obligations as a fiduciary agent of his employer[6]. It is not altogether easy to define the boundary between the cases controlled by this conception, and those reviewed in s'b-d. (*a*), *ante*. But the decisions and dicta there referred to show clearly that the doctrine of agency cannot be successfully by the employer invoked, unless something more is shown besides the facts of employment and use of the employer's time and appliances for the purpose of making the experiments which led to the discovery in question.

(*d*) *Acquiescence by employé in the taking out of a patent by his employer.*—Where a servant has surrendered to his master his rights as an inventor, by expressly or impliedly permitting him to incur the trouble and expense of obtaining a patent, it cannot be said that the master obtained the patent surreptitiously, or in fraud of the servant's discovery[7].

(*e*) *Assignment of patent rights by employé.*—An inventor who is hired at a specified salary, without abatement for loss of time and without payment for extra time, and agrees that all the improvements made by him, while engaged in setting up,

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[6] In a case where a chemist employed in a factory had discovered certain processes, Kekewich J. thus stated his reasons for a decision in favour of the employer: "For all purposes, except that of being the first and true inventor, he was the agent of his employers. His labours were theirs, he worked in their laboratory with their materials, as well as their assistance, and the benefits of his discovery, morally and equally belonged to them. *Kurtz* v. *Spence* (1888) 5 Rep. Pat. Cas. 181. Other rulings of the English Patent Office to the same effect are cited in Frost, Patents, (2nd Ed.) p. 14.

In *Worthington Pumping Engine Co.* v. *Moore* (1902) 19 Times, L.R. 84, the evidence showed that the relationship between the plaintiff and the defendant, as their general manager in England, was of the closest and most confidential character, and that it was part of his duty to communicate and consult with the head office about any modifications in the construction of the article manufactured, and to offer such suggestions as might seem to him advantageous to the corporation in respect to the business he controlled. The inventions which he had patented were, upon examination, found to be largely based upon information communicated to him as manager, and, having regard to the manner in which fresh details of construction were from time to time brought into existence, it was extremely difficult to determine to whom, among the various officers of the company, the merit of such details should be attributed. Upon this state of facts it was considered that the plaintiffs were entitled to a declaration that the defendant was trustee for them of the patent in question.

[7] *Dixon* v. *Moyer*, (1821) 4 Wash. C.C. 68, (action by master for infringement of patent).