

Court of Errors and Appeals.

Between
The ATTORNEY GENERAL, ex rel., the
Right Rev. JAMES R. BAYLEY, com-
plainant,
and
THEODORE RUNYON and JOHN M. GERVAIS,
Executors of N. Moore, deceased, de-
fendants. } *On Bill.*

Bill of Complaint.

[Filed September 10, 1866.]

IN CHANCERY OF NEW JERSEY.

*To the Honorable Henry W. Green, Chancellor of the State of
New Jersey.*

Informing, showeth unto your Honor, Frederick T. Freling-
huysen, esquire, Attorney General of the state of New Jer-
sey, at and by the relation of the Right Reverend James
Roosevelt Bayley, Bishop of the Roman Catholic Church of
the United States of America, and of the diocese of Newark, 10
comprehending the city of Newark, in the state of New Jer-
sey, and complaining showeth, the said James R. Bayley,
that on or about the twenty-ninth day of March, in the year
of our Lord one thousand eight hundred and sixty-five, one
Nicholas Moore, of the city of Newark, county of Essex, and
state of New Jersey, being then seized and possessed of
valuable real and personal estate, and without lawful issue,
made, published, and declared his last will and testament in
manner following, that is to say—

“In the name of God, amen : I, Nicholas Moore, of Union street, in the city of Newark, in the county of Essex, and state of New Jersey, being of sound and disposing mind, memory, and understanding, do make and publish this, my last will and testament, in manner and form following, that is to say—

First. It is my wish, and I do order and direct that my executors, herein after named, do pay all my just debts, funeral, and testamentary expenses, as soon after my decease
10 as conveniently may be.

Second. I give to my said executors the sum of seven hundred dollars, out of which they are to pay said funeral expenses, and they are to give the balance, which will remain after payment of those funeral expenses, to the clergyman who at the time of my funeral shall be the pastor of St. James' Roman Catholic Church in Newark, aforesaid, to be disposed of by him at his discretion for the benefit of my soul and the soul of my deceased wife.

Third. I give, devise, and bequeath to my said executors,
20 and to the survivor of them, all the rest and residue of my estate, real, personal, and mixed, whatsoever, and wheresoever the same may be, and of whatsoever the same may consist, including all the property which I shall own or be entitled unto at the time of my death ; and I do hereby give to them and him full power to sell and dispose of, at public or private sale, as they or he may deem expedient and most for the benefit of my estate, and at their or his discretion as to price and terms of sale, all the real estate which I shall own at the time of my decease ; and I hereby give to them
30 and him full power and authority to make, execute, acknowledge, and deliver, all proper or necessary deeds or conveyances for the same, when sold. This devise and bequest of rest and residue of my estate to my executors and the survivor of them are, however, *in trust* for the purposes following, that is to say—

First. To pay to my daughter, Ellen McGrader, of New Haven, the sum of two hundred dollars, within one year after my decease, her individual receipt to be taken therefor.

Second. To pay to my cousin, Martin Flinn, the sum of
40 two hundred dollars, within one year after my decease.

Third. To pay to Ann Flinn, daughter of said Martin Flinn, the sum of one hundred dollars, in one year after my decease.

Fourth. To pay and appropriate one thousand dollars for the building of an altar in St. James' Roman Catholic Church aforesaid, and the sum of six hundred dollars for the construction of two side windows in said church, one to contain my name, and the other that of my deceased wife, Ann Moore.

Fifth. To pay to St. Mary's Orphan Asylum, now or late located in Newark aforesaid, the sum of four hundred dollars. 10

Sixth. With the balance of my estate which may remain after executing the foregoing trusts, to establish, as soon as may be practicable after my decease, in what is now known as the fifth ward of said city of Newark, an orphan asylum, to be called St. James' Roman Catholic Orphan Asylum, and also hospital for sick and infirm persons. And my said executors, or the survivor of them, shall, as soon as may be conveniently practicable after the institutions shall have been established, cause them to be incorporated, one corporation for both institutions, and shall convey to the corporation, 20 when created, all the property belonging by assignment or appropriation of said executors or the survivor of them, to the institutions. In the meantime and until such incorporation, my executors or the survivor of them, shall have the management of the institutions.

Lastly. I hereby constitute and appoint Theodore Runyon, now mayor of said city of Newark, and Reverend John M. Gervais, now pastor of St. James' Roman Catholic Church, in Newark aforesaid, executors of this, my last will and testament, hereby revoking and annulling all other and former 30 wills and testaments by me made.

In witness whereof I have hereto set my hand and seal this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and sixty-five."

That on or about the first day of July, in the year one thousand eight hundred and sixty-five, said testator departed this life without having in anywise altered or revoked his said will, and the same was thereafter, to wit, on or about the twenty-fifth day of July, one thousand eight hundred and sixty-five, admitted to probate by the surrogate of the county 40

of Essex aforesaid, by whom letters testamentary thereon were issued to Theodore Runyon and John M. Gervais, the executors named therein, who thereupon immediately entered upon the execution thereof and are still engaged therein.

That said executors have for the most part converted said testator's estate into money and personal securities, paid his debts, and discharged the legacies mentioned in said will, and are now proceeding or professing and pretending to be proceeding to carry out and execute the sixth clause or
 10 residuary bequest of said will, providing for an orphan asylum and hospital with the residuary estate, amounting to about forty thousand dollars.

That said executors propose, notwithstanding the language aforesaid of said will, to establish an orphan asylum and hospital purely charitable and of a general nature; to organize a corporation for their administration in such a manner as that Protestants will not be excluded from their benefits, or from their management, and that Roman Catholics shall not be managers of said charities, or either of them,
 20 more than persons of any religious belief or persons without any religious creed whatever; nor shall the tenets of the Roman Catholic Church be taught in said institutions or either of them, or the forms of worship of said church be adopted therein, either exclusively or in preference to those of any other religious denomination.

That said executors are at this time circulating, and causing and permitting to be circulated, subscription papers for the obtaining the contributions of citizens of Newark generally, without regard to their denominational belief, to increase the funds which may be used for the said institution,
 30 and are obtaining thereby subscriptions from divers persons for the increase of said funds, on the ground that said institutions, and especially said hospital, were intended by said testator to be organized and will be organized under no sectarian or denominational government, nor for the special benefit of orphans, or sick and infirm persons of the Roman Catholic faith, but that they were both intended and will be carried on as municipal charities for the benefit of any person, orphans, or disabled, and without being under the management
 40 peculiarly of the Roman Catholic Church or its members, lay or clerical.

And the said Attorney General, on the relation aforesaid, further informs, and the said complainant further shows and charges, that it was the intent of the said testator by his said will to create two institutions, to wit, one an orphan asylum and the other a hospital, both to be located in the fifth ward of the city of Newark, both for general charity and for the reception and benefit of persons, without regard to religious belief, but to be under the control and management exclusively of the Roman Catholic Church; that is to say, that religious services should be in both of them had, and religious 10 instruction there given according to the tenets and forms of worship of said Roman Catholic Church; and that in order to secure that result, the trustees managing said institutions, in when incorporated, should be members of the said Roman Catholic Church, and that the institutions should each be subject to the right of visitation, for spiritual purposes, of the bishops and clergy of said church.

That the said testator was for a long while before his death, an earnest Roman Catholic, a large contributor to the building of St. James' Roman Catholic Church in the 20 fifth ward, in which he was a stated worshipper; that he was warmly attached to the minister of the said church, whom he made one of his executors, in order that said corporation might be properly organized and its administration begun according to his design, and under Roman Catholic guidance; that it clearly appears by said will that it was his design and intent that the orphan asylum he wished to found should be a Roman Catholic Orphan Asylum, and that it being a necessity that little children should receive constant religious instruction, the charity cannot rightly be 30 administered without sectarian instruction, while the creed of the testator and the words of the will show clearly that it was the Roman Catholic doctrines and worship that he wished there to be promoted; that a hospital to be properly carried on, requires the presence of nurses and religious ministers, who may give consolation to the sick and dying; that the Roman Catholic Church has many orphan asylums and hospitals under its care, with orders of men and women especially trained for this department of christian labor; that when the testator, a Roman Catholic, spoke in his will 40

of a Roman Catholic Orphan Asylum, he had reference to like asylums with whose existance and character he was familiar, and when he provided that one corporation should manage both the asylum and the hospital, his intention was manifested that both should be under Roman Catholic management, governed and carried on as Roman Catholics ordinarily govern and carry on like institutions.

And the said Attorney General further informing in the relation aforesaid, and the said complainant further shows
 10 and charges, that the said relator has caused to be prepared a proposed charter for a corporation to manage said residuary estate of said testator, in the manner intended by said testator, a copy of which is hereto annexed as expressed in his said will, and hath presented the same to said executors and requested them to make immediate application to the legislature of New Jersey for the passage thereof; that the said executors make no objection to the said act nor to obtaining the passage thereof as aforesaid, so far as concerns the particulars of the same; and aver their willingness to apply there-
 20 fore, if the general scope of said act be according to the intent of said testator, as expressed in said will and endeavored to be secured thereby; but they insist that the general scope and design of said act is contrary to the intent of said testator, as expressed in said will, and that neither the said orphan asylum or hospital, but especially said hospital, ought to be managed as Roman Catholic institutions.

In tender consideration whereof, and forasmuch as this matter is wholly and peculiarly within the jurisdiction of this honorable court, the said Attorney General informing, and
 30 on the relation aforesaid, and said complainant pray that this honorable court may, by their decree in this cause, authoritatively construe the said will and direct the said executors how best to carry out the design of the testator in regard to the charities aforesaid, and each of them; and that a proper charter may be settled under the direction of this court, for the passage of which by the legislature said executors may apply, and that this court may declare that the design and intent of said testator were to cause the establishment of an orphan asylum and hospital, to be managed
 40 and carried on as Roman Catholic institutions, exclusively by Roman Catholic trustees, and under the direction and

subject to the spiritual visitation of ministers of the Roman Catholic Churches, and with the use of Roman Catholic forms of worship of Almighty God, and teaching, in all matters of religious instruction, the doctrines and tenets of the Roman Catholic Church,

And that such other and further relief may be afforded as to this honorable court shall seem meet and agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant the state's writ of subpœna, issuing out of and under 10 the seal of this honorable court, to be directed to said Theodore Runyon and John M. Gervais, executors as aforesaid, of this last will and testament of Nicholas Moore, deceased, therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be named, to appear before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such decree as to your honor shall seem meet and agreeable to equity and good conscience.

PARKER & KEASBEY, 20

Solicitors and of counsel with relator and complainant.

FRED'K T. FRELINGHUYSEN,
Attorney General.

An act to incorporate the St. James' Roman Catholic Orphan Asylum and Hospital for sick and infirm persons, in Newark.

Whereas, Nicholas Moore, late of Newark, New Jersey, deceased, did, by his last will, devise certain property to his executors in trust to establish therewith an Orphan Asylum 30 and Hospital, to be incorporated by the name and for the purposes expressed in the title of this act; and whereas, it is right that his charitable intentions should be carried out; therefore, be it enacted by the Senate and General Assembly of the state of New Jersey, and it is hereby enacted by authority of the same—

1. That the Right Rev. James Roosevelt Bayley, the Reverend John M. Gervais, William Dunn, Christopher Nugent, Michael Phillips, Patrick Brady, Michael Ledwith, and their associates and successors, constituted in manner following, be and they are hereby made a body politic and corporate in fact and in law, by the name of the "St. James' Roman Catholic Orphan Asylum and Hospital for sick and infirm persons, in Newark," and by that name they and their successors shall have perpetual succession, power to sue and to
 10 be sued, plead and be impleaded, answer and be answered unto, in all courts and places whatsoever, to make a common seal, and the same to change at pleasure, and to purchase, take, hold, receive, and convey any lands, tenements, or hereditaments, in fee simple or otherwise, or any goods, chattels, choses in action or other personal property, by gift, grant, devise, bequest, or otherwise, and the same to give, grant, convey, sell, use or dispose of for the use of said corporators.

2. *And be it enacted*, That one object of the said corporation
 20 shall be the support and instruction of destitute orphan children, to be selected by the corporation, under such regulations as the said directors shall ordain, and to provide a suitable asylum for such children, to be located within the district now known as the fifth ward of the city of Newark; and that for the purpose of better educating said children, they shall be trained to habits of industry, and shall have the benefit of moral and religious instruction.

3. *And be it enacted*, That another object of said corporation shall be, the erection within said territory now known as
 30 the fifth ward of the said city of Newark, of a building to be used as a hospital for sick, infirm, and wounded persons of whatever age, and whether or not in destitute circumstances, in order to their being more comfortably and skilfully nursed, cared for, and cured; the maintenance forever of such hospital, and the making therein and thereby provision for such sick and infirm, and wounded persons; such maintenance and provision to be made under and by virtue of such regulations as the said directors shall ordain.

4. *And be it enacted*, That the religious instruction of said
 40 orphan children, shall be according to the tenets of the

Roman Catholic Church, and that there shall be attached to said hospital a chaplain, to be selected from time to time, by said directors, and who shall be a priest of said Roman Catholic Church; and religious services may be had in said hospital under regulations of said directors, which shall be according to the rites and forms of said Roman Catholic Church; provided, that all sick, infirm, and wounded persons, without distinction as to religious belief, shall be always admitted to said hospital, and that such persons shall be permitted to receive religious instruction or consolation from 10 any person or minister, and in such form as they may desire, also without distinction as to religious belief; that the said James R. Bayley, so long as he shall remain bishop of said diocese, and any future bishop thereof, shall be *ex officio* president of said corporation.

5. *And be it enacted*, That whenever any director shall die or resign, or his office be in any way vacated, the remaining directors shall, by a majority vote, appoint a director in his stead; and said directors shall in like manner elect a treasurer, secretary, and such other officers as they shall think best, 20 whose duties shall be by them prescribed and regulated; provided, that the treasurer shall give suitable security for the faithful fulfilment of his duties.

6. *And be it enacted*, That it shall be lawful for the said directors to receive from the overseers of the poor, or other persons having lawful power in the premises, such orphan children as it may be desired to place under their care, and to have the same bound to them in the same manner, and subject to the same laws and regulations as such children may be bound to other parties; and the said directors, when 30 the children under their care arrive at the proper age and their interests require it, shall have the power to bind out said children as they would have under the laws of the state, if they were their legal guardians; such binding to the said association, and binding out by them, to be subject to all the laws and regulations of this state, for the protection and benefit of said children.

7. *And be it enacted*, That a majority of the directors shall constitute a board for the transaction of business, and shall have power to make and prescribe such by-laws and regu- 40

lations as to them shall seem needful and proper for the management and direction of the said corporation; provided, such by-laws and regulations shall not be repugnant to this act, or the laws of this state, or the United States.

8. *And be it enacted*, That the property and effects of the said corporation, held or used for the purposes contemplated by this act, shall not be subject to the imposition of any tax.

9. *And be it enacted*, That it shall be lawful for the legislature at any time hereafter to alter, modify, or repeal this act.

10 10. *And be it enacted*, That this act shall take effect immediately.

Answer.

[Filed September 27, 1866.]

The answer of Theodore Runyon and John M. Gervais, executors of the last will and testament of Nicholas Moore, deceased, defendants to the information of the honorable Frederick T. Frelinghuysen, Attorney General of the State of New Jersey, and the bill of complaint of the Right Reverend James Roosevelt Bayley, Bishop of the Roman
20 Catholic diocese of Newark, in this state.

These defendants, now and at all times hereafter, &c., &c., &c., answering, say—they admit that Nicholas Moore, in said information and bill mentioned, departed this life at or about the time in said information and bill mentioned; that he died seized and possessed of valuable real and personal estate in the city of Newark, in the county of Essex, in this state, and without lawful issue; and that before his death, at or about the time in said information and bill in that behalf
30 stated, he made, published, and declared his last will, in the manner and of the tenor and to the effect in said information and bill in that behalf set forth; that at or about the time in said information and bill in that behalf mentioned, said will, the same being in full force, was admitted to probate, and letters testamentary thereon issued by the surrogate

of said county to these defendants, who immediately thereafter entered upon the execution thereof, and are still engaged therein.

And these defendants further answering say, it is true that they are engaged in settling said testator's estate, but it is not true that they have, for the most part, converted said estate into money and personal securities; but they say that they are proceeding with all practicable despatch in settling said estate, and propose, as rapidly as may be consistent with the best interest of said estate, to convert all the real property belonging to it into money; they believe they have paid all the testator's just debts, and they are proceeding to carry out and execute the sixth clause or residuary bequest in said will contained, providing for an Orphan Asylum and Hospital, but they are not able to state what the amount of the residuary estate will be. 10

And these defendants further answering say, they are proceeding to establish a hospital and orphan asylum, purely charitable, and of a general and unsectarian character, to organize the corporation for the administration thereof in such manner as that Protestants will not be excluded from the benefits thereof or from their management, and that Roman Catholics shall not be managers of those charities any more than persons of other religious belief, or persons without any religious creed whatever, and that the tenets of the Roman Catholic Church shall not be taught in said institutions, or the forms of worship of that church be adopted therein exclusively or in preference to those of any other religious denomination, and that because they believe such to have been the intention of said testator in providing for said asylum and hospital. 20 30

And these defendants further answering admit, that they are circulating subscription papers for obtaining the contributions of the citizens of Newark generally, without regard to their denominational belief, to increase the funds which may be used for said hospital and asylum, and are obtaining subscriptions, as in said information and bill mentioned, from divers persons for the increase of said funds, on the ground that said hospital and asylum were intended by said testator to be organized and will be organized under no sec- 40

tarian or dominational government, nor for the special benefit of orphans or sick and infirm of the Roman Catholic faith; but that said hospital and asylum were intended to be and will be carried on as secular charities for the benefit of any persons, orphans or disabled, and without being under the management of the Roman Catholic Church or its members, lay or clerical.

And these defendants further answering say, they believe and they therefore admit, that it was the intention of said
 10 testator by his said will to create two institutions, as in said bill and information charged, but they do not believe and they therefore deny that said testator intended that said orphan asylum and hospital should be under the control and management of the Roman Catholic Church, in the manner or as in said bill and information in that behalf alleged, or at all, or that he intended that the trustees managing said institutions, when incorporated, should be members of the Roman Catholic Church, or that the institutions, or either of them, should be subject to the right of visitation for spiritual
 20 purposes, of the bishop and clergy (or either or any of them) of said Roman Catholic Church, the said will making no such provisions, but merely providing as to said orphan asylum that it shall be called St. James' Roman Catholic Orphan Asylum, which these defendants understand to be mere direction as to the name of said asylum, and having no effect, either directory or otherwise, beyond or besides that; and they further say that said testator in fact and as indicative that said charities should be non-denominational, committed the establishment of said institutions to the hands of
 30 these defendants, one of whom, the Rev. John M. Gervais, is and at the time of making said will, was a Roman Catholic, and the other, of whom this defendant, Theodore Runyon, then was and still is a Protestant, as the trustees of the same, giving to them full charge, without limitation or direction, except as to including both charities in one corporation over the establishment thereof.

And these defendants further answering say, it is true that said testator (who was of humble origin) was sincere in his attachment to the Roman Catholic religion, but they deny
 40 that he was an earnest Roman Catholic in the sense inti-

mated in said information and bill, he having been in no sense a propagandist, or even specially desirous to promote the spread of the Roman Catholic religion. They admit that he was a considerable contributor to the building of St. James' Roman Catholic Church, in the fifth ward of Newark aforesaid, in which he was a worshipper; that he was warmly attached to the pastor of said church, whom he made one of his executors; but they deny that he made him one of his executors with the design that the institution might be organized, or its administration under Roman Catholic guidance; and they also deny that it appears by said will that it was said testator's design or wish that said orphan asylum should be a Roman Catholic Orphan Asylum, in the sense insisted upon in said information and bill, or more than in name; and while they admit that it is a necessity that little children should receive constant religious instruction, they deny that there is any necessity that such instruction shall be sectarian or denominational, and they deny that the charity cannot rightly be administered without sectarian instruction; and they also deny that either the creed of the testator or the words of the will, or both, show that the testator wished to promote the Roman Catholic doctrine or worship there; and they also admit, that in order to the proper conducting of a hospital the presence of nurses and of religious ministers, who may give consolation to the sick and dying, are required; and they also admit that the Roman Catholic Church has many orphan asylums and hospitals under its care, with orders of men and woman especially trained for this department of christain labor, but they also say that a hospital may be equally well conducted in every respect under Protestant or non-sectarian guidance and management; and they deny that when the testator, being a Roman Catholic, directed in his will that said asylum should be called St. James' Roman Catholic Asylum, he had any discoverable, or any reference to any like asylum, or any asylum, or that in providing for one corporation for both institutions he manifested any intention that the institutions, or either of them, should be under Roman Catholic management, or governed or carried on as Roman Catholics particularly carry on and govern like institutions. And these

defendants allege, that from the fact that said testator, in his said will, gave no denominational character whatever to said charities, or either of them, and attached no conditions to the establishment and management of the same, and made no provision whatever for sectarian or denominational management of or control over the same, or either of them, not limiting the benefits of said institutions, or either of them, to any class of persons, or the children of any particular persons or class, thus evidencing his intention to make them

10 freely available to all who should stand in need of their aid; and in the case of said hospital not even giving a denominational name to the institution, but in all things providing for said institutions by language appropriate to benevolent institutions intended to be free from sectarian control and management, his intention to make said institutions merely secular is clearly manifested. And they submit that, to place those institutions, or either of them, under any particular denominational control or management, or to confine their benefits, or the benefits of either of them, to any particular

20 class of persons, or to the children of any particular class of persons, would be to wrest those institutions from the intentions of said testator in founding the same, and to impose thereon limitations never contemplated by him, and in clear violation of his intentions.

And these defendants further answering say, that said testator was, as aforesaid, a man of considerable property, that at the time of making said will, and at the time of his death, he was a widower without legitimate children, and that having in said will made certain bequests to pious uses of a

30 denominational character, among which is the bequest of four hundred dollars to St. Mary's Orphan Asylum, a Roman Catholic institution, then and still wholly denominational, and under Roman Catholic management in every respect, he, in his will, devoted the greater part of his estate to enterprises—the orphan asylum and hospital in question in this cause—of a merely philanthropic character, limiting the locality to the ward in the city of Newark in which he had resided for very many years, and in which he had, by his industry, accumulated his property, and assuring the secular

40 character of the enterprises by appointing the then mayor of

the city as such (as appears by said will) one of the trustees thereof.

And these defendants further answering say, they admit that the proposed act of the legislature, in said bill and information mentioned, has been prepared and presented to them with the request that they would apply for the passage thereof, as in said bill and information set forth, and they admit that they have made, as they still do, the objections to so doing in said bill and information in that behalf made, and that it is also true that these defendants insist that the 10
general scope and design of that act are contrary to the intent of said testator, and that neither the Orphan Asylum or the Hospital, and especially the latter, ought to be managed as Roman Catholic institutions.

And these defendants, &c., &c.

All which matters and things, &c., &c.

RUNYON & GUILD,

Solicitors for and of counsel with the defendants.

Opinion.

The hearing in this case is upon bill and answer. Nicholas 20
Moore, of the city of Newark, by his will, dated March 29th, 1865, gave to the defendants, the executors thereof, the bulk of his estate for certain specified objects, one of which, being the sixth and last, is designated in these words:

“Sixth. With the balance of my estate which may remain after executing the foregoing trusts, to establish, as soon as may be practicable after my decease, in what is now known as the fifth ward of said city of Newark, an orphan asylum, to be called St. James’ Roman Catholic Orphan Asylum, and also a hospital for sick and infirm persons; and my execu- 30
tors, or the survivor of them, shall, as soon as may be practicable after the institutions shall have been established, cause them to be incorporated, one corporation for both institutions, and shall convey to the corporation, when created, all the property belonging, by assignment or appropriation of said executors, or the survivor of them, to the institution;

in the meantime, and until such incorporation, such executors, or the survivor of them, shall have the management of the institution."

The testator belonged to St. James' Roman Catholic Church in Newark, of which the defendant, John M. Gervais, was pastor, and in the clause appointing the executors, Gervais is so described, and Theodore Runyon, the other executor, is there described as mayor of the city of Newark, which office he then filled.

- 10 The executors design to perform the trust imposed by the above recited clause of the will, by establishing an orphan asylum and hospital, not under the control of the Roman Catholic Church or of the bishop of the diocese of that church, in which they will be located. The information is on the relation of the Right Reverend James Roosevelt Bailey, the bishop of that diocese. He claims that it was the intention of the testator to place the orphan asylum and hospital under the exclusive control and management of the Roman Catholic Church; that the trustees should be mem-
- 20 bers of that church, and that they should be subject to the right of visitation, for spiritual purposes, of the bishop and clergy of that church, and that its doctrines and tenets should be taught, and its forms of worship observed in these institutions.

The prayer of the bill is that the defendants may be compelled to establish these institutions upon such principles, and may be required to adopt and procure a charter designed by the relator for the purpose of carrying them out—a copy of which is annexed to the bill.

- 30 The main question in the cause is—Was it the intention of the testator, in founding these institutions, to make them denominational, and to place them under the control of the Roman Catholic Church, of which he was a member? There is nothing in the clause of the will above recited that bears upon this question, except the name of the orphan asylum; he directs that it shall be called "St. James' Roman Catholic Orphan Asylum." It does not seem to me that the mere name is sufficient to give character or control of the institution. The direction is to establish "an orphan asylum," to
- 40 be called by that name. If he had entertained the intention

contended for, the most natural way to have expressed it was to direct the establishment of "a Roman Catholic Orphan Asylum," to be called by that name. It seems to me that this would naturally, if not unavoidably, have suggested itself to him or the draftsman of the will, in casting about for words to express that intention. No one would suppose that naming a charity after an individual, a society, or a church, would give the individual or body whose name was used the control of the charity. Directing a charity to be named The McClellan Hospital, The Lincoln Home, or The Farra- 10
gut Snug Harbor, would not give to the person whose name was thus used the visitation or control of it. The testator directed this asylum to be named after his own church, St. James' Roman Catholic Church, most probably to show his respect for, and his attachment to that church and its pastor; and if the right to control is to be inferred from the name, it should be given to St. James' church and its pastor.

Nor do the other provisions of the will or the circumstances of the testator change the construction of this clause, so as to give it a different signification from the plain mean- 20
ing of the words.

He first directs his debts to be paid, and seven hundred dollars to be appropriated for his funeral expenses, and the benefit of his soul and the soul of his deceased wife. The residue of his estate is given to his executors in trust, as follows: First, second, and third, to pay three small legacies, amounting to five hundred dollars; fourth, to expend one thousand dollars for an altar, and six hundred dollars for two windows in St. James' Roman Catholic Church; fifth, to pay to St. Mary's Orphan Asylum, in Newark, four hundred 30
dollars; and then follows, sixth, the clause above set forth.

The fact that after making these bequests, some for purely religious and denominational purposes, and so expressly restricted, he directed these institutions to be established by his executors, shows that he did not mean so to restrict them. This conclusion is strengthened by the fact that one of the executors named to fulfil this trust was a Protestant, and 40
the office which he held, mayor or chief magistrate of the city where the institutions were to be located. That the testator was a decided Catholic, and made

large bequests to the church of which he was a member must, under these circumstances, weigh against the construction of the relator. He would not, if his object was to place these institutions under Roman Catholic control, have directed their establishment by a known Protestant, who, as survivor, might have had the entire direction of their future character.

In my view the right to establish these institutions, for the purpose specified in the will, is in the executors. They and they alone can control the matter. They are not bound
10 to place them under the direction of the Roman Catholic Church or its Bishop or prelates, or to cause the worship of that church to be adopted, or its tenets to be taught exclusively or at all, except so far as their own judgment impels them.

As no relief can be given here, the bill must be dismissed.

Final Decree.

[Filed May 21, 1867.]

This cause coming on for hearing on bill and answer, before the Chancellor, as yet of the Term of February, 1867,
20 and having been argued before Cortland Parker, esquire, for the complainant, and Joseph P. Bradley, esquire, for the defendants, and the Chancellor having considered of the matter, and being of opinion that there is nothing in the last will and testament of Nicholas Moore, deceased, which entitles the relator, as Roman Catholic Bishop of Newark, or otherwise as the representative or head of the Roman Catholic Church, or any portion thereof, to the direction, control, or management of the orphan asylum and hospital created by said will, or which in any way subjects the said charities to
30 the control or management of said church as a denominational body of christians, or requires that they should be established or conducted according to the peculiar principles and usages of said church.

It is, therefore, on this twenty-first day of May, in the year eighteen hundred and sixty-seven, at a stated term of

the court, held at Trenton, ordered, adjudged, and decreed by the Chancellor, that the bill of complaint in this cause be dismissed, with costs.

On motion of

RUNYON & GUILD,
Solicitors for the defendants.

A. O. ZABRISKIE, C.

Notice of Appeal.

[Filed September 11, 1867.]

The complainant hereby appeals from so much of the final 10
decree made in this court, in the above stated cause, as declares that there is nothing in the last will testament of Nicholas Moore, deceased, which entitles the said complainant, as Roman Catholic Bishop of Newark, or otherwise as representative or head of the Roman Catholic Church, or any portion thereof, to the direction, control, or management of the orphan asylum and hospital created by said will or which in any way subjects to the said charities to the control or management of said church, as a denominational 20
body of christians, or requires they should be established or conducted according to the peculiar principles and usages of said church; and from the decree dismissing the bill of complaint therein to the Court of Appeals in the last resort in all causes.

PARKER & KEASBEY,
Solicitors of complainant.

CORTLAND PARKER,
Of counsel.

Dated September 10th, 1867.

I conceive there is good cause for appeal in the above 30
stated cause.

CORTLAND PARKER,
Of counsel with complainant.

Petition of Appeal.

COURT OF ERRORS AND APPEALS.

Between The Attorney General ex rel. the Right Reverend James R. Bayley, appellant, <i>and</i> Theodore Runyon and John M. Gervais, executors of Nicholas Moore, deceased, appellees.	}	<i>On bill, &c.</i>
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[Filed September 12, 1867.]

To the Honorable the Court of Appeals in all causes of law.

The humble petition of the Attorney General ex rel. James R. Bayley, the appellant in the above stated cause, and of the said James R. Bayley, the said relator, respectfully shows—that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the twenty-first day of May, in the year eighteen hundred and sixty-seven, wherein the said Attorney General ex rel.

20 James R. Bayley was complainants, and the said Theodore Runyon and John M. Gervais, executors of Nicholas Moore, deceased, were defendants, in this respect, to wit, that the said decree adjudges that there is nothing in the last will and testament of Nicholas Moore, deceased, which entitles the appellant, as Roman Catholic Bishop of Newark, or otherwise as the representative or head of the Roman Catholic Church, or portion thereof, to the direction, control, or management of the orphan asylum and hospital created by said will, or

30 management of said church, as a denominational body of christians, or requires that they should be established or conducted according to the peculiar principles and usages of said church, and in this respect, that the said decree adjudges that the said bill of complaint in said cause should be dismissed; and your petitioners humbly appeal from the said decree of the said Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said

last will and testament of said Nicholas Moore, deceased, doth entitle the said relator, as Roman Catholic Bishop of Newark, to the direction, control, and management of the orphan asylum and hospital created by said will, and subjects the said charities to the control and management of said church as a denominational body of christians, and that the said relator was entitled to the decree prayed for in said bill of complaint.

Your petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside, and for 10 nothing holden.

And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

Dated September 10th, 1867.

PARKER & KEASBEY,
Solicitors of appellant.

CORTLAND PARKER,
Of counsel.

Answer.

[Filed November 14, 1867.]

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These respondents, not confessing all or any of the matters to be true, as in and by the said petition of appeal are mentioned and set forth, for answer thereunto say, that such decree as is complained of was made by the Court of Chancery, as in the said petition of appeal is mentioned and set forth, but, as to the date, substance, and extent thereof, these respondents humbly beg leave to refer thereto when the same shall be produced. And these respondents humbly conceive, and are advised that the said order is agreeable to equity and justice, and therefore humbly pray that the same may be affirmed, and that this appeal may be dismissed in this honorable court, with costs. 30

Dated November 14th, 1867.

RUNYON & GUILD,
Solicitors for and of counsel with the respondents.

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