there is no right of recovery of the goods (s. 5). In New Zealand the vendor could give notice to the purchaser of the right to cancel within seven days of the receipt thereof and therefore such an agreement would not be void, but voidable, within the seven days, at the option of the buyer (s. 8). In any case the situation would not readily arise in New Zealand as most sales on the premises are initiated by the customer and as such are expressly excluded. The United Kingdom Act is thus wider and extends to other sales including mail order sales.

Both Acts purport to prohibit contracting out of the requirements for extra-premises agreements. The New Zealand Act also contains a general anti-circumvention clause that,

> Any transaction entered into or any contract or arrangement made, whether orally or in writing for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding, or preventing the operation of this Act in any respect shall be unenforceable except that any money paid as part of any such transaction . . . may be recovered . . . (s. 12(2)).

Goods are defined in the New Zealand Act as having the same meaning as that assigned to the term by the Sale of Goods Act 1908 except that it does not include any mammals, birds, perishables or anything that has been exempted by Order in Council (s. 2(1)). In the United Kingdom Act goods are defined without exception as in the Sale of Goods Act 1893 (U.K.). There is no power to exempt goods by Order in Council and thus unfairly prejudiced interests could be denied an expeditious remedy.

The sale of services by booksellers in New Zealand is deemed in certain circumstances to be a credit agreement (s. 3). The United Kingdom Act has no such provision. This would appear to make circumvention of the Act possible, for example, by the gift of encyclopaedias together with a contract to annotate and supplement them for ten years at a price that covers the cost of the encylopaedias and services.

The New Zealand Act requires that a copy of the agreement on which there is notice of the right to cancel within seven days together with a form for cancellation, must be delivered to the purchaser at the time that the agreement is made (s. 6). In the case of the United Kingdom Act two copies of the agreement are completed, one is given to the purchaser at the time of signature, and the other must be posted to him within seven days. From the day on which the second copy is received by the purchaser he has four days in which to cancel the agreement (s. 9). This seems unnecessarily complicated but the second notice would have the effect of reminding the purchaser of his rights and obligations.

A. P. M. Macalister.

CRIMINAL LAW

The principal ground for appeal against conviction for murder in *R.* v. *Ramsay* [1967] N.Z.L.R. 1005 was that the judge, relying on *Thabo Meli* v. *R.* [1954] 1 All E.R. 373, had misdirected the jury in telling them that they could regard Ramsay's acts as a series actuated throughout by one domineering state of mind, and that they need not determine

his intention or knowledge specificially at the time he did either of the two particular acts which might have been thought to have finally caused death.

The Court of Appeal distinguished *Thabo Meli* on the ground that Ramsay's conduct was not the result of a preconceived plan. More important it went on to hold that the rule propounded by the Privy Council applies only where there is throughout a definite intention to kill, where the Crown relies on s. 167(a) of the Crimes Act 1961, and is not appropriate where the Crown relies on knowledge that the act is likely to cause death, under s. 167(b) or s. 167(d). The act which the jury finds to have caused death must be looked at as an individual act, and it must be determined whether the accused, when he did *that* act, had the requisite knowledge, though surrounding facts, including the prior conduct of the accused, are pertinent to this issue. The Court therefore re-asserted the principle that, save perhaps in exceptional circumstances such as pertained in *Thabo Meli*, the *mens rea* required must accompany the act which causes the *actus reus*.

The Court of Appeal refused to uphold the conviction under the proviso to s. 385(1), because, if they had, the result would have been that the prisoner would stand convicted of murder without having his defence properly considered by the jury which convicted him.

Ramsay was again convicted of murder at his retrial.

R. v. *Morrison* [1968] N.Z.L.R. 156 was an appeal against conviction for murder, Morrison, and one Wilson had attacked a policeman in order to escape from Dunedin prison. The injury which ultimately caused death was inflicted by Wilson, who pleaded guilty to murder.

The main ground of Morrison's appeal was that "the judge did not tell the jury that if they thought, as the defence had contended at the trial, that the fatal blow by Wilson might have been the result of 'an independent murderous intent' on Wilson's part, then that blow was not struck 'in the prosecution of the common purpose' ". Section 66(2) of the Crimes Act 1961, to which this ground relates provides:

> Where two or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

In *R.* v. *Anderson and Morris* [1966] 2 W.L.R. 1195 the Court of Criminal Appeal had held that where two persons embark on a joint enterprise each is liable criminally for acts done in pursuance of the joint enterprise, including unusual consequences arising from the execution of the joint enterprise; but if one of them goes beyond what has been tacitly agreed as part of the joint enterprise, the other is not liable for the consequences of the unauthorised act. The Court in *Morrison's* case held the judge's direction on this point to be a proper one, since read as a whole it was clearly put to the jury that they should consider whether Wilson's conduct went beyond what was tacitly or expressly agreed to be within the scope of the common purpose.

The second ground of appeal was that the jury were not properly directed on their constitutional right to bring a verdict of manslaughter and not murder. It was conceded that counsel had not actively canvassed the possibility of a manslaughter verdict.

It is well established that if on the whole of the evidence there arises a question of manslaughter, then the judge must put the question to

the jury (*Kwaku Mensah* v. *The King* [1946] A.C. 83). On the other hand, in *R.* v. *Malcolm* [1951] N.Z.L.R. 470 at 485 the Court of Appeal said:

> We think . . . where the evidence proves murder or nothing, the presiding judge is entitled to tell the jury that it cannot find a verdict of manslaughter —that is, where the evidence clearly supports a verdict of murder and there is nothing in the evidence to justify the verdict's being reduced to manslaughter. The authorities we have considered go to show that at common law a jury should not be directed that it has power to return a verdict of manslaughter where the evidence, if accepted, proves murder or nothing.

Against this view, the Full Court of Victoria in *R.* v. *Ryan and Walker* [1966] V.R. 553 said that the jury have a constitutional or common law right to return a verdict of manslaughter even in cases where the evidence pointed to murder alone.

The trial judge in the instant case said:

> [Counsel] made mention of manslaughter. It is within the province of a jury, even if it is satisfied that the case has been proved, to bring in an alternative verdict of manslaughter. That is a privilege and is a matter for you. I say no more than that about it.

The view in *R.* v. *Malcolm*, endorsed in *R.* v. *Black* [1956] N.Z.L.R. 204 at 210, was not that taken in *R.* v. *Ryan and Walker*, but it was not necessary to resolve the apparent conflict in *Morrison's* case as the Judge's summing up was favourable to the appellant.

Mrs J. C. Somerville.

EQUITY AND THE LAW OF SUCCESSION

Formation of the trust

(a) Certainty as to obligation to hold property on trust: In *Re Pugh* [1967] 1 W.L.R. 1262 the testator devised and bequeathed his residuary estate subject to payment of debts, funeral and testamentary expenses and legacies

> unto my trustee absolutely and I direct him to dispose of the same in accordance with any letters or memoranda I may leave with this my will and otherwise in such manner as he may in his absolute discretion think fit.

The testator left no letters or memoranda. Pennycuick J. held that the above instruction

> clearly imposes upon the trustee at any rate some degree of fiduciary obligation, and it is impossible to construe the gift as a simple and absolute gift to the trustee . . . one may well use the word trust because that fiduciary obligation is in the nature of a trust.

That the court must look at the whole instrument was also stressed by Goff J. in *Re Baden* [1967] 1 W.L.R. 1457 where the phrase "the trustees shall apply the net income of the fund in making at their absolute discretion grants . . . " was found to create only an illusory trust, from consideration of the whole context.

(b) Certainty as to the beneficiaries: In the following cases the courts have shown themselves prepared to accept a lower standard of certainty in the case of a power than with a trust or a trust power. The