

and took one view of his position while they took another, then, I say, his legal right remains—that he has not contracted himself out of it; and I submit they must prove to demonstration that he has given away his legal right in entering into this position. Now, your Honour, have they made that clear? That is the question. Can it be said for a moment that they made it clear to Scott—that they have demonstrated by evidence here that they made it clear to Scott that he had given up his legal right? I submit that the action of Mr. Henderson in taking Mr. Haggitt's opinion absolutely negatives this. His action in connection with the rabbit fine alone absolutely negatives this. Mr. Ritchie may have persuaded himself that his references to the risks of a rabbit prosecution took a wider scope than Scott says and admits that they took. He has persuaded himself that. He may have grown up into that persuasion since this liability arose; but this must be remembered, your Honour: that Mr. Ritchie has forgotten several things of some importance in connection with this inquiry, and he has to build up his case, so to speak, out of very flimsy material and against his own documents. He may remember that he used some big words to Scott, cautioning him about this and cautioning him about that, and he may *bond fide* think now that he did warn Scott, in the sense of fully arranging with Scott that he (Scott) was to bear these liabilities. It may be that Mr. Ritchie is giving evidence on these subjects in perfect good faith; but I submit that is a very different thing from proving it in the face of his own documents. Now, there is one matter on which I cannot help observing in connection with this telegram which Mr. Ritchie so glibly explains away now. I do not doubt Mr. Ritchie's statement in general terms that he thought that he had paid Scott something. I do not wish to cast doubt upon that. I do not wish to suggest that Mr. Ritchie was telling me a deliberate untruth when he sent me that telegram. It is highly improbable that he would try to do such a thing when the truth must come out ultimately. The thought that probably he had in his mind was that Scott was to be remunerated in some way for the annoyance to which he subjected himself; but Mr. Ritchie says in his telegram, "Have paid him in full for such use as we got of his run." He does not say anything of that sort in his evidence, because your Honour will remember the singular fact in his evidence that he has actually sold the right to the use of this run to the purchaser of his cattle and sheep, not merely for this six months, but for so long as the purchaser likes to go on paying the rent, and that he actually claims the right so to sell it.

*His Honour*: I do not think that was so. It was up to the end of the time for which the rent was paid.

*Mr. Chapman*: I understand it was "so long as the rent was paid."

*Mr. Haggitt*: No; for the period the rent was paid for.

*Mr. Chapman*: I understand it is so, and so I took it down. However, I am observing upon this telegram. Now, I do not wish to accuse Mr. Ritchie of wilful untruthfulness. I am satisfied he was not guilty of that; but I must say this: that the plaintiff's solicitors were unfairly treated in the matter. Mr. Ritchie must have come to know very soon that he had made an erroneous statement in his telegram, yet he never made the slightest attempt to clear up the misleading effect of that telegram of the 7th December until he delivered his Statement of Defence on the 3rd February. No explanation from him, and no explanation from his solicitors, and, more than that,—

*Mr. Haggitt*: His solicitors did not know.

*Mr. Chapman*: No; his solicitors did not know it, and my friend Mr. Haggitt did not know it, otherwise my friend Mr. Haggitt would not have allowed me to assume on the 23rd December, when I went before your Honour in Chambers for an order for discovery of documents—would not have allowed me to assume that that payment was an issue in the cause. Your Honour will remember that I asked prematurely for an affidavit of documents. There was no issue in that sense that the statement of defence was delivered, and my friend objected that I was premature in my application for an affidavit of documents, because the parties were not at issue, and I pointed to the paragraph setting out our telegram to Mr. Ritchie and his answer, and to our letter to my learned friend in paragraph 20, and my learned friend's answer, as raising issues, and your Honour decided the question upon that ground—that the correspondence set out in the statement of claim was sufficient to show that the parties were at issue, and this was one of the issues. I only had at that time Mr. Scott's statement in his statement of claim, reiterated time after time as your Honour may suppose, when faced with this statement of Mr. Ritchie's; and yet Mr. Ritchie never corrected it; and when my learned friend was instructed he was never instructed to clear up that question by admitting that Mr. Ritchie had made a mistake.

*Mr. Haggitt*: I do not see any importance in it.

*Mr. Chapman*: My learned friend is not expected to see any importance in it. Mr. Ritchie seeks to explain away his telegram as he seeks to explain away his draft letter, to which I shall refer presently, as a matter of no importance. It appears to be of no importance to this gentleman to have to contradict his own documents; it appears to be of no importance to have to contradict his own course of dealing; it is all capable of being explained away by merely saying, "Well, I thought so." Now, your Honour, as to the further matters in Mr. Ritchie's evidence: Firstly, that peculiar entry in the ledger; Mr. Ritchie has never yet to this hour explained how it is that in his ledger he debits Scott as a debtor with this rent, and that that entry in the ledger is undischarged to this hour. It is true that Mr. Ritchie is now quite glad to say that Mr. Henderson, in a sense, discharged it by reporting it along with other things in connection with this run to London as bad. My learned friend made some observations to Sir R. Stout about his notion of book-keeping, but I submit nothing can be more obvious than that it is perfectly evident that this ledger has been left in that imperfect state for some object. The proper course would have been to make some entry on the other side discharging the item. No doubt the proper thing would have been to enter it "Ohau Transaction."

*Mr. Haggitt*: There is an explanation.