

1901-37

Southampton County Chancery - Drake, Junius W. vs Blythe, Caroline et al

Wants the will of Elijah Toyner construed  
& meaning declared; that her estate be  
divided to entitled parties; if this can't  
be done the sell and divide proceeds  
to those entitled.

Blythe, Joseph  
Drake, George  
Lankford, Indiana  
" , Andrew T.  
Beale, Ella  
" , Mills

i } Blythe, Lucius  
by }  
for }  
By Prince, J. B. (G. A. W.)

Book  
21-p. 310

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Junius W. Drake  
vs.  $\frac{3}{3}$  Bill R.

Blythe et al

---

1906. 1<sup>st</sup> Rich. Rules

Incorporated by

To the Honorable Robert R. Prentis,

Judge of the Circuit Court of Southampton County, Virginia.

Humbly complaining sheweth unto your Honor, your orator, Junius W. Drake, of the County of Southampton, Virginia, that his grandfather, Elijah Joyner, in his life time, was seized and possessed of that said tract or parcel of land situate in Jerusalem, magisterial District in Southampton County, Virginia, containing seventy (70) acres, more or less, and bounded by the lands of J. W. Drake, Newitt Cobb, Adeline Wester, J. H. Beale, and Wesley Bradshaw, and the public roads leading from Black Creek to Courtland, and that being so thereof, seized and possessed towit:

On the \_\_\_\_\_ day of \_\_\_\_\_ departed this life, leaving his last will and testament as follows towit:

"October 15, 1869. Eye give to my wife all my estate her life, and at her death, eye give to my two daughters, Eveline M. Joyner, and Caroline F. Joyner, to them and their heirs forever, and if they dye with douth are, eye give <sup>it</sup> to ~~my~~ son, Junius W. Joyner, the son of my daughter, Mary Jane Drake. Eye give to my daughter, Mary J Drake, five dollars."

( Signed ) Elijah Joyner ( seal. )

All of which will fully appear from a certified copy of said will filed herewith, as exhibit "A", and prayed to be read and taken as a part of this will. That the said will was duly admitted to probate in the County Court of Southampton County, on the 20th day of December, 1869.

That Patsy Joyner, who was the wife of the said Elijah Joyner, mentioned in said will, departed this life a few years after the death of said Elijah Joyner. That on a certain date thereafter towit: On the 17th day of November, 1905, the said Eveline M. Joyner, mentioned in the said will, departed this life, intestate, never having married, and without issue; that Caroline F. Joyner has inter-married with Joseph Blythe, and there has been born unto them, one child, Lucius Blythe, an infant of about 17 years of age, and that the said Caroline F. Blythe, Joseph Blythe, and Lucius Blythe are still living.

That the said Eveline M. Joyner left, as her next of kin and heirs at law, her sister, Caroline F. Blythe, and Junius W. Drake, your orator, George Drake, Indiana Lankford, (who was Drake) the wife of A. T. Lankford, and Ella Beale (who was Drake), the wife of Mills Beale, sons and daughters of her deceased sister, Mary Jane Drake, who departed this life sometime about the year 1903.

Your orator, who is referred to in the said will by the name of Junius W. Joyner, by which name, as well as the name of Junius W. Drake, he is sometimes called, is advised that the said Eveline M. Joyner having departed this life without issue, one-half of said estate vests in him, under and by virtue of the said will, and that the other half thereof belongs to Caroline F. Blythe, whose title thereto is subject to be defeated upon the happening of a certain contingency, her death without issue living, in which event, the entire estate will vest in your orator.

Your orator is informed that there are other parties, who contend that the estate limited to your orator in the said will was contingent upon the death of both Eveline M. Joyner and Caroline F. Joyner without issue, and that should either of them die, leaving issue their estate became complete.

Your orator says that the said land is susceptible of partition among the several parties entitled thereto, but if it cannot be so divided, then your orator desires that the same may be sold, and the proceeds divided among the parties, according to their respective rights. Should property not be divisible in kind, your orator believes, and here states that the interest of those that are entitled to the estate, or its proceeds, will be promoted by the sale of the whole, or by allotment of part, and the sale of the residue.

In tender consideration whereof, and inasmuch as your orator is without remedy in the premises, except in a court of equity, where all such matters are alone and properly cognizable, your orator prays that the said, Caroline Blythe, Joseph Blythe, George Drake, Indiana Lankford, and A. T. Lankford, Ella Beale, Mills Beale, and Lucius Blythe, the last an infant of tender years, may be made parties defendant to this bill, and be required to answer the same, answer under oath being waived ; that a proper guardian, ad litem be assigned to the infant defendant to defend his interest in this suit, who shall answer this bill, but not under oath; that the said will of Elijah Joyner, as aforesaid, may be construed and its meaning declared ; that the said real estate be divided between the several parties entitled thereto, and your orator's portion thereof allotted to him, and in case the said real estate cannot be divided in kind, that the same may be exposed to sale, and the proceeds of such sale be divided among the several parties thereto; that proper process may issue, that all proper orders and decrees may be made and proper inquiries be directed and taken, and that all such other, further, general, and special relief may be afforded your orator, as the nature of his case may require, or to equity shall seem meet. And your orator will ever pray, etc.

James L. Drake  
By Counsel

Wm. J. Drake Jr. pz.

OFFICE OF  
JOHN N. SEBRELL, JR.  
ATTORNEY AT LAW,  
428 ATLANTIC TRUST BUILDING.

NORFOLK, VA. January 28, 1907.

Mr. B. F. McLeMore,  
Clerk of Court,  
Courtland, Va.

Dear Sir:

You will please make for Junius W. Drake a transcript of the record in the chancery case of Drake Vs. Blythe et als pending in this Court and send same to me as early as convenient for you.

Mr. *W. J.* Sebrell is counsel for the adverse parties and I am sending this to him together with notice as required by section 3457 of the Code with request that he acknowledge notice and hand this letter to you. You will, of course, understand that it is not necessary to incorporate the notice in the transcript of record, it being sufficient to certify that notice was given as required by the statute.

Thanking you for your kind attention to this matter,  
I am,

Yours very truly,

S./D.

*John N. Sebrell, Jr.*

Drake

Spencer

1906-1907 Mich Rules  
Oct 21

Exhibit Feb 25<sup>th</sup> 1904  
by delivering a true  
copy of the within  
writ to the within  
Name furnished  
J. L. Gillette Sheriff

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON.....

*Caroline Rhyder*  
*Joseph Rhyder, George Drake, Indiana Sanford*  
*Andrew T. Sanford, Olla Beale*  
*Mills Beale and Lucius Rhyder, the*  
*last an infant under the age of 21 years.*

to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules  
to be holden for the said Court on the *1st* Monday in *March* 1906  
next, to answer a Bill in Chancery exhibited against *them*  
in our said Court by *Jurries W. Drake*

And this *they* shall in nowise omit under penalty of law. And have then there this writ.

Witness B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this  
*21st* day of *February*, 190*6*, in the *17th* year of the Commonwealth.

Teste:

*B. F. McLeMore*, c. c.

Drake J. W.

vs.

Blythe, et als.

Entered C. O. B.

Page 45

**VIRGINIA:**

*In the Supreme Court of Appeals, held at  
the Library Building in the City of  
Richmond on Thursday the 12th  
day of March 1908.*

Junius W. Drake ----- Appellant

against

Caroline Blythe, Joseph Blythe, George Drake,  
Indiana Lankford, A. T. Lankford, Ella Beale,  
Mills Beale, and Lucius Blythe by J. B. Prince,  
his guardian ad litem ----- Appellees

Upon an appeal from and supersedeas to a decree pro-  
nounced by the Circuit Court of Southampton County  
on the 23rd day of January, 1907.

This day came again the parties, by counsel, and the court  
having maturely considered the transcript of the record of the  
decree aforesaid and arguments of counsel, is of opinion, for  
reasons stated in writing and filed with the record, that there  
is no error in said decree. It is therefore adjudged, ordered  
and decreed that the same be affirmed, and that the appellant pay  
to the appellees their costs by them expended about their defence  
herein, and also thirty dollars damages.

Which is ordered to be certified to the said Circuit Court.

A Copy,  
Teste:

W. H. Jones C.C.

Appellees' costs:  
Attorney's fee  
Clerk's fees

\$20.00  
3.36  
\$23.36

Teste:

W. H. Jones C.C.

October 15, 1869 Eye give to my wife all my estate her life  
and at deth eye Give to my two daughters Eveline M. Joyner  
and Caroline F. Joyner to them and there heirs forever  
And if they dye with douth are eye Give it to Son James W. Joyner  
the Son of Son my Daughter Mary Jane Drake Eye Give to my  
daughter Mary, J. Drake Five Dollars

Elijah Joyner

(seal)

Test

John T. Joyner

his

William H. Joyner.  
mark.

At a Court held for the County of Southampton, at the Court-  
house thereof, on Monday the 20th of December A D, 1869.

This last will and testament of Elijah Joyner deceased, bearing  
date October 15th 1869, was proved by the oaths of John T.

Joyner and William H. Joyner, the subscribing Witnesses thereto  
and order to be recorded.

Teste: Oswin White C. C.

A Copy.

Teste:

*H. B. McLennor* C.C.

*By H. B. McLennor D.C.*

-1909-  
Juncus H. Drake  
} Stat: Rules

Blythe et. als:

Junius H. Drake

Caroline Blythe. Joseph Blythe.  
George Drake. Indiana Lankford.  
Andrew J. Lankford. Ella Beale.  
Mills Beale. and Lucius Blythe.  
The last an infant under 21 years  
of age.

1906. Feb 21<sup>st</sup> Process issued to 1<sup>st</sup> Mich Rules.

" 1<sup>st</sup> Mich Rules: Process ret. Executed -

Bill & Ex: filed.

Deere River

1906. 2<sup>nd</sup> Mich Rules:

Bill taken for Confessed as to  
Adults, and Cause set for hearing  
as to them.

Drake -  
vs.  $\frac{1}{2}$  —  
Blythe chals

Answer of G'da  
ad litem

1907 Jan 23 Filed

The answer of Lucius Blythe by J.B. Price  
his guardian ad litem to a bill in equity  
exhibited against him and others in  
the Circuit Court of Southampton County  
by James W. Drake.

This respondent answering &c. for  
answer to said bill or to so much  
thereof as it is material he should  
answer, answer and says -

That being an infant of tender  
years he knows nothing of the  
matters and things in said bill  
contained, and commits the same  
to the court.

And now having answered he prays  
hence to be dismissed &c.

J.B. Price  
Son ad litem for  
Lucius Blythe

Drake,  
v.  $\Sigma$  In Chancery.

Blythe et al.

1906 Dec 13. Filed

Answer of Caroline  
F. Blythe, and Joseph  
Blythe, her husband.

deem.

The respondents deny all charges of

fraud; perjury and other intentional  
statements; the respondents deny all charges of  
fraud; perjury and other intentional  
statements; the respondents deny all charges of

fraud; perjury and other intentional

statements; the respondents deny all charges of

fraud; perjury and other intentional

1906

The joint answer of Caroline F. Blythe and Joseph Blythe, her husband, to a bill of complaint exhibited against them and others by Junius W. Drake, complainant, in the Circuit Court of the County of Southampton:

The respondents reserving to themselves the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as they are advised it is material that they should answer, answer and say:

That true it is the said Elijah Joyner died at or about the time alleged in the bill, leaving the tract or parcel of land mentioned in said bill, and leaving, also, a will as therein stated; that it is, also, true that Patsy Joyner, the wife of the said Elijah Joyner mentioned in the said will departed this life a few years after the death of the said Elijah Joyner; and that it is, also, true that the said Evelyn M. Joyner, mentioned in the said will, departed this life, intestate, and without issue, at or about the time alleged in the said bill.

The respondents, however, wholly traverse and deny so much of the allegations of the said bill as would tend to assert any claim on the part of the said complainant to an undivided one-half interest in the tract or

parcel of land in the bill mentioned, or that would tend to fix in him any present vested interest in or to the said land, or any part thereof. The respondents most earnestly and seriously claim and contend that the said complainant has no vested interest whatever in or to said land or any part thereof.

In this connection, the respondents say that at the time of the making of the said will by the said Elijah Joyner, and at the time of his death, the said tract of land constituted practically his entire estate, and that the said Elijah Joyner, with his wife, the said Patsy Joyner, and his two daughters, to-wit, the said Corline M. Joyner, and the respondent, Caroline F. Blythe, (who was then Joyner), lived upon and occupied the said farm as their home; and that in devising the said farm or home to his wife, for her life, with remainder to his two said daughters, he gave it to his wife, for life, as a unit or entirety, and gave the same unit or entirety, in remainder to his two said daughters, with no purpose or intent that there should be any severance or division of the same, and that it was only in the event that they, that is, both, and not one of them, should die without issue, that the said testator desired or

provided that the said complainant should have any interest in, or title to, the said farm, but that unless or until they (both) died without issue, it was intended by the said testator, as manifestly appears from the tenor of his will, that it should be held and owned by his two said daughters, or by the survivors, in the event of the death of either of them without issue, subject to the limitation and determinable by the contingency mentioned in the said will.

The respondents say that, one of the said daughters, to-wit, the respondent, Caroline F. Blythe, being now alive, and having issue also now alive, the contingency provided for in the said will has not yet happened, and that, therefore, the complainant has not, as yet, any vested interest in or to the said farm, and that, therefore, his claims thereto are premature, unwarranted, and untenable, and that the prayers of his bill should be denied.

The respondents deny all fraud, unlawful combination and confederacy; and having fully answered the Complainant's bill, pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray &c.

W.D. Sebrill, p.d. {  
                                  {  
                                  {

Caroline F. Blythe,  
Joseph Blythe, By Counsel.

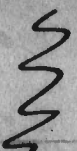
Drake -  
vs. { Deere  
Blythe chad

Enter Jan. 23 1907

Robert C. Hentz

Entered in

L. O. B. O. 325

Junius W. Drake, plaintiff,  
vs.  Deere.

Caroline Blythe, Joseph Blythe, George Drake,  
Indiana Lauckford, A. J. Lauckford, Ella Beale,  
Mills Beale, and Lucius Blythe, the last named  
an infant under twenty one year of age.

This day this cause came on to be  
heard on the bill of complainant and  
exhibits therewith filed, the answer of  
Caroline F. Blythe and Joseph Blythe, taken  
for confessed as to the ~~other~~ adult defendants,  
upon whom process has been duly served, they  
still failing to appear and plead, answer  
or demur to the said bill, the answer of the  
infant defendant by J. B. Prineas  
his guardian ad litem, <sup>who is hereby this day assigned</sup> ~~duly assigned at rules~~  
to defend him in this suit, with general rep-  
lication thereto, and was argued by counsel.

On consideration whereof, the Court  
construing the will of Elijah Joyner, dec'd,  
is of opinion that it manifestly appears  
from the tenor of the said will that it was  
the intention of the testator that, at the death of  
his wife, the tract of land in the proceedings  
mentioned should pass as a unit to his two  
daughters Eveline M. Joyner and Caroline F.  
Joyner (now Blythe), and that in the event of  
the death of either of the said daughters the part  
or interest of the one dying should then belong to

by way of cross-remainder, by implication,  
the other, and that the said Junius W. Joyner  
should not take the said tract of land nor  
any part thereof, unless and until <sup>both of</sup> the two  
said daughters should die without issue; And  
it appearing to the Court that one of the said  
daughters, Caroline F. Blythe, formerly Joyner,  
is still living, with issue also still living,  
the Court doth adjudge and decide that the  
said Junius W. Joyner is not now entitled  
to take the said tract of land, or any part  
thereof, but that the interest of the said Evelyn  
M. Joyner, deceased, passed under the said will  
to her sister, the said Caroline F. Blythe, formerly  
Joyner, and that the said tract of land, including  
the said interest, will not pass to the said  
Junius W. Joyner until the happening of the  
contingency provided for in said will, to-wit,  
the death of <sup>both of</sup> the two said daughters without  
issue.

Drake -  
vs.  $\frac{1}{2}$  Deere  
Blythe chad

Enter Jan. 23 1907  
Robert C. Hanks

Entered in  
L. O. D. O. 325

Drake

or  $\frac{3}{3}$  balance

Blythe ch. als.

---

I hereby acknowledge  
service of within  
notice.

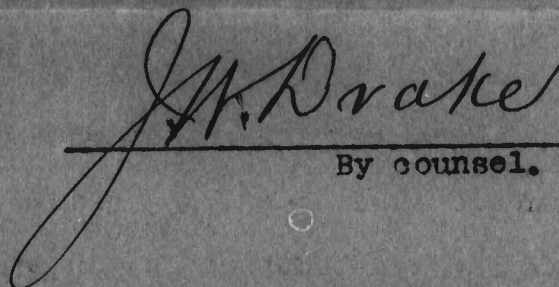
W.D. Webb,

Counsel for Defendants  
Caroline Blythe and  
Joseph Blythe.

TO W. J. Sebrell, counsel for defendants in chancery  
suit of Drake Vs. Blythe et als:

TAKE NOTICE that I intend to apply to the Clerk of  
the Circuit Court of Southampton County for a transcript  
of the record in the Chancery suit pending in the said  
Court wherein I am plaintiff and Caroline F. Blythe  
and others are defendants, for the purpose of presenting  
same to the Court of Appeals for an appeal.

Very respectfully,

  
By counsel.

Drake J. H.  
TO } *Supersedeas*  
BOND.

Commonwealth.

1907 - Feb 26.

Know all men by these Presents, THAT WE, J. N. Drake  
and George T. Drake

are held and firmly bound unto the Commonwealth of Virginia, in the sum of One Hundred Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemption as to this obligation, and any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post or trust with coupons detached from the bonds of this State. Sealed with our seals and dated this 26<sup>th</sup> day of February, one thousand nine hundred and seven.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas a Supersedeas has been awarded to Junius H. Drake by the Supreme Court of Appeals of Virginia to a decree entered in the Circuit Court of Southampton County Virginia on the 23<sup>rd</sup> day of Jan'y, 1907 in the suit in which Junius H. Drake is Plaintiff and Passine Blythe, Joseph Blythe, George Drake Indiana Daikford, A. T. Daikford, Elba Drake, Wills Drake, and Lucius Blythe by J. B. Prince his Guardian and Litton Drake Defendants, Now, therefore if the said Junius H. Drake shall perform and satisfy the judgment, decree or order of the Court and all actual damages costs and fees incurred in consequence of the said Supersedeas, according to law then this obligation to be void, or otherwise to remain in full force and virtue.

J. N. Drake

SEAL.

Geo. T. Drake

SEAL.

SEAL.

Office of the Clerk  
In the Clerk's Court of the County of Southampton,  
the 26<sup>th</sup> day of February 1907

This bond was executed and acknowledged in open Court by the obligors, and ordered to be recorded,

Geo. T. Drake

the surety therein having first justified on oath that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expect to have to pay is worth the sum of One hundred dollars, over and above all exemptions allowed by law.

Teste:

B. F. McLenore

Clerk.

Drake J. H.

or

Plytho, Et: als

Costs

Sum: 25 - 7 Copies @ 13 - .91

Re: 18 Atty. 10 - Re: 18, 18. Rule 1.00

Entering a motion 35, filing Bill 15

Filing Exhibit 15. Do Answer 15

Do Answer of 4th Addition 15

Copy Exhibit 25, Taking & recording  
Supra & deas Bond 1.45

2 Deoras @ 36 - 72

Taking Care to & Copy - 4.0

Expense for Court, 50. Re: 18

Transcript of Record - 3.55

Filing Answer, Papers 1.25

GRK \$10.87

Shff 4.00

Law 16.50

Costs in Supra & deas 23.36

\$54.73

Defendants' Damages \$30.00