sold them for a certain price, and I will show why we did not complete the sale.

The Vice Chancellor: Well, I do not know which leg you are going to stand on.

Mr. McDermott: There is no evidence about that. Perhaps it was omitted; I do not know. 40

Richard D. Norton—Redirect.

The Vice Chancellor: Go on. I will let you go into it.

Q. To whom had you sold either one of those properties?

A. Mrs. Kassenhauff bargained for the purchase
10 of the large house.

Q. For how much?

A. \$4,500.00.

Q. Was that after the sale?

A. Yes.

Q. After the sheriff's sale?

A. Yes.

Q. And before you filed your bill of complaint in this case?

A. Yes sir.

20 Q. Was that before or after you received a letter from Nathanson, mentioned in the pleadings, requiring you to complete that sale by the first of January?

A. It was before that.

The Vice Chancellor: Are these properties divided by the same division as appears in the two descriptions in the bill?

Mr. Dawes: Yes.

30 The Vice Chancellor: Now, this property is tract 1 or 2 that he bargained to sell?

Q. Which was that, Mr. Norton?

A. Tract 1, I presume, because that was the big tract.

By Mr. McDermott:

Q. That is the one on Cooper Avenue?

A. Yes. First comes the Number one tract, and then there is a vacant lot, and then the number two
40 house.

Richard D. Norton—Redirect.

By the Vice Chancellor:

Q. Just look at the bill and tell me whether it was tract 1 or tract 2?

A. Well, it seems to be tract 2, the one on Cooper Avenue.

Q. When you speak of the sale you mean after it was purchased by Mr. Nathanson at the Sheriff's sale mentioned in the bill of complaint?

A. Yes, sir.

10

The Vice Chancellor: All the facts set up in relation to that sale are admitted by the answer, are they not?

Mr. McDermott: Substantially, yes sir, in a little different form.

By Mr. Dawes:

Q. (Showing witness paper.) Did you receive that letter?

20

A. Yes sir.

Q. Did you reply to it?

A. Yes sir.

Q. Did you get an answer to that?

A. Yes, sir.

Q. Was this sale of that property which you have just spoken of, for \$4,500.00, made before you received this first letter of December 25th, 1912?

A. Yes I think it was before.

Q. How long before?

30

A. Probably a month.

Q. Do you know why that sale was not completed?

A. Yes sir. Mr. Nathanson told a party that if they—

Mr. McDermott: I object.

The Vice Chancellor: Objection sustained.

Q. Did the buyer tell you why he—

A. Yes.

40

Richard D. Norton—Redirect.

Q. Mr. Norton, in this sale of the Castle Garden tract by the sheriff, and the exceptions which were filed thereto, what was your purpose in filing those exceptions?

Mr. McDermott: I object to that question.

The Vice Chancellor: Objection over-ruled.

Q. What was your purpose in filing those exceptions?

The Vice Chancellor: You went into it, Mr. McDermott, on cross examination.

Mr. McDermott: This is as to his purpose.

The Vice Chancellor: You opened the door.

Mr. Dawes: I will have these letters marked.

(Two letters marked respectively C-6 and C-7.)

Q. Now, what was your object in filing the exceptions to the confirmation of that sale?

A. I did not want Mr. Nathanson to get away with the property without paying the different ones that had claims against it what was their dues.

Q. What was your contention as to the amount due in that decree?

The Vice Chancellor: Mr. Dawes, that could not have arisen under any objections. All you can raise under objections to the confirmation of a sale is whether it brought the highest and best price it could do at the time of the sale. If you want to contest the sale on any other ground you must do it by petition. It was recently held by me in the Lambertville case, and affirmed in the Court of Errors and Appeals, in an opinion by Chancellor Walker.

Q. When was the first talk about those exceptions between you and Mr. Nathanson?

A. When I was talking with him about borrowing this \$5,000.00.

Richard D. Norton—Redirect.

Q. Did he ever make any attempt to have those exceptions disposed of?

A. No sir.

The Vice Chancellor: Do you mean objections?

Mr. Dawes: Yes.

Q. To have the objections to the sale disposed of?

A. No sir.

10

The Vice Chancellor: Have you the record here?

Mr. McDermott: The record is here.

Q. Mr. Norton, at that time what object did you propose to or think you could raise by having those objections filed to the confirmation of the sale?

Mr. McDermott: I object.

Mr. Dawes: I want to show that Nathanson at that time knew that our objections to that 20 sale went to the amount in the decree.

The Vice Chancellor: Do you expect the witness to testify to motives different from what actuated you as his counsel?

Mr. Dawes: I want to get before the court the reasons which actuated the filing of those exceptions, and what we proposed to do; if the objections would not do it, we proposed to file the proper pleadings that would do it.

The Vice Chancellor: By petition?

30

Mr. Dawes: Yes.

The Vice Chancellor: The objection is sustained. Mr. Dawes, do your exceptions show pretty clearly—does that disclose all you expected to prove?

Mr. Dawes: Yes.

The Vice Chancellor: Do you withdraw your question then?

Mr. Dawes: Yes. I offer in evidence at this time the objections to the confirmation of that 40

Richard D. Norton--Redirect.

sale. Shall I read it right in the record now? It is an official paper. (Reading) "In Chancery of New Jersey between——"

The Vice Chancellor: Read the endorsement first.

10 Mr. Dawes: "In Chancery of New Jersey. Between Samuel Nathanson, Complainant, and the Lerner, Norton, Block Company, Defendant. Objections to confirmation of sale. Filed October 24, 1912. Copy sent to——"

Mr. McDermott: May I suggest that he hands it to the stenographer to have it copied in? I would rather not have it read now.

The paper referred to reads as follows:

" IN CHANCERY OF NEW JERSEY,
" *Between*

SAMUEL NATHANSON,
Complainant,

20

AND

THE LERNER, NORTON, BLOCK COMPANY.

30 "The defendants, Richard D. Norton, William Kirby, and the Lerner, Norton, Block Company, hereby object to the confirmation of the sale of the mortgaged premises made by the sheriff of the County of Monmouth, because these defendants and each of them were prevented and deprived of the right of redeeming the said premises because the complainant's decree is greatly in excess of the amount really and honestly due on this said mortgage, and that the complainant misrepresented the amount of the decree, whereby by reason of the error in said decree, and the action of the complainant in forcing the sale and misrepresenting the amount of the decree, the said sale should not be confirmed.

40

(Signed) A. V. DAWES,
Solicitor.

Richard D. Norton—Redirect.

State of New Jersey,

RICHARD D. NORTON, being duly sworn says the matters and things are true so far as they relate to his own acts and so far as they relate to the acts of others he believes them to be true.

(Signed) RICHARD D. NORTON.

Sworn and subscribed this
24th day of October
1912.

10

Signed

CHAS. H. STULTS.

Notary Public."

Q. Mr. Norton, you state in the bill of complaint, that your wife owned the \$3,000.00 mortgage. Will you state who was the owner of that mortgage and the circumstance?

The Vice Chancellor: What is that? 20

Mr. Dawes: I am going to prove the ownership by Mrs. Norton.

The Vice Chancellor: That is admitted, isn't it?

Mr. McDermott: It was assigned to somebody else.

The Vice Chancellor: That mortgage was foreclosed, was it not?

Mr. Dawes: That is on the Cooper Avenue 30
property.

The Vice Chancellor: Wasn't it foreclosed under the \$5,000.00 mortgage?

Mr. Dawes: Yes.

The Vice Chancellor: And at the time of the foreclosure, some one else owned it, eh?

Q Was that mortgage assigned?

A. As collateral.

Q. For what?

A. For a claim of, I think, \$600.00.

40

Richard D. Norton—Recross.

The Vice Chancellor: Now, have that straightened out, won't you? You say that before the foreclosure Mrs. Norton assigned the \$3,000.00 mortgage mentioned in paragraph one of the bill to somebody to secure the payment of \$600.00. Is that right?

The Witness: Yes sir.

10 Q. Do you know the name of the party?

A. Max Friedman.

Q. Now, Mr. Norton, the Castle Garden property in 1913, in the month of February, was in what condition as compared to the present time? Was in what condition of repair, compared with the present time?

Mr. McDermott: I object to the question.

20 The Vice Chancellor: Why— Because you asked it three or four times?

Mr. McDermott: No, I have always objected to the question. I had the answer stricken out. I object to attempting to show that. I asked what its condition was, and he proceeded to answer it by comparing it with some other period of time, and your Honor struck it out as not responsive.

The Vice Chancellor: You had it struck out because it was not responsive.

30 RECROSS EXAMINATION BY MR. McDERMOTT:

Q. The assignment to Max Friedman that you have just referred to a certified copy of which I now show you, has nothing in it to show that it is a collateral assignment at all?

A. No. It is, just the same.

Q. There is nothing in it to indicate that?

A. Well, we have an agreement from Mr. Friedman to cover that point, that is the facts of the case.

40 He did not have the full amount of the mortgage.

Richard D. Norton—Recross.

By Mr. Dawes:

Q. Have you got that agreement here?

A. No I do not think I have. No; I know I have not.

By Mr. McDermott:

Q. I did not catch the name of the woman to whom you say you sold the cottage. What was that name?

10

A. Mrs. Kassenhauff.

Q. Was that a written agreement?

A. No sir.

Q. Did she pay anything on account?

A. No sir.

By Mr. Dawes:

Q. Did she ever make a payment on it?

A. No sir. It was nipped in the bud before she made any payment.

20

By the Vice Chancellor:

Q. When did you make the agreement to sell Castle Garden?

A. That was the 26th day of May 1914.

Q. When was the agreement to be performed and the title passed?

A. The title was to be closed on July 21st, at 3:00 P. M. at Room 1173 Woolworth Building, 233 Broadway. Title was to be closed as of July 21st.

30

Q. Had the time been extended between you and the purchaser?

A. No sir. He came to Long Branch and the more he inquired about the property he backed out.

Q. He refused to perform?

A. Yes sir.

By Mr. McDermott:

Q. You made a bargain with him in New York?

A. Yes.

40

Richard D. Norton—Recross.

Q. When he came out to look at the property he refused to perform?

A. Well, he had seen the property before, but I guess he heard more about the expenses——

Q. How much did he pay on account?

A. \$25.00.

Q. He never paid any more than that?

A. No sir.

Q. Did you take him to see Mr. Nathanson about
10 the mortgage or anything of that kind?

A. No sir.

Q. Had he been through the property before you made the agreement with him?

A. Yes sir

Q. Do you know with whom?

A. No sir.

Q. He went through and looked at it, did he?

A. Yes.

Q. Then you said he made the agreement in New
20 York?

A. Yes sir; the agreement was made through his attorney, Mr. Lester Freeman.

Q. Oh, he didn't even make the agreement himself?

A. Well, it was drawn up or something by Mr. Lester Freeman. Mr. Lester Freeman was his attorney.

Q. Was it signed by him?

A. Signed by the man himself, yes sir.

30 Q. Then you say he went down and looked at it?

A. Yes sir; he looked at it again, and I suppose, of course, that he had some one talk to him about it and at any rate he wouldn't perform. He wouldn't go any further with it.

Q. Did you tell Mr. Nathanson you had got somebody to buy it?

A. I didn't know that it was Mr. Nathanson's business, particularly, no sir.

Q. Well, did you tell him?

40 A. No sir.

Arthur Holston—Direct.

DAVID LERNER, sworn for the complainant.

(Witness withdrawn.)

ARTHUR HOLTSON, sworn for the complainant.

DIRECT-EXAMINATION BY MR. DAWES:

Q. Where do you live?

A. Long Branch.

Q. What is your business?

A. Real estate and fire insurance. 10

Q. Do you know the property you have been talking about, the Castle Garden property, in Long Branch?

A. I do.

Q. How long have you known that property?

A. I should judge about 25 years.

Q. Are you acquainted with the sales of property in Long Branch?

A. I am.

Q. How long have you been in the real estate business? 20

A. Oh, around eight or nine years.

Q. Do you know of any sales which took place in Long Branch of real estate?

A. Yes.

Q. And do you know of any sales in the vicinity of this Castle Garden property?

A. Sales of property adjoining it on the east.

Q. Did you examine the Castle Garden property? 30

A. Several times.

Q. During what period of time?

A. I carried the insurance on it for several years, and each year I would go down usually with an inspector of the insurance company and go through it.

Q. How is the condition of the property to-day compared with what it has been for the last two or three years?

(Objected to.)

Arthur Holston—Direct.

The Vice Chancellor: What was the condition of the property then and now?

Q. What was the condition of the property as you knew it?

A. The condition of the property has been bad for several years.

Q. In what respect?

10 A. Neglect and—oh, I would say neglect.

Q. Do you say to-day the condition of the property is better or worse than it has been for the last two or three years?

Mr. McDermott: Objected to.

The Vice Chancellor: Objection overruled.

(Last question read.)

20 A. I imagine it would be about the same. I can't see very much difference. It is what I would call in the fire insurance business a rotten risk. It has been that way for several years.

By the Vice Chancellor:

Q. A rotten risk?

A. Yes.

Q. That is one way down the line?

A. Yes, sir.

By Mr. Dawes:

30 Q. What is a rotten risk?

The Vice Chancellor: Well, there are so many elements enter into that, Mr. Dawes.

Mr. Dawes: All right. I won't go into that.

Q. What in your opinion was the fair value of the property in the month of February, 1913?

A. I would consider \$50.00 a foot a fair value of the property.

Mr. McDermott: For the land?

40 The Witness: For the land.

Arthur Holston—Cross.

Q. What would you consider the house on the property worth?

A. Well, a thousand dollars would be a fair figure for that building.

Q. In your judgment what is the fair market value of that property to-day?

A. Oh, around thirty-five or thirty-six hundred dollars.

Q. Why do you put the house at only \$1,000.00. 10
What is there about the house?

The Vice Chancellor: I guess they have told us enough about that, Mr. Dawes.

Mr. Dawes: All right. Cross-examine.

CROSS-EXAMINATION BY MR. McDERMOTT:

Q. I understand your valuation of the lot is approximately \$3,500.00?

A. Yes. 20

Q. It is a corner lot?

A. It is a corner lot.

Q. And that is a fair valuation?

A. I should say that would be a good valuation.

Q. Do you know the history of this property?

A. Very well; yes sir.

Q. And it was converted into stores and a dwelling house by Mr. McKenna, wasn't it, some years ago?

A. Mr. Lerner had something to do with it. 30

Q. Wasn't that another time, or was it the same time, as you recollect?

A. No. There were several attempts to remodel this.

Q. And there are several stores down on the first floor, three, are there not?

A. Well, you might call them stores.

Q. That is what they use them for, isn't it, Mr. Holtson?

A. When they are occupied. 40

Arthur Holston—Cross.

Q. Aren't they stores whether they are occupied or not? Why do you want to fence with me like that?

The Vice Chancellor: Don't criticize the witness.

Q. Aren't there three stores in the first floor?

A. Three stores.

10 Q. How many apartments are there, or rooms, above the three stores?

A. I couldn't tell you. I know there are a number of rooms.

Q. Didn't you count them?

A. No sir.

Q. Didn't you know you were going to be a witness?

A. No sir.

Q. You made no examination of the property
20 with that in mind?

A. No sir.

Q. When did you see the property last?

The Vice Chancellor: Make an inspection, Mr. McDermott?

Mr. McDermott: No; whether he saw it.

A. I saw it day before yesterday, I think it was.

Q. Did you make an inspection then?

A. No, not what you call an inspection. I was
30 in it—

Q. You said you carried insurance on it. You had the insurance for a time?

A. Yes.

Q. How long ago was that?

A. I should imagine 1908, I think.

Q. Haven't you had any insurance on it since that time?

A. Not since last year. I cancelled the business.

Q. Did you have insurance on it then, up until
40 last year?

Arthur Holston—Redirect.

A. Up until last year, for several years.

Q. How much insurance did your office carry on it?

A. \$3,000.00.

Q. And you cancelled it last year?

A. Yes, sir.

Q. You carried \$3,000.00 on it then for how many years up to last year?

A. Well, it is pretty hard—I can't tell. 10

Q. Well, approximately, Mr. Holtson, if you can't tell exactly.

A. Around 1908 or 1909 I think.

Q. From 1908 or 1909 until last year?

A. Yes.

Q. Did you ever have more than three thousand on it?

A. I do not think so.

Q. In effecting the insurance you went around to see it I understood you to say? 20

A. Yes, sir, made several inspections.

Q. When was the last?

A. Last year, I think.

Q. And it was on its condition then that you decided to cancel the insurance?

A. We had more or less trouble with the cancellation of the companies, in keeping it placed.

Q. Was it on the examination last year, in 1914, that you decided to cancel it?

A. No. Non-payment of premium. 30

Q. Non-payment of premium was the real reason, was it?

A. Yes.

REDIRECT-EXAMINATION BY MR. DAWES:

Q. In 1908, 1909 and 1910 who effected the insurance, who employed you to put the insurance there?

A. Well, it was granted a renewal. 40

Arthur Holston—Redirect.

Q. Who did that? Did you ever insure it for one Samuel Nathanson?

A. Yes, sir.

Q. Do you remember when?

A. I can't tell you the date. I remember having made several endorsements on this particular risk.

Q. Pardon me.

A. I remember having made several endorsements, 10 changing ownership on this property, but I cannot recall about that now.

Q. Do you remember if Nathanson has ever paid you for any insurance on that property?

A. Yes.

Q. During what period of time?

A. Well, I think he paid the 1913 insurance.

Q. Was that the first you recall he paid anything?

A. I think it was.

20

By the Vice Chancellor:

Q. Who fixes the amount of the insurance on a given property?

A. What do you mean, in this particular case?

Q. No, on any given property—the company or the insured?

A. Well, it is usually the insurer asks for the—

Q. Do you usually insure for more than the value of the property?

30 A. No.

Q. Do you insure up to the value of the property?

A. The value of the—for instance, the building on it—I don't quite understand you.

Q. Do you insure up to the estimated value of the property, up to what the company estimates the value of the property, do they sometimes insure?

A. Yes, they sometimes insure.

Q. Well, that is a regular feature of their business, is it, to insure the full values?

40 A. No.

Arthur Holston—Redirect.

Q. What percentage do they usually insure?

A. Sometimes people require —

Q. No, I mean the company?

A. Oh, the company makes no—I don't quite get that.

Q. Up to what amount do Insurance companies insure property, up to the full value?

A. They insure properties at full value, yes sir. 10

Q. As a regular part of their business, eh?

A. Yes sir.

Q. When property is insured to its full value who estimates the value on the part of the company, for the company?

A. Well, a man putting up a building would say—

Q. No, no. A man comes to you and orders insurance upon a property which is equal to the value of the property, who estimates or appraises the 20 value of that property for the company, if anybody?

A. Why, the local agent, I suppose.

Q. Now, you were the local agent in this case when this property was insured for \$3,000.00. Did you appraise the property then at \$3,000.00?

A. When I received the order for the policy of \$3,000.00 I, of course, knowing the building, thought probably that would not be over-insuring the building.

Q. And you continued that until last year? 30

A. 1913.

By Mr. Dawes:

Q. When did you make the estimate of \$3,000.00 on the building for the insurance?

A. Oh, in 1908 I think it was.

Q. And it was simply renewed from year to year after that?

A. From year to year.

Arthur Holston—Redirect.

By the Vice Chancellor:

Q. Renewed by re-issue of policy each year?

A. Yes, sir. "Renewal" they call them.

By Mr. McDermott:

Q. I understood you to say you went around frequently to examine them because you did carry a
10 risk on them?

A. The companies sent inspectors occasionally to inspect a property as to its physical condition.

Q. I want to get what you do?

The Vice Chancellor: Get the last time he did it, Mr. McDermott.

Q. When was the last time you inspected this property for the purpose of ascertaining its value for the purposes of insurance?

20 A. I can't just recall.

By the Vice Chancellor:

Q. About how long ago?

A. About a year ago; a little over a year ago. It must have been a year ago.

Mr. Dawes: Did you at that time estimate the value of this property at \$3,000.00?

30 The Vice Chancellor: That is a year ago when you renewed the insurance. Answer that question please.

The Witness: No, I don't know as I did.

By Mr. Dawes:

Q. Did you at that time accept the same value that had been placed upon it in years before?

A. In renewing policies—

40 The Vice Chancellor: Answer the question please.

Richard H. Hughes—Direct.

The Witness: Let me have the question please.
 (Previous question read as follows: Did you
 at that time accept the same value that had
 been placed upon it in years before?)

The Witness: I must have.

RICHARD H. HUGHES, sworn for the complainant.

DIRECT-EXAMINATION BY MR DAWES:

10

Q. Mr. Hughes what is your business?

A. Builder.

Q. Where?

A. Long Branch.

Q. Are you acquainted with the market values of
 properties there?

A. Well, some; yes, somewhat.

Q. Have you bought and sold properties?

A. I have.

Q. Do you know the property known as Castle 20
 Garden, situated in Long Branch?

A. I do.

Q. You live in Long Branch?

A. Yes.

Q. When did you see that property last?

A. Yesterday.

Q. Did you examine the building?

A. Just the exterior.

Q. How long have you known that building?

A. Since the last thirty years about.

30

Q. In your judgment, what is the value of that
 building?

Mr. McDermott: One moment. May I cross-
 examine as to his qualifications?

The Vice Chancellor: I do not think he is
 qualified at all. It will not help me a bit if he
 just saw the outside.

Q. Do you know anything about the building on
 the inside?

40

Richard H. Hughes—Direct.

A. Not on the inside. Just from the exterior I looked it over.

Q. Have you ever been on the inside of the building?

A. No sir.

Q. In what condition is the building?

A. Well, in a somewhat dilapidated condition at the present time.

10 Q. Do you know what the building formerly was?

A. Yes, it was used as a blacksmith or wheelwright shop, or a portion of it years ago.

Q. In your judgment what is the value of that building?

A. The building?

Q. Yes.

A. At the present time?

Q. Yes.

Mr. McDermott: I object to the question.

20 The Vice Chancellor: I do not think you have qualified your witness.

Q. You say you are acquainted with the values of—

30 The Vice Chancellor: I do not mean as to that. I assume the builder knows the values of buildings if he knows what the buildings are. Ask him if he could, from an exterior inspection, tell generally the construction of the interior.

Q. From your examination and knowledge of that building, could you tell what was the value of the building?

A. Well, I could tell—I could give a price of what I think the building is worth from an exterior examination.

By the Vice Chancellor: How could you accomplish that?

40 The Witness: Well, in the first place it is a

Richard H. Hughes—Direct.

frame building, with the glass broken out, and from the general exterior appearance it is pretty well run down, and never was considered what we would call a first-class construction.

The Vice Chancellor: How do you know that? You were never inside and did not see it 10 constructed, did you?

The Witness: Well, I have been in it when it was a blacksmith and wheelwright shop. That is years ago. It is a pretty old building; part of it is very old.

The Vice Chancellor: Did you see the building in the remodeling?

The Witness: I didn't take notice of it, the remodeling—the remodeling is the one story stores built on the Broadway side. The older 20 main part of the building is two stories high, where the dwelling parts are.

Q. Did you look in the windows?

A. I looked in the doors, yes. The doors are open and the windows.

Q. Did you see the interior of the house there?

A. Very casually, yes.

Q. Did you notice the so-called stores?

A. Yes.

Q. From your examination and knowledge of 30 that building can you express yourself as to the value of it?

Mr. McDermott: I still object.

A. Yes.

The Vice Chancellor: The objection is overruled, as to whether he can.

Mr. McDermott: Oh, I beg your Honor's pardon. That is true.

Richard H. Hughes—Direct.

Q. Do you feel you have sufficient knowledge of the building to express an opinion as to the value of it?

A. I do.

Q. In your opinion what is the fair value of that building to-day?

Mr. McDermott: I object.

10 The Vice Chancellor: You may cross-examine. I presume there are witnesses here who can testify as to the value. This man being a builder in that neighborhood, a hypothetical question could be put to him, describing the building. Not knowing the interior of the building, the testimony is of very light weight. Go on.

By Mr. McDermott:

20 Q. Mr. Hughes, your operations have been in the cottage section of Long Branch?

A. Yes.

Q. Where the more elegant properties are?

A. Yes.

Q. You have been for many years a builder of handsome properties?

A. Yes sir.

Q. And this property is not of that type?

A. No.

30 Q. This is an old remodeled property, which you inspected yesterday in order to qualify as a witness?

A. Yes.

Q. You knew then you were going to be a witness?

A. Yes.

Q. You have not been an investor in land in that immediate neighborhood, have you?

A. No.

Q. And have no interest, have you, in that neighborhood at all?

40 A. None whatever.

Richard H. Hughes—Direct.

Q. And I don't understand you to say you are qualified as to the land at all?

The Vice Chancellor: He has not been asked that at all.

Q. You say you found the building in bad shape yesterday?

A. From the exterior, yes; it looked pretty bad.

Q. Do you know the number of rooms in the house? 10

A. I do not.

Q. Or the size, or how they are cut up?

A. I do not.

Q. You couldn't tell that without going inside?

A. Not without going through, no.

Q. Could you tell from the exterior of that building what it would cost to put up to-day a building of that size and character?

A. Well, I could by measuring it up and making an itemized estimate. 20

Q. You did not do that?

A. I did not do that, no.

Q. You made no inspection of it at any previous time with the idea of estimating its value?

A. No.

Mr. McDermott: I submit the witness is not qualified.

The Vice Chancellor: I will hear it. The objection is over-ruled. 30

By Mr. Dawes:

Q. Will you answer the question? ("In your opinion what is the fair value of that building to-day"?)

The Vice Chancellor: No. The objection is sustained to that question. You mean the fair value two years ago, don't you?

Q. Do you recall the building in the last two years? 40

Richard H. Hughes—Direct.

A. Well, from my recollection, the building was practically the same two years ago as it is at present. It is probably run down a little bit more now than it was two years ago by being neglected and not being taken care of.

Q. In your opinion is the value of the building about the same to-day as it was two years ago?

10 Mr. McDermott: I object to that.

The Vice Chancellor: The value of building material?

Mr. Dawes: Yes, I suppose the cost of building.

The Vice Chancellor: The witness does not evidently know a thing about this building as of two years ago, except in a general sort of way. This testimony of the value of the property to-day is not of any importance. The question is what the value of this property was
20 two years ago.

Mr. Dawes: Then I will withdraw the witness.

The Vice-Chancellor: You may do that. But why can't you put a hypothetical question to him?

Q. Mr. Hughes, what are the dimensions of the building?

A. I do not know.

Q. Well, the lot is fifty feet front, —

30 A. I think the buildings cover practically the whole lot.

Q. — seventy four feet back line, and ninety two feet on the other line and forty seven feet in the rear.

A. Well, the buildings cover that whole piece, apparently.

Q. The building contains stores such as you saw on this building there yesterday?

A. Stores on the front, one story stores, built very
40 cheaply a few years ago, and on the rear the old

Augustus Chandler—Direct.

buildings stand there and have been remodeled and turned into apartments or rooms, I believe.

Q. Now, what was such a place as that, in your opinion, in Long Branch, worth in 1913?

Mr. McDermott: I object to that.

The Vice Chancellor: Objection sustained.

Mr. Dawes: I haven't sufficient data to frame a question to cover it, then. That is all, Mr. Hughes. 10

AUGUSTUS CHANDLER, sworn for the complainant.

DIRECT-EXAMINATION BY MR. DAWES:

Q. What is your business, Mr. Chandler?

A. Lumber and building material.

Q. At Long Branch?

A. At Long Branch.

Q. Are you connected with a real estate company 20 there?

A. No, sir.

Q. With a mortgage and loan company? Do you serve as appraiser?

A. I am connected with the New Jersey Mortgage & Trust Company.

Q. Do you serve as appraiser of properties?

A. No sir, excepting an appraisal made by a committee.

Q. Are you acquainted with the values of proper- 30 ties in Long Branch?

A. Yes, to a certain extent.

Q. And how long have you been familiar with the values of properties?

A. Well, I have been in business there twenty eight years.

Q. Do you know this property on Broadway, the Castle Garden property?

A. Very well, yes sir.

Q. How long have you known that? 40

Augustus Chandler—Direct.

A. Well, I have known it as long as I have lived there, and that is a good many years.

Q. You figure on buildings, don't you?

A. On the material, yes sir.

Q. Have you made an examination of this building?

A. Outwardly, with Mr. Hughes.

Q. You have been in the building?

10 A. I was in it when the additions were put on. I sold some of the material for it.

Q. And you have a knowledge of the interior of the building, as well as the outside?

A. I have at the time it was put up; that is the additions.

Q. How often have you seen this building in the last two years?

A. Oh, I see it every day.

Q. What is your opinion of that building to-day?

20 A. Rather bad.

Q. What was the condition of it two years ago?

A. Not any better. Property always depreciates when it is not cared for, and that has not been cared for, for the last two or three years.

Q. In your opinion what is the market value of that property?

Mr. McDermott: I object.

The Vice Chancellor: Objection sustained.

30 Q. Mr. Chandler, what are the dimensions of that building?

A. Well, the land, the way I paced it off is about fifty feet by a hundred and the building covers the whole lot.

Q. How long has that building been built?

A. The old building, which we always called the building has been there as long as I can remember. The addition that has been put on by different parties, I suppose has been there
40 ten years. The old building was two stories, and

Augustus Chandler—Direct.

I think some of the new building was two stories; in the rear, one story, where the stores are around a certain distance on Long Branch Avenue. The balance of it is two stories.

Q. What sort of stores are these?

A. One good sized store on the corner, on North Broadway and Long Branch Avenue, and the others are small stores, about ten feet each, I should judge. 10

Q. Assuming a building on North Broadway has been built for ten or twelve years or over, and during that period of time has run down and is in a dilapidated condition, window lights out, and has not been kept up, a building two stories high, covering an area of fifty by a hundred, in your opinion what is such a building as that worth?

Mr. McDermott: I object. 20

The Vice Chancellor: Objection sustained, Mr. Dawes. I think the value of this property must be taken as a whole. I do not think the value of the lot aside from the value of the house is a relevant matter at all.

Q. Mr. Chandler, you are acquainted with the market price of property in Long Branch?

A. Yes.

Q. And you have been for a number of years, have you not? 30

A. Yes sir.

Q. Are you familiar with the values of properties at Long Branch on North Broadway?

A. Yes sir.

Q. In your opinion, what is the fair market value of the Castle Garden property?

Mr. McDermott: I object to the question. May I cross examine?

The Vice Chancellor: Yes. 40

Augustus Chandler—Direct.

By Mr. McDermott:

Q. Mr. Chandler, have you bought and sold property in the neighborhood of this property?

(Recess to 1:30 o'clock in the afternoon.)

Q. (Last question read.)

A. I have, through the Mortgage & Trust Com-
10 pany, adjoining this property.

Q. And in connection with that company you have appraisers who make appraisals, have you?

A. Yes sir.

Q. And that was——

A. That was a foreclosure sale.

Q. A sheriff's sale, wasn't it?

A. Yes, and then we sold the property afterward.

Q. And that was the only sale that has taken place in that neighborhood recently?

20 A. West of the railroad, yes sir.

Q. A forced sale?

A. Yes.

Q. You have not owned any property there yourself?

A. Not on North Broadway—on South Broadway.

By the Vice Chancellor:

Q. Is this west of the Central Railroad?

A. Yes, of the southern division of the Central
30 Railroad, that goes to the Highlands. That goes past our place, and about half a block from this place.

Mr. McDermott: I submit the witness is not qualified.

By Mr. Dawes:

Q. You say this property adjoining it was a forced sale? Your company purchased the adjoining tract,
40 did it not?

Augustus Chandler—Direct.

A. Yes.

Q. Then what became of the adjoining tract?

A. We sold it.

Q. At public or private sale?

A. Private sale.

Q. When did the private sale of the adjoining tract take place?

A. That was last Fall sometime. I could not say 10 just the date.

Q. Do you know of any other sales in the neighborhood?

A. Not west of the railroad, no sir.

Q. You have already described the building there, have you not?

A. The building?

Q. Yes?

A. Yes sir.

Q. In your opinion, Mr. Chandler, what is the 20 fair market value of the Castle Garden tract, or what was the fair market value of the Castle Garden tract in 1913, in the month of February?

A. It was worth more in 1912 than it is to day, for several reasons. People that have located near there have depreciated the value—

The Vice Chancellor: Answer the question.

The Witness: How much was it worth?

Q. In 1913, in the month of February.

30

The Vice Chancellor: 1912 he said.

Mr. Dawes: I said 1913.

A. Well, I should have said the property in 1913 was worth \$5,000.00.

Q. Do you mean to say— Why do you state that?

A. What is that?

Q. Why do you put the value of \$5,000.00 on it in two years?

A. I say in 1913. I am not speaking of it now. I 40

Augustus Chandler—Direct.

am speaking of 1913. It was in better condition then than it is to-day.

Q. Do you recall the property in 1913?

A. Yes sir.

Q. What is the difference that you notice between 1913 and to-day?

A. The property has depreciated in its value because it has been neglected, and also all property in that neighborhood has depreciated 25% in the last three years.

Q. You spoke about 1913. Do you mean that the property to-day is in a poorer condition as to repair than it was two years ago?

A. Worse condition? Certainly, sir.

Q. This particular property, this Castle Garden property?

A. Yes, sir.

20 Q. Don't you know that it has been painted and some repair has been made on it since 1913?

A. I do not know it sir.

Q. Do you know it is not so?

A. I do not.

The Vice Chancellor: Well, Mr. Dawes, he is your witness.

Q. The sale of this property that you speak of, that went through your company, was what year, 30 the adjoining property?

A. Last year. We bought it in 1914, and also sold it in 1914.

Q. What did you sell the property for?

Mr. McDermott, I object to the question.

The Vice Chancellor: Objection sustained.

Q. What value do you put upon lots in that locality, how much a foot?

A. I can't answer that by comparing it with the 40 other property, can I, the property we sold?

Augustus Chandler—Cross.

By the Vice-Chancellor:

Q. What is the property along there worth a foot?

A. The property we sold we did not get \$25.00 per front foot. I should judge the property on the corner was worth double.

Q. How much was the value of it before 1913?

A. When I am putting that value on it I am putting it since last Fall, 1914 until now. 10

By Mr. Dawes:

Q. What was the value in 1913?

The Vice Chancellor: He is not qualified Mr. Dawes.

A. I would not want to say about it, because there is no property there I know of being sold at that time. 20

CROSS-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Chandler, you started to say something about the value in 1912—

The Vice Chancellor: It did not impress me that was the question he was asked. Was it?

(Previous answer read as follows: "It was worth more in 1912 than it is to-day for several reasons. People that have located near there have depreciated the value—") 30

Q. Is that the fact, in the Fall of 1912?

A. Well, anywhere along that time. I would not put any particular date on it, or the month.

Q. Was it worth more in the Fall of 1912 than 1913?

A. Yes, I think so, because property depreciates every year.

Q. Does your valuation of \$5,000.00 refer to that building? 40

Harry T. Bennett—Direct.

A. No; I mean the whole property.

Q. And you spoke of the value per foot there. You thought the land itself, the front value on the corner, was worth probably double what it was in the interior?

A. Yes. That is a very valuable corner, so far as that is concerned. The other isn't.

10 HARRY T. BENNETT, sworn for the complainant.

DIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Bennett, what is your business?

A. Well, I am in the newspaper business, and my office is that of assessor.

Q. Are you assessor in the City of Long Branch?

A. Yes, sir.

Q. How long have you been assessor?

A. Nine years.

20 Q. Are you acquainted with the market values of properties in Long Branch on North Broadway?

A. Well, I am acquainted with the assessing value. I do not know what distinction you make between market values and the assessing value. I think I am acquainted with property values in Long Branch, although some folks think I am not.

Q. You keep informed as to the properties, what they bring when sold, do you?

30 A. I try to but I can't always get the consideration.

Q. You have been for the last nine years estimating and judging values of properties, have you not?

A. Yes.

Q. How long have you known Castle Garden?

A. Well, I have been on intimate terms with it for nine years. I have known it longer than that.

Q. Describe the condition of the Castle Garden property for the last two or three years.

40 A. Well, it is a tract at the corner of North

Harry T. Bennett—Direct.

Broadway and Long Branch Avenue, 92 feet on Long Branch Avenue, 52 feet front and 47 on the rear and 74, as has already been stated, and the whole tract is covered by buildings, I think, three; if you were to divide them there would be three sections, the original building, and the McGill Building, and a one story addition on the front, and and on the Long Branch Avenue side, and then a two story structure in the rear. 10

Q. Do you recollect the condition of the property in 1913?

A. I should say it was about as it is to-day. It may be a little worse to-day than it was then.

Q. What was, in your judgment, the fair market value of this property in the month of February, 1913?

Mr. McDermott: I object to the question. May I cross-examine? 20

The Vice-Chancellor: Yes.

By Mr. McDermott:

Q. Mr. Bennett, have you been in this property?

A. Yes.

Q. In the stores or the rooms?

A. I have been in the living rooms and the first floor rooms which I styled the stores.

The Vice Chancellor: Were you up stairs? 30

The Witness: Yes sir.

Q. Were you all through the house?

A. I have not been up stairs this year. I was up stairs last year.

Q. You are in the newspaper business?

A. I am in the Department of Taxation but that is my present business; newspaper.

Q. You have not bought or sold land in that neighborhood, have you?

A. No sir. 40

Harry T. Bennett—Direct.

Q. And you say you are familiar with the lands in that neighborhood?

A. I always familiarize myself with the sales so far as it is possible.

Q. You mean as assessor you ought to know something about it?

A. Yes.

10 Q. But as a witness, now, do you know anything as to the selling price of property in that neighborhood in recent years?

A. Well, I am not sure that I would want to be sworn to that effect, but I have learned in some cases the prices, I have had to accept it and base some of my calculations on that.

Q. Have there been any sales in that neighborhood in the last two years?

20 A. Well, there has been a number of transfers, yes. The folks that owned this particular building that owned the property in the other block, east of the railroad, that was cut up and resold.

Q. Privately or by the sheriff?

A. Oh, privately.

Q. Do you know the value of the buildings? Have you had any experience to learn the value of the buildings?

A. I have never been asked to figure on the value of structures, but I have a horse sense knowledge of this type of building, I think.

30 Q. Have you any regular rate in that neighborhood for assessing lands?

A. Yes sir, in all sections of the city.

Q. So much per front foot?

A. So much per front foot.

Q. And your method of assessment is based on that?

A. Absolutely, so far as real-estate goes.

Q. Is that arbitrary? Has that been fixed for some years as the basis of assessment?

40 A. Oh, that is continually changing. It has not

Harry T. Bennett—Direct.

changed in this particular block in the last four years. It has been the same; but in the block east of this it has changed by reason of the recent sale that was made there.

Q. Your idea and belief is that the land is about the same, the value of the land?

A. Yes; my books show it has been kept at the same price for the past four years.

Q. As a matter of assessment?

10

A. Yes.

By the Vice Chancellor:

Q. Do you make assessments at full values?

A. Well, I aim to do that.

Q. Is that your standard?

A. It ought to be the standard of every assessor—

Q. Yes, but what is your standard—75%, 90% or 100%?

20

A. Well, your Honor, that is a very difficult question to determine. If you saw the condition of this property, how a man could say the proper value of this property now—I would not know how to get at the proper value of this particular property now.

Q. You would not be able to form an opinion of the value of the property?

A. That is my own notion.

Q. That is an assessor's notion?

A. I should not put it up as an expert notion.

30

Q. An assessor's notion?

A. Yes, perhaps it is an assessor's notion.

Q. An assessor who valued property at 100% would be unpopular in his neighborhood, wouldn't he?

A. Exceedingly—in all neighborhoods, I think.

The Vice Chancellor: Do you think he is qualified, Mr. Dawes? He disqualifies himself now. Probably you did not hear the last of it.

Mr. Dawes: Yes; I was listening.

40

Harry T. Bennett—Direct.

By Mr. Dawes:

Q. Mr. Bennett, you are familiar also with the private sales, lots, in Long Branch?

A. I know of transfers, but I cannot always get their consideration, the true consideration. I will ask for it and maybe I will have to question it after I get it.

10 Q. But you know that transfers are made of these properties?

A. I know every transfer that is made.

Q. And you have a general knowledge of the consideration of various properties in Long Branch?

A. I try to get at the consideration as near as I can.

Q. And you have been doing that for a period of nine years?

A. Yes sir.

20 Q. Do you own property in Long Branch?

A. Yes.

Q. Have you bought and sold property?

A. I have not sold any. I bought one.

By the Vice Chancellor:

Q. In this neighborhood?

A. Not in this neighborhood, no.

By Mr. Dawes:

30 Q. Mr. Bennett, what in your judgment is the fair market value of this property, or was, in 1913 in the month of February?

Mr. McDermott: I object.

The Vice Chancellor: Objection over-ruled.

A. I assessed it in 1913—

The Vice Chancellor: No. Strike that out.

Q. The market value?

40 The Vice Chancellor: I think you better ask the witness—He is perfectly frank with you.

Harry T. Bennett—Direct.

Ask him whether he can, from his knowledge of sales, form an honest opinion as to the true value of this property as of January or February 1913, and see whether he will qualify himself.

Q. Mr. Bennett, do you feel, with your knowledge of the sales—

The Vice Chancellor: Not what he feels. Ask him whether he can, from his knowledge of sales of property in this neighborhood, form an honest opinion of the true value of this property, as of February 1913, can you? 10

The Witness; There has not been a sale that I have any knowledge of the true consideration in that block since 1913.

By the Vice Chancellor:

Q. Won't you just answer my question? Can you from the knowledge of transfers of property in that neighborhood form an honest opinion as to the value of this property as of the month of February, 1913? 20

A. Well, I have no data, your Honor. I can tell you what I think it is worth, what I think it was worth in 1913.

Q. Would that be a guess?

A. Well, based on all the experience that I have.

The Vice Chancellor: I will hear it.

The Witness: \$3,400.00 my field book shows.

The Vice Chancellor: No. Strike out the answer. 30

By Mr. Dawes:

Q. You must answer the question.

The Vice Chancellor: The witness is giving us what he has assessed it at. His whole opinion evidently is predicated upon that assessment. Is that right?

The Witness: Well, I cannot do anything else. 40

Harry T. Bennett—Direct.

Q. Don't you predicate your opinion on what you know of the sales? Don't you gather the value from the sales of the property?

A. Well, I have already told you there has not been a transfer in that particular block of which I know the true consideration, and I must fix these appraisements according to what I think they ought to be.

10 Q. Has there not been any sales in the last nine years on this block?

A. Yes, but I have never been able to get the true consideration of any of the sales. There was one last year but I couldn't get it.

Q. Do you know the consideration of the property next door to it?

A. No sir.

Q. Have you been told?

20 A. I have never been told. I have these transcripts, but they don't admit them.

Mr. Dawes: I cannot go any further with him now.

The Vice Chancellor: You are quite right.

Mr. Dawes: I would like to recall Mr. Chandler.

The Vice Chancellor: What for?

30 Mr. Dawes: To ask him whether or not the property to-day is not in the same condition it was in the month of February 1913, what value he would place upon it.

The Vice Chancellor: As of to-day?

Mr. Dawes: No; as of then.

The Vice Chancellor: He has already stated that the property in that neighborhood generally depreciated 25%. Now there are a great many elements you must take into consideration.

David Lerner—Direct.

DAVID LERNER, sworn for the complainant.

DIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Lerner, how long have you lived at Long Branch?

A. About fifteen years.

Q. Do you know Samuel Nathanson?

A. Yes sir.

Q. Did you see him in the month of December, 1912, when R. D. Norton was with him? 10

A. Yes sir.

Q. Did you hear anything said by Mr. Norton or Mr. Nathanson concerning the loan of any money to Mrs. Norton?

A. Yes sir.

Q. Where was that conversation?

A. We went to see Mr. Nathanson in the house

Q. Mr. Nathanson's house?

A. Yes. 20

Q. Who was there?

A. Myself and Mr. Norton and Mr. Nathanson.

Q. Mr. Norton?

A. Yes.

Q. And who else?

A. Myself.

The Vice Chancellor: What about the wife.

The Witness: She was outside on the porch? 30

Q. What was said at that time? Give the conversation.

A. Well, Mrs. Norton was going to buy that tract of the lumber yard and Mr. Norton wanted to find out whether he could borrow \$5,000.00 and he went and asked Mr. Nathanson if he would let Mrs. Norton have the \$5,000.00 and Mr. Nathanson said yes, he would, provided he could get straightened up the Castle Garden if he would take back the Castle Garden. 40

David Lerner—Direct.

Q. Give the full conversation and what was said as to the price, and everything that was said at that time.

A. Well, I don't exactly remember all the conversation; that was the fact. We were going over to see Mr. Nathanson at that time.

10 Q. How many times were you present at any conversation between Mr. Norton and Mr. Nathanson?

A. Oh, several times.

Q. What else was said at that time by Mr. Norton respecting the Castle Garden?

A. Mr. Norton said that time to Mr. Nathanson he thought his figure was awful high. Well, Mr. Nathanson answered that he would not care to let them have any more money until this was straightened up.

20 Q. What price was asked for Castle Garden at that time?

A. I do not think there was any price made at that time. The principal question at that time was that Mr. Nathanson wanted the full amount of the money for the Castle Garden. I don't remember exactly what it was.

Q. Did you hear any conversations at any other time?

A. No, except Mr. Norton said he would see about it.

30 Q. Did you hear any further conversation between them?

A. Well, a couple of weeks later I believe it was Mr. Norton came and said he would take the \$5,000.00.

Q. What did he say about the price of Castle Garden?

A. Well, Mr. Nathanson was supposed to pay the difference—

40 The Vice Chancellor: Strike that out.

David Lerner—Direct.

Q. What was said between the parties about the price of Castle Garden?

A. Why, \$6,800.00.

Q. What was said at that time—Give the full conversation respecting the price of \$6,800.00 for Castle Garden.

A. I cannot hardly recall that.

Q. What do you say? 10

A. I cannot remember that.

Q. Was anything said about money at that time to pay for services or anything of that kind?

Mr. McDermott: I object to that as leading.

The Vice Chancellor: That is leading. Under some circumstance you have a right to lead, but you should first exhaust the memory of the witness. I think you ought to exhaust generally the recollection of this witness by general 20 questions. Ask what was said, and if he says he don't remember then you can—

Q. Mr. Lerner, have you given, as far as you recall, what was said at the first conversation at which you were present?

A. (No response.)

The Vice Chancellor: Did you understand that?

The Witness: I understand it, yes sir. I re- 30 member he asked Mr. Nathanson for the loan, and Mr. Nathanson said he would not do that only if this Castle Garden is taken into consideration.

Q. What else did you hear? I want all the conversation, everything that you can remember, that was said during the negotiations at which you were present.

The Vice Chancellor: So it won't confuse, confine the witness to the first conversation. 40

David Lerner—Direct.

Q. First, Mr. Lerner, go back to the first conversation at which you were present between Mr. Norton and Mr. Nathanson and give us that entire conversation.

A. Well, Mr. Norton said to Mr. Nathanson he was to buy this Edwards property, and he would not have money enough for Mrs. Norton, and if he could be sure of getting the loan of \$5,000.00 he
10 would buy it, otherwise he could not buy it, and Mr. Nathanson said he would give him \$5,000.00 on mortgage provided he takes Castle Garden back, and Mr. Nathanson holds title at the time to the Castle Garden.

Q. What was said at that time if anything as to—

The Vice Chancellor: Is that all he remembers.

20 Q. Is that all you remember?

A. That was the first conversation, yes sir.

Q. Now, was there anything said at that time that you recall about how much the Castle Garden property was to be?

A. Yes, Mr. Nathanson's figure was \$6,800.00.

Q. What was said at that time between Mr. Norton and Mr. Nathanson about this \$6,800.00? How do you put it \$6,800.00 rather than \$5,800.00 or some other figure?

30 A. Well, he said it was standing him in \$6,800.00, and he wanted him to take it back for \$6,800.00 and "If you do that you have outside collateral and we will settle the loan," and Mrs. Norton had a mortgage for \$5,000.00 for the Cooper Avenue property, and we put that proposition to Mr. Nathanson and Mr. Nathanson took it up and said he would take that as collateral, and, of course, then Mr. Norton wound up the matter with Mr. Nathanson without me there.

40 Q. Did you hear any other conversation?

David Lerner—Direct.

A. I don't think there was any more said about this Castle Garden business.

Q. You did not hear anything more said?

A. Not about the Castle Garden matter.

Q. At any time?

A. (No response.)

Q. I say, at any time, did you hear any other conversation respecting the Castle Garden property 10 or the loaning of the money?

A. Well, we come back and told him we would take it.

The Vice Chancellor: About two weeks afterward.

Q. What was said at that time?

A. Well, we had bought the property before. Then we come and told Mr. Nathanson and Mr. Nathanson said he tried to get the money but he 20 couldn't do it. In fact Mr. Nathanson tried to get it and couldn't get it, and we waited a little longer and then we gave in everything Mr. Nathanson required and we took the loan.

Q. What did he require?

A. Well, this five thousand dollars mortgage and three thousand dollars Castle Garden, and two thousand dollars mortgages on the coal yard, and the two thousand dollars mortgage on the office buildings.

Q. Were you present when the money was ad 30 vanced?

A. I wasn't there, no sir.

Q. During any of these conversations, was anything said by Nathanson as to the Castle Garden property, and why he put the price at \$6,800.00.

A. Yes, Mr. Nathanson said he wanted \$6,800.00.

Q. Why did he say he wanted \$6,800.00?

The Vice Chancellor: Do you mean, did he say why?

David Lerner—Cross.

Q. Did he say at what time why he wanted \$6,800.00 for this property?

A. Well, he said he had a lot of trouble getting that money, \$5,000 for us, and that is what he asked for it.

Q. Which conversation was it he said that?

A. Well, it was about a day or two before it was settled up I believe.

10 Q. You knew what the Castle Garden property stood him in, didn't you?

A. Well, to the best of my knowledge I did.

Q. Was there anything said at that time as to what it did stand him in?

A. Yes, we figured it up and Mr. Norton showed it didn't stand him in so much, and Mr. Nathanson, of course, had his figures. Mr. Norton showed him what it stood him in at that time, and Mr. Nathanson showed his figures, you know, and Mr. Na-
20 thanson said he would not do anything no other way.

Q. Who owned the Castle Garden property at that time?

A. Mr. Nathanson.

Q. Was Mrs. Norton in any way interested in that?

A. No sir.

Q. Was Mrs. Norton any way interested in the Lerner, Block, Norton Company?

30 A. No sir.

CROSS-EXAMINATION BY MR. McDERMOTT:

Q. You were interested in the Castle Garden property?

A. Yes sir.

Q. And you filed objections to the sale being confirmed by the court?

A. I did not.

Q. What?

40 A. I did not.

David Lerner—Cross.

Q. You knew objections were filed to the sale?

A. Not mine.

Q. Well, the company, the Lerner, Block, Norton Company—that was your company, wasn't it?

A. Yes.

Q. That filed objections to the sale?

A. Well, I haven't signed any papers to that effect.

Q. You did not know about that? 10

A. No sir. I know that the mortgagees did. Mr. Kirby and Mr. Norton, they held mortgages against the property.

Q. But you did not know that the Lerner, Block, Norton Company, filed any, did you?

A. I knew they filed the objections, but I didn't file any papers.

Q. You knew they were filed?

A. Yes.

Q. And you knew there was a sheriff's sale? 20

A. Yes.

Q. And you knew Mr. Nathanson bought at the sheriff's sale?

A. Yes sir.

Q. And he did not get possession, did he?

A. No sir.

Q. You stayed in possession?

A. Yes.

Q. And continued to collect the rents? 30

A. Yes.

Q. And have continued?

A. Yes.

Q. Did you see Mr. Nathanson about buying the property back?

A. Yes, I spoke several times to Mr. Nathanson.

Q. And you knew there were some people wanted the property?

A. Yes sir.

Q. At that time.

A. Yes sir. 40

Q. And did you know the price at which they wanted it?

A. Well, different prices at that time.

Q. You saw Mr. Nathanson, yourself. You were interested in the property and saw him several times about getting the thing straightened out?

A. Mr. Nathanson made the claim he hasn't had his money returned and I told him I would try and
10 sell it and would try to see that he made his good also, but he never gave me the claim of property.

Q. He did not get a deed.

A. Oh, I see.

Q. But you talked about getting the whole thing straightened out with him?

A. Yes sir.

Q. And he told you at that time that he had a purchaser for the property, I mean, before Mr. Norton came at that time, after the sheriff's sale
20 and before Mr. Norton came to him?

A. I don't remember Mr. Nathanson telling me he had a customer for it.

Q. How many times did you see him before you saw him with Mr. Norton?

A. Oh, several times.

Q. And it was with the idea of getting it straightened out and getting title in somebody else?

A. Trying to sell it and get out of it the best we could.

30 Q. You wanted to get a higher price so that you could pay off these mortgages?

A. Or we take the title back. We had the other mortgages to arrange for.

Q. On the Castle Garden?

A. Yes. You mean the mortgages after Nathanson's?

Q. The mortgages that were on the property before the sheriff's sale.

A. After the sale we arranged it.

40 Q. But what you were seeing Mr. Nathanson for

David Lerner—Cross.

was to see what could be done about getting it so you could keep possession of it?

A. At that time, yes.

Q. You say you do not remember that he told you he had somebody to buy it?

A. I do not remember, no sir. I remember I told him I had the next property to it and the two together would be more likely to bring a price, together. 10

Q. Did you own the property, or the corporation, next door?

A. I owned it and when I got out the corporation I got out too.

Q. Didn't Mr. Heidel own the property next door?

A. No, I bought that from Johnson in 1903.

Q. Mr. Heidel had a place on the north?

A. On Long Branch Avenue adjoining the Long Branch property.

Q. Don't it adjoin this property? 20

A. On Long Branch Avenue, yes sir.

Q. Didn't Mr. Nathanson tell you Mr. Heidel wanted to buy the corner property?

A. No sir. I went to Heidel myself—

Q. I have not asked you that.

A. No sir.

Q. You and Mr. Nathanson did not talk about that?

A. No sir.

Q. I understood you to say Mr. Nathanson wanted 30 to get the thing straightened out, as you express it, in your first statement of the conversation, wanted to get it straightened out so he could get a deed or so something could be done with it. He was not then getting anything?

A. No sir.

Q. The sale had been held up and it was all up in the air. That is right, isn't it?

A. Yes.

Q. I understood you to say at first that when Mr. 40

David Lerner—Cross.

Norton saw him he said he wanted to get the Castle Garden straightened out.

A. Mr. Nathanson said so, yes.

Q. And that finally developed into a price at which it would be turned back, or be turned over, rather, to Mrs. Norton?

A. No. Mr. Nathanson said he wanted that much
10 money, \$6,800.00.

Q. He wanted to sell it for that price?

A. Yes.

Q. Did you ever know of his offering it for sale at any other price?

A. No sir.

Q. You did not know that?

A. No sir.

Q. Did you know that the exceptions were with drawn afterward?

20 A. Yes sir.

Q. And after that did you still continue to collect the rents?

A. Yes sir.

Q. You occupied part of the property yourself?

A. Up until a couple of months ago.

Q. You were not interested in the purchase of the property?

A. No sir.

Q. At \$6,800.00?

30 A. No sir.

Q. And Mr. Norton, I understand, was there twice talking about it, with you?

A. Well, yes sir.

Q. That is your recollection, is it?

A. Yes sir.

Q. Did you say the other mortgages were taken care of on this property?

A. Yes.

Q. They were cut off by the foreclosure?

40 A. Yes. That did not stop us from straightening

David Lerner—Redirect.

it up with the parties. We had to straighten it up with them.

Q. Do you mean the people who had mortgages?

A. Yes sir.

Q. That you cleared that up.

A. Yes.

Q. Mr. Blueston?

A. We gave Mr. Blueston a property in New York and gave Mr. Kirby a property in Long Branch for his mortgage, and took care of two of them. They owned it before the foreclosure, and the foreclosure cut them out. 10

Q. How did they take care of them, on this property, after you bought it back.

Mr. Dawes: Is that material? I object.

The Vice Chancellor: Objection overruled.

Q. (Last question read.) On the Castle Garden property did you take care of them by putting more mortgages on that? 20

A. No sir.

Q. On what property?

A. We had lots of more properties down there.

REDIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Lerner, you say there were other mortgages on this property, the Blueston?

The Vice Chancellor: They satisfied the debt. 30

Q. Were these mortgages on the Castle Garden property and other properties, or just on the Castle Garden property?

Q. No sir. They were on Castle Garden and also other property.

Q. When did you first become the owner of Castle Garden?

A. I bought that in 1906, I believe.

Mr. McDermott: When?

The Witness: I believe 1906.

David Lerner—Redirect.

Q. What other properties do you own on North Broadway, near this property?

A. Well, I own the whole block down there. I once owned next to Johnson, and the next corner, the Thomas W. Cooper tract, and then the old man Hendrick's tract, which took from North Broadway to Cooper Avenue.

10 Q. You have bought and sold properties, have you?

A. Oh, I sell a lot of other properties, yes.

Q. And you own other properties there?

A. Yes.

Q. Do you recall the condition of this property in 1913?

A. Yes.

Q. What was its condition?

20 A. Well, it was pretty near as bad as it is now. You couldn't say exactly the same, but it was not in first-class condition, that I would call it; about the same condition it is to-day; maybe now a little worse.

Q. What was the fair market value of that property in 1913, in February?

A. Well, I think about \$3,500.00 to \$4,000.00 would have been a fair price for it.

Q. How long had you owned this property?

A. I own it since 1906.

30 Q. Are properties worth more or less now than they were when you bought that, the selling price, are the properties worth more or less now, than they were when you bought that—any property on North Broadway?

A. I can't see any difference; about the same value.

The Vice Chancellor: The same value as when?

40 The Witness: As 1913, to-day. It hasn't had many changes down there.

David Lerner—Recross.

RECROSS-EXAMINATION BY MR. McDERMOTT:

Q. You bought the property in 1907?

A. I don't remember exactly the date. I bought of Mr. Thomas P. McKenna.

Q. And the deed was made by Mary E. Pettit?

A. Yes.

Q. And you turned it over to the Lerner, Block, 10
Norton Company in 1909?

A. Yes.

Q. And there was a mortgage on there made by
Mrs. Pettit?

A. Yes.

Q. \$4,000.00?

A. Yes.

Q. And you made a mortgage to Richard D. Nor-
ton for \$3,000.00?

A. That was as collateral also. That was not a 20
mortgage; it was collateral.

Q. Well, it was a \$3,000.00 mortgage, though?

A. Well, I say a mortgage as collateral.

By the Vice Chancellor:

Q. Collateral for what?

A. Collateral for I think some notes in the bank
that Mr. Norton has cashed for discounted for the
company.

30

By Mr. McDermott:

Q. Then you made a mortgage to Kirby of
\$,2,800.00?

A. Kirby's covered two tracts of land.

Q. Yes, something besides this, but it was also
on this?

A. Yes.

Q. Then you made another mortgage to Richard
D. Norton for \$6,000.00 on this property and some
others?

40

David Lerner—Recross.

A. Well, now, if you get the record you will find out M. Norton's mortgage was then cancelled.

Q. Which was cancelled.

A. Mr. Norton's mortgage.

Q. The \$3,000.00 one?

A. Yes; he owned a \$6,000.00 mortgage and his mortgage was cancelled and this one was put in place of it by the transfer to the Lerner, Block, 10 Norton Company.

Q. And another mortgage on it by Blueston for \$6,000.00?

A. This covers 13 tracts of land.

Q. Well, that is on this?

A. This was on the thirteen.

Q. And there were judgments against you, a number of judgments against you?

A. Yes.

Q. That they could not collect with these mortgages on the property?

A. There was no judgment against me then. When I owned the property them mortgages was on the property—

Q. Have you a book or anything showing the rents you collected on this property?

A. Yes.

Q. Have you got it with you?

A. No, I ain't got it with me.

Q. Do you mean to say that the rents now are 30 the same as they were in February 1913?

A. About the same.

Q. Are they about the same?

A. Yes.

Q. Isn't it a fact that in February 1913 the rents amounted to about one hundred dollars a month—
Figure up the rooms.

A. I know the rooms. I built them. Is that in 1913?

Q. 1912 and 1913, about the time of this sheriff's 40 sale.

David Lerner--Recross.

A. No sir; at the time of the sheriff's sale it was just about as much as to-day.

Q. Wasn't it about a hundred dollars a month?

A. No sir; not then.

Q. Well, that summer before, weren't they a hundred dollars a month?

A. The first year I built it, about seventy six or eighty dollars.

Q. I want the time in 1912 and 1913? 10

A. I haven't seen it.

Q. What did the big store rent for?

A. \$20.00 a month.

Q. How much did the other two stores rent for?

A. They have been idle—

Q. I am getting back to the time they were not idle.

A. We only had six months one store rented, and since then it is unoccupied.

Q. How many rooms are there in the building 20 besides the stores?

A. Twenty-four rooms.

Q. What was the price per room?

A. Three rooms rented for seven dollars and eight dollars.

Q. A month?

A. Yes.

Q. Do you mean to say the property has not run down any since 1913?

A. I don't see any difference. 30

Q. What?

A. I can't see any difference.

Q. To your mind it is just as good, is it, as it was then?

A. I think so.

Q. The rent is just as good, you say?

A. What I have been getting I get now, yes sir.

Q. What do you say you get now?

A. I get from the store \$20.00 now.

Q. And from Mr. Fisher, how much? 40

David Lerner—Recross.

- A. Not a penny.
- Q. What is the rental? What does he agree to pay?
- A. \$10.00 in the summer; he is supposed to pay, and \$8.00 in the winter time.
- Q. \$10.00 a month?
- A. In the summer and \$8.00 in the winter time.
- Q. And the Ross rooms?
- 10 A. \$7.00 and \$8.00, but they are not rented.
- Q. Saboski?
- A. Who?
- Q. Saboski?
- A. I ain't got any tenant by the name of Saboski.
- Q. Well, Slavatski?
- A. Yes.
- Q. \$8.00 a month?
- A. You mean \$3.00 a month. If he will give you \$8.00 I would like you to collect it from him.
- 20 Q. What is his rental?
- A. \$3.00 a month Slavatski.
- Q. Is that what he agrees to pay?
- A. That is all he agrees to pay, yes.
- The Vice Chancellor: How many rooms?
- The Witness: He only uses one room. He has three rooms there, your Honor, but he only uses one.
- Q. Morris Weisman, how much?
- 30 A. Seven dollars.
- Q. And how much does Crolley's lease call for?
- A. \$8.00.
- Q. And you occupy part of the house yourself?
- A. Yes, I just moved in two months ago.
- Q. How many rooms?
- A. Well, there is five rooms and there is another room and we call it a six room place.
- Q. How many baths are there in that apartment? How many bathrooms are there?
- 40 A. In this building?

David Lerner—Recross.

Q. Yes.

A. Not one.

Q. Now there are bath tubs in some of those rooms, aren't there?

A. No sir, only sinks.

Q. What?

A. Water sinks.

Q. What do you say about your apartment, anything in that? 10

A. No sir, no baths there.

Q. You think the fair value of this property is \$3,500.00?

A. Up to \$4,000.00 to-day.

Q. What was it worth in February, 1913?

A. Well, we didn't have any buyer for it.

Q. No. In your judgment what was it worth?

A. In my judgment I do not think it was worth anything more. Sometimes you can find a buyer and get two or three hundred dollars more, but that 20 is about the proper value of it.

The Vice Chancellor: Did you offer it for sale at that time?

A. I did. Before the sheriff's sale took place I offered to sell it to quite a few people, and of course, I asked \$5,000.00 for it, or \$4,500.00 for it, and I had no offer for it, and I asked to put a \$4,000.00 mortgage on it before it went to sheriff's sale, but Mr. Nathanson didn't feel like it. 30

Q. You bought it subject to a \$4,000.00 mortgage?

A. I did.

Q. How much did you spend on it then? You made the remodeling?

A. Yes.

Q. How much did that cost?

A. I haven't the exact figures. I was doing business there for myself, David Lerner, and I had a man by the day. I ain't figured it up.

Q. How much did it cost? 40

David Lerner—Recross.

A. I should judge I must have spent from a thousand to fifteen hundred dollars on it.

Q. Besides your own work?

A. I didn't do much work there myself.

Q. Did you give anything above the mortgage?

A. I paid for it \$4,750.00.

Q. That was, of course, before you made these repairs, before you remodeled it, as you say?

10 A. Yes.

By Mr. Dawes:

Q. You say you spent about \$1,500.00?

A. From \$1,000.00 to \$1,500.00, yes.

Q. Didn't you buy an old building for \$300.00?

A. Yes sir.

Q. Didn't you use the lumber from that?

A. Yes.

20 Q. How did you pay the carpenter?

A. By the week, so much a week. Oh, no. This house particular I remember it, with the carpenter, I give him a horse and wagon for the carpenter work.

Q. You say you spent \$1,500.00? You paid the carpenter with a horse, didn't you?

A. Yes.

Q. For the work on the building?

A. Yes sir.

30 Q. Did you have any other carpenter besides the one?

A. Yes, I put up a building in the yard, too, at that time.

Q. Who was the carpenter there?

A. Oh, it was another carpenter.

Q. What did you pay him?

A. Well, that building in the yard—that didn't belong to this part—

Q. I am talking about the Castle Garden property.

40 A. Oh, that is all I had, this one carpenter, I paid

David Lerner—Recross.

him \$300.00—gave him a horse and wagon that cost me \$125.00.

Q. You paid the carpenter with a horse that cost you \$125.00?

A. Yes.

Q. And that all was it was worth?

A. That is all it was worth, I suppose.

Q. Now, the lumber you used in fitting up Castle Garden, where did you get that from? 10

A. I bought a building from Albough.

Q. What did you give for that building?

A. \$300.00.

Q. And you tore that down?

A. Yes.

Q. And used the lumber of it?

A. Yes sir.

Q. On Castle Garden. Did you use any other lumber?

A. Well, some few pieces. 20

Q. Is that all the repairs you put on it?

A. That is all, with the exception of some little plumbing I did.

Q. Did that cost you \$1,500.00?

A. No sir. Altogether it cost me—the property at that time cost me from a thousand to fifteen hundred dollars.

Q. I am asking you about the Castle Garden property?

A. That is all I spent at Castle Garden. 30

Q. The building and the horse?

A. The building and the horse; and there is \$57.00 I pay for plaster and plumbing bill, whatever it was.

Q. And you say that there was a mortgage on this property for \$4,000.00?

A. Yes sir.

Q. Who took that mortgage?

A. Mary V. Pettit. My partner sold it but it was in her name and she took the mortgage back. 40

David Lerner—Recross.

Q. Mr. Nathanson got that mortgage, didn't he?

A. Yes sir, he took an assignment.

Q. What did Nathanson exact from you, if anything, in order to take that mortgage?

Mr. McDermott: I object to the question as immaterial.

10 The Vice Chancellor: How is it relevant in your view?

Mr. Dawes: My view is this: this property never stood him in any more than \$4,000.00. When he took the property, instead of taking the \$4,000.00 mortgage he required a certain payment of \$500.00 by the man who owned the property; that there was no such amount of money due Nathanson as he got a decree for in the Court of Chancery. That was the point,
20 and it goes to his good faith.

The Vice Chancellor: I think you are going too far afield Mr. Dawes. Objection sustained. Ask him what this property stood Mr. Nathanson from him. I think that is relevant, because of the statement made by this witness that Nathanson exacted \$6,800.00 because he, Nathanson, said it stood him in \$6,800.00. Ask what he knows.

30 Q. Do you know how much this Castle Garden property stood Samuel Nathanson in, in the month of January, 1913?

The Vice Chancellor: Do you know?

A. I don't remember exactly, at that time. I knew at the time he gave him the mortgage how much it stood him in.

Q. How much did he advance on that mortgage, do you know that?

40 A. Yes sir.

David Lerner—Recross.

Q. What was the arrangement between you and him when he took that mortgage?

Mr. McDermott: I object to the question.

The Vice Chancellor: That is only repeating what I have already ruled out, Mr. Dawes.

Q. How much money did Samuel Nathanson put in that property originally?

A. \$3,500.00. 10

Q. And was there any interest paid on that mortgage afterward?

A. Yes sir.

Q. How many years—do you know how much interest was paid?

A. I do not remember.

Q. Can you give any idea?

A. No sir.

Q. Was the interest paid every year?

A. Sometimes every year; sometimes every six 20 months.

Q. For how many years was the interest paid?

Mr. McDermott: I object.

A. I can't remember.

Q. Mr. Lerner, how is the interest usually paid, by check or in cash?

A. Sometimes by check and sometimes in cash.

Q. Who gave the checks?

Mr. McDermott: I object. 30

A. I did.

Mr. McDermott: I omitted a question.

By Mr. McDermott:

Q. Do you remember how much insurance you carried on that property?

The Vice Chancellor: Hasn't that already been sworn to? 40

Mrs. Elizabeth C. Norton—Direct.

A. Yes sir.

Q. Was it \$4,000.00 or more?

A. Never more. When I first started I had a \$4,000.00 policy. When I fixed the building up at the time it was foreclosed it was \$4,000.00.

Q. And more recently it has been \$3,000.00?

A. Ever since, \$3,000.00.

By the Vice Chancellor:

10 Q. Why did you insure this building for \$4,000.00?

A. The mortgagee—they took a policy for their mortgage.

Q. Was the insurance of \$4,000.00 in one policy?

A. Yes, just one policy. We couldn't pay the premium, it was so awfully high.

Q. Earlier in your examination you said that Mr. Norton gave to Mr. Nathanson a \$5,000.00 mortgage on the Cooper Avenue property as collateral security. What did you mean by that?

20 A. Well, Mr. Nathanson—

Q. Did he give it to him as collateral security?

A. He gave it to him as collateral security, yes sir.

Q. What else did Mr. or Mrs. Norton give to Mr. Nathanson to show that Mrs. Norton owed Mr. Nathanson \$5,000.00 for which the \$5,000.00 mortgage was given as collateral security, if anything,—a note or bond or anything of that kind?

A. Mr. Norton?

30 Q. Yes.

A. Nothing.

Q. If it was given as collateral security then he had accepted by word of mouth. Is that your idea?

A. That is what I told.

MRS. ELIZABETH C. NORTON, the complainant,
sworn.

DIRECT-EXAMINATION BY MR. DAWES:

40 Q. Mrs. Norton, you are the complainant in this case?

Mrs. Elizabeth C. Norton—Direct.

A. I am.

Q. In 1913 did you own a certain tract of land known as the Cooper Avenue properties?

A. Yes.

Q. In 1912, the latter part of it, did you negotiate for the purchase of what has been known as the Edwards tract in Long Branch?

A. Yes.

Q. And do you remember how much they were asking for—

The Vice Chancellor: What did you agree to pay?

The Witness: Between \$7,000.00 and \$8,000.00.

Q. How much money did you need over what you had in order to complete the purchase of the Edwards tract?

A. \$5,000.00.

Q. How did you attempt to raise that \$5,000.00?

Mr. McDermott: I object to this. The witness did nothing personally about it.

The Vice Chancellor: The objection is overruled. Proceed.

Q. How did you go about to raise the \$5,000.00?

A. Why, Mr. Norton saw Mr. Nathanson and he said he would lend the \$5,000.00.

Q. You did it through your husband?

A. Yes.

Q. Was Mr. Norton your agent in this matter?

A. Yes he was.

Q. What were you desiring at that time? Were you desiring to purchase any other tracts than the Edwards tract at that time?

A. No, only the Edwards.

Q. When did you first hear of the Castle Garden tract of land?

A. Oh, I had heard of that for several years.

Q. Well, as to your becoming interested in it?

Mrs. Elizabeth C. Norton—Direct.

A. After Mr. Nathanson said he would not give the \$5,000.00 unless we——

Mr. McDermott: May I ask to have that stricken out?

The Vice Chancellor: Motion denied. Go on. (Last question and answer read.)

10 The Witness: Unless we let him deed that to us and we give him \$12,000.00 mortgages on different properties.

By the Vice Chancellor:

Q. You want to add to that, as reported to you by your husband.

A. Yes.

20 The Vice Chancellor: I think that takes the sting out of it, does it not? This woman had some dealings, she transacted some business. Whether Nathanson actually told this to her husband is not proved by that. She did it because her husband told her something.

Mr. McDermott: I am quite content as it is now, your Honor.

By Mr. Dawes:

30 Q. Did you desire at that time or at any other time to become the owner of the Castle Garden property?

A. No I did not.

Mr. McDermott: I object to the question.

Q. At the time that you agreed to take the Castle Garden property what was said to you? What was your belief as to the value of that property, if any?

Mr. McDermott: I object to the question.

40 The Vice Chancellor: Objection sustained.

Mrs. Elizabeth C. Norton—Direct.

Q. Did you at any time prior to Mr. Norton telling you that you must take the Castle Garden property if you desired a loan, did you at any time have a desire to become the purchaser of that property?

Mr. McDermott: I object to the question.

The Vice Chancellor: The objection is over-ruled. It has already been answered.

Mr. McDermott: That is one reason I objected. 10

Q. Since you have had that property has any effort been made to sell that property?

Mr. McDermott: I object to the question.

The Vice Chancellor: Why do you object to that?

Mr. McDermott: Because it is immaterial, that is all.

The Vice Chancellor: Answer the question. The objection is over-ruled. 20

Q. (Last question read.) Do you know or not?

A. No; I don't know.

Q. Mrs. Norton, were you in any way interested in the Lerner, Block, Norton Company?

A. I was not.

Q. Were you in any way interested in the Castle Garden property prior to February 1913?

A. No, I was not.

Q. You paid the balance of the money. Where did you get the balance of the money to complete 30 the Edwards tract from?

A. I had it in the bank, \$2,000,00.

Q. That was your own money?

A. Yes sir.

Q. Did you have any notion as to the value of this property? Answer that yes or no.

A. Yes.

Q. Did you have any information from any one as to the value of this property? 40

Mrs. Elizabeth C. Norton—Cross.

A. Mr. Norton had told me some one had told him it wasn't —

Mr. McDermott: I object.

Q. What was your idea as to the value of this property at the time you got this loan from Mr. Nathanson?

A. \$3,500.00.

10 Q. Would you have taken this Castle Garden property for \$6,800.00, except to get a loan of \$5,000.00?

A. No, only to get the loan because we needed it.

Q. Have you ever seen the Castle Garden property?

A. Yes.

Q. Before or since the——

A. Before and since.

Q. You knew the property?

20 The Vice Chancellor: What information came to you as to the value of the property and from whom?

Q. What was your information as to the value of that property?

A. I said \$3,500.00.

Q. Who gave you that information?

A. My husband.

Q. Was anything ever said as to what Mr. Nathanson said as to the value of the property?

A. No.

30

CROSS-EXAMINATION BY MR. MCDERMOTT:

Q. You did not look at the property to see how much it was worth?

A. No, just from the exterior.

Q. Your only idea of the value of it was from your husband, was it?

A. Yes.

Q. And you bought it at \$6,800.00?

40 A. Yes, to get a loan.

Mrs. Elizabeth C. Norton—Cross.

Q. What do you say you heard it was worth?

A. \$3,500.00.

Q. So you gave \$3,300.00 to get \$5,000.00?

A. That is the idea.

Q. You had a \$5,000.00 mortgage that was perfectly good?

A. Yes.

Q. And you also had the Edwards property to mortgage for whatever you could get on it? 10

A. Yes.

Q. And you did get a mortgage for \$4,000.00 on it?

A. Yes.

Q. So you had resources of \$9,000.00 with which to get \$5,000.00, the five you had and—

A. Gave a mortgage on Cooper Avenue for \$5,000.00, and \$4,000.00 on the Edwards.

Q. That made \$9,000.00.

A. And three on the—

Q. I am not talking about that, because you got 20 that afterward. But at the time you had that in control?

A. Yes.

Q. And you thought it was wise to give \$3,300.00 to get \$5,000.00 you say?

A. We did, because we thought the property we were buying— We had to get the money somewhere.

Q. Did you think the Edwards property was going to increase in value enough to compensate you on 30 that?

A. Yes.

By the Vice Chancellor:

Q. What did you think the Edwards property was worth?

A. We thought it was worth more than we gave.

Q. Did you think it was worth \$3,300.00 more?

A. I don't know what it was worth. 40

Richard D. Norton—Direct.

Q. Here you got \$5,000.00 and gave a bonus of \$3,300.00. Is that right?

A. We could not get the \$5,000.00 unless we gave it.

Q. Did you make an attempt to get it from others?

A. We did.

Q. What was the Cooper Avenue property worth at the time you gave the five thousand dollars 10 cash—

A. I should imagine it was worth about what the mortgage was.

Q. You had in the neighborhood of \$2,000.00 in cash?

A. Yes.

Q. Do you mean to say you made an effort to get \$5,000.00 by hypothecating this \$5,000.00 mortgage you had, and also putting up the Edwards property?

A. Yes.

20 Q. Where did you try to get that money from any one else?

A. Well, we tried several people but they didn't have it.

Q. Where?

A. Well, different friends of ours.

Q. Through any operator in real-estate, or money operator?

A. No.

Q. You did not try there?

30 A. No.

Q. You really don't know much about these transactions anyhow?

A. No, only as they are explained to me.

Q. You leave everything to your husband?

A. Yes sir.

RICHARD D. NORTON—Recalled.

By the Vice Chancellor:

40 Q. Mr. Norton, did you make any effort to get the \$5,000.00 loan that you needed to get, on the

Benjamin Wolfson—Direct.

Harry W. Green—Direct.

Edwards property, from any source other than Nathanson?

A. Yes, I did.

Q. Where?

A. I saw Mr. Morris at Long Branch.

Q. Real-estate and money dealers?

A. Yes, and I came to Trenton here and applied to the Trust Company, and they said they would 10 not go as far from home as that.

Q. Did you try to get this \$5,000.00 by hypothecating the \$5,000.00 mortgage and also putting up the Edwards property?

A. Yes sir, from both properties, the \$5,000.00 mortgage and the Edwards property. Yes, I was offering everything I had and I could not get the loan.

BENJAMIN WOLFSON, sworn for the complainant. 20

DIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Wolfson, what is your business?

A. Contractor and builder.

Q. And do you buy and sell real-estate?

A. No.

Q. Have you bought and sold real-estate?

A. No.

Mr. Dawes: That is all, then.

(No cross-examination.)

30

Mr. Dawes: We rest.

HARRY W. GREEN, sworn for the defendants.

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Green, where do you live, and what is your business?

A. Long Branch. I am in the real estate and insurance business.

40

 Harry W. Green—Direct.

Q. How many years have you lived there?

A. I have lived in Long Branch and I have been in business there over twenty-five years.

Q. Do you know the Castle Garden property?

A. Yes.

Q. Where is that located?

A. Corner of Long Branch Avenue and North
10 Broadway.

Q. What sort of building is it?

A. Well, it is a two story frame building with a one story addition on it.

Q. Have you carried insurance on that building?

A. Only for the past year.

Q. Did you know the building before it was in its present condition or shape?

A. I did.

Q. What was it formerly?

20 A. When they first built it, it was a livery stable and afterwards it was a garage, and then it was turned into stores and apartments. I believe McGill used the upper part of it for a tin shop at one time, in connection with the wheelwright business.

Q. Did you know the property in 1913?

A. Yes.

Q. And the latter part of 1912?

A. Yes sir.

30 Q. How far is it from your business, or place of business?

A. Oh, two or three blocks.

Q. Have you bought and sold real estate in Long Branch and observed the sales?

A. I have.

Q. And the prices in Long Branch?

A. Yes sir.

Q. What, in your judgment, was this property fairly worth in the latter part of 1912 or the first two or three months of 1913?

40 A. Well, I think the land was worth \$2,000.00

Harry W. Green—Cross.

and the building about \$4,500.00. Or perhaps \$4,000.00. It was between \$4,000.00 and \$4,500.00.

Q. Have you seen it recently?

A. Oh, yes; I see it very often.

Q. What is its present condition?

A. In bad shape.

Q. What is its present condition as compared with 1913?

A. Well, it always looked pretty seedy, but it wasn't so bad as it is now. At the present time the window glasses are broken out, and even the sash are broken out up stairs. It has a general unkept appearance. 10

Q. What insurance do you carry on that Mr. Green?

A. \$3,000.00.

CROSS-EXAMINATION BY MR. DAWES:

Q. Do you have any knowledge of any sales of 20 property in that vicinity?

A. Nothing of a recent date, no sir.

Q. You are not basing it on the sale of the property adjoining it?

A. No.

Q. Didn't you conduct the sale, of the livery right above it?

A. No sir.

Q. Your knowledge of values which you place upon this property is not based on any sales? 30

A. It is on judgment.

Q. Just on your own judgment.

A. Yes.

Q. Your business is what?

A. Real estate and insurance.

Q. Have you anything to do with putting up buildings and erecting them?

A. I have put up a great many, yes.

Q. Are you a carpenter?

A. No. 40

William H. Brehm—Direct.

Q. Do you build buildings?

A. I said so, yes.

Q. You contract for the building of them?

A. Yes.

Q. What experience have you ever had with selling and disposing of buildings that have been on lots for ten or fifteen or twenty years?

A. I have tried a good many times to sell them.

10 Q. Have you made any sales?

A. Not recently. I have a building right near that I have been trying to sell for fifteen years.

WILLIAM H. BREHM, sworn for the defendants.

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Brehm, where do you live?

A. Long Branch.

20 Q. How many years have you lived in Long Branch?

A. Well, not quite a year.

Q. How long have you lived in that neighborhood?

A. Well, forty years.

Q. Do you know the Castle Garden property that has been spoken of?

A. Yes.

Q. Are you are a property owner near there?

30 A. Yes, about seven or eight hundred feet from there.

Q. How many properties have you there?

A. I have got fourteen there and four down on Seaview Avenue.

Q. How long have you known the Castle Garden property?

A. Oh, I suppose fifteen or sixteen years; that is, to remember it.

40 Q. How long have you been familiar with property in that neighborhood, buying and selling property in that neighborhood?

William H. Brehm—Direct.

A. Just in that vicinity about six years.

Q. Have you sold as well as bought?

A. Yes.

Q. Have you been inside the Castle Garden property?

A. Well, I have, when it was first overhauled, but not since.

Q. When it was overhauled by whom?

A. Mr. Lerner; he brought me through and showed it to me. ¹⁰

Q. Do you know how it is cut up?

A. I forget just now, but it was cut up in flats.

Q. How many stores?

A. Three.

Q. The building occupies almost the entire lot?

A. Yes.

Q. What in your judgment was the fair value of that property in the latter part of 1912 and the first two months of 1913? ²⁰

A. Well, I should judge—the way I get at property when I get anything like that, is what it is worth, income.

Q. Do you know something of the income of this property?

A. I understand it has been as high as a hundred dollars a month.

Q. Well, taking the property as you know it, what would you say was a fair valuation? ³⁰

Mr. Dawes: I object to that, as he is not qualified.

The Vice Chancellor: I will sustain it at the present time. He has really disqualified himself.

Mr. McDermott: By his statement as to what he would give for the property?

The Vice Chancellor: He said he would value the property by the income. That is not the proper criterion. ⁴⁰

William H. Brehm—Cross.

You said something about the value of the property by the income. Do you mean its value to you? Is that the idea? That is one of the elements, isn't it?

The Witness: Yes.

Q. But judging this property by itself, and from what you know of values in that neighborhood, can you give an estimate of the value of this property?

Mr. Dawes: I object to that.

The Vice Chancellor: Objection over-ruled.

Q. What do you say is the fair value?

A. I should think a fair price would be about \$7,000.00.

Q. In 1912?

A. 1912, yes, but it would not be worth that to-day.

Q. How about 1913?

A. Well, around that neighborhood, yes.

Q. Why isn't it worth as much to-day?

A. I don't know what it is worth to-day, hardly, it is all run down.

Q. Do you see it often?

A. Yes, I see it two or three times a day, pass it every day.

CROSS-EXAMINATION BY MR. DAWES:

Q. What, in your opinion, is the fair value of that property to-day?

A. Well, I would not want to give over fifty five for it.

The Vice Chancellor: What do you mean by that?

The Witness: Five thousand, five hundred.

Q. How much do you estimate the land to be worth?

William H. Brehm—Cross.

A. Two thousand.

Q. And that is the fair market value for lots, is it?

A. That is a corner lot. No, it ain't a fair price for lots along there, no. That is a corner lot.

Q. Do you regard that as a fair value of that lot?

A. Yes.

Q. What experience have you had in buying and selling properties there in the last three or four years?

A. Well, I have sold two or three properties in the last three or four years. 10

Q. Do you know of any sales in this vicinity in the last three or four years?

A. No, only foreclosures.

Q. Do you think the difference in value of it, between \$5,500.00 and \$7,000.00 is due to the decline of the property?

A. Yes sir. I certainly do, to that kind of depreciation.

20

By the Vice Chancellor:

Q. Is your estimate based upon your understanding of the income of a hundred dollars a month?

A. Yes sir, and the location on the corner, yes.

Q. If your information as to that was an error and you were informed that the rent was much less than that, would you still adhere to your opinion that it was seven thousand?

A. No.

30

Q. Suppose it to be the fact in this case that the rent was only \$50.00 a month, what then in your opinion would be the value of this property as in February 1913?

A. Well, if that was really the income of it I would have to cut it.

Q. Would you cut it one half?

A. No, I would not. This property is run down; it could be taken care of and made to pay a good income. They let it go right down to nothing.

40

William H. Brehm—Cross.

By Mr. McDermott:

Q. It is capable of producing it?

A. Yes sir, a hundred dollars a month, easy.

By Mr. Dawes:

10

Q. How do you know that?

A. From experience. I have got the same kind of property; it ain't fit to go into, let alone anything else.

Q. Where have you got any such property as that?

A. I ain't got any quite as low as that. I have some up town and I have some up near the town hall.

20 Q. But you have no properties in this vicinity?

A. Within seven or eight hundred feet north of it.

Q. Have you got stores there?

A. No.

Q. What sort of houses have you got there?

A. Detached houses, bungalows and houses.

Q. Small or large houses?

A. Small fifteen dollar houses.

Q. How much?

30 A. Fifteen dollars a month.

By the Vice Chancellor:

Q. You have personal charge of this property?

A. Yes.

Q. And look after collecting the rents and repairs?

A. Yes sir, repairs and everything.

(Adjourned until Thursday, September 23rd,
40 1915, at 10:30 o'clock in the forenoon.)

 IN CHANCERY OF NEW JERSEY.

Between

 ELIZABETH C. NORTON, *et al.*,
 Complainants,

AND

 SAMUEL NATHANSON,
 Defendant.

On Bill, &c.,

10

Testimony.

TESTIMONY taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the twentieth day of October, 1915, at 10:30 A. M.

20

Before HON. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES: AARON V. DAWES, Esq., for the Complainants;
 W. A. STEVENS and FRANK P. McDERMOTT, Esqs., for the Defendant.

Mr. McDermott: I offer in evidence bond made by Elizabeth Norton and Richard D. Norton to Samuel Nathanson, to secure the sum of \$4,000, dated February 13, 1913.

Also, a mortgage dated February 13, 1913, made by Elizabeth Norton and Richard D. Norton to Samuel Nathanson, to secure the sum of \$4,000, on the Edwards tract.

Said bond and mortgage, the latter recorded in the Monmouth County Clerk's Office in Book 451 of Mortgages, page 408, are marked, respectively, "D-1" and "D-2".

40

Case.

The Court: There is no dispute, as I understand, as to the amount due on the mortgage.

Mr. McDermott: We accept the amount testified to by Mr. Norton.

10 I move to amend the bill of complaint to show the interest due to August 13, 1914. The stenographer, or whoever inserted it in the complaint, had it August 13, 1915. I wish to amend it to conform to the facts.

I also move to amend the bill of complaint by setting forth the default in the payment of interest due February 13, 1915, and the taxes due December 20, 1914, and the assertion of right under the option. This is on the Edwards' property.

The Court: The amendments will be allowed.

20 Mr. McDermott: I also offer in evidence a bond dated August 30, 1913, made by Elizabeth Norton and Richard Norton to Samuel Nathanson, to secure the sum of \$3,000, on the Castle Garden property.

Also, a mortgage made by Elizabeth C. Norton and Richard D. Norton to Samuel Nathanson, to secure the sum of \$3,000, on the property known as the "Castle Garden" property.

30 Said bond and mortgage, the latter recorded in the Monmouth County Clerk's Office in Book 463 of Mortgages, page 361, are marked, respectively, "D-3" and "D-4."

Mr. Dawes: Interest is due on that mortgage up to what time?

40 Mr. McDermott: In the record, on page 13: "The first check of \$210.00 paid to August 13th, 1913? Ans. Yes, sir. Ques. Then the three checks, two of \$60.00 and one of \$90.00, making \$210.00, paid to February, 1914? Ans. Yes, sir. Ques. Now, the next \$210.00 paid to August, 1914. Is not that so? You stated that

it paid to February of this year, but that would not be so, according to your figures. Ans No, I guess you are right about that. Ques. To August, 1914? Ans. Yes; the last \$210.00 check paid to August. Ques. 1914? Ans. Yes, sir." That is Mr. Nathanson's testimony.

In connection with the bond and mortgage of August 30, 1913, that is, the Castle Garden 10 property, I move to amend the bill of complaint in that cause to show that the interest was paid until August 30, 1914, instead of 1915, as stated in the bill of complaint.

The Court: The amendment is allowed.

Mr. McDermott: And also to recite a default in the bill of complaint of that cause of the non-payment of taxes for 1914, and the exercise of the option by the complainant.

The Court: I will allow it. 20

Mr. McDermott: I offer the record in the case of Nathanson *vs.* Sullivan, which is the foreclosure by Mr. Nathanson of the mortgage on the Hutchinson property, which resulted in the sale which is set forth in the bill of complaint filed by Mrs. Norton. That relates to the Cooper Avenue property.

Said record (Docket No. 37-557) is designated "Exhibit D-5." 30

Mr. McDermott: I also offer in evidence the deed by the Sheriff of Monmouth County, Wilbert A. Beecroft, to Samuel Nathanson, dated October 12, 1914, and recorded in the Monmouth County Clerk's Office, in Book 983 of Deeds, page 438, etc.

Said deed is marked "Exhibit D-6."

Mr. McDermott: I also offer in evidence the record in the Court of Chancery, in the cause 40

brought by Samuel Nathanson, complainant, *vs.* Lerner-Lock-Norton Co. *et als.*, a proceeding brought to foreclose the former mortgage on the Castle Garden property.

10 Said record (Docket No. 34-268) is designated
“ Exhibit D-7.”

Mr. McDermott: I next offer the deed of the Castle Garden property, made by Wilbert A. Beecroft, Sheriff of Monmouth County to Samuel Nathanson, dated March 10, 1913, and recorded in the Monmouth County Clerk's Office in Book 948 of Deeds, page 438, &c.

Said deed is marked “ Exhibit D-8.”

20 Mr. McDermott: I also offer in evidence a certified copy of an assignment of mortgage made by Elizabeth C. Norton to Max M. Freedman, bearing date December 3, 1914, assigning the mortgage for \$3,000 made to her by Jack Sullivan on the Hutchinson property.

Said assignment is marked “ Exhibit D-9.”

30 Mr. McDermott: I offer in evidence also, a certified copy of a deed made by Elizabeth C. Norton and husband to Jack Sullivan, dated October 28, 1913, conveying one parcel of the Cooper Avenue property.

Said deed was marked “ Exhibit D-10.”

Mr. McDermott: I also offer a certified copy of deed made by Elizabeth C. Norton and husband to Jack Sullivan, dated October 28, 1913, conveying another parcel of the Cooper Avenue or Hutchinson tract.

40 Said deed is marked “ Exhibit D-11.”

Samuel Nathanson—Direct.

SAMUEL NATHANSON, the above-named defendant, being duly sworn in his own behalf, testified as follows:

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Nathanson, where do you live?

A. Long Branch.

How long have you lived there? 10

A. About 30 years, 31 years.

Q. How long have you been in business there?

A. Well, I was in the wholesale liquor business for about 22 years.

Q. Are you in business now?

A. Yes.

Q. What is it now?

A. We run a hotel at West End.

Q. Do you know Richard D. Norton?

A. Yes, sir. 20

Q. Do you know Mr. David Lerner, who was here on the former occasion?

A. Yes, sir.

Q. How long have you known Mr. Norton?

A. I think for about six or seven years; I didn't know him previous—

Q. How long have you known Mr. Lerner?

A. About the same time.

Q. In 1912, you foreclosed the mortgage on the Castle Garden property, did you not? 30

A. Yes, sir.

Q. And after the foreclosure, there was a sheriff's sale?

A. Yes, sir.

Q. Did you become the purchaser at the sheriff's sale.

A. Yes, sir.

Q. Did you ever have possession of the property, Mr. Nathanson?

A. No, sir. 40

Samuel Nathanson—Direct.

Q. Did you ever collect any rents?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Were you ever in the property?

A. Yes, sir.

Q. After the sheriff's sale you didn't get a deed immediately?

A. No, sir.

10 Q. Do you remember about that?

A. Yes.

Q. Do you remember why?

A. There was some objection filed by Mr. Norton.

Q. You have already said you didn't get possession?

A. No, sir.

Q. Following the sheriff's sale, and the filing of these objections, did Mr. Lerner or Mr. Norton see you in relation to the property?

20 A. Yes, sir.

Q. Which one saw you first?

A. Of course, Mr. Lerner I would see mostly every day around the street, and Mr. Norton I would see once in a while, when he would come up; if I happened to be on Broadway, I would see him.

Q. Did Mr. Lerner come to see you in relation to this Castle Garden property?

A. Yes, sir, after his objection was filed, yes, sir.

Q. Where did he see you?

30 A. He saw me on the street and he come to the house.

Q. And did Mr. Norton come to see you?

A. Yes, sir.

Q. Where did Mr. Norton see you?

A. On the street, and he would be down to the house maybe two or three times, or something like that.

Q. Was anything said by Mr. Lerner about taking that property back or disposing of it?

40 A. Yes, sir.

Samuel Nathanson—Direct.

Mr. Dawes: That is objected to on the ground that it has no relevancy to this cause.

The Court: Objection overruled, and it comes too late.

Q. And what did he say about it, Mr.—

Mr. Dawes: I object to that.

The Court: Objection overruled.

10

A. He wanted to know whether I wouldn't sell the property to him, and I said "Yes," and he wanted to know the price of it, and I think I asked him about \$7,500.00, I wanted for it.

Q. Did he at any time bring a purchaser for the property?

A. No, sir.

Q. Was there more than one of these conversations with Mr. Lerner?

A. Yes, sir.

20

Q. Tell us, in their order, if you can, what was said, the first and then the next.

A. I told him I would take \$7,500.00 for it.

Q. What did he say?

A. He thought it was too much.

Q. Did you have any other talk about it?

A. Yes, sir.

Q. What was that?

A. He said he would give me \$6500 for it.

Q. Was that carried out in any way?

30

A. No, sir.

Q. Did you say you would do it, or what?

A. No, sir.

Q. Did he make you any better offer than that?

A. No, he didn't.

Q. How many times did Mr. Lerner see you about taking the property back or buying it from you.

A. About half a dozen times.

Q. Did you ever give him any different price from \$7500.00 for it?

40

Samuel Nathanson—Direct.

- A. Yes, sir; I told him I would take \$7,000 for it.
- Q. Did he get you a customer at \$7,000?
- A. He did not.
- Q. Was there anybody else talking about buying it at the time?
- A. Mr. Norton.
- Q. Outside of Mr. Norton and Mr. Lerner?
- 10 A. I have given this property to agents for sale.
- Q. But you didn't sell it?
- A. No, sir.
- Q. Do you know when Mr. Norton came to see you?
- A. In about December or November, 1912.
- Q. What did he say?
- A. We were dickering around, until finally I consented on \$6800.00.
- Q. What took place?
- 20 A. That's the only thing took place. I told him I would take \$6800.00 for it.
- Q. Was Mr. Lerner there?
- A. Not the last time, I don't think.
- Q. All this time—you had not yet received the deed, had you?
- A. No, sir.
- Q. Did you finally agree upon the price with Mr. Norton?
- A. Yes, sir.
- 30 Q. And what was that price?
- A. \$6800.00.
- Q. How was that \$6800 paid by Mr. Nathanson?
- A. There was nothing said about the payment; I simply said I would take \$6800.00 for it.
- Q. Wasn't there something said how you were to be paid—how much mortgage you were to take back?
- A. That was somewhere around January. Mr. Norton come to me after that and said he wanted a
- 40 loan of \$5200.00.

Samuel Nathanson—Direct.

Q. Well, when did you say the price of \$6800 was fixed?

A. During the month of December, I should judge, as far as I can remember; in 1912.

Q. And in January, you say it was he came to see you about borrowing some money?

A. A loan of \$5200.00

Q. Did you agree to let him have it? 10

A. Yes.

Q. And what were you to take as security?

A. There was this \$6800.00 for Castle Garden, and the loan of \$5200.00, which would make up \$12,000, and as collateral he was to give an assignment of this Hutchinson property of \$5,000 and \$3,000 on the Castle Garden, after I give him the deed for it; and I was to get \$4,000 on the Edwards' property.

Q. Mr. Nathanson, state what took place at the interview with Mr. Norton, which you refer to, in 20 November or December, 1912; state more in detail.

A. It was simply negotiating to buy this property back of me; that's all.

Q. Can you state how it was done; what was said about it, or not?

A. Well, I would be on Broadway, and Mr. Norton would pass by me, and say: "Well, what are you going to do about it," one day or another, just that way; and he might have been up at the house once or twice. 30

Q. Tell us what took place; what he said to you and what you said to him, Mr. Nathanson. if you can.

A. Well, during January he—

Q. No, I am talking about November and December.

A. Well, that was in reference to this property.

Q. What did he say and what did you say?

A. Well, that was my price; it was \$7500.00. I was asking for it. 40

Samuel Nathanson—Direct.

Q. What did you and Mr. Norton say to each other about it?

A. Finally, around the last of December, we consented to \$6800.00; I told him that's the very lowest I would take for it.

Q. What did he say about that?

A. There was nothing more done; I told him I would take \$6800.00 for it.

10 Q. Was Mr. Lerner with him on any of these occasions or not?

A. They might have been once together.

Q. Did you ever give Mr. Lerner the price of \$6800.00 or not?

A. No, sir.

Q. You did not?

A. No, sir; \$7500.00 is what I was asking for it.

Q. In January, you say, Mr. Norton saw you?

A. Come down to the house.

20 Q. In relation to a loan?

A. Yes.

Q. Tell us what took place on that occasion?

A. A loan of \$5200.00—

Q. What took place; what did you have to say to each other?

A. He simply said, "If I get this loan of \$5200.00, I'll take the property at \$6800.00, and we'll fix it up, and this is the collateral I will give you for it." He offered me those mortgages.

30 Q. What else was said, if anything; let's have the conversation.

A. The last, in reference to the Castle Garden property, was \$6800.00 during the month of December. Then Mr. Norton come to the house, in about January; and wanted a loan of \$5200.00.

Q. Did he say what for?

A. He told me he was negotiating for this Edwards' tract, and he wanted \$5200.00. He said, "I'll give you \$12,000 collateral," and this is the
40 security he offered me for it: Assignment of this

Samuel Nathanson—Direct.

mortgage of \$5,000, four on the Edwards' tract and three on the Castle Garden.

By the Court:

Q. Was that \$5,000 mortgage that he put up, a good mortgage?

A. He guaranteed it.

Q. Was the property worth it?

A. I think so, there were two houses—— 10

Q. What was the property worth on which the \$5,000 mortgage was, in your judgment?

A. Well, I should judge about \$3500.00, in the condition it is now.

Q. I am speaking of the property upon which the \$5,000 mortgage was that was assigned to you; what was that worth?

A. It was two properties.

Q. What were they worth?

A. About \$6,000, I figured them. 20

Q. It was a pretty good mortgage?

A. Yes; and Mrs. Norton would guarantee it.

Mr. Norton said Mrs. Norton would guarantee the mortgage.

Q. How much interest did that mortgage pay?

A. Six per cent. As I recollect, it was an \$8,000 policy on the \$5,000 mortgage,—\$5,000 on the big house and \$3,000 in the rear; and I thought that would——

Q. You thought that mortgage was good 30 security for \$5,000?

A. Yes; there was an \$8,000 policy issued by Hetrick, of Ashbury Park, as far as I can remember.

Q. Mr. Nathanson, speaking of this Cooper Avenue property, you got a deed for that property?

A. Yes, sir.

Q. And you also got two hundred and some dollars from Mr. Norton? 40

Samuel Nathanson—Direct.

A. Yes, sir.

Q. Did you ever take possession of it?

A. No, sir.

Q. Mr. Nathanson, Mr. Norton, in his testimony, states that he got a purchaser for part of that property; did he ever bring anybody to you?

A. No, sir.

Q. Did he bring Mrs. Kassenhauff to you?

10 A. He never brought her.

Q. Did you see her?

A. She come to my house, yes, sir.

Q. Was she prepared to buy the property?

A. No, she simply asked the price of it.

Q. Did she have any money to pay on it?

A. She asked the price of it, and I asked her what money she had, and she said she could raise \$500.00; I asked her \$5,000, and she said Mr. Norton or Mr. Lerner offered it to her for \$4,500. I told
20 her that was the people to buy it from. I had a deed for it, but, of course, if Mr. Norton could deliver it for \$4,500.00, why, all right; I wanted \$5,000 for the two of them, \$4,000 on one house, and \$1,000 on the little house. I knew the woman had no money, and it didn't interest me. She said Mr. Norton offered it for \$4,500, and I told her I held the title to it, but if Mr. Norton could sell it to her, I was perfectly willing to it.

Q. Mr. Nathanson, I think I asked you if you
30 ever had possession of the Castle Garden property?

A. No, sir.

Q. Has the insurance been kept up on that property by the mortgagors?

A. No, sir.

Q. Who has paid it, or who did pay it?

A. I paid it.

Q. How long have you been paying the insurance?

A. The last three years.

Q. How much was it insured for?

40 A. I have it insured for \$3,000; of course, I was

Samuel Nathanson—Direct.

to get \$4,000 insurance, but I thought that was sufficient, and being I had to pay the premium on it, I didn't pay so much.

By the Court:

Q. You thought \$3,000 would cover the loss?

A. That would be sufficient for me; I only has \$3,000 mortgage on it; there had been \$4,000 insurance carried. 10

Q. How much a year did you pay on it?

A. Somewhere around \$60.00; I don't know exactly the amount of it; I have so many policies.

Q. I show you these three policies for \$1,000 each, premium \$15.00 in each case; are those the policies?

A. Those are the policies, yes, sir.

Q. Did you pay for this?

A. Yes.

Q. Did you pay for any before this? 20

A. Yes, sir, when I first got Green Brothers to insure those properties; the bill was sent to Norton, and he demanded time and time for payment, and there was no answer, and I paid it.

Q. That would make it for three years?

A. Yes, sir, three years, going on four, I think.

Q. Who has paid the taxes on the Castle Garden property?

A. I haven't paid any.

Q. On the Edwards property, who has kept up 30 the insurance policies?

A. I did.

Q. For how long?

A. Up until last spring; the policy has been cancelled, Mr. Green told me. The building was wide open, and one of the insurance men had been down and had a look, and he said he wasn't going to carry any insurance on it, and he told me he would try to get me \$1,000 in another company; I guess he did. 40

Samuel Nathanson—Cross.

Q. Is that all the insurance you have on that?

A. Yes, sir.

Q. I show you two policies of \$500.00 each, made by Elizabeth C. Norton, and I ask you if these are the policies you refer to?

10 A. Of course, this is the first time I saw these policies; there has been more on it, and Mr. Green cancelled it, and he said he would try to get me in another company.

Q. Do you know whether you paid for this or not?

A. They are more than paid, because I paid for the \$2,000.

Q. Mr. Nathanson, no part of the principal of any of these mortgages has been paid?

A. No, sir.

20 Q. The five or four or three?

A. No, sir.

CROSS-EXAMINATION BY MR. DAWES:

Q. Mr. Nathanson, when Mr. Norton asked you to loan him \$5200 or \$5,000, what security did he offer you for that loan?

A. These securities which I have just stated.

Q. Which securities do you mean?

30 A. We was to close this deal together; he was to take title to this Castle Garden, because he had already been up and down by this Castle Garden, negotiating, and then when he come for this \$5200, these are the securities he offered me.

Q. Then, you never loaned the \$5200.00 on any particular property?

A. The \$5200.00 was the last cash money advanced.

Q. You didn't loan it on any particular one of those securities, did you?

40 A. I don't understand.

Samuel Nathanson—Cross.

Q. You didn't advance him \$5200 on any one of those securities?

A. Not on any particular one.

Q. Then, the deal was a \$12,000 deal?

A. The deal was a \$12,000 deal.

Q. When did they first talk to you about the \$12,000 deal?

A. This was in January.

Q. Then the deal was made in January, the deal 10 for \$12,000 was made in January, was it not?

A. That was when the loan was made, but he was negotiating for the Castle Garden previous to that.

Q. When was the deal made for the \$12,000, when was that concluded and agreed to?

A. In January.

Q. Who did you regard as the borrower of this money, Mr. Norton or Mrs. Norton?

A. Mr. Norton. 20

Q. Mr. Richard Norton?

A. Mr. Richard Norton.

Q. You knew that Mrs. Norton had the mortgage on the Cooper Avenue property for \$5,000, did you not?

A. I didn't know who held those mortgages.

Q. Did you know who was the owner of the Edwards' property when you agreed to make the loan, did you know who was the owner of the Edwards' property? 30

A. Before Mr. Norton got it?

Q. No, when you agreed to make the loan.

A. It was Mr. Norton; I was doing business with Mr. Norton all the time.

Q. And entirely with him?

A. Yes, sir.

Q. And you didn't know Mrs. Norton in the transaction?

A. No, sir.

Q. When these papers were brought to you, you 40

Samuel Nathanson—Cross.

knew that the Edwards' property belonged to Mrs. Norton, and also that she held the Cooper Avenue property, did you not?

A. I didn't know who owned them, no, sir. Those papers were turned over to my counsel and I depended on them to examine them and pass title on them.

Q. Then the fact is, that you sold, according to
10 your testimony, the Castle Garden property to Richard D. Norton, did you not?

A. Yes.

Q. And not to Mrs. Norton; that is right?

A. Yes, sir, that is right. Mr. Norton has made the deal with me, yes, sir.

Q. When Mr. Norton came to see you about the Castle Garden property, after the exceptions were filed, did he not state to you that the basis of those exceptions was, that you had received \$5,000 from
20 David Lerner at the time that you purchased the mortgage on the Castle Garden property for \$4,000 in November or December, 1908? Didn't he further state to you that he had paid you most of the interest which had accrued after you had become the owner of the property; didn't he state those things to you?

A. No, sir.

Q. Did you ever hear those things before I just told them, from anyone?

30 Mr. McDermott: That is objected to.
The Court: Objection overruled.

A. There was \$500.00 paid to me by Lerner, to buy a mortgage; that's all I know.

Q. And also, the mortgage you bought was \$4,000?

A. Yes, sir.

Q. You, therefore, received from Lerner \$500 for buying that mortgage?

A. Lerner has come to me, if you want to know
40 about it, and told me he had a valuable piece of

Samuel Nathanson—Cross.

property which they were foreclosing; and he had a mortgage of \$4,000 on it, and he needed the money; and I told him I wouldn't give for the mortgage over \$3,500.00.

By the Court:

Q. Why?

A. Because I didn't want it.

Q. Any other reason.

10

A. That's all I would give for it.

Q. What percentage of interest was paid on the mortgage?

A. Six per cent. I believe,—it was a mortgage held by the man who sold it to him.

Q. You received \$500 from David Lerner, did you not?

A. I received it; I would like to explain.

Q. Mr. Lerner was the owner of the Castle 20 Garden property at that time?

A. Yes, sir.

Q. He was the owner of it?

A. Yes.

Q. After you took the assignment of that mortgage, did you receive any interest on it?

A. No, sir.

Q. Do you mean to state that you allowed that mortgage on the Castle Garden property to remain from December, 1908, down to 1912, without receiving any interest?

A. There might have been some interest paid, which has been applied to a note by Mr. Norton for \$500.00, which is protested.

Q. I show you a check for \$62.50, January 8, 1910, and I ask you what that was given to you for?

A. I couldn't say what this check was for Mr.—

Q. Was it paid to you on account of the interest?

A. On account of how much interest?

40

Samuel Nathanson—Cross.

Q. Was it paid to you on account of the interest due on the Castle Garden mortgage?

A. No, sir, I don't know.

Q. I show you another check, dated June 28, 1910, "Pay to the order of Samuel Nathanson \$120.00"; signed "David Lerner", and I ask you what that was paid to you for?

10 A. Well, that might have been paid for six months' interest on \$4,000.

Q. Don't you know that Mr. Lerner did, during the period that you held the mortgage on the Castle Garden property, pay you interest on it?

A. He paid me some.

Q. You know that, don't you?

A. Some.

Q. I show you another check for \$60.00, and ask you what that was paid to you for?

20 A. This is a note.

Q. Well, a note; what was that given to you for?

A. This is a note of Lerner.

Q. What was it given to you for?

A. I don't know; he might have got the money off me for that note.

Q. How many years' interest, to the best of your knowledge and belief, were paid on the Castle Garden mortgage while you held it, and before you foreclosed it?

30 A. It might have been paid for a year.

Q. More than that? You held it from 1908 to 1912, before you filed your bill for foreclosure?

A. There's a note there for \$500.00, which some of the interest was applied to.

Q. That is not an answer to the question.

A. That's the best I can remember.

Q. From the time you acquired title to the Castle Garden mortgage for \$4,000 in 1908, down to December 30, 1911, when you filed your bill to foreclose
40 the mortgage, how much interest, to the best of your

Samuel Nathanson—Cross.

knowledge and belief, at the present time, was paid on that mortgage while you held it?

Mr. McDermott: That is objected to.

Mr. Dawes: So long as we were in possession of the property, claiming a right to redeem, being the owners of the equity of redemption, the only right this man could have to exact money from us, was to get the amount due him, with interest and costs. 10

The Court: Isn't that settled in the final decree in that foreclosure suit?

Mr. Dawes: While exceptions might not have been the proper way of raising the objections, they perform the office. My point is this: here is a decree and affidavit by him that there was no interest paid during the entire period he held it. This \$500.00, paid to him by Lerner, who owned the property, wasn't credited on this mortgage and that these defendants, therefore, had a right to have that decree opened, if those facts were true, and that all that this man had a right to exact from them was the principal, interest and costs due him. I think there was a mistake in that decree, and to rectify it— 20

The Court: Objection is sustained.

Q. From the time you held the mortgage on the 30 Castle Garden property, up to the present time, have you ever been in the possession of the Castle Garden property?

A. No, sir.

Q. Now, Mr. Nathanson, when the purchaser for the Cooper Avenue property came to see you, you asked \$5,000 for part that property?

A. Yes, sir.

Q. Not for the whole property?

A. No, sir, just for part.

Philip Jarsky—Direct.

By the Court:

Q. Which part? You told me all.

A. There was a house in the rear; she wanted the front one.

Q. That was for the front property?

A. That was for the front property, yes, sir.

Q. You knew, did you not, that Mr. Norton was
10 acting as the agent for Mrs. Norton?

A. Yes.

Q. When these securities were turned over to you, did you not?

A. Yes, sir.

Q. And did you regard any offer from David Lerner for \$6,500, as coming from a solvent person a solvent person who would pay \$6,500 for that property? When you say Mr. Lerner offered you \$6,500 for the Castle Garden property, did you re-
20 gard him as solvent and in a condition to complete the purchase?

A. Yes, sir.

Q. Did you agree at any time with him to take \$6,500.00 for it?

A. No, sir.

Q. When did Mr. Lerner offer you \$6,500.00?

A. During November.

Q. Did Mr. Norton ever offer you \$6,500 for it in the month of November?

30 A. Not as I remember.

PHILIP JARSKY, a witness produced on behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDERMOTT:

Q. Mr. Jarsky, where do you live?

A. Long Branch.

Q. What is your business?

40 A. Real estate.

Philip Jarsky—Direct.

Q. How many years have you been engaged in that business?

A. About twelve or thirteen years.

Q. At what place in Long Branch?

A. 62 Madison Avenue.

Q. Down there all the time, the same place?

A. No, sir, I have been there only five years.

Q. Do you know the Castle Garden property at 10 Long Branch?

A. Yes, sir.

Q. How far is that from your place of business; are you familiar with property in that location?

A. Yes, sir.

Q. And the values of property there?

A. Yes, sir.

Q. And the sales of property at Long Branch?

A. Yes, sir.

Q. Have you ever been in the Castle Garden property?

A. I have been all through that house.

Q. When were you all through it?

A. 1912, in the early part of the fall.

Q. And how did you come to go through it at that time?

A. Mr. Norton seen me on Broadway, in front of the First National Bank, and he told me there is a chance for me to make a couple of hundred dollars, if I sell that Castle Garden property. I asked him how much he wanted for it; he said he paid \$10,000 for it. I asked him how much expense was it; he said, "It brings in around \$1400 a year;" and I didn't want to take his word; we don't do that in the real estate business; we like to find out ourselves. I went through the house and inquired how much the tenants paid, and I seen he was about right; it did bring about that much. I went over to a fellow in Seabright, by the name of Chris Brehm, and took him around there, and I think he

Philip Jarsky—Direct.

offered me seventy-five—that's what he offered me, \$75.00.

By the Court:

Q. What?

A. \$7500. I looked for Norton and I couldn't see him; I seen David Lerner and told him, and he said, "No," he wouldn't take no less than \$9,000; that would be the bottom price, and I couldn't get another party to give that price, and I didn't sell it.

Q. Speaking of that visit to the property, you say you went through it.

A. Through every room.

Q. Did you find out what the tenants paid?

A. I did.

Q. Were the rooms all occupied at that time?

A. Every—well, all the apartments were occupied, outside of one store was idle.

Q. Do you remember how much the total of those rents amounted to?

A. There were three of them on the first floor paid \$7.00 apiece, and one store paid \$22.00, and one store paid \$10.00; then on the first floor there are 12 rooms, and they brought in about \$10.00 apiece,—something like that. I couldn't say exactly on the second floor, I know they were between nine and ten dollars a month.

Q. Do you remember what the total amount of the rents of the rooms occupied at that time was?

A. It brings him \$1400, he told me; it was pretty near \$1400 a year.

Q. Did you ever report to Mr. Norton? I understood you saw Mr. Lerner—did you ever report anything to Mr. Norton after he gave the property into your hands?

A. Yes; three or four weeks after I seen Lerner, I told him I had a party looking at that property,

Philip Jarsky—Cross.

and the best he offered me was \$7,500.00, and he said he wouldn't accept it; that's all it was.

Q. Did you have anybody else you reported to him?

A. I don't know anything about Mr. Nathanson and Mr. Norton having any dealings with him; I said to Nathanson, "Well, Sammie, I got a bargain 10 for you."

Mr. Dawes: That is objected to.

The Court: The objection is overruled.

Q. Did you get an offer from any other source after you reported to Mr. Norton?

A. No; I seen Mr. Nathanson and asked him if he would purchase a piece of property that pays over 10%; he asked me where it is, and I told him. He said, "I got a mortgage on that property; I know all about it." 20

Q. Did you have any talk about any other properties?

A. He told me if I got the right buyer, he would sell it for about \$9,000.

By the Court:

Q. Who told you that?

A. Mr. Norton.

Q. What was the condition of that property at that time you examined it the latter part of 1912? 30

A. In fair condition.

Q. What was that property worth, in your judgment, in the fall of 1912?

A. About \$8,000.

CROSS-EXAMINATION BY MR. DAWES:

Q. Have you ever sold any properties in this neighborhood?

A. Yes.

Q. What properties? 40

Philip Jarsky—Cross.

A. I sold to Mr. David Lerner, right on Cooper Avenue, that house belonging to Hendrickson; I sold him that property.

Q. What did you get per foot, for that?

A. I don't sell by the foot.

Q. How do you estimate the values of properties?

A. What it brings in.

10 Q. Based on the income of the property?

A. On the income.

Q. Is that the sole test of the value of property, in your opinion?

A. That's the way we sell property; that brings in 10%.

Q. You figure what it brings in on a certain amount?

A. Yes, sir.

20 By the Court:

Q. Is that the only element or factor that you consider in appraising properties?

A. No, sir, the location and the ground.

Q. Is that all?

A. That's all.

Q. You saw Mr. Norton, you say; where did you see him?

A. Right in front of the First National Bank.

30 Q. How many times did you see him?

A. That was the first time I seen him.

Q. How many more times did you see him?

A. I saw him about twice more besides this time.

Q. Who was the person that offered you \$10,000?

A. I haven't said that.

Q. What offer did you get?

A. \$7500.00.

Q. From whom?

A. Chris. Brehm.

40 Q. Whom did you report that to?

Philip Jarsky—Cross.

A. To Mr. David Lerner; I couldn't see Norton at the time.

Q. You got your directions to sell, from whom?

A. From Mr. Norton.

Q. Why didn't you communicate by letter to Mr. Norton?

A. I knew they were partners at the time.

Q. But you didn't communicate to Mr. Norton that offer? 10

A. Twice after that I seen him and told him only once, and he said he wouldn't accept.

By the Court:

Q. Who said that?

A. Mr. Norton.

Q. You say this was in what year?

A. 1912, in the early part of November.

Q. The early part of 1912? 20

A. Yes, sir, the early part of the fall,—it must have been around January, or a couple of weeks ahead of that.

By the Court:

Q. That isn't fall; that is mid-winter; what do you mean?

A. Just at the time when we take up books for renting cottages.

Q. Where does this Chris Brehm live? 30

A. Seabright.

Q. Does he live there now?

A. Yes, sir.

The Court: What is his address?

Mr. Stevens: Seabright.

The Court: What does he do?

Mr. Stevens: He keeps a hotel; he is a brother of the witness we had at the last hearing. 40

Samuel Nathanson—Direct.

SAMUEL NATHANSON, the above-named defendant, being recalled in his own behalf, testified as follows:

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Nathanson, was it the fact that Mr. Norton saw you in relation to the \$5,000 loan before he talked about the purchase of the Castle Garden property?

10 A. No sir.

By the Court:

Q. When in the negotiations did you first agree to let Mr. Norton have the \$5,000 to buy the Edwards' property?

A. In January.

Q. Had he, prior to that time, spoken to you about buying the Castle Garden property?

20 A. Yes, sir.

Q. Had you agreed upon the purchase of the Castle Garden property before January?

A. In the latter part of December.

Q. Did he then agree to buy it?

A. He was negotiating, and I told him I would take \$6800.00 for it in December.

Q. Had he at that time asked you for the \$5,000 loan?

A. No, sir.

30 Q. But later on, he asked you for it, did he?

A. Yes, sir, in January.

Q. Did he tell you what it was for?

A. Yes, sir.

Q. What did he tell you it was for?

A. To buy this Edwards' property.

Q. Did you tell him you would let him have the \$5,000 to buy the Edwards' property?

A. Yes, sir.

40 Q. And when, with reference to that time, were the negotiations completed for the pur-

Samuel Nathanson—Direct.

chase by him of the Castle Garden property; when, with reference to January, did he agree to buy the Castle Garden property?

A. At the time of this \$5200.00 loan.

Q. Yes, but when was it with reference to the time he asked you for a loan of \$5,000, wherewith to buy the Edwards' property?

A. In January he applied for this loan. 10

Q. Yes; and then how soon after that, did he agree to buy the Castle Garden property?

A. They were together.

Q. At the same time?

A. At the same time I was anxious to have the other thing straightened out.

Q. What other thing?

A. This Castle Garden.

Q. Why were you anxious?

A. They filed objections; it was hanging; I 20 couldn't do anything with it.

Q. Did you at that time tell him you would not let him have the \$5,000 unless he did straighten out the Castle Garden matter?

A. I don't think I would let him have it.

Q. Did you at that time say to him, in substance, that unless he straightened out the Castle Garden property, you would not let him have the \$5,000?

A. No, sir, not that way. 30

Q. How did you say it?

A. When he come for this loan —

Q. How did you say it?

A. That's what I said; if he would straighten out this matter I would let him have the money.

Q. But prior to that time, you had not agreed to let him have the \$5,000?

A. No, sir.

Q. Had he applied to you for the \$5,000 before the time you said to him you would not 40

Samuel Nathanson—Direct.

let him have the \$5,000 unless he straightened out the Castle Garden property?

A. No, sir.

Q. At the time you said to Mr. Norton that you would not let him have the \$5,000 unless he straightened out the Castle Garden property, how much was due you on the Castle Garden property?

A. \$5600 or \$5700.

10 Q. How do you make that?

A. In October, I think—I didn't exactly say I wouldn't let him have the money if he didn't straighten out this loan; I was willing to do it.

Q. How much had been your outlay up to that time on the Castle Garden property?

A. Fifty-six or seven hundred dollars.

Q. How do you make it; \$3500 you paid?

A. The face value of the property was \$4,000.

Q. All right; figure it at \$4,000.

20 A. There is interest and insurance and costs.

Q. Everything ran up to that?

A. Fifty-three or fifty-four hundred dollars. That was the time we had the sale. Then they carried that property from October to February; the interest was to run to February.

Q. If you wanted the Castle Garden property straightened out, why did you get the \$6800.00 for it?

A. I thought it was worth it.

30 Q. You said you were anxious to straighten it out.

A. On account of the objections; if it wasn't for the objections, I wouldn't have been so anxious.

Q. What was your bid at the sheriff's sale in October?

Mr. Dawes: That is objected to as immaterial.
The Court: Objection overruled.

40 A. Around \$5200 or \$5300; I am not positive.

Samuel Nathanson—Cross.

CROSS-EXAMINATION BY MR. DAWES:

Q. You stated that the Castle Garden property stood you in \$5600 or \$5700, didn't you?

A. I don't exactly know what it run up to that time.

Q. You testified before the Master in the foreclosure proceedings between yourself as complainant and the Lerner-Block-Norton Company, that you had not received any interest during the entire period you held that mortgage, did you not? 10

A. Yes, sir.

Q. And you also testified before the Master that the principal of that mortgage was \$4,000?

A. Yes, sir.

Q. If you deduct what was paid to you for interest on the mortgage on the Castle Garden property, how much was due to you then at the time that you had these negotiations with Mr. Norton? 20

A. There was no reduction. Lerner simply give me \$500 to take this assignment of the mortgage; that wasn't to be applied on the mortgage.

Q. What was that for, the \$500 paid you at that time?

Mr. McDermott: I object to the question as irrelevant and immaterial, and that he has been all over that.

The Court: Objection sustained.

Q. When these checks were brought to you for \$62.00 and for \$120.00, when they were given to you by Mr. Lerner, what were they given to you for at that time? (Handing witness checks.) 30

A. The only check I know is the \$120.00 check.

Q. The \$62.50?

A. That is one of the checks I used to cash for Mr. Lerner once in a while; that wouldn't make up any interest, \$62.50 on \$4,000.

Q. During the time you held the mortgage—Mr. 40

Samuel Nathanson—Cross.

Lerner did make payments to you on account of the interest money on that mortgage, didn't he?

A. Yes, sir, this check.

By the Court:

Q. And he wasn't given credit for it by the Master in the foreclosure suit, was he?

10 A. I got a note of Mr. Norton for \$500.00, which I put in the bank, and that was to come off; I discounted a note for Lerner for \$500.00, and it went to protest.

Q. And then you applied the money he paid to you for interest in reduction of the note, and kept the mortgage?

20 A. No, sir; they come to me and wanted it done that way; he said they were anxious to have this property foreclosed, and he said, "You can straighten that thing out by the payments——"

Q. So you could secure your money on the mortgage?

A. No, sir; they simply applied these checks on the \$500 note.

Q. Did you foreclose that mortgage, then, at their request?

A. No, sir.

30 Q. You knew that Mr. Lerner represented the Norton-Block Company, did you not?

A. Yes, I done business with Lerner.

Q. You, too, knew that the Lerner-Block Norton Company was the owner of this Castle Garden property?

A. Yes.

40 Q. You knew when these checks were brought to you from the Lerner-Block Company, they were to go on that mortgage; didn't you state a few minutes ago, that the reason you didn't put them as credits on the bond——

Samuel Nathanson—Cross.

A. I did it at that time.

Q. You made that a credit on the bond?

A. I don't know whether I did on the bond.

By the Court:

Q. You accepted it as payment of interest on the bond?

A. Yes, sir. 10

Q. And then afterwards, when the time came for foreclosure of the mortgage, they wanted you to apply those payments on the note; is that right?

A. Yes, sir.

Q. So that you would have your mortgage for the full amount intact, and would foreclose it for the full amount; is that the idea?

A. No, sir.

Q. What was the idea, then? 20

A. They were behind in the interest, and I went to Lerner and told him if they didn't straighten out that matter, I would have to foreclose. He says, "That's so much the better; that's just what I want you to do."

Q. How much behind were they in interest at that time?

A. A couple of years, or a year and a half.

Q. I show you the Master's report in Nathanson vs. The Lerner-Block-Norton Company, and ask 30 you if that is your signature?

A. Yes; that's my signature; but we straightened that note out; it was checks that had been paid on the interest at that time.

By the Court:

Q. It appears from the testimony of the witnesses, that they withdrew the credits from the payments of interest on the bond, and applied 40

Montillion Krug—Direct.

those payments in reduction of the note, so as to leave the principal of the mortgage and the accumulations of interest intact for foreclosure purposes; wasn't that it?

A. Yes, sir.

Q. Whose note did you hold?

A. Mr. Norton's.

10 Q. You discounted it?

A. For Lerner, and give him the money for it.

Q. At what rate did you discount that note?

Mr. McDermott: That is objected to.

The Court: Objection sustained.

Q. How did you come to take a mortgage for the \$3,000 on the Castle Garden property?

Mr. McDermott: Objected to.

20 The Court: Objection sustained.

MONTILLION KRUG, a witness produced on behalf of the Defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Krug, where do you live?

A. Long Branch.

Q. What is your occupation?

30 A. Carpenter work.

Q. Do you know the Castle Garden property?

A. Yes, sir.

Q. How long have you known it?

A. All my life.

Q. Have you ever been in it?

A. Yes.

Q. When was the first time you were through it?

A. I have been into it since the grocery was in the store, many times, and the last time was about five 40 or six weeks ago.

Montillion Krug—Direct.

Q. What sort of an examination did you make of it at that time?

A. The floor shows it's in pretty bad shape.

Q. What kind of an examination did you make?

A. I went all through it.

Q. On the roof?

A. Yes.

Q. Did you see all the sides of it?

A. All around it.

10

Q. What condition is it in now?

A. The third floor is in bad shape; the windows are out and the sashes are gone, and there ain't no sills in there at all; the gutter is in bad shape, too, on the roof.

Q. What about the roof?

A. If there comes a heavy rain or snow, it will back right up in the house,—there's no sills.

Q. What kind of a roof is it?

A. A tin roof.

20

Q. And what is the condition of the roof?

A. You know what a tin roof is; it has got to be taken care of.

Q. Has this been taken care of?

A. No, it's rusty.

Q. What is the enclosure on the house?

A. One side is corrugated iron, and the other side is shingles.

Q. Does the corrugated iron need anything?

A. Painting.

30

Q. What about the other part of it?

A. The shingles are all right.

Q. Have you been through it at any time since?

A. Yes; I was through last Sunday.

Q. What was its condition then?

A. Well, I was down with Mrs. Lerner.

Q. What was its condition?

A. Just about the same as before; there was one or two tenants that isn't there now that was in there before.

40

Montillion Krug—Cross.

Q. You have known this property a long time?

A. Yes, sir.

Q. Had you been there through any part of it before that?

A. Only the grocery store.

Q. How does the condition of that compare with what it was a few years ago?

A. It was all right, but the floor is in bad shape,
10 worn out.

Q. That was the only part you had been in previous to five or six weeks ago?

A. Yes, sir.

CROSS-EXAMINATION BY MR. DAWES:

Q. The floor is now worn out?

A. It's in bad shape; there are holes in it, and they got boards nailed to it.

Q. These conditions you found there have not all
20 come up within the last two or three years; the sills, for instance?

A. I didn't say anything about the sills, I said the floor. Up at the top it takes time to rot out.

Q. What has happened to the floor?

A. It's wore out, I suppose; it wants a new floor.

Q. That is done in the natural wear and tear?

A. That's the wear and tear, yes, sir.

Q. Then you say the roof has been neglected?

A. Yes, it's not been painted.

30 Q. And the corrugated iron?

A. Yes; that needs paint every year.

Q. And they are the things which you think—

A. They ought to be attended to.

Q. Otherwise, you say the conditions are the same?

A. All through the house it wants lots of repairs.

Q. The conditions are not different from the last three or four years?

A. It don't look so good from the outside; it needs
40 painting up.

Richard D. Norton—Direct.

Q. And that's the main objection, is it?

A. It wants to be overhauled.

Q. And it has wanted it for the last three or four years, hasn't it?

A. I don't know.

Q. The conditions you saw there are from the natural use?

A. Yes, and some from neglect.

Q. And what is from neglect?

10

A. The windows upstairs.

Q. What else?

A. The sashes are out.

Q. You don't know how long they have been out?

A. A good while,

Q. Four or five years?

A. No; I wouldn't think they had been out four or five years; they have been out all summer,—yes, longer than that,—last spring.

20

RICHARD D. NORTON, being recalled on behalf of the Complainant, testified as follows:

DIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Norton, did you ever employ the witness on the stand, this man Jarsky, to sell the Castle Garden property?

A. No, sir.

Q. Did you have any conversation with him in 1912 respecting that property?

30

A. No, sir.

Q. Did he ever report to you that he had an offer of \$7,500 for that property?

A. Never.

Q. Did you hold that property at \$10,000?

A. No, sir.

By the Court:

Q. Did you ever have any conversation with him?

40

Richard D. Norton—Direct.

A. Yes, sir.

Q. Did you ever see him before?

A. Yes, sir, but not to have him sell property for me.

Q. Did you ever speak to him about this property?

A. No, sir.

Q. When was the first time you ever heard of this \$7500 offer?

A. When he was on the witness stand here.

Q. I show you a check, dated November 20, 1912, on the First National Bank—

The Court: (To counsel for the defendants): Did you know that this witness Jarsky was to testify that he had an offer from a man by the name of Brehm, of \$7500, which he submitted to Mr. Norton?

Mr. Stevens: Only within the last few days.

20 The Court: Then why have you not subpoenaed Brehm?

Mr. Stevens: Well, we didn't subpoena him.

The Court: Why?

Mr. Stevens: I might say, that I didn't know it was with Brehm until to-day, but he told me he had taken three or four gentlemen to Mr. Norton. I only went over that with him yesterday. I can produce Brehm.

The Court: I think you had better do so.

30 Mr. McDermott: I only heard of Jarsky and the offer made by somebody yesterday over the telephone, late yesterday afternoon.

The Court: There is a direct conflict between these people concerning which there can be no honest mistake; either Mr. Norton is telling what is untrue, or that witness has told what is untrue.

40 Mr. McDermott: When I heard of this I suggested that the man who made the offer be subpoenaed,

Richard D. Norton—Cross.

Q. Are you able, Mr. Norton, to fix the time when you entered into the negotiations, or concluded the negotiations for the purchase of the Edwards' tract?

A. Yes; I gave the check of \$200.00 to Mr. Bailey, the receiver.

Q. I show you a check dated November 20, 1912, and I ask you if that is the check you refer to? 10

A. Yes, sir.

Q. Did you see Mr. Nathanson prior to, or after the giving of that check, in relation to the loan to you of \$5,000?

A. Prior to.

Q. How long prior to that?

A. Well, I would say about a week.

Q. Did you have any knowledge that the payments of interest which Mr. Lerner had made on account of the Castle Garden property mortgage to Mr. Nathanson, between 1908 and the date of the foreclosure, were to be credited on some note or other paper? 20

A. I had no knowledge of it whatever, no, sir.

Q. The property during that period of time stood in whose name?

Mr. McDermott: That is objected to.

A. Lerner-Block-Norton Company, in 1909.

Q. Before that time?

A. D. Lerner. 30

CROSS-EXAMINATION BY MR. MCDERMOTT:

Q. Didn't it stand for a while in the name of the Lerner Company?

A. No, sir.

Q. Mr. Norton, I understood you to say you knew Mr. Jarsky?

A. Yes, sir.

Q. How many years have you known him? 40

Richard D. Norton—Cross.

A. I don't know, four or five years, I would say.

Q. You know him at Long Branch, of course?

A. Yes, sir.

Q. Wasn't one of these properties purchased through him, the property adjoining this?

10 A. No, sir.

Q. Wasn't the Hendrickson property purchased through him?

A. No, sir; I never knew him doing any business at all—

Q. Did you know of the sale of the Cooper Avenue property; had you anything to do with it?

A. I helped pay for it, but I don't know that I did have very much to do with the purchase of it.

Q. You hadn't much to do with that?

20 A. No, sir.

Q. You don't know whether that was made through Jarsky or not?

A. If it was, I know nothing about it.

Q. Do you mean to say you had no conversation with him?

A. I often talked with the man, yes.

Q. And in 1912, didn't you?

A. Yes, in Long Branch.

Q. You knew he was in the real estate business?

30 A. No, I didn't.

Q. You didn't know that?

A. No, sir.

Q. Mr. Norton, when did you begin negotiations for the purchase of the Edwards' tract?

A. I think it was in October; I wouldn't say for sure.

Q. This is the first payment you made by this check?

40 A. No, I don't think it was; I am not sure about that.

Richard D. Norton—Cross.

By the Court:

Q. You said your negotiations began about a week before the date of the check?

A. Yes, sir.

Q. There was a public auction sale of that property?

A. Yes, sir.

Q. Did you attend that?

A. No, sir.

Q. You didn't know of the public sale?

A. No, sir.

Q. And the purchaser didn't complete?

A. At the time of the sale I didn't; afterwards, I did.

Q. And you knew the purchaser didn't complete after that?

A. Yes.

Q. And it was after that, that you entered into negotiations?

A. No, sir, not exactly, not to the day.

Q. Your negotiations were begun after the auction sale?

A. Yes, sir.

Q. Don't you know that was on the 19th day of November, 1912?

A. I don't know the date of it, no, sir. 30

Mr. Dawes: I offer the check.

Said check for \$200.00, dated November 20, 1912, is marked "Exhibit C-7."

Mr. Dawes: I want to produce Mr. Lerner.

The Court: What for?

Mr. Dawes: To get his version of the Jarsky affair.

The Court: All right. 40

Richard D. Norton—Cross.

Q. How soon after this check did you open negotiations with Mr. Nathanson?

A. Before I gave the check; I don't know whether—it might have been the same day, but before I gave him the check, I negotiated with Mr. Nathanson.

Q. Before the public sale?

10 A. I wouldn't say; I think it was after the public sale, but before I gave the check.

Q. The same day?

A. It might have been in the morning; I gave the check in the afternoon, but I had the promise of the \$5,000 before I closed the deal up; I think it was the same day.

20 Mr. Dawes, I offer the deed from Theodore F. Bailey, receiver, to Elizabeth C. Norton, dated January 24, 1913, and recorded March 3, 1913, in Book 946 of Deeds, page 412.

Said deed is marked "Exhibit C-8."

Mr. Dawes: I offer all the papers marked for identification, in evidence.

Mr. McDermott: That is objected to.

The Court: Objection sustained.

30 Case closed on both sides, with the exception that the complainant, Norton, is to produce Mr. Lerner, and Mr. Nathanson is to produce Mr. Brehm.

The hearing is continued to Thursday, November 4, 1915.

Philip Jarsky—Cross.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH C. NORTON, *et als.*,
Complainants,

vs.

SAMUEL NATHANSON,
Defendant.

On Bill, &c.

10

TESTIMONY taken in the above-entitled cause at the State House, Trenton, on Thursday the Fourth day of November, nineteen hundred and fifteen,

Before HON. JOHN H. BACKES, Vice Chancellor.

20

APPEARANCES:

AARON V. DAWES, for Complainants;
W. A. STEVENS, and FRANK P. McDERMOTT,
Esqs., for the defendant.

PHILIP JARSKY, being recalled for further cross-examination, testifies as follows:

CROSS-EXAMINATION BY MR. DAWES:

30

Q. Did you ever live in Trenton?

A. Never.

Q. Are you the Philip Jarsky that was convicted in the Monmouth County Quarter Sessions and sentenced to the New Jersey State Prison for one year and to pay a fine of One thousand dollars for keeping a disorderly house?

A. It is not so; for renting a house to a man.

Q. Were you convicted in that Court?

A. Yes.

40

Philip Jarsky—Redirect.
John J. Brehm—Direct.

Q. You were convicted of keeping a disorderly house?

A. Yes.

Q. And sentenced to the State Prison?

A. Yes, sir.

Q. And you were sentenced on that conviction to the State Prison?

10 A. Yes.

By the Court:

Q. Was it for the sale of rum, or for harboring women?

A. The sale of rum.

Q. Without a license.

A. Without a license?

Q. Wasn't the indictment against you for having women in the house?

20 A. Not to me.

REDIRECT-EXAMINATION BY MR. McDERMOTT:

Q. When was this? How many years ago?

A. About seven or eight years or something like that.

Q. And where did the State charge that you had this house; on what place?

A. On Simpson's place.

30 Q. In what town?

A. Long Branch.

JOHN J. BREHM, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Mr. Brehm, where do you live?

A. Seabright.

40 Q. What is your full name?

John J. Brehm—Direct.

A. John Joseph Brehm.

Q. Are you sometimes known as Chris.?

A. No, sir.

Q. Do you know the witness Jarsky who was last on the stand?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have seen him several times in Long Branch. I didn't know who he was only through a brother of mine, that he was in the real estate business.

Q. Your brother William?

A. I asked my brother who this man was. He had approached me on several occasions about buying property in Long Branch, and my brother told me he had done a great deal of business with him.

Mr. Dawes: I move to strike that out.

The Court: Motion denied.

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Q. What property did he show you, Mr. Brehm?

A. Well, I was up there to Long Branch some three or four years ago. It was in the fall of the year, He called me to one side and told me he had got a bargain in a piece of property. I told him I was in no position to buy property at the present time. I was interested in property up to the Bronx and different places. But he insisted he show me this property, and he asked, if my recollection is clear, I think, \$9,000.00.

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Q. What property was it?

A. They called it "Castle Hill," "Castle Garden," in Long Branch. I told him I wouldn't take it paying such a price as that. I think I made him an offer of \$7,500.00, I think. It's some three or four years ago. So that was about all, and I believe I drew my brother's attention to it in regards to what the value of the property was, and such like.

Q. Your brother has property in that neighborhood?

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John J. Brehm—Cross.

David Lerner—Direct.

A. Yes, several properties.

Q. Did you look at the property?

A. Yes, this gentleman brought me down there at the time.

Q. Did you go through it?

A. No, I didn't go through the property.

CROSS-EXAMINATION BY MR. DAWES:

Q. You say you didn't go through the property?

10 A. No sir.

Q. Did you offer him \$7,500.00 cash for the property?

A. No, I didn't; but I told him "I don't think I would pay you over \$7,500.00 for it".

Q. Did you make him an offer to that effect?

A. No, not a *bona fide* offer.

Q. Were you called on the 'phone two weeks ago yesterday?

A. Yes, sir.

20 Q. Were you asked over the 'phone by Mr. Norton whether or not you had ever made an offer for the Castle Garden property, and didn't you say over the 'phone to him that you had never heard of the Castle Garden property?

A. At the time he spoke to me I didn't know what he meant or who this Mr. Norton—

By the Court:

Q. You did say that to him?

30 A. I did say that to him. I said, "I guess you got reference to my brother."

Mr. McDermott: We Rest.

DAVID LERNER, being recalled on behalf of the complainants, testifies as follows:

DIRECT-EXAMINATION BY MR. DAWES:

Q. Mr. Lerner, did Philip Jarsky in 1912 report to you an offer of \$7,500.00 for the Castle Garden
40 property?

David Lerner—Direct.

A. I don't remember any such offer.

Q. Did you make any offer for the property to Mr. Nathanson, for the Castle Garden property, of \$6,500.00, after the objections had been filed to the confirmation of the sale of that property?

A. No—

Q. Prior to the time Mr. Norton went with you to get the loan of that money? 10

A. No; \$6,800.00.

Q. Did he tell you he wanted \$7,500.00?

A. No, sir; sixty-eight or sixty-nine hundred dollars.

Q. Did he tell you he wanted \$6,800 for that property before you went with Mr. Norton for the loan of \$5,000.00?

A. I don't understand what you mean.

Q. After the objections to the confirmation of that sale had been filed and before you went with Mr. Norton to get the loan from Mr. Nathanson, did he tell you that he wanted \$7,500.00 for the Castle Garden property? 20

A. No, sir.

By the Court:

Q. When did he tell you that he wanted \$6,800.00 for it?

A. The time I asked Mr. Nathanson for the loan on the Edwards property. 30

Q. At that time?

A. Yes, sir, at that time.

The Court: What time does this refer to?

Mr. Dawes: My notion of it is that he is referring to the time he went with Mr. Norton.

The Court: Was that at the time or after Nathanson had promised to loan him the \$5,000.00?

Mr. Dawes: That was after that time. 40

David Lerner—Cross.

CROSS-EXAMINATION BY MR. STEVENS:

Q. Mr. Lerner, at the time of the securing of the final decree on the foreclosure of the mortgage on the Castle Garden property, didn't you at that time negotiate with Mr. Nathanson for the property?

A. At the time of the foreclosure against the Lerner-Block-Norton Company?

10 Q. Yes?

A. Yes, sir.

Q. And at that time what offer did you make to him?

A. Well, I couldn't exactly tell; I don't remember. It was pretty near a year and a half—

Q. Were you then negotiating a loan for the purchase of the property from any source—

Mr. Dawes: Objected to.

The Court: Objection overruled.

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Q. Were you negotiating a loan from any source?

A. I did.

Q. From where?

A. Oh, I believe several. I tried to get the money from Mr. Nathanson once, and then the New Jersey Mortgage Company, I believe.

Q. That was for what purpose?

A. To buy property back from the Lerner-Block Company.

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By the Court:

Q. Do you mean Castle Garden?

A. Yes, sir.

Q. How much money did you try to borrow from Nathanson at that time?

A. I believe \$5,000.00.

Q. How much did you offer him for the Castle Garden property at that time?

A. I was supposed to buy it at the Sheriff's

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sale.

David Lerner—Cross.

Q. Immediately after the Sheriff's sale how much did Nathanson agree to sell it to you for?

A. For his money.

Q. How much?

A. Whatever it was at the time, but didn't want to make a profit on it.

Q. When first did he say he wanted to make a profit on it?

A. When the Edwards Lumber property was 10 bought. I don't remember exactly, but I think we had about \$1,400.00 deposited at the Receiver's sale, and the time we had to take the title I saw Mr. Nathanson and he said he would let us have the money provided we would take the Castle Garden for \$6,800 00. I don't remember positively whether it was \$6,800.00 or \$6,700.00, but in that neighborhood.

Q. That is the first time, so far as you know, 20 that Norton spoke to Nathanson about borrowing \$5,000.00?

A. I don't know anything about Norton.

Q. So far as you know?

A. So far as I know, yes; I wanted to buy that property myself. I own the property next to it, and there was—

Q. Did you make any application to any other party in Long Branch for a property at that time? 30

A. I think I did. I made one with you, too.

Q. I ask you if you didn't make an application to Mr. Benjamin P. Morris on that Castle Garden property of Five Thousand dollars?

A. It's possible I did.

Q. Do you recall the circumstances under which you made that application?

A. I can't tell; I made so many applications to Mr. Morris. We owned fourteen or fifteen properties.

David Lerner—Redirect.

Cora M. Throckmorton—Direct.

Q. What value did you place upon the property at the time for a loan?

A. I couldn't tell. The applications might tell for themselves.

Q. Did you say in the application that that property was worth from eight to ten thousand dollars?

10 A. I don't remember; maybe I did.

Q. Did Mr. Morris make you the loan?

A. No, sir.

Q. Why?

A. Well, I don't remember exactly, but I think Mr. Morris took it up with Mr. Norton then, if I am not mistaken.

Q. Do you know this young lady sitting here?

A. Yes, sir.

Q. Who is she?

20 A. Mr. Morris' stenographer, I believe.

REDIRECT-EXAMINATION BY MR. DAWES:

Q. In making these applications did you offer any other property than the Castle Garden for the loan?

A. I can't exactly state that. We had fourteen properties for foreclosure.

30 CORA M. THROCKMORTON, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. McDERMOTT:

Q. Miss Throckmorton, where do you live and what is your occupation?

A. I live in Long Branch, and I am a stenographer for Benjamin P. Morris.

Q. How many years have you been stenographer for Mr. Morris?

40 A. Over sixteen years.

Cora M. Throckmorton—Direct.

Q. Do you know Mr. Richard D. Norton?

A. Yes.

Q. And Mr. David Lerner who was on the stand a moment ago?

A. Yes.

Q. In the summer of 1912 did Mr. Lerner or Mr. Norton make an application to Mr. Morris for a loan, in your presence?

Mr. Dawes: That is objected to as absolutely irrelevant. 10

The Court: Objection overruled.

A. Yes, sir.

Q. And did they in making the application state the value of the Castle Garden property?

Mr. Dawes: Objected to, because it should state who made the offer.

The Court: Objection overruled. 20

A. They stated the property was worth at a low valuation \$8,000.00, but that it brought an income \$10,000.00, bringing in about \$1,000.00 a year rental.

Q. Who made that statement?

A. Mr. Lerner made it at first.

By the Court:

Q. In the presence of Mr. Norton?

A. Not at that time. Mr. Norton came back with him when they came to get a report. 30

Q. Then what statement was made?

A. They made the application and left it with Mr. Morris for whether he would grant it or not.

Q. You said that Mr. Lerner made the statement that the property was worth \$8,000.00, and had a rental value of \$10,000.00?

A. Yes, sir.

Q. That was made not in the presence of Mr. Norton; but you say they afterwards came to- 40

Cora M. Throckmorton—Cross.

gether. Was any such statement made afterwards in the presence of Mr. Norton and Mr. Morris?

A. Well—

Q. Tell us yes or no?

A. Yes.

Q. When?

10 A. A short time afterwards within a day or two, they would be in the office, within a day or two, and what they did Mr. Norton verified.

Q. Tell us all about it?

20 A. Mr. Morris refused to make the loan, stating to them that there was a *lis pendens* filed that would have to be cleaned up covering that property and other properties, and also that the property had been condemned by the State Board of Health, and until those matters had been disposed of he would not take the matter up.

Q. Was it a loan of \$5,000.00?

A. It was between four and five thousand; I don't remember which.

CROSS-EXAMINATION BY MR. DAWES:

Q. Did they make application for loans on any other property?

A. Numerous.

30 Q. At that time?

A. No; all other matters had been closed.

Q. That was the only one?

A. The only one pending at that time.

[BOTH SIDES REST.]

