

(B.)

*Indenture tripartite* dated 22nd March, 1864, *between* W. G. Coombes, trader, of first part, Thomas S. DeWolfe and Chas. H. M. Black of second part, and the several other persons whose names are hereunto subscribed and seals set, creditors of the said W. G. Coombes, of the third part,

*Witnesseth* that said Coombes, by and with the consent of his said several creditors, parties hereto (testified by their respectively signing and sealing these presents), hath granted, &c.

*Upon trust* to pay and discharge the debts of all creditors who shall have executed these presents; and, after full payment, to distribute the residue (if any) amongst all the creditors of said W. G. Coombes in equal shares; and, should any surplus remain thereafter, to pay over the same to said W. G. Coombes.

*Witnesseth* further full release to Coombes by all creditors executing this Indenture,

*Provided* that no creditor shall be entitled to any benefit, &c., who shall not execute these presents within three months from the date hereof.

NOTE.—The Trust Deed contains no provision for giving notice of the assignment to creditors.

The case was fully argued during the present Term by *B. G. Gray*, for the plaintiff, and *Shannon, Q. C.*, for the defendant.

YOUNG, C. J. now delivered the judgment of the Court.

The question submitted to us is, whether by law or in equity the trustee of the estate can come in and share with the other creditors under the assignment, although he has not executed the same within the period of three months limited therein. Assuming, therefore, in this case, the functions of a Court of Equity, we have to enquire whether we have authority, in the face of the proviso that no creditor shall be entitled to the benefit who shall not execute within the period, to deal with the plaintiff as an executing creditor and permit him under the special circumstances to come in.