by a direct abuse by them, as by converting to their own use the effects of the deceased, but also by such acts of negligence and wrong administration as will disappoint the claimants on the assets. If the executor, by his delay in commencing an action, has enabled the debtor of his testator to protect himself under a plea of the Statute of Limitations this amounts to a *devastavit*. So also, if the executor or administr tor misapply the assets in undue expenses for the funeral, in the payment of debts out of their legal order to the prejudice of such as are superior, or by an assent to a payment of a legacy, when there is not a fund sufficient for creditors. If an executor releases a debt due to the testator, he is liable himself to be charged with the amount of it, and he is also guilty of a *devastavit* if he applies the assets in payment of a claim which he is not bound to satisfy. In an action brought against one of three executors on a covenant of the testator, it was held that the inventory taken before probate was evidence to charge him with the assets therein specified: (*Rowan* v. *Jebb*, 10 T. R. 216.)

In the case of *Stiles* v. *Guy*, 14 L. T. Rep. 305, it was held that by proving the will, the executors became responsible for getting in the estate of the testator, notwithstanding the usual indemnity clauses: so that an executor who by being merely passive enables his co-executor to withhold or misapply any part of the estate, becomes liable to make good any deficiency occasioned by his co-executor's breach of trust. By this case it was also determined that executors are liable for negligence or inattention to their duties, and that they cannot safely rely for their protection on the old cases on the subject.

In the following case the trustees of a marriage-settlement were made personally responsible for the consequences of their neglect to enforce a covenant contained therein. By the settlement in question it was covenanted and agreed that £5,000 Consols, part of the wife's property, should be transferred to trustees, upon certain trusts for the husband and wife and children. At the time of the settlement a sum of £4,946 was standing in the name of the wife: but the trustees took no steps to enforce a transfer, and it was sold out and misapplied by the husband. It was held that the trustees were personally responsible for the loss: (*Fenwick* v. *Greenwell*, 10 B. 412). In this case it was also held that the trustees were not relieved from their liability by the trustee indemnity clause, declaring that they should not be liable "for any casual or involuntary loss, without their wilful default; but for such moneys only as should actually come to their hands.

In a still later case, a trustee of certain estates received the proceeds, and paid them into a bank, where they were left for many years. A suit was instituted, and a receiver appointed of rents and interest. The bank having failed, it was held that the *cestui que trust*, who were infants, must not be prejudiced by the neglect of the trustee to place the fund in safety, and that the trustee was liable to refund the money lost: (*Drewer* v. *Maudesley*, 18 L. J. 273, C.)

The investment of the trust-fund upon proper and safe security is, of course, one of the foremost duties which devolves both upon executors and trustees. Where by negligence, or from whatever cause, they omit to take proper measures to obtain such a security for the trust-fund as the rules of law and equity sanction, and in consequence of such neglect or dereliction of duty the trust-fund suffers thereby, the trustees themselves are very justly held responsible to make good the loss so occasioned by their wrongful acts, or wilful neglect.

In the following case, the *cestui que trust* proposed to pay off a mortgage on the trust property, by raising the necessary funds at less expense and at a lower rate of interest than would be required by another mode of raising the moneys possessed by the solicitor of the trustees. The *cestui que trust*, without the concurrence of the trustees, carried out their proposal; and pending these transactions, one of the trustees of the settlement retired, and in his room a near relative of their solicitor was appointed a trustee, but without any communication on the subject with the *cestui que trust*. The trustees afterwards gave notice of their intention to sell the property under a power of sale and exchange, and defray out of the proceeds their costs, charges and expenses of negotiating the treaty for the loan which they had proposed to effect. The sale was prevented by injunction, and a bill filed by the *cestui que trust* against the trustees and their solicitor. It was held at the hearing, that the contemplated sale, if carried out, would have been a breach of trust, and that, under the circumstances, the trustees ought to be removed and new trustees appointed: (*Marshall* v *Sladden*, 19 L. J. 57, V.C.W.)

A *cestui que trust* discovering a breach of trust, but not receiving any benefit from it, or conniving in it for any purpose, and not recognising the transaction, is not precluded from complaining of it merely on the ground that he abstained from making such complaint until long after he first knew of it. Therefore, where stock stood invested in trust for the mother for life, with remainder to her son and daughter and their children, and the daughter knew of an application by the son for a loan from the trustees of part of the trust-moneys upon his personal security, and that the trustees were willing to make the loan with the consent of her mother, the tenant for life, and that the loan was, in fact, afterwards made, and she objected to the loan in her communications with her mother, but did not otherwise oppose it, and had not any communication with the trustees on the subject; it was held that this was not such acquiescence on the part of the daughter to the loan as to preclude her from charging the trustees with the breach of trust in a suit instituted seven years after the transaction took place, It was held, also, that the daughter was not precluded from so charging the trustees, by the fact that she knew that the mother had (untruly) stated to her son that she (the daughter) had consented to the loan, such statement of the daughter's consent never having been communicated to the trustees, or constituted any part of the sanction or authority under which they acted. An investment by trustees of £2,183 trust-funds, which they were empowered to lend on real security, in a mortgage of house property in a town, occupied for commercial purposes and valued at £2,800, a value also in some measure dependent on the performance of covenants, was held not to be justified. Where trustees having power to invest in government or real security, and to vary such investment from time to time, sold out stock for the purpose of investing the produce of the stock in a mortgage which they were not justified in taking, it was held that the Court could not treat the sale of the stock as lawful, and the investment as unlawful, so as to justify the trust by replacing the money, but that the whole must be treated as an unjustifiable transaction, and that the trustees must replace the stock. Where trustees lent the trust-moneys to one of the *cestui que trust*, upon a contract which constituted a breach of trust, the Court, in a suit by the trustees against all the *cestui que trust*, refused, as against the *cestui que trust* who had obtained the loan, to make a decree for the repayment of the money contrary to the terms of the contract: (*Phillipson* v. *Getty*, 7 Hare, 516; affirmed by L. C. 10th March, 1849.

Under a will, trustees of a fund for the plaintiff were empowered to invest on security of real estate in England or Wales, with her consent; and under a settlement on the marriage of the plaintiff, similar trusts were created, and the same trustees, with J., empowered to invest the fund on securities of real estate in Great Britain or Ireland, with the consent of the plaintiff and her husband. The trustees under the will invested, under Mr. Lynch's Act, on a mortgage of real estate in Ireland, but without the plaintiff's consent obtained in writing; and the trustees under the set-