OPINION OF ADVOCATE GENERAL DARMON
delivered on 8 February 1994 *

Mr President,
Members of the Court,

1. In this reference from the Court of Appeal this Court is asked to rule upon the interpretation of Article 16(1) of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [1] (hereinafter referred to as 'the Convention'). The main facts of the dispute are as follows.

2. During 1971 George Lawrence Webb concluded an agreement for the purchase of a flat in Antibes (France). The authorizations required by the Bank of England under exchange control legislation were granted in the name of his son, Lawrence Desmond Webb.

3. The funds necessary for the purchase were transferred from the bank account of the plaintiff in the main proceedings to one opened in Antibes by his son in whose name the property was registered.

4. In March 1990, the father, George Webb, brought an action against his son in the High Court primarily for a declaration that the son held the property upon trust and for an order that his son should execute such documents as should be required to vest the legal ownership of the property in himself.

5. The son, Lawrence Webb, besides contending that the property was a gift to him, challenges the jurisdiction of the English courts on the ground that, since the action concerns a right *in rem* in immovable property, only the French court of the place where the property is located has jurisdiction. He relies in this regard on Article 16(1) of the Convention, which provides that:

'The following courts shall have exclusive jurisdiction, regardless of domicile: ... in proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated'.

* Original language: French.

1 — As amended by the Convention of Accession of 9 October 1978 (OJ 1978 L 304, p. 1).

6. By judgment of 23 May 1991 the High Court dismissed that objection on the ground that the father's claim is based on a fiduciary relationship, the father not seeking an order for possession, rectification of the land register or a declaration that he is the owner.

7. An appeal was lodged and the Court of Appeal has referred the following question:

'Whether on the true interpretation of Article 16(1) of the Brussels Convention the proceedings in the action in the Chancery Division of the High Court of Justice the short title and reference to the record of which is *Webb* v *Webb* [1990] W. No 2827 are proceedings in respect of which the courts of France have exclusive jurisdiction'.

8. A preliminary observation is called for. Although the referring court has made its reference on the basis of Article 177 of the EEC Treaty, the relevant provision in this case is Article 3 of the Protocol of 3 June 1971. Even under that provision, the Court may not rule directly on the case before the Court of Appeal but must provide it with the necessary criteria for interpretation so that it may give judgment. The question must therefore be reframed and could be put in these terms: does an action brought by a person against another person for a declaration that the other person holds immovable property as trustee and for an order requiring the latter to execute such documents as should be required to vest the legal ownership in the plaintiff constitute an action *in rem* within the meaning of Article 16(1) of the Convention?

9. The Convention does take account of trusts and their specific nature since it lays down jurisdiction in matters concerning trusts in Article 5(6). However, that provision is inapplicable in the present case owing to the very particular nature of the trust in question. Whereas the aforesaid provision can only govern 'a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing', the resulting trust involved here is to be deduced

'... from the presumed intention of the person who furnishes the property, or the purchase price of the property'. [2]

10. As regards a resulting trust, Mr Béraudo gives the example

'... of a person who buys property in another's name. In the absence of a clear intention to make a gift, the person who financed the purchase is presumed to have retained equitable title, the beneficial interest in the property. The nominal owner has only the legal

2 — Dyer-Van Loon Report on Trusts and Similar Institutions, *Hague Conference on Private International Law, Proceedings of the Fifteenth Session*, 8 to 20 October 1984, Volume II, 1985, p. 64, No 110.

title. He is the presumed trustee of the property'. [3]

11. Where Article 16 is concerned, it should be borne in mind that this provision appears in Section 5 of Title II of the Convention and determines which courts are to have jurisdiction where the *principal subject-matter* of the claim relates to a matter mentioned therein. Article 16, which confers exclusive jurisdiction, has the effect of ousting the jurisdiction of the courts of the place where the defendant is domiciled and applies irrespective of any contrary agreement between the parties.

12. As Droz wrote [4]

'... the heads of jurisdiction enumerated in Article 16 will normally be the subject of exclusive jurisdiction only if they relate to the *principal subject-matter* of the proceedings of which the court is to be seised. This follows *a contrario*, but quite clearly, from Article 19 of the Convention which requires the court to decline jurisdiction, where a court of another Member State has exclusive jurisdiction under Article 16, only if it is seised of the principal subject-matter of the issue reserved for the courts of another Member State'. [5]

13. Finally, a judgment given in another Contracting State in disregard of that jurisdiction rule cannot be recognized (Article 28) nor enforced (Article 34).

14. Article 16 may therefore have the effect of bringing parties before a court which is not that of any of them.

15. That provision, in the part conferring exclusive jurisdiction 'in proceedings which have as their object rights *in rem* in immovable property' on the courts of the Contracting State in which the property is situated, has given rise to only one judgment of the Court, in *Reichert I*, [6] on which the observations of the parties concentrated, though it was not mentioned during the proceedings before the English courts.

16. In the case in which that ruling was given, a man and wife domiciled in the Federal Republic of Germany had donated to their son, who was also domiciled in that State, the legal ownership of immovable property located in France, taking a life interest for themselves. The German bank, which was a creditor of the couple, had brought in France an '*action paulienne*'

3 — 'Les Trusts Anglo-Saxons et le Droit Français', *LGDJ*, 1992, p. 38, No 65.

4 — *Compétence Judiciaire et Exécution des Jugements dans le Marché Commun*, Dalloz, 1972.

5 — Paragraph 146. See also the Jenard Report, OJ 1979 C 59, p. 34 and 38; Bellet, P.: 'L'élaboration d'une Convention sur la Reconnaissance des Jugements dans le Cadre du Marché Commun', *Journal du Droit International*, 1965, p. 833, 857; Gothot et Holleaux: *La Convention de Bruxelles du 27 Septembre 1968*, Jupiter, 1985, paragraph 141; Kaye, P.: *Civil Jurisdiction and Enforcement of Foreign Judgments*, Professional Books, 1987, p. 874.

6 — Judgment in Case C-115/88 *Reichert and Others* v *Dresdner Bank* [1990] ECR I-27. It should be remembered that following delivery of that judgment the referring court made a fresh reference in order to determine whether the *action paulienne* could be treated as an action covered by Articles 5(3), 16(5) and 24 of the Convention (judgment in Case C-261/90 *Reichert II* [1992] ECR I-2149). The second judgment is not relevant for the purposes of these proceedings.

which had the effect of making the transfer of property ineffective against itself. After the defendants had challenged the jurisdiction of the French court in favour of the German court of their domicile, the Cour d'Appel, Aix-en-Provence, referred a question asking in substance whether the *action paulienne* constituted an action *in rem* within the meaning of Article 16(1) of the Convention.

17. In its ruling the Court referred to its judgment in *Sanders*, [7] relating to the concept of 'tenancies of immovable property' and its judgment in *Duijnstee*, [8] on 'proceedings concerned with the registration or validity of patents', and repeated its concern to ensure that concepts used in the Convention should be applied uniformly, this requiring

'... an independent definition [to] be given in Community law to the phrase "proceedings which have as their object rights *in rem* in immovable property"'. [9]

18. After then observing that Article 16 provided for a forum different from that ordinarily having jurisdiction, the Court came to the conclusion that it

'... must not be given a wider interpretation than is required by its objective...', [10]

the *ratio legis* of that provision resting on the principle of proximity [11] which justified conferring jurisdiction on the courts of the *locus rei sitae*, which

'... are the best placed, for reasons of proximity, to ascertain the facts satisfactorily and to apply the rules and practices which are generally those of the State in which the property is situated...'. [12]

19. Those considerations led the Court to interpret that provision as meaning that

'... the exclusive jurisdiction of the Contracting State in which the property is situated does not encompass all actions concerning rights *in rem* in immovable property but only those which both come within the scope of the Brussels Convention and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights

7 — Judgment in Case 73/77 *Sanders* v *Van der Putte* [1977] ECR 2383.

8 — Judgment in Case 288/82 *Duijnstee* v *Goderbauer* [1983] ECR 3663.

9 — Paragraph 8.

10 — Paragraph 9.

11 — See, on this point, the study by Lagarde on 'Le Principe de Proximité dans le Droit International Privé Contemporain', *Académie de Droit International, Recueil des Cours*, 1986, I, Volume 196 of the collection, p. 9 et seq., 129.

12 — Paragraph 10.

in rem therein and to provide the holders of those rights with the protection of the powers which attach to their interest'. [13]

20. The Court found it necessary to consider the basis and purpose of the action brought and refused to apply Article 16(1) on the ground that:

'The *action paulienne* ... is based on the creditor's personal claim against the debtor and seeks to protect whatever security he may have over the debtor's estate'. [14]

21. As Bischoff states: [15]

'It would not therefore be rash to venture the view that the implications of the judgment certainly extend beyond the *action paulienne* alone and embrace all actions for annulment, rescission or avoidance which, although they might have a bearing on title to property, are based on a right *in personam* of the plaintiff'. [16]

22. Thus, being based on an enforceable claim, the *action paulienne* has as its purpose to preserve the creditor's general security over the debtor's estate but without giving him a *ius in rem*, so that, as Ancel states: [17]

'Claims seeking to strike down a right *in rem* in immovable property by challenging the transaction by which the property was transferred do not concern that category of rights as directly as those striking at their structure and protection. Unlike the latter, the former arise away from the core of the "substance" — the legal nature of the property — and are therefore liable to be barred by the rule of strict interpretation'. [18]

23. The positions taken before the Court are as follows.

24. On the one hand, we have the United Kingdom, which takes the view that the object of the father's action is 'the determination of the question whether land is held under a trust' [19] and that the action concerns only the relations internal to the trust so that it cannot be regarded as concerning a right *in rem*.

13 — Paragraph 11.
14 — Paragraph 12.
15 — *Journal de Droit International*, 1990, p. 503.
16 — P. 505.
17 — *Revue Critique de Droit International Privé*, 1991, p. 151.
18 — P. 157.
19 — Paragraph 9 of its observations.

25. That view is shared by the plaintiff in the main proceedings who considers that 'where the dispute concerns the existence or otherwise of a right arising out of a contract between the parties, or out of their conduct towards each other, the courts of the *situs* will be no better qualified to determine the dispute than the courts of any other Contracting State'. [20]

26. On the other hand, we have both the Commission and the defendant — the Commission expressly and the defendant more implicitly — laying stress on the *purpose* of the claim and submitting that the action is one *in rem*, with the father claiming to be the owner, which at the hearing led Counsel for the defendant to sum up the plaintiff's claim, not without humour, in these words: 'What is the plaintiff's claim? My Lords, the plaintiff's claim is to own the flat!'

27. The question is not an easy one and I have pondered on the correct approach to take, for the claim of ownership undeniably underlies the claim for the recognition of such a trust.

28. However, the approach which looks at the actual *aim* pursued by the plaintiff in the main proceedings is not supported by the relevant provision, by prevailing academic opinion or by the case-law of the Court. The jurisdiction *ratione materiae* of a court must necessarily be assessed in the light of the *subject-matter* of the claim, as defined in the originating application, without looking at purpose. [21]

29. Exclusive jurisdiction is conferred provided that the principal subject-matter of the claim relates to rights *in rem* in immovable property. Reading the French, Spanish and Italian texts ('en matière de droits réels immobiliers', 'en materia de derechos reales immobiliarios', 'in materia di diritti reali immobiliari'), one notices the slight difference in the English text ('in proceedings which have as their object rights *in rem*').

30. As Advocate General Sir Gordon Slynn stated in his Opinion in the *Rösler* case: [22]

'The other language versions seem to indicate that what is covered is litigation the subject-matter (rather than "the object") of which is a tenancy agreement of immovable property rather than one which concerns simply the immovable property itself'. [23]

20 — P. 9 of his observations.

21 — See Verheul, J. P.: 'The EEC Convention on Jurisdiction and Judgments of 27 September 1968 in Netherlands Legal Practice', *Netherlands International Law Review*, 1975, p. 210.

22 — Judgment in Case 241/83 *Rösler* v *Rottwinkel* [1985] ECR 99.

23 — At p. 104 *in fine*. English academic writers also consider that the subject-matter of the claim determines the forum and not the purpose. See, to this effect, Dashwood-Hacon-White: *A Guide to the Civil Jurisdiction and Judgments Convention*, Kluwer, 1987, p. 29; Anton, A. E.: *Civil Jurisdiction in Scotland*, Green & Son Ltd, 1984, p. 103.

31. Jenard also explained in this report that

'... the matters referred to in this article will normally be the subject of exclusive jurisdiction only if they constitute the principal subject-matter of the proceedings of which the court is to be seised',

and

'[t]hese rules (on exclusive jurisdiction), which *take as their criterion the subject-matter of the action*, are applicable regardless of the domicile or nationality of the parties.' [24]

32. As far as the case-law of the Court is concerned, the requirement of a restrictive interpretation of Article 16, laid down for the first time in the *Sanders* judgment, cited above, reflects the Court's refusal to extend the scope of that provision to cover claims which only indirectly or incidentally concern rights *in rem*.

33. The question to be determined, therefore, is whether or not an action for a declaration that a person holds property in trust for another person and for an order that the defendant execute such documents as are necessary to vest the legal ownership in the plaintiff constitutes an action *in rem* for the purposes of Article 16(1).

34. The distinction between rights *in personam* and rights *in rem*, which is well known in continental legal systems, was defined in this way in the Schlosser Report:

'A right *in personam* can only be claimed against a particular person ... A right *in rem*, on the other hand, is available against the whole world. The most important legal consequence flowing from the nature of a right *in rem* is that its owner is entitled to demand that the thing in which it exists be given up by anyone not enjoying a prior right'. [25]

35. Where property is transferred to a trustee to be held in trust, 'dual ownership' [26] arises since title stands in the name of the trustee or in the name of another person on behalf of the trustee, [27] and the beneficiary holds the beneficial interest which is an equitable interest.

24 — OJ 1979 C 59, p. 34, my emphasis.

25 — OJ 1979 C 59, paragraph 166 at p. 120.

26 — See the Dyer-Van Loon Report, cited above in footnote 2, paragraph 9 at p. 15.

27 — See, in this regard, the definition of a trust in Article 2 of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition, in the *Hague Conference on Private International Law, Proceedings of the Fifteenth Session*, 8 to 20 October 1984, cited above in footnote 2, p. 362.

36. According to the Schlosser Report, equitable interests

'... are not, however, merely the equivalent of personal rights on the Continent. Some can be registered and then, like legal rights, have universal effect, even against purchasers in good faith. Even if not registered they operate in principle against all the world; only purchasers in good faith who had no knowledge of them are protected in such a case'. [28]

37. Lasok and Stone [29] also suggest that equitable interests in land should be included in the concept of rights *in rem*. According to them:

'... there can be no doubt that an equitable interest in land, as known to English law, qualifies as a "right *in rem*" for the purpose of Article 16(1); such an interest is binding on all persons, with the limited exceptions of certain purchasers, viz. those who purchase without notice, or benefit of non-registration, or purchase from a vendor exercising powers of overreaching'. [30]

28 — Paragraph 167(b), at p. 121, second paragraph, *in fine*.

29 — *Conflict of Laws in the European Community*, Professional Books, 1987.

30 — At p. 237. See also Megarry and Wade: *The Law of Real Property*, 1984, p. 114, who state as follows: 'If by rights *in rem* is meant (as normally) rights enforceable against third parties generally, as opposed to rights *in personam* which are enforceable only against specified persons (e. g. contractual rights), then equitable rights to property are unquestionably rights *in rem*, though somewhat different from legal rights to property'. See also Kaye, *op. cit.*, p. 901.

38. However, in the case in point, can the action brought by the plaintiff in the main proceedings be regarded as an action laying claim to the immovable property situated in France on the basis of an equitable interest if the subject-matter of the dispute relates to the possible existence of a trust between himself and his son, or, alternatively, to the question of the parties' intention when the property was purchased? [31] Is this not rather a *preliminary question*, which, whilst indeed having decisive consequences as regards ownership, is intrinsically based at this stage on a purely personal relationship?

39. Although the circumstances of the *Duijnstee* case, cited above, were quite different since it concerned Article 16(4), that case presents certain similarities. The relevant facts were as follows.

40. Mr Goderbauer, the employee of a company, had been granted patents in his name in various Contracting States. The liquidator in the winding-up of the company, Mr Duijnstee, claimed that those patents belonged to the person in whose name he sought their transfer. Article 16(4) confers jurisdiction 'in proceedings concerned with the registration or validity of patents' on 'the courts of the Contracting State in which the deposit or registration ... has taken place'.

31 — Paragraph 11 of the order for reference.

41. After pointing out that none of the claims primarily concerned validity or registration, Advocate General Rozès continued:

'That question (of the relationship between the company and the employee) arises in advance of the formalities, properly so-called, for the transfer of the applications lodged or patents registered .... It is not until a decision has been taken on any assistance which Mr Goderbauer might have to give to the Liquidator that the problem of the transfer, properly so-called, of the rights of the applicant or the inventor will actually arise in the other Contracting States...'. [32]

42. In its judgment the Court held that Article 16(4) was not applicable on the ground that

'... neither the validity of the patents nor the legality of their registration in the various countries is disputed by the parties to the main action. The outcome of the case in fact depends exclusively on the question whether Mr Goderbauer or the insolvent company ... is entitled to the patent, which must be determined on the basis of the legal relationship which existed between the parties concerned'. [33]

43. Although the legality of the registration was not the principal subject-matter of the dispute, nevertheless it was closely linked to the intention of, and relations between, the parties at the time of deposit so that this question had to be examined prior to the completion of the transfer formalities.

44. It is for that reason that I find the Commission's arguments in this case, based on the authority of Professor Kaye, unconvincing. According to Professor Kaye,

'[a]n action for a declaration that land purchased by one person in the name of another is subject to a resulting trust in favour of the former' [34]

is covered by Article 16(1) in so far as the dispute concerns an equitable interest in land and

'[t]here seems no good reason why Article 16(1) should not also be held to apply when the immovable property, rights *in rem* in which form the object of the proceedings, is or is alleged to be property subject to a trust, since the sound policy reasons for subjecting such proceedings to the exclusive jurisdiction of courts of the Contracting

32 — At pp. 3683 and 3684.

33 — Paragraph 26.

34 — P. 903.

State *situs* are no less applicable than would be the case if the property were not held on trust'. [35]

45. However, besides expressing doubt about actions which might be considered as being *in rem*, Kaye, after giving the example of an action for the recognition of a resulting trust as an action *in rem*, goes on to mention likewise as an action *in rem* proceedings brought under section 172 of the Law of Property Act 1925, which penalizes the conveyance of property by a settlor to trustees with intent to defraud creditors, [36] these being proceedings which may be equated with the *action paulienne*, which, in its judgment in *Reichert I*, however, the Court held to be *in personam*.

46. I myself take the view that only actions bearing *directly* upon 'the extent, content or ownership of immovable property' fall within the scope of Article 16(1).

47. In this regard, Schlosser draws such a distinction:

'One could ... envisage a dispute arising between two people as to which of them was trustee of certain property. If one of them instituted proceedings against the other in a German court claiming the cancellation of the entry in the land register showing the defendant as the owner of the property and the substitution of an entry showing the plaintiff as the true owner, there can be no doubt that, under Article 16(1) or (3), the German court would have exclusive jurisdiction. However, if a declaration is sought that a particular person is a trustee of a particular trust which includes certain property, Article 16(1) does not become applicable merely because that property includes immovable property'. [37]

48. The dividing line therefore appears to lie between actions whose principal subject-matter is a dispute over ownership between persons who do not claim *inter se* any fiduciary relationship and actions concerning a breach of fiduciary duty which, if found to have been committed, will have effects *in rem*. In such a case, the personal nature of the relations is, in my view, the overriding factor.

35 — Pp. 901 and 902.
36 — P. 903, (d).
37 — Paragraph 120 at p. 108.

49. There can be no ground here for applying Article 16 since that provision, interpreted in the light of Article 19, is designed to govern only situations in which the *in rem* nature is predominant.

50. This is precisely the logic adopted in the Schlosser Report with regard to actions in connection with obligations to transfer immovable property. [38] According to Schlosser, in French, Belgian and Luxembourg law, which is largely followed by Italian law, ownership is transferred as soon as the contract is concluded, which is the time from which the purchaser may proceed to effect transcription which has the effect of making his title effective against third parties. In the United Kingdom, the purchaser has an equitable interest in the property which is effective against third parties even though he must obtain the vendor's cooperation in order to make his legal title fully effective.

51. Although he considers that the purchaser may claim transfer of ownership on the basis of his right *in rem*, such an action must, according to Schlosser, be regarded as one *in personam* falling outside the scope of Article 16(1). Schlosser concludes:

'Actions based on contracts for the transfer of ownership or other rights *in rem* affecting immovable property do not therefore have as their object rights *in rem*'. [39]

52. According to Gothot and Holleaux: [40]

'Mixed actions by which a person relies on both a right *in rem* and a right *in personam* arising from the same legal transaction also appear to lie outside the scope of Article 16(1)...'. [41]

They also consider that an action for dividing immovable property should not be subject to special jurisdiction. [42]

53. However, as the High Court points out, the plaintiff in the main action relies solely on the *existence of a fiduciary relationship* , a situation which indeed appears to correspond to that described in the Schlosser Report.

54. In my view, the provision does not cover an action by which a person seeks a declara-

38 — Paragraphs 169 to 172.

39 — Paragraph 172(c), at p. 122.

40 — *La Convention de Bruxelles du 27 Septembre 1968*, Jupiter, 1985.

41 — Paragraph 145 at p. 84. They also state that: 'Article 16(1) confers exclusive jurisdiction on the courts of the country in which the immovable property is situated to entertain actions *based* on a principle or accessory right *in rem* in immovable property' (paragraph 144, my emphasis).

42 — Paragraph 146.

tion that property is held by another on trust since the person is not the holder of rights *erga omnes*, that is to say rights effective against the whole world. Nor are the rights of third parties acting in good faith affected by any recognition of a trust since *ex hypothesi* they were not previously informed of its existence.

55. The fact that the plaintiff in the main proceedings seeks an order requiring the defendant to execute such documents as should be required to vest the legal ownership of the property in the plaintiff cannot alter the nature of the action, since the order sought is a mandatory injunction directed at the defendant alone whose non-performance would lead the plaintiff to bring proceedings for the rectification of the land register.

56. It is true that the *ratio legis* of Article 16(1) is partly based on procedural economy which is mentioned by Jenard;

'... the system adopted also takes into account the need to make entries in land registers located where the property is situated'. [43]

57. This idea of procedural economy, which forms the basis for exclusive jurisdiction, has been supported in particular by Huet, [44] who, in his commentary on the *Rösler* case, stated that

'... the only consideration which would account for the *exclusive* jurisdiction provided for in Article 16(1) is the necessity for the judgment which is to be delivered in the proceedings to be enforced at the place where the property is situated'. [45]

58. However, the Court has never expressly adopted that principle. Thus, in the *Sanders* case, it stated that

'... actions concerning rights *in rem* in immovable property are to be judged according to the rules of the State in which the immovable property is situated since the disputes which arise result frequently in checks, inquiries and expert assessments which must be carried out on the spot, with the result that the assignment of exclusive jurisdiction satisfies the need for the proper administration of justice'. [46]

43 — P. 35.

44 — *Journal de Droit International*, 1986, p. 440. See also, to this effect, the commentary by Bischoff in the same publication, 1978, p. 388 and 393.

45 — P. 444.

46 — Paragraph 13.

59. Similarly, in *Reichert I*, it held:

'... although in certain Member States the rules governing the public registration of rights in immovable property require public notice to be given of legal actions seeking to have transactions affecting such rights avoided or declared ineffective as against third parties and of judgments given in such actions, that fact alone is not enough to justify conferring exclusive jurisdiction on the courts of the Contracting State in which the property affected by those rights is situated'. [47]

60. However, no-one doubts that the need to have a judgment enforced at the place where the property is situated is part of the *ratio legis* of Article 16(1) so that in the present case the conferral of jurisdiction on the French courts could meet that need.

61. If the Court should hold, however, that an action for a declaration that a person is a trustee of a trust attaching to immovable property is an action *in rem*, that analysis would necessarily be the same in the case of a trust which attached to various properties situated in different Contracting States. The plaintiff would in that case be compelled to bring proceedings in the courts of each place where property is situated, which would have sole jurisdiction. Who cannot fail to see that such a situation would entail a serious risk of conflicting decisions, with the courts of each State each having a monopoly on the recognition of the existence of any trust relating to the property situated in their area of jurisdiction? Article 22 of the Convention, which deals with related actions, could not counteract that risk in every case since it does not constitute a head of jurisdiction. [48] In such a situation, the proper administration of justice requires that the plaintiff should apply to one court only, which would assess the question of the possible existence of a trust by a judgment followed either by enforcement proceedings if the defendant complies with the order or by a direct action for claiming right of ownership.

62. Finally, I would observe that the essential reason for conferring sole jurisdiction under Article 16(1), as recognized by the Court in *Reichert I* , namely that the courts of the *locus rei sitae* are better placed to ascertain the facts satisfactorily and to apply the rules and practices of that *locus*, is irrelevant where, as in this case, the principal subject-matter of the dispute is the possible existence of a fiduciary relationship between the parties.

47 — Paragraph 13.

48 — See, on this point, Gaudemet-Tallon, H.: Les Conventions de Bruxelles et de Lugano, *LGDJ*, 1993, p. 204 et seq.

63. I accordingly propose that the Court should rule that an action brought by a person against another person for a declaration that the latter holds immovable property as trustee and for an order requiring the latter to execute such documents as should be required to vest the legal ownership in the plaintiff does not constitute an action *in rem* within the meaning of Article 16(1) of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.