had acceded to or gone against a deed. V. C. Page Wood said that persons who had done nothing either for or against a deed of this kind were entitled to come in and prove their claims, and this decision was affirmed upon appeal (3 DeGex. F. & J. 107). It was argued there that quiescence was not accession, and that the deed being expressly upon trust for those who acceded within three months the Court had no jurisdiction to divide the property among persons who had not brought themselves within this description. But Lord Chancellor Campbell said that "since the case of *Dunch* v. *Kent*, 1 Vern. 260, the doctrine of the court has been that the time limited by such a deed for the creditors to come in is not of the essence of the deed." Again, "the intention was that all creditors should come in and take a dividend, and that the debtor after his cession should be freed from his liability to these creditors. The deed was not for the benefit of any particular class of his creditors, but for all equally. The period of three calendar months is evidently introduced with a view to hasten the arrangement, and to authorize the trustees when that period has expired to make a dividend, which the subsequent claim of other creditors should not disturb. This is the understanding which has long prevailed on the subject; and with this understanding, the supposed hardship upon a creditor who executes the deed the last hour of the last day of the limited period does not exist; for if he thinks he is secure against any more creditors coming in afterwards, and feels confident that he must receive twenty shillings in the pound, and for this reason consents to execute the deed, he has a right only to blame himself for being ignorant of the law, which he ought to have known, as he ought to know the days of grace given for the payment of a bill of exchange.

W. G. P. Cassels objected that (1) Chambers was not the proper place for an application of this kind. There was no practice which could warrant the addition of parties in this way after a Master had refused to add them. In such a case they could only be added by filing a bill for that purpose. (2.) Both these claims were barred by the Statute of Limitations. Johnston's debt had accrued in 1859, and the petition and affidavit shewed no assent, he thought, to the deed, which could operate in taking it out of the statute. Johnston knew nothing of the deed, and he did not prosecute merely because he did not know of Pomeroy's having left any property so that there was nothing to prevent the statute from running (*Darby* on Limitations, 189). (3.) Both claims were also barred by *laches*. They had lain by now for ten years. In the cases of *Joseph* v. *Bostwick*, 7 Grant 332, and *Collins* v. *Reese*, 1 Coll. 675, it was true that the time had not been considered material, but this was on account of special circumstances, which were absent in this case. As to Hardy he had not actually executed the deed, but he had assented to it. This, he submitted, was insufficient. He must have done *some act* or must have been prejudiced and prevented from proceeding in some other way (*Snell* Principles of Equity, p. 71). And even supposing that Hardy was entitled, this fact could not save him from the statute. He must have been a party to the deed to render the statute inoperative.

Rae, for the defendants, and *Foster*, for the plaintiffs, submitted to what order the Court might make.

Moss, in reply: There was nothing to shew that the estate was not given to pay all claims in full, and in such case other creditors would not be allowed to take advantage of a mere error when the parties beneficially entitled to the residue made no objection. All the objections taken were technical (1) that the application was not made in the proper *forum*. But in all kindred cases it had been made in Chambers in *Schreiber* v. *Fraser*, 2 Ch. Ch. 271, and in *Andrew* v. *Maulson*, 1 Ch. Ch. 316; (2.) That the claims were barred by the Statute of Limitations. This, he submitted, was a question for the Master, and all that need be decided upon this application was whether the petitioners were entitled to prove their claims, not whether they had any claims or whether their claims were good. The claim of Hardy was one in the schedule. He had endorsed a note of Pomeroy's, it was not due when Pomeroy left the country. He paid it when due, and thus became a creditor of Pomeroy's and when his right of action accrued, Pomeroy was out of the country, and this fact apart from any trust in his favour under the deed was a bar to the Statute's running against him. So with Johnston's claim. He had become surety for Pomeroy in a bond to B S. Upon Pomeroy's absconding Johnston became liable to and having paid B S. he became a creditor of Pomeroy's. In addition to this he submitted that the trust deed had the effect of charging all Pomeroy's debts on his real estate, and preventing the statute from running against his creditors. (3.) As *laches* this objection could not apply to Hardy, to who had done every thing necessary except sign the deed, it was aimed at Johnston, and this very fact of his taking no steps independently, but acting as if he were a party to the deed was one of the grounds upon which he relied. If he had instituted proceedings for the recovery of his debt independently of the deed he might have disentitled himself to any benefit under it. (4.) As to the last objection that assent alone was not sufficient, the petitioners could only have shewn their assent more strongly by executing the deed, and *Whitmore* v. *Turquand* was so clear on this point that it was useless to discuss it.

MR. TAYLOR on this application allowed both petitioners to come in and prove their claims, holding (1) that it was not necessary to file a bill in order to obtain the relief sought from the fact that a suit was pending and the application was properly made in Chambers by petition in the suit. Hardy's case was a similar one to *Pyper* v. *McDonald*, 5 U. C. L. J. (O. S.) 162, where no bill was considered necessary. (2.) That the debts were not barred by the statute, for the absence of Pomeroy from the country during a period commencing before their right against him accrued and extending to the present time, had prevented the statute from beginning to run. Lastly, it was plain from *Whitmore* v. *Turquand*, 1 John & Hem. 444, and from the late case *Re Baber's Trusts*, L. R. 10 Eq. 554, that a party who had done nothing inconsistent with the deed was entitled to the benefits it secured, and in the latter case, too, the application had not been by bill.