delay between the time the sample was taken and the time the sample was submitted to the analyst. In the later case Tompkins J. held no objection could be taken to production of the certificate to the court being effected by the prosecution merely handing over the certificate to the court. The appellant had submitted that production within the meaning of s. 62 of the Transport Act 1962 should be effected either by the analyst in person or the policeman having proper custody thereof. In addition both cases established beyond doubt that the certificate is evidence of the matters so certified and of the qualifications of the analyst.

In *R.* v. *McKay* [1967] N.Z.L.R. 139 the Court of Appeal was called to consider the admissibility of statements made by the appellant while under the effect of "Truth Drugs", and it was held by the court that evidence of psychiatrists of such statements, although in the interest of the appellant were inadmissible. Similarly inadmissible was evidence to the effect that the psychiatrists were of the opinion that as a result of their examination the testimony given by the appellant on oath at his trial was true.

Ever since the decision of the House of Lords in *Hollington* v. *Hewthorn* [1943] K.B. 587 the injustice of the rule in that case has received both academic and judicial criticism and no exception are *Goody* v. *Oldhams Press* [1966] 3 W.L.R. 460 and *Barclays Bank* v. *Cole* [1966] 3 All E.R. 948, two decisions of the English Court of Appeal. In the former case a conviction and sentence to thirty years imprisonment was held inadmissible in a civil action as any evidence of justification in a libel action arising out of the incident on which the criminal liability was founded, and, in the second a similar frustration met an action in conversion, although the defendant had been convicted in a criminal court of the relevant theft. However, in *Goody's* case, although this objectionable rule of evidence (and it was there described in similar terms by Lord Denning M.R.) was held binding upon that court, an opening in the law was widened to relieve some of the injustice of the case. It was noted that if a defendant in a libel action fails to establish justification he cannot adduce evidence of the plaintiff's specific misdeeds in mitigation, but the court excluded this rule where the previous misconduct culminated in criminal conviction. Accordingly the defence were able to establish the plaintiff's bad reputation as evidenced by his previous convictions spanning several years, and thus the publication was incapable of causing him any material injury. Although this case did eventually give relief to the innocent defendant it does illustrate the stupidity of a rule of law which to all intents presumes a convicted man to be innocent so far as subsequent civil proceedings are concerned.

I. S. Hurd.

INTERNATIONAL LAW

Fisheries (Agreement with Japan) Act 1967

By this Act the New Zealand Government gives effect to the Agreement on Fisheries between New Zealand and Japan pending its formal ratification by both Governments. This action is consistent with the understanding between the two governments confirmed in an Exchange

of Notes following the Agreement itself, to the effect that pending ratification, they would "give provisional effect to the Agreement and its related documents in so far as may be practicable within the limits of their constitutional authority".

Prior to the coming into effect of the Act on 12 October 1967, the joint effect of the Territorial Sea and Fishing Zone Act 1965 and Part I of the Fisheries Amendment Act 1963 was to make it an offence to use any vessel in the "Fishing Zone of New Zealand" (defined by s. 8 of the Territorial Sea and Fishing Zone Act 1965 as extending for a distance of nine miles from the outer limit of the three mile territorial sea) for fishing for the purpose of sale unless the vessel was registered (s. 5 of the Fisheries Amendment Act 1963) and had a boat-fishing permit (s. 12). The result was that fishing within the zone was in effect reserved to New Zealand vessels.

Section 3 of the Fisheries (Agreement with Japan) Act 1967 permits vessels registered in Japan to fish within a "specified area" in the fishing zone until the 30th December 1970 provided that a licence has been issued by the Government of Japan pursuant to the Agreement and that fish are taken only by "bottom long-line fishing".

So the effect of the Territorial Sea and Fishing Zone Act 1965 and the Fisheries Amendment Act 1963 is suspended in these circumstances until the 30th December 1970, on which date Japanese boats will once again be prohibited from fishing in the New Zealand Fishing Zone.

In recent years state practice has indicated that the reservation of a twelve mile fishing zone is not contrary to International Law if accompanied by reasonable "phasing-out" measures which have been agreed to by all interested states. Therefore, the settlement of the dispute with Japan (the only nation apparently interested in fishing within the zone) would appear to have made New Zealand's claim to a twelve mile fishing zone more justifiable at International Law.

Fisheries Amendment Act 1967

By 1967 several defects in the Fisheries Amendment Act 1963 had become apparent.

First, the provisions of s. 5 and s. 12 making it an offence to fish from an unregistered boat or to fish without a boat-fishing permit are more applicable to New Zealand than foreign boats, as foreign vessels would be unable to obtain registration without the consent of the Minister of Marine. Secondly, it was not clear from the Act whether or not crew members were intended to be punished for offences under s. 5 and s. 12, as well as the owner and master of the vessel. Thirdly, the £50 fine provided for the breach of both sections was obviously inadequate when dealing with a foreign vessel.

The Fisheries Amendment Act 1967 has remedied these defects. Section 11 provides for a new s. 12A to the principal Act. This prohibits fishing in New Zealand fisheries waters by all foreign vessels except for the purposes of "fisheries research or experimental or sports fishing" and even in these cases only with the consent of the Minister of Marine. Section 11(4) makes it clear that every crew member of a vessel used in breach of the section, as well as the owner, charterer (if any) and master, commits an offence under the section, and the fine is increased to $5,000 in the case of the owner, charterer or master, and $500 in the case of each crew member.

Section 11(2) places the onus of proving that the vessel was engaged in fishing for lawful purposes with the defendant and s. 11(3) makes the offence of any small boat or dory the offence of the mother ship.

Section 12 adds a new s. 18B to the principal Act which will also have the effect of casting the onus of proof on the defendant. It provides that in any proceedings for an offence under part I of the Act the certificate of the Secretary of Marine shall be sufficient evidence, in the absence of proof to the contrary, of any of the matters specified in the section, e.g., whether a vessel was registered, whether it was a New Zealand ship, whether a boat-fishing permit was in force, etc.

Post Office Amendment (No. 2) Bill

This Bill is designed to prevent the establishment and operation of unlicensed broadcasting stations on the high seas and is consistent with Regulations 422 and 962 made by the international Telecommunications Union whereby the operation of all such stations is prohibited.

Clause 2(1) of the Bill amends s. 164 of the Post Office Act 1959, which requires the licensing of all radio stations "within New Zealand or on any New Zealand ship within the meaning of the Shipping and Seamen Act 1952", by instead providing that stations "within the territorial limits of New Zealand or on any New Zealand ship" must be licensed. Clause 2(3) adds a new subsection 9 to s. 164 of the principal Act in which the term "New Zealand ship" is defined as including any New Zealand ship within the meaning of the Crimes Act 1961 and any vessel for the time being registered in New Zealand as a ship under the Shipping and Seamen Act 1952. "Ship" was defined as "every description of vessel . . . used in navigation . . . " and it could be argued that as a ship-based "pirate" radio station is permanently moored it is not "used in navigation" and is therefore not a "ship" for the purposes of either the Shipping and Seamen Act 1952 or the Post Office Act 1959. It is suggested that subclauses 1 and 3 of clause 2 of the Bill are designed to overcome this difficulty.

Clause 2(2) increases the penalties for the establishment, maintenance or use of unlicensed stations, by providing that any person engaged in such activities shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding $1,000.

Clause 3 relates to "unlawful broadcasting stations", defined as any station required to be licensed under s. 164 of the principal Act and not so licensed, or any station established on or over the high seas, whether on a "ship" or on an "unlicensed vessel".

Clause 3(2) defines those persons over whom the New Zealand courts will have jurisdiction in respect of offences against this clause. These are:

(a) Any person within the territorial limits of New Zealand.

(b) Any person on board a New Zealand ship on the high seas.

(c) Any New Zealand citizen or person ordinarily resident in New Zealand on board any ship or unregistered vessel on the high seas.

By including persons ordinarily resident in New Zealand, the New Zealand courts are given a wider jurisdiction than that given to English courts by the Marine Broadcasting (Offences) Act 1967, where juris-

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*.