memory, 'a stubborn unlaid ghost' perhaps still offering 'ghostly counsel and advice'."

But it is not only in the field of criminal law that Sir Francis will be remembered. He was the complete lawyer equally proficient in all branches of the law. During his years on the Supreme Court Bench it fell to his lot on more than one occasion to deliver judgments on questions arising out of new legislation or modern developments in family law, equity and the law of contract for which there was no clear line of judicial precedent. He did not hesitate to venture beyond the stepping stones of previous decisions when by the logical extension of legal principle he could do justice between the parties seeking the judgment of the court. He has enriched our Law Reports by such enlightened judgments both in the Supreme Court and in the Court of Appeal—sometimes minority judgments—which have since been cited with approval both in our own Courts and in those of other Commonwealth countries.

Sir Francis was a scholarly man of strong principles instilled upon him by his upbringing; a man of integrity and unfailing courtesy. Although austere in outward appearance he had a lively sense of humour and a friendly disposition. His great love was the law and from his student days this devotion shaped his life. He himself once said "The Law is a stern mistress. She has worked me hard both at the Bar and on the Bench. But there are no regrets on that score and I would play the game again with her as my taskmistress."

W. F. Thomson.

Sir Francis in the Library

When Sir Francis Adams retired from the Supreme Court Bench in 1960 he occupied himself with legal writing. But in effect he merely moved from his chambers in the Supreme Court into the Law Society's library which he had used for so many years, as indeed his father had done before him. His entrenched figure became part of the library. As the years passed, he spent more and more time working on his massive second edition of *Criminal Law and Practice* and writing special articles on this subject, which seemed to engross his whole mind.

I enjoyed the privilege of lunching with him several days a week at "Aldersgate", opposite the Supreme Court, where many Judges, Magistrates and lawyers came to our table when visiting Christchurch. I mention this because it afforded me a unique opportunity of understanding something of his legal thinking, and his approach to legal problems generally. The following remarks are offered in all humility.

Sir Francis was an analytical positivist, in the loose sense that he was not fundamentally interested in concepts of natural law, or in comparative law or sociological jurisprudence. He looked almost exclusively to legislation and reported cases before committing his opinion to writing. He wrote in longhand, and considered very deeply everything he wrote. He examined all aspects of a problem and carefully tested and revised his drafts. Having made up his mind he could not be moved

from the opinion which he had then formed. This process was not that of one who was a slow thinker, or who suffered from indecision—it rested fundamentally upon a desire for thoroughness and complete impartiality, based on full study and understanding of authority.

We frequently discussed current legal problems, usually on the basis that I acted as Devil's advocate, a role which I readily assumed as I grew to understand his mind. His mental habit of dissent was partly perhaps a genetic inheritance, and was I think encouraged by his early nonconformist upbringing. To this was added a sound Scottish education in the University of Otago, where as a young man he met such eminent lawyers as Stout, Salmond and Sim, to mention only a few names which came up at times in his conversation.

The philosophical law of contradiction, first discovered by Parmenides, pervaded more or less unconsciously our discussions, arguments and probings. The propensity of Sir Francis to negate, or to adopt an attitude of sceptical neutrality, was frequently apparent in his later years, and is implicit in some of his judgments. His contradictory and at times inflexible mood must have annoyed and displeased some of those who sought to influence his thinking. His patience, his invariable courtesy and his complete integrity were a counterpoise to the weight of his dissenting or qualified opinions. In my experience, his mind was always open to the consideration of the views of others, even the humblest, and he always listened attentively to what was said to him. One was never stopped *in limine*.

During the last few years Sir Francis told me more than once of his increasing respect for the judgments of Sir Robert Stout. He never accepted the authority of Salmond's *Law of Torts*, and disagreed particularly with his views on possession. Of Australian judges, he frequently mentioned the decisions of Sir Victor Windeyer, whose scholarship struck an answering chord. As to English judges Sir Francis occasionally remarked to me, with pleasure, "Strangely enough, Lord Denning so often turns out to be right"—a comment which I enjoyed as being rather characteristically against the legal Establishment.

This leads me to draw attention to some notes in the second edition of *Criminal Law*, where disagreement is expressed. Those interested should look at *Crossan* (1943) paras. 2607-11, *Glassey* (1962) 3467, *Grant* (1966) 1171, *Keenan* (1967) 1769-1770, *McGregor* (1962) 1264-9, *Macmillan* (1966) 418, *Malcolm* (1951) 664, 667, 1220-1, 1318, *Ramsay* (1967) 1233-4 and *White* (1938) 2728 (c) and (e), 3154. As to the limited nature of appeals to the Privy Council in criminal cases, see paras. 3576 et seq. Sir Francis wrote all the annotation notes to 10th February 1973. There are some astringent comments in these notes—see for example *O'Loughlin* 1971) para. 2872, *Gammage* (1969) 1313 and *Drury* (1971) 3467.

If I may irreverently interpose an image, I have seen many heads in the basket at the receiving end of Sir Francis' Guillotine of Dissent, and I have identified only a few here, for the pleasure of collectors. More seriously, I would add that I detected no pleasure in Sir Francis as he performed his laborious task of dissection or indeed vivisection of some recent decisions.

The writing which in recent years pleased him most was his *Criminal Onus and Exculpations*, which he first wished to call *Provisoes and Exceptions in the Criminal Law*. His preface is well worth study, if only because it reveals so much of his mind. The writing which recently

troubled him most was his article in the Otago Law Review "Voluntariness in Crime: A Critical Examination of *Kilbride* v. *Lake*". This he wrote and rewrote many times. Indeed at one stage he seemed baffled, and unable to arrive at or to state, his conclusions. He was relieved to be done with the problem, which had intruded too frequently into his main work upon his book. His anxiety to comment adequately and clearly is revealed in this essay—one of the most careful of his writings in the last few years of his life. Mention should also be made of three judgments which recurrently pleased him—the judgment in *Horry's* case (1952)—no corpse; his judgment in *Woolworths* v. *Wynne* (1952)—Privy Council and status of the Sovereign in New Zealand; and *Everitt* v. *Martin* (1953)—trespass to chattels on the highway.[1]

Space forbids an extensive reference to other of his writings. But I should record, however inadequately, a few more of his views. In the matter of new legislation he was emphatic upon the desirability of our not deviating wherever possible from the wording of earlier sections of statutes, long in existence, and from time to time discussed by judges and commentators whether here, or in England or Australia. He was very strongly against requiring counsel to submit arguments in writing, and was sharply critical of this occasional practice. He was firmly against haste in the trial of actions, and deplored setting judicial time against a fair hearing of all parties and a well considered decision. He deplored the occasional failure of judges to use the full powers of amendment given to them by the Judicature Act. At the Law Conference at Christchurch in 1938 he was a pioneer in the movement to abolish trial by jury in civil cases. Both he and his father were perhaps over-inclined to disturb a jury's verdict, as some practitioners may still remember. In his prime, on the Bench in Christchurch, Sir Francis was very well known to many of us—and in retirement he gained the respect and the gratitude of a number of young men who came to him in the library for help, always given readily, and invariably sustaining in the extremities which can befall counsel in the middle of a trial.

The interior of the Law Library was completely rebuilt in 1959, the year before Sir Francis retired from the Bench.[2] The new library is one of the most beautiful in this country, and induces in its users some feelings of aesthetic pleasure accompanied by nostalgia for an earlier and more leisurely period, when law, in retrospect, seemed to be a more agreeable occupation than it now tends to become. Sir Francis invariably occupied a seat in the north-west corner of the Library, which is lighted by a stained glass window. Here, behind a stack of shelves, a thin plume of smoke rose continuously in the sunlight, to be lost in the high rafters. Sir Francis would be there, quietly smoking his weekly four ounces of pipe tobacco, and absorbing the immemorial dust of law reports and statutes.

The library building will soon be razed to the ground, and much of human interest will disappear with it. New men will sit in new places, but the memory of Sir Francis will long endure, transmitted however inadequately by his writings and by those of us who have been privileged to touch the hem of his robe.

A. C. Brassington

1 *R.* v. *Horry* [1952] N.Z.L.R. 111; *Woolworths (New Zealand) Ltd.* v. *Wynne* [1952] N.Z.L.R. 496; *Everitt* v. *Martin* [1953] N.Z.L.R. 298.

2 Sir Francis was the resident Judge referred to in the writer's article "The Christchurch Law Library", [1959] N.Z.L.J. 316.