

ROBERT S. HOLLINS, ADMINISTRATOR  
 OF JOHN HOLLINS,  
 vs.  
 CHARLES F. MAYER, AND OTHERS.

MARCH TERM, 1851.

[VALIDITY OF ASSIGNMENT IN FAVOR OF CREDITORS—CONSTRUCTION OF DEEDS.]

A DEED conveying property, real and personal, in trust, to sell and apply the proceeds, 1st, to the payment of costs and commissions, and 2d, to the full payment of such creditors, named in an annexed schedule, as assent and release within a fixed time, "if the fund be sufficient for that purpose, and the balance, if any," to one of the grantors and his representatives, "but ratably and proportionably, according to the amount of the claims of each of said creditors, if the fund be insufficient to pay the whole;" *provided*, the shares of the non-assenting creditors "shall not be distributed among the others," but shall be held by the trustees, "subject to the future order and control of" the said grantor, is valid.

The fund not proving sufficient to pay the assenting creditors in full, they can only receive dividends, in the proportion that their claims bear to the whole amount of claims specified in the schedule, and the surplus must be paid to the grantor.

The non-assenting creditors cannot claim this surplus, because they would then receive the same benefit under the deed as the assenting creditors, without complying with its terms, which would destroy a material stipulation of the deed, and defeat one of the principal inducements to its execution.

[A deed of trust was executed on the 15th of January, 1823, by John Hollins, Michael McBlair, and John Smith Hollins, conveying to certain trustees certain real and personal property, consisting of two pieces of land, situated in the city of Baltimore, and "all and singular the stocks, chattels, effects, claims, debts, and sums of money" specified in two schedules annexed to the deed, *in trust*, to sell and collect the same, and apply the money arising therefrom, in the *first* place, to the payment of the costs and expenses attending the execution of the trust, and a commission of twelve per cent. to the trustees, and in the *next* place, "to distribute and divide the whole of the residue of such moneys, or so much thereof as may be neces-