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 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, (*Walton* v. *Knight*, 19 Beav. 369); *Brandling* v. *Plummer*, 6 W. R. 117. The two cases I mentioned above are *Lane* v. *Husband*, 4 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.