Michaelmas Term
[2024] UKSC 39
On appeal from: [2022] EWCA Civ 35

JUDGMENT

Kireeva (Appellant) *v* Bedzhamov (Respondent)

before

Lord Reed, President
Lord Lloyd-Jones
Lord Briggs
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
20 November 2024

Heard on 21 and 22 November 2023

Appellant
Stephen Davies KC
William Willson
(Instructed by DCQ Legal and (for judgment) Steptoe International (UK) LLP (London))

Respondent
Justin Fenwick KC
Stephen Robins KC
(Instructed by Greenberg Traurig)

Intervener
Andrew Scott KC
Gayatri Sarathy
(Instructed by Mishcon de Reya LLP (London))

LORD LLOYD-JONES AND LORD RICHARDS (with whom Lord Reed, Lord Briggs and Lady Rose agree):

1. It is an established principle in many national legal systems, including the common law of England and Wales, that questions as regards rights to and interests in land and other immovable property are governed by the law of the country in which the property is situated (the lex situs) and that jurisdiction to decide those questions belongs to the courts of that country. Where immovable property is situated in country A, neither the law nor the courts of country A will recognise or give effect to any laws or judicial decisions of other countries which purport to govern or decide issues of rights to and interests in that immovable property, save to the extent of any exceptions under the law of country A. In this judgment, we refer to this principle of private international law, as applied to immovable property in England and Wales, as "the immovables rule".

2. The issue on this appeal is the effect, if any, under English common law of the immovables rule on the claim of a trustee in bankruptcy or similar representative appointed in foreign bankruptcy proceedings to immovable property situated in England and owned by the debtor.

3. This issue arises in relation to a property in London owned by the Respondent, against whom a bankruptcy order was made by a Russian court. The Russian court appointed the Appellant as the trustee of his bankruptcy estate. As a matter of Russian law, the property in London forms part of his bankruptcy estate and the trustee is under a duty to get in and realise it for the benefit of his creditors. The issue for decision is whether, as a matter of English law, the immovables rule prevents the Appellant as trustee from claiming the property in London and from obtaining assistance from the English court to do so.

4. As we will later explain, the statutory provisions under which the English court may give assistance to a foreign trustee in bankruptcy do not apply in this case. The question is therefore whether assistance may be given at common law.

The facts

5. As the issue in this appeal has been argued as a question of principle, it is necessary to give only a brief summary of the facts and of the extensive proceedings in Russia and England.

6. The Respondent is a Russian citizen who left Russia in 2015 and has lived in England since 2017. In 2015, he acquired an interest in a house in Belgrave Square and its associated mews house ("the Property"). His interest comprised a lease with some 20

years remaining and an agreement with the freeholder for the grant of a new lease for a period of 129 years conditional on the redevelopment of the Property.

7. In August 2016, Vneshprombank LLC ("VPB"), a Russian bank in provisional liquidation, obtained a judgment on an unjust enrichment claim against the Respondent in a district court in Moscow. The judgment sum had a sterling equivalent in excess of £30 million. The Respondent's appeal was dismissed, as were subsequent attempts by him to set aside the judgment. In December 2016, VTB 24 Bank ("VTB"), also a Russian bank, obtained judgment against the Respondent in another district court in Moscow on a guarantee which the court found to have been given by the Respondent. The judgment sum had an approximate sterling equivalent of £3 million.

8. In January and April 2017, VPB and VTB respectively filed bankruptcy petitions with the Moscow City Arbitrazh Court ("the Arbitrazh Court") against the Respondent based on the judgments obtained by them.

9. On 20 September 2017, the Arbitrazh Court accepted the validity of VTB's claim and ordered a debt restructuring procedure in respect of the Respondent's debts, appointing a financial administrator to supervise the debt restructuring. The Respondent's appeal against this order was dismissed.

10. The Arbitrazh Court subsequently accepted the validity of VPB's claim on its judgment, which was opposed by the Respondent, as well as a claim by the Federal Tax Authority.

11. On 2 July 2018, the Arbitrazh Court declared the Respondent bankrupt and appointed the Appellant as the new financial manager for the purpose of realising the Respondent's assets, a position equivalent to that of trustee in bankruptcy under English law. We will refer to this order as "the Russian bankruptcy order".

12. In December 2018, VPB issued proceedings against the Respondent in the Chancery Division of the High Court in London, claiming damages in excess of £1.34 billion in respect of losses alleged to have been suffered as a result of fraud on the part of the Respondent, who it was said had personally benefitted to the extent of some £35.4 million. A worldwide freezing order was made against the Respondent in March 2019. The order applies to all his assets including, by the express terms of the order, the Property. In the usual way, the Respondent was permitted to use his funds for living expenses and for the payment of legal costs. As we understand it, these proceedings are continuing and have yet to come to trial: see *Vneshprombank LLC v Bedzhamov* [2024] EWHC 1048 (Ch), [2024] 1 WLR 4674.

13. Pursuant to a variation of the freezing order made by Falk J on 5 March 2021 ("the Variation Order"), the Respondent charged his interest in the Property to his then solicitors, Mishcon de Reya LLP, to secure accrued and future legal costs.

14. At least partly to fund his defence of the action brought by VPB, the Respondent has taken steps with a view to a sale of his interests in the Property and succeeded in an application, opposed by the Appellant, to vary the freezing order to permit a sale: *Vneshprombank LLC v Bedzhamov* [2023] EWHC 1459 (Ch).

The present proceedings

15. In February 2021, the Appellant issued an application in the Chancery Division, seeking recognition at common law of the Russian bankruptcy order and of her appointment as the Respondent's bankruptcy trustee and financial manager and "[s]uch further relief as the Court sees fit, including orders for the entrustment of the Belgrave Square Property (and any other property of the Respondent in England) and that the Applicant will be able to question the Respondent in relation to the Belgrave Square Property".

16. In her evidence in support of the application, the Appellant said that she had become aware of the Property in January 2021 and, given that it is a major asset, she "would therefore like to take control over it, as I am entitled and obliged to do under Russian law, to protect the interests of the bankruptcy estate (which includes the collective interest of at least three creditors)".

17. The Appellant also issued an application to set aside the Variation Order which had enabled the Respondent to charge his interest in the Property in favour of Mishcon de Reya ("the Set Aside Application").

18. Both applications were heard by Snowden J who, by an order dated 25 August 2021, formally recognised the Russian bankruptcy order and the Appellant's appointment by the Arbitrazh Court. He directed that any application by the Appellant for assistance in relation to the Respondent's movable assets in England should be made to Falk J, but he dismissed the application insofar as it sought assistance in relation to the Property and any other immovable assets in England. He also dismissed the Set Aside Application. See [2021] EWHC 2281 (Ch).

19. As regards recognition, Snowden J held that, although it was common ground that the Respondent had not been domiciled in Russia at the time of either the bankruptcy application or the bankruptcy order, he had submitted to the jurisdiction of the Arbitrazh Court and that the orders declaring him bankrupt and appointing the

Appellant should be recognised on that basis. In addition to challenging the jurisdiction of the Arbitrazh Court, the Respondent resisted recognition on a number of other grounds, all of which were rejected by the judge. One of those grounds was that the VTB judgment on which the Russian bankruptcy order was based had been obtained by fraud, through forging his signature on the guarantee on which VTB made its claim. The Court of Appeal allowed the Respondent's appeal against the order for recognition on this ground alone and directed that the matter be remitted for a new hearing with cross-examination of the Respondent: [2022] EWCA Civ 32, [2023] Ch 45. This was heard by Falk J who held that the Respondent had not established that the guarantee was a forgery and that the Russian bankruptcy order and the Appellant's appointment should be recognised at common law: see [2022] EWHC 2676 (Ch). There is no longer any dispute about the recognition order.

20. As regards the Appellant's claim for assistance in relation to the Property, the Appellant submitted that this was not barred by the immovables rule. Mr Davies KC and Mr Willson, appearing then as now for the Appellant, submitted that the effect of the immovables rule was limited to preventing an automatic vesting of the legal title to the Property in the Appellant as trustee. The foreign bankruptcy order could not bypass the local system for transferring legal title under the lex situs. The English court would, however, recognise that the Property fell within the Respondent's bankrupt estate and would assist the Appellant to realise it for the benefit of the estate and the creditors. Snowden J rejected these submissions, holding that, by reason of the immovables rule, English law did not recognise the Appellant as having any claim on behalf of the estate to the Property or any other immovable property in England. There was therefore no basis on which the English court could provide assistance to the Appellant to gain possession of, or to realise, the Property. On the same basis, the judge dismissed the Set Aside Application.

21. On appeal, the Court of Appeal by a majority (Newey and Stuart-Smith LJJ, Arnold LJ dissenting) upheld the decision of Snowden J as regards the Property and the Set Aside Application. Counsel for the Appellant repeated their submission that the immovables rule bears only on legal title to the Property and that the English court will accept that a foreign trustee has complete dominion over all the debtor's assets, including immovable property, and that the debtor holds the legal title for and at the direction of the trustee. They also developed a submission that, for relevant purposes, statutory provisions enabling the court to give assistance to foreign trustees and other office-holders and common law recognition both served as gateways to the provision of assistance, such that there was no essential difference between the statutory regimes and the common law in the assistance that the court was empowered to provide. In particular, the court could at common law as well as under the statutory regimes exercise its jurisdiction to appoint a receiver of the Property with power to sell it and remit the net proceeds of sale to the Appellant for distribution among creditors in accordance with applicable Russian bankruptcy law.

22. The majority rejected these submissions. Newey LJ emphasised that the immovables rule did not just prevent the automatic vesting of immovable property within England in a foreign trustee, but had the effect that a foreign bankruptcy law "will not be recognised as having conferred any interest in or right to such property on the office-holder and, absent statutory intervention, the office-holder will not be entitled to an order vesting it in him" (para 100), nor will the office-holder "be considered to have an interest meriting protection by the grant of a receiver or injunctive relief" (para 102). In a short concurring judgment, Stuart-Smith LJ agreed with this reasoning.

23. In his dissenting judgment, Arnold LJ took as his starting point that the effect of the recognition order was that "the English courts recognised Ms Kireeva as the duly appointed trustee of Mr Bedzhamov's bankrupt estate, and thus recognised her duty and right to realise the assets comprising that estate for the benefit of Mr Bedzhamov's creditors" (para 109). While the immovables rule meant that the English court would not recognise any title to immovable property in England conferred by a foreign bankruptcy court (para 112), it did not mean that the foreign office-holder had no rights at all in respect of such immovable property. English law will recognise such property as falling within the bankrupt estate and the English court may exercise its discretionary power to make an in personam order appointing a receiver in respect of the immovable: see para 126. Arnold LJ would have remitted the Appellant's application in relation to the Property to the High Court for a decision as to how the discretion to appoint a receiver should be exercised.

24. This Court gave the Appellant permission to appeal as regards her application for assistance in relation to the Property and as regards the Set Aside Application. Mishcon de Reya was given permission to intervene to protect its interests as chargee of the Property. It supports the Respondent's case, and it is common ground that, if the appeal as regards assistance is dismissed, the appeal as regards the Set Aside Application will fall to be dismissed. If the appeal is allowed, the Set Aside Application would be remitted to the Chancery Division for re-hearing. It is not necessary to consider further the position of Mishcon de Reya as chargee.

The immovables rule

25. It is the special nature of land that has given rise to the immovables rule, as a result of which a foreign court has no jurisdiction to make orders in respect of land in England and Wales and rights relating to such land are governed exclusively by the law of England and Wales.

26. *Dicey, Morris and Collins, The Conflict of Laws*, 16th ed (2022), state the jurisdictional rule, as applied to land in England, as follows:

> "Rule 139 – A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that country."

27. As the editors explain (at 24-062), it is a corollary of the principle that English courts have no jurisdiction to determine the title to, or the right to possession of any immovable situate outside England: *British South Africa Co v Companhia de Moçambique* [1893] AC 602. It is an imprecise corollary, however, because unlike the *Moçambique* principle, which is subject to exceptions, no exceptions to Rule 139 have yet been formulated.

28. *Dicey, Morris and Collins* state the choice of law rule as follows:

> "Rule 140 – All rights over, or in relation to, an immovable (land) are (subject to the Exception hereinafter mentioned) governed by the law of the country where the immovable is situate (lex situs)."

The exception referred to in Rule 140 is that it does not apply to the formal and material validity, interpretation and effect of a contract, and capacity to contract, with regard to an immovable.

29. The editors explain that, as a result, a person's capacity to alienate an immovable by sale or mortgage (24-073), capacity to take land (24-079), the formal validity of a conveyance of land (24-080), the material or essential validity of a disposition of land (24-081) and issues of prescription and limitation (24-082) are all to be determined in accordance with the lex situs. In each case, the lex situs means, for an English court dealing with land in England, English domestic law.

30. These rules reflect domestic public policy. As Farwell LJ observed in *In re Hoyles* [1911] 1 Ch 179 at pp 185-186, "[n]o country can be expected to allow questions affecting its own land, or the extent and nature of the interests in its own land which should be regarded as immovable, to be determined otherwise than by its own Courts in accordance with its own interests". *Dicey, Morris and Collins* states (at 24-070): "The sovereign of the country where land is situate has absolute control over the land within his or her dominions: he or she alone can bestow effective rights over it; his or her courts alone are, as a rule, entitled to exercise jurisdiction over such land." In *Freke v Lord Carbery* (1873) LR 16 Eq 461 at p 466, Lord Selborne LC said: "The territory and soil of England, by the law of nature and of nations, which is recognised also as part of the law of England, is governed by all statutes which are in force in England." In short, the immovables rule reflects territorial sovereignty.

31. Professor Adrian Briggs notes (*Private International Law in English Courts*, 2nd ed (2023) p 619) that the connection between the subject of the proceedings and the law which will apply to it is stronger and closer in the case of land and the lex situs than is the case with any other rule of private international law. *Cheshire, North and Fawcett, Private International Law*, 15th ed (2017) p 1256, affirming comments by *Hay, Borchers and Symeonides, Conflict of Laws,* 5th ed (2010) p 1231, consider that "there is no doubt … that the law of the situs has a powerful interest in its rules being applied to a wider range of matters – essentially "with the manner in which land is used, occupied or developed"". The editors of *Dicey, Morris and Collins* consider (24-003) that a modern justification for the rather special position of land in most legal systems is that important social questions may be involved, such as housing policy and tenants' rights, and the relevant legislation may be regarded as embodying public policy.

32. These rules are a particular manifestation of wider principles of the sovereignty, equality and independence of states in international law. Dr F A Mann in his lectures entitled "The Doctrine of International Jurisdiction Revisited after Twenty Years" given in 1984 at the Hague Academy of International Law (see *Further Studies in International Law* (1990)) expresses these principles as follows (p 4):

> "International jurisdiction is an aspect or an ingredient or a consequence of sovereignty … laws extend so far as, but no further than, the sovereignty of the State which puts them into force nor does any legislator normally intend to enact laws which apply to or cover persons, facts, events or conduct outside the limits of his State's sovereignty. This is a principle or, perhaps one should say, an observation of universal application. Since every State enjoys the same degree of sovereignty, jurisdiction implies respect for the corresponding rights of other States. To put it differently, jurisdiction involves both the right to exercise it within the limits of the State's sovereignty and the duty to recognise the same right of other States. Or, to put the same idea in positive and negative form, the State has the right to exercise jurisdiction within the limits of its sovereignty, but is not entitled to encroach upon the sovereignty of other States."

33. In general, courts in this jurisdiction will normally recognise and will not question the lawfulness or validity of a foreign state's executive and legislative acts within its territory, including acts affecting all kinds of property situated in its territory at the material time (*Maduro Board of the Central Bank of Venezuela v Guaido Board of the Central Bank of Venezuela* [2021] UKSC 57, reported sub nom *Deutsche Bank AG London Branch v Receivers Appointed by the Court* [2023] AC 156 at paras 118-135, 172-176). Similarly, courts in this jurisdiction will normally recognise at common law judgments of foreign courts affecting property within the jurisdiction of the foreign

court. "A court of a foreign country has jurisdiction to give a judgment in rem capable of enforcement or recognition in England if the subject-matter of the proceedings wherein that judgment was given was immovable or movable property which was at the time of the proceedings situate in that country" (*Dicey, Morris and Collins*, Rule 50). However, courts in this jurisdiction will not in general give effect to foreign laws, executive acts or judgments purporting to affect property situated outside the foreign state. In *Williams & Humbert Ltd v W & H Trade Marks (Jersey) Ltd* [1986] AC 368 Lord Templeman observed (at p 428):

> "There is undoubtedly a domestic and international rule which prevents one sovereign state from changing title to property so long as that property is situate in another state."

34. Similarly, in *Société Eram Shipping Co Ltd v Cie Internationale de Navigation* [2003] UKHL 30, [2004] 1 AC 260 Lord Hoffmann observed (at para 54):

> "The execution of a judgment is an exercise of sovereign authority. It is a seizure by the state of an asset of the judgment debtor to satisfy the creditor's claim. And it is a general principle of international law that one sovereign state should not trespass upon the authority of another, by attempting to seize assets situated within the jurisdiction of the foreign state or compelling its citizens to do acts within its boundaries."

In that case, the principle was one of the grounds upon which the House of Lords held that an English court cannot make a third party debt order in respect of a foreign debt. In *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, [2020] 1 CLC 816, *Société Eram* was the basis of the converse conclusion that it would be exorbitant for a foreign court to make, for the purpose of enforcing its judgment, orders against a judgment debtor affecting its property outside the territory of the foreign state. Males LJ observed (at para 71) that "just as the English courts will give effect to these principles when enforcing an English judgment, so too we can expect that foreign courts will respect the territorial jurisdiction of the English courts over assets located here when making orders for the enforcement of their own judgments".

35. In *Peer International Corpn v Termidor Music Publishers Ltd* [2003] EWCA Civ 1156, [2004] Ch 212 the Court of Appeal refused to give effect to a Cuban law which purported to divest the claimants of the UK copyright in certain musical compositions. In denying extraterritorial effect to the Cuban law, the Court of Appeal made clear that this did not turn on its confiscatory character. (In doing so, it approved the decision of Devlin J in *Bank Voor Handel en Scheepvaart NV v Slatford* [1953] 1 QB 248 and

overruled the decision of Atkinson J in *Lorentzen v Lydden & Co Ltd* [1942] 2 KB 202.) In his concurring judgment Mance LJ (at para 66) reaffirmed the recognised and "simple rule that generally property in England is subject to English law and to none other" stated by Devlin J in *Bank Voor Handel* at p 260.

36. The immovables rule, as applied in any jurisdiction, also has a sound basis in practical considerations. The editors of *Dicey, Morris and Collins* refer, with regard to jurisdiction (at 24-003), to the facts that proceedings concerning land may involve inspections of the property or of local records which can be carried out only by the courts of the situs and that any judgment that may be given will normally be enforceable only with the co-operation of the courts of the situs. As they point out (at 24-046), in the last resort only the courts of the situs can control the land and the rights of the parties thereto. They further explain with regard to choice of law, at 24-069:

> "As a general rule, all questions that arise concerning rights over immovables (land) are governed by the law of the place where the immovable is situate (lex situs). The general principle is beyond dispute, and applies to rights of every description. It is based upon obvious considerations of convenience and expediency. Any other rule would be ineffective, because in the last resort land can only be dealt with in a manner which the lex situs allows."

Other common law jurisdictions

37. Similar rules exist in many other common law jurisdictions. In *United States v Crosby*, 11 US 7 Cranch 115 (1812) the US Supreme Court held (Story J at p 116):

> "The Court entertain no doubt on the subject; and are clearly of opinion that the title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situate."

38. Similarly, in *McCormick v Sullivant*, 23 US (10 Wheaton) 192 (1825), the US Supreme Court held (Washington J at p 202):

> "It is an acknowledged principle of law, that the title and disposition of real property is exclusively subject to the laws of the country where it is situated, which can alone prescribe the mode by which a title can pass from one person to another."

39. In the same way, in *Duke v Andler* [1932] 4 DLR 529 the Supreme Court of Canada held that courts of a foreign country have no jurisdiction to adjudicate in rem upon the title to any immovable not situate in that country. See also the decision of the High Court of Australia in *Australian Mutual Provident Society v Gregory* (1908) 5 CLR 615 ("*AMP v Gregory*").

The subject matter of the immovables rule

40. The concepts of movable and immovable property have been adopted so as to be applicable across different legal systems. In *In re Hoyles*, a case concerning succession rights to mortgages on land in Ontario held by a testator domiciled in England, Farwell LJ explained at p 185 that "out of international comity and in order to arrive at a common basis on which to determine questions between the inhabitants of two countries living under different systems of jurisprudence, our Courts recognise and act on a division otherwise unknown to our law into movable and immovable". (The suggestion made by Farwell LJ in the same passage that this division does not apply when the two countries adopt the same domestic categorisations of property, such as real and personal property, has since been discredited.)

41. The division between movable and immovable property is not intended to reproduce proprietary concepts used in domestic systems. In applying the distinction, it is irrelevant, for example, that a particular item would be characterised as personal property or real property in English law. This is notwithstanding that the characterisation of property as movable or immovable is a matter for the lex situs. Thus, leasehold interests constitute immovable property even when they would constitute personal property under English law. The same is true of debts secured by a mortgage over land, because the debt and the security cannot sensibly be distinguished, although in English domestic law the debt is personal property: see *In re Hoyles* at pp 183-184 (Cozens-Hardy MR). In a case involving succession, the High Court of Australia by a majority of 3-2 took a different view, holding that both the debt and the security should be treated as movable property: *Haque v Haque (No 2)* (1965) 114 CLR 98

42. Immovable property includes land and, as stated in Rule 140 in *Dicey, Morris and Collins*, "[a]ll rights over, or in relation to" land. Rights in relation to property take their character as movable or immovable from the character of the property. So, rights in relation to immovable property will generally be treated as themselves immovable: see *AMP v Gregory* at pp 624-625 per Griffith CJ. Thus, as stated above, under English law, immovable property includes, as regards land, leasehold interests, rentcharges and mortgages, and indeed any claim to an interest in, or right over, land within the jurisdiction. It applies as much to claims to a beneficial or equitable interest in property as it does to claims to legal title: *Pepin v Bruyère* [1900] 2 Ch 504, *In re Berchtold* [1923] 1 Ch 192, *Philipson-Stow v Inland Revenue Comrs* [1961] AC 727.

The application of the immovables rule to personal bankruptcy

43. Under English insolvency law, where an individual is declared bankrupt, all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, with immaterial exceptions, vests in the trustee in bankruptcy "without any conveyance, assignment or transfer": section 306 of the Insolvency Act 1986 ("the IA 1986"). It may be noted that the position is different in the case of the liquidation of a company, where legal ownership of assets remains vested in the company and does not vest in the liquidator who is authorised by statute to deal with and realise the company's assets.

44. For these purposes, "property" includes interests in land and other immovable property. In the case of registered land, it vests in the trustee at law without the need for a registration of the disposition: section 27(5) of the Land Registration Act 2002 and see *Helman v Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon* [2014] EWCA Civ 17, [2014] 1 WLR 2451. The immovables rule has, of course, no effect on the application of the IA 1986 to land within the jurisdiction. Nor, as a matter of English law, does it have any effect on any interest in land or other immovable property owned by the bankrupt at the commencement of the bankruptcy. This follows from the combined effect of sections 283 and 436 of the IA 1986. Section 283 defines the bankrupt's estate as including "all property belonging to or vested in the bankrupt at the commencement of the bankruptcy" and section 436 defines "property" as including "land and every description of property wherever situated". It provides a statutory exception to the immovables rule as applied in English law to property outside the jurisdiction. However, it is of limited effect, because the ability of the trustee in bankruptcy to claim such interest for the benefit of the estate will depend on the law in that other country, including its own application of the immovables rule. It does nonetheless entitle the trustee to apply to the English court for a personal order against the bankrupt to take steps necessary to vest the foreign immovable in the trustee: see *Ashurst v Pollard* [2001] Ch 595.

45. Under Russian bankruptcy law, the position is similar to that under the IA 1986. All the property of the bankrupt, wherever it is situated and whether it is movable or immovable, vests in the trustee to be realised for the benefit of the creditors.

46. Where, as in the present case, an individual has been declared bankrupt in Russia, or in any other foreign country, a straightforward application of the immovables rule would, as a matter of English law, deny the claim of the Russian or other foreign trustee to any interest in land in England. As explained above, the effect of the immovables rule as applied under English law is that the provisions of foreign law have no effect on the ownership of interests in land situated in England and that a foreign court has no jurisdiction to make an order which affects the ownership of interests in land in England. The position is different as regards movable property. In cases of

transmission of movable property, whether on death or bankruptcy, English law applies the principle accepted in most legal systems that movable property is deemed to "go with the person" and be governed not by the lex loci but by the law of the person's domicile: see, for example, *Freke v Lord Carbery* (1873) LR 16 Eq 461 at p 466.

47. The immovables rule is a substantive rule of English law and, unless some exception exists applicable in the case of a foreign bankruptcy, it will apply to the claims of foreign trustees, including the Appellant in the present case.

48. There are two significant statutory measures which exclude the application of the immovables rule to foreign insolvencies. It is common ground that neither applies to the Respondent's bankruptcy, but it is important to note their principal features.

Section 426 IA 1986

49. Section 426 of the IA 1986 makes provision for courts in the United Kingdom to give assistance in relation to insolvency proceedings in certain other countries. Section 426(4) provides:

> "The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom *or in any relevant country or territory*." (Emphasis added)

50. The statutory predecessors of section 426(4), going back to section 74 of the Bankruptcy Act 1869, and re-enacted in the Bankruptcy Acts 1883 (section 118) and 1914 (section 122), made provision for assistance to be given by and to courts with bankruptcy jurisdiction in the United Kingdom and "every British court elsewhere having jurisdiction in bankruptcy or insolvency". Although undefined, a "British court" encompassed any court in the United Kingdom and in what was then the Empire. By 1986, this term had become of limited and uncertain application. Its replacement (a court having insolvency jurisdiction "in any relevant country or territory") means any court with insolvency jurisdiction in any of the Channel Islands or the Isle of Man or in any country or territory designated by the Secretary of State: section 426(11). The designated countries and territories are for the most part Commonwealth states and British overseas territories. They do not include Russia.

51. An application for assistance made to a UK court constitutes "authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable

matters falling within its jurisdiction": section 426(5). Section 426(5) also provides that in exercising its discretion under this subsection a court shall have regard in particular to the rules of private international law.

52. "Insolvency law" is defined for these purposes by section 426(10) as including, so far as relevant to the issue in this appeal, the provisions of the IA 1986 and "in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions" in the IA 1986. This does not, however, prevent the UK court from also exercising its general jurisdiction and powers, including the power to appoint a receiver: *Hughes v Hannover Ruckversicherungs-Aktiengesellschaft* [1997] 1 BCLC 497.

53. As noted above, under the IA 1986, a bankruptcy order made by an English court extends to almost all the bankrupt's assets at the date of the order, including any interests in land. It follows that, under section 426, an English court is empowered to give assistance to a court in a relevant country or territory as regards any interest in land situated in England which falls within the bankrupt estate. There is no exception made for interests in land in England, with the result that, whatever may otherwise be, the immovables rule does not apply where a request for assistance is made in relation to a bankruptcy proceeding in a relevant country or territory. The ability to give such assistance as regards land in England was recognised in *In re Levy's Trusts* (1885) 30 Ch D 119 and it has been given by the courts in England under section 426 and its statutory predecessors and by courts in other countries with similar legislation in numerous cases: see, for example, *In re Osborn* (1932) 15 B&CR 189 (England), *In re Fogarty* [1904] QWN 67 (Queensland), *In re Bolton* [1920] 2 IR 324 (Ireland), *In re Jackson* [1973] NI 67 (Northern Ireland), *Radich v Bank of New Zealand* [2000] BPIR 783 (Federal Court of Australia) and *Dick v McIntosh* [2002] BPIR 290 (Federal Court of Australia).

54. It is common ground that the English court has no power under section 426 to provide assistance to the Appellant as the Respondent's trustee in a Russian bankruptcy, because Russia has not been designated as "a relevant country" for the purposes of the section.

The Cross-Border Insolvency Regulations 2006

55. The second statutory exclusion of the immovables rule in the case of a foreign bankruptcy of an individual arises under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030) ("the CBIR"), which is of considerably wider scope than section 426 of the IA 1986.

56. The CBIR incorporate into the law of England and Wales, and of Scotland, the provisions of the UNCITRAL Model Law on Cross-Border Insolvency ("the UNCITRAL Model Law") adopted by the UN Commission on International Trade Law on 30 May 1997 and formally agreed by the UN General Assembly on 15 December 1997. (Comparable regulations were made for Northern Ireland in 2007: SR 2007/115.) The UNCITRAL Model Law has to date been adopted in over 60 jurisdictions. The legislative technique used in the CBIR is to schedule the UNCITRAL Model Law with modifications to adapt it for application in Great Britain and to provide that it has the force of law in Great Britain (regulation 2(1)).

57. The CBIR are not limited in their application to insolvency proceedings in particular countries. Nor do the CBIR contain any requirement for reciprocity. They apply to insolvency proceedings in any country irrespective of whether that country has adopted the Model Law or would otherwise recognise or assist insolvency proceedings in England. Provided the insolvency proceeding satisfies certain conditions and subject to a public policy exception, the court is obliged to recognise it. Recognition has some automatic consequences such as a stay of proceedings, and it also empowers the court to give assistance.

58. Subject to compliance with certain requirements which it is unnecessary to detail here, a foreign proceeding will be recognised either if it is taking place in the state where the debtor has "the centre of its main interests" (when it will be recognised as "a foreign main proceeding") or if it is taking place in a state where the debtor has "an establishment" (as defined) (when it will be recognised as "a foreign non-main proceeding"): article 2 of Schedule 1.

59. Article 21(1) of the UNCITRAL Model Law provides that, upon recognition of a foreign proceeding, "where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief". There follows a non-exclusive list of orders that the court may make, including "(e) entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated by the court". Article 21(2) provides that the court may "entrust the distribution of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated by the court".

60. The words "all or part of the debtor's assets located in Great Britain" are not qualified in any way and are plainly wide enough to include interests in land. There is nothing in the context of the UNCITRAL Model Law or of the CBIR, or in the Guide to its Enactment and Interpretation published by UNCITRAL, that would suggest an implicit qualification by reference to the immovables rule.

61. Like section 426, it is the clear effect of the CBIR that the immovables rule does not apply to foreign bankruptcies recognised under the CBIR.

62. The Respondent left Russia in 2015, and it is common ground that he has not had his centre of main interests or an establishment in Russia at any material time, and that accordingly it is not open to the Appellant to seek recognition or to obtain assistance under the CBIR.

Assistance at common law: the Appellant's case

63. While accepting that an effect of both section 426 of the IA 1986 and the CBIR was that the immovables rule did not restrict the assistance which the English court could give in the case of any foreign bankruptcy to which they applied, counsel for the Appellant submitted that they did not represent exceptions to the immovables rule and that at common law the court was also entitled to assist a foreign trustee to get in and realise any interests of the bankrupt in land situated in England. Section 426 and the CBIR were simply gateways to obtaining assistance, which was available through the gateway of the common law.

64. The key elements of the case advanced by the Appellant were (1) by reason of the immovables rule as applied to a foreign trustee, there was no automatic vesting in the trustee of the bankrupt's interest in immovables located in England, but (2) English law nonetheless recognised the trustee as having authority under the foreign law to get in and realise all the bankrupt's property, including immovables located in England, and would if appropriate make orders to assist the foreign trustee in the performance of that duty. Specifically, and this was the relief sought by the Appellant, the court would exercise its equitable and statutory jurisdiction to appoint a receiver of the Property with a power of sale. Once sold, the receiver would apply the proceeds of sale in accordance with the court's directions, which the Appellant would argue should be to remit the proceeds to her for distribution in accordance with Russian bankruptcy law.

65. Mr Davies examined at some length the orders and remedies, particularly the appointment of a receiver, available to the court at common law when giving assistance to a foreign office-holder. There is no doubt that the court may make any appropriate order within its general jurisdiction, which includes the appointment of a receiver. Equally, there is no doubt that at common law the court may order assets or their proceeds to be remitted to the foreign office-holder for distribution in accordance with the foreign insolvency law, at any rate if the distribution regime is not significantly different from that under English law: see *In re HIH Casualty and General Insurance Ltd* [2008] UKHL 21, [2008] 1 WLR 852 ("*HIH*") and *In re Swissair Schweizerische Luftverkehr-Aktiengesellschaft* [2009] EWHC 2099 (Ch), [2009] BPIR 1505.

66. The issue is not the types of order that are available to the court to make by way of assistance, but whether it can grant relief at common law to assist a foreign trustee to get in and realise interests in land located in England.

67. In advancing the Appellant's case, Mr Davies argued that, although there was no vesting of the Property in the Appellant as trustee, she had a legal or equitable interest in respect of which assistance could be given, by virtue of her duties and rights under Russian bankruptcy law. The effect of the immovables rule was only that, because the Russian bankruptcy order did not of itself alter title to the Property and vest it in the Appellant as trustee, it was necessary for her to obtain an appropriate order from the English court to give effect to her rights and duties in respect of it. A different way of making the case was, Mr Davies submitted, that the Court of Appeal had been wrong to focus on the title or proprietary interest of the Appellant, as opposed to her broader rights and interests under Russian bankruptcy law. It followed from those rights and interests, and their recognition under English law, that the Appellant had an interest in the Property that merited protection and assistance. Otherwise, it was submitted, recognition of the bankruptcy proceedings and the position of the Appellant as trustee would be an "empty formula" which would mean "very little", to use Lord Sumption's phrase in *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36, [2015] AC 1675 ("*Singularis*") at para 23. The immovables rule, it was submitted, did not operate to place an English immovable beyond the reach of the foreign bankruptcy.

Assistance at common law: principles

68. If the Appellant were right that English law recognises and gives effect to the foreign trustee's duty and right to get in and realise the bankrupt's interests in land in England, there would exist a sound basis for the court to make orders to assist the trustee to perform that duty, including the appointment of a receiver.

69. However, the fallacy on which all the submissions of the Appellant are based is that, notwithstanding the immovables rule, the English court may at common law recognise and give effect to the rule of Russian bankruptcy law that all the property of the bankrupt, including interests in land located in England, forms part of the bankrupt estate. This is fundamentally at odds with the immovables rule which is a substantive rule of English law. The rule is not concerned solely with the vesting of title, but has the effect, as earlier explained, that at common law no recognition will be given to any provision of foreign law or any order of a foreign court which purports to affect rights to or interests in land located in England. It follows that the common law does not recognise the Property as being part of the assets that are within the scope of the Respondent's bankruptcy in Russia. As a matter of English law, his interests in the Property are unaffected by the Russian bankruptcy order. Therefore, subject to any statutory provision to contrary effect, it is not open to an English court to take steps to

deprive the Respondent of his interests in the Property in favour of the Appellant as trustee in the Russian bankruptcy.

Kooperman and other cases

70. In support of the Appellant's case, Mr Davies relied on the order made by Astbury J in *In re Kooperman* [1928] WN 101, (1928) 13 B&CR 49 ("*Kooperman*") appointing the trustee in a Belgian bankruptcy as the receiver of leasehold interests in land in England owned by the bankrupt, and on the subsequent citation of this decision in authorities and textbooks. As receiver, the trustee was given authority to sell the leasehold interests and to deal with the proceeds as trustee in the Belgian bankruptcy.

71. The application was unopposed, and the judge did not give a reasoned judgment. Counsel's submission is reported as follows in the B&CR report, at pp 49-50:

> "The order of the Belgian Court cannot affect immovable property, whether freehold or leasehold, situate in England (*Dicey's Conflict of Laws*, Rule 123), but the English Court will assist the foreign trustee in a proper case by appointing a receiver to the English property. The bankrupt is out of the jurisdiction and cannot be served."

72. The Weekly Notes report shows that counsel relied on *Bergerem v Marsh* (1921) 6 B&CR 195 which, as he accepted, concerned the appointment of a receiver over movable property.

73. *Kooperman* is not an authority on which any weight can be placed. The application was unopposed. Counsel relied on a decision which was irrelevant to the issue of whether a receiver could be appointed over immovable property. Although there was an acknowledgement by counsel that the Belgian bankruptcy order could not affect immovable property in England, there was apparently no discussion by counsel or the judge as to the basis on which the English court could nonetheless assist the Belgian trustee by appointing him receiver of the leasehold interests. The judge did not give a reasoned judgment. We consider that it was wrongly decided.

74. We were referred to no other case in which the English court has exercised a common law power of assistance over immovable property in England in favour of a trustee in a foreign bankruptcy, whether by appointing a receiver or otherwise.

75. However, Mr Davies sought support from what he said was the endorsement of the decision in *Kooperman* in *In re Osborn* (1932) 15 B&CR 189 ("*Osborn*"). In *Osborn*, a bankruptcy order was made in the Isle of Man and the Manx court made an order seeking the assistance of the English court for the purpose of getting in movable and immovable property in England for distribution in the bankruptcy. The trustee applied to the English court for assistance pursuant to section 122 of the Bankruptcy Act 1914, one of the statutory predecessors to section 426 of the IA 1986. It clearly appears from the report of counsel's submissions and from the answers he gave to questions posed by the judge (Farwell J) that he based the application firmly on section 122, a point underlined by the judge in his judgment at pp 193-94 and reiterated by him at p 194 where he said that he was bound in a proper case, under section 122, to assist the court in the Isle of Man. Farwell J was concerned that even under section 122 it was not open to the court to vest the bankrupt's title to the immovable property in the trustee but he relied on *Kooperman* as showing that, although a vesting order could not be made, the court could appoint the trustee as receiver of the rents and profits of the property with a power of sale, and could do so without requiring security. There is no discussion of whether in the different circumstances of a Belgian bankruptcy, which Farwell J observed at p 195 made it "a more difficult case", the court had power at common law to give effect to the foreign trustee's claim to the immovable property nor was there any need to discuss it, given that section 122 applied.

76. In our judgment, *Osborn* does not provide any support for the Appellant's case.

77. The decision in *Kooperman* has for many years been cited without criticism in the leading textbooks as (the only) authority for the proposition that the court has a common law power to appoint a receiver of immovable property in England on the application of a foreign trustee in bankruptcy. This would carry some weight if those textbooks had addressed the issue posed by the immovables rule and explained why, in the authors' view, there nonetheless existed a common law power to assist the foreign trustee to get in immovable property in England for the purposes of the bankruptcy. As Lord Diplock observed in *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at p 284, "The persuasive effect of learned commentaries, like the arguments of counsel, in an English court, will depend upon the cogency of their reasoning". None of the commentaries cited to us on this point contained reasoning, and they do not assist us to decide this appeal.

78. Mr Davies sought support from decisions of courts in Scotland and Ireland.

79. In *Araya v Coghill* 1921 1 SLT 321, the official receiver appointed by the court in Chile in an insolvent estate applied to the Court of Session for orders including authority to sell heritable property in Scotland owned by the deceased for the benefit of his creditors. The First Division of the Inner House authorised the applicant to sell the property but on terms that the proceeds should be paid into court to abide the court's

determination of the persons(s) entitled to them. The property was unlet and, as the Lord President put it, "eating its head off", and it was the right time of year to sell a property of that type. It was, therefore, the Lord President said, "proper, in the interests of everybody concerned, that in order to prevent loss we should lend our assistance to enable the property to be disposed of and the proceeds put in safe keeping" (p 323). This order was agreed between the parties and, although the Chilean office-holder was authorised to sell the property, this was without prejudice to whether he had a good claim to the property or its proceeds. It is not a decision that assists the Appellant in this case.

80. In *In re Drumm* [2010] IEHC 546, a first instance decision of the Irish High Court, the trustee in a personal bankruptcy under Chapter 7 of the US Bankruptcy Code applied ex parte for the following orders: a declaration that real property in the Republic of Ireland owned by the bankrupt at the time of his bankruptcy vested in the trustee, an order for registration of a certificate of vesting with the appropriate authority, and assistance in the determination and realisation of his interests in such real property. The court granted the relief sought, although the report does not identify any assistance given, beyond the vesting order and the order for registration of a certificate of vesting.

81. Leaving aside that the court heard no contrary argument, two points are to be noted. First, the court made a vesting order, which Farwell J in *Osborn* considered that he had no jurisdiction to make even under section 122 of the Bankruptcy Act 1914 (and which the Appellant has not sought in the present case). Second, the judge relied on a dictum of Lord Hoffmann in *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26, [2007] 1 AC 508 ("*Cambridge Gas*").

82. Lord Hoffmann's dictum in *Cambridge Gas* at para 19 follows a discussion of the treatment by English law of the movable property of an individual subject to a foreign bankruptcy order and contrasts the common law's treatment of immovable property:

> "In the case of immovable property belonging to a foreign bankrupt, there is no automatic vesting but the English court has a discretion to assist the foreign trustee by enabling him to obtain title to or otherwise deal with the property."

83. It does not appear from the report of counsel's submissions or from the judgment of Lord Hoffmann that there was any discussion of the extent and effect of the immovables rule nor was it an issue that arose for consideration. No doubt for that reason, Lord Hoffmann does not discuss the basis for his dictum, nor does he analyse its compatibility with the immovables rule. Having ourselves analysed the rule and the

relevant bankruptcy cases, we are unable to agree that the dictum is correct as regards the suggested common law power to assist a foreign trustee as regards immovable property.

Modified universalism

84. The Appellant relied on the principle of modified universalism, as discussed in *Cambridge Gas* and in subsequent decisions of the House of Lords (*HIH*), the Supreme Court (*Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236 ("*Rubin*")) and the Privy Council (*Singularis*).

85. As Mr Davies accepted, of the three propositions advanced in *Cambridge Gas*, two have subsequently been rejected. The propositions were summarised by Lord Sumption in *Singularis* at para 15:

> "The first is the principle of modified universalism, namely that the court has a common law power to assist foreign winding up proceedings so far as it properly can. The second is that this includes doing whatever it could properly have done in a domestic insolvency, subject to its own law and public policy. The third (which is implicit) is that this power is itself the source of its jurisdiction over those affected, and that the absence of jurisdiction in rem or in personam according to ordinary common law principles is irrelevant."

86. The third proposition was rejected in *Rubin* and the second was significantly modified in *Singularis* at para 18:

> "The Board considers it to be clear that although statute law may influence the policy of the common law, it cannot be assumed, simply because there would be a statutory power to make a particular order in the case of domestic insolvency, that a similar power must exist at common law. So far as *Cambridge Gas* suggests otherwise, the Board is satisfied that it is wrong… If there is a corresponding statutory power for domestic insolvencies there will usually be no objection on public policy grounds to the recognition of a similar common law power. But it cannot follow without more that there is such a power. It follows that the second and third propositions for which *Cambridge Gas* ... is authority cannot be supported."

87. The first principle identified by Lord Hoffmann, that of modified universalism, remains an important element of the common law as regards assistance in cross-border insolvencies, but it is necessarily subject to jurisdictional limits. As Lord Sumption said in *Singularis* at para 19:

> "In the Board's opinion, the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy and, secondly, that the court can only ever act within the limits of its own statutory and common law powers."

88. It is on the inevitable qualification that common law powers are subject to local law and local public policy that the Appellant's reliance on the principle of modified universalism founders. To repeat what we have already said, the immovables rule is a long-established rule of substantive law. The court's common law powers of assistance do not permit it to provide assistance which is inconsistent with rules of substantive law. Mr Davies did not dispute that qualification, but he relied on his basic submission that the immovables rule was concerned only with legal title to immovable property and did not prevent the court from recognising and taking steps to give effect to the Appellant's duties and powers under Russian law as regards immovable property situated in England. For the reasons already given, we are clear that the rule is not limited in this way but has the effect that those powers and duties under Russian law are not recognised in this jurisdiction. It would therefore be contrary to English law, and to the principle of modified universalism, for the court to accede to the Appellant's application for the appointment of a receiver or other assistance as regards the Property.

89. As what was essentially an alternative argument, counsel for the Appellant submitted that it was permissible and appropriate for the court to appoint a receiver over the Property with a power of sale, because once the Property was sold the proceeds of sale would constitute movable property and would thus be recognised at common law as falling within the bankrupt estate. Further, they submitted that it was incoherent to contemplate the appointment of a receiver of the rents and profits of the Property, which he said the Court of Appeal had accepted as permissible, while maintaining that a receiver with a power of sale could not be appointed.

90. As regards the submission that the proceeds of sale would fall within the bankrupt estate as recognised at common law, counsel relied on a dictum of Viscount Simonds in *Philipson-Stow v IRC* [1961] AC 727 at p 743:

> "I have come to the conclusion that the proper law may change with a change in the subject-matter. Applying that to

> the present case, I should not exclude the possibility that, if and when the South African property is sold and the proceeds are gathered in, the proper law regulating the disposition will be English law. It is not necessary for the purpose of this case to decide that question."

91. The short answer to this submission is that, in the case of a foreign bankruptcy, the status of property located in this country as movable or immovable is determined as at the date of the bankruptcy order, that being the order from which, under the foreign bankruptcy law, the trustee's title to or interest in the property derives. The proceeds of a subsequent sale of the Property remain subject to the immovables rule and so will not be assets within the bankrupt estate.

92. In *AMP v Gregory*, a testator devised land in Tasmania to trustees on trusts as to income during his widow's life and directed that thereafter they should sell the land (with a power to postpone the sale for seven years) and divide the proceeds equally among his sons. One son was made bankrupt in Natal in South Africa, where he lived, while his mother was still alive. The High Court of Australia held that from the date of the testator's death until the sale of the land, each son's interest was immovable property and that therefore the bankruptcy under Natal law did not operate as an assignment of the insolvent son's interest. The critical question posed by Griffith CJ at p 625 was "What, then, was the subject matter of [the bankrupt's] interest at the date of sequestration?".

93. This approach is consistent with that adopted on succession. In *Freke v Lord Carbery*, the deceased was domiciled in Ireland and at the date of his death owned a leasehold interest in a house, coincidentally, in Belgrave Square. By his will he devised the leasehold interest to his trustees on trust for sale with the proceeds of sale to be held on the trusts declared in his will. The issue was as to the validity of these trusts of the proceeds of sale of real property under English legislation then in force. It was argued that the proceeds would be movable property and so Irish, not English, law would govern the validity of the trusts. Lord Selborne held that the testator's leasehold interest was at the testator's death immovable property and that the proceeds of sale "must necessarily follow the law applicable to the house itself" (at p 467).

94. Similarly, in *Duncan v Lawson* (1889) 41 Ch D 394, Kay J held that freehold and leasehold interests in land in England belonging to a testator, who was domiciled in Scotland at his death, devolved in accordance with English, not Scots, law. Kay J said at p 397:

> "There is no doubt as to the devolution of the English freeholds so far as undisposed of by the will. These, or the

> proceeds of any converted under the will, would descend as real estate, and would belong to the testator's heir-at-law at the time of his death…"

He reached the same result as regards the leasehold interests, notwithstanding that they fell to be treated as personal property under English law. As interests in land, they and any proceeds of sale were immovable property and therefore their devolution was governed by English law as the lex situs.

95. The dictum of Viscount Simonds in *Philipson-Stow v IRC* on which counsel relied was taken out of context. The decision in that appeal is to the same effect as the cases just cited. The case concerned a will trust of residuary estate which included a farm in South Africa. There were successive life interests under the trust. A life tenant died in 1954, and the issue was whether the farm was deemed to be excluded, for the purposes of estate duty, from property passing on the death of the life tenant. Under the terms of the relevant legislation, this is in turn depended on whether the proper law regulating the devolution of the farm was South African law.

96. By a majority (Lord Radcliffe dissenting), the House of Lords held that, on the basis that the trustees continued to hold the South African land at the date of the life tenant's death, South African law was the proper law, with the result that the property was not subject to estate duty. It would make no difference to the estate duty liability arising on the life tenant's death if the land were subsequently sold, because the duty was chargeable (if at all) by reference to the assets as at the date of death.

97. Viscount Simonds' dictum was directed to the effect of such a subsequent sale on the liability to estate duty on the death of the next life tenant, by which time the relevant assets would be the proceeds of sale, not the land in South Africa. The dictum has no application by analogy to the facts of the present case, where the critical date is that of the Russian bankruptcy order at which time the Respondent retained his interest in the Property which had not been sold. If anything, it is the majority decision on the appeal, not Viscount Simonds' dictum, which is in point.

98. We turn to the second aspect of the Appellant's alternative submission, that there is an internal incoherence in permitting the appointment of a receiver of the Property's rents and profits but not of a receiver with a power of sale. The expression "rents and profits" is apt to cover a wide range of income. It may be that, with the benefit of full information, some such income would properly be characterised as movable property, although we are far from satisfied that this is correct. We are, however, unable to see how that could be correct as regards, for example, the right to receive rent payable under a lease. Viewed from the perspective of both lessor and lessee, a lease of land is immovable property and the right to receive rent is one of the incidents of that

immovable property. In our judgment, it would not in a case such as the present be open to the court to appoint a receiver of the rents and profits of land within the jurisdiction, with the exception of such identified rents and profits, if any, as were properly characterised as movable property and were received pursuant to rights existing as assets at the date of the foreign bankruptcy.

99. The only authority for the much-repeated proposition that the court may at common law appoint a receiver of rents and profits of land on the application of a foreign bankruptcy trustee is *In re Kooperman*, but for the reasons given above it is a case on which no weight can be placed and which, in our view, was wrongly decided.

100. We therefore reject the submission that there was internal inconsistency or incoherence in the decisions of the courts below.

Is it appropriate for the court to develop the common law so as to enable assistance to be provided?

101. For the reasons set out above, we consider that the common law does not at present enable the English courts to provide assistance to a foreign trustee in bankruptcy by appointing a receiver with a power of sale over immovable property. It is therefore necessary to consider whether this court should extend the common law so as to enable assistance to be provided.

102. The immovables rule as applied by the English courts has been modified by legislation. Thus section 30(1) of the Civil Jurisdiction and Judgments Act 1982 modified the rule in its application to the jurisdiction of the courts in England and Wales and Northern Ireland to entertain proceedings for trespass to, or any other tort affecting, immovable property by providing that such jurisdiction should extend to cases in which the property was situated outside that part of the United Kingdom unless the proceedings were principally concerned with a question of the title to or the right to possession of that property. (See the discussion in the judgment of Lord Walker and Lord Collins in *Lucasfilm Ltd v Ainsworth* [2011] UKSC 39, [2012] 1 AC 208 at paras 71-76.) Similarly, as discussed above, two statutory exceptions to the immovables rule have been established, by section 426 of the IA 1986 and by the CBIR. These enable a foreign trustee in bankruptcy to obtain the bankrupt's land in England. In particular, the CBIR has greatly expanded the circumstances in which the court may provide this assistance to any case in which the bankruptcy order has been made in a state in which the bankrupt had his or her centre of main interests.

103. We consider that any further modification of the immovables rule so as to enable courts in this jurisdiction to assist a foreign trustee in bankruptcy by appointing a receiver with a power of sale over immovable property here must be a matter for

Parliament and not for the courts. It would not involve an incremental development of the common law but a substantial departure from the existing law and the principles of public policy to which it gives effect. In particular, the considerations of national sovereignty which underpin the immovables rule require that such a development should have the approval of Parliament.

104. In *Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd* [1979] AC 508 the House of Lords not only refused an invitation to depart from that part of the rule in the *Moçambique* case which precluded actions for damages for infringement of property rights but extended it by holding that it applied when no question of title was involved. One reason given by Lord Wilberforce (at p 537A-B) for not modifying the rule was that "the nature of the rule itself, involving, as it clearly must, possible conflict with foreign jurisdictions, and the possible entry into and involvement with political questions of some delicacy, does not favour revision (assuming such to be logically desirable) by judicial decision, but rather by legislation". Viscount Dilhorne considered (at p 541E-F) that questions of comity of nations might well be involved and if any change in the law was to be made it should only be made after detailed and full investigation of all the possible implications which the court could not make. (See also Lord Fraser of Tullybelton at pp 544E-545C.) Modification of this aspect of the rule had to await legislation in the form of section 30(1) of the Civil Jurisdiction and Judgments Act 1982. (See *Lucasfilm Ltd v Ainsworth* per Lord Walker and Lord Collins at paras 71-76.)

105. In *Rubin*, one essential question was whether, as a matter of policy, the court, in the interests of universality of insolvency proceedings, should devise a rule for the recognition and enforcement of avoidance judgments in foreign insolvency proceedings which was more expansive, and more favourable to liquidators, trustees in bankruptcy, receivers and other office-holders, than the traditional common law rule embodied in the *Dicey* rule, or whether it should be left to legislation preceded by any necessary consultation. (See Lord Collins at para 91.) The majority in the Supreme Court considered that a change in the law relating to enforcement of foreign judgments to apply a different rule which would remove the need for a jurisdictional basis in the context of insolvency was a matter for the legislature. Lord Collins observed (at paras 128, 129):

> "128. … This would not be an incremental development of existing principles, but a radical departure from substantially settled law. There is a reason for the limited scope of the *Dicey* rule and that is that there is no expectation of reciprocity on the part of foreign countries. Typically today the introduction of new rules for enforcement of judgments depends on a degree of reciprocity. The EC Insolvency Regulation and the Model Law were the product of lengthy negotiation and consultation.

> 129. A change in the settled law of the recognition and enforcement of judgments, and in particular the formulation of a rule for the identification of those courts which are to be regarded as courts of competent jurisdiction (such as the country where the insolvent entity has its centre of interests and the country with which the judgment debtor has a sufficient or substantial connection), has all the hallmarks of legislation, and is a matter for the legislature and not for judicial innovation. The law relating to the enforcement of foreign judgments and the law relating to international insolvency are not areas of law which have in recent times been left to be developed by judge-made law. …"

106. The majority decision in *Rubin* attracted a good deal of international academic criticism. It is important, however, to note that the majority decision in *Rubin* not to develop a specific common law exception for insolvency-related judgments was not a decision that recognition and enforcement of such judgments would be, in principle, undesirable, still less was it a decision that was hostile to international cooperation in insolvency cases. The decision was based on the court's judgment that, if this change was to be made, it was one for the legislature, not the judiciary. It was essentially a decision based on constitutional, rather than insolvency, considerations. The decision whether a change or development of the law in any particular case is one for legislation or judicial ruling is, in our constitutional arrangements, a delicate one. The judgment of the court that the change proposed in *Rubin* was one for the legislature is not, in our judgment, open to sustainable challenge.

107. This is borne out by subsequent events. Partly in response to *Rubin*, UNCITRAL adopted in 2018 a Model Law on Recognition and Enforcement of Insolvency-Related Judgments ("the Model Law on Insolvency Judgments"). The United Kingdom was one of the first countries to propose incorporation of the new Model Law and to that end published a consultation paper in July 2022. In its response to the representations received, the Government remained in favour of its incorporation, but it acknowledged the concerns raised and would "consider further how the technical detail of the proposal can be adapted to address the issues". It is apparent that the process of law reform on the issue raised in *Rubin* was not one well suited to judicial innovation.

108. In *Singularis*, the Judicial Committee of the Privy Council, on appeal from Bermuda, rejected a more extreme submission than that made in *Rubin*: that it should apply legislation, which ex hypothesi did not apply, as if it did apply. A Cayman Islands company was wound up in the Cayman Islands and liquidators appointed. The liquidators, seeking to trace the company's assets, made an application in Bermuda for an order requiring the company's auditors, a Bermuda registered partnership, to produce certain documents relating to the company. Under the Bermudan Companies Act 1981, the Bermudan courts had power to make such an order but only in relation to a company

which that court had ordered to be wound up. The Privy Council held that the judiciary could not by analogy extend the scope of insolvency legislation to cases where it did not apply. As a result, the Bermudan court could not apply, by analogy, the statutory powers under the Bermudan Companies Act 1981 as if the foreign insolvency were a domestic insolvency. It seems to us that in the present case there is force in the point made by Snowden J (at para 254) that by the recognition application the trustee in bankruptcy seeks, under the pretext of extending the common law, to apply by analogy the CBIR to situations to which, by their terms, they do not apply.

109. In the present case, the fact that legislation in the form of section 426 of the IA 1986 and the CBIR has already created exceptions to this aspect of the immovables rule in defined circumstances makes it all the more important that any further exceptions should be achieved by legislation. Judicial intervention of the sort contended for by the Appellant might well contradict both the statutory scheme and the rationale of those statutory exceptions. As Lord Nicholls observed in *In re McKerr* [2004] UKHL 12, [2004] 1 WLR 807 at para 30, the courts have always been slow to develop the common law by entering, or re-entering, a field regulated by legislation, because otherwise there would inevitably be the prospect of the common law shaping powers and duties and provisions inconsistent with those prescribed by Parliament.

110. It may be said, with some justification, that the application of the immovables rule in the case of a foreign bankruptcy produces a surprising result in leaving the bankrupt's immovable property in this country to be enjoyed by the bankrupt or to be taken in execution by individual creditors on a first come, first served basis, when in a bankruptcy under the laws of both this country and the foreign state (in this case, Russia), immovable property would form part of the bankrupt's estate. That, however, is a policy reason to be considered in the context of any proposal for legislative change. Further, by reason of the CBIR, this result is avoided where the bankruptcy order is sought and made in the debtor's centre of main interests. In the present case, it was open to the Respondent's creditors to apply for a bankruptcy order in this country, where he had his centre of main interests and his domicile for bankruptcy purposes, rather than in Russia.

111. Under the immovables rule, as a matter of English common law, the trustee in bankruptcy has no interest in or right to the bankrupt's immovable property in this jurisdiction. It is for Parliament and not the courts to determine whether and, if so, under what conditions there should be further development beyond those already made by legislation.

Conclusion

112. For the reasons given in this judgment, we would dismiss the appeal.