The decision of the Court of Appeal in the case last cited[29] was based on the earlier Court of Appeal decision in *Jennings v. Stephens*.[32] With respect, it is submitted that both these cases proceed upon a too tender regard for the rights of the author. In the case of a wireless broadcast, the fees paid by the broadcasting company should be sufficient for the broadcast irrespective of how many or how few people listen to the particular programme. The mere fact that a saving is effected on the number of wireless receiving sets used should be regarded as immaterial. Further, as the law now stands, it would appear that if a householder switches on his private wireless set and the broadcast is overheard by a burglar outside the window, the householder is *strictum ius* liable for a "public performance." From the author's own point of view, the re-broadcasting of music in factories is an advantage rather than a disadvantage because :

(*a*) It increases his potential market ;

(*b*) A demand by factories for his work strengthens his position in bargaining with a broadcasting company.

The fact that probably the majority of authors assign their copyright on or in anticipation of publication of their works completes the anomaly, since the Court of Appeal is in fact protecting not the small author but a powerful corporation—a fact to which the Court's attention was apparently not directed in *Performing Right Society v. Gillette*[33] or in *Jennings v. Stephens*[34]. The anomalies revealed would appear to be but another example of the way in which our law is allowed to continue unchanged long after the social conditions for which it was designed have ceased to exist. Instances such as the present in which the law is out of touch with the needs and life of the community will, if allowed to continue, only further the tendency to bring the law into disrepute.

K. H. GIFFORD.

32. *cit. sup.*
33. *cit. sup.*
34 *cit. sup.*

CRIMINAL LAW : PROOF OF INTENT.

The appellant in *R. v. Steane*[1] had been convicted on an indictment which charged him under the *Defence (General) Regulations*, reg. 2A, with doing acts likely to assist the enemy with intent to assist the enemy. It was proved, and the appellant admitted, that he had broadcast certain matters for the German Broadcasting Service, and there was evidence from which a jury could infer that these broadcasts by the appellant were acts likely to assist the enemy.

The trial judge, in directing the jury, said : "A man is taken to intend the natural consequences of his acts. If, therefore, he does an act which is likely to assist the enemy, it must be assumed that he did it with the intention of assisting the enemy." The Court of Criminal Appeal held this to be a misdirection and quashed the conviction. In a judgment delivered by Lord Goddard C.J. the court reaffirmed the principle that where a particular intent is a necessary constituent of the offence charged

1. [1947] 1 All E.R. 813.

that intent must be proved by the Crown just as much as any other fact necessary to constitute the offence. In many cases, if the prosecution proves an act the natural consequences of which would be a certain result the jury may, on a proper direction, find that the accused was guilty of doing the act with the intent to bring about that result. If however, on all the evidence, there is room for more than one view as to the prisoner's intent the jury should be directed that the intent must be proved and that they should acquit the accused if they think the intent did not exist or if they are left in doubt as to it.

In the instant case, in evidence on his own behalf, the accused stated that he had at first refused to undertake any broadcasting and had only agreed to do so because of the brutal treatment and threats to which he was subjected, and because he was told that, if he persisted in his refusal, his wife and children would be put in a concentration camp. In the opinion of the court these facts had to be taken into account when determining the existence of intent. Where acts were done by a person in subjection to the power of another, especially if that other were a brutal enemy, it was impossible to draw as a necessary inference from the fact that he did these acts that he intended their natural consequences.

As the case was disposed of on this ground Lord Goddard did not find it necessary to examine in detail the separate defence of duress. He was content to say that there was very little authority on the subject but that according to Hale and Fitzjames Stephen it does not apply to treason, murder and some other felonies, but does apply to misdemeanours. If duress were available as a defence the onus of proving it would be on the accused. However, before any question of duress as a defence arose, the jury must be satisfied that the prisoner had the requisite intention, in respect of which the onus of proof is on the Crown.

This decision indicates that the existence of duress may be of great importance in any case where a specific intent is an essential ingredient of the offence charged. Its application to Common Law offences will therefore be attended by some difficulty since it is often a matter of dispute as to what, if any, specific intent is required in these offences. It is probable that the case will be of primary importance in relation to statutory crimes. It would be a startling suggestion that, for example, a person who has fired at and killed another, should be held not guilty of murder on the ground that though he knew the natural consequences of his acts would be the death of his victim, he did not desire the victim's death to result.

L. M. MUIR.