

look to the company for anything, and that it might involve him in bankruptcy; that Scott thereupon said, "I do not care; I am willing to take the risk. The Government can get nothing out of me. I have nothing they can seize except an office-table and a chair or two, and I am perfectly willing to take the risk." Now, your Honour, Mr. Ritchie will tell you that he distinctly told Mr. Scott that he was running a risk. I quite admit that it was not in the contemplation of either Mr. Ritchie or Mr. Henderson on the one part, or of Mr. Scott on the other, that he would be involved in the ultimate proceedings he was. They both seemed to have agreed upon the assumption that the utmost that could result to Mr. Scott was bankruptcy; and Mr. Ritchie will tell your Honour he distinctly stated to Scott, "Mr. Scott, you must understand what risk you are taking, and if you have the slightest hesitation or doubt about taking the risk say so, and there is an end of it;" that Mr. Scott thereupon took the run up, and that the first half-year's rent was paid, and Mr. Ritchie always thought that the money that Mr. Scott had to be paid had been arranged for by Mr. Henderson and paid to Mr. Scott. Mr. Henderson and Mr. Ritchie will tell your Honour that whenever any messages came from Mr. Scott in connection with the matter, either with reference to rabbiting or with reference to payment of rent, that they, not on one or two but on many occasions, told Mr. Scott that they had no interest in the matter whatever; that he knew the risk he was taking when he took the run up; and that he must bear the consequences. But Mr. Ritchie will also say that when the fine for the rabbiting took place he said to Mr. Scott, "If this is to be the end of it I may go beyond the original agreement and pay to you the fine,"—which amounted, I think, to £13—"in order that you may get the profit I promised," or "that your profit may not be swept away by the fine imposed on you; but at present I cannot even promise that, and I cannot go beyond my word." Your Honour will see that the case is established by the pleadings exactly as it is to be established by evidence. My learned friend makes a point that Mr. Scott was a dummy. We do not deny that at all, and it is nothing wrong—neither wrong nor illegal—that he should be a dummy. It may be that the Government did not get what they expected; but there is nothing illegal in that—nothing either immoral or illegal. The Government are bound to accept any purchaser. No declaration is made; and you have no misstatement from the commencement to the end. We ask your Honour to look at the probabilities of the case. We say this: that the object of the company in the matter is perfectly apparent. The company wished to get the use of the run for six months without saddling themselves with the responsibility of keeping it during the term, and being called upon to put down the rabbits. If the arrangement was as alleged by Mr. Scott, if it was expressly said that Scott was to look to them, and that they practically took all responsibility in the matter, why should they employ Mr. Scott at all? Why pay Mr. Scott £15 or £20 for doing something they were perfectly well able to do for themselves; and there was nothing whatever to prevent them getting one of their employes—one of their own servants—to do the same thing they got Mr. Scott to do. The very object the National Mortgage Company had in view in employing Scott to do this would have been frustrated, and it would have been of no service whatever to them if the arrangement was as Mr. Scott represented.

*His Honour*: I do not quite see that; because, according to the suggestion of the plaintiffs, the National Mortgage people thought that the Government would not object to Scott giving up the run, and would not press him for the rabbit-money; whereas, if it was taken up by the servants of the National Mortgage Company, or some one known to be connected with them, or by the company themselves, there undoubtedly would have been that objection.

*Mr. Solomon*: Yes; if some one known to be connected with the National Mortgage Company had done so, no doubt; but it is suggested that it was perfectly well known this man was a dummy; and I put it if a man not notoriously connected with the company could not have been got to do the same thing as we say Scott was employed to do, and no such indemnity as Mr. Scott alleges in this case to have been given would have been required in the other case. However, that is the view we put to your Honour. But we say that this case is the case of a resulting trust also. Supposing this matter were put the other way about. It is very much the same case as the case of one person purchasing property with the money of another. Here, according to the plaintiff's version of the case, Mr. Scott was trustee for the National Mortgage Company of this run. Now, if your Honour looks to the cases referred to in "*Lewin on Trusts*," you will find such a trust as that an exception from the ordinary law of the Statute of Frauds—that, while there is express judicial authority to the effect that parole evidence may be given to prove its existence, that parole evidence must be clear and distinct. Here in this case, applying it the reverse way, such an arrangement as that suggested by Scott can be proved by parole evidence. The leading case, "*Gascoigne*—

*Sir R. Stout*: You ought to have pleaded that if you rely upon it.

*Mr. Solomon*: I expressly said a moment ago I did not rely upon the statute. Your Honour will find it in "*Lewin on Trusts*," 8th edition, page 186. The particular passage to which I refer is, "Parole evidence, where admitted, must prove the fact very clearly," those words being in italics. Applying that the reverse way, I submit that the same principle precisely arises—that this resulting trust is an exception from the usual law of the Statute of Frauds, and although it can be proved by parole evidence, yet that parole evidence must establish it clearly and distinctly, and without any reasonable doubt whatever. Here, in this case, Mr. Ritchie and Mr. Henderson will positively deny the statement of the case as alleged by Mr. Scott; they will tell your Honour plainly and distinctly that Mr. Scott from the commencement was made aware of the risks he ran, and that Mr. Ritchie himself especially warned him and told him if he had any doubt about taking the risk he had better say so at once and have done with it. My learned friend must have been hard pushed to suggest the reason he has done why Mr. Scott's evidence should possibly be preferred to Mr. Ritchie's. Apparently he has anticipated that it would be a question of one witness's evidence being preferred to another's, and he wishes your Honour to disbelieve Mr. Ritchie's because Mr. Ritchie sent a telegram which he says is untrue, and which he says we admit is untrue. We do admit that the statement in the telegram is incorrect, but we say it was perfectly *bona fide*, and that this was what he thought