

ing creditors, therefore, were to be paid no more than the dividends of the trust fund, distributable to their respective claims, and in ascertaining the amount of such dividends, regard was to be had to the whole amount of claims specified in the schedules attached to the deed. If the trust fund should prove to be inadequate to the payment of all the creditors, the assenting creditors were to receive only dividends, and were not to have divided among them the shares of the creditors who refused to comply with the conditions of the deed, but those shares, by its explicit terms, were to be held "subject to the demand and control of John Hollins," &c.

The argument, therefore, that these dividends should be divided among the creditors who executed the releases, is in direct conflict with the provisions of the deed, to the terms and conditions of which they gave their positive assent, and the benefit of which, in consideration of that assent, they have enjoyed by receiving the dividends, which otherwise they could not have claimed.

The argument, also, that the creditors who have not assented are entitled to the benefit of this fund, cannot, I think, be maintained, because in that case they would, without complying with the terms of the deed, receive the same benefit under it as those who did assent to it, by releasing the grantors. It would in effect be destroying a most material stipulation of the deed, and defeat one of the principal inducements to its execution.

It is said, however, in the argument of the defendant's solicitor, that John Hollins has over this fund no more than a *power of appointment*. I do not concur in this argument. It is clear beyond controversy that this surplus, according to the provisions of the deed, was neither to be paid to the assenting or dissenting creditors, but, in the language employed in the instrument, was to be held by the trustees, "subject to the order and control of John Hollins, his executors, administrators, or assigns." The surplus, therefore, after paying the dividends of the releasing creditors, was to go back to John