

crued or become payable upon such advances, according to the true construction of the deed aforesaid, which contemplates the payment of such dividends only out of the net receipts, to arise from the use and employment of said buildings, after they had been constructed and properly furnished. That there never has been any such net receipts at any period, on the contrary, respondent has always been largely in debt, for the construction and furnishing said buildings, and carrying on the operations for which they were intended.

The answer also admits the recovery of a judgment against respondent, by Samuel K. Jennings, for the sum of \$10,984 08, on or about the 9th of February, 1841, who afterwards entered the same in part to the use of Edward Green, who caused an execution to be issued thereon and levied upon the interest of respondent in the property conveyed by the deed of trust, and hath bought the same at sheriff's sale, under said writ. It further states that respondent is insolvent, but that it has never failed to fulfil any of the requirements contained in the deed aforesaid, and that it is now in possession of the buildings erected as aforesaid, and using them for the purposes contemplated by said deed; that by the true construction of said deed, the principal thereby secured, is payable only at its pleasure, and after the 24th of July, 1845, and that the parties advancing the same, have no right or power to demand its reimbursement, or to have a sale of the university property. That the only contingency in which such a sale can be made, is that of the semi-annual, or other dividends, being in arrear for the space of twelve months, and that there never have been any semi-annual or other dividends declared, or due, or payable in the premises.

The answer of Green, filed on the 7th of January, 1845, submits that said deed of trust is not valid, or binding as against the creditors of said corporation, because the same was made to secure the stockholders of said corporation in preference to its creditors, and that the certificates proposed to be issued by said deed, were, in fact, certificates of stock and not loans to said corporation, and that if complainants advanced