

6th September, 1984

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JAMES BARKER

DEPUTY BAILIFF: On the 3rd August, Lazard Brothers obtained a judgment against Mr. Barker for £215,000. On the 10th August, because a debt of £145,031 had not been satisfied, being due to Barclays Bank, that bank obtained from this Court a declaration of Mr. Barker's goods being 'en désastre'.

The affidavit which was required to be filed in accordance with Rule 12 (3) (1) of the Royal Court Rules, 1982, merely stated what I have said, that there was a previous judgment and that the debtor was indebted to the bank and that, accordingly, the deponent believed that the debtor was insolvent. It may well be that, in future, it might be better for such affidavits to contain more detail as to the grounds on which the belief of the deponent is based and, in particular, to disclose to the Court whether the person whose goods are sought to be declared 'en désastre' is the owner of real property, or as we say 'fondé en héritage'.

It is quite clear to us, reading Le Gros and the chapter on 'Désastre', that he draws a distinction between persons who are 'fondé en héritage' and persons who are not, and it is also clear to us that, before a declaration of 'désastre' can be received by the Royal Court and confirmed, the Court should be satisfied by proper evidence tendered by the applicant that the person whose goods are to be declared 'en désastre' is, in fact, insolvent. Now, that normally causes no difficulty because, without being tautologous, in most cases the person against whom the declaration is sought is usually notoriously insolvent or patently insolvent or clearly insolvent.

But the difficulty arises where a person owns real property and claims that the value of that real property is more than sufficient to pay all his creditors. Mr. Boxall presented an attractive argument that the Court had two ways of considering this matter: one from the current account test, that is the immediate failure to pay aspect, and the other from the balance sheet test, that is the comparison of the debtor's assets with his debts, and he sought to suggest that there wasn't any difference between the two and you could take them together. The Court is unable to go as far as that. The Court feels that a person who owns real property is insolvent if he is unable to pay

his debts within a reasonable time. The question is, of course, what is reasonable in the circumstances of every particular case?

It may well be, as Mr. Boxall has said, that this position of Mr. Barker is not a passing difficulty and is a continuing one and it may well be that the declaration of 'désastre' was well merited, but we are not in a position to give a final judgment this morning. As I said to Mr. Renouf, the Court feels that, although this is an application to lift the 'désastre' by Mr. Barker, it would be right for us to treat it - and we have treated it - as if this were a declaration or rather an application for a declaration by Barclays Bank with the attendant requirement of their proving the insolvency. We don't think that we have sufficient information about the assets and, indeed, the liabilities of Mr. Barker for us to come to a conclusion.

We are going to allow a reasonable delay for verification of the position to be achieved by the Viscount. We are going to postpone giving judgment for three months subject to proposals for payment to be submitted by Mr. Barker and his advisers to the Viscount and verified on oath. The Viscount will report to us at the end of this period. It follows first that the 'désastre' will remain on but the Viscount is to take no further steps to liquidate the assets. And second, Mr. Barker should be able to continue in business and trading under the general supervision of the Viscount.

As regards the matter of costs, we will leave that over.