

IN THE MATTER OF "THE FARMERS' CREDITORS ARRANGEMENT ACT, 1934," AND AMENDMENTS THERETO,

1938
* Oct. 12.
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1939
* Feb. 7.

AND

IN THE MATTER OF A PROPOSAL FOR A COMPOSITION, EXTENSION OR SCHEME OF ARRANGEMENT UNDER THE SAID ACT BY BARICKMAN HUTTERIAN MUTUAL CORPORATION.

BARICKMAN HUTTERIAN MUTUAL } APPELLANTS;
CORPORATION

AND

SAMUEL A. NAULT, OFFICIAL RECEIVER,
AND ALEXANDER LAFRENIÈRE } RESPONDENTS.
AND JOHN JOSEPH ZASTRE, EXECUTORS OF THE ISADORE ZASTRE ESTATE }
(CREDITORS)

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Farmers' Creditors Arrangement Act, 1934 (Dom.), c. 53—"Farmer," as defined in the Act—Corporation—"Person"—"Principal occupation"—Incorporated religious community of farmers who believed in and practised ownership of property in common—All property owned by the corporation—Question whether it was a "farmer" within said Act and entitled to benefit thereof—Provisions of the incorporating Act, Man., 1931, c. 103.

The appellant corporation was created, as "a body corporate and politic," by special Act, Man., 1931, c. 103. Its members were farmers who constituted a religious community whose tenets and practice included ownership of all things in common, and, under said Act, no member retained or held any property but all property belonged to the corporation for the common use, interest and benefit of its members. Each member was required to devote his time, labour, etc., to the corporation and its purposes. In said Act the preamble stated that "a religious community of farmers exists * * * who have associated themselves together for the purpose of promoting and engaging in the Christian religion * * * according to their religious belief, and of having * * * all things in common"; and the objects of the corporation were stated to be "to promote, engage in and carry on the Christian religion * * * according to the religious belief of the members of the corporation" and "to engage in, and carry on farming, stock-raising, milling, and all branches of these industries; and to manufacture and deal with the products and by-products of these industries," with other subsidiary and incidental objects.

* PRESENT:—Duff C.J. and Rinfret, Cannon, Kerwin and Hudson JJ.

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Held (Cannon J. dissenting): Appellant corporation was a "farmer" within the meaning of that word as used in *The Farmers' Creditors Arrangement Act, 1934* (Dom.), c. 53 (and amendments); and was entitled to take advantage of that Act.

Judgment of the Court of Appeal for Manitoba, 45 Man. R. 619, reversed, and judgment of Roy, C.C.J. (*ibid*), restored.

The definition of "farmer" in said Act as "a person whose principal occupation consists in farming or the tillage of the soil" may include a body corporate and politic, including a corporation of such a nature as that of appellant. Such inclusion is justified by the meaning of the word "person" (definition of which in the *Bankruptcy Act*, s. 2 (cc), as including "a body corporate and politic" and a "corporation" as defined by s. 2 (k) of that Act, is brought into *The Farmers' Creditors Arrangement Act* by s. 2 (2) of the latter Act, "unless it is otherwise provided or the context otherwise requires") and by the fact (as held) that, on consideration of *The Farmers' Creditors Arrangement Act* (various provisions thereof dealt with in this regard), such inclusion is consistent with and not obnoxious to the provisions and objects of that Act.

The application to appellant of said definition of "farmer" was not affected by the fact that, in the incorporating Act, appellant's firstly expressed object was with regard to engaging in the Christian religion according to the religious belief of its members. Farming was appellant's temporal object and occupation, and, being such, was its "principal occupation" within said definition.

Per Cannon J. (dissenting): Having regard to the preamble and the provisions of the incorporating Act, and the evidence, it must be held that the primary object of appellant corporation is a religious one, and, being a religious body, it cannot get the benefit of *The Farmers' Creditors Arrangement Act*, which applies only to a person whose principal occupation consists in farming or the tillage of the soil. Further, being a religious body, appellant is not a "person" within the meaning of the *Bankruptcy Act* or *The Farmers' Creditors Arrangement Act*. Further, the latter Act, in view of the nature of its provisions, was intended to help only natural persons.

APPEAL by the Barickman Hutterian Mutual Corporation, incorporated as "a body corporate and politic" by special Act, Man., 1931, c. 103, from the judgment of the Court of Appeal for Manitoba (1) which allowed the appeal taken by certain creditors of the said corporation from the order of Roy C.C.J. (2) whereby the Official Receiver appointed under *The Farmers' Creditors Arrangement Act, 1934*, c. 53 (Dom.), was directed to proceed with the application of the said corporation, which had filed a proposal under the last mentioned Act. The order of Roy C.C.J. was made on an application, under Rule 42

(1) 45 Man. R. 619; [1938] 1 W.W.R. 777; [1938] 2 D.L.R. 802;
 19 C.B.R. 176.

(2) 45 Man. R. 619; [1938] 1 W.W.R. 777; 19 C.B.R. 176.

of the Rules and Regulations under the last mentioned Act, for an order for directions, in consequence of objection by some creditors to the Official Receiver's jurisdiction on the ground that said corporation was not a "farmer" within the meaning of that Act.

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No written reasons were given in the Court of Appeal. According to its formal judgment, it was adjudged that the said corporation is not a "farmer" within the meaning of *The Farmers' Creditors Arrangement Act, 1934*, and amendments thereto, and it was ordered that the order of Roy C.C.J. be reversed.

Special leave to appeal to the Supreme Court of Canada was granted by a Judge of this Court.

E. F. Newcombe K.C. for the appellant.

J. T. Thorson K.C. for the respondent creditors.

F. P. Varcoe K.C. for the Minister of Finance.

THE CHIEF JUSTICE.—I have no doubt that by the combined operation of section 2, subsection 1 (f), of the *Farmers' Creditors Arrangement Act, 1934*, and amendments, section 2 (cc) and section 2 (k) of the *Bankruptcy Act*, a corporation may be a "farmer" within the meaning of section 6 and the correlated provisions of the former statute. It is sufficient to refer to the reasons given by my brother Kerwin for this conclusion.

The question of substance is whether the particular corporation with which we are concerned (the appellants) is a "farmer" within the contemplation of the statute and entitled to take advantage of its provisions. This question subdivides itself into two: whether, in point of verbal construction, that corporation comes within the definition of "farmer" in section 2 (1) (f); and, if so, whether there is anything in the provisions of the statute which impliedly excludes it from that category.

The corporation, the Barickman Hutterian Mutual Corporation, was created by Cap. 103 of the Statutes of Manitoba, 1931. The character and objects of the corporation appear from the provisions of this incorporating statute. The first paragraph of the preamble is in these words:

Whereas a religious community of farmers exists in this province under the name of Barickman Colony of Hutterian Brethren, who have associated themselves together for the purpose of promoting and engaging

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in the Christian religion, Christian worship and religious education and teachings according to their religious belief, and of having, holding, using, possessing and enjoying all things in common, and who are desirous that the said religious community may be incorporated.

The preamble proceeds to state that certain persons, whose names are given and who are said to be members of this religious community, have by their petition prayed that they be incorporated for the objects set forth in the statute. By section 1, it is enacted that the persons named in the preamble and all others who shall become members of the corporation in accordance with the provisions of the statute and the by-laws, rules and regulations shall be constituted a corporation with the normal capacities of corporations constituted by the Manitoba Legislature.

The objects set forth are:

2. (a) to promote, engage in and carry on the Christian religion, Christian worship and religious education and teachings, and to worship God according to the religious belief of the members of the corporation;

(b) to engage in, and carry on farming, stock-raising, milling, and all branches of these industries; and to manufacture and deal with the products and by-products of these industries;

with other subsidiary and incidental objects.

It is provided that all property owned by or held in trust for the Barickman Colony of Hutterian Brothers shall be vested in the Corporation and that the Corporation shall assume and be liable for the debts and obligations of the Colony and all debts and obligations guaranteed by the Hutterian Brethren Church in Manitoba.

The Act provides that no individual member of the Corporation shall have any assignable or transferable interest in the Corporation or in any of its property. The property, affairs and concerns of the Corporation are to be managed by, and its business is to be carried on by, a board of five directors elected by the members who are to have full authority to exercise all the powers of the Corporation subject to the by-laws, rules and regulations of the Corporation and the provisions of the Statute.

The peculiar nature of the relations between the Corporation and its members appears from certain provisions which it is desirable to set forth verbatim. Section 12 provides as follows:

12. All property, both real and personal, that each and every member of the corporation has or may have, own, possess or may be entitled to at the time that such member becomes a member of the said corporation, and all the property, both real and personal, that each and every

member of the said corporation may have, obtain, inherit, possess or be entitled to after such person becomes a member of the said corporation shall be and become the property of the said corporation to be owned, used, occupied and possessed by the said corporation for the common use, interest and benefit of each and all the members thereof.

By section 13, if any member of the Corporation ceases to be a member he shall not be entitled to withdraw any of the property of the Corporation and, in the case of the death of a member, no interest in the Corporation or the property of the Corporation shall pass to the heirs or the legal personal representatives of such member.

By section 14,

Each and every member of the said corporation shall give and devote all his time, labour, services, earnings and energies to the said corporation and the purposes for which it exists, freely, voluntarily and without compensation or reward of any kind whatsoever other than as herein provided or in the by-laws, rules and regulations of the said corporation expressed.

The members of the Corporation constitute a religious community and it appears from the evidence, when read with the provisions of the statute, that as a religious community they aim at pursuing a way of life broadly conforming, as they conceive, economically as well as spiritually, to the "Christian principles described in the New Testament." Their tenets and their practice include ownership of all things in common, the administration of their goods and their worldly affairs generally by persons nominated by themselves for that purpose. It is freely admitted, and it may be assumed, that the arrangements for the administration of their temporal affairs are only a means to enable them to govern their lives by what they believe to be the primitive Christian plan.

On the other hand, the members of the Corporation are farmers dependent for their livelihood and the livelihood of their families upon revenues derived from their labours and those of their brethren in farming and in necessarily incidental pursuits; the Corporation being the depositary of the title to all the property and all the revenues of the community, which it holds and administers for their benefit. The Corporation (which takes the place of the former trustees) is simply the legal instrumentality by which this autonomous community of farmers manages under the law its affairs and those of its members (according to the plan of community of property); and I can see no impropriety in designating it as a "farmer," as a

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"person" whose principal occupation is farming. In a temporal sense, farming (with necessarily incidental pursuits) is not only the "principal," it is said to be the exclusive occupation of the members of this community.

I humbly think the application of the definition is not affected by the fact that the economic constitution and canon of the community are dictated by the religious beliefs and purposes of its members, or that one of the objects of the Corporation is to promote the religious objects of the community; because I am quite satisfied that the word "occupation" in the intendment of that definition is limited in its scope to temporal affairs. It should be observed that the provision of the statute enabling the Corporation to apply funds in support of religious objects is a very necessary provision in view of the fact that the title to all the property of the members is vested in the Corporation.

Nor do I think this application of the definition of "farmer" is obnoxious to the enactments or the objects of the statute considered as a whole. The principal argument to the contrary is that the main purpose of the *Farmers' Creditors Arrangement Act* is disclosed by one sentence in the preamble in these words:

and whereas it is essential in the interest of the Dominion to retain the farmers on the land as efficient producers and for such purpose it is necessary to provide means whereby compromises or rearrangements may be effected of debts of farmers who are unable to pay:

and it is said that this affirmation cannot possibly envisage a corporation such as the appellants. I am unable to agree with this. Indeed, I should have thought that, in the case of a group of persons organized as this community is, the considerations upon which the statute appears to be founded might well be supposed to have greater force than in the case of an individual.

The appeal should be allowed and the judgment of the County Court Judge restored with costs throughout.

The judgment of Rinfret, Kerwin and Hudson JJ. was delivered by

KERWIN J.—The question on this appeal is whether the appellant, the Barickman Hutterian Mutual Corporation, is a farmer within the meaning of that word as used in *The Farmers' Creditors Arrangement Act, 1934*, and amendments thereto, hereinafter referred to as the

Act. Subsection 1 (f) of section 2 defines a farmer as "a person whose principal occupation consists in farming or the tillage of the soil." By special Act of the Manitoba Legislature (chapter 103 of the Statutes of 1931), the appellant was declared to be a body corporate and politic, and the first point presented for determination is whether the word "person" in the definition clause of the Act includes as well a body corporate and politic as a natural person.

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By subsection 2 of section 2 of the Act, "unless it is otherwise provided or the context otherwise requires," expressions contained in the Act are to have the same meaning as in the *Bankruptcy Act*, and by section 2 of the latter it is provided:—

In this Act, unless the context otherwise requires or implies, the expression

* * *

(cc) "person" includes a firm or partnership, an unincorporated association of persons, a corporation as restrictively defined by this section, a body corporate and politic, the successors of such association, partnership, corporation, or body corporate and politic, and the heirs, executors, administrators or other legal representative of a person, according to the law of that part of Canada to which the context extends.

The word "implies" probably neither enlarges nor restricts the meaning of "requires" but in any event it is applicable only to a consideration of the provisions of the *Bankruptcy Act*. It is not otherwise "provided" and unless, therefore, the context otherwise "requires" (Act section 2, subsection 2), this clause in the *Bankruptcy Act* makes it clear that a body corporate and politic is covered by the word "person" in the Act.

It is true that, as a rule, one does not speak of such a body having an occupation; the reference is generally to its objects or business; but there is nothing to prevent the legislature using the word "occupation" as applicable to it, if the general intention, upon a reading of the whole of the Act, is clear. It was argued that the use of the word "resides" in subsection 2 of section 3, in section 5, and in subsection 11 of section 12, indicates that only a human being was envisaged. However, the courts have had no hesitation in determining, for the purpose of allowing service out of the jurisdiction under the rules, that a corporation is domiciled or ordinarily resident where it has its head office, and for the purpose of income tax

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that a company resides where its real business is carried on. One or other of these meanings may well be ascribed to the word in the Act when dealing with a body corporate and politic. Similarly the expression "his liabilities" in section 6 may be read "its liabilities."

By subsection 1 of section 11, "on the filing with the official receiver of a proposal, no creditor whether secured or unsecured, shall have any remedy against the property or person of the debtor." While the latter part is clearly inapplicable to a corporate body, it was evidently inserted in order to prevent the pursuit of any remedy by a creditor against a farmer who was an individual.

The mischief the Act sought to relieve and the remedy proposed may be ascertained from the preamble wherein, after reciting that in view of the depressed state of agriculture the present indebtedness of many farmers is beyond their capacity to pay, it is further recited that it is essential, in the interest of the Dominion, to retain the farmers on the land as efficient producers. There is nothing incongruous in speaking of a corporate body being retained on the land or as being an efficient producer; each expression is applicable, in my opinion, as well to such an artificial person as to a natural one. How is it proposed to retain the farmers on the land? By permitting them, with the permission of a Board of Review, to scale down their debts to a point where they will be able gradually to liquidate them while continuing their farming operations. There is no reason why these advantages should not be enjoyed as well by a corporate farmer as by an individual unless there is something in the context that requires us to hold otherwise.

In addition to the expressions to which I have already referred, our attention has been called to subsection 8 of section 12, which provides:—

The Board [of Review] shall base its proposal upon the present and prospective capability of the debtor to perform the obligations prescribed and the productive value of the farm.

In my view, it is possible for a Board to consider the present and prospective capability of a corporate body as well as that of an individual. While such a body may stop its farming operations or carry on another business, there is nothing to prevent either of these things being done by an individual. Provision is made by Rule 48 of

the Rules and Regulations, approved by the Governor in Council in pursuance of section 15 of the Act, for the receiver or any creditor to apply to the Court for an order setting aside a proposal if “(d) the debtor has conducted himself, to the satisfaction of the official receiver, in such manner as indicates bad faith towards his creditors.” I do not pause to consider the rules and regulations further because, while the word “resides” is used therein in many instances, the power to make rules is given only so far as “procedure” is concerned and “to give effect to the provisions of this Act.”

It was urged that as Parliament had provided a means of compromising the debts of a company by *The Companies' Creditors Arrangement Act, 1933*, it was not intended that the Act should apply to bodies corporate and politic. As to this, it appears sufficient to point out that in 1934 Parliament was dealing with an entirely different matter. In my opinion it intended to say, and did say, that bodies corporate and politic might take advantage of the provisions of the Act as well as individuals.

Is the appellant, then, such a body whose principal occupation consists in farming or the tillage of the soil? The evidence is uncontradicted that not only the principal occupation but the sole occupation of all its members is farming. It is true that the preamble to the special Act of Incorporation recites:—

Whereas a religious community of farmers exists in this province under the name of Barickman Colony of Hutterian Brethren, who have associated themselves together for the purpose of promoting and engaging in the Christian religion, Christian worship and religious education and teachings according to their religious belief, and of having, holding, using, possessing and enjoying all things in common, and who are desirous that the said religious community may be incorporated;

and in section 2 of the Act of Incorporation the first object “of the corporation” is stated to be:—

(a) to promote, engage in and carry on the Christian religion, Christian worship and religious education and teachings, and to worship God according to the religious belief of the members of the corporation;

This, I think, may be taken to be the spiritual object. So far, however, as the temporal object of the “corporation” and its temporal occupation and chief business are concerned, the “corporation” was by clause (b) of section 2 authorized:—

(b) to engage in, and carry on farming, stock-raising, milling and all branches of these industries; and to manufacture and deal with the products and by-products of these industries;

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subsequent clauses authorized the "corporation" to carry on any other business (whether manufacturing or otherwise) which might seem capable of being conveniently carried on in connection with its business, etc., but its principal occupation as carried on by its members does consist in farming or the tillage of the soil. I see nothing, therefore, to withhold the benefit of the Act from the appellant merely because of the reference in its objects to the promotion, etc., of the Christian religion.

I would allow the appeal and restore the judgment of the County Court Judge with costs throughout.

CANNON, J. (dissenting)—The Barickman Hutterian Mutual Corporation was incorporated by Chapter 103 of the Statutes of Manitoba, assented to on the twentieth of April, 1931. The petition to the Legislature for incorporation was signed by Samuel J. Hofer and others, not as *farmers*, but as members of a religious community. The preamble says that they have associated themselves for the purpose of promoting and engaging in the Christian religion, Christian worship and religious education, and teachings, according to their religious belief, and of having, holding, using, possessing, and enjoying all things in common.

The petitioners, according to the preamble, were desirous that the said *religious* community may be incorporated.

All the properties belonging to, or held in trust for the said Barickman Colony of Hutterian Brethren before incorporation were vested in the corporation. The trustees who held real or personal property for the said Brethren at the time of the passing of the Act, were authorized and directed to transfer, set over and assign to the said corporation all such real and personal property held by them.

Section 2 of the Charter sets up the object of the corporation as follows:

(a) to promote, engage in and carry on the Christian religion, Christian worship and religious education and teachings, and to worship God according to the religious belief of the members of the corporation;

(b) to engage in, and carry on farming, stock-raising, milling, and all branches of these industries; and to manufacture and deal with the products and by-products of these industries;

Under section 6, the corporation was liable for the debts incurred by the Barickman Colony, and section 8

says that no individual member of the corporation shall have any assignable or transferable interest in the corporation or in any of its property, real or personal.

Section 12 reads as follows:

All property, both real and personal, that each and every member of the corporation has or may have, own, possess or may be entitled to at the time that such member becomes a member of the said corporation, and all the property, both real and personal, that each and every member of the said corporation may have, obtain, inherit, possess or be entitled to after such person becomes a member of the said corporation shall be and become the property of the said corporation to be owned, used, occupied and possessed by the said corporation for the common use, interest and benefit of each and all the members thereof.

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D. Decker, heard as a witness, as President of the appellant corporation, stated that it owns 2,780 acres of land situated about twelve miles off Headingley, and that no land belongs to any of the individual members, each of whom may be expelled from the corporation without taking anything. Decker says that he cannot deny that the primary object of the corporation is a religious one, although he says, "We are farmers at the same time."

In view of this admission, two conclusions cannot be escaped:

1° Being a religious body, the corporation cannot get the benefit of the *Farmers' Creditors Arrangement Act* which applies only to a person whose *principal occupation* consists in farming and tillage of the soil.

2° The individual farmers who join this religious community are not farmers within the meaning of the *Farmers' Creditors Arrangement Act*, for they own no farm, they owe personally no debts and have no obligation from which to be relieved. Indeed none of the farmers have made any application in the premises.

The appellant relies upon section 2 of the *Farmers' Creditors Arrangement Act* for the purpose of bringing the definition of "person" as contained in the *Bankruptcy Act* into the *Farmers' Creditors Arrangement Act*, but as the appellant is not a person within the meaning of the *Bankruptcy Act*, being a religious body, the *Bankruptcy Act* is not applicable.

Moreover, my definite view after a careful perusal of the *Farmers' Creditors Arrangement Act*, as amended, and of the regulations and forms approved by the Governor

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General in Council, is that the Act applies only to a person whose principal occupation is farming, and who is being unable to meet his liabilities as they become due. The object of the Act was to retain the individual farmer on the land as an efficient producer.

The Board of Review appointed by the Governor in Council under section 12 of the Act are supposed to inspect and investigate all the circumstances of each case and base a proposal upon the present and prospective capability of the debtor to perform the obligation prescribed, and also upon the productive value of the farm. The capability of a farmer to perform his obligations depends not only on the productive value of the farm, but also on his qualities and characteristics, e.g., a man who is an habitual drunkard would not have the same capability as a normal sober individual. His physical, moral qualities, his age, his experience must be considered. Also, whether he can depend on the help of a wife and of a more or less large number of children, or contrariwise, being a bachelor, cannot or can do without hired help. The farmer who could perform his work himself without any hired help would have more merit and deserve more consideration than the lazy fellow who would rely on others to do his work and pay them wages. The personal character, the honesty and record of the farmer making a proposal to his creditors are certainly to be weighed by the Board in making an award or approving a proposal and compelling the creditors to accept it. This test cannot apply to a corporation.

The application of this extraordinary piece of legislation cannot be extended beyond the obvious and natural intent of the legislator. Nothing shows that it was intended to help other than natural persons, citizens of Canada in difficult circumstances beyond their control.

The individual farmers who are employed in the tillage of the soil belonging to the Barickman Hutterian Mutual Corporation are not before us. They have made no application for relief, and there is no means to retain them on the land which does not belong to them, or to compel them to pay an indebtedness which is not theirs. These individual farmers have formed the corporation not for the main purpose of farming, but of constituting a religious

body, as it appears clearly in the preamble of the Charter.
For the above reason the appeal should be dismissed with costs.

Appeal allowed with costs.

Solicitor for the appellant: *Ernest A. Fletcher.*

Solicitors for the respondents: *McMurray, Greschuk & Walsh.*

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