

right to sell what they say was Scott's run? The dangerous man Matheson was to be offered the run, and so the whole thing got rid of, lock, stock, and barrel, just as Mr. Henderson suggested selling to Preston. We rely upon the documents and upon the conduct of the parties as well. There was an object in keeping the matter secret, and my learned friend actually put it, "Why should they not have done it in the name of one of the shepherds, or anybody they chose?" Your Honour will remember there was only forty-eight hours, or something like that, to do it in. There was only an exceedingly short time; the applications were to be in within a few days, and the auction was coming on in a week, and somebody had to be picked up at the moment. If they had had time to properly mature their plans possibly they might have done it a different way, and have imported a dummy from the North Island, or have got some unknown man; but as to the idea of employing one of their shepherds to do this, they would never have thought of it. My learned friend says they would have employed one of their own shepherds if they had dreamt of risking such a liability as this. Your Honour will see this: that Mr. Ritchie most emphatically stated that no company would be released from its liability. Would he have had the slightest prospect of a release from liabilities if one of the company's own servants had been put forward? Unquestionably, the soft line of least resistance could not have been followed if one of the company's servants had been put forward. The reason for suggesting Mr. Scott was that they expected the transaction to go off; as Mr. Henderson says, he expected it to go off with a little pressure at the end of six months, and then forfeiture in the usual way. I submit that answers my learned friend from this point; and upon the general point of credibility between these gentlemen, I submit there is far less in it than my friend would make out. Mr. Scott was unshaken in cross-examination. Mr. Scott appears to be a credible person. My learned friend admits he was unshaken; and Mr. Scott tells a consistent story, and a story quite consistent with the documents; whereas these other gentlemen cannot really face the documents, except by pooh-poohing them. They cannot face the fact that all along they have asserted an interest in the country except by pooh-poohing the documents in their own writing. I submit that nothing can be clearer than that they left everything to silence as it were, hoping that the thing would go through, and, as Mr. Ritchie and Mr. Henderson said, that the forfeiture would go through; and now, I again say, they are attempting to get out of their fair liabilities.

His Honour: Yes. I will take time to consider.

Judgment was accordingly reserved, and the Court rose at 2. 30. p.m.

MONDAY, 11TH APRIL, 1892.

His Honour Mr. Justice Williams delivered judgment as follows: If it be necessary for the plaintiff, in order to make out his case, to prove an express contract that he should be indemnified he has not succeeded in doing so. The case, however, turns, in my opinion, on the question as to whether, in the circumstances, a right to indemnity would be implied, and, if so, whether the plaintiff has contracted himself out of that right. There are certain facts which are either undisputed or clearly proved. The run was taken up in Scott's name, with the company's money. The money paid for the first half-year's rent was, apparently by inadvertence, debited to Scott in the books of the company; but Scott was not made aware of this; and there was nothing in the negotiations between Scott and the company to suggest that the rent as paid was to be treated as a loan to Scott. The company treated the run in all respects as their own. It was occupied by their stock, under the supervision, I suppose, of their own people. Mr. Martin, the company's manager at Christchurch, immediately before the purchase of the license, offered to sell the license, when bought, to a Mr. Matheson. Mr. Scott, at a later date, represented to Mr. Henderson that a Mr. Preston might be a possible purchaser of the run. Mr. Henderson informed Mr. Scott where Mr. Preston might be found, and told him that if he (Scott) sold the run he might get a commission. This conversation was not denied by Mr. Henderson. Scott was merely a passive instrument in the hands of the company; he never interfered in any way with the run; he did what the company told him; and they acted in respect of the run without consulting him in any way. There was no bargain that the company were to pay Scott anything for the rent of the run, but merely a small sum for the use of his name. Now, the purchase of the run in Scott's name, with the company's money, apart from any other circumstances, is sufficient to create a resulting trust in favour of the company, but the other circumstances go to show irresistibly that there was a resulting trust. If, before trouble with the Crown arose, there had been a great rise in the price of wool and stock, and a murrain among rabbits, and the run had, in consequence, largely increased in value, is it really to be supposed that the company would not have claimed to continue to treat it as their own? If Mr. Scott in such circumstances had asserted it was his, the facts he would have had to admit would have been sufficient to have put him out of Court. The company only wanted the use of the run for six months or less. If the company had taken up the run in their own name they knew that the Crown would have held them to their bargain. If, however, the run were taken up in the name of a private person, they assumed that he would be allowed to throw it up, as of course, without objection, as had always been the case in the past. Mr. Ritchie, writing on the 5th March, 1891, to the manager at Christchurch, says, "We pay six months' rent only, and can then forfeit by non-payment;" thus, by the way, treating Mr. Scott as holding for the company. Nor was it anticipated that during the first six months the Rabbit Inspector would enter on the run to clean it. The course actually taken by the Inspector was pretty well unprecedented. These considerations render it improbable that there was any stipulation as to who should take the risk in the event of the Crown objecting to Mr. Scott throwing up the lease, or in the event of the run being cleaned by the Inspector. People do not contract with respect to events which they never anticipate will happen. If the run were in the name of the company these risks would have been serious, but if the run were in the name of Mr. Scott, experience had shown that they practically did not exist. While, therefore, it is improbable that the company expressly agreed