

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

10 pages.

10.

Decision given: 14th November, 1989; Reasoned judgment reserved.
Reasoned judgment handed down: 16th February, 1990.

Before: The Bailiff and
Jurats Coutanche and Hamon

Her Majesty's Attorney General

- v -

Alan Baker Arthur, John Dunett McLellan,
Angela Marie McLellan nee Dennis, John Le Cras Bisson
and Barry Keith Pickersgill

Attorney General for Crown
Advocate S. A. Pearmain for Alan Baker Arthur
Advocate S. J. Habin for Mr. & Mrs. McLellan
Advocate W. J. Bailhache for John Le Cras Bisson
Advocate D. E. Le Cornu for Barry Keith Pickersgill

This case arises from the prosecution of the defendants who were said to have contravened Article 14(d) of the Housing (Jersey) Law 1949, as amended, ("The Law"). They were charged as follows:-

"Alan Baker Arthur, John Dunett McLellan, Angela Marie McLellan nee Dennis, John Le Cras Bisson and Barry Keith Pickersgill with having between 24th August, 1978 and 29th September, 1978, or thereabouts, contravened paragraph (1)(d) of Article 14 of the Housing (Jersey) Law, 1949, as amended, by being parties to a device, plan or scheme for a transaction or arrangement, namely the purchase on behalf of the said John Dunnet McLellan and Angela Marie McLellan nee Dennis by the said Alan Baker Arthur, of the property known as 7 Le Clos de Patier, Patier Lane, St. Saviour, that was inconsistent with the Application No. 59829 made to the Housing Committee on the said 24th August, 1978, for its consent to the purchase of the said property by the said Alan Baker Arthur."

The Facts :

Mr. Arthur is a resident of Jersey and in 1978 was qualified to buy property under the relevant provisions of the Law. Before 1978 he had employed Mrs. McLellan. She and her husband were qualified to rent property but not, as yet, to purchase it, and would have to wait for a further ten years until 1988. Mr. Arthur agreed to buy 7 Le Clos de Patier, Patier Lane, St. Saviour, ("the property") and to install Mr. and Mrs. McLellan as his tenants. It was not clear from the evidence whether he intended to do this at the time he contracted to buy the property or not. Nevertheless, whether he did so or not, on the 21st August, 1978 Mr. Arthur signed an application form for submission to the Housing Committee to acquire the property. The names of the proposed occupiers were given as follows:-

"John Dunett McLellan and
Angela Marie McLellan (nee Dennis)

Mr. McLellan has lived in the Island for ten years immediately preceding the commencement of their (sic) occupation." Clause 16 of the application form signed by Mr. Arthur is in the following terms:-

"16. Terms of intended transaction and the terms of any other transaction in any way related thereto. (Sale price, contents, etc.)"

The solicitor acting for the vendor wrote the following in the section provided for an answer to Clause 16.

"Consideration of Twenty-five Thousand eight hundred pounds (£25,800.00) no contents"

Messrs. Bois and Bois, of whom Mr. Bisson, one of the Defendants, is a partner, acted for Mr. Arthur.

On the 21st September 1978 the Housing Committee gave its consent. The form embodying that consent contained three conditions the relevant one of which was as follows:-

- "2. that the property shall be occupied by the purchaser(s), or shall be offered for sale to, to let unfurnished to, or otherwise occupied by, persons approved by the Committee as being persons of a category specified in Regulation 1(1),(a),(b),(c),(d),(e),(f),(g), or (h) of the Housing (General Provisions)(Jersey) Regulations, 1970, as amended"

On the 29th September the contract for the purchase of the property by Mr. Arthur was passed before the Royal Court. The price for the property inserted in the contract was £28,500.

On the same day a number of agreements between Mr. and Mrs. Arthur and Mr. and Mrs. McLellan were signed. The first was a Bond by Mrs. Arthur to the McLellans to reloan, as was stated in the Bond to Mr. Arthur, of £15,800. The second was a lease of the property for an indeterminate period, subject to three months notice on either side, by Mr. Arthur to Mr. and Mrs. McLellan. In passing, it may be doubted if the lease was valid for more than nine years. The third document was an agreement of sale by Mr. Arthur to Mr. and Mrs. McLellan for £25,800 subject to the consent of the Housing Committee. Lastly, the fourth document was a Bond for £25,800 subscribed by Mr. Arthur in favour of Mr. and Mrs. McLellan. The position, therefore, was that the McLellans were going to live in the house provided by Mr. Arthur but subject to a number of conditions. The first was that under the Bond subscribed by them in favour of Mrs. Arthur they were to pay £214.41. per month to her. The capital of the amount borrowed was to be repaid in the event of a number of events, including the purchase of the property by the McLellans from Mr. Arthur. Under the tenancy agreement no rent was payable except a reimbursement of Schedule A Income Tax which was then in force.

The tenants were obliged to maintain the property in a good condition and repair, and to reimburse Mr. Arthur with his insurance premiums and pay the foncier and occupiers rate "as if they were the beneficial owners thereof". On the 23rd October, following correspondence from the Housing Committee, an exempted transaction form was submitted by Mr. and Mrs. McLellan to the Housing Committee. The lease was described as a quarterly tenancy.

It was accepted that the arrangement we have described was designed to effect an eventual sale by Mr. Arthur to the McLellans of the property but subject to their, by inference at least, obtaining a right to acquire the property after a further ten years residence in Jersey, and expressly as required by the agreement, the consequential consent of the Housing Committee. Because Messrs. Bisson and Pickersgill had drawn up the agreements on behalf of their respective clients they were joined in the prosecution as Defendants.

The Attorney General accepted that Mr. Arthur and the McLellans were guided by their lawyers and did not intend to contravene the Housing Law. He further conceded that both solicitors believed, in 1978, that the arrangements were lawful and advised their respective clients accordingly. The matter came to light when the McLellans submitted an application on the 10th August, 1988 to buy the property from Mr. Arthur.

The arrangements also meant that the McLellans had effected a down payment of £10,000 towards the eventual purchase of the property. The Attorney General described such arrangements as "a deferred purchase". A more accurate description would be that it was a conditional deferred purchase dependant on two events. The first was that the McLellans continued to reside in Jersey for a further ten years in order to qualify to buy a house, and the second was that the Housing Committee would grant consent when the time came in 1988.

At the close of the prosecution case counsel for the Defendants submitted that the offence was not one of strict liability and that because the Attorney General had conceded that none of the Defendants had the necessary mental element in the actus reus they should be discharged. We agreed and we now give our reasons.

The Law :

There are a number of Jersey cases upon which the Crown relied to support its submission that offences under the Law are those of strict liability and that, accordingly, the Crown need do no more than prove the actus reus of the scheme, devise, or plan, in order to succeed.

The first case is that of the Attorney General v. Hilda Hales, nee Frost, wife of Ernest Stanley Hales. That case, unfortunately, was not reported and we had to rely on the Judicial Greffier's note. The Act of the Court is dated 23rd November, 1978 and it says - "that the Court held (1) that offences created by the Housing (Jersey) Law 1949 were offences of strict liability". The Judicial Greffier's note is incomplete. This is not surprising because he is not required to act as a Court reporter, but merely to record accurately the Court's decision for the "Acte" of the Court. From his note, however, it seems that the Court accepted that the Law was a law that provided penalties for acts that were not mala in se but merely mala prohibita. Unfortunately the cases cited in the judgment were not reported by name in the Judicial Greffier's note. The reasoning behind the decision is not apparent and that decision therefore is not one to which the Court, in the instant case, ought to feel obliged to follow.

The second case is that of the AG v. A. T. and V. M. Miletis, which was reported only in the local Press and there is no official typescript of the judgment. The Miletis and their Solicitor were charged, as in the instant case, with contravening Article 14 (1) (d) of the Law. The difference between that case and the instant case is that Mr. and Mrs. Miletis were not qualified even to rent property. They accordingly made an agreement with a third party, who was not prosecuted, to occupy her home with an eventual arrangement for them to purchase it. In that case the Court heard evidence and found the accused guilty. The only reference to the effect of the Housing Law is to be found in part of the Court's judgment which was given on the 1st May, 1986, when the defendants were sentenced, where the Court referred to them as not being prepared to act honestly. The inference may be drawn from that statement, therefore, that mens rea was required. The paragraph referring to the Miletis is as follows:-

"We do not think that you told the lawyer all that you had in mind and we are quite certain that he would not have been a party to the scheme had you divulged anything to him in the way you should have done, had you been minded to act honestly. We are quite certain that you went into these matters with your eyes open and you both merit a substantial fine".

The arrangements were found by the Court, in the words of the Attorney General, "to be a front". That case is an authority for holding that if a dishonest client withholds information from his lawyer, he is not entitled to shelter behind him. It is not an authority for holding that offences against the Housing Law are ones of strict liability.

The third case is that of Re Madok Limited v. George Butler (Dudley) Limited, a civil case reported in JJ 1962 at p 207, which is of help only to the extent of showing that the Court will look behind a pretended transaction to see what that transaction in essence really is. That case does not help us on the question of strict liability.

The fourth case is that of *de Gruchy v. Housing Committee* 1985/86 JLR 130. The main issue decided in that case was whether the Housing Committee was obliged to grant consent (as the Regulations require them to do to certain prescribed transactions) to an arrangement which it believed was inconsistent with the information supplied on an Application Form to the Committee. In *de Gruchy's* case there was a gentleman's agreement to acquire the property when the tenant became able to do so. On page 138 the Court said this -

"We are in no doubt that where the same statutory provisions, on the one hand require a statutory body to consent to a transaction, and, on the other hand contain a provision which has the effect of making that transaction a criminal offence, then it would be absurd and contrary to the accepted notions of good government and administration to hold that that body must nevertheless comply with the requirement."

The Court did not say whether, in its opinion, an offence against the Housing Law was one of strict liability. This may be inferred only from its findings that it accepted that it was, but it was not asked to decide this point. Moreover, the case was a civil one and, more importantly, no authorities on the question of strict liability was cited, or if they were, they were not referred to in the judgment.

In *A.G. v. Weston* 1979 JJ p.141 the Court accepted the observations of Lord Simon of Glaisdale in *Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443 at 477, where it said -

"A court should only hold a judgment to have been given per incuriam if it is satisfied, first, that such judgment was given in inadvertence to some authority (judge-made, statutory or regulatory) apparently binding on the court giving such judgment and, secondly, that if the Court giving such judgment had been advertent to such authority, it would have decided otherwise than it did - would, in fact, have applied the authority"

Since apart from extracts from the 12th Edition of M. .well on the Interpretation of Statutes and from the 4th Edition of de Smith's on Judicial Review of Administrative Action, no other authorities appear from the judgment in de Gruchy to have been cited, notwithstanding the closely reasoned argument in the judgment; it is impossible to say whether, for example, the case (to name but one) of Gammon (Hong Kong) Limited v. AG of Hong Kong 1984 2 ALL ER 503 had been cited, the Court would have come to the same decision.

The last case is the more recent decision of the Royal Court in the AG v. Roberts and Son (Holdings) Ltd. Unreported 88/1C 3/3/88. In that case the defendants were charged also with contravening Article 14 (1)(d) of the Law. The Court held that a mistake of law was no defence. This Court accepts that if the defendants in the instant case were under a mistaken belief as to the law, that would not avail them if, following our ruling on the question of strict liability, the Attorney General had not been content not to oppose the defendants' submissions of "no case".

So far as concerns mens rea and statutory offences, the Court in Roberts accepted the A. G. v. Hales (nee Frost) case as a precedent. For the reasons we have already given we think it cannot be so considered. The same qualification we have made in the case of de Gruchy v. Housing Committee cannot apply absolutely to the Roberts case where a number of important authorities were cited, or at least referred to by the Court in preparing its judgment, but the list attached to the judgment merely cites them as "authorities". Nevertheless the Court decided, obiter, that an offence under Article 14 (1)(d) was one of strict liability. Unfortunately in so doing it relied, in part, as we have said, on AG v. Hales (nee Frost) and appears to have overlooked an important passage in Sweet v. Parsley 1969 1 AER 347.

The court, whilst accepting Counsel's submissions that one provision of a statute could be interpreted as imposing strict liability, while another provision of the same statute could be not so interpreted, went on to say that if one article imposed a specific state of mind "one can more readily assume the contrary in respect of those that do not". With respect this is not correct. In *Sweet v. Parsley* the case of the teacher whose tenants were, unknown to her, smoking cannabis, Lord Reid said this at pages 349/350 beginning at letter H -

"Our first duty is to consider the words of the Act; if they show a clear intention to create an absolute offence, that is an end of the matter. But such cases are very rare. Sometimes the words of the section which creates a particular offence make it clear that mens rea is required in one form or another. Such cases are quite frequent. But in a very large number of cases there is no clear indication either way. In such cases there has for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did. That means that, whenever a section is silent as to mens rea, there is a presumption that, in order to give effect to the will of Parliament, we must read in words appropriate to require mens rea.

Where it is contended that an absolute offence has been created, the words of Alderson, B. in *A.G. v. Lockwood* (4) have often been quoted:

"The rule of law, I take it, upon the construction of all statutes, and therefore applicable to the construction of this, is, whether they be penal or remedial, to construe them according to the plain literal and grammatical meaning of the words in which they are expressed unless that construction leads to a plain and clear contradiction of the apparent purpose of the act or to some palpable and evident absurdity."

That is perfectly right as a general rule and where there is no legal presumption. But what about the multitude of criminal enactments where the words of the Act simply make it an offence to do certain things but where everyone agrees that there cannot be a conviction without proof of mens rea in some form? This passage, if applied to the present problem, would mean that there is no need to prove mens rea unless it would be "a plain and clear contradiction of the apparent purpose of the Act" to convict without proof of mens rea. But that would be putting the presumption the wrong way round; for it is firmly established by a host of authorities that mens rea is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary. It is also firmly established that the fact that other sections of the Act expressly require mens rea, for example because they contain the word "knowingly", is not in itself sufficient to justify a decision that a section which is silent as to mens rea creates an absolute offence. In the absence of a clear indication in the Act that an offence is intended to be an absolute offence, it is necessary to go outside the Act and examine all relevant circumstances in order to establish that this must have been the intention of Parliament. I say "must have been", because it is a universal principle that if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted."

We think likewise that it is firmly established in this jurisdiction that the fact that other parts of an article in a Law expressly require mens rea is not in itself sufficient to justify a decision that another part of that article which is silent as to mens rea creates an absolute offence. We think that in Roberts the Court placed too great an emphasis on the contrast between the paragraphs in Article 14 of the law.

In addition to the five cases, (really four, as regards strict liability), there are two other Jersey cases which were not cited to us.

The first is that of the AG v. Collings and Basden-Smith, an unreported case, the judgment in which was given on the 26th February, 1986. The defendants were charged with having entered into a transaction as principal and agent respectively to which Part III of the Law applied without the consent of the Housing Committee and did so without lawful excuse. The Court held that an offence under the Article of the Law, that is to say Article 7 (1) was not one of strict liability. No reasoned judgment was reported and as in the case of AG v. Hales (nee Frost) we have had to rely on the Judicial Greffier's notes of the Court's decision. The words, without lawful excuse, appear in Article 4 (1) (a) but not in Article 4 (1) (d).

The second case is that of the Attorney General v. the Aurora Hotel Ltd. of the 15th August, 1988. This was an appeal from a decision of the Magistrate on an infraction of Article 80 of the Licensing (Jersey) Law, 1974, which is as follows:-

"If any holder of a licence, either by himself or by any servant or agent, acts in contravention of or fails to comply with any condition or restriction on or subject to which the licence was granted, or sells intoxicating liquor otherwise than as he is authorized by the licence, he shall be guilty of an offence."

The Magistrate held that it was an offence of strict liability. Counsel for the Attorney General conceded that that was not the position and the Magistrate had been wrong. No further argument on this point was heard and the case was decided on the question of imputing knowledge to a licensee. The following cases were referred to in argument:

Paterson's Licensing Acts (96th Ed. 1988) p.p. 444 - 447
Somerset - v - Wade (1891) All E.R. p. 1228
A.G. - v - Chambers (1966) J.J. 607
Sweet - v - Parsley (HL) (1969) 1 All E.R. p. 347

In the Weston case the Court adopted also the position concerning decisions of co-ordinate Courts which applies in England, that is to say, that the Royal Court will usually follow previous decisions of the Inferior Number, differently constituted, unless it is satisfied that the earlier judgment was wrong. We accept that this is the position here.

It is not necessary for this Court to examine all the authorities afresh. It will suffice if we cite a passage from Gammon (Hong Kong) Limited v. AG of Hong Kong on the general principles. In that case Lord Scarman sets out those principles between pages 507 and 509 as follows:-

"The general law

In *Sweet v Parsley* [1969] 1 All ER 347 at 350, [1970] AC 132 at 149 Lord Reid observed that -

'it is firmly established by a host of authorities that mens rea is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary.'

The question in the appeal is whether the ordinance, correctly interpreted, provides a sound reason for holding that the offences created by sub-s(2A)(b) and (2B)(b) of s 40 of the ordinance are offences of strict liability. The Attorney General of Hong Kong contends that it does; the appellants contend that it does not.

Before, however, one considers the ordinance, it is necessary to have clearly in mind the applicable principles of the criminal law. Three cases, all of them well known, bear directly on the issue. In *Sherra v De Rutzen* [1895] 1 QB 9 18, [1895-9] All ER Rep 1167 the court had under consideration the prohibition contained in the Licensing Act 1872 on the supply by a licensee of liquor to a police constable while on duty. The appellant's case was that he did not know and had no reason to believe that the constable was on duty. The court quashed the conviction. Wright J, in the course of his judgment, considered the classes of case in which the presumption of mens rea can be displaced in English law. He saw three principal classes of cases in which the presumption can be displaced; two of them are relevant to this appeal, namely (1) cases where the prohibited acts are not criminal in any real sense but are acts which in the public interest are prohibited under a penalty, and (2) cases of public nuisance. He prefaced his judgment by a statement of general principle ([1895] 1 QB 918 at 921, [1895-9] All ER Rep 1167 at 1169):

'There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered.'

In *Lim Chin Aik v R* [1963] 1 All ER 223, [1963] AC 160 the Judicial Committee accepted Wright J's formulation of principle as correct. But the Board warned that the adoption of the principle does not dispose of the question whether the presumption is displaced (see [1963] 1 All ER 223 at 227-228, [1963] AC 160 at 172-173). For the difficulty of applying the principle remains. What should be the proper inferences to be drawn from the language of the statute under review? And what are the inferences to be drawn from the subject matter with which the statute deals?

The Board went on to state an approach to these two questions which was later approved and accepted by the House of Lords in *Sweet v Parsley*. The Board said ([1963] 1 All ER 223 at 228, [1963] AC 160 at 174):

'Where the subject-matter of the statute is the regulation for the public welfare of a particular activity-statutes regulating the sale of food and drink are to be found among the earliest examples-it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea.'

But the Board added ([1963] 1 All ER 223 at 229, [1963] AC 160 at 175):

'Where it can be shown that the imposition of strict liability would result in the prosecution and conviction of a class of persons whose conduct could not in any way affect the observance of the law, their Lordships consider that, even where the statute is dealing with a grave social evil, strict liability is not likely to be intended.'

However, in *Sweet v. Parsley* [1969] 1 All ER 347 at 350, [1970] AC 132 at 149 Lord Reid refused to accept that in determining the question of mens rea or strict liability it is sufficient merely to have regard to the subject matter of the statute in construing the words of the provision creating the offence. Other considerations have to be borne in mind including the nature of the prohibited act; if it were 'truly criminal', it would be necessary, for example, to consider whether the public interest really required that an innocent person should suffer in order that fewer guilty men might escape.

In the course of his speech in *Sweet v. Parsley* [1969] 1 All ER 347 at 362, [1970] AC 132 at 163, Lord Diplock addressed himself directly to the question which their Lordships have to consider in this appeal. He said:

'But where the subject-matter of a statute is the regulation of a particular activity involving potential danger to public health, safety or morals in which citizens have a choice whether they participate or not, the court may feel driven to infer an intention of Parliament to impose, by penal sanctions, a higher duty of care on those who choose to participate and to place on them an obligation to take whatever measure may be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfil the ordinary common law duty of care. But such an inference is not lightly to be drawn, nor is there any room for it unless there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation (see *Lim Chin Aik v. Regina* ([1963] 1 All ER 223 at 228, [1963] AC 160 at 174)).'

In their Lordships' opinion, the law relevant to this appeal may be stated in the following propositions (the formulation of which follows closely the written submission of the appellants' counsel, which their Lordships gratefully acknowledge): (1) there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is 'truly criminal' in character; (3) the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute; (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern; public safety is such an issue; (5) even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act."

There is no doubt that the housing shortage is of great social concern but as against that it may be said that "the more a particular construction is likely to damage a person's reputation, the stricter the interpretation the Court is likely to give" (Bennion Statutory Interpretation). It is an inescapable fact that offenders against the Housing Law, at any rate those who commit serious offences, incur a high degree of social stigma; "the obloquy involved in the mere fact of conviction" (per Lord Edmund-Davies DPP of Northern Ireland v. Lynch 1975 AC 653). We think that such is the public worry about housing that it may be said, with some confidence, that serious offences under the Housing Law are regarded as crimes, as much as burglary and theft, rather than mere regulatory offences. The reduction of any type of dwelling which reduces the housing stock available to house the inhabitants (in passing it may be noted there is no definition of an inhabitant in the Law) by persons entitled to do so will result, as we have said, in a high degree of social stigma and obloquy from the offenders' fellow citizens. We doubt, however, whether this is a sufficient reason to permit the overturning of the ordinary principle of law that mens rea is required in every criminal offence. We don't doubt that the Housing Committee wish to control the ownership of property as well as the occupation of it. Indeed, the Law enables them, and enjoins them, to do so. But the Committee does not have a totally unfettered discretion. It is bound to grant consent to a transaction unless it invokes Regulation 3 of the Housing (General Provisions) (Jersey) Regulations, 1970, the relevant part of which is as follows:-

3. Notwithstanding the provisions of Regulations 1 and 2 of these Regulations, the Committee shall not be required to grant consent to the sale or transfer of land or to a registered contract of lease where, in the opinion of the Committee, the land concerned is suitable for the making of a loan under the Building Loans (Jersey) Law, 1950, ⁽⁶⁾ or should be acquired on behalf of the public to provide for the housing of the inhabitants of the Island:

Provided that the provisions of this Regulation shall not apply in any case where the Committee, having refused to grant consent for the reasons aforesaid, has not made a loan under the said Law in respect of the land concerned, nor purchased the land, nor served a preliminary notice in respect of the land in accordance with Article 4 of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961, ⁽⁷⁾ as amended, ⁽⁸⁾ and a subsequent application for consent as aforesaid is received by the Committee at a date at least six months later than the date of the original refusal.

In the instant case the Housing Committee decided not to apply that Regulation and therefore it follows that we may infer that 7 Clos de Patier fell outside either of the two categories mentioned in Regulation 3. Accordingly can it be said that the defendants' actions were such as to hinder the Committee's work which is, in the words of the amended long title of the law: "To ensure that sufficient land is available for the inhabitants of the Island"? If they were not, then in the absence of mens rea, which in our opinion the words of Article 14 (1)(d) require, they should not be convicted.

The words of that Article are open to two interpretations. If it was intended that the Article would be one of strict liability, why were the words "or intended to be" added after the word "is". To bring in intention must infer forethought and planning with some degree, we think, of guilty concealment. The same act upon which a prosecution is based cannot import both strict liability and a requirement of mens rea at the same time. If the intention is not clear then the authorities show that the less strict interpretation must be preferred. Furthermore, the words devise, plan or scheme, import an underhand approach to the transaction.

In considering an offence of this nature the Court in England is entitled to have regard to the intention of Parliament had it been explained clearly to it what the effect of the Act would be.

Lord Reid in *Sweet v. Parsley* at letter G on page 351 said this -

"I assert with confidence that no Parliament within my recollection would have agreed to make an offence of this kind an absolute offence if the matter had been fully explained to it. So, if the court ought only to hold an offence to be an absolute offence where it appears that that must have been the intention of Parliament, offences of this kind are very far removed from those which it is proper to hold to be absolute offences."

Similarly, substituting the words "States" for "Parliament", we think, equally, that that is the position in this jurisdiction also. Furthermore, when the stringent controls in the law over the sales and leases of properties were first introduced in the States in 1949 the Assembly made it possible to limit the Law's duration by a simple Act of the States. Article 16 of the Law is as follows:-

"This Part of this Law shall remain in force until the States determine that its continuance in force is no longer necessary or expedient and by Act resolve that it shall cease to have effect:

Provided that the expiry of this Part of this Law shall not affect the operation thereof as respects things previously done or omitted to be done.

It may therefore be inferred that the law was not to be permanent but of course the exigencies of the housing position in effect has made it so. Is the absence of clear words requiring strict liability to be implied in respect of what was intended to be temporary legislation? We question again whether the States would have answered that question in the affirmative.

It is common for this Court to follow English authorities where appropriate, particularly in criminal matters. The instant case is clearly a criminal matter and it is interesting to note the observations of Lord Diplock in *R v. Sheppard* 1980 3 All ER 899 where he said -

"The climate of both parliamentary and judicial opinion has been growing less favourable to the recognition of absolute offences over the last few decades ..."

Some attempt also has been made to find a middle way between mens rea and strict liability in regulatory offences both in England and in Australia. In *Hearn v. McCann* (1982) 29 SASR 448 a case involving driving at a greater speed than 60 kilometres an hour (in a municipality, town or township), the Supreme Court of South Australia observed, inter alia:

"What then should be the discrimen in such a case? Professor Brett in the article, to which I have referred ("Strict Responsibility: Possible Solutions" in the (1947) 37 *Modern Law Review* 417, at p 436) said: "If Parliament creates an offence but provides that it is punishable only by a fine, it gives a clear indication that it regards the offence as of a different order from "ordinary" or "true" crimes. Surely the courts are entitled to take note, and to hold that such offences are not crimes and do not attract the ordinary incidents of the criminal law". Glazbrook in an article called "Situational Liability" contained in *Essays in Honour of Professor Glanville Williams: Reshaping the Criminal Law* (1978), p 108, considers that, unless the offence is expressly stated to be one of strict liability, if an offence is an offence of omission, a person charged with a breach alleging such an offence, should not be guilty unless he is negligent in relation to the omission, unless of course a mental element is expressly or impliedly required by the statute under consideration. I do not find either of those solutions helpful in the instant case.

The Law Reform Commission of Canada in its booklet *Studies on Strict Liability* (1974) at p 35 recommended, in much the same way as Professor Brett that "negligence should be the minimum standard of liability in regulatory offences" and "an accused should never be convicted of a regulatory offence if he establishes that he acted with due diligence, that is, that he was not negligent". A better solution, in my respectful opinion, is that propounded in the Ninth Report of the Law Reform Committee of South Australia (1970), namely, that if Parliament wants an offence to be treated as one of strict liability, it should have to say so expressly in the statute.

We find, for the reasons we have stated, to be in agreement with the last sentence of that judgment and for the reasons we have already given, we find and hold that Article 14 (1)(d) of the Housing Law does not create an offence of strict liability.