

1892.

NEW ZEALAND.

SCOTT v. RITCHIE AND OTHERS.

(REPORT OF AN ACTION FOR INDEMNITY RESPECTING A PASTORAL LEASE.)

*Presented to both Houses of the General Assembly by Command of His Excellency.*SCOTT *versus* RITCHIE AND OTHERS.

REPORT of CASE, JAMES ROBERTSON SCOTT *versus* JOHN MACFARLANE RITCHIE, WILLIAM HENDERSON, and THE NATIONAL MORTGAGE AND AGENCY COMPANY OF NEW ZEALAND.—An Action for Indemnity respecting a Pastoral Lease, heard before His Honour Mr. Justice Williams, sitting without a Jury, at the Civil Sittings of the Supreme Court at Dunedin.

SUPREME COURT, MONDAY, 22ND FEBRUARY, 1892.

Sir Robert Stout and Mr. F. R. Chapman appeared for the plaintiff, and Messrs. B. C. Haggitt and S. Solomon for the defendants.

Sir R. Stout said,—In this case James Robertson Scott is the plaintiff, and John Macfarlane Ritchie, William Henderson, and the National Mortgage and Agency Company of New Zealand the defendants. The statement of claim I need not read at length, but shall state shortly what the statement of claim discloses, and what the statement of defence discloses. The first two paragraphs in the statement of claim are admitted—namely, that the plaintiff is a commission agent, carrying on business in Dunedin, and that the defendants are the National Mortgage and Agency Company, &c. Then, the next paragraph is denied, which says, “The defendants requested the plaintiff to act as their agent in applying, in his own name, for Pastoral Run No. 93A, and subsequently in bidding in his own name for the said run.” Then, the next paragraph is admitted, leaving out the words, in the first line, “pursuant to the said request,” and the words in another line, saying it was at the request of the defendants; otherwise it is admitted. What is admitted I shall read: “That plaintiff appointed a person designated by the defendants, who was really a servant or agent of the defendants, to apply for the said run, and bid for the same; that it was knocked down to plaintiff; and that plaintiff thereafter executed a license thereof, whereby it was leased to him in his own name for ten years.” Then, the next paragraph simply states that the plaintiff is a man of small means; that he had no real interest in the transactions; that he never paid any rent for the same, or took possession thereof; all of which facts point to the presumption that he acted as trustee or agent merely. Then, the defendants admit that they paid the first half-yearly instalment, and the plaintiff’s plea avers this fact, and says that they occupied the run and managed it, and treated it as their own. They admit also occupation for a short time, but say it was in pursuance of some arrangement. The next paragraph is, “The defendants, when they requested the plaintiff to take the said run for them, promised to undertake the whole responsibility for the said run, and to indemnify him against all liability in respect thereof, provided he from time to time submitted all correspondence to them, and received and acted on directions from them, as to his actions respecting the same, all of which he has done.” That paragraph, your Honour, is denied. The next paragraph is, “In the month of May, 1891, the plaintiff was prosecuted, and ultimately fined £15, and 3s. for costs, for failing to destroy the rabbits on the said run to the satisfaction of the Inspector; and the plaintiff was defended by solicitors nominated by the defendants; and the defendants promised, in consideration of the plaintiff then paying the amount of the said fine and the costs of the defence, amounting to £5 5s., and sundry disbursements for telegrams and otherwise in connection with the said matter, that they would repay the same to him, which sums the plaintiff accordingly paid.” They admit the prosecution and fine, but deny everything else. The ninth paragraph is, “It was thereafter arranged between the plaintiff and the defendants that no money should for the time being pass in respect of the said fine, and the expenses of the said defence and other disbursements, and such arrangement was entirely for the convenience and protection of the defendants, and was made at their request.” That is denied. The next is, “On the 4th and 31st days of March, the 18th day of May, and the 3rd day of June, 1891, the Chief Inspector of Stock for Canterbury gave the plaintiff notice to destroy the rabbits on the said run, and that, in the event of his failing to do so, the said run would be poisoned, which notices the plaintiff handed to defendants, requesting them to attend to the same; and the same is