

- them, and all dividends that shall have accrued thereon, and pay over the residue, if any, to the grantor, or its successors, or assigns." **HELD**, That this deed does not place the contributors and the corporation in the relation of partners with each other, or among themselves: that it provides simply for a loan of money by the contributors to the corporation, to secure the repayment of which, the latter gave them a lien upon the lot and premises in question, and that, consequently, they have superior rights to any creditor of the corporation becoming such after the execution of the deed.
- That it sufficiently appears that the dividends were to arise from the profits to be derived from the use of the buildings, and that from the nature of the trust, it was the duty of those having charge of the finances of the college, to ascertain and declare such dividends, and that the deed was not, therefore, void by reason of the uncertainty of its provisions in reference to the making of dividends.
- In 1841, S. K. J. recovered a judgment against the college for \$10,894 08, which was entered to the use of E. G., the defendant, to the extent of \$6,000, and the residue to another person. Upon this judgment a *fi. fa.* was issued and levied upon the property conveyed by the above deed of trust, and on the 27th February, 1843, E. G. became the purchaser thereof, at the sheriff's sale for \$6,500. Upon a bill filed by the contributors praying for a sale of this property upon the ground that the college had become incapacitated for fulfilling the requirements of the trust, and performing the agreements and conditions upon which the contributions were made: it was **HELD**,
- That since the sale of the title of the corporation to E. G., the college was not in a condition to perform the requirements of the deed, and as the leading object of its execution was to secure the reimbursement of the principal sums advanced by the complainants, they are now entitled to the interposition of this court in such form as will accomplish that object.
- It is now settled, that if the purposes of a trust cannot be accomplished without the most serious delays and inconveniences, the court will direct a sale or mortgage of the estate, though a power is only given to raise money for these purposes in a different way.
- A power or direction in a will to raise money out of the rents and profits of an estate to pay debts, or portions, has been held to include in it a power to sell and mortgage, when it is necessary to raise the money for the purposes of the trust, upon the ground that otherwise it might be impracticable to raise the money.
- Even in cases where the party is not wholly without remedy, but the interposition of the court is called for, simply to accelerate the payment of the debt, the authorities show, that the courts will grant relief by decreeing a sale, and, *a fortiori*, will they do so when the only remedy of the creditor is to be found in the power of the court in decreeing a sale.
- Partnership effects must be first applied in liquidation of the claims of joint creditors, before any partner can claim anything for his share or debt, and after a determination of the partnership, each partner is entitled to be allowed against the other every thing he has advanced or brought into the concern, and nothing will be considered as the share of any one, but that proportion of the residue to which each, on a balance of the accounts, will be entitled.