

some other reasonable way, at his discretion; or that he was required to apply them to the maintenance or education of the *cestui que trust*; and it must also appear, that he not only failed to do so, but applied the money to his own use, or put it to hazard in a manner in which he had, or might have derived a profit from it. That the trustee was required to invest, or make a beneficial application of the money may be shewn by the terms in which the trust was created. But, whether he has applied it to his own use or not, must be shewn by proof. Whether the pecuniary ability of the trustee was such as to enable him to pay at any time, when called on, is a matter of no consequence, as regards the question of interest. The making of a deposite of the money at a bank as his own; or making purchases with it; or using it in the course of his trade, has been deemed sufficient evidence of his deriving such a profit from it as to authorize the court to charge him with interest upon each annual amount of interest. (*n*)

In the case under consideration, it very satisfactorily appears to have been the duty of the defendant *John Diffenderffer* to have applied the rents and profits, received by him, for the benefit of all the devisees of the late *Charles Rogers*; and that, instead of doing so, he deposited them, as received, in bank as his own, drew them out, made purchases, and used them for his own use and benefit exclusively. What advantages he derived from those rents and profits, thus mingled with his own money, from the time of their being deposited in bank, has not been shewn; but such a management must have been very beneficial to himself, and greatly injurious to the devisees. Such a course of conduct by any one, standing as this defendant *John Diffenderffer* did, bound to make the funds received by him productive, or constantly useful to those entitled to them, cannot be tolerated by this court. I am therefore, of opinion, that he has been correctly charged with interest on the whole amount including principal and interest found to be in his hands at each rest.

The next inquiry is as to the allowances which should be made to the defendant *John Diffenderffer*. In England, trustees are never allowed anything as a compensation for their trouble; (*o*) here it is otherwise; executors, and all persons, standing in the

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(*n*) *Newton v. Bennet*, 1 Bro. C. C. 359; *Rocke v. Hart*, 11 Ves. 59; *Raphael v. Boehm*, 11 Ves. 92, S. C. 18, Ves. 408 & 591; *Tebbs v. Carpenter*, 1 Mad. Rep. 290; *Attorney-General v. Solly*, 2 Cond. Chan. Rep. 528; *Ringgold v. Ringgold*, 1 H. & G. 12.—(*o*) *Sykes v. Hastings*, 11 Ves. 363.