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# Australian Law Journal

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# THE AUSTRALIAN LAW JOURNAL

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### MOSES V MACFERLAN: 250 YEARS ON

**Hon Justice W M C Gummow**

The continued influence of this case upon the scope of the action for money had and received is apparent in the Restatement of the Law Third, Restitution and Unjust Enrichment, which was adopted by the American Law Institute earlier this year. The basic proposition that the action lies where the money was received in such circumstances that retention would offend equity and good conscience informs the Restatement and in Australia is reflected in a long line of High Court authority. In particular, over definition and dissection of the defence of “change of position” by reference to “good faith” of the recipient diverts attention from the question whether it would be inequitable for the claimant to require repayment. “Good faith” may require the exercise of caution and diligence by the recipient and, for example, may be lacking, even without dishonesty, if a financial institution fails to act in a commercially acceptable way. .... 756

### PROFESSIONALISM AND COMMERCIALISM: CONFLICT OR HARMONY IN MODERN LEGAL PRACTICE?

**James Allsop**

The following is in substance the paper delivered at the 2009 Australian Academy of Law Conference in Perth, 17-19 September 2009. It seeks to expose some of the competing considerations concerning the practice of the law as a profession and as a business. It raises the question whether, if the fiduciary relationship is properly recognised and enforced, some of the apparent problems might be seen to be ones not for agonising over, but for remedy. .... 765

### RICHARD OF ANSTEY AND THE SACKVILLE INHERITANCE

**John P Bryson**

Richard of Anstey’s claim to inherit his late uncle’s manors took five years to reach decision by King Henry II and there were many delays and adjournments, procedural manoeuvres, irrelevant arguments, interlocutory appeals, overseas journeys, masses of documents, doubtful law and enormous expense and trouble. There was no restraint in this family conflict. Richard attacked his niece’s legitimacy and she responded with claims of fraud in high places. Some constants of litigation were present in the 12th century. .... 775

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