

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