

Foote vs Grigsby
Deposition of John Gibson
7 September 1829

Note – Prince William County to wit: Richard Foote assignee of H. Barron plaintiff against Aaron Grigsby defendant. \$12.09 will be the plaintiffs costs if a judgment at June Court 1828.

Teste John Williams D.C.
April 24th 1828

On back of note – amount of Bond \$69.36 ½ - Bond dated 9th of February 1819 payable on demand.

The deposition of Charles Ming taken at the house of Sarah Brooks in the Town of Buckland on the 15th day of September 1829 agreeable to notice, which deposition is to be read in evidence in a certain suit now depending in the Chancery Court of the Fredericksburg District in which Richard Foote is plaintiff and Aaron Grigsby defendant. This deponent deposeth and sayeth that by virtue of an order of the county court of Prince William bearing date the 10th August 1826 referring all matters of dispute between Richard Foote and Aaron Grigsby to Charles Ming and Charles Hunton, we met at Brentsville first on the 7th day of April 1828 and adjourned several times holding meetings at Haymarket and Brentsville: all the adjournment took place in consequence of Mr. Foote writing to us he could not attend agreeable to our notice – Mr. Foot attended but twice once at Brentsville and once at Haymarket on the 3rd October 1828 which was our last meeting.

Question by Grigsby – Did you discover at your last meeting at Haymarket that any insult or any improper treatment was offered by Mr. Hunton to Mr. Foote which induced him to go away before the business was closed.

Answer – No Mr. Foote was treated with all the politeness and attention then and at our former meeting which we are capable of shewing to any Gentleman: although: he shewed much impatience and abruptness when before us. I recollected of but one circumstance which could give the least shadow of offence which was in Mr. Footes conversing with Mr. Hunton. Mr. Foote remarked that he would pay Grigsbys claims on his deceased wife – when he received funds, Mr. Hunton, replied that, that he had received funds according to his acknowledgment to the amount of \$300. Mr. Foote made some short reply the words I do not recollect, when Mr. Hunton replied that he thought he meant to guabble. I did not discover that Mr. Foote took any notice of Mr. Hunton's remark, as he told me he was compelled to return home as soon as he got his dinner, which he did do and told me when he was about to go, that he was compelled to go home. Mr. Tyler would attend and act for him. I had then not the most distant thought that Mr. Foote was offended at anything that had occurred. On the last day he was before us as referees and as I at two or three several times after our award was returned, conversed with Mr. Foote on the subject of the award, he never to me intimated displeasure at our behavior or treatment when he was before us; he remarked then what he had done before that he did not consider we had any right to settle the claims on his deceased wife as it was a subject he did not intend should be embraced in the order of reference or acted upon by us. Mr. Foote presented his private accounts against Mr. Grigsby dated as far back as the year 1814 up to 1821. Mr. Grigsby's account from the years 1818 to 1821. I remarked that those accounts were out of date the parties agreed that no exception should be taken to time: what was proven to our satisfaction should be admitted. Mr. Foote was particularly earnest in claiming the benefit of his account.

Question by Grigsby – Did you return the award to Court &c. Answer – I did on the 1st Monday in December 1828 from the distance Mr. Hunton and myself lived apart, we did not sign and seal the award until the 26th November 1828 we then sealed it and directed it to the County Court of Prince William, at court I told Capt John Macrae I had our award in the case of Foote vs Grigsby which I must hand to the Court he desired me to leave it with him, and he would hand it up at a proper time which I did.

Question by Grigsby – Do you recollect my saying to Mr. Tyler – Foot meant to plead the act of limitation to my claims against his deceased wife. Answer – I do not recollect the particulars of the conversation with Mr. Tyler as my attention was not particularly drawn to it at the time, but recollect the remark that you ought to have said as administrator and he had no doubt you would recover.

Question by Grigsby – Did Mr. Tyler as counsel for Foote leave any objections with you to your taking into the settlement my claim in the name of Foster against his deceased wife. Answer – He did in writing of which the following is a true copy.

The counsel for Foot objects to the admission of the accounts presented by Grigsby for articles & bought and paid for by said Grigsby for Footes wife previous to her marriage, as by her death he the said Foote was bound for their payment in the character of her representation and also objects to the account transferred by James Foster as not being such a transfer of interest as entitled Grigsby to use it as an effect.

Friday 29, 1829
Wm. B. Tyler
Atty. For R. Foot

Directed to Messrs. C. Hunton and C. Ming.

When Mr. Tyler handed me the paper of which the above is a copy. I think I promised him I would return it to Court with the award which I thought I had done but looking over the papers with Cols Gibson and Mr. Foote some time after I found it to my surprise amongst the papers relating to the reference which I should have returned to court with the award, but each party claimed them as his own private property and requested me to hold them until they had an opportunity to call on me and get what belongs to each. Mr. Foote afterwards called on me for his papers. I told him I could not separate them as their matters was likely to become litigated but if Col. Gibson wished to see them they might do so and make what use of them they wished but they must return them to me which was accordingly done. Amongst the papers handed in by Mr. Grigsby are several letters from R. Foote to Francis Lockett of Kentucky which letters had escaped Mr. Foote's notice when before us as arbitrators, he then asked me how the letters got among the papers. I told him Mr. Grigsby had furnished us with them.

Question by Grigsby – Did the amount you awarded exactly correspond with the account you made at out Between Foot and me. Answer – No, we charged you with the whole amount of cost in the suit of claim against you amounting to \$17.94 but in more fully weighing the whole matter we considered it would be more just and equitable that each party should pay his own costs but omitted to add the amount as stated above in your favour. The amount of our award was \$236.79 and ought to have been \$254.73.

Question by Grigsby – Do you know the hand writing of Richard Foote – Answer I do.

Question by Grigsby – Are the letters of R. Foote to Frances Lockett bearing date January 10th 1821, February 22nd 1821 and May 15th 1821 and numbered 1, 2, & 3 in the hand writing of

Richard Foote. Answer – I believe them to be in Mr. Foote’s hand writing and when Mr. Foote saw them he acknowledged them. No further the deponent saith not.

Charles Ming

Prince William County to wit:

The foregoing deposition of Charles Ming was duly subscribed and sworn to before us magistrates in the County aforesaid. Given under our hands this 15th September 1829.

James B. Ewell

J. W. F. Macrae

Copy, Teste – Jno Chew C.C.

The deposition of Charles Hunton taken at the house of Sarah Brooks in the Town of Buckland on the 15th day of September 1829 to be read in evidence in the suit depending in the Superior Court of Chancery for the Fredericksburg District, wherein Richard Foote is plaintiff and Aaron Grigsby is defendant. This deponent being first duly sworn deposeth and sayeth that in pursuance of an order of the County Court of Prince William dated 10th August 1826 referring all matters of difference between Richard Foote and Aaron Grigsby to Charles Ming and Charles Hunton we met at various times at Brentsville and at Haymarket then we took affidavits examined the accounts of each party and heard their statements and explanations and finally made up an award which was left with Mr. Ming to hand to the Clerk of the Court. At several of those meetings we adjourned on account of the absence of Mr. Foote he writing to us he could not attend. In every case of adjournment both parties had notice of the time and place of the next meeting.

I am not sensible of feeling any prejudice against either of the parties as I knew nothing of the matter in dispute till I met as an arbitrator. To the best of my judgment I assisted Mr. Ming in settling the accounts and making up the award believing when I did it, we were making a just and equitable settlement between the parties. Before us neither party objected to the date of the accounts. At one of the meetings after Mr. Foote had left the place Mr. Tyler his counsel contended we ought not to charge Mr. Foote with his wife’s account. Mr. Grigsby said if he did not Mr. Foote would plead the act of limitation. Mr. Tyler replied he could not as he had acknowledged the accounts and Mr. Grigsby ought to sue him as administrator of his wife.

I have understood Mr. Foote has said in his Bill that I treated him with disrespect and insulted him. I am unable to say what grounds he has for such a charge. I will detail a conversation I had with him at one of the meetings to the best of my recollection. I am sure this must be the only occurrence he could possibly make any exception to.

Mr. Foote said he had paid debts against his wife which were of superior dignity. I said to him he ought to shew us it was so, and if he was not ready then we would give him time, he said he was not obliged to do it, when I said in substance, he was deposed to guibble. I made this reply hastily and might have shown some warmth. In a conversation with Mr. Tyler and Col. Gibson sometime after we had made an award, I did say that I believe the award to be just and that if Mr. Grigsby did not get his claims by an award, that he never would as I believe from what I had seen of Mr. Foote before us that he would avail himself of the act of limitations. As to the particular times of our meetings and dates of papers, and papers handed to us by the parties I cannot speak positively about as Mr. Ming had possession of all the papers and we live a considerable distance from each other.

Some weeks after we had made up our award Mr. Ming mentioned to me that we had made a mistake against Grigsby to the amount of \$17.94. I examined the papers and was

satisfied of the error; but we concluded it was not proper for us to withdraw the award to make the alteration.

Question by Grigsby – Did Mr. Foote acknowledge before you he had received \$300 in Kentucky as part of his wife's Estate? Answer – He did.

And further this deponent saith not.

Chas. Hunton

Prince William County to wit:

The foregoing deposition of Charles Hunton was duly subscribed to and sworn to before us magistrates in the County aforesaid. Given under our hands this 15th September 1829.

J. W. F. Macrae

James B. Ewell

Copy, Teste – Jno Jas. Chew C.C.

At a late Superior Court of Chancery held in the Town of Fredericksburg on the 5th day of May 1830.