a contingency in the future. Of consequence the claim of the existence of another remedy to defeat plaintiff's complaint for declaratory relief is unwarranted.

It is submitted that a declaratory judgment should not have been denied to the plaintiff.

Fiduciaries—Guardians Ad Litem—Estoppel—Infants

The testator in 1932 created a life insurance trust whereby the defendant trust company was named as trustee, with directions to invest the proceeds in legal investments for trust funds and to pay the income therefrom to his mother, his widow, and infant children for life. The defendant trust company invested the proceeds in mortgages purchased from the Franklin Title and Guaranty Company. In 1934 the widow of the testator filed a bill praying that some of the trust corpus be advanced to one of the infants to aid him in his education. In this friendly suit all the interested parties appeared, including the other infant who was represented by a guardian *ad litem*. Here it was openly revealed that the defendant had illegally invested in the mortgages, a fact already known to the widow and her solicitor, and now made known to the guardian *ad litem* of the infant. In 1935 the defendant trust company presented an accounting to the adult *cestuis* and to the guardians *ad litem* of the two infants, appointed for the purpose of protecting their rights. Further particularity of the nature of the investments was provided to all. In 1937 the *cestuis que* trust filed a bill in equity praying for an accounting of the investments and that the defendant trust company be removed as trustee, charging that because of the corporate affiliations and the interlocking relationship of stockholders, officers, and directors between the mortgage company and the trust company, they were improper investments for the trust company to have made.

Held: Where the officers and directors of a corporate trustee are also officers and directors of another corporation, it is improper for the trustee to invest trust funds in securities purchased from such affiliated corporation and the *cestuis* have an absolute right to disavow such

investments. However, as the *cestuis* knew or had notice of the investments and had failed promptly to disavow them, they were estopped. This estoppel was held to operate also against the infant *cestuis,* whose parent, solicitor, and guardians *ad litem* in previous actions had knowledge or notice of the facts. *Rothenberg v. Franklin-Washington Trust Company et al.,* 127 N.J.Eq. 406, 13 Atl. 2d 667 (Ch. 1940).

The question to be determined is whether or not the learned vice-chancellor was correct in holding that the infant complainants were estopped from seeking relief in a court of equity where notice of the defendant trustee's improper and illegal investments was had by infant's mother, her solicitor, and their guardians *ad litem.*

It has long been established in this state that one having a trust relation or obligation shall not place himself in a situation in which he might be tempted to take advantage of the *cestui que trust,* and any act in violation of this rule regardless of the motive is voidable at the instance of the person he represents.[1]

It is firmly established that if a cestui joins with the trustee in that which is a breach of trust, such a cestui can never complain of such a breach.[2] No cestui can claim that to be a breach of trust which has been done by his own sanction, whether by his previous request or consent or by his subsequent ratification. This doctrine in effect is equivalent to the application of the Latin maxim, "Volenti non fit injuria."[3]

No one will question that the principles of equity and good conscience expounded in these cases justify the court's decision as to the adult complainants.

We submit that the acquiescence or failure to act on the part of the adult complainants was equivalent to ratification by them of the trus-

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1. Staats v. Bergen, 17 N.J.Eq. 554 (E. & A. 1867), Stewart v. Lehigh Valley Railroad Company, 38 N.J.L. 505 (E. & A. 1875); Shanley's Estate v. Fidelity Union Trust Company, 108 N.J.Eq. 564, 138 Atl. 388 (Ch. 1927); McAllister v. McAllister, 120 N.J.Eq. 407, 184 Atl. 723 (Ch. 1936), *aff'd,* 121 N.J.Eq 264, 190 Atl. 52 (E. & A. 1936); *In re* Bender's Estate, 122 N J.Eq. 192, 192 Atl 782 (Prerog. 1937), *aff'd,* 123 N.J Eq. 171, 196 Atl. 677 (E. & A. 1937); *In re* Westhall's Estate, 125 N.J.Eq. 551, 5 Atl. 2d 757 (E & A 1939)

2 Lord Eldon in Walker v. Symonds, 36 Eng. Rep. 751 (1818)

3 *In re* Leupp, 108 N.J Eq. 49, 153 Atl 842 (Ch. 1931)

tee's action.[4]

It is our contention that the vice-chancellor was absolutely correct in extending this doctrine to the infant complainants.[5]

Infants' rights are not superior to those of adults.[6] The rights of adults cannot be yielded to those of an infant merely because he is an infant. In *Graves v. Graves,* 94 N.J.Eq. 268, the court said:

> I desire to express my regret that I have been unable to reach the conclusion that this trust in favor of the grandchildren and the great-grandchildren so clearly expressed by the testator must be defeated because of the inexorable operation of a rule of construction firmly established in the law. And it is all the more regrettable because it compels a decision against the interests of infant defendants. But, after all, infants' rights are not superior to those of adults and the rights of adults are not to be defeated because the adversary parties are infants.

Those cases which hold that an infant is incapable of acquiescing or ratifying an act are cases in which they were not represented by guardians *ad litem,* next friend, or *prochain ami.*[7]

It has been laid down as a general rule that the doctrine of estoppel has no application to infants.[8] Occasions may arise, however, when an estoppel does apply to them. Infants' rights cannot be waived by a person not authorized by law to do so.[9]

A guardian *ad litem* or next friend of an infant can make no concessions.[10] He cannot waive or admit away any substantial rights of

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4. POMEROY, EQUITY JURISPRUDENCE (3d ed. 1905), sec. 1083.
5. Pomeroy *op cit.,* sec. 817.
6. *In re Shreve,* 87 N.J.Eq. 7, 103 Atl. 683 (Ch. 1917), *aff'd,* 87 N.J.Eq. 710, 103 Atl. 683 (E. & A. 1917); Graves v. Graves, 94 N.J.Eq. 268, 120 Atl. 420 (Ch. 1922); Morris v. Glaser, 106 N.J.Eq. 585, 151 Atl. 766 (Ch. 1930), *aff'd,* 110 N.J.Eq. 661, 160 Atl. 578 (E. & A. 1932); Reuther v. Fidelity Union Trust Company, 116 N.J.Eq. 81, 172 Atl. 386 (E. & A. 1934).
7. Haggerty v. McCanna, 25 N.J.Eq. 48 (Ch. 1874); Tantum v. Coleman, 26 N.J.Eq. 128 (Ch. 1875).
8. 31 C. J. 1005.
9. Therriault v. Breton, 114 Me. 137, 95 Atl. 699 (1915).
10. Evans v. Davies, 39 Ark. 235 (1882); Harris v. Young, 298 Ill. 319, 131 N.E. 670 (1921).

the infant or consent to anything which may be prejudicial to him.[11]

It is well settled that any person having a sufficient interest in the trust estate may call on the trustee to account.[12] The infants are obviously incapable of exercising their right to demand an accounting. Their guardians *ad litem,* however, should have exercised this right for them when they discovered during the suits they were defending that the trustee had illegally invested the trust funds. Where the cestui is incompetent and has in prior proceedings regarding the trust recognized his next of kin as "his next friend," the latter may, although not formally appointed, require the trustee to account.[13] If a next friend not formally appointed has the right to demand an accounting on behalf of the infant cestui, why has not a guardian *ad litem* formally appointed by the court and acting as its agent and officer also such a power?

The infants' guardians *ad litem* had their opportunity to remove the defendant trustee when they discovered the illegality of the investments by the defendant trust company. Their failure so to do despite their knowledge estopped them from attempting later to question the same illegality. It can be said that they ratified the investments. Equity demands that the infants they were authorized to represent and protect also be estopped.

Therefore, the defendant trust company, which acted bona fide throughout the many years of its trusteeship, will not be removed.

Insurance—Policy Loans—Nature Of

Defendant issued a life insurance policy to the plaintiff's husband which, after payment of the third year premium would have a loan value of $216.20. Just prior to the time that the policy would lapse for non-payment of the third year premium, the company took an assignment of the policy for $216.20 and a note for $60.37 consisting of the remainder of the premium and the interest on the loan value of the

11. Turner v. Jenkins, 79 Ill. 228 (1875).
12. 65 C. J. 881.
13. Cuhler v. Hoover, 4 Pa. 331; 31 C. J. 1118.