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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **19/09/2018**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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2018 No. 47490

IN MATTER OF CARROWREAGH MANAGEMENT COMPANY LIMITED (COMPANY NO. N1606237)

-and-

IN THE MATTER OF THE COMPANIES ACT 2006

BETWEEN:

HSBC BANK PLC

Applicant;

-and-

THE REGISTRAR OF COMPANIES FOR NORTHERN IRELAND
THE CROWN SOLICITOR
THE CROWN ESTATES COMMISSIONERS

Respondents.

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McBRIDE J

Introduction

[1] This case involves a consideration of the effect of the arcane and complex doctrines of escheat and bona vacantia on the property of a company which is dissolved and then subsequently restored to the company register.

[2] This issue has been considered in two cases in the English High Court, namely *Allied Dunbar Assurance Plc v Fowle* [1994] 2 BCLC 197 and *Re Five Star Properties Limited* [2015] EWHC 2782 (Ch), [2016] 1 WLR 1104 and in one case in the

Scottish Court of Session (Inner House) – *ELB Securities Limited v Alan Love and Prestwick Homes Limited* [2015] CSIH 67, [2016] SC 77. Although each case considered essentially the same issue, the Scottish court reached a completely different conclusion to that reached by the courts in England and Wales. A recent article by Burgess Salmon LLP, dated 21 January 2016 and entitled, "Bona Vacantia, Escheat and Company Restoration – A Grand Mess" is an apt title to describe the difficulties which now exist in this area.

[3] In light of the diversity of approach it is now necessary for this court to determine which line of authority should be followed in this jurisdiction.

Background facts

[4] Carrowreagh Management Company Limited ("the company") was incorporated on 18 February 2011. On 11 November 2011 the company was registered as the freehold owner of the lands comprised in Folio DN183771 County Down ("the lands"). The lands comprise Carrowreagh Business Park, Carrowreagh, Dundonald, Belfast, County Down. The lands were burdened with a number of leases and in particular part of the lands were burdened by a lease entered into on 22 November 2004 between Glenfern Investments Limited and Richard Agnew and Stephen Crowe, ("the lease"). The lease contains a number of onerous covenants in respect of decorating, forfeiture and non-assignment. The lands held under the lease are now comprised in Folio DN134233L County Down and are otherwise known as Unit 2B/3, Carrowreagh Business Park.

[5] The company was dissolved following voluntary striking from the register on 15 June 2012. On 21 April 2016 the lands came to the notice of the Treasury Solicitor and on 1 August 2016 he disclaimed the lands.

[6] The applicant is a chargee of the lands held under the lease dated 22 November 2004.

[7] The applicant intends to bring proceedings before the Lands Tribunal under Article 5 of the Property (Northern Ireland) Order 1978 to vary the onerous covenants contained in the lease. To bring these proceedings the applicant requires the company to be restored to the register.

[8] By summons dated 11 May 2018 the applicant sought an order pursuant to Section 1029 of the Companies Act 2006 restoring the company to the register. By letter dated 16 May 2018 the Registrar of Companies for Northern Ireland indicated that he had no objection to this application. By Order dated 25 May 2018 I ordered that the company be restored to the Register of Companies.

[9] Solicitors acting for the applicant entered into correspondence with the solicitors for The Crown Estates Commissioners ("the third respondent") to inquire

whether the third respondent would transfer the freehold estate in the leasehold lands to the applicant. Such a transfer would have resulted in the merger of the freehold and leasehold interests thus terminating the onerous covenants in the lease and thus enabling a purchaser to obtain good title free from any onerous covenants. The third respondent indicated it could not transfer part of the freehold to the applicant and could only deal with the entirety of the freehold, as to do otherwise, it considered, would constitute an act of management, possession or ownership of the lands. As the applicant did not wish to purchase all the lands he brought the present application.

Application

[10] By originating summons issued on 11 May 2018 the applicant ("the bank") sought, inter alia, the following relief:

> "2. A declaration that consequential on the restoration to the Register of the company the freehold estate in the lands and premises known as Carrowreagh Business Park, Carrowreagh Road, Dundonald, Belfast, County Down and comprised in Folio DN183771 County Down is vested in the company;
>
> 3. In the alternative, an order pursuant to Section 1017 of the Companies Act 2006 vesting in the applicant the lands set out in the schedule to this summons on such terms as the court shall think fit;"

[11] The bank indicated that it was only seeking at this stage the relief sought at paragraph 2 of the originating summons. In the event such relief was granted, the court would not be asked to consider the relief sought at paragraph 3. In the event the relief at paragraph 2 was not granted, the bank requested an adjournment to allow it time to consider whether it wished to pursue the relief sought at paragraph 3 of the originating summons.

[12] The bank was represented by William Gowdy of counsel. The respondents were put on notice of the proceedings by way of letter sent by the applicant's solicitors dated 14 May 2018. The bank sought each respondent's consent to the application and in the absence of same, reasons why consent was not being granted. The Crown Solicitor ("the second respondent") indicated that she neither wished to object nor consent to the application.

[13] The third named respondent, responded by letter dated 17 May 2018 enclosing a draft form of letter for production to the court. It stated:

> "The Crown Estate can neither consent nor object to applications made to the court for the restoration of the company and its subsequent vesting order, we confirm that it is highly unlikely that the Crown Estate would seek to interfere with any such applications made as to do so might be construed as an act of management, ownership or possession in relation to the Property.
>
> If required we would be able to provide a letter for production to the court with your claim application and enclose a draft form of this letter for reference …"

The enclosed draft letter stated as follows:

> "Where freehold land is disclaimed by the Treasury Solicitor, the land may be deemed subject to escheat to the Crown, and we act for the Crown Estate in relation to such matters. Longstanding legal advice to the Crown Estates Commissioners is that if they undertake no act of possession, entry or management, no liability or responsibility in respect of the Property arises in the circumstances of escheat. Please note that neither this letter nor any other communication in the matter shall be deemed to constitute such an act. Kindly note the following points: …
>
> 2. We confirm that the Commissioners do not oppose (whilst not supporting) the Claim and will not be represented at the hearing. We should not, however, be taken to express any view in the validity of the Claim, or on the form of the proposed order, or as to whether there has been any prior application for a vesting order …
>
> 4. This letter is written on the understanding that no costs are claimed against The Crown Estates Commissioners."

[14] The applicant's solicitors corresponded again with all the respondents on 20 June 2018 advising each of them of the date of hearing. No response was forthcoming from any of the respondents.

[15] At the hearing none of the respondents was represented nor appeared.

[16] Given that the Crown Estates Commissioners, the party which holds the legal interest in the lands in question, did not wish to play an active part in the proceedings and the fact that the other respondents were neither represented nor attended at court I proceeded to hear the application in their absence.

[17] I am very grateful to Mr Gowdy of counsel for the very well researched and marshalled arguments set out in his skeleton argument and in particular commend him for the careful way in which he discharged his duty to the court by bringing to its attention an authority which was against the argument he was making.

Question for determination

[18] The key question for the court to determine is, whether in the events which have happened, the lands vest in the company upon its restoration to the register. This raises the following subsidiary questions:

(a) What happens to the property of a company when it is dissolved?

(b) What is the effect of disclaimer by the Treasury Solicitor in respect of property?

(c) What effect does restoration of the company have on its property?

(d) Does disclaimer by the Treasury Solicitor constitute a disposition?

[19] To answer these questions it is necessary to analyse the statutory scheme and the conflicting case law.

The statutory scheme

(a) The effect of dissolution of a company upon its property

[20] The relevant statutory provision dealing with the effect of dissolution of a company on its property is Section 1012 of the Companies Act 2006 ("the Act"). It provides:

> "(1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution … are deemed to be bona vacantia and—
>
> (a) Accordingly belong to the Crown …

> (b) Vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown …"

In accordance with Section 1012 the property of a company, when it is dissolved, passes to the Treasury Solicitor by way of bona vacantia. This is the term used to describe "lost" property. The Treasury Solicitor (Bona Vacantia Division) deals with all cases of bona vacantia.

Section 1012(2) provides some qualification to sub-section (1) and states as follows:

> "(2) Sub-section (1) has effect subject to the possible restoration of the company to the register under Chapter 3 (see Section 1034)."(emphasis added)

Disclaimer of property by the Treasury Solicitor

[21] Section 1013 of the Act confers on the Treasury Solicitor power to disclaim any property which vests in the Crown as bona vacantia. Section 1013 provides as follows:

> "(1) Where property vests in the Crown under Section 1012, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor …"

Section 1014 sets out the effect of Crown disclaimer and provides:

> "(1) Where notice of disclaimer is executed under Section 1013 as respects any property, that property is deemed not to have vested in the Crown under Section 1012.
>
> (2) The following sections contain provisions as to the effect of the Crown disclaimer—
>
> Sections 1015 to 1019 apply in relation to property in England and Wales or Northern Ireland;
>
> Sections 1020 to 1022 apply in relation to property in Scotland."

The effects of Crown disclaimer are set out in Sections 1015 to 1019. The only relevant provision is Section 1015 which provides as follows:

"**General effect of disclaimer**

(1) The Crown's disclaimer operates so as to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed.

(2) It does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person."

[22] The equivalent provision applicable in Scotland is Section 1020, which is worded slightly differently. It states as follows: (with the different wording highlighted in bold):

"1. The Crown's disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, **and the property of the company**, in respect of the property disclaimed.

2. It does not (except so far as is necessary for the purposes of releasing the company **and its property** from liability) affect the rights or liabilities with any other person."

Effect of restoration of a company to the register

[23] Section 1032 sets out the effect of a court order restoring a company to the register. It provides as follows:

"(1) The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register. …

(3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register."

Section 1032(1) is often referred to as the "as you were" provision.

[24] Section 1034 makes specific provision in respect of property and provides as follows:

"**Effect of restoration to the register where property has vested as bona vacantia**

(1) The person in whom any property or right is vested by Section 1012 (property of dissolved company to be bona vacantia) may dispose of, or of an interest in, that property or right despite the fact that the company may be restored to the register under this Chapter.

(2) If the company is restored to the register -

(a) The restoration does not affect the disposition …

(b) The Crown or, as the case may be, the Duke of Cornwall shall pay to the company an amount equal to -

(i) The amount of any consideration received for the property or right or, as the case may be, the interest in it, or

(ii) The value of any such consideration at the time of the disposition,

or, if no consideration was received an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition. …"

The conflicting jurisprudence

[25] Both English High Court decisions considered what effect the restoration of the company had on company property which was disclaimed. In *Allied Dunbar Assurance Plc v Fowle* [1994] 2 BCLC 197 a company held a lease of premises granted by Allied Dunbar. The company's obligations under the lease including payment of rent were guaranteed by directors of the company. The company was dissolved and struck off the register. The lease became vested in the Crown as bona vacantia but was then disclaimed by the Crown. The company was subsequently restored to the register. The guarantors of the company's obligations under the lease claimed that their liability determined when the lease was disclaimed and was not revived by the restoration because the Crown disclaimer constituted a "disposition, as a result of

which the company's obligations under the lease were discharged". Consequently they submitted they were relieved of their liabilities to Allied Dunbar. In contrast Allied Dunbar made the following submissions, which are summarised at page 207 of the judgment as follows:

> "(1) The effect of Section 653(3) (which is equivalent to Section 1032 of the Act) is that on 30 September 1993 (the company) was 'deemed to have continued in existence as if its name had not been struck off'. The lease therefore is deemed never to have vested in the Crown so that no question of bona vacantia ever arose.
>
> (2) If the lease is deemed never to have vested in the Crown, the Crown cannot have disclaimed. However, it there had in fact been a disposition while the company's property was vested in the Crown, Section 655 (equivalent to Section 1034 of the Act) provides for the necessary 'tidying up' but its disclaimer is not a disposition. The construction of the section requires a disposition to a third party. A mere divesting from the Crown does not fall within the section. If it did, two undesirable consequences would follow:
>
> (a) The Crown's right to disclaim is to protect the Crown from having to assume burdens: if, in the event, the lease is shown to have had some value on assignment, the Crown would have to pay compensation …
>
> (b) A company (or interested surety, e.g. a director could obtain relief from liability by the company failing to file returns, being struck off, persuading the Crown to disclaim, being revived (at very modest costs) and then continuing to trade, but without liability for the period from dissolution to revival."

After hearing the arguments presented by counsel and after reviewing the authorities, Garland J held at page 211G:

> "The answer to the central issue: 'is a Crown disclaimer disposition for the purposes of Section 655?' must, in my judgment, be no. I accept the

> arguments advanced by Allied and Pneumatic which I have summarised earlier. In my view, both the natural meaning of the words used and the policy of … the Act point to an 'as you were' situation once the company is restored to the register, subject to the court's power to 'tidy up' under Section 653(3) and 655 (equivalent to our Sections 1032 and 1034)."

[26] Garland J therefore accepted that, in accordance with the Act, a disclaimer operated by way of avoidance or an extinguishment of the interest disclaimed rather than by way of a transfer or conveyance of that interest to any person. The effect of restoring the company to the register therefore was that the company was deemed to have continued in existence such that the property was deemed never to have become bona vacantia and the disclaimer, (arising from the status of the property as bona vacantia) was deemed never to have arisen.

[27] The facts of *Re Five Star Properties Limited* [2015] EWHC 2782 (Chancery), [2016] 1 WLR 1104, are very similar to the facts of the present case. After going into administration the company was dissolved. As a result its assets vested in the Crown as bona vacantia pursuant to Section 1012 of the Companies Act 2006. Those assets included a freehold property. The bank held a legal charge as security for a loan made to the company against this property. The tenant of the freehold property served notice of its claim for a new lease on the Treasury Solicitor. The Treasury Solicitor disclaimed the Crown's title to the freehold. The bank, intending that the lease negotiations be concluded and the property then sold in order for it to recover the sums secured by its charge, applied to the court for, inter alia:

> "1. An order for the restoration of the company to the Register of Companies, and
>
> 2. A declaration that the property would re-vest in the company, notwithstanding the company's dissolution and the disclaimer of the freehold by the Crown."

[28] The court granted the bank's application. Judge David Cooke held that the disclaimer by the Treasury Solicitor did not have the effect of extinguishing the Crown's ultimate title to the land but only "the Crown's title to it under (Section 1012)". This was because, once disclaimed the land nonetheless reverted to the Crown under the doctrine of escheat. Cook J further held at paragraph 21 that such a disclaimer did not amount to a disposition because:

> "… A Crown disclaimer of a freehold … operates by way of extinguishment of the freehold estate such that 'the Crown becomes the owner of the land in question

> freed from the previous freehold interest' (see *Scmlla* case [1995] BCC 793, 805) rather than by way of transfer of that freehold to the Crown."

[29] He then held at paragraph [17] that the effect of restoration of the company on its property is:

> "…that the company is retrospectively deemed to have continued in existence as if it had not been dissolved (Section 1032(1)), on which hypothesis the property in question never would have become bona vacantia. Subject to the possible effect of Section 1034 of the 2006 Act if the Crown has in the meantime made a disposition of the property, the company is deemed always to have been the owner, as if it had never been dissolved."

He concluded at paragraph 23:

> "The Crown disclaimer of the freehold is not a 'disposition' and the effect of restoration is that the freehold estate is retrospectively recreated and re-vested in the company in all respects as if it had never been dissolved and as if the freehold had never been disclaimed."

[30] Thus the established position in England is that, when a company is restored to the register, following its dissolution and its property then being disclaimed by the Crown, is that the company's property re-vests in the company.

Scottish case

[31] A rather different view of the law was taken by the Inner House of the Court of Session in the case of *ELB Securities Limited v Alan Love and Prestwick Hotels Limited* [2015] CSIH 67, 2016 SC 118. In that case the company was dissolved and struck off the Register of Companies. The company had a tenant's interest in lands. The landlords sought to have the company removed from the lands. A director of the company sought to restore the company to the register and to argue that following restoration the lease between the company and landlords continued as if there had been no interruption. The landlords however submitted that as a consequence of the company's dissolution and the Crown's disclaimer the lease had ended when the Crown disclaimed its interest in the lease. The Court of Session held that the 'general effect' of restoration of the company, was that the company is deemed to have continued in existence as if it had not been dissolved or struck off

the register. It held however that this general approach must give way to the specific and detailed provisions in the 2006 Act dealing with the company's property. The court held that the company's right in the lease came to an end on the date the Crown disclaimed the property and consequently the company did not retain the benefit of the lease and the landlord was entitled to possession.

[32] When analysing the effect of the statutory scheme to the facts of the case the court held at paragraph [25]:

> "… it can be seen that PHL (the company) was dissolved and struck off the register on 14 June 2013. On that date, its rights in the lease vested in the Crown as bona vacantia. However the Crown issued a disclaimer on 15 July 2013. The effects of the disclaimer were first, that PHL's rights in the lease terminated as from the date of the disclaimer (15 July 2013); and secondly, that any rights in the lease were deemed not have vested in the Crown as bona vacantia. Accordingly PHL's rights, interests and liabilities in the lease and the 'property of the company' in the lease came to an end on 15 July 2013 (see Section 1020(1)) …
>
> 26. Thus on a proper construction of the 2006 Act, 'the general effect' of the restoration of the company as provided for by Section 1032, namely 'that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register', merely provides for the general approach which is to be adopted in such circumstances:- but that general approach must give way to the specific and detailed provisions concerning the company's property as set out in Sections 1012 to 1014 and 1020 to 1022. As a result, therefore we consider that PHL's rights in the lease came to an end on 15 July 2013."

[33] At paragraphs 28 following, the court sets out the grounds which supported its conclusion. In particular the court stated that any other construction of the Act would lead to uncertainty and confusion in the commercial world and Parliament could not have intended to produce such results. Secondly, the construction proposed by the company meant that Section 1032 (equivalent to Section 1032(2)) became superfluous and unnecessary and thirdly the court distinguished the case of *Allied Dunbar Assurance Plc v Fowle* on the basis that decision related to the liability of a guarantor rather than the question of principle concerning the effect of disclaimer and the subsequent restoration of the company, on its property.

Consideration

[34] The key question for the court's determination is whether, in the events which have happened, the lands re-vest in the company upon its restoration to the register. To answer this question it is necessary to answer the following subsidiary questions:

(i) What happened to the lands when the company was dissolved?

[35] In accordance with Section 1012(1) of the Act the lands were deemed to be bona vacantia once the company was dissolved. The lands therefore fell to be dealt with by the Treasury Solicitor.

(ii) What was the effect of disclaimer by the Treasury Solicitor?

[36] Once the lands were disclaimed by the Treasury Solicitor, in accordance with section 1014 the lands were deemed not to vest in the Crown. Consequently, any title the Crown had to the lands arising by virtue of Section 1012 was extinguished. Further, in accordance with the provisions of Section 1015 when the Treasury Solicitor disclaimed his interest in the lands this operated to terminate the company's title to the lands.

[37] As the company held no interest in the lands and because the lands were freehold lands they reverted to the Crown in accordance with the doctrine of escheat. The doctrine of escheat is one of the last relics of the medieval doctrine of tenure. Under the doctrine of tenure all estate owners in fee simple hold directly from the Crown as "tenants in chief" and when this relationship comes to an end the freehold title reverts to the Crown on the principle that all freehold estate originally came from the Crown. In the present case therefore, given that no one was entitled to the freeholder's estate by law, the freehold title reverted to the Crown. The curious result in the present case is that notwithstanding the disclaimer by the Treasury Solicitor the lands nonetheless belong to the Crown by reason of the doctrine of escheat. The lands are therefore now dealt with by the Crown Estates Commissioners.

(iii) What effect did restoration of the company to the register have on the lands?

[38] As outlined above the courts in England and Wales and the Inner House in Scotland have answered this question differently. The courts in England and Wales have concluded that the effect of restoration of a company to the Register is to re-vest the disclaimed property in the company. In contrast the Inner House concluded that restoration did not have this effect. Given the disparity of views expressed and given that none of the decisions is binding upon this court, it is necessary for this court to consider the statutory scheme and determine what effect dissolution of the

company, followed by disclaimer of the lands and the subsequent restoration of the company had on its title to the lands.

[39] Section 1032 provides that the "general" effect of an order by the court restoring a company to the register is that the company is "deemed" to have continued in existence as if it had not been dissolved or struck off. The ordinary and natural construction of the words used in the Act indicate, that upon restoration the company is deemed to have continued to be the owner of the lands. Further support for this construction is found in section 1012(2). It provides that section 1012 sub-section (1) is "subject to" the possible restoration of the company. I am satisfied that this is a condition subsequent and therefore when the company was restored to the register the deeming provisions of Section 1012(1) are treated as if they never arose. Consequently, the land is deemed never to have vested in the Crown as bona vacantia and there is deemed never to have been a disclaimer by the Treasury Solicitor. Hence the provisions of sections 1014 and 1015 do not come into play. Therefore the company remained a competent tenant to hold the fee simple freehold estate. Hence the lands are treated as never having reverted to the Crown by escheat. Consequently, when the company was restored to the register it is treated as if it had never been dissolved and as if there had been no interruption by the disclaimer and the escheat of the lands and therefore treated as retaining title to the lands.

[40] I am therefore satisfied that the effect of the statutory scheme is that upon restoration of the company to the Register, the company is deemed to have continued in existence and to have retained ownership of the lands. The only exception to this would be if the Crown effected a disposition of the lands. In that case section 1034 would come into play.

(iv) Is disclaimer by the Treasury Solicitor a "disposition"?

[41] Stanley Burton QC in *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793 conducted an extensive review of relevant learned writing and authority going back hundreds of years and held that the effect of such a disclaimer was the termination of the freehold and the automatic escheat of the relevant estate to the Crown.

[42] Gray & Gray, Elements of Land Law, Butterworth's 3rd Edition at page 318 states:

> "…It is open to company liquidators and trustees in bankruptcy to disclaim 'onerous property' held by an insolvent entity or person...The effect of such disclaimer is the termination of the freehold and the automatic escheat of the relevant land to the Crown."

Further, at page 76 the authors state:

> "Thus, the implosion of the largest common law estate simply re-vests the land within the allodium of the Crown, in rather the same way in which a lease for years falls in for the landlord on the expiration of the term granted."

[43] In a footnote Gray and Gray, refer to the case of *Re Mercer and Moore* [1880] 14 Ch D 287 at 295 per Jessen MR:

> "The freehold title goes back to the Crown on the principle all freehold estate originally came from the Crown, and that where there is no one entitled to the freehold estate by law it reverts to the Crown." (emphasis added)

[44] I am satisfied that the reversion of lands to the Crown by escheat is not a "disposition". It is not a transfer or a conveyance of the freehold to the Crown as escheat operates automatically. Further, under the doctrine of escheat the freehold estate is extinguished, as there is no one at law entitled to hold the freehold estate. Consequently, I consider that the Crown's disclaimer of the lands in this case was not a disposition of property. Therefore upon the restoration of the company, the company is deemed to have continued as though there was no interruption to its title to the lands and therefore the company retains ownership of the lands in question.

[45] As appears from my analysis of the statutory scheme I consider the arguments upon which the English decisions were based have logical weight and I therefore adopt the views expressed in the English cases. Given that the Scottish decision is by a higher court I think it is appropriate to set out why I have not followed its approach.

[46] Firstly, it is clear that Parliament legislated separately in respect of the question of the effect of Crown disclaimer between Scotland on the one hand and the common law jurisdictions of England & Wales and Northern Ireland on the other hand. There is a difference in wording between section 1015 which deals with the effect of disclaimer in England and Wales and Northern Ireland and section 1020 which applies in Scotland. The fact that Parliament considered it necessary to legislate separately for the jurisdictions suggests that there may well be underlying conceptual differences between Scots law on the one hand and the common law on the other hand in relation to the effect of disclaimer on its property rights. As a consequence I consider it more appropriate for this court to follow the English approach as it reflects the interpretation of the 2006 Act against the common law theory of property rights.

[47] Secondly, I consider that there are some difficulties with the strength of the reasoning by the Inner House. In particular, the Inner House does not appear to have considered or given any weight to section 1012(2) and its effect on the deeming provisions of section 1012 (1).

[48] Thirdly, its concerns about commercial uncertainty I consider are more theoretical than real. This is because the rights of the dissolved company, if disclaimed, will not pass to third parties. It is therefore difficult to see how third parties could obtain rights which would be affected on restoration. Further, if the Crown effect a disposition of the property in question section 1034 ensures that the third party's position is protected.

[49] Fourthly I consider that the argument about Parliamentary intention is problematic given that Parliament must be taken to have legislated with knowledge of the interpretation of the provisions in *Allied Dunbar Assurance Plc v Fowle*. If Parliament had intended to change the effect of restoration, as considered in that decision, Parliament could have legislated clearly to reflect that end. Parliament did not do so and therefore must be taken to have intended to continue with the approach identified in *Allied Dunbar Assurance Plc v Fowle*.

[50] Fifthly, I consider that the Inner House erred in finding that section 1032(3) would be superfluous if the court adopted a different approach. On the basis of the interpretation of the Act which I have adopted, the court may still need to direct on a number of issues including, as appears from section 1030 (3), the limitation period.

[51] Sixthly, I have some difficulty in ascertaining the basis upon which the Inner House distinguished *Allied Dunbar Assurance Plc v Fowle*. The court sought to do so on the basis that it could be distinguished on its facts and on the basis that it did not deal with the question of principle. I am satisfied that *Allied Dunbar Assurance Plc v Fowle* was a decision not only on its own facts but one which focussed on the question whether, in principle, property re-vested in a company upon its restoration to the Register. It is therefore unclear on what basis the Inner House could properly distinguish *Allied Dunbar*.

[52] I also consider that section 1034 supports the view that the company is put back in the position it would have been prior to dissolution. The whole import of this section is to restore the company, so far as is possible to its pre-dissolution state whether by restoring the land or providing compensation in respect of lands which have been disposed.

Conclusion

[53] For the reasons set out above I make a declaration in the terms sought by the applicant at number 2 of the originating summons.