

tions as to onus they rely, nor have I heard their argument; and it may be necessary for me to deal with that in reply ultimately; but I shall now submit to your Honour the view of the evidence which we submit is the proper one, and the view which the Court should take of the whole case. It is common ground in this case that Mr. Scott applied for this lease at the request of the defendants. My friend Mr. Solomon opened that, and he drew a delicate distinction, stating that Scott was not an agent for the defendants, and, I think, adding that Scott was not a trustee for the defendants, but that Scott applied for this run, and placed himself under this liability at the request of the defendants. Mr. Henderson asserted that in his evidence, if more were needed; and Mr. Ritchie admits it, and says that he made the request; so that nothing can be plainer. We submit that all we have to show your Honour is that the ordinary implication of law arises, and that that implication of law entitling Scott primarily to indemnity having arisen, the onus is shifted entirely on to the defendants to get rid of that, and show the Court by what means they seek to shift upon Mr. Scott the liability which the law ordinarily casts upon them, and my friends have undertaken this task in a most peculiar way. They have avoided pleading that Mr. Scott released any of his rights as trustee or as an agent; yet I shall submit presently that they cannot make the case which they allege arises upon the evidence without a specific plea that Scott, having certain rights, deliberately released them. I am dealing with the question as one of onus, and I will contrast their case with that put forward on behalf of Scott. Their own case, as detailed by Mr. Ritchie, is that they drew Mr. Scott, treating him as a man of straw—drew him into a scheme by which payment of rent to the Crown was to be evaded; by which they were to get the benefit of this country; by which they were to provide that the rabbits on the country which they were using, and which they were occupying, should go on increasing to the destruction of their neighbour's property; that no rent should be paid to the Crown; and that after they had ruined the country in this way they should get off scot-free. That was their view of the transaction, and Mr. Ritchie deliberately states that it was with that purpose that he went into it. We rely, on the other hand, on a perfectly simple case, your Honour. Our case is narrated in the statement of claim, and I submit it is proved. It is indeed superfluously narrated so far as the pleadings are concerned, because we have alleged unnecessarily from the pleader's point of view, that the defendants promised to indemnify Mr. Scott—unnecessarily, if I am right in my proposition that the right of indemnity arises out of the very nature of the transaction. We had, however, a reason for alleging that promise of indemnity by the defendant Mr. Henderson on behalf of the defendants. We had a reason for alleging that, and our reason simply was that we knew we could prove it, and intended to prove it. My learned friend Mr. Solomon appeared to make some kind of grievance out of that—that at first we relied on the special promise of indemnity, and then on the implication of indemnity; but I submit that that is what one necessarily does: you rely upon the case as made on the pleadings at large, and upon any special allegation in the pleadings. That is Mr. Scott's story, and he has set it out in a simple form in the statement of claim, and has supported it by his evidence; and we shall rely broadly on this, your Honour: that whereas Scott's statement is from first to last minutely consistent with the documents, and is not only consistent with the documents but is minutely borne out by the documents, and by documents in Mr. Ritchie's own handwriting, the defendants, on the other hand, cannot make their case without absolutely throwing their own writings—their own documents—to the winds. How do they dispose of these documents? We say, your Honour, that the run never was ours in the broad sense of the term. Certainly it was taken in Scott's name, with his eyes open, with a warning at any rate derived from a superficial knowledge of the relations of landlord and tenant—a knowledge of those relations, and a very imperfect knowledge indeed, as when the matter comes to be dealt with in detail I shall show hereafter; but a broad knowledge of the fact that he made himself a runholder in Canterbury, and was liable for the rent of the run. Mr. Scott never felt the slightest interest in the run; he never had the curiosity to inquire where it was; he never really knew where it was beyond a general statement that it was in the Ohau district; in fact, he seems to have known nothing about it. He appears to have thought at one time that it was the Black Forest, and to have got on the former transaction so confused about the position of his own alleged property as to suppose that it was at the Black Forest. I do not know if your Honour knows the locality. We have Lake Ohau here, and the Black Forest is where the three Waitakis join, sixty or eighty miles lower down. This country is above Lake Ohau, the upper forks of the river. So little did Scott know about it. On the other hand, what is the position of the defendants? They took the keenest interest in the transaction. They say they never contemplated that it was to be theirs for longer than six months, and that they took no interest in it; but all the documents show the keenest interest as owners on their part, and the most total ignorance on Scott's part, and the most total indifference on his part as to where or what the country was. Now, your Honour, if the Court believes Scott's story, it will simply accept his statement to this effect: first of all, that he took up the run at the request of the defendants for their use, and that nothing was said to him to dispose of the normal legal consequences; that they were ultimately—whoever bore the first brunt—that they were ultimately to bear the consequences the law cast upon them. Secondly, he says that on two occasions, when the approach of liabilities became, as it were, acute, Mr. Henderson, in accordance with what I might venture to term the whole history and nature of the case, assured him that it was all right—that they would see him through. The very expression is a common one under the circumstances, and it only really repeated what Mr. Henderson must have known was the legal liability of the defendants. If the Court is unable to decide—if it feels itself unable to decide—upon what appears to be a conflict of evidence between the parties, I submit, your Honour, treating it as a question of the burden of proof, that the Court must allow what may be termed the normal or natural legal inference to prevail—to let the case, as it were, decide itself as a mere inference from the situation which the respective parties chose to assume. Now, what is the evidence upon this subject, your Honour? Mr. Ritchie admits, though reluctantly, that he was really prepared to answer for everything that he really had in contemplation as likely to occur when he made the