

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, 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 |

(c.) At the rate of 150 words per minute. Takes 5 minutes.

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