stands. In *O'Connor v. Bray* the High Court followed its earlier decision in *Latter v. Muswellbrook*,[9] a case with similar facts which was also concerned with the effect of section 63 of the Workers' Compensation Act 1926-1929 (N.S.W.), and it can be argued that the High Court in that case based its decision on the particular wording of that section, support for this argument being found in a passage from the judgment of Latham C.J. where he said:—[10]

> "There is, in my opinion, a very real difference between the following provisions: (1) The worker may proceed under this Act or independently of this Act; and (2) The worker may at his option proceed under this Act or independently of this Act. Under a provision such (1) it is provided that the worker may do one of two things . . . . The significance of a provision such as (1) would be that if the worker did one thing he was precluded from doing the other . . . . Knowledge of the existence of the alternative courses would be irrelevant. But, under a provision expressed as in (2), the position is, I think, quite different. The words 'at his option' add to the meaning of the provision. They introduce an additional element. This additional element must be that there should be knowledge that the alternatives exist and a choice between them."

This argument can further be supported by the fact that the judgment in *Elder's Trustee and Executor Co. Ltd. v. Commonwealth Homes and Investments Co. Ltd.* was delivered after the decisions in *O'Connor v. Bray* and *Latter v. Muswellbrook*.

In conclusion it is submitted that until there is a decision of the High Court directly in point the decision of the Victorian Full Court in *Coastal Estates Pty. Ltd. v. Melevende* represents settled law in Victoria, and that in the rest of Australia the point is moot.

W.E.D.D.

REVOCATION OF AN AGENT'S AUTHORITY.

In *Barraclough v. Hellyer*[1] the defendant appointed the plaintiff as his agent to sell his land, and agreed that the plaintiff should have "the sole and exclusive right of selling the property for a period of 2½ months." Shortly after signing the agreement the defendant withdrew his property from sale. The plaintiff sued for damages in the

9 (1936) 56 C.L.R. 422.
10 *Ibid.*, at 433.
1 [1964-65] N.S.W.R. 449.

District Court for breach of contract, but failed on the grounds that the authority to sell was not irrevocable and that the defendant was entitled to revoke at any time before the authority was fully exercised. On appeal, however, the Full Court of New South Wales (Sugerman, Walsh and Wallace JJ.), following an earlier decision of the Full Court of New South Wales in *Barraclough v. Crotty*,[2] held that the revocation of the authority by the defendant constituted a breach of contract and ordered a new trial. It is submitted that the decision of the Full Court is clearly correct, and indeed unexceptionable, but it highlights a curious anomaly in the state of the law.

Sugerman J., in a judgment with which Walsh and Wallace JJ. concurred, cited a passage from the judgment of Scrutton J. in *Lazarus v. Cairn Line of Steamships Ltd.*,[3] where the learned judge said:—[4]

> ". . . where there is a principal subject matter in the power of one of the parties, and an accessory or subordinate benefit arising by contract out of its existence to the other party, the court will not, in the absence of express words, imply a term that the subject matter shall be kept in existence merely in order to provide the subordinate or accessory benefit to the other party, but . . . where there is an express term requiring the continuance of the principal subject-matter, or giving the plaintiff a right to a continuing benefit, the courts will not imply a condition that the plaintiff's right in this respect shall cease on certain events not expressly provided for."

In support of his decision that in the case before him the plaintiff had a right to a continuing benefit, Sugerman J. cited *Reigate v. Union Manufacturing Co. (Ramsbottom) Ltd.*,[5] *Coulter v. Readhead*,[6] *Turner v. Goldsmith*,[7] and *Ogdens Ltd. v. Nelson*.[8] In all these cases an agent had his agency terminated contrary to his contract of agency, due to his principal going out of business; in each case it was held that the agent was entitled to damages. *Reigate v. Union Manufac-*

2 Not reported. See [1964-65] N.S.W.R. 454. In that case the defendant appointed the plaintiff "sole agent" to sell her house for a period of three months. Before that period elapsed she withdrew the house from sale. The Full Court of New South Wales (Owen J., Roper C.J. in Eq., and Kinsella J.) held that the plaintiff was entitled to damages.

3 (1912) 106 L.T. 378.

4 *Ibid.*, at 380.

5 [1918] 1 K.B. 592.

6 (1931) 31 S.R. (N.S.W.) 432.

7 [1891] 1 Q.B. 544.

8 [1905] A.C. 109.

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*[9] 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.*[10]

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.*,[1] 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.[2] The question as to whether the fraud of an undisclosed principal will vitiate a contract, even although the agent

9 [1931] 1 K.B. 253.
10 [1941] A.C. 108, at 117 *per* Viscount Simon L.C., and 145 *per* Lord Wright.
1 [1964] 2 Lloyd's Rep. 296.
2 [1965] 3 All E.R. 273.