

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.