Neutral Citation Number: [2009] IEHC 515

THE HIGH COURT

JUDICIAL REVIEW

2007 1234 JR

BETWEEN

WAXY O'CONNORS LIMITED

APPLICANT

AND

JUDGE DAVID RIORDAN

RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS,

IRELAND AND THE ATTORNEY GENERAL

NOTICE PARTIES

JUDGMENT of Mr. Justice Herbert delivered on the 25th day of November, 2009

In this case the applicant was granted leave by Order of this Court to seek, by way of judicial review, *certiorari* or, if necessary, a declaration of invalidity.

THE FACTS

The applicant is the holder of an Intoxicating Liquor licence in respect of a licensed premises in the centre of Cork city. On the 22nd April, 2006, a young woman, - who it is accepted did not become 18 years old until the 18th May, 2006, - assumed the identity of another person and presented that person's drivers licence and passport to the doorman at the applicant's premises. There is a difference in recollection between the young lady and the doorman as to whether or not she also produced an Age Card, issued pursuant to the provisions of the Intoxicating Liquor Act 1988, (Age Card) Regulations 1999, (Statutory Instrument No. 4/99). It is not clear whether the learned Respondent found as a fact whether she had or she had not. However, it appears to have been the evidence of the doorman that an Age Card was produced to him but that the photograph on the card was so blurred that he refused to accept it. He admitted the young lady to the licensed premises on foot of the passport and the drivers licence. She was there sold a bottle of beer which was supplied and delivered to her and which she consumed on the premises.

When challenged by a member of An Garda Síochána as to her age, this young lady maintained for a period of between 5 and 10 minutes that she was the person named on the passport and the drivers licence. She maintained this deception even to the extent of writing the signature of the holder as appearing on these documents a number of times. Eventually she was obliged to disclose her true identity.

The applicant was charged with an offence under s. 31(1) of the Intoxicating Liquor Act 1988, (No. 16/1988) of permitting a person to sell or deliver intoxicating liquor for consumption on his licensed premises to a person under the age of 18 years. The applicant was also charged with an offence under s. 34(1) of the Intoxicating Liquor Act 1988, as substituted by s. 14 of the Intoxicating Liquor Act 2003 (No. 31/2003), of allowing a person under the age of 18 years to be in the bar of his licensed premises at any time.

On the 4th September, 2007, the learned Respondent dismissed the charge against the applicant on foot of s. 34(1) of the Act of 1988, (as substituted). Section 34(8), (as substituted) provides that:-

> "In any proceedings against the holder of a licence of licensed premises for a contravention of subsection (1) of this section it shall be a defence to prove that the holder used all due diligence to prevent the person concerned from being admitted to or remaining in the bar."

On the same date the learned Respondent convicted the applicant of an offence under s. 31(1) of the Intoxicating Liquor Act 1988. This section provides as follows:-

> "The holder of any licence shall not –
>
> (a) sell or deliver or permit any person to sell or deliver intoxicating liquor to a person under the age of 18 years,
>
> (b) sell or deliver or permit any person to sell or deliver intoxicating liquor to any person for consumption on his licensed premises by a person under the age of 18 years,
>
> (c) permit a person under the age of 18 years to consume intoxicating liquor on his licensed premises, or
>
> (d) permit any person to supply a person under the age of 18 years with intoxicating liquor on his licensed premises."

Subsection 4 of s. 31 of the Act of 1988, as enacted provided as follows:-

> "In any proceedings against a person for a contravention of subsection (1) or (2) of this section, it shall be a defence for such person to prove that the person in respect of whom the charge is brought produced to him an age card relating to such person or that he had other reasonable grounds for believing that such person was over the age of 18 years, or, if the person is charged with permitting another person to sell or deliver intoxicating liquor contrary to the said subsection (1) or (2), to prove that an age card was produced by the person concerned to that other person or that that other person had other reasonable grounds for believing as aforesaid."

This subsection was amended by s. 14(1)(b) of the Intoxicating Liquor Act 2000, (No. 17/2000), by the substitution of the following provision:-

> "In any proceedings for a contravention of subsection (1) or (2) of this section, it shall be a defence for the defendant to prove that the person in respect of whom the charge is brought produced to him or her an age card relating to that person or, if the defendant is charged with permitting another person to sell or deliver intoxicating liquor contrary to either of those subsections, to prove that an age card relating to the person to whom the intoxicating liquor was sold or delivered was produced by that person to that other person."

SUBMISSIONS

It was submitted by Senior Counsel for the applicant, that the learned Respondent had misdirected himself in law in concluding that the defence provided by s. 31(4) (as substituted), of the Act of 1988, was the only defence to a charge preferred under s. 31(1) of that Act. Senior Counsel submitted that the correct interpretation of the intention of the Legislature was to provide an additional defence to an existing defence of "reasonable care" or "due diligence". Since the decision of this Court in *Attorney General (MacNeill) v. Carroll* [1932] I.R. 1, this existing defence has been available in every prosecution for an offence under the Licensing Acts, of "permitting" an Act or omission. The Licensing Acts, said Counsel constituted a Comprehensive Code which must be interpreted as such.

Senior Counsel submitted, in the alternative, that since it was accepted by the Notice Parties that this offence was intended by the Legislature to be an offence of "strict liability", there must be a defence available to an accused person that he believed in a mistaken set of facts which if true would render the act or omission innocent, or that he had taken all reasonable care to avoid the prohibited act or omission. Proof of such a defence, Senior Counsel submitted, is a matter of evidence to be proffered by the accused and evaluated by the Court and, is not a matter which can be regulated or restricted by the Legislature. The purported restricted defence provided by s. 31(4) (as substituted), of the Act of 1988, if held to be the sole defence now available to an accused person in respect of an offence under s. 31(1) of that Act, is unreasonably and disproportionately restrictive. The failure of the section to continue to provide a general defence of reasonable care or due diligence in fact constitutes the offence one of "absolute liability", since it is not in any reasonable sense open to an accused person to exculpate himself by showing that he was not at fault. This said Senior Counsel for the applicant is invalid as infringing the provisions of Article 38.1 and Article 40.3 of the Constitution.

Senior Counsel on behalf of the Notice Parties submitted that the intention of the Legislature in enacting s. 31 of the Act of 1988, was to provide a regulatory offence of "strict" but not "absolute" liability. He accepted that the Legislature must be presumed to have been aware of the interpretation placed by this Court on the word "permits" wherever it appears in the Licensing Code and, must be presumed not to have intended to effect a change in this Law unless the contrary clearly appeared. In its original form, s. 34(4) of the Act of 1988, followed this law and also provided an additional defence: an accused person could either establish that an Age Card was produced by the person seeking to be supplied with Intoxicating Liquor or, that the person selling, delivering or supplying the intoxicating liquor or permitting it to be consumed on the licensed premises, had other reasonable grounds for believing that the person supplied with intoxicating liquor or consuming it on the licensed premises was 18 years of age or older.

Senior Counsel for the Notice Parties submitted that the subsequent legislative history of the section demonstrates a clear intention on the part of the Legislature to revise the offence by deliberately removing the "other reasonable grounds for believing" aspect of the defence and confining it to the production of an Age Card. This intention was carried into effect by the unequivocal provisions of s. 14(1)(b) of the Intoxicating Liquor Act 2000. Considered in this context the phrase "it shall be a defence" did not mean one of a number of defences but indicated a single defence. By way of contrast Senior Counsel for the Notice Parties pointed to the fact that in s. 34 of the Act of 1988, as substituted by s. 14 of the Intoxicating Liquor Act 2003, in relation to what he claimed was the less serious offence of allowing a person under the age of 18 years to be in the bar of a licensed premises, the defence of "using all due diligence" was retained. Further, Senior Counsel for the Notice Parties pointed to the fact that in s. 34A of the Act of 1988, as inserted by s. 15 of the Intoxicating Liquor Act 2003, which made it an offence for persons aged between 18 years and 21 years, to be allowed to be in the bar of a licensed premises between certain hours, proof of age may be established by the production of what is called an "Age Document", which the section defines as including, an age card, a passport, a drivers licence and an E.U. identity card.

Senior Counsel for the Notice Parties submitted that the Act of 1988, enjoys a presumption of constitutionality, which he said the applicant had failed to displace. It was not unconstitutional for the Legislature to limit the defence of "reasonable care" or "due diligence" to this single form. The Legislature was seeking, in the interests of the common good, to regulate the operation of a privilege granted by statute to the holders of licences for the sale of intoxicating liquor so as to eradicate the pernicious evil of underage drinking. The defence provided by s. 31(4) (as substituted) of the Act of 1988, was fair, rational, reasonable, proportional and not oppressive of an accused. A defence of "reasonable care" or "due diligence" remained and, this was sufficient to take the offences established by s. 31(1) of that Act of 1988, out of the category of "absolute liability" offences. This, he said, was particularly so in the case of a regulatory offence where the maximum penalty for a first offence was a fine of €3,000 and for a second and any subsequent offence a fine of €5,000, (Intoxicating Liquor Act 2008, (No. 17/2008) s. 17 and Schedule 1) and, a Temporary Closure Order for a period not exceeding seven days in the case of a first offence and for a period of between 7 and 30 days in respect of a second and any subsequent offence, (s. 36A of the Intoxicating Liquor Act 1988, as inserted by s. 13 of the Intoxicating Liquor Act 2000).

By way of reply, Senior Counsel for the applicant submitted that if s. 31 of the Act of 1988, did not fall, as he contended

it did, within the third category of offences as identified by Dickson J. in *Regina v. City of Sault Ste. Marie* 85 (DLR) (3d) 161 at 181, (offences where it is not open to an accused to exculpate himself by showing that he was free of fault), the Legislature was endeavouring to create a Fourth category of offences, - strict liability offences with a limited defence. This extension of the doctrine of "strict liability" was, he submitted, outside the power of the Legislature. In support of this latter contention he referred to the dissenting judgment of Keane J. (as he then was) in *Shannon Regional Fisheries Board v. Cavan County Council* [1996] 3 I.R. 267 at 289, where he approved of this view as expressed by Dickson J. in the case above cited.

DISCUSSION

It is a matter of construction whether by s. 31 of the Intoxicating Liquor Act 1988, the Legislature intended, as submitted by Senior Counsel for the applicant, to make the production of an Age Card a part of the particular offence. If such were the case the onus would lie on the prosecution to prove beyond reasonable doubt that an Age Card was not produced and the offence would not be established in the absence of such proof. Senior Counsel for the Notice Parties contended that the production of an Age Card was not part of the offence established by the section, but was a defence available to a person charged with an offence under that section.

The offences established by s. 31(1) of the Intoxicating Liquor Act 1988, are offences of selling or delivering or of permitting intoxicating liquor to be sold, delivered or supplied to, or consumed on the licensed premises by a person under the age of 18 years. The doing or permitting of these acts, together with the proof that the person to whom the intoxicating liquor was sold, delivered or supplied or by whom it was consumed on the licensed premises was under the age of 18 years, constitutes the offences. The offences established by s. 31(1) of the Act of 1988, are not offences of doing or permitting these things to be done without the production an Age Card.

In my judgment the clear object of the Legislature in establishing these offences was to endeavour to curtail the mischief of underage drinking of intoxicating liquor and, not to establish a type of identity card system for accessing licensed premises. Non production of an Age Card is not an ingredient of any of these offences. Persons under the age of 18 years may not lawfully have such a card and, persons over the age of 18 years are not legally obliged to have such a card. The production by the person to whom intoxicating liquor was sold, delivered or supplied or by whom it was consumed on the licensed premises, is deemed to be proof of the exercise of "reasonable care" or "due diligence" on the part of an accused person should it subsequently be established that the other person was in fact under the age of 18 years. The terminology employed in s. 31(4) of the Act of 1988, both in its original form and in its post section 14(1)(b) of the Act of 2000, substituted form, is clear and without equivocation:-

> "In any proceedings for a contravention of subsection (1) or (2) of this section, it shall be a defence for the defendant to prove . . . ."

This subsection draws a clear distinction between the offence and the permitted defence to that offence.

For these reasons I am satisfied that the submission on behalf of the Notice Parties is correct. This is clearly a case where the Legislature has transferred the onus so that once the prosecution has established the necessary facts beyond reasonable doubt the accused must then convince the Court, on the balance of probabilities, that he "took reasonable care" or exercised "due diligence" to avoid committing the offence.

In my judgment, no rational person would reasonably consider a breach of s. 31(1) of the Act of 1988, to be a "true crime", such as under the provisions of the Misuse of Drugs Act 1977, (As Amended). To employ the words of Wright J., in *Sherras v. DeRutzen* [1895] 1 Q.B. 918 at 922, these are Acts which in the public interest are prohibited under a penalty. I am satisfied that the maximum permitted penalties provided by the section though no longer "slight" remain "minor", (*City of Sault Ste. Marie* per. Dickson J. p. 171-172), or "small", the term used by Charleton J. in *Brady v. The Environmental Protection Agency* [2007] 3 I.R. 232 at 252. While the question of social stigma might be arguable, these are not the sort of penalties typical of "true crimes" which are imprisonment, confiscation of property and major fines amongst others. I do not accept that there is necessarily any equivalence between the amount of the penalty and the generality of the defence in these forms of public welfare offences.

Numerous cases in this and in other Common Law jurisdictions establish the principle that the intention of the Legislature, whether a statute is penal or remedial, is to establish by considering the plain, literal and grammatical meaning of the words employed. If this construction leads to a clear departure from the apparent purpose of the statute or, to a manifest absurdity, the Court may have to employ other means such as interpretative rules of construction, presumptions of general or specific application or by adopting a purposive construction, in order to endeavour to ascertain, if possible, the intention of the Legislature. In the instant case, Senior Counsel for the applicant relied upon a number of these additional rules and presumptions in support of his submission that the intention of the Legislature in enacting s. 31(4) of the Act of 1988, (as substituted) was to provide an Age Card defence as additional to the existing defence of "reasonable care" or "due diligence". Senior Counsel for the Notice Parties submitted that on a plain, literal and grammatical construction of the section and of the Act of 1988, (as amended) the Legislature clearly intended to establish an Age Card production defence as the sole defence.

Section 31(4) of the Intoxicating Liquor Act 1988, as originally enacted, provided for two mutually exclusive defences:-

(1) That the person produced an age card relating to that person, or

(2) That the accused person had other reasonable grounds for believing that such person was over the age of 18 years.

I accept, as was submitted by Senior Counsel for the applicant, that the above second permissible defence, reflected and endorsed the judicial construction given to the word "permits" in the context of the Licensing Code. This Court held that the word connoted a failure on the part of an accused person to take reasonable steps to prevent the prohibited act *(Attorney General (MacNeill) v. Carroll* [1932] I.R. 1 at 10 per. Hanna J.), of which the Legislature must be presumed to have been aware (*Duncan v. Gleeson* [1969] I.R. 116 at 120 per. Pringle J.), and also the judicial development of the law of "strict liability". I accept that unless the Legislature either expressly, or by clear and compelling inference otherwise provided, it would be an anomaly in a coherent Licensing Code that s. 31(4) should receive a different interpretation.

However, by the provisions of s. 14(1)(b) of the Intoxicating Liquor Act 2000, which substituted a new subsection for the original subsection (4) of s. 31 of the Act of 1988, in my judgment the Legislature in the clearest, most emphatic and unequivocal language expressly removed the second possible defence of "other reasonable grounds for believing that such a person was over the age of 18 years", while retaining the Age Card defence as the sole reasonable ground for that belief. The substituted subsection provides that:-

> "In any proceedings for a contravention of subsection (1) or (2) of this section, it shall be a defence for the defendant to prove . . . that an age card . . . was produced . . . ."

In my judgment it is the plain, literal and grammatical meaning of the words employed that there should be only the single indicated defence.

By way of contrast, which in my judgment further confirms the clear and deliberate intention of the Legislature, in respect of the less serious offences of allowing a person under the age of 18 years to be in the bar of a licensed premises at any time, (s. 34 of the Act of 1988) and, permitting under age persons on a licensed premises during extended hours, (s. 35 of the Act of 1988), the defence of "due diligence" is retained, (by s. 35(7) of the Act 1988, as substituted by s. 14(2) of the Intoxicating Liquor Act 2000, and by s. 34(8) as substituted by s. 14 of the Intoxicating Liquor Act 2003), despite the amendment of the sections.

Senior Counsel for the applicant submitted that the words "it shall be a defence" as used in the subsection signified that this was to be one of a number of permissible defences. However, I am satisfied that the intention of the Legislature was to constitute an Age Card defence the sole defence available to a person accused of an offence contrary to the provisions of s. 31(1) and (2) of the Intoxicating Liquor Act, 1988. There are numerous cases which show that the meaning to be given to "a" can vary with the context, for example it has been held to mean, "one" or "more" or "some" or "the". In my judgment in subsection 4 of s. 31 (as substituted) of the Act of 1988, it is used as an indefinite article indicating a single defence. I am satisfied that it would be illogical and inconsistent to consider that the Legislature, having expressly removed the very general defence of "other reasonable grounds for believing", could have intended that something else might be offered by an accused person by way of defence in addition to the Age Card defence. It is also significant that the phrase "it shall be a defence" is employed even where the defence of "due diligence" is the only permitted defence, for example s. 35(7) (as substituted) of the Intoxicating Liquor Act 1988, s. 34(8) (as substituted) of the Act of 1988 and, s. 136 of the Mines and Quarries Act 1965.

In the leading case of *Regina v. City of Sault Ste. Marie* 85 (D.L.R.) (3d) 161, approved in this jurisdiction by the Supreme Court in *CC and PG v. Ireland and The Attorney General and The Director of Public Prosecutions* [2006] 4 I.R. 1 at 78 (and etc.), Dickson J. delivering the decision of the Supreme Court of Canada traced the judicial development of "strict liability" offences as a "middle ground" (p. 172) between "true criminal offences", such as murder, rape and assault, where the prosecutor must prove intent and, "absolute liability offences", which developed as regulatory offences concerned with public welfare, where liability is based on proof of the forbidden activity and it is not open to an accused to exculpate himself by showing that he was not at fault. This latter form of offence, though generally confined to breaches of health, public safety, public welfare and commercial regulations and, attracting "petty" or "slight" penalties, still attracted a general revulsion against punishment of the morally innocent, (Dickson p. 170) and *Sweet v. Parsley* [1970] A.C. 133 per. Lord Reid and Lord Diplock. Accordingly, the judiciary in Australia, the United Kingdom and Canada, (particularly in the seminal cases of *Sherras v. DeRutzen* [1895] 1 Q.B. 918 and *Sweet v. Parsley* [1970] A.C. 133 (House of Lords) in the United Kingdom and *Proudman v. Dayman* [1941] 67 C.L.R. 336 by the High Court of Australia and the above case of *Regina v. City of Sault Ste. Marie*), developed the doctrine that in the case of all public welfare offences which the Legislature had not expressly or as a matter of "compellingly clear inference" declared to be "absolute liability" offences, it was a good defence for an accused to prove that all reasonable care was taken by him to avoid the prohibited act or omission. In some cases it was said that the accused person may show that he acted with "due diligence". In other cases it was held that it was the defence open to a person accused of such an offence to show that he honestly believed on reasonable grounds in a state of facts, which if true, would render his act innocent. In other cases the reference is to "negligence" or to "an unreasonable failure to know the facts".

In *Regina v. City of Sault Ste. Marie* (above cited), Dickson J. concluded at

p. 181 as follows:-

> "The correct approach, in my opinion, is to relieve the Crown of the burden of proving *mens rea*, having regard to Pierce Fisheries and to the virtual impossibility in most regulatory cases of proving wrongful intentions. In a normal case, the accused alone, will have knowledge as to what he has done to avoid the breach and it is not improper to expect him to come forward with the evidence of due diligence. This is particularly so when it is alleged, for example, that pollution was caused by the activities of a large and complex corporation. Equally, there is nothing wrong with rejecting absolute liability and admitting the defence of a reasonable care.
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> In this doctrine it is not up to the prosecution to prove negligence. Instead, it is open to the defendant to prove that all due care has been taken. This burden falls upon the defendant as he is the only one who will generally have the means of proof. This would not seem unfair as the alternative is absolute liability which denies an accused any defence whatsoever. While the prosecution must prove beyond a reasonable doubt that the defendant committed the prohibited act, the defendant must only establish on the balance of probabilities that he has a defence of reasonable care.
>
> I consider for the reasons which I have sought to express that there are compelling grounds for the recognition of three categories of offences rather than the traditional two:
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> 1. Offences in which *mens rea* consisting of some positive state of mind such as intent, knowledge or recklessness, must be proved by the prosecution either as an inference from the nature of the act committed or by additional evidence.
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> 2. Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable

> man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts, which I true, will render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability. Mr. Justice Estey so referred to them in *Hickey's* case.
>
> 3. Offences of absolute liability where it is not open to the accused to exculpate himself by showing that he was free of fault."

In *Shannon Regional Fisheries Board v. Cavan County Council* [1996] 3 I.R. 267, S.C. Keane J. (as he then was) delivering a dissenting judgment at p. 291-2 held that in strict liability cases, an accused may avoid liability by proving that he took reasonable care.

I can find nothing in these various decisions by which the judges in this and in other common law jurisdictions have developed the doctrine of "strict liability", which states or even suggests that it is not competent for the Legislature for a proper purpose, and, to a reasonable and proportionate extent, to limit the type of reasonable care upon which an accused may rely to exculpate himself. In the course of his dissenting judgment in *Shannon Fisheries Board v. Cavan County Council* (above cited) at p. 289, Keane J. said:-

> "The doctrine of strict liability has been developed by the Courts and there seems no reason why its further elaboration should not also be undertaken by the judges rather than by the Legislature. That was a view taken by Dickson J. and is one with which I would respectfully agree."

I consider that specifying what shall, in the case of a particular defence of strict liability, amount to taking "reasonable care" to avoid the prohibited conduct seems scarcely to be the sort of "further elaboration" to which Keane J. is referring. Absent any prohibitions manifested in these decisions, I can evince of no reason why the Legislature, in the interests of the public good and the proper regulation of the licensed trade in that interest, may not lawfully specify the degree of care which alone will suffice as a defence. This is of course provided that the stipulated defence is not unfair, unreasonable, irrational, unduly burdensome or disproportionate as respects the benefit sought to be achieved and the mischief sought to be remedied. This Court may take judicial notice of the very great social evil of under age consumption of intoxicating liquor and, of the pressing necessity for persons enjoying the statutory privilege of operating premises licensed for the sale and consumption of intoxicating liquor to be particularly vigilant to prevent this problem. Subject as aforesaid, the Legislature in my judgment is entitled to regulate the licensed trade in the interests of the public good and to take these matters into account. There is no question in the instant case of the burden of proof placed on an accused person being extremely difficult or impossible to discharge.

The Age Card defence is certain and straightforward and makes a decision whether or not to sell, deliver, supply or permit the consumption of intoxicating liquor simple and more open and less likely to cause individual offence. It transfers to the members of the public themselves and to An Garda Síochána the task of establishing age. The Age Card is easier or as easy to obtain as either of the documents otherwise generally relied upon to establish age and identity, - a passport or a drivers licence. This defence imposes no financial burden whatsoever on the operator of a licensed premises. Furthermore, while admitting what Hardiman J. described as, "the factious assumption that a person can always know for certain the age of another", in practice the requirement to seek an Age Card will only arise in a relatively limited number of instances. This defence also makes the law, which remains a penal statute, - despite the quasi – criminal or entirely regulatory nature of the offence, - more certain. By eliminating a defence provable on the balance of probabilities and based on a belief, which if genuine does not have to be shown to be objectively reasonable or, on the mere absence of negligence and, against the background of the ingenuity capable of being displayed by members of the public under the age of 18 years, the substituted subsection must result in a more rapid and consistent administration of justice by the court.

In my judgment it must follow that s. 31(1) of the Intoxicating Liquor Act 1988, so long as it provides a valid and lawful defence to an accused person, cannot be categorised as establishing an offence of absolute liability rather than an offence of strict liability. I am unable to accept the further submission on behalf of the applicant that in enacting s. 14(1)(b) of the Intoxicating Liquor Act 2000, the Legislature had endeavoured to establish an impermissible fourth category of criminal offences, one which relieved the prosecution of the burden of establishing intent while providing an accused person with only a very limited defence. This is something, Senior Counsel said which was never contemplated by the judges who developed the doctrine of "strict liability". I am fully satisfied that the originating authorities do not place any construction whatsoever upon, and, leave entirely at large the question of what might or might not amount to "reasonable care" or "due diligence". I am satisfied that it is not a part of the doctrine of "strict liability" that only an unlimited and unspecified form of defence of "reasonable care" or "due diligence" will suffice for this category of offence.

DECISION

I am satisfied and I so find, that the provisions of s. 31 of the Intoxicating Liquor Act 1988 (as amended), for the foregoing reasons, do not constitute an impermissible infringement of the right of an accused person to a trial in due course of Law, as guaranteed by the provisions of Article 38.1 of the Constitution, nor is there a failure on the part of the State to defend and to vindicate the personal rights of citizens as required by the provisions of Article 40.3 of the Constitution.

The Court will therefore refuse to grant the reliefs sought by the applicant in this application.