

23rd September, 1986

IN THE ROYAL COURT OF JERSEY

Before: V.A. Tomes, Esq., Deputy Bailiff
Jurat M.G. Lucas
Jurat J.J.M. Orchard

In the matter of the application of James Barker
under the "Loi (1839) sur les Remises de Biens"

DEPUTY BAILIFF: We consider that the period of a year and a day is significant in matters of Remises de Biens notwithstanding that the provision in the Code was declared obsolete by the Code of 1771 Revision (Jersey) Law, 1965. Counsel have been unable to find any case where an additional respite was not granted where the application was made within the year. It is true that there may have been no opposition or that the matter was not argued; nevertheless, it has some significance. We consider that a year and a day should be regarded, so to speak, as a dividing line.

In the case of *Le Maitre -v- de Feu* (1850) 171 EX. 508, which was a case about whether or not the debtor was liberated from his debts following a remise, one of the "considérants" reads as follows: "Attendu qu'en remettant son bien entre les mains de la Justice, le débiteur en fait personnellement la cession à ses créanciers, s'il ne les satisfait point dans l'an et jour de la remise".

Hemery and Dumaresq in their statement of the mode of proceeding in the Royal Court, 1789, at page 30 state that, "If after examination, his estates be not found sufficient, and the creditors cannot be brought to a composition, then, after one year's respite, he must make cession of his estates". In many cases, the original term was one year and was extended by consent. In re Edge (Ex. 4th July 1866), it was not extended beyond one year because there was opposition from a creditor.

We propose, therefore, to make this distinction. After a year, the period would not be extended unless there were consent or very exceptional reasons. Before the year has expired, the period would be extended on the recommendation of the Jurats unless there were very exceptional reasons.

Mr. Barker was granted a remise by the full Court, so he cannot have been considered unworthy of a remise at that time. To the extent that conduct is relevant to the present application, it can only be conduct subsequent to the grant of the remise. Whilst we have no doubt that Mr. Barker has been difficult, we consider that the practical situation, as set out in the Jurats' report, outweighs the problems of conduct. We have not been persuaded that there has been exceptional delay or that the recommendation of the Jurats is unsound.

Therefore, we grant the application for an extension of four months from the 21st September, 1986.

We have been urged by Mr. Falle to direct the Jurats to, or at least make a recommendation that they should, offer the properties for sale by public auction. In our view, we cannot fetter the Jurats' discretion in any way but we feel sure that the Jurats in consultation with their professional advisers, will so conduct the remise as to expedite its conclusion.

We have given some weight, in our consideration, to two undertakings given on Mr. Barker's behalf. The first is that he will co-operate fully with the Jurats in every way from now onwards. That undertaking has been given to the Court and any breach of it would amount to contempt of Court. The second is that Mr. Barker will pay interest at the rate of 10% per annum on all debts which are ultimately found not to be already bearing interest, from the 21st September, 1986, to the date of ultimate payment.

We order that the report of the Jurats be lodged 'au Greffe', and that the costs of the three parties shall be paid out of the proceeds of the sale, alienation or other disposition of the debtor's properties.