Genesis of the law of bankruptcy in Jersey

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1. CS Le Gros states[1] that the origin of the désastre procedure can be traced to the failure of the partnership of Jean Fiott and Company in 1797 when creditors of the partnership instituted over two hundred actions. The Royal Court ordered that, given this state of financial disaster, all the actions should be adjourned to a particular day, in order to put the creditors on an equal footing.

2. By 1811 the practice had evolved to the extent that the procedure was recognised as "désastre". In the case of Thomas Le Maistre[2] several actions had been instituted and the Court recorded that it having been "representé à la Justice que les affaires dudit Thomas Le Maistre sont **en désastre**, la Cour … a remis ces causes …" to another date. The date to which all actions instituted against the debtor were adjourned was known as the date of the "passation des causes". On that date the Court would make the appropriate order to ensure that there were no undue preferences and that all creditors were treated equitably.

3. In Godfray v Le Couteur[3] the Court declared:

> "Qu'une déclaration de désastre a lieu dans la vue de sauve-garder les intérêts et droits de créanciers, et aussi d'accorder la faculté au débiteur de s'arranger s'il est possible avec ses créanciers.
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> Qu'en l'état où se trouveun débiteur après declaration de désastre qui le prive de la possession de ses biens, il est nécessaire que la Cour charge une personne d'office d'avoir la charge desdits biens.
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> Que le Vicomte étant le premier officier de la Cour, doit être préposé pour avoir la garde desdits biens pour l'avantage commun des parties intéressées, …"

4. A further stage in the development of the law came in Smith v d'Auvergne[4] where the Court overruled a submission that the preservation of equality between creditors was a pre-requisite for a declaration en désastre. The Court held that every creditor had the right to prevent his insolvent debtor from selling or otherwise disposing of his assets by declaring them en désastre.

5. In subsequent cases it was established that, before a person can be declared en désastre, there must be prima facie evidence that the person is insolvent. It was also established

[1] Le Gros, Droit Coutumier de l'Ile de Jersey, 1943,Les Chroniques de Jersey Ltd, Jersey (re-printed by Jersey and Guernsey Law Review Ltd 2007) p 75.
[2] 1811 Ex. 4 Mai
[3] 1858 Ex.181, p 63
[4] 1886 Ex.210, p 492

that it was open to an insolvent debtor to declare his own moveable property en désastre.

6. In 1966, in the seminal case of Re Désastre Overseas Insurance Brokers Ltd,[5] the Court was able to state that the scope of the procedure had been enlarged over the years and that the process could be defined as follows:

> "A désastre is a declaration of bankruptcy, the effect of which is to deprive an insolvent debtor of the possession of his moveable estate and to vest that possession in He Majesty's Viscount whose duty it is to get in and liquidate that estate for the benefit of the creditors who prove their claims."

7. The Court also recommended that Rules of Court should be amended. That recommendation bore fruit in Part 12 of the Royal Court Rules 1968 which set out, for the first time, some basic procedural rules to govern the administration of a désastre.

8. Bankruptcy was becoming, however, no longer merely a domestic matter. During the 1970s the Viscount had sought to recover assets in France and in England. On 19th November 1976 an English solicitor called Geoffrey Myerson was declared en désastre and, shortly afterwards, left the Island for London. In 1978 the Viscount applied to the High Court of Justice in London for an Order in Aid pursuant to section 122 of the Bankruptcy Act, 1914 to collect in the assets of the debtor. The application was hotly contested and led to a lengthy hearing before Goulding J whose judgment is to be found in the law reports.[6]

9. The speaker, then the Solicitor General of Jersey, was called by the Viscount to give evidence, and cross-examined at length by counsel for the debtor, Mr Muir Hunter QC. A number of issues arose. To what class or classes of assets did the désastre process apply (a) territorially and (b) extra-territorially? Did the assets caught by the désastre include any of the property acquired by the debtor after the declaration en désastre? Was there reciprocity of recognition between the Royal Court and the High Court in relation to applications seeking aid under section 122 of the Bankruptcy Act? Was the debtor subject to the jurisdiction of the Royal Court at the time of the declaration, and did he remain subject to that jurisdiction? Was the Royal Court a "British court" in the context of the Bankruptcy Act?

10. The issues were in substance resolved in favour of the Viscount, and an Order-in-Aid was issued. The Court's order was not made without some implicit criticism of the uncertainty of the law of bankruptcy in Jersey. The sequel to the case was a resolve to enact legislation to put the désastre process on a statutory footing. A long gestation period was followed by the enactment of the Bankruptcy (Désastre) (Jersey) Law 1990.

[5] 1966 JJ 547
[6] 1981 …