other is a *cestui que trust*, he is personally liable to indemnify the trustees for any loss accruing in the due execution of the trust, and under that doctrine I shall hold that the estate of the testator became liable to indemnify the trustees against the payment of this large sum of money." And that is the process in Fraser against Murdoch, 6 Appeal Cases, 855. That was one of the cases arising out of the failure of the City of Glasgow Bank. The trustees were all held personally liable. Possibly somebody may have in some cases warned them, You are undertaking a fearful risk—undertaking a fearful liability: but they were all held liable. The question arose about indemnifying them, and this is what is said, at page 872: "It was argued that the maker of a trust is personally bound to indemnify the trustee for all costs and liabilities properly incurred in the execution of the trust; but I do not think that is the law. No doubt any one who requests another to incur a liability which would otherwise have fallen on himself, is, in general, bound at law as well as in equity to indemnify him. This principle applies to many cases, and, where a trust is for the benefit of the maker of a trust, it may apply to the trustee. Balsh *v.* Hyham (2 P. Wms. 453) is a good example of a case where it did apply, and there are many others. In Jervis *v.* Wlferstan the Master of the Rolls goes so far as to say, 'I take it to be a general rule that where persons accept at the request of another, and that other is a *cestui que trust*, he is personally liable to indemnify the trustee from any loss accruing in the due execution of the trust. Perhaps this rule is too broadly stated, as something must depend on the nature of the trust and the interest of the *cestui que trust;* but it is not necessary now to say more than that this rule has no application to a case where the maker of a trust is not a *cestui que trust*.'" Generally the proposition is not, as I understand, seriously disputed by my learned friends. It says, in a very concise way,——

Mr. Solomon: It is not disputed at all.

Mr. Chapman: I refer to the case of Reid against Anderson, in 10 Queen's Bench Division, page 100. That was Mr. Justice Hawkins's celebrated decision. That is a case illustrating how far the doctrine may go. That was a betting case. A person commissioned a turf commission agent to make bets for him; he made the bets for his principal, and lost them; and, before the time for paying them came, the principal repudiated the bargain. The commission agent, nevertheless, paid the debts. He was under no legal liability to pay them, but he was under an obligation to pay them, and the Court held that the person who commissioned him had irrevocably constituted him a person to make these bets and to pay them, though they were not legal liabilities. Then, your Honour, as to the question for what the defendants are liable: that does not seem to have been discussed, and I do not know whether my friends propose to say anything about it. The two principal items are the rabbit charge and the rent; but there are other charges. There is this rabbit fine, as to which we allege a general liability, and an express promise—the rabbit fine and costs incurred by Mr. Scott then, and in connection with his arrest. We submit, your Honour, that all this will be included in the indemnity. As to a person recovering his own costs, where he has placed himself in a predicament at the request of another, I cite the case of Dixon v. Fawcus, 30 Law Journal, Queen's Bench, page 137, and the cases referred to in Smith's "Master and Servant" in connection with the right of a servant to indemnity under similar circumstances. In this edition of Smith's "Master and Servant," the third edition, page 190, the law is there summed up, and this case is referred to in this way: "Where the defendant employed the plaintiff, who was a brickmaker, to make bricks with R.'s trade-mark, and R. filed a bill in Chancery against the plaintiff which he compromised, it was held that he might recover from the defendants the cost of the Chancery suit." That does not fully state the case. What he was held entitled to recover was this: There was a question raised as to whether this servant could be held liable by R., the owner of the trade-mark. The defendant, his employer, was held not entitled to go into that. He left his servant exposed to a bill in Chancery, and his servant made the best settlement he could; he compromised the case—that is, he made the same kind of settlement in his master's interest which he would make in his own interest. He paid off the plaintiff who had filed the bill, and incurred costs of his own; and it was held he was entitled to recover both amounts. The rules upon which we rely as to these various items it is not really important to discuss now, because in any decree that your Honour made it would naturally be left open to the defendants to review this liability in point of detail. The rule we rely upon is very much like the common-law rule of damages—that this indemnity being asked for and refused is equivalent to a breach of contract; and we ask by way of damages a sum sufficient to indemnify Scott for all liabilities which he incurred *bonâ fide* in the execution of the office confided to him, whether it be called agency or trust.

Mr. Solomon: Included in damages?

Mr. Chapman: It does not matter what it is called. Damages is one form of indemnity, and we are quite indifferent in what form we receive the indemnity; but what we do ask is this: In pursuance of the case cited yesterday by my friend Sir Robert Stout, of Hobbes and Wayet, we say this: that we have been unduly exposed to liability, and the moment the time has arrived for us to call upon Mr. Scott's employers to relieve him of that liability he is entitled to a decree of indemnity, which will enable him for the future, as each new liability arises, to work under that decree to obtain relief from time to time. As, in Hobbes and Wayet, Mr. Justice Kekewich says, "I must give the plaintiff the relief he claims by way of indemnity," &c., we shall ask—in addition to clearing Scott from liability for these various sums of money and paying the costs—for a declaration that the defendants, or some of them, are liable to indemnify him; and under that, as claims from time to time arise under this lease, or in respect of future rabbit transactions, the defendants shall be asked to treat them as their own. They can take over the run if they like, if they choose to take an assignment. We say it is theirs, and I shall show your Honour presently by reference to the evidence that it is theirs, and has been treated as theirs throughout. Now, your Honour, I propose to address myself to the case so far as I can address myself to it, in view of the fact that I have heard nothing from my learned friends as yet but my friend Mr. Solomon's opening. I have not heard on what propositions of law they rely, or on what proposi-