of the private company in New Zealand was considered at some length. Proposals in this direction were governed by two objectives of the Committee: first to reduce the number of registrations; and secondly to increase financial disclosure. Other important recommendations were made including making a prospectus a more meaningful guide to the potential investor; improving the disclosure of financial information regarding companies' accounts; and stream-lining the winding-up of companies.

G. R. J. Thornton

CONSTITUTIONAL LAW

Race relations — discriminaton

On appeal from the decision of the English Court of Appeal in *Race Relations Board* v. *Charter* [1973] A.C. 868, (noted in (1973) 3 Otago L.R. 108) the House of Lords (Lord Morris of Borth-y-Gest dissenting) rejected Lord Denning M.R.'s distinction between personal and impersonal qualifications for membership as a test for determining whether a club is involved in "providing goods, facilities or services to the public, or a section of the public" for the purposes of s. 2 Race Relations Act 1968 (U.K.), and so therefore acting unlawfully in England if it practises discrimination in approving the applicants for membership.

Their Lordships maintained that the test should be whether the procedure prescribed in the rules for personal approval of applicants for membership was genuine or not. It seems that the mere existence of a procedure for personal approval of applicants was regarded as raising a presumption that a group is of a private nature rather than a public nature, and this can be rebutted only by showing that the procedure was neglected, or was a mere formality, or a sham. Their Lordships held that there were rules in the club providing machinery for personal acceptability that were adhered to, and therefore the club membership constituted a private group and not a section of the public.

Lord Morris, dissenting, claimed that the distinction between "a section of the public" and a private group is whether there is provision for application to join. If there is entry only by invitation then it is not public, but if there is provision for application then there would be an offering of facilities to a section of the public and the Act would apply irrespective of whether the approval procedure is automatic.

In *Race Relations Board* v. *Applin* [1973] Q.B. 815 the English Court of Appeal purported to apply the test of the majority in *Charter's* case but the decision itself appears to be more in keping with the dissenting judgment of Lord Morris. A married couple was registered with three local authorities as foster parents, and over a twenty-three year period they had fostered three hundred children of which sixty per cent had been

coloured. In 1970 they moved to a new area and continued to foster children. An organisation called the National Front complained about the couple fostering coloured children and put pressure upon them to take whites only. The Front handed circulars to the residents in the area complaining about and condemning the couple, and held a public meeting where they were publicly condemned for fostering coloured children. The Race Relations Board took proceedings against the National Front claiming that the Front had incited the couple to commit an unlawful act of discrimination under s. 2 Race Relations Act 1968 (U.K.).

The decision in this case also depended on whether the couple were supplying facilities to "a section of the public". The Court of Appeal held that children in need of foster parents were a section of the public and therefore the defendants were guilty of incitement. Although the mere existence of procedure for personal approval in *Charter's* case was sufficient to raise a presumption that the Conservative Club was a group of a private nature and therefore not subject to the Race Relations Act 1968, such approval procedure existed in this case as well but the Court of Appeal placed little or no emphasis on this. Lord Denning M. R. was in no doubt that since facilities were clearly provided for children in need in a manner similar to that in which facilities are provided for the residents of a hotel, they were provided for "a section of the public". Buckley L. J. went further in holding that the three local authorities were capable of constituting a section of the public for whom the couple provided facilities. Leave to appeal to the House of Lords has been granted and it will be awaited with great interest to see if the House of Lords affirms the decision of the Court of Appeal.

Although these decisions involve the interpretation of an English statute they are of considerable importance in the New Zealand context because s. 4 New Zealand Race Relations Act 1971 makes it "Unlawful for any person who supplies goods, facilities or services to the public or to any section of the public — (a) to refuse or fail on demand to provide any other person with those goods, facilities or services . . . by reason of the colour, race or ethnic or national origins of that person. . . . " No doubt the English decisions will be referred to when any question as to the interpretation of these words comes before a New Zealand court, but it is submitted that their Lordships' reasoning in *Charter's* case can be distinguished on two grounds. In the first place, as Lord Simon stated in *Charter's* case, the English Race Relations Act follows the view that although discrimination is unwise and deplorable it would be impractical to apply the provisions of this Act to private situations. The Act is not intended to cover the personal life of the private individual because it expressly provides that acts of discrimination in certain private situations are lawful. The intention of the English Act was gradually to educate the public by taking a cautious approach to discrimination and continuing to allow it in private. However in contrast the New Zealand Race Relations Act takes

a clear and unambiguous stand against all forms of racial discrimination.

Secondly, the majority in *Charter*'s case expressed concern that the Court of Appeal decision would render unlawful all clubs and associations that confined themselves to one race even if they were cultural clubs. Lord Cross of Chelsea found it necessary to point to the extraordinary consequences which acceptance of the arguments of the Race Relations Board would entail with regard to clubs, membership of which was confined to racial groups. In New Zealand it would not be necessary to take this approach as s. 9 New Zealand Race Relations Act creates a specific exception to s. 4 which exception is wide enough to include such organisations.

Legislation

The only recent innovation in this field has been the Constution Amendment Act 1973. Section 53 (1) declares that the General Assembly has full powers to make laws having effect in or in respect of New Zealand or any part thereof and having effect outside New Zealand. This newly constituted s. 53 (1) gives Parliament the sovereign power to decide what laws it will make and means that now laws can no longer be challenged on the basis that they are extraterritorial or that they are not for the peace, order and good government of New Zealand.

G. A. Fraser.

CONTRACT

Mistake

An interesting case decided last year relates to issues of mistake and the position of a bank which has failed to carry out the instructions of its customer to countermand a cheque. *Southland Savings Bank* v. *Anderson* [1974] N.Z.L.R. 118 was a decision of Quilliam J. on an appeal from the Magistrate's Court in which the magistrate had held that the plaintiff bank could not recover its loss. The facts were that a depositor at the appellant bank drew a cheque, had it marked by the ledgers department, and paid it to the respondent for the purchase of a van. The respondent handed over the change of ownership papers and the van. The next day, a Saturday, the van broke down and on the Monday the depositor rang the appellant and stopped payment of his cheque at 8.45 a.m. At about 10.10 a.m. the same day the respondent, who suspected that the cheque might be stopped, but not knowing that it had been, had the cheque presented by his wife, who was paid cash as the teller had not been notified of the stoppage. The magistrate, on the basis of unilateral mistake, held that the appellant could not recover. The argument on appeal was based on mutual mistake.

In his judgment Quilliam J. stated (id., 120) "Whether or not the case was argued before the magistrate on the alternative