

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. *Newton v. Bennet*, 1 Bro. C. C. 359; *Roche v. Hart*, 11 Ves. 59; *Raphael v. Boehm*, 11 Ves. 92; S. C. 13 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.

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, *Sykes v. Hastings*, 11 Ves. 363; here it is otherwise; executors, and all persons standing in the * situation of trustees, charged with the care and management of an estate, are allowed a com- 207
pensation for their trouble in the form of a commission of so much per cent. upon the amount collected and disbursed by them. In many cases the commission is limited by positive law, 1798, *ch. 101, sub-ch. 10, s. 2*; but in all cases its allowance within the prescribed limits seems to be considered as an exercise of a discretionary power which rests so exclusively with the Court of original jurisdiction, that it cannot be revised or controlled in any way whatever. *Nicholls v. Hodges*, 1 Peters, 562.

The Court of Chancery is peculiarly and absolutely civil in its institution, and in all its modes of procedure. It is confined to cases of distributive and commutative justice alone, and has no jurisdiction whatever over torts or crimes. It dispenses no favors nor does it administer vindictive justice in any form. 1 *Fonb. 2*; *Peake v. Highfield*, 1 Russ. 560; *Nash v. Nash*, 4 *Ecclesi. Rep.* 357; *Singery v. Attorney-General*, 2 H. & J. 497; *Fornshill v. Murray*, 1 Bland, 484. The principle upon which it awards simple or compound