

10/22/1878

Kentucky Court of Appeals

September Term, Oct. 22, 1878

Kentucky University Appellant } Appeal from
vs 3 Opinion } Fayette
H. H. White vs Appellee Circuit Ct.

The court being sufficiently advised delivered the following opinion herein.

The position of appellants counsel, that property conveyed to a corporation is to be held under the conveyance and charter as if they constituted but one instrument, is, we think correct.

The powers of the corporation are derived from its charter and those powers can not be enlarged by contracts with third persons - though their exercise as to particular parts of the corporate property may be limited by such contracts when such limitations do not affect the rights of the public by impairing the ability of the corporation to accomplish those purposes for which it was created - If therefore the appellants charter, or its charter and the act to establish the agri-

Cultural & Mechanical College, or those and the contracts between the Corporation, by its agent, and those from whom the money to purchase the land and erect the buildings was obtained, inhibit a sale of the property by the Corporation than it can not defeat that inhibition by the indiscretion of creating debts and permitting the property to be sold under legal process to satisfy those debts -

There is nothing in either deed imposing any restrictions on the power of the Corporation over its corporate property, and as by Section three of the Charter of 1858, it has general power to sue, lease, rent and dispose of any property it may acquire in any way the Curators may judge most useful to the interests of the University, there is no limitation upon the power of disposition unless it be contained in Section 14. of the Charter, or in Section three of the act to create the N. M. College, Section 14, applies to property donated, that is to gratuitous to the Corporation,

and makes provision, first that all such donations, whether by deed, will, or otherwise, shall be strictly applied according to the directions of the donor or testator; and, second, that all money thus donated as a permanent endowment fund shall be principal, and only the income therefrom shall be used. But that section has no application to a fund not donated. And as those who paid money an obligations of which exhibit "A" is a copy, were by its terms to be entitled to certificates of stock, entitling them, their representatives & assigns to stock to the amount paid, & that stock entitled the holder to tuition, in the university, they are not donors within the meaning of section 14. Nor does the recital in the obligation that the money for which it was given was for the purchase of grounds and the erection of buildings for the various apartments of the university, create a trust or use of such a character, as exempts the property purchased with it from the general powers of the ex-

privilege conferred by section 3,
while it is no doubt true that the
desire to advance the cause of
education was the positive induce-
ment prompting those who gave
their obligations & paid money as then,
yet this is not exposed as the
consideration, nor is there any attempt
to place the property to be purchas-
ed, under the provisions of the
14th section of the Charter,
Section 3 of the act to establish the
Agricultural & Mechanical College,
provides for conducting an exper-
imental or model farm, and for in-
structing pupils in the art of farming
and in the mechanical arts, and for
the purpose of carrying on that
College the State made certain ap-
propriations, but these were limited
to the expenses of conducting the
College, and were not for the
purchase of lands or the erection of
buildings - and gave the State no
interest in the corporate property,
nor did that act in any way limit
the power of the Corporation over
its own property - and we are

unable to perceive the grounds upon which it is supposed that act operated to exempt the property of the appellant from sale to satisfy its debts, that it is an educational corporation does not make it a public, or even quasi public, corporation,

The public has no other or greater interest in the existence and conduct of the appellants school than in any other of equal size & merit. It is strictly a private corporation and those who contributed to its establishment or support placed their contributions under the power & control of the corporation and trusted its preservation & use to them, and if it be lost by being sold to satisfy corporate debts, the loss is an incident to the nature of the enterprise, and must be borne just as in other cases of the kind,

Judgment affirmed

A Copy

Attest: J. J. Henry C. C. J.
By Robt. L. Gross Dec.

Kentucky
University

3 Copies of
or 3 Opinions

H. N. White vs

1850

Hayden