

SUPREME COURT REPORTS.

1879.

VOL. IX. PART II.

IN RE ESTATE OF MCINERNY.

Executor.—Name idem sonans.

Where a husband and wife had by last will appointed the "Reverend Farley" their executor, and there was no person of that name in the place, but it was shewn that the testators had expressed their intention to appoint a priest named the Reverend Patrick Farrelly, the Court ordered letters of administration under the will to issue to the Rev. Patrick Farrelly, as being the person intended to be appointed by the testator.

Thomas McInerny and wife executed a mutual last will on the 2nd May, 1870, appointing the survivor of them and the "Reverend Farley, of Port Elizabeth," the executors. Mrs. McInerny died in June, 1875, and the husband in August, 1878. The Rev. P. Farrelly applied for letters of administration to be issued to him as sole surviving executor, but the Master of the Court refused to grant them on account of the difference in the spelling of the name. Thereupon notice was given on behalf of the Rev. P. Farrelly, calling upon the Master to shew cause why he should not be ordered to issue letters of administration to the applicant under the will.

Jacobs, for the applicant, produced several affidavits in support of the motion. Martin Devitt deposed that he was one of the attesting witnesses to the will; and that the Rev.

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Patrick Farrelly, then of Port Elizabeth, but now of Uitenhage, was one of the executors named by the testators, and was the same and identical person therein described as the "Reverend Farley." The Rev. John O'Brien deposed that he was a Roman Catholic Priest, officiating in St. Augustine's Church, Port Elizabeth, and that in 1870 the Rev. Patrick Farrelly was an assistant priest in the same church; that deponent was intimately acquainted with Mr. and Mrs. McInerny, and that he knew from conversations with them prior to the execution of their will, that it was their wish, and intention to appoint the said Rev. Patrick Farrelly to be an executor jointly with the survivor of them; that after the death of Mrs. McInerny he had been informed by the husband that the Rev. Patrick Farrelly had been appointed by his late wife and himself as executor under their mutual will; that the Rev. Patrick Farrelly was now priest in charge of the Roman Catholic church at Uitenhage, and was the person who had applied to the Master for letters of administration, and was the identical person described as the "Reverend Farley, of Port Elizabeth," in the said will; and that during his pastorate there had never been any other priest of the name of Farrelly in the Roman Catholic church, or minister of any other church in Port Elizabeth, except the applicant.

There was no appearance for the Master.

The Court ordered letters of administration to issue to the applicant; at the same time intimating that the Master had acted correctly in the course he had adopted.

Ordered accordingly.

[Applicant's Attorneys, FAIRBRIDGE, ARDERNE, & SCANLEN.]
