asked, I think, with the view of obtaining corroboration, "Was your room next to Henderson's, and was your door open?" I think Mr. Ritchie was asked that; at any rate, Mr. Henderson was, and Mr. Henderson was called to corroborate the conversation which he was near enough to hear. Yet, your Honour, with this singular result, that, though Mr. Ritchie says he fully warned Scott of these liabilities that he was running into, Henderson never heard it. Henderson, though he says he overheard the conversation, and was in a position to hear the conversation, never heard that; and he details a similar conversation and a similar warning on a totally different occasion, several weeks earlier, as to which Mr. Ritchie does not speak at all. Now, your Honour, a reference to the evidence will bear me out in that.

His Honour: Do you mean the detailed conversation with Mr. Ritchie?

Mr. Chapman: No; when both of them were together in the room. They were together at that conversation on the 6th of January, and thundered these warnings at Scott. This was Mr. Henderson's version. Mr. Ritchie in no way bears that out. Mr. Ritchie says he gave these warnings with reference to this transaction, and Mr. Henderson who was virtually present in the room, within hearing, heard no such thing. Now, I ask your Honour to accept Scott's version of this. He says that his conversation was with Mr. Henderson in connection with this transaction, and that any conversation with Mr. Ritchie was a mere passing conversation, certainly containing a kind of warning, but a jocular conversation, at Mr. Ritchie's door—the two doors being close together—as he went out. Now, Mr. Ritchie and Mr. Henderson would have the Court accept this—that this warning was given to Mr. Scott in such terms that Scott renounced and contracted himself out of his undoubted legal right, a right to be indemnified by his principals. I submit, your Honour, that that is absurd on the face of it, for the reason that I have already given, and it is totally inconsistent with Mr. Henderson's statements. My friend Mr. Solomon tried very hard to bring him up to the scratch in examining him, and apparently brought him up once or twice; but the burden of Mr. Henderson's evidence really was that the subject of indemnity was never mentioned. Yet, your Honour, he has virtually set up a plea that Scott released him from the indemnity. The real explanation now, your Honour, of these differences is this—and if my friend Mr. Solomon is here now he can hear the further explanation of the unconventional remark I made to your Honour at the outset, if further explanation is wanted: It is quite possible Mr. Ritchie may have said to Mr. Scott, "You are taking a big liability; there is this awkward rabbit question, and this rent question." That is quite possible; but does that amount to a release? Scott knew he was taking a position which might lead to extreme unpleasantness. His first question was, "Is there anything 'crooked' in it?" He had heard of dummying, and there is a kind of dummying supposed to be very "crooked," and a kind of dummying not supposed to be "crooked." There is a delicate distinction between the two classes apparently; and there are some people who draw a line between them, though both are designed to impose upon the Government. There are some people who draw the line between the kind of dummying involving making a false declaration and the kind of dummying that does not. Scott asked if there was anything "crooked" in it, and the experienced stock and station agent assured him there was not; but that it was all right. So it is quite possible a warning may have been given to Scott. Scott says there was something said in a flippant tone on the stairs; and it is possible that on a former occasion, which Scott has forgotten, something was said to the effect, "You are exposing yourself to a big liability, Scott," but that is a very different thing from an arrangement, a contract, that Scott should not only stand the first brunt—the extreme unpleasantness of being accused of being a dummy, of being paragraphed in the papers as a dummy, of being fined for the rabbit nuisance as a dummy, and possibly being subjected to something a good deal further as a dummy—there is a good deal of difference between that and a contract to bear the ultimate liability. And yet that is what the defendants have undertaken to prove. I submit the burden is entirely upon them, and that the real nature of the conversation was to point out to Scott that he was to stand a lot of unpleasantness, and possibly a rabbit prosecution, rather than that he should stand any risk whatever, still less any ultimate risk; and, least of all, the risks they say were never contemplated—the risk of being sued for the rent, and for the enormous cost of cleaning the country of rabbits; and all this for £15 or £20. Now, the question here is, I submit, has Scott knowingly and deliberately contracted with the defendants that he shall not have the ordinary recourse the law gives him; and I submit the defendants will have to prove that he has so contracted. Now, your Honour, it is possible that a party may enter into such a contract. I admit that a trustee may contract, in taking shares on behalf of a trust estate, that he is to bear the whole burden, and "stand the racket." A man, if he is foolish enough, may so contract himself. A servant may contract that in going into a liability he shall take the whole burden, and not only the unpleasantness, but the white-washing; but in order to impose such a burden upon a solvent man—a man who may have obligations to the outside world in the nature of debts, but a man undoubtedly engaged in commerce, in commission transactions—in order to impose such a contract on such a man, it must be clearly made out; and these gentlemen who have chosen to leave all this matter "mum," and have chosen not to put a word of it in writing, and not to express themselves in a definite way, for their own reasons, lest they should be found out—these gentlemen who have chosen to do this must take the burden of any misunderstanding on the subject, and must take——

Mr. Haggitt: Mr. Scott is one of the gentlemen.

Mr. Chapman: Mr. Scott is one of the gentlemen, otherwise he would not be in Court—a gentleman procured by other gentlemen in a higher position in life; that is all I can say—more humble than they probably, if my friend will have it so.

Mr. Haggitt: Why should that change the burden of proof?

Mr. Chapman: Because they were procuring Mr. Scott, in their own interests, in connection with a transaction—every detail of which was known to themselves—every liability respecting which was known, or might have been known, to themselves, in which they had fears which he need not be expected to have so long as he relied upon them. If Scott, your Honour, understood