

[1910] A.C. 814, 80 L.J.P.C. 41, 103 L.T. 325, reversing the judgment of the Supreme Court of Canada (not reported) which affirmed the judgment of the Supreme Court of Nova Scotia, 43 N.S.R. 485, and restoring the judgment of the referee, who held the agent entitled to the full commission stipulated for in the agency agreement under the circumstances shewn.

An agent of an absent principal entered into negotiations with a person who was anxious to buy certain hotel property belonging to the principal, but no sale was completed at the time because the prospective purchaser found the cash payment required too much for him to handle. He then called the attention of two of his acquaintances to the desirability of the property and the three entered into an agreement among themselves that they would buy it. The amount of the cash payment, however, was still too large even to the three, and, the owner having returned, they carried on all further negotiations in regard to a sale with him personally without any further intervention on the part of the agent. The property was finally sold to the two acquaintances of the person with whom the agent negotiated on the same terms as it had been offered through the agent, excepting that the cash payment was smaller. It also appeared that the agent did not know the two purchasers until after the sale was completed. It was held that, though the person whose attention the agent had called to the land withdrew from the transaction and the sale was made to his associates without him, the agent was the efficient cause of the sale of the property, and that he was therefore entitled to recover a commission on such sale: *Stratton v. Vachon*, 44 Can. S.C.R. 395, reversing *Vachon v. Stratton*, sub nom. *Vachon v. Stratton*, 3 Sask. J.R. 286.

Where the contract is that the agent is merely to find a purchaser willing to purchase and he fulfilled it by finding such person, the agent is entitled to his commission, though the sale fell through, if the cause of the failure was the fault of the principal and not of the agent: per Chief Justice Ritchie in *MacKenzie v. Champion*, 12 Can. S.C.R. 649.

Where an owner placed his farm in the hands of a real estate agent for sale at a fixed price under an agreement in writing whereby, in consideration of the agent registering the farm in a real estate register issued by him describing properties for sale, the owner agreed to pay him a commission of a certain per cent. on the price obtained "whenever a sale of the property or any part thereof takes place," to be paid when the farm was sold, either at the price fixed or at such other price that the owner might accept, and the agent did nothing apart from including the property in his register towards affecting a sale and the property was sold by the principal about a year after without the interposition of the agent, the agent was entitled to recover commission on the selling price of the farm at the rate stipulated in the agency agreement: *McCallum v. Williams*, 44 N.S.R. 508.