intended to be protected by the statute. *Benes v. Campion*, 186 Minn. 578, 244 N.W. 72 (1932); *Burnette v. Augusta Coca-Cola Co.*, 157 S.C. 359, 154 S.E. 645 (1930). One court may, perhaps, be regarded as holding that the presence of a harmful substance in food amounts to negligence *per se*. *Rozumailski v. Philadelphia Coca-Cola Co.*, 296 Pa. 114, 145 Atl. 700 (1924). The doctrine of *res ipsa loquitur* has also been applied, the presence of the harmful substance giving rise to a presumption of negligence by the manufacturer. *Coleman v. Dublin Coca-Cola Co.*, 47 Ga. App. 369, 170 S.E. 549 (1933); *Nehi Bottling Co. v. Thomas*, 236 Ky. 684, 33 S.W. (2d) 701 (1930); *contra*, *Tonsman v. Greenglass*, 248 Mass. 275, 142 N.E. 756 (1924); *Perry v. Kelford Coca-Cola Co.*, 196 N.C. 690, 145 S.E. 14 (1928). In any event plaintiff need only show the presence of an injurious substance in the food when it was shipped from the manufacturer's plant and consequent injury to make out a *prima facie* case of negligence. *Goldman & Freiman v. Sindell*, 140 Md. 488, 117 Atl. 866 (1922); *De Groat v. Ward Baking Co.*, 102 N. J. L. 188, 130 Atl. 540 (1925); *Campbell Soup Co. v. Davis*, 175 S.E. 743 (Va. 1934). And the presence of the foreign substance at the time of shipment may be inferred. *Doyle v. Continental Baking Co.*, 262 Mass. 516, 160 N.E. 325 (1928). The courts apparently being desirous of holding the manufacturer liable on one theory or another, for injury caused by defective food, the theory of an implied warranty of fitness running with the chattel seems commendable as the simplest way to reach the desired result.

Trusts—Salary Received by Trustee as Corporate Official—[Maryland].—A co-trustee, by virtue of the trustees' holding one-half of the stock of a corporation in trust, was elected secretary of the corporation at a salary of fifty dollars per week. In an accounting by the trustee, it was *held*, the cestui is entitled to one-half of the salary received without interest. *Mangels v. Safe Deposit & Trust Co. of Baltimore*, 173 Atl. 191 (Md. 1934).

The court relied on the well-established rule that a trustee will not be permitted to deal with his trust so as to gain profit for himself; he may not retain any advantage gained directly or indirectly because of his position; *Michoud v. Girod*, 4 How. (U.S.) 503 (1846); *Magruder v. Drury*, 235 U.S. 106 (1914); *Linsley v. Strang*, 149 Ia. 690, 126 N.W. 941 (1910); *Williams v. Barton*, [1927] 2 Ch. 9; 3 Bogert, Trusts (1935), § 492; Lewin, Trusts (13th ed. 1928), 251. It is immaterial that the trustee rendered a fair equivalent to the estate, and that the estate has not been injured, for the rule rests on the rigid policy of equity against allowing the trustee to be in any position where his self-interest and his interest as trustee may possibly conflict. *Hoyt v. Latham*, 143 U.S. 553 (1891); *Kahn v. Chapin*, 152 N.Y. 305, 46 N.E. 489 (1897); Perry on Trusts (7th ed. 1929), § 427; Pomeroy, Equity Jurisprudence (4th ed. 1918), § 958. The vigor of this policy led to a denial at first of any commissions to the trustee, in the absence of a provision in the trust instrument, for his work as trustee. *Egbert v. Brooks*, 3 Harr. (Del.) 110 (1840); *Green v. Winter*, 1 Johns. Ch. (N.Y.) 26 (1814); *Ayliffe v. Murray*, 2 Atk. (Eng.) 58 (1740); *Barrett v. Hartley*, L.R. 2 Eq. 789 (1866). That rule no longer prevails. *Barney v. Saunders*, 16 How. (U.S.) 534 (1853); *Howard v. Hunt*, 267 Mass. 185, 166 N.E. 568 (1929); *Loud v. St. Louis Union Trust Co.*, 313 Mo. 552, 281 S.W. 744 (1925). See 42 Yale L. J. 771 (1933).

There is a tendency in some jurisdictions to regard the rule that a trustee may not profit from his trust as not inflexible. Thus one court allows a trustee commissions for

sales to the trust where the transaction is fair and the trustee charges no more than anyone else would. *In re Estate of Ena*, 24 Hawaii 414 (1918); *In re Estate of Wichman*, 27 Hawaii 780 (1924). And it has been held that a trustee may be allowed commissions on advertising. *In re Berri*, 130 Misc. 527, 224 N.Y.S. 466 (1927). A salary as a salesman has been allowed the trustee of an interest in a partnership on the ground that the salary resulted not from the trust but from work done independently of the trust. *In re Lewis*, 103 L.T. 495 (1910).

Where the trustee of stock in a corporation is elected an officer of the corporation, the rule that a trustee may not profit from his trust has been used to compel the trustee to account to the estate for any salary received. *Matter of Hirsch No. 1*, 115 App. Div. 367, 101 N.Y.S. 893 (1906); *Pyle v. Pyle*, 137 App. Div. 568, 122 N.Y.S. 256 (1910); *In re Kirkman's Estate*, 143 Misc. 342, 256 N.Y.S. 495 (1932); *In re Francis*, 74 L. J. Ch. 198 (1905). In some cases, however, the trustee has been allowed to retain salary received as a corporate official. *In re Berri*, 130 Misc. 527, 224 N.Y.S. 466 (1927); *In re Gerbereux' Will*, 148 Misc. 461, 266 N.Y.S. 134 (1933). Where a trustee has been given shares in a corporation expressly to enable him to qualify as a director, he may retain compensation received as director. *In re Dover Coalfield Extension, Limited*, [1907] 2 Ch. 76, [1908] 1 Ch. 65. Maryland, as the principal case indicates, will not allow a trustee to retain his salary as a corporate officer when he is elected by virtue of the stock held as trustee; but will allow him to retain the salary if he owns some stock in his own right and is elected by stock exclusive of the stock held in trust. *Dailey v. Wight*, 94 Md. 269, 51 Atl. 38 (1902).

Though it professes to follow the rule that a trustee may not profit from his trust, the court in the instant case has applied it in what seems to be a peculiar manner. The court reasons that because the trust estate consists of half of the corporation's stock, the net return to the estate is lessened by half of the salary, and hence the trustee is accountable only for that amount. It would seem, however, that the reason of the no profit rule would dictate that the trustee should be deprived of all salary received, if deprived of any; the reason being not only to repair loss to the estate, but also to prevent temptation of the trustee. Wherever the transaction might lead the trustee into temptation to be disloyal and neglect the interest of the trust, any profit he gains should be taken away from him in order to discourage him from considering selfish interests. The profit is taken from him not only to make the estate whole for a loss occasioned in the particular instance, but also to have a deterring influence on this trustee and others in the future. 3 Bogert, Trusts (1935), § 492. Actually the trust estate lost nothing, the court admitting the trust had benefitted from the trustee's services as an officer of the corporation. Morever, it hardly seems compatible with compensation for loss to exclude interest as the court here did. Furthermore, the decision in the principal case is objectionable as being capable of evasion by the simple expedient of doubling the salary.

Wills—Ademption—General or Specific Bequests—[Wis.]—Testatrix made two bequests of "one hundred (100) shares of the common stock of the Ohio Oil Company." On petition for construction of the will, the lower court held these bequests to be specific, because at the time of executing the will testatrix owned exactly two hundred shares of the common stock. It also held the bequest to be revoked and destroyed,