REVIEW OF CURRENT ENGLISH CASES.

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PRINCIPAL AND AGENT—SUB-AGENT—SECRET PROFIT MADE BY SUB-AGENT—PRIVITY OF CONTRACT—FIDUCIARY RELATION—RIGHT OF PRINCIPAL TO CALL SUB-AGENT TO ACCOUNT—MONEY HAD AND RECEIVED—DECLARATORY JUDGMENT.

Powell v. *Jones* (1905) 1 K.B. 11 was another action involving the right of principals to recover a secret profit; but in this action the secret profit had been received by a sub-agent, and consequently the case was complicated by questions of privity of contract and the legal relationship of the parties. The plaintiffs had been employed as agents for a commission, to procure for the defendants a loan, and with the assent of the defendants the plaintiffs employed one C. as sub-agent on the footing that he should share the commission to be paid by the defendants; and the defendants were aware that C. was acting in the matter for them; C. secured the required loan to be made; but, without the knowledge of the plaintiffs or the defendants, C. secured from the lenders a commission for introducing the business to them, and by the same agreement further sums were to be payable to C. in the future in respect to the transaction. The plaintiffs sued to recover their commission, and the defendants set up by way of defence and also by counterclaim, to which C. was made a party, but to which the lenders were not parties, that the plaintiffs by permitting C. to receive the commission from the lenders had forfeited their right to any commission from the defendants, and that the defendants were moreover entitled to be paid the commission received by C. from the lenders. Kennedy, J., who tried the action, gave judgment for the plaintiffs on the claim, and for defendants on their counterclaim as against C. only. C. appealed from this decision, and the Court of Appeal (Collins, M.R., and Stirling and Mathew, L.JJ.) affirmed the judgment of Kennedy, J., on the ground that privity of contract between C. and the defendants had been established, and even if it had not, C. was in a fiduciary position in relation to the defendants, which debarred him from making a profit on the transaction unknown to them; therefore, that the defendants were entitled to recover from him the amount he had actually received, but in regard to the future payments, as the