ENGLISH PRECEDENTS IN AUSTRALIAN COURTS

There are times when every lawyer must be led to wonder about the value of the system of binding precedents, to doubt whether the justice which results from the measure of certainty which the system ensures outweighs all particular injustices. But it is not intended here to attempt to add to the volume of matter which has already been written on the problem.[1] It is sufficient for present purposes to make the general statement that the value of the system of binding precedents is open to some question.

The special concern of this article is the authority of English precedents in Australian courts. Excluding for the moment the Judicial Committee of the Privy Council, the question posed is—"Should decisions of the House of Lords and the Court of Appeal bind Australian courts?" The answer of one who has reached a firm conclusion against the value of the system of binding precedents at large will come easily: "Surely we can make enough mistakes of our own without being forced to have also those of the House of Lords and the Court of Appeal." To one who is not so intemperate, the writer addresses these two points to support a view that decisions of the House of Lords and of the Court of Appeal should *not* bind Australian courts.

(1) The House of Lords and the Court of Appeal do not belong to our law-area. Our law-area has its own legislatures subject only to a very theoretical subordination to the parliament of the United Kingdom, and has its own hierarchy of courts in no way linked with the House of Lords and the Court of Appeal; no appeal is available from Australian courts to Court of Appeal or House of Lords. Autonomy in law-making should extend not only to statute law but also to judge-made law.

(2) English courts do not belong to our civilisation-area.[2] If, as will be generally admitted, the law should administer to the needs of the civilisation of the time and place, then judge-made laws should be Australian and not imported.

A number of arguments will be made in reply. It will be said that our emotional links with the mother country are strengthened by accepting the authority of English precedents. But no one would submit that the achievement of virtual independence of English

1 For a brief survey of the literature see Paton, *Jurisprudence*, 161 et seq.
2 The point is suggested by Stone, *The Province and Function of Law*, 366, footnote 30.

statute law has made for the weakening of emotional ties. On the contrary, it is submitted that it has made for their preservation. What is true in the field of statute law must surely be true in the field of judge-made law.

It will be said that "logic" supports the authority of the House of Lords and the Court of Appeal. English common law is our inherited law; therefore what the English courts say is English common law must *ipso facto* be part of our law, unless some legislative provision says otherwise. The argument seems sound enough, but it rests on the assumption that judges do not make law, that they are merely revealing rules already inherent in the body of the common law at the time of our inheritance. There will be almost unanimous agreement today that such an assumption is false.

It will also be said that it is convenient to have a fund of precedents, beyond the output of our own courts, on which to draw. But the output of six State Supreme Courts and the High Court is not inconsiderable, though perhaps inadequately reported. In any case, it does not follow that precedents of the House of Lords and Court of Appeal are not available if they are not binding. They might be referred to in order to assist the court, just as American and Canadian precedents are used.

Finally, it will be said that it is especially convenient to Australian lawyers that they should be able to use English textbooks. There is still much to be done in the matter of the publication of Australian textbooks, but the convenience of lawyers is an unimportant consideration in determining the proper content of our law although the lawyers themselves may not think so.

House of Lords Decisions.

So much for the writer's views; what matters, of course, is the view which the Courts have taken in the matter. The leading case on the authority of House of Lords decisions in Australia is *Piro v. W. Foster & Co. Ltd.*[3] Action was brought by an employee claiming damages for personal injury caused by a breach of his employer's statutory duty to fence or safeguard dangerous machinery under the Industrial Code 1920-36 of South Australia. The employer pleaded contributory negligence of the employee as a defence. Richards, J., the trial judge in the South Australian Supreme Court, found that the employee was in fact guilty of contributory negligence. He was then faced with a conflict between the decision of the High Court in *Bourke v. Butterfield & Lewis Ltd.*[4] and the decisions of the House of Lords in *Caswell v. Powell Duffryn Associated Collieries Ltd.*[5] and *Lewis v. Denye.*[6] In *Bourke* it had been held that contributory

[3] (1943) 68 C.L.R. 313.
[4] (1926) 38 C.L.R. 354.
[5] [1940] A.C. 152.
[6] [1940] A.C. 921.

negligence was not a defence to an action founded on breach of a duty imposed upon an employer by sec. 33 of the Factories and Shops Act 1912 (New South Wales) to fence dangerous machinery. In *Caswell* and in *Lewis* the House of Lords had held that contributory negligence was a defence to actions founded on breaches of similar statutory duties imposed by English Acts. Richards, J., disregarded the decision of the High Court and followed the House of Lords.[7] On appeal the High Court approved his action and overruled its own previous decision in *Bourke*.

On the question of the authority of House of Lords decisions each member of the High Court bench expressed opinions which warrant careful examination. Latham, C.J., said—

> "This Court is not technically bound by a decision of the House of Lords, but there are in my opinion convincing reasons which lead to the conclusion that this Court and other courts in Australia should as a general rule follow decisions of the House of Lords. The House of Lords is the final authority for declaring English law, and where a case involves only principles of English law which admittedly are part of the law of Australia, and there are no relevant differentiating local circumstances, the House of Lords should be regarded as finally declaring that law."[8]

No other "convincing reasons" are revealed in the judgment of the Chief Justice than what may appear in the passage quoted, where, it is submitted, there are none. The appeal to logic implicit in the words "where a case involves only principles of English law which are admittedly part of the law of Australia" does not avail, for, as it has already been submitted, while it is no doubt true that we took as our own the principles of English law as they were at the time of our inheritance, it is not true that the principles of English law are today what they were over a century ago. There is encouragement, however, in the qualifying words "where there are no relevant differentiating local circumstances," which suggest that the Chief Justice is not wholly unmindful of possible civilisation-area differences. Moreover, the words contradict the logic argument unless we are to take the view that what the House of Lords says is English law is not necessarily English law at all.

Rich, J., said—

> "In quest of uniformity I considered in *Waghorn v. Waghorn* that we should yield to a decision of the English Court of Appeal rather than follow a decision of our own Court. Technically we are bound only by the judgments of the Privy Council, but I have no doubt that we should follow all rulings of the House of Lords on points of law common to both coun-

[7] [1943] S.A.S.R. 68.
[8] (1943) 68 C.L.R. 313, at 320.

tries. For the future, in order to prevent circuity of action, it is advisable for us to direct that Australian courts should follow all rulings of the House of Lords and of course of the Privy Council in preference to those of this Court."[9]

The last sentence is no doubt to be read subject to that which precedes it so as to qualify the word "all" by the words "on points of law common to both countries." It might be said that Rich, J., simply begs the question, for whether or not the point of law is common to both countries will depend on whether or not the House of Lords is to be followed. But probably he too intended to suggest the untenable logic argument. Apart from this, no clue will be found in the judgment as to *why* he had "no doubt" about following the House of Lords.

Starke, J., is obscure—

> "Technically the decision of the House of Lords does not bind this Court, but I have no doubt that this Court should accept the decision as a correct statement of the law of England and overrule or disregard its decision in *Bourke v. Butterfield & Lewis Ltd.* It was suggested at the Bar that the learned primary judge should have followed the decision of this Court and left it to overrule or disregard its decision if it thought fit. But this appears to me a matter which other courts and primary judges must deal with as they think most conducive to the regular administration of justice and the interests of the litigant parties. I would suggest that the course adopted by the primary judge in the present case is only advisable in cases beyond question and possibly only in cases that do not involve title to property."[10]

It is difficult to know whether Starke, J., intended to lay down a general rule, or whether he only intended to hold that in the particular case before him the High Court should follow the House of Lords. His discussion of the course adopted by the primary judge would seem to indicate the former, but what limits, if any, he would place on the application of House of Lords precedents, and why, do not appear at all.

McTiernan, J., said—

> " . . . It should rightly be regarded as within the discretion of an Australian court, although it is bound as a general rule by the decisions of the High Court, to follow a decision of the House of Lords rather than a decision of the High Court in any case where there is a clear conflict between the two decisions and there are no circumstances which would render the law laid down by the House of Lords inapplicable in this country."[11]

[9] *ibid.*, at 325-6.
[10] *ibid.*, at 326-7.
[11] *ibid.*, at 336.

On his view it is a matter in the discretion of an Australian court whether or not it will follow the House of Lords. In the exercise of that discretion, an Australian court should take count of any "circumstances which would render the law laid down by the House of Lords inapplicable in this country." With such a view the present writer has no quarrel.

Williams, J., is the strongest supporter of the authority of House of Lords decisions—

> " . . . If this Court decided to adhere to its own decision, there would be a conflict between the interpretation of the law as declared by the highest judicial tribunal in the Empire and as declared by this Court. . . . The importance of uniformity is clear in the present case, because, since the two decisions of the House of Lords, the Court of Appeal has been busy in applying and extending the principles there laid down to numerous cases of breach of statutory duties of all kinds; . . . so that, if this Court adhered to its own decision in *Bourke v. Butterfield & Lewis Ltd.*, the divergence between the interpretation of the same law in England and Australia could tend to become even more accentuated in the future than it is at present."[12]

The argument used to support his unconditional endorsement of House of Lords decisions is explicity the logic argument—it is the *same* law in England as in Australia, and we must avoid divergent interpretation of it at all costs. Involved here is what Maine described as "the doctrine that somewhere, *in nubibus,* or *in gremio magistratuum,* there existed a complete, coherent, symmetrical body of English law, of an amplitude sufficient to furnish principles which would apply to any conceivable combination of circumstances."[13] Pollock, commenting on the doctrine, wrote that "no intelligent lawyer would at this day pretend that the decisions of the Courts do not add to and alter the law."[14] In an article in the Law Quarterly Review, Zelman Cowen says, "The binding effect of the decisions of the House of Lords upon Australian tribunals has been clearly established in the High Court in . . . *Piro v. W. Foster & Co. Ltd.* The decision has formally written the House of Lords into the hierarchy of tribunals whose decisions bind Australian courts."[15]

It is submitted, with respect, that this is not the necessary conclusion from the opinions expressed by members of the Court. The net effect of the judgments of Latham, C.J., and McTiernan, J., is that House of Lords decisions have strong persuasive value only. They should be followed unless, in the words of the Chief Justice, there are "relevant differentiating local circumstances," or in the words of McTiernan, J., "there are no circumstances which would

[12] *ibid.*, at 341.
[13] *Ancient Law* (1930 edn.), 38.
[14] *ibid.*, 48.
[15] 60 L.Q.R. 378, at 380-1.

render the law laid down by the House of Lords inapplicable in this country." No definite opinion can be drawn from the judgment of Starke, J. Only the views of Rich and Williams, JJ., support the proposition for which Cowen claims the case is authority. Moreover, the case ultimately only involves an expression of the intentions of the High Court with regard to following House of Lords decisions. In the final analysis no court can bind itself to be bound by decisions of another court or by its own previous decisions.

By way of general comment it might be said that while *Piro v. Foster* presented the High Court with an opportunity to make a thorough examination of the reasons why House of Lords decisions should or should not bind Australian courts, members of the Court were in the main content with *ex cathedra* pronouncements on the desirability of uniformity, without any serious attempt to canvas reasons.

Court of Appeal Decisions.

The leading case on the authority of Court of Appeal decisions in Australian courts is *Waghorn v. Waghorn*,[16] which ante-dates *Piro v. Foster*. The case involved a petition for divorce by a husband under the (New South Wales) Matrimonial Causes Act 1899, s. 13 (a), on the ground of his wife's desertion "during three years and upwards." Twelve months after his wife left him the petitioner commenced to live in adultery with another woman, and the question for the Court was whether the adultery automatically terminated the desertion. In *Crown Solicitor v. Gilbert*[17] the High Court had held that it did, while the contrary conclusion had been reached by the Court of Appeal in *Earnshaw v. Earnshaw*,[18] approving the judgment of Sir Boyd Merriman, P., in *Herod v. Herod*.[19] The trial judge in the New South Wales Supreme Court held himself bound by the decision of the High Court in *Crown Solicitor v. Gilbert*. On appeal the High Court had to make a choice between its own previous decision and the Court of Appeal decision in *Earnshaw*. Rich, Starke, Dixon, and Williams, JJ., decided to follow the Court of Appeal; McTiernan, J., dissented.

What has been called the "logic" argument was unavailable in this case, since what was involved was patently a question of statutory interpretation. The members of the Court forming the majority were therefore content with assertions of the "uniformity" ideal, apparently convinced that the ideal explains itself. Thus Rich, J., said—

> "I have elsewhere stated that 'in Australia the six States forming the Commonwealth are governed by common law, modified by statute, which although enacted by six parliaments

[16] (1941) 65 C.L.R. 289.
[17] (1937) 59 C.L.R. 322.
[18] [1939] 2 All E.R. 698.
[19] [1939] P. 11.

showed remarkably little divergence . . . One of the tasks of this Court is to preserve uniformity of determination. It may be that in performing the task the Court does not achieve the uniformity that was desirable and what uniformity is achieved may be uniformity of error. However in that event it is at least uniformity.' "[20]

It may be that the High Court should endeavour to achieve uniformity at any price as between the States of the Commonwealth. But surely there is a *non sequitur* involved if Rich, J., intends to infer that therefore the High Court should endeavour to achieve uniformity at any price as between Australian and English law.

Starke, J., avoided the question of the authority of the decisions of the Court of Appeal by holding that *Crown Solicitor v. Gilbert* was "an erroneous decision, and . . . should no longer be followed."[21] Dixon, J., faced the question and answered it in this way—

> "The question how far this Court should defer to the decisions of the Court of Appeal is one to which an unqualified answer can hardly be given. But I think that if this Court is convinced that a particular view of the law has been taken in England from which there is unlikely to be any departure, wisdom is on the side of the Court's applying that view to Australian conditions, notwithstanding that the Court has already decided the question in the opposite sense. The fact that we still believe in the correctness of our own decision, as I do in the present case, is not in itself an adequate ground for refusing to follow this course. . . . But where a general proposition is involved the Court should be careful to avoid introducing into Australian law a principle inconsistent with that which has been accepted in England. . . . Statutes based upon a common policy and expressed in the same or similar form ought not to be given different operations."[22]

But *why* is wisdom on the side of the High Court's applying to "Australian conditions" a particular view of the law taken in England? *Why* does it matter if "statutes based upon a common policy are given different interpretations," provided our interpretation correctly reflects the policy of our statute? Dixon, J., indeed was firmly convinced that *Crown Solicitor v. Gilbert* correctly reflects the policy of the New South Wales Matrimonial Causes Act.

Williams, J., agreed with Dixon, J., in these words—

> "On the whole, for the reasons given by my brother Dixon, it would appear to be advisable to follow *Herod's Case*, so as to make the law in this instance consistent in both countries."[23]

[20] 65 C.L.R. 289, at 293.
[21] *ibid.*, at 294.
[22] *ibid.*, at 297.
[23] *ibid.*, at 305.

No one, then, of Rich, Dixon, and Williams, JJ., attempts to explain why uniformity is desirable, and in the absence of any such explanation, it is submitted, they are merely saying, "Court of Appeal decisions should bind because they should bind."

The short dissenting judgment of McTiernan, J., is refreshing—

> "With great respect to the reasoning in *Herod v. Herod,* I am not convinced that this Court's decision in *Crown Solicitor v. Gilbert* is erroneous. Error is not available as a ground for departing from our prior decision. The only possible ground is that it is desirable to have uniformity between the law in this country and that in England. . . . As I cannot agree that our prior decision is wrong, I do not think that we should be justified in declining to follow it on the ground that it is desirable to have a measure of uniformity in the interpretation of the Matrimonial Causes Act of this State and the English Act. Whether it is desirable to obtain such uniformity is, I think, only a question of expediency. If the doctrines expounded in *Herod v. Herod* are to become law in this country, it belongs to the province of the appropriate legislative body to make them law if it thinks fit to adopt them."[24]

While it is not submitted that "expediency" states the case for uniformity adequately, McTiernan, J., at least opens up the question of why uniformity is desirable. But his voice is drowned by other members of the Court who are apparently convinced that the uniformity ideal explains itself.

It is impossible to state precisely the effect of *Waghorn v. Waghorn.* The impression left by a perusal of all the judgments is that it is a stronger endorsement of Court of Appeal decisions than *Piro v. Foster* is of House of Lords decisions. There is comfort, however, in the fact that *Piro v. Foster* is a later decision than *Waghorn v. Waghorn,* and obviously the High Court will not attribute greater authority to Court of Appeal decisions than it allows to House of Lords decisions.

Court of Appeal decisions differ from House of Lords decisions in this obvious respect, that they are always subject to being overruled by the House of Lords. There is only a technical offence to the ideal of uniformity in refusing to follow the Court of Appeal if it is predicted that the House of Lords will overrule that Court. A rule that the High Court may refuse to follow the Court of Appeal in such circumstances would, it is submitted, be endorsed by all members of the High Court. This is the rationale of the High Court's refusal to follow the Court of Appeal in the recent case of *Wright v. Wright.*[25] There the High Court was asked, in view of the de-

[24] *ibid.,* 301.
[25] 22 A.L.J. 534; (1948) 77 C.L.R. 191.

cision of the Court of Appeal in *Ginesi v. Ginesi,*[26] to reconsider its decision in *Briginshaw v. Briginshaw,*[27] where it was held, on a petition for divorce on the ground of adultery, that the standard of proof was not the criminal standard but the civil standard. In *Ginesi v. Ginesi,* the Court of Appeal held that adultery must be proved with the same degree of strictness as was required to establish a criminal charge. Latham, C.J., Rich and Dixon, JJ., refused to follow *Ginesi v. Ginesi.* Latham, C.J., referred to the fact that *Ginesi* had been "determined without argument," and Dixon, J., to the "great difficulty in being sure of what had been finally settled in England."[27a] McTiernan, J., dissented and approved *Ginesi,* holding that there was no reason arising from Australian conditions why adultery should not have the same legal aspect as that given to it by the Court of Appeal. His decision is in line with his views as expressed in *Piro v. Foster* and *Waghorn v. Waghorn.*

Only a few days separates judgment in *Wright v. Wright* from judgment in *Powell v. Powell.*[28] A number of High Court cases, including *Dearman v. Dearman,*[29] had approved the statement of Lord Penzance in *Fitzgerald's Case*[30] that desertion meant abandonment and implied an active withdrawal from an existing state of cohabitation. However, in *Pardy v. Pardy*[31] the Court of Appeal held that though the original separation may have been by mutual consent, desertion may in certain circumstances supervene without the necessity of a resumption of a common life and home. In *Powell v. Powell* the High Court was asked to decide whether or not it would follow *Pardy v. Pardy.* It decided unanimously to do so. Latham, C.J., did not see any real conflict between *Pardy* and *Fitzgerald.* Starke, J., was inclined to agree with the Chief Justice, but in any case held that since *Pardy* was law in England, the High Court should follow it. Dixon, J., was prepared to follow the Court of Appeal even though in his opinion to do so meant a "change in the basal conception of desertion on which the administration of the divorce laws in Australia has proceeded for more than half a century."[32] Williams, J., had no doubt that *Pardy* should be followed in Australia. The uniformity ideal remains the inspiration of the High Court but one still must search in vain for any real attempt to justify it.

[26] [1948] P. 179.
[27] (1938) 60 C.L.R. 336.
[27a] The views expressed by Dixon, J., in *Waghorn v. Waghorn* quoted earlier are stated even more strongly by him in these words:—"Diversity in the development of the common law (using that expression not in the historical but in the very widest sense) seems to me to be an evil. Its avoidance is more desirable than a preservation here of what we regard as sounder principle:" (1948) 77 C.L.R. 191, at 210.
[28] [1949] A.L.R. 53.
[29] (1916) 21 C.L.R. 264.
[30] (1868) L.R. 1 P. & D. 694.
[31] [1939] P. 288.
[32] [1949] A.L.R. 53, at 60.

Waghorn v. Waghorn and *Powell v. Powell* have this in common, that each involved determining the meaning of the word "desert" in a local statute; yet the High Court in each case felt bound to follow what English courts considered to be the meaning of the same word in an English statute made many years after the local statutes. It is, to say the least of it, a curious proceeding. Yet one member of the High Court, Dixon, J., seems to be distressed at the unwillingness of English courts to apply a reciprocal technique, *viz.*, to find the intent of English statutes in what Australian courts have said is the intent of Australian statutes. In *Waghorn v. Waghorn* he said, "In England strangely enough, the question did not come up for decision until after the decision of this Court in *Crown Solicitor v. Gilbert,* but when it came to be determined the report of that decision was not available to Sir Boyd Merriman, P."[33] In *Wright v. Wright* he remarked that cases had of late been decided in England that were very hard to reconcile with the settled doctrine of all Australian States, particularly in relation to desertion.[34]

The High Court treated *Piro v. Foster* as involving a point of common law, but an argument can be made that it really involved a question of statutory interpretation, *viz.*, the extent of the duty imposed on an employer by the Industrial Code of South Australia; whether it was a duty to prevent damage only to employees taking care for their own safety, or whether it was a wider duty to prevent damage to employees not taking such care. If the problem of *Piro v. Foster* is so understood, then it seems inappropriate to answer it by adopting what the House of Lords said in cases which had nothing to do with the Industrial Code of South Australia. *Piro v. Foster* overruled *Bourke v. Butterfield & Lewis Ltd.* It is perhaps significant that hot on the trail of *Piro v. Foster,* the New South Wales legislature passed the Statutory Duties (Contributory Negligence) Act, 1945, which, so far as New South Wales is concerned, restored the law in *Bourke v. Butterfield & Lewis Ltd.* and put it beyond the power of any Australian court to achieve uniformity between New South Wales and English law in this matter. Apparently, in the view of the New South Wales legislature, "uniformity" is not the primary interest to be pursued. Surely it is not too much to ask that an Australian statute shall be construed as Australian-made, which does not necessarily involve giving to it the same meaning it would have had if it had been made in England.

The Judicial Committee of the Privy Council is the final court of appeal from (some, not all) members of the British Commonwealth and from the colonies, except where the appeal has been precluded by constitutional provision, or by legislative action under the Statute of Westminster. Judicial pronouncements are sometimes framed so generally that they would support a view that *all* Privy Council decisions bind Australian courts.[35] A moment of reflection

[33] (1941) 65 C.L.R. 289, at 297.
[34] 22 A.L.J. at 537; (1948) 77 C.L.R. 191, at 211.
[35] For example Rich, J., in the passage cited above from *Piro v. Foster.*

will show that such a view does not make sense. Are decisions of the Privy Council on questions of Roman-Dutch law to be binding here? When the Privy Council sits on appeal from Australian courts, its decisions *are* binding.

It is not proposed here to enter the lists on the issue of retention or abolition of appeals to the Privy Council, save to remark that while their Lordships when sitting on appeals from Australian courts become for the time being part of the legal system of our law-area, they do not necessarily become part of our civilisation-area. It must indeed be difficult for their Lordships, being of stable physical location, to transport themselves intellectually to the environment whence a particular appeal comes. Members of the Judicial Committee when sitting in the House of Lords on Scots appeals have, if the Scots are to be believed, found it difficult to move as far as the border.

An intriguing question arises as to the relative authority in Australian courts of Privy Council decisions as against decisions of the House of Lords, a question which has been considered by W. N. L. Harrison in an article in the Australian Law Journal. In the event of conflict between Privy Council and House of Lords, Harrison considers that the House of Lords should be followed. He reaches this conclusion by the following argument:—"The Privy Council would almost certainly prefer a decision of the House of Lords to a prior conflicting decision of its own. Most of the members of the Judicial Committee of the Privy Council are also members of the House of Lords. Now the House of Lords may dissent from a decision of the Privy Council but it cannot overrule its own prior decisions. . . . Hence, when the members of the House of Lords sit in the Privy Council they are not likely to refuse to follow a House of Lords decision, even though it means overruling a previous Privy Council decision."[36]

On the other hand Cowen, in the article mentioned above, favours the Privy Council against the House of Lords. He writes, "The Privy Council is the supreme court of appeal so far as Australian courts are concerned . . . If that is the case it appears logical that decisions of that tribunal should bind Australian courts. If, as it may, the Privy Council elects to reverse its own decision because of a later contrary decision of the House of Lords the Australian courts will be bound by that reversal; but only because that reversal is effected by the Privy Council itself."[37] If, however, Harrison is right, and the Privy Council "would almost certainly prefer a decision of the House of Lords to a prior conflicting decision of its own," then however much "logic" might support Cowen's position, common sense is on the side of Harrison. We may as well have the House of Lords decision right away rather than wait for some enterprising litigant to secure it for us by fighting an action to the Privy Council.

[36] 7 A.L.J. 405, at 408.
[37] 60 L.Q.R. at 382.

One might, it is submitted, legitimately ask that their Lordships should decide cases in all possible awareness of our distinct civilisation-area. Some manifestation of such awareness might inspire the High Court to examine its "uniformity" ideal and to withdraw some of its support for House of Lords and Court of Appeal decisions.

But surely the true function of the Privy Council as a final court of appeal from Australian courts is not fulfilled by simply following what the final court of appeal on *English* law says is *English* law?

ROSS PARSONS.

ADDENDUM.—The marked anxiety of Dixon, J., to reach a safe harbour in House of Lords and Court of Appeal decisions is revealed in the following passage from his Honour's judgment in *Wright v. Wright* (the full text of which was not available when the article was written) :—"For myself, I have in the past regarded it as better that this Court should conform to English decisions which we think have settled the general law in that jurisdiction than that we should be insistent on adhering to reasoning which we believe to be right but which will create diversity in the development of legal principle. Diversity in the development of the common law (using that expression not in the historical but in the very widest sense) seems to me to be an evil. Its avoidance is more desirable than a preservation here of what we regard as sounder principle." —R.P.