



**THE STATES assembled on Tuesday, 25th June, 1985
at 10.15 a.m. under the Presidency of the Bailiff,
Sir Frank Ereaut.**

His Excellency The Lieutenant Governor,
Admiral Sir William Pillar, G.B.E., K.C.B.,
was present.

All members were present with the exception of –

Senator Peter Geoffrey Kevitt Manton – out of the Island.
Edgar John Becquet, Deputy of Trinity – ill.
Ronald Winter Blampied, Deputy of St. Helier – out of the
Island.

Prayers

Agricultural Statistics for 1984.

The Agriculture and Fisheries Committee by Act dated 23rd May, 1985, presented to the States a Report on Agricultural Statistics for 1984.

THE STATES ordered that the said Report be printed and distributed.

States of Jersey Police Force Report 1984.

The Defence Committee by Act dated 13th June, 1985, presented to the States a Report on the States of Jersey Police Force for 1984.

THE STATES ordered that the said Report be printed and distributed.

Probation Service Report 1984. R.C.12.

The Prison Board by Act dated 28th May, 1985, presented to the States the Report of the Probation Committee for 1984.

THE STATES ordered that the said Report be printed and distributed.

Matter lodged.

The following subject was lodged “au Greffe” –

Draft Methodist Church (Jersey) Law, 198 . P.68/85.

Presented by Senator Reginald Robert Jeune and referred to the Legislation Committee.

Dégrèvement. Questions and answers.

Senator Richard Joseph Shenton asked Deputy Edgar John Becquet of Trinity, President of the Legislation Committee, the following questions –

- “1. Will the President explain briefly the purpose of the procedure known as ‘dégrèvement’?”
2. Is it correct that a ‘dégrèvement’ can be obtained against a debtor’s property even if the debtor has sufficient assets to cover the debt?
3. Is the permission of the debtor required before dégrèvement proceedings are instituted?
4. What happens to the balance of the debtor’s assets (if any) after the debt has been paid?

5. Will the President give his views as to the relevance of the 'dégrèvement' proceedings in present-day circumstances?
6. Will the President give his views as to the relevance of imprisonment for debt in present-day circumstances?
7. Does imprisonment for debt exist in the United Kingdom or other Commonwealth countries?

The Vice-President of the Legislation Committee replied to the questions on behalf of the President as follows –

- “1. The purpose of 'dégrèvement' is to enable creditors to proceed against a debtor's immovable property, (i.e. houses, land, building etc.). Although it is theoretically available to unsecured creditors, it is more generally used by creditors whose claim is charged or secured upon the immovable property. A claim may be secured upon immovable property, either by the debtor agreeing that this should be done, as, for example, when a person borrows money to buy a house and the loan is charged or secured on the property, or by a creditor who has obtained a judgment of the Court against the debtor registering that judgment in the Public Registry. The former type of secured claim is known in Jersey Law as a conventional hypothec, and the latter is known as a judicial hypothec. A claim may also be secured by operation of law, without any action on the creditor's part. These are known as legal hypothecs. 'Dégrèvement' is the way in which these secured claims are realised if the debt is not paid; it corresponds to foreclosure proceedings available in England to mortgagees.

Although this has not been asked for, I feel that it will be of assistance in understanding the answers to both this and subsequent questions if I outline briefly the steps in a 'dégrèvement' which are as follows –

- (i) The creditor obtains a judgment of the Royal Court (if the amount is over £1,000) or of the Petty Debts Court (if the amount is under £1,000), ordering the debtor to pay what is owed.
 - (ii) If the debtor does not pay the debt within one month, the creditor applies to the Royal Court for what is called an 'Acte Vicomte chargé d'écrire'. This is an act ordering the Viscount to write to the debtor giving him formal notice that if he does not pay the debt within two months (in the case of a Royal Court judgment), or within three months (in the case of a Petty Debts Court judgment), all his property, both movable and immovable, will be liable to be adjudged renounced.
 - (iii) If the debtor still does not pay the debt, the creditor applies to the Royal Court at the expiration of two months or three months as the case may be for an order adjudging all the debtor's property to be renounced. The movable property, and two types of immovable property which are of no relevance here, are sold under a procedure known as 'réalisation', and the proceeds distributed to the creditors. The immovable property is subject to 'dégrèvement', the 'dégrèvement' proceedings being conducted by the Judicial Greffier.
2. It will be clear from what I have said that a 'dégrèvement' can only take place if the debtor does not pay the debt, either when the creditor obtains judgment against him or when he receives the formal notice from the Viscount. If a debtor has sufficient assets to pay the debt, and does not wish a 'dégrèvement' to take place, he has only to use the assets to pay the debt and the 'dégrèvement' cannot take place.

It may be that in some cases the debtor has sufficient assets to cover the debt, but does not feel that he will be able to realise them in time to prevent a 'dégrévement'. The protection provided by the law for such a situation is the procedure known as 'remise de biens'. The debtor applies to the Royal Court for permission to place his property in the hands of the Court. If, after a preliminary examination, the Royal Court is of the opinion that it is proper to grant a 'remise', it will make an order placing the debtor's affairs in the hands of two Jurats for a specified period, usually a year. During this time the Jurats gradually realise the assets and pay off the debts. Once they have paid off the debts they do not sell any more of the assets. The period of the 'remise' can be extended if need be, and for as long as it lasts the creditors cannot proceed against the debtor, and thus cannot bring about a 'dégrévement'.

3. It will be clear from what I have already said that 'dégrévement' proceedings cannot be instituted unless the debtor neither complies with the Court's judgment and the formal notice from the Viscount, nor applies to the Court for a 'remise de biens'.

If the debtor's permission were needed, an unscrupulous debtor would only have to refuse permission to cheat his creditors indefinitely of the money to which they were entitled. This would make utter nonsense of the concept of securing claims, and in such a situation few if any persons or institutions would be willing to lend money for, e.g. house purchases, as they would have absolutely no security or their money.

I may add that I am not aware of any jurisdiction in which the debtor's permission is required before discomberment proceedings take place.

4. This question cannot be answered within the context of 'dégrévement', as in a 'dégrévement' the immovable property is not sold, but is taken by the creditor. This means of course that if the property is worth more than the debt the creditor will profit, and the debtor lose, by the amount by which the value of the property exceeds the debt. The debtor can avoid this happening by applying for a 'remise de biens' when he receives formal notice from the Viscount that if he does not pay the debt his property may be adjudged renounced; as I have said, at least two months must elapse between notification by the Viscount and the subsequent adjudication of renunciation, which is ample time to apply for a 'remise', and in a 'remise' as much property as is necessary will be sold by the Jurats, who will pay the creditors and return the balance of the proceeds, and any unsold property, to the debtor.

5. What I have said so far will, I hope, make it clear that 'dégrévement' is Jersey's form of discurberment, a proceeding which exists in one form or another in every country where people own immovable property and either borrow money or incur debts. It is probably of greater relevance at the present day than at any previous time, because at the present day a greater number of people than ever before wish to buy their own homes with the aid of loans. Those loans are inevitably secured on the property. If there were no form of discurberment, it would be impossible to realise the security, and if it were impossible to realise the security no bank or other financial institution would be likely to be willing to lend money towards house purchases, as they would be risking the loss of their money. Home buying would thus be placed beyond the reach of the man in the street.

As a general principle, I would think it quite wrong that creditors should be deprived of the opportunity to proceed against their debtors' immovable property, as this would, as I have said, enable unscrupulous

debtors to deprive their creditors of money to which they are entitled, by putting all their assets into the ownership of immovable property.

6. I have been asked for my views on the relevance of imprisonment for debt in present-day circumstances. I think it is essential, in order to deal with this question properly, that I should outline the circumstances in which a person may be imprisoned for debt in Jersey, and the restrictions upon such imprisonment.

Imprisonment for debt may happen in any of the following ways –

- (i) If the creditor fears that the debtor is about to leave the Island, he may obtain a provisional order from the Bailiff, if the debt exceeds £1,000, or from one of the Judges of the Petty Debts Court if the debt is less than £1,000. Once the debtor has been arrested, the creditor must have the orders confirmed by the Royal Court or the Petty Debts Court as the case may be. When the application for confirmation is made the debtor will be present in Court and will be able to put his case to the Court.
- (ii) A creditor who has obtained a Royal Court judgment against his debtor may, if the debtor does not satisfy the judgment, apply to the Royal Court for an order, known as an ‘Acte à peine de prison’, which authorises him to have the debtor imprisoned if he does not pay the debt which the Court has ordered him to pay. The debtor must be served personally by the Viscount in advance with notice of the creditor’s intention to apply for an ‘Acte à peine de prison’, and he can of course

appear in Court when the application is made.

- (iii) When a creditor obtains judgment against a debtor in the Petty Debts Court, the Petty Debts Court Law ('Loi (1891) sur la Cour pour le recouvrement de menues dettes') provides that the Act of the Petty Debts Court will include an authorisation empowering the creditor to cause the debtor to be imprisoned if he does not satisfy the judgment.

If a debtor is imprisoned by virtue of an order of either Court, and cannot afford to pay the debt, he may apply to that Court for leave to make 'cession' of his property. He must declare an oath that he has only failed to pay his debts because he does not have sufficient assets; if he does this, and if the Royal Court is satisfied that he is acting in good faith, he will be allowed to make 'cession'. The effect of this is that such assets as he does have are realised for the benefit of his creditors, while he himself is released from prison forthwith.

In addition to this, if the debtor is imprisoned by virtue of an order of the Petty Debts Court, the Petty Debts Court Law specifically provides that if it is established to the satisfaction of the Judge that the debtor is temporarily unable to pay the debt, the Judge may, on the application of the debtor, suspend the creditor's right to have the debtor imprisoned, and give him a delay during which to pay the debt.

It will thus, I hope, be clear that a debtor can always secure his own release unless he could afford to pay the debt but is deliberately refusing to do so, or is acting in bad faith. Reverting now to the question as put, I feel that I cannot do better than to refer to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5 of which provides that a person may be deprived of his liberty if, in

accordance with a procedure prescribed by law, he is arrested or detained for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law. This appears to me to cover exactly the position as it exists in Jersey at the present day.

Article 1 of Protocol No. 4 (Strasbourg, 1963) provides that no one shall be deprived of his liberty solely on the ground of inability to fulfil a contractual obligation. I trust I have said enough to make it clear that the debtor who is unable, rather than unwilling, to meet his obligations can always obtain his release. I do not wish to be repetitive, but I think that the importance of the question will justify me in summarising again the safeguards available to the debtor who does not pay because he cannot.

- (i) If the inability to pay is temporary, and the debt falls within the jurisdiction of the Royal Court (i.e. exceeds £1,000), he can apply to that Court for a 'remise de biens' as soon as he receives notice of the creditor's intention to apply for an 'Acte à peine de prison'.
- (ii) If the inability to pay is temporary, and the debt falls within the jurisdiction of the Petty Debts Court (i.e. less than £1,000), he can ask the Judge of the Petty Debts Court to suspend the creditor's right to have him imprisoned, and grant him a delay within which to pay the debts.
- (iii) If the inability to pay is permanent, then whether the debt is more or less than £1,000 he can apply to the Royal Court to make 'cession'. This will only be refused if the Court is not satisfied that he is acting in good faith, and indeed even if the debtor is acting in bad faith, the Royal Court may, if he is genuinely unable to pay his debts,

refuse him leave to make `cession' because of his bad faith, but release him from prison nevertheless.

Imprisonment for debt appears to me to be of no less relevance to the present day than in former times. More people than ever borrow money, e.g. on personal loan schemes, or buy goods on credit, e.g. by means of hire purchase. Imprisonment for debt can never operate to the prejudice of the debtor who has acted in good faith, as he will always be able to secure his release in one of the ways which I have mentioned, while if a debtor is acting in bad faith, and deliberately refusing to pay a debt which he could pay if he wished to, I consider it highly desirable that his creditors, who indeed may themselves suffer considerable hardship by being kept out of their money, should have some way of exerting pressure on him to change his mind.

7. As far as I am aware, imprisonment for debt has been retained in the United Kingdom for certain classes of debt, e.g. maintenance payments. I am not familiar with, nor have I attempted to research, the position in the rest of the Commonwealth. The demands in the terms of time which this task would impose would be immense, and not, in my opinion, justified; if our system is, as I believe it to be, entirely consistent with the demands of natural justice, then I fail to see what further benefit could be derived from investigating the systems of other countries."

Finance and Economics Committee: public finances. Statement.

The President of the Finance and Economics Committee made a Statement in the following terms –

“As we are about to debate several capital projects totalling many millions of pounds, I thought it might be appropriate to say a general word about finances and also to make a specific comment.

The general word relates to the Public Finances (Administration) (Jersey) Law, 1967, which I would ask Members, and particularly the newer Members, to study. The Law places responsibility on the Finance and Economics Committee for regulating, controlling and supervising the public finances of the Island. The Committee has been presented with quite a problem this year to examine and comment upon a number of capital requests which total £35 million and which, in many cases, had been received quite late in the day, bearing in mind that the Public Finances (General) (Jersey) Rules, 1967, states that all such Propositions must be in the Finance and Economics Committee’s hands at least 56 days before the last Sitting in June.

As I have already said it is my Committee’s intention to endeavour to find a more acceptable procedure for future years.

Nevertheless, the Committee and its Officers have spent considerable time in the examination of these projects and it would, therefore, be wrong for a remark made last Tuesday to pass without comment.

It was said during the Fort Regent debate that the Committee had spent only 25 minutes in the study of that Report. This was a very misleading statement because, in fact, many hours had been spent on the study of the proposals from the time the original Report was received in early March when I and the Treasurer of the States met the

President and Chief Officer to comment and express some doubts on the original proposal.

In March and April the Treasury staff went further into the whole matter and a fuller and amended Report was then presented. The Treasurer and the Assistant Treasurer spent several hours at the Fort in discussion with the Chief Officer and the Architect and prepared a Paper for the Finance and Economics Committee with recommendations. At the end of April the Committee examined the Fort's proposals, which included a presentation by the Chief Officer and the Architect. At the conclusion of the discussion the President of Fort Regent agreed to withdraw £500,000 of the project and also agreed to set out that Committee's order of priorities, on the assumption that the whole project might not be possible from the financial point of view this year.

Finally, may I say that when the House has decided upon the Propositions today, it will then be for the Finance and Economics Committee to take the next step and consider how much of these sums can be included in the Budget for next year."

Supplementary and Additional Votes of Credit.

THE STATES considered an Act of the Finance and Economics Committee dated 10th June, 1985, presenting Acts of the undermentioned Committees and, acceding to the requests contained therein, granted to the said Committees Supplementary (S) and Additional (A) vote of credit out of the General Reserve as follows –

	S	A
	£	£
Finance and Economics Committee		
Judicial Greffe		
0322 Premises	7,000	
Carried forward	7,000	

	S	A
	£	£
Finance and Economics Committee cont'd.		
Brought forward	7,000	
Miscellaneous		
0603A Additional Courts and Commissioners' expenses	<u>15,000</u>	
Total request	<u>22,000</u>	
Education Committee		
2503 Primary Schools – non fee paying – premises	22,000	
3096 Structural Maintenance – general and emergencies	<u>48,000</u>	
Total request	<u>70,000</u>	
Social Security Committee		
4814 Extra-statutory awards	<u>10,000</u>	
Cottage Homes Committee		
4902 Premises	<u>10,500</u>	
Prison Board		
Administration		
5502 Premises	<u>14,900</u>	
CAPITAL VOTES OF CREDIT		
Public Health Committee		
C0680 Clinique Pinel, St. Saviour's Hospital – upgrading		301,500
C0681 General Hospital – electricity supply		<u>6,000</u>
Total request		<u>307,500</u>

	S	A
	£	£
Harbours and Airport Committee		
C0240 Port of St. Helier – general development		<u>300,000</u>
C0825 Submarine cable survey		<u>90,000</u>

The total requests granted for the June Supply Day amounted to £824,900.

The total of the deferred Supply item amounted to £79,200.

Housing Committee: basic States Loan developments – abnormal costs. Deferred Supply. P.69/85.

THE STATES deferred consideration of the request of the Housing Committee for an additional vote of credit in the sum of £79,200 for abnormal costs relating to basic States Loan developments.

The Proposition relative thereto was lodged “au Greffe” by Deputy Corrie Stein of Grouville. The States decided to take this subject into consideration on 30th July, 1985.

Clinique Pinel, St. Saviour’s Hospital: remedial work, improvements and upgrading.

THE STATES, adopting a Proposition of the Public Health Committee, approved the undertaking of necessary remedial work, together with certain improvements and upgrading at Clinique Pinel, St. Saviour’s Hospital.

Victoria Cottage Homes: Block 'K' – improvements to toilet facilities.

THE STATES, adopting a Proposition of the Cottage Homes Committee –

- (a) approved Drawing No. 2822/001 'B' showing the work to be carried out on Block 'K', Victoria Cottage Homes in respect of the installation of additional toilet facilities;
- (b) authorised the Greffier of the States to sign the said Drawing on behalf of the States.

Bon Air Lane, St. Saviour: extension of main sewer.

THE STATES, adopting a Proposition of the Resources Recovery Board –

- (a) approved Drawing No. T.S.767 showing the proposed extension of the main sewer to serve Bon Air Lane, St. Saviour;
- (b) authorised the Greffier of the States to sign the said Drawing on behalf of the States.

Greville Bathe Fund: appointment of Trustee.

THE STATES, adopting a Proposition of the Finance and Economics Committee, approved the appointment of Jurat Donald Edward Le Boutillier as a Trustee for the purpose of administering the income of the Greville Bathe Fund in place of George Norman Simon, T.D., who on 27th April, 1985, retired from the office of Jurat.

Port of St. Helier: development. P.49/85.

THE STATES, adopting a Proposition of the Harbours and Airport Committee, approved in principle the development of an outer

harbour at St. Helier Harbour to provide two roll-on/roll-off ferry berths and associated facilities.

Public Works Committee: capital projects for 1986. P.59/86.

THE STATES, adopting a Proposition of the Public Works Committee, approved in principle the replacement of an existing glasshouse at Warwick Farm with clearspan houses.

Resources Recovery Board: works progress and capital estimates for 1986. P.60/85.

THE STATES, adopting a Proposition of the Resources Recovery Board, approved in principle –

- (a) the continuation of the repair, relining and reconstruction of defective or inadequate sewers in accordance with priorities to be determined from a continuing review of the system of sewers;
- (b) the extension of the system of main sewers to areas which have been identified as being in greatest need;
- (c) the construction of surface water drainage improvement works under the heading “Surface Water Drainage – Miscellaneous Improvements”.

The Very Reverend T.A. Goss, Dean of Jersey – retirement.

The Bailiff, on behalf of all the States Members and Officers of the States, paid tribute to the service which the Very Reverend T.A. Goss had given the Island and the States during his term of office as The Dean of Jersey and wished him a long and happy retirement.

The Bailiff then presented the Dean with twelve crystal wine glasses. The Dean responded to the Bailiff’s speech and thanked the Bailiff, Members and Officers for the gift.

THE STATES adjourned at 5 p.m. until 26th June, 1985.

R.S. GRAY,

Deputy Greffier of the States.