

*turing Co. (Ramsbottom) Ltd.* and *Turner v. Goldsmith* were decisions of the Court of Appeal, *Coulter v. Readhead* was a decision of the Full Court of New South Wales, and *Ogdens Ltd. v. Nelson* was a decision of the House of Lords. There is ample authority, therefore, for the proposition that where an agent is appointed "sole agent" to sell a property for a stipulated period, he is entitled to damages if his principal withdraws the property from sale before the stipulated period has elapsed.

However, in *Bentall, Horsley and Baldry v. Vicary*<sup>9</sup> McCardie J. held that an agent who had been appointed "sole agent for the sale" of a property for a period of six months could not recover damages when his principal sold the property himself before the six months were up. As *Bentall v. Vicary* was a case at first instance it could be argued that it was wrongly decided, were it not for the fact that it was expressly approved by the House of Lords in *Luxor (Eastbourne) Ltd. v. Cooper*.<sup>10</sup>

As the law now stands, therefore, it would seem that if a principal who has appointed someone "sole agent" to sell his house for a definite period terminates that agency by withdrawing the house from the market he is liable in damages, but that if he terminates the agency by selling the house himself he is not. There would seem to be no logical reason for this distinction.

W.E.D.D.

#### FRAUD BY AN UNDISCLOSED PRINCIPAL.

In *Garnac Grain Co. v. Faure & Fairclough Ltd.*,<sup>1</sup> the plaintiffs were induced to contract with the defendants by the fraud of a third party; the defendants were innocent of any fraud. Megaw J. held that the defendants were acting as agents for the third party, who was an undisclosed principal, and that the fraud of an undisclosed principal was a good defence to an action on a contract, even although the agents were innocent. On appeal the Court of Appeal (Sellers, Dankwerts and Diplock L.JJ.) reversed this decision on the ground that the defendants were not in fact agents of the third party, but themselves contracted as principals.<sup>2</sup> The question as to whether the fraud of an undisclosed principal will vitiate a contract, even although the agent

<sup>9</sup> [1931] 1 K.B. 253.

<sup>10</sup> [1941] A.C. 108, at 117 *per* Viscount Simon L.C., and 145 *per* Lord Wright.

<sup>1</sup> [1964] 2 Lloyd's Rep. 296.

<sup>2</sup> [1965] 3 All E.R. 273.

is innocent, did not, therefore, have to be decided. However, Diplock L.J. said:—<sup>3</sup>

“This branch of the English law of contract is anomalous and peculiar. One thing, however, seems to be clear: that is that although the agent is entitled to enforce the contract in his own name, at least until the principal intervenes, he nevertheless does so on behalf of the principal and is accountable to the principal for the fruits of the action. I should be sorry to think that the law permitted a fraudulent but undisclosed principal in this way to reap the fruits of his own fraud in inducing the other party to enter into the contract with his agent. I see no reason why it should; I do not think that it does and I have not been persuaded by the ingenious and erudite argument of counsel . . . that the learned judge’s judgment should have been reversed on this ground had I felt able to uphold his finding on the agency issue.”

This passage from the judgment of Diplock L.J. is, of course, *obiter*; it does, however, give some support to the contention that the fraud of an undisclosed principal will vitiate a contract, even although the agent is innocent. Megaw J. himself did not cite any authority in support of his decision, preferring to base himself on principle, and said:—<sup>4</sup>

“As a matter of principle, I hold the view that the plaintiffs were entitled to rescind the contract. The contrary view would lead to this: that the agent could enforce the contract—and that, of course, an agent for an undisclosed principal can normally do—but, having enforced the contract which would not have been made by the plaintiffs but for the undisclosed principal’s fraud—the first defendants would remain bound, as agents, to account for those fruits to their principal, . . . . Thus, the fraudulent principal would indirectly be entitled to enjoy the fruits of his own fraud.”

It is respectfully submitted that Megaw J. is clearly correct, for it would be a monstrous state of affairs if a dishonest person could practice fraud with impunity merely by acting through an agent and remaining an undisclosed principal. His decision, moreover, can be supported not only on principle but also by authority. In *Ludgater v. Love*<sup>5</sup> the defendant sold some sheep to the plaintiff through the agency of his son by fraudulently misrepresenting that the sheep were

<sup>3</sup> *Ibid.*, at 287.

<sup>4</sup> [1964] 2 Lloyd’s Rep. 296, at 317.

<sup>5</sup> (1881) 44 L.T. 694.

not affected with rot; the son being unaware of his father's fraud. The Court of Appeal (Lord Selborne L.C., Bagally and Brett L.JJ.) held that the plaintiff could recover damages against the defendant. If a person who has been induced to enter into a contract by a fraudulent principal who acts through an innocent agent can obtain damages, then clearly he can also resist an action on the contract. It is true that in *Ludgater v. Love* the defendant was a disclosed and not an undisclosed principal, but this, it is submitted, can make no difference.

**W.E.D.D.**

## BOOK REVIEWS.

*Lives of the Lord Chancellors 1885-1940.* by R. F. V. HEUSTON.  
Oxford: The Clarendon Press. 1964. pp. xxiii, 632 (including index). \$9.45.

Professor Heuston (as he now is), in this admirable set of twelve biographies of Chancellors from the Earl of Halsbury to Viscount Caldecote, has produced for us a worthy successor to the eight volumes of Lord Campbell's *Lives of the Chancellors* and the two volumes of Atlay's *Victorian Chancellors*. In his graceful preface the author pays tribute to the "remarkable industry and talent" displayed by Campbell and the "felicity in portraiture and literary grace" of Atlay. He has matched Campbell's industry with his own, for there seems to be no accessible source, whether publicly available in print or accessible only through the courtesy of the holders of private papers, which he has neglected to consult in the course of writing this work; and the book is written with all the care and lucidity which we have come to expect from him. The twelve biographies, indeed, are models of their kind.

Inevitably some of the ground has been worked over before. Thus, as he tells us in his preface, Heuston has chosen to begin with Lord Halsbury, although Atlay had included both him and Herschell his successor in his second volume, because at the time this appeared Herschell had been dead for only nine years and Halsbury was still alive, and this must have affected what Atlay could say. Again, both Haldane and Birkenhead have become well-known through both autobiographical and biographical writings, Cave has been the subject of a biography by Sir Charles Mallet, Buckmaster of one by Johnston and Viscount Maugham wrote his own memoirs. But for the other five subjects the present work presents the first substantial biographies.

The book begins with a short but valuable introduction which reviews the nature of the office, and the constitutional position, of the Lord Chancellor, and ends with a brief general survey of the twelve men who are the subjects of the book. In answer to the question "How far did the men who occupied the office change over the period 1885-1940?" The answer is clearly "very little". All but two came of a background which was, in the author's words "solidly middle-class". All but one were University men, and all but two of these gained either a First or a Second. None (except perhaps Viscount Hailsham, who came of a wealthy family) died a rich man; four indeed died