***Lord Bathurst’s Gift: The Genesis of the Golden Thread, being the Early History of Cross-Border Insolvency and the Theory of Universalism with particular reference to the original Solomons v. Ross case papers***

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**Abstract**

*The genesis of the golden thread of modified universalism in cross-border insolvency cases has been said to be the seminal 1763 judgment of Lord Bathurst in Solomons v. Ross. From the highest courts in the land to the most authoritative commentators, it has become an axiom that the concept of reciprocity between national courts in insolvency matters traces its roots to the Court of Chancery hearing a dispute between a London trader, Ross, and an insolvent Dutch company’s representative, Solomons.*

*Using primary source material from the National Archive this article debunks this proposition and argues that (1) Lord Mansfield’s earlier judgment in 1760 in Robinson v. Bland is in fact the genesis of the golden thread, and that (2) Lord Mansfield influenced the then Mr Justice Bathurst in coming to his decision in Solomons v. Ross (1763) either directly, or because of the approach adopted in Robinson v. Bland (1760).*

*This article therefore debunks decades of scholarship and a number of House of Lords and Supreme Court decisions in relation to the concept of modified universalism and its genesis in English and Welsh insolvency law. In so doing it asserts for the first time that Lord Mansfield is responsible for facilitating early co-operation across borders in matters of cross-border insolvency and shows that these approaches are of greater antiquity than has hitherto been believed to have been the case.*

**Introduction**

The 1760s were a tumultuous decade. Commencing with Tacky’s Revolt in the British West Indies, one of the largest slave revolts of the 18th century, 1760 also saw the coronation of “Farmer George”, i.e. George III, the first Hanoverian to be born and raised in England. The following year, 1761, saw the arrest of John Wilkes MP whose essay “The North Briton” brought a charge of seditious libel for its criticism of George III. 1763 saw the end of the seven-years’ war between Britain and France. The Treaty of Paris transferred Florida, parts of India, Minorca, Quebec and the West Indies into Britain’s possession. Two seminal moments that sowed the seed of the American revolution also took place mid-decade, namely, the Stamp Act riots of 1765 and the June 1766 import tax levy on American colonists. In 1768 Captain James Cook of Whitby set sail on HMS “Endeavour” to the South Pacific Ocean. No less than six governments held office during the decade.

It is against this backdrop that we find Mr. Justice Bathurst (as he then was), a pusine judge of the Court of Common Pleas, ensconced in Westminster Hall on the 26th January 1764. Bathurst was standing in for the gout ridden Lord Chancellor Northington[[3]](#footnote-3) in the Court of Chancery and hearing the facts in the now famous *Solomons v. Ross* case.[[4]](#footnote-4) This purportedly landmark cross-border insolvency judgment stands as the genesis of the “Golden Thread” of reciprocity and recognition in cases of international insolvency.

International insolvency has a long history. As Fletcher observed in 2016, “…it is in fact a very old subject that has lasted for many centuries in a somewhat dormant state…however, international insolvencies have become very much a thing of the moment.”[[5]](#footnote-5) Against this setting of contemporary interest the purpose of this article is to revisit these historical roots, or the genesis of cross-border insolvency, to borrow a turn of phrase from Fletcher.[[6]](#footnote-6) We are seeking the genesis of the Golden Thread, namely, that principle of English and Welsh insolvency law that permits recognition of foreign insolvency proceedings, including the remission of assets to that foreign jurisdiction, even if English and Welsh creditors exist and could claim on those assets situated in England and Wales.

This article is divided into three parts. Part One defines the Golden Thread in the context of insolvency in private international law and sets out the theories of territorialism and universalism and how they have impacted on English and Welsh law.

Part Two examines the historical foundations of cross border insolvency. Following a brief exposition of the economic background during the time of the *Solomons v. Ross* decision there follows a biographical exposition of the key judge in our story, namely, Henry Bathurst, 2nd Earl Bathurst, sometime Lord Chancellor of England and Wales.[[7]](#footnote-7)

Part Three moves to a close discussion of Bathurst’s judgment in *Solomons v. Ross*. Hitherto unexplored materials relating to the case in, *inter alia*, the National Archive are critically examined. In this part of the article a critical analysis of the reasoning behind the judgment is undertaken which argues that Lord Mansfield, the incumbent Lord Chief Justice at the time of *Solomons v. Ross*, heavily influenced Bathurst in coming to his judgment in *Solomons v. Ross*. A conclusion then follows.

By revisiting Bathurst’s decision in *Solomons v. Ross*, and analysing, *inter alia*, counsels’ arguments,[[8]](#footnote-8) hitherto unexplored primary source material relating to the case from the Mayor’s Court of the City of London held in the London Metropolitan Archive, the Court of Common Pleas records and the Court of Chancery records at the National Archive,[[9]](#footnote-9) as well as pertinent biographical material, we can shine further light on the early beginnings of the subject cross-border insolvency, a subject to which Professor Ian F. Fletcher QC (Hon) contributed so much over his long and distinguished career. *Fiat lux*, as Fletcher himself once suggested.

1. **What is the Golden Thread?**[[10]](#footnote-10)

This part of the article engages in scene setting activity to establish what the Golden Thread is. In so doing we examine the competing theories that regulate insolvency in private international law.[[11]](#footnote-11) This exposition lays the foundation for the rest of the article and demonstrates how *Solomons v. Ross*, but most notably earlier decisions of Lord Mansfield, stand as the genesis of the Golden Thread.

There are a number of theories that have influenced the deployment of cross-border insolvency laws and which make up its very foundation. These move from the broad to the narrow and nuanced. Taking the first broad category, the two main positions are: territorialism and universalism.

Territorialism

Territorialism places primacy with the mother jurisdiction where the insolvent company is located and where the initial insolvency proceedings are opened. No attention is paid to Foreign interests whilst the insolvency is administered solely in the mother jurisdiction for the benefit of creditors in that jurisdiction using assets in that jurisdiction. The sovereign and supreme home jurisdiction is the key player and anything that usurps the legislative and judicial integrity of that jurisdiction is not tolerated by those who advocate this theoretical approach. There have been a number of critiques of this approach which focus on the delay that can accrue through having to deal with multiple self-interested jurisdictions where assets are located and the damage to value and viability that can flow from that delay.

One mid-19th century case perfectly illustrates this nationalistic, inward facing view. In *Re Oriental Inland Steam Company, ex parte Scinde Railway Company*[[12]](#footnote-12)two English companies, the Scinde Railway Company (SCR) and the Oriental Steam Company (OSC), had their respective head offices in England but carried on business in India.

On the 23rd May 1867 SRC obtained a judgment in India against OSC. Subsequently, a winding up order was made in England on the 8th November 1867 against OSC. SCR proved for their debt in England in the English liquidation. Simultaneously, SCR proceeded under the Indian judgment and attached property in India that belonged to OSC. SCR were then ordered to withdraw their attachments and the Liquidator was directed to pay SCR from the proceeds of sale of the Indian assets.

The Liquidator appealed arguing that SCR should repay the money. Vice-Chancellor Mallins agreed and made the requisite order. SCR appealed again and the case came before the Court of Appeal. James, LJ affirmed the Vice-Chancellor’s order and held that judgment creditors who have proved in the English liquidation are not allowed to attach to property in an alternative jurisdiction, in this case India, so as to “get any priority over their fellow creditors by reason of their having got possession of the assets in this way”[[13]](#footnote-13) He continued, “the assets must be distributed in England upon the footing of equality”.[[14]](#footnote-14)

It is an axiom that sovereign States prefer not to have their internal legal regimes subverted by the laws of another State. Territorial limits are sacrosanct. Interference with assets and natural persons within that jurisdiction is strictly prohibited through territorialists’ vision of international insolvency law. This interference, particularly in relation to the rights of the natural person, sits behind Lord Collins’ stern rejection of universalism in *Rubin[[15]](#footnote-15)* and the counter reformation of territorialism. Legislative action can only stretch the effect of these foreign laws.

Territorialism also reflects the selfish nature of creditors.[[16]](#footnote-16) Assets in a given jurisdiction are to be for the creditors in that jurisdiction. This of course ignores the wider value increases that could be obtained on pooling international assets. This is then a myopic and damaging view. It is a view however which reflects the long held view[[17]](#footnote-17) which has been acknowledged that recovering assets situated abroad is a close to impossible task.

Universalism[[18]](#footnote-18)

There is an alternative view which recognises that business is undertaken on a global stage and a view that is perhaps less nationally insecure, i.e. its openness reflects trust and confidence in its insolvency systems and courts and the respect that they both garner world-wide. This theory is represented by the term Universalism. Universalism is less parochial and is therefore more attractive as it advocates the idea that the courts should be outward looking and facilitative of insolvency procedures, even those which are afoot in different jurisdictions. If Brexit is indicative of a little Englander parochial inward looking attitude,[[19]](#footnote-19) exemplified in the cross-border insolvency context by the territorialism theory, then universalism is the tonic to rouse debtors and creditors from this myopic and ultimately destructive view. The damage that flows from insularity is discussed below.

At its core universalism recognises that all of the assets of the company, no matter where they are situated, should come to be dealt with by one procedure and by one officeholder in one jurisdiction. In this sense there is one officeholder to take charge of all the assets to whom all creditors must prove; one officeholder who must find all the assets; one procedure to deal with all the creditors and assets and; one jurisdiction to deal with any arguments between creditors and bind them in formal agreement pursuant to one insolvency regime. This universal approach takes place on a world-wide basis. Reciprocity and collaboration are the key watchwords of universalism, an approach that has been adopted by the United Kingdom[[20]](#footnote-20) and which is also reflected in European Union approaches to cross-border insolvency including judgments of the European Court of Justice (ECJ).[[21]](#footnote-21)

There are detractors who have argued that universalism is by no means a flawless approach. Fletcher has drawn attention to the fact that some critique this approach as being “idealistic”.[[22]](#footnote-22) McCormack has noted that, “it is contended that universalism is simultaneously a bad deal for every country involved.”[[23]](#footnote-23) One of the major reasons for this, again exemplified by *Rubin*, is the problem of recognition of domestic court orders abroad, particularly when those orders effect the liberty of the person.

Whether or not these disadvantages out-way the undoubted cost savings is a moot point. One of the main attractions of universalism is that it avoids a multiplicity of actions in various jurisdictions. This reduces expenditure and retains value within the insolvent estate.

**Theoretical Perfections**

Both of these rival theories have been perfected in a way that brings them closer together in effect and substance. There has still however been no merger of the two streams of thought and the competing theories.

Co-operative Territorialism

The first perfection that exists is a theory known as co-operative territorialism. This is something of a half-way house from the extremes of territorialism on the one hand and universalism on the other. Its genesis lies in a desire to avoid the fragmentation that can occur if States select approaches which are at odds with each other, e.g. if Matilda Land adopts territorialist approaches whilst Ophelia Land adopts universalism. As Fletcher has stated this approach avoids fragmentation and stasis through the use of multilateral conventions.[[24]](#footnote-24)

Modified Universalism

Modified universalism represents another perfection. This approach recognises that international insolvency should be conducted on an international collective basis but that allowance should be made for the foibles on specific participating States and the respective nuances of their insolvency laws and their specific jurisdictional oddities. There should be recognition of the universal nature of various elements of insolvency law which the English and Welsh courts should both recognise, as well as assist in the implementation of those tools.

Modified Universalism was until recently the preferred approach of the English and Welsh courts. Lord Hoffmann’s progressive opinions in the judicial committee of the House of Lords in *Cambridge Natural Gas[[25]](#footnote-25)* and *HIH[[26]](#footnote-26)* continued this course and are exemplars of modified universalism. However, more recently in the United Kingdom Supreme Court Lord Collins has suggested that Parliamentary intervention is required if we are going to further extend these principles. Before that is done it is prudent to examine the roots of these approaches. It is to that area that we now turn in the next part of this paper.

1. **The Early History of Cross-Border Insolvency Law**[[27]](#footnote-27)

We can now move to examine the genesis of the “Golden Thread” and the beginnings of universalism by examining Lord Bathurst’s 1764 decision in *Solomons v. Ross*[[28]](#footnote-28)and the case’s background and context*.* In the first section of this part we examine the economic background to the decision. What was happening economically and in terms of trade in the 1760s and leading up to that decade? In the second part of this section we will then move to consider the judge who handed down the important decision, namely, Mr Justice Bathurst (as he then was).

Global Trade Patterns of the 1760s[[29]](#footnote-29)

As Lord Hoffmann has recently demonstrated in *HIH* in the context of *Solomons v. Ross*, it is important to understand the economic background that existed at the time of *Solomons v. Ross* to put the case in its proper historical context. Lord Hoffmann noted in the context of universalism:

*“This doctrine may owe something to the fact that 18th and 19th century Britain was an imperial power, trading and financing development all over the world. It was often the case that the principal creditors were in Britain but many of the debtor's assets were in foreign jurisdictions. Universality of bankruptcy protected the position of British creditors. Not all countries took the same view. Countries less engaged in international commerce and finance did not always see it as being in their interest to allow foreign creditors to share equally with domestic creditors.”*[[30]](#footnote-30)

To what extent is he correct? A decade before the first cotton mill opened in the 1770s there were a number of interesting economic developments in the 1760s.[[31]](#footnote-31) In 1764, the same year that *Solomons v. Ross* was decided, several thousand weavers in London demonstrated against the clandestine importation of French silks.[[32]](#footnote-32) International trade threats in the shape of imported goods were not novel. As Leng has demonstrated trade conflicts occurred during the time period under discussion.[[33]](#footnote-33)

Lord Hoffmann is of course correct to highlight the global nature of trade and mercantilism at the time of *Solomons v. Ross.*[[34]](#footnote-34) In terms of Anglo-Dutch trade there were extensive an developed trade networks between the two countries, and had been for much of the century and before.[[35]](#footnote-35) Indeed, the *Solomons v. Ross* case highlights a commercial conflict between two traders who hailed from the two jurisdictions.

*Dramatis Personae* - The 2nd Earl Bathurst[[36]](#footnote-36)

On the 20th May 1714[[37]](#footnote-37) Allen Bathurst, the first Earl Bathurst, and his wife Catherine (nee Apsley) welcomed their second so into the world. Henry Bathurst (1714-1794) would go on to forge an illustrious career in the law being created Lord Apsley in 1771 as Lord Chancellor before succeeding to his father’s Earldom in 1775.

Bathurst was educated at Eton College and at Bailliol College in the University of Oxford. He took his degree of BA in 1733. He read law at the Inner Temple and was called to the Bar in 1736. Whilst at the Bar Bathurst rode the Oxford circuit and appeared before the Court of King’s Bench.

A year previously he had been elected to Parliament for the family seat at Cirencester in Gloucestershire. He sat from 1736 until 1751. During his time as an MP Bathurst made contributions to debates touching on international matters including staffing in the Navy and on the port of Dunkirk. International themes were familiar to Bathurst.

Advancement in the legal profession came quickly. On the 22nd June 1743 he was admitted to Lincoln’s Inn in addition to his Inner Temple membership. He was made a Bencher of Inner Temple 25th April 1746 having recently been elevated to the front bench taking silk as King’s Counsel on the 20th January 1746.[[38]](#footnote-38) A year previously in 1745 Bathurst had become Solicitor-General to Frederick, prince of Wales. In 1748 he became the Prince’s Attorney-General until the Prince’s death in 1751 whereupon Bathurst became Attorney-General to George, prince of Wales.

It was from these positions that Bathurst was elevated to the position of a pusine judge of the Court of Common Pleas on the 2nd May 1754 by Lord Hardwicke.[[39]](#footnote-39) He had stood aside from the family seat in the general election of 1754 in favour of his brother. When Charles Yorke, the Lord Chancellor, died in 1770 the Great Seal was put into commission.[[40]](#footnote-40) Bathurst became one of the commissioners whilst the Great Seal was in commission before a new Lord Chancellor was appointed. It was Bathurst himself who would be appointed, apparently despite himself, on the 23rd January 1771. As Jones has observed:

*“As the commissioners were thought incompetent, there was considerable surprise when on 23 January 1771 Bathurst, regarded as the least competent, was appointed lord chancellor and raised to the peerage as Baron Apsley.”*[[41]](#footnote-41)

Bathurst was installed as Lord Chancellor and raised to the peerage with the title Baron Apsley of Apsley[[42]](#footnote-42) in the county of Sussex on the 23rd January 1771 at St. James’s, the first day of the Hilary term. A day later he surrender his pusine judgeship.[[43]](#footnote-43) His tenure on the Woolsack lasted seven years.

In 1775 Bathurst became the 2nd Earl Bathurst, succeeding to his father’s Earldom. He was replaced as Lord Chancellor on the 3rd June 1778 when he surrendered the Great Seal. Edward Thurlow, then Attorney-General, became Lord Chancellor in his place. Bathurst then acted as Lord President of the Council until 1782.

In later life Bathurst may himself have encountered the bankruptcy laws in a personal capacity, at least from the perspective of a creditor. The Gloucestershire Archives contain papers concerning a law suit brought by Bathurst.[[44]](#footnote-44)

One of his more recent biographers takes a dim view of Bathurst’s performance as Lord Chancellor. Jones notes:

*“His abilities were mediocre and unsuited to the high offices which he came to fill, but even his critic Lord Campbell admitted that his career had been without reproach and that, so far as the public could observe, he had performed his duties decently.”*[[45]](#footnote-45)

This was not however before Campbell noted “One incompetent Judge better than three”[[46]](#footnote-46) in relation to Bathurst succeeding the three man commission that had held the Great Seal up to his appointment following the death by suicide of Charles Yorke, Lord Morden, the short-lived previous incumbent of the Woolsack. Campbell, who some have argued is an unreliable commentator,[[47]](#footnote-47) pulled no punches in relation to Bathurst. In his forty page treatment of Bathurst’s tenure on the Woolsack critique abounds. For example, in his introduction Campbell notes that Bathurst was, “…little qualified for any intellectual pursuit”[[48]](#footnote-48) nor did he have any “striking qualities, good or bad.”[[49]](#footnote-49) He also stated that Bathurst had “moderate abilities and learning.”[[50]](#footnote-50) By way of final example there stands Campbell’s critique of Bathurst’s competence in matters of international law. When Bathurst relinquished the Great Seal in 1788 perhaps prematurely, Campbell observed when searching for a reason: “I suspect that, from the approaching war against France and Span, and the questions which were anticipated with neutral powers, some advice was required in the cabinet upon international law, which might be given in a bolder tone, and acted upon with more confidence.”[[51]](#footnote-51) Campbell was clearly unfamiliar with *Solomons v. Ross* and Bathurst’s input in the case.

There is some veiled positivity, Campbell noting that “dull discretion”[[52]](#footnote-52) and “harmless manners, sober habits, family interest and the mediocrity of his parts”[[53]](#footnote-53) played their part in Bathurst’s progression from MP to Lord Chancellor. Campbell seems to paint Bathurst as a yes man who didn’t inspire jealousy or envy. Upon his elevation to the bench as a pusine judge in the Court of Common Pleas, Campbell notes that Bathurst was, “quiet and bland in manners, and he possessed a great share of discretion, which enabled him on the bench to surmount difficulties, and to keep out of scrapes…he made a very tolerable pusine.”[[54]](#footnote-54)

Hogarth also painted a rather negative picture of Henry Bathurst. In Hogarth’s *“The Bench”* line engraving of 1758, Sir John Willes, Lord Chief Justice of the Court of the King's Bench, is pictured with Bathurst. Bathurst is however asleep! The picture may be saying more about Willes’ conversation than Bathurst’s competence.

Underhill has also delivered a rather dim view of Bathurst, perhaps influenced by the unreliable Campbell,[[55]](#footnote-55) when he noted in relation to Bathurst’s elevation to the woolsack in the alternative to Lord Mansfield and the aforementioned three man commission, “the Government…settled for the blameless but wholly insignificant pusine judge, Henry Bathurst, who was created Lord Apsely (later becoming Earl Bathurst in succession to his father).”[[56]](#footnote-56) Underhill has also argued that Bathurst unsuited to the role of Lord Chancellor as keeper of the King’s conscience and head of the Court of Chancery due to his common law practice, as opposed to working on the equity side.[[57]](#footnote-57) A similar charge was made by Campbell who observed that Bathurst and his fellow commissioners were “almost entirely unacquainted with the practice of Courts of Equity.”[[58]](#footnote-58) True, apart from Bathurst previously sitting as a judge in the Court of Chancery.

Was Bathurst really unacquainted, unsuitable and insignificant? Is this an accurate reflection of his abilities and standing? Why was Bathurst drafted in to hold the fort for Lord Northington in 1764, some seven years before his appointment to the Woolsack if he was unfamiliar with equity? Were both Campbell and Underhill unfamiliar with this episode? From their writing it seems they both had a tenuous, if any, understanding of Bathurst’s judicial activity.

These critical assessments of Bathurst may well be accurate in the general sense, but when one comes to analyse Bathurst’s contribution to international insolvency law, his contribution must be considered to be more than mediocre or insignificant, at least in terms of its impact. It is to that contribution that we can now turn.

1. *Solomons v. Ross*[[59]](#footnote-59)

There are two main sources through which an examination of *Solomons v. Ross* can be undertaken. First, there is the reported decision, or rather a note to a 1764 report in Henry Blackstone’s reports. This note refers to *Solomons v. Ross*, for *Solomons v. Ross* was never fully reported in its own right.

The second source are the surviving primary sources materials relating to the case in the National Archive. These include the pleadings, bills and answers.

It should be noted that in the period under discussion in this article, i.e. the 1760s, the bankruptcy laws provided a jurisdiction for discharge that was only available to “traders” as a narrowly defined group of individuals. This remained the case until the 1869 reforms removed the distinction between the bankruptcy jurisdiction[[60]](#footnote-60) and the imprisonment for debt jurisdiction[[61]](#footnote-61) by abolishing the latter and opening up the former to all subjects, save for married women.

We can now move to a close consideration of the facts and reasoning in *Solomons v. Ross* by reference to the reported decision, such as it is. We will then consider the primary sources that exist in the National Archive in relation to the case.

Facts

The salient facts in *Solomons v. Ross* relate to two London merchants, Michael Solomons and Hugh Ross, and their dealings with Messrs Deneufvilles, merchants and partners in Amsterdam, Holland. Hugh Ross was an iron merchant[[62]](#footnote-62) and supplier of hemp[[63]](#footnote-63) to the Royal Navy. He had iron dealings as far afield as the Baltic and Sweden. Ross was also no stranger to litigation.[[64]](#footnote-64)

On the 2nd of January 1760 the Chamber of Desolate Estates in Amsterdam declared Messrs Deneufvilles bankrupts.[[65]](#footnote-65) Curators and assignees were appointed of their estates and effects. Unfortunately for Ross he was owed approximately 3000l by the Deneufvilles. This indebtedness is evidenced from an affidavit that was made by Ross on the 20th of December 1759 in the Mayor's Court of London. The Mayor’s Court was a popular, cheap and speedy forum within which merchants could solve their disputes. There was no monetary limit on the actions for debt that could be heard in the Mayor’s Court. This differed to the Sheriff’s Court where debt recovery was capped. The Mayor’s Court was also cheaper than the competitor Royal Courts at Westminster. Unfortunately, no records survive from the 18th century for the Mayor’s Court that can shed further light on *Solomons v. Ross*.[[66]](#footnote-66)

The law report does however show that Ross obtained an attachment on Deneufvilles monies that were in the hands of Michael Solomons and located in England. Solomons was a debtor of the Deneufvilles to the amount of 1200l. The 8th of March 1760 was a bad day for Solomons as he was taken in execution and imprisoned for debt. This was because Ross had obtained judgment by default on the attachment and issued a writ of execution against Solomons. Solomons was unable to pay the 1200l, hence the execution.

A fourth character then enters the scene, namely, Israel Solomons. Israel had a power of attorney from the Dutch curators to act for them in England. Israel filed a bill as plaintiff praying that the defendant Michael Solomons might account with the Curators for the effects of the bankrupts (Deneufvilles) which were in his hands, namely, the 1200l. The bill prayed that Michael Solomons would deliver the 1200l to Israel Solomons for the use of the curators, and perhaps most importantly, be restrained from paying them over to Ross. The 1200l was then paid into court in the name of the Accountant -General following a separate bill filed by Israel Solomons.

So in short we have the English creditors (Ross) versus the Dutch creditors (in the form of Israel and the Curators).

The case came on before Bathurst sitting in the Court of Chancery[[67]](#footnote-67) in place of the indisposed Lord Chancellor Northington.[[68]](#footnote-68) Northington was probably ill with gout. His biographer has noted that “His health…had latterly become much impaired; his constitution was enfeebled by repeated attacks of gout; and he had frequently and for considerable intervals, been incapacitated from performing the laborious duties of his office.”[[69]](#footnote-69)

Ross would have been hopeful of a favourable outcome not least as he was encountering difficulties with the quality of his iron at around the same time as his insolvency case was being heard in the Court of Chancery.[[70]](#footnote-70)

The decree directed, *inter alia*,

*“That the stock purchased with the money paid into the bank, should be transferred to Israel Solomons, for the benefit of the creditors of the bankrupts, and that Ross should deliver up the note given by Michael Solomons for 1200l. to be cancelled.”*[[71]](#footnote-71)

The effect of Bathurst’s judgment is then to stipulate that the effect of the bankruptcy was to vest all of the Deneufvilles’ moveable assets in the Dutch Curators. This included debts owed by English debtors, such as Michael Solomons.

A number of interesting points spring from the judgment. Would the result have been different if Lord Northington had not be indisposed?

The National Archive materials on *Solomons v. Ross*

As noted above the National Archive contains a number of materials that relate to the *Solomons v. Ross* litigation. These include pleadings for the case.[[72]](#footnote-72) There is a bill and answer,[[73]](#footnote-73) a bill and two answers both in 1760[[74]](#footnote-74) and a separated answer in 1761.[[75]](#footnote-75)

*There may be other pleadings so it could be worth looking at the Cause Book at IND 1/4200 to see if there should be anything else.*

*As with all legal records the documents are stored by record type, see our research guide on Chancery to identify other series of documents worth checking, there should be something in the Decrees and Orders (C 33).*

What do these teach us about the case? XXXX

Bathurst’s other judgments

Bathurst’s judicial activity was not restricted to *Solomons v. Ross*. He sat as a pusine judge of the Court of Common pleas for XX years and as Lord Chancellor of England and Wales for XX years.

A perusal of the law reports in which Bathurst gave judgment is enlightening as it shows (1) the type of business that was before him, and; (2) the quality of the advocates who appeared before him. Would these advocates have tolerated the kind of judge commentators like Underhill and Campbell have asserted Bathurst was? Do their diaries, reminiscences, etc, critique Bathurst the judge? We know that a fellow later Lord Chancellor, Lord Loughborough,[[76]](#footnote-76) was counsel in *Solomons v. Ross.* Loughborough, an experienced Chancery practitioner appeared before Bathurst’s tenure as Lord Chancellor. Loughborough contact took place whilst Bathurst was a pusine judge of the Court of Common Pleas, who was sitting in for Lord Northington.

Bathurst’s other noteworthy cases include…

Was the result in *Solomons v. Ross* an accident caused by an incompetent the results of which have echoed through the ages?

The shadowy influence of Lord Mansfield?

Lord Mansfield had refused the Woolsack following the death of Lord Chancelor Yorke. Lord Mansfield was happy to remain Lord Chief Justice and to stay out of the rough and tumble of politics. As we have seen Bathurst was himself elevated to the Woolsack via the commissionership. Fletcher has noted that a number of Lord Mansfield’s judgments paved the way for cross-border cooperation between the English courts and foreign jurisdictions.[[77]](#footnote-77)

Mansfield certainly presided over a number of bankruptcy cases as Fifoot has demonstrated.[[78]](#footnote-78) This includes cases such as *Alderson v. Temple*[[79]](#footnote-79) in 1768 and *Le Chevalier v. Lynch*[[80]](#footnote-80) in 1779. The latter is particularly noteworthy as the case concerned the gathering in to the estate debts that were due to the bankrupt from a debtor out of England. Mansfield held that, “the debtor shall be answerable to the assignees…In Scotland they permit assignees of a bankrupt in England to sue for money owing to the bankrupt in Scotland; and it has been determined at the Cockpit, upon solemn consideration, that bills by English assignees may be maintained in the Plantations upon demands due to the bankrupt’s estate.”[[81]](#footnote-81) But this case was decide some years after *Solomons v. Ross*. What came before it in terms of Mansfield’s judgments?

In 1756 Mansfield gave judgment in *Raynard v. Chase*,[[82]](#footnote-82) an appeal in a bankruptcy case. Mansfield heard this case on only his second day sitting as a judge.[[83]](#footnote-83) This case pre-dates *Solomons v. Ross* by 8 years. *Raynard v. Chase* concerned…

Fletcher cites the 1760 case of *Robinson v. Bland*,[[84]](#footnote-84) heard some four years before *Solomons v. Ross*, as well as judgments that were handed down subsequently. These include the 1774 case of *Mostyn v. Fabrigas*,[[85]](#footnote-85) and the 1775 case of *Holman v. Johnson.*[[86]](#footnote-86) The last is particularly noteworthy, even though it was decided some eleven years after *Solomons v. Ross*. In *Holman* Lord Mansfield stated that: “in a variety of circumstances, with regard to contracts legally made abroad, the laws of the country where the cause of action arose shall govern.”[[87]](#footnote-87) Here we therefore have Lord Mansfield acknowledging the universal effect of certain legal proceedings, in foreign jurisdictions.

But we can go back further, and in particular before *Solomons v. Ross,* to *Robinson v. Bland,*[[88]](#footnote-88)a case heard in Westminster Hall on the 22nd May 1760 before Lord Mansfield. The advocates included Wedderburn (later Lord Loughborough, LC) and Blackstone. The facts involved a deceased intestate English gentleman, Sir John Bland, who had borrowed money for the purposes of gambling. The plaintiffs sought recover of the loan of £672 based on a bill of exchange drawn up in Paris. Lord Mansfield stated that in the present case, “the facts stated scarce leave room for any question; because the law of France and of England is the same”[[89]](#footnote-89) that is that, “That money lent to play with, or at the time and place of play, may be recovered there, as a debt…”[[90]](#footnote-90)

Why is this foreign law recognition activity important? It has been suggested that Bathurst and his fellow commissioners consulted Lord Mansfield, Lord Chief Justice, on their decrees[[91]](#footnote-91) and that Lord Mansfield attended Scottish appeals to specifically assist Bathurst.[[92]](#footnote-92) So this raises the question of whether or not Bathurst engaged in this behaviour seven years before when he sat in for Lord Northington in *Solomons v. Ross*? Did Bathurst consult Lord Mansfield on *Solomons v. Ross*? Was Lord Mansfield therefore behind the decree in *Solomons v. Ross*?

It is an interesting theory but one that is not supported by later biographers. No less than three biographers have evaluated Lord Mansfield’s life, including the great CHS Fifoot[[93]](#footnote-93), Oldham,[[94]](#footnote-94) and Poser[[95]](#footnote-95) none make mention of Bathurst in anyway whatsoever. This does of course not mean that contact between the two judges did not occur. In later life Mansfield did come to the aid of Bathurst during debates in the House of Lords whereupon the former apparently “rescued”[[96]](#footnote-96) the latter.

Whoever is responsible, Fletcher is correct to observe that, “these early decisions contain the seeds of what can be justly acclaimed as an internationalist tradition spanning more than two centuries of English judicial development of international insolvency.”[[97]](#footnote-97)

It is to that development that we now turn, but with particular reference to how these early cases, and in particular *Solomons v. Ross*, have been used by judges in subsequent cases.

Later Judicial and Academic Treatment of *Solomons v. Ross* – accurate?[[98]](#footnote-98)

Judicial Treatment

*Solomons v. Ross* continues to survive in the English Reports, and therefore their derived nominate reports in a surprisingly abundant form. There are at least ten references to the case, albeit relatively cursory references.[[99]](#footnote-99)

Perhaps the most startling use, or rather lack of use, of *Solomons v. Ross*, features in the House of Lords 1910 decision in *Galbraith v. Grimshaw*.[[100]](#footnote-100) Lord Loreburn, Lord Chancellor, declined to act on *Solomons v. Ross* mainly due to the brevity of the report of the case. At seven pages Galbraith isn’t a lengthy set of opinions in its own right. In relation to *Solomons v. Ross* Lord Loreburn observed:

*“…And I am not prepared to accept and act upon the case [Solomons v. Ross (1764) 1 H.Bl.131,n.] which is scantily reported in the volume of Blackstone’s Reports to which we have been referred. I am not prepared to accept that case as an authority against the rule which I have referred to.”*[[101]](#footnote-101)

This is a severe break in the continuity of the golden thread. If it is not a complete rupture it is certainly a heavy snag. Lord Loreburn was a noted authority on company law, as was Lord Macnaughten of Salomon fame. He also sat in the *Galbraith* case. However its effect on Solomons v. Ross is considered at the very least it must be seen as blocking the effect of Solomons v. Ross where there is an attachment.[[102]](#footnote-102)

This “Galbraith Disruption” is not frequently discussed. Blom-Cooper has observed that, “had this report been available to the court in Galbraith v. Galbraith it is probable that greater value would have been accorded the decision even had it been it been finally rejected as a legal proposition.”[[103]](#footnote-103)

*Solomons v. Ross* seems to escape the binding shackles of the case and continue to be lauded by many as the genesis. It is to one of those laudatory judgments that we can now turn.

*HIH*

More recently Lord Hoffmann made great use of Solomons v. Ross in both *Cambridge Transportation* and *HIH*.

“The primary rule of private international law which seems to me applicable to this case is the principle of (modified) universalism, which has been the golden thread running through English cross-border insolvency law since the 18th century. That principle requires that English courts should, so far as is consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company’s assets are distributed to its creditors under a single system of distribution.”[[104]](#footnote-104) (Lord Hoffmann).

“For example, in Solomons v Ross (1764) 1 H Bl 131n a firm in Amsterdam was declared bankrupt and assignees were appointed. An English creditor brought garnishee proceedings in London to attach £1,200 owing to the Dutch firm but Bathurst J, sitting for the Lord Chancellor, decreed that the bankruptcy had vested all the firm's moveable assets, including debts owed by English debtors, in the Dutch assignees. The English creditor had to surrender the fruits of the garnishee proceedings and prove in the Dutch bankruptcy.

17 This doctrine may owe something to the fact that 18th and 19th century Britain was an imperial power, trading and financing development all over the world. It was often the case that the principal creditors were in Britain but many of the debtor's assets were in foreign jurisdictions. Universality of bankruptcy protected the position of British creditors. Not all countries took the same view. Countries less engaged in international commerce and finance did not always see it as being in their interest to allow foreign creditors to share equally with domestic creditors. But universality of bankruptcy has long been an aspiration, if not always fully achieved, of United Kingdom law. And with increasing world trade and globalisation, many other countries have come round to the same view.

(HIH or Cambridge per Hoffmann).

Academic Treatment

What do commentators say about *Solomon v. Ross*? Is the text book treatment of *Solomons v. Ross* accurate? For the most part comment is positive, if the case is mentioned.[[105]](#footnote-105) The case has been cited by a number of commentators in modern scholarship for the proposition that assets can be remitted to a foreign liquidator.[[106]](#footnote-106)

Going back though the positive coverage of *Solomons v. Ross* reached its zenith with its use by Dicey in 1879[[107]](#footnote-107) and continued in the late 19th century with other commentators in England and Wales[[108]](#footnote-108) and America.[[109]](#footnote-109)

Interestingly, later editions of Dicey argue that the claim of the attaching creditor would “now be preferred”[[110]](#footnote-110) and cite *Gasgoigne v. Galbraith* as authority for this proposition, a case that decided not to use *Solomons v. Ross* because of its brevity.

Apart from the two editions of his major monograph on the subject of cross-border insolvency Fletcher made a number of other contributions that discuss international insolvency, including a brief historical sketch[[111]](#footnote-111) and his important Current Legal Problems inaugural lecture at UCL.[[112]](#footnote-112) In the former Fletcher notes that…

* Smart –
* Omar –

The most thorough academic treatment flowed from the pen of the renknowned America scholar, Kurt (???) Nadelman, a professor at Harvard (????). Nadelman takes a forensic approach to the judgement, but he did not consult any primary sources such as the Court of Chancery records.

“Solornons v. Ross, decided by Justice Bathurst in 1764, is

reported in Henry Blackstone's Reports in a note to Folliott v.

Ogden,' which was before Lord Loughborough in 1789. The

same note reports two other decisions rendered in favour of

foreign trustees in bankruptcy; one is an English decision,

Jollet v. Deponthicu,' decided by Lord Chancellor Camden in

1769, which again involved Dutch trustees in bankruptcy who

claimed assets that were garnished after the Dutch declaration

of bankruptcy; the other is Irish, Neale v. Cottingharm,' before

Iord Lifford, in which an Irish creditor was ordered to refund

to English trustees in bankruptcy money which he had

obtained by garnishee proceedings begun after the bank-

ruptcy declaration in England” (Nadelman)

*An alternative genesis of the Golden Thread?*

If *Solomons v. Ross* is not the true genesis of the golden thread, what is? Are there alternative judgments that can be used in place of *Solomons v. Ross* that provide the origin of universalism?

*Holman*, decided in 17XX by Lord Mansfield must stand as a strong contender for the origin of the Golden Thread.

*Jollett and Reitveld v. Deponthieu[[113]](#footnote-113)*

Decided by Lord chancellor Camden in 1769 this case…

Jollet and Reitveld v. Deponthieu and Baril , in Cane. November 23, 1769, before Lord Chancellor Camden.\*

The Deneufvilles, merchants, at Amsterdam (but not the same as those mentioned in the preceding case), on the 30th of July 1763, stopped payment. On the 8th of October, the plaintiffs were appointed curators of their estate and effects. At the time when the Deneufvilles stopped, and were declared bankrupts, they were indebted to Messrs. Deponthieu and Co. merchants of London in 1600l. and Messrs. Baril and Texier were indebted to the Deneufvilles in 2131l. 18s. 11d.

On the 5th of January 1764, the Deponthieus and Co. made an affidavit of their debt, and on the 12th of that month attached the monies of the Daneufvilles in the hands of Baril and Texier. Pending the attachment, the curators filed their bill against Deponthieu and Co. and Baril (Texier being absent) praying, “that an account might be taken of all dealings and transactions between the bankrupts and Baril and Texier, that the balance might be liquidated, and paid to the plaintiffs, and that the other defendant might be restrained by injunction, from any further proceedings against Baril and Texier in respect of the foreign attachment, or any security given in consequence thereof.” It was decreed, “that the plaintiffs were entitled to recover from Baril and Texier the sum of 2131l. 18s. 11d. being the balance of an account current, transmitted to the Deneufvilles on the 24th of October 1764,” (which the plaintiffs consented to accept as the real balance due, and to waive all further account, and therefore) “that it should be referred to one of the masters to compute interest on the principal sum of 2131l. 18s. 11d. at 4 per cent. from the 26th of October 1764, and that a perpetual injunction should issue against Deponthieu and Co. to restrain them from proceeding on the foreign attachment.”

It appeared from the proofs taken in the cause, that a bankrupt's effects, by the laws of Holland vest in the curators only from the time of their being appointed, and not by relation to the time of the committing the act of bankruptcy.

*Neale v. Cottingharm*[[114]](#footnote-114)

Lord Lifford’s judgment in the Irish case of Neale is also another early contender. Heard in XX the case involved XX

Grattan a merchant in London was indebted to Cottingham a merchant in Dublin in 862l. 4s. 1d., and the Houghtons were indebted to Grattan in 600l. On the 27th of October 1763, Cottingham made an affidavit of his debt, and commenced an action in the Tholsel Court of Dublin against Grattan, and on the 31st of that month attached the monies due to him from the Houghtons, in their hands. On the 21st of November, judgment was signed by default, and on the 9th of January 1764, the Houghtons were taken in execution on a ca. sa. who in order to procure their discharge, paid Cottingham 600l. the money due from them, and 1l. 19s. 11d. costs. On the 28th of October 1763, a commission of bankrupt issued against Grattan in England, who on that day was declared a bankrupt. On the 10th of November 1763, his effects were assigned to the plaintiffs' assignees. On the 16th of November 1764, they filed a bill in the Court of Chancery in Ireland, against Cottingham and the Houghtons, praying, that an account might be taken of all such sums of money as had been received by Cottingham from the Houghtons, for any debt due by them to Grattan before his bankruptcy, and that interest might be computed thereon from the times when he received the same respectively, and that he might be decreed to pay what should be found due to the assignees. As this was the first cause of this kind ever decided in Ireland, the Lord Chancellor called in the assistance of several of the Judges, and after great consideration, with the approbation of the Judges whom he consulted, pronounced a decree in favour of the plaintiffs, and ordered Cottingham to pay them the money which he had received of the Houghtons.

But see Cooke's Bankrupt Law, 243 and 244. [See the comments on this case post, 691, vol. ii. p. 407.] [See the comments on this case post, 691, vol. ii. p. 407.] [Vide post, vol. ii. p. 407.]”

Odwin v. Forbes (Jabez work).

Odwin v Forbes (1817) 1 Buck 57 (PC)

Odwin v Forbes (1817) 1 Buck. 57 (PC); J. Henry, The Judgment Of The Court of Demerara, in the

case of Odwin v. Forbes (1823, S. Sweet, London) (reprinted 2010, Kessinger Publishing, Whitefish

MT).

o Ian F. Fletcher, International Insolvency: A Case for Study and Treatment, 27 INT’L LAW.

429, 437 (1993)

Solomons v. Ross (1764) 1 Hy.Bl. 131n; 126 E.R. 79

Sill v Worswick (1781) 1 H. Bl. 665.

Odwin v. Forbes (1817) 1 Buck. 57 (PC)

Re Kooperman [1928] W.N. 101, 72 Sol. Jo. 400

Waite v. Bingley (1882) 21 Ch.D.674

New Zealand Loan & Mercantile Agency Co. Ltd v. Morrison [1898] A.C. 349 (PC)

In re Davidson's Settlement Trusts (1873) LR 15 Eq 383

Woods and Lewis Contract, Re

[1898] 1 Ch. 433; CHD; 04 March 1898

Rein v Stein

[1892] 1 Q.B. 753; CA; 05 March 1891

Nouvion v Freeman

(1889) 15 App. Cas. 1; HL; 22 November 1889

Robertson, Ex p.

(1875) L.R. 20 Eq. 733; Ct of Chancery; 07 June 1875

Godard v Gray

(1870-71) L.R. 6 Q.B. 139; QB; 10 December 1870

Williams v Jones

153 E.R. 262; (1845) 13 M. & W. 628; Ex Ct; 01 January 1845

Wallace v King

126 E.R. 9; (1788) 1 H. Bl. 13; CCP; 01 January 1788

See also Fletcher’s comments on bankruptcy in an international context where he notes, “...the successive statutory enactments that have borne upon the matter of jurisdiction and its limits contain no internal evidence of any systematic or principled approach to these problems on the part of the Legislature...”: see I. Fletcher, Insolvency in Private International Law: National and International Approaches (2nd ed) (2005, Oxford University Press, Oxford), at paragraph 2.12 (“Fletcher International”).

**Conclusion**

Bathurst’s recent biographer has observed that: “Bathurst's judgments as lord chancellor are not memorable...”[[115]](#footnote-115) Similarly Campbell observed that, “He [Bathurst] does not seem to have settled any point of much importance…”[[116]](#footnote-116)

Taking into account the long influence of *Solomons v. Ross* this perception of Bathurst’s judicial contribution on the cross-border insolvency front must be incorrect.

Professor Ian F. Fletcher QC (Hon) was peerless in the field of cross-border insolvency law[[117]](#footnote-117) and insolvency law more generally.[[118]](#footnote-118) His cross-border insolvency work has been cited in the Judicial Committee of the House of Lords (as it then was)[[119]](#footnote-119) and he has appeared in its successor appellate court, the UK Supreme Court, in the famous Rubin case.[[120]](#footnote-120)

Fletcher’s work has also laid the foundations upon which a number of subsequent scholars have forged their own careers. In recent times this has included the work of, *inter alia*, Mevorach,[[121]](#footnote-121) Omar,[[122]](#footnote-122) Chan Ho and Wood.[[123]](#footnote-123) Their continued work on these complex cross-border issues helps us to understand particularly in troubled period of Brexit (take some more Brexit material from original article for here).

National Futures

Common law – Fletcher’s counter counter reofmration (from UKRIP email).

**TO DO**

* Search emails from Fletcher for any direction on his thoughts on cross border
* Cooke’s bankruptcy and other early bankruptcy books
* Selden materials on Bathurst
* Oxford history of enlgish law on the period?
* Holdsworth on the period of Bathurst?
* Polden and OUP white cover histories on Bathurst, etc.
* Blom cooper llm thesis
* Comparative thesis in room on top of milman and sealy – Whitney Dunscomb, S. *Bankruptcy – A Study in Comparative Legislation*. Studies in History, Economics and Public Law, Vol.II, No.2, Columbia College, New York, 1893.

Look at??:

Constitutional Change in England and the Diffusion of Regulatory Initiative, 1660–1714

Pettigrew, William A, History, December 2014, Vol.99(338), pp.839-863

**Cross-border insolvency.**

**David** **Graham**.

C.L.P. 1989, 42, 217-229.

1. ♦ Chief Registrar in Bankruptcy (2004-2017), Registrar in Bankruptcy (1996-2004), High Court of Justice. Consultant, Moon Beaver and Non-Executive Director, Manolete Partners PLC. [↑](#footnote-ref-1)
2. ♣ Senior Lecturer in Law, School of Law and Social Justice, University of Liverpool. Academic Associate, Exchange Chambers. Email: [j.tribe@liverpool.ac.uk](mailto:j.tribe@liverpool.ac.uk). We would like to thank Ms. Liz Hore of the National Archive, Mr. Gabriel Moss QC, Professor Michael Lobban, Professor David Milman, Ms. Tamsin Bailey and Dr. Paul Omar for commenting on earlier drafts of this article. Any errors or omissions are the sole responsibility of the authors. It should be noted that the dedicatee of this Special Edition of Insolvency Intelligence, Professor Ian F. Fletcher QC (Hon), is referred to as Fletcher throughout this article in line with academic convention. [↑](#footnote-ref-2)
3. Northington was created Lord Chancellor on the 16th January 1761. His woolsack indisposition did not prevent him from being elevated to an Earldom as by letters patent bearing the date 19th May 1764 he was created an Earl with the title Earl of Northington in the County of Southampton and Viscount Henley. See: Henley, R. A *Memoir of the Life of Robert Henley, Earl of Northington, Lord High Chancellor of Great Britain.* London, 1831, p.48. [↑](#footnote-ref-3)
4. *Solomons v. Ross* (1764) 1 Hy. Bl. 131n; 126 E.R. 79; (1764) 1 H Bl 131n (Henry Blackstone’s reports). See also: Wallis’ Irish Chancery Reports (1839), at 59: see also: Nadelman, KH. *Solomons v. Ross and International Bankruptcy Law* (1949) 9 MLR 154, at 155. (Hereafter *Solomons v. Ross*). Fletcher’s own discussion of *Solomons v. Ross* can be found in: Fletcher, IF. *Insolvency in Private International Law*. Clarendon Press, Oxford. 1999, p.15 where he summarises the case succinctly. He notes “…as early as 1764 the English court was prepared to rule that a foreign bankruptcy could have direct extraterritorial effect upon the bankrupt’s moveable property situate within the jurisdiction of the English court.” In his 2002 inaugural lecture at UCL Fletcher cited *Solomons v. Ross* as authority when he stated, “Indeed, since the middle of the eighteenth century, English courts had been prepared to recognise the validity of foreign bankruptcy proceedings conducted at the debtor’s domiciliary forum, and had ruled that any of the bankrupt’s moveable property which happened to be situate in England could automatically vest in the foreign trustee in bankruptcy, in the same way as would occur of proceedings took place in England.” See: Fletcher, IF. *The Quest for Global Insolvency Law: A Challenge for Our Time*, in: Freedman, MDA (Ed). *Current Legal Problems 2002*. Volume 55. Oxford University Press, Oxford, 2003, p.434 [↑](#footnote-ref-4)
5. *Per* Professor Ian F. Fletcher QC (Hon) (hereafter Fletcher) in his module summary video for the Corporate International Insolvency Law LLM module at UCL, see: <https://youtu.be/_ckWY9Vi6zE> [↑](#footnote-ref-5)
6. See further: Fletcher, IF. *The Genesis of Modern Insolvency Law - an Odyssey of Law Reform* (1989) (Sep) JBL 365-376. [↑](#footnote-ref-6)
7. Hereafter Bathurst. [↑](#footnote-ref-7)
8. Alexander Wedderburn, later Lord Loughborough, Lord Chancellor, and later still the 1st Earl of Rosslyn. [↑](#footnote-ref-8)
9. On these Chancery records see: Horwitz, H. *Chancery Equity Records and Proceedings 1600-1800*. Public Record Office Handbook No.27, Public Record Office, Kew, 1998. [↑](#footnote-ref-9)
10. On the golden thread see further: Dessain, A & Wilkins, M. *How strong and long is "The Golden Thread"? Jurisdictional issues in a globalised world* (2014) J.G.L.R, 18(1), 72-108. See also: Crystal, M. *"The golden thread": universalism and assistance in international insolvency* (2011) J.G.L.R, 15(1), 21-34. See also: Fletcher, IF. *Rowing back from Rubin: the Court of Appeal reaffirms the policy of modified universalism in the granting of judicial assistance* (2014) Insolv. Int. 2014, 27(3), 43-47. See also: Kirshner, JA. *A Jersey disast(re)? Exporting corporate insolvencies across borders* (2103) C.R. & I,6(4), 99-101. [↑](#footnote-ref-10)
11. We are not concerned here with comparative insolvency. For some interesting early examples of that approach see: Whitney Dunscomb, S. *Bankruptcy – A Study in Comparative Legislation*. Studies in History, Economics and Public Law, Vol.II, No.2, Columbia College, New York, 1893. [↑](#footnote-ref-11)
12. *Re Oriental Inland Steam Company, ex parte. Scinde Railway Company* (1873-74) L.R. 9 Ch.App 557. [↑](#footnote-ref-12)
13. *ibid*, p.559. [↑](#footnote-ref-13)
14. *ibid.* [↑](#footnote-ref-14)
15. *Rubin v. Eurofinance SA, New Cap Reinsurance Corp Ltd (In Liquidation) v Grant* [2012] UKSC 46; [2013] 1 A.C. 236; [2012] 3 W.L.R. 1019. For a critique of *Rubin* see: Anderson, H. *Six of the best: the record of the Supreme Court in the insolvency cases decided in its first four years* (2014) J.B.L, 3, 194-206. [↑](#footnote-ref-15)
16. On which see further: Tribe, J. *Corporate Insolvency Law: Challenging Orthodoxies in Theory, Design and Use.* Edward Elgar, London(Forthcoming). [↑](#footnote-ref-16)
17. See: *Graham Discovering*, p.155. [↑](#footnote-ref-17)
18. For a critical discussion of universalism see: Mevorach, I. *On the road to universalism: a comparative and empirical study of the UNCITRAL model law on cross-border insolvency* (2011) EBOLR. 12(4), 517-557. See also: McCormack, lG. *Universalism in insolvency proceedings and the common law* (2012) OJLS, 32.2 (2012), 325-347. [↑](#footnote-ref-18)
19. See further: Tribe, J. *Brexit and Insolvency: Ruminations on Loss and Opportunity ("Re-imagining Cross-Border Insolvency in Private International Law: A Defence of Modified Universalism in the Age of Brexit").* In Exchange Chambers' 17th Annual Insolvency Conference. Exchange Chambers, Manchester & Leeds, October 18th 2017. See also: Tribe, J. *The not-so-great Reformation? Recent corporate insolvency framework reform proposals, the ‘bonkers’ Brexit and England and Wales’ contribution to EU law reform*. (2016) Recovery, (Autumn), 30-33. [↑](#footnote-ref-19)
20. cite s.426 and the part of the statute that shows that universalism is the UK approach. [↑](#footnote-ref-20)
21. **As Finch and Milman have noted. See:** [↑](#footnote-ref-21)
22. cite fletcher here. [↑](#footnote-ref-22)
23. Cite mccormack [↑](#footnote-ref-23)
24. *Fletcher International*, p.XX [↑](#footnote-ref-24)
25. See: *Cambridge Gas Transport Corp v. Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26; [2007] 1 A.C. 508; [2006] 3 W.L.R. 689. (Hereafter *Cambridge Transportation*). [↑](#footnote-ref-25)
26. See: *Re HIH Casualty & General Insurance Ltd* [2008] UKHL 21; [2008] 1 W.L.R. 852. (Hereafter *HIH*). [↑](#footnote-ref-26)
27. On the history of the area see: Graham, D. *Discovering Jabez Henry, cross-border insolvency law in the 19th century* (2001) I.I.R, 10(2), 153-166; See also: Graham, D. *In search of Jabez Henry: Part II: the readership of Foreign Law* (2005) I.I.R, 14(3), 223-234. See also: Graham, D. *The insolvency Italian banks of medieval London: Part* 2 (2000) I.I.R, 9(3), 213-231; Graham, D. *The insolvent Italian banks of medieval London: Part 1* (2000) I.I.R., 9(2), 147-156. See also: Graham, D. *The cross-border scene: pre-INSOL* (2007) INSOL W. 2007, 1 Supp (Silver Jubilee Edition 2007), 10-12; Graham, D. *Cross-border insolvency* (1989) C.L.P. 1989, 42, 217-229. See also: Nadelmann, K.H. *Bankruptcy Treatise* (1944) 93 U.Pa. L. Rev 58. See also: Nadelmann, KH. *An International Bankruptcy Code: New Thoughts on an Old Idea* (1961) ICLQ, Vol. 10, No. 1 (Jan., 1961), pp. 70-82. [↑](#footnote-ref-27)
28. *Solomons v. Ross* (1764) 1 Hy. Bl. 131n; 126 E.R. 79; (1764) 1 H Bl 131n. [↑](#footnote-ref-28)
29. For general economic history, including the period under discussion in this article, see: Hill, C. *British Economic and Social History 1700 – 1982*. See also: May, T. *An Economic and Social History of Britain 1760 – 1970*. See also: de Zwart & van Zanden. *The Origins of Globalization: World Trade in the Making of the Global Economy, 1500-1800* (New Approaches to Economic and Social History, 2018. [↑](#footnote-ref-29)
30. *per* Lord Hoffmann, *HIH*, para.XX. [↑](#footnote-ref-30)
31. Generally see: <https://www.history.ac.uk/library/collections/economic-history> [↑](#footnote-ref-31)
32. See: Ashton, TS. *An Economic History of England – The Eighteen Century*. Routledge, London, 1955, p.228. [↑](#footnote-ref-32)
33. Leng, T. *Commercial Conflict and Regulation in the discourse of trade in seventeenth century England* (2005) The Historical Journal, 2005, Vol.48(4), pp.933-954. [↑](#footnote-ref-33)
34. Erikson, E. *Between Monopoly and Free Trade: The English East India Company, 1600-1757* (Princeton Analytical Sociology Series), 2016. See also: Pincus, S. *Rethinking Mercantilism: Political Economy, The British Empire and the Atlantic World in the 17th and 18th Centuries* (https://warwick.ac.uk/fac/arts/ren/projects/archive/newberry/collaborativeprogramme/ren-earlymod-communities/britishandamericanhistories/25march/session3reading/rethinkingmercantilism.pdf ). See also: Daudin, G & O’Rourke, KH & Prados de la Excsura, L. *Trade and Empire, 1700 – 1870, no. 2008 – 24, July 2008,* (https://www.researchgate.net/publication/4849529\_Trade\_and\_Empire\_1700-1870) [↑](#footnote-ref-34)
35. Gijs, R. *The role of mercantilism in Anglo‐Dutch political relations, 1650–74* (2010) Economic History Review, August, Vol.63(3), pp.591-611. See also: Morgan, K. *Anglo Dutch Economic relations in the Atlantic World, 1688 – 1783* (https://www.jstor.org/stable/10.1163/j.ctt1w8h3c9.11?seq=1#metadata\_info\_tab\_contents). See also: Koot, CJ. *Empire at the Periphery: British Colonists, Anglo-Dutch Trade, and the Development of the British Atlantic, 1621-1713.* 2015. See also: Palmer, SH (Ed). *Economic Arithmetic: A Guide to the Statistical Sources of English Commerce, Industry, and Finance, 1700-1850* (Routledge Library Editions: The Industrial Revolution) Nov 2018. [↑](#footnote-ref-35)
36. See further: Jones, N. *Bathurst, Henry, second Earl Bathurst (1714–1794), lord chancellor*. Oxford Dictionary of National Biography. Oxford University Press. 2008. (Hereafter *Jones ODNB*). [↑](#footnote-ref-36)
37. Campbell has it as the 2nd May 1714 (p.437) [↑](#footnote-ref-37)
38. See: Sainty, J. *A List of English Law Officers, King’s Counsel and Holders of Patents of Precedence*. Selden Society, London, 1987, p.93. [↑](#footnote-ref-38)
39. See: Sainty, J. *The Judges of England: 1272-1990*. Selden Society, London, p.81. (Hereafter *Sainty Judges*). [↑](#footnote-ref-39)
40. Thomas, P. *Yorke, Philip, first earl of Hardwicke (1690–1764), lord chancellor*. Oxford Dictionary of National Biography. Ed. 2007. [↑](#footnote-ref-40)
41. *Jones ODNB.* [↑](#footnote-ref-41)
42. Note about apsley house, no.1 London. Bathurst had a houdse in Dean Street at the time of his elevation to the woolsack. [↑](#footnote-ref-42)
43. *Sainty Judges*, p.81. [↑](#footnote-ref-43)
44. See: *Papers concerning law suit brought by Lord Bathurst (as trustee) v. Robert Warburton, former master, bankrupt.* 1787-1788. [↑](#footnote-ref-44)
45. *Jones ODNB.* [↑](#footnote-ref-45)
46. Campbell, J. *The Lives of the Lord Chancellors and Keepers of the Great Seal of England, from the earliest times till the reign of King George IV*. John Murray, London, 1846, vol.5, page XX (Hereafter *Campbell Lives*). With more than a touch of inconsistency Campbell goes on to note, “The Chancery galley was less unsteady than when three unskilful pilots were employed at the helm.” (see vol.V, p.448). [↑](#footnote-ref-46)
47. For example Campbell notes, “I know not, and I must own I have not taken much pains to ascertain at what school he [Bathurst] was educated. He probably passed through it with little flogging and little distinction.” This is pure speculation which could have easily be cleared up in Campbell’s time not least as Bathurst attended Eton. See *Campbell Lives*, p.437. Campbell also noted that, “Lord Chancellor Bathurst made no attempt to amend the law, or to reform the abuses of the Court of Chancery.

    Jones has show that in fact…ODNB examples of law reform?? [↑](#footnote-ref-47)
48. *Campbell Lives*, p.432. [↑](#footnote-ref-48)
49. *Campbell Lives,* p.437. [↑](#footnote-ref-49)
50. *Campbell Lives*, p. 445. [↑](#footnote-ref-50)
51. *Campbell Lives*, p.463. [↑](#footnote-ref-51)
52. *Campbell Lives*, p.432. [↑](#footnote-ref-52)
53. *Campbell Lives*, p.432. [↑](#footnote-ref-53)
54. *Campbell Lives*, p.413. [↑](#footnote-ref-54)
55. On Campbell see: Jones, G., & Jones, V. *Campbell, John, first Baron Campbell of St Andrews (1779–1861), lord chancellor*. Oxford Dictionary of National Biography, Oxford, 2008. [↑](#footnote-ref-55)
56. Underhill, N. *The Lord Chancellor*. Terence Dalton Limited, Suffolk, 1978, p.152. (Hereafter *Underhill*). [↑](#footnote-ref-56)
57. *Underhill*, p.163. [↑](#footnote-ref-57)
58. *Campbell Lives*, p.445. [↑](#footnote-ref-58)
59. *Solomons v. Ross* (1764) 1 Hy. Bl. 131n; 126 E.R. 79; (1764) 1 H Bl 131n (Henry Blackstone’s reports). See also: Wallis’ Irish Chancery Reports (1839), at 59: see also: Nadelman, KH. *Solomons v. Ross and International Bankruptcy Law* (1949) 9 MLR 154. [↑](#footnote-ref-59)
60. See further: Lobban, M & Cornish, WR & Anderson, JS & Cocks, R & Polden, P & Smith, K. *The Oxford History of the Laws of England, volumes XI-XIII*. Oxford 2010, volume XII, at Chapter IV (bankruptcy) and V (imprisonment for debt). [↑](#footnote-ref-60)
61. See further: Tribe, J. *The Imprisonment for Debt Jurisdiction* (2018) Insolvency Intelligence, (31(3)), 92-100. [↑](#footnote-ref-61)
62. See for example: *Thomas Corbett. Hugh Ross, a London merchant under contract to supply iron from the Baltic, is sueing his insurers for the loss of his ship the Betty, which was detached from the convoy of the Anglesea, Harwich and Deptford prize*. ADM 354/128/51, National Maritime Museum: The Caird Library and Archive. See also: *Hugh Ross of St Mary Axe. Asks that some Swedish iron surplus to contract be received at Deptford*. 1747 August 22, ADM 106/1048/125, The National Archives, Kew. See also: *John Clevland. Hugh Ross, under contract to supply iron to the Navy, reports he has a ship laden with iron waiting in the Thames for convoy to Portsmouth. Ask for a convoy from the Nore*. 1747 Augusts 26th. ADM 354/136/112. National Maritime Museum: The Caird Library and Archive. See also: *Hugh Ross, London. His iron contract has expired and requests that the iron still due is received from the Thomas and Frances, Captain Dawson, the Triton, Captain Bride, and the Prince Gustaff, Captain Badendick*. 19th October 1763. ADM 106/1128/129. The National Archives, Kew. [↑](#footnote-ref-62)
63. See: *Hugh Ross, St Mary Axe. Will be short in the delivery of hemp for Woolwich and Portsmouth, of which only part has been delivered…* ADM106/1105/67. 1752. National Archives, Kew. [↑](#footnote-ref-63)
64. See for example: *Ross v. Ross (documents type: Bill and two answers). Plaintiff: Hugh Ross, merchant of St Mary Axe, London*. C11/197/9. The National Archives, Kew. [↑](#footnote-ref-64)
65. Professor Sir Simon Schama’s 1991 “*The Embarrassment of Riches”* contains a striking description of the Dutch Desolate Boedels Kamer, complete with pictures. Schama notes: “Of all the sculptured reliefs that festoon the interior of the Amsterdam town hall, none is more startling than the decoration over the door of the Bankruptcy Chamber – the Desolate Boedels Kamer…But it is the decoration above the plaque that is more unconventional. It is the place where reality bites into platitude, for the hanging garlands are the actual rather the emblematic, attributes of financial disaster. Empty chests, unpaid bills, worthless stock lie strewn around while among the detritus of a fortune scuttle a family of hungry rats.” See: Schama, S. *The Embarrassment of Riches: An Interpretation of Dutch Culture in the Golden Age.* Harper Perennial, London, 1991, page 343. [↑](#footnote-ref-65)
66. The City of London’s London Metropolitan Archive houses the records of the Mayor’s Court. However, many of the records have not survived. There are gaps for the 18th and 19th centuries which includes the period when Solomons v. Ross was litigated. The records were destroyed in a fire at the Royal Exchange in 1838. Record loss also occurred in 1941, some three years before Fletcher was born, as a result of Luftwaffe bombing during World War II. On this history of this court see: Polden, P. *Appendix 1: The Mayor's and City of London Courts". A History of the County Court, 1846–1971*. Cambridge University Press, Cambridge, 1999, pp. 322–325. [↑](#footnote-ref-66)
67. Not Lord Hardwicke as one case has erroneously stated, see: *Phillips v. Hunter*, 2 H. Bl. 403; 126 Eng. Rep. 618 (1486-1865. [↑](#footnote-ref-67)
68. (1708–1772). Who presided as Lord Chancellor from the 30th June 1757 until 30th July 1766. See further a memoir published by the second Earl: Henley, RHE. *A Memoir of the Life of Robert Henley, Earl of Northington, Lord High Chancellor of Great Britain. (Appendix-a few of Lord Northington's judgements.).* London, 1831. See also: Thomas, P. *Henley, Robert, first earl of Northington (c. 1708–1772), lord chancellor.* Oxford Dictionary of National Biography, Oxford. 2004. [↑](#footnote-ref-68)
69. Henley, R. *A Memoir of the Life of Robert Henley, Earl of Northington, Lord High Chancellor of Great Britain*. London, 1831, p.49. [↑](#footnote-ref-69)
70. See: *Hugh Ross, St. Mary Axe. He stated in his last letter that the works of iron abroad have suffered from the fluctuation of property and their owners, and the marks are often altered though the iron comes from the same ore and mine…* 3rd December 1753. ADM 106/1115/32. The National Archives, Kew. [↑](#footnote-ref-70)
71. *Solomons v. Ross.* [↑](#footnote-ref-71)
72. These are contained in the Chancery series C 12 in the National Archive. To find these documents researchers must use a search of the National Archive catalogue ( ) using the search terms “S\*l\*mons AND Ross”. This brings up three hits all with the spelling “Salomons”. This is possibly an error in the National Archive catalogue. [↑](#footnote-ref-72)
73. *Salomons v. Ross* [sic] b.r. 1760, C 12/1280/32, The National Archives. [↑](#footnote-ref-73)
74. *Salomons v. Ross* [sic] b.r.r, 1760, .C 12/1280/33, The National Archives. [↑](#footnote-ref-74)
75. *Salomons v. Ross* [sic], 1761, r. C 12/1284/36, The National Archive. [↑](#footnote-ref-75)
76. On Lord Loughborough see: Murdoch, A. *Wedderburn, Alexander, first earl of Rosslyn (1733–1805), lord chancellor.* Oxford Dictionary of National Biography, Oxford, 2008. [↑](#footnote-ref-76)
77. See: Fletcher, IF. *Insolvency in Private International Law*. Clarendon, Oxford, 1999, p.15 (Hereafter *Fletcher International).* [↑](#footnote-ref-77)
78. See: Fifoot, CHS. *Lord Mansfield.* Clarendon Press, Oxford, 1936, pp.85-86 88, 108-10, 220-1. [↑](#footnote-ref-78)
79. (1768) 4 Burrow 2235; 1 W. Bl.660. [↑](#footnote-ref-79)
80. (1779) 1 Douglas 170. [↑](#footnote-ref-80)
81. (1779) 1 Douglas 170. [↑](#footnote-ref-81)
82. (1756) 1 Burr.6. [↑](#footnote-ref-82)
83. Poser, NS. *Lord Mansfield – Justice in the Age of Reason*. McGill-Queen’s University Press, Montreal, 2013, p.202. [↑](#footnote-ref-83)
84. (1760) 2 burr 1077; 97 ER 717; 1 WM BL 234; 96 ER 129 and 141. [↑](#footnote-ref-84)
85. (1774) 1 Cowp 161; 98 ER 1021. [↑](#footnote-ref-85)
86. (1775) 1 Cowp 341. (Hereafter *Holman*). [↑](#footnote-ref-86)
87. (1775) 1 Cowp 341. [↑](#footnote-ref-87)
88. (1760) 2 burr 1077; 97 ER 717; 1 WM BL 234; 96 ER 129 and 141. [↑](#footnote-ref-88)
89. *Ibid.* [↑](#footnote-ref-89)
90. *Ibid.* [↑](#footnote-ref-90)
91. *Campbell Lives*, p.445, 446. [↑](#footnote-ref-91)
92. *Campbell Lives*, pp.452 & 453. [↑](#footnote-ref-92)
93. See: Fifoot, CHS. *Lord Mansfield.* Clarendon Press, Oxford, 1936. [↑](#footnote-ref-93)
94. See Oldham, J. *Murray, William, first earl of Mansfield (1705–1793), judge and politician.* Oxford Dictionary of National Biography, Oxford, 2008. [↑](#footnote-ref-94)
95. Poser, NS. *Lord Mansfield – Justice in the Age of Reason*. McGill-Queen’s University Press, Montreal, 2013. (pp.202-203 on bankruptcy). [↑](#footnote-ref-95)
96. *Campbell Lives*, p.465, citing 20 Parl Hist. 569. [↑](#footnote-ref-96)
97. See: *Fletcher International*, p.15. [↑](#footnote-ref-97)
98. It should be noted that Government policy documents have also referred to the case in a positive light, e.g. viewing *Solomons v. Ross* as an application of a “liberal conflicts rule“ See: Bankruptcy Reform Act of 1978 - Hearings before the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, Senate, 95th Congress, 1st Session, on S. 2266 and H.R. 8200, November 28, 29 and December 1, 1977. Part 2; p. 411-1316. (Hereafter *Senate Bankruptcy*). [↑](#footnote-ref-98)
99. See for example: (1) *Folliott v. Ogden* 1 H. BL. 132.126 Eng. Rep. 75 (1486-1865); (2) *Sill v. Worswick* 1 H. Bl. 665; 126 Eng. Rep. 379 (1486-1865); (3) *Smith v. Buchanan,* 1 East, 6; 102 Eng. Rep. 3; (4) *Hovil v. Browning*, 7 East, 154; 103 Eng. Rep. 59; (5) *Trimbey v. Vignier*, 1 Bing. (N. C.) 151, 131 Eng. Rep. 1075 (1486-1865); (6) *Hunter v. Potts*, 4 T. R. 182; 100 Eng. Rep. 962; (7) *Selknig v. Davies*, 2 Dow P. C. 230; 3 Eng. Rep. 848 (8) *Sieveking v. Behrens*, 2 My. & Cr. 581; 40 Eng. Rep. 761 (9) *Phillips v. Hunter*, 2 H. Bl. 403; 126 Eng. Rep. 618 (1486-1865); (10) *Alivon v. Furnival*, 1 C. M. & R. 277; 149 Eng. Rep. 1084; (11) Clark v. Mullick, 2 Moo. Ind. App. 263, 18 Eng. Rep. 300; (12) *Stanley v. Bernes*, 3 Hagg. Ecc. 373; 162 Eng. Rep. 1190; (13) [↑](#footnote-ref-99)
100. [1910] AC 508 (HL). Hereafter *Galbraith.* [↑](#footnote-ref-100)
101. [1910] AC 508 (HL), p.511. [↑](#footnote-ref-101)
102. *Senate Bankruptcy*, p.1050. [↑](#footnote-ref-102)
103. Blom-Cooper, L.. *Bankruptcy in Private International Law*. London, 1954, p.107. [↑](#footnote-ref-103)
104. *RE HIH Casualty & General Insurance* Ltd [2008] 1 W.L.R. 852. [↑](#footnote-ref-104)
105. Neither Mevorach or Chan Ho mention the case in their recent modern treatments on cross-border insolvency. [↑](#footnote-ref-105)
106. See for example: McKnight, A. *A review of developments in English law during 2006: Part 2* (2007) J.I.B.L.R, 22(4), 187-217. See also: Grace, AD. *Law of liquidations: the recognition and enforcement of foreign liquidation orders in Canada and Australia - a critical comparison* (1986) I.C.L.Q, 35(3), 664-703. [↑](#footnote-ref-106)
107. Dicey, AV. *Law of Domicil as a Branch of the Law of England stated in the form of Rules*. Stevens & Sons, London, 1879, p.277. See also his much later work: Dicey, AV. *A Digest of the Law of England with Reference to the Conflict of Laws.* 2nd ed. Stevens & Sons Ltd, London, 1908, p.xxvii. [↑](#footnote-ref-107)
108. Check all the books in my room for Solomons v. Ross treatment. [↑](#footnote-ref-108)
109. See for example: Parsons, T & Kellen, W. *The Law of Contracts*. Little Brown and Company, Boston, 1883, vol.III, p.452. See also: Ross, G. Leading Cases in the Commercial Law of England and Scotland. T&JW Johnson, Philadelphia, 1854, p.556. [↑](#footnote-ref-109)
110. See: Dicey, AV & Berriedale, AK. *A Digest of the Law of England with Reference to the Conflict of Laws.* 3rd ed. Stevens & Sons Ltd, London, 1922), p.476. This view is repeated in the 4th edition of 1927 at page 481 (footnote (z)) and the 5th edition of 1932 at page 501 (footnote (c)). [↑](#footnote-ref-110)
111. Fletcher, IF. *International insolvency: a brief historical sketch* (2007) INSOL W. 2007, 1 Supp (Silver Jubilee Edition 2007), 6-9. [↑](#footnote-ref-111)
112. Fletcher, IF. *The quest for global insolvency law: a challenge for our time* (2002) C.L.P, 55, 427-445. [↑](#footnote-ref-112)
113. (1764) 126 E.R. 80 [↑](#footnote-ref-113)
114. Neale and Another, Assignees of Grattan v. Cottingham and Houghton , in Cane. in Ireland, November 16, 1764. [↑](#footnote-ref-114)
115. *Jones ODNB.* [↑](#footnote-ref-115)
116. *Campbell Lives*, p.451. [↑](#footnote-ref-116)
117. Fletcher’s work with Professor Bob Wessels on the III/ALI Global Principles for Cooperation in International Insolvency Cases project is an important recent example (see <http://iiiglobal.org/component/jdownloads/viewdownload/36/5897.html>). See also I. Fletcher and B. Wessels, “A Final Step in Shaping Rules for Cooperation in International Insolvency Cases” (2012) 9(5) International Corporate Rescue 283-286; I. Fletcher and B. Wessels, “Shaping Rules for Cooperation in International Corporate Insolvency Cases through Dialogue” (2010) 7(4) European Corporate Law 149-153; I. Fletcher and B. Wessels, “A First Step in Shaping Rules for Cooperation in International Insolvency Cases” (2010) 7(3) International Corporate Rescue 149-153; I. Fletcher, “The Quest for Global Insolvency Law: a Challenge for Our Time” (2002) 55 Current Legal Problems 427-445; I. Fletcher, “Bridges to the Future - Building Tomorrow’s Solutions for International Insolvency Problems” (2000) 2(Sep) Company Financial and Insolvency Law Review 161-179; I. Fletcher, “International Insolvency Issues: Recent Cases” (1997) (Sep) Journal of Business Law 471-485; and I. Fletcher, “International Insolvency: the Way Ahead” (1993) 2(1) International Insolvency Review 7-28. See also I. Fletcher, “Towards a Next step in Cross-Border Judicial Cooperation” (2014) 27(7) Insolvency Intelligence 100-105; I. Fletcher, “Rowing Back from Rubin: the Court of Appeal Reaffirms the Policy of Modified Universalism in the Granting of Judicial Assistance” (2014) 27(3) Insolvency Intelligence 43-47. [↑](#footnote-ref-117)
118. He also contributed on other subjects, see: Fletcher, IF. *Latin Redaction A of the Law of Hywel* (1986), reviewed by Dafydd Walters (1987) 18 Cambrian Law Review 100-103. [↑](#footnote-ref-118)
119. See: Cambridge Gas Transportation Corp v. Official Committee of Unsecured Creditors of Navigator Holdings Plc [2007] 1 A.C. 508 PC (Isle of Man). Lord Hoffmann, para 18. See also: In re HIH Casualty and General Insurance Ltd [2008] 1 W.L.R. 852paragraph 7. [↑](#footnote-ref-119)
120. Fletcher made written submissions for the Madoff intervenors. See: Rubin v. Eurofinance SA [2012] UKSC 46; [2013] 1 A.C. 236 (SC) [↑](#footnote-ref-120)
121. On group company cross-border insolvency issues see: Mevorach, I. *Cross-border insolvency of groups: the choice of law challenge* (2014) BJCFCL. 9(1), 226-249. See also: Mevorach, I. *Insolvency within multinational enterprise groups*. Oxford University Press, Oxford, 2009. See also: Mevorach, I. *Centralising Insolvencies of Pan-European Corporate Groups: a Creditor's Dream or Nightmare?* (2006) JBL pp.468-486. [↑](#footnote-ref-121)
122. See: Omar, P. *The "Empire" strikes back: lessons for the mother country in insolvency co-operation (Case Comment)* (2013) I.C.C.L.R., 24(11), 411-418; Omar, P. *The resurgence of cross-border recognition and enforcement of insolvency judgments: the Re Phoenix case* (2013) I.C.C.L.R, 24(9), 329-335. Omar, P. “Passporting” Rescue: Section 426 of the United Kingdom Insolvency Act and Assistance to Other Countries, Chapter 8 in R. Parry (ed), Substantive Harmonisation and Convergence of Laws in Europe (2012) INSOL Europe (99-114). See also: Omar, P. Passport renewed: extension of rescue proceedings to foreign companies under section 426 of the Insolvency Act 1986 (2103) Int. C.R. 2013, 10(5), 310-317. See also: Omar, P. UK cross-border cooperation: extending rescue to Jersey debtors on a "passporting" basis (2103) I.I.R, 22(3), 119-143. See also: Omar, P. Visa denied: an end to the Jersey practice of insolvency "passporting" (2013) J.G.L.R, 17(2), 182-194. Omar, P. Cross-border assistance in insolvency under Jersey law (2011) I.I.R, 20(2), 107-129; Omar, P. Cross-border assistance in the common law and international insolvency texts: an update (2009) I.C.C.L.R, 20(11), 379-386; [↑](#footnote-ref-122)
123. Nottingham citation and Brexit piece in insol int [↑](#footnote-ref-123)