

DIVISIONAL COURT.

AUGUST 20TH, 1912.

TRAVIS v. COATES.

3 O. W. N. 1651.

Principal and Agent—Agent's Commission on Sale of Lands—Purchaser found by Agent—Abandonment of Purchase—Subsequent Purchase through Another Agent—Causa Causans of Sale.

Action by real estate broker against owner for commission on sale of defendant's house. The house had been placed in plaintiff's hands for sale, and in September, 1911, he procured one Jerou to enter into a verbal agreement for the purchase of the property. When the time came to close the proposed sale, Jerou, for no sufficient reason, refused to complete and plaintiff notified defendant that the sale was off. Nothing further transpired until December, 1911, when Jerou purchased defendant's property for the price formerly agreed upon, but through another agent than plaintiff, to which latter agent defendant paid the usual commission. All the evidence tended to shew that Jerou had definitely abandoned, in September, 1911, all intention of purchasing.

DENTON, Co.J., gave judgment for plaintiff with costs.

DIVISIONAL COURT, *held*, that plaintiff's actions were not the *causa causans* of the sale and that, therefore, he could not recover.

Toplin v. Barrett, 6 T. L. R. 30, followed.

Imrie v. Wilson, 21 O. W. R. 964; 3 O. W. N. 1145, and other cases referred to.

Judgment of Denton, Co.J., reversed, and action dismissed, both with costs.

An appeal from a judgment (May 2nd, 1912), of HIS HONOUR JUDGE DENTON, in favour of the plaintiff in an action tried by him (April 30th), without a jury in the County Court of the county of York, brought to recover a commission on the sale of land.

The appeal to Divisional Court was heard by HON. SIR WM. MEREDITH, C.J.C.P., HON. MR. JUSTICE RIDDELL, and HON. MR. JUSTICE KELLY.

C. A. Moss, for the defendant, appellant.

T. N. Phelan, for the plaintiff, respondent.

HON. MR. JUSTICE RIDDELL:—The facts are not complicated, but the result of the judgment if it is to stand, would be that for the owner of real estate, as soon as he wished to sell it, the proverbial inevitable evils have become a trial and "there is nothing sure but death, taxes, and agents' fees."

I set out the facts as I understand them giving references where I add to or vary the findings of the learned trial Judge.