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EDITORIAL

A RADICAL CHANGE

The present Academical Course of law has had a chequered career. It has had in particular a long innings of upheaval and innovation, admittedly justified by attending circumstances. The urgent need for a sweeping and transformation in university life, University culture, and, above all, University outlook brooked no question. The greatest and most difficult transition of which the history of the University bears record had to be effected. Ina addition the conservative attitude and the deep lethargy of proportion of the undergraduate community had to be overcome.

Progress towards this goal has been, it is true, jerky and halting at times; but a certain amount of progress has been made and we are now definitely paddling in smoother waters. The undergraduates are becoming more and more liberal in their views and a spirit of rebirth is pervading the walls of the Alma Mater. This is not only evidenced by the frequent excursions in realms of dancing and amateur dramatics, but even more clearly by a rapid increase in the number of undergraduate societies.

THE LAW SOCIETY

A new addition to this host of student bodies is the University Students' law Society. The declared aims of the Society are :

(i) To promote the study of law in general and of Maltese Law in particular;
(ii) To facilitate intercourse between the Society and similar bodies;
(iii) To protect and advance the interest of its members.

In furtherance of this policy the committee has decided to undertake the publication of this periodical. And here the thanks of the committee go to Government and to the rector for unstinting support.

It is a sign which augurs well for the future that the Society started off with a flood of activities – monthly lectures, reading of papers, debates, and moots.

Lectures. The lecture-series was initiated by a lecture on the "Re-establishment of self-government" given by the chief Justice H. H. Sir George Borg, Kt., M.B.E., LL.D., which we are printing in this issue of the journal. Other lectures, also in this issue, are "The importance of the legal profession", by the Hon, Mr. Justice E. Ganado. LL.D., and "The duties of lawyers" by the Hon, Mr. Justice W. Harding, B.Litt., LL.D.

Debates. The most interesting subject that came up for discussion was contained in the motion : "that entail should be abolished" which was defeated by one vote.

Papers. These covered a wide variety of topics ranging over all branches of law. One or two appear in this number.

Moots. Moots or debates on supposed cases in a mock court, familiar to students preparing themselves for the legal profession in the Inns of Court in London, are something new to our

University. Two cases have so far been argued, Prof. V. Caruana. B.Litt., LL.D., kindly consenting to hear the first case and Sir Philip Pullicino, Kt., B.Litt., LL.D., the second.

A noticeable feature of these moots has been the thorough manner in which the disputants in either side analyzed the cases, a fact borne out particularly by the lavishness of pertinent quotations fro, prominent legal writers bearing in the disputed points. The *judges*, as could be expected, disentangled the relevant trades and drew the inevitable conclusions with all the sureness that marks out learned and experienced lawyers.

LAW IN LIFE

After reading the foregoing paragraphs the man strap-hanging on the 7:30 'bus will undoubtly feel himself entitled to an apology for the publication of those Journal. And small wonder, for to him the mention of the law conjures up a blurred picture of priggish Judges, sleek-tongued lawyers whose tactics are worthy of Fabius himself, wily experts ready to swear to any-thing, pertinacious wranglers juggling with Latin tags, and lastly, juries nonchalantly chewing gum. A man is accordingly considered lucky if he can escape the meshed of the law.

These conceptions or misconceptions of the law are partly due to the influence of indignant litigants (usually very communicative) still under the smart of disappointment, but chiefly to the present state (some people prefer the word 'system') of education –

A word capable of extensive interpretation. The remedy that suggests itself here is the inclusion in the curriculum of our secondary schools of some kind of instruction in the general principle of law under which he lives, for law is the keystone of our social existence and the true and constant basis upon whish the superstructure of our civilization rests.

Law is really a very human affair; it covers the whole complex tissue of daily life. It deals with the everyday concerns and relationships of ordinary people, their struggles and their emotions, their ambitions, their jealousies and their rivalries. It is intimately bound up with each one of us from them moment of birth to the moment of death.

At birth we are recognized as *personae* and as such the subjects of rights and duties: the birth must be registered; as infants we are subject to paternal authority or to tutorship till we reach our majority; if we marry the law fixes the formalities and procedure; if we have a motor-car it must be registered and a license obtained; when we drive on the roads we must obey police regulations; if we die through a car-crash or in a any other way the law requires that our death shall be registered; and even after death the law is still there, for if we have made a will the law provides that our property shall be distributed according to that will, and if we have made no will the law is ready with the rules of succession *ab intestato*.

These and a milliard other cases. We have become so accustomed to this ubiquity of law and, in most of our daily contacts, it works out so smoothly that we take it for granted. Thus it will be seen out that law is but a self-contained system of rules and concepts, but a function of life whereby all incidents of the citizen's relations with his fellow-beings are regulated.

TRIAL BY JURY

A liberal and open administration of justice is the inner core of a freedom-loving community and the restitution of Trial by Jury has no doubt been a judicious measure. But as the correspondence columns of the local Press have for months clamoured for its restitution and for months have pictured it as an unmixed blessing it is easy for many people to pass over

the weaknesses and shortcomings of the institution. Most of the correspondents were laymen and it is the habit of laymen to be effusive in one direction and to ignore the opposite viewpoint.

Juries are egregiously vacillating; and there have been glaring instances in which the have acquitted the guilty and with, juries may be inclined (though this fact has been stretched to absurd lengths by the American film industry) to regard with a favourable eye young women whose physical charms are their best counsel for defence. Again, juries may be influenced by class distinctions and political prejudices. Then, finally, there are the experts. Juries look on the expert with high-sounding qualifications as an oracle. In this connection it is harder for a Judge to be led astray; he has often heard experts flatly contradict each other in civil cases.

MALTESE LEGAL TERMINOLOGY

That vexed question – Maltese legal Terminology – has been in the limelight again following the introduction by the Attorney-General of a Bill to amend the Laws of Organisation and Civil Procedure. The purpose of the Bill is to add, to the other qualifications required of lawyers, a certificate to the effect that they have attendant a course of lectures on Legal Maltese Terminology and passed the requisite examination. In regard to the present law students the bill limits itself to demanding a certificate to the effect that they have attended lectures on the subject "with diligence and profit" –

A sufficiently vague criterion. Equally vague is the expression "a course of lectures" as the length of time of this course is not specified.

A brisk correspondence ensued in the local newspapers and several students of the Academical Course of Law took the field against what they considered "a sheer waste of time".

The chief argument of the students was that there was no need to follow any course of lectures in order to learn the terminology of the law since it did not appear that there could be any theories underlying the law's terminology which required explanation. The students further contended that even if, for the sake if argument, the lectures were to be considered of any utility they would still be confronted by the discrepancy known to exist between the Legal Maltese terminology taught at the University and the Maltese Terminology (still unpublished) drawn up by the Statute law Revision commission—The only *legal* terminology.

We consider it impolite to put down in writing our feelings on the suggestion made be the legal Secretary in the Counsil of Government that, as the revised edition of the laws would be published in a year's time, it would leave the present law students ample time to bring their terminology into line with that of the Commission.

ITALIAN TEXT-NOTES

We now come to an enigma. The reference is of course to the hybrid system of law-study. The text of the Notes on Civil and Commercial Notes is in Italian, and there is no English translation of these Italian text-Notes. All colourable explanations have been given for these deficiencies which have succeeded in convincing certain quarters that required no convincing in the first place. Other people may have other ideas but why the text-book on a subject should be in Italian while the lectures and examinations are held in English we do not pretend to understand. The system is a cramp to the minds of law students.

This deplorable stat of affairs can easily be rectified. The plan we advocate is this: the appointment of a translator who can give a *good* English rendering of the Italian Notes and then the printing in book-form of the English version. And something of this nature is apparently being contemplated for it has come to our knowledge that a sum of money has already been voted for the appointment of a translator. If this is so, it *is* a good step forward; the difficult part is the appointment of a translator who has both the *time* and the *ability* of the task.

THE COMMERCIAL CODE

Laws to-day are by no means the laws of the Medes and the Persians. It is of the essence of law that it should continue to be ever-changing and that it should adapt itself to current ideas and conditions. Every law should indeed be a progressive and adaptable thing to be steadily perfected by constant touch with human experience, human needs, and human research.

It is a refreshing thought that our Commercial Code is being compiled anew. The bulk of our Commercial Law is at present contained in Ordinance XIII of 1857 and Act XXX of 1927. Ordinance XIII of 1857 is in many matters hopelessly inadequate and out of date, while the 1927 Act is only a modicum of the vast subject. The need for a new Commercial Code is therefore prominent.

It is to be hoped that the Commission will adhere to the lucid and concise sentence-structure of Ordinance VII of 1868 and Ordinance I of 1873. Careful consider ration should be given to those Articles which purport to embody definitions and to other Articles which at present make neither smooth nor convincing English.

OUR POLICY

We wish to make it abundantly clear at the very outset that our aim is not political. Nor do we intend to express opinions bearing political meaning. At the same time we cannot be held responsible for what clever people may read (or imagine they read) between the lines. Surely it would be a saner community if people were to confine their attention to the lines, the whole lines, and nothing but the lines. That is a lesson which has been invariably disregarded in the past and which has been invariably disregarded in the past and which it would be the nadir of impetuous folly to disregard in the future.

OBITUARY—FR. NOLAN

We regret that we have to record the death of the Very Rev. Father L. Nolan, B.A., S.Th.M., O.P., whose name will be remembered by law and students for his orthodox lecture on "International law and war" recently delivered to the Law Society. Father Nolan was a forceful personality. Of venerable appearance which left its print on the minds of those with whom he came in contact, he was a profound scholar, a remarkable disciplinarian, and an inflexible Catholic. He passed full of years and of humor.

ACKNOWLEGEMENTS

We wish to acknowledge the receipt of a Memorandum relative to Maltese Legal Translations by the Ghaqda tal- Kittieba tal-Malti.

RE-ESTABLISHMENT OF SELF-GOVERNMENT

(A lecture delivered by H.H. Sir GEORGE BORG, K., M.B.E., LL.D.)

I FEEL it an honour and a pleasure to have been asked by your Society to deliver this inaugural address after that the Rules of the Society have been definitively approved by the General Council of the University. It is an honour because the objects the Society has in mind, as stated in the rules themselves, are of raising the standard of University Students and to place them in a position ready to prepare themselves befittingly for the hard struggle of life after that they shall have finished their university career. It is a pleasure, because it reminds me of the good old days when I was a University student and this gathering recalls to my mind the ancieties of school life to which, once they are over, I look with satisfaction. Indeed, University life represents the happy periods of one's life, when one does not realize the heavy responsibilities of office and of manhood in general.

You will, in the ordinary course of events, as I do hope, finish your career with the conferment of the degree of Doctor of Laws and you will be ready for the hard struggle of life. The end of your University career will, I presume, coincide with the introduction of radical constitutional changes in the Government of these Islands. I am sure you have followed with interest, not unmingled with satisfaction, the announcement made a few months ago by His Excellency the governor on behalf of his Majesty's government to the effect that as soon as the present state of hostilities is over and circumstances permit, Self-Government will be re-established in Malta. You, who have gone through the constitutional history of Europe and more particularly of the British Empire, know too well that members of the legal community have invariably throughout the whole civilized world taken the most active interest in all reprentative institutions, and, therefore, both by reason of your professional learning and of your love for your country, which I am sure, is not wanting in every Maltese breast, you will participate to a large degree in the shaping of the future destinies of our Island by taking direct and immediate interest in all public affairs affecting the well being of all sections of the Maltese community.

The occasion which will present itself to you. As soon as your University studies are over, will indeed be unique. For. Gentlemen, it is the hearty and disinterested co-operation of the rising generation, to which you belong, that will make the grant of self-government a success especially in its experimental stages.

His Majesty's Government have given a tangible proof of their willingness to assist the inhabitants of these Islands towards sharing the great advantages of British Constitutional liberties and it rests entirely with the Maltese people to show, by example and precept, that they are competent and mature to administer their local concerns.

A statement of the British Government's policy regarding the constitutional future of all the Colonies held in trust by the British Crown has been made in unequivocal and clear terms, namely to the effect that gradually, as the different colonies become ripe, they will enjoy the blessings of autonomy.

Nor could it be otherwise : for the present universal struggle is being fought for the supremacy of Democracy and for the prevalence of liberal institutions.

This statement of policy has been dictated by the sheer experience of hundreds of years of British Colonial Government, which has been a constant change towards that state if perfection, which only liberal institutions can introduce and which will in the long run lead towards happiness and prosperity of both governors and governed.

We see the development of political institutions fro, the time of the French Revolution, the series of changes towards limited Monarchical and Republician ideas on the whole continent and their repercussions on the minds of the ordinary conservative English people. We see the Boston Tea Riots at the time of George III who insisted on ruling the American states from the Metropolis of the Empire without the right of those immediately concerned to express their views. We see the reaction to this high-handed political system, which brought about the establishment of the well known principle of "no taxation without representation."

These mistakes served to change the whole colonial policy of the Authorities at Downing Street and to induce responsible ministers of the crown to advise the Sovereign to grant gradual reforms which culminated in the establishment of Colonial Dominions, bringing about that marvelous piece of legislation and statesmanship known as the Statute of Westminster, according to which each dominion has the fullest right to govern itself, to secede from the mother country. But far from encouraging separatist ideas these liberal institutions are the wonder of the whole world since they have engendered a feeling of genuine fellowship which has given such an eloquent proof during the life and death struggle we are now traversing.

The history of the British Constitution is emphatically the history of progress and it is on this basis that Colonial Government has been carried out. The fundamental principle of religious toleration has been propounded throughout the whole empire with unique constancy. Those who are familiar with the evolutionary progress of European, as you are, are fully aware of the series of quarrels and immense bloodshed due to religious intolerance. By allowing everybody to observe his religious beliefs the State in England and throughout the Empire has eliminated one of the main causes of constant misunderstanding and bloodshed. In Malta this principle was propounded by the Maltese National Congress which met 114 years ago, that is, on the 11th February, 1800. One of its first acts was to issue a declaration of the rights of the Maltese people and in it the Congress affirmed the principle of religious toleration.

Unfortunately the Congress was soon to be dissolved and the first shape of constitutional Government was given to the Maltese people in 1849 when a Council of Government was granted with power to make laws for the peace and good government of these Islands. The council being composed of 18 members, namely: of the Governor as President, nine appointed by Her Majesty and eight elected by the electorate of Malta. I need hardly point out that as the official members were always in the majority it was very often difficult if not impossible that the elected members could make their will prevail. But in examining the importance of that concession one must not overlook the state of European politics one hundred years ago, the ferment prevailing in the neighbouring peninsula and the uncertainty of conditions throughout the Continent. Nevertheless the elected members had the means of ventilasting the grievance of their constituents and more particularly of the lower section of the Maltese community.

But the most important constitutional concession at that time was embodied in the dispatch of the then Secretary of State the Earl Grey sated 16th November, 1847 wherein the principles on which these Islands should be governed were set down.

An important concession was made in 1887 when the so called Knutsford Constitution was granted. The constitution took the name of the then Colonial Secretary Lord Knutsford. The elected members were in a decided majority and they had absolute power of purse for the

official members could not according to the Letters Patent even registry their votes on all money matters.

This form of Government had a relatively short life and it was evident from the very beginning that engineers were wanting who could make the legislative machinery work properly. The constitution suffered so many mutilations and it was so thoroughly truncated that at the end one deadlock followed another with such rapidity that it had ultimately to be withdrawn.

I need not go in detail through the subsequent constitution and the abstention policy followed by the then elected members because this is now old history and it would serve no useful purpose.

I come at once to the Letters Patent of 1921 when Self Government was for the first time established in these Islands. As I presume you are aware, that was a marked concession as it practically granted a quasi-Dominion status to the inhabitants of these Islands. The constitution established Two Houses of Parliament, namely, the Senate composed of 17 members and the Legislative Assembly consisting of 32 members. In the Senate two members represented the Church, two the professional classed, two the Chamber of Commerce, two the Nobility, and two the Trade Unions, the remaining seven being returned by the Special electors. In the Legislative Assembly the 32 members represented the General electors on a quasi-universal male suffrage.

The defects in the constitution itself and the mistakes perpetrated by the political parties, into which it would be both impolite and useless to enquire, brought about the destruction of the Constitution itself. Nevertheless they would serve as example regarding the working of the future form of government which His Majesty's Government has promised to grant to the people of Malta as soon as the war is over and some of the post-war problems have been settled.

That Constitution is technically styled as 'hierarchical', that is to say, there was the Imperial Government at the head of which the King's representative presided, being ultimately responsible towards the Crown for the security of the Fortress and there was the Civil Government entrusted to the representatives of the people who had a real and efficient control over all money votes, appointment of Civil Servants, alienation of public property and the administration in general.

The stumbling-block was the line of demarcation between Imperial and local interests which the Letters patent tried to define but which they failed to do. The consequence was constant clashes between the Imperial and the Civil Governments—A series of law suits ensuing.

There is no doubt that according to the spirit of the Constitution as originally granted the idea of the legislator was that except in extraordinary cases when Imperial interests were in jeopardy the will of the people was to prevail. Unfortunately through a series of misunderstandings it was in several instances difficult to compose the difficulties of the two interested parties and either through want of foresight or stunnomness of one or of the other party deadlocks were reached.

But the main and, I hope I may be allowed to state, the principle cause of the destruction of the constitution, was the want of fair play on the part of the political parties themselves and total absence of reciprocal toleration which reached its climax in 1930.

A liberal constitution undoubtedly grants immense power to the party enjoying a majority in the legislative Assembly which is responsible for the doing and undoing of ministries but it

would be a grievous mistake if such powers were to be used to the extent of suffocating all reasonable opposition.

The situation becomes more acute, when the Senate goes beyond its power rendering the Constitution unworkable. The Senate is intended everywhere as an Upper House or Review and never as a means of propping up a weak and unsteady Government.

The Assembly is the direct and immediate emanation of the people whose will must prevail, especially as regards the expenditure of public money. It is the body politic that has the power of the purse.

On the other hand the Senate is calculated to control all hasty legislation and to see that a House of Representatives which may happen to be composed of rash and unthinking people should not succeed in placing on the statute book legislative enactments which might in the ling run prove deleterious to the best principles of the community in general.

For obvious reasons I am referring to these matters and to a relatively recent period of the constitutional history of these Islands is m a very generic way, because I wish to have it clearly understood that I have not the least desire to re-open past quarrelling. But I am simply referring to them as they will serve as an illusion of past mistakes with a view to their not being repeated as such a thing might render nugatory the promised constitutional liberties.

To my mind the future constitution should be composed of two Chambers, the Upper House to represent the vested rights of the Upper classes as well as duly constituted working classes. Its members should have reached a certain age when judgment is ripe and experience offers a guarantee of prudence and moderation. All interested sections of the community ought to be represented therein.

The Lower House should be elected on a universal male suffrage without distinction to knowledge or economic conditions. Before the appointment of the Royal Commission in 1932 persons sentenced to imprisonment with hard labour were not entitled to be registered as electors even after that they had served their sentence. The Royal Commission recommended that the principle obtaining in England, to the effect, that after the person concerned had served its sentence he may be registered as voter, should be established in Malta and the disqualification regarding character should be done away with. I strongly believe that a system which has worked satisfactorily in Great Britain should likewise apply to Malta and that the recommendation of the Royal Commission should be adopted in the future Constitution.

A Congress is being appointed for the purpose of preparing a draft of the Constitution to be submitted to the Colonial Office. Delegations are being sent and I am strongly of opinion that the University students as a body should be represented on the Congress. No other section of University students is more competent to take part in the discussions and deliberations of the Congress than students attending the Law Courses and I am sure that you will not fail to press your claims and to send representatives. Several are the questions of a controversial nature that will have to be discussed, foremost amongst which is the system which is to be adopted for the general and partial elections. Proportional representation by the single transferable vote was imposed on the people pf Malta in 1921 and it has remained in operation for twelve years, none of the parties ever tried to do away with it, for I am of opinion that although it is not a perfect system, nevertheless, it is the most scientific that has up to now been excogitated by the human mind.

I remember that during the first elections of 1921, Mr. Humphreys, Secretary of the British Proportional Society came over to Malta to see how it would work. In a conversation I had with him I pointed out that the University had refused to adopt it with regard to the election of

the two representatives of the Professional Classes and his reply was that he was not at all surprised, because all Universities, including those of the United Kingdom, were pre-eminently conservative. It is a fact that proportional representation cannot gauge public opinion during the lifetime of the legislature as to popularity or otherwise of the party in office, in so far as no partial elections in the true sense of the word are held. At the same time it secures a guarantee to minorities to have their views represented.

Another question which will have to be settled before Self-Government is re-established refers to female suffrage which has now been established on sound lines in England. There is no doubt that a majority of the Maltese women are not sufficiently instructed in political matters and it would be dangerous to give them the franchise; nevertheless, a considerable number of Maltese ladies, both by reason of their attainments of the interest they have in the proper working of the Constitution on account of their being landed owners, should be given the opportunity of taking a more direct activity in the well-being of the community. A fairly large number of young ladies who have succeeded in getting their degrees in our Alma mater and who are still pursuing their studies, shows that brains amongst the fair sex are not wanting.

In a properly organized Society the powers of the State are divided into three sections : the Executive, the Legislative and the Judiciary. The principles which govern each sphere of activity of the three powers were Sir Thomas Maitland assumed the Governorship of these Islands. Any encroachment of one power within the sphere of any of the two other powers would bring about confusion and misgovernment. It is one of the glories of the Maltese race that the Judiciary has been known for its independence and loftiness of character and it is imperative that the absolute independence of the judiciary should be maintained and that the emoluments of the Members of the Bench should not be subject to any political influence or interference. In other countries the validity of the elections is entrusted to the Chambers themselves where party spirits are high and impartiality is difficult to secure. In so small a place like Malta it is sound that any question which might arise regarding the legality of elections as well as the validity of laws to enacted by future legislatures should remain within the purview of His Majesty's Civil Courts.

Another question intimately connected with the three powers of the State refers to the appointment of His Majesty's Judges. Under the Constitution of 1921 as originally granted, the right of appointing Judges was vested in the Governor on the advice of his Ministers. In virtue of the Malta Constitution Act passed by the Imperial Parliament in 1932 this right was denied to Ministries. It is a matter of serious consideration whether the old system obtaining in 1921 should be reintroduced or otherwise. On the one hand the appointment of Judges by His Majesty the King offers a sound security regarding the efficiency of persons to be selected, while on the other hand such a system might in the long run be an obstacle to members of the legal profession of outstanding capabilities from participating in local politics, as they might labour under the impression that political considerations might be an obstacle to their elevation to the Bench.

In virtue of the Act of the Imperial Parliament to which I have just referred, the Department of Police was declared to be a reserved matter and, therefore, beyond the jurisdiction of the Ministry. In coming to a decision on this matter one must proceed with the greatest circumspection and the question offers food for much thought and reflection. Whatever may be the ultimate decision, to my mind, the Chief of Police should not be an easy instrument in the bands of any capricious Minister of Justice but should be responsible to a higher authority as the Police ought not to be an instrument of revenge or of political intrigue.

Unless free opportunity is given to the public to ventilate their views in a free and unfettered press and unless they are of public meetings, no election can be conducted on a sound basis and therefore it is imperative that full opportunity be given for the holding of public meetings. Experience has shown that opposite parties have invariably been intolerant of what exponents of public opinion have to say and many a public meeting has been frustrated through organized opposition. This is regrettable in the extreme for the spirit which should animate our public meeting if the future Constitution is to work harmoniously, should be that of reciprocal toleration.

You will perhaps at some future date remember the words of a man who is past his past his fifties and who has nothing to hope for . Prior to the withdrawal of the Knutsford Constitution when the then elected members had indulged in systematically rejecting money votes which were considered to be absolutely necessary for the conduct of the administration the then governor Lord Grenfell called upon Sir Philip Sciberras who was justly considered as one of the leading citizens of that time, although he was not an elected member, and asked him to warn the representatives of the people that the Constitution did not belong to them, but that they were the trustees of that precious liberal institution. The Governor added that it was their duty to hand it to future generation as a sacred heirloom. I tell you the same thing today. Possibly rash and ill-advised people might at some time take steps leading to the Constitution being threatened. You will remember that a second chance is being given to the people of Malta to govern their own affairs and to shape their own destinies. It will be your duty to do your level best with a view to securing the proper working of the Constitution and to safeguard so liberal an establishment.

I have started this lecture by stating that, as soon as you receive your degree and leave the University benches, you will be called upon to register your votes in the forthcoming elections. As His Excellency the Governor stated in his speech when the Degree of LL.D. was conferred on him, much more is expected from you. You will be leaders of public opinion, for the future welfare of your fellow countrymen mainly depends on your activities. Gentlemen, it is not a right but a duty on your part to take an active part in politics and to help in the proper working of the future constitution. A unique chance is given to the inhabitants of these Islands to govern themselves. Experience elsewhere has shown that seventy-five per cent, of all constituted bodies belong to the legal community which is the best suited to participate in public affairs both by reason of its knowledge and of the gift of the cap.

In doing so, look back at the past constitutional history of Malta, try to learn from the mistakes committed, so that the will not be repeated. Be indulgent towards your adversaries. Remember that under Self-Government. His Majesty's Opposition is as important as His Majesty's Government, for the opposition may at any moment be called up by the King's Representative to form the Government of the Island and to have the destinies of the whole population entrusted to it.

But, over and above all, remember that Malta's most important feature is that Malta is a Fortress of the highest importance, as the present war has shown, and that it is a great bulwark in the great chain of Imperial defence. Remember that it is the generosity of a great democratic and liberal Government that can permit of autonomy being given to a small island with few resources, surrounded everywhere by enemies whose aim, the present war has shown, is that of destroying the Great Empire of which we are proud to form part.

FORESEEN AND UNFORESEEN DAMAGES

(By Paul Mallia, B.A.)

IT is a rule of law that obligations lawfully entered into by the parties must be performed with good faith (art. 699). It sometimes happens, unfortunately, that such obligations are not performed. The first effect of such non-performance is " enforcement"; but the Court cannot always enforce an obligation; it is a well-known maxim of law that *nemo precise cogi potest esse ad factum.* In many cases all that can possibly be done by the Court is to give money compensation, i.e. to order a payment which shall put the plaintiff in the same financial position as if the duty had been fulfilled or the wrong not committed. And here we come to the second effect of the non-performance of obligation, namely liability for damages on the part of the debtor.

If such non-performance, however, is due to irresistible force or a fortuitous event, the debtor cannot be made liable for damages for *res debita creditori.* Unless the debtor is in delay since *mora perpetuat obligationem* and has the effect of transferring the risk and peril of the thing from the creditor to the debtor. Failing such "casus", "the person, who has contracted an obligation is bound, if he does not fulfill it, to make good the damages"(art.831).

Art.842 lays down : "The debtor is liable only to such damages as were, or might have been, foreseen at the time of the obligation, unless the non-performance of the obligation proceeds from fraud on his part."

Art.843 lays down that "in cases where the non-performance of an obligation proceeds from fraud on the part of the debtor, damages relative to the loss sustained by the creditor and to the profit of which he has been deprived, are not to exceed that which is the immediate and direct consequence of the non-performance of the obligation.

Art. 842 distinguishes between foreseen and unforeseen damages, and lays down that a debtor who negligently does not fulfill his obligation is liable for those damages which were or might have been foreseen at the time he entered into the obligation. Now the question is asked whether such foresight refers in the case and origin of the damage or to the quantity of the damage actually suffered. Until lately it was held that such foresight referred to the cause and origin of the damage; once the cause of the damage was, or could have been foreseen at the time of the obligation, the debtor was responsible in case of negligent non-performance to the whole amount of the damage resulting from such non-performance. Thus a Railway Company was held responsible for the loss of parcels lost through the negligence of its employees not withstanding that the actual amount of the damage could not possibly have been foreseen . however, in 1924, the French Courts decided that the foresight referred to the extent and actual amount of the damage suffered and not to its cause and origin. This seems rather illogical since such decisions tend to equalize the responsibility of a debtor who acted negligently with that of a debtor whose non-performance proceeds from fraud, for by art.843 the fraudulent debtor is responsible for the actual amount of the damage suffered by the creditor provided such amount of damages does not exceed that which is the immediate and direct consequence of the non-performance of the obligation, which damage can always be foreseen, even if such damage is not or cannot be foreseen at the time he enters into the obligation.

It is only logical that some sort of difference should exist and that the responsibility for damages in case of fraud should be stricter than the responsibility in case of negligence, since in case of *dolus,* the liability for the damages does not simply arise from the non-performance of the obligation, but it also raised *ex delicto.*

To sum up we may therefore say that in case of negligence the debtor is liable to the damage whose *cause* he foresaw or could have foreseen at the time of entering into the obligation, while in case of *dolus* he is liable to the whole damage which is the immediate and direct consequence of the non-performance of the obligation irrespective of whether such damage was or could have been foreseen at the time of concluding the obligation.

The question is now asked what is meant by the word "foreseen"? Foreseen damage is that damage which any other person (i.e. other than the creditor) would have suffered in the circumstances : *damnum communiter incursum, lucrum communiter cessans, id est atque uni vel alteri ejusdem conditionis contingens;* it is, in one word, common or intrinsic damage; such extraordinary damage cannot in any way be responsible foreseen. This distinction between common and particular damages is debatable for, as Demoulin says, all damage is particular to the particular person who suffers it. Pothier , on the other hand, holds that in sale, for example, the contracting parties are not liable to every kind of damage possible, but only to those damages which are closely connected with the thing itself i.e. the intrinsic or common damages.

An example will illustrate this better: A sells B an immovable for £1,000. B carries out necessary and useful repairs; establishes a business; and is able to acquire good will from the inhabitants of the town in which the immovable is situated. Independently, however, of such business, the value of the house has increased considerably owing to the opening of new street just in front of it. After 2 years or so, it is found out that A was not the real owner, and since *nemo plus iuris ad alium transferre*, B suffers eviction. What damages is the seller in this case bound to make good?

According to the distinction we referred to above, the seller is bound only for the intrinsic damages i.e. those damages which are closely connected with the immovable sold. Thus A is to reimburse B for the necessary and useful repairs carried out, for the rents paid, for the costs of contract, and also for the accidental increase of value of the house due to the opening of the new street; but he is not bound to make good the loss of the has nothing to do with the immovable itself but is peculiar to the not intrinsically connected with the immovable itself. Here however lies the difficulty : all damages suffered are either closely or remotely connected with the thing itself. The only help that is offered us in this case is to distinguish between common and good will acquired by b in his business, since such food will is peculiar damages. The good will acquired by B in his business particular use made of the house by B. it is needless to say, however, that A would also be liable for the loss of such good will if the establishment of the business was a clause in the contract of sale.

Damages are part of the system of remedies which the Law sanctions for safeguarding the performance of obligations lawfully entered into by the parties thereto—they are in fact its most complicated part. It is no doubt true that in most cases they are not applied. – People are getting more and more conscious of their duty to obey the Law and to execute faithfully all

obligations entered into freely by themselves and we may hope that the system of damages will in the future fall in the background. The existence of such remedies, however, is essential to the working of the social system as men are now constituted. We may hope, indeed, that we are progressing towards a time when the element of compulsion in Law will not be indispensable. But we have not yet reached it; until that time is reached the system of damages will continue to play its important role in Civil as well as in Commercial Law.

THE IMPORTANCE OF THE LEGAL PROFESSION

(A lecture delivered by the Hon.Mr. Justice Prof. E. Ganado, LL.D)

BEFORE I take up the subject I have chosen, allow me to offer you my congratulations for the creation of this Society which will give you an opportunity to study many important legal questions and to become familiar with the art of talking. This is indeed a real art because there are modes and modes in which one may deal with difficult cases ; you now have a chance of getting used to talking in public— a thing which will prove of immense help when one day the gates of the University will have to stand ajar and behold you about to enter a much wider sphere : the legal profession. It will not be necessary for you then to start learning how to make public speeches, because this Society will, I hope, afford you a chance for training yourself in elocution. I, therefore, wish you every success and I hope that when you bid adieu to this your Alma Mater, you come in a healthy and active condition.

The orbit of the subject under review is very wide. I am not going to discuss any question of law and I am doing this because I deem it to be of capital importance for you to become spiritually united with our profession— that profession which is the goal of your studies, which is equivalent to your very lives and to which upon must exclusively and wholeheartedly devote yourselves. You must, therefore, become familiar with the spirit of your profession, because otherwise you will feel alien to it, ever-diffident and restless. The knowledge of its secrets and of its glorious attributes will prove to be the keystone of the arch of your lives, because it will procure your ideal happiness; the opposite attitude of indifference will some day or other ripen into contempt of your profession ; you will be always looking for respite in other quarters and maybe in other spheres of life. Then your profession will loathe you and your state will savour of the most abject misery. The end will certainly not be bright and this "lame and impotent conclusion" will only be due to your not having tried to know this noble profession well. It is with this purpose at the back of my mind that I am now going to try to give you glimpses of the vast subject: "The importance of the legal profession."

It is well-known that in the early days of Greek civilization there were great orators like Demosthenes, Lysias and Pericles who, in their bursts of eloquence, stood up for the weak and the oppressed. They were not well-read in the legal science and as a result they very often appealed to the Judges' hearts rather than to their minds, trying to influence them by their admirable fecundity. It is said that during the speech in defence of the girl Frine, a great orator tore her veil away so that the girl's beauty might—at least as he believed— envelop the Judges' hearts in a dense cloud of compassion. As you see, these thoughts sprung out of the unrestrained rhetoric of old and they certainly would not even be dreamt of by a respectable modern barrister.

In Rome many patricians, after having attended court for some time and learnt the art of oratory, statted defending not only their clients but also the population in general, thus elevating their office to the dignity of a real profession. Even here we find orators, of world-wide fame, who were not lawyers ; I may mention Cicero and Quintillian some of whose works I am sure you have all read. The jurists at first refrained from doing other work save that of advising their relatives and friends. The pontiff Coruncianus testifies to the great number of people who sough for his advice. It is true that practice makes perfect and it happened that

after the lapse of some time the orators found out that they required the aid of jurists, at least as regards the purely technical points, and it was only up to them to explain the matter clearly and elegantly, making a case for their clients in very vivid colours and in the manner they thought best according to their art.

But when the old ideas of absolute distinctions between patricians and plebeians began to lose ground, the legal profession became open to all and we find the orator who is also the lawyer. It suffices to mention the names of Scaevola and Crassus in order to have an idea of the profound respect which was inspired by our noble profession in all classes of the population. The Diges itself devotes several titles to the subject under review—a fact that adorns the legal profession immeasurably more than any words of mine can do. The Roman Emperors conferred the *lofty ius respondendi* on several eminent jurists and in general their answers possessed the force and authority of law. Hence the names of Papinianus, of Gaius, of Paulus and of many others have come down to us embedded in a sea of everlasting glory.

Learned men in several countries started following the Roman example and from Rome. Our profession was diffused into every country. Although it suffered seriously as a result of invasion by the barbarian forces, it emerged from the ruins as vigorous as it was before. For whole centuries there was a constant universal inclination to turn to the wise men learned in the law of different countries enjoy world-wide celebrity up to this very day. In England, in France, in Italy, in Belgium, in Austria, in Germany, in the U. S.A and in other countries we find lawyers whose very names are brilliant stars in the world's legal history. In the United Kingdom we find men like Thomas More, Francis Bacon, Edward Coke, Erskine, May, Pitt, Brougham, Gratten and O`Connel, who in their work at law-making and in their forensic orations awaken the memory of the old Roman jurists.

Here in Malta the legal profession is a very ancient institution; it existed during several dominations and in 1782, when the knights of St John were still the ruling power, the barristers became united in a *Collegium* enjoying certain high privileges and honours conferred upon it by the Grand Master. Sir Antonio Micallef, President of the supreme Tribunal and one of our best jurists, in his commentary on the Code de Rohan explains the law relating to the *Collegium* of barristers, which was set up conjointly with the "Supremo Magistrato di Giustizia". Nowadays, as you know, the Chamber of Advocates has as one of its highest aims the maintenance of the prestige of the Bar. And its President possesses special attributes according to law.

Our profession has at all times inspired the greatest respect in all classes of the community. From the days of the Roman Republic the Jurists have in the main received nothing but esteem and reverence on account of their learning and wisdom in advising the people and the State itself. It suffices to mention what the Emperors Leo and Antonius said: *Advocati, qui dirimunt ambigua fata causarum suaeque defensionis* viribus in *rebus publicis ac privatis lapsa eriguant fatigata reparant, non minus provident humano generi quam si praeliis atque vulneribus patriam parantesque salvarent. Nec anim solos nostro imperio militare credimus illos, qui gladiis, clypeis et thoracibus nituntur, sed etiam advocatos: militant namque laborantium spem, vitam et posteros defundunt.*

Yes our profession is indeed noble, because it requires the *vir bonus juris et dicendi peritus*. According to the sparkling language of the French writer Gibault, it requires profound knowledge both of law and of literature, and the greatest experience in the practical affairs of life. It is noble because its goal is the thing most noble and precious upon the earth; and that is Justice. It is noble because it tends to procure fair and proportionate distribution between men:

every person according to his right: ius suum cuique tribuere; its practical role lies in defending the citizen by keeping his right inviolate and vindicating them if they are abused. It may be that his name had to suffer the darkest obloquy and the most vexatious traducement; it may be that his very life has been threatened and his peace of mind fundamentally jeopardized. In all these causes may I ask who is the good Samaritan: to whom does the poor battered citizen turn with suppliant eyes?

It is noble because the defence of Justice is not procured by means of crude force; it is not the powerful who prevail or the weak who succumb. Our profession does not provide the barrister with machine-guns or torpedoes but it supplies him weapons of moral worth more persuasive and in conformity with the loftiness of the intellectual nature of man. We have at our disposal the general principles of moral and juridical import which are the basis of the whole legal system. When a person is aware that what he has gained is due to his efforts, does he not feel happy, satisfied and spiritually calm? Can one ever imagine the same degree of satisfaction, when the object of one's desire has been gained by sheer weight of power, by vexatious, deceitful or malicious means? An animal, it is true, can harbour within itself that sort of satisfaction, when it stands triumphant over its prey; but man cannot even experience that animal glory because, if it is born, it is immediately suffocated by the voice of his conscience.

When one day you will have succeeded in unfolding the reality of your client's claims or the truthfulness of his assertions; when by means of juridical argumentation you will have unveiled the unfounded pretensions of your adversary, his fraudulent devices, his negligence or his malice, you will then certainly feel yourselves conjoined with the real glory of our profession. You will then perceive how deep was the insight of the ancients, when they said: Blessed is the country in which the legal profession is active, flourishing and free and in which the Judicial Bench is impartial and independent of any interference.

Our profession is noble because it is free and it must needs be free because it is noble. It was the greatest of truths that the head of the Chancellors of France D'Aguesseau expressed, when he said that the lawyer sacrifices himself for the common weal but he does not become its slave. He protects the interests, the honour, the very lives of his brethren. He devotes himself to the services of others; he is a real servant of the public, but still he preserves intact his liberty and independence, because without such freedom he cannot perform his duties with dignity and respect. Henroin de Pansey with sculpteresque art says : the lawyer is free from the chains which fetter all other men :too proud to have protectors ; to modest to call himself 'protector'-without slaves and without masters ; he reproduces man in his primitive dignity, if such a man can be found upon the earth.

Napoleon I in his Decree given in 1810 eulogizes our profession in so far as it is based upon consummate probity and disinterestedness upon the love of truth and peace, and upon a noble ardor for defending the weak and the oppressed. Its aim is truth itself-real, not apparent truth-that truth which is justice image and therefore its way is delicate and noble, because once its aim is reached, we have truth and justice incarnate. Hence it is no surprise that the aforementioned Chancellor of France has left a dictum that redounds to the honour of our glorious profession: "The order of barristers is as ancient as the Bench, as noble as virtue, as necessary as Justice"

The individual, the family, the state—all require the aid of the members of the legal caste. Try to imagine the wan image of a person brought to the parish by the actions of fraudulent administrators or by the devices of the worshippers of the golden calf. He will remain fleeced

were it not for the ever-ready counsellor who after a through examination will be in a position to defend him. The evil-minded knaves will find their intricate plans laid waste and their malice made open to the world. Turn again your mind's eyes to another person, dishonoured, humiliated, upon the verge of dire despair. His frenzied mind cannot perceive a way how to disprove the most elaborate network of calumnious accusations which are made against him; his reputation is so starched with unite that all his observations are received with the profoundest contumely. To whom can he turn for help? It is only the barrister who can unravel the truth by penetrating through the hard shells of vice and make the world look at the poor man's actions in their true perspective. Then the scales will fall from the world's eyes, the mist will pass away, and the majesty of truths radiant light will then have away over men's hearts. Discord waxes into harmony; but is the actual effect of the work of a conscientious lawyer. It is only zeal, study, and a certain degree of savoir faire that the lawyer must have in order to be able to perform his high functions well. In many instances, it is true, his intervention may at first appear to be whetting the acrimony between the parties, but, believe me that is only a momentary blaze which will gradually give way to the pervading calm of the barristers influence.

Hence we may say that our profession is necessary for the well-being of society at large. It does not falter or in any way suffer a diminution in its efficacy when its adversary is a person on high standing either by birth, position, or wealth. On the contrary, it is on these occasions that it acquires golden merits by manifesting the independence and the integrity of its sons. I once read this anecdote in the biography of an eminent continental barrister: The lawyer was vindicating in his client's favour a very large estate which was in the possession of a young lady, who, whilst the case was going on, became engaged to him and in fact later on married him. The client felt full of confidence in his counsel's integrity and the barrister went on with his client's claim which he finally made good and the whole property passed out of the hands of his fiancée to his client's. It is true that this is a case savoring of heroism but nevertheless it reflects it reflects upon the integrity which the barrister should have.

J.L. Brierly says in his work on English Law: "One part of the lawyer's work, advocacy is often misjudged by the layman. An advocate is not insincere for he does not express any opinions of his own; it would be quite improper for him to do so. His duty is to present arguments, either as to the interpretation to be put on the facts that the witnesses have proved, or as to the principle of law under which they fall ; and if it is important, as it surely is, that before a case is decided, the court or the jury should be aware of all that can fairly be said on both sides, then his function is an essential part of the machinery of Justice."

The legal profession is likewise necessary for the good government of a country because, on the one hand, it is impossible for the governing body in a state to enact laws without the collaboration of jurists, and on the other, deep legal training is necessary for the good administration of Justice. It is not conceivable how man can doubt the necessity of laws in a modern state, as it is quite obvious that a pre-requisite to law-making is the knowledge of the general net-work of the law and especially of that branch which is ordinarily known as Science of Law or Jurisprudence. Otherwise the state would lack a coherent body of rules which can win golden opinions from all nations, thus forming the basis of its prestige abroad and which can be a sure guide or commercial, penal or constitutional. The body of laws would be an apt specimen of confusion in all its sublimity, adorned with the most wonderful obscurity, and it would be no less than the embodiment of disorder itself. The same may be said as regards the Courts of Justice. There is no need to make reference to their important function, because I

have no doubt that you are all aware of them. Both the gentlemen at the Bench and those at the Bar must needs be learned in the law, because it is not conceivable in modern times that the orator should find himself bound to recur to the lawyer, when a question of law arises. That belonged to the past and it does not appertain to the present. A Court which is not presided by a jurist will be lacking of one of its fundamental elements in applying the law.

Our profession reposes upon integrity and probity not upon covetousness for pelf. The lawyer must feel convinced of the good faith of his client and he must not accept to defend any person whom he knows to be in the wrong (except perhaps as regards cases of a criminal nature). His sole aim must be to advance his client's cause regardless of his own interests or of the client's desire to adopt a particular course, because the path of truth is one, and there are no by-roads. In fact, the legal advisor of old was not allowed to receive any pecuniary compensation because that was thought to lower the nobility of the profession. However, it was lately justly seen that the barrister has also a right to live, although he sacrifices himself for the sake of other people. The practitioner, however, must eschew from his mind every idea of gain; that will come in due course. We find in Halsbury's Laws of England (Sec. Edit. Vol. 2. No. 702) that "the employment of a barrister is a purely honorary one in the sense that it confers on him no legal right to remuneration for his services ; hence the remuneration of a barrister is called "honorarium" as opposed to "merces". He is to point out whether or at least a compromise effected. It is to point out whether or at least a compromise effected. It is up to him to examine all points of law and his only source of inspiration should be the lawfulness of the claim of his clients. Then will the lawyer be able to say that he is treading upon the path our noble predecessors followed. The Code de Rohan Lib. Cap. 40 par. V prescribed severe penalties against barrister who defended unjust suits. Although nothing is said in our laws of procedure there is no doubt that the same general principles obtain , because otherwise we would be at variance with the specific terms of the oath every barrister takes to perform his duties with the greatest honesty and exactness and to help the court in finding the truth. In a few words, he must be a good priest of Themia and perform his duties with the greatest scrupulosity.

There are three other qualities which are essential for our profession : sound knowledge of the law, deep study, and eloquence. It is obvious that a lawyer must have a profound knowledge of the law; a cursory one is inadequate. Your practical purpose in studying the various branches of the law is become doctors of this science and it would be absurd for anyone to pretend to become a Doctor of Law without being familiar with the fundamental principles of the law. All branches offer you fertile ground for intellectual speculation. There is no need of digging hurriedly or widely, but when you dig, dig deep; that is my counsel and that was the sound advice which such eminent jurists as Judge Paolo DeBono and Professor Giovanni Caruana gave us when we were young and it is their opinion that I am now transmitting to you. By now after three years of legal studies I should hope that everyone of you has had some glimpses of the vastness and richness of our science. More than two decades ago at a Graduation ceremony, while I was addressing students like you, I uttered words the truth of which experience has proved to me beyond a doubt. I told them that the day in which a person ends his University course is a really happy day—a day of heartfelt felicity ; but foolish is he who thinks that his studies are over. That day marks a beginning as much as it marks an end; it proclaims the completion of the foundation but it heralds hard days of toil. Attended by continuous and incessant study.

Yes, study is the motive power, the very heart which in its pulsations gives life to our profession. It is that factor underlying the whole organism and in its absence every sinew will wither away. Study must be our faithful companion, because our work is indefinite as much as the object at which it aims, i.e. Justice. The jurist whether as counsel or as Judge must devote serious attention to the particular case under review; and the examination of every single detail must be wholehearted, deep, and sure, because his purpose even as a barrister, is not deceit, but exactly the contrary : the precise truth in every case. Day by day the fire of life flickers, looming lower and lower but he must be unswerving to the end always remembering that *aliis serviendo consumor.* It may be that he is sometimes faced by ingratitude; but it does not matter : he ought not to be saddened or disheartened, once he has done his duty. Nothing weighs upon his conscience and no thanklessness of men can engender any sort of disquiet.

The French jurist La Brujere said : The barrister must not be confounded with the sacred orator, who having to deliver a certain number of sermons, prepares them with comfort, recites them by heart, powerful through his authority, without adversaries — which except for few modifications, he repeats with honour on more than one occasion. On the other hand, the barrister must speak often, always on serious questions, in front of Judges who may call him to order at any moment, in front of adversaries who do their utmost to interrupt him; he must always be ready with a reply, he must speak in public several times every day, before different courts on different matters. His house is not for him a haven of rest or an asylum against the importunities of his clients; but it is always open to those who go to tire him with their question and doubts.

He is their counselor, indeed a source of deep solace and consolation. To him alone do they resort in their days of anxiety and tribulation ; they reveal all their secrets, hopes and fears and eagerly gather the crumbs of comfort he may have succeeded to throw in their way. I admit that the practitioner must in these contingencies show a proverbial patience. Allow me to recall a particular case which occurred to me, naturally when I was practising at the Bar : a lady, who was of a rather hysterical turn used to pay me interminable visits at my office, always repeating her troubles an sorrows over and over again. When the case ended — and fortunately it had a bright conclusion — in thanking me she said . "I thank you most heartily for having had the patience of hearing my hysterical outbursts, but I assure you that I could not help it, because every time on leaving your office I felt calm and hopeful." The lawyer is protected from revealing anything which is said to him without his client's permission. In this singular privilege the nobility of our profession puts is thrown into relief; in fact, Art. 599 of the laws of Civil Procedure puts the barrister on equal terms with the priest who cannot be questioned as regards anything he has come to know in confession. The same privilege exists in other countries; we read in Halsbury's Laws of England that "the employment of counsel places him in a confidential position, and imposes upon him the duty not to communicate to any third person the information which has been confided to him as counsel, and not to use either such information or his position as counsel to his client's detriment. This duty continues after the relation of counsel and client has ceased."

Our profession demands, however, immense sacrifices. But do not be fainthearted for I am certain that you will look at difficulties straight in the face and your efforts will be crowned with success. When the young practitioners crosses the Rubicon he must work with all his might and during the first few years patience must necessarily be the back-bone of all his actions. Do not eye askance the slow rate in which work starts piling up. Work will initiate its journey with clipped wings sed vires adquirit eundo : it will surely come, it will ever be

gaining in momentum, on condition that you are honest and studious. The key to victory lies in consummate probity, in that brotherly love which makes one sacrifice oneself wholeheartedly for one's neighbour's good. Be always daunted by the reproving voice of your conscience and keep always present before your eyes the sad image of the barrister who bears no love for his profession and does what he does in quest of Mammon's fodder — always disconnected with his surroundings — dejected and honest lawyer is patient, confident of success, which some day or other will breathe upon him odes of rapture and satisfaction.

In life every beginning proves rather difficult; but after, say the first ten years which may be relatively hard, the intelligent, laborious, and honest practitioner, will receive compensation both in the quantity and quality of the work which is entrusted to him, merely as a result of his daily efforts to increase his practice through profound study. Yes, the upright and even-handed barrister will experience golden hours of immense bless when he beholds his adversary subjugated, his malice, his cunning, and dishonest plans laid bare before the Judges. In a few words, his previous efforts, when crowned with success, are moulded into a qusi tangible joy at seeing the good product of his toil and the effusion of thanks right from his client's heart.

It cannot be denied that there may be clients who are ungrateful and who deck their cold words with fiendlike thanklessness. It will sometimes prove painful to see such stark oblivion of kindness taking away over men's hearts with remarkable rapidity. Persons, whom one has bears one's own children, it is sad to say, are unmoved by anything which is done to them. And, perhaps, for some time the unrequited tenderness will make one think of ingratitude with the same pathetic poignancy of Lear when he said:

"Ingratitude thou marble-hearted fiend
More hideous when thou showest thee in a child
Than the sea-monster."

But one good lamb will overbalance all those insensible of benefits; pain will quickly vanish at the sight of the gratitude of others which will shine more resplendent and at the same time impart a deep sense of quiet and satisfaction. A great writer, Giuriati, says that he who thinks that the barrister does not experience such moments is giving clear proof that he has never felt the peace which pervades every quarter of the human frame when a person is conscious that real life has been given to his neighbour through his collaboration : yes, his very life, because he gives him back his lost liberty and his undermined honour; his life, because he purges away the misery in which his neighbour languished. An ordinary person can hardly imagine the satisfaction which arises within a lawyer's breast, when he succeeds in calling to order a powerful persecutor of mankind or a rogue who is an expert in the most abject villainies. In that lies at rock bottom the social importance of our profession. It constitutes an indomitable instrument at the disposal of the community in order to procure its purge from what is evil and unsound — not with blind arbitration, not with despotic force, but with tools more in conformity with the nobility of the Almighty's creation in the human personality.

I have already mentioned that Napoleon Bonaparte said that the legal profession was to be well spoken of, because it was directed towards the attainment of peace. In fact, the lawyer aims at Justice and at the revelation of truth, both of which partake of the very nature of peace and order and stand in strong antithesis to dissent. This wholly disproves what is sometimes nay often, said by the main in the street that woe to him who is led into the claws of the barristers, because he will certainly not remain untainted, owing to the penetration of some imaginary microbes from that pernicious and quasi-pestilential atmosphere. These suppositions are no more than foolish tales circulated to their disciples by the Solomons which

are found in plenty in every place. It is a dreary accusation disproved by the past and by daily happenings and it cannot but grate on the ear of every intelligent person.

In his works on English justice a writer says : "there is a deep-seated shrinking on the part of most people from coming in personal contact with the administration of the law... One of the commonest things... is to be told by dome of the respectable poor as a disgrace, while to be 'summonsed' is terrible."

This naturally led to ignorance of the law and to erroneous suppositions. The ideal upright lawyer (because, if he is dishonest, he is not worthy of the name, since it repels the very symptoms of dishonesty) will be able to appreciate to the full the absolute untruthfulness of this assertion; selfishness is excluded from his work; he labors with might and main for his client's sake. Nothing but peace, order, justice, is radiant before his eyes, because, I may say, a super-human probity pervades his min, his heart, his feelings, and all his doings.

He devotes his entire self to his client's benefit but he maintains and cannot but maintain his dignity and his respectability. We read in the Digest "De Postulando" *Quisque vult esse causidicus non idem in eodem negotio sit advocatus.* Indeed an admirable sentence because who almost become a party in the suit cannot possibly be the good barrister, since he would be degrading his profession. The lawyer must always be Themis' devoted follower; he is, as it were, a court official who is called upon by the state to help the Judges in deciding law-suits and in giving to every person his due in proper measure. Hence, he must at all times recall that the execution of his work does not stand in complicating matters, but rather in analyzing circumstances, in pointing out to the Court the real knot of the question, and in helping the Judges to unloosen it

Respect is Society's lifeline and ,since the barrister's work. Actually consist in repelling discord and in introducing absolute harmony in Society's smooth-going, it is very natural that he should do his very best to reproduce in his action, especially in his public life, Society's underlying factor, in order to avoid a clear contradiction in his work. Hence modesty and respect should be forces moulding his actions, his words, and all his dealings. His general demeanor should bear both in its inward and outward significance a deep sense of respect towards the members of the Bench and the senior members of the Bar.

Our profession, as I have already said, is essential for the government of a country. In fact, we generally see that many members of the legal profession take part in the political activities of a State. The reason is not far to find, because it is quite evident that, since law is life, their whole study is focused on the unfolding of man's nature and in what does the art of government consist, other than in the skilful handling of such a high degree of experience that he is in fact indispensable for the government of a country, because a good ruling body must always be composed of a country, because a good ruling body must always be composed of men who are in constant, familiar intercourse with the bulk of the population and not of men who always keep aloof from the man in the street.

Nevertheless, I must remark what an eminent writer says : our deity Themis; being more exacting than others, is vexed, if the lawyer, at least for the first few years of his career, does not devote himself completely and exclusively to her. The University student studies the radical principles of our science which he will bring to action when he starts upon his career of advocacy; every one of us has had to encounter difficulties in the first few years but had to encounter difficulties in the first few years but the greater the bastion to be surmounted, the more formidable should be the assault and the spirit driving it on, and in this way the young lawyer who wants to perform his duties well, must divert his attention and devote himself body

and soul to the study of the law, even in its minutest detail and to scrutinize cases in which he is briefed. Nothing must remain unaccomplished, because it is his foremost duty not to spare himself either through sheer laziness or perhaps through a sentiment of selfishness; egoistic tendencies will never lead to any good and especially in the barrater's case they will in due course effectively bar the road to success. His efforts, fraught with modesty and respect, will be at the root of his reputation with the judges, who will be in a position to admire his deep study both in his speeches and writings; with his adversaries who will be bound to admit his adamantine virility in the defence of his thesis; with his client who will be induced by his barrister's Herculean stand to praise and honour him; and with many on lookers who are spelled by the zeal of the young barrister whom, though unknown to them, they admire and praise.

Two other important branches of our profession are those pertaining to Notary Public and to the Legal Procurator. The same characteristics, *mutatis mutandis*, apply to those professions; however, there is a special and delicate one which refers to that of Notary Public, that is, the great trust the State reposed on the Notary; he must always be impartial with regard to both parties in receiving, formulating, and explaining their agreements, and in some legislations his functions are classified with those of a Magistrate.

Gentlemen, besides all these qualities, the Maltese barrister must possess another character without which he cannot but be led to erroneous conclusions in the interpretation of our laws. It is indeed of extreme glory to the name of our island-home that the Cross of Christ has dominated the hearts of our forefathers from time immemorial. The dogmas and teachings of the Roman Catholic Church pervade the whole system of our laws, and violence would be done to the provisions of the law were we to discard the sacred rules of morality and the teachings of our Holy Church in interrupting them. It is only armed with Faith and with the holy teachings of our Lord that the barrister can bring his efforts to fruition. It is only with these sacred doctrines at the back of his mind that he can adopt the correct theories of Science of Law and properly examine and solve many questions relating to the Criminal Laws and to various institutions of Civil Laws. If he does not keep them in sight he cannot but take an attitude, in respect of the law, which clashes with its spirit and which is at variance with the 'nward life of the nation. He will infect his work from the very start and mar his name with indelible shame.

Before concluding, I wish to ask you one question which I made over twenty years ago to the law students of the time, while I was addressing them, before I started the lectures on Roman Law. Do you bear deep love towards the study of the law and to our profession, of which, God willing, you will be members within a few years? Do you love them with that sincere, absorbing, rabid love which will be of sufficient strength to make you overpower the anxieties and obstacles which you will some day will some day or other have to encounter? I am sure you do; this love, then, will be a source of courage to you, because it will impart a peaceful spirit of perseverance and of hope in the future; It will evoke within you noble ardor for the legal science which will retain its full strength or increase intensity during the whole course of your lives. *Nihil studi reliquens quod sibi possible* est—study must be the rule of your lives. Remember always that you must be true to your forefathers who have delivered to you a legal system and tradition which redounds to the glory of Malta's name and whose very names should inspire in you deep reverence and veneration. They have acquired perennial fame through their talents and profound legal knowledge and through their religiosity; the have shown us that the Maltese lawyer can reach the heights at attained by the great jurists of other

nations; small are our land's dimensions but the legal knowledge and the acumen of these luminaries of the Bench and Bar were definitely not small. You will be able to appreciate the veracity of my words. When you read their judgments or writings. Certainly their works will prove of great help to you. Because they impart of sense of their personalities and in this manner you will have the necessary have the spiritual power to be able to make a good name for yourselves. As they once did, and you will thus continue glorifying our Island which, I am happy to say. Has always been blessed with men deeply learnt in the law.

A NOTE ON UNNEUTRAL SERVICE

(BY Edwin Busuttil. B.A.)

THE term "unneutral service" is the official translation of the heading *"L'assistance hostile"*, which appears in the unratified Declaration of London [1]; and 'hostile assistance" is the more current expression on the Continent. Another term in use before the Declaration was "analogues of contraband" with which it was often confused. But it is now generally recognized that acts of unneautral service are different from the carriage of contraband. For one thing, destination is immaterial in cases of unneutral service. In the carriage of contraband unless a hostile destination is established[2] by the captor. Again, in unneutral service *direct* assistance is given to the enemy and consequently such service assumes a warlike character. Carriage of contraband, on the other hand, is properly a mercantile transaction and is no crime[3] against International Law though such contraband, if captured while the vessel is in *delicto*[4], is liable to confiscation by the Municipal Prize Courts of the captor.

Two different acts which are treated as unneutral are distinguished by the ungratified Declaration. One includes acts which render the vessel liable to the same treatment meted out to a neutral ship seized when carrying contraband; the other comprises acts which render the vessel liable to the same treatment applied to an enemy merchantman. In the *first* group come the following acts"

(1) The transportation of *individual* passengers who are "embodied in the armed forces" *("incorpores dans la force armee")* of the enemy by a neutral vessel when on a voyage undertaken solely for such taransport[5]. by Art.47. moreover, persons incorporated in the armed forces of the enemy found on board neutral merchantmen may be made prisoners of war even though it may be afterwards result that there is no ground for the capture of the vessel. Reservists are not considered as incorporated in the armed forces.

(2) The carriage of a military detachment of the enemy, by a vessel not however appropriated to that special task, if either the owner or the charterer or the matter is *aware* of such carriage[6].

(3) The carriage, to the knowledge of either the owner or the charterer or the master, "of one or more persons who in the course of the voyage directly assist the operations of the enemy" e.g. by signaling or a wireless message.

(4) The transmission of intelligence to the enemy by neutral vessel when of a voyage specially undertaken for such transmission include not only oral transmissions of intelligence but also transmissions of intelligence contained is dispatches.

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1. Chap. III, Arts. 45-47.
2. In theory only, for during the World War it often happened that national prize rules laid down certain presumptions which placed the bonus of contrary proof on the claimant.
3. Pyke (*The Law of Contraband*) and Hyde (*International Law chiefly as interpreted and applied by the United States*) do not accept this view.
4. In unneutral service the same rule applies, i.e. the vessel can be seized only so long as she is *in delicto.*
5. Art. 45 (2)
6. Art. 45 (1)

Falling within the *second* group, that is, that which imputes enemy character to neutral vessels are those cases:

(1) If a vessel takes a direct part in hostilities, for instance, assisting the enemy fleet during a naval engagement or assisting the enemy fleet in laying mine-lanes or signaling to enemy submarines the position of warships.

(2) If a vessel is sailing under the orders or control of an agent placed on board by the enemy Government. Such vessel is rightly regarded as forming part of the enemy's merchant marine.

(3) If a vessel is in the exclusive employment of the enemy Government.

(4) If a vessel is at the time exclusively engaged in the transport of enemy troops or in the transmission of intelligence to the enemy[7]. and here we must distinguish this case from that of a vessel[8] which is on a voyage especially for the transportation of individual passengers incorporated in the armed forces of the enemy or for the transmission of intelligence (oral or in dispatches) to the enemy.

So much for what the Declaration of London has to say on the matter. In effect the Declaration was never ratified and although it was adopted at the outbreak of the 1914-1918 war, it was subsequently abandoned by the Allies in a memorandum of July 7, 1916. The Allied Governments had come to the conclusion that the rules of the Declaration were no longer applicable having regard to the ever-changing conditions of modern warfare; they would thenceforward limit themselves to applying the customary and well-established rules of International Law. We shall now examine what these customary rules were in regard to the question of unneutral service and how far they were in regard to the questions of unneutral service and how far they were applied by the Prize Courts of the various countries before and during the World War.

A belligerent could confiscate a neutral vessel for assisting[9] the enemy in his operations. The most frequent cases that came up before the Prize Courts were those in which neutral ships were engaged in reprovisioning enemy warships. In the case of *La Bella Scutarina* the Italian Prize Commission confiscated on Albanian schooner for supplying enemy submarines with oil-fuel and for transmitting intelligence to the enemy. The French *Conseil des Prises* confiscated a neutral vessel, the *heina*, which was employed in carrying fuel and supplies to German warships operating in the Atlantic. Similar cases were those of the *Thor*, the *Pao-Hingl.i.e*, and the *Adephotis*.

Neutral vessels were liable to condemnation if they transmitted intelligence to the enemy. In the case of the *Iro-Maru* this rule was extended to include allied vessels. The *Iro-Maru* was a Japanese ship which was transporting an enemy agent carrying sealed papers, amongst which there were dispatches from Germany. The French *Conseil de Prises* condemned the vessel and the decision was later confirmed by the *Conseil d'Etat.* One exemption was admitted, however, to the above general rule. A neutral vessel might not be confiscated for carrying dispatches from the enemy Government to its diplomatic representatives in neutral countries, or, contrariwise, from

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7. Art. 46 (4)
8. Art. 46 (1) above, ion this "Note"
9. It is immaterial whether the assistance was rendered gratuitiously for hire

enemy diplomatic agents in, neutral countries to the enemy Government. But, in the cases where the vessel had *actually* transmitted intelligence to the enemy, *bona fide* ignorance on the part of the master of the vessel was considered as no excuse. This view was supported by the Supreme Court of New South Wales in the case of the *Zambesi* following the decision of Sir William Scott in *the Orozembo*

A belligerent could also confiscate a neutral vessel captured for carriage of certain persons on behalf of the enemy[10]. The rules prevailing before the unratified Declaration of London included under the expression" certain persons" not only members of the armed forces but also enemy reservists. In the case of the *Federico* the French *Conseil des Prises* held that even persons who were on their way to join the armies were to be considered as embodied in the armed forces of the enemy. The *Conseil d'Etat* confirmed this decision, but the *Manuel des Lois de la Guerre Maritime* (adopted by the Institute of International Law) and the great majority of writers do not agree with this view.

In the singular case of the *Svithiod* the Privy Counsil refused to condemn a neutral vessel which, while sailing from one neutral port to another, had carried on board a German officer on the score that no adequate evidence was available. Lord Summer's explanation is worth quoting :

"Their Lordships are, of course, very fully impressed with the importance of the subject, with the high obligation service, particularly in view of the fact that the change in the circumstances under which maritime warfare is now carried on is so great since most of the cases relied upon were decided, on some proper occasion it might be necessary to define with very great accuracy the way in which well- known principles should be applied under modern conditions; but it is precisely because their Lordships are so impressed with the importance of the subject, with the high obligations which rest upon neutrals to refrain from all unneutral service, and with the gravity of that breach of duty, if it should occur, that they think it unnecessary, and therefore inexpedient and undesirable, to endeavor to decide any question of law in a case where, in their view, the captors have failed to lay any foundation in fact which would justify the investigation of so important a subject".

Finally the "topic of unneutral service" as applicable to aircraft. The British Prize Act. 1939 [11], provides that, subject to some slight exceptions[12], the law of prize shall apply in relation to aircraft and goods carried therein, as it applies in relation to ships and goods carried therein, and shall so apply, notwithstanding that the aircraft is on or over land. The Hague Air Warfare therein are subject to prize court proceedings in order that neutral claims may be duly heard and determined. The Italian War Regulations,1938, and the Scandinavian neutrality Rules, 1938, may be usefully examined.

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10. British Prize courts further confiscated that part of the cargo which belonged to the owner of the ship.

11. (2 and 3 geo. 6. cap. 65.s.1)

12. These are exceptions to the provisions of the Naval Prize Acst, 1864, the Prize. Courts (Procedure) Act, 1914, and the Prize Courts act, 1915. They refer to minor matters like joint capture and ransom.

DUTIES OF LAWYERS*

(A lecture delivered by the Hon. Mr. Justice W. Harding, B.Litt.,LL.D.)

THE lecturer began by stressing the point that he did not intend to lay down a rigid catalogue of does and donts ; he would merely express his personal views on the matter. His aim was twofold: to inculcate good counsel in the minds of law students and to impress upon them the high standards of the profession which it was their duty as potential lawyers to maintain.

There existed, however, an inveterate popular prejudice against the legal profession — a prejudice as impossible of explanation as the instinctive dislike of Dr. Fell in the old rhyme. Three charges seemed to be at the root of this profound prejudice.

In the first place it had been pointed out that advocates could not be sincere and honest man in their private life once, in the words of that mordant satirist Swift, they were men "bred up from their youth in the art of proving by words multiplied for the purpose that white is black and black is white." The answer to this charge was that in pleading a case an advocate was not stating his own opinions ; it was no part of his business, and he had no right to do so. What it was his business to do was to present to the Court all that could be said on behalf of his client's case, all that his client would have said for himself if he had possesses the requisite skill and knowledge. Outside the court a lawyer was paid for affecting warmth for his client, he was briefed to express his client's views, and therefore there was no dissimulation : the moment he left the Bar he resumed his usual behaviour.

A second charge was concerned with the law's delays. In that connection it was well to weigh carefully the words of Mr. Justice Eve : "The reputation of a Court of justice is built on the soundness of its judgments and not, as in the case of motor-cars, on tests for speed." The third charge related to the alleged mercenary character of his forensic triumphs. There was a repugnance in the popular mind to the idea of paid advocacy. People were too ready to accuse the lawyer of "selling his ingenuity to the highest bidder. That in a sense might be regarded as paying an involuntary tribute to the Bar for it recognized the fact that the advocate in exercising his profession was discharging a public duty which it would not be fitting to place upon a mere business footing.

After advocating the closest co-operation between the Bench and the Bar, and warning his listeners against the layman's pointed satire exemplified in Swift's definition of the Judges as those "who had long talked while others slept and now slept while other talked". The lecturer went on to lay down the following golden rules embodied in the Code of Louisiana supported by the New York Commissioners, and quoted by Jameson :

1. *To maintain the respect due to the Courts of Justice and judicial officers,* — Contempt of Court meant contempt of the Sovereign.

2. *To counsel or maintain such actions, proceeding or defences only as appear to him lawful and just, except in the case of a person charged with a public offence, i.e. a* crime.

3. *To employ such means only as are consistent with truth and never to seek to mislead the Judges by any artifice or false statement of fact or law.* — The Court was entitled to rely on counsel's not misleading it. With regard to a question of law, no water-tight rules existed, but

* Reported by Edwin Busuttil, B. A., and Paul Mallia, B.A.

Lord Birkenhead in *Glebe Sugar Refining Co. v. Greenoch Harbour Trustees* expressed the view that all authorities which bore one way or the other upon matters under debate should be brought to the attention of the Court by those who were aware of them, even if the particular authority did not assist the party who was aware of it.

4. *To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client.* — A lawyer secured client's confidence only in so far as he showed himself worthy of it.

5. *To abstain from all offensive personalities and to advance no fact prejudicial to the honour or reputation of a party or witness, unless required by the justice of the cause with which he is charged* .— He must not go too far in cross-examination and it was his duty to see that no man's good name was wantonly attacked.

6. *Not to encourage either the commencement or the continuance of an action from any motive of passion or interest.* — The advocate was a representative but not delegate. He gave to his client the benefit of his learning, his talents and his judgement, but he had no personal interest in the case. In the words of Lord Eldon : " The lawyer lends his exertions to all; he lends himself to none".

7. *Never to reject for any personal consideration the cause of the defencies or the oppressed* — the services of counsel were open to every member of the public alike for the Bar was, in the words of Maitre Moro Giafferi, " the bulwark of each citizen against the rage and violence of authority".

The lecturer then struck a new note. He emphasizes the fact that no one could possible be a good lawyer without being a good scholar. Intellectual attainments were of the utmost importance to lawyers. A lawyer must live a life of intellect; his studies must not end on his leaving the Alma Mater but must today than he knew yesterday. He must ever strive to know more today than he knew yesterday. He must make the legal profession a veritable " aristocracy of the brain." Lastly, a lawyer must possess that "indefinable something" which was best termed "gentleman". And the best equivalent to that word "gentleman" was given by Arthur Bryant in his book "English Saga"— "a Christian".

Mr. Justice Harding then reminded lawyers of the cardinal fact that every lawyer stood for a great tradition ; a priceless inheritance was bequeathed to every lawyer. A lawyer must have a proper conceit of himself as a member of a great profession and must bear in mind that, were it not for the Bar, our liberties and privileges would be very much less than at present. Te\two examples from the past, to which the lecturer referred, showed clearly enough the high esteem in which Maltese Judges, who after all were also lawyers, were held.

The lecturer ended up by urging the present Law Students to make use of the opportunity which would surely come their way in the days of post-war reconstruction (a word certainly not limited to buildings, though the lecturer suggested that the Law Courts should occupy a building more dignified and more worthy of the legal tradition than hitherto). Finally he echoed the words of a Canadian Prime Minister who exhorted his compatriots to devote to their country—their work, their arms, and their hearts.

MOOTS

SMITH vs. BUS COMPANY LTD.*

MR. SMITH was traveling by bus through a place which had a rather sinister reputation. Passengers were informed by public notices that the Bus Company Lts, did not take any responsibility for any harm which might be caused to their person or property. Owing to the gross negligence of the Company's employee stationed near a bridge coupled with the slight negligence of the driver, injuries of a serious character were caused to Mr. Smith. The gross negligence of the employee consisted in not having given warning of damage in the bridge and the slight negligence of the driver in not having asked for detailed information.

Mr. Smith is suing the Bus Company Ltd. for damages :

1. for the loss which be suffered for not having kept his appointment;
2. for the expense incurred in hospital;
3. for the loss which he will sustain since he has been maimed;

on the ground of the invalidity of the Company's declaration relating to its responsibility.

Professor V . Caruana , B.Litt., LL.D., kindly consented to hear the case.

Counsel for plaintiff : M. A. Pace, L.P. ; Mr. P. Mallia, B.A.

Counsel for defendant : Mr. J.A. Micallef;
Mr. E. G. Bonello, B.A.

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After having congratulated the students who had acted as counsel for their successful attempts to explain their respective contentions, Professor Caruana made some comments on the duties of a lawyers, especially as regards the honesty and integrity which should always be the leading stars in all his forensic activities. He then proceeded to the examination of the case under discussion.

A contract or a clause thereof could be agreed upon either expressly or tacitly and in this case it was as clear as ether that the agreement as regards mere transport had reached its conclusion ; however the question whether the responsibility clause had been agreed upon or not was not as clear as that the clause had been brought to the notice of the public by notices, the effect of which had always been the subject of prolonged controversies both in English and Continental laws. Professor Caruana did not think that a public notice was sufficient to impose conditions whioch were not customary and of which the general public was ordinarily unaware,. The necessity of the clause being " common knowledge" can be clearly inferred from Thompson v. L.M. & S. Railway Co. (1930). Consequently no agreement had been arrived at as regards that clause and therefore it was to be considered inexistent.

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* Reported by Joe M. Ganado, B.A.

However, Professor Caruana, "for argument's sake" went on to deal with the other question anent the clause's validity. Amongst legal writers the opinion prevailed that such clauses were altogether invalid owing to public welfare at large which demanded that no person could relieve himself of the responsibility imposed by law. And, apart from this, there was a still more convincing argument : a contract (if it may be so called) would be devoid of any binding element were we to recognize validity to clauses relieving the obligor of all responsibility in case of non-performance.

The Bus Company Ltd. was responsible for the acts of its employees, since the principles relating to contractual, not to delictual, liability were to be applied ; it followed that employees were to be considered as a mere " longa manus" of the employer and this eschewed all questions relating to "culpo in eligendo".

Judgment was therefore given for the plaintiff, damages being awarded. As regards the nature of the damages claimed, Professor Caruana said that No(1) had evoked considerable discussion and not without cause : he thought the claim was also in this point well based at law, if Mr. Smith's transaction had reached its final stages and would have been completed at the meeting, since it was correct, as Planiol et Ripert said, to hold that the distinction between foreseen and unforeseen damages referred to the quantity of the damages rather than to their cause.

LINCOLN vs AZZOPARDI *

MR. Azzopardi, a Maltese merchant trading in Malta, offered Mr. Lincoln, a Tunisian merchant, 500 tons of coal for sale ; he also offered to carry the coal from Minorca, Balearic Isles, to Tunis. "Inter alia" in his letter he said : "Any answer must reach me by the 22nd February,1944 : I will not consider an answer received after sate date .... I am leaving Malta within a few days and shall not be back before the 15th February, so that you are completely at your ease almost up to that date." Mr. Lincoln accepted the offer and his registered letter of acceptance which was posted on the 4th February arrived at Mr. Azzopardi's office on the 6th. On the 8th Mr.Azzopardi sent an unregistered letter from Tripoli withdrawing his offer to economic and other considerations "saving all contracts which have been already stipulated". On the 20th Mr. Lincolnsold the coal to a third person and on the latter's suit he was condemned £500 damages for non-performance by a Tunisian Court.

Mr. Lincoln is suing Mr. Azzopardi in a Maltese court :

1. for the performance of the contract and for payment of £500 damages (v.judgement of the High Court of Tunis) ; or

2 .subordinately for payment of £300 damages as "lucrum cessans", besides £500 damages as above on the following grounds:—

a) that the law to be applied is the law of Tunis ;

b) that damages are due according to Art.252 of the Commercial code of Tunis;

c) that as regards performance the contract became complete on the 6th February, date of receipt of the acceptance and hence the withdrawal of the offer was of no effect ;

d) Subsidiary, if the law of Malta were applicable, the offer found not be withdrawn, because the contract became perfect on the 6th February. As regards damages, they are always due by the defendant for his not having registered for his not having registered the letter of the 8th

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N.B. — Art.252 of the Commercial Code of Tunis reads as follows : "The offeror may withdraw his offer in all cases, except when the contrary has been declared by public act, subject to the payment of damages." The law if Tunis is similar to the law of Malta in all other respects. The law in force at Minorca is in conformity with the law of Malta except as regards the law enacted in Malta on the 15th February,1944.

Sir Philip Pullicino, Kt.. B.Litt.,D.,kindly consented to hear the case.
Counsel for plaintiff : Mr. Pullicino ; Mr E. Mizzi, B.A.
Counsel for defendant : Mr. A. Calleja, B.A.;
Mr. C. Schembri

* * *

Sir Philip Pullicino explained that in this contract the rules relating to contracts "inter absentes" were applicable. The words quoted from Mr. Azzopardi's letter did not give one to understand that the right to withdraw the offer had been given up ; if he had expressly bound

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* Reported by Joe M . Ganado, B.A.

himself to leave the offer open up to a certain date, there would have been no doubt, but in this case no such words were used and the mere establishment of a time limit could not be interpreted in a way as to imply the renunciation of the right to withdraw the offer.

Sir Philip then proceeded to determine the general principles regulating contracts "inter absents". One must proceed by analogy with contracts "inter presents", he said, and, if one did so, one was sure to come to the conclusion that the knowledge of the acceptance on the part of the offeror was essential before the contract could be perfect. This was admirably illustrated by two cases i.e., by a judgment of the Court of Appeal, Malta, in re "Sammut vs. Gatt" 1.4.87. VolXI.p.290, and, by an example quoted from Merlin (repertoire v. Vente). In a few words this was the example : A. a deaf man, made an offer to B who replied in the affirmative ; but A was unable to catch the answer and pen, ink and paper had to be fetched. During the short interval which elapsed B changed his mind and wrote a curt refusal on the paper. Merlin rightly opined that the contract had not been completed by the previous oral declaration, because the offer never became cognizant of it. For the completion of a contract there had to be the union of the respective wills of the parties having regard to an identical object and manifested at the same time.

In this case, however, although it was ascertained that Mr. Azzopardi was unaware of the acceptance, Sir Philip thought that it was not reasonable to suppose that his business stopped on his departure but rather it was to be presumed that he had left his representatives at his office to carry on his normal business in Malta. We must respect commercial customs, as otherwise commercial activities would seriously handicap. After reviewing the relevant incidents of the case, Sir Philip concluded by saying that the contract had been consummated on the 6th and hence no questions of Private International Law fell to be discussed and revocation of the offer on the 8th was altogether impossible. Even were we to take the hypothesis that the contract had not reached its perfection on the 6th, the letter of withdrawal would have been devoid of any effect on account of its not having ever reached its destination.

It was therefore held that the plaintiff's contentions were well founded. As regards the actual claims Sir Philip opined that either actual execution of the contract or damages could be sued for: the claim for both was inadmissible and hence the subordinate claim for damages i.e. Lm300 "lucrum cessans" and Lm500 (according to judgement of the High Court of Tunis) was allowed.