

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