3. Every illegal contract is of no effect, and no person is entitled to any property under a disposition made by or pursuant to such contract; with the proviso that any disposition of property made by or through a party to an illegal contract for valid consideration, is valid, if the person to whom the disposition was made, was not a party to the contract, and had no notice that the property was the subject of an illegal contract.

4. The Court has in its discretion power to grant relief to any party to an illegal contract, or to any person claiming through such party, provided it considers to do so would be in the public interest.

5. The Act binds the Crown.

6. The Act applies to contracts made both before and after the comencement of the Act, except that the provision that an illegal contract be of no effect applies only to contracts made after the Act.

G. G. Hall

CRIMINAL LAW

Mens Rea

R. v. *Strawbridge* [1970] N.Z.L.R. 909 re-affirmed the existence of an intermediary class of statutory offence as suggested by Lord Pearce in *Sweet* v. *Parsley* [1970] A.C. 132 as a "sensible half-way house", which, while not creating a strict liability, does not place upon the prosecution the conventional burden of affirmatively establishing a guilty mind on the part of the accused. In this type of case *mens rea* may be presumed but if there is evidence that the accused believed on reasonable grounds that his act was innocent he is entitled to be acquitted.

The argument concerning *mens rea* in relation to drug offences and strict liability, seems to have come full circle since Edward J.'s conclusions in *R.* v. *Ewart* (1905) 25 N.Z.L.R. 709. Although his statement in that case that the burden of proof had passed to the accused went a little too far, it is true to say that if the accused can indicate some evidence which creates reasonable doubt that he did not have a guilty mind then he may be entitled to an acquittal. The decisions in *Strawbridge* seems to culminate a line of argument on this question since *Ewart's* case.

The decision is particularly significant in the way it avoids the imagined difficulty presented by *Woolmington* v. *D.P.P.* [1935] A.C. 462. In so doing North P. said (*ibid.*, 915):

> . . . in New Zealand we have never interpeted *Woolmington's* case as going any further than determining that the burden of proof at the end of and on the whole of the case lay on the Crown. With the exception of statutory offences of an absolute nature we have however distinguished between cases where the offence consists in "knowingly" doing an act and cases where the word "knowingly" has been omitted. In the former class of case the Crown must prove knowledge on the part of the accused before it can be said that a *prima facie* case has been made out. In the latter class of case, on the other hand, knowledge of the wrongful nature of the act will be presumed in the absence of any evidence to the contrary.

Since the accused alone would know the belief upon which he acted he should be granted the opportunity to explain his grounds for such belief and if the jury considers this reasonable, it might acquit him.

[The recently decided case of *McCone* v. *Police* [1971] N.Z.L.R. 105 is interesting in that it puts the *Strawbridge* decision in the whole context of *actus reus* and *mens rea* in regard to absolute liability.]

Appeal in Summary Jurisdiction

Police v. *McNaughton* [1970] N.Z.L.R. 889 concerned a respondant charged under section 127 of the Social Security Act 1964 for making a statement knowing it to be false for the purpose of obtaining a benefit under the Act. She had on eight occasions made a false statement knowing it to be false. The magistrate dismissed all the informations and the police appealed on a point of law. The appeal involved the principles of case stated, the contents of the case stated, and how precisely the point of law involved should be specified.

The appeal was allowed and it was pointed out by Haslam J. in his judgment that the case stated must specify precisely the point of law which is submitted to the court for an answer. It was not satisfactory to ask in a general way whether the decision under review was erroneous in point of law.

Evidence and Proof

R. v. *Hicks* [1970] N.Z.L.R. 865 concerned the evidence of an accomplice, corroboration, and the necessity for a judge to warn the jury that although they might convict on the evidence of an accomplice, it was dangerous to do so unless it was corroborated. The case for the Crown rested on the uncorroborated evidence of two girls who were clearly accomplices and the judge was obliged to warn the jury of the above rule.

In *R.* v. *Lord and Doyle* [1970] N.Z.L.R. 526 the Court of Appeal, held that where the evidence of the commission of a crime arises only from something the accused has said, something more must be convincingly proved which is itself cogent and satisfactory.

With reference to the case of *R.* v. *Davidson* (1934) 25 Cr. App. Rep. 21, Turner J. said:

> When the commission of a crime has once been independently proved, the confessions of an accused may be excellent evidence against him. And where apart from a confession or other incriminating statement from an accused, no proof is furnished that a crime has been committed, yet sufficiently cogent evidence of some confession or incriminating statement, made in circumstances in which its truth is likely, is produced, such a statement may by itself be sufficient to support a conviction (*ibid.*, 529).

Offences against the Person

R. v. *Forrest and Forrest* [1970] N.Z.L.R. 545 concerned a charge under section 134 of the Crimes Act 1961 of having sexual intercourse with a girl under sixteen years of age. The case involved the matter of proof of the age of the girl in a sex charge and referred to the case of *R.* v. *Nankivell* (1908) 11 G.L.R. 101 where it was maintained that the birth certificate standing alone was insufficient as no witnesses had been called to identify the girl with the child named in the certificate. In the present case no evidence had been brought to support the girl's own statement as to her age when producing her birth certificate. The appeal was thus allowed.

Aiding and Abetting

In *Sweetman* v. *Industries and Commerce Dept.* [1970] N.Z.L.R. 139, a company and its manager were both charged with similar offences. The company was acquitted while the manager was convicted. On appeal the main question was whether the manager could be convicted as the principal or an an aider and abettor. The facts indicated that there had been a contravention of Regulation (6) of the Hire Purchase and Credit Sales Stabilisition Regulation 1957. The manager who had full knowledge of the facts, was held to have been properly proved by the evidence to be guilty as an actual offender or else as an aider and abettor of an offence committed by the company.

Richmond J. pointed out that no general rule of law in New Zealand required a person who is prosecuted as an aider and abettor to be acquitted in all circumstances if some other person named as the actual offender is acquitted. Consideration was given to cases such as *R.* v. *Hamson* [1941] N.Z.L.R. 354 and *Thornton* v. *Mitchell* [1940] 1 All E.R. 339 where it was held that the acquittal of the principal offender and the conviction of an aider and abettor could not stand together. But in those cases there had been conflicting findings of fact as between the person charged as principal offender and the aider and abettor. In the present case this question did not arise because the Magistrate had found rather that as a matter of law the company was entitled to an acquittal.

D. G. Holloway

EQUITY AND THE LAW OF SUCCESSION

Variation of trusts

Re Bodle's Trust, Stratton v. *Bodle* [1970] N.Z.L.R. 750 arose from an originating summons for an order under section 64A of the Trustee Act 1958, seeking approval of the court to a variation of the terms of a deed of trust. By accelerating and fixing the date of vesting as at 31 August 1971 instead of at the death of the testator, substantial death duties could be avoided, giving a distinct advantage to those sharing in the fund.

The issue to be decided was whether in terms of section 64A the scheme was "to . . . [the] detriment" of the contingent beneficiaries on whose behalf the court was asked to approve, taking into account all indirect benefits and moral-social advantages to the family units involved.

Woodhouse J. in allowing the variation, was of the opinion that complete justice could be done by requiring that all who took an interest on that date, immediately re-transfer one half of what they got to a new trust. This was for the protection of interests of those who would have taken under the original terms of the deed.

In *Re Remnant's Settlement Trusts* [1970] Ch. 560 a novel variation was approved. The use of the English equivalent of section 64A Trustee Act 1958 was extended from allowing variation merely where the trust has been considered to be disadvantageous from a revenue point of view. Here a forfeiture clause conditioned on religious affiliation was deleted. The clause provided that the beneficiaries were to forfeit their rights if at the time their interests were to vest, they were practising Roman Catholicism. There was no attack for uncertainty since the clause stated