cases except two, which I shall afterwards refer to, where creditors have been excluded, are cases where they have acted inconsistently with the terms of the deed; as by bringing an action against the debtor when the deed contained a clause releasing him, (*Field* v. *Lord Donoghmore*, 1 Dr. & War. 227;) or, as was said in one case, actively refusing to come in, and not retracting the refusal within the time limited, (*Johnson* v. *Kershaw*, 1 DeGex & Sm. 260); or setting up a title adverse to the deed, (*Watson* v. *Knight*, 19 Beav. 369); *Brandling* v. *Plummer*, 6 W. R. 117. The two cases I mentioned above are *Lane* v. *Husband*, 14 Sim. 656, where the deed containing a release, a creditor was not allowed to come in, the debtor having in the meantime died, on the ground that the debtor could not then obtain the benefit of the consideration upon which the deed was based. The other is *Gould* v. *Robertson*, 4 DeGex & Sm. 509, which is cited in *White* and *Tudor's* L. C. as an authority, and the only authority for the proposition that a creditor who, for a long time delays, will not be allowed to claim the benefit of the deed. In that case, however, there was a provision, not found in the present deed, that in case any creditor should not come in under the deed for six months, he should be peremptorily excluded from the benefit of it. V. C. Knight Bruce held that after six years, and a correspondence extending over all that period, upon the subject of the debt in question, the creditor was not entitled to share. In a later case—*Re Baber's trusts*, L. R. 10 Eq. 554—even such a provision has been held not to exclude a creditor.

The case of *Whitmore* v. *Turquand*, 1 J. & H. 444, was one where the question was considered in the case of a deed limiting a time for creditors to come in: a creditor who has neither assented to or dissented from the deed within the time, can afterwards be admitted to share together with those who acceded before the expiration of the stipulated time. There V. C. Page Wood allowed a creditor to come in after apparently six years, and his decree was afterwards affirmed on appeal (3 D. F. & J. 107). The latest case on this subject is *Re Baber's trusts*, L. R. 10 Eq. 554. There the deed contained the same provision as in *Gould* v. *Robertson*, excluding creditors who did not come in within a limited time, yet the creditor who all along knew of the existence of the deed and had corresponded with the trustees on the subject, but who was not aware of the provision rendering it necessary for him to execute within a limited time, was allowed to share a dividend even after nineteen years. The circumstance that he had corresponded with the trustees would not seem to have been material under *Whitmore* v. *Turquand*, and was not even alluded to by V. C. Malins in his judgment. It was contended, however, that leave to come in would not be given unless the creditor had clearly a debt for which he could prove. In other words, that if it could be shewn now that there was no debt, the court would at once refuse the application and not leave the question to be inquired into by the Master. Here it is said the debt is barred by the Statute of Limitations, having accrued due in 1856. The present case is in this way distinguished from the one formerly before me in this suit, where the debt accrued due only after the debtor had absconded.

I incline to think that the debt here is not barred. The assignment is complete, it having been acted upon by the trustees, and communicated to some, at least, of the creditors, they having executed the deed. Under such circumstances it could not be revoked by the settlor. *Cosser* v. *Radford*, 1 De Gex, J. and S., 585; *Acton* v. *Woodgate*, 2 Mil. and Keen, 495. In *McKinnon* v. *Stewart*, Lord Cranworth, in 1 Sim. N. S. 89, holding this, as clear as to creditors who have executed the deed, said, "Where they have not executed the deed, questions have often arisen how far by having been apprized of its execution, and so, perhaps, been induced to do or abstain from doing something which may affect their interests, they may not have acquired the rights of *cestuis que trust*. As all the creditors had, in that case, executed the deed, it was not necessary for him to decide the point. In Darby on Limitations, p. 190. *Simmonds* v. *Palles*, 2 J. & L. 409, 584; *Kirwan* v. *Daniels*, 5 Hare, 493; *Harland* v. *Binks*, 15 Q. B. 713, it is laid down that where creditors are parties to the assignment or it is communicated to them, the relation of trustee and *cestuis que trust* is constituted between the assignees and every one of the creditors, and so long as the property remains in the hands of the assignees, the right of any creditor to an account of the property and to payment out of it, is not barred by lapse of time.

Here the trustees are themselves beneficially interested, so the deed was not revocable. *Siggers* v. *Evans*, 5 Ell. & Bl. 367; *Lawrence* v. *Campbell*, 7 W. R. 170. That such a deed would create a good trust, for even those creditors to whom it was not communicated, and who were not parties to it, would seem to follow from *Griffiths* v. *Ricketts*, 7 Hare, 307, where Lord Langdale doubted whether such a trust having been communicated to some of the creditors, it could ever after satisfying them be revoked by the settlor, as to creditors to whom it had not been communicated. Besides, in the present case the settlor, by the deed declares that the schedule annexed contains the names of the creditors and the sums due them respectively, and then provides that other persons not mentioned in the schedule, being *bona fide* creditors of his, may come in and share and participate in the advantage to be derived from the trusts, rateably, with the other creditors. In this schedule the petitioner's name appears as a creditor, and I think the trust prevented the statute from running against his debt.

The hardship of allowing a creditor to come in now upon those who signed the deed within the limited time was urged here, as it has been in almost all the cases on this subject. The courts have always refused to give effect to the argument, and I cannot be any more attentive to it here. The order will declare the plaintiff entitled to participate in the benefit of the deed, and to come in and prove his claim under the decree. As this is, I understand, a test case brought forward by arrangement, and by the decision in which all similar cases are to be governed, both parties should have their costs out of the estate.