be regarded as the master's property, and the earnings and profits as the value or proceeds of that property, converted by the servant to his own use and sold for money which in his hands is to be deemed money had and received to the use of his master. Such is the doctrine of the old decisions: Lightley v. Clouston, 1 Taunt. 112; Foster v. Stewart, 3M. & S. 191; Barber v. Dennis, 6 Mod. 69; Meriton v. Harnsby, 1 Ves. Sen. 48; Hill v. Allan, ib. 93. But, in a learned note to their edition of Coke upon Litt., at p. 117a, Messrs. Hargrave and Butler, discussing these cases, question the soundness of the principle upon which they proceed, and suggest a distinction between apprentices and other servants. They point out that in Treswell v. Middleton, Cro. Jac. 653, the master, suing for work and labour done for another by his servant, failed, because he did not allege that the service was rendered by himself or on his account. . . . [Reference to Morrison v. Thompson, L. R. 9 Q. B. at p. 482, and Reynolds v. Roosevelt, 30 N. Y. St. Repr. 369.]

I am unable to distinguish profits made by the servant by working on his own account from wages earned by him in the service of another. Neither one nor the other may represent any real damage sustained by the master. As such neither one nor the other can be recoverable by him. As money obtained by the servant by the sale of time and labour which belonged to his master, and, therefore, in contemplation of law, the proceeds of the master's property, his right to follow and demand them may be upheld: Taylor v. Plumer, 3 M. & S. 562. I am bound, I think, to hold profits so made by a servant to be in his hands the property of his master, for which the servant must account to him. . . .

Plaintiffs have not shewn that in any of the several outside enterprises in which he was engaged did defendant expend any portion of the usual business day which he could have used to the advantage of plaintiffs in the branch or department of their business in which he was employed. On the contrary, defendant has discharged the burden, which I hold to have been upon him in regard to the ordinary business hours, of proving that he did not utilize for his own purposes any time which fairly belonged to his employers.

Moreover there is, with regard to the posters and the album "Ocean to Ocean," a very considerable body of evidence to support the finding of the trial Judge that the plaintiffs knew of and acquiesced in defendant's participation in these enterprises. The Judge has found otherwise with regard to the publication of the "Elite Directory" and the business of the Press Publishing Co. While a finding in regard to both these ventures similar to that made in respect to the posters and album would not, upon the evidence, seem