

ROYAL COURT
(Samedi Division)

3rd March, 1995

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Before: The Bailiff, and
Jurats Coutanche and Gruchy

In re M.A. Bingle, Ltd., *en désastre*.

Representation of the Company *en désastre*.

Advocate R.G.S. Fielding for the Representor.

JUDGMENT

5 THE BAILIFF: This is a representation by M.A. Bingle Limited, to
which we shall refer as "the Company", which seeks *inter alia* the
recall of a declaration *en désastre* made of its property by the
Court on 24th February, 1995, on the application of Mr. M.A.
10 Bingle. It is suggested by the Company that the application for
the declaration *en désastre* was made improperly in that Mr. Bingle
had no *locus standi* to apply for the declaration; however that
matter is not for determination this afternoon. What is presently
for consideration is the request of the Company through its
15 counsel, Mr. Fielding, for a stay. In asking for a stay Mr.
Fielding told us that he meant firstly an order that the Viscount
should not proceed with the liquidation of the assets of the
Company and secondly an order permitting the Company to re-take
possession of certain agricultural machinery and to continue to
trade pending further order. The Viscount helpfully informed us
that the machinery of the Company which he had taken into his
possession had been valued at approximately £44,000.00. There
were no other assets of which he was aware.

20 So far as the liabilities of the Company were concerned the
Viscount had not yet advertised for claims, but he was able to
tell us that a judgment was taken on the 17th February, 1995, by
Mr. Robert Lester Le Brocq and his wife against the Company in the
sum of £27,995.00.

25 There is also a claim presently before the Court by the Royal
Bank of Scotland plc for the sum of £19,500.00. That action was
called this afternoon and was adjourned for a week. In addition

there is the claim by Mr. Bingle which is disputed by the Company that the Company is indebted to him in the sum of £20,000.00. Arithmetically speaking therefore it is at least arguable that the Company's liabilities exceed its assets.

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There appear to us to be a number of difficulties in the way of Mr. Fielding's application for an order permitting the Company to re-take possession of its agricultural machinery. It is, we think, sufficient this afternoon to mention only one. If the Company is effectively permitted to continue trading pending the continuance of the *désastre* what would be the position of any creditors who might come into being as a result of that trading? The Company is arguably, as we have said, bankrupt and it seems quite wrong for the Court to authorise a Company in such a position to continue to trade to the possible prejudice of third parties.

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It was suggested to us that Mr. and Mrs. Robert Lester Le Brocq might offer a guarantee underwriting the obligations of the Company in that respect, but although they have apparently in correspondence gone some way towards offering such a guarantee, Mr. Fielding was not able to confirm to us that such a guarantee was actually forthcoming. Mr. and Mrs. Robert Lester Le Brocq are not present in Court this afternoon and not represented by counsel.

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In addition, there is the consideration that the Royal Bank of Scotland plc and Mr. Bingle might be prejudiced by any such trading were we to authorise it.

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Finally, although a number of allegations are contained in the representation of the Company placed before the Court this afternoon, we note that they are not supported by any affidavit. In these circumstances we are not prepared to permit the Company to take re-possession of the agricultural machinery pending a decision as to whether or not the declaration *en désastre* was wrongly made.

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We are prepared to accede to the first part of Mr. Fielding's application and we accordingly order that the Viscount should, while retaining possession of the Company's assets, take no steps to proceed with their liquidation pending further Order of the Court.

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We Order, therefore, the service of the representation, as you have asked, upon Mr. Bingle and the Royal Bank of Scotland plc and the Viscount and we convene those parties for one week's time.