

**ROYAL COURT**  
**(Samadi Division)**

88

5th May, 1994

Before: **Commissioner F.C.Hamon, Esq, Commissioner and**  
**Jurat M.W.Bonn and Jurat A. Vibert**

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**IN THE MATTER OF THE APPLICATION OF**  
**COLIN STEPHEN RUSSELL**  
**t/a ISLAND GAS SERVICES and**  
**t/a PLUMBING AND HEATING ENGINEERS**  
**THAT HE BE ALLOWED TO MAKE CESSION**

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**Advocate C.J.Dorey for Colin Stephen Russell**  
**S.C.K. Pallot, Esq., Crown Advocate for the Treasurer of the States**

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**THE COMMISSIONER:** Mr. Colin Stephen Russell ("Mr. Russell") has applied to the Court for an Act announcing his intention to make "cession générale" and, if that is granted, to allow him to make "cession générale" fifteen days after obtaining the Act. We heard that second application today. It is made under, and the proposed procedure would conform with, the Loi (1832) sur les Décrets. In support of the application, Mr. Russell has sworn a detailed affidavit. Since it was sworn on the 17th March of this year, there have been two changes made. Mr. Russell from being unemployed (he registered at the Job Centre on the 9th December, 1993 and has had his card stamped weekly), has obtained employment on a temporary basis with a firm erecting marquees at £3.50 per hour. He has currently worked for 30 hours at this employment. His wife does not work (they have three children aged 8, 6 and 3), but she has obtained family allowance of £62.09 per week.

Mr. Russell's financial situation, on the facts presented to us, is parlous. He is a qualified plumber and heating engineer having obtained his City and Guilds Certificate in these trades in 1977. He is also registered as an engineering technician with the Engineering Council. He has traded as Russell Engineers for the past nine years and as Island Gas Services for the last eight years. He served his apprenticeship as a plumber with C.A.Hanley and worked as a plumber/fitter for the Jersey Group of Hospitals from 1974 to 1984. He then went into business on his own and, according to his affidavit, up until eighteen months ago the businesses were doing well. His downfall appears to have been rapid and his debts amount to nearly £40,000. The family lives in rented accommodation which, with a rent rebate from the Housing Department, just obtained, is paid weekly. His realisable assets are negligible and his debts (mainly trade debts) continue to rise because any money that comes into his business account is removed

by the Bank to cover his personal overdraft. His creditors (22 are identified in the affidavit) eleven are listed as having taken judgment and most of these judgments are in the Petty Debts Court. His work van has now been returned to the leasing company as he could not afford to make repayments. Appearing before us today was Advocate Pallot for the Treasurer of the States, who is claiming arrears of income tax of £2,012.73 for the year ended 1989 and £2,589.13 for the year ended 1992. The Treasurer of the States had not been convened. He appeared to protest. He questioned the affidavit of Mr. Russell which clearly gave the impression that there were no major problems until quite recently when the building recession hit Jersey. He told us that judgment had been taken by the Treasurer in July 1983 following Court action for arrears of income tax in respect of 1977, 1978, 1979, 1980 and 1981. In December 1983, there was court action in respect of the 1982 income tax. Judgment was taken in March 1988 following court action in respect of 1985 and 1986 arrears of income tax. Although these court actions were adjourned for payments, Mr. Russell apparently never kept to any agreements to pay income tax. The matter was returned to Court on the 20th January, 1989 to obtain judgment.

The saga continued. In February, 1989 there was court action in respect of income tax for 1987 for payment on account. Court action followed in March 1990 in respect of the 1987 balance and for income tax for 1988. In April 1993, there was court action in respect of 1990 and 1991 on account. Judgment was taken in January, 1994 for court action in respect of 1989 and 1992.

Mr. Pallot told us that no court action was taken until Mr. Russell had had various letters asking for payment and had either ignored them or failed to keep to agreed schedules. Where action was not taken, income tax was paid after a period of time following pressure and warnings that the court actions would be brought back to Court in order to take judgment.

It is not perhaps surprising then, that despite Mr. Russell, on the advice of his lawyers, having written to all his creditors explaining the situation and expressing the hope that he would find employment and be able to pay them off, some of the creditors have taken judgment against him.

Unless there are other matters which have not been fully explained in the affidavit, we are concerned that a qualified plumber, with residential qualifications, is unable to find work. Perhaps some of Mr. Russell's creditors share that concern. We do not know if that concern is justified. If we were to grant the application we would never know, because, after making cession, if Mr. Russell fulfils all the requirements of the law, he would be personally freed from all liability of all debts incurred before the time when he made cession.

When the position of debtors was modified by the Loi (1832) sur les Décrets, the position was clear. In order to make cession générale, one of two conditions had to be satisfied. Either the

debtors must be imprisoned for debt and reduced "aux petits dépens" in prison or he must have intimated fifteen days previously his intention of making cession. Once the Court had granted the debtor's prayer to make cession, publicity to the Acte was given and the debtor had to action his creditors to witness his admission to make cession. Once admitted to make cession, he had to take an oath that it was because of insufficiency of means that he was unable to pay his debts. He then handed over to the Greffier all his papers relating to both his moveable and immoveable property duly listed under his signature and countersigned by the Greffier. There are many instances in the "Tables" of creditors intervening.

In Hanby v Dixon (209 Ex59) a defendant asked for a delay in order to study the "état".

In Gaudin v. Le Brocq (212 Ex 280) another creditor asked for a similar delay.

In Le Feuvre v. Jennings (212 Ex 3) a creditor intervened to raise an objection that Jennings had defrauded creditors "et s'était rendu indigne de la cession de biens". The matter was sent to proof (212 Ex 22).

In Telefitters (C.I.) Ltd. v. Roy David Young (1st March, 1993) Jersey Unreported, the learned Bailiff, in a closely reasoned judgment found (at page 5) in this way:-

**"Under the circumstances this is a matter of law and I rule that a debtor is not precluded from making an application although he is not in prison at the time of the application, subject to the qualification I have just mentioned that he has to be "malheureux" and he still has to make it in good faith".**

The Court went on to say, after issuing a caveat, with which we entirely agree, that an application of this sort has to be granted with caution.

**"We should add that, in addition to satisfying us that an applicant is "malheureux" and is acting "bona fide" he must, though not in prison, at least be at risk of going to prison for debt".**

On the question of caution raised by the learned Bailiff we have also the words of the Court of Appeal in Norris v. Emprunt (Jersey) Ltd. (24th January, 1990) Jersey Unreported; (1990) JLR N1., where at page 6 of the unreported Judgment, the Court said this:

**"In considering whether a cession should be granted the Court had in my view to consider the full circumstances disclosed by the appellant's affidavits including the legitimate interests of**

his creditors. An important consequence of the grant of cession is that in respect of the surrender of all the debtor's assets he is entitled to an absolute discharge of all debts incurred prior to the cession. Having regard to that legal consequence the Court properly, in my view, would be expected to proceed with caution before granting such an application".

Where then is the risk of Mr. Russell going to prison for debt? There are, as we have said, some 22 creditors. Not one is convened. Many have not taken judgment. It may be that they are relying on Mr. Russell's letter (which we have not seen) and awaiting his finding employment. We must recall that in Aubin administrateur de King, Long et Cie c. Rive (1858) 71 Ex.385 a debt incurred before the making of "cession" could not be revived after "cession" had been made despite a verbal undertaking by the debtor to satisfy the debt.

Advocate Dorey relies on Article 14 of the "Loi (1891) sur la Cour pour le recouvrement de menues dettes". It reads:

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#### ARTICLE 14.

*En prononçant une condamnation, le Juge pourra ordonner le paiement entier à un jour fixe, ou le montant en plusieurs sommes et à différentes époques. L'Acte accordera à l'acteur la faculté, à défaut de paiement au temps fixe, de faire saisir et vendre les biens-meubles du défendeur; mais la vente ne pourra avoir lieu, si ce n'est à la requête du défendeur, que huit jours après l'arrêt. La vente devra être affichée le Dimanche dans la boîte des annonces à la porte du cimetière de la paroisse où la vente aura lieu.*

*L'Acte de condamnation accordera à l'acteur la faculté de faire saisir la personne du défendeur et de le loger en prison pour dettes, s'il ne peut trouver des biens-meubles à lui appartenant. Nul ne pourra être detenu en prison plus de quatre jours pour chaque livre sterling qu'il sera condamné payer, et en proportion pour les fractions de livre sterling. Cet emprisonnement sera un acquittement de la dette. S'il est établi, à la satisfaction du Juge, que le débiteur est dans l'impossibilité momentanée de payer le montant auquel il a été condamné, le Juge, sur la demande du débiteur, pourra suspendre le droit du créancier de saisir la personne de son débiteur et prolonger le délai qui lui aura été accordé pour payer. Le débiteur pourra toujours sortir de prison en payant le montant de la condamnation et des frais encourus."*

That Article, on Advocate Dorey's argument, contains the necessary ingredients of the "threat of imprisonment".

We must again remind ourselves that in the Telefitters case, the Court was informed that there was a Petty Debts Court judgment which entitled the creditor to imprison Mr. Young and that preliminary steps had actually been taken but had not been pursued. In any event, the Judge of the Petty Debts Court has the right to suspend the application and grant a delay. We can see from an exchange of correspondence between the Viscount and Mr. Russell's lawyers (exhibited to his affidavit) that "cession" would have great advantage to the Viscount faced with applications for a "désastre" by debtors whose assets are negligible.

As the Viscount wrote in his letter of 13th December, 1993:

*"Nowhere in the law is there specific provision for those bereft of realisable assets to be dealt with. "Désastre" is a long, expensive procedure. The Finance and Economics Committee, which took the Law to the States, has not made provision for the taxpayer to meet the expenses incurred by the Viscount when there are insufficient assets to cover costs".*

We can understand "the great interest" shown by the Viscount in this application. We could also understand the great interest that would follow our finding in Miss Dorey's favour from any debtor embarrassed by a judgment obtained against him in the Petty Debts Court. It is entirely fortuitous that Mr. Pallot appeared before us. By way of example, the Social Security Department (owed £1,728.24) was not aware until they spoke to Mr. Pallot that this hearing was before us today. The Court is not prepared to grant the application and we would not consider the full merits of the case unless and until Mr. Russell could show to us that he was under real threat of imprisonment and that, following the proper procedures, he had at least summonsed before the Court the party from whom that real threat originated. In any event, we are not satisfied that the affidavit is made with entire candour in the light of Mr. Pallot's remarks. Other creditors may have had other cogent comments. In the circumstances, the application is refused.

**Authorities**

Loi (1832) sur les Décrets.

Hanby -v- Dixon 209 Ex 59.

Gaudin -v- Le Brocq 212 Ex 280.

Le Feuvre -v- Jennings 212 Ex 3.

Telefitters (C.I.) Ltd. -v- Young (1st March, 1993) Jersey Unreported.

Norris -v- Emprunt (Jersey) Ltd. (24th January, 1990) Jersey  
Unreported C of A.; (1990) JLR N.I. C. of. A.

Aubin, administrateur de King, Long et Cie c. Rive (1858) 71 Ex 385.

Loi (1891) sur la Cour pour le recouvrement de menues dettes.