

for them any articles which they might require and which he was in a position to obtain. Such assistance rendered to the principal seems to fall naturally within the scope of an agency such as this. For articles so supplied to them by their agent, plaintiffs are bound to pay "all expenses"—but only, I think, expenses. The remuneration—and the whole remuneration—receivable by the agent is set out in the contract. He is to get in certain cases 10 per cent. and in other cases 20 per cent. of the contract price. If he, in addition, makes a profit on the articles required for the carrying out of the contract, he is getting out of the work more than the contract entitles him to. Defendant must, therefore, file a new account of the amounts due for these articles, eliminating therefrom all profits to himself.

The second branch of the counterclaim is a claim for \$500 damages for alleged loss of profits owing to the default of plaintiffs. No charge of this nature is made against Dyson in defendant's books, nor is such a charge included in the items of any of the bills rendered from time to time by defendant. Even in a bill, put in as exhibit 25, which was used as the basis of an attempted settlement after both parties had placed the matter in the hands of their solicitors, there is no mention of such a charge. It first appeared in the counterclaim, six months after the occurrences complained of. It evidently belongs, therefore, to that numerous class of causes of action which are resurrected after the parties get into litigation over other matters, and which would never have been heard of were it not for that litigation. If such a claim is supported by proper evidence, it must, of course, be given effect to, notwithstanding the circumstances in which it is brought forward; but that evidence will naturally be more carefully scrutinized than would perhaps otherwise have been the case. What is the evidence here? Cole says that, as he understood the contract, he was to canvass for plaintiffs only when Dyson was here to go with him, and that, owing to the infrequency and shortness of the latter's visits, coupled with his failure to supply designs and price lists, contracts were lost which might otherwise have been secured. I have already stated that, in my view of the meaning of the contract, Cole's duty was to canvass for and secure orders irrespective of Dyson's presence or absence. I have no doubt that Cole was in a position to do this, notwithstanding