

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