



## Jersey Archive Information Leaflets

# Bankruptcy Records

### General Information

Bankruptcy laws and procedures are complicated processes that have changed over time in Jersey. The current bankruptcy law in use in Jersey is the 1990 law which was drafted over the course of many years and when enacted brought Jersey into line with other worldwide jurisdictions in this branch of law.

The following information should give researchers some guidance in identifying different bankruptcy procedures and dates and in finding the relevant records from various different branches of the Judicial Greffe and Viscount's Department.

### Access

Each collection held by Jersey Archive has a unique reference code. These collection references have been included in the following information after the collection title. Should you wish to find out about a certain collection simply go to one of the Open Public Access Catalogues available in the Help Desk area of the Archive. Click on reference search and enter the collection reference.

### Current Departmental Roles in Bankruptcy Records

#### Royal Court Records – Judicial Greffe – D/Y

The records of the Royal Court give details of individuals or companies appearing in Court on bankruptcy charges and also lists of creditors.

#### Viscount's Department – D/AV

The Viscount's Department is responsible for administering bankruptcies, this includes becoming the legal owner of the property of a debtor, gathering the names of creditors and selling the assets of the debtor.

### Types of Bankruptcy, Processes and Records at Jersey Archive

The following sections list the different types of bankruptcy giving details of the dates over which this type of bankruptcy would have been followed, an idea of the processes and where to find records at the Jersey Archive.

#### Décret

The earliest form of bankruptcy were the records of décret dating from the 16<sup>th</sup> century court records to the 20<sup>th</sup> century. In a décret the property of a bankrupt individual is treated together as a single entity and can include movable (e.g. money, shares, goods, household items) and immovable property (e.g. land, rentes). The procedure was changed to dégrèvement after the 1880 Propriété Foncière Law (see below). Despite this the records of décrets continue to 1917.

### **Procedures of the Décret**

After a décret was declared in the Samedi Court a list of creditors was produced. The unsecured creditors were then called en masse and asked if they wished to become the tenant après décret who would take over the property of the bankrupt (which included the debts). If none of them elected to become the tenant then the secured creditors were called in reverse date sequence.

Décrets are considered in 15 year sections. If no tenant was found in the 15 years of transactions preceding the décret then the previous 15 years would be brought into the décret procedure. If a tenant was not found then the décret was know as vide sans tenant and action could proceed against the ascendants of the bankrupt individual. The tenant après décret took over the real property of the bankrupt and could assign the benefit to a third party who was called the tenant subrogé. (See example below)

### **Records of the Décret**

Early décrets are announced and permitted in the Samedi Court registers [D/Y/F1]. The Cour de Cattel registers [D/Y/E1] then record the lists of creditors and appointment of the tenant. Records of décrets are also listed in a separate series of volumes from 1618 – 1917 reference D/Y/F3. This series of volumes was started after a Court order of 24/09/1618 which ordered that the Greffe register all rights, titles and evidence in the case of a décret. Décrets do exist prior to this date in the Cattel and Samedi registers but will not include a detailed list of evidence.

The initial function of the décret registers was purely to list the property (movable and immovable) of the debtor. By 1832 the décret registers also record the details of the décret from the Samedi (announcement and permit) and Cattel (lists of creditors) registers. The décret registers are indexed by debtors name on the OPAC.

Décret records will include a register of the creditors and acquirers of the héritage of the debtor. Records can deal with both movable and immovable property. The movable property of the debtor will be listed first and can include promissory notes, loans and outstanding bills. The immovable property will then be listed with copies of all contracts passed by the debtor within the period of the décret.

### **Example of a Décret from the 1820s – Matthieu Le Geyt**

- 26/02/1820 – Announcement of the décret investigation in the **Samedi Court** Register. Matthieu's movable and immovable property is placed in the hands of the Greffier of the Royal Court pending investigation of his affairs by appointed individuals.
- 09/03/1821 – Permission to décret in the **Samedi Court** Register. Matthieu has been unable to pay his creditors in the time given so the décret is announced.
- 15/05/1821 – Record of the public announcement for creditors to make claims on the décret in the **Cour du Cattel**. A tenant will be appointed from those who come forward.
- 09/10/1821 – List of the creditors who have come forward to claim in the **Cour du Cattel**. (Additional creditors can be added at a later date)
- 14/05/1821 – Appointment of the tenant après décret in the **Cour du Cattel**. Charles William Poingdestre is appointed tenant and takes over possession of the movable and immovable property of Matthieu Le Geyt and is required to pay rentes, mortgages, reasonable arrears and other debts. Charles William

Poingdestre appoints his brother Jean Matthews Poingdestre as tenant subrogé of half the property.

- The **Décret Registers** (D/Y/F3) at this stage purely record the details of the movable and immovable property that is owed to the creditors (e.g. copies of contracts, mortgage agreements, unpaid bills, loans etc.)

### **Désastre**

In the eighteenth and nineteenth centuries désastre proceedings were created by the Court under Common Law. Désastres originally only applied to movable property but after the 1990 Bankruptcy Law désastres applied to both movable and immovable property and became the most common form of dealing with insolvency.

The purpose of a désastre is to gather in and sell an insolvent debtor's assets, to find out why insolvency occurred and whether any bankruptcy offences were committed, and to distribute the net proceeds of the assets to those who are entitled to them.

### **Procedures of a Désastre**

The Viscount's Department is responsible for the administration of désastres. As soon as a désastre is declared all the property of the debtor is vested in the Viscount and he becomes the legal owner of all the debtor's property worldwide.

The Viscount then advertises for all creditors to file their claims with him by a set date after which the claims are available for public inspection. The Viscount gathers in the assets of the bankrupt and sells them and cash is kept in an interest bearing account. The Viscount, once the case is complete, then supplies all the creditors with a report and accounts of the désastre. At the same time any final dividend is paid.

If the bankrupt is an individual (rather than a company) then after 4 years (this can be extended or reduced) the Viscount brings an application to the Royal Court for an order discharging the bankrupt. The bankrupt is then no longer liable to pay the debts dealt with by the désastre. If the bankrupt is a company the Viscount notifies the Registrar of Companies that he has concluded the case and the Registrar proceeds to dissolve the company.

### **Records of Désastre**

The company or individual is declared en désastre in the records of the Samedi Court. The Viscount then adjudicates claims and takes over assets (see above). The departmental records include the following volumes concerning the administration of the désastre:

- D/AV/D1 - Sales ordered by Act of the Royal Court. Volumes giving details of public sales of movable goods of bankrupt individuals. Includes details of the proceeds of the sales and payments to creditors, 1931 – 1970
- D/AV/D2 - Sales of movable goods of bankrupt individuals, 1931 – 1954
- D/AV/D3 - Ledgers showing accounts of bankrupt individuals, 1940 – 1957
- D/AV/D4 - Closed Sales and Sundry Debtors Accounts, 1964 – 1975
- D/AV/D5 - Désastre Settled, 1963 – 1980
- D/AV/D6 - Closed Désastre Accounts, 1979 – 1983
- D/AV/D7 - Files Concerning Individual Désastre Cases

Further references to the désastre, including any claims, are present in the records of the Samedi Court.

## **Dégrévement**

The dégrévement was a procedure allowing the creditors of a bankrupt to foreclose upon and gain possession of his land. The dégrévement was introduced when the 1880 Propriété Foncière Law was passed and only related to immovable property.

## **Procedures of Dégrévement**

The dégrévement was similar to the previous décret proceedings for immovable property but was conducted separately on each 'corps de bien-fonds' i.e. each isolated piece of land owned by the bankrupt and joined on all sides by property owned by third parties or public roads.

The dégrévement would be announced in the Samedi Court (usually at the same time as a décret was announced for movable property) and then a date would be fixed to hear the dégrévement in the Royal Court. The immovable property was divided into 'corps de bien-fonds' (see above). Creditors and their complaints would be listed and the references given to any transfers of property in the Public Registry.

## **Records of Dégrévement – D/Y/F5**

Records of dégrévement at the Archive date from 1881 after the 1880 Propriété Foncière Law was passed until 1980. Later records are still with the Judicial Greffe. The records of the dégrévement include references to and in most cases copies of any extracts from the Samedi Court or Public Registry that relate to the case.

## **Liquidation and Réalisation**

Liquidation was created in 1880 and abolished in 1904 on the creation of réalisation. In both cases the aim was to convert the movable and immovable property of a debtor to cash and try to avoid a décret or dégrévement.

The movable property of the debtor would be taken over by an attorney acting with the Greffier and a Jurat, after a cession de biens or adjudication de la renunciation des biens. The capital would then be realised and the proceeds distributed to the creditors after paying costs and privileged debts. If the debtor owed rentes or mortgages then a liquidation had to be followed as these could not be subject to a décret or dégrévement.

## **Records of Liquidation and Réalisation**

The Archive has one Court volume relating to liquidation and réalisation – D/Y/F6/1. The volume includes extracts concerning the establishment of the liquidation/realisation in the Samedi Court, lists of creditors and in some instances inventories of movable property.

The purpose of the Jersey Archive is to identify, select, collect, manage, preserve and provide access to the Island's on behalf of the whole community, promoting Jersey's culture, heritage and sense of place, both within its shores and beyond.

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Opening Hours: 9am to 5pm, Tuesday to Thursday. The Reading Room and Help Desk are closed between 1-2pm. Late night till 7pm the last Thursday of the month.

The information in this leaflet is accurate as of March 2010. Please be aware that the Jersey Archive receives new collections on a regular basis and ask staff if you have any queries.