

Edmund Jones, William Jones and James Williamson
against

Defts.

Thomas Payne James S. French Eliza Kirkfield administrators of Sarah Payne dec'd Esqrs Messrs
Francis Coffey, Richard Darden Thos. A. & Joseph West merchants partners trading under
the firm and style of Thos. A. & West Bank Branch & Thos. John A. Patterson and John B. Wells Late
merchants and partners trading under the firm and style of West Patterson Wells and Thomas. S.
Simmons and all the other creditors of Thomas Payne

Defts.

A Copy of the judgment of the Court of Appeals in this cause was received by the Clerk of this
Court in the vacation thereof the 14th day of December 1853 and is in these words.
"Virginia. At a Supreme Court of Appeals held at the State Court house in the City of Rich-
mond on Wednesday November 23^d 1853.

James S. French

against

Edmund Jones William Jones, James Williamson, Richard Darden and
Thomas Simmons

Appell.

} Upon an appeal from a
} decree pronounced by the
} Circuit Superior Court of

Appell.

law and chancery held for Southampton County on the third day of May 1851 in a suit
in which the appellers Edmund Jones, William Jones and James Williamson were
plaintiffs and the appellees and there were defendants.

This day came the parties by their counsel, and the Court having maturely considered the transcript of
the record of the decree aforesaid and the arguments of counsel is of opinion, that the power of
attorney and deed of trust, in the bill and proceedings mentioned, should be construed together and
be interpreted as to give effect to both; That so construed they would, but for the admissions of the
appellant on his answer, have entitled him to priority of satisfaction out of the effects of the common
debt, as well for debts which he was bound as security, as for the debts due to him by Thomas Payne,
or the payment of which he had assumed for him. But as by the answer it is admitted the
interest of C. Jones was placed on an equal footing with the claims which the appellant was
bound for as security, and as no discrimination is made in the trust deed between the enumerated
creditors, they must all share alike; and it was not competent for the appellant to change the
rights of the parties by selling the Brown land as attorney, and not as trustee. The Court is
therefore of opinion that in settling the accounts of the appellant, he should be charged with the
proceeds of all the effects of said Payne received by him under the power of attorney or deed
of trust, and after deducting his costs and commissions he should be credited with the amount of
any individual debt which the said Payne owed him on the first of December 1851, or the payment
of which he may have assumed for said Payne at or before that day, and which he shall actually have discharged,
and the residue of the fund to be appropriated among the debts enumerated in the deed of trust.

The Court is further of opinion that as to the power of the heirs Wellington, the credit given for forty five
hundred dollars as of the fourteenth of December 1851 on the note for four thousand dollars should be
disregarded; that the Court should direct an enquiry to ascertain the real value of said bond on the
fourteenth of December 1851, that the appellant should be charged with said true value as part of the
trust fund, and the said appellee be entitled to their pro rata share on account of said debt of four
thousand dollars, crediting said share with the true value of said bond, so to be ascertained, and of
such value exceeds the pro rata share on account of said debt for four thousand, they should be required
to refund the excess, for the benefit of the other enumerated creditors. And the Court is of opinion that there
was no other error in the decree appealed from of which the appellant could complain, but as the cause
must go again before a Commissioner, leave should be given to the parties interested in the fund to show
that the Simmons debt has been paid or reduced in amount; and if the part of Allen has not been disposed
of, leave should be given to the parties interested in the trust fund to apply for further relief in relation to the
pro rata portion of the debt for fifteen hundred dollars to which they may show themselves entitled, and all