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DAME MARIE-ANNA SARRAZIN (PLAINTIFF) ..... APPELLANT; * Mar. 19. * Apr. 18.

AND

LES CURÉ ET MARGUILLIERS DE L'ŒUVRE ET FABRIQUE DE LA PAROISSE DE ST-GABRIEL DE BRANDON (DEFENDANTS)..... RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

*Bankruptcy—Motion for leave to appeal—Whether ecclesiastical bodies or institutions within the ambit of the Bankruptcy Act—Whether a "corporation" or "a person"—Bankruptcy Act, section 2 (cc, k. p.).*

Ecclesiastical bodies or institutions are not included within the ambit of a bankruptcy statute essentially designed for the administration of the property of persons or corporations carrying on business. The *Bankruptcy Act* was never intended to apply to a parish or church or other religious body.

MOTION for special leave to appeal to the Supreme Court of Canada from a judgment of the Court of King's Bench, appeal side, province of Quebec (1), quashing an order of Boyer J. granting the appellant's petition in bankruptcy for a receiving order against the respondents.

*Oscar Gagnon* for the motion.

*Paul Belcourt contra.*

* Davis J. in chambers.

(1) (1935) Q.R. 58 K.B. 123.

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SARRAZIN v. LES CURÉ ET MARGUILLIERS DE ST. GABRIEL DE BRANDON.

DAVIS J.—The petitioner, dame Marie-Anna Sarrazin, moved before me for special leave to appeal to the Supreme Court of Canada from the judgment of the Court of King's Bench, appeal side, province of Quebec, rendered on January 31, 1935 (1), whereby an order of Mr. Justice Boyer, granting her petition in bankruptcy for a receiving order against the respondent, Les curé et marguilliers de l'œuvre et fabrique de la paroisse de St-Gabriel de Brandon, was quashed upon the ground that the provisions of the *Bankruptcy Act* do not apply to the respondent. A similar decision upon somewhat similar facts, *Demoiselle Bricault et autres* v. *Les curé et marguilliers de l'Œuvre et fabrique de la paroisse de Saint-Etienne* (2), was rendered by the Court of King's Bench.

The appellate court from which leave to appeal to this Court is now sought held that the respondent was not a corporation within the definition of that word in the *Bankruptcy Act,* section 2 (*k*) which is as follows:

"Corporation" means any company incorporated or authorized to carry on business by or under an Act of the Parliament of Canada or of any of the provinces of Canada, and any incorporated company, wheresoever incorporated, which has an office in or carries on business within Canada, but does not include building societies having a capital stock nor incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

Counsel for the petitioner admits that the respondent has no corporate existence by statute or otherwise and, while not abandoning the contention advanced by him in the courts below that the respondent is in the nature of a corporation, now puts his case mainly upon the definition of the word "person" in the *Bankruptcy Act,* section 2 (*cc*) which is as follows:

"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.

It is useful in considering the matter to refer to the definition in the Act of the word "debtor"—section 2 (*p*).

"Debtor" includes any person, whether a British subject or not, who, at the time when any act of bankruptcy was done or suffered by him, or any authorized assignment was made by him.

(i) was personally present in Canada, or

(ii) ordinarily resided or had a place of residence in Canada, or

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(iii) was carrying on business in Canada personally or by means of an agent or manager, or

(iv) was a corporation or a member of a firm or partnership which carried on business in Canada.

Counsel do not substantially differ in their statements as to the nature of the respondent. Counsel for the petitioner says that the curé and the three elected wardens of the parish constitute what he terms a special board empowered to manage the temporal affairs of the parish. Counsel for the respondent describes the respondent as a council of administration charged with the administration of the affairs of the parish.

I have no doubt that the *Bankruptcy Act* was never intended to apply to a parish or church or other religious body. Clear and explicit language would be necessary to bring ecclesiastical bodies or institutions within the ambit of a bankruptcy statute essentially designed for the administration of the property of persons or corporations carrying on business.

Moreover, the petitioner's debt is represented by two promissory notes aggregating $525 signed in the name of the respondent by a former curé of the parish. A very serious question was raised by the present curé and wardens when this bankruptcy petition was filed that the parish was not bound in law by these notes signed by the former curé alone, and it appears that many other notes of similar kind extending into very large sums of money are outstanding. Counsel for the petitioner admits that before this petition was filed he knew that the present curé and wardens repudiated any liability on the part of the parish for payment of the two notes upon which the petition was founded. The question of liability of the parish for these notes was something that had to be faced as a matter of law at the very outset in order to establish the relation of debtor and creditor between the petitioner and the respondent. The learned judge before whom the petition came took evidence on this issue and determined that the respondent was liable. Then in order to establish the essential fact of insolvency, the present curé was asked whether the parish could meet all the known outstanding notes of similar kind to those upon which the petition was based if the question of liability were determined against the parish, and the curé admitted that if there

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was liability on the parish in respect of all similar notes, running into very large amounts, the parish would be unable to pay them. That was not proof of the act of bankruptcy charged against the respondent that it had ceased to meet its liabilities generally as they became due.

I do not feel justified in granting leave in this case, and the motion must therefore be dismissed with costs.

*Motion dismissed with costs.*