the Court of Appeal was faced with the vexing problem of "ostensible authority", this time when a company secretary hired cars in the company's name but for his own use. The second case, *In re Holders Investment Trust Ltd.* [1971] 1 W.L.R. 583, touches on the equally contentious issue of a majority exercising a power to a minority's detriment. On this occasion the court found that, in reducing the capital of the company, the majority shareholders had not asked what was best for the preference shareholders as a class.

Legislation

Looking ahead, it seems it may not be long before a new Companies Act will replace the present one. In May, 1968 a Special Committee was appointed to review and report upon the provisions and working of the 1955 Companies Act. In August of 1971 this Special Committee produced an Interim Report on its work to date: "We do not think that any fundamental change in the framework of the existing Act is required", the Committee said, "but we do think it has been shown there are now a number of matters upon which we have received a good deal of evidence to the effect that amendment of the existing law is required." (at p. 4). Those matters referred to by the Special Committee included the powers of companies including consideration of the *ultra vires* doctrine and pre-incorporation contracts, accounts and audit and accounting disclosure, prospectuses and the protection of investors, takeovers, registration of charges, obligations of directors, inspection and investigation into company affairs, and generally the enforcement of the performance of the duties imposed upon companies and their officers by the Companies Act. Hopefully, the work of this committee will soon be transformed into law, in the shape of a more streamlined and up-to-date Companies Act.

R. G. R. Eagles

CONTRACTS

Exclusion Clauses

In *Thornton* v. *Shoe Lane Parking Ltd.* [1971] 1 All. E.R. 686 the English Court of Appeal applied a well established principle to a novel situation. The plaintiff, having driven his car into an automatic carpark and received a ticket from a machine, later returned to collect it and was injured, partly as a result of the park owner's negligence. The issue was whether the latter had limited its liability by an exemption clause.

The Court held it had not. His Lordship relied on *Parker* v. *South Eastern Railway Co.* (1877) 2 C.P.D. 416, and the dicta of Mellish L.J. to the effect that the customer in cases of this nature is bound by an exempting condition only if he knows that the ticket is issued subject to it; or if the company does what is reasonably sufficient to give him notice of it. And this, it was conceded, Shoe Lane Parking Ltd. had not done. The Master of the Rolls reiterated what he had said in *J. Spurling Ltd.* v. *Bradshaw* [1956] 1 W.L.R. 461, at 466—that the clause was so wide and so destructive of rights that to be effective it would need to be printed in red ink with a red hand pointing to it or something equally startling.

In any case, any notification that might have been given on the ticket and which might according to the "ticket cases" have supported the efficacy of the clause, was too late (*Olley* v. *Marlborough Court Ltd.* [1949] 1 K.B. 532). The contract was complete at the moment the ticket was issued by the machine. The ticket was no more than a voucher or receipt for the money paid (*Chapleton* v. *Barry* U.D.C. [1940] 1 K.B. 532) and the park owner could not limit its liability by a clause that came to the car-owner's notice only after the contract was complete.

Void and Illegal Contracts

Section 25 of the Land Settlement Promotion Act 1952 has been the subject of judicial interpretation on several occasions, notably by F. B. Adams J. in *Hayes* v. *Sutherland* [1959] N.Z.L.R. 1377 and McGregor J. in *Harris* v. *Walker* [1952] N.Z.L.R. 837. The section provides that if a transaction which falls within the statute is not followed within a month by the deposit with the District Land Registrar of a statutory declaration as to certain matters the transaction is to be deemed unlawful and shall have no effect.

Both F. B. Adams and McGregor JJ. agreed that though the illegality arose at the expiration of the time limitation it related back to the inception of the contract. But from that point their views diverged. F. B. Adams J. (*op. cit.* 1386) thought that on a purchaser's claim to recover a deposit paid before the illegality supervened, the court must proceed as if there had never been any contract at all while McGregor J. considered (*op. cit.* 847) that the court must recognise that the contract had in fact existed until it was overtaken by illegality. The first view allows for restitution, while under the second, the loss lies where it falls.

Joe v. *Young* [1964] N.Z.L.R. 24 resolved the conflict to some degree. Haslam J. preferred the opinions expressed on appeal in *Watson* v. *Miles* [1953] N.Z.L.R. 958 to those of F. B. Adams in *Hayes* v. *Sutherland* (*supra*) but his judgment was reversed on appeal. The Court of Appeal agreed with Stanton J. in the Supreme Court in *Miles* v. *Watson* [1953] N.Z.L.R. 154 that the words of s.15(4), "and shall have no effect" were not mere surplusage and disapproved the contrary opinion expressed on appeal in that case.

In *Wainuiomata Golf Club Inc.* v. *Anker Developments Ltd.* [1971] N.Z.L.R. 278 Wild C.J. after a full consideration of the above authorities preferred to follow the reasoning and to adopt the conclusion of Adams J. in *Hayes* v. *Sutherland* (*supra*). The Chief Justice went on to say that he thought that the fundamental point is that in s.25(4) Parliament did not stop short at deeming the transaction to be unlawful but that Parliament went on to declare that it "shall have no effect" and these words must be given their natural and ordinary meaning.

Misrepresentation and Fraud

The outcome of *Kenny* v. *Fenton* [1971] N.Z.L.R. 1, rested almost entirely on the view the Court took of the facts. There was a direct conflict of evidence as to what was said by the parties during their negotiations, and particularly whether a conversation had included a certain vital representation by the defendant. The Court of Appeal (North P. and Haslam J.; Turner J. dissenting) upheld the action of

Woodhouse J. in granting rescission of the contract and restitution to the plaintiff in an action alleging fradulent misrepresentation concerning turnover, thereby inducing a contract of sale and purchase of a motel business and premises at Mt Maunganui.

In so doing the majority accepted the principle expressed by Lord Sumner in *S.S. Hontestroom* v. *S.S. Durham Castle* [1927] A.C. 37 at 47 that

> If his estimate of the man forms any substantial part of his reasons for his judgment the trial Judge's conclusions of fact should, as I understand the decisions, be let alone . . . . We must, in order to reverse, not merely entertain doubts whether the decision below is right but be convinced that it is wrong.

Turner J. in his dissenting judgment reminded the Court of the judgment of the English Court of Appeal in *Hornal* v. *Neuberger Products Ltd.* [1957] 1 Q.B. 247 and of the standard of proof requisite in fraud cases. As Morris L.J. said in that case, the court must be brought, on a charge of fraud, to a degree of conviction which is 'commensurate with the occasion'. The learned Judge was of the opinion that this was a case in which there was not room on the evidence for the conclusion reached by Woodhouse J.

Repudiation

When does a breach of contract amount to a repudiation? This was the central question in *Decro-Wall International S.A.* v. *Practitioners In Marketing Ltd.* [1971] 1 W.L.R. 361, where their Lordships upheld the view of the Judge that there had been no repudiation by the defendants, the English marketing agents. Salmon L.J. stated the case in familiar terms when he said that the legal consequence of a breach was to be ascertained from the terms of the contract or by looking at the practical results of the breach in order to decide whether or not it went to the root of the contract, referring to *Mersey Steel & Iron Co. Ltd.* v. *Naylor, Benzon & Co.* (1884) 9 App. Cas. 434 and *The Mihalis Angelos* [1971] 1 Q.B. 164.

Here the terms of the contract relating to the time of payment of certain bills could not be regarded as being of the essence of the contract. The practical consequences of the breach were to expose the plaintiffs to a possible claim for additional bank interest, a claim they could easily have passed on to the defendants. This finding was supported by the plaintiffs' own action in extending the time for payment on several occasions.

The Court further found that the defendants were not bound to accept as a repudiation the plaintiffs' letter advising that they regarded the contract as at an end:

> In principle a repudiation of a contract cannot operate as a notice given under it—and a fortiori a letter wrongly purporting to accept a repudiation that has not occurred cannot so operate (*op. cit.*, 378, per Sachs L.J.).

On the question of what length of notice was reasonable to end the relationship of principal and agent the Judge considered that twelve months would be adequate. The defendants had taken three years to develop a market and had laid out a substantial sum in advertising. They had developed the sale of the plaintiffs' goods to the stage where they accounted for over eighty percent of the defendants' business and anything less than twelve months' notice would have been unreasonable.

Ruby Ah Keni