NATIONAL TRUST COMPANY LIMITED (PLAINTIFF)..... } APPELLANT;

AND

THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LIMITED AND THE BOARD OF REVIEW FOR THE PROVINCE OF BRITISH COLUMBIA (DEFENDANTS)..... } RESPONDENTS

1941

* April 22, 23, 24.
* June 24.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Debtor and creditor—Farmers' Creditors Arrangement Act, 1934 (Dom.)—Structure and operation of the Act—Whether respondent Community is a "farmer"—Board of Review—Jurisdiction—Whether county or district courts have exclusive jurisdiction under the Act—Jurisdiction of Supreme Courts of the provinces in the matter—Action by creditor against debtor before Supreme Court and appointment by the latter of a Receiver, prior to proceedings by the debtor under the Act—Farmers' Creditors Arrangement Act, 1934 (Dom.), s. 2 (2), s. 5 (1), s. 6 (1) (2) (7), s. 11 (1) (2), s. 12 (4) (5) (6).

On May 18th, 1938, the appellant instituted in the Supreme Court of British Columbia a debenture holder's action against the respondent Community, praying foreclosure, or sale, of certain properties and assets mortgaged to the appellant by the respondent Community to secure the payment of certain debentures of the Community. In May and July, 1938, by orders of the Supreme Court of British Columbia, a Receiver (an authorized trustee in bankruptcy) was appointed and immediately entered upon his duties. This action is still pending and the Receiver is still executing his duties In June, 1929, the Community purported to file a proposal under the *Farmers Creditors Arrangement Act*. In the same month, by County Court orders, "upon the application of" the Official Receiver, under said Act, "for directions," "and upon reading the statement of affairs herein and the proposal and the resolution of the Directors" of the Community, the latter was "hereby permitted to make appli-

* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis and Hudson JJ.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

cation under and (was) entitled to take advantage of the provisions of" said Act, and the Official Receiver was "hereby permitted to accept the said proposal" of the Community under said Act. On September 14, 1939, the respondent Board of Review gave notice to the Receiver that a written request by a creditor of the Community had been made to the Board of Review to formulate an acceptable proposal for a composition, extension of time or scheme of arrangements of the affairs of the Community and gave notice of hearing. The appellant immediately on the 16th of September, 1939, brought the present action, claiming, *inter alia,* a declaration that the respondent Community was not a farmer within the meaning of the *Farmers' Creditors Arrangement Act* and was not entitled to the benefit of that Act, that the respondent Board of Review was without jurisdiction and that it had no jurisdiction over the appellant and the other creditors of the Community. The trial judge held that he was invested with jurisdiction to render a decision in the action, and his decision was that the respondent Community was not a farmer within the meaning of the above Act. The appellate court, reversing that judgment, held that the Supreme Court of British Columbia had no jurisdiction in the matter and that, by force of the provisions of the Act, such jurisdiction resided exclusively in the County Court, and it further held that the respondent Community was a farmer.

Held, that the respondent Community was not a farmer within the meaning of the *Farmers' Creditors Arrangement Act,* and, as such, entitled to a proposal for a composition of its liabilities under the provisions of that Act; and, also, that, under the circumstances of this case, the Supreme Court of British Columbia had jurisdiction to determine the questions raised by the appellant's action. *Barickman Hutterian Mutual Corporation* v. *Nault* ([1939] S.C.R. 223) disc. and dist.

Held, also, *per* The Chief Justice and Davis and Hudson JJ., that, under the circumstances of this case, the Supreme Court of British Columbia had jurisdiction to entertain the appellant's action—It is not necessary, for the purpose of this appeal, to determine generally the jurisdiction of the County Court and of the Supreme Court, respectively, in relation to the statutory validity of a proposal filed by a debtor who is invoking the provisions of the statute.—In the present case, property of the respondent Community affected by the debentures was in the hands of a Receiver appointed by the Supreme Court. Whatever may be the effect of the general language of the enactment which purports to give to the County Court exclusive jurisdiction in bankruptcy, such general language cannot be read as giving to the County Court any control over the assets of the respondent Community, in the hands of the Receiver, which could be exercised without the consent of the Supreme Court; and it seems necessarily to follow that it would be within the jurisdiction of the Supreme Court to ascertain by an examination of the facts (if such a claim were made) whether or not the purported proceedings under the statute were competent proceedings,—whether or not, in other words, the County Court had acquired exclusive jurisdiction in relation to the debtors' assets by force of the statute. The Board of Review was about to consider a proposal to be formulated under s. 12 (4) (5) of the Act, and, in the case of a proposal being formulated and confirmed by the Board, questions might very well arise as to the position of the Receiver.

S. 11, read literally and giving effect to it according to the full scope of its terms, without any qualification, would appear directly to affect the Receiver in any proceedings by him to realize property within the receivership (*e.g.*, in an action to collect a book debt charged by the debentures in suit). Only the very clearest language would justify the conclusion that Parliament intended in these circumstances to deprive the Supreme Court of the authority to decide for itself whether the filing of the Community's proposal had any statutory warrant. The words employed in the first paragraph of section 5 of the Act ought not to be read as excluding the jurisdiction of the Supreme Court to decide whether, in such circumstances as those in this case, its jurisdiction in respect of property in its possession, and in respect of proceedings in relation to that property pending before it, has been ousted. The trial judge had all the circumstances before him and, having regard to those circumstances, felt it his duty to pronounce upon the issue. The trial judge was right in exercising the jurisdiction he did exercise. He was not deciding upon any abstract question. It was important that the issue should be decided speedily, to avoid conflict of jurisdiction with resulting confusion and expense. As to the County Court orders (The recital shows that they were made on application for directions before the Community's proposal was filed—and *quaere* whether, until such filing, the Official Receiver has any status, or the Court any jurisdiction, on such an application): The farmer's right to file a proposal arises from provisions of the Act, not from any leave of the Court; the Act does not contemplate an application for such leave. The purpose of the procedure under Rule 42 is to enable the Official Receiver to obtain directions as to his own acts in the course of administration where the application of the Act, which is the foundation of the authority both of the judge and the Official Receiver, is assumed—it is not its purpose to empower the Court to make binding orders affecting the rights of third persons who are not parties to the proceeding. It does not follow that on an application for directions questions of right and jurisdiction may never be determined. The County Court has jurisdiction, speaking generally, to determine such questions in a summary way, and the hearing of an application for directions in a particular case may be a convenient and unobjectionable occasion for dealing with such questions, when proper care is taken to see that everybody concerned is fully represented and has full opportunity of bringing out the facts and presenting his case. The County Court orders in question should be treated as directions to receive and file proposals, and the statement therein that the Community is permitted to make application under, and is entitled to take advantage of, the provisions of the Act, must be regarded simply as introductory, expressing the judge's opinion *quantum valeat* with regard to matters upon which he had no authority to make a binding pronouncement.

Per Rinfret J.—The principal powers of the Board of Review are enumerated in section 12 of the *Farmers' Creditors Arrangement Act* and its subsections; but, nowhere is there to be found vested in the Board of Review the power to determine as a question of law the applicability of that Act to a person whose quality and status as a "farmer" is disputed, or where it is objected, by some party having an interest in the matter, that the applicant for a proposal does not come within the definition of the Act: the courts of justice are the proper forum where the matter must be debated and determined.—

1941

NATIONAL TRUST CO. LTD. *v.* THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

As to the question whether, in a province other than the province of Quebec, an interested party, who decides of his own initiative to contest the status of an applicant as farmer, must necessarily have to institute his proceedings in the county or district court or whether he is deprived of the right of invoking the general jurisdiction of the Supreme Court of the province, it should be *held,* as far as the interpretation of the statute is concerned, that, as the *Farmers' Creditors Arrangement Act* may be regarded as a chapter of the *Bankruptcy Act,* the status of a farmer and the question whether he is entitled to invoke the benefit of the *Farmers' Creditors Arrangement Act* are included within the words "jurisdiction in *bankruptcy*" mentioned in the first paragraph of section 5 of the Act and that, therefore, these matters, under the Act, are within the exclusive jurisdiction of the county and district courts of all the provinces except in the province of Quebec.—It does not necessarily follow that the Supreme Courts of these provinces are divested by the Act of their supervisory authority over an official such as the Official Receiver or a board such as the respondent Board of Review, which jurisdiction is exercised through the writs of prohibition, *mandamus* or *certiorari,* or possibly by declaration and injunction as contended by the appellant; but this latter question may be left for wider examination in a case where the point may come up squarely for decision—In the present case, however, there is a special situation. The appellant's Debentures Holders' action was instituted prior to the respondent Community's application to the Official Receiver under the *Farmers' Creditors Arrangement Act* and before the county court orders were issued. That action is still pending and the Receiver appointed in that action of the Supreme Court of British Columbia is still carrying on his duties. The effect of the Receiver's appointment by the Supreme Court was to put all the property and assets of the Community under the authority of that Court. In such circumstances, its jurisdiction in respect of the assets of the respondent Community and with regard to the proceedings then pending before it could not be interfered with by the mere application of the Official Receiver to the county courts under the *Farmers' Creditors Arrangement Act.*

Per Crocket J.—Upon a consideration of the record and of the relevant provisions of the *Farmers' Creditors Arrangement Act* and its regulations the trial judge had full jurisdiction to make the declaration which he did and his judgment was fully warranted by the evidence. If the respondent Community was not a farmer, neither the Official Receiver nor the Board of Review nor any County Court judge had any authority whatsoever to bring the respondent Community within the operation of that Act, and any orders or reports purporting to recognize such respondent as a farmer must be held under the explicit provisions of the Act to have been wholly void and of no effect. If the respondent Community was not a farmer within the meaning of the Act, the fact that a County Court judge had without authority and erroneously found that the respondent Community was a farmer cannot possibly have the effect of ousting the jurisdiction of the Supreme Court to pronounce upon the validity of these proceedings and of removing from the custody and control of a special receiver appointed by the Supreme Court for the administration of the British Columbia assets and business of the respondent Community for the realization of the moneys secured by the respondent's deed of trust and mortgage, and placing them in the exclusive control of the county

court. Moreover, the whole tenor of the statute negatives the suggestion that the Parliament of Canada intended to interfere with the inherent jurisdiction of the Supreme Court of the various provinces to declare the nullity of wholly unauthorized proceedings and orders of all inferior statutory functionaries or tribunals at the suit of those whose property and civil rights such proceedings and orders purport to affect.

Judgment of the Court of Appeal (55 B.C. Rep. 516) reversed.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of the Supreme Court, Robertson J. (2) which had maintained an action by the appellant in which the latter sought a declaration that the respondent Community was not a farmer within the meaning of the *Farmers' Creditors Arrangement Act.*

A. E. Hoskin K.C. and *D. N. Hossie K.C.* for the appellant.

C. L. McAlpine K.C. for the respondent Community.

F. P. Varcoe K.C. for the respondent Board of Review.

The judgment of the Chief Justice and of Davis and Hudson JJ. was delivered by

THE CHIEF JUSTICE—I shall refer to the respondent, The Christian Community of Universal Brotherhood, Limited (which is a company incorporated under the Dominion Companies Act) as the respondent company.

The respondent company is not, I am satisfied, on the facts disclosed in the evidence before us, a farmer within the contemplation of the *Farmers' Creditors Arrangement Act* of 1934, and for this and other reasons the proceedings of the Official Receiver and the respondent, the Board of Review, were without statutory warrant. Had it not been for the decision of this Court in *Barickman* v. *Nault* (3), it would never have occurred to anybody, I think, that the respondent company was a farmer within the intendment of that statute. The only point of law decided in that case was that a corporation may be a farmer and entitled as such to avail itself of the provisions of the

(1) (1940) 55 B.C.R. 516; [1940] 3 W.W.R. 650; [1941] 1 D.L.R. 268.
(2) (1939) 54 B.C.R. 386; [1940] 3 W.W.R. 203; [1940] 4 D.L.R. 767.
(3) [1939] S.C.R. 223.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Duff C.J.

statute. In the very special circumstances of that case we held that the corporation was a farmer within the definition

> a person whose principal occupation consists in farming or the tillage of the soil.

There is little pertinent resemblance between the corporation whose status was there in question and the respondent company, and that decision is really of no assistance in the decision of the question before us. I think it is very clear that, although the members of the Community for the most part are farmers, the incorporated company itself is not a farmer in the ordinary sense of the term, or in the sense of the statute. My brother Rinfret has given conclusive reasons for this.

An important question, however, which was very fully argued, arises. That question is whether it is competent to this Court to give practical effect on this appeal to its conclusion that the respondent company has the right to avail itself of the benefit of the enactments of the *Farmers' Creditors Arrangement Act,* and that question again depends upon the answer to the question whether or not the Supreme Court of British Columbia was competent to adjudicate upon the respondent company's rights in that respect.

The *Farmers' Creditors Arrangement Act* provides in section 6 (1) and (2) as follows:—

> 6. (1) A farmer who is unable to meet his liabilities as they become due may make a proposal for a composition, extension of time or scheme of arrangement either before or after an assignment has been made.
>
> (2) Such proposal shall be filed with the Official Receiver who shall forthwith convene a meeting of the creditors and perform the duties and functions required by the *Bankruptcy Act* to be performed by a trustee in the case of a proposal for a composition, extension of time or scheme of arrangement.

By section 7:—

> 7. A proposal may provide for a compromise or an extension of time or scheme of arrangement in relation to a debt owing to a secured creditor, or in relation to a debt owing to a person who has acquired movable or immovable property subject to a right of redemption, but in that event the concurrence of the secured creditor or such person, shall be required, except in the case of a proposal formulated and confirmed by the Board of Review as hereinafter provided.

By section 11 (1) and (2):—

> 11. (1) 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, or shall commence or continue any proceedings under the *Bankruptcy Act,* or any action, execution or other proceedings for the recovery of a debt provable in bankruptcy, or the realization of any security unless with leave of the court and on such terms as the court may impose; Provided, however, that the stay of proceedings herein provided shall only be effective until the date of the final disposition of the proposal. 1938, Ch. 47 Am.

(2) On a proposal being filed the property of the debtor shall be deemed to be under the authority of the court pending the final disposition of any proceedings in connection with the proposal and the court may make such order as it deems necessary for the preservation of such property.

By section 5, subsection (1):—

5. (1) In the case of an assignment, petition or proposal in the province of Quebec, the Superior Court of the judicial district where the farmer resides, and in other provinces, the county or district court, shall have exclusive jurisdiction in bankruptcy subject to appeal as provided in section one hundred and seventy-four of the *Bankruptcy Act.*

The statute also provides for a Board of Review consisting of a Chief Commissioner and two Commissioners, and that where the Official Receiver reports that a farmer has made a proposal, but that no proposal has been approved by the creditors, the Board shall, on the written request of a creditor or of the debtor, endeavour to formulate an acceptable proposal, and the Board shall consider representations. If the proposal so formulated is accepted by the debtor and the creditors it is to be filed in Court and then, by force of section 12, subsection (5), it becomes binding on the debtor and all the creditors. Even where a debtor and the creditors refuse to approve a proposal so formulated the Board may, nevertheless, confirm the proposal with or without amendments, and on being filed in Court it becomes binding on all the creditors and the debtor as if it had been accepted by the creditors and approved by the Court.

In May, 1938, the appellants instituted in the Supreme Court of British Columbia a Debenture Holders action against the respondent company, praying foreclosure or sale of certain properties and assets mortgaged to the appellant to secure the payment of debentures. In May and July, 1938, by orders of the Supreme Court of British Columbia, one G. L. Salter was appointed Receiver and immediately entered upon his duties. This action is still pending and the Receiver is still executing his duties.

In June, 1939, the respondent company purported to file a proposal under the *Farmers' Creditors Arrangement*

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Duff C.J.

Act and on the 14th of September, 1939, the Board of Review sent to the Receiver a notice stating that a written request by a creditor of the respondent company had been addressed to the Board of Review, requesting the Board to formulate an acceptable proposal for a composition, extension of time or scheme of arrangements of the affairs of the said company, and that this request would be dealt with at Nelson, in the county of Kootenay, on the 26th of September, 1939. The appellants immediately commenced an action in the Supreme Court of British Columbia, claiming, among other things, a declaration that the respondent company is not a farmer entitled to take advantage of the *Farmers' Creditors Arrangement Act.*

The issue of substance which the appellants sought to raise in their action in the Supreme Court of British Columbia was, of course, the question whether the respondent company was entitled to take advantage of the *Farmers' Creditors Arrangement Act.* The appellants, being the holders of debentures in the amount of three hundred and fifty thousand dollars ($350,000) and having, as already observed, in a Debenture Holders action had a Receiver appointed of property affected by their security in British Columbia, had, of course, an immediate and practical concern in the proceedings taken by the respondent company, purporting it to be under the authority of the *Farmers' Creditors Arrangement Act.*

The statute, as appears from the enactments already set out, where a proposal, which is a proper proposal within the contemplation of the statute, is filed by a person who is entitled to the benefit of the provisions of the statute, effects (*inter alia*) a stay of all proceedings taken by the holder of the security to realize his security pending at the time the proposal is filed; and also brings the property of the debtor filing the proposal under the authority of the Court, which is the County Court of the county in which the debtor resides, and gives the County Court authority to make orders for the preservation of the property.

Furthermore (it cannot be too plainly kept in view), authority is given to the Board of Review to formulate a proposal providing for a compromise and extension of

time or scheme of arrangement in relation (*inter alia*) to a debt owing to a secured creditor, and such proposal so formulated by the Board may be confirmed by the Board and filed in the County Court and thereupon (even without the consent of the secured creditor) it becomes binding upon all the creditors and the debtor.

The appellants, I repeat, were naturally and properly concerned with these proceedings, and when they received notice from the Board that the Board intended to consider the framing of a proposal they instituted their action in the Supreme Court of British Columbia, as already mentioned.

On behalf of the respondent company and the Board of Review it was argued that the statute invests the County Court with exclusive jurisdiction in bankruptcy and that this includes any proceeding to determine the question raised by the action; and so precludes the exercise of jurisdiction therein by the Supreme Court. I do not think it is necessary for the purpose of this appeal to determine generally the jurisdiction of the County Court and of the Supreme Court, respectively, in relation to the statutory validity of a proposal filed by a debtor who is invoking the provisions of the statute. *Prima facie* it would seem that an application made to the County Court judge to set aside such a proposal as incompetent would fall within the "jurisdiction of bankruptcy" within the meaning of the statute, and that the County Court judge would have jurisdiction to pass upon such an application.

In the present case property of the respondent company affected by the debentures is in the hands of a Receiver appointed by the Supreme Court of British Columbia. On general principles any attempt to interfere with the possession of the Receiver would constitute contempt of court. In the absence of some statute to the contrary effect, the Supreme Court would not permit even an action to be brought against the Receiver in respect of his receivership, unless leave of the Court were first obtained. *Blair* v. *Maidstone* (1); *Russell* v. *East Anglia Rly. Co.* (2); *Coleman* v. *Grenville* (3), *per* Strong, V.C.

(1) [1909] 2 Ch. 286. (2) (1850) 3 Mac. and G. 104, at 120.
(3) (1871) 18 Gr. 42, at 43, 44.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Duff C.J.

This, of course, is well-known law. Whatever may be the effect of the general language of the enactment which purports to give to the County Court exclusive jurisdiction in bankruptcy, such general language cannot, in my opinion, be read as giving to the County Court any control over the assets of the respondent company, in the hands of the Receiver, which could be exercised without the consent of the Supreme Court. Only the most precise language would justify one in ascribing such an intention to the legislature; and it seems necessarily to follow that it would be within the jurisdiction of the Supreme Court to ascertain by an examination of the facts (if such a claim were made) whether or not the purported proceedings under the statute were competent proceedings,—whether or not, in other words, the County Court had acquired exclusive jurisdiction in relation to the debtors' assets by force of the statute.

In the present case the Board of Review was about to proceed to consider a proposal to be formulated under section 12, subsections (4) and (5) and, in the case of a proposal being formulated and confirmed by the Board of Review, questions might very well arise as to the position of the Receiver. It is to be noticed that section 11 read literally, when effect is given to it according to the full scope of its terms, without any qualification, would appear directly to affect the Receiver in any proceedings by him to realize property within the receivership—in an action, for example, to collect a book debt charged by the debentures in suit. Only the very clearest language would, I repeat, justify the conclusion that the legislature intended in these circumstances to deprive the Supreme Court of the authority to decide for itself whether the filing of the proposal had any statutory warrant.

The principle of *Stradling* v. *Morgan* (1) must, I think, be applied. The words employed ought not, I think, to be read as excluding the jurisdiction of the Supreme Court to decide whether, in such circumstances as those before us, its jurisdiction in respect of property in its possession, and in respect of proceedings in relation to that property pending before it, has been ousted.

(1) (1558) Plowden 204.

The learned trial judge had all the circumstances before him and, having regard to those circumstances, felt it his duty to pronounce upon the issue. He held that the respondent company is not a farmer within the contemplation of the statute, a conclusion with which, as I have mentioned, we are in entire agreement.

As already observed, the only point remaining to be considered is whether or not the trial judge was also right in exercising the jurisdiction he did exercise, or whether, on the contrary, the County Court was solely competent to pass upon the issue presented to him. If the learned trial judge was wrong in holding that he was invested with jurisdiction, the only course open to us would be to dismiss the appeal, with the result that the question must go back to the County Court for determination, and the time and energy spent in trying the issue before the ~~County~~ Supreme Court judge and in arguing it before the Court of Appeal and before this Court thrown away. Happily, in my opinion, this course is not forced upon us because I think the trial judge's decision on the question of jurisdiction, as well as his decision on the question of substance, is right. He was not deciding upon any abstract question. It was important that the issue should be decided speedily in order to avoid conflict of jurisdiction, with resulting confusion and expense.

With the deepest respect for the learning and the judgment of the able and experienced Chief Justice of British Columbia, I am, for the reasons I have indicated, unable to accept his conclusion. I may add, also, that I have read the valuable judgment of Mr. Justice O'Halloran with care, but, with respect, it does not meet the point upon which I think the appeal must be decided.

I think perhaps some observations ought to be made upon certain orders by the judges of the County Court of Yale and the County Court of West Kootenay, respectively.

On the 26th of June an order was made by Judge Kelly, of the County Court of Yale, and on the 28th of the same month an order in the same terms was made by Judge Nisbet, of the County Court of West Kootenay. These orders are in the following terms:—

Page 611, at line 16th, the words "County Court" should be "Supreme Court".

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Duff C.J.

June 1939.

In the County Court of

holden at

In the matter of "The Farmers' Creditors Arrangement Act, 1934," and Amendments thereto, and

In the matter of a proposal for composition, extension or scheme of arrangement of The Christian Community of Universal Brotherhood, Limited, Farmer.

Before His Honour Judge
in Court

, the day of June, 1939.

Upon the application of Walter Gordon Wilkins, an Official Receiver under the said Farmers' Creditors Arrangements Act, 1934, and amendments thereto for directions.

And upon reading the statement of affairs herein and the proposal and the resolution of the Directors of the said Christian Community of Universal Brotherhood Limited and the affidavit of Nicholas M. Plotnikoff attached thereto.

It is ordered that the said Christian Community of Universal Brotherhood Limited is hereby permitted to make application under and is entitled to take advantage of the Provisions of the said Farmers' Creditors Arrangement Act, 1934, and amendments thereto.

And it is further ordered that the said Official Receiver, Walter Gordon Wilkins, is hereby permitted to accept the said proposal of the Christian Community of Universal Brotherhood Limited under the said Farmers' Creditors Arrangement Act, 1934, and amendments thereto.

Judge, County Court of

(SEAL)

C. C. of

Entered this day of June, 1939

Registrar,

County Court.

The recital shows that the order was made on an application by the Official Receiver to the County Court for directions before the proposal was filed. It may be open to question whether until the proposal is filed the Official Receiver has any status, or the Court any jurisdiction, under Rule 42. It is not necessary, however, to decide that point.

Section 6 of the *Farmers' Creditors Arrangement Act* does not contemplate a proposal filed by leave of the County Court; it does not contemplate an application for such leave by a person seeking to avail himself of the provisions of the statute. The right of the farmer is a statutory right arising from the provisions of the statute and not from any leave of the Court. Rule 42 does not

empower the County Court to give any direction contrary to the Act, or, on an *ex parte* application in the absence of the parties known to be principally concerned, to adjudicate upon any controversy touching the right of any person to file a proposal as an insolvent farmer under the authority of section 6 of the *Farmers' Creditors Arrangement Act*. The purpose of the procedure under rule 42 is to enable the Official Receiver to obtain the advice of the Court in matters of administration where the application of the Act, which is the foundation of the authority of the judge as well as the Official Receiver, is assumed. The purpose of the procedure is to enable the Official Receiver to obtain directions as to his own acts in the course of administration for his own protection and for the orderly conduct of the administration; it is not its purpose to empower the Court to make binding orders affecting the rights of third persons who are not parties to the proceeding.

It does not follow, of course, that on an application for directions, when all parties are present, questions of right and jurisdiction may never be determined. The County Court has jurisdiction, speaking generally, to determine such questions in a summary way and the hearing of an application for directions in a particular case may be a convenient occasion for dealing with such questions, and there can be no objection to such a course when proper care is taken to see that everybody concerned is fully represented and has a full opportunity of bringing out the facts and presenting his case.

The proper way to read the orders is to treat them as directions to the Official Receiver to receive and file proposals and the earlier paragraph must be regarded simply as introductory, expressing the judge's opinion *quantum valeat* with regard to matters upon which he had no authority to make a binding pronouncement.

I think the appeal should be allowed and the judgment of the learned trial judge restored with costs throughout.

RINFRET J.—Prior to the commencement of the action in respect of which the present appeal is asserted, the appellant had, on May 18th, 1938, commenced in the Supreme Court of British Columbia a Debentures Holders' action against the respondent Community, asking for the foreclosure, or sale, of certain properties and assets of the

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

Community mortgaged to the appellant by the Community to secure the payment of certain bonds of the Community which are still outstanding and unpaid. In that first action, one Mr. G. L. Salter, a chartered accountant and authorized trustee in bankruptcy, was appointed Receiver by Orders of the said Supreme Court of British Columbia, dated May 18th and July 15th, 1938.

The Receiver immediately entered upon his duties as such and he has ever since and still is carrying on the same; and the Debentures Holders' action is still pending in the Supreme Court.

The Receiver is and at all material times was an Officer of the Supreme Court of British Columbia.

About the end of the month of June, 1939, the Community purported to file a proposal under the *Farmers' Creditors Arrangement Act, 1934;* and, on or about August 1st, 1939, it purported to make a request under that Act to the respondent Board of Review.

On September 14th, 1939, the Board sent out a notice of hearing, whereupon the appellant brought the present action on September 16th, 1939.

At all material times, the Debentures Holders' action was proceeding in the Supreme Court of British Columbia and the Receiver appointed by that Court was in charge and acting.

In the present action, the appellant alleged, among other things, that the Community was not a farmer within the meaning of the *Farmers' Creditors Arrangement Act* and was not entitled to the benefit of that Act; that the Community had not made a proposal for a composition, extension of time or scheme of arrangement pursuant to the Act; and that accordingly the Act had no application to the Community, and the Board of Review for the province of British Columbia was without jurisdiction, that it had no jurisdiction over the appellant and the other creditors of the Community.

The appellant asked and claimed:

(*a*) A declaration that the *Farmers' Creditors Arrangement Act* of 1934 does not apply to the respondent Community;

(*b*) A declaration that the Community is not entitled to make a proposal for a composition of its liabilities under the provisions of the Act;

(*c*) A declaration that the respondent Board is not authorized or empowered and has no jurisdiction to hold a hearing, or formulate a proposal for such a composition;

(*d*) A declaration that all proceedings of the Board pursuant to the application of the Community are null and void;

(*e*) An injunction restraining the respondents, and each of them, from taking any further steps under the Act with respect to the application of the Community, or with respect to its liabilities;

(*f*) The costs of this action;

(*g*) Such further or other relief as to this Honourable Court may seem meet.

The formal judgment of the Supreme Court of British Columbia, at the trial before Robertson J. (1), was a declaration that the Community was not a farmer within the meaning of the Act; and it gave liberty to apply for an injunction as against the Board, in the event of its deciding to proceed with the "Request for Review." The judgment gave costs to the appellant against the Community.

Having decided that the Community was not a farmer within the meaning of the Act, the learned judge stated that, under the circumstances, it was not necessary to consider the appellant's alternative submissions.

Both the Community and the Board appealed from this judgment to the Court of Appeal of British Columbia, where the appeal was allowed and the judgment was set aside with costs against the present appellant (2).

The Court of Appeal decided that the Supreme Court of British Columbia had no jurisdiction in the matter and that, by force of the provisions of the Act, such jurisdiction resided exclusively in the County Court. It decided further that, on the authority of *Barickman Hutterian Mutual Corporation* v. *Nault* (3), the Community was a farmer.

The other questions raised in the action have not been dealt with by the appeal court.

The substantial question that stands to be decided in the present appeal is whether the Community is a farmer

(1) (1940) 55 B.C.R. 516. (2) (1939) 54 B.C.R. 386.
(3) [1939] S.C.R. 223.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

within the meaning of the *Farmers' Creditors Arrangement Act* and, as such, entitled to a proposal for a composition of its liabilities under the provisions of that Act.

When once this point is settled, there will have to be examined the further question whether the respondent Board established under the Act is authorized and empowered and has jurisdiction to hold a hearing, or to formulate a proposal for a composition of the liabilities of the respondent Community.

If these two questions be disposed of in accordance with the contentions of the appellant, there will remain to be decided whether the County Court is vested with the exclusive jurisdiction to pass upon these questions, subject to appeal as provided in sec. 174 of the *Bankruptcy Act*, or if the appellant's action was competently brought before the Supreme Court of British Columbia; and, in such a case, whether the jurisdiction of that Court should have been exercised in a declaratory action such as was instituted here, or whether the intervention of the Supreme Court could be asked for only by petition for a writ of certiorari.

I will deal first with the question whether, on the evidence before the Court, the respondent Community can be held to be a farmer within the meaning of the *Farmers' Creditors Arrangement Act*.

The Christian Community of Universal Brotherhood is a limited company incorporated by letters patent under the Dominion *Companies Act* on April 25th, 1917, with a capital stock of $1,000,000 divided into 10,000 shares of $100 each.

Its powers and objects are those usually granted to an ordinary commercial corporation. The Charter contains no reference to any religious beliefs, practices, or observances.

Some of the objects and powers of the Company are as follows:

(*a*) To carry on agricultural pursuits, and to manufacture the products of the farm, the mine, the soil and the forest; to manufacture, purchase or otherwise acquire, to hold, own, sell, assign and transfer or otherwise dispose of, to invest, trade, deal in and deal with, either at retail or wholesale, goods, wares and merchandise, and real and personal property, corporeal and incorporeal, of every class and description whatsoever and whatsoever required; to grow, produce, manufacture, buy, sell, trade, deal in and deal with raw materials, live stock, grains, fruits, agricultural

products and all other products and by-products of the soil, the forest, the mine, the lakes and rivers; including among others the raising, buying, selling, trading in and dealing with cattle, sheep, horses and live stock of every kind, and to manufacture any and all materials, goods, products and merchandise of any and every kind from any of the foregoing;

(*e*) To distribute any of the property of the company in specie among the members;

(*f*) To promote freedom of contract, and to resist, insure against, counteract and discourage interference therewith, and to subscribe to any association or fund for any such purposes;

(*g*) To distribute any of the assets for the time being of the company among the members in kind, and to stipulate for and obtain for the members, or any of them any property, rights, privileges or options;

(*h*) To carry on any other business (whether manufacturing or otherwise) which may seem to the company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;

(*k*) To enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concessions or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same;

(*t*) To procure the company to be registered and recognized in any foreign country and to designate persons therein according to the laws of such foreign country to represent this company and to accept service for and on behalf of the company of any process or suit;

(*w*) To sell, improve, manage, develop, exchange, lease, enfranchise, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;

(*x*) To do all or any of the above things in any part of the world and as principals, agents, contractors or otherwise, and by and through agents or otherwise, and either alone or in conjunction with others;

The incorporators of the Company were nine individuals: Two farmers, a clerk, a carpenter, an accountant, a fruit dealer, a housekeeper, a gardener and a contractor. These nine individuals were among those subsequently appointed permanent directors of the Company.

After its incorporation, the Community purchased from Peter Verigin, one of its directors, certain city, town and farm lands and certain property in the provinces of British Columbia, Saskatchewan and Alberta for $600,000, paid for by the allotment to each of the twelve directors of the Company of 500 fully paid up shares.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

Prior to the purchase of these properties, the same were occupied by members of an unincorporated association commonly called The Doukhobors, for whom Peter Verigin held the same in trust.

The lands acquired from Verigin were registered in the name of the incorporated company (the respondent Community).

The lands so owned by the Community represented over 60,000 acres of land in British Columbia, Saskatchewan and Alberta, although in Alberta the lands there owned were registered in the name of a wholly subsidiary company: The Christian Community of Universal Brotherhood of Alberta Limited.

While a large part was farm land, the respondent Community also owned city and town property and industrial sites, from the rental of which revenues were derived.

The business of the Community in British Columbia, with which we are more directly concerned, included logging, milling of various products, the operation of a flour mill, the manufacture and selling of jam, the operation of a brick yard and the operation of several general stores.

The relative importance of these separate operations appears from an examination of the balance sheets of the Community. For example, the Community balance sheet as of December 31st, 1928, shows, under the heading of "Received Assessment from Members of Community" rents in British Columbia, Alberta and Saskatchewan totalling $333,948.50. The profit and loss account headed "British Columbia Industry—Commercial Branch" shows a total of over $1,000,000, and the statement of profit and loss headed "Saskatchewan Industry—Commercial Branch" shows a total of over $230,000.

The balance sheet as of December 31st, 1938, shows assets in excess of $5,300,000 and liabilities of a little over $860,000. Among the latter liabilities are shown $340,000 owing to individual Doukhobors or Community Groups of Doukhobors.

While the respondent Community owned farm lands, it did not operate the farms itself, but rented the land to individual or to groups of Doukhobors. The rent was paid to the Community in the form of assessments, which were made "according to the quality of the land." These

assessments were paid, whether the farms rented were or were not under cultivation, and without consideration to the value of the products. At all events, the products belonged to the individuals or the groups who were working the farm and did not belong to the Community.

The Debentures Holders' action was for the recovery of the amount outstanding on a bond issue of $350,000 secured by a deed of trust and mortgage in favour of the appellant, executed on December 3rd, 1925; and, at the time of the purported proceedings under the *Farmers' Creditors Arrangement Act,* the deed of trust and mortgage to the appellant covered all the property and assets of the Community of whatsoever kind and wheresoever situate.

The mortgage and claim of the appellant had and has priority over the claims of all other creditors of the Community and is a direct charge upon all its properties and assets.

Under the above circumstances, can it be said that the Community is a farmer within the definition of the Act (c. 53 of the Statutes of Canada, 1934, s. 2*f*)?

Under that definition, a farmer is "a person whose principal occupation consists in farming or the tillage of the soil."

Whether a person comes under that definition is almost exclusively a question of fact; and the learned trial judge has held that the Community was not a farmer, at least within the meaning so defined.

It seems clear that, so far as lands were concerned, the Community was in the position of a landlord or vendor. The "farming or the tillage of the soil" was done by the individuals or the groups who paid the assessments to the Community.

It need not be repeated here that a limited company is an entity separate from its component members (*Salomon* v. *Salomon* (1); *Macaura* v. *Northern Assurance Company* (2); *Pioneer Laundry* v. *Minister of National Revenue* (3)). The Community never worked the farm lands itself. It rented them out to the members of the unincorporated Christian Community of Universal Brotherhood and received from their members who leased the lands an

(1) [1897] A.C. 22. (2) [1925] A.C. 619.
(3) [1940] A.C. 127, at 137.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

annual assessment which, to all intents and purposes, was a rental. On this point, the evidence, both documentary and verbal, is conclusive and fully warrants the holding of the trial judge. Indeed, the Community itself did not contend at the trial that the farming was being carried on by it. Particularly after the year 1926, the Community confined its endeavour in British Columbia to logging, milling forest products, manufacturing and selling jams and operating stores. Neither was it doing any farming in Alberta or Saskatchewan. Farm lands in Saskatchewan were all sold in 1928.

It is apparent from the "statement of affairs" accompanying the proposal made by the Community and filed with the Official Receiver that the Community itself hired no labour. All the work was done by families on the land. No record of the crop raised on the lands was kept by the Community; it was "kept by each individual on land to whom the Corporation made assessments annually." In fact, the Community had no knowledge of what the crop record was, since the crops belonged to the individuals.

In view of these facts, it does not seem possible to reverse the finding of fact of the trial judge that the respondent Community was not a farmer, and, more particularly, that it was not "a person whose principal occupation consisted in farming or the tillage of the soil," as defined in s. 2*f* of the Act.

The decision of this Court in the *Barickman* case (1) is, of course, authority for the principle that the definition of "farmer" in the Act may include a body corporate and politic and a corporation of such a nature as that of the Barickman Hutterian Mutual Corporation. In that case, such inclusion was said to be justified by the definitions of the words "person" and "corporation" in the *Bankruptcy Act* (s. 2*cc* and s. 2*k*) which are brought into the *Farmers' Creditors Arrangement Act* by s. 2 (2) of the latter Act, and also by the fact that, on consideration of the *Farmers' Creditors Arrangement Act,* such inclusion is consistent with and not obnoxious to the provisions and objects of that Act.

But an examination of the nature and the methods of operation of the respondent Community with those under

(1) [1939] S.C.R. 223.

consideration in the *Barickman* case (1) shows that there was no comparison between the two, in so far as the *Farmers' Creditors Arrangement Act* may be made to apply to each of them. There is no similarity between the two corporations.

The member of the Hutterian corporation can own nothing and does not own anything. He is, at best, an employee of the Hutterian corporation working for his board and lodging, not even in the ordinary position of a hired man on a farm who, in addition to board and lodging, would receive wages as his own. The farming operations are the operations of the Hutterian corporation and the crops are theirs.

The position of the Hutterian is very fully described by the Chief Justice of Canada in the *Barickman* case (1).

The respondent Community is an entirely different organization. In so far as lands are concerned, it is, in fact, like an ordinary land or real estate company leasing or selling its lands to others; and, so far as its other activities are concerned, it is like any other commercial corporation carrying on certain commercial undertakings and industries, such as stores, jam factories, saw mills, planing mills, brickyards, etc. In this case, as already stated, the individual or the group is the farmer. He is not a hired man; but he works for himself and he pays rent to the Community. If he happens to work in a store, factory, or saw mill belonging to the Community, he is paid wages. When he sells his fruit to the jam factory, he is paid for it. He is an independent tenant or owner; and when he harvests his crops the proceeds are his.

He can, and apparently does, accumulate large sums of money for, among the creditors of the Community, as appears by the "Statement of Affairs" filed with the proposal, there are a large number of Doukhobors with claims amounting to two-thirds of the total indebtedness of the Community, or over $342,000.

The Doukhobor, therefore, is the owner of wealth; he accumulates money and property and lends it to the Community, while the Hutterian can and does own nothing. The latter works without wages and entirely for the Corporation.

(1) [1939] S.C.R. 223.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

It need not be said that the *Farmers' Creditors Arrangement Act* does not concern itself with the landlord or the vendor, but only with the actual farmer—the man on the land. The farmers are those whom "it is important to retain on the land as efficient producers" or, in this case, the individual Doukhobors, the men who farm, and not their landlord or vendor, the respondent Community. If the foreclosure action of the appellant be proceeded with and maintained, the farmer on the land in the present case will not be put off, he will merely change his landlord.

It seems that, for the purpose of ascertaining whether the respondent Community can be classed as a farmer within the meaning of the Act, the facts, in the premises, clearly distinguish this case from the *Barickman* case (1).

The learned trial judge held that, in view of all the circumstances, the Community was not a farmer; and I am unable to think of any reason why his finding should be disturbed.

We now come to the point whether, in the circumstances, the respondent Board established under the Act is authorized and empowered and has jurisdiction to hold a hearing or to formulate a proposal for the composition of the liabilities of the respondent Community.

In discussing this point, it is necessary to bear in mind that the *Farmers' Creditors Arrangement Act,* envisaged as the exercise of the jurisdiction ot the Parliament of Canada, finds its justification, so far as legislative competency is concerned, on the ground that it is legislation dealing with insolvency and bankruptcy (Reference *re Farmers' Creditors Arrangement Act* (2); *Attorney-General for British Columbia* v. *Attorney-General for Canada* (3)). It follows that the jurisdiction conferred by that Act upon the Official Receiver and the Board of Review must be strictly confined within the sphere of the Act for the dual reason that, unless so confined, and if the case under discussion fails to come within it, the result would be not only that the Receiver or the Board do not establish a foundation for their jurisdiction, but the matter itself would have to be regarded as beyond the competency of the Dominion Parliament and *ipso facto* would cease to have any effective operation.

(1) [1939] S.C.R. 223.
(2) [1936] S.C.R. 384. (3) [1937] A.C. 391.

We must, therefore, start from the point that, before the Act can be entered into at all, the applicant of a proposal for a composition or scheme of arrangement must be "a farmer who is unable to meet his liabilities as they become due" (s. 6 of the Act). Unless these conditions exist, not only is the Act not applicable, but it could not have been competently enacted by the Dominion Parliament.

Assuming, however, that we have a farmer who is unable to meet his liabilities as they become due, the latter is entitled, under the Act, to make a proposal which shall be filed with an Official Receiver. It is then the duty of such Official Receiver forthwith to convene a meeting of the creditors and perform the duties and functions required by the *Bankruptcy Act* to be performed by a trustee in the case of a proposal for a composition, extension of time, or scheme of arrangement.

On the filing of a proposal with the Official Receiver, no creditor shall have any remedy against the property or the person of the debtor, or shall commence, or continue, any proceedings under the *Bankruptcy Act*, or any action, execution or other proceedings for the recovery of a debt provable in bankruptcy, or the realization of any security, unless with leave of the court and on such terms as the court may impose (s. 11-1).

On a proposal being filed, the property of the debtor is deemed to be under the authority of the court, pending the final disposition of any proceedings in connection with the proposal (sec. 11-2).

If the proposal filed with the Official Receiver fails to receive the approbation of the creditors, and the Official Receiver so reports, it is then that, on the written request of a creditor or of the debtor, the Board endeavours to formulate an acceptable proposal to be submitted to the creditors and the debtor, and the Board shall consider representations on the part of those interested (sec. 12-4). If the proposal formulated by the Board is approved by the creditors and the debtor, it is filed in the court and becomes binding on the creditors and on the debtor. If the creditors or the debtor decline to approve the proposal, the Board may nevertheless confirm the proposal, either as formulated or as amended by the Board. In that case, it is filed in the court and becomes binding on all the

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

creditors and on the debtor as in the case of the proposal accepted by the creditors and approved by the court (ss. 12-5 and 12-6).

Certain rules, regulations and forms under the Act were made by the Governor General in Council pursuant to sec. 15 of the Act, and became effective on June 1st, 1935.

Under them, a farmer who is unable to meet his liabilities as they become due and who intends to make a proposal must, at the time when he asks for a convening of the meeting of his creditors, lodge with the Official Receiver a true statement of his affairs in the prescribed form, verified by statutory declaration. That statement must include a list of his creditors, with their addresses and the amount due to each of them; it must state for what purpose the debt was incurred; and it must contain a list of the assets of the farmer, an estimate of their productive value and of the present and prospective capacity of the farmer to meet his obligations, together with any corroborative evidence of the value which the farmer may furnish. The proposal must be in writing and signed by the farmer or his duly authorized agent.

Certain rules are prescribed for convening the meetings of creditors, the procedure at those meetings and the proportion of the number of creditors which are to form the majority required to carry a proposition or a decision at such meetings.

Certain other rules are prescribed to regulate the procedure if the proposal filed with the Official Receiver fails to receive the required approval of the creditors; and an application is made to him by the farmer, or any creditor, requesting the review by the Board.

The only other regulation to which it is necessary to refer is rule no. 42, whereby

> The Official Receiver may, in the case either of a proposal, assignment, or receiving order, apply to the court for directions.

The perusal of the material sections of the Act and of the rules and regulations made thereunder fails, therefore, to disclose any jurisdiction vested in the Board of Review, except to formulate a fresh proposal upon the written request of a creditor or of the debtor, where the Official

Receiver has reported "that a farmer has made a proposal, but that no proposal has been approved by the creditors."

The Board may formulate the new proposal; it may amend it; and, if approved by the creditors and the debtor, it is then filed in court and becomes binding on the debtor and all the creditors; or if the creditors or the debtor decline to approve the same, the Board may nevertheless confirm it, in which case it is filed in court and becomes binding upon all the creditors and the debtor.

The Board may, upon receiving a request to formulate a proposal, direct any one or more of its members on its behalf to investigate any or all circumstances and report to the Board. The Board must base its proposal upon the present and prospective capacity of the debtor to perform the obligations prescribed and the prospective value of the farm; and, for the purposes of the performance of its duties and functions, the Board has the powers of a commissioner appointed under the Inquiries Act.

Finally, the Board may decline to formulate a proposal in any case where it considers it cannot do so in fairness and justice to the debtor or the creditors.

The powers above mentioned are all enumerated in s. 12 of the Act and its subsections. It will be seen that they have to do with the inspection and investigation of all the circumstances surrounding the solvency of the farmer, his present and prospective capability to meet his liabilities and to perform his obligations, the productive value of his farm, and the formulation of a proposal based upon these several considerations which can be made consistently with all fairness and justice to the debtor or the creditors.

But nowhere is there to be found vested in the Board of Review the power to determine as a question of law the applicability of the *Farmers' Creditors Arrangement Act* to a person whose quality and status as a "farmer" is disputed, or where it is objected, by some party having an interest in the matter, that the applicant for a proposal does not come within the definition of the Act.

That the applicant should be a farmer to whom the Act applies is a condition precedent to the validity of a request that the Board should endeavour to formulate a proposal and is a prerequisite of its competency in the matter. The consequence must be that, if such a request is made

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

to a Board of Review and if the status of the farmer in respect to whom a proposal is requested from the Board, either by one of the creditors, or by the debtor, be disputed, it is not within the province of the Board to decide that dispute; and the courts of justice are the proper forum where the matter must be debated and determined.

By force of subs. 4 of s. 12 of the Act, it is only upon the report of the Official Receiver "that a farmer has made a proposal" and the proposal has not been approved by the creditors, that the jurisdiction of the Board begins, at the written request of a creditor or of the debtor, and that jurisdiction is confined to the matters stated in the Act and analysed above.

It should only be added that, of course, the Official Receiver himself has no authority to decide whether the person filing the proposal is a "farmer who is unable to meet his liabilities" within the meaning of the legislation, if that point be disputed by the interested parties; and, in that case, the Receiver should avail himself of the provision contained in rule 42, whereby he may "apply to the court for directions."

Now, the Court referred to in the *Farmers' Creditors Arrangement Act* and upon whom jurisdiction is conferred by the Act, in the case of an assignment, petition, or proposal of the nature contemplated by the Act is, by s. 5,

> in the province of Quebec, the Superior Court of the judicial district where the farmer resides, and, in the other provinces, the county or district court.

Section 5, however, enacts that the courts so designated

> shall have exclusive jurisdiction in bankruptcy subject to appeal, as provided in section 174 of the Bankruptcy Act.

This provision means that an order or decision of the court competently made under s. 5 may, under certain conditions, be appealed to the appeal court, and therefrom to the Supreme Court of Canada.

Section 5 further provides that the Superior, County, or District Court judge, acting under it,

> shall exercise the powers vested in the Registrar by s. 159 of the *Bankruptcy Act*.

If we refer to s. 159, we find that the Registrars of the Superior Courts exercising bankruptcy jurisdiction have power and jurisdiction, subject to the General Rules limiting the power conferred by that section,

(*a*) to hear bankruptcy petitions and to make receiving orders and adjudications thereon, where they are not opposed;

(*b*) to hold examinations of debtors;

(*c*) to grant orders of discharge, where the application is not opposed;

(*d*) to approve compositions, extensions, or schemes of arrangement, where they are not opposed;

(*e*) to make interim orders in case of urgency;

(*f*) to make any order, or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;

(*g*) to hear and determine any unopposed or *ex parte* application;

(*h*) to summon and examine any person known or suspected to have in his possession effects of the debtor, or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property;

(*i*) to hear and determine appeals from the decision of the trustee allowing or disallowing a creditor's claim, where such claim does not exceed five hundred dollars.

There are, therefore, two important points to be borne in mind with regard to s. 5, and they are:

1. That the exclusive jurisdiction conferred upon the court therein designated is a "jurisdiction in bankruptcy"; and

2. That the powers vested in the court as a result of the inclusion of s. 159 of the *Bankruptcy Act* are, generally speaking, powers limited to matters and applications *ex parte,* or "not opposed."

It follows that the court specified in s. 5 cannot rely on its powers under s. 159 of the *Bankruptcy Act* to found jurisdiction upon the questions we are now discussing, for the appellant clearly denies the status of "farmer" to the respondent Community and opposes its right to make a proposal under the *Farmers' Creditors Arrangement Act;* and, indeed, it urges that the Act is not in any way applicable to this particular Community.

If, therefore, it is contended that, in the province of British Columbia, a county or district court alone and exclusively has jurisdiction in respect to the questions of status raised in the present case, such contention must rely on the first paragraph of s. 5, whereby a wider jurisdiction is conferred upon these courts, subject to appeal as therein stated.

But, in s. 5, the enactment is that the courts there mentioned "shall have exclusive jurisdiction in bankruptcy." The insertion of the words "in bankruptcy" cannot be taken to have been made without object.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

According to the interpretation section of the Act (s. 2), for the purposes of this legislation, the word "'court' means the court having jurisdiction under the Act"; and it would follow that wherever in the successive sections of the Act, reference is in terms made to "the Court," it means that jurisdiction on the particular matter mentioned in those sections is specifically vested either in the Superior Court, if the matter be in Quebec, or, if it be in the other provinces, it is vested in the county or district court. With regard to any matter specially dealt with in those sections, there can be no doubt as to where jurisdiction lies.

But, because of the qualifications implied in the addition of the word "in bankruptcy," it is not as easy to define the jurisdiction conferred upon these courts by the first paragraph of s. 5.

It is clear that the "court" mentioned in ss. 6*a*, 8, 10, 10*a*, 11, 12, and such other sections where a similar reference is made, and equally the "court" mentioned in the rules and regulations and, in particular, in regulation no. 42, or in form C and, for that, generally speaking, in the other forms in the appendix to the rules and regulations, is intended to designate the Superior Court in Quebec and the county or district court in the other provinces. It is not as evident that the latter courts are given exclusive jurisdiction on all other matters having relation to the application and the administration of the Act.

If the status as such of an alleged farmer making a proposal for a composition, extension of time, or scheme of arrangement and filing it with the Official Receiver is put in question by an interested party, the Official Receiver deeming it necessary or opportune to "apply to the court for directions" will, of course, by force of rule 42, apply in British Columbia to the County or District Court of the judicial district where the farmer resides; but the question in the present case is whether, assuming the interested party himself of his own initiative decides to contest the status of the applicant as farmer and to dispute the latter's right to make a proposal under the Act, he will necessarily have to institute his proceedings in the County or District Court; and whether he is deprived of the right—

which he would otherwise have in ordinary cases—of invoking the general jurisdiction of the Supreme Court of the province.

The words "jurisdiction in bankruptcy" are, of course, well known to Canadian bankruptcy law. They can be found throughout the interpretation clause and the several sections of the *Bankruptcy Act*. It would seem that the court which is invested with original jurisdiction in bankruptcy under the latter Act is given the competency to decide such questions, amongst others, as the following: whether a debtor has committed an act of bankruptcy; whether the person presenting a bankruptcy petition to the court is a creditor within the meaning of the Act, whether the debtor is able to pay his debts, whether an insolvent debtor may make an assignment of all his property for the general benefit of his creditors instead of being subject to a receiving order, whether a proposal made by an insolvent debtor should be approved or refused and upon what terms, whether an order already made should be reviewed, rescinded or varied.

As the *Farmers' Creditors Arrangement Act* may be regarded as a chapter of the *Bankruptcy Act*, as that Act

> shall be read and construed as one with the *Bankruptcy Act* * * * and the provisions of the *Bankruptcy Act* and Bankruptcy Rules shall, except as in that Act provided, apply *mutatis mutandis* in the cases hereunder, including meetings of the creditors

(sec. 2, subs. 2), I think I may conclude that the status of a farmer and the question whether he is entitled to invoke the benefit of the *Farmers' Creditors Arrangement Act* are included within the words "jurisdiction in bankruptcy" and that, therefore, these matters, under the Act, are within the exclusive jurisdiction of the Superior Court in Quebec and of the County and District Court in the other provinces.

It does not necessarily follow, however, that the Supreme Courts of these provinces are divested by the Act of their supervisory authority over an official such as the Official Receiver or a board such as the Board of Review with which we are now dealing.

It may be a question whether the Parliament of Canada may oust the Supreme Court of a province of that well recognized jurisdiction; but that jurisdiction is exercised through the writs of prohibition, mandamus, or certiorari·

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

and that question does not arise in this case as none of those writs were resorted to here.

The appellant contends that it may also be exercised by declaration and injunction.

It need only be mentioned that the *Farmers' Creditors Arrangement Act* does not purport to exclude the jurisdiction of a provincial Supreme Court through one of these proceedings, except in so far as it may be implied from the use in sec. 5 (1) of the words "exclusive jurisdiction." The extent of that implication may be left for wider examination in a case where the point comes up squarely for decision.

In the premises, the situation as it presents itself, is that, as a matter of fact, two county courts in British Columbia, the county court of Yale, holden at Penticton, June 26th, 1929, and the county court of West Kootenay, holden at Nelson, June 28th, 1929, have issued orders

> that the said Christian Community of Universal Brotherhood Limited is hereby permitted to make application and is entitled to take advantage of the said *Farmers' Creditors Arrangement Act, 1934,* and amendments thereto (and) that the said Official Receiver, Walter Gordon Wilkins, is hereby permitted to accept the said proposal of the Christian Community of Universal Brotherhood Limited under the said *Farmers' Creditors Arrangement Act, 1934,* and amendments thereto.

It was explained that the Official Receiver deemed it more prudent to apply to two courts on account of the doubt which existed as to within which judicial district the respondent Community could be said to have its "residence."

The Appellate Division of the Supreme Court of Alberta, in the case of *Kettenbach Farms' Ltd.* v. *Henke* (1), relying on the decision of the Privy Council in *Board* v. *Board* (2), and quoting from it the statement:

> Nothing shall be intended to be out of the jurisdiction of a Superior Court, but that which specially appears to be so,

held that a Superior Court has always a supervisory authority over inferior courts and over tribunals which are not judicial, for the purpose of seeing that they do not go beyond their jurisdiction, unless such authority is taken away by competent legal authority.

Chief Justice Harvey, delivering the judgment of the Alberta Court, added:

(1) (1937) 19 C.B.R. 92. (2) [1919] A.C. 956.

There is no suggestion in the *Farmers' Creditors Arrangement Act, 1934*, or any other Act to which our attention has been directed, that the Board of Review is not to be subject to such supervisory authority; and, in view of the multitude of cases that come before it, it naturally must proceed generally upon a simple *prima facie* case of jurisdiction being established; and no special provision is made in the Act for the disposition of a contest on the point.

With due respect, it would appear that section 5 of the Act was there overlooked, as it can hardly be contended that the courts named in that section are not given the required authority to dispose of a contest of the character contemplated.

Such was the decision of the Court of Appeal of Saskatchewan in the case of *Great West Assurance Company* v. *Beck* (1). It was held there that the district judge has jurisdiction to determine whether a debtor who has made a proposal to the Official Receiver under the Act is a "farmer" within the meaning of that Act; and that a creditor, in applying under sec. 11 (1) of the Act for leave to proceed, may properly and conveniently do so on the ground that the debtor who has filed the proposal is not a "farmer."

In that case, the language of section 12 (4) of the Act was pointed to; and it was said that that

language implies that the question of whether or not a debtor who has made a proposal is a farmer should be determined before the Official Receiver reports to the Board of Review.

The same court, in *Lefebvre* v. *Lefebvre* (2), held that the discretion given by sec 11 to the district court judge to grant leave to a creditor to commence or continue proceedings against a debtor, after the latter has filed a proposal under the Act, is unfettered; and, although it was stated that such discretion should be exercised with the greatest of care, it was added however, that, when it has been exercised, it should not lightly be interfered with on appeal.

I have already said that, in my view, the status of the applicant as a farmer must be determined, or accepted, at some point before the Official Receiver has become functus and before the jurisdiction of the Board can arise, because the Official Receiver has no authority to make a report to the Board unless that status exists (*Samijama* v. *The King* (3)), and it is undoubtedly within the spirit of the

(1) [1940] 2 W.W.R. 552. (2) [1940] 2 W.W.R. 578.
(3) [1932] S.C.R. 640.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

Act that the question of status should be decided by one of the courts named in sec. 5. It is a familiar principle that where a specific remedy is given, it excludes, generally speaking, a remedy of any other form than that given by the statute (See: Earl of Halsbury, L.C., in *Pasmore* v. *Oswaldtwistle Urban Council* (1))

In the *Barickman* case (2), the appeal was from a decision of a county court, on the question whether the applicant corporation could be considered as a "farmer" within the meaning of the Act, and it is significant that no one questioned the jurisdiction of the county court judge to decide the point.

In *Prudential Insurance Company of America* v. *Liboiron* (3), the Court of Appeal of Saskatchewan, in an ordinary action otherwise within the jurisdiction of the Court of King's Bench of that province, where the defendant moved to set aside the action on the ground that he had filed a proposal under the Act and the action was brought without the leave provided for by sec. 11 (1) of the Act having been obtained, held that the court had jurisdiction to inquire into and determine objections to the validity of the proposal, including the objections that the defendant was not a person authorized by the Act to make a proposal. There, it was decided that the jurisdiction of the Court of Appeal was not excluded by sec. 5 (1) of the Act in the circumstances of that case, and that the onus was then on the defendant to show, not only that he had filed a proposal, but that he was a person authorized to do so, i.e., a farmer unable to meet his liabilities as they become due. The Court referred to *National Trust Company* v. *Powers* (4) and disagreed with *Gaul* v. *Charbonneau* (5) on the question of jurisdiction, though agreeing with the latter judgment on the question of onus.

In the *Liboiron* case (3), the Court of Appeal held that, assuming the defendant to be a farmer, she had failed to discharge the onus of showing that she was entitled to file a proposal, viz.: one who was insolvent.

In the course of his judgment, Chief Justice Turgeon stated that there may be various reasons why a plaintiff

(1) (1898) 67 L.J. Q.B. 633 at 637.
(2) [1939] S.C.R. 223.
(3) [1940] 3 W.W.R. 556.
(4) [1935] O.R. 490.
(5) [1937] O.W.N. 601.

may wish to proceed against a person who has filed a proposal. If his contention was, as it was there, that the defendant was not authorized by the Act to file such a proposal and that the proposal was, therefore, a nullity, two courses were open to him:

> He may commence his action, as these plaintiffs have done, or take a further step in an action already commenced, leaving it to the defendant to move to set the proceeding aside. If the question of the defendant's status under the Act is determined in favour of the defendant, the action or other proceeding will, of course, be set aside. If the question is determined in favour of the plaintiff, he will be allowed to continue his action. This was the procedure followed in Ontario in *National Trust Company* v. *Powers* (1) and in *Fofton* v. *Shantz* (2).

Incidentally, it may be pointed out that such was also the course followed in *Diewold* v. *Diewold,* decided by this Court (3).

Chief Justice Turgeon continued:

> But the other course, the course of applying to the district court judge under s. 11 (1) before taking his action, or commencing his further proceeding, is also open to the plaintiff.
>
> * * *
>
> Where, however, the right of the defendant to file a proposal is not questioned, and consequently the validity of the proposal is assumed, but the plaintiff believes that, for some reason, he ought to have leave to proceed against the respondent without waiting for the final disposition of the proposal, he must apply for such leave to the district court judge who, alone, has power to grant it. In such a case, an action commenced without such leave would of necessity be set aside.

If the above reasoning be applied to the appellant in the present case, it should be said that the appellant had two courses open to it: Either it should have applied to the county court for permission to continue its Debentures Holders' action already commenced, or it should have further proceeded with that action until the Community had applied to have it set aside on the ground that it had filed a proposal.

But there was not in the *Liboiron* case (4), as there is here, the feature that a county court had already given permission to the applicant and to the Official Receiver to proceed under the *Farmers' Creditors Arrangement Act.*

I do not overlook the appellant's argument that, unless the applicant is a farmer, the Act has no application to him whatsoever, and anything which he purports to do

(1) [1935] O.R. 490.
(2) [1937] O.R. 856.
(3) [1941] S.C.R. 35.
(4) [1940] 3 W.W.R. 556.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Rinfret J.

under it, and any proposal made or filed by him is a nullity, and the jurisdiction of the Superior Courts is in no way interfered with.

The appellant's contention is that, until a proposal within the meaning of the Act is filed with the Official Receiver, the statute has not been taken advantage of and there is no foundation for any proceedings under it, and anything purported to be done under the Act is a nullity. It further says that the county courts' orders show on their face that no proposal had been filed with the Official Receiver at the time when they were made, as by these orders the respondent Community is permitted to make application under the Act and the Official Receiver permitted to accept the proposal.

But the point is that the scheme of the Act is to submit these questions to the decision of the courts named in sec. 5; and the legislature entrusted these courts with a jurisdiction which includes the jurisdiction to determine whether this preliminary set of facts existed, as well as the jurisdiction, on finding that it does exist, to allow the Receiver or the Board to proceed further or to do something more.

In the present case, however, there is a special situation. As already stated, the appellant's Debentures Holders' action was instituted before the respondent Community applied to the Official Receiver under the *Farmers' Creditors Arrangement Act* and before the county court orders were issued.

The Debentures Holders' action is still pending; and the Receiver appointed in that action by the Supreme Court of British Columbia is still carrying on his duties. The effect of the Receiver's appointment by the Supreme Court was to put all the property and assets of the Community under the authority of that court. In such circumstances, its jurisdiction in respect of the assets of the respondent Community and with regard to the proceedings then pending before it could not be interfered with by the mere application of the Official Receiver to the county courts under the *Farmers' Creditors Arrangement Act.*

On the face of the orders issued by those courts, they were simply *ex parte* orders, without any of the material and pertinent facts being put before the county court judges and in the absence of all the other parties interested in the matter.

Having regard to the particular situation, I entirely agree on this point with the reasoning and with the conclusion of my Lord the Chief Justice. It cannot be that the intention of Parliament was to give to the county court the competency to interfere with the possession of the Receiver appointed by the Supreme Court, which, in effect, would amount to an interference with the possession of the Supreme Court itself.

In the result, the appeal should be allowed and the judgment of the trial judge should be restored with costs throughout.

CROCKET J.—This appeal arises out of an alleged proposal for a composition, extension of time or scheme of arrangement under the *Farmers' Creditors Arrangement Act*, made by the respondent, the Christian Community of Universal Brotherhood, Limited, on June 23rd, 1939, and a later request, purporting to be made under the provisions of the said Act on August 1st, 1939, by one, Joseph Peter Shukin, "the vice-president of the above mentioned farmer," to the Board of Review under the said Act to

> endeavour to formulate an acceptable proposal for a composition, extension of time or scheme of arrangement herein.

The appellant had commenced in the Supreme Court of British Columbia in May, 1938, a debenture holders' action against the respondent Community for a foreclosure or sale of certain property and assets of the Community mortgaged to the appellant on December 3rd, 1925, to secure a bond issue of $350,000 in respect of which the Community was then in default to the extent of $170,000. The writ in that action was issued on May 18th, 1938, in pursuance of leave granted by Manson J., and on the same day the Supreme Court by order of the same judge appointed a receiver of all the undertaking and property and assets of the defendant comprised in and subject to the said deed of trust and mortgage, to whom the same was ordered to be forthwith delivered, subject to permission to the defendant to carry on under the supervision of such Receiver the ordinary businesses of its general stores, flour mills, jam factory, brickyard and sawmills and planing mills in British Columbia, with liberty to the defendant and the Receiver to apply to that court for directions from time to time.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Crocket J.

That action was pending and the Receiver, one G. L. Salter, a chartered accountant and authorized trustee in bankruptcy, was acting as an officer of the Supreme Court of British Columbia therein for the purpose of enforcing the security created by the respondent corporation's deed of trust and mortgage, when the latter filed its alleged proposal on June 23rd, 1939, with the Official Receiver under the *Farmers' Creditors Arrangement Act* for the judicial district in which presumably the Community had its residence and which, it may be inferred, included the counties of Yale and West Kootenay, as the judges of both these County Courts purported to have made analogous orders, one on June 26th, 1939, and the other on June 28th, 1939, upon the application of one Walter Gordon Wilkins, who is described therein simply as an Official Receiver under the *Farmers' Creditors Arrangement Act,* purporting to permit the Community to make application under the *Farmers' Creditors Arrangement Act* and the said Official Receiver " to accept the said proposal." Mr. Wilkins was asked by counsel for the respondent before the trial judge (Mr. Justice Robertson) if he could tell him

> Were these applications and orders made by Their Honours Judge Kelly and Judge Nesbitt at the time you had the application?

to which he replied,

> Well, in answer to that I would say I received a tentative application to start with and during the course of a few weeks the order was built up and then I applied to Judge Kelly,

and in cross-examination said that he could not tell whether he had given any notice of his application to either of the two County Court judges. I suppose from the record, as it comes to us, it must be taken that the Community's alleged proposal had been actually filed on June 23rd, notwithstanding that the orders of both County Court judges purported to permit the Community " to make application under and is entitled to take advantage of the provisions of the said *F.C.A. Act, 1934,*" and the said Official Receiver " to accept the said proposal."

In any event, the Community filed its request to the Board of Review on August 1st, 1939, from which it must be assumed, if we are to have any regard for the provisions of the Act, that the Official Receiver had called a meeting of the interested creditors and submitted the proposal

with the required statement of its affairs for their consideration, and that the proposal had not been approved, for there is in the record an exhibit, which purports to be a notice to Mr. Salter, the Receiver for the appellant Trust Company, that the Board would deal with the Community's written request for the formulation of "an acceptable proposal for a composition, extension of time or scheme of arrangement of the affairs of the said farmer" at the court house at Nelson, B.C., on September 26th, 1935, (which presumably is an error for 1939)—which they could only do under the provisions of s. 12 in the event of the original proposal not having been approved by the creditors.

The appellant on September 16th, ten days before the time fixed for the hearing before the Board of Review, commenced this action in the Supreme Court of British Columbia against the Community and the Board, claiming a declaration that the Community was not a farmer within the meaning of the *Farmers' Creditors Arrangement Act* and that the Board of Review had no jurisdiction to take any proceedings or consider the request for the formulation of an acceptable proposal under that Act, and on the same date an interim injunction was granted restraining the defendants and each of them until the trial of the action or until further order from taking any further steps under the Act with respect to the applications or liabilities of the Community. This injunction was dissolved on October 20th, 1939, by Mr. Justice Fisher on the ground that it was premature, and on December 15th, 1939, Mr. Justice Robertson, who tried the action, gave judgment declaring that the respondent, the Christian Community of Universal Brotherhood, Limited, is not a farmer within the meaning of the *Farmers' Creditors Arrangement Act,* statutes of Canada, 1934, ch. 53, as amended by statutes of Canada, 1935, ch. 20, and statutes of Canada, 1938, ch. 47, and giving liberty to apply for an injunction as against the Board of Review in the event of its deciding to proceed with the request for review. From this judgment both defendants appealed to the Court of Appeal, with the result that the appeal was allowed and the trial judgment set aside with costs.

It had been argued in behalf of the Community before the learned trial judge that the decision of this Court in

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Crocket J.

Barickman Hutterian Mutual Corp. v. *Nault* (1) was conclusive upon the question of the Community being a farmer within the meaning of the Act. His Lordship, however, carefully compared the facts of that case with those of the present and pointed out that while the corporation in the *Barickman* case (1), as the owner of the farm lands, managed and directed the farming and owned all the produce of the farms, and that no one else had or could have any legal interest therein, in the present case it was the tenants of the Community, whose principal occupation was farming or the tillage of the soil, and not the corporation itself, and thus distinguished it from the case relied upon by the Community, and held that the decision of this Court in the former case could not be relied upon by the respondent corporation as an authority for its contention in the present action, and made the declaration prayed for that the Community was not a farmer within the meaning of the Act.

Macdonald, C.J., in his reasons for judgment in the Court of Appeal, with which McQuarrie, J., agreed, adopted a dictum of Martin, J., in *Great West Life Assurance Co.* v. *Beck* (2), that whether or not a debtor, who has made a proposal, is a farmer should be determined before the Official Receiver reports to the Board of Review, and that if the Official Receiver was in doubt as to the status of the debtor, he might apply to the County Court judge for direction under rule 42 of the rules and regulations made by the Governor in Council under s. 15 of the Act, and he held that the County Court judge had jurisdiction to decide that question and that the above mentioned orders made by the two County Court judges were

> not things of naught, whatever might be said of the right to vacate them by appropriate proceedings.

If he was wrong in this view, he added,

> and an action for a declaration as to whether or not the appellant Christian Community is a "farmer" may be maintained in the Supreme Court, I would say, with the greatest respect for any contrary views, on the authority of *Barickman Hutterian Mutual Corp.* v. *Nault* (1), that it is a "farmer." This, of course, is the substantial question to be decided.

(1) [1939] S.C.R. 223. (2) [1940] 2 W.W.R. 542.

O'Halloran, J., held that the order of the judge of the proper County Court was an order of a court of competent jurisdiction under the *Farmers' Creditors Arrangement Act*, and that the Supreme Court of the province had no jurisdiction to ignore it or set it aside in a declaratory action.

With every respect, upon a consideration of the record and of the relevant provisions of the statute and regulations, I am of opinion that the learned trial judge had full jurisdiction to make the declaration which he did, and that his judgment was fully warranted by the evidence; and that the Court of Appeal therefore was not justified in setting it aside.

As its title, preamble and all its provisions and the rules and regulations thereunder clearly connote, the *Farmers' Creditors Arrangement Act* was designed by Parliament for the sole and exclusive benefit of farmers, who were unable to meet their liabilities as they became due. It is not questioned that no one, who was not a farmer within the definition prescribed by the Act ("a person whose principal occupation consists in farming or the tillage of the soil"), had any right to avail himself of its provisions to make a proposal either for a composition in satisfaction of his debts or an extension of time for payment thereof or a scheme of arrangement of his affairs, either by the Official Receiver or by the Board of Review. It seems to me, therefore, that if the respondent corporation was not a farmer, neither the Official Receiver nor the Board of Review nor either of the County Court judges had any authority whatsoever to bring the respondent corporation within the operation of that Act, and that any orders or reports purporting to recognize the respondent as a farmer must be held under the explicit provisions of the Act to have been wholly void and of no effect. The learned Chief Justice of British Columbia, pointing out that the two analogous orders of the County Court judges of the Counties of Yale and West Kootenay permitting the applicant to take advantage of the Act involves a decision that the applicant was a "farmer," himself states that that is the only basis upon which the orders could be made; and, as I have already stated, that the question of whether the Community was a farmer, was the substantial question to be decided on the appeal to the Appeal Court.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Crocket J.

I cannot, therefore, upon my part, comprehend how, if the Community was not a farmer within the meaning of the Act, the fact that a County Court judge had without authority and erroneously found that the respondent corporation was a farmer can possibly have the effect of ousting the jurisdiction of the Supreme Court to pronounce upon the validity of these proceedings and of removing from the custody and control of a special receiver appointed by the Supreme Court for the administration of the British Columbia assets and business of the respondent corporation for the realization of the moneys secured by the respondent's deed of trust and mortgage, and placing them in the exclusive control of either of the County Courts mentioned. The only possible construction of s. 6 of the Act, it seems to me, is that the right to make a proposal for a composition, extension of time or scheme of arrangement, is limited to a farmer, as above defined, and that the filing of a proposal by such a person with the Official Receiver is an essential pre-requisite of the jurisdiction of that official to act at all in any particular case in the same way that the filing of such a proposal is another essential pre-requisite under s. 11 (2) of the authority of any County Court in respect of the property of the appellant debtor.

In *Toronto Railway Co.* v. *Corporation of the City of Toronto* (1), an action had been brought by the railway company in the Supreme Court of Ontario for a declaration that the appellant's cars were personal property and as such were not liable for $8,775, sought to be levied as taxes thereon by the respondent. The trial court found that the plaintiff's cars were real estate and dismissed the action, and this judgment was affirmed by the Court of Appeal. On appeal to the Privy Council the Board held that the cars formed no part of the railway and were not fixed in any way to anything which was real estate and were, therefore, not assessable under the Ontario *Assessment Act*. It was argued that the decision of the Court of Appeal was *res judicata*, the question having been decided by the Revision Court appointed under the provincial *Assessment Act*, and the County Court judge on appeal from that decision. The Judicial Committee rejected this contention on the ground that the jurisdiction of the County Court is confined to the amount of assess-

(1) [1904] A.C. 809.

ment and does not extend to validate an assessment unauthorized by the statute. Lord Davey in delivering the judgment of the Board said that the jurisdiction of the Court of Revision and of the courts exercising the statutory jurisdiction of appeal from the Court of Revision is confined to the question whether the assessment was too high or too low and that those courts had no jurisdiction to determine the question whether the assessment commissioner had exceeded his powers in assessing property which was not by law assessable.

In other words,

(His Lordship continued)

where the assessment was *ab initio* a nullity they had no jurisdiction to confirm it or give it validity.

The Board therefore advised His Majesty that the order of the Court of Appeal should be reversed and instead thereof a declaration should be made and an injunction granted as claimed by the statement of claim.

In *Donohue* v. *The Parish of St. Etienne* (1), which was an action before a Superior Court in the province of Quebec, under Article 50 C.C.P., to have the defendant's assessment roll declared null and void on the ground that it included the assessment of machinery as immovable property, this Court held that the plaintiff having been assessed for property, which was non-assessable under the *Assessment Act,* the valuation roll was void *ab initio* and that the case fell within the principle of the decision of the Privy Council in *Toronto Railway Co.* v. *City of Toronto* (2). The appeal from the Court of King's Bench, reversing the judgment of the Superior Court, dismissing the plaintiff's action, was consequently allowed. In that case, Duff, J., as he then was, said that he could see no reason why the principle of the *Toronto* case (2) was not applicable and that there should be a declaration in accordance with the view above expressed, viz: that the machinery in question was not assessable as immovable property. Anglin and Mignault JJ., held that the decision of the Privy Council in *Shannon Realties Ltd.* v. *Ville St. Michel* (3) was not in point and that the failure of the appellants

(1) [1924] S.C.R. 511. (2) [1904] A.C. 809.
(3) [1924] A.C. 185.

1941

NATIONAL TRUST CO. LTD. v. THE CHRISTIAN COMMUNITY OF UNIVERSAL BROTHERHOOD LTD. AND THE BOARD OF REVIEW FOR B.C.

Crocket J.

to proceed under articles 430 and 662 of the Municipal Code did not preclude their maintaining an action under article 50 C.C.P., in order to have the valuation roll declared null.

In the *City of London* v. *Watt & Sons* (1), this Court held that s. 65 of the Ontario *Assessment Act* (R.S.O., 1887, c. 193) does not enable the Court of Revision to make valid an assessment which the statute does not authorize. Taschereau C.J., in delivering the judgment of the Court, held that that section of the Ontario *Assessment Act* does not make the roll as finally passed by the Court of Revision conclusive as regards a question of jurisdiction.

> If there is no power,
>
> (he said),
>
> conferred by the statute to make the assessment, it must be wholly illegal and void *ab initio,* and confirmation by the Court of Revision cannot validate it.

It is true that these three cases concern the exercise of statutory rights and powers provided for by provincial Assessments Acts, but if, as they all affirm, the unauthorized assumption of powers on the part of tribunals designated by such statutes makes their exercise null and void, and entitled the Supreme Courts of the provinces to try declaratory actions brought by those against whom it is sought to exercise such powers, why should the principles thus affirmed in these cases not apply similarly to the exercise of the explicitly limited rights and powers provided for by the *Farmers' Creditors Arrangement Act?* I can conceive of no reason why they should not. The whole tenor of the statute, it seems to me with all respect, negatives the suggestion that the Parliament of Canada intended to interfere with the inherent jurisdiction of the Supreme Courts of the various provinces to declare the nullity of wholly unauthorized proceedings and orders of all inferior statutory functionaries or tribunals at the suit of those whose property and civil rights such proceedings and orders purport to affect.

(1) (1893) 22 Can. S.C.R. 300.

I would, therefore, allow the appeal and restore the judgment of the learned trial judge with costs throughout against the respondent corporation.

Appeal allowed with costs.

Solicitors for the appellant: *Davis and Company.*

Solicitor for the respondent The Christian Community of Universal Brotherhood Limited: *C. F. R. Pincott.*

Solicitor for the respondent The Board of Review for the Province of British Columbia: *W. S. Owen.*