In the matter of Lee Douglass (in Bankruptcy) & In the matter of an application for an Order recognising their appointment as joint trustees in bankruptcy of the Bankrupt

**IN THE ROYAL COURT OF GUERNSEY**

**(ORDINARY DIVISION)**

**IN THE MATTER OF**
**LEE DOUGLASS (IN BANKRUPTCY)**

**AND IN THE MATTER OF:**

**AN APPLICATION BY GERALD MAURICE KRASNER**
**AND**
**JOANNE SARA WRIGHT**
**FOR AN ORDER RECOGNISING THEIR APPOINTMENT AS**
**JOINT TRUSTEES IN BANKRUPTCY OF THE BANKRUPT**

**Applicants**

**Decision handed down: 10th July 2017**

**Before: Richard James McMahon, Esq., Deputy Bailiff**

**Counsel for the Applicants: Advocate A Horsbrugh-Porter**

**Counsel for the Respondent (the Arresting Creditor): Advocate R Fullman**

**Counsel for HM Sheriff: Advocate J Hill**

**Cases, Texts & Legislation referred to:**

*Metalloy Supplies Ltd (in liquidation) v MA (UK) Ltd* [1997] 1 All ER 418
The Insolvency (England and Wales) Rules 2016
*In the matter of Battoo* [2014] GLR 86

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*Terry v Butterfield Bank (Guernsey) Limited* [2005-06] GLR 327
*Schemmer v Property Resources Ltd* [1975] Ch 273
Dicey, Morris & Collins, *The Conflict of Laws*
*Brittain v JTC (Guernsey) Limited* [2015] GLR 248
*Batty v Bourse Trust Company Limited* (unreported, 23 March 2017)
The Insolvency Act 1986
*Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] 1 AC 1675
*Cambridge Gas Transportation Corpn v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2007] 1 AC 508
*Rubin v Eurofinance SA* [2013] 1 AC 236
Dawes, *Laws of Guernsey*
The Bankruptcy (Désastre) (Jersey) Law 1990
Ogier, *The Government and Law of Guernsey*, 2nd ed.
*Approbation des Loix*
Havet, *Les Cours Royales des Îles Normandes*, 1878
*Chambers v HM Sheriff* (unreported, 22 December 1977)
Le Marchant, *Remarques et Animadversions sur l'Approbation des Lois* (page 85)
The Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006
*Borkowski's Textbook on Roman Law*, 5th ed. (2015)
*Giles v Grover* [1824-34] All ER Rep 547; 9 Bing 128
*Cloche v Cloche* (1870) LR 3 PC 125

**Introduction**

1. By an Application dated 17 May 2017, Gerald Krasner and Joanne Wright, in their capacity as joint trustees in bankruptcy of Lee Douglass, have sought orders recognising their appointment dated 4 January 2017 by the County Court at Newcastle-upon-Tyne and ancillary orders relating to their "*right to collect funds and assets of the bankrupt in Guernsey including funds in any bank accounts or shares held on behalf of the Bankrupt by any third party*" (para. 2) and "*the right to collect all books, papers and other records which relate to the Bankrupt's estate and affairs (including any which would be privileged from disclosure in any proceedings)*" (para. 3). The recognition of the appointment was granted on 19 May 2017, but paragraphs 2 and 3 were adjourned to 2 June 2017 for further submissions and to enable Her Majesty's Sheriff, if he so wished, to be heard thereon. Following that hearing, I invited further submissions in writing on a particular issue that had arisen. Having received them, I am now able to resolve these paragraphs of the Application.

2. As will become apparent when I summarise the chronology of events, this Application raises an issue that has not previously been encountered. It involves the inter-relationship between foreign insolvency proceedings and *désastre* in Guernsey.

**Background**

3. For a period of less than two years in 2011 and 2012, Lee Douglass was a director and employee of Invescap Holdings Limited in Guernsey. He was actioned by that company by way of an Amended Cause tabled on 13 February 2013. Mr Douglass admitted part of the

claim in the amount of £160,000 and judgment was duly entered against him, with the remainder of the claim being placed *inscrite*. More of the background to that action is described in a judgment I handed down on 30 July 2014 in which I dealt with an application by the company for judgment to be entered in its favour in respect of the majority of the claims made against Mr Douglass. That application was partially successful. However, Mr Douglass was given leave to defend the remainder of the action provided he complied with some conditions that were imposed. He did not do so, and on 26 September 2014, judgment was entered against him for further amounts and costs on a partial indemnity basis were awarded.

4. The Acts of Court were passed to HM Sheriff with a view to enforcement of them for amounts due under them. (Mr Douglass and his wife were also subject to other proceedings in respect of the residential property they jointly owned arising from non-payment of the mortgage secured on it. Those proceedings resulted in a saisie, which concluded during 2014.) The first arrest of the assets of Mr Douglass by HM Sheriff took place on 13 March 2014, albeit at the instance of a different judgment creditor. Following the judgment in favour of the company on 26 September 2014, a further arrest of those assets took place on 9 October 2014. On 9 January 2015, the company returned to Court to seek confirmation of the arrest of items of personalty by HM Sheriff. I confirmed the arrest of the assets of Mr Douglass and granted leave for those assets to be sold.

5. On 20 February 2015, I made an unless order against Mr Douglass that would, if he failed to comply with the terms of the order, result in what was then left of his Defences and Counterclaim being struck out and judgment for a further amount entered against him. By an Act of Court dated 13 March 2015, I adjusted downwards the amount ordered to be paid by Mr Douglass under one head of the company's claim. The aggregate amount under the various judgments given against Mr Douglass is £1,892,581.49.

6. The indebtedness of Mr Douglass under these judgments was assigned to Confiance Limited pursuant to an assignment dated 1 March 2017. Notice of the assignment was given to Mr Douglass and HM Sheriff by way of letters dated 10 March 2017. As the new judgment creditor, Confiance Limited, referring to itself as the Arresting Creditor, actioned Her Majesty's Sheriff to appear before the Court to see the Sheriff pay the proceeds held following the sale of the assets of Mr Douglass to it. The amount that HM Sheriff holds is £40,443.73, from which the costs to which HM Sheriff is entitled for the part he has played in executing the judgments will have to be taken. When that Cause was tabled on 12 May 2017, it was adjourned for a week to enable the joint trustee in bankruptcy of Mr Douglass to apply so as to have standing to be heard in respect of it. It was that adjournment that led to the present Application for recognition and related orders.

7. On 19 May 2017, I declined to hear Advocate Horsbrugh-Porter, who appears on behalf of the Applicants, in relation to the substantive relief in paragraphs 2 and 3 of the Application. Advocate Fullman, on behalf of Confiance Limited, did not oppose the recognition of the Applicants' appointment as joint trustee in bankruptcy, which was duly granted, thereby enabling Advocate Horsbrugh-Porter to be heard in that capacity in relation to the action brought by Confiance Limited. However, Advocate Fullman sought time to take instructions in relation to the remainder of the Application, which was adjourned to 2 June 2017. I also directed that the Applicants should serve the Application on HM Sheriff on the basis that that office-holder was, in the circumstances, a necessary or proper party to the Application and entitled to be heard in respect of it.

8. On 19 May 2017, I also dealt with the action of Confiance Limited to the extent that a Deputy Sheriff confirmed that the amount realised from the sale of the arrested assets of Mr Douglass was £40,443.73. The costs to be deducted by then were stated to be £4,490.94, which left a balance of £35,942.79. (The costs referred to by HM Sheriff previously had been stated to be higher.) One asset, a watercolour painting, had not been sold and remained subject to the arrest. Given the stance taken by the Applicants, it was clear that there was at least one other claim of which HM Sheriff was aware. Advocate Horsbrugh-Porter sought to persuade me that there was no prejudice in postponing what would usually occur in such a situation, namely declaring Mr Douglass's affairs to be *en désastre*. That was the outcome for which Advocate Fullman argued. I was satisfied that the declaration should be made because the customary conditions for making it were clearly satisfied and were not being contested. I did, however, stay the appointment of a Commissioner until such time as paragraphs 2 and 3 of the Application had been resolved.

9. The evidence in support of the Application is contained in the First Affidavit of Joanne Wright sworn on 17 May 2017 and her Second Affidavit sworn on 31 May 2017. Advocate Fullman objected to that Second Affidavit being considered on the basis that the documentation exhibited to it could, and so should, have been adduced in her First Affidavit. I admitted this Second Affidavit into evidence on the basis that it was a response to the Affidavit of Bryan Little sworn on 31 May 2017, which had been lodged on behalf of Confiance Limited, to which some, but not all, of the correspondence is exhibited. I was satisfied that I should be able to consider all the material that had been exchanged between the respective parties before reaching any decision on the Application.

10. I have also had the benefit of the initial Skeleton Argument prepared by Advocate Horsbrugh-Porter dated 17 May 2017, in which, as he confirmed on 19 May 2017, all the material on which the Applicants rely is contained, and the Skeleton Arguments filed on behalf of Confiance Limited and HM Sheriff dated 26 and 30 May 2017 respectively. At the hearing on 2 June 2017 I declined to permit Advocate Horsbrugh-Porter to file and rely on a further Skeleton Argument purporting to be a response to that Skeleton Argument on the basis that he was seeking to introduce a particular point by reference to a case previously omitted from the material on which the Applicants rely that he should have made from the outset. Because of matters that were raised during the hearing, I directed that further written submissions be lodged during the course of the week thereafter. Accordingly, I have had the benefit of additional documents prepared by Advocates Hill (on behalf of HM Sheriff), Fullman and Horsbrugh-Porter dated 6, 8 and 9 June 2017 respectively.

11. During the course of the hearing on 2 June 2017, Advocate Horsbrugh-Porter sought leave to amend para. 3 of the Application to narrow it from "*all books, papers and other records which relate to the Bankrupt's estate and affairs (including any which would be privileged from disclosure in any proceedings)*" to "*all books, papers and other records which belong to the Bankrupt's estate*". Because Advocate Fullman did not have instructions in respect of such an application, he sought time to obtain his client's instructions. By a letter dated 5 June 2017, Advocate Fullman indicated that Confiance Limited would consent to that application but only subject to there being an order that the wasted costs associated with the late amendment be paid by the Applicants. By a letter dated 6 June 2017, Advocate Horsbrugh-Porter opposed any order that would oblige the joint trustee in bankruptcy of Mr Douglass to pay these costs personally. In doing so, he seeks to draw an analogy with the position in England and Wales

where costs orders against liquidators are contemplated, referring to *Metalloy Supplies Ltd (in liquidation) v MA (UK) Ltd* [1997] 1 All ER 418.

12. I do not regard the stance taken by either Advocate as particularly helpful. As I see it, the purpose of the application to amend para. 3 is to reduce the scope of what the Applicants seek. On the basis that para. 5 of the Application already seeks "*Such further or other relief as the Court considers appropriate*", such a narrower order is available even if no amendment had been pursued. The benefit of formally amending para. 3 is that the Court is not then required to consider whether what is sought by it is drafted too widely. The opposition to para. 3 from Confiance Limited appears to me to be no different whether the Application remains unamended or becomes more focused as a result of the amendment sought. The costs consequences can, in my view, properly be left out of consideration at this stage. The just outcome is to permit the Applicants to make this amendment because it assists everyone involved. Accordingly, I am determining the Application on the basis that para. 3 has been amended in this way.

**Facts**

13. Spirit Pub Company (Leased) Limited presented a bankruptcy petition on 24 August 2015 in respect of a debt owed to it by Mr Douglass of £52,371.30. On 4 January 2017, a bankruptcy order was made at 11.25 am by District Judge Kramer. Mr Douglass did not attend that hearing. The Order made explains that the Official Receiver attached to the County Court at Newcastle upon Tyne became the receiver and manager of the estate of Mr Douglass and that Mr Douglass had certain duties to the Official Receiver as set out in section 291 of the Insolvency Act 1986. By a certificate dated 22 March 2017 and issued on behalf of the Secretary of State by that court, the Applicants were appointed as joint trustees of the bankruptcy. Ms Wright refers to an Experian search having been performed by the Official Receiver. From the figures set out in her First Affidavit, the creditors of Mr Douglass identified through this process, which includes the petitioning creditor, have claims aggregating to in excess of £150,000. One of the larger creditors on this list is a Guernsey-registered entity.

14. By e-mail on 10 March 2017, a lawyer acting on behalf of Confiance Limited informed someone on behalf of the Official Receiver about the assignment of the judgment debts to it. It is apparent that there had been a prior telephone conversation on 8 March 2017. Information was also supplied that the original judgment creditor had registered the judgment of 26 September 2014 in the High Court of Justice under the Foreign Judgments (Reciprocal Enforcement) Act 1933, as shown by an order of Master Leslie dated 25 March 2015. A reply from the Official Receiver was sent on 13 March 2017, to which the lawyer confirmed on 16 March 2017 that Confiance Limited agreed with the course of action being pursued by the petitioning creditor, which was nominating the Applicants as joint trustees in bankruptcy. A Proof of Debt form was forwarded by the Official Receiver's representative on 20 March 2017 and returned by the lawyer on 28 March 2017, having been duly completed and signed by Advocate Robison. The amount of the claim is £2,171,930.24, of which £279,348.75 relates to outstanding uncapitalised interest.

15. Ms Wright also refers to an Affidavit that Mr Douglass swore on 1 March 2013, complying with an order made in the proceedings brought by Invescap Holdings Limited that he depose to his assets. That Affidavit listed *inter alia* motor vehicles, art work, watches, wine and guitars, not all of which were subsequently made subject to the arrest undertaken by HM Sheriff. On

28 March 2017, Mr Douglass was interviewed on behalf of the Official Receiver. He thought that about £100,000 had been realised when the furniture from the house he and his wife had in Guernsey was auctioned off.

16. A letter dated 25 April 2017 was sent by the Official Receiver's Office to Confiance Limited, care of its Advocates. The letter enclosed a report dated 10 April 2017 made pursuant to rule 10.66 of the Insolvency (England and Wales) Rules 2016. That report indicated that Mr Douglass had one asset referred to as "*Compensation*" with a value of £249 and debts totalling £2,333,219. The bulk of those debts comprises the judgment debt now owed to Confiance Limited. In light of the substantial shortfall in assets to cover liabilities, especially taking into account the standard costs of the Official Receiver set out in the Annex to the report, it is stated that there is no prospect of money being returned to creditors.

17. The Applicants' Advocates wrote to HM Sheriff on 5 May 2017, noting that the normal course of events would be for an application to be made for reciprocal relief pursuant to section 426 of the Insolvency Act 1986, as extended to the Bailiwick of Guernsey. However, because there were no liquid funds available in the estate of Mr Douglass, this was not a viable option. The Advocates, therefore, enquired whether the assets held by HM Sheriff could be paid over to enable them to be distributed, on the basis that English law automatically vested in the trustees in bankruptcy the bankrupt's estate. A response from the Prévôt Délégué was sent on 8 May 2017, indicating that HM Sheriff had been summonsed to appear before the Court on 12 May 2017 when the value of the assets held would be disclosed, noting that the proceeds of sale were in any event insufficient to satisfy the outstanding judgments. Advocate Horsbrugh-Porter wrote to the Greffe on 10 May 2017 presaging the comments that he has since made on behalf of the Applicants.

**Comity and recognition**

18. The Applicants rely on what has been termed the principle of modified universalism of bankruptcy procedures. In a number of situations, including where insolvency proceedings are afoot, this Court has confirmed that it will, so far as it is able, be pleased to render assistance to foreign officials, having regard to principles of comity. Given that starting point, it is necessary to consider what limitations there may be relating to what recognition of an appointment as joint trustees in bankruptcy entails and the consequences that flow therefrom.

19. I have not been referred to any direct authority on the issues that arise in this Application. There are, however, a number of Guernsey decisions in related areas from which guidance can be obtained and there are cases from other Commonwealth jurisdictions that may also assist. Before turning to the decisions of this Court, it is appropriate first to consider what the Court of Appeal indicated in *In the matter of Battoo* [2014] GLR 86.

20. That case involved an application for recognition by a receiver appointed by a court in the United States of America. The Court of Appeal confirmed the approach that had been taken by the Royal Court in *Terry v Butterfield Bank (Guernsey) Limited* [2005-06] GLR 327, which in turn had adopted the decision in *Schemmer v Property Resources Ltd* [1975] Ch 273 and the summary in Dicey, Morris & Collins, *The Conflict of Laws* as being applicable as a matter of Guernsey law, under which a sufficient connection to the jurisdiction has to be established before recognition will be available. In passing, the Court of Appeal also commented on other situations:

"*40 On occasions, an order of a court will result in some other person being given the right to act for the person concerned. This can happen on bankruptcy, incapacity and other similar events. Thus, upon the bankruptcy of an individual, a trustee in bankruptcy will be appointed by a court and will, as a result, have title to act in all respects on behalf of that individual in the jurisdiction in question. Similarly, upon a winding up of a company, a liquidator may be appointed and thereafter the company may only act through the liquidator.*

*41 But orders of a court are generally territorial. It follows that a trustee in bankruptcy or a liquidator will only have the authority to act in the jurisdiction of the court making the order. The court order has no effect in a foreign jurisdiction.*"

21. To the extent that Advocate Horsbrugh-Porter submitted that simple recognition was all that the Applicants required before they have the powers that are conferred upon them by their appointment as joint trustees in bankruptcy, arguably rendering paragraphs 2 and 3 of the Application otiose, I reject those arguments. A decision as to whether or not to recognise the appointment is a necessary first step but the powers that can then be exercised as a consequence of recognition need to be addressed. As this case demonstrates, they may depend on the particular facts, but in other cases the powers sought by paragraphs 2 and 3 of the Application would be regarded as uncontroversial (see, eg, *Brittain v JTC (Guernsey) Limited* [2015] GLR 248, at para. 8). Moreover, if those paragraphs served no purpose, the Applicants had no need to pursue them.

22. One of the reasons why I take that view is that the Application has been advanced outside of the statutory regime that was (and is) available to the Applicants. As I explained quite recently in *Batty v Bourse Trust Company Limited* (unreported, 23 March 2017), under section 426 of the Insolvency Act 1986 as extended to the Bailiwick, "*there is a duty and not a discretion to act in aid of and be auxiliary to the High Court in England*" and "*the sources of law under section 426 of the 1986 Act as extended are (a) this Court's general jurisdiction and powers, (b) the provisions of Guernsey insolvency law, which would be an updated list of the laws mentioned in section 426(10)(a), as extended and modified, and (c) so much of the law of England and Wales as corresponds to that comprised in (b)*" (para. 22). In effect, had the Application been brought under this statutory framework on the basis of a letter of request, this Court would have been able to confer on the Applicants the powers that they are given by the 1986 Act. However, it does not follow automatically, and requires consideration to be given as to whether it is appropriate to permit the trustees in bankruptcy to exercise the particular powers pursuant to the order to be made. I see no reason why an office-holder seeking relief from this Court outside of that statutory framework should be in a better position. As was noted in the *Brittain* case (at para. 81), to do so would have the effect of bypassing the procedure established for letters of request.

23. Paragraphs 2 and 3 of the Application are broadly based on powers that apply by operation of law in England and Wales. For example, by virtue of section 306(1) of the 1986 Act, "*The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.*" Section 311(1) of the Act provides:

> "*The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or*

*under his control (including any which would be privileged from disclosure in any proceedings).*"

Section 312(1) imposes a duty on a bankrupt to deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession. Consequently, the powers that the Applicants wish to be able to exercise in Guernsey upon recognition are those that they already have available to them in England and Wales in respect of Mr Douglass.

24. In *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] 1 AC 1675, the Judicial Committee of the Privy Council, in an appeal from Bermuda, accepted that the principle of modified universalism forms part of the common law. There had already been some rowing back from what is described as "*the furthest that the common law courts have gone in developing the common law powers of the court to assist a foreign liquidation*" (see para. 18), as had been set out in *Cambridge Gas Transportation Corpn v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2007] 1 AC 508, before endorsing what Lord Collins had summarised as being the position in *Rubin v Eurofinance SA* [2013] 1 AC 236, which I believe deserves repetition in full:

> "*29. Fourth, at common law the court has power to recognise and grant assistance to foreign insolvency proceedings. The common law principle is that assistance may be given to foreign office-holders in insolvencies with an international element. The underlying principle has been stated in different ways: 'recognition … carries with it the active assistance of the court': In re African Farms Ltd [1906] TS 373, 377; 'This court … will do its utmost to co-operate with the US Bankruptcy Court and avoid any action which might disturb the orderly administration of [the company] in Texas under ch 11': Banque Indosuez SA v Ferromet Resources Inc [1993] BCLC 112,117.*
>
> *30. In Credit Suisse Fides Trust v Cuoghi [1998] QB 818, 827, Millett LJ said: 'In other areas of law, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention … It is becoming widely accepted that comity between the courts of different countries requires mutual respect for the territorial integrity of each other's jurisdiction, but that this should not inhibit a court in one jurisdiction from rendering whatever assistance it properly can to a court in another in respect of assets located or persons resident within the territory of the former.'*
>
> *31. The common law assistance cases have been concerned with such matters as the vesting of English assets in a foreign office-holder, or the staying of local proceedings, or orders for the remittal of assets to a foreign liquidation, and have involved cases in which the foreign court was a court of competent jurisdiction in the sense that the bankrupt was domiciled in the foreign country or, if a company, was incorporated there …*
>
> *33. One group of cases involved local proceedings which were stayed or orders which were discharged because of foreign insolvency proceedings. Thus in Banque Indosuez SA v Ferromet Resources Inc [1993] BCLC 112 an English injunction*

*against a Texas corporation in Chapter 11 proceedings was discharged; cf In re African Farms Ltd [1906] TS 373 (execution in Transvaal by creditor in proceedings against English company in liquidation in England stayed by Transvaal court), applied in Turners & Growers Exporters Ltd v The Ship Cornelis Verolme [1997] 2 NZLR 110 (Belgian shipowner in Belgian bankruptcy: ship released from arrest); Modern Terminals (Berth 5) Ltd v States Steamship Co [1979] HKLR 512 (stay in Hong Kong execution against Nevada corporation in Chapter 11 proceedings in United States federal court in California), followed in CCIC Finance Ltd v Guangdong International Trust & Investment Corpn [2005] 2 HKC 589 (stay of Hong Kong proceedings against Chinese state-owned enterprise in Mainland insolvency). Cases of judicial assistance in the traditional sense include In re Impex Services Worldwide Ltd [2004] BPIR 564, where a Manx order for examination and production of documents was made in aid of the provisional liquidation in England of an English company.*"

25. It is apparent that the courts in a number of jurisdictions have had to grapple with the means by which to provide assistance in cross-border insolvencies and the limitations that may be imposed on the extent of any such assistance. In Guernsey, this was the issue in the ***Brittain*** case (*supra*), in which the Lieutenant-Bailiff, not being bound by the majority decision in the ***Singularis*** case, preferred the reasoning of the minority (Lords Neuberger and Mance), rejecting the existence of any inherent jurisdiction to treat a power conferred only by statute as being available in a case which is not within the statute (see para. 78). The issues in the present case are not, though, quite the same as in that case. The powers sought to be conferred through paragraphs 2 and 3 of the Application are what might properly be regarded as the "ordinary" consequences of recognition, rather than any more far-reaching power that has no identifiable equivalent outside of a statutory framework that was not being utilised. In that regard, I draw a distinction between an application in accordance with section 426 of the 1986 Act as extended, in which these powers would follow as a matter of course but any other powers sought might need to be subjected to more intense scrutiny before being granted and the broadly equivalent customary law approach to getting in a debtor's assets with a view to satisfying his, her or its creditors, ie, the *désastre* and any other processes to which I will turn shortly. In other words, if nothing had yet taken place domestically in relation to the foreign bankrupt's affairs, it is most likely that there could be no opposition to the granting of powers on recognition of the foreign appointment such as those sought by paragraphs 2 and 3 of the Application.

26. The Applicants suggest that the action of Confiance Limited in providing a proof of debt in the English bankruptcy should be regarded as it having submitted to the jurisdiction of the English process. As a result, the Court should treat its opposition to an order that all of the assets of Mr Douglass wherever they may be should be dealt with by the Applicants with caution because it has already engaged in seeking to participate in any distribution available in England, thereby overriding its ongoing use of the *désastre* process in Guernsey. However, I do not find that there is any inconsistency in the position adopted by Confiance Limited (or indeed the other Guernsey-registered entity identified by the Applicants). In particular, I do not consider that the apparent submission of Confiance Limited to the jurisdiction of England and Wales in 2017 impacts on the process that has been underway since 2014 of its seeking to enforce its judgments against Mr Douglass in Guernsey. As I will explain in more detail shortly, the *désastre* process that is being run by Confiance Limited does not produce the same effect for Mr Douglass as his bankruptcy in England potentially will. If, as seems likely, Confiance

Limited does not recover what it is owed in full, it is still open to Confiance Limited to pursue Mr Douglass elsewhere. Accordingly, I do not think that providing to the Applicants a proof of debt in accordance with the 1986 Act procedures operating in England and Wales precludes Confiance Limited from raising the opposition it has to the powers sought in Guernsey by the Applicants on recognition of their appointments as joint trustees in bankruptcy.

27. Confiance Limited opposes para. 2 of the Application insofar as it applies to the converted funds currently held by HM Sheriff. It opposes para. 3 insofar as it is applicable to it. The effect of the amendment to para. 3 is to narrow the ambit of it to such an extent that the focus is now only on books, records and papers belonging to the estate of Mr Douglass and so is unlikely to have any impact on Confiance Limited. In particular, when raising its opposition, it draws attention to there being no letter of request, thereby sidestepping the process envisaged by section 426 of the 1986 Act and that the Application is not straightforward because of the ongoing *désastre* proceedings in respect of Mr Douglass and how what the Applicants seeks usurps the jurisdiction and office of HM Sheriff. The latter point is something that Advocate Hill has also developed on behalf of HM Sheriff.

28. I have already touched on the choice the Applicants made not to utilise section 426 of the 1986 Act. Had they chosen to return to the court in Newcastle to seek a letter of request and, assuming it had been forthcoming, applied under section 426 of the Act as extended, the relief being sought would clearly have been capable of being granted by reference to the sections of the Act to which I have already referred. For the reasons given by them, that option was not taken and instead the Applicants rely on the customary, or common, law. Consequently, the domestic law in relation to the steps a judgment creditor can take, potentially leading to satisfaction or the judgment debtor's affairs being declared *en désastre* becomes engaged.

***Désastre***

29. Advocate Fullman has drawn attention to the summary given in Dawes, *Laws of Guernsey* (at page 218):

> "*Désastre is customary in origin; there are no written rules establishing the procedure and few governing it. Désastre is intended to be a quick, cheap and realistic judicial solution to the problem of insolvency, albeit from the point of view of the creditors as opposed to any broader public interest.*
>
> *The philosophy underpinning désastre is to permit all the creditors to share the proceeds of sale of a debtor's chattels, as opposed to a single creditor liquidating assets for his exclusive benefit. It is a procedure concerned entirely with <u>personalty</u> as opposed to realty. Likewise désastre has no other consequence at all for the debtor save for the liquidation of his personalty and distribution of the proceeds of sale to his creditors. There is no sense in which désastre proceedings impede or prohibit any form of future activity by the debtor, at least not as a matter of law. The reality may be somewhat different if the case is well publicised. It is still important to note, however, that désastre is not, of itself, equivalent to a bankruptcy order. Neither does désastre in any sense constitute a discharge or even a potential discharge for the debtor from his liabilities. Any creditor in the désastre proceedings may continue to pursue the debtor notwithstanding part-payment of the material debt. Typically this would occur when*

*other assets were discovered subsequent to initial désastre proceedings which may in turn lead to further désastre proceedings and so on for as long as new assets appear.*"

30. As already stated, the steps taken by the judgment creditor to enforce the judgment debt against Mr Douglass, the benefit of which has now been assigned to Confiance Limited, have followed the usual course. An Act of Court was handed to HM Sheriff, who proceeded to arrest so much of the assets of Mr Douglass that could be identified in Guernsey as would be needed to satisfy that debt. Given the quantum of the debt, everything falling within the estate of Mr Douglass in Guernsey was arrested. It was as long ago as 9 January 2015 that the items listed by HM Sheriff as having been arrested were confirmed by the Court and permission to sell granted. One of the problems in this case is that the action against HM Sheriff to pay over the net proceeds of sale was delayed. Had it all occurred before Mr Douglass was made subject to a bankruptcy order, the issues raised by the Application would not have come to light. It is quite apparent that the amount realised was never going to be sufficient to satisfy the judgment debts faced by Mr Douglass. Of course, had Mr Douglass chosen to satisfy the total amount of the judgment debt now due to Confiance Limited before the sale of the assets that had been arrested, the arrest would have been lifted and those assets restored to him. Equally, had he managed to satisfy the judgment debt after they had been sold but before the judgment creditor summonsed HM Sheriff to pay over the net proceeds of sale, those net proceeds of sale would have been returned to Mr Douglass. Neither of these things happened. The sequence of events, therefore, is what has given rise to the novel point for resolution resulting from the making of an English bankruptcy order during the course of the steps being taken before this Court.

31. Because of the customary law origins of the *désastre* regime, there is merit in considering the position in Jersey. Unlike in Guernsey, the legislature has intervened. The Bankruptcy (Désastre) (Jersey) Law 1990 makes provision for applications to be made to the Royal Court of Jersey for a declaration that the property of a person is *en désastre*. Had the affairs of Mr Douglass been subject to this Law, as a result of Article 4, steps would appear to have been needed to be taken earlier than this year. Article 8 of that Law provides:

> "*(1) All the property and powers of the debtor specified in paragraph (2) shall vest in the Viscount immediately upon the making of the declaration.*
>
> *(2) Subject to paragraph (3) and Article 8A, the property and powers of the debtor to vest in the Viscount under this Article and be divisible amongst the debtor's creditors shall comprise–*
>
> > *(a) all property belonging to or vested in the debtor at the date of the declaration;*
> >
> > *(b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of any property as might have been exercised by the debtor for the debtor's own benefit at the date of the declaration.*
>
> *(3) Property held by the debtor in trust for any other person shall not vest in the Viscount.*"

Article 8A excludes rights under approved pension arrangements. The property otherwise covered by this provision extends to both movable and immovable property. It is, therefore, of

wider application than the customary law regime in Guernsey. Part 6 of the Law sets out the general powers of the Viscount in respect of the debtor's estate and includes his powers to sell.

32. The role of HM Sheriff is not identical to that of the Viscount in Jersey, but similarities inevitably exist. Advocate Hill has referred to the summary of the office given in Ogier, *The Government and Law of Guernsey*, 2nd ed., in which the history of the office is shown to derive from that of the *Sergent de l'Epée* of the ancient courts of Normandy, which was expressly highlighted in the *Approbation des Loix* in 1583. The office of *vicomte* (no doubt the origin of Jersey's Viscount) was also related to what has become Guernsey's *Prévôt*. In Havet, *Les Cours Royales des Îles Normandes*, 1878, the description of HM Sheriff's functions includes (page 97):

> "*Le prévôt royal est l'officier exécutif de la cour. En matière civile, il fait, comme le vicomte de Jersey, les arrêts et empêchements, en d'autres termes les saisies de biens; il fait les déliverances, il baille saisine d'héritages par les regards et commandements de la cour, c'est-à-dire qu'il met les parties gagnates en possession des biens qui leur sont adjugés par sentence de justice.*"

A fuller discussion is set out in *Chambers v HM Sheriff* (unreported, 22 December 1977), to which I have had regard generally and in which the passage in Le Marchant, *Remarques et Animadversions sur l'Approbation des Lois* (page 85) is cited:

> "*Par les 13$^{O}$ et 14$^{O}$ articles les Sergeants ayant exécuté des biens, et les ayant en leur possession, en doivent bailler reçue à la partie, … et s'ils ont des biens exécutés entre mains, les doivent mettre en vente dans huitaine, à peine de prison et amende, et s'ils vendent au plus offrant les dits meubles, ils sont tenus eux-mêmes de faire diligence de recouvrir le prix de la main des achepteurs d'iceux meubles pour le délivrer actuellement entre les mains de ceux à l'instance desquels ils ont fait l'exécution et vente, à peine d'en responder en leurs propres nom, et par corps, et des dépens, dommages, et interests, et ce dans terme de huitaine; ce qui, quant à ces deux derniers Articles, est du tout contraire à la coustume et pratique corrumpue de la dite Isle; en ce, spécialement, qu'apprès telles ventes faites le Sergeant ne prent plus de cognoissance si l'achepteur paye ou non la partie pour qui la vente a esté faite, et n'est tenue en respondre et le faire payer ou voir payé.*"

The distinction between the customary law of Normandy and the customary law of Guernsey concentrates on the obligation in Normandy to pay over the proceeds of sale within a short time. One implication, to which I will return, is that HM Sheriff is potentially acting other than solely as agent for the judgment creditor.

**Assets in bankrupt's estate**

33. In the absence of any such statutory regime in Guernsey, the question arises as to whether the assets of the debtor that ultimately fall to be dealt with through a *désastre* process fall outside of the debtor's estate at any point. If they do, then the opposition of Confiance Limited to the granting of para. 2 of the Application would be affected. As is apparent in Jersey, the vesting occurs on the making of the *désastre* declaration. However, it is also informative that it seems that the process leading up to such a declaration would have been completed if operating in Jersey before the making of the bankruptcy order in the present case.

34. The extent to which the legislature has dealt with matters from which the position can be inferred is contained in the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006. Section 7 provides (omitting references to Alderney):

> "*(1) Where Her Majesty's Sheriff … –*
>
> *(a) has executed an arrest on any goods, and*
>
> *(b) has sold the goods,*
>
> *then, provided that –*
>
> *(i) he was acting under the authority of an Act of Court,*
>
> *(ii) notice of the intended sale was given in La Gazette Officielle …,*
>
> *(iii) prior to the date of sale, no application had been made to the Court to determine the lawful ownership of the goods or otherwise to oppose the sale, and*
>
> *(iv) where appropriate, he complied with the provisions of section 4 of the 1983 Law (formalities for sale of goods subject to landlord's tacit hypothecation),*
>
> *subsections (2) to (6) apply in relation to the sale.*
>
> *(2) The sale of the goods shall not be impugned by reason of the subsequent determination of any application to the Court to decide the lawful ownership of the goods or otherwise to oppose the sale.*
>
> *(3) A bona fide purchaser for value of the goods without notice of any ground on which such an application might have been made shall be deemed to have acquired good title to them.*
>
> *(4) The rights of any person claiming to be the owner or joint owner of the goods shall attach instead to the proceeds of sale received by Her Majesty's Sheriff … (whether or not the proceeds are still in his hands) or to any property representing the proceeds of sale.*
>
> *(5) No liability shall be incurred by Her Majesty's Sheriff …, or by any of their respective officers, servants or agents, in respect of the arrest and sale of the goods and the subsequent paying out of the proceeds of sale.*
>
> *(6) Subsection (5) does not apply to anything done or omitted to be done in bad faith.*"

35. On behalf of Confiance Limited, Advocate Fullman submits that this provision supports his contention that Mr Douglass lost the legal interest in his former assets, and so also the proceeds of sale, once they had been sold. On behalf of the Applicants, Advocate Horsbrugh-Porter submits that the provisions support his contention that there continues to be an enforceable interest of Mr Douglass (and so the Applicants as his trustees in bankruptcy) in the proceeds of sale (and the one remaining painting that has not been sold). On behalf of HM Sheriff,

Advocate Hill suggests that the analysis required leads to the conclusion either that a constructive trust has been created or that the separation of possession and ownership under the customary law derived from Roman law points to the former assets of Mr Douglass, and the proceeds of sale, not falling within his estate.

36. None of the Advocates has suggested that the act of arresting goods affects the title of the original owner. I agree with that position. As I have indicated, if the judgment debtor were to arrange for a judgment debt to be satisfied, the arrest of the goods as the first step in the execution of that judgment would be lifted and the goods returned to the judgment debtor.

37. Where the arrested goods are sold, the 2006 Law confirms that the purchaser acquires good title. If any other person asserted title to or some interest in the goods, that should have been dealt with prior to the sale. In the event that it has not been dealt with before sale, the person's interest ceases to be in the goods themselves but attaches to the proceeds of sale. Advocate Horsbrugh-Porter submits that the reference in section 7(4) of the 2006 Law to "*any person claiming to be the owner*" extends so as to include Mr Douglass. I am not persuaded that that construction of the subsection is the correct one. In my view, the reference to a person "*claiming*" to be the owner leads to the conclusion that it does not include the acknowledged owner, ie, the judgment debtor in respect of whom the judgment creditor is seeking to execute its judgment. The purpose of the provision is to ensure that any third party is able to make a claim in respect of the proceeds of sale because the ability to follow the property into the hands of a bona fide purchaser has been removed. The third party with the alleged interest in the goods that have been sold needs to be afforded some means of redress. It would be unfair to deprive the purchaser of the goods, so the legislature has provided instead that the proceeds of sale, whether retained by HM Sheriff or as paid out, are the subject of any such claim by the third party. A failure to make such provision would potentially result in the third party being deprived of his property without any recourse being available. The position of the judgment debtor is different. If the goods were solely those of the judgment creditor, they have been arrested and sold so as to provide some value towards satisfying the judgment debt. If the judgment debtor satisfies the judgment debt in full after the sale, the arrest, by then attaching to the proceeds of sale rather than the goods, is no longer required. Once it is lifted, the property held by HM Sheriff, ie, the proceeds of sale, falls to be dealt with according to whether there are other debts known, which is part and parcel of the customary law *désastre* process, or the monies have to be returned to the judgment debtor as representing what has been obtained through the Court-authorised sale process. In other words, whilst the arrest continues to be effective, the proceeds of sale are not the property of the judgment debtor as the former owner of the goods.

38. Advocate Fullman has drawn attention to the passage in Le Marchant to which I have already referred. The implication is that the traditional approach is to treat HM Sheriff as acting on behalf of the judgment creditor when going out and arresting goods as a step towards securing execution of the judgment of the Court. HM Sheriff is an officer attached to the Court for this purpose. Advocate Horsbrugh-Porter has highlighted the analysis in *Laws of Guernsey* equating the position to the walking possession in an English law context, and the way in which HM Sheriff is described in that work as the "sequestrator". As a result, he submits that the title to the proceeds of the sale remains in the judgment debtor throughout.

39. Advocate Hill has referred additionally to the different systems that developed in Roman law, as summarised in *Borkowski's Textbook on Roman Law*, 5th ed. (2015), the earliest of which

was the *legis actiones*, which was abolished by Augustus in 17 BC, following which the formulary system came to the fore, albeit itself abolished in AD 342, and finally the *cognitio* procedure. One of the methods of seeking to execute a judgment *in personam* under the *legis actiones* was *pignoris capio*, enabling the judgment creditor to seize the property of the other party to pressurize him into performing the obligation to satisfy the judgment debt (see para. 3.2.3.2). It was a form of pledge and it was unclear what happened if the obligation to pay remained unperformed. Under the formulary procedure (see para. 3.3.3), the judgment creditor had to pursue an *actio iudicati*, which was a final chance for the judgment debtor to satisfy the judgment debt. The judgment debt could be challenged at this stage, but if unsuccessfully challenged the debtor became liable to pay double damages. Thereafter, two new steps were introduced: sale of assets (*bonorum venditio*) and surrender of estate (*cessio bonorum*). The process under the *bonorum venditio* (para. 3.3.3.1) involved the creditor requesting the praetor to grant *missio in possessionem* ("a sending into possession"). Once granted, the creditor had to advertise for 30 days to permit other creditors to make their claims. At the end of that time a manager was appointed to conduct the sale, normally at public auction to the bidder who offered the highest dividend to creditors. However, the debtor remained fully liable for any unpaid part of the debt. It is described as "*a deliberately harsh process, the threat of which was intended to force payment from the debtor*". A *cessio bonorum* was not available as of right, but was a less oppressive outcome for the debtor so as to avoid what would otherwise be public disgrace. By the time of the *cognitio* procedure, the 30-day rule was more flexible, rising under Justinian to four months and, if the judgment debt were not satisfied, the delegate of the State, the magistrate, had overall control of the process. The judgment creditor was able to accept property in lieu of a money judgment, otherwise the purpose of seizure and sale was to generate sufficient funds to meet the debt or to pay a dividend to the debtor's creditors.

40. Advocate Horsbrugh-Porter also seeks to draw an analogy with the position in English law as described in <u>*Giles v Grover*</u> [1824-34] All ER Rep 547; 9 Bing 128. The headnote reads:

> "*By the seizure of a debtor's goods by the sheriff under a fi fa no property in the goods passes to the judgment creditor. Until the sale of the goods the general property remains in the debtor who, after their seizure, may, by payment of the judgment debt, stay the execution and have back his goods. The right of the execution creditor to the goods does not become consummate until after the sale of the goods to him.*
>
> *The sheriff has a special property in goods which he has seized under a fi fa while they are in his hands and may maintain trespass and trover for them, but that is a limited right (per PATTESON and ALDERSON, JJ) resulting from the sheriff being an officer of the law and the goods being in custodia legis, conferred on him to enable him to perform a public duty, or (per TINDAL, CJ, and LORD TENTERDEN, CJ) as being the right which belongs to any man in legal possession of goods, whether as a bailee or otherwise, to maintain an action against a person who deprives him of their possession.*"

The focus in this case was about the time prior to sale. Advocate Horsbrugh-Porter submits that the possessory nature of the interest of HM Sheriff in the goods applies equally post-sale to the proceeds. However, this decision is not authority for that proposition as a matter of English law and so I do not regard this as being of any real assistance in respect of the question I have to determine. Whilst I acknowledge that the holding of the assets subject to the arrest can be equated to them being in *custodia legis*, particularly once the authorisation for them to be sold

is obtained, the effect of the sale and the manner in which the proceeds are to be allocated have not been addressed by analogy to the position in England and Wales.

41. In any case, I prefer the approach suggested by Advocate Fullman by analogy to other situations in Guernsey where the assets of a person are administered by another. The first example he relies on is that of an executor. By reference to the Jersey case of *Cloche v Cloche* (1870) LR 3 PC 125, even though the maxim "*le mort saisit le vif*" means that the heirs are the true owners of the deceased's property, "*the law gives the executors full right and title, d'eux-memes, that is, in their own names, to take possession of, and recover and receive the whole of the moveables for the purposes of administration.*" Under the law of curatelle, the guardian takes possession of the patient's property and settles any liabilities arising. However, the property itself remains in the estate of the patient. In much the same way, HM Sheriff takes possession of a judgment debtor's property with a view to handling it on the directions of the Court as and when that stage is reached and the 2006 Law confers on the purchaser of it good title, thereby extinguishing the debtor's title. Until that time, the property continues to form part of the debtor's estate.

42. It is readily apparent that the customary law process of *désastre* bears many similarities to the ancient enforcement processes under Roman law. I consider that the handing to HM Sheriff of an Act of Court to make use of the enforcement services offered can be viewed as engaging that office-holder on behalf of the judgment creditor in the first instance. The step of arresting goods can be regarded as a means by which the judgment debtor is invited to satisfy the debt or face the consequences. In circumstances where the judgment creditor has not had satisfaction and returns to the Court to confirm the arrest and seek permission for HM Sheriff to sell the goods subject to the arrest, that step can be viewed as bringing the matter into the overall control of the Court. The fact that the goods arrested cannot automatically be sold confirms that the title to them has not at that stage passed to anyone else. It requires the intervention of a further Court order before the judgment debtor loses the ability to demand the return of his goods. At the point of authorising the sale of those goods, it is still open to the judgment debtor to satisfy the judgment creditor's debt and then the arrest would be lifted and the goods returned. To that extent, the permission to sell confers a provisional entitlement on HM Sheriff to pass title in them to another person. However, as soon as the goods are sold and title vests in the purchaser, the judgment debtor's title to the goods themselves is lost. The customary law position involves the officer of the Court selling those assets to hold the proceeds to satisfy the judgment debt and this is consistent with the situation in which there could be multiple arrests, sales and handing over of the proceeds if the debtor has only a single creditor. However, where there are two or more creditors, and the proceeds of sale are insufficient to settle all known debts, those proceeds are held for their benefit rather than for the benefit of the judgment creditor alone. This is the step that results in the declaration of the affairs of the debtor being *en désastre* being made. In many respects, having commenced the process acting for the judgment creditor, HM Sheriff's role evolves into acting for all known creditors and even for those creditors who have yet to come forward. It is a simple form of collective personal insolvency process.

43. I do not regard it as necessary that there be a declaration made before the proceeds of sale are treated as having left the debtor's estate. As soon as the permission to sell has been relied upon and a sale takes place, the proceeds will either be applied in their entirety to satisfying the judgment debt, plus any other known debts, or they will be held pending the final step of inviting the Court to make the *en désastre* declaration. If a third party were to come forward

after sale but before final distribution of the proceeds of sale to those entitled to them, the action would be to be paid out the value of the interest as now represented by the proceeds of sale. If monies were to be paid out in such a case, it might convert a position where all the creditors could be paid to one where there would then be an *en désastre* declaration or it might simply reduce the amount available for distribution in any event. In either situation, the role of HM Sheriff is distinct from acting on behalf of the judgment creditor but at no time is he acting solely for the judgment debtor, which would have to be the position if the submissions of Advocate Horsbrugh-Porter were accepted.

44. Whether this analysis involves HM Sheriff being constituted as a trustee of the proceeds of sale and, if so, the precise class or classes of beneficiary or beneficial interest is a matter I do not feel I have to resolve to do justice in respect of the present case. There are elements that could be viewed in this way because it is clear that HM Sheriff holds the proceeds of sale on behalf of others, subject only to his continuing interest in deducting from the monies he holds the costs to which he is entitled.

45. For these reasons, I am satisfied that the interest of Mr Douglass in his assets ended by the time that they were sold. The authorisation to sell them provisionally deprived him of those assets. It was still open to him to satisfy his debts at that time and, had he done so, the arrest of them would have been lifted and his continuing title to them would have meant he could direct to what use they be put. However, once sold, the proceeds of sale were not being held by HM Sheriff as a direct replacement for the sold goods and on the same terms. They were by then being held as part of a Court-directed enforcement process which would either see those proceeds of sale paid away to the judgment creditor or them being dealt with through the *désastre* process. That is why the interest of Mr Douglass had ended. As a consequence, at the time that the bankruptcy order was made, or perhaps more accurately at the time of the Applicants' appointment as trustees in bankruptcy being recognised, the proceeds of sale do not form part of the estate of Mr Douglass. The one painting that has not been sold is different. No title in it vests in HM Sheriff. Title to it remains in Mr Douglass and so that one painting is capable of being handed over to the Applicants pursuant to para. 2 of the Application.

**Conclusions**

46. The opposition of Confiance Limited to paragraphs 2 and 3 of the Application has been raised because of the context surrounding the proceeds of sale of the arrested assets of Mr Douglass now in the hands of HM Sheriff and because of the breadth of the original wording of para. 3, which could extend to documents in respect of which Confiance Limited has the privilege vested in it. The latter point has, in my view, disappeared by virtue of the narrower wording of para. 3, as amended. The opposition to para. 2 disappears if the proceeds of sale are not within Mr Douglass's estate. Throughout, HM Sheriff has been concerned as to the impact that any conclusion that the proceeds of sale of the assets are not available for distribution within the *désastre* may have on the usual way HM Sheriff operates as an officer of this Court.

47. I have already explained in detail why I have reached the conclusion that the proceeds of sale held by HM Sheriff do not fall within the estate of Mr Douglass at any time that would enable para. 2 of the Application to affect what happens to them. In those circumstances, I am satisfied that this Court should grant para. 2. Although the trustees in bankruptcy have chosen not to use section 426 of the 1986 Act, I see no reason why this Court should not attach to an order recognising their appointment the usual effect of recognition, namely empowering them

to gather in the assets of Mr Douglass found in this jurisdiction. The effect of recognition would serve little to no purpose if this could not be done by them. In practical terms, it may mean very little indeed unless, of course, there are assets within the jurisdiction that have escaped HM Sheriff.

48. In reaching that conclusion, I reject the primary submission of Advocate Fullman that the only avenue through which the Applicants could gain the powers they seek would be through the formal process of a letter of request under section 426 of the 1986 Act as extended. I accept that an office-holder can choose to seek recognition and ancillary powers under the common, or customary, law. When determining what powers are capable of being exercised following recognition, as the ***Brittain*** case (*supra*) explains, the power to gather in the assets of the bankrupt and the relevant documents in the same way as provided for under the 1986 Act will usually be uncontroversial. They have only really been contested in the present case because of the difference of opinion as to what would be covered by the orders sought. That is why I have concentrated on what assets are within the estate of Mr Douglass and what is not. In particular, for the reasons I have given, I have concluded that the proceeds of sale in the hands of HM Sheriff are not assets to which Mr Douglass is legally entitled. I am satisfied that those proceeds of sale are held in readiness for any *désastre* proceedings and so do not fall within his estate. As a consequence, the opposition of Confiance Limited to para. 2 of the Application is significantly reduced.

49. Paragraph 3 of the Application is also less controversial as a result of its ambit being narrowed through the amendment granted.

50. Advocate Horsbrugh-Porter has suggested that it is necessary for the Applicants to take control of every last penny potentially available to them because in this way expert insolvency practitioners can fulfil the duties imposed on them. The implication underlying that contention is that the *désastre* process in Guernsey should be treated as inadequate to give satisfaction to the creditors of Mr Douglass. If the proceeds of sale currently in the hands of HM Sheriff fell within the estate of Mr Douglass and so were potentially available to the Applicants, it would mean there is some liquidity in the estate for them to conduct further enquiries but may result in no creditor getting even the smallest of dividends. Whatever the flaws of the *désastre* process, any creditor choosing to register a claim is likely to receive something in return.

51. The outcome of the Application is that the Applicants succeed on both para. 2 and para. 3 (as amended) and so the Application is granted. This is subject to the qualification that I find that para. 2 does not extend to the proceeds of sale held by HM Sheriff. Because it has not been sold, the one painting subject to arrest is available for the Applicants. Insofar as it is necessary to do so, I will direct that the arrest maintained in respect of it be lifted in the event that the Applicants wish to have the painting. The creditors of Mr Douglass (possibly even acting through the agency of the Applicants) are at liberty to register their claims in the *désastre* with a view to sharing proportionately in the amount available for distribution.

52. I propose to reserve the costs of the Application. At present, given the mixed outcome where no one can be said to have been wholly successful, I am minded to make no order as to costs. If all parties bear their own costs, I take the view that this means that the Applicants' costs are in the bankruptcy, the costs of Confiance Limited are added to the overall debt owed to it by Mr Douglass because I consider they can properly be regarded as part and parcel of the process of

seeking to enforce the judgments, and the costs of HM Sheriff should similarly be added to the costs his office has incurred in executing those judgments.

**Postscript**

53. There is one final matter that I feel I ought to raise and that is the citation of authority. This is an issue that is more general than only this case but it has been brought sharply into focus because of the documents produced by Counsel.

54. If a Guernsey judgment has been reported in the Guernsey Law Reports, I think that a copy of the actual report should be produced for use by the Court instead of just the raw text judgment. If the decision has only been noted, it is helpful to have a copy of the raw text as well. In relation to judgments from other jurisdictions, the best available source should be used. Accordingly, if a case has been reported, the report should similarly be used rather than just the text of the judgment. If a case is reported in more than one series of law reports, the version that contains the most detail is preferable. For example, the series of Appeal Cases is generally superior to the same case in the Weekly Law Reports because it often contains Counsel's arguments, in which useful material can sometimes be found.