things as the resolutions of the city, the proposal for bids, instructions to bidders, specifications and drawings. While this method of presentation gives the contract a foreign appearance to the Australian reader, this is largely superficial, and it is at least a reminder that Butterworth's *Encyclopaedia of Forms and Precedents*, enshrining the Lincoln's Inn style of drafting, is not everywhere regarded as the final arbiter of taste.

P. A. WILSON

The Law of Agency, by Raphael Powell, Sir Isaac Pitman & Sons, 1952, pp. xliv: 355, £3.

The Principles of Agency, by Harold Greville Hanbury, 1952, pp. xviii: 237, Stevens & Sons Ltd., £1 14s. 6d.

The law of agency may be likened to a swamp draining off the seepage from the main stream of the law; a legal Slough of Despond. "As the sinner is awakened about his lost condition there arises in his soul many fears and doubts, and discouraging apprehensions, which all of them get together and settle in this place". Branches of the law as diverse as contract, tort, crime, real property and evidence all carry with them their residual problems of agency. Because of this Professor Powell in his preface expresses doubt whether any man can be sufficiently versatile ever to write a perfect book on Agency. Still the books have been written and Professor Powell's book is as near as may be to perfection; Professor Hanbury has not had perfection as his object.

Despite the residual character of the law of agency it also has a life of its own. A century ago it must have been a very active life with the agent looming as large in commerce and the law as does the company today. Of the cases cited in both the above works a substantial majority date from the first three quarters of the nineteenth century; a disproportionate number in relation to the length of English Legal History. This is no doubt because that period covered the hey-day of British Mercantilism when the products of the Industrial Revolution were making their way onto the markets of the world. Corporate organization was then all but unknown; business administration was in its infancy; means of communication difficult and costly; and it was frequently only through the ubiquitous agent, earning his reward from commission that business transactions could be carried on.

But the agent today has become a member of a depressed class, at least in the field of legal theory. The middleman has been cut out. With the exceptions of the Estate Agent and the Stock Broker he has lost much of his former importance in the world of affairs and hence the law. Many things have contributed to this. The enactment of the Companies Acts has permitted an increase in the size of business organizations enabling them to carry out through their

employees or through subsidiary companies many of the functions formerly undertaken by the entrepreneur type of agent. Even where this is not convenient and it is necessary for a business to employ an "agent" the relationship of principal and agent is in practice avoided as far as possible. Instead the "agent" is constituted a "dealer" or "distributor" who is in law, a purchaser reselling to third parties. He is not rewarded by the payment of commission but is permitted to purchase at a discount. This is the result of businesses desiring to shelter themselves from claims by consumers for defective goods by means of standardized contracts including most conditions and warranties, otherwise implied by the various Goods Acts. The business employing agents may well find itself bound by its agents "sales talk" if this amounts to the giving of collateral warranties or the making of representations. An interesting example of this tendency[1] is the practice of taxi-cab companies to lease their cabs to the drivers for short periods such as twelve hours. In the event of accidents the driver, but not the company is responsible to the passenger, assuming that the driver is negligent. This may well be of importance since the compulsory third party insurance on the vehicle is limited to £2000 in respect of a passenger (See *Motor Car Act* 1951 Sec. 44 (2) and *Dillon v. Gange* (1941) 64 C.L.R. 253).

Another factor leading to the decline of the agent has been the universal activity of governments. We are much more governed than our ancestors, and while this may be good for our souls it is bad for business. Currency, import and export, and credit restrictions; the need for licences and permits for an increasing range of commencial activity; and the control of prices of many commodities, leave less and less scope in commerce for the entrepreneur agent. Moreover in the absence of a Double Taxation Agreement between Australia and a foreign country the business, (whether incorporated or not), which carries out transactions overseas through agents may well find itself in foreign taxation fields with unfortunate results, which could have been avoided by the adoption of a relationship such as that of vendor or purchaser.

The object of these sage reflections is not however to suggest that the above books are lacking in practical value but rather to indicate where their practical value lies. The relationship of principal and agent is not one which modern commerce likes and as a result agency problems today more frequently arise in situations in which none of the actors are persons who would be popularly identified as agents. Usually they would be called employees.

Profesor Hanbury displays some consciousness of this as is shown by the fact that while his book covers the main principles of agency

[1] i.e. to constitute a potential agent a principal. The liability which it is here sought to avoid is, of course, of a different character from that attaching to a principal because of representations made by his agent.

much of it is devoted to difficulties doubts and novelties rather than the orthodox ramifications of the X, Y, Z formula (Powell less algebraically and more lucidly uses P, A, T). This emphasis does however occasionally lead to peculiar results. Thus he devotes a whole chapter to the "Doctrine of Holding Out" and then in it proceeds to discuss that curious exhibit in the museum of legal antiquities viz., the extent of a husband's liability for his wife's debts. Professor Powell, more rationally deals with "holding out" in his chapter on the "Agents Authority" and relegates the husband and wife question to "Quasi-Agency" which he dismisses, (rightly so), in a page. Again Professor Hanbury devotes a chapter to "Agency in Tort and Crime" and a chapter to "Agency in the Law of Evidence", where he treats us to interesting, if somewhat disjointed snippets from those subjects. In Chapter 7 ("Personal Rights and Liabilities of an Agent") we have, on pp. 152-4 a sudden incursion into Administrative Law where he deals with the "Position of Agents of Government Departments" before and after the enactment of the Crown Proceedings Act 1947.

Professor Hanbury's approach is bold and discursive. Bold: "The basic principle is that the agent drops out, and the principal is left in contractual relations with a third party." (p. 4). Discursive: Roman Law, p. 4 (one page); Relations from which Agency may be Implied, p. 129 (one and a half pages). The best example is the abrupt annexation of two cases at the end of Chapter 8 ("Rights and Liabilities of an Undisclosed Principal") after a section on "Foreign Undisclosed Principals". One case discusses an agent contracting on behalf of a principal for the sale of unascertained goods; the other "illustrates the converse of the doctrine of the liability of the undisclosed principal." Both would have been equally apposite before or after the inadequate index or table of cases.

Hanbury's *Agency* is not a work of reference but it is interesting, and valuable, bedtime reading.

Powell's *The Law of Agency* is in a different class. It is obviously the work of a lifetime, as lifetimes go these days. The author wrote an insubstantial primer on the subject in 1933 and one feels that the present masterly production has been in the making ever since. The immediate impression on opening the book is one of merit. The table of cases not only tabulates the names of the cases but also gives their citations in every series of reports in which they appear; the index even enables one to find things. This is as it should be, but often is not.

The scheme of the work is carefully thought out and topics fall naturally into headings and subheadings instead of being dealt with in a hand-to-mouth manner. At the conclusion of any subsection one is left with the impression that the topic dealt with forms part of a rational whole. In view of the diversity of the subject matter this of itself is an achievement. Particularly impressive are the

author's first two chapters in which he deals, in Chapter 1, with the definition of "Agent" and compares an agent with other persons in similar positions, and Chapter 2, on "The Agent's Authority," in which he deals with the various types of authority, express and implied, usual authority and with the basis of the principal's liability for unauthorized acts. This is a branch of the law where liability often, lamentably, depends upon definition. Lamentably because liability can become lost in words and instead of flowing from the social consequences of particular acts becomes dependent on a preliminary classification. Still, while this occurs a careful analysis is invaluable to those who must make it.

The author has been most zealous in the quest for authority both in the form of reported decisions and articles in periodicals. He supplements the more obvious local sources by drawing on the Restatement, United States, Dominion authorities and the less widely read English reports. Of particular interest, for example, was his citation of the decision in *J. S. Holt and Mosely (London) Ltd. v. Sir Charles Cunningham and Partners* (1949) 83 Ll.L. Rep. 141 of Prichard J. that there is no longer any legal presumption that an agent who contracted within the jurisdiction on behalf of a foreign principal had no authority and was therefore personally liable. Although this proposition is generally accepted this obscurely reported case is the only direct pronouncement on the point.

The book may well become a legal classic.

P. A. WILSON

Legal Controls of International Conflict, by Professor JULIUS STONE, LL.M. (Leeds), S.J.D. (Harvard), B.A., D.C.L. (Oxford). (Maitland Publications Pty. Ltd., Sydney, 1954), pp. lv, 851. Price £5 5s.

Professor Julius Stone, Challis Professor of International Law and Jurisprudence at Sydney University, had so far been best known in the world of legal scholarship for his great jurisprudential opus, "The Province and Function of Law". His new book, "Legal Controls of International Conflict", shows him a master in another field, that of public international law. To say that this is a handbook of that part of international law which, following the classical dichotomy into the Law of Peace and the Law of War, deals with the latter would be quite inadequate. For a considerable portion of the book is devoted to international disputes short of war, the settlement of disputes, and measures for the enforcement of peace: in short, that part of international law which is of such special importance in the present cold-war era.

This book is of first-rate importance for a number of reasons. Despite the great number of monographs and articles on various topics of international law, there exists in English legal literature a dearth of up-to-date general treatises or handbooks on international