

The amount of any individual debt which the said Payne owed him on the first of December 1841, 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 apportioned amongst the debts enumerated in the list of trust. The Court is further of opinion that as to the price of the horse Wellington, the credit given for thirty five hundred dollars as of the fourteenth of December 1841, on the note for five thousand dollars should be disregarded, that the Court should direct an inquiry to ascertain the real value of said horse on the fourteenth of December 1841, that the appellant should be charged with such 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 five thousand dollars crediting each share with the true value of said horse, so to be ascertained and if such value exceeds the pro rata share on account of said debt for four thousand dollars, 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 from which the appellant could complain, but as the cause must go again before a Commissioner, care should be given to the parties interested to show that the sum of debt has been paid, or reduced in amount; and if the sum of Allen has not been disposed of care 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 in which they may show themselves entitled, and all proper considerations for the security of said proportion until the termination of said controversy in relation to said debt for fifteen hundred dollars, as to the Court may deem expedient. Therefore it is decreed and ordered that the said decree be reversed (and) annulled and that the appellees do pay unto the appellant his costs by him expended in the prosecution of his appeal aforesaid him. And it is ordered that the cause be remanded to the Circuit Court of Southampton County to be proceeded in according to the principles aforesaid and, for a final decree.

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

Appeals costs in Court of Appeals \$57.70 &c

J. Cooper, Test. J. Allen, R.C.

And was argued by Counsel. On consideration whereof, the Court doth adjudge, order and decree that David Francis Bernard of Petersburg who is by the agreement of the parties by their Counsel appointed a special Commissioner for the purpose, and it, State and doth submit to the Court report on account of the transactions of James S. French, as attorney in fact for James Payne and Under in a deed of trust executed by the said Payne on the first day of December 1841, charging said French with the payment of all the debts of Payne released by him under the power of attorney a deed of trust, and after deducting his costs and commissions deducting him with any individual debt Payne owed him on the first day of December 1841, or the payment of which he has assumed for him at or before that day, and which he shall actually have discharged. And he is directed to appraise the residue among the debts enumerated in the Deed of trust, showing the amount which each creditor may