Such being the nature and the terms of their servant's employment, plaintiffs claim . . . an account of profits made by him by engaging in work in breach of his agreement with them for exclusive service, on the grounds, first, that the time which he so spent was their time, and that they are, therefore, entitled to his earnings or profits made by using it for his own purposes, and, second, that as their servant he was bound to refrain from engaging in any competitive business, and that to that extent his relation to them was fiduciary, and such as would entitle them to an account of profits made by him in breach of such duty. . . .

Defendant . . . occupies the position of a servant or employe rather than that of an "agent," in the sense in which that word is generally used.

Counsel for plaintiffs strongly urged upon us that the profits of which his clients seek an account were made by defendant out of transactions within the terms of or in the course of or in connection with his employment, within the purview of the line of cases which requires agents to account for secret commissions and other profits or advantages derived by them from the transaction of the business of their principals, beyond the renumeration for which they have agreed to render their services. I am unable to agree with this contention. On the contrary, I think it is absolutely clear that the profits claimed by these plaintiffs were made, if at all, in independent transactions, undertaken by defendant as principal, and in no wise connected with or arising out of his employment by the plaintiffs—transactions to which this line of authority has no application.

Speaking with very great respect for the distinguished Court by which Morrison v. Thompson, 9 Q. B. 480, was decided, it is not at all clear that the distinction between cases in which the agent or servant has been compelled to disgorge profits made out of his employment, and those in which the servant's earnings from entirely independent employment have been held to belong to the master, was given the consideration to which it is entitled. In the judgment of the Lord Chief Justice both classes of cases are discussed. The essential difference in the principles upon which the decisions rest is not adverted to. It should be noted that in the former class of cases the liability of the agent to account to his principal is for money had and received—a contractual obligation to account for and pay over to the principal everything received beyond the stipulated remuneration, the relation between them being that of debtor and creditor, and not that of trustee and cestui que trust: Lister v. Stubbs, 45 Ch. D. 1; Powell v. Evans, [1905] 1 K. B. 11. In this aspect there is more resemblance between them. But other-