

Although the principle of publicly tipping servants and the higher grades of agents has not yet reached in this country the unpleasant proportions it has attained in Europe, it is to be feared that we are already in the midst of a wide-spread development of a most serious outgrowth of the tipping policy. It is well known to the Bar, as well as to business, that eager dealers are constantly resorting to the practice of giving some secret personal benefit to the representatives of others with whom they trade. The full extent of it from its very nature cannot be discovered, but in any agency case counsel will do well to probe this feature of the agency, and will be almost certain to produce surprising results. Some States have enacted statutes punishing as a misdemeanor the acceptance of a secret discount, or rebate, by an agent.¹

These statutes, however, are seldom enforced, and are generally overlooked by the Bar. A still more effective punishment in many cases is the well-established rule founded in the soundest common sense that an unfaithful agent is not entitled to compensation for his services.

An agent is held to uberrima fides in his dealings with his principal, and if he acts adversely to his employer in any part of the transaction or omits to disclose any interest which would naturally influence his conduct in dealing with the subject of employment, it amounts to such fraud upon the principal as to forfeit any right to compensation for services.² "The defendant was entitled throughout the negotiations to command the personal fidelity and sound judgment of his agent to whom he had entrusted the business, uninfluenced by such an arrangement. But, after the plaintiff had placed himself in a position where according to a common experience he must be unduly affected by a regard for his individual advantage and that of

(1) See Acts of 1904, Ch. 343 of Massachusetts.

(2) *Murray v. Beard*, 102 N.Y. 505, 508 Acc. *Schliesbaum v. Rundbaken*, 81 Conn. 623, 625; *Wadsworth v. Adams*, 138 U.S. 380, 388; *Schaeffer v. Blair*, 149 U.S. 257, 257; *Williams v. McKinley*, 65 Fed. 4, 7, 11 (C.C. Minn., 1894); *Trice v. Comstock*, 121 Fed. 620, 622 (C.C.A. Mo., 1903); *Hobart v. Sherburne*, 66 Minn. 171, 172; *Williams v. McKinley*, 74 Fed. 94, 95 (C.C.A. Minn., 1896).