Court will not entertain a case, where the subject-matter of the suit or action has been in fact settled before litigation, for the mere purpose of determining who is entitled to costs: *Griffin* v. *Brady*, 39 L. J. Ch. 136; *Re Holden*, 39 U. C. R. 88; *Samson* v. *Haggart*, 25 Gr. 543. The same principle underlies the uniform practice observed in the Courts of refusing to entertain an appeal on the question of costs alone, save in certain special and exceptional cases. In what may may be called the leading case on this subject (*Owen* v. *Griffith*, 1 Ves. Sr. 249), Lord Hardwicke said that the foundation of the rule was to prevent vexation and trouble; for, as cases in equity often depend on abundance of circumstances, about which as the reason of mankind might differ, it would create perpetual appeals. However, in that case an appeal for costs was entertained on behalf of an incumbrancer who had been deprived of costs and ordered to pay the plaintiff's costs. It was said that being an incumbrancer for a just debt, he had a lien on the estate for costs, as well as for his demand, and the deprivation of costs, therefore, affected the merits of the case. This case indicates the first and chief exception, and may be formulated thus: Where the party has a *right* to costs and is deprived of them, he can appeal. Such a case arose in *Cotterell* v. *Stratton*, L. R. 8 Ch. 295, where a mortgagee, not guilty of vexatious or oppressive conduct, was refused his costs of suit in a suit to redeem. Lord Selborne said that the right of a mortgagee in a suit for redemption or foreclosure to his general costs of suit, unless he had forfeited them by some improper defence or other misconduct, was well established, and did not rest upon any exercise of that discretion of the Court which in litigious causes was generally not subject to review. The Lord Chancellor then referred to another of such cases, namely that of a trustee, in the following language:—The contract between the author of a trust and his trustees entitled them to all their proper costs incident to the execution of the trust, by way of indemnity, out of the trust estate, as between themselves and the *cestuis que trust*. These rights resting substantially upon contract can only be lost or curtailed by such inequitable conduct on the part of the mortgagee or trustee as might amount to a violation or culpable neglect of his duty under the contract.

The effect of Lord Selborne's language as to a trustee is, however, considerably modified by the subsequent decision in *Re Hoskins' Trusts*, L. R. 6 Ch. D. 281, where Lord Justice James held that where a trustee has been deprived of costs on account of impropriety of conduct, an appeal on that ground for costs alone will not lie; and, speaking generally, he said, the costs of a trustee are subject to the discretion of the Court. See also *Taylor* v. *Dowlen*, L. R. 4 Ch. 697.

The position of trustees was again brought before the Court of Appeal in *Re Chennell*, 26 W. R. 595. An order was made directing the payment of a trustee's "costs, charges and expenses," and the Court held that was appealable. The Master of the Rolls pointed out that a great deal more than costs was included in the allowance of charges and expenses. In one sense these were in the discretion of the Court, but not in the ordinary sense. The Court had a discretion for gross misconduct to deprive a trustee of them, and, therefore, he said it is a very substantial matter, when you have a case of gross misconduct charged against a trustee, that you should deprive him of his charges and expenses out of the fund. This decision may, perhaps, afford a clue to the reconcilement of the