

to the defendant *John Diffenderffer* than to charge him with interest, according to the rule of the court, from the time each sum was received; and therefore, the computation of interest from the rests will in this case be approved.

But it is objected, that interest should not be charged on the interest computed as a portion of the balances at each of those rests.

From all that has been said upon this subject, I take it, that interest upon interest, or compound interest may be charged in three kinds 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. (*k*) *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. (*l*) *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. (*m*)

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

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(*k*) 2 Fonb. 438.—(*l*) *Sammes v. Rickman*, 2 Ves. jun. 37; *Ringgold v. Ringgold*, 1 H. & G. 12; *Latimer v. Hanson*, 1 Bland, 51.—(*m*) Co. Litt. 172, a.