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In Chancery of New Jersey.

BETWEEN HAMILTON S. BATTIN, *Complainant,* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**In Partition.** **Bill of Complaint.**

10

BILL OF COMPLAINT.

Filed October 2, 1920.

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TO THE HONORABLE EDWIN ROBERT WALKER,
CHANCELLOR OF NEW JERSEY:

The complainant, HAMILTON S. BATTIN, of the Borough of Fair Haven, County of Monmouth and State of New Jersey, respectfully shows that:

1. Lambert B. Battin, late of the Borough of Fair Haven, Monmouth County, New Jersey, became seized in fee simple on October 1st, 1884, by deed of that date, recorded October 8th, 1884 in book 379 of deeds for the County of Monmouth, at page 416, of the following described premises, viz: 30

All that house and tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Shrewsbury, in the County of Monmouth and State of New Jersey.

BEGINNING at the southwest corner of the lot 40

formerly of John Hendrickson adjoining lot No. 27 on the map; thence along the north side of said lot No. 27 one chain and forty links to lands occupied by Stacy Pitcher (formerly); thence northwardly along said Pitcher land and along east side of the Charles Cross lot to the North Shrewsbury River; thence eastwardly along the North Shrewsbury River; thence the northwest corner of said lot formerly John Hendrickson's; thence southwardly along the westward side of said lot of formerly John Hendrickson's to the southwest corner thereof the beginning. Containing in the whole lot one acre and a half. Being premises conveyed to Joseph Battin by Virginia Battin and husband by deed dated September 30, 1884.

2. On February 12th, 1918, said Lambert B. Battin departed this life seized in fee simple of the said premises above described, and leaving him surviving as his heirs and next of kin, a widow, Jennie Mae Battin, and six children, named respectively, this complainant, a son, Hamilton S. Battin; a daughter, Lela M. Snodgrass (nee Battin), wife of Robert D. Snodgrass; Lillian H. Battin, a daughter, now married to Daniel H. Applegate; a daughter, Meta E. Battin; a daughter, Blanche A. Battin; and a son, Lambert E. Battin, and leaving a last will and testament dated September 19th, 1906, and a codicil thereto dated August 31st, 1916, a copy of which will and codicil is annexed hereto as Exhibits A and B respectively, and made a part hereof.

3. Said last will and testament and codicil were duly admitted to probate by the Surrogate of Monmouth County on April 29th, 1918, and said probate has never been revoked.

4. That in and by said will and codicil the premises above described were devised in fee simple to the said Jennie Mae Battin, Hamilton S. Battin, Lela M. Snodgrass, Lillian H. Applegate, Meta E. Battin, Blanche A. Battin and Lambert E. Bat-

tin, who are now tenants in common thereof.

5. In and by said will and codicil it was expressly provided that the several bequests therein are to be received by the said Jennie Mae Battin in lieu of her dower, and complainant expressly charges the fact to be that the said Jennie Mae Battin has accepted said bequests and has thereby released her dower in the above described premises.

6. In and by said will it was further provided that the said devise to said Jennie Mae Battin was to be in-operative in the event of her re-marriage and complainant says that all of the children of said Lambert B. Battin, their respective wife and husbands have agreed to waive any default in such devise to the said widow in the event of her re-marriage.

7. Hamilton S. Battin, the complainant, is married to Helen F. Battin.

8. Lela M. Snodgrass is married to Robert D. Snodgrass.

9. Lillian H. Applegate is married to Daniel H. Applegate.

10. Blanche A. Battin, Meta E. Battin and Lambert E. Battin are unmarried.

11. Helen F. Battin is the wife of Hamilton S. Battin and as such has an inchoate right of dower in the interest of said Hamilton S. Battin in said lands and premises.

12. Robert D. Snodgrass is the husband of Lela M. Snodgrass and as such has an inchoate right of curtesy in the interest of said Lela M. Snodgrass in said lands and premises.

13. Daniel H. Applegate is the husband of Lillian H. Applegate and as such has an inchoate right of curtesy in the interest of said Lillian H. Applegate in said lands and premises.

14. That complainant is seized of and entitled to an undivided one seventh part of the said lands and premises, subject to the said right of curtesy of his said wife and the defendants, Jennie Mae

Battin, Lela M. Snodgrass, Lillian H. Applegate, Blanche A. Battin, Meta E. Battin and Lambert E. Battin are each seized of a like interest therein, the interests of the said Lela M. Snodgrass and Lillian H. Applegate, being subject to the inchoate right of curtesy of their respective husbands.

15. Complainant is desirous that a partition or division of the said lands and premises should be made between complainant and the said per-
10 sons aforesaid, according to their several rights, estates and interests therein, or in case, as complainant believes and avers the fact to be, that the said lands and premises being a small single tract with a dwelling house, barn and out-buildings erected thereon, cannot be divided among the owners thereof without great prejudice to their interests, then that the same may be sold subject to the municipal liens now a lien thereon, and the proceeds thereof divided between complainant and the
20 other parties entitled thereto as aforesaid, according to their respective rights and interests. That complainant is advised that no valid or effectual partition, division or sale of the said premises can be affected without the aid or interposition of some competent court, and that this Honorable Court has full and complete jurisdiction in the premises.

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

1. That Jennie Mae Battin, Helen F. Battin,
30 Lela M. Snodgrass, Robert D. Snodgrass, Lillian H. Applegate, Daniel H. Applegate, Blanche A. Battin, Meta E. Battin and Lambert E. Battin who are the defendants in this suit may answer this bill of complaint without oath and each statement therein made.

2. That a fair partition and division of the above described premises may be made according to the course and practice of this Court, if the same be practicable and consistent with the rights of all
40 the parties interested therein, among complainant

and the other persons entitled to shares in the said premises, according to their respective rights and interests therein.

3. That in case such partition and division in fact of the said premises shall be found to be impracticable, or if it should appear that the same cannot be made without great prejudice to the owners of the said premises, then that the said lands and premises may be decreed by this Honorable Court to be sold, including the inchoate right of dower and the inchoate right of curtesy of the defendants, Helen F. Battin, Robert D. Snodgrass and Daniel H. Applegate, and that the proceeds thereof, after paying the costs and charges of this suit, and the municipal liens against the said premises, be divided among the complainant and the several parties to this suit entitled thereto and interested therein, according to their respective rights, shares and interests in said premises.

4. That complainant may have such other and further relief as the nature and circumstances of the case may require, and as shall be agreeable to equity.

5. That a writ of subpoena may issue commanding the said defendants and each of them, to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

CHARLES E. HENDRICKSON,
Solicitor for and of counsel with Complainant.

EXHIBIT A.

IN THE NAME OF GOD, AMEN.

I, LAMBERT B. BATTIN, of the City of Elizabeth, in the County of Union, and State of New Jersey, being of sound and disposing mind, memory and understanding, do hereby make, publish

and declare the following my last Will and Testament, that is to say:

FIRST. It is my will and I hereby direct my executors hereinafter named to pay all my just debts and funeral expenses as soon as practicable after my decease.

SECOND. Whereas a large part of my personal estate comes to me from my late father Joseph Battin, by virtue of a deed of trust and the income thereof in the event of my death is directed to be paid to each of my children in equal portions and my wife does not participate therein, it is, therefore, my will and wish that my children and my beloved wife live together in the event of my death and combine the income aforesaid with that derived from the rest of my property for their maintenance. In the case of the marriage or disagreement of any of my children with this direction it is my will that in such case the share of such child or children shall not be paid to him or them; except as relates to their interest in said deed of trust. In the event of the marriage of my wife it is my will that her interest in this Will shall cease.

THIRD. It is my will that so long as my wife remains my widow she shall have the same supervision over my household which she has always enjoyed during my lifetime and I give, devise and bequeath to her in lieu of dower an equal share with all of my children in all of the estate real and personal of which I may die seized. It being my intention also that the home be kept up as hereinbefore referred to out of the income derived from so much of my estate as comes to me from my father, as well as that which I own independently. If, if, however, my widow and children do not live harmoniously together, then and in that event the will of the majority of my executors and executrixes shall decide the management of my home

and personal property. My widow and any unmarried child shall have a home at the Anchorage, Fair Haven, New Jersey.

FOURTH. I give and bequeath to the oldest of my daughters who may not have married at the time of my decease, my diamond scarf pin, the diamond of which was formerly in the engagement ring given by me to Virginia, and my silver flute to my son, Lambert E. Battin.

FIFTH. It is my will and I hereby give, devise 10 and bequeath all the rest, residue and remainder of my property, real and personal, to my beloved wife Jennie Mae Battin, and my children, Hamilton S. Battin, Lela M. Snodgrass, Lillian H. Battin, Meta E. Battin, Blanche A. Battin and Lambert E. Battin, their heirs and assigns forever, share and share alike. This provision to be in lieu of dower to my said wife and to be inoperative in the event of her marriage as aforesaid. It is further my will that all expense connected 20 with my real estate, such as taxes, insurance, repairs, etc., shall be met by my heirs, share and share alike. Any failure to do so shall be charged against his or her share on final division of my estate.

SIXTH. It is my will that the weekly allowance for personal expenses which my wife and children now receive should be paid to them by my executors after my death. And further, as the younger children reach the age of sixteen years 30 that they shall receive the same allowances as the older children.

It is my intention and wish as above expressed that my children and wife shall continue the home as now maintained, after my death and to that end it is my will that no distribution be made of my estate during the lifetime of my said wife, or so long as she remains my widow, but that the whole income thereof to be devoted as at present to the maintenance of my home known as "The Anchor- 40

age," at Fair Haven, N. J. It is my will that no real estate shall be sold or mortgaged without the consent in writing of each of my executors and executrixes.

LASTLY. I hereby nominate, constitute and appoint my beloved wife Jennie Mae Battin, and my son, Hamilton S. Battin, and my daughters Lela M. Snodgrass, Lillian H. Battin, Meta E. Battin, Blanche A. Battin, and my son Lambert E. Battin, to act when of age, as my executrixes and executors without bonds, and without compensation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this Nineteenth day of September, one thousand nine hundred and six.

LAMBERT B. BATTIN. (L. S.)

Signed, sealed, published and declared by the said Testator, as and for his last Will and Testament in the presence of us, who were both present at the time, and who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Frank J. Pfaff, 68 Broad St., Eliz., N. J.
William E. Brown, 68 Broad St., Elizabeth, N. J.

EXHIBIT B.

This is a Codicil to be added to the Last Will and Testament of me, Lambert B. Battin, of the Borough of Fair Haven, in the County of Monmouth, and State of New Jersey, which Will bears date the Nineteenth day of September, Nineteen Hundred and Six.

FIRST. I do hereby ratify and confirm my said Will in all respects, save so far as any part thereof

shall be revoked or altered by this present Codicil.

I hereby give, devise and bequeath unto my beloved wife, Jennie Mae Battin, all that certain lot and brick house thereon on North Broad Street, in the City of Elizabeth, Union County, New Jersey, and known as No. 430 North Broad Street, free of all liens and encumbrances, to her, her heirs and assigns forever.

I also give and bequeath unto my said wife such of the furniture and furnishings now contained in my premises at Fair Haven, Monmouth County, New Jersey, as she may select. 10

I give and bequeath unto my said wife all the Elizabeth Town gas stock which may be owned by me at the time of my death the same to be delivered to her free from all liens and encumbrances.

I give and bequeath unto my said wife two large windows, now boxed and contained in my stable at Fair Haven, aforesaid.

The above devise and bequests and those contained in my said Will, are made and to be received by my said wife in lieu of her dower in my estate. 20

IN WITNESS WHEREOF, to this present writing which I hereby declare to be a Codicil to my last Will and Testament, and which I direct to be added thereto and to be taken as part thereof, I have set my hand and seal, this Thirty-first day of August, Nineteen Hundred and Sixteen.

LAMBERT B. BATTIN. (L. S.) 30

Signed, sealed, published and declared by the said Lambert B. Battin, as and for a Codicil to his last Will and Testament, and to be taken as part thereof, in the presence of us, who, at his request, in his presence, and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

Meta A. Von Glahn, Red Bank, N. J.

Leon E. de la Reussille, Jr., Red Bank, N. J. 40

In Chancery of New Jersey.

BETWEEN HAMILTON S. BATTIN, *Complainant,* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**On Bill for Partition.** **On Interlocutory Decree and Order of Reference.**

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ORDER OF REFERENCE.

Filed December 9, 1920.

20 This cause being opened to the Court by Charles E. Hendrickson, of counsel with the complainant, and it appearing that process of subpoena for the defendants to appear and answer the complainant's bill has been duly issued, and returned served on all the defendants therein named and that the defendants, Jennie Mae Battin, Helen F. Battin, Lela M. Snodgrass, Robert D. Snodgrass, Lillian H. Applegate, Daniel H. Applegate, Blanche A. Battin, Meta E. Battin and Lambert E. Battin,
30 have not, nor have any of them, appeared, pleaded, answered or demurred to the complainant's bill of complaint within the time limited by law and the rules of this court, or at any other time, but they have wholly failed and neglected so to do.

IT IS THEREUPON, On this 9th day of December, 1920, ORDERED, ADJUDGED and DECREED, that the complainant's bill be and the same is hereby taken as confessed against the defendants, Jennie Mae Battin, Helen F. Battin,
40 Lela M. Snodgrass, Robert D. Snodgrass, Lillian

H. Applegate, Daniel H. Applegate, Blanche A. Battin, Meta E. Battin and Lambert E. Battin: And

IT IS FURTHER ORDERED, that it be referred to Frederick W. Hope, one of the Special Masters of this Court to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described in the bill of complaint in this cause; and also, whether, in his opinion, the said lands and real estate are so 10 situate that a partition thereof can be made without great prejudice to the owners thereof; and that he state the facts upon which this cause is founded; and in case such partition cannot be made, then to ascertain and report whether, in case of a sale of said premises, under all the circumstances of the case, having regard to the interests of all the parties, the estate and interest of Jennie Mae Battin if any she have as tenant in dower in the said premises, ought to be excepted from the sale 20 thereof; or whether the same should be sold. And

IT IS FURTHER ORDERED, that it be referred to said Master to ascertain and report whether the undivided interest or estate of any of the parties in this suit in said lands and premises is subject to any lien by mortgage, judgment, decree, devise or otherwise, and if so, to what liens or encumbrances, and by whom they are held; and to ascertain and report the amount due to any party as aforesaid, who has such lien on the said 30 premises. And

IT IS FURTHER ORDERED, that the said Master make his report to the Chancellor on the 4th day of January next at 10 o'clock in the forenoon at the State House in Trenton.

E. R. WALKER,
C.

Respectfully Advised,

BAYARD STOCKTON, A. M. 40

In Chancery of New Jersey.

BETWEEN

10 HAMILTON S. BATTIN,
Complainant,
AND
JENNIE MAE BATTIN ET ALS.,
Defendants.

On Bill for Partition and Order of Reference.

REPORT OF FREDERICK W. HOPE, SPECIAL MASTER.

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Filed July 15, 1921.

In pursuance of an order of this court, made in the above cause, bearing date on the 9th day of December, in the year 1920, whereby it was ordered that it be referred to the subscriber, Frederick W. Hope, one of the special masters of this court, to ascertain and report the right, title and 30 interest of the respective parties in the premises mentioned and described in the bill of complaint in this cause; and also to report to this court whether the premises are so situated that a partition thereof can be made without great prejudice to the owners; and in case such partition thereof cannot be made, then to ascertain whether, in case of a sale of said premises, under the circumstances of the case, having regard to the interest of all the parties, the estate and interest of Jennie Mae Bat- 40 tin, the widow of Lambert B. Battin, deceased, if

any she have as tenant in dower in the said premises, ought to be excepted from the sale thereof; or whether the same should be sold; and also to ascertain and report whether the undivided interest or estate of any of the parties in this suit in said lands and premises is subject to any lien by mortgage, judgment, decree, devise or otherwise, and if so, to what liens or encumbrances, and by whom they are held; and to ascertain and report the amount due to any party as aforesaid, 10 who has such lien on the said premises; and that he may make his report to the Chancellor on the 4th day of January, 1921, at ten o'clock in the forenoon at the State House in Trenton:

I, Frederick W. Hope, Special Master in Chancery aforesaid, do hereby report to his Honor the Chancellor, that I have been attended by Hon. Charles E. Hendrickson, Solicitor of the Complainant, and in his presence have examined the matters referred to me by the said order, and I do 20 find and report that the rights and interests of the respective parties in the premises whereof partition is sought by the said bill of complaint, are as follows:

The said Jennie Mae Battin, widow of Lambert B. Battin, deceased, has not any right or estate in dower in said premises or any part thereof, but has accepted the provisions of the Last Will and Testament of her husband, the late Lambert B. Battin, given to her in lieu of her right of dower, 30 and that the said Jennie Mae Battin has all of the rights, title, interests, and estate in all of the premises described in the bill of complaint in this cause and known as "The Anchorage" which was the Homestead residence of the said Lambert B. Battin and the said Jennie Mae Battin, his wife, at the time of his decease on the 12th day of February, 1918, which she received or became entitled to under the provisions of the aforesaid Last Will and Testament of Lambert B. Battin, and that the fol- 40

lowing is a copy of some of the items in said Will by which she received in fee simple an equal undivided one-seventh share and interest in the real estate and premises described in the bill in this cause; and also the additional rights, interest and estate in the dwelling house and land and premises aforesaid, during the term of her natural life or unless and until she re-married, viz.:

FIRST. It is my will and I hereby direct my
10 executors hereinafter named to pay all my just debts and funeral expenses as soon as practicable after my decease.

SECOND. Whereas a large part of my personal estate comes to me from my late father, Joseph Battin, by virtue of a deed of trust, and the income thereof in the event of my death is directed to be paid to each of my children in equal portions and my wife does not participate therein, it is, therefore, my will and wish that my children and my
20 beloved wife live together in the event of my death and combine the income aforesaid with that derived from the rest of my property for their maintenance. In the case of the marriage or disagreement of any of my children with this direction, it is my will that in such case the share of such child or children shall not be paid to him or them; except as relates to their interest in said deed of trust. In the event of the marriage of my wife it is my will that her interest in this will shall cease.

30 THIRD. It is my will that so long as my wife remains my widow she shall have the same supervision over my household which she has always enjoyed during my lifetime and I give, devise and bequeath to her in lieu of dower, an equal share with all of my children in all of the estate real and personal of which I may die seized. It being my intention also that the home be kept up as hereinbefore referred to out of the income derived from so much of my estate as comes to me from my
40 father, as well as that which I own independently.

If, if, however, my widow and children do not live harmoniously together, then and in that event the will of the majority of my executors and executrixes shall decide the management of my home and personal property. My widow and any unmarried child shall have a home at "The Anchorage," Fair Haven, New Jersey.

FIFTH. It is my will and I hereby give, devise and bequeath all the rest, residue and remainder of my property, real and personal, to my beloved wife, 10 Jennie Mae Battin, and my children, Hamilton S. Battin, Lela M. Snodgrass, Lillian H. Battin, Meta E. Battin, Blanche A. Battin and Lambert E. Battin, their heirs and assigns forever, share and share alike. This provision to be in lieu of dower to my said wife and to be inoperative in the event of her marriage as aforesaid. It is further my will that all expense connected with my real estate, such as taxes, insurance, repairs, etc., shall be met by my heirs, share and share alike. Any failure 20 to do so shall be charged against his or her share on final division of my estate.

SIXTH. It is my will that the weekly allowance for personal expenses which my wife and children now receive should be paid to them by my executors after my death. And, further, as the younger children reach the age of sixteen years that they shall receive the same allowances as the older children.

It is my intention and wish as above expressed 30 that my children and wife shall continue the home as now maintained, after my death, and to that end it is my will that no distribution be made of my estate during the lifetime of my said wife, or so long as she remains my widow, but that the whole income thereof to be devoted as at present to the maintenance of my home known as "The Anchorage," at Fair Haven, N. J. It is my will that no real estate shall be sold or mortgaged without the 40

consent in writing of each of my executors and executrixes.

LASTLY. I hereby nominate, constitute and appoint my beloved wife, Jennie Mae Battin, and my son, Hamilton S. Battin, and my daughters, Lela M. Snodgrass, Lillian H. Battin, Meta E. Battin, Blanche A. Battin, and my son Lambert E. Battin, to act when of age, as my executrixes and executors without bonds, and without compensa-
10 tion.

That said will was offered in evidence and marked Exhibit 1 for Complainant and was dated September 19, 1906 and said will and the codicil thereto dated August 31, 1916 (which did not change the items copied), were duly probated in the Surrogate's Office of Monmouth County, New Jersey, April 29, 1918, and that all of the executors and executrixes except Lambert E. Battin, who was not then twenty-one years of age, qualified and were
20 authorized to act as executors and executrixes thereof.

I further find and report that it was proven before me that the said Jennie Mae Battin, the widow of Lambert B. Battin, has not re-married and that she is now the widow of said Lambert B. Battin, deceased, and that all of the legatees and devisees named in said will of the said Lambert B. Battin, deceased, have waived the defeasance clause and provision by which, if said widow Jennie Mae Bat-
30 tin should re-marry, her interest under the will would cease or her rights be prejudiced, and that her rights, interest and estate are not subject to being defeated in case she should hereafter remarry.

And I find and report that the said Jennie Mae Battin has not released any of the right, title, interest or estate given to her by the said last will and testament of Lambert B. Battin, and that she is entitled to all the rights, title and interest and
40 estate in all of said land and premises which she

received by the aforesaid will of Lambert B. Battin, and that nothing has been done to bar her said rights in the said premises, and such additional rights and estate were not mentioned in any manner in the bill of complaint in this cause, or seeking to have the aforesaid additional rights of said Jennie Mae Battin (outside of her one-seventh share and interest in the fee simple of said premises) disposed of in this cause and that the said Jennie Mae Battin now has the estate in the whole 10 of said premsies which she received by the aforesaid last will and testament of her husband the late Lambert B. Battin now deceased; and that all of the land and premises described in the bill of complaint and each share thereof, is subject to the aforesaid rights, interest and estate of the said Jennie Mae Battin.

That the complainant, Hamilton S. Battin, is seized in fee of one undivided seventh part of said premises, subject to the aforesaid estate of the said 20 Jennie Mae Battin therein, and also subject to the inchoate right of dower of Helen F. Battin, his wife, therein.

The defendant Lela M. Snodgrass is seized in fee of one undivided seventh part of said premises subject to the aforesaid estate of the said Jennie Mae Battin therein, and also subject to the inchoate right of curtesy of her husband, Robert D. Snodgrass, therein.

The defendant Lillian H. Applegate is seized in 30 fee of one undivided seventh part of said premises subject to the aforesaid estate of the said Jennie Mae Battin therein, and also subject to the inchoate right of curtesy of Daniel H. Applegate, her husband, therein.

The defendant Blanche A. Battin is seized in fee of one undivided seventh part of said premises subject to the aforesaid estate of the said Jennie Mae Battin therein.

The defendant Meta E. Battin is seized in fee of 40

one undivided seventh part of said premises subject to the aforesaid estate of the said Jennie Mae Battin therein.

The defendant Lambert E. Battin is seized in fee of one undivided seventh part of said premises subject to the aforesaid estate of the said Jennie Mae Battin therein.

The defendant Jennie Mae Battin is seized in fee of one undivided seventh part of said premises sub-
10 ject to the aforesaid estate of the said Jennie Mae Battin therein.

Helen F. Battin, the wife of Hamilton S. Battin, has an inchoate right of dower in the share and interest of said Hamilton S. Battin in said lands and premises, subject to the aforesaid estate of the said Jennie Mae Battin therein.

Robert D. Snodgrass, the husband of Lela M. Snodgrass, has an inchoate right of curtesy or curtesy initiate in the share and interest of said Lela
20 M. Snodgrass in said lands and premises, subject to the aforesaid estate of the said Jennie Mae Battin therein.

Daniel H. Applegate, the husband of Lillian H. Applegate, has an inchoate right of curtesy or curtesy initiate in the share and interest of said Lillian H. Applegate in said lands and premises, subject to the aforesaid estate of the said Jennie Mae Battin therein.

That all of the premises described in the bill of
30 complaint in this cause and all of the rights, interest and estate of each and all of the aforesaid parties is subject to the encumbrance of the unpaid taxes against said premises for the last half of the year of 1920 for $88.39 with interest thereon, and for part of the taxes for the year 1921, the amount of which has not yet been ascertained, and that said taxes are payable to the Borough of Fair Haven in the County of Monmouth and State of New Jersey, but that said Borough of Fair Haven
40 is not a party to this suit.

That all of the shares and interest of all the parties to this suit, as owners of the estate in fee simple of said premises, are subject to the payment to the complainant, Hamilton S. Battin, of $75.57 and interest on $49.77 thereof from January 1, 1920, to June 15, 1921, $4.24, together with the $25.80 premiums on the other two policies recently issued amounting to the sum of $79.81 and that $11.40, the one-seventh thereof, is a lien on each one-seventh share and interest in said premises 10 other than the one-seventh share and interest therein owned by the said Hamilton S. Battin, the complainant, and that said lien of said Hamilton S. Battin on said other six one-seventh shares is equal in priority to the lien of the defendant, Jennie Mae Battin, for money due her as hereinafter mentioned.

And I find and report that there is due to the defendant, Jennie Mae Battin, for money paid, advanced and expended by her the sum of $1,263.50, 20 and for six-sevenths of which she has a lien against the other six-sevenths interest in said premises, owned by the other parties to this proceeding, for principal and interest thereon to June 15, 1921, as set forth in the schedule hereto annexed, and hereby referred to and made part hereof; and that $180.50, the one-seventh thereof, is a lien on each one-seventh share and interest in said premises other than the one-seventh share and interest therein owned by the said Jennie Mae Battin; and that 30 said lien of the said Jennie Mae Battin on said other six one-seventh shares is equal in priority to the lien of the complainant, Hamilton S. Battin, for money due him as hereinbefore mentioned.

And I further find and report that, while the bill of complaint in this cause did not mention or make any allegation in relation to the right or estate of said Jennie Mae Battin, under the last will and testament of her husband, the late Lambert B. Battin, in the premises in question other than the 40

equal undivided one-seventh share and interest in fee simple in the said premises; and the allegation therein relative to her dower in said premises, being paragraph five of said bill of complaint, of which the following is a copy:

> "5. In and by said will and codicil it was expressly provided that the several bequests therein are to be received by the said Jennie Mae Battin in lieu of her dower, and complainant expressly charges the fact to be that the said Jennie Mae Battin has accepted said bequests and has thereby released her dower in the above described premises."

Still, that the solicitor of the complainant at the times of taking the depositions herein and at the hearings, and by his arguments and briefs, before the special master in this cause, claimed that the said Jennie Mae Battin, one of the defendants, had no right or interest in said premises except the equal undivided one-seventh share and interest in the legal title in fee as one of the seven tenants in common of said premises; and that the said Jennie Mae Battin in response to the master's summons attended at the times of taking testimony and hearings and met the issue raised by the solicitor of complainant, in behalf of his client, and testified in relation thereto, and later presented further statements as arranged between her and the solicitor of the complainant; and that a copy of the letter from solicitor of complainant to the master by way of argument, and the further brief from said solicitor of complainant submitted to the master, and of the aforesaid statements of Jennie Mae Battin, are hereto annexed. And I find and report that the provisions and directions of the last will and testament of the aforesaid Lambert B. Battin, deceased, giving to the said Jennie Mae Battin

the use and benefit of said premises for her lifetime and the supervision therof are valid and are in full force, and are binding on all the parties to this suit; and that the provision and direction in the last paragraph of the fifth item of said will are valid and are binding on all the parties to this suit, and that the following is a copy of said paragraph, viz.:

> "It is further my will that all expense connected with my real estate, such as taxes, insurance, repairs, etc., shall be met by my heirs, share and share alike. Any failure to do so shall be charged against his or her share on final division of my estate."

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I further certify that the defendant, Jennie Mae Battin, at the repeated insistence of the solicitor of the complainant, and in compliance with the request of the master, made in order that the statement and items might be before the court and be available, if needed in this proceeding, produced a statement of the expenses of letting the premises for two months of the summer season in 1920, which shows that the expenses of preparing the property to let and of letting it, used up all of the $450.00 rent, and that if said Jennie Mae Battin had been chargeable with the money received for rent there would still be due her $44.02 for the residue of expense above the $450.00; but the master having decided that under the provisions of the will, the said Jennie Mae Battin was entitled to the use and benefit of the premises, I allowed Jennie Mae Battin only such items of said statement as are chargeable to the owners of the fee of said premises, and against their shares and interests in said premises under the terms of said will; and this report and the schedule of the amount due said Jennie Mae Battin, annexed hereto, allow on-

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ly items of expenditures of the aforesaid class.

I further certify that the defendant, Jennie Mae Battin, claimed that the complainant, Hamilton S. Battin, was indebted to the said Lambert B. Battin, deceased, and to his estate the sum of $104.00 for rental due for the use and occupation by him of the barn or carriage house or portions thereof on the premises in question, in the lifetime of said Lambert B. Battin; and that said Hamilton S. Bat-
10 tin was also indebted to her, the said Jennie Mae Battin, the sum of $608.00 for rental due for the use and occupation of said barn or carriage house, or portions thereof on said premises in question, since the death of said testator from February 12, 1918, to May 1, 1921, while said Jennie Mae Battin was entitled to the use and benefit of all of said premises under the provisions of said will; but that there was not sufficient evidence before me to enable me to determine as to the barn rental value
20 of said portion of said premises occupied by said Hamilton S. Battin, and therefore the question of the fair rental value thereof is reserved and not decided by me; but I find and report that the Estate of Lambert B. Battin is entitled to have and receive the full rental value of said premises until the period when Jennie Mae Battin became entitled thereto, and that the said Jennie Mae Battin is entitled to have and receive from said Hamilton S. Battin payment of the fair rental value of the por-
30 tion of said premises occupied by him from the date of the death of the said Lambert B. Battin, February 12, 1918, until he vacates said premises, and that I annex hereto and return herewith the bills and statements, presented by Jennie Mae Battin, of the amounts she claimed were due from said Hamilton S. Battin to said estate of Lambert B. Battin, and to her personally, for information of the Chancellor and for reference and such use thereof as may be deemed proper.

40 And I further certify and report that the solici-

tor of complainant produced before me a search in the office of the clerk of Monmouth County, New Jersey, in relation to the premises described in the bill of complaint in this cause, and which search was offered in evidence and marked Exhibit C 2, and that I have examined the said Abstract of Search and the statement of fees and charges claimed therein and in my opinion such searches were necessary for the proper purposes of this suit and that the sum of $244.98 named in the certificate as thereto incurred therefor, does not exceed the fee allowed by law. 10

And I further certify and report that the said premises are, in my opinion, so situate that a partition thereof cannot be made between the parties interested therein without great prejudice to the owners thereof, and that my reason for this opinion is that the premises in question are more valuable as one property in its entirety than if divided in two or more parcels, as appears from the depositions hereunto annexed. 20

And I do further certify and report that under all of the circumstances of the case, regard being had to the interests of all the parties, the interests and estates of Helen F. Battin, wife of Hamilton S. Battin, Robert D. Snodgrass, the husband of Lela M. Snodgrass, Daniel H. Applegate, the husband of Lillian H. Applegate, ought not to be excepted from the sale thereof but that in case of a sale of said premises, the said interests and estates of said wife and husbands should be sold. 30

And I do further certify and report that in case of a sale of said premises the aforesaid estate and interest of the said Jennie Mae Battin therein under the terms and provisions of the will of Lambert B. Battin, deceased, giving her the use and benefit of said premises during her lifetime, could not properly be sold without further proceedings for that purpose, in case the court has the power to order a sale of said rights and benefits given to 40

said Jennie Mae Battin by the will of her late husband, and deems it right to exercise it in a proceeding for that purpose wherein the said Jennie Mae Battin and all other parties who are interested therein have an opportunity to be heard in relation thereto; but that any sale thereof made in this proceeding under the present position and circumstances thereof should be made subject to said rights of said Jennie Mae Battin, other than her
10 equal undivided one-seventh share and interest in the fee of said premises.

All of which is respectfully submitted this 15th day of June A. D. 1921.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

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20 Schedule of payments made by the defendant, Jennie Mae Battin, the widow of Lambert B. Battin, deceased, and interest thereon from the date on which each payment was made to June 15, 1921, and for six-sevenths of which sum of money Jennie Mae Battin has a lien on the six one-seventh shares in the premises other than the one-seventh share owned by her:

Elizabeth National Bank (note)	$ 226.50
Interest thereon from February 6, 1919 ..	30.09
30 City of Elizabeth, N. J., taxes due in lifetime of Testator	144.50
Interest thereon from February 6, 1918 ..	29.10
Interest on 1917 Fair Haven tax paid Borough	9.64
Interest on $9.64 Fair Haven tax from December 15, 1919	.87
Henry Kleinhans, Plumber	55.04
Interest thereon from September 18, 1918	9.08
Surrogate, two certificates	1.52
40 Stationery, postage and incidentals	10.00

Interest thereon two years	1.20
Transfer inheritance tax for Estate....	60.99
Interest thereon from May 7, 1919	7.60
Fair Haven tax 1918	131.84
Interest paid collector on the Fair Haven tax	8.78
Interest on $140.62 from December 15th, 1919	12.66
Fair Haven tax 1919	153.72
Interest paid collector on the Fair Haven tax	3.08
Interest on $156.80 from December 15, 1919	14.10
Fair Haven first half year's tax of 1920..	88.39
Interest thereon from December 15, 1920	2.60
	$1,001.30

Paid by her for necessary repairs on the residence and premises and clearing up after the winter in preparing the property for use or renting for season of 1920.

July 1, 1920, Expense of renting "The Anchorage":

Cook & Oakley, Plumbing	$ 44.50
Paper hanger	20.70
Paper, 60c per roll	3.00
Two cleaners, 4 days at $4	32.00
Water bill	17.00
Gas man	2.72
Turning off water	9.00
Two wire screens	2.40
Wire screens	3.00
Netting	.87
Carting	1.50
Earling, Johnson & Frake, repairing main roof	107.92
Hendrickson & Applegate, paint, oil and turpentine	3.33
Total	$ 247.94

Interest on $247.94 from July 1, 1920, to June 15, 1921		14.26
		$ 262.20
Total of the items on the preceding page and interest as stated in the respective items	$1,001.30	
Total of the foregoing items on this page and interest as stated therein	262.20	
Total of foregoing items paid by Jennie Mae Battin.....		$1,263.50
Less one-seventh of said $1,263.50 (the share thereof payable from the one-seventh interest of the said Jennie Mae Battin in said premises).....		180.50
		$1,083.00

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The amount chargeable against each one-seventh share and interest of each of the six shares other than Jennie Mae Battin's share, and payable by them to her: being $180.50 for each of the other six shares, viz.:

Hamilton S. Battin, the complainant, one-seventh	$ 180.50
Lela M. Snodgrass, a defendant, one-seventh	180.50
Lillian H. Applegate, a defendant, one-seventh	180.50
Meta E. Battin, a defendant, one-seventh	180.50
Blanche A. Battin, a defendant, one-seventh	180.50
Lambert E. Battin, a defendant, one-seventh	180.50
	$1,083.00

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FREDERICK W. HOPE,

40 Special Master in Chancery of New Jersey.

In Chancery of New Jersey.

BETWEEN HAMILTON S. BATTIN, *Complainant,* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**On Interlocutory Degree and Order of Reference.** **Depositions.**

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TESTIMONY.

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Testimony taken in the above entitled cause before Frederick W. Hope, one of the special masters in the Court of Chancery of New Jersey, pursuant to the order of reference herein made on the 9th day of December, 1920, and to the master's summons issued in the above stated cause and served on all of the defendants and which is returnable on Saturday, the 18th day of December, 1920, at ten o'clock in the forenoon at the office of said special master in the Kridel Building, corner Broad and Front streets, Red Bank, Monmouth County, New Jersey, in the presence of Honorable Charles E. Hendrickson, solicitor for the complainant and solicitor for the defendants, Helen F. Battin, Lela M. Snodgrass, Robert D. Snodgrass, Lillian H. Applegate, Daniel H. Applegate, Meta E. Battin and Blanche A. Battin, and in the presence of said solicitor and of Hamilton S. Battin the complainant and Jennie Mae Battin and Lambert Earle Battin, the defendants, I proceeded to inquire into the

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matters referred to me and to take the evidence offered by said parties.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } SS:

VERNON W. ROSE, of full age, being duly
10 sworn according to law, on his oath deposes and says that he will, to the best of his ability, stenographically take and typographically reproduce the testimony given in a certain cause pending in the Court of Chancery of the State of New Jersey, wherein Hamilton S. Battin is complainant and Jennie Mae Battin et als. are defendants, at the law offices of Frederick W. Hope, Special Master in Chancery of New Jersey, No. 2 Broad Street, Red Bank, N. J.

20 VERNON W. ROSE.

Sworn to and subscribed before me this 18th day of December, 1920.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

Examination BY MR. HENDRICKSON:

HAMILTON S. BATTIN, of full age, being duly
30 sworn according to law, on his oath testifies as follows:

I am the eldest son of the deceased Lambert B. Battin. He left a widow, Jennie Mae Battin, my mother, and six children. I am married and my wife's name is Helen F. Battin. Lela M. Snodgrass is married to Robert D. Snodgrass. Lillian H. Applegate is married to Daniel H. Applegate. Meta E. Battin, Blanche A. Battin and Lambert E. Battin are unmarried. At the time of my
40 father's death, he left no personal property except

the Elizabethtown gas stock which was bequeathed to his widow, and the household furniture in "The Anchorage" at Fair Haven, N. J., and some personal property in the barn, window frames, tools, lumber, etc. I think they might have been sold for $2,000.00. There was also a mortgage of $500.00 against my house, but that has been paid and cancelled. Funeral expenses and all bills have been paid.

Q. What bills against your father's estate are against the property known as "The Anchorage"? A. Insurance premiums amounting to $49.77, $24.00, $1.80. I offer the receipts in evidence. 10

Q. Your sisters, Meta Battin, Lillian H. Applegate, Lela M. Snodgrass and Blanche A. Battin and yourself all agree to waive the defeasance clause in the will of your father by which, if his widow should re-marry, her interest in the will would be inoperative, do you not? A. We do.

HAMILTON S. BATTIN. 20

Sworn to and subscribed before me this 18th day of December, 1920.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

MR. HAMILTON S. BATTIN, *Re-Called*:

Mr. Hamilton S. Battin produced a bill for insurance in effect on "The Anchorage" at the last hearing, amounting to $49.77. The insurance is St. Paul policy No. 18495, 3 years from November 24, 1919, for $4,500.00 on the house. 30

St. Paul policy No. 18234, 3 years from November 24, 1919, for $2,300 on the stable.

Also a new policy for $10,000 for one year from December 3, 1920, covering the dwelling, premium $24.00. Also policy for $500.00 dated December 3, 1920, covering stable, premium $1.80.

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Q. Mr. Battin, have you paid these bills? A. I have.

HAMILTON S. BATTIN.

Sworn to and subscribed before me this 22d day of of December, 1920.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

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Examination BY MR. HENDRICKSON:

EDWARD S. ALLAIRE, a witness produced on the part of complainant, being duly sworn according to law, on his oath testifies as follows:

That he is in the business of dealing in real estate in Red Bank, Monmouth County, New Jersey, and its vicinity including Fair Haven; that he has
20 been in such business upwards of twenty years and has had a very wide and extensive experience handling, selling, buying and renting many properties in the locality and many properties equivalent to the Battin property known as "The Anchorage" at Fair Haven, N. J.; that "The Anchorage" at Fair Haven, N. J., owned by the late Lambert B. Battin has a frontage on the North Shrewsbury River of about 400 feet and on which is erected a large dwelling house containing eleven rooms and
30 an attic and on which is also erected a large stable or garage and other smaller out buildings; the plot of ground comprises about one and one-half acres; that the buildings are so located upon said premises that, in deponent's judgment, it would be impossible to make an actual partition thereof into seven shares so that the seven shares could be of anything like comparable equal value, because of the buildings thereon, and also because cutting the plot up into seven tracts would make each tract
40 smaller in area than is the actual demand for plots

of ground in that locality. In deponent's judgment also a considerable value in the plot such as this would be lost by cutting it up into smaller tracts. The premises are not in the best condition; have been practically unoccupied for nearly two years and a storm has injured the trees and shrubbery and the premises should be sold to prevent any further deterioration in the property in this deponent's judgment.

EDWARD S. ALLAIRE. 10

Sworn to and subscribed before me this 22d day of January, A. D., 1921.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

Examination BY MR. HENDRICKSON: 20

JENNIE MAE BATTIN, of full age, being duly sworn according to law, testifies as follows:

Q. Are you the widow of Lambert B. Battin, deceased? A. I am.

Q. When did Mr. Battin die? A. He died February 12th, 1918.

Q. Whom did he leave surviving him? A. He left his children, Hamilton S. Battin, Lela M. Snodgrass, Lillian H. Applegate, Meta E. Battin, Lambert E. Battin, and myself, his widow. 30

Q. Mr. Battin left a will and codicil which was probated at Freehold by the Monmouth County Surrogate, April 29th, 1918, and which is recorded in Book 66 of Wills on page 278, did he not? A. He did.

(Certified copy of the Last Will and Testament and Codicil of the deceased Lambert B. Battin, probated April 29, 1918, and recorded in Book 66 of Wills, page 278, for Monmouth 40

County, N. J., offered in evidence and marked Exhibit C-1.)

Q. Mrs. Battin, you have compared this certified copy with me with the copy of the original and find it correct, have you not? A. Yes.

(Abstract of the title of the property known as "The Anchorage" at Fair Haven, N. J., referred to in Paragraph 6 of the will above mentioned, offered in evidence and marked Exhibit C-2.)

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Q. Mrs. Battin, at the time of your husband's death, he was the owner of the property known as "The Anchorage" at Fair Haven, N. J., was he not? A. Yes.

Q. You qualified as Executrix of your husband's will, did you not? A. I did.

Q. And the five elder children qualified as executors at the same time, did they not? A. Yes.

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Q. And the younger son, Lambert (Earle), did not qualify, did he? A. No. (Mrs. Battin states that she desires to uphold the will.)

Q. Mrs. Battin, where do you now live? A. I now board at 139 Monmouth Street, Red Bank, N. J.

Q. How long have you lived there? A. Two years. I have lived occasionally in my own home.

Q. By your "home," you mean "The Anchorage" at Fair Haven, do you not? A. Yes.

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Q. How long have you lived at "The Anchorage"? A. Five months after my husband died, when my son was called upon to do his duty in the World War, he entered the Navy and I desired to board in Red Bank because I was in ill health with my great sorrow, and my son being away, didn't want to be alone and I was broken down with sorrow. I have lived in Red Bank since. As I was sufficiently recovered to be there, I lived at "The Anchorage" five weeks this Fall.

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Q. The will provides that the provisions therein made are to be in lieu of dower, does it not? A. Yes.

Q. You say that this was in lieu of dower? A. I did.

Q. You never re-married, did you? A. No.

Q. When your husband died, he left no personal property income at all, did he? A. What would you say was personal?

Q. He owned no stock, mortgages, etc., so that there was an income out of which to pay the weekly allowances, was there? A. There was the Elizabethtown gas stock. He also owned a house at Elizabeth and a small mortgage on his son's house. 10

Q. That house is referred to in the codicil as No. 430 North Broad Street, is it not? A. Yes.

Q. Before your husband died that was deeded to you, was it not? A. No, it was not.

Q. That passed to you under the will and the Elizabethtown gas stock passed to you under the will and codicil, did they not? A. Yes, those two, and the rights given me in "The Anchorage" and the furnishings. 20

Q. When your husband died you had two things passed to you under the will? A. Yes.

Q. And there was no income from his estate, was there? A. No.

Q. Mrs. Battin, your contention, as I understand it, is that under the will of your husband, you have a life estate in "The Anchorage" as long as you live and remain his widow. Is that right? A. Yes. 30

Q. (Hamilton S. Battin is married to Helen Battin, Lela M. Snodgrass is married to Robert D. Snodgrass, Meta E. Battin is unmarried, Blanche A. Battin is unmarried, Lillian H. Applegate is married to Daniel H. Applegate, Lambert E. Battin is unmarried.) Have Mrs. Snodgrass, Mrs. Applegate or Mr. Hamilton Battin any children, or have they ever had any children? A. No, not to my knowledge. 40

Q. Do you know how much ground there is in "The Anchorage"? A. There is an acre and a half in "The Anchorage". On it there is erected a dwelling house containing 15 rooms, a hall, a large attic and a bath.

Q. What other buildings are there on the place? A. There is a 60-foot stable, a poultry house and two small outbuildings. The latter amount to nothing. The stable can be used as a garage and
10 at the present time is being used as such. In my judgment the property could not be cut up into 7 pieces so as to make an equitable distribution of the land. If it were cut up into small pieces and sold it would not bring near as much money as if it were sold in its present condition as one parcel. Cutting it up would ruin it. It is worth more and would sell for more as one piece, and to better advantage than if it were divided in any manner.

Q. There are no debts of your husband's now un-
20 paid, are there? A. I have kept it free of debt myself. There are no debts now unpaid except the half year's taxes now due on "The Anchorage", and Wilson & Smock's bill. These and bills between some of the family.

Q. Can you give a list of your husband's debts which were paid by yourself? A. Yes, I will furnish such a list to the Master sometime next week.

Q. How much income have you collected out of the property known as "The Anchorage" at Fair
30 Haven, N. J.? A. About $450.00 I think. I claim that that comes to me personally. I claim that under the will.

Q. How much have you paid out of this money? A. About $160.00.

Q. Will you furnish the Master with an itemized statement of the expenditures you made on the property out of the rent? A. I will.

Q. Have you paid out any other money for the upkeep of "The Anchorage" since your husband's
40 death? A. Yes.

Q. Will you furnish the Master with a statement of all such money you have expended? A. I will, except there is one bill which has not come in yet.

Q. There are no judgments against you in any court, are there? A. No. I desire to uphold the will and carry out the wishes of my husband as I understand them, and I want to do just as my husband would have me do.

By Mr. Hendrickson: I object to the isolation from the will of any one clause or paragraph or unfinished paragraph or part of the will, as the will must be construed as an entirety. 10

Mrs. Battin: I desire to call the Master's attention to the SECOND paragraph of my husband's will which refers to the income. I next refer to paragraph THIRD of the will and to the provision in it, as follows:

> "It is my will that so long as my wife remains my widow, she shall have the same supervision over my household which she has always enjoyed during my lifetime." 20

Accordingly, I feel that I have the right to make repairs. I claim the right to rent the home and receive the rent as mine, because the children (I mean the unmarried children) disagree with me. This I claim under the provision made in the SECOND clause of the will. 30 We have always lived together harmoniously when they were at home, before my husband's death, although they had been separated from our home for 6 or 7 years and now possess their own homes, except my son, Lambert E. Battin, who lives with me when he is at home. For much of the time he is on the seas in his business.

I want it known that my husband made it 40

very emphatic that he intended "The Anchorage" to be my home and that no distribution should be made of his real estate (referring to "The Anchorage") during my lifetime. The house is now in readiness for any unmarried child and myself to occupy within 24 hours' notice. The house is furnished and everything is ready.

10 Q. You would be unable to rent it and at the same time maintain it as a home for yourself and any unmarried child, would you not? A. I have a perfect right to leave my home occasionally I was obliged to rent it during my husband's lifetime in order to meet expenses, and have rented it only once since his death, and that was for two months from August to October, 1920. I was prevented by my son, Hamilton Battin, from renting it for a good price ($950.00) in the springtime,
20 after working very hard for three months to bring it about with my tenant. I was about to have the check placed in my hands by my tenant, in the presence of his family and friends, and my son was right there and stopped it. I was then putting the house in good repair and there was also a possibility of selling it. That interefered with my plans and I changed my mind. It was formerly only our summer home (except) during the last few years. I don't see why I should be made to live
30 in it all the time in order to claim it by law, and if I leave it for a few months I have a perfect right to do so. It is now many years since this will was made and the income has been considerably reduced. This will prevent the carrying out of the provision of giving each child and myself an allowance.

In the SIXTH paragraph, 8th line, I want to call your attention to the provision there made, "that no distribution be made of my real estate dur-
40 ing the lifetime of my said wife etc." I do not

think my husband could have put it any stronger or plainer in his will than he did in making his provisions for me, that "The Anchorage" should be my permanent home.

The will was drawn and witnessed by persons living in Elizabeth. It was drawn when he owned more property.

JENNIE MAE BATTIN.

Sworn to and subscribed before me this 18th day of December, 1920. 10

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

Examination BY MR. HENDRICKSON:

LAMBERT EARLE BATTIN, of full age, being duly sworn, according to law, on his oath testifies as follows: 20

I am a son of the deceased Lambert B. Battin and Jennie Mae Battin, my mother. I am unmarried. There are no judgments against me in any jurisdiction. I am over 21 years of age, now 22. In my judgment "The Anchorage" property is most valuable in one piece; that is, as it is now. I have heard my mother's descriptions of the buildings and they are correct. If my mother should re-marry, I waive any question as to defeasance thereby as to her rights under the will. 30

LAMBERT EARLE BATTIN.

Sworn to and subscribed before me this 18th day of December, 1920.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

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CONTINUATION of hearing in the above entitled matter at the offices of Frederick W. Hope, Special Master, Red Bank, N. J., January 8th, 1921, at 10 A. M., pursuant to adjournment.

Charles E. Hendrickson in behalf of complainant. Jennie Mae Battin, personally. No others appearing.

Mrs. Battin, the witness, appearing in her own behalf, having heretofore been duly sworn, testi-
10 fies as follows, it having been agreed at the previous hearing that Mrs. Battin might write her statement at home and present it at this hearing, and now presenting her statement in writing, Mr. Hendrickson asks to enter his objection to the acceptance as evidence of such parts of this statement which are in fact arguments as distinguished from statements of fact. Mrs. Battin then read the following statement:

December 28th, 1920.

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STATEMENT.

I, Jennie Mae Battin, widow of Lambert B. Battin, having been made a defendant in the Court of Chancery by Hamilton S. Battin, son of the deceased Lambert B. Battin, desire to make a statement upholding the Will of my late husband, it being his wish and will that "The Anchorage," our home at Fair Haven, New Jersey, should remain
30 my home and any unmarried child's, his two unmarried daughters have their own home, and have dwelt in it a number of years. My own son and myself were the only remaining ones in our home when my late husband passed away, February 12, 1918, continuing to remain there for five months, when war having been declared, and my son, Lambert E. Battin, reaching his 20th birthday, June 25th. Duty called him to take his part in the great cause for right; prostrated by my great sorrow, the loss
40 of my son, and in ill health, I closed my house to

seek oblivion, rest and recovery, though visiting my home frequently to give it proper care. My home has been unoccupied just two years. It was occupied by me July of this year; two months by tenants and five weeks later on by myself. My own son, having just returned from a five months' sea voyage, suffering from a severe attack of neuritis, and in a very rundown condition, his physician states it will be sometime before he regains his health, having passed through such nerve racking 10 experiences, more than ordinarily fall upon one so young. I feel that outdoor physical exercise about our home would more quickly aid in his recovery, and as my late husband would have wished, will as soon as possible occupy our home again. Referring again to my late husband's Will, second clause, beginning at the fifth line,

> "it is therefore my Will and wish that my children and my beloved wife live together in event of my death, and combine the income aforesaid with that derived from the rest of my property, for their maintenance. In case of the marriage or diagreement of any of my children with this direction, it is my will that in such case, the share of such child or children shall not be paid to him or them, except as relates to their interest in said deed of trust;"

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therefore they have no right to the rent of the premises.

My late husband's estate had become so reduced that there was no other income aside from the trust fund worthy of mention, but that which I earned for him by preparing and renting our two houses one by the year and one for a few summer months in order to defray some of our living expenses, repairs and taxes. The last two years, our home, the Anchorage, was not rented because I 40

wished him to enjoy it and not be disturbed in the closing hours of his life, and the property began to depreciate. This last Spring, 1920, I had an opportunity to secure an excellent tenant. My agent and I were three months negotiating. At the end of that time, through courtesy made known to the heirs that I thought it necessary to do so as the property needed considerable attention but feeling also, according to the Will, second clause, they had
10 no right to the knowledge of or to the disposal of the accruing rental, it was finally rented for $950.00. I was about to receive the lease and first check from the hands of my prospective tenant, when my stepson Hamilton S. Battin, came on the premises and declared it could not be rented. Greatly mortified and afterwards made very ill by his attitude, I yielded and refused to accept the lease and check of my prospective tenant, having considered that this married son's car was in the
20 stable, which would have been required by my tenant, and undoubtedly force would have to be used to oblige him to vacate; this I did not desire to do, although it was against his dying father's expressed wish that his son should not keep his car in our stable, he spoke of this three times; it seemed to disturb him very much. The car has been there ever since. Having been advised by a lawyer, a bank president, a justice of the peace, and real estate agent, upon learning the condition of the
30 Will, I later rented the house for two months using the rental to prepare the property for tenant; make repairs most essential, and which I am ready to account for any time, but consider it entirely a personal matter, I have not made known to the heirs what disposition I have made of it.

In the third clause, the Will states, "If, if we do not live together harmoniously"—we have always lived together harmoniously. All now but my son and myself have other homes that they are inter-
40 ested in. We are not harmonious at this time be-

cause they wish to take from me, my home. The Will clearly emphasizes in one sentence by itself,

> "My widow and any unmarried child shall have a home at 'The Anchorage,' New Jersey."

In the sixth clause—

> "It is my intention and wish as above expressed, that my children and wife shall continue the home as now maintained, after my death, and that no distribution be made of my estate during the lifetime of my said wife."

10

The Will also states:

> "That no real estate shall be sold or or mortgaged without the consent in writing of each of my executors, and executrixes"—

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that undoubtedly means after the widow's death or remarriage.

My home, "The Anchorage," the house in question, was in a ruined state some ten years ago and I rented it for $1,000 for four months. I made repairs, painted the house, a 60-foot stable, poultry houses and fences; had laid over 100 feet of gas pipes; over 100 feet of new water pipes; installed gas fixtures throughout house and stable where necessary and had lawns, and driveways, put in thorough, good and attractive condition. Unfortunately, this last summer the elements created havoc on the grounds by a tornado, uprooting 3 huge trees; one 5 feet in diameter; and breaking in half the huge branches of 6 or 7 large trees, thus greatly destroying the beauty of the property. I have had much of this removed without cost, for the wood, and was in the midst of this work when I received the subpoena in this suit of the complainant. I feel that the property is in no proper con-

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dition to sell, should I be obliged by the law to part with it.

I am an executrix together with others of my late husband's Will. I understand his wishes and have carried them out to the best of my ability. I have paid all outstanding bills (with the exception of two or three small unimportant ones that the other executors have received) amounting to over $1,725.66. I have found, and provided the means
10 from my own personal funds to pay these bills. I have stopped lawsuits, settled claims and am paying the taxes and feel that I am privileged to keep and maintain the home, my late husband has provided for me and that I shall continue to have the same supervision over that house that I have always enjoyed during his lifetime as his will states and without interference from my step-children.

The Elizabeth house was made a gift to me by way of a return for moneys I earned for him and
20 provided him with, as well as for an income to provide for my daily necessities.

JENNIE M. BATTIN, Ex.

Cross Examination BY MR. HENDRICKSON:

Q. Mrs. Battin, was the Elizabeth house made a gift to you by way of return for moneys you earned for your husband? A. I presume he felt that way.

30 Q. How did you earn that money? A. If you could have seen me down there you would have thought that I earned it. A 15-room house—Oh, a 16-room house and a huge attic such as never was seen.

Q. You mean by that that your work as Mr. Battin's wife around the house, your and his home, was the moneys you earned for him? A. I don't see much sense to that. The answer to that question requires considerable digression. The household
40 duties to which I was unaccustomed, the prepar-

ing of two houses, and renting, removal, etc., I consider was very hard work, and my late husband appreciated it.

Q. You did not earn any money by any work outside of the house did you? A. There could not have been harder woman's work outside.

Q. By that do you mean that you did not earn any money outside of your husband's house? A. No.

Q. The house and premises are now much out of repair are they not? A. Yes, the house would be improved with one coat of paint; stable is injured and needs some repair. This I would have had done if I had not been interfered with in renting in 1920. 10

Q. In reading your statement, you commented by saying that the property was not in such shape now that it could be sold and bring a fair price, that is, what it is really worth, is that so? A. I don't think it will bring what it is really worth. 20

Q. Is that because it is out of repair? A. Because of the elements. Caused by a tornado. I never saw such destruction in this part of the country about the grounds.

Q. When? A. Last summer.

Q. Your son, Lambert, is now in the Merchant Marine, is he not? A. Yes.

Q. In your statement you say you earned money for your husband by renting his property prior to his death, is that so? A. By preparing and renting his property. 30

Q. What property do you refer to as having been rented by you as your husband's property during his lifetime? A. "The Anchorage" and the Elizabeth house. I frequently rented these properties to raise money to pay taxes and for our living expenses and repairs.

Q. What rents have you collected from "The Anchorage" since your husband's death? A. I refuse to answer. I have previously replied. 40

Q. What bills have you paid for repairs, taxes, and any other expenses connected with "The Anchorage"? A. Well, necessarily I have a great deal to say. I present my statement as follows:

1917 and 1920.

Amount of bills sent and due Jennie M. Battin:

L. B. Battin Estate.

Paid February 6, 1919, Elizabeth National Bank, $400 note	$226.50
10 Paid 1918, Elizabeth tax 1917	144.50
Paid December 15, 1919, Interest on 1917 Fair Haven tax	9.64
Paid September 18, 1918, Henry Kleinhans, plumber	55.04
Paid Surrogate, 2 certificates	1.52
Stationery, postage, incidentals	10.00
Paid May 7, 1919, Transfer Inheritance tax	60.99
Heirs' indebtedness	$508.19

20

Paid December 15, 1919, Fair Haven tax 1918	$131.84
Fair Haven tax, 1918 interest	8.78
Paid December 15, 1919, Fair Haven tax 1919	153.72
Fair Haven tax, 1919 interest	3.08
Paid 1920, Fair Haven tax, 1920 (first half)	88.39
	$385.81

30 Without 6% interest $508.19—L. B. Battin Estate.
$385.81—Heirs of L. B. Battin.

Total paid out by Jennie Mae Battin $894.00

$385.81 divided by 7 (heirs) equals $55.11 share of each heir payable to Jennie Mae Battin, totalling $330.66 due her.

The items add up to $508.19. L. B. Battin's estate is properly divisible: one-seventh to each of
40 the six children and myself. Having been paid by

me, I claim on the several items, 6% interest from the time of payment. The items add up to $385.81, the heirs' indebtedness, has also been paid by me. One-seventh of this is chargeable to me but I have paid it all, therefore I am entitled to be repaid a one-seventh of it from each of the six children, together with interest from date of payment at 6%. The total amount paid by me is $894.00. The statement at the bottom of the page deducting for Jennie Mae Battin's share $55.11 is only calculated on one-seventh of the $385.84. I did not have space on the paper to calculate one-seventh of $508.19. 10

Q. What other expenditures have you made that are chargeable against the other heirs or against "The Anchorage" property? A. I present a statement dated July 1st, 1920, as follows (showing amounts paid out by me for repairs to "The Anchorage" property and from which is deducted the rent which I collected at $450.00, leaving a balance over and above the income of $44.02): 20

July 1st, 1920. Expenses of renting "The Anchorage":

Cook & Oakley	$ 44.50
Paper hanger	20.70
Paper, 60c per roll	3.00
F. Mulford, agent	22.50
Cutting grass, cleaning up grounds	12.00
Broom	1.30
Mop	1.25
Buckets	.60
4 days, 2 cleaners at $4 per day	32.00
Water bill	17.00
Gas man	2.72
Turning off water	9.00
Kitchen utensils	3.17
Wire screens	3.00
2 wire screens	2.40
Netting	.87
Carting	1.50
Half dozen soap	.40

30

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2 gas mantles	.50	
Earling, Johnson & Frake, repairing main roof	107.92	
1 month's personal superintending and use of furniture and furnishings of 15-room house	200.00	
Hendrickson & Applegate's bill for paint, oil and turpentine	3.33	
Remainder of Weller's bill	4.36	
		$494.02
Rent of "The Anchorage"		450.00
Due Jennie Mae Battin		$ 44.02

10

I rented it for the purpose of making necessary repairs and improving property, without having to call on the heirs to provide the money. This $450.00 is the only rent collected for the property.

Q. Are there any other moneys paid out by you in connection with the estate of "The Anchorage" property which should be paid by the other heirs? A. No, except cutting hedge, $2.50, and travelling expenses, car fare and incidentals, $20.00.

20

JENNIE MAE BATTIN.

Sworn and subscribed to before me this 8th day of January, 1921.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

30

I, Frederick W. Hope, Special Master in Chancery of New Jersey, hereby certify that the foregoing depositions in this cause were taken in my presence stenographically by Vernon W. Rose, a stenographer selected by me and who was first duly sworn, and then typewritten by him, and a copy thereof furnished to the solicitor of complainant, and to Jennie Mae Battin, one of the defendants;

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and that on March 12, 1921, pursuant to notice from the undersigned, the solicitor of the complainant and Jennie Mae Battin appeared before the Special Master and Mrs. Battin had the solicitor of complainant write in her testimony some corrections and changes she desired made in it and as appears written with a pen in the typewritten testimony; and that said Jennie Mae Battin then signed her deposition on that day, having been duly sworn before testifying on the 18th day of December,1920; and that each of the other witnesses also read over their testimony and then signed their respective depositions to which this certificate is annexed.

FREDERICK W. HOPE,
Special Master in Chancery of New Jersey.

In Chancery of New Jersey.

BETWEEN 10 HAMILTON S. BATTIN, *Complainant,* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**On Bill &c.** **On Exceptions to Master's Report.** **Exceptions by Complainant.**

EXCEPTIONS BY COMPLAINANT.

20 Filed July 23, 1921.

Exceptions taken by the complainant in this cause to the report made therein on the 15th day of June, 1921 by Frederick W. Hope, one of the Masters of this Court, to whom it was referred to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described, in the bill of complaint; also whether the said lands and real estate are so situ-
30 ate that a partition thereof can be made without great prejudice to the owners thereof; that he state the facts upon which this cause is founded; that in case such partition cannot be made, then to ascertain and report whether, in case of a sale of said premises, under all the circumstances of the case, having regard to the interests of all the parties, the estate and interest of Jennie Mae Battin if any she have as tenant in dower in the said premises, ought to be excepted from the sale thereof, or
40 whether the same should be sold; also to report

whether the undivided interest or estate of any of the parties in this suit in said lands and premises is subject to any lien by mortgage, judgment, decree, devise or otherwise, and if so, to what liens or encumbrances, and by whom they are held, and the amount due to any party as aforesaid, who has such lien on the said premises.

First Exception: For that the said Master has reported as follows: (On page 2 beginning in the sixth line from the bottom of the page) "and also 10 the additional rights, interest and estate in the dwelling house and land and premises aforesaid, during the term of her natural life or unless and until she re-married", and the complainant insists that said paragraph should be struck out of said report for the reason that it attempts to declare that said Jennie Mae Battin has a life estate in said premises which is contrary to both law and equity under the terms of the Will by which her estate therein is created. 20

Second Exception: For that the said Master has reported as follows: (On page 5 commencing in line one the second paragraph) "that the said Jennie Mae Battin has not released any of the right, title, interest or estate given to her by the said last Will and Testament of Lambert B. Battin, and that she is entitled to all the rights, title, and interest and estate in all of said land and premises which she received by the aforesaid Will of Lambert B. Battin, and that nothing has been done to bar her 30 said rights in the said premises and such additional rights and estate were not mentioned in any manner in the Bill of Complaint in this cause, or seeking to have the aforesaid additional rights of said Jennie Mae Battin, (outside of her one-seventh share and interest in the fee simple of said premises) disposed of in this cause; and that the said Jennie Mae Battin now has the estate in the whole of said premises which she received by the aforesaid Last Will and Testament of her husband 40

the late Lambert B. Battin now deceased; and that all of the land and premises described in the Bill of Complaint and each share thereof, is subject to the aforesaid rights, interest and estate of the said Jennie Mae Battin," and the complainant insists that said paragraph should be struck out of said report for the reason that it attempts to declare that said Jennie Mae Battin has a life estate in said premises; that she is entitled to manage the prop-
10 erty in her own way without the consent and approval of the other executors; that she has the right to rent the same and appropriate the proceeds of such rental to her own use; that she has the right to contract debts in connection therewith and charge the same to her co-devisees which is contrary to both law and equity and the facts as proved in the testimony taken herein; that it further attempts to establish that the said Jennie Mae Battin has not released certain alleged rights
20 claimed by her, and that she is entitled thereto, and that nothing has been done to bar her said alleged rights which is contrary to evidence as shown in the depositions annexed to said Master's Report.

Third Exception: For that the said Master does not charge the said Jennie Mae Battin in the accounting with the rents received by her and credit the same to the remaining six co-devisees, and the complainant insists that the said co-devisees are entitled each to one-seventh of the said rentals or to
30 credit for the same on account of the maintenance charges of said land and premises.

Fourth Exception: For that the said Master has reported as follows: (Page 10 line 2) "and I find and report that the provisions and directions of the last Will and Testament of the aforesaid Lambert B. Battin, deceased giving to the said Jennie Mae Battin the use and benefit of said premises for her lifetime and the supervision thereof are valid and are in full force and are binding on
40 all the parties to this suit" and insist that the same

be struck out for the reason that the same is a misstatement of the fact of which the said Will and Codicil is the evidence and the complainant insists that said Will does not give to said Jennie Mae Battin the use and benefit of said premises for her life and the supervision thereof.

Fifth Exception: For that the said Master has reported as follows: (Page 10 line 7) "and that the provision and direction in the last paragraph of the fifth item of said will are valid and are binding on all the parties to this suit", for the reason that the paragraph referred to is misleading by itself and complainant insists that this should be stricken out and said Will read in its entirety.

Sixth Exception: For that the said Master has reported as follows: (Page 10 line 5 from the bottom) "but the master having decided that under the provisions of the Will the said Jennie Mae Battin was entitled to the use and benefit of the premises, I allowed Jennie Mae Battin only such items of said statement as are chargeable to the owners of the fee of said premises, and against their shares and interest in said premises under the terms of said Will; and this Report and the schedule of the amount due said Jennie Mae Battin annexed hereto allow only items of expenditures of the aforesaid class" and complainant insists that the same should be stricken out for the reason that it is an effort on the part of the Master in an indirect and evasive manner to find that Jennie Mae Battin has a life estate in said premises, is not chargeable with waste and is entitled to take the rents and income therefrom without being chargeable for the maintenance and upkeep thereof.

Seventh Exception: For that the Master has reported as follows, (Page 11 line 23) "I find and report that the Estate of Lambert B. Battin is entitled to have and receive the full rental value of said premises until the period when Jennie Mae Battin became entitled thereto, and that the said

Jennie Mae Battin is entitled to have and receive from said Hamilton S. Battin payment of the fair rental value of the portion of said premises occupied by him from the date of the death of the said Lambert B. Battin February 12, 1918, until he vacates said premises, and that I annex hereto and return herewith the bills and statements, presented by Jennie Mae Battin of the amounts she claimed were due from said Hamilton S. Battin to said Es-
10 tate of Lambert B. Battin, and to her personally; for information of the Chancellor, and for reference and such use thereof as may be deemed proper," and complainant insists that the same be struck out for the reason that the matters referred to therein are outside of the order of reference herein, are matters of personal claim as between the Executors and Hamilton S. Battin and between Jennie Mae Battin and Hamilton S. Battin and are not within the issues raised by the bill of com-
20 plaint filed herein, and for the reason that the alleged bills and statements, if any, were not offered in evidence at any hearing before the Master, and that the same is impertinent and immaterial in this matter.

Eighth Exception: For that the Master has reported as follows: (Page 13 line 1) "And I do further certify and report that in case of a sale of said premises the aforesaid estate and interest of the said Jennie Mae Battin therein under the terms
30 and provisions of the Will of Lambert B. Battin, deceased giving her the use and benefit of said premises during her lifetime could not properly be sold without further proceedings for that purpose, in case the court has the power to order a sale of said rights and benefits given to said Jennie Mae Battin by the Will of her late husband, and deems it right to exercise it in a proceeding for that purpose wherein the said Jennie Mae Battin and all other parties who are interested therein have an
40 opportunity to be heard in relation thereto; but

that any sale thereof made in this proceeding under the present position and circumstances thereof should be made subject to said rights of said Jennie Mae Battin, other than her equal undivided one-seventh share and interest in the fee of said premises," and complainant insists that said paragraph is argumentative, and not within the limits of the order of reference and is an attempt to declare a life estate in the whole of said devised premises in the said Jennie Mae Battin contrary both to law and equity and the estate created by testator's will, and that said paragraph should be stricken out and order for sale of the said premises substituted therefor.

Whereas the said Frederick W. Hope, Master as aforesaid, has not reported properly or in accordance with the terms of the said Rule or in accordance with the principles of equity and of the evidence before him.

In which said several matters and respects this Exceptant prays the judgment of this Court.

CHARLES E. HENDRICKSON,
Solicitor for Complainant.

In Chancery of New Jersey.

BETWEEN 10 HAMILTON S. BATTIN, *Complainant.* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**On Bill, &c.** **On Exceptions to Master's Report.** **Notice of Hearing.**

NOTICE OF HEARING.

20 Filed October 10, 1921.

TO JENNIE M. BATTIN AND LAMBERT E. BATTIN:

Please take notice, That I shall apply to the Chancellor at the Chancery Chambers, No. 75 Montgomery Street, Jersey City, New Jersey, on Monday, October 24th, 1921, at ten o'clock in the forenoon of that day, or as soon thereafter as Counsel can be heard thereon, for a hearing upon the ex-
30 ceptions filed by the complainant to the Master's Report dated June 15th, 1921, filed by Frederick W. Hope, one of the Special Masters of this Court, and for such order thereon as the Chancellor may determine.

Annexed hereto is a copy of Complainant's exceptions to the Master's Report.

CHARLES E. HENDRICKSON,
Solicitor for Complainant.

40 Dated October 10, 1921.

In Chancery of New Jersey.

BETWEEN HAMILTON S. BATTIN, *Complainant,* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**On Bill for Partition, &c.** **Minutes of Hearing.**

10

APPEARANCES:

Chas. E. Hendrickson, Esq., for Complainant.

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Mary Wooster Sutton, Esq., for Defendant Jennie Mae Battin.

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J.
January 23d, 1922.

THE VICE CHANCELLOR: I will hear you, Mr. Hendrickson.

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MR. HENDRICKSON: In the matter of Battin vs. Battin, your Honor asked for some additional testimony and for argument, and Mrs. Sutton represents the widow and I suppose the other child.

MRS. SUTTON: Well, I suppose I only represent the widow.

40

MRS. LELA M. SNODGRASS, Sworn.

Direct Examination BY MR. HENDRICKSON:

Q. Mrs. Snodgrass, where do you reside? A. 145 West Fifty-fifth St., New York City.

Q. You are a daughter of Mr. Battin, the decedent, who lived at the Anchorage, Fairhaven, N. J.? A. I am.

10 Q. And you are a daughter by his first wife? A. I am.

Q. Mrs. Battin, the widow, is your stepmother, the second wife of your father? A. She is.

Q. What other children did your father have by his first wife? A. He had four.

Q. Four others? A. Four living.

Q. And they are Hamilton S.? A. Yes.

Q. And Mrs. Applegate—what is her name? A. Lillian.

20 Q. And who are the other two? A. Meta and Blanche.

Q. They are unmarried? A. Yes.

Q. Mrs. Applegate lives with her husband, I suppose? A. Yes.

Q. Whereabouts? A. In Tottenville, Staten Island.

Q. And Meta and Blanche are unmarried? A. Yes.

Q. Where do they live? A. 766 West End Avenue, New York City.

30 Q. And they work for their living and support themselves? A. They do.

Q. You are one of the executors of your father's will? A. I am.

Q. These that you have mentioned are all children by the first wife? A. Yes.

Q. Then there is another son, another brother you have, or half-brother—what is his name? A. Earl.

40

Q. And he is the son of the widow, the present widow, Mrs. Battin? A. Yes.

Q. Now, you are one of the executors? A. I am.

Q. And you qualified as such? A. Yes.

Q. In the will, your father appointed his widow and all of the children, including Earl, as executors? A. Yes.

Q. They all qualified except Earl, didn't they? A. I believe so.

Q. Well, don't you know? A. Yes. 10

Q. And Earl did not qualify because he was away, or because he was under age? A. He was under age, I think.

Q. Now, what property came to the hands of the executors? Did your father leave any property? A. He left his house.

Q. What house? A. At Fairhaven, known as the Anchorage.

Q. That is the one which is mentioned in the will? A. Yes. 20

Q. Now, was there any other personal property or real estate that was left of the estate? A. 430 North Broad Street, Elizabeth.

Q. That was not left to the estate, that was left by the codicil to the widow? A. No. That was all.

Q. No other property? A. No other property.

Q. There was some personal property, was there not—furniture in the house at the Anchorage? A. Yes, that was fully furnished.

Q. What happened to that? A. Why, it was 30 there in the house.

Q. There in the house? A. Yes.

Q. And how much was the value of the property? A. I don't know.

Q. Whom was that left to by the will, do you remember? A. The property, or the—

Q. (Interrupting). The personal property, the furniture in the house? Do you remember the language of the will?

40

MR. HENDRICKSON: Your Honor, the will is in evidence; I do not know that you want the testimony on that, or not.

THE VICE CHANCELLOR: I think it was left to Mrs. Battin.

THE WITNESS: That she "might take as much of it as she wanted."

Q. So that the executors have never taken any
10 of it? A. Nothing.

Q. When your father married his second wife there was no antagonism or hostility between yourself and the other children over the matter, was there? A. None.

Q. You always tried to get along together? A. Always.

Q. No serious difficulty had ever arisen until after you had left home and was married, had there? A. No.

20 (No cross examination.)

MRS. LILLIAN APPLEGATE, Sworn.

Direct Examination BY MR. HENDRICKSON:

THE VICE CHANCELLOR: Haven't you got all that you desire from this first witness?

MR. HENDRICKSON: No, your Honor says in
30 this letter here that you want such proof as shows the controlling influence that dominated the testator in making his will and codicil; now, this lady and her brother, Hamilton, probably in a very short statement, can explain exactly why these peculiar terms are used in there.

THE VICE CHANCELLOR: Go ahead.

Q. Mrs. Applegate, you are one of the executors
40 of your father's will? A. I am.

Q. Will you please state to the Court just what your father said to you about his will? A. My father said to me, about twelve years—

THE VICE CHANCELLOR: I cannot consider that, Mr. Hendrickson; you cannot offer evidence of what the testator said for the purpose of explaining his will; you can offer evidence to identify the person or the property to be conveyed, but you cannot go into his reasons. 10

MR. HENDRICKSON: I appreciate that, your Honor, but your Honor says this will is rather ambiguous, and I guess counsel on both sides agree with you, and I think this would be very helpful, I really do think so. I do not intend to contradict any of the specific provisions of the will, of course, so far as they are determinable; but evidently your Honor thinks they are not determinable.

THE VICE CHANCELLOR: Well, you may go ahead. 20

Q. Just state, if you will, then, your talk with your father—where you sat, and how it came about? A. I was on the porch of the Anchorage one afternoon, I would think about twelve years before my father died; and he said, "I have made a change in my will," he said, "I see that you children cannot live home nicely with your stepmother," and he said, "I want to tell you what I have done"—he said, "I have given to your stepmother for her life the house in Elizabeth as a home for her, and I have given the Anchorage to all of the children as a home; it will be a home for the unmarried children, and the married ones can go back there and live by paying a little board. In that way you will not have to live together with your stepmother, and you all will be fixed for a home"; and he also told me where the will could be found, at Lawyer Brown's in Elizabeth; and he 30 40

also said "I have not spoken of this matter to anybody."

Q. Is that all that he said? A. He also told me that my mother's engagement ring would be left to the oldest unmarried daughter.

Q. Who was on the porch with you? A. There was nobody on the porch.

Q. Just your father and yourself? A. I was there alone with him.

10 Q. And this was down at the Anchorage? A. At the Anchorage.

Q. Now, how long did you continue to live in the Anchorage—did you live always in the Anchorage? A. We spent our winters in Elizabeth, as a rule, and in the Anchorage in the summer.

Q. And when did that stop—how long ago has it been since you went to Elizabeth? A. Well, I guess it has been eighteen years.

Q. Well, then, at this time you were not living 20 at Elizabeth any of the time? A. Well, this was in the summer-time. No, we were not then living in Elizabeth.

Q. But I mean, you had then ceased to live in Elizabeth, when this conversation took place, twelve years ago? A. Yes.

Q. Now, when did you leave the Anchorage? A. My two sisters and myself left the Anchorage for good in 1913.

Q. And where did you go then? A. My father 30 rented a house down about a quarter of a mile, or less than a quarter of a mile from the Anchorage.

Q. He knew when you went, didn't he? A. He knew when we went, yes.

Q. And he paid the rent for that house? A. He paid the rent; he said "I know you cannot live peacefully here, and there is no use in your staying here and trying to get along."

Q. Were you living down there at the time your father died? A. When my father died I was liv- 40 ing in my own little house.

Q. Where? A. Right down there on Battin Road.

Q. How long was your father sick? A. Well, I would say, about three years; I think he had his first stroke about the last of 1914 or the first of 1915, and he died in 1918; I don't know whether he was taken sick in November, or after Christmas sometime after the first of the year.

Q. Who took care of your father the last year or year and a half that he was alive? A. We had a 10 nurse for him, and my sister and myself relieved the nurse.

Q. How long did that continue? A. Fully a year, as I recall it.

Q. Who paid for the nurse? A. My married brother and my married sister.

Q. That is, Hamilton and Mrs. Snodgrass and yourself? A. Lela. I did not pay for the nurse; Mrs. Snodgrass and Mr. Hamilton Battin paid for the nurse. My unmarried sister and myself took 20 care of him by relieving the nurse; we were with him every afternoon when the nurse went off.

Q. Was Mrs. Battin living in the home with him at that time? A. She was living in the home at that time.

Q. Why didn't she take care of him? A. I don't know; she didn't seem to be ever around with him at all, in the room.

Q. Now, then, as one of the executors, you want this property sold and turned into cash, and pre- 30 served? A. It ought to be. The house is going to pieces there and doing nobody any good.

Q. How long since you have seen it? A. Well, I have seen it in perhaps a year and a half; but I know from what my brother and sisters have told me.

Q. Well, we do not want to know that; but, as one of the executors, your judgment agrees with your other brothers and sisters that the property should be sold? A. I do. 40

Q. For the proper handling of it? A. I do.

Cross Examination BY MRS. SUTTON:

Q. Mrs. Applegate—pardon my voice, I am very hoarse—you said that you conversed with your father about this will about ten years ago, which would make it about 1912? A. It was about twelve years ago.

Q. Making it 1910, then; now, the will states on its face that it was drawn in 1906, you understand that? A. Yes.

Q. So it was four years after this will was drawn that you had this conversation? A. Yes, but I understood it was a codicil he added.

Q. Wait a minute—the codicil is dated 1916, which would be six years after the time—now, where is the other? A. Nobody knows where that other codicil is.

Q. Well, the codicil has been probated? A. It was drawn up a few years before he died.

Q. There is only one codicil.

THE VICE CHANCELLOR: Well, the will and codicil are annexed to the bill?

MR. HENDRICKSON: Yes.

Q. Well, there is no codicil between the original will, as dated, 1906—

THE VICE CHANCELLOR: Why waste time on it? I am going to ignore all this testimony.

MRS. SUTTON: The will speaks for itself.

THE VICE CHANCELLOR: The will must speak for itself. What the testator said as to his intentions cannot be relevant excepting as to the identity of persons and property to pass, if it is a case of ambiguity.

MRS. SUTTON: Yes, but I do not want your Honor to get the idea that the codicil was drawn up at the time the witness says it was.

THE VICE CHANCELLOR: I do not care about that testimony.

MRS. SUTTON: Because there is six years difference. Then I think I have no further cross examination. Just a moment:

Q. You stated that you and your sisters relieved the nurse in taking care of your father—what was your stepmother doing at the time? A. I don't know; I saw very little of her; she was in the house; that is all I know. 10

HAMILTON S. BATTIN, Sworn.

Direct Examination BY MR. HENDRICKSON:

Q. Mr. Battin, you heard Mrs. Applegate's testimony with regard to what her father said about the will? A. Yes. 20

Q. Now, state to the Court what you know about that codicil? A. Why, one afternoon—

THE VICE CHANCELLOR: I don't know that it is necessary to go into that; the law is so perfectly plain that I have no right to consider any conversation with the testator which goes to explain his will, where it does not tend to identify the property to pass or the person to whom it goes. Now, there is no ambiguity as to the property or as to the person. If the testator made a will and did not express his intent in the will, that is his misfortune; the court has no right to go beyond the language of the will in this case to ascertain what he meant. 30

MR. HENDRICKSON: Well, Mr. Battin's testimony goes to a conversation in the presence of Mrs. Battin. I thought it might help the Court. But your Honor's statement is exactly 40

the correct law, and that is what we are absolutely bound by, and that is what I have argued from the beginning on this will. But, with the mighty peculiar language, it seems to me that it is difficult to understand.

THE VICE CHANCELLOR: The lauguage is peculiar; but I think the plain intent of the testator was to protect his wife at all hazards; that she was the primary object of his bounty. The only thing I have in mind is whether the property ought not to be sold.

Q. You are one of the executors? A. Yes.

Q. You feel that it ought to be sold? A. Absolutely.

Q. And you live right next door to it, don't you? A. Within a hundred yards, or so, yes.

Q. What condition is the building itself in today? A. Dilapidated; it needs paint and general repairs.

Q. Has it got any paint on it, at all? A. Practically none.

Q. How is the putty and the glass in the windows? A. All falling out.

Q. And the fire place on the east side of the house —that has fallen through the side of the house, has it not? A. Yes, sir.

Q. How are the porches and the exterior woodwork; what is the appearance of that—is any of that rotting or decaying? A. It is rotting away, and needs repairs.

BY THE VICE CHANCELLOR:

Q. By the way, did your brother—you have no brother, have you? A. Yes, I have a brother.

Q. Did you or your sisters, or half-brother, get one dollar from the estate of your father? A. Not a penny, no.

Q. Then, all this property, whatever it may have

been, either went to your stepmother, in his lifetime by gift and deed, and by will after his death, and the Anchorage, which is the remaining property, with its contents, went to your stepmother for life? A. Well, it went to my stepmother and my unmarried sisters to live in, to have a home there; that was his intention; but the family relations were such that he realized that they could not live together there, and he made other provisions in a codicil which was afterwards destroyed; but he 10 gave Mrs. Battin the home in Elizabeth to take care of her. That was after the original will, when he thought they might possibly live in the Anchorage at Fair haven and on what little estate he had.

By Mr. Hendrickson:

Q. What was your father worth at the time he married Mrs. Battin? A. Oh, it is hard to say; I understood he was worth one hundred thousand 20 dollars, but that was hearsay.

Q. That is how many years ago? A. Twenty-four or five years ago.

Q. None of that ever came back—none of that was there, existing, at the time of his death? A. Not to my knowledge, no.

Q. The only thing you know of was the Elizabethtown stock that was given to Mrs. Battin, and the house at Elizabeth? A. Yes.

Q. And there was no other property or assets? 30 A. There was a mortgage of five hundred dollars which I had given him on my property.

Q. Well, you paid that off? A. I paid that off.

Q. And that was used to pay the debts? A. Yes.

Cross Examination by Mrs. Sutton:

Q. Mr. Battin, in the one hundred thousand dollars do you include the income from the trust fund which your grandfather left to your father?

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A. No, that was not his; he had nothing to do with it.

Q. But he had the trust fund during his life? A. He had the income from that.

Q. Yes, the income from it? A. Yes.

Q. And that was not included in the one hundred thousand dollars? A. No.

By Mr. Hendrickson:

10 Q. How much was the income from the trust fund? How much did that amount to, per year? A. About fourteen hundred dollars.

Mrs. Sutton: Each year?

Mr. Hendrickson: Each year, yes.

Mr. Hendrickson: That is all.

The Vice Chancellor: What is the purpose of the parties? They do not propose to keep this property unsold—is that the purpose?

20 Mr. Hendrickson: That is what Mrs. Battin wants; yes, sir.

Mrs. Sutton: If your Honor please, I have prepared a brief here—

The Vice Chancellor: You may submit your brief; but I am talking as a man of ordinary common sense and business judgment —it is not possible that Mrs. Battin proposes to let this place go into decay. It is perfectly plain she cannot live in it; and I am inclined 30 to think now, in view of the fact that the father or husband left no property to these children to bind them to carry out certain trusts mentioned in the will and imposed upon them, that if she takes this property as life-tenant she has got to maintain it, under the ordinary rule of law, in good condition, and prevent waste and decay of it.

Mrs. Sutton: Yes, she can do that. I would like Mrs. Battin to take the stand, and 40 I will prove that she can do that.

MRS. JENNIE MAE BATTIN, Sworn.

Direct Examination BY MRS. SUTTON:

Q. Mrs. Battin, have you been in the Anchorage, and on the premises quite lately? A. Why, yes, since last December my son and myself occupied the premises.

Q. Well, have you visited the premises even more recently? A. Yes, I have, in the last two weeks.

Q. When was the last time you were there? A. A few days ago.

Q. Did you find the conditions such as Mr. Hamilton Battin stated on the witness stand? A. Well, it is not in very good state. He exaggerated it. The house could be improved by paint; and the stable is in rather bad condition; but about two years ago I had an opportunity of renting the place for $950—

THE VICE CHANCELLOR: Well, never mind that.

Q. Could you hear what Mr. Battin said on the witness stand as to certain fireplaces falling in, and so on? A. I did.

Q. All right—was Mr. Battin's statement correct, according to your knowledge? A. It is a fireplace that cannot be used as a fire place, at all; it is falling out, a few bricks are falling out, but it is of no consequence to the house at all.

Q. Have you income enough from different sources to keep this place in order, if you are not thwarted by persons?

MR. HENDRICKSON: I object, if your Honor please, because that question leaves Mrs. Battin the judge of what is the necessary income, and I insist on Mrs. Battin stating what income she has.

(Question withdrawn).

Q. I will ask, Mrs. Battin, about how much it will cost to keep that place in order each year? A. When it once is put in order, as I expect to put it, it would be about four hundred dollars a year.

Q. Upkeep, including the taxes, and everything? A. Yes.

Q. All right; have you money enough to put that in order?

10 MR. HENDRICKSON: I object.

THE VICE CHANCELLOR: Let her state how much money she has.

BY THE VICE CHANCELLOR:

Q. What money have you got? A. $1,200 from the income of the Eizabeth house in Broad Street; I have personal property—income from personal property; I have gas stock.

20 BY MR HENDRICKSON:

Q. How much income from the gas stock? A. $44.00 a year. My own personal income, I do not see why I should state that; and my son contributes his part, and he has got prospects of earning a living; and if I have my life rights I certainly have the right to rent it, which I shall do as soon as I have; and I shall take all the proceeds and put that property in first-class condition. It has been held up by this lawsuit for two years when it need-
30 ed attention.

BY MRS. SUTTON:

Then, Mrs. Battin, you consider that you have enough money of your own, future and present, to put that property in as good order as it was when Mr. Battin died? Just answer "Yes" or "No," please? A. I have.

Q. Then, after that, your income will be suffici-

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ent to allow you to expend enough to keep it in perfect order? A. Yes.

Q. So that the remaindermen will not be defrauded? A. Certainly, yes.

Q. Mrs. Battin, in the codicil to the will (the will is already before the Court), you take the Elizabeth house in fee simple—you have that entirely?

THE VICE CHANCELLOR: Oh, yes; that speaks for itself. 10

Q. So that you are assured of the income from that, which is, of course, twelve hundred a year, and you have these other sources of income, including your son. You understand, by the will, that your husband made you life-tenant of the Anchorage?

THE VICE CHANCELLOR: What difference does it make whether she understands it, or not? 20

MRS. SUTTON: Well, she has always tried to act on that understanding, and it has not been objected to in four years.

THE VICE CHANCELLOR: Well, her action and understanding may be entirely in discord with the will.

MRS. SUTTON: But when the heirs have acquiesced in her taking the position as life-tenant, doesn't that go to show that they all considered her the life-tenant from the beginning? 30

MR. HENDRICKSON: If your Honor please, I do not think they can undertake to create an estate out of the generosity of step-children who are trying to do the best they can to get along with the step-mother, and make her life happy, because of that acquiescence. I object to it.

THE VICE CHANCELLOR: I will sustain the objection.

MRS. SUTTON: I think that is all. 40

Cross Examination BY MR. HENDRICKSON:

Q. Mrs. Battin, the son who contributes is Earl, is it not? You say your son contributes—Earl? A. Yes.

Q. Where does Earl work now? A. He is on a ship.

Q. How long since he has been on a ship? A. About a month, or less than a month.

10 Q. Well, what ship is he on? A. "Eastern Sea."

Q. What are his wages on the ship? A. I don't know.

Q. How much did he contribute to you in the last ten months? A. I can not say.

Q. He did not contribute anything, did he? A. He did.

Q. How much? A. All the time.

Q. Five dollars a month? A. I cannot say.

20 Q. Twelve dollars a month? A. I wouldn't say.

Q. Thirty dollars a month? A. I don't remember.

Q. You do not remember any sum of money that he ever gave you in the last ten months? A. Our expenses were divided.

Q. Who paid the bills, he or you? A. Both of us.

Q. Did you give him money to pay the bills with? A. We divided expenses.

30 THE VICE CHANCELLOR: Oh, what is the use of wasting time? This lady does not propose to tell you, that is all, and I propose to utterly ignore her testimony, as well as all the other testimony.

Q. Out of that twelve hundred dollars income from the Elizabeth house you have to pay the taxes and repairs on that property, don't you? A. It is all done.

40 Q. Sure, but you have to pay the taxes, so you

have not got twelve hundred dollars in bank to maintain this house, have you, out of that income? A. Not just at present, but I expect to have.

Q. Now, you board in Red Bank, don't you, most of the time? A. I do not.

Q. Well, from three or four months, or five months, after this will was probated, until after this suit was started, you did board all the time in Red Bank, did you not? A. I did not.

Q. Where did you live then? A. For a time I 10 lived in Red Bank.

Q. In Red Bank? A. I did; and then I have been in my home.

Q. Weren't you boarding when living in Red Bank? A. I was boarding, yes. My statement is clear; I was ill; my son was away.

Q. In your testimony (referring to the testimony taken before the Master) you say "I have lived in Red Bank since"—that is, when this testimony was taken, nearly a year ago, ten months ago; that 20 was true, wasn't it, then? A. I have been living with my son, since last December, in my home, and I just left it for a week or two.

Q. Why, I saw you in your house, didn't I—I came down and served a paper on you? A. You certainly did.

Q. And you and he were down there yet? A. Yes.

Q. That was last December? A. Yes.

Q. But, up until this suit was started, until the 30 Master filed his report, you did not live in the house at all from about five months after your husband died, a period of two years? A. I did, I lived there.

Q. You have testified before the Master that you did not? A. Well, it was after that, possibly.

Q. Yes, it was since that? A. Yes.

Q. Since the Master filed his report, why, then occasionally you have gone down there with your son and stayed for a few days? A. I have stayed 40

for weeks there with two guests, women friends.

Q. For how long a period, the longest time you were in there? A. Six or seven weeks.

Q. Now, the only income you can give us is the Elizabeth rent and gas stock; haven't you got property of your own? A. Some.

Q. You refuse to give us that? A. I do.

Q. Did that come to you from Mr. Battin? A. It did not.

10 Q. How much did Mr. Battin have when you married him, do you know? A. I don't know.

Q. He was a man of considerable means then, was he not? A. I don't know.

Q. Well, you had servants, and you lived well, you had lots of means? A. We had, yes; he lived on his capital.

Q. He made allowances, didn't he, to all of his children and to you? A. Very small allowances.

Q. And he wanted those kept up in the will? A.

20 Well?

Q. They have not been kept up, have they?

MRS. SUTTON: I object.

Q. You are an executor, aren't you? (To the Court) She is competent to answer whether she has paid any allowances under the will.

MRS. SUTTON: Oh, I object; the will was made away back in 1906, and it speaks as of

30 the date it was written.

THE VICE CHANCELLOR: That is the old law; now it speaks as of the date of the death.

Q. But no child, or anybody, has been paid anything under that will, have they—not an annuity, or anything? A. There was nothing to pay it with.

Q. Sure, but it was not paid? A. No.

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Re-Direct Examination BY MRS. SUTTON:

Q. Mrs. Battin, your son Earl, even though he has given you a certain amount of money that you have refused to state, has helped in other ways, as to clothing? A. Why, certainly.

Q. Will you tell the Vice Chancellor what expensive articles he has given—

THE VICE CHANCELLOR: Oh, I do not care to hear that; she does not care to tell, and I am not interested in knowing. 10

THE VICE CHANCELLOR: Is there anything further?

MR. HENDRICKSON: That is all.

Testimony closed.

Case held for disposition.

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In Chancery of New Jersey.

BETWEEN

10 HAMILTON S. BATTIN,
Complainant.

AND

JENNIE MAE BATTIN ET ALS.,
Defendants.

Exceptions to Master's Report.

Memorandum.

Filed September 25, 1922.

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Submitted February 2d, 1922; decided May 19, 1922.

For the Complainant-Exceptant, Chas. E. Hendrickson, Jr., Esq.

For the Defendants-Respondents, Mrs. Mary Wooster Sutton.

GRIFFIN, V. C.:

The complainant in this cause filed his bill for partition. An interlocutory decree was taken 30 against all of the defendants, and there was the usual reference to a Special Master to report. The Master reported the various interests of the parties, and "that the provisions of the last will and testament of Lambert B. Battin, deceased, giving to the said Jennie Mae Battin the use of said premises for her lifetime and the supervision thereof are valid and in full force and are binding on all parties to this suit." The will is quite ambiguous, and various parts are contradictory and repugnant. In 40 the case of *Den vs. Gifford, 9 N. J. L., 46* (at p. 50)

Chief Justice Ewing, in discussing a will, said "It is not unworthy of remark, that, filled as our books are with reports on wills, no case has been found presenting a similar devise and showing its just construction. The fact furnishes another illustration of the never-ending variety of litigation with which the wit and wisdom or the ignorance and folly of mankind are likely to supply the tribunals of justice." The same remarks might aptly be applied to the will in this case. 10

I have gone over the will a number of times, and examined it in its entirety from almost every possible angle and viewpoint. The testator made his will on the 19th of September, 1906, at which time he had the property described in the bill and known as "The Anchorage," a residence at Elizabeth, and other property. By a codicil dated the 31st of August, 1916, he gave to his widow, Jennie Mae Battin, substantially all of the property of which he died seized excepting The Anchorage. In the 3d 20 paragraph of his will he gives, devises and bequeathes to his wife, in lieu of dower, an equal share with all of his children in all of the real and personal estate of which he may die seized. He then makes provisions for the maintenance of the home out of the income derived from a trust estate left by his father as well as from that which he owned independently. He then provides that, in case his widow and children do not live harmoniously together, a majority of his executors shall de- 30 cide the management of his home and personal property. He then adds the following clause, at the foot thereof: "My widow and any unmarried child shall have a home at The Anchorage, Fairhaven, New Jersey."

He had no power to provide for the use of the income of the trust estate, because, on his death, that passed to the children; and the only property which he had at the time of the making of this will was The Anchorage and the property which he 40

afterwards devised and bequeathed to his widow by the codicil, and perhaps some other property which he disposed of between the making of his will and his death. Therefore, when he died there was no property devised or bequeathed the income whereof might be used for the maintenance of the home.

By the Fourth Paragraph he makes some specific bequests to certain of his children.

10 By the Fifth Paragraph he devises and bequeathes all the rest, residue and remainder of his property, real and personal, to his wife and six children, in fee, share and share alike.

Plainly, by the Third and Fifth Paragraphs, a fee simple was devised in The Anchorage to the wife and six children. (I may add that all of the children, excepting Lambert, are children by a former wife.) At the end of the Sixth Paragraph, after saying that the whole income shall be de-
20 voted as at present to the maintenance of his home at The Anchorage at Fairhaven, New Jersey, he says "It is my will that no real estate shall be sold or mortgaged without the consent in writing of each of my executors and executrices," and he appoints his wife and six children as executors.

The first question I will consider is the latter clause, which requires the consent in writing of the executors to a sale. By the terms of the will, a fee is granted to the wife and six children as tenants
30 in common. In the Third and Fifth Paragraphs of the will, this latter clause requiring consent I consider void as being repugnant to and derogating from the devise. *Kreuger vs. Frederick, 88 N. J. Eq. 259; Potter vs. Couch, 141 U. S., 297, at p. 315; 11 Sup. Ct. Rep., 1005, at 1010, col. 2, 1011, col. 1.*

The next question to be considered is whether the will, particularly the language at the foot of the Third Clause "My widow and unmarried child shall have a home at The Anchorage, Fairhaven,
40 New Jersey" prevents a partition? It is plain that

this language is permissive and personal—permissive, in the sense that she need not make her home there if she does not so desire; and, second, that it is personal to her and her unmarried child, to whom only the personal use may be had without authority to rent the property. *(Endicott vs. Endicott, 41 N. J. Eq., 93-99.)* If she has abandoned the place as a home, the bill for partition is maintainable. In her testimony, Mrs. Battin says, "I now live—board—at 139 Monmouth Street, Red Bank, 10 N. J., and have lived there two years." She lived occasionally at The Anchorage—lived there five months after her husband died, and has lived in Red Bank ever since. She lived at The Anchorage five weeks this Fall (1920). She contends in her testimony that she has a life estate in The Anchorage. The building is erected on an acre and a half, and contains fifteen rooms, a hall, a large attic and a bath, with a 60 ft. stable, a poultry house and two small outbuildings. She collected 20 $450 for rental on the Anchorage.

It is perfectly plain that she has not a life estate; she merely has an option of user. During the period from her husband's death in 1918 she lived in the house for about five months after her husband's death, and for two years thereafter she did not make her home there, and even since this suit was started she has but occasionally lived there for periods, the longest period being six or seven weeks. It is quite apparent from her story that her 30 husband was a man of some means, having a city residence and The Anchorage as a country residence, and that it would be impossible for Mrs. Battin to maintain this large establishment as a home. Her theory is that she has a life estate and may rent the same. This, as above indicated, is incorrect. I am satisfied from the evidence that The Anchorage is not her bona fide home, that she has not been using it as such, and that her home is at Red Bank. 40

She also appears to claim that no distribution may be made during her lifetime, under the Sixth Paragraph of the will. This distribution has reference only to the property outside of The Anchorage, because it says "the whole income" (which can only mean the income outside of The Anchorage) "is to be devoted as at present to the maintenance of my home known as The Anchorage."

As a result of the foregoing views, the exceptions will be sustained, but no part of the report will be stricken out, because it is part of the record.

As to the Seventh Exception, which holds that Jennie Mae Battin is entitled to receive from Hamilton S. Battin the fair rental value of the premises occupied by him from the date of the death of his father, this exception will be sustained; but the question arises as to whether Hamilton should not pay to the estate the fair rental value. Of course there was no ouster, as far as I can see, and, as I recall the law, one tenant in common may occupy a portion of the premises without paying rent, unless he excludes the other tenants from the use thereof. I reach this conclusion the more readily in view of the fact that it appears that the premises are running down, and are likely, unless properly occupied and maintained, to go into decay.

A decree will be advised in accordance with the foregoing views. Counsel may present this decree to me on the 29th of May at the Chancery Chambers in Jersey City at ten o'clock in the morning, having first submitted the form to opposing counsel.

E. R. WALKER,
C.

Respectfully advised,
JOHN GRIFFIN, V. C.

In Chancery of New Jersey.

BETWEEN HAMILTON S. BATTIN, *Complainant.* AND JENNIE MAE BATTIN ET ALS., *Defendants.*	**On Bill for Partition.** **Decree for Sale.**

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Filed May 29, 1922.

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This cause coming on to be heard in the presence of Charles E. Hendrickson, of Counsel with the Complainant, and Mary W. Sutton, of Counsel with the defendants Jennie Mae Battin and Lambert E. Battin, no one appearing for the other defendants, and it appearing that in pursuance of the decretal order heretofore made in this cause, by which it was amongst other things ordered that Frederick W. Hope, one of the Special Masters of this Court should make his report, on the fourth day of January, Nineteen hundred and twenty-one, at ten o'clock A. M., at the State House, in Trenton, of the matters referred to him by said order; and said Special Master having made a report accordingly bearing date June 15th, 1921, and rule nisi to confirm said report having been made and entered and served on the parties interested therein, and exceptions having been duly taken by the Complainant to certain findings in said report, and said exceptions having been regularly brought on for hearing

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before the Chancellor, on bill, Master's report and exceptions thereto and further testimony taken in open Court, and the Court having heard the argument of the respective Counsel and considered of the same and sustained the exceptions of the Complainant, from and by all which it appears that the rights and interests of the parties in the premises described in the Complainant's bill are as hereinafter declared; and that the said lands and prem-
10 ises are so situate that a partition thereof cannot be made without great prejudice to the owners of the same; and that said Jennie Mae Battin, widow of Lambert B. Battin deceased, has not any right or estate in dower in said premises or any part thereof; and that all of the legatees and devisees named in Will of said Lambert B. Battin deceased, have waived the defeasance clause and provision by which if said widow, Jennie Mae Battin should remarry her interest under the Will would cease or
20 her rights be prejudiced, and that her rights, interest and estate are not subject to being defeated in case she should hereafter remarry.

It is thereupon, on this 29th day of May, Nineteen hundred and twenty-two, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the said Master's report and the matters
30 and things therein contained except as to those matters covered by the Complainant's exceptions, stand ratified and confirmed, and that the exceptions of the Complainant be sustained; and that the parties to this suit, hereinafter named, are seized of and entitled to the lands and premises described in the Complainant's bill, with the appurtenances; and that their respective rights and interests are, and they are hereby ascertained, adjudged and declared to be as follows, to wit:

40 The Complainant is seized in fee of and entitled

to the one undivided seventh of the said premises, subject to the inchoate right of dower of his wife, Helen F. Battin, the defendants, Jennie Mae Battin, Blanche A. Battin, Meta E. Battin and Lambert E. Battin, are each respectively seized of and entitled to one equal undivided seventh part of said premises; the defendant Lela M. Snodgrass and Lillian H. Applegate are each respectively seized of and entitled to one equal undivided seventh part of said premises, each subject to the inchoate right 10 of curtesy of their respective husbands, Robert D. Snodgress and Daniel H. Applegate, therein; and

It is further ordered, adjudged and decreed, that all and singular the said premises mentioned in the said Bill of Complaint, and therein described as follows, to wit:

All that house and tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Shrewsbury, in the County of Monmouth and State of New 20 Jersey.

Beginning at the southwest corner of the lot formerly of John Hendrickson adjoining lot No. 27 on the map; thence along the north side of said lot No. 27 one chain and forty links to lands occupied by Stacy Pitcher (formerly); thence northwardly along said Pitcher land and along east side of the Charles Cross lot to the North Shrewsbury River; thence eastwardly along the North Shrewsbury River; thence the northwest corner of said lot for- 30 merly John Hendrickson's; thence southwardly along the westward side of said lot of formerly John Hendrickson's to the southwest corner thereof the beginning. Containing in the whole lot one acre and a half. Being premises conveyed to Joseph Battin by Virginia Battin and husband by deed dated September 30, 1884.

Including also the inchoate right of dower of the defendant, Helen F. Battin, wife of said Hamilton S. Battin, and including also the inchoate right of 40

curtesy of Robert D. Snodgrass, husband of said Lela M. Snodgrass and Daniel H. Applegate, husband of said Lillian H. Applegate, together with all and sigular the hereditaments and appurtenances to the said premises belonging or in anywise appertaining, be sold at public vendue to the highest bidder in the presence and under the direction of John S. Applegate, Jr., of Red Bank, N. J., one of the Special Masters of this Court. And

10 It is further ordered, that the said Master sell the same in such portions as to him may seem most to the interest of the parties; and that he give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of the statute in such case provided; and that he forthwith, after such sale make report thereof to this Court, and after his report of sale shall have been confirmed by this Court, make and execute unto the purchaser or purchasers good and

20 sufficient conveyances in the law for said real estate, upon their complying with the conditions of said sale; and that such sale and conveyance or conveyances, duly executed as aforesaid, be valid and effectual forever, and operate as as an effectual bar, both at law and in equity, against the said parties, Complainant and defendants, and all persons claiming by, from or under them, or any of them. And

It is further ordered, that the said parties, or

30 either of them, be at liberty to apply to this Court for further directions, if occasion shall require.

E. R. WALKER,
C.

Respectfully advised,

JOHN GRIFFIN,
V. C.

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In Chancery of New Jersey.

BETWEEN HAMILTON S. BATTIN, *Complainant-Respondent,* AND JENNIE MAE BATTIN AND LAMBERT EARLE BATTIN, *Defendants-Appellants.*	**On Bill for Partition.** **Notice of Appeal.**

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20

Filed June 7, 1922.

TO CHARLES E. HENDRICKSON, 75 Montgomery Street, Jersey City, N. J.,
Solicitor of Complainant.

Take notice that the defendants, Jennie Mae Battin and Lambert Earle Battin, appeal to the Court of Errors and Appeals of the State of New Jersey, from the whole of the opinion and from the decree for sale filed in this suit, on the following grounds: 30

1. The claim of complainant that he is seized in fee of one undivided seventh of the premises in question, without being subject to the rights of the widow under the will of Lambert B. Battin, is contrary to the provision made by said testator in his will, probated April 29, 1918, wherein said testator provided a home for his widow for her lifetime or until she remarried.

2. The claim of complainant that the widow has 40

abandoned the premises in question as a home is contradicted by the evidence produced in the court below showing that the widow actually occupied said premises for most of the time since the death of the testator, having been absent only temporarily during the summer of 1920 when her tenants had possession, and for brief periods at other times.

3. The claim of the depreciation by reason of defendants' neglect of said premises is unfounded, as the evidence below shows that Jennie Mae Battin and her son, Lambert Earle Battin, have shared the care and expense of their common home on said premises, laboring and paying for labor performed thereon.

Dated June 5, 1922.

MARY WOOSTER SUTTON,
Solicitor of Defendants,
Jennie Mae Battin and
Lambert Earle Battin.

I, Mary Wooster Sutton, solicitor of and counsel with the above named defendants, do hereby state that I believe there is good cause for the appeal in the within named suit.

MARY WOOSTER SUTTON.

Court of Errors and Appeals.

BETWEEN HAMILTON S. BATTIN, *Complainant-Respondent,* AND JENNIE MAE BATTIN ET ALS., *Defendants-Appellants.*	**On Bill for Partition.** **Petition of Appeal.**

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Filed June 27, 1922.

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TO THE HONORABLE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY:

The petition of Jennie Mae Battin and Lambert Earle Battin, appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a Decree for Sale made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, advised by his Honor, John Griffin, Vice Chancellor, bearing date of 29th of May, 1922, wherein the said Jennie Mae Battin and Lambert Earle Battin were two of the defendants, in the following respects:

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1. That the said decree adjudges that the complainant is seized in fee of and entitled to the one undivided seventh of said premises, indicating a certain property situated at Fair Haven, Monmouth County, New Jersey, known as "The Anchorage," the subject of this suit. Said decree does

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not state that said fee is only that of a remainderman or subject to the rights of the widow of Lambert B. Battin, testator, whose will probated in the office of the surrogate of Monmouth County, N. J., April 29, 1918, expressly provides for his said widow, Jennie Mae Battin, defendant-appellant herein, a home for her lifetime or until she remarries, in lieu of dower, in the words: "It is my intention and wish as above expressed that my
10 children and wife shall continue the home, as now maintained, after my death and to that end it is my will that no distribution be made of my estate during the lifetime of my said wife, or so long as she remains my widow," as found in the SIXTH paragraph of said will, which said paragraph closes with the independent statement, "It is my will that no real estate shall be sold or mortgaged without the consent in writing of each of my executors and executrixes." The widow and the six children of
20 said testator were appointed executors of said will, of these the widow and one son, the said Lambert Earle Battin object to the sale.

2. That the Special Master in Chancery, Frederick W. Hope, of Red Bank, New Jersey, to whom this cause was referred, reported that Jennie Mae Battin, widow, "received in fee simple, an equal, undivided one-seventh share and interest in the real estate and premises described in the bill in this cause, and also the additional rights, interest
30 and estate in the dwelling house and land and premises aforesaid (The Anchorage), during the time of her natural life or unless and until she remarried," which said report was excepted to in part by complainant, and the exception to the above quoted finding by the Master, was sustained by the Vice Chancellor, in his opinion as to the construction of said will and in the memorandum upon which the said Decree for Sale was basel.

3. That the complainant, considering himself
40 as one of seven tenants in common, under his con-

struction of the said will, has been and is now occupying a portion of said premises to the injury of said widow, life tenant, under her construction of said will, as upheld by the aforesaid Master, but denied by the Vice Chancellor, thus aggrieving your petitioner, Jennie Mae Battin.

4. That the complainant's claim, mentioned by the Vice Chancellor in his memorandum aforesaid, of abandonment by the widow of her home, "The Anchorage," is unfounded, as shown by the evi- 10 dence produced in the court below, and by the fact that both appellants herein are actually occupying the premises, never having removed their belongings therefrom and never having been absent in person excepting temporarily and with full intention of returning thereto.

5. That the claim made by complainant and upheld by the Vice Chancellor in his memorandum, that said premises had deteriorated, is not corroborated by the facts as the testimony taken in the 20 court below shows; and your petitioners set forth that they both have labored personally and have expended considerable money in order to preserve said premises, and are continuing so to do; and they deny that said premises have depreciated in value since the death of Lambert B. Battin, testator aforesaid.

6. That complainant made no allegation in his bill of complaint relative to the estate of the said widow, Jennie Mae Battin, under the will of her 30 husband, or to her dower right in said premises, therefore, no issue being raised, your petitioner, the widow aforesaid, was given no opportunity to be heard on this point, and your petitioner claims that partition is not maintainable until said point is adjudicated.

7. Your petitioners appeal from the decree of the Vice Chancellor as advised to his Honor, the Chancellor, upon the ground that the same is erroneous inasmuch as it is contrary to the expressed 40

intention of the testator as shown in his said will, which with its codicil construed in its entirety, as your petitioners verily believe, confers upon the widow a life tenancy in the said premises, and the additional rights and benefits given to your petitioner, Jennie Mae Battin, by said will and codicil in the entire property during her lifetime.

Your petitioners therefore pray that the said Decree for Sale may be reversed and set aside, and
10 that your petitioner, Jennie Mae Battin, may be adjudged life tenant of said premises with the rights thereof according to law and in accordance with the special rights given to her under the will of Lambert B. Battin, testator. And that your petitioners may have such relief in the premises as to this court shall seem just.

Dated June 26, 1922.

MARY WOOSTER SUTTON,

Solicitor of and Counsel with Defendants-Appel-
20 lants, Jennie Mae Battin and Lambert Earle Battin.

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Court of Errors and Appeals.

BETWEEN HAMILTON S. BATTIN, *Complainant-Respondent.* AND JENNIE MAE BATTIN ET ALS., *Defendants-Appellants.*	**On Bill for Partition.** **Answer to Petition of Appeal.**

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The answer of the Respondent to the petition of appeal of the Appellant. 20

The Respondent admits it to be true that a certain decree was made and entered into in the Court of Chancery as in the petition of appeal stated; but as to the substance and form thereof this Respondent prays to refer thereto when the same shall be produced. And this Respondent is advised and believes that said decree is agreeable to law and equity and he prays that the same may be affirmed.

CHARLES E. HENDRICKSON, 30
Solicitor for and of Counsel with
Complainant-Respondent.

Filed June 30, 1922.

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New Jersey Court of Errors and Appeals

Between, HAMILTON S. BATTIN, Complainant-Respondent, and JENNIE MAE BATTIN, et als., Defendants, and JENNIE MAE BATTIN and LAMBERT EARLE BATTIN, Appellants.	On appeal from Decree in Chancery of New Jersey.

BRIEF FOR COMPLAINANT-RESPONDENT.

Lambert B. Battin died February 12th, 1918 (p. 31, l. 25), seized of the premises in question known as the anchorage, consisting of one and one half (1½) acres of land, a large dwelling house containing fifteen (15) rooms, a hall, a large attic and a bath; a sixty (60) foot stable, poultry house and two (2) small out buildings (p. 34, l. 2).

He left no other property as the codicil gave the rest of the property to the widow, Jennie Mae Battin (p. 65, l. 20).

He left a will dated September 19th, 1906, and a codicil dated August 31st, 1916 (pp. 5 to 9 inclusive). They were probated April 29th, 1918.

He left a widow, Jennie Mae Battin, a son Lambert Earle Battin, by her, both defendants herein, a son Hamilton S. Battin, the complainant, and four (4) daughters, the defendants, Lela

M. Snodgrass, Lillian H. Applegate, Meta E. Battin and Blanche A. Battin, all children by his first wife. All seven were appointed executors. All qualified except Earle.

By his will and codicil he devised in fee simple the anchorage aforesaid to said widow and six children, as tenants in common, providing therein that such devise and bequests are to be in lieu of her dower in his estate.

The particular language of the devise of the Anchorage is as follows:

Paragraph 3 of Will, page 6—

> "* * * I give, devise and bequeath to her (the widow) in lieu of dower an equal share with all of my children in all of the estate real and personal of which I may die seized."

Also in paragraph 5 of Will, page 7.

> "FIFTH. It is my Will and I hereby give, devise and bequeath all the rest, residue and remainder of my property, real and personal, to my beloved wife, Jennie Mae Battin, and my children, Hamilton S. Battin, Lela M. Snodgrass, Lillian H. Battin, Meta E. Battin, Blanche A. Battin and Lambert E. Battin, their heirs and assigns forever, share and share alike. This provision to be in lieu of dower to my said wife and to be inoperative in the event of her marriage as aforesaid."

We say that this Will by this language created an estate in common in the widow and six children, and that as an incident thereof the Complainant has a right to maintain his action for partition in this Court.

Complainant filed his Bill for Partition. Decree Pro Confesso and Order of Reference was

made to a Master. The Master reported that the widow and six children were each entitled to a one seventh in fee; that the widow had accepted all the devises and bequests given to her in lieu of dower and that she had no right or estate in dower in the Anchorage. Then the Master went on and reported that the widow in addition to her undivided one seventh in fee had also the rights given to her by the Will and copied in the Will so that the Court could decide what those rights were. He did not attempt to name them.

The Complainant filed exceptions to that part of the report. The matter came up before Vice Chancellor Griffin on those exceptions. He took additional testimony, sustained the exceptions and decided that the widow and six children were tenants in common and made an order for the sale of the premises in question.

The respondent in her Petition of Appeal divides her objections up into six objections, and a general objection that the decree is erroneous.

I want to discuss the objection in the sixth paragraph of the Petition of Appeal, 1st, viz., that the Complainant made no allegation in his Bill of Complaint so as to raise an issue as to the right of dower of the widow.

Testator by his Codicil to his Will says:

> "First. I do hereby ratify and confirm my said Will in all respects save so far as any part thereof shall be revoked or altered by this present Codicil."

Then he gives his widow, Jennie Mae Battin, his city house in Elizabeth, such furniture and furnishings at the Anchorage as she may select, his Elizabeth Town Gas Stock, two large windows in his stable at the Anchorage, everything he had left except the Anchorage.

Then he says in the Codicil:

> "The above devise and bequests and those contained in my said Will, are made and to be received by my said wife in lieu of her dower in my estate."

This Codicil was executed August 31st, 1916. Testator had his first stroke of paralysis about Christmas 1914 and died February 12th, 1918 (p. 61, l. 3).

All the children have waived the default clause in the Will as follows: "and to be inoperative in the event of her marriage as aforesaid" (See Bill of Complainant, p. 3, l. 13—Mr. Battin's testimony, p. 29, l. 14--Lambert E. Battin's testimony, p. 37, l. 29).

The Master found as a fact in his report (p. 16, l. 26): "that all of the legatees and devisees named in said Will of the said Lambert B. Battin, deceased, have waived the defeasance clause and provision by which, if said widow Jennie Mae Battin should re-marry, her interest under the Will would cease or her rights be prejudiced, and that her rights interest and estate are not subject to being defeated in case she should hereafter remarry." No exception was ever taken to this part of his report.

The widow received the devises and bequests made to her in the Codicil as well as in the Will and thereby released her right of dower in the Anchorage, all that is left of testator's estate.

The Master finds in his report as follows:

> "The said Jennie Mae Battin, widow of Lambert B. Battin, deceased, has not any right or estate in dower in said premises (the Anchorage) or any part thereof, but has accepted the provisions of the Last Will and Testament of her husband * * * given to her in lieu of her right of dower."

No exception was ever taken to this part of his report.

The evidence of Mrs. Battin, page 33, shows she took the Elizabeth house and the gas stock, the rights given her in the "Anchorage" and the furnishings under the Will. Her own evidence sustains the Master's report in this regard.

Complainant charges in his bill of complaint as follows:

"Complainant expressly charges the fact to be that the said Jennie Mae Battin has accepted said bequests and has thereby released her dower in the above described premises," viz., The Anchorage.

We therefore respectfully insist the above disposes of paragraph 6 of Petitioner's Petition of Appeal, and that said paragraph must be dismissed.

As to paragraph 5 of the Petition of Appeal. In this the petitioner claims that the Courts finding, "that said premises had deteriorated, is not corroborated by the facts as the testimony taken in the Court below shows."

The testimony is as follows (p. 31, l. 4)—Edward S. Allaire:

> "The premises are not in the best condition; have been practically unoccupied for nearly two years and a storm has injured the trees and shrubbery and the premises should be sold to prevent any further deterioration in the property in this deponent's judgment."

Page 39, line 39, the widow after testifying,

> "The last two years, our home, the Anchorage, was not rented because I wished him to enjoy it and not be disturbed in the closing hours of his life (he had died in February, 1918), and the property began to depreciate.

This last Spring, 1920, I had an opportunity to secure an excellent tenant. (It had stood unoccupied 2 years.) My agent and I were three months negotiating. At the end of that time, through courtesy made known to the heirs that I thought it necessary to do so as *the property needed considerable attention,* but feeling also, according to the Will, second Clause, they had no right to the knowledge or to the disposal of the accruing rental, it was finally rented for $950."

The Will provides, paragraph third (p. 6, l. 37):

"If, however, my widow and children do not live harmoniously together, then and in that event the Will of the majority of my executors and executrixes shall decide the management of my home and personal property."

The house had been unoccupied two years, 5 of the 6 executors wanted to sell the house but Mrs. Battin would not sell it. Mrs. Battin goes on to testify (p. 40, l. 14):

"My stepson, Hamilton S. Battin, came on the premises and declared it could not be rented."

Page 40, line 27:

"Having been advised by a lawyer, a bank President, a Justice of the Peace, and a real estate agent (the Court will note that the widow excludes from her advice the other 5 executors), upon learning the condition of the Will, I later rented the house for two months, using the rental to prepare the property for tenant; *making repairs most essential,* and which I am ready to account for any time but consider it entirely a personal matter, I have not made known to the heirs what disposition I have made of it."

The widow further testifies (p. 41, l. 31):

"Unfortunately, this last summer the elements created havoc on the grounds by a tornado, uprooting three huge trees; one 5 feet in diameter; and breaking in half the huge branches of six or seven large trees, thus greatly destroying the beauty of the property. I have had much of this removed without cost, for the wood and was in the midst of this work when I received the subpoena in this suit of the complainant. I feel that the property is in no condition to sell, should I be obliged by the law to part with it."

At page 43, lines 10 to 25, she testifies:

"Q. The house and premises are now much out of repair are they not? A. Yes, the house would be improved with one coat of paint; stable is injured and needs some repair. This I would have had done if I had not been interfered with in renting in 1920.

Q. In reading your statement, you commented by saying that the property was not in such shape now that it could be sold and bring a fair price, that is, what it is really worth, is that so? A. I don't think it will bring what it is really worth.

Q. Is that because it is out of repair? A. Because of the elements. Caused by a tornado. I never saw such destruction in this part of the country about the grounds.

Q. When? A. Last summer."

At page 46, line 14 she testifies:

"I rented it for the purpose of making necessary repairs." (At that time I had been employed by the 5 stepchildren and agreed to this renting in order to save further waste.)

Lillian H. Applegate, a daughter (p. 61, l. 29):

"Q. Now, then, as one of the executors, you want this property sold and turned into cash, and preserved? A. It ought to be. The house is going to pieces and doing nobody any good."

Hamilton S. Battin, a son (p. 64, l. 13):

"Q. You are one of the executors? A. Yes.

Q. You feel that it ought to be sold? A. Absolutely.

Q. And you live right next door to it, don't you? A. Within a hundred yards, or so, yes.

Q. What condition is the building itself in today? A. Dilapidated; it needs paint and general repairs.

Q. Has it got any paint on it at all? A. Practically none.

Q. How is the putty and the glass in the windows? A. All falling out.

Q. And the fire place on the east side of the house—that has fallen through the side of the house, has it not? A. Yes, sir.

Q. How are the porches and the exterior woodwork; what is the appearance of that—is any of that rotting or decaying? A. It is rotting away and needs repairs."

Page 66, Line 17:

"The Vice Chancellor: What is the purpose of the parties? They do not propose to keep this property unsold—is that the purpose?

Mr. Hendrickson: That is what Mrs. Battin wants; yes, sir.

Mr. Sutton: If your Honor please, I have prepared a brief here—

The Vice Chancellor: You may submit your brief; but I am talking as a man of ordinary common sense and business judgment—it is not possible that Mrs. Battin proposes to let this place go into decay. It is perfectly plain she cannot live in it;"

Mrs. Battin testifies (p. 67, l. 12):

"Q. Did you find the conditions such as Mr. Hamilton Battin stated on the witness stand? A. Well, it is not in very good state. He exaggerated it. The house could be improved

by paint; and the stable is in rather bad condition; but about two years ago I had an opportunity of renting the place for $950—

The Vice Chancellor: Well, never mind that.

Q. Could you hear what Mr. Battin said on the witness stand as to certain fireplaces falling in, and so on? A. I did.

Q. All right—was Mr. Battin's statement correct, according to your knowledge? A. It is a fireplace that cannot be used as a fireplace at all; it is falling out, a few bricks are falling out, but it is of no consequence to the house at all."

We respectfully submit that the findings of the Court that "the said premises had deteriorated" is substantiated by the evidence "and that paragraph 5 of the petition of appeal must be dismissed."

As to paragraph 4 of the petition of appeal. In this the finding of the Court that the widow had abandoned the "Anchorage" as her home is claimed to be unfounded, as shown by the evidence.

The evidence is as follows: Testimony of Mrs. Jennie Mae Battin taken December 18th, 1920 (p. 32, l. 24):

"Q. Mrs. Battin, where do you now live? A. I now board at 139 Monmouth Street, Red Bank, N. J.

Q. How long have you lived there? A. Two years, I have lived occasionally in my own home.

Q. By your 'home,' you mean 'The Anchorage' at Fair Haven, do you not? A. Yes.

Q. How long have you lived at 'The Anchorage'? A. Five months after my husband died, * * * I have lived in Red Bank since. * * * I lived at 'The Anchorage' five weeks this Fall (1920)."

Before Vice Chancellor Griffin, January 23rd, 1922, Mrs. Jennie Mae Battin testified as follows (p. 71, l. 4, to p. 72, l. 3):

"Q. Now, you board in Red Bank, don't you, most of the time? A. I do not.

Q. Well, from three or four months, or five months, after this will was probated, until after this suit was started, you did board all the time in Red Bank, did you not? A. I did not.

Q. Where did you live then? A. For a time I lived in Red Bank.

Q. In Red Bank? A. I did; and then I have been in my home.

Q. In your testimony (referring to the testimony taken before the Master) you say 'I have lived in Red Bank since'—that is, when this testimony was taken, nearly a year ago, ten months ago; that was true, wasn't it, then? A. I have been living with my son since last December, in my home, and I just left it for a week or two.

Q. Why, I saw you in your house, didn't I —I came down and served a paper on you? A. You certainly did.

Q. And you and he were down there yet? A. Yes.

Q. That was last December? A. Yes.

Q. But, up until this suit was started, until the Master filed his report, you did not live in the house at all from about five months after your husband died, a period of two years? A. I did; I lived there.

Q. You have testified before the Master that you did not? A. Well, it was after that, possibly.

Q. Yes, it was since that? A. Yes.

Q. Since the Master filed his report, why, then occasionally you have gone down there with your son and stayed for a few days? A. I have stayed for weeks there with two guests, women friends.

Q. For how long a period, the longest time you were in there? A. Six or seven weeks."

This testimony shows that Mr. Battin died February 12th, 1918; for 5 months thereafter Mrs. Battin lived in the Anchorage; the Master filed

his report July 15th, 1921; in December, 1921 (p. 71, l. 21) she was there a few days or weeks, but had left it before January 23rd, 1922. But the longest time she spent there she says was "6 or 7 weeks" (p. 72, l. 3).

Of course the real fact of the matter is Mrs. Battin cannot maintain the "Anchorage" as her home. She says (p. 42, l. 32):

> "A. 15-room house—Oh, a 16 room house and a huge attic such as never was seen."

(p. 34, l. 3):

> "There is an acre and a half in 'The Anchorage'."

Before Griffin, Vice Chancellor, Mrs. Battin testifies (direct examination by Mrs. Sutton (p. 67, l. 31 to p. 71, l. 3):

> "Q. Have you income enough from different sources to keep this place in order, if you are not thwarted by persons?
>
> Mr. Hendrickson: I object, if your Honor please, because that question leaves Mrs. Battin the judge of what is the necessary income, and I insist on Mrs. Battin stating what income she has.
>
> (Question withdrawn.)
>
> Q. I will ask, Mrs. Battin, about how much it will cost to keep that place in order each year? A. When it once is put in order, as I expect to put it, it would be about four hundred dollars a year.
>
> Q. Upkeep, including the taxes, and everything? A. Yes.
>
> Q. All right; have you money enough to put that in order?
>
> Mr. Hendrickson: I object.
>
> The Vice Chancellor: Let her state how much money she has.

By the Vice Chancellor:

Q. What money have you got? A. $1,200 from the income of the Elizabeth house in Broad Street; I have personal property—income from personal property; I have gas stock.

By Mr. Hendrickson:

Q. How much income from the gas stock? A. $44.00 a year. My own personal income, I do not see why I should state that; and my son contributes his part, and he has got prospects of earning a living; and if I have my life rights I certainly have the right to rent it, which I shall do as soon as I have; and I shall take all the proceeds and put that property in first-class condition. It has been held up by this lawsuit for two years when it needed attention.

By Mrs. Sutton:

Then, Mrs. Battin, you consider that you have enough money of your own, future and present, to put that property in as good order as it was when Mr. Battin died? Just answer 'Yes' or 'No,' please? A. I have.

Q. Then, after that, your income will be sufficient to allow you to expend enough to keep it in perfect order? A. Yes.

Q. So that the remaindermen will not be defrauded? A. Certainly, yes.

Q. Mrs. Battin, in the codicil to the will (the will is already before the Court), you take the Elizabeth house in fee simple—you have that entirely?

The Vice Chancellor: Oh, yes; that speaks for itself.

Q. So that you are assured of the income from that, which is, of course, twelve hundred a year, and you have these other sources of income, including your son. You understand, by the will, that your husband made you life-tenant of the Anchorage?

The Vice Chancellor: What difference does it make whether she understands it or not?

Mrs. Sutton: Well, she has always tried to act on that understanding, and it has not been objected to in four years.

The Vice Chancellor: Well, her action and understanding may be entirely in discord with the will.

Mrs. Sutton: But when the heirs have acquiesced in her taking the position as life-tenant, doesn't that go to show that they all considered her the life-tenant from the begining?

Mr. Hendrickson: If your Honor please, I do not think they can undertake to create an estate out of the generosity of step-children who are trying to do the best they can to get along with the step-mother, and make her life happy, because of that acquiescence. I object to it.

The Vice Chancellor: I will sustain the objection.

Mrs. Sutton: I think that is all.

Cross Examination by Mr. Hendrickson:

Q. Mrs. Battin, the son who contributes is Earl, is it not? You say your son contributes —Earl? A. Yes.

Q. Where does Earl work now? A. He is on a ship.

Q. How long since he has been on a ship? A. About a month, or less than a month.

Q. Well, what ship is he on? A. 'Eastern Sea.'

Q. What are his wages on the ship? A. I don't know.

Q. How much did he contribute to you in the last ten months? A. I can not say.

Q. He did not contribute anything, did he? A. He did.

Q. How much? A. All the time.

Q. Five dollars a month? A. I cannot say.

Q. Twelve dollars a month? A. I wouldn't say.

Q. Thirty dollars a month? A. I don't remember.

Q. You do not remember any sum of money that he ever gave you in the last ten months? A. Our expenses were divided.

Q. Who paid the bills, he or you? A. Both of us.

Q. Did you give him money to pay the bills with? A. We divided expenses.

The Vice Chancellor: Oh, what is the use of wasting time? This lady does not propose to tell you, that is all, and I propose to utterly ignore her testimony, as well as all other testimony.

Q. Out of that twelve hundred dollars income from the Elizabeth house you have to pay the taxes and repairs on that property, don't you? A. It is all done.

Q. Sure, but you have to pay the taxes, so you have not got twelve hundred dollars in bank to maintain this house, have you, out of that income? A. Not just at present, but I expect to have."

We respectfully submit that the evidence substantiates the findings of fact in this regard by the Court of Chancery and that paragraph 4 of the petition of appeal must be dismissed.

The first, second and third paragraphs in the Petition of Appeal may be considered together.

Counsel for Appellant does not affirmatively state what estate she wants this Court to find the Appellant has in this "Anchorage." Counsel comes into Court backwards and says in paragraph 1 of her Petition of Appeal, Appellant is aggrieved because the decree of the Court of Chancery does not state that the fee of the Complainant "is only that of a remainderman or subject to the rights of the widow of Lambert B. Battin, testator, * * *" but Counsel does not affirmatively say what she considers those rights to be or give them any name.

The Master in his report (see Paragraph 2 of the Petition of Appeal) does about the same thing. He "reported that Jennie Mae Battin, widow, received in fee simple, an equal, undivided one-seventh share and interest in the real estate and premises described in the bill in this cause" (which we believe is correct under our law and the will), and then goes on "and also the additional rights, interest and estate in all of said land and premises which she received by the aforesaid Will of Lambert B. Battin and then sets forth the Will in full so that the Court can determine for itself what those rights are but he does not say affirmatively what they are.

In paragraph 3 counsel for Appellant says Appellant is aggrieved because the Complainant occupies a portion of said premises (keeping his automobile in the big 60 foot barn occupied by no one else and excluding none of the other six tenants in common from the equal use of that barn).

Counsel for Appellant has, I believe, no where affirmatively claimed that the widow has a fee in an undivided one-seventh part and also a life estate in the remaining six-sevenths part.

Vice Chancellor Griffin, in his opinion characterizes certain paragraphs in this Will as ambiguous, contradictory and repugnant. He quotes Chief Justice Ewing in *Den* vs. *Gifford,* 9 N. J. L., 46 (at p. 50), as follows (p. 75, l. 2, p. 6, l. 8):

> "It is not unworthy of remark, that, filled as our books are with reports on wills, no case has been found presenting a similar devise and showing its just construction. The fact furnished another illustration of the never-ending variety of litigation with which the wit and wisdom or the ignorance and folly of mankind are likely to supply the tribunals of justice."

He says

> "The same remarks might aptly be applied to the Will in this case. Those paragraphs are as follows:
>
> 'SECOND. Whereas a large part of my personal estate comes to me from my late father Joseph Battin, by virtue of a deed of trust and the income thereof in the event of my death is directed to be paid to each of my children in equal portions and my wife does not participate therein, it is, therefore, my will and wish that my children and my beloved wife live together in the event of my death and combine the income aforesaid with that derived FROM THE REST OF MY PROPERTY FOR THEIR MAINTENANCE. In the case of the marriage or disagreement of any of my children with this direction it is my will that in such case the share of such child or children shall not be paid to him or them; except as relates to their interest in said deed of trust. In the event of the marriage of my wife it is my will that her interest in this Will shall cease."

This will was made September 19th, 1906, at a time when testator had other property. By a Codicil dated August 31st, 1916, he gave the widow all of his property except the "Anchorage" which he allowed to stand as he had disposed of it in his original will, viz, in fee in common to the widow and the six children. Therefore there was no income from his property to combine with the trust funds, and lend any possible suggestion of a consideration to obligate the children to combine resources and live together. Three children were married and all six children were away including Earle who was in the navy when decedent died. At most the clause is only a wish from the parent, probably prompted by a pride to keep up the grand home and style of his former

life, and to help carry out his vision he goes on to provide that in the case of marriage the child's share should not be paid to him or her. This would be void, I think, as against a good Public Policy and also so provides if there be a disagreement of any child with this direction.

But this language in no way applies to the "Anchorage." It applies only to "the rest of my property" which he seemed to think should be needed to keep up the grand ancestral home in the "Anchorage." That "rest of my property" he gave his widow by the Codicil of 1916, which I consider revokes this provision.

Therefore we submit nothing in this paragraph affects the devise of the "Anchorage."

In the third paragraph of his will he says:

"THIRD. It is my will that so long as my wife remains my widow she shall have the same supervision over my household which she has always enjoyed during my lifetime" * * * (that gives her no estate in the freehold of the "Anchorage." She had no estate in the freehold "during" his life. She had an inchoate right of dower. It means she shall enjoy the position of the mother at the head of the family as she had been as his wife) and then he goes on and gives her her estate as follows "and I give, devise and bequeath to her in lieu of dower an equal share with all my children in all of the estate, real and personal, of which I may die seized." (This is probably sufficient to make them all tenants in common of the "Anchorage".) Then he goes on and says, "It being my intention also that the home be kept up as hereinbefore referred to out of the income derived from so much of my estate as comes to me from my father, as well as that

which I own independently. (This language confirms what I have said that pride of family was what he wished kept up. It was no more than a wish. He had in mind that the "Anchorage" should continue as it had been the favorite home for all his family and to that end he was devoting all his other property, but he changed his mind as his estate dwindled in the next eleven years and he gave all that other property to his widow by a Codicil, the effect of which necessarily was to cancel and revoke any direction to them all to combine their resources.) Then he goes on in the same third paragraph. "If, however, my widow and children do not live harmoniously together, then, and in that event the will of the majority of my executors and executrixes shall decide the management of my home and personal property."

This clause evidently he put in by way of precaution. It is not necessarily contradictory to the preceding clauses. He gave them all equal shares in his estate and hoped and wished that his home might continue as their favorite home. There was no cloud then upon the horizon, but with proper caution he clearly wished to provide a machinery by which the majority of the executors might rule and prevent waste of his estate. This machinery broke down because the widow will not agree with the other five executors and there is no power of sale in the will.

The final paragraph of this third paragraph is "My widow and any unmarried child shall have a home at the anchorage, Fair Haven, N. J." The most that this clause can be said to give is a permissive right on the part of the widow, or any unmarried child. It is at best, a personal right of occupancy. But it does not create a life estate in the widow as she claims.

Endicott v Endicott, 41 N.J. Eq. 93 @ 99.

Her testimony is page 33, line 28.

> "Q. Mrs. Battin, your contention, as I understand it, is that under the will of your husband, you have a life estate in 'The Anchorage' as long as you live and remain his widow. Is that right? A. Yes."

Also at page 35, line 26.

> "I claim the right to rent the home and receive the rent as mine, because the children disagree with me."

Neither does it give her the right to close it up, Mrs. Battin testifies, page 38, line 40.

> "I closed my house to seek oblivion, rest and recovery, though visiting my home frequently to give it proper care. My home has been unoccupied just two years."

In the sixth paragraph he provides for the payment of the weekly allowances to the widow and children. Mrs. Battin testifies, page 72, line 35.

> "Q. But no child, or anybody, has been paid anything under that will, have they not an annuity, or anything? A. There was nothing to pay it with.
> "Q. Sure, but it was not paid? A. No."

Then he goes on in paragraph 6th.

"It is my intention and wish as above expressed that my children and wife shall continue the home as now maintained, after my death and to that end it is my will that no distribution be made of my estate during the life time of my said wife, or so long as she remains my widow, but that the whole income thereof to be devoted as at present to the maintenance of my home known as 'The Anchorage,' at Fair Haven, N. J." This clause

relates only to the testator's other property outside of the Anchorage as he expressly provides that the income is to be used for the maintenance of the home in the Anchorage, and the testator himself revoked this clause by giving all of that particular property to his wife by the Codicil to his will. Therefore, no part of this effects the sale and distribution of the proceeds of the sale of the Anchorage.

In this same paragraph he goes on further as follows:

"It is my will that no real estate shall be sold or mortgaged without the consent in writing of each of my executors and executrixes." As this clause is part of this paragraph in which he provides for no distribution of his other property as he wants the income devoted to the maintenance of this Anchorage, we feel convinced that no meaning can be given to it that could bar the right of any of the tenants in common to maintain their action for partition, and it certainly has no effect whatsoever except as one of the crude efforts made by the testator to urge upon the respective numbers of his family to maintain the Anchorage as their favorite home. There is no power of sale in the will so that the executors could not sell or mortgage the Anchorage without all agreeing in writing by executing the deed of conveyance. The definite language in the Fifth paragraph of the will in which he says: "I hereby give, devise and bequeath all the rest, residue and remainder of my property, real and personal to my beloved wife and six children (naming them), their heirs and assigns forever, share and share alike" makes them all tenants in common and they could not sell the Anchorage without all signing the deed.

Krueger v Frederick, 88 N.J. Eq. 259
Potter v Couch, 141 U.S. 297 @ 315

Therefore, this no sale or mortgage clause is an absolute nullity and is entitled to no consideration in this action.

It seems to me that the clear intention of the Testator as expressed by his Will is to give the widow and his six children an estate in common in fee, each an undivided one seventh in his lands, and a similar one seventh each of his personalty, coupled with a wish that they might live together, keep up the Anchorage as their home. This was his intention in 1906. He was then a rich man. In 1916 he was a poor man. By a Codicil he gave the widow his home in Elizabeth and the remaining balance of his personal property, but left the Anchorage as he had disposed of it in the Will. In that Codicil he did not say anything about the Anchorage, and he did not give the widow any life estate therein. By giving all the rest of his estate to the widow except the Anchorage he made impossible the carrying out of his wish for the Anchorage to be maintained as a home and thereby showed his intention to nullify and revoke his wish for the continuance of the Anchorage as a home for his widow and children.

We respectfully submit that the conclusions of the Vice Chancellor are correct in statement of fact and the conclusions in accordance with law and the decree for sale is properly made and that the Appellant's Petition of Appeal should be dismissed with costs to the Complainant-Respondent.

Respectfully submitted,

CHARLES E. HENDRICKSON,
Of Counsel with the Complainant-Respondent.

N. J. Court of Errors and Appeals.

BETWEEN HAMILTON S. BATTIN, *Complainant-Respondent,* AND JENNIE MAE BATTIN ET ALS., *Defendants,* AND JENNIE MAE BATTIN AND LAMBERT EARLE BATTIN, *Appellants.*	**On Appeal from Decree in Chancery of New Jersey.**

BRIEF FOR DEFENDANTS-APPELLANTS.

FACTS.

Sat below: Walker, C., Griffin, V. C.

The above entitled cause involves a construction of the will of Lambert B. Battin, deceased, and a demand by complainant for partition of the premises known as "The Anchorage," the homestead of said testator and his family during his lifetime and now occupied by the appellants who are opposed to such partition.

Lambert B. Battin, testator, and Jennie Mae

Battin, his wife, were married March 28, 1896. A son, Lambert Earle Battin, their only child, was born June 25, 1898. The wife and the son Earle are the appellants in this cause. Testator and both appellants lived together until the death of testator February 12, 1918, in their home, "The Anchorage."

By a former marriage, Lambert B. Battin had five other children, the oldest, Hamilton S. Battin, complainant-respondent in this cause, and four daughters who were made defendants but who do not appear as appellants or respondents.

The complete will and its codicil, probated April 29, 1918, are set forth in the State of Case on pages 5 to 9 inclusive as Exhibits A and B.

THE PROCEEDINGS BELOW.

The special master to whom this case was referred, determined in his report (Pages 12 to 24) that Jennie Mae Battin is the life tenant of the premises in question called in the will "The Anchorage" (Page 20, line 37, to page 21, line 4), and furthermore has additional rights therein under the will of her husband, the testator, who expresses his intention in the FIFTH item of the will as follows:

> "It is further my will that all expense connected with my real estate, such as taxes, insurance, repairs, etc., shall be met by my heirs, share and share alike. Any failure to do so shall be charged against his or her share on final division of my estate."

Exceptions were taken by the complainant to the master's report, and the Vice Chancellor before whom the case was brought sustained certain exceptions, and in his opinion (Page 77, line 22)

says: "It is perfectly plain that she has not a life estate; she has merely an option of user."

POINT ONE.

The Vice Chancellor was in error in determining that appellant Jennie Mae Battin had not a life estate in the premises, since the will expresses the intention of the testator to bestow upon his wife a life interest in their home, The Anchorage.

In the SIXTH item of the will he declares:

> "It is my intention and wish as above expressed that my children and wife shall continue the home as now maintained, after my death, and to that end it is my will that no distribution be made of my estate during the lifetime of my said wife, or so long as she remains my widow, but that the whole income thereof to be devoted as at present to the maintenance of my home known as 'The Anchorage' at Fair Haven, N. J." Page 7, line 33, to page 8, line 1.)

Evidently the testator intended to absolve his widow from the usual duties and obligations attending a life tenancy. "Such provisions contrary to the rule of making repairs, paying taxes, etc., are possible." Baker vs. Baker, 82 N. J. Eq., 150.

POINT TWO.

The Vice Chancellor was in error in stating that the widow of the testator had not been using The Anchorage as a home and had made her home at Red Bank (Page 77, lines 36 to 40).

In the Vice Chancellor's opinion he states (Page 77, line 7): "If she (Jennie Mae Battin) has abandoned the place as a home, the bill for partition is maintainable."

By the testimony of Jennie Mae Battin, cross-examined (Page 71, line 4, and remainder of page), it is shown that the widow had no intention of abandoning her home, "The Anchorage," and has not done so.

By the direct testimony (Page 68, line 20, etc.) it is shown that she is financially able to maintain "The Anchorage" as a home for herself and her son Earle, who bears part of the burden of expense.

During the World War, Earle Battin served his country in the navy and of course was absent from "The Anchorage" for several months, but his personal belongings were never removed from his home and whenever he was off duty he spent his time with his mother at their home, or if she chanced to be away temporarily he occupied "The Anchorage" alone, cooking and sewing for himself, sailor like. The home has not been abandoned by either appellant but all their furniture and the household furnishings, which passed to Jennie Mae Battin under the codicil of the will (Page 9, line 10,) including three pianos, rugs, bedding, etc., have never been removed from the homestead, and all said furnishings are there to this day. When it was necessary for the widow to close the large house because of the severe winter weather and the loneliness during her son's absence at sea in war time, she did rent a single room in Red Bank and boarded there. Very often in this period she visited "The Anchorage" to assure herself that the property was safe. (Page 38, lines 32, etc.)

POINT THREE.

No decree for sale of The Anchorage ought to have been made, since the will of the

testator expressly forbade a sale unless with the consent in writing of each of the seven executors.

In the SIXTH item of the will, last sentence (Page 8, lines 1 to 4) the testator declares:

> "It is my will that no real estate shall be sold or mortgaged without the consent in writing of each of my executors and executrixes."

Thus under the will the seven remaindermen (who are also the seven executors), namely the wife and the six children of testator, could exercise the power of sale provided the consent was unanimous, but it was not unanimous. Both appellants resist the partition and desire to maintain "The Anchorage" as their permanent home so long as Earle Battin remains unmarried, at least, according to that provision of the will, THIRD item, which says:

> "My widow and any unmarried child shall have a home at "The Anchorage," Fair Haven, N. J." (Page 7, lines 1 to 3.)

The Vice Chancellor stated during the direct examination of Hamilton S. Battin (Page 64, line 6, etc.), "The language is peculiar; but I think the plain intent of the testator was to protect his wife at all hazards; that she was the primary object of his bounty. The only thing I have in mind is whether the property ought not to be sold."

The codicil to the will emphasizes the fact that the wife was the main object of testator's bounty, and this is the more clearly understood when it is remembered that testator during his lifetime received from his father, Joseph Battin, an income from a certain trust fund, which said income passed to the six children of testator at his decease, but the widow did not share in such income. Testator

names his reasons in the SECOND item of the will (Page 6, line 8).

In Radley vs. Radley, 78 N. J. Eq. 170, it is said: "A life estate may be sold without the consent of the life tenant only when it exists as an interest in lands, the remainder of which is in others who are entitled to possession in some form, either with the life tenant or exclusive of him or in conjunction with him."

Under the provisions of the will none of the remaindermen excepting the unmarried children are entitled to any use or possession of "The Anchorage" in conjunction with the widow of Lambert B. Battin, therefore a partition is not possible in this case.

Bouvier v. Baltimore and New York Railway Company, 67 N. J. Law, 281, discussing Acts relating to partition, states that there is no Act of New Jersey which "empowers the court to order the sale of a life estate, which is in actual use and enjoyment of the life tenant without that tenant's consent."

CONCLUSION.

This case depends upon the construction of the will of Lambert B. Battin, and if the widow of the testator is found to be in truth and in fact the life tenant of the premises in question, namely, "The Anchorage," then the decree for sale as ordered by the Vice Chancellor should be reversed by this Court.

Respectfully submitted,

MARY WOOSTER SUTTON,

Solicitor for and of Counsel with
Defendants-Appellants.