

interest to a party whose money has been unjustly withheld, or misapplied, is that of commutative justice, considering the interest as a full compensation for the injustice done, and as the proper, or only remuneration which the Court can award in such cases; 1 *Fonb.* 3; 2 *Fonb.* 423; and, consequently, to lessen or altogether to withhold from a trustee any allowance to which he may be justly entitled, upon the same ground on which he had been charged with simple or compound interest would be, in effect, to impose upon him a fine or forfeiture upon the principles of vindictive justice; and to punish him for an offence which the Court itself had declared would be sufficiently expiated by the payment of simple or compound interest. The duties performed by a trustee, may have been so light, or may have been performed in so negligent or unskilful manner as, on that ground, to entitle him to small, or perhaps to no commissions at all; but to whatever commissions he may be entitled, they certainly should not be lessened, or altogether withheld, upon the ground of his having done, or omitted to do anything for which the payment of simple or compound interest had been awarded as a compensation; because every single transaction must be considered by itself. *Sammes v. Rickman*, 2 *Ves. Jun.* 37; *Adey v. Feuilletau*, 3 *Swan.* 87, note. Recollecting, **208** however, that a trustee cannot be allowed to retain or \*receive anything, as a compensation, until he has paid all he owes to the plaintiffs, or *cestui que trust*.

It is clear that this trustee, John Diffenderffer, is entitled to some commission, and as his claim to such compensation cannot be affected by a reference to those circumstances, upon which he has been charged with compound interest, it follows, that the amount of his commissions can only be determined by a consideration of all other circumstances connected with the discharge of his duty as trustee. It appears from the proceedings, that he has had in all respects, as complicated and troublesome an estate to deal with, as ever was committed to the management of a trustee of any denomination. His receipts have been very numerous, many of them small; and the collections and disbursements, it is evident, must have been attended with much trouble; and, therefore, upon every principle of analogy, apart from considering him as the successor of the trustee Vincent, to whom ten per cent. had been allowed, I am of opinion, that ten per cent. commission is a reasonable compensation, and shall therefore ratify the statement of the auditor, which makes that allowance.

Whereupon, it is decreed, that the statement D, making a part of the auditor's report, filed on the 10th of November, 1828, be and the same is hereby ratified and confirmed; and all other statements at the same time reported by the auditor, together with his report of the 26th of March last, be and the same are hereby rejected; and all the exceptions of the parties at variance with the statement D, are hereby overruled.