

English case of *Broughton v. Broughton*, 1855, 5 De. Gex M. & G. 160, and his statement of it has ever since been accepted as practically the last word on the matter: "The rule applicable to the subject has been treated at the bar as if it were sufficiently enunciated by saying, that a trustee shall not be able to make a profit of his trust; but that is not stating it so widely as it ought to be stated. The rule really is, that no one who has a duty to perform shall place himself in a situation to have his interests conflicting with that duty; and a case for the application of the rule is that of a trustee himself doing acts which he might employ others to perform, and taking payment in some way for doing them. As the trustee might make the payment to others, this Court says he shall not make it to himself; and it says the same in the case of agents, where they may employ others under them. The good sense of the rule is obvious, because it is one of the duties of a trustee to take care that no improper charges are made by persons employed for the estate. It has been often argued that a sufficient check is afforded by the power of taxing the charges, but the answer is this, that that check is not enough, and the creator of the trust has a right to have that, and also the check of the trustee."

In consequence, in order to permit of a testator's law adviser acting as his trustee and for other motives, clauses expressly permitting him to receive the usual remuneration came to be almost invariably inserted. These clauses have, however, been adversely commented on twice by Mr. Justice Kay, *Re Chappel*, 27 Ch. Div. 584; and in *Re Fish*, 1893, 2 Ch. 413, his latest dictum being: "I wish to say on my own behalf that when a solicitor trustee himself prepares a document containing a clause of that kind in his own favour, he must not be surprised, if, when the matter comes before the Court, the Court is inclined to watch very jealously indeed his conduct as solicitor and trustee under the clause."

Notwithstanding the obvious intention of these clauses, which is to place the trustee agent in the same position as if he were not a trustee, yet in England, they have come to be regarded as conferring a benefit; in other words, as being of the nature of a legacy. Certain consequences which are not beneficial to the solicitor