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.

policy which was payable in advance in accordance with the policy. Assured failed to pay the note and died several months after its due date. Both the policy and the note provided that upon failure to pay a premium note when due, the policy would lapse. *Held,* that the transaction was a policy loan and the policy remained in force until 31 days' notice had been given in accordance with statute.[1] Recovery allowed. *Paul v. Columbia Insurance Co.,* 125 N.J.L. 350, 15 Atl. 2d 636 (E. & A. 1940).

The court seemed to take the view that the company lent the assured the entire amount of the premium and then repaid itself with the loan value of the policy and the assured's note for the remainder of the loan and allowed recovery as though the third year premium had thus been paid. Such a holding, it would seem, would not be correct if this were a company of this state for New Jersey statutes[2] prohibit local companies from making such a loan. Hence, the transaction would be *ultra vires* and illegal unless some ground could be found to estop the company from asserting such a defense. It is submitted no ground of estoppel is apparent. The assured seems to have done nothing relying on the transaction nor is it shown, as it must be to invoke an estoppel, that he was in any way damaged by the transaction.[3] In such a case, the transaction being void, the beneficiary should not recover, especially since the note was never paid.

It is suggested that in this case another interpretation might be found in accordance with the principle that where two interpretations of a contract are possible, one rendering the contract legal and the other illegal, that which renders the contract legal will be adopted.[4] It is universally accepted that a note is not payment but merely extends the time of payment[5] unless expressly otherwise provided. The same rule

1. N.J.R.S. 1937, 17:34-16 (a); N.J.S.A. 17:34-16 (a).

2. N.J.R.S. 1937, 17:24-4; N.J.S.A. 17:24-4.

3. Grisberg v. Eastern Life Insurance Co., 118 N.J.Eq. 223, 178 Atl. 378 (Ch. 1935).

4. Briody v. DeKimpe, 91 N.J.L. 206, 102 Atl. 688 (E. & A. 1917); Kelly v. Guarantee Trust Co., 114 N.J.Eq. 110, 168 Atl. 413 (E. & A. 1933).

5. Fry v. Patterson, 49 N.J.L. 612, 10 Atl. 390 (S. Ct. 1887); Union Cleaners and Dyers, Inc. v. Zeidman, 113 N.J.L. 86, 172 Atl. 546 (S. Ct. 1934); Taylor v. Wahl, 72 N.J.L. 10, 60 Atl. 63 (S. Ct. 1905); Pignone v. Brooks, 120 N.J.L. 258, 199 Atl. 372 (S. Ct. 1938); Ferguson Carpet Co. v. Schottenfeld, 109 N.J.L. 539, 162 Atl. 534 (E. & A. 1932).

has been applied to premium notes given for life insurance policies [6] Hence if this note had covered the entire amount of the third year premium, there would seem to be no doubt as to its being an extension of time.[7] In this case, the policy had no loan value until after the payment of the third year premium, but after such payment it would have a loan value of $216 20. The company merely anticipated this loan value and conditionally credited it toward the premium accepting a note for the remainder of the premium and the interest on the loan which was payable in advance. Thus, the note covered the amount of money the insurance company would have actually retained had the third year premium been paid in cash and then the assured borrowed on the policy to the full extent paying the interest thereon in advance To hold that such a transaction was merely an extension of time to pay the amount of premium money the company would have actually retained, would seem to be more nearly in accordance with the intention of the parties and an equally fair interpretation of the transaction.

It is submitted that the nature of the transaction should not be materially changed by the fact that one company is a resident and the other a non-resident of the state. In addition, there seems to be no material difference in the transaction if the company accepts a note for the amount of the premium it would have actually retained or if it accepts a note for the full amount and then permits the assured to borrow on the policy to the full extent and pay off the note pro tanto. Moreover, the incorporation of the interest on the $216.20 in such a note should make no difference since it was payable in advance in accordance with the policy.

Furthermore, it is suggested that justice does not demand greater rights for the assured simply because the company entered into this transaction to give him an extension of time in which to pay the amount of money he would have actually been out of pocket, than if he had merely failed to pay the premium when due without such a gratuitous extension of time by the company.

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6. National Life Insurance Co v. Goble, 51 Neb. 5, 70 N W. 503 (1897), Occidental Life Insurance Co v Jacobson, 15 Ariz. 242, 137 Pac. 869 (1914); Leeper v. Franklin, 93 Mo App 602, 67 S.W. 941 (1904); Fidelity Mutual Life Insurance Co. v. Price, 117 Ky 25, 77 S.W. 384 (1903), Hudson v. Knickerbocker Life Insurance Co, 28 N J Eq 167 (Ch 1877).

7 See *ante* note 6