

The account J J, was made up without charging interest on either side. In the course of the transactions upon which the account is founded, the balance may have shifted from time to time; and in view of all the circumstances, and in the absence of any fixed rule of law giving interest as a matter of right, I am of opinion the claim cannot be supported, and it must be disallowed.

13th. The thirteenth ground of surcharge relied upon in the answer, has already been noticed and disposed of.

14th. This item of surcharge, which applies to the railroad account, has likewise been examined and disposed of in considering the second error specified in the bill, and nothing further need be said regarding it.

15th. This allegation in the amended answer, which charges the complainant with the receipt of moneys prior to the settlement of this account J J, for which it was said he had not in any manner accounted, is understood to be abandoned. The moneys thus alleged to have been received, and not accounted for by the complainant, are stated and enumerated in a paper marked Exhibit A A, No. 3, filed with the amended answer; but, as appears by the report of the Auditor, this paper was sent to the defendant's solicitor for proof, and has not been returned, and no proof whatever has been offered in support of it. This item of surcharge, therefore, must be disregarded and rejected.

16th. The sixteenth item of surcharge in the amended answer has respect to certain orders, drawn by the complainant, which the defendant alleges were paid out of moneys or other means of the defendant, appertaining to defendant's store, and for which orders the complainant received credit, as if the sums for which they were drawn were paid by himself, but for which he gave no credit to the defendant. These orders, which are stated in the defendant's Exhibit A A, No. 4, amount in the aggregate to \$5,624 32, commencing in the year 1836, and terminating in May, 1839. In examining this item it is very material to consider (indeed the fact bears with irresistible force upon the question), that it has not been shown, nor has