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time the authority was procured had materially and radically changed. Without questioning or inquiring into the motives which influenced the Trustee, we are constrained upon principle and authority to hold that he committed a clear breach of his duty in using the funds in the purchase of land. As a consequence of this, his estate and his sureties are obliged to restore to the cestui que trust in money, if they demand it, the whole amount so misapplied, unless the cestui que trust participated in the misappropriation in such a way as to be binding on them or being legally capable of doing so, acquiesced in or sanctioned the act now complained of. This brings us to the consideration of the defence chiefly relied on. There can be no doubt that a cestui que trust who has participated in a breach of trust, or who knowing all the facts and being apprised of his legal rights and being under no disability to assert them, has acquiesced in the wrongful act of the Trustee, will not, upon the plainest principles of Justice, be allowed in a Court of Equity to recover for the losses which have resulted from investments that he himself has influenced or knowingly sanctioned or assented to. But the proof of this defence rests on the Trustee. Lord Chancellor Brougham observed in Bennett vs Colly 2 Mylne & Keen 232. "it can never be maintained that the acquiescence of a party under ignorance of his rights, operates as a waiver of any claim, or as a confirmation of any thing done against him. Neither can it be seriously contended that the proof of ignorance or want of notice lies on the party against whom such acquiescence is alleged" Evidence of acquiescence in cases like this must be full and satisfactory. The same strictness is required as in the proof of other dealings between the trustee and cestui que trust. Dorey vs Banks January Term 1889. clearly lays down the measure of such proof. It is unnecessary to advert to the testimony bearing upon the alleged acquiescence of Mary A Irvin the cestui que trust for life, because no mere acts of hers however clearly established could be binding on the persons entitled to the remainder. There are three persons entitled to that remainder, an infant, a married woman and Francis A Irvin. The rights of the infant and of the married woman are not before us.

The testimony of the trustee is the only evidence in the record directly relating to Irvin's alleged acquiescence. Zimmerman, the Trustee, swore that Francis M Irvin distinctly assented to the investment. Irvin with equal emphasis testified that he did not assent thereto but protested against what was done. Zimmerman stated that he had conversed several times with Mrs. Stein one of the cestui que trust, and with her husband, and that they both sanctioned what he had done. Stein and his wife in their testimony expressly and pointedly contradict this assertion. Upon this state of the evidence, notwithstanding the record discloses some very serious charges against Irvin, it would not be possible to hold that the Trustee had discharged the burden of proof placed upon him by the law. There can be no doubt that Irvin could have invoked the aid of a Court of Equity, even during the life time of Mary Ann Irvin to correct this breach of trust. Browne vs Cross 14 Beav. 105

If then with a full knowledge of his rights and possessing the power to assert them, he stood by for more than ten years and did nothing or received benefits from the wrongful act of the Trustee he can not be allowed, after the investment has proved to be disastrous, to repudiate his acquiescence and to hold the Trustee liable for the losses which have ensued. But if he was misled by the Trustee, whether designedly or not, is immaterial, he cannot be made to bear