

Jersey & Guernsey Law Review – February 2011
**THE DEMISE OF REMISE IN JERSEY LAW: GREATLY
EXAGGERATED?**

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This article examines remise de biens in Jersey bankruptcy law and recent case law pronouncement on the workings of the procedure, its relationship to other insolvency measures, the respective role of the court and the Jurats in the procedure and the rights of the debtor to be heard in proceedings.

Introduction *¹

1 A *remise de biens* is a method for an embarrassed debtor² to apply for the indulgence of the court, usually granted on strict conditions.³ It results in the affairs of the debtor being placed in the hands of the court for a fixed period, usually 6 months, although the period may be extended.⁴ During this time, two Jurats appointed by the court attempt to discharge debts by realising the debtor's property. The utility of this procedure is to avoid a fire-sale of the debtor's assets with a view to obtaining a better price than could be obtained were the sale conducted in haste. If the debts are paid in their entirety, any unsold property is returned to the debtor. As a result, a *remise de biens* is useful to a debtor, who might otherwise be obliged to apply for a *cession de biens* or who might be the subject of an *adjudication de renonciation* at the creditor's behest and who would risk losing any surplus value in their immovable property through transfer of that property via the *dégrévement* process to one of their creditors. Similarly, it is useful when compared to a *désastre*, because the costs of the procedure are usually less than the fees charged by the Viscount in that procedure, while the debtor retains ownership of his property, although obliged to co-operate with the Jurats who exercise a power of management over the property. *Remise de biens* is the only Jersey procedure of a suspensory type specifically

* The author would like to thank Jonathan Walker, Solicitor of the Royal Court of Jersey and Adjunct Professor, Institute of Law Jersey, for kindly casting a critical eye over the contents of this article. Needless to say, all errors and omissions remain the author's own.

¹ This article is based in part on material, by this author, contained in the *Law relating to Security on Movable Property and Bankruptcy Study Guide* (2010, Institute of Law Jersey, St Helier), Chapter 10.

² Note that, although the word "debtor" is used here, it is not a requirement for the procedure that the debtor be insolvent. Note also that the procedure can only be initiated at the debtor's instance and it is not accessible to creditors to effect a seizure and sale of the debtor's property. Note also that a term used here is "*adjudication de renonciation*", although strictly speaking, it is a decision of the Royal Court by which the property of a debtor is adjudged renounced (*adjudée renoncée*).

³ The procedure, which developed in Jersey customary law, is said to be based on the *lettres de répit* issued by Royal fiat first introduced in a French ordinance promulgated in 1673 during the reign of Louis XIV.

⁴ The *Loi (1839) sur les remises de biens*, which codified and amended the customary law procedure, does not define a duration for the procedure. The court granting an order for *remise* will set a time limit, normally of 6 months, although this may extend up to 12. The court may also extend time on a subsequent application, though extensions beyond a year are not usually granted unless the creditors consent: *Re Barker* 1985–86 JLR N–2b, *Re Barker* 1987–88 JLR 4.

to enable the rehabilitation of the debtor because it results in a discharge if successful.⁵ It is also fair for the debtor because only so much of the debtor's property is realised as is necessary to satisfy the creditors and, prior to the inclusion of immovables within the scope of *désastre* proceedings, it was the only equitable method for dealing with a debtor with immovable property.⁶ As a result, it has remained in use until modern times, albeit case law, reported or unreported, on its operation is sparse.⁷

2 A recent case has shed further light on the use of the *remise de biens* procedure and the role of the court in controlling access to it. In *Re Mickhael*,⁸ the court states that the rationale for *remise* is to mitigate the rigours of the bankruptcy process of *dégrévement* or to avoid the pressure to make *cession de biens* because of the potential risk (however slight in practice) of a committal to prison at a creditor's behest. It also allows the debtor time to effect an orderly realisation of his assets to pay the creditors.⁹ The case involved a debtor, Dr Nagy Mickhael, who ran a business in St Helier offering, *inter alia*, physiotherapy, hydrotherapy and other medical services. The debtor had been inactive in his business for some three years, absenting himself from the Island by reason of personal difficulties and had incurred debts.¹⁰ As a result, proceedings were brought against him by his principal creditor, Lloyds TSB Offshore Ltd, and an *adjudication de renonciation* obtained on 29 January 2010 with a *dégrévement* ordered for 2 March 2010. Dr Mickhael filed his application for a *remise de biens* on 26 February 2010, duly accompanied by the detailed statement (*état détaillé*) of all his property required by the law.¹¹ The court, having appointed Jurats to enquire into the debtor's affairs and to report back to court on the viability of a *remise de biens*,¹² stayed the *dégrévement* process. Although apparently not recommending that an order be granted, the Jurats reported back on 12 March 2010 advocating that a hearing take place in the presence of the debtor and creditors, which duly occurred on 26 March 2010. At this hearing, the court exercised its discretion not to grant the *remise de biens* and reserved the reasons for its judgment,

⁵ Jersey Law Commission Consultation Paper No 2 (November 1998), at para 2.5.1., copy available at: <<http://www.lawcomm.gov.je/consultation2.htm>> (last viewed 26 September 2010). This may be contrasted with *cession de biens*, in which, although it also results in a discharge, the surplus value of the property not required to meet creditors' claims accrues to the creditor who takes the property during the *dégrévement* process.

⁶ *Ibid.*, at para 2.5.2. In fact, although it is common during a *remise de biens* for all the debtor's property, whether movable or immovable, to be sold to meet debts, the qualification for entry to the procedure is that the debtor must be *fondé en héritage*. *Re Taylor* (10 December 1999, unreported) is authority that shares in a company which owns immovable property may be classified as the equivalent for the purposes of a *remise de biens*.

⁷ One of the most extensive accounts, albeit of some vintage, of the operations of a *remise de biens* and its relationship to the procedures of *cession de biens/adjudication de renonciation* is the series of cases involving the debtor Barker, various hearings being reported as *Re Barker* 1985–86 JLR 120, 196, 284 and *N–2b*; 1987–88 JLR 4 and 23.

⁸ Judgment of 14 September 2010, *coram* W. Bailhache DB and Jurats Le Breton and Kerley.

⁹ At para 2.

¹⁰ At para 19.

¹¹ Article 1, *Loi (1839) sur les remises de biens*. A full account of the operations of the procedure may be read in F. Benest and M. Wilkins, *Can we be at Ease with the Remise?* (2004) 8 JL Rev 42.

¹² *Ibid.*, art 2.

which it has now delivered.¹³ In the judgment, the court recites the principles that would motivate it to consider whether an order would be appropriate. It also gives a perspective on the relationship between the Jurats and the court in determining the viability of any procedure and establishes the rights of the debtor at the hearing stage.

Principles governing access to *remise de biens*

Benefit for creditors generally

3 Apart from the fact that the procedure is initiated at the debtor's behest, a pre-requisite for which is that the debtor is *fondé en héritage*, the courts have traditionally only provided access to a *remise de biens* on the basis of there being a benefit for the creditors, secured and unsecured. Before the *Loi (1839) sur les remises de biens* was enacted, a debtor was required to satisfy the court that the debtor's immovable property was sufficient for the satisfaction of the debtor's total liabilities.¹⁴ This requirement has been mitigated by the law itself,¹⁵ which refers to the possibility of the procedure being used where the debtor's secured debts (as opposed to his total liabilities) can be paid in full, with any surplus being applied to meet the needs of the unsecured creditors. This has been confirmed by the courts accepting that they have no jurisdiction to grant an order unless satisfied that there will be a credit balance, however small, for distribution amongst the ordinary creditors. Even in this instance, the granting of an order for a *remise de biens* remains at the court's discretion.¹⁶

4 In *Re Mickhael*,¹⁷ the court accepts the same principle, but adds a gloss to it, stating that there would be no point in ordering a *remise de biens*, as opposed to a *dégrévement*,¹⁸ where the value of the immovable property was precisely equal to the amount of the secured debt. Although the need for a surplus continues to be treated as a condition precedent, the order is not affected by any change in the valuation of the assets or the debts. However, any change in the value of the property so as to remove the possibility of any dividend to the unsecured creditors could result in an application to the court for discontinuance of the procedure and, presumably, the lifting of the stay in relation to the *dégrévement* proceedings.¹⁹ The advantage for the debtor in there being a surplus is that the payment of a dividend, no matter how small, will result in his obtaining a discharge.²⁰ The prospect for the return of any surplus, however remote a prospect, makes this procedure appear more equitable from the debtor's perspective.²¹ In this light, one can appreciate the debtor's concern to obtain, if at all possible, the benefit of the

¹³ At para 1.

¹⁴ Jersey Law Commission Consultation Paper No 2, above note 5, at para 2.5.5., citing P. Le Geyt, *Constitution, Lois et Usages* (1846, Falle, St Helier), Volume 1, at 390.

¹⁵ Article 6, *Loi (1839) sur les remises de biens*.

¹⁶ *Re Shield Investments (Jersey) Ltd* 1993 JLR N-3.

¹⁷ At para 3(i).

¹⁸ Whether this followed a *cession de biens* or *adjudication de renonciation*.

¹⁹ *Re Superseconds Ltd* 1996 JLR 117.

²⁰ *Re Barker* 1987-88 JLR 23.

²¹ *Re Barker* 1985-86 JLR 284.

procedure and the court itself states that it is right to investigate the matter and give consideration to the application for a *remise de biens* if it is satisfied that there may be a credit balance available for distribution to the unsecured creditors.²²

5 However, in the instant case, the evidence revealed problems over the valuation of the assets and the Jurats' assessment of the estate, on the basis of valuation advice, differed significantly from the art 1 statement supplied by Dr Mickhael.²³ Their assessment revealed a potential shortfall of the amount necessary to satisfy the secured creditors, although matters in relation to certain claims were open to dispute, making a revision of this position possible, if not probable.²⁴ In any event, the court was prepared to accept the possibility of a surplus arising, although it stated that the matter was by no means clear. Although the court recognised the risk of hardship to the debtor were the order not granted and any surplus accrued to the creditor taking in *dégrévement* proceedings, it was also exercised by the prospect that failure of the *remise de biens*, perhaps because of a subsequent discovery that no prospects of a dividend to the unsecured creditors would be forthcoming, could cause real hardship to the creditors who would presumably have to wait longer for their due and undergo the risk of diminution in the value of the property available.²⁵ Similarly, even though one of the unsecured creditors had made, fortuitously for the debtor, an offer for the property that could have generated the necessary surplus for the unsecured creditors and ensured the success of the *remise de biens*,²⁶ the court considered that, because the creditor concerned was not committed at law to complete the transaction, it had no confidence in the likelihood of the transaction "coming to fruition" and consequently refused the application.²⁷ The court concluded that uncertainty about asset values and hence about the success of the *remise de biens* are likely to carry substantial weight in the exercise of any discretion.²⁸

Balance of benefit between debtor and creditors

6 As this case also reveals, one of the interesting things about the *remise de biens* is its relationship to other procedures. An application for a *remise de biens* may be made notwithstanding that the debtor's property has been surrendered voluntarily in a *cession de biens* or involuntarily by an *adjudication de renonciation* and irrespective as to whether a *dégrévement* has been ordered, provided that the property concerned has not yet vested in the *tenant après dégrévement*. In one of the Barker hearings, the court held that the property had not yet vested in the *Attournés*, whose task it was to conduct the *dégrévement*, and, consequently, the debtor still had title to the property. An *adjudication*

²² At para 3(ii).

²³ At paras 4–6.

²⁴ At para 7.

²⁵ At para 20(i)–(ii).

²⁶ At para 8.

²⁷ At para 20(iii)–(iv). Doubts are also expressed by the principal secured creditor as to the likely completion of this transaction, reported at para 16(ii).

²⁸ At para 3(viii). At para 16(iv), the principal creditor bases part of its opposition on the fact it is "impossible to indicate whether there would be ... a credit balance", the suggestion being that there might be further unsecured claims as yet undiscovered by the Jurats.

de renonciation, the court held, was not irrevocable, and the consent of the creditors to a change of procedure was not required, although their views would be taken into account.²⁹ In the same hearing, the court also stated that a *remise de biens* was always preferable to a *dégrévement* if the circumstances warranted it as it did not necessarily deprive the debtor of all of his assets and could restore a surplus if there was one. The draconian nature of the *dégrévement* procedure means that the court is able to halt the procedure at any time and pursue a *remise de biens* instead.

7 In this light, the interest of the debtor in pursuing *remise de biens* proceedings can be understood.³⁰ A successful outcome would offer him a discharge. A failure, on the other hand, would simply result in the opening of a *cession de biens* procedure, given that the courts treat the application for a *remise de biens* as being a *cession conditionnelle*, the conditional element being the success of the *remise de biens*.³¹ On failure, therefore, the “resumption” of the *cession de biens* would simply result in a *dégrévement* being ordered with the creditors being in no better a position than if the original *dégrévement* had been allowed to continue. The advantage from the debtor’s perspective of proceeding with the *remise de biens* is that, as in *Re Mickhael*, despite its failure, he would obtain the discharge from debts a *cession de biens* and subsequent *dégrévement* would offer him and which the *adjudication de renonciation* accompanied by a *dégrévement*, to which he was in fact subject, would not.³² Nevertheless, as in relation to the condition precedent debate above and the issue of any surplus for the unsecured creditors necessary for proceedings to be initiated, the court also states in *Re Mickhael* that it will have regard to any impact that a delay caused by halting *dégrévement* has on the creditors’ prospects of recovering debts owed them.

8 The court in fact states that the *dégrévement* process, although also taking time to complete, has the merit of conferring finality in enabling one or more creditors to recover all or some part of the debts due them. Therefore any extended delay and its impact on one or more creditors who could be affected by that delay is a legitimate factor to take into account.³³ However, the court is also exercised by the need to balance the relative interests of the debtor and creditors. The court states here that, where there is a significant equity in the property, which would otherwise accrue to the fortunate creditor in

²⁹ *Re Barker* 1985–86 JLR 186.

³⁰ There was also a further point, noted in passing at paras 11, 18 and 20(ii), that any bankruptcy would have an adverse effect on Dr Mickhael’s practising certificate issued by the General Medical Council. As bankruptcy is defined in art 8 of the Interpretation (Jersey) Law 1954 to include both a *remise de biens* and an *adjudication de renonciation*, it might not have been material to the debtor’s position whether the remise was in fact ordered.

³¹ *Le Maistre v Du Feu* (1850) 171 Ex 508.

³² *Birbeck v Midland Bank* 1981 JJ 121. The debtor here did not have the option of filing for a *cession de biens* on the failure of his application for a *remise de biens*, on the authority of *Re De Gruchy* (1873) Ex 195, because of the *adjudication de renonciation* to which he was already subject.

³³ At para 3(iii). However, this need not necessarily be a factor in the situation of a *dégrévement* which follows on an *adjudication de renonciation*, given the principle in *Birbeck v Midland Bank* 1981 JJ 121, as the waiting creditor(s) retain their right to pursue the debtor for outstanding amounts. Their risk here is the usual one of pursuit of a personal claim against an impecunious debtor as opposed to the claim against immovable property they would enjoy in *dégrévement* proceedings.

a *dégrévement*, that fact could motivate the court to exercise its discretion to order a *remise de biens*.³⁴ Conversely, the presence of only a marginal equity or the likelihood of a potentially complex process being necessary for the realisation of the assets in question might motivate a court to question whether a *remise de biens* would be appropriate.³⁵ Between these two positions, the court states that other factors may have relevance and the weight the court will be prepared to attach to them will depend on the margin of equity in the property the court deems to exist, the length of time for any realisation to take place and the likelihood of hardship, whether on the debtor's or creditors' part.³⁶ Given the ambiguity surrounding the valuation of assets noted above and the consequent impact on the likelihood of success of the procedure,³⁷ it is not surprising that the court is more motivated by the hardship likely to be suffered by the creditors were an order made authorising a *remise de biens* to proceed. In fact, one of the arguments raised by the creditor in the case was that there was a risk of generating a plethora of judgments, as in the *Barker* case, were a *remise de biens* to be ordered.

Good faith

9 An element of good faith and probity has always been evident in the law relating to *remise de biens*. Le Geyt stated that the procedure was not available to persons who had wantonly dissipated their assets by spending their money "in taverns, on games of chance or with shameless women".³⁸ The 1839 law itself was passed in order to control the availability of the procedure by subjecting the application to a hearing before the court and to require debtors to follow the advice and counsel of the Jurats.³⁹ In fact, the law now states that the detailed statement of property presented by the debtor must, unless rejected on the spot, be verified on oath before the court that it is true and faithful.⁴⁰ In *Re Mickhael*, the court states that good faith on the part of the debtor is required, particularly where the debtor is asking the court to exercise its discretion in granting a *remise*, applying the maxim: "he who comes to equity must do so with clean hands".⁴¹ In the case, there is a suggestion by the principal secured creditor that a lack of good faith can be shown by the fact that the security contract was breached by the debtor by further security being given over the property concerned and by the delay in applying for a *remise de biens*, thus causing particular prejudice to the creditor concerned.⁴² In fact, the court

³⁴ At para 3(iv).

³⁵ At para 3(v).

³⁶ At para 3(vi).

³⁷ At para 3(viii).

³⁸ Le Geyt, above note 14, Volume 1, at 386.

³⁹ See Preamble to the *Loi (1839) sur les remises de biens*.

⁴⁰ *Ibid.*, art 1. Le Gros also states that despite the requirement to swear an oath, some debtors have in the past mis-stated or omitted debts from the statement, often acting in concert with creditors to do so: C. Le Gros, *Traité du Droit Coutumier de l'Île de Jersey* (1943) (reprinted 2007, Jersey and Guernsey Law Review Ltd, St Helier), at 371–372.

⁴¹ At para 3(vii).

⁴² At para 16(iii). At para 17, one of the junior creditors supports this, stating that the debtor ought to have sold the property earlier, at a time when he was better placed to obtain the best possible price for it. Furthermore, as reported at para 16(i), the principal creditor, although secured in the *dégrévement* procedure, continued to lose the unpaid interest on the loan, running at some £4000 *per mensem*.

makes no finding on the point, being simply content to recite the application of the maxim.⁴³

Role of Jurats and the Court

10 The role of the Jurats in the *remise de biens* is to ascertain at the outset whether it will be useful to grant the debtor's petition.⁴⁴ However, the court's discretion is stated as being unfettered and the court may depart from the recommendations of the Jurats. In practice, however, unless it considers the objections of creditors overriding, the court is likely to follow the recommendations of the Jurats, especially where their report is supported by expert advice unless there were cogent reasons for refusal. This is subject, however, to the condition precedent relating to the sufficiency of the assets to discharge the secured creditors' claims and for a dividend for the unsecured. Provided that there is enough to pay such a dividend, the court is able to grant a *remise de biens* even where a *cession de biens/adjudication de renonciation*, followed by a *dégrévement*, has already been under way. Although the discretion is commonly described as unfettered, in practice the court's discretion to grant or refuse the application must be exercised according to established principles of fairness.⁴⁵ Despite the formal bar on appeals in the law,⁴⁶ an applicant may still challenge the court's order if there has been a failure of natural justice principles.⁴⁷ In the event of such a challenge, any pending *dégrévement* is stayed pending the decision of the appeal. However, this is commonly an application of last resort for a litigant without a substantive issue to try. Before an application is granted, the court must be satisfied that there has been a denial of natural justice or an excess of jurisdiction which must be remedied.

11 Particularly because its discretion is unfettered, the court may depart from the Jurats' recommendations if it becomes aware of matters not known to them at the time of making their report. For example, although criticised for this subsequently, the court attempted to accept various undertakings given by the creditors as regards their conduct in a *dégrévement* and refused the application for a *remise de biens*.⁴⁸ In *Re Mickhael*, the principal creditor opposed the application for a *remise de biens*, arguing that it was not open to the court to implement a *remise de biens* where the Jurats had not expressly recommended this, relying on the precedent of similar cases where an order had only been granted where the Jurats had made a positive recommendation.⁴⁹ The argument

⁴³ In the context of *cession de biens*, good faith, shown by the debtor's making efforts to pay, is also a requirement for avoiding an *acte de prison* (*Benest v Le Maistre* 1998 JLR 213), as it is for applying for the *cession de biens* itself (*Le Gros*, above note 40, at 297).

⁴⁴ Article 2, *Loi (1839) sur les remises de biens*.

⁴⁵ *Re Barker* 1985–86 JLR 284; *Eves v. Hambros Bank (Jersey) Limited* 1995 JLR 345.

⁴⁶ Article 2, *Loi (1839) sur les remises de biens*.

⁴⁷ *Re Barker* 1985–86 JLR 284. This is in fact a general remedy by way of a petition for *doléance* by reason of a failure of natural justice.

⁴⁸ *Re Barker* 1985–86 JLR 186, overturned on appeal in *Re Barker* 1985–86 JLR 284. The judgement in *Re Mickhael*, at para 2, refers to the “hybrid procedure” that had been created and that was disapproved of by the appeal court.

⁴⁹ *Re Shield Investments (Jersey) Ltd* 1993 JLR N–3.

was also made that art 2 of the *Loi (1839) sur les remises de biens* only contemplated a *remise de biens* being ordered where the Jurats supported the application.⁵⁰ The court responded to the argument by holding that it was not bound, even if the condition precedent were fulfilled, to grant a *remise de biens*. It remains a matter for the court's discretion and, although the court states that it will usually take into account the report of the Jurats, nothing in the case law or indeed the law suggests that the court is not free to depart from the opinions expressed in the report. In this, the court relies heavily on the unfettered discretion that has been stated it possesses in relation to such claims and rejects the argument to the contrary.⁵¹

Debtor's right of address

12 As stated above, the making of the application for a *remise de biens* is initiated by the debtor and the detailed statement of all of his property must be verified on oath before the court. The debtor must normally make this application in person, although there is authority to the effect that an application by an attorney on behalf of a debtor is permitted.⁵² The presence and participation of the debtor may therefore presuppose that the debtor is heard on the application. It is surprising therefore in *Re Mickhael* that this position was questioned by counsel for one of the junior creditors, who argued that the law only authorised the hearing of dissenting creditors, especially where the Jurats had in fact recommended the granting of an order for a *remise de biens*.⁵³

13 The reply by the advocate for the debtor rested on construing art 2 of the *Loi (1839) sur les remises de biens* in a way compliant with the European Convention on Human Rights ("Convention").⁵⁴ Consequently, in order to ensure that the debtor enjoyed his art 6 Convention right to a fair hearing,⁵⁵ it was necessary to read the 1839 Law, although silent on the matter, so as to permit the debtor to be heard.⁵⁶ The court accepted this, holding that the law as it stood does not say that the debtor could not be heard. Given the fact that the debtor has made the application, the court would find it surprising that the debtor could not be heard on the matter and that all that the law did, by expressly providing for the right of dissenting creditors to be heard, was to "flag [that] up". For the court, the fact that the decision was final and without appeal also indicated the cogency of hearing any submissions the debtor wished to make, this position being consonant with the principles of natural justice. Finally, the court accepted the validity of the human rights argument and that it was accordingly necessary to read the law in a Convention-compliant way.⁵⁷

Summary

⁵⁰ At para 9.

⁵¹ At paras 14–15, citing *Re Barker* 1985–86 JLR 284.

⁵² *Re Syvret* (1892) 215 Ex 187; *Re Fauvel* (1893) 216 Ex 173.

⁵³ At para 10.

⁵⁴ Given effect in Jersey by the Human Rights (Jersey) Law 2000.

⁵⁵ Also stated as potentially engaged here is art 1 of the First Protocol to the Convention on the deprivation of property.

⁵⁶ At para 11.

⁵⁷ At paras 12–13.

14 This is an interesting case for a number of reasons, not least that it is a recent pronouncement by the court on the workings of the *remise de biens* procedure and clarifies certain aspects of how the procedure is to work in practice. The hierarchy between the various procedures available in Jersey law is also underlined by this case. Normally, the view of the courts is that the availability of *désastre* should preclude the use of the older procedures derived from customary law unless it is in the interests of justice, normally only where the debtor's estate is a simple one to administer.⁵⁸ As between the older procedures, a *remise de biens* is viewed by the courts as being preferable to a *cession de biens/adjudication de renonciation* accompanied by a *dégrévement* if the circumstances warrant it, the draconian nature of the *dégrévement* procedure meaning that a court may intervene at any time, provided that the property has not been transferred into the hands of a *tenant après dégrévement*, to halt it and pursue a *remise de biens* instead. In *Re Mickhael*, the court underlines the benefits of a *remise de biens*, including its suspensory effect, although on the facts it feels constrained to deny the application. This seems to indicate that, given the right circumstances, the court would have no hesitation in according the debtor the indulgence that the procedure represents and that, accordingly, the procedure continues to have a viable role to play in modern Jersey bankruptcy law. This view accords with that of the Law Commission, who believe that, although *cession de biens* and *dégrévement* should be abolished,⁵⁹ *remise de biens* still serves a purpose and should be retained.⁶⁰ In the absence of progress on existing proposals or any further suggestions for a suspensory procedure,⁶¹ it appears that *remise de biens* will continue to enjoy a part, albeit a small one, in the canon of Jersey bankruptcy procedures.

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⁵⁸ *Re Superseconds Ltd* 1997 JLR 112. Note, however, also art 5, Bankruptcy (*Désastre*) (Jersey) Law 1990, which enforces a duty on the court not to make a declaration where an order relating to a *remise de biens* has been made.

⁵⁹ Jersey Law Commission Consultation Paper No 2, above note 5, at paras 4.3.–4.4. and 5.2.

⁶⁰ *Ibid.*, at paras 4.6. and 5.3. Note the suggestion in para 4.7. that *remise de biens* could eventually be replaced by a modern suspensory procedure with the Viscount supplanting the Jurats. In this regard, see Benest and Wilkins, above note 11, at para 20, who mention proposals issued by the Jersey Financial Services Commission in 1999 for a new suspensory procedure that failed to progress, which nonetheless they recommend for enactment, but to sit alongside a retained *remise de biens* (at paras 22–23).

⁶¹ Interestingly, recent cases such as *Re OT Computers Ltd* 2002 JLR N [10], *Re Governor and Company of the Bank of Ireland* [2009] JRC 126 and *Re Anglo Irish Asset Finance* [2010] JRC 087 seem to point to the fact that the absence of just such a suspensory procedure in Jersey is a deficiency only partly palliated by resort to Letters of Request for an Order in Aid under s 426, Insolvency Act 1986 (United Kingdom), for the application of United Kingdom administration or corporate voluntary arrangements to Jersey companies.