

to me at all improper, I am unable to say that the contrary conclusion, supported as it is by some evidence, is erroneous. . . .

If the servant is to be held accountable to his master for profits which he makes, during the term of his employment, by using his spare time in business similar to, and, because of its competitive character, likely to be injurious to, that of his employer, it must be, as Lord Ellenborough indicated in *Thompson v. Havelock*, 1 Camp. 527, because it is contrary to sound ethics to permit a man to retain profits made out of an undertaking which gives him an interest conflicting with his duty. . . .

It would be most dangerous if immunity to the servant were assured by confining the redress of the employer to the recovery by way of damages of compensation for such special loss, or even actual general loss, as he could with any reasonable degree of certainty trace to this cause: *Ratcliffe v. Evans*, [1892] 2 Q. B. at p. 528. The contrary view seems to be so opposed to sound principles, that, although we do not find the proposition explicitly formulated in any judicial opinion, I think that we should not hesitate to declare it to be law that no servant can be permitted to retain as against his employer profits acquired by engaging, during his term of employment, without his master's consent, in any business which gives him an interest conflicting with his duty to that employer.

But does the evidence sustain the claim that the defendant has engaged in competitive business? In my opinion, plaintiffs cannot bring the business of defendant within the rule merely because it may be of a character such as their charter permits them to undertake. Whatever rights they have must be restricted to business similar to and competitive with that in which they are engaged. The only publication or enterprise of plaintiffs with which it is suggested the ventures of defendant might conflict or compete is the society newspaper, "Saturday Night."

"The Newspaper Reference Book," the sole publication of the Press Publishing Co. during the period in question . . . contained no advertising. How such a publication could compete with or injuriously affect the business of "Saturday Night," as described by plaintiffs' witnesses, even the ingenuity of counsel for appellants did not enable him to suggest.

The "Elite Directory" comprised an alphabetical list of the "society" ladies and gentlemen of the city of Toronto. . . . A quantity of advertising matter of a class similar to that which is to be found in the columns of "Saturday Night" is a prominent feature of this publication. One or