CLAIMS BY OR AGAINST DISSOLVED COMPANIES UNDER THE AUSTRALIAN COMPANIES ACTS

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[In a pioneering article Mr Doane investigates the law relating to the revival of dissolved companies. He examines the legislative provisions and their interpretation by courts in the United Kingdom and Australia. While not minimising the difficulties inherent in the resuscitation of defunct companies he is critical of some decisions for their unnecessarily restrictive approach. Finally he suggests that a single rationalized process for revival should be incorporated into any general scheme for the reform of Australian company law.]

The commencement of proceedings on behalf of or against a registered company which has been dissolved[1] is inffective to confer jurisdiction on a court unless there is some vitiating element in the circumstances surrounding the dissolution.[2] Where the proceedings have been commenced before dissolution there is an abatement at that point[3] unless, perhaps, the proceedings were delayed until after the dissolution merely by pressure of work on the court.[4] In the absence of any procedure for reviving a dissolved company, these rules would be adequate to settle any dispute concerning one although the result might not in every case satisfy the requirements of justice. As the uniform Companies Acts of the Australian States and Territories permit a dissolved company to be revived, further

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1 Dissolution may occur under the Australian Acts by court order following a compulsory winding-up [s. 240(1)] or in the course of sanctioning a reconstruction [s. 183 (1) (d)], on the expiration of three months after the lodging of a return of the holding of a final meeting in a voluntary winding-up [s. 272(4)] or on the striking of the company's name from the register of companies by the Registrar (or, in some States, the Commissioner for Corporate Affairs) and gazettal of notice thereof [s. 308 (4)].

2 *Re Pinto Silver Mining Company* (1878) 8 Ch.D. 273 (C.A.); *Re London & Caledonian Marine Insurance Company* (1879) 11 Ch.D. 140 (C.A.); *Re Cornish Manures Ltd* [1967] 1 W.L.R. 807.

3 *Coxon v. Gorst* [1891] 2 Ch. 73.

4 *Re Crookhaven Mining Company* (1866) L.R. 3 Eq. 69. Chitty J. doubted this decision of Lord Romilly M.R. during the argument in *Coxon v. Gorst* [1891] 2 Ch. 73, 75 but said nothing about it in his judgment and it does not appear from the report whether that action was commenced before or after the company was dissolved. North J. followed *Re Crookhaven Mining Company* in *Whitely Exerciser, Limited v. Gamage* [1898] 2 Ch. 405 and Stirling J. distinguished it in *Salton v. New Beeston Cycle Company* [1900] 1 Ch. 43 where the delay was due to the amendment of pleadings.

rules are required. It has been left to the courts to work out satisfactory rules in this regard. The task has not been made easier by the provision of competing methods for revival or by the fact that the effects of revival differ according to which method is adopted.

PROCEEDINGS INITIATED OR CONTINUED AFTER DISSOLUTION: REVIVAL UNDER SECTION 307

Under section 307 the court may be asked to make an order declaring the dissolution of a company, regardless of how it became dissolved,[5] to have been void.

The section provides that: 'the Court may . . . make an order . . . declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.' The first question which arises from section 307 is whether its operation is retrospective so as to have any effect on earlier proceedings taken or continued after the dissolution. It would be startling if words conferring jurisdiction to declare a dissolution void were mere surplusage, and it may have been to avoid this result that the awkward formulation 'may . . . make an *order* . . . declaring . . .' was adopted. On the other hand, the House of Lords has come very close to limiting the identical British provision[6] in exactly this manner. In *Morris v. Harris* (*Pauper*),[7] Harris had claimed damages from the company for wrongful dismissal and obtained a substantial arbitral award. In the course of the arbitration the company had undergone a reconstruction, under which a new company succeeded to its assets and liabilities, and had been wound up and dissolved before the award was made. The reconstruction was unsuccessful and shortly thereafter the new company entered into a scheme of arrangement with its creditors. The plaintiff attempted to enforce his award so that he could claim priority against the new company. This attempt failed on the ground that the award had been made after the old company's dissolution and could not therefore bind it or pass with its liabilities to the new company. He then obtained from Astbury J. an order declaring the dissolution of the old company to have been void and sought to prove for his award in its liquidation.

The plaintiff could perhaps have been forgiven for supposing that his declaratory order operated retrospectively to avoid the dissolution so that the company was still subsisting at the date of the award and that the award could be enforced by such proceedings as he could have taken earlier had the company not been in a state of dissolution. This was not,

[5] *Re Belmont & Co. Ltd* [1952] Ch. 10; *Re Test Holdings* (*Clifton*) *Ltd* [1970] Ch. 285.
[6] See s. 352, Companies Act 1948 (U.K.).
[7] [1927] A.C. 252.

however, the view which commended itself to the majority of the Law Lords. Lord Sumner remarked that the order was not expressed to be one setting anything aside or declaring the dissolution to be deemed not to have taken place or to be void, and went on to say:

> The words "to have been void", in s. 307, appear, it is true, so far as they go, to have some retrospective effect, and tend to some extent to support the [plaintiff's] argument. On the other hand, the remaining words, which define the order, point rather to a declaration removing a bar to such action as might otherwise have been taken, than to one validating past proceedings, taken since the dissolution through ignorance or disregard of it and consequently invalid. The remaining words, "and thereupon such proceedings may be taken, as might have been taken if the company had not been dissolved," seem to me to point conclusively in the same direction. They describe an authority given to the parties concerned to do, "thereupon" and accordingly thereafter, things which they might have done but obviously had not done theretofore, and, but for the order, could not have done after the dissolution. I think these words do not affect the validity or the contray on steps taken during that interval. They must still depend on the facts existing and the rights arising before and independently of the order.[8]

It is difficult to be certain which words His Lordship was referring to as 'the remaining words, which define the order' but it is clear that he regarded the words which confer the declaratory jurisdiction to do no more than to permit life to be breathed retrospectively into the company and found the real operation of the section in the words following which permit proceedings to be taken from the date of the declaration. Viscount Dunedin agreed with Lord Sumner's opinion 'in every particular'.[9]

Lord Blanesburgh considered the legislative history of the section and contrasted it with the express deeming provision in the older section which is the counterpart of the Australian section 308(5).[10] In his view, the fiction in the later section was designed to preserve intervening acts done by a dissolved company's officers who might be unaware of the Registrar's action. No such preservation could have been intended for intervening acts done after a full winding-up by pretended agents who would know of the dissolution. In regard to this latter situation he said:

> On consideration, it appears, I think, clear that automatically to validate such acts as being the acts of a duly constituted officer on behalf of a duly incorporated company might involve consequences too disastrous to be even envisaged. These are avoided by the terms of the section. The company is restored to life as from the moment of dissolution but, continuing a convenient metaphor, it remains buried, unconscious, asleep and powerless until the order is made which declares the dissolution to have been void. Then, and only then, is the company restored to activity.[11]

[8] [1927] A.C. 252, 257-8.
[9] *Ibid.* 253.
[10] See s. 353(6) Companies Act 1948 (U.K.) and discussion below. The subsection is numbered 308(6) in Victoria.
[11] [1927] A.C. 252, 269.

The view taken in *Morris v. Harris*[12] that an order under section 307 does not turn the clock back was extended to judicial proceedings in *Re Lewis & Smart Ld.*[13] A misfeasance summons had been taken out under the British counterpart of section 367B[14] against the directors of a company during a creditor's winding-up but had not been served until after the company had been dissolved. The petitioner obtained an order under the British counterpart of section 307 and then sought directions. Wynn-Parry J. held, firstly, that as the result of success in misfeasance proceedings is an order in favour of the company, no more effective order could be made in favour of the petitioner than could be in favour of the company. He went on to hold, relying on Lord Blanesburgh's judgment in *Morris v. Harris*,[15] that the proceedings had abated on the company's dissolution and that the order for the company's revival had not breathed life into them.

PROCEEDINGS INITIATED OR CONTINUED AFTER DISSOLUTION: REVIVAL UNDER SECTION 308(5)[15a]

A company which has been dissolved pursuant to its name being struck from the register of companies under section 308 may be revived by lodging with the Registrar[16] an office copy of a court order obtained under section 308(5) for the restoration of its name to the register. The consequences of revival are expressly provided to be that:

> the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

This method of revival accordingly operates on a fictitious basis and the usual question arises as to how far the fiction is to be taken. Contrasting judicial approaches to the problem may be illustrated by the following remarks, first of Lord Asquith of Bishopstone, then of Buckley J.:

> If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from and accompanied it.[17]
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> On the whole, I think that the right way to approach this sort of problem of construction is to adopt that interpretation which would give a working

[12] *Ibid.*
[13] [1954] 1 W.L.R. 755.
[14] See s. 333 Companies Act 1948 (U.K.). The section is numbered 305 in Tasmania and the A.C.T.
[15] [1927] A.C. 252.
[15a] S. 308(6) in Victoria.
[16] Or Commissioner for Corporate Affairs.
[17] *East End Dwellings Co. Ltd. v. Finsbury Borough Council* [1952] A.C. 109, 132.

effect to the sub-section without extending the operation of inference or imagination further than is necessary for that purpose.[18]

The Court of Appeal, in *Tyman's Ld v. Craven,*[19] took a generous view of the fiction contained in section 308(5). The company had been dissolved under the section's British counterpart.[20] Subsequently, an application was made in its name to the English County Court for a new lease under the provisions of the Leasehold Property (Temporary Provisions) Act 1951 (U.K.). These proceedings were adjourned to permit the company to obtain an order for its name to be restored to the register.[21] The revived company came back to the County Court, only to be told that its application had been a nullity and that it could not, despite its revival, proceed further with it. As it was out of time to commence fresh proceedings for a new lease, the company pressed its case to the Court of Appeal where, by a majority of two to one, it was successful. The Court held that an order for restoration to the register not only retrospectively restores the company's existence but also validates everything purportedly done on its behalf during the interval. The question of construction was whether the concluding words of section 308(5):

> and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off —

operated to qualify the retrospective effect of the deeming provision in the way the concluding words of section 307 had been held to qualify the effect of the declaration in *Morris v. Harris.*[22] It seemed clear enough that the deeming provision must have been intended to produce a greater effect than that of the declaration afforded by section 307, and there were *dicta* in *Morris v. Harris*[23] itself suggesting that the Lords had been influenced by its presence in section 308(5) when they decided that section 307 did not breathe life into an arbitral award made during the interval of dissolution. Further, the spectacle of a court trying to disentangle multifarious transactions entered into over a period of twenty years[24] with a multitude of persons who must all be made parties to the proceedings was, in the words of the Master of the Rolls, 'well-nigh impossible to contemplate.'[25]

Nevertheless, unless some other work could be found for the concluding words, they would restrict the operation of the deeming provision and

[18] *Re New Timbiqui Gold Mines Ltd* [1961] Ch. 319, 326.
[19] [1952] 2 Q.B. 100.
[20] See s. 352 Companies Act 1948 (U.K.).
[21] Under s. 353(6) of the U.K. Act, a dissolved company is given standing to seek its own revival. See *Re Conrad Hall & Co. (Lim.)* (1916) 60 Sol. Jo. 666.
[22] [1927] A.C. 252.
[23] *Ibid.*
[24] Fifteen years in Australia.
[25] [1952] 2 Q.B. 100, 111.

produce just this result. In this regard, the Court of Appeal accepted the suggestion of the company's counsel that the concluding words would permit completion of transactions where the company or third parties had abstained from taking steps (presumably because they knew of the dissolution) which it was too late to take at the time of revival.

INTERRUPTED PROCEEDINGS

Where the company's dissolution and revival occur under section 308 no question arises as to whether the interrupted proceedings can be recommenced from the point which had been reached at the time of dissolution. The judgments in *Tyman's Ld v. Craven*[26] make it clear that there is no need to start all over again. The operation of section 307 in this respect is, however, far from clear. The judgments in *Morris v. Harris*[27] do not advert directly to the point. Lord Blanesburgh said merely:

> In my judgment, accordingly, the arbitration proceedings which abated on the dissolution of the old company thereby became abortive and have in no sense been reconstituted as a result of Astbury J.'s order.[28]

Lord Sumner said: 'most of the proceedings in the arbitration in this case and, above all, the award itself, are null'[29] which suggests that the earlier part of the arbitration did not need to be thrown away. He went on to say, however, '[t]he respondent must therefore prove his claim afresh in proceedings to which [the liquidator] will be a party.'[30] This comment and the order, which was that the cause be remitted back to the Chancery Division with a direction that the respondent was entitled to prove in the liquidation for such sum as he could establish for damages for breach of his service contract, both seem to point in the opposite direction. There is no suggestion in the judgments that it would have been impracticable to continue the arbitration and, as it had been the company's election which had forced Harris into arbitration, one would suppose that he ought to have had the election to continue or to prove in the liquidation. On the other hand, nearly six years had elapsed so that it may very well have been that the Lords made the only order which was reasonably open.

The question came up squarely for decision in the Victorian Supreme Court in *Schlieske v. Overseas Construction Co. Pty Ltd.*[31] The plaintiff sought damages for personal injuries arising from the company's alleged negligence. The defence was conducted by the defendant's insurer who instructed a firm to act on its behalf. The defendant was dissolved after service of the writ but before the trial. Counsel on both sides were un-

[26] *Ibid.*
[27] [1927] A.C. 252.
[28] *Ibid.* 269.
[29] *Ibid.* 259.
[30] *Ibid.*
[31] [1960] V.R. 195.

aware of the dissolution until the trial was well advanced and, by arrangement between them, the trial proceeded to a verdict. The jury found for the plaintiff and awarded him substantial damages. At this point the plaintiff moved for judgment according to the verdict and Sholl J. adjourned the proceedings. An order under the Victorian predecessor of section 307 was made by the Chief Justice and the parties came once again before Sholl J. who held that the writ and proceedings taken before the dissolution were not abortive and ordered fresh pleadings and a retrial. Unfortunately, His Honour's reasons have not been reported[32] so it is not possible to know whether his attention was drawn to *Re Lewis & Smart Ld*[33] in which Wynn-Parry J. had come to the opposite conclusion. In that case, the misfeasance summons had been issued before the company's dissolution, although not served until afterwards. After the order had been obtained declaring the dissolution to have been void, the applicant sought directions from the Registrar. The matter came before Wynn-Parry J. by way of appeal from the Registrar's refusal to make any order. The Registrar had accepted the submission that, on the authority of *Morris* v. *Harris*,[34] the summons had abated and had not been resuscitated by the order for revival of the company. His Lordship's dismissal of the appeal left the applicant no other course than to issue a fresh summons if he still could. Wynn-Parry J. relied expressly on the statement of Lord Blanesburgh quoted above from *Morris* v. *Harris*.[35] As that statement is equivocal so far as this question is concerned, there seems to be no reason why Australian courts should not adopt the more convenient view which commended itself to Sholl J.

STALE PROCESS

There is one further difficulty which may arise if the more convenient rule is adopted. The originating process may not have been served at the date of dissolution and may become stale before the company is revived. If the other party or the persons acting on the company's behalf become aware of the situation in time, revival proceedings can be instituted immediately. If revival is postponed until too late the only course is to seek renewal of the process. Where the order for revival is made under section 308(5), this may be sought in the revival proceedings as a direction for 'placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off'. Section 307, however, does not give the court jurisdiction to make such an order and separate proceedings would have to be brought under the appropriate

[32] The report in [1960] V.R. 195 concerned the plaintiff's subsequent application for an order for costs against the defendant company's solicitors and merely rehearses the earlier proceedings.

[33] [1954] 1 W.L.R. 755.

[34] [1927] A.C. 252.

[35] See n. 28.

rules of court. The position generally, except for New South Wales where renewal of process is not permitted, is that the court has a discretion to renew the originating process where reasonable efforts have been made to serve or there is other good reason. The usual form of rule appears to require the application to be made while the process is current which would operate to the company's disadvantage. The practice of the courts has, however, been to entertain applications for renewal even though the time for service has expired.[36] It seems hardly likely that, all things being equal, a court would refuse to exercise its discretion to renew a writ which could not have been served on a company because of its dissolution so long as steps were afoot to remedy that situation. Where the company itself seeks renewal it may, of course, be met by the argument that its officers must have been aware of the reconstruction or winding-up and have been in a position to postpone dissolution until the necessary steps to conclude the litigation had been taken. There does not seem to be any direct authority on this point but the tenor of the reported cases suggests that renewal would nevertheless be granted unless the defendant could show that it would place him at an unfair disadvantage. If the limitation period has also expired, a defendant will be seriously prejudiced by renewal and the rule is that it will not, in the absence of exceptional circumstances, be granted.[37] It may be that, assuming that time does run during the interval of dissolution,[38] a plaintiff could show exceptional circumstances where a corporate defendant had pulled the rug from under him, so to speak, by willingly undergoing a winding-up or reconstruction without giving him a chance to serve. It seems doubtful that a corporate plaintiff could plead exceptional circumstances on the strength of its own conduct in undergoing such a process.

LIMITATION OF ACTIONS: INTERRUPTED PROCEEDINGS

The question arises as to what will happen if the cause of action relied on in interrupted proceedings becomes barred by the running of time before the company is revived. So far as section 308(5) is concerned, the point is squarely covered by *Tymans Ld v. Craven*,[39] at least where there has been service of the originating process. The company was out of time to commence fresh proceedings but, as it was deemed to have continued in existence during the interval of dissolution, the application made in its name at that time was held to be effective. So far as section 307 is concerned, the question would appear to depend on the view which is taken of the question just discussed, *i.e.*, whether the parties must start over

[36] See *Pino v. Prosser* [1967] V.R. 835, 840 for a review of the practice.
[37] *Weldon v. Neal* (1887) 19 Q.B.D. 394. See *Pino v. Prosser* [1967] V.R. 835, 840 for a review of the authorities.
[38] See discussion of this point below.
[39] [1952] 2 Q.B. 100.

again after revival. On Wynn-Parry J.'s view, in *Re Lewis & Smart Ld*[40] that the originating process remains abated despite revival, the situation is as though no proceedings had ever been initiated.[41] If, however, as on Sholl J.'s view in *Schlieske v. Overseas Construction Co. Pty Ltd*,[42] the originating process is still good then it must be effective to stop time running as at the date the original proceedings were instituted.

LIMITATION OF ACTIONS: UNPROSECUTED CLAIMS

The question of whether time runs in favour of or against a company while it is in a state of dissolution is not only vexing—it borders on things metaphysical. Limitations legislation typically prohibits litigation after a stated period calculated from the accrual of the cause of action. On a literal reading, the prohibition appears to be absolute. There seems little scope for implying an exception to cover the case of revocable death. Nor does the usual exception in favour of potential plaintiffs who suffer disability seem to cover the situation. Indeed, it would be anomalous if it did for this would always operate in the company's favour and never in the other party's. As the question cannot arise unless the company becomes revived, the question does not really seem to be whether time runs for or against a dissolved company but rather whether the provision for revival permits a stale claim to be prosecuted so long as it was not barred at the time of dissolution.

The words of section 307: 'and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved . . .' are susceptible of two readings. They may mean that such proceedings may be taken as could have been taken earlier. A less generous reading is that such proceedings may be taken as could have been taken at the time of revival if the company had never been dissolved. The latter reading seems preferable because the more generous reading involves a partial repeal of the limitations legislation by an implication which is by no means clear. This was probably the view taken by counsel in *Re Lewis & Smart Ld*[43] as otherwise it is difficult to see why he pressed for directions instead of issuing a fresh summons. It may also be that this reading was present to Sholl J.'s mind in *Schlieske v. Overseas Construction Co. Pty Ltd*[44] as he made his order on 29 August 1958 and the writ had been issued sometime in 1955. On the other hand, in *Morris v. Harris*[45] the Lords remitted the cause back to the Chancery Division with a direction that Harris was entitled to prove for his damages. As the dismissal had occurred eight

[40] [1954] 1 W.L.R. 755.
[41] See below for a discussion of this situation.
[42] [1960] V.R. 195.
[43] [1954] 1 W.L.R. 755.
[44] [1960] V.R. 195.
[45] [1927] A.C. 252.

years earlier, Harris was out of time and the decision might be regarded as *sub silentio* authority in support of the more generous reading.

The position regarding an unprosecuted stale claim which was not barred at the time of dissolution is hardly less clear of resolution under section 308(5).

The fact that the company is deemed to have continued in existence suggests that time should be treated as though it continues to run. The provision of a fifteen year period for revival suggests the contrary. Professor Gower argues[46] that the cases leave the question in some doubt and cites *Re Donald Kenyon Ltd,*[47] *Re Vickers & Bott, Ltd*[48] and *Re Huntingdon Poultry Ltd.*[49] In *Re Donald Kenyon Ltd*[50] Roxburgh J. gave a direction in favour of creditors which would have been unnecessary had he not taken the view that time runs during the interval of dissolution.

In *Re Huntingdon Poultry Ltd,*[51] Buckley J. refused to give the same direction but only because the creditor was not statute-barred and he did not disapprove of *Re Donald Kenyon Ltd.*[52] In *Re Vickers & Bott, Ltd,*[53] Pennycuick J. observed that *Re Donald Kenyon Ltd*[54] did not apply where the company was already in liquidation. In *Re Lindsay Bowman Ltd*[55] Megarry J. expressed very clearly the view that time does continue to run during the interval of dissolution and this view does seem to permeate the decisions.

It is probable that the better view is that time should be treated as though it continues to run but that the provision permitting the court to 'give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off' is designed to permit a stale claim to be proceeded with where it is in the interests of justice to do so. There is, admittedly, a difficulty in the way of this view. At first glance, a direction or provision that the interval of dissolution should not be counted in reckoning the limitation period would not appear to fall within the permitted class of orders. The class seems to be limited to orders for placing persons in the same position as if the company had *not* been struck off and certainly time must have run if that had been the situation. Nevertheless, this was the direction given by Roxburgh J. in *Re Donald Kenyon Ltd*[56] and approved of by Megarry J. in *Re*

[46] *Principles of Modern Company Law* (3rd ed. 1969) 653 n. 64.
[47] [1956] 1 W.L.R. 1397.
[48] [1968] 2 All E.R. 264n.
[49] [1969] 1 W.L.R. 204.
[50] [1956] 1 W.L.R. 1397.
[51] [1969] 1 W.L.R. 204.
[52] [1956] 1 W.L.R. 1397.
[53] [1968] 2 All E.R. 264n.
[54] [1956] 1 W.L.R. 1397.
[55] [1969] 1 W.L.R. 1443.
[56] [1956] 1 W.L.R. 1397.

Lindsay Bowman Ltd.[57] In the latter case, Megarry J. refused to follow Roxburgh J.'s lead in inserting a direction in the order that the revival be without prejudice to any remedy which a creditor might have against any person in respect of debts incurred by the company during the interval of dissolution.[58] That direction, in His Lordship's view, fell outside the permitted class of orders in that it tended to negate the fiction that the company had continued in existence. His Lordship inclined to the view, however, that a direction that time be taken not to have run was the sort of thing aimed at by the sub-section. It amounted to giving a creditor additional time to make up for the time he would have had for bringing suit if the company had continued in existence. This argument is attractive and no doubt *Re Donald Kenyon Ltd*[59] will be accepted in the Australian jurisdictions.

CONCLUSIONS

The parallel existence of sections 307 and 308 (5) is due more to the historical development of the legislation than to any need for competing methods of revival.[60] There might at one time have been justification for affording separate treatment to companies which had been dissolved by the unilateral act of a Registrar. Where dissolution followed a winding-up or reconstruction a greater measure of protection was afforded to interested persons. That justification no longer exists. The Australian Registrars and Commissioners are conscious that section 308 cuts across third party interests and are meticulous in their administration of it.[61] In recent years company officers have been attracted by the simplicity and economy of section 308 contrasted to the procedure for winding-up and the Registrars are now accustomed to exercising their power under it at the request of the company concerned. Moreover, the operation of the two sections has become mingled as a result of Buckley J.'s decision, in *Re Belmont & Co. Ltd,*[62] that a declaration can be obtained under section 307 to revive a company which has been dissolved under section 308.[63]

The present requirement is for one standard method of revival and clear rules establishing the results which are to follow from it. It is to be hoped that consideration can be given to the question when Australia's companies legislation next comes under review.

[57] [1969] 1 W.L.R. 1443.
[58] *Re Rugby Auto Electric Services Ltd* (1959 unreported).
[59] [1956] 1 W.L.R. 1397.
[60] Both sections have been copied from the British Companies Acts. Interestingly, s. 308 which wears the more modern complexion, was first introduced in the U.K. in 1880 while s. 307 dates only from 1907.
[61] See Ryan, *Australian Company Registration Practice* (2nd ed. 1972) for a discussion of their requirements.
[62] [1952] Ch. 10.
[63] There are significant differences in the standing required of applicants under the British counterparts of the two sections. The applicants in *Re Belmont & Co. Ltd* came under the counterpart of s. 307 as they believed they lacked standing under that of s. 308(5). Megarry J. was critical of this decision in *Re Test Holdings (Clifton) Ltd* [1970] Ch. 285 but followed it.