

So far as the facts before December go there can be no doubt that the plaintiff could not recover: But it is claimed 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 *causa sine qua non* (to use the time honoured terminology); but that is not enough—the services must be a *causa causans*.

In *Imrie v. Wilson* (1912), 21 O. W. R. 964; 3 O. W. N. 1145, the defendant agreed to pay the plaintiff a commission if he sold certain property: the plaintiff introduced K. to the owner as a purchaser: K. was unable to purchase, but agreed with the defendant that he should try to sell for him as an agent and did so. Mr. Justice Clute held that the plaintiff could not succeed and this was sustained by the Divisional Court (June 11th, 1912), "No doubt" says my learned brother "the introduction by Stinson (one of the plaintiffs) of K. to Nelson was the cause without which the sale would not have been effected: but was it the *causa causans*, or was there a new and distinct act which intervened which really brought about the sale; . . . It required a new act to procure a purchaser: in short the plaintiffs' acts were not the effective cause of the sale which actually took place. The most that can be said is that the introduction was merely a *causa sine qua non*."

Not wholly unlike and really the converse of that case is *Barnett v. Isaacson* (1888), 4 T. L. R. 645—the plaintiff was to introduce to the defendant a purchaser of the business—he introduced one C. an accountant to find a purchaser. C. did not find a purchaser but bought on his own account. The plaintiff sued but was held not entitled to recover.

The test is "was the relation of buyer and seller really brought about by the act however trifling of the agent?" if so "he is entitled to his commission although the actual sale has not been brought about by him." *Green v. Bartlett* (1863), 14 C. B. N. S. 681. And accordingly in *Sleere v. Smith* (1885), 2 T. L. R. 131, where an agent took one H. to the owner and introduced him, although H. did not then make any offer but took a house in the same street, still when H. ultimately did buy from the owner, the agent was held by Field, J., entitled to his commission. That right is not lost even by the discharge of the agent, and with-