she had knowledge that she was in possession of certain goods in a bottle but she was innocent as to the precise contents. Her appeal was dismissed and the provision in question was construed as giving rise to absolute liability and accordingly no relief could be granted although *mens rea* was absent. It was only necessary to show that the appellant knew she was in possession of goods which later turned out to be dangerous drugs, and her ignorance as to the precise contents of the bottle was irrelevant. In *Fraser's* case it was held irrelevant that the particular novel in question was unknown by the defendants to be indecent and the conviction was secured on the mere fact that the defendants had imported the particular novel.

The appeal in *Burns* v. *Bidder* [1966] 3 W.L.R.99 was upheld on the broad principle that criminal responsibility does not attach to an involuntary *actus reus*. The appellant had been convicted of failure to give precedence to a pedestrian on a crossing, despite his contention that his brakes failed. The magistrate held the regulations in question to impose an absolute duty. However, the Queens Bench Division considered that the regulations did not necessarily impose an *absolute* obligation to afford precedence and in fact held there was no breach in circumstances where a driver fails to give way solely because his control of the vehicle is lost by some incident outside his possible or reasonable control, and in respect of which he is in no way at fault. In the circumstances of this case the failure of brakes was deemed to be such an incident; thus a driver has a defence if he cannot stop in time to afford such precedence because of an unforeseeable failure of his brakes, provided he is in no way at fault himself. The reasoning is similar to that in the New Zealand decision of *Kilbride* v. *Lake* [1962] N.Z.L.R. 590 in that the accused is not criminally responsible if in the words of Woodhouse J. "he merely sets the stage" for the *actus reus*.

I. S. Hurd.

EQUITY AND THE LAW OF SUCCESSION

1. *Powers and duties of trustees*

(a) Remuneration: The Court of Appeal in *Re Spedding* [1966] N.Z.L.R.447, declined to hold that the Court has an inherent jurisdiction to review or reduce the amount charged by a trustee corporation for the administration of a trust so long as the charges fall within the statutory limits. In *Re Bourke* [1966] N.Z.L.R.327, Hutchison J. held that it was only in very special cases that commission on the gross income of a trust property would be payable to the trustee pursuant to s.72 of the Trustee Act 1956 and that in that case which concerned the carrying on of a farm business the net income was the correct basis of calculation. The trustee's claim for commission on the sale of the assets was also reduced for much of the amount realised (such as proceeds from life insurance policies) involved little work on the part of the trustee.

(b) Profit: Among the assets of the trust in *Boardman* v. *Phipps* [1966] 3 W.L.R.1009, were 8,000 shares in a company. The appellants (the trustees' solicitor and one of the testator's sons) acquired a controlling interest in the company with a view to its reorganisation although the will did not authorize such action. The profit resulting

from the subsequent realization of the assets was over £75,000. During negotiations the appellants, who had acted honestly throughout, with the consent of the trustees took it upon themselves to represent the trust's shareholding and by so doing acquired information concerning the company's assets and affairs which enabled them to successfully complete the transaction. Thus it was held by the House of Lords that the appellants were constructive trustees of the shares for the respondent (a beneficiary) and were liable to account for the profits. At the same time the appellants were to be liberally remunerated for their work and skill in respect of their obtaining the shares and the profits thereon. In *Holder* v. *Holder* [1966] 3 W.L.R.229, moneys were paid into, and cheques signed by all three executors drawn on, a bank account opened two months after the testator's death. Subsequently, but before probate was granted, the defendant renounced his executorship and at an auction sale purchased the reversionary interest in the trust farms. Cross J. upheld one of the beneficiaries' claim for recission of the sale on the ground that the purchase came within the rule of equity disentitling a trustee to purchase trust property. The executor's purported renunciation was ineffective because he had already performed acts of administration.

(c) Advancement: *Re Clore* [1966] 1 W.L.R.955, is a case where the trustees who were empowered to apply money for the advancement and benefit of the beneficiary, wished to make such a payment to a charity established by the settlor. Pennycuick J. in holding that the trustees were entitled to do so, stated that the discharge of a moral obligation would in the case of a wealthy man be for his benefit, i.e. the improvement of his material situation. *Re Allen-Meyrick* [1966] 1 W.L.R.499, concerned a will which directed the trustees to apply the income of the trust for the maintenance of the testatrix's husband, but the trustees apart from paying certain debts were unable to agree as to further payments. The Court refused to accept the surrender of such a discretion which involved changing circumstances and which could not be exercised in advance. Buckley J. was however prepared to give certain directions as to how the trustees should act in the existing circumstances.

(d) Acquiescence of Beneficiary: In *Holder* v. *Holder* (*supra*) it was held that although the plaintiff (who was the beneficiary) had received moneys from the proceeds of the sale he neither knew, nor was deemed to know constructively through his solicitors, of his right to avoid the sale. Thus there had been no acquiescence by him to the purchase and it was still voidable at his instance.

2. *Variation of Trusts*

These cases are English decisions and are thus concerned with s.1 of the Variation of Trusts Act 1958 (U.K.) but are of some relevance to New Zealand. In *Re Pettifor* [1966] Ch.257, the Court was asked to approve an arrangement on behalf of any child who might be born to the testator's seventy-eight year old daughter. However Pennycuick J. held that the Act was not designed to cover impossible contingencies and that the application was therefore inappropriate. *Re Berry* [1966] 1 W.L.R.1515, involved a variation which released part of the trust fund in favour of the life tenant absolutely and in excess of the value of the life interest. Stamp J. gave the court's approval on behalf of

infant children who held contingent interests as the arrangement would ultimately be for their benefit. The Court in *Re Drewe* [1966] 1 W.L.R. 1518, approved on behalf of the life tenant's future children a transaction which involved the release of the life interest in the trust property. The life tenant also possessed a power of appointment over the property and Stamp J. ordered that a clause precluding the exercise of this power without professional advice be inserted in the arrangement. This was to avoid further estate duty liability on the life-tenant's death which would be to the detriment of the children.

3. *Charitable Trusts*

A difference of view as to the existence of a general charitable intention appears evident from two cases which were decided at much the same time without reference to each other. Buckley J. in *Re Jenkins* [1966] Ch.249, held that the court could not, because of the inclusion of a non-charitable gift (to the Anti-vivisection movement) among six charitable gifts, infer that the testator was actuated by a general charitable intention, even though the purposes were all closely related. Thus the non-charitable gift passed as on an intestacy. The testatrix in *Re Satterwaite* [1966] 1 W.L.R.227, left all her estate to organizations connected with animal welfare, but one of the nine gifts was for a non-charitable purpose (again to an Anti-vivisection society). Another of the gifts was to "The London Animal Hospital" an institution which could not be traced. The claim to this bequest by a veterinary surgeon who prior to the date of the will had practised under that name was rejected because the intention of the will was to benefit institutions rather than individuals and because the claimant was not practising under the name in question at the time of execution. Secondly, the Court of Appeal held that the bequests showed a general charitable intention, not withstanding the inclusion of a non-charitable object. Some emphasis was placed on the fact that the average testator would not know that these societies were not charities at law. Accordingly this particular share was applied *cy-pres*. *Jenkins'* case (*supra*) appears to be irreconcilable with this decision.

4. *Perpetuities Act 1964*

The Perpetuities Amendment Act 1966 amended subs.(1) of s.6 of the principal Act (which enables a settlor to specify a period of years not exceeding eighty as the perpetuity period) by clarifying the words defining the perpetuity period in such a case. Sub-section (4) of the same section which enabled a date certain (as opposed to a number of years) to be specified as the date of vesting has been entirely repealed. This has removed the possibility of the perpetuity period being implied and so the perpetuity period itself must now be specified if a draftsman wishes to take advantage of s.6. However the amending Act provides that a previous disposition can not be invalidated by the repeal of subs. (4).

5. *Family Protection*

It was held by Wilson J. in *Re Berryman* [1966] N.Z.L.R.743, that a claim by an illegitimate child of the testator under the Family Protection Act 1955 was no weaker than that of a legitimate child and in some situations might conceivably be stronger.

Although the following decisions of the English courts related to claims brought under the Inheritance (Family Provision) Act 1938 (U.K.) their principles are applicable in New Zealand. In *Re Clayton* [1966] 1 W.L.R.969, Ungoed-Thomas J. held that there was no greater onus of proof on a surviving husband than on a surviving wife in a claim under the Act. In this case although the testatrix's husband was able to maintain himself at the time of the hearing, the prospect of his ceasing to be employed in the near future entitled him to some provision from his wife's estate. The claim of the testator's wife from whom he had been separated for over twenty years was dismissed by Stamp J. in *Re E.* [1966] 1 W.L.R.709. It was not unreasonable for the deceased to have made no provision for the plaintiff out of his very small estate, most of which arose from a grant earned by the deceased during his cohabitation with the defendant (his *de facto* wife). Further he was entitled to regard his estate as something he could freely give to the defendant who had shared his life for over twenty years.

The claimant in *Re Ducksbury* [1966] 1 W.L.R.1226, was the deceased's estranged daughter who had vainly attempted to bring about a reconciliation with him. Although the daughter did contribute to the quarrel, this did not justify the testator's refusal to be reconciled, nor his failure to make any provision for her. However it was held by Buckley J. that the fact that the daughter had of her own volition chosen part-time employment only and was thus in a worse financial position than necessary did not increase her claim. Finally, the Court of Appeal in *Re Gale* [1966] Ch.236, upheld an order of the High Court varying the amount of periodical payments to be made to a successful claimant on the ground that the income of the estate had doubled. It was also stated that an order awarding periodical payments under the Act should be in the form of a definite sum and not a fraction of the income of the estate.

J. G. French.

EVIDENCE

The Evidence Amendment Act 1966 inserts in the Evidence Act 1908, s.25 A, which relates to the admissibility of documentary evidence in criminal proceedings. The section provides:

> In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the original document be admissible as evidence of that fact if—
>
> (a) The document is, or forms part of, a record relating to any business and compiled in the course of that business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed by the Court to have personal knowledge of the matters dealt with in the information they supply; and
>
> (b) The person who supplied the information recorded in the statement in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to recollect the matters dealt with in the information he supplied.

The amendment goes on to state that if the original document is not produced, a copy certified to be a true copy will be admissible under