



Claim No: CH-2025-000194

Neutral Citation Number: [2026] EWHC 2769 (BP)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

IN THE MATTER OF THE FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) ACT 1933

7 Rolls Buildings,
Fetter Lane, London,
EC4A 1NL

Date: 29 October 2026

Before:

THE HONOURABLE MR JUSTICE THOMPSELL

- 1) ANTONIO SIDOLI
- 2) ANDREA SIDOLI

Appellants/Claimants

- 1) DANTE SIDOLI
- 2) ANNA MORUZZI

Respondents

Ms Sarah Egan instructed by Pini Franco LLP for the **Appellants**
Mr R K Sahonte instructed by DMH Stallard LLP for the **Respondents**

Hearing dates: 24 April 2026 and 21 July 2026

JUDGMENT

Mr Justice Thompsell:**1. INTRODUCTION**

1. This appeal raises an interesting point of law. Should the English court register a foreign judgment under ss.(1) and 2(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the “**1933 Act**”) where that foreign judgment is based on the foreign court’s application of its own laws in relation to inheritance and is made against persons domiciled in the UK who would be recognised under English law as the beneficiaries of the estate of the deceased?
2. This is an appeal from a decision of Deputy Master Dew (the “**Deputy Master**”) on the 10th of June 2025, reported with the neutral citation number [2025] EWHC 1425(Ch) (the “**Dew Judgment**”). The Deputy Master declined to make an order in favour of the Appellants under Sections 1(1) and 2(1) of the 1933 Act to register and enforce a judgment or judgments of courts in Italy.
3. The Appellants are seeking to enforce against the Respondents either a judgment of the Court of Appeal of Bologna, Italy (the “**Bologna Court**”) obtained on the 28th of December 2022 (the “**Italian Appeal Judgment**”), or alternatively the First Instance Judgment of the Court of Piacenza, Italy (the “**Piacenza Court**”) of the 21st of February 2020 (the “**Italian First Instance Judgment**”) (collectively the “**Italian Judgments**”).
4. For convenience, and not meaning any disrespect, I will refer to the family members in this judgment by reference to their first names.
5. The Italian Judgments arose out of a family dispute arising following the death of Davide Giovanni Antonio Sidoli (“**Davide**”), and the earlier death of his father Quintilio Sidoli, (“**Quintilio**”). Both were residing and domiciled in England at the time of their death. Both were Italian citizens (despite having been born in this country).
6. The Appellants (whom I will also refer to as Antonio and Andrea) say that Davide is their father, but Davide denied that he was their natural father and disinherited them in his Will and so left his estate to his brother Dante and sister-in-law Anna (clause 3 of his Will) and explained (in clause 5 of his Will) that he had not left anything to Antonio or Andrea as he did not accept them as being his natural children. The paternity of Antonio and Andrea is still disputed by the Respondents. However the courts in Italy accepted that Davide was indeed the father of the Appellants.
7. The First Respondent, Dante, is the son of Quintilio and brother of Davide. The Second Respondent, Anna, was Dante’s wife and is now his widow. During the course of this appeal Dante died. None of the parties considered that this made any difference to these proceedings, as Anna stood to inherit Dante’s assets (subject to his liabilities).
8. The facts underlying this appeal are for the most part agreed between the parties and are summarised in a little more detail in the Dew Judgment at [3] to [8]. I gratefully adopt the Deputy Master’s summary, and for the convenience of the reader, reproduce it below:

“The Italian Judgment

3. The proceedings in Italy concern the estate of Davide Sidoli. Davide died on 14 September 2006. He left an English Will, dated 22 August 2006, which states his residence to be St Joseph Hospice in London and on the face of it applies to his worldwide estate. The executors of the Will were the partners of a firm called Whiskers. There has never been a grant of probate

4. Davide was pre-deceased by his father, Quintilio Francesco Giovanni Sidoli, who died on 14 May 2004. Quintilio left a Will dated 12 October 2000, describing his residence as 3 Broadfield Avenue in London and which applied to his estate outside of the Republic of Italy. That Will appointed Dante as executor. Amongst other things, it gave the property at Broadfield Avenue to be held on a trust which permitted Quintilio’s sister-in-law, Inez, to live in the property and, at the time when the property was sold, gave the sum of £100,000 to Davide. It also left the residue of the estate to Davide so, in the event, Davide was solely entitled to 3 Broadfield Avenue subject to Inez’s interest. From the Italian judgment referred to below it can be seen that Quintilio also left an Italian Will in Italy leaving his whole estate to Davide.

5. Davide’s Will left his estate to the Defendants, who while his brother and his brother’s wife (i.e. Davide’s sister-in-law). It contains the following statement:

“For the avoidance of doubt I take this opportunity to confirm that it is my wish that neither of my former wife’s sons namely Andrea Sidoli and Antonio Sidoli shall receive any part of my estate as BOTH sons were born to my then wife ... during our marriage but I was not their natural father and I consequently take the view that I have no moral obligation to make any financial provision for them from my estate and I FIRMLY TAKE THE VIEW that my said brother and sister-in-law on my closest living relatives.”

6. Andrea and Antonio are the Claimants in this matter. They began proceedings in Italy in 2012. There were various hearings in Italy culminating, eventually, in a judgment of the Ordinary Court of Piacenza on 21 February 2020 (“**the Judgment**”). The bundle contains a translation of the Judgment and reading that, albeit reliant on the translation and without any expertise in Italian law and procedure, it can be seen that the court found that the Claimants were the children of Davide and set the Will aside on the grounds that Davide was mistaken in holding the belief that the Claimants were not his children. It then assessed, with reference to a report provided by a valuation expert who seems to have consulted both sides, the value of Andrea and Antonio’s

share of the whole estate including his right over the 3 Broadfield Avenue.

7. The Judgment concludes with the following (according to the translation):

“The Court, definitively pronouncing any difference and conference the instance rejected or absorbed, so disposes:

1. Ascertains the invalidity pursuant to art. 624, co.2, of the Italian Civil Code, of the testamentary dispositions contained in points 3 and 5 of the testaments dated 18 and 22 August 2006 by Davide Sidoli for the effect,

2. Cancels the same provisions;

3. Declares Andrea and Antonio Sidoli legitimate heirs of Davide Sidoli for the share of ½ each;

4. Condemns Davide Sidoli and Anna Moruzzi to the delivery and release, in favour of the plaintiffs, of their share of the properties located in the Municipality of Morfasso (PC);

5. Condemns the defendants to pay, in favour of the plaintiffs, the total amount of €381,796.31, plus legal interest from the date of this sentence to the balance.

6. Fully compensates litigation costs.

7. Definitively places the Technical Adviser’s costs jointly and severally on the parties.”

8. The Defendants appealed that decision. By a judgment made on 28 December 2022, the Appeal was dismissed by the Court of Appeal of Bologna (“**the Appeal Judgment**”). The Appeal Judgment did not replace the earlier judgment but instead dismissed the appeal against it. It follows (and it was not disputed) that the Defendants remain liable under Italian Law to pay to the Claimants the sum set out in paragraph 5 of the above quote.

9. I will consider the Italian Judgments in more detail later in this judgment, but for the moment I will just add that the First Instance Judgment also purported to cancel the provisions of Davide’s Will “through which he had named Dante and Anna as “trustees mortis causa”, and refers to the “annulment of the Will”.
10. Following an unsuccessful appeal by the Respondents, to the Court of Appeal in Bologna (the “**Bologna Court**”) the Appellants obtained a final and conclusive judgment in the sum of €381,796.31 as debt and interest and were awarded the Appellants’ costs in the appeal.

11. The heart of the matter relates to the question whether the 1933 Act can be used to register the Italian Judgments or either of them.

2. THE PROCEEDINGS IN THE ENGLISH COURTS

12. The proceedings in the English court leading up to the hearing before Deputy Master Dew are summarised in the Dew Judgment at [9] to [13]. There is no need to repeat this here, beyond noting that:
 - i) the Appellants were originally successful in registering the Appeal Judgment, but this was subject to a right on the Respondents to set this order aside;
 - ii) an application for that original order to be set aside and the original registration was cancelled; and
 - iii) the matter was transferred to the Chancery Division and Deputy Master Dew reheard the application for registration.

3. THE DEW JUDGMENT

13. Deputy Master Dew, provided an admirably well-argued judgment explaining his reasons for refusing registration under the 1933 Act. It is appropriate that I summarise this in a fair amount of detail.
14. The Deputy Master determined that the 1933 Act could not (or at least usually could not) be used to register judgments arising out of claims in foreign courts regarding succession. He refused registration on that basis.
15. In doing so, he acknowledged that he was not following the decision of Master Cook in *Del Curto v Del Curto* [2023] EWHC 2106 (KB) ("*Del Curto*"). In that case, Master Cook dismissed an application to set aside registration of a judgment in similar circumstances.
16. Deputy Master Dew began his analysis at [18] and [19] by reference to the grounds for registering a judgment under the 1933 Act and concluded that the Italian Appeal Judgment was registrable, subject to grounds set out in section 4 of the 1933 Act to set such registration aside. There is no challenge to this finding.
17. At [22] he noted that the application was to register the Italian Appeal Judgment and that there was an argument that the application ought to have been made in respect of the Italian First Instance Judgment as the Italian Appeal Judgment did not replace the Italian First Instance Judgment, but merely dismissed the appeal. He considered that there was nothing in this point but if there was he would anyway have given permission to amend the application so as to register the Italian First Instance Judgment. I agree and similarly will treat the Italian Judgments as a composite whole.
18. At [23] the Deputy Master considered section 4(1)(a) of the 1933 Act, noting that this requires the registration of a judgment to be set aside if the registering court is satisfied in relation to any of six separate matters. On the matters listed, he considered that the Respondents were relying upon the following four grounds:

- i) the “**immovable property argument**”: that the Italian courts had no jurisdiction on the basis that the claim was one where the subject matter was immovable property (ss. 4(1)(a)(ii) and 4(3)(a));
 - ii) the “**administration of estates argument**”: that the Italian courts had no jurisdiction on the basis that the claim was not an action *in personam* because it concerned an action in respect of the administration of an estate (ss. 4(1)(a)(ii) and s.4(2)(a) as well as s.11(2);
 - iii) the “**no-submission argument**”: that if the claim was an action *in personam* the Italian courts had no jurisdiction on the basis that the Respondents had not submitted to jurisdiction (ss. 4(1)(a)(ii) and 4(2)(a); and
 - iv) the “**public policy argument**”: that enforcement of the Italian Judgments would be contrary to public policy.
19. He noted that at one stage it appeared that the Respondents were intending to argue fraud in obtaining the Italian Judgments, but this argument, he considered rightly, had not been pressed. He noted that an argument based on the Human Rights Act 1998 also was not being pressed.
20. The Deputy Master went on to consider the arguments that were being pressed individually.

A. The immovable property argument

21. The Deputy Master agreed with Mr Sahonte (who was representing the Respondents before him, as he did before me) that the claim concerned immovable property in the sense that Davide had an entitlement to the property at 3 Broadfield Avenue under Quintilio’s will. However, the Deputy Master considered that this was better characterised as an interest in Quintilio’s unadministered estate or (more likely) an interest under a trust over that property. The Deputy Master agreed, following *Kireeva v Bedzhamov* [2024] UKSC 39 [2024] 3 WLR 1010 that questions as regards rights to and interests in land and other immoveable property are governed by the law of the country in which the property is situated; that jurisdiction to decide those questions belongs to the court of that country; and that immoveable property includes all rights over, or in relation to, land including beneficial or equitable interests. However, he considered that that point did not necessarily answer the question posed by the 1933 Act, namely whether the *subject matter of the action* in Italy was immovable property not in Italy.
22. He went on to note that claims, in whatever jurisdiction, often have a multiplicity of subject-matter, especially where the dispute relates to an entitlement to assets from an estate,
- “where the subject-matter can variously be described as the Will, the estate generally, or the individual assets of that estate. Conflicts of law principles, however, often ask the court to decide in an overall sense what the subject matter of a dispute is before determining what system of law applies to it.”

23. He referred to *Macmillan v Bishopsgate* [1996] 1 WLR 387 (“*Macmillan*” where Staughton LJ said:

“In any case which involves a foreign element it may prove necessary to decide what system of law is to be applied, either to the case as a whole or to a particular issue or issues. Mr. Oliver, for *Macmillan Inc.*, has referred to that as the proper law; but I would reserve that expression for other purposes, such as the proper law of a contract, or of an obligation. Conflict lawyers speak of the *lex causae* when referring to the system of law to be applied. For those who spurn Latin in favour of English, one could call it the law applicable to the suit (or issue) or, simply, the applicable law. In finding the *lex causae* there are three stages. First, it is necessary to characterise the issue that is before the court. Is it for example about the formal validity of a marriage? Or intestate succession to moveable property? Or interpretation of a contract?

The second stage is to select the rule of conflict of laws which lays down a connecting factor for the issue in question. Thus the formal validity of a marriage is to be determined, for the most part, by the law of the place where it is celebrated; intestate succession to moveables, by the law of the place where the deceased was domiciled when he died; and the interpretation of a contract, by what is described as its proper law.

Thirdly, it is necessary to identify the system of law which is tied by the connecting factor found in stage two to the issue characterised in stage one.

Sometimes this will present little difficulty, though I suppose that even a marriage may now be celebrated on an international video link. The choice of the proper law of a contract, on the other hand, may be controversial.”

24. The Deputy Master considered that the 1933 Act similarly required the court to consider the overall subject matter of the claim. He therefore considered that the court could not merely identify a particular asset within the estate (the property in London) that was outside the Italian jurisdiction and say that because of that the registration must be set aside. Instead it seemed to him that the subject matter of the claim was the succession to Davide’s estate.
25. This analysis was not complete: I observe that the Italian Judgments also dealt with the succession to Quintilio’s estate.

B. The administration of estates argument

26. Accordingly, the Deputy Master turned to the administration of estates argument, noting (at [32]) that:

“In a rather tortuous process of deeming provisions and double negatives, the 1933 Act provides that:

32.1. The original court is deemed to have jurisdiction in respect of an action in personam, if any of the pre-requisites in section 4(2)(a) are made out (including submission to the jurisdiction, see next heading).

32.2. An action *in personam* shall not “be deemed to include” (which I take to mean shall exclude) any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estate of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants” (emphasis added), section 11(2).

27. To interpret this provision the Deputy Master considered it important to put the 1933 Act in its historical context. This included that:

- i) The common law conflicts of laws rules in England and Wales are that the English Court applies English law to the succession of immoveable assets in this jurisdiction and to the worldwide movable assets of those domiciled in this country. Accordingly, it did not recognise judgments which determine the succession of immoveable assets in this jurisdiction or to the moveable assets of those domiciled here.
- ii) The 1933 Act was not intended to change the common law. In support of this proposition he cited the Report of the Foreign Judgments (Reciprocal Enforcement) Committee, CMND 4213 (1932) and the case of *Société Coopérative Sidmetal v Titan International Ltd* [1966] 1 QB 828 (“*Sidmetal*”) and the point that in all the European Conventions concerning the recognition and enforcement of judgments to which the United Kingdom was a signatory, Wills and succession have been excluded.
- iii) Judgments concerning succession have generally been regarded by the English Courts as not being, or as being more than, merely actions *in personam*. They constitute a decision against the world, and so at least in part an action *in rem*.
- iv) It would therefore be surprising if the 1933 Act had included succession matters as being registrable judgments on the basis of their being actions *in personam*. In that context he considered section 11(2) to be:

“peculiar in apparently not also excluding succession to estates”.
- v) He noted that in English law a “distinct difference” was recognised between disputes over the administration of an estate and disputes over succession to it.
- vi) He considered that the peculiarity greatens when it is realised that under the Convention of 7 February 1964 between the United Kingdom and the Republic of Italy for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (the “**1964 Convention**”), which led to the recognition

of Italian Judgments by way of the Reciprocal Enforcement of Foreign Judgments (Italy) Order 1973 (the “**1973 Order**”), matters concerning succession apparently were to be excluded from reciprocal enforcement. He referred to Article IV to the Convention which forms Schedule 1 of the 1973 Order to make good on that point.

- vii) He considered therefore that it was fair to assume that Italy will not itself, at least under its legislation giving effect to the treaty, give effect to English judgments concerning succession despite the treaty being reciprocal.
- viii) At [39] he made the key finding that:

“In my judgment, the above suggests that either (i) the term “administration of estates” was intended to have a broader meaning and to have included “succession” or (ii) the definition of actions *in personam* in any event excludes claims in respect of succession.”
- 28. At [40] the Deputy Master noted that. in *Del Curto*, the Master rejected submissions to similar effect to the points made above, finding that (i) the treaty had no effect in English Law (para 48), (ii) the judgment in that case was an order for restitution, which was of its nature *in personam*, and (iii) the judgment was not *in rem* (para 96),
- 29. The Deputy Master disagreed with the approach taken in *Del Curto*. He also (with due diffidence) disagreed with what appeared to be a finding of HHJ Paul Matthews in *Pescatore v Valentino* [2021] EWHC 1953 (“*Pescatore*”).
- 30. Here, in context of an anti-suit injunction to prevent a foreign claim concerning succession, HHJ Paul Matthews appeared to suggest that a judgment in Italy concerning succession could possibly be registered under the 1933 Act on the grounds that the party had voluntarily submitted to the jurisdiction, suggesting that such a claim could, at least in part, be treated as an action *in personam*.
- 31. The Deputy Master noted that it appeared that HHJ Matthews had not been directly addressed on, or directly considered, whether the 1933 Act did exclude such judgments from registration and also that and these passages did not make up any part of his decision (with the result that they may be considered to be *obiter dicta*). Accordingly he did do not regard these passages as decisive.
- 32. Having considered these cases the Deputy Master set out his key finding that:
 - i) The 1933 Act probably did intend to include, within the definition of “administration of estates” matters concerning succession; and
 - ii) in any event a claim the subject-matter of which is the succession to a person’s estate is not, in his judgment, described as an action *in personam*.
- 33. He considered that the Italian court had no jurisdiction under English law principles to deal with issues concerning succession in the case of an individual who is domiciled in England. He noted also that almost the whole succession (relating to Davide) concerned rights over the property at 3 Broadfield Ave.

34. It followed that the registration should be set aside on the grounds that the country of the original court (Italy) had no jurisdiction in the circumstances of the case.

C. The no-submission argument

35. Turning to the no-submission argument, the Deputy Master noted that this did not apply given his findings on the administration of estates argument that the Italian Judgments were not dealing with a matter that was *in personam*. However, for the record, he rejected the Respondents' argument that they had not submitted to the jurisdiction, on the basis that they had lodged an appeal based on merits, rather than on lack of jurisdiction.

D. The public policy argument

36. Turning to the public policy argument, the Deputy Master noted that this boiled down to the unacceptability of the delay in the Italian courts and that the Italian court's decision was irrational on its face. The Deputy Master rejected both points. In relation to the latter point he noted that whilst the DNA evidence only showed that the Appellants were brothers, there was other evidence before the Italian courts that meant that finding of paternity was not irrational.
37. The Deputy Master also rejected arguments based on abuse of process and delay.
38. The Deputy Master concluded that he would not register the Italian Appeal Judgment on the basis that whilst it was registrable, its registration should be set aside. Procedurally it was best just to dismiss the application for registration.
39. The Deputy Master later gave permission for the appeal of his decision, on the basis that he acknowledged that this was a difficult case to decide and raises issues of law which were capable of being decided the other way and on the basis that his decision differed from that in the apparently analogous case of *Del Curto*.

4. THE GROUNDS OF APPEAL

40. The Appellant has set out five grounds of appeal. In summary they are as follows:
- i) **Ground 1:** The Deputy Master was wrong to refuse registration, or alternatively to set aside registration on the basis that the 1933 Act cannot be used to register judgments arising out of claims in foreign courts relating to succession in circumstances where the courts have found that Italian succession judgments could be registered under the 1933 Act, in particular in *DelCurto*, where the facts were analogous to those in the current case and in *Pescatore*.
 - ii) **Ground 2:** The Deputy Master was incorrect in finding that the Italian Courts had no jurisdiction in the circumstances of the case on the basis that the original claim was not an action *in personam* because it pertained, and was wrong in interpreting the reference to "administration of estates of deceased persons" for the purposes of defining the expression "action *in personam* in s.11(2) of the 1933 Act to include succession, thereby excluding succession from the definition of an action *in personam* in s.4(2)(a) of the 1933 Act.

- iii) **Ground 3:** The Deputy Master erred in not considering whether the Italian Judgments could be registered in circumstances where the subject matter pertaining to immovable property at the time of the original proceedings in addition to succession such that the Italian Courts have jurisdiction under English conflicts of law principles and where the Judge had acknowledged that the claims have a multiplicity of subject matter.
- iv) **Ground 4:** The Deputy Master was wrong not to consider whether the Italian Judgments were registrable in all the circumstances where the jurisdiction of the Italian Courts is recognised by the law of England and Wales as expounded in certain textbook authorities.
- v) **Ground 5:** The Deputy Master erred by failing to consider whether refusing registration of the Italian Judgments would be contrary to public policy in all the circumstances where his judgment conflicted with previous decisions of the courts of the same level (*Pescatore* and *Del-Curto*) and set a precedent depriving other litigants of the remedies of registration and enforcement when the intention of Parliament in ratifying the 1933 Act was to avoid unfairness.

41. I will consider these grounds in turn.

5. GROUND 1:THE APPEAL TO AUTHORITY

42. In her skeleton argument for the Appeal, Ms Egan representing the Appellants. dealt with Grounds 1 and 2 together. I consider that she was right to do so. Ground 1 is essentially an appeal to the previous authority of *Del Curto* and of *Pescatore*. Ground 2 deals with reasons why those cases should be considered to reflect the law correctly.

A. The authority of *Pescatore*

43. The Appellants rely on *Pescatore* at [76]) where HHJ Matthews found:

“... an Italian judgment can be registered (and enforced as an English judgment) under the Foreign Judgments (Reciprocal Enforcement) Act 1933, where it is a money judgment and is final and conclusive, but again only where the Italian court had jurisdiction in the sense provided for under that Act. Once more, the only possible head of jurisdiction in this case is that the Claimant voluntarily submitted to the Italian jurisdiction, which again does not seem likely”.

44. *Pescatore* was decided at High Court level, but as the Deputy Master noted, the comments made in that case concerning registration under the 1933 Act were not relied upon for the decision in this case. To use the Latin phrase, they were *obiter dicta*, and there was no reasoning or argument supporting this finding.

45. It may be noted that later in *Pescatore* the learned judge (at [78] – [79]) noted that:

“...any Italian judgment seeking to change the way in which the succession of the deceased operates faces considerable obstacles before it can even pass through the gateway into England. But

there is more, and in my judgment this is even more significant. To the extent that any Italian judgment seeks to interfere with the devolution of immovable property situated in England, it will not be recognised or enforced by the English courts. The devolution of immovable property situated in England is a matter for English law and English courts alone. Accordingly, any disputes arising over that devolution will require litigation in England if the parties cannot agree.

To the extent that such a judgment seeks to interfere with the devolution of the movable property situated in England, if the English court holds that the deceased died domiciled (in the English sense) in England, so that English law governs that devolution, it will similarly not be recognised or enforced. So, the Italian proceedings will not “obviate the need for” litigation in England in relation to English immovables in any event, and may not do so in relation to movables.

46. In view of its status as *obiter dicta* and that it includes comments favouring both the arguments of the Appellants and those of the Respondents, *Pescatore* cannot be regarded as determinative of the question that we are now considering: the application of the 1933 Act in a case involving a foreign judgment that concerns an English Will devolving English property.

B. The authority of *Del Curto*

47. *Del Curto* was a decision by a Master. I have not been able to find any guidance in the case-law on whether a Master is bound by previous decisions of a Master. However, I note from the decision of David Foxton QC sitting as a Deputy High Court Judge (as he then was) in *Coral Reef Ltd v Silverbond Enterprises Ltd and another* [2016] EWHC 3844 (Ch), [2018] 4 W.L.R. 104, (“*Silverbond*”) the decision of a High Court judge is not binding on another High Court Judge (see at [47]) so I find it difficult to believe that a decision of a Master is binding on a Master.
48. Ms Egan, for the Appellants does not seek to argue that *Del Curto* was binding on the Deputy Master as such, but rather seeks to justify Ground 1 on the more subtle argument that the Deputy Master erroneously failed to accord due weight to the decision in *Del Curto* under the principle of judicial comity in circumstances where he did not positively articulate the definitive conviction that the decision was wrong. On this basis she argues that the Deputy Master was in error in failing to follow *Del Curto*.
49. In support of this argument Ms Egan notes that in *Silverbond* at [47] Foxton J, as well as finding that a High Court judge is not bound by the decision of other High Court judges, notes also “the modern practice is that such a judge should follow such a judgment unless convinced it is wrong”.
50. Deputy Judge Foxton had deduced this principle partly from *Lornamead Acquisitions Limited v Kaupthing Bank HF* [2011] EWHC 2611 (Comm) in which Gloster J (as she then was) at [43] cited a passage from *Halsbury’s Laws* to that effect. That passage is still in the same terms and can be found at *Halsbury’s Laws* (5th Edn.) (2020) in Volume 11 at [32]. It provides:

“There is no statute or common law rule by which one court is bound to abide by the decision of another court of co-ordinate jurisdiction. Where, however, a judge of first instance after consideration has come to a definite decision on a matter arising out of a complicated and difficult enactment, the opinion has been expressed that a second judge of first instance of co-ordinate jurisdiction should follow that decision; and the modern practice is that a judge of first instance will as a matter of judicial comity usually follow the decision of another judge of first instance unless he is convinced that that judgment was wrong”.

51. Mr Sahonte notes that the principle of comity is more commonly encountered in considering respect for the decisions of foreign judges, but nevertheless I recognise that has a place in the context of respecting the decisions of other judges of the same rank. As noted by Wilberforce J in *Re Howard's Will Trusts, Levin & Bradley* [1961] Ch 507 at 523, [1961] 2 All ER 413 at 421:

“it is evidently undesirable that on a subject so much a matter of appreciation [in that case the validity of condition subsequent in a Will requiring a beneficiary to change her name] different judges of the same Division should speak with different voices.”

52. Ms Egan suggests that this principle of comity requires the later judge (of the same rank as the original judge) not merely to disagree with the earlier judge, but that the later judge must be *convinced* that the judgment was wrong - by which I think she is suggesting that a higher degree of certainty is needed than the second judge merely disagreeing. I think it is implicit also in her argument that the later judge must say so within his or her judgment.
53. Ms Egan takes the requirement of having to be “convinced” from *The Makedonia* [1958] 1 QB 365 where Pilcher J declined to follow *The Telemachus* [1957] P. 47; [1957] 1 All E.R. 72; [1956] 2 Lloyd's Rep. 490 on the ground that he thought it was wrongly decided. Pilcher J there quoted from *Huddersfield Police Authority v. Watson*, [1947] K.B. 842, 848; 63 T.L.R. 415; [1947] 2 All E.R. 193 that:

“... I can only I think that the modern practice, and the modern view of the subject, is that a judge of first instance, though he would always follow the decision of another judge of first instance, unless he is convinced the judgment is wrong, would follow it as a matter of judicial comity. He certainly is not bound to follow the decisions of a judge of equal jurisdiction.”

54. Ms Egan contrasts this with the decision, in *Re Cohen* [1960] Ch 179, where Danckwerts J felt obliged to follow a decision of Harman J even where it had been doubted (though not overruled) by a dissenting Court of Appeal judgment.
55. I do not see that this decision does much to support Ms Egan’s argument. Danckwerts J dealt with this matter in one paragraph. He considered himself to be “bound” without considering any difference between binding precedent and judicial comity. There is no suggestion that he had independently formed his own view that the decision of Harman

J that he decided to follow was wrong but was not sufficiently “convinced” and therefore must follow the earlier decision.

56. Whilst I acknowledge the importance of the principle of comity, I consider that Ms Egan is going too far in her suggestion that it is an error of law for a judge not to follow a principle of law or statutory interpretation in previous judgment unless that judge has stated in no uncertain terms that he or she is “convinced” that the prior judgment is wrong – certainly if the term “convinced” is meant to connote a higher standard of certainty than merely having been persuaded of the point as a result of the arguments of counsel.
57. I would state the principle of comity in milder terms. As a matter of comity, a judge should follow (or distinguish) a decision on the same point by an earlier judge, having taken care to understand the basis of this decision, unless the later judge considers that that decision is wrong, and if the later judge is departing from the earlier judgment he or she should acknowledge this and explain his or her reasons for coming to this conclusion.
58. I would add, that it is not clear to me that, even if there is a failure of comity, that amounts to an error in law. To state otherwise is getting close to equating a failure of comity with a failure to follow binding precedent, contrary to all the judicial pronouncements on this matter. If it turns out that the later judge was correct and the earlier judge was wrong, it is difficult to see how it could be an error in law for the later judge to adopt the correct analysis.
59. In the present case, I do not consider there was any failure in comity. It is clear that the Deputy Master recognised that he was not following *Del Curto* and stated (at [16] of the Dew Judgment); that he disagreed with “some of the conclusions in that judgment”; and that this would be apparent from the remainder of his own judgment. His disagreement was apparent throughout his judgment. In particular, at [40] the Deputy Master stated the main basis of his disagreement with *Del Curto* - the characterisation made therein of the judgment of the Italian court in that case as being an order for restitution and therefore *in personam* and not looking behind the order made to ask what was the real subject-matter of the action. I do not think that the Deputy Master could be clearer in identifying that he disagreed with the basis on which *Del Curto* had been decided.
60. *Silverbond* also indicated that a decision of a Master is not binding on a High Court Judge (although the reverse is true). Accordingly I consider that *Del Curto* is not binding on me as a judge of the High Court, and I am entitled to assess whether the Deputy Master was right to depart from the reasoning in that case.
61. However, even if not strictly binding as precedent, and apart from any issues of comity, it is useful and necessary to understand the basis of the decision in *Del Curto* for its reasoned consideration of the issues and as this essentially forms the basis for Ground 2 of the appeal. Again it is appropriate that I summarise this in some detail.

6. GROUND 2

A. THE REASONING IN *DEL CURTO*

62. *Del Curto* concerned a judgment in Italy that had been registered in England under the 1933 Act. This related to the estate of a wealthy businessman Davide del Curto, an Italian citizen who died in Chile. He had assets in a number of jurisdictions, including Italy and Chile. He left a will but it did not deal with his assets in Chile and none of the parties to the current action were beneficiaries to it. His illegitimate daughter, Rita, who was not entitled to any inheritance under Chilean law at that time brought an action in Italy based on article 533 of the Italian Civil Code, which deals with forced inheritance.
63. The Italian court (the Tribunale di Sondrio) had found that it had jurisdiction; that Rita was co-heir of the deceased; that her siblings (Julian and Gloria) had possession of the assets not in good faith; that she was due two-ninths of the entire estate of the deceased and made a payment order against the siblings for them to pay two-ninths of the estimated value of the inheritance as determined by a valuation expert that had been appointed by the court.
64. Master Cook was considering in *Del Curto* an application to set aside a registration order registering the order of the Tribunale di Sondrio. The application was based on two of the grounds set out in s.4 of the 1933 Act:
- i) that there was not “payable under [the judgment] a sum of money”, such that it would be deemed to have jurisdiction under s.1(2)(b) of the 1933 Act; and
 - ii) that the Tribunale di Sondrio had no jurisdiction under s.4(1)(a)(ii) because:
 - a) the judgment was not given in an action *in personam* such that it would be deemed to have had jurisdiction under s.4(2)(a); and
 - b) in any event, the court is deemed to not have jurisdiction under s.4(3)(a) (which has the effect of overruling s.4(2)(a)) because the subject matter of the proceedings was immovable property outside the country of the original court (reflecting the common law position).
65. Master Cook considered the relevant wording within the 1933 Act, specifically ss.4(2), 4(3)(a) and (c) and 11(2).
66. Julian, who was bringing the action to set aside the registration of the judgment, had employed Mr Dew as counsel representing him. Coincidentally this was the same person as Deputy Master Dew, but in this case in his capacity as counsel. Mr Dew had submitted to Master Cook:
- i) that on common law principles the Chilean and not the Italian courts would be recognised as having jurisdiction to deal with the succession of the Deceased’s immovable Chilean estate;
 - ii) that the Italian courts would only be recognised as having jurisdiction to deal with the deceased obvious movable Chilean estate if the deceased was deemed to be domiciled in Italy at the time of his death;

- iii) that the 1933 Act was intended to reflect these common law principles and there was no suggestion that the Act was envisaged to alter the common law position on succession (a point made by reference to the Greer Report and *Sidmetal*;
 - iv) that the phrase “any proceedings in connection with ... [the] administration of estates was” intended to extend to all matters relating to succession, so as to accord with the common law principles he had outlined;
 - v) that the 1973 Order which allowed the recognition of Italian judgments under the 1933 Act gave effect to the 1964 Convention – and the 1964 Convention explicitly excluded matters of succession as being outside those matters where the court was deemed to have jurisdiction *in personam* (referring in particular to Article IV(3)). Thus, neither the United Kingdom nor Italy envisaged succession actions as being within the definition of actions *in personam*;
 - vi) that the judgment was not for a sum of money: it was for the return of specific assets in the first place and insofar as it did order a payment of money that order was not for a definite sum of money as it was not ascertained or ascertainable; and
 - vii) the judgment was *in rem* and not *in personam* as it concerns the ownership of assets belonging to the deceased: article 533 Italian Civil Code entitled an heir to the devolution of assets rather than particular sums of money: under English law principles a judgment determining the ownership of assets, with the subsidiary order for their return, is in the nature of or at least analogous to an action *in rem*.
67. Mr Cumming of counsel, acting for Rita, made contrary representations, many of which Master Cook found to be persuasive and were reflected in Master Cook’s conclusions at [74] onwards. I summarise them as follows:
- i) It was necessary to apply the Act, adopting the approach explained in dicta of Males LJ in *Strategic Technologies PTE Ltd v Procurement Bureau of the Republic of China Ministry of National Defence* [2020] EWCA Civ 1604 (“***Strategic Technologies***”). In that case the Court of Appeal was considering whether it could pursuant to the Administration of Justice Act 1920 (the “**1920 Act**”) register a “judgment on a judgment” (that is a money judgment registered in one Commonwealth State that itself was the result of registering a judgment obtained in another Commonwealth state). At [47] Males LJ said:

“In my judgment it is neither necessary nor productive to decide what answer the common law would give to the question whether a judgment on a judgment can be enforced by action if that question were now to arise. That is because, although they restate much of the common law position, neither the 1920 nor the 1933 Act purports to codify the common law. It was so held by Widgery J in *Societe Cooperative Sidmetal v Titan International Ltd* [1966] 1 QB 828 so far as the 1933 Act is concerned and the position is the same for the 1920 Act. The right approach, in my judgment, is to consider the 1920 Act on its own terms and in the light of the purpose of the legislation as

seen in the Report of the Committee chaired by Lord Sumner dated May 1919 ("the Sumner Committee Report") which led to its passing."

68. Master Cook decided he should have regard to the 1933 Act and not to the 1964 Convention. In doing so he was following Millett J in *In re International Tin Council* [1987] Ch 419, who found that the terms of a treaty cannot affect any alteration in our domestic law (although as Millett J pointed out the court may consider a treaty to enable domestic legislation to be construed as far as possible in conformity rather than in breach of pre-existing international obligations undertaken by the United Kingdom).
69. In relation to the question that registration of the judgment should be set aside because there is not a sum of money payable under the judgment, Master Cook noted first that a judgment may contain provisions that can be registered and others which cannot be registered. As the judgment in question did order a sum of money to be paid this element could be registered. The sum payable was readily calculable.
70. Coming to the question that is at the heart of Grounds 1 and 2 in our current case, he noted that the Italian judgment he was considering was brought under section 533 of the Italian Civil Code. The agreed translation of this section provided;

"For the purpose of obtaining restitution of the property, the heir can request recognition of his hereditary status against whomever possesses all or part of the heritable property under claim of heirship or without a claim of any kind"

This provision provided for restitution. Master Cook agreed that restitution is a personal obligation and in the circumstances of that case meant either the return of the assets or their equivalent value.

71. Master Cook accepted that the fact that a claim is one for return of assets does not automatically make the claim a claim *in rem* - a point that he supported by reference to the decision in *Webb v Webb* [1991] 1 WLR 1410, where it was found that an order for specific performance of the contract relating to the sale of land abroad was an order *in personam* against the defendant. He referred also to *Akers v Samba Financial Group* [2017] UKSC 6 ("*Akers*") where Lord Sumption said at [83] in relation to circumstances where the proprietary interest of a beneficiary may not be effective or enforceable, that would not affect the beneficiary's personal rights, if any, against a trustee or his inability to personal remedies: in such circumstances equity may

"act in personam by requiring the trustee to perform his trust or a relevant third party to account".

72. Master Cook determined that Rita's action in Italy determined matters between (i) Rita and (ii) Julian and his sister Gloria and not the world, and thus should be considered to be the same actions *in personam*, not *in rem*.
73. Master Cook dismissed Mr Dew's argument that the proceedings were concerned with the administration of an estate and thus were barred by the operation of s.11(2) of the 1933 Act. He preferred the argument of Mr Cummings that the omission of "succession" from s.11(2) was not an accident of drafting: it was deliberate because:

- i) The 1933 Act was not intended to fundamentally change the common law approach to the recognition of foreign judgments. The 1933 Act was a technical bill, which was the product of an expert report under the Chairmanship of Lord Justice Greer. (Hansard, HL Deb 14 February 1933 vol 86 cc 671-5). The driver was a concern that foreign judgments could be enforced in England by means of an action on the judgment at common law, with no equivalent method of enforcing English judgments abroad.
 - ii) English law makes, and has always made, a clear distinction between (i) the administration of estates; and (ii) succession more generally. See, for example, *Williams, Mortimer & Sunnucks, Executors, Administrators and Probate*, 21st Ed., 3.03
 - iii) This, he considered was true in 1932. *Dicey* (then as now the leading work on the Conflict of Laws) treated administration and succession as separate legal topics within the 5th edition of *Dicey* published in 1932, i.e. the current version at the time of the 1933 Act. This made it clear that the administration of estates was considered to be distinct from succession:
 - iv) There was therefore no purposive basis for construing “administration of estates” as being or including “succession”, as it would be contrary to the wording and intentions of the 1933 Act.
74. On the basis of these arguments, Master Cook declined to set aside the registration of the judgment.
75. I think it is a fair summary of the arguments put forward by Ms Egan in our current case that she adopts all of the points that Master Cook relied upon and argues that these points are to be preferred to the analysis favoured by Deputy Master Dew.
76. Like Master Cook, and as enjoined by Males LJ in *Strategic Technologies*, in determining Grounds 1 and 2, I will start by considering the wording of the 1933 Act.

B. Detailed analysis of the relevant provisions of the 1933 Act

The Purpose of the Act

77. First, I note the long title of the 1933 Act:
- “An Act to make provision for the enforcement in the United Kingdom of judgments given in foreign countries which accord reciprocal treatment to judgments given in the United Kingdom, for facilitating the enforcement in foreign countries of judgments given in the United Kingdom, and for other purposes in connection with the matters aforesaid” (emphasis added).
78. I consider that the words set out in the long title that I have underlined provide an indication that the 1933 Act was looking to register judgments of foreign countries in cases where that country would afford reciprocal treatment. This is relevant since an enactment should be construed in the light of its purposes (see *Bennion, Bailey and Norbury on Statutory Interpretation* 9th Edition (“**Bennion**”) at [10.6] and [12.2]. A

long title is a part of an Act and may be used as an aid to construction (see *Bennion* at [16.3]).

79. The point that the 1933 Act was looking to register judgments of foreign countries in cases where that country would afford reciprocal treatment is reflected in s.1(1) which provides the power to extend the operation to a country to judgments or judgments of any particular class where Her Majesty is satisfied that:

“substantial reciprocity of treatment will be assured as regards the enforcement in that country of similar judgments given in similar courts”.

80. The point is also underlined in the case of *Strategic Technologies*. At [34]-[36] of the Males LJ makes clear that the basis for enforcing a foreign judgment is reciprocity and at [53] to [55] (albeit in this case by reference to the Administration of Justice Act 1920, but the same logic would apply to the 1933 Act) and that it is appropriate to give the legislation a purposive rather than a literal interpretation.
81. As regards reciprocity in the present case, it may be noted that the 1973 Order, which is the order that brought judgments in Italy within the scope of the 1933 Act, included a recital expressly accepting that there was “substantial reciprocity of treatment” under the 1964 Convention.
82. The text of the Convention is reproduced as a Schedule to the Order. Article IV(1) of the Convention requires that an original court (in our case Italy) shall be recognised as possessing jurisdiction in certain circumstances, including where the judgment debtor submitted to the jurisdiction voluntarily (except in certain particularly described circumstances) but subject to exceptions, including relevantly:
- i) where the subject matter of the proceedings is property outside that jurisdiction that is immovable property or to judgments in actions *in rem* in respect of movable property outside that jurisdiction;
 - ii) judgments in matters of family law status (including divorce decrees or other judgments in matrimonial causes); and
 - iii) judgments in matters of succession, or the administration of estates of deceased persons.

Key provisions

83. The key provisions for the purposes of our consideration of Grounds 1 and 2 are those set out in relevant parts of s.4 of the 1933 Act, which I reproduce below:

“4 Cases in which registered judgments must, or may, be set aside.

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(a) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;

.....

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection

(3) of this section, be deemed to have had jurisdiction—

(a) in the case of a judgment given in an action in personam—

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings; or

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;

(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—

- (a) if the subject matter of the proceedings was immovable property outside the country of the original court; or
- (b)
- (c)”

84. In addition it is necessary to consider s.11(2):

“11(2) For the purposes of this Act, the expression “action in personam” shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants.”

Understanding the structure of the key provisions

85. As the Deputy Master noted, the structure of and deeming provisions within this drafting present are quite convoluted. However, it may be summarised as providing to a judge who is considering an application under s.4 the four instructions that I outline below.
86. **Instruction 1** derives from s.4(1)(ii). It is that the judgment **must** be set aside if the courts of the original court had no jurisdiction.
87. There is an apparent ambiguity in s.4(1)(ii). It is not clear on the face of that provision whether the question “jurisdiction” means jurisdiction (i) as recognised by the original court or (ii) as recognised by English law (or the relevant law of another part of the United Kingdom to which the 1933 Act applies). I consider that it must mean jurisdiction as recognised by the relevant United Kingdom law. This is because:
- i) if there was no jurisdiction under the relevant law of the original court, it seems unlikely that the judgment would have been passed by the original court, and anyway that would be a matter for that court;
 - ii) this is a provision in an English statute;
 - iii) this interpretation would be consonant with the view (correctly noted by both Deputy Master Dew and Master Cook) that there was no intention within the 1933 Act to change English law rules on jurisdiction;
 - iv) if the test related to the foreign jurisdiction, then it is difficult to see how it is the proper place of the English legislature to alter that test by the various deeming provisions that we have seen; and
 - v) this position is confirmed anyway by the provision I summarise below as subparagraph (iii) within Instruction 2: to the extent that the deeming provisions otherwise included in s.4(2) or s.4(3) do not provide the answer, then the effect of sub-paragraph (c) is that we refer to the relevant United Kingdom rules relating to the recognition of jurisdiction.

88. **Instruction 2** is that the original court (in our case Italy) shall (subject to s.4(3)) shall be **deemed** to have had jurisdiction:
- i) if the action is *in personam* and there is submission to the jurisdiction in one of the ways mentioned in s.4(2)(a): this is derived from s.4(2)(a);
 - ii) if the action is one where the subject matter was immovable property **or** an action *in rem* if the property in question was at the time of the proceedings situated in the original court (Italy) judgment is given: this is derived from s.4(2)(b); or
 - iii) where neither (i) or (ii) apply, if the jurisdiction of the original court is recognised by the law of the registering court: this is derived from s.4(2)(c)).
89. I consider that the existence of this category (iii) is intended to deal with a category of proceedings that are not readily capable of being categorised as being either *in personam* or relating to immovable property or *in rem* relating to personal property), and not merely the category that arises of proceedings that are *in personam* but where there is not submission to the jurisdiction in one of the ways mentioned in s.4(2)(a).
90. There is clearly a need for such category. There are types of proceedings which do not relate to land or to elections *in rem* relating to personal property, which nonetheless cannot be regarded as purely personal matters. S.11(2) catches many of these types of proceeding, but could never be thought of as being exhaustive. For example, the 1964 Convention recognises (at Article IV(3)) matters relating to “status”, which I consider might apply to such issues as recognition of paternity or recognition of gender. Under the 1964 Convention, matters of status, (as are matters of succession or the administration of estates or bankruptcy proceedings amongst others) are not dealt with as matters *in personam*, but instead are recognised as being matters for the law of the country of the court where recognition is sought.
91. **Instruction 3** derives from s.4(3)(a). There are two possible interpretations, which I describe as a weak form or a strong form:
- i) In its strong form, it is that the original court shall be deemed not to have had jurisdiction if the subject matter of the proceedings was immovable property outside the country of the original court.
 - ii) In its weak form, it is that the deeming provisions in Proposition 2 are not to be applied if the subject matter of the proceedings was immovable property outside the country of the original court. This has the effect that the question of jurisdiction is to be determined without the imposition of any deeming provisions.
92. The reason for their being two possible interpretations of s.4(3)(a) is the convoluted wording in s 4(3)(a) “shall not be deemed to have had jurisdiction”. The natural meaning of that phrase is that deeming provisions elsewhere (which here are identified in particular as being those in s.4(2)) do not apply in the circumstances where the matters listed in s.4(3) apply, and in particular for our purposes where s.4(3)(a) applies. The natural meaning then favours the weak form interpretation.

93. However as I discuss below, when we come on to consider s.11(2), the similar words (“shall not be deemed to include”) in that context probably do have to be read as meaning the same as “shall be deemed not to include”, or in other words “shall be deemed to exclude”. If the 1933 Act is to be read consistently therefore this suggests that the strong form of Instruction 3 is correct.
94. In my view the natural meaning of the words, “shall not be deemed to have had jurisdiction” in s.4(3) and therefore the weak form of Proposition 3 is to be preferred. I reach this conclusion having regard to the express reference to s.4(2) (itself a set of deeming provisions) immediately followed by an instruction not to deem in certain circumstances.
95. **Instruction 4** derives from s.11(2). It is that the expression “action *in personam*” shall be deemed to exclude (amongst other things listed) “the administration of estates of deceased persons”.
96. Again in s.11(2), there is the awkward formulation “the expression “*action in personam*” shall not be deemed to include...”.
97. The Deputy Master considered that this must mean that “the expression “*action in personam*” shall be deemed not to include ...” (or as he put it “shall be deemed to exclude...”).
98. Of course in strict logic there is a difference in meaning between “not deeming something to be” and “deeming something not to be”. However, here the Deputy Master must be right, as his interpretation is the only way of giving any rational meaning to the phrase as it is used here. Unlike the use of the similar phrase (“shall not be deemed”) in s.4(3), where a clear meaning can be given to the natural interpretation of these words, s.11(2) could not be interpreted as disapplying deeming provisions set out elsewhere, as there are no such deeming provisions to be disappplied in relation to the types of proceedings listed in s.11(2).
99. This, however is not to say that anything that is not listed in s.11(2) as one of the categories deemed not to constitute an “action *in personam*” must as a result of that omission constitute an action *in personam*.
100. The main points that I wish to emphasise by restating the relevant provisions of s.4 as a series of four instructions to the judge applying that section are that:
- i) the key starting point for the application of s.4 is the question whether English law recognises the overseas court as having jurisdiction.
 - ii) the question whether English law recognises the overseas court’s jurisdiction is then statutorily modified or clarified by the various deeming provisions that follow;
 - iii) however, it must be recognised, and is recognised (at s.4(2)(c)), that the key question may not be answered by looking at the deeming provisions in paragraphs (a) or (b) of s.4(2): not all types of proceeding can unambiguously be assigned to the categories of *in personam* or property or *in rem* actions dealt with in those paragraphs;

- iv) whilst s.11(2) excludes certain types of proceedings, including proceedings relating to the administration of estates as types of proceedings that cannot be regarded as proceedings *in personam*, it does not follow that any types of proceeding that are not listed in s.11(2) must be regarded as being actions *in personam* if they are not clearly actions *in rem*. Any type of proceeding that is not listed in s.11(2) and is not otherwise the subject of any of the deeming provisions in s.4 falls to be dealt with under s.4(2)(c).
 - v) Where the deeming rules do not otherwise provide the answer, then both the general principle in s.4(a)(i) (which I summarise as Instruction 1) and the fallback provision in s.4(2)(c) (which I summarise as Instruction 2(iii)) require the judge to consider which court has jurisdiction according to the relevant United Kingdom rules relating to the recognition of jurisdiction.
101. These observations are important when considering two reasons given in the alternative by the Deputy Master in his judgment at [39] (and reproduced at [2727.viii]) above as to why he considered that the litigation in Italy (which he considered related to succession) did not constitute action *in personam*. These two reasons were:
- i) First, because what we would now think of as “succession” was intended by the parliamentary draftsman to be included within the term “administration of the estates of the deceased person”; or
 - ii) Secondly, in the alternative, because the definition of actions *in personam* in any event excludes claims in respect of succession.
102. Both these arguments depend on characterising the Italian Judgment as being made in relation to succession (or as relating to the administration of estates). It is therefore necessary to consider the Italian Judgments in some detail.

C. Detailed analysis of the relevant provisions of the Italian Judgments

103. The following summary is based on an English translation of the Italian Judgments. It appears that these translations were not undertaken by a person skilled in the translation of legal documents. Certainly it is difficult to follow for an English lawyer not versed in Italian law, but, with those caveats, the issues considered in the Italian First Instance Judgment may be summarised as follows.
104. The Defendants appeared before the Piacenza Court originally to object to the jurisdiction of the Italian judge regarding the English Wills and the English assets of Quintilio and Davide but they also made points regarding the merits of the claim including in relation to the claim being statute barred. These preliminary questions were dismissed by the Piacenza Court and the court later went on to determine the claim according to the evidence and under the Italian law of succession.
105. The most important issue related to the validity of the last Will and Testament made by Davide leaving his possessions to his brother Dante and his sister-in-law (Dante’s wife), Anna. This Will was made under English law and was later found in the Dew Judgment to apply to his worldwide estate.

106. Davide had confirmed in his Will that he did not wish Andrea and Antonio to receive anything under his Will because he considered that he was not their natural father and considered he had no moral obligation to leave them anything. The Piacenza Court considered Davide's belief about the paternity of Antonio and Andrea to be an error and applied article 624(2) of the Italian Civil Code to invalidate clause 3 (the dispositive provision of the (English) Will leaving everything to Dante and Anna), and clause 5 (which included the explanation that Davide did not believe Antonio and Andrea to be his natural children). In fact it appears that the Italian courts went further and set aside the entire Will including the appointment of Dante and Anna as "trustees mortis causa". The court refers to the Will as being a "nullity".
107. The Italian court therefore ruled that Davide's estate should be dealt with in accordance with Italian rules on intestacy under which the assets were to be divided equally between the children of Davide: Antonio and Andrea.
108. The Piacenza Court also considered what should be Davide's and Dante's share of the assets of Quintilio "for the purposes of reconstructing the estate" of Davide. The court applied article 537 of the Civil Code to hold that Davide was entitled to a "statutory share" of one third of the estate, which the court valued at €212,831.15, whereas the testamentary dispositions made by Quintilio had fallen short of this in an amount of €61,626 so that upon these facts the statutory share due to Davide from Quintilio's estate should be given effect by the payment of that sum.
109. Quintilio's estate was found to include Quintilio's house at 3 Broadfield Avenue, London, and its contents; a 4/6 share in a property comprising a house and land at Morfasso, Italy; a 1/15 share of various plots of agricultural land also in Morfasso; a 1/75 ownership of other plots of agricultural land in Morfasso; a half share of agricultural land in Vernasca, Italy and a Mercedes car kept in Italy. The court determined that these assets had a total value of €823,371 and that the assets located in Italy had a value of €79,032.
110. Quintilio had made an Italian will leaving to Dante the properties located in Italy and to Davide a sum of money purportedly corresponding to Davide's "legitimate share" of the assets in Italy. Quintilio also made English will leaving to Dante a "trust for sale" of the house in London (at 3 Broadfield Avenue) and its contents and to Davide a sum of money equal to £25,000 and an additional sum of £100,000 on condition that the trust for sale came into execution before Davide's death. The Piacenza Court found that the London house was sold before Davide's death.
111. The Piacenza court concluded that Quintilio's testamentary provision violated Italian law in that it did not provide Davide with his "legitimate share" – his statutory share under article 537 of the Civil Code entitling him, where the deceased has left two children, to a minimum of one third of the estate. Davide's legitimate share was considered to be equal to €274,457, whereas the value of the assets that he had received were considered to have been €212, 831, so that he had received a shortfall of €61,626 and this sum was due back from Dante therefore to Davide's heirs (which, as we have seen, the Italian court had found to be Antonio and Andrea).
112. Relying on a trust created under an English will made by Quintilio, Davide had sold to Dante and Anna 1/6 of a property in Morfasso, Italy. The Italian First Instance Court refused to invalidate this sale.

113. Taking all these matters into account, the Italian First Instance Court determined:
- i) that the assets of Davide on his death to be divided equally amongst his heirs, Antonio and Andrea were entitled to a value of €410,885.93;
 - ii) that the properties in Morfasso should be transferred to Antonio and Andrea;
 - iii) that Dante and Anna should pay Antonio and Andrea a total amount of €381,796.31 plus interest from the date of the judgment and fully compensate litigation costs except for the costs of obtaining technical advice, which were to be jointly and severally paid by the parties.
114. The Respondents appealed this decision. The appeal was heard by the Bologna Court. The grounds of appeal included that the Piacenza Court:
- i) had incorrectly applied article 624 of the Italian Civil Code (the provision relied upon to invalidate a Will that is made on the basis of a mistaken belief) ;
 - ii) had misinterpreted the testamentary wishes of Davide; and
 - iii) had given a judgment that went beyond the relief sought.
115. The Bologna Court noted that the interim judgment where the Piacenza court rejected or declared inadmissible the preliminary objections raised by the Respondents (including as to jurisdiction) was not the subject of an appeal, and found this to have the consequence that the Italian courts had jurisdiction over the dispute and that Italian law (including the provisions of Italian law as to succession) should be applied to the estates of Davide and Quintilio as they were Italian citizens.
116. The Bologna Court dismissed the grounds of appeal and awarded further costs to the Appellants.
117. It may be noted that they added a further reason why Davide's failure to recognise Andrea and Antonio as his children on the basis that it was undisputed that they were born during Davide's marriage with their mother, and while he was alive Davide did not bring proceedings disclaiming paternity under article 244 of the Italian Code of Civil Procedure.
118. It is relevant to note that the Bologna Court also found that Davide could not totally disinherit Andrea and Antonio: they would anyway be entitled to a statutory share of the inheritance equal to two thirds of the (worldwide) estate.
119. In summary the Italian Courts:
- i) determined that they, as a matter of Italian law, had jurisdiction to determine the succession of both Davide and Quintilio on the basis that they were Italian citizens;
 - ii) determined the paternity status of Andrea and Antonio, finding them to be Davide's sons;

- iii) applied the Italian Civil Code to invalidate Davide's English Will and to substitute it with Italian rules applicable on intestacy so that Andrea and Antonio were the true heirs;
- iv) determined that even if the English will had not been invalidated Andrea and Antonio would have been entitled to their "statutory share";
- v) applied the Italian Civil Code to overrule the dispositions in Quintilio's wills to give effect to Italian requirements for forced inheritance;
- vi) determined the validity of a sale of a share of a property at Morfasso by Davide to Dante and Anna (that share having been inherited by Davide from his mother);
- vii) required Dante and Anna to transfer their share of the movable property in Morfasso to Antonio and Andrea;
- viii) made an order for Dante and Anna to make a payment (together with interest) to Andrea and Antonio;
- ix) made an order for costs.

The Characterisation of the Italian Judgments

120. As the Deputy Master rightly noted in order to apply the 1933 Act it is necessary to characterise what a foreign judgment was dealing with, and this may not be an easy matter. As he put it at [28]:
- "Claims, in whatever jurisdiction, often have a multiplicity of subject-matter, even more so where the dispute relates to an entitlement to assets from an estate, where the subject-matter can variously be described as the Will, the estate generally, or the individual assets of that estate."
121. The Deputy Master answered that question at [30]:
- "it seems to me that the subject matter of the claim that was before the Italian Court was Davide's succession. It was that which was at issue and it was the determination of those issues of succession which gave the Claimant's under Italian law, a right to compensation (and other orders) over the whole of Davide's estate."
122. The Deputy Master rejected the contention that the subject matter of the proceedings in Italy was immovable property and decided instead that the subject matter must be deemed to be succession.
123. This was a different analysis to that made by Master Cook in *Del Curto*. He noted (at [90]) that the judgment in the case before him was under article 533 of the Italian Civil Code] which provided that:

“For the purpose of obtaining restitution of the property, the heir can request recognition of his hereditary status against whomever possesses all or part of the heritable property under claim of heirship or without a claim of any kind”.

124. He therefore saw this as being a claim in restitution, and was akin to a claim for specific performance of the contract (as in *Webb v Webb* [1991] 1 WLR 1410, or a personal claim against a trustee relating to the dissipation of money (as was a characterisation given to the proceedings under consideration in *Akers*. Both types of claim were regarded as an *in personam* claim even though they related to property. Master Cook thus (at [94]) took it to be:

“... established law that the enforcement of equitable obligations are personal obligations and they are therefore *actions in personam*.”

125. It is clear that his thinking was very much influenced by the fact that the foreign judgment he was considering operated only between the parties to that action did not bind the world. He considered that it must be regarded therefore as an action *in personam*. He agreed with the submissions made by Rita’s counsel that the proceedings could not be considered to be the administration of an estate, paying particular regard to statements in Williams, Mortimer & Sunnucks *Executors, Administrators and Probate*, 21st edition which distinguished the law of administration of estates and the law of succession – the latter concerning beneficial entitlement to, and distribution of, the deceased’s estate after discharge of his or her liabilities”.
126. He noted also the different definitions to these two terms given in the fifth edition of *Dicey* that was published in 1932 and so was current at the time that the 1933 Act was being drafted. This defined “administration” and “succession” separately:

“Rule 75... In this Digest, unless the context or subject-matter otherwise requires,

(5) “Administration” means the dealing according to law with the property of a deceased person by a personal representative

(6) “Succession” means beneficial succession to the property of a deceased person.”

...

The terms “administration” and “succession” are purposely so defined as to be applicable to foreign countries (e.g. to France) no less than to England. The two things are essentially different, for the one means the dealing with a deceased’s person’s property according to law, the other the succeeding to it beneficially. And English law, in common with the systems which follow the law of England, emphasizes the distinction between administration and beneficial succession.”

127. In relying on these quotations, I consider that Master Cook was considering only part of the story. In that edition *Dicey* went on to say on page 336 (after giving a slightly more expansive definition of “succession”) that
- “But, under English law, though administration is kept absolutely distinct from succession, there can be no succession to property without administration; for the possibility of dealing fully and legally with the property of an intestate or testator depends, as already pointed out, upon someone having obtained from the Court, in the form either of letters of administration or of probate, authority to deal with the property according to law, all, in other words, to administer it”.
128. It may be noted that the Italian Judgments in our case and the Italian judgment being considered by Master Cook in *Del Curto* each cut across the requirement for an “administration” (which term was used by *Dicey* as dealing with the administration of an estate either by obtaining letters of administration or probate) in a differing manner:
- i) in the case before the Deputy Master by declaring (by reference to rules in the Italian Civil Code) provisions in Davide’s English Will (and apparently the whole Will including the appointment of executors) to be invalid, then dealing with the resulting intestacy according to Italian rules on intestacy, and then converting the claim in intestacy into a claim for money; and
 - ii) in *Del Curto* by ordering a restitutionary payment without invalidating any Will.
129. Accordingly it is not as clear to me as it was to the Deputy Master that I am dealing with a pure question of succession. The question that was being considered by the Italian court was not a pure question of succession: the elements dealing with succession were themselves dependent on the question of what instrument, or law of intestacy should apply - a point that is properly considered as a question of the administration of estates, or probate as was recognised within the explanation given of this term in the fifth edition of *Dicey* quoted at [127] above. That question in turn was determined (applying Italian rules) by the finding made by the Italian courts as to the paternity of Andrea and Antonio.
130. Looking at the matter afresh, I can see that there are a number of different ways in which this the Italian Judgments could be characterised:
131. First, the determination of the Italian Courts was based on their own findings as to the paternity of Andrea and Antonio (a question of family status).
132. Secondly, it is important that the key findings of the court were to invalidate the succession provisions of Davide’s Will. It is correct to describe this as a question of succession. However that is not the whole story. The Italian Judgment is also purported to annul the Will, which would conventionally be regarded as a matter relating to probate and/or the administration of estates.
133. The Deputy Master was not incorrect in characterising these key findings as “succession” when he was regarding “succession” as being included in the term “administration of estates”. If, however, the terms “succession” and “administration of

estates” must be given different meanings for the purposes of the 1933 Act, then in applying the 1933 Act, the fact that the Italian courts purported to nullify an English Will leads to the conclusion that the courts in dealing with Davide’s estate were purporting to deal with the administration of the estate (or, if different a probate, matter) as well as succession.

134. Thirdly, insofar as the Italian Judgment dealt with the validity of a property transfer in Italy, this was a question regarding real property in Italy and clearly was something within the jurisdiction of the Italian courts. This, however, is something of a side issue since the registration of the Italian Judgment would only be valid insofar as it results in a money judgment and anyway the English court is unlikely to contribute much to the enforcement of that finding.
135. Fourthly, insofar as the Italian Courts made findings in relation to Quintilio’s estate that swelled the Davide’s estate, this is also a question of succession but also had a bearing on the administration of that estate, in that it cut across the administration of the Quintilio’s English and Italian Wills. Insofar as the Italian Courts made orders concerning the ownership of property those questions might also be regarded as questions relating to property in the United Kingdom (as regards some of the property) or in the Republic of Italy (as regards other property).
136. I reject, however, the contention that because the net result of the Italian Judgments was to order a payment, that matter is sufficient to characterise the proceedings as proceedings relating to “restitution” (as was found to be the case in *Del Curto*). The Respondents argue that whilst the Italian court gave a monetary judgment it is clear that that judgment in form and essence was a declaratory judgment in respect of the estates of Davide and Quintilio. I agree, and I would add that it was one that pronounced against the validity of a Will and dealt with matters of paternity (or family status) and legitimacy.
137. It is appropriate to look beyond the remedy and to consider the nature of the proceedings that the court was dealing with, which related to inheritance in its broad ambit, including both succession and administration of estates and based on a finding relating to paternity.

D. Other arguments raised by counsel

138. Before making any determination on Ground 2, I should deal with various arguments raised by counsel on both sides, insofar as they have not already been dealt with.
139. The Appellants make the argument that whether the Italian Judgments were registrable under s.4(2)(c) in all the circumstances of the case as the jurisdiction of the Italian Court is recognised by the law of England and Wales as expounded *inter alia* in *Dicey, Morris and Collins on the Conflict of Laws* and *Private International Law in English Courts* (“*Dicey*”).
140. In particular the Appellant relies on the distinction between administration of estates and succession, relying on the commentaries in such works as *Dicey* (both in the latest, 16th, Edition) and in the 5th edition as quoted by Master Cook which was in force at the time that the 1933 Act came into force and in *Williams, Mortimer & Sunnucks on Executors, Administrators and Probate*, 22nd Edition.

141. The Appellants argue that the Deputy Master was therefore in error in regarding the phrase “administration of estates” in s.11(2) of the 1933 Act as applying to the Italian Judgments when he had in fact determined that they were to be characterised as relating to succession.
142. In relation to this point, I did not think it is entirely clear that the draftsman of the 1933 Act would have understood this distinction.
143. The Respondents have made a contrary argument by reference to the Administration of Estates Act 1925, which they point out is more or less contemporary with the 1933 Act and uses the similar phrase in its long title referring to the “administration of the estates of deceased persons”. They point out that that Act hardly mentions the word “succession” at all and yet was a consolidating statute that dealt with both testate and intestate inheritance, as well as other matters. The Respondents are correct that this Act does deal with matters relating to succession within the definition given by *Dicey* – s.45 abolished certain rights of descent that would have affected succession; s.46 determined who would inherit on intestacy. This was so despite the long title of the act being “an Act to consolidate Enactments relating to the Administration of the Estates of Deceased Persons”, with no mention of “succession”. I therefore agree that the argument that the statutory draftsman must have meant to exclude “succession” (a term not mentioned at all within the 1933 Act) is somewhat weakened by this consideration.
144. Secondly, the Appellants argue that the Italian Judgments were anyway of their nature proceedings relating to a claim *in personam*, and here quote the commentary in *Dicey* at [11-002] which defines a claim *in personam* as follows:
- “A claim in personam may be defined positively as a claim brought against a person to compel that person to do a particular thing, e.g. the payment of a debt or of damages for a breach of contract or for tort, or the specific performance of a contract; or to compel that person not to do something, e.g. when a prohibitory injunction is sought. A claim in personam may be negatively described as any claim which is not an Admiralty claim in rem, a probate claim, or an administration claim. A claim in personam does not include a proceeding for divorce or judicial separation, or proceedings for a declaration of nullity of marriage or of legitimacy or regarding the custody of children, or a proceeding in bankruptcy, or an application to set aside an arbitral award.”
145. The Appellants note that claims about “succession” are not listed alongside probate and administration in this definition, and conclude that this was a deliberate omission here as well as in section 11(2) and therefore this definition supports their argument that the Italian Judgments were determining a claim *in personam* and therefore the Italian Court had jurisdiction under s4(2)(i).
146. It seems to me that this citation does not entirely support their case, given the inclusion in the list of things that are not a claim *in personam* of (i) a probate claim and (ii) of proceedings relating to the legitimacy of children.

147. First “probate” here does not have the narrow meaning contended for. Elsewhere in *Dicey* (at [11-218]), in commenting on where the court will recognise jurisdiction for the purposes of service outside the jurisdiction under CPR 6.36 “probate” *Dicey* explains:

“These clauses deal with claims concerning **the administration of estates and succession matters**. They include claims for the grant of probate or letters of administration, or the revocation of such a grant, **or for a decree pronouncing for or against the validity of an alleged will**. Whereas claims for a remedy in proceedings for the administration of an estate are confined to those who die domiciled in England, there is no such territorial restriction in relation to probate claims or those for rectification of a will.” (Emphasis added)

148. The Italian Judgments purported to pronounce against the validity of Davide’s English Will, so may be considered to be within this wider definition of probate. They also dealt with the question of the legitimacy of Antonio and Andrea.
149. The Respondents argue that as Davide had made a Will, governed by English law, relating to his worldwide assets (the majority of which were situated in England) and was at all times an English resident and had an English domicile, England was the proper place for determining the validity of that will.
150. The Respondents refer back to the common law rules for recognition of jurisdiction and in particular to the Privy Council case of *Singh v Raja of Faridkot* [1894] AC 670 and *Schibsby v Westenholz* (1870-71) L.R. 6 Q.B. 155 for the proposition that at common law English law recognises domicile as the principle for questions of status or succession quoting Lord Selbourne in the *Raja of Faridkot* case:

“Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over moveables within the territory; and, in questions of status or succession governed by domicile [*sic*], it may exist as to persons domiciled, or who when living were domiciled, within the territory”

151. The Respondents argue this point also on the basis of *Sidmetal*, which they note was cited without disapproval in *Black-Clawson v Papierwerke* [1975] AC 591. That was indeed one of the points made in *Sidmetal*. However I note that *Sidmetal* also recognised that the deeming provisions that we have considered above in the 1933 Act would overrule the common law basis for the purposes of the 1933 Act where they apply, and therefore this point only goes so far. As noted by Males LJ in *Strategic Authorities* the right approach is to consider the Act on its own terms and in the light of the purpose of the legislation.
152. The Respondents also argue that the Deputy Master was correct at [38] in the Judgment to consider the provisions in the Order which at Article IV(3) stated:

“The provisions of paragraph (I) of this Article shall not apply:

(a) to judgments in matters of family law or status (including divorce decrees or other judgment in matrimonial causes);

(b) to judgments in matters of succession or the administration of estates of deceased persons;

.....”

153. The Respondents point out that the approach that the Deputy Master made to the interpretation of the 1933 Act allowed the Act to be in conformity with the level of reciprocity intended by this Order. This point only goes so far since it is difficult to see how an Order passed in 1973 can affect the interpretation of an Act passed in 1933.
154. The Respondents also make an argument based on the interpretation of s.11(2) noting that the matters which that section says shall not be deemed to be included as within the expression “*action in personam*” include “any proceedings **in connection with** any of the following matters...” (and, of course the “administration of estates” is one of those following matters). They make the argument that the words “in connection with” broaden the reference to “administration of estates” so that s.11(2) does not merely exclude proceedings that relate directly to the administration of estates from the category of proceedings *in personam* but it excludes also proceedings that are **in connection** with such proceedings.

E. Conclusion in relation to Ground 2

155. Having regard to all of the arguments above, the purpose of the 1933 Act, the wording of the relevant provisions of the 1933 Act and the basis on which the Deputy Master made his determination, I reach the following conclusions:
156. The purpose of the 1933 Act was to allow foreign judgments to be registered where there is reciprocity. If there is any ambiguity in the provisions of the Act they should be resolved having regard to that purpose.
157. It would be an unsatisfactory position and not consonant with the purposes of the 1933 Act if the 1933 Act was to be interpreted in a way that would cause the English courts to recognise and register a judgment which implemented a decision of a foreign court that was contrary to the decision that would be made in the English court in circumstances where the English court should be regarded being the court with jurisdiction in the matter - particularly if that foreign court was not offering reciprocity in relation to that matter.
158. The points in the preceding two paragraphs are not a reason for ignoring the wording in the 1933 Act where it is clear, but do provide a guide as to how to resolve any ambiguity in the Act.
159. The court is obliged under s.4(1)(a) to set aside a judgment where the original courts had no jurisdiction – which I consider must be determined in accordance with English common law, as modified by the deeming provisions within the 1933 Act.

160. As to the English rules in relation to jurisdiction I find the following particular rules expounded by *Dicey* as being particularly relevant:
- i) Rule 169: The material or essential validity of a will of movables or of any particular gift of movables contained therein is governed by the law of the testator's domicile at the time of his or her death, including its choice of law rules.
 - ii) Rule 170: The material or essential validity of a will of immovables or of any particular gift of immovables contained therein is governed by the law of the country where the immovables are situated (*lex situs*), this is including its choice of law rules.
161. The reference to "material or essential validity" in these rules includes any issues where a Will is said to be invalid as a result of forced heirship provisions. In my view it would also include the arguments based on articles 624 and 231 and 232 of the Civil Code that were relied on to invalidate the provisions of the English will leaving Davide's estate to Dante and Anna.
162. Accordingly, I consider that the Italian courts were taking jurisdiction here in relation to matters for which they would not be regarded as having jurisdiction according to the English rules concerning jurisdiction - except insofar as they were dealing with immovable property in Italy.
163. Further, I note that the Italian courts were not offering reciprocity, in that they would not recognise the jurisdiction of the English court in relation to matters relating to the administration of estates or succession.
164. Accordingly, it seems to me that unless the wording of the 1933 Act unambiguously indicates otherwise, I should favour a purposive reading of the Act that does not afford to the Italian courts a jurisdiction over a matter that they would not have under the English common law notions of which country should take jurisdiction.
165. The Deputy Master found in favour of the Respondents on the basis of two alternative arguments:
- i) first because the Italian Judgments were to be regarded as being in respect of "succession" must have been intended to be included within the term "administration of the estates"; or
 - ii) in the alternative, because the definition of actions *in personam* in any event excludes claims in respect of succession.
166. As regards the first argument, on balance I accept the Appellant's argument that the parliamentary draftsman must have understood that English law distinguished between the administration of estates and succession (and therefore was not within the deeming provision within s.11(2)). Accordingly, the Deputy Master may have been incorrect in his precise formulation of that argument.
167. However, there is a good argument that questions of succession, particularly in the way that they play out when two different systems of law recognise different bases for the

acceptance of the validity of a will, or whether it is to be overruled by legal requirements such as forced succession, can be regarded as arguments that are “**in connection with** the administration of an estate” and thus for s.11(2) to apply in that way.

168. As regards the Deputy Master’s alternative argument, I consider the case for this to be even stronger. As I have mentioned above, s.4(2)(c) that the 1933 Act deals with the types of case that fall outside the categories of proceedings which fall between the categories outlined in s.4(2)(a) and (b) (which deal with actions *in personam* in certain circumstance, actions *in rem* or property outside the original court).
169. It seems to me that this case is one such case, since it all but defies categorisation as it included declarations in relation to:
- i) the status of Antonio and Andrea as Davide’s natural and legitimate sons (a matter of family status);
 - ii) the essential validity of Davide’s English will (which could be seen as a matter of administration of estates or probate);
 - iii) who should be regarded as the owner of property in Italy (which could be seen as having as its subject property in Italy);
 - iv) who should have been the owner of the property in England (which could be seen as having as its subject property in England).
170. In such circumstances, it seems to me that the best interpretation of the 1933 Act, and one that would accord fully with the purposes of the Act would be that in cases such as this where there is no one clear characterisation of the case, the matter should fall to be dealt with under s 4(2)(c) and be resolved according to the question whether the jurisdiction of the original court over the matter is recognised by the law of the registering court.
171. Where different elements of a foreign judgments to be registered fall to be dealt with in accordance with different rules of jurisdiction, then it may also be appropriate to break the judgment down to allow registration of the judgment to the extent, but only to the extent, that the English courts would recognise as being properly within the jurisdiction of the overseas courts.
172. I will return to this last issue in relation to Ground 3 and in my conclusion.

7. GROUND 3

173. Ground 3 is that the Deputy Master erred in not considering whether the Italian Judgments could be registered in circumstances where the subject matter pertaining to immovable property at the time of the original proceedings in addition to succession such that the Italian Courts have jurisdiction under English conflicts of law principles and where the Judge had acknowledged that the claims have a multiplicity of subject matter.
174. It will be apparent from my analysis above that I have sympathy for this ground of appeal. Where a foreign judgment deals partly with matters that are within the actual or deemed jurisdiction of the foreign court and partly with other matters that are not, then

to the extent possible, it does not seem to me to be consonant with the purposes of the 1933 Act to adopt a “winner takes all” approach. If the court considers that the overseas court had jurisdiction in some matters, but not in other matters I agree that it would be appropriate to separate those matters out insofar as possible.

175. On the basis of the analysis I have undertaken above it seems to me that:

- i) the Italian court had jurisdiction to deal with succession to property included within the Italian jurisdiction, and in doing so to implement the Italian rule of enforced inheritance in relation to Quintilio’s estate – insofar as this was the subject of his Italian Will, or otherwise related to immovable property within Italy;
- ii) the Italian courts had jurisdiction to deal with the validity of the sale of interests in property in Morfasso;
- iii) the Italian courts did not have jurisdiction to invalidate Davide’s Will and to determine who would succeed to his property in England, however they did have jurisdiction to apply Italian forced inheritance rules in relation to any real property owned by Davide in Italy (which the Bologna court found would have applied had Antonio and Andrea not succeeded anyway as the result of what the Italian court considered to be an intestacy).

176. It seems to me, therefore, that the Deputy Master should have broken down the Italian Judgments in the manner I have just indicated and allowed the Judgment to be registered insofar as it reflected that analysis.

177. I consider, therefore, that the Appellant do therefore succeed to that extent under Ground 3.

8. GROUND 4

178. Ground 4 is that the Deputy Master was wrong not to consider whether the Italian Judgments were registrable in all the circumstances where the jurisdiction of the Italian Courts is recognised by the law of England and Wales as expounded in certain textbook authorities.

179. The arguments made on behalf of the Appellants supporting these points are as follows.

180. They argue that the learned Deputy Master omitted to consider whether the Italian Judgments may have been registrable under Section 4(2)(c) of the 1933 Act, namely in an action *other than* any action mentioned in either paragraph 4(2)(a) or paragraph 4(2)(b), if the jurisdiction of the Italian Courts was recognised by the law of England and Wales. If the Deputy Master considered that the subject matter of the action in Italy was *not* an action *in personam* for the purposes of Section 4(2)(a) he should have considered whether the Italian courts had jurisdiction on account of there being immoveable property in Italy.

181. They argue that had the Deputy Master considered whether the jurisdiction of the Italian Courts may have been recognised under English law he would have considered *Dicey’s* Rule 163, which holds that:

“The courts of a foreign country have jurisdiction to determine the succession to all property of a deceased person which is situated in such country. This jurisdiction is unaffected by the domicile of the deceased.”

182. As I have mentioned, given the nature of the determinations made by the Italian Courts there are other rules within *Dicey*, (Rules 169 and 170) which also need to be considered. However, I agree that the fact that the courts Italy would be regarded as having jurisdiction to determine the succession to all property of a deceased person which is situated in that country. Accordingly, I agree that the Deputy Master could, and I think should, have considered whether the Italian Courts had jurisdiction to determine succession in respect of Davide’s and Quintilio’s Italian assets.
183. I do not accept, however, the further arguments that, under Article 50 of Italian Law 218/1995 the Italian Courts have jurisdiction in matters of succession if the deceased was an Italian citizen at the time of their death and that to provide the Appellants with a remedy the learned Judge could have applied the doctrine of *renvoi* and applied the Italian Courts’ choice of law in deciding whether the Italian Courts had jurisdiction, over the whole of Davide’s estate and that of Quintilio. As I have mentioned, it is necessary for questions of jurisdiction to be governed by English law, and not the law of the overseas jurisdiction, whether directly or by means of *renvoi*.

9. GROUND 5

184. Ground 5 is that the Deputy Master erred by failing to consider whether refusing registration of the Italian Judgments would be contrary to public policy in all the circumstances where his judgment conflicted with previous decisions of the courts of the same level (*Pescatore* and *Del Curto*) and set a precedent depriving other litigants of the remedies of registration and enforcement when the intention of Parliament in ratifying the 1933 Act was to avoid unfairness.
185. I do not accept this argument, except, perhaps, insofar as it refers to the immovable assets in Italy.
186. As we have seen, the important principle of the 1933 Act was to allow reciprocity. The Italian Courts were not providing reciprocity in respect of matters of succession, and so it is difficult to see a general argument why the English court should allow for this is a matter of public policy.
187. Insofar as this matter is argued on the basis that the Deputy Master has created uncertainty by conflicting with the previous decision in *Pescatore* and *Del Curto*, that adds nothing to the consideration I have already given in relation to Grounds 1 and 2. It does not provide an independent ground for accepting the appeal.

10. TRANSACTION AT AN UNDERVALUE

188. The skeleton argument for the Appellants makes an argument that the court should declare a transfer made by Dante of 3 Broadfields Avenue to his daughters on 29 April 2020, apparently for no consideration to be a transaction for an undervalue. There are three reasons why the court should not do this:

- i) This matter is outside the subject matter of the appeal and it would not be appropriate to deal with it here, even if I was providing a judgment which gave the benefit of that property to the Appellants;
- ii) even if I was finding in favour of the Appellants and ordering the registration of the Italian Judgment, that judgment does not purport to give them any interest in this property – merely a cash payment; and
- iii) in any case, for the reasons I have given, I am not going to allow the Appellants to register the Italian Judgments to the extent that that would purport to deal with any assets other than real assets in Italy.

11. CONCLUSION

- 189. The Deputy Master was correct in his finding that the court should set aside, (and in this case refuse to register) a judgment of the Italian court that purported to deal with the inheritance of the assets of persons domiciled and resident in England, but in my view only insofar as the assets to be inherited constituted assets situated in the United Kingdom, and succession in the case of an individual who was domiciled in England.
- 190. He reached that conclusion in two different ways – first by finding the 1933 Act probably did include, within the definition of “administration of estates” matters concerning succession.
- 191. This was by no means clearly a wrong conclusion, as we have seen when considering the use of that term within the Administration of Estates Act 1925, and coupling this with a purposive reading of the 1933 Act, with its emphasis on reciprocity and the widespread acceptance that it was not intended to change the common law rules on recognition of jurisdiction. However, on balance, I think the evidence we see from the 5th edition of *Dicey*, that succession and administration of estates were at the time of the 1933 Act well understood as meaning different things, including in the context of provisions dealing with conflicts of laws, and so I will not agree with the Deputy Master on this point.
- 192. However, it does not follow that because “succession” was not separately mentioned within s.11(2) that a case relating to succession regarded as an action *in personam*. That does not follow as a matter of logic. Certainly it does not follow if one takes a purposive interpretation of the 1933 Act.
- 193. Accordingly, I accept the Deputy Master’s alternative argument that the Italian Judgments could not be regarded as actions *in personam*. They involved determining the paternity and legitimacy of Andrea and Antonio; they purported to invalidate an English Will, making them akin to a probate action and they made declarations regarding property. The Italian Judgments thus fell into the catch-all category provided for in s.4(2)(c) of the 1933 Act and were enforceable only if (and, I would add, only to the extent that) the jurisdiction of the original (Italian) court is recognised by the registering (English) court.
- 194. The Deputy Master took the view that almost the whole succession relating to Davide concerned rights over the property at 3 Broadfield Avenue (which was property to be

inherited under an English Will) and therefore, refused to register the entirety of the Italian Judgment.

195. I consider that he went too far in doing this. He had noted the passage from *Macmillan* that I reproduce at more length at [23] above that:

“In any case which involves a foreign element it may prove necessary to decide what system of law is to be applied, either to the case as a whole or to a particular issue or issues”

but did not go on to consider that there were separate issues here that could be dealt with separately sensibly and in line with the purpose of the legislation to recognise judgments where there would be reciprocity.

196. Having determined that the multi-faceted Italian Judgments need to be dealt with under s.4(2)(c) of the 1933 Act it was, and is, appropriate to consider the extent that the Italian Judgments provided remedies in relation to matters that were properly within the jurisdiction of the Italian courts (having regard to English conflict of laws principles) and in how far they were purporting to provide remedies in relation to matters outside their jurisdiction.
197. As we have seen, the English courts would certainly recognise the ability of an Italian court to deal with matters of succession to Italian real property (including forced succession). The English Court would not, however, beyond that recognise any ability of an Italian court to deal with the validity of an English Will.
198. In my view therefore it is appropriate to recognise the Italian Judgments insofar as they deal with the succession to Quintilio’s estate in Italy. The Italian court could also properly, under English law ideas as to jurisdiction, deal with Davide’s estate in Italy insofar as it related to immoveable property as swelled by the determination of the Italian Courts in relation to Quintilio’s Italian estate, at least in respect of the Italian rules of forced inheritance (which the Bologna court found to apply), but not through its purporting to invalidate Davide’s Will.
199. I consider that it is appropriate then to calculate the recovery that would be due to Andrea and Antonio on this basis and I set out such a calculation below.
200. It may be argued that in doing so I am going outside the parameters of the 1933 Act in that this requires the registration of a particular money judgment, and it is not for the courts to rewrite the judgment of the overseas court to register a judgment for a different figure than the one calculated by the overseas court.
201. However, I do not think that this argument is correct. As we have seen, from *Macmillan* (see [23] above), the court may look either at a particular issue or separately at issues to determine the relevant system of law to be applied. In other words, it is not necessary to adopt a “winner takes all” approach. Clearly, it is in the interests of justice that one should not do so - even where there is a single money judgment to be dealt with under s.4 of the 1933 Act that depends in part on matters where the original court had no jurisdiction (under English law principles) and in part on other matters where the original court would so be recognised as being the proper forum for determining the matter. It is inevitable that if such an approach is taken, this would require breaking

down the original single money judgment to reflect the elements that the English court will recognise as registrable and those which are not.

202. Accordingly I consider that such a calculation is warranted in this case. I am also fortified by an acknowledgement made through counsel by the Respondents that they would not object to the Appellants receiving a due share of the assets in Italy only.
203. The principles for this calculation derive from my finding that the Italian Courts had jurisdiction in relation to matters of forced succession, but only to the extent of the immovable property in Italy. To reflect this, the calculation should be as follows:
204. First, calculate the size of Davide's Italian estate at his death, as swelled by the forced inheritance he received from Quintilio using the values found by the Italian courts. This is agreed to be €410,855.93.
205. Secondly, calculate the value of two thirds of Davide's total worldwide estate as calculated in the Italian Judgments (one third each for Antonio and Andrea according to the forced settlement provisions found to be applicable by the Bologna Court). This comes to €273,923.95. This figure represents the most that the Italian courts could deal with by way of forced inheritance in relation to Davide's estate.
206. Secondly, compare this with the value at Davide's death the value of Dante and Anna's share of the Italian real property transferred (or to be transferred) to Andrea and Antonio by the Italian Judgments as this represents the most that I am recognising as the element of the Italian Judgments that the English court should recognise to satisfy Antonio and Andrea's right of forced inheritance. This figure is somewhat difficult to extract from the Italian Judgment but I consider that the appropriate figures are those under the heading "In the event of a simulated purchase and sale" on page 59 of the translation of Mr. Montarani's Technical Report (items (i) to (o) which deal with real property in Italy totalling a value of €45,865.79.
207. Next calculate the payments due from the Respondents to the Appellants as the lesser of the figure calculated at [205] and that calculated at [205]. This gives us the basic figure that may be registered as being due and registrable rather than the figure of €381,796.31 provided for in the Italian Judgments. This figure is €45,865.79.
208. Next add to the figure in [207] the appropriate figure for costs. I understand that the Piacenza Court made no order for costs and that Bologna Court awarded the Appellant's fixed costs (of the appeal only) at the rate of 15% of the appeal costs and allowed €2,034 for this. It is appropriate that this figure be prorated to reflect the difference between the award allowed by the Bologna Court (€381,796.31) and the basic figure that I am allowing to be registered (€45,865.79), which is 12.01% of such figure. Applying that percentage to the costs awarded (€2,034) reduces the costs award to €244.28. Adding this figure to the figure in [207] increases that figure to €46,110.07.
209. To this figure there should be added what the Italian courts refer to as "legal interest" from the date of the Italian First Instance Judgment, but calculated on this lower figure. Both sides agree that this figure should be calculated at the applicable statutory interest rate applied by the Italian courts for the period between the date of the Italian first instance judgment (21 February 2020). These rates (which varied over time between

0.05% and 5.00%) are substantially less than the default rates of interest used within the English courts and I consider it reasonable to accept this argument.

210. The court should also register the joint and several obligation on the Respondents and the Appellants to pay the Technical Adviser's costs on a joint and several basis and a right of contribution among the Respondents and the Appellants if one side or the other has already paid all or a disproportionate amount of these costs.
211. I will ask the parties to agree a draft order reflecting the above principles, or if they are unable to agree, to set out the basis of their disagreement so that I can settle the form of the order on paper.
212. A short hearing should be listed as soon as possible after the handing down of this judgment to deal with any consequential matters including costs and any application for permission to appeal.
213. In view of:
 - i) the fact that, having received further representations in relation to the calculations and provisions now reflected at [204] to [210] above, I have made material changes to the final version of this Judgment from the draft previously sent out to the parties;
 - ii) the fact that this decision is being handed down remotely without attendance of the parties; and
 - iii) the guidance given in *McDonald v Rose & Ors* [2019] EWCA Civ 4,

that consequential hearing should be regarded as the adjourned hearing of the hand-down of the judgment for the purposes of allowing any of the parties to apply to this court for permission to appeal and I will allow an extension of time to the parties on either side for filing any appellant's notice until two days before (i) the date listed for such consequential hearing (or if it is listed within a window of time), (ii) the first date within that window.