

situation of trustees, charged with the care and management of an estate, are allowed a compensation 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; (*p*) 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. (*q*)

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 favours, nor does it administer vindictive justice in any form. (*r*) The principle upon which it awards simple or compound 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; (*s*) 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 a 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. (*t*) Recollecting, however, that a trustee cannot be allowed to retain or

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(*p*) 1798, ch. 101, sub ch. 10, s. 2.—(*q*) *Nicholls v. Hodges*, 1 *Peters*, 562.—(*r*) 1 *Fonb.* 2; *Peake v. Highfield*, 1 *Russ.* 560; *Nash v. Nash*, 4 *Ecclesi. Rep.* 357; *Singery v. Attorney-General*, 2 *H. & J.* 497; *Fornhill v. Murray*, 1 *Bland*, 484.—(*s*) 1 *Fonb.* 3; 2 *Fonb.* 423.—(*t*) *Sammes v. Rickman*, 2 *Ves. jun.* 37; *Adye v. Feuilliteau*, 3 *Swan.* 87, note.