The God That Won

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1 Introduction

In *Bumper Development Corporation Ltd.* v *Commissioner of Police for the Metropolis and others*[1] Purchas LJ., delivering the judgment of the Court of Appeal, upheld the decision of Ian Kennedy J. that a ruined 12th century Indian temple (recognised as a juristic entity in Indian law) was also capable of being recognised as a juristic entity in English law and was, accordingly, entitled to sue in the English courts through its 'fit person' to recover religious artifacts stolen from its site. On June 4th 1991 it was reported that the House of Lords had rejected an application for leave to appeal by Bumper (a Canadian Oil Company). Subsequent to the refusal of this application the religious artifact in question – a 12th century bronze 'Nataraja' representing the Hindu God Siva, the value of which is reported as being *now* £1.5 million – was delivered up to Lawrence Graham (solicitors acting for the various Indian claimants). The statue or idol was then entrusted to the Indian High Commission in London, which held a celebratory reception on July 22nd to mark the event, and has now been returned to India. In simple terms, this decision will undoubtedly help the Indian authorities to stamp out the smuggling of historic artifacts. It will doubtless also have a wider and more general importance in the message it sends out.

2 The Factual Background

In August or September 1976 an Indian landless labourer named Ramamoorthi, who lived in a hut near the site of a ruined Hindu temple at Pathur in the State of Tamil Nadu called the Arul Thiru Viswanatha Swamy Temple (the 'Temple'), was excavating foundations for his new cow-shed in a place which was either immediately adjacent to, or formed part of the site of the Temple, when his spade struck a metal object. The object struck was a major idol known as a Siva Nataraja (the 'Pathur Nataraja'):[2] it proved to form part of a series of bronze Hindu idols (the 'Pathur bronzes') buried on the site which were later identified as members of a 'family'. The

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remaining artifacts unearthed by Ramamoorthi were subsequently found to be from the Chola period. In all probability these idols formed part of the religious objects in the Temple (which had been endowed in the late 13th century by a Hindu notable, Arul Thiru Viswanatha) and which had probably been buried to prevent them from destruction by invading Muslims. Ramamoorthi realised immediately that he had struck objects of value, promptly reburied them in the pit he had dug and contacted a dealer in religious artifacts to whom the Pathur Nataraja was sold. A series of re-sales followed and the Pathur Nataraja was last traced conclusively to a dealer in Bombay, Valar Prakash (who remained untraced at the time of the actions).

All the parties to the action accepted that the Temple had lain in a ruinous state and unworshipped for centuries. It must also be appreciated that amongst the surviving relics discovered at the Temple was an object of religious worship known as a Sivalingam which is a sculpted stone object representing a phallus and which would have been positioned in the sanctum and the focus of all religious worship. Since the inception of proceedings in the instant case it had been restored as an object of religious worship at the Temple. On June 10th 1982, the Bumper Corporation purchased a Nataraja (the 'London Nataraja') in good faith from a dealer called Sherrier who produced what proved to be a false provenance for it for the purposes of the sale. While the London Nataraja was in the hands of the British Museum for appraisal and conservation it was seized by the Metropolitan Police as part of a policy of returning stolen religious artifacts to their true owners. Bumper brought an action against the Commissioner of Police and two of his officers in detinue and conversion claiming the return of the Nataraja and damages. The proceedings in the Court of Appeal flowed from the position of the defendants as interpleaders and the addition of others as 'claimants' to the London Nataraja in an appeal by Bumper from an order made by Ian Kennedy J. on April 17th 1989 as a result of a judgment delivered by him on the trial of a preliminary issue.

3 The Legal Background

The respective 'claimants' were as follows: (1) the Union of India as first claimant;[3] (2) the State of Tamil Nadu as second claimant;[4] (3) Thiru Sadagopan who claimed as the fit person of the Temple on his own behalf as third claimant;[5] (4) the Temple itself suing through Sadagopan as fourth claimant; and (5) the Sivalingam which was added as fifth claimant at a late stage of the trial of the issue.[6] The Sivalingam was said to represent or alternatively to remain endowed with the continuing pious intentions of the 12th century benefactor who had endowed the Temple.[7]

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The 'Nataraja'
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4 The Trial

The issue tried by the Judge related to the title to the London Nataraja possessed by the various parties and fell naturally into two parts:- (1) were the 'London Nataraja' and the 'Pathur Nataraja' one and the same object? and (2) *if, and only if* they were, did any of the 'claimants' have a superior title to the Nataraja than Bumper?

4.1 The First Main Issue — Identity

In essence, the claimants' case was based around the evidence of Ramamoorthi and others who purported to identify the 'London' Nataraja and the 'Pathur' Nataraja as being one and the same. Their case was supported by expert evidence as to the stylistic similarity between the 'London Nataraja' and 'Pathur bronzes' and other expert evidence of a metallurgical, geological and entomological nature. Bumper's case was built principally on the evidence of a Dr. Presencer (who was accepted as an honest witness) who stated that he had seen the 'London Nataraja', which was the object purchased by Bumper, in London on May 13th 1976, i. e., before Ramamoorthi dug up the Pathur Nataraja. His evidence, that an 'antique Nataraja', *viz.* one that had long been buried and therefore suffered accordingly, was shown to him in May 1976, if accepted, was conclusive of the issue (that the London Nataraja could not be the Pathur Nataraja) in favour of Bumper. In support of his evidence, it was agreed that the London Nataraja had obviously been buried for centuries and had deteriorated as a result. Bumper further relied on metallurgical evidence to show the dissimilarity between the 'London Nataraja' and the 'Pathur bronzes' collectively. The Judge preferred the evidence of the claimants and rejected that of Dr. Presencer (whom he believed to be mistaken as to the date on which he had seen the antique Nataraja) and held that the 'London Nataraja' and the Pathur Nataraja were *one* and the *same*.

4.2 The Second Main Issue – Title

On the second part of the case the Judge held that the fourth claimant — the institution comprising the Temple (which remained in being as an institution), with its idols and the Sivalingam therein, suing by its 'fit person', custodian or next friend, the third claimant (Sadagopan) as 'trustee' — had a valid and superior title to the Nataraja to that enjoyed by Bumper; alternatively, that the pious intention of the benefactor as enshrined in the Sivalingam and represented by the third claimant, had a good title to the Nataraja; and that, in any event, the state of Tamil Nadu would have title to the Nataraja under the provisions of its H.R. and C.E. Act and/or the Treasure Trove Act.[8] In coming to these conclusions, the Judge rejected, *inter alia*, Bumper's defence under the Limitation Act,

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1980. He concluded that: '... the pious intention of the 12th Century notable, who gave the land and built the Pathur temple, remains in being and is, personified by the temple itself, a juristic entity which has a title to the Nataraja superior to that of the defendant'.[9]

Bumper appealed against both findings of the Judge on the issue and claimed a declaration that each of the claimants had failed to prove it had any title which would be recognised by the English court.[10] The claimant respondents lodged various cross-appeals.[11]

5 The Appeal

The Court of Appeal adopted the same methodology for dealing with the issues as did the Judge.

5.1 The First Main Issue – Identity

The Court of Appeal dealt first with the question of the identity of the Nataraja. This, in itself, involved a number of issues *viz.* the direct and various forms of scientific evidence of the respective parties and the resolution of the conflict of evidence in favour of the claimants. The central evidential point which the Court treated as axiomatic was that the exercise in the Court of Appeal was 'to consider the transcript to see whether it [could] be demonstrated that Ian Kennedy J. was not entitled to make the assessment which he made; it [was] not for [the Court of Appeal] to make a fresh assessment of its own'.[12] Rejecting all Mr. David Calcutt Q.C.'s attacks on behalf of Bumper the Court stated that the Judge 'was fully entitled to come to the conclusion which he reached on each aspect of this part of the case and that he gave to each conclusion the appropriate weight when considering the global effects of such evidence as contrasted with the direct evidence of identification'.[13] On the finding in favour of the claimants, the Court commented that:

> [A]lthough of necessity the various elements of evidence leading to the question of the identification of the two Natarajas have been considered in compartments, in the end the question of whether or not there was a reliable identification established is one of a general assessment of the evidence as a whole. On this part of the case the onus of establishing identification on the balance of probabilities is on the claimants.[14]

Further evidence was admitted (this evidence was unavailable at the trial and Bumper was, thus, not estopped from adducing it) during the appeal from an American dealer, Robert Ellsworth. He testified that an 'antique Nataraja' was being offered for sale on the London market in Easter 1974, that he had examined it briefly and that he identified it now as the disputed idol purchased by Bumper. This

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evidence was, in turn, supported by soil analysis which demonstrated geomorphological incompatibility between the soil attached to the base of the 'London Nataraja' and the geology of the excavation site. It was accepted that Mr. Ellsworth's evidence could at best lead to a retrial on the issue of identification. The Court re-iterated the long established test propounded by Lord Buckmaster in *Hip Foong Hong* v *Neotia & Co.*[15] to the effect that where a new trial is sought on the basis of new evidence (there being no issue of fraud involved) the evidence must be such that it would have been a determining factor if adduced at the first trial. In effect, a new trial will not be ordered unless failure so to do results in a miscarriage of justice.

Assessing all the new evidence, the Court concluded that a retrial was not justified and upheld the Judge's finding on the issue of identification — *viz.* that the 'London Nataraja' and the 'Pathur Nataraja' were one and the same and accordingly dismissed Bumper's appeal on this point.

5.2 The Second Main Issue — Title

The next issue with which the Court of Appeal had to deal was whether any of the claimants had established that they had a better title than Bumper to the Nataraja?[16] This issue was treated in three separate logical stages:

(a) had any of the claimants a title recognised by the Tamil Nadu courts according to Hindu law as practised in *that* state;
(b) on the assumption that one or more of the claimants would be acceptable in the Tamil Nadu courts and would have a good claim to the Nataraja enforceable in the local courts, then would that claimant be recognised as capable of suing and being sued in the English courts; and finally
(c) if the answers to the first two questions were 'yes', would the claimants to the Nataraja be considered by the English courts as having a title superior to the possessory title claimed by Bumper?

Fundamentally, this part of the second issue involved a detailed examination of Hindu and, in particular, Tamil Nadu law in respect of the provisions of the H.R. and C.E. Act on the question of the 'juristic entity' of the third, fourth and fifth claimants in local Tamil Nadu law and the interesting evidential issue of the reception of foreign law into English law.

The Court considered first the evidential points. So far as the English courts are concerned foreign law is a question of fact[17] to be decided by the Judge and is not generally a matter of judicial notice. The general rule is that foreign law is assumed to be the

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same as English law unless the party asserting it to be different from English law proves otherwise. Foreign law must be proved by an expert; in this case both sides called expert witnesses who expressed diametrically opposed views on the juristic capacity of the Temple and the scope of the Tamil Nadu statutes. The Court of Appeal affirmed that where there is such a diversity of view the judge must resolve those differences as he would with any other issue of fact. Ian Kennedy J. had sought to resolve those differences by independent study of relevant Indian texts[18] and had in one instance reached a conclusion on the basis of his researches which was contrary to that which *both* experts has expressed, i.e., where there was no evidential dispute to resolve. Was his approach sustainable? The Court of Appeal approved nineteenth century authority which provides that where experts have referred to relevant texts, for example statutes and decisions, those texts form part of the expert's evidence and since they are evidence the judge can further consult those texts to enable him to assess the expert testimony[19] and help resolve any factual dispute.[20] In this case it became clear that the majority of the Judge's findings as to the Indian law were sustainable in that he resolved any points of difference between the experts by reference to texts to which the experts had themselves referred. The Court of Appeal stressed, however, that the Judge would have been wrong to prefer the evidence of one expert witness over another on the basis of independent research and the use of texts not previously referred to and hence not forming part of the evidence.[21] Further, since a judge is permitted to consider the texts only with a view to resolving a dispute between witnesses the Court of Appeal held that Ian Kennedy J. was wrong to reject the view expressed by all experts to the effect that Sadagopan was a *de facto* trustee of the Temple. The line between a judge consulting texts better to appraise the evidence and using them in substitution for expert evidence is a fine one[22] and the Court of Appeal corrected the over-involved approach of the Judge.

After dealing with the evidential points the Court examined the position of the claimants in detail under local law as proved. As far as the third claimant (Sadagopan) was concerned the Court held that:

> [C]ertainly there was no evidence upon which [Sadagopan] could be cloaked with any rights to claim the Nataraja otherwise than as the representative claiming on behalf of some other juristic entity entitled to claim the Nataraja, i.e., the Temple as enshrining the Sivalingam or the Sivalingam itself. In our view whilst the third claimant [Sadagopan] does not qualify as a juristic entity as a result of his appointment under the H.R. and C.E. Act, he is certainly qualified to act in Tamil Nadu as a representative of the fourth and fifth claimants.[23]

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The claim of the Temple was taken by the Court next. On this part of the case, it seems to have been common ground that there was no doubt that in Hindu law at least the juridical personality could reside in an idol, albeit at this stage discussion about juristic entity in relation to idols was in relation to the Nataraja rather than the Sivalingam. But could the Temple *itself* possess a juristic entity in local Tamil Nadu law such that it was capable of suing and being sued? Mr. Vadivelu's evidence (the claimants' expert on Hindu law and local Tamil Nadu law who was the Commissioner and Secretary to the Law Department of the Government of Tamil Nadu) was decisive and preferred to that of Mr. Meyer (Bumper's expert) by the Judge, who, accepting Mr. Vadivelu's evidence had held that the courts of Tamil Nadu would today accept a suit in the name and on behalf of a Temple without objection or need for amendment. The Court of Appeal commented that it was 'unable to hold that the body of expert evidence and the textbooks and reports to which reference was made, compel the conclusion that Ian Kennedy J. was not entitled to accept the expert evidence of Mr. Vadivelu'[24] and added that 'there was ample evidence upon which Ian Kennedy J. was entitled to reach the conclusion that the third claimant was an appropriate representative of the Temple for the purposes of suing or claiming possession of, or asserting the Temple's right to the Nataraja in the courts of Tamil Nadu'.[25]

Accordingly, the Court of Appeal concluded that 'the learned judge was correct in coming to the conclusion that the third claimant was properly constituted by whatever description as the person whose claim on behalf of the Temple with its idols would be recognised by the courts in Tamil Nadu'.[26]

The next part of the second issue was put thus by the Court:

> [H]aving held that the Temple is a legal person under the law of Tamil Nadu acceptable in the courts of that State as a party which, with the third claimant acting as a representative, could have sued for the recovery of the Nataraja, we must now decide whether, as the Judge held, it is likewise acceptable in the courts of this country.[27]

The question whether a foreigner can be a party to legal proceedings in England is one to be determined by English law (*lex fori*). There is no difficulty with individuals or other foreign legal persons which would be recognised by English law as having legal personality – for example, foreign trading companies.[28] The novel question which arose was whether a foreign *legal* person which would not be recognised as a legal person by English law could nevertheless sue in the English courts. The Court characterised the peculiar situation in our law thus: '[t]he particular difficulty arises out of English law's restriction of legal personality to corporations or the like, that is to say the personified groups or series of individuals'.[29] The Court

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recognised that the insistence on an essentially animate content in a legal person lead to a 'formidable' conceptual difficulty in recognising as having capacity to sue here what was 'on one view little more than a pile of stones'. In this situation, the Court sought refuge in first principles of legal personality and resorted to *Salmond on Jurisprudence*.[30] Resort to *Salmond* suggested that: (a) since legal personality was an arbitrary creation of the law it could be of as many kinds as the law permitted; (b) English law took a very limited view on legal personality when compared with other legal systems in its insistence on personified groups or series of individuals; (c) a comparative examination of these other legal systems suggested that there was no good reason why the law should not regard an institution *itself* such as a church, a hospital, a university or a library as having legal personality. The Court reasoned that:

> [T]hus *Salmond* recognises the possibilities which may not be far-fetched, of (say) a foreign Roman Catholic Cathedral having legal personality under the law of the country where it is situated; and, in order to make the concept more comprehensible, let it be assumed that it is given that personality by legislation specifically empowering it to sue by its proper officer for the protection and recovery of its contents. It would, we think, be a strong thing for the English court to refuse the Cathedral access simply on the ground that our own law would not recognise a similarly constituted entity as a legal person.[31]

In the final analysis the Court felt that the 'touchstone' for granting or withholding access to the English courts was the concept of the comity of nations which could be described as '[t]he courteous and friendly understanding by which each nation respects the laws and usages of every other, so far as may be without prejudice to its own rights and interests'.[32] The Court argued that today there was no distinction in principle between the example of a Roman Catholic Cathedral and a Hindu Temple and held that far from it being an affront to our public policy in allowing a Temple to sue here for recovery of property which it was entitled to recover by the law of its own country, it would indeed enhance public policy.[33]

According to the Court of Appeal at rock bottom the question was: what did justice demand?[34] In accordance with the demands of justice, the Court held that the Temple was acceptable as a party to proceedings and *as such* entitled to sue for the recovery of the Nataraja in the English court through the third claimant (Sadagopan) although he was not *himself* a competent party. It should be mentioned that the Court accepted that under Hindu law the Sivalingam (fourth claimant) would be recognised in Tamil Nadu as a juristic entity which could sue through its 'dharmakatar' (custodian responsible for the administration and presentation of temples and their idols which are actively in worship). However, in view of

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the Court's decision in favour of the Temple it was unnecessary to decide whether the Sivalingam would be recognised as a juristic entity entitled to sue in the courts of this country and the Court accordingly declined to do so.

It was this part of the case that attracted the most commercial law reporting attention.[35] In using the twin criteria of 'comity' and 'justice' and having resort to the expedience of public policy the Court adopted the correct approach in deciding that the Temple was a juristic entity in English law. The public policy of promoting the return of stolen artifacts and treasures (or those exported in breach of regulations) to the country of origin – at least where the country concerned is both a friendly state and a member of the Commonwealth – is to be applauded and will ensure that our courts make a significant contribution to the international protection of cultural property. Furthermore, the Court's approach in *Bumper* is entirely consonant with the reasoning and decision of the House of Lords in *Arab Monetary Fund* v *Hashim and Others (No.3)*[36] wherein the House held (Lord Lowry dissenting) that by the comity of nations the courts of the United Kingdom recognise a corporate body created by the law of a foreign state recognised by the Crown and having legal personality there, as also having legal personality here on proof of proper incorporation in that foreign country. Indeed, Lord Templeman said that: 'it would be unthinkable for the courts of the United Kingdom applying the principles of comity to reach any other conclusion'.[37]

5.3 Defences

The final point on the second main issue concerned Bumper's defences, in particular, under the U.K. Limitation Act, 1980 and the Indian Treasure Trove Act, 1878.

It was agreed by all parties that Section 3 of the Limitation Act 1980[38] would prevail and Bumper's title would be unimpeachable unless the taking of the Nataraja fell within Section 4 of the Act. Section 4 provides, in essence, that in respect of an action for conversion which arises from the theft of a chattel time does not start to run against the person in whom the cause of action is vested until the chattel is purchased in good faith. In this case, Bumper was the first person to purchase in good faith and, consequently, if the claimants action for conversion derived from the theft of the Nataraja, they would not be time-barred until six years from the date of Bumper's purchase. 'Theft' is defined in Section 4(5) of the Act[39] and the Court of Appeal, approving the Judge, held that Section 4(5) required the relevant conduct to constitute theft in English law regardless of whether it fell within the definition of theft in India. Ian Kennedy J. had found that Ramamoorthi's act of acquisition constituted the 'dishonest misappropriation of property' contrary to the Indian Criminal Code and that this necessarily

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required a dishonest intention by Ramamoorthi. Consequently, Ramamoorthi's breach of Indian law provided the factual basis for a finding that he had committed theft within English law. Hence, Ramamoorthi had stolen the idol for the purposes of Section 4 and the claimants' action was not time-barred. Bumper's second defence also failed. The Court of Appeal found (contrary to Ian Kennedy J.) that the Treasure Trove Act had no application to the case because it could apply only to items that were 'ownerless'. Having determined that the Temple remained in existence and that the bronzes had been hidden to prevent despoliation by invaders it followed that the bronzes had never left the possession of the Temple and had never been ownerless.

6 Conclusion

The whole tenor of the judgment sends out the clear signal that English courts will do all they can to ensure the return of cultural property to its rightful owner: in essence, every argument mounted by David Calcutt Q.C. for Bumper against the Judge's findings was shot down by the Court of Appeal. The evidence on identity preferred by the Judge seemed, to these commentators, (who, of course, like the Court of Appeal did not have the benefit of a first hand sight of the witnesses) to have been attacked very ably by counsel, to no avail. Equally clearly, the judgment of the Court cannot be faulted in the application of the relevant legal principles and is accordingly perfectly supportable. Obviously, public policy, as the Court admitted, played a significant role in the decision. It is quite right that the English courts should put their weight behind the attempt of foreign countries to protect the illegal export from their shores of their own national heritage. Although the decision itself was confined strictly speaking to the *locus standi* of a Temple, the reasoning behind the decision and the resort to the principles of comity and the criterion of public policy will ensure a wider application of the decision. It may mean that *any* institution which is a juristic entity in its own country will be held henceforth to have standing to sue in this country to recover its lost property. If so, this is a most welcome development for the international protection of cultural property.

Notes

1 [1991] 4 All ER 638. The judgment, delivered on February 13th 1991, discussed many issues relating to the return of stolen artifacts some of which were not fully reported in the All England Reports. Consequently, in this note we make reference not only to the report of the case but also to the transcript.

2 Siva Natarajas are a representation of the Hindu God Siva and are found in various forms. Typically, the God is depicted with his right foot on a dwarf,

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the whole figure being surrounded by a circle or 'halo' which represents the flames issuing from the mouths of two crocodiles situated on the left and right of the dwarf. At the top of the halo in some Natarajas is found a design in the form of a mask or rosette known as 'Kurti Muka'. Flames issue from around the halo radially. This Nataraja had a circular halo (whereas in many others it may be oval in shape) and a lotus base mounted on a square-shaped 'peedam' or pedestal. Chola Natarajas also have some other distinguishing features.

3 By the date of the trial the Union of India had ceased to pursue its claim but was continuing to underwrite the costs of the action.

4 The state claimed under its domestic legislation – the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959 as amended by the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment and Special Provisions) Act 1976 (jointly referred to as the H.R. and C.E. Act) and under the Indian Treasure Trove Act 1878.

5 Sadagopan was a public official appointed to control the affairs of the Temple under the provisions of the H.R. and C.E. Act.

6 This occurred in March 1987 at the conclusion of the evidence.

7 By the Re-re-re-amended Statement of Claim the Sivalingam sued through the third claimant as fit person or trustee.

8 See note 4, above.

9 Transcript p. 77.

10 Alternatively Bumper sought an order for a retrial of the issue; in the further alternative Bumper sought a retrial of that part of the trial of the issue relating to the legal capacity in India of the Temple and/or the Sivalingam to hold title to property and to pursue an action in England.

11 One of which was that the judgment ought to be upheld on the metallurgical evidence which was not relied on by the Judge.

12 Transcript p. 25.

13 Transcript p. 67.

14 Idem.

15 [1918] AC 888.

16 On the assumption that the 'London Nataraja' and the 'Pathur Nataraja' were one and the same.

17 It is accepted that it is a rather unusual question of fact so that, for example, a finding as to the nature of foreign law is more readily capable of challenge than a normal finding of fact, see for example, *Parkasho* v *Singh* [1968] p. 233.

18 It is possible for a judge to refer a dispute over the effect of the law of a Commonwealth country to the courts of that country by virtue of the British Law Ascertainment Act 1859 – a rarely used provision.

19 *Di Sora* v *Phillipps* (1863) 10 HLC 624.

20 *Earl Nelson* v *Lord Bridport* (1845) 8 Beav 527.

21 Ian Kennedy J. took the view that he could refer to authorities not cited by the expert witnesses in reaching a conclusion on the relevant law.

22 The problem also arises in assessing other factual issues requiring expertise – a judge may inform himself of background information in order to assess the evidence but may not substitute his new-found (or any existing) knowledge for the evidence; see for example, *McQuaker* v *Goddard* [1940] 1 K.B. 687.

23 Transcript p. 109.

24 Transcript p. 131.

25 Transcript p. 144.

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26 Transcript p. 146.
27 [1991] 4 All ER 638, 646 at letter j.
28 See *Lazard Brothers & Co.* v *Midland Bank Ltd.* [1933] A.C. 289 per Lord Wright at p. 297, 'English courts have long since recognised as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. Such recognition is said to be by the comity of nations.'
29 [1991] 4 All ER 638, 647 at letter b.
30 12th ed., 1966.
31 [1991] 4 All ER 638, 647 at letter j.
32 The Shorter Oxford Dictionary, 3rd ed., 1944. See generally Joel R. Paul, Comity in International Law (1991) 32, Harvard International Law Journal, 1–81.
33 See also *Loucks* v *Standard Oil of New York* (1918) 224 NY 99 at p. 111 per Cardozo J: '[t]he courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep rooted tradition of the Common Weal.'
34 See *National Bank of Greece and Athens SA* v *Metliss* [1958] A.C. 509 at p. 525 per Viscount Simonds: 'in the end and in the absence of authority binding the House, the question is simply: what does justice demand in such a case as this?'
35 See for example: *The Times*, the *Solicitors' Journal*, the *Law Society's Gazette* and the *All England Report*.
36 [1991] 2 W.L.R. 729.
37 Ibid., at p. 735.
38 Section 3(1) of the Limitation Act provides that where a cause of action accrues to a person in respect of the conversion of a chattel which, before he recovers possession of it, is the subject of a further conversion, no action can be brought in respect of this further conversion after the expiry of six years from the accrual of the cause of action in respect of the original conversion.
39 The definition states that theft is obtaining a chattel by any conduct, whether committed within or without England and Wales, which would fall within either the definition of theft or obtaining by deception or blackmail within England or Wales.

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