NEW JERSEY COURT OF
ERRORS AND APPEALS

BETWEEN: FANNIE G. INMAN, Complainant-Appelant, and ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY, Defendants-Appellee.	ON APPEAL FROM COURT OF CHANCERY

STATE OF CASE

FRANCIS TANNER,
Solicitor for and Of Counsel with Appellant.

FRANKLIN H. BERRY,
Solicitor for and Of Counsel with Defendants-Appellee.

120/122

IN CHANCERY OF NEW JERSEY

TO THE HONORABLE LUTHER A. CAMPBELL, CHANCELLOR OF THE STATE OF NEW JERSEY:

The Complainants, FANNIE G. INMAN, of the Village of Manahawkin, County of Ocean and State of New Jersey, and THE FIRST NATIONAL BANK OF BARNEGAT, NEW JERSEY, a banking association organized under the Laws of the United States of America, with its principal office in the Village of Barnegat, County of Ocean and State of New Jersey, respectfully show that:

1. EWARD INMAN, late of said Village of Manahawkin, died on October 19th, 1935, leaving a last Will and Testament which was on November 6th, 1935, duly admitted to probate by the Surrogate of said County of Ocean, and Letters Testamentary thereon issued to Alexander H. Inman and Warren Sprague, the Executors therein named, who have taken upon themselves the burden of administering the said Estate. A true copy of said Will is hereunto annexed and made a part hereof.

2. In and by his said Will the said Edward Inman provided as follows:

"Fifth:—My automobile is to be sold by my Executors at time of my Death, the proceeds of same to be placed in Trust with the Bank herein named."

"Seventh:—My houseboat, power boat, two gunning boxes and all my decoys are to be sold by my Executors, the proceeds from same to be invested in Trust with the aforesaid Bank."

"Ninth:—All my stock in the Atlantic City Electric Company is to be sold and proceeds placed in Trust with the First National Bank at Barnegat, New Jersey."

"Tenth:—My Pennsylvania Saving Fund, In-

surances and Lodges and any and all other investments I may have not herein mentioned is to be trans*fer*ed in Trust with the First National Bank at Barnegat, N. J., together with all others mentioned herein to be combined with the Trust Fund I now or may hereafter have with the aforesaid Bank."

3. The said Edward Inman at the time of his decease was living with his wife, Fannie G. Inman, having retired from business and had no other income except from the securities and other things mentioned in his said Will.

4. Complainant, FANNIE G. INMAN, claims that since under Paragraph numbers 5-7-9 and 10 of decedent's Will, no beneficiary is named in the alleged trusts and that decedent died intestate as to that part mentioned in said Paragraphs 5-7-9 and 10. The said Fannie G. Inman is therefore entitled to the proceeds of the funds mentioned in the aforesaid Paragraphs since the decedent did not have any children of his own. The Complainant, Fannie G. Inman further claims that the First Baptist Church of Manahawkin, New Jersey, benefits only under Paragraphs 3 and 8 under the Decedent's said Will.

5. The Complainant, THE FIRST NATIONAL BANK OF BARNEGAT, NEW JERSEY, the Trustee named in the decedent's will is of the belief that the trust funds contained in the aforesaid paragraphs named are not good for the reason set forth by the Complainant Fannie G. Inman.

6. The said Alexander H. Inman and Warren Sprague, Executors as aforesaid claim that the aforesaid Trust funds mentioned are good and that the decedent's widow is entitled only to the interest from the decedent's Estate during her lifetime and that the beneficiary of said trust funds is the First Baptist Church at Manahawkin, New Jersey, wherein the Decedent in Paragraphs 3 and 8 of his said Will made provision for the Preacher's Salary and

the up-keep of the cemetery of the said Baptist Church.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That Alexander H. Inman and Warren Sprague, Executors of the last Will and Testament of Edward Inman, deceased, and the First Baptist Church of Manahawkin, New Jersey, who are the Defendants to this suit may answer this Bill of Complaint and each statement therein made:

2. That this Court may construe the said Last Will and Testament of said Edward Inman, deceased, and declare complainants rights thereunder:

3. That a Writ of Subpoena may issue, commanding said Defendants to answer this Bill of Complaint and to abide by such Decree as this Court may make in the premises.

FRANCIS J. TANNER,
Solicitor for and Of Counsel With Complainants.

(Filed Aug. 26, 1937)

IN CHANCERY OF NEW JERSEY

On Bill &c.,—ANSWER

BETWEEN: FANNIE G. INMAN and THE FIRST NATIONAL BANK OF BARNEGAT, NEW JERSEY, Complainants, and ALEXANDER H. INMAN and WARREN SPRAGUE, Executors of the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY, Defendants.	On Bill &c., A N S W E R

The Defendants, ALEXANDER H. INMAN and WARREN SPRAGUE, Executors of the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY, answering the Bill of Complaint in the above entitled cause say that:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted

except that defendants have no knowledge or information sufficient to form a belief as to the sources of income of the decedent EDWARD INMAN.

4. Paragraph 4 is denied.
5. Paragraph 5 is denied.

6. Paragraph 6 is admitted.

7. Further answering said Bill of Complaint these defendants say that a proper construction of the testator's Will indicates that the provisions of the third, fifth, seventh, eighth, ninth and tenth paragraphs of said Will all had to do with and provided for the creation of a Trust Fund to be administered by The First National Bank of Barnegat, N. J., for the benefit of The First Baptist Church of Manahawkin, N. J.; that the references in the fifth, seventh, ninth and tenth paragraphs of said Will to a Trust Fund were to the same Trust Fund specifically described in the third and eighth paragraphs of said will; that the testator did not die intestate as to those portions of his Estate referred to in the fifth, seventh, ninth and tenth paragraphs of his Will, but that a reading of the entire Will indicates an intent on the part of the testator to create a trust for the benefit of The First Baptist Church of Manahawkin, N. J., and for no other purpose.

8. Further answering said Bill of Complaint, defendants say that the testator did not, at the time of his death, own any stock in the Atlantic City Electric Company, referred to in the ninth paragraph of said Will.

FRANKLIN H. BERRY,

SOLICITOR FOR DEFENDANTS, ALEXANDER H. INMAN and WARREN SPRAGUE, Executors of the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY.

(Filed Oct. 11, 1937)

120/122

IN CHANCERY OF NEW JERSEY

On Bill &c.—REPLICATION

Between: FANNIE G. INMAN, et als, Complainants, and ALEXANDER H. INMAN, et als, Defendants.	ON BILL, &c., REPLICATION

The Complainants join issue on the answer of the Defendants.

FRANCIS TANNER,
Solicitor of Complainants.

(Filed Oct. 13, 1937)

120/122

IN CHANCERY OF NEW JERSEY

On Bill, &c.—ORDER OF REFERENCE

Between: FANNIE G. INMAN, et als, Complainants, and ALEXANDER H. INMAN, et als, Defendants.	ON BILL, &c., ORDER OF REFERENCE

This matter being opened to the Court by Francis Tanner, Solicitor of the Complainants, and it appearing that Franklin H. Berry, Solicitor of the Defendants, has consented hereto;

It is, on this 25th day of October, 1937, on motion of Francis Tanner, Solicitor of the Complainants, ORDERED that the above entitled cause be referred to Hon. Alfred A. Stein, one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and to advise what Order or Decree should be made therein.

LUTHER A. CAMPBELL,
C

I hereby consent to the entry of the foregoing Order.

FRANKLIN H. BERRY,
Solicitor of Defendants.

A true copy
Edw. L. Whelan
Clerk

(Filed Oct. 25, 1937)

120/122

IN CHANCERY OF NEW JERSEY

On Bill &c.—DESIGNATION

Between: FANNIE G. INMAN, et als, Complainants, and ALEXANDER H. INMAN, et als, Defendants.	On Bill, &c., DESIGNATION

This matter being opened to the Court by Francis Tanner, Solicitor of the Complainant, and it appearing that Franklin H. Berry, Solicitor of the Defendants, has consented hereto:

It is, on this 30*th day of October,* 1937, ORDERED that the 6*th day of January,* 1938, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, in *Industrial Building,* 1060 *Broad Street, Newark,* be designated as the time and place for the hearing of the above entitled cause.

ALFRED A. STEIN
V. C.

I hereby consent to the entry of the foregoing Order of Designation.

FRANKLIN H. BERRY,
Solicitor of Defendants

(Filed Oct. 30, 1937)

120/122

IN CHANCERY OF NEW JERSEY

On Bill, etc., Docket 120, *page* 122—*CONCLUSIONS*

Between Fannie G. Inman and the First National Bank of Barnegat, New Jersey, Complainants, and Alexander H. Inman and Warren Sprague, Executors under the Last Will and Testament of Edward Inman deceased, and the First Baptist Church of Manahawkin, New Jersey, Defendants.	On Bill, etc. Docket 120, page 122. CONCLUSIONS. (Not for print in any Report)

Appearances:

Mr. Francis Tanner, Solicitor for and of Counsel with Complainants.

Mr. Franklin H. Berry, Solicitor for and of Counsel with Defendants.

STEIN, V. C.

This bill of complaint is brought by Fannie G. Inman, (testator's widow), and the First National Bank of Barnegat, New Jersey, and prays construction of the last Will and Testament of Edward Inman, deceased, and for a declaration of complainants' rights thereunder.

Testator died October 19, 1935, leaving a last Will and Testament probated by the Surrogate of Ocean County on November 6, 1935, who issued letters testamentary thereon to the executors therein named, Alexander H. Inman and Warren Sprague.

Paragraphs of the will are:

"Second: All interests accruing from my incomes from investments, I give to my beloved wife, Fannie G. Inman to have as long as she remains my widow. The house and home in which we are now living, I leave to her to have and hold during her life as my widow, with the provision,-viz: she is to keep the said property in good repair and condition, furthermore she as my widow, shall maintain the insurance, taxes, etc.

"Third: At time of my wife's death or being married to another, the home property; re*fer*ed *to in* article, Second, is to be sold and the proceeds thereof is to be placed in Trust with the First National Bank at Barnegat, New Jersey bearing interest which is to be paid semi annu*aly* to the First Baptist Church at Manahawkin, State of New Jersey for the Preachers Salary during the church having one actively serving as same, however, at any time or times the Church is without a minister, all monies are to be withheld and remain in Trust bearing interest.

****

"Fifth: My automobile is to be sold by my Executors at time of my death, the proceeds of same to be placed in Trust with the Bank herein named.

****

"Seventh: My house boat, power boat, two gunning boxes and all my decoys are to be sold by my Executors, the proceeds from same to be invested in Trust with the aforesaid Bank.

"Eight: My stock in the Beach Haven Ice and Cold Storage Co. all interest accuring from the said

stock is to be placed in Trust with the bank heretofore mentioned is to be paid semi-annu*aly* for the upkeep of the cemet*ary of the Baptist Church at* Manahawkin, N. J., from the time of my wife's death or mar*rag*e to another.

"Ninth: All my stock in the Atlantic City Electric Co. is to be sold and proceeds placed in Trust with the First National Bank at Barnegat, N. J.

"Tenth: My Pennsylvania Rail Road Saving Fund, Insurances and Lodges and any and all other investments I may have not herein mentioned, is to be transf*ered* in Trust with the First National Bank at Barnegat, N. J., together with all others mentioned herein to be combined with the Trust Fund I now or may hereafter have with the aforesaid Bank."

The third paragraph of the will read in conjunction with the second paragraph creates a charitable trust in favor of the First Baptist Church at Manahawkin, New Jersey. The deceased gives his widow the right to the use of the home property as long as she lives and remains his widow, subject to the proper maintenance charges. Upon her death or remarriage the home is to be sold and the proceeds invested by the trustee and the income thus arising is to be paid semi-annually to the First Baptist Church at Manahawkin for the preacher's salary when a preacher is actively serving. If at any time the church is without a minister, the income is to be withheld and added to the corpus.

In the eighth paragraph the testator created another charitable trust in favor of the Baptist Church at Manahawkin, New Jersey. The testator there directs that the "interest" accruing from his stock in the Beach Haven Ice and Cold Storage Company is to be paid semi-annually for the upkeep of the cemetery of the Baptist Church. Such interest

arising from said stock, however, is to be paid to his widow during her lifetime, but such payments cease in the event of her remarriage.

The will is inartistically drawn and probably was drawn by a layman. The solicitor for the complainants contends that the will does not contain a residuary clause, and, it being conceded that the decedent had on deposit money in one or more banks not specifically disposed of in the will, he argues that as to such funds the deceased died intestate.

The testator considered money on deposit as an "investment" and intended such money on deposit to form part of his trust fund. This I gather from the tenth paragraph of his will in which he disposes of his Pennsylvania Railroad Saving Fund, insurances and lodges "and any and all other investments I may have not herein mentioned" and transfers the same in trust to the First National Bank of Barnegat, N. J., "together with all others mentioned herein to be combined with the Trust Fund I now or may hereafter have with the aforesaid Bank." Reading the will from the four corners thereof, I conclude that in this clause it was his intention to dispose of the residue of his estate of every kind and nature in trust with his named trustee. In the construction of a will the court must do everything in its power to discover the testator's intentions, and to see that they are carried out, if possible.

Johnson v. Bowen, 85 *N. J. Eq.,* 76.

The testator in the second paragraph said "all interests accruing from my incomes from investments, I give to my beloved wife, Fannie G. Inman to have as long as she remains my widow." The fifth, seventh, ninth and tenth paragraphs form the corpus of a trust fund for the benefit of his wife. From these paragraphs and others in the will it clearly appears that the testator intended his widow

to have the income from all of his estate not specifically bequeathed to others as long as she lives and remains his widow. As to the corpus of the trust funds arising under the fifth, seventh, ninth and tenth paragraphs, the testator died intestate. I am not unmindful of the presumption which exists that the testator did not intend to die intestate with respect to any part of his estate, nevertheless such rule does not prevail against the result of intestacy when that result is fairly inescapable. *White v Crossman,* 64 *A.* 168; *Federal Trust Co. v. Ost,* 120 *N. J. eq.* 43 120 *N. J. Eq.,* 475, 183 *A.* 830, 186 *A.* 579, *affirmed* 121 *N. J. eq.* 608, 191 *A.* 746.

Decree will be advised in accordance with the foregoing.

(Filed March 10, 1938)

120/122

IN CHANCERY OF NEW JERSEY

On Bill &c.—DECREE CONSTRUING WILL

BETWEEN: FANNIE G. INMAN and THE FIRST NATIONAL BANK OF BARNEGAT, NEW JERSEY. Complainant, and ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY. Defendants.	ON BILL &c., DECREE CONSTRUING WILL

This cause coming on to be heard in the presence of Francis Tanner, Solicitor of the Complainants, and Franklin H. Berry, Solicitor of the Defendants, and the Court having examined the pleadings and proofs and having considered the arguments of counsel thereon; AND IT APPEARING to the satisfaction of the Court, that, by the true construction of the last Will and Testament of Edward Inman, deceased, late of the Village of Manahawkin, in the Township of Stafford, County of Ocean and State of New Jersey:

(a) The Complainant FANNIE G. INMAN is given the right to the use of the home property as long as she lives or until she remarries, provided

she shall be responsible for all maintenance charges; and upon her death or remarriage the home property is to be sold and the proceeds invested by the trustee and the income therefrom is to be paid semi-annually to the FIRST BAPTIST CHURCH at MANAHAWKIN for the preacher's salary, except when the Church is without a minister, when the income is to be withheld and added to the corpus;

(b) Under the eighth paragraph thereof the "interest" accruing from the testator's stock in the BEACH HAVEN ICE AND COLD STORAGE COMPANY is to be paid to the widow until her death or remarriage, and thereafter, semi-annually, for the upkeep of the cemetery of the Baptist Church;

(c) Under the fifth, seventh, ninth and tenth paragraphs thereof, in conjunction with the second paragraph thereof, there is created a valid trust fund, the income of which is to be paid to the widow until she dies or remarries, and as to the corpus of which the decedent died intestate;

(d) Funds of the decedent on deposit in bank accounts are to be included in the trust fund referred to in the tenth paragraph of the Will.

IT IS, thereupon, on this 29th day of March, 1938, ORDERED, ADJUDGED AND DECREED as follows:

1. The Complainant FANNIE G. INMAN is entitled to the use of the home property until her death or remarriage, provided she shall maintain the property in good repair and condition and shall pay all insurance, taxes and other maintenance charges.

2. Upon the death or remarriage of complainant FANNIE G. INMAN, the home property shall be sold; the proceeds of such sale shall be invested by the trustee; and the income thereof shall be paid semi-annually to the FIRST BAPTIST CHURCH AT MANAHAWKIN for the preacher's salary, except when said church shall be without a minister, when

said income shall be withheld and added to the corpus of the fund.

3. The income from the stock in BEACH HAVEN ICE AND COLD STORAGE COMPANY, owned by the decedent, or from the proceeds of the sale thereof, shall be paid to the complainant FANNIE G. INMAN until her death or remarriage, and thereafter to the FIRST BAPTIST CHURCH AT MANAHAWKIN, semi-annually, for the upkeep of its cemetery.

4. Those portions of the estate of decedent referred to in the fifth, seventh, ninth and tenth paragraphs of the Will, including funds of the decedent which were on deposit in bank accounts, shall be paid over to the trustee and the income thereof shall be paid to complainant FANNIE G. INMAN until her death or remarriage, at which time the corpus of the trust fund so established shall be distributed among the heirs at law of the said EDWARD INMAN in accordance with the provisions of the statutes of the State of New Jersey relating to the distribution of personal property of intestates.

IT IS FURTHER ORDERED a counsel fee of $250.000 Dollars be allowed to Francis Tanner, Solicitor of Complainant and a counsel fee of $250.00 Dollars be allowed to FRANKLIN H. BERRY, Solicitor of defendants, said counsel fees, together with costs of this suit, to be paid by the defendants ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased, out of the Estate in their hands.

Respectfully advised,
A. A. STEIN
V. C.

LUTHER A. CAMPBELL
C.

(Filed March 29, 1938)

120/122

IN CHANCERY OF NEW JERSEY

On Bill, etc.—NOTICE OF APPEAL

Between: FANNIE G. INMAN and THE FIRST NATIONAL BANK OF BARNEGAT, NEW JERSEY, Complainants, and ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the Last Will and Testament of Edward Inman, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY. Defendants.	ON BILL, etc. NOTICE OF APPEAL

The Complainant, FANNIE G. INMAN, hereby appeals from so much of the Final Decree made in the above-entitled cause, on March 29, 1938, as to Paragraph 4, which directs as follows: "Those portions of the Estate of decedent referred to in the 5th, 7th, 9th and 10th Paragraphs of the Will, including funds of the Decedent which were on deposit in bank accounts, shall be paid over to the Trustee and the income thereof shall be paid to Complainant FANNIE G. INMAN until her death or remarriage, at which time the corpus of the trust fund so established shall be distributed among the heirs at law of the said EDWARD INMAN in accordance with the provisions of the statutes of the State of New

Jersey relating to the distribution of personal property of intestates," to the Court of Errors and Appeals in the Last Resort in All Causes.
Dated: June 27th, 1938

FRANCIS TANNER,

Solicitor for and Of Counsel with Complainant, FANNIE G. INMAN.

I conceive there is good cause for Appeal in the above-entitled cause.

FRANCIS TANNER,

Of Counsel with Complainant, FANNIE G. INMAN.

Sat below:
ALFRED A. STEIN,
V. C.

(Filed June 29, 1938)

NEW JERSEY COURT OF ERRORS AND APPEALS

On Appeal From the Court of Chancery
PETITION OF APPEAL

FANNIE G. INMAN, Complainant-Appelant, vs. ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY. Defendants-Appellees.	ON APPEAL FROM THE COURT OF CHANCERY PETITION OF APPEAL

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The Petition of FANNIE G. INMAN, the Appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, bearing date March 29th, 1938, in a certain cause in the said Court of Chancery wherein the said FANNIE G. INMAN was one of the Complainants and the said ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased,

and the FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY, were Defendants, in this respect, to wit, that the said Decree adjudges that "those portions of the estate of decedent referred to in the 5th, 7th, 9th and 10th paragraphs of the Will, including funds of the decedent which were on deposit in bank accounts, shall be paid over to the Trustee and the income thereof shall be paid to Complainant, Fannie G. Inman, until her death or re-marriage, at which time the corpus of the Trust Fund so established shall be distributed among the heirs at law of the said Edward Inman in accordance with the provisions of the statutes of the State of New Jersey relating to the distribution of personal propery of intestates."

And Petitioner appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that same is erroneous in that the corpus of the trust funds mentioned in the 5th, 7th, 9th and 10th paragraphs of the Will should be turned over to the Petitioner, since the Chancellor held that the Testator died intestate as to those trust funds mentioned, there being nothing in the Testators will to indicate that in the event that he should died intestate as to any part, that his said wife should not benefit thereby and since the Chancellor decreed that the Testator died Intestate as to the 5th, 7th, 9th and 10th Paragraphs of the Will, the Petititioner contends that the contents of same should be turned over to her in accordance with the intestate Laws of the State of New Jersey, since she is the lawful wife of the decedent, and there being no issue of said marriage.

Petitioner finds herself aggrieved also, by reason of the fact that she was refused permission to put in

testimony at the hearing, with reference to statements made by the Testator during her lifetime and just prior to his death.

Petitioner therefore prays that the said Decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that Petitioner may have such other relief in the premises as to this Court shall seem proper.

FRANCIS TANNER,
Solicitor for and Of Counsel with Appellant.

(Filed July 15, 1938)

EXHIBIT I

In The Name of God, Amen.

I, Edward Inman, of the Village of Manahawkin, Ocean Co., and State of New Jersey being of sound mind, memory and understanding do make and publish this my last Will and Testament, in manner following, that is to say:

First:—I order and direct my Executors hereinafter named to pay all my just debts and funeral expenses as soon as conveniently may be after my decease.

Second: All interest accuring from my income from investments, I give to my beloved wife, Fannie G. Inman to have as long as she remains my widow.

The house and home in which we are now living, I leave to her to have and hold during her life as my widow, with the provision,—viz: she is to keep the said property in good repair and condition, furthermore she as my widow, shall maintain the insurance, taxes, etc.

Third: At time of my wifes death or being married to another, the home property; refered to in article, Second, is to be sold and the proceeds thereof is to be placed in Trust with the First National Bank at Barnegat, New Jersey bearing interest which is to be paid semi annualy to the First Baptist Church at Manahawkin, State of New Jersey for the Preachers salary during the church having one actively serving as same, however, at any time or times the Church is without a minister, all monies are to be withheld and remain in Trust bearing interest.

Fourth: To my sisters, Lyda Palmer and Carrie A. Sprague and my brother Alexander H. Inman, I give and bequeath all my silverware and my personal effects the may desire, which is to be divided among them (if living) as they may mutually agree one with the other.

Fifth: My automobile is to be sold by my Executors at time of my death, the proceeds of same to be placed in Trust with the bank herein named.

Sixth: I bequeath to my nephews Elwood Sawyer, Charles Courtney and Raymond Palmer, the following, viz: One sixth part of the North Point Meadows in Manahawkin bay for gunning purposes.

Seventh: My house boat, power boat, two gunning boxes and all my decoys are to be sold by my Executors, the proceeds from same to be invested in Trust with the aforesaid Bank.

Eight: My stock in the Beach Haven Ice and Cold Storage Co. all interests accruing from the said stock is to be placed in Trust with the bank heretofore mentioned is to be paid semi-annualy for the upkeep of the cemetary of the Baptist Church at Manahawkin, N. J., from the time of my wifes death or marrage to another.

Ninth: All my stock in the Atlantic City Electric Co. is to be sold and proceeds placed in Trust with the First National Bank at Barnegat, N. J.

Tenth: My Pennsylvania RailRoad Saving Fund, Insurances and Lodges and any and all other investments I may have not herein mentioned, is to be transfered in Trust with the First National Bank at Barnegat, N. J. together with all others mentioned herein to be combined with the Trust Fund I now or may hereafter have with the aforesaid Bank.

Lastly, I hereby nominate, constitute and appoint to be Execut of this my Last Will and Testament, hereby revoking any and all Wills by me at any time hertofore made and declaring this only to be and contain my Last Will and Testament, Alexander H. Inman Warren Sprague.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Thirty First day of January, in the year of our Lord one thousand nine hundred and thirty one.

EDWARD INMAN (Seal)

SIGNED, SEALED, PUBLISHED AND DECLARED, by the above named to be Last Will and Testament, in the presence of us; who were present at the same time, and at the request of the testator have hereunto subscribed our names as witnesses, in the presence of the testator and of each other.

ERNEST MOREY, *Tuckerton, N. J.*

STANLEY SEAMAN, *Tuckerton, N. J.*

NEW JERSEY COURT OF
ERRORS AND APPEALS

BETWEEN: FANNIE G. INMAN, Complainant-Appellant, and ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY, Defendants-Appellee.	ON APPEAL FROM COURT OF CHANCERY

Brief of Complainant - Appellant

For the Complainant-Appellant

Francis Tanner, Esq., Barnegat, N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between: FANNIE G. INMAN, Complainant-Appelant, vs. ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY. Defendants-Appellees.	ON APPEAL FROM THE COURT OF CHANCERY PETITION OF APPEAL

STATEMENT

The Complainant, FANNIE G. INMAN, is the lawful wife of Edward Inman, deceased, who departed this life, a resident of Stafford Township, Ocean County, New Jersey, leaving a last Will and Testament which obviously was drawn by a layman and in which he did set-up or attempt to set-up certain Trust Funds.

Under the said Last Will and Testament the decedent named two Executors, to wit, Alexander H. Inman and Warren Sprague. The said Executors qualified before the Surrogate of Ocean County and proceeded to administer the said Estate and advise the Complainant, FANNIE G. INMAN, that the Trust funds set-up in the Last Will and Testament were in their opinion good and valid and that the said widow would be entitled during the term of her natural life or until her death to the interest only

of the Assets of said Estate. The said Widow protested said construction of the Will and the said Executors refusing to file a Bill in the Court of Chancery asking for a proper construction of said Will the said FANNIE G. INMAN and the FIRST NATIONAL BANK OF BARNEGAT, NEW JERSEY, who was named Trustee under said Will filed in the said Court of Chancery, a Bill of Complaint asking for a proper construction of the meaning of said Will. It was contended by the Complainants that Paragraphs 5, 7, 9 and 10 were invalid since no beneficiary was named, and that the decedent died intestate as to Paragraphs 5, 7, 9 and 10 and accordingly the said FANNIE G. INMAN alleged that she was entitled to the proceeds mentioned in said Paragraphs since she was the surviving widow of said decedent, there being no children.

The Defendants in their Answer alleging that the Trust Funds were good and that the Testator did not die intestate as to those portions of his Estate referred to in the Complainant's Bill of Complaint and contending that a reading of the entire Will indicated an intent on the part of the Testator to create a Trust for the benefit of the First Baptist Church of Manahawkin, New Jersey, and for no other purpose. The matter came on to be heard before Hon. Vice Chancellor ALFRED A. STEIN, at the Chancery Chambers, Newark, New Jersey, and the said Vice-Chancellor refusing to permit testimony at said hearing, the matter was considered on the pleadings alone, over the objections of the Complainants. At the conclusion of the Hearing at which time no testimony was taken, but oral argument was presented by Counsel for both parties, and the learned Vice-Chancellor reserved decision and requested Counsel to present Briefs.

The learned Vice-Chancellor thereafter rendered

a written opinion declaring in fact that the decedent died intestate as to Paragraphs 5, 7, 9 and 10, of said Last Will and Testament. In the Conclusions filed by the learned Vice-Chancellor with reference to Paragraphs 5, 7, 9 and 10 of said Last Will and Testament, he said in part:

> "the 5th, 7th, 9th and 10th paragraphs form the corpus of a Trust fund for the benefit of his wife. From these paragraphs and others in the Will it clearly appears that the testator intended his widow to have the income from all of his Estate not specifically bequeathed to others as long as she lives and remains his widow. As to the corpus of the Trust funds arising under the 5, 7 9 and 10th paragraphs, the testator died intestate. I am not unmindful of the presumption which exists that the testator did not intend to die intestate with respect to any part of his estate, nevertheless such rule does not prevail against the result of intestacy when that result is fairly inescapable."

After the decision made by the learned Vice-Chancellor, the matter was regular brought before him in order to fix the form of decree to be entered therein. And the Complainant, FANNIE G. INMAN, finds herself aggrieved by that portion of the decree which reads as follows:

> "Those portions of the Estate of decedent referred to in the 5th, 7th, 9th and 10th paragraphs of the Will, including funds of the decedent which were on deposit in Bank accounts, shall be paid over to the

> Trustee and the income thereof shall be paid to Complainant, Fannie G. Inman, until her death or re-marriage at which time the corpus of the Trust Fund so established shall be distributed among the heirs-at-law of the said Edward Inman, in accordance with the provisions of the statutes of the State of New Jersey relating to the distribution of personal property of intestates."

At the time of decedents death, the total assets of the Estate amounted to approximately $5,000.00, and at the present time, the total amount of the decedents assets with the exception of the Home mentioned in the Will is approximately $4,000.00. The latter information is not part of the State of the Case before this Court but same was mentioned in the Oral Argument before the learned Vice-Chancellor in order that he might have before him in considering the matter, the entire facts which might or might not have some bearing on the actual intention of the testator, and the construction of same.

LAW and ARGUMENT

It is the contention of the Complainant-Appellant that the Testator died intestate as to Paragraphs 5, 7, 9 and 10 and should be distributed immediately in accordance with the Intestate Laws of the State of New Jersey. The contents of Paragraphs 5, 7, 9 and 10 consisting entirely of personal property would therefore pass to the wife since there were no children born of said marriage.

In the last paragraph of the Opinion filed by the learned Vice-Chancellor, he said in part, 'the testator in the second paragraph said 'all interest

accruing from my incomes from investments, I give, to my beloved wife, FANNIE G. INMAN, to have as long as she remains my widow.' The 5th, 7th, 9th and 10th paragraphs, form the corpus of a Trust fund for the benefit of his wife. From these Paragraphs and others in the Will, it clearly appears that the testator intended his widow to have the income from all of his Estate not specifically bequeathed to others as long as she lives and remains his widow. As to the corpus of the Trust funds arising under the 5th, 7th, 9th and 10th paragraphs, the testator died intestate." It would clearly indicate that the opinion did not take into consideration the fact that paragraph 10 of the Will contained a residuary clause which he also declared to be invalid, and that the testator died intestate as to same. It would appear to be the settled Law of this State that unless a contrary intention is manifested, all lapsed, void and illegal legacies fall into the residuum and pass as part of it, but this rule does not apply to the residue. If a gift of the residue, or any part of it fails, whether by lapse, illegality, or revocation, to the extent that it fails the will is inoperative, and the subject of the gift passes to the next of kin. Burnet vs. Burnet, 30 Eq. 595. In reading the Will from beginning to end there is nothing in same which would indicate what disposition the testator desired to make of his said Estate in the event that any part of same should be declared invalid or void. Neither was there anything in the Will which would indicate what disposition the Testator intended to make of his property in the event that the First Baptist Church at Manahawkin, N. J., as is the case here, would not benefit under the terms of said Will. Nor, is there any indication in the Will that the Testator did not wish his said wife to benefit by the provisions of his said Will, in the event that

certain portions of his said Will should be declared void or invalid. It is the contention of the Complainant that the invalid portions of the Will should fall into the residuary clause if any, and it would appear that the learned Vice-Chancellor considered, as such, paragraph 10 of the testators Will, from a reading of his opinion, in which he stated in part, in the last paragraphs as follows, "the testator considered money on deposit as an 'investment' and intended such money on deposit to form part of his Trust fund. This I gather from the 10th paragraph of his Will in which he disposes of his Pennsylvania Railroad Fund, Insurances and Lodges, 'and any and all other investments he may have not herein mentioned' and transfers the same in Trust to The First National Bank of Barnegat, N. J., 'together with all others mentioned herein to be combined with the Trust fund he now or may hereafter have with the aforesaid Bank.' Reading the Will from the four corners thereof, I conclude that in this clause it was his intention to dispose of the residue of his Estate of every kind and nature in Trust with his named Trustee. In the construction of a Will the Court must do everything in its power to discover the testator's intention, and to see that they are carried out, if possible."

In the case of Stenneck vs Kolb, 91 Eq. 382, at page 384 the Court said as follows: 'It is the well-settled Law of this State that this residuary clause, having lapsed, and there being no other provision in the will for its disposition in such event, the testatrix died intestate as to that portion of her Estate, and it will follow the intestate laws." As indicated above, it will be noted that there is no provision in the testator's will for any disposition in the event of lapse or illegality.

As a matter of fact, it will be noted the learned

Vice-Chancellor in his Conclusions stated,

> "from these paragraphs and others in the Will, it appears that the Testator intended his widow to have the income from all of his Estate not specifically bequeathed to others as long as she lives and remains his widow."

It is very significant to note that since Paragraphs 5, 7, 9 and 10 have been declared invalid that obviously the contents of said paragraphs are not specifically bequeathed under the Last Will and Testament of decedent. Again referring to the case of Burnet vs Burnet, 30 Eq. 595, at page 600 the Court reciting Skrymsher v. Northcote, 1 Swans, 566, 570,

> 'It seems clear, on the authorities, that a part of the residue, of which the disposition fails, will not accrue in augmentation of the remaining parts as a residue of residue; but, instead of resuming the nature of residue, devolves as indisposed of. Residue means all of which no effectual disposition is made by the will other than by the residuary clause; but when the disposition of the residue itself fails, to the extent to which it fails the will is inoperative."

And the Court goes on to say that the same Rule was applied in a case where a testator by a Codicil, revoked the gift of one share of the residue given by his Will, and made no other disposition of it. As to that share it was held he died intestate.

In the case of Stenneck v Kolb, 91 Eq. 382 in which case the Testatrix made a bequest of $700.00

to her said husband which sum was to be derived out of the sale of certain Real Estate and it appearing that at the time of testatrix's death the husband had predeceased her. The said Testatrix having two Sons, namely Leopold and Charles and as to her son Charles her said Will provided that he should receive only the sum of $1.00 because she believed him to be a spendthrift and lazy. One of the questions before the Court was, in this situation, as to what disposition should be made of the property of the Testatrix, which otherwise would have gone to the husband had he not predeceased her. The Court held at page 384 that the Testatrix died intestate as to that portion of her Estate and same should be divided equally between the two Sons Leopold and Charles. The Court held thus, in spite of the fact that the Testatrix had specifically stated in her Will that the said Son, Charles, should receive only $1.00. In the instant case it would appear that the Complainant-Appellant, FANNIE G. INMAN, should receive the corpus of the invalid trusts, since the Testator in no part of his Will indicated that in the event that part of his said Will should be inoperative, that his said wife could not take the corpus of same. Neither is there anything in the Will which would definitely indicate that the Testator did not intend to die intestate as to any part of his said Estate as in the case of Aitken vs Sharp, 93 Eq. 336.

CONCLUSION

It is respectfully submitted that the learned Vice-Chancellor was in error in signing a Final Decree directing that the said FANNIE G. INMAN should receive the income from those portions of the Estate of decedent referred to in Paragraphs 5, 7, 9 and 10 of the Will until her death or remarriage, at which time the corpus of the Trust funds should be distributed among the heirs-at-law of the said Edward Inman in accordance with the provisions of the Statutes of the State of New Jersey relating to the distribution of personal property of intestates. Under the Law of this State careful reading of the decisions would seem to indicate that the said Decree should be amended permitting the Complainant-Appellant to receive immediately those portions of the Estate of decedent referred to in the 5th, 7th, 9th and 10th Paragraphs of the Will.

Respectfully submitted,

Francis Tanner, Solicitor for and of Counsel with Complainant-Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

FANNIE G. INMAN,
Complainant-Appellant,

and

ALEXANDER H. INMAN and WARREN SPRAGUE, Executors under the last Will and Testament of EDWARD INMAN, deceased, and THE FIRST BAPTIST CHURCH OF MANAHAWKIN, NEW JERSEY,
Defendants-Respondents.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF DEFENDANTS-RESPONDENTS.

FACTUAL STATEMENT.

It seems unnecessary to burden the Court with a complete restatement of the factual situation as set forth in the appellant's brief. Accordingly, we shall confine ourselves to those statements requiring clarification, or with which we take issue.

FIRST, the executors are charged with having refused to file a bill for construction of the will. This has no bearing on the merits of the case, but inasmuch as there actually was no such refusal, we feel that this assertion should not be permitted to stand uncontradicted.

SECONDLY, the Vice-Chancellor is accused of "refusing to permit testimony at said hearing," and of having considered the matter on the pleadings alone, "over the objections of the complainants." There is nothing in the record to support any such charge, and as a matter of fact the Vice-Chancellor did not refuse to hear competent testimony.

It is next said that the Vice-Chancellor rendered a written opinion declaring that the decedent died intestate as to paragraphs 5, 7, 9 and 10 of his will. This is not an accurate statement, for the exact language used by the Vice-Chancellor was:

> "*As to the corpus of the trust funds arising under* the fifth, seventh, ninth and tenth paragraphs, the testator died intestate:" (Case 13, ll. 3-5.) (Italics ours.)

The concluding paragraph of appellant's factual statement deals with the quantum of the estate, as to which there was no proof, and which, of course, has no bearing upon the matters at issue.

Appellant has failed to print in the State of the Case a copy of the will, which was annexed to the bill of complaint. It is, therefore, printed as an appendix to this brief.

LAW AND ARGUMENT.

I.

The appellant's complaint is with that paragraph of the decree designated by the number 4, which directs the payment of those portions of the estate referred to in the fifth, seventh, ninth and tenth paragraphs of the will into a trust fund, the income of which is to be paid to appellant until her death or remarriage, at which time the corpus shall be distributed among decedent's heirs at law. Her contention is that since a specific beneficiary is not named in those paragraphs, the trust fails and decedent died intestate as to those portions of his estate.

The position of the respondents in the Court of Chancery was that the will should not be so construed as to produce either complete or partial intestacy unless such intention clearly appeared; it being a well established presumption that when a will is executed the testator intends to dispose of his entire estate and does not intend to die intestate as to any part of his property.

> *Leigh v. Savidge's Exrs.*, 14 N. J. Eq. 124;
> *Baldwin v. Baldwin,* 107 N. J. Eq. 91;
> *Second National Bank & Trust Company of Red Bank, New Jersey v. Borden,* 113 N. J. Eq. 378.

> "The law abhors intestacy and it is the duty of the Court to sustain a will if there is any way in which it can do so reasonably."
> *In re Smith,* 95 N. J. Eq. 631.

The Court of Chancery found that the third paragraph of the will, read in conjunction with the second, created a charitable trust in favor of the FIRST BAPTIST CHURCH AT MANAHAWKIN, subject to the right of the widow (appellant) to use the home property so long as she remained the widow of testator. The Court further found that the eighth paragraph of the will established another charitable trust in favor of the same church. No appeal has been taken from either of these findings.

Next, the Court of Chancery determined that the fifth, seventh, ninth and tenth paragraphs of the will, read in conjunction with the second, created a trust fund whose income was payable to the widow until her death or remarriage, and the corpus of which was not disposed of.

To hold, as appellant urges, that the fifth, seventh, ninth and tenth paragraphs are void for want of a beneficiary would not only require the ignoring of the presumption against intestacy, but would bring about a result the direct opposite of that which the testator intended. In every instance in which he makes provision for his wife, he makes it clear that she is to enjoy the benefits allotted to her only so long as she remains his widow; and that as to the personalty, even during that period, she is to be limited to the income therefrom. For example, in

the second paragraph we find the following: (Italics supplied.)

> "All interests accruing from my incomes from investments, I give to my beloved wife, FANNIE G. INMAN, to have *as long as she remains my widow.*"
>
> "The house and home in which we are now living, I leave to her to have and hold *during her life as my widow* * * *."

And in the third paragraph we find:

> "*At time of my wifes death or being married to another,* the home property; * * * is to be sold * * *."

And again in the eighth paragraph:

> "* * * all interests accruing from the said stock is to be paid * * * for the upkeep of the cemetery * * * *from the time of my wifes death or marriage to another.*"

Clearly, if there is any one thing about this will concerning which there can be no question, that is that the testator did not want title to any of his property, real or personal, vested in his widow and that such provision as he did make for her was to be effective only until her death or remarriage. And it is that plainly and unequivocally expressed intent that the appellant would have the Court violate, ignoring the presumption against intestacy and the rule as stated in *Schouler, Wills,* Sec. 885 and quoted in *National Newark and Essex Banking Company*

v. Arthur Sunshine Home &c., 113 N. J. Eq. 313, that:

> "The plain intent of the testator as evinced by the language of his will must prevail, if that intent may be carried into effect without violating some deeper principle of public policy or of statute prohibition."

It is submitted that the plain intent of the testator may be discerned without doing violence to the language used in the will, and further that the testator's purposes violate neither deeper principles of public policy nor statutory prohibitions.

In her brief in this court, appellant seems to be laboring under a misapprehension as to the effect of the decree in Chancery. For instance, it is erroneously stated that paragraph 10 contained a residuary clause "which he also declared to be invalid." And again it is said that "the invalid portions of the will should fall into the residuary clause." And still later, that "since paragraphs 5, 7, 9 and 10 have been declared invalid * * *."

Just to keep the record straight, no portion of the will was adjudged invalid. On the contrary, those provisions of the will which are the subject of this controversy were held to establish a valid trust fund for the benefit of appellant until her death or remarriage. At the termination of the trust, the corpus becomes distributable under the intestate laws, which determination is entirely in accord with *Burnet v. Burnet,* 30 N. J. Eq. 595 and *Stenneck v. Kolb,* 91 N. J. Eq. 382, cited by appellant.

II.

We think that it has been demonstrated conclusively that to award the bulk of the estate to appellant outright would be improper, and that the Vice-Chancellor was correct in limiting her to the enjoyment thereof during her widowhood. However, even though no cross appeal has been taken, the Court may consider that there should be some modification *of that portion of the decree appealed from,* along another line. We do not doubt the power of the Court to take such action, and we invite the attention of the Court to the following considerations, which we believe would justify a modification of the decree to the extent of providing that on the death or remarriage of the widow, the income from the trust fund established by the four paragraphs in question be paid to the FIRST BAPTIST CHURCH OF MANAHAWKIN, N. J.

Bear in mind that the will was drawn by the testator personally or by some other layman at his direction. In the first paragraph in which a trust fund is mentioned he fully describes it. He thinks of various items of his estate as he goes along, and as he thinks of them, the disposition he wants to make of them is set down in the will. Certain things are given outright, *e. g.,* the subjects of paragraphs 4 and 6; others are to go into the trust fund. What necessity is there, in the mind of the testator, as he mentions each item or group of items, to again set forth in full the purpose of the trust and the name of the beneficiary? That these paragraphs do refer to the

fully described trust is clearly indicated by the fact that in each of them he refers to the same trustee. E. G.:

5th Paragraph: "with the Bank herein named."

7th Paragraph: "with the aforesaid Bank."

9th Paragraph: "with the First National Bank at Barnegat, N. J."

10th Paragraph: "with the First National Bank at Barnegat, N. J. *together with all others mentioned herein to be combined with the Trust Fund I now or may hereafter have with the aforesaid Bank.*" (Italics supplied.)

In other words, it is clearly evident that the testator had in mind only one trust fund; in the various paragraphs he was simply enumerating the items he wished to go into that fund. He had in mind, after the death or remarriage of his widow, but one beneficiary, the Baptist Church at Manahawkin, and that his money would be used for the benefit of that church.

If this line of reasoning is pursued, and it appears to be perfectly sound, the intent of the testator will be carried out to the letter, and there will not be even partial intestacy, either now or later. In the final analysis, all that the Court is concerned with is to ascertain the meaning and intent of the testator, as he has expressed it. It will not write a new will for the testator, nor will it indulge in speculation. It must determine the testator's intent by his own language, not by what the Court would have him say. *Brearley v. Brearley,* 9 N. J. Eq. 21; *The First National Bank of Toms River, N. J., Trustee &c. v. Levy,* 123 N. J. Eq. 21.

Unless this Court does see fit to modify the decree in the manner herein suggested, it is possible for a most anomalous result to occur. As has previously been pointed out, the testator made absolutely certain that his wife was to obtain no part of the corpus. Not only that, he specifically directed that in the event of her remarriage she should no longer have the use of the realty and should receive no more income. And yet, under the Chancery decree, she may, by remarrying, obtain the corpus itself! (As noted in appellant's brief, there were no children.)

It is submitted that to determine the intent of the testator and to put that into effect requires no "interpretation" and straining at words; indeed, that the intent being signified by apt words and phraseology, there is no room for construction (*Brearley v. Brearley, supra; First National Bank v. Levy, supra*); and that such being the case, the Court is in duty bound to respect that intent, thereby not only satisfying the testator's wishes, but avoiding that abhorrent situation, unintentional intestacy.

If the law "abhors intestacy" generally it ought especially to detest the possibility of such a result in this instance, where one whom the testator intends to deprive of the income of his estate if she remarries, may by that very act secure for herself not only the income but absolute ownership and control of the principal.

Respectfully submitted,

FRANKLIN H. BERRY,
Solicitor for and of Counsel with Defendants-Respondents.

APPENDIX.

IN THE NAME OF GOD, AMEN.

I, EDWARD INMAN, of the Village of Manahawkin, Ocean Co., and State of New Jersey being of sound mind, memory and understanding do make and publish this my last Will and Testament, in manner following, that is to say:

FIRST: I order and direct my Executors hereinafter named to pay all my just debts and funeral expenses as soon as conveniently may be after my decease.

SECOND: All interests accruing from my incomes from investments, I give to my beloved wife, FANNIE G. INMAN to have as long as she remains my widow. The house and home in which we are now living, I leave to her to have and hold during her life as my widow, with the provision,-viz: She is to keep the said property in good repair and condition, furthermore she as my widow, shall maintain the insurance, taxes, etc.

THIRD: At time of my wifes death or being married to another, the home property; refered to in article, Second, is to be sold and the proceeds thereof is to be placed in Trust with the First National Bank at Barnegat, New Jersey bearing interest which is to be paid semi annualy to the First Baptist Church

at Manahawkin, State of New Jersey for the Preachers salary during the church having one actively serving as same, however, at any time or times the Church is without a minister, all monies are to be withheld and remain in Trust bearing interest.

FOURTH: To my sisters, Lyda Palmer and Carrie A. Sprague and my brother Alexander H. Inman, I give and bequeath all my silverware and my personal effects *the* may desire, which is to be divided among them (if living) as they may mutually agree one with the other.

FIFTH: My automobile is to be sold by my Executors at time of my death, the proceeds of same to be placed in Trust with the bank herein named.

SIXTH: I bequeath to my nephews Elwood Sawyer, Charles Courtney and Raymond Palmer, the following, viz: One sixth part of the North Point Meadows in Manahawkin bay for gunning purposes.

SEVENTH: My house boat, power boat, two gunning boxes and all my decoys are to be sold by my Executors, the proceeds from same to be invested in Trust with the aforesaid Bank.

EIGHT: My stock in the Beach Haven Ice and Cold Storage Co. all interests accruing from the said stock is to be placed in Trust with the bank heretofore mentioned is to be paid semi-annu*aly* for the upkeep of the cemet*a*ry of the Baptist Church at Manahawkin, N. J. from the time of my wifes death or marr*a*ge to another.

NINTH: All my stock in the Atlantic City Electric Co. is to be sold and proceeds placed in Trust with the First National Bank at Barnegat N. J.

TENTH: My Pennsylvania Railroad Saving Fund, Insurances and Lodges and any and all other investments I may have not herein mentioned, is to be transfered in Trust with the First National Bank at Barnegat, N. J. together with all others mentioned herein to be combined with the Trust Fund I now or may hereafter have with the aforesaid Bank.

Lastly, I hereby nominate, constitute and appoint to be Execut of this my last Will and Testament, hereby revoking any and all wills by me at any time heretofore made and declaring this only to be and contain my last will and Testament, Alexandrew H. Inman Warren Sprague

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Thirty First day of January, in the year of our Lord one thousand nine hundred and thirty one.

EDWARD INMAN (SEAL)

SIGNED, SEALED, PUBLISHED AND DECLARED, by the above named to be last Will and Testament, in the presence of us; who were present at the same time, and at the request of the testa have hereunto subscribed our names as witnesses, in the presence of the testa and of each other.

ERNEST MOREY TUCKERTON, N. J.
STANLEY SEAMAN TUCKERTON, N. J.

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