

From all that has been said upon this subject, I take it, that interest upon interest, or compound interest may be charged in three kind of cases; first, where with the knowledge and permission of the debtor his whole debt, principal and interest, has been paid by a third person or his surety; because, as to such third person or surety the interest is the same as the principal sum lent. 2 *Fonb.* 438. Second, where a trustee or holder of money has been directed, or undertakes to invest the sum placed in his hands in a way to make it productive, and fails or refuses to do so, he shall be charged with compound interest. As where a trustee was ordered to invest a certain sum of money, then in his hands, in bank-stock; and that he should, in like manner, invest the dividends arising from such investment; on his failing and refusing to do so he may be charged with interest upon the sums so directed to be invested, and interest upon that interest until the whole sum shall be invested or brought into Court. *Sammes v. Rickman*, 2 *Ves. Jun.* 37; *Ringgold v. Ringgold*, 1 *H. & G.* 12; *Latimer v. Hanson*, 1 *Bland*, 51. And third, where a trustee has received rents and profits which he should have applied so as to be productive, or towards the maintenance of devisees; but failing or refusing to do so, retains and uses the money as his own, in a manner to derive profit from it; there also he shall be charged with the whole profits he has made from the use of it; or on his failing clearly to shew what those profits were, it will be presumed, that the annual amount of interest had yielded him interest; and he must be charged with interest thereon accordingly; considering each year's interest as an addition to the capital sum lent or withheld. *Co. Litt.* 172, *a.*

The equity of the last rule is founded upon the fact of the beneficial application of the money to the trustee's own use in violation of his trust, and to the prejudice of the *cestui que trust*; and therefore, it must appear, that the nature of the trust required the trustee to make the funds which came to his hands productive as soon, and to as large an amount as practicable in the mode prescribed, or in *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 deposit of the money at a bank as his own; or making purchases