manner of bringing out the evidence, so as to convince the court or jury, as the case may be". The author appreciates that for the making of a competent advocate more is necessary than such a technique as is here expounded. There must be certain natural or developed qualities, some background knowledge, and practice in applying the technique. Within its limits the book should prove of considerable assistance to those to whom it is addressed, and the author's modest aim is chiefly to assist beginners in advocacy.

B. SUGERMAN *

The Principles of Agency: By H. G. Hanbury, D.C.L., Vinerian Professor of English Law in the University of Oxford, etc.; pp. i–xviii, 1–231 and Index. London, Stevens & Sons Ltd.; Australia, The Law Book Co. of Australasia Pty. Ltd.; 1952. Price £1/14/6.

In the Preface to this entirely new work Dr. Hanbury gives as the reason for its publication that "there is room for a concise account of general principles [of agency] illustrated by references to the cases of the greatest importance." The truth of this statement cannot be doubted for, apart from standard works on the law of contracts which treat agency as a mere appendage, the only text book which makes any pretence of dealing comprehensively with the law of agency is Bowstead, now in its eleventh edition. Bowstead, however, is a digest and, as at least one reviewer has recently pointed out,[1] stands in need of substantial revision instead of mere re-editing.

In undertaking the task of writing a new work on the Principles of Agency, Dr. Hanbury has done a great service to law students and indeed to the legal profession generally: all the more so because both as a teacher of law and as a text writer he is no novice; his academic status bears witness to the former, whilst his contributions to legal periodicals and his *Modern Equity*, now in its fifth edition, are firm evidence of the latter.

All the foregoing considerations suggest that Dr. Hanbury's new book should be a contribution of the greatest utility and the highest quality. In many, and perhaps in most, respects it is; but there are some features of incompleteness and of arrangement which cannot fail to disappoint the more critical reader and therefore prevent the label of perfection from being applied to it.

Normally it is easy, on the score of incompleteness, to point to topics which have not been dealt with by an author of any new text book. Dr. Hanbury has, however, cast his net widely and in addition to discussing all the normal incidents of agency law has included chapters on "Agency in Tort and Crime" and "Agency in the Law of Evidence". Although some topics are really beyond the scope of a work on agency, one cannot help feeling that some of the discussion in these two chapters is so perfunctory that they would better have been omitted. This is particularly so in respect of the criminal liability of corporations occupying a single page and containing references only to *Monsell v London and North-Western Railway Co.*[2] and Mr. R. S. Welsh's article on "The Criminal Liability of Corporations."[3] In like manner the chapter on "Agency in the Law

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[1] A. W. R. Carrothers, (1952) 30 Can. Bar. Rev. 96.

[2] (1917) 2 K.B. 836.

[3] 62 L.Q.R. 345.

of Evidence", which occupies ten pages, is of little real value, especially in the light of the opening passage that "The law of agency is, of course, governed by the same rules of evidence as determine the method of proof of any situation in substantive law."

Rather more important from the viewpoint of lack of completeness is the omission of any discussion of two related matters which assume vital practical consequence in sales of property. One is the distinction between an agent for the vendor and a stakeholder and the other is the process of interpleader. Perhaps one of the most common practical problems of agency arises when a contract of sale of property goes off after a deposit has been paid by the purchaser to an agent. If the purchaser is not in default he can recover his deposit, but the form of and parties to his action will depend on the character in which the agent received the deposit;[4] the agent, if sued personally, will generally avoid taking it on his own shoulders to determine the merits of the dispute and will interplead so as to bring purchaser and vendor to issue; but this useful procedure may not be available if the agent has a claim for commission against the vendor and asserts a lien on the deposit. It may be, of course, that the procedural difficulties which are inherent in situations such as these are of no special significance under the judicature system, but nevertheless the nature of an agent's rights as a matter of substantive law in similar circumstances must be both troublesome and important under any system of procedure. By way of contrast it should be mentioned that the right of an agent to commission on an uncompleted sale is dealt with in some detail by Dr. Hanbury and occupies over seven pages of Chapter 4 of the book.

The basic arrangement of Dr. Hanbury's book is conventional, but it suffers from some defects and exhibits some disproportion in treatment. The first five chapters (pp. 1-110) are excellent in both method and detail, but in Chapter 6, which relates to "The Extent of the Agent's Authority," the cohesion of the earlier chapters is not so evident. This chapter, after stating some obvious truths, seems to abandon any attempt to discuss further an agent's authority as a matter of principle and proceeds to deal with the Factors Acts which are previously discussed in Chapter 2; it then goes off at a tangent with a brief reference to "Limits of Authority as Regards Payments" and returns to a discussion of some classes of special agents, namely publicans, stockbrokers, estate agents and insurance agents, including under the last mentioned a lot of detail concerning contracts *uberrimae fidei* and cases such as *Biggar v Rock Life Assurance Co.*[5] Other classes of agents—brokers, commission agents and auctioneers—are not discussed in this chapter but in Chapter 2 under the heading "The Chief Types of Agent." This criticism is directed not to the substance of the chapters but rather to the untidy and unsystematic arrangement of the material.

Again in Chapter 6 Dr. Hanbury, under the heading "Inducements by an Agent", indulges in a discussion of the liability of a principal for "inducements"—a neutral word, deliberately chosen—made by an agent; this section (pp. 129-132) only deals with fraud and really should have been relegated to Chapter 9—"Agency in Tort and Crime". There is, however, another criticism of this section: Dr. Hanbury is at some pains to refer at length to *Udell v Atherton*,[6] which he describes as as case "which has of late been neglected in text books." He points out that the court of four judges, which included the trial judge, was equally divided, quotes from the opposing judgments, and concludes that "*Udell v Atherton*, though an important landmark in the history of the law of contractual agency, is a decision on which it would be unsafe to

[4] *Ellis v Goulton* (1893) 1 Q.B. 350; *Christie v Robinson* (1907) 4 C.L.R. 1338; *Swindle v Knibb* (1929) 29 S.R. (N.S.W.) 325.

[5] (1902) 1 K.B. 516.

[6] (1861) 7 H. & N. 172.

rely" (p. 131). Apart from the obvious inutility of the case as a precedent, this digression appears to be pointless because the whole law on the liability of a principal for his agent's fraud is adequately covered by *Lloyd v Grace Smith and Co.*[7] and, if any excursion into the past were thought desirable, it surely should not extend further back than *Barwick v English Joint Stock Bank.*[8]

Chapters 7 and 8, which deal with the "Personal Rights and Liabilities of an Agent" and the "Rights and Liabilities of an Undisclosed Principal", also manifest some defects in arrangement. The admission of parol evidence is discussed in three places (pp. 156, 175 and 177) but only in a satisfactory way in the last. So, too, there are three discussions (pp. 160, 162-4 and 182-4) of the position of an agent for a foreign principal and the cases on that topic; and the questions posed on p. 160 as to the liability of such an agent are answered with a different emphasis on pp. 164, 173 and 184. Moreover, even a law student is entitled to question the treatment (pp. 158-163) of the cases in which an agent has been held personally liable or has escaped liability; these cases, as Dr. Hanbury says (p. 158), are ranged "in opposite camps", but he does not deduce any principle from them and leaves the reader with the notion that the law must be a weird and wonderful mystery when two similar cases, decided in 1870 by the same four judges within a few days and reported in the same law report, resulted in different conclusions.[9]

It may be that in these three chapters (6, 7 and 8) Dr. Hanbury has endeavoured to simplify the problems of the authority, rights and liabilities of agents and undisclosed principals, but in a book which must find its primary demand amongst students it surely would have been preferable to subdivide each chapter into more clearly recognizable sections and to treat each separately, using as illustrations, as far as possible, actual or hypothetical cases which could admit of no ambiguity or doubt.

These imperfections, however, though they prevent the book from being classed as perfect, detract only in a minor way from its readability and general utility. Dr. Hanbury has a lucid and attractive style and his discussion of the cases is nearly always reduced to the most simple elements. In particular, his use of X, Y and Z as the parties to cases is commendable for clear understanding, though in one or two instances he has been guilty of an error or a departure; e.g. on p. 159, line 18, "X" should be "Z", whilst on pp. 125, 153, 163, 179, 180 and in some less important instances he has resorted to the use of the actual names of the parties or the words "plaintiff" and "defendant". These matters are of only passing importance and no doubt will be corrected in the second edition which, it is hoped, will follow as quickly as the second and later editions of Dr. Hanbury's most useful text book "Modern Equity".

One concluding comment should, I think, be made. In most law schools, in Australia at any rate, the law of agency has suffered the fate of being taught as a postscript to the law of contracts, no doubt because it is so dealt with by Anson. Dr. Hanbury's book shows that the law of agency merits treatment as a separate subject because it is no more exclusive to the law of contracts than it is to the numerous aspects of mercantile law or the law of torts, and it also has more than a passing relationship with equity and the law of trusts. Now that we have a book which fairly attempts to state the principles of the law of agency, it is to be hoped that it may gain a greater stature in the curricula of our law schools.

R. ELSE-MITCHELL *

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[7] (1912) A.C. 716.

[8] (1867) L.R. 2 Ex. 259.

[9] *Fairlie v Fenton* (1870) L.R. 5 Ex 169; *Paise v Walker, ibid.* 173.

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An Introduction to Evidence: By G. D. Nokes, LL.D., of the Middle Temple and South-Eastern Circuit, Barrister-at-Law; Reader in English Law in the University of London. London: Sweet & Maxwell Limited. 1952. vii and 415 pp. (index 12 pp.) £2/9/6 in Australia.

If Dr. Nokes had not said in his Preface that he had practised at the bar, sat upon the bench of an appellate court in an Indian State and taught and examined students in the law of evidence, this book would itself provide evidence, cogent if not conclusive, that its author was preaching what he had practised.

He wrote the book, he says, because it seemed "there was room for a book which provided some historical and theoretical background". The history is for the most part kept in the background. But present rules and illustrations thereof, justifications and the critical comments of learned persons become mingled. Theorising is sometimes halted by practical experience, as when the limits of relevance are found to be at the stage when the judge enquires of counsel: "Is it really necessary to go into all this?"

The author does not concern himself only with main rules and principles. He explains proceedings before and at trial, the pleadings, even counsel's advice on evidence, notices to produce, discovery of documents, subpoenas, the order of addresses at the trial, examination and cross-examination, views, etc. One cannot help wondering whether it was really necessary to go into all this. The law of evidence is a forensic matter. What a practising lawyer needs to know is what is admissible and what is not. He needs to know it so that he may lead evidence by proper questions, cross-examine intelligently, object on the spur of the moment, and know why he objects, and when it is wise to object, and when not. Much of this can never be properly learnt except from practical experience. The rules of evidence presuppose a knowledge of the course of a trial. But in a very short work on evidence some knowledge must be assumed and the more knowledge that is assumed of other matters the more room there is for the law of evidence and its history and theory.

This book is called an "Introduction to Evidence"; and it obviously is intended for students. But some of the debatable theory and commentary on the categories adopted by other authors may be not only superfluous but confusing. For the post-graduate scholar, on the other hand, the book is unnecessarily encumbered with elementary matters. But there is a wide range of interesting references, especially to periodical and other literature apart from reports of cases.

The book is concerned with the English law of evidence applied in English courts. But in various parts of the British Commonwealth courts are still hammering away at, and shaping more perfectly, the rules of evidence in purely common law forms. Perhaps, therefore, it is not merely the pride and prejudice of a denizen of such parts that causes the comment that the author might have looked at the work of craftsmen outside England.[1] Australia, for example, has done more than be the *locus in quo* of the Makins' felonies.

Lord Campbell[2] said that "in no department does English talent appear to

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[1] There are some slight, but entertaining, references to the author's Oriental experience. In a recondite footnote on page 252 it is said that in "non-Christian countries" the abuses of dying declarations, which Stephen noted, have not disappeared. Reference to the passage in Stephen's *History of the Criminal Law* shows that mortally wounded natives of the Punjab were said, in his time, to incriminate their enemies, since "a man at the point of death can have no possible motive for telling the truth." And on page 116 there is the interesting statement that "the practice of the plaintiff calling the defendant as his witness, and cross-examining him as hostile, and vice versa, was much favoured in certain parts of India; its advantages are usually negligible and its disadvantages considerable."

[2] *Lives of the Chief Justices* (1857), 274.