

Rayner

ADELAIDE UNIVERSITY LAW STUDENTS'
SOCIETY. *aug 2/23*

A meeting of the Adelaide University Law Students' Society was held at the University on Tuesday evening, when Mr. F. G. Hicks presided over a good attendance of members. The question for debate was:—"A instructs B, a land agent to procure a purchase of A's house (R.P.A. title) for £1,000. B takes C, a labourer, who has never dealt in houses, to see the house, and represents to him—(a) that if C purchases the house for £1,200, he (B) will guarantee to be able to sell it within two months for £1,400 cash, and that any smart land agent would be able to do so; (b) that he does not know, and cannot find out, what A paid for the house when it was transferred to him; (c) that in his (B's) opinion the place is worth easily £1,400; (d) that the value of the house properties in that district has been rising for two or three years past. All the representations are untrue, and known to B to be untrue, and are intended to deceive, and do deceive C. A paid £900 for the house, and the transfer at L.T.O. shows that; S signs a written contract agreeing to purchase the house for £1,200, and pays a deposit, settlement to take place three months later. B does not sell the place within two months for £1,400, and knew he would be unable to. After two months C repudiates the contract, and claims against A rescission and return of the deposit, alternatively damages." Counsel for the plaintiff C was Mr. C. C. Crump, and with him Mr. H. Leader, for A, M. L. T. Gunn, with M. M. Bednall. Mr. Crump and Mr. Leader contended that there was a guarantee by the agent, and it was fraudulent. The agent was acting within the scope of his employment. In support of this he cited *Udell v. Atherton*, *Mullins v. Miller*, and *Smith v. Chadwick*. They claimed rescission of contract and refund of deposit. Mr. Gunn and Mr. Bednall contended it was a case of special agency. The agent acted outside the scope of his authority. C could have ascertained the facts about the property by searching the title. Mr. Gunn distinguished the present case from that of *Mullins v. Miller*, and claimed that A was not affected by his agent's misrepresentations, and that C's only remedy was against the agent. Counsel having concluded, the matter was open for discussion, and the following spoke:—Messrs. Harry, Tucker, Brazil, Millhouse, Buttrose, Ohlstrom, and Harford. Counsel then replied. Mr. Hicks, in giving judgment, analyzed the positions of the respective parties. He referred to *Mullins v. Miller*, and *Lloyd v. Gray*, *Smith, Bellairs v. Tucker*, and *Ex Parte Burrell*. It taking the misrepresentations (a), (b), (c), and (d), he found that on (b) and (d) the plaintiff was entitled to claim that facts has been misrepresented, and that such facts were material to the transaction. He distinguished between an expression of opinion and a statement of fact. Judgment was entered for the plaintiff for a rescission of contract and the return of the deposit.