

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

not now in the plaintiff's possession." They admit all excepting the words "requesting them to attend to the same." These are struck out and the rest admitted: "The defendants did not take the requisite or sufficient measures to destroy the rabbits on the said run," and so on. That is admitted. The next is, "On the 5th day of October, 1891, the said Chief Inspector, pursuant to 'The Rabbit Nuisance Act, 1882,' made a demand on the plaintiff, pursuant to Schedule B of the said Act, for payment of the sum of £415 Os. 1d. for the expenses of destroying the said rabbits." That is admitted. The next is, "The plaintiff showed the said demand, and the particulars thereof, to the defendants, and requested them to pay or attend to the same; but the defendants failed to pay the same." The words "requested them to pay or attend to the same" they deny, but admit the other. Then, "On the first of September, 1891, the rent of the said run for the half-year, amounting to £190, became due, and the plaintiff, having received a demand therefor from the Receiver of Land Revenue at Christchurch, intimated the same to the defendants, and requested their instructions thereon, and the defendants directed him to decline to pay the same." They admit all excepting the words beginning "and requested their instructions," denying the latter part. Then, the next is, "On the 27th day of November, 1891, there were due and owing to Her Majesty the Queen in respect of the aforesaid matters the following sums, namely: Rent of run, £190; penalties, at £1 per day, £80; account for destroying rabbits, £415 Os. 1d.; total, £685 Os. 1d." That is admitted. Then, "In addition to the aforesaid amounts the penalty of £1 per day, for non-payment of the rent of the said run, had further accrued in respect of several days, and is still accruing from day to day." That is admitted. "Thereupon Her Majesty's Solicitor-General, on the said 27th day of November, 1891, issued his fiat pursuant to 'The Crown Suits Act, 1881,' and on the 3rd day of December, 1891, Her Majesty caused to be issued against the plaintiff a writ of *Capias ad respondendum*, and the plaintiff was, on the 4th day of December, 1891, pursuant to the said writ, taken by the Sheriff of Otago and carried to the common gaol at Dunedin, until he should make deposit of, or find bail for, the said sum of £685 Os. 1d., together with £10 10s. for costs, to which claim the plaintiff has no valid defence." That is admitted. The plaintiff on the same day requested the defendants to find bail for him, or indemnify some person who should become bail for him; and, after making the request verbally to the defendants, William Henderson and the National Mortgage and Agency Company, without result, at their suggestion, telegraphed through his solicitors to the defendant, John Macfarlane Ritchie, who was at or near Timaru, in the following terms: 'J. M. Ritchie, National Mortgage Company, Timaru.—J. R. Scott was this morning arrested under civil process at the suit of the Crown for £685 for rent of run and expenses of exterminating rabbits. He must remain in gaol unless bail given. Please wire advising what is to be done.—SMITH, CHAPMAN, SINCLAIR, WHITE.'" They admit that that telegram was sent on the suggestion of Mr. Henderson, of the National Mortgage Company. "On a subsequent day—namely, the 7th December—the said defendant replied by a telegram in the following terms: 'Timaru.—Smith, Chapman, Sinclair, White, Dunedin.—Have nothing to do with Scott whatever. Have paid him in full for such use as we got of his run.—J. M. RITCHIE.'" That is admitted. "The statement in the said telegram as to payment is not true, as the plaintiff has not, in fact, received any payment from the defendants, or any of them." It is admitted that the telegram is untrue. "On the 5th day of December aforesaid, the defendant, William Henderson, after sending to the plaintiff's solicitors a person of insufficient means to become bail for the amount required, failed to find bail for the plaintiff, and in the evening of that day the plaintiff was taken out of the said gaol on bail by his friends, who were not procured or indemnified by the defendants." That is admitted. "Thereafter, on the 9th and 11th days of December, 1891, the plaintiff took proceedings to set aside his arrest and the bail-bond so given; and upon the last-mentioned day the same were set aside, on the ground of a technical defect in the said proceedings." That is admitted, and, in fact, the whole of the rest is admitted. "(23.) From the time of his arrest to the setting-aside of the said arrest and bail-bond the plaintiff incurred legal expenses to the amount of £41 18s. in connection with the aforesaid matters, and the bail who acted at his request incurred legal expenses to the amount of £12 12s., and railway and other expenses to further amounts. (24.) On the 9th day of December, 1891, the plaintiff's solicitors wrote and sent to the defendants' solicitors a letter in the following terms: '9th December, 1891.—Messrs. Haggitt Brothers and Brent, solicitors.—Dear Sirs,—*Re* J. R. Scott: As you are aware, Mr. Scott must find special bail, or render himself to-morrow. He can only find bail if they are indemnified by the National Mortgage Company, or Mr. Ritchie, or Mr. Henderson. We have now to ask you if the company, or these gentlemen, are prepared to do this, or pay the sum due. Should Mr. Scott be replaced in gaol he will certainly hold your clients liable for the consequences. As Mr. Scott does not wish to have this matter hanging over him, we have now to ask your clients, for whom Mr. Scott placed himself in this position, to pay the present debt and relieve him of all further liability. Should they fail to do this proceedings will at once be commenced in the Supreme Court to compel them.—We are, yours faithfully, SMITH, CHAPMAN, SINCLAIR, WHITE.' And also forwarded copies of the said letter to the defendants individually. (25.) To the last-mentioned letter the defendants' solicitors replied, as follows: 'Dunedin, 9th December, 1891.—Messrs. Smith, Chapman, Sinclair, White, solicitors, &c.—Dear Sir,—*Re* J. R. Scott: We have your letter of to-day's date, and have seen Mr. Henderson in reference thereto. The National Mortgage Company will not, nor will Mr. Ritchie or Mr. Henderson, indemnify Mr. Scott's special bail, nor will they pay the amount due by Mr. Scott to the Crown. We will accept service of any proceedings you may be instructed to issue, whether against the company, Mr. Ritchie, or Mr. Henderson.—Yours truly, HAGGITT BROTHERS AND BRENT.' (26.) The plaintiff fears that, having no defence to the said claims by Her Majesty the Queen, he may be arrested in execution of any judgment obtained in respect thereof, and, further, that he may at any time be arrested and held to bail for the further penalties accruing from time to time; and that, unless indemnified and relieved of his liability in respect of the said license, he may be constantly subjected to liabilities in respect of rent and

penalties, and also of expenses, none of which he is able to meet." Then comes the prayer, under various headings, your Honour, for relief. The statement of defence simply contains the admissions and denials I have mentioned as I have read through the statement of claim. It admits the first and second paragraphs. It denies that "they (defendants), or any or either of them, in or about the month of February, 1891, or at any other time, requested the plaintiff to act as their agent in applying in his own name for the pastoral run in the third paragraph of the said statement of claim mentioned, and subsequently, in bidding in his own name for the said run." "(3.) The defendants admit all the allegations in the fourth paragraph of the said statement of claim, save and except the words 'pursuant to the said request,' and the words 'at the request of the defendants;' but they deny that anything in the said paragraph mentioned was done by the plaintiff pursuant to or at the request of the defendants, or any or either of them. (4.) The defendants deny all and each and every of the allegations in the fifth paragraph of the said statement of claim, and especially the allegations therein that the plaintiff had no real interest in the transactions therein referred to, and that the plaintiff is or ever was a trustee or agent for the defendants, or any or either of them, in respect of the said run. (5.) The defendants admit that they paid the first half-yearly instalment of rent for the said run, but say that they paid the same for and on behalf of the plaintiff, and as his agents; and the defendants also admit that some stock, the property of the defendants—the National Mortgage and Agency Company of New Zealand (Limited)—were depastured upon the said run with the consent of the plaintiff, and by arrangement with him, for a short time after the plaintiff purchased the said run; but, save as herein admitted, they deny all the allegations in the sixth paragraph of the said statement of claim. (6.) The defendants deny that they or any or either of them ever at any time promised to undertake the whole responsibility for the said run, and to indemnify the plaintiff against liability in respect thereof. (7.) The defendants admit that the plaintiff was prosecuted for failing to destroy the rabbits on the said run, and was fined, as in the eighth paragraph of the said statement of claim is alleged, but they deny all the other allegations in the said eighth paragraph contained. (8.) The defendants deny all and singular the allegations in the ninth paragraph of the said statement of claim. (9.) The defendants admit all and singular the allegations contained in the several paragraphs of the said statement of claim numbered from ten to twenty-five, both inclusive, save and except the words 'requesting them to attend to the same,' in paragraph 10; the words 'and requested them to pay or attend to the same,' in paragraph 13, and the words 'and requested their instructions thereon, and the defendants directed him to decline to pay the same,' in paragraph 14, which words, and the allegations contained therein, the defendants deny." Your Honour will therefore see that the question that is open for decision by the Court is really one of agency by Scott for the defendants, or one of them. That is the whole defence that has been set up; and the question really narrows itself, it seems to me, down to the narrow question, Was Scott the agent of the defendants, or any of them, in the transaction which is referred to in the statement of claim, the circumstances regarding which I am about to state? There is no other defence raised as to the promise of indemnity. Perhaps some of these other defences may be raised on legal grounds when the evidence is concluded. We, however, say, your Honour, that the rule is that an agent is entitled to indemnity, and that the request to act as agent carries with it this indemnity so long as the person requested acts in the ordinary course of business. The law is summarised in "Smith's Leading Cases," on page 164 (9th edition). *Lampleigh v. Brathwait*, perhaps, puts it in fewer words. In his "Principal and Agent" or "Story on Agency," this rule is laid down as the duty of the principal: "A principal is bound to indemnify his agent against the natural consequences of all acts done by him in pursuance of the authority conferred upon him." In this case we have conclusive evidence of what was done; but all that is necessary is admitted, and the real question is whether Scott acted as the agent of these parties or not. If the Court comes to the conclusion that he was their agent I submit we are entitled to the relief sought, and I submit we have not come too soon, because we are entitled to come to the Court for indemnity so soon as we are threatened with anything, and the other side will not help the plaintiff. That is laid down very clearly by Justice Kekewich in "*Hobbe against Wyatt*," 36 Chan. Div. 256, where he said, "I think a man who accepts a liability is entitled to relief from that liability." Of course that was the case of an executor; but the same law will apply. And now I will state what are the circumstances that we will prove in this case, your Honour. As has been stated and admitted, your Honour, the defendants—the National Mortgage Company—carry on the business of stock and station agents, and have to do with runs—are general merchants, and a lending company, &c. I believe that as such they have sheep and cattle of their own. Mr. Ritchie is, I understand, the general manager of the company, and Mr. Henderson was the manager in Dunedin, acting under Mr. Ritchie—practically, acting as a sort of assistant manager of the company. Now, they have had to do with runs, and early in January last year Mr. Henderson sent for Mr. Scott, and asked him if he could use his name in bidding for a run. He said that it was a small matter, and that if the run was not bought Scott was to get a guinea, and that if the run was bought he was to get £10 or £20 for the use of his name: he was to be the agent, and they were to pay all the costs, rents, and everything else. There was not much said about the matter. Mr. Henderson simply informed Scott that they wanted his name because they had two clients bidding, and they did not want them to know who interfered in the matter. Scott assented to that, and, I believe, sent a telegram that their agent at Timaru was to act for him; but that was all, so far as that run was concerned: it was not bought by them, and he got his guinea. After this transaction had been concluded, about the end of February last year, Mr. Henderson sent for Mr. Scott again, and asked him again for the use of his name, and he at once assented to the use of his name. He did not know anything about the property for which his name was to be used; and I believe that to the present day he has not only never seen the run, but he does not even know the locality of this run referred to—Run 93a. He has certainly never seen it. He says that he simply asked Henderson to be sure not

to do anything to involve him, and Henderson said that was all right; they would pay all expenses, and only wanted to make use of his name, as he did not want to take up the run in his own name. Scott was assured by Henderson that the company would undertake all responsibility and pay all expenses, and that if any correspondence or anything took place between himself and others in reference to the matter he was to submit the correspondence to them, and receive directions as to his action. That is how the thing stood. The next step was that he signed an authority to the agent of the company at Timaru to act for him. This took place about the end of February—the 27th February, 1891. What actually took place further appears from the correspondence and other documents that have been discovered to have been this: The first telegram seems to have been a telegram sent by Mr. Ritchie himself to the National Mortgage Company at Timaru, and it was in these words: "Please act on J. R. Scott's telegram." The next telegram was sent on the same day—sent by Mr. Ritchie, in Scott's name: "27th February, 1891.—National Mortgage Company, Timaru.—Please apply to-morrow morning on my behalf for Run 93A, Lake Ohau, paying necessary moneys.—JAS. R. SCOTT (per J. M. Ritchie)." There, your Honour will see, Mr. Ritchie seems to have taken a very deep interest in this transaction. The next telegram was a telegram sent by Scott himself, but not written by him—written by some person in their office: "Please apply to-morrow morning on my behalf for Run 93A, Lake Ohau, paying necessary moneys.—JAS. R. SCOTT." Your Honour will see that that was exactly word for word with the telegram Ritchie himself sent, signing Scott's name, per J. M. Ritchie. Then, on the next day Scott does nothing, but Ritchie is very anxious, for he sends a telegram to the National Mortgage Company at Timaru, as follows: "When is application 93A decided?—J. M. RITCHIE." The next thing was the reply from the manager at Timaru to Mr. Ritchie, as follows: "Timaru, 28th February, 1891.—General Manager, Dunedin.—Dear Sir,—Lake Ohau: I got your wire yesterday afternoon, and put in an application this morning, in Mr. J. R. Scott's name, for Run 93A. Please get Scott to sign, and return enclosed authority by express on Monday. Fussell"—that is the name of a clerk in the Land Office—"was not able to tell me what would be done supposing more than one application was lodged for any run; any way, no one has so far applied here for 93A. You will see Matheson on Tuesday, and find out what he means to do.—Yours truly, Wm. R. McLAREN, Manager." Matheson, your Honour, was the person supposed to be the intending competitor at this auction-sale; but, so far as Mr. Scott was concerned, Mr. Scott signed this authority, and he never, even up to the present time, has done anything with any letters or documents without at once submitting them to the National Mortgage Company, or to Mr. Henderson, or Mr. Ritchie, and simply obeying their instructions. But I shall go on. What next happened was that the application was lodged on the 28th of February. The law was that if there were more applicants than one it was to be put up to auction between the persons who applied; and the run appears to have been put up to auction in Christchurch, the head Land Office, not at Timaru. The next thing we know of the correspondence is on the 2nd of March—that is, two days later still—when Mr. Henderson sent a telegram, "Manager, Timaru.—Lake Ohau: In reply to yours of 28th ultimo, we now send you agent's authority, signed by Mr. James Robertson Scott in your favour.—W. H." The next is that Mr. Ritchie seems still so anxious that he sends a telegram on the same day, "National Mortgage, Christchurch.—Advise whether telegram is sufficient authority for you to bid for Lake Ohau.—J. M. RITCHIE." So that he seems to have been very anxious.

Mr. Haggitt: He was so anxious that he sent a "delayed" telegram.

Sir R. Stout: Yes, anxious. Very likely he sent it towards the afternoon; and even in trifles like this he appears to have been very careful of his own or of his principal's money. The next letter is the 5th March, 1891: "The Manager, Christchurch.—Dear Sir,—About Run 93A, which is for sale to-morrow, at the upset of £150, an authority has gone for you to bid for J. R. Scott, who authorises me to instruct you as follows:—Now, as for that, Mr. Scott will say the instructions here he never gave, for the simple reason that he knew nothing about it. He had no cattle and no stock. The reason for putting these words in "authorises me," may have been that he did not want the manager to know that Scott was, to use a common word, a "dummy" for him—"The run is only wanted to get time for sale and delivery of the cattle (about 800) and sheep (about 5,500 wethers) now on it, and, if we could get from one to two months' time for this, Scott would not bid at all." Your Honour will see from this that it never was or could have been intended that this should be a *bona fide* bid to obtain the run, and that the whole object was to get rid of the cattle and the wethers—the cattle and the wethers belonging to the National Mortgage Company, or to Ritchie, or to Henderson, never to Scott; and the statement is that Scott would not have bid at all if they could get one or two months' time to get rid of the stock. Further, the letter says, "If we run the risk of being jammed"—not, if Scott runs the risk—"for the disposal of these sheep and cattle it will pay us to run up to £200, or even £250, as we can pay six months' rent only, and can then forfeit by non-payment. Possibly you might get hold of the applicants and put this view before them—not, of course, saying anything as to forfeiting, but merely that you have authority to bid for a man who is interested in the stock, and wants to sell and deliver them. I am wiring you about it, and shall give you a limit when I get your answer.—Yours truly, J. M. RITCHIE." Now, your Honour, this letter is either true or false. We are not to assume that Mr. Ritchie—it is signed by him—that Mr. Ritchie would write to the manager to tell another applicant a deliberate falsehood, and, if we are not to assume that, we are therefore to assume that the letter is true; and what does it say? The truth, then, is that he is to tell the man he has authority to bid for a man who has an interest in the stock. Who was the man who had an interest in the stock? It was not Scott; he had not a single tittle of interest in the stock. The only parties that had any interest in the stock were the National Mortgage Company, or Ritchie, or Henderson. This, then, shows the authority to bid so far as Scott is concerned, because we are not to assume that Ritchie was telling his agent to tell an untruth. The only authority they had on the face of the letter was that Scott was a mere agent, trustee, or dummy for them. Then, Mr. Ritchie says,

"I am wiring you about it, and will give you a limit when I get your answer." Then, I must remark that, so far as Scott was concerned, he was never consulted about the terms; and your Honour will see from what follows in the telegrams that they got so anxious that Mr. Ritchie practically told the manager at Christchurch to bid any price—to secure at all hazards. In the letter he says he will fix a limit; but in the end he says, secure it at any price whatever. The next telegram is the 5th March, the same date as the letter, "Letter by express about Lake Ohau sale to-morrow. Wire to-day whether we get any time remove cattle and sheep if another buys 93A. We only want such time.—J. M. RITCHIE," there, again, showing that Scott has nothing to do with it. "We" only want time to remove cattle and sheep. There is no pretence that Scott was not the agent, nor can they be heard to say so now. The next thing is there is a telegram on the same day—and not a "delayed" one either, because this is an important telegram—saying there is to be no limit. In the letter there was to be a limit fixed; here there was to be no limit. Here is an imperative instruction: "Secure 93A Run, Lake Ohau, to-morrow for J. R. Scott. If you let other applicants know he means to have it, it might be a good thing. Acknowledge this.—J. M. RITCHIE." We do not think the other telegrams, if there were any, came to Christchurch; only this was sent. Then comes a letter from the agent in Christchurch, and this letter and the letter of the 5th March may be read word for word. There is a good deal of a mixture of "we" and "us" and "Scott" in it. Apparently the general manager knew perfectly well the position Scott occupied. This is what he says: "The General Manager, Dunedin.—93A: I quite understand the difficulty there was in coming to anything like a bargain about the bidding for this, as it would be contrary to the Act, and particularly with such a dangerous man as Matheson is." The "contrary to the Act" is this: that the Act prohibits people who are at auction-sales of land from making private bargains, so as to get rid of having a proper auction. That is all that is referred to there. "I told him, however, that my client was bound to have the run to-day, if only to afford him ample time to deal with the stock, but that if he was a buyer we would be willing to give him the first offer of the whole thing—run, sheep, and cattle—as a going concern, and that in such case no premium would be asked, and the rental paid to-day." How could Mr. Martin, the general manager, have told Matheson that they were able to give him the first offer of the run, stock, and everything, if Scott was not merely their agent, and had no beneficial interest in it? "However, this did not appear to satisfy him, and he ran me steadily to £380. I am not sure that it was policy on our part to indicate that we were"—I ask your Honour particularly to notice this—"I am not sure that it was policy on our part to indicate that we were"—then comes, bracketed "(or, rather, Scott was) bound to have it." He considers to himself, "Well, this letter may be some time produced, and then they may say, 'You are interested, and not Scott.'" He says, softening the clause, "or, rather, Scott was bound to have it;" but he soon forgets that, and the "we" and "us" come in again. He says, "As I think, when he could not get us off, he felt on safe grounds to run; and if there could only have been any certainty of getting the stock off in fourteen days we should have dropped it to him"—Scott is again forgotten; it is "we"—"but your instructions by telegrams to secure it were imperative, and I did not like to depart in any way from them; and, besides, Matheson was ready to be troublesome, and he had his solicitor with him at the sale to raise an objection to applicants bidding through agents, but it was not entertained.—Yours truly, G. MARTIN, Manager." That is all the correspondence that takes place. The run was thus knocked down to Scott, and he signs any documents they put before him. They pay the rent—£191 1s. That includes £1 1s. license and £190 for the half-year's rent, and, so far as Mr. Scott is concerned, he knows nothing of it. They keep their sheep and cattle on it, and anything that takes place afterwards he reports to them. He gets notices about the rabbits, and every notice he gets he brings to them, and shows them, and they simply tell him what to do. I do not see how they can say, in face of the documents, independently of Scott's evidence, that Scott was anything but an agent for them for the purchase of this run. But what takes place afterwards, I submit, is conclusive. The next question is about rabbits. The rabbits are troublesome, and, as your Honour will see, they only wanted the use of the run for a few months so as to dispose of their 800 head of cattle and 5,000 sheep; they did not want to take trouble about the rabbits; so the first thing that happens now is that Foster, who was then head of the Stock and Rabbit Department in Christchurch, communicates with Scott about the rabbits, and a telegram is sent to Foster. That communication from Foster was taken to Mr. Henderson, and the answer sent was dictated by Mr. Henderson. That was in May. Then the next thing is that Mr. Scott is summoned. Before he is summoned, or at or about the time he is summoned, Mr. Ritchie—not Mr. J. M. Ritchie, but Mr. J. P. Ritchie, the head of the Stock Department—visits Dunedin, and Mr. Henderson sends Logie, Mr. Scott's clerk, to see him, and he tells the National Mortgage Company what has been the result of the interview—that they were going on with the summons. The next things I shall refer to are a letter and a telegram. The first is a telegram, signed by Scott and written by Logie, at the dictation of Henderson. It was this telegram:—"Foster, Sheep Inspector.—Inspector Thomson summoned me, rabbit-poisoning. Find cannot continue to hold run. Must abandon it." That was written at Henderson's dictation, and Scott signed it. The next was a letter at Henderson's dictation to Perry and Perry, solicitors, Timaru, as follows: "Would you kindly appear for me at the hearing of the complaint against me by the Rabbit Inspector. I cannot possibly attend personally as I have made arrangements to go to Southland, and am leaving town this afternoon. I find that I cannot continue to pay the rent for the run. I have made up my mind to lose the rent I have paid, and abandon the country. I hope, under these circumstances, you can induce the Court to deal lightly with me. Indeed, the Government ought to poison the country, as I find the rent is much too dear." That is Mr. Henderson's letter, which Mr. Scott signed. Your Honour will see that here the whole thing now comes out. They have had the use of the ground for three or four months, and then this takes place. Having got the use of the ground for March, April, and May, they say, "We can get the sheep and the cattle off now, abandon the country, and get rid of the

whole thing—have nothing more to do with it;” and they believe that, as Scott is not a man of large means, the Government is likely to allow the run to be abandoned, and that nothing more will be heard of it, and that Scott will not be put to any trouble. However, the Government thought better of it, and did not choose to allow the run to be abandoned. The next thing is that Perry and Perry appear for Scott, and there is the fining, and they send him a wire. At that time Scott was away, and Mr. Logie replied to it after, I believe, consulting with Mr. Henderson. Then, the next thing that happens is that Perry and Perry think there may be an appeal against the conviction, and a telegram—“What is decided to do *re* appeal?”—is sent to Scott. Scott takes it at once to Mr. Ritchie, and Mr. Ritchie himself wrote the reply on the back in pencil, and the reply was, “What time would be gained by appeal, and at what cost?” That was what Mr. Ritchie suggested should be sent, and that was sent. The result was that Scott was fined without any appeal. The defendants consulted their own lawyer; they told Scott they would consult Mr. Haggitt, and he, apparently, advised against the appeal. Mr. Scott never knew what the advice was, but they told him they had taken the advice of their own solicitor, and the result was that the appeal was not gone on with. The next thing is that the fine is enforced, and has to be paid. Scott told Ritchie, and he said perhaps it would be better that no money should pass in the meantime—of course, the object being that in case of accident they did not want any money to pass in the meantime, as that might make evidence against them. There is only one other thing that it may be necessary—I do not know that it is necessary—to open, and that is, an interview between Mr. Scott and Mr. Ritchie in reference to the rabbit question. Scott saw Ritchie and told him that he supposed the thing had quietened down now as he had not heard anything for some time, and Mr. Ritchie told him that he supposed that was so, and that “it was better not to meet the devil half-way.” That, I suppose, meant that it was better not to stir the matter up, but to allow the thing to rest if the Government chose to allow it to rest. That is our case. We have, therefore, first this: Scott’s positive statement that Henderson told him they would indemnify him. Then, the whole of the actions and circumstances of the transactions—that they pay the rent; that they do not wish to pay money in connection with the rabbits in the meantime, that that was to stand over for future action; and that they know all the steps taken about the run just as if they were the owners. Then, they neither consult Scott about the amount of rent nor make any arrangement about the stock; and your Honour will see from Mr. Martin’s letter that he offers to sell to another buyer the run, sheep, cattle and all as a going concern. How, in the face of their own letters, and in the face of Scott’s evidence, they can say that Scott was not their agent I do not know. I hope it will not, and I do not see how, in the face of their letters, it can, come to a question of veracity, but if it comes to a question of veracity I submit that people who send letters or telegrams which they have to say in the box are untrue cannot be believed, and Mr. Ritchie has put himself in that position; because in this telegram to Messrs. Smith, Chapman, Sinclair, and White, in reply to one from the firm, he says, on the 7th of December, “Have nothing to do with Scott whatever. Have paid fully for such use as we got of run.” There is an admission on the face of the pleadings that that reply was not true. Why was that reply sent, excepting to bluff Scott, and to make out that he had been paid for the use of the run. If, unfortunately, there should be any conflict of testimony—and I do not see how there can be, in the face of this statement—I submit to the Court that your Honour will be bound to accept their own letters as corroborating Scott’s testimony, and there, I submit, is an end of the matter. What then happened afterwards is detailed in the statement of claim, and, practically, is not denied. Scott was arrested, and after Scott was arrested they first said, apparently, they would do something for him, and they got a man sent to appear as bail for him; but that man, I suppose, could not make the necessary affidavit of value, that he was worth the large sum claimed, and therefore nothing more came of it. I submit to the Court that Scott is entitled to this indemnity. I do not know if it is necessary to remark upon it, but I believe they have an entry in their ledger to this effect: “J. R. Scott, in account National Mortgage Company: To Timaru rent account, Lake Ohau, £76 1s.; Run 93A, rent of, £115: total, £191 1s.” But they have no credit entry against it for the use of the run. If there had been any arrangement such as they allege in their statement of defence, surely that arrangement would have been shown on the credit side as against this debit entry. The fact is that there was no such arrangement; that Scott was simply asked for the use of his name; and, in the face of their own correspondence, it is conclusively proved that they simply wanted Scott to take up the run, and that as soon as they got their sheep and cattle off it was to be abandoned. The reason they did not take it up in their own name is plainly obvious—that if they took the run in their own name the Government might not choose to allow them to abandon it, and they would have to stick to it for the whole term of the license. In order to get rid of that they employed Scott. They assumed that the Government would not insist upon his keeping the run, as he was not a man of large means; and therefore they thought, if they used Scott’s name, they would be able to get rid of the run. That is the attitude they then took up; but now, when the Government, apparently, is not going to allow Scott to get rid of the run, they turn round and say, “You are not our agent; you are the owner of the run.” I submit that is utterly ridiculous, in the face of Mr. Ritchie’s correspondence and the correspondence of the office; that the case is abundantly clear that Scott was merely an agent, and nothing else, and that he is therefore entitled to occupy the run, the license for which is for ten years. They thought fit to pay £190 to get the use of the country for four or five months, and then they thought they could chuck the whole thing up and let it go when they pleased. To show that that was so, Mr. Henderson contemplated that Mr. Scott might be made a bankrupt, and in one instance Henderson asked Scott whether his furniture was not settled upon his wife, leaving, therefore, nothing for the Official Assignee to get hold of. Then it was thought he might sail gracefully through the Bankruptcy Court, they piloting him all the time he was there. However, Mr. Scott told Mr. Henderson he did not know that his furniture was

settled on his wife, and that he was not going to do anything "crooked." Mr. Henderson wanted Mr. Scott to see Mr. Denniston and Mr. Hazlett, to see if his property could not be settled on his wife, and then he might sail gracefully through bankruptcy, greatly to the relief of Mr. Ritchie, Mr. Henderson, or the company. The case, your Honour, I submit, is abundantly clear, and the only surprising thing is that the company, having put Mr. Scott in this position, should be mean enough, now that he is in it, to say that he was not their agent, and must take the consequences.

JAMES ROBERTSON SCOTT examined.

1. *Mr. Chapman.*] What are you, Mr. Scott?—I am a commission agent, carrying on business in Dunedin.

2. You know Mr. Henderson?—I know Mr. Henderson and Mr. Ritchie, of the National Mortgage Company.

3. Had you any business dealings with them before last year?—Not very much.

4. Last year you saw Mr. Henderson about something?—Yes.

5. When was your first interview?—Early in January.

6. That had not to do actually with this transaction?—No.

7. Well, I will ask you what it was?—He sent for me and told me—that is, Henderson told me—he wanted to take up a run in my name.

8. *His Honour.*] "He" or "they"?

9. *Mr. Chapman.*] What expression did he use?—I think he said "we." "We want to take up a run in your name," or to make use of your name in taking up a run; and he said the run might not be bought. It was to bid at auction at Timaru for a run, and if they did not buy the run I was to get a guinea, and if they did buy the run I was to get £10.

10. How did that result?—Shortly afterwards they told me they did not get the run.

11. And you were paid the guinea?—Yes.

12. Did you know where that run was?—No.

13. You did not?—I think I recollect it was in the Lake Ohau district, but I do not know positively.

14. Did Mr. Henderson say anything as to why he wanted you to bid?—The only thing that was said—no, I do not think he did at that particular time. I do not think he gave any reason at all.

15. Did you hear Sir Robert's suggestion of a reason to his Honour?—That was wrong; that was my conjecture on the matter.

Mr. Haggitt: I think we shall find that will go through a great deal.

Mr. Chapman: No, it will not; but my friend Sir R. Stout's opening did not quite correspond with his brief.

Sir R. Stout: It is, "I inferred from what he did say." I thought he had said it.

16. *Mr. Chapman.*] What was the next thing you had to do?—The next time Henderson sent for me was in February—towards the end of February, I think.

17. You then saw him in the office of the National Mortgage Company?—Yes.

18. Did you go voluntarily, or were you sent for?—I was sent for.

19. What did he say to you?—He said he wanted to go in for another run. I cannot remember the exact words. He wanted to go in for another run, and that I was to do the same that I did last time. There was nothing said particularly as to what I was to be paid at this particular time, but I was to be paid.

20. Yes?—And I think the only thing said at that time was Mr. Henderson explained that Mr. Ritchie was frightened for the rabbits, and that the Government would come down on a company, whereas they would not come down on a private individual. He gave that as the reason for my taking the run up in my name.

21. What further took place at that interview?—Oh, I said, "Well, I hope it's all right. I hope there is nothing 'crooked' about it." And he said, "Oh, it's all right," and that I was to act for them—to submit the correspondence to them, and do nothing of myself—submit everything to them.

22. Anything more?—I do not think anything particular more was said.

23. Was anything said about the rent?—Not a word.

24. Was anything said about who was to pay the rent?—Oh, they were to pay the rent.

25. About the amount of rent?—No; nothing whatever.

26. Were you then, or at any time, consulted about the amount of the rent?—No.

27. Did you know the length of the term of the lease?—No.

28. Did you know the situation of the run?—I knew it was in the Lake Ohau district somewhere. That is all I knew.

29. Did you know anything of its qualities or character, or of the responsibilities attaching to your taking it up?—No.

30. Well, then, what liabilities or responsibilities were you taking in the matter?—They were making use of my name. I had to answer letters and telegrams.

31. *Mr. Solomon:* Is this what was said, or what he thinks?

32. *Mr. Chapman.*] Was anything said about that?—They were to take the whole responsibility of everything.

33. Well, what was said about that?—He said he would see me through it.

34. *Mr. Haggitt.*] Who did?—Mr. Henderson.

35. *Mr. Chapman.*] Was anything said about stock on the run—whether there was any stock on it?—I did not know whether there was any stock on it or not.

36. Well, what did you do then?—I think the next thing I did was to sign a telegram to the agent at Timaru or Christchurch.

37. *His Honour.*] Was that at the same interview?—No, it was not at the same interview.
38. *Mr. Chapman.*] What was the finish of that interview? You see a suggestion has been made to you, what did you say or do? Did you refuse or consent?—I consented, certainly.
39. *His Honour.*] To what?—I consented to their making use of my name.
40. *Mr. Chapman.*] Was anything written on that day or at that interview—written or signed?—I do not think so.
41. This is a copy of a telegram apparently sent by you on the 27th February, 1891: "Please apply to-morrow morning on my behalf for Run 93A, Lake Ohau, paying necessary moneys.—J. R. Scott." It was sent to the National Mortgage Company, Timaru. It is preceded by a telegram sent by Mr. Ritchie, of the same date. Do you remember when and where you signed that?—If I signed it in my office it is in the letter-book; if not, I must have signed it over at their office. I think it was over at their office. I am pretty sure it was.
42. You do not remember the actual date of this interview with Mr. Henderson?—The end of February.
43. Then, that telegram was sent. When did you next hear anything about it?—Some days after I got a letter, or a telegram, saying that the run was to be bid for in Christchurch.
44. It was the Head Office letter of the 2nd March, 1891—a formal letter: what did you do with that letter?—I took it over to the National Mortgage Company's office.
45. Whom did you see? to whom did you show it?—I think, to Mr. Henderson.
46. Then, did Mr. Henderson say anything, or produce anything, for you to sign?—I afterwards, I think, signed a telegram to Christchurch to bid, to the National Mortgage and Agency Company, or a document of some sort authorising.
47. This authority to bid would be sent to Christchurch, dated the 4th March, 1891; that is a copy. You sent some authority to bid. This is not your signature; it is a copy?—Yes, that is right.
48. Did you hear anything of the result?—Not for some days afterwards.
49. Well, what did you hear?—I do not think I heard anything. I heard that the run was bought, but how long afterwards I do not know.
50. Did you go to inquire whether you had become a runholder in Canterbury?—No, I did not.
51. Do you know how or when you heard it?—I think Mr. Henderson must have told me.
52. But you do not speak positively?—I cannot speak positively.
53. When did you come to know the rent?—I did not know it very well till to-day.
54. I think you had occasion to know it before that?—The exact sum I did not know.
55. From first to last, did you say that any kind of rent was to be paid at all?—None whatever.
56. Do you remember signing the lease?—Yes.
57. In the Land Office here?—Yes.
58. Did you read it?—No.
59. Who told you to sign it here?—Mr. Henderson.
60. You had no sheep or cattle, had you?—No.
61. Did you ever know what sheep or cattle were on this run?—No.
62. Did you ever make any arrangement for depasturing anybody's sheep or cattle on your run?—I never had a run of my own.
63. You never considered you had a run?—No.
64. Did you make any arrangement for depasturing stock on this run?—No, I did not.
65. Now, when there was any correspondence or anything of the kind about this run, when it came to you, what used you to do with it?—Take it over to Mr. Henderson.
66. What was the next thing you heard about it?—The next time it cropped up was some notices about rabbit-killing, and I took them right over to Mr. Henderson.
67. Were there any conversations when you took these over?—No; only "Let them alone." Mr. Henderson invariably told me to leave it alone—to do nothing.
68. Afterwards you got a summons, did you not, for failing to destroy the rabbits?—Yes.
69. What did you do with that?—Well, I paid no attention to it for some time, I think, and then Mr. Henderson came over and dictated a telegram in my office to Mr. Foster.
70. Were you present?—I do not know whether I was present or not on that particular occasion—Logie wrote it.
- Mr. Chapman:* That telegram was sent to Foster.
- His Honour:* Logie is your clerk, and Foster is the Rabbit Inspector?
71. *Mr. Chapman.*] Mr. Foster is the Chief Inspector in Christchurch. That telegram, at any rate, was not originated by you?—No.
72. You sent the telegram to the Inspector, at any rate, and it was not originated by you?—No; it was dictated by Mr. Henderson.
73. *His Honour.*] Who signed it?—I signed it, and Logie wrote it.
74. *Mr. Chapman.*] It is, "Inspector Thomson has summoned me for rabbit-poisoning. Find I cannot continue to hold the run. Must abandon it.—J. R. Scott"?—Yes.
75. That was dictated by Mr. Henderson?—Yes.
76. *Mr. Haggitt.*] No; he cannot say so?—Yes; I was not sure, but I must have been there, because, I see, I signed it. I remember I was busy about something else at the time, but I was about the room.
77. *Mr. Chapman.*] Did Mr. Henderson come over to your office?—Yes.
78. And your office is across the street from his?—Yes.
79. You got the reply, did you not, "You had better see Chief Inspector Ritchie in Dunedin.—FOSTER, Chief Clerk"?—I think that came while I was away. I heard of it after I came back to town.

80. Was anything said or done about defending you?—Yes; on the same day that he wrote that telegram Mr. Henderson dictated a letter which Logie wrote, and which I signed, to Messrs. Perry and Perry, solicitors, Timaru.

81. Are those gentlemen your solicitors in Timaru, Mr. Scott?—No; I do not know them.

82. *His Honour*: On the 26th May, 1891?

83. *Mr. Chapman*.] Yes; the same date as the telegram. (To witness:) You did not know Messrs. Perry and Perry?—No.

84. Have you ever had anything to do with them?—Never.

85. The letter, you say, was dictated by Mr. Henderson, written out by Mr. Logie, and sent by you?—Yes.

86. Read it?—"Dunedin, 26th May, 1891.—Messrs. Perry and Perry, solicitors, Timaru.—Dear Sirs,—Will you kindly appear for me at the hearing of the complaint against me by the Rabbit Inspector. I cannot possibly attend personally, as I have made arrangements to go to Southland, and am leaving town this afternoon. I find that I cannot continue to pay the rent for the run. I have made up my mind to lose the rent I have paid, and abandon the country. I hope, under these circumstances, you can induce the Court to deal lightly with me. Indeed, the Government ought to poison the country, as I find the rent is much too dear.—Yours truly, Jas. R. Scott."

87. Had you made up your mind to lose the rent?—I had not any rent to lose.

88. Or had somebody made up your mind for you?—I had not made up my mind.

89. You say that letter was dictated by Mr. Henderson?—Yes.

90. Was anything more said about instructing Messrs. Perry and Perry?—No, nothing more was said about instructing Messrs. Perry and Perry then.

91. Did you have any communication with them beyond that before the case was heard?—No.

92. Did any one on your behalf, as far as you know?—Nobody.

93. Then, if there was any further communication with Messrs. Perry and Perry, who was it who attended to it?—I do not know of any further instructions at all.

94. That was the last, so far as you were concerned?—Yes.

95. Do you know whose solicitors they are at Timaru?—Oh, a lot of people's.

96. But any one connected with this transaction; were you ever told?—I cannot say I know it absolutely; but I understood from the writing of this letter that they were the solicitors of the National Mortgage and Agency Company.

97. Now, Mr. Henderson came to your office next day, did he not?—I was absent then.

98. Well, when did you hear about the result of the rabbit case?—When I came to town the first thing I saw was in the *Evening Star*, a telegram from Timaru saying I had been fined; and I think allusion was made to it as a case of dummyism, and so forth.

99. *His Honour*.] How long afterwards was that?—That would be about the end of May.

100. *Mr. Chapman*.] The case was heard on the 29th, your Honour. (To witness:) Whom did you see after that?—I saw Mr. Henderson.

101. Any one else?—The first person I saw was Mr. Henderson.

102. What passed with him?—Well, I told him that I was very much put about about this appearing in the newspapers, and that it was a thing I did not anticipate when I did this business for them; and he assured me that it would be all right—that they would see me through it.

103. Did you take any further steps with respect to this fine?—Yes, they dictated a telegram.

104. *His Honour*: Who is "they"?

105. *Mr. Chapman*.] Who did this?—There was first a telegram on the 29th May. No, that was done when I was away. The first that I knew of was on the 2nd June, but there had previously passed some telegrams when I was absent, of which, of course, I heard when I returned to town, from my clerk.

106. Do you know what date you came back?—It was on Saturday night. I think I must have come back about the 29th May.

107. Well, there was a telegram on the 2nd June?—I was in town on the 2nd June, anyhow.

108. There is the telegram of 2nd June; did you receive this from Perry and Perry, of Timaru?—Yes.

109. "What have you decided to do *re* appeal?" When you received that, what did you do?—I went over to the National Mortgage office, and saw Mr. Ritchie.

110. Do you know whether this was your first interview with Mr. Ritchie on this subject?—I do not remember clearly seeing Mr. Ritchie before at all. I think he was present on one occasion previously. Yes, he was present on one occasion previously, and he said something about that they would come down on me for the rabbits, and I, jokingly, said, "Not much to come down on;" and he replied, "Oh, but you are doing pretty well now, are not you?" and I said, "Yes, I am doing very well." That is the only conversation I can remember with Mr. Ritchie.

111. *His Honour*.] Previous to the 2nd June?—Yes.

112. *Mr. Chapman*.] Well, on the 2nd June you took this telegram over to Mr. Ritchie?—Yes.

113. What happened between you and Mr. Ritchie?—I asked him what I was to do, and he wrote on the back of the telegram what I was to say.

114. "What time might be gained by appeal, and what cost?"—Yes.

115. Anything more said at that interview?—I do not think so.

116. Did you send a telegram to that effect?—Yes.

117. And you got an answer?—Yes.

118. The answer came the same day, "Our costs about fifteen guineas, and other side probably same amount if case lost, looking at worst side. Appeal argued beginning of July, or later.—

PERRY, PERRY, and KENNAWAY." And what did you do with that telegram?—I took it over, and saw either Mr. Henderson or Mr. Ritchie, I am not clear which, but, whichever it was, he said they would consult Mr. Haggitt.

119. Was Mr. Haggitt's opinion ever communicated to you?—No.

120. Did they ever claim the costs of it from you?—No.

121. You did pay Perry and Perry's account for the defence in the Magistrate's Court?—Yes; Messrs. Perry and Perry drew on me through the bank.

122. And you paid the draft?—Yes.

123. And you subsequently paid the fine?—Yes; and Perry and Perry's bill of costs. They first sent me down the bill of costs, and I took it over to the National Mortgage Company, and showed it to them.

124. To whom did you show it?—I gave it to Mr. Henderson.

125. Did you ever get it back?—No.

Mr. Chapman: We should like to have that.

Mr. Haggitt: We never saw it to our knowledge.

126. *Mr. Chapman*. You say you gave it to Mr. Henderson, and did not get it back?—I took every document over, and everything I have not in my office must be left there.

127. You left it with him?—Yes.

128. Then, afterwards you paid the fine, did you not?—I did; but I saw Mr. Ritchie about the fine previous to that.

129. Who first made a demand upon you for the fine?—A policeman named Pratt.

130. And you saw Mr. Ritchie about it?—Yes.

131. What did you say to him?—I told him that a man was asking for payment, and asked what should I do, and Mr. Ritchie told me to put him off as long as I could.

132. Yes?—I put him off for about a month, and then I paid him.

133. Did you see Mr. Ritchie more than once?—After I had paid him, some days after, I cannot remember when, I went over and told Mr. Ritchie that I had paid him, and Mr. Ritchie said, "Oh, you had better go and get the money."

134. Did he indicate where you were to go?—Oh, to the counter—the cashier: he was in his office.

135. Yes?—I said, "Oh, perhaps it would be better no money passed just now. There are some telegrams, and Perry and Perry's costs, and perhaps it would be better not to have any money passing between us just now;" and Mr. Ritchie said, "Oh, well, yes; perhaps so."

136. What was the next thing that happened?—Oh, I think the next thing that happened was a demand for the rent.

137. Had you seen Mr. Ritchie at all in the interval?—I do not think so.

138. You afterwards got a demand for the rent?—Yes, which I took over, and saw Mr. Ritchie with.

139. Was there any conversation?—No; there was nothing. He simply sat at his desk and wrote what I was to say.

140. You showed him the demand, and he wrote what you were to say on the back of it?—Yes.

141. "I beg to give you notice that it is my intention to abandon Run 98A, as I cannot make anything out of it at the rental." You wrote in these terms, then?—Yes; on the 7th of September.

Mr. Haggitt: Will you let us see that writing, please.

142. *Mr. Chapman*.] Then you wrote in these terms. Does that represent the whole of your letter?—My letter reads word for word.

143. *Mr. Haggitt*.] Will you read it?—"I beg to give you notice that it is my intention to abandon Run 93A, as I cannot make anything out of it at the rental.—Your truly, J. R. Scott."

144. *Mr. Chapman*.] You sent that. When did you next hear anything? You seem to have got a letter on the 5th October?—Yes, from the Crown Solicitor, James C. Martin: "I have been instructed to apply to you for payment of £190, rent due to the Crown on the 1st ultimo, for Run 93A, and to inform you that, unless that sum, together with the statutory penalty, is paid before the end of the week, proceedings will be taken against you.—Yours truly, J. C. MARTIN, Crown Solicitor."

145. What did you do with that?—I took it over and showed it to Mr. Henderson.

146. Did any conversation pass?—He dictated a letter.

147. You replied on the 7th October, "In reply to yours of the 5th instant, I beg to inform you that I have abandoned Run 93A"?—Yes, that is what Mr. Henderson told me to write.

148. Now, about this time you appear to have got two rabbit notices—5th October, 1891?—I think they came with the letter.

149. From the Crown Solicitor?—Yes; they came about the same time anyhow.

150. Both on the 5th October—the letter and notices?—Yes, with the Rabbit Inspector's letter.

151. There is the Rabbit Inspector's letter, enclosing a formal notice of account for £415 0s. 1d.?—I went over and saw Mr. Henderson about that, and he told me Mr. Ritchie was not at home, but in the meantime to do nothing.

152. You took these over—the Inspector's formal notices and the Inspector's account for rabbit-poisoning—to Mr. Henderson, and he told you Mr. Ritchie was not at home, but in the meantime to do nothing?—Yes.

153. Did you do anything?—I did not do anything.

154. Had you any other conversations with either Mr. Ritchie or Mr. Henderson that you remember at this moment prior to your arrest?—When I got that I went over to Mr. Henderson and told him that the affair looked very serious altogether.

155. *His Honour.*] That was when you got—?—The letter with the account for £400 odd for rabbiting.

156. You went over to Mr. Henderson and told him something about it looking serious?—I pointed out that it looked very serious, and asked him what he was going to do. He said he could do nothing in the meantime.

157. *Mr. Chapman.*] Yes?—I think it was at that time he said they might put a bailiff in my house.

158. *Mr. Solomon.*] That was Mr. Henderson?—Yes. Perhaps I said they might put a bailiff in my house. I am not sure who said it, but I said, “I will have no bailiff in my house.”

159. *His Honour.*] Yes?—He then inquired how I was situated as regards the settlement of my furniture.

160. Yes?—I said that it was not settled on anybody; that it was not settled in my wife’s name at all, although I thought that my previous trustees had given me instructions to do so—the trustees when I was bankrupt some years ago.

161. Yes?—I again told him that I was not going to do anything “crooked.”

162. *Mr. Chapman.*] Is that all?—He suggested that I should see Mr. Denniston and Mr. Hazlett as to the position of my furniture, but I did not do so.

163. Who were they?—They were trustees in my estate in bankruptcy.

164. Was that under deed of arrangement?—No, it was a bankruptcy under the old Act some years ago.

165. Have you had any conversations with Mr. Ritchie?—I met Mr. Ritchie in the street one day when there was a lull in the proceedings. I was standing on the pavement, and said, “I suppose that matter is all over now.” I did not catch very clearly what he said, but I thought he said something about not stepping out to meet the devil half-way, or something of that sort. He said it in a jocular way.

166. Do you know when that was?—It would be before I got this rabbiting business. It was just previous to the final rabbit notices with the big bill.

167. After you had paid the fine, and before you got the final rabbit demands?—Yes.

168. What was the next matter? You met a gentlemen named Brown in the street one day? Yes, and he said,—“I have a warrant to arrest you.”

169. Well, we need not go through the process; you were arrested, and you ultimately got clear of that?—Yes.

170. Did you see either Mr. Ritchie or Mr. Henderson after that?—After I got out of gaol?

171. Yes?—Yes, I saw Mr. Henderson.

172. What passed?—I said “Well, this is a nice mess you have got me into,” and I asked him what he was going to do, and he said, “We are certainly not going to pay the money.” I then told him that I had seen a telegram which Mr. Ritchie had sent to you, my solicitor; and I expressed to him my surprise at Mr. Ritchie sending such a telegram.

173. Was that this telegram, set out in the statement of claim: “Have nothing to do with Scott whatever. Have paid him in full for such use as we got of his run?”—Yes.

174. You referred to that?—Yes.

175. You told Mr. Henderson you had seen the telegram from Mr. Ritchie to your solicitors, and what else?—And I said I was very much surprised at his sending such a telegram.

176. What did he say?—I said, further, “It has been suggested to me that the telegram was sent for the purpose of not letting the Government know through the telegraph-office.” That had been suggested to me, and I asked him if he thought so, and he said, “Perhaps so.”

177. Yes; did anything more pass?—Nothing more passed. Ah! yes, one thing he said, “We never contemplated this.” I do not remember the exact words, but he gave me to understand that they had contemplated my having to go bankrupt, but had never contemplated my being put into such a position as I was put in.

178. Now, Mr. Scott, as to your position: in general terms, are you a pauper?—No; I have always had enough to keep me going for the past three years.

179. About what income do you make?—£500.

Cross-examined by Mr. HAGGITT.

180. *Mr. Haggitt.*] Now, I understand you to say, Mr. Scott, that this was about the first business transaction you had had with the company?—Which was the first business?

181. This particular one?—No; there was one previously, in January.

182. Which came to nothing; and this was the next?—Yes.

183. You had had a similar transaction, we may say, in January, which came to nothing, and you got paid a guinea for what you did in the matter, and there was an end of that?—Yes.

184. And this was the next transaction?—Yes.

185. With regard to that first transaction, you did not see Mr. Ritchie at all?—I do not think so.

186. You have not mentioned it, and you have told us all that took place between yourself and Mr. Henderson with regard to that transaction?—As far as I can remember.

187. Mr. Henderson said “We want to take up a run in your name,” or to make use of your name in taking up a run, and if the run was not bought you were to get a guinea, and if they did buy the run you were to get £10?—Yes.

188. That was all that took place?—Yes.

189. You assented, and shortly afterwards the run was put up. They did not get the run, and you were paid a guinea?—Yes.

190. You made no remonstrance at all?—No.

191. And there was nothing said about indemnity?—No.

192. Then, you made no stipulation about being indemnified at that time at all, and they said nothing about it?—Not at that time; I do not think anything was said.

193. Now, the next time Mr. Henderson saw you, you say, was towards the end of February?—Yes.

194. And then it was in regard to this particular transaction?—Yes.

195. Now, you were sent for to go to Mr. Henderson's office?—Yes.

196. And you go there. That was the first of it?—Yes.

197. Do not you recollect meeting Mr. Henderson in the street, and having a talk with him?—No.

198. No recollection at all of that?—No, I have not.

199. On the day that you went over to their office, do not you remember meeting Mr. Henderson in Bond Street?—No, I cannot say I do.

200. About 2 o'clock?—I cannot remember it. I will not deny it, but I cannot remember it.

201. Do you remember him telling you that Mr. Ritchie wanted to speak to you at that interview?—No, I do not.

202. Do you remember his telling you that Mr. Ritchie wanted you to take up an outlying run about Lake Ohau—that he only wanted the country for six months, after which the company would have no further use for it, and that if you were prepared to take up the country he would find the first half-year's rent, and would give you £15 or £20 for yourself?—I do not remember that.

203. You do not remember that as having taken place either in the street or in Mr. Henderson's office?—No.

204. Do you remember his giving as a reason for Mr. Ritchie wanting you to take it up that, on account of the rabbits, Mr. Ritchie would not have anything to do with it on the part of the company?—I remember him saying in one interview that Mr. Ritchie was very frightened of the rabbits, but I did not understand what he meant.

205. You remember his saying at one interview that Mr. Ritchie was very frightened of the rabbits, but you do not know whether it was on this occasion when he spoke to you in the street?—No.

206. Of course you do not remember saying, then, that you would have to face that, and that you were quite prepared to take the risk?—I do not remember saying that at all, and there was no question of risk mentioned.

207. Then, you say that, as far as you recollect, you were sent for to go to Mr. Henderson's office?—I think so.

208. And that Mr. Henderson commenced the conversation by saying that he wanted to go in for another run?—Yes; something of that sort.

209. That is how the conversation commenced—"I want to go in for another run"?—I could not say those were the exact words; something to that effect.

210. Did he give you any further information than that about it?—He pointed out to me on the map where the run was on one occasion, and I understood it was up at the Beach Forest.

211. Oh, you knew it was on Lake Ohau. How far is Beach Forest from Lake Ohau?—I really do not know.

212. Were you not a cadet on a run yourself once?—Yes.

213. Whereabouts?—At Hawkdun Station.

214. Whereabouts is that?—Near St. Bathans.

215. And is that the only place?—That is the only station, except that of Mr. W. A. Tolmie, at Clifton.

216. But did you not tell Mr. Henderson that you had been a cadet on this run, or near this run, and that you knew the country well?—No, I did not. I will tell you what I told Mr. Henderson. I remember the conversation. I told Mr. Henderson, when he alluded to Lake Ohau, that on the station I was on they were in the habit of going up—that several fellows had gone up to Lake Ohau. I had never been further than Omarama myself in my life, so I do not think I could have told Mr. Henderson I had been a cadet there. I was on Pareora Station, too, as a cadet once.

217. Whereabouts is that?—Near Tinaru; this side of St. Andrew's.

218. Then, you never led Mr. Henderson to believe you had been a cadet on a run in the neighbourhood of Lake Ohau; at least, you never meant to if you did?—I never meant to.

219. Tell us the conversation as it occurred. You say you were sent for, and went to Mr. Henderson's office. How did the conversation commence?—I really could not remember at this distance of time. I did not anticipate any trouble, and had no reason to take notes.

220. Cannot you tell us anything of the conversation at all?—The conversation I carried away with me—what I understood was that they wanted to take up a run in my name. The reason he explained to me at that time, or at some other time, was that the Government would "go for" a company for not killing the rabbits, whereas they would not "go for" a private individual.

221. Am I to understand that that is all you recollect of the conversation?—Yes, it is.

222. That you were sent for to speak to Mr. Henderson, and when you went you found Mr. Henderson wanting to speak to you about taking up a run in your own name; that you did not know where the run was; and that either at that interview or at some other time you understood that they wanted you to take it up in your own name, because they thought the Government would come down upon a company when they would not upon a private individual?—Yes, quite so.

223. That is all you recollect of the conversation?—Yes.

224. Is that really so?—Yes.

225. You can tell us no more than that?—No, I cannot, really.

226. Now, Mr. Scott, did you on that occasion—the occasion when you were sent for to go and see Mr. Henderson—go into Mr. Ritchie's room and have an interview with him?—No; Mr.

Ritchie was at the door as I came out. There are two doors, and I think Mr. Ritchie may have been present at his door, as the interview was finished.

227. And you had no talk with Mr. Ritchie about this at all?—No; I do not think so.

228. You got all your information from Mr. Henderson on the subject?—Yes.

229. Now, was there anything said at this interview as to what you were to get for lending your name?—I do not think there was anything mentioned at this time. I have no recollection of it.

230. But you were to get something?—Yes.

231. That was the understanding?—Yes.

232. But no amount was mentioned?—Yes.

233. And you were prepared to take the risk, or any risk there was, without stipulating the amount you were to be paid?—There was no question of risk mentioned. If that word had been used I think I should have had some recollection of it.

234. Did you understand why the company wanted this run taken up in a name other than their own?—Yes; because—just what was said. I understood that what they said was that the Government would “go for” a company, but would not “go for” a private individual in the matter of rabbits. That is what I understood.

235. Then, was there nothing said to you about the company only wanting the run for a short period?—No; I do not remember anything about what period they wanted it for.

236. They did not tell you that they only wanted it for a short time, in order to give them time to sell some stock?—I have no recollection of it.

237. Never heard about it?—No.

238. Not at any time? It is news to you now?—I never heard of it before. I can see now what they wanted it for.

239. And it was never explained to you at all?—No; there was very little said.

240. Well, now, did you never at any time have an interview with Mr. Ritchie at which this whole matter was explained to you?—No, not that I remember.

241. Did Mr. Ritchie never explain to you that, in consequence of the large area of inaccessible country included within the boundaries of the run, he dared not take it up as the company's, as the cost of rabbiting would be serious?—Never heard of it.

242. Did Mr. Ritchie ever tell you that he only wanted to get a few months in which to muster and sell the stock, and that the Government was sure to exact the fulfilment of every condition from the company to the very end of the lease, if the company bid: that they might do so to you even to making you bankrupt, but that they were certain to do so in the case of a company?—No. Mr. Ritchie never hinted at bankruptcy—never used the word—and I have no recollection of anything either about the run—as to what the Government would do to the company as against a private individual. We had no long interview. Mr. Ritchie made me no long statement at all.

243. From anything he said, you cannot even say whether that reference to what the Government would do to a company and not to an individual was on this occasion or at some other time? (No answer given).

244. Did Mr. Ritchie not say to you that he would not take the responsibility on the company on any consideration, and that he only wanted to get the use of the country for a short time, if they could get it for the rent, and such consideration as you might think fair to yourself without responsibility to the company?—No; he did not say so.

His Honour: Will you repeat that, please.

Mr. Haggitt: Mr. Ritchie did not say that the company would not take the responsibility on themselves on any consideration; that they only wanted to get the use of the country for a short time, if they could get it for the rent, and such consideration as he (Scott) might think fair to himself, so that the company might not be responsible for the term of the lease or for rabbiting.

245. Then, will you deny, Mr. Scott, that you said to Mr. Ritchie that you were quite willing to bid for it on these terms—that the Government could get nothing out of you, as you had nothing, and they were not likely to push you to extremes?—That reply of mine was just made at the door coming out of the office, alluding to the remark that they might come down on me for the rabbits. Mr. Henderson had previously told me I was to look to them for everything, and I made the jocular remark that they would not get much out of me; but it was not at a time that Mr. Ritchie had made a long explanation like that.

246. You did say it?—I made that remark, and Mr. Ritchie, in reply to that, said, “Oh, but you are doing pretty well,” and I said “Yes, I am doing pretty well now.”

247. Now, when you saw Mr. Ritchie, after you had been fined, what did Mr. Ritchie say to you? You told Mr. Ritchie you had been fined; what did he say to you on that occasion?—What I saw Mr. Ritchie about—I do not think I went to tell him I had been fined; he knew that; but I went to tell him the policeman had called for the money, and he told me at that time to put him off as long as I could. I told him I would do so. I told him I had put the policeman off by telling him I expected some money from Melbourne, which was the truth. I had expected some money from Melbourne, and I put the policeman off for a month.

248. Is that all you recollect Mr. Ritchie saying?—Yes.

249. Put him off, and get as much time as possible; that was all he said?—Yes.

250. Did Mr. Ritchie say to you anything to this effect: that he was sorry he could not interfere, as you had entered upon the venture with your eyes open, and after a full explanation by him?—He never said anything of the sort.

251. Did he say anything to this effect: that if that was the end of it he might go beyond his bargain and pay the fine, so that your remuneration in the matter might not be swept away, but at present he would not?—No; he did not say so.

252. Well, then, you did not know, Mr. Scott, that this run had been bought in your name until some time afterwards?—Well, some day or two afterwards.

253. Oh, it was not a long time?—No; I think it appeared in the newspapers.
254. And you saw it in the newspapers?—I cannot say I saw it; somebody pointed it out to me.
255. Was this what you saw in the newspaper [extract produced]?—No; I never saw that.
256. Have you read it?—No; but I am sure I never saw it.
257. The only part that would interest you is somewhere near the end?—No; I do not think I ever saw that.
258. Was it something different you saw?—I do not say I saw it in the papers. Somebody else told me, as far as I can remember.
259. You said it was pointed out to you in the papers?
- Sir R. Stout*: He did not say the actual paper was pointed out.
260. *Mr. Haggitt*.] You see it does appear in the paper that you were the purchaser of the run at £380 a year?—That is so.
261. According to your account of this matter you made no inquiries about the run at all?—None. I had perfect confidence in the National Mortgage and Agency Company.
262. You made no inquiry whatever?—None.
263. As to what was going to be done, or anything else?—I did not care a button.
264. You lent your name that the run might be purchased?—Yes.
265. And you signed authorities to apply for it and to purchase it in your name?—I believe I did.
266. You made no stipulation as to the price to be paid?—None whatever.
267. And you made no stipulation as to being indemnified, or anything else, against the consequence of what you did?—No; I made no stipulation.
268. And you were to be paid for something or other, you do not know what?—Oh, yes; for lending my name to be used.
269. But you did not even stipulate what you were to be paid?—No.
270. Mr. Ritchie never at any time said anything about indemnifying you, I understand?—No; I do not think he did.
271. And beyond a general expression from Mr. Henderson that you told us of, there was nothing said at all about indemnifying?—No; there was nothing said.
272. Now, how long was it after you purchased that you found out that there was some responsibility attaching to the use of your name?—Not till after the Timaru incident—the Timaru summoning. When I saw that in the newspapers about dummyism, at or about the end of May; when I was summoned at Timaru for the rabbits.
273. That was about three months after the run had been purchased?—Yes; somewhere about that.
274. When did you sign the lease?—I really could not remember; somewhere between March and May, I suppose. I really could not remember when I signed it. I took no notes.
275. Have you the lease here?—No; I do not know where it is. I have never had it.
276. You left it in the office?—I signed it and left it. I do not know who has got it.
277. And it began to get troublesome about that time—the time the notices came in?—I did not see any trouble about it till when that appeared in the papers. That is what wakened me up.
278. That is, about dummyism?—Yes.
279. And what were you frightened of then?—I do not know. I was not very frightened. I simply went over and asked Mr. Henderson whether it was all right, and he said it was.
280. You asked if it was all right?—As I told you, I pointed out that the thing had got serious; it looked bad. He said, “Oh, it’s all right,” and he assured me they would see me through it.
281. It was on that occasion he assured you they would see you through it?—On one or two other occasions he gave me that assurance.
282. Now, it is almost useless to ask you after what you have admitted—you have not said that on the first occasion Mr. Henderson said anything about seeing you through it. Did he say so at the first interview or not?—At the first interview he certainly assured me that the responsibility was not mine.
283. But what did he say?—I cannot remember the exact words. He assured me they would see me through it in the same way he has always done.
- Mr. Haggitt*: No; this was the first occasion.
- Sir R. Stout*: He said, on the first occasion connected with this run. He used words to that effect.
284. *Mr. Haggitt*: He said nothing of the kind. I have taken every word he said. [To witness:] Whereabouts did that come in in the conversation?—I really could not remember. Very little was said.
- Sir R. Stout*: I have it here, your Honour.
- His Honour*: Yes, that is so. “He said it was all right, that I was to act for them—to hand all the correspondence to them; do nothing myself; submit everything to them. I do not think anything more was said. They were to pay the rent.”
- Sir R. Stout*: He goes on, “I did not know the length of the lease.”
- His Honour*: Yes; “I did not know the length of the lease, but Henderson said he would see me through it. They were to take the whole responsibility.”
- Sir R. Stout*: That is what he said before, “Henderson said he would see me through it.”
285. *Mr. Haggitt*.] Now, I ask him at what stage of the conversation that took place. Will you swear that those were Mr. Henderson’s exact words?—No, I will not.
286. And Mr. Henderson said this without your stipulating that anybody should see you through it—it was voluntary?—I asked him if there was anything “crooked” about it, and he said no, it was all right.

287. Well, then, what followed upon that?—He said they would see me through it, or something to that effect.

288. But what was he to see you through?—The consequences of this affair, whatever they might be. They did not seem to be very much at the time; at least, they did not seem to me to be much.

289. What was it he was to see you through?—All the expenses and everything that might happen in connection with this, seeing that they were merely using my name. That is what I understood.

290. Did he say so?—He led me to understand that.

291. Tell us what it was that led you to understand that?—I cannot tell you more than I have told you. He said that they would see me through it; that it was all right; and they would see me through it. As far as I can remember, those were the words.

292. You said, "Well, I hope it is all right, that there is nothing 'crooked' about it;" and he said it was all right, that they would see you through it?—Yes.

293. You said before that Mr. Henderson said he would see you through it?—Oh, I do not remember the words—"he" or "we." I looked upon Mr. Henderson as the manager of the National Mortgage and Agency Company.

294. Then, it was not Mr. Ritchie who was to see you through it, nor Mr. Henderson?—I do not know really who was to see me through it. I did not consider it at the time. I saw Mr. Henderson as the manager of the National Mortgage and Agency Company. I certainly did not think it was a private piece of business of Mr. Henderson's.

295. Only you told us that Mr. Henderson said he would see you through it, and now you do not know whether he said he would or the company would?—I think the word generally used was "we."

296. You had not seen Mr. Ritchie, so "we" could not have meant Mr. Ritchie?—I do not know that it could.

297. You understood somebody was to see you through it, and did not know who?—Oh yes; the National Mortgage and Agency Company. That is what I understood.

298. What did you mean by asking whether there was anything "crooked" about it? What did you expect could be "crooked" about such a transaction?—I merely wanted an assurance from them that they were not asking me to do anything illegal. I never thought that they would do so.

299. And they have not done so, have they?—Not as far as I know.

300. You know anybody may buy a run in his own name if they like?—I do not know.

301. There is no declaration required to be made on the purchase of a run?—I really do not know.

302. You did not make one?—I signed something. I do not know what it was.

303. And you did not care, I suppose?—Yes.

304. You were quite indifferent then, and are quite indifferent now, as to what you signed?—Yes.

305. And you signed everything, in point of fact, that you were asked to sign?—Yes.

306. But you knew you were taking the responsibility of this run on your shoulders?—I did not know that at all. I considered the National Mortgage Company responsible.

307. When you signed the lease of the run in your own name, do you mean to tell us you did not know you assumed responsibility?—I assumed that I was acting as agent for the National Mortgage and Agency Company, and I considered they were good enough. I never gave the matter much thought, as a matter of truth—I mean as to risk.

308. Did you read the lease before you signed it?—No.

309. Did you go yourself, or did anybody take you?—I went myself. I asked Mr. Henderson where I was to go to, and he told me to the Land Office.

310. Did not you get an intimation yourself where you were to go to?—I do not think so.

311. Did not you get a letter from the Crown Lands Office, Christchurch?—If I did do so I took it to Mr. Henderson. I do not say I did not get one; but if I did I took it to Mr. Henderson, as I took everything.

312. As you got an intimation direct yourself as to where the sale was to be, the other intimation would also be addressed to you. Can you tell us what it said?—The intimation? I really could not say I received it.

313. How could you, then, say you had taken it over?

His Honour: Anything he got he took over.

Mr. Chapman: It is most likely to have been sent direct to Mr. Henderson, because another communication was. Mr. Bacon's telegram—

314. *Mr. Haggitt*.] Then, you do not know whether you got an intimation or not, but if you did you took it to Mr. Henderson. You told Mr. Henderson you were going to the Land Office, and Mr. Henderson told you where the Land Office was?—If I did receive that letter which you say I received—[*Mr. Haggitt*: I did not say so]—I thought you did say I must have received the letter—if I did, I went over to Mr. Henderson. I did not know where to go to sign the lease without inquiring, and I must have received the information where to go from somebody, and to the best of my knowledge and belief it was from Mr. Henderson.

315. You are not even sure of that now?—No, I am not; but, if you have the letter, I can be sure. If I received the letter I went to Mr. Henderson with it first.

316. If you took the letter to Mr. Henderson, you asked Mr. Henderson where the office was; and, if you asked Mr. Henderson where the office was, Mr. Henderson told you?—Yes.

317. At all events, the thing you did was to go to the Land Office, and sign the lease there?—Yes.

318. Did you ever ask the company for the remuneration you were promised for signing this lease?—Never.

319. Or Mr. Henderson, or anybody else?—No; I asked Mr. Henderson once to lend me £40—to discount a bill for me for £40; but I never asked for remuneration.
320. Did he do it?—No; he did not.
321. You never asked to have the amount of remuneration fixed?—No.
322. Neither Mr. Henderson nor Mr. Ritchie even mentioned the amount?—I once said to Mr. Henderson in an interview I thought the thing was giving me a great deal of trouble, and I should require to be well paid for it. I remember saying that to Mr. Henderson.
323. But it was always understood you were to be paid?—Yes.
324. Although the amount was never mentioned between you?—Yes.
325. Now, Mr. Scott, did you know there was any stock running on this country?—No; I did not know whether there was or was not.
326. You had no idea that any stock belonging to the company were running upon the run at the time you purchased it?—No, I had not.
327. When did you find out that?—I never found it out at all.
328. When did you first hear of it?—I did not know anything about what has been done with the run at all till I saw it in those letters to-day—I mean, as to the stock, and all that sort of thing.
329. Now, you say that Mr. Henderson came over and dictated a telegram which has been read?—Yes.
330. You say Mr. Henderson dictated that letter?—Yes.
331. Are you sure of that?—I am pretty confident.
332. If Mr. Henderson says he did nothing of the kind, will you still swear to it?—Yes; I will.
333. Was it dictated to you, that telegram?—To Mr. Logie. I was about the room. The telegram is in Logie's writing. That is my signature; and I remember Mr. Henderson coming in and sitting down to dictate the telegram. I told Logie to take it down.
334. You have a letter there dated the same day—26th May, 1891—which you also say Mr. Henderson dictated?—Yes.
335. Did Mr. Henderson dictate both letter and telegram?—I think so. Yes.
336. Then, when was it you paid this money to Messrs. Perry and Perry?—The draft is there. *Sir R. Stout*: About the 6th July, 1891.
337. *Mr. Haggitt*.] On the 6th of July it was. How long was that before you paid the policeman?—Oh, it would be a week or so. I forget. Look at the policeman's receipt.
- Mr. Chapman*: The 2nd July the policeman was paid. The policeman was paid first.
338. *Mr. Haggitt*.] Very well; Messrs. Perry and Perry drew upon you for this £5 5s. very shortly after you paid the amount to the policeman—four days after?—Yes.
339. Did you take that draft to the National Mortgage Company when you got it?—I really cannot remember. I paid it, anyhow. I went over to see them about it, and they told me to pay the costs.
340. Who did you see?—I saw Mr. Henderson about the account, and intimated that I had been drawn upon.
341. Did you ask Mr. Henderson to pay it?—Oh, I cannot say the exact words. I showed it, and he told me to pay it.
342. Will you swear that you showed Mr. Henderson that bill until months after you had paid it?—I am certain that I intimated to him; I am quite positive I always took everything over.
343. Then, you are not speaking with reference to any recollection you have with regard to this particular document, but only because you always took everything over?—I am quite certain I did.
344. But you have no recollection of taking this over?—I cannot say I have.
345. Did you ever ask the company to pay that amount?—Yes.
346. When?—When I spoke to Mr. Ritchie I told him there was Perry and Perry's costs, some telegrams, and £15 3s. to the policeman.
347. And Mr. Ritchie said?—No. I said, "Perhaps it would be better to let the matter lay over; better not to let any money pass just now till afterwards;" and he said, "Oh, yes; all right"—assented to what I said.
348. No. Mr. Ritchie said first, "You had better go and get the money"?—Yes; he first offered me the money.
349. You are sure of that?—Yes, he did.
350. I put another alternative of that interview to you just now?—Yes.
351. What was the other version?—All that was said at that time. I met Mr. Ritchie at the inner door of his office upstairs, and that was all that was said. There were no statements or explanations at all.
352. You are speaking now of the interview you had with Mr. Ritchie about the payment of this money, after you had paid it: that took place at the door of Mr. Ritchie's room?—No; at the door at the top of the stairs in their office; there is a door there.
353. It was not in his own office at all?—No; at the door at the top of the stairs.
354. *His Honour*.] When you told him of Perry and Perry's costs and telegrams and the policeman, was that the occasion you saw Mr. Ritchie at the door?—Yes, at the door of the big office; not at the door of his room.
355. *Mr. Haggitt*.] That was the interview you had with Mr. Ritchie after you paid the fine?—Yes.
356. You are sure of that?—Yes.
357. And that interview took place at the top of the stairs leading into the company's office?—Yes. I told him I had paid that money. I did not go to see him on that business, but happened to meet him, and told him I had paid, and he said at once, "Oh, go and get the money."

358. You told him at that time you had paid Messrs. Perry and Perry's costs?—I think I did.

359. At the same interview?—I think so.

360. And he said, with regard to both of them, "You had better go and get the money?"—He did not say "with regard to both of them:" he said, "You had better go and get the money."

361. He said, speaking with regard to both of them, "You had better go and get the money?"—Yes; as to whatever sum I mentioned.

362. And you declined to take the money at that time?—No; I simply suggested it might be better that no money should pass just then. I said, "Perhaps it would be better no money should pass just now."

363. Why?—I really do not know why.

364. You paid this money out of your own pocket—money the company was bound to reimburse you; and yet, when the money was offered you, you said, "Better no money should pass just now," although the beginning was to ask for it?—I did not say that.

365. Although you had asked for the money, at all events?—No. I did not ask for the money on that occasion; I merely intimated to Mr. Ritchie that I had paid it. I did not ask for it; and Mr. Ritchie said, "You had better go and get the money," pointing to the cashier.

366. But you declined to take the money just then; thinking it better no money should pass, you mentioned this to Mr. Ritchie, and he said, "Oh, very well; perhaps so." Very well, so you might have had that money if you had liked to take it, and you would not?—No, I did not.

367. In whose interest did you consider it better you should not take the money?—I do not know what prompted me to do that. I was getting a little suspicious at that time that I might be made more use of than I had contemplated. I had an idea of that sort, and I thought I would act with caution.

368. And you thought you were showing caution in not taking money when you could have got it?—I had a sort of idea of that. I suggested that to Mr. Ritchie, whether he thought so. If Mr. Ritchie had offered me the money there and then I should have taken it.

369. Then you had rabbit notices, and every document you got you took over?—Yes.

370. At one of your interviews with Mr. Henderson, after this rabbit summons had taken place, Mr. Henderson said that it looked a very serious affair, asking what you were going to do?—No, he did not.

371. You said to Mr. Henderson that it looked a very serious affair, and asked what he was going to do, and he said he should do nothing in the meantime?—I will tell you what Mr. Henderson said. At that interview he said he thought Mr. Ritchie had mismanaged the affair altogether, and that the rabbits should have been killed, and that he could not understand Mr. Ritchie's action in the matter at all.

Mr. Haggitt: That is something new.

Sir R. Stout: It is "briefed."

372. *His Honour.*] When was this interview with Mr. Henderson?—I could not give the date.

373. *Mr. Haggitt.*] Some time when the rabbit question cropped up?—The payment for the rabbits.

374. That rabbit question cropped up in July?—Yes, I know, but it was when we got the long bill. I think it was then when I got the long bill, and was threatened with a summons—somewhere in October, I think it would be. I will not be sure as to what interview it was, but at one interview he did say that.

375. At all events, at that interview—somewhere about the 7th October it was, you say—Mr. Henderson said that he thought Mr. Ritchie had mismanaged the whole thing—that the rabbits should have been killed?—Yes; that he could not understand Mr. Ritchie's action in the matter.

376. Are you quite certain that it was not you who said that, and not Mr. Henderson?—Quite certain. I did not say it. I said the rabbits should have been killed, but Mr. Henderson said the rest. I am quite certain he said he could not understand Mr. Ritchie's action in the matter.

377. And he told you Mr. Ritchie was not at home, and in the meantime you were to do nothing?—Yes.

378. That was at this interview too?—It was at one interview.

379. And you said to Mr. Henderson that it looked a very serious affair, and asked him what he was going to do?—Yes.

380. Was it in reply to that remark of yours that he said he did not understand Mr. Ritchie?—I think it was something of that sort.

381. Now, do you recollect saying, "I said to Mr. Henderson, or Mr. Henderson said to me, that it looked a very serious affair"?—I cannot say that those were the words.

382. But did not you say before, "I said to Mr. Henderson, or Mr. Henderson said to me, I do not know which, that it looked a very serious affair"?—No, I do not think I said that.

383. Which of you said it? Did you say it to Mr. Henderson, or Mr. Henderson to you?—I think it very likely that I said it.

384. But you are not certain that Mr. Henderson did not say it?—I do not think Mr. Henderson said it.

385. It was Mr. Henderson suggested that they might put a bailiff into your house?—I am not sure whether Mr. Henderson suggested it or I suggested it.

386. But you said, "Well, I will have no bailiff in my house." He must have said it if you made that reply?—Yes, I think he must have said it.

387. And then he inquired how you were situated as to the settlement of your furniture. Will you swear you had not told both Mr. Henderson and Mr. Ritchie long before that interview took place that you had nothing whatever to lose, as you had got nothing?—No, I never said such a thing.

388. Did you never tell Mr. Henderson that you had nothing except your office table and a

few chairs there, and that the furniture at the house belonged to your wife?—No, I never said it, because it would not be true. I did not say it.

389. Did you never tell Mr. Ritchie or Mr. Henderson that there was nothing they could seize belonging to you except this table and a couple of chairs?—I never did.

390. Then, you said it was suggested to you to inquire as to how you were situated as to a settlement on your wife. Did you do so?—No, I did not.

391. Then, you have not ascertained yet?—No.

392. You do not know whether the furniture is settled on your wife or not?—I know it is not.

393. You said you thought your trustees had instructed you to settle it on your wife?—Yes.

394. And he recommended you to see the trustees to see how it was, and you have not done so?—No; I have not done so.

Re-examined by Mr. CHAPMAN.

395. *Mr. Chapman.*] Have you ever had any account rendered to you by the company?—In this matter?

396. Yes?—No.

397. No claim made upon you? Then, you do not know to this day who paid for the opinion that was taken when Messrs. Perry and Perry suggested an appeal?—I know that they said they would consult Mr. Haggitt, and beyond that I know nothing.

398. No. You have been asked some questions apparently suggesting some evidence that is to be given hereafter?—Yes.

399. Mr. Scott, you knew, presumably, that you placed yourself under some liability to the Government?—Yes.

400. Did you ever undertake, with Mr. Ritchie or Mr. Henderson, to bear that entirely yourself?—I did not.

401. Was there anything in your conversations with them to suggest that you were to take the whole of that burden, and that they were to go scot-free?—Certainly not.

402. Did they ever explain to you that the result of the position they intended to put you in would be that you could not fall back upon them?—No; they did not.

403. Now, in these conversations, was it ever particularised who was backing you—that is to say, whether it was Mr. Henderson himself, or the company, or any one else?—No; it never was particularised.

404. It never was particularised whether Mr. Henderson himself or the company was backing you or employing you?—No.

405. Did you ever make any agreement with them to give them the use of this run that was taken up in your name?—Never.

406. Now, at the time when this conversation took place in which you suggested that no money should pass then, had the question of dummyism appeared in the newspapers?—Oh, yes.

407. And you knew it had been said you were a dummy for somebody?—Yes.

408. Something had appeared in the newspapers suggesting you were a dummy, and after that you suggested to Mr. Ritchie that perhaps no money had better pass?—Yes.

409. You say he assented to that?—He did.

410. When you paid those five guineas to Messrs. Perry and Perry, how did you pay it?—By cheque.

411. Did you keep books?—Yes.

412. To whom did you charge it?—I think it was charged to the National Mortgage Company.

413. There was one matter I omitted to put in the examination-in-chief. I ask leave to put the question. Do you remember the name of Preston cropping up?—I do.

414. In conversation with whom?—In conversation with Mr. Barron, late M.H.R.

415. You cannot give us that. There was a conversation with Mr. Barron, in which reference was made to Mr. Preston?—Yes.

416. Did you report it to Mr. Henderson?—I did.

417. Now, can you tell us when it was?—It would be at the early part, before I was fined at Timaru, I think.

418. You reported the conversation to Mr. Henderson; what did you tell him?—I told him I had heard from Mr. Barron that Mr. Preston had bought some runs adjoining, and that he possibly might buy this run. Mr. Barron had advised me to sell the run to Mr. Preston—that possibly I might sell it to him. So I went to Mr. Henderson and repeated this, and all Mr. Henderson did was to tell me that Rattray was the agent, and to send me along there. I inquired if Mr. Preston was in town, but Mr. Preston was not in town, and nothing came of it.

419. Mr. Henderson sent you to him?—He did not send me to him, but told me where I would find whether Mr. Preston was in town.

420. What did he say about commission?—He said, "If you sell it to him you might get a commission."

WALTER LOGIE, Clerk to the Plaintiff, J. R. Scott, examined.

421. *Mr. Chapman.*] Do you know the defendants, Messrs. Henderson and Ritchie?—By sight, yes.

422. When was your first connection with this matter of this run Mr. Scott took up?—The first personal knowledge was on the 26th May. It commenced by my writing, to Mr. Henderson's dictation, a letter to Messrs. Perry and Perry, of Timaru.

423. Was Mr. Scott in the office at the time?—He was; yes.

424. Did Mr. Henderson say anything particular that you remember besides dictating that?—No, nothing particular.

425. Did he say anything to you you remember?—He told me before I commenced to write this that it was to be private; it was to be kept secret.

426. That you were not to mention anything; that it was to be kept secret?—That I was to hold my tongue in the matter.

427. Did you also write a telegram?—I wrote one, I think, to Foster, if I recollect aright.

428. The Chief Inspector of Stock in Christchurch?—Yes.

429. Did you originate that or did any one dictate it to you?—It was dictated.

430. Who dictated it?—Mr. Henderson.

431. Do you remember the answer coming to that?—There was an answer which I showed to Mr. Henderson.

432. Was Mr. Scott in town when the answer came?—No; Mr. Scott had gone South.

433. Mr. Scott had gone away South, and an answer came which you showed to Mr. Henderson. Do you know when the answer came?—The day after, I think—about the 27th.

434. What did Mr. Henderson say?—He came over and told me to see Mr. Ritchie, the Sheep Inspector.

435. Anything further?—He told me to represent that I had come from Mr. Scott.

436. Told you to represent to the Sheep Inspector that you had come from Mr. Scott?—Yes, about this run at Timaru, saying that he had received a communication from Christchurch, and asking him if he could have the case withdrawn that was coming on at Timaru.

437. Did you see the Inspector?—I did.

438. Mr. Inspector Ritchie?—I did; yes.

439. Did you know where his office was?—I did not.

440. Who told you where to go?—Mr. Henderson told me I would find the office in the Government Buildings.

441. You got an answer from Mr. J. D. Ritchie?—I did.

442. Did you convey that answer to Mr. Henderson?—After writing it. I called at the office and wrote down exactly what Mr. Ritchie said, and then delivered it to Mr. Henderson.

443. You called back at Mr. Scott's office and wrote down a memorandum of what Mr. J. D. Ritchie had said, and took that and delivered it to Mr. Henderson?—I did.

Mr. Chapman: I should like to have that.

Mr. Haggitt: If you have a copy of it put in the copy. We have no special notice to produce it.

Mr. Chapman: No, we went as far as we could; we got an affidavit of documents.

444. *Mr. Chapman*.] Will you tell us what it contained?—It is dated "Dunedin, 27th May, 1891.—Memorandum.—Mr. Henderson,—I saw Chief Inspector Ritchie, who states he consulted the Law Officers in this case when he (Mr. Ritchie) was in Wellington, and they state, so long as Mr. Scott holds the run he must be held responsible, and he cannot withdraw the case. He had also received a communication from Mr. Foster, Christchurch, on the subject; and he also stated that sheep were still running on the land when he visited it a short time ago, and to advise Mr. Scott that things must take their course.—Yours truly, W. Logie." Signed by myself.

445. Did you see Mr. Henderson when you took that over?—I delivered it personally.

446. Did you ever get it back?—No.

447. Did he say anything?—Nothing particular. I do not know that he made any remarks then.

448. Did you keep Mr. Scott's books?—Yes.

449. Have you his books there?—I have the cash-book and ledger.

450. And how did you enter the costs, five guineas, paid to Messrs. Perry and Perry?—I should enter it in the cash-book from the block, and then debit it in the ledger. I debited it to the National Mortgage Company, because I understood it was on their account it was paid.

Cross-examined by Mr. HAGGITT.

451. *Mr. Haggitt*.] Who told you to debit the money so. You did not do it of your own motion?—Yes. When I see the accounts written out I debit them accordingly.

452. You did it of your own motion?—As I keep the books, I should make all the entries as written in the cheques.

453. *His Honour*.] You have the block of the cheque-book there: in whose handwriting is that?—Mine.

454. *Mr. Haggitt*.] You did it entirely of your own accord?—Quite so.

455. *Sir R. Stout*.] Why did you put "N. M. A. Coy." there?—Because it is their account.

456. Why did you put it there?—Because I perfectly understood it was an account of theirs.

457. *Mr. Haggitt*.] From whom?—From Mr. Scott; from hearsay all through. I understood from the first how the matter stood, though this was my first connection with the case.

Mr. Haggitt: That will do.

Sir R. Stout: That will be our case, with the documents put in.

Mr. Solomon: The course we propose to adopt is to open and record our view of the evidence and the facts of the case; and at the close of the evidence it is for the other side to move. That, I understand, is the usual course adopted. It will be for the plaintiff to move for a decree if he thinks himself entitled. I suppose the plaintiff does not object to that.

Mr. Chapman: It is the usual course. We do not object.

Mr. Solomon: The question between the parties before the Court will resolve itself at the conclusion of the evidence into a very short and simple question of fact. As to the law that my learned friend Sir R. Stout stated, that an agent is entitled to be indemnified by the person who employs

him for the natural consequences of acts done in the employer's service, we do not dispute. There is no doubt about that proposition of law at all; but the case apparently made out in the pleadings for the plaintiff is that there was an express agreement, and that also is supported by the evidence of Mr. Scott. My learned friend apparently relied, in opening, upon an implied undertaking to indemnify, and the plaintiff also apparently relies upon an implied undertaking to indemnify him. We dispute the liability of the defendants, or either of them, either upon an express or implied agreement. The defence, your Honour, is this: The National Mortgage Company had, upon a Run 93A, in the Lake Ohau District, some eight hundred head of cattle and some five thousand five hundred head of sheep. It was necessary, for the purposes of their business, that some time should be given them in order to dispose of these cattle and sheep. They did not wish to get the run itself; and Mr. Ritchie expressly told the defendant that he would under no circumstances saddle the National Mortgage Company with it.

Sir R. Stout: I think this is the proper time now to take the objection. If it is meant to go upon what was hinted at in the end of the cross-examination of Mr. Scott, I submit they cannot do that under the pleadings.

Mr. Solomon: Upon what grounds?

Sir R. Stout: If you are going upon any agreement of any sort you cannot do that under the pleadings. It has not been pleaded, and I submit that, under the rules, it ought to have been pleaded, and that that point has been sufficiently decided. There is no agreement alleged between the plaintiff and the defendants; no facts are set up; the only thing is in the fifth paragraph of the statement of defence, and that has no bearing on the defence sought to be elicited. Of course, we could not object to that, because that would have been admissible on the ground of credibility; but I submit there is no statement whatever in the defence set up of any agreement whatever between the company or any of the defendants and Mr. Scott, except this, which is referred to in the fifth paragraph, and that is not at all what was put to Scott in the witness-box, namely: "That the defendants admit that they paid the first half-yearly instalment of rent for the said run, but say that they paid the same for and on behalf of the plaintiff, and as his agents." Of course, that was not what was put to Scott at all. "And the defendants also admit that some stock, the property of the defendants—the National Mortgage and Agency Company of New Zealand (Limited)—were depastured upon the said run with the consent of the plaintiff, and by arrangement with him, for a short time after the plaintiff purchased the said run; but, save as herein admitted, they deny all the allegations." So that your Honour will see there was nothing whatever in the statement of defence alleging any agreement between the plaintiff and the defendants; and they, I submit, cannot now be permitted to set up some arrangement different from what we allege in our claim as having been made, because our rule is explicit that the grounds of defence must be set out.

Mr. Haggitt: My learned friend is arguing against nothing at all. My learned friend Mr. Solomon has not set up an agreement. He is merely going to state what took place.

Sir R. Stout: Pardon me, my learned friend cannot get in what he calls the actual facts without pleading them.

His Honour: But really Mr. Solomon is opening nothing improper. You set up this agency; they deny agency. In proof of your case you brought out your client's account of what took place between him and the two defendants. Well, in answer to that, certainly it is admissible for the defendants to show what did take place. If what did take place amounted to an agreement, then it may be open to you to object that, as it was not pleaded, they cannot succeed upon it.

Sir R. Stout: That is the only point I wish to make.

His Honour: The evidence, certainly, cannot be excluded.

Sir R. Stout: I understand my friend is opening that an agreement was made.

His Honour: He may not be able to rely upon it. I do not say whether he can or cannot, but certainly he can open all that took place between the parties.

Sir R. Stout: I do not care for their version so long as they cannot rely upon it. That is my argument, if your Honour will kindly note it.

His Honour: I think the argument may be premature at this stage.

Sir R. Stout: If I did not object now I might have been estopped.

His Honour: Hardly.

Mr. Solomon: I have listened carefully, but I cannot see what my friend objects to.

Sir R. Stout: If you cannot you are very dull; I am sure Mr. Haggitt sees.

Mr. Solomon: I do not propose to open anything except what is distinctly brought before the notice of the parties, and what I say distinctly is shown on the pleadings. Our defence is that there was no agency whatever between Mr. Scott and the defendants: that, at the request of the defendants, Mr. Scott purchased the run himself, and that there was no agency at all. The position of the matter from our point of view is this: that the National Mortgage and Agency Company had some eight hundred head of cattle and some five thousand five hundred head of sheep depasturing upon this run; and that it was necessary for the purpose of their business that they should have the use of this run for a short time—some months—but they were unwilling to take upon themselves the responsibility both of the rent and the rabbits for the usual term of the lease. Mr. Ritchie expressly told Mr. Scott this, and made him aware that the company required the use of the run for a short time, but that they were unwilling to take upon themselves the responsibility of taking it up for themselves: that Mr. Scott was thereupon told, both by Mr. Ritchie and by Mr. Henderson, that if he was willing to take up this run in his own name that they would pay the first half-year's rent, and that they would pay him such a sum as he might think fair for the service that he was rendering for them; but Mr. Ritchie and Mr. Henderson will both flatly contradict Mr. Scott's statement that they ever told him that "they would see him through it," or that "it was all right," and that he was to look to them. Mr. Ritchie will tell the Court quite distinctly that he made Mr. Scott aware he had to take the whole responsibility of the transaction, and could not

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

had been done. Mr. Ritchie is the general manager, and does not know all the minute details in the office. Mr. Ritchie told the manager at Dunedin to arrange the matter.

Sir R. Stout : That is not evidence.

Mr. Solomon : After his conversation with Mr. Scott, and from his subsequent communication with the manager at Dunedin (Mr. Henderson), Mr. Ritchie believed that the money had been paid ; and that was the cause of the dreadful untruth my friend relies upon as showing that Mr. Ritchie is not to be believed.

Sir R. Stout : I did not rely on that alone.

Mr. Solomon : I heard nothing else.

Sir R. Stout : I said, if he wished to say that his letter to the manager is false——

Mr. Solomon : I do not think I should be interrupted. The statement was that, if it came to be a question of reliability, your Honour must disbelieve Mr. Ritchie, because he said in that telegram the money was paid, whereas as a fact it was not paid.

His Honour : Well, Sir Robert Stout also referred to the letter to the manager, and relied mainly on the letter.

Mr. Solomon : I understood my learned friend to rely that that letter corroborated their view of the case.

Sir R. Stout : Yes ; if it was true.

Mr. Solomon : But I understood my learned friend to say that Mr. Ritchie was untrustworthy, because he made a statement which we admit in our pleadings to be untrue—that is, we do admit the statement was incorrect, but I have little doubt your Honour will see that Mr. Ritchie had every reason to believe the statement he then made. He had no means of verifying it, but he had every reason to believe what he stated in his telegram was quite correct. All we say, your Honour, is this : We say the object of the National Mortgage Company was clear ; that the object they had in view in employing Mr. Scott would have been frustrated and put an end to if the express arrangement, which is quite collateral and co-extensive with the implied arrangement, had been made. It is not necessary there should be this express arrangement, because the implied agreement to indemnify is the one alleged to have been expressly made. But I say that if the arrangement was that Mr. Scott was to be employed as their agent in purchasing the run, and the run was really their purchase and not his, that the very object for which they employed Scott would have been frustrated, and there could have been no reason in the world why they should have done this sort of thing. And we further say that in a case of this sort, where there will be a clean and distinct issue of fact between the two parties, the Court cannot exercise its discretion in finding that a trust is established under such circumstances as these, and, even supposing it could, there must be something more than a mere balance of testimony—it must be established by clear and distinct evidence, beyond any reasonable doubt, that such a trust has been established before the Court will find that it is so.

JOHN MACFARLANE RITCHIE, General Manager of the National Mortgage and Agency Company (Limited), examined.

458. *Mr. Haggitt*.] Mr. Henderson is your manager in Dunedin?—Yes.

459. Had you any interest, or had your company any interest, in the sale of Run 93A?—Our company had an interest by foreclosure as mortgagee about the end of 1889. We had been in possession up to the close of the old lease, and we had had a temporary arrangement for twelve months with the Government for the occupation of the run, which brought it down to 1891.

460. This run was offered for sale again in January, 1891?—Yes.

461. With some additional country added?—Yes.

462. And at that time you had the stock on the country you had taken over from the mortgagor?—Yes.

463. And that stock comprised what?—About eight hundred head of cattle, and some horses—sixty or seventy horses—and about five thousand five hundred sheep (wethers).

464. And we may take it that it did not suit you to remove those sheep immediately?—We had not sufficient time.

465. Well, at a moment's notice, it did not suit you?—No, it would take probably some weeks to muster the cattle.

466. What did you do under those circumstances?—When we found that the run was to be put up for sale, and that it was uncertain whether we could make any arrangement either with the Government or with the possible incoming tenant for the use of the country for a sufficient time to muster the stock, I had a discussion—somewhere about the 25th or the 28th of February—with Mr. Henderson as to the best course to pursue. I represented——

467. Well, that is not evidence ; do not tell us what took place between you and Mr. Henderson ; but it resulted in——?—It resulted in my coming to the conclusion——

Sir R. Stout : That is not evidence.

468. *Mr. Haggitt* : Did you do something?—The result of the whole thing was——

Sir R. Stout : That is not evidence.

Witness : I do not know exactly how to put it.

Sir R. Stout : Mr. Haggitt knows how to put it. He can put the questions.

469. *Mr. Haggitt*.] It resulted in Mr. Scott being sent for to see you?—Yes.

470. Now, when did you have your interview with Mr. Scott?—I think, either on the 26th or the 27th of February.

471. The 27th is the date of your telegram?—That would be the same date. I have no notes of it, but I believe that was the day.

472. What time was it when Mr. Scott came to see you?—I think it was the afternoon, but I am not quite sure.

473. Was anybody present at the interview between you and Mr. Scott?—No, not in the same room. The door was half open, and Mr. Henderson was in the next room.

474. You saw Mr. Scott in your own room; Mr. Henderson was in the adjoining room, only separated from yours by a glass partition, and the door was open between the two. Now, tell us, as briefly as you can, what took place—how the conversation commenced, and how it progressed?—I told him all the reasons which induced me to suggest to Mr. Henderson to send for him—the reasons which caused him to be there.

475. Tell us what you told him?—That the company had this stock upon this particular run—No. 93A.

476. When was this?—On the 27th February. That the stock had been running there for some time, when the limits and boundaries of the run were very much smaller than they were now; that we had had some 21,000 acres, but the boundaries had been increased to the tops of the mountains, including an area of 126,000 acres.

477. *His Honour.*] What were the old boundaries?—About 21,000 acres. They were low down, comparatively a short distance back from the rivers and from the lake.

478. Now that the boundaries have been extended to the tops of the mountains, it comprises how many acres?—About 124,000 acres. I also pointed out to him, if my recollection serves aright, that about seventy odd thousand acres were marked by the Government “barren and useless,” and that, in consequence, I could not on any consideration bid for the run in the name of the National Mortgage Company; that the responsibilities for rabbiting were so great as to make this impossible.

479. *Mr. Haggitt.*] Anything more?—I went on to explain that it was very desirable that we should have some time in order to muster the sheep and sell the stock; that a few months—certainly within six months—would suffice for this; and I told him that if he bought we should pay the first half-year’s rent, and whatever fee he might think would meet the case in addition. I warned him more than once that the responsibility might be considerable; that the Government would probably insist upon his continuing to pay the rent, or might insist upon his continuing to pay the rent, and also pay them all the rabbiting; and I expected that, at any rate in another year, this might be a serious item. He treated the whole matter very lightly, laughed a good deal at the whole thing as I explained it, and said that the Government could get nothing out of him, as he had nothing. I said, “Have you not been doing better lately?” and he admitted he had, but that he had no assets—no properties. I finished by warning him again, and telling him that if he had any scruples at all to say so, and I should drop the subject at once. I think that is the gist of what passed between us.

480. Was anything said about any remuneration to Mr. Scott for what he was to do?—Only in that passing way. I said we would pay the first half-year’s rent, and anything he might consider fair for his part in the matter.

481. No specific sum was mentioned?—Not to him.

482. Throughout the whole interview, then—you have told us all that occurred—there was never a word said about the company indemnifying Scott against the consequences?—No.

483. He never asked for such a thing, and you led him clearly to understand, apparently, that he was not to expect it?—Yes.

484. And you intended, by what you have told us, to make it clear to him?

Sir R. Stout: Surely!

His Honour: We have what was said. You cannot take it further.

485. *Mr. Haggitt.*] Was anything said then about his buying as an agent for the company?—No; nothing more than I have said now.

486. Did you understand at all that he was buying as an agent for the company. Was that your object at all?—Certainly not.

487. *Sir R. Stout:* Who was he buying for?

488. *Mr. Haggitt.*] Buying on his own account, at the request of the company. (To witness :) You have mentioned that a good deal was added to this run between the time you first held it and the time of the sale. Does that [plan produced] give an idea of the additions?—Yes; that in the red is approximately what we were using and what we were responsible for previously to the extension of the boundaries.

489. *His Honour.*] When were the boundaries extended?—About the same time in the previous year—about January, 1890, when the old lease terminated.

490. You got a temporary extension for a year?—It was put up for sale about January or February, 1890, and it failed to elicit a bid. Thereupon I communicated with the Government, and said that if they liked to allow me to go on with a limited responsibility as to rabbiting and the old rent, I did not object to take it for another year.

491. Yes. I see the old lease was about 21,000 acres?—Yes; that was up to January, 1890.

492. *Mr. Haggitt.*] What was the rent under the old lease?—I think, £150, but I am not sure. I cannot remember at present.

493. Practically there were about 74,000 acres of useless country added to the run which involved an expenditure for rabbiting the country, without getting any advantage?—That would be so.

494. *His Honour.*] Your arrangement with the Government was to take the enlarged run?—No, your Honour; the old boundaries.

495. With the right to run over the whole?—There was nobody to stop our right. We had no bargain for it.

496. *Sir R. Stout.*] Used the land, practically, without rabbiting?—Well, I do not think the sheep go on any part of it, as far as I know.

497. *Mr. Haggitt.*] It was absolutely valueless land beyond the boundary of the old run?—In my opinion, worse than valueless; it entailed a large responsibility.

498. Now, Mr. Scott has apparently forgotten that any such conversation with you ever took place?—Before leaving that interview, I may say that after Mr. Scott left I went into the next room to Mr. Henderson and told him what passed.

Sir R. Stout : Well, that is not evidence.

Witness : Is that not evidence?

His Honour : No.

499. *Mr. Haggitt*.] You mentioned to Mr. Henderson on this occasion what you thought Mr. Scott should be paid?

His Honour : I do not think that is evidence.

500. *Mr. Haggitt*.] When did you next see Mr. Scott?—I may have seen him.

501. To see him to speak to?—I do not think anything passed about the matter till the matter of the notices about the rabbiting cropped up—some three months afterwards I suppose. That is the next time I would have had any conversation with Mr. Scott with reference to this run at all.

502. You sent a telegram to your agent at Timaru: how was it you signed the telegram “J. R. Scott, per J. M. Ritchie,” and afterwards you sent one signed by himself?—Simply because he consented so absolutely, without reserve, to undertaking the responsibility I had pointed out. Time was of importance, and I knew that he would give the authority in his own hand when asked for it a little later.

503. Now, as to your letter to Mr. Martin, I think it was, your manager in Christchurch: your manager knew perfectly well, I suppose, that the cattle and stock on Run 93A belonged to you?—Yes.

504. And when you wrote, “Authority has gone to you to bid for Mr. J. R. Scott, who authorises me to instruct you as follows,” you were quite satisfied your manager would understand what was written; and he would know that any instructions about the cattle came from you and not from Scott?—But that is not about the cattle.

505. Yes it is?—I repeated there simply what I had stated to Scott, and what he absolutely and unreservedly assented to.

506. Your arrangement with Mr. Scott was such as to enable you to instruct Mr. Martin in that way?—Yes.

507. But you never intended——

Sir R. Stout : I object to that—to his stating what he intended. There is the letter, and surely he cannot say what his intentions were.

508. *Mr. Haggitt*.] It is the letter of the 5th March, 1891. Very well, Mr. Ritchie. Now you say the next time you saw Mr. Scott was after he got the notices to rabbit. Whereabouts did you see him on this occasion?—I think he called at the office.

509. Did he come to you or to Mr. Henderson?—I came across him; I really cannot be quite sure whether in my own or Mr. Henderson’s room. I think he brought the notices into my room. One was signed by Mr. Thomson, and one by H. R. Foster. I remember seeing the notices distinctly.

510. What did you say to him?—I said, “You must make the best of it; we have nothing to do with it.”

511. He says you told him to put it off as long as he could?—I said to him something like this: “That the best thing is just to sit low; sometimes the Inspectors do not go further, and sometimes they do.”

512. When did you next see him? By-the-by, is that all you recollect taking place on that occasion?—I think so. I did not say anything more. I distinctly let him understand we had nothing to do with it, although I did not object to discuss it with him—to help him, if I could, to the best way of dealing with it.

513. When did you see him next?—I think I saw him in the street once or twice, but I could not say the date, or anything approximately to the date. I remember he said to me that either a policeman or detective had been up at his house. I think it was between the interview of which I have just spoken and the time of his being fined, but I am not sure.

514. Did any conversation take place at that time?—I said I was very sorry; that I hoped they would not push matters to extremes; but that he had gone into the matter with his eyes open, and he smiled and assented.

515. Do you remember his telling you on any occasion that he had paid the policeman?—He came in again, and showed me a telegram from Timaru—from Perry and Perry, I think it was—to say that a distress warrant had been issued. I said, “Well, I suppose you must pay, Scott.” I said, “I have nothing to do with it;” and he said, Yes, he supposed he must pay; and then I said, “Well, if this is the end of the thing, Scott, I won’t say that I may not go beyond the extent of my promise, and pay this fine rather than see your whole profit in the transactions swept away; but at present I can make no promises.”

516. This conversation took place when?—Either the same day or at the time Scott got the telegram from Perry and Perry saying a distress warrant had been issued.

517. Did he hand that telegram to you, or did you get it?—I do not think I ever saw it except in his hands.

518. There is an indorsement on that telegram in pencil. Was that indorsement on it at the time you saw the telegram?—I do not know.

519. *His Honour*.] Who made the indorsement?

Sir R. Stout : It was made by Mr. Scott before he went over.

Witness : He did tell me on one occasion that his wife was not well; but I do not remember that indorsement.

520. *Mr. Haggitt*.] You do not know whether he showed it to you before he handed it in to the office?—No; I do not remember seeing it.

521. You have told us the conversation about the telegram?—I am not perfectly certain whether it was at the time the telegram arrived, but I have an impression that it was.

522. Did you see him on any occasion when he said that he had paid the money, and that he had also paid Messrs. Perry and Perry's costs?—No; I do not think he ever told me that.

523. Did you ever say to him, "You had better go and get your money at the counter" or "in the office"?—From our men?

524. Yes?—Never.

525. Mr. Scott has told us that, after he had paid the money to the policeman, he saw you, and told you that he had done so, and also told you that he had paid Messrs. Perry and Perry's costs (five guineas), and you said that he had better go and get the money in the office?—He may have told me that he had paid the money. I used to meet him.

526. He says on this occasion he met you at the top of the stairs leading into your office?—I am sure, perfectly positive, that I never said he might go and get the money in the office, because the whole tenor of my talk was the reverse.

527. He tells us he said to you, "Oh, it is better no money pass just now," and that you said, "Oh yes, perhaps so." Did any conversation like that take place between you?—No. After I had said this, about the possibility of my paying, he said, "Then, I had better go and pay it," and I said "Yes."

528. At this time, I suppose, you had no thought that the matter would go further than the fining him for not taking notice of the notices he had received to poison the rabbits?—No; I cannot say I had.

529. Cannot say you had what?—Any notion that it would go further.

530. And you led him to believe that if it ended there, and it was nothing further than the costs he was put to in respect of the non-poisoning of the rabbits, you would pay that, so as not to deprive him of his remuneration?—I made no promise, but I said I might reconsider my previous understanding to that extent.

531. By-the-by, did you ever instruct him to communicate with Messrs. Perry and Perry?—No.

532. Now, Mr. Ritchie, you sent a telegram from your place beyond Timaru in reply to a telegram sent to you by Smith, Chapman, and Co.: do you recollect that?—Yes.

533. You said in it, "Have nothing to do with Scott whatever. Have paid him in full for such use as we got of his run"?—Yes.

534. You wrote that from Cannington?—Yes.

535. Without any opportunity of inquiring whether the money was paid or not?—Yes.

536. Did you believe at that time that the money had been paid?—Yes.

His Honour: Mr. Ritchie says he believed the money promised had been paid?

537. *Mr. Haggitt*.] That is what you refer to?—Yes.

538. And you say what you wanted was the use of the run to get the stock off; and for that you paid the first half-year's rent and this remuneration to Mr. Scott?—Yes.

539. Then, when was your next interview with Mr. Scott?—I do not think I ever saw him afterwards.

540. You were away at the time he was arrested, and could not?—Yes.

541. And you were away for a considerable time afterwards, until the whole matter had been disposed of by Scott being discharged from custody on condition of his bringing an action against you?

Sir R. Stout: Do you want to go into the question of the number of people Mr. Ritchie sent to Mr. Scott to get him to keep quiet—you had better not.

542. *Mr. Haggitt*.] Then, Mr. Ritchie, I understand you to say that Mr. Scott knew perfectly well what he was going into at the time he purchased this run?—I made it very plain—as plain as I could.

543. That there was no question of his buying as agent for the company, or for you, or for Mr. Henderson, or anybody else; that he bought it on his own account?—Yes.

Sir R. Stout: This is mere matter of re-examination to co-operate up the evidence.

His Honour: It is just summarising, I suppose, what Mr. Haggitt takes to be the evidence.

544. *Mr. Haggitt*.] Yes; and that Mr. Scott had no right to come to you, or to Mr. Henderson, or to the company, to get rid of the difficulty?—That was the feeling that prompted me to send that telegram to Mr. Chapman. I did not know why he was telegraphing to me.

545. That, according to your arrangement with him, your whole responsibility ended with the first half-year's rent, and whatever sum should be agreed upon for his remuneration?—Yes.

Cross-examined by Sir R. Stout.

546. I understand, then, you sent this telegram to your agent in Timaru to apply for the run in Mr. Scott's name before you got any authority from Mr. Scott to do so?—My authority from Scott was an assumption arising from what passed between me and him.

547. You had not seen him before?—Yes, I had.

548. Are you sure of it?—Yes.

549. I think you said you had not seen him till the afternoon?—I certainly had seen him, and discussed the whole thing.

550. Why did you not get him to sign the telegram?—He went out, and I could not get him, and time was of importance.

551. There was a telegram-form in the office you could have got?—He had given—

552. Is it not a fact that you sent the telegram before Scott authorised you to sign it, on the strength that you could get him to consent—on the strength of the previous arrangement that had been entered into?—No.

553. Then, I understand you to say that Mr. Scott agreed to do it, and that you did not get

him to sign the telegram till he had left the room?—No; the telegram was sent for him to sign, I think.

554. Now, Mr. Ritchie, I understand you to say you sent that telegram yourself—first the one and then the other. Had he consented to allow the company to act as his agent before you sent the telegram?—I do not know about acting as agent: he had consented to do what I asked him to do on the terms proposed.

555. He had consented to act though he had left the room? Did you not know that the thing was pressing?—I do not exactly know what you are driving at.

556. Never mind that. Did not you know the matter was pressing?—I did not know it was so pressing as I found out afterwards, when I called Mr. Henderson, and found out the date and the hour of the sale. I do not believe ten minutes had elapsed between the one and the other, so far as I know.

556A. In the previous transactions had you seen Mr. Scott—about the previous run-transactions—at all?—I think so; yes.

557. I again ask you, did you not send the first telegram before you got Mr. Scott's authority at all. Will you say you did not?—I am as sure as I can be of anything.

558. You have not the original you sent to the agent at Timaru?—Is it not there?

559. Now, you sent the telegram, and you say you led Mr. Scott to believe that he was to run the risk?—Certainly.

560. And you will say, Mr. Ritchie, that the letter you sent to your agents in Christchurch was sufficient to let them know the terms on which you and Mr. Scott had agreed?—I do not understand.

561. I understand you to say this as to the letter to your manager, "The manager knew well that the cattle and sheep belonged to the company; I repeated what passed between me and Scott to Martin"?—I said I intended to convey to Martin the tenor of the understanding arrived at between me and Scott.

562. Very well; that is the same. He knew who owned the stock?—We had been in correspondence about the stock for some time.

563. You did not suggest to Mr. Martin to say what was untrue to Matheson?—No. In what respect?

564. In any respect?—Certainly I did not intend to do so.

565. Then, you intended Mr. Martin to convey to Mr. Matheson the truth?—Yes.

566. Very well, we accept that. And I suppose you were not surprised at Mr. Martin's letter that you got back about his transactions with Mr. Matheson: that did not surprise you?—No.

567. And you did not see that Mr. Martin had done anything wrong in anything he had done?—No.

568. And you never found fault with him for his action?—Not that I remember.

569. You knew Mr. Scott had a fair business, Mr. Ritchie?—No.

570. I thought you said you thought he was doing better?—I asked him, and he said he was.

571. You knew he was doing a little?—Yes.

572. Did you contemplate anything happening to Scott, but simply the demand for the rent being made, and his having to give up the run? Did not you think the usual thing would follow?—I did not know what might follow.

573. Did not you think so?—I did not.

574. Did not you know as a fact that surrender of runs had been accepted from private individuals by the Government?—Oh, yes! I knew that.

575. And were you not afraid, Mr. Ritchie, that the then Minister of Lands would not accept surrender from a company?—I knew he would not, and it is exactly the same either one Minister or another.

576. Take it like that. Had you any transactions of this sort before 1891?—No.

577. January, 1891, was the first transaction with Mr. Scott; and the other was in February or March. You had none of this class of transactions before?—What do you mean by "this class of transactions"?

578. Why, getting people to buy runs to give you the use of the grazing-rights?—Well, I do not know how to answer that question.

579. There is nothing illegal in it, nothing immoral, nothing wrong in it, my learned friend says?—I have subleased from men who bought runs.

580. Had they taken up the runs on your account?—Not more than that—

581. Not more than that what?—That they had agreed to sublet it to me afterwards.

582. Did you enter into any agreements with them?—Not specific.

583. Well, verbally—that you were to be the tenant?—Possibly.

584. Why was that done, seeing that you wanted to sublet it?—I was the tenant; I subleased from them.

585. But why should not you have taken the run direct from the Government?—Because I did not choose to.

586. Then, you wanted to get rid of the liability of a tenant to the Government?—No, I did not. It was not with the Government at all.

587. You wanted not to take up the liability of a lessee, so that you could get out of it at any time by giving up the lease?—I did it because I chose to.

588. Because you chose to! Very well; that was the object of it. Now, Mr. Ritchie, if you had nothing to do with this, how came you to write the telegram saying that Scott was to surrender the run—abandon the run?—What telegram?

589. On the letter of the Chief Inspector, in your handwriting—the pencil memorandum on the

back: how came you to send this if you had nothing to do with it?—I said to Scott, "That is what you had better write." He was always coming to me to know what he should do.

590. Why should you be a sort of adviser-in-chief if you had nothing to do with it?—It was the easiest way to get rid of him to advise him.

591. This is the note you wrote: "I beg to give you notice that it is my intention to abandon Run 93A, as I cannot make anything out of it at the rental." Now, Mr. Ritchie, had Mr. Scott ever attempted to make anything out of it at the rental?—Well, he had.

592. How?—I was willing to pay him fifteen or twenty pounds, and he knew it.

593. Surely that was nothing "at the rental." Is this statement true or not—the statement you made Scott sign?—I did not make Scott sign it.

594. You wrote it for him?—He asked me what he should do. I said, "Write something like that.

595. Yes. Now, was this something correct?—Yes.

596. I will read it: "I beg to give you notice that it is my intention to abandon Run 93A, as I cannot make anything out of it at the rental"?—Yes, nobody could make anything.

597. Is that correct?—How correct?

598. When you asked Scott to sign that statement, was that asking him to sign a true statement?—I think so.

599. You really say you think so?—Yes. It would take a much cleverer man than Mr. Scott to make anything out of the run.

600. That is not the question, as you know very well. Had Mr. Scott ever attempted to make anything out of it at the rental?—I do not suppose he would have gone into it if he did not.

601. Did you ever imagine for a moment that Mr. Scott was going to run sheep on that run—was to be a runholder?—I have said so already. I said we did not want anything to do with it.

602. That is not the question: did you imagine that Scott was going to be a runholder, and run sheep on this country?—I cannot say what I imagined.

603. There is no use beating about the bush. Is not this the fact: You wanted the use of the land for a few months; Scott was to take up the run; you were to pay the rent; and as soon as you had done with the run he was to abandon it: and you expected the Government would let him abandon it. Did not you expect that to happen?—I hoped so.

604. Now, Mr. Ritchie, you saw Mr. Scott again about this rabbit question, and you indorsed this on this telegram?—Yes.

605. Now, why should you put this indorsement, "What time might be gained by appeal, and at what cost?" What interest was it that Scott was to gain time in an appeal?—I suggested that as a reply to Messrs. Perry and Perry. When they asked—I think it was Perry and Perry—I suggested, before giving an answer *re* appeal, that he might ask that question.

606. What interest was it to him?—I do not know.

607. Was it not in your own interest this telegram was to be sent?—Certainly not.

608. If not, why did you go to Mr. Haggitt and take his opinion?—I do not think we did.

609. Did you not do that?—I do not think so.

610. Did not your company get an opinion in writing about this very appeal?—I have no recollection of it.

611. Has it not been charged in your books?—I could not swear. It can easily be found out. I certainly did not go to Mr. Haggitt.

612. Do you mean to say you did not see the opinion?—Not that I know of.

613. Did Mr. Henderson tell you of it?—Not that I know of.

614. Were you charged for the opinion?—I cannot tell. We do not get our accounts so promptly as that.

615. You do not know whether you are charged for it or not?—Not in the least.

616. Now, I understand you to say, Mr. Ritchie, that all that Mr. Scott was to do was to apply for the run, and that you were to pay the rent?—The first half-year's rent.

617. If so, why charge it to Mr. Scott in your books?—I do not know. I did not instruct them to charge it to Scott in our books.

618. How does it come to be charged in the books of the National Mortgage and Agency Company against Mr. Scott if you were to pay it, and not Scott?—I am afraid you will have to ask the book-keeper. I do not know.

619. Then, he would make it without instructions?—Yes; but the whole thing was in Scott's name, and he assumed it was a payment made to his account, as in many instances it is done.

620. Then, he assumed that the company had nothing to do with it—that it was not to be debited against the company?

Mr. Haggitt: There is the warrant to the book-keeper to make the entry. [Document produced.]

Sir R. Stout: That is not a warrant to charge Scott.

Mr. Haggitt: Ask Mr. Ritchie what it is.

621. *Sir R. Stout:* What is it?—That is the authority of the manager at Christchurch to the book-keeper at Christchurch as to how the money is to be charged.

622. Charged in the books down here?—Passed down in the books here, because it is a Dunedin transaction.

623. If that was the true agreement, how was it the book-keepers did not know the true agreement, and a false statement appears in the books?—I do not know. What is your suggestion.

624. My point is this: Would you keep from the book-keeper what was the agreement between you and Scott?—So far as I am concerned, nothing passed between me and the book-keepers.

625. How can your books as a public company be audited, if they are false?—I do not know, I am sure.

626. Here stands a debit against Scott, making out, according to the books, that Scott is owing the company money when he is not owing the company a shilling: can you explain that?—I have explained it.

627. Have you? Well, we will leave it at that, as you have no explanation to give?—Yes, I have—that it came from Christchurch on that warrant.

628. Mr. Ritchie, a little ago you stated that Mr. Martin, of Christchurch, knew of the arrangement?—Certainly.

629. If Mr. Martin knew of the arrangement would Mr. Martin make a false entry in your books as manager at Christchurch?—I cannot speak for him.

630. Can you explain how it is the book-keeper makes no debit entries for telegrams and other expenses, and no commission either? Can you explain that?—I thought the commission was paid.

631. Commission to you or to Scott?—Commission from Scott to us.

632. If your book-keeper thought you were acting as Scott's agents, how does he not debit Scott with commission?—We do not debit commissions like that.

633. How then?—Sometimes at the end of six months, sometimes at the end of twelve months.

634. This is the end of six months?—There was no commission in the matter. The whole thing has been explained.

635. I admit that; but your book-keeper is treating it as if it were an ordinary transaction, in which you were acting as agents?—If you want my theory about the thing I will give it. It is this: We agreed to pay the first half-year's rent; there was no necessity for Scott paying it, and when we paid it the entries required to be made.

636. Do you mean to say the auditor is to see a debit entry that is bogus?—It is not bogus.

637. Yes, so long as he is not credited with the amount?—But he will be.

638. When is your balance made? What month do you balance your books?—On the 30th September and the 31st March.

639. Then, the balance is passed, and no credit, and if the books are audited there stands to the credit £191 ls. that ought not to be a credit?—Well, you see, it was a dead loss.

640. That is another theory. When you are passing accounts, in whatever end of the year, would that account not show as a debt due to the company by Scott?—It was advised as a bad debt—a debt not paid.

641. Is there anything to show that it is a bad debt, or written off?—It was advised by me in my despatches.

642. That it was a bad debt?—I believe so.

643. I ask your Honour to take that down. If that was advised by you as a bad debt, why did you in your affidavit of discovery not show us that part of the letter you wrote to the London office, saying that you had so advised them? You have already sworn you have disclosed everything. This is your affidavit.

Mr. Haggitt: Everything relating to the matter.

644. *Sir R. Stout*.] Is not this relating to the matter—the bad debt? Certainly it is. This is what you have sworn: "To the best of my belief the said documents set forth in the said schedule are the only documents in our possession or power relating to the matter in dispute"—and so you go on. Now, Mr. Ritchie, we will take the bad-debt theory. How could this possibly be a bad debt owing by Scott, when Scott never owed a penny of it at all? On your statement, how could it be a bad debt if Scott never was due the money?—We were due the money to Scott.

645. Then it was not a bad debt; it should have been a credit?—Certainly, and it would come into credit.

646. You have told me now you have written to the London office to write it off a bad debt. How could it be a bad debt if the money was never due by Scott?—It was debited to Scott, and in due course of time an entry crediting Scott would be passed.

647. That is not the question. I want to know why you should write to London that it was a bad debt if it never was a debt due by Mr. Scott at all?—It is exactly a similar transaction to what we agreed—to pay Scott a half-year's rent of run.

648. But you have in your book and up to the balance an entry that Scott is due to the company £191 ls. That stands in the balance as audited as due by Scott, and you have explained that you wrote Home to the agents to tell them it was a bad debt. Was that true?—Yes.

649. You called it a bad debt though it was never due by Scott at all?—But the thing is different altogether. That stands as Scott's debit until it is squared off by a credit entry.

650. When is it going to be squared off?—Whenever the proper entry is made.

651. Why should not you have made a correct entry before the balance?—The entries for all bad debts came from the London office.

652. Then, it is a bad debt. You treat it as a bad debt?

Mr. Haggitt: Surely a debt that is not recoverable is a bad debt.

653. *Sir R. Stout*: It is not a debt at all, and my friend knows it. [To witness:] And of taking all this trouble about Mr. Scott—writing telegrams, and all—your explanation is that you did it out of kindness to the man, to get rid of him?—I simply gave him the benefit of my advice.

654. Free, gratis, and for nothing?—Yes; free, gratis, and for nothing.

655. When did you take the sheep off?—I suppose it must have been about the middle of August.

656. Is it not a fact, Mr. Ritchie, that when you penned this indorsement on the telegram asking what time could he get—that the object was to enable you to get delay by appeal in order to get your sheep off—that that was the object?—No.

657. "What time might be gained by appeal, and at what cost." Is it not a fact that at this time your sheep had not been removed off the land?—What is the date of that?

658. June?—Yes.

659. And did you not remove the sheep off the land just in time to escape the distress warrant due in September?—I suppose a fortnight or three weeks before; but they did not belong to me for three months before that.

660. *Mr. Haggitt.*] When did you sell the sheep?—About the month of May.

661. *Sir R. Stout.*] With the grazing-right to the purchaser to keep them how long on the run?—There was no grazing-right. The purchaser was informed I had made an arrangement with Mr. Scott that they might run there for so long as the rent was paid for, and he took the risk and responsibility himself.

662. Then, you told him, practically, that he might run his sheep there up to the end of August?—To the time the rent was paid for.

663. There is one expression Mr. Scott used you have not denied, where he said that you said something about “not meeting the devil half-way—better not do anything.” Do you remember that?—No.

664. You will not say you did not say it?—No.

Re-examined by Mr. HAGGITT.

665. *Mr. Haggitt.*] As far as this book-keeping entry is concerned, you had nothing to do with it, I understand?—No.

666. You gave no instructions with regard to that, and whatever the object of those who made the entries may have been, the entries were not influenced by you in any way?—No.

667. I suppose, when money is paid out—I am putting this to you simply as an ordinary question of book-keeping—when money is paid out by the company it has to be debited to some account. It is necessary for the purpose of book-keeping it should be?—Yes.

668. And when money is so debited there must be a cross-entry somewhere else?—Well, if it is debited to an account which is not the final account it has to stand to, there must be a cross-entry, and that happens scores of times.

669. The company paying out money on its own account may have in the first instance to debit it to some account not responsible for it?—Often.

670. And when the charge comes to be closed up there is a proper entry made?—What we call an interim entry.

671. In the meantime no cross-entry has been made in this transaction?—I do not know that there has.

672. But when the thing comes to be closed up finally there will be such a cross-entry?—Yes; we will then credit Scott with the rent we promised to pay him, and debit the account that has ultimately got to bear it.

673. You were asked, with reference to the letter to your manager at Christchurch in which you wrote, “Possibly you might get hold of the applicants, and put this view before them, not, of course, saying anything as to forfeiting, but merely that you have authority to bid for a man who is interested in the stock, and wants to sell and deliver them”—you were asked if that was true. Your attention was not drawn to the form of it, and you said, Yes, you thought it was?—Yes.

674. That implies, you see, that Scott was interested in the stock, and wanted time to sell and deliver. You did not understand that?—I did not understand the point referred to. I asked him to point it out, but did not get it.

675. Then, the fact is that Scott had no interest in the stock at all, and that it was you who wanted time to sell?—But I had made an arrangement with Scott in the meantime.

676. And you say you consider that the effect of your arrangement with Scott was to authorise you to send that letter?—Yes.

677. At all events, the person to whom you wrote could not have been misled by it?—Yes.

Mr. Haggitt: You see, your Honour, these letters were written between Mr. Ritchie and his own agent.

Sir R. Stout: As you were the agents of Scott, we were entitled to them. We have a right to know what takes place between our servants. You seem to forget that our agent actually wanted to sell our run without consulting us.

678. *Mr. Haggitt.*] Scott knowing perfectly well what the arrangement was, as well as Matheson, you consider justified you in writing that letter?—Yes. I had explained the whole thing to Scott absolutely without any reserve.

WILLIAM HENDERSON examined.

679. *Mr. Solomon.*] You are manager of the National Mortgage and Agency Company at Dunedin?—Yes.

680. Do you know Mr. J. R. Scott, the plaintiff?—I do.

681. The Court has been told by Mr. Scott that you had an arrangement with him in January, 1891, about the purchase of a run?—Yes.

682. Had you had any business in your office with him before that?—Only in connection with shipping.

683. You had another arrangement with him at the end of February, 1891?—Yes.

684. You remember having a conversation with Mr. Ritchie, your general manager, about Run 93A, Lake Ohau District?—Yes.

685. In consequence of that conversation you had with Mr. Ritchie, did you see Mr. Scott?—I saw him on the 27th February.

686. Where?—Met him in Bond Street.

687. About what time of the day would that be?—Shortly after 2 o'clock.

688. Had you any conversation with him?—Yes.

689. Will you tell us what you told him?—I told him that the outlying run at Lake Ohau was exposed for sale again, and I told him that Mr. Ritchie was not prepared to take it up, on account of the rabbits, and I asked him if he was prepared to apply for it. I told him that the company was prepared to pay the first half-year's rent, and that he would have £15 or £20 to himself. I told him that he might have trouble with regard to the rabbits, but that he must risk it, as the company would have no further use for the run after the first six months. He said that he was quite ready, that he had nothing; the Government could not go against him, as they could take nothing off him. I told him that he had better see Mr. Ritchie, and arrange everything further.

690. What did he say to that?—And that I would let him know when Mr. Ritchie could see him.

691. And did you let him know?—Mr. Ritchie returned to the office after 3 o'clock, and I told him I had seen Scott, and that he was prepared to take it up, and we sent for him.

692. You heard what Scott said—that you told him that you would pay the expenses, and the company would take all the responsibility: is that true?—No.

693. Did you ever agree with him, at that time or at any other time, to indemnify him against any loss he might sustain?—No, never.

694. Was anything said, and, if so, will you tell us what passed between you, as to what was to happen if he did get involved in difficulties over taking the run?—Was anything said by him?

695. Was anything said by either you or him as to whether he would have a remedy against the company or not?—No; the conversation was a short one. Not more took place than I have repeated.

696. I understand you told him that he was to take all the risk?—Clearly.

697. Did you say to him then, or at any other time, that you—either “I” or “we”—“will see you through it”?—Never used such words, nor anything to that effect.

698. Then you left Scott, and he was sent for to see Mr. Ritchie?—Yes.

699. Where were you during the conversation between him and Mr. Ritchie?—In my own room.

700. Could you hear what was going on?—Yes.

701. Are you sure Mr. Scott did have a conversation with Mr. Ritchie in your office on that same day?—Perfectly certain.

702. You heard Mr. Ritchie give his evidence: did you hear him say anything to Scott about the responsibility or risk he was undertaking?—I heard him repeating to Scott very much the conversation he had had with me prior.

703. That Mr. Ritchie had had with you?—Yes.

704. Did you tell Mr. Scott the reason the company wanted the use of this property?—Yes. I said the boundaries had been extended largely, and Mr. Ritchie would not take it up on account of the rabbits.

705. Did you tell him why the company wanted the use of it?—Yes—to run the stock to such a time that they could be disposed of.

706. Did you make him aware that your company had stock on that run?—Yes.

707. Sure?—Perfectly so.

708. Did you give him any idea as to how long the company would require the use of the run for that purpose?—Just for a few months.

709. Will you tell us, please, Mr. Henderson, as nearly as you can, what conversation you heard between Mr. Scott and Mr. Ritchie?—Mr. Ritchie explained to Scott that he would not on any account take up the run with the extended boundaries—that he wished the use of it for a few months to enable him to dispose of the stock.

710. Well?—Scott was in the room for about five minutes, and the conversation—I could not repeat the whole conversation.

711. Did you hear Mr. Ritchie ask Scott or tell Scott—

Sir R. Stout: Surely you cannot put a suggestion.

712. *Mr. Solomon*.] I am not going to put a suggestion. Did you hear Mr. Ritchie ask or tell Scott what he (Ritchie) wanted him to do?—I could not say I heard any further particulars.

713. Did you hear Mr. Ritchie say anything about responsibility?—No, I could not swear to that.

714. Now, when you spoke to Scott about taking up this run in that district, did he say whether he knew the district or not?—He had told me previously he knew the district.

715. How?—He told me he had been a cadet on a station, and knew all about that district.

716. *Sir R. Stout*.] Was that in Bond Street also?—That was previously—in January. It was the time when he saw the map that he referred to.

717. *Mr. Solomon*.] Well, after the conversation between Ritchie and Scott in Ritchie's room, had you any conversation with Scott on that day?—No.

718. What is the next you heard of it?—After that the run was taken up. The application was sent to Timaru.

719. What was the next time you saw Scott?—I did not see him for some time. Yes, I saw him the day after the run was taken up and advertised in the paper. I met him in Bond Street again, and he said he had observed that he had secured a run, and laughingly said he was a runholder.

720–21. Well, when next did you see him?—I have seen him frequently, but with regard to this matter I had no conversation, I think, until the rabbit matter came up.

722. How was that brought before your notice?—He brought the notices to the office.

723. What did he say, or you say?—I told him that we could not do anything—that I would show them to Mr. Ritchie.

724. You say you told him that you could not do anything: did he want you to do anything?—No; he merely brought them in as having received them.

725. Did you see Mr. Ritchie?—Yes.

726. Did you see Scott again?—Yes, and told him that we could not do anything in the matter.

727. Did you say why?—I told him that Mr. Ritchie would not move in the matter at all.

728. How long would that be after the run was obtained?—I think that would be about June.

729. What did he say to that?—He said he could not do anything.

730. Did he suggest that you ought to defend it for him?—No.

731. Well, now, that was when he got the notices: then he got a summons?—Yes; he brought the summons in, and said he had been summoned, and I asked him what he thought of doing. He said that he did not know any solicitor in Timaru. I said I did not know any one there; the only solicitors I know are Messrs. Perry and Perry.

732. Well, at that interview did Mr. Scott suggest that the company should defend the thing for him?—No.

733. You told him the only solicitors you knew were Perry and Perry. Did you advise him to do anything?—I told him I supposed he had better communicate with them.

734. *Sir R. Stout.*] Where was this—in Scott's office?—No; in our own office.

735. *Mr. Solomon.*] Was anything said at all about paying them?—No, nothing.

736. What did he say to your suggestion that he should write?—He went away, and I understood that he did write to them.

737. Did you draft any letter for him to them?—Not with regard to that.

738. Or dictate any?—No; I dictated the letter he read of the 26th May. That was in his office afterwards.

739. The letter I am speaking of, I apprehend, is the letter written in your office when he came to you with the summons, and you told him he had better communicate with Messrs. Perry and Perry. Did you dictate or suggest a form of letter then?—No; I do not recollect dictating any letter then.

740. Did Scott ever at any time, in his office or yours, suggest or say that it was part of your bargain that you should defend him from these proceedings?—No, never.

741. *His Honour.*] I understand Mr. Henderson to admit dictating the letter to Perry and Perry of the 26th May?—Yes.

Sir R. Stout: That is the only letter we say he dictated.

742. *Mr. Solomon.*] This [letter produced] was what you dictated?—That was done in his office.

743. You have spoken of an interview in which he referred to Messrs. Perry and Perry in your office: were there two interviews?—Yes.

744. What do you mean by "dictating?" Do you mean to say that Scott took down, word for word, what you said?—Scott asked me, I think, what he ought to write, and I drafted out a letter for him. He was in a great hurry going off somewhere, and asked Logie to take it down.

745. *Mr. Haggitt.*] You drafted it?—I either wrote it or dictated it. I know Logie wrote it afterwards. It was all done in Scott's office.

746. *Mr. Solomon.*] The next proceeding against Scott we have here is that he was fined, and called upon to pay Messrs. Perry and Perry's costs?—Yes.

747. Did he come and tell you he was fined?—No; I saw it in the paper.

748. Did you have any conversation with him about it before he paid the fine?—Yes; he told me that a bailiff or a policeman had come to his office; that he did not know how to get rid of him. He had been haunting the office, he said; that he could not pay, and that he was putting him off from time to time.

749. Did he ask you or the company to pay?—No, never suggested such a thing.

750. Did he ever say you had promised to see him through it, or anything of the sort?—No, he never did.

751. Did you hear that he had paid Perry and Perry's costs and the fine?—Yes, a considerable time afterwards he told me. He referred to having paid the fine, and I said, "Oh! have you paid it? I did not know." "Oh, yes!" he said, "I have paid it."

752. Now, Mr. Scott has told us this: that you knew he was going south; and he says, "When I returned to town I saw in the *Star* a telegram from Timaru that I had been fined, and that it was a case of dummyism. About the end of May I saw Henderson, and told him I was much put about at seeing this in the papers; that it was a thing I did not anticipate when I did this for them. He assured me it was all right, and that they would see me through?"—The latter part of that is not true.

753. Anything to that effect?—Not at any time.

754. What did Mr. Scott say about having seen this in the *Star*?—He said he had seen the *Star* when he was down South, and was very much worried by it; that he did not think he was to have so much trouble when he took the thing up.

755. What did you say to that?—I said I did not know how he was to get out of it.

756. After he had told you that he had paid the fine, and had paid Perry and Perry's costs, did he ever ask you to pay the money back to him?—No.

757. Do you remember having any communication with him about the settlement of his furniture?—That was a long time afterwards; that was when the large claim had been made against him by the Government.

758. Now then, Mr. Scott also says that after he came out of gaol he saw you, and asked you what you were going to do, and that he told you he had seen a telegram Mr. Ritchie sent to Smith, Chapman, and Co., and that he was surprised at his sending such a telegram as that. Do you remember that?—Yes; I think he did speak about that telegram.

759. Did he ask you what you were going to do after he came out of gaol?—Well, he said he could not go back to gaol. I said, "I do not know what can be done."

760. Mr. Scott also says that he said to you that Mr. Ritchie had mismanaged the whole thing, and that the rabbits should have been cleared off. Is that true?—Yes; after he came out of gaol he said that he thought Mr. Ritchie had not managed the thing well.

Mr. Haggitt: No, he said that you said that.

Witness: No, I never said so. He said so, but I never criticized Mr. Ritchie's management. It would have been an absurdity to do so to Mr. Scott.

761. *Mr. Solomon*.] When Mr. Scott came out of gaol did he complain that the company had not fulfilled its bargain in seeing him through it?—No. He came to me about 3 o'clock one afternoon, the day after he came out of gaol, and said that he wished Mr. Ritchie and myself to clearly understand that he was taking the whole responsibility on himself, and, whatever we might hear outside, not to believe it.

762. *Mr. Chapman*.] Was this after he came out of gaol?—Yes, after; and he said he was acting under the advice of some friends.

763. *Mr. Solomon*.] Did he up to that time throughout the transaction—then or at any previous time—express dissatisfaction with the action of the company?—He was a little annoyed sometimes when he came to the office with these things.

764. You mean to say that he was annoyed at being put in this position; but did he ever say the company was not acting up to its bargain?—No, never.

Cross-examined by Mr. CHAPMAN.

765. *Mr. Chapman*.] Well, this portion is new. Let me ask you this: You have read the statement of claim, I suppose, in this action?—Yes.

766. You remember the letter which is set out in the statement of claim from Scott's solicitors to Messrs. Haggitt Brothers and Brent, dated December 9, 1891. It is the only letter to Messrs. Haggitt Brothers and Brent: "As you are aware, Mr. Scott must find special bail or render himself to-morrow. He can only find bail if they are indemnified by the National Mortgage Company, or Mr. Ritchie, or Mr. Henderson. We have now to ask you if the company or these gentlemen are prepared to do this or to find the sum due"—I remember that letter.

767. That letter—the duplicate of that letter—was forwarded to you personally?—Yes.

768. And a triplicate, I presume you heard, was forwarded to Mr. Ritchie?—Yes.

769. You say, then, in spite of that, Scott was so meek that he assured you he was going to take the whole responsibility upon himself?—That was after Scott had been in gaol.

770. Yes; this letter was after Scott had been in gaol. Scott was in gaol on the 4th, he came out on the 5th, and on the 9th that letter was sent to you?—Yes.

771. What day do you say it was that he told you that, notwithstanding anything you might hear outside, he was taking all this upon himself?—The first time I met him after he came out of gaol.

772. Were you in possession of that letter of the 9th December?—No, not at that time. He said that to me in Mr. Ritchie's room. Mr. Ritchie had not returned.

773. You see that is a very different attitude from that taken up in the letter?—Yes.

774. Now, I do not want to go unnecessarily into matters that concern myself, but you remember that I saw you on the day on which Scott was arrested, and the first you heard of Scott's arrest was from me, and that was after the luncheon-hour—say, about 2 o'clock on that day. You remember I told you I had looked after you once or twice, and had not found you?—Yes.

775. There was no mistake about my attitude, was there?—No.

776. I called upon you, or Mr. Ritchie, or the company, or somebody, to find bail for Mr. Scott?—Yes, and you suggested that I should see Mr. Haggitt.

777. There was a little hesitancy on your part?—I was surprised, of course.

778. You were taken aback at the whole business?—Yes.

779. Did not you ask me if arrest for debt was not abolished?—Yes.

780. And it was arranged you should see Mr. Haggitt, who, I presume, was solicitor for the company?—Yes.

781. Well, do you remember Mr. Haggitt—I do not want you to tell me what passed between you and Mr. Haggitt—I presume you saw him at his office; you saw him again at your own office on the Saturday?—Yes, afterwards.

782. Do you remember me calling again at your office while Mr. Haggitt was with you in your room?—Yes.

783. Do you remember handing to me a telegram which Mr. Haggitt had handed to you?—A telegram from whom?

784. A telegram from myself to Mr. Ritchie?—Yes.

785. This very telegram set out in the statement of claim?—Yes.

786. You got it from Mr. Haggitt and handed it back to me?—I think that was the way.

787. You handed me the telegram Mr. Haggitt brought down from his office?—Yes, I think so.

788. And said, in the absence of Mr. Ritchie you could not take any responsibility?—Yes; and you asked for his address, and I furnished it.

789. You told me that Mr. Ritchie had gone off to Timaru, and probably to Cannington, a place some distance further?—Yes.

790. Did you send a telegram to the office at Timaru to forward my telegram by special messenger?—I cannot recollect whether I did or not. I know I telegraphed to Mr. Ritchie what had taken place.

791. Did you indeed?—Yes.

792. Have you set out that telegram in the affidavit of documents —No.
793. Why not?—Oh! I did not consider that part of the documents for disclosure.
794. Oh! you did not consider that part of the documents?—No.
795. Are you your own adviser in this matter?—Well, I had no recollection of it.
796. Did you keep a press copy of it?—Whatever telegram was sent was copied.
797. Would you be kind enough to furnish us with a copy of it?—Yes, if there was one sent.
798. Did you know that Mr. Ritchie was in Timaru?—No, I did not.
799. Did you make any arrangements for forwarding his telegram?—I do not think so.
800. Do you know, as a matter of fact, whether a special messenger was sent with your telegram and ours to Mr. Ritchie?—No, I do not.
801. You say you saw Mr. Scott in connection with the prior transaction?—Yes.
802. Was that for a run held in connection with this same country?—Yes.
803. And you missed it; it went too high?—Yes; we were outbid.
804. How was that matter arranged? Did Mr. Scott sign an authority to apply for the run? —Yes.
805. Did Mr. Scott sign an authority to the Christchurch agent to bid for the run?—No; to the Timaru agent.
806. Then that was auctioned at Timaru?—Yes.
807. Why should that one be auctioned at Timaru and the other at Christchurch?—It is not for me to question that.
808. Now, when and where did you see Mr. Scott about that?—I saw Mr. Scott in my own office, early in January.
809. Do you know if he saw Mr. Ritchie about that?—He did.
810. You saw him in your office?—Yes.
811. Did you make the arrangement with him, or was it made with Mr. Ritchie?—It was made along with Mr. Ritchie. We were together in Mr. Ritchie's room.
812. Did he ever receive the guinea?—Yes. He was to get the £10 or £15 mentioned. Then, the day after, when we saw by the paper he had not secured the run, he came into the office and said, "I see I have not got that run." I said, "No." I said, "How much have I to give you for your trouble?" He said, "A guinea;" and I paid the guinea there and then.
813. You say the arrangement respecting that run was made by you and Mr. Ritchie together? —And Mr. Scott.
814. How long were you engaged with Mr. Scott?—He would be in the room about ten minutes.
815. Tell me as nearly as you remember what passed on that occasion?—The explanation was somewhat similar to what occurred on the second occasion.
816. Be so good as to tell me what passed?—Mr. Ritchie explained that he did not wish to take up 93A, but that he would like to take up 93; that he did not wish to secure the use of 93A, but the use of 93; that he would not take it on the company's account in the company's name, as the boundaries had been extended.
817. He explained that?—Yes; and that the rabbiting was too great a risk. He asked Scott if he was prepared to take it up in his own name, and said that the Government might give a good deal of trouble with regard to rabbiting; that they might even go the length of making him bankrupt. Scott agreed to take it up.
818. And what was he to get for all this?—£10 or £15.
819. You are positive of that?—Yes.
820. You swear positively?—Yes.
821. That a definite arrangement of that sort was made?—Yes.
822. Now, coming to this occasion of the actual transaction—the present one—do you remember what time of day you saw Mr. Scott?—Just about 2 o'clock—shortly after 2.
823. Where did you see him?—In Bond Street, almost in front of Bartleman's office.
824. That is a door or two from your own?—Yes, just next door. I met him there coming over the channel.
825. Did you take him to your office then?—No.
826. Did you explain your business?—Yes.
827. What did you tell him?—I told him that outlying Run 93A—I do not think I mentioned "93A" then, but I told him that that run was to be offered at auction—or for application it would be first—and that Mr. Ritchie wished to get the use of it for a short time to run stock until the stock could be disposed of.
828. Yes, and what did he say to that?—That he would get £15 or £20 if he took up the run, and we would pay the half-year's rent.
829. That is what you said to him in the street?—Yes.
830. What did he say to that?—I told him also he would have the risk of rabbiting—that that was the reason Mr. Ritchie was not taking it up; and he said, "All right, I am quite agreeable."
831. Then he made an arrangement with you in the street?—I asked him to come and see Mr. Ritchie.
832. But he had assented to you in the street?—Yes.
833. Did you tell Mr. Ritchie that?—Yes; I told Mr. Ritchie that Mr. Scott was prepared to take it up: would I send for him. And we sent for him.
834. How long after you had seen Scott in the street did you see Mr. Ritchie?—About an hour afterwards, between 3 and 4 o'clock.
835. What did he do when you told him that?—I said, would I send over for him; and he said, "Yes." He came over direct, and went into Mr. Ritchie's room.
836. Did you see the telegram sent?—I saw it pass out a little before 5.

837. Did you see the second telegram sent?—There were two telegrams sent, both by Mr. Ritchie, and both went together.

838. What telegrams are you speaking of—the telegram Mr. Ritchie signed, “J. R. Scott, per J. M. Ritchie,” and the one that Mr. Scott signed?—No. If I am not mistaken there was one sent at the same moment to the manager at Timaru.

839. *Mr. Solomon.*] The one signed “G. R. Scott” was not sent at all?—No.

840. *Mr. Chapman.*] Where was Mr. Scott then?—He had gone to his own office; it was shortly before 5.

841. You swear that?—Yes.

842. That the telegram signed by Mr. Ritchie in Scott’s name was signed after Scott had left the office and gone to his office?—Yes.

843. Do you say that was just before 5 o’clock?—It was immediately before 5 o’clock, so that they might get it in Timaru, and be prepared for action next morning.

844. Then the later telegram was never sent?—No; it was an exact copy signed by Scott in confirmation.

845. Whom did you send for Mr. Scott?—One of the lads in the office.

846. You must have sent a second time to sign the telegram?—No, that was not done by me. Mr. Gibson, who was in the office, wrote it out and took it over to Scott on the following morning.

847. Now, when it came to the rabbit question, you suggested Messrs. Perry and Perry?—Yes.

848. Did Scott appear to know anything about them?—No.

849. What did you know about them?—I had known them for many years as solicitors.

850. As the company’s solicitors at Timaru?—Yes. I had known them for years by name.

851. Then, in suggesting their names, was this a piece of pure philanthropy on your part?—There is no philanthropy about it.

852. You were interested in it?—No.

853. It was an ordinary piece of office business?—Certainly not. It was just to help Scott.

854. That is what I call pure philanthropy unless there is any reason for it?—Very well, call it that; it is a very nice name.

855. Was there any other reason than that?—No.

856. You say you were not really interested in the matter?—No.

857. That you did it purely for Scott’s sake?—Yes, he having taken the risk.

858. Did you take Mr. Haggitt’s opinion subsequently purely for Scott, and for Scott’s sake?—I told Mr. Ritchie, I think, what was taking place, and he said I might see Mr. Haggitt.

859. Mr. Ritchie does not know anything about taking Mr. Haggitt’s opinion?—He may have been away, and I may have gone there.

860. Without consulting him?—That is so.

861. At any rate, you did take Mr. Haggitt’s opinion as to the propriety of appealing?—Yes.

862. And that, again, was pure philanthropy on Scott’s behalf?—Well, there was not much philanthropy about it.

863. Then, was it a business transaction on behalf of your company?—No, it was not.

864. What was it?—It was for Scott’s information.

865. Mr. Henderson, will you swear that?—Well, Scott was in conversation with me regarding the whole matter.

866. Mr. Henderson, I ask you will you swear that the opinion of Mr. Haggitt was taken for Scott’s information?—I do not know that it was precisely for it.

867. Then, will you withdraw that expression?—Perhaps I had better.

868. Then, tell me, was it a business transaction of the company’s, of yours, of Mr. Ritchie’s, or was it a transaction of Scott’s?—It was a transaction of Scott’s.

869. It was a transaction of Scott’s, taking Mr. Haggitt’s opinion?—As far as Mr. Haggitt’s opinion is concerned, I do not know about that.

870. You went and took Mr. Haggitt’s opinion as to proceeding with the appeal from the rabbit conviction: was that a business transaction of the company’s, or was it a transaction of Scott’s?—It must have been a transaction of Scott’s; Scott was interested.

871. Will you swear it was a transaction of Scott’s?—Scott was interested to that extent.

872. Will you swear it was a transaction of Scott’s, Mr. Henderson? Sooner or later I must have an answer?—I will not swear that Mr. Scott asked me to get Mr. Haggitt’s opinion.

873. Was it done in the interests of your company or yourself, or was it done in Scott’s interest?—It was done in Scott’s interest.

874. Purely in Scott’s interest?—Perhaps not entirely in Scott’s interest.

875. Well, you have been a long time getting to this?—It is the way you put it.

876. It was perhaps not done entirely in Scott’s interest: who else might have been interested?—The stock was the property of the company.

877. And that gave the company an interest?—It was not the company’s property, but they had sold them.

878. At the date you took Mr. Haggitt’s opinion had they sold the stock?—I think so.

879. Mr. Haggitt’s opinion must have been taken in June?—Then they were sold, with the right to run—that is, only the sheep; the cattle were sold before.

880. You sold the stock, with the right to run?—Yes.

881. For how long did you give the right to run?—Up to the end of the first half-year.

882. Now, you tell me this opinion was Mr. Scott’s affair, taken in Mr. Scott’s interest: when did you disclose it to him?—Immediately after.

883. Will you swear that?—Yes.

884. Are you prepared to swear that you ever showed Mr. Scott this opinion?—I do not know; but I told him.

885. You told him you had taken it?—I must have told him.
 886. That is your expression, "I must have told him": do you remember ever telling him?—No; I have no distinct recollection.
 887. Who paid for it?—It is charged to the company's account.
 888. And never debited to Scott?—Not yet; neither will it be.
 889. What is the meaning of your expression a moment ago?—I do not think the account is rendered yet.
 890. What was the meaning of the expression "Not yet"?—It will not be charged to Scott at all; it will be charged to Lake Ohau Account.
 891. Quite so. Do you take any supervision of the company's books?—Yes.
 892. And you attend to these matters yourself?—The statements come before me.
 893. And it is your duty to see them go out, I suppose?—Not "go out."
 894. Well, to see them properly made up?—Monthly returns are made from all branches, our own included, and the ledger accounts are made up from the returns, and come before me.

Re-examined by Mr. SOLOMON.

895. *Mr. Solomon.*] In asking Mr. Haggitt's advice, were the circumstances of the case—the relationship of Scott—mentioned at all?—Yes.
 896. The only question I want to ask you—for the suggestion is this—
Mr. Chapman: No, it is not.
 897. *Mr. Solomon.*] Do you not think you had better wait to hear what it is before you say it is not? (To witness:) The suggestion is, if you have no interest in the run, why pay Mr. Haggitt for advising about Scott—why put your company to the expense of getting Mr. Haggitt's opinion if it is Scott's affair and not yours?—For one thing, I wished to know whether there was any likelihood of disturbance with regard to the run.
 898. You wanted to know if you ran a risk?—Yes; the main thing was the stock while we had occupation from Scott.
 899. You guaranteed occupation to your buyers?—Yes.
 900. So that you had an interest in the matter as well as Scott?—Yes, as far as that went. There is one other matter I should like to explain, with regard to what Mr. Scott said regarding the furniture, and my suggestion to see the trustees. That bears quite a different light from what Mr. Scott put upon it.
 901. Tell us, please?—Mr. Scott came to me and told me his wife was ill, and that he was afraid of his household being interfered with, and of his losing his home. I said to him, "I thought that your furniture was in your wife's name when you were a bankrupt a few years ago—that your creditors gave it." He said, "Well, I am not sure about that." I said, "Who are the trustees?" and he said "Mr. Hazlett is one of the trustees: I think I had better see him about it." I said, "I think you had."
 902. The weather was becoming a little threatening at that time?—Yes. He told me that a detective had been up to the house about breakfast-hour. Scott was a little excited, and he said, if he went back again he would shoot him.
 903. Shoot you?—Oh, no! Scott was always very friendly with me.
 904. When you first went into the transaction with Scott, and suggested to him to take up this or similar runs, did he say anything to you about his financial position?—He told me that he had nothing; that the Government could not come against him for anything; and afterwards he told me they could only take his office-table. That was the reason I suggested to him about the furniture being his wife's.
 905. So that at the time you told him he ran a risk in taking up the run?—Yes; I said that more than once.
 906. I want to ask you this: Was it ever mentioned at any time when you told Mr. Scott that he ran a risk of getting into a difficulty—was ever anything said as to whether, if he did get into difficulty, the company would help him out, or see him through?—No, never.
 907. Do you mean to say you told him he could not look to the company?—He understood that distinctly.
 908. Did you tell him so in so many words?—Yes. He never seemed to think he need ask for it.
 909. You say you told him so?—I told him so, yes.
 910. *Mr. Chapman.*] You say he never seemed to think he need ask for the company's indemnity?—No.
 911. Was the company's indemnity spoken of at all?—No, never.
 912. That was left silent?—Yes.
 913. The company's indemnifying him was not brought up, but you swear you never reassured him—never said you would see him through?—Yes.
 914. The subject of the company's backing him was never brought up?—Never asked for.
 915. And never offered?—No.
 916. And never came into the conversation?—It came into the conversation when I told him he must take the whole risk.
 917. At the first transaction?—No; on the 27th February.
 918. Not the 6th January?—No; the 27th February. He understood while I was present from Mr. Ritchie that he was to run the risk.
 919. Somehow this subject of the company's indemnity was never brought up?—Never put in that way—never in question.
 920. You expected things would take the course they had always taken before. I mean that he would chuck up the lease, and the Government would forfeit?—That had been the course.

921. The regular course. Ever since you have had to do with runholding, every single man who did not pay the rent of the lease chucked up his run, and the Government forfeited?—I have never had much experience as a runholder, but I expect that is so from what I have seen in the newspapers.

922. You have had experience of the company for years?—Four.

923. And you have heard of other cases?—I have seen every other day that the Land Board accepted surrenders.

924. You never knew a man sued for rent, did you?—No.

925. Still less arrested?—No.

926. You have known men prosecuted for not killing rabbits, but you never knew a man sued for a large sum for the cost of exterminating them?—Not during the last four years.

927. That was a new experience? The whole thing was a new experience; you did not know it? The suing for rent instead of forfeiting, and suing for the cost of exterminating rabbits, are both new things in your experience?—Yes.

928. And certainly were not thought of by any one at the preliminary interviews?—The risk he ran with regard to rabbiting was thought of.

929. The risk with regard to the rent was not?—It was; but he anticipated he could surrender.

930. And you anticipated the same thing?—I thought the same thing.

931. *Mr. Solomon.*] But you told him he ran all the risk?—All the risk after the first six months' rent.

932. That was all the interest you had in it?—That was all the interest we had in it. It ceased then.

Mr. Chapman: There are two or three things we have called for from time to time we should like to get, your Honour. First, the memorandum—Logie's memorandum. If Mr. Henderson makes a further search for it, no doubt he will find it. Then, the bill of costs of Messrs. Perry and Perry handed in to him.

Mr. Solomon: We do not admit we ever had it.

Mr. Chapman: We will ask Mr. Henderson to have a search made. It is traced to the office.

Mr. Solomon: Mr. Henderson says he does not remember it.

Mr. Chapman: I do not suppose he does, or he would have brought it; but Mr. Logie says he gave it to Mr. Henderson personally.

His Honour: The memorandum? Did he keep a copy of it?

Mr. Chapman: Yes; but we want to see the original. Then, there is the bill of costs; we should like to see that, too, that Mr. Scott sent in. I should also like to see a copy of the telegram sent to Mr. Ritchie by Mr. Henderson on the day of Scott's arrest; and we should also like to have what ought to have been produced—the original telegrams sent to the Timaru office and the Christchurch office.

Mr. Haggitt: The ones at the Timaru office we cannot get; we have tried, but they are lost.

Mr. Chapman: The telegram sent by Mr. Ritchie on behalf of Mr. Scott?

Mr. Haggitt: It cannot be found.

Mr. Chapman: We have a particular reason for asking for that.

Mr. Haggitt: We have given a copy.

Mr. Chapman: I should be glad if you would telegraph again.

Mr. Haggitt: The only consequence of not producing is that secondary evidence can be given.

We have given the press copies from our own press copy-book. We will do anything in reason.

Mr. Chapman: That is in reason.

His Honour: There are these two documents, it is suggested, Mr. Henderson will find in his office if he makes a search.

Mr. Haggitt: As to one of these, we have admitted secondary evidence; as to the other, Mr. Henderson has no recollection. However, as far as searching is concerned, we will have a search made, though what purpose can be served in having the originals if a copy is admitted—

His Honour: If it can be got, there is no harm in having it.

Mr. Haggitt: We admit what they say is a copy of what was delivered. How can it possibly help the case; to search for the original document is admitted, and the fact that it was delivered is in no way disputed.

Mr. Chapman: As we have an object—my friend may take my word for that—I should prefer that a search should be made for that.

His Honour: However, as to the bill of costs, it is not admitted that that has been received, and Mr. Henderson, in looking through the papers for the bill of costs, might just look for the other.

Mr. Haggitt: How will it help them if it is found? The fact is proved that the money was paid by Scott, and that is the only material matter. All these allegations are admitted in the statement of defence. From our view of the matter it was no interest of ours to deny them. We say we are not responsible whether the money was paid or not. Why should we look for Perry and Perry's bill of costs when we admit it was paid by Scott?

Mr. Chapman: Does that mean that you decline to look for it?

Mr. Haggitt: No; but it is simply putting us to trouble.

Mr. Chapman: The amount of trouble is exceedingly small.

Mr. Haggitt: But if we undertake to make a search it will not be done in a perfunctory manner.

Mr. Chapman: Then, there is another matter which ought to have been mentioned in the affidavit of documents—that is, the report to London. He has given us a list, no doubt to the best of his ability, of everything bearing on the transaction, and has ultimately produced documents,

including correspondence with Timaru and Christchurch; but that should have been listed with the others.

Mr. Haggitt: Certainly not.

Mr. Chapman: Why?

Mr. Haggitt: Simply because he mentioned in the report to London that the debt appearing in the books as a debt by Scott was a bad one, why should that be mentioned? It is immaterial to the matters in question whether he did or did not. If I had been asked my opinion of the document, I assert I should have advised Mr. Ritchie that it was not one of the documents necessary.

Mr. Chapman: Then, all I can say is that if my learned friend has given such advice the affidavit is very imperfect.

Mr. Haggitt: I did not say I had done so, but that I should have done so.

Mr. Chapman: Then, you would have given very bad advice. Mr. Ritchie is not to be the judge of the materiality of the documents. For all we know, he may have reported the transactions in some such way as they are mentioned in the letters to Timaru and Christchurch. If it is in any way as material as those letters it is very material for our purpose. Perhaps my learned friend will say those letters are not material, and do not advance our case. My learned friend has set them out, though he thinks them immaterial. Then, why leave out the London letter?

Mr. Haggitt: Because I never heard of it. •Mr. Ritchie does not say positively he wrote anything of the kind.

Mr. Chapman: Very well; he can look, and let us have a copy.

His Honour: If there are any despatches to London mentioning the matter, I think the plaintiff would have a right to know what they are, and to ask for them.

Mr. Haggitt: We do not dispute that.

Mr. Chapman: Then, we should have been informed of such despatch.

His Honour: I do not know whether it should have been included in the documents, but if it ought to have been included, and was omitted, it was evidently a slip.

Mr. Chapman: I do not suggest anything but a slip.

His Honour: Now it has come out.

Mr. Haggitt: But it has not come out.

His Honour: Mr. Ritchie said it was so. I do not know if he meant to say so, but he stated that positively. He says he believes it was: "The amount was, I believe, advised by me in my despatches as a bad debt." That is what it was; not that "it was," but he believes it was. Well, you have the right to ask for the despatches to be referred to to see if anything was said, and, if anything was said, to know what it was. You do not deny that.

Mr. Haggitt: No.

His Honour: Very well, then, that will be done.

Mr. Solomon: We will look for it for you.

Mr. Haggitt: And will give you an extract relating to that.

Mr. Chapman: Or to anything relating to the transaction.

Mr. Haggitt: You will get a good deal more than you bargained for.

Mr. Chapman: Then, there is more than we bargain for?

Mr. Haggitt: If we put in a letter of that kind, I submit we should be allowed to put in Mr. Ritchie's reports to the company about what he intended to do with regard to the run. If we are to put in anything connected with the purchase of the run by Mr. Scott, I shall ask to put in also letters written shortly previous to that time, in which Mr. Ritchie reported to the company that it was not safe to touch the run at any price or on any terms.

Mr. Chapman: It is very singular these were not listed.

Mr. Haggitt: Simply because they had nothing to do as between Scott and the company.

Mr. Chapman: Where does my friend get this inspiration? I can only say it was a pity we did not hear of it before.

His Honour: What do you want, Mr. Chapman, exactly?

Mr. Chapman: I have asked my friend, without making any affidavit of documents, to make a little list of such as should be put in.

Mr. Haggitt: I decline.

His Honour: Reports to London about Scott's matter by the general manager of the company to the board of directors would, I conceive, be documents which ought to have been listed in the affidavits.

Mr. Haggitt: Not about Scott's matter; Scott's name was never mentioned.

His Honour: If they are not about Scott's matter they need not be listed; but Mr. Chapman understands some of them are about Scott's matter.

Mr. Haggitt: All my friend has got to go upon is the statement by Ritchie that possibly in a letter to London he may have mentioned something about the debit to Scott, with a view to explaining it. What I am referring to has nothing to do with Scott, inasmuch as it was written before Scott was thought of.

His Honour: Then, it is not relevant.

Mr. Haggitt: Yes. Your Honour will pardon me, it is relevant to show that Mr. Ritchie would not touch this land on any account, on account of the company.

His Honour: Then, it is not relevant. Mere statements made by Mr. Ritchie, before the transactions with Mr. Scott commenced, to the directors in London are certainly not admissible evidence; but statements made after the commencement of the transactions with Scott to the board of directors in London about the transactions with Scott are relevant.

Mr. Haggitt: About the transactions?

His Honour: Of course.

Mr. Haggitt: Then, all he has to found that on—

His Honour : Is the admission by Mr. Ritchie that he believes he did mention it. If he did not, is it not the simplest thing for Mr. Ritchie to look and see if he said anything to the directors about Mr. Scott's matter, and, if so, to give an extract?

Mr. Haggitt : We have never refused to do so. My learned friend seems to think they need an order of discovery. We have to produce anything in writing at any time in connection with the run.

His Honour : No; in connection with the transaction with Scott. It is limited strictly to that. If Ritchie reported to the directors in London anything about the transactions with Scott Mr. Chapman wants to know it, and he has a right to see it.

Mr. Haggitt : I understand we have to produce extracts to the London directors of anything having reference to the transactions with Scott, and nothing else.

His Honour : Yes.

Mr. Haggitt : Then, we have no objection.

The Court then adjourned, at 5.30 p.m., until 10.30 on the following morning.

TUESDAY, 23RD FEBRUARY, 1892.

The Court resumed at 10.30 a.m.

JOHN MACFARLANE RITCHIE, recalled and examined.

933. *Mr. Haggitt*.] You were to look at your London letter-book, and see what letters you have written to London on this matter: have you done so?—Yes.

934. Do you find you were correct in stating that you had written to the London office explaining the debit against Scott in the company's books?—No.

935. How was that?—I merely referred to the whole account, Maitland and Stronach, which was the original account. I did not refer to this particular item.

936. Have you ascertained how that was referred to in the report to London?—I do not think I referred to that particular item at all, so far as I can discover.

937. How was the London office informed as to the account?—The London office was informed that the account was practically bad—the balance that remained at it; but nothing was said about the entry made as a debit to Scott.

938. You were speaking about your own letter. I am asking how you intimated to the London office that Scott's account was not an available sum?—Well, it was not, except that in the ledger balance there was put against it "Account, Lake Ohau."

939. Opposite the item in the ledger balance sent Home there was written "Account, Lake Ohau;" but what would that convey?—That would represent that that sum represented a sum that practically belonged to Maitland and Stronach's account.

940. And so, that account being considerably to the bad, that entry of Scott's?—Would make it still more so.

941. Well, now, do you produce extracts from your letters to the directors?—Yes.

942. What dates are they?—The first is the 23rd February, 1891.

Mr. Chapman : That is before the transaction with Scott.

Mr. Haggitt : It is after the first transaction.

Mr. Chapman : We have nothing to do with it.

Witness : It relates to it.

Mr. Chapman : Excuse me, no question is put by counsel.

His Honour : No, that is so. We have nothing to do with it. It may have been with reference to these runs, but that is not the point.

Mr. Haggitt : It is with reference to these runs, and with reference to the former transaction—Run 93; we have evidence as to that. However, what we propose to do is to hand these to your Honour.

Mr. Chapman : They are not relevant.

Mr. Haggitt : You asked for them.

Mr. Chapman : I did not. I asked for one thing, which Mr. Ritchie says does not exist.

Mr. Haggitt : Then, you do not want them? If my friend says he does not want them there is an end to them; we do not want them.

WILLIAM HENDERSON, recalled and examined.

943. *Mr. Haggitt* : You said yesterday you thought you had sent a telegram to Mr. Ritchie?—Yes.

944. Have you searched for that telegram?—Yes.

945. Do you find you did not send it?—No, I did not send a telegram. I stated that if I did send a telegram it would be in the letter-book; and I find I did not send a telegram.

946. *His Honour* : When was this?

Mr. Haggitt : After Mr. Chapman saw Mr. Henderson. Chapman and Henderson were both under the impression that Henderson sent a telegram to Ritchie.

Mr. Chapman : I asked the question of Mr. Henderson. I do not know what suggested it to me. Mr. Henderson had not told me so, certainly, because I had no interview with Henderson after Mr. Haggitt saw him.

Mr. Haggitt : I may say that I was under that impression personally; it appears that Mr. Chapman was too.

Mr. Chapman : My impression was, and what I asked was, whether he sent a telegram to the Timaru office to expedite my telegram to Mr. Ritchie. I sent one, and I got it into my head that Mr. Henderson sent one too. I do not know how.

947. *Mr. Haggitt*.] You were asked to look for Messrs. Perry and Perry's bill of costs, and for a memorandum handed to you by Mr. Logie: have you done so?—Yes.

948. Have you succeeded in finding them?—No, I have not traced them: I cannot find them.

949. Have you any recollection of ever seeing Messrs. Perry and Perry's bill of costs?—No.

950. But you do recollect getting a memorandum from Mr. Logie?—Yes.

His Honour.] That is all your evidence?

Mr. Haggitt: Yes.

Mr. Haggitt: Would your Honour allow me to ask Mr. Ritchie a question? It is a matter I ought to have asked about yesterday.

His Honour: Very well.

JOHN MACFARLANE RITCHIE recalled and examined.

951. *Mr. Haggitt*: It was suggested yesterday that you sent a number of people to Mr. Scott to get him to keep quiet?

Mr. Chapman: When.

His Honour: There is no evidence, but something of the sort was said by Sir R. Stout.

952. *Mr. Haggitt*.] I want to ask Mr. Ritchie if there was any foundation at all for saying that he did send people to Mr. Scott?—No.

953. You have not sent one?—No.

954. Nor been a party to anybody being sent?—No.

Mr. Haggitt: That is all. I should have asked it yesterday, I know.

Mr. Chapman, addressing the Court, said,—I propose first, your Honour, to state what relief we consider we are entitled to on the case as now made out. The questions raised by the pleadings are few, and there are no questions raised as to the amount of liabilities which Mr. Scott has incurred, and no question raised as to the expenses to which he has been put. We have alleged in our pleadings that in taking this run he acted as agent or as trustee for the defendants, or some of them; and we have sued the three parties because, obviously, inasmuch as one is a corporation and two are individuals, and all these discussions take place either in the first person or the third, when they take place in the third person it is equally open to question to the person with whom they took place whether the party who is addressing him and talking about "We will do this" and "We want you to do that" is addressing him on his own behalf or on behalf of the corporation which he represents. It is immaterial to us, however, against whom we obtain relief. Whatever Mr. Scott may have thought at the time of the party who was soliciting him to enter upon this liability, or whether he thought of it at all, is quite immaterial. At any rate, Mr. Ritchie, in his evidence, has told the Court that he was acting for the National Mortgage Company.

His Honour: There is no doubt about that. I think from any point of view of the transaction, whatever it was, it was made on behalf of the company. Mr. Scott thought so, and the other side thought that too.

Mr. Chapman: Yes, your Honour, Mr. Scott may have thought that. He probably did not think very much about it; but of course the question might have arisen as to the authority of Mr. Ritchie to make it; but that is cleared up by the plea which shows that the stock belonged to the Mortgage and Agency Company. All the parties pleaded that in the statement of defence. All we ask is this: We say we are entitled to the ordinary rights of a trustee. Mr. Scott has been requested by the defendants to assume this liability, and, though we allege we have proved that Mr. Scott was assured twice, if not oftener, by Mr. Henderson, who also appears to have acted on behalf of the company, that they would see him through, it is unnecessary for us to rely upon that. We claim that the liabilities arise out of the very situation and out of the very nature of the transaction. I need only refer to a few authorities on the subject, your Honour. It is laid down broadly in all the text-books on trusteeship and agency and kindred subjects—and the position of directors of a company is the same—that they are entitled to be indemnified by those for whom they act. My learned friend Sir R. Stout cited a case from 36 Chancery Division. That was one class of case where a person accepting a trust was entitled to be indemnified out of the trust estate. A very familiar class of case analogous to this is that of brokers and jobbers assuming liability on behalf of customers. Under the old rules of stock exchange all over the world, whenever a person goes to a member of the Stock Exchange and requests him to make a purchase in the market, he goes into the market, and, though everybody may know he is purchasing as an agent, he at once makes himself legally liable to the broker or jobber from whom he purchases, and it has been held in numerous cases that he is entitled to indemnity from his principal. The principal case upon the subject is that of *Cruse against Paine* (L.R. 4 Chan. Appeals, 441.) The head-note is "A firm of stock-jobbers agreed on the Stock Exchange to buy 100 shares for a certain day, and on the sale-note were the words 'with registration guaranteed.' The jobbers, before the day, gave the name of a transferee, who duly paid the purchase-money; the seller executed the deed of transfer and delivered it to the transferee. The transferee never registered the transfer, and calls were made upon the seller, who filed a bill against the jobbers for indemnity, and had since died. Held, That the jobbers were liable to indemnify the estate to the seller." The value of the words "registration guaranteed" in that case was merely to get rid of another rule of Stock Exchange—that when once the buyer's name was supplied the jobber is relieved of his liability; but it does not in any way interfere—in fact, it it fully recognises the general doctrine that a person who buys for another, and takes a liability at his request, has always to be indemnified by him, unless he contracts himself out of his right to an indemnity. Then there is another case in the same volume (*Coles v. Bristowe*, 4 Chan. Appeals, page 3), and in that case, at page 6, there is some reference made to the owner of a leasehold house finding a buyer. The Lord Chancellor says, "If I agree with the owner of a leasehold house to buy or to find a buyer for it on the 1st of January, and I do find a buyer, who is to indemnify the owner against the covenants?" That is a question, whether the person who undertakes to find a buyer, or the buyer, is to be the indemnifying party—a question that does not arise here. Then there is a case in New Zealand, of *Henderson's Trustees against Diver*, in New Zealand Law Reports, I., Supreme Court, page 369, the head-note of which is this: Where a person owing a

debt upon a property sells shares in the property to other persons, who agree to pay the debt, he can, when demand is made upon him for payment and before payment of the debt, or any part of it, claim to be indemnified by the purchasers for their shares of the amount of indebtedness, and it makes no difference to this right if the person primarily liable has become bankrupt, and has died before the suit, and his assets have proved deficient. The amount of the indemnity in such a case will be the full amount of the claim, and not the amount of the dividend which the bankrupt estate could pay." . . . "Where several persons are partners or co-owners in a property indivisible, and one incurs liability for the common benefit, he is entitled to be indemnified by the others, and the shares of those who are unable to pay must be paid by those who are." And that goes a good deal further in holding that the assistance of an assignee in bankruptcy may be invoked by a creditor claiming that he shall be completely indemnified, and not merely to the extent of the dividend obtainable, but that the assignee shall sue and obtain a complete indemnity from him, and so relieve the other creditors of any claim upon the estate. When I speak of this liability for indemnity arising out of the very nature of the transactions I can refer to numerous other classes of transactions in which the same thing occurs. For instance, there is your Honour's decision or dictum in *In re Guthrie Ex parte* the Bank of Australasia, which is reported in 2 New Zealand Law Reports, 425. There was some discussions there as to whether the purchaser of an equity of redemption had entered into a covenant to indemnify the mortgagor against the mortgage debt, and your Honour expressed the opinion there that no covenant was necessary—that a person who purchased an estate subject to a mortgage is liable without covenant to indemnify the mortgagor against the mortgage debt. In the same way the recent case of Edmunds against Wallingford, in Law Reports, 14 Queen Bench Division, page 811. This illustrates, though it is a different class of case, very completely the general doctrine that the right of indemnity arises out of the very transaction, without special agreement. "As a general rule, where one person's goods are lawfully seized for another's debt, the owner of the goods is entitled to redeem them, and to be reimbursed by the debtor against the money paid to redeem them; and, in the event of the goods being sold to satisfy the debt, the owner is entitled to recover the value of them from the debtor; and the right to indemnity exists, although there may be no agreement to indemnify, and although there may be in that sense no privity between the owner of the goods and the debtor (*England v. Marsden*, L.R. 1 C.P., 529) questioned. The defendant bought the business of an ironmonger in his own name for his two sons; he paid the greater part of the purchase-money. The banking account of the business was kept by him, and he drew the cheques on that account. A society having obtained judgment in an action against the defendant, certain goods of his sons were seized by the Sheriff. The sons claimed the goods; but, upon an interpleader summons taken out by the Sheriff, the claim of the sons was barred, and the goods were sold. They realised £1,300, and this sum was paid into Court, in the action by the society against the defendant, as a security for what might be found due to the society from the defendant upon taking certain accounts. The defendant's sons were afterwards adjudicated bankrupts, and the plaintiff was appointed their trustee. The defendant agreed with the plaintiff that, in consideration of his sons' goods having been seized and sold on behalf of the society in respect of an alleged claim against him, he would pay £300 per annum to the plaintiff until he should have paid a sufficient sum to pay the trade creditors of his sons in full. The plaintiff having brought the present action to recover £1,200 due by virtue of the above agreement, or in the alternative £1,300, the value of the goods seized, Held, That even if the defendant's express promise to pay £1,200 was not legally binding upon him, nevertheless the action was maintainable, for, although the decision on the interpleader summons did not estop the defendant from showing that the seizure by the Sheriff was unlawful, nevertheless he had by his conduct led to the seizure, and the goods of his sons had been legally taken for the debt. The defendant, therefore, was bound to indemnify his sons, and the plaintiff, as their trustee in bankruptcy, was entitled to have judgment entered for him for the sum of £1,200, which he was willing to accept instead of £1,300, the value of the goods seized." Now, your Honour, in that case the sons placed their goods in the father's hands, and their assignee in bankruptcy—there was no sentiment about it—their assignee in bankruptcy came forward and claimed indemnity from the father; and the Court held him entitled, merely because he had exposed his sons' goods to seizure and sale, and consequently the liability was held to arise out of the very situation; and I venture to say, your Honour, contrasting this case with that in the case of the assignee of the sons against the father, the Court would have taken exactly the same view of it even if the father had come forward and had told a long story about indicating to the sons, "You know what an awful risk you are running; you know your goods are liable to be seized; you know you are liable to lose these goods." If the father had said all that to the sons, just as Mr. Ritchie and Mr. Henderson say they said to Scott here, it would have had no effect on the ultimate question of liability to reimbursement, though the sons were warned that they took the risk of losing their goods. I shall presently, when I come to deal with this case, ask the Court to say that, accepting every word of these alleged warnings, only discounting them by excluding an express contract by Scott to give up his ordinary rights—a right of indemnity as a trustee—that, only discounting the evidence to that extent, then all these warnings amounted to nothing more than this, to put it in vulgar language: "You bear the brunt, and we'll stand the racket." My friend Mr. Solomon asks me, *sotto voce*, what is the difference.

Mr. Solomon: We do not understand you.

Mr. Chapman: My friend may not understand the difference; but I am not addressing my friend just now. [*Mr. Solomon*: Put it again.] I shall not put it again now, but I shall put it again very plainly. There are two other cases, your Honour. They are cited in *Hobbes v. Wyatt*, 36 Ch. Div. 256. They state in general terms the rights of trustees, and I shall submit presently that Mr. Scott was a trustee. *Jervis v. Wolferstan*, Law Reports, 18 Equity, page 18, in which Sir George Jessel says, "I take it to be a general rule that where persons accept a trust at the request of another, and that

other is a *cestui que trust*, he is personally liable to indemnify the trustees for any loss accruing in the due execution of the trust, and under that doctrine I shall hold that the estate of the testator became liable to indemnify the trustees against the payment of this large sum of money." And that is the process in *Fraser against Murdoch*, 6 Appeal Cases, 855. That was one of the cases arising out of the failure of the City of Glasgow Bank. The trustees were all held personally liable. Possibly somebody may have in some cases warned them, You are undertaking a fearful risk—undertaking a fearful liability: but they were all held liable. The question arose about indemnifying them, and this is what is said, at page 872: "It was argued that the maker of a trust is personally bound to indemnify the trustee for all costs and liabilities properly incurred in the execution of the trust; but I do not think that is the law. No doubt any one who requests another to incur a liability which would otherwise have fallen on himself, is, in general, bound at law as well as in equity to indemnify him. This principle applies to many cases, and, where a trust is for the benefit of the maker of a trust, it may apply to the trustee. *Balsh v. Hyham* (2 P. Wms. 453) is a good example of a case where it did apply, and there are many others. In *Jervis v. Wlferstan* the Master of the Rolls goes so far as to say, 'I take it to be a general rule that where persons accept at the request of another, and that other is a *cestui que trust*, he is personally liable to indemnify the trustee from any loss accruing in the due execution of the trust. Perhaps this rule is too broadly stated, as something must depend on the nature of the trust and the interest of the *cestui que trust*; but it is not necessary now to say more than that this rule has no application to a case where the maker of a trust is not a *cestui que trust*.'" Generally the proposition is not, as I understand, seriously disputed by my learned friends. It says, in a very concise way,—

Mr. Solomon: It is not disputed at all.

Mr. Chapman: I refer to the case of *Reid against Anderson*, in 10 Queen's Bench Division, page 100. That was Mr. Justice Hawkins's celebrated decision. That is a case illustrating how far the doctrine may go. That was a betting case. A person commissioned a turf commission agent to make bets for him; he made the bets for his principal, and lost them; and, before the time for paying them came, the principal repudiated the bargain. The commission agent, nevertheless, paid the debts. He was under no legal liability to pay them, but he was under an obligation to pay them, and the Court held that the person who commissioned him had irrevocably constituted him a person to make these bets and to pay them, though they were not legal liabilities. Then, your Honour, as to the question for what the defendants are liable: that does not seem to have been discussed, and I do not know whether my friends propose to say anything about it. The two principal items are the rabbit charge and the rent; but there are other charges. There is this rabbit fine, as to which we allege a general liability, and an express promise—the rabbit fine and costs incurred by Mr. Scott then, and in connection with his arrest. We submit, your Honour, that all this will be included in the indemnity. As to a person recovering his own costs, where he has placed himself in a predicament at the request of another, I cite the case of *Dixon v. Fawcus*, 30 Law Journal, Queen's Bench, page 137, and the cases referred to in Smith's "Master and Servant" in connection with the right of a servant to indemnity under similar circumstances. In this edition of Smith's "Master and Servant," the third edition, page 190, the law is there summed up, and this case is referred to in this way: "Where the defendant employed the plaintiff, who was a brickmaker, to make bricks with R.'s trade-mark, and R. filed a bill in Chancery against the plaintiff which he compromised, it was held that he might recover from the defendants the cost of the Chancery suit." That does not fully state the case. What he was held entitled to recover was this: There was a question raised as to whether this servant could be held liable by R., the owner of the trade-mark. The defendant, his employer, was held not entitled to go into that. He left his servant exposed to a bill in Chancery, and his servant made the best settlement he could; he compromised the case—that is, he made the same kind of settlement in his master's interest which he would make in his own interest. He paid off the plaintiff who had filed the bill, and incurred costs of his own; and it was held he was entitled to recover both amounts. The rules upon which we rely as to these various items it is not really important to discuss now, because in any decree that your Honour made it would naturally be left open to the defendants to review this liability in point of detail. The rule we rely upon is very much like the common-law rule of damages—that this indemnity being asked for and refused is equivalent to a breach of contract; and we ask by way of damages a sum sufficient to indemnify Scott for all liabilities which he incurred *bond fide* in the execution of the office confided to him, whether it be called agency or trust.

Mr. Solomon: Included in damages?

Mr. Chapman: It does not matter what it is called. Damages is one form of indemnity, and we are quite indifferent in what form we receive the indemnity; but what we do ask is this: In pursuance of the case cited yesterday by my friend Sir Robert Stout, of *Hobbes and Wayet*, we say this: that we have been unduly exposed to liability, and the moment the time has arrived for us to call upon Mr. Scott's employers to relieve him of that liability he is entitled to a decree of indemnity, which will enable him for the future, as each new liability arises, to work under that decree to obtain relief from time to time. As, in *Hobbes and Wayet*, Mr. Justice Kekewich says, "I must give the plaintiff the relief he claims by way of indemnity," &c., we shall ask—in addition to clearing Scott from liability for these various sums of money and paying the costs—for a declaration that the defendants, or some of them, are liable to indemnify him; and under that, as claims from time to time arise under this lease, or in respect of future rabbit transactions, the defendants shall be asked to treat them as their own. They can take over the run if they like, if they choose to take an assignment. We say it is theirs, and I shall show your Honour presently by reference to the evidence that it is theirs, and has been treated as theirs throughout. Now, your Honour, I propose to address myself to the case so far as I can address myself to it, in view of the fact that I have heard nothing from my learned friends as yet but my friend Mr. Solomon's opening. I have not heard on what propositions of law they rely, or on what proposi-

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

request to Mr. Scott. I say he admits that for this reason: It is true that he represented to Mr. Scott, according to his version, the huge liability that might be looming in future. It is true he said these were the conditions of lease which Scott might have to perform, and the rabbit liabilities Scott might be called upon to be responsible for; but those that he really contemplated as probable events he was prepared to bear himself, consisting only of the first half-year's rent, and the fine and costs when Scott was prosecuted for the rabbits—they very naturally expecting that Scott might be fined. I suppose the rabbits were so bad at that time that they naturally expected that Scott might be fined, though they did not appear to have contemplated the huge liabilities that lie behind the fine under the Rabbit Acts; and, though Mr. Ritchie says he did not contract to be liable for Scott's fine or costs, he admits really that they would pay them: indeed, if he was not willing to pay them, it would be simply ludicrous, in view of Mr. Henderson's version of what was to be Scott's probable remuneration. I think Mr. Henderson says £15 or £20. When one knew that the first fine that fell upon Scott would sweep away half, or, most likely, all, of that it is simply ridiculous to suggest that that was the position Scott was willing to take; and, at the time they actually thought that in all probability he would soon be fined; and they must have thought that the fine would swallow up the sum Henderson had in his mind when he sent for Scott to go into the transaction. Mr. Ritchie was actually prepared to pay the rabbit fine and the costs if that was to be the end of it; and no doubt when he (Ritchie) went into the transaction, it was with the idea that something would fall upon Scott, and that he might have to pay that too, but that, somehow or other, he would shuffle out of the big ulterior liabilities, as, in fact, men have always managed to get out of these in the past. It is perfectly evident now, from Mr. Ritchie's evidence and from Mr. Henderson's evidence, that they never really contemplated such a thing as Scott being sued for a large sum for not destroying rabbits, or of Scott being sued and made pecuniarily liable for the rent. What both thought was, as Mr. Henderson himself says, that things would take their ordinary course; and it required my friend Mr. Haggitt's intervention here to suggest that people had been sued before for failing to pay the rent of runs. Mr. Henderson, though he had been a stock and station agent for four years, and in business for I do not know how many more, Mr. Henderson had never heard of such a thing. He knew that people somehow or other managed to forfeit their runs to get rid of them. Now, we say that that was all that was really in contemplation; and, your Honour, I put it to the Court that the suggestion of the defendants as to what took place—as to what they call their bargain, or the company's bargain—is monstrously absurd—ridiculously absurd—in view of all the circumstances. They say that, for an unfixed remuneration, as to the amount of which Mr. Ritchie said nothing beyond that it was to be “what Mr. Scott considered fair for the business,” or some such expression as that—“such a fee as Scott considered fair for the business”—that for that consideration Scott should expose himself, as they admit—as they put it—to the risk of bankruptcy. I submit, your Honour, that there is ample evidence that Mr. Scott was not the kind of man likely to accept the position of a mere man of straw, and that Mr. Ritchie knew that Scott was not a man likely to accept such a position. Mr. Ritchie, in one of his conversations, says to Mr. Scott, “You are doing pretty well, are you not?”—[Mr. Haggitt: No.]—or, “You are doing better now, are you not?”—some such remark as that. He knew, as Scott knew, that he was doing business. Mr. Scott himself says that his income, though he may have been working hard for it, is something like £500 per annum. He certainly is not a man of property; but he has this much property, and that was disclosed to Mr. Henderson, that his furniture was given to him by his creditors in his bankruptcy many years ago. He has his furniture, not settled or secured from execution in any way; yet, your Honour, to put it in popular language, this is the man they can hire for £20 to become a bankrupt, and hire him for such a sum that they know the first fine would sweep away. They knew the first fine would sweep it away, because Mr. Ritchie says he said to Scott, “If this is to be the last of it I have no objection to pay the fine, so that you will get your fee clear.” In other words, Mr. Ritchie seems to have had in his mind at that date that the fine and fee—£15 or £20—came to about the same thing. Is it credible that Scott offered himself to be made a bankrupt for £10, or £15, or £20? Is it credible that Scott could have been induced to make such terms as that he would become a bankrupt for £100 or £200? I submit, your Honour, that, on the figures themselves, it is perfectly apparent that the suggestion is monstrous, and never could have been, and never was, brought to Scott's mind, or that they so included it as one of the terms in his hearing. This, too, must be remembered, your Honour: It is all important that from first to last they never vouchsafed to inform Mr. Scott what kind of a lease he was going into. There is no suggestion that they even told him the term of the lease. There is no hint that it was a lease for more than one year, or for three years, as these leases often are. Mr. Scott swears he never did know the term of the lease. He might have known it a month later, when he went up to the Land Office to sign the lease; but I think he stated that he did not read the lease—it was not his concern, and he did not read the lease sufficiently to know what the rent was. He picked up the amount of rent from the man in the street, and he did not seem to have remembered it at the date when he was arrested, or even when he came here, so little did he care for the matter. Yet, your Honour, Mr. Ritchie's version is, and Mr. Henderson's version is, that they had a free hand to make what terms they chose as to rent; and they certainly never did inform Scott, or consult him, as to what limit they were to plunge him into liabilities, either as to rent or as to the term of the lease; and they ended by giving their own agent a free hand in the matter; and they do not pretend that they ever consulted Scott as to whether they should give their agent a free hand or not. Mr. Ritchie says in his telegram, “We paid Scott for the use of his run,” or makes use of some such expression. He says he warned Scott of the responsibility he was undertaking, but he never warned him pointedly of any definite rent, or of any rent *qua* any definite term; and there is a singular circumstance connected with this alleged warning, your Honour, and that is this: Mr. Ritchie specifically detailed the alleged warning that he gave to Scott in his room; and he was

asked, I think, with the view of obtaining corroboration, "Was your room next to Henderson's, and was your door open?" I think Mr. Ritchie was asked that; at any rate, Mr. Henderson was, and Mr. Henderson was called to corroborate the conversation which he was near enough to hear. Yet, your Honour, with this singular result, that, though Mr. Ritchie says he fully warned Scott of these liabilities that he was running into, Henderson never heard it. Henderson, though he says he overheard the conversation, and was in a position to hear the conversation, never heard that; and he details a similar conversation and a similar warning on a totally different occasion, several weeks earlier, as to which Mr. Ritchie does not speak at all. Now, your Honour, a reference to the evidence will bear me out in that.

His Honour : Do you mean the detailed conversation with Mr. Ritchie?

Mr. Chapman : No; when both of them were together in the room. They were together at that conversation on the 6th of January, and thundered these warnings at Scott. This was Mr. Henderson's version. Mr. Ritchie in no way bears that out. Mr. Ritchie says he gave these warnings with reference to this transaction, and Mr. Henderson who was virtually present in the room, within hearing, heard no such thing. Now, I ask your Honour to accept Scott's version of this. He says that his conversation was with Mr. Henderson in connection with this transaction, and that any conversation with Mr. Ritchie was a mere passing conversation, certainly containing a kind of warning, but a jocular conversation, at Mr. Ritchie's door—the two doors being close together—as he went out. Now, Mr. Ritchie and Mr. Henderson would have the Court accept this—that this warning was given to Mr. Scott in such terms that Scott renounced and contracted himself out of his undoubted legal right, a right to be indemnified by his principals. I submit, your Honour, that that is absurd on the face of it, for the reason that I have already given, and it is totally inconsistent with Mr. Henderson's statements. My friend Mr. Solomon tried very hard to bring him up to the scratch in examining him, and apparently brought him up once or twice; but the burden of Mr. Henderson's evidence really was that the subject of indemnity was never mentioned. Yet, your Honour, he has virtually set up a plea that Scott released him from the indemnity. The real explanation now, your Honour, of these differences is this—and if my friend Mr. Solomon is here now he can hear the further explanation of the unconventional remark I made to your Honour at the outset, if further explanation is wanted: It is quite possible Mr. Ritchie may have said to Mr. Scott, "You are taking a big liability; there is this awkward rabbit question, and this rent question." That is quite possible; but does that amount to a release? Scott knew he was taking a position which might lead to extreme unpleasantness. His first question was, "Is there anything 'crooked' in it?" He had heard of dummying, and there is a kind of dummying supposed to be very "crooked," and a kind of dummying not supposed to be "crooked." There is a delicate distinction between the two classes apparently; and there are some people who draw a line between them, though both are designed to impose upon the Government. There are some people who draw the line between the kind of dummying involving making a false declaration and the kind of dummying that does not. Scott asked if there was anything "crooked" in it, and the experienced stock and station agent assured him there was not; but that it was all right. So it is quite possible a warning may have been given to Scott. Scott says there was something said in a flippant tone on the stairs; and it is possible that on a former occasion, which Scott has forgotten, something was said to the effect, "You are exposing yourself to a big liability, Scott," but that is a very different thing from an arrangement, a contract, that Scott should not only stand the first brunt—the extreme unpleasantness of being accused of being a dummy, of being paragraphed in the papers as a dummy, of being fined for the rabbit nuisance as a dummy, and possibly being subjected to something a good deal further as a dummy—there is a good deal of difference between that and a contract to bear the ultimate liability. And yet that is what the defendants have undertaken to prove. I submit the burden is entirely upon them, and that the real nature of the conversation was to point out to Scott that he was to stand a lot of unpleasantness, and possibly a rabbit prosecution, rather than that he should stand any risk whatever, still less any ultimate risk; and, least of all, the risks they say were never contemplated—the risk of being sued for the rent, and for the enormous cost of cleaning the country of rabbits; and all this for £15 or £20. Now, the question here is, I submit, has Scott knowingly and deliberately contracted with the defendants that he shall not have the ordinary recourse the law gives him; and I submit the defendants will have to prove that he has so contracted. Now, your Honour, it is possible that a party may enter into such a contract. I admit that a trustee may contract, in taking shares on behalf of a trust estate, that he is to bear the whole burden, and "stand the racket." A man, if he is foolish enough, may so contract himself. A servant may contract that in going into a liability he shall take the whole burden, and not only the unpleasantness, but the white-washing; but in order to impose such a burden upon a solvent man—a man who may have obligations to the outside world in the nature of debts, but a man undoubtedly engaged in commerce, in commission transactions—in order to impose such a contract on such a man, it must be clearly made out; and these gentlemen who have chosen to leave all this matter "mum," and have chosen not to put a word of it in writing, and not to express themselves in a definite way, for their own reasons, lest they should be found out—these gentlemen who have chosen to do this must take the burden of any misunderstanding on the subject, and must take—

Mr. Haggitt : Mr. Scott is one of the gentlemen.

Mr. Chapman : Mr. Scott is one of the gentlemen, otherwise he would not be in Court—a gentleman procured by other gentlemen in a higher position in life; that is all I can say—more humble than they probably, if my friend will have it so.

Mr. Haggitt : Why should that change the burden of proof?

Mr. Chapman : Because they were procuring Mr. Scott, in their own interests, in connection with a transaction—every detail of which was known to themselves—every liability respecting which was known, or might have been known, to themselves, in which they had fears which he need not be expected to have so long as he relied upon them. If Scott, your Honour, understood

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.

Mr. Chapman : There is an explanation, but no entry to this hour. It is said it will be corrected in due course ; but the transaction is now nearly a year old, and yet an entry has never been made. The reason is pretty obvious : some inquiry might be made, and this book might be called for ; and the same reason, good or bad, which inspired Mr. Henderson to swear Logie to secrecy no doubt accounts for this ledger being left in this imperfect condition.

His Honour : In order to perfect it, what, according to the defendants' view of the case, would have been necessary would have been to have credited Scott with £192, which they promised to pay him, and to have debited " Ohau," their venture, whatever it was, with the amount.

Mr. Chapman : Then, your Honour, Mr. Ritchie seeks to explain away his memorandum on the telegram and his memorandum on the letter. He and Mr. Henderson have throughout managed the transaction, and have managed Scott. They found Mr. Scott easy-going—a person who would do their bidding without question. He appears to have got uneasy at times ; but he appears to have been a good-natured easy-going sort of a man, easily managed by these gentlemen, and they appear to have taken him in hand, and to have managed the whole business, certainly not as his, but wholly as theirs. Now, will any reasonable man accept Mr. Ritchie's version of that memorandum written on the notice from the Land Office. Mr. Ritchie told the Court that Scott took all the risk ; and yet, down to a date in September or October, when the officials of the Land Office are making these demands, Mr. Scott is treating Mr. Ritchie as the person interested, as he has uniformly treated the defendants from first to last. He takes him the blue paper, and virtually in so many words asks Mr. Ritchie for his orders, as he had asked for his orders on every other occasion. There is not a single scrap of writing to show that when Scott sent over these rabbit notices, and brought over these various kinds of notices to the company, that they did anything consistent with their present attitude—that the defendants ever did such a thing as to send Scott a note saying, " Don't bother us with your transactions ; what do we want to know of your position ? " Not a scrap consistent with that ; but numerous writings absolutely inconsistent with it, and numerous actions absolutely inconsistent with it. Now, will any man accept Mr. Ritchie's version that he wrote this as the easiest way of getting rid of Scott. An easier way would have been to tell him to mind his own business, and not to pester them any longer. An easier way would have been to write a note saying, " You know your position ; we do not want to hear more from you ; " but he sends the rabbit notices, and he brings the Land Office notices, and Mr. Ritchie writes the answer he is to send back to the officials in Canterbury. As to the rabbit notices, they actually keep them, and they keep the telegram with Scott's memorandum. The rabbit notices came from the possession of the defendants.

His Honour : Did they ?

Mr. Chapman : Yes. That is to say, this written notice comes from Scott's possession, because Mr. Ritchie delivered it back to him with what I say are Scott's orders as to the reply to give ; but the rabbit notices came from Mr. Ritchie's possession.

His Honour : The rabbit notice of the 5th October, with the big bill ?

Mr. Chapman : The later and former rabbit notices, and the big bill with them, were given back to Scott.

Mr. Haggitt : There are two bundles of papers there : one was produced by us, and the other by the other side.

His Honour : Yes ; the rabbit notices of the 3rd June. These came, but not the rabbit notices with the big bill.

Mr. Chapman : No. Mr. Ritchie says they were brought to him, and apparently they were taken away again. Then, another thing that comes from their possession is this, and it is very important : Perry and Perry's telegram about execution.

His Honour : " The Clerk of Court issues a distress warrant, as the fine is not paid " ?

Mr. Chapman : Yes ; and Scott's memorandum on it, your Honour.

His Honour : Yes ; the remark, " Well, I don't want a bailiff in my house. "

Mr. Chapman : They did not send back that, and say, " What has that to do with us ? " They kept it among their documents, and we have it now coming from their possession. Now, as to Mr. Ritchie's evidence with reference to the documents produced from Christchurch, I submit, your Honour, that the correspondence with Timaru and Christchurch from first to last bears out Scott's case, and bears out Scott's evidence, and cannot be reconciled with the evidence given by the defendants. Mr. Ritchie says that the manager at Christchurch knew the position of matters. He says that he intended in his letter to convey to the manager at Christchurch what was really approximately his arrangement with reference to the run. He says, " Dear Sir,—About Run 93A, which is for sale to-morrow at the upset of £150, an authority has gone to you to bid for J. R. Scott, who authorises me to instruct you as follows : The run is only wanted to get time for the sale and delivery of the cattle (about 800) and sheep (about 5,500 wethers) now on it"—it is not worth while to say Scott's cattle and sheep, though that would be the inference any one would draw but some one in the know—" and if we could get from one to two months' time for this, Scott would not bid at all. " What could be more palpable than that he was a dummy. " If we run the risk of being jammed for the disposal of these sheep and cattle it will pay us to run up to £200 or even £250, as we pay six months' rent only, and can then forfeit by non-payment. Possibly you might get hold of the applicants, and put this view before them, not, of course, saying anything as to forfeiting, but merely that you have authority to bid for a man who is interested in the stock, and wants to sell and deliver them. I am wiring you about it, and shall give you a limit when I get your answer. " That letter bears out Mr. Ritchie's own evidence in one point : that what he contemplated was forfeiture—that Scott should be held liable, certainly not ; much less that Scott should be arrested. Then, the other letter is still plainer—Mr. Martin's letter to him—" I quite understand the difficulty there was in coming to anything like a bargain about the bidding for this, as it would be contrary to the Act, and particularly with such a dangerous man as Matheson is. I

told him, however, that my client was bound to have the run to-day, if only to afford him ample time to deal with the stock, but that if he was a buyer we would be willing to give him the first offer of the whole thing—run, sheep, and cattle—as a going concern, and that in such case no premium would be asked, and the rental paid to-day.” I refer to that as showing this: that they were willing to sell the run—apparently, to take the run in Scott’s name, and sell it—if by that means they could get rid of a competitor and find a purchaser. So little had Scott to do with the transaction that this arrangement is made to sell his run—a transaction for which he certainly would not be entitled to a penny of remuneration or profit. They are prepared to make an arrangement to sell his run without consulting him on the subject, for the simple reason that really Scott had nothing to do with the run—that it was contemplated that they should be the owners in the future, as they were then. The letter goes on, “However, this did not appear to satisfy him, and he ran me steadily to £380. I am not sure that it was policy on our part to indicate that we were (or, rather, Scott) bound to have it, as, I think, when he could not get us off he felt on safe grounds to run; and, if there could only have been any certainty of getting the stock off in fourteen days, we should have dropped it to him; but your instructions by telegraph to secure it were imperative, and I did not like to depart in any way from them; and, besides, Matheson was ready to be troublesome, as he had his solicitors with him at the sale to raise an objection to applicants bidding through agents, but it was not entertained.” I submit, your Honour, that Mr. Ritchie has to make headway against the whole of his correspondence—correspondence which is entirely consistent with Scott’s case, and entirely inconsistent with Mr. Ritchie’s. Now, as to Mr. Henderson. His suggestion that the company was not interested in the land was so manifestly absurd that he abandoned it; and it took, I suppose, five minutes, and he had to be plied with a dozen or two dozen questions, before he decided whether the taking of Mr. Haggitt’s opinion was in the interests of the defendants or the interests of Scott. He says that he never showed the opinion to Scott; but he says, of course he told him what it was. I do not remember whether Scott was asked on the subject, but my impression is that Scott never heard of it. I submit, your Honour, that Mr. Henderson cannot be credited in the last piece of evidence that he gave in re-examination—I think it was in answer to my friend Mr. Solomon—when he said that after Scott’s arrest Scott came to him and said to him voluntarily, “Whatever you may hear outside, I am taking the whole burden on myself,” or something to that effect. Mr. Henderson has chosen to give that piece of evidence—and I submit he has given it recklessly, and that he is not to be credited when he makes such a statement. How was this consistent with Mr. Scott’s position—with the position Mr. Scott has uniformly taken, and which is borne out by his conduct, and borne out by the documents? It is ridiculous, in the face of the fact that, as Mr. Henderson admits, on the day of Scott’s arrest I went to him and peremptorily demanded that he should indemnify Scott’s bail and get Scott out of prison. Mr. Henderson admits that I made that peremptory demand, and he admits that he did not stand upon his dignity, and say, “We have nothing to do with this;” but he got time to consult Mr. Haggitt, and, possibly, to communicate with Mr. Ritchie. It is ridiculous, in face of Scott’s attitude at the date when Perry and Perry warned him there would be an execution in his house. At that date he had put down his foot and shown to his employers perfectly plainly that he would not have a bailiff in his house, implying that it was their business to see that he did not have a bailiff in his house; and he wrote that across Perry and Perry’s telegram, and delivered it to them, and they kept it. Mr. Henderson admits that to me he did not repudiate his liability, but asked to see Mr. Haggitt; and he took time to see Mr. Haggitt. It is perfectly apparent that Mr. Scott never could have succumbed in this way, and have gone to him voluntarily and have told him that he was taking the whole burden upon himself, because it is perfectly certain that Scott was, in the hands of his solicitors, making this demand at the time—a demand in accordance with the attitude he had taken up before, and a demand followed up a few days later by a peremptory letter to the company, duplicated to Mr. Ritchie, and triplicated to Mr. Henderson, showing perfectly plainly the position Scott took up in the matter; and the telegram—[Mr. Haggitt: What telegram?] A telegram to Mr. Ritchie, which Mr. Henderson knew was sent; a telegram Mr. Haggitt had probably discussed with him, because they were in the room together when it was handed back to me. He knew Mr. Scott’s attitude on that day in two ways; he knew Scott’s attitude and feelings, and the probability that in two or three days an action would commence, and yet he has the temerity to say that Scott went to him saying, “Whatever you hear outside, don’t believe it; I’m going to stand the racket, and take the consequences.” Then, your Honour will remember Henderson’s vacillation about Mr. Haggitt’s opinion—an opinion which has never been produced. It is admitted it was taken in their own interest, but is never listed in the affidavit of documents, and has not been produced to this hour. I daresay the opinion was that the appeal would not lie. It is immaterial which way it was; but it was taken in their own interest by the defendants from their own solicitor—who certainly never was Scott’s solicitor—and was taken without obtaining permission from Scott, on their own motion, and purely because the transaction was theirs. And it was taken at what time? At a time when they wanted to ascertain what delay could be got by putting off the rabbit fine for a few weeks; whether it was worth while to pay £15 or £20 to carry on an appeal against the conviction for the purpose of delay, with a view to getting off their own stock, or to enable the purchaser to whom they had guaranteed possession to get it off. Is it consistent for a moment with the alleged attitude of Scott on the date he speaks of, and the attitude which the defendants take now, that Henderson should have gone to Mr. Logie, and have dictated the letter that he was to write to Messrs. Perry and Perry about the rabbit defence—that he should have sent Logie to Mr. Inspector Ritchie, and have sworn him to secrecy, and have made these inquiries about Scott’s furniture? Is any one of these things consistent with the statement that Mr. Henderson now makes, that the company was not really interested in the matter—that Scott had launched himself upon this sea of liability, and had agreed with the company that the company should take no liability in the matter? I submit, it is ridiculous. The question has been interjected by my learned friend, “Why should the company employ

Scott?" I submit that, all things considered, it was not an occasion for employing so obvious a dummy as my friend suggests—one of their own servants or one of their own shepherds. It was not an occasion for employing such parties. It was necessary for their purposes, whatever they must have been. They knew the Government would not release a company, and it was necessary for their purposes that some outsider should be employed, some person other than a mere servant or shepherd—that some person of apparent substance and of known position should be employed. For some reason best known to themselves suspicion was to be avoided, and this was the mode that they chose. They took a person whom they knew in business as a likely instrument, as a person whom they could influence, who was likely to be useful for their purpose—an easy-going man; they chose him rather than one of their own shepherds, and they had some reason for it, both when they chose Scott, and when Henderson imposed upon his clerk Logie an obligation of secrecy in the matter. Now, your Honour, the defendants allege that Scott was not an agent, but I submit they prove that he was a trustee, and prove it beyond a doubt. They have taken upon themselves, then, to demonstrate that, without consideration, except this flimsy unnamed sum, he has given up his rights. What would Scott's position have been if that had occurred which sometimes has occurred in the history of this colony—that values had jumped up enormously, and this run, valueless in one six months, had jumped to a big value in another? Could Scott have said, "You have only six months' interest in this run"?

Mr. Haggitt : Of course.

Mr. Chapman : My friend says, "Of course he could." I submit, your Honour, if this run had risen in value, and Scott had dared to assume that position, he would have found himself here with *Morrin v. Kissling* quoted against him, and *Driver v. Carson* quoted against him—these cases decided in this Court and the Court of Appeal—and he would have been asked this question: "Did not Mr. Henderson suggest to you that you should go to Preston and try and make a commission off him by selling the run that stood in your name to him?" and Scott would have had to answer, "Yes, I did see a prospect of a commission;" and then he would have been asked, "How, sir, do you reconcile the suggestion that you were willing to make a commission with the statement that this run is yours?" That alone would have barred Scott in any such case, and, by the same token, it answers Mr. Henderson, and disposes of him. Now, I submit that whatever difficulty they might have had in making a case against Scott to render up the run, supposing it had become valuable, there is no difficulty in making a case against them—that they have treated themselves as the absolute owners. Mr. Henderson leaves uncontradicted Scott's statement that he (Mr. Henderson) told Scott that there was a chance of making a commission on it by selling it to Preston. That is Scott's uncontradicted evidence. What is a commission but a profit possibly made by Scott out of the property of the defendants? certainly not a profit made by Scott out of his own property. They have chosen to treat themselves throughout as the absolute owners. Their taking an unlimited authority to bid, and not disclosing to Scott the term for which they were bidding, is consistent with nothing else. Scott's ignorance of the whereabouts of the run is consistent with nothing else than that, as he stated, he was taking no interest in the matter. Mr. Henderson says that Scott said he had been a cadet on a station near that run. I can only submit that Mr. Henderson may have imagined that Scott said such a thing. But that is only another instance of Mr. Henderson's evidence being unreliable. Their interference with the rabbit prosecution, their interference with reference to the proposed appeal, their agreement with a buyer, if I have rightly understood the evidence, the memorandum and the letter of Mr. Martin in Christchurch offering the run for sale to Mr. Matheson, are all inconsistent with anything but that the defendants were the absolute owners of this run standing in Scott's name. Your Honour will remember that in the correspondence there was a "dangerous man"—Matheson—mentioned; and Mr. Martin writes, "I told him, however, that my client was bound to have the run to-day, if only to afford him ample time to deal with the stock, but that if he was a buyer we would be willing to give him the first offer of the whole thing—run, sheep, and cattle, as a going concern,"—thus treating it as their own, as it was. And yet Mr. Martin is the man of whom Mr. Ritchie says, "He knew the purpose of the transaction and the nature of the transaction." I submit, your Honour, that the proposed offer to Matheson—the offer to Matheson, the proposed sale of it, and the suggestion that Scott might make a commission out of the sale to Preston—show demonstrably that these parties all along treated the run as theirs. Scott was never consulted about it. And yet, in the face of that, your Honour is asked to accept their evidence as amounting really to a release by Scott of his rights. Now, I put it, further, as a matter of evidence, that the defendants setting up this version of a transaction have not dared to put into writing their arrangement with Scott. They say that it was legal; and one of my friends has hinted that it was a perfectly moral transaction taking this run up in this way. One of my learned friends has hinted that.

Mr. Haggitt : Which?

Mr. Chapman : I forget which it was. I think it was Mr. Solomon. Why did the parties not put it into writing? It has been their cue all through to keep it secret, for reasons best known to themselves—swearing Logie to secrecy, relying on Scott's secrecy, keeping secret themselves, not putting a line in writing. What would have been easier than to have got the understanding in writing? Who is to suffer if they have, for their own purposes, so arranged matters that they understood one measure of liability and Scott another? I submit, again, that if they have chosen to leave matters in such a foggy position that they cannot now demonstrate that Scott intended to give up his ordinary rights, that they are to blame for that. They might easily have put the matter in writing in some way that it could have been clearly understood, and there would have been an end of the matter. Virtually, here they rely upon a special agreement; but I submit on the pleadings they cannot rely upon a special agreement. If it amounts to that they cannot rely upon it, and short of that I submit it is of no avail. Scott's attitude, your Honour, has been consistent

throughout, and I submit there is no consistency in the attitude of the defendants. They are burdened with showing that a man worth £500 a year has contracted to become a bankrupt if necessary for £10, or £15, or £20. A more monstrous proposition never was put before the Court. They have, possibly, added imaginary extensions to conversations and actual facts. That may account for a good deal of the appearance of conflict; but, your Honour, they have chosen to leave the matter in doubt—they have failed to clear matters up. It was incumbent upon them to make matters clear; and, if it has resulted in their taking one view and Scott taking another, I submit, your Honour, that Scott is nevertheless entitled to his indemnity; that even if Mr. Henderson and Mr. Ritchie had clearly in their minds their intention of quitting themselves of liability by clearly informing Scott, and getting him to assent to the statement that he was to bear the whole ultimate burden, and that they were to bear nothing, for this paltry sum of £20—even if they had that in their minds—unless they demonstrated that to Scott's mind, and demonstrate to the Court now that Scott appreciated it, I submit the ordinary law must prevail, and that Scott is entitled to indemnity. I submit to your Honour that on the whole this much has been clearly proved: that the transaction was theirs from first to last; that it was intended to be theirs; that Scott's attitude has been consistent throughout; that the defendant's attitude has been consistent with Scott's position, but inconsistent with their own; and that they cannot now make the case they attempt to set up.

Mr. Haggitt, addressing the Court for the defence, said,—Your Honour, my learned friend has argued a good deal as to the absurdity of supposing that the alleged bargain, as Scott calls it—the arrangement spoken to by Mr. Ritchie and Mr. Henderson as being the actual arrangement arrived at—could have been entered into, considering Scott's position as a man making about £500 a year, and considering that the reward he was to receive for his services was so small as it appears to have been—£15 or £20. My learned friend characterized the settlement of such a bargain as monstrously and ludicrously absurd. Now, to judge of a bargain—as to its absurdity or monstrosity or otherwise—one must place oneself in the position of the parties at the time the bargain was being made. My learned friend, whilst characterizing the bargain in the way I have described, also said time after time, in the course of the proceedings, and he has repeated it again to-day, that this is the very first case on record in which the Government have taken the stand they have done in this case; that it has been by no means an uncommon thing for runs to be taken up in the name of persons who are not to use them, or not to use them beyond a certain time, with the object of throwing those runs up as soon as the purpose for which they were required was served; and that invariably, previous to this case, the Government allowed that course to be adopted. I also am prepared to assert that the Government have cancelled leases for the non-payment of rent, and so put an end to the transaction, time after time, and that there is no case on record where the Government have forced a lessee through the Bankruptcy Court to get rid of a lease.

Mr. Chapman: We do not say there is.

Mr. Haggitt: I say there is no case on record where the Government have forced a man to bankruptcy to get rid of a liability to them under a lease; and before this case, there never was a case in which the course was adopted that has been followed in this case—of arresting a man under the Crown Suits Act and putting him into gaol at the very initiation of the proceedings, and not suing in the ordinary way. If these matters are considered, your Honour—and I submit the Court has to take them into account—if these matters are considered, there is nothing so absurd or ludicrous in the arrangement made here. It was put to Scott as plainly as possible that if the company took up the run in their own name, with the known hostility of the Government of the day to companies, the company could expect no mercy at their hands; but that if an individual took up the run in his own name, then that he would be treated probably as individuals had been treated before, and that the very worst that could happen to him would be that he would have to go through the Bankruptcy Court, neither Mr. Ritchie, nor Mr. Henderson, nor Mr. Scott, apparently, being aware that going through the Bankruptcy Court would not release him from rent due to the Crown. Mr. Scott then contemplated that he would be treated as Crown tenants had previously been treated—that is to say, that if he could not pay the rent the lease would be forfeited, and there would be an end of the matter. The remuneration he was to receive, or to be entitled to receive, is not so ridiculously small when the matter is viewed in that light, nor is the fact of Mr. Scott being prepared to take upon himself the risk a matter to be at all wondered at, since, at the time, the only consequence anticipated was the trifling matter of answering a few applications for rent; and, when he communicated the fact that he was not in a position to pay, of the lease being cancelled. That that was the position of matters in this case your Honour has the evidence of two persons.

His Honour: You have also to make out that Mr. Scott undertook this: that if during the six months the company were to have the use of the run fines were inflicted for not getting rid of the rabbits, Scott was to bear them; and the probability was, of course, that, as the rabbits were there, fines would be inflicted, and that he was to bear this out of the £20 or £30 he was to get.

Mr. Chapman: More than that, there was the cost of clearing the rabbits, which in this case comes to £400.

His Honour: That, of course, is a different matter, because, as I understand the evidence, the chances were not that the Inspector would step in and clean the run. You contend that Scott, out of this £20 or £30, was to run the risk during the six months the company was in possession of having to pay all these fines.

Mr. Haggitt: No; I say it was never contemplated that during the first six months there would be any fines. It is a most unusual thing to be so prompt. Proceedings were taken within three months of Scott taking up the run. This was a most extraordinary thing. This lease was granted of country which was apparently full of rabbits, and within three months of the lease being granted notices were given to destroy the rabbits, and those notices were immediately

followed up by a summons, so rapidly that the whole proceedings were completed within three months, and the fine inflicted for not having kept down the rabbits. That is an unprecedented thing, I submit, with regard to a run taken up for the first time, and smothered with rabbits as this was. The parties were fairly entitled to take into consideration that at least six months would elapse before proceedings were taken against a new man going into new country; and I might say (not that it appears on the evidence) that if there had not been a suspicion that Mr. Scott was not a *bonâ fide* purchaser, but was acting for the company, no such proceedings would have been taken.

Mr. Chapman: That was not what they contemplated, because this rabbit terror was a thing they talked about.

Mr. Haggitt: Not for this six months, but during the ten years.

His Honour: They certainly contemplated that, at the end of six months, Scott would get rid of the run; so they were pretty sure about that.

Mr. Haggitt: They were sure they would not, but they were pretty sure Scott would.

His Honour: But they thought, notwithstanding, that, apparently, there was a risk Scott would have to bear of the rabbits.

Mr. Haggitt: It was not a thing to be dreaded at all—not a thing which any previous knowledge of the ways of the Rabbit Department would have given them any cause to suspect at all. But, however, that was the position of matters. Both parties thought the risk a very great deal less than it turned out to be; and that must be taken into consideration, I submit, in considering the arrangement on both sides. If Mr. Scott had known that he was liable to be popped into gaol without a moment's warning, no doubt he would never have gone into it; if the company had known that that was likely to be the case, no doubt they would never have asked him. Circumstances have developed in connection with the transaction which neither party contemplated at the time; and, therefore, I submit that to talk of the bargain made as being an absurd one, or a monstrous one, in the light of the circumstances which are now known, is a very different thing from considering the matter in the light in which the parties contemplated Scott's undertaking at the time he undertook it. Besides, your Honour, the company were not dealing with Mr. Scott as a man who, as my friend says, was making £500 a year—they were dealing with a man whom they had every reason to believe, out of his own mouth, was the man of straw my friend mentioned. According to Mr. Scott's statement to Mr. Henderson—according to his statement to Mr. Ritchie—Mr. Scott had nothing but his office-table and a couple of chairs—nothing that could be taken from him, if the worst came to the worst, except his office-table and a couple of chairs. Now, under these circumstances, there was nothing for Scott to lose; and, if bankruptcy was mentioned, which my learned friend seems to say never was, but which Sir R. Stout admitted was mentioned to Mr. Scott—

Mr. Chapman: I did not say it never was mentioned; Scott says it was mentioned at a subsequent date.

Mr. Haggitt: Sir Robert Stout said that when the necessity came for paying out the money Scott was to sail gracefully through the Bankruptcy Court; so that, apparently, Scott contemplated that course of proceeding from the commencement; but I submit that, on the statement of Scott himself to Mr. Henderson and to Mr. Ritchie, they had a right to consider that he was a man with nothing to lose, and therefore a man prepared to take such a risk as they were asking him to take. Mr. Scott, apparently, made no objection to be treated as a man of straw at the time. All that he was afraid of, apparently, was that the transaction was one that might involve him in some liability for making a false declaration, or something of that kind; he wanted to be satisfied that there was nothing "crooked" about it—nothing he could be made criminally responsible for from the fact of applying for the run in the way he was asked to do. Now, my learned friend has said that one of his learned friends—he is now quite justified in saying both of them—had said that there was nothing morally wrong or legally wrong in this transaction. I submit there was not. The land was open to any person who chose to apply for it, and if two persons applied for the same run, then it was to be put up to auction as between the two persons who so applied. Anybody was at liberty to apply. There was no declaration required as to the purpose for which the run was to be used; no restrictions, certainly, that the person who made the application should be in a position to pay the rent he was bidding; nothing of that kind, and it was open to anybody who had previously put in an application for the land to bid for it at the auction. If, therefore, the parties were within the Land Act, I submit there was nothing immoral or illegal or wrong in the transaction. I am not bound to defend the thing on moral grounds at all, but, as my learned friend has challenged me to do so, I venture to assert that there is nothing immoral in anybody purchasing a run simply because they do not want it if the land-laws make no provisions against persons buying runs which they do not want; and all that can be said about the transaction is this: that Scott became the purchaser of a run which he did not want. My learned friend says that the defendants set up that Scott released them from the indemnity which otherwise he was entitled to. I say that the defendants set up nothing of the kind. That is not the defence set up at all. The defence set up is this: that Scott was not an agent at all; that Scott was a principal in the transaction; that Scott was the purchaser of the run. He may have been persuaded into purchasing; he may have been deluded into purchasing it. However that may be, it does not matter; the fact remains, not that he was an agent in acquiring the run, but that he was the actual purchaser of the run in his own name for his own purposes, and not for the purposes of the company. I am speaking of this now—I shall have to refer to the letter presently—I am speaking of this now in meeting my learned friend's assertion that this bargain was monstrously and ridiculously absurd. I ask your Honour now to look at the reverse view—to take my learned friend's contention, founded upon Scott's assertions with regard to the matter, and see what a monstrous position, and what an absurdly ludicrous position, the company were putting themselves in. Here was Mr. Ritchie, for years acquainted with

this run, acquainted with the fact that it was utterly valueless, acquainted with the fact that the addition of 17,400 acres of absolutely valueless country made it worse than ever it had been before—yet Mr. Ritchie, who had determined to have nothing to do with this run on behalf of the company, gets Mr. Scott to act as dummy for the purchase of this run, and agrees to indemnify him from the consequences of any purchase that he might make. That is the reverse of the position my learned friend puts to you. I submit that it is absurd and ludicrous in the extreme to imagine that Mr. Ritchie or Mr. Henderson ever made a bargain with Mr. Scott to indemnify him against the consequences of the purchase, thereby putting themselves absolutely in the position of purchasers. Is it probable that Mr. Scott asked that he should be indemnified, or that there was any understanding at all between him and the company that he would require to be indemnified? If Mr. Scott had asked for an indemnity there were thirty other people who could have been got quite easily who would have done what was required without indemnity. The run was open to application by anybody. What easier than that one of the shepherds employed on the run, or on some other run, should put in an application; he was as good as anybody else, and he would not have asked for an indemnity; he would have been glad to do it for £10, £15, or £20, whatever the sum offered, to do exactly the same thing that Mr. Scott did; and what could have been said then? I submit that the only story that is credible at all with regard to the matter is, that it was because Mr. Scott had nothing to lose, and was willing to take the risk upon himself, that Mr. Scott was asked to do, or allowed to do, what he did. What possible gain could it be to the company? What possible advantage, I should have said, could it be to the company to employ Mr. Scott to purchase this run for them if they were to be responsible to indemnify Mr. Scott against all the consequences? I say, if the bargain is considered in the light of the probabilities, that the probabilities are all in favour of the story told by Mr. Ritchie and Mr. Henderson, and diametrically opposed to the story told by Mr. Scott. Why, the very first mention of holding him harmless against the consequences of what he was asked to do would at once have induced Mr. Ritchie or Mr. Henderson to have said to him, “If that is what you want, you are not the man for us; we might as well take it up in our own name as take it up in yours, and be responsible to indemnify you against the consequences of taking it up. If we are to indemnify you we may as well take it up ourselves. If you are prepared to take the risk yourself, to let us have the country for the short time we want it, on our paying you the rent for six months, and giving you £20 or £30 for yourself, then you take it up; otherwise don’t.” That, I submit, is the natural view to take of the position, and not to suppose that the company were driven to employ Mr. Scott to take up the position he did take up by a promise to indemnify him against the consequences of his so doing. Now, my learned friend asks, Has Scott so contracted with the defendants as to deprive himself of the indemnity he was entitled to? I do not admit that Scott was ever in a position to ask for an indemnity, and the story, as told by Henderson and Ritchie, is that Scott never was in a position to ask for an indemnity. Scott was the purchaser of the run—not the *bona fide* purchaser perhaps, but he was the actual purchaser of the run, with a full knowledge of the position of matters, and prepared to take risks upon himself which the company would not take, relying upon the fact of his being a man of small means as protection against the law being enforced against him with the same rigour as against the company, and believing that nothing worse could happen to him than his being compelled to go through the Bankruptcy Court, which he had done before, and might do again. What I submit is that it is not a question at all of Scott having contracted with the defendants so as to deprive himself of the indemnity he was entitled to; it is a question of what the actual position of parties was—the question as to whether Scott is to be believed in his statement of what took place, or whether Mr. Ritchie and Mr. Henderson are to be believed. When it comes to dealing with a matter of that kind, I submit that the Court must take Mr. Ritchie and Mr. Henderson’s account of the matter as against Mr. Scott’s. Mr. Ritchie and Mr. Henderson’s account is clear and consistent in itself. It is supported by documentary evidence, so far as the documentary evidence goes, and it is only contradicted by the plaintiff, who admits he has no memory whatever, and can give no connected account of any conversation he had with anybody in connection with the matter; and even denies that he had any interview at all with Mr. Ritchie previous to the purchase, when that interview is distinctly sworn to both by Mr. Ritchie and by Mr. Henderson, and details of the conversation are given. It is possible that a man may forget what took place at an interview, but hardly probable that he could forget altogether the fact of such an interview having taken place, the more especially when the details of what took place at that interview are given in his presence, and when the circumstances as to how the interview was brought about are brought under his notice. I should have thought that Mr. Scott, after hearing the evidence of Mr. Henderson and Mr. Ritchie on the subject, would have said, or at all events have told his counsel to say, that he was satisfied now he was mistaken in saying the interview did not take place, although he had forgotten about it at the time he gave his evidence. Now, my learned friend says the burden is on the defendants to prove that Scott so contracted as to deprive himself of indemnity. I say no; I say that is not so—that the burden lies on the plaintiff to prove his case, and, in the face of the evidence, that the defendants were the agents of Scott, and not Scott the agent of the defendants. The burden of proof is undoubtedly with Scott; and I take the very instance my learned friend put as showing that his contention was the correct one to show that it is not. My learned friend put it that if this run had gone up in value the company could have compelled Scott to give it up. Now, I say that the fact is not so at all. I say that the company could have compelled Scott to give it up if the fact had been that Scott was merely their agent, and had bid in his own name; but they would have had a very difficult task, no doubt, to convince the Court that under all the circumstances proved here they and not Scott were entitled to have the run. Of course, their own conduct would have been against them very much; the fact of the run having been bid for in Scott’s name would have been very much against them, and the only point they would have in their favour would be

that they had paid the purchase-money; and the fact that they had debited the purchase-money to Scott's account would again tell very heavily against them. No doubt the real fact of the matter could have been proved by verbal evidence, and in such a case verbal evidence is sufficient, in spite of the Statute of Frauds; but it would have taken very strong evidence to have satisfied the Court under the circumstances before it would have held Scott a trustee for the company, and the onus of proof in that case would undoubtedly have been upon the present defendants, and they would have had to satisfy the Court in the clearest possible way that Scott was a trustee for them. Now, there are authorities on that subject to be found in "Lewin on Trusts," page 167; "Godefroi on Trusts," 174; Smith's "Principles of Equity," page 67 and the following pages. In every case it is laid down that parol evidence, where admitted under such circumstances, must prove the facts very clearly. The statement is repeated in all the books to which I have referred—that parol evidence, although admissible, requires to prove the facts very clearly; and that is my answer to the case which my learned friend puts of the run having gone up in value, and the company trying to compel Scott to give it up. But I submit that if that is the rule in a case of that kind, yet where the converse is the case, as this is now, the same rule must still apply. If the parties came before the Court to set up an equity, as Mr. Scott here comes before the Court to set up an equity, as opposed to the legal status in himself, that the parol evidence which he gives in support of his case must be exceedingly satisfactory, and must make his case perfectly clear. This proves that my learned friend's contention is not the correct one—that the onus of proof is upon us—but that the onus of proof is, in point of fact, upon Mr. Scott. Mr. Scott is setting up as against the lease in his own name that he is trustee of that lease for the company, and he is trying to satisfy the Court of that fact by parol evidence. I submit that the case is exactly the same in point of principle as if the company were setting up as against the lease that Scott was trustee for them; and that being so, the rule which I have referred to, and which is stated in "Lewin on Trusts," and in these other books, is to be followed, and then it lies upon Mr. Scott to satisfy the Court that he is a trustee for the company, and it is not for the defendants to disprove the fact. Now, your Honour, my learned friend took up a good deal of time this morning in trying to satisfy the Court that Mr. Scott was entitled to the ordinary rights of a trustee, and that the trustee was entitled to indemnity from a *cestui que trust*. We do not dispute that for a moment if the relation of trustee and *cestui que trust* is established. I take the law to be perfectly clear. If I say to a person go and buy me a piece of land, without saying anything else, and he does so, I am bound to indemnify him against the consequences of acts done by him, and to repay him all moneys in connection with the purchase made. We admit there can be no doubt about that. My learned friend might have saved himself the trouble of arguing the point. My learned friend Mr. Solomon admitted as much in his opening remarks, and there can be no doubt it is the law; but I submit that if I induce a person by promise of reward, or out of friendship for me, or on any other account, to take up for himself something which I am afraid to touch myself, and to give me a benefit out of what is his purchase, then that there is no implied contract to indemnify him on my part, and that the risk is all his own; and I say that that is this case. Of course, the man who puts himself in such a position may be a fool, but the Court has nothing to do with that. I submit, your Honour, that the whole question here is a question of credibility between the plaintiff on the one side and Ritchie and Henderson on the other. My learned friends seem to catch at little points in order to turn the scale of evidence in their favour, such as Mr. Ritchie's telegram, in which he says that the money had been paid to Scott when it had not; and the fact of Mr. Henderson having taken a legal opinion whether an appeal against the fine was likely to succeed or not: but these little points, I submit, are not of the slightest importance; they throw no light at all upon the case, and cannot help the position. The telegram—the matter of the telegram was easily explainable, and was satisfactorily explained. At the time Mr. Ritchie received the telegram to which his was an answer he was away miles back from Timaru—in the back country; he had no opportunity of making inquiries or referring to his books, or anything else. He thought that the amount Mr. Scott was entitled to be paid had been paid, and he said so; whereas the fact turned out to be that it had not been paid, because it had not been asked for. There was the explanation of that circumstance that was to throw such an immense amount of light on Mr. Ritchie's credibility. My learned friend Sir Robert Stout said so, but my learned friend Mr. Chapman did not; he had the justice to say that he did not accuse Mr. Ritchie of saying anything but what he believed to be true.

Mr. Chapman: Mr. Ritchie's explanations came after Sir R. Stout addressed the Court, your Honour.

Mr. Haggitt: But because it was pleaded; because it had been admitted on the pleading that the answer to the telegram was untrue, it was suggested that that gave so much greater force to his having made a deliberate misstatement. My learned friend was particularly eloquent upon the subject of his not having been informed, up to the very last moment, that it was not correct. Well, my learned friend knows perfectly well what the explanation was; he knew that Mr. Ritchie was not in town, and that he did not return to town until two days before the statement of defence was filed.

Mr. Chapman: I knew that, on the contrary, Mr. Ritchie had been in town.

Mr. Haggitt: My learned friend referred to myself, and said that I never informed him. The first intimation I had of it was on the very day on which the plea was delivered to him; so that my personal explanation, I trust, is satisfactory.

Mr. Chapman: Since my friend is going outside the evidence, I say that Mr. Ritchie was in town at an earlier date, for I saw him.

Mr. Haggitt: If he was here he was only down for a day or two, and I did not know of it. At all events, he did not attend to this case while in town, or give any instructions about it. But this is making a fuss, I submit, about matters which are perfectly immaterial, and really can have nothing to do with influencing the decision of the Court. Then, again, there is the other

question of the taking of this opinion. What really can that have to do with it? How can my learned friend ask the Court to draw the deductions from that that the company were absolutely interested in this run, and that Scott was not, simply because Mr. Henderson, after having assisted in getting Scott into the mess that he was in, took some little interest in the matter, and tried to help him as far as he could? Is it an extraordinary thing that Mr. Henderson, having, innocently no doubt, brought Mr. Scott into the position he was, should help him to write letters and telegrams when Scott asked him to do so, in connection with the difficulty in which Mr. Scott found himself. I submit that it was the most natural thing in the world that both Mr. Ritchie and Mr. Henderson should give all the assistance they possibly could to Mr. Scott, in order to relieve him as far as possible of the difficulty into which undoubtedly they had contributed to bring him. It is not worth while, I submit, to comment any further upon what my learned friend said upon that head. He has taken up a good deal of time, no doubt, and very ably argued from his own point of view the grounds upon which witnesses are to receive credit at the hands of a Court of justice and to be refused it; but I am willing to take it that your Honour knows far more on that subject than I do; and I shall leave your Honour to draw the proper conclusion from the evidence which is before you. Then, I submit that the only possible ground for not crediting Mr. Ritchie and Mr. Henderson is that Mr. Scott does not agree with them. That is the only possible ground. But, as Mr. Scott has shown that his memory is an absolute blank on the subject, the fact of his not agreeing with them is no ground at all; and therefore there is nothing to oppose to their credibility. This is not a case in which much can be said likely to prove of much assistance to the Court: the whole matter turns on the credibility of the testimony that your Honour has in writing before you; and if your Honour has any difficulty in arriving at the conclusion as to which side to believe, then I feel that I can say nothing to assist you. Well, your Honour, all that I could say, in a short space, is what I have just said: The only possible ground for not believing Mr. Ritchie and Mr. Henderson is that Mr. Scott does not agree with them, and that Scott has no memory at all; and therefore the fact of his not agreeing with them amounts to nothing, and their testimony, therefore, remains unopposed. Then, I submit that if your Honour credits the testimony given by Mr. Ritchie and Mr. Henderson, the plaintiff is not entitled to relief at all. But if the Court is of opinion that the plaintiff is entitled to relief against some one, against whom is he to have it? Is it to be against the defendant Ritchie? The plaintiff says he never spoke to him about the matter at all! Is it to be against the defendant Henderson, who, the plaintiff says, only spoke to him as manager of the company, and not in his private or individual capacity, and who clearly had no interest in the matter personally; or is it to be against the company? I submit there is nothing at all in the evidence, in any view of it, as against Mr. Ritchie or Mr. Henderson to entitle the plaintiff to any relief against them, and that they are entitled to be discharged from the suit at once. Then, if so, only the company remains; and if relief is to be granted against the company, what is the relief, if any, that the plaintiff could claim against the company? I submit that it certainly will not be the relief which the plaintiff asks in the prayer to his claim. There are only two paragraphs in the statement of claim which have the slightest direct bearing on the matters to be decided in the suit. These are the allegations in the third paragraph of the statement of claim, that "the defendants requested the plaintiff to act as their agent in applying in his own name for pastoral Run 93A and subsequently in bidding, in his own name, for the said run;" and the allegations "that 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 from 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." I submit that sets up not an implied promise, but an express promise, and that was undoubtedly what the plaintiff expected to be able to prove in this case. Now they have been obliged—I was going to say to abandon it, but to almost abandon it, and to set up an implied right to indemnity from the fact which they assume of the plaintiff having acted as agent for the defendants. The case we came here to meet was a case of express promise made at the time of the arrangement for the company "to undertake the whole responsibility of the said run," or for the defendants, or one of them, to undertake it, "in consideration of the plaintiff submitting all the correspondence to them, and acting upon directions from them." That was clearly what we were entitled to expect them to prove. What evidence is there of that? Mr. Scott says that Mr. Henderson on one occasion said that "he," or "we," or some one, "would see him through it." He cannot tell us what the promise was. He first swore that Mr. Henderson said that he (Mr. Henderson) would see him through it. Then he said, in cross-examination, that he supposed Mr. Henderson was acting for the company, and was speaking for the company, and not for himself, and he could not say whether he said "we," or who it was that was to indemnify him. And that is the evidence with regard to the allegations here made that the defendants promised to undertake the whole responsibility. Now, it is not an unimportant matter this, because I shall show your Honour presently by cases how an indemnity of this kind is to be construed by a Court of equity, as this is supposed to be for the purposes of this suit, and that the relief given by a Court of equity is simply commensurate with the terms of indemnity promised. The Court, in this case, if they take Mr. Scott's statement of the matter, will have to put an interpretation on the words "he" or "we" "will see you through." There is no explanation given in the evidence of what Scott understood the words to mean; there is simply the bare fact that Mr. Henderson said, "Oh, you need not trouble, we will see you through," or something to that effect. And your Honour, on the interpretation you may put on these words, will have to decide what decree the plaintiff is entitled to, if it is established to your satisfaction that he was the agent of the defendants, and entitled to be indemnified. Your Honour will find a case going to this extent: that where the contract to indemnify was against money that one party might pay on account of another, it was held that the contract was not broken

till payment was actually made, and therefore the plaintiff was not entitled to be indemnified till he had actually paid the money; whilst in another case, where the contract was to indemnify against all claims, it was taken that the breach of contract arose as soon as a claim was made against which the person had a right to be indemnified. I shall refer to those cases presently, and now only mention them to show that I am not taking merely hypercritical objections but matters that are substantial, if the Court has to consider whether the plaintiff is entitled to a decree, and what decree. Well, then, I do not know whether I did mention it or not, but this promise, whatever it was, that the plaintiff said Henderson made to him is distinctly denied by Mr. Henderson, and is entirely opposed to the evidence of Mr. Ritchie and Mr. Henderson as to what the actual arrangement was. Then, the plaintiff falls back on the implied undertaking to indemnify arising from the employment of the plaintiff as agent. As regards that, I submit that the undertaking to be implied from the employment of a person as agent is merely what we have admitted already as arising from the employment. I put it this way: If I say to a person, "Go and buy me a piece of land," a flock of sheep, or anything else, and he does so, I am bound to indemnify him against all acts done by him in pursuance of the authority conferred upon him, and to repay him all the moneys which he may have paid on my account. That is the contract arising from the employment of a person—namely, an undertaking to indemnify him against the consequences of all acts done in pursuance of the authority conferred upon him, and to repay him all the moneys which he may have paid on account. If Mr. Scott's account of the matter is taken, then there can be no implied, because there is an express, contract, which would certainly do away with an implied one. The plaintiff would not be in a position to say that the company, or anybody else, agreed to indemnify him against So-and-so and So-and-so, and to rely upon an implied authority as well. The implied authority can only arise if there is no express agreement. An implied authority can only arise, then, if the Court takes the evidence of Mr. Ritchie and Mr. Henderson and rejects the evidence of Mr. Scott; and in that case there can be no indemnity, because the circumstances as detailed by Ritchie and Henderson entirely dispose of the question of there being any indemnity at all, for they dispose of agency. I do not know whether I have made myself clear. What I mean to say is that it can only be on Mr. Scott's testimony that there is any express indemnity, because it is denied by Mr. Ritchie and Mr. Henderson. If Mr. Scott is to be considered as expressly indemnified, then he is only to be indemnified as against what he says his contract of indemnity was. If Mr. Scott's evidence is set aside, and the evidence of Mr. Ritchie and Mr. Henderson is taken, then the circumstances which they relate as being the circumstances under which Scott purchased are such as to disprove altogether the fact of there being agency at all, and to do away with any question of implied indemnity; but, even if indemnity is to be implied from the facts, then, I submit, that the indemnity to be implied is nothing approaching what the plaintiff claims in the prayer of his statement of claim. He claims, "That they be ordered to pay him the amount of the expenses in connection with the said arrest; his obtaining bail, and his release, and the legal and other expenses of the persons whom he procured to become bail; that an account be taken of all the other expenses, and that the defendants be ordered to pay the same; that the defendants be decreed to relieve him of the said license, and indemnify him against all future liabilities in respect thereof, and that they be ordered to find sufficient security to effect such indemnity." Now, as regards that, I submit that there is no authority whatever for the Court granting the relief prayed for in the statement of claim. It is shown that the defendant deliberately took this lease in his own name. He is bound to continue it in his own name, and cannot ask to be relieved of it, or be indemnified against future liabilities in respect of it, or to be secured against such liabilities, unless the agreement was that that should be done; and there is no allegation in the statement of claim that it should be done, or any evidence of such an agreement. There is a case of *Lloyd against Dimack* (Law Reports, 7 Chancery Division, page 398) which throws some light upon the subject. The marginal note is this: "Where two of five defendants jointly and severally liable to the plaintiff had become bankrupt: Held, That action might proceed against the other three defendants without bringing the trustees in bankruptcy of the two bankrupt defendants before the Court, or giving them notice of the proceedings. In a suit by the assignors of a lease claiming for his assignee indemnity in respect of breaches of covenants in that lease, the Court will direct merely payment on account of breaches of covenant already committed, and will not make a general declaration of the assignor's right to indemnity, giving liberty to apply from time to time in case of future breach." *Ranclaugh v. Hayes* was disapproved of, and the rule laid down as stated. In the judgment is the following: "The next question is whether I can give judgment in the form asked for by the plaintiff's counsel, declaring that the defendants are bound to indemnify according to the terms of the deed, and giving liberty to apply from time to time as breaches of the indemnity may occur. Now, in the first place, it will be observed that such a judgment would be highly inconvenient, because some of the leases are for long terms of years, and I should be giving a judgment which would require from time to time the interference of the Court over the whole residue of the term of ninety-nine years, beginning in 1860. I think such a form of judgment would be highly inconvenient. In the next place, I am not aware that, with the single exception of the case of *Ranclaugh v. Hayes*, any authority can be produced for a judgment of that description. That is a case which, I believe, has never been actually followed. It has been cited over and over again, but the industry and learning of the counsel for the plaintiff have not enabled them to produce a single case in which a decree has been made declaring the right to indemnity, and giving liberty to apply from time to time. Therefore, upon the ground of the great inconvenience of such a judgment, and looking at the fact that no such decree can be produced from the time of *Ranclaugh v. Hayes* down to the present time, and looking at the not very clear report of that case and the difficulty of ascertaining the exact circumstances, and especially what was the duration of the liability in respect of which that indemnity was declared, I feel myself bound to say that I cannot make such a declaration or

give such a general liberty to apply. All I do is to direct accounts, and that the defendants do pay the amounts found to be due on those accounts within fourteen days after the Chief Clerk's certificate." Now, your Honour, of course I need not say that, though I have referred to the kind of decree it ought to be, yet that I insist very strongly that the plaintiff is not entitled to a decree against any of the defendants. If he is entitled to a decree against one of them it can only be against the company, because his own evidence on the subject does not entitle him to a decree against either Mr. Ritchie or Mr. Henderson; and if the story of Mr. Henderson or Mr. Ritchie as to what took place is believed, then no question of agency arises at all, for the circumstances show that Mr. Scott was not the agent of the defendants, or any or either of them, but that he was the purchaser on his own account of this run, induced to make the purchase by a desire to oblige the defendants and by the promise of a reward for himself, and no doubt still further induced to it by the idea that the risk he was running was very slight and such as would not hurt him; with no idea on his part or on the part of anybody else that such extraordinary means would be resorted to as were resorted to, and that he would be the first to be pitched upon to be dealt with under the new régime, so to speak. I submit, therefore, that on the whole evidence the plaintiff is not entitled to any indemnity, and that if he is he can, on his own showing, only be entitled to indemnity against the company, and that the indemnity against the company cannot be by any means so extensive as the prayer of the statement of claim recites.

Mr. Chapman, in addressing the Court in reply, said,—I have a few words to address to the Court, and I will deal first with the question with regard to the form of the decree. The first thing we ask for is a sufficient decree to cover all these sums of money in respect of which we have been made liable. It is not seriously argued by my learned friend that we have come too early for this. All that my learned friend argues is that we have come too early for the ulterior relief respecting liabilities which have not arisen.

Mr. Haggitt: If you only wanted that you could have sued at law.

Mr. Chapman: That is possible; but what we could not have sued at law for is that, undoubtedly, the September rent being outstanding, we are day by day incurring a penalty.

His Honour: After judgment?

Mr. Haggitt: I can contend, and I think successfully, that the Government cannot recover any more rent at all.

Mr. Chapman: They have not proceeded to forfeiture.

Mr. Haggitt: There are two modes of proceeding pointed out in the Land Act for the recovery of rent—one is, I think, in clause 187, and the other in clause 188.

His Honour: Of which Land Act?

Mr. Haggitt: Of the Act of 1885; that is the Act now in force. There are two remedies given in that land-law. Under section 187 the rent may be recovered by distress or by an action in the name of the Commissioner of Crown Lands; and all the remedies are given which an ordinary landlord has, and there is nothing said about penalties in that section. Then, the 188th section deals with the matter in another aspect, which can be adopted if the Government choose. The 187th section says, "The rent may be recovered in like manner as any rent is or shall be recoverable by law, and, in case the sum shall be levied by distress, an order of the Commissioner of Crown Lands shall be a sufficient warrant and authority to distrain, any law or enactment to the contrary notwithstanding." There is complete provision there for the recovery of rent in any manner in which rent is recoverable by law. Then, the 188th section goes on to provide that, "If the occupier of any run shall not pay the rent within fourteen days after it shall be due he shall be liable to a penalty of not more than one pound per day for every day that such rent shall be in arrear after the day when it became due, to be added to the amount of the rent due." Now, the penalty in this case was assumed at £1 a day, and judgment has been confessed and entered up for the full penalty against Scott, but your Honour will see that the penalty is not fixed. The penalty is not to exceed £1 for every day; so that the penalty has to be adjudicated upon.

His Honour: Of course.

Mr. Haggitt: The Land Boards here and in Southland have apparently assumed that the penalty is a fixed sum.

His Honour: Of course, the penalty is not a fixed sum—£1 is the maximum. Is there nothing in the Act which says who is to fix it?

Mr. Haggitt: No; but under "The Penalties Recovery and Remission Act, 1888," it is recoverable before Justices of the Peace.

His Honour: The Justices have the option of saying whether it shall be 1d. a day or £1 a day.

Mr. Haggitt: That is so; until the penalty has been fixed no amount can be claimed. The 187th section continues: "Provided always that in case of the death of the lessee before the rent becomes due the time of payment may be extended by the Board to three months." And now comes the point: "If such rent and penalty be not paid within one month after such rent becomes due, the said Board shall cause to be inserted in the *Gazette* a notice to the occupier of such run that the same is liable to forfeiture; and if such rent, together with the full amount of the penalty, be not paid within three months after the date of such insertion the Commissioner of Crown Lands shall forthwith declare such run forfeited; and after any such declaration the interest of such occupier of such run shall cease and determine." My contention is this: The Board has the option of proceeding under the 187th or the 188th sections; but if they proceed under the 188th section, and demand and recover the penalty, then they are bound to go on under that section.

His Honour: There is a direction to forfeit?

Mr. Haggitt: Yes. If they sue for a penalty they must follow it up.

His Honour: Yes; I see. If they do anything showing an election they cannot afterwards withdraw.

Mr. Haggitt: That is the case.

His Honour : You contend that demanding a penalty shows an election to forfeit ?

Mr. Haggitt : Yes, and certainly that suing for it does !

His Honour : Well, does it ? Supposing they sue for a penalty, and the penalty is recovered and paid, then there is no forfeiture.

Mr. Haggitt : That is so ! But the Act provides : “ If such rent and penalty be not paid within one month after such rent become due ”—and more than a month has elapsed—“ the said Board shall,” &c. So that they have the option either to follow section 187 or section 188 ; and my contention is that if they follow section 188 they are bound to forfeit if the rent and penalties are not paid within three months.

His Honour : Yes ; I see the point.

Mr. Chapman : Well, I was saying the penalties were accruing from day to day. There is among those admitted in the allegations of the statement of claim one that there was due for rent £190, for penalties at £1 per day, £80, and for rabbiting, and in addition there were still penalties accruing from day to day. That is admitted in the statement of defence ; and my learned friend has added the fact not proved, and which is a fact, that judgment has been entered up for this amount—I believe, for the £80. Probably Mr. Scott confessed—I suppose he confessed judgment for whatever he was sued for. However, a matter of this kind is more conveniently discussed upon settling the minutes of the decree than upon argument now. I have never gone minutely into that question, or satisfied myself whether my learned friend is right about it. Curiously enough it is to be added to the amount of rent recovered, apparently, in some way ; and it looks rather odd to go to Justices to fix the penalty, and to recover the rent before another Court having sole jurisdiction. There are difficulties in the way of construing the section from any point of view.

His Honour : Of course, it has to be ascertained first. That is the only thing quite clear about the Act—that it must be ascertained by a Court.

Mr. Chapman : It must be if your Honour attaches any importance to the words “ not more than.”

His Honour : I suppose they mean what they say. What might be a reasonable penalty in one case might be unreasonable in another.

Mr. Chapman : That is a matter for after consideration. What we ask for mainly is a decree respecting the sums referred to. My learned friend is raising a difficulty which is quite unnecessary as to which of the defendants the decree should be against. Your Honour sees why these parties were all made defendants. It was necessary from a pleader's point of view. Under an implied obligation, Mr. Ritchie clearly proved the company liable ; but if Mr. Ritchie's statement was accepted that he made the arrangement, he would be liable, and, in so far as an express promise has been given, that would give rise to a different kind of action, and Mr. Henderson or the company or both would be liable under that ; but in reality there is no question about this : that if any one is liable the company is liable. The defendants themselves have taken care to make that perfectly clear—if any one is liable the company is liable, and nothing can be gained substantially by throwing out these other gentlemen, which would only affect a trifling question of costs. Now, inasmuch as they have joined in one defence—joined in employing solicitors and counsel—there could be no question of costs arise, and if they did they would be entitled to recover those costs, not against Mr. Scott, but against the company ; or, if they received an order for costs against Scott, Mr. Scott would be permitted to include it in the claim against the company. Nothing can be clearer than this, after the evidence of Messrs. Ritchie and Henderson : that in any point of view if they are rendered liable they are entitled to indemnity against the company, because they were acting as they believed in the best interests of the company ; indeed, on the question of morality, about which your Honour was enlightened—on the question of morality, the only complaint a moralist would be likely to make would be that their sense of duty to the company had dulled their sense of morality. These points are of no importance, inasmuch as my learned friend admits that if there was a promise to bear the liability, once the liability has arisen, we are entitled to ask for immediate payment, and payment to us ; but we have offered by the prayer to be satisfied with payment to the Crown ; so that my learned friend need not make himself uneasy about that. Then, if it were necessary for us to rely upon it, the Court would have no difficulty in saying that “ I will see you through it ” means “ I will bear your burdens ”—all those burdens such as might have been contemplated, and reasonably were contemplated, at the time. As to the other matters touched upon, I have little to say. Your Honour pointed out to my friend Mr. Haggitt that the early incubus of a fine was one of the things that the parties actually seem to have contemplated as likely to occur within the six months. They all knew that Scott would be liable to that ; and the burden of Mr. Ritchie's evidence, and the burden of Mr. Henderson's evidence, is—and it also comes out in Mr. Scott's evidence—that this liability in respect of the rabbits was the thing principally talked about. Mr. Henderson says that the rent was not mentioned, and apparently, so far as he was concerned, was not thought of, because he never heard or dreamt of a man failing to escape without paying rent when he really tried to. Now, your Honour has been asked to contrast Mr. Scott's story and the story of Messrs. Ritchie and Henderson. All I can say is that I again repeat this : that Mr. Scott has told a consistent story, and he has told a story consistent with the documents throughout, and that these gentlemen are working up-stream against their own documents. So in connection with the question raised now as to whether Mr. Scott could have stuck to this lease after six months if it had become profitable. Supposing, your Honour, Mr. Scott had gone as Mr. Henderson suggested, and had succeeded in selling this lease to Mr. Preston, and had netted a profit of £200 or £300, could it be said for a moment that he could have stuck to that profit, after he had gone upon a suggestion emanating from Mr. Henderson for the purpose of earning a commission on the sale ? On the other hand, where is our difficulty ? My learned friend says we must show this with great clearness, and cites “ Lewin on Trusts.” Where is the want of clearness, in face of the fact that Mr. Martin actually tried to sell what they say was Scott's run—that he actually assumed the

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

to indemnify Mr. Scott it is equally improbable that he agreed to forego any right to indemnity that might arise from the circumstances. Mr. Ritchie may, as he says, have warned Mr. Scott against risks, and said that the company would not take them. That the conversation detailed by Mr. Ritchie took place there can be no doubt, though Mr. Scott forgets it. Whether, however, Mr. Ritchie's memory is correct as to the exact expressions used is not so certain, as Mr. Henderson, who overheard the conversation, does not remember them. That there were serious risks if the run had been in the name of the company was true, and that the company would not take them was also true. There was, however, at that time no practical risk if the run were taken up in the name of Mr. Scott. What liability there was, Mr. Scott, of course, primarily incurred by his name being in the license, but it does not follow that he abandoned any right to indemnity he might acquire by having incurred the liability for the company's benefit. It is the very fact of this running the risk of liability that gives him the right to indemnity. Mr. Ritchie says that Mr. Scott at this conversation treated the matter very lightly, and Mr. Scott himself says he remembers nothing about the conversation. There is no sufficient evidence that if the circumstances place Mr. Scott in the position of a trustee he has contracted himself out of the ordinary rights which attach to such a position. That the effect of the purchase of the run in Mr. Scott's name with the company's money was to create a resulting trust of the run in favour of the company is, I think, plain. If before the trouble arose the relation between the parties had been in question it would have been beyond doubt that Mr. Scott was a bare trustee for the company; and this way of looking at it is, in my opinion, the true way of testing what the relation between the parties really was. If that was the relation between the parties in the first instance it is so still. Once the relation is established it lies upon the defendants to show beyond all doubt that the plaintiff has contracted himself out of the ordinary rights which attach to that relation. This they have failed to do. I do not think the case turns on a conflict of testimony. In order to assist the higher Court in dealing with the evidence in the event of an appeal, it is right to say that there is no reason to suppose that the witnesses on either side were untruthful. Experience, however, shows that where an arrangement is the result of verbal negotiations, and unexpected events subsequently happen, which give rise to a conflict of rights, there is a universal tendency in persons who endeavour to recall what actually took place to look at the original negotiations in the light of the subsequent events. Too much reliance, therefore, ought not to be placed on every detail given by a witness of such a negotiation, although the good faith of the witness be free from all doubt. These considerations, of course, apply to the evidence given on both sides. There is, however, very little necessity to apply them. I have had very great difficulty with respect to a point in connection with the case which was not taken by the defendants, but was mentioned by Sir Robert Stout at the hearing. He suggested that the transaction was "illegal and immoral." "Immoral" is a wide word; but, whatever opinion may be formed of the transaction, it certainly was not immoral in the sense which would make it illegal on the ground of its immorality. The Court, however, does not enforce illegal agreements, and if the agreement is illegal on other grounds ought the Court to give effect to rights alleged to arise out of it, even if the defendant does not raise this point? Certainly cases could be suggested of illegal agreements which the Court would not give effect to, even if the defendant raised no objection, and submitted to judgment. It is not for the benefit of defendants that the Court refuses to enforce illegal agreements, but in the interest of the public. I have a pretty strong opinion that the transaction was illegal. There are some grounds for contending that the mere taking-up of the license in the name of Scott on behalf of the company was contrary to law. Apart, however, from that, the intent and effect of the agreement were to impose upon the Crown as licensee a man who had purchased in bad faith, with the intention of not fulfilling his bargain, and who was unable to fulfil it, and to prevent the Crown obtaining a *bona fide* tenant. The agreement therefore interfered directly with the due administration in manner provided by law of Crown lands, and the natural tendency of it was to injuriously affect the revenue derived from Crown lands. This seems to me to be contrary to public policy in the strictest sense as tending to cause a direct injury to the State. Ought, then, the Court to interfere on its own motion if there is reason to believe that the agreement was illegal? Of course, I could not in any case decide against the plaintiff on this ground without further argument. The point, however, was not raised by the defendants, and there is authority in a case which bears some analogy to the present that it was for them to raise it (*Haigh v. Kay*, 7 Ch., 473). As, therefore, there is some authority on the point, and as to give effect to the objections would benefit the principal offender, though I am not free from doubt on the subject, I pass over the objection, and give judgment for the plaintiff. The plaintiff is entitled to a decree against the defendant company, somewhat on the lines of the decree prayed, and to the costs of the action.

Mr. Chapman: As to the scale of costs.

His Honour: It will be on the highest scale. I do not know exactly what the amount was—over £500.

Mr. Chapman: Practically the amount involved in the action is some thousands of pounds.

His Honour: I have not considered that.

Mr. Chapman: The value of the run is some thousands of pounds. The total rent amounts to some £3,000 or £4,000 in the course of the ten years.

His Honour: But that is hardly the way—

Mr. Chapman: No, your Honour, the amount actually claimed was £685; that is the amount under the present claim, but it settles future rights to a very much larger amount—to the extent, probably, of some thousands.

His Honour: Yes. The trial occupied two days.

Mr. Chapman: It closed at 2 o'clock in the afternoon of the second day.

His Honour: There were not many witnesses; it was not a heavy case to get up at all.

Mr. Chapman: No, your Honour.

His Honour : I think it might be taken as if £1,200 were claimed. I think that will be reasonable compensation.

Mr. Chapman : And second day and second counsel?

His Honour : Yes.

Mr. Chapman : We can settle the decree in Chambers to-morrow.

His Honour : Very well; you had better draw up what you want.

TUESDAY, 12TH APRIL, 1892.

Motion to settle minutes of decree.

Mr. Chapman appeared for the plaintiff, and *Mr. Haggitt* for the defendants.

After argument, his Honour granted the decree in the following terms: "Order made that the defendants, J. M. Ritchie and William Henderson, be discharged from the suit, and that the defendants, the National Mortgage and Agency Company of New Zealand (Limited), do pay to the plaintiff the sums of £685 0s. 1d. and £10 10s. mentioned in the statement of claim. That the defendant company do indemnify plaintiff against all actions, suits, claims, and demands which may be made by or on behalf of Her Majesty the Queen, or by any person, for or in respect of rent, penalties, or any other liability of any kind whatever consequent upon or arising out of the circumstance of the plaintiff being the licensee of the said run and premises. That the defendant company do pay to the plaintiff his expenses in connection with his arrest, obtaining bail, and his release, and the legal and other expenses of the persons whom he procured to become bail; such costs to be fixed by the proper officer of the Court. That the defendant company be ordered to reimburse the plaintiff the sums of £15 3s. and £5 5s. referred to in the said statement of claim. That the defendant company do pay to the plaintiff his costs of this action, as upon a sum of £1,200 being claimed, allowance for second day and second counsel, witnesses' expenses, and disbursements to be settled by the proper officer of this Court."

Mr. Haggitt asked that there should be stay of proceedings on security being given in the event of appeal. He said that of course it was apparent if they paid *Mr. Scott* the money there would be no chance of getting it back again if they succeeded in the appeal.

Mr. Chapman said they would undertake not to hand the money to *Mr. Scott*, but he did not see that they could undertake not to pay the debt to the Crown.

Mr. Haggitt replied that in either case it would be equally gone.

His Honour said the usual course, if security was given, was to give stay of proceedings.

Mr. Chapman thought that the usual course applied to usual cases; this was a special case. The money was due to the Crown, and if *Mr. Scott* could not give security, what was to happen if he were again arrested?

His Honour : I do not suppose that while the appeal is pending the Government would act. It would be tyrannous.

Mr. Chapman : Some of the critics said the action of the Government was tyrannous before.

His Honour : That is a different thing. There would be no object now in it.

Mr. Chapman asked that the appeal should come on at the May sittings—that that should be a condition of proceedings being stayed. *Scott's* position, learned counsel remarked, would become intolerable.

His Honour : The only awkwardness *Scott* is exposed to is that the Government may arrest him again for the rent; but I should suppose they are not likely to do that while the proceedings are pending anyhow.

Mr. Haggitt said they were not bound to give notice for twelve months, but they did not intend to take advantage of that, and, if his Honour wished, the terms might be that notice of appeal should be given within thirty days. He did not want to give notice of appeal until they were determined to go on with the appeal.

His Honour directed that, if notice of appeal be given within thirty days, and security be given within six days thereafter, either to prosecute the appeal at the October sittings of the Court of Appeal and perform the judgment of the Court of Appeal, or to perform the judgment of this Court, action be stayed until after the sitting of the Court of Appeal.

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