

Isaac Sinner
against

James Sinner. Joseph Sinner.

A copy of the decision of the Court of Appeals in this cause was received by the Clerk of this Court in the vacation thereof the 21st day of November 1852. and is in these words.

Virginia. At a Court of Appeals held at the State Courthouse on Monday February 2^d 1853.
Isaac Sinner and Joseph Sinner

against
Isaac Sinner

Plff. } In Chancery.
Dft.

Appell. } Upon an appeal from
Appell. } a decree pronounced

by the Circuit Superior Court of Law and Chancery held for Southampton County on the twelfth day of November 1852 in a suit in which the appellee was plaintiff and the appellants &c were defendants.

Dft. Is Sinner

Case on Ch. Ct

Fig. 55.

To go to

This day came the parties by their Counsel whereupon the transcript of the record of the decree pronounced and the argument of Counsel having been mutually considered, the Court is satisfied by the pleadings and proofs in the cause, that the bond of seven hundred dollars, in this bill and proceedings mentioned, had been reduced from its first day of September 1850 by payments to about the sum of seven hundred dollars; that on the day last mentioned, a new bond (whether executed by James Sinner or Joseph Sinner does not distinctly appear) for the said balance of seven hundred dollars was delivered by the said Joseph Sinner to the appellee Isaac Sinner and accepted by the latter, in satisfaction and discharge of the said balance. And that the said bond of seven hundred dollars was thereupon surrendered by the said Isaac to the said Joseph. And that thereafter and prior to the institution of this suit, this said bond of seven hundred dollars was fully satisfied by payments made by the said James and Joseph. The Court is therefore of opinion, that the said Circuit Superior Court erred in adopting the Special Statement of the Commissioner as the basis of its decree and in rendering a decree against the appellants for the balance reported in said Statement, and in ordering a sale of the property attached and that it ought instead thereof, to have confirmed the original report of the Commissioner and dismissed the bill. The Court is also further of opinion that notwithstanding James Sinner was regularly proceeded against as an absent Defendant, and therefore according to the decisions of this Court in the cases of Platt against Howland, Smith & Leigh, five hundred and seven, and of Parker and Company against Sumrell &c South Gateham four hundred and forty two, had no right to appeal to this Court on account of any error in the decree against him: yet that as Joseph Sinner filed his answer under the provisions of the Court and thus submitted himself to the privileges of a home defendant, and succeeded in the opinion of this Court, as above indicated, in procuring a decree which was in no respect procured, but established the satisfaction and discharge of the joint obligation on which the suit was founded, the appeal of the said Joseph necessarily brought under review the propriety of the whole decree, and devolved on the said Joseph, wherefore it is decreed and ordered that the said decree be reversed and annulled and that the Appellee do pay unto the Appellant Joseph Sinner his costs by him expended therein as the said Circuit Superior Court ought to have pronounced, it is further decreed and ordered that the original report of the Commissioner be confirmed, and that the bill of the Appellee be dismissed. And also that the said Appellee do pay unto the Appellant Joseph Sinner his costs by him about his defence in the said Circuit Superior Court expended.

Which is ordered to be certified to the Circuit Court of Southampton County.
Appellant Joseph Sinner Costs \$50.00.

Attest. Teste. J. Allen cc.