

This was an action brought by the complainants against a firm of auctioneers who had been employed to sell certain goods for the plaintiffs, and who were to be paid a certain commission therefor together with their cash disbursements. In making their charges the auctioneers put in the full amount of the charge for certain newspaper advertisements where, as a matter of fact, the newspapers had allowed them a certain percentage as commission on such advertisements. The custom to allow such commission was established by proper evidence. The court disallowed the commissions but refused to allow the plaintiff's contention that they could recover from the defendants the total commission agreed upon for their services as auctioneers.

The more recent case of *Stubbs v. Slater*,⁹ the lower court refused to allow a stockbroker his commission because it was shewn that he was getting another commission from another broker with whom he dealt in the course of carrying the principal's stock. The *Hippisley* case was expressly limited to cases where the agent's compensation was separable, and he could be deprived of the portion of the compensation due for the part of his conduct which was unfaithful, and yet allow him that which he had earned for the part of his conduct that was faithful. On an appeal the decision in the case was reversed on the ground that the plaintiff ought to have known from the form in which the account was rendered that the broker was getting a commission for carrying it. There is also some loose talk in this decision to the effect that the broker would be entitled to a reasonable compensation, even if he could not get the stipulated compensation.

It is hoped that the stringent rule applying to all fiduciaries will not be weakened in this way in this country, and in the only case¹⁰ which has been found bearing upon it, though the English was not considered, the general rule was rigidly enforced. The plaintiff as broker for defendant was to sell land and have as his compensation all over \$2,000. He then made a contract to

(9) (1910) 1 Ch. 195, 203, 632.

(10) *Little v. Phipps*, *supra*, was decided since the above was written.