On the 15th April last a similar petition was made by one C. Stead. His position differed materially, however, from that of the former petitioners, Hardy and Johnston, in this, that he was unable to plead ignorance of the deed, and his only ground for being admitted to share the benefits it conferred, was, that he had taken no proceeding hostile to it, but had thus virtually acquiesced in its provisions, and trusted to being paid his claim in due course of administration. Evidence was also put in by the creditors to shew that Stead's claim was a joint one against Pomeroy and one Mathews; that he had sued the estate of Matthews, and proved his claim against it, and therefore could not prove against the Pomeroy estate.

C. Moss contended that to disentitle a creditor *after any lapse of time* to come in, it must be shewn that he acted contrary to the deed, *e. g.* by proceeding against the estate at law. He cited *Joseph* v. *Bostwick*, 7 Grant 332, where a creditor was debarred from enjoying the benefit of such a deed by contesting it, and trying to establish a prior claim; and he submitted that where a party had merely neglected to comply with the strict terms of the deed no lapse of time would prevent him from coming in under it, even, it seemed, where dividends had been paid, on the terms, however, of not disturbing such dividends, *Re Baber's Trusts*, L R. 10 Eq. 554, was the latest authority, and there *Spottiswoode* v. *Stockdale*, 1 G. Cooper 102, was referred to, where Lord Eldon lays down what was now contended, and that too in a case where a proviso was inserted in the deed that it was *to be void unless executed by the creditors within eleven months*. No such provision was contained in this deed, and there was no time limited for notifying the trustees; the year limited referred, only to the execution of the deed. He contended also that it need not be shewn on this motion whether or not Stead had been paid out of the Matthews estate or whether his claim was barred. These were questions for the Master. All that need be decided upon this motion, was whether Stead was entitled to prove what he claimed.

Cassels argued that it should be shewn that he had a valid claim before putting the estate to the expense of investigating it, and that if a person having knowledge of the deed did not choose to ascertain whether he had a right under it, he should not be allowed to claim the benefit of it after allowing sixteen years to go by. Stead's evidence shewed that he had always thought the Matthew's estate was liable for his claim; he had a right to prove his full claim against it, as the note under which he was a creditor was joint, and it should be assumed that he had proved to the full extent of his right when he did prove against the Matthew's estate. He again urged the objection of the Statute of Limitations, and contended that it was properly urged now, for though it was for the Master to decide a disputed *amount*, yet it should be shewn on this application that the debt was a valid one.

Moss replied that the evidence shewed that he still claimed $5,000, and that as Stead was mentioned as a creditor in the schedule to the deed, he became a *cestui que trust*, and the Statute of Limitations ceased to affect him from the date of the assignment to the trustees and their acceptance of the trusts.

MR. TAYLOR, THE REFEREE IN CHAMBERS.—The petitioner claims to be a creditor of S. S. Pomeroy, and, as such, entitled to the benefit of an assignment, made by Pomeroy for the payment of his creditors, the trusts of which are being carried out under decree in this cause. His claim appears to have arisen thus: He held a note made in April, 1856, by Mrs. Matthews and Pomeroy, the consideration for the note being an alleged balance due to him for work done on the property of the Matthews' estate, of which Mrs. Matthews was executrix, and which Pomeroy, a son-in-law, managed as her agent. Upon this note he came in to prove in a suit in this court of *Morley* v. *Matthews*, where part of his claim was allowed and the remainder disallowed, on the ground, as I understand, that it was for work done, not for the estate, but upon a portion of it, to which Pomeroy was individually entitled. It is in respect of this balance that he now seeks to prove under the decree in this suit. The deed of trust for the benefit of creditors was made by Pomeroy as far back as November, 1859, and provided for its being executed by the creditors within twelve months Due public notice of the execution appears to have been given by the trustees, but it has never been executed by the petitioner, nor does he appear ever to have informed the trustees of his acquiescence in the deed His name appears in a schedule annexed to the deed as one of the creditors of Pomeroy.

The question is, whether he is now at this late date entitled to participate in the benefit of that deed. In considering the question of delay, it is important to remember that although the deed was made in 1859, no dividend has ever been declared under it. Indeed, the trustees seem to have taken no steps to distribute the estate, nor did any creditor take proceedings to enforce a distribution until the filing of the bill in this cause, in the spring of 1871. The petitioner it appears knew of the deed being executed by Pomeroy, probably soon after it was executed, though the exact time when he became aware of it does not appear. He says, however, that he did not know of the terms of the deed, or of creditors being required to become parties to, or execute the deed within a given time. He did not take any step to notify the trustees of his claim or of his intention to take the benefit of the deed, because, he says, he did not think anything would ever come to their hands for payment of the creditors, and that he would be paid his claim out of the Matthews' estate. It is not shewn that he has taken any proceedings hostile to the terms of the deed or inconsistent with them. He has simply lain by or done nothing. Now it is well settled that even although a deed, like the one in question, have limits, a time within which the creditors are to execute it, a creditor who has failed to do so is not necessarily excluded from the benefit of the trusts. *Dunch* v. *Kent*, 1 Vern. 260; *Spottiswoode* v. *Stockdale*, 1 G. Cooper, 102; *Rawworth* v. *Parker*, 2 K. & J. 163. It is sufficient if he has assented to it or acquiesced in, or acted under its provisions and complied with its terms (*Field* v. *Lord Donoghmore*, 1 Dr. & War. 227). No case seems to lay down what acts are necessary to constitute such assent, acquiescence or compliance. All the