

CONSTRUCTION OF DEEDS—*Continued.*

by the treasurer for the time-being, of the college; said sum to be accepted by the party to whom the certificate was issued, or his assigns, in discharge, to that extent of said deed and of his claim to the property thereby conveyed, when tendered at any time after the 4th of July, 1845, by the grantors, or their assigns. The trusts are, 1st, that the grantor shall occupy and use the property, and receive the rents and profits thereof, until sold and disposed of as is therein provided. 2nd, That if the dividends on said certificates shall be in arrear, and unpaid for one year from the date thereof, then it shall be lawful for the grantees to sell the property, and out of the proceeds pay and reimburse the owners of said certificates, the full amount of the principal moneys mentioned in them, and all dividends that shall have arisen 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 creditors of the corporation, becoming such after the execution of the deed. *Conkling vs. Washington University*, 497.

4. 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. *Ib.*
5. 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 on the property conveyed by the above deed of trust, and on the 27th of February, 1843, E. G. became the purchaser thereof, at the sheriff's sale, for \$6,500. Upon a bill filed by the contributors 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. *Ib.*

6. The sale under the *fi. fa.* could only transfer the interest of the corporation at the date of the judgment, and would be subject to all judgments, liens, and outstanding equities existing against it, anterior to that time. *Ib.*