

the Court confirming the same, doth adjudge, order and decree that John W. Pender
execute & deliver a deed of different sort with special warranty to John H.
Rishard for the home of lot in the town of Jerusalem whereof Daniel H.
Drumgool died seized & possessed the Thomas Drake for a tract of
land containing by estimation one hundred acres lying adjacent to the lands
of Elijah Nelson, Thomas J. Piller & Jonathan Davidson in the County of
Penthampton whereof Daniel H. Drumgool died seized & possessed
to said D. Dring for a tract of land of one acre in Indian town
whereof Daniel H. Drumgool died seized & possessed & that the
costs of this suit remaining unpaid be paid by the creditors of D. H.
Drumgool mentioned in the decree, bearing of May term 1851, in proportion
to their respective demands.

Edmund & W^m Jones & James Williamson

Deft 1

against
Thomas Payne, James S. French, Elyse A. Winfield (Clerk of Court
Payne, Reuben Mason, Francis Coffey & others Defts.

This day this cause came on to be again heard & the papers formerly
read and the transcript of the decree of the Supreme Court of Appeals
upon an appeal from the decree of this Court pronounced on this day
of May 1845, which is in the following words viz:

Virginia At a Supreme Court of Appeals held at the State Penitentiary
in the City of Richmond, on Wednesday, November 23rd 1853.

James S. French

Appell^t Upon an appeal from a

against

Edmund Jones, W^m Jones, James Williamson

decrees pronounced by the
Court superior court

Richard Darden and Thomas Simmons Appels }
for Penthampton County on the third day of May 1845 - at
which the appellors, Edmund Jones, William
Jones, and James Williamson were plaintiffs and the
appellants and others were defendants.

This day came the parties by their counsel (and the Court having mutually con-
sidered 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 or should be construed together
and so interpreted as to give effect to both. That is construed they would, but
for the admissions of the appellant in his answer, have settled but to
priority of satisfaction out of the effects of the common debt, as well
for debt for which he was bound as security as for the debt due to
him by Thomas Payne i. e. the payment of which he had assumed for him-
self as by the answer it is admitted the interest of E. Jones was placed
on an equal footing with the claims which the appellant was bound
for as security and so no discrimination in the trust deed betwixt 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 same land as
aforesaid, and not as trustee. The Court is therefore of opinion that in settling
of said Payne received by him under the power of attorney & deed of trust,
and after deducting his costs and commissions he should be credited with