Trinity Term
[2026] UKSC 29
On appeal from: [2025] EWCA Civ 62

JUDGMENT

Valeriy Ernestovich Drelle (Respondent) *v* Servis-Terminal LLC (In Liquidation in the Russian Federation) (Appellant)

before

Lord Sales, Deputy President
Lord Briggs
Lord Hamblen
Lord Stephens
Lord Doherty

JUDGMENT GIVEN ON
27 July 2026

Heard on 24 and 25 June 2026

Appellant – Servis-Terminal LLC
Mark Phillips KC
Dr Riz Mokal
Clara Johnson
(Instructed by Madison Legal Ltd)

Respondent – Valeriy Ernestovich Drelle
Charles Samek KC
Bláthnaid Breslin
(Instructed by Sterling Law)

LORD BRIGGS AND LORD HAMBLEN (with whom Lord Sales, Lord Stephens and Lord Doherty agree):

1. Introduction

1. The main issue on this appeal is whether a creditor may rely upon an unrecognised and unregistrable foreign judgment as the basis for being owed a debt, sufficient to entitle the creditor (subject to other conditions not in issue) to present a bankruptcy petition under section 267 of the Insolvency Act 1986 (the "1986 Act"). By "unrecognised" it is meant that the foreign judgment has not been made the subject of recognition proceedings in the UK. A judgment is "unregistrable" if the statutory process for registration of certain foreign judgments, such as that provided by the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the "1933 Act"), does not apply to it. The matter was first raised in the High Court on appeal from the Insolvency and Companies Court ("ICC") judge. The High Court judge thought that the creditor could do so, but the Court of Appeal thought not. The creditor appeals to this court.

2. Factual background

2. The appellant, Servis-Terminal LLC ("ST"), is a Russian company in bankruptcy and acts by its trustee-in-bankruptcy, Mr Sergey Lisin. The respondent, Mr Valeriy Drelle ("Mr Drelle"), is the former Director General of ST. He was also a shareholder.

3. The largest creditor of ST is Gazprom Neft ("GPN"). GPN is a subsidiary of PJSC Gazprom ("Gazprom"), a publicly listed company engaged in energy production, majority owned (directly or indirectly) by the Russian State. GPN became a "designated person" for sanctions purposes on 10 January 2025.

4. In December 2011, ST advanced a loan of RUB 2 billion (the "Loan") to Fort-Steiton LLC ("Fort-Steiton"), a Russian company, with the benefit of a personal guarantee from Fort-Steiton's owner, a Mr Anatoly Motylev ("Mr Motylev"), the chairman and majority shareholder of the Russian Credit Bank ("RCB").

5. In or around July 2015, RCB collapsed. As a result, ST lost around RUB 7.9 billion held in its accounts with RCB. The majority of these funds came from GPN. Shortly after RCB's collapse, Mr Motylev left Russia. The Loan was never repaid. Mr Motylev was declared bankrupt in Russia in February 2018, and in England in November 2020.

6. Mr Drelle has left Russia and settled in London.

7. In April 2017, the Arbitrazh Court of Yaroslavl Region declared ST bankrupt and appointed Mr Lisin as its Trustee-in-Bankruptcy.

8. In March 2018, ST issued proceedings against Mr Drelle in the Arbitrazh Court of Yaroslavl Region. The basis of ST's claim against Mr Drelle was that, by causing ST to advance the Loan, he had acted unreasonably and in bad faith, and had caused loss to ST.

9. Mr Drelle defended the claim on a number of grounds, including that the Loan had been entered into in order to generate a profit; there were no grounds to doubt Fort-Steiton's solvency; he had acted in accordance with established business practice in obtaining a guarantee from Mr Motylev and had no grounds to doubt Mr Motylev's creditworthiness since he was the owner of a banking group and considerable assets; ST had issued several other loans to Fort-Steiton which had all been repaid with interest; and the shareholders had approved the granting of the Loan.

10. The proceedings in the Arbitrazh Court of Yaroslavl Region were conducted over a 14-month period and involved ten hearings as well as written submissions. In a judgment dated 24 May 2019 the judge held that Mr Drelle had breached his duties to ST and he was ordered to pay RUB 2 billion to ST.

11. Mr Drelle appealed to the Court of Appeal (Second Arbitrazh Appeal Court). The appeal was conducted by way of full review. Following a hearing on 31 July 2019, in a judgment dated 6 August 2019, the Court of Appeal dismissed the appeal.

12. Mr Drelle appealed to the Cassation Instance Arbitrazh Court (Arbitrazh Court of Volgo-Vyatsky District). In a judgment dated 6 November 2019, the appeal was dismissed.

13. Mr Drelle appealed to the Supreme Court of the Russian Federation. His application was considered by a single judge who held that there were no grounds for the appeal. By a ruling dated 17 February 2020, the appeal was dismissed.

14. On 9 October 2020, ST served a statutory demand under section 268(1)(a) of the 1986 Act (the "Statutory Demand") on Mr Drelle based on the judgment of the Arbitrazh Court of the Yaroslavl Region dated 24 May 2019 (the "Russian Judgment").

15. On 13 October 2020, ST presented a bankruptcy petition (the "Petition") on an expedited basis under section 270 of the 1986 Act.

16. On 27 October 2020, Mr Drelle issued an application to set aside the Statutory Demand (the "Set Aside Application"). The grounds of the Set Aside Application (which were the same grounds as those opposing the making of a bankruptcy order) were that the Russian Judgment debt was disputed on bona fide and substantial grounds because the Russian judgments were improperly obtained, biased and/or contrary to natural justice and English public policy, and further or alternatively that they were obtained by fraud and/or collusion.

17. Mr Drelle adduced witness evidence from Alyona Zheglova, ST's finance officer, in relation to his contention that the outcome of the Russian proceedings was predetermined against him, as well as expert evidence on Russian law from Maxim Kulkov, and on State interference in Russian legal proceedings from John Lough. ST also adduced expert evidence in those fields.

18. The trial of the Petition took place on 28, 29 and 30 June 2022 before ICC Judge Burton. In her judgment, which was handed down on 9 March 2023, ICC Judge Burton found that the Russian Judgment debt was not disputed on bona fide and substantial grounds: [2023] EWHC 506 (Ch); [2024] BPIR 285.

19. On 31 March 2023, a bankruptcy order was made (the "Bankruptcy Order").

20. Mr Drelle obtained permission to appeal against the Bankruptcy Order on the basis that ICC Judge Burton's conclusion that the Russian Judgment debt was not disputed on bona fide and substantial grounds was wrong. He also raised for the first time the contention that the Russian Judgment did not constitute a petition debt since it had not been the subject of recognition proceedings.

21. The appeal was heard by Richards J on 15 and 16 January 2024 (the "First Appeal"). By his judgment, which was handed down on 11 March 2024, Richards J dismissed the First Appeal: [2024] EWHC 521 (Ch); [2024] BPIR 496.

22. Mr Drelle obtained permission to appeal from the Court of Appeal on the ground that Richards J had erred in holding that an unrecognised foreign judgment is a debt within the meaning of section 267(2)(b) of the 1986 Act (Ground 1) and also on the ground that he had applied the wrong standard of appellate review to the decision of ICC Judge Burton and that that judge's conclusion that the Russian Judgment debt was not disputed on bona fide and substantial grounds was wrong (Grounds 2 to 4).

23. The hearing of the appeal took place on 11 and 12 December 2024 before Lords Justice Newey, Popplewell, and Snowden (the "Second Appeal"). On 31 January 2025, judgment was handed down: [2025] EWCA Civ 62; [2026] Ch 1; [2025] BPIR 564. The

Second Appeal was allowed on the ground that a bankruptcy petition cannot be presented on the basis of an unrecognised foreign judgment (Ground 1).

24. In view of the fact that Mr Drelle had succeeded on Ground 1 and because the Court of Appeal did not want to say anything which might prejudice the hearing of any recognition proceedings concerning the Russian Judgment which ST might bring, the Court of Appeal did not address Mr Drelle's remaining grounds of appeal (Grounds 2 to 4) relating to the decision that the Russian Judgment debt was not disputed on bona fide and substantial grounds.

3. The legislative background

25. The Petition was brought under section 267 of the 1986 Act. This section is headed "Grounds of creditor's petition" and provides so far as relevant as follows:

> "(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.
>
> (2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—
>
> > (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
> >
> > (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
> >
> > (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
> >
> > (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts."

26. Section 382(1) of the 1986 Act provides that "Bankruptcy debt", in relation to a bankrupt, means (subject to subsection (2)):

> "any of the following—
>
> > (a) any debt or liability to which he is subject at the commencement of the bankruptcy,
> >
> > (b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy …."

27. Section 382(3) provides:

> "For the purposes of references in this Group of Parts [which comprises sections 251A to 385] to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in this Group of Parts to owing a debt are to be read accordingly."

28. As to the grounds for the Petition, the Russian Judgment was unsecured and was for a liquidated sum well in excess of the bankruptcy level of £5,000. No suggestion had been made that Mr Drelle was able to pay that sum, or had a reasonable prospect of being able to pay it, and the Statutory Demand based on the Russian Judgment debt had not been satisfied. The key question is whether the Russian Judgment meets the requirements of section 267(2)(b) of the 1986 Act and, more specifically, whether it gives rise to a "debt … payable to [ST] … either immediately or at some certain, future time."

4. The judgments below

29. Richards J held that the Russian Judgment is a "debt" within the meaning of section 267(2)(b) even though it is unrecognised. His essential reasons for so concluding were as follows:

(1) Rule 51 of *Dicey, Morris & Collins, The Conflict of Laws* (16th ed) ("*Dicey*") provides that a foreign judgment which is not impeachable (as found by ICC Judge Burton) is "conclusive as to any matter thereby adjudicated upon" and cannot be impeached for any error of fact or law.

(2) The effect of Rule 51 is that the Russian Judgment is to be taken as conclusive of any matter that it adjudicates. Accordingly, for the purposes of section 267, it is to be assumed conclusively that Mr Drelle presently owes RUB 2 billion to ST, as determined by the Russian Judgment.

(3) The fact that ST has only an unrecognised foreign judgment, does not prevent the Russian Judgment constituting a "debt". It finally and conclusively requires payment of a liquidated sum that is not subject to any contingency. The "obstacle" of the need for recognition presents a barrier to enforcement that is no different in nature to the barrier to enforcement that faces a creditor who has an English trade debt, but no judgment.

30. The leading judgment of the Court of Appeal was given by Newey LJ who held that, not having been the subject of recognition proceedings, the Russian Judgment was not capable of providing the basis for a bankruptcy petition. His essential reasons for so concluding were as follows:

(1) *Dicey* Rule 45 shows that there is a general principle that a foreign judgment has no "direct operation" in England. A foreign judgment is enforced by bringing an action on the judgment, not by execution. The bringing of a bankruptcy petition is seeking enforcement and involves using the foreign judgment as a "sword".

(2) *Dicey* Rule 51 confirms that an unrecognised foreign judgment can be determinative of a matter but that rule is concerned with defences, not with use of such a judgment as a "sword".

(3) The principle that a foreign judgment "has no direct operation" in England reflects the common law's aversion to enforcing a foreign exercise of sovereign power. That suggests that use of an unrecognised judgment as a "sword" is objectionable.

(4) The revenue rule (that the English courts have no jurisdiction to entertain an action for the enforcement of a revenue law of a foreign state) has a similar root. The revenue rule prevents a foreign tax as being regarded as a "debt" for the purpose of section 267 of the 1986 Act. That supports the contention that an

unrecognised foreign judgment, arising, as it does, from an exercise of sovereign power, is likewise not to be seen as giving rise to a "debt".

(5) In *re A Judgment Debtor* [1939] Ch 601 ("*Judgment Debtor*") the Court of Appeal decided that, under the 1933 Act, a bankruptcy petition cannot be presented on the strength of an unregistered (but registrable) foreign judgment. That would mean that a holder of an unrecognised judgment would be in a better position than a holder of an unregistered judgment were it the case that a petition can be founded on the former.

31. Snowden LJ gave a concurring judgment and Popplewell LJ agreed with both judgments.

5. The Issues

32. The essential issues which arise on the appeal may be stated as follows:

(1) At common law, what is the legal effect, if any, of an unrecognised foreign judgment for a debt or definite sum of money?

(2) The construction of section 267 of the 1986 Act—does such a judgment give rise to a "debt" within the meaning of section 267 such that a bankruptcy petition can be presented in reliance upon it?

(3) Article 13 of the United Nations Commission on International Trade Law of 30th May 1997 ("the Model Law") - does article 13 of the Model Law mean that a "foreign creditor" under an unrecognised foreign judgment for a debt has the same rights as a creditor with an equivalent claim under English law?

33. If necessary, Mr Drelle also seeks by respondent's grounds of appeal to uphold the order made by the Court of Appeal to set aside the Bankruptcy Order on the ground that ICC Judge Burton erred in concluding that the debt was not disputed on bona fide and substantial grounds and Richards J erred in upholding that decision. The Court of Appeal gave permission to appeal on this issue for the Second Appeal but did not address it.

6. Issue (1): At common law, what is the legal effect, if any, of an unrecognised foreign judgment for a debt or definite sum of money?

(i) The Dicey Rules

34. There are various *Dicey* Rules which are of relevance to the appeal. In particular:

> "Rule 45—A judgment of a court of a foreign country (hereinafter referred to as a foreign judgment) has no direct operation in England but may
>
> > (1) be enforceable by claim or counterclaim at common law or under statute, or
> >
> > (2) be recognised as a defence to a claim or as conclusive of an issue in a claim
>
> …
>
> Rule 46—(1) …a foreign judgment *in personam* given by the court of a foreign country with jurisdiction to give that judgment…and which is not impeachable…, may be enforced by a claim or counterclaim for the amount due under it if the judgment is
>
> > (a) for a debt, or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); and
> >
> > (b) final and conclusive,
>
> but not otherwise.
>
> …
>
> Rule 51—a foreign judgment which is a final and conclusive on the merits and not impeachable…is conclusive as to any

> matter thereby adjudicated upon, and cannot be impeached for any error either
>
> (1) of fact; or
>
> (2) of law."

35. There is no issue in this case that the Russian Judgment was given by a court of competent jurisdiction, that it is final and conclusive, and that, as matters stand, it is not impeachable, as held by ICC Judge Burton. There is also no issue that the status of the judgment is governed by common law as there is no statutory scheme, such as the 1933 Act, applicable to Russian judgments. It is not therefore a registrable judgment.

36. Mr Charles Samek KC for Mr Drelle submits that the fact that an unrecognised judgment has no "direct operation" in England means that it is of no legal effect unless and until it is recognised. A foreign court's authority, carrying with it powers of enforcement and sanction, ends at the border of the state in which it sits. Before a foreign judgment can be deployed offensively in England, it must itself first be recognised by the English court.

37. Mr Mark Phillips KC for ST submits that the fact that an unrecognised foreign judgment for a debt or definite sum of money may be enforced by an action on the judgment shows that that judgment does have legal effect. If it were otherwise no action could be brought upon the judgment. This is what he calls the obligation principle, which he submits is of long standing and has never been doubted.

38. These rival contentions require an analysis of the juridical basis upon which an action may be brought on a foreign judgment for a debt or definite sum of money.

(ii) The obligation principle

39. As stated in *Dicey* para 14-007:

> "English courts have recognised and enforced foreign judgments from the 17th century onwards. It was at one time supposed that the basis of this enforcement was to be found in the doctrine of comity. English judges believed that the law of nations required the courts of one country to assist those of any other, and they feared that if foreign judgments were not

> enforced in England, English judgments would not be enforced abroad. But later this theory was superseded by what is called the doctrine of obligation".

40. As *Dicey* explains, the doctrine of obligation or, as we prefer to call it, the obligation principle, was first stated in two decisions of Parke B in the 1840s and later endorsed in two decisions of Blackburn J in 1870.

41. *Russell v Smyth* (1842) 9 M & W 810; 152 ER 343 concerned the enforceability in England of an order for expenses (costs) made by the Court of Session in Scotland. The court held that an action of assumpsit or debt could be brought to enforce the order. Parke B (at p 347) stated the applicable principle as follows:

> "Where the Court of a foreign country imposes a duty to pay a sum certain, there arises an obligation to pay, which may be enforced in this country".

42. *Williams v Jones* (1845) 13 M & W 628; 153 ER 262 concerned the enforceability in England of a judgment for a debt given by the county court of Caernarvonshire, an inferior court not of record. It was held that an action of debt could be brought upon the judgment. Parke B (at p 265) stated as follows:

> "The principle on which this action is founded is, that, where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced, and the same rule applies to inferior courts in this country, and applies equally whether they be courts of record or not."

43. This statement of principle was cited and applied by Blackburn J in *Godard v Gray* (1870) LR 6 QB 139. That case concerned a judgment given by a French court for an amount of freight due under a charterparty governed by English law. The fact that the judgment may have been wrong as a matter of English law was held to be no defence to an action brought upon the judgment. Blackburn J (in reasons given with Mellor J) stated (at p 148):

> "It is not an admitted principle of the law of nations that a state is bound to enforce within its territories the judgment of a

> foreign tribunal. Several of the continental nations (including France) do not enforce the judgments of other countries, unless where there are reciprocal treaties to that effect. But in England and in those states which are governed by the common law, such judgments are enforced, not by virtue of any treaty, nor by virtue of any statute, but upon a principle very well stated by Parke, B., in *Williams* v. *Jones* [citing the passage set out at para 42 above]."

44. Blackburn J further explained (at p 150) that the foreign judgment:

> "…was considered, not as merely prima facie evidence of that cause of action for which the judgment was given, but as in itself giving rise, at least prima facie, to a legal obligation to obey that judgment and pay the sum adjudged".

45. *Schibsby v Westenholz* (1870) LR 6 QB 155 concerned a French judgment in default. It was held that it could not be enforced in England because the French court had no jurisdiction over the defendant. In giving judgment, Blackburn J (with whom Mellor, Lush and Hannen JJ agreed) endorsed what he had said in *Godard v Grey* in the following terms at p 1139:

> "It is unnecessary to repeat again what we have already said in Godard v. Gray.
>
> We think that, for the reasons there given, the true principle on which the judgments of foreign tribunals are enforced in England is that stated by Parke, B., in Russell v. Smyth, and again repeated by him in Williams v. Jones, that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the courts in this country are bound to enforce…"

46. These cases clearly establish that the principle upon which foreign judgments for a debt are enforceable in England and Wales by an action on the judgment is that, at common law, such a foreign judgment itself gives rise to an obligation to pay the sum for which judgment has been given.

47. This was recognised in the 1932 Report of the Foreign Judgments (Reciprocal Enforcement) Committee, chaired by Greer LJ, which led to the enactment of the 1933 Act (the "Greer report"). It summarised the common law as follows (at para 5):

> "If a foreign judgment fulfils the conditions required for its recognition in England as final and conclusive, and any sum of money certain is payable by one party to the other thereunder, the judgment itself creates in England a cause of action as for a debt in respect of the sum due thereunder. An action can be brought to recover the sum of money due under the judgment".

48. It has also been recognised in leading modern authorities.

49. In *Adams v Cape Industries plc* [1990] Ch 433 (CA) Slade LJ (giving the judgment of the court) stated (at p 513) that it is "clear" that "at common law in this country foreign judgments are enforced, if at all, not through considerations of comity but upon the basis of a principle explained…by Parke B in *Williams v Jones*". He then cited the passage cited at para 42 above and said that Blackburn J "stated and followed the same principle" in *Godard v Grey* and *Schibsby v Westenholz*.

50. In *Owens Bank v Bracco* [1992] 2 AC 443 (HL) Lord Bridge of Harwich (with whom the other Lordships agreed) stated (at p 484):

> "A foreign judgment given by a court of competent jurisdiction over the defendant is treated by the common law as imposing a legal obligation on the judgment debtor which will be enforced in an action on the judgment by an English court in which the defendant will not be permitted to reopen issues of either fact or law which have been decided against him by the foreign court."

51. *Rubin v Eurofinance SA* [2012] UKSC 46; [2013] 1 AC 236 ("*Rubin*") concerned the enforceability of orders made in foreign bankruptcy proceedings against a person who was not present or resident in that country and had not submitted to the jurisdiction of the foreign court. It was held by the majority that since at common law and under the 1933 Act a judgment in personam would not be enforced in such circumstances, the court should not adopt a more liberal rule in the interests of the universality of bankruptcy.

52. In his judgment Lord Collins of Mapesbury (with whom Lord Walker of Gestingthorpe and Lord Sumption agreed) observed (at para 5) that if the judgment

debtors had submitted to the jurisdiction, then no issue would have arisen as "[e]nforcement would have been at common law".

53. At para 9 he cited with approval the main authorities set out above, stating as follows:

> "The theoretical basis for the enforcement of foreign judgments at common law is that they are enforced on the basis of a principle that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained: *Williams v Jones* (1845) 13 M & W 628, 633, per Parke B; *Godard v Gray* (1870) LR 6 QB 139, 147, per Blackburn J; *Adams v Cape Industries plc* [1990] Ch 433, 513 and *Owens Bank Ltd v Bracco* [1992] 2 AC 443, 484, per Lord Bridge of Harwich. As Blackburn J said in Godard v Gray, this was based on the mode of pleading an action on a foreign judgment in debt, and not merely as evidence of the obligation to pay the underlying liability: LR 6 QB 139, 150."

54. Lord Collins then observed:

> "But this is a purely theoretical and historical basis for the enforcement of foreign judgments at common law."

55. If by "theoretical" Lord Collins meant that in many cases the juridical basis for the rule will not matter in practice, that is no doubt correct. There will, however, be cases where it does matter, as the present case illustrates. Another example of a case where it might matter is where the issue was one of limitation—see, for example, *Berliner Industriebank AG v Jost* [1971] 2 QB 463 in which, under the Limitation Act 1939, a common law obligation was held to be subject to the 6-year limitation period under section 2(1) rather than the 12-year limitation period applicable to judgments under section 2(4). If by "historical" Lord Collins meant that it is the product of history, then again that is correct. If, however, he meant that it is of historical rather than current significance then we respectfully disagree. The obligation principle remains the juridical basis of the enforcement of foreign judgments for a debt or definite sum of money as the cases referred to above, most of which were cited with apparent approval by Lord Collins in *Rubin*, make clear. We consider it most unlikely, however, that this is what Lord Collins meant as otherwise he would surely have identified (which he did not) what the alternative (modern) juridical basis is and why.

56. In summary, the well-established common law principle is that a foreign judgment for a debt or definite sum of money gives rise to an obligation to pay the sum for which judgment has been given. That obligation arises when the final and conclusive judgment is given. It does not depend upon recognition. As noted in the Greer report, the cause of action is "as for a debt".

57. The Court of Appeal do not appear to have been addressed in detail on the obligation principle. Their conclusion that a foreign judgment has no legal effect until it is recognised is, however, contrary to that principle. We will now address the principal matters relied upon by the Court of Appeal for reaching the conclusion which they did.

(iii) "Direct operation"

58. The Court of Appeal placed significant reliance upon the statement in *Dicey* Rule 45 that a foreign judgment has no "direct operation" in England. What this means is that it has no status as a judgment in England. As such, none of the processes of execution which would be available in respect of an English judgment are available in respect of a foreign judgment. So, for example, none of the methods of enforcing judgments set out in CPR 70 such as a third party debt order or a charging order or the appointment of a receiver can be invoked in respect of a foreign judgment.

59. That "direct operation" is referring to processes of execution is borne out by the commentary at para 14-002 of *Dicey.* This states:

> "A foreign judgment has no direct operation in England. It cannot be immediately enforced by execution."

In other words, having no "direct operation" means it cannot be "enforced by execution".

60. That it does not mean that the judgment has no legal effect is made clear in the 1st edition of *Dicey* in 1896. In that edition Rule 88 stated that: "A foreign judgment has no direct operation in England" and the comment explained this by reference to execution: "A foreign judgment does not operate directly in England. The judgment of, e.g., a French Court, cannot be enforced here by execution". Rule 94 stated that: "An invalid foreign judgment has…no effect". By contrast, the comment did explain this in terms of it having no legal effect: "When it is established that a foreign judgment to which effect is to be given in England is invalid, the judgment has no effect in England".

61. A foreign judgment may, however, have indirect operation in England. Being able to sue on a foreign judgment for a debt or definite sum of money involves indirect reliance

on the judgment. What is being sued upon is the common law obligation to pay the judgment sum, and that obligation is founded upon the foreign judgment itself, rather than on the underlying facts (such as a contract to pay) which led to the judgment. If the action succeeds then there will be an English judgment for which processes of execution are available. Where the judgment is not for a debt or definite sum of money then the underlying cause of action can be sued upon and the foreign judgment relied upon as being conclusive as to matters of fact and law determined thereby—see *Dicey* Rule 51 and Rule 45(2). Again, that involves the indirect operation of the foreign judgment.

62. The Court of Appeal relied upon the following passage from Briggs, *The Conflict of Laws*, 5th ed., at p 112:

> "The first rule of foreign judgments is that judgments of foreign courts have, as such, no legal effect in England, for foreign judges have no authority in England. Except where Parliament has provided otherwise, foreign judgments cannot be enforced in England by execution, and no person is in contempt of court, or otherwise in peril in England, if she fails to do what she has been ordered to do by a foreign judge. As judicial adjudication is an exercise of state sovereignty, this is obvious: state sovereignty ends at the border of the state, and while international comity may certainly require that respect be given to exercises of that power within the sovereign's own territory, that is where the conventional obligations of comity end."

63. Professor Briggs is there stating that foreign judgments have no legal effect in England "as such"—ie as judgments. They can only have indirect effect or operation, as described above. As he states, that means that they "cannot be enforced in England by execution".

64. That foreign judgments do have legal effect is borne out by Professor Briggs' endorsement and explanation of the obligation principle at p 121:

> "The foreign judgment, if it satisfies the requirements of the common law, is understood to create an obligation, a tie of law, by which the parties are bound and to which each may hold the other. The 'doctrine of obligation', which provides the basis and the intellectual justification for the common law recognition of judgments, was articulated 150 years ago in two classic judgments of the Court of Queen's Bench, and was never doubted by Dicey."

He then comments that criticisms of that principle “need to be repudiated, firmly”.

(iv) A shield but not a sword

65. The Court of Appeal were wrong to say *Dicey* Rule 51 means that an unrecognised foreign judgment can only be used as a shield rather than a sword. Where the foreign judgment is for a debt or definite sum of money and an action is brought on the judgment it is clearly being relied upon as a sword. Similarly, if the findings of fact or law are relied upon as being conclusive in proceedings brought in reliance upon the underlying cause of action it is again being relied upon as a sword. Rule 51 draws no distinction between reliance upon the foreign judgment as being final and conclusive to support a claim or a defence.

(v) The revenue rule

66. *Dicey* Rule 20 provides that:

> “English courts have no jurisdiction to entertain an action:
>
> (1) For the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign state”

67. The Court of Appeal placed significant reliance on the revenue rule. As stated by Newey LJ at para 43:

> “The significance of this for present purposes lies in the fact that there can, I think, be no doubt but that the ‘revenue rule’ precludes presentation of a bankruptcy petition in respect of a foreign tax liability. Nor did I understand Mr Phillips to dispute that. The ‘revenue rule’ must therefore serve to prevent a foreign tax from being regarded as a ‘debt’ in respect of which a petition could be presented notwithstanding the fact that nothing to that effect is expressed in section 267(2)(b) of the 1986 Act. More specifically, the fact that imposition of a tax involves an exercise of sovereign power must result in a foreign tax not being regarded as a ‘debt’ on which a bankruptcy petition can be presented. That tends to support the contention that an unrecognised foreign judgment, which has no ‘direct operation’ because it arises from an exercise of sovereign

> power, is likewise not to be seen as giving rise to a 'debt' capable of founding bankruptcy proceedings."

68. This is in our view a false analogy. The basis of the revenue rule is explained in *Dicey* para 8-002 as follows:

> "There is a well-established and almost universal principle that the courts of one country will not enforce the penal and revenue laws of another country. Although the theoretical basis for the Rule is a matter of some controversy, the best explanation, it is submitted, is that suggested by Lord Keith of Avonholm in *Government of India v Taylor*, that enforcement of such claims is an extension of the sovereign power which imposed the taxes, and 'an assertion of sovereign authority by one State within the territory of another, as distinct from a patrimonial claim by a foreign sovereign, is (treaty or convention apart) contrary to all concepts of independent sovereignties.'"

69. There is a world of difference between a sovereign authority bringing a claim asserting a sovereign right, such as to a tax or penalty, and a private person bringing a claim asserting a private right, as in the present case. Even where the claim is brought by a sovereign authority the revenue rule does not apply where the claim does not involve the assertion of a public right but is of a kind which could be brought by any private citizen. This is borne out by this court's recent decision in *Skatteforvaltningen v Solo Capital Partners LLP* [2023] UKSC 40; [2024] AC 539. In that case it was held that the revenue rule did not apply to a claim brought by the Danish national tax authority to recover tax refunds which it alleged had been fraudulently induced. As explained by Lord Lloyd-Jones (with whose judgment the other Justices agreed) at para 58:

> "In the present case, the appellants are undoubtedly able to point to prior exercises of sovereign power by Denmark in creating its laws relating to the taxation of dividends and in operating the tax system. This, however, merely provides the context for the present claims. The substance of the claims, as we have seen, does not involve any act of a sovereign character, any exercise or enforcement of a sovereign right, or any vindication of sovereign power. On the contrary, the respondent is simply bringing restitutionary claims to recover monies of which it has been defrauded, a course open to any private citizen who had been similarly defrauded. Furthermore, as the Court of Appeal pointed out, the attempt to challenge that conclusion by seeking to characterise the payment of the refunds as sovereign acts does not assist the appellants. First,

> even if, notwithstanding the fact they were induced by fraud, the making of the payments was correctly characterised as a sovereign act, there is no reason why an attempt to recover the payments should be considered a vindication of sovereign power. Secondly, the respondent is not seeking to vindicate the payment but to invalidate them on grounds of fraud."

70. The claim brought by ST to found the Petition does not involve "any act of a sovereign character, any exercise or enforcement of a sovereign right, or any vindication of sovereign power". It is not only a claim that could be brought by any private citizen, it is in fact being brought by such a citizen.

71. The revenue rule, and the principles underlying it, are of no relevance to the present case. Where it applies the court has no jurisdiction to entertain the action. This is so whether the foreign tax authority seeks judgment in England, or obtains a foreign judgment and then tries to get it recognised by an action on it. No such suggestion can be or is made here. The court clearly has jurisdiction to entertain an action on a foreign judgment for a debt or definite sum of money.

72. Rule 46(1) itself clearly draws the distinction between an action on a foreign judgment for a debt or a definite sum of money and a revenue or penal claim by making it clear at (1)(a) that the common law action on the judgment will not lie if the sum in question is "payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty".

73. For all these reasons the Court of Appeal's reliance on the revenue rule was misplaced.

(vi) The 1933 Act

74. This will be addressed in more detail under Issue (2) below. In the present context, all that need be said is that there is no reason why the common law should operate in the same way as a statutory scheme, such as the 1933 Act. Just as the common law is not relevant to the operation of such a statutory scheme, that scheme is not relevant to and does not affect the (pre-existing) common law.

Conclusion on Issue (1)

75. At common law, the legal effect of an unrecognised foreign judgment for a debt or definite sum of money is that it gives rise to an obligation to pay the judgment sum.

7. Issue (2): The construction of section 267 of the 1986 Act - does such a judgment give rise to a "debt" within the meaning of section 267 such that a bankruptcy petition can be presented in reliance upon it?

76. The short question of construction lying at the heart of this appeal is whether the obligation to pay to which a foreign judgment gives rise, even prior to its recognition, is a "debt" within the meaning of that word when used in section 267 of the 1986 Act. We have set out the relevant part of section 267 above. By section 264(1)(a) a bankruptcy petition may be presented by any one or more of the individual's creditors, but only on the grounds set out in section 267. All the cumulative conditions set out in section 267(2) assume that there must be a relevant debt, and section 267(1) requires that the debt must be owed by the debtor to the petitioning creditor. But the word "debt" is not elsewhere defined for the purposes of section 267, and the phrase "bankruptcy debt", which is defined in section 382, is not used in section 267. That phrase is more concerned with who may prove in the bankruptcy, which is a different question from who may present a petition, and less restrictively circumscribed.

77. Although some of the concepts used to identify who may present a bankruptcy petition in the Bankruptcy Act 1914 (the "1914 Act") are carried through to the 1986 Act, (such as the requirement that the debt be a liquidated sum payable immediately or at some certain future time), generally the scheme of the 1986 Act makes a new start, and falls to be construed in its own right as a fresh, separate piece of legislation. Counsel wisely did not attempt to elucidate the meaning of "debt" by any kind of carry-over from the 1914 Act. The right to petition under the 1914 Act depended upon establishing one or more acts of bankruptcy by the debtor, one of which was failure to pay a judgment debt, execution not having been stayed, after service of a bankruptcy notice: see section 1(1)(g). Judgment debt in the 1914 Act plainly meant an English judgment or (later) a registered foreign judgment, since an unregistered and unrecognised foreign judgment could not have been the subject of execution in England: see *Williams and Muir Hunter on Bankruptcy* (19th ed) at p 30.

78. All that has been swept away by the 1986 Act, which requires only that a qualifying debt (whether a judgment debt or not) is one which the debtor appears to be unable to pay, or to have no reasonable prospect of being able to pay: see section 267(2)(c) and section 268, where inability to pay may only be established upon the failure of the debtor to respond to a statutory demand, or execution of a judgment debt being returned unsatisfied. Plainly the unsatisfied execution basis can again only refer to an English judgment (or registered foreign judgment) but there is no requirement that the statutory demand be based upon a judgment debt at all. Any debt will do. In this respect the new bankruptcy provisions in the 1986 Act may be said to have taken their lead more from the pre-existing provisions relating to petitions for the winding up of a company, than from the 1914 Act: see section 168(5) and 169(1) and (2) of the Companies Act 1929.

79. But even a fresh piece of legislation needs to be construed in the light of the common law as it stood at the time of the enactment. This is because, when using without special definition a legal term or concept like "debt", the makers of the statute must be taken to have had in mind the then common law understanding as to what it meant: see *Bennion, Bailey and Norbury on Statutory Interpretation* (9th ed) at para 22.5. Of course, a properly purposive and contextual interpretation of the legislation may lead to a conclusion that some other meaning of the legal term was intended, but the general common law meaning is at least a good place to start.

80. Speaking in general common law terms, a debt is a legal obligation owed by one person to pay a sum of money to another person: see eg *Jowitt's Dictionary of English Law* (6th ed) under "Debt". It may arise under a contract, a deed, a covenant, a statute or anything else giving rise to the necessary legal obligation. Plainly it may arise under a judgment or other court order.

81. It is a fair assumption from section 267 read in context that "debt" is being used in that wide general sense, not least because the section then goes on to prescribe much more precisely what particular characteristics the debt must have if it is to be made the subject of a petition. It must exceed the bankruptcy level: section 267(2)(a) and (4). It must be for a liquidated sum, payable immediately or at a certain future time, payable to the petitioner and be unsecured: section 267(2)(b). It is not to be regarded as liquidated by reason only that its amount is specified in a criminal bankruptcy order: section 267(3).

82. It has always been the understanding of the common law (before, at the time of and after the passing of the 1986 Act) that an unrecognised foreign judgment for a sum of money did give rise to an immediate legal obligation to pay that sum to the judgment creditor, enforceable by an action on the foreign judgment in an English court. It was therefore a "debt" within the general understanding of the common law. It is no surprise to read it so described (ie as a debt) in the Greer report.

83. We can envisage no reason why section 267 should have used "debt" in any narrower sense than we have described, or why its purpose should not have extended to a legal obligation to pay under an unrecognised foreign judgment. The evident purpose of the scheme encompassed by sections 267 and 268 of the 1986 Act is to provide a reasonably precisely specified basis upon which the court might conclude that the relevant debtor was unable to pay his or her debts, so as to make it appropriate that the statutory scheme of *pari passu* distribution of the debtor's assets among their creditors should be put in place. There is no reason why inability to discharge the legal payment obligation arising from an unrecognised foreign judgment should not qualify for that purpose.

84. A sustained attempt was made by counsel for Mr Drelle to submit that, since a bankruptcy petition is a recognised means of "enforcement" of a judgment debt (although

not execution of it), to read "debt" in section 267 as including the obligation arising from an unrecognised foreign judgment would run counter to the statement in Dicey Rule 46(1) that an unrecognised foreign judgment "may be enforced by a claim or counterclaim for the amount due under it… but not otherwise." There are at least two difficulties with that submission.

85. The first is that this is evidently not the opinion of the learned editors of *Dicey*. At para 14-012 is it stated that:

> "A judgment creditor seeking to enforce a foreign judgment in England at common law cannot do so by direct execution of the judgment. It must bring an action on the foreign judgment."

But at footnote 33 the editors add that:

> "The judgment creditor may serve a statutory demand in terms of the foreign judgment, just as with any other unpaid debt".

To the same effect is Professor Briggs, in his article 'Recognition of foreign judgments: a matter of obligation' (LQR 2013, 129(Jan), 87-100) at footnote 12.

86. The second is that although bankruptcy (or winding up) proceedings are often loosely categorised as a means of collective enforcement of debts (see eg *Wight v Eckhardt Marine GmbH* [2003] UKPC 37; [2004] 1 AC 147 per Lord Hoffmann at para 26 citing Brightman LJ in In re *Lines Bros Ltd* [1983] Ch 1, 20), they are in no relevant sense a means of enforcement of a judgment. Bankruptcy proceedings initiate a scheme for the division of the debtor's assets *pari passu* among his unsecured creditors, under the protection of a moratorium upon the enforcement or execution of any judgment: they are in that sense the very antithesis of the enforcement of an individual creditor's judgment: see *Sian Participation Corpn v Halimeda International Ltd* [2024] UKPC 16; [2025] AC 1321 at paras 32 and 54 and In re *International Tin Council* [1987] Ch 419 at 455F-G per Millett J.

87. Reliance was also placed by counsel for Mr Drelle upon the effect of the 1933 Act. As explained in the Greer report its intention (as between participating jurisdictions) was to provide a simpler means of enforcing a foreign judgment than by recognition proceedings, but with substantially the same effect, by making a registered judgment as good as an English judgment for the purposes (inter alia) of execution and the running of interest: see section 2(2). Section 6 then provides that:

> "No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom."

It was decided in *Judgment Debtor* (and not challenged in this appeal) that this prohibition extended to bankruptcy proceedings. Thus, if a foreign judgment was registrable, bankruptcy proceedings could not be founded upon it without first having the judgment registered. Why, counsel asked rhetorically, should an unregistrable and unrecognised judgment be any better placed? It was pointed out that the Greer report (upon the advice of which the 1933 Act was passed) assumed that its provisions would not enact anything more than a convenient procedural, rather than substantive, change to the position at common law, "with no radical alterations of the present position".

88. In our view the primary answer to this submission is that whatever changes the 1933 Act may have made to the enforceability of registrable but as yet unregistered foreign judgments, it made no difference to the use that could be made of unregistrable and unrecognised foreign judgments at common law, or under the existing bankruptcy legislation. The secondary answer is that, as already noted, an unrecognised foreign judgment could not in 1933 be used as the basis of an alleged act of bankruptcy under the Bankruptcy Act 1914 (in force at the time of the Greer report). So the 1933 Act, and in particular section 6, did indeed replicate the then effect of recognition of a foreign judgment, for bankruptcy purposes. It was the new scheme for bankruptcy petitions under the 1986 Act which, as described above, for the first time enabled reliance on the debt created by an unrecognised (but unregistrable) foreign judgment for the purpose of creating a relevant debt for bankruptcy purposes. Finally on this point, the explanation in the Greer report of the nature of the debt obligation under an unrecognised foreign judgment was just as we have earlier described it. Nor is the position of a creditor with a registrable foreign judgment any worse off in the aggregate than one with an unregistrable judgment. The registration process carries with it substantial procedural advantages over recognition proceedings. Viewed that way, the simple process of registration is not much of a disadvantage, as a required preliminary to presenting a bankruptcy petition.

89. Our conclusion on issue 2 therefore is that, contrary to the judgment of the Court of Appeal, the obligation to pay a sum of money under an unregistrable, unrecognised foreign judgment is a debt within the meaning of section 267 of the 1986 Act. The result is that, subject only to Mr Drelle's additional grounds of appeal to the Court of Appeal, which have yet to be adjudicated upon, this appeal should be allowed.

8. Issue (3): Article 13 of the Model Law—does article 13 of the Model Law mean that a "foreign creditor" under an unrecognised foreign judgment for a debt has the same rights as a creditor with an equivalent claim under English law?

90. ST advanced (for the first time in this court) a lengthy but essentially fallback submission that, even if its primary case as to the meaning of "debt" in section 267 of the 1986 Act did not prevail, viewing the matter as at 1986, it should nonetheless succeed because of a change introduced into English insolvency law by reason of article 13 of the Model Law. Since 2006 this has had the force of law in Great Britain by virtue of Reg 2(1) of the Cross-Border Insolvency Regulations 2006 ("CBIR"), pursuant to the power conferred by section 14 of the Insolvency Act 2000. Article 13 (in the form which appears in Schedule 1 to the CBIR) provides as follows, under the heading: "Access of foreign creditors to a proceeding under British insolvency law":

> "1. Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under British insolvency law as creditors in Great Britain.
>
> 2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under British insolvency law, except that the claim of a foreign creditor shall not be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.
>
> 3. A claim may not be challenged solely on the grounds that it is a claim by a foreign tax or social security authority but such a claim may be challenged—
>
> > (a) on the ground that it is in whole or in part a penalty, or
> >
> > (b) on any other ground that a claim might be rejected in a proceeding under British insolvency law."

91. The gist of the argument advanced by Dr Riz Mokal, junior counsel for ST, may be summarised as follows. "Foreign" where used in article 13 and elsewhere in the Model Law did not mean, or at least was not confined to, a reference to the geographical location of the creditor, but rather it meant, or included a reference to, the law under which the creditor was owed its debt. Thus, in giving effect to the anti-discrimination provision in paragraph 1 (about the commencement of bankruptcy proceedings) a foreign creditor was

(or included) a creditor, wherever located, claiming under a foreign judgment. By parity of reasoning the comparator was another creditor, wherever located, who was claiming under an English judgment.

92. Since we have already concluded, without reference to the Model Law, that someone seeking to base a bankruptcy petition on a debt under a foreign unrecognised judgment is no worse off in terms of locus standi than a creditor with an English judgment debt, this fallback argument is not a necessary part of ST's case. Therefore, without meaning any disrespect to Dr Mokal's detailed submissions, we need only deal with it very briefly.

93. In summary, we have been entirely unpersuaded by it. It appears clear to us that, wherever "foreign" is used in the Model Law, or at least where it is used in article 13, it is used as a descriptor of geographical location. The foreign creditor intended to be protected from discrimination on account of their foreign-ness is one who (or which) is located abroad, geographically speaking. For this purpose, the precise criterion for geographical location (nationality, ordinary residence or centre of main interests) is irrelevant. So, the comparator for a Russian located creditor seeking to rely upon a debt under a Russian judgment is an English (or strictly British) located creditor relying upon an identical Russian judgment. It has nothing to do with the question whether the Russian origin of the judgment creates any disadvantage for the creditor, as against an English judgment. In any event, as we have concluded, it does not, for the purpose of commencing bankruptcy proceedings.

94. The high point of Dr Mokal's submission was to suggest that, for the purposes of the Model Law, someone living in Calais was to be treated as foreign not because of their location in Calais, but because their relevant rights were likely to be governed by French Law. In our view they would be foreign because they were separated from Britain by the English Channel.

9. The respondent's grounds of appeal

95. Mr Drelle invited the court to uphold the order made by the Court of Appeal to set aside the Bankruptcy Order on the ground that ICC Judge Burton erred in concluding that the debt was not disputed on bona fide and substantial grounds and Richards J erred in upholding that decision.

96. As the court made clear at the hearing, this is not an appropriate issue for determination by the Supreme Court, all the more so in circumstances where there has been no prior decision made by the Court of Appeal. It is the Court of Appeal which gave permission to appeal on this issue and it is that court which should determine it. This issue will accordingly have to be remitted to the Court of Appeal.

10. Conclusion

97. For all the reasons set out above, the appeal is allowed against the Court of Appeal's decision to allow Ground 1 of the appeal before it. The case will be remitted to the Court of Appeal to determine the remaining grounds for which it gave permission to appeal (Grounds 2 to 4).