The plaintiff had, on the 27th September, rendered his bill to the defendant for $115, and her solicitors had, the next day, written an answer, "You are, no doubt, aware that Mr. Jerou declined to purchase;" and no reply was made by the plaintiff.

After the sale in December, the defendant paid Ponton a commission for the sale; on the 15th February, 1912, the plaintiff issued his writ; the trial Judge has given him judgment for $115 and costs; and the defendant now appeals.

The trial Judge finds that Jerou never abandoned his intention to buy. That may be so; I doubt it; but certainly he gave his solicitor to understand that the sale was off; the plaintiff gave the defendant to understand that the sale was off. No intimation was given to any one by Jerou that the sale was not off—and, if he had still the intention to buy, he carried that around in his head without making any external or visible manifestation of its existence; and "de non apparentibus et de non existentibus eadem est ratio." The plaintiff cannot set up that the sale was not off, that Jerou had not refused to purchase; he told the defendant that the sale was off; and the defendant acted accordingly.

It cannot, in any event, I think, be considered that the intention, if any, which Jerou had in reference to this property was to buy on the basis of the arrangement made through the plaintiff, but to enter into new negotiations and buy if he could make satisfactory terms.

It is, to my mind, in every respect as though he had no intention in the matter: but had simply refused to carry out his purchase.

So far as the facts before December go, there can be no doubt that the plaintiff could not recover. But it is contended that the subsequent sale, through Ponton, to the same purchaser, entitled the plaintiff to his commission. It may be at once admitted that the sale to Jerou would probably not have been effected had it not been for the plaintiff's retainer by the defendant and his efforts. No doubt, the plaintiff's services were a cause sine qua non (to use the time-honoured terminology): but that is not enough—the services must be a causa causans. . . .

[Reference to Imrie v. Wilson (1912), ante 1145, 1378; Barnett v. Isaacson (1888), 4 Times L.R. 645; Green v. Bartlett (1863), 14 C.B.N.S. 681; Steere v. Smith (1885), 2 Times L.R. 131; Wilkinson v. Martin (1837), 8 C. & P. 1; Lumley v. Nicholson (1885), 2 Times L.R. 118, 119; Gillow v. Aberdare (1892), 8 Times L.R. 676, 9 Times L.R. 12; Taplin v. Barrett (1889), 6 Times L.R. 30.]