

Upon these exceptions, the following opinion was delivered on the 7th of December, 1850.]

THE CHANCELLOR :

This case is submitted by consent, upon exceptions to the report of the Auditor of the 18th of July last. The exceptions briefly, but very clearly, state the objections to the report, and some suggestions have been made by the solicitor of the parties interested in maintaining it.

The first exception relates to the allowance, by the Auditor, of interest upon the claim of the complainants from the day of sale, to the date of the affirmance by the Court of Appeals, of the order of this court ratifying it. This is objected to, first, upon the ground, that the complainants' remedy, if any, for the loss occasioned by the delay consequent upon the appeal, is, by a different proceeding, and personal against the defendants. And, secondly, that if the complainants may resort to the proceeds of sale, to indemnify them from this loss, it was not proper in the Auditor to calculate interest upon the claim to the day of sale, and interest upon the whole claim, as of that day, to the date of the affirmance, by the Court of Appeals. In other words, that the complainants' claim as it stood on the day of sale, should not have been treated as principal, but the interest should only have been charged, upon the original principal debt.

With regard to this last objection, I consider it met and answered, by the case of *Ellicott vs. Ellicott*, 6 Gill & Johns., 35, where it is said, that if the debtor's property be sold on credit, to pay his debts, his creditors using due diligence in getting their money from the trustee, on the day of its receipt by him, would be getting not only simple interest on their debts from their maturity, but interest compounded from the day of sale ; and it seems to me very clear upon principle, that if the creditor is precluded of this right by the act of the debtor, as for instance, by appealing, as in this case, and filing an appeal bond, that the rights of the former should not be prejudiced. The debtor cannot be heard to say, that the claim of his creditor,