

whose transactions are portrayed to us, admonishes us that we cannot reiterate them too often nor enforce them too rigidly. The court below placed the decree from which their appeal was taken upon these indisputable principles."

The general rule has been equally well established in England.⁷ An exception has, however, been made in recent English litigation, which will in many case destroy the efficacy of the general rule as a preventive measure.

The English decisions appear to have drawn this distinction, that where the transactions are separable and it can be determined as to which of the transactions the agent has obtained a secret profit or commission, such transactions are to be separated from those in which he has dealt fairly with his principal, and that the agent will not be deprived of his commission on all such transactions.⁸

In the *Hippisley* case, Kennedy, J., said: "I feel it is difficult to lay down any definite rule upon the subject with confidence, but I would venture to suggest the following: That where the agent's remuneration is to be paid for the performance of several inseparable duties, if the agent is unfaithful in the performance of any one of those duties by reason of his receiving a secret profit in connection with it—and I here use that word 'unfaithful' as including a breach of obligation without moral turpitude—it may be that he will forfeit his remuneration, just as in certain cases a captain of a ship might be held in the Admiralty Court to forfeit his wages as a result of misconduct in any branch of his duty as a captain; but where the several duties to be performed are separable, as to my mind they are in the present case, the receipt of a secret profit in connection with one of those duties would not, in the absence of fraud, involve the loss of the remuneration which has been fairly earned in the proper discharge of the other duties."

(7) See *Andrews v. Ranney* (1903), 2 K.B. 635.

(8) *Hippisley v. Knee Brothers*, 1 K.B. 1. The Mass. Supreme Court, on March 3, 1911, in the case of *Little v. Phipps*, criticised the *Hippisley* case and affirmed the general rule. 94 N.E. Rep. 260.