diction is given only over British subjects, citizens of the United Kingdom and Colonies, and British protected persons.

Clause 3(4) of the Bill provides that "any person who knows or has reasonable cause to believe that an unlawful broadcasting station is situated within the territorial limits of New Zealand or on or over the high seas" commits an offence if he operates or assists in the operation of the station or participates in other activities associated with the station such as furnishing the station with provisions or broadcasting material such as tapes, carrying persons or goods to the station, or entering an agreement for the transmission of matter from the station. The penalty for any such offence is once again imprisonment for a term not exceeding three months or a fine not exceeding $1,000.

Liability is more strict under the Bill than under the corresponding United Kingdom legislation. The Marine Broadcasting (Offences) Act 1967 distinguishes between three different types of act with regard to unlawful stations and provides for each of these a different standard of liability. Any person who participates in the operations of an illegal station (s. 3) or advertises by means of an illegal broadcast (s. 5(2)(e)) commits an offence. On the other hand persons supplying or maintaining apparatus , or supplying or carrying goods, are liable only if they knew or had reasonable cause to believe that such apparatus was to be used for illegal broadcasting, or in the case of goods, that they were being supplied or carried to a station engaged in illegal broadcasting. Furthermore, s. 5(3) provides that persons supplying filmed or recorded matter commit an offence only if they intended it to be used for illegal broadcasting.

It is submitted that the United Kingdom legislation is less likely to do injustice than the New Zealand Bill. It would appear that a person who in fact furnishes goods to an illegal station commits an offence under the Bill whether or not he knows that he is dealing with an unlawful broadcasting station, provided he knows that stations of that nature do in fact exist. Such an offence is one of strict liability, and it is to be hoped that the provisions of the Bill dealing with liability will be revised along the lines of the Marine Broadcasting (Offences) Act 1967 before the Bill becomes effective as law.

The Post Office Amendment (No. 2) Bill was introduced to the House of Representatives on Tuesday 21 November 1967, and was sent to the Statutes Revision Committee for consideration.

J. A. Smillie.

JURISPRUDENCE

Delivering the judgment of the Judicial Committee of the Privy Council in *Australian Consolidated Press* v. *Uren* [1967] 3 W.L.R. 1338 Lord Morris of Borth-Y-Gest stated that the High Court of Australia was not bound to follow the House of Lords decision in *Rookes* v. *Barnard* [1964] A.C. 1129. The issue before their Lordships was whether the High Court while being justified in recognising the award of exemplary damages ought to have agreed that such awards of exemplary damages should only be made in cases falling within the limited categories described in *Rookes* v. *Barnard*.

The brief facts of *Uren's* case were that in 1963 the respondent claimed damages for defamation against the appellants in respect of passages published in three of the appellant's newspapers. The trial judge directed the jury that in the event of finding for the respondent it was open to them to award exemplary damages. No objection was made to the trial judge's directions and the jury found for the respondent and awarded £30,000 damages. By Notice of Motion in April 1964 the appellants sought to have the verdict set aside and a new trial granted upon the ground (*inter alia*) that the trial judge had erred in in directing the jury that it was open to them to award exemplary damages, and in June 1966 following the decision of the Full Court of New South Wales the Australian High Court decided that a jury had the right, in Australia, to award exemplary damages in appropriate cases and were not limited by the categories laid down in *Rookes* v. *Barnard*. The appellants made application for special leave to appeal to the Privy Council and the Judicial Committee granted leave to appeal "against so much of the decision of the High Court of Australia that it was competent to award punitive damages in the case" (p. 1346 G). The Judicial Committee dismissed the appeal and held that it would not interfere with the decision of the High Court of Australia thus approving the departure from the decision of the House of Lords.

Does the decision in *Uren's* case represent a backward step for the High Court of Australia and other Commonwealth courts? It is suggested that far from being retrograde, it is a step forward. Their Lordships said that (p. 1358)

> in a sphere of the law where its policy in a particular country is fashioned so largely by judicial opinion it became a question for the High Court to decided whether the decision in *Rookes* v. *Barnard* compelled a change in what was a well settled judicial approach in the law of libel in Australia.

Their Lordships felt that it was not open to doubt that it was generally understood in Australia in the years before *Rookes* v. *Barnard* was decided that "the awarding of exemplary damages in libel cases was not so circumscribed as to be permissable only within the limits of the categories defined in that case" (p. 1357). Nor could their Lordships accept that the law was laid down in Australia with imperfect appreciation of what it involved. It was felt that had the law developed by process of faulty reasoning or had it been founded upon misconception it would have been necessary to change it but this was not the case.

It is stated in *Uren's* case (p. 1356) that there are "doubtless advantages if within those parts of the Commonwealth where the law is built upon a common foundation, development proceeds along similar lines." Their Lordships, however, pointed out that in matters which may be only of domestic or internal significance the need for uniformity is not compelling. In 1879 in *Trimble* v. *Hill* (1879) 5 App. Cas. 342, 345 it was said to be of the utmost importance that "in all parts of the Empire where English law prevails, the interpretation of that law by the Courts should be as nearly as possible the same." Rupert Cross (*Precedent in English Law* (1961) p. 17), has stated that it was for this reason, "in the absence of some special local consideration to justify a deviation, the Australian and Canadian courts would be loath to differ from decisions of the House of Lords". The gain that uniformity of approach may yield is far less marked in some branches of the law than in others, but it appears to be, eminently desirable in those fields

of the law such as the carriage of goods by sea, and the law merchant, which bear a direct relationship to the laws of other nations and are matters of common ground.

Whether the New Zealand Court of Appeal will follow the lead given it by the High Court of Australia is open to speculation. In *Robins* v. *National Trust Company Limited* [1927] A.C. 515, the Judicial Committee of the Privy Council stated that where the decision of a Colonial court conflicted with a decision of the House of Lords the latter must be treated as supreme. Following this view in *Smith* v. *Wellington Woollen Manufacturing Company Limited* [1956] N.Z.L.R. 491 the New Zealand Court of Appeal held that it was bound to follow a decision of the House of Lords on a matter of general principle when there was a clear conflict between a decision of the House of Lords and one of its own decisions. In 1943 the High Court of Australia had come to a similar decision in *Piro* v. *W. Foster & Co. Ltd.* (1943) 68 C.L.R. 313. Now however, the House of Lords being no longer bound by its own decisions, following Lord Gardiner's statement of 26 July 1966 ([1966] 1 W.L.R. 1234) the element of certainty resulting from the application of the principle in *Smith's* case may have been considerably reduced. If the lead given in *Uren's* case is followed by our own Court of Appeal it could do much to reinstate this certainty, for our Court of Appeal, if it deemed local considerations should prevail, would be able to depart from House of Lords decisions and create settled law in New Zealand that accords with New Zealand circumstances and local requirements. Authority can be found for the suggestion that our Court of Appeal should perhaps follow the English Court of Appeal rather than its own decisions (*Preston* v. *Preston* [1955] N.Z.L.R. 1251, 1259) but in view of *Uren's* case it would seem that such a suggestion would now be less attractive as it would be an absurd situation if the New Zealand Court of Appeal was bound by the English Court of Appeal but not by the House of Lords.

Much will depend upon the interpretation placed on *Uren's* case in subsequent decisions. If the ratio is broadly construed it could mean that the High Court of Australia and probably other Commonwealth courts need not follow decisions of the House of Lords at all when determining matters where the need for uniformity is not pressing. On the other hand if a narrow interpretation is taken, the principle may only apply to matters of purely local significance. Such an interpretation it is suggested ought to be given to *Uren's* case by the New Zealand Court of Appeal and *Smith's* case should perhaps be reconsidered. On the other hand certain statements in *Piro* v. *W. Foster & Company Limited* must now be taken to have been conclusively overruled.

The decision of the Judicial Committee recognises that the High Court of Australia and presumably other Commonwealth Courts are capable of making and applying law which fits the needs of their countries and it may be undesirable for the British courts to carry out this function for them. It may be suggested that the attitude of the Privy Council in upholding the decision of the High Court of Australia is symptomatic of the further breakdown of the strict legal structure of precedent within the Commonwealth and that the movement is to much greater authority for the final appeal courts of individual Commonwealth countries and a contraction of the scope of the traditional final appellate courts.

P. C. L. Gibson.