

agreed that, if he does other business than that of his employer, it shall be on his employer's account or for his benefit. The right of the employer to the earnings or profits derived from such extraneous employment of his servant must, if it exists, rest upon something other than such an implied agreement on the part of the servant.

The covenant of an employee to devote his entire time to the undertaking of his employer must, moreover, receive a reasonable construction. It cannot, for instance, be deemed to require that the employee should give to the service hours of the day or night usually devoted to rest and recreation. It does impose upon him an obligation to employ diligently, in advancing that undertaking or business of his principal to which he has agreed to devote himself, during such hours as it is customary for men in positions such as his to work, all the time and ability he can bestow advantageously to his principal. Even during these hours of the day usually devoted to work of the kind for which he is engaged, the servant is not obliged by such a covenant to sit in idleness. . . .

[Reference to *Williamson v. Hine*, [1890] 1 Ch. 393.]

If the agent or servant undertakes, in that capacity, work outside the scope of his employment, his principal or master is, if he wishes to take them, entitled to earnings or profits so made. The only right which the servant or agent can have against his master is a possible claim for extra remuneration. But, if he neither uses time which belongs to his employer nor engages in competitive undertakings, an agent or servant doing work in some other capacity is not accountable to his employer for his earnings from such work: *Jones v. Linde British Refrigeration Co.*, 2 O. L. R. 428. . . . The servant's spare time is his own: *Wallace v. De Young*, 98 Ill. 638. But, if he employs for his own purposes portions of the day usually devoted to such business as that for which he has been engaged, the onus is certainly upon him to furnish convincing proof that the time so spent was not required for and could not have been profitably used in the business of his master which has been intrusted to him.

Putting aside, therefore, the expenditure of spare time in non-competitive business, two questions remain for solution. If the servant, without his employer's consent, devotes to his own purposes time which he should, under his agreement fairly construed, have given to the service of his employer, is the latter entitled to earnings or profits so acquired? If the servant devote only his spare time to a rival or competitive business, is the master entitled to an account of the earnings or profits which he so makes?

If the master is so entitled, in the former case, it must be because the time and labour expended by the servant is to